IN THE COMMON PLEAS COURT OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

****

COMMONWEALTH	:	**January Session 1982**
VS.	:	**NOS. 1357 Poss Instru of Crime Gen**
MUMIA ABU-JAMAL	:	**Poss Instru of Crime Weap**
aka	:	**1358 Murder**
WESLEY COOK	:	**Voluntary Manslaughter**
		1359 Involuntary Manslaughter

PCRA-MITSCHRIFTEN DES FALLES
MUMIA ABU-JAMAL

INHALTSVERZEICHNIS

12. Juli 1995 3
14. Juli 1995 23
17. Juli 1995 39
18. Juli 1995 41
19. Juli 1995 55
26. Juli 1995 63
27. Juli 1995 111
28. Juli 1995 153
31. Juli 1995 191
1. August 1995 241
2. August 1995 287
3. August 1995 331
4. August 1995 379
7. August 1995 409
9. August 1995 423
10. August 1995 461
11. August 1995 495
14. August 1995 551
15. August 1995 571
11. September 1995 579
12. September 1995 601
18. September 1996 605
1. Oktober 1996 613
2. Oktober 1996 665
3. Oktober 1996 717
26. Juni 1997 741
30. Juni 1997 789
1. Juli 1997 815

12. Juli 1995

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COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

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Hearing on Motion for Recusal and Stay

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July 12, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

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BEFORE: THE HONORABLE ALBERT F. SABO, J.

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APPEARANCES:

- HUGH BURNS, ESQUIRE
- CHARLES GRANT, ESQUIRE
- RONALD EISENBERG, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- STEVEN W. HAWKINS, ESQUIRE
- DAVID RUDOVSKY, ESQUIRE
- PAUL MESSING, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- PAUL COOPERSTEIN, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

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(At 10:2O a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - -

THE COURT: Good morning, everyone. Before we proceed I just want to remind everyone that this is a Court of law. We are not out on the street. This Court will not tolerate any outbursts. If that should occur, the Sheriffs are instructed to remove that person immediately and they will not be allowed back into the Courtroom. Everything must be proper and decorum must be maintained.

Counselors.

MR. WEINGLASS: Thank you, Your Honor. My name is Leonard Weinglass. I am one of the attorneys for the Petitioner Mumia Abu-Jamal.

This is a matter which belatedly came to our attention, which came to our attention this morning. I am serving the District Attorneys representing the District Attorney's Office of Philadelphia.

And that is the question, the preliminary question and the threshold question, of whether or not Your Honor has the

Page 3.

jurisdiction or the jurisdictional capacity to sit on matters which are before the Court. In the papers we cite to the Court the fact that under Article 5, Section 16B of the Constitution of the State of Pennsylvania, all jurists of the Commonwealth are mandatorily retired at the age of 70. And as we indicate in Exhibit 7 attached to our petition, Your Honor has passed that date. I believe your date of birth is 1920 -- although the Court is free to correct me if I am in error.

THE COURT: I know my birthday.

MR. WEINGLASS: So the Court has been stripped by virtue of the Constitution of jurisdiction.

I also understand under Article 5, Section 16C the Supreme Court of Pennsylvania is empowered to restore temporarily, I emphasize the word temporarily, judicial authority to the Court by order of the Chief Justice of the Supreme Court.

It's my understanding -- and again I could be corrected by the Court -- that the Chief Justice of Pennsylvania restores temporary authority to this Court on a month-to-month

Page 4.

basis and that an order has been signed for the month of July 1995. But in that order the Court is authorized in a limited capacity to only sit on those matters, quote, as directed. And principally to assist the Common Pleas Court of Philadelphia in reducing the backlog of both civil and criminal cases.

And so our first position on the jurisdictional issue is whether or not this Court has been directed as the Supreme Court order indicates to sit on this matter. And if the Court has not been so directed, the Court is without authority to sit on these proceedings.

MR. BURNS: Your Honor, do you wish us to address that threshold question now?

THE COURT: You might as well.

MR. BURNS: Thank you, Your Honor. Hugh Burns for the Commonwealth.

Your Honor, we just received this filing this minute. However, it is very similar to a filing which you reviewed in the Fahy case a couple of weeks ago and I prepared for you on that. And I am here today with Mr. Eisenberg, the Deputy of the Law Division, and Mr. Grant, the Chief of the Homicide Unit.

Page 5.

As far as the order of the Supreme Court appointing you as a Senior Judge, as you know, it states, as Mr. Weinglass stated, that you are to serve as directed. That means, of course, as directed by Judge Bonavitacola. And there is an order attached to the defense filing which says very plainly that PCRAs are to be disposed of by the trial Judge. And in this case that's you.

By the way: That doesn't go to jurisdiction. Any Judge of the Common Pleas Court, as you are, has the same jurisdiction as any other Judge of the Court of Common Pleas Court. So this motion is frivolous.

Thank you, Your Honor.

MR. WEINGLASS: If I just may answer that. Counsel only read part of the order that governs the local proceedings here in Philadelphia. The rest of the order -- and I am reading from it -- provides, in the event the trial judge is no longer an active member of the judiciary, these matters will be assigned for disposition to other judges assigned to the homicide program at that time.

Your Honor, we feel that this Court is

Page 6.

not an active member of the judiciary.

THE COURT: Do you mean --

MR. WEINGLASS: Temporary.

THE COURT: Do you mean I have been sitting as a Common Pleas Judge, I am not active?

MR. WEINGLASS: Well, I am not talking --

THE COURT: That is what you are saying.

MR. WEINGLASS: I am not talking about your physical movements, I am talking about your status in law. The Court has been stripped of the authority by --

THE COURT: No, because in the Fahy case, and I was a Senior Judge at the time, the Supreme Court sent the matter back to me to hear as the trial Judge. There's never been any change to that rule. I have all the powers of a Common Pleas Judge that I had before I was mandatorily retired. As long as I am certified by the Supreme Court to sit as a Common Pleas Judge, I have all the powers of a Common Pleas Judge.

The motion is denied, Counselor.

Page 7.

MR. WEINGLASS: Your Honor, we will submit to the Court a written order denying that motion. And I would ask the Court to certify that issue so that it may be appealed.

THE COURT: I am not going to certify it. No. It will take it's due course.

MR. BURNS: For the record, we would object to certification in any case, Your Honor.

MR. WEINGLASS: Your Honor, so the record is clear: I would like to provide through the Court Crier a copy of the order which we would request the Court to sign, to enter in the record, giving a copy to the Commonwealth. And I understand the Court is refusing it, I just wanted it to be clear on the record.

(Handing) If that could be marked as an exhibit in this hearing, as Petitioner's Exhibit 1.

THE COURT: All right, that matter has been disposed of. What is next?

MR. WEINGLASS: Your Honor, before I begin the argument on the two issues that are before the Court, I would like to introduce as a courtesy to Counsel, Co-counsel, and to the

Page 8.

court, my fellow Counsel seated here at the table.

Rachael Wolkenstein to my left, a member of the bar of New York.

Daniel R. Williams, a member of the bar of New York.

Steven Hawkins, a member of many bars.

THE COURT: Including Pennsylvania?

MR. WEINGLASS: He is not from Pennsylvania. No, I think he served his clerkship here in Philadelphia with the Federal Court of Appeals.

MR. HAWKINS: Yes.

THE COURT: Okay.

MR. WEINGLASS: And Paul Messing, who you know. And David Rudovsky the Court also knows, local counsel.

If the Court please: On June 5th, a little more than five weeks now ago, Mr. Jamal filed with this Court his first post-conviction relief application. Those documents included a very lengthy petition setting forth 19 separate grounds upon which a new trial should be granted, attaching 47 exhibits and 13 affidavits. This petition was accompanied by a

Page 9.

memorandum of law, also rather lengthy, specifying the issues of law pertaining to the 19 grounds he alleges as a basis for getting a new trial.

In addition, a motion was filed for discovery, a very lengthy motion because ample discovery is necessary under the circumstances and allowed for under the relative provisions of the post-conviction statute. And a motion for recusal. These documents, some 500 pages in length, which the District Attorney's Office referred to as a telephone directory in terms of it's volume and scope, has been lodged with the Court now for over one month. As I understand it, initially the Court or whoever assigns these matters set this case down to be argued on July 24th. We objected to that as being too long a passage of time because a warrant was signed on June 1st and the execution date is set for August 17th. And pursuant to our objection, this Court moved the hearing date up to today, July 12th. Which we appreciate. But the prosecution did not serve us with papers until just last week. And we have had occasion to examine those papers. But if the Court

Page 10.

agrees -- and I think the Court has already agreed -- there are only two issues to be argued today, and they have to be taken in the following order of necessity.

First is the issue of whether or not the Court should disqualify itself based upon the papers that have been filed. And secondly is the issue of whether or not, if the Court does not disqualify itself, a stay of the execution date should be granted.

Now, addressing recusal is not a legally complicated matter. Because I think if you read the papers -- and over a hundred pages on this issue has been submitted to the Court, including 10 exhibits attached to our moving papers for recusal -- the law is fairly clear-cut as I understand it in Pennsylvania. And I sense no disagreement from the District Attorney's Office. The law provides that a Court should disqualify itself according to the canons of judicial ethics where certain factors appear. Namely -- reading now directly from the canons of judicial conduct -- a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. In

Page 11.

other words, it doesn't have to be proven, it merely might reasonably be questioned. And the Pennsylvania Supreme Court adopted that standard in the Commonwealth V Boyle case in 1982. So we are talking about a very low standard, a threshold standard for when the Court should recuse itself.

Well, what do you look at to see whether or not the Court's impartiality might reasonably be questioned? And we are also told that by the case law. We are to look at factors and circumstances which reasonably question the Court's impartiality. And Justice Roberts of the Pennsylvania Supreme Court set that forward as the standard.

Now, in looking at that we have gathered, I believe, a total record here that's unprecedented in size and scope respecting the factors and circumstances that ought to be considered on whether or not this Court could reasonably be labeled as lacking in impartiality.

The District Attorney's papers claim that we are engaging in rumor, innuendo and speculation. But I want to point out to the

Page 12.

Court that what we have set before Your Honor is not rumor or innuendo, what we have set before this Court are sworn statements of members of the Bar of Philadelphia. What we have put before the Court is the results of a poll taken of members of the Bar of Philadelphia. We have put before the Court a commentary by one of the leading scholars in Pennsylvania on the issue of the death penalty, Professor Bruce Ledowitz of Duquesne University of Pittsburgh. We have put before the Court the results of a serious investigative effort by the Philadelphia Inquirer, the leading newspaper in the community, which has examined 35 cases tried before Your Honor.

So we have gathered before this Court a complete factual record. And it is a public record, and I emphasize that, because what we have here is a public perception gathered from reports from the Bar, reports from lawyers, indeed reports from even prosecutors and judges, all of whom have commented publicly and under sworn statements as to the performance of this Court. The record I feel is not a rumor, the record is undeniable.

Page 13.

And in the final analysis it's that public record which should lead to a determination by this Court that it can not sit on a case involving an African American Defendant who was convicted before this Court of killing a white police officer in this City and now seeks a new trial through post-conviction relief.

The papers that we have submitted to the Court include -- and I don't want to limit the sworn affidavit which Your Honor is familiar with -- of attorney Weinberg, a member of the Bar, who, as I understand it, is a partner and associate of a former prosecutor Richard Sprague. In his affidavit he contends -- and we have

attached it -- that he has the statement of six former prosecutors of the District Attorney's Office in Philadelphia who would testify to the fact that this Court is uniformly biased against criminal defendants. A very serious allegation, not easily made, I assume, not made without considerable thought and reflection.

In addition to that we have attached the result of a study of one of the leading

Page 14.

journalists in the City, Mr. Tulsky, who has examined 35 trial records in which this Court presided and has come to the conclusion -- again I believe a very studied and careful and thoughtful conclusion -- that this Court is a criminal defendant's nightmare.

We have provided to the Court the report of a poll of members of the Bar of Philadelphia which was conducted shortly after Your Honor sentenced Mr. Jamal in which one-third of the members who responded to the poll indicated that the Court was unqualified.

We have recited a report that again appeared in the Philadelphia Inquirer that lawyers, judges and prosecutors all agree on one thing, that matters tried before this Court are tried differently than they are tried before other judges.

The statistical record is also not rumor but fact. As I understand it, 31 Defendants before this Court who were tried before Your Honor received, as a result of a trial by jury, 31 death sentences. Now, as I understand it, no other judge in the City of Philadelphia has presided over 31 death

Page 15.

sentences. No other judge in the State of Pennsylvania has presided over 31. And significantly, no other judge in the United States has presided over as many death sentences following trial as Your Honor has.

And lastly, we have attached the fact 17 that this Court has also compiled a record on these kinds of proceedings, post-conviction proceedings -- and we recite the cases in which Your Honor has been involved in -- and in which Your Honor has dealt summarily and, I say respectfully, injudiciously with post-conviction proceedings which death row inmates have brought before this Court.

The Pennsylvania Capital Resource Center has provided us -- and we have attached it -- a computer printout of these cases which Your Honor has sat on indicating not only that this Court has sat on more death penalty sentence cases than any other judge in the United States, but that this Court has been reversed by appellate courts more than any other judge. And not just the State of Pennsylvania but in the United States.

So this is not rumor. We are talking

Page 16.

about factual records. We are talking about the sworn statements of respected members of the Bar. The considered opinions of the press. Which must indicate to this Court it reflects the considered opinions, reflects and shapes the considered opinions of the public at large.

And lastly we talk about a matter which might not ordinarily be an issue, a factor or circumstance but is in this case. And that is the fact that Your Honor has served prior to becoming a Judge of the Commonwealth for 16 years as an Undersheriff in Philadelphia. And while you were in that capacity the Court was a member of the Fraternal Order of the Police, as I understand it, and the Court was a member of the Police Chiefs' Association, and a member of the Sheriffs' Association. And we don't know what this Court's relationship is to those organizations, but we do know that one of the organizations that this Court has had a long-standing relationship with is the Fraternal Order of the Police, and that association is now currently, today, actively involved in a campaign to see to it that Mr. Jamal is executed. That he doesn't get the relief that

Page 17.

we are here in Court seeking.

Now, Your Honor's association with an organization that is dedicated to that proposition clearly raises in the public mind at least a question of impartiality.

THE COURT: If I may interject for a second, Counselor, with your permission: I am no longer a member of the Fraternal Order of the Police. When I was elected as a Judge I withdrew.

MR. WEINGLASS: And then I understand Your Honor has no association whatsoever with the Fraternal Order of Police?

THE COURT: I am not a member. Not a dues-paying member, not a free-paying member, no member, period.

MR. WEINGLASS: I appreciate the Court stating that on the record, and I accept that. I just know in my own experience being a member of an organization for 14 years, although not currently a member of the organization --

THE COURT: I don't know if I was a member for 14 years. I dispute that. Because the Sheriffs were not taken in with the Fraternal Order of Police at that time. It was

Page 18.

not until later on. I think I was only a member, an active member for a few years.

MR. WEINGLASS: For how many years?

THE COURT: I don't remember how many.

MR. WEINGLASS: Pardon --

THE COURT: Just for a few years. Because the Sheriff was not recognized. They are today recognized by the Fraternal Order of Police. And they are members of the Fraternal Order of Police.

MR. WEINGLASS: Well, I don't want to quibble, I feel --

THE COURT: Well, I don't want to quibble either, I just want to correct the record, that's all.

MR. WEINGLASS: And I appreciate that, and I accept the correction.

THE COURT: Okay.

MR. WEINGLASS: However, in this panoply of facts, factors and circumstances, I saved that for last because I felt that was the least important. Ordinarily that would not reflect one way or another on the impartiality of the Court, but given this Court, and all the other matters I cited, which the Court has not

Page 19.

interrupted me --

THE COURT: I understand that. But to accept what you say, then no assistant district attorney should ever be a judge.

MR. WEINGLASS: No, oh, no, I don't agree with that proposition.

THE COURT: Why?

MR. WEINGLASS: I don't quite agree with the Court.

THE COURT: Why?

MR. WEINGLASS: The factor of membership in the Fraternal Order of Police does not per se disqualify this Court, I hoped I had made it clear.

THE COURT: Okay.

MR. WEINGLASS: It is the other which I had cited. It is --

THE COURT: Okay.

MR. WEINGLASS: It is the record of performance as reflected in undeniable facts here which we are concerned about. I just put in the Fraternal Order of the Police as the last issue.

Now, it is against that backdrop which I have set forth, that backdrop of factors and

Page 20.

circumstances that we must now turn to consider briefly the 17 events which we set forth in our recusal motion, all drawn from the record of trial and one from pre-trial, in which this Court sat and made rulings and rendered judgments that we contend reflect that very bias and lack of impartiality that all of the public matters reveal are part of this Court's conduct in the performance of your official duties.

We cite 17. I don't want to go into all of them. They are responded to by the Commonwealth. But these 17 include issues which

directly impacted the fact-finding process which resulted in Mr. Jamal being convicted. One of them Your Honor will probably recall clearly.

And if I am reciting it in error, Counsel I am sure could correct me.

The prosecution 's case included a claim that Mr. Jamal had admitted, more than admitted, had openly proclaimed in the hospital where he was brought for treatment, this man who had been a court reporter for years and knew court proceedings and evidence, had nonetheless, according to their case, openly proclaimed that he had shot the officer. But the peculiar thing

Page 21.

about that part of the prosecution's case is that the two witnesses they produced, the deceased officer's former partner and best friend Gary Bell, and a hospital security guard Priscilla Durham, both failed to tell anyone about this admission, this very damming admission, for over two months. Indeed, Officer Bell was interviewed, as he should have been, by the homicide investigators one week after the shooting in which he told them all kinds of things. Speculated on why his partner was shot. But he didn't say anything about the so-called admission that he claimed two months later, after Mr. Jamal had filed a complaint against the police officers for abusing him in the hospital, a complaint that was backed up by independent witnesses. So two months later he remembers. He said he never told his wife, he never told any police officer that he heard this damming admission, just never told anyone.

And Priscilla Durham, the security guard, she said yes, I heard it also, but I didn't tell anyone. Even though I see police everyday, six days a week, I just never told anyone. But I did write it down that night in

Page 22.

my own longhand. That longhand note that she claimed was never produced, mysteriously disappeared. But what kind of an answer could Mr. Jamal give to this? His answer was simple, clear-cut and definitive. The officer who was guarding him in that hospital, Officer Gary Wakshul, did write a report that night, an official police report. And what did he say about Mr. Jamal? He said the male Negro made no statements.

Well, that's a very critical defense witness to answer these charges of an admission. So when the defense case began, Mr. Jackson, Mr. Jamal's back-up attorney at that time, asked to have Mr. Wakshul brought in to testify to this report. And the Assistant District Attorney at that time said we object, it's too late, using a kind of a technical defense. Well, the Court said why don't you try to look for him, maybe he's on vacation. And sure enough, after a 10 minute recess the Assistant District Attorney comes back in and says to Your Honor, Judge, you were right, he's on vacation and he is unavailable.

Well, this is a critical defense

Page 23.

witness. And so Mr. Jamal and Mr. Jackson together implore the Court to just ask the Assistant District Attorney to find out if this Officer is on vacation at home here in the City of Philadelphia or if he's left the jurisdiction. Or find out where he is.

But this is a critical witness. And the Court's reply was I'm not going to take the Court's time to go looking for a witness. They were only looking for a telephone call to ascertain his whereabouts. And the defense case was cut off and Officer Wakshul was never produced, the Jury never knew this. And Mr. Jamal brought to the Court's attention the fact that written on the report of Officer Wakshul was a notation that he was not to be permitted to go on vacation. And yet he was on vacation.

And what was Your Honor's response to this? Did Your Honor say to the police that was a wrong thing to do? Did you say to the prosecutor this man should not have been allowed on vacation? Your response was, you turned to Mr. Jamal, who faced the death penalty, and you said to him, almost casually, but kind of cruelly, you and your attorney goofed. And that

Page 24.

was the end of the issue.

THE COURT: Well, shouldn't they have subpoenaed the Officer?

MR. WEINGLASS: Well, Your Honor --

THE COURT: Should they not have subpoenaed the Officer?

MR. WEINGLASS: The answer to that is of course.

THE COURT: Well, then he wouldn't have been able to leave.

MR. WEINGLASS: But, Your Honor --

THE COURT: You see, that is not my responsibility. I don't take the Commonwealth's position, I don't take the defense position. That is something they have to do.

MR. WEINGLASS: We have a claim here which has to be factually litigated in post-conviction proceedings wherein we are going to examine the ineffective assistance issue of Counsel. And that is going to be one of the issues which the defense will raise, and on that ground alone the Court should grant post-conviction relief. If Your Honor feels you've done nothing wrong, but it was Counsel who was in error, Mr. Jamal has to be given a

Page 25.

new trial either way, either way you cut it. Either the Court was wrong or Counsel was wrong. But Mr. Jamal was injured and irreparably. And that's why he must have a new trial. The Court does see the importance of this witness, I'm sure. And now the Court is saying well, then Counsel was wrong. You might be right, but in any event Mr. Jamal gets a new trial on just that issue. But there are 16 other issues.

THE COURT: All right, let's get through with the 16.

MR. WEINGLASS: I will be brief, I won't deal with 16, I just want to tell the Court I am only going to deal with two or three.

THE COURT: Okay.

MR. WEINGLASS: The other one that concerns us greatly about the performance of the Court, the Court will recall an episode occurred here that was very unusual. Mr. Jamal began by being his own attorney. And in the two days that he conducted the questioning of Jurors --

THE COURT: Go ahead.

MR. WEINGLASS: -- one Juror was seated. To refresh the Court's recollection, her name was Jenny Dooley or Dawley.

Page 26.

THE COURT: I am familiar with the case.

MR. WEINGLASS: And after the entire Jury was selected, the Court sequestered the Jury, they were put up in a hotel. And Miss Dawley communicated to the Court, as I understand it, by note, or through the marshals or attendants --

THE COURT: She didn't communicate with me, Counselor, let's get that straight. I didn't know a thing about it until the Court Officer relayed the information to me.

MR. WEINGLASS: Your Honor, the record of the trial indicates that the Court Officer brought before the Court the question of this Juror's personal problem. And the Juror asked the Court if she could be excused to take her cat to a vet who was ill, and not during Court time but in the evening from about 6:00 to 9:O0. So that there would be no break in Court time, and presumably she could go with the Court attendant and take care of her family emergency.

The Court shot back to this Juror through the attendant no, you can not go. The Court never asked Counsel to come into chambers and let's

Page 27.

discuss this problem and let's talk about whether or not this Juror should be helped here so that we can save this Juror. The Court summarily rejected her request and the Juror, finding that she had no other alternative, went and took her cat to a vet and returned to the hotel. That was reported to the Court. And when that was reported to the Court, the Court had in it's chambers Mr. Jackson, and there was a discussion about this Juror. She was not brought in and questioned. Mr. Jamal was not there, he was absent. The only Juror who he had selected. An African American woman who sat in seat number one. And she was in Mr. Jamal's absence summarily removed.

THE COURT: No, she was not summarily removed, Counselor. But I will let the Assistant District Attorney answer that. Go ahead.

MR. WEINGLASS: There was discussion.

THE COURT: Wait awhile. You are right, there was discussion, that's right.

MR. WEINGLASS: Summarily removed in Mr. Jamal's absence. But who was present?

THE COURT: The attorney.

Page 28.

MR. WEINGLASS: Mr. Jackson, Mr. McGill, the Assistant District Attorney. And this was, the Court gave the opinion about this Juror, and I must say respectfully --

THE COURT: I gave?

MR. WEINGLASS: Yes, it is in the record. It is cited.

THE COURT: If it is in the record, okay.

MR. WEINGLASS: It is in the record. And what did the Court say? And I believe, respectfully, this is what motivated Your Honor. You said I didn't like this Juror's attitude from the beginning. And you turned to the two lawyers and you said I don't know why you let this Juror on the Jury. But it was Mr. Jamal who selected this Juror. And so because Your Honor didn't like a Juror, who Mr. Jamal had selected, and the prosecution accepted her, this Juror was dealt with in a fashion that I could only describe as summary.

And why do I say that? I say that for the simple reason that later on in the trial another Juror had a problem. That Juror's problem was much more threatening to the case

Page 29.

than Miss Dawley's problem. That Juror wanted to take a civil service exam during Court hours. Well, when the Court got that information, what did the Court do? Unlike Jenny Dawley, you called in both lawyers and now you said, and I think quite properly, what do we do with this Juror. And there was a decision and the Court offered to send a Court attendant with this Juror to take a civil service exam and the Court was suspended for half a day despite the fact that you had this Jury working two consecutive Saturdays, one Saturday until six o'clock at night. Time was very important to the Court, that's why you wouldn't grant an hour so Officer Wakshul could be found.

THE COURT: Well, this was in the evening, Counselor, and there was no way for me to contact the attorneys to come back into Court so we could discuss the issue. I said she was sequestered and she is sequestered, period.

MR. WEINGLASS: So was the other Juror.

THE COURT: Right. But wait awhile. We didn't do anything until the attorneys were there present. I wasn't going to do anything on

Page 30.

my own. The attorneys were present and they discussed the matter. But when she did what she did, and, Counselor, she said I don't care what the Judge says or what anybody says, I am going to do it, okay, but this was in the evening, there was no way for me to get in touch with the attorneys to call them in, come into Court and say let's discuss it, what are we going to do with this person. If you remember, they agreed to excuse her, not me.

MR. WEINGLASS: They being not Mr. Jamal, who never knew this.

THE COURT: No.

MR. WEINGLASS: It was his Jury.

THE COURT: Well, he didn't want to participate in the proceedings.

MR. WEINGLASS: He wasn't invited into that chambers.

THE COURT: Because he wasn't, he didn't want to participate. That was from the very beginning he didn't want to participate. But go ahead, Counselor, I'm sorry for interrupting you. But go ahead.

MR. WEINGLASS: Your Honor, I just want to take exception with one observation.

Page 31.

Miss Dawley, according to your Courtroom attendant, who did testify on the record --

THE COURT: Hmm-hmm.

MR. WEINGLASS: -- and asked to take her cat to that hospital throughout that day, in the daytime hours.

THE COURT: Unfortunately, I didn't know about that. I didn't know about that.

MR. WEINGLASS: That is in the record.

THE COURT: Well.

MR. WEINGLASS: It wasn't at night.

THE COURT: Well, I thought you just said a while ago it was at nighttime that he called me. But go ahead. Maybe the Commonwealth looked at the notes more carefully. But go ahead.

MR. WEINGLASS: Your Honor, the undeniable fact is what happened here, not going back into it, is that Juror Number 1, an African American woman picked by Mr. Jamal, was removed in his absence and replaced by Juror, first alternate Juror Mr. Courchain, who said he subconsciously felt he didn't think he could be fair. And Mr. Courchain ended up being Juror Number 1.

Page 32.

THE COURT: But -- not to cut you short, Counselor -- didn't the Supreme Court on direct appeal go into that matter?

MR. WEINGLASS: Yes.

THE COURT: Well, if they went into it it is resolved.

MR. WEINGLASS: But they didn't go, they went into half of it. They went into the question of whether or not the Court's discretion as a matter of law was violative of Mr. Jamal's rights. I am now arguing not that issue, I'm arguing the way the Court handled this issue, apart from your discretion as a matter of law, indicated a lack of sensitivity to the fact that this man is on trial for life and he picked a Juror who the Court removed in his absence.

THE COURT: That is the same issue, Counselor, that they have already resolved.

MR. WEINGLASS: I beg to differ. They never were even asked because appellant Counsel never read the record of what happened to Jenny Dawley; it was not even raised in the Supreme Court. The only issue was, was it proper to seat Mr. Courchain. That was raised, but not the

Page 33.

whole business about the Court removing a Juror, which as Your Honor well knows is a very serious matter in law. You can not take from a defendant, particularly a capital defendant, his jury. You can't touch that jury unless there is adequate grounds. And that was done here.

And I want to say just in passing and move off this: In their response to our argument on that issue, where we say and say accurately that an African American Juror was removed and replaced by a middle-aged white Juror who said he wasn't sure he could be fair to Mr. Jamal, and another Juror was given great leeway who happened to be a young Caucasian Juror, male, the Assistant District Attorney tries to say we are attempting to create a racial issue where none exists. And they hide behind a technical subterfuge that nowhere in the record is the race of these Jurors indicated. And therefore they try to inform this Court that we tried to make racial issues where none exists. But what they overlook, maybe inadvertently, is an affidavit which their Assistant District Attorney filed with the Supreme Court when the case was over in which he

Page 34.

stated the race of these Jurors. And Assistant District Attorney Joe McGill said I have a distinct recollection that Jurors Number 1, 7 and 10, Jenny Dawley, Savannah Davis, and Basil Malone were black. So it is in the record. And he goes on: Juror Number 1 was removed and replaced by the first alternate who was Caucasian.

So their own Assistant District Attorney in an affidavit informs the Supreme Court of the race of these Jurors. And when we raise it before this Court they say we are trying to create a race issue

where none exists. But they just overlook the record, which they have done often. And their response is that -- and I don't want to get into it because I don't believe in argument among Counsel: I think issues ought to be addressed on their merits -- but that's nonetheless the way they deal with the issues that we raise about these Jurors.

Your Honor, I just want to talk about discretionary rulings that you made. A cab driver, an alleged eyewitness by the name of Robert Chobert, confessed to this Court at sidebar that he had a felony conviction for

Page 35.

throwing a Molotov cocktail into a public school for pay. A rather serious felony I think everyone would agree. The Jury was never told that. And they were never told that because the Assistant District Attorney objected.

THE COURT: No, not because he objected. But because the felony has to be crimen falsi. That's the law here in Pennsylvania, Counselor. I don't know what the law is in New York. Maybe that would be admissible in New York. But in Pennsylvania it's not admissible unless it's crimen falsi.

MR. WEINGLASS: Yes, and I quite understand the law in Pennsylvania, and I appreciate it. But the law in Pennsylvania also is this. Under the case of Commonwealth V Murphy, where a case tried before Your Honor was reversed so I am sure you remember it, in Commonwealth V Murphy what was kept from the Jury was the fact that the witness was still on probation, which Mr. Chobert still was. And the Jury in Mr. Jamal's case was never told that. That reversed the Murphy case. And that's the part that was error. So the Jury never knew this. And as Mr. McGill then argued in

Page 36.

summation, these witnesses had no reason to lie. Of course they did. That witness was on probation and the Jury was never told it.

You also cut off the questioning of witness Veronica Jones. She was attempting to tell the Jury that their key witness -- a young woman who, unfortunately, lived a life as a prostitute, had 38 arrests, had three pending cases in Philadelphia, was serving 18 months in Massachusetts on another related prostitution charge -- Veronica Jones attempted to say to the Jury that I was offered the same deal by the police as was given to this prostitute, and that is if I would talk against Mr. Jamal I could work my corner unmolested by the police. Your Honor felt that had nothing to do with the case. But, Your Honor, it had everything to do with the case. It established the motive of the chief prosecution witness, her deal. And now we know by way of affidavit from an investigator, an investigator Mr. Greer, that not only did she have a deal to work her corner unmolested, she was always under the watchful care of two plainclothes officers of the Police Department of the City of Philadelphia. Incredible that

Page 37.

that witness was accorded those privileges in return for her testimony. But the Jury was never told that.

So these rulings, Chobert, Veronica Jones, removing a Juror, denying a continuance, all of these, Your Honor, impacted this Jury. And that's why of course a conviction would follow.

I don't want to go into the others, the other 14, but I will say this: There was an interaction here, for better or worse, fortunate or unfortunate, between this Court and Mr. Jamal in which Your Honor used, I think regrettably and possibly you regret it in hindsight, inappropriate language in addressing Mr. Jamal. When you banished Mr. Jamal from the Courtroom for whatever reason, the Court injudiciously said to him -- it is on the record -- take a walk. You do not say that, I submit, to someone who faces a death penalty in a trial and is trying to defend himself. He is not to be addressed in that fashion. In addition, as already mentioned, to him you said you goofed. And when he asked to have Mr. John Africa seated at his table you casually said to him why don't

Page 38.

you send him to law school, and there were exchanges of that nature which are utterly inappropriate but reflective of the lack of sensitivity that the Court had with respect to Mr. Jamal's situation.

Your Honor, so we come full circle around. Do all of these factors and circumstances taken together, including the background factors, do all of these raise just a reasonable question, no more than that, a reasonable question about the impartiality and the fairness of this Court to preside over proceedings in which the life-and-death issue of Mr. Jamal's situation will be resolved.

We have raised in our petition, Your Honor, very substantial and factually intensive issues pertaining to questions, as I have already indicated: The way the Jury was selected, 11 peremptory challenges exercised against African Americans to purge the Jury of as many African Americans as possible. I know Your Honor is going to say that was raised in the Supreme Court. Indeed it was, but it was raised on the basis of a statement which the District Attorney's office gave to the Supreme

Page 39.

Court, which turns out, we believe, to be inaccurate and false. They told the Supreme Court of Pennsylvania that they only used eight peremptory challenges against African Americans. We now have reason to believe that they used 11, or about 80 percent of all their challenges, an unacceptable number, as our memorandum points out. The United States Supreme Court said we are well past the day when prosecutors in a city that has a large population of minorities can use the office, their public office, their public trust, to purge a jury of the peers of the person who is on trial. That's what happened in this case. And it happened more than they told the Supreme Court.

We'll have an evidentiary hearing, I hope, and we'll bring before the Court what they did there. We will also bring before the Court how Jenny Dawley was removed.

And Your Honor is correct: There might be factual arguments here. You might disagree with me, the Commonwealth will disagree with me. We ought to have a hearing, we ought to have sworn testimony under oath with witnesses testifying about what did happen so

Page 40.

that when this case is decided it will be decided on the facts, not anybody's recollection.

There was also, as I pointed out, major issues of ineffective assistance of Counsel. We have an affidavit from Mr. Jackson. Major issues they disagree with. You have to hear from Mr. Jackson. You have to hear from his appellate attorney, who we have an affidavit indicating the appellate attorney never read the trial record. People say Mr. Jamal had an appeal. He had an appeal like he had a trial, but he had an attorney which never read the record. That's why the issues I am talking about right now weren't raised.

And lastly but most importantly, there are many new factual issues here that we have recently come across. Because evidence was suppressed, evidence was kept from his defense Counsel. Evidence is still being suppressed. People were driven out of this City who said someone else shot the Officer. People were given polygraph tests who wanted to testify on Mr. Jamal's behalf. The tests were torn up. People were shown photo line-ups. Defense

Page 41.

Counsel were never told that. Presumably they identified someone else because they were never brought in here. So the case, the evidence, the so-called evidence was a one-sided show of evidence. Only the evidence that the police and the District Attorneys wanted to lay before the Jury was laid before the Jury. The other evidence which we now have some indication of was never brought into play. We have to have a hearing on that. A serious hearing.

Mr. Jamal never had a pathologist. There is one now. What he has to say is critically important to this case. It completely belies the theory on which the case was tried.

We now have a firearms expert. He should also testify, it is very important what he has to say.

We now know, and I think probably Your Honor now knows for the first time, that the medical examiner who they put on the stand wrote in his report that the bullet removed from Officer Faulkner was .44 caliber. Mr. Jamal's gun was a .38 caliber. You can not fire a .44 caliber bullet with .38 caliber gun. The Jury

Page 42.

was never told that. Never brought out.

So all these issues have to be brought to the surface in long hearings. But what happens in these hearings? Your Honor sits as the Judge finder of fact. The sole finder of the law. We have no jury to turn to with this hearing. Only this Court. And that's why it's so important that this Court sit free of the taint of partiality and unfairness.

Particularly, Your Honor -- and I will just close with this -- particularly in a case which all the media has reported has had a polarizing effect on the City, for better or worse, and now I think it could fairly be said in the nation as well. And even internationally.

I just want to say, I don't think Your Honor is aware of it, but we have two attorneys here from Japan, and two attorneys here from Germany, who were sent by lawyers' associations in their home countries because their countries are concerned about this. I myself have had a call from the Consul General of Italy who said the foreign office in Rome wants a report on these proceedings.

Page 43.

So it's important in every case, because there is always a life on the line. And it's critically important. It's also even more important in a situation where the life of the City, the peaceful life of the City, and the peaceful sense of unity in the nation, is on the line as well.

Judge Ribner, your colleague, his first comment when he heard of this case, even before all of this, his first comment was this is a case that has explosive tendencies in the City.

For all these reasons, including matters I didn't argue, the 14th Amendment to the Constitution of the United States, the 8th Amendment which requires heightened scrutiny of a case where the death penalty is involved because it's so final, the precedence of law which I cited in Pennsylvania, I would ask the Court on behalf of Mr. Jamal, for the Court to reflect on all these matters, and because of the public perception, because of the reason this Court can't give what the Pennsylvania Supreme Court has said is the essential ingredient of every proceeding, namely, the appearance of

Page 44.

fairness, I would ask this Court to step aside so that another jurist in the Commonwealth of Pennsylvania may consider these proceedings.

MR. BURNS: Good morning, Your Honor.

Mr. Weinglass said that we agree on the law. I don't think that's true. I would like to direct your attention as I have in my filing to the case of Reilly versus SEPTA, a Supreme Court decision of 1985 which was recently reaffirmed by the Pennsylvania Supreme Court just last month. June of 1995. It is cited in our answer to the stay petition. I am going to quote what Justice Cappy wrote in that case, a reiteration of what the Court decided in Reilly. Justice Cappy wrote that whether a judge has the ability to be impartial is, quote, a personal and unreviewable decision that only the jurist can make. Once satisfied by that self-examination, the jurist must then consider whether or not continued involvement in the case would tend to undermine public confidence in the judiciary in reviewing a denial of his disqualification. We recognize our judges are honorable, fair and competent. Once the decision is made, it is final.

Page 45.

Now, the Court said something else in writing Reilly. It said that a judge hearing a recusal motion has to remember that public confidence in the judiciary depends on the knowledge the judges will not be swayed by unfounded charges of unfairness made by, and I quote, bold and unscrupulous advocates.

There's been a lot of representations made. Most of them concern what happened during the trial. Some of them concern matters which are not of record, and I would look forward to hearing that evidence presented by the defense in the event we get to the stay motion today. I would like to see witnesses presented.

But as to the recusal motion, the bulk of the complaints seem to be referring to matters that occurred at trial that are matters of record. And in referring to those matters, I suggest to you that there has been a consistent strain of misrepresentation taking place here.

One of the things that was mentioned -- I am going to try and answer all of them -- one of the first things that was mentioned was the matter of witnesses Priscilla Durham and Officer Bell. Those were two

Page 46.

witnesses who heard the Defendant when he was brought into the hospital admit that he had shot the victim -- I am not going to repeat the exact words -- and express his wish that the victim die. And during cross-examination of Miss Durham -- and again this is all part of the trial record -- as the defense attempted to show that Miss Durham had not told anyone about this statement until months after the event, until after the Defendant had made an accusation of brutality against the police -- and that investigation of course proved to be unfounded -- but during that investigation, the defense claimed was the first time that Miss Durham had mentioned this to anyone. And at that time she revealed that she had given a statement to her superiors the next day. And she produced a statement in writing that she had given to her superiors which totally refuted the idea that she had not told anyone. And this is on the record at trial.

Officer Bell, it is true, did not tell anyone about the statement when he was first interviewed. He was later interviewed again and he explained that he was watching his best

Page 47.

friend die on the operating table and that when he heard the Defendant say this, and he was interviewed about it immediately after the event, he was simply too upset to recall it. This supposedly sets up the situation in which Officer Wakshul was not called.

Now, the record shows that at various points in the trial Mr. Jackson, the Defendant's attorney expressed his discomfort because he didn't even know who the witnesses were going to be because the Defendant would not tell him who they were. This trial had been in progress for over a month, since June lst, when on the day that closing arguments were supposed to take place the defense stated that it wanted to call Officer Wakshul. And Mr. Weinglass now tells you that Officer Wakshul is a critical defense witness. Well, Officer Wakshul too had given a statement saying that the Defendant had made this admission that he had shot the victim, that he hoped the victim would die. So if anything, Officer Wakshul was a prosecution witness. And if anything was written on his report about him not going on vacation it was for the purpose of calling him as a prosecution witness.

Page 48.

The defense had both of these reports. It had the report of Officer Wakshul saying that he had guarded the Defendant and the Defendant had not made any comments. And it also had his later statement in which he said I said he didn't make any comments while I was guarding him, but he went on to explain that after he had been released of guarding the Defendant he heard the Defendant make this statement. So Officer Wakshul could have been called as a prosecution witness. Now they portray him as an example of your bias in not allowing the defense to hold up the trial because when they finally did decide to call Officer Wakshul, after the prosecution had long ago rested, after he had already gone on vacation, he was not available. He would not have been available until July 8th when he returned from vacation. That's what the record says. It is not what you hear being said here but that's what the trial record says.

Let me move on to the suggestion that Jenny Dawley or Dooley was improperly removed from the Jury. I think it's interesting that many significant facts were left out of Mr. Weinglass' presentation. The first being

Page 49.

that the Defendant yes, indeed, selected this Juror. In fact, he personally voir dired her. And the record of the voir dire showed he offended her: She didn't like some of his questions, she expressed her displeasure. He nevertheless selected her as his first Juror.

On the first day of trial the Defendant completely derailed the proceedings. He made it impossible for the opening statements to take place. The Jury eventually had to be taken out, he had to be removed and the entire first day was simply derailed by his actions. On that same day this Juror chose to violate the sequestration order because she wanted to take care of her cat. She had already mentioned that she had a husband at home who, evidently, could have taken care of the animal. Well, be that as it may, she didn't get the Court's permission to go, she simply chose to go. And the Crier reported it to you -- and this is a part of the record -- when he told her that she should not leave, she said I don't care what Judge Sabo or anybody says, I do what I have to do, nobody is going to stop me.

Well, when this was brought to the

Page 50.

attention of defense Counsel -- and it is true, the Defendant wasn't in the room because of course he had been removed for his misconduct so he wasn't present -- but the defense attorney took that opportunity to let this Juror be removed for the reason that she had broken sequestration and because he agreed with the prosecutor who observed that this Juror appeared to hate the Defendant. And the Court noted that she appeared to be mentally unbalanced. So the defense attorney felt it would be a good thing if this Juror who appeared to hate the Defendant was not on the Jury and he agreed that she should be removed. And this is presented to you as an example of your bias.

The defense says that you terminated the questioning of Veronica Jones. Well, the record shows that the questioning of Veronica Jones ended when defense Counsel had no more questions. That's June 29th, 1982, page 179. I don't recall Miss Jones attempting to testify on the motives of another witness but if she did that would have been inadmissible: A witness can't testify about what is in the mind of someone else.

Page 51.

It's been said here that you banished the Defendant from the Courtroom. The record shows that time and again the Defendant intentionally disrupted the proceedings. This happened on a daily basis, from June 18th to the end of the trial. Each time the Defendant did this you would later send for him, ask him to behave properly, he said he would, each time he went back on his word, had to be removed again. So the use of the word banished I think is not particularly accurate. And it certainly has nothing to do with any question of recusal, certainly has nothing to do with your personal bias. In fact, removing the Defendant under those situations was approved by the United States Supreme Court in Illinois versus Allen.

The defense has claimed in their filings that because of the tension between the defense attorney Mr. Jackson and the Defendant, that you should have taken some sort of remedial steps, you should have investigated the situation further and this is an example too of your bias. Of course the record shows that the Defendant was not prepared to cooperate with any attorney. He stated repeatedly on the record

Page 52.

that he was following the so-called strategy of John Africa by disrupting the proceedings and portraying himself as a political figure being persecuted by the system. He stated that he had no intention of cooperating with any, quote, legal-trained lawyer because any such attorney would be an employee of the court system who would be conspiring with you in the prosecution in order to, quote, hang him. Well, the Defendant made it impossible for any attorney to correctly represent him, yet he presents this to you as an example of your bias.

It is interesting too some of the mention that was made in the defense filings of the appellate record. Mention was made today of the fact that Mr. Chobert's record was not used. Of course the record shows that his record was offered as crimen falsi; and there was argument at sidebar about whether or not an arson conviction constitutes crimen falsi, and you correctly decided that it did not. That's the purpose for which it was offered; you correctly ruled that it was not admissible for that purpose. There is no bias in that.

Mention is made, though, of a case in

Page 53.

which a witness' record should have been admitted. Commonwealth versus Murphy was mentioned. Now, the defense refers to this case as though it was a criticism of your decision by the Supreme Court, whereas in fact the Supreme Court's decision was reviewing an issue of whether or not Murphy's Counsel was ineffective: Something that you had no control over. So the Murphy case has nothing to do with you as a Judge. Again it has nothing to do with you being biased.

They mention in their filings the case of Commonwealth versus Reed in which they portray you as denying a capital defendant the assistance of a psychologist to assist him in his defense. What they don't say, and which is mentioned of course in the Reed opinion by the Supreme Court, is that this Defendant had two murder cases and had already been examined by three court-appointed psychiatrists when that request was made. And that at the time this of course was made, you offered to give the defendant in that case yet another examination by another Court-appointed psychiatrist. But the defense said no, I have a handpicked

Page 54.

psychiatrist, or psychologist, rather, who will act not as an expert witness, not as an objective witness, but rather as an advocate, rather as a hired gun. You said well, the State's not going to pay for that. And this was brought to the attention of the Supreme Court of Pennsylvania and they said you ruled correctly. It was brought to the attention of the United States Supreme Court, and they denied review.

It is said in the defense filings that you did not allow the defense to ask jurors what their race was, potential jurors while they were being voir dired. They cite the notes of testimony, June 7th, 1982, page 20. On that page of the record you are on the record saying to the defense if you want to ask that, go ahead. The record says the exact opposite of what the defense claimed it says as an example of your bias. The exact opposite. Totally misrepresented.

The defense states that it has presented you with an unprecedented record. I mean that's true, but it is certainly not in the way they intend. I don't believe that there is any case in Pennsylvania indicating that

Page 55.

reliance on newspaper articles or hearsay opinions of disgruntled defense attorneys can stand as a basis for recusal. Your own self assessment is what is important.

But there is another issue here I think which is important too. And that is, as I have already mentioned, the integrity of the judiciary. Because the issue in this case is whether a judge may properly be driven out of a case by a campaign of public pressure. I think the record should show when the Defendant was brought in there was applause in the room. I think the record should show there was chanting in the hall outside. It should show there was chanting in the street outside that is audible here in the Courtroom. And Mr. Weinglass went on television three days ago, on Issues And Answers, a local television show, and he stated that this case outraged the Supreme Court of the United States.

Now, I thought that was interesting because I handled the Commonwealth's response to the Defendant's petition for certiorari in the Supreme Court, and they didn't express any outrage. They didn't express any outrage at

Page 56.

all. As a matter of fact, they said petition is denied, period. Some outrage. Yet this man goes on television and tells the world that the United States Supreme Court is outraged at what happened in this case. Untrue. Falsehood.

Mr. Weinglass said on television, and he said it again in this Courtroom, that you had been reversed more than any other judge in the United States. That's absolute nonsense. I don't know where that comes from. In fact, he said in his filing -- and he based this, by the way, on a newspaper account -- that up until 1992 you had been reversed 18 times. I don't know whether or not that's true, but I believe you came on the bench in 1974. And since that time you have been hearing mainly homicide cases, certainly the most difficult, most challenging cases in this Court system; and if you

were reversed less than once a year, I think that's an enviable record for someone in your position. Assuming that that's true. I have certainly no way of determining that.

There was reference to your interaction with Mr. Jamal on the record. Well, we cite a plethora of situations, of places in

Page 57.

the record where the Defendant was taunting the Court, was refusing to cooperate, was making gestures and demonstrations of disrespect. And throughout you maintained your equilibrium in what I must say is a commendable manner. The record in this case is truly unprecedented to the extent that the Defendant attempted to portray himself as a political victim and attempted to disrupt the proceedings on a daily basis. And there was nothing that this Court did during the proceedings that was in any way improper.

The bottom line in regard to all of the statements that have been made that are contradicted by the record, refuted by the record, refuted by appellate decisions, that the defense attempts to rely on is this: It demonstrates that the defense in this case does not care about the truth, does not care about the law, does not care about the record. What it cares about is making inflammatory statements which are intended to inflame and feed an atmosphere of public pressure which is directed at you, which is intended to pressure you. And the question of public policy in this case is

Page 58.

whether you should entertain the notion that a judge should be driven out of a case by a campaign of public pressure like this.

I have seen, in addition to all else I have seen fliers distributed by I do not know who, in which they include your FAX number, and they say put pressure on this Judge, send him a FAX. And I wonder if we could ask you for the record, Your Honor, if you have received any FAXs?

THE COURT: (Indicating).

MR. BURNS: You are indicating by spreading your arms wide, indicating that you have received quite a few. I expect. I suggest that that is all part and parcel of the strategy that's been adopted by the defense in this case. As a matter of public policy, only you can tell us? Can decide whether as a matter of conscience you can be unbiased in this case. And the Supreme Court has said that that is something only you can decide and that is unreviewable.

The public policy question, the additional question is what is a person to do in terms of this attempt to put pressure on the judiciary, on you personally by making these

Page 59.

false statements. And I suggest that the proper response is to deny the motion for recusal. Thank you, Your Honor.

MR. WEINGLASS: Just very briefly: I'm new here and I am an outsider, I am aware of that.

THE COURT: That's all right.

MR. WEINGLASS: But I am somewhat disconcerted when the representative of the District Attorney's Office, which has I assume many attorneys and many fine attorneys, stands before this Court and talks about matters that are not of record: Fliers, television appearances where I did appear with Assistant District Attorney Joe McGill because I thought it was important for both sides to be heard, and references are made that are inaccurate, that are outside the record. Indeed, in the written submission, Your Honor, you must have seen as I did that in response to the sworn affidavits that we filed with our Exhibit, Counsel just willy-nilly recites in his response that well, these are all sworn affidavits of lawyers. But I want to tell this Court, and put this in writing, that I know a lot of lawyers,

Page 60.

presumably fellow members of his office, who think Judge Sabo is very fair. But they don't attach any exhibits, no affidavits, no respect for this Court. They come and they make this plea but when they perform as attorneys, they perform outside of all acceptable rules and bounds of propriety. I just want to say that's shocking.

Now, I don't want to go into a point-by-point rebuttal because I think our position has been amply made, but I do want to talk about some things. Counsel refers to the record where the defense asked Your Honor to put the race of the jurors into the record so that an appellate court could see what they then predicted would happen and indeed did happen, and that is, namely, representatives of the District Attorney's Office did what they ordinarily do, and that is they struck 11 of 15 jurors who were African Americans to reduce the number of Jurors on that Jury. But when that request was made to the Court, Your Honor denied that request. And you said instead what he now reads from the record. You put it on the record, I'm not going to do it. But, you see,

Page 61.

the plea with the Court was Your Honor, don't make us turn this into a racial issue. There are racial issues here but we think the Court ought to state for the record so that Counsel doesn't have to the race of jurors that an appellate court could review it. They were trying to reduce the level of --

THE COURT: Counselor, you have to understand that at that time that was not the law. But I did say to them if you want to ask the juror his race. I can't look at him and say his race is a certain race. Ask him. And if they had asked then they would have it on the record.

MR. WEINGLASS: Yes, but you put the defense Counsel in a difficult position.

THE COURT: No, it is not difficult. You just ask.

MR. WEINGLASS: Your Honor, lay people come into a courtroom, they don't know the rules. They sit in the witness chair and the lawyer says to them first question, what race are you, they seem ridiculous, if not inflammatory. If not provocative. It undermines the credibility of the lawyer.

Page 62.

THE COURT: I don't care who asked, whether it would be the Commonwealth or the defense, I said be my guest.

MR. WEINGLASS: The defense is the only one interested, Judge. The defense was the one who asked for it.

THE COURT: Well, if they are interested then they have to. Or if they could have waited until the juror left the Courtroom, because we had individual voir dire, they could have waited until the juror left the Courtroom and then put on the record the race of that individual. I have no objection to that.

MR. WEINGLASS: The fact of the matter is this, Your Honor: You refused the request.

THE COURT: I didn't refuse the request. I said --

MR. WEINGLASS: You refused to put the race --

THE COURT: I don't think it's my responsibility to do that.

MR. WEINGLASS: Precisely.

THE COURT: And that wasn't the law at that time, Counselor. So if you want to put it on the record you wait until the juror leaves

Page 63.

the Courtroom.

MR. WEINGLASS: I'm very glad Your Honor said that wasn't your responsibility.

THE COURT: It isn't.

MR. WEINGLASS: Because what happened is, in Mr. Jamal exercising his rights, he excused one juror peremptorily, who was an African American male.

THE COURT: Yes.

MR. WEINGLASS: And what happened when he did that? Your Honor put on the record --

THE COURT: Right.

MR. WEINGLASS: -- the race of that juror.

THE COURT: Right.

MR. WEINGLASS: So that an appellate court could see that Mr. Jamal had excused one juror. But when the prosecutor excused --

THE COURT: They could have done the same thing after the juror was excused. He could have done the same thing. He didn't have to ask the juror if he didn't want to.

MR. WEINGLASS: But the question remains why did Your

Honor intervene at that moment.

Page 64.

THE COURT: Because he was making an issue of race and that's why I figured they ought to know the race of the person that he is striking.

MR. WEINGLASS: So you were correcting the record for the benefit of the Commonwealth.

THE COURT: No, I am not correcting the record for anybody; I am saying they could have done the same thing. I didn't stop anybody from doing that.

MR. WEINGLASS: But you didn't do it for any of the 11 that were struck by the prosecution.

THE COURT: Because nobody asked me to do it.

MR. WEINGLASS: No one asked you to do it when Mr. Jamal struck a juror but you did it on your own.

THE COURT: Okay. After the juror had left. But not while the juror was here.

MR. WEINGLASS: You did it but you didn't do it for any of the 11 that they struck. Af --

THE COURT: I don't even remember, if anybody had complained I would have made a

Page 65.

record of it. If the defense had said I want to make a record of that juror's race that has just been excused, if they had they would have done it.

MR. WEINGLASS: Let me ask you: Your Honor says you made that record against Mr. Jamal with no one asking you.

THE COURT: I didn't make the record.

MR. WEINGLASS: You put it on the record.

THE COURT: I put it on the record, sure, because everybody was making an issue, at least the defense was.

MR. WEINGLASS: You didn't put it on any of their 11 strikes.

THE COURT: Because nobody asked me about that. If the defense --

MR. WEINGLASS: For the Defendant.

THE COURT: Counselor, please, I am not going to argue with you about it.

MR. WEINGLASS: Your Honor, I just want to say a few other things. They bring up the Reed case where the court refused the defendant the right to have a psychiatric exam. They explained why the court did it. I don't

Page 66.

want to quarrel with that. The problem and the reason why we submitted it was because the comment that Your Honor made when you denied this Defendant his right to a psychiatrist. You recall your comment? Your comment was you might as well mine for gold while you're at it.

THE COURT: Well, because the Court has to look where it could spend it's money. We don't have, we don't have OJ Simpson here who could afford to spend millions of dollars, and the court can't spend millions of dollars on every case. We have Court psychiatrists that are impartial and they examine all Defendants.

MR. WEINGLASS: I am not quarreling with the substance of your decision. Although I do take issue with it.

THE COURT: If you are not quarreling with the substance of my decision then what are we arguing about?

MR. WEINGLASS: I am quarreling with the insensitivity of the comment.

THE COURT: No insensitivity, Counselor.

MR. WEINGLASS: A man is on trial for his life.

Page 67.

THE COURT: Fine, I realize that. He was on trial for his life. He wanted to disrupt the proceedings. And his attorney came to me before the case even started and said he doesn't want me to participate. He doesn't want me to even cross-examine the witnesses. And I said to him, as the Supreme Court has already ruled, that you must disregard such an instruction, you must defend that Defendant to the best of his ability. And I said to him you are legally, morally and ethically required to defend him to the best of your ability. And I said if you don't I am going to hold you in contempt and I am going to commit him, and that's what I told him.

MR. WEINGLASS: And you did hold him in contempt.

THE COURT: If he doesn't follow that instruction, yes. I don't remember what contempt I held him for. And this was, I don't even know if this was on the record, because this was as I was beginning to leave the Courtroom, Joe McGill, the Assistant D.A., and Anthony Jackson came up to me, and that's when they explained to me what the Defendant wanted

Page 68.

him to do. And I said I don't want you to follow those instructions: You are legally, morally and ethically required to defend him to the best of your ability. And you better cross-examine every witness that is put on that stand to the best of your ability.

Now, if that show bias on my part so be it. I was interested in seeing that he got a fair trial.

THE COURT OFFICER: Order in the court.

THE COURT: Please, I told you before we are not out on the street. You are in a Court of law. You will maintain proper decorum here. If you act up you will be excluded from the Courtroom.

MR. WEINGLASS: Your Honor, there was one comment made by the Assistant District Attorney which I think ought to be responded to. He indicated that Mr. Jamal said that he intended to disrupt the proceedings. Your Honor can look through the 18 volumes as I have and you will not find one single reference by Mr. Jamal to the fact that he ever intended to disrupt the proceedings. You find the opposite.

Page 69.

He kept reassuring the Court I have no intention of disrupting this trial, I only want to have my interests protected. That's what he kept saying to Your Honor. So for Counsel to say that, that's Counsel's own imagination. If he can find one reference in maybe 4,000 pages of transcript where Mr. Jamal ever said he wanted to disrupt these proceedings, then I will retract that.

THE COURT: All right, I will let him answer that.

MR. WEINGLASS: But I don't think there is a single reference where he said that.

MR. BURNS: Your Honor, I am not saying that there is any place where the Defendant stood up and said I am going to disrupt the proceedings now, no. What the Defendant did was he said I am following my personal strategy of John Africa and then he would proceed to disrupt the proceedings. And of course he constantly denied it. You know, you brought him in one time, and I don't know whether it was the fifth time or the tenth time, and you said will you please be courteous now and not disrupt the proceedings. The Defendant

Page 70.

said I've never been disruptive. Laughable. Laughable, Your Honor. Really.

THE COURT: He was making a -- and I don't know if the record shows this but he was making frequent contacts with a female MOVE member, I forgot her name.

MR. BURNS: The record shows he was constantly conferring with, one was Theresa Africa, and there may have been another individual. But you allowed him to refer -- confer, pardon me.

THE COURT: And he was following their orders.

MR. WEINGLASS: He was?

THE COURT: I said he must have been following their orders.

MR. WEINGLASS: I beg your pardon?

THE COURT: Well, because he came back in, I guess they told him to come back.

MR. BURNS: Whether or not he was following someone else's orders or what he was following -- what he said was his personal strategy, the strategy of John Africa -- the fact is the Defendant

proceeded on a daily basis to disrupt the proceedings. Now, whether or not

Page 71.

he affirmed that by saying I am going to disrupt the proceedings now, no, that is not our claim. Our claim is that he went ahead and did it, that his actions speak more loudly than anything else he could have said.

THE COURT: In other words, you're saying his actions tell us what his words were.

MR. BURNS: Yes, Your Honor.

MR. WEINGLASS: Now that we have brought the question of the record to the fore, Counsel has receded somewhat and said that well, the record doesn't show that he ever said that. But Counsel did represent to this Court ten minutes ago that he said that, and he never said that.

As a matter of fact, he never said that he is following the strategy of John Africa, he never said that either. That is another one of Counsel's inferences.

MR. BURNS: The record will show that he did, Your Honor.

MR. WEINGLASS: Innuendo.

THE COURT: Did you say something? I thought he answered you. Did you answer him?

MR. WEINGLASS: Please.

Page 72.

MR. BURNS: Your Honor, I would say that the record shows that he did say that he was following the strategy of John Africa.

MR. WEINGLASS: Really? Again I will stand corrected. I would appreciate that.

MR. BURNS: We will prepare a memorandum later today with the reference.

MR. WEINGLASS: That is not the record, Judge.

MR. GRANT: I could help Mr. Weinglass.

Charles Grant on behalf of the Commonwealth.

With Your Honor's permission: On June 2lst, 1982, during the course of the trial, Mr. Jackson, his previously back-up attorney, then forced into the role because the Defendant refused to participate as primary Counsel, stated to Your Honor --

MR. WEINGLASS: Mr. Jackson.

THE COURT: Just a minute.

MR. GRANT: Quote, quote, there may be additional comment from Mr. Jamal that I would like. My consultation with Mr. Jamal results in my representing to the Court that, indeed,

Page 73.

notwithstanding the Supreme Court order, notwithstanding Your Honor's order, Mr. Jamal will continue to act according to the strategy of John Africa, and that is consistent with his consultations with Theresa Africa as well as my participation in his defense.

Then on June 26th, transcript page 37, notes of testimony, Mr. Jackson again addresses the Court.

MR. WEINGLASS: Your Honor, this doesn't respond to my request --

THE COURT: Counselor, please.

MR. WEINGLASS: Mr. Jackson said a lot of things.

THE COURT: I just want to hear what he is going to say. I will give you another chance at it.

Go ahead. Go ahead. Sorry for the interruption.

MR. GRANT: Quite all right, Your Honor. Mr. Jackson, quote; I just consulted with Jannet or Janet Africa, who has advised me to tell Mr. Jamal that he should come into Court and not say anything, not interrupt the order and process of the trial. Mr. Jamal has

Page 74.

indicated to me that he plans to act consistent with the advice of Janet Africa in that he will remain in Court and not interrupt and will be quiet.

MR. WEINGLASS: Which shows that Mr. Jamal was obviously not into disrupting the proceeding. If in fact he was following the strategy of John Africa. But, Your Honor, my position stands.

THE COURT: This is his attorney saying that.

MR. WEINGLASS: No, it is not his attorney. Your Honor, you know it is not his attorney. It's his --

THE COURT: It was his attorney as far as the trial is concerned.

MR. WEINGLASS: The attorney who you imposed on him who didn't want the case and who he didn't want.

THE COURT: Who didn't want him?

MR. WEINGLASS: Mr. Jamal didn't want him.

THE COURT: I know that but sometimes we have to have an attorney appointed for him whether he wants it or he doesn't want it.

Page 75.

MR. WEINGLASS: Your Honor, I just wanted to say a few other things. There was no statement in writing from witness Priscilla Durham who claims she heard Mr. Jamal's statement in the hospital. That was a misstatement of Counsel. She testified I hand wrote a statement that night but that statement mysteriously disappeared. What the prosecution produced was a statement which she denied knowing anything about, which was typed up allegedly by someone else, who was never produced. And that statement is the statement he is referring to.

THE COURT: Counselor, here we are talking about recusal. This is something, what has that got to do with recusal?

MR. WEINGLASS: No, what it has to do with recusal is Your Honor allowed it although it was improper.

THE COURT: Well, it was a legal decision and the Supreme Court reviews these things.

MR. WEINGLASS: They didn't review that one.

THE COURT: Well, we don't know. They

Page 76.

reviewed the entire record.

MR. WEINGLASS: Well, his own Counsel never read the record.

THE COURT: They don't have to because if you read the Supreme Court's opinion, they have gone into matters that were not brought up and were technically considered as waived but the Court said in fairness they would still make a decision on it. Which they did. When the Supreme Court of Pennsylvania speaks, I follow. That's it.

MR. WEINGLASS: I am going to hold you to that, Your Honor.

THE COURT: Absolutely. Whatever they tell me is what I do.

MR. WEINGLASS: Your Honor was reversed last Friday, July --

THE COURT: Last Friday by what?

MR. WEINGLASS: By the Supreme Court of Pennsylvania.

THE COURT: When did they reverse me?

MR. WEINGLASS: Fahy case.

THE COURT: They didn't, they just granted a stay and they sent --

MR. WEINGLASS: To Your Honor's --

Page 77.

THE COURT: Because there was no reason for me to grant a stay at that time.

MR. WEINGLASS: And he took an appeal.

THE COURT: He took an appeal.

MR. WEINGLASS: And the Supreme Court --

THE COURT: The Supreme Court decided that they wanted him to have the PCR matter that they had previously denied him. Because if you went into the record, when it came down to me it came down with one issue only. And I had the Defendant's attorney in there, and the D.A., Assistant D.A. in my room, and I suggested that they go back, because the D.A. wanted them to present the entire issue at that time. And I said look, the Supreme Court is telling me one thing, I can't deviate from this. I suggest you go back to the Supreme Court and ask them for permission to

do this. They did and the Supreme Court denied it. So I couldn't do anything else. I don't consider that reversal.

MR. WEINGLASS: Your Honor, the simple fact is you denied the stay.

THE COURT: I denied the stay at that time and I said send it immediately to the

Page 78.

Supreme Court, let them decide what they want to do with it.

MR. WEINGLASS: What did they decide?

THE COURT: Well, they decided to send it back for a PCR hearing. That's perfectly all right for me. And then they stayed it because they said that the Defendant would have 30 days to file his petition. And then the Commonwealth has a right to answer and they want me to decide it within 60 days. It's all right with me. Now; if you say I don't have jurisdiction, why are they sending it back to me?

MR. WEINGLASS: The simple fact is you denied the stay, the Supreme Court ordered the stay.

THE COURT: Fine. Because I had no reason to grant the stay at that time. As far as I was concerned, I heard the matter and I could make a decision, which I did within the proper time. If someone else needs additional time, that's up to them to stay it. That doesn't mean anything.

MR. WEINGLASS: You didn't think he needed additional time.

THE COURT: I didn't think so. But if

Page 79.

the Supreme Court thinks so, fine.

MR. WEINGLASS: Fine, I will rest on that.

THE COURT: Fine.

MR. BURNS: Your Honor, the Supreme Court decided to grant a stay in a case in which you decided not to. If that has something to do with recusal, I don't know.

THE COURT: I don't know.

MR. BURNS: I don't know either.

THE COURT: I don't know either.

MR. BURNS: I think we are finished as well, Your Honor.

MS. WOLKENSTEIN: Could we indicate Judge Sabo laughing on the record.

MR. WEINGLASS: Your Honor, and correct me if I am wrong on this, and this is my last observation: I had been told by those who studied the record that your entire tenure on the bench you have not granted a stay.

THE COURT: I don't know. I probably didn't have a reason to grant the stay.

MR. WEINGLASS: Well, you can't remember one instance where you granted a stay.

THE COURT: Counselor, it is not up to

Page 80.

me to do that. If the appellate Court needs more time to stay a case, they can grant the stay. The Governor can grant the stay. They could even give him a pardon. It is out of my jurisdiction, it has nothing to do with me.

MR. WEINGLASS: You have the power.

THE COURT: I may have the power, if I think I need it. In other words, if I need to grant that stay because I can't make my decision within the proper time, yes, I could do it. Or send it up immediately to the Supreme Court and they could grant the stay.

MR. WEINGLASS: But you have never done it.

THE COURT: I don't know whether I have or I haven't. All I could say is if I needed the time I would grant it. If I didn't need the time I wouldn't grant it. The United States Supreme Court refuses stays also. Does that mean that somehow they are wrong? The Pennsylvania Supreme Court has denied stays also. Does that mean they are wrong?

MR. WEINGLASS: No, I just know of no other jurist who has an unblemished record. Who has never --

Page 81.

THE COURT: Counselor, I don't answer for any other judges, I answer only for what I do. I have no control over what other judges do. Each judge must decide for himself.

MR. WEINGLASS: We are only asking Your Honor to answer for what you do.

THE COURT: That's right, that's all I am going to do. I am not going to answer for anybody else. I can't answer for anybody else.

I have given serious thought to this, gentlemen, and I see no reason why this Court should recuse itself. I feel that I was fair to him during his trial and I could be fair to him at this time. For that reason I deny your motion for recusal.

MR. WEINGLASS: Your Honor, I have a copy of the order denying the motion. May I hand it to the Court Crier? A copy to Counsel (handing).

THE COURT: What is your pleasure, gentlemen? Do you want to break for lunch or whatever you want to do.

MR. WEINGLASS: I think we could go on with the writ. I won't be long on that.

THE COURT: All right. Go ahead.

Page 82.

MR. WEINGLASS: Is Your Honor going to sign the denial of the recusal?

THE COURT: I will do what I have to do, Counselor, don't worry about it. Okay.

MR. WEINGLASS: Yes, sir. It's just that --

THE COURT: I know, Counselor. I will do what I have to do. I have already told you what my ruling is. I will do what I have to do.

MR. WEINGLASS: Now, as the Court has already been told, with respect to the granting of a stay on the date of execution which is set for August 17th, 1995, approximately one month and one week from today, give or take a few days? In that one month and one week that's left there is a great deal of litigation that must occur.

First, the Assistant District Attorney must answer a very lengthy discovery motion which we filed five weeks ago, which they have told us they will not even begin to answer until after today's proceedings. I assume that's going to take a considerable amount of time to answer. Then, under the PCRA discovery must be done by both parties. We are going to have to

Page 83.

examine the materials they provide us, we are going to have to bring before this Court matters that perhaps they will refuse to provide us. There will have to be hearings on those issues.

There will have to be a full discovery proceeding which is contemplated by the post-conviction statute. And then following that there has to be what is referred to in the case law as a full, fair and adequate hearing on the 19 issues that we raise in our petition. Your Honor's going to have to hear from lawyers, from experts, from witnesses. You are going to have to hear new evidence that's been provided. You are going to hear from investigators. And that full, fair and adequate hearing is going to consume a number of weeks, as I presently estimate. And I haven't even received the discovery yet which I am sure when it is made is going to increase the period of time of a hearing.

This is Mr. Jamal's first post-conviction application. And it's his first attempt to exercise his rights to discovery and to a full hearing. And neither of those events can occur in the remaining five or six weeks to

Page 84.

the execution date, so a writ to stay the execution is absolutely essential for an indefinite period of time so that these matters could be adequately and properly and carefully considered in many ways.

I will just say -- this is an editorial comment -- from our perception we have reached this point because adequate care wasn't taken in the first place. Sufficient monies weren't provided, resources weren't provided. The case was moved rather quickly.

THE COURT: Well, money was provided, Counselor. Judge

Ribner provided money.

MR. WEINGLASS: A hundred and fifty dollars.

THE COURT: Well, that's all we were allowed to do at that time unless they would file a petition that they needed more money, why they needed more money.

MR. WEINGLASS: Well, there were -- constant -- and I don't want to get into an argument on this -- there were constant requests through the months of March, April and May --

THE COURT: Written requests?

MR. WEINGLASS: -- by Mr. Jackson for

Page 85.

more money.

THE COURT: Written requests?

MR. WEINGLASS: Oral requests.

THE COURT: Well, he has to provide the Court with what he has done with the money that's been allocated to him so far and why he needs additional money. He is supposed to do that in writing so that the Court, the Commonwealth could answer and the Court could make a decision.

MR. WEINGLASS: Your Honor, I don't want to get into arguments over whether or not the Court --

THE COURT: Well, don't tell me it wasn't awarded. Initially Judge Ribner did award this money. And that was under the rules that we operated under.

MR. WEINGLASS: Right, but I don't want to get into an.argument at this point as to whether the Court erred or whether his Counsel erred. But as I pointed out before, either Mr. Jamal's rights were compromised through a rush through for time and lack of resources and -- I am only saying this -- I hope it doesn't happen again. Finally, we are at the point where no

Page 86.

shortcuts ought to be taken. Things ought to be done properly, promptly, and set before the Court promptly.

THE COURT: Promptly?

MR. WEINGLASS: Yes.

THE COURT: Okay.

MR. WEINGLASS: Mr. Jamal is not asking for a dime from this Court, he is asking no money from the taxpayers of Pennsylvania.

THE COURT: Okay.

MR. WEINGLASS: But he is asking for the least thing to which he is entitled to, which is time to examine the discovery materials, time to prepare his witnesses, time to put on fact-intensive hearings, all of which he is entitled to and none of which can occur in the next five weeks.

Now, Your Honor, five weeks have passed. We put our papers in Court on June 5th, but it was the Commonwealth, or the Assistant District Attorney, that hasn't been able to respond in time.

THE COURT: If he wasn't able to do it, a stay will be considered. Let's hear from the D.A. What is your

Page 87.

position?

MR. BURNS: Thank you, Your Honor. On the stay question, as to that last comment, I think we've had about half as many weeks to answer these filings as the defense has had years. I think our filings were done in a fairly rapid fashion.

In order to obtain a stay the defense has to show you that there is a likelihood of success on the merits. And it is the Defendant's burden to do that. The PCRA requires the Defendant to plead and prove that each one of their claims is not waived or barred under the PCRA statute. Specifically, the claim wasn't raised at trial or direct appeal. The Defendant has to plead and prove why that waiver is excused. And if it is a claim that was litigated on appeal in the Supreme Court, the Defendant has to show that there is some justification for raising the claim again, and generally such claims can not be raised in the PCRA.

The defense presents us in the stay petition 10 separate items, and every one of them falls under the category of either having

Page 88.

been raised, not raised at trial, not raised on direct appeal, or having been litigated on direct appeal in the Supreme Court. Such as, well, such that every single one of these claims would be barred on the PCRA.

Now, today in argument the defense has made some rather broad references to ineffective assistance of prior Counsel, either trial Counsel or appellate Counsel. Well, that is not in the stay petition but let's not quibble about it, if they have some evidence that such ineffectiveness took place -- remember, they must prove ineffective assistance -- well, now is the time. Now is the time for them to present witnesses to show that there is a likelihood of success on the merits sufficient for them to have a stay to have this extended litigation of the PCRA petition which Mr. Weinglass has described to you.

Incidentally, mention was made by Counsel that there has to be a delay for discovery. My understanding is that we advised the defense that there wasn't going to be any discovery. The trial is over, and pre-trial discovery is one thing. There is no provision

Page 89.

for discovery under the PCRA. And I believe that would be our position as to the discovery motion. So there is no need for delaying matters in order for us to provide discovery: We are not going to be providing any discovery.

As far as the stay petition goes: Far from showing that there is a likelihood of success on the merits, it would be fair to say that the stay petition demonstrates the opposite, that there is no likelihood of success on the merits, because the petition fails to show that any of the claims are even cognizable.

Now, the stay could be denied on that ground alone, and properly so. But there is also the question of intentional delay. The Defendant's own filing, his own stay petition indicates that as early as 1989 his attorneys began working on the current PCRA petition. That was six years ago. That is something that the Defendant says in his own petition.

This Defendant is also different, I would submit, than other defendants who may have come before you, who stated that they had been unrepresented up until the point that the death warrant was signed and that they now realize

Page 90.

that they had to proceed with the PCRA. This Defendant represents that he was represented. In fact, Mr. Weinglass -- and this is part of our filing -- told the Philadelphia Tribune, I believe it was in February, that the defense did not intend to file it's PCRA until the Governor signed the warrant of execution. And sure enough, I don't know how many years it was after the direct appeal, after the cert petition was denied in 1990, which is when the defense was first procedurally able to file a PCRA, nothing was filed until this, well, this past month of 1995. The Governor announced that the warrant had been signed on Friday, I believe it was June 1st or 2nd, and the defense filing took place the following Monday. And it was a stack of papers this thick (displaying). I think this is about 6 inches. This wasn't put together over the weekend. So I think it is clear that this matter was being worked on for a considerable period of time, possibly a matter of years. Certainly what we have on the record now indicates that. Yet the defense literally chose not to file until now, until the warrant of execution was signed, until time had been

Page 91.

compressed. That's not a basis for granting a stay; that is a basis for denying the stay.

Now, the defense filing offers some excuses for, purported excuses for not acting more quickly. I would like to go over them, and I submit that they are spurious. The first thing it says is that the record was with the Governor. Indicating, I suppose, that they couldn't get a look at it. I just received, no, I received a lot of papers from the defense today for the first time, and one of them indicates that the defense was actually offering to -- you could look at the attachments yourself -- one of them indicates that the defense was actually offering to supplement the record for the Governor. According to the Supreme Court Prothonotary, when

they send or certify the record to the Governor they don't send it away, they keep a copy. It was available here in the Supreme Court. There is no indication that the defense asked to see the record in the Governor's possession, there is no indication that the defense asked the Court to see it's copy, no indication that the defense asked former Counsel to see their notes of

Page 92.

testimony. They certainly did not ask us. That is not an excuse for a delay.

They state that the record was in some way incomplete. They don't explain why the record wasn't in some way complete. And they don't specify why that impeded them from filing the PCRA or why it stopped impeding them when the warrant of execution was signed. Because it's been filed and apparently the record is still incomplete in whatever way it was incomplete before.

They have stated that evidence was suppressed by the Commonwealth. They say that they have evidence to this effect. Well, now is the time to put on the witnesses to establish that, if they can.

They say that they had difficulty getting information from the FBI. Now, you can go through this stack of papers (displaying), Your Honor, and you can try and find the claim that has something to do with the FBI. It's not here. What the FBI has to do with this case I really do not know. This was a Philadelphia murder, investigated by the Philadelphia Police, prosecuted by the Philadelphia District

Page 93.

Attorney's Office. What does the FBI have to do with the case? Why was it necessary to delay filing the PCRA until they had received information from the FBI? That is totally unclear.

THE COURT: I thought you said they already filed a PCRA.

MR. BURNS: No, they stated that they delayed filing the PCRA because they were waiting to get information from the Federal --

THE COURT: We have their PCRA now.

MR. BURNS: We do now. But this is their reason that they state in their stay petition, their reason for not filing it sooner. Even though they had stated elsewhere that they intentionally didn't file it until after the warrant of execution had been signed.

Finally, they say that prison officials were intercepting the Defendant's mail. I don't know the details about it, I would like to see the witnesses testifying about it. I do imagine that a prison is entitled to look in a convict's mail to make sure that someone is not mailing them a bomb or drugs or a gun or some such thing, but how this interfered

Page 94.

with the filing of the PCRA petition is not explained. And if it interfered it is not clear why it ceased to interfere with the filing of a petition at the moment the warrant of execution was signed.

So none of these things suggest any excuse for what appears to be a deliberate and calculated delay in filing the PCRA petition, in waiting until the very last possible moment, until the moment that the Governor finally signed the warrant of execution. And of course that took place five years after the original certiorari petition to the U.S. Supreme Court was denied.

Now, the Defendant has said that, one of his arguments is of other defendants who asked for a stay when they are filing the first PCRA: They all got one so I should get one too. And he says that this creates a Constitutional liberty interest. Well, there are two answers to that. First of all, this Defendant is not like all those other defendants. He has indicated that he had representation from as long ago as 1989 in preparing this PCRA. He was not unrepresented as they were.

Page 95.

And also the Supreme Court in the Dumshad case, which we have cited in our filing, has held that the fact that other defendants who are situated as you are received something does not create any right, no liberty interest, no other kind of right in you, the defendant, in your seeking a similar form of relief.

Now, those are two sound, I submit, bases for denying the stay.

Now, the Defendant has indicated that in order to show the likelihood of success on the merits he is capable of introducing investigators, witnesses. We are not saying they should put on their entire PCRA case, but in order to show that there is a likelihood of success on the merits on at least a couple of claims, on at least perhaps the matter of ineffective assistance, it is their obligation in asking for a stay to put those witnesses on the stand and to put them on the stand today. And I believe the Court should order them to do so in order to make a factual showing that there is a likelihood of success, in order to lay a foundation for their request for a stay. And if they fail to do that, the stay should be denied.

Page 96.

Thank you, Your Honor.

MR. WEINGLASS: Your Honor, just briefly: It's true what Counsel hinted at in the midst of his argument: No petitioner in the history of Pennsylvania in Mr. Jamal's position has ever been denied a stay. No petitioner who has his first PCRA and has already filed nearly 500 pages of documents, including affidavits, has ever been denied a stay so that he could have a full hearing to make out his claims. If they are suggesting that Mr. Jamal is the first in the history of Pennsylvania to be denied a stay, and Your Honor agrees with it, so be it. But as Your Honor sits there, you know that in 1995 the Pennsylvania Supreme Court has spoken on two cases, neither one of which is cited by the Assistant District Attorney, where petitioners in Mr. Jamal's position, who had not even filed their petitions, yet were granted a stay by the Pennsylvania Supreme Court so that the provisions of the Post-Conviction Relief Act may be exercised by the petitioner before he faces execution. And that one case is the Rolan case -- R-O-L-A-N -- where the petitioner waited not the four years, but he waited six years.

Page 97.

And when a warrant was signed he didn't wait two days, he waited two months. And when his case was called he didn't have a petition, he didn't have a single paper filed in court (displaying), but he asked for a stay anyway. And what did the Pennsylvania Supreme Court do? They granted him a stay so he could file his petition.

We are so far ahead in this case of where Petitioner Rolan was that Your Honor, I think that Your Honor has no alternative but to follow what the Supreme Court did in the Rolan case.

I thought the Rolan case was out of another county. I was shocked to see that the Rolan case is out of Philadelphia, handled by the District Attorney's office. They have an obligation to tell Your Honor about that case but they didn't.

And, Your Honor, we already discussed -- and I don't want to go back over it again -- last Friday the Supreme Court spoke again, this time ordering a stay when Your Honor didn't. Saying no matter what the delay is here, or any other issue, a person in the State of Pennsylvania, Commonwealth, facing execution,

Page 98.

who brings before the Court matters that ought to be heard, should be heard before he is executed. How can the Assistant District Attorney take any other position in the name of simple justice and humanity than that? And I will tell you how because it's in their papers. On page 29 is writing that I thought would not see the light of day from a public agency that is so grotesque and cold as to be unbelievable. They wrote -- and I want to quote from their papers -- the death penalty is the law. It is the highest exercise of the State's authority. It should not be lightly disturbed. Defendant would of course contend that he would suffer irreparable injury if he is executed. But this argument assumes that death is an injury. That is improper. And then they go on to say the carrying out of a valid death sentence cannot constitute irreparable injury for purposes of requesting a stay.

To my knowledge, no other public agency of the United States has ever intimated in writing to a court of law that an execution is not an irreparable injury. Their position here is so desperate, is so unprecedented, that

Page 99.

they have no alternative but to stoop to the lowest level that is

conceivable to argue that executing someone does not constitute an injury.

Your Honor, I discussed the Rolan case and I discussed the Fahy case. Both cases out of Philadelphia. Neither case having a petition filed in Court. Neither case, he discusses we haven't shown waiver. Those cases didn't even show that they had an argument. We have outlined 19 arguments, with affidavits, with exhibits, all calling for a hearing. They say it is a waiver. That is interesting they say waiver. Waiver, Your Honor, is a fact issue. Waiver requires a hearing to see if in fact there was waiver. Have we set out any basis to give this Court an understanding that a hearing will show there wasn't a waiver? Yes, we have given you the affidavit of Tony Jackson where he says I didn't even consider issues. Where he said on a death penalty case I didn't even talk to the two eyewitnesses who I called. Not even talked to them and he called them to the stand.

Your Honor knows that. Midway through Veronica Jones' testimony you stopped Tony Jackson and you said to Tony Jackson have you

Page 100.

talked to this witness, this eyewitness you are calling in the defense of Mr. Jamal. He said no, I have never talked to her. You said well, we'll take a brief recess so you could talk to her in the hall. Is this the way a death penalty case is defended under standards of due process in the United States? You have to have a hearing to hear that out.

We have an affidavit here from Mr. Hawkins, who is seated here at Counsels' table, where he informs the Court under oath that the lawyer who took his appeal to the Supreme Court never read the record. Is that conceivable? Is this how we execute a person? That's why we have to stay. That's why we have to --

THE COURT: When can you start producing your witnesses?

MR. WEINGLASS: Pardon?

THE COURT: When could you produce your witnesses?

MR. WEINGLASS: Your Honor, I can't answer that question simply but I will try.

THE COURT: I hope you would.

MR. WEINGLASS: Under the PCRA

Page 101.

provisions we are entitled to post-conviction discovery. That they made discovery pre-trial is of no moment.

THE COURT: He says you don't. I will tell you what: Why don't both of you research the law.

MR. WEINGLASS: Your Honor, we've had discussions on the law already.

THE COURT: Not discussions. You want me to rule on it. You research the law. You Xerox a case that satisfies your position.

Commonwealth, do the same thing. Okay. And I will hold it under advisement.

MR. WEINGLASS: On the question of whether or not --

THE COURT: Everything. As far as the stay is concerned too.

MR. WEINGLASS: We have already, Your Honor, given this Court over 300 pages.

THE COURT: I know you gave me 300 pages, but I would like to hear something under oath for a change.

MR. WEINGLASS: You have 13 affidavits and 47 exhibits.

THE COURT: I would like to hear that

Page 102.

from the witness stand here under oath so that each side can cross-examine. All right?

MR. WEINGLASS: That's what we are asking for.

THE COURT: I was asking you when can you start that.

MR. WEINGLASS: We can start that process --

THE COURT: Tomorrow? Today? Tomorrow?

MR. WEINGLASS: No, Your Honor, we are in this position because of the precise thing you are suggesting: The Court's rushing when there is no need to rush.

THE COURT: Counselor.

MR. WEINGLASS: When we have to have an opportunity to hear --

THE COURT: I am asking you. I mean he says there is no, he said you don't have a right to discovery. I am giving you an opportunity to research the law and give it to me. If you are right I will rule with you. If the Commonwealth is right then I will rule with them. I am giving you time to do that. All I am asking you is when do you think you could

Page 103.

begin putting some witnesses on this stand.

MR. WEINGLASS: I will answer that after I see what they turn over in discovery after Your Honor rules in our favor that we are entitled to discovery. And I will answer that.

THE COURT: Okay, I will give you time to research the law. How much time do you need?

MR. WEINGLASS: To research the law on the issue of discovery?

THE COURT: Yes.

MR. WEINGLASS: We will probably need at least 10 days.

THE COURT: 10 days?

MR. WEINGLASS: 10 days.

THE COURT: 10 days? We are only in Pennsylvania: I am not researching the law for the whole 50 states.

MR. WEINGLASS: Your Honor, to research the law, to answer our first papers, just two papers --

THE COURT: Not --

MR. WEINGLASS: -- the Assistant District Attorney took five weeks. That's why we are so late. And Your Honor set this hearing down for July 24th. We are here early.

Page 104.

THE COURT: I didn't set that down, the Court Administration did.

MR. WEINGLASS: We are here early because we insisted on it, that's why we are here early.

THE COURT: That is fine. That's what I am trying to do, to get this matter resolved.

MR. WEINGLASS: We are here early because we wanted it.

THE COURT: Okay.

MR. WEINGLASS: And we will proceed if you will give us enough time to allow us to prepare the case. 10 days, Your Honor.

THE COURT: How much time do you need?

MR. WEINGLASS: You gave them five weeks to answer our papers.

THE COURT: I didn't give them anything.

MR. WEINGLASS: They got five weeks.

THE COURT: Okay.

MR. BURNS: May I respond, Your Honor?

THE COURT: Yes, sure. How much time do you need to research the law on that issue?

MR. BURNS: I submit that discovery is not at all an issue in the stay matter. The

Page 105.

defense has represented to you that they have evidence right now, that they have investigators, that they have witnesses who will testify the Commonwealth suppressed evidence. What do they need discovery for? This is the basis for the stay, Your Honor. We are not talking about litigating the PCRA. They have to make a good faith showing that they could prevail on the merits in order to get a stay in the first place. And if as they say they have such evidence it should be eminently possible to put the witnesses on the stand right now.

So there is no need for discovery. They claim that they have this evidence already, not that we need to give it to them.

MR. WEINGLASS: We claim, Your Honor --

MR. BURNS: Can I continue, Your Honor? I think I let Mr. Weinglass speak, I have a few more things to say.

THE COURT: Gentlemen, take it easy.

MR. WEINGLASS: Sorry. I thought he was gathering his papers and leaving.

THE COURT: Go ahead.

MR. BURNS: Mr. Weinglass once again

Page 106.

misrepresented something: He stood and read to you what I had written and he read it incorrectly. I wrote that the death verdict is an injury, and that is in quotes, i.e., that it is improper. Meaning that for purposes of looking for a stay, you have to show that the imposition of the sentence is unlawful. Not simply that there will be a sentence imposed. The imposition of a lawful sentence under the law is not improper. And it's not, legally speaking, an injury.

The Rolan case which was mentioned by Mr. Weinglass was a situation in which the defendant was unrepresented up until the time that the warrant of execution was signed, the exact opposite of the situation that we have here. In the Duffy case the Supreme Court denied a stay. And that was, that ruling was affirmed by the Third Circuit. So it is not as though everyone who comes in front of the Supreme Court gets a stay just for the asking.

The situation, the reference to Mr. Jackson in not talking to a witness: Mr. Jackson said on the record the Defendant wouldn't tell him who the witnesses were. He

Page 107.

was finding out who the witnesses were when the Defendant revealed that information to him just as they were taking the stand. As a matter of fact, there was 15 character witnesses, not one of which was given to the Commonwealth as required by the discovery rules because the Defendant refused to reveal the names to the Commonwealth or Mr. Jackson.

So it is not surprising that Mr. Jackson didn't talk to the witnesses. What that has to do with the need for a stay is difficult to assess without something coming from the witness stand. The Defendant said they have the evidence now. They should be ordered to present it now.

Thank you, Your Honor.

MR. WEINGLASS: Your Honor, with respect to applications for a stay, what they are saying is this: If the verdict is legal, then the death penalty is not an irreparable injury. But they are saying let's not have a hearing to see if the verdict is legal. Let's have the death penalty first and the hearing later.

THE COURT: That's why he wanted to

Page 108.

have the hearing now. I am asking you when could you bring these witnesses in that you say that you have?

MR. WEINGLASS: We would be prepared --

THE COURT: Tomorrow?

MR. WEINGLASS: We could do it --

THE COURT: Today?

MR. WEINGLASS: Within 60 days after we get discovery.

THE COURT: No.

MR. WEINGLASS: After we get discovery from the people --

THE COURT: Forget it, Counselor. I will take it under advisement but you will have to supply me with some cases on that. I just can't, you just can't ask for 60 days.

MR. WEINGLASS: Pardon?

THE COURT: You can't just ask for a 60-day stay.

MR. WEINGLASS: I am asking Your Honor for discovery.

THE COURT: Counselor, and I am telling you what I want. I want from you and I want from the Commonwealth Xeroxed copies of

Page 109.

cases that support your views as to whether you are entitled to discovery or whether you are not. He is saying that you have to at least put some witnesses on there to show that a stay would be justified. And I am asking you when can you do that. And can you do it tomorrow? Can you do it Friday? Can you do it Monday?

MR. WEINGLASS: Mr. Hawkins, Your Honor.

MR. HAWKINS: Your Honor, if I may: I have litigated death penalty cases across the country. The standard for a stay as I understand it, from Barefoot versus Estelle, which is a case from my old office the NAACP in the Supreme Court, says if you can show that there is a reasonable question as to the merits of the issues -- not are issues, not are issues more probable than not, but reasonable jurists could differ on the merits of particular issues -- that is sufficient for a stay in the first instance. I know of no hearing that I've ever had or that exists in the law -- and we can certainly supply Your Honor with law as to that in three days -- that says that in order to get a stay of execution that you must put on

Page 110.

witnesses. That is unheard of, Your Honor. If the issues themselves are sufficiently meritorious, that in and of itself is enough for a stay.

THE COURT: How is the Court going to know whether it is meritorious or not?

MR. HAWKINS: Your Honor --

THE COURT: Only by somebody who takes the stand and takes an oath and is cross-examined by opposing Counsel.

MR. HAWKINS: Your Honor, that gets into the factual substance of the petition itself. I can't bootstrap a request for a stay of execution into a consideration of the merits of --

THE COURT: Well, what are you --

MR. HAWKINS: -- an actual factual resolution.

THE COURT: You are saying the stay is automatic.

MR. HAWKINS: As long as there are meritorious issues.

THE COURT: How do I know that unless somebody takes this stand and testifies under oath, that's what I am saying, and is

Page 111.

cross-examined.

MR. HAWKINS: Your Honor, if the statements as presented in the habeas petition, if true -- and that's the law; and, Your Honor, I could supply you with law on that in three days -- taking the petition on it's face, if that raises questions that reasonable jurists could disagree on, the law is clear that a stay of execution is warranted. Your Honor, I could give you law on that in a few days.

MR. GRANT: May I respond, Your Honor?

THE COURT: Yes.

MR. GRANT: For six years and some months, eminent Counsel have been preparing a submission of 500 pages where they make what, if it were not encased in a Court of law and legal proceedings, would be considered nothing less than slander and libel. They have been engaged in public relations, broadcasting, publication, verbal attacks, banners hanging from City Hall; and now they claim to have 47 affidavits, declarations and exhibits, and that shows on it's face that there is merit to these claims.

Well, I would suggest to you that we wouldn't be asking for evidence to be presented

Page 112.

from the witness stand subject to cross-examination but for the fact that after having read their affidavits, their moving papers and submissions, and looked at what actually happened at the trial, there's no comparison between the two. It is as if we are talking about two entirely different events in the course of human history here.

Now, if their representations comported with the record you wouldn't need testimony. But it seems to me -- and I would submit to Your Honor, respectfully, it should be obvious to you -- that these representations can not be relied upon, for if they were able to be relied upon a stay should be decided on the papers moved by the parties. I suggest to Your Honor that these are disingenuous, intellectually dishonest. They misrepresent, misstate and misquote

to the nth degree.

As a result of that, I think the only recourse for you is to say Counselor, with all due respect, come on, I don't want to hear it, you made some allegations, now is the time to put up or shut up -- and that's what I suggest we do here.

Page 113.

MR. WEINGLASS: Your Honor, let's talk about litigation. We are in a Courtroom. Litigation is where we put into the Court a document. In the ordinary course of litigation the document is answered point by point under oath. The Court then receives both sides' documents, reviews it, enters orders on discovery if they are necessary, and a hearing is set. That's litigation in death penalty cases. That's absolutely essential litigation. You don't have one side presenting you with affidavits and the other side standing up and saying we 're not answering those affidavits because we think they are false, we think that they are not true, and we think they are frivolous and that should end the matter. I think I'm dreaming. I am in a Court of law.

THE COURT: I think --

MR. WEINGLASS: This isn't done anywhere.

THE COURT: I think you ought to put them on the stand.

MR. WEINGLASS: No, I think we ought to get a response. Your Honor, no --

THE COURT: I don't care whether they

Page 114.

respond or not. I still think we should put them under oath so that the Court could make an honest decision.

MR. WEINGLASS: No, the Court makes an honest decision after it gets both sides in writing, studies both sides.

THE COURT: No.

MR. WEINGLASS: And then enters an order for discovery.

THE COURT: I don't want to decide what they are going to answer you and they are going to give me something else. I would like to hear from this witness stand whatever witnesses you want to present. And can you do that as of tomorrow? Friday? No later than Monday I want to --

MR. WEINGLASS: Your Honor, the local rules require an answer.

THE COURT: No, it does not require an answer. It says they don't have to answer, it is presumed to be denied.

MR. WEINGLASS: 3O days after the petition is filed there will be an interim common listing. And then it goes on to say how things proceed, exactly as I suggest.

Page 115.

THE COURT: No, it says they may answer. They don't have to answer.

MR. BURNS: Actually, Your Honor, we responded in writing.

THE COURT: Did you respond in writing?

MR. BURNS: We responded in writing to the stay petition, to the recusal petition, answering all of the substantive claims to the extent they concerned the record as it stood.

Now, there are two classes of claims. There are claims that are based on the record, which you could go to the record and look at it and see if they have any substance. And there are claims in which they say we have new evidence, we have investigators, we have witnesses, we have them and we can prove that the Commonwealth suppressed evidence.

Well, we are not asking for a full-blown PCRA hearing. We are not asking the Defendant to prove each and every one of his claims. But he has to make a showing, he has to put at least a couple witnesses on the stand that shows that there is some substance to these allegations.

Page 116.

MR. WEINGLASS: Your Honor, we will do that if they could provide Your Honor with law that says we must do that. I challenge them to do that. If they could provide the Court with law to back up that statement we will do it.

THE COURT: I don't care whether he has or not. But I feel in the interest of justice we ought to have somebody come in and testify under oath.

MR. WEINGLASS: And in the interest of justice, that proceeding is had after both sides have submitted to the Court in writing their positions and the Court has examined the evidence.

THE COURT: No, because I am telling you they have already answered it.

MR. WEINGLASS: They haven't answered the petition.

THE COURT: The PCRA --

MR. WEINGLASS: They haven't answered the petition.

THE COURT: He is not talking about the PCRA, he is talking about the stay.

MR. WEINGLASS: Yes, but as Mr. Hawkins points out, the law is you do not

Page 117.

produce evidence on the stay. What you do is if the written submissions that are in the petition raises reasonable questions the stay is granted.

THE COURT: Well, I don't know that you could say that's reasonable. You could get anybody, I guess, to sign something. I would like to have them come into Court and testify under oath.

MR. WEINGLASS: You are saying these affidavits are all false?

THE COURT: Well, I don't know. All I am saying is I would like to have them come into Court and be sworn and be cross-examined by the other side so we could have some idea.

MR. WEINGLASS: As Mr. Hawkins pointed out, that procedure which Your Honor just described is simply --

THE COURT: What you are saying, then I don't know why you filed a motion to stay. It should be in the statute itself. It should say there is an automatic stay, period. If it says that then I have no problem.

MR. WEINGLASS: Your Honor, the 1995, where there wasn't even a petition

Page 118.

filed --

THE COURT: I know, that's the problem, there was no petition filed and they had to give him time to file it. You already filed your petition. You have your petition here. You have your answer to that petition.

MR. WEINGLASS: We don't. They said they never answered the petition.

THE COURT: They only answered the stay. Oh, the stay.

MR. WEINGLASS: Yes.

THE COURT: Okay.

MR. WEINGLASS: Now I am saying they should answer the petition, then the Court must get their answer.

THE COURT: When can you file an answer to his PCRA?

MR. BURNS: Respectfully, that is not the issue, Your Honor. The issue now is the stay.

THE COURT: I know that.

MR. BURNS: And I think it is absolutely astounding that we are asking the defense to produce the evidence that they say they have had for these many years about the

Page 119.

Commonwealth, among other things, suppressing evidence. And I would like to hear one or two witnesses.

Why are they refusing to present witnesses? I will tell you what the answer is. The answer is that this is all about delay. This is all about pushing off the time for decision so that the Court will be forced into a situation that they have been trying to force the Court into in which it will have to grant a stay or else face the prospect of having the execution take place without any adjudication or any ruling on the merits. They say well, 60 days to present witnesses on allegations that have already been made in detail, allegations from witnesses and affidavits. If you can get an affidavit you can

certainly get the witness in here to testify to it. Otherwise, it is just a piece of paper, it is a piece of hearsay, it has no standing in a courtroom.

THE COURT: Well, let me ask you this. They filed a petition, a PCRA. Are you compelled to file an answer?

MR. BURNS: The rules are not that we are compelled to file an answer. If the Court

Page 120.

directs us to file an answer, or we may choose to file an answer. But we are --

THE COURT: If you don't it is presumed to be denied.

MR. BURNS: It is presumed that all of the factual averments are denied if no answer is filed. Yes, that is what the rules say. So there is no obligation to file an answer to a PCRA petition; it is the factual averments therein are presumed to be denied if no answer is filed.

Now, in the event a stay were granted, well, of course we would file an answer to the PCRA petition. We would go ahead and litigate it. But the question now is has the Defendant made a showing that he is entitled to a stay. And this they refuse to do. They refuse to produce even one witness to show that there is some substance to the remarks or the statements that they have been making, which on their face, Your Honor, in light of the record, appear to be rather outrageous.

Now, if they had proof to back up these statements they should produce it. That's all our position is. I think it is amazing that

Page 121.

they should come in here and make these statements --

THE COURT: That is all that I am asking them to do.

MR. BURNS: -- and refuse to produce the evidence that they claim to possess. That is all we are asking for. One or two, maybe three witnesses, to lend some substance to this so that there was some justification for the stay.

THE COURT: Why don't you do that, Counselor, so we could have something on the record.

MR. HAWKINS: Your Honor, with all due respect to yourself and the District Attorney's Office's position, that is simply not required by the United States Supreme Court. The Court made clear that as long as a petitioner has a petition and states, just as in a civil proceeding, facts which are to be taken as true on the face of the document, absent an answer to the contrary --

THE COURT: Well, he answered it: They said it's fabricated. They have answered it. They say --

Page 122.

MR. HAWKINS: We have, Your Honor, in answer --

THE COURT: Why can't you put on a few of those witnesses?

MR. HAWKINS: Your Honor, that is not our obligation at this point. Our obligation is merely to supply you with a petition that states on it's face allegations which if true would entitle the petitioner to relief. That's all our obligation is by the United States Supreme Court.

Your Honor, the Assistant District Attorney has not cited law. Your Honor, I am citing law to you.

THE COURT: I don't want you to cite me law; I want you to give me a Xeroxed copy of the case.

MR. HAWKINS: Law is what this Court is about.

THE COURT: Give me a Xeroxed copy of the case so I could read it and interpret it. I don't want to take your interpretation; I don't want to take the Commonwealth's interpretation.

MR. HAWKINS: Your Honor, by Monday we will supply you with United States Supreme Court

Page 123.

case law.

THE COURT: Why would it take to Monday? Why can't you get that to me by tomorrow? You say you already know the case. All you have to do is push it in a machine and give me a Xerox copy.

MR. HAWKINS: Friday.

THE COURT: Why do I have to wait until Friday or Monday? You could put that information in the machine and you could Xerox a copy.

MR. HAWKINS: We will give it to you. When would Your Honor like it?

THE COURT: Tomorrow. Somebody ought to have a copy.

MR. GRANT: How about today, Judge? If he has the case we could read it today.

MR. WEINGLASS: Why not by one o'clock?

THE COURT: Well, we haven't had lunch yet.

MR. WEINGLASS: Your Honor, this is what happens.

THE COURT: All I am asking, Counselor: At this point you are asking me to

Page 124.

make a decision. I want to make a right decision and I want to give you an opportunity to present me cases. I want to give the Commonwealth an opportunity to give me cases. What's wrong with that? Can you do it today? Can you do it tomorrow?

MR. GRANT: Your Honor --

MR. HAWKINS: Your Honor, let me suggest this. Why don't we take maybe an hour-and-a-half lunch break in which both sides --

THE COURT: No.

MR. HAWKINS: We would have to confer on it.

THE COURT: Counselor, I can't have everybody conferring and then telling the Court how to run the Courtroom. You know, let's be practical about this. I am willing to give you time. If you are saying that you can't have the cases to me until tomorrow, but then I have to read the case. Why don't you get it to me today sometime. Let me read the case.

MR. WEINGLASS: Let me put this request in context, it's proper context. This Court set this hearing down for July 24th,

Page 125.

THE COURT: I didn't set it down for July 24th.

MR. WEINGLASS: A Court did here.

THE COURT: Somebody in Court Administration evidently did that.

MR. WEINGLASS: That's 12 days from now.

THE COURT: Yes.

MR. WEINGLASS: We, the defense, the Petitioner requested that it be 12 days earlier.

THE COURT: And we granted that.

MR. WEINGLASS: It was granted.

THE COURT: Right.

MR. WEINGLASS: We are trying to move this case faster.

THE COURT: Well, you are not moving it faster if you are telling me you can't get the cases to me today.

MR. WEINGLASS: But we are not trying to move this case the way it was moved the first time.

THE COURT: It was not a question of moving it. Counselor, you are citing law to me. You should be able to get those cases. As a matter of fact, you should have those cases now

Page 126.

and say Judge, here is a Xerox copy of the case, in your leisure read it, it is right on point.

MR. WEINGLASS: Your Honor, what we did is we gave this Court -- and I hope the Court read it --

THE COURT: I know that, I don't want --

MR. WEINGLASS: We gave this Court our position in writing.

THE COURT: I know what your position is. I like to have Xerox copies of the cases. I like to read them myself. I like to interpret them to see actually what the Court is saying.

MR. WEINGLASS: On June 5th we gave the Court over 25 cases.

THE COURT: No, I don't mean give me cases, I am asking you --

MR. WEINGLASS: That was five weeks ago.

THE COURT: Counselor, I am asking you for Xerox copies. I am not going to go looking those cases up. That is your responsibility. Give me a Xerox copy and I will take them home with me and I will read them overnight. Why can't I do that?

Page 127.

MR. WEINGLASS: We will give you a Xerox copy of all those cases plus the Rolan case where the Pennsylvania Supreme Court granted --

THE COURT: Give me all the cases you want to, Counselor. I will be glad to read them.

MR. WEINGLASS: Despite the fact it is out of this Office, we will provide you with those copies which you should have been provided by the District Attorney's Office.

One last thing, Your Honor, to show you how things have been stood on their head here and what is true has been turned around upside down. The question has been made and raised here that the Petitioner had since 1989 to come into this Court.

THE COURT: Counselor, I already heard that. We went over that. I don't want to hear that again, please, or we will be here forever.

MR. WEINGLASS: The United States Supreme Court denied him on July 10th, 1991 his petition. That was four years ago. And neither Rolan nor Fahy moved as quickly as Mr. Jamal. And he moved with lawyers --

Page 128.

THE COURT: Fahy moved fast.

MR. WEINGLASS: Not as fast as this. Mr. Rolan waited six years. But, Your Honor, I want to point this out: They are saying that we waited until the Governor signed a warrant before we filed our papers.

THE COURT: Counselor, I don't care what they are saying. They are saying many things, and all I want to get from you is when could you get these cases for me to read?

MR. WEINGLASS: Please hear me out as to what happened. What happened is this. On April 2lst, 1995 I wrote the Governor of the Commonwealth of Pennsylvania and I informed the Governor in April of 1995 that I was preparing my papers for a petition and that I was having some difficulty because the Court reporters had lost, and they are still lost, four pre-trial hearings in this case. So the full record --

THE COURT: By this Court or by somebody else?

MR. WEINGLASS: By Judge Ribner.

THE COURT: Okay. Well, I have no control over that.

MR. WEINGLASS: I am not pointing a

Page 129.

finger of blame, I am just reciting the facts.

THE COURT: I guarantee you I would have the notes.

MR. WEINGLASS: Right. I am just reciting the facts. The Court reporter wrote me a letter saying we have lost Mr. Jamal's pre-trial notes.

THE COURT: I never lose my notes.

MR. WEINGLASS: Right. I wrote the Governor and I said Governor, I am preparing this petition, two months before he signed the warrant, and I need your help and I am willing to work with you, let's get these notes so that when Mr. Jamal's petition is presented in Court it will be presented in it's entirety. The Governor was on notice in April that we were preparing the petition. On June lst, before the Governor signed the warrant, I went to S.C.I. Greene and I wrote them a letter in which I said I am coming to see Mr. Jamal -- this is before the Governor signs the warrant -- to see Mr. Jamal so he could verify the petition we are about to file. On June 1st the Harrisburg paper reported that Mr. Jamal was going to file his petition on June 5th. What happened: The

Page 130.

Governor moved that night, knowing we were coming into Court, to sign the warrant in an unusual procedure at night, so that a warrant would preempt our coming into Court and put us in the position and allow them to argue the way they are arguing now so that we would be denied a stay. That's what happened. We didn't wait on the Governor. The Governor knew we were coming and he moved just before, the last business day before we came to Court to preempt this, Your Honor.

THE COURT: Counselor, I can't, I can't decide why the Governor did what he did. Whatever he did he did.

MR. WEINGLASS: We provided the record. Do we have copies?

THE COURT: Prior Governors haven't done anything.

MR. WEINGLASS: I have the letter to the Governor. I have the letter from the Court reporter.

THE COURT: Counselor, I can't do anything with that. Let me decide the issue.

MR. WEINGLASS: Could I have it marked as an exhibit?

Page 131.

THE COURT: Let me decide what I have to decide here. I can't decide why the Governor did what he did. Whatever he did he did. And you could go back to him, he might even give you a pardon, I don't know. But that's up to the Governor.

MR. GRANT: I assume --

MR. WEINGLASS: That kind of remark.

THE COURT: Well, it is true: He has that authority.

MR. WEINGLASS: That's what pervaded the trial.

THE COURT OFFICER: Court is in session.

THE COURT: No, it is --

MR. WEINGLASS: That is the kind of flip remark that is inappropriate.

THE COURT: No, it is appropriate. Because I can't control the Governor. He has those powers. And there is nothing wrong with that. He could do that. He could stay it, he could commute it. He could do everything if he wants to: He is the Governor. And there is nothing wrong with that. And I am not saying he can't do that. Of course he can.

Page 132.

MR. WEINGLASS: The Court sits here patiently while they explained why we delayed. When I tried to answer it by saying we didn't delay it --

THE COURT: All I am asking from you at the present time: When could you have these Xerox copies of the cases to me so I could read them? Tomorrow?

MR. WEINGLASS: Your Honor, I would like to have today these documents marked as an exhibit which I think an appellate court ought to have. May they be marked?

MR. GRANT: Your Honor, I object. And I object because this is nothing more than legerdemain, slight of hand. You asked for an answer, can you give me the case. I want to argue about six years ago. Can you give me an answer, when can you give me the case. I want to file these documents. I would ask, the vast majority of their witnesses on affidavit are right up Broad Street. Right down the street here. It is not going to take 60 days or six days to get them in here. I would suggest that after we file, after they submit whatever cases they have, Your Honor, they put their witnesses

Page 133.

on the stand so we can examine them, Your Honor can judge credibility and make a ruling on the stay. Then we could get on with the PCRA.

THE COURT: Okay.

MR. WEINGLASS: We will provide you with case law indicating that is precisely not the law of this State or any state.

THE COURT: That's right, I am asking you --

MR. WEINGLASS: We will provide you that tomorrow.

THE COURT: Okay. And I said, Commonwealth, if you have anything, Xerox it for me, please. You don't have to make a big brief. Just Xerox the cases, I would be glad to look at and read the cases and make a decision. Then we will decide where to go from there.

MR. WEINGLASS: Your Honor, is Your Honor deciding to grant

the stay?

THE COURT: I am taking it under advisement. I am giving you an opportunity to present me the cases. I am not going to make a decision on the spur of the moment. He is not being executed tomorrow. If he was I would have to make a decision right today. But I am taking

Page 134.

it under advisement. I am giving you an opportunity.

MR. WEINGLASS: Okay. Now we are going to give the Court the law within a day. When will the Court give us his answer?

THE COURT: Well.

MR. BURNS: Your Honor, I object to that. The Defendant has no right to be putting pressure on you as to when you are going to give the answer. Again I want to stress --

THE COURT: I will do it as quickly as possible. Go ahead.

MR. WEINGLASS: As quickly as possible.

MR. BURNS: I want to stress what the issue is. The issue before you is whether you have discretion to order the Defendant to present some evidence to back up factual claims he is making.

THE COURT: That's the cases I want him to submit to me.

MR. BURNS: The reason is that in a part of the argument I thought I heard reference to the defense already having given you cases

Page 135.

and their intention to give you copies of a, I suppose a plethora of cases. I want it to be clear that the issue is whether you have the discretion to order the Defendant to produce evidence to back up his claim that he needs a stay. That's what I think the issue is. Thank you, Your Honor.

THE COURT: Okay.

MR. WEINGLASS: And we will provide that tomorrow. But will the Court give us a Court date when we are to come back?

THE COURT: Well, if I rule that you have to present some evidence, I would hope you would be able to do that by Monday.

MR. WEINGLASS: No, as I understand it, the ruling the Court will make is whether or not the Court will grant the stay after reading the cases indicating that a stay ought to be granted, Judge.

THE COURT: Counselor, I will reserve decision on the stay. Okay.

MR. WEINGLASS: And we don't have a Court date?

THE COURT: We have a Court date for Monday if you wish.

Page 136.

MR. WEINGLASS: Monday.

THE COURT: Is that fast enough for everybody?

MR. GRANT: Friday.

MR. BURNS: We would respectfully suggest Friday since time is of the essence.

THE COURT: Time is of the essence, it is all right by me. You could get the cases to me tomorrow and I will rule on it Friday.

MR. WEINGLASS: Okay, and the ruling will be whether or not a stay ought to be granted.

THE COURT: The ruling will be whatever the Court rules. I don't know at this time. If you could read my mind better than I can then fine. But I can't. I am giving you time to give me the cases. Let me read the cases to decide.

MR. BURNS: If it please the Court: My understanding is that the Court will rule on whether or not it will order the defense to present witnesses.

THE COURT: Well, that too, that too.

MR. GRANT: That will take place, as I understand it that will take place on Friday, if

Page 137.

Friday is the day.

THE COURT: If I so decide that they have to present witnesses, I will give them to Monday to present whatever witnesses they have.

MR. BURNS: Whatever you decide.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, one last thing. Mr. Jamal is here, his family is present, could he have an opportunity to just briefly talk to his family?

THE COURT: Well, you have to take that up with the Sheriff.

MR. WEINGLASS: I meant here in the Courtroom.

THE COURT: You have to take that up with the Sheriff. They have, they have jurisdiction in this Courtroom as far as security. You have to take it up with the Sheriff. Whatever the Sheriff will allow is all right by me.

MR. WEINGLASS: It is okay with the Court.

THE COURT: Whatever the Sheriff wants to do, yes. We could recess, then.

MR. GRANT: May we be excused, then?

Page 138.

THE COURT: Until Friday morning.

MR. WEINGLASS: Friday morning.

THE COURT: Yes.

MR. GRANT: Thank you, Your Honor.

THE COURT CRIER: All parties remain seated.

THE SHERIFF: Remain seated until the Defendant leaves the room.

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(The hearing was adjourned at 11:48 p.m.)

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Page 139.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

14. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

Hearing on Motion for Recusal and Stay

- - - - -

July 14, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- HUGH BURNS, ESQUIRE
- CHARLES GRANT, ESQUIRE
- RONALD EISENBERG, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- JONATHAN PIPER, ESQUIRE
- DAVID RUDOVSKY, ESQUIRE
- PAUL MESSING, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- PAUL COOPERSTEIN, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

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(At 10:20 a.m. the hearing was convened
in the presence of the Court and the attorneys.)

- - - - -

THE COURT: Good morning, everyone. For the benefit of any of the visitors who were not here on Wednesday, I just want to caution you that the Court during this session will not tolerate any outbursts, any screaming, or anything of that nature. If it happens you will be removed from the Courtroom and not be permitted to re-enter. You must maintain proper decorum in this Courtroom.

MR. WEINGLASS: Your Honor, good morning, Your Honor. I want to start by bringing us back to Wednesday, July 12th, when the Court requested of all Counsel to provide the Court within 24 hours, the next business day, July 13th, with case precedent on the issue of whether or not the Court should at this time grant a stay and what are the standards that are to be applied.

In addition to that, on the following day, Wednesday, I believe at approximately ten o'clock in the morning, I received a call from

Page 3.

the Court's chambers requesting that we also provide the Court with case citations on the issue of what if any discovery ought to pertain in this post-conviction proceeding.

As I understand it, we did yesterday, prior to 4:00 p.m., provide this Court with the cases that we contend stand for the proposition that a stay must be granted at this point. We gave the District Attorney's Office a list of our cases as we were advised to do before the close of business day.

I left my office last night at about 7:30 and I hadn't received anything by that time from the District Attorney's Office. It wasn't until much later that evening, I believe it was about ten o'clock, that I received word from Miss Wolkenstein that she had received materials from the District Attorney's Office; and I went back to my office and at 10:30 I found the materials that the District Attorney's Office was asked to provide us.

In addition to that, I found a 33-page document which I hadn't anticipated with respect to their answer on our discovery.

Now, and I haven't had an opportunity

Page 4.

as yet to completely review that document. The point I am trying to make at this point is we are rushing under very strict deadlines, after the District Attorney has had four weeks to file written responses to our two motions, recusal and stay, we've had 24 hours, and then even less than that -- to file on the stay -- and less than that to file responses on discovery.

I just make the observation prior to my argument that this is hardly the orderly proceeding that is contemplated by the case law with respect to a capital case. We simply can not be in a position representing Mr. Jamal where the Assistant District Attorney has four weeks to respond to our papers and we have 24 hours to provide the Court with case law. And in addition to that, we are given another request for additional case law on a separate issue, and get from Counsel for the other side, the Assistant District Attorney, their papers at 10:30 at night before we are coming into Court to argue. This is hardly the way we should be proceeding on a death penalty case. And I am prepared to proceed and I am willing to proceed but I just want to point out for the record that

Page 5.

we are doing this under an incredible pressure of time.

THE COURT: Counselor, I said to you I took it under advisement, so don't worry about it. I will give you all the time you need. Go ahead.

MR. WEINGLASS: Now, Your Honor, with respect to the first issue, and that issue is a very important issue, whether or not this Court should entertain and grant a stay of the warrant for execution, now set approximately five weeks from now, for August 17th, 1995: We have provided the Court with the case law that indicates to this Court that there are standards to be applied at this point on the question of whether or not a stay ought to be granted. To be sure, and I think both sides agree on this, that there is no case law in Pennsylvania up to this point in time that deals with that precise issue. So we must look to the Federal case law, because Federal case law, as Your Honor knows, in many ways is incorporated in the scheme of the Post-Conviction Relief Act of the State, the Commonwealth of Pennsylvania. So we look to the Federal case law.

Page 6.

And we have provided this Court with the seminal case on this issue, which is the case cited by Mr. Hawkins when we were here on Wednesday, the Barefoot case, decided by the United States Supreme Court in 1983, an opinion written by Justice White, a Justice not known for his over-sympathetic feelings towards persons who are filing post-conviction proceedings, but nonetheless a very long, carefully considered opinion on what standard should apply to all jurists who are in Your Honor's position this morning: Facing a man who has an execution date and deciding the very weighty and important question of whether or not a stay ought to be granted so that the Court may in an orderly process consider the claims that are before you.

Well, what does the Barefoot case say? The Barefoot case says

very clearly that there is a single standard, as I understand it, which is annunciated in that opinion. And the standard is if any of the claims, any one of the claims asserted by the petitioner in the petitioner's papers is a non-frivolous claim, then a stay ought to be granted. Why? It ought

Page 7.

to be granted so that under the shadow of death, that petitioner will have the opportunity to present in a proper court of law, in a proper fashion, the support for his or her claims. And so there has not been a case since Barefoot which alters that standard, that a stay ought to be granted when any one claim asserted by the petitioner is non-frivolous.

Now, what is non-frivolous? Well, well, that opinion indicates that even if a petitioner makes a colorable claim, based on information and belief, not even evidence, that claim will be sufficient to trigger the stay, if an examination of that claim indicates it's non-frivolous. You do not need affidavits, you do not need evidence. All you'd have to do is make an assertion on information and belief, and if it's not frivolous it's enough for the stay.

Well, we have asserted in very weighty documents 19 claims, and we have given this Court affidavits, sworn statements, and we have provided 47 exhibits. And unless --

THE COURT: Counsel, is that in your PCRA?

MR. WEINGLASS: Yes.

Page 8.

THE COURT: Okay, go ahead.

MR. WEINGLASS: And unless Your Honor finds all of them, every one of them to be frivolous on it's face, a stay must be granted. And that is clearly the state of the law, because that's the only way Your Honor can litigate this case. If there is a stay and then we proceed in an orderly fashion to present evidence, there is cross-examination, there is counter evidence, this is a determination made by Your Honor, that is the only way we can proceed. There was no other way that the Barefoot case can conceive of us moving at this point unless a stay is granted.

Now, what do you look at? I have already indicated this. There is one case we cited out of the Eleventh Circuit, the Bundy case: B-U-N-D-Y. And in that case what the Eleventh Circuit said is when Your Honor is faced, as Your Honor is, on whether or not to grant a stay, you look to the petition, the face of the petition. If on the face of the petition claims are asserted that are not frivolous, you grant the stay. You don't do what Your Honor -- and I say this respectfully -- suggested or

Page 9.

hinted at on Wednesday: That is you don't call for evidence. You don't call for testimony. You don't call for a hearing. You read the petition. And if on the face of the petition the claims are not frivolous, a stay has to be granted.

And there is another case dealing with that issue which we have given to the Court. And that is the Blackledge case, and the Wesson case. Now, what did they say, what standard? When you look at this and you read it, how do you know these are not frivolous? How do you know that? Well, you apply a standard which was set forth in the Blackledge case, 1977 opinion of the United States Supreme Court. And the standard is what? The same standard you would apply when one party asks this Court to make a dismissal of the petition. And the standard is what? The standard is the matters alleged are presumed to be true, or accurate. And on that basis you would find on reading our petition that there is asserted non-frivolous claims.

So I urge the Court to read the petition, to read the 19 claims, the memorandum of law. I know it's a lot. It's over 300

Page 10.

pages. And to see that there is at least one -- that's all we need to show -- claim that's not frivolous.

And you have here, Your Honor, 19 claims asserted. Not even like in the Barefoot case where the claim was -- I'm sure Your Honor has read that case -- that psychiatric testimony in the mitigation phase of that case was wrongfully admitted. That's an issue to be sure, but it's nothing compared to the issues that we are raising. We are raising the core issues of Constitutional litigation in death penalty cases. We are raising Brady, we are raising Batson, we are raising Dawson. We are raising Chambers. This case touches them all. And we've supported each of these claims with affidavits and exhibits.

It's inconceivable that Your Honor upon reading these documents could reach a conclusion that they are all frivolous and that there is no basis whatever, accepting them as being true, no basis whatever for this Court to grant a stay. It would be unprecedented. Now, the prosecution has provided this Court with one case, the Mulligan versus Georgia

Page 11.

case, Zand, I think Mulligan versus Zand -- Z-A-N-D -- out of the Middle District of Georgia -- a two-and-a-half page opinion by the lowest Federal Court in the State of Georgia, written in 1982. That case has not been cited since in 13 years. And why hasn't it been cited? Because it's been overruled by the Barefoot case which came down the next year in 1983 saying this Federal District Judge in Georgia was entirely wrong and he applied the wrong standard. That's what it says by implication. Because the standard that the Federal Judge in Georgia applied is the standard that Your Honor was given by the District Attorneys yesterday, which is a standard that is not applied anywhere in the United States since that one lonely Federal Judge in Georgia did it, and was by implication reversed the following year by the United States Supreme Court in the Barefoot case.

And what standard did that judge apply which has not been applied anywhere? The standard that the Assistant District Attorney stood here on Wednesday and that Your Honor hinted at before you got the case law, I must

Page 12.

say in fairness: That the petitioner must show that he or she has a substantial likelihood of success. That was what was applied in Georgia and never applied since to anyone's knowledge. They haven't cited one case since which has used that standard. And we have given the Court Fifth Circuit cases, Eleventh Circuit cases and United States Supreme Court case.

So I think it's clear on the law at this stage in the proceeding a stay must be issued so that we can then move to the second stage, which is an evidentiary proceeding set out in accordance with the local rules of the Common Pleas Court of Philadelphia, which I am now familiar with, whereby, Your Honor, we have a scheduling hearing whereby the Assistant District Attorney responds for the first time, which they haven't done yet, to our petition, whereby a period of time is allowed for investigation, by implication provided in the rules. Whereby we have to provide 30 days before the hearing, 30 days before a hearing, affidavits.

So we are looking, as I suggested on Wednesday, respectfully, if we follow the local

Page 13.

rules and don't make an exception for Mr. Jamal's case, we are looking at a period of 60 days to 90 days whereby we will then begin an evidentiary hearing.

But there is an execution date in five weeks so we must have the stay to begin with. And then we will move under the local rules, we will receive their response, which is required, and a memorandum of law is required. We haven't gotten them yet.

We've gotten their discovery last night at 10:30. We will look it over, we will respond to it. There will probably have to be litigation concerning discovery. There will then be a brief period for investigation and preparation, the preparation of affidavits of witnesses; and then 30 days after that we will go into a hearing. That's what the rules provide. I am only asking and seeking for Mr. Jamal what the rules provide. And that's what they provide, there is no getting around it. Unless the District Attorney's Office position is let's make an exception for Mr. Jamal and let's move this thing willy-nilly, not in an orderly, not in a fair, not in a full

Page 14.

proceeding, which is all required by the Constitution, but let's move it quickly as the trial was done.

THE COURT: Well, you don't understand this, Counselor. You

know, the Assistant District Attorney is faced with the speedy trial, he must try the case within 180 days, doesn't have any choice in the matter. If he doesn't the prisoner is allowed to go free.

MR. WEINGLASS: Yes.

THE COURT: So he has to proceed.

MR. WEINGLASS: Yes. I understand that, Your Honor. And I have --

THE COURT: So when you say it's speedy, it has to be speedy because it is for the benefit of the Defendant.

MR. WEINGLASS: It has to be speedy, and the trial started on June 7th and that was just within the 180 days, as Your Honor indicates.

THE COURT: That's right.

MR. WEINGLASS: Yes. But there is nothing in the rules that require the trial to proceed through two Saturdays, one Saturday sitting at six o'clock. There is nothing in the

Page 15.

rules --

THE COURT: The Jury was sequestered, Counselor. I have to show some concern for the Jury.

MR. WEINGLASS: Oh, yes.

THE COURT: They are sequestered and they are not happy about that. And I am not happy about working on Saturday but I worked on Saturday for their benefit. And the attorneys did too.

MR. WEINGLASS: But when one Juror wanted to take a civil service exam, you adjourned the Court for half a day to accommodate that Juror.

THE COURT: Counselor, the Supreme Court already ruled on that, so don't bring up something that they have already ruled on.

MR. WEINGLASS: No, Your Honor, they didn't rule on that issue.

THE COURT: They had it in front of them. If they thought there was something wrong about it they would have said so.

MR. WEINGLASS: But his appellate Counsel never read the record so it was never brought to their attention.

Page 16.

THE COURT: The Supreme Court reviews it in total on it's own. They went into matters that were not brought up because they must in a capital case review the entire proceedings, whether the Counsel brings them up or not. So let's not argue about simple things like that, let's go forward.

MR. WEINGLASS: I don't want to get into quibbling with the Court. I agree with the Court. I was just concerned, and I wrote the Governor a letter that when the Supreme Court had Mr. Jamal's case they did not have the transcripts for his pre-trial hearings because they are lost. How could they review the record? The record isn't even --

THE COURT: Well, you go back to the Judge that had the pre-trial motions and he will have his Court reporter transcribe them for you if they weren't already transcribed.

MR. WEINGLASS: The transcript notes were lost, Your Honor. I have been trying to get them transcribed for eight months and they can't find the notes. They can not transcribe the pre-trial hearings in this case: They are lost.

Page 17.

THE COURT: I don't know, I have some.

MR. WEINGLASS: You have some and I have some. Four are missing. That is not the way you do a death penalty case, on some. You do it on the whole record.

THE COURT: Counselor, you go back to the Judge that handled the case. I can't control his Court reporter. I don't know what hearings he held.

MR. WEINGLASS: We did advise the Court in the petition. And that brings me to a point that I should have raised at the outset. I am assuming that Your Honor has read the petition. Am I correct in that assumption?

THE COURT: Yes. Your PCRA?

MR. WEINGLASS: Yes.

THE COURT: Yes, okay.

MR. WEINGLASS: So the Court understands the 19 claims that are all set out with specificity.

THE COURT: And you are proceeding on all 19?

MR. WEINGLASS: Yes.

THE COURT: Okay. Because I thought last time you said you were proceeding on less

Page 18.

than 19.

MR. WEINGLASS: No, we will start out with 1 and then go to the others.

THE COURT: Okay.

MR. WEINGLASS: In an orderly fashion.

THE COURT: Okay.

MR. WEINGLASS: Yes. And I think that should be the subject for a scheduling hearing: All sides will know how we are proceeding. Then, I think this is litigation of the most serious sort, and I think we ought to have a very firm understanding as to how we are going and where we are proceeding.

THE COURT: Well, that's what I am trying to do now, Counselor, if you don't mind. That's exactly what I am trying to do.

MR. WEINGLASS: Yes, yes, yes. So, Your Honor, I think there is no question, given the state of the law that's been provided to this Court -- and I am only addressing now the issue of stay, not discovery -- that the Court should enter a stay today and then we should move to a scheduling order, then we should get the response from the District Attorney's Office. Then we should have a period for

Page 19.

investigation and preparation. And then we should have the 30-day period for the affidavits. And then at the end of that --

THE COURT: What affidavits? I thought you attached the affidavits.

MR. WEINGLASS: Pardon?

THE COURT: I thought you had already attached the affidavits.

MR. WEINGLASS: No, Your Honor, the local rules require that before there is an evidentiary hearing, the petitioner must provide an affidavit in substance of what the witnesses that the petitioner will call at the hearing will say. And then after that there is 30 days and then we are into an evidentiary hearing. In other words, under these rules --

THE COURT: You mean while you were preparing this PCRA you didn't get this information?

MR. WEINGLASS: No, we prepared the petition, Your Honor, to be a petition. Then under the local rules you move into the second phase, which is an evidentiary hearing. We are prepared to do that and we will follow the local rules, which will put the evidentiary hearing 60

Page 20.

days from now. We will follow it exactly.

When Your Honor asked me on Wednesday when would we be willing to go, we will go at the first opportunity allowed by the rules: About 60 days from now. We will be ready then.

THE COURT: District Attorney?

MR. EISENBERG: Thank you, Your Honor.

I think it's important to remember again what the real issue before the Court is at this point. And that is not primarily, yet, whether a stay should be granted at all, but whether there should be some sort of an evidentiary hearing held by the Court, whether the Court has the discretion, the power to hear some evidence at this point. And on the basis of that decide whether there should be a stay, or decide that perhaps the stay will not be necessary because after hearing the evidence the Court will perhaps be able to reach the merits of the claims.

THE COURT: But in order to do that wouldn't I have to hear their

PCRA?

MR. EISENBERG: Well, Your Honor, if necessary, and if the Court chooses to do that that would certainly be within the Court's

Page 21.

discretion to do.

And I have heard on Wednesday and again today complaints that the Commonwealth didn't answer this or didn't answer that. As you know, we got a large stack of documents. We answered the motion for recusal and stay first. Because the issue of discovery was brought up on Wednesday, we rushed to get an answer out in writing, a very thorough and detailed answer to the discovery demands, which we completed yesterday. And we are also prepared to do the same for the PCRA answer itself: We are prepared to file that answer Monday morning, Your Honor.

And we believe that certainly at that point, if not today, the case is ready to proceed to some sort of an evidentiary hearing where the Court may begin to hear actual evidence about the claims that the Defendant is raising.

The issue here is not whether the Defendant is going to be deprived of a hearing. On the contrary, it is exactly the opposite: It is whether the Defendant is going to have the hearing. What the Defendant is actually asking

Page 22.

for is not to have his hearing, but to not have his hearing, to have it later on at some point down the line maybe. But what he really wants is to get that stay, is to get that delay.

He talks about how we had four weeks and he just had a day, but we keep ignoring the real time period that is at issue here. For some reason it doesn't come up. And that is the fact that the defense team has been working on this case, by it's own admissions, for years and years, since apparently 1989, 1990. The documents that were produced that were filed in the beginning of June of this year are the product of five years of work. And now the Defendant says now he wants a period for investigation and preparation and discovery. He has done that. That's why he was able to come and produce these documents.

He says he wants to file affidavits 30 days before the hearing. He did file affidavits. He filed numerous affidavits, and we have them. And if the hearing were to begin today, even right now, the affidavits would have been filed more than 30 days before the hearing.

So there is no technical issue about

Page 23.

whether he can comply with the rule about filing affidavits or anything. The reason he was able to do that is because so much work and preparation and investigation has obviously already gone into that. And it is time to test this.

Now what the Defendant is really saying is that warrant of execution doesn't mean anything, the fact that a day is set for execution doesn't mean anything except that now that is an invitation for me to come into Court and start talking about when I am finally going to put on my case and meet the burden. It is the Defendant's burden of proof at this time to overturn the verdict that has been upheld by every Court that has looked at it.

And all we are saying is fine, let's start to do that. We want to move ahead and do that. We take that date seriously, that date set by the Governor. It is not the beginning of the process, so that at some point after that point we will just, you know, talk about when we are going to have a hearing.

We ought to take it seriously and we ought to do what we can to advance the

Page 24.

resolution of these issues as soon as possible. The Defendant says they are so serious, they are so important, they are of such public interest. Let's let the public -- and the Court, more importantly -- hear about the substance of these issues. And if a stay becomes necessary during the course of that process in order to have these issues properly resolved, the Court can exercise it's discretion to do that.

THE COURT: What you are saying, then, is the Court has the right to determine when the stay is actually necessary. In other words, there is nothing in the law that says I must rule within 24 hours, 48 hours, 72 hours or anything. As long as I rule on it before the execution date.

MR. EISENBERG: That's exactly --

THE COURT: Is that what you are saying?

MR. EISENBERG: That is exactly right, Your Honor. And there is no reason now to say gee, we are going to throw up our hands and give up and not even try to litigate this case, the case that this Defendant says he so desperately wants a hearing on. Let's go ahead and do it.

Page 25.

He has been working on it for years he says, now should be the time we start to do it.

THE COURT: Is that what you call justice delayed is justice denied?

MR. EISENBERG: Yes, Your Honor. And it is remarkable that the argument is being made that we are rushing willy-nilly on something that has been in the works for years and years. How could that be called a willy-nilly rush for something that we have been working on for years?

The argument that the trial was handled in the same way: As Your Honor has pointed out and Counsel has conceded, the trial was begun six months after the crime. And it is not an accident that it happened to be six instead of five or seven: That's what the rules of procedure call for for the beginning of a trial. And the trial lasted a full month. It wasn't an overnight sort of thing. The trial went on for a month before Your Honor and a Jury. And let's go ahead and hear the evidence now in the same fashion that has been under wraps for all this time, for all of these years, let's go ahead and start testing it.

Page 26.

Now, the Defendant relies on Federal habeas corpus cases for the proposition that you can't do that, that you can't actually hear the evidence that he says he wants you to hear because all you can do is look at his papers. And there are two problems with that. First of all, the cases don't say that; and second of all, if they did, they wouldn't dictate what this Court in Pennsylvania can do.

Barefoot versus Estelle, which the Defendant relies on as his main case, is a case about how a Federal Court of Appeals should handle a last-minute request for a stay of execution after a Federal District Court has denied a Federal habeas petition. And of course there is no issue there in Barefoot about whether the Federal Court of Appeals should hold a hearing on the stay petition or not. A Court of Appeals can't hold a hearing. An appellate court is not a court of record. It doesn't sit in a Courtroom like this and hear witnesses and have a jury or a fact-finder or an audience in this manner. That's not how appellate courts work. And the Supreme Court of the United States wasn't addressing that question in

Page 27.

Barefoot.

But it did say some very important things in Barefoot that actually bear on this question. And what it said in Barefoot is when the Court of Appeals is faced with that sort of request for a stay of execution, the Court of Appeals doesn't have to throw up it's hands and say gee? looks like there might be something here, we've got to back off, grant a stay and send it back so it goes back for months or years to sit in front of some trial judge for a hearing. The Court of Appeals doesn't have to do that. The United States Supreme Court said that the court can look at the merits of the claims that the defendant is raising to challenge it's conviction. On the materials that it has before it it can look at the merits and resolve the merits of the claims.

Now, an appellate court, the only way that a court can resolve the merits of the defendant's challenges to his conviction is to look at the cold record before it, the papers, the transcripts. That's all an appellate court has, those are the only tools that it can work with.

Page 28.

But that is not true for a trial court. Trial courts, as opposed to appellate courts, hear evidence. That is the way in which they

resolve issues. And that's why the fact that a Federal appellate court doesn't hold an evidentiary hearing under Barefoot versus Estelle is meaningless.

In fact, even if a Federal District Court, a Federal trial court didn't hold a hearing, that would be meaningless. Because a Federal District Court hearing a challenge to a State conviction is not the trial court. The trial doesn't occur in that case in Federal Court. The Federal district judge sits in like an appellate judge, he is reviewing the lawfulness of the judgment of sentence. And in the general manner, the general case, the Federal district court, even he, even though he is a trial judge for Federal crimes, when it comes to State crimes he is not a trial judge and he doesn't get to hear evidence either. There is a presumption of correctness to the state court findings. It is the state court where the hearing is supposed to occur. And all the rules of Federal habeas corpus make it clear

Page 29.

that in the first instance these factual matters are supposed to be resolved in the state court in a hearing and then the Federal court looks over that record. And if there has been some problem for some reason that the record couldn't be fully developed, then maybe the Federal district court gets to hold a hearing too.

But in the main the Federal district court, like the Federal appellate court, is supposed to look at the record of the state court proceedings. And all we are trying to do is start creating that record so that these claims can be resolved. Instead of holding it off, instead of not putting on the evidence that the Defendant says is so powerful, that he wants the world to see so badly, instead of not doing that, we say let's start doing it.

Now, as I said, the Defendant had said on Wednesday they didn't have our discovery response. They have that. They said they didn't have our PCRA answer. They will have that on Monday. Not that any of that should change anything. The Defendant came to the Court Wednesday, filing his papers over a month ago, and said here, look at all that I've got

Page 30.

now. It was his burden to proceed and he said hey, I could meet it, I've got this stuff, I've got affidavits, I've got witnesses. So it is not a question of now beginning to have to go out and investigate and prepare. That was already done. It's obvious from the papers. Even the Defendant says look what I've done, look at all of the information that I've already gathered. And we should start hearing it.

Now, in our filing yesterday we analogized the status of the case now to a preliminary injunction hearing. And that is really the closest analogy in the law. Whether this is a death penalty case or not, we are in effect asking to, the Defendant is in effect asking to preliminarily enjoin his execution. He says I am going to want a permanent injunction later on, I am going to want you to vacate that death penalty all together, but in the meantime I want you to vacate it for now so that we can resolve the merits of our claims.

Well, in a preliminary injunction setting in Pennsylvania, as in virtually every other jurisdiction, the court holds a hearing on the merits of those claims so that the defendant

Page 31.

can show a substantial likelihood of success on the merits. And Mr. Weinglass says no, that is not the standard, and he talks about Federal cases and he cites Bundy versus Wainwright. But even Bundy versus Wainwright, even in the Federal setting, to the extent that it were applicable here at all, says the standard for granting a stay of execution is a general standard for granting an injunction, including the likelihood of success on the merits. Whether the movant has made a showing of likelihood of success on the merits, on page 1421 of the Bundy opinion that's been handed to Your Honor.

Now, the Bundy court, because it was a Federal court and was dealing with Federal procedures, said we'll make that decision just on the papers in our case, not by having a hearing. But they weren't purporting to bind a state court in deciding whether the state court could have a hearing at that stage of the case. That was a matter of Federal procedure for Federal habeas corpus cases, which, as I have explained, are different.

The Defendant says well, but we

Page 32.

incorporate Federal habeas corpus law into Pennsylvania law. And I imagine that this is a reference to a particular provision in the Pennsylvania Post-Conviction Relief Act. But in fact that reference does not support the proposition at all. One of the bases for eligibility for relief under the PCRA in Section 9543 refers to Federal habeas corpus.

THE COURT: B.

MR. EISENBERG: 5, little 5 is the one that refers to Federal habeas corpus. If the petitioner can assert a violation of the provisions of the Constitution, law or treatise of the United States which would require the granting of Federal habeas corpus relief to a state prisoner. In other words, if you've got a substantive claim that would knock out your conviction, that is the kind of a claim that a Federal Court would recognize, then we will recognize it here in Pennsylvania too. In other words, if you've got a claim like they violated my right to counsel or some other sort of Constitutional claim, and it is the kind of claim that the Federal court would hear, we'll hear it.

Page 33.

But that is not what we are talking about now. Now we are talking about a procedural question about whether this Court has the power to conduct an evidentiary hearing on the claims that the Defendant says he so desperately wants a hearing on. And even if Federal procedure prohibited that, those Federal procedures haven't been incorporated into the PCRA. We don't use Federal rules of evidence when we have a PCRA hearing. We don't use the Federal rules that were promulgated for habeas corpus cases under Federal rules, we don't use those, we don't consult those. We don't use the Federal Rules of Civil Procedure, we don't use the Federal Rules of Appellate Procedure. The only thing that is referred to in the Pennsylvania Post-Conviction Relief Act are substantive claims like a violation of the Constitution that would knock out your conviction. But how we determine that, how we litigate those claims is handled by Pennsylvania procedural rules, not by Federal procedural rules.

THE COURT: Wouldn't we do that when we have a hearing on the PCRA? Don't you do

Page 34.

that while we are having the hearing?

MR. EISENBERG: We certainly could, Your Honor, and we would have no objection to doing that. All that we object to is delaying, all we object to is the Defendant being able to say look, we have all that stuff but we don't actually want to get into it yet, we want that stay, we want that delay of the execution that's already been delayed for all these years, but we don't want to actually start having to put our evidence on. And we say let's do it. Let's hear the evidence, let's have it tested in an open, public Court of law finally.

Thank you, Your Honor.

MR. WEINGLASS: Your Honor, we accept, we accept the challenge that we go ahead. And we intend to go ahead. Counsel from the District Attorney's Office argues here at length but never once cites the local rules. We will go ahead in accordance with local rules.

THE COURT: Well, if the Commonwealth is not objecting to anything, what is there --

MR. EISENBERG: The only local rule that I recall Mr. Weinglass referring to is the requirement that affidavits be filed 30 days

Page 35.

before the hearing. That time period, obviously, is to avoid prejudice to the other side. So that I agree with you that the Commonwealth could waive that possibility of prejudice, but it's irrelevant anyway because we have the affidavits and we've had them for more than 30 days.

Furthermore, as Your Honor is probably aware, although we keep calling these local rules, these are just one Judge's, Judge Papalini's, own internal procedures for how he conducts PCRAs.

He is entitled to do it that way. Some judges follow it, some judges don't, but there is nothing about the local rules that prohibits this Court from going ahead and hearing the merits of these claims.

And we have something that we don't have in the usual PCRA case: We have a warrant of execution. And the bottom line of the Defendant's position is let's not take that seriously, that doesn't count for anything. All that means is we have to go through this sort of technical exercise of going into court and getting that knocked away by having a judge grant a stay. And we say that's not what it

Page 36.

means.

THE COURT: It is not necessary for me to make a decision on the stay at this moment.

MR. EISENBERG: Exactly, Your Honor.

THE COURT: There is no case law that says I must make it right now.

MR. EISENBERG: That is correct.

MR. WEINGLASS: Your Honor, there is five weeks to a date of execution.

THE COURT: I know there is five weeks. And that's why I said I will take it under advisement. I want to proceed with the PCRA matter.

MR. WEINGLASS: No, Your Honor.

THE COURT: Start taking evidence under that. And if we get close to execution, Counselor, I will rule, okay, on your stay.

MR. WEINGLASS: No, Your Honor, we can not proceed.

THE COURT: What do you mean you can not? Where does it say we can not?

MR. WEINGLASS: I will tell you where it says that. If you look at the case law we have given you, it is a very different proposition than has just been laid out for you

Page 37.

by the Assistant District Attorney. I could put it in a nutshell. This is what the D.A. says. The D.A. says let's hear the evidence first and then the Court can decide the stay.

THE COURT: I could decide the stay at any time.

MR. WEINGLASS: Pardon?

THE COURT: I could decide the stay at any time.

MR. WEINGLASS: But when you look at the cases, Your Honor.

THE COURT: But you haven't shown me a case that says I must do it before I start hearing any evidence about the PCRA.

MR. WEINGLASS: Yes, it is exactly what we have shown you and exactly what I have argued. Because this is what the cases say. They don't say the evidence first and then the stay.

THE COURT: I am not saying that. I am not saying that, Counselor.

MR. WEINGLASS: All right.

THE COURT: The only purpose of a stay is to permit you to complete your proceedings under the PCRA. And I will decide that. I

Page 38.

would agree with you if his execution date was set for Saturday or his execution were next week, I would agree with you there would not be enough time. I haven't heard anything in this case. What I want to do now is to take it under advisement, you know, and let you proceed with your PCRA matter. And we could take care of it. If we get close to the time, if it takes longer than that, I hope it doesn't, but if it should I certainly will rule on it.

MR. WEINGLASS: Your Honor, you are overlooking one critical fact: When you say you haven't heard anything. And that's what the cases point to.

THE COURT: No.

MR. WEINGLASS: You have heard a petition. You have heard --

THE COURT: I know.

MR. WEINGLASS: You have heard 19 claims. You have heard 300 --

THE COURT: I am giving the District Attorney until Monday to file his answer to that. And then I will proceed with taking of testimony under your PCRA petition.

MR. WEINGLASS: Look at what the

Page 39.

Barefoot case says. The Barefoot case says, does the Court look at the evidence before it decides the stay. The Barefoot case says you look at the petition.

THE COURT: I am not deciding it on the basis of the evidence. I am saying if you can complete your PCRA matter within sufficient time then the matter goes directly to the Supreme Court. If the Supreme Court feels that it needs time to resolve it, they will stay it. Or I'11 stay it before it goes there if it is too close for them to make that decision.

MR. WEINGLASS: One thing: You can not overlook the fact that you have a petition which sets forth the claims and that are supported. That's what triggers the stay.

THE COURT: Counselor.

MR. WEINGLASS: That's what triggers the stay, not the evidence.

THE COURT: I am taking it under advisement. I am not ruling on it one way or the other at this time. What I am saying to you now is let's proceed with the PCRA matter.

MR. WEINGLASS: This is what Barefoot, Bundy and the Blackledge cases say. If a Court

Page 40.

has been given the petition, the Court looks at the petition and decides the stay. You have the petition. Now you should decide the stay. Don't wait for the evidence, that's what they all say.

THE COURT: I am not waiting for any evidence.

MR. WEINGLASS: Decide the stay.

THE COURT: I will make it at the proper time. I am taking it under advisement, Counselor. I am not denying you your stay.

MR. WEINGLASS: You are denying us an orderly proceeding.

THE COURT: No. Why?

MR. WEINGLASS: And a full and fair hearing.

THE COURT: I am going to give you a full hearing. What I am asking you is why must I decide that right now?

MR. WEINGLASS: Because, Your Honor, very simply this.

THE COURT: Quiet or you are going to be removed from the Courtroom. All right, go ahead.

MR. WEINGLASS: Your Honor is an

Page 41.

experienced jurist. You have received a document over 300 pages in length. It asserts 19 claims. Hear me out, please --

THE COURT: Yes.

MR. WEINGLASS: -- without interruption. The same courtesy as you gave Counsel.

THE COURT: I gave you courtesy all the time, Counsel.

MR. WEINGLASS: Okay, I appreciate it. If Your Honor can say, in all seriousness can say honestly that these 19 claims can be litigated and appealed and go to Federal Court in the space of 25 working days, then Your Honor can say you have time. But that is a total falsehood.

THE COURT: Well, Counselor, I don't know. I don't know whether this all can be resolved.

MR. WEINGLASS: You are an experienced jurist, there is no way this could be done in 25 working days.

THE COURT: If you have a crystal ball that I don't have I would appreciate it if you give it to me so I could look at the crystal

Page 42.

ball and decide it can't be done. You are not even giving it a chance to resolve this matter to see.

MR. WEINGLASS: You have every chance right here in a written petition with affidavits and exhibits.

THE COURT: I know.

MR. WEINGLASS: Anyone looking at this will know this can't be done.

THE COURT: As I told you before, I will take it under advisement. If we get close to the time, if we are not finished, I will then rule on your stay.

MR. WEINGLASS: But, Your Honor, we can't even begin immediately.

THE COURT: Why not?

MR. WEINGLASS: We can not begin immediately because, number one, my investigator, who I had to bring from out of state because I could not get local investigators.

THE COURT: Why? We have plenty of them around here.

MR. WEINGLASS: They are all a little afraid of this case because of the police

Page 43.

involvement.

THE COURT: Quiet or you will be removed. If you want me to empty the Courtroom I will empty it. I don't want any outbursts here. Go ahead.

MR. WEINGLASS: We could not get investigators in Philadelphia, and we will put on evidence to that effect, because they were very concerned about their futures as investigators in this City if they got involved in this case. We also had difficulty getting witnesses because the District Attorney's Office eliminated the addresses and the phone numbers of all the witnesses and we have to find witnesses who were on the street 13 years ago. This is a very problematic issue that requires time. And we can not be rushed in this case according to the Court's schedule.

Now, we have tried to move this quickly. We asked this hearing be held on these dates rather than July 24th so that we would have time. And now that we've saved the Court that time, now the Court is imposing upon us a time restraint that is unacceptable.

Page 44.

THE COURT: Your own petition alleges that you have these people who were going to come in here and testify. Bring them in. Bring them in. Yes?

MR. GRANT: If the Court please.

MR. WEINGLASS: Let me correct one mis impression that the Court has...

THE COURT: Yes.

MR. WEINGLASS: Let me correct one mis impression. It has been said here by Counsel, not this morning, because I think they are becoming a little more careful about what they say, but it was said on Wednesday that I have been in this case since 1989. And they cite Paragraph 3 of the petition, which does not say that at all. As a matter of fact, I was not in this case in '89, or '90, or '91. And I started assembling a team in '92, which took a considerable effort.

THE COURT: '92?

MR. WEINGLASS: In '92. We are now up to our eighth investigator.

THE COURT: It is now '95.

MR. WEINGLASS: Pardon?

Page 45.

THE COURT: It is now '95.

MR. WEINGLASS: That's right, Your Honor.

THE COURT: All right.

MR. WEINGLASS: But it takes to reinvestigate a case that's 10, 12 years old with local investigators who we could not get, and we are doing it on monies that have been raised, takes years. But let me explain what's happened in the interim. I met with Governor Casey's Counsel and we laid out for Governor Casey's Counsel all of our problems so that the Governor refrained from signing a warrant. Then I met with the Governor himself in September of '94 and I said to the Governor we don't have the full transcripts and we can't get them. I am trying but they are lost. And he said well, in that case we can not move this case too quickly because you need the record.

As I stand here today I still don't have the transcripts. And I wrote Governor Ridge this on April 21st -- and you have a copy of that letter -- and I said to Governor Ridge would you help me, I have got an obligation here to move a case, I can't move it because I don't

Page 46.

have the transcripts, please use the influence of your office to get me the transcripts. And I got a response saying they wouldn't help me.

Now, that's the way I sit here today in this case. I still don't have the full record and I am still looking for it.

THE COURT: What record don't you have?

MR. WEINGLASS: Pardon?

THE COURT: What record don't you have?

MR. WEINGLASS: I don't have four critical pre-trial hearings where over 12 pre-trial motions were argued.

THE COURT: Who handled them?

MR. WEINGLASS: Judge Ribner.

THE COURT: Well, go see Judge Ribner.

MR. WEINGLASS: I talked to Judge Ribner's clerk. I've talked to the head of the reporters. I've, there are letters back and forth, I will provide them to the Court. They lost them. They found one, they found one.

THE COURT: I will hear --

MR. BURNS: Could I respond?

MR. WEINGLASS: Wait a minute, Your

Page 47.

Honor, please don't cut me off.

THE COURT: You said you don't have them.

MR. WEINGLASS: Please don't cut me off. Please don't cut me off.

THE COURT: Maybe they have the records, will you wait just a minute. Do you have the records that he said was lost?

MR. BURNS: I don't know what particular records are being discussed here. Mr. Weinglass has made a number, a large number of representations unsworn, uncross-examined throughout this morning. He talked to the Governor --

THE COURT: Wait awhile, Counsel.

MR. WEINGLASS: I never said to this Court --

MR. BURNS: A whole variety of facts.

THE COURT: Gentlemen, please. Let him speak now for a minute: I will get back to you.

MR. WEINGLASS: I have a personal privilege. He recited a television program falsely.

Page 48.

MR. BURNS: Personal privilege?

MR. WEINGLASS: Yes, because he said I misrepresented.

MR. BURNS: Yesterday he was outside trying to incite the crowd.

MR. WEINGLASS: That is on the record.

MR. BURNS: Yes, I want that on the record as well.

MR. WEINGLASS: This is the kind of thing, Your Honor, I come to Philadelphia, I expect lawyerly-like conduct.

THE COURT: I am trying to find out about the records that you don't have.

MR. WEINGLASS: Right.

THE COURT: Is there any records that you have that he doesn't have?

MR. BURNS: I do not believe so. I do not know what record he is referring to.

THE COURT: I don't either. I only have one for April.

MR. BURNS: I know what's in the record, and what's in the record, obviously, is in the record. Lacking some specifics as to what is being missed, I really don't know.

THE COURT: You have to talk to Judge

Page 49.

Ribner to find out when he had these.

MR. WEINGLASS: I talked to his clerk.

MR. BURNS: Furthermore, if there were notes it would certainly be possible --

THE COURT: Talking to his clerk isn't going to help you. You have to talk to the Court reporter.

MR. WEINGLASS: I meant his Court, I talked to the head Court reporter.

THE COURT: Not the head, he doesn't transcribe the notes. Talk to Judge Ribner's Court stenographer.

MR. WEINGLASS: Your Honor --

MR. BURNS: May I be heard, Your Honor?

THE COURT: Ask him what, tell him what days you want.

MR. WEINGLASS: Your Honor, the Court doesn't understand, with all due respect, the process.

MR. BURNS: I believe the Court recognized me and wanted to hear from me.

THE COURT: I have been here long enough: I understand the process. That's where you have to go. I can't give you the record.

Page 50.

If it was in my Courtroom I would have it, Counselor, because I keep all my notes.

MR. WEINGLASS: When a case is this old the notes that are taken by the Court reporter are put in a morgue, or in a vault.

THE COURT: Mine are not put in a morgue: I keep mine.

MR. BURNS: Mr. Weinglass is now instructing the Court on civil procedure in Pennsylvania.

MR. WEINGLASS: That's right.

MR. BURNS: If he is going to go on could I say something to the Court, please?

MR. WEINGLASS: I get it from the Court reporter.

MR. BURNS: Am I recognized to speak?

MR. WEINGLASS: No, you are not. Your Honor --

MR. BURNS: Mr. Weinglass is going to be allowed to speak and I am not, Your Honor?

THE COURT: Mr. Weinglass, please.

MR. WEINGLASS: Yes.

THE COURT: Mr. Weinglass, please. I am the one that decides whether he speaks or not. So let him now.

Page 51.

MR. WEINGLASS: But you should also protect my right.

THE COURT: I will let you speak also, I have listened to you.

MR. WEINGLASS: Please don't interrupt me.

THE COURT: Wait awhile, Counselor. You have you made a statement. I want to know if he has anything that you don't have. That's what I want to find out.

MR. WEINGLASS: Good.

THE COURT: Well, let him speak.

MR. WEINGLASS: Do they have it?

THE COURT: That's what I am asking him.

MR. EISENBERG: Your Honor, I am not even sure what dates we are talking about, but I think there is an important point to make here because the representation is being continually made that these are critical, that they absolutely need them that, that they are holding up the whole case. I don't understand how that is so. If they know they are critical then I guess they know what they are about. How is it we know what they are about? We are talking

Page 52.

about proceedings, presumably in front of the calendar judge, which Your Honor is aware of, you know how those lists are handled with 30 or 40 cases before a judge in a day. We are probably talking about something which, if it ever existed, if it was ever transcribed, could be a page or three pages long. The assertion that these are somehow critical to proceeding with the case at all now is ludicrous. We have 19 claims here in the petition. We keep hearing that. Which ones of those claims can't proceed because we are missing four days of transcripts from 1982? I would like some specificity about that. Since the transcripts are being asserted as the reason for delay, let's hear which claims can't proceed without the transcripts and why that is so. Because there have got to be claims, given the nature of the claims in here that are based on witnesses, on extra-record information, not on transcripts, but on things that happened outside of court, there have got to be claims that can proceed. And there is no reason why those claims shouldn't proceed.

And if Mr. Weinglass wants to make a case for the Court why there are other claims

Page 53.

that can't proceed without the transcripts he can. But Your Honor is well aware from handling PCRA cases, when the defendant delays for years in filing his petition, sometimes things get lost. If the transcripts are lost right up front, at the period where the case is still on direct appeal, then the burden of that problem may fall on the Commonwealth. Because it is the Commonwealth's obligation in the first instance to create and have in store, on store a record of the proceedings. But when the case goes on for years and years, and when we are looking at 13 years after the fact, then the records are misplaced, that is not something that the Defendant can get up and say here is a reason why I can't proceed. And certainly not without specifying for us why his 19 substantive, weighty claims as he calls them can't go ahead without these transcripts. We are not even hearing what those proceedings were about and what they have to do with each and every single one of these 19 claims. That's the issue here: Whether we can proceed with those claims. And we keep hearing about transcripts.

MR. WEINGLASS: Your Honor, all you're

Page 54.

hearing, I believe, is, number one, a concession on the part of the District Attorney that they don't have them either. And that, in point of fact, no one has them. Please hear me out, Your Honor. You gave him 10 minutes, I ask for the same privilege.

THE COURT: Ten minutes? No, I didn't give him 10 minutes, but.

MR. WEINGLASS: Whatever you gave him I ask for the same. I provided the Court on Wednesday with a letter I wrote to the Governor on April 2Oth, 1995 in which I pointed out to the Governor that it is most egregious that the Court reporter administration has recently notified me that the notes of four remaining missing hearings have not been located and that they are still trying to locate the notes.

THE COURT: Well, who told you that?

MR. WEINGLASS: The Court reporter administration.

THE COURT: Court reporter administration, bring him in here. Find out what he is talking about.

MR. WEINGLASS: Pardon.

THE COURT: Bring him in, let's find

Page 55.

out what he is talking about.

MR. WEINGLASS: Absolutely, I have their letters, Your Honor, I could provide the Court with the letters. I corresponded with them, pleading with them to send me the transcripts. Hear me out. They sent me one. They sent me the transcript of May 13th, 1982, 71 pages long.

THE COURT: Let me say this: I could probably help you. Why don't we dig up the pay voucher for Jackson and see if he put in for any particular days to be paid, and where it was and how long he was in there. That will tell us if there were any sessions and what it's all about.

MR. GRANT: I think that may require an order from Your Honor

to the Prothonotary or Clerk of Quarter Sessions because we don't have the authority to investigate that matter.

MR. WEINGLASS: I could give Your Honor the days, I could give Your Honor the precise days.

THE COURT: Well, yes, let's bring Mr. Jackson in here to find out what happened on those days.

MR. WEINGLASS: But that is not the

Page 56.

transcripts I want.

THE COURT: Well, he will tell us. He may say he just came in there and we didn't do anything except be ready. Whether they wanted any discovery. Now, I have one transcript dealing with the discovery, I think it's in April of '82, those notes. And that's all that was about. And in those notes the Assistant D.A. McGill indicated that he opened his files to Mr. Jackson, so that he had everything that the D.A. had. And the only thing he was complaining about was that he didn't get any discovery back from the defense.

MR. WEINGLASS: Your Honor, I beg to differ with Your Honor's recollection.

THE COURT: Well, I just read it. I just read it the other day.

MR. WEINGLASS: Right. When he came into Court on that date he asked the Court to appoint another lawyer to assist him because he wasn't on top of the case and he was too busy with other cases.

THE COURT: That's not what he said. No, he didn't like the idea of being back-up Counsel, that's what he said.

Page 57.

MR. WEINGLASS: No.

THE COURT: Yes, he did. He said he wasn't, he never went to law school to become back-up Counsel.

MR. WEINGLASS: Your Honor, that occurred on May 13th.

THE COURT: Well, April I think it was.

MR. WEINGLASS: No, April was a totally different hearing. April he was still trying to convince this Court to give him the resources to defend the case. The Court turned him down. And when the Court turned him down Mr. Jamal asked to represent himself.

THE COURT: Judge Ribner did not turn him down. He gave him sufficient funds. As a matter of fact, you talk about that, in May he gave him additional funds.

MR. WEINGLASS: No.

THE COURT: And the D.A. was complaining because they didn't have discovery back from the defense.

MR. WEINGLASS: Right. He, the defense was given a hundred and fifty for pathologists, he gave him not another cent. A

Page 58.

hundred and fifty for a firearms expert.

THE COURT: Fassnacht.

MR. WEINGLASS: He was given about another $200. It wasn't enough for Fassnacht.

THE COURT: Wait awhile. He gave him a hundred and fifty and then he gave him 200 more?

MR. WEINGLASS: Pardon?

THE COURT: He gave him initially a hundred and fifty and then gave him 200 more?

MR. WEINGLASS: That is the grand sum of about $350 and Fassnacht could not do anything.

THE COURT: I don't know about that.

MR. WEINGLASS: He did not look at the bullets, he did not look at the gun.

THE COURT: He did look at them and he said that he would be giving Mr. Jackson advice on the whole matter.

MR. WEINGLASS: No, Your Honor, he did not.

THE COURT: Read the notes again.

MR. WEINGLASS: I have his affidavit, Your Honor has read it.

THE COURT: I don't care about his

Page 59.

affidavit. Read the notes.

MR. WEINGLASS: No, in his affidavit.

THE COURT: Well, then bring him in here and let him tell us.

MR. WEINGLASS: In due course you will hear in accordance with local rules unless you make an exception for Mr. Jamal.

THE COURT: I am not making an exception for anyone. You are asking me to make an exception.

MR. WEINGLASS: I am standing on the rules, I am standing on the local rules.

THE COURT: It is not our rules. As he said, they are the rules of Judge Papalini.

MR. WEINGLASS: So you won't follow Judge Papalini's rules?

THE COURT: No, he doesn't handle murder cases or capital cases, he handles the other ones. He's got enough headache just taking care of the non-homicide cases.

MR. WEINGLASS: So Your Honor is saying that in homicide cases lesser guarantees of protection apply?

THE COURT: No, I am not saying that. I am saying that there are no rules on capital

Page 60.

cases or murder cases, even if it's life or death, it doesn't make any difference.

MR. WEINGLASS: But there is one rule: There must be an orderly --

THE COURT: That's what I am trying to get to, that's --

MR. WEINGLASS: Orderly.

THE COURT: That's what I am trying to get to: Orderly.

MR. WEINGLASS: We can't have orderly when you are telling me that we have 24 hours to file a brief, that we have half-a-day to file other briefs, that on Monday we are going to hear other things and that you are denying a stay. That is not orderly.

THE COURT: I am not denying a stay.

MR. WEINGLASS: You are.

THE COURT: I said I am taking it under advisement. Don't you understand?

MR. WEINGLASS: Yes.

THE COURT: Well, that's, I am not ruling against it. I am not saying I won't ultimately grant it. I don't know.

MR. WEINGLASS: Your Honor, let me make this request.

Page 61.

THE COURT: If you could show me a case that says I must rule on that before I could hear anything from the PCRA matter, fine.

MR. WEINGLASS: The cases are as follows: Barefoot, Bundy --

THE COURT: Barefoot doesn't say that.

MR. WEINGLASS: It says the Court looks at the petition only.

THE COURT: I know that but --

MR. WEINGLASS: Look at the petition.

THE COURT: -- it doesn't say when I have to make a ruling.

MR. WEINGLASS: No, we asked for a stay.

THE COURT: It doesn't say when I have to make the ruling. That's what I asked you: Must I make the ruling in 24 hours? 48 hours? 72 hours? Can I take it under advisement or am I prohibited from taking it under advisement?

MR. WEINGLASS: Then I ask Your Honor to read Bundy. In Bundy this is what the Court said, very similar to Your Honor: Well, I have the petition but I do want to hear some more evidence.

THE COURT: I am not saying I want to

Page 62.

hear -- I don't want to hear any evidence on the petition. What I want to hear evidence on is on your PCRA. That's what I want to hear.

MR. WEINGLASS: That is the petition.

THE COURT: No, that is the PCRA, that is not the petition to stay. You filed two petitions here: The petition to stay and a petition under the PCRA.

MR. WEINGLASS: What evidence do you want to hear on the petition for a stay?

THE COURT: I don't want to hear any evidence on the stay.

MR. WEINGLASS: You don't want to hear any evidence on the stay.

THE COURT: No, I want to proceed with the PCRA.

MR. WEINGLASS: You want to proceed with the petition.

THE COURT: Yes.

MR. WEINGLASS: And we are asking for a stay on this day, which is Friday, July 14th.

THE COURT: I will take it under advisement, Counselor.

MR. WEINGLASS: But you are denying a request for a stay.

Page 63.

THE COURT: Right this minute, yes, I am taking it under advisement.

MR. WEINGLASS: You're denying the stay today.

THE COURT: I am taking it under advisement, I am not ruling on the stay. Don't try to put words in my mouth. I said I would take it under advisement.

MR. WEINGLASS: But we asked for a stay today.

THE COURT: Well, you could ask for anything you want. I am taking it under advisement. Do you want to say something?

MR. WEINGLASS: Today, Your Honor, we want the stay today.

THE COURT: Wait awhile, Counselor, I heard you already. Let --

MR. EISENBERG: Your Honor, it is clear that the reason that Counsel is trying to put those words in your mouth is that he thinks maybe he could create some sort of an order out of that by which he could block your efforts. Now, they are entitled to proceed in any way in any other court that they want, but I think the

Page 64.

meaning of Your Honor's order is clear. And even in all the other stay litigation that we have all talked about, other cases that we have referred to, in none of those cases did the Court rule immediately. They were cases where the Court ruled two days later, four days later, a week later, sometimes several weeks later. In the Duffy case, for example, where the court initially granted a short stay and then decided to hold a hearing, and had a lengthy hearing and then denied a stay. There are other cases where the Supreme Court has not ruled on a stay for several weeks.

It's clear that you don't, as Your Honor says, don't have to rule on the stay now. And the only reason that the defense wants you to rule on the stay now is so that they can try to block the evidentiary hearing which they have been claiming all along that they wanted.

The latest excuse that we have heard so much about today is the transcripts. But nobody goes through these 19 claims listed over two pages in the PCRA petition and explains to us why we can't proceed without these transcripts. Mr. Weinglass is able to discuss

Page 65.

the events of those days in great detail, he obviously knows what happened on those days. And if the transcripts come, fine, we'll see them. If they don't come, as often happens in a case that's 13 years old, a few pages may be missing out of several thousand, then we will proceed as best we can as happens in every other case. We will try to bring out what evidence we can and the defense can try to recreate those events as best it wants to and puts on witnesses who will testify to their recollection of what happened. But apparently the position is that until we have every single piece of paper here we can't proceed at all. I suppose that if we never get the transcript we will just have to stay this thing indefinitely, is the defense position. Of course we can't proceed that way. There is no explanation of how these various transcripts are going to relate to any of these claims or block them. There is certainly no reasonable position that we never proceed unless and until we have everyone of these transcripts. It's time to go forward.

THE COURT: How about the discovery issue?

Page 66.

MR. EISENBERG: Your Honor, as --

THE COURT: I think he said something about --

Did you speak on the discovery issue?

MR. WEINGLASS: We filed a brief on the discovery issue.

THE COURT: I mean do you want to say anything? Are you entitled to discovery at this time? That's the issue.

MR. WEINGLASS: We had filed with the Court a lengthy request for discovery. And we filed it on June 5th, 1995. And we got the response last night at approximately ten o'clock on July 13th. And I have not had an occasion yet --

THE COURT: To read it.

MR. WEINGLASS: -- to read that full response.

THE COURT: All right.

MR. WEINGLASS: But this is the way in which we are proceeding in this case. This is not an orderly way to proceed.

THE COURT: We are, we are proceeding very orderly. He gave you the response. It's 11:30. Would you be back here at one o'clock?

Page 67.

Give you an opportunity to read it.

MR. WEINGLASS: Your Honor, I really do not believe in a death penalty case I ought to be proceeding under this kind of pressure.

THE COURT: Well, you have to proceed as promptly as possible. As I said before, justice delayed is justice denied.

MR. WEINGLASS: But the Assistant District Attorney delayed five weeks in responding to discovery.

THE COURT: Then you delayed until the Governor signs a warrant.

MR. WEINGLASS: Your Honor, we haven't delayed at all on the discovery. We filed our discovery at the time we filed the petition.

THE COURT: Okay, so what evidence don't you have that you are entitled to? You had initial discovery, pre-trial.

MR. WEINGLASS: No.

THE COURT: You had that discovery.

MR. WEINGLASS: No, Your Honor, they were given statements and the addresses and the phone numbers were deleted, and that's why witnesses could not be found and still can not be found. So we want to have at least the

Page 68.

addresses.

THE COURT: Well, they may not have the addresses either, I don't know.

MR. WEINGLASS: That's one point. But I haven't read their response and I need time to read it.

THE COURT: Okay, do you want until Monday, then, to read the response? I don't care, I will give you as much as time as you need, but I want to proceed to resolve the matters here as promptly as I can.

MR. WEINGLASS: But so promptly that Mr. Jamal's rights are again being interfered with.

THE COURT: No, justice delayed is justice denied. And I am trying to do it in --

Please, no more comments or I am going to have to clear the room. You understand what I mean: You are not out on the street here, you are in a Court of law. And you are going to maintain the proper decorum or you are going to be moved out, period. I can't tolerate that in a Courtroom.

Go ahead, Counselor.

MR. WEINGLASS: Oh, Your Honor, I have

Page 69.

to consult with -- could I have 10 minutes to consult with my Co-

counsel and with Mr. Jamal?

THE COURT: Sure, tell me how much time you need.

MR. WEINGLASS: Because we are operating here where I get papers 10:30 at night and when I am in Court the next morning.

THE COURT: I didn't get your papers until this morning.

MR. WEINGLASS: Your Honor, Your Honor left your office early yesterday.

THE COURT: Shame on you.

MR. WEINGLASS: We got it to Your Honor's office before the close of the business day but you were gone.

THE COURT: Close of the business day.

MR. WEINGLASS: I wasn't asking the Court where you went.

THE COURT: You better not.

MR. WEINGLASS: But I think the record ought to reflect that unlike the District Attorney's Office, we provided you and the Assistant District Attorney with our papers before the close of the day.

THE COURT: All right.

Page 70.

MR. WEINGLASS: We did not get theirs until after the close of the day.

MR. EISENBERG: I just have to put a few additional fact on the record. I received a list of cases at some time after five o'clock. I was told earlier that there would be a list and a memorandum. I received the memorandum this morning. According to the FAX of that memorandum, it arrived at my office FAX machine about five to 1l:OO p.m. last night. Now, I am not saying that to complain that they didn't give me enough notice. Under the circumstances I think that it was admirable that they got it to me last night at all. Because if I had been able to still be in my office at eleven o'clock last night, I left at lO:OO, I would have been able to start looking at it.

MR. WEINGLASS: And you didn't give us your papers until ten o'clock.

MR. EISENBERG: The idea that --

THE COURT: It is not a question of --

MR. EISENBERG: The question that somehow the Commonwealth delayed here is ludicrous. This is how death penalty stay litigation goes. I've had several already this

Page 71.

year. Everyone of them was a matter of running around in front of Federal judges and State judges and filing things the next day and the day after. That's how it goes all around the country. We don't just sit back, kick up our heals and say sure, who cares about the scheduled execution date, we will just put that off and take it easy.

MR. WEINGLASS: Then, Your Honor, it is time we do it better. And Mr. Jamal is entitled to due process.

THE COURT: He is not the only one facing death. There are other people here and they have the same rights.

MR. WEINGLASS: Mr. Fahy had a right to a stay two weeks ago.

THE COURT: He got his stay.

MR. WEINGLASS: The Supreme Court had to come in and give him a stay.

THE COURT: And the Supreme Court will come in here and give him a stay if they need it. I am taking it under advisement. You are not satisfied with that, you do whatever you have to do.

MR. WEINGLASS: But we are asking for

Page 72.

the stay today.

THE COURT: I am telling you I am taking it under advisement. That's all I could do, that's all I could tell you.

MR. WEINGLASS: We are not making the request today. We want the Court to make the order today.

THE COURT: I don't care what you want, I am telling you I am taking it under advisement.

MR. WEINGLASS: You are denying my request.

THE COURT: I am not doing that, I am taking it under advisement.

MR. WEINGLASS: You are denying the request.

THE COURT: I am not denying the request, I am taking it under advisement. If you don't understand English, Counselor, I'm sorry. Yes?

MR. WEINGLASS: I understand all too well.

THE COURT: Well, wait awhile.

MR. BURNS: Pardon me, Your Honor.

Page 73.

THE COURT: Go ahead.

MR. BURNS: If it please the Court: This is becoming extremely repetitive. Mr. Weinglass is making the same arguments over and over again. I believe you have made your position clear. I would respectfully suggest, Your Honor, that we adjourn and reconvene on Tuesday, if that's appropriate, to start taking testimony.

THE COURT: Well, I want your answer in. You are going to have your answer to the PCRA?

MR. BURNS: Monday morning, Your Honor.

THE COURT: Okay. What about this discovery? He has a motion here for discovery. I've had a chance to look over the Act and I have tried to find cases and I could find none.

MR. BURNS: Well, the Defendant has filed a written motion for discovery. We filed a written answer. That certainly gives the Court a basis to rule. And if the Court wants to rule on that, fine.

THE COURT: Does anybody have any cases on it? I had my law clerk use a computer

Page 74.

and couldn't find any. And I have looked at the statute itself and there is no provision in there for it.

MR. BURNS: It is controlled by the rule of criminal procedure which specifies that discovery is given before trial.

THE COURT: And I checked on Ribner's notes there: The entire file was turned over to Mr. Jackson, so they already have that. They had the discovery pre-trial. And I don't know that there is anything, if anybody could give me any cases. But at this moment I am ruling that the motion for discovery is denied. But I will give you --

MR. WEINGLASS: Your Honor was going to give me 10 minutes to confer.

THE COURT: No, on the discovery.

MR. WEINGLASS: No, discovery.

THE COURT: But if you could give me any cases on it, I will be glad to reconsider my decision on that.

MR. WEINGLASS: The Court has indicated that we will come back after a 10-minute break and I will consult with my Counsel.

Page 75.

THE COURT: On the --

MR. WEINGLASS: On what we are going to do with respect to argument on discovery.

THE COURT: Okay.

MR. WEINGLASS: Because we got papers too late for me to read them last night. Now Counsel --

THE COURT: Well, Counselor, I don't care whether you read his or not, the D.A.'s. I have tried on my own to find some excuse or some rulings on this point. I could find none. And I have gone over the statute itself, the PCRA statute, but it does not make any provision for discovery. And there are no cases that I could find in Pennsylvania that did that. You have to understand that if he is entitled to discovery, so is every other person entitled to discovery. And this may be a matter that the Pennsylvania Supreme Court must resolve.

Now you could talk to your Counsel, I will take a 10-minute recess, but I am telling you I could find nothing on it. Unless you could find something on it. I will be glad to consider it. Or

reconsider it, either way.

Take a 10-minute recess.

Page 76.

THE COURT OFFICER: This Court stands recessed until the call of the Crier.

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(Brief recess.)

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THE COURT OFFICER: Court is back in session.

MR. WEINGLASS: Thank you for the opportunity for us to consult. I want to thank the Court's personnel for making a telephone available for us to call New York. And I think it's been fruitful because we now have the precise dates on which transcript notes have been lost. And the dates are December 2lst, 1981. February 22nd, 1982. March 18th, 1982. And April 1st, 1982. Those are the four dates that the Court administrator has informed me the notes are lost.

And if the District Attorney's Office could check their file, and if they have any of those dates, then we could move on from there. If they don't, then I assume we'll have as the Court suggests a reconstruction proceeding where we will attempt to reconstruct matters that were heard before the Court on that date and replace

Page 77.

the reconstruction with the actual transcript.

But I think, Your Honor, given the fact that we are facing an execution date, I don't think we can proceed until we have the full record, including the pre-trial hearings. I do not know what happened on those dates. I've talked to Mr. Jackson: He can't recall with spec, with any specific, he can not recall specifically --

THE COURT: Specificity.

MR. WEINGLASS: -- right -- what happened on those dates. So if the District Attorney's Office has those records.

THE COURT: Well, maybe Judge Ribner might be able to help you, I don't know.

MR. WEINGLASS: It's possible, or personnel in his office. I, as I mentioned, I dealt with the Court administrator because I was referred to the Court administrator -- I am an out-of-state attorney -- and I dealt with a person who I was told had the notes. And indeed that person found one hearing, 71 pages for May 13th, and that was helpful to me. They gave it to me in November of 1994, that's when they came up with it.

Page 78.

THE COURT: That's when they were talking about discovery.

MR. WEINGLASS: Pardon?

THE COURT: Discovery.

MR. WEINGLASS: Yes, now I want to answer the Court's request on discovery. I have talked to my Co-counsel, and I haven't had the principal responsibility for discovery, but we did file a 22-page request which is specific requesting various specific items. And we've gotten the response which is over 30 pages, I think 33 pages, response to each and every paragraph of the request. There are matters that are going to have to be argued and reviewed, there is case law.

I have talked to Counsel because the Court has indicated a proposed schedule of dealing with those matters on Tuesday. The best we can do, Your Honor, we can be back on Wednesday. And by Wednesday we will have the District Attorney's response to our long petition.

THE COURT: Well, no, I want the District Attorney's response by noon on Monday. All right, gentlemen? I want that

Page 79.

back here on noon on Monday. And we will reconvene here on Tuesday. In Courtroom 253.

MR. WEINGLASS: Well, Your Honor, please, some of the Counsel cannot make it and some of the attorneys who are important for discovery cannot make it. Today is Friday. It's not unusual --

THE COURT: Counselor, as I said --

MR. WEINGLASS: Conflicts.

THE COURT: Counselor, I said to you before, I'm denying the motion for discovery. If you can give me any law that says that you are entitled to it in a PCRA matter, I will be glad to consider it, and I will reconsider my order. I have checked the records, I could find no cases on it. It is not a part of the PCRA statute. You had, the Defendant had a right to discovery pre-trial, which he had. He had the entire file. I don't know that you are entitled to a second look at it. So unless you could come up with a case that would say that in a post-conviction matter such as this, that you are entitled to discovery -- and I say this honestly to you -- I think that is going to have to be resolved by the Pennsylvania Supreme

Page 80.

Court. Because I could find no cases on it.

MR. WEINGLASS: Let me try to help the Court in one particular. To give you an example of what the problem is. We have alleged on page...

(Discussion was held off the record at this time.)

MR. WEINGLASS: Page 8, the bottom of 7, the top of 8, that we have examined the letters that were sent to Mr. Jackson pre-trial, indicating an enclosure of certain statements of witnesses. We have gone through all the files that are available to Mr. Jamal. We have found that approximately 12 of those statements are missing. And we list them by name. Frank Allen, Beulah Campbell, Sharon Cook, Delores Fox, Pasquale Marcovecchio, Anthony Merrone, Robert Schmidt, William Stapleton, Reginald Thompson, Mark Turnock, et cetera, I don't want to list them all. These statements are missing. We have no basis for determining whether or not there was an ineffective assistant of Counsel in the review of these statements because we don't have them. We need the statements. Now, I think the Assistant

Page 81.

District Attorney has them. And I think they can copy them.

THE COURT: I think what you need now is to put the attorney on the stand and let's find out what he did with them, if anything. I don't know.

MR. WEINGLASS: But, Your Honor, before we put the attorney on the stand, we are representing a Petitioner who faces a very serious consequence. Don't you think Counsel ought to have a copy, just a copy, D.A. can make a copy of these statements so we can know what it is that the attorney representing Mr. Jamal at the time did or didn't do? We are just asking for documents.

THE COURT: According to my reading of the initial notes the attorney didn't know who Mr. Jamal wanted to call until he told him.

MR. WEINGLASS: Your Honor, these are prosecution witnesses.

THE COURT: No, I don't care whose witnesses they are. But the thing is did he want to call them, did the defense want to call them?

MR. WEINGLASS: The defense wants to

Page 82.

be able to assert it's claim on ineffective assistance of counsel. In order to do that we have to have all of the documents.

THE COURT: What do you mean, what did he do that was ineffective?

MR. WEINGLASS: Perhaps he overlooked something in these statements.

THE COURT: Well, we are not here as a Monday morning quarterback. What did he do?

MR. WEINGLASS: Not Monday morning quarterback. Ineffective assistance of counsel, as Your Honor well knows, is a clearly recognized ground, and we have asserted it, on which post-conviction relief is based.

THE COURT: I know, but exactly what didn't he do that he should have done? That is what I mean.

MR. WEINGLASS: He received these statements.

THE COURT: Right.

MR. WEINGLASS: We don't know what's in these statements. In order for us to assert the claim that he was ineffective we must have those statements. That's pure discovery.

THE COURT: Wait awhile. Did you talk

Page 83.

to the attorney Jackson and ask him?

MR. WEINGLASS: We've asked about these, yes.

THE COURT: Does he have them?

MR. WEINGLASS: He does not have them.

THE COURT: What did he do with them?

MR. WEINGLASS: I don't know.

THE COURT: Well.

MR. WEINGLASS: I don't know.

MR. GRANT: Your Honor.

THE COURT: Wait awhile. Let me see if we could clear this up.

MR. GRANT: To the extent that Mr. Weinglass would make that list available to me I will look to find out whether we have any of these documents. We will reproduce those that he wants. And I know for a fact based upon the reading of the record itself that at some point Mr. Jackson gave his entire file to Mr. Jamal. And he was not able to look at those statements thereafter at any point in time. And he had to find out from Mr. Jamal which witnesses he should call next based upon Mr. Jamal's reading of the 49s and the 483s that were presented to him...

Page 84.

MR. WEINGLASS: Now we are making some progress in discovery. If Counsel will turn them over we will receive them, there are about 12 or 14.

MR. GRANT: If we have them. I don't know, I don't recognize any of those names of any of those witnesses. They were not Commonwealth witnesses, they were never called to testify.

MR. WEINGLASS: Exactly, that's why we are very curious about them.

THE COURT: Well, he says if they have them they will give it to you. But the discovery generally is denied.

MR. WEINGLASS: Yes. Now, Your Honor, we are making some progress in the direction of an orderly proceeding. We have a claim, they have responded, I think we resolved it. Mr. Jamal has the documents he ought to have. When we put Mr. Jackson on the stand, which we will do --

THE COURT: What did he do with the things that he had, that Mr. Jackson gave him?

MR. WEINGLASS: Pardon?

THE COURT: Let's find out what he did

Page 85.

with what Mr. Jackson gave him. He gave him his whole file.

MR. WEINGLASS: Your Honor is accepting carte blanch what they represented, Judge.

THE COURT: He said it is in the notes, I don't know. And he is going to answer your thing and if it's there it's there.

MR. GRANT: I do have the reference to the notes of testimony wherein Mr. Jackson states that, Your Honor. If I may.

(Pause.)

MR. WEINGLASS: I also, also I could reveal this to the Court while Counsel is looking: I've had conversations with Mr. Jackson. Whatever he turned over to Mr. Jamal he kept a copy for himself.

THE COURT: Well, then he should have a copy of these.

MR. WEINGLASS: He doesn't have it.

THE COURT: Well, find out what he did with them.

MR. WEINGLASS: That's part of what these proceedings are going to be about.

THE COURT: But the thing you are

Page 86.

asking for is a general discovery.

MR. WEINGLASS: No. Very specific. We named everyone we are looking for.

THE COURT: All right.

MR. WEINGLASS: We didn't say give us all the statements. These are the ones we are missing.

THE COURT: Okay.

MR. EISENBERG: Your Honor, while Mr. Grant is looking through the notes let me just point out something about this, about these witnesses and these statements, since Mr. Weinglass, after we have offered to give a copy of something that we already turned over is now turning this into a discovery issue and proof that we need some big, extended, lengthy proceeding. The point here is that as a matter of courtesy when things that have already been turned over to the defense are lost at some point in the transition, there are times when, if the Commonwealth is able, if we are the only source for these materials, we try to give them over. But that's not discovery. And that's the crucial point. Because when Mr. Weinglass uses the word discovery, what he is saying is that he

Page 87.

has a legal right to these things.

THE COURT: Well, I have already ruled that he doesn't.

MR. EISENBERG: That's why I want to make it clear that when we talk about discovery, we shouldn't be using that word in reference to these documents. As far as discovery is concerned, these documents are already done.

THE COURT: That's right, and I have already ruled as a matter of law that he is not entitled to discovery. But if you have them, you want to give them to him, fine.

MR. EISENBERG: I think another point is important also. Mr. Weinglass says he needs what is in them because he can't proceed without them because maybe they are going to be claims of ineffectiveness as to Mr. Jackson. In order to substantiate any such claims, if they ever need to come up with them, they need to put witnesses on the stand to testify as to what their testimony on issues relevant to trial would have been.

THE COURT: I understand that.

MR. EISENBERG: Since they know the names of these people then at some point they

Page 88.

are going to have to talk to people anyway. And again, this is something, this information was in the possession of the defense, could have been investigated. If they want to investigate it in the future, if there is time and the Court permits that, fine. But the idea that they couldn't do anything on this until now is simply untrue.

MR. WEINGLASS: As I understand it, we were granted a recess so I could consult with Councel so I could indicate to the Court when I would be prepared to argue discovery. We are not at that stage yet.

THE COURT: No, I ruled on discovery already.

MR. WEINGLASS: You ruled.

THE COURT: I ruled that it is denied because I have done my own research on it.

MR. WEINGLASS: Your Honor, I haven't read their papers. Your Honor has heard from me orally. You are denying it.

THE COURT: Counselor, I heard from you.

MR. WEINGLASS: I didn't argue discovery.

Page 89.

THE COURT: Counselor, give me a case, I said to you.

MR. WEINGLASS: I asked until Wednesday.

THE COURT: Counselor.

MR. WEINGLASS: Give me until Wednesday.

THE COURT: Counselor, I said to you I am denying the motion for discovery. If you are able to come up with a case that says that you are entitled to that, I will reconsider my decision. But for the time being I am denying your motion for discovery.

MR. GRANT: Your Honor, on June 26th of 1982, Mr. Jackson was addressing the Court at page 139 and 140 of the notes of testimony. At that time he stated to Your Honor, one of the difficulties that I have in determining what witnesses to call is that I have to reflect and search my notes as to the statements of witnesses. Since I no longer have a copy of the statements. Mr. Jamal has copies of the statements. I think that I indicated I showed you all the names.

Thereafter, on July lst, 1982, at page

Page 90.

32 and 33 of the notes of testimony of the transcript, Mr. Jackson again addresses Your Honor. When asked what witnesses he will put forth for the defense next he states to you, to Your Honor, we have now found that there is another police officer that we would like to have testify. Mr. McGill, the prosecutor, just advises me that he is not present today. I would ask that of course he be called in.

THE COURT: You knew about this before. I'm not going to hold up this trial.

MR. JACKSON: I did not.

THE COURT: What do you mean you didn't? Didn't you get statements regarding -- and there are words missing from the photocopy -- didn't you get the statements of -- I assume it says police and detectives -- months and months ago.

MR. JACKSON: Absolutely. Then he states I was forced to try and remember everything that everybody said and I couldn't do it.

MR. MCGILL: interposes: I object to this. I think if Mr. Jamal, the Defendant in this case, decides he is not going to give

Page 91.

statements until the very last minute to his attorney, that's on him. I don't see any reason why this trial should be delayed.

Now Mr. Jackson has said expressly and implicitely that he didn't even have the statements of the witnesses who were taking the stand, and he further opines during the calling of character witnesses, I don't know what to tell the Jury the name I am going to call next because Mr. Jamal tells me who to call next and until that moment I am unaware.

Full discovery has been granted in this matter. But as a courtesy to Mr. Weinglass, we will provide whatever we have that he doesn't have.

THE COURT: Okay, good enough. We will adjourn until, well, first of all, I said you will have your answer to the PCRA by Monday noon.

MR. BURNS: Monday noon, Your Honor.

THE COURT: Serve a copy on the defense. We will reconvene on Tuesday. And we will reconvene in Courtroom 253. All right.

MR. WEINGLASS: May I have just a moment, Your Honor. I am going to be losing

Page 92.

one of my Counsel because the Court wouldn't give us one day. If the Court will give me a moment, just a moment to consult with Counsel.

(Pause.)

MR. WEINGLASS: If the Court please: On Wednesday I handed up to the Court two orders: The order denying jurisdictional authority and another order denying recusal. Has the Court had an opportunity to review these and sign these?

THE COURT: Yes, I don't know if I had one for the jurisdiction. I ruled in Court on it. But I know I had signed the one on the motion for recusal. Is there one for the jurisdiction?

MS. FURIA: You haven't signed it.

THE COURT: Do you have it there?

MS. FURIA: Yes.

THE COURT: Counselor, the date that you mentioned, you said you don't have notes for December 21st of 81?

MR. WEINGLASS: That's right.

THE COURT: Well, what that was, according to the docket entries, it was a petition to photograph the Defendant while in

Page 93.

custody at Philadelphia County Prison was filed. And on 12-21-81 the order was granted by Judge Ribner. So there are not going to be any notes, it may be a one-page thing that he granted the thing and the dockets will show that.

MR. WEINGLASS: It might be and it might not be.

THE COURT: Well, that's all it is according to the docket entries.

On 2-22-82, what happened then was omnibus motions were filed. And on, on 3-18-82, that omnibus motions were granted. And in addition, the petition to distribute questionnaires to proposed venire persons was filed. And on 4-1, what's that, 4-1-82, in Courtroom 613, defense request for a line-up of witnesses, Robert Chobert and Albert McGillity is hereby denied. The Court also denied defense attorney's request to submit questionnaires to prospective jurors. That was all done by Judge Ribner.

So basically that's all it is. You are not going to find any lengthy notes in that thing.

MR. WEINGLASS: Well, I assume that

Page 94.

there was argument on the line-up issue.

THE COURT: There was no argument, the Judge made a ruling. If you want to know why he ruled, go see him. And he must have filed some sort of an order.

MR. WEINGLASS: We prefer to read the official record, with all due respect.

THE COURT: Well, read it, it is in the dockets.

MR. WEINGLASS: No, but we don't have the transcript of that meeting.

THE COURT: Well, you don't need the transcript. As far as the Supreme Court is concerned, they could interpret that. They know what that means. I know what it means. I don't need the notes in order to determine what that means. I don't care what the arguments were, the Judge made a decision, period. That's it.

MR. WEINGLASS: You don't need how the Judge made the decision or what comments --

THE COURT: Well, go ask him. I don't know how either. I am not here to, but this case went up on appeal, and the Supreme Court had all of that. If they thought it was an issue that needed any further explanation, they

Page 95.

would have asked Judge Ribner to explain.

MR. WEINGLASS: They didn't have the transcript of the proceeding.

THE COURT: They don't need it, they see the order.

MR. WEINGLASS: Well, with all due respect, I believe the case law requires that they have the transcript.

THE COURT: Well, save that for the Supreme Court, because I don't have that idea.

MR. WEINGLASS: Could we have a copy of the Court's order denying the recusal?

THE COURT: I will have to make a Xerox copy. Unless you have a copy there, I will sign another one for you.

MR. WEINGLASS: I have copies, yes. Both of them: Jurisdictions and recusal.

THE COURT OFFICER: You want to conform these copies?

THE COURT: I will sign it for him and that's it.

MR. WEINGLASS: There is another order which I am tendering to the Court denying discovery.

MR. EISENBERG: Could I see a copy?

Page 96.

(Pause.)

THE COURT: Okay (handing).

THE COURT OFFICER: Counsel (handing).

THE COURT: Today's the 14th, right. Does the Commonwealth

want a copy of these things that I'm signing?

MR. EISENBERG: Yes, we do, Your Honor.

MR. BURNS: Thank you, Your Honor.

THE COURT OFFICER: I will get you copies, Judge. I will go get a copy.

THE COURT: All right. How about getting them copies for the other two. Frank.

MR. WEINGLASS: While we are waiting: There is a matter which I would like to bring to the Court's attention.

Seated at our table is Mr. Jonathan Piper at the far end of the table. And a member of the bar of Illinois.

There is one other matter, Your Honor. The Court knows, Mr. Jamal is in what is referred to as a Phase 2 status on death row at S.C.I. Greene. As I understand it, he is entitled to be counseled by a spiritual advisor. And he does have a spiritual advisor, Mr. Steve

Page 97.

Wiser. W-I-S-E-R. Wiser. And he is a member of the Bruderhof -- B-R-U-D-E-R-H-O-F -- Community, which is a religious order that has been in the Commonwealth as I understand it several hundred years. And he has served as his advisor, but he needs an order of this Court in order to see Mr. Jamal during this period of time. And I would ask the Court to indicate it's agreement that Mr. Wiser may visit with Mr. Jamal while he is in Phase 2.

MR. BURNS: No objection to that, Your Honor.

THE COURT: All right, do you have any kind of an order for me to sign? I will be glad to sign it. If you don't have it now, give it to me whenever you can. All right.

MR. WEINGLASS: Later this afternoon.

THE COURT: Okay.

MR. WEINGLASS: Also, Your Honor, seated at Counsel's table is a legal runner who has been recognized and accepted as my legal runner in the City of Philadelphia. Miss Jennette Patton.

THE COURT: Who?

MR. WEINGLASS: Jeannette --

Page 98.

J-E-A-N-N-E-T-T-E -- Patton -- P-A-T-T-O-N. And she has been working with me because I'm unfamiliar with the City, and assisting me in terms of my investigation. And she has been recognized and accepted by the Department of Corrections as my runner. And has been accorded privileges to visit with Mr. Jamal on that basis by the Department of Corrections.

THE COURT: If they allow it there is nothing for me to do. As long as they allowed it it's all right by me.

MR. WEINGLASS: I believe while Mr. Jamal is here, and he has being kept at Graterford temporarily, we would need an order from the Court to allow her --

THE COURT: I don't think you need that. If they already recognized her. What do you need an order from me for? If the Corrections has a problem with it let them call me.

MR. WEINGLASS: This is the problem that Corrections does have. Under the rules of Phase 2 an inmate is only allowed to see his Counsel and his immediate family. And I would just ask while we are about to proceed here with

Page 99.

a hearing, that Mr. Jamal be permitted, because I am in New York, to meet with my legal runner.

THE COURT: Well, you have a lot of Counsel here. I don't know how many you have here.

MR. WEINGLASS: None of them are from Philadelphia.

THE COURT: It doesn't make any difference whether they are from Philadelphia. They could go there and see him. Look, I can't get into a squabble with the Department of Corrections. If they have a certain rule, that's it. If they won't bend on it. Let them get in touch with me. I don't know, I am not going to get into a squabble of how they run the prisons. If that's their rules that's their rules.

MR. WEINGLASS: The Court is suggesting I should have the Department of Corrections call Your Honor.

THE COURT: Yes, if there is a problem. I am not going to get into a squabble with the Department of Corrections. I don't run the prisons. I don't let the prisons tell me how to run the Courtroom, and they don't let me

Page 100.

tell them how to run the prisons. I am not going to get involved in that. If that's what Phase 2 says then that's what Phase 2 says.

MR. WEINGLASS: Phase 2 only requires that we get a Court order, and that's what I am asking.

THE COURT: Well, then let the prison call me and let me see what they need. If they have a problem with it, let them give me a call. I don't know what their problem is. We will adjourn, then, gentlemen, until Tuesday morning.

MR. GRANT: Yes, Your Honor.

MR. BURNS: Yes, Your Honor.

THE COURT: The defense ought to submit to the Court a list of your potential witnesses.

MR. WEINGLASS: Pardon?

THE COURT: Could you submit to me on Monday afternoon sometime the list of the witnesses as you are going to call them. So that everybody knows who is going to be called so that they don't at the last minute, I don't want the Commonwealth at the last minute to say we didn't know they were going to call them. So

Page 101.

just in the order that you are going to call them.

MR. GRANT: May we also have Counsel's requested additional discovery names so we can have that done over the weekend?

MR. WEINGLASS: Page 8 of the motion.

THE COURT: He said it is on page 8. All right?

MR. WEINGLASS: Fine.

THE COURT: Okay.

THE COURT CRIER: This Court stands adjourned until 1O:OO a.m. Tuesday morning, Courtroom 253.

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(The hearing was adjourned at 12:30 p.m.)

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Page 102.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

17. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Monday, July 17, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- JONATHAN PIPER
  Councel for the Defendant

- - - - -

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Official Court Reporter of the Court of Common Pleas

Page 2.

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(At 10:25 a.m. the hearing was convened
in the presence of the Court and the attorneys.)

- - - - -

MR. PIPER: Good morning, Your Honor. Jonathan Piper on behalf of the Petitioner Mumia Abu-Jamal.

I have presented to Your Honor and to Mr. Banks Petitioner's emergency motion to reconsider the order scheduling a hearing date to certify orders for interlocutory appeal and to stay a hearing pending appeal.

Mr. Banks I think would like a moment to read it?

MR. BURNS: I think Your Honor would perhaps also.

THE COURT: I don't want to even read it because we don't have the Defendant here. We didn't make arrangements to have him brought down today and I am not going to go into any proceedings without him.

MR. PIPER: Your Honor, we will --

THE COURT: We will take that up tomorrow when he is going to be here.

Page 3.

MR. PIPER: Your Honor, one of the problems that we've had is that we haven't been able to meet with the Defendant over the weekend.

THE COURT: Well, that is your problem, Counselor.

MR. PIPER: What I would suggest is that we continue the hearing at least one day.

THE COURT: Well, I said tomorrow because he is going to be brought in tomorrow.

MR. PIPER: Then we should continue the evidentiary hearing at least one day so that this motion could be presented.

THE COURT: You could present it first thing in the morning, I will take it up.

MR. PIPER: We would also then plan to appeal to the Supreme Court.

THE COURT: I don't know how you are going to appeal it. I am not certifying anything.

MR. PIPER: Would you continue the hearing for at least one day, the evidentiary hearing?

THE COURT: I don't know, take it up tomorrow. Tell me what your problems are

Page 4.

tomorrow, okay.

MR. PIPER: Would you stay these proceedings while we take our appeal?

THE COURT: Counselor, will you bring it up tomorrow when we could have the Defendant present? That's all I am going to do now. Since he is not here, I am not going to hear it.

MR. PIPER: Your Honor, we will be appealing. Would you stay these proceedings while we appeal?

THE COURT: You could do anything you want. If the Supreme Court wants to listen to you, that's fine. I can't tell you what to do, Counselor. I am not here to represent you or anybody else. I'm here to make a decision. And I have already made a decision in this matter. But I said if you can give me any cases that would justify my reversal of that decision, I'd do it. If you have cases, give them to me and I will read them today. If you don't have them, too bad.

MR. BURNS: Thank you, Your Honor. May it please the Court: My name is Burns, not Banks. That's all. Thank you, Your Honor.

THE COURT: Counselor, do you want to

Page 5.

put your name down too for the record.

MR. GRANT: I believe he knows my name, Your Honor.

MR. BURNS: Thank you, Your Honor.

THE COURT: Okay.

MR. PIPER: Your Honor, one other housekeeping matter which is really just a presentment of the order you granted Friday appointing a spiritual advisor from the --

THE COURT: Yes. And I waited all day Friday for you.

MR. PIPER: We called Friday afternoon and we were advised that --

THE COURT: You did not call.

MR. PIPER: Yes.

THE COURT: We were here until 4:30. Don't give me that.

MR. PIPER: I called at 4:00 o'clock and there was --

THE COURT: Well, yes, that's not true, Counselor. You should have had it over. See how small that is (displaying)? You could have had that over at ten o'clock in the morning, eleven o'clock in the morning, any time.

Page 6.

MR. PIPER: Your Honor, the order was not even granted until after twelve o'clock and we called your office and you were not there.

THE COURT: You have one paragraph, roughly one paragraph here? Do you see how small it is. What's the big deal, why didn't you get it to me? You could have probably seen him over the weekend.

I will sign that right now. I have no problem doing that. Today's the 17th?

THE COURT CLERK: That is correct, Your Honor.

THE COURT: But I didn't even know why you need it because he has already been appointed spiritual advisor to the Defendant. And you told me it was in Greene Prison, out in Western Pennsylvania there.

MR. PIPER: Your Honor, I don't know the details. Mr. Weinglass would. But you did indicate --

THE COURT: You mean he didn't tell me the truth?

MR. PIPER: I said I am not familiar with that.

THE COURT: You were there, weren't

Page 7.

you?

MR. PIPER: That's what he said, yes.

THE COURT: That's wrong?

MR. PIPER: Whatever he said is true. Whatever you granted the order based on is what is true.

THE COURT: It is based on his telling me the truth, and I assumed that's what he was doing.

MR. PIPER: Exactly.

THE COURT: Okay. Now, it reads as follows: And now this 17th day of July, 1995, upon consideration of Petitioner's motion for Steve Wiser to be appointed spiritual advisor to Petitioner, and Respondent 's lack of objection thereto, it is hereby ordered, adjudged and decreed that the Petitioner's motion is granted.

Is there anything wrong with that, gentlemen?

MR. GRANT: No, Your Honor.

THE COURT: Okay. See that.

MR. PIPER: Your Honor, if we could have copies of the orders we would appreciate it.

THE COURT: Well, I will tell you what

Page 8.

I will do: I will sign your copies for you.

MR. PIPER: Thank you.

THE COURT: But if they have to be certified you better take it to the Clerk.

MR. PIPER: Thank you, Judge.

THE COURT: Let me give copies to the D.A. also so that they know what I'm doing.

MR. GRANT: Thank you, Your Honor.

THE COURT: Give this to the D.A. so he will have his copy.

THE COURT OFFICER: (Handing.)

THE COURT: Here is a copy for the defense. And I am going to keep a copy for myself and I am going to hand the original to the Clerk of Court. This is the original for the Clerk of Court.

Okay, that's all for today, gentlemen.

Do I have to sign these?

THE COURT CLERK: Yes.

THE COURT: All right, we will adjourn.

THE COURT OFFICER: There being no further business, this Court now stands adjourned.

Page 9.

THE COURT: Until tomorrow morning, gentlemen.

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(The hearing was concluded at 10:45 a.m.)

- - - - -

18. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

July 18, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- RONALD EISENBERG, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

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Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- GINA FURIA, ESQUIRE
  Law Clerk for the Honorable
  Albert F. Sabo

Page 3.

- - - - -

(At 10:20 a.m. the hearing was convened in the presence of the Court and the attorneys.)

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THE COURT: Good morning, everyone.

I just want to remind the spectators once again that while in this Courtroom everyone will respect the proper decorum. Any outbursts of any kind, the person will be evicted and not be able to return.

MR. PIPER: Jonathan Piper on behalf of Mumia Abu-Jamal, presenting our emergency motion to reconsider the order scheduling the hearing date.

Your Honor, we have said from the beginning that if this Court handles this hearing it will not be fair and will be perceived by the world as an unfair hearing. After two days in this Court the world has already spoken. The Inquirer Sunday said the behavior of this Judge in this case was disturbing the first time around and in the hearings last week he did not give the impression to those in the Courtroom of

Page 4.

fair-mindedness. Instead, he gave the impression damaging in the extreme of undue haste and hostility towards the defense's case.

And Senator Arlen Spector told the Republican National Committee that this case is being handled as a rush to judgment.

Specifically, he noted that Judge Albert Sabo yesterday ordered that a hearing on Mr. Jamal's post-conviction appeal proceed, quote, but the hearing's going to be on Tuesday, without sufficient interval for review of documents and preparation. He said that you can not maintain a penalty as severe as the death penalty without being meticulous in how it is being applied.

So as we predicted, Your Honor, there is, to say the least, an appearance of impropriety in all of the orders that the Judge entered last week. We were scheduled for a hearing on Wednesday, the correspondence was clear that the only issues to be presented, the only issues were the recusal motion and the stay of execution. Your Honor denied the recusal motion on Wednesday and continued the stay motion for briefing on Friday. Then on Friday you insisted on proceeding to discovery, when we

Page 5.

had not had a chance to even review the Commonwealth's papers or to present argument. Mr. Weinglass was not even allowed orally to argue the question. And our discovery motion seeking the suppressed evidence which is necessary to prove Mr. Jamal's innocence which has been suppressed for 15 years by the Commonwealth needs to be ferreted-out. But Your Honor will not permit that.

Then, with no prior notice that a scheduling issue would be presented, Your Honor peremptorily ordered a full evidentiary hearing on every one of the 19 claims raised in this Petition (displaying) on two Court days notice. That we were supposed to prepare the many witnesses we will need to present these claims, to find them, to subpoena them, to bring them into Court on just two days notice. That is completely unreasonable and everyone knows it.

What is happening these two days? Well, for one thing, although Your Honor refused to grant us any discovery of the suppressed evidence, we got a handful of the witness statements that had previously been in the possession of Tony Jackson which were sent to us

Page 6.

by the Assistant District Attorney, including the key statement of Officer Gary Wakshul, proving that the State's confession claim is a fabrication. Officer Wakshul was there in the police van and he was there in the hospital. You may recall Inspector Alphonse Giordano at one point put forward the story that Jamal confessed in the van. Giordano, who has simply since been thrown off the force after he pled guilty to corruption, who was known as one of Mayor Rizzo's favorite cops in the civil disobedience surveillance of the Black Panthers and other left organizations in the early '7Os, but Gary Wakshul was there and he says, quote, the Negro male made no comments. Then we have the alleged confession in the hospital, cooked up by Officer Gary Bell two months later, again Wakshul was there, quote, during this time the Negro male made no comments.

We've asked for the logs of Officer Bell from the night when he supposedly heard these comments. The Commonwealth says there are no such logs and they won't produce them. We are entitled to that evidence.

Your Honor says you are not required

Page 7.

to follow the local PCRA rules of this Court. But I believe you

will not dispute that you are required to follow the Pennsylvania Rules of Criminal Procedure, specifically Rule 1508, which says an evidentiary hearing will be on the material issues of fact raised by the petition and the answer. Well, we did not even get the answer framing the issues in their view until an hour late yesterday afternoon. So we've had about 15 hours to have it in our possession. That is not by any means enough time to review the factual or legal assertions that they have made. And at the same time Your Honor is requiring us to try to find and subpoena witnesses. As Mr. Weinglass tried to explain to you on Friday, our investigator is not here this week because his wife is hospitalized for surgery. That did not faze Your Honor so we found another investigator, who was willing to cancel his vacation with his family in North Carolina to come in. And he arrived Sunday afternoon and has been working full-time with sleepless nights to try to get this case ready on such short notice. But this is an impossible task and a complete denial of any kind of due

Page 8.

process.

How can we get the witnesses we need on this short notice? What about prosecutor McGill? His legal office balled up the subpoena that we served and threw it out the door. Then Mr. McGill called the Court directly to say that he will be tied up in Federal Court and not available until next week.

How about Officer Wakshul? What do you know, again he has disappeared. He called in sick to work yesterday and could not be found at home. This is the man who Your Honor found was, quote, on vacation at the time of the trial and so he was not allowed to testify about this phony confession theory.

Your Honor, the only way that a fair hearing could possibly go forward is with a 60-day continuance to permit the defense the, quote, reasonable opportunity for investigation and preparation which is required by the rules. That we be allowed to take discovery, to get at the suppressed evidence, that we be allowed to get at the ballistics evidence, to examine it since the proper tests were not done before the trial by the Commonwealth and since the defense

Page 9.

was not given the money it needed to hire an expert to test it.

We need to get at the medical and autopsy evidence which was not provided to the defense which shows the incompetency of the autopsy proceedings, which shows that the examiner thought this was a .44 caliber bullet, not a .38.

We proceeded yesterday before the Pennsylvania Supreme Court and Mr. Eisenberg and myself had a teleconference with the emergency Justice of that Court. He said it was premature to decide this question on appeal because Your Honor may continue the hearing today. But that if Your Honor does not continue the hearing, the issue will be ripe for decision in the Supreme Court.

We were not even allowed to visit with our client over the weekend to discuss the preparation of witnesses. And Mr. Eisenberg has the gall to assert well why do we need to talk to our client about his case. The same attitude that this Court and the prosecution took during the trial when he was excluded from the Courtroom, denied any means to follow the

Page 10.

details of what was going on in the Court.

THE COURT: Counselor, I don't like to interrupt you, but didn't you tell me that the attorneys were allowed to -- are you telling me that attorneys weren't allowed to meet with their client, has somebody denied you that right?

MR. PIPER: Yes, Your Honor.

THE COURT: Who?

MR. PIPER: The prison.

THE COURT: Why didn't you call me? All right, anybody acting up, you're going to go out of the Courtroom. I am not kidding. We are going to maintain decorum in this Courtroom.

This Court is not going to be intimidated by mob pressure. Understand that. If the day ever comes that the mob can control the courts, then, indeed, we are in dire circumstances. I will not tolerate it. No threats, nothing is going to intimidate this Court. No mob pressure is going to intimidate this Court.

MR. PIPER: Let the record reflect there was only a low murmur in the Courtroom.

Page 11.

THE COURT: Well, if it is a low murmur, I don't want a low murmur. I don't want a loud one. I don't want anything. I want quiet in the Courtroom.

All right, Counselor, but I will take it up with the Commissioner if that's what you want me to do.

MR. PIPER: We have tried to present that to you, Your Honor, yesterday.

THE COURT: You told me that you were entitled to see him. You said so. I signed an order for his religious man to see him, his minister, why wouldn't I allow you to see him?

MR. PIPER: Your Honor --

THE COURT: Please don't. Please.

MR. PIPER: Could Miss Wolkenstein address this issue in more detail in terms of what happened?

MS. WOLKENSTEIN: Yes, Judge, I attempted to see Mr. Jamal over the weekend on Sunday. And I made several phone calls to the prison, both starting at nine o'clock in the morning and continuing until four o'clock in the afternoon. I spoke to the supervising lieutenant and captains on the morning shift and

Page 12.

the afternoon shift. Phone calls were placed to the assistant to the superintendent by the name of Alan Lafay, who supposedly, I was told, tried to contact, he would try to contact the superintendent. In any event, Mr. Lafay, who what I have been told is the person who grants such a permission, so called special permission for attorneys to visit, said he would not allow an attorneys' visit even though all the details were put before him. The fact that we were compelled to proceed with the hearing on Tuesday, the fact that we had just received new materials from the prosecution over the weekend, that we were under this very tight schedule, not to mention the fact that the date for execution --

THE COURT: Why didn't you call me?

MS. WOLKENSTEIN: Judge, to be very honest, I didn't call you because I knew that you would be unavailable as early as three o'clock.

THE COURT: No, there is a City Hall operator that will contract me.

MS. WOLKENSTEIN: The idea that you would be able to be reached, very honestly,

Page 13.

given what was going on in the Court absolutely was beyond the capacity --

THE COURT: You had a parade in front of my house: You knew I had to be home.

MS. WOLKENSTEIN: Your Honor, what I understood from Mr. Piper, the question --

THE COURT: I don't care about Mr. Piper. I am telling you if you have a problem, you call me.

MS. WOLKENSTEIN: Next time I will, Your Honor. But I want to make the point since you asked the question why not: Mr. Piper relayed just further confirmation of the problems here, but when he produced the order to you on the question of Steven Wiser being appointed spiritual adviser you gave him a hard time about it.

THE COURT: I gave nobody a hard time. I signed it.

MR. PIPER: After giving me a hard time.

THE COURT: When did I give you a hard time, Counselor?

MR. PIPER: Yesterday, after I told you we were not permitted --

Page 14.

THE COURT: No, yesterday you wanted to proceed with these proceedings and I said Mr. Jamal wasn't here, we would not do it, I would continue it to today when he was here because I don't

want him to accuse me of having some hearings out of his presence.

MS. WOLKENSTEIN: Your Honor, in point of fact --

THE COURT: In point of fact I didn't give him a hard time. I signed the order. When it was given to me I signed it.

MS. WOLKENSTEIN: Excuse me, Your Honor, the point of fact is that we had a Court date to begin testimony in --

THE COURT: I know that, I know that. But he is talking about you didn't have permission to see him. And I am saying to you next time it happens call me.

MS. WOLKENSTEIN: Your Honor, point --

THE COURT: The telephone operator here at City Hall will contact me.

MS. WOLKENSTEIN: Would there be a standing order entered as of this moment to the Department of Corrections that as attorney for Mister --

Page 15.

THE COURT: Did you give me such an order?

MS. WOLKENSTEIN: Could I finish?

THE COURT: You don't have to finish. Give me an order and I will sign it.

MS. WOLKENSTEIN: We can have an order --

THE COURT: Give me an order and I will sign it.

MS. WOLKENSTEIN: -- on the record. The order that you will be requested to sign. I will handwrite it out.

THE COURT: Don't handwrite it. Print it or type it.

MS. WOLKENSTEIN: Would be that Defendant Jamal should have access for legal visits in the evening, daytime and the weekend upon phone call to the institution. Will you agree with that, Your Honor?

THE COURT: Counselor, prepare an order for me.

MS. WOLKENSTEIN: Would you sign such an order?

THE COURT: Prepare an order and let me call the prison, I want to find out what

Page 16.

their problem is.

MS. WOLKENSTEIN: You will sign --

THE COURT: Counselor, I will sign an order permitting you to see your client. All I want to do is to have the courtesy to call the prison. I want to know why they didn't allow you and if there is some problem of which I don't know. After all, I don't run the prisons.

MS. WOLKENSTEIN: Everything had to be negotiated from nine o'clock to four o'clock on a weekend. And that was the reason. Since it hadn't happened during the weekday they were not going to allow it, despite all of the emergency nature of these proceedings and how quickly we were going.

THE COURT: Counselor, prepare an order. I will contact the prison: I want to find out if there is a problem. If there is a problem I am going to have them come into this Courtroom and see what the problem is.

MS. WOLKENSTEIN: I will make an appropriate order. I will present it this afternoon.

MR. PIPER: To clarify the issue of calling you on the weekend: Over the weekend,

Page 17.

we tried to present this matter on Monday and not only did your clerk tell me you were very upset that we were disrupting your scheduling --

THE COURT: No.

MR. PIPER: But that --

THE COURT: Nobody speaks for me, Counselor. Didn't I come into the Courtroom?

MR. PIPER: And you told me you would hear it today.

THE COURT: Right. I asked you did you have Mumia Abu-Jamal brought down and you said no. And I said I was not going to go forward unless he was in the Courtroom and I said so we will continue it to today. So now you have your opportunity. He is present.

MR. PIPER: Your Honor, to summarize -- and the New York Times Magazine again confirms --

THE COURT: Are we going to try this case on the news media or are we going to try it in this Courtroom?

MR. PIPER: Your Honor, the issue --

THE COURT: I don't care what the news media says about me or about anything else. Try the case in this Courtroom under the law and

Page 18.

under the rules as they now exist, okay.

MR. PIPER: The legal standard is whether these proceedings appear to be fair to the public at large, and it is incontrovertible that the answer is no.

THE COURT: Well, that's your opinion. And as I said to you before: Mob pressure will not control the courts. If the day ever comes that that happens, boy, we are in real trouble, all right.

MR. PIPER: Your Honor, it was the Fraternal Order of Police which began sending telegrams to the judges saying that Mumia should not even been allowed out on bail. Mr. Jamal, when he was first arrested. So you don't need to tell us about the mob. And we do not think that Arlen Specter or the Philadelphia Inquirer or the New York Times editorial board are generally considered to be the problem.

THE COURT: Well, Arlen Specter wants to make political hay out of this case. That's fine, he's running for president, that's his business. But Arlen Specter is not the Judge and is not a Justice of the Supreme Court of Pennsylvania or the United States.

Page 19.

MR. PIPER: The issue is how these proceedings can have any appearance of fairness before Your Honor given not only your history generally, but your history in this particular case and your history last week.

THE COURT: Counselor, you can be as insulting as you wish, but that's not going to move the Court, okay.

MR. GRANT: Your Honor, if I may: I believe this is nothing more or less than a thinly veiled attempt to revisit the recusal issue which Your Honor so aptly decided. Can we get on with this hearing or not, Judge?

THE COURT: I would hope so.

MR. GRANT: Why do we have to rehash the history of the proceedings?

THE COURT: Why don't you just stick to whatever you are trying to prove now.

MR. PIPER: The point, Your Honor, is that these proceedings will not be fair if Mr. Jamal is required to go forward on two Court days notice for reasons of due process in this capital case where heightened scrutiny, the most careful consideration is required. There must be a continuance and our motion should be

Page 20.

granted.

MR. EISENBERG: Your Honor, Ronald Eisenberg for the Commonwealth.

I believe that the authority that has been cited, the only authority, quote unquote that has been cited by the defense on this motion for reconsideration establishes that the true nature of the defense proposition, the piece of, quote unquote, authority that the Defendant talks about is a comment from the media, from the press. No law is cited to Your Honor for the proposition that you can not hold a hearing as Defendant requested in his PCRA Petition, merely comments from the press, in order to make the point that the world is watching and we should do what the world thinks is the right thing here. It's precisely because the world is watching, Your Honor, that it is time to hear these complaints, these charges of an unfair trial, of a conspiracy. The defense PCRA Petition makes out claims that this Defendant has been

railroaded through some gigantic law enforcement conspiracy going back to his teenage years, and it is time now to hear these allegations and to put

Page 21.

evidence on concerning them.

Now, the Defendant says that he is not being allowed to do that in a fair way and he keeps talking about two days were the applicable time period here. It is not, and it is beyond me how the defense can ignore the true period of time that we are talking about.

The defense has admitted beginning to work on this case, on these allegations at least as early as 1992, three years at the very least; and they produced immediately after the warrant was signed a 300-page Petition which detailed affidavits from fact witnesses who the defense said would show that he was improperly convicted and that he was really innocent. And those affidavits were almost uniformly dated at the end of May of 1995. The Defendant had those witnesses and their statements, that evidence, in 1995 in May, and filed a Petition on June 5th, after three years of work. And now he says suddenly that we are talking about a two-day period. It was three years before the Petition was filed and it's been six weeks since the Petition is filed. We are not talking about two days. We are talking about three years and then

Page 22.

another six weeks since the Petition was filed in order to hear evidence that the Defendant said he had then, not that he has to develop now. Evidence that he said that he had then and he submitted to this Court affidavits to show that he had that evidence.

Now the Defendant says that he hasn't really had a fair chance, he hasn't been allowed to argue discovery. This Court made it clear what it saw as the discovery issue here: Whether there was a right to discovery at the Post-Conviction Relief Act stage. The Defendant ducks that issue, they refuse to confront that issue. The Court said I don't know how many times in hearings last week, you bring me some law on that to show that there is a right to that sort of discovery and I will reconsider my ruling about the discovery. There has been no law offered, the subject is not even mentioned by the defense. They studiously ignore the Court's invitation, yet go on and on complaining about how they were denied discovery, despite the exact words of the Court inviting them to present you with legal authority.

The discovery, as we have pointed out,

Page 23.

is a pre-trial rule. These materials were turned over to the defense before trial. Not only were they in possession of the defense attorney, but we know from the record which was recited, quoted last week, we know that these materials were turned over to the Defendant himself. And that indeed trial Counsel had difficulty because he did not have ready access to the materials that were in the Defendant's possession. Yet the defense says here today and complains that they haven't had enough time because we are talking about materials that they say that they have a right to now that were actually in the Defendant's personal possession 13 years ago.

And as the primary example of these documents that they say that they need, they refer to a statement of Officer Wakshul that they say that we just turned over to them. And this is a particularly disturbing allegation since the defense knows full well that they had the statement of Officer Wakshul at the time of trial 13 years ago. Not just from documents and correspondence between Counsel, but because that statement was referred to in the trial record by

Page 24.

the Defendant himself. They had that statement 13 years ago, and they come into Court today and say that this hearing is too rushed because they just got it two days ago.

As Your Honor recalls, last week the defense said we want some materials which we know you already turned over but which we can't find again. And out of courtesy we said fine, we will give you those materials, tell us which ones. And they told us, and that same day, Friday, we sent to them every document that they requested at that point. Every statement that they said we know we had them before but now we don't have them, please give us a copy, we gave it to them the same afternoon. And another copy of the Wakshul statement they had 13 years ago was in that package of materials. And the allegation that there is some reason for delay because they are just seeing this is preposterous and offensive.

Now, the defense also argues that the Court is not following the local rules. That they need these 60 days that the local rules provide. This mysterious 60 days: There is no such thing in the local rules. The local rules

Page 25.

don't say we get 60 days from whenever we declare that we want 60 days. The local rules say -- and I will quote here -- if fact witnesses are to be called in an evidentiary hearing, you must supply affidavits of those witnesses to the Court and the Assistant District Attorney setting forth the substance of his or her testimony. Such affidavits must be filed at least 30 days prior to the date of the hearing. The affidavits were filed on June 5th, 1995. Today is July 18th, 1995. That is more than 30 days ago.

The local rules go on: If an evidentiary hearing is granted, you must make immediate arrangements to have your witnesses present for the hearing. That is what is happening. The Court has informed the defense that it is willing to have an evidentiary hearing on the PCRA Petition. The Defendant asked for that kind of hearing. He said here are my affidavits right here; right now. And the Court said fine, I will give you a hearing, and the hearing is to occur more than 30 days after the filing of the affidavits.

I am getting tired of hearing

Page 26.

repeatedly about the violation of the local rules when there was no such violation. Even assuming that it mattered. Even assuming that the non-capital, PCRA judge's procedures, which is what we are talking about, were binding on this Court, even assuming that this Court were bound by those procedures, there has been no violation of those rules.

THE COURT: Isn't that rule for the benefit of the Commonwealth?

MR. EISENBERG: It certainly is, Your Honor.

THE COURT: And if you are willing to waive it, why do I care?

MR. WEINGLASS: If it had been less than 30 days, Your Honor, that is absolutely right. The reason that that period of 30 days is built into the rule is to give the Commonwealth adequate opportunity to investigate the defense allegations. Now, as it happens, it's been more than 30 days. But even if it had been less, the Commonwealth could choose to proceed earlier. We have a certain number of days to file an answer, for example, to the PCRA petition. I believe we have 90 days under this

Page 27.

set of procedures in the normal --

THE COURT: I didn't give you 90 days.

MR. EISENBERG: The Court didn't give us 90 days. We got less time.

Why is it important to move ahead? Two reasons, Your Honor. First of all, because as I said, it's the defense which puts these allegations out about the rule. They stand here today and repeat them. Even today they go into detail about the various reasons why their client is really innocent and how he has been railroaded by the system. And yet when we say fine, let's hear the evidence, they say no. They want to continue to argue the merits of their claims in the press. They want to refer to the New York Times and the Daily News or The Inquirer, whoever, and say here, here is what's wrong with what happened to our case. They are not standing back from giving the details of these allegations to the press. They are not telling the press, oh, excuse me, Mr. Reporter, Ms. Reporter, we haven't had enough time to investigate our allegations yet, give us a chance, give us 60 days and we'11 come back to you so that you could write your story. They

Page 28.

are telling the press right now and last month and the month before and for months the details of these allegations that show

that their client is wrongly convicted. And they have filed those detailed allegations in Court filings on paper, and yet now they say we can't proceed. They are ready enough when it comes to talking about it to the press, but when it comes to talking in Court, suddenly they are not ready.

Now, Mr. Piper also refers to the Rules of Criminal Procedure, Rule 1508, which say that the hearing shall be held on the basis of the defendant's PCRA petition and answer. But the Rules also say that the Commonwealth need not file an answer at all. The Rules do not require the filing of an answer. A hearing can proceed without any answer. And again, as usual, we hear no specifics from the defense about what it is about the answer or about not having an answer that somehow precludes them from going ahead with the hearing.

The Court didn't order them to have 19 witnesses here in Court today, or 25. The Court didn't say you are having a hearing starting Tuesday and Tuesday afternoon it is going to be

Page 29.

done and you have to have everything ready to go on Tuesday or you're out of Court. What the Court said is we are starting on Tuesday. We are started. So what the defense position is in effect is that they shouldn't be required even to be able to get a single witness, anybody at all to come and testify today. Nobody. Despite having detailed factual affidavits dated in, May of this year, suddenly these witnesses are not available for a hearing.

The defense obviously believes that they don't have to prove their allegations, that the setting of the execution date merely means that all they have to do is come into Court and say Judge, we've got all these allegations, therefore you've got to overturn the Governor's setting of the execution date. You've got to ignore that, you have to put it aside like it was worth nothing. But that's not the case, Your Honor. That was a solemn legal act on the part of the Governor setting the execution date. He didn't rush to it. It's been sitting there waiting for years and years. The Governor could have signed an execution warrant as soon as the litigation in this case was over.

Page 30.

There hasn't been anything, any litigation in this case since 1992. It was, actually, basically over even earlier than that. And nobody acted. Nobody rushed them. Nobody signed a warrant. They had their years to investigate, to draft their Petition, to get their affidavits. And then all of a sudden when the warrant is signed and they file they say now we don't have enough time anymore.

They admitted to the press, to which they wish to address their claims so freely, that they would not file their Petition until after the Governor signed the death warrant. And presumably if that had been a year from now we wouldn't have this PCRA Petition for another year. If it had been earlier, that's when we would have had the PCRA Petition. They intentionally waited until the death warrant was signed and now they say that because we waited, because we delayed, because we chose strategically not to show the Court the claims that we were showing the press, the Court has to back off of the execution date, the Court has to let us control the scheduling here. And it's not up to the defense to control the scheduling.

Page 31.

We are talking about a period of years. And it is appropriate for the Court, given that period of years, for the Court to schedule this proceeding, for the Court to control the scheduling. And when the Court knows that the defense has had a minimum of three years to put this together, when the Court knows that the defense indeed did put this together and was able to file it the day after the warrant became public, it is appropriate for the Court to proceed with a hearing.

Now, the defense has made a reference to going before the Pennsylvania Supreme Court, as if somehow the Pennsylvania Supreme Court is eager to act in this matter. And I thought that that point also deserved comment. What happened was that I received a call from the Court yesterday at 5 p.m. asking me for my response to the defense motion. The defense motion, however, had not been served on the Commonwealth at that point. And the Supreme Court Justice was very concerned about that. He said I have a certificate of service here signed by the defense attorney which says that you have already served this on the Commonwealth but you

Page 32.

now concede that you haven't, and I'm unwilling to proceed on your motion which you concede has not been served on the Commonwealth. And it is understandable how the Supreme Court Justice at five o'clock at the end of a business day, on a alleged emergency motion, would be reluctant to proceed where both sides had not had notice of the proceedings.

The Court also said, however that it wondered what it was that the defense had been doing with this case since June 5th when the Petition was filed. And I think that is a very good question, Your Honor. They came to Court on June 5th after three years of work and said we want a hearing; and now Your Honor wants to give it to them and they say oh, no, we don't actually want a hearing, not now, maybe at some point down the line.

And all we are trying to do is start that process. To advance the process, given that we have an execution date, which just shouldn't be thrown out like so much toilet paper. We have a signed warrant of execution. We have allegations that are being made daily in the press around the world, and the world should

Page 33.

begin to hear the evidence on those claims.

Now, the defense also argues that they can't possibly proceed because, as yet another example of the system's efforts to railroad their client, they are not being allowed to see him in prison. And I think some details need to be added here as well, Your Honor.

As the defense knows, the procedure of the prison is to allow freely counsel visits during weekdays; weekend visits require special permission. The procedure is you call on Friday, you get that permission. When Ms. Wolkenstein called over the weekend she said yes, I didn't call on Friday, I was busy, let me try to see the Defendant. And the prison said we can't arrange that consistent with our procedures.

Now, I understand that Ms. Wolkenstein was busy. We've all been busy. Everybody gets busy when a case goes into litigation just before the execution date. Every death case in this State and the country results in a flurry of activity when the defense waits until the execution date to begin litigating. That's the way it works. And if they say that they've had

Page 34.

experience in handling other death cases then they know that perfectly well: It's going to be busy in this period. Your Honor has already offered to make arrangements to allow access in a freer manner if that is what is necessary, but there is certainly no allegations, no explanation of why it was necessary to see the Defendant on Saturday or Sunday versus Friday or Monday in order to be able to proceed today. He is not one of the listed witnesses. There is no affidavit from the Defendant. He's been in Court and with Counsel throughout. Ms. Wolkenstein has been visiting him in prison frequently. The prison records show, indeed, that Ms. Wolkenstein's visits to the Defendant begin in, I believe, 1987, eight years ago. And there is certainly sufficient opportunity to consult with the Defendant in order to at least begin these proceedings. That's all we are talking about is just starting.

Now, the defense says they couldn't deal with the Court because they've tried to deal with the Court and you wouldn't let them yesterday when they came before you. And I think again some details need to be stated for

Page 35.

the record here.

On Friday afternoon we received a call and a letter from the Defendant, from the defense saying that they were in effect declaring a hearing for Monday morning. There was no Court proceeding scheduled for Monday morning, the Court was scheduled to reconvene today, Tuesday morning. But they said we're going to file something, we'll FAX you a copy over the weekend, Saturday or Sunday. And we are going to appear at the Judge's chambers Monday morning for a hearing. The Court had not agreed to schedule any such hearing. But despite the fact that

the defense in effect was scheduling the Court for itself, the Court did agree to have a hearing, not in chambers but in an open, public Courtroom.

And in fact, despite the Defendant's repeated claims today, last week, for months and years, that he has being excluded in these proceedings, no arrangements were made to have the Defendant present for this supposedly crucial hearing that the defense scheduled for itself yesterday. And so the Court said let's do it tomorrow when we know the Defendant is

Page 36.

going to be here. It's hard to see how there is something inappropriate about scheduling a hearing in a matter to allow the Defendant the access to the hearing that he is claiming he is being denied. And the argument that they couldn't come before the Court is ridiculous.

I think it's important to remember in the end, Your Honor, the basic facts regarding the starting of this motion. The Defendant worked on his case as long as he pleased with his lawyers, with a whole team of lawyers and investigators for years and years and years, deciding to withhold those papers until the Governor signed the warrant, filing those papers the day after the warrant became public. And then, even then, six weeks later, claiming that he has not had the,opportunity to investigate and prepare.

It is the defense that has delayed here. They have been allowed to delay. Now is the time to stop delaying and to put on in Court the allegations that they are so happy to make in detail in public.

Thank you, Your Honor.

We filed a written answer to the

Page 37.

defense motion which was served on the defense this morning. I don't know whether the Court has yet received a copy. May I hand up a copy of that (handing)?

Thank you, Your Honor.

MR. GRANT: In addition, Your Honor, preliminarily to their submission of witnesses, Your Honor asked them on Friday or rather. . . . . ordered them, to present to the Commonwealth a witness list with the order of witnesses they intended to have here today. We have the names of witnesses. And as Your Honor knows, under the Pennsylvania Rules of Criminal Procedure, 1508, we are entitled to the affidavits of any witnesses and the Petition that is their basis for moving forward in this matter. There is a Lydia Wallace, a Ruth Ballard, Ken Hamilton, E. Steven Collins -- none of whom were mentioned in the Petition. No affidavits appear or are forthcoming from these people. I would like to have an offer of proof and then I would like to reserve the right to move to preclude.

In addition to which, since they can't find all their witnesses in such an untimely fashion, since Your Honor is rushing the

Page 38.

procedure, the Commonwealth has taken the liberty to subpoena their witnesses for them and bring them to Court so they could present their claims before the press and Your Honor.

One Dessie Hightower, who is alleged to have taken a polygraph examination on 12-9-81 and to have passed, which information was apparently not given to the defense, which they perceive as exculpatory and Brady material, was subpoenaed for this date, this room, two hours ago. He has failed to appear. I would ask that Your Honor issue a bench warrant for his arrest. I have the original and copies of the signed warrants.

MS. WOLKENSTEIN: Objection.

MR. WEINGLASS: Here we go again with the intimidation tactics of the prosecution which was so evident during the trial and which formed the basis of our allegations. In the dark of night the prosecution as an aid to us subpoenas one of our witnesses and then comes before Your Honor and has the gall to say that this individual should now be arrested. I could almost rest the case of harassment on just what the gentleman has said in the last 10 minutes.

Page 39.

This is so typical.

THE COURT: Counselor, I have been harassed too so what is the difference.

MR. WEINGLASS: Your Honor, if that is the Court's response --

THE COURT: No, Counselor, he is just trying to help you. And can you have the witness in here on your own?

MR. WEINGLASS: The difference is a man's life is at stake. Need I remind the Court.

THE COURT: Counselor, I understand that, and I know when August 17th is coming, Counselor. I have it on my calendar, don't worry about it. What I am saying to you: Do you need any help in getting any of these witnesses in?

MR. WEINGLASS: Not the kind of help that has them subpoenaed in the middle of the night and arrested the following morning.

THE COURT: Well, nobody is arresting anybody yet. I am just asking, can --

MR. WEINGLASS: There has been a request made.

THE COURT: Did you make

Page 40.

arrangements --

MR. GRANT: Your Honor, he was subpoenaed last week in the middle of the day, for Counsel's edification.

THE COURT: You see, Counselor, I would appreciate it if you do not give me statements that are not true. I don't appreciate that. If you don't know say you don't know. But don't deliberately tell me something that is not true. I will not tolerate that in this Courtroom.

MR. WEINGLASS: Well, Your Honor --

THE COURT: I look at you as an officer of the Court. And I am expecting you to be honest and true with me.

MR. WEINGLASS: Let me provide the Court with a piece of information also. One of our witnesses was subpoenaed.

THE COURT: Okay.

MR. WEINGLASS: His name is Mr. Fassnacht. I believe it's George Fassnacht. He called me, he spoke to me last night. And he said to me that he was a little surprised, having been retained by the defense in this case, to find that he was being asked whether or

Page 41.

not he would now work as an expert for the prosecution. Mr. Fassnacht felt there might be something a little unethical going on here when he files an affidavit for the Petitioner, then he is subpoenaed by the prosecution and in a conversation they asked him if he will change sides and begin working for the prosecution. I represent to the Court I had that conversation.

MR. GRANT: And I represent that is a total falsehood.

THE COURT: See. Why don't you bring him in here?

MR. WEINGLASS: We will hear from Mr. Fassnacht.

THE COURT: Okay.

MR. WEINGLASS: I will stand by it.

THE COURT: Okay, let him take the stand and under oath let him tell us.

MR. WEINGLASS: Let me say --

MR. GRANT: I don't think we should go any further without hearing that exposed. Mr. Fassnacht was one of their affiants who says the ballistics were so botched, the firearms examination was so poorly and ineptly done, had I been the expert, had Your Honor or Judge

Page 42.

Ribner paid me more money, this is what I would have exposed. So since he is an affiant and they seem to have problems getting their witnesses in, I subpoenaed all their witnesses, and I will have them here for them whenever they want.

In addition to which I asked Mr. Fassnacht, well, since you believe that this was so ineptly done, sir, I don't think you got the

evidence, do you think you could go and check it out now and come up with a better conclusion. That is certainly not working for me. He is still working for them, but I challenged him to back up what he says, just like we are doing for the defense. Of course he doesn't want to do that.

That is the conversation, since you didn't participate in it.

MR. WEINGLASS: Mr. Fassnacht's perception of that conversation was that was unethical, that he shouldn't be asked to perform a test since he was retained by this side. It is an elemental procedure. And that's what happened. I think Counsel just acknowledged that. They asked him to do a test for them when

Page 43.

he was retained by this side.

Now, I want to address the obfuscation here. This Petition --

Which, incidentally, includes the affidavit of Lydia Wallace, Counsel, you haven't read the full Petition. It is attached as an exhibit.

This Petition, which was filed an June 5th, 1995, is akin, and I will make the analogy, to a civil complaint. We did not go to the media; we filed a Petition which was a public document and the media read it and questioned us about the public document. And it's all contained, as they say, specifically and in great detail.

Now, what happens after that in the ordinary course? In the ordinary course the Commonwealth files an answer to the document. And they did. When did they file it? They filed it at one o'clock yesterday afternoon. And what did they say their answer does? They say that their answer -- I will get it in a moment. This is what they said. Well, I'm I sorry. The primary purpose of this answer is not to discussion the legal merits of the

Page 44.

Defendant's claim, to the extent the underlying claims may be cognizable, but to identify, and here I have put in the primary answer, is not to discuss the legal matters that the Defendant claims, but to identify to the extent the underlying claims may be cognizable any disputed issues of fact.

So we go to the answer yesterday.. Now we are proceeding on track. A complaint has been filed, an answer has been filed (displaying). They have defined the issues of fact. They do, for 163 paragraphs of this Petition, they say certain paragraphs are denied, certain paragraphs are admitted.

Now, in the ordinary course, Your Honor well knows this, in civil litigation, we now have the issues joined. What happens? The hearing doesn't happen the next day. Never. What happens is discovery occurs.

THE COURT: Counselor.

MR. WEINGLASS: Investigation occurs.

THE COURT: Counselor, as I said to you before, that is pre-trial. We are now in PCRA. And as I said to you, Counselor, if you could show me a statute, a case, a law, anything

Page 45.

that would justify that, fine, I will reconsider my order. But you haven't done that.

MR. WEINGLASS: We have done that.

THE COURT: No, you haven't.

MR. WEINGLASS: Yes, and Mr. Piper will give it to the Court, which we did give it to the Court on Thursday last. We will repeat it. The local rule provides for discovery. The word discovery --

THE COURT: The local rule does not provide for discovery in a PCRA matter, Counselor.

MR. WEINGLASS: Your Honor, well, I will allow Mr. Piper to address that.

MR. PIPER: Your Honor has all the authority in the world to permit us discovery. And given the allegations we have made it's clearly appropriate and necessary. Rule 1508 says that we --

THE COURT: Is that the Criminal?

MR. PIPER: Rule 1508 of the Criminal Rules of Procedure.

THE COURT: That is pre-trial.

MR. PIPER: Governing post-conviction relief. Rule 1508, Your Honor, states that we

Page 46.

must have a reasonable opportunity to prepare and investigate before the hearing and that the Court shall enter any order necessary in the interest of justice to let us prepare and investigate. Of course there are many other statutes which give this Court the power to enter any order necessary to preserve and facilitate it's jurisdiction. And the case law from Pennsylvania and from the Federal courts and other state courts are clear, that regardless of whether there is an express discovery provision set out in the post-conviction rules, discovery should be entered where there are allegations of suppressed evidence, Brady issues, issues of favorable evidence that was concealed by the police and the prosecution. That should be discoverable. We have cited the Federal cases, such as Mayberry versus Petsock. We cited this to you Thursday. Which says that in determining whether to grant discovery you just need to look at the four corners of the petition.

There is also the Pennsylvania case of Commonwealth versus Bryson, 421 PA Superior, 618 A.2nd 420, which says that, which quotes New

Page 47.

York cases, saying that even though New York doesn't provide for discovery in it's rules, of course it should be allowed in post-conviction proceedings when necessary. And that's a Pennsylvania case approvingly citing that standard.

So to answer your question, Your Honor, we have cited you amp1e authority showing that you have the power to grant discovery. And if you would like to now turn to the specific discovery requests which should be entered, we would be happy to address those.

THE COURT: Well, let me first hear from the Commonwealth. What is your answer to that?

MR. EISENBERG: Your Honor, I am shocked and amazed to hear the allegation now as compared to the allegation a half an hour ago that authority has been presented to Your Honor on the question of discovery. When Mr. Piper first spoke this morning, you will recall that he said that they were denied any opportunity at all to argue about discovery and therefore they couldn't proceed today because Your Honor wouldn't even hear argument about discovery.

Page 48.

And now they said oh, yeah, we already gave all that to you last week. But if they already gave it all to you last week then they weren't denied the opportunity to argue about discovery.

The point is that what they gave to you last week, which wasn't given to you for the purpose of arguing discovery at all, doesn't establish that they are entitled to discovery. They cited Rule 1508 last week, sure. Rule 1508 doesn't provide for discovery. It doesn't say, as Mr. Piper just purported to quote, that the Court in the interest of justice can grant discovery to let the defense investigate and prepare. What it says is the Court shall enter such interim orders as may be necessary in the interest of justice, no reference whatsoever there to investigating or preparing.

In fact, the point at which Rule 1508 comes into play is after a petition has been filed and a hearing is going to proceed. There is no reference here to using that interest of justice language in the rule in regard to discovery. There's no practice of it, there is no precedent for it. They don't cite a single Pennsylvania case applying this vague, general

Page 49.

language to say gee, when we talk about interests of justice, what we really meant is giving us discovery. They don't say that. They don't give you that.

Now, last week on Friday, as Your Honor will recall, after we presented our response to the discovery request, and pointed out that these materials had been given over to the defense before trial 13 years ago, the defense said there were some things that they didn't have anymore even though they were originally given over to the defense and as far as the record shows were in the Defendant's personal possession. So we said tell us what those

things are and we will give them to you again. And they told us what they were. They gave us a list of those statements and we gave them to them again, even though they already had them and even had referred to some of them at trial. And now they say that there is some sort of right to discovery. None of the cases that they have cited in support of their request for a stay said that they had a right to discovery. These were all Federal cases that were cited to Your Honor, Federal habeas corpus cases which

Page 50.

dealt with the issue of a stay of execution, not discovery. There was one case that they talked about, I believe it was McClesky versus Zant, here they referred to the word discovery. And when you look in the opinion, what you will see the opinion discusses, of the United States Supreme Court, is that that defendant can't use his failure to discover evidence as an excuse for delaying his request to have his execution put aside. If the evidence could have been discovered, was discoverable, then the defendant should have gone out and found it and presented it to the court in support of his effort to put his sentence aside.

Now, that use of the word discovery is hardly what Counsel is talking about today. Discovery in today's context is a legal term of art, a special word in the law. And what it means is not just finding something the way that Columbus discovered America. What it means is when is there an obligation on the part of the other side to turn over information that it has to you. Not when do I have an obligation to discover things on my own, to investigate on my own, but when can I force the other side to do

Page 51.

it for me. That's what discovery in the technical-legal sense means.

That's not what the cases on which they relied for another proposition talked about, as the cases that they gave the Court last week. What those cases made clear when they speak about the defendant having to discover information is that. It is the defendant's obligation at this point to go out and investigate his case, discover evidence, if he believes that it exists, present it to the court, and on that basis ask for the execution to be put aside. That is an opposite meaning of the word discovery from the purpose for which it is being cited to Your Honor today. A complete twisting of the cases.

And the Defendant has done that, he said he's done it, and so one of two things must be true. Either he did it, like he says in his Petition that he did it, like he had at least three years to do, in which case his present claim today that he hasn't had a chance to do it yet is false. Or he didn't do it, he didn't investigate and prepare like he was supposed to and like he had years to do. In which case his

Page 52.

claim today that he hasn't done it may be true, but the claims in the Petition filed on June 5th are false. Those can't both be true.

And this is not a civil case. This is not the beginning of a civil case, as Mr. Weinglass attempts to analogize. A civil case drags on in court for years. A case in a civil matter, a car accident, products liability may come to trial 10 years after the filing of a complaint. It's absurd to suggest that that's how we should proceed here. It's absurd enough that we are still arguing about this case 13 years later, even in a criminal case. But to say that we should treat this proceeding like a civil trial where the hearing can occur 10 years later is truly absurd.

We've already had the trial here. We had it 13 years ago. At that point it became the Defendant's burden to try to overturn that trial if he wanted to. He messed around in the Courts for years: He went to the Pennsylvania Supreme Court directly, he filed a petition for rehearing in the Pennsylvania Supreme Court, a filing which is virtually never granted. It got him some delay. No relief, of course. He went

Page 53.

to the United States Supreme Court. He filed a petition for rehearing there again, a filing that is never granted, virtually never granted by the Court, but he filed it anyway, got some delay. Got his result denying the rehearing. Waited six months, which you are not allowed to do, and filed for rehearing again. Virtually unprecedented to ask for a hearing again; and of course the Court summarily dismissed that petition as well.

That brought him to 1992. Even with all of that going back and forth in the Courts it brought him only to 1992. And here we are in 1995. He has been working on all of this since that time and he says now gee, I've got to discover things. Well, he did discover things, and that's what the cases, even his own cases, put the burden on him to do, is to discover things. And he says he did, and now it is time for us to hear them. Not just for the press to hear them, but for us in Court on the witness stand to hear them.

MR. WEINGLASS: Your Honor, Rule 1508, which Counsel cited but only in part, there is another part that Counsel didn't cite. And that

Page 54.

part addresses the very issue that's before the Court this morning. And that issue is this: When should a hearing be scheduled. When. Should it be within one day after we get the answer, two days after the Court tells us we are going to trial. Or should we be given a reasonable opportunity to prepare, Your Honor, for the hearing. Counsel knows --

THE COURT: Not hearing, hearings. I am assuming you are not going to do it in one day, or a half a day.

MR. WEINGLASS: Right, hearings.

THE COURT: Hearings.

MR. WEINGLASS: Does Rule 1508 address what is immediately before the Court? And it does. But Counsel didn't read it. Let me read it.

The Judge shall schedule the hearing for a time that will afford the parties a reasonable opportunity for investigation and preparation and shall enter such interim orders as may be necessary in the interest of justice. The judge on motion or request shall postpone or continue a hearing to provide either party a reasonable opportunity if one did not exist

Page 55.

previously for investigation and preparation regarding any new issue of fact raised in an amended motion or amended answer.

Now, the words that stick out are the words reasonable opportunity in the interest of justice. Have we had an opportunity to investigate claims. The answer is we have and have produced our Petition of June 5th. Have we had a reasonable opportunity to prepare for a hearing. And the answer is no, because we got the answer yesterday afternoon. Preparing a case for the presentation of claims is one thing. Preparing a case for a hearing, as any lawyer knows, and as Your Honor knows, is a totally different exercise. And we have started that. But we are just at the beginning and we are in no way prepared for a hearing. And so that's the distinction.

Now, they try to string those things together.

THE COURT: Suppose the Commonwealth had decided not to file an answer, just denied it?

MR. WEINGLASS: We would still need the time to get our witnesses.

Page 56.

THE COURT: You have been doing this for three years.

MR. WEINGLASS: Your Honor, three years is of no moment. As I just explained --

THE COURT: What do you mean of no moment?

MR. WEINGLASS: Let me give Your Honor an example. One of our witnesses is Mr. McGill, the former District Attorney.

THE COURT: Yes, okay, and I understand he has a problem.

MR. WEINGLASS: We all have problems.

THE COURT: All right, fine, we could deal with his problem and I will help you on that.

MR. WEINGLASS: And deal with ours as well.

THE COURT: That's right. But you can't tell me you don't have anybody, that you just can't start the proceedings.

MR. WEINGLASS: Your Honor, when you put it that way, it

would be malpractice and I would confess it for me to put on the stand a witness I haven't talked to for purposes of a hearing. I have talked to witnesses for

Page 57.

purposes of filing a claim (displaying) in a petition. That's very different than preparing a witness for a hearing.

Why? Your Honor, when you prepare a witness for a hearing you review with that witness potential areas of cross-examination which you never review when you file an affidavit. You review with the witness the rest of the record.

THE COURT: Let me ask you this, Counselor: Do you want to call one witness a day? So that you could prepare him the night before?

MR. WEINGLASS: Your Honor, it's --

THE COURT: I will do whatever you want to. If you want to do it that way, fine.

MR. WEINGLASS: No, what I have asked for is this: A continuous hearing going non-stop, day-to-day, after we've had an opportunity to meet and talk to our witnesses and to subpoena them. And we can do that but we can't do it today. We can't do it today.

THE COURT: Let me hear from the Commonwealth.

MR. GRANT: Your Honor, if Counsel

Page 58.

does not wish to present those people that support his claims today, I would suggest respectfully and request that Your Honor bifurcate the proceedings, allow the Commonwealth to put on witnesses that it has which can rebut the assertions. And I am sure that they will find that some of those witnesses are the witnesses that they claim were going to exonerate the Defendant. They are here today in this building. I would ask for the opportunity to put them on. Because we don't need forever and a day to prepare them: We could ask them what happened, they are going to tell us.

MR. EISENBERG: And, Your Honor, I could point out that it is a very common situation in Post-Conviction Relief Act hearings for the proceedings to occur in that fashion. They don't necessarily, like a trial, start on day one and go through without stop on day five or whatever. They are frequently separated in order to accommodate the availability of witnesses.

Mr. Weinglass refers to the witness Mr. McGill, the trial prosecutor. Assuming that that witness has relevant testimony to present,

Page 59.

the witness informed the Court, I understand, that he received the notice last, late yesterday afternoon, that he is on trial before a Federal judge right now, and that, accordingly, he can't come here. This Court's subpoena does not have the power to override the Federal Court which has Mr. McGill before it trying the case. The Court doesn't have that power, but Mr. McGill said I can be available Monday.

Now, this Court, to my hearing, never said to the defense you've got to be done by Friday, we can't hear any witnesses next Monday.

THE COURT: No, I never said that.

MR. EISENBERG: The Court said we are starting now.

THE COURT: Just start, that's all.

MR. EISENBERG: So the fact that a witness is not available today but Monday --

THE COURT: We take him on Monday.

MR. EISENBERG: Is not remotely an impediment to beginning these proceedings.

Now, Mr. Weinglass says that the rule provides for a reasonable opportunity for investigation. Now we stopped hearing about the local rules because the local rules make it

Page 60.

clear what we mean by that. In the normal case the petitioner often files the petition first without affidavits. He makes his claims out. He may not have investigated them all to the point where he can file affidavits. The rules allow him to do that. At some later point, then, if he hasn't already done it he has to file those affidavits. And at that point is when the rules say the hearing can occur 30 days thereafter, in order to give the Commonwealth an opportunity to look at your actual evidence, your affidavits. It's that period before the filing of the affidavits when the case has to be investigated and prepared, not after.

How can you file affidavits, how can you present sworn material before the Court about detailed pieces of evidence if you haven't investigated and prepared already? You can't do it.

And that's why the local rules make it clear that after the affidavits are filed you don't have a year or 10 years or even 60 days. You have 30 days to give the Commonwealth an opportunity which, if the Commonwealth didn't need it, the Court could take less time. As it

Page 61.

happens, it's been more than 30 days and so we've had the opportunity.

Now Mr. Weinglass says well gee, I have been able to investigate my claims but not prepare for the hearing. All that shows is the defense's arrogance in relation to the execution date which has been set by the Governor. We know, they say, that the Governor signed an execution warrant saying that the date is August 17th. We want a hearing before that execution is carried out, but we don't care what date the Governor sets for it, you will have to reschedule that execution to a date that is convenient for us so that we could have our hearing.

The bottom line is they asked for a hearing before the execution, the Court is trying to give them that hearing, and they say oh, no, it's not actually the hearing that we want now, it's just rescheduling the execution date.

And their entire argument about delaying the hearing is not really an argument about the hearing at all. It's just further argument about a stay of execution. The whole

Page 62.

purpose for the stay of execution is not supposed to be to delay the execution in and of itself. It's not for delay itself, it's not supposed to be for delay. It's supposed to be about airing the claims before the execution. And when Your Honor tries to do that they say gee, we don't have enough time. Even when Your Honor says fine, put on a witness and prepare the night before, put on the next witness the next day, Mr. Weinglass says oh, no, I can't even do that.

Well, Your Honor, even in a trial lawyers have to work, they have to work hard, they have to prepare. They don't get to do everything six months or a year in advance, file it all away and then pull it up at some leisurely pace during the trial. That is not how a trial runs, let alone a hearing being held under the shadow of an execution date which the Defendant waited to be set before he filed his Petition. You have to work in that situation. You don't get to just say gee, I don't think I have enough time. I specifically waited to come to you and begin the process until after the Governor set the execution date, and now lo and

Page 63.

behold here is the execution date. Well, of course here is the execution date. Because they waited for it. And even if there weren't an execution date, a Court would properly say to the lawyers now is the time to go ahead. You don't get to go, in a trial, even in a civil trial you don't get to go before a judge and say judge, I am just not ready yet. The judge gets to set a date and have the hearing proceed and the lawyers have to work to get it done. And when that date comes, whether it is three years later, as it has been since Mr. Weinglass got involved here, six weeks later, as it has been since he filed his PCRA petition, or 10 years later, at a certain point it is going to be time to do the work.

And if it were 10 years later no lawyer is going to do the work 10 years in advance anyway. Of course there will be last-minute things to be done. And to trivialize this, the execution date by saying that the fact that they have to do last-minute work means we can't proceed and have to put off the execution is to misunderstand that this is a Court of law. And I think that we should

Page 64.

proceed.

MR. WEINGLASS: Your Honor, just so that one thing is clear, because we have already informed the Court but evidently it hasn't made much of an impression: The Pittsburgh, the Harrisburg Patriot reported on June 1st in their morning edition that Mr. Jamal's attorneys would be filing a Post-Conviction Relief Petition on June 5th. And that was publicly announced. It was after we announced that we would be filing the Petition, it was after I informed the Corrections Department that I would be coming in to see Mr. Jamal for the purpose of signing a verification that the Governor's Office moved quickly to get a warrant signed before we could come to Court with our Petition. We did not file the Petition after the warrant. The Governor signed a preemptive warrant knowing the Petition was coming in. That's how we got here. And we have subpoenaed --

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: We have subpoenaed the appropriate people in the Governor's Office to come in here and testify under oath that that is

Page 65.

precisely what happened. And we intend to show that.

But Counsel keeps insisting that we waited until the Governor signed the warrant. The Governor moved preemptively to sign a warrant, knowing we were coming to Court. And I must say, as a matter of practice, no prior governor, knowing that the petitioner was coming into court to have his claims litigated, would move preemptively to sign a warrant. They would wait until the court had an opportunity to examine those claims and if the court denied them, then the governor would sign the warrant. But the process was reversed in the case of Mumia Abu-Jamal. And the Governor moved quickly to get his warrant in as we were literally on our way into Court. And that's why we have the dilemma we have today.

THE COURT: We don't have any dilemma. But go ahead.

MR. WEINGLASS: We have this dilemma.

THE COURT: He doesn't have any dilemma. I said, I know when the execution date is set for. And I tell you don't worry about it. I have taken it under advisement, don't

Page 66.

worry about it. Let's just start the hearings. Let's get some testimony from somebody. That's all I am asking you to do.

Could you tell me when you will be able to do that? Are you able to start today?

MR. WEINGLASS: Pardon?

THE COURT: Are you able to start today?

MR. WEINGLASS: No.

THE COURT: Just yes or no.

MR. WEINGLASS: We are not able to comply with what the law requires us to do today. And that is a full and fair hearing.

THE COURT: Well, you are going to get a full and fair hearing, and I wouldn't be able to do it all in one day, as I told you. You are going to have to take one witness at a time. And I don't know how long it is going to take you to do that. Don't worry about it. Take as much time as you need. But get the witnesses in here so that we could start. Let's stop trying it in the press. Let the press get it from the actual witnesses who come in here and testify. Let's do it that way.

MR. WEINGLASS: The press has gotten

Page 67.

it from the public document that is the Petition.

THE COURT: Well, the public document is not your Petition, it's the notes of testimony: What transpired in the past, and what will transpire now. Whatever the witness is going to say when he gets in here. All I want to do is start it.

MR. WEINGLASS: Your Honor give me five minutes to confer with Counsel?

THE COURT: Sure. Five minutes he wants.

THE COURT OFFICER: Court stands in recess until the call of the Crier.

(Brief recess.)

THE COURT OFFICER: Come to order, please, Court is in session.

MR. WEINGLASS: Your Honor, after consultation with Mr. Jamal and my Co-counsel, and the investigator who just came into town, we feel that we could be prepared to proceed with the hearing two weeks from today. That's August 1st. And we would be prepared to put our witnesses on, to proceed in an orderly fashion with the hearing at that time. We also welcomed

Page 68.

the offer by the District Attorney's Office to assist us in locating those witnesses who we have been unable to serve, particularly Officer Wakshul and Mr. Harkins, who was another witness. But we would prefer Counsel on the other side, working together we could be prepared to go on August lst, two weeks from today.

MR. GRANT: Can we proceed? The burden here is the preponderance of evidence, Your Honor, which means more likely than not their claims have merit and should prevail. And I think the Commonwealth has a right to present evidence that they should not prevail.

Since they need help in finding Mr. Harkins I would like to call him right now to the witness stand. We would like this bifurcated to put on the witnesses we have here who have been waiting since this morning. And for the Court to allow us the opportunity to do that.

MR. WEINGLASS: Well, see, Your Honor, when a reasonable offer is being made, immediately the District Attorney's Office moves to take advantage of the offer. And we are not

Page 69.

prepared with Mr. Harkins or with any other witness for a hearing.

MR. GRANT: We are, Your Honor.

MR. WEINGLASS: We will be in two weeks. This is the way things were done, unfortunately, in the earlier proceedings where things went quickly and willy-nilly.

THE COURT: Yes, but that was for his benefit. Speedy trial is not for the benefit of the Commonwealth. The Commonwealth is ordered to try him within 180 days or he goes free. It's for the defendant's benefit. It is not to the defendant's detriment, it is for his benefit.

MR. WEINGLASS: I wasn't referring to that.

THE COURT: Well, that's what you said.

MR. WEINGLASS: I was referring to the fact that in the midst of trial Mr. Jamal asked for a brief continuance so that Officer Wakshul who was sent on vacation, despite the fact he wasn't supposed to be --

THE COURT: Let's see if it would have made any difference. Bring him in, let him

Page 70.

testify.

MR. WEINGLASS: Officer Wakshul?

THE COURT: Yes, bring him in.

MR. WEINGLASS: We will bring him in in two weeks time.

THE COURT: Why can't you bring him in now?

MR. WEINGLASS: We tried to subpoena him last night.

THE COURT: Don't worry about it. Commonwealth, will you make him available?

MR. GRANT: We are going to look for him tonight, Judge. And he will be available, we will find him and bring him in.

MR. WEINGLASS: Your Honor, Officer Wakshul, who is a Court attendant in this building, did not come to work yesterday, called in sick. We sent our investigator to his home. He was not at home either. We don't know where he is, but this was precisely, ironically, the dilemma in the trial: Wakshul was never found.

MR. GRANT: We will find him, we will find him.

MR. WEINGLASS: We need time.

Page 71.

THE COURT: The Commonwealth says they will find him for you.

MR. WEINGLASS: But this is no way -- and maybe they will, and we will be ready to go with him in two weeks.

THE COURT: You could be ready with him in two weeks, but how about somebody else? You mean you don't have any witnesses that you could put on? Even if you took one witness a day?

MR. WEINGLASS: Your Honor, that --

THE COURT: One witness a day?

MR. WEINGLASS: That is not the question.

THE COURT: That is my question to you.

MR. WEINGLASS: Could we produce a full and fair hearing? The answer is no.

THE COURT: Yes, you can. You take all the time you need. But at least you could bring in one.

MR. WEINGLASS: No, Your Honor, it is being gradually led into a position where Mr. Jamal's rights are compromised.

THE COURT: Nothing is being

Page 72.

compromised. All I am asking you to do is let's bring a witness in here. Besides you people talking and lecturing and trying this case in the news media, let's try it in the Courtroom. If you have to have one witness a day, you have to skip a day because you couldn't find them, fine. Let's do something.

MR. WEINGLASS: With all due respect to the Court's offer, which I appreciate, it is not the way to grant a full and fair hearing to a petitioner, Judge, who faces the death penalty.

THE COURT: Counselor, all the people that face the death penalty are confronted with the very same issue. You know, I am under orders in the Fahy case to try that and to have it completed within 60 days. And because they did not file their petition like you did, the Supreme Court is giving them 30 days to do that. But that's because they didn't file their petition. But once they file their petition, I have only 30 days to get rid of that case. So don't tell me. This is a death penalty case too. It is the same thing.

MR. WEINGLASS: Right now we are not

Page 73.

asking for 30 days, I am asking for two weeks.

THE COURT: But you already had --

MR. WEINGLASS: I am asking for two weeks.

THE COURT: You already had your 30 days.

MR. WEINGLASS: No, Your Honor.

THE COURT: They filed, they gave Fahy 30 days to file his petition because no petition was filed.

MR. WEINGLASS: But, Your Honor, we've had one day. We got the answer yesterday.

THE COURT: Don't worry about their answer.

MR. WEINGLASS: Well, the answer is, as they say, identifies disputed issues of fact.

THE COURT: All I am saying to you: Why can't you present at least one witness? Do you want to bring one witness tomorrow? Fine. Get him, talk to him overnight, prepare him, bring him in tomorrow. I am not saying that you, have to have 10 witnesses a day, 20 witnesses a day, five witnesses a day. I will give you even one witness a day. As long as we could get this thing moving, that's all.

Page 74.

MR. WEINGLASS: You see, Your Honor, but that, with all due respect, is a prescription for disaster. It is --

THE COURT: No, it is not a prescription for disaster. It is a prescription for getting something done that the Court is obligated to do.

MR. WEINGLASS: The Court, as I understand it, is obligated to give us a reasonable opportunity.

THE COURT: Well, you've had that reasonable opportunity. You've had three years at the very minimum to prepare for this thing.

MR. WEINGLASS: Not to prepare for the hearing. I've had three years to investigate the claims.

THE COURT: Well, you investigated. What other investigation do you have to do?

MR. WEINGLASS: Anyone who files a lawsuit of any nature investigates, files a lawsuit, and then there is a hearing, not within 24 hours or not within two days, but after a reasonable opportunity is afforded.

THE COURT: Counselor, when this case was initially tried the Commonwealth was under

Page 75.

the same burden. They didn't have any leeway.

MR. WEINGLASS: They had six months.

THE COURT: Six months. That's because they had to get ready for the trial, and if they didn't they would be out of luck. But that is for the trial. We are now in an PCRA hearing. It is altogether different than preparing for a trial. And the burden was on them, the Commonwealth. They are forced. I didn't force them, I didn't tell them how many witnesses they have to give in one day. They gave me whatever they had. And if the defense needed time for his witnesses, he had that too.

MR. WEINGLASS: No, Your Honor, the defense was denied a continuance for Wakshul. You know that, that is part of the record.

THE COURT: I know that, but that was unreasonable. And there was no necessity for that. But if it is that material, bring him in. Bring him in. And if you can't find him, they will try to find him for you.

MR. WEINGLASS: But I want the time, reasonable opportunity to prepare for a full and fair hearing.

THE COURT: Counselor. Counselor, if

Page 76.

I gave you to August the 1st you are still going to be having trouble. Even if I gave you to August the lst, you are still going to tell me you have a problem locating somebody. All I am saying to you is if you have a problem, name the witness that you have a problem with. If the D.A. can't, if I can't find him, the D.A. will look for him. If he is able to find him, turn over him over to you and you will proceed.

I am not saying that you have to try to bring all of these 19 witnesses or however many you have, I am not saying that you have to do that just in one day. I am giving you leeway. All I want to do is to at least start the proceeding. Let's find out where we are going. We won't know where we are going until we start. I don't know that you have a problem but let's start it and see if we have a problem, if we have to continue it.

MR. WEINGLASS: We were told that we had to begin this hearing on Friday.

THE COURT: No, I said to begin to listen to at least some witness. I didn't tell you which one. Whichever one you have that's handy.

Page 77.

MR. WEINGLASS: Friday night I got the 38 pages.

THE COURT: Don't worry about his, I am not talking about his answer to anything.

MR. WEINGLASS: I didn't get that until yesterday.

THE COURT: I am not talking, about that. Because they didn't have to file an answer. I forced them. They had a right to complain and say Judge, you are not giving us enough time to answer this thing. If they had said that I would have given them a little bit more leeway. But I am trying to move this case along. And I said to them file it by Monday. They filed it by Monday.

MR. WEINGLASS: They had six weeks to file an answer.

THE COURT: Well, they had other motions that you filed, and they had to answer them.

MR. WEINGLASS: They had six weeks.

THE COURT: But they can't concentrate on all of them at one time.

MR. WEINGLASS: They have ample manpower, I'm sure.

Page 78.

THE COURT: You had three years.

MR. WEINGLASS: No, Your Honor, I had to investigate.

THE COURT: Look at all the lawyers you have here. I don't know how many you have here today but you have a gang of lawyers, you have investigators, and I don't know what else you have.

MR. WEINGLASS: They came in on Sunday. I came to Philadelphia on Sunday.

THE COURT: Well, Counselor, I am going to ask you one more time: Can you start tomorrow? One witness? Any witness?

MR. WEINGLASS: Your Honor, I, the Court puts me in this position.

THE COURT: I don't put you in any position.

MR. WEINGLASS: You are asking me to compromise Mr. Jamal's rights.

THE COURT: I am not asking you to compromise anybody's rights. All I am saying to you is give me even one witness. And if you can't start him tomorrow, you could start him the next day. Give me one witness. I am not saying that you have to bring them all in. If

Page 79.

all you could do is get one witness a day, fine. That's all right. I will give you that time. All I am asking you is that you start to move. I told you before: Justice delayed is justice denied. So if you want to confer with your --

MR. WEINGLASS: If I could have just a moment.

THE COURT OFFICER: Court will take a short recess until the call of the Crier.

(Brief recess.)

THE COURT OFFICER: This Court will now come to order. Court is again in session.

MR. WEINGLASS: Yes, with all due respect to the Court's invitation, after consultation with Counsel and Mr. Jamal, I have to respectfully represent to this Court that it is the Petitioner's position that we simply cannot do a hearing on two days notice in a piecemeal fashion as the Court suggests and without discovery. It is a denial of a full and fair hearing.

THE COURT: I said to you discovery

Page 80.

was denied. And I said to you if you could come up with any case, any statute to permit you, I would reconsider at any time. But so far you haven't.

Well, I think the only thing to do is to entertain the Commonwealth's motion for, bifurcation. Let the Commonwealth proceed. They seem to be ready to proceed.

MR. WEINGLASS: We also object to doing a hearing in reverse order because a hearing in reverse order we are not prepared for and we haven't had two days notice, we haven't had one days notice, we had 15 minutes notice.

THE COURT: You haven't given me any assurance that you will ever be ready.

MR. WEINGLASS: Your Honor, I am assuring you --

THE COURT: No.

MR. WEINGLASS: Well, then, let me say it, because if I haven't it's my error. We will be prepared to put on an orderly hearing with witnesses, evidence and exhibits, commencing on August lst, two weeks from today. And we will do it within the full confines of what our obligations are under the relevant rules to put

Page 81.

on a hearing.

MR. GRANT: We are ready to proceed, Your Honor.

THE COURT: Yes, go ahead. Go ahead.

MR. GRANT: We call as our first witness Miss Deborah --

THE COURT: No, wait awhile. If you are going to do that, it is twelve o'clock, people have to have their lunch.

MR. GRANT: That is true, except this lady has a child in day care. If we could accommodate her and put her on we would appreciate it.

MR. WEINGLASS: Your Honor, we object to this proceeding. We ask the Court to enter an order denying our continuance, denying our discovery and give us --

THE COURT: I already denied your discovery, I don't have to do it again.

MR. WEINGLASS: And give us another day to go to the Pennsylvania Supreme Court which invited us to return.

THE COURT: If they invited you I can't stop them from hearing it. I am not certifying anything to the Supreme Court. Every

Page 82.

time I make a ruling I am not going to certify it to the Supreme Court so that you could run up there and have them decide everything that I am doing as I do it. That's not the way to do it.

But if they want to entertain it, I can't control the Supreme Court. If they want to hear it, I can't stop that.

MR. WEINGLASS: I am only asking the Court for a reasonable opportunity for us to go to the Supreme Court today because they invited us to come back. And we would like to come back now that we've had the Court's decision refusing a continuance. And we will do it today. I ask for an adjournment.

THE COURT: Could we adjourn until tomorrow morning?

MR. GRANT: Your Honor, with all due respect to Counsel, every time he stands up he is saying let's not do it. And I am saying we have witnesses here that will verify or dispute their claims. I would ask, Your Honor, they can file, they could go to the Supreme Court, there is nothing stopping them from walking down the hall and up the stairs. I am only asking that proceedings not be stayed, that we be allowed to

Page 83.

present the witnesses that we have here today. We will bring more for them, for ourselves, tomorrow and the next day. Until the Supreme Court rules. In the meantime why should everybody sit around twiddling their thumbs waiting for the Supreme court to decide? We don't know if they will. They went to the Supreme Court yesterday and no decision was forthcoming because they were not prepared to do what they wanted to do.

I am asking to proceed today, proceed with the witnesses we have. We subpoenaed Mr. George Fassnacht, who claimed that the firearms examiner did a poor job. We have Mr. Harkins, whose house they visited yesterday on two occasions, that they seek to have here in Court, we have him here in Court in the next room.

Deborah Kordansky, this missing witness who will show that some other person killed Officer Faulkner, despite the fact that the Defendant was found seated within 4 feet of the Officer with a bullet in his chest, right there at the scene. We brought her in anyway just to make sure that they understand we are

Page 84.

not trying to hide anything from anyone. We are going out looking for them because we know when they get on the stand the truth is going to be told here, and it is not going to be inuring to their benefit. I would like to proceed.

THE COURT: What is that first witness?

MR. GRANT: Deborah Kordansky.

THE COURT: Is that the witness?

MR. GRANT: This was a witness who according to the one paragraph statement she gave to Homicide nineteen years ago said I heard some gunshots, about five, I thought they were firecrackers, and then I heard some sirens, then I looked out my window and I saw the police vans, about two of them, 10 police cars over on the south side of my street, and I saw some person

running on the south side of Broad Street. Which would mean either you would be running into the arms of the police or running past the police. And they are suggesting that that is the phantom shooter; and I am suggesting that is nonsense. And we have the witness here, they could examine the witness and they could verify their claim.

Page 85.

MR. WEINGLASS: Your Honor will recall at the trial, because it is in the record, that Mr. Jackson did telephone and talk to Miss Kordansky once from Your Honor's chambers in the middle of the trial, and she indicated to Mr. Jackson, as he reported on the record, that she doesn't like black people and she didn't want to help his client.

THE COURT: Well, then ask her that when she gets on the stand.

MR. WEINGLASS: Yes, but that is in the record.

THE COURT: Ask her when she gets on the stand.

MR. WEINGLASS: That is the kind of witness they are calling.

THE COURT: If you are not ready to go I will bifurcate the case and let the Commonwealth present their witnesses. At least we will move forward.

MR. GRANT: Thank you, Your Honor.

MR. WEINGLASS: We were in the Supreme Court yesterday at 5:00 p.m.

THE COURT: You will go back there again, okay.

Page 86.

MR. WEINGLASS: I am only asking Your Honor for a day for us to go back to the Supreme Court.

THE COURT: Counselor, we already have witnesses here ready to take this stand and testify. I will listen to those witnesses.

MR. WEINGLASS: I had less than one hour notice that these witnesses are coming. I don't even have my witness file for Miss Kordansky, to give you an example. We have been looking for her, we haven't found her.

MR. GRANT: You could use my file.

THE COURT: He has one here for you.

MR. WEINGLASS: I have my own file.

THE COURT: You will have a chance to cross-examine her.

MR. WEINGLASS: Without a file.

THE COURT: You don't need a file to cross-examine.

MR. GRANT: I have a file, Judge, right here.

MR. WEINGLASS: This is not how cases are tried. I don't defend a petition with the prosecutor's file. This is outrageous.

THE COURT: I understand when somebody

Page 87.

is trying to snowball me.

MR. WEINGLASS: I can't believe this suggestion by the Court, that I should use their files in defending Mr. Jamal. And that I don't need a file to even --

THE COURT: He has everything.

MR. WEINGLASS: No, he doesn't.

THE COURT: Oh, yes he does. He has that.

MR. WEINGLASS: He was given everything and it was burned in the house when the MOVE house was bombed. That's why we didn't have the documents they gave us last week.

THE COURT: What was it doing in the MOVE house?

MR. WEINGLASS: He gave it to them for storage, he was in prison.

THE COURT: They store it in prison.

MR. WEINGLASS: Only some of it. And the rest of it had to be moved out. And it was stored there and it's been destroyed. That's why we didn't have these witness statements which they gave us Friday night at ten o'clock, because Mr. Jamal's statements were destroyed in the fire. That's the way we are working here,

Page 88.

Your Honor.

THE COURT: That is the way you are working and I am trying to get some orderly proceedings here.

MR. WEINGLASS: That's what I am looking for.

THE COURT: Right, and I can't wait until August the 1st. If I do that in this case, I'll have to do it in every capital case. And I don't have that leeway with Fahy. He was on death row too. And the Supreme Court has given me a definite time. And I have to follow their orders. It's got to be done in that time. Supreme Court has not given you any time in this case.

MR. WEINGLASS: Yes, they have.

THE COURT: Not in this case.

MR. WEINGLASS: Not in this case.

THE COURT: Well, okay, if you want to run to the Supreme Court and ask for them to give you a schedule, fine. If they want to schedule it and tell me Sabo, I want you to do it this way, okay.

MR. WEINGLASS: Well, I will.

THE COURT: I will do it.

Page 89.

MR. WEINGLASS: I will tell the Court what the Supreme Court said about this case. Yesterday at five o'clock they said to Mr. Piper reapply for a continuance and if Judge Sabo denies it come back.

THE COURT: Okay.

MR. WEINGLASS: That is an invitation.

THE COURT: It is an invitation, you want to go back, go back.

MR. WEINGLASS: And we can not go back while we are litigating in this Court. I respectfully ask the Court to respect the jurisdiction of the Supreme Court.

THE COURT: Oh, I always respect the jurisdiction. I understand that. I am not a Justice, I am only a poor old Common Pleas Judge in the battlefield here.

MR. WEINGLASS: Then give us the opportunity to file papers with the Supreme Court.

THE COURT: If the Supreme Court wants to hear you I can't stop that.

MR. WEINGLASS: I know.

THE COURT: But I am not certifying anything to them. Get that straight.

Page 90.

MR. WEINGLASS: I hear that, I got it straight from the Court. But all I ask for is time and not --

THE COURT: Okay I will continue this until tomorrow morning. Okay, gentlemen, I'm sorry, but I will do that.

MR. GRANT: I would respectfully object, of course, Your Honor, but I understand Your Honor's ruling.

THE COURT: But tomorrow morning, unless the Supreme Court stops me, we are going forward. If you are not going to present any witnesses I will allow the Commonwealth to bifurcate and they could put on their witnesses.

All right.

MR. GRANT: Your Honor, there is one other matter.

THE COURT: What's that?

THE COURT OFFICER: Quiet, please. Excuse me.

MR. GRANT: I do have the lawfully-issued subpoena for Mr. Hightower to be here today. And I would like to at least bring him before the Court to explain his failure to appear, because he is a key witness and an

Page 91.

affiant supporting their Petition which they claim allows for a Constitutional claim. Now he is subpoenaed, he is subpoenaed last week to be here today.

THE COURT: All right, I will tell you what you do: Get in touch with him, tell him be here tomorrow. If he is not then I will issue one.

MR. GRANT: Very well, Your Honor.

THE COURT OFFICER: Court is adjourned until 9:30 a.m. tomorrow.

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(The hearing was adjourned at this time.)

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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

Date

The foregoing record of the proceedings upon the trial of the above case is hereby approved and directed to be filed.

Judge

19. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Wednesday, July 19, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- RONALD EISENBERG, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- JONATHAN PIPER, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- DAVID DOMZALSKI, ESQUIRE
- ANNE PASQUARIELLO, ESQUIRE
  Deputy City Solicitors

Page 3.

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(At l0:25 a.m. the hearing was convened in the presence of the Court and the attorneys.)

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THE COURT: I hate to have to keep reminding everyone that we are in a Court of law: Proper decorum will be maintained at all times. If you can't live up to that, then please leave.

Counselor, we are here today to set up the agenda.

MR. WEINGLASS: Because there are several matters. The question of the availability in the evidence room, I understand that it's here in this building, for the Petitioner's attorneys to examine the evidence which is maintained in the evidence room pertaining to this case. And Miss Wolkenstein will address that.

I understand there is a question about subpoenas to the Police Department in Philadelphia. And Miss Wolkenstein will address that as well.

There is an issue pertaining to one

Page 4.

subpoena which is outstanding, which is a subpoena to Dessie Hightower. And he was subpoenaed to appear yesterday and he called Mr. Grant, as I understand it, yesterday and indicated that he would appear whenever he is wanted. He called my office and assured me of the same. And he gave me Detective Cobert's number, who served the subpoena, and asked me if I would call Detective Cobert and tell him the same. And I called the Detective Cobert but he was out yesterday evening. And I tried to convey that message to him as well.

This morning before Court began I conveyed to Mr. Grant that Mr. Hightower had called me after he had spoken to him and he wanted to assure both of us that whoever wants him in Court, he will appear at the designated time. He is in a very precarious position, Your Honor. And his employment literally is on the line if he has to come down today.

THE COURT: Well, we are not starting today so forget it. We are not starting today.

MR. WEINGLASS: Yes, I know, and I assure the Court that I had that conversation with him and with Mr. Grant and tried to call

Page 5.

Detective Cobert. But I think this man will appear and I don't see any need to cost him his job today.

MR. GRANT: I would like to respond. Yesterday Counselor stated to the Court and to everybody in this room that pursuant to the Court's order and the subpoena for Mr. Hightower' s appearance, that we are attempting to intimidate the witness, to drag him out in the middle of the night, and then to lock him up when he didn't show up, when all the time he knew very well where this man was. He was subpoenaed, he contacted Mr. Weinglass, and he told Detective Cobert yesterday that Mr. Weinglass told him not to come into this Courtroom.

MR. WEINGLASS: That's false, absolutely false.

MR. GRANT: I have the witness here.

MR. WEINGLASS: Let's put him on. Let's put him on.

THE COURT: Do you want to take the stand too?

MR. WEINGLASS: Sure, sure.

THE COURT: Okay, continue.

Page 6.

MR. GRANT: Thereafter, Mr. Hightower called me and I advised him that the Court is holding in abeyance a bench warrant for his arrest unless he appears here this morning. There was no agreement, because that was not my place to make the Court's agreement, that he show up whenever he's needed. He thereafter called Mr. Weinglass and now he is not here again today. And I presume, although Mr. Weinglass represents that the understanding was that whenever he is needed he will show up, there is no such understanding because I don't understand it and he has no such right. And I ask that Mr. Hightower be brought in to determine whether Counsel misrepresented to the Court by not stating that he knew where this man was the entire time.

MR. WEINGLASS: If I may, Your Honor, just respond to that briefly. In a great show of vigor, yesterday Mr. Grant accused me of misrepresenting -- it is a daily occurrence -- to the Court about Mr. Hightower being subpoenaed while he was asleep and brought down here. Mr. Grant then stood right over there and said I want to inform the Court that he was

Page 7.

subpoenaed in the daytime. Well, now we know the truth. And the truth is -- and I am going to ask for an apology from the Court -- he was subpoenaed while he was sleeping on Friday night, not in the daytime. He was sleeping at eight o'clock at night, he was ill.

And he was awakened by the detective, Detective Cobert, who subpoenaed him at eight o'clock Friday night. I ask for an apology from Counsel, and I ask the Court to admonish Counsel who misrepresented. It was his detective who subpoenaed him, he gave the Court the wrong time.

MR. GRANT: In Philadelphia --

MR. WEINGLASS: It led to my ad --

MR. GRANT: In Philadelphia at 8:00 p.m. it is the daytime. Because he retired early it is still daytime.

MR. WEINGLASS: He told me he was sleeping, he was awakened. And I represented that to the Court and I was castigated for that.

THE COURT: He may have been sleeping at eight o'clock.

MR. WEINGLASS: He was ill.

THE COURT: He may have been ill, he may not, I don't know, I am not a doctor, and I

Page 8.

am not here to decide that issue. As I said before, it's moot now because we are not going to start until as Justice Montemuro says Wednesday, I think, July 26th.

MR. WEINGLASS: That's right. And I quite agree with the Court, I think the issue is moot. I think Mr. Hightower will be here, and I ask --

THE COURT: Okay.

MR. WEINGLASS: I ask the Court to just abide by that and allow him to come at that time.

THE COURT: Counselor, let him come when you want him to be here to testify, okay.

MR. WEINGLASS: Thank you.

THE COURT: But when you talk about misrepresentations, I think you misrepresented something to me also.

MR. WEINGLASS: Well, I am aware of this problem.

THE COURT: You are aware of this problem?

MR. WEINGLASS: I was told by my Co-counsel of what the Court's reaction was yesterday.

Page 9.

THE COURT: As to what?

MR. WEINGLASS: About Mr. Wiser as a spiritual advisor.

THE COURT: Because they FAX'd me a letter that says at no time did I or any of my staff authorize or recognize Steven Wiser as a spiritual advisor. It is a letter here (displaying) that's FAX'd to me by --

MR. GRANT: Your Honor, could you speak into the microphone?

THE COURT: Oh, I'm sorry. It's not on.

It's signed by James S. Price, the superintendent, State Correctional Institution at Greene, which is in Waynesboro, Pennsylvania. And I will have this letter made a part of the Court's records. Not that it is material, but the reason I am bringing it up, Counselor, if you are going to quote me something be candid and exact.

MR. WEINGLASS: Did I quote? I didn't quote.

THE COURT: Well, you said to me that Mr. Wiser was recognized as a spiritual advisor by the institution at Greene, Greene institution

Page 10.

in Waynesboro, Pennsylvania. And I said well, if he is recognized by them, I don't see why I have to even sign an order because the prison at Graterford can call them and find out. But you insisted on an order, and based on your statement that you gave me, I signed that order. I didn't question you. But I got a different story. I didn't ask for this; he FAX'd it to me. And he also FAX'd to me a letter, evidently, that he got from a Malvin L. Wulf threatening to go to Court if he didn't allow Wiser to be his spiritual advisor.

Now, I don't like to get involved with institutions. They have their rules, and I have my rules. But you talked me into that one. And I signed it, and I am not going to revoke it, but I am not going to necessarily break my back about it.

MR. WEINGLASS: Well, I am pleased the Court approaches that in the manner that it is. Because I'm glad the Court represented on the record that I said that he had been approved by the institution, because we'll have the transcript and I can assure the Court now that the Court's representation is in error.

Page 11.

THE COURT: Okay, I have the FAX.

MR. WEINGLASS: I never represented that. What the Court said I said I never said. And we will have the transcript.

THE COURT: Okay I but do you want a copy of this?

MS. WOLKENSTEIN: Yes, please.

MR. WEINGLASS: Yes, if we could.

THE COURT: All right, we will make copies for everybody, for the D.A. and defense (handing).

MR. WEINGLASS: And when we have the transcript I will correct the record, because the Court is misrepresenting what I said.

THE COURT: Okay, that's my understanding. And let me say this: That was the reason I signed the order. Believe me. I don't care how you phrased it, but that's the impression it left with me and that was the reason I signed it. If I knew that there was any kind of a dispute with the institution, I would let you go to Court and resolve it. I am not going to get involved in these things. But be that as it may, you will get a copy of what they sent me.

Page 12.

What was your next thing that you were --

MS. WOLKENSTEIN: There are a couple of technical matters, Your Honor. The first was the question of legal visits with Mr. Jamal at Graterford Prison.

THE COURT: Oh, yes. Yes. I will settle that for you right away. They said that you could visit him in the evening or on the weekends if you call them in advance and let them know so that they can prepare for you. To me that's perfectly all right. Call them in advance and they will make the arrangements for you.

MS. WOLKENSTEIN: I am perfectly prepared to call them in advance, Judge. The question --

THE COURT: Okay, then we have no problem.

MR. WEINGLASS: I did speak to Superintendent Vaughn yesterday afternoon and he did indicate a limitation in terms of weekend visits that I need to address the Court about. He said that we would only be able to visit on Saturday, absolutely not on Sunday, and only

Page 13.

until the hours of 2:30. Now, consideririg our schedule and that we are going to be coming back and forth to Philadelphia in preparation for this hearing, we actually are going to need to be able to come in to see Mr. Jamal on Sunday in order to do preparation.

THE COURT: Well, you must have a good reason for that, Counselor.

MS. WOLKENSTEIN: It has to do with our trial, our travel schedule.

THE COURT: I am talking about the institution. They must have a reason why they can't do it. And unless you could tell me what the reason is, I am not going to get into a fight with the correctional institution.

MS. WOLKENSTEIN: Your inclination, your statement is we should be able to get in there over the weekend.

THE COURT: I said you should get in there, that the impression they gave me was if you called them in advance they would try to make arrangements for you. And I am leaving it at that.

MS. WOLKENSTEIN: I will address this issue Saturday with Superintendent Vaughn and

Page 14.

get back to your office.

THE COURT: Because I don't know, they may have a good

reason for no visits on Sunday. I don't know.

MS. WOLKENSTEIN: If they --

THE COURT: Maybe they are short of staff. There could be a lot of reasons why. And I am not, you have to understand one thing, I am not here to run the prisons. I don't see why you can 't see him every evening during the week and on Saturday. That's six days out of seven. Somebody ought to be able to rest on Sunday.

MS. WOLKENSTEIN: Unfortunately, we don't, so we are going to need to be able to see him on Sunday.

THE COURT: That's what you say, but maybe you should, it would do you good to rest a little bit on Sunday and maybe you would be in a better position to proceed.

MS. WOLKENSTEIN: Your Honor, if we got a further stay of these proceedings and stay of the warrant I can assure you we will be glad to take off both Saturday and Sunday.

THE COURT: Well, do whatever you

Page 15.

think you have to do. I am doing what I think I have to do. At this moment they told me that if you call them in advance, they will make special arrangements. Now, they are giving you more than they ever give any other inmate on death row.

MS. WOLKENSTEIN: Well, I don't believe that is accurate, Your Honor. In fact, that raises another question.

THE COURT: Well, tell them. Tell them to let other attorneys come in there on Sunday.

MS. WOLKENSTEIN: I believe so. In fact, Mr. Weinglass and I have both visited Mr. Jamal previously on Sunday.

THE COURT: Well, then take it up with them and say look, I visited him on Sunday before.

MS. WOLKENSTEIN: There is another possibility here, Your Honor, which is this. Is that I understand that Mr. Fahy, who was also a stage two capital case --

THE COURT: Not anymore.

MS. WOLKENSTEIN: Not anymore. Okay? I am glad to hear that, but he was a stage two

Page 16.

defendant and he was housed at the PICC, at the county correctional institute, I don't know...

THE COURT: Where.

MS. WOLKENSTEIN: The Pennsylvania County or Philadelphia County Industrial Correctional, known as PICC, I am told. There is an institute that is the county jail.

THE COURT: Philadelphia prison here?

MS. WOLKENSTEIN: The county jail. Mr. Fahy was there for two weeks and I actually think that would actually be much better accommodations in terms of being able to meet with Mr. Jamal.

THE COURT: I don't tell the State where to keep him. At this moment he is a State prisoner. I don't transfer people around, I don't have that authority.

MS. WOLKENSTEIN: Mr. Fahy apparently was there and appeared before, he was before you as well, as I understand it.

THE COURT: Counselor, he may have but I didn't send him there.

MS. WOLKENSTEIN: I would request an order from the Judge to transfer him to PICC so that we would be able to better meet with him.

Page 17.

THE COURT: I can't just transfer people around in a State institution. You show me that I have that authority. Why don't you take it up with the Superintendent at Graterford and ask him if he could transfer him over there. I don't transfer prisoners. That's not my job.

What is your next problem?

MS. WOLKENSTEIN: So that's denied, Your Honor?

THE COURT: It is not denied. I am saying, I am telling you how to do it. Talk to the Superintendent over there at Graterford. I don't transfer prisoners. I don't decide where -- as a matter of fact, there was an order we couldn't put him in Philadelphia because they are overcrowded and they didn't want to take him.

MS. WOLKENSTEIN: This is Mr. Fahy.

THE COURT: He is a State prisoner, put him over at the State.

MS. WOLKENSTEIN: This is Mr. Fahy we are talking about now?

THE COURT: We are talking about any prisoner. That was the order.

MS. WOLKENSTEIN: It was about three

Page 18.

weeks ago that Mr. Fahy was there for two weeks.

THE COURT: Talk to Mr. Fahy. I don't know how he gets there. I didn't put him there, that's all I am telling you. I don't know how he got there.

MS. WOLKENSTEIN: Okay.

THE COURT: He is a State prisoner, he should have been in Graterford. How he got to Philadelphia, I don't know. Because by putting him there then they are forcing somebody else out. They have a cap over there. And I am not going to fight about the cap. That's already been decided by other judges. I am not going to get involved in their cap. The State says, or the City says look, he is a State prisoner, keep him in a State institution. Now, if you could get that resolved somehow, be my guest. But I am not going to get involved. They have a cap over there, they are only allowed so many prisoners there.

MS. WOLKENSTEIN: I just raised that as a possibility because it causes a problem with us being able to visit.

THE COURT: Counselor, I am telling you to research it and see if you could get

Page 19.

something done. It is not within my province to say where people should go. At one time it is true we used to keep our State prisoners in Philadelphia when they were on trial. But that has been discontinued because they have a cap from the Federal Courts on how many prisoners they could keep in the City detention center. And I am not going to fight with the Federal government or anybody else about the issue. And we have been told to keep State prisoners in the State institution. Now, if you could get the Superintendent at Graterford to talk to the Superintendent in Philadelphia and they want to transfer him, hey, no problem with me. I am not stopping you. But you do the leg work, I am not here to do that leg work.

What is your next problem?

MS. WOLKENSTEIN: Okay, the next issue is this. There are trial Exhibits that are, as I understand it, with both the Court files and also in the evidence room in the Courthouse. We tried yesterday to be able to get access to them to take a look at them, see what's there. We want to view those in preparation for a hearing. We were informed that it was not possible to do

Page 20.

that without either the District Attorney accompanying us to do that, or we needed an order from the Court.

THE COURT: Okay? what is the situation on that, Counselor? Do you know?

MR. GRANT: I don't know what Court files. We have to have some specificity. She may just want paper documents, that's all the Prothonotary would have.

THE COURT: No, no, she is talking about the evidence room I think up on the 7th floor.

MR. GRANT: We could make an arrangement at her convenience. We will have the evidence custodian available, they could inspect the evidence.

THE COURT: There, just talk to the D.A., you could get a lot.

MS. WOLKENSTEIN: We were on a conference call with Mr. Eisenberg and we were told we had to raise that today. That's why we are raising it today.

THE COURT: He said if you contact them they will make arrangements. You tell them when you want to go there.

Page 21.

MS. WOLKENSTEIN: We could be there without someone from the D.A.'s Office.

MR. GRANT: No.

THE COURT: He says you can't without the D.A.'s Office.

MR. GRANT: And we would like some specificity of what you want.

MS. WOLKENSTEIN: First of all, everything that was on the list of Exhibits at the trial that was available to your office. I could make a copy if you don't have an Exhibit's list.

MR. GRANT: For the Court's information and Counsels' edification: What is in the evidence room is physical evidence.

MS. WOLKENSTEIN: We are also interested in looking specifically at the physical evidence: The guns, the bullets, the bullet fragments. The police officer's jacket. In other words, all the physical evidence that's involved in this case.

MR. GRANT: That's all that is going to be there. Exhibits like diagrams, sketches, photographs et cetera are not housed in the evidence room.

Page 22.

MS. WOLKENSTEIN: Where are those housed?

MR. GRANT: Well, tell me what you need.

MS. WOLKENSTEIN: I want everything that was presented as an Exhibit at the trial.

MR. GRANT: Could we have a copy --

THE COURT: Why don't you give him a copy and why don't you work it out. Why do you have to get the Court involved in something?

MS. WOLKENSTEIN: Because the District Attorney's Office yesterday indicated in a phone conference that we would have to work it out here before Your Honor.

THE COURT: You could work it out. Whenever --

MS. WOLKENSTEIN: Is there a problem with getting access to the Exhibits that were presented at trial, that are part of the official Court record?

MR. GRANT: Give me a copy of your list, Counsel, and we will accommodate. Just give me a copy of your list.

Your Honor, these Exhibits are either part of the Quarter Sessions file or pursuant to

Page 23.

the letter that was sent to the Governor in 1989, which I am sure the defense has, the file which was sent to the Governor and has been available there for all this time.

MR. WEINGLASS: As Mr. Grant says, I am sure we can work it out.

MR. GRANT: It was not our assumption that these allegations were made without any of these materials having been reviewed already.

MS. WOLKENSTEIN: We were told we could not review them until the PCRA was filed. That's what Mr. Weinglass was told when he attempted to review them previously.

MR. GRANT: PCRA was filed on June 5th, Your Honor, and these Court documents are either part of the Quarter Sessions file or part of the official record that was sent to the Governor's Office. I am sure that these paper documents exist and can be located for review and I am sure we can work it out.

THE COURT: Okay I all right.

MS. WOLKENSTEIN: So we will talk this afternoon. We can work out times and whatever to do this.

Will you do that? Can I call you at

Page 24.

one o'clock?

MR. GRANT: Yes, you may. I would like to have a copy of that list, please.

MS. WOLKENSTEIN: I have to make a copy. I presumed you had a copy of the trial Exhibits.

THE COURT: We will make a copy for you right now.

MR. GRANT: Thank you, Your Honor.

MS. WOLKENSTEIN: Okay, the next issue is the question of service of subpoenas for various, these are subpoenas duces tecum for various records in the possession and control of the department of police. And they are of several different forms. I am not here to discuss really the content of them or whether they are going to be quashed. There will be a motion or that discussion. There is a technical problem which is as follows. It is our understanding when we tried to serve these subpoenas that in fact they can not be served with the terminology on them for the duration of the proceedings. That we have to serve them with a date certain. And that for that date certain for each subpoena there is a fee of $38.

Page 25.

That's my understanding. And that if we don't use them, that that witness is not available or the trial schedule is such that we can not use that witness that particular day, they have to be re, they have to be re-subpoenaed and pay another $38. And if we needed them on call for a period of time, that would be $38 times whatever number of days. Again we were told that there was only one way to get around that, or two ways, which was either an order from the Court appointing one of our staff to sort of issue these subpoenas -- I don't quite understand it myself -- or to get the cooperation of the District Attorney's Office so that we could give, say, a date certain with the understanding that that, that those files would be returned to Court on the appropriate day. Again we need the cooperation of the Court and the District Attorney's Office to do this. And that's the relief I'm requesting.

THE COURT: What is your problem? Did you hear what she said?

MR. GRANT: Yes, Your Honor. I don't know what, Counsel is continually wanting us to do work for them and I don't know what it is

Page 26.

this time but Mr. Domzalski represents the City.

MR. DOMZALSKI: Good morning, Your Honor. Dave Domzalski, Counsel from the City Solicitor's Office for the Police Department.

What Counsel is representing with regard to police procedures for subpoenas: It is true that they do not accept on-call subpoenas, they want a subpoena for a date certain. Obviously, officers have to be called in off the street. Officers may be on audio status. It costs the City money to have these officers here. Basically, a $38 fee is a nominal fee, in that it doesn't really carry the true expenses of the Police Department. That issue basically is a coordination matter, Your Honor, that the Police Department asks all attorneys to do. It even asks the City Solicitor's Office. I have tried cases where I've had the same problems in trying to figure out what my witness list is and with how I could schedule witnesses to fit in. But it is a basic procedure with the Police Department that they only accept subpoenas for that particular day.

Now, in addition, Your Honor, the subpoenas that were served, they were just

Page 27.

served in an envelope and placed at the security desk of the Police Administration Building. The basic practice for the defense bar of Philadelphia and most do know it is to file subpoenas in Room 142, City Hall, where the appropriate fees and appropriate instructions will be given.

MS. WOLKENSTEIN: We served those subpoenas, Your Honor. That is not an issue here, we will serve wherever is the appropriate place.

THE COURT: 142, he said.

MS. WOLKENSTEIN: Right, I heard that, we will certainly do that. But again, in order for us to do that we need to clarify this question of date certain.

THE COURT: No, you see, what the problem is, he told you: They have to take police off duty somewhere.

MS. WOLKENSTEIN: These are subpoenas duces tecum.

THE COURT: That's all right but the police --

MS. WOLKENSTEIN: These are administrative officers, Your Honor. All of

Page 28.

them are people who are in control of files. That's what they are. They are not taking officers off the street, that is not the type of subpoenas that they are.

MR. DOMZALSKI: Your Honor, it all depends what documents Counsel is seeking. Yes, it may not be necessary for a police officer to appear, for example, if it is just certain documents. For example, one subpoena is asking for records of the intelligence division of the civil disobedience unit for the period of 1968 through 1981.

MS. WOLKENSTEIN: This pertains to Mr. Jamal.

MR. DOMZALSKI: As it pertains to Mr. Jamal, that is correct. Whether those files still exist, Your Honor, I have no idea. I did receive these subpoenas and I asked the Police Department to look into the matter anticipating that the matter would be clarified at some point in time.

But a couple scenarios developed. There may be no files there, at which time I would just submit an affidavit.

MS. WOLKHNSTEIN: You should take care

Page 29.

of that at that point. I would really like to resolve the question of how to serve these subpoenas.

THE COURT: Counsel has already alerted them.

MS. WOLKENSTEIN: I appreciate that. What I would like to do: I am perfectly prepared to pay the normal $38 fee for one time service. The question is whether or not we are going to be required to pay that many, many times over the course of this, or we can work this out that we will make arrangements over when the officers are necessary to come to Court.

MR. DOMZALSKI: I believe that could be worked out.

MS. WOLKENSTEIN: Then this issue is resolved. Thank you very much, I appreciate that.

THE COURT: Okay.

MR. DOMZALSKI: While we are here do you want to --

MS. WOLKENSTEIN: No, I don't. We will... Do you want me to give the subpoenas now?

Page 30.

THE COURT: No, 142.

MS. WOLKENSTEIN: We are not ready to discuss the content of the subpoenas.

(Discussion was held off the record at this time.)

MR. DOMZALSKI: Thank you, Your Honor. That concludes our business before the Court today. May we be excused?

THE COURT: You may be excused. Any other problems, Counselor?

MS. WOLKENSTEIN: No, that resolves the issues that I have.

Yes, Your Honor, I'm sorry, there is a possibility of seeing the physical evidence out of the presence of the District Attorney's Office. It requires a Court order.

THE COURT: I am not going to sign such a Court order. I am not signing such a Court order. If they want to let you see it, you will do it in the presence of the District Attorney's Office, period.

MS. WOLKENSTEIN: That is the end of this discussion.

THE COURT: That is the end of this discussion. You will get to see it. They want

Page 31.

to be there present when you see it.

MR. GRANT: Your Honor, Miss Pasquariello and Mr. Domzalski were here today specifically to address the issue of whether or not these subpoenas are even valid and whether --

MS. WOLKENSTEIN: Your Honor --

MR. GRANT: Excuse me... As to whether or not --

THE COURT: Let me hear what the problem is.

MR. GRANT: As to whether or not these subpoenas would even be honored, Your Honor. And she has indicated in a colloquy with Counsel at the bar of the Court sotto vote that she does not wish to litigate those issues today. Why, I don't know. But --

MS. WOLKENSTEIN: They haven't been served yet, to begin with.

MR. GRANT: But I think that issue should be addressed.

THE COURT: Well, I think, I think somebody ought to teach them --

You are from New York, aren't you?

MS. WOLKENSTEIN: Yes.

Page 32.

THE COURT: Okay. Somebody here, well, you must have somebody here that's from Philadelphia.

MS. WOLKENSTEIN: No, no luck.

THE COURT: What do you mean? What happened to all those Counsel that you had here?

MS. WOLKENSTEIN: (Indicating).

THE COURT: They disappeared.

MS. WOLKENSTEIN: You scared them away, Judge.

THE COURT: What happened to them? They disappeared, all those learned Counsel that you had here.

Well, I tell you what, why don't you talk to them and they will tell you what kind of subpoena to use.

MS. WOLKENSTEIN: That is fine, I would be happy --

THE COURT: Because I am not here to hold classes in the practice of law here.

MS. WOLKENSTEIN: That is fine.

MS. PASQUARIELLO: Your Honor, for a moment: Anne Pasquariello, also Counsel for the City, specifically the Medical Examiner's Office. We were served with two subpoenas

Page 33.

yesterday. My supervisor John Straub spoke with Counsel --

-- not you, with someone else --

-- and accepted service. Just for the record, I would have the subpoenas declared null and void so that we are not under subpoena. Counsel made a representation to the Court that they were not served. In fact, the City of Philadelphia accepted the subpoenas. So I just would --

MS. WOLKENSTEIN: That particular subpoena, okay.

THE COURT: She said she is going to get new subpoenas.

MS. PASQUARIELLO: Fine. So the subpoenas for the Medical Examiner's file and --

THE COURT: She is going to get new subpoenas.

MS. PASQUARIELLO: Fine. Thank you.

THE COURT: Somebody will instruct her.

MS. WOLKENSTEIN: We will get some help to do it.

(Discussion was held off the record at this time.)

Page 34.

THE COURT: All right, that was nice and easy. What else do we have?

MR. WEINGLASS: Nothing further.

THE COURT: Anything else? Anything for the Commonwealth?

MR. GRANT: Yes, Your Honor, there are two things. Since the Supreme Court has ordered the hearing to proceed, I would like an order and a list of witnesses, as well as an offer of proof. Unless Counsel is willing to state that the affidavits that are submitted pursuant to attachments or as exhibits to their Petition is the offer of proof, then I will accept that. But absent that stipulation, I would like an offer of proof as to their witnesses.

THE COURT: Well, we ought to have a schedule as to who is going to come, what the order is that you are going to present them. Could you do that?

MR. WEINGLASS: We will provide them with an order of Wednesday witnesses on Tuesday.

MR. GRANT: We would like to have that.

THE COURT: You ought to have it.

MR. GRANT: They have those five days,

Page 35.

we would like to have that five days also.

MR. WEINGLASS: We will have five days to prepare our hearings. We asked for two weeks. At the end of it we were only given one week.

THE COURT: Let me say this: If you need a little recess to look them over, I will grant it. If they don't care about pushing the case I am not going to worry about it.

MR. GRANT: Your Honor, with all due respect, I'm worried about it because I have to cross-examine these people and I would like to know. I don't want to stay up all night preparing for witness number 19 when they are putting witness number one on. And I think it is only common courtesy and practice traditionally.

THE COURT: I think he ought to give you the order in which he is going to call them and if for any reason you can't call them in that order let them know. No big deal.

MR. GRANT: Can they let us know sometime this week? I mean we have a lot more days this week.

THE COURT: I agree they should do

Page 36.

that. Well, you should have that by this week, yes.

MR. GRANT: Could we have it by tomorrow, at the end of the business day?

MR. WEINGLASS: No, that is quite --

THE COURT: Let's say Friday.

MR. WEINGLASS: That is quite impossible.

MR. GRANT: Friday in the morning, Your Honor?

MR. WEINGLASS: Quite impossible.

THE COURT: Why is it impossible?

MR. WEINGLASS: Your Honor, because we said -- let me, before I say that, let me say this. Counsel worries about time.

THE COURT: No, I am worried about procedure.

MR. WEINGLASS: He is worried about his time.

THE COURT: No, I am worried about procedure.

MR. WEINGLASS: Yes.

THE COURT: We should have some idea who you are going to call when. In other words -- and I am not going to hold you to that

Page 37.

to the very minute -- but the thing is, we don't know how many witnesses we could get through on Wednesday the 26th, how many we could cover on the 27th. But I think there ought to be at least a list and an order.

And if you are telling the Commonwealth that, he is asking for an offer of proof, but if you say they are going to testify to what they put in their affidavit, he is satisfied with that. All he wants to know is the order so that they could sort of prepare.

MR. WEINGLASS: If the Court will hear me out. Yesterday at about this time the same attorney who makes the plea for time to prepare for cross suggested -- please hear me out without interrupt.

THE COURT: I know that, but, Counselor --

MR. WEINGLASS: I ask for the same privilege.

THE COURT: Counselor, just one thing: I don't care about the time for preparing for cross-examination. I'm more concerned with some order. So you should send me a copy too. I would like to know what order you are going to

Page 38.

call these people.

MR. WEINGLASS: We do not presently know that. I told the Court yesterday it would take two weeks for us to prepare. We are now given one week. We will know it probably Tuesday. And I want to say this: We have already, the day before yesterday, or yesterday, served Counsel with a list. He has one.

THE COURT: Do you have a list?

MR. GRANT: I had the list that they gave me in the morning and then they said they didn't have those witnesses here to testify. And I think that was merely --

THE COURT: I guess that's the ones he is going to call on Wednesday.

MR. WEINGLASS: Right.

MR. GRANT: That was the ones he was going to call.

MR. WEINGLASS: He has it for a week. He could sleep all weekend if he would like.

MR. GRANT: Your Honor, they gave me a list that was nothing more than a falsehood: None of those witnesses were here. Because you heard him say they don't have any witnesses, but they gave me a list of witnesses. So I want to

Page 39.

know the real deal. And I would like to have it in a tixnely fashion.

THE COURT: Well, why don't you get it over to them. You ought to know, for instance, what witnesses you are going to call on Wednesday the 26th.

MR. WEINGLASS: I will know on Tuesday.

THE COURT: You will know that even before Tuesday.

MR. WEINGLASS: Your Honor.

THE COURT: You will know that before Tuesday.

MR. WEINGLASS: We are operating under extraordinary pressure here.

THE COURT: What pressure? Hey, you went to the Supreme Court and they said start on Wednesday.

MR. WEINGLASS: We wanted two weeks, we got one week.

THE COURT: Well, I'm sorry about that.

MR. WEINGLASS: Two weeks puts us under great pressure, one week puts us under extraordinary pressure.

Page 40.

THE COURT: That reminds me of the old Biblical story of Solomon, you remember, the women that were claiming the baby. And Solomon says cut the child in half and give a half to that woman and a half to that woman.

MR. WEINGLASS: We felt like that child.

THE COURT: That is basically true.

MR. WEINGLASS: We have been cut in half.

THE COURT: So do I, because I wanted to start today and you wanted to start August 1st. And the Supreme Court broke the bone, gave you a piece, gave me a piece, and said now you lawyers chew on it, okay.

MR. WEINGLASS: Well, we are suffering.

THE COURT: I didn't chew on mine, I ate it.

And if there are any reporters in here, that's spelled A-T-E.

I ate it, okay. So we'll start on July the 26th. Go ahead.

MR. WEINGLASS: We will try to be ready and we will have a list on the 25th.

Page 41.

MR. GRANT: I object.

THE COURT: All right. If you need time too, if he wants to delay things.

MR. GRANT: Delay them.

THE COURT: Anything else?

MR. GRANT: Just a moment.

(Discussion was held off the record at this time.)

MR. WEINGLASS: Your Honor, just one minor point.

THE COURT: What's that?

MR. WEINGLASS: I want to state for the record this morning

when the Court came into the Courtroom, and the Crier asked people to rise --

THE COURT: Right.

MR. WEINGLASS: -- there were some in the audience who did not rise.

THE COURT: Right.

MR. WEINGLASS: But remained seated quietly and non-disruptively. I want to state that for this reason. It is my understanding that in the United States, no civilian, no citizen need to rise when a judge enters a courtroom. We do not impose that on any citizen

Page 42.

of the United States.

THE COURT: We don't?

MR. WEINGLASS: Provided they don't disrupt.

THE COURT: We don't?

MR. WEINGLASS: We do not.

THE COURT: Did you ever hear the United States Supreme Court?

MR. WEINGLASS: Pardon?

THE COURT: Did you ever attend the United States Supreme Court when they come in, the Justices?

MR. WEINGLASS: The United States Supreme Court comes in, those who want to rise rise, those who do not want to rise remain seated quietly and it is totally acceptable. In any Court in the United States.

THE COURT: Any court?

MR. WEINGLASS: Yes. We are not compelled in this country to show respect to anyone in authority. If the President of the United States walked into a room --

THE COURT: You are not showing respect to me, you are showing respect to the Court itself. The Court system.

Page 43.

MR. WEINGLASS: That is not required.

THE COURT: Not me. Well, I stand up.

MR. WEINGLASS: Your Honor is welcome to stand or remain seated. As everyone else in this country.

THE COURT: Do you remain seated? Well, Counsel, I won't argue with you.

MR. WEINGLASS: I am an officer of the Court.

THE COURT: Counselor, in this Courtroom here, they will stand.

MR. WEINGLASS: Well, Your Honor, people have been ejected.

THE COURT: Let them stay outside, okay. Stay outside.

MR. WEINGLASS: It is a public trial, they want --

THE COURT: It is a public trial. They could come in later. Stay outside. But when this Court opens, they will rise like anybody else. And if they feel they don't want to rise, let them stay outside. And when the Court is in session and they want to come in, fine, let them come in then. I don't care.

MR. WEINGLASS: About if they wait

Page 44.

outside they won't get in because there is a long line.

THE COURT: Well, that is not my problem.

MR. WEINGLASS: But it's wrong, Your Honor, to --

THE COURT: No, it is not wrong. That's the way I will maintain order in this Courtroom. Period. Everybody will have to do that in order to maintain the decorum of this Courtroom.

MR. WEINGLASS: Your Honor, it doesn't detract from the decorum.

THE COURT: Go argue that to somebody else. That means nothing to me, that argument means nothing. If they want to stay outside, they don't want to rise, fine, stay outside. After the Court is in session then maybe they could come back in.

MR. WEINGLASS: With all due respect, I have been through this many, many times, and every court has recognized the right of a citizen of this country to exercise the right to remain seated provided they don't disrupt the proceeding.

Page 45.

THE COURT: Fine, I heard your argument.

MR. WEINGLASS: And it is denied.

THE COURT: Well, I told you, this is my procedure here to maintain the decorum in the Courtroom. If they don't want to rise, stay outside.

MR. WEINGLASS: Your Honor, the only disruption it causes --

THE COURT: They could come in afterwards.

MR. WEINGLASS: The only disruption it causes is when you send Court Officers out into the center of the Courtroom to remove them. That does cause a disruption.

THE COURT: That's what they want to do, fine, then we will have to confront that. That is my order, okay, in this Courtroom. Now, if they want, if they don't want to rise, fine, stay outside. After the proceedings start, then they could come in.

MR. WEINGLASS: Your Honor, you are denying Mr. Jamal a public trial.

THE COURT: I am not denying anybody. I am saying that is the decorum that I want

Page 46.

carried out in this Courtroom, period. Counselor, I am not going to sit here all day and argue with you about it. You made your point, I have made my decision, that's it. I am not going to argue forever. Anything else that you have?

MR. WEINGLASS: I just want to put in a legal frame one sentence.

THE COURT: Well, a legal frame, I put it in a legal frame too: Maintain the decorum in this Courtroom, period.

MR. WEINGLASS: And I just want to say I am making this motion on behalf of Mr. Jamal who is entitled to a public trial of those who --

THE COURT: He will have a public trial.

MR. WEINGLASS: -- those who won't respect the institution of the Court.

THE COURT: Those who do not show respect to this Court during these proceedings will be outside.

MR. WEINGLASS: And he is being denied a public trial.

THE COURT: No, he is not. There are

Page 47.

a lot of people here. There is news media here, there is everybody here. This is a public trial. No one is entitled to a trial solely of his exclusive membership. Nobody is entitled to that.

MR. WEINGLASS: And he is not.

THE COURT: All you have to do, Counselor, is to tell them to stand up. If they don't want to stand up, stay outside, wait until it starts, and then come in. Anything else, gentlemen?

MR. GRANT: No, Your Honor.

THE COURT: All right, we will adjourn until Wednesday, July the 26th, 1995, Courtroom 253.

MS. WOLKENSTEIN: 653 next week. A public trial would require the other Courtroom that we had.

THE COURT: Counselor, I could only use the Courtroom that the Court has available for me. I'm lucky they are giving me this Courtroom. They are liable to give me one on the seventh floor or sixth floor, where you won't have anybody in there.

MS. WOLKENSTEIN: I know we need a

Page 48.

Courtroom that has security access to it and I know --

THE COURT: Counselor, you go over and see Court Administration, tell them you would like to be in 653. I don't care, I will go to whatever Courtroom they send me. I've checked with them, I say what Courtroom am I going to be in so I could let the public know. They said, 253. This is what you got, 253, all right.

THE COURT OFFICER: The matter at the bar of the Court will now stand in recess until 9:30 a.m. in Courtroom 253, July 26th. Thank you.

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(The hearing was concluded at this time.)

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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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

26. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Wednesday, July 26, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- DAVID DOMZALSKI, ESQUIRE
- ANNE PASQUARIELLO, ESQUIRE
  Deputy City Solicitors

INDEX

WITNESS	DE	CE	RDE	RCE
David Richardson	30	53	70	--
E. Steven Collins	73	97	--	--
Kenneth Hamilton, Jr.	104	126	132	--
Lydia Wallace	137	168	194	--
Ruth Ballard	206	217	220	--

Page 3.

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(At l0:25 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - -

THE COURT: Good morning.

Take a seat back there (indicating). She is not a lawyer. I am asking her to take a seat back there.

MS. WOLKENSTEIN: She did legal work with the defense team. This is Jeannette Patton.

THE COURT: I know. This is not an attorney. This is the attorneys (indicating). I have to keep track of who is here. Let her take a seat right back there.

MS. WOLKENSTEIN: Your Honor, the record should show that --

THE COURT: The record should show that I asked her to please remove herself from the attorneys' seats. Move her back over there. Right there. There is a seat right there.

MR. WEINGLASS: Miss Patton was not seated at defense table.

THE COURT: As far as I am concerned,

Page 4.

she is right behind Mumia Abu-Jamal, that is the defense table.

MS. WOLKENSTEIN: She sits behind Mr. Jamal and myself and assists me as she has for the last several years.

THE COURT: I don't think anybody has to assist you, Counselor. You are a well known attorney and I don't think you need assistance from anybody that is not an attorney. So please. Let's not argue about that.

MR. WEINGLASS: No, I think it should also be noted that she has sat there without disruption of any kind for the last Court session.

THE COURT: I am not talking about disruption; I am saying that is not the proper place for her to sit. Right back there. Right back there, okay. She had too much to say in the last trial and that's why we had a lot of trouble. Let her sit back there. Any outbursts and you will be evicted from the Courtroom. You are not out on the street. What you do on the street I don't care, but in this Courtroom you will show proper respect for the proceedings that are going on

Page 5.

here now.

Okay, Counselor.

MR. WEINGLASS: Your Honor, the Court's last comment about the first trial role of Miss Patton is reflective of an attitude.

THE COURT: It is not reflective of anything, I am just telling you plain ordinary facts that occurred. Counselor, please. I understand you subpoenaed the Governor and his staff.

MR. WEINGLASS: Yes.

THE COURT: I have a motion to quash and I think by agreement between you and the State that is to be taken up on Monday, July the 3lst?

MR. WEINGLASS: That's correct, Your Honor. We have subpoenaed the Governor and four members of his staff and now the Governor's Counsel has moved to quash that subpoena.

THE COURT: Right.

MR. WEINGLASS: We have been served with papers yesterday.

THE COURT: Right.

MR. WEINGLASS: And I understand there is an agreement reached between all parties that

Page 6.

the question of quashing the Governor's subpoena will be argued next Monday, July 31st.

THE COURT: Okay. That's all. I just want to put it on the record, okay.

MR. WEINGLASS: I. just wanted to note for the record that we have received papers and we are reviewing them. We know that

the Governor's Counsel has cited among other cases the United States versus Nixon, which comes as somewhat of a surprise: I don't think executive privilege was upheld in that particular case.

THE COURT: Counselor, you will take it up on Monday, okay.

MR. WEINGLASS: Your Honor, the first matter that we would like to bring before the Court this morning is the question of whether or not the Court should continue to sit on this case. And we renew at this time our motion for recusal and we base it on facts that have occurred since the last time we have argued that motion. And the facts that have occurred of course as Your Honor well knows is the extraordinary intervention of the Supreme Court of Pennsylvania which stopped this Court from proceeding in a way that disadvantaged Mr.

Page 7.

Jamal's rights and ordered the case adjourned for one week so that the defense could get adequate time to prepare for the hearing. That action by the Pennsylvania Supreme Court, we contend, reflects the fact that this Court is unable to maintain the standard which was set out in Re: Buchenson by the United States Supreme Court in 1955.

MR. GRANT: Your Honor, I have the Supreme Court's order right here. The Supreme Court's order is right here. It says this trial Court is ordered to commence the hearing on Wednesday, July 26th, 1995. Counsel has also been apprised that his motion before the Supreme Court for your recusal is denied. His motion to remove Your Honor because of jurisdiction is denied. Motion for discovery at the Post-Conviction Relief Act stage: Denied.

Today the hearing is to commence and I would ask that Your Honor order them to do so.

MR. WEINGLASS: Yeah, Your Honor, I appreciate the interruption, but, Your Honor, what Counsel overlooks --

THE COURT: I don't like anymore delays. The Supreme Court has said I am

Page 8.

supposed to start today.

MR. WEINGLASS: Yeah.

THE COURT: Let's start today, let's obey the Supreme Court.

MR. WEINGLASS: And we will. And we will.

THE COURT: Okay, let's go. The recusal request is denied. For the 10th time, the 20th time, the 30th time, it is denied, okay. Let's proceed with the case.

MR. WEINGLASS: We will.

THE COURT: Call your first witness.

MR. WEINGLASS: I just ask that the Court accept exhibits which go to our recusal request this morning, exhibits which include headlines from the local newspaper.

THE COURT: We are not trying this in the newspaper, Counselor. It is now time to try it in this Courtroom. Put on your first witness as the Supreme Court has ordered you to do. If you don't obey me, at least obey the Supreme Court of Pennsylvania. They gave you the privilege of coming here from New York to try this case. Now at least show respect to the Supreme Court of Pennsylvania and proceed with

Page 9.

the trial as they have ordered you to do. That's all.

MR. WEINGLASS: Yeah. And in order to do that I want to complete the record for Mr. Jamal and I ask that the Court receive these articles which reflect community sentiment concerning the ability of this Court to sit fairly.

THE COURT: Community sentiment does not, this Court does not buckle under community pressure. If that ever occurs we might as well close up the court system entirely.

MR. GRANT: May the Commonwealth call it's first witness, then, if he declines to do so?

MR. WEINGLASS: Pennsylvania Supreme Court, Your Honor, has said that it's the appearance of fairness. The appearance to the community.

THE COURT: They already held their emergency request you had there and they have denied it; so let's proceed as they have ordered us to do.

MR. WEINGLASS: Now we are renewing it on the basis of new evidence.

Page 10.

THE COURT: That is not new evidence. That has been in the news media from time immemorial. They had that.

MR. WEINGLASS: Date of the article is July 19th.

THE COURT: They had it before that.

MR. WEINGLASS: And July 21st.

MR. GRANT: I move to proceed out of order if Counsel does not.

THE COURT: One way or another we are proceeding.

MR. WEINGLASS: It is the same hurry up --

THE COURT: It is not a hurry up. The Supreme Court has given you an order and I am here to see that you obey that order.

MR. WEINGLASS: And we will proceed in the regular fashion.

THE COURT: You will proceed as the Supreme Court has ordered you to proceed today.

MR. WEINGLASS: The Supreme Court has ordered this Court to stop hurrying us. That's why we got the extra week.

THE COURT: I told you the Biblical story about the little baby before Solomon where

Page 11.

the two women were claiming a baby and he wanted to cut it in half and give each one a half. In effect, that's what the Supreme Court has done for you.

They have taken a bone and broken it and given you a piece and given me a piece. And as I told you before, I ate my piece. Now let's proceed.

And that's spelled A-T-E, for the news media. Okay.

MR. WEINGLASS: Your Honor, I just wanted to tender these for the record without comment.

THE COURT: Put them down there.

MR. GRANT: I object: Totally irrelevant. I ask that a witness be called.

MR. WEINGLASS: May I have these marked as exhibits?

MS. WOLKENSTEIN: Exhibits 1, 2 and 3.

THE COURT: I am not marking anything. If you wanted to leave it over here you leave it. If the Supreme Court wants it when they get the case I will be glad to send it up. I will send it up with all the other paraphernalia that they have.

Page 12.

MR. WEINGLASS: We can't proceed with the hearing unless exhibits are marked.

THE COURT: That is not true. Put your witnesses on. And you know that. Let's put your witnesses on the stand and let them start testifying. Let them start testifying under oath.

MS. WOLKENSTEIN: Your Honor, there are other preliminary matters before we could start. One is to note for the record that the Department of Corrections has granted spiritual advisor status to Steven Wiser.

THE COURT: That's all right.

MS. WOLKENSTEIN: It is necessary for the record. And on that basis we are withdrawing the order and ask the Court to vacate the order which was entered previously on this question.

THE COURT: All right, the order that I had issued appointing him as the spiritual director, you are asking me to vacate that order?

MS. WOLKENSTEIN: Yes.

THE COURT: All right, the order is vacated.

Page 13.

MS. WOLKENSTEIN: It's vacated because it has already been granted. It is not regranted by the Department of Corrections.

THE COURT: Whatever you work out -- I told you before -- whatever you work out with the Department of Corrections is

okay with me.

MS. WOLKENSTEIN: Your Honor, the other preliminary issue is one we raised the last time we were in Court, which was the defense request to examine the exhibits from Mr. Jamal's trial. Arrangements were made through your offices to grant an order for Counsel to be able to look at those exhibits which were then put in the custody, I believe, of Joseph Walsh from the Homicide Division or working out of the D.A. 's Office. I had some opportunity on Friday afternoon to look at some of the physical evidence which was there. And which was a preliminary review of said evidence subject to further review by the defense Counsel, including experts who might test the, conduct tests of this physical evidence.

However, during the four hours I was there going through several boxes of physical evidence, it was clear that quite a few items

Page 14.

which were exhibits at the trial were not there.

I have submitted a list to the District Attorney's office dated July 25th itemizing those trial exhibits which were not there as part of the evidence that was shown to me. And also requested as well copies of tapes which were available. Only one of which I had the time to listen to in a very quick fashion. Given the time, the time of going through this. I wanted to submit to the Court as a record the correspondence on this and to indicate that the current instructions from the District Attorney's Office is for defense to go back to the Quarter Session file and to see if various written documents are there as part of the Quarter Session files. And I'm told that the District Attorney's Office as well has to make some arrangements to provide the photographs -- there were a substantial number of exhibits at the trial which are photographs of Mr. Jamal, of William Cook, of the hospital, of the scene; all of which are necessary for review prior to this proceeding, and which were of course all a part of our pre-trial discovery motion which has been denied by the Court.

Page 15.

So I want to renew the request for the prosecution to help expedite this matter and provide us with the copies. I was told by Detective Walsh that in fact these photographs in their blown-up and their developed stage were missing. They are looking for them. That they have the proofs but that arrangements would have to be made.

So I would ask at this time whether or not those photographs have been found by the District Attorney's Office and to ask for them to make arrangements to turn them over this afternoon. Or for me to at least look at them and to make photocopies of them.

MR. GRANT: Your Honor, everything's been taken care of that can be. The Commonwealth, although it is not our obligation, went to the Clerk of Quarter Sessions, where the evidence was kept -- as Counsel can do -- and before that went to about five repositories going back 10 to 15 years looking for everything they needed. We found it here in City Hall, we provided it to them, she was there photographing each piece of evidence for four hours on Friday. We don't keep documentary evidence because it's

Page 16.

documents, exhibits admitted during the course of the trial. They are attached to the Quarter Sessions file, the Quarter Sessions notes. She should go look in the Quarter Sessions file. We are not the repository. I think we bent over backwards to help her. Now she wants photographs. I think she should look at the Quarter Sessions file to see if they are attached.

MS. WOLKENSTEIN: I was already told by Detective Walsh that these photographs are not there, that they are missing.

THE COURT: Then somebody from the D.A.' s office had been trying to locate them for you, right?

MS. WOLKENSTEIN: Is that the case: Are you trying to find them?

MR. GRANT: Don't address your comments to me. Mr. Walsh does not have possession of any photographs. They are documentary exhibits. They can been found in the Quarter Session file. If, if not, if there is a proof sheet available we will have them made at Counsel's expense. Simple.

MS. WOLKENSTEIN: Well, the question

Page 17.

is whether or not they are there. I was told already --

MR. GRANT: You will find out.

THE COURT: He has to look.

MS. WOLKENSTEIN: Your Honor, there was already a representation of an officer who works for the District Attorney, Detective Walsh --

THE COURT: I know that.

MS. WOLKENSTEIN: -- to me that says that they do not exist.

THE COURT: Well, if they don't exist they don't exist.

MS. WOLKENSTEIN: I am asking this Court to instruct or request the District Attorney to print the photographs from the proofs. I was told that there are proofs.

MR. GRANT: If she just goes and looks in the Quarter Session file, if they are not there we will make arrangements. There is no need to argue about this matter, we are trying our best.

THE COURT: There is no need to argue this, you work it out with the District Attorney's Office.

Page 18.

MS. WOLKENSTEIN: I have copies of correspondence between the District Attorney's Office and myself on this matter. I would ask it to be marked Exhibit 4.

Your Honor, there are numerous subpoenas which are outstanding for documents, records. To my knowledge, nobody has come to Court, we have not been informed that they have come to Court in response to these subpoenas.

THE COURT: Well, you can't bring everybody in at one time. Why don't you put on who you have now. And if you are having trouble with somebody, we will take that up at that time.

MS. WOLKENSTEIN: Your Honor, the Office of the District Attorney, the commanding officer of the Department of Police and the Commissioner of Police are all under subpoena from the defense.

THE COURT: So?

MS. WOLKENSTEIN: The subpoena was returnable for this morning.

THE COURT: Well.

MS. WOLKENSTEIN: I am asking whether or not any of these designees are here, have

Page 19.

come to the Court with the documents.

THE COURT: You sent me a notice that says that you have the following witnesses for today. A David P. Richardson, Junior. E. Steven Collins. Ken Hamilton. Lydia Wallace. Ruth Ballard. Joe Davidson. Anthony Jackson, Jeremy Gelb.

Now, are any of those witnesses here now?

That's the witnesses that you said that you would have for Wednesday, July 26th. The list of witnesses that you said that you would have here today. That's why I kept telling you to give us a list.

MS. WOLKENSTEIN: And you have the list, Your Honor. And we will call --

THE COURT: You say you have all of these people here now?

MS. WOLKENSTEIN: We will call our first witness after we go through the preliminaries.

THE COURT: No, we are not going -- Counselor, you are not going to waste the Court's time.

MS. WOLKENSTEIN: There are subpoenas.

Page 20.

THE COURT: The Supreme Court has said this is to commence as of today.

MS. WOLKENSTEIN: We are not, Your Honor, getting a full and fair hearing here.

THE COURT: You will get a full hearing. Put your witnesses up

for a change.

MS. WOLKENSTEIN: The Department of Police and the District Attorney's Office are under subpoena from the defense to turn in documents.

THE COURT: They will be here when you say you need them. All right.

MS. WOLKENSTEIN: We said we needed them this morning, Your Honor.

THE COURT: You gave me a list. Now, you gave me a list, I just read them off to you. Do you have those witnesses?

MS. WOLKENSTEIN: These are subpoenas duces tecum.

THE COURT: I know, fine, I know what that is. You didn't put that on the list. You didn't tell me you wanted them today. You gave me a list: 1, 2, 3, 4, 5, 6, 7, 8.

MS. WOLKENSTEIN: With all due respect, the Court does --

Page 21.

THE COURT: With all due respect, I asked you for a list and you gave me a list. Now let's start calling those witnesses.

MS. WOLKENSTEIN: Your Honor, with all due --

THE COURT: When it gets to a time that you give me a list and say that you need this officer or that officer, I will see that they are here. Okay.

MS. WOLKENSTEIN: Your Honor, what the Court, it is my understanding of the practice of law, at least in the State of New York, is that if there is a subpoena outstanding --

THE COURT: You are not in New York now, Counselor, you are in Pennsylvania.

MS. WOLKENSTEIN: -- the Court assists the party who has done the subpoenaing to enforce that subpoena, not to obstruct --

THE COURT: You gave me a list of witnesses. Are there any of them you want me to issue a warrant for? Do you want me to issue a warrant for any of these?

MS. WOLKENSTEIN: This is an obstruction of the defense.

THE COURT: You are obstructing us

Page 22.

from proceeding, Counselor.

MS. WOLKENSTEIN: To give Mr. Jamal a full and fair hearing. I wish to object.

MR. GRANT: I would like to proceed. If she wants to talk, I would like to put witnesses on.

MS. WOLKENSTEIN: I would like to be informed at the point at which if at all anyone appears here in response to the subpoena duces tecum and if they are not here by noon I am going to make a request that the Court so order them.

THE COURT: You will make a request for any of these that you gave me on the list that you were going to call today. If they are not here I will issue a warrant for their arrest, okay. Now let's proceed.

MS. WOLKENSTEIN: We need the documents.

THE COURT: I am not going to tell you anymore about outbursts. Anymore outbursts and you will go out and you won't come back in. Now let's cut this out: You are not out on the street now.

MS. WOLKENSTEIN: These documents were

Page 23.

all requested as part of our discovery motion.

THE COURT: I know that, but I told you --

MS. WOLKENSTEIN: The Constitution gives you the right to receive information favorable to the defense per Brady versus Maryland and per Kyles V. Whitley, both Supreme Court decisions which guarantee due process rights to a criminal defendant in a post-conviction proceeding in order to provide and assure fundamental due process and fairness in a proceeding such as this.

THE COURT: I told you before --

MS. WOLKENSTEIN: These actions by both the Court and the prosecution obstruct those rights.

THE COURT: You are obstructing his rights. Proceed with your witnesses.

MS. WOLKENSTEIN: We are not going to have a full and fair hearing.

THE COURT: Proceed with your witnesses, Counselor. I told you time and time again. Counselor, that's it, I am not going to hear from you unless you will call a witness.

MR. WILLIAMS: Your Honor, Daniel R.

Page 24.

Williams.

THE COURT: Did you enter an appearance?

MR. WILLIAMS: I am entering it now.

THE COURT: You are not entering it now. Where do you practice law?

MR. WILLIAMS: New York City.

THE COURT: I'm sorry, we already have two from New York City. If you have anything to say you tell it to them.

MR. WILLIAMS: I am on the Petition as Counsel.

THE COURT: I don't care if you are on the Petition. You did not enter an appearance here, this Court. You have to seek special permission. You should go to Judge Davis.

Okay, Mr. Weinglass and...

MS. WOLKENSTEIN: Wolkenstein.

THE COURT: ....Miss Wolkenstein are being his Counsel here. You are not going to delay any longer, Counsel.

MR. WILLIAMS: I am prepared to call a witness.

THE COURT: Well, call him. Which one do you want?

Page 25.

MR. WILLIAMS: Your Honor, the Petitioner calls David P. Richardson.

THE COURT OFFICER: Your Honor, the only two witnesses that have shown up are Mr. Ken Hamilton and Mr. E. Steven Collins. They are the only two that we have at this time that have appeared.

MR. WILLIAMS: Mr. Richardson is here.

THE COURT: Tell your witnesses to check in so we know who is here and who is not here.

THE COURT OFFICER: Are there anymore witnesses in the Courtroom who have not checked in yet?

MR. GRANT: I move for sequestration of any other witnesses here in the Courtroom this morning, Your Honor.

THE COURT: All right, all witnesses that are called for the day are sequestered to remain outside until you are called. Is there a Lydia Wallace here?

THE COURT OFFICER: She is back in security.

THE COURT: She is outside.

Ruth Wallace?

Page 26.

THE COURT OFFICER: Outside.

THE COURT: Joe Davidson? Joe Davidson?

MR. WEINGLASS: Tomorrow. I'm sorry.

THE COURT: He is not here today?

MR. WEINGLASS: I'm sorry.

THE COURT: Tomorrow?

MR. WEINGLASS: Yes. And Mr. Jackson is on call. As is Jeremy Gelb.

THE COURT: On call.

MR. WEINGLASS: Both are practicing -- sorry, Mr. Gelb isn't practicing.

THE COURT: Oh, on call. Okay. All right.

MR. GRANT: Your Honor, if Counsel is not admitted pro hoc vice, has not been recognized by any Court in this jurisdiction, I would suggest that it's error to allow him to ask these witnesses questions because that's going to be the subject of appellate

grounds.

THE COURT: Yes. As far as I know, if I am wrong, Mr. Weinglass and this young lady here are the only two that have been admitted. Okay.

MR. WEINGLASS: Your Honor, Mr. Jamal

Page 27.

waives any issue respecting Mr. Williams' qualifications. He has absolute confidence in Mr. Williams, who has been working on this case with me for quite some time. And is eminently qualified, is a member of the bar of both California --

And New York?

MR. WILLIAMS: (Nodded affirmatively.)

MR. WEINGLASS: -- as a matter of fact, was a clerk for the Chief Judge of the Ninth Circuit, Chief Justice Browning. So he is a very qualified person and he has prepared our witnesses. And he is prepared to proceed on Mr. Jamal's behalf. Mr. Jamal expressly waives any question concerning Mr. Williams' qualifications.

MR. GRANT: Mr. Weinglass expressly waives it for him. It calls for a colloquy from Mr. Jamal.

THE COURT: Okay, Mr. Jamal.

(Discussion was held off the record at this time.)

MR. GRANT: In any event, no matter whether Mr. Jamal likes him or not, he is not a lawyer recognized in the State of Pennsylvania,

Page 28.

that is the bottom line.

MR. WEINGLASS: The Court has discretion to permit him to proceed, I believe.

MR. GRANT: If that is true, Your Honor, could we have a colloquy from Mr. Jamal expressly waiving any appellate rights?

THE COURT: Mr. Jamal, would you come up here, please.

Mumia Abu-Jamal, appearing at the Bar of the Court, having been duly affirmed, was examined and testified as follows:

THE DEFENDANT: I have full confidence --

THE COURT: Wait awhile. Wait until you get a question.

MR. GRANT: Mr. Jamal, Mr. Weinglass has made representations that Counselor here before the Bar of the Court Mr. Williams has worked with you in this matter and that you are fully cognizant of the fact that he is not an admitted member of the Bar either by Court's permission or by examination to appear before us here today. Would you waive and be willing to

Page 29.

waive any errors occasioned by his actions here in this proceeding from further appellate review?

THE DEFENDANT: I do hereby waive any question with regard to the statement made by Counsel for the Commonwealth. I have --

MR. GRANT: Sorry, go ahead.

THE DEFENDANT: I have absolute and full confidence in the representation offered by Mr. Daniel Williams.

MR. GRANT: Mr. Jamal, there are only a few questions which may seem rather simplistic to you but they are required here to be asked.

What is the highest level of education you have completed, sir?

MR. WEINGLASS: Your Honor, this is all unnecessary.

THE COURT: He wants to make sure that he understands that he is capable of making this waiver.

MR. WEINGLASS: Your Honor, this is another attempt by the prosecution --

THE COURT: It is not, it is a requirement by our appellate courts. It is a requirement, Counselor. Please. If you want

Page 30.

Mr. Williams to handle this thing, please let us get the colloquy on that satisfies the appellate court.

Go ahead, Mr. Grant.

MR. GRANT: Could you tell us the highest grade of education you completed, Mr. Jamal?

THE DEFENDANT: Two years of college.

MR. GRANT: And you read, write and understand the English language, do you not?

THE DEFENDANT: I do.

MR. GRANT: And you are not today suffering from the effects of any intoxicating beverages or any narcotic substances, are you?

THE DEFENDANT: Not to my knowledge.

MR. GRANT: You have discussed this with Mr. Weinglass, your primary Counsel in this matter, have you not?

THE DEFENDANT: I have.

MR. GRANT: And you are satisfied that he is competent to handle your matters?

THE DEFENDANT: I am.

MR. GRANT: And you are confident and satisfied that his representation as to the qualifications of Mr. Williams is correct; is

Page 31.

that right?

THE DEFENDANT: Absolutely.

MR. GRANT: I have nothing further, Your Honor.

THE COURT: All right. Then the Court will allow Mr. Williams to proceed.

MR. WILLIAMS: Your Honor, I appreciate that.

THE COURT: Okay. You have to follow the proper procedures. I don't know what they do in New York or California.

THE COURT OFFICER: May I swear the witness in now?

THE COURT: Yes, please.

- - - - -

State Representative David P. Richardson, Junior, having been duly affirmed, was examined and testified as follows:

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MR. WILLIAMS: May I inquire, Your Honor?

THE COURT: Yes, sure.

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DIRECT EXAMINATION

- - - - -

Page 32.

State Rep. David Richardson - Direct

BY MR. WILLIAMS:

Q. Mr. Richardson, could you introduce yourself for the Court, please?

A. Yes. My name is David P. Richardson, Junior, State Representative of the 201st Legislative District of Philadelphia.

Q. And how long have you been a State Representative?

A. I have been a State Representative for 23 years.

Q. And in those 23 years, how many times have you faced the electorate?

A. Twelve consecutive terms.

Q. And I take it you have won every time?

A. I won every time.

Q. Now, are you a member of any committees in connection with your being a State Representative?

A. Yes, I am.

Q. Can you tell the Court what those committees are?

A. I presently serve as the chairperson of the House health and human services committee for the Commonwealth of Pennsylvania. I served as the chairperson of the Black Elected Officials of Philadelphia. Also served as a ward leader of the

Page 33.

State Rep. David Richardson - Direct

59th ward in Philadelphia. And the committee person for the 59th ward, 5th division. I serve on the executive committee of the National Conference of State Legislators and also the executive committee of the National Black Caucus of State Legislators.

Q. Mr. Richardson, are you affiliated with any organizations that bear directly, any other organizations aside from what you just mentioned, that bear directly on your status as a State Representative?

A. Yes, sir. Several committee organizations that exist. As well as being a former president of the National Black Caucus of State Legislators in the USA. And also served on the 1997 committee that will host the NBCSL conference here in Philadelphia. And community organizations such as the Greater Germantown Youth Corporation. Board of directors of the Germantown Settlement organization. Pennsylvania Council of the Arts. And also the Afro-American Historical and Cultural Museum here in the City of Philadelphia.

Q. Have you received any awards in these past 23 years while you served as a State Representative?

A. I received numerous awards related to numerous dimensions here in this particular trial.

Page 34.

State Rep. David Richardson - Direct

Q. What are some that you are most proud of?

A. I guess the 1994 Political Action Award given by the Teamsters here in Philadelphia, Local 502. Also, the Outstanding Service Award by the CAP, which is the Community Action for Prisoners here in Pennsylvania. Distinguished service award from the AME Union Church here in Philadelphia. And a number of other certificates and awards from community organizations for outstanding services to the community and political activities as well as community activities and activism here in the City of Philadelphia.

Q. Thank you, Mr. Richardson. Now, you are aware that you are here in connection with a Petition that Mr. Jamal has filed for a new trial?

A. That is correct.

Q. Okay. I want to ask you some questions concerning your knowledge of Mr. Jamal. Do you understand?

A. Yes.

Q. First of all, do you know this man: Mr. Jamal?

A. Yes, I do.

Q. And about how long have you known him?

A. Going back to the late '60s or early '70s here

Page 35.

State Rep. David Richardson - Direct

in the City of Philadelphia.

Q. And are you aware and were you aware back in 1982 that this man was under indictment in the State of Pennsylvania for murder?

A. Yes, I was.

Q. And can you tell the Court when you became aware of that?

A. In Philadelphia it was certainly a widespread news item in Philadelphia for a long time, as well as hearing it over WDAS radio here in the City of Philadelphia, and personal knowledge of the indictment myself.

Q. I take it you became aware of it initially through the news accounts?

A. Yes.

Q. Okay. Now, did you attend, Mr. Richardson, any of the early pre-trial proceedings in connection with Mr. Jamal's case?

A. Yes, I did.

Q. Okay, which ones did you attend? That you can recall.

A. My recollection is that I attended the bail reduction hearing for Mr. Jamal and as well as proceedings that took place during the trial, at the time of the trial.

Page 36.

State Rep. David Richardson - Direct

Q. Now, okay, let me turn your attention to the bail proceeding that you mentioned. Did you play a role in the proceedings at all other than observing the proceedings?

A. Yes, I did.

Q. Tell the Court what role you played?

A. I testified at the bail reduction hearing on behalf of Mr. Jamal to ask that bail be reduced on his behalf.

Q. How were you contacted to come to Court to testify in that bail proceeding?

A. I was contacted by Mr. Anthony Jackson to appear at the hearing on behalf of Mumia -- Mr. Jamal, on behalf of the Court for the bail reduction hearing.

Q. What was your understanding of Mr. Jackson's role in the proceedings?

A. My understanding at that time was that Mr. Jackson was the Counsel for Mr. Jamal.

Q. Okay. Now, on that proceeding, and when you were asked to appear for that proceeding, were you reluctant in any way to appear?

A. No, I was not.

Q. Were you reluctant in any way to testify in any way in that bail proceeding?

Page 37.

State Rep. David Richardson - Direct

A. No, I was not.

Q. All right. Now, you mentioned Mr. Jackson. Did you know Mr. Jackson prior to his representation of Mr. Jamal?

A. Yes, I did.

Q. Tell the Court how you knew him?

A. I knew Mr. Jackson through his activities through Pilcop, which is an organization here in the City of Philadelphia that has tried cases concerning abuse relevant to police abuse here in the City of Philadelphia.

Q. Did you consider yourself friends with Mr. Jackson?

A. I knew Mr. Jackson and had several conversations and interaction with him throughout my career here in the City of Philadelphia, political as well as personal.

Q. So it would be your understanding and it would be safe to say that he knew you as well?

A. That's correct.

Q. And obviously Mr. Jackson knew how to contact you, I take it?

A. Yes.

Q. Now, let me direct your attention now to the trial itself. Okay?

Page 38.

State Rep. David Richardson - Direct

A. Hmm.

Q. In the summer of 1982. Did Mr. Jackson ever contact you to testify as to Mr. Jamal's character and uprightness as a human being in connection with any proceeding in the summer of 1982?

A. No, sir.

Q. Were you in Philadelphia in late June and early July of 1982?

A. If I wasn't in Philadelphia, I certainly was in Harrisburg in session. Because we normally are in session through June 30th. And then we are back, normally, in the City of Philadelphia or the surrounding areas after the session is over.

Q. Okay. Well, let me ask you this. Was there anything that would have impeded you in any way to appear in a court here in Philadelphia if you were asked to do so in late June or early July of 1982?

A. Nothing.

Q. And aside from being available, were you willing to testify had you been asked?

A. Yes.

Q. Now let me turn to the circumstances under which you know Mr. Jamal. Do you understand, Mr. Richardson?

A. Yes.

Page 39.

State Rep. David Richardson - Direct

Q. Okay. Can you explain to us those circumstances under which you began to know Mr. Jamal? Not simply when you first met him but when you began to know him?

A. Well, yes, from several activities. One is I began to know Mr. Jamal through my community activism here in the City of Philadelphia because before I became an elected official we were very actively involved in the community through a number of organizations, groups, to try to help promote and direct our attention to trying to help give what we believed at that time was an important direction to help motivate the community around cultural and positive aspects of the African-American community here in the City of Philadelphia.

Q. Okay. Can you put some kind of a time frame on that?

A. Yes, I can go back to 1965, after we graduated from high school here in Philadelphia to a demonstration of 1967 at the Board of Education to demand that African-American history and African history be taught in the public school system here in the City of Philadelphia. And then in 1968 with the struggle here in the City of Philadelphia to continue to motivate and try to fight on behalf of citizens

Page 40.

State Rep. David Richardson - Direct

who were being shot down in the street here in the City of Philadelphia by police officers who at that time, Pilcop's organization was very much involved in trying to bring those cases to light.

So we were involved in a lot of struggles related directly to those issues that impacted on our community. So our community activism was very high. And as I told you before, I was elected to office here in the City of Philadelphia.

Q. I take it from your answer, then, that during this time frame you were active in issues of vital concern?

A. Yes.

Q. And your path crossed Mr. Jamal's path quite frequently because he shared that concern; would that be safe to say?

A. That would be safe to say. I interacted, though, because many of the activists here in the City of Philadelphia during the late '60s and early '70s were very much in the same circle, so many of the meetings and many of the activities that did take place allowed us to converse a lot and to interact a lot.

Q. Now, what about when you became a State Representative: Did you have any occasions to

Page 41.

State Rep. David Richardson - Direct

interact with Mr. Jamal at that phase of his life?

A. On several occasions. I became elected in January of 1973. And I can't remember which station, but either WHYY, or WKDU, or WDAS in Philadelphia, Mr. Jamal worked for. And on many occasions when we were actively involved in activities and demonstrations it was Mr. Jamal who would actually do the interviewing of us with respect to those particular issues that were being confronted with at that time.

Q. Okay. For the benefit of the record: You specified various letters. Are those call letters for radio programs?

A. I'm sorry, they are call letters for radio stations here in the City of Philadelphia.

Q. Okay. Again for the benefit of the record: How do those call letters that you have mentioned a moment ago relate to Mr. Jamal?

A. That he either directly or indirectly worked for those particular radio stations at the time I was elected. And at that time that we were dealing with issues that were being confronted with within the community. And I had an opportunity to encounter him as a result of those interviews that were given by him at the time.

Page 42.

State Rep. David Richardson - Direct

Q. Okay. So the capacity in which you interacted with Mr. Jamal was as a journalist, he was a journalist?

A. Yes.

Q. Okay. Now, as you sit here today -- and I also ask you to do a difficult thing -- as you place yourself back in 1982, do you feel now and do you feel that you felt back then that your exposure to Mr. Jamal permits you to share your thoughts and your impressions about his unique qualities as a human being, do you feel equipped to do that?

A. Yes.

Q. Okay. Can you tell the Court why you feel equipped to do that?

A. Well, several reasons. One is that I believe that Mr. Jamal was a special gift that had a unique voice to Philadelphia. In fact, his melodious voice that many people heard over the radio stations here in the City of Philadelphia would be identified first by his voice even before they would hear his name. And many individuals grew to respect that name here in the City of Philadelphia and also his works as a journalist, but also as an activist who was actively involved in the community on issues that did impact directly on the community.

Page 43.

State Rep. David Richardson - Direct

Q. Let me isolate your comments about Mr. Jamal as a journalist for the moment, okay. I take it that in hearing Mr. Jamal's broadcasts and interacting with him directly as a journalist, he left a certain kind of impression on you as a human being.

A. Yes.

Q. Am I right?

A. That is correct.

Q. Okay. I would like you to explain to us how his skills as a journalist impressed you as a human being, how it affected you?

A. Well, you know, it's not often that you see someone who has come through the ranks of the struggle that grows among you. And that Mr. Jamal was one of those persons that had an opportunity to really grasp the issues within the community and, notwithstanding his profession as a journalist, was also able to work with the community organizations and groups who would listen to his wisdom and knowledge. And we grew to know him -- and I'm speaking now on behalf of many other people whom I know who know Mr. Jamal -- we grew to know him as being a peaceful, law-abiding citizen and a person who had a lot of compassion for people and compassion for those issues that did impact directly on vital

Page 44.

State Rep. David Richardson - Direct

issues, such as housing, such as health care, such as feeding the homeless. And also at a time in starting a breakfast program for needy children within the community. So there were a lot of attributes that seemingly tied directly into this individual, Mr. Jamal, as being someone conscious and concerned about the community, and not a phony, as many would describe in Philadelphia that they can depict in the first 10 to 15 seconds that they meet somebody.

Q. These qualities that you just mentioned about compassion and dedication to the community, was that evident, was that evident in the way Mr. Jamal used his skills as a journalist? Aside from what you knew of him personally.

A. Yes, it was. I mean it had to stem above and beyond -- you see, some, some people that just get a call, some people are just gifted and some people are just given a gift. So Mr. Jamal, I saw Mr. Jamal as just being one of those persons who was given a gift and had an opportunity to use that gift in the community to help promote, and also to educate as a teacher. And a leader for the community, which a lot of people looked up to him.

Q. Well, Mr. Richardson, I think we all know that some people

have enormous gifts and they use it to

Page 45.

State Rep. David Richardson - Direct

amass great fortunes, and some use their gifts for other things. Can you enlighten us a bit about what direction, as far as you can tell, Mr. Jamal used those gifts that you just talked about?

A. Well, if you are talking about monetary gifts and looking for something monetarily, certainly that was not Mr. Jamal's mission. And I can certainly indicate that on a number of times he would work extensively into the wee hours of the morning on cases and issues that we all seemingly hooked up at the same time in. And certainly it was not for any pay. It was not for any money. It was certainly not for any personal human enhancement, but it was for a belief and conviction he had inside of him which seems to be more important than anything else in this day and time. If people don't have a conviction they don't have anything. And he had that and a lot of people recognized that.

Q. You used a word in your answer earlier: Struggle. That Mr. Jamal used his gifts in the struggle. Can you help us to understand what you meant by that term?

A. Well, for many of us who understand the struggle for African-American and poor people every single day, it is to continue to strive to try to

Page 46.

State Rep. David Richardson - Direct

help better the conditions of life within our City and within our nation. And a lot of individuals such as myself and others try to promote that no matter what profession you may go into, so that is not lost.

For example, I see myself as a human being, an African American first, and then a State Representative. I don't see myself in a different context. Many people saw Mr. Jamal as Mr. Jamal and Mumia in the community, as he was called, Brother Mumia, as he was called, but not a journalist first. And I think that that makes the difference in a number of cases for a number of us whose struggle is being something that is continuous and ongoing, is not part time or individually --

Q. So when you used the term struggle, and then you described certain issues that Mr. Jamal would focus on as a journalist, what segment of the population primarily did it seem that Mr. Jamal had a concern for in using his skills and gifts as a journalist?

A. Well, you know, one thing about being a humanitarian, you have concerns for all people. And I would have to say that while our emphasis was directly related to the African-American community, certainly emphasis was on all struggling people, all

Page 47.

State Rep. David Richardson - Direct

the restless people all around the world. And I think it transcended the kind of narrow focus that a lot of people have. He was more worldwide than what people thought and he was more universal than what people thought. And he also carried that out in his professionalism as well as his community activism.

Q. By the way, do you know if Mr. Jamal was a member of any professional organizations connected with his --

A. Yes, I do. I do know that he was a member of the Association of Black Journalists here in the City of Philadelphia and that he was president of that organization at one time. Because I know that he was succeeded by Mr. Joe Davidson, who worked at the Bulletin, after that.

Q. So Mr. Jamal at one time was the president of the Association for Black Journalists?

A. Of the Philadelphia chapter.

Q. Of the Philadelphia chapter. Okay. Now I'm going to ask you to search your mind here. Are there any broadcasts that you heard by Mr. Jamal that stand out in your mind? That touched you in a particular way, that you think illuminates the character, the character and unique attributes of Mr. Jamal, any particular broadcasts?

Page 48.

State Rep. David Richardson - Direct

A. I guess if there were any I would have to cite the time when there was a missing child, in Northwest Philadelphia, I'm not sure, and the appeal came across the air by Mr. Jamal to ask for anyone who did see or did have an opportunity to know the whereabouts of this 12- to 13-year-old child. If they would call the number to the station and try to reach out directly to anyone who might have seen him to call into the station. The reason why it sticks out more so than a lot of other cases, and I have been involved in demonstrations and other activist things, was because it was the compassion that was shown directly as it related to a human life. And the fact that this child was missing, but that the parents who had called into the station seemed to be not getting any help from the City of Philadelphia in trying to locate the child. And you know how any mother or father misses their child or feels that they have been lost have emotional pain as a result of that.

This was an opportunity for Mr. Jamal to make an appeal over the public airways, over the station, and as a result heard his compassionate plea to ask that people call in and try to give the whereabouts of where this child was because the

Page 49.

State Rep. David Richardson - Direct

parents were very upset.

Q. You, I take it, detected the compassion in Mr. Jamal in his voice?

A. You can feel it. It transcends voice, it actually vibrates through you and you can feel it. If you heard him speak you would know what I was talking about. Others who have heard him would know what I'm referring to. So therefore it transcended just the compassion that they heard, but also the fact that it was felt very closely because of his relationship to this situation and how he felt about it. So it was very evident.

Q. Let me see if I could understand you. Sometimes, when you hear somebody speak, they speak with the full force of their humanity. Is that what you are talking about?

A. They speak to such a tone that you could tell whether a person is sincere or not or whether they are just doing it because that's their job. A saying a lot in the community is that people speak with fork tongue, or that people speak a lot just to hear themselves speak. And in this situation you could feel it. And therefore the humanitarianism, but also the compassion and the vibrant feeling, that there is a person here that's really concerned about my

Page 50.

State Rep. David Richardson - Direct

situation. And therefore I would like to make sure that the mother and father know that somebody is really trying, that came across loud and clear.

Q. Have you ever heard Mr. Jamal speak on other occasions that touched you like that?

A. Oh, when Mumia speaks to me, if you don't know Mumia and you have never had a chance to meet him, which in this instance I would say that yes he has touched not only my life but many other lives for those who have heard him speak because of the way he comes across. And I think that that's probably the major point for many of us who knew him back then in the day for what he stood for. That he came across that way and that's what people will remember.

Q. Now, in your personal exposure to Mr. Jamal's dedication to the community, did you get a sense or did you ever witness expressions by Mr. Jamal concerning his desire to use violence, has that ever occurred?

A. Never.

Q. Never. Have you come to learn in your dealings with Mr. Jamal what his attitude is about violence?

A. Well, I know what his attitude is about peace.

Q. Yes, please tell me?

Page 51.

State Rep. David Richardson - Direct

A. I know that he was a strong advocate to be a peacemaker in

many situations that were involved in the black community, African-American community when there were struggling differences between various groups. Many times that the Church of The Advocate at 52nd street, the parish St. Thomas, St. Thomas Parish Church I think it was called, and also 50th and Baltimore Hickman Church AME, that there were several rallies that were called and many times there were struggles and fights that would erupt. And it was Mumia's voice that sort of like quelled and got order back to those settings to try to get people to realize the importance of why we must not be fighting against one another in a unity sense.

And I can say that we had many situations where there have been toe-to-toe confrontations in the community and it has been Mumia that has stepped in to be the peacemaker.

He, he was one of those that not only abhorred violence but he was for trying to make sure that all the time we saw peace and unity within our community and we would not use the divisiveness or the division of seeing the fights that erupted in our community has taken us away from the struggle and kept us on those points. And I think constantly over

Page 52.

State Rep. David Richardson - Direct

and over again that you will find that it was Mumia who stepped in and was an advocate. Plus the fact that he did that on an ongoing basis. I mean it was not just something that was just during the period of time when he was a journalist, but also as an activist in the community.

And I can say to you that I do not know of any time, place -- and I have been in his company a lot of times where he has been locked up or arrested. I have been locked up and arrested more times than Mumia has ever been locked up and arrested here in the City of Philadelphia during the struggle and I think it should be pointed out that we have been in the middle of a lot of controversy. But it was always Mumia that stepped up to speak in the voice that others did not have to try to quell the peace of the community.

Q. Were those occasions where you were locked up and arrested, and occasions that you referred to regarding Mr. Jamal being locked up and arrested, was that in the grand tradition of people like Dr. Martin Luther King?

A. Well, it was the compassion and the heart and feeling of Dr. Martin Luther King but the tenacity of a Malcolm X, and also the conviction of a man like

Page 53.

State Rep. David Richardson - Direct

Medgar Evers. And I think if you tied them together and you look at what we have here today you would have that in a total, comprehensive sense in Mr. Jamal, who has been actively involved in our City and struggle for a long time.

Q. Okay. Now, you have described in considerable detail about Mr. Jamal's dedication to the community. Are you in a position to tell us anything about Mr. Jamal's dedication to his family, to the inner sphere of his life?

A. Yeah, I would think that if you were to look at Mr. Jamal, he is definitely a family man and has been for a long time. If you had been around him and knew him like we knew him, I think that you could picture Mumia with his son on his shoulders and his microphone in his hand interviewing people in the community as he was actually out in the community doing his work. So he embodied that with respect to his family. And his conviction for his own young son and the fact that that had meant a lot to him. So therefore he carried, therefore he carried him a lot with him everywhere he went. He did that with his professional job as a journalist most of the time that we saw him.

Q. Thank you. I am struck by the image that you

Page 54.

State Rep. David Richardson - Cross

just described. You described Mr. Jamal as having his young son on his shoulder and tapings of his --

A. His tape recorder, his shoulder holster on the side that had a microphone where he would be interviewing people, and have his son on his shoulder and interviewing people at the same time.

Q. Now, tell me, with that image in your mind of Mr. Jamal, how did that speak to you, what was it saying to you?

A. Well, it was saying that, number one, he not only understands what it means to be a journalist, but he also understands what it means to raise a family and also raise his son; and that he wanted his son to be a part of what he was doing. And he saw that as his responsibility and he did not shun his responsibility. And therefore, 24 hours a day, seven days a week when he was out there in the community he had his son with him.

MR. WILLIAMS: Mr. Richardson, thank you very much.

Thank you, Your Honor.

MR. GRANT: May I, Your Honor?

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CROSS-EXAMINATION

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Page 55.

State Rep. David Richardson - Cross

BY MR. GRANT:

Q. Good morning, Your Honor.

A. Good morning.

Q. State Representative, you indicated that basically you became aware of Mr. Jamal early in his career as a budding journalist and as a community spokesperson; is that right?

A. Community activist, yes, sir.

Q. And at the time when you were first being elected to State-wide office in 1972, Mr. Jamal was just a teenager, was he not?

A. I don't know his age at that time. I just know that he was outspoken. This was in the early '70s.

Q. Now, Mr. Jackson, speaking of Mr. Jackson: He contacted you and asked you to come and be basically a character witness at the bail hearing for Mr. Jamal; is that right?

A. No, that's not correct.

Q. He contacted you and asked that you appear before the Court of Common Pleas for a bail reduction hearing?

A. That is correct.

Q. And did he discuss with you what he wished you to testify to?

Page 56.

State Rep. David Richardson - Cross

A. If I remember correctly, it was the fact that he wanted to have someone talk about the fact that they needed to have the judge know that bail should be reduced on behalf of Mr. Jamal so that he could be put out on the street while his trial was going to be called at some later date.

Q. And how did you know Mr. Jackson that he could call you up and ask you to do this?

A. Because he was a member of the Pilcop organization here in the City of Philadelphia. And we had had many dealings with Mr. Churchill and Mr. Thomas Gilhool and other members of the Pilcop organization here in the City of Philadelphia. And I had been down to the office and we had been actively involved in numerous cases in the City of Philadelphia that led us to know that that's the office where many people were, where officers referred many cases down there. So I got to know all of the lawyers inside of the building, not only on a first name basis, but also because we were actively involved in a number of other issues here in the City of Philadelphia.

Q. What does Pilcop stand for?

A. I think it stands for Philadelphia something about cooperating with police. I am not sure of the

Page 57.

State Rep. David Richardson - Cross

acronym of the name any longer. Pilcop, I know that it exists and I know it is an organization that specifically was designed to go out and help people who had cases where there were police involvement. And we went down there because many people

called us and asked us what organization is dealing with that. And we always said Pilcop so I never knew necessarily the full name.

Q. And when you say the organization helped people out who had cases involving police practices, brutality, abuse, what have you, did you mean that the members of this organization that were actually lawyers actually went to court and represented people that had these needs?

A. Some of them did, yes.

Q. And Mr. Jackson in fact was a director of, at one point, of that organization, was he not?

A. I don't know what his title was, sir.

Q. And how long had you known Mr. Jackson to be active in Pilcop? Before the date of December the 9th of 1981.

A. I don't know the exact amount of years, all I know is that he was there because he was also a practicing attorney himself here in the City of Philadelphia. And I knew him also in that capacity.

Page 58.

State Rep. David Richardson - Cross

So I don't know directly what first year he went to Pilcop.

Q. Mr. Jackson was not only professionally associated with organizations like Pilcop and came to the aid of people who needed his services in the community, but he philosophically also believed in those types of issues, did he not?

A. Oh, yeah, Mr. Jackson was actively involved for a number of years himself out in the community. I think even before he went to Pilcop.

Q. And the organization members and the people who came to Pilcop for their services considered Mr. Jackson a top flight attorney, did they not?

MR. WILLIAMS: I am going to object to that question, Your Honor.

THE COURT: Objection is overruled.

BY MR. GRANT:

Q. You may answer, sir.

A. I guess that when you say, when you say he was a what?

Q. He was considered by the people in the organization Pilcop, both members and those who sought their services, as a top-flight attorney, is --

A. I don't know how they felt about him because I

Page 59.

State Rep. David Richardson - Cross

never asked them about that.

Q. How did you feel about him?

A. I thought he was a good lawyer.

Q. Now, in any event, he contacted you and you appeared and testified at a bail hearing, and that would have been in January, specifically January the 11th of 1982. And I know it's been 13 years, I am not trying to hold you to dates.

A. I can't, I wouldn't remember even if I tried.

Q. I wouldn't ask. But in fact you did appear to testify at that time?

A. Yes.

Q. And Mr. Jackson represented Mr. Jamal at that point in time, did he not?

A. Yes.

Q. And then five months later, roughly around June the 19th of that same year of 1982, the trial involving the indictment -- as Mr. Williams calls it -- of Mr. Jamal began. Did you attend those proceedings?

A. Some of them I did.

Q. And when you attended those proceedings in this very Courtroom, Mr. Jackson was seated over there at Counsel's table as the lawyers are arrayed here today, was he not?

Page 60.

State Rep. David Richardson - Cross

A. He was at the table.

Q. And did you acknowledge him or did he acknowledge you in the Courtroom on those days that you did show up?

A. No, there was no acknowledgement at that time. There was a lot of activity in the Courtroom and I don't think that I was ever acknowledged personally by him because he was handling the case. I did not talk to him and I did not have any communication with him at all.

Q. We are having a little competition: Do you think that you could either --

A. Speak up a little louder.

Q. Yes, sir, or you could simply pull your chair a little closer to the mike, that's probably the easiest way. Thank you, sir.

Now, you indicated that there was no opportunity, basically, for acknowledgement because there was a lot of activity about the periphery of the trial and in the Courtroom itself; is that correct?

A. Yes.

Q. And you said that Mr. Jackson was handling the case at that time?

A. I didn't say that.

Page 61.

State Rep. David Richardson - Cross

Q. Oh.

A. You said was he sitting at the table. I said yes he was sitting at the table. I don't remember because I don't recollect back that far to remember the case. I was in and out of the proceedings, that's why I attended some of them and I was not there for the full extent of the hearing.

Q. So you don't know whether or not he was handling the case?

A. No, I do not know whether or not he was handling the case or not, no.

Q. At the time of trial?

A. At the time of trial.

Q. Or at the time of sentencing?

A. Or at the time of sentencing, because I wasn't there.

Q. Did it puzzle you that Mr. Jackson would call you when the issue was a bail release of Mr. Jamal and have you come to court and testify on his behalf but then throughout a month-long trial and a day-long sentencing hearing, you would have no contact with him whatsoever when you knew Mr. Jamal intimately?

A. We raised the question later on to Mr. Jackson after the case was over why we never were called. In fact, we were probably in several meetings after that

Page 62.

State Rep. David Richardson - Cross

proceeding was over to ask why we were not called to testify, as well as other people in the community that knew Mr. Jamal at that time.

Q. And did you know what had changed between January the 11th of 1982 and the beginning of Mr. Jamal's trial on June 19th, 1982 involving his attorney status?

A. No, I think that there was a number of discussions about whether or not Mr. Jackson was going to continue to represent him or whether Mr. Jamal was going to represent himself.

Q. On the occasions when you appeared during the course of trial proceedings, did you not hear Mr. Jamal tell Mr. Jackson to sit down, that he doesn't want him as a lawyer, that he wanted John Africa, and that Mr. Jackson, you don't represent me; did you hear any of those statements?

A. I never heard that, no, sir.

Q. Did you know that Mr. Jamal himself was actually installed as his own Counsel by his own request beginning on June the 2nd of 1982 and that Mr. Jackson was thereafter not his lawyer as far as Mr. Jamal was concerned?

A. I did not know the date. I did hear about it just like others in news accounts that everyone else

Page 63.

State Rep. David Richardson - Cross

would hear that there was a discussion about the fact that Mr. Jamal was going to hear his -- was going to try his own case, but I don't know the circumstances that surrounded that, what made that happen, so I can't speak to that at all.

Q. And after you knew that Mr. Jamal was representing himself and in fact he was for all intents and purposes the lawyer, did you contact him to tell him I'm available if you need me to be a reference or a witness or to testify on your behalf?

A. No, I did not.

Q. Did he ever contact you and ask you to appear and testify on his behalf?

A. No, he did not. He was incarcerated.

Q. Yes, but he has access to phone service, I assume?

A. I don't know that, sir, I can not answer that question.

Q. Had you ever been to visit Mr. Jamal while he was incarcerated or awaiting trial?

A. Only here in this City Hall.

Q. I'm sorry?

A. Only here in City Hall.

Q. And when you, how many times, approximately, do you recall that occurring?

Page 64.

State Rep. David Richardson - Cross

A. Twice.

Q. Did you ever discuss your status as a potential witness for him on those occasions?

A. No, I did not.

Q. On those two occasions, was that before or after he became his own lawyer?

A. See, I don't know when he became his own lawyer. All I could say to you is that the times that I saw him have been since he has been incarcerated after he was found guilty and not before then. So it's been after, since the trial has been going on here in City Hall.

Q. Now, since you knew Mr. Jackson, he was a long-standing member of Pilcop, Mr. Jackson had every interest and every motivation, from what you could tell, to defend Mr. Jamal to the full extent the law permitted?

A. I can't determine.

MR. WILLIAMS: Objection, Your Honor, to what Mr. Jackson's interests were.

THE COURT: Overruled.

THE WITNESS: I can't determine what is in another person's mind, because we never did have any full discussion other than the time I appeared, sir, at the hearing, at his bail

Page 65.

State Rep. David Richardson - Cross

reduction hearing. There was no other time that I had any accounting with Tony Jackson until after the case was well over in 1982.

BY MR. GRANT:

Q. Do you know that none of Mr. Jamal's immediate family testified at his sentencing hearing, or in the trial?

A. No, I did not know that.

Q. Do you know why that was?

A. I didn't inquire because I was only concerned with Mr. Jamal and what he stood for for many of us who were actively out in the community talking about his particular case. I did not get into his family situation at all and I did not know whether they did testify or did not testify at the time.

Q. And so because Mr. Jamal was so beloved in the community for his activist voice and for his ability to stand up and take the heat when other people may have turned around and shirked their duties, is that why they erected after his arrest the Mumia Abu-Jamal Defense Fund to raise monies for his defense team?

A. My understanding was that there were some committees that were put together. There was a transportation committee, there was a fund-raising committee. There were speakers bureaus committees.

Page 66.

State Rep. David Richardson - Cross

There were a number of committees that were formed after that on behalf of Mumia, so I can't speak directly to the fund-raising committee because I was not involved in that, sir.

Q. Since you are very aware of Mr. Jamal's journalistic and community activist background, I assume you are aware that at some point those journalistic organizations that had had and enjoyed a relationship with Mr. Jamal felt it necessary to sever their relationship with him prior to the time of the homicide charges in this case, are you aware of that?

A. If you are speaking about a dispute -- and I don't know which radio station you are referring to, whether it was WKDU or WHYY or WDAS, because those are the only two stations that I am aware of -- I am not aware of any personal disputes that exist between their management and Mr. Jamal.

Q. But you are aware that he was no longer employed by any of these stations on December the 9th of 1981, are you not?

A. No, I am not aware. I thought that he was still participating as a journalist at one of those stations, that's why I can only remember those three stations. But I don't know if he had any involvement

Page 67.

State Rep. David Richardson - Cross

in any other radio stations then at that time.

So you are saying December 1 of 1981. I don't have any recollection of December 1 or December the 9th of that same year.

Q. Yeah, I am not trying to confuse you with dates, Mr. Richardson. What I am trying to refer to is the date that the murder in this case happened. And I am using that as a benchmark for recollections both before and after. And I prefer not to mention the fact of the murder but that's why I tried to couch it in terms of the date.

A. Okay.

Q. Okay? Now, were you aware as to whether or not Mr. Jamal was employed as a cab driver?

A. I did not find that out until later on after the broadcast came across that Mr. Jamal had been driving a cab, as a result of the, of the newscast that I heard about the incident that occurred on that date.

Q. And were you aware that he was actually not driving a cab, but he borrowed a cab from a cab driver when the cab driver was asleep so that he could make some money because he was unemployed?

A. I have no knowledge of that, sir, and I could not speak to that at all. I only can speak to what I

Page 68.

State Rep. David Richardson - Cross

know of Mr. Jamal and what I knew of him as an individual person who worked together in the community on issues that impacted directly on our community. Those were items concerning the police, cab drivers, et cetera, et cetera. I can not answer that yes.

Q. Did you participate personally in any of the groups that were erected to come to Mr. Jamal's defense, which is the transportation committee, the fund-raising committee, the defense committee?

A. Speaking of that, I have been involved in most of them with respect to his case with demonstrations and speaking all across this country. Including activities that we have participated in in New York and California. And recently Wisconsin.

Q. And you did this because you knew that Mr. Jamal was not

only a community activist but peace-loving person and you staunchly have defended him throughout these years?

A. Without question. I believed in Mumia because I knew Mumia and knew what he stood for.

Q. And did you know that he stood for the purchase in 1979 of a .38 caliber snub-nose and a shoulder holster to go with it?

A. Because he bought a gun, many people buy guns

Page 69.

State Rep. David Richardson - Cross

in the City of Philadelphia. Certainly I know you are aware of that. And I don't know what that has to do with me knowing Mr. Jamal. I know many people who are in this Courtroom that have permits to carry guns.

Q. Well, it goes to your representation that in your view he was a peace-loving, nonviolent person?

A. That's correct, because a person carries a gun does not mean that they are not peace-loving and law-abiding.

Q. Now, since 1982 when Mr. Jamal was convicted in this matter, have you been in contact with his lawyers -- Miss Wolkenstein, Mr. Weinglass, Mr. Williams -- regarding testimony here today?

A. Yes.

Q. And when were you first contacted?

A. Concerning?

Q. Concerning your representations that you were available for the penalty phase, you were not contacted by the attorney and you know not why.

A. I was contacted by Mr. Weinglass I guess about a year-and-a-half ago when he came to Philadelphia and met with the organizing committee at the Friends Services Center at 1501 Cherry Street.

Q. And when you say the organizing committee,

Page 70.

State Rep. David Richardson - Cross

what did that committee organize?

A. It organized the friends and family of Mumia Abu-Jamal.

Q. And did Mr. Weinglass or one of his associates assist you in preparing this affidavit which has been marked as part of their exhibits for the Petition in support of a Post-Conviction Relief, exhibit number 8? Did they assist you in preparing this, sir?

A. Yes.

Q. To what extent?

A. That after I wrote this they checked it for errors and edited, I guess, for the proper way to submit it to the Court.

Q. And paragraph number 3 there says, on July 3rd, 1982 I was available and willing to testify as a witness on behalf of Mr. Jamal at his trial during the penalty phase of his trial. Were you not available to testify at the guilt phase of his trial, that is whether he would be found guilty or innocent of these charges?

A. Well, as I understood it, I was indicating that I was available to testify at whatever point in time it would be necessary on behalf of Mr. Jamal if I had been called. I think they fixed the dates to them because I don't know the dates.

Page 71.

State Rep. David Richardson - Redirect

Q. So you are saying you would have been available to testify at any time and every time that you were needed, not just at the penalty phase?

A. Exactly. In other words, if I had been called.

Q. And what would you have been called for at the trial, can you give us an idea?

MR. WILLIAMS: Objection, Your Honor: He is not competent to answer that question.

THE COURT: Oh, I think so. Overrule the objection.

BY MR. GRANT:

Q. What testimony could you offer at the guilt phase?

A. If there was a guilt phase I would answer as a character reference.

MR. GRANT: I see. Thank you. I appreciate it. Nothing further, Your Honor.

MR. WILLIAMS: Your Honor, just a few questions.

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REDIRECT EXAMINATION

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BY MR. WILLIAMS:

Q. Mr. Grant asked you some questions about

Page 72.

State Rep. David Richardson - Redirect

remarks that Mr. Jamal made during the course of the trial. Do you remember those questions?

A. About Mr. Jackson? Yes.

Q. Okay. During your time that you observed the trial, were you ever present when His Honor Judge Sabo instructed Mr. Jackson that he had a moral and ethical and legal duty to represent Mr. Jamal to the best of his ability? Were you ever there for that?

A. Umm, no, I was not. I do not recall those comments. I heard similar statements made but I do not recall that statement.

Q. Okay. And the last question is: You were asked about various committees that were formed in connection with the case against Mr. Jamal, right? Was it pretty obvious from your standpoint as a person in the community that there was considerable support for this man during the course of his trial?

A. Overwhelming support. In fact, one of the things that many recognize is the fact that that's why there is so much confusion out in the hallways and out in the streets today: Because there's been that support all along. And he has received that internationally as well as locally.

Q. So if an attorney was sitting in this seat here during the course of that trial, it would be

Page 73.

State Rep. David Richardson - Redirect

obvious to that attorney that there was considerable public support for his client?

A. I would certainly think so.

MR. WILLIAMS: Mr. Richardson, thank you.

MR. GRANT: I have nothing further, Your Honor. Thank you.

THE COURT: All right, you are excused.

THE COURT OFFICER: Watch your step, sir.

(Witness excused.)

THE COURT: Your Honor, the next witness that the Petitioner calls is E. Steven Collins.

MR. GRANT: Since Mr. Collins is not an affiant supporting their Petition and we have received no items to indicate what he would testify to, I ask, A, for an offer of proof, and then I would ask Your Honor to entertain a motion to preclude.

MR. WILLIAMS: Well, the offer of proof is it is a continuation along the lines of the testimony we have just heard. Mr. Collins was a colleague of Mr. Jamal, he also is in the

Page 74.

E. Steven Collins - Direct

field of radio broadcast journalism and will describe his relationship to Mr. Jamal in connection with being a colleague of his. Along, with being a friend.

(Discussion was held off the record at this time.)

MR. WILLIAMS: I also would like to remind the Court that they've had his name for eight days.

MR. GRANT: That doesn't make him a part of the Petition or an affiant in the matter, but if this will expedite the process let's have him.

MR. WILLIAMS: I appreciate Mr. Grant's concession.

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E. Steven Collins, having been duly sworn,
was examined and testified as follows:

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DIRECT EXAMINATION

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BY MR. WILLIAMS:

Q. Mr. Collins, thank you for coming in this morning. You are aware that you have been asked to testify in connection with a Petition that has been

Page 75.

E. Steven Collins - Direct

filed by Mr. Jamal?

A. Yes.

Q. And that's a Petition for a new trial: You are aware of that?

A. Yes.

Q. By the way, Mr. Collins, are you a resident of Philadelphia?

A. Yes.

Q. How long have you been a resident of the City?

A. My entire 40 years.

Q. And do you work here in Philadelphia?

A. Yes, I do.

Q. What kind of work do you do?

A. Host a talk show on WDAS radio; I also do sales at WDAS radio.

Q. How long have you been working at that radio station?

A. It will be 19 years in June.

Q. By the way -- I will allow you to do a little promotion for the radio -- what station, what kind of a listenership does it have?

A. It's the number one 25-54 radio station the last four Arbitron books. Focus is on adults, African Americans in the Philadelphia area.

Q. Now, by the way, what is your educational

Page 76.

E. Steven Collins - Direct

background, sir?

A. I have a degree from Temple University in radio, television, film; and I graduated West Catholic High School.

Q. And are you a member of any professional organizations? Community organizations?

A. I am a member of the Association of Black Journalists in Philadelphia. I am a board member of the Philadelphia Ad Club. I am involved in a variety of community organizations: Concerned Black Men, Police Athletic League, a number of them.

Q. By the way, Mr. Collins, have we met, you and I?

A. Just once to discuss this.

Q. This proceeding?

A. Correct.

Q. Okay. Do you remember when you and I met?

A. It was about a week ago.

Q. And that's the only time?

A. Yes.

Q. Now, do you know Mr. Jamal?

A. Very well.

Q. Did you know him back in 1982?

A. Better.

Q. You did?

Page 77.

E. Steven Collins - Direct

A. Yes.

Q. And were you aware that back in 1982 he was under indictment?

A. Yes.

Q. And were you aware that there were proceedings that were conducted in this Courthouse in connection with that indictment?

A. Yes.

Q. Did you attend any of those proceedings, Mr. Collins?

A. No, I did not.

Q. You did not. Did you know a man by the name of Anthony Jackson back in 1982?

A. Yes.

Q. What did you know him to be?

A. He was an attorney, I believe he worked for the Philadelphia Public Interest Law Center.

Q. Did you know if Mr. Jackson had any connection with the proceedings related to Mr. Jamal?

A. Yes, I did. He was, he was a Court-appointed attorney at that time. For a period of time.

Q. Now, in late June and early July of 1982, were you here in the City of Philadelphia?

A. Yes.

Q. You were living here?

Page 78.

E. Steven Collins - Direct

A. Yes.

Q. Were you working here back then too?

A. Yes.

Q. Where were you working back then?

A. WDAS radio.

Q. Okay. So I take it you were available, you had the ability to come to court if someone were to ask you to come to court?

A. Absolutely.

Q. Back in 1982?

A. Absolutely.

Q. Had somebody asked you to come to court and testify on behalf of Mr. Jamal as a character witness, would you have been willing to do that?

A I would have jumped. I definitely, positively would have been available and would have been willing to do so.

Q. When you say you would have jumped, I take it that you would have no reservations at all?

A. At all, none whatsoever.

Q. Okay, now let's turn our attention to how you knew Mr. Jamal, okay. Can you share with us the circumstances under which you began to know Mr. Jamal?

MR. GRANT: Objection, Your Honor. If

Page 79.

E. Steven Collins - Direct

Mr. Collins would have appeared as a character witness it is instructive for us to know his background but his only testimony relevant to this proceeding would be I knew others who knew Mr. Jamal and their opinion. would be X.

MR. WILLIAMS: That would be true at the guilt phase, Your Honor, but not as a mitigating witness in the penalty phase.

THE COURT: He said he would be available as a character witness.

MR. WILLIAMS: At the penalty phase. I could use the term mitigation witness, but.

THE COURT: We use the testimony of the character witness in the penalty phase. That is used.

MR. WILLIAMS: The term character witness.

THE COURT: Reputation. That is used in the penalty phase. And the Jury is instructed whatever they use in the primary case goes over into the penalty case.

MR. WILLIAMS: Precisely. What I am asking him now and what I am directing his attention to is if he was, if he had been asked to testify in the penalty phase --

Page 80.

MR. GRANT: I withdraw my objection, then.

MR. WILLIAMS: Very well. Thank you.

BY MR. WILLIAMS:

Q. Can you now explain the circumstances under which you began to know Mr. Jamal?

A. I heard Mumia on the radio when I was a student at Temple University. He was on WKDU, which was Drexel's radio station. And he did a commentary on a young brother who was shot. And I didn't know the brother and I didn't know the circumstances, but in three minutes it felt like I had a keen, a keen insight into what happened and Mumia's conclusion was compelling and it encouraged people to think about the value of life. And I thought I would like to meet him.

Several weeks later a person had a news conference and he coincidentally and I happened to attend and we met. And began for me a mentoring relationship in my pursuit to do commercial news broadcasting in Philadelphia. Mumia was a mentor.

Q. Okay. To be clear: This news conference that you attended, you are referring to Mr. Jamal as the person that you met there?

A. Correct.

Page 81.

Q. And you are referring to Mr. Jamal as the person that you developed this mentoring relationship with?

A. Correct. He was a reporter and I was a student reporter. And that's the basis of our initial relationship.

Q. Was it important to you at that juncture in your life to establish a mentoring relationship with somebody?

A. Yes.

Q. Help us to understand why?

A. Well, the nature of broadcasting in a major market is extraordinarily competitive and therefore you need to know or should know someone who understands that and can direct you in that area.

Mumia was my age but had an exceeding wealth of experience, an understanding and a genuine care about me and other people who wanted to be in broadcasting. He also was an extraordinary reporter at that time. Even though we were, we were not in mainstream broadcasting.

Q. Mr. Collins, what kind of qualities do you regard as being important for a good mentor?

A. Well, I think in this particular field one needs to know writing, needs to understand how to --

Page 82.

one needs to have a real serious grasp on the language, on English. And understand how to write concisely. Must have contacts. Must be involved.

And Mumia had that. But I think the thing that separated him at that time, the way I remember him at that time was a serious concern for people which transcended just reporting a news story. He wanted to know the condition of people. And he told stories. I mean that's basically what he did. He did it in a very professional way. He had an eloquent style, and he had, has a commanding voice. But essentially, he wanted to tell the story of people. All people and specifically African-American people in the City.

Q. Okay. Mr. Collins, I have met many people who have enormous gifts but they would be terrible mentors. Is there something about the fact that he has enormous gifts but he was able to transmit those gifts to you?

A. Oh, yeah, absolutely.

Q. Tell us about that?

A. Well, he had an interest in my career. That was just based on Mumia. If you, if you knew him you would understand that. He just felt that he had a responsibility to give something to me and to other

Page 83.

people. You know, I mean that's what he did. He went out of his way. We used to, he helped me to get on WHAT radio, which was my first commercial job. He was going to WPEN radio to work the night and he had WHAT. He thought I was pretty good. I thought he was the greatest voice and greatest journalist I had met, beyond some of the people that I had worked with at the Inquirer. And when he got the job at 'PEN he talked to the program director at WHAT, and he didn't really ask, he told them that I would be his replacement. And I was.

During the years or the months following my starting at WHAT, Mumia would call me up and tell me how I sounded, what I did, what I didn't do right. If there was a hot-breaking story wherever it was, he told me I should get a police radio scanner. We both had them. We used to stay up real late listening, finding out where news was breaking. Could be a fire, could be any neighborhood. Could be any issue. We broke a lot of stories. We competed to bring stories.

We used to have a system in Philadelphia concerning UPI and AP. The United Press International and Associated Press. And if you broke a story, they would credit you with your last name

Page 84.

and your radio station's logo. And after a few weeks, we would compare who broke the most stories. We did that a lot.

Q. Was this in good-natured competition?

A. Absolutely. It was good for me because it taught me not just how to read a story and to be concerned about information, but it taught me, you know, how the District Attorney's Office worked, about the police charging function of the D.A.'s Office, how the Police Department worked, how media worked in a major market. It was essential. And it was just really important.

Q. What I am hearing from you, Mr. Collins, is that Mr. Jamal is a man very willing to share what he has; am I hearing you right?

A. Absolutely, absolutely.

Q. Aside from his willingness to share what he has with you, was there anything about his skills as a professional journalist that affected you personally? Do you understand?

A. Absolutely. There were so many different stories that were covered by the major media in Philadelphia, yet when Mumia covered a story it was a different story all together.

Q. How was it different?

Page 85.

A. Well, Mumia has an ability to describe details in a way that is unique, complexions, and how people look and they feel. He had a way of translating human emotion through the radio so that no matter where you were you understood the circumstances. I think of him as I think of Dr. King. Because Dr. King did that. Dr. King was able to tell a story from a prison cell through his writings in such a way and delivered with a patient kind of oration in such a way as to create a certain awareness that was beyond what was written in the newspaper.

Mumia had that ability, he probably still has it. It's something that he did it, he did relatively natural. It looked easy for him. But for me and for anybody else trying it it was extremely difficult. So I mean on a professional level, that I think impacted on me and just about everybody else who worked with him or hired him in the many radio stations he worked at here in Philly.

Q. He made you feel, feel for the story?

A. Absolutely. He made us understand the pain, suffering, loss or great victory. Could be a '6ers game, or a fire and the family was burnt out, or a homeless condition or whatever. I mean that's...

Q. Now, as a journalist yourself, is it difficult

Page 86.

E. Steven Collins - Direct

to convey to people who are listening to a radio program the pain that's intrinsic in a story, the suffering that is intrinsic in a story, the joy that is intrinsic in a story, is that difficult to do?

A. Yes, it can be. It depends on what the story is. Radio is a medium of imagination. And it's also in our medium, where we are music intensive, a short thing: You have to tell a story in 30 or 45 seconds. You have to tell who, what, where, why, when and how.

Mumia had an ability to tell that story in a relative short period of time that was piercing. And you, people used to say radio news is a tune out. But when Mumia was on people turned it up. He had a great, great command of language. He had an absolutely recognizable, predictable truism for people and the condition of people and he conveyed that every time he opened the microphone. So in that way I was impacted, but millions of people in the tri-state Philadelphia area who heard him were as well.

Q. Is there any event, Mr. Collins, looking back over those many years, that stands out in your mind as particularly moving to you?

A. A particular event...

Q. A particular broadcast or something along

Page 87.

E. Steven Collins - Direct

those lines?

A. The first time I heard him on the air was particularly. It was about one African American who was killed by another for no real reason. I don't know if it was over sneakers, but it was over a superficial reason. Mumia focused on the importance of life. And he focused on it to say to the audience that we take life too superficially. And that was the focus and it was just, I can't remember and I feel bad that I can't remember it exactly word-for-word the way he said it, how he said it and the words he used, but I got the message. It was, and it was on the small college station, Drexel's WKDU. That was the trademark.

Q. What did that tell you about him, that he was able to convey, to impress that on you through his voice?

A. Well, again, Mumia and I are very close, I am very close to his family. I have known him for a long, long time. And I knew his mother.

MR. GRANT: Your Honor, I object. First of all, I have been giving Counsel considerable latitude in his leading questions, which 85 percent of them are. But also I would object that the answer is not responsive to the

Page 88.

E. Steven Collins - Direct

question. What did that tell you and he begins a biographical description of Abu-Jamal. I would move to strike.

THE WITNESS: It was not a biographical --

THE COURT: Repeat your question, rephrase your question so he could answer it correctly.

MR. WILLIAMS: Let me move on, Your Honor.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. You described a lot of qualities about Mr. Jamal as a journalist?

A. Hmm-hmm.

Q. You have described how he's been able to convey the pain, the suffering, the joys of a news story. Can somebody in your, in your position as a professional journalist, in your view, can somebody act that? Can somebody mimic that? Do you understand what I'm saying?

A. Yes. The answer is no. I don't think that you can, my feeling is that you can't pretend to present on that consistent a basis that kind of caring about people you don't know but you care

Page 89.

E. Steven Collins - Direct

about.

Q. You also used the term that radio journalism is imagination?

A. Absolutely.

Q. Right. So I take it that broadcast journalism, radio broadcast journalism in many respects is not an activity that one performs from the neck up, but that it requires an enormous amount from the heart?

A. It can. Or one can be very by the facts, you can just simply tell the facts. In all-news radio that works regularly because that's the format. In radio news or even in television broadcast news, with an editorial or a commentary, one's opinion is the heart of what you are talking about, you would think that you would have some passion about the thing that you have the opinion about. And in that regard Mumia's reports, which were often commentaries on WKDU, were passionate. And that was not without reverence.

Q. And was that a unique quality among radio broadcast journalists?

A. Some of the special ones it's standard. You know, I think of Osgood or some of the other people in the country who are just incredible in their

Page 90.

E. Steven Collins - Direct

ability to write a story and convey a message. And I clearly put Mumia in that category. But locally I don't know too many radio broadcasters who are quite that patient about a story or conveying a message.

Q. Okay. Let me make sure that this is clear. At the time of this unfortunate episode back in late 1981 --

A. Right.

Q. -- did Mr. Jamal have the potential to become a broadcast journalist on the scale of Charles Osgood or Ed Bradley or people like that?

A. It was, it was, that was expected. I mean everyone who ever heard him or knew him at the many radio stations that he worked at expected that. I mean that was just a forgone conclusion that he would become that as he moved along the ladder.

Q. Do you know what was important to Mr. Jamal as a journalist, what his values were as a journalist?

A. Sure. He, he felt that we had a responsibility as journalists to hold people accountable generally. Specifically as African-American journalists we had a responsibility to our community and to hold everyone accountable. After working with him I felt almost as though I was elected to a position of reporter. You just couldn't

Page 91.

E. Steven Collins - Direct

accept what the wire services said or the newspaper said about what happened in the community, if you knew Mumia, you had to find it out. You had to report it. And you had to stay with it. And that's the measure I think of his ability as a reporter.

Q. He inspired you as a journalist?

A. Absolutely. Absolutely.

Q. What about linking, did he link his craft as a journalist to anything within the community itself?

A. I would think so --

MR. GRANT: I would object, Your Honor: It is leading, it has been asked and answered.

MR. WILLIAMS: I am trying to direct his attention to a particular area.

THE COURT: Rephrase your question, will you.

BY MR. WILLIAMS:

Q. Did Mr. Jamal, where did he focus his journalistic craft to?

A. Well, often, a lot of stories that Mumia covered were stories that Mumia uncovered. Things that he found that were newsworthy. That were not on an editor's sheet. Things that were happening in the community that were important things.

Page 92.

E. Steven Collins - Direct

He was also the president of the Association of Black Journalists in Philadelphia. And through that position affected journalists in the Philadelphia area who were members at that time and student members who were also members at that time. Students from Temple University and some of the other schools in the area. But he was very, very, very interested in the community. That was seemingly his trademark.

Q. In what aspect of the community was Mr. Jamal most interested?

A. Usually people who needed a voice. People who were out of work. People who were protesting cuts in subsidies for, you know, all sorts of things. From children's meals in schools. He did a story once I remember on the public school system and it's lacking in relationship to academic expectation and achievement levels. And predominantly low-income schools in the Philadelphia area. It went beyond a report. It was a passionate series of reports on that particular issue. Anybody who heard that I would think would be compelled to want to make some changes with respect to public schools in Philadelphia.

Q. Have you ever heard Mr. Jamal described as the

Page 93.

E. Steven Collins - Direct

voice of the voiceless?

A. Sure.

Q. Have you ever heard that?

A. Yes.

Q. Does that have any meaning to you?

A. Yes, absolutely.

Q. What meaning does it have?

A. Well, again, if you are standing in an employment line or in a welfare line and you get a short treatment, as the people do on that level, Mumia would articulate and illuminate their condition in an incredible way. And he did it in a variety of ways. He wrote papers, he wrote his news stories, he appeared on public affairs shows. He was a person that anyone could go to to attempt to get somebody to listen. And he seemingly on a regular basis presented that kind of information.

Q. Mr. Collins, have you ever related with Mr. Jamal outside the confines of work, that is on a personal level?

A. Sure, all the time.

Q. (Indicating.)

A. He was a good friend, he is a good friend. He knows my family. We got together for a number of times at his parents' home. You know, we were, we

Page 94.

E. Steven Collins - Direct

were very close. In fact, on the night of the shooting incident he was at my house. We had dinner. He and former State Senator Milton Street and his wife and the young lady I was dating. He left about 1:OO a.m.

Q. Was there anything unique about his demeanor, about his temperament on that last night that you spent with him?

A. Mumia was, you know, consistently the same temperament. He always ended the conversation by saying peace. And he meant it. He always seemed to have a pretty even-keel personality. He had a way of holding his feelings until he sort of sorted it out and then he would tell you how he felt. He has an incredible intellect. He is the life of any social event. Because he would sit down, and people may be partying or eating, but they would stop and listen. Because he just from an early age was very well read. And had an incredible insight in persuasion or debate, if you will.

Q. You said you spent some time in Mr. Jamal's home?

A. I spent time in his mother's home and at other locations that his family was at.

Q. Were you able to observe how he related to his

Page 95.

E. Steven Collins - Direct

mother, for example?

A. He loved his mother. He was, he lived for his mother. He was the only person I know who called his mother by her first name. He was, he was....he was very respectful and loving of his mother, he put her first.

Q. What about with members of, other members of his family?

A. He was very close to Billy, his brother. He was very close to Lydia. He is close to his family. I mean all of his family were, they were very close, very close-knit family, it was obvious.

Q. Were you aware that he has a twin brother?

A. No, I was not.

Q. You mentioned the name Billy. Is that Billy Cook?

A. Yes.

Q. Do you know what kind of relationship he had with Billy Cook?

A. Very close, extremely close. They're brothers. Very close.

Q. Did Mr. Jamal have a concern or take a concern for Billy Cook's welfare?

A. I would think so. I saw at various times -- Billy was a vendor and Mumia was very -- and he would

Page 96.

E. Steven Collins - Direct

see him on a regular basis. We have a story in Center City, or if I saw him downtown, you would kind of think that Billy would be close, or vice-versa. They were close.

Q. What about were you aware that Mr. Jamal had children of his own?

A. Yes.

Q. Did you ever have occasion to see what kind of father he was to his children?

A. Yes.

Q. Could you tell us about that?

A. He was very, he lived for his son Mumia -- Amassi, rather, his daughter and his other son. He was very close to them. He provided for them. He was at times a little, I thought, preoccupied with making a better income and providing better for them. Which I think was one of the reasons why he moved from one station to another: In search of a better, you know, income to take care of his family.

Q. So you knew Mr. Jamal even at that level?

A. Yes.

Q. Of his concerns for his income and care for his family?

A. Yes.

Q. There was that kind of interplay there?

Page 97.

E. Steven Collins - Direct

A. I had a very close relationship with one of his children. And I think I know his other children very well.

Q. Is there anything in your entire experience with Mr. Jamal that led you to believe that he had any kind of bent towards violence?

A. See, that's the whole, that is the whole question here. I knew, I've known Mumia for a long, long time. During that period prior to this incident we were very, very close. And in searching my mind, I can't remember one time where there was ever a discussion, any hostility, verbal or otherwise, towards any law enforcement, or even a philosophical view that would suggest that.

He talked about the members of MOVE like people. Family members. Like they should have been talked about. The media talked about them like they were from Mars or something. They were sons and daughters of people, you know. And Mumia approached that when he reported about them. He kind of was conscious, I mean he reminded people that people that were

unlike the standard group are people too.

So I don't know, I just, you know, as all this occurred, in my mind I thought a million times about, you know, this whole preoccupation with

Page 98.

philosophical and some bent on hurting law enforcement or whatever. And I don't remember ever, ever, ever hearing that or having a discussion with Mumia or other people where that came up or that was principal or centerpiece as he has been treated in many news stories since this occurred.

MR. WILLIAMS: Mr. Collins, thank you very much.

MR. GRANT: May I, Your Honor?

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CROSS-EXAMINATION

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BY MR. GRANT:

Q. Good morning, Mr. Collins.

A. Good morning.

Q. I have heard your voice many times.

A. Thank you.

Q. I heard your broadcasts myself. So I will take your word as to the immense talents of Mr. Jamal. You say that you were with Mr. Jamal on the night that the shooting occurred?

A. Yeah, he was at my house, my apartment. He stopped by. I don't remember exactly the time but he stopped by. We, we had dinner. There were some other people there. And it was a great, a great

Page 99.

evening. Anytime Mumia was around it was a great evening.

Q. Do you know or do you recall how he arrived there, that is by --

A. No, I don't know the mode of transportation, if that's what you mean.

Q. And was his brother there also: Billy?

A. No, he was not.

Q. You indicated, sir, that because you were having a good-natured competition with Mr. Jamal for breaking news stories that you both had police scanners?

A. That's right.

Q. Did he have a police scanner that night?

A. Umm, I don't remember. We didn't -- this was some time, this was some time from those days. When we had all that kind of thing going on, we lived for radio news. And there was very little else going on. That night I don't -- we got into a discussion with Milton Street on politics and world events and that's the focus of it and so we were not preoccupied with local, current-breaking stories.

Q. Now, you knew Mr. Jamal from his efforts at his work, his obviously talented journalistic voice, and his activism at WPEN, WHAT, WDAS, and WKBU?

Page 100.

A. KDU. And WHYY, and on broadcasts for National Public Radio, for the National Black Network. A variety of other outlets.

Q. Do you know whether or not on the evening that he came to your house before the shooting is alleged to have occurred, whether he was employed at any of these radio stations?

A. No, I do not.

Q. Now, since he had such wide-based support and such an impact on the community, there is no question that hundreds of people could have occupied your position in that had they been asked they would have testified on his behalf, I assume. Did you make any effort to contact Mr. Jamal and tell him I'm here for you if you need me, or I'm willing to come to Court and testify for you?

A. I never verbalized that phrase but if you needed me I would. And again, I knew Tony Jackson. And I'm sure Tony had my home number, so.

Q. Did you ever contact Mr. Jackson and tell him I think I have uniquely insightful information about Mr. Jamal, about his character?

A. I don't, I don't remember, I really and truly don't. I believe during that period I had some conversations with Tony, but I do not remember the

Page 101.

specific nature of what we talked about.

Q. Is it implicit within your testimony, Mr. Collins, that Mr. Jackson should be faulted because you didn't testify on behalf of Mr. Jamal?

A. I don't know that --

MR. WILLIAMS: Objection.

THE COURT: Overruled.

THE WITNESS: I don't know that I should. I don't know. I don't know in the sense that I don't know all the facts and I don't know exactly what in fact he did do. And then I don't know at what point Mumia expected him not to represent him. So I don't know. I really don't know.

BY MR. GRANT:

Q. Were you working at WDAS from December of '81 up through July of '82?

A. Yes.

Q. Was Mr. Jamal working there at that time with you?

A. December of '81 through... no, he was not.

Q. When had he last been employed there with you?

A. I don't remember exactly the date he was, he was working. I kind of felt that I should pay him back for helping me get to WHAT. So he was not

Page 102.

working, I talked to our general manager about him working at WDAS, which occurred for a period of time, I don't know the exact dates, but.

Q. Also you were instrumental in him working at WDAS?

A. I would like to think so, yeah.

Q. And when he left that employment, was that by mutual consent?

A. I suppose. I don't know, I wasn't involved. I didn't hire him and I wasn't his supervisor.

Q. I see.

A. I was just a person who thought that he was extraordinary. And after they heard him they agreed and he was on the air. I don't know if he took another job because it was a better position or why he did that.

Q. On the night that you saw him on the night of the tragic events that later transpired, were you aware or did you know that he was driving cabs at that time for a living?

A. No, I didn't know.

Q. Did you or have you contributed efforts, whether they be journalistic, social, activism, or money, prior to the date of Mr. Jamal's conviction, to his defense effort?

Page 103.

A. Yeah. You could say that.

Q. Money?

A. No.

MR. GRANT: Thank you, sir.

THE WITNESS: You're welcome.

MR. GRANT: Excuse me, if I may, Your Honor, with the Court's indulgence. I have nothing further.

MR. WILLIAMS: Nothing further, Your Honor. Thank you, Mr. Collins.

MR. WEINGLASS: Your Honor, the Petitioner now calls Ken Hamilton.

MR. GRANT: Your Honor, if this is a non-affidavit-bearing witness, I would stipulate that they would be available to testify and would have been so inclined had they been called. However, Mr. Hamilton, like the last witness, and, I assume, the next witness, under the rules of the Post-Conviction Relief Act, I believe has to be an affiant.

And I will stipulate to his testimony, Counselor, if that's what you would like on the record, but I would object to him testifying.

MR. WILLIAMS: We decline the invitation for the stipulation. We appreciate

the offer but we believe that his testimony, the substance of his testimony is vital for our Petition.

THE COURT: Vital?

MR. WILLIAMS: It is now the first time they are raising the issue of the affidavits. We initially told the Court that there was this rule of an affidavit, and that we would need time to prepare affidavits.

MR. GRANT: I raised it last week, if you recall, Judge. I said I would be asking you to entertain a motion to preclude those witnesses who did not have supporting material.

THE COURT: What he wants to know is what's he going to say.

MR. WILLIAMS: Okay, I will tell him.

Mr. Hamilton was Mr. Jamal's high school history teacher. And he became friends with Mr. Jamal in connection with that teacher-student relationship. And he will describe in considerable detail about that relationship. And again it goes to the mitigation phase of the trial.

MR. GRANT: Counsel would be considered ineffective if his testimony was not

forthcoming, so rather than have a third issue I am going to remove my objection from the record.

THE COURT: Okay.

- - - - -

Kenneth Hamilton, Junior, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

MR. WILLIAMS: May I inquire, Your Honor?

THE COURT: Sure.

MR. WILLIAMS: Thank you.

BY MR. WILLIAMS:

Q. Mr. Hamilton, good morning. Or good afternoon.

A. Good afternoon.

Q. I appreciate you coming in. Do you live here in the City of Philadelphia?

A. Yes, I do.

Q. How long have you lived here?

A. 53 years.

Q. All right. Are you employed?

A. Yes.

Q. Where are you employed?

A. Philadelphia School District, Benjamin Franklin High School.

Q. What you do you do at that school?

A. For the last 30 years I have been a history teacher, and basketball coach for the last 24 years.

Q. Now, you're aware of why you have been asked to testify here?

A. Yes.

Q. You know that Mr. Jamal has filed a Petition for a new trial?

A. Yes.

Q. And have you and I met?

A. Yes.

Q. Okay. When, how many times have we met?

A. Once.

Q. Once. And when was that?

A. Last Monday, I think it was Monday or Tuesday, I guess.

Q. Of last week?

A. Yes.

Q. Okay. And you know Mr. Jamal, right?

A. Yes.

Q. And you knew him back in 1982?

A. Yes, I did.

Q. Is that right?

A. Yes.

Q. And were you aware that back in 1982 he was charged with a crime here in Philadelphia?

A. Yes, I was.

Q. And you were aware that he went to trial?

A. Yes.

Q. On charges?

A. Yes.

Q. Right. Did you attend any of those proceedings, Mr. Hamilton?

A. No, I did not.

Q. You were aware that those proceedings were occurring at the time?

A. Yes.

Q. How did you know that they were occurring?

A. Through the news and other past students that I had who also knew, students that went to school with Mumia who also knew that I was familiar with him, that I was keeping up with him, and the news, that's how I was aware.

Q. Was there any impediment, any illness or anything that would have prevented you from coming to this Courthouse to testify had you been asked?

A. None whatsoever.

Q. Would there have been any reluctance on your part to come in and testify on Mr. Jamal's behalf?

A. None whatsoever.

Q. Now, did you know the attorney who was appointed to represent Mr. Jamal?

A. Just through I heard his name, who this was, yes.

Q. His name was Mr. Jackson?

A. Jackson, yes.

Q. Okay. Had you had any discussions with Mr. Jackson or anybody affiliated with Mr. Jackson about the possibility of your testifying?

A. No.

Q. Nobody ever contacted you?

A. No one.

Q. Now, can you tell us when you first met Mr. Jamal?

A. 1969, 1968. As a student of mine at Ben Franklin High School.

Q. What class was that?

A. History.

Q. You were teaching history?

A. Yes.

Q. And he was a student?

A. Yes.

Page 109.

Kenneth Hamilton, Jr. - Direct

Q. How long did it take you to take notice of him as a young, as an adolescent?

A. The first day that we ever met. The first day of class.

Q. The first day of class?

A. Yes.

Q. What was it about the first day of class, Mr. Hamilton, that made you aware of Mr. Jamal's presence?

A. I was impressed by his intelligence, his sincerity, he was very well read for a young man of his age and he stood out as far as the rest of the class.

Q. You could tell that on the first day?

A. Absolutely.

Q. Now, over the course of time as you were teaching history in that class, did your impression of him as a student change at all?

A. No, it got, I was even more impressed as we got to know each other.

Q. Can you share with us, Mr. Jackson, what kind of student he was? Mr. Hamilton, I'm sorry.

A. Yes, he's very intelligent. You can see that he had been, that he was well-read. And outspoken. He voiced his opinions. His opinions were usually

Page 110.

Kenneth Hamilton, Jr. - Direct

based on facts. Which a lot of young people at his age, they have a lot of opinions but many of them are not basing it on what they read. And that stood out.

And also we used to use Mumia, or it was Wesley then, as a student-mediator. Because in those days at Ben Franklin High School we used to have a lot of mobs with gangs and gang war. And Mumia was very good with his peers. And as a matter of fact, when we heard that there might be a gang problem, because Mumia lived in the area where one of those gangs came from, we used to use Mumia to help keep calm, and he had a very calming effect on his peers.

Q. Now, you said that he was well-read?

A. Yes.

Q. As a teacher of high school students, do you feel that you're in a position to detect when a student is well-read?

A. Yes.

Q. What do you look for to determine whether a student is well-read?

A. What they are basing their opinions and statements on. And just whether they make sense as far as experiences beyond their neighborhood and the things that are in the immediate environment.

Page 111.

Kenneth Hamilton, Jr. - Direct

Q. Did you have the benefit of reading any of Mr. Jamal's writings as a tenth grade student in your class?

A. Yes.

Q. What was the quality of his writing?

A. Oh, excellent. You could see that this, he was different, he was someone that had a lot to offer.

Q. A lot to offer. What do you mean by that?

A. Well, he would impress his peers. Once again, especially the gang members, he could really make them feel bad about wanting to kill each other and beat each other up and things like that. He would put things on their minds. The same things we as adults do, but coming from their peers it would be more meaningful.

Q. He was able to communicate with these gang members, as you described them, through words?

A. Yes.

Q. And you said that he was outspoken, you used the word outspoken?

A. Yes.

Q. That has many connotations. What was the kind of tone, tenor of his outspokenness?

A. It was one of calming. And when I say

Page 112.

Kenneth Hamilton, Jr. - Direct

outspoken, unfortunately, many of my students, they're ashamed of good deeds. They are ashamed of speaking out and being known as someone that is good with words and has read. And when I say outspoken, Mumia has never been ashamed of that fact. He was proud of that. And that's one of the things that we try and work with to get many of our young people to be proud of those types of endeavors.

Q. Now, you said that he had a skill in dealing with these gang members?

A. Yeah.

Q. Was that skill known to other faculty members at Ben Franklin?

A. Yes.

Q. Was it ever a subject of discussion?

A. Yes.

Q. Can you share that with us?

A. Well, I was dean of students at that time. And I would have many meetings with the principal and vice-principal and other people in charge. And any time that I would bring up or one of them would bring up the fact that we thought Mumia might be able to help us again with one of these conciliatory jobs, there was never any doubt that's what we should do.

Q. Wait a minute, Mr. Hamilton. You are saying

Page 113.

Kenneth Hamilton, Jr. - Direct

that teachers would meet and discuss using Mr. Jamal, a tenth-grade student, to help with some of the problems in the school?

A. Yes.

Q. Is that unusual?

A. Yes.

Q. Have you ever met a student quite like Mr. Jamal?

A. Not quite like, but fortunately, because I have been there for so long, there have been a few of us who have come along like him. But there is a very small group.

Q. It is a unique group?

A. Yes.

Q. A select group?

A. Yes.

Q. Now, speaking now about back when you were teaching him as a tenth-grade student, did you have expectations of him as a teacher?

A. Yes.

Q. To go on after graduating from high school?

A. Yes.

Q. What kind of expectations did you have of him?

A. Well, college just seemed to be the natural progression. And when he showed interest in

Page 114.

journalism and those areas, doing some of the things that he accomplished on the radio, and in the news, and, well, we helped send him to Goddard to, you know, to pursue his journalistic skills.

Q. Goddard is a post-high school institution?

A. Yes.

Q. Why did you believe that he would ultimately make a success of himself in this career choice of his?

A. Because he, he was sincere, he was serious. You know, it was something that he really was going to work at and he had already proven to me that those types, those things that you really wanted to do like that, that he had the ability to accomplish them.

Q. As a teacher, do you believe that discipline is an important quality in a student?

A. Yes. Very important.

Q. Did Mr. Jamal have that quality?

A. Yes, he, he was able as begin as a young person, just the fact that he would spend as much time reading and discussing shows discipline that I wish that many more of my students would use in those areas.

Q. When you remember teaching Mumia in a class, did Mr. Jamal ever ask questions or contribute

comments?

A. Constantly.

Q. Constantly?

A. Yes.

Q. How did the other students react to that?

A. In the beginning there would be a murmur as to why doesn't he shut up like the rest of us. But after, you know, maybe a couple of days, then they would also be impressed and they would almost look forward to it. Sometimes I am not sure if they wanted to hear him or me.

Q. Share with us if you can, Mr. Hamilton, how he related to those students?

A. It would be in intellectual terms and in sharing with them many of the ideas out of his readings, and the fact that he was further advanced educationally than most of his peers and he was very willing to share in these ideas. And again it would, he had a calming, you know, his voice, his demeanor was very calming to the rest of his peers.

Q. Did he ever appear to gloat over the fact that he had this intelligence?

A. No, he was just very eager to share.

Q. Now, what about Mr. Jamal's leadership qualities, did you get a sense as to whether he had

any innate abilities as a leader?

A. Yes, very much so. Because usually the, the leaders of that age group, as unfortunately many of the young people that come from Mumia's neighborhood, the leaders aren't positive. So that's the reason. And they don't get away with -- there might be other young leaders of young people in a positive way, but they didn't have the skills to get away with it. And that was what made me realize that Mumia was a very strong, you know, leader and someone who could gain respect through education.

Q. Are there any examples, Mr. Hamilton, that could illustrate what you are saying, that he had these abilities as a leader?

A. The fact that he could talk gang members out of a gang war. And the fact that he was overwhelmingly elected the president of our school, so.

Q. Mr. Jamal was elected president of the school?

A. Yes.

Q. Did he perform in that role at the school?

A. Yes.

Q. And how did he perform as the president of the school?

A. Very strong. And, again, someone who the

students knew that through, by following him, they, the administration would also be, it was a good, it was a good combination.

Q. Was the administration satisfied with him as the president of the school?

A. Yes.

Q. Did he ever give any speeches as the president of the school?

A. Yes.

Q. How did he give those speeches?

A. Dynamic. Because he's a good speaker. Usually, you know, in our student leader and faculty meetings he was able to get the program and/or things that we wanted across over to the young people.

Q. Was there anything in your experience with Mr. Jamal that would lead you to believe that he is a violent person or has a tendency towards violence?

A. No.

Q. Would you say that everything you have known about this man and his relationship to humanity points in the opposite direction, would you agree with that?

A. I don't understand.

Q. Would you agree that everything that you know about him and his relationship to humanity at large

points in the opposite direction, away from violence, would you agree with that?

A. Yes, yes.

Q. Mr. Hamilton, do you only know Mr. Mumia in your capacity as a teacher in his history class?

A. No.

Q. How else do you know him?

A. We became friends.

Q. You did?

A. Yes.

Q. When did you start developing a friendship with him?

A. Class and a friendship too and it lasted. Based mainly, I would say, without us really being together. By that I mean we developed a friendship that is the kind of friendship we don't have to really see each other to know that we're thinking and we're friends.

Q. There is just that kind of special bond that people could have?

A. Yes.

Q. Did you ever associate with Mr. Jamal outside of the classroom?

A. Yes.

Q. Outside of the schoolyard?

A. Yes.

Q. What kind of, can you tell us about that?

A. We would go to meetings, African-American awareness programs and things like that. We would discuss various issues. And this was after he --

Q. After he left your class?

A. Yeah.

Q. Okay. And in your experience, experiences with Mr. Jamal, did

you get a sense of what he found important in life?

A. Yes.

Q. What kind of things from your perspective did he find important in life?

A. Humanity. And people just getting along with one another and understanding one another. And also African Americans especially becoming aware of our history and those types of things.

Q. Did Mr. Jamal have an interest in politics?

A. Yes.

Q. When did that manifest itself, in your experience with him?

A. I would say as a young student.

Q. As a student in your class?

A. Yes.

Q. Is that unusual, for a tenth grader to have an

Page 120.

interest in politics?

A. In those days, no.

Q. That was the climate that he lived in?

A. Yes.

Q. What about his dedication to his home community, to Philadelphia and to Philadelphians?

A. Oh, very much so.

Q. He had a strong dedication to that?

A. Yes.

Q. How did that show itself?

A. In his willingness to attend meetings and lead student workshops and those things. And he never got paid.

Q. He never got what?

A. Paid. A salary. And was always willing and able to participate whenever asked.

Q. Would you say that one of his outstanding qualities is the fact that he is a sharing person?

A. Yes.

Q. Have you ever seen his relationship with his family?

A. Yes.

Q. How did you get to see that?

A. Well, because we had a relationship beyond -- excuse me -- beyond the classroom. Sometimes I would

Page 121.

even take him home or go home with him after some of these meetings, and I was very impressed with his relationship with his mother and his entire family.

Q. What impressed you about his relationship with his mother?

A. Well, again, a lot of young people at his age I didn't think had feeling or -- he wanted to help and he did help and he tried to help. Because just before I met him his father died and it seemed as though he took it on himself to fill the void that was left in the family to help his mother. Because of what had happened.

Q. Is Mr. Jamal the kind of person who could express his emotions to other people?

A. Yes. Which is also unusual for, at that point at that time Ben Franklin only had males. And that was very unusual for a young male to be able to show that.

Q. And Mr. Jamal was different in that respect?

A. Yes.

Q. What about the showing of his emotions towards his mother?

A. Yes.

Q. It was apparent to anybody who witnessed it?

A. Yes.

Page 122.

Q. Did you know that he had a twin brother?

A. Yes. He attended Ben Franklin High School.

Q. Ahh, so you knew his twin brother?

A. Yes.

Q. Do you know what kind of relationship he had with his twin brother?

A. Yes.

Q. Tell us about it?

A. He was helpful, supportive. Again, he was more well-read and he had more of an interest, Mumia had more of an interest in school and education than his twin brother. And he would try and help and share.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. Did you know that his twin brother went on to a career in the military?

A. Yes.

Q. And do you know that he was successful in his endeavors?

A. Yes.

Q. And yet you are saying, in your opinion -- and I know it is subjective -- but is Mr. Jamal more talented?

Page 123.

A. Educationally --

Q. Educationally speaking, yes.

A. Yes.

Q. And as a teacher looking at the two twin brothers, did you have a sense as to who had more potential to success? I know that is a difficult question, but as a teacher.

A. Well, in education, in academia.

Q. Yes.

A. I would say Mumia.

Q. Mumia did?

A. In academia, yeah.

Q. And did he, besides the intellectual capacity, the intellectual appetite that would lead towards success, did he have other characteristics that are important to success in life?

A. Well, he was, Mumia seems, just in knowing both of them, was more capable of showing his feelings and emotions and his love. And I think sometimes it might even have irritated his brother sometimes.

Q. Was there any competition between the two?

A. Ahh, the normal as twins, yeah, the normal competition between siblings, yes.

(Discussion was held off the record at this time among Defense counsel.)

Page 124.

BY MR. WILLIAMS:

Q. Now, you knew that the baby of the family was Billy Cook?

A. Yes; he also attended Ben Franklin High School.

Q. Did you have the opportunity to see how Mr. Jamal related with the baby of the family?

A. Yes; Mumia took the position of his father.

Q. He did?

A. And the younger one, Mumia was already out of school, and Mumia used to be the parent who would come to school. Maybe because he was the youngest, Billy developed an attendance problem. And when I got word to Mumia, Mumia was there instantly to try and find out how we could solve this problem of

his younger problem not coming to school.

Q. In much the same way that a concerned parent would?

A. Yes.

Q. By the way, do you recognize the name Charles Tomczak?

A. As a student at Ben Franklin High School, yes.

Q. Was he white or was he an African American?

A. He was white.

Page 125.

Kenneth Hamilton, Jr. - Direct

Q. Why is it that you could recognize his name?

A. Because I think in my 30 years, I think we've had four white students.

Q. Is there anything in your entire experience with Mr. Jamal that would give you any hesitation to testify in front of a penalty-phase Jury as you have just done?

A. None.

MR. GRANT: One moment, Mr. Hamilton.

(Discussion was held off the record at this time among Defense Counsel.)

BY MR. GRANT:

Q. I'm sorry, let me go back to Mr. Tomczak, Charles Tomczak, who was a student at Ben Franklin.

A. Yes.

Q. Do you remember if he was a student at around the time that Mr. Jamal was a student?

A. Now, I can't, I can't say, I've had a lot.

Q. A lot of students?

A. I have had a lot of students. Around... In the late '60s or early '7Os, somewhere in there, but I couldn't say exact.

Q. Okay. Is it at least possible, then, in the four-years that there would have been some overlap?

A. Yeah.

Page 126.

Kenneth Hamilton, Jr. - Direct

MR. GRANT: Objection as to what is possible, Your Honor. Move to strike the answer.

MR. WILLIAMS: Is Your Honor granting the objection?

THE COURT: What was that objection? I couldn't hear you.

MR. GRANT: He asked the witness is it possible that another student who attended the school possibly may have known Mr. Jamal. I am moving to strike it as speculative.

THE COURT: Well, I will have to sustain that. That is real speculative. Anything is possible.

BY MR. WILLIAMS:

Q. When Mr. Jamal was a student at Benjamin Franklin, was he a well-known student?

A. Yes.

(Discussion was held off the record at this time among Defense Counsel.)

MR. WILLIAMS: Your Honor, just for the record: I have made reference to a name Charles Tomczak with the witness. And he is or was a member of the Jury during the trial, the guilt phase and the penalty phase. I just note

Page 127.

Kenneth Hamilton, Jr. - Cross

it for the record for the benefit of Your Honor.

Your witness.

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CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good morning, Mr. Hamilton.

A. Good morning.

Q. Did Mr. Jamal graduate from Benjamin Franklin?

A. No.

Q. Where did he graduate from, if you know?

A. He took a G.E.D.

MR. WILLIAMS: Your Honor, I'm sorry to interrupt. Just if I may through the Court request that Mr. Grant speak a little louder for the Court.

THE COURT: He wants you to speak a little louder. Oh, you.

MR. WILLIAMS: Mr. Grant, he doesn't have the microphone.

THE COURT: If you have any influence on that crowd, it would be good if you just talk to them.

MR. WILLIAMS: I understand.

Page 128.

Kenneth Hamilton, Jr. - Cross

BY MR. GRANT:

Q. Mr. Jamal dropped out of school?

A. Yes.

Q. What grade, sir?

A. The eleventh or twelfth.

Q. And though he dropped out of school he had other high school teachers at Benjamin Franklin High School, I presume?

A. Yes.

Q. Did you ever confer with them or discuss Mr. Jamal with these other teachers?

A. Yes.

Q. And do you know if even one of them testified at the murder trial that occurred in 1982?

A. Did I know -- 1 don't think any teacher from Benjamin Franklin or any other representative of Benjamin Franklin High School participated in that trial.

Q. And would it be fair to say based on your knowledge of those teachers and Mr. Jamal's interaction with them, that all of them would have come to Court and testified on his behalf?

A. No, I don't know if all -- I don't know.

Q. Okay. Of the ones that you came in contact with and with whom you discussed Mr. Jamal?

A. Oh, yes.

Page 129.

Kenneth Hamilton, Jr. - Cross

Q. Okay. And do you know whether you contacted Mr. Anthony Jackson to let him know of your sentiments and that you wished to testify for Mr. Jamal?

A. Did I contact Mr. Jackson?

Q. Yes.

A. No, but I did ask another person to ask Mr. Jackson if I or anyone else were needed.

Q. Who was that, sir?

A. His name is Ron White.

Q. Ron White?

A. Yes.

Q. Attorney Ron White?

A. Yes.

Q. Did he ever get back to you? Mr. White, that is.

A. No, as to what happened when he talked to Mr. Jackson, no.

Q. You are assuming that he talked to Mr. Jackson?

A. He told me he talked to Mr. Jackson.

Q. And did he say what his response was?

A. No, he just said because he is an attorney just -- oh, no, I don't know what the response was.

Q. Did you ever visit Mr. Jamal while he was

Page 130.

awaiting trial on the murder charges?

A. No.

Q. Did you ever contact him by phone or any other medium of communication?

A. No. But again, I did speak to Mr. White as to if I would be needed or I was available or if anyone else was.

Q. Mr. Jamal knew where you lived, did he not?

A. Yeah.

Q. And he knew how to get in touch with you if he needed you, right?

A. I -- yes.

Q. Did he get in touch with you asking you to be a witness for him?

A. At that point, no.

Q. Where is Goddard, sir, and what is Goddard?

A. It's a, it's in Massachusetts. Connecticut. It's in New England.

Q. Okay.

A. It is a university for what I guess is a standard university but also is for, we got Mumia in because he could take an entrance exam without having a problem.

Q. I see. It is a four-year institution, is it not?

Page 131.

A. Yes.

Q. Mr. Jamal did not graduate from Goddard, did he?

A. I don't think so.

Q. Now, you knew his brother. Billy Cook?

A. Yes.

Q. The baby of the family?

A. Yes.

Q. And you knew his twin brother Wayne?

A. Yes.

Q. Wayne, Wesley?

A. Yes.

Q. That's how you knew him, right?

A. Yes.

Q. And you indicated that Mr. Jamal had a paternal instinct when it came to the baby of the family, as he did for all his siblings, because he was --

A. I know his support for Billy and Wayne.

Q. In what way, sir?

A. When you said paternal.

Q. And when you say you noticed it more for Billy, in what way did it manifest itself? I know it is a difficult question, if you could answer it.

A. Okay, again, I mentioned that he showed up as

Page 132.

his family member when there was a problem or when he needed to see a parent. He went and visited his other teachers other than me to find out what work was missing and how Billy could begin to pass and be on schedule as far as his education is concerned.

Q. To your knowledge, did Billy have any problems physically with the other boys in the school, that he would get in fights?

A. Not that I could remember, no. Not to my knowledge.

Q. Do you ever recall Mr. Jamal coming to his defense in a situation that may have resulted in physical violence?

A. No.

Q. And you found out about the murder trial from news accounts and student gossip, so to speak?

A. Yes.

Q. And you did not attend one of the proceedings?

A. No.

Q. And you did not attend the penalty phase of the hearings?

A. No. One of the, well, in following this in the press and being interested and concerned, I didn't even know if I could get in. There was a lot of commotion.

Page 133.

Q. Yes. Like today.

A. Yes.

Q. So you didn't attend?

A. They didn't want to let me in today.

Q. I understand that. So you didn't attend the preliminary hearing either?

A. No.

Q. And you didn't attend the bail hearing?

A. No.

Q. And you didn't go to the homicide calendar room?

A. The...?

Q. Homicide calendar room. It is a courtroom like this but they don't have trials.

A. No, no.

Q. They schedule the cases to go to trial.

A. No, no.

MR. GRANT: Thank you very much, Mr. Hamilton.

THE WITNESS: Okay.

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REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Hamilton, very briefly. You mentioned

Page 134.

that Mr. Jamal dropped out of school.

A. Yes.

Q. Did that indicate to you an inability to do the work in the school?

A. None whatsoever.

Q. What did it, what did it tell you about Mr. Jamal, the fact that he dropped out of Benjamin Franklin?

A. In discussing and talking to him, he was so sincere about many of the things that he wanted to help people with that he thought at that point it was more important than to finish his education. And I think also that he thought that it would be kind of easy to make it up, because he, you know, that he was ahead of the rest of the students.

Q. Did you ever meet people who believe that the world was their classroom?

A. Yes.

Q. Was Mr. Jamal that type of person?

A. Yes.

Q. Now going back to 1982, where --

MR. WILLIAMS: Withdrawn. No further questions. Thank you, Mr. Hamilton.

MR. GRANT: I have no redirect. Thank you, sir.

Page 135.

THE COURT: Okay. All right, I think this may be a good spot to recess for lunch until...

MR. GRANT: We may have --

THE COURT: 2:15.

MR. GRANT: Do you think we could have a short lunch today, Your Honor, because there are so many witnesses who are not

affiants I have a feeling that we won't be able to reach the witnesses that we should in order to get this thing done.

THE COURT: All right, two o'clock. If it's all right with you it's all right with me.

MR. GRANT: Very well, Your Honor.

THE COURT OFFICER: This Court now stands for a luncheon recess until 2:00 p.m. this afternoon.

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(Luncheon recess was held until 2:40 p.m.)

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THE COURT: Good afternoon, everyone.

MS. WOLKENSTEIN: Your Honor, before we proceed with the next witness I have a couple

Page 136.

of small matters. Not so small matters, actually.

First of all, I want to indicate to the Court that an attorney from the City Solicitor's Office was here this morning and she was prepared to turn over a copy of the Medical Examiner's file per the subpoena that was served on them. However, Mr. Grant, I'm told, refused to participate in that and we're going to be taking it up, therefore, with arguments later this afternoon when they return. So I want to indicate to the Court that we will have to interrupt the witnesses in order to hear whatever argument there is going to be on that subpoena as well as an answer to the various police subpoenas.

I am also told the attorney from the City is going, or the Police Department will be returning this afternoon to deal with that.

Okay, then the next matter, Your Honor, is the question of Jeannette Patton sitting at Counsel's table. I want to correct Your Honor's statement about Jeanette Patton creating a disturbance during Mr. Jamal's trial. As a matter of fact --

Page 137.

THE COURT: I am talking about the first trial, not this trial.

MS. WOLKENSTEIN: I understand that, I want to correct that misrepresentation. Miss Patton was never ejected from this Courtroom. She never caused a disruption. She was in fact assigned by yourself to be a legal runner for Mr. Jamal and never once was she involved in any disruption of the Court proceedings.

THE COURT: Okay, the next witness.

MR. WILLIAMS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. WILLIAMS: The Petitioner now calls to the stand Lydia Wallace.

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Lydia Wallace, having been duly sworn, was examined and testified as follows:

- - - - -

MR. WILLIAMS: May I inquire, Your Honor?

THE COURT: Yes.

MR. WILLIAMS: Thank you.

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DIRECT EXAMINATION

Page 138.

Lydia Wallace - Direct

- - - - -

BY MR. WILLIAMS:

Q. Good afternoon, Miss Wallace.

A. Good afternoon.

Q. Do you live here in the City of Philadelphia, Miss Wallace?

A. Yes, I do, I live in the East Mount Airy section of Philadelphia.

Q. How long have you lived in Philadelphia?

A. All of my life.

Q. And are you a working woman? I mean do you work?

A. I better, yes. I do.

Q. How are you employed?

A. I am a licensed practical nurse and I am also a director of social services for mentally retarded and mentally ill.

Q. How long have you been working in that area?

A. I have been working with the mentally ill and mentally retarded since 1988. Prior to that I did practical nursing for about 12 years.

Q. Can you tell us a little bit about your educational background?

A. Sure. I graduated from the Board of Education School of Nursing and I worked at nursing for a few

Page 139.

Lydia Wallace - Direct

years and I decided that I wanted to do a little more. I went back to school, to Antioch University. I got a BA degree in human services and administration. I am also certified in fitness and nutrition.

Q. Are you a member of any community organizations?

A. Any what kind of organization?

Q. Community organizations. Or professional organization.

A. I am on the board of directors of the Philadelphia Black Womens' Health Group Project and treasurer. I have been a Democratic committeewoman for the past several years, until I moved recently where I am now. And I am not affiliated in my community where I am but I will be.

Q. And now you are aware this proceeding concerns a Petition that has been filed by Mr. Jamal for a new trial.

A. Yes, I understand that.

Q. All right. And have you consulted with any members of Petitioner's legal team in connection with testifying today?

A. I met with you twice and that was to tell me what was going to happen, what kind of proceedings

Page 140.

Lydia Wallace - Direct

this was. And how I could be utilized in the procedure.

Q. Okay. Do you remember how many times you met with me, Miss Wallace?

A. Twice.

Q. Do you remember when you met with me?

A. Umm, I met you last night and I met with you one day last week, I can't remember the exact day.

Q. Fair enough. Did you also sign an affidavit that was used in connection with this Petition?

A. Yes. I signed that affidavit more than likely, yes.

Q. You had dealings with Mr. Weinglass in executing that affidavit?

A. Yes, I did. Hmm-hmm.

Q. By the way, have you had occasions to review that affidavit?

A. Yes, you sent me a copy of it so I would, you know, know -- well, I wrote it. Once I had it notarized and sent to him, he sent me a copy.

Q. Okay. The completed, executed draft?

A. That's correct.

Q. Now, Miss Wallace, do you know this man sitting here (indicating)?

A. Sure; that's my kid brother Mumia.

Page 141.

Lydia Wallace - Direct

Q. That's your brother?

A. Yeah.

Q. So obviously you knew him back in 1982?

A. Definitely, yeah.

Q. Were you aware that your brother was under indictment in

1982?

A. Yes, I was.

Q. How did you become aware of that?

A. Well, I was here during the trial. I sat through the trial and everything so I knew what was going on. I had occasion to speak with Tony Jackson. My family has been involved all along, so I knew what was going on.

Q. You mentioned Tony Jackson. Who is Tony Jackson?

A. He was a Court-appointed attorney that Mumia had in 1982.

Q. Did you know him personally?

A. Umm, I had the occasion to talk with him, like after Court sessions. He also visited my mother's home to speak with my mother on a few occasions. And I had an opportunity to interact with him, yes.

Q. By the way, is your mother still living?

A. No, my mother died in February of 1990.

Q. Did your mother attend any of the proceedings?

Page 142.

Lydia Wallace - Direct

A. Yes, my mother and I, I pretty much came with my mother because she was ill at the time. For myself also but she attended everyday. And I attended almost everyday, because I had to work on some occasions, but she was here.

Q. And while you were here in Court during those proceedings, did you have any opportunities to discuss the proceedings or what was happening in the proceedings with Mr. Jackson?

A. On occasion Mr. Jackson would talk to us after the Court had dismissed for the day. And he would pull us aside and try to explain to us what had happened that day in case we didn't understand the legal proceedings or the legal jargon. Because this was our first time of being in a courtroom so we didn't understand everything that was going on and he would explain to us what was happening.

Q. So, Miss Wallace, is it fair to say that you relied to a large extent on Mr. Jackson's explanations to help you understand what was happening on a daily basis?

A. Definitely, because we just did not understand what was going on in the Courtroom. More especially the jargon and just how things transpired during the day.

Page 143.

Lydia Wallace - Direct

Q. Did Mr. Jackson ever explain to you that in a capital case, that is in a death penalty case, that the trial is divided into two phases, a guilt phase and a penalty phase?

A. Yes, he did explain that to us.

Q. And did he explain to you after a guilt phase, if there is a finding of guilt on a murder count, that the case would then proceed to a penalty phase, did he explain that to you?

A. Yes, he did.

Q. Okay. And did he explain to you what was involved in a penalty phase?

A. I, I don't remember him really detailing it, I can't recall.

Q. Do you remember any discussions along the lines that there would be testimony at a penalty phase?

A. No, I don't remember hearing that.

Q. Now, I take it because you were present at much of the proceedings that you were available to testify at a penalty phase proceeding if you had been asked; is that right?

A. Oh, definitely. I was there, I was willing to do whatever I could do. I was never asked.

Q. As you sit here today, is there anything that

Page 144.

Lydia Wallace - Direct

as far as you can tell would have prevented you from testifying or would have made you reluctant to testify?

A. Heck, no. Excuse me. No.

Q. And did Mr. Jackson at any point approach you or your mother about testifying at the penalty phase?

A. He didn't, he never approached me. I can not say that he approached my mother, but my mother never discussed that with me, that he did or he didn't.

Q. In any event, he never approached you?

A. No.

Q. He never discussed with you the possibility of testifying, did he?

A. No.

Q. By the way, did you ever have any role in the proceedings other than as an observer?

A. No, I was always just an observer.

Q. Now let me move on to questions about the Cook family, okay. Can you explain to us what was the structure of the Cook family?

For the record: The Cook family is the family of Mumia Abu-Jamal.

A. My stepfather and mother. I have five brothers, I have one older than myself. One brother. Younger than me, the twins, which included Mumia, and

Page 145.

Lydia Wallace - Direct

the baby brother.

Q. And the baby brother is Billy Cook?

A. Billy.

Q. And then the next in age is Mumia?

A. Is Mumia. His twin.

Q. His twin is Wayne?

A. His twin is Wayne, yes.

Q. What is Wayne doing now?

A. Wayne is a career serviceman. He's out of the States right now. Has been for all of the time this has been going on. He's been in the military. And then our oldest brother is in the military, has been, now he is a retired sergeant. And they haven't been here.

Q. I want to direct your attention to when Mumia was a child, okay. How would you characterize during that time period in his life the closeness of the family? Do you understand what I'm asking?

A. You say as children?

Q. Yes, the children and your relationship with your parents among yourselves, how would you characterize the family?

A. Well, we, we were, I guess you would call us a typical family. We lived in public housing. Low income family. Very Southern Baptist mother, very

Page 146.

Lydia Wallace - Direct

strict. We had to be in the house by eight o'clock. We weren't allowed to go outside the boundaries of the public housing until we got a certain age. We had dinner at five o'clock every night. Dishes had to be done by six o'clock. You know, very, very strict.

My mother, the neighbors would tell you my mother would come to the door and holler out her children's name in order and call them in. And we would just take our baths one at a time as long as the water would stay hot. The rest of us would watch TV while everybody took a bath. But we usually were in bed by 9:30, ten o'clock at night. Mom was pretty, she was a spiritual woman, she was a real straight Southern Baptist woman. Most of the time, maybe I had some girls sitting on the front step. I guess you would say, if I had to compare it to some of the families I worked for, today we would be pretty nerdy.

Q. Pretty nerdy?

A. Yeah, just a normal family.

Q. I hear you saying that it was kind of a regimented lifestyle?

A. Oh, real structured. I mean, you know, like Mom was involved

in neighborhood things, like she was

Page 147.

in PTA. We also belonged to the Friends Neighborhood Guild, which was a Quaker organization that offered social activities for the neighborhood. Mom would go to pottery classes and sewing classes and we would go to TV classes or Cub Scouts. We were involved in neighborhood kinds of things. My mother was, she was a poll watcher and Judge of Elections and, you know, she got involved in everything in the neighborhood. So we were really watched and nurtured by the neighborhood people.

Q. Did your younger brother during his early years in life ever rebel against this regimentation, the oversight that your mom provided to the children?

A. No, you didn't rebel against Edith. You didn't play that game. No, we didn't do that. We would never think about rebelling against parents, it's just, you just didn't do that.

Q. Now, you mentioned, I think I heard it right, you said that your mother was active with the Friends Neighborhood Guild. Is that --

A. It is a Quaker organization located at 8th and Fairmount Avenue and they have a lot of social activities, like arts class. Art classes, pottery classes, sewing classes. When I got older I taught a teen class in aerobics and sewing. You know, it was

Page 148.

a neighborhood community center. You did a lot of things out of there.

Q. And was Mumia involved at all with this Quaker organization?

A. Yeah, we all, we all grew up through that. I remember Mumia used to go out to art classes. They also had a library there, there was a librarian named Mrs. Hurley. And he used to spend a lot of time over there in the library. He spent a lot of time reading during that time.

Q. During your exposure to this organization, the Friends Neighborhood Guild, did you come to understand what, what Quakers were all about?

A. No, they didn't too much -- I guess a lot of the people that were on the board of directors were Quakers. They didn't as much interact with us. They had program people that came in and taught the classes. So I don't think, except for the Quakers that lived in the neighborhood and were on the board of directors, we didn't have that much interaction with Quakers. It was a United Way agency, funded agency. So we didn't have that much interaction with them, except the ones that lived in the neighborhood.

Q. Did Mumia seem to enjoy spending time there as a child?

Page 149.

A. We all did. You know, that was our life. We lived in public housing and outside of public housing there was this guild; that was our only occupation besides 4th and Fairmount, which would be a Department of Recreation swimming pool. And we would go down there. But we weren't allowed outside of that boundary of our neighborhood.

Q. Now I want to ask you to try to share with us how Mumia related to you and his brothers. Was he very close to his siblings?

A. Oh, yeah. I often, I often felt like Mumia was very close to me. He hates to admit it but I used to change his diapers so he was like my little kid. Until they got too big, and then I had to switch him off to my oldest brother, I couldn't carry him anymore. So we had a real special relationship, you know, he was my baby. Wherever we went, my oldest brother and I, I wanted to take our twin.

As we got older Mumia became like, umm, an advisor for us. And we were older, older than him. But his knowledge base and his interests in things outside of the public housing made us, you know, listen to him a little more.

He would always talk to his brothers real soft. Real sensitive. Mumia was very, very

Page 150.

sensitive. If his brothers got into arguments among themselves, he would be the peacemaker. He was a real sensitive kind of kid.

He wouldn't lie. He wouldn't lie. He used to get us in a lot of trouble. Sometimes we would be doing something we had no business as children to do. And we would all get in a corner and say well, we going, we going to tell mom that we did this, we did that. And everybody said yeah, this is the lie, this is what we are going to tell.

Not Mumia. He'd get us beaten every time. He would not do that, he just wouldn't hang with the crowd.

Q. In your family how important was doing well in school?

A. How was what?

Q. Doing well in school?

A. Oh, gosh. My stepfather used to at night sit us down at the table and make us go over our homework. And one of the things that he was real particular about was us like learning like the times tables. I used to dislike him a lot for that because he would just hammer in your head you need to learn these times tables or you're not going to make it in this world, get this in your head, how much is 2

Page 151.

times 6, and you have to recite all this stuff. And of course we learned it and of course at that time we were like who needs it. But we had structured time after dinner we had to sit down and do our homework. Mom was, as I said, really on the PTA, so she was always in school checking on us, making sure we were doing what we were supposed to do. And everybody knew Mom, so if we did wrong they would tell her.

Q. What kind of relationship did your brother have with your mother?

A. Mumia?

Q. Yeah.

A. Oh. Mumia was loving. He was loving towards all of us. But he was very loving towards my mother. He, he adored my mother, I guess, if that's the word I would, you know. He would never come in the house without hugging and kissing her. He was always bringing her things, like bean sprouts and fresh vegetables and fresh fruit, because he was always concerned about her health. But, always bringing her gifts, berry gifts and things like that. He was always just very loving.

Q. You said he always greeted your mother with a hug and a kiss. Did he greet other people like that?

A. Yes, as we got older, being the only girl out

Page 152.

of the whole family, my mom and I might be sitting in the kitchen talking, Mom and myself, and one of her neighbors would be sitting in the kitchen talking, and Mumia would come in, he would hug Mom and kiss her, and we also would get a hug and a kiss. He was a real emotional, real whooshy, real mushy, very emotional.

Q. Just for the benefit of the record: Could you describe what you mean by mushy?

A. Oh, you know, like teenage kids, you know, they don't -- c'mon, you know, c'mon with the kissing, come off with the hugging. But he was like I loves you, sis, I loves you, that's why I'm hugging you. He would just jokingly tell you why he was hugging and kissing you. He would always like to touch. He was like a people kind of person around the family, even around the neighbors.

Q. So he was the kind of person, if I am hearing you right, that was not afraid to show his affections?

A. He always did, he was always very affectionate.

Q. I want to direct your attention to before he was a teenager, when he was a child. What stands out in your mind about his characteristics as a child?

A. Mumia liked to read so much. He read everything. If you didn't want him to read it you better not leave it sitting around. Because he's read it and gone. He was, I guess the word I would use is spiritual. He was very curious. He would, he would, umm... when he was, I guess he was elementary school age and we used to go a block away to the elementary school. That was one of our boundaries, going east. And there was a Jewish synagogue, there was a missionary church, there was a Catholic church, there were all kinds of churches around. And I recall Mumia going to these churches, visiting the rabbis and priests and ministers and all that stuff, questioning them about religious things. He would always talk to the older people in our neighborhood, talk to them about religious things. So we always said well, he's just spiritual, you know. And I guess that had a lot to do with our upbringing at home also.

But Mumia read everything that he could read about religion, he read everything he could read as far as newspapers and books. He pretty much stayed to himself in reading and studying, and trying to know the world around him.

Q. And this is even at a very young age you are

describing him?

A. Oh, he was elementary school age.

Q. I'm sorry?

A. He was elementary school age when I recall him doing this.

Q. And when he grew into adolescence, did those attributes at all change or did he transform himself?

A. Oh, no, he was just more of what he was: Quiet, loving, sensitive. He was just a man. He was better able to deal with these things than an elementary school kid. I guess, I guess he was more convicted in what he read and knew. He was stronger about those things. His knowledge. I guess that's the way I would put it. But he never changed. He was always, you know, spiritual.

Q. As he grew into adolescence, what was your impression about the power of his intellect? Was he an intelligent young man?

A. Well, we used to think he was a nerd. We used to think he was a square because he just, he just knew so much. And we didn't, we didn't, we didn't disbelieve him, because if he told you something, if he told you the sun was shining, he could give you evidence, he could give you facts. He could give you enough facts that if the sun was actually purple he

could convince you that it was green. But he had enough knowledge that we never questioned what he told us. He loved going to school, he loved learning, so we knew he knew what he was talking about. He was the knowledgeable one. The wise maker. So he was always learning and teaching and we respected that.

Q. What kind of relationship during his adolescent years did he have with his twin brother Wayne?

A. Ahh, very loving. Very protective. The difference between he and Wayne is he was physically bigger.

Q. You are talking about Mumia now?

A. The difference between Mumia and Wayne, Mumia was physically bigger than Wayne. Mumia was more outgoing than Wayne. Mumia had more, I guess you could say, academic skills than Wayne. So he was very protective of Wayne. Very nurturing of Wayne. Like bringing his baby brother along. Wayne was just not up to the same level that Mumia was.

Q. And what about your brother's relationship to Billy?

A. They had more, they had a more playful relationship as they were teenagers. They did more

playful things together. Like Bill used to work downtown, he was a street vendor. And they would be downtown together, maybe hanging out, you know. It was more loose than Wayne. He was more protective of his twin. But Bill and he were like closer, in my eyes.

Q. You mentioned that he had took a very early interest in spiritual matters?

A. Hmm-hmm.

Q. Did he continue to have that interest as he got older, when he was a teenager?

A. Yes, his curiosity about spiritual things increased. And I guess when you say spiritual things we have to talk about love, you have to talk about being sensitive to other people and emotion. Like if we were watching a TV show or something, and something would happen where someone was oppressed or something negative happened, he would be really outraged about that. He felt that even a roach had a right to live. He, he always expressed equal rights for people and fairness, fairness and justice and those kinds of things. I don't know if you would call those things spiritual. In my sense they are.

Q. Hmm-hmm. Well, you mentioned that he had this sensitivity towards the right of all things to live.

Did that have anything to do with, did his dietary habits at all reflect what you have just described?

A. Oh. I guess when Mumia was about 14, 15 years old, he started realizing what he was eating. He just became aware of the foods and stuff that he was eating. We were still eating pork chops and, you know, all that kind of stuff. But Mumia stopped. I'm not going to say I know that he stopped because he didn't want to kill animals because that was bothering him, but that was my sense the way he came to eat more healthful, more vegetarian. He was a vegetarian, he ate more healthful foods. But knowing his character about killing things, he probably, that was probably how he came to be a vegetarian. I'm not going to say that's the fact, but.

Q. That is your feeling?

A. That's just my feeling.

Q. And your sense in observing him?

A. Yes.

Q. You used the term -- and I wrote it down here -- you used the term aware. You said that he was aware. Now, would you agree with me that sometimes you meet somebody and they just seem to be more aware of their surroundings or the world they live in, would you agree some people are just more

tuned in to what's going on around them?

A. The whole time that we were growing up we were more interested in what was going on in the house and confines. Our interest didn't go outside the complex. We were interested in who was having a baby. Joke and roll, you know, that kind of stuff. But Mumia was more interested in other things. I can't say all of the things that he was interested in, but he could play with us for awhile but then he would go and watch TV or listen to the radio or read a book, or do his homework, for that matter. But he was interested in other things just different than what we were.

Q. What about when he began to develop intellectually as a young adult: Did he seem to exhibit a certain awareness about the world around him?

A. Oh, he was always interested. I don't know whether his interest in journalism came before his interest in the world. I don't, I don't know which came first. So I don't know if he was being watchful because he wanted to be a journalist or try to figure out how to do that kind of stuff, I don't know that. But I know he always watched and listened to the news. And he always discussed it with my mother or

any adult that was around to feed his curiosity.

Q. Would it be accurate to say that even as an adolescent Mr. Jamal was an idealistic person? Do you know what I mean by that: Idealistic?

A. No.

Q. Well, did he, let me put it this way: Did he during those young adult years express concerns about the welfare of other human beings in his community and in the larger community as a whole?

A. Ahh, that started at home. Like right in the complex. That started at home in our house. Like we need to care about each other, make sure that each others' well-beings are looked after. Then that extended to our extended family. So Mumia was always interested and concerned about the well-being of the complex, the larger community. He liked being out in the community with people. He liked being with people. So he was concerned about whether we had good housing or being well fed or whether the neighborhood's kids had food or something like that. He was always concerned about the community.

Q. When he went into adulthood and become a journalist, did you still maintain contact with him?

A. Yes, I had gotten married and left home and we still, we always came home. We come home for

Page 160.

Christmas, Thanksgiving dinner, to my mother's house. Or one of us would host it at our home. But we always stayed together. When a baby was born the family came together. And Mumia's named a lot of babies in the family, because it was like a special event for all of us to come together.

Q. Did he have a role in naming any of your children, Mrs. Wallace?

A. Yes, he named my son.

Q. He did?

A. Yes.

Q. Did he have a chance to have a relationship with that son of yours?

A. The youngest son, he didn't have as much time. He was gone during the later years. But my son was like 3 or 4 years old when this happened. So he didn't get to spend a lot of time.

Q. Now, are you aware, or were you aware what kind of journalism he practiced?

A. Well, when Mu started writing he used to talk about reporters being objective reporters. Reporting the truth. When I started listening to him on the radio, I remember him talking about things that interested me. Like things in the black people, in our community, things that were going on with our

Page 161.

representatives, the things that were going on in the black clergy, things that would interest the black community. He was more focused on making them aware of what was going on in the world. Even though I do remember him reporting on things in other countries. But I guess by nature of the stations that he worked for, it was more things of the community interest.

Q. What was the feeling among the family, your mother and yourself and your brothers, about his being a journalist?

A. We were proud of him. We were real, real proud of him. It used to be really typical because my girlfriends all wanted to meet him because they thought he had this real sexy voice and they wanted to see what he looked like. We were really proud. He wasn't boastful about what he was doing but he was proud about being able to do something and make money at it, doing something that he enjoyed. So we were really like, you know, go for it, we were really proud of him. My mother was ecstatic.

Q. Did you get a sense -- you have listened to some of his radio broadcasts?

A. Yes, I have.

Q. And in listening to him as a broadcast journalist, and in just knowing him as your brother,

Page 162.

did you get a sense, Miss Wallace, of what motivated him as a journalist, what drove him in his wanting to develop his craft as a journalist?

A. I would guess it is his concern for people. He cared about people. He wanted, he wanted everyone to have a fair shake. And he, he was good at English so he would always get annoyed when, you know, journalists or people used the wrong words to, to paint pictures or paint scenarios and that kind of thing.

So he, you know, he was about fairness, he was sensitive to the peoples' plight, hardship, oppression. I really think that was, that was just my guess. That's what I felt from listening to him.

Q. Now, you described a close family while your brother was a child and while he was in his teenage years. What about while he was an adult, was he still close with your mother?

A. We were, we were and are still close, very close until my mother died. As a matter of fact, we were very concerned about Mumia when my mother died because he was incarcerated at that time.

Q. Well, what about back in 1981 and around that time period, was he still close to the family?

Page 163.

A. Oh, yes. We were all still, we are still to today very close. As we are allowed to be with Mumia, we are still very close with him and the other family. Even though geographically we are separated, my phone bill will tell you that we are still connecting. As a matter of fact, last weekend, the weekend before last I had a family reunion at my home and everyone was there and we were still doing our thing, you know.

Q. Did Mr. Jamal visit his mother during his adult years?

A. Always.

Q. With any frequency?

A. Always. I could recall him living right over in Camden, New Jersey when he was married. And he used to put his son on his back and walk over on the bridge and come to visit my mother and bring her some foods or something like that. He wasn't too much on cars, you know, that kind of stuff. He liked to walk or ride a bike because he liked to be in the community and look at things. And, you know, be around people. But he was always visiting my mother. His house was always open for us to visit. So we always still came together.

Q. You mentioned that, you mentioned his son, he

Page 164.

carried his son on his back. Did you ever have an opportunity to see what kind of father he was to his son?

A. He was, he likes kids. He loves children, they didn't have to be his sons. But he was very fatherly, very affectionate, very loving, you know, to his children. He loves children. They didn't have to be his children. They could be anybody's children. Because the kids in the neighborhood, you know, sat and told me that he would read to them. I mean he just loved children. But he was very, very affectionate and protective of his children.

Q. Now, in your dealings with your brother, did you get a sense as to his attitude about issues regarding peace and violence?

A. There is nothing that is in his character that I recall being violent. He's only been a peacemaker. He always talked, like kids in the neighborhood and they were gang-warring, which was going on all the time we was growing up, he would talk to them, you know. He would talk to people, he was always a peacemaker. Even if he got into a confrontation, unfortunate to his opponent, he would talk them out of confrontation. You know, they might want to fight, but before they knew it, Mumia had talked them

Page 165.

out of it. And they didn't even know that they had been talked out of it, you know. He was like that. He wasn't, there wasn't anything violent about him. You know, that just wasn't his nature.

Q. Your sense from your brother is that he would adopt the idea that the pen is mightier than the sword?

A. I'm sorry, I didn't hear you.

Q. The pen is mightier than the sword: Is that the kind of altitude your brother had?

A. Yeah, he felt like he could get his point across in writing or talking as opposed to fighting, yes.

Q. Have you ever seen your brother, other than perhaps normal squabbling among brothers or things like that, have you ever seen him lose his temper in an outburst of violent rage or anything like that?

A. I've never seen him in a violent rage. I've seen, you know, we've had our tussles, even he and I, you know, had boxed each other, but not to the point where I had a bloody eye or anything like that. He wouldn't even go that far, he would never go there.

MR. WILLIAMS: Miss Wallace, thank you very much.

THE COURT: I just want to correct the

Page 166.

record, Miss Wallace. I thought you said that your brother went to a public swimming pool at 4th and Fairmount.

THE WITNESS: Yeah, we used to go.

THE COURT: 4th and Fairmount?

THE WITNESS: Yeah.

THE COURT: I think you are mistaken. I grew up at 3rd and Fairmount.

THE WITNESS: Northern Liberties Recreation Center has a swimming pool down there.

THE COURT: Swimming pool on 7th Street between Spring Garden --

THE WITNESS: No, 4th and Fairmount.

THE COURT: 4th and Fairmount on the northwest corner is a Marian Bank.

THE WITNESS: I used to be on the laundry committee --

THE COURT: Northeast corner --

THE WITNESS: The bank is still there. It is in the middle of the block.

THE COURT: It is in the middle of the block on Fairmount.

THE WITNESS: Yeah, right on Fairmount.

Page 167.

THE COURT: I remember going as a youngster, when I was in grade school I used to go to a swimming pool, it was between Reed School and Spring Garden, I don't remember whether it was 7th Street, Franklin Street or 8th Street, but there is a public swimming pool.

THE WITNESS: No, there is an outdoor swimming pool, outdoor pool I think at 8th and Brown Street.

THE COURT: Now, you mean.

THE WITNESS: No, it's been there for quite a long time. 8th and Brown Street.

THE COURT: Would it have been there between 1926 and 1934?

THE WITNESS: I don't know.

THE COURT: Well, that's what I'm talking about.

THE WITNESS: No, I ain't going there.

THE COURT: I thought there wasn't one on Fairmount Avenue. Because when I was growing-up if there was one on Fairmount Avenue there, I would have gone there. The one I went to was either on 7th Street, Franklin or 8th Street but it was between Green Street and Spring Garden.

THE WITNESS: It's 8th, I think it's

Page 168.

8th and Brown.

THE COURT: Well, I didn't know that one. The one I went to was between Reed Street and Spring Garden. Maybe they discontinued it since then. I don't know.

MR. GRANT: May I proceed?

THE COURT: But that's the only one. I don't know of any swimming pool on Fairmount Avenue. If it was there when I was growing up, and I did leave that neighborhood but I have been back to that neighborhood, because I always go back to my old neighborhood.

THE WITNESS: Yeah.

THE COURT: I grew up there. And I went to school there.

THE WITNESS: It is a good neighborhood.

THE COURT: You are right it is a good neighborhood. It was an excellent neighborhood when I went there. I went to school at 4th and Brown. Do you know where that is?

THE WITNESS: We went to Kearny at 6th and Fairmount.

THE COURT: 6th and Fairmount, I remember Kearny, but I went to Catholic school,

Page 169.

at --

THE WITNESS: We couldn't afford that.

THE COURT: Well, they didn't charge anything when I went there. Of course I don't know about now. In my days it was free. Well, okay.

MR. GRANT: May I proceed, Your Honor?

THE COURT: Go ahead.

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CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good afternoon, Mrs. Wallace.

A. Hi.

Q. Is it Miss or Mrs?

A. Miss.

Q. Miss Wallace. I guess I better use this microphone.

A. Please.

THE COURT: There is a lot of noise outside: He won't hear you.

BY MR. GRANT:

Q. Miss Wallace, you are Mumia's older sister, are you?

A. Oldest sister.

Page 170.

Q. How much older are you?

A. Hmm, six years.

Q. So you were a grown woman when he was still a teenager?

A. I'm sorry?

Q. You were a grown lady when he was still --

A. Yeah, when he became, when he was about in high school I had just about left home.

Q. Okay. You said your parents were sticklers for getting your education, especially your stepfather and --

A. Yes.

Q. Did your mother agree with that principle?

A. Oh, definitely.

Q. I'm sorry, I'm sorry to hear about your mother's passing. I want to ask you, though: How did your stepfather and your mother take it when your brother decided that he was going to drop out of high school though he had this immense intellectual tendency, I am sure they saw it?

A. Unfortunately, I wasn't privy to the discussion about that. I wasn't there. And I don't know what was said between them.

Q. How did you take it?

A. Umm, I recall, what I remember is during that

Page 171.

Lydia Wallace - Cross

time Mumia was struggling to have the name of the school changed from Franklin High to Malcolm X High which was more applicable to the people that used the school. So I thought that was very admirable. But because Mumia was, Mumia probably was more advanced than his peers at that time so he probably was bored anyway.

Q. At what age did he drop out of high school?

A. I'm sorry?

Q. At what age did he drop out of high school?

A. Umm, I don't remember.

Q. Did he drop out of the tenth grade?

A. Well, I don't want to guess but if one would guess I would say between tenth and eleventh grade.

Q. And since you were his big sister and you were so close to him, I imagine you realized at or about that time he had joined and become an active member of the Black Panther Party; is that correct?

A. Yes, I remember him telling me he was an active member of the party. When he became part of the Black Panther Party I was still home. And he used to talk about the feeding days and having programs for children and that kind of thing. That's all he talked to me about.

Q. Did he talk to you about the philosophy of the

Page 172.

Lydia Wallace - Cross

Black Panther Party aside from nurturing children?

A. No. One of, having five brothers and being the only girl, they always get things together. Even with my stepfather, like they would go down to the waterfront and just do that male-bonding thing. And I wasn't a part of that. You know, I had a real attitude about that.

Q. You are a girl?

A. Yeah.

Q. You're a girl and we're guys and you don't hang with us: That was the attitude?

A. Yeah, so sometimes I would say that Mumia wouldn't tell me everything.

Q. How old was he when he joined the Panther Party?

A. I don't know.

Q. Now, you've testified that both yourself and your mother attended the trial everyday?

A. Yes, I didn't attend everyday. I had to work sometimes. But my mother was able to come everyday.

Q. And you also came to the sentencing hearings, right?

A. Yes.

Q. And you knew Mr. Jackson, by the time the trial came around you knew him personally, did you

Page 173.

Lydia Wallace - Cross

not?

A. What do you mean personally? Just having had conversation about the trial and proceedings with him.

Q. No, I mean when a man comes in your home on a number of occasions and speaks to your family and your mother, probably you, I would assume that you got to know the person in some way?

A. He came to my mother's home, I wasn't home. I wasn't living at home then.

Q. Okay.

A. And he would come to my mother's home. I don't remember how many times. But I know that he used to come to talk to my mother, and I might have stood there, from that day's proceedings, or I might have taken my mother out to dinner or something like that and I just happened to be there when he came. But I would venture to say he never came to talk to me, he came to talk to my mother.

Q. And when he pulled you aside during the course or after the proceedings that you may have attended, he would explain to you exactly what transpired so that you and your mom would understand what efforts he was making on behalf of your brother, I take it?

A. He would try to explain to us what went on

Page 174.

Lydia Wallace - Cross

earlier in the day.

Q. Were you absent at that time, is that why he was explaining it to you?

A. No, if I was there. He would not call me or meet with me if I wasn't there that day. If we were sitting in the spectator area and he would just lean over and say so-and-so just happened or whatever.

Q. And on the days you attended would you see any communicating, would you see them whispering or communicating while the proceedings were taking place?

A. I don't understand what you asked.

Q. Yes. There is a trial going on, and I'm going to communicate with the person sitting with me at counsel's table by cupping my hands (indicating), whispering. Could you see him doing that with Mr. Jamal, your brother?

A. Not very much, no.

Q. You didn't see it?

A. I did see them do that but not very much, no.

Q. I want to ask you a question, ma'am. You said this, that I, together with my mother Edith Cook, attended the trial of my brother each day during the month of June of '82.

A. Yeah.

Page 175.

Lydia Wallace - Cross

Q. We saw his backup Counsel Anthony Jackson. And now what does that mean: You saw his backup Counsel? What does that --

A. You are talking about in the Courtroom?

Q. Yes. And what I am trying to determine is what you mean by the word backup Counsel?

A. His Court-appointed attorney.

Q. Well, some people have court-appointed attorneys and the attorneys are called attorneys.

A. Yes.

Q. But you call him backup. What does that mean to you?

A. Well, I realize that at some time, and I would not venture to say on this day he was a backup and/or the next day he wasn't or whatever. But I realized that at some time Tony was the backup attorney. But I don't know, I'm not clear about when it starts and stops.

Q. Well, if somebody asked you does he have your back, that means to you is a person protecting you from behind?

A. Yeah.

Q. But that means that you are in the lead?

A. Okay.

Q. Now, backup Counsel, does that imply to you

Page 176.

Lydia Wallace - Cross

that this person was not the primary lawyer but the person was just backing up their primary lawyer?

A. I believe I recall sometimes Mumia was in the back and Anthony Jackson was in the back, at his back.

Q. Did you ever attend the proceedings when Mumia was in the

front and Anthony Jackson had his back, that is when Mr. Jamal was examining witnesses and inquiring of Jurors in Court?

A. I think I recall that.

Q. And at that point in time on those occasions whenever you recall them, Mr. Jamal was in charge, was he not?

A. Not the whole time, no.

Q. But on those occasions when you saw him under those circumstances, was it your sense that he was in charge?

A. Honestly?

Q. He was a lawyer?

A. No.

Q. He wasn't in charge?

A. I didn't feel that Mumia was in charge.

Q. Listen to this. I am not asking you if he was in control of the environment or the events. I am asking you was he in charge; that is to say, I'm

Page 177.

going to dictate my destiny, what the world does around me the world does?

A. No. Unh-unh, not at all, no.

Q. No? How did you first, how did Mr. Jamal get Anthony Jackson in the first place as a lawyer?

A. I wasn't involved in that process.

Q. Did friends of your family come to you and suggest to your mother that Mr. Jackson would be the man to get for this type of case?

A. I wasn't involved in that process, I don't know.

Q. Now, you exchanged greetings with Mr. Jackson. You said you had never been in City Hall before that?

A. Yes.

Q. Even before trial; is that right?

A. Yes.

Q. So you don't know if he was a good lawyer or a bad lawyer, do you?

A. No, I don't.

Q. From coming to your home, speaking with your mother, pulling you aside or your mother aside whenever you would come to Court to explain things to you, did you feel that he was an attentive lawyer?

A. To us?

Q. Yes.

Page 178.

A. Umm, I guess you could say when he gave us time, yes.

Q. And did he ever not give you time when you requested it?

A. I never requested time, I don't know.

Q. Are you aware of whether your mother ever requested time and did not receive it?

A. Umm... we, we, we put our confidence in him.

Q. Why did you --

A. We didn't question him because we didn't know what to question. We didn't know, we didn't know what he was supposed to do: We never worked with a lawyer before. So they are telling us this is a lawyer and he's qualified and he's all of that.

Q. Who is telling you he is all of that?

A. Well, that's what some of the supporters were saying at that time.

Q. Some of Mumia's friends?

A. Yes. And they were saying that he had a record of doing some things, and I don't even remember what they were. I think it's working with Pilcop or something like that.

Q. Yes, do you know what Pilcop is?

A. Excuse me?

Q. Do you know what that is: Pilcop?

Page 179.

A. I didn't know then. I didn't know at all. So I'm just assuming that people in the know are feeding us information. He's an attorney and we just figured he knew what to do.

Q. And what people, friends and supporters of Mr. Jamal, were telling you is that he was a good lawyer and he was all of that?

A. That's pretty much what they said.

Q. All of that is a colloquial expression for cat's meow: He is the best of the best?

A. No, I never heard that. They said he was competent, he could do the job, you know. Cat's meow, no, I didn't hear that.

Q. Hmm-hmm. Your mother testified at a bail hearing on behalf of her son back in January of '82, about a month after the shooting?

A. Okay.

Q. Is that right? Do you recall that?

A. I wasn't here. I don't think I remember hearing it. Where did that take place?

Q. Well, it says here in your affidavit that you signed that Mr. Jackson was aware of your relationship to your brother, had called your mother as a witness to testify in Mumia's behalf during a bail hearing in January of 1982; is that true?

Page 180.

A. Okay. I don't remember the particulars but, okay, I remember.

Q. And that's, you don't remember that particularly because you didn't actually draft this, did you?

A. Yeah, I wrote that.

Q. You wrote that?

A. Hmm-hmm.

Q. And where, who supplied you with the dates here?

A. Who supplied me with what?

Q. The dates, since you don't remember the dates?

A. I don't remember the dates. You could do whatever you want with me on dates, I don't remember dates.

Q. Okay. I am not going to do that.

A. I don't remember dates.

Q. I know you think lawyers are full of tricks but that's not going to happen. Let me ask you this. What lawyer assisted you in preparing this affidavit, which is marked for the record exhibit number 7, affidavit of Lydia Wallace in support of Mr. Jamal's Petition?

A. Your question?

Q. My question is what lawyer if any conferred

Page 181.

with you or discussed with you and assisted you in drafting this affidavit (indicating)?

A. Len Weinglass called me and asked me to write up something, he told me to write what I remember, our relationship to him and, you know, those kinds of things. I wrote it, I had it notarized and I sent it to him. That's what I remember. I said that to the other lawyer.

Q. Where did you have it notarized?

A. Down at I and Erie Avenue.

Q. That's in Philadelphia, right?

A. Yeah.

Q. Oh. Well, the notary's name here is Sheldon Rosen, looks like, from Phoenixville Borough, Chester County. Is that where you got it notarized?

A. I'm sorry? I didn't hear you.

Q. Sheldon Rosen, Phoenixville Borough, that's in Pennsylvania, Chester County. It says --

A. I went to I and Erie, that's where I got it done at.

Q. Okay. Your mom testified but you didn't testify?

A. No, I didn't.

Q. You didn't testify at the bail hearing, and you didn't testify at the preliminary hearing?

Page 182.

A. No. No one asked me to testify.

Q. You didn't testify at the trial?

A. No.

Q. You didn't testify at the sentencing phase?

A. This is the first time I've ever done any of it.

Q. Yet all this time you were conversing with Mr. Jackson, he was coming to visit your mother?

A. Yeah.

Q. Coming to her home. Did you ever ask him is it normal that a family member would not testify?

A. No, I never questioned, it never crossed my mind to ask him that.

Q. Did you not testify -- strike that. Your brother Ronald didn't testify either, did he? To your knowledge?

A. I don't remember.

Q. But you would remember if he did, wouldn't you?

A. I didn't.

Q. Okay. Do you recall Mumia's twin Wayne testifying?

A. No, he wasn't in the states at that time.

Q. How about Keith?

A. Keith was in the military, he wasn't here

Page 183.

either.

Q. Well, he was in the military, but you would agree that in your family's history this was a significant event, would you not?

A. I don't remember Keith testifying, I don't remember him being here.

Q. And we all know that his youngest brother, the baby, William Cook, who you call Billy, he never testified either, did he?

A. No.

Q. At any hearing?

A. At his own -- no, he didn't testify, no.

Q. Why do you think that no one from his family, your family, testified on behalf of Mr. Jamal?

MR. WILLIAMS: Objection, Your Honor.

BY MR. GRANT:

Q. If you know, being a family member?

MR. WILLIAMS: I am going to object to that, to the operation of other peoples' mental processes.

MR. GRANT: I will rephrase the question.

BY MR. GRANT:

Q. Are you close to Billy?

A. Ahh, yes.

Page 184.

Q. And when Mumia got locked up, did you talk to Billy about it?

A. Afterwards, when he was out I talked to him.

Q. And Billy told you that he was right there when the whole thing happened, didn't he?

MR. WILLIAMS: I am going to object to this as outside the scope of direct.

THE COURT: Objection is overruled, Counselor.

Go ahead.

BY MR. GRANT:

Q. Did he not tell you, ma'am, that he was right there when your brother was shot?

MR. WILLIAMS: Your Honor, objection on the hearsay grounds.

THE COURT: I said it is overruled, okay. You have an exception.

BY MR. GRANT:

Q. You could answer that.

A. No.

Q. You never discussed it with Billy or you discussed it with him but he never told you that?

A. We didn't discuss the night of December 9th, 1981.

Q. You never discussed that with him?

Page 185.

A. No.

Q. Did you not testify on behalf of your brother for the same reason that Billy Cook didn't testify?

A. I don't know why Billy didn't. I could say no one asked me.

Q. Did Mr. Jackson ever come to your mother's house and discuss with you what his approach was going to be in defending your brother? That is did he give you some inkling into his ideas and how he thought that he could best approach this and maybe save him?

A. Umm, he could have discussed it with my mother but not me.

Q. And you don't recall ever asking him any questions along those lines?

A. No, I just figured he had, he had it, you know. He, he, handled it. I don't even know what kind of question to ask him, you know. Mumia always said to us during the trial, you know, the truth will come out, that he would be free. So we just sat through those trials knowing that when it was over, we was going to take Mu home because the truth was going to come out. I never asked any questions about anything.

Q. When Mr. Weinglass contacted you and asked you

Page 186.

to write some things down, you didn't just start writing a rambling exposition about when I was 3 this happened to me, and when I was 4 something happened more, you gave a structured affidavit here?

A. Yeah, he told me.

Q. Where did you get the structure from, who gave you that structure?

A. When he called me on the phone he said write about myself, what my employment was.

Q. Yes.

A. What I was doing in December of '81. And my relationship to my brother Mumia. And if I had attended any trial, any of the trial, that kind of stuff. So that's what I wrote.

Q. And you left something out: If Mr. Jackson asked you to testify?

A. Yes. That's correct.

Q. Mr. Weinglass specifically asked you to write that?

A. Yes.

Q. So you had no role other than as an observer during the trial?

A. As an observer and supporter to my mother and a loving sister I was there.

Q. You did say to Mr. Williams on direct

Page 187.

examination that Mr. Jackson explained that in a capital penalty case, that there are two phases to it, in one the jury has to decide if

the person should even get to the second part?

A. That is correct.

Q. And when he explained that to you, Mr. Williams asked you did he describe what goes on in the penalty phase. And you said you don't remember hearing that explanation?

A. He didn't go into detail on it. He just said it was two. I remember him saying it was two phases and basically he gave an overview of what would happen in the first phase and what would happen in the second phase.

Q. Okay. That is an overview. Is that the same as more or less an explanation as to what occurs?

A. If you want to say that.

Q. Well.

A. It, it was very brief.

Q. When you say you don't remember hearing this explanation, but it's possible in fact that he did in fact tell you those things?

A. It's possible, yes.

Q. And in fairness to you, we are going back 13 or 14 years, I understand that.

Page 188.

Lydia Wallace - Cross

A. Yeah, yeah.

Q. He never approached you -- that is Mr. Jackson -- to testify, but you say he could have possibly approached your mother; is that right?

A. I don't know whether he did or not.

Q. Okay. Now, when did you leave home, ma'am, at what age were you in relationship to the age of Mumia?

A. Ahh, I think I left home, moved into my first apartment, I must have been 19 to 20.

Q. So that means that he was 13 or 14?

A. Yeah. About, yeah.

Q. And you said you were still at home when he had joined the Black Panther Party?

A. Yeah.

Q. So he joined before he was 13 or 14?

A. No. Umm, I'm trying to relate to when my son was born. I was 18 years old. And I left home, I would have to guess, within, within three to five years after that. I can't, dates and stuff I don't remember well.

Q. And were you living in Philadelphia in 1979?

(Pause.)

A. Yes, I think so, yes.

Q. And were you still close to your brother Mumia

Page 189.

Lydia Wallace - Cross

at that time, conversing with him about various things that were going on in one another's lives?

A. Yeah.

Q. Did he tell you why he felt compelled to buy a firearm and to carry it on his person without a license at that time?

A. No, he didn't discuss that with me.

Q. Did you ever see the weapon?

A. No.

Q. Were you aware of it's existence?

A. Not until after the fact.

Q. After which fact?

A. After the incident. I heard in the newspapers and that kind of stuff after the incident in '81 that he owned it. But I never heard about it prior to that.

Q. Well, you were describing Mumia, about his sensitivity to other human beings and that he was aware of things around him and interested in things other than what occurred within the complex in which he lived, and about his sense of fairness and his peaceful nature. What did you think when you found out that the gun involved was found right next to him, a shoulder holster was found on him, and that there were five spent cartridges in it, meaning that

Page 190.

Lydia Wallace - Cross

gun had been fired five times?

MR. WILLIAMS: I am going to object to that, Your Honor: Assumes facts not in evidence.

MR. GRANT: Well, at this time, Your Honor, I would move to incorporate the entire trial testimony from the transcripts of the Quarter Sessions file, if that is the case.

THE COURT: Okay, if it is in the record.

BY MR. GRANT:

Q. You may answer.

A. I --

Q. I know I lost you.

A. I lost the question.

THE COURT: Repeat the question.

BY MR. GRANT:

Q. According to the record in this case, according to the facts testified by numerous witnesses -- and I'm framing this question in light of your descriptions of him as peaceful, sensitive, wouldn't harm a roach, things of that nature -- found within inches of his left arm was a .38 snub-nose revolver. The gun had been fired five times, sitting in a pool of blood, and an officer lying 3 feet from

Page 191.

Lydia Wallace - Cross

him, a hole through his head between his eyes, likewise in a pool of blood. And the weapon was later traced to having been purchased by him in 1979. And a shoulder holster on his person indicated that he carried this weapon without permission to do so or license on the City streets of Philadelphia.

Now, my question was, and my question would have been in 1981 had you testified, how do you reconcile the person that you have described here to us with the facts that were found by the Jury?

A. No, not my kid brother. No question in my mind, I, you know. Well, the other thing is he told me he didn't do it. So I believed him. But I know that's not characteristic of his -- of him, he is not like that.

Q. From all the descriptions of everybody that has come here -- and they all are good people from what I can see, I believe -- I don't think that is characteristic. Nevertheless, he had a bullet in his own chest that was determined to be from the officer's weapon who was lying next to him prone and dying at that moment. In light of that I want to ask you this: Did your brother Mumia, since Billy was the baby, take up for him, fight his fights for him, protect him from society, so to speak?

Page 192.

Lydia Wallace - Cross

A. I couldn't say he did that that night.

Q. I am not asking you about that night.

A. Oh, okay.

Q. I am saying, since you knew both of them intimately, you are the older sister, Billy is the baby brother and Mumia is next to the baby brother in age, they are the two youngest, you are the next to the oldest, you could watch them as an adult would watch them, see through the eyes of a mature individual, did you see Mumia have a propensity to take up for Billy in his interaction with the world?

A. I saw Mumia take up more for Wayne than Billy. I would say that Mumia was protective of all of us. But Billy, I see him more protective of Wayne than Billy.

Q. Okay. Speaking of your brother's sensitivity: How many days or what percentage of the trial, the guilt phase of the trial, do you think that you saw? It started on June 19th, basically, there were

some preliminary motions, selection of the Jury and things of that nature, but the actual testimony from the witness stand right there where you are seated began on June 19th. From June 19th until the end of June, that 12-day period, and three days in July, the trial occurred. How many days do you think you attended?

Page 193.

Lydia Wallace - Cross

A. Probably about 10.

Q. About 10. That's a lot. That's 10 out of 15 or 16 days?

A. Probably about. I attended at least half.

Q. Okay. And if you attended you know now, you saw the way your brother, who was usually serene and peaceful and sensitive, treated his lawyer?

A. Treated who?

Q. His lawyer, his backup Counsel. Did you witness that, ma'am?

A. His lawyer. I saw the way he treated him?

Q. Yes.

A. Yeah, I sat back and I could see them in the front. I never knew what conversation would transpire between them.

Q. You never heard conversations and you were here 10 days of a 15-day trial?

A. Between the two?

Q. No. It wasn't necessarily a conversation, it may have been a one-way conversation, but you did not hear your brother harangue his lawyer, telling him to get his ass out of here, he is not John Africa, he is not a real lawyer, I want a real lawyer, someone who can acquit me; you didn't hear any of that?

A. I never had, I never heard him. I heard him

Page 194.

Lydia Wallace - Cross

talk to the Judge.

Q. In that fashion?

A. In that fashion. I never heard him talking to Mr. Jackson that way.

Q. Were you here when he was removed on a number of occasions for like conduct?

A. I was here when Mumia would try to make a point or get a point across and couldn't. And he would be removed from the Courtroom, shouting back so that people could hear what he was trying to get across. That's what I heard.

Q. Whenever Mr. Jackson, whenever you observed or heard your brother dealing with Mr. Jackson, his lawyer, his backup lawyer, in that fashion, did Mr. Jackson ever come over to the family and try to explain what the situation was?

A. No, not -- no, no, never during those times.

Q. Did he at some later on point in time tell you why he didn't feel it was appropriate to come over to you during those episodes?

A. I recall Mr. Jackson coming over to us after the whole proceedings of the day and try to explain to us what legally transpired that day.

Q. I am talking about his relationship with your brother.

Page 195.

Lydia Wallace - Redirect

A. He didn't discuss that with me.

Q. He didn't tell you that Lydia, you're his older sister, I am trying to help this man, can you talk to him and let him know I am not his enemy?

A. No, no, no, he didn't come to me that way.

MR. GRANT: Thank you, ma'am.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Miss Wallace, I appreciate you coming in. I just have one question for you. Do you know, and did you know back in 1982, what the obligations of an attorney were at a penalty phase, did you know what the law required of an attorney at the penalty phase?

A. No.

MR. WILLIAMS: No further questions.

MR. GRANT: I have no recross, Your Honor.

THE COURT: All right, Miss Wallace, I have been reminiscing but I think I know where you are talking about now. Take you back a good many years. For both of us. Do you remember a little street between Fairmount and Brown Street closer to 3rd Street? Do you remember that

Page 196.

little street?

THE WITNESS: No.

THE COURT: Well, there was a police station right on that corner there of that little street.

THE WITNESS: On 3rd?

THE COURT: No, not as far as 3rd. Close to 3rd but before 3rd there is a little street that used to run, I remember when I was going to school I used to go up that street to go to Brown Street. And there was a police station right there.

THE WITNESS: No.

THE COURT: They closed up that police station and it was empty for a long time. And when did you go swimming there, do you remember the years?

THE WITNESS: During, during the years that we went to Kearny School. We used to go down there and get our surplus food always.

THE COURT: What year was that, 1960 or --

MR. GRANT: Your Honor, I don't think this lady wants to reveal her age.

THE WITNESS: I don't know why he

Page 197.

wants to take me back there. I keep telling you I am not going.

THE COURT: The fact I am trying to get at: I had moved from there by that time but I do go back there many times. And I remember they converted that police station to a swimming pool. And they cut off that --

THE WITNESS: Are we talking about 4th and Fairmount?

THE COURT: Not at 4th and Fairmount. Closer to 3rd and Fairmount there is a little street there, okay. They converted that to a swimming pool. That's probably where you went. I don't remember.

SPECTATOR: Are we talking about Mumia? Could you remove me? Could I leave now? I would like to leave. I would like to be escorted out. Are we talking about executing Mumia Abu-Jamal? Are we talking about executing him? I want to leave right now.

THE COURT: Just put her out, please.

(A spectator was escorted from the Courtroom.)

THE COURT: Do the rest of you want to go?

Page 198.

You could put the rest of them out if you wish too. I just wanted to correct you. I think I know now where you went swimming. But that was after my time. Okay. Your next witness?

MR. WILLIAMS: Your Honor, the Petitioner now calls Miss Ruth Ballard.

MR. GRANT: The Commonwealth requests an offer of proof, Your Honor.

THE COURT: Do you have any affidavits with these?

MR. GRANT: No.

THE COURT: In the future would you please do that so we don't have this problem all the time? Under the rules here you are supposed to do that.

MR. WILLIAMS: We suggested that at the very outset.

THE COURT: Well, just a simple little affidavit of what they are going to talk about, okay.

MR. GRANT: In the meantime I will settle for an offer of proof,

Your Honor.

MR. WILLIAMS: Well, I would be glad

Page 199.

to give an offer of proof, that is fair enough. Miss Ballard was a neighbor of the Cook family and was very close with the Cook family. And as a result, was in a position to get to know Mr. Jamal, particularly in his early years of life. And she'll describe Mr. Jamal during those early years. Again it goes primarily to the penalty phase issue.

MR. GRANT: Thank you.

THE COURT: All right.

(Pause.)

MR. WEINGLASS: Your Honor, while we are waiting: Would the Court indicate what time it will close today?

THE COURT: As long as you want, I'm here at your convenience.

MR. WEINGLASS: I have to let the witnesses know.

THE COURT: Who?

MR. WEINGLASS: There are witnesses outside who I wonder if I could excuse them.

THE COURT: How long will this witness be?

MR. WEINGLASS: I think 30 minutes total.

Page 200.

THE COURT: It's almost four o'clock. How long do you want to go today?

MR. GRANT: Six o'clock everyday, work on Saturdays, Judge, let's get it on.

MR. WEINGLASS: No, Your Honor.

THE COURT: Well, let me say this: After her who do you have? According to this list you have three. Joe Davidson is for tomorrow, right?

MR. WEINGLASS: Yes, we are.

THE COURT: Do you have an affidavit on that one so we could get --

MR. GRANT: No, I have no affidavit on him, Your Honor. But if they have no more witnesses I have a couple that we could possibly call, depending on how late Your Honor wants to work this evening.

MR. WEINGLASS: Your Honor, we would prefer to let our witnesses go without interruption. There is no need for that.

THE COURT: Well, the ones that were already testified to, you could have them on call. Who else do you have?

MR. WEINGLASS: We will have them on call.

Page 201.

THE COURT: That's what I am talking about. You have them on call so they are not here. You have Anthony Jackson and Jeremy Gelb on call, so they are not here. They are back somewhere. I don't know where they are, but.

MR. WEINGLASS: Well, I wanted to know what time Your Honor will finish today so I will know whether to bring in witnesses or not.

THE COURT: Well, who are you going to bring in tomorrow? Maybe we could use this time to try to see where we are going. Who do you have tomorrow?

MR. WEINGLASS: Yeah, we could start out in the morning with Mr. Davidson. Move to Mr. Jackson. Move to Mr. Gelb. Your Honor, it is not going to be Miss Gelb.

MR. GRANT: Jeremy.

MR. WEINGLASS: Jeremy Gelb.

THE COURT: Who after that?

MR. WEINGLASS: Gary Wakshul.

THE COURT: Well, do you have a copy for me?

MR. WEINGLASS: (Handing).

THE COURT: Would you get the copy for me. Give a copy to the D.A. so he knows who is

Page 202.

coming in tomorrow.

Who do we have here?

Joe Davidson. Now, on these here, do you have affidavits on these, please.

MR. GRANT: None on Jeremy Gelb, none on Wakshul, none on McGill. And we would ask for an offer of proof. And we have one for Mr. Robert Greer, Your Honor, and he is right in the room over there. There are two witnesses that we've had who have been here for a week.

THE COURT: He is here?

MR. GRANT: Yes, he is.

THE COURT: Why don't we do him today, then. Because --

MR. GRANT: Yes, Your Honor.

THE COURT: -- you have an affidavit.

MR. GRANT: Yes, Your Honor, we do.

THE COURT: But you don't have any for the other three. Could you give him an affidavit?

MR. WEINGLASS: No.

THE COURT: Under our Rules you are supposed to do that.

MR. WEINGLASS: We read those Rules. We offered affidavits. The Rule requires that

Page 203.

they be provided 30 days before a hearing. We wanted the 30 days to prepare our affidavits" We were denied that.

THE COURT: Well, you say you have them. So if you have them why don't you get it over to them?

MR. WEINGLASS: We do not have the affidavits.

MR. GRANT: I will waive that, Judge. I will waive it. Could we put on the witness?

MR. WEINGLASS: Okay. They are waiving it, there is no problem.

THE COURT: Ruth Ballard, he wants.

THE COURT OFFICER: Yes, Your Honor, Miss Ballard.

THE COURT: Tell Robert Greer to stay, we might as well get him. He is here.

MR. GRANT: Yes, Your Honor.

MR. WEINGLASS: Your Honor, then is this the last witness for the day?

THE COURT: No, there is Robert Greer here.

MR. WEINGLASS: No, Robert Greer, we will not put him on out of order.

THE COURT: Well, that is the order

Page 204.

he's here. And you are going to put him on.

MR. WEINGLASS: He is here pursuant to a prosecution subpoena. He is a Petitioner witness and we will put him on in our case in the order that we have decided to put our case on.

THE COURT: Well, you don't tell the Court how long you want to work. I decide how long we are going to work.

MR. WEINGLASS: Absolutely, but I am telling the Court the order of our witnesses. The Court will decide how long we work but we will decide the order of our witnesses.

MR. GRANT: I have two witnesses here, Your Honor, and they have been here for awhile. All I would like to do is, with the Court's permission -- and you certainly have the discretion to take witnesses out of order. I don't think it is going to make these proceedings too complex. I think it is going to make it simplified because these are people who they allege can exonerate Mr. Jamal and they are here and I would like the courtesy shown to them that we are showing to their witnesses by having them on call.

Page 205.

THE COURT: There is no sense in having them keep coming day in and day out. If they are here let them take the stand.

MR. WEINGLASS: No, they are here pursuant to a prosecution subpoena.

THE COURT: I will put them on.

MR. WEINGLASS: I strongly object to the Court dictating our case. You told us to call one witness a day, we called four. Now we are told it is not enough. I had that order from the Court.

THE COURT: I see now exactly what it is. No grandstanding, please. All you are trying to do is dillydally.

But tell him to come back tomorrow, and if Weinglass wants them back tomorrow.

MR. WEINGLASS: I do not. I want my witnesses tomorrow.

THE COURT: Well, your witness is Robert Greer.

MR. GRANT: Mr. Greer was subpoenaed by the defense for today's date. It happened to coincide.

MR. WEINGLASS: Excuse me?

MS. WOLKENSTEIN: No, he was informed,

Page 206.

Your Honor --

MR. WEINGLASS: His name is not on the list. He is on the list for tomorrow.

THE COURT: Okay, I tell him he wants him back here tomorrow, okay. I am not go --

MR. GRANT: Can we put him on, Your Honor?

MR. WEINGLASS: Of course not.

THE COURT: No, put him on tomorrow.

MR. GRANT: Very well.

MS. WOLKENSTEIN: Mr. Greer was notified for tomorrow. If he is here today it is at the compulsion --

THE COURT: I don't need anymore echo in here. Only one of us could get on this record at a time. I said he could go home and come back tomorrow. What are you arguing about? I am trying to do what you asked me to do. Now let's go. She's here.

MR. WEINGLASS: Your Honor --

THE COURT: Wait awhile, Counselor. Wait awhile. Ruth Ballard is on the stand here. Put her under oath. She is already sworn?

THE COURT OFFICER: Not yet, Your

Page 207.

Honor.

Ruth Ballard - Direct

THE COURT: Swear her in. Where is the attorney who is going to question? All right, okay. Are you ready? Let's go.

- - - - -

Ruth Dorothea Ballard, having been duly sworn,
was examined and testified as follows:

- - - - -

MR. WILLIAMS: Your Honor, may I inquire?

THE COURT: Yes, sure.

MR. WILLIAMS: Thank you.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Miss Ballard, thank you very much for coming in.

A. You're welcome.

Q. Are you a resident of this City of Philadelphia?

A. Yes, I am now.

Q. How long have you lived here in Philadelphia?

Page 208.

Ruth Ballard - Direct

A. About 50 some years.

Q. And do you work?

A. Yes, I do.

Q. What do you do?

A. I'm a telephone console operator.

Q. And how long have you worked in that job?

A. Six years.

Q. Now, are you aware of what these proceedings are all about?

A. Yes, I am.

Q. You understand that Mr. Jamal seated here has filed a Petition for a new trial? Do you understand that?

A. Yes.

Q. And have you ever met me before today?

A. Yes! I have.

Q. How many times?

A. Two.

Q. And have we ever discussed the nature of these proceedings?

A. Yes, somewhat, yes.

Q. Did we discuss why I have, we have requested that you kindly come to Court and testify?

A. Yes, you did.

Q. Now, we asked you to come to testify because

Page 209.

Ruth Ballard - Direct

you know Mumia Abu-Jamal --

A. Yes, you did.

Q. -- is that true?

A. Yes.

Q. Did you know him, Miss Ballard, back in 1982?

A. Yes, I did.

Q. Well, when did you first meet this man?

A. I first met Mr. Jamal as a baby.

Q. How old was he when you met him?

A. Oh, maybe a little over a year old.

Q. Now, I want to ask you some questions about that but first let me ask you this. Were you aware that in 1982 that Mr. Jamal was under indictment?

A. Yes.

Q. And were you aware in the summer of 1982 that there was a trial concerning that indictment?

A. Yes, I was.

Q. Did you, Miss Ballard, attend any of those proceedings?

A. Yes, I did.

Q. About how much of those proceedings did you attend?

A. Ahh, maybe about anywhere between two and four.

Q. Okay. Did you know when you attended those

Page 210.

Ruth Ballard - Direct

proceedings, Miss Ballard, whether Mr. Jamal was represented by an attorney?

A. Yes.

Q. Do you know who that attorney was?

A. Anthony Jackson.

Q. And did you ever have occasions to actually talk with Mr. Jackson?

A. No, I did not.

Q. But you saw him here in Court?

A. Yes, I did.

Q. Did you see him anywhere else, outside of the Courthouse?

A. I have seen him on the street.

Q. Oh, I see.

A. Hmm-hmm.

Q. What about in connection with his involvement in this case:

Did you see him outside of the Courthouse but in connection with his involvement in this case?

A. No.

Q. Now, you were living here in Philadelphia during the summer of 1982?

A. Yes, I was.

Q. And was there any, any reason, either health reasons or other personal reasons, that would have

Page 211.

Ruth Ballard - Direct

impeded your ability to come to Court to testify?

A. No.

Q. And if somebody had asked you to testify at that proceeding, would you have been willing to do that?

A. Yes, I would have.

Q. And did anybody discuss with you the possibility --

A. No, they did not.

Q. -- of testifying?

A. No, they did not.

Q. Now, you mentioned that you first met Mr. Jamal when he was about a year old?

A. Yeah, a year, a little older.

Q. Now, could you tell us how did that come to pass, how did you come to see or know Mr. Jamal when he was an infant?

A. Well, I got to meet Mr. Jamal and his family because we were neighbors. They had moved into this development a little before I did. And then when I moved our back's faced one another, the back of our houses were somewhat facing one another.

Q. I see. And you were friends with his folks, his parents?

A. Yes.

Page 212.

Ruth Ballard - Direct

Q. Do you remember, what were their names?

A. Edith and William.

Q. And their last name?

A. Cook.

Q. The Cook family?

A. Yes.

Q. And you developed a friendship with the Cook family?

A. Yes, I did.

Q. How close was that friendship with the Cook family?

A. Ahh, it got to be very close over the years.

Q. What do you mean by it got to be close? How was it close?

A. Umm, by visiting, going to places together, to church together. To a movie together. To the park together.

Q. Was the Cook family church-going folks?

A. Yes.

Q. And when Mr. Jamal was an infant, how often would you see him?

A. About once or twice a week.

Q. And then over the years as he grew up, became a toddler and then a young boy and so on, did your relationship with the Cook family, did it become even

Page 213.

Ruth Ballard - Direct

closer over time?

A. Yes, it did.

Q. And did you have the opportunity to see this man grow up from an infant into a toddler and then into an elementary school child?

A. Yes, I did.

Q. Miss Ballard, I know it is a long time ago, but I want you to search your mind on this. And I am going to ask you what impressed you the most, in thinking back on this man as a child, what impressed you the most about him? What struck you about him? Do you understand what I'm trying to get at?

A. Yes, I believe so.

Q. Okay. If you could try to share that with us, please.

A. Hmm-hmm. Okay. As he was growing up, Mumia was always a quiet child. And he grew to be a respectful young lad. A patient young lad. And he loved to read. He was very fond of reading.

Q. Let me interrupt you just for a moment. You said that he was a respectful young lad?

A. Yes.

Q. You also said that he was patient?

A. Yes.

Q. Tell me what you mean? What do you mean by

Page 214.

Ruth Ballard - Direct

the fact that he was respectful? How did that, how did he strike you as respectful?

A. Umm, by speaking to his elders and how he would speak to his elders.

Q. You mean he was very deferential to the adults?

A. Yes.

Q. Okay. Did you ever see him speak ill of his parents?

A. No, no.

Q. What kind of relationship did he have with his mother, that you saw?

A. He had a very good relationship with his mother. He was affectionate and very loving.

Q. And you said that he was patient. How did you come to that conclusion that he was a patient child?

A. He didn't seem to get upset about things. He didn't seem to be a child that would get upset about different things. Like some children if you tell them no you can't do this or you can't do the other, they are going to scream and holler. He wasn't that type of child.

Q. I see. And you said that he loved to read?

A. Yes.

Q. About how old was he when you noticed that he

Page 215.

Ruth Ballard - Direct

was very fond of books?

A. Well, about 8 or 9.

Q. Is there anything, Miss Ballard, in looking at him today and thinking back when he was a child, any events or anything that he did that stands out in your mind?

A. Yes. There is one particular incident where in the summertime mainly they would have Bible class. And a teacher would come around and teach them at the community hall different things about the Bible and the Lord. And Mumia would go as well as other children, but Mumia would do something different after the class was over. He would go home and he would gather up the little children and he would read to them from the literature that he had received in Bible class. As though he was the preacher or the teacher.

Q. How old was he when you noticed that he was doing that?

A. About 10.

Q. About 10 years old?

A. Hmm-hmm.

Q. And where would he do that?

A. Pardon?

Q. Where would he conduct these?

Page 216.

Ruth Ballard - Direct

A. On his mother's doorstep, or sometimes maybe even underneath a tree.

Q. What was it about that, that remembrance that you have just described, what does it tell you about this man Mumia Abu-Jamal?

A. It told me that he was different from ordinary children. And that he seemed to have a belief in a a higher being.

Q. Did you notice as he grew older as to whether his interest in spiritual matters, whether it grew? Did he continue to have an interest in spiritual matters?

A. Ahh, yes, as far as I know for awhile, yes.

Q. Now, was there anything in his childhood, you said that he was patient, but was there anything in his childhood that you observed that would suggest to you that he was a violent person?

A. No, nothing at all.

Q. Did you ever see him in the neighborhood acting like a bully or anything like that?

A. No, I did not.

Q. Were you in a position to see that if in fact he was that kind of child?

A. I mostly certainly believe I would have.

Q. And that's because of your friendship with the

Cook family?

A. Yes.

Q. Were you able to just go over to the Cook family basically any time that you wanted to socialize with them?

A. Yes, I could.

Q. And was your home available to them as well?

A. Yes, it was.

Q. And did you in fact go over to the Cook family at various times of the day, at various times during the week?

A. Yes, various times during the week.

Q. Now, did you see Mr. Jamal when he became a teenager?

A. Yes.

Q. What kind of a teenager was he that you observed?

A. He still was a quiet child that seemed to think a lot.

Q. What do you mean he seemed to think a lot?

A. Ahh, well, to me a person that thinks a lot, they don't talk a lot.

Q. So he was a quiet person?

A. Yes.

Q. Did he still maintain an interest in books, a --

A. Yes.

Q. A fondness for books?

A. Yes, he did.

Q. He did?

A. Yes, he did.

Q. Now, Miss Ballard, in watching Mr. Jamal grow up, did you ever think that you would live to see him in a situation like he is in today?

A. No, I did not, no.

Q. Why is that?

A. Because of his character and his attitude towards people. And life. I would never think that he would be in such a situation.

MR. WILLIAMS: Okay. No further questions.

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CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. I just have a couple of questions for you, Mrs. Ballard. During the trial that you went to, you said that you went between two and four times during

the course of the trial?

A. Yes.

Q. That was 13 years ago, wasn't it?

A. Yes, it was.

Q. And at that time you did not know Anthony Jackson, Mumia's lawyer, did you?

A. Not personally, no.

Q. And --

A. I would know him, you know, as I saw him.

Q. You would know him to recognize him?

A. Yes.

Q. But you wouldn't know him to have a speaking relationship with him?

A. No.

Q. And did he know you?

A. No.

Q. Did you know anybody that knew him?

A. Yes, I did.

Q. Who would that be?

A. I mean as far as his family, Mumia's family.

Q. Oh, Mumia's family?

A. Hmm-hmm.

Q. Okay. And you would sometimes during the course of the trial see Mr. Jackson walking outside City Hall, going about his business or whatever?

A. Yes.

Q. But that was the only real contact that you had with the man; is that fair to say?

A. Yes, yes.

Q. And if he didn't know you and you didn't know him, how would you expect him to get in touch with you and know that you even existed to put you on the witness stand?

A. Umm, well, he knew Mumia's family and if he had wanted witnesses he could have asked Mumia's family.

Q. Okay. So you are saying, so you are --

THE COURT OFFICER: Quiet in the room. Thank you.

BY MR. GRANT:

Q. You are saying that Mumia himself would have to be the person to let Mr. Jackson know I know Ruth Ballard back there?

A. Right.

MR. WILLIAMS: I object: That was not the witness' testimony.

THE COURT: He is cross-examining. I will give you redirect if you want.

BY MR. GRANT:

Q. What I am saying, ma'am, what I am trying to

say is Mr. Jackson would have no way of even knowing that you were here unless Mr. Jamal or Mr. Jamal's family told him that; would that be fair to say?

A. Yes.

MR. WILLIAMS: I am going to object to that also because she is not competent to testify --

THE COURT: Overruled.

MR. WILLIAMS: -- as to what was available to Mr. Jackson.

THE COURT: Because from what her testimony is they didn't know one another. She only knew him in seeing him, okay. So how else could she meet him unless somebody tells him.

MR. GRANT: I have nothing further, ma'am. Thank you.

THE COURT: Is that it?

MR. WILLIAMS: Just one question.

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REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Miss Ballard, one, or two questions, actually. You are not legally trained, are you?

A. Pardon me?

Page 222.

Ruth Ballard - Redirect

Q. You are not a lawyer?

A. No, I'm not.

Q. You have never been to law school?

A. No.

Q. And you've never been a defendant in a criminal trial, have you?

A. No, I have not.

Q. And do you know what the obligations of an attorney are in connection with securing witnesses for a client, do you know what those obligations are?

A. No, I do not.

MR. WILLIAMS: No further questions.

THE COURT: Anything else?

MR. GRANT: No, Your Honor, I have nothing further. Thank you.

THE COURT: All right, you are excused.

Now, before we recess until tomorrow, I think we have, from what you gave me -- Joe Davidson, Anthony Jackson, Jeremy Gelb, Gary Wakshul, Joe McGill and Robert Greer -- now, if he doesn't have any of those affidavits for them, will you please let him know roughly what they are going to testify to. So we don't have any hangups tomorrow, okay.

Page 223.

MR. GRANT: Your Honor, if the Court pleases: I would like, I don't anticipate getting it until I get all documents from Counsel, which is the day that I am in Court, the morning that we are here, which would be tomorrow. I would like on the record an oral offer of proof right now as to what --

THE COURT: All right.

MR. GRANT: As to what Mr. McGill's testimony is going to be.

THE COURT: Why don't you give him that so we don't waste time tomorrow. Tell him, as to the ones you didn't give him an affidavit on, tell him what they are going to testify, give him a rough idea.

MR. WILLIAMS: Mr. Weinglass.

THE COURT: Okay, Mr. Weinglass. For instance, do you have anything on Joe Davidson?

MR. GRANT: Of course not, Your Honor.

THE COURT: All right, tell him about Joe Davidson.

MR. WEINGLASS: No, Your Honor.

MR. GRANT: And Gary Wakshul, while we're at it. And Jeremy Gelb, while we're at it.

Page 224.

THE COURT: Well, whatever ones you don't have. Joe Davidson. What is he, roughly, going to say?

MR. WEINGLASS: Character witness. Mitigation penalty witness who should have been called and wasn't.

THE COURT: I mean did he know him a long time? Relative? What is it?

MR. WEINGLASS: Precisely.

THE COURT: What is it, relative?

MR. WEINGLASS: No, he is a colleague and a friend.

THE COURT: A colleague and a friend.

MR. GRANT: That's great.

THE COURT: Okay. How about Anthony Jackson?

MR. WEINGLASS: Anthony Jackson, we filed an affidavit of Mr. Jackson.

THE COURT: So you have an affidavit?

MR. GRANT: Yes, Your Honor.

THE COURT: Okay, forget that. How about Jeremy Gelb?

MR. WEINGLASS: Jeremy Gelb, Your Honor, there is a matter which both Counsel have talked to Mr. Gelb about and we would both I

Page 225.

think prefer to take it up with the Court in private.

MR. GRANT: No, I am asking what he intends to testify to. I am not asking about confidential matters. Offer of proof: Mr. Gelb.

MR. WEINGLASS: Mr. Gelb is an attorney. He will testify about his role in the appellate process.

MR. GRANT: Okay.

THE COURT: Okay. How about Gary Wakshul?

MR. WEINGLASS: Gary Wakshul, Your Honor will recall, was a witness who the defense attempted to call.

THE COURT: Oh, he is the police officer.

MR. WEINGLASS: He is the police officer.

THE COURT: He now works for the Court system.

MR. GRANT: That's right.

MR. WEINGLASS: That's right.

MR. GRANT: And I know what his expected testimony is.

Page 226.

THE COURT: How about Joe McGill?

MR. WEINGLASS: Joe McGill, if they don't know what Joe McGill will testify to...

MR. GRANT: Judge, I don't know.

MR. WEINGLASS: He is the Assistant District Attorney, formerly.

THE COURT: I know you are calling him for a specific purpose, let him know.

MR. WEINGLASS: That's right, he was the Assistant District Attorney in the trial. We are calling him for that reason.

MR. GRANT: No, well, I object and move to strike. He is subpoenaed, you are calling him for a reason. You could subpoena the Judge. That is ridiculous. Could I have an offer of proof, Counselor?

THE COURT: Give him something.

MR. WEINGLASS: That is the offer of proof.

THE COURT: Well, that is no offer of proof. Well, you got the thing from Robert Greer.

MR. GRANT: Yes. Mr. McGill would like to know if he is being called tomorrow. And I am going to move to ask the Court, or

Page 227.

invite the Court's attention to my motion to preclude him unless Counsel could give us an offer of proof. We have had magnanimous forbearing with the rules as it is.

THE COURT: Tell him why you want to call him. Because under our rules he could ask that I disqualify him as a witness. Now, maybe he will call him, I don't know. But if you want to call him as a witness, tell him why you are calling him.

MR. WEINGLASS: Under our rules we would have 30 days to

prepare an affidavit.

THE COURT: No, no, no, we are now in Court here, don't worry about the 30 days. That's out.

MR. WEINGLASS: Well, Your Honor, the District Attorney can't have it both ways.

THE COURT: All right, I will take it up tomorrow with you, then.

MR. GRANT: Mr. McGill would like to know, from a note that I have here.

THE COURT: Well, he should know, because he has to be prepared to come in here with whatever things you want to bring out. I don't know, he may have a record of this, I

Page 228.

don't know.

MR. GRANT: He may not have to testify at all after Your Honor rules. Based upon their lack of notice and their lack of an affidavit. And their lack of an offer.

THE COURT: I am trying to save him. But he just won't listen.

MR. WEINGLASS: Your Honor, the District Attorney's Office has 18 volumes of his performance.

THE COURT: I know that.

MR. WEINGLASS: That's what I am going to question him about.

THE COURT: 18 volumes of his performance?

MR. WEINGLASS: Yeah. During the trial.

THE COURT: In this trial?

MR. WEINGLASS: Yes, in the 1982 trial.

THE COURT: Yes, the trial.

MR. WEINGLASS: Right, yeah, I am going to question him about matters of record in the volumes.

THE COURT: He is going to talk to him

Page 229.

about matters of record in the volumes.

MR. GRANT: There are 4,000 pages of notes of testimony. The D.A. can take the stand on any particular case and talk about anything from I believe the guy was innocent the whole time or guilty the whole time or I thought there should have been less evidence that we had to put on. I would like an offer of proof, Judge. I don't think I am being unreasonable.

THE COURT: Okay, let me say this to you: Bring in Rules, cases, whatever you have, Xerox it for me. I will read the case, I will look at the Rule, and I will make a decision. Okay.

MR. GRANT: Thank you.

THE COURT: Tomorrow.

THE COURT OFFICER: This Court now stands adjourned until 1O:OO a.m. tomorrow morning.

(Brief recess.)

THE COURT OFFICER: The Judge will come out back out now. Please take your seats. Thank you very much. Close that door please. This Court is now reconvened. Everyone will cease all conversation.

Page 230.

MR. WEINGLASS: Your Honor, I want the record to reflect that Miss Wolkenstein asked the Court to remain. The Court left.

THE COURT: I know, I had already left, Counselor.

MR. WEINGLASS: Exactly. Mr. Grant went in, asked the Court to come back, and the Court came back.

THE COURT: Even my law clerk came in and asked me about it.

MR. WEINGLASS: At Mr. Grant's request.

THE COURT: I didn't know what you were talking about. There is too much noise in this Courtroom. If you don't shut up I will put you all outside. Take him out.

SPECTATOR: You are a Judge. You are a Judge.

THE COURT: Put him out. It is getting to be a circus here, Mr. Weinglass. Stop this nonsense. I had finished for the day.

THE COURT OFFICER: Quiet in the Courtroom, please.

Page 231.

THE COURT: Boy, I will tell you, this is getting to be a circus. It is a shame. It is a disgrace.

THE COURT OFFICER: Silence.

THE COURT: Please keep quiet so I can hear.

What is the problem?

MR. WEINGLASS: What we have is a matter that Miss Wolkenstein --

THE COURT: All right, what is it, Counselor? Don't give me all of that. Let's get right to it. What is your problem?

MR. WEINGLASS: I think the record should reflect that Miss Wolkenstein was speaking to the Court in the --

THE COURT: I had already left. I said I was leaving and I left the bench.

MR. WEINGLASS: And she was speaking.

THE COURT: I couldn't hear her. There was so much noise in this Courtroom. I said quiet, please.

MR. WEINGLASS: There was quiet too.

THE COURT: I disagree with you. There was noise. That's why I was leaving.

MS. WOLKENSTEIN: I believe the noise

Page 232.

was my speaking to you and you up and walked off the bench.

THE COURT: Fine. What is your problem? Let's get right to the issue and stop this nonsense. Come on.

MR. WEINGLASS: We objected to the Court coming back. Mr. Grant insisted on it.

THE COURT: You don't want me to come back, I will leave. You want me to leave?

MR. GRANT: Your Honor --

THE COURT: I am not going to stand here and listen to this nonsense.

MR. GRANT: I understand, Judge, but Jamal was about to be taken back and I understand that Counsel wanted to deal with these discovery matters. I asked the Sheriffs, since Mr. Jamal would like to be present on each and every proceeding, not to take him up so we could discuss this on the record. They were kind enough to oblige me.

Then I asked the Court, your law clerk if she could ask you if you could come back so we could deal with the discovery issue so that the proceeding could go smoothly.

THE COURT: What is the problem with

Page 233.

this discovery?

MS. WOLKENSTEIN: Your Honor, I think we have concluded for the day.

MR. GRANT: The problem is they are not entitled to any and they keep hassling me about it.

MR. WEINGLASS: Your Honor, we can bring this matter up after cool heads prevail tomorrow morning. We will all be back here. This can be argued appropriately at a better time than now. I think there's been a --

THE COURT: But he wants to know where he stands.

MS. WOLKENSTEIN: Your Honor, we want to know where we stand.

THE COURT: Tell me. What is your problem?

MS. WOLKENSTEIN: You did not want to deal with this this morning. There was now an incident here, I believe we should just begin in the morning.

THE COURT: No, I would like to do it now. Because I am not going to do it tomorrow morning so let's do it now. If you got a problem tell me what it is. What is your

Page 234.

problem?

MR. DOMZALSKI: Your Honor, David Domzalski from the City Solicitor's Office.

MS. WOLKENSTEIN: Excuse me. These are our subpoenas. Could we begin on this, then, and just do it properly?

THE COURT: You represent the Police Department?

MR. DOMZALSKI: Your Honor, the Police Department received several subpoenas, as well as the Medical Examiner's Office received several subpoenas in this matter to produce certain documents. I contacted several officials in the Police Department regarding production of those documents. A lot of those documents, Your Honor, one, no longer exist; two, are not in the custody and control of the Police Department; or, three, create a very undue burden to produce because the subpoenas are very broad and would require a lot of manhours by the Police Department in order to do that.

THE COURT: Why don't you narrow down what you want.

MR. DOMZALSKI: Your Honor, we have

Page 235.

attempted to do that.

MS. WOLKENSTEIN: We said that actually we would get back to you about the one issue that I think needs to be narrowed down, which is number five, and we could do that later today. So we could do that.

MR. DOMZALSKI: Two other issues, particularly with respect to a subpoena for the Detective William Wynn. William Wynn is a detective that conducts line-ups in the Police Department, Your Honor. Basically, the subpoena directed to Detective Wynn was for a certain photo array and any other documents of a broad nature. Basically, we asked the defense Counsel to give us a range for Mr. Wynn with respect to line-ups. And the only files that he has are line-up files. We need the exact dates to go back into the archives to see if he has any records pertaining to line-ups that were conducted in or around that time related to the event. With respect to --

THE COURT: Well, did we have a line-up in this case?

MR. DOMZALSKI: The problem, Your Honor, there were no line-ups. The defense --

Page 236.

THE COURT: Well, if there was no line-up.

MS. WOLKENSTEIN: Right, there is no point in looking. The defense requested them. It was denied by Your Honor. And so --

THE COURT: Wait awhile. It wasn't denied by me.

MS. WOLKENSTEIN: Excuse me, it was a prior judge on that.

THE COURT: Please be accurate will you.

MS. WOLKENSTEIN: Excuse me. All right, however, the question is whether or not there are, there are composites of photo arrays. Now, it may not be necessarily in Mr. Wynn's custody. And if that is the case I will seek them elsewhere. I believe the place to seek --

THE COURT: What are you trying to prove, Counselor?

MR. DOMZALSKI: Fine, I would ask that that subpoena be quashed.

THE COURT: It would be quashed because it is not specific enough.

MR. DOMZALSKI: Or withdrawn.

THE COURT: He doesn't have any.

Page 237.

MS. WOLKENSTEIN: If you don't have it you say you don't have it.

THE COURT: He said there was no line-up here in this case so how could they have anything.

MS. WOLKENSTEIN: I think we could go to the particulars.

MR. GRANT: I object to them even asking and him answering it because all this is is a fishing expedition to try to find some evidence even though it doesn't exist. That doesn't stop them from slapping subpoenas on everybody they could find.

MS. WOLKENSTEIN: Excuse me.

MR. GRANT: The Supreme Court has ruled so we are not providing it.

MS. WOLKENSTEIN: You wanted an offer of proof, I will give you an offer of proof. We have an affidavit, we have a witness who says that one of the witnesses here was shown a photo array. He was shown a photo array by the police.

THE COURT: Well, put that witness on the stand, let him say it under oath.

MS. WOLKENSTEIN: The police never

Page 238.

informed the prosecution, never informed the defense that there were any photo arrays. As the Court is well aware, there is an obligation --

THE COURT: The only picture they have of him is the picture they took when he was arrested.

MS. WOLKENSTEIN: Your Honor, I don't know that.

THE COURT: Well, you don't know. I don't know it either, but.

MS. WOLKENSTEIN: We have contrary information and we believe that information --

THE COURT: I said there would be no discovery here, period, okay. Now, if you have any proof, bring that gentleman in here, let him take this stand, let him testify under oath, and we will take it from there.

MS. WOLKENSTEIN: Your Honor, we have an affidavit.

THE COURT: I know you have an affidavit. Bring the person in here, I said.

MS. WOLKENSTEIN: Your Honor, could I complete a sentence? You are asking for why, you are saying it is a fishing expedition, I am

Page 239.

I am trying to explain why.

THE COURT: I said I would not allow any discovery. I bent over backwards to a certain extent but this is it.

MS. WOLKENSTEIN: Regardless of what the offers of proof are, regardless of the points that we are trying to make here and the affidavits --

MR. GRANT: I could resolve this issue for her.

THE COURT: All right.

MR. GRANT: They have an investigator named Robert Bugler, who I imagine is somewhere in the Court today, probably him (indicating), who claimed to have talked to a witness who said that there was a photo display shown. That witness has been sitting there all day long and we don't know if his affidavit is based on hearsay. We could put the witness right there (indicating the witness stand) and that could resolve her issues.

THE COURT: All right, who is the witness?

MR. GRANT: Mr. Robert Harkins has been here for two days.

Page 240.

THE COURT: He doesn't have him on the list.

MR. GRANT: I know.

MS. WOLKENSTEIN: Because he is not being called today or tomorrow by the defense.

THE COURT: All right, when you get ready to call him let me know.

MS. WOLKENSTEIN: The defense has informed Mr. Harkins as to when he should appear and it is not today and it is not tomorrow. As Mr. Weinglass has previously explained. We have subpoenaed for information about photo arrays --

THE COURT: Unless they give you something specific I can't do anything. You just come in and ask that the subpoena be quashed, okay.

MS. WOLKENSTEIN: Could we go through the particulars -- or let's do this tomorrow morning.

THE COURT: No, I am not going to do it tomorrow morning.

Tomorrow morning we are going to do the witnesses.

MS. WOLKENSTEIN: Then let's go through the other things that are on the subpoena and deal with it point by point so we

Page 241.

have a clear record here. The subpoena that's being responded to indicates that there is a commander of Officer Wakshul who is being subpoenaed along with his records including information about Mr. Wakshul's work and vacation records.

MR. DOMZALSKI: That is the second subpoena, Your Honor. That is directed to the commanding officer of Reports Control. The first subpoena was directed to Detective William Wynn.

MS. WOLKENSTEIN: That one we hear there are no, we know that there are no line-ups, you are saying there are no photo arrays maintained there, you don't have any information, right?

MR. DOMZALSKI: Right.

MS. WOLKENSTEIN: So this subpoena we are on you are also responding to --

MR. DOMZALSKI: Paragraph 1, that the Captain at that time Henry Marie is no longer a member of the Police Department. And therefore we can not produce him, he is not under our custody or control. And we submitted an affidavit to that fact, along with his employee

Page 242.

history record, which indicates he was a Captain of the 6th District around from approximately 1980 to December of '82, and that he retired in 1993.

MS. WOLKENSTEIN: Okay, the second element of that was information concerning Police Officer Wakshul's work and vacation records for the period of June lst, '82 to July 15th, 1982.

MR. DOMZALSKI: That is also contained in subpoena C, which was directed to the Police Commissioner. And what we have produced and provided to defense Counsel is a document called a time usage record. Which we have an affidavit from the budget office of the Police Department, and the finance. And the time usage record basically indicates time that Wakshul used in 1982 during, well, the run is actually from January to July of '82. I'm sorry. Strike that '82.

MS. WOLKENSTEIN: We have not gotten any information concerning any of the notations, memos, requests for that vacation time, who approved that vacation time, since Mr. Wakshul's investigative statement said no vacation on it

Page 243.

very clearly.

THE COURT: You are calling Wakshul: He will tell you.

MS. WOLKENSTEIN: We are requesting per the subpoena any of the records concerning the situation of Mr. Wakshul applying for his vacation.

THE COURT: He told you what he could give you.

MR. DOMZALSKI: This was found so far. That's all we have found so far.

MS. WOLKENSTEIN: Is there a possibility of any other materials in your file? If so we are requesting them for our subpoena. Would you search for them or produce them?

MR. DOMZALSKI: The only other possible place would be in the 6th District, if the 6th District keeps records back to 1982.

THE COURT: Why don't you send your investigator down there if they do. No, I mean her. She has an investigator.

MS. WOLKENSTEIN: There is nothing else there?

MR. DOMZALSKI: Basically, our records

Page 244.

we have found so far is the time usage record.

MS. WOLKENSTEIN: There are other places to search. I request that you do so.

MR. DOMZALSKI: That will be done.

THE COURT: He is not working for you. You have your investigator to go down to the 6th District and find out.

MR. DOMZALSKI: Quite frankly, Your Honor, we won't let their investigator go into the 6th District to look.

THE COURT: Well, talk to somebody, then.

MS. WOLKENSTEIN: Next issue is point 3, a codicil which deals with all the ballistics, firearms, et cetera, reports, and physical evidence. And there, as I understand it, your position is that it's been turned over to the District Attorney's Office?

MR. DOMZALSKI: Yeah, basically, Your Honor, there are several paragraphs of this second subpoena. Based on information and belief, all that information has been provided to the District Attorney's Office and is in their custody and control.

MS. WOLKENSTEIN: We are requesting

Page 245.

copies of what has not been turned over to the District Attorney's Office. It is very difficult to believe that everything has been turned over to the District Attorney's Office and no copies remain in Police Department files. In fact, what we believe is that there is information that has not been turned over to the defense and will be contained in the District Attorney's files and in the police files. So we would request to look at all information, all records, testing, et cetera.

THE COURT: You can't proceed with a shotgun.

MR. DOMZALSKI: I could certainly ask the Police Department to go through their records one more time, with some specificity, for some kind of particular document.

MS. WOLKENSTEIN: We want all the reports dealing with the testing of the bullet, of the weapons, all of the bullets and fragments found, removed, et cetera, from the police officer.

MR. GRANT: I object to that. It was given to defense Counsel 13 years ago. Mr. Jamal had physical possession of it. We have

Page 246.

given them a number of documents just based on common courtesy to out-of-state Counsel. But Your Honor has ruled, the Supreme Court has ruled. All they want is discovery through the back door because they couldn't get it through the front door.

MS. WOLKENSTEIN: I believe that the position of the District Attorney in response to our discovery motion is that these items were available to us by subpoena and we should do so. Which is precisely what we are doing. Now they are coming in saying it's discovery and they won't give it to us.

I want to just put on the record that yesterday morning we attempted to serve the District Attorney's Office for the District Attorney's file on this case. Our investigator who was serving that subpoena was informed by the representative of the District Attorney's Office that she would not accept that subpoena, and that it required a Court order to do so. It is my understanding that that subpoena has been served and has been accepted. Now, whether there will be a motion to quash or not I don't know, but the point being that the District

Page 247.

Attorney's Office took the position that despite the fact that they are public officials, they would not even accept a subpoena for their records. Which is what we feel now we are being told here, that in fact all of the Police Department records as to Detective William Thomas, who was the supervising, supervising officer in this investigation, is with the D.A.'s Office, the ballistics and firearms report is in the D.A.'s Office, all reports concerning sketches, photographs of the crime scene, recovery of the weapons, is in the D.A.'s Office.

MR. DOMZALSKI: As the Court knows, Your Honor, that is part of a typical homicide binder.

MR. GRANT: What it reflects really is discovery. We have the discovery which we gave to them. That's all we have. Mr. McGill, Your Honor, turned his entire file over to the defense at the time of trial.

THE COURT: I know.

MR. GRANT: They have exactly what we have.

MS. WOLKENSTEIN: Furthermore, Your

Page 248.

Honor, there is a request on the same subpoena for information as to the polygraph test, the polygraph test conducted on Dessie Hightower and any other witness in this case. And the answer does not indicate at all whether there was any polygraph test to the best of the information --

THE COURT: It is not admissible.

MS. WOLKENSTEIN: The fact of whether or not there was a polygraph test of a person with favorable evidence for this Defendant, for Mr. Jamal, is a Brady question, Your Honor. Whether the polygraph is admissible or not, it is a Brady issue.

THE COURT: Well, you have an investigator.

MS. WOLKENSTEIN: It is a Constitutional issue going to the fundamental question --

THE COURT: Do you have any witnesses who are going to take the stand?

MS. WOLKENSTEIN: -- of whether or not -- excuse me, Your Honor -- of whether or not --

THE COURT: Counselor, please

MS. WOLKENSTEIN: -- of whether or not

Page 249.

Mr. Jamal had a fair trial or not. And we are seeking, based on our information from our investigation, and an affidavit of Mr. Hightower -- who will be here to testify --

THE COURT: All right.

MS. WOLKENSTEIN: -- that in fact a polygraph was given to him.

THE COURT: Who had a polygraph?

MS. WOLKENSTEIN: Mr. Hightower. And the fact that polygraph was never disclosed to the defense, that is a violation of fundamental Constitutional rights.

MS. PERKINS: If I may, Your Honor, Linda Perkins for the Commonwealth. I submitted, I filed the discovery answer that the Commonwealth filed several weeks ago, or last week, whenever it was. And there are just a couple of things that I want to point out, given what we have here.

The Commonwealth, yes, in it's answer to the Defendant's discovery motion did say that much of the documents they were requesting were in the hands of the Police Department. Counsel here for the City Solicitor's Office has now represented that we have that information. That

Page 250.

does appear to be a conflict. But what has occurred, Your Honor, is that Counsel has consistently made an over-broad request for what has been considered discovery, what is the rough notes that may be in a file. Somewhere buried in a file somewhere. We have the ballistic report, which is a one-page document. We may have a report from the Mobile Crime Unit, which is a typewritten report, which may be six pages. We do not have the individual work files for each of these police units.

Now, it is my understanding that these Counsel do not understand Philadelphia procedure. Obviously, they don't. That's why they have local Counsel who is supposed to explain these things to them. There are different agencies in the Police Department who each have their own records and things to get. The Commonwealth has not misrepresented anything. We only have the things that we have given them. We have nothing more than that. And the Commonwealth has not misrepresented anything.

Now, if they have a specific request for some document they should say what it is.

Page 251.

They can't just come in and ask for the world without a showing of relevance. And that's why they first have to put the witnesses on. If they have a witness who says photo arrays were shown to me, fine, put the witness on the stand to say that. The Commonwealth responded in it's discovery answer that it had no information that any photo array was shown. The Commonwealth also represented it had no information that there was any favorable polygraph that constituted Brady material. That has been consistently said to them, that is part of our discovery answer. And Counsel can continue to insist that these items exist. That does not make it so. So the Commonwealth stands by --

I am speaking, ma'am.

The Commonwealth stands by --

MS. WOLKENSTEIN: You have --

THE COURT OFFICER: Quiet in the Courtroom.

THE COURT: Counselor, please, for a minute. He can't take down everything from all of you so just wait a minute.

MS. PERKINS: The Commonwealth stands by it's answer, Your Honor, to their discovery

Page 252.

request. If they wanted specific documents they have to demonstrate that they are relevant and material. This PCRA proceeding does not give them the license to go on a fishing expedition to examine every file in the City of Philadelphia regardless of who it belongs to, or even to come in and examine the trial file. There is case law on that point. They have to first establish that it is material and relevant; and these blanket requests for every rough note, sketch, memorandum, simply do not suffice.

MS. WOLKENSTEIN: Okay.

THE COURT: Excuse me. Wait awhile. My printout sheet shows David Rudovsky. Is he local Counsel here for you people?

MS. WOLKENSTEIN: He is local Counsel, yes.

THE COURT: For you people?

MS. WOLKENSTEIN: Yes.

THE COURT: Why don't you take it up with him?

MS. WOLKENSTEIN: We have taken it up with him.

THE COURT: Tell him to come in next

Page 253.

time.

MS. WOLKENSTEIN: I think the problem here is that our discovery motion on our subpoenas are quite specific. And the interruption occurred when I was dealing with an extremely specific and particular question, which was whether or not there was a polygraph done of Dessie Hightower and any other witnesses in this case. That was not answered, but, rather, an interruption occurred. We are asking for a search in the records of the Police Department as to whether or not there was a polygraph done.

MR. DOMZALSKI: Your Honor, it is my understanding and information that information related to polygraphs, if any, of Dessie Hightower were provided to the District Attorney's Office. Maybe we are playing semantics here, but that's my understanding and belief. In an effort of due diligence, I will ask the Police Department to go and look for other polygrapher records, but.

MR. GRANT: First of all, Your Honor, I could respond to Counsel, if I may. Unless it is a polygraph taken of the accused individual,

Page 254.

since polygraphs are not admissible in any court of law in any of the contiguous 48 states that I am aware, or perhaps even outside the adjacent states, it is not exculpatory material. And even if he passed the polygraph, only the pre-polygraph questions and/or answers he may have given perhaps are subject to discovery under Brady. But the mere fact that a polygraph was given is not --

MS. WOLKENSTEIN: We are not asking for the mere fact --

MR. GRANT: -- under Rule 305, under which we operate in Pennsylvania, there is no such discoverable item. Therefore, even if it existed, I would object to producing it.

MS. WOLKENSTEIN: All right, so what I am hearing is that there was a polygraph. That's what I am hearing.

THE COURT: I didn't hear any such thing, but.

MS. WOLKENSTEIN: Anyway, I want to make it clear.

THE COURT: Bring your witness in.

MS. WOLKENSTEIN: That the answer from the City Solicitor's Office is this information

Page 255.

on the polygraph is in the District Attorney's Office. And as I said, they are subpoenaed and we will look forward to the District Attorney's response to that subpoena.

There are a couple other things on this codicil that we need to discuss. There is a request for documents concerning complaints filed between January lst, 1977 and '82, and January lst, 1982, against any of the officers involved in the questioning of witnesses involved in this case which involved allegations of brutality, excessive force, prejudice based on race, ethnicity or national origin, and false arrest. And the names and addresses of the persons who lodged those complaints. That is a specific request as to specific officers who were involved in the interrogation of witnesses here. The answer from the City, if I may just say, is that there are no documents available because there is a five-year life of them and they have been destroyed.

However, I ask whether or not there is any record maintained on any of the names of officers still, even without the records. What I am looking for, quite clearly, is the names of

Page 256.

any officers who engaged in acts of coercion or brutality against witnesses who were also involved in this particular case. I believe that it is highly relevant. It is Brady material and it is something that I believe should be able to be released because I can't believe that there is no record existing in any way, shape or form at this point of the names at least and the badge numbers of those officers.

MR. DOMZALSKI: Your Honor, we submitted an affidavit from the now commanding officer of the Internal Affairs Division who directed a search for records specific to this, to this particular request. There is a five-year retention of files in Internal Affairs of complaints at the time pursuant to Mayor's Executive Order 1-80. And the affidavit of, I believe it's Inspector Boyle, indicates no files were found regarding this request.

Now they are asking for any information on any officer. I would assume, and I am only assuming, that may relate to discipline somehow. Well, discipline in the Police Department is not contained in Internal Affairs materials, it is contained in a

Page 257.

personnel file or the Police Board of Inquiry records, which have not been subject to subpoenas as of this date. And, you know, basically, with respect to this paragraph, we have complied with it. We have done a search for records and there are no records in Internal Affairs where complaints against police are lodged.

THE COURT: Okay.

MR. GRANT: I do have for Counsel's benefit a document marked as Commonwealth Exhibit number 1 for this particular hearing, which purports to be a photocopy of something that did exist in 1982. And it is an order from the Honorable Judge Ribner, who is a Judge of the calendar court, which says Commonwealth versus Mumia Abu-Jamal, 3-19-82. I hereby certify that on the 19th day of March of '82, the Court directs that Police Commissioner Morton Solomon produce the Internal Affairs Bureau file on the complaint against police filed by Anthony Jackson, Esquire on behalf of Mumia Abu-Jamal to be furnished forthwith to the Honorable Paul Ribner, Room 444, City Hall. And it has an asterisk next to the words file of the

Page 258.

Internal Affairs Bureau, including correspondence between Anthony Jackson, Joseph McGill, Commissioner Solomon, and a copy of order 1-80. This says that they got that 13 years ago. And now that it's been destroyed it is becoming an issue.

MS. WOLKENSTEIN: Actually, we are not asking for that.

MR. GRANT: Could I have this marked, Your Honor?

MR. WEINGLASS: That is not what we asked for. We asked for files concerning any of the officers who were involved concerning the questioning of witnesses, not the persons who arrested and beat up Mr. Jamal that night. By the people who questioned, officers who questioned witnesses in this case. Along with whether any of them were subject to investigations concerning charges of brutality, coercion or prejudice or bias of some sort.

THE COURT: That's like sort of a fishing expedition.

MS. WOLKENSTEIN: No, it isn't, Your Honor. We have reason to believe --

THE COURT: And I said to you give me

Page 259.

a case that says you could fish and I will let you fish.

MS. WOLKENSTEIN: Your Honor, this is extremely relevant.

THE COURT: Well, it is relevant if you give me a case. Xerox a case for me.

MS. WOLKENSTEIN: Your Honor, not only is it relevant given the information we have and the witnesses we are going to be producing in this hearing, but it's also relevant because it is well-known and documented, a matter of public record, that this Police Department has engaged in a history of coercion, beating --

THE COURT: Now we are putting the Police Department on trial here. I thought this was Mumia Abu-Jamal.

MS. WOLKENSTEIN: This was 1979, the U.S. Justice Department action against the City of Philadelphia, Mayor Rizzo and the Police Department, in which substantial evidence of this type of activity was brought forward and proven as such. And these practices obviously continue today. We can not pick up a paper, any paper in this City, in this period of time, in which there is not a report about police

Page 260.

officers who have manufactured evidence -- I am now talking about the 39th District incident, which has now led to the overturning of 39 drug cases. There just recently were five police officers who pled guilty to violating the civil rights of people they arrested. And in one instance, a 53-year-old grandmother, another instance a Temple University student. These are all instances recently. So from the past to now there has been a process and a practice in this Police Department in this City of coercing witnesses, of framing people up and prosecuting them illegally.

THE COURT: Why don't you bring these witnesses in?

MR. DOMZALSKI: Your Honor, may I at least respond? I certainly object to the characterization by defense Counsel.

In point of fact, I will actually cite you some case law -- the case is Commonwealth versus Petrose, whereby in order for the issue of the civil rights of the defendant to be admissible with respect to discipline of a police officer, it has to be an exception to the prior bad acts rule. There, one, must be an

Page 261.

administrative proceeding in which a police officer has been found guilty of some wrongdoing by the police department. In Petrose, Your Honor, this was a case involving a bribery defendant, and the subject officer was demoted as a result of taking bribes at some point in time. And that is the narrow exception to the prior bad acts rule in Pennsylvania with respect to impeachment purposes, which I assume would be the underlying motive for trying to get these documents ahead of time and to put these officers on with respect to prior disciplinary practices.

And, Your Honor, at that time -- obviously, I don't have the records of these officers -- but it would be that limited scope.

And I would also just state for the record that there are many fine police officers who go out there and do their job everyday and do it in a very hard, vigorous and sincere manner. And myself -- also being a police officer, I want to add, at one point in time, for 13 years, and serving this City -- would strenuously object to the characterization. Certainly there are officers in the Police

Page 262.

Department that do things wrong and we take every sincere effort to get them out.

MS. WOLKENSTEIN: Well, obviously the record indicates these activities. And we request again to get that information for the reasons given.

Well, you said that you don't have those records. And I am looking again for a list of names of the people.

MR. DOMZALSKI: As I understand it, we are switching the focus to disciplinary.

MS. WOLKENSTEIN: We will send you a new subpoena if necessary that says that.

MR. DOMZALSKI: Okay.

MS. WOLKENSTEIN: We will do that until we work through each and every file that is possible, if that's the way we will do it. As opposed to simply grunting, looking and not understanding what the request is, which is very clear, it is very clear from our subpoena and looking at the information in the body.

There is another subpoena, as I understand it, which we are dealing with here. And that's the one that's addressed to the Police Commissioner. And this is another aspect

Page 263.

of the vacation, the personnel files question.

MR. DOMZALSKI: I believe we dealt with that. When we combined the subpoenas we mentioned them.

MS. WOLKENSTEIN: There is another aspect.

MR. DOMZALSKI: Paragraph 2.

MS. WOLKENSTEIN: Request for any and all records of intelligence, civil disobedience, and civil affairs records concerning Mumia Abu-Jamal, covering the period from January 1971 to December 1981. Attached to our Petition is a series of documents released from the Federal Bureau of investigation. They are the files on Mumia Abu-Jamal maintained by the FBI, over 700 pages. Many, many of those pages indicate that the work, the surveillance, political surveillance of Mr. Jamal was done in tandem with, at the initiation of, using reports of informers and from agents from the Philadelphia Police Department from these divisions. We know as a fact, because we have these files, that in fact that happened. This was from the period of 1968 through 1973. I know as a fact that Mayor Rizzo when he was Police Commissioner and the

Page 264.

Police Inspector Fencil maintained surveillance records on some 18,000-plus people who lived in the City of Philadelphia. And we have every reason to believe from the FBI files and from this fact of public record that there are records on Mr. Jamal which would be maintained under the supervision of the Philadelphia Police Department in one or another of their divisions from the period of January lst, 1968 to December 3lst, 1981.

Now, there is an answer here. And it --

MR. DOMZALSKI: Once again, Your Honor, basically --

MS. WOLKENSTEIN: It says no records were located. It is not clear to me --

THE COURT: All right, let him answer you.

MR. DOMZALSKI: Basically, Your Honor, with regard to the subpoena, the intelligence division of the civil disobedience unit of the Police Department: There is no such animal that exists at this time. Basically what I did, I directed the subpoenas to the commanding officer of the Intelligence Unit and to the commanding

Page 265.

officer of the Civil Affairs Unit. But those commanders had people directed to files related to that time period and no files were located.

MS. WOLKENSTEIN: On Mr. Jamal in particular?

MR. DOMZALSKI: Yes.

THE COURT: That's what it says.

MS. WOLKENSTEIN: That just flies in the face of reality given this 7O0 pages from the FBI that cite Philadelphia Police.

THE COURT: Use the FBI file, for what it's worth. Okay, anything else?

MS. WOLKENSTEIN: That was the Intelligence division. What about the civil disobedience?

MR. DOMZALSKI: Well, there is no intelligence division of the civil disobedience unit. I directed it to the Intelligence Unit of the Police Department, Civil Affairs Division. Records were also reviewed I believe with respect to Robert Small --

MS. WOLKENSTEIN: Your representation is they do not exist for this period of time?

MR. DOMZALSKI: No.

MS. WOLKENSTEIN: There are files,

Page 266.

there are files of political surveillance?

MR. DOMZALSKI: I am not representing that at all.

MS. WOLKENSTEIN: There are no files on Mr. Jamal?

MR. DOMZALSKI: With regard to the language of the subpoena, there are no records. That's what the Commanders have signed in affidavits.

MS. WOLKENSTEIN: This is pertaining to Mumia Jamal?

MR. DOMZALSKI: Right.

MS. WOLKENSTEIN: You are saying there is none for Mumia Abu-Jamal or Wesley Cook for this period?

MR. DOMZALSKI: Right.

MS. WOLKENSTEIN: All right, we will do another subpoena for the Black Panther Party and organization and people who were active and who raised their voice in opposition to certain policies by the Mayor and the Police Department and try again. All right, there is another, there is another aspect. I think there is maybe another Counsel here to deal with another subpoena.

Page 267.

Is that right?

MR. DOMZALSKI: Your Honor, this issue regards the issuance of a subpoena to the Medical Examiner's Office directed to the personnel file of Paul Hoyer. The City would move to quash that subpoena outright because it wouldn't reveal any pertinent or relevant information. Basically, the scope, as I understand it, of Counsel's, or one of Counsel's representations of what they are looking for, is it's material to determine the question of the competence of Dr. Hoyer in some way, shape or form. And basically, again, I think with respect to any potential disciplinary issues. I have already set forth the case law in Commonwealth versus Petrose. I believe it would apply to a civilian and not just a police officer.

And with regard to the personnel file, the only thing of possible relevance regarding competence would be a performance report. And it seems to me if there are any performance reports in the personnel file, the only one of any potential relevance would be the one in 1981, when he did the autopsy.

Page 268.

MS. WOLKENSTEIN: Okay? The reason we made this request, Your Honor, is that while Dr. Hoyer was testifying it became clear that there was an exit wound of Officer Faulkner that showed up on the slides and was not in the autopsy report. This raises substantial questions as to the reliability of the autopsy report. And we believe that it's very germane to our inquiries here to be able to take a look at the personnel files of Dr. Hoyer.

MR. DOMZALSKI: Your Honor, the practice, you know, at least in my experience, in the Court of Common Pleas, Your Honor, is that in situations like this, often times the Court does an in camera inspection of the files to make a determination on materials and the relevance. I don't know if the Court wants to entertain doing that. But certainly we have asked to quash the subpoena outright, but if the Court believes that there is a sufficient offer of proof to merit an in camera review, the City would not appeal that.

MS. WOLKENSTEIN: And of course, Your Honor, anything that would demonstrate in some way the incompetence of the autopsy report would

Page 269.

probably be well deemed Brady material in this instance.

MR. DOMZALSKI: I think that's about it for me.

MS. WOLKENSTEIN: Your Honor is not commenting. Is your silence denial, agreement or taking it in camera?

THE COURT: Counselor, as I said to you before: Xerox me a

case that says you are entitled to this and I will be glad to read it.

MS. WOLKENSTEIN: There is another issue.

MR. GRANT: I will deal with it.

MS. WOLKENSTEIN: You will take it? I thought there was Counsel representing the City on this.

MR. GRANT: Don't worry about opposition Counsel. You could state your position.

MS. WOLKENSTEIN: Could you indicate on the record your name and who that you represent from the City.

MS. PASQUARIELLO: Good afternoon, Your Honor. My name is Anne Pasquariello, Deputy City Solicitor. I am Counsel for the

Page 270.

Medical Examiner's office.

MS. WOLKENSTEIN: All right, this is in response to the subpoena that we made to get all of the reports and information, slides, tapes of the Medical Examiner's autopsy. I have already indicated the importance of this. That there already was evidence at the trial that this autopsy was significantly flawed. Perhaps totally unreliable. And that we want to see, basically, the material and the reports, notes, tapes and slides of the autopsy. We do have the autopsy report. That's not an issue. We want all the other documents surrounding it. And as I said, there are, as I understand it, there are tapes made by the Medical Examiners doing the autopsy, there are slides made. The Medical Examiner was looking at these slides when he testified and he said oops, I see another exit wound which I didn't put on the autopsy. And we believe that we are entitled to this material.

It is also my understanding that we were going to get this material and that there was no objection until Mr. Grant intervened here. And as we can see -- are you going -- he is prepared not to even allow Counsel to argue

Page 271.

it herself.

MS. PASQUARIELLO: Your Honor, if you will: I have the original Medical Examiner's file, which contains things other than the autopsy report. I spoke with Mr. Rudovsky on Monday. He suggested that I bring the original plus a copy. Which I've done. I can give a copy of the Medical Examiner's report to defense Counsel. And to the District Attorney's Office.

I also have Kodachrome slides, nine, identification photographs, and photographs of the injuries of Police Officer Faulkner, which at this point I can give to defense Counsel.

THE COURT: (Indicating).

MS. WOLKENSTEIN: Thank you very much. Okay. That's fine.

(Discussion was held off the record at this time.)

MS. WOLKENSTEIN: All right, I think that for the moment, until we get to the next round of the subpoenas, which are returnable tomorrow, that concludes this.

There is one other thing, Your Honor. I had asked earlier on for certain documents to

Page 272.

be marked in as exhibits. As the Court indicated reticence to do that, I would really like to know from the record whether or not the various documents that were proffered at the very beginning of today --

THE COURT: I don't know that anybody identified them. I don't even know what they are. Newspaper articles?

MS. WOLKENSTEIN: They were given to the Court.

THE COURT: Newspaper articles?

MS. WOLKENSTEIN: There were three newspaper articles and then there was correspondence. We believe that they are part of the record, they are part of the arguments that we were making before this Court. I am interested in knowing at this point whether the Court has had them marked.

THE COURT: I guess the Court Officer would have them.

THE COURT OFFICER: We only have one, we only have C-l, Your Honor.

THE COURT: Is that all we have?

THE COURT OFFICER: Yes, Your Honor.

MS. WOLKENSTEIN: In other words, you

Page 273.

accepted the offer of an exhibit --

THE COURT OFFICER: No, nobody accepted anything. We took nothing from the Bar of the Court which was entered this afternoon. Right, that's the only thing we got.

MS. WOLKENSTEIN: No, there were --

THE COURT OFFICER: We took nothing else.

THE COURT OFFICER: Excuse me. Excuse me. Could I? Excuse me.

THE COURT: Well, do you have copies.

MS. WOLKENSTEIN: There were copies placed here, given to the Court and Assistant District Attorney. I believe the District Attorney has their copies. Unless they will say it disappeared. The others were part on the Bar of the Court. It was Your Honor who refused to accept them.

THE COURT: Don't give them to me, Counselor: I don't hold these things.

MS. WOLKENSTEIN: You said you are not taking them.

THE COURT: I don't hold these things.

MS. WOLKENSTEIN: They were put here for the Clerk to take. There were four items

Page 274.

that were marked. Were indicated to be marked.

THE COURT: They are looking for it.

MS. WOLKENSTEIN: Defense 1, 2, 3 and 4. And they should have been.

MS. PERKINS: If I may, Your Honor: The newspaper articles that they referred to this morning, I believe Mr. Grant, I saw him myself and he just confirmed with me, he gave those back to the defense table. Where they are, I don't know. As for the correspondence between the Commonwealth and defense Counsel yesterday regarding their request to see additional exhibits --

THE COURT OFFICER: Here they are.

MS. WOLKENSTEIN: Let's try again. Could we try again?

MS. PERKINS: If I could finish my statement, Your Honor: With regard to the correspondence that Counsel wanted marked, I don't know if it was marked or not, I told the Quarter Sessions Clerk we have no objection to that being made part of the record. It is correspondence that is between Counsel. And I believe that was included in the Quarter

Page 275.

Sessions file, whether it was marked or not. It doesn't have to be marked. A letter can, very obviously, be put in the Quarter Sessions file.

THE COURT: Where is the Clerk of Court? Is he here?

THE COURT OFFICER: Your Honor, the Clerk has gone.

THE COURT: He is gone.

THE COURT OFFICER: He was here.

MS. WOLKENSTEIN: Well, we can try this again.

THE COURT: Save it for tomorrow. He is going to be here. Don't give them to me. I don't want them. The Clerk of Court.

MS. WOLKENSTEIN: Let the record indicate that we proffered four exhibits this morning.

THE COURT: All right, just mark them.

MS. WOLKENSTEIN: Your Honor's Clerk did not accept them, did not --

THE COURT: He is not my Clerk. He doesn't work for me.

MS. WOLKENSTEIN: I thought Your Honor made it clear you ran this Courtroom.

THE COURT: Yes, but I am beginning to

Page 276.

think I'm not. I can't even run you.

MS. WOLKENSTEIN: You are not going to, either. I would ask you to really withdraw that. That is really totally improper.

THE COURT: Counselor, we both can't talk. That poor Court Reporter here can't get both of us. I told you what to do. They are marking them.

MS. WOLKENSTEIN: They are marked.

THE COURT: Okay, I tomorrow morning when the Clerk of Quarter Sessions is here give it to the Clerk of Court.

MS. WOLKENSTEIN: Your Honor, I ask you for an apology.

THE COURT: Apologize? You got a long wait, Counselor. You have a long wait.

MS. WOLKENSTEIN: Could somebody take them?

THE COURT OFFICER: I am not accepting them until tomorrow.

THE COURT: You should apologize to me, not me to you. I told you to hold them in your possession because they are going to get lost. Hold them. Tomorrow morning when the Clerk is here I will tell you to hand it to the

Page 277.

Clerk, he will take it and put it in the file, okay. Is there anything else?

MR. GRANT: No, Your Honor.

THE COURT: Okay. See you tomorrow morning.

THE COURT OFFICER: This Court now stands adjourned until 1O:OO a.m. tomorrow morning at the Call of the Crier.

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(The hearing was adjourned at 4:55 p.m.)

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Page 278.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

27. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Thursday, July 27, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DAVID RUDOVSKY, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

PETITIONER'S EVIDENCE

WITNESS	DE	CE	RDE	RCE
Anthony E. Jackson, Esq.	30	90	--	--
Joseph Davidson	225	238	242	243

EXHIBITS

PETITIONER'S EXHIBITS

NO.	DESCRIPTION	PAGE
1	Newspaper article	15
2	Newspaper article	15
3	Newspaper article	15
4	Newspaper article	15
5	Transcript excerpt, Beverly Greene	27
6	Transcript excerpt, Darlene Sampson	28
7	Transcript excerpt, Alma Lee Austin	28
8	Declaration	38
9	Coroner's report	77

COMMONWEALTH EVIDENCE

EXHIBITS

NO.	DESCRIPTION	PAGE
1	Quarter Sessions file	182
2	Medical Examiner's package	200

Page 3.

- - - - - -

(At 10:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - - -

MR. GRANT: Good morning, Your Honor. May we have the Court's indulgence for a moment, Your Honor?

THE COURT: Yes.

(Discussion was held off the record at this time.)

MR. GRANT: Thank you, Your Honor.

MR. WILLIAMS: Good morning, Your Honor. This morning we are going to have two very brief witnesses. And we have discussed this with Mr. Grant. The two witnesses are Alma Crenshaw and Darlene Campbell. And I would hand up to the Court an amended witness list (handing). They are very brief witnesses, Your Honor.

MR. GRANT: That has been discussed with me, Your Honor, and of course I object. And the basis on which these witnesses purport to be called is that they were two jurors allegedly peremptorily struck, allegedly by the

Page 4.

Commonwealth. And they would come to say I'm either white or black or Asian or Indian or something and I was struck. That issue was dealt with on direct appeal by the Pennsylvania Supreme Court, headnote number one, Commonwealth versus Mumia Abu-Jamal, which is cited primarily at 321 -- I'm sorry. 521 Pennsylvania Supreme Court Reporter, 168. 1989. And it's dealt with directly at length by the Supreme Court in their opinion beginning at page 194.

I would suggest to Your Honor that this issue has been litigated by the highest Court in this jurisdiction, therefore it is not subject to PCRA review.

MR. WILLIAMS: Your Honor, it is subject to PCRA review for one specific reason. This is new evidence which indicates that the Supreme Court did not have a complete and accurate record.

THE COURT: Counselor, the Supreme Court has already ruled on this. It's not proper. Okay. That's my position. You take it up with the Supreme Court later on.

MR. WILLIAMS: Okay, just so the record is clear on this.

Page 5.

THE COURT: The record is clear that as long as the Supreme Court has ruled on any issue it's not a proper issue to be brought up now. Period.

MR. WILLIAMS: We11, Your Honor, that begs the question.

THE COURT: No, it doesn't beg any question, that is a definite answer. Okay. The Supreme Court has ruled on it, that's it. It's not a proper basis for PCRA.

MR. WILLIAMS: These are witnesses --

THE COURT: I know what they are, Counselor. But I have already ruled on that.

MR. WILLIAMS: Well, I am concerned that the record isn't clear

as to who they are and I would like to make sure that the record is clear.

THE COURT: You mentioned their names and you told me that the D.A. didn't object. Now I hear that he is objecting because he says that it's already been resolved by the Pennsylvania Supreme Court.

MR. WILLIAMS: Your Honor, we only said that we discussed the matter with Mr. Grant.

Page 6.

THE COURT: Oh, okay.

MR. WILLIAMS: What I am concerned about is to insure that any future court that examines this record knows precisely which witnesses we are calling and why we are calling them.

THE COURT: Well, you already said that.

MR. WILLIAMS: I said that.

THE COURT: I am saying to you, Counselor, maybe you could bring it before that other Court, maybe they would be willing to hear it, I don't know. But as far as this Court is concerned, if the issue has already been ruled on by the Pennsylvania Supreme Court, and that's what I am bound by, it is a dead issue. Okay.

MR. WEINGLASS: Your Honor --

THE COURT: No more, Counselor, please.

MR. WEINGLASS: Your Honor, I assure the Court it won't take more than 20 minutes of the Court's time.

THE COURT: I don't care if it is five minutes, I said if the Supreme Court has already ruled on it that is the end of it.

Page 7.

MR. WEINGLASS: They have not ruled on this issue.

THE COURT: Yes, they have.

MR. WEINGLASS: No, they had before them eight peremptory strikes, Your Honor.

THE COURT: Whatever they had they had and they ruled on it, Counselor.

MR. WEINGLASS: They ruled on the fact that eight African Americans peremptorily struck does not invoke Batson. In fact there were 11. And we have two of the three here in Court today who are African American who will identify --

THE COURT: Counselor, I am not going to call all those jurors back to find out what the situation is.

MR. WEINGLASS: We are calling two of them, just two.

THE COURT: I don't care if you call two or one, but, Counselor, the Supreme Court has already ruled on it, that's it. That's finished.

MR. WEINGLASS: They have ruled on the incorrect and incomplete record.

THE COURT: Fine, tell them about it when you get up there.

Page 8.

MR. WEINGLASS: But we have to give them a full record.

THE COURT: You are going to go there anyway, it is an automatic appeal.

MR. WEINGLASS: Exactly.

THE COURT: Take it up with them when you get up there.

MR. WEINGLASS: But they should have a full record when we get there and you are preventing us.

THE COURT: You won't have a record at this time, I ruled that's it.

MR. WEINGLASS: You are preventing us from making that record.

THE COURT: I am telling you we are not here to just make a record. PCRA is pretty plain, if you don't understand it go back and read that statute again.

MR. WEINGLASS: But we are telling the Court again that the Supreme Court of Pennsylvania did not rule.

THE COURT: Well, you are telling me that they made a mistake?

MR. WEINGLASS: No, they did not make a mistake, they were misled. They were misled

Page 9.

by an affidavit.

THE COURT: Tell them that they have been misled, okay.

MR. WEINGLASS: Yeah, and we are going to prove that by calling two witnesses.

THE COURT: No, you are not going to do that.

MR. WEINGLASS: To show that they were misled.

THE COURT: You are not going to do that. Period.

MS. PERKINS: If I may, Your Honor: Under the PCRA the Defendant Petitioner is precluded from litigating issues previously litigated. And if this issue is before the Supreme Court it was previously litigated, whether they are now saying it could have been done differently.

MR. WEINGLASS: It was done on an inaccurate record and you know it. And that Court was misled and I object to this Court preventing us from presenting that record so the Supreme Court won't be misled again.

THE COURT: I overruled your objection. You have an automatic exception.

Page 10 is missing. We will make attempts to locate it.

Page 11.

affidavit to the Supreme Court at that time as part of the defense pleadings.

MR. WEINGLASS: Which they discounted.

THE COURT: Just a minute.

MS. PERKINS: I do not know that these two jurors were part of his affidavit. If that's the case, then it was not presented to the Supreme Court for whatever reasons. If they want to put on Mr. Gelb or Mrs. Gelb, who was appellate Counsel, to establish why they didn't raise it, they must first do that. They can not come in here and say we have the witnesses, we are entitled to explore this record without first establishing that appellate Counsel was ineffective for not raising it.

MR. WEINGLASS: Maybe Counsel hasn't read the Supreme Court opinion. I will excuse her for that. What the Supreme Court --

THE COURT: Maybe you haven't read it. I have read it.

MR. WEINGLASS: I have read it many times. What the Supreme Court of Pennsylvania said was we have before us the affidavit of Anthony Jackson who says that 11 African-American jurors were struck. We also

Page 12.

have before us the affidavit of Mr. McGill who says that there were only eight. We, the Supreme Court, have decided that we will put more credibility in Mr. McGill's affidavit because Mr. Jackson's affidavit is older. Now it turns out Mr. McGill's affidavit was wrong. It was false. And it misled the Supreme Court. We are now trying to correct that record by bringing the proper, the jurors in so that there will be no question that Mr. Jackson's affidavit was accurate, and Mr. McGill's affidavit was false.

Now, if Counsel has read the opinion, you will know that three times the Pennsylvania Supreme Court said the Commonwealth struck only eight African Americans. That was incorrect. And we are prepared to show that this morning. But we are being precluded from doing that. Your Honor, we spent a lot of resources in finding these two jurors.

THE COURT: I know, and that's been waived, for the time being that's been waived. It is not a proper petition under the PCRA.

MR. WEINGLASS: Well, Your Honor.

THE COURT: That's it. Give me your

Page 13.

next witness, will you.

MR. WILLIAMS: I would like to have marked as exhibits in connection with our efforts to get these jurors to testify, marked as exhibits 5 and 6, the minutes, exhibit 5 from June 8th, 1982, the voir dire of Alma Lee Austin. I would like to have that marked as exhibit 5. And then the minutes for June 16th, 1982, which is the

voir dire of Dorothy -- I'm sorry, Darlene Sampson. And these are the two witnesses who are present hear this morning and we proffer them as witnesses.

MR. GRANT: Your Honor, could I be informed as to what Exhibits 1, 2, 3 and 4 are?

THE COURT: He says part of the voir dire testimony.

MS. WOLKENSTEIN: He is asking what Exhibits 1, 2 and 3 and 4 are. These are the exhibits that were proffered yesterday morning, Your Honor.

MR. GRANT: Very well.

THE COURT: Hand it to the Clerk.

MS. WOLKENSTEIN: Not accepted by the Clerk apparently. Here they are again, I am offering them again, repeating what was done at

Page 14.

about this time yesterday. Exhibits 1, 2, 3 and 4 are here (handing).

THE COURT: Well, if she doesn't have it put it in there.

MS. WOLKENSTEIN: They were put over here on the bench and the Court indicated it wouldn't accept them.

THE COURT: You are wasting this Court's time.

MS. WOLKENSTEIN: 1, 2, 3 and 4 (handing).

Okay. 1, 2, 3 and 4 again to the District Attorney's Office (handing).

MR. GRANT: Thank you.

MS. WOLKENSTEIN: And these are your 5 and 6 (handing).

MR. GRANT: Thank you.

THE COURT: You have the wrong ones now.

MS. WOLKENSTEIN: I would note that they were thrown on the floor by the District Attorney's Office.

THE COURT: That is a shame. You shouldn't do that.

Is that right now? You have it right?

Page 15.

Is that right now?

Okay, give them to the Clerk.

THE COURT OFFICER: Does the Court want to see these?

THE COURT: No, 1. don't want to see them, give them to the Clerk.

(Copies of newspaper articles were marked Defendant's Exhibits D-l, D-2, D-3 and D-4 for identification.)

THE COURT OFFICER: So marked D-l, 2, 3 and 4, Your Honor.

THE COURT: Okay.

Your next witness, Mr. Williams.

MR. WEINGLASS: If the Court will bear with me a moment, I want to check my witness in the hall.

THE COURT: No, just give us the name, the Court Officer will call out there for you. Who do you want to call?

MR. WEINGLASS: Anthony Jackson.

THE COURT: See if Anthony Jackson is here. Is Anthony Jackson around?

THE COURT OFFICER: Anthony Jackson.

THE COURT: Somebody check outside and see if he might be outside.

Page 16.

THE COURT OFFICER: We have them in a room, Your Honor.

THE COURT: Oh, you keep them out there.

He is not there, Counselor.

Where is Williams? Will you tell that attorney I want him back in the Courtroom.

Williams, where are you? He's not here. Who is your next witness?

MR. WEINGLASS: Your Honor, in light of the fact that we had two witnesses here this morning, the short fact witness --

THE COURT: All right, but there are other witnesses that are available here from this list. Pick one of them, will you, Counselor, so we could proceed.

MR. WEINGLASS: Your Honor, as we indicated in our list of witnesses, our next witness in order is Anthony Jackson.

THE COURT: Well, he is not here.

MR. WEINGLASS: Yes, it's 10:25.

THE COURT: I know that, that's what concerned me. I have been here since 9:30. It's 10:25, now let's go. You have other witnesses back there. Who do we have available

Page 17.

back there?

MR. WEINGLASS: If the Court will bear with me for one moment. He informed me this morning that he would be in Court here at 10:30. I ask for a four-minute recess so that Mr. Jackson could arrive?

THE COURT: According to my watch it's 10:28 and a half.

MR. WEINGLASS: Well, if the Court will bear with us.

THE COURT: I will give you until 10:30, period.

MR. WEINGLASS: Well, Your Honor.

THE COURT: I will give you until 10:30. Do you understand English, Counselor?

MR. WEINGLASS: I understand that two weeks ago --

THE COURT: That's what I said, 10:30.

MR. WEINGLASS: I understand two weeks ago this Court invited us to proceed.

THE COURT: Yes, if you had started when I wanted you to start. You got a whole week out of the Supreme Court.

MR. WEINGLASS: One full week is not enough to litigate a death penalty case.

Page 18.

THE COURT: Tell it to the Supreme Court.

MR. WEINGLASS: And we did and the Supreme Court stopped this Court.

THE COURT: Right, and they said start on the 26th.

MR. WEINGLASS: And we did, but we are asking this Court for five minutes and we are not getting it.

THE COURT: Look, you had one, two, three, four, five, six, witnesses here.

MR. WEINGLASS: Right.

THE COURT: Pick another one, we will. Take him as soon as he comes.

MR. WEINGLASS: We added two this morning which we anticipated calling.

THE COURT: Okay.

MR. WEINGLASS: The Court rejected those witnesses.

THE COURT: Right.

MR. WEINGLASS: So we are short a few minutes.

THE COURT: You have other witnesses that have been here since yesterday. And you haven't called them and it is not being fair to

Page 19.

them. Call one of the other witnesses.

MR. WEINGLASS: Your Honor, the Court is not being fair to us. And I want to make that record.

THE COURT: Okay; you have it on the record. I am not being fair to you. You are not being fair to the Court. The Supreme Court says we have to proceed. And that's what we are going to do.

MR. WEINGLASS: Your Honor, we are not trying this case by a second hand or a minute hand.

THE COURT: Counselor, I don't care how you try it, that is your problem, but you are going to proceed when the Court says you proceed. You want to delay it more, delay it more. You don't want to call anybody, we will adjourn until tomorrow. Of course the

D.A.'s not going to be happy about that.

MR. GRANT: That is correct. And I would most respectfully object to that, Your Honor.

THE COURT: Well, it is past 9:30 now, Counselor, call your next witness, Mr. Williams.

Mr. Williams. Mr. Williams. The

Page 20.

Court has directed you to call the next witness. I don't want to have to hold you in contempt. Please call the next witness.

MR. WILLIAMS: Your Honor, we are dividing up the duties in this case.

THE COURT: I don't care who is dividing up what. Call the next witness.

MR. WILLIAMS: I am trying to consult with my Co-counsel Mr. Weinglass.

THE COURT: You had all night to consult with him. You gave me a list of who you are going to call today. Those witnesses are here. Whichever ones are not here, do you want me to issue a bench warrant for them?

MR. WILLIAMS: That's what I am trying to determine, Your Honor.

THE COURT: Well, you want to find out who is here.

MR. WILLIAMS: If you could just give me a moment.

THE COURT: Wait awhile. Who are the witnesses that are there?

MR. WEINGLASS: Your Honor.

THE COURT: I know those but --

MR. WEINGLASS: Your Honor, we can put

Page 21.

on, at this point in time the Petitioner calls Joe McGill.

THE COURT: Is he here?

MR. GRANT: They know very well he's not here.

THE COURT: Okay, so he is not here either. Who is the next one?

MR. WEINGLASS: Well, we ask that Mr. McGill be brought here.

THE COURT: Well, bring them all here, but who else is here now?

THE COURT OFFICER: Gary Wakshul is in Room 618.

THE COURT: Gary Wakshul.

MR. GRANT: Yes, yes.

THE COURT: But who is back in there now?

THE COURT OFFICER: Just these two. Nobody else.

THE COURT: Just these two. They are the only two there?

THE COURT OFFICER: Yes.

THE COURT: Okay? We could call Gary Wakshul.

MR. WEINGLASS: No, Your Honor, we

Page 22.

object strenuously to this procedure. We are not prepared with Mr. Wakshul.

THE COURT: You gave me his name.

MR. WEINGLASS: His name is on the list and if Your Honor will consult the list he is way down on that list. And you can not dictate to us the order of our witnesses.

THE COURT: He is second on the list, right. Jeremy Gelb, there's Gary Wakshul. Do you want to call Jeremy Gelb?

MR. WEINGLASS: We are at the point where Tony Jackson is the next witness.

MS. WOLKENSTEIN: It is from yesterday.

MR. WEINGLASS: It is from yesterday. He is a holdover.

THE COURT: He is a holdover.

MR. WEINGLASS: From yesterday.

THE COURT: He was a holdover and he was ahead of Jackson. Where is Joe Davidson, is he here?

MR. WEINGLASS: He was told to be here at one o'clock, he will be here at one o'clock.

THE COURT: You told him one o'clock.

MR. WEINGLASS: Exactly.

Page 23.

THE COURT: I didn't say the Court was going to start at one o'clock.

MR. WEINGLASS: We were starting with Mr. Jackson at 10:30.

THE COURT: He is not here.

MR. WEINGLASS: After we called Darlene Sampson and we called --

THE COURT: You told me about your list. Davidson was first on your list, why don't you call him?

MR. GRANT: Would you like us to assist Counsel in bringing Mr. Jackson, Your Honor?

THE COURT: Maybe, if it will help you in any way.

MR. GRANT: Counsel, would you like us to contact Mr. Jackson?

MR. WEINGLASS: Yes, they could contact Mr. Jackson, certainly.

THE COURT: Okay. We will take a recess while defense tries to dig up it's witnesses.

THE COURT OFFICER: This Court stands recessed until the call of the Crier.

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Page 24.

(Brief recess.)

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MR. GRANT: Your Honor, if Mr. Williams is going to continue to proceed as Counsel for the defense, in, light of Your Honor's request that he be admitted pro hoc vice, and their assurances that such motions would be filed with the Court, if he has not provided those I would ask that Mr. Rudovsky present himself here as local Counsel to justify why this has not been accomplished?

MR. WILLIAMS: Your Honor, as I understand it, the papers are being prepared. I drafted out all the relevant information for the Rudovsky firm last night. So I could assure the Court that the papers are being prepared and will be filed today, pursuant to Your Honor's order.

THE COURT: Well, let's call Rudovsky. Shouldn't he be here? Shouldn't he ask the Court?

MR. WILLIAMS: He will be the movant. He will be moving my admission.

THE COURT: He will be here?

MR. WILLIAMS: He will be here to move

Page 25.

my admission.

THE COURT: When will he be here?

MR. WEINGLASS: I spoke to him last night, I believe he is clearing space to come today. I could only assure the Court that we will have him here.

THE COURT: Well, you call him and tell him I ordered him here. Because I won't permit you to continue if we don't do this properly. You better get him on the phone and get him over here. Where is he now?

MR. WEINGLASS: I believe he is in his office but I am not sure of that.

THE COURT: Why don't you call his office and tell him to get over here so that we could complete this properly. I told you this yesterday.

MR. WEINGLASS: Yeah. I am proceeding from this point on, Your Honor, not Mr. Williams, on the questioning of witnesses.

THE COURT: Oh, okay. But if you want to get back into this thing, make sure.

MR. WILLIAMS: I will.

THE COURT: Make sure he is over here.

Page 26.

MR. WILLIAMS: I will. The only other thing, Your Honor --

THE COURT: The only other thing is until he moves for your admission, you just have to take a seat. Okay.

MS. WOLKENSTEIN: Your Honor, we just wanted to clarify for the record: There was a third juror who was here this morning. A woman by the name of Beverly Greene. And I want to proffer her transcript as defense exhibit 7.

THE COURT: Is anybody here by that name?

MS. WOLKENSTEIN: Yeah, she was here this morning: Beverly Greene.

MR. GRANT: That is apparently an allusion to another juror on the Jury question. We would have the same objection.

MS. WOLKENSTEIN: I am only filing it as an exhibit.

THE COURT OFFICER: No, this was 5 and 6 that Mr. Williams proffered. You never presented it after the 1, 2, 3 and 4.

You tried to present two exhibits but then you went back.

MS. WOLKENSTEIN: Before I came up

Page 27.

with 1, 2, 3 and 4, 5 and 6. Could we have copies of the ones we already submitted again?

THE COURT: Look at the list.

THE COURT OFFICER: Counsel, you handed to me 1, 2, 3 and 4 and I asked you if that was all.

THE COURT: We could show you what we have here.

MS. WOLKENSTEIN: There must be a wastebasket right hear for defense exhibits.

THE COURT: No, you are not doing it properly. I told you to hand it to the Court Officer to hand to the Clerk. The Clerk keeps them.

MS. WOLKENSTEIN: Okay, I have 1, 2, 3 and 4.

THE COURT OFFICER: Yes, ma'am.

MS. WOLKENSTEIN: 5 then would be the transcript of Beverly Greene.

THE COURT OFFICER: So marked D-5.

(Copy of transcript was marked
Defendant's Exhibit D-5 for identification.)

MS. WOLKENSTEIN: Okay. The next exhibit is the transcript of Darlene Sampson.

Page 28.

(Copy of transcript was marked
Defendant's Exhibit D-6 for identification.)

THE COURT OFFICER: So marked D-6.

MS. WOLKENSTEIN: The next one is the transcript of Alma Lee Austin.

(Copy of transcript was marked
Defendant's Exhibit D-7 for identification.)

THE COURT OFFICER: So marked D-7.

MS. WOLKENSTEIN: I believe you need the one for Beverly Greene.

MR. GRANT: Not really.

MS. WOLKENSTEIN: You don't want it. Okay. The record should reflect the prosecution or the Commonwealth doesn't want their copy of the transcript. Right. And I want to make clear for the record that she is the third juror who was African American who was peremptorily excused by the Commonwealth, Joseph McGill, during the original trial.

THE COURT: Who is next on the agenda? It's three minutes after 11:00. Let's go.

MR. WEINGLASS: I want to thank the Court for it's time and it's patience. The next witness called by the Petitioner is Anthony Jackson.

THE COURT: Anthony Jackson. Well, I

Page 29.

thought you asked for Joe McGill.

MR. GRANT: Mr. Jackson arrived in the interim, Your Honor.

THE COURT: Well, I guess we can excuse, I guess we can excuse you for the time being. I'm sorry.

(Mr. Joseph McGill, Esquire appeared
before the Bar of the Court.)

MR. MCGILL: Your Honor, when would you like me here?

THE COURT: I don't know, his honor over here is making all those decisions. I can't make it for them. He is telling me who he wants to call and when. There wasn't anybody here so he asked to call for you, we called for you. So.

MR. MCGILL: Do you mind if I ask him?

THE COURT: Yes.

(Discussion was held off the record at this time.)

MR. MCGILL: 3:00 p.m. is what...

THE COURT: Is it okay?

MR. MCGILL: Yes.

THE COURT: Okay, thank you for coming over. I'm sorry.

Page 30.

MR. GRANT: With all due respect, Your Honor, with the anticipated offer of proof and the affidavit of Mr. Jackson, I think we will be here way past 3:00 p.m., and way past 3:00 p.m. tomorrow.

THE COURT: We may very well be but we won't call him. Go ahead.

Anthony Jackson. He is outside?

MR. WEINGLASS: Yes.

THE COURT OFFICER: He is outside?

MR. WEINGLASS: Yes.

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Anthony E. Jackson, Esquire, having been duly affirmed,
was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Mr. Jackson.

A. Good morning, Mr. Weinglass.

Q. Are you appearing in Court this morning pursuant to a subpoena?

A. That is correct, sir.

Q. Mr. Jackson, drawing your attention back to

Page 31.

December of 1981: At that time what was your occupation and employment?

A. Attorney. I was in December of '81, I believe at that time I was still working, I was the Director of the police project at the Public Interest Law Center of Philadelphia.

Q. And when were you first admitted to the practice of law in the Commonwealth of Pennsylvania?

A. July 27th, 1974.

Q. What law school had you attended and graduated?

A. Temple University.

Q. And did you also graduate in 1974?

A. Yes, '74.

Q. Prior to your admission were you employed by any governmental agency of the City of Philadelphia?

A. Yes, Philadelphia Police Department.

Q. And how long had you worked for the Police Department?

A. Approximately five-and-a-half years.

Q. Do you recall what years they were?

A. Yes, sir. 1963 through '68, maybe '69.

Q. And in what capacity were you working for the Police Department?

A. Evidence technician. I began as an assistant

Page 32.

Anthony Jackson, Esq. - Direct

or something of that, there was one title and then eventually I got another title, I forget what the first one was but eventually it was an evidence technician.

Q. And after your admission in 1974 and prior to December of 1981, were you ever employed by the District Attorney's Office?

A. Yes, sir.

Q. Of the City of Philadelphia?

A. Yes, I was.

Q. And in what capacity?

A. As an Assistant District Attorney.

Q. And for how long were you so employed?

A. About six months.

Q. And prior to December of 1981, did you have a professional relationship with an attorney in Philadelphia by the name of Marilyn Gelb?

A. Yes, sir, I did.

Q. And could you describe briefly for the Court the professional relationship you had with her?

A. Prior to going to law school, I was also an investigator for the Public Defender's Office for about five years, and I was also a private investigator for a number of years. During that period of time I met Marilyn Gelb as an investigator.

Page 33.

Anthony Jackson, Esq. - Direct

And I had occasion to investigate a number of cases for her, as well as a number of other attorneys. In fact, during this relationship, she was one of the people who encouraged me to go to law school as well. I continued to investigate cases for her, even while I was in law school.

Q. And did you continue to maintain a relationship of a professional nature with Marilyn Gelb through the 1980?

A. Yes, I did. I mean I would see Marilyn, we would consult sometimes on different cases and things of that sort.

Q. Would it be fair to say that you were close personally?

A. Yes.

Q. Now, could you also indicate what your professional experience was as an attorney after 1974 and up to December of 1981? You have indicated that you worked for the District Attorney.

A. After I left the District Attorney's Office, I think it was in January of '75, I was associate counsel for the Philadelphia Prison Master. At that time the Philadelphia Prison System had been declared un-Constitutional. And a Master was appointed and I was associate counsel. I worked there for

Page 34.

Anthony Jackson, Esq. - Direct

approximately a year-and-a-half or two years, I'm not really clear. And during that period of time I also maintained a private practice as well.

After that I began at Pilcop I believe in 1978 as the Director of the police project. And I held that position for approximately three years and in fact I was about to leave in, I think in January of '82, yeah, so I think in fact I was working at Pilcop for about three weeks or so after the appointment to Mr. Jamal's case.

Q. We will get back to that in a moment.

A. Okay.

Q. While you were at Pilcop, what did your practice consist of for that office?

A. Primarily suing police, instructing attorneys on how to sue police departments and police officers for wrongful conduct. In addition to which we gave information and testimony before the United States Congress, the State Congress, the City Council -- City Council, State Legislature. We conducted studies, we did investigations of police officers here in the City of Philadelphia who had committed wrongful acts. As well as we assisted in enacting legislation that now to a large extent governs police conduct here in the City of Philadelphia.

Page 35.

Anthony Jackson, Esq. - Direct

And in addition to which, we were instrumental in having the United States Justice Department sue the City of Philadelphia Police Department, first time in the history of the United States.

Q. That case became United States versus Philadelphia?

A. That is correct, sir.

Q. Now, during the period of time that you were the Director of the police project, would it be fair to say that your work mainly involved civil litigation?

A. Absolutely. Well, mainly, yes. There were, with this exception. In our representation, in our obligations, we would from time to time represent citizens who were arrested for what we called cover charges: Resisting arrests. Oftentimes they had confrontation with the police and the police would issue those cover charges, as we called them. And we would from time to time represent people on those charges.

Q. Was your work as the Director of Pilcop full-time work or part-time?

A. It was full-time.

Q. Now, prior to December of 1981, how many cases

Page 36.

Anthony Jackson, Esq. - Direct

had you tried that went through to the sentencing or penalty phase in a capital prosecution?

A. One or two. One of the cases that I'm thinking of was before Judge Sabo. I don't know whether that was, quite frankly, if it was before or after Mr. Jamal. It seems to me that it was before Mr. Jamal. I really, I can't remember the name of the case, I can't put it in a time sequence. And there was one other, I think that was before Latrone. So two cases.

Q. And at the time of your appointment to this case, December of 1981, were you at that time still working at Pilcop?

A. Yeah, I think -- yeah, I think, again, that was my last few weeks there or something of that sort, yeah, I was still actually working there.

Q. And sometime after your appointment, did you then open an office for the practice of law in Philadelphia?

A. That is correct, sir.

Q. So would it be fair to say that at the time that you accepted the appointment to represent Mr. Jamal, you were in a transition out of Pilcop and into your own private practice of law?

A. That's right.

Page 37.

Anthony Jackson, Esq. - Direct

Q. And do you recall when you opened your office, approximately?

A. I think it was January, February. Again, I'm thinking...

Q. That would be January or February of 1982; is that correct?

A. That's correct.

Q. And do you recall when you were appointed by the Court to represent Mr. Jamal?

A. I think in December.

Q. Of 1981?

A. '81, yes.

Q. So would it be fair to say that you were in fact appointed to represent Mr. Jamal at a point in time prior to the opening of your

office?

A. Well, yeah, I mean, maybe I should just explain this. The police project was funded through LEA: Law Enforcement Administration assistance funds. The funding for the police project ended I think in August or September of '81. I then performed most of the same duties as I had previously performed; however, I was doing other matters at Pilcop as well. And I had to make a decision whether or not I wanted to transfer to some other project or just what would happen. And I knew that it was about

Page 38.

Anthony Jackson, Esq. - Direct

time, or at least I wanted to return to private practice. At the time that I took the appointment, I knew that I was going into private practice. I was not in fact working full-time, or not working as much as I had been for them.

MR. WEINGLASS: Now I would like to have a document which has been marked D-8, which is a copy of the seven-page declaration appended to the Petition and marked in the Petition as Exhibit 1 (handing).

(Exhibit D-8 for identification.)

THE COURT OFFICER: (Handing.)

BY MR. WEINGLASS:

Q. Do you have it?

A. Yes, sir, I have it.

Q. Directing your attention to the last page of that document, do you recognize the signature on that document?

A. Yes, I do.

Q. And whose signature is that?

A. It is my signature.

Q. And do you note the date on which that document was signed?

A. April 17th, 1995.

Page 39.

Anthony Jackson, Esq. - Direct

Q. Now, did you review that declaration prior to signing?

A. Yes, I did.

Q. And have you reviewed it once again prior to your appearance here in Court today?

A. Yes, I have.

Q. And do you recognize that document as an important document for these proceedings?

A. Yes, I do.

Q. And you are of course aware of the significance of these proceedings for Mr. Jamal?

A. Absolutely.

Q. Is that document a true and accurate document to the best of your knowledge and belief?

A. Yes, it is. With a couple of minor exceptions. One of which we have already discussed. I think in here I mentioned that I took the appointment when I was in private practice. Again, I think I was off for about three weeks; I was actually at Pilcop then.

Q. Other than that the document is accurate?

A. That is correct, sir.

Q. Now, do you recall the date that the Jury returned a verdict of first degree murder in this trial in 1982?

Page 40.

Anthony Jackson, Esq. - Direct

A. Yes, I do.

Q. And what date was that?

A. Oh, you want, I remember the day, the date I'm not certain of. I could look through my notes, through this affidavit.

Q. Yes, page 6 of your declaration.

(Pause.)

Q. Well, if it is not there.

A. Yes, my guess would be -- wait a minute, July 2nd, I believe.

Q. Yes, I believe you are correct.

A. Yes, July 2nd.

Q. And do you recall what day of the week July 2nd was?

A. Friday evening.

Q. And do you recall what time of day the Jury returned the verdict?

A. As I recall, five, six o'clock, something like that. It may have been later, I just, it seems it was sometime in the early evening.

Q. And do you recall when the sentencing or penalty phase of the case was set to begin?

A. Saturday morning.

Q. The next morning?

A. That's correct, sir.

Page 41.

Anthony Jackson, Esq. - Direct

Q. Now, prior to the Jury reaching their verdict of guilt of the first degree, and from the time of your appointment back in December of 1981, did you have any discussion with Mr. Jamal concerning the sentencing or the penalty phase of his case?

A. None at all.

Q. And from December 15th, 1981, to July 3rd, 1982, had you interviewed anyone for the purpose of having them appear as a witness in the penalty or the mitigation phase of the trial?

A. No, sir.

Q. Had you subpoenaed anyone to appear as a witness for the penalty or the mitigation phase?

A. No, sir.

Q. Had you engaged in any discovery with the District Attorney's Office for the purpose of obtaining information or evidence or testimonial evidence for the mitigation or penalty phase?

A. No, sir.

Q. To your recollection, had you received any Brady materials from the District Attorney's Office respecting the penalty or the mitigation phase?

A. No, sir.

Q. Had you requested it?

A. No, sir, not for the penalty stage.

Page 42.

Anthony Jackson, Esq. - Direct

Q. Now, after the Jury returned it's verdict Friday evening and -- strike that. Do you recall what you did that Friday evening after the Jury returned it's verdict?

A. No. And for some time I have just tried to recollect what I did as opposed to what I assume I did or what I was in the habit of doing. I just don't know. I remember speaking to Mr. Jamal's mother in the rear of the Courtroom after the Jury's verdict. Typically, I would see Mr. Jamal up in the cell room or up at the prison. I think that day I think the relationship had become so strained, I don't know, I may have been reluctant to go see him. But I wasn't reluctant not because I had any fear or anything, but because he had just been convicted. I know I spoke to him, I think it was just here in the cell room. I did not have an opportunity to discuss, quite frankly, the penalty stage at that point. And I really don't remember -- I don't think that I even went to see him up at the prison that evening, I don't recall. I have no independent recollection of it. It seems to me that I did not.

Q. And you mentioned that you spoke to Mrs. Edith Cook?

A. That's correct.

Page 43.

Anthony Jackson, Esq. - Direct

Q. His mother. Was that more to console his mother after the verdict was announced?

A. Yeah, I have a specific --

MR. GRANT: I would object to the leading and move to strike that portion that was.

MR. WEINGLASS: I'm sorry, it was leading, I will withdraw it.

BY MR. WEINGLASS:

Q. When you spoke to his mother after the verdict was announced, I think you indicated here in the Courtroom, could you relate what the conversation was?

A Sure. Essentially, she was here of course to hear the verdict. And I did, again, I have a specific recollection of talking to her in the rear of the Courtroom. And it was primarily to provide whatever comfort I could for the verdict. I would assume that I would have talked to her later on because I sometimes did. But quite frankly, I don't think that I did. I think when I saw her in the Courtroom, that may have been -- Mr. Weinglass, I mean I just don't know. I mean I just don't know.

MR. GRANT: Move to strike his assumptions as well. I move to strike Mr.

Page 44.

Jackson's assumptions since he bases it on nothing.

THE COURT: The part about assuming could be stricken.

Go ahead.

MR. WEINGLASS: The rest of the answer --

THE COURT: Yes.

MR. WEINGLASS: -- may remain.

BY MR. WEINGLASS:

Q. Mr. Jackson, did you ask Mrs. Cook if she would appear the next day as a witness in the mitigation hearing when you saw her here in the Courtroom after the verdict was announced?

A. No, sir.

Q. To your recollection, as best you could recall that Friday evening, July 2nd, did you reach out and try to locate any witnesses for the mitigation or the penalty phase hearing which was set for the next morning?

A. No witnesses, no, I did not talk to any witnesses. Nor did I reach out for any witnesses, sir.

Q. Now, could you state for the Court and the record, what were the reasons why you hadn't prepared

Page 45.

for the penalty or the mitigation phase of the proceeding?

A. Okay. Twofold. Believe it or not, I didn't think that he would be convicted of murder in the first degree. That was the first reason. The other is because we had been I think working six days a week for a couple of weeks. And I first assumed that in the unlikely event that would have happened, we would have had at least an extra day to prepare whatever preparation would be available and necessary.

Q. Now, prior to the time the verdict was reached in the case of guilt, you were aware, were you not, that there might be an aggravator in the penalty phase of this case: Because the victim was a police officer?

A. Absolutely.

Q. Did you have any plan or formulate any strategy to rebut that aggravator in the penalty or mitigation phase of the case?

A. You said did I plan?

Q. Yeah.

(Pause.)

A. I considered arguments at that -- I mean I knew that that was an aggravator and I knew... I knew

Page 46.

that there was some consideration I had as to what I do to rebut it in argument only, not with testimony or evidence or things of that sort. And I knew at least in my mind what the mitigating factors were.

Q. Now, was there any, to your recollection, any conscious, deliberate or tactical or strategic reason why you did not call any witnesses other than Mr. Jamal during the penalty or the mitigation phase of the case?

A. I don't know if -- it's, it's difficult for me to recall why witnesses were not called for the penalty stage. I know that obviously after Mister, I guess it was the morning of the 3rd is when I do recall seeing Mr. Jamal, and Mr. Jamal had requested the opportunity to address the Jury. I notified Judge Sabo that and Mr. Jamal was able to speak to the Jury. Now, of course that is one of, your question also went to if I had a plan. I knew what the aggravating circumstance was. In my mind there was one aggravating circumstance, that the police officer, because he was a police officer. In my mind there were several mitigating circumstances that could be offered in Mr. Jamal's behalf.

Certainly the testimony or mitigating factors might have been, may have been more

Page 47.

effectively presented with witnesses. If you recall, I am sure you know, there were limited funds in this case. There was limited time in this case. And unfortunately, as I said, the first thing that struck my mind after the Jury's verdict was to make sure that I was legally prepared to deal with the penalty phase. I didn't want to just helter-skelter go after witnesses without particularly knowing what I would do with the witnesses. But I, in retrospect, I don't know why I did not call the witnesses. I don't know if there was a plan, I don't think so. I just don't know about it. I don't know.

MR. GRANT: I didn't hear that last....

THE WITNESS: I said I don't recall what the reason is why there were no witnesses called during the penalty stage.

BY MR. WEINGLASS:

Q. In any event, so that we are clear, Mr. Jackson --

A. Sure.

Q. -- prior to the verdict of guilt Friday afternoon, July 2nd, you hadn't done anything to prepare a penalty or a mitigation-phase hearing?

A. No, sir.

Q. Now, you indicated on the morning of the

Page 48.

penalty phase hearing, July 3rd, which was a Saturday, you had a meeting with Mr. Jamal prior to coming to Court; isn't that correct?

A. That's correct, sir.

Q. And in the course of that conversation, did Mr. Jamal indicate to you that he wanted to make a statement to the Court?

A. Yes, he did.

Q. And when he did that, did you advise Mr. Jamal of the risks that might be involved in his doing so?

A. No, sir.

Q. Did you review any statement he was planning to make with him?

A. No, sir.

Q. When you put him on the stand during the penalty phase, did you know what he was going to say?

A. No, sir.

Q. And after he began to speak, did you do anything to call a recess so you may review his narrative with him?

A. No, sir.

Q. Now, you recall, Mr. Jackson, that in January of 1982 you had put on the stand during a bail reduction hearing Mr. Jamal's mother Edith Cook, as well as the legislator of the Commonwealth of

Page 49.

Pennsylvania David Richardson?

A. That is correct, sir.

Q. Did you contact either Mrs. Cook or Mr. Richardson and ask them if they would also appear and testify during the mitigation or penalty phase hearing?

A. No, sir. Mrs. Cook was here but I never asked her to testify.

Q. And you also during the guilt phase of the trial put on a number of reputation witnesses to testify for purposes of establishing Mr. Jamal's reputation in the community; do you recall that?

A. Yes, sir.

Q. Did you inquire of any of those witnesses as to whether or not they were available to testify in the penalty or the mitigation phase of the hearing?

A. No, sir.

Q. Now moving back to the guilt phase of the trial.

A. Yes, sir.

Q. Do you recall, Mr. Jackson, that you did put on several witnesses for the defense during the guilt phase of the trial?

A. Yes, sir, I have a vague recollection.

Q. Do you recall putting on an eyewitness by the

name of Dessie Hightower?

A. Yes, sir.

Q. Had you talked to Mr. Hightower yourself prior to putting him on the stand?

A. Just here in the Courtroom or just outside the Courtroom for a few moments.

Q. Do you recall also putting on the stand another eyewitness named Veronica Jones?

A. Yes, sir.

Q. Had you talked to Miss Jones prior to putting her on the stand?

A. No, sir. In fact, even before she took the witness stand in the Courtroom I tried to speak with her, again either in the Courtroom or out in the hallway, and she refused to talk to me. Of course, well, she took the stand.

Q. Yeah. Had you prior to the moment that you had called them here to the Courtroom made an effort to talk to either Dessie Hightower or Veronica Jones?

A. Veronica Jones I don't, I don't, I don't think so. I don't remember. I just don't remember... how I even got her to Court. And Dessie Hightower, I assume that I tried to contact her but I don't remember. But I don't remember. Veronica Jones, I know for whatever reason I couldn't talk to her: I

don't know whether she was unavailable or I don't know whether the prosecution found -- I don't know. But I know she wasn't available for me to talk to her whenever it is that I wanted to.

Mr. Hightower I think, on the other hand, we did, we were able to obtain his address and I think he was available to talk to me. I don't know what happened, why I never talked to him, I just don't recall.

Q. But so that the record is clear: The fact is, Mr. Jackson, the two eyewitnesses that you called for Mr. Jamal in the guilt phase were two people who you hadn't interviewed prior to putting them on the stand?

A. That's correct, I didn't interview them, no, sir.

Q. Now, you also recall during the defense case calling the physician who had treated Mr. Jamal at Thomas Jefferson University Hospital on the night of the occurrence: Dr. Anthony Colletta?

C-O-L-L-E-T-T-A.

A. Yes, sir.

Q. And had you talked to Dr. Colletta before you put Dr. Colletta on the stand?

A. No, sir, I wasn't permitted to. No, sir.

Q. And had you seen Dr. Colletta's medical report concerning his treatment of Mr. Jamal prior to putting him on the stand?

A. I don't believe I did, sir.

Q. As a matter of fact, you recall seeing the transcript recently where you admitted on the transcript that you hadn't read his medical report prior to putting him on?

MR. GRANT: I move to strike anything that he admitted outside this Courtroom and off that witness stand.

THE COURT: It is stricken, the last statement. Please, Counsel, just ask questions...

MR. WEINGLASS: I'm sorry.

BY MR. WEINGLASS:

Q. Were you shown the transcript page wherein it appears that you informed Judge Sabo that you hadn't seen the medical report before?

A. Yes, sir. I saw the transcript, and I recall I made some note to the Judge that I didn't, I was barred from talking to the doctor prior to his appearance and that I just at that time received the medical report.

Q. Now, also in the guilt phase, do you recall there came a time when you used Judge Sabo's chambers

and the telephone in his chambers to attempt to locate a witness named Debbie Kordansky?

A. Yes, sir.

Q. Had you ever done that before?

A. First time in my life, sir. It's a strange situation. That I could explain.

Q. Yeah.

A. In this case, unlike any other -- excuse me -- unlike any other homicide case that I had tried before, the District Attorney was pretty much in control of all of the witnesses. They had redacted the addresses and phone numbers of the witnesses and cut them out literally. There was no way for the defense to contact these witnesses without going through the District Attorney's Office. Miss Kordansky, as an example, was one person I wanted to speak to. Why? Among other things, she said she saw a man running from the scene. Obviously I wanted to see her.

I remember bringing this up to, bringing it up to the Judge and Mr. McGill I needed to see this witness. And Mr. McGill as I recall said words to the effect that she didn't want to talk to me, she had nothing to say, she'd hurt me or something of that sort. I know when I first brought

it up, I think it was at the initial time I said words to the effect that Mr. McGill keeps telling me that these witnesses don't want to testify for the defense or won't be good for the defense when in fact they were witnesses who would be helpful to the defense if we could talk to them.

And back to the phone call. I asked if I could contact Miss Debbie Kordansky. He would not give me the address, he would not give me the phone number of the witness. He said that he would contact her or have the County detectives contact her to see if she would want to talk to me. So the County detective said well, Miss Kordansky, the defense wants to talk to you about your statement that you made about a man running away. You don't have to talk to them, do you want to talk to them.

MR. GRANT: I object unless he was there and heard that conversation, which I am sure he was not. Move to strike it.

THE COURT: Strike that part where he wasn't present.

MR. WEINGLASS: We will be calling the witness, for the Court's information.

THE COURT: Okay, call her later on.

MR. WEINGLASS: The person who spoke

Page 55.

Anthony Jackson, Esq. - Direct

to Debbie Kordansky was Detective Thomas, who is under subpoena for the defense.

THE COURT: Okay.

MR. WEINGLASS: And we will be calling Detective Thomas.

THE COURT: All right.

BY MR. WEINGLASS:

Q. Please continue.

A. As a result of what I was told, I nevertheless persisted that I was not, I would not take the word of the prosecution that my witness, that a witness wouldn't talk to me. And that I would still like the opportunity for her to say no to me personally, to my investigator, if I had an investigator, or someone. The concession I was able to secure was a phone call in the Judge's chambers. And I talked to her on the phone, she said words to the effect that she didn't like black people because she had been arrested -- I'm sorry, she had been assaulted or raped by a black man in the past, and words, words to that effect.

She went on to say other things that I don't specifically recall. But I do know the fact that she didn't like black folks and had been raped in my mind did not excuse her as a witness: She could dislike us as long as she told the truth. I

Page 56.

Anthony Jackson, Esq. - Direct

had no opportunity to know where she was. I still did not know where she was, they called. No, I did not see it, Mr. McGill called the number. I never knew where she was. Well, now I know where she is supposed to have been but I could never contact her.

Q. So she wasn't produced at trial?

A. She was not produced.

Q. Did she also, to refresh your recollection, Mr. Jackson, say that she didn't want to help you?

A. I think that was the words that she -- yeah, that's the words that she used, yes, I don't want to help you.

Q. Did that leave in your mind the impression that if she were called she wouldn't help you?

A. Yes, sir.

MR. GRANT: Objection. Objection.

Thank you, Mr. Jackson.

THE COURT: Stop leading, will you. Just ask him. Let him answer the questions without suggestions.

BY MR. WEINGLASS:

Q. Now directing your attention to another witness, a cab driver who did appear and testify for the Commonwealth by the name of Robert Chobert: C-H-O-B-E-R-T.

Page 57.

Anthony Jackson, Esq. - Direct

A. Yes, sir.

Q. Do you recall Mr. Chobert?

A. I certainly do.

Q. Do you recall Mr. Chobert at some point after he had completed his direct, prior to cross-examination, indicating to the Court at sidebar that he had a prior record?

A. Yes, sir, I know I became aware of it somehow, yes, sir.

Q. And do you recall, Mr. Jackson, what that record was?

A. I think for bombing a school or something of that sort. Or a school bus. Firebombing or something of that sort. And I think he was still on probation for that offense. Maybe over in Jersey or Delaware. I think, I don't think it was here in Philadelphia.

Q. Would it refresh your recollection that Mr. Chobert had told the Court at sidebar that he had thrown a Molotov cocktail into a public school for pay?

A. Okay, yeah, yeah. That now -- yeah, that's what it was, yeah, that's what it was. He had been hired to do that, yes, sir.

Q. And do you recall what, did you request that

Page 58.

Anthony Jackson, Esq. - Direct

that fact be laid before the Jury during cross-examination?

A. Yes, sir.

Q. And do you recall what Judge Sabo's ruling was?

A. He ruled against it.

Q. Did the Jury ever hear that?

A. No, sir.

Q. Now, do you recall on what basis you had asked the Court to permit you to lay that fact before the Jury?

A. On the basis of crimen falsi.

Q. Crimen falsi?

A. Yes, sir.

Q. And it was on that basis that the Court denied your request?

A. That's correct, sir.

Q. Did you also raise with the Court on that occasion the fact that this evidence could be admitted under cross-examination under the doctrine of Commonwealth V Murphy and Davis V Alaska as proof of the witness' bias or motive since he was still on probation?

A. I did not, sir.

Q. I know this is not easy for you, but, Mr.

Page 59.

Anthony Jackson, Esq. - Direct

Jackson, was that just an oversight?

A. I don't know if it was just an oversight as much as I don't think I knew that at the time. I think, I knew that in some situations, just as the cases hold that the record could be admitted for purposes of showing bias. At the time, at the time the situation came up, quite frankly I don't think I knew, I knew that law.

Q. Moving into another area. During, the course of your preparation for this trial, did you have occasion to try to employ the services of a pathologist as an expert witness?

A. Yes, sir.

Q. And could you relate to the Court what your efforts were and what occurred?

A. I think the first initiative was to file a petition with the Court for funds. I requested, filed a petition for funds. The Court gave I think $150 for a pathologist. I telephoned five, six, seven pathologists in this area of Pennsylvania, New Jersey, Maryland, Delaware. The best that I could get was a pathologist in Pittsburgh who said if I would mail it to him he would read it and tell me something over the telephone. For $150 he says he doesn't walk out of his neighborhood. And he, he was

Page 60.

Anthony Jackson, Esq. - Direct

willing at least to do that for $150. But I had no success in finding a pathologist who would even consider reviewing, talk to me or anything, for $150.

Q. So are you indicating the case went to trial without the services of an expert pathologist for Mr. Jamal?

A. Absolutely.

Q. Now, would you indicate what effort you made if any with respect to obtaining an expert in firearms?

A. Yes, sir. Almost identical situation. George Fassnacht was a ballistician I had known, from the Police Department and other. And there was substantial questions with regard to the weapons, the projectiles and things of that nature. And obviously I needed the services of a ballistician. Again I requested funds from the Court. I think I was initially given the 150 or 250, I'm not certain what the amount is. I spoke to Mr. Fassnacht once or twice at his home. And I think eventually I requested another -- I think he may have gotten a total of $350. However, I did not have enough funds for him to perform any tests, any examinations, nor for his

appearance in Court.

Q. So there was no test done on the alleged gun

Page 61.

Anthony Jackson, Esq. - Direct

that Mr. Jamal had that night, and no test done on the bullet that was removed from Officer Faulkner, to your knowledge?

A. Not by the defense.

Q. Do you recall making a request also that you have an investigator?

A. Yes, sir.

Q. And you made that request early on?

A. In fact I think I made a request in December, I think. Or certainly by January.

Q. Was it because this was an alleged offense that occurred on a public street at four o'clock in the morning and it would be important to have an investigator early on to get out in the street and find potential witnesses?

A. Absolutely. The area, the area is known to be inhabited, a lot of transient persons who frequent the area. There were just a lot of, a lot of people that could have, could have seen something, known something, that were not in fact interviewed by the police. Just a number -- I could give you a litany of reasons why I needed an investigator.

Q. And fast?

A. Fast, right away.

Q. And it is a fact, is it not, that the Court

Page 62.

Anthony Jackson, Esq. - Direct

did not approve your request for an investigator until January 20th, 1982, six weeks after the alleged occurrence?

A. That's correct, sir.

Q. Incidentally, in looking at all these police interviews that you were given by the prosecution in this case: They did an awful lot of their interviewing in the month of December; isn't that correct?

A. That is correct, sir.

Q. Before you had an investigator?

A. Yes, sir.

Q. How much money was allocated for your investigation of this case?

A. The grand total for all of the experts, investigators, ballistics, less than a thousand dollars. Perhaps $800. For everybody.

Q. For everybody?

A. Everybody. And they didn't get paid until after the case was over. I think the investigator, think I may have paid him in advance. But that was the other obstacle: Even the amount, assuming even the amount given by the Courts was acceptable, you then had to ask that they wait approximately a year before they receive the money.

Page 63.

Anthony Jackson, Esq. - Direct

Q. Incidentally, what was the name of the investigator who you retained with the money the Court authorized?

A. Bob Greer. Robert Greer.

Q. To your recollection, of all the witnesses, potential witnesses, do you recall how many of the witnesses he was able to locate and interview with the funds that were made available to you?

A. I think two.

Q. Do you know how many witnesses the police had interviewed in connection with this case, a round figure?

A. 150.

Q. Now, in your experience as a defense attorney up to June of 1982, how would you go about bringing a police officer witness who you wanted to call for the defense into Court?

A. Okay, if I am on trial, a jury trial, simply tell the D.A., the Assistant District Attorney who is trying the case, what police officer, Officer so-and-so, and they would have the officer in.

Q. And that was a matter of practice and a working arrangement between defense attorneys and District Attorneys in your experience?

A. Yes, sir. The exception would be if there was

Page 64.

Anthony Jackson, Esq. - Direct

perhaps an ongoing trial and I had a minor matter, you would then take a subpoena down to the Court Attendance and bring the police officer in that way. But in,any trial you simply would tell the police officer -- tell the Assistant District Attorney who would then bring the officer in.

Q. So if I understand you correctly, then, the procedure would be you would just inform the District Attorney informally and the District Attorney would see to it that the police officer would appear in court?

A. Yes, nine times out of 10 that would be the only way. There may be some reason in a particular case where the Assistant D.A. may have objections for reasons that fit that particular case. Generally speaking, in a homicide, just call the D.A. to tell the D.A. who you want if it is a police officer.

Q. And did you come to this Court in June of 1982 in the defense of Mr. Jamal in the expectation that that same arrangement would be followed in his case?

A. Absolutely.

Q. And did there come a time in the course of that trial when you requested of Mr. McGill, the District Attorney prosecuting the case, that he produce a police officer by the name of Gary Wakshul?

Page 65.

Anthony Jackson, Esq. - Direct

A. That is correct, sir.

Q. And did the District Attorney produce Officer Wakshul?

A. No, sir.

Q. Do you recall when you, what phase the trial was in when you made that request of Mr. McGill?

A. Sure. It was definitely during the time where the defense was presenting it's case. Having refreshed my recollection through some of the notes of testimony, it appears to be late in the defense of the case. I can't tell you which day, which day into the defense or which day before the verdict. But it was after a number of witnesses had already been presented.

Q. Did the District Attorney Mr. McGill tell you that you were too late in making that request?

A. Well, yes, he did tell me it was too late. Because the officer, contrary to what I understood, none of the officers, or the officers were instructed not to go on vacation during the period of the trial. When I requested that this officer be present, I was then told that he was on vacation. That he was on vacation. And that I should have told him a lot earlier. I guess he would have canceled his vacation, I don't know. But as I understood it, he

Page 66.

Anthony Jackson, Esq. - Direct

had already been instructed not to go on vacation but somehow he got away.

Q. Did you ask the Court for a continuance so that this officer could come back off vacation?

A. Yes, sir.

Q. Was it granted?

A. No, sir.

Q. Did you ask the Court to have Mr. McGill call Officer Wakshul to see if he was still in the City of Philadelphia?

A. Yes, sir.

Q. While on vacation?

A. Yes, sir.

Q. Was that granted?

A. No, sir.

Q. So the Jury never heard from Officer Wakshul?

A. No, they didn't, sir.

Q. Why was Officer Wakshul important to the defense?

A. Extremely important. There were a security guard and I believe another police officer testified that after Mr. Jamal was removed from 13th and Locust to the Jefferson Hospital, that Mr. Jamal made a statement, a confession: I killed the mother-fucker and I hope he dies. I'll never forget those words

Page 67.

Anthony Jackson, Esq. - Direct

because they said it so cute. And I say cute because -- well.

But in any event, Officer Wakshul, who had been, according to the report, had been with Mr. Jamal from the time that he was transported from 13th and Locust until I think the doctor saw him, in his report he said Mr. Jamal never said anything.

Q. So you wanted to lay that fact in front of the Jury as a rebuttal to this alleged confession?

A. Absolutely.

Q. The Jury never heard it; isn't that true?

A. That is correct, sir.

(Discussion was held off the record at this time between defense counsel.)

BY MR. WEINGLASS:

Q. As a trial attorney, in your way of thinking, that alleged confession was an important piece of evidence against your client?

A. Extremely important.

Q. Was it also an important piece of evidence for the Jury to have heard and considered during the penalty phase as well?

(Pause.)

A. Well, let me answer it this way. During the, during the trial it is critically important if an

Anthony Jackson, Esq. - Direct

Page 68.

officer is contradicting the alleged confession to another officer and this other security guard. The question as to would it be critically important at the penalty phase, the question is whether, whether you reintroduce that information or you just incorporate it. I guess it's just, I don't know if it is a tactical matter or what, but certainly the jury would need to know that information in either stage.

Q. Now, do you recall coming before Judge Ribner on or about April 29th, 1995 -- that's about five weeks before the trial was about to begin -- and requesting that a second attorney be appointed to assist you in this case?

A. Yes, sir.

Q. And do you recall indicating to Judge Ribner five weeks before the trial that you needed that assistance in order to properly prepare the case?

A. Yes, sir.

Q. Do you recall stating why you needed that assistance?

A. Yes, sir.

Q. And did Judge Ribner grant you the assistance of another attorney?

A. No, sir.

Page 69.

Anthony Jackson, Esq. - Direct

Q. Now, it's a fact, is it not, that shortly after that, on May 13th, 1982, Mr. Jamal had asked the Court if he could represent himself?

A. That's correct, sir.

Q. This was after your applications for resources for a pathologist, for a forensic expert, and for assistance of investigators and attorneys had all been turned down?

A. That's correct, sir. We were batting zero.

Q. And did Mr. Jamal then begin in fact to represent himself?

A. He did indeed.

Q. And what became then of your role?

A. I was told that I was to be backup Counsel.

Q. Backup Counsel?

A. Yes, sir.

Q. Mr. Jackson, had you ever been backup counsel before?

A. No, sir.

Q. Did you know what the responsibility and obligations of a backup counsel were?

A. I didn't know then, still don't know, sir.

Q. Did you ask the Court to assist you in telling you what your obligations and responsibilities were?

A. Yes, sir.

Page 70.

Anthony Jackson, Esq. - Direct

Q. Did you get any assistance?

A. No assistance in Common Pleas Court. As a result of that I appealed to the State Supreme Court for clarification. Because, again, I had never taken a course in backup counseling, never been backup counsel, didn't know what I was supposed to do, not do, who I was supposed to talk to, who I was not supposed to talk to. No instructions, no guidelines, no books on being backup counsel. I was put in a tenuous situation.

Q. Because you were put in a tenuous situation, you asked to be released?

A. Absolutely.

Q. And you asked more than once to be released?

A. I asked so many times, yes, sir.

Q. And you weren't released?

A. No, I was not.

Q. Did there come a point in time during the Jury selection when Mr. Jamal was asked to desist from further representing himself with respect to asking questions of jurors?

A. Yes, sir.

Q. And to your impression, during the several days that Mr. Jamal was questioning jurors, was he proceeding in an appropriate fashion?

Page 71.

Anthony Jackson, Esq. - Direct

A. As appropriate as any attorney I've ever seen do it before.

MR. GRANT: I would object to that. Counsel, if you would please not answer --

THE WITNESS: I'm sorry, I didn't see you. Forgive me.

MR. GRANT: Yes. I object and move to strike, Your Honor.

THE COURT: It is stricken from the record. That's already been ruled on by the Supreme Court.

MR. WEINGLASS: With all due respect, Your Honor, the Supreme Court ruled on it without hearing Mr. Jackson's impression of how his client was proceeding in a pro se status and we are entitled to put --

THE COURT: The Supreme Court has ruled on it and that's the end of it.

MR. WEINGLASS: Yes, Your Honor.

THE COURT: Okay.

MR. WEINGLASS: In a PCRA, it specifically provides --

THE COURT: In a PCRA, any matter that has already been ruled on by the Supreme Court

Page 72.

Anthony Jackson, Esq. - Direct

is not part of PCRA.

MR. WEINGLASS: Right. We are entitled --

THE COURT: Where is local Counsel for this gentleman to give

him advice as backup Counsel?

MR. GRANT: I could give him some. If he is saying that he is incompetent now, why should we receive his impressions about anything?

MR. WEINGLASS: That is a matter of weight, Your Honor.

MR. GRANT: Legally.

MR. WEINGLASS: That is a matter of weight. That is their position.

THE COURT: Whatever the Supreme Court has already ruled on is not proper in a PCRA. You give me a case that says that's wrong, Counselor, Xerox me a case, and I will be glad to reconsider.

MR. WEINGLASS: Right. Your Honor, I will Xerox the statute, which says new evidence must be presented in a PCRA. This is new.

THE COURT: This is not new evidence. It has already been --

Page 73.

Anthony Jackson, Esq. - Direct

MR. WEINGLASS: The Supreme Court didn't have it.

THE COURT: This is not new evidence. The Supreme Court already had it and ruled on it, Counselor.

MR. WEINGLASS: Moving on.

BY MR. WEINGLASS:

Q. Did there come a time later, after voir dire was completed -- I don't want to go back into that issue: I am being precluded --

A. Yes, sir.

Q. -- where the Court took from Mr. Jamal his right to represent himself and ordered you to represent Mr. Jamal? Did there come that time?

A. Yes, sir, the relationship began to go downhill even before.

Q. All right, but there came a time where you were ordered by Judge Sabo to begin to defend Mr. Jamal as his lead Counsel?

A. Yes, sir. During the time the trial began, Mr. Jamal was conducting the voir dire, and I believe he had conducted maybe one or two other pre-trial matters, he was questioning the witnesses, conducting the voir dire in my mind as effectively as any other attorney. And I think there was this one instance

Page 74 is missing. We will make attempts to locate it.

Page 75.

Anthony Jackson, Esq. - Direct

BY MR. WEINGLASS:

Q. Did you become lead Counsel at a certain point later in the trial, after the Jury was selected?

A. Yes, I was lead Counsel while I completed the voir dire. Mr. Jamal was then supposed to have an opportunity to represent himself again. And I played lead Counsel again. Mr. Weinglass, it's kind of difficult for me to recall just the machinations how I was going back and forth. Sometimes I was lead Counsel, sometimes I was backup Counsel, sometimes I was in never-never land, I don't know.

Q. But I don't want to go back into the part that the Court has already ruled on.

A. Sure, yes, sir.

Q. Looking at the rest of the trial, past the time of Jury selection, could you describe for the Court what your relationship was with Mr. Jamal after you assumed the role of lead Counsel?

A. The relationship become progressively strained after that time. I think it was particularly because Mr. Jamal had been removed from representing himself. I think Mr. Jamal, obviously, clearly felt that the rules of Court, the Judge's rulings, as well as my role as an attorney following those same rules and regulations, were causing him problems. And I think

Page 76.

Anthony Jackson, Esq. - Direct

at that point he realized that he was in a jam. When I say he was in a jam, it's because he was not being able to exercise the rights that he felt that he was entitled to. And as a result of that, he didn't think that the system, the rules, my competence or incompetence, or a lawyer, quite frankly, was going to do him much good. And I think he had to have lost confidence in me because I, as backup Counsel, I couldn't assist him in remaining Counsel for himself.

Q. So you were put in a very difficult, compromised position?

A. Oh, absolutely.

Q. As a lawyer, did it appear to you that you were put in a conflict position with your client Mr. Jamal?

A. It didn't appear, I certainly was. I had to do many things contrary to what he wanted me to do.

Q. Now, were you under orders from the Court to proceed as a lawyer in this case?

A. Yes, sir.

Q. And you heard Judge Sabo say to you that you must proceed in this case as a lawyer fulfilling all the obligations that a lawyer would fulfill under the circumstances?

A. That's right. As best I possibly can. And I

Page 77.

Anthony Jackson, Esq. - Direct

say as best as I possibly can because it was clear that the relationship between me and Mr. Jamal had deteriorated. Mr. Jamal had strong reservations and suspicions about what was going on in the Courtroom.

MR. WEINGLASS: May I have this document marked as D-9, I think it is. D-9.

No, 9. And handed to the witness.

And I want to show a copy to Counsel (handing).

- - - - -

(Document was marked Defendant's Exhibit D-9 for identification.)

- - - - -

THE COURT OFFICER: (Handing).

BY MR. WEINGLASS:

Q. Mr. Jackson --

THE COURT: Just a minute. Is there any objection to this?

MR. GRANT: None, Your Honor.

THE COURT: What's that?

MR. GRANT: I have no objection.

THE COURT: Okay. Go ahead, then.

BY MR. WEINGLASS:

Q. I want to show you what's been marked D-9, which is denominated Coroner's Report, and ask you to look at the first page.

Page 78.

Anthony Jackson, Esq. - Direct

A. Yes, sir.

Q. Lower, left-hand corner.

A. Yes, sir.

Q. Do you see the handwritten notation in a box there?

A. Yes, sir.

Q. What does it say?

A. Shot... letter I, 44 caliber.

Q. 44 caliber?

A. Yes, sir.

MR. GRANT: I object: That's not what it says. Would you read --

THE WITNESS: 44 cal.

MR. GRANT: Thank you, sir.

BY MR. WEINGLASS:

Q. 44 Cal?

A. C-A-L, period. I'm sorry.

Q. Do you recall if you saw this prior to or during the trial?

A. Never. Never.

MR. WEINGLASS: If I may have just a moment, Your Honor.

Excuse me, Mr. Jackson.

THE WITNESS: Sure.

Page 79.

(Discussion was held off the record at this time between defense Counsel.)

MR. WEINGLASS: Thank you, Mr. Jackson. I have no further questions.

THE WITNESS: Thank you.

THE COURT: Could we recess for lunch.

MR. GRANT: Do you want to, Judge?

THE COURT: Well, it's 12 after 12:00, and --

MR. GRANT: Whatever Your Honor's pleasure.

THE COURT: And I usually grab something at this time.

MR. GRANT: That's fine with me.

THE COURT: A quarter after 1:00?

MR. GRANT: That's fine.

THE COURT: Okay.

THE COURT OFFICER: This Court will take a luncheon recess until 1:15.

(A luncheon recess was held until 1:35 p.m.)

THE COURT: Good afternoon, everyone.

THE COURT OFFICER: That gentleman in the green shirt, please escort him out of the

Page 80.

Courtroom now.

(Pause.)

THE COURT OFFICER: Sorry, Your Honor, for the interruption.

THE COURT: Are you moving for somebody's admission?

MR. RUDOVSKY: I have original copies for Your Honor.

THE COURT: Where do the originals go?

MR. RUDOVSKY: I have it here.

THE COURT: You will file it?

MR. RUDOVSKY: I will file it, Your Honor. If I may hand up a copy. I served them to the District Attorney.

May it please the Court: My name is David Rudovsky, I am local Counsel in this matter. And I hereby move for the admission pro hoc vice of Daniel R. Williams and Jonathan B. Piper to appear in these proceedings, these proceedings alone in the defense in this PCRA matter. The supporting material is in the affidavit. Both Mr. Williams and Mr. Piper are members of the Bar in good standing in their own jurisdictions. They have been working on this matter for a number of years and will aid the

Page 81.

defense in the presentation of the evidence.

THE COURT: I see Mr. Williams. Mr. Piper is not here, is he?

MR. RUDOVSKY: Mr. Piper is not here right now.

THE COURT: All right. You will take care of filing the papers?

MR. RUDOVSKY: I will, Your Honor. Thank you.

THE COURT: All right.

MS. WOLKENSTEIN: Your Honor, before we begin with witnesses, there is another matter to be brought to the attention of the Court. I believe that there is a disparate and biased procedure in terms of people entering the Courtroom before these proceedings. This afternoon, members of Officer Faulkner's family were allowed to enter without going through the metal detector. Immediately after that the Cook family attempted to enter. The doors were closed behind them, or in front of them, and as they attempted to come in, as members of Mr. Jamal's family, they were, members of the family were physically accosted by whatever portion of, I don't know if it was the Sheriffs or Court

Page 82.

Officers out there in the hall. Specifically Mr. Jamal's son was physically stopped from entering after the Faulkner family had entered unimpeded without having to go through the metal detector. And then Mr. Jamal's first wife Abeeba Hart was also touched by the Court Officers. And they were then, the metal detectors were put on for the Cook family.

Contrary to the procedure being followed for the Faulkner family. I believe this is fundamentally unfair, biased and disparate. And if there is a procedure for the families it should be for both families, not for one, not only for the black family, not only for the family of the Petitioner here, but for both families. We should have the same procedure. If there is going to be metal detectors it has to be for both families, or no metal detectors for both families.

The other thing is it has come to our attention that in fact representatives of the FOP have been allowed to enter this Courtroom -- they are not in uniform, they are not part of the Court Officers here -- without going through

Page 83.

metal detectors. Again, they are members of the public coming in here and they should be treated in the same way as any other members of the public. If the public is being subjected to going through a metal detector, then so should the FOP representatives. I would ask the Court to remedy this situation. Or to indicate that it is not going to for the record.

MR. GRANT: If I may, Your Honor: The Faulkner family was searched. I don't know where Counsel gets her information but I wish she would start researching some of the statements she makes prior to opening her mouth. Number one.

THE COURT: She does that all the time.

Go ahead.

MS. WOLKENSTEIN: What was that, Your Honor?

THE COURT: I said you do that all the time.

MR. WEINGLASS: Is that stated on the record, please?

THE COURT: Yeah, sure, he takes down everything.

Page 84.

Go ahead.

MR. GRANT: Number two, Your Honor, obviously, and I would ask the record to reflect that since July the 12th when we started these proceedings, there has been a constant tumult, incessant horns blaring, crowds shouting, right underneath the window where the proceedings are taking place. So that even Counsel for Mr. Jamal who is trying to have an orderly and fair proceeding can't even hear the statements of Counsel or the other witnesses.

We've had three outbursts, four outbursts in the last three days: People shouting and directing comments to Your Honor. People have been escorted out today. There's been a sum total of about 16 people ejected from the Courtroom.

Now, I am not suggesting that the defense team is orchestrating any of this, but certainly emotions are very volatile and spirits are very high. I would suggest for Counsels, own protection and everybody else that there be two separate entrances and they have metal detectors at both, because clearly this is not going to resolve itself in this Courtroom.

Page 85.

MS. WOLKENSTEIN: You are indicating --

THE COURT: What are you suggesting?

MR. GRANT: I am suggesting that there be two entrances, one for each family, if that's what they want to do. They could be searched at either place. But if you were here earlier today you would realize that people are willing, because of their beliefs or disbeliefs in whatever is going on, anti the death penalty, pro death penalty, I could understand these emotions, but if it is going to come to physical confrontation, we are here to maintain order: That's what this Court exists for.

MS. WOLKENSTEIN: There has been no physical confrontation between the Jamal family and Faulkner family.

THE COURT: Will you please keep quiet for a minute. He has made a suggestion and I think it is a good one.

MS. WOLKENSTEIN: I object.

THE COURT: You are talking about the second entrance?

MS. WOLKENSTEIN: I object. It is not with the acquiescence or acceptance of the

Page 86.

Petitioner.

THE COURT: You could decide anything you want, it is my Courtroom, I will make the decisions.

You are suggesting they come through this way?

MR. GRANT: Yes, Your Honor. Only the families be allowed in this area. These people of the spectators, the members of the gallery, are primarily the people who have been ejected.

THE COURT: I will change that. The families on both sides could come through this second entrance here.

MS. WOLKENSTEIN: Families on both sides, fine.

THE COURT: That's what I said, Counsel. If you just listen to what I am saying.

MS. WOLKENSTEIN: Families on both sides.

THE COURT: That's right. I don't have to repeat it. Okay. Now, are there any other problems?

THE COURT OFFICER: Your Honor, if that is the case, then it should be known that

Page 87.

all families should show ID when they come through.

THE COURT: Yes, we have to: You don't know who they are.

THE COURT OFFICER: We need to know.

MR. GRANT: I agree with you.

THE COURT OFFICER: If they are a member of the Cook family we want to know, if they are a member of the Faulkner family we want to know.

MS. WOLKENSTEIN: The families have been coming in on a regular basis, they have been identified.

THE COURT: Let the Court Officer know who they are because I am not there at the door.

MS. WOLKENSTEIN: We will do that.

THE COURT: All right. Okay, let's proceed with cross-examination now.

MR. WEINGLASS: Your Honor, there is --

MR. GRANT: Thank you, Your Honor.

MR. WEINGLASS: There is just one other matter, which I brought up with Mr. Grant before Court began this afternoon. We have a witness who is on our witness list, his name is

Page 88.

Joe Davidson. He is a reporter, as I understand it, with the Wall Street Journal, stationed in Washington. He came up today and we --

THE COURT: Why don't you let him finish cross-examination: Maybe we could get to him.

MR. GRANT: That was my suggestion precisely.

MR. WEINGLASS: I was just concerned because --

THE COURT: Well, Counselor, you weren't concerned. I told you to call him early in the morning before we had Mr. Jackson here. You didn't want to put him on. Now come on.

MR. WEINGLASS: If I may finish. I was concerned because of Mr. Grant's representation that he might be cross-examining Mr. Jackson --

THE COURT: He might, he might.

MR. WEINGLASS: -- all day today and all day tomorrow.

THE COURT: He may, I don't know. But let's go. We are never going to know. If you would stop talking so we could proceed with this witness.

Page 89.

MR. WEINGLASS: Yea. Your Honor, if we could just have Mr. Davidson on for 10 minutes on his direct, that's all that --

THE COURT: Counsel, I am not going to interrupt the District Attorney's cross-examination at this point. I offered you to let him go on this morning when we were having difficulty in finding anyone. And I had to wait and sit in my chambers for nothing. You could have had him on and off.

MR. WEINGLASS: Correct, but we thought --

THE COURT: Well, I know what you thought, but you didn't think right, so let's proceed with the cross-examination of this witness.

MR. WEINGLASS: We had three witnesses that the Court refused to hear.

THE COURT: Fine, okay.

MR. WEINGLASS: We expected that the Court would hear those.

THE COURT: You should have had him on here, he could have gone on. I suggested him, I told you who you could put on. But you won't tell me how to run this Courtroom. He is on for

Page 90.

cross-examination, let's proceed.

- - - - -

Anthony E. Jackson, Esquire, having been previously affirmed, was examined and testified as follows:

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good afternoon, sir.

A. Good afternoon, Mr. Grant.

Q. For the record, Mr. Jackson: You and I have known one another for a number of years, is that not true?

A. That is correct, sir.

Q. As a result of trying murder cases; is that right?

A. Yes, sir.

Q. By the way, just to start off: Mr. Weinglass asked you how many times prior to the case for Mr. Jamal had you tried a murder case and went to the penalty phase, and you said once or twice; is that correct?

MR. WEINGLASS: Your Honor, that is a misstatement of the record.

Page 91 is missing. We will make attempts to locate it.

Page 92.

Q. How many murder cases had you tried, sir, prior to December, or I should say June the 2nd of 1982?

A. My best recollection is a minimum of 16, perhaps 20 cases, 20 murder cases before Mr. Jamal's case.

Q. And how many of those defendants were convicted of first degree murder? Just round numbers if you can. Percentages if you can.

A. A half dozen.

Q. So out of 20 murder cases, six people convicted of first degree murder. And ostensibly, those six people faced the judgment of life or death by a jury, I presume?

A. That is correct, sir. Let me correct it. This is tough. I think there may have been two, possibly three that were convicted of first degree on waivers, with the judge.

Q. Nevertheless, the two possible penalties for first degree conviction are only a life or a death sentence; is that correct?

A. That is correct, sir.

Q. Of those six people -- that was prior to Mr. Jamal's --

A. That is correct.

Page 93.

Q. -- none of those people received the death penalty, did they?

A. No, sir.

Q. And that's because you saved their lives through your oral skills, your intellectual prowess, and your advocacy as a lawyer; would that be fair to say?

A. I appreciate the compliment but I would assume that the facts of the cases helped a little bit too.

Q. Oh. So you think that basically when a man is killed and that person happens to be a police officer, and that police officer's bullet is found in the center of the chest or removed from the back of a person who is found within three or four feet of the officer with the gun used to kill the officer, you think basically there is no way you can win that kind of a case?

A. No, never thought that.

Q. You never thought that?

A. Never thought it.

Q. Because as a lawyer you have to have a certain degree of ego and you think you can win any case that you try, don't you?

A. Pretty much so, yes, sir.

Q. And there was nothing different about this

Page 94.

case than there was about the other 20 murder cases in terms of your feelings and abilities and belief in yourself?

A. That's true.

Q. Now, you graduated from Temple Law School in 1974; is that right, Mr. Jackson?

A. That is correct.

Q. Where did you go to undergraduate?

A. University of Pennsylvania.

Q. And what did you major in there, sir?

A. Political science.

Q. And you worked for the D.A.'s office the next year after you graduated from law school; is that correct?

A. Actually, it was the same year.

Q. Same year?

A. I think I graduated in May or June and I think I began in the D.A.'s Office in July.

Q. And you only stayed with the D.A.'s Office six months; is that correct?

A. That's correct.

Q. Well, that's kind of an unusual tenure. Is there some reason for that?

A. Yeah. Umm, first reason is for me going to the D.A.'s Office -- I will just give you the

Page 95.

history -- my last semester of law school Arlen Specter conducted a criminal law seminar. I did a paper in my last year on the lack of black prosecutors throughout the United States and got a good grade on the course. But as a result of that, he then contacted me to, since I said there were few blacks prosecutors in the United States, would I consider coming to the D.A.'s Office.

At the time it was probably the last place that I thought of working. But I guess to some extent I was a little bit embarrassed about it so I did take the job. It lasted, I lasted, I stayed six months because of the situation with the prison came up and I moved on to that.

Q. Well, you moved on to that because that was the last place you thought of working because you never fancied yourself being a criminal prosecutor in the first place?

A. Never did.

Q. And what you saw of it you didn't like; would that be fair to say?

A. Some of it, that's correct.

Q. And you had another job where you worked in law enforcement, and you worked for the Police Department?

Page 96.

A. That's correct.

Q. As a civilian?

A. Yes, sir.

Q. And what did you do, sir?

A. I worked in the identification unit in the evidence lab. Took fingerprints, compared fingerprints, did latent prints, did searches, employment searches, photographs of evidence, photographs of defendants, dead bodies, things of that sort.

Q. Crime scene photos?

A. Crime scene photos.

Q. Sketches?

A. I did not do sketches.

Q. Collecting evidence at the scene?

A. Collecting evidence.

Q. You did all those things that are the very core and the essence of a criminal prosecution for five-and-a-half years, did you not? The only thing left is talking to witnesses?

A. Yes, sir.

Q. So you would agree with me that in terms of the scientific and forensic sciences that are involved, you were pretty well skilled and experienced in that field before you even became a

Page 97.

lawyer?

A. I had some skills and some talents, yes, sir.

Q. Well, did you get promoted through the ranks in that field?

A. One promotion.

Q. You got pay raises?

A. Yes, sir.

Q. Were you a slug?

A. No, sir.

Q. All right. You were competent at what you did?

A. I think so.

Q. And even though you had a stint at the D.A.'s. Office, you weren't particularly enamored of prosecutors or policemen, are you, as a general philosophical --

A. Policemen but I didn't like prosecutors.

Q. Okay. And you also did a stint as an investigator?

A. Yes, sir.

Q. And you investigated for various lawyers in town, criminal practitioners?

A. Yes, sir.

Q. And Marilyn Gelb was one of them? And she was the appellate Counsel who succeeded you while you

Page 98.

served as trial Counsel for Mr. Jamal, was she not?

A. That's right, sir.

Q. And you maintained this professional relationship with her even after you stopped being a private eye and you became a lawyer, did you not?

A. That is correct, sir.

Q. And you did that because you thought she was pretty damn good and you liked her style and you felt that she would be a good mentor for you, didn't you?

A. Absolutely, I respect Marilyn Gelb a great deal.

Q. And do you still?

A. Still do.

Q. You think she is a good lawyer?

A. Yes, sir.

Q. Do you think you are a good lawyer?

A. Yes, sir.

Q. Now what I would like to discuss with you is this organization, this Public Interest --

A. Law Center.

Q. Law Center. The police project?

A. Yes, sir.

Q. Would you tell us a little bit about that?

A. Sure. The police project at Pilcop was established I think approximately in 1977 or

Page 99.

seventy -- 77? I think it was '77. It was funded, as I said, by LEA funds, Law Enforcement Assistance Administration. It was specifically funded to explore avenues of increasing police-community relations, implementing wrong -- not wrong, I guess I am just trying to think of what the expression was in the grant. But we were trying to create an avenue for citizens here in Philadelphia to file complaints and have them meritoriously examined.

Prior to that time in Philadelphia when one made a complaint against the police, normally we would have to go right back to the police station where the incident happened; and there was no telling who might take the complaint, an officer might write it on a yellow sheet of paper and after the person leaves throw it in the trash.

As a result of that, we thought that was an inequitable way of conducting an investigation of citizens' complaints. We tried a number of avenues, one of which was litigation. Another of which was lobbying. Another of which was community organizing. Some of which was representation, criminal representation of those who were charged with what we call cover charges. And of course we did other types of research and information

Page 100.

dissemination.

Q. If I am not mistaken, you sued the police, instructed other attorneys how to sue the police, and investigated the police in Philadelphia and enacted guidelines for police conduct, assisted the Department of Justice in suing the City of Philadelphia Police Department, first in the country, assisted citizens and represented them in criminal court on cover charges?

A. And we represented police officers too.

Q. Did you?

A. Yes, sir.

Q. How many?

A. The entire Guardian Civic League, black police officers.

Q. Black police officers?

A. Yes, sir.

Q. And in what fashion did you represent them?

A. Primarily in employment discrimination.

Q. I see. No criminal cases?

A. No, sir.

Q. No civil cases for money?

A. No, sir.

Q. And these cover charges you are talking about, what you are talking about is pretextural arrests?

Page 101.

A. Exactly.

Q. Fabricated, framed people?

A. That's right, sir.

Q. And you became the Director of Pilcop, did you not?

A. Yes, sir.

Q. How long were you the Director?

A. Three, three-and-a-half years.

Q. And is that the job you left the D.A.'s Office to take?

A. No. I left the D.A.'s Office to take a job as staff counsel with the Prison Master. The prison system here in Philadelphia had been declared un-Constitutional because it constituted cruel and unusual punishment.

Q. You mean crowded conditions?

A. No, sir. No, sir.

Q. What do you mean?

A. No, I am talking about Jackson V Hendricks. This was, it was more than overcrowding; it was rodents, bad food, bad accommodations, it was everything. And of course Mr. Rudovsky was here and I am sure Mr. Rudovsky could tell you a great deal more about it than I can. But again, that was the first time that the prison system here in

Page 102.

Philadelphia had been declared un-Constitutional and that was an unusual situation when a Master was appointed. The Master was appointed to oversee the correction of those problems in the prison system.

Q. How long did you stay there?

A. Approximately two years.

Q. Now, when you took the job at Pilcop, probably for the first time in your adult life you had a job, I would venture to say, that suited your profession, because you were in fact an attorney, and suited your philosophy, because you believed in what that job represented, did you not?

A. Yes, sir.

Q. And over that period of time of dealing with the persons you perceived as the victims of the system that forced the institution of that project, and your criminal practice, you began to philosophically identify with this type of organization and what it hoped to achieve, did you not?

A. At least that, yes, sir.

Q. Okay. And since you had had 20 murder trials, more or less, before Mr. Jamal was tried, where did you have time to squeeze all those in between the D.A.'s Office and the Police Department and the

Page 103.

prison system and Pilcop?

A. I worked real hard. I did, I could try to tell you. 1975 was the year because I think I left the D.A.'s Office in January, maybe February of 1975. During that time again I was staff counsel for the Prison Master, it was not full-time. During that first year of being in private practice, I think I was appointed to three, maybe four criminal cases, criminal homicide cases. I was privately retained for one.

Q. Major cases, sir? And by that I mean every case is major if there's a murder involved?

A. Right.

Q. What I am suggesting to you, though, is there are some cases that put more pressure on lawyers than others. There are cases that have political overtones, community activism, socialist orientations and crowds, high emotions?

A. I've never had another case like Mr. Jamal's case.

Q. Well, each case is going to be different than any case you've ever had?

A. Absolutely.

Q. But did you ever have a case that approached this scale on sensitivity and emotion?

Page 104.

A. As Mr. Jamal's?

Q. (Nodded head affirmatively.)

A. No.

Q. On those three cases you were appointed to, two you were appointed to, one you were retained?

A. Three, three or four I was appointed, one I was retained.

Q. In either of those was the issue of the death penalty involved?

A. Well, neither of those that I just spoke of. I was also acting as Co-counsel, another case that I had forgotten about, that was a death penalty case. I played no major role in the case. Another lawyer, Bobby Mozenter, was the lawyer.

Q. Okay, so tell me about the other 17 or 18 cases that you had when you were working also with juggling these balls and trying these murder cases?

A. Sure. '75, as I said, must have been four or five cases. I tried to make a note.

Q. By the way, excuse me, Mr. Jackson.

A. Yes, sir.

Q. Are you reciting all of these informational facts and all your direct examination based on a 13-year-old recollection?

A. No, not all of them. Well, some of my

Page 105.

testimony on direct was refreshed by my reviewing some old transcripts. Things of that sort. But --

Q. And some were refreshed by reviewing your trial file, I take it?

A. No, not my trial file. I. haven't seen my trial file since I gave it to Marilyn Gelb.

Q. You gave it to her?

A. I gave her everything.

Q. Everything?

A. Everything that I recall. I may have retained some -- I think I gave Marilyn everything that was in the file.

Q. Well, there wasn't much in the file since you gave it all to Mr. Jamal during the trial?

A. That isn't true. That isn't true.

Q. That isn't true?

A. No, sir.

Q. Well, did you say to the Judge that it was true?

A. That I gave -- that what, did I say what to the Judge?

Q. That Mr. Jamal took all the statements of the witnesses who testified in that case and you had to go from memory and your own rough notes to proceed as to how to cross-examine them and to know which ones

Page 106.

were there, which ones were available for you?

A. That is partially correct. Let me explain what happened. When I first received discovery from the District Attorney's Office I made copies -- remember, I mean it was at least 150 statements. I made copies of most, some of those statements, gave them to Mr. Jamal. As we proceeded in preparation for trial or during the trial, I'm not certain when, I gave him some statements that I had not made copies of. Those would be the statements that I was talking about that Mr. Jamal had. I had copies of some statements that I had also provided him copies with. There were other statements that I had no copies of. And I believe there may be statements that I had that he didn't have.

Am I confusing you, sir?

Q. No, I am not confused. I think you are, Mr. Jackson.

A. Okay.

Q. Do you recall this situation? I will see if I can refresh your recollection.

MR. WEINGLASS: When Counsel has the line and page I would appreciate it.

MR. GRANT: When I have it I will give it to you.

Page 107.

I'm sorry for the delay, Mr. Jackson.

THE WITNESS: No problem, sir.

BY MR. GRANT:

Q. I would invite your attention, sir, to the date of June 26th, 1982. Pages 139 and 140. And you are acting as Counsel at that time, Mr. Jackson. Not backup but as primary Counsel. When being asked by the Court why you didn't know who your next witness was you stated -- and I have the volumes physically here for you in the event that you would like to refresh your recollection further -- you stated one of the difficulties that I have in determining what witnesses to call is that I have to reflect and think --

A. That I had to what?

MR. GRANT: May I approach, Your Honor?

THE COURT: Give it to him.

MR. GRANT: (Handing.)

139, sir.

THE WITNESS: Okay, thanks, sir. All right, 139, sir.

BY MR. GRANT:

Q. It says Mr. Jackson: One of the difficulties -- is how it begins. Do you see it?

Page 108.

A. Yes, I'm sorry, I see where you are.

Q. One of the difficulties that I have in determining what witnesses to call is that I have to reflect and think and search my notes as to the statements of witnesses since I no longer have a copy of the statements. Mr. Jamal has copies of the statements. I think that I indicated I showed you all of the names.

You were speaking to Mr. McGill at that point in time.

A. Right.

Q. So does that refresh your recollection as to what was in your file that you turned over to Marilyn Gelb and how much you gave to Mr. Jamal and how much you retained?

A. That's entirely consistent with what I said, sir. At the time that I made these statements, again, I specifically recall that there were some, when I originally received copies of some of the discovery, there were a number of them that I made copies of and I gave to Mr. Jamal. Now, I kept all of the others. At a point in time there were some statements that were the only copies, the originals I had given to Mr. Jamal. At this time I'm not -- I don't know exactly which, which witnesses we were

Page 109.

talking about at this time. This may have been a time that he had all of the statements and I got some. I just don't know. But I mean it is not that he had all of the copies so long that I didn't have them. I mean he had some and I had some. If he had all of them then I would have had duplicates of statements because I made copies of them.

Q. Well, this is pretty plain English right here. It says I no longer have a copy of the statements, Mr. Jamal has copies of the statements. That sounds like the entirety, it sounds like it is inclusive, whole; it doesn't say some or others, it says the statements, does it not?

A. Yes, talking about specific statements, I would assume. I don't know if it's talking about all the statements.

Q. Oh, I see. So you have an independent recollection 14 years later as to what you meant at that paragraph in the 4,000-page transcript?

A. No, I didn't say that. I said it doesn't say all the statements, I don't know what it is. And if you were to let me clarify I will tell you. I don't know, but I don't believe that it refers to all of the statements.

Q. Did you bring any file here today?

Page 110.

Anthony Jackson, Esq. - Cross

A. No, sir. I have no file.

Q. I see you looking at some papers you are referring to?

A. Piece of paper, I wrote this, I wrote this earlier today to count up the cases. And this is the affidavit. That is what I made (displaying). This is my file.

Q. May I see them?

A. Absolutely.

MR. GRANT: May I approach, Your Honor?

THE WITNESS: (Handing).

BY MR. GRANT:

Q. You were telling us before I rudely interrupted you about how you were able to balance 20 homicides, more or less, and your other jobs. Would you continue, please?

A. Well, you have my crib sheet right there.

Q. Oh, I see. So what you have is a little numerical data sheet and you have a copy of your affidavit?

A. Yes, sir.

Q. Who prepared the affidavit for you, sir?

A. Mr. Weinglass.

Q. And in what respect did he prepare it for you,

Page 111.

Anthony Jackson, Esq. - Cross

since you are a lawyer as well?

A. He prepared it on behalf of Mr. Jamal, as far as I know. He was representing Mr. Jamal.

Q. And these statements that are found in the affidavit here, they are dictated by you to his secretary?

A. No, sir.

Q. They were typed by you in their present form?

A. No, sir.

Q. You gave him a rough draft and he filled in the text?

A. No, sir.

Q. Well, tell me how that came about?

A. Sure.

Q. And I hate to keep diverting, digressing from our mission.

A. Mr. Grant, no problem. I met Mr. Weinglass perhaps two years ago. I talked to Mr. Weinglass and a couple of his associates. He generally asked me about my representation of Mr. Jamal. We conversed perhaps a couple of hours. Over the last two years I have spoken to Mr. Weinglass a number of times. I've seen him a number of times. And obviously the subject of the conversation was my representation of Mr. Jamal.

Page 112 is missing. We will make attempts to locate it.

Page 113.

Anthony Jackson, Esq. - Cross

THE COURT: You no longer have privilege. There is no longer a privilege.

MR. GRANT: This is a statement of the witness, and he is taking notes as to the witness' statement. And I just want to see if the notes comport with the reality that I see typed here in front of me.

THE COURT: Well, if you have them turn it over to him.

MR. WEINGLASS: I don't have such. I don't have the notes. And I believe the notes are privileged. I am Counsel to Mr. Jamal. That privilege still pertains.

THE COURT: That is not anything that Jamal said to you, it is what a witness said to you.

MR. WEINGLASS: If it has anything to do with what I take down in terms of my representation of Mr. Jamal.

THE COURT: No, no.

MR. GRANT: I would like to state that when Mr. Jamal claims his Counsel at trial was ineffective he has waived the attorney-client privilege with respect to what this man did and what his file showed he did on behalf of Mr.

Page 114.

Anthony Jackson, Esq. - Cross

Jamal.

And he is no longer representing Mr. Jamal (indicating Mr. Jackson). And this attorney is not representing Mr. Jackson (indicating Mr. Weinglass). So there is no attorney-client privilege here.

MR. WEINGLASS: He is missing one gap and that is that I represent Mr. Jamal, and the privilege between Mr. Jamal and myself pertains.

THE COURT: That's right, but we are not talking about anything that Mr. Jamal said to you. Only what Mr. Jackson said to you. If you have the notes turn them over. Otherwise the Court can conclude that you just manufactured this thing. If you have them give it to him.

MR. WEINGLASS: Well, I appreciate the Court indicating the possibility that it was manufactured.

THE COURT: Well, because he is going to argue that later on. And I am trying to help you now. Because if you have them give it to him.

MR. WEINGLASS: Your Honor beat him to it. You are making the argument from the bench

Page 115.

Anthony Jackson, Esq. - Cross

for the prosecutor. But I appreciate that observation. But I don't have the notes. There are no notes.

MR. GRANT: Thank you, sir.

THE COURT: He doesn't have any notes.

BY MR. GRANT:

Q. So he sent you a rough draft based on rough notes that he had taken from conversations with you over the couple years?

A. That's what I suspect, that's where the rough draft came from, his notes and from his recollection.

Q. Did you see him taking notes while he was taking to you?

A. Yeah, from time to time, sure.

Q. When he sent you the rough draft did he send you a copy of the rough notes as well?

A. No.

Q. Never saw those?

A. No.

Q. You don't know what he was writing?

A. No, sir. I sure don't.

Q. He didn't let you review it?

A. No, he could have been writing a recipe for a cake as far as I know.

Q. And you didn't ask to see the recipe for that

Page 116.

Anthony Jackson, Esq. - Cross

cake or taste it, did you?

A. No, sir.

Q. Okay, back to juggling.

A. I'm with you. Where would you like me to begin?

Q. I would like you to tell me about the other 17 cases, minus the three or four that you have mentioned?

A. Okay, sure. All right, 1975 I was appointed, I think I told you about that. Okay, '76, I was appointed to at least three cases, possibly four. I was privately retained in two cases. 1977, appointed to four or five cases, privately retained in two or three. If you add up '75, '76 and '77, it is a minimum of 11 cases I was Court-appointed, a maximum of 13. I was privately retained through those same years a minimum of 5 cases, a maximum of 7 cases. That's why you got 11 and 5, 16; 13 and 7 is 20.

Q. And you know what, Mr. Jackson --

A. Yes, sir.

Q. -- comparing notes with your colleagues back in the late '70s --

A. Hmm-hmm.

Q. -- you probably had more homicide experience than 80 percent of the lawyers practicing criminal

Page 117.

Anthony Jackson, Esq. - Cross

law here in Philadelphia?

A. Didn't know that.

Q. Wouldn't you say that?

A. I had a lot.

Q. Did you know of any lawyers that tried as many murder cases as you that were your peers at that time?

A. No, I had no way of knowing, sir.

MR. GRANT: Okay. I am not bringing you anything, I am just giving you these notes for your ease and comfort. If I could have that one back, please.

THE WITNESS: (Handing).

MR. GRANT: This.

THE WITNESS: Oh, I thought you wanted my crib sheet.

BY MR. GRANT:

Q. Now, how did you come to represent Mr. Jamal? And I know you were appointed, sir.

A. Yes, sir.

Q. But, you know, there's ways to get appointed. Like Defendant's friends come to you and say Mr. Jamal is in trouble, we know you are a good lawyer, do you think you could go to Court and see if you could represent him, see if you could somehow get an

Page 118.

Anthony Jackson, Esq. - Cross

appointment to represent him. Tell us how you got to be appointed?

A. Okay. What you just said is kind of sort of how it happened this time. It is the first time in my whole career it ever happened this way.

Q. Are you sure? Was it the last?

A. Pardon me, it was the first and only time I ever talked to a client and got the Court to appoint me. All of the other Court appointments were given to me out of the blue. I had no prior knowledge. This is the only case where -- and let me back up to answer your question fully.

I was approached by some friends of Mr. Jamal's after Mr. Jamal was arrested and shot who suggested that he needed representation. Not that I could necessarily be his lawyer, but he needed someone to receive some advice and counsel while he was in Jefferson Hospital. I recall that I went to Jefferson Hospital where he was. He was, you know, had the tubes, he was wounded. Things of that sort. I had known Mr. Jamal before that time. I went, I told him that I was there as a result of some concerned friends of his that he at least have counsel available to him if he had any questions or concerns to make sure that at least in that situation

Page 119.

Anthony Jackson, Esq. - Cross

that things didn't get any worse. That may have been... it could have been a week or so, two weeks before I was actually --

Q. Formally appointed?

A. Appointed, that's right.

Q. And who were these friends and supporters who suggested that you go visit him, and that was your introduction to him professionally for the representation ultimately that arrived?

A. Yes. Ahh... now, I think it was E. Steven Collins was the one who actually talked to me. And I think he told -- well, I know he told me that he conferred with others, and he called me or saw me, I don't really recall. And as a result of that he came, Mr. Collins came and asked me. And I said well sure. At that point I think the concern was not necessarily representation for him in the homicide case, but representation for whatever was going to be his needs while he was in the hospital. I think, I don't think that he, Mr. Collins or anyone else, could tell Mr. Jamal who to retain or who to have represent him. Nor could I impose myself on him. I think at the time it was just a need that he should have somebody to advise him.

Q. Yeah, but being the popular man, outspoken

Page 120.

Anthony Jackson, Esq. - Cross

community activist and generally respected and liked person, he could probably have selected a number of lawyers that he could have come to him and asked them to go get the same appointment that you got; correct?

MR. WEINGLASS: Objection, Your Honor. It is highly speculative: He could probably.

MR. GRANT: All right, I will rephrase it.

BY MR. GRANT:

Q. You weren't the only lawyer in town, were you?

A. No.

Q. And you weren't the only black lawyer in town, were you?

A. No.

Q. And there were some good lawyers back in the day?

A. Still are.

Q. Yes, there are.

A. Yes, sir.

Q. I am talking about lawyers with reputations that are legendary right now?

A. Yes, sir.

Q. And they were your contemporaries then?

A. Yes, sir.

Q. And do you know any of those people?

Page 121.

Anthony Jackson, Esq. - Cross

A. Oh, absolutely.

Q. Name some?

A. You mean black lawyers, Ben Johnson.

Q. Ben Johnson?

A. Starting in, he was of course a great lawyer. But I think the one thing that you are missing: Mr. Jamal was in the hospital, he was wounded. Mr. Jamal did not have access to a phone. I don't know, if Mr. Johnson wanted to volunteer his services I don't know how Mr. Jamal would have talked to him.

Q. The same way that you were contacted and not by Mr. Jamal?

A. Mr. Jamal didn't initiate the conversation.

Q. That's what I am saying. Mr. Collins did.

A. Yes.

Q. And he could have walked to a phone and called somebody else just as easily as you; correct?

A. Sure.

MR. WEINGLASS: Your Honor, Mr. Collins was here yesterday. Counsel had an opportunity to cross-examine him. This witness does not know what Mr. Collins was doing or thinking or why he was acting.

THE COURT: If you want --

MR. WEINGLASS: This is very bizarre.

Page 122.

Anthony Jackson, Esq. - Cross

The very witness we are questioning Mr. Jackson about was here in Court yesterday. He could have questioned him all afternoon.

MR. GRANT: I could have had I known that he was the one that got Mr. Jamal his Counsel and then didn't even come in to testify

on behalf of Mr. Jamal.

THE COURT: Bring him back if you wish.

MR. WEINGLASS: I assume the Court is sustaining the objection.

THE COURT: No, I am not sustaining the objection. I'm overruling the objection. I am saying you could bring Collins back if you want to.

MR. WEINGLASS: Well, it is the District Attorney who is asking about Collins. Not me.

THE COURT: No, it is what came up now through cross-examination.

MR. WEINGLASS: Right.

THE COURT: He can't ask Collins about something if he didn't know Collins was the one that called Mr. Jackson.

MR. WEINGLASS: Exactly. So the

Page 123.

District Attorney could bring Collins back and ask questions about Collins.

THE COURT: Anybody could bring him back but the objection at this point is overruled. 0kay.

BY MR. GRANT:

Q. Mr. Jackson?

A. Yes, sir.

Q. Was E. Steven Collins, who is a broadcast journalist, a friend of yours at that time?

A. Yes, sir.

Q. Was Mr. Jamal a friend of yours at that time?

A. No, not a friend. I knew him. I wouldn't say he was a friend.

Q. How many lawsuits could you estimate that you brought against the Philadelphia Police Department during the years that you were Director of Pilcop?

(Pause.)

A. That we actually -- oh. Probably... no more than six or seven. We were primarily involved in assisting other lawyers in suing the Police Department, the theory being, you know, the old private attorney general theory that if we trained more lawyers in the City to do this type of litigation, the citizens would just have a better

Page 124 is missing. We will make attempts to locate it.

Page 125.

Q. How soon after you got in the case were you suing the Police Department for brutality against the person who was accused of killing the police officer by shooting him between the eyes at pointblank range?

A. I'm not quite following you.

Q. Yeah. You filed a lawsuit, and the lawsuit and the discovery as a result of that lawsuit which was even engendered by your filing the claim got to you before the trial was tried, wasn't it?

A. You mean I filed a lawsuit on behalf of Mr. Jamal?

Q. Yes. You recall filing a lawsuit, don't you?

A. I remember filing a complaint. Quite frankly, I don't recall filing a lawsuit. If I did, fine.

Q. Okay.

A. I remember filing a complaint.

Q. Administrative complaint?

A. Yes, sir, not a lawsuit.

Q. I see. Well, had you ever filed any of those before that, before that shooting on December the 9th of '81?

A. Had I filed any what?

Q. Administrative complaints before.

A. On behalf of Mr. Jamal?

Q. On behalf of anyone.

Page 126.

A. Oh, sure, plenty, plenty.

Q. Plenty of them?

A. Yes, sir.

Q. And do you know what happens when you file those complaints?

A. I know what happens, I know what happened -- no, I didn't know what happened during that period of time. Because that's the basis of Pilcop being, being there. Because there was no predictability about what would happen.

Q. Okay.

A. I understand based on the time, by the time I represented Mr. Jamal, by that time we had been successful in getting the Police Department to establish a system whereby the police officers were to investigate the case or give me some notice within 30 days that they are doing something, send me a letter saying we got your complaint and we are going to do it.

Q. What happens when you investigate your complaints, generally speaking, after you established this procedure?

A. Yes, sir.

Q. What generally happens when you file an administrative complaint? The Police Department

Page 127.

investigates, what they do is go around with a microphone saying did you see anybody getting beat up and walk away if the person says yes or no?

A. Obviously what they would want to do is to interview the complainant. That's what they would want to do. As if it would make a difference. And interview, I guess, the officers who were charged with the wrongdoing.

Q. And if they didn't know what if any officers were charged with wrongdoing, they would interview every officer that was in the periphery of that incident, would they not?

A. I have no idea at all what they would do in that situation.

Q. Okay, let me say this to you: You did file an administrative complaint in this case?

A. Yes, sir.

Q. And they did go out and interview almost every single person that had already been interviewed related to the murder in this case, hence, 150 interviews; would that be fair to say?

A. Mr. Grant, I'm going to, I'm guessing. I assume it, I don't, I don't have any specific recall of how many people they interviewed as a result of the administrative complaint, how many people they

Page 128.

interviewed as a result of the criminal charge. I really, I have no idea.

Q. But you saw innumerable instances of duplicated or duplicate interviews of the same person on two or three different occasions, didn't you, when you had the statements?

A. I know there were some, yeah.

Q. Now, don't you think it would be a smart tactic for a clever lawyer, even if there was no basis to filing a lawsuit, to file a lawsuit while the criminal case is pending so that cops would be interviewed twice, the civilians would be interviewed three times, and then you could look and find little discrepancies so that it is better for you to be a criminal practitioner?

A. Absolutely not right. Worse thing in the world. Why would you want to file an administrative complaint that has no basis? I wouldn't do it.

Q. I am not saying you would. Even if there weren't a basis, that would be very beneficial to you as a cross-examiner, would it not?

A. Yeah, it could if there was a basis for it. And he had a right --

Q. Yes.

A. -- why not exercise the right. Would it be

Page 129.

Anthony Jackson, Esq. - Cross

beneficial? Hopefully.

Q. And in this case it totaled a lot more interviews than in the average homicide case, wouldn't you say? Because they were doing dual investigations?

A. Mr. Grant, I assume. You know, I know that there were duplicate statements. I don't know that all of these statements were as a result of the complaint. As an example, I know Cynthia White probably had three or four statements, each one of the statements were different. I don't know if that were as a result of the administrative complaint or just the fact that each time she told a lie the Police Department wanted to go back and ask her again, I don't know.

Q. And you kept her on the stand for two-and-a-half, three days, didn't you, on cross only?

A. It was a tough following it, yes, I did.

Q. It was as a result of this administratively filed complaint which took place pretty much parallel to and in conjunction with this criminal accusation against Mr. Jamal, in other words, these two things were going on in tandem, which is the occasion for the officer, Mr. Wakshul,

Page 130 is missing. We will make attempts to locate it.

Page 131.

Anthony Jackson, Esq. - Cross

tell you which interviews were generated as a result of the administrative complaint or the regular police investigation. I have no idea at all what motivated the police. And maybe if I had the specific interview in front of me that said Internal Affairs as opposed to Joe Detective I could make that distinction. I don't recall ever seeing a statement Wakshul said that Mr. Jamal said that yeah, I shot the mother-fucker, I'm glad. In fact, I recall the exact opposite, where the officer said that he was with him until he was treated and he never said anything. That's my recollection.

Q. Well, I appreciate that. And we are going back 13 years, but didn't it occur to you since you were going to be testifying about something 13 years old or more that you might want to read the 4,000 pages which constitute the notes of testimony in this trial?

A. It occurred to me.

Q. But it didn't occur to you that you should do it or that you would do it but just that you should do it?

A. Maybe I should do it. 4,000 pages. No, I lived through it once, it's difficult for me to go back and live through it again reading the pages. I

Page 132.

Anthony Jackson, Esq. - Cross

admit my recall isn't perfect and if I am making a mistake I apologize but I just don't remember that statement.

Q. Well, that makes it entirely impossible, of course, although it may seem convenient to a prosecutor's mind when you say I don't recall, then I'm stuck, right? As opposed to you making a statement saying yeah, I read it, based on the information I have, this is my answer. Now, you see, that is something somebody could deal with, but when you say I don't remember it's tougher, isn't it?

MR. WEINGLASS: Your Honor, if Mr. Grant is having difficulty as an examiner he should take a little time and restudy the record. He shouldn't put it to the witness to confirm that he's having difficulty conducting his cross-examination.

MR. GRANT: Thank you.

MR. WEINGLASS: I object to the form of the question and it's relevance and it's materiality.

MR. GRANT: Thank you, Counselor.

MR. WEINGLASS: May I have a ruling from the Court?

THE COURT: The objection is

Page 133.

Anthony Jackson, Esq. - Cross

overruled.

Go ahead.

THE WITNESS: Is there a question for me?

THE COURT: No, there is no question.

MR. GRANT: There is no question pending.

(Pause.)

BY MR. GRANT:

Q. Based on what you are telling us thus far, when you opened your new offices in January or February of '82 --

A. Yes, sir.

Q. -- and you had already received the appointment to represent Mr. Jamal, this was not something to which you were unaccustomed: After all, you were working at Pilcop but the money had run out, you knew you were leaving?

A. Yes, sir.

Q. And you went with Mr. Crawford as a partner?

A. Well, we shared expenses.

Q. Shared space?

A. Yes, sir.

Q. So did you give Mr. Jamal second-rate service because you were moving your offices from one part of

Page 134 is missing. We will make attempts to locate it.

Page 135.

Anthony Jackson, Esq. - Cross

McGill stated this to you on page 85 and 86, June 2nd, 1982. The purpose of backup Counsel as stated yesterday -- so it wasn't the first time he was saying this to you --

A. Mr. McGill is saying this to me?

Q. Yes, sir.

A. He is telling me.

Q. He is giving you some instruction as to the difficulty you are in, he is saying this is the purpose of backup Counsel.

A. Okay, I'm listening, sir.

MR. WEINGLASS: Your Honor, I object to the question. It is a sad day, Your Honor, when defense counsel has to take it's instructions from a district attorney.

THE COURT: Look, this is cross-examination, Counselor.

MR. WEINGLASS: No, Your Honor, but he asked if he got --

THE COURT: Objection is --

MR. WEINGLASS: -- if he got any direction from the Court and he indicated that the Court gave him --

THE COURT: I don't know the whole statement yet, he is just starting.

Page 136.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: But it is a statement from the District Attorney Mr. McGill.

THE COURT: Okay. He is starting.

MR. WEINGLASS: Mr. Jackson doesn't have to take anything from Mr. McGill.

THE COURT: He doesn't have to take anything from anybody if he doesn't want to. He is saying, Counselor -- let's not argue this in front of the witness. The objection is overruled. Now, please, let's proceed.

BY MR. GRANT:

Q. Since you expressed to Mr. McGill that you had never been backup counsel, and they don't teach backup counseling in law school --

A. Yes, sir.

Q. -- he stated the purpose of backup counsel as stated yesterday is, number one, to literally protect. And the law feels this is

necessary to protect a defendant against himself, is one reason why the law allows or requires that. Secondly, a reason for backup counsel to be a professional member of the bar is necessary in the event the defendant would want to relieve himself of this right that has been permitted him by this Court to represent himself. Counsel would then be present, would be

Page 137.

Anthony Jackson, Esq. - Cross

legally equipped to handle the case throughout. And lastly, if for whatever reason, and I am not saying that there will or is a reason, that the defendant would be for any reason ejected from the courtroom, at that point backup counsel, a professionally competent individual who was a member, who is a member of the Bar and aware of the procedures in the law, would then take over for the defendant maintaining all his rights. And for these reasons it's necessary that a member of the Bar be present for Mr. Jamal's own sake.

Do you recall that conversation?

A. I recall a conversation similar to that, yes.

Q. And the actual taking of testimony did not occur for two-and-a-half weeks later?

A. Yes.

Q. After that?

A. What --

Q. That was on June 2nd, the trial actually began with testimony on June 19th. Now, you had all that time to ponder and deliberate over these weighty words since you didn't know what backup counsel did or what they were for; correct?

A. Mr. Grant, Mr. Grant, Mr. McGill to tell me what backup counsel was.

Page 138.

Anthony Jackson, Esq. - Cross

Q. Nor I am not suggesting that he can.

A. If I could answer the question.

Q. Yes.

A. I am not saying Mr. McGill was wrong. But what I am saying is each and every person in this Courtroom could tell me what backup counsel was and it could be all different and they could all be right. My problem was, and that's why I went to the Supreme Court: Tell me what a backup counsel is. Everybody else is telling me what I do. Mr. Jamal is telling me what to do. Mr. McGill is telling me what to do. Judge Ribner is telling me what to do. Judge Sabo is telling me what to do.

Q. What did the Supreme Court tell you to do?

A. The Supreme Court said go back and do whatever you can.

Q. The best you can do?

A. So I went back and I just did this for awhile (Witness indicating by folding arms).

Q. Do you know why you were having a hard time?

A. I know some of the reasons.

Q. I have read this record extensively, Mr. Jackson.

A. Yes, sir.

Q. And I don't envy the position you were in and

Page 139.

Anthony Jackson, Esq. - Cross

I certainly could empathize with what was happening there, but tell me if this is a fair statement. Basically, Mr. Jamal, whether you were called backup Counsel on June 1st, or primary Counsel on June 19th, or no Counsel on July 3rd, you may have been the lawyer, but he was telling you what to do and dictating both the strategy and the witnesses to be called?

A. No, sir.

Q. No?

A. No, sir. Mr. Jamal was not dictating anything to me, sir.

Q. I see. Well, let me see if I could give you a little series of excerpts that may alter your opinion. First of all, on June 2lst, 1982, page 4.02, you were speaking to the Court. Judge Sabo. Well, there may be an additional comment from Mr. Jamal but I would like, you stopped, you stated my consultation with Mr. Jamal leads me to my representing to the Court that indeed, notwithstanding the Supreme Court order -- for you to represent him as primary Counsel, and backup Counsel if necessary -- and notwithstanding Your Honor's order, Mr. Jamal will continue to act according to the strategy of John Africa, and that is consistent

Page 140.

Anthony Jackson, Esq. - Cross

with his consultation with Theresa Africa as well as my participation in his defense.

Now, who was calling the shots on strategy, you or him?

A. As far as I know, I was. I consulted with Mr. Jamal, obviously, and when I made the remark about the MOVE strategy, the MOVE strategy as I understood it was that they represent themselves and wouldn't waive any right at all.

Q. And he later said to you, a week later, as a matter of fact, June 28th, page 28, dot 48, I am fighting for my life according to the strategy of John Africa. I don't want you to participate -- meaning Mr. Jackson. You are not working for me. I want you to get your ass up and go out of here?

A. Yes, sir. I remember that specifically.

Q. On June 24th, page 2, 1982, Mr. McGill stating for the record: I am putting on the record again that the Judge has permitted Theresa Africa to speak with. And you state no, Janet Africa. Mr. McGill said I'm sorry, it's Janet this morning. The Court: That's Janet. The other one wasn't here. To speak with Mr. Jamal. And she has been doing it for about 10 or 15 minutes. And I believe this was a time when you and Miss Africa and Mr. Jamal were talking. And

Page 141.

Anthony Jackson, Esq. - Cross

he is referring to you. All three of you. And you state just briefly: They were talking only to tell me they didn't want me to sit there. Meaning as a lawyer (indicating). That's all.

Were you running the show? You weren't running the show, you were part of the show, Mr. Jackson, weren't you?

A. Well, see, your characterization. I could tell you specifically about that conversation if you wanted to know. If you wanted to talk about a show, I don't know what you mean about the show.

Q. Okay.

A. He did not dictate to me what, he did not dictate strategy to me. If he did I would have walked out of the Courtroom then.

Q. Did you have some kind of allegiance to him above and beyond your professional relationship with him?

A. Yes, I respected him as a man.

Q. And you would go to jail for him, wouldn't you?

A. No, sir, that's why I didn't walk out of the Courtroom. That's what the conversation was about. He wanted me to walk out of the Courtroom. I said I'm not doing it and I didn't. So I wasn't going to

Page 142.

Anthony Jackson, Esq. - Cross

jail. I respected him but I wasn't going to jail.

Q. Do you recall this conversation that you had with the Court in that regard? This is June 9th, 1982. During voir dire or the questioning of witnesses at page 3.19 through 3.22. The Court had at that point, Mr. Jackson -- I know this was difficult for you and I know this is difficult for you and I am not trying to trivialize this matter, believe me.

A. Mr. Grant, go on, I have no problem.

Q. The Court had removed the right to Mr. Jamal of questioning witnesses. The Court said to Mr. Jamal: I will do it but if you want to limit my questions I will allow you to present to me any questions you have, Mr. Jamal, or you, Mr. Jackson. The Court said do you have any additional questions. And this was at sidebar. Mr. Jamal then walks away from sidebar and stands over at Counsel's table, right here in this very room, right there in that

very spot. And the Judge said is he going to get some questions. You go over to Counsel's table and then you stand there side-by-side with him, and you remain at Counsel's table while the Judge and the D.A. are standing at sidebar waiting for you. And at that point you say I have been instructed -- and I

Page 143.

Anthony Jackson, Esq. - Cross

emphasize that term --

A. Hmm.

Q. -- by Mr. Jamal not to participate. He asked me not to participate, Your Honor. With all due respect, I think that I have to follow his wishes. He is my client.

Now he is saying to you let them put on the evidence against me, don't say squat, and let them convict me: You were willing to do that?

MR. WEINGLASS: Objection to the form of the question.

MR. GRANT: I will rephrase the question.

MR. WEINGLASS: Thank you.

BY MR. GRANT:

Q. He said don't participate as a lawyer, you went to school 20 years to do that and he said don't do it, and you stood beside him and said Judge, I have to respect the wishes of my client. The Court went on to say that is not exactly true, Mr. Jackson. You said sir, under the circumstances I feel compelled to follow his wishes, Your Honor. The Court: Well, you realize that you would be in direct contempt of this Court, and I may very well sentence you to six months in prison.

Page 144.

Anthony Jackson, Esq. - Cross

And you said I appreciate that, Your Honor, but I think under the circumstances, my right to represent Mr. Jamal even in this modified circumstance -- meaning backup Counsel -- I feel compelled to follow the wishes of my client. I appreciate and respect Your Honor's intention with respect to this issue, but I think under the circumstances my allegiance to my client is superior, quite frankly, Your Honor, than my abidance by the rules of the Bar of the Court.

You were saying I'm going to throw my ethics out the window, I am going to throw my obligation to serve my client dutifully out the window because a lay person tells me to do that, and the Supreme Court told me otherwise, and the Common Pleas Court told me otherwise, and you are telling me that you were running the show, Mr. Jackson?

A. I am telling you I was running the show.

MR. WEINGLASS: I object to the questioner testifying.

THE COURT: Well, he asked him a question.

MR. WEINGLASS: I have no objection to that part of the question that was read from the record. That's appropriate. But then Counsel

Page 145.

Anthony Jackson, Esq. - Cross

adds his own editorial comment as to what Counsel thinks Mr. Jackson was saying. And that's Counsel's impression, but it's not appropriate to ask Mr. Jackson on the basis of his impression of his reading the record. The record speaks for itself.

I have no objection to him confronting Mr. Jackson with the record. I do have an objection to confronting Mr. Jackson with what Mr. Grant thinks he believes the record says.

MR. GRANT: Well, I read it in the record, it is words, they are on paper. I know you have the record.

MR. WEINGLASS: That part of your question I sat quietly through.

MR. GRANT: Thank you.

MR. WEINGLASS: I have no objection to that part. It is last part of his question where he editorializes.

MR. GRANT: I move to strike the editorial, if I may.

MR. WEINGLASS: Thank you.

BY MR. GRANT:

Q. When I say were you running the show, Mr. Jackson, what I am trying to say, sir, is the reason

Page 146.

Anthony Jackson, Esq. - Cross

you were having a hard time, from reading this record it appears to me -- you correct me if I am wrong -- is that you had a person who wanted to tell you what to do, and tried to humiliate you while they are telling you what to do, but yet you were expected to be professional and to carry out the wishes and to save that person's life, of necessity. Now, do you think that you were controlling that situation? Have you ever had a client deal with you like that, where you walk up to the Judge and say I have been instructed to do this, I have been ordered to do that, my client's demand is this? Have you ever been in that situation?

MR. WEINGLASS: Compound question now.

MR. GRANT: It is all one question:

BY MR. GRANT:

Q. Have you ever been in that situation?

A. All right, have I ever been in that situation? No. But the situation that you described is not reality. The situation -- Mr. Jamal asked for me to do some things sometimes that I thought perhaps were unreasonable. I nevertheless had abiding faith in, well, what this Court, what the system was supposed to provide.

When Mr. Jamal would ask, he would ask

Page 147.

Anthony Jackson, Esq. - Cross

me to walk out the Courtroom, I am not walking out of the Courtroom. I am not going to jail. At the time, and again the context of the statement that you read I am not really familiar with, but I believe that if he had a right to exercise, I was going to defend that right. I don't think he had a right to tell me to walk out of the Courtroom. There is a difference. There is a difference. That's what I am talking about.

Q. I am reading words, sir, I wasn't there.

A. I understand you are reading words, and I am telling what you the words mean. I would not go to jail if he tells me to walk out of the Courtroom. But for Mr. Jamal or any other client that I represent, that I would try to represent them and represent their interests as best as I possibly could. If that in fact meant that I might have to go to jail, then fine, if I am protecting their rights consistent with the law. I do. No question. Done it many times. Been cited for contempt of court throughout my career in this Courthouse.

Q. June 1st, 1982, page 22 and then page 95. Talking to Judge Sabo. Quote: I mean of course Judge Ribner has appointed me as backup Counsel. I am serving in that capacity, quite frankly, not

Page 148.

Anthony Jackson, Esq. - Cross

directly as a result of that order, but because of my sense of responsibility to Mr. Jamal. My request to be removed from this case was not out of any sense of disinclination, but indeed to remove the Court from jurisdiction over me in my role with Mr. Jamal. I feel my role with regard to backup Counsel to Mr. Jamal is that indeed I represent him. I anticipate that there is the possibility that Mr. Jamal's role in the activity in this Court may come into conflict with the Court's rules and with Your Honor, Judge Sabo. And I'm suggesting at this point I will follow the rules that address the order and command of my client, and I want that to be clear.

At page 22, by you. May it please the Court: Your Honor, Mr. Jamal has made certain representations to this Court with respect to my representations to Judge Ribner -- that one I read -- and my present attitude and feelings towards representing him. I would like the record to clearly reflect that it has indeed been my decision and my request that I be removed from this trial as backup Counsel. If I were removed, to the extent that I would participate or assist Mr. Jamal, that would be my decision and Mr. Jamal's decision.

So you asked to be removed as backup

Page 149.

Anthony Jackson, Esq. - Cross

Counsel from reading this so the Court couldn't tell you what to do, to remove the Court from jurisdiction over me with my role with Mr. Jamal -- those are the words you uttered?

A. Right.

Q. Tell us what that means to you?

A. Sure, real clear, real clear. If Mr. Jamal is representing himself, I'm a friend of his. I'm a lawyer. If he wants me, he wants to ask me something, fine. I have no problem doing that. If I am backup Counsel it sounds like I've got some obligation, some duty that I don't know what it is. So if I'm just, if Mr. Jamal wants to consult, if he is his own lawyer, he wants to ask me a question, I am a friend of his, I come in, an associate of his or something, he wants to ask me a question, he wants me to sit down at Counsel's table, he wants to break to consult, fine, in Court then he is just conferring with me. But as soon as you say I'm backup Counsel, that sounds like there is some obligation, some standard that I have to meet. Nobody is telling me what the standard is to meet. I am in an untenable situation, that's why I wanted to get out of it.

Q. Let's be realistic, Mr. Jackson.

A. Pardon me?

Page 150.

Anthony Jackson, Esq. - Cross

Q. Let's be realistic here.

A. That's what I -- trust me, I was being realistic.

Q. Do you think it's harder to be a secondhand lawyer, so to speak, than it is to be a firsthand lawyer: Do you think it's harder to be somebody assisting somebody who is the main lawyer or do you think it is harder to be that main lawyer?

A. You see, now you are saying all kinds, secondhand, firsthand, assisting, backup. Now you see what happens: Nobody knows what it is.

Q. I do and you do. Primary and backup, those are the words.

A. Mr. Grant, you could call it primary, backup, assistant, you start using all these different names, but, Mr. Grant, and I'm sure you know, to this day, to this day I don't think anyone could give you a definitive answer to what a backup counsel is supposed to do. A backup counsel is supposed to do almost anything that the client or the court or somebody else may want them to do. And I have never been in that situation. And it's like I've got to be ineffective at the point where I'm being backup counsel. What do I do?

If I sit like this (Witness folded his

Page 151.

Anthony Jackson, Esq. - Cross

arms) as backup counsel and never open my mouth, am I being effective backup counsel? Possibly so.

Nobody is going to tell me what to do. I mean what do you do? And I'm saying as backup Counsel, do I wait until he asks me a question, or do I tell him he is about to make a mistake? I mean what do I do? If the Judge tells me something or he tells me, what do I do as backup Counsel?

And, Mr. Grant, what I am saying to you: It may be clear to you, it may be clear to some others what backup Counsel is. I admit I have no idea at all what the standard for being a backup counsel is.

Q. What did you do for Mr. Mozenter when you were his so-called co-counsel?

A. I sat there and assisted him, did research, talked to the client, did some investigation, did some writing, things of that sort.

Q. Advised and consulted with him together?

A. It is co-counsel, not backup counsel.

Q. Well, you weren't Mr. Mozenter's peer at that point, I hesitate -- was a lawyer.

Q. And you were a junior lawyer to him?

A. Oh, absolutely.

Page 152.

Anthony Jackson, Esq. - Cross

Q. And you were not basically going to be lead counsel in that situation?

A. That's right. But, Mr. Grant, you are talking about lead counsel and associate counsel as opposed to backup counsel. I am telling you backup counsel is an entirely different animal.

Q. Okay.

A. For me.

Q. Let's approach it easily.

A. Yes, sir. Yes, sir.

Q. You went to law school?

A. Yes.

Q. You were trained to be a lawyer?

A. Yes, sir.

Q. Nobody was asking you to be greater than a lawyer?

A. That's right.

Q. They weren't asking you, a backup doesn't sound to me like something that's far beyond the ability of a lawyer; it sounds like something that's maybe less than is required, to a certain degree, than of a person who has the primary responsibility to carry out litigation of a claim. Wouldn't you agree with that, Mr. Jackson?

A. Yes and no. Mr. Grant. No matter how you ask

Page 153.

Anthony Jackson, Esq. - Cross

me, you are not going to get me to say I knew what being a backup counsel was. I'm never going to say it. And there is nothing, you could ask me another way, I still, I didn't know then, I still don't know.

Q. And if you were to practice 50 more years you still wouldn't know, would you?

A. Absolutely. Maybe by that time the court will make some pronunciation to tell you and describe it. And I am telling you now: You tell me a case, you show me a case that tells you what a backup counsel does. There is none. Is none. So where did I get my guidance from? What standard of effectiveness do I use? There is none so I wanted out. I'm saying well, I'm going to be judged by, Judge Sabo is going to tell me to do something, Mumia is going to tell me to do something, and Mr. McGill is going to tell me to do something, and everybody else in the Courtroom is going to tell me to do something. Backup Counsel.

Q. And you were, in your own opinion, a very good lawyer?

A. In my opinion, egotistical as it may sound.

Q. It doesn't sound egotistical to me, it sounds factual to me. In fact, you stated -- 6-1-82, page 03 -- I have been I believe an effective counsel for many, many years here in the City of Philadelphia;

Page 154.

Anthony Jackson, Esq. - Cross

and at 6-21-82, during the pendency of the trial, at page 402 and -03, what I am saying essentially, Your Honor, is that of course Mr. Jamal's being represented by me under protest. It is still against his wishes that I represent him. Nevertheless, as Your Honor well knows, it is at least my present intention to defend Mr. Jamal to the best of my ability with all the vigor that I could put forth.

And you meant those words?

A. When I am his lawyer he's got it all. As backup Counsel, I don't know what he's got.

Q. Hmm. Well, that was after you had been appointed no longer backup?

A. That's what I am saying. I am a lawyer, I know at least when I am a lawyer I know what to do.

Q. The point I am making is you were only backup for a heartbeat, you were only backup until when he was removed from voir dire, from that point on, from 6-2 to July 3rd you weren't backup anymore, you were primary Counsel?

A. Mr. Grant.

Q. So what was the quandary here?

A. The quandary is you brought it up.

Q. I brought up the fact --

A. You brought up, and I am telling you when the

Page 155.

Anthony Jackson, Esq. - Cross

issue of being backup Counsel was an issue, it started, it started before we came here to Judge Sabo. I went up to the Supreme Court during the time I was at pre-trial. That's when it started. When Judge Ribner said I was going to be backup. So that was a precursor to what happened actually in the Courtroom. I went, before we even came here I said Supreme Court, tell me what to do. Because I do not want to be backup Counsel. Either I am going to represent him or I'm not. For me to be a backup Counsel with no guidance, no standard, I felt uncomfortable. As long as -- quite frankly, if I was appointed as Mr. Jamal's Counsel, quite frankly even against his wishes, I knew what I could do. But I was not going to be backup Counsel and not know what standard to follow. That was my problem. If the Court -- in the petition I said tell me what I am supposed to do. And listen to what I'm asking. Tell me what I am supposed to do. Since you folks are telling me I'm backup Counsel, tell me what backup Counsel does. Nobody would tell me.

Q. Well, Judge Sabo told you you don't have to be backup anymore, right?

A. Well, yes, fine.

THE COURT: Just a minute. Mr. McGill

Page 156.

Anthony Jackson, Esq. - Cross

came in. You are not going not going to him?

MR.WEINGLASS: We are not going to call him now. But if he is in violation of the sequestration order --

THE COURT: He just walked into the Courtroom.

MR.WEINGLASS: -- I would ask him to be removed.

THE COURT: I didn't want to interrupt the witness.

MR. WEINGLASS: I appreciate that.

THE COURT: I don't think they are going to need you today. Okay.

MR. GRANT: Or tomorrow. With all due respect.

THE COURT: I don't know when. You will be on call, we will let you know when.

MR. JOSEPH MCGILL: Your Honor, I do have a few hearings tomorrow. Should I stay in contact with the Court Crier?

THE COURT: No, we will be in touch with you if we need you.

MR. MCGILL: Yes, sir.

THE COURT: Okay. I realize that.

Page 157.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: Your Honor, in case the Court reporter didn't hear it, Mr. Grant did indicate that it was his present belief that he wouldn't be needed tomorrow either. I just think that should be on the record. Because we are trying to prepare our schedule.

THE COURT: I know.

MR. WEINGLASS: We've had trouble with the Court before on scheduling.

THE COURT: This is cross-examination, I can't cut anybody short.

MR. WEINGLASS: I am not asking you to cut him short; I am just indicating to the Court that when we prepare for tomorrow we are accepting the representation of Counsel that he is going to go all day tomorrow.

MR. GRANT: I will try.

THE COURT: You have other witnesses here. Jeremy Gelb. Gary Wakshul. Joe Davidson. So. We will have them available tomorrow if you need them. Try to get their phone numbers and we will call them. Okay. Go ahead.

BY MR. GRANT:

Q. Now, Mr. Jackson --

Page 158.

Anthony Jackson, Esq. - Cross

A. Yes, sir.

Q. -- that dilemma that you had at backup Counsel status, that only lasted for a little while because --

A. Yeah.

Q. -- during the second day of Jury selection you became primary Counsel, didn't you?

A. Right, sir.

Q. And therefore you knew how to do that, didn't you?

A. Yeah, now, and you could correct me if I am wrong, it seems to me that even prior to the voir dire Mr. Jamal may have conducted some examination. It seems to me he did.

Q. Yes, he did the motion to suppress?

A. Okay.

Q. And he did a few witnesses, maybe 15 or 20, 30 witnesses perhaps, at the voir dire stage, the initial day.

A. Okay, then he got to voir dire. Now, during that period of time, during that motion to suppress and that voir dire, I'm backup Counsel.

Q. Yes.

A. That's what I'm doing (Witness indicating by folding arms).

Page 159.

Anthony Jackson, Esq. - Cross

Okay. So then the next day after Mr. Jamal was removed from representing himself, I, quite frankly, pleaded with him because the alternative was for Judge Sabo -- no disrespect to the Court -- was for Judge Sabo to select the Jury.

THE COURT: Wait awhile. I didn't select the Jury. You voir dired the Jury.

THE WITNESS: For voir dire. Forgive me, Your Honor, I should be more precise in my language.

THE COURT: I don't select any juries.

THE WITNESS: And the defense says the same thing. Not you. In other words, the Judge would do the questioning. And I said hey, let me do it. I know you don't want it, I don't want to be in this position, but in my opinion it would be better for me to participate in the voir dire rather than to leave it to the Judge to do it.

Mr. Jamal conceded to that on the condition that after that was completed, Mr. Jamal would then begin to represent himself.

Now, during that period of time I had no preparation, I'm doing the voir dire, I'm conducting the voir dire. And during that

Page 160.

Anthony Jackson, Esq. - Cross

period of time, I was the lawyer. No problem doing that. And again, and once we, once, well, the Judge removed him from representing himself after the Jury was selected, you know, I was back as his lawyer. But there were these times when I was in never-never land. Where I was, I call it never-never land, backup-counsel land, I don't know what to do there.

MR. WEINGLASS: Excuse me. I just want to state for the record that at one point in his response Mr. Jackson indicated that he just sat that with his arms folded across his chest and I don't think the Court reporter got that. I thought the record should indicate that he was, that he was mimicking a position of having no role at all but to sit quietly.

MR. GRANT: And for the record --

THE COURT: How do you know that's what he meant?

MR. GRANT: That was a hypothetical example that he gave. He didn't indicate he did this at this trial.

THE COURT: He may have been praying.

THE WITNESS: I prayed a lot, Your Honor.

Page 161.

BY MR. GRANT:

Q. For the month of June and all of July you were his lawyer?

A. Right.

Q. And as a result of that, you knew what you were doing because you've done it 20 times before in situations like that?

A. Right, yes, I have.

Q. And you were going to try to do the best that you can do because, A, you respected him as an man?

A. Right.

Q. You had come to know his family, had you not?

A. Yeah, very well.

Q. And you know that he was referred to you by E. Steven Collins?

A. Yeah.

Q. Who you knew?

A. Yeah.

Q. Who you respected?

A. Sure.

Q. And you knew he was counting on you?

A. Yes.

Q. And you know that by saying I was a lousy lawyer, that certainly increases his chances here today to get a new trial all over again, don't you?

Page 162.

A. I'm not going to say I'm a lousy lawyer.

Q. Well, you said you were ineffective?

A. Yeah. I said, when I use the word ineffective, I said I was an ineffective backup lawyer.

Q. Oh.

A. Each time I was a backup lawyer I was ineffective.

Q. Do you think that you were effective as the primary lawyer or the lawyer?

MR. WEINGLASS: Objection, Your Honor: The question of effectiveness is a matter for the Court to decide upon review of the record.

THE COURT: Everybody is asking him his opinion so I will let him ask it.

THE WITNESS: Most times I was. I made mistakes. The question is if I make mistakes does that make me ineffective. Maybe.

Mr. Weinglass asked me the question about Mr. Chobert about his record. I blew that issue. I don't know, does that make me ineffective? It certainly didn't help Mr. Jamal any.

BY MR. GRANT:

Q. Well, let's look at that a little bit. He

Page 163.

commented to you about the case of Commonwealth versus Murphy. And you remember Craig Murphy, don't you?

A. Yes, sir.

Q. And you know that Craig Murphy wasn't convicted until about another seven or eight years after your trial, don't you?

A. I don't recall today.

Q. So that wasn't the law then?

MR. WEINGLASS: I also mentioned Davis V Alaska.

MR. GRANT: Counsel, could I do this? Do you mind?

MR. WEINGLASS: I think the question ought to be complete.

THE COURT: Counselor, you have redirect if you wish. Don't tell the D.A. how to ask his questions. He doesn't tell you how to ask yours. You merely object.

And if there is an objection to his question the objection is overruled.

Now, please, let's go forward. You will have a chance for redirect. Okay.

MR. WEINGLASS: When he starts a question by saying --

Page 164.

THE COURT: Counselor, I have already ruled the objection is overruled. You have a chance to redirect, you can phrase the question any way you wish.

MR. WEINGLASS: Thank you.

THE COURT: Do it then, okay.

MR. WEINGLASS: Thank you. I would do that. But when he starts a question by saying did Mr. Weinglass ask you and then he only gives half of my question, that's inappropriate. That part is inappropriate.

THE COURT: You bring it out on redirect, okay.

Let's go, come on.

BY MR. GRANT:

Q. Davis versus Alaska?

A. Pardon me.

Q. Davis versus Alaska?

A. Yes, sir.

Q. That is the seminal case that decided whether you really blew it or not in that instance, according to the representations here today. Do you know anything about the facts of that case, sir?

A. No, sir.

Q. Well, let me just give it to you, a little

Page 165.

overview. Two guys went out and committed a crime together, and one of them was going to testify against the other. Plead guilty. And the guy that wanted to plead guilty was on probation or on parole, okay. Juvenile. And the Court felt, Supreme Court of the United States said hey, when a guy's got that much to gain and that much to lose, and he's got this thing in the background here motivating him to cooperate with the Commonwealth because he could get additional time for whatever he gets plus time for the crime, you got to tell the fact-finder that and the lawyer should know that. Now let's contrast and compare that with the scenario that you were involved in.

We have a man who is driving his cab down the street, he sees a man run out of a parking lot, run over and shoot a police officer in the back, almost at pointblank range from 12 inches away, then stands over the police officer, shoots him between the eyes, there were flash burns on his face, within 45 seconds the cops come and he runs up to them and says I'm on probation or parole, don't believe what I say, he runs up and says I just saw that man shoot that cop. Now, before the cops ever knew who the man was, and before they had a reason to look for a

Page 166.

record, he said those words to them. He interjected himself into that situation.

Now, what you would have to suggest, I guess, in that situation is that he went up and told them what he saw, not because he was stunned, shocked and amazed, but because I'm on probation, I saw a crime, I'd better go tell the police.

Now, on appeal I guess that will be decided by the Supreme Court, but you could see how you are still a good lawyer and those issues on which reasonable men would differ are going to be the things that turn this case; do you understand?

A. I understand what you are saying, sir.

Q. So I'm saying to you: Are you confessing error because he threw a case at you?

A. Sir, I am not confessing error. Well, if that was an error, yes, I'm confessing it. I am confessing what I did and what I didn't do. That's what I have been doing the entire time I have been up here. If it makes me an ineffective lawyer it makes me an ineffective lawyer. I have enough ego to know who I am and what I do. I am just admitting and telling you what the facts and reality is. You know, I'm taking it whichever way it comes: I'm a man.

THE COURT: All right, quiet, please.

Page 167.

THE COURT OFFICER: Quiet in the Courtroom.

THE COURT: Or you will be evicted. Please.

BY MR. GRANT:

Q. You do realize -- getting back to my previous question -- that if you say I'm ineffective, or I didn't do a good job in some areas, that is the basis on which their claims are premised, and of course that would give the person who you have come to respect as a man, and whose family you have come to know, and who you like as a person, and who was referred to you by friends of yours, another chance when you couldn't succeed for him, and since this is the first time that you ever had a man on death row, the first time?

A. Hmm-hmm.

Q. You still remember this case vividly, don't you?

A. I sure do.

Q. Like every other lawyer, you see those things that you think that you should have done in the back of your mind when you're shaving in the morning, because you don't like to lose, because you are just like everybody else, aren't you?

Page 168.

A. Yeah, I got a big ego.

Q. So this would be a chance to help this man, wouldn't it?

A. Sure would.

Q. Well, you said you didn't have any resources and basically you guys were batting zero, right?

A. I . . . yes, you are talking about two different things but the answer is yes yes.

Q. Yes yes I had no money, and yes yes I could give him a new chance, those are the possibilities in --

A. I could give him a new chance?

Q. A new chance, a new trial?

A. Oh.

Q. You could assist?

A. Oh, now, Mr. Grant.

Q. I'm sorry, Mr. Jackson, I'm sorry.

A. Mr. Grant, let me tell you, Mr. Grant: If I wanted Mr. Jamal to have a new trial, I would have came in here and said I've been ineffective, that's it.

Q. But you couldn't do that --

MR. WEINGLASS: May the witness have a chance?

MR. GRANT: Yes, I apologize.

Page 169.

THE WITNESS: All I am simply saying is the facts speak for themselves. You have the record. And I'm not trying to embellish the record, I'm trying to explain to both of you, Mr. Weinglass and to you, what happened, what was going through my mind.

If as a result of my explanation it makes me ineffective, then I'm ineffective. And that's, and that seems to me is a legal conclusion. As far as I am concerned, Tony Jackson is concerned, in terms of whether I was effective, it's totally different than the Court's stand. I know what I did and I'll live with it.

BY MR. GRANT:

Q. You did what?

A. Pardon?

Q. You say you know what I did?

A. I said I know what I did.

Q. Okay. Now I want to discuss with you the statements that you made that you weren't getting any resources to help you in your quest to save Mr. Jamal from conviction.

A. Yes, sir.

Q. And in that regard I would like to bring to

Page 170.

your attention an examination that Mr. Jamal himself did of the then Superintendent of Philadelphia Prisons, Mr. David S. Owens, and that was on June the 3rd of 1982. It was during the pendency of a motion to suppress.

A. Okay.

MR. GRANT: At page 3.57, Counsel.

BY MR. GRANT:

Q. And they were discussing what if any resources Mr. Jamal did have to assist him, aside from the money given to him by the Court and the lawyer given to him by the Court.

A. Hmm-hmm.

Q. Now, Mr. Jamal had gone on with Judge Sabo saying, you know, you are not going to let me do this and let me do this and I want you to bring somebody here to explain why they are not doing this up at the prison. The Court asked David Owens to come down and he came down. And the Court said did I discuss with you the issue of Mr. Jamal having runners on his behalf.

Answer: Yes, sir.

He said well, for the record would you tell us exactly what those arrangements are, or were.

And he says yes. There's been ongoing

Page 171.

dialogue with Mr. Jackson -- you -- with regard to the visitations in the institution for Mr. Jamal. After some discussion and some communication -- with you -- we have arrived at the following visiting at the institution. Number one, the Mumia Jamal Defense Committee, Committee, will be permitted to visit on every Saturday morning no more than four visitors at any time. Number two, the Association of Black Journalists will be permitted to visit on Thursday mornings, no more than four individuals at any time. Number three, the Prisoners' Rights Council, they would be extended visits but they would have to conform to the agreed upon process, since that is a group that comes to the prison frequently.

A. Sure.

Q. And number four, legal runners, Mr. Jackson provided me with the names of two individuals who he indicated would be of value entering the institution to work at Mr. Jamal's case and that request was approved.

And at that point Mr. Jamal asked well, what is your definition of a runner. Just what are you going to allow them to do for me.

Mr. Owens said, my definition of a runner is an individual who is a paralegal who is

Page 172.

able to take the information to a prisoner, carry it back to the community to effect and do those things that the prisoner, by nature of being incarcerated, could not do.

The Judge then asked Mr. Owens, of the total amount of privileges including these that have been allowed Mr. Jamal, in your experience how would you rate that in relation to other prisoners in your experience.

Mr. Owens: I am not aware of anywhere in our system now or that there has been in our system in the past that would have amounted to the groups of individuals coming in to visit and assist him.

And Mr. Jamal then says, well -- I'm sorry, he doesn't say at that

point. Same day, earlier on, when he brought to the Court the motions he had put in for runners: I made those motions to you for legal runners not just so they could have access to me at the prison but so they could be field workers for me, be my legs, my ears and my eyes. And he names two runners, Alfonso Robbins and Gerald Ford.

Didn't the fact that he had that support structure that you were working with --

Page 173.

Anthony Jackson, Esq. - Cross

A. I wasn't working with it. He was working with it.

Q. What do you mean?

A. They were working for him, they weren't working for me. When I asked for an investigator, when I asked for a pathologist, ballistics, I wanted them to work for me. Where I would talk to them. Mr. Jamal, he had runners, as you say, to assist him in doing things with his family, in the community, and, I'm sure, serve some beneficial purpose. But none of those people could I send out as an investigator.

Q. I didn't --

A. None of those people were pathologists, ballisticians. I mean if everybody in this Courtroom went up to see him everyday, how did it help me?

Q. Well, you had an investigator?

A. For a little while. $450 worth.

Q. How about five months? How long did the investigator work for you on Mr. Jamal's case?

A. $450 worth.

Q. How much?

A. $450 worth.

Q. Where did that come from?

A. It came out of my pocket and the Court

Page 174.

Anthony Jackson, Esq. - Cross

reimbursed me.

Q. So how much was he charging by the hour?

A. I don't really remember.

Q. Was he making more than you an hour?

A. Probably -- no. I think the Court, there is a rate that the investigators get, I don't recall what it was. And Mr. Greer, Bob Greer is his name. Sometimes Mr. Greer would, in effect, volunteer his time. He was also doing some work on some other matters. But with $450, if he was charging $15 an hour, or $25 an hour, how long would that last? And you said it's over five months. It may have, I got the appointment in, I think the petition was approved in January, I think.

Q. Yes. January 20th?

A. In January. I don't recall specifically after when I retained Mr. Greer.

Q. Okay.

A. But I mean it isn't like I had the services of an investigator full-time for five months. I've never had such pleasure in my life.

Q. Well, how much investigation can you get for $450?

A. Not much.

Q. In 1981 dollars we are talking, we are not

Page 175.

Anthony Jackson, Esq. - Cross

talking 1995 dollars, Mr. Jackson.

A. Not much.

Q. Okay. So did people from the Mumia Abu-Jamal Defense Committee also pay this man?

A. I don't know. I don't think so. But I don't know.

Q. You didn't ask him?

A. No, sir.

Q. Well, if you knew that wasn't buying much investigative time, and five months is pretty long investigative time, didn't you inquire why he wanted to work for you so long for no bucks?

A. You said that, I didn't say that.

Q. All right. Let me read you something. Mr. Greer, apparently he had some contact with Mr. E. Steven Collins, and he sent out some, some inquiries to several people.

A. You are asking me about conversations between Mr. Greer and Mr. Collins?

Q. No, I am asking you about who was paying Mr. Greer, if you know, besides yourself?

A. I have no idea at all of anyone paying him except me.

Q. Except you.

A. Yes, sir.

Page 176.

Anthony Jackson, Esq. - Cross

Q. So he could have been getting more money than what you were paying him and what the Court permitted?

A. Could have been getting.

MR. WEINGLASS: Objection: Speculative. If Counsel has any proof of that, it's highly speculative. He could have been.

MR. GRANT: Okay.

MR. WEINGLASS: Nothing could be more speculative than a question beginning with those words.

THE COURT: The witness filed a financial statement in this case. So if that is of any use to anybody.

BY MR. GRANT:

Q. I don't know if you have seen the filings of defense Counsel in this case, sir?

A. No.

Q. But Robert T. Greer -- who formerly worked for you?

A. Yes, sir.

Q. -- sent out a letter on March 16th -- and I am reading from exhibit number 2, the last page.

A. Hmm-hmm.

Q. Robert T. Greer's stationery, private

Page 177.

Anthony Jackson, Esq. - Cross

investigator, Suite 805, One East Penn Square -- is that where he worked: One East Penn Square?

A. Yeah, I think that's where he worked.

Q. He sent a letter -- I am not asking you to verify the contents of the letter, I know you can't do that -- this letter is in response to your phone call on E. Steven Collins, on the Georgie Woods Show, I have been retained -- and that has a specific legal connotation, would you agree?

A. Yeah, it does for me. I know what a retainer is.

Q. Somebody gave me money?

A. That's what it means.

Q. Okay. I have been retained by the Mumia Abu-Jamal Defense Committee to investigate the incident of his arrest.

Now, is that the same thing he was investigating for you?

A. You are asking me -- no, you know, I retained Bob Greer as a investigator. As to what he meant in that letter, I am afraid to venture a guess.

Q. Well, let me say this: He was retained to investigate the arrest of Mumia Abu-Jamal. Do you think, using logic and common sense --

A. Right.

Page 178.

Anthony Jackson, Esq. - Cross

Q. -- he was talking about the same murder charges that you are talking about when you were paying him?

A. I would assume so. But then I assume that he is talking about

the same charges. But then I have to assume the truth of everything that he's been retained.

Mr. Grant, what you are doing is asking me what did he mean when he wrote this letter. I have no idea that the letter even existed.

Q. Well, that is unfair.

A. It sure is.

Q. What I am really asking you is if the guy was working on the murder case for you?

A. Yes, sir.

Q. I would assume that since he is employed by you?

A. Yes, sir.

Q. That you would be aware of what he is doing since you are paying him?

A. Yes, sir. But let me explain this. I was an investigator, Mr. Greer is an investigator. I asked him to do some tasks for me. I'm not so certain that that letter isn't consistent with him working for me. He may have decided to put that hat on to say well,

Page 179.

on behalf of the Mumia Abu-Jamal Defense Fund I am going to talk to you, I am going to do something, because that is the hat he put on. Tomorrow he may put another hat on. I mean it is something you just have to switch in midstream to accomplish your purpose.

I am speculating now. But I don't know that letter is inconsistent with what he was doing for me. It sounds like you are trying to suggest that he was being paid by this fund. I don't know if he was. I don't know.

Q. You gave him money out of your pocket, you gave him money from the Court?

A. Well.

Q. And now this letter says I was retained by the defense fund?

A. Mr. Grant. Let me just tell you. I gave him money out of my pocket because, as you know, what happens in Court appointments, you file a petition and they wait a year to get their money.

Q. I understand, Mr. Jackson.

A. You know, Mr. Greer is a big man: He looked at me and said he needed his money so I gave the money out of my pocket.

Q. I understand.

Page 180.

A. Then you are asking me to buy into that because he was retained that he got some money. And you and I are both lawyers and you know we get retainers, I don't know if that necessarily means the same thing to him. I don't know if it's the truth or not. It may have been a subterfuge. It may have been a convenient entre. I just don't know.

Q. Did he ever work for you prior to that?

A. Mumia's case I think was the first case Bob ever worked with me.

Q. Did he ever work with you as an investigator when you were an investigator?

A. Oh, no, no, no.

Q. You didn't meet him through your prior career as an investigator, did you?

A. No, sir.

Q. Okay. Now 1et's talk about the other resources that you didn't have to help you. On January 20th of '82 you filed a petition, you filed a petition to ask for Court funds to employ a ballistician, a photographer, a special investigator, and a pathologist. And you knew that the going rate for the Court of Common Pleas -- and they have thousands of criminal cases a year, and hundreds of lawyers appointed -- is $150 per expert, or per

Page 181.

investigator, initially? And you knew that was an initial amount, right?

A. Yes, sir.

Q. That's why you initially got 150 bucks for Greer and then you came back and got triple that eventually, right?

A. I think so -- yeah. I think so. I think it was four. Now please don't mess with me if I'm wrong.

MR. WEINGLASS: Your Honor.

BY MR. GRANT:

Q. I am not going to mess with you.

MR. WEINGLASS: I just have this objection: Counsel inadvertently misstated on January 20th it was filed. On January 20th the Court ordered it. The filing was much earlier. And that is a matter of Court record.

MR. GRANT: Oh.

MR. WEINGLASS: I don't think Counsel should misstate the Court record.

THE COURT: If it is in the Court record.

MR. GRANT: And if I haven't done it I would move as Commonwealth Exhibit 1 in these proceedings the entirety of the Quarter Sessions

Page 182.

file, including the transcript notes of testimony, transcripts and related Exhibits into this proceeding so that they may be part of this record.

THE COURT: Okay.

(Quarter Sessions file was marked Commonwealth's Exhibit C-l for identification.)

MR. GRANT: And I'm sorry, Counsel.

BY MR. GRANT:

Q. Filed, ordered: You got money for these people; correct?

A. Yeah. Approved.

Q. And what did the Judge at the time, Judge Ribner was the one who ran the calendar room, that is the room where preliminary matters are discussed and arrangements of this nature are made; correct?

A. Yes.

Q. And when you filed that, didn't he tell you in this kind of case I think all those experts would be appropriate to have?

A. Yes, sir.

Q. And I am going to give you money for each, and I am going to give you our standard initial fee?

A. Right.

Q. But if you need more give me an itemized bill

Page 183.

so I could tell we are not just giving people money for nothing and X will accommodate you and --

A. That's right, he put it off on Judge Sabo.

Q. He put it off on Judge Sabo. He put it off on the trial Judge?

A. Let me say: Before he put it off on Judge Sabo I went back to him -- my recollection is that I went to Judge Ribner several times for money before we even got to Judge Sabo where I asked him for money. Yes, I could initially request, you know, money for the experts and things of sort thing, and they give you 150. But initially it was like this was not a 150 case.

Q. Yes?

A. And it's like why, why go through this. I mean it's like why go through a charade because this is typically the way things are done. Because it is not always done, because I know, and I am sure you know, during that time some people got more money for certain things. But anyway, he said if this is not enough money I come back in. It's like a game. I'm giving you 150, if you need

more come back. You're coming back. You better go see the trial Judge. So like come on.

Q. So you went to see the trial Judge and you got

Page 184.

Anthony Jackson, Esq. - Cross

more money?

A. Yeah, another 150.

Q. So in your affidavit when you said you didn't get more money and you were without funds -- and that's why Mr. Jamal decided to be his own lawyer: Because he saw that you were ineffectual in getting bucks for him -- well, this is what you are implying in this affidavit, or declaration?

A. I am implying, yes, that I was ineffectual in getting money. Yes, I got a total of about $800 for a pathologist, ballistician, investigator and photographer.

Q. And you don't know how much money he got, though?

A. Who, Mr. Jamal?

Q. Mr. Jamal.

A. No, I have no idea at all.

Q. Could it be -- well, you have no idea?

A. None whatsoever. I didn't know he got any money, sir.

Q. If people came in here and testified that they contributed thousands of dollars to the Mumia Abu-Jamal Defense Fund to defend him --

MR. WEINGLASS: Nobody testified to thousands of dollars.

Page 185.

Anthony Jackson, Esq. - Cross

MR. GRANT: I said if, Counsel.

THE COURT: Counselor, listen to his question. He said if.

MR. GRANT: If.

THE COURT: If they did.

MR. WEINGLASS: Objection: Speculative. There are no if questions allowed in a court of law so far that I know. It leads to speculation.

MR. GRANT: Counselor, you are right. I am going to go back to law school. I apologize, let me rephrase that.

MR. WEINGLASS: I accept it.

THE COURT OFFICER: Quiet in the Courtroom, please.

BY MR. GRANT:

Q. Do you know Mr. Joseph Davidson?

A. Yes, sir.

Q. How do you know him, sir?

A. I know Joe as a journalist and I think at the time of Mumia's arrest I think, maybe, I think Joe was then the president of the Association of Black Journalists. I think. But I mean I have known Joe for a long time.

Q. Then you know him to be an honest and

Page 186.

Anthony Jackson, Esq. - Cross

trust worthy individual, right?

A. Yes, sir.

Q. Do you read the papers?

A. Yes, sir.

Q. Do you read the Sunday paper?

A. Yes, sir.

Q. Did you read the article substantially quoting you Sunday in the Review and Opinion section? I have it here for you.

A. Oh, yeah, I read that.

Q. You read that?

A. Yes, sir.

Q. And you read about the bucks that was contributed just by the Association of Black Journalists to give to the support of the defense of Mr. Jamal?

MR. WEINGLASS: Objection: Hearsay. You can not question a witness on the basis of a newspaper article unless you bring in the author.

THE COURT: He is asking him if he read it.

MR. GRANT: Every exhibit he puts up here is a newspaper article. I'm just asking about one.

Page 187.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: He did and I did not object. But it is objectionable when they get into the content of what he read, which is when I objected.

THE COURT: That's what you gave me. They were your exhibits, they were hearsay.

MR. WEINGLASS: Your Honor refused to accept my newspaper articles as exhibits.

THE COURT: They are in the file.

MR. WEINGLASS: But when I offered them you refused them even though they were directly relevant to the injustice which is occurring in this Courtroom.

THE COURT: That is your opinion.

MR. WEINGLASS: No, it was the opinion of a headline of a local newspaper.

MR. GRANT: Here we go with the papers, Judge. I told you, Judge, I told you.

MR. WEINGLASS: And those newspapers, according to the standard set by the Pennsylvania Supreme Court, reflect the fact that the community believes Your Honor cannot sit fairly. When a community newspaper --

THE COURT: Well, isn't it up to the Supreme Court to rule on that?

Page 188.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: When a community newspaper says Sabo must go, that is evidence of the fact that the community does not believe in the fairness of these proceedings. It's evidence. What he is questioning him on is not evidence.

MR. GRANT: Is this my cross-examination or what?

THE COURT: Don't take up anymore time.

MR. WEINGLASS: I have no objection to proper cross.

THE COURT: Please don't interrupt cross-examination.

MR. WEINGLASS: I object to hearsay. What is in the newspaper is classic hearsay unless it is directly relevant to community attitudes, which is why I offered mine.

THE COURT: Let's see where he is going.

MR. GRANT: Okay, I will get some quotes from the papers and ask the person who made them if they are so.

THE COURT: Okay.

BY MR. GRANT:

Page 189.

Anthony Jackson, Esq. - Cross

Q. You don't know anything about Mr. Davidson's fund raising efforts or any statements he made in the press about giving money to Mr. Jamal, I assume?

A. I know the statements that appeared in the press that were reportedly made by him. I don't know that he said it.

Q. And you don't know that it is in fact true that just that Association raised a thousand bucks?

A. I have no idea. I have no idea.

Q. There are some attributions to you, Mr. Jackson, in that same newspaper.

A. Yes, sir. Yes, sir.

Q. Did you interview with Marc Kaufman or Julia Cass in this regard?

A. Yes, with Marc.

Q. And you basically said to him, or they elicited from you, or however it came about --

MR. WEINGLASS: Could we have the date of the newspaper?

MR. WEINGLASS: Yes, you may. Sunday.

THE COURT: This last Sunday.

MR. WEINGLASS: Last Sunday.

MR. GRANT: You could have the newspaper, it's right here (handing).

MR. WEINGLASS: Thank you.

Page 190.

Anthony Jackson, Esq. - Cross

THE COURT: You mean you didn't buy the newspaper?

MR. WEINGLASS: Pardon?

THE COURT: You didn't buy the newspaper?

MR. WEINGLASS: Oh, yes, Your Honor, I have the newspaper.

THE COURT: Well, you have that one?

MR. WEINGLASS: Yes, I have this newspaper.

THE COURT: He has that one.

MR. WEINGLASS: Photograph of Mr. Jamal that says the City known for past excesses.

THE COURT: Since you bought it already we won't read it here.

MR. WEINGLASS: I am just noting the headline.

THE COURT: Yes, okay. That's hearsay as you said. Okay.

MR. WEINGLASS: Oh.

THE COURT: If we are going to let part of the hearsay in, let's leave the whole hearsay in. Okay. Let's go.

Page 191.

Anthony Jackson, Esq. - Cross

MR. GRANT: Thank you, Your Honor.

BY MR. GRANT:

Q. Mr. Jackson?

A. Yes, sir.

Q. With respect to the comments you made, the reason that I'm raising this is because, just so you know, if you haven't already defined it, my theory of this entire matter --

A. Hmm-hmm.

Q. -- is that despite the fact that you were nominally an attorney for Mr. Jamal, Mr. Jamal effectively right here ran the show, and now through your mouth is alleging that he was ineffective as Counsel because you really didn't control anything. And to that extent I am going to ask you if you said this.

A. I didn't -- okay, go ahead.

Q. Go ahead, please.

A. I was trying to follow you. You are saying that Mr. Jamal was always in control, and he was ineffective, is that what you are saying?

Q. I am saying he dictated to you what he wanted you to do.

A. All right, you said that several times, and if you believe that's true, that's your belief.

Page 192.

Anthony Jackson, Esq. - Cross

Well, let me ask you. Philadelphia Inquirer, 7-23-95 Review and Opinion section. Page E dash 1. Byline Marc Kaufman and Julia Cass. Column 5.

It was Abu-Jamal's decision not to call his brother.

Did you say that?

A. No, sir.

Q. You didn't say that?

A. Danny Alva.

Q. Danny Alva said --

A. Danny Alva wouldn't let me call him. Danny Alva represented Billy.

Q. Mr. Jamal never said I don't want my family involved in this, this is my thing? Think carefully, Mr. Jackson.

A. No, I don't know why that occasion... you are talking about in this trial?

Q. I am talking about did he ever say that to you at any time?

A. That he didn't want his family involved in his trial or something. Because, Mr. Grant, I know you are a good lawyer and I am just trying to answer your question.

Q. Just answer what is in your mind.

A. I am trying to.

Page 193.

Anthony Jackson, Esq. - Cross

Q. I am not going to tell you where to go.

A. If you are asking me if Mr. Jamal said that he didn't want his family involved in this trial, I could answer that question. If you are asking me if Mr. Jamal didn't want his family involved in going to Atlantic City -- I need to know what you are asking me, sir.

Q. Well, your only involvement with Mr. Jamal and his family was through this trial process?

A. No, if you are talking about this trial then he never said that.

Q. He never said that?

A. No, sir.

Q. So you made some tactical and strategic decisions on your own as to what witnesses were going to be called, whether you are going to put on character references from his family, whether you are going to call them at the penalty stage; these were all your decisions, correct?

A. In cooperation with my client. Some in cooperation with my client.

Q. Well, which ones were not in cooperation with your client? If you recall.

A. You are asking me to go back through every witness that I called?

Page 194.

Anthony Jackson, Esq. - Cross

Q. You are the witness. You are the one that signed the affidavit.

A. But you are asking the question and I am trying to find out the question. I am trying to answer you, Mr. Grant. You need to tell me what question you are asking. If you want me to go through every witness that testified then you have to bring out the transcript and tell me each and every witness. And to the best that I possibly can I will tell you whether or not that was a cooperative decision.

Q. Gary Wakshul. Wakshul. You know him, right, the guy that --

A. Yes, sir.

Q. -- said I didn't hear the Negro male make any comment?

A. Yes, sir. What is your question?

Q. He was not called until the very eve, at the moment before closing arguments were about to take place, do you recall that, on July 1st?

A. I didn't recall it until the other day, that it was that late, but, yeah.

Q. You know that was on the day that closing arguments were given?

A. I didn't know that it was. I'm not denying

Page 195.

Anthony Jackson, Esq. - Cross

that it was. I know it was late, I just didn't remember what day it was.

Q. Okay.

A. And that was my fault, sir.

Q. You said that before and you said that in your affidavit.

A. That's right. I thought that's what you were asking.

Q. Well, not yet.

A. Okay.

Q. I am at page through 35, July 1st, 1982, Counselor.

A. Yes, sir.

Q. Not you. You are Mr. Jackson. And you are speaking to the Court. Your Honor, there are several other matters that I would like to bring to Your Honor's attention. We -- that's not fair.

(Pause.)

MR. GRANT: If I may, Your Honor. May I approach?

THE COURT: If you are going to give him a copy.

MR. GRANT: Yes, Your Honor.

BY MR. GRANT:

Q. (Handing) Right there (indicating).

Page 196.

We have found there is another witness we need to call. Let me make sure I have that right. We have found that there is another police officer that we would like to have testify.

A. Yes, sir.

Q. It is anticipated to be very brief. Mr. McGill advises me that he is not present today. I would ask that of course he be called in.

THE COURT: When did you ask for this witness. Let me see you over here.

This is obviously taking place in open Court. And the Judge is asking for a sidebar.

The following discussion ensues. What is this officer that you want. What's he going to testify to.

He picked Mr. Jamal up at the scene.

So.

During this time the Negro male made no comment. He was with him the entire time.

Mr. McGill says he's not around. I'm not going to be bringing this guy in, he's not around. That's what he says. Mr. McGill says I'm not bringing him in at the last minute. The Court then says Mr. Jackson, you knew about this before. I'm not going to hold up this trial. You -- Mr.

Page 197.

Jackson -- says I didn't.

What did that mean: I didn't know about it before?

A. No, I knew about it, I just overlooked it, I forgot about it.

Q. That doesn't say I forgot, it says I didn't.

A. Well, I didn't read you the answer. Are you asking me to read the answer or are you asking me for an answer, sir.

Q. I am asking you: When the Judge says you knew about this and you said I didn't, what does that mean?

A. I forgot, that's what I said. I had forgotten the statement of Officer Wakshul.

Q. Well, the Judge asked you the same question I am asking you right now. What do you mean you didn't. Didn't you get the statements from the detectives months and months ago?

Mr. Jackson: Absolutely right.

A. Yeah.

Q. Now, I forgot. That's what your statement is. And that this was a joint decision or singular decision on your part?

A. Which question are you asking me?

Q. You forgot. You forgot that Mr. Wakshul

Page 198.

existed? You forgot what?

A. I forgot that I had this statement. Let me put it this way. I am going to say either I forgot or an oversight. Obviously Mr. Wakshul was an important witness. It wouldn't be something that -- I wouldn't deliberately not call him in. I called him in at the last day when he came to my attention. I don't know if Mr. Jamal brought it to my attention, whether I saw it myself, or someone else. When I realized I needed the officer I asked that the officer be in Court.

I mean there certainly would not have been any strategy not to call an important witness. I mean that would have been silly.

Q. What tells you, with all your legal skills and abilities, that this was an important witness for the defense?

A. Because he, because we had two witnesses who said that Mr. Jamal made a confession. So when this man says --

Q. Four, actually, two of them didn't testify; correct?

MR. WEINGLASS: Objection: There were two before the Jury.

THE COURT: He is asking.

Page 199.

THE WITNESS: Well, I am not going to comment. You said there were four, fine. I mean I know during the motion to suppress there were some others and all, and I think I have, I have my own suspicions about why those others weren't put on. But be that as it may, I knew that this officer, if those two witnesses said that Mr. Jamal made the statements, and this would have been prior to him receiving care from the doctor, this officer as I recall the statement said that he was with Mr. Jamal the entire time until the doctor came. So either these two people are lying or the officer is lying. And as far as I was concerned, this officer, he simply made a statement that he made no statement whatsoever. That's the only statement that I saw. I know you referred earlier about some other statement. I never saw any other statement.

BY MR. GRANT:

Q. Well, you got entire discovery in this matter, Mr. Jackson; do you deny that?

A. I got what they gave me.

Q. Well, do you have any basis in 1995, 13 years later, do you have any independent basis or any kind

Page 200.

of basis to say discovery was withheld from you in this case?

A. Yes, sir.

Q. Name it?

A. All right, the Medical Examiner's report.

Q. Yeah?

A. The Medical Examiner's report, there was a page indicating that the police officer said that -- I believe that a police officer shot Mumia other than, other than Faulkner. I was never -- the discovery I got from the District Attorney's Office didn't contain that paper.

Q. You know what, Mr. Jackson, I was hoping you'd bring that up.

MR. GRANT: May I have this marked as Commonwealth Exhibit number 2 for these proceedings?

(Documents were marked Commonwealth's Exhibit C-2 for identification.)

BY MR. GRANT:

Q. This purports to be a package from the Medical Examiner's Office to a Mr. Anthony E. Jackson. 13 years later, same package (displaying).

Were you at Suite 911, Western Savings Bank Building back then at Broad and Chestnut?

Page 201.

A. Yes, sir.

Q. With Mr. Crawford?

A. Yes, sir.

Q. Could you read into the record, sir, what Counsel has had for awhile and what I respectfully submit that you had?

A. Could I read it into the record?

Q. Yes, sir.

A. What do you mean?

Q. That is a letter from you, right?

A. Yeah.

Q. Okay. Now, what's it say?

A. Dear Mr. Ainge: Please be advised that I have been appointed by the Court to represent the Defendant charged in the death of the above-captioned person. Accordingly, I'm requesting that you forward a copy of the report to this office. Your prompt communication -- cooperation in this matter will be appreciated.

Q. You asked for a report, right? And that implies to you, the average lawyer doing homicide, the Medical Examiner's report was basically a protocol, that's what you are asking for, isn't it, the findings of the Medical Examiner? But they didn't just send you that. Would you flip the page

Page 202.

there?

A. Would I what?

Q. Right there. There are two entries, Mr. Jackson. The top one says what? It's handwritten and it is from?

A. Copy of preliminary... police report I guess. Preliminary, looks like P-O-L report. Given to Detective Thomas, 744 of Homicide unit.

Q. Please. I don't think this gentleman is getting that.

A. Oh, I'm sorry.

Q. You know who Detective Thomas was, don't you? He was the assigned detective in this prosecution, right, Bill Thomas?

A. Yeah, I know Bill Thomas.

Q. Taller, kind of black guy, chubby cheeks?

A. Yeah. You said that.

Q. All right.

A. Okay.

Q. And they said on the first line -- what is that, by the way, you are reading from?

A. A log.

Q. A log? What is it entitled?

A. Investigative log.

Q. From the Medical Examiner's Office?

Page 203.

A. That is correct.

Q. What is the second entry on there, Mr. Jackson, and what date is it?

A. 1-27-82. Copy of complete case sent to Anthony E. Jackson, Esquire, Suite 911, Western Savings Bank Building, Broad and Chestnut Street, Philadelphia, 19107.

Q. And it does not say report sent, it says complete case sent, and it puts your name, address and where you are, doesn't it?

A. Yes, sir.

Q. Now, do you deny that you received that packet, sir?

A. I haven't examined the packet. I'm telling you there was one sheet that I did not receive.

Q. Look on the fourth sheet back and maybe you will find it there?

A. Is this what I had, sir?

Q. Yes, sir.

A. This is what I received?

Q. Yes, sir. Do you see a cover sheet that is called preliminary -- and I stress that word -- preliminary findings, presented to you by Mr. Weinglass earlier today?

A. Pardon me?

Page 204.

Q. You read from a Medical Examiner's notation earlier today?

A. Yeah, right here.

Q. Okay. Now look and find that in that same package that you are looking through right here, sir?

A. (Witness complies with request.)

Q. Do you see it? It is going to be right there at the top, it will be the first three or four pages.

A. Oh, I'm sorry, yes, sir, I see it now.

Q. Now, it is one thing to say that you don't recall having reviewed any of the notes of testimony in this case, apparently having no file, having given half your file to Mr. Jamal -- and then of course that was burned up in the MOVE fire -- what are you basing your statements on here today 13 years later?

A. On what am I basing my statements? Mr. Grant, I am thoroughly confused. You are talking about the medical, Mr. Grant, now you are asking me -- come on, tell me what you are asking.

Q. Why are you making these statements, Mr. Jackson?

A. What statement?

Q. That I know that I didn't receive this piece of paper right here. How do you know that?

A. Is this the paper I didn't receive?

Page 205.

Q. Yes.

A. When did I say this is the paper?

Q. When Mr. Weinglass was asking you about it.

A. Is this the one I said I didn't receive? Let me see...

Q. Which one are you referring to, by the way?

A. Oh, oh. There's another sheet. This is not it, sir.

Q. It is the last one in your hand?

A. That's not what I am talking about, Mr. Grant. That's where you have me confused, sir. There is a sheet that says that Mr. Jamal was shot by another officer or something. I can't specifically -- this is not the sheet that I am talking about, sir.

Q. Okay, may I approach?

A. Yes.

Q. That is right next, that is the next page, fourth page right there?

A. Yeah.

Q. Right there in front of you. Now, you received that, right?

A. Yeah, but not from the Medical Examiner.

Q. Who did you get it from?

A. The one I got from the Medical Examiner did not have this sheet.

Page 206.

Q. Who gave this sheet to you?

A. Someone.

Q. Someone snuck into the Medical Examiner's Office, stole it and sent it to you in the mail?

A. That is your statement, sir.

Q. How did you get it, sir?

A. I got it through a confidential source, sir.

Q. What does that mean?

A. It means that I got it from somebody I am not telling you where I got it from.

THE COURT: All right. Quiet back there or you are going to go out.

BY MR. GRANT:

Q. Did they give you the rest of the M.E.'s file too?

A. Yes, sir, I got the entire report.

Q. So you got the entire report. I thought you said you didn't have that statement at the time of trial?

A. I didn't say that. I said the District Attorney did not turn it over to me.

Q. I see.

A. Big difference.

Q. Do you think the District Attorney had that also?

Page 207.

Anthony Jackson, Esq. - Cross

A. No, in fact Mr. McGill said he didn't have it. That's what he said.

Q. And you disbelieved him, right?

A. It wasn't, whether Mr. McGill had the report or not, it was part of his obligation to turn over all the files of the Police Department and the Medical Examiners, whether he had it in his hand or not, it doesn't satisfy the rule.

Q. Is that the law?

A. It is Jackson's law as I understand it, sir. Now, if you tell me that it is different, that he shouldn't turn it over.

Q. I am not telling you that, sir.

A. It is my understanding if a police officer has a report, he has a statement from somebody, Joe -- excuse me -- Joe McGill doesn't have it, the Commonwealth, the Commonwealth is held responsible for that. The fact that he didn't see it or he didn't get it is no excuse.

Q. I see, but you did have it. Both of them. You had the Medical Examiner's statement about some other policeman shot Mr. Jamal because you had a hearing on that on June 28th, didn't you, where you brought these very police officers in that you thought this statement came from and you had a

Page 208.

Anthony Jackson, Esq. - Cross

previewed examination to see if you would want to use them as defense witnesses, and you had it on the record and Judge Sabo gave you his chamber to conduct it; correct?

A. It was, it went a little different than that. He made me go back there and he decided that I could not put them on. I wanted to put them on, obviously, because they sent me a report that did not contain a sheet that says that Mr. Jamal was shot by another police officer. Isn't it awfully strange that they would send me a report without that?

Q. Well, you claim they didn't send it to you?

A. I have no reason to lie to you, Mr. Grant.

Q. Well, would Mr. McGill have a reason to lie to you?

A. Pardon me?

Q. Does Mr. McGill have a reason to lie to you, Mr. Jackson?

A. I don't --

Q. You are kind of making some insinuations here and I just want to clear this up.

A. All right, let's clear it up. I am saying I did not get the sheet. Mr. McGill said that he didn't get it. I don't know whether he got it or not. But it's not important whether he had it. If

Page 209.

Anthony Jackson, Esq. - Cross

the Commonwealth, with it's resources, it was in their possession, it is his responsibility to have it. If it was, if it was a person with the Medical Examiner's Office who had the report, it is still on Mr. McGill. It is his responsibility to turn it over to me.

So Mr. McGill might have been telling the absolute truth. That does not absolve the Commonwealth of it's responsibility to turn over all of the information.

Q. I am just trying to find out if you are accusing Mr. McGill of lying to you?

A. I don't know if he is lying, I am not accusing anybody. I am simply talking about what the responsibility is. I want that to be very clear. If I had the proof that Mr. McGill was lying I would have brought it to the Court's attention then or now. I don't know. I simply know the obligation of the Commonwealth and that is to turn over all of the information. And they didn't do it.

When you start asking me what in this case did the Commonwealth not turn over, that was number one. And I am telling you I don't know what else.

Q. What is number two?

Page 210.

Anthony Jackson, Esq. - Cross

A. Pardon me?

Q. What is number two?

A. Let me see if there was something else...

(Pause.)

All right, the names, the addresses and phones numbers of witnesses.

Q. Oh, please, Mr. Jackson. That, they would turn that over to you, what, so you could do -- well let me strike that.

A. Yeah, be careful. Oh, I'm sorry.

Q. They didn't turn over the names and addresses of witnesses to you?

A. Names.

Q. They turned over the names to you?

A. Names, yeah.

Q. Yeah. They didn't tell you where they lived, did they?

A. No, sir.

Q. And in what case when you were trying murder cases in the late '70s did they ever give you the place where the person lived?

A. Some of them.

Q. Some of them?

A. Yeah.

Q. How many of them? How many cases had you

Page 211.

Anthony Jackson, Esq. - Cross

tried where they give you the name of the --

A. I understand the District Attorney has a policy to redact all that and I am not suggesting --

Q. Why do you think they do it?

A. Because, as I understand it, because they fear that the defendant may get the address and somehow intimidate that possible witness.

Q. Do you think that is a reasonable policy?

A. Absolutely not. Absolutely not. And if you wanted to know why I will tell you why I don't think it is reasonable.

Q. Why?

A. All right, the reason is this. The Police Department conducts these interviews, right. Now, of all the people that a person might talk to, you think about a police officer, isn't a police officer an intimidating individual? I am not talking about a police officer in particular. Police generally are intimidating to folks. Me, I am a member of the Bar of the Court. They give me the address. They gave me the report. It's Mr. Jackson as a member of the Bar of this Court, we don't want you to give this information to your client, but we don't want you to be hampered in your investigation in providing an effective representation. Here is where the witness

Page 212.

Anthony Jackson, Esq. - Cross

lives. If you want to go talk to that witness, here it is. But I am going to ask you, just like me, I am not a District Attorney, I am a member of the Bar, I am not going to intimidate this witness. So why shouldn't I be given the same respect and given the opportunity to represent my client and investigate the people?

You have all, you the District Attorney, you have all the advantages. You have the witnesses. And you are saying well, we're honorable people, but those defense lawyers, they are dishonorable people so we are not going to give them that information. That's why I don't like that policy, sir.

Q. Just because you are an honorable man doesn't mean you could make generalizations. And do you read papers anymore?

A. That's absolutely right. Why assume that everyone in the District Attorney's Office is honorable?

Q. You know how many witnesses have been dead in the last year, don't you?

A. I don't know.

Q. Directly related to their testimony?

A. I don't know.

Page 213.

Anthony Jackson, Esq. - Cross

Q. Well, I do. So --

A. I understand what you are talking about, sir.

MR. WEINGLASS: Objection, Your Honor.

THE WITNESS: You are missing my point, you are missing my point. What I am saying to you: If I am defense counsel, you tell me -- and I am telling you it has been done -- you tell me here is a statement with the address, with the phone number. You, Mr. Jackson, as a member of the Bar of the Court, I want you to give me your word that you won't give this information to your client.

BY MR. GRANT:

Q. Are you saying that by withholding or protecting the address of the people who witness murders, are you saying that we are violating the discovery rules by doing that?

A. I am not saying that.

Q. It is not, is it? It is absolutely not, is it?

MR. WEINGLASS: Your Honor --

THE WITNESS: That is not what I was talking about.

MR. WEINGLASS: Your Honor, if I may.

THE COURT: He could answer that

Page 214.

Anthony Jackson, Esq. - Cross

question.

If that is an objection it is overruled.

MR. WEINGLASS: Your Honor, there is a Police Directive that requires that information to be turned over: Directive 135.

THE COURT: Bring it up in redirect.

MR. WEINGLASS: Well.

THE COURT: He is asking him a legal question. He is a lawyer, he could answer it.

MR. WEINGLASS: But he is misrepresenting the Police Directives.

MR. GRANT: I don't work for the police and we give out discovery so I don't care what that says. We give out discovery.

BY MR. GRANT:

Q. Is that against --

MR. WEINGLASS: He should ask him if Police Directives are in error.

THE COURT: You could bring it out in redirect. Will you, please.

BY MR. GRANT:

Q. Is that an ethical or legal violation of the law, sir?

Page 215.

Anthony Jackson, Esq. - Cross

A. Mr. Grant, I am not suggesting, and I don't know for certain that it is a violation of the discovery rule. But that wasn't the question I was addressing. You asked me --

Q. The question I asked you was what did we withhold from you? And I am not implying things legally permissible to be withheld, as you well know, when I asked the question.

A. Okay, this is what I meant when I say you are withholding something, whether it is on a statement, your policy or whatever. If I am a lawyer for a defendant, I have a statement from him, from this witness, I have the police, I have what the police says that witness says. I would like to talk to that witness myself, just to find out if in fact that witness said so. District Attorney says no you won't. You will not contact this witness. You will contact us and we will contact that witness and find out if the witness wants to talk to you and if you could get to her. Now, do you think that that's fair?

Q. No, I don't think it is fair and I don't --

A. That is my own point.

Q. I don't think it's fair because I don't think it happens very often. And I want to ask you about

Page 216.

Anthony Jackson, Esq. - Cross

withholding statements from you and the D.A. saying I won't let you talk to this witness, because you made some accusations today.

A. I didn't say withholding statements.

Q. You made some accusations about Mr. McGill about Miss Kordansky, he wouldn't help you get the witness and the detective said you ain't got to show up if you don't want to, and I want to visit that issue. What I am trying to do initially, Mr. Jackson, before we proceed --

A. Yes, sir.

Q. -- is clear up these insinuations, this innuendo, these implications that you are raising here. Now let's talk about June 30th of 1982.

A. Okay.

Q. Page 3, we are talking about this very type of thing.

A. Okay.

Q. Mr. McGill is talking to the Court and says Mr. Jamal has been here for about 10 or 15 minutes. And you state: Your Honor, I would like to bring to your attention that we have a prospective witness, a Debbie Kordansky. Yesterday Counsel for the prosecution, Mr. McGill, gave me her phone number and the St. James Hotel as the place where I could locate

Page 217.

Anthony Jackson, Esq. - Cross

her. I contacted her by phone. She indicated to me by phone that she no longer lived at the St. James Hotel, although I have not been able to confirm it. In any event, she indicated to me last Monday she was in a bicycle accident, she injured her head, she would find it extremely inconvenient and impossible to appear in Court. My sense is that she simply wants to avoid appearing as a witness.

Now, you then go on to state: Given the fact yesterday, I guess it was about 6 p.m., six o'clock last night was the first opportunity I had of contacting this witness, I wondered whether or not there may be some means that the Court could suggest that I could have her brought in or her injury confirmed or if she is not going to testify. Then the Court goes on to say let's find out what she would testify to, and you read the Court the statement.

And her statement that you felt was exculpatory was this: I was watching TV, I heard about five gunshots. And where she lives is approximately, it is on the corner of 13th and Locust.

A. Not quite on Locust but I know where it is, yes, sir. Closer to Walnut Street.

Page 218.

Anthony Jackson, Esq. - Cross

Q. Approximately. I was watching TV, I heard five, about five gunshots, sometime between 3:45 and four o'clock. Which is the time of the alleged murder -- or the proven murder at this point. The gunshots seemed to be in succession. I thought it was firecrackers. I didn't look out the window at first. I heard sirens a short time later. I saw about 10 squad cars and two vans at 13th and Locust. And then she says I saw a male running on the south side of Locust.

Now, that's her statement. Now you say to the Court -- my point is maybe that's not the sequence, maybe when the 10 squad cars and two vans or whatever were there, obviously that's after the crime has occurred and they are all converging on the scene, and clearly

if a person is running, they are going to either run right into the arms of the police, or run right past the police -- but you are saying no, Judge, I think what she really meant was I saw the person running and then I noticed all this other stuff.

The Judge then says... Did you ask her whether that was out of sequence.

And you go on to relate to him what you heard.

Page 219.

Mr. McGill then interrupts and says did you get an address from her.

This is you: She won't tell me anything. She said nobody said anything about Mumia's case but it sounds like some Moslems. I don't know whether they are white or black, they are calling me and harassing me. She says I don't know if it has anything to do with this case.

Mr. McGill then says to you, Mr. Jackson, first of all, the first time I heard that name as a potential defense witness was yesterday. That would have been June 29th. Yesterday afternoon. I then said let me check to Mr. Jackson. I checked my book, this was yesterday afternoon, I checked to see if I could get the address and give to it them right away. I said it was not here and I would check the book which had been taken over -- like these boxes I bring back and forth (indicating). They took the box over right after Court, the police officers. And I said it's over on my desk. I went over and got the information, called Mr. Jackson immediately and gave it to him.

Mr. Jackson: That is correct.

Mr. McGill then says: I could appreciate the fact that you would like to have a

Page 220.

witness. I have never contacted the woman. Although we have had a telephone number. I suppose that the Commonwealth would be willing to try and give somebody a call, to call her, but we don't have any more information than Mr. Jackson does.

Now, Mr. Jackson, that doesn't sound to me, the words from this transcript don't sound like the words you told Mr. Weinglass that occurred when you were trying to find Debra Kordansky and the people, Mr. McGill was telling you not to bring her in, that the detective was saying you don't have to come -- where is any of that in there?

A. I haven't heard it.

MR. WEINGLASS: Your Honor, there is another part of the transcript.

MR. GRANT: Let's read it. Where is that?

MR. WEINGLASS: That is the part I read.

THE COURT: Bring it up in redirect.

MR. WEINGLASS: But Counsel says it doesn't sound to me like my question, I questioned him on another part of the transcript.

MR. GRANT: Could I have the page?

Page 221.

MR. WEINGLASS: Oh.

BY MR. GRANT:

Q. Now, could you reconcile those two versions of the same event, sir?

A. No, I can't, Mr. Grant. I just know what I remember, sir. And again, I haven't reviewed the transcript. Look, and I know, I know that I tried to find, to locate Deb, Debbie Kordansky. I had an investigator even look for her.

Now, the transcript that you are reading now suggests as soon as I asked Mr. McGill for the address and phone number he gave it to me. I don't know what that says, that didn't happen.

Q. Why did you say 13 years ago that's correct?

A. I'm saying if that is what that transcript says, that that was the only time, then I am telling you it didn't happen that way.

Q. Well, it is in black and white and your memory is not?

A. You know, and that's true. Look, could I make a mistake? Absolutely. It is not, but it is not the thing that I was likely to make a mistake today. Debbie Kordansky in my mind was a vital witness. I just didn't all of a sudden decide I wanted to see Debbie Kordansky and then I asked Mr. McGill and he

Page 222.

gave me the information. Why, if that were the case, why would I get the Judge involved in chambers? I never had a judge go back in chambers to call a witness since I was practicing law. Believe me, the events did not come down like you are reading it.

Q. You had the Judge intervene to get Gary Wakshul for you, and you claimed at that time that you were making the decisions and you forgot to get Mr. Wakshul in, isn't that the same?

A. No, sir, that is not the same. No, sir, that is not true. That is not true.

Q. All right, Mr. Jackson.

A. That is not true.

Q. By the way, you didn't know that had you brought Mr. Wakshul in, he would have said as a result of Mr. Jackson filing a suit against all the officers, the Internal Affairs Division interviewed all of us to see if we beat up Mr. Jamal, and had that not had happened I probably wouldn't have even mentioned the fact that the guy did say yeah I shot the mother-fucker and I hope he dies? Because when he said it I was, I claimed I went out to get my hat and coat from the Police van but I lied. I broke down and cried and I went out and wrecked my car because I didn't believe it. And then for the first

Page 223.

time when they asked me, that's when I mentioned it. I probably never would have.

A. You know --

Q. Did you know he was going to say that when you brought him in? It was in his statement.

A. Okay, first of all, again, I never filed a lawsuit against them.

Q. Complaint, I'm sorry.

A. Let me just tell you this, Mr. Grant. You tell me if I am wrong. Throughout this trial, whenever there was any testimony that was changed, it was always to the benefit of the Commonwealth. Each and every time. When there was testimony that was changed...

THE COURT: Do you want a recess?

THE WITNESS: Just for a minute.

MR. GRANT: Perhaps we could recess until tomorrow.

THE COURT: Let's recess until tomorrow morning so you could get your composure back.

All right, we will adjourn until tomorrow morning. Could we try about 9:30.

MR. WEINGLASS: Could we, before the Court leaves, could we put on Mr. Davidson? He

Page 224.

is here.

THE WITNESS: I am all right now.

THE COURT OFFICER: Quiet in the Courtroom. The Court is still in session, quiet in the Courtroom.

THE COURT: Do you have any --

MR. GRANT: I'm sorry?

THE COURT: He wants to put on Mr. Davidson.

Where is he?

MR. WEINGLASS: He is in the witness room. Just outside.

THE COURT: I thought the witness room was back here (indicating).

THE COURT OFFICER: Yes, Your Honor, he is in the witness room.

MR. WEINGLASS: I think he's back here.

THE COURT OFFICER: Yes, he is.

THE COURT: Would you bring him out.

(Brief recess.)

THE COURT: All right, Counselor, will you take a seat there.

THE COURT OFFICER: This Court is now reconvened.

Page 225.

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Joseph Davidson, having been duly sworn, was examined and testified as follows:

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THE COURT: Are you ready?

MR. WILLIAMS: I am. Your Honor. May I inquire?

THE COURT: Yes, sure.

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DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Davidson, I know you have been waiting a long time and I appreciate it. Can you tell the Court where you live?

A. I live in Washington, DC.

Q. Okay. And I would like you to explain to us a little bit about yourself. What do you do for a living?

A. I'm a reporter with the Wall Street Journal.

Q. How long have you been a reporter with the Wall Street Journal?

A. It's almost 11 years now.

Q. All right. And are you based in Washington, DC?

Page 226.

A. I am.

Q. And what kind of stories do you cover for the Wall Street Journal?

A. Currently my beat is criminal justice and immigration.

Q. Can you share with us, Mr. Davidson, a little bit about your educational background?

A. I went to the public schools in Detroit, Michigan. I went to undergraduate school at Oben University, which is a college outside of Detroit. I went to the University of Michigan for graduate school.

Q. What did you study at the University of Michigan?

A. Public policy studies.

Q. Now, are you a member of any professional organizations, sir?

A. I am a member of the National Association of Black Journalists.

Q. Mr. Davidson, I want you to look here at the gentleman that I am putting my hand on (indicating). Do you see this gentleman?

A. Yes.

Q. Do you know who he is?

A. Yes.

Page 227.

Q. Can you tell the Court who he is?

A. Mumia Abu-Jamal.

Q. Did you know this gentleman back in 1982?

A. Yes.

Q. Were you aware that in 1982, that gentleman was under indictment?

A. Yes.

Q. Were you aware that pursuant to that indictment he was put through a trial?

A. Yes.

Q. In this Courthouse?

A. Yes.

Q. Did you attend any of the proceedings, Mr. Davidson?

A. Umm, a couple of days I believe, not the full trial.

Q. Okay. Did you know that there was a Court-appointed attorney representing him?

A. Yes, I did.

Q. Do you know who that attorney was?

A. Yes.

Q. Tell the Court who that attorney was?

A. Tony Jackson.

Q. Did you know Mr. Jackson personally?

A. Yeah, from around this building, basically.

Page 228.

Q. Have you ever had any dealings with him prior to 1982?

A. Tony Jackson?

Q. Tony Jackson, yes.

A. Ahh, yes, casual dealings, you might say.

Q. Was it your impression that he also knew who you were?

A. Yes.

Q. Now, was there any health reasons or any other personal matters that would have impeded you from taking the witness stand in those proceedings? I am referring to the proceedings related to Mr. Jamal.

A. No, I could have taken the stand.

Q. Now let me ask you ask you this, Mr. Davidson. If you were asked to come into Court and to testify in a proceeding for the benefit of Mr. Jamal, would you have been willing to do that?

A. Yes.

Q. Did anybody discuss with you the possibility of your coming into Court and testifying for the benefit of Mr. Jamal?

A. No.

Q. Now, you said that you know Mr. Jamal. Can you share with us the circumstances under which you grew to know him?

Page 229.

A. Well, we're colleagues. I worked in this building in 212 as a City Hall reporter. Mumia was often around this building doing things with a job as a radio journalist. So as journalists together we got to know each other.

I also, he also lived not too far from me in the Mount Airy section. And sometimes his son would come over to my house before school because my son went to the same school as his son. Also, we were both active in the Philadelphia Association of Black Journalists. He was, I succeeded him as president of that organization.

Q. Let me interrupt you for one moment. First, to be clear: You said you were colleagues. You are referring to the fact that you were professional colleagues?

A. Exactly.

Q. Both of you were journalists, right?

A. Yes.

Q. And then you referred to the Association of Black Journalists?

A. That's right.

Q. And you said that you followed Mr. Jamal as president?

A. Yes.

Page 230 is missing. We will make attempts to locate it.

Page 231.

person on the street. I mean I found that he had a real, a real empathy, I guess, for those people who were being beaten by the system or being cheated somehow. The little guy. The little woman. I thought that he had, he was in touch with them, he was sensitive towards them. And so, you know, the down-to-earth part has to do not just with, you know, finding some glory in reporting about the most powerful people, and being able to rub shoulders with the most powerful people in the City or in the society, but also those who were down the bottom rung of the ladder.

Q. Let me ask you this, Mr. Davidson. I know in the law there is an incredible urge to brush shoulders with the powerful. Is that also true in journalists: Is there an urge or a desire among journalists to rub shoulders with the powerful?

A. Among some, not all.

Q. And by your eyes, is it an admirable quality to resist that desire to rub shoulders with the powerful and to have empathy for those who are voiceless in our society?

A. I think it's a particularly, it's particularly valuable and important for journalists to be able to do that.

Page 232.

Joseph Davidson - Direct

Q. Tell me why?

A. Well, many people come into the profession because, because we feel that it provides an opportunity to be of service to the, you know, just to the small people, if you will. I mean the notion of being a muckraker, while sometimes I think outside of the profession it's considered, you know, like a scandalous kind of thing almost, like you are into sensationalism, among journalists muckraking is really a valuable cause because what it means is that you are, you are digging out the dirt that somehow afflicts those at the bottom of the society. And it means that rather than spending all of your time with those who, you know, have the wealth in society, you are really looking out for those who are poor, for the downtrodden. It is a noble calling far too often forgotten, I think.

Q. And did you think that Mr. Jamal was dedicated to what you called that noble calling?

A. Definitely.

Q. Did you find that you had much in common with Mr. Jamal?

A. I think so. I mean I thought we shared a, you might say an outlook. I mean we talked about society, we talked about phoniness, for example. And

Page 233.

Joseph Davidson - Direct

I thought that, you know, we did share, you know, a certain outlook on the world.

Q. Help us to understand a little bit what you mean by this shared outlook. What outlook are you talking about?

A. Well, I think it's a, it kind of gets back to what I've been saying, this business of how we approach the profession. Also, a certain skepticism, I think, about the way in which the political and economic system treated various groups of people. Particularly poor black people. And I mean we certainly had shared some, you know, some doubts about the fairness of the system. And so we talked about those things. And so that was another kind of link between us.

Q. Did you have the occasion, Mr. Davidson, to observe the kinds of skills that Mr. Jamal exhibited as a journalist?

A. Yes, all the time.

Q. Can you explain to us what kind of skills he exhibited?

A. Well, I thought that he was the best radio journalist in the City. And I paid attention to the journalists in the City because they were my competition in many cases. I thought that on one

Page 234.

Joseph Davidson - Direct

level his, it was the gift of his voice. But it was certainly more than that. It was his writing ability. He has the ability to convey with words a picture so that his listeners can, his listeners are in a sense placed at the scene of whatever it is he is reporting. I think that his, I think he can do that because of a certain empathy he feels with, you know, with the subjects about which he is writing. It is again that sensitivity.

And so I think it was the combination of the physical gift, the writing ability, paying attention to details, which is very important in our profession. All of those things I think were very important. And, like I said, Mumia made a very, very, very good radio journalist.

Q. So you are saying that it takes a certain amount of empathy and sensitivity to be able to write with this kind of power that you were describing? Is that right?

A. That's right. I believe so. I mean I think that there are plenty of good writers in the business. But I believe that it's, I believe that it's important to really try to, it's really important to try to feel what, in kind of a sense, feel the issue. It's more difficult to do this if

Page 235.

Joseph Davidson - Direct

you are covering like City Council, for example. If you are covering a dry hearing on Capital Hill. Where this kind of reporting comes out is when you're out on the street, in the neighborhood, or out in the fields with people. And you are talking with them basically about their life. Often it's about their problems. Often it's about some tragedy. And it has to do with your ability to listen. It has to do also I think with a certain, a certain level of self-confidence. And it is the kind of thing that you don't learn in journalism school. It is the kind of thing that educators, you know, seldom will talk with you about. It has to do I think with, with a willingness to open yourself up to others. A willingness or an ability perhaps to be vulnerable. Because I mean there is all this touchy-feely stuff that you never hear about when you talk about journalism. I frankly believe it is really important, though, because the more you get into people, the more that will come out in your work. And I think that is remarkable in journalism.

Q. Mr. Davidson, I think that would be true for attorneys as well. But let me ask you this. You say that Mr. Jamal had the ability to feel the story.

A. Right.

Page 236.

Joseph Davidson - Direct

Q. And you just described that it requires an ability to be vulnerable?

A. Right.

Q. What kind of qualities in a human being would you believe is required to have that kind of vulnerability to feel other peoples' pain?

MR. GRANT: I object, Your Honor. Unless Mr. Jamal possessed those qualities, I respect his opinion but I don't think it is relevant here.

THE COURT: Would you get right to the issue, whatever you are trying to show, Counsel.

MR. WILLIAMS: I am trying to get to the issue of Mr. Jamal's qualities as a human being.

THE COURT: I thought you did that.

BY MR. WILLIAMS:

Q. Mr. Davidson, let me put it to you directly. What kind of qualities as a human being do you think that Mr. Jamal possessed that allowed him to have that kind of vulnerability that you were speaking of?

A. Well, I find it's one of a sense of independence and sense of self-confidence. Because I don't think that you can, that you have those characteristics unless you're basically secure enough

Page 237.

Joseph Davidson - Direct

to be open enough to others and to allow those kinds of, those feelings to come out, come out in the way you deal with others in terms of the way you listen, your openness. And that comes out in

your work. So I think it's self-confidence and I think it is just the ability to listen, be sensitive, and to empathize.

Q. Now, Mr. Davidson, if Mr. Jamal was interested in using his, what you have characterized his enormous skills as a journalist and as a human being to make money and to rise in the profession of journalism, do you think that he had the potential to do that?

A. Without a doubt. I think that there are many people in the profession on the national scene, on local scenes around the country, who have far less talent and who have done very well in the profession.

Q. Far less talent than Mr. Jamal?

A. Right.

MR. WILLIAMS: Mr. Davidson, thank you very much.

MR. GRANT: I know it has been a long day for you, sir, I only have a couple questions.

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Page 238 is missing. We will make attempts to locate it.

Page 239.

MR. WILLIAMS: Well, that is true, if they --

MR. GRANT: I am asking some questions. I let you ask every question in the world.

MR. WILLIAMS: I don't think we should be addressing each other. I think our remarks should be addressed to the Court.

THE COURT: Let him finish, will you. You said you won't be long and I gave you that opportunity, now let's let him cross-examine so we could all go home.

BY MR. GRANT:

Q. Do you think that your feelings were shared that you expressed here today by other members of the Philadelphia chapter?

A. My feelings about his skills as a journalist?

Q. His skills, ability and sensitivity and the kind of voice that he presented in the community.

A. Among those who I spoke with, I would say yes. I can't speak for all of the journalists, but I would say certainly a number did share those views.

Q. And as a result of that, the Philadelphia chapter of the Association of Black Journalists raised how much money on his behalf to submit to his

Page 240.

defense in this case?

A. Well, the Philadelphia Association of Black Journalists at that time participated in a defense fund. And essentially what that amounted to was encouraging people to send money to a post office box.

Q. Whose box?

A. Pardon me?

Q. Whose box was it?

A. I believe it was the PABJ box, Philadelphia Association of Black Journalists' box.

Q. Who was the repositor or the treasurer of those funds?

A. I think I believe the treasurer was Tyree Johnson.

Q. Could you tell us, since you were basically the man at that point in the Association, could you tell us how much or what level of monies were collected for Mr. Jamal's defense? --

A. Well, I actually spoke with him a few days ago. And his recollection was it was between two and four-hundred dollars.

Q. Two and four-hundred dollars?

A. Right.

Q. When did you talk to the reporters from The

Page 241.

Inquirer when you said that you thought it was a thousand bucks?

A. I think that was last week.

Q. And after you made that statement to them you later talked with the person who ultimately received the money?

A. That's right.

Q. And that's what you were told?

A. That's right.

Q. So at the time you made that comment you thought it was true?

A. That's right.

Q. Thank you.

A. And what I told them, The Inquirer reporter, I thought it was up to a thousand and no more. But that my recollection was hazy. And so after that I checked with the, I checked with two other people, as a matter of fact, who told me it wasn't anything like that. It was the treasurer told me it was like two to four-hundred.

Q. Okay. But you, you knew personally that you were not the only organization that was making these efforts on behalf of Mr. Jamal, did you not?

A. That's true.

Q. Do you know how many other organizations or

Page 242.

groups were collecting money for Jamal's defense?

A. I don't know how many, there were certainly others involved.

Q. Other organizations or other individuals?

A. Other organizations. But also other individuals.

MR. GRANT: Okay. Thank you very much, sir. Thanks for your patience today.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Davidson, let me pick up where Mr. Grant left off regarding the money you referred to. What was your impression of the purpose for this fund that became two to four-hundred dollars?

A. Well, I recall we had some discussions about what should be done with it. And it was my impression then that it was meant primarily for his family. I think his defense was going to be paid for by the State.

Q. So do you know if any money went to Mr. Jackson for his defense?

A. Well, the best I could say on that is that when I spoke with the former treasurer of the

Page 243.

organization he indicated that some money, that he believes some money went to a photographer. He doesn't know if the money went directly to Mr. Jackson. But that some money went to a photographer to take some pictures, I guess of the scene. And then some of it may also have gone to the family.

MR. WILLIAMS: Very well. Thank you very much.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Do you know sir, if I may, that photographer's name or if that photographer's name was William Peraneau?

A. That's what I was told.

Q. And did you know that that Mr. Peraneau was retained and also being paid by the Court of Common Pleas for his efforts?

A. No.

MR. GRANT: Thank you, sir. I have nothing further, Your Honor.

THE COURT: All right, you are excused.

We will adjourn until tomorrow

Page 244.

morning.

MR. WEINGLASS: Your honor, just one last thing. Tomorrow I understand Mr. McGill will be here.

THE COURT: No, tomorrow morning we will continue cross-examination.

MR. WEINGLASS: I know, but sometime during the day tomorrow, hopefully Mr. McGill will be here, I am not sure.

THE COURT: I am not sure, so why don't we wait until tomorrow and see what tomorrow brings.

MR. WEINGLASS: Tomorrow might be too late.

THE COURT: Let's try to get in here a littler earlier.

MR. WEINGLASS: I just make one simple request of the District Attorney. Mr. McGill filed a declaration which went to the Supreme Court of Pennsylvania. We do not have a copy of it in our files. Could the District Attorney provide it to Counsel? It's part of the official record.

MR. GRANT: Not anymore. I am sick of giving them everything. They gave it to us,

Page 245.

that's how I got it. So I am not going to provide it to Counsel.

MR. WEINGLASS: Your Honor, we do not have Mr. McGill's declaration that the Pennsylvania Supreme Court relied upon. May we have a copy of it? It is a very simple document which is part of their records. We from the defense side do not have Mr. McGill's affidavit, which was referred to by the Pennsylvania Supreme Court.

THE COURT: Well, I don't have it either.

MR. WEINGLASS: I know, I am asking the District Attorney to provide it for us.

THE COURT: Well, who was the attorney that represented Mumia in the Supreme Court?

MR. WEINGLASS: In the Supreme Court the attorney was Marilyn Gelb.

THE COURT: Well, ask her.

MR. WEINGLASS: I have asked her, Your Honor, and I represent to you that their office does not have a copy of that declaration.

THE COURT: Well, I don't.

MR. WEINGLASS: I am sure the District Attorney has it. This is a very simple request.

Page 246.

THE COURT: I know that.

MR. WEINGLASS: It is a two page document. They have it in their file, we don't have it. I just ask for it. So that when I question Mr. McGill we don't have to interrupt his testimony for that document to be found. They could find it tonight. It's very simple.

THE COURT: Okay, you try to find it tonight too, will you.

MR. WEINGLASS: Your Honor, I don't have it.

THE COURT: Well, I don't have it.

MR. WEINGLASS: I am not asking the Court for it, I am asking the Court to ask the District Attorney to provide it for us.

THE COURT: You ask the District Attorney.

MR. BURNS: Your Honor, this is a copy of the affidavit for Mr. McGill that was given to the defense.

MR. WEINGLASS: It is wrong, it is the wrong affidavit. You are looking at the wrong -- read the Supreme Court declaration, they referred to it. There is another one.

THE COURT: Go back up to the Supreme

Page 247.

Court and ask them where it is. I don't have it. What do you want me to do, dig something up for you? I don't have it.

MR. WEINGLASS: I want you to perform as a Judge interested in the rights of my client.

THE COURT: I can't force them to give you something that they say they don't have. Go back to Marilyn Gelb and ask her.

MR. WEINGLASS: I have already asked, Your Honor.

THE COURT: Have her in here and let's find out where it is.

MR. WEINGLASS: Don't leave the bench.

THE COURT: Well, I am leaving the bench now because I am tired of this.

MR. WEINGLASS: You leave in the middle of Defense Counsel's argument and you come back when the Commonwealth wants you.

THE COURT: Tomorrow, I said. In the meantime, you look for it. They will look for it, do whatever you have to do.

MR. WEINGLASS: Same old game tomorrow: You will tell me it's too late.

MR. GRANT: You know what, Judge, I

Page 248.

think Counsel needs to be reprimanded. I don't think he understands the rules of decorum and the profession in a Courtroom.

MR. WEINGLASS: I understand the Canons of Professional Ethics.

THE COURT: I understand it. Do you understand you are here by permission of this Court?

MR. WEINGLASS: I understand that.

THE COURT: You could be removed. So please. Don't go too far.

All right.

THE COURT OFFICER: This Court now stands adjourned until 9:30 a.m. tomorrow morning at the call of the Crier.

- - - - -

(The hearing was adjourned at this time.)

- - - - -

Page 249.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

28. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Friday, July 28, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

PETITIONER'S EVIDENCE

WITNESS	DE	CE	RDE	RCE
Anthony E. Jackson, Esq.	--	7	--	--

COMMONWEALTH'S EVIDENCE

EXHIBITS

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
3	FIU report	15
4	Portion of fee petition	38
5	Letter	83
6	Police interview	86
7	Letter	197
8	Letter	198

Page 3.

- - - - - -

(At 10:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - - -

THE COURT: Before we commence I just want to make a few comments as to the proper decorum in this Courtroom. I know yesterday I had said that the families could come in through this back door. After speaking to my security detail, they advise me that that wasn't such a smart idea. Instead, they have set up two monitors out at the front here. The one in the middle is for the family members. The one on the other side is for the general public.

In addition, to you people of the news media, I do wish that you would report the proceedings in here correctly. You said that we had evicted three people yesterday because they refused to sit. We actually evicted four. Three of them were evicted because when they stood up they turned their back to the Court. The fourth one was evicted, was a rather stocky white male who when he stood up gave the Court the Nazi salute. Well, nobody in this Courtroom

Page 4.

will address this Court with a Nazi salute. He not only was evicted but he is told that he could not come back any further in these proceedings. I will not tolerate any Nazi salute in this Courtroom.

I received a memo from the Court Officer today that reads: To whom it may concern. I have an appointment at Hahnemann Hospital Comp clinic today. I must leave at 10:45 a.m. in order to arrive on time. Following that I leave to go to physical therapy at Novocare at Roosevelt Boulevard and Harbison Avenue. I will be available on Monday until 1:45 p.m. when I again leave therapy and also on Tuesday. That's Gary Wakshul.

If anybody wants a copy of this memo, we will give it to you. Otherwise I will just give it to the Court stenographer.

And I have also been notified that Anthony Jackson called at 9:35 and said he would be 15 minutes late. He's here now so there's no problem.

I also read in the news media that there is constant bickering between defense Counsel and the Judge. Well, that's going to

Page 5.

stop. When I make a ruling, that's final. You have an automatic exception. I will not tolerate any arguing about it. The matter, as you all know, is on automatic appeal to the Supreme Court. They will review your objections. I will not tolerate any bickering, there is not going to be anymore bickering. When I adjourn for the day we are adjourned for the day.

Yesterday I had adjourned because of Anthony Jackson. Defense asked that we take a witness Joe Davidson because he was from Washington, DC. I agreed to that -- well, the D.A. agreed and I said okay, fine, we'll do that. When that was finished I wanted to leave. It was a long day. I don't want any motions or arguments at that time. There will not be anymore of that. If a motion is determined at that time it will be taken up the following morning. So everybody understands it. And if you continue to do that, I will have no alternative but to hold you in contempt and fine you. Okay.

THE COURT: All right. Mr. Jackson is here?

Page 6.

MR. GRANT: While he is coming in, Your Honor, I would like the record to reflect that Miss Wolkenstein yesterday asked me, or the Commonwealth, I should say, to record two tape recordings that were made, one of Cynthia White and one of the Police Radio tape, since apparently she didn't have it. We voluntarily complied and I am turning over to her the copies of the two tapes this morning (handing).

MR. WEINGLASS: Your Honor, I just wanted to note that yesterday and again today, the Court quite properly recited the

procedural path that this case might take on an automatic appeal to the Pennsylvania Supreme Court.

THE COURT: It always does, it always does.

MR. WEINGLASS: Right. But I hope --

THE COURT: The case always go to the Supreme Court of Pennsylvania.

MR. WEINGLASS: But I hope that the Court's reciting that now twice does not indicate that the Court has already made up it's mind.

THE COURT: No, I am just telling you for the record that that is the procedure that

Page 7.

Anthony Jackson, Esq. - Cross

we have here.

MR. WEINGLASS: Only if we lose here.

THE COURT: Right. Even if you win here the D.A. is going to appeal and that is going to the Supreme Court.. So it is going to go there no matter who wins or who loses, okay, Counselor.

Where is Anthony Jackson?

- - - - -

Anthony E. Jackson, Esquire, having been previously affirmed, was examined and testified as follows:

- - - - -

CROSS-EXAMINATION (Continued)

- - - - -

BY MR. GRANT:

Q. Good morning.

A. Good morning, Mr. Grant.

Q. Good morning. Yesterday after we adjourned proceedings with your testimony, Mr. Jackson, a Mr. Joseph Davidson testified and he indicated that the Philadelphia Association of Black Journalists collected money for the defense of Mr. Jamal and the amount in question is apparently between two and four-hundred dollars. Now, you requested the Court

Page 8.

Anthony Jackson, Esq. - Cross

by way of a petition for monies to pay for a photographer, did you not?

A. I did, sir.

Q. And that was granted, was it not?

A. Yes, sir.

Q. And how much did Mr. Peraneau receive?

A. I think 150, 200, I really don't recall. Something.

Q. And he was in fact a photographer?

A. Yes, sir.

Q. And he took photographs for you?

A. Yes, sir.

THE COURT: Counsel, I hate to interrupt. Maybe this will help your recollection of what he got (handing).

THE WITNESS: Thank you, Your Honor.

THE COURT: I am handing him his fee petition that he submitted to the Court. It has on there the figures. And it would help me too.

MR. GRANT: Fee petition that Mr. Jackson submitted?

THE COURT: Yes, in this case.

MR. GRANT: Okay.

THE WITNESS: Apparently he received

Page 9 is missing. We will attempt to locate it.

Page 10.

Anthony Jackson, Esq. - Cross

MR. GRANT: Very well.

THE WITNESS: I should point out: Mr. Peraneau didn't get the money until the end of the trial, he probably didn't get it until a year after the trial.

BY MR. GRANT:

Q. He got the money?

A. Yeah, I'm pretty sure, yeah, I gave it to him.

Q. Mr. Jackson, in fact, it is customary, as unfortunate as it is, that even you and all lawyers who are court appointed to represent indigent defendant's have to wait for their money?

A. Yes, sir.

Q. Because we're in a City that at various stages in our history has been nearly bankrupt; you would agree with that, wouldn't you?

A. Yes, sir.

Q. And so it is not unusual for people to wait, including all the lawyers who represent people that you are appointed to, isn't that so?

A. Yes.

Q. So that wasn't a big deal in that case anymore than it was in any other case, was it?

A. With this photographer, no.

Q. May I take a look at that, please?

Page 11.

Anthony Jackson, Esq. - Cross

MR. GRANT: May I approach, Your Honor?

MR. WEINGLASS: If the Court please.

THE COURT: Do you want copies of that?

MR. WEINGLASS: Yes, I would like to.

THE COURT: All right.

Frank, could you make copies of this for everybody.

THE COURT OFFICER: All right, let me have this, Counsel?

MR. GRANT: I will proceed in the meantime, Your Honor.

THE COURT: All right.

MR. GRANT: Thank you.

MR. WEINGLASS: I think the record should reflect that the Court provided a document to the prosecution this morning in aid of it's cross-examination.

THE COURT: I gave it to the witness to refresh his memory. He didn't seem to know what was paid. Since that is his fee petition and he has it on there, I gave it to him to remember.

BY MR. GRANT:

Page 12.

Anthony Jackson, Esq. - Cross

Q. Mr. Jackson, you do acknowledge that pursuant to Judge Ribner's statements to you and from your years of practice and your more or less 20 homicide trials here in Philadelphia prior to Mr. Jamal's case, that the standard fee for experts, the initial fee that was given was $150?

A. I think that's correct, yes, sir.

Q. All right, now, just by the document that you submitted to the Court for your fee payment, you acknowledge that Mr. Peraneau, who is nothing more or nothing less than a photographer, received almost three times that amount; correct?

A. Yes, sir.

Q. And based upon your testimony yesterday, Mr. Greer received practically $500; correct?

A. Ahh, yes, sir.

Q. And that was more than three times the standard initial fee?

A. Yes, sir.

Q. And you said yesterday also that Mr. Fassnacht, who was your alleged expert ballistician, received more than twice what the initial and usual fee was for his services, did he not?

A. I believe he did.

Q. Well, you stated yesterday he received $350?

Page 13.

Anthony Jackson, Esq. - Cross

A. Yeah, okay.

Q. Now, do you know whether any of these experts that were retained by you received any other monies from any other source while working on behalf of Mr. Jamal?

A. I have no knowledge.

Q. By the way, with respect to Mr. Fassnacht, the ballistician?

A. Yes, sir.

Q. You testified on direct examination yesterday, Mr. Jackson, that Mr. Fassnacht received $350 for his services; correct?

A. Yes, sir. Again, I could be wrong, it could have been four.

Q. I won't hold you to that figure.

A. Yes.

Q. But whatever it is, he got money?

A. Yes, sir.

Q. And you then thereafter testified that he looked at no Firearms Identification Unit reports, that is to say he didn't look at the findings on paper of the ballisticians who testified at trial; correct?

A. He looked at whatever I was given.

Q. Pardon me?

A. Whatever I was given he looked at.

Q. Oh. So then he did look at the reports?

A. Yeah, I apologize if I misstated. Yeah, I mean he looked at what I was given in discovery.

Q. And what you were giving him in discovery said that the bullet removed from Mr. Jamal beyond a reasonable degree of medical certainty came from the dead officer's handgun; correct?

A. Ahh -- I don't recall specifically what the report says. I wouldn't imagine that a ballistician would be talking about medical terms but I don't know, I don't recall what the medical report said.

Q. No, they weren't talking about medical terms. A doctor that you brought in to testify on behalf of the defense removed the bullet --

A. Yes, sir.

Q. -- from beneath the skin in Mr. Jamal's back?

A. Yes, sir, I thought you were referring to the ballistics report.

Q. I am.

A. It didn't have medical terms in it, sir.

Q. Oh, I'm sorry, did I say beyond a reasonable degree of medical certainty?

A. Yes.

Q. Beyond a reasonable degree of scientific

certainty.

A. Okay.

Q. That is one of the findings in the report that you gave Mr. Fassnacht?

A. I would assume so. I don.'t recall what's in the report. And I am not disagreeing with you, I just don't know what is in the report.

Q. I appreciate that. And let me see if I can refresh your recollection here if that's possible.

MR. GRANT: May I have this three-page document which I am showing to Counsel which they have already received marked for identification as Commonwealth Exhibit number 3.

THE COURT: You say three pages, that looks --

MR. GRANT: Four pages, yes, Your Honor.

THE COURT: Okay, all right.

THE COURT OFFICER: Do you have it?

(FIU report was marked Commonwealth Exhibit C-3 for identification.)

THE COURT OFFICER: So marked C-3, Your Honor.

THE COURT: Okay. Would you staple that for the lawyers, please.

THE COURT OFFICER: Yes, Your Honor. (Handing).

BY MR. GRANT:

Q. Mr. Jackson, you are being handed what has been marked for identification purposes as Commonwealth Exhibit number 4. It purports to be a firearms, I'm sorry, number 3, purports to be a Firearms Identification Unit examination report. I would like you to take your time and look that over. And based on your work as an evidence technician, I am sure you have seen hundreds, if not thousands, of those, have you not?

A. Yes, sir. Mr. Grant, this does appear to be one of the documents that was given to me. However, I think there were additional documents. I think... there was a property receipt given for the weapon. Seems to me there was something else.

Q. I tell you what it was.

A. This was 13 years ago.

Q. Property receipts for all the weapons, they gave you property receipts for all the fired missiles, both spent shells and fired cartridge casings, bullet jackets, and you gave him Dr. Tumosa's report from the Criminalistic's report whereby he found primer gun residue on the clothing

of both Mr. Jamal and the police officer, which indicated on that report that both gunshots were exchanged from a distance of no more than 12 inches?

A. All right, I will accept that. I knew it was something more than that.

Q. So you gave them that report?

A. Yes.

Q. Along with other reports, he reviewed them?

A. Yes, sir.

Q. And after he reviewed them he didn't tell you what his findings were?

A. No. We had some preliminary discussions but no findings as such because I couldn't afford to have him conduct any examinations or any testing.

Q. Well, when you talked to Mr. Fassnacht, you contacted him and you asked him would he agree to help you in this case with his expertise; correct?

A. Yes, sir.

Q. And when you call somebody up to buy a couch at Strawbridges, and they agree to sell you the couch, don't you ask them how much it is going to cost you?

A. Yes, sir.

Q. Didn't you ask him what his fee was going to be?

A. Yes, sir.

Q. So you knew what his fee was going to be before he looked at those documents?

A. No, sir.

Q. His fee was going to be based on reading all your files, giving you an expert opinion as to what he read, and then he would tell you how much he was going to charge you?

A. No, sir.

Q. Tell us how that arrangement went?

A. Sure. He had to see what documents were available and what work had to be done before he could give me a fee, he didn't know what he had to do.

Q. And what fee did he give you?

A. I don't remember at all. Excuse me. I know as a result of our

having I think two conversations, and his, his analysis of the reports that he had there without doing any independent testing, and providing me with some expert suggestions with regard to cross-examination of the ballistician, we paid him whatever we paid him, 350 or something. I know for him to perform independent tests as well as to review the actual projectiles, as well as the actual weapons and things of that sort of the Police Department, it

Page 19.

Anthony Jackson, Esq. - Cross

was an amount that was extraordinary, I don't know what it was. I mean he might have said a thousand dollars, and at the time that would have been extraordinary. I just have no idea. I really don't.

Q. Well, when he gave you that extraordinary projection, did you file a petition with the Court of Common Pleas and say I need extraordinary bucks to satisfy this?

A. Oh, yes, sir. Mr. Fassnacht was -- I do particularly remember being in front of Judge Ribner. Mr. Fassnacht is well known here in Philadelphia and of course he has performed these tests and things of this sort all over the world. During the time I know that I appeared before Judge Ribner I had asked for additional funds. And I know there was a prolonged discussion. And I was told when I got the extra money that's all I was going to get. And again, I think originally 150 and whatever the extra amount was, that was it.

So I mean I was doing enough things in vain without having to go back to the Court again to ask for something in vain. I mean time was limited. I knew I wasn't going to get anymore money, why go back again.

Q. Because you are so successful at that time and

Page 20.

Anthony Jackson, Esq. - Cross

you are a lawyer, and you know everything in life is negotiable in life, don't you, Mr. Jackson?

A. Yeah, sometimes in life you have to draw a line. Perhaps I drew the line too soon.

Q. Maybe you didn't. Because on the stand yesterday you said we got less, we were operating on a shoestring budget, we received less than $800 for his defense?

A. Yeah, I think that figure was actually lower by looking at the petition.

Q. By looking at the petition, it looks like we are getting to twice that much and we are not exhausting all the experts?

A. I have to look at the petition. It's been 12, 13 years since I have seen that document, I have no idea what is going on.

Q. Do you think that the recorded transcripts of your words uttered in 1981 would be more accurate than your 13-year-old memory stated here today?

A. About how much I received?

Q. About everything involved in this case.

A. Generally speaking, I would say that's true. It doesn't necessarily have to be true. You would have to give me a specific example.

Q. Is it a fact that after you talked

Page 21.

Anthony Jackson, Esq. - Cross

preliminarily with Mr. Fassnacht, that you didn't have anymore discussions with him, not because his fee was extraordinary, but because Mr. Jamal was then acting as his own lawyer and he was going to and told you that he was going to make determinations and talk to these experts?

A. Oh, no. Even if he was his own lawyer, why wouldn't he want me to consult with the expert? I mean he couldn't do it. I mean the answer is no.

Q. I would like to direct your attention, sir, to the notes of testimony from June the 7th, 1982 --

-- at page 86, Counsel --

-- and whenever you would like me to give you a copy of the transcript.

A. Sure.

Q. Wherein you stated, based upon request from Mr. Jackson, I'm sorry, from Mr. McGill, who protested in this fashion to you. Wow, you mentioned George Fassnacht. I have not received any reports at all, Judge. So 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. He goes on to state: I want to make sure that I have all the

Page 22.

Anthony Jackson, Esq. - Cross

facts correct because you protested that Mr. Fassnacht didn't get any money. He says there was some money allotted for a ballistician.

And then you say yes, $350.

He then says well, let's have the report.

You say I haven't gotten the report, up to this point I have no report, written or oral. Mr. Jamal has never spoken to Mr. Fassnacht, through no fault of his own. So there is nothing to provide.

Mr. McGill: He -- meaning Fassnacht -- was engaged three months ago.

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

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 time I have not spoken to him -- meaning Mr. Fassnacht -- because now Mr. Jamal is Counsel, I haven't talked to him.

Does that mean that after Mr. Jamal became his own attorney you ceased any negotiations

Page 23.

Anthony Jackson, Esq. - Cross

with Mr. Fassnacht and left it to Mr. Jamal? Because you mentioned twice during this conversation that Mr. Jamal had not spoken to him, as if that meant something.

A. Spoke to Mr. Fassnacht after that. I spoke to him before that when I had to get the money, when the Court approved the $350. Mr. Fassnacht would not perform, I had to pay the money out of my pocket and received it after the money was received from the Court. As I had to do in a number of instances.

But in any event, I had spoke to Mr. Fassnacht whenever it was, when he said three months prior to that, whatever time it was. Sure I did. I went up to his, to his home. This was during the trial. At that time I was Mr. Jamal's lawyer.

Q. So basically this man did not testify on behalf of Mr. Jamal?

A. No, sir.

Q. He did not look at one single revolver?

A. No, sir.

Q. He did not look at one fragment of a bullet?

A. No, sir.

Q. He did not test fire one weapon?

A. No, sir.

Q. He did not inspect any physical evidence by

Page 24.

Anthony Jackson, Esq. - Cross

way of clothing, gunshot primer residue, whatever you --

A. No, sir.

Q. And you paid him 350 bucks?

A. Yes, sir.

Q. Nice job if you can get it?

A. Well, I think it was cheap at that price. If you know the ballistics. The information he gave me was invaluable during the cross-examination of the witness, it was well worth it.

Q. It was well worth it?

A. Yes.

Q. In fact, he did advise you and consult with you and give you his expertise?

A. I said that, yes.

Q. And he directed you to areas that he thought were ripe for exploitation or attack by you?

A. Yes, sir. It all just made it all the more clear it would have been so much better if I had him to conduct an independent test and perform some other examinations. Couldn't do it. Couldn't do it.

Q. Certainly in the best of all worlds it is always nice to have more?

A. Yes, I guess that's what it is.

Q. But when you coupled his expertise and his

Page 25.

advice to you -- and he is a world-renowned expert, is he not?

A. Yes, sir.

Q. When you coupled that with your experience as an evidence technician and knowing what of necessity is done and should be done, that in fact gave you more of an edge than the average lawyer would have because of your expertise coupled with his expertise, did it not?

A. Probably did.

Q. And you kept Mr. Larry Paul on the witness stand and cross-examined him on behalf of Mr. Jamal to a fare-thee-well, didn't you?

A. Did the best I could, sir.

Q. Now, you said yesterday, sir, that you couldn't hire a pathologist and you contacted and attempted to solicit at least six of these people to give you an expert medical opinion beyond a reasonable doubt of medical certainty on behalf of Mr. Jamal; is that correct, sir?

A. That is correct, sir.

Q. Name two of them?

A. I couldn't name one of them, I couldn't actually even name the one I talked to.

Q. How do you know you actually talked to

Page 26.

anybody?

A. Because I said so.

Q. How about the doctor in Pittsburgh that you contacted who said I will give you an opinion -- much like Mr. Fassnacht, I might add -- I won't come and testify for you, I won't look at any physical remains of Mr. Faulkner, I won't come in to Philadelphia, but I will look at all the information you provide me, pathology report, a toxicology report, ballistics reports, and I will give you an opinion by phone: You stated that yesterday?

A. Yep, that's essentially it, yeah.

Q. And what was his name?

A. I have no idea at all.

Q. Well, did you take him or her up on that offer?

A. Yeah, I mean I mailed the materials to him. So I mean his name would be in the file. I have no idea, I just don't recall the name, sir.

Q. Well, the name is not important.

A. Yes, sir.

Q. You in fact, after having mailed those reports to him --

A. Yes, sir.

Q. -- had further contact with him and solicited

Page 27.

and received his expert opinion, did you not?

A. Yes, sir, based on the documents that I sent him, I had a telephone discussion with him. And, generally speaking, the discussion just reviewed what was in the reports. And I don't recall that there was anything in our discussion that was particularly noteworthy. Since, again, he was reviewing old documents and not the actual specimens and things of that sort. As far as I know, the information perhaps turned out to be not as significant as I would have wanted it to be.

Q. Merely reviewed the documents. What do you mean, he wrote you a letter and called you up and said you sent me items one, two, three, four and five, thank you very much, I'll take 350 bucks?

A. No.

Q. What do you mean by review?

A. I guess he looked them over and reviewed it. You know, looked at the pages, read them. I don't know if he did any comparison. I don't know what a pathologist does with information like that. Whatever those guys do.

Q. You do too, Mr. Jackson?

A. I don't know what he does with the report.

Q. Well, you know he reads it, for one thing?

Page 28.

A. Yeah, I said it, and you questioned what I meant. I don't know what other word to give you.

Q. Tell us what opinion did he give you, did he tell you?

A. He gave me nothing other than response to a telephone call.

Q. Did he tell you that Police Officer Faulkner was not dead?

A. I don't think he said that.

Q. Did he tell you that the cause of death was not a gunshot wound?

A. No, sir.

Q. Did he tell you that in fact a bullet was not taken from the brain of Officer Faulkner?

A. No, sir.

Q. What did you expect him to say even if he had agreed to testify for you with any reasonable degree of medical certainty?

A. Mr. Grant, that's why I hired a pathologist. Because I am not a pathologist, I don't know what he was going to tell me. Pathologists do their pathology thing, I don't know.

Q. How much did you pay him?

MR. GRANT: Indicating for the record Mr. Jackson is reviewing his fee petition filed

Page 29.

with the Court.

(Pause.)

THE WITNESS: I assumed it was $150. It is not recorded on the petition that I filed with the Court.

BY MR. GRANT:

Q. But you do recall having paid the man for his services?

A. Yes, sir. I don't know whether it was 150 of the -- I think it was about 150. Whatever the Court approved, whatever the amount was that was approved, that's the amount that I paid him. And again, I had to do the same thing with him as I had done in other instances: I had to pay him the money then. I think it was $150, Mr. Grant.

Q. Okay. So now we are up around what? Let me see. 450, 350, that's 800, photographer, Fassnacht. We got 450 for the investigator. That's around 1,200. Now we have 150 for the pathologist so we are up around 1,400. Did you retain the services of, that you paid for, of any other experts in your pursuit of a defense for Mr. Jamal?

A. I don't think so. I don't...

Q. When I say did you pay for: Did the Court of Common Pleas, did the Citizens of Philadelphia pay

Page 30.

Anthony Jackson, Esq. - Cross

for any other experts?

A. No. According to this petition, Citizens of Philadelphia paid 562 for an investigator, $400 for a photographer, and 350 for a ballistician, and that was it.

Q. So the investigator got nearly $600 now?

A. Yep, that's what it looks like.

Q. And that doesn't include what if any retainers he received -- and I am referring to this letter you sent to Mr. Steven Collins -- that was not counting if he received any retainers from the Mumia Abu-Jamal Defense Fund?

A. I could only tell you what this document reflects. I have no idea what he got from anybody else.

Q. Now, you testified on direct examination, Mr. Jackson, that in addition to making a request for additional monies for experts, you also petitioned the Court for the services of another lawyer to help you, counsel, associate --

A. Yes, sir.

Q. And that was denied, you stated; is that correct?

A. Yes.

Q. Can you explain this statement made by you on

Page 31.

Anthony Jackson, Esq. - Cross

June 22nd, 1982? Page 5.022. Quote, Your Honor --

MR. WEINGLASS: I'm sorry, give that cite.

MR. GRANT: 6-22-82. Page 5.

BY MR. GRANT:

Q. Your Honor, Jonathan Black, a member of the Bar, is going to assist me in further cross-examination. I will continue to do the questioning, Mr. Black is going to assist me in some other matters.

Now, you said that from that table right there, and he was with you?

A. Yes, sir.

Q. So my question is: The same person that you petitioned to assist you, perhaps without money, but he was assisting you; is that correct?

A. That day.

Q. Oh, that one day he was here?

A. That one day, sir. Mr. Black has been a life-long friend, high school, college, law school together. We were partners. Mr. Black assisted me that one day.

Q. I see. So your request that he assist you by way of your petition was not in fact denied, what was denied was Mr. Jamal's right to have two lawyers work

Page 32.

Anthony Jackson, Esq. - Cross

for him at the City's expense?

A. When I filed the petition it had nothing to do with Mr. Black. Mr. Black didn't take any Court appointments anyway. So it wasn't for him. I filed a petition for the services of another lawyer. I didn't tell them anymore about it.

Q. And he gave it to you?

A. No, the Court did not give me any help. The request to the Court was made prior to the date Black, Black came in and assisted me during the trial. The request for additional counsel was made before trial.

Q. I know, but in fact Mr. Black did come in and assist you during the trial?

A. That one day, yes, sir, yes, sir.

Q. So June 3rd when you informed the Court that the Defendant was out an investigator or something, or ballistician, and no funds were made available, by your very fee petition that statement was not true, was it?

A. No, that -- I'm sure I wasn't trying to mislead this Court. I am sure this Court, I asked Judge Sabo and Judge Ribner a number of times for money. So if I said that there were no funds, that was just a slip; it was no secret that I got whatever

Page 33.

Anthony Jackson, Esq. - Cross

I got.

Q. And which Judge is the one that gave you these additional increments of money? Judge Sabo? Judge Ribner? Judge Ribner was the calendar Judge, Judge Sabo was the trial Judge.

A. I. . .

Q. It was Judge Sabo, wasn't it?

A. It may have been, sir, I just -- it may have been. Because I think in fact when I did go back -- and that was part of the problem, I filed the original petitions with Judge Ribner. When I asked for additional amounts he said see the trial judge. Well, who is the trial judge? In the beginning there was no trial judge. And then after awhile he said well see the trial judge and it was Judge Sabo. And then we had to, I think it was three weeks after we were assigned, it took about three or four weeks before we even got to Judge Sabo. So, well...

Q. So you could say, based on yesterday's testimony, in which you stated after my initial request Judge Ribner put it off on Judge Sabo --

A. Yeah, I think there may have been one or two -- I think all of the requests for funds, the additional amounts for funds were sent to Judge Sabo. I think.

Page 34.

Anthony Jackson, Esq. - Cross

MR. GRANT: Okay. If I may, Your Honor, I would request that the fee petition submitted by Counsel be marked as Commonwealth Exhibit number 4 for the purposes of this Post-Conviction Relief Act hearing.

MR. WEINGLASS: Your Honor, I am going to object to this. First the Court facilitated the cross-examination by the Commonwealth without even being requested by Commonwealth Counsel, the Court on it's own brought in an exhibit to help the Commonwealth. Now this petition for fees is a matter that should not be presented publicly because it is a petition that an attorney files with the court in order to obtain reimbursement for expenses and his fee. So I believe this petition ought to be protected by the Court. I don't think it was appropriate to bring it here in the first place.

THE COURT: You are saying it's not public property?

MR. WEINGLASS: Yes, exactly.

THE COURT: I disagree. It is public property.

I just wanted to correct the record: I only gave it to Mr. Jackson because I saw he

Page 35.

Anthony Jackson, Esq. - Cross

was having difficulty remembering what the fees were. How could he remember 13 years ago. So I gave it to him as an assistance.

MR. WEINGLASS: Exactly. But this is what happens all too often here. The Court brings in a document to assist the witness, then the document is given to the prosecution.

THE COURT: I gave it to both of you. Since you asked for it.

MR. WEINGLASS: Yeah, but we hadn't requested it and we are not doing the cross-examination. You gave it as an aid to the party who is doing the cross-examination, who is the Commonwealth. After that happened --

THE COURT: I gave it, I gave it to the witness.

MR. WEINGLASS: Yes.

THE COURT: I didn't give it to the Commonwealth.

MR. WEINGLASS: But now the Commonwealth has taken it

from the witness. And now the Commonwealth seeks to make it an exhibit. So the Court started a process.

THE COURT: Well, let me say this: It's already an Exhibit with the Court. Because

Page 36.

these are Court records. This is filed with the Court.

MR. WEINGLASS: This is filed with the Court, but as I understand it, Your Honor --

THE COURT: There is no privilege here. No. There is no privilege.

MR. WEINGLASS: In order to preserve the sanctity --

THE COURT: This is no sanctity. These are public funds that are expended. And it's public record.

MR. WEINGLASS: Yeah. But you see, Your Honor, these matters are not ordinarily given to the Commonwealth. Because when you give them these matters, they now know how a defense is structured. They now know of resources that the defense spends. You read this and you know just what calculations were made by a defense side in a trial. What was important, what they spent time on. Now we are going to get --

THE COURT: Wait awhile. Are you saying this is a lie?

MR. WEINGLASS: No, I am not saying that at all. I'm saying it's the truth. But it

Page 37.

is a truth that if we have a new trial, will put Mr. Jamal with a disadvantage because now the Commonwealth will see what the defense spends it's money on. And will be able to calculate in our new trial just what the defense strategy will be. This should never be turned over to the Commonwealth without reason. So I object to their being given this document and I object to it being put into evidence.

MR. GRANT: Your Honor, if I may: First of all, I don't have to try to speculate and calculate on what defendant lawyers do. Because I was a Federal Public Defender for years. I know what they do, because I do it, I have done it. There is no mystery.

And if it makes Counsel rest any easier, I will only ask that portions be admitted with respect to monies paid for experts to assist Mr. Jamal's defense. Since one of the averments in their Petition is that inadequate funds were made available to these individuals to help Mr. Jamal. Clearly there's no attorney-client privilege anymore. He is saying that lawyer was no good. We have a right to see if in fact that allegation is true. Mr. Jackson

Page 38.

is testifying on behalf of them that yeah, you are right, I wasn't no good, I didn't spend the money. And now we are finding out now that he spent adequate sums and more than the average person gets.

I certainly think this is admissible evidence. It is material, it is relevant, and I can't even think of a legal excuse why an objection should be sustained.

THE COURT: All right, it is admitted for the limited purpose that you say, all right.

MR. GRANT: Yes, Your Honor.

(Above-described portion of fee petition was marked Commonwealth's Exhibit C-4 for identification.)

BY MR. GRANT:

Q. Now, Mr. Jackson, you said that basically you had a conversation with Mr. Fassnacht and he looked at the documents. And that was the extent of his money, that was before the trial, that was the extent of his time contributed and that was before the trial; correct? You could refer to what's been marked as C-4.

A. I don't think it's any -- no... I know I originally talked to George whenever I filed the

Page 39.

petition. I'm assuming that I talked to him when I went up to his home. And again, I think I went up there twice. I am assuming that I did it before trial.

I just don't know, Mr. Grant. I really -- I would assume I did, I just don't know.

Q. Have you practiced civil law?

A. Yes.

Q. You practice criminal law?

A. Yes, sir.

Q. And you have retained experts in both fields?

A. Yes, sir.

Q. And when you have an expert and the expert is going to testify on your behalf and he is going to assist you and counsel you, the law, the rules of evidence provide that you must turn over his report within a reasonable degree of time, because we don't have trials by ambush, we have trials by discovery; correct?

A. Yes, sir.

Q. And true lawyers, and good lawyers, and these aren't lawyers who are doing anything bad --

A. Yes, sir.

Q. -- have oral consultations with their experts and have a conversation something like this...

Page 40.

A. Yes, sir.

Q. Did you look at the materials I sent you. Yes, I did. Did you come to any conclusions. Yes, I did. What are they. X. Are they helpful to me. No. Well, I don't need a report. Thank you.

Now, that happens all the time, doesn't it?

A. I guess with some folks it does.

Q. It's happened for you?

A. Not in this instance.

Q. Not in this instance?

A. That's right.

Q. But you were consulting with this man right up to the very day of the penalty hearing, weren't you?

A. Mr. Fassnacht? Up to the penalty stage?

Q. Yes.

A. I don't know why I would be ---

Q. Because, I could tell you why you might be.

A. Let's not speculate.

Q. Okay, let's not speculate. He was operating from a corporation or a company called Keystone State Arms Consultants, was he not?

A. Yeah, I think that's what he calls his company.

Q. And I don't know if yours are marked, and

Page 41.

since this is not paginated, I am going to give you my copy, which I have. The old tab mark is on it, if I may. And I would like you to look at your figures as to the dates and times when you had correspondence and consultation with Keystone Arms Consultants (handing).

First one is a letter to you with a bill that says give me 350 bucks, it is from Mr. Fassnacht?

A. Yes, sir, April 2nd.

Q. Okay. Now would you go to the next tab, please. And you will see now an hourly breakdown that you provided the Court as to those times when you consulted with Keystone Arms Consultants; correct?

A. I'm sorry, sir, what is the next?

Q. The tabs are clearly marked in those areas, sir. And red ink is highlighting the entries you made with respect to Keystone.

A. Well, I'm looking for Keystone. You have a lot of tabs that are marked with red.

Q. A lot of Mr. Fassnacht's consultations.

A. Oh.

Q. And they go up until June 30th. You could look that over for yourself and tell me if you agree

Page 42.

Anthony Jackson, Esq. - Cross

with that?

A. I'm looking at it. Preparation, filing, complaint, police department. That's one of the tabs. I thought they were all about Mr. Fassnacht.

Q. Well --

A. Mr. Grant, I'm looking for it, I am not trying to be -- all right, I'm sorry. Here it is. March 30th, consultation with people and Keystone.

Q. Yes, sir.

A. That's on the 30th of March.

Q. How much time, how many hours did you put in for that payment?

A. For him and the others, 3 point -- 3.5.

Q. March 30th, right?

A. Right. And for him and what, four people?

Q. However, he was first retained and monies made available on January 20th, 1982; correct?

A. No, sir.

Q. Well, that was when the Judge, Judge Ribner signed the order granting your fee petition, your petition?

A. Yes, sir. I could go through this again if you want about when the petition was signed and when he was retained. Mr. Grant, I will just refer you to the letter you just gave me. It says he received

Page 43.

Anthony Jackson, Esq. - Cross

some money. This is a bill in April so you know he didn't receive the money in January.

Q. So he had to wait until the end of the trial?

A. Pardon me?

Q. So he did not wait until the end of the trial?

A. No, that is the problem.

Q. When is the next time that you consulted with him, that is Keystone Arms Consultants? We have one day now: March 30th.

(Pause.)

A. June 2nd.

Q. And how many hours did you spend with him?

A. Two hours.

Q. Go to the next tab, please. What date is there?

A. June 30th.

Q. June 30th. Did you know that the trial ended, closing statements were given on July lst?

A. No, I didn't know. I don't recall.

Q. Would you take my word for it?

A. Yeah.

Q. Did you know that June only had 30 days then and only has 30 days now?

A. I'll take your word for that too.

Q. So the next day, that day that the trial was

Page 44.

Anthony Jackson, Esq. - Cross

over, the day before that you were still talking to Mr. Fassnacht, weren't you, for how many hours in that day?

A. 1.5 hours.

Q. Do you know how many words could be said in seven hours?

A. I know I could say a lot of words: I talk fast.

Q. Does Mr. Fassnacht?

A. No.

Q. So you spent seven hours with him, and you were deciding or consulting and being advised by him and deciding whether or not it may be worth putting him on the stand up until the very day closing arguments were given, isn't that so?

A. Mr. Fassnacht was never going to take the stand, I couldn't afford to put him on the stand.

Q. Okay, all right. So you would admit upon reflection and with your memory being refreshed that your statement to the Court on June 3rd before the trial actually started that you were without experts and no funds were made available was not true?

A. Again I will say say that, yes, and I am sure the Court was aware that if I said no funds were available, I'm sure this Court knew that that wasn't

Page 45.

Anthony Jackson, Esq. - Cross

true since this Court had already approved funds, and Judge Ribner. Look, if I said that I was incorrect.

Q. Mr. Fassnacht also went up and spent some time with the Defendant, didn't he?

A. I don't remember.

Q. Do you remember requesting from Judge Sabo a Court order to allow Mr. Fassnacht to go up to the cell room or the prison, he didn't like going to the prisons, he preferred to meet with the Defendant in a courtroom, that was denied so then you asked for him to go up to the cell room and an order was in fact given; do you recall that?

A. I don't. I'm not denying that it happened, I just don't remember.

Q. I don't want there to be any question. And I would direct your attention to...

(Pause.)

MR. GRANT: I seem to have lost a document or two.

(Discussion held off the record at
this time among Commonwealth's Counsel.)

MR. GRANT: The Court's indulgence, please, Your Honor. I'm sorry.

(Pause.)

BY MR. GRANT:

Page 46.

Anthony Jackson, Esq. - Cross

Q. Do you have some of my notes up there, Mr. Jackson?

A. These (displaying)? I was trying to get some more of them. Yeah, I have some, ballistics report and --

Q. I will take some of them.

A. (Handing.)

Q. I am going to have to get back to that, I don't know what I did with my documents.

MR. GRANT: I will move along, sir, we will return to that area.

BY MR. GRANT:

Q. In your affidavit on page 2, Mr. Jackson -- which was only executed a couple of months ago?

A. Yes, sir.

Q. April 17th, I believe you said. I will digress for a moment: I think I found my document. With respect to whether or not Mr. Fassnacht advised Mr. Jamal at the prison, I would like to direct your attention or invite your attention to June lst, 1982, page 99. And thereafter the following day, to June 2nd, 1982, page 2.78 and 79.

Mr. Jackson to the Court: George Fassnacht is a ballistician and he was appointed as a

Page 47.

Anthony Jackson, Esq. - Cross

ballistician for Mr. Jamal.

I guess that in fact was not true, right, since he really didn't work for Mr. Jamal and do too much, right?

A. Well, I guess the Court appoints -- I don't know whether the Court appointed him or they just appointed a ballistician.

Q. Mr. Jamal had never spoken to him. On the next day, Your Honor, during the lunch period the ballistician by the name of John Fassnacht -- now this is Mr. Jamal speaking -- he is mispronouncing his name but he is talking about the same individual -- wanted to meet with me. The issue is he tried to see me during the lunch hour and he couldn't get in to see me. I need an order from the Court so I could meet him.

The Court: I don't see why you need one. Implying that if he is your expert, Mr. Jackson is working with him, they should let him in. But I will give you one anyway, all right.

And thereafter there was an order in the Quarter Sessions file, which has been marked as Commonwealth Exhibit 1 in this case, verifying that the order was signed. Do you know of any reason why the order was not complied with?

Page 48.

Anthony Jackson, Esq. - Cross

A. No. I, I just, I draw a blank on it.

Q. You just have no recollection?

A. No, sir.

Q. Okay. That's fair enough. Now, in your affidavit on page 2, sir, supporting the Post-conviction Relief Act alleged by Counsel Mr. Weinglass, you state either I can not or did not know how to effectively obtain additional funding for experts.

You wrote that, didn't you?

A. Yes, sir.

Q. And that's totally untrue, isn't it?

A. I still think it's true.

Q. Well, you got more money than everybody else usually gets for these kinds of things, now why did you say either I could not or did not get more money when you knew Judge Ribner's statement to you was Counsel, I will give you the initial fee, if you need more money and it is a reasonable expense, and you itemize a bill as to how the money is being spent, we will give you more money? Isn't that what he told you?

A. That's what he told me. Sir, I said that was true in the affidavit. That was true then, it is still true today. The fact that I had gotten more

Page 49.

Anthony Jackson, Esq. - Cross

money than I had gotten in other cases before doesn't mean it's enough. And the record reflects that I spent seven hours with George Fassnacht and what did he get? 350. And you said that was an exorbitant amount of money. I don't think that it was. This was a trial, as you know, that had 150 statements in it. There was a lot of work to be done. A lot of work. And we are talking about $150 for a pathologist?

Q. No, I agree with you that seems like a relatively paltry sum.

A. You are talking about, what's the amount for the ballistician? Mr. Grant, I am not going to even argue with these amounts of money. If you think that's enough money for these experts, so be it.

Q. I am not saying that's enough money, I'm saying that your representations were untrue and --

A. No, they weren't, sir. I couldn't get another dime.

Q. Okay.

A. Another dime. Not another dime for anybody. If I could I would have gotten the money, I'm not a fool.

Q. Now, yesterday you said you had to review over 150 witness statements and interviews?

Page 50.

Anthony Jackson, Esq. - Cross

A. I think it was about that.

Q. Well, all you had to do was read your own words from the affidavit you submitted in this case and which you looked at yesterday and it is limited to a hundred, so now your work is cut down by 33 percent; do you recall --

A. I don't know whether it was a hundred, a hundred and fifty pages.

Q. Maybe it was 200?

A. Maybe it was 200.

Q. It could have been 500?

A. I don't think it was that many. I don't know how many pages it was, I am talking about how many statements. I don't know. I did not count it. I didn't know I would be required to count them. I didn't count them then, I didn't count them now: Forgive me.

Q. I wasn't counting either but you wrote it down?

A. All right, I approximated. I guessed that.

MR. WEINGLASS: Your Honor, the affidavit says over 100, over 100 witness interviews were turned over in discovery. So it's Counsel who is mistaken, not the witness.

MR. GRANT: That's what I said.

Page 51.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: Over 100. You said 100.

MR. GRANT: Oh, okay.

MR. WEINGLASS: But throughout this cross-examination Counsel has been shaving the actual record.

THE COURT: Counsel, you have a right to redirect if you want to bring something out.

MR. WEINGLASS: And I appreciate that, Your Honor.

THE COURT: Okay.

MR. WEINGLASS: But Counsel cannot ask a question which misstates the record.

THE COURT: All right.

MR. WEINGLASS: That is fundamental.

THE COURT: Would you ask him the question again.

MR. GRANT: Yes.

BY MR. GRANT:

Q. In your statement, your affidavit supporting Mr. Jamal's claims, you state that there were -- I will ask you precisely -- you state that there were in excess, that there were... oh, here it is. Over 100 police interview?

A. At the time that's what I believed the number

Page 52.

Anthony Jackson, Esq. - Cross

to be.

Q. I shouldn't have said that there were only 100, I should have said there were over 100. What does that mean, l0l? ll0?

A. It could.

Q. My guess was as good as yours, wasn't it?

A. That's it.

Q. All right. You state on your affidavit, page 2, the last paragraph, that because the witnesses' addresses were deleted from the statements that you were given, this resulted in your investigator spending most of his limited budget, nearly $600 by your estimation, searching for a single witness?

A. He spent a lot of time looking for Sandra White.

Q. You said most of his limited budget looking for one-witness?

A. Yes, sir. She never gave the Police Department the correct address. He found out where she lived. And he did visit her a number of times.

Q. Oh, he did.

A. He visited the house, I'm sorry, the house.

Q. So he wasn't looking for her because he knew where she was?

A. Well, first of all it took him a little while

Page 53.

Anthony Jackson, Esq. - Cross

to find out where she actually lived because she never, out of all those arrests she had -- and I think there might have been 26 arrests -- but she never gave her proper address.

But in any event, when he went to the house she was living she was never there. I would characterize it as looking for her; you characterize it some other way. So be it. She wasn't there.

Q. I am reading your words, Mr. Jackson.

A. I may have misspoke, then. Now, he went to the house looking for her and she wasn't there. That's what he tells me, sir, I wasn't with him.

Q. Well, how much of his time did he spend looking for the house before he found out where she lived?

A. I have no idea.

Q. So he may have found the house the second week he was looking for her?

A. He could have, yeah. I mean you are right, I just don't know.

Q. So most of his time wasn't spent looking for - that person where they lived?

A. Well, I don't know, Mr. Grant.

Q. Well, Mr. Greer says in his affidavit that he located her and there were always two plainclothes

Page 54.

Anthony Jackson, Esq. - Cross

police standing around protecting her while she prostituted herself on the corner of 12th and Locust?

A. That's where she was working. I am talking about when he went to her house.

Q. If you are an investigator -- and you have been one?

A. Yes, sir.

Q. -- you assume a lot of poses, and you suggested yesterday that maybe he used the Mumia Abu-Jamal Defense Fund to get access and entre to certain circumstances, so he could investigate this house, or he could just visit her where she works, in the hotel, if she uses a hotel -- he is an investigator, so what are you talking about?

A. You need to ask him. I don't -- fine, you are asking me to tell you why he didn't talk to her. I don't know, sir. He saw her a number of times on the corner working and he didn't talk to her. Why, I don't know.

Q. I am asking you why you wrote down he spent all this time doing this and you don't know what he did, that's all I am asking you?

A. Say it again, sir. I misunderstood.

Q. You made representations about what he did and spent his time on?

Page 55.

Anthony Jackson, Esq. - Cross

A. Yes.

Q. And now when I ask you directly what it is you profess ignorance, that's what I am asking you?

A. I am not professing ignorance. I will tell you once again, Mr. Grant, I will tell you once again. Mr. Greer told me that he spent most of his time looking for Cynthia White. Now, I am professing any further ignorance beyond that. I was not specifically there. I can't tell you where and when he looked for her. I know he saw her once at 13th and Locust Street. That's what he told me once. You have the reports, I don't know what else I could tell you.

Q. On May 13th Mr. Jamal became his own lawyer, at least he petitioned the Court to become his own lawyer, and that petition was granted by Judge Ribner.

A. Okay.

Q. Now, from December the 9th of '81 until May 13th, what's that? Five months. Five months. Now, you say in your affidavit, sir, that at the time of trial you were kept busy each evening feverishly reviewing over 100 police interviews as well as abundant materials on forensic and physical evidence, which, you gratuitously add, which had been earlier

Page 56.

Anthony Jackson, Esq. - Cross

turned over in discovery. And then you --

MR. WEINGLASS: What page are you reading, Counsel?

MR. GRANT: Well, you filed the affidavit, sir. Page 4.

BY MR. GRANT:

Q. Now, if you were feverishly from night to night pouring over these documents, pouring over these documents preparing yourself for examination, what were you doing for five months and four days prior to that time?

A. You really want me, you really think I know what I was doing?

Q. Well, no, I don't think I know what you were doing, I think you did a lot more than you are admitting here on direct examination. That's why I'm asking you. I think you put substantial work into this case and I could tell by your cross-examination, sir. Now, you tell us what you did?

MR. WEINGLASS: Objection, Your Honor.

MR. GRANT: I will withdraw that statement. Move to strike it.

BY MR. GRANT:

Q. Tell us what you did?

A. Okay, Mr. Grant, as best as I could recall,

Page 57.

Anthony Jackson, Esq. - Cross

when I was appointed by the Court to represent Mr. Jamal I reviewed the statements, as any lawyer would do. I did not review every statement in this case prior to trial.

Q. When you say review --

A. Read them.

Q. This is a term that we use as lawyers?

A. Okay, I read them.

Q. And usually, basically, is applied to civil law but we do it too. It's like what I did (displaying) with the notes of testimony from this trial: We call it digest and index?

A. Right, I did not do that immediately.

Q. Well, how many times did you read the reports? You must have read each report ten times at least?

A. At least.

Q. Mr. Jackson, you are a thorough lawyer, I have seen you operate, I know you must have read them 10 times, and I am glad you admitted it.

A. Yeah.

MR. WEINGLASS: Your Honor, the person conducting the questioning is testifying. That is not allowed.

THE COURT: Mr. Jackson said it is true.

Page 58.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: I have seen your work before, I know you are thorough. He is acting as a character witness. That is not permitted. He could ask questions, not make statements.

THE COURT: I understand that.

MR. GRANT: I will proceed, Counsel: The objection is well taken.

BY MR. GRANT:

Q. You read each statement at least 10 times, didn't you?

A. Yes, I read the statements over a lot, Mr. Grant.

Q. Mr. Jackson, you had just left an institution where you had worked for three or four years, you had a substantial reputation for being an excellent lawyer litigating against the Police Department of Philadelphia, had you not?

A. Yes, sir.

Q. And now you were going out on your own for the first time? More or less?

A. More or less, yes, sir.

Q. And this case was probably one of the biggest events in the criminal justice system in the City of Philadelphia for a quarter of a century, wouldn't you agree?

Page 59.

A. Indeed it was, sir.

Q. And if you succeeded and did a good job, whether you won or lost, because all lawyers are also businessmen, this could have been an immeasurable boost to your career, couldn't it?

A. I'm sure, I'm sure it could have. But I had a bigger problem. A problem -- go ahead, I'm sorry.

Q. And therefore you had every interest and every incentive to do the best job that you could possibly do?

A. Yes, sir.

Q. And you determined to do that, didn't you?

A. Yes, sir.

Q. Now, you state, when I became backup Counsel -- this is in your affidavit --

I don't have the page marked here; if I read it you will recognize it, Mr. Weinglass, where it is.

-- you state, when I became backup Counsel, I assumed that my responsibility for trial preparation was over, and hence I abandoned all efforts. What do you mean by that?

A. It means --

MR. WEINGLASS: The proper reading is all efforts at trial preparation. Counsel only

Page 60.

reads portions.

MR. GRANT: Isn't that what I just asked him?

MR. WEINGLASS: No, it is the gist of what --

MR. GRANT: No, it is not the gist.

THE COURT: Read it over again, Counsel, please.

BY MR. GRANT:

Q. I will ask you it my way.

A. Sure.

Q. This is what I want to ask you. When you became backup Counsel --

A. Right.

Q. -- according to the affidavit you filed with that man two months ago or three months ago, you said in effect, I abandoned all efforts at trial preparation and you assumed your responsibility for doing so was over, did you say that?

A. I did, sir.

MR. GRANT: Mr. Weinglass, would you leave me alone.

BY MR. GRANT:

Q. What did you mean by that?

A. Well, just as I said to you yesterday, again,

Page 61.

in that never-never land of being backup Counsel, I told you I was just going to sit back with my hands folded (indicating).

Q. You were going to do that when you knew what this meant to both your career and the person you had come to befriend?

A. Sir, when I am backup Counsel it didn't mean much to me at all. I was put in a position I didn't want to be in. I was no good. I wasn't doing myself any good, I wasn't doing him any good.

Q. It didn't stop you from submitting a fee petition, did it?

A. The Court was ordering me to be there. I didn't mean at the present time I didn't want to be there. If they are going to make me be there they are going to pay for it.

Q. But in fact you were advising and consulting him and you were assisting him, and you know there are notations in the record -- have you read any of the record since yesterday?

A. No, sir.

Q. Do you intend to read any of the record while you are a witness in this case?

A. I didn't hear you.

Q. Do you intend, do you intend to read any of

Page 62.

the record of your performance or the transcripts of these proceedings while you are a witness in this case?

A. If I could get out of it without reading anymore, believe me I will. I don't need to read anymore, trust me.

Q. Let me read something to you.

A. Okay, I figured that was coming.

Q. You then go on to state in your affidavit -- and I am paraphrasing --

MR. WEINGLASS: Beg your pardon.

BY MR. GRANT:

Q. I am paraphrasing because I don't really care about the exact wording, Mr. Jackson, I am concerned about the gist.

MR. WEINGLASS: If the affiant gave a sworn statement, if that affidavit is true, I believe you have to give him the precise statement of the words, otherwise it is not proper impeachment.

MR. GRANT: Could Counsel cite some law for that proposition?

MR. WEINGLASS: You can't paraphrase and say you are impeaching at the same time.

MR. GRANT: This is Mr. Weinglass on

Page 63.

evidence, Judge. I never heard this rule.

MR. WEINGLASS: Let the record reflect that there was a loud laughter from the right side of the Courtroom and no admonishments from this Court. This Court only admonishes the left side of the Courtroom. But when the friends of the Fraternal Order of the Police laugh, the Court laughs with them, without comment. I think the record should reflect that. It's happened before.

THE COURT: It is not the exact record. There was an outburst from the right side. And I will caution them.

Please; no comments.

Your own client has been spotted laughing at this. Because I have been watching him. I have been watching you.

MR. WEINGLASS: And he smiles and he laughs with his supporters, but they get an admonishing. But when the persons on the other side of the Court make --

THE COURT: The admonishing is when they give a loud disruption of the proceedings.

MR. WEINGLASS: There was a loud laughter in this Courtroom. Much louder than

Page 64.

I've heard from the other side.

THE COURT: All right, I am admonishing everybody. No laughing, no speaking out, no nothing.

And that goes for you too, Mr. Weinglass.

MR. GRANT: May I proceed, Your Honor?

THE COURT: Sure.

BY MR. GRANT:

Q. You further state words to the effect of the Defendant had at some point authorized me to assume his role...

A. Thanks. I'm sorry.

Q. It's all right. The Defendant authorized me to assume his role for the limited purpose of voir dire?

A. Yes, sir.

Q. And would it be fair to say that that means Mr. Jamal said to you okay, Jackson, you can finish asking these Jurors questions so we could pick a Jury, but I want you to know that after that I'm the lawyer again?

A. That's right.

Q. That's what it means to you?

A. Yes, sir.

Page 65.

Q. Well, where does Mr. Jamal get the authorization to dictate the rules of your profession and mine, and to tell you what your duties are going to be over and above the Courts that control your behavior?

A. I believe since he got it from Judge Sabo.

Q. Oh, he did?

A. Yes.

Q. Let me refer you to page 6-28. I'm sorry, June 28, 1982, page 28.4.

MR. GRANT: And this is a quote, Mr. Weinglass.

MR. WEINGLASS: Could I have just one moment. What was the page?

MR. GRANT: Six -- I'm sorry, page 28.4. Four-zero, 40. I am not going to waste time.

MR. WEINGLASS: I appreciate that. It is not the first time.

BY MR. GRANT:

Q. The Court: I told you initially that when I appointed you as Counsel -- speaking to you, Mr. Jackson -- and this is in response to your belief that Judge Sabo told Mr. Jamal oh, it is only going to be for this limited time period -- I told you

Page 66.

initially when I appointed you as Counsel once you became Counsel you were going to follow this thing all the way through. I think it's only fair that the continuity of the representation of this Defendant include not only the opening remarks, since you are going to be the one that has to let the Jury know what you intend to prove, and the closing remarks, as to your arguments as to what you have proven, or as to what the evidence shows.

Now, do you recall the Judge having admonished you when you were trying to defer to Mr. Jamal and allow him to be Counsel despite your appointment and despite the Supreme Court's order to you?

A. Mr. Grant, you know, I don't remember that specifically. And my recollection is that when Mr. Jamal was removed as, removed from representing himself, it was, I was only to resume or take his place for the completion of the voir dire and Mr. Jamal would then be returned to represent himself. I don't, now, I don't know, I just didn't make this up out of the air. That was my understanding. If I misunderstood the Court, fine. But that was clearly, clearly my understanding, that Mr. Jamal would be representing himself at the beginning of this trial.

Page 67.

I thought he did.

Q. Okay. Well, he was removed from that representation on June the 7th. And the trial didn't take place, witnesses were not actually called until June the 19th, so in addition to the five months you had, and --

MR. WEINGLASS: Objection: That is a misstatement of the record. What the Court did on June 7th is, as the record reveals, was not to remove Mr. Jamal as his own Counsel. The Court exercised it's prerogative under the local rule to take over the voir dire, which it can do with any attorney. Mr. Jamal remained as Counsel while the Court took over the voir dire. Mr. Jamal was not removed as Counsel until June 18th.

MR. GRANT: Oh. Thank you, Mr. Weinglass. My mistake.

BY MR. GRANT:

Q. For the five months, minus those 11 days Mr. Weinglass so helpfully provided for me --

A. Yes, sir.

Q. -- you had prepared that case as if you were going to be the lawyer and the only thing changed is that there was a two-week hiatus in your taking that

Page 68.

role and running with it? In other words, from the time you got this case up until the time of trial, there were only two weeks when you didn't think you were going to be the lawyer, right?

A. Excuse me. That may have been it. I prepared the case with the intention of being Mr. Jamal's lawyer, the answer is yes.

Q. Okay. And you said in your affidavit nevertheless, on page 4, with the Jury sequestered -- and this is a quote, by the way -- with the Jury sequestered and opening arguments scheduled to begin, I had no choice but to proceed even though unprepared -- and I emphasize that -- for trial; you said that, right?

A. Yes, sir.

Q. Do you recall your statements on June 26th, 1982 -- pages 136 through 137 -- as to your preparedness for trial? Quote, as far as I'm concerned -- speaking to the Court -- I have an idea of what my opening remark would be to the Jury, and that would include generally a list of some witnesses, not necessarily their names, but the types of witnesses as to what they would say, as well as character witnesses. You continued. Of course, Mr. Jamal solely and exclusively knows the character

Page 69.

witnesses, but he would generally and normally call, and I don't know. I of course have some concern about telling the Jury what I am going to present as to character, that I am going to present character witnesses, when in fact he -- Mr. Jamal -- may later on decide that those character witnesses should not appear. And then you say, I am suggesting that perhaps I shouldn't say it in the opening remark. But I know that my training and experience suggests that this would be a good time to let the Jury know that you have somebody who is going to come in and say that a person's reputation is generally good for veracity -- which means truth telling -- and things of that sort. Now, it may be somewhat, it may be a somewhat premature concern, but I just wanted the record to reflect I do have a strategic problem with regard to what is in my opening remarks, and that it may be compromised somewhat by the Defendant at a later time.

Would it be fair to capsulize that statement as I'm ready to go to trial and give my opening and I know what I would say, and what my experience dictates I should say, but I think Mr. Jamal is going to undercut me?

A. No, I don't remember the specific context in

Page 70.

that matter. Correct me if I am wrong, I thought Mr. Jamal was going to return as his own Counsel. I didn't know whether I was making the opening remark or him. I don't know who was lawyer. That's the way I remember it. And I am saying I have an idea of what I would say to the Jury at that point, and again you could give me the context, I don't think I knew what my role was. I think that was the complaint.

Q. Let me give you the context.

A. Okay.

Q. That same day, page 136 and 137. The Court was asking if both sides are ready to proceed.

A. Okay.

Q. You say, Mr. Jamal is currently speaking with Janet Africa relevant to my comment to him that I am now required to present

an opening remark. And you said I am required, so you knew that it was you who was going to give the opening, did you not?

A. Yeah, I think I just found out. That was the problem.

Q. In my opening remark I indicated to him that only generally am I required to indicate to the Jury what I intend to prove. And generally the witnesses or types of witnesses that I would intend to call. Mr. Jamal indicated that he wanted to speak to Janet

Page 71.

Anthony Jackson, Esq. - Cross

Africa before commenting further with me.

Meaning I'll let you know if I agree or disagree with you making an opening; was that fair to say?

A. Well, I don't think so, Mr. Grant.

Q. Okay.

A. As I recall, Mr. Jamal, that day Mr. Jamal was going to make an opening remark to the Jury, or that was, that was what we were planning. All of a sudden I was told I had to do it. I had not planned it. So he took the opportunity to talk to Janet Africa for whatever reason he wanted to. He was his own Counsel at that point. And then all of a sudden I was put in that position to make the opening remark and do all those things. And you said maybe it was strategy. I haven't, I knew who the witnesses were but, no, I didn't know who his character witnesses were. I haven't known this man all my life. You call it strategy if you want. I couldn't call character witnesses for you other than perhaps myself. I just don't know who they are.

Q. That is precisely the problem with the character witnesses. Because do you know Ruth Ballard?

A. Pardon?

Page 72.

Anthony Jackson, Esq. - Cross

Q. Do you know a Mrs. Ruth Ballard?

A. Yes, I think -- I know that name. I think I know her.

Q. When did you became familiar with her name?

A. I think I had -- oh, no, no, no. I heard the name. She testified in the hearing, that's where I heard the name.

Q. You didn't know her from a can of paint until yesterday?

A. Yeah.

Q. And so you wouldn't call that person as a character witness because you don't even know the person exists on this planet until they come to you and say I am a character witness; correct?

A. Or a client tells me.

Q. Okay.

A. Yeah.

Q. Now, that statement that you made to the Court about I'm ready to go on with my opening, I'm fully prepared except for the problem Mr. Jamal is causing me, was made on June 26th. June 19th is one week prior to that. And on page 7 and 8 you say, apparently again regarding your preparedness to act as trial Counsel, all right, may it please the Court, I would also like to bring to the Court's attention

Page 73.

Anthony Jackson, Esq. - Cross

that I am at this very moment prepared to defend Mr. Jamal to the best of my ability. I will also bring to the Court's attention that unless and until Mr. Jamal specifically indicates to me that that it will be his strategy for me not to participate, or in other words to remain silent, with regard to the presentation of witnesses and facts, until or unless that is done, and placed on the record, I will defend Mr. Jamal in the traditional manner of an attorney and I ask then that the trial begin.

Does that tell you that you were prepared?

A. It tells me I thought I was prepared for the trial to begin. At that time, to say yes at that point, I was then made a real lawyer again. And I had reviewed the documents. But, and I think you know, it is one thing to prepare for a case that you may have some participation in. It is another thing to prepare for a case where you are actually conducting the examination. Up until that time, if Mr. Jamal was his own lawyer, I'm, I'm not, I can't substitute my strategy, my views for his. I mean that's just common, that's just common sense.

And I am saying yes, I read the statements. Of course I would read them again. If

Page 74.

Anthony Jackson, Esq. - Cross

the Court asks me if I read them, well, I'm sure, I'm ready, let's get it on. Because understand that you make the opening remarks the Commonwealth puts. So you know you do have some time to prepare on a daily basis.

But, Mr. Grant, I think clearly when Mr. Jamal was his lawyer, he was his lawyer. I was not his lawyer. I was a backup lawyer. And again, when I'm a backup lawyer, I don't do a thing.

Q. When you weren't his lawyer, he was still his lawyer?

A. That isn't true. When I was his -- look, I have some integrity, I have some self-respect. If I'm his lawyer, I'm his lawyer.

Q. Okay. Would it be fair to say, then, that you may have been doing the talking but Mr. Jamal controlled, directed and ordered you, an attorney at the Bar of this Court, when and how to proceed?

A. No, sir. I mean this was, there were things that I consulted with Mr. Jamal as I would with any client. Any client can direct me in certain instances. When I acted as his lawyer, contrary to what you and perhaps any other person might believe, I was his lawyer.

Q. Okay. July lst, 1982. Page 32. Mr. Jackson.

Page 75.

Anthony Jackson, Esq. - Cross

Regarding the last-minute attempt to subpoena Police Officer Gary Wakshul -- these statements are made to the Court -- we have now found there is another police officer that we would like to testify.

Now, you have been his lawyer now since -- July 1st; this is the day they are going to give closing arguments -- you have been his lawyer throughout the trial at this point?

A. Right.

Q. We have now found that there is another police officer that we would like to have testify. There was some discussion. Mr. McGill just advises me that he is not present today and I would ask the Court that he be called in.

The Judge says, you knew this. You knew about this before, I am not going to hold up this trial.

You say I didn't.

The Court says what do you mean you didn't. Didn't you get statements regarding these detectives months and months ago.

You say absolutely Judge. But then you say, I was forced to try and remember everything that everybody said and I couldn't do it.

And that sounds like a strange comment

Page 76.

Anthony Jackson, Esq. - Cross

but I think the context in which it was said will help you understand the implication.

Mr. McGill then states, I object to this. I think if Mr. Jamal, the Defendant in this case, decides he is not going to give statements until the very last minute to his attorney, that's on him. I don't see any reason why this trial should be delayed.

And then at page 39 you say, regarding not knowing who your next witness will be, I told him -- Mr. Jamal, you are implying -- when we were at sidebar if there were any others to let me know.

And the Court says to the Defendant: You should have told Mr. Jackson you wanted him from the beginning of the trial. And the Defendant states I told him at the motion to suppress and he didn't show up. Meaning Mr. Wakshul.

Do you recall that conversation?

A. I thought you were saying this was some other police officer. Okay. Now, all right.

Q. Gary Wakshul: The person you wanted on the last day of trial?

A. Yeah, okay, right.

Q. Now the Defendant --

A. Right.

Page 77.

Q. -- at the Bar of the Court, talking to the Judge, and you are saying, I told him before to tell me if he wants anymore witnesses.

And he said: I told you I wanted some more witnesses and I told you back at the motion to suppress that I wanted that guy and he never showed up.

Do you recall that conversation?

A. I take all the responsibility for not calling that officer.

Q. That is the point: You are taking the responsibility?

A. It is my fault. How could it be his fault?

Q. How could you tell me that you didn't do something when what you had to do was go into this person's mind and find out what they wanted to do?

A. No. I don't understand.

Q. Let me read it again to you, maybe it will make it clear to you.

A. All right.

MR. WEINGLASS: What page?

MR. GRANT: Same pages.

BY MR. GRANT:

Q. The Judge said to you, come on, Mr. Jackson, you have been in my room before, I know you're good.

Page 78.

You should have told me this before. You should have told the D.A. before. If you wanted that cop you should have had him in here before.

You said no, Judge, I couldn't have done it before.

And he said why not, and you say, basically, I told the Defendant when we were at sidebar if there were any others -- meaning police officers or witnesses -- to let me know.

And then --

A. But Mr. Grant.

Q. -- the Court says to the Defendant, why didn't you tell him from the beginning of the trial.

Now, how are you claiming -- oh, I understand what you are saying.

A. No, you don't.

Q. How are you claiming responsibility for that?

A. Okay. You said there's something in there that somebody told me something in the motion to suppress. I think Mr. Jamal represented himself in the motion to suppress.

Q. Yes, he did.

A. So how could the man be responsible in the motion to suppress to produce the witness? That's the context of that statement. If you let me finish

Page 79.

I'11 answer your question, sir.

The statement suggests that I was told during the motion to suppress to produce evidence. I wasn't the lawyer then. So it doesn't make sense then, it doesn't make sense now.

Q. Don't get excited, because that statement that he made was a lie. And I am going to reveal it right now.

A. Well, I don't know. You say it's a lie.

MR. WEINGLASS: Your Honor, I ask that it be stricken.

MR. GRANT: Well.

MR. WEINGLASS: Counsel again is not only testifying, he is giving summations.

MR. GRANT: I said I am going to show it. And if I may be allowed to continue, subject to his motion to strike, which may be granted if I don't prove what I am saying, then I think it is a good motion. I think I should be allowed to proceed.

BY MR. GRANT:

Q. No, I am not saying, Mr. Jackson, that you had a responsibility to bring somebody in at the motion to suppress. What I am saying to you is on that very last day of trial, you are coming in here today in

Page 80.

1995 saying it's my fault, Judge, I should have got that witness in. You know good and well that means I was ineffective as a lawyer, and that means maybe he gets a new trial, and you know in fact that that's not true and you are in here doing it for him?

A. Okay.

MR. WEINGLASS: Objection to the form: Argumentative.

BY MR. GRANT:

Q. Isn't that so?

MR. WEINGLASS: Compound.

THE COURT: He said isn't that so. Just a minute.

THE WITNESS: I'm sorry.

MR. WEINGLASS: Could I have a ruling on my objection?

THE COURT: Overruled.

MR. WEINGLASS: Overruled?

THE COURT: Yes.

MR. WEINGLASS: Thank you.

BY MR. GRANT:

Q. Isn't that what you are doing?

A. I'm answering, I'm answering the question truthfully. It was not Mr. Jamal's responsibility to bring in the witness. It's my responsibility. I'm

Page 81.

the lawyer.

Q. Well, let me suggest to you that you as a lawyer wouldn't have brought that witness in.

A. All right, Mr. Grant, I know you made some, some allusions to Mr. Wakshul yesterday about some testimony I never knew anything about. Let me just give you the context of this officer. I did not conduct the motion to suppress. During the motion to suppress, I don't know why Wakshul would not have been called because -- I don't know.

Q. What?

A. I do not know why he would not have been called. Since this was, what, three, four witnesses who said they heard Mr. Jamal confess. If, again, Wakshul was with him for the entire length of time and that it seemed Mr. Jamal remained silent, then he would have been presented as a witness. Mr. Jamal conducted that motion to suppress. And I am not going to compare Mr. Jamal's efforts with regard to legally-trained attorneys. However, I did not have that same hands-on familiarity with the witnesses and how they were called and things of that sort.

I don't know, it may have been during the motion to suppress Mr. Jamal had Mr. Wakshul's statement, I don't recall. He conducted the motion

Page 82.

to suppress. As I said to you before, there were some statements that I made copies of, some copies of statements I gave to him. But certainly, why wouldn't I call the witness if I knew?

Q. Let me tell you why you might not want to call the witness, sir.

A. Yes, sir.

Q. First of all, you made a claim that I never knew about that officer prior to that date and I didn't know about any statements

that he may have given I guess to the Internal Affairs Bureau. That is not true, is it?

A. Yeah, I still haven't seen the statement to the Internal Affairs Bureau.

Q. What?

A. I don't think I've ever seen it, have I?

MR. GRANT: May this be marked as Commonwealth Exhibit number 5 for identification, please, Your Honor.

THE COURT: Yes.

MR. GRANT: This purports to be an April 12th, 1982 letter to Mr. Jackson from the prosecutor in this case: Joseph McGill.

THE COURT: All right.

Page 83.

(Letter was marked Commonwealth's Exhibit C-5 for identification.)

MR. GRANT: Yes, Counsel, I believe -- has Counsel seen it?

THE COURT OFFICER: (Handing).

(Pause.)

MR. GRANT: The document that Counsel, all of them, are perusing is a document that they received also in discovery so it is not a mystery.

THE COURT OFFICER: Show it to the witness, Mr. Grant?

MR. GRANT: Yes, please. For the record: Mr. Jackson appears to be perusing the document C-5.

THE WITNESS: Okay, I have read the document, sir.

BY MR. GRANT:

Q. Now would you read that into the record, sir?

A. Sure. It is dated April 12th, 1982. It is directed to me. Dear Mr. Jackson: Please, be advised that the staff inspector's entire file has been duplicated and delivered to your office pursuant to Judge Ribner's order. You may set a date and time to hear a tape recording of one witness' statement in our office. Since we are voluntarily turning over

Page 84.

this discovery to you, we expect you to provide us with names, addresses, and statements of any witnesses you will call at trial. If you fail to provide us with same we will assume that none exist. If you seek to introduce such evidence at trial, we will assert your failure to notify us of such evidence as a bar to it's admission. Signed, Joseph McGill.

Q. Now, that was two months before the trial began in this case?

A. That's right.

Q. And you claim that you didn't receive any statement from Gary Wakshul; correct?

A. All right, I don't remember. I don't remember.

Q. Well, say you don't remember, don't say you didn't get it.

A. I will tell you what I do remember. I remember a statement from Gary Wakshul where he said I was with him and he never said a word. I remember that, specifically. I don't remember ever hearing any other words. If you don't want me to say I don't remember, I do remember that.

Q. Okay. And you said yesterday on direct that, or on cross, that you wouldn't know which of his

Page 85.

statements were given for the Homicide investigation and which were given for the Internal Affairs investigation unless you saw some indication up in the upper corner that this was from a special investigation or something like that?

A. Yeah, because you told me there were two statements, I only remember one. I only remember one statement. You said there were two statements, and you said well, don't you know that there was a simultaneous investigation conducted by the Internal Affairs of the Police Department. The only way that I would know is because they indicate who they are doing the examination. I only remember one statement.

Q. Well, that is a lot different than saying you didn't remember more than one statement, isn't it?

A. Well, it may be, but in my mind, if I remembered one, I would remember the other. But yes, it is a big difference.

MR. GRANT: I'll say. And I would like this marked as Commonwealth Exhibit 6, please. And I'm sorry to keep running you around.

THE COURT OFFICER: No problem. Keep me in shape.

Page 86.

(Police interview was marked Commonwealth's Exhibit C-6 for identification.)

THE COURT OFFICER: (Handing).

(Pause.)

MR. GRANT: This document also was turned over to Counsel previously, Your Honor.

(Discussion was held off the record at this time.)

THE COURT OFFICER: Mr. Grant, show it to the witness?

MR. GRANT: Yes, please.

THE WITNESS: Thank you, sir.

BY MR. GRANT:

Q. You have been presented with a document, sir, consists of approximately six pages. And it's dated February llth, 1982, four months before the trial began. Do you see the first question that's on that document, sir, posed by Mr. Goldberg, who is a special investigator?

A. Yes, sir.

Q. What does, don't give me the answer, just what does the question read, read that into the record?

A. Officer Wakshul, I am staff inspector Frank Goldberg and this is Lieutenant Daniel -- I can't.

Q. Looks like Sitella.

Page 87.

A. Okay. Sitella.

Q. S-A-T-T-E-L-O-E-L-E? I am not sure.

A. Of the Internal Affairs Bureau. I am going to take down what you say directly on the typewriter. Do you understand.

Q. Now, sir, where it says we are questioning you concerning -- and you probably have seen hundreds of these reports: These are typical 75 dash four-eight-three forms from the Detective bureau -- what does it say we are questioning you concerning?

A. Oh, I'm sorry.

Q. It's up there, it's right above --

A. Yeah.

Q. Right above what you just read.

A. Your copy might be better. Allegations... initiated by Anthony Jackson, an attorney representing Mumia Abu-Jamal, Wesley Cook, indicating that police officers --

Q. Abused his client on 12-9-81?

A. Okay. Yeah.

Q. Now, they are basically responding to your complaint and they are interviewing all the people that may be responsible for any abuse suffered by Mr. Jamal, that's their job and that's what you intended for them to do when writing that complaint, right?

Page 88.

A. Yes, sir.

Q. And that was four months before the trial, and you read a letter from Mr. McGill saying I'm turning over the entire file of the Inspection Bureau's investigation to you?

A. Mr. McGill wrote it to me?

Q. Yes, sir.

A. Yes.

Q. Now, you asked why would I not put this man on at trial. Do you see that yellow sticker on that file C-6 there, sir?

A. Yes, sir.

Q. Go to page 3, please.

You indicated earlier that you heard the male, you recall the statement that the male made no comment, you recall that, and that would be great to put him on to prove that these other police officers and security guards who worked at Thomas Jefferson were liars: I mean tactically that's what a good lawyer would do?

A. Yes, sir.

Q. What would a good lawyer do if he knew that there was another statement that read, what I am going to ask you to read into the record, start at the question at the top of page 3 and read down to

Page 89.

the bottom, or read down to the next question, please, into the record, if you can't read it out?

A. I'm sorry, sir. Police Officer Gary Wakshul, okay, question: Upon carrying him --

Q. Upon carrying him, meaning Jamal?

A. -- into the emergency room, where did you put him.

When we entered the hospital we placed him on the floor, somewhat inside the second set of electric doors which led into -- I don't know what that word is.

Q. The emergency room?

A. Oh, emergency room.

Q. Let me do it this way, Mr. Jackson.

A. Sure.

Q. Let me read it and you follow along and you tell me if I'm, if it seems to be correct. Question: Upon carrying him into the emergency room where did you put him. Meaning Mr. Jamal.

Answer -- this is Mr. Wakshul talking -- when we entered the hospital we placed him on the floor somewhat inside the second set of electric doors which lead into the emergency room. By this time I was tired and winded from carrying him. He was very heavy and constantly struggled to

Page 90.

keep us from carrying him. I was too tired to carry him anymore and said something to that effect. And said something to that effect that I had to put him down. After he was placed on the floor, and as I was standing back up, I did hear him say I shot him, I hope the mother fucker dies. I was disgusted at this point and decided I wasn't going to touch him again. I didn't want to be near him. I stepped away a few feet in front of a small alcove in the emergency room opposite the receptionist's desk. I stood there for a few seconds and then walked out of the hospital.

Did you re-enter the hospital at any time.

Yes, about five minutes later.

For what purpose.

I closed up the wagon doors, got my hat and then went back in to see what else I could do.

Now, when you put on the evidence the male made no comment, you know that any mediocre D.A. is going to put in the rebuttal to that, which is this. Would that not cause a person to pause or hesitate as to the value of putting that person on?

A. Yes, sir. But I did call him. I asked for him.

Page 91.

Q. You asked for him?

A. It is on the record.

Q. No, Mr. Jamal asked for him.

A. Oh, I'm sorry. I thought I was the one who asked. On the record it said me, but.

Q. On the record?

A. But you don't believe I was the lawyer.

Q. You said we?

A. I won't quibble with words. Mr. Grant, honestly and sincerely, I don't remember ever seeing that statement. If I have seen it, sir, maybe. I don't ever remember seeing that statement.

Q. I am not questioning that, Mr. Jackson. I know you to be a man of honor for many years. I'm saying just because you don't remember it doesn't mean you didn't get it?

A. Yeah.

Q. Would you agree?

A. I agree, I agree.

Q. All right, we are at the same page. Now, that part about the Defendant, when the Court said in response to you wanting Mr. Wakshul on July 1st at the last minute, on page 48, the Judge says you should have told Mr. Jackson -- talking to Mr. Jamal now at sidebar -- you should have told him that you

Page 92.

wanted him from the beginning of trial.

The Defendant states, I told him -- Mr. Jackson -- at the motion to suppress that I wanted that guy Wakshul and he didn't show up.

And you are saying that's not, that's not true. And it's not true, is it?

A. No, sounds to me that he said during the motion to suppress he wanted Wakshul. Just like I said before: What happens is, when we want police witnesses, you tell the D.A. He and Joe McGill weren't necessarily on speaking terms so Mr. Jamal, sounds to me like Mr. Jamal is saying he told me to tell Mr. McGill. That's what I am assuming that statement is.

Q. Let's assume that your assumptions would be well-founded. At page 113 through 115, on June 2nd, this is is what actually happened --

A. Okay.

Q. -- at the motion to suppress. Just before the defense portion of the motion to suppress was to begin. That is to say, when the Defendant wants to put on his evidence at the suppression motion, he is entitled to put on evidence?

A. Yeah.

Q. And the Court said, in asking which witnesses

Page 93.

would the defense require, the Court said what witnesses do you need. And he is speaking to Mr. Jamal. Because Mr. Jamal is acting as his own lawyer then. What witnesses do you need.

Mr. Jamal says say what.

The Court says what witnesses do you need. Perhaps we could have them for you. Are any of these police officers.

Jamal says yes, some.

The Court: All right, tell the District Attorney and he will have them for you.

Mr. Jamal: Some are private citizens as well.

The Court: First of all, do you want the, do you want the police officers.

Mr. Jamal: Judge, a policeman I would like to have, I have their names here.

Judge Sabo says read them off.

Mr. Jamal says Daniel Soboleski and John McGurk.

This is bringing back memories, isn't it?

A. Something.

Q. The Court says how do you spell that last name. And the Defendant then proceeds to spell both

names correctly. And then says Soboleski, Officer Soboleski, badge number is badge 5596, and he states that Officer McGurk's badge number is 3185, he is from the 6th District.

The Court says, are those the only two officers.

Mr. Jamal says yes.

The Court goes further in trying to assist him to present his case by saying who else do you want.

And Mr. Jamal says Debbie Kordansky and Veronica Jones. He later goes on to say I changed my mind, I don't want them to come in. After conferring with you, by the way.

Nevertheless, the Court says who else.

The record reflects Mr. Jackson confers with Defendant. And then Mr. Jamal says a curious thing: Judge, I have no objection to the District Attorney's Office supplying the police witnesses. They are available to him. As if he would allow us to do him a favor.

The Court then says, before we get into that, who else after Veronica Jones or is that the end.

Mr. Jamal says that is the end.

Mr. McGill then says, if the Court would wish me, I would be very glad to get them. Meaning the officers and the witnesses. I was going to get them anyway.

Now, considering that exchange, and that was the witnesses for the defense that he asked to be brought in at the motion to suppress, did you hear the name of Gary Wakshul one time?

A. No, sir.

Q. Would you take my word for it that it was never ever mentioned at any time prior to July lst, 1982, the date of closing arguments?

A. I will take your word for it that there is nothing on the record that would indicate that he asked for it. Mr. Grant, you have to understand: I don't remember. And if, if Mr. Jamal has specific recollection of asking me maybe he didn't ask me on the record. I don't know, and I'm speculating, but I just can't tell you anymore.

Q. Now, when you gave Mr. Jamal some statements, you had some and he had some?

A. Yes, sir.

Q. Why would an attorney give his only copy of a document that he would need for trial to a person who may not value these documents like attorneys value

them: To be used for weapons?

A. I will try to explain again. I got the documents --

THE COURT: Go ahead. Finish up.

THE WITNESS: There was a time when I got the documents. Made copies for Mr. Jamal, and I kept copies. There is another time we got some additional documents, gave some to Mr. Jamal and I think I kept some. There were times when Mr. Jamal had some. Mr. Jamal was his own lawyer at the motion to suppress. I don't, I am assuming that at some point in time there may have been some statements. I don't think it was necessarily that statement of Wakshul, but I don't really know. He was the lawyer, I wasn't the lawyer.

BY MR. GRANT:

Q. I don't care, if you were backup Counsel, wouldn't you have a backup copy?

A. Well, you see how that backup thing gets you in trouble. I don't know. You say --

MR. GRANT: Yes, Your Honor.

THE COURT: All right, the Court reporter indicates he needs a break. And I think it's almost, well, nine minutes to 12:00.

We'll break for lunch until one o'clock.

MR. GRANT: Very well.

THE COURT OFFICER: This Court now stands in luncheon recess until one o'clock at the call of the Crier.

- - - - -

(Luncheon recess was held until 1:30 p.m.)

- - - - -

Anthony E. Jackson, having been previously affirmed, was examined and testified as follows:

- - - - -

BY MR. GRANT:

Q. Good afternoon, Mr. Jackson.

A. Good afternoon, Mr. Grant.

Q. When you filed the police complaint, the complaint against the Police Department, which generated additional discovery or documents, you billed the City of Philadelphia for that, did you not?

A. I don't know.

Q. Could you take a look at C-4?

A. Sure.

Q. Let me see if I can find the tab.

MR. GRANT: Here is mine (handing).

THE COURT OFFICER: (Handing).

BY MR. GRANT:

Q. It's tabbed in yellow and it's marked in red, sir. A little check mark. I believe the date is 12-30-81.

A. That's correct, sir, I did.

Q. What's that notation there, sir?

A. 12-30-81: Preparation and filing complaint with Police Department: 1.5 hours.

Q. And you were paid for that, were you not?

A. Yes, sir.

Q. And you knew that that was going to generate additional police materials and interviews of the other individuals that may have been under suspicion?

A. That is correct, sir.

Q. So you were basically getting the benefit of having duplication of investigation with the obvious and inherent possibilities that it contains; namely, that people may say things in a different way or totally different; correct?

A. That, that's a possibility, yes, sir.

Q. Now, and that was only 21 days after the arrest for the murder in this case; correct?

A. Yes, sir.

Q. Now, yesterday, sir, I asked you, and I was asserting to you at that point that you may have been the lawyer but Mr. Jamal was running the show.

A. Yes, sir.

Q. Do you recall giving an interview in Philadelphia Magazine in December of 1993, sir, about this case?

A. Philadelphia Magazine?

Q. Well, let me see. Inquirer Magazine?

A. I don't know, umm... I may have, I don't recall.

Q. Let me see if I can -- do you recognize this photograph? It's called 'Presumed Innocent,' picture of Mr. Jamal in handcuffs?

A. No, I never have seen it.

MR. WEINGLASS: May I see it?

MR. GRANT: Yeah, let me identify it for the record if I can. It is a pretty poor photocopy.

THE WITNESS: I know I didn't see the article.

BY MR. GRANT:

Q. Pardon me?

A. I didn't see the article.

Q. You've never seen?

Page 100.

Anthony Jackson, Esq. - Cross

A. I didn't see that article.

(Pause.)

MR. GRANT: Okay, while Counsel is looking at that:

BY MR. GRANT:

Q. Your final bill submitted on C-4 for experts -- and you claim that they were fair and reasonable amounts -- was 1,312 dollars and 50 cents; would that be correct?

A. What page is it? I'm sorry. I'll find it?

Okay, yes? I see it down there.

(Pause.)

A. I guess that's it, yeah.

Q. Now, you disagreed with me yesterday that Mr. Jamal was calling the shots even though you were the attorney, and you still take that position, sir?

A. Yes, sir.

Q. I would like to invite your attention, sir, to an interview you had for the Philadelphia Inquirer this past Sunday, July 23rd, 1995. It's called the Review and Opinion section, at pages 1 and 2, section E. When asked a number of questions, apparently you responded to reporters, did you not?

A. Yes.

Q. If I may just read from the article. As

Page 101.

Anthony Jackson, Esq. - Cross

Abu-Jamal's case moves through the appeal stage questions arise. One, why didn't William Cook, Mr. Jamal's brother, testify for his brother. According to Cook's lawyer, the younger brother was ready and eager to testify.

Now they are distinguishing between Mr. Jamal and his brother by calling one Cook and Mr. Jamal by his lawful name?

A. Yes, sir.

Q. Now, Cook's lawyer was Danny Alva, was he not?

A. That is correct.

Q. Now, according to this article, it says the younger brother was ready and eager to testify. The defense attorney Jackson says it was Abu-Jamal's decision not to call his brother.

Did you say that?

A. No, sir.

Q. You didn't say that?

A. No, sir.

Q. That is a misquote?

A. It's whatever it is. I didn't say that.

Q. Well, when asked why didn't you pursue a murder three charge or a temporary insanity or self-defense claim as opposed to tell the Jury they should find the Defendant guilty of murder in the

Page 102.

Anthony Jackson, Esq. - Cross

first degree or nothing at all, there is another response here, and it is in quotation marks -- tell me whether or not you said this one -- during the trial people would say that Mumia was probably enraged that night, that he acted to what he saw happening and was temporarily insane, Jackson said. I remember he said -- Mr. Jamal -- they want me to buy into that, to say I'm crazy, but he would never select that, it was never an option because of the way he is.

Did you say that?

A. I said words to that effect, yes, sir.

Q. No, did you say that?

A. I don't remember -- I don't remember each and every word that I said to the reporter. I'm saying now I said words to that effect, yes. That's as best as I could do. I didn't have a tape recorder so I can't tell you I said exactly that.

Q. Do you recall after the trial was over Mr. McGill walked up to you and said Tony, you did a good job for the man, he wouldn't give you any help, he wouldn't let you put the gun in his hand, he made you argue first degree murder or nothing, and your response was that's right, it's one or the other?

A. That decision for first degree was my decision

Page 103.

Anthony Jackson, Esq. - Cross

and my decision alone. I never asked Mr. Jamal, I never asked Mr. Jamal what I was going to argue to the Jury. Never. Never once, never once.

Q. You never thought that perhaps a defense of others claim may have been viable?

A. Pardon me?

Q. Defense of others: It is like self-defense?

A. Oh, yeah.

Q. You never thought that was a viable defense?

A. I considered it, yes, sir.

Q. But you made a tactical and strategic decision not to pursue that defense?

A. Yes, sir.

Q. And you likewise made a tactical and/or strategic decision not to pursue, although I don't even know if it exists in the annals of Pennsylvania law, a temp insanity defense, enragement, irresistible impulse?

A. Well, if you want to call it tactical decision, perhaps it was. You know, by implication perhaps one, you know. And again that's what the response of the article suggests, there wasn't any evidence of that. I mean people surmised that that's what happened. The brother, he was enraged and did it. That's what people surmised. I couldn't respond

Page 104.

Anthony Jackson, Esq. - Cross

to what people surmised. And Danny Alva prevented me from talking to his brother because his brother had charges pending against him.

Q. Are you sure he had charges pending or had they already been disposed of, Mr. Jackson?

A. There was a time, and I don't know what time, that the brother had charges pending against him.

Q. What were the charges against him, do you know? Simple assault against a police officer?

A. Well, it wouldn't be simple, it was a police officer, so it would be aggravated.

Q. Aggravated as a misdemeanor?

A. Okay. But notwithstanding the charges against him there, here the clear implication that I got when he didn't want him to testify would be that if he testified in this trial, there may be some additional problems. Now, I know about double jeopardy and all of that, I wasn't Mr. Cook's lawyer.

Q. Did Mr. Jamal ever tell you just leave my family out of this, this is not their thing, this is my thing? Think carefully, Mr. Jackson.

A. I'm not going to say he didn't say it, but that -- it is the context in which he may have said it. It had nothing to do with the trial, it had nothing to do with bringing Billy into the Court, if

Page 105.

Anthony Jackson, Esq. - Cross

that's what you mean.

Q. Didn't what?

A. Didn't prevent me from bringing Billy into Court, if that's what you are talking about, Mr. Jamal's brother. There may have been a time he said he didn't want his family involved. But I think you have to understand his family. He had a very loving and close family and very close relationship with his family.

Q. You did?

A. I did too, but I mean he did. And I think he was trying to protect them as well. It had nothing to do with presenting Billy or something of that sort.

Q. Or Lydia Wallace?

A. Yeah, or Lydia.

Q. Or Elizabeth Cook?

A. That's right.

Q. In other words, you could have at any point in time brought them in, either at the penalty phase, or at the guilt phase, but you made a conscious decision not to?

A. I would assume so. I did use -- I think his mother. Well, I'm sorry.

Q. You used his mother?

Page 106.

A. Mr. Jamal -- oh, at the bail hearing I think Mrs., I think his mother testified. I believe.

Q. Yes, she did, 1-11 of '82. So?

A. So therefore, again, she testified so she must have had some involvement in this case. So that's what I am saying. You have to consider the context at which time the people were involved or whether they were involved at all or not. I mean I was not prevented from talking to his family. Except Billy, and that was because of his lawyer.

Q. His order?

A. Billy's lawyer, Danny Alva.

Q. Oh, his lawyer?

A. I mean I didn't talk, I mean I spoke to Billy but I never talked to him about the case out of respect for what his lawyer said.

Q. And even though you knew his lawyer had no legal claim specifically: His case was over by the time this case went to trial; it was relatively minor charges as compared to a death penalty litigation?

A. That wasn't my decision to make, that's his lawyer's decision to make.

Q. Very well. So you are saying that at some point you chose to call members of his family, had the bail hearing at which you called his mother, and

Page 107.

at other times you chose not to, such as character witnesses or the penalty stage for mitigating circumstances, but you are saying that was an oversight?

A. At the character stage..; I don't remember specifically. Umm... seems to me I presented a number of character witnesses during the trial stage. I don't, I don't recall whether I decided not to or whether I had planned to present them. I don't really recall just what happened. Seems to me that he --

Q. How about 15, you called 15 out of the 20, list of 20, is that a lot?

A. Yeah, seems to me the Judge stopped me from putting more witnesses on.

Q. The Judge said to you Mr. Jackson, this is cumulative. The Judge can't stop you but he says how many more do you have to go. And in deference to what was common sense, I mean you could have good character, one person could establish it or 50 people could come in and say the same thing, just like was done here before you got on the stand. I mean how much of that do you want to hear?

A. Okay, I am going to tell you: Maybe it was because I put on 15 character witnesses and maybe I

Page 108.

thought that 15, 16 or 17 character witnesses were enough without his family. I just don't remember specifically why I didn't do it, sir.

Q. But you did pursue character and you did consider using his family members?

A. I would assume so. Yeah, I mean in any, always. Yeah, sure.

Q. Have you ever had a person facing a capital punishment in any of your trials prior to or since that day where it got to that phase that you didn't put on relatives of the defendant at the penalty or the guilt phase, if the person had good character and you could put them up there without them being attacked?

(Pause.)

A. During the guilt phase I don't remember doing it because the cases that I could recall the defendants had records. So they couldn't put character witnesses on because their record would come out.

Q. So the issue never arose?

A. That's right, the issue never arose.

Q. Now, Mr. Jamal went so far in directing your efforts that he went so far as to presume to tell you to request a Jury instruction in the middle of the

Page 109.

trial, didn't he?

A. I don't -- in the middle, a Jury instruction in the middle of the trial, no.

Q. It is strange, isn't it? While there is no Jury deliberating, before it is time for them to receive the law, he wants you to tell them the law before he ever gets to that point?

A. I guess so. I don't remember. But, you know, if it is on the record I guess. I just don't have have any specific recollection.

Q. What if I told you that you did, would you say that the tail was wagging the dog instead of the dog wagging the tail?

A. No, if he asked me to make that request of the Judge, I'd ask him. He is not, if he asked me to ask something, that's directing. If I ask you to give me the paper, I am making you give me the paper? I see it differently, you see it differently.

Q. Well, Mr. Jackson, you have been a lawyer for 17 years?

A. Yes, sir.

Q. Have you ever, ever -- and I don't care who asked you --

A. Hmm-hmm.

Q. -- requested that the judge charge the jury on

Page 110.

the degrees of murder when they are still listening to the evidence?

A. No.

Q. One time? Of course you haven't.

A. Oh, no.

Q. Notes of testimony, July lst, 1982, page 55. Mr. Jackson to the Court: I have a statement I would like to read, Your Honor. Your Honor, for the record, as well as for Your Honor's purposes, I would like to make it perfectly clear that my client Mumia Abu-Jamal ordered me to make a motion that the charges against him be dismissed on the grounds that murder as is previously defined by the Courts is not defined to the satisfaction of my client. You said those words. You further went on to state: My client wants to put on the record that he is making a motion for the definition of murder while the trial is still in progress and not after the closing arguments.

Would you deny that you said that?

A. No, sir, and it is consistent with what I have said.

MR. WEINGLASS: Your Honor, at the point at which this conversation occurs all the evidence had already been in. We were at the

Page 111.

point, or they were at the point in the trial just prior to closing argument. It was an entirely appropriate time to discuss what the instructions of the Court would be. But Counsel in his argument miss, in his question I should say, misrepresents to the witness the time frame in which this happened. Therefore, he misleads the witness and then asks him questions. That's why he should show the witness the transcript, so that the witness can see what was occurring in the context of the trial at that time. So that the witness isn't misled into giving information.

So I object to this line of questioning without the witness seeing the transcript. This was, it wasn't in the middle of the trial, it was the end of the trial. And all the testimony had already been taken. It was an appropriate time to discuss instruction. So I object to this question.

MR. GRANT: First of all, Your Honor, Mr. Weinglass wasn't and didn't know that Philadelphia existed in 1981, and he wasn't at this trial. And Mr. Jackson was and he spoke these words while the trial is still in

Page 112.

progress. And I think that lawyer knows what he is talking about.

Secondly, I offered him early on at the beginning of the day whenever he needed to resort to notes of testimony I would make them available to him. And I wish Counsel would quit making speeches and trying to rehabilitate his witness when it is not his turn. He has a right to redirect.

THE COURT: On redirect you could bring up anything you want.

MR. WEINGLASS: But it is common courtesy, Your Honor.

THE COURT: Well, he is reading what he said.

MR. WEINGLASS: Common courtesy to show the witness the transcript.

THE COURT: Well, he said if he needs it he will give it to him. So let the witness ask for it.

If you need anything just ask for it.

THE WITNESS: That's just for point of clarification: You said this was in the middle of the trial?

MR. GRANT: No, you said it was.

Page 113.

THE WITNESS: You asked me the question, you said during the middle of the trial do I remember him saying it?

BY MR. GRANT:

Q. Yes, sir.

A. Okay, fine. Now, I don't remember him saying that in the middle of the trial. But I am not saying it didn't happen.

Q. What do you call while the trial is still in progress, to quote you?

A. Well, there is the beginning, there is a middle, there is an end. Any time the trial began, before the trial is over it is the middle. Is that what you are saying?

Q. No, what I am saying is when it is the end the trial is no longer in progress?

A. Well, okay, I guess we just have to, maybe I should do this. At what point in time was this said? I don't know what you are talking, you know, I am not going to remember it.

Q. They don't have a clock that comes with the transcript.

A. No, what I mean by this: I don't remember it being asked in any event, but I don't know if you are talking about during the voir dire, during the

Page 114.

prosecution's presentation, the defense presentation, character. I don't know at what stage it was made, if it makes a difference, because I don't remember it.

Q. It does make a difference.

A. Okay, fine. But I think you need to understand that what I said was consistent with what I have said all along. When I said Mr. Jamal wants me to ask this, Mr. Jamal's direction. That's when Mr. Jamal was talking. At any other time I was doing the lawyering. When Mr. Jamal wanted me to say something I pointed out that Mr. Jamal wanted me to do it. What you just read was Mr. Jamal wants me to read this. Mr. Jamal directs this. At any other time I was the lawyer, and I made that very clear. So that there wouldn't have to be any misunderstanding about who the lawyer was.

Q. There are so many instances where Mr. Jamal directs and Mr. Jamal demands and Mr. Jamal orders that the question then becomes who was the lawyer. And that's precisely the line of questioning we are engaged in now.

MR. WEINGLASS: I object to the form of the question, Your Honor.

THE COURT: He is answering the

Page 115.

witness' question, so.

MR. WEINGLASS: Well, will the Court sustain my objection as to form?

MR. GRANT: I withdraw the question.

Strike the statement, if I may.

BY MR. GRANT:

Q. Why do you use the word he is ordering me around if you were the attorney?

MR. WEINGLASS: Objection, unless the witness is shown where those words appear in the transcript.

THE COURT: Overruled. This is a general question first, then he will be more specific.

MR. WEINGLASS: No, the question contains --

THE COURT: The question, the question is all right. So the objection is overruled. Come on, let's get going.

THE WITNESS: The question, the answer is clear --

THE COURT: Just a minute.

MR. WEINGLASS: Your Honor overruled --

THE COURT: Wait awhile, he is moving

Page 116.

around.

MR. GRANT: May I approach, Your Honor? (Handing).

MR. WEINGLASS: Thank you. Date, page?

MR. GRANT: Same date, Mr. Weinglass. Same page, Mr. Weinglass.

MR. WEINGLASS: Okay, July 1st. Page 55.

BY MR. GRANT:

Q. Why did you, why do you use the word order whenever there is an occasion when you have to relate to the Court Mr. Jamal's wishes if you are in charge? People give orders and they take them?

A. Okay. Sure. I have an obligation as an attorney if a client requests something that he disagrees with that the Court know the difference. That my client wants something. I use the word order, directed. Say whatever you want to say. I mean it happens, it happens lots of times. Lots of times. Client may want to take the stand, I say I don't think you should. The client wants to take the stand. Let it be known that it is not me.

In this instance Mr. Jamal wanted me to make that statement, whatever it was. Apparently,

Page 117.

again, I haven't had an opportunity to see the context of when the statements was made. Apparently I would not have made it at that point. That's all. That's all it means. When I say order: I haven't been ordered to do things in a long time, other than Judge Sabo ordered me to.

Q. That's right.

A. But I certainly didn't mean it in the same context.

Q. Only Judge Sabo and Mr. Jamal have ordered you to do anything since you have been a man and been out of the military?

A. Judge Sabo and Mr. Jamal ordered me to do. If I used the word order I used it in a different context. I apologize for the choice of the word.

Q. Again, it wasn't a slip of the tongue, was it, because it appears throughout the transcript?

A. That is the word I used.

MR. WEINGLASS: Objection to the reference. He could only show it in one place. Then he embroiders it by saying it appears throughout the transcript. I would like to have additional references.

MR. GRANT: I could go on ad nauseam and show various places, Judge.

Page 118.

Anthony Jackson, Esq. - Cross

THE COURT: Go right ahead, then. He wants you to do it, go right ahead.

MR. WEINGLASS: Good.

THE COURT: Okay.

BY MR. GRANT:

Q. Now, do you recall saying these words in December of '93? And I'm trying, I can't for the life of me get the header that goes with this article. So I don't know whether it is the Philadelphia Inquirer or Philadelphia Magazine supplement that goes into The Inquirer Magazine.

MR. WEINGLASS: Philadelphia Magazine.

MR. GRANT: Thank you.

MR. WEINGLASS: I'm new to the City but I do know that much.

MR. GRANT: Yes, you're in tune, Mr. Weinglass, you probably read it.

BY MR. GRANT:

Q. It says here, Jackson quickly discovered that Jamal had his own plans. Well, actually what it does is give you several compliments. Let's just go on to say what it says. A committee was formed to raise money for his defense. State Representative David Richardson and then State Senator T. Milton Street testified on Jamal's behalf at a bail hearing.

Page 119.

Anthony Jackson, Esq. - Cross

Anthony E. Jackson, who had defended MOVE members and served as director of the Public Interest Law Center police abuse project signed on as Jamal's Court-appointed attorney. Jackson quickly discovered that Jamal had his own plans, quote, it became obvious, he says, that it wasn't going to be my show. Did you say that?

A. I may have.

Q. How come you could never remember when you say something, sir? You are in a profession that deals with words and the precision of using them and you have not yet once said I did say something. What's up?

A. Okay, I am going to tell you what --

MR. WEINGLASS: Objection to the form of the question.

BY MR. GRANT:

Q. I mean what is going on? I mean can you explain that?

MR. WEINGLASS: Objection to the form of the question.

THE WITNESS: I will do the best I can.

MR. WEINGLASS: Now, Your Honor, now we are dealing with compound questions.

Page 120.

Anthony Jackson, Esq. - Cross

THE COURT: Overruled. This is cross-examination.

THE WITNESS: Mr. Grant, you are asking me if I said something. I dare say I could ask you if you said something last week, I can't imagine that you could say with an absolute degree of certainly yes or no. And I am saying, some things you asked me about 13 years ago you said if I said it and I said I don't know: And you are wondering why I can't remember.

BY MR. GRANT:

Q. How about December of '93, that's not 13 years ago?

A. I did, I don't know. I may have said it. You are asking me did I say it. I have to think in the context who it was I mean I was talking to. You can't just pick out words did you ever say it. I have to think where I was, who did I say it to. I can't just remember just like that.

Q. Devon Leonard?

A. Pardon me?

Q. Devon Leonard?

A. I remember the name. I don't, I mean I don't know the context in which I would have said it.

Page 121.

Anthony Jackson, Esq. - Cross

Q. But you recall words to that effect being said out of your mouth to that man, don't you? Yes or no, Mr. Jackson?

(Pause.)

A. The best I could do, I may have said it. I won't deny it. The best I could say, I may have said it. I don't know what context I might have said it, I may have said it, sure.

Q. May have, let's deal with probability. Is it more likely than not that you said it?

A. Okay, what show are we talking about? If you want me to be that specific, I may have said it. If he was talking about what Mr. Jamal was doing with regard to his political views, that was his show, I had nothing to do with it.

Q. Oh?

A. I mean you have to tell me. Mr. Grant, I am trying to respond to your question but you are saying but did I say that's his show. I may have. He may have been talking about Mr. Jamal's radio show, that's his show. I mean how can I be certain?

Q. I could see that you probably are getting your memory back because in the next paragraph he goes on to talk about his political views?

A. His what?

Page 122.

Anthony Jackson, Esq. - Cross

Q. Political views, that this Courtroom and this case became a show of his political views --

A. I said that.

Q. No. But it just so happens and it is uncanny that you would have the same thought process that this article would have right after your comment?

MR. WEINGLASS: Objection: Counsel's observation that it's just uncanny is an unacceptable predicate for a question. Counsel is not permitted to editorialize in a Court in asking a question. I ask that the question be exonerated from the record and the answer be stricken. May I have a ruling?

MR. GRANT: Judge, if I may respond. I think I can ask the question in any form I want as long as it ends with an interrogatory. And even though it may be laced, to Counsel's dismay, with damaging information, the witness may respond. And this witness is more capable than any other witness we will get on the stand because he is a lawyer, and he does what I do for a living.

MR. WEINGLASS: The fact that he is a lawyer does not permit Counsel to ask unacceptable questions under the rules of

evidence. Counsel is not permitted to comment editorially in the course of asking a question.

MR. GRANT: I will withdraw the question.

BY MR. GRANT:

Q. Now, you commented yesterday, Mr. Jackson, that, when I asked you if you had received full discovery, you expressed some opinion that you got the Medical Examiner's report and you didn't necessarily get it from the D.A.'s office, did you not?

A. Not not exactly. You asked me if I got discovery and I said I got what I got. I did say I got, I did get a Medical Examiner's report from the D.A.'s office and I got another Medical Examiner's report.

Q. Okay, and when you compared the two did you find that the D.A., true to their word, had given you everything that they had?

A. Well.

Q. You can't recall?

A. You are asking me -- let me tell you the -- in fact I know that I got the report, the Medical Examiner's report that I got had one additional page. The one I got from the D.A.'s Office had one page

missing. I am not suggesting, because I am not in a position to suggest, that it was the District Attorney's Office that removed it. All I am telling you is the one I got from the District Attorney's Office did not have that page.

Q. The thing you are saying causing me concern: I am not saying it was the District Attorney's Office who removed it?

A. Yes.

Q. Now, that presumes that the District Attorney's Office received it. You see, before you can remove something you must have something. Now, are you saying that you know for a fact that Mr. McGill got what's, the page you are talking about yesterday was an investigator's log from the Medical Examiner's Office noting their having sent their complete case file to you, having sent a preliminary report to the Police Department, and their version of what they thought happened, right?

A. Let me answer the complicated question. And see, I can't... The law has given us a reason not for me to make a decision whether it is the D.A.'s Office or the Medical Examiner's Office. The courts, the law says if there are some agencies within the District Attorney, you know, their apparatus, if I

don't get the information the District Attorney is responsible. I don't care if it was Joe Blow the police officer on the street, if he doesn't give a report to the D.A., the report maybe he never got, it is his responsibility. You know that to be the law as well as I do. I don't have to decide whether or not the D.A. got it, it wasn't there.

Q. In fact you are absolutely right. What confidential source gave it to you?

A. A confidential source.

Q. Well, nothing is confidential when you testify in a Court of law --

THE COURT: Quiet.

BY MR. GRANT:

Q. -- when you are on the stand and under oath.

A. I am under oath, I am not going to tell you.

Q. That's good, I am not going to ask you again. How about the confidential sources that you had in the Police Department since you were an evidence technician there for five-and-a-half years, did you have any of them?

A. I don't know, I've never had to use them to find out.

Q. You never exploited them?

A. Right.

Q. So you have them?

A. I never had to use them.

Q. So you probably had as much information and as much documentary evidence and knowledge about the case as the District Attorney had, and perhaps a little bit more because you had more avenues because you worked for these people, didn't you?

A. Oh, absolutely not. Think about it. Think about it. You are saying I had more information than the D.A. He gets all the reports, he talks to the detectives who interviewed the people, he gets the flavor, he knows what the witnesses look like, where they live. What their phone number is. And you are saying I have more than him. Come on.

Q. You have his whole file, you know what their phone numbers are, you know what their names are, the only thing you don't know is where they live, and you have confidential sources?

A. Listen, the District Attorney, he had an opportunity, each one of those people who were interviewed, he had an opportunity to talk to the person who interviewed them. Don't you think that's of greater value than just reading the cold page? Don't you think the people who conducted the test, he talked to them, he knew what did happen and didn't

happen. He knew what was not in the report. I don't know what was in the report. How could you compare what I knew with what he knew? They had everything. I got what they gave me. They were in control. If they're in control how could it be the same? They are in control.

Q. The District Attorney got witnesses for you, he gave you full discovery, attempted to give you guidance, and when you needed it encouragement during your difficulties with that man, yet you wouldn't even abide by the rules of Court and be reciprocal in turning over discovery to them, that you were obliged under the law to do, isn't that so, because Mr. Jamal wouldn't let you?

A. What, I don't know what I didn't -- what did I have that I didn't turn over?

Q. Let's explore it, then.

A. I don't remember.

Q. Notes of testimony, page -- would you like the transcript?

A. No, go ahead.

MR. WEINGLASS: May I have a reference to the page?

THE COURT: He is just getting ready, he just asked him --

MR. GRANT: Notes of testimony, June 24th, 1982, pages 4 through 7. I will read it in it's entirety, and it has some length to it, but I am going to pose a question at the end. So --

THE WITNESS: I will wait.

BY MR. GRANT:

Q. So I will come to that point. Mr. McGill is complaining to His Honor Judge Sabo in your presence, quote, I mentioned this to Mr. Jackson before. I would ask again, I realize this is not his personal fault but the Defendant's. I'd request once again pursuant to the rules of discovery any statements or any names of witnesses that he would call. He indicated to me that as far as he knew -- meaning you, as far as you knew -- the only witnesses that he would call if he decides to call them would be the witnesses he has told me about. And you told him about Dessie Hightower, Robert Pigford, Dr. Colletta and Dr. Cudemo. Cudemo and Colletta were treating physicians for Mr. Jamal at Thomas Jefferson. Hightower and the other one were people who came after the shots were fired and claimed to see a one-armed bandit running from the scene. Mr. McGill then says, I made a request, and I believe I also

made a request, yes, before Judge Ribner, the names of all possible character witnesses. And this was done at the same time as requests for criminal records. Any witnesses he may call, I made to Mr. Jackson a request for the name of all potential character witnesses so I could make a check on their records. There is an indication he may call some. I received no names. I will petition to exclude, Your Honor, so that everyone's on notice, to exclude the testimony of anyone who I'm not informed of at this point, because I think that I may rest my case tomorrow. And at this point I received no word except what Mr. Jackson has done pursuant to the rules of discovery.

And you say, regarding character witnesses, aside from the difficulties that I'm having with Mr. Jamal, and Mr. Jamal has indicated to me at least previously that he, that he intended to present character witnesses -- as an aside: You were the lawyer of record at this point?

A. Yes, sir.

Q. You further state, Mr. Jamal has previously indicated to me at least that he has several witnesses who were character witnesses who were coming from Europe. Whether in fact that occurs, I

Page 130.

don't know. Then you say Judge, let me assure you and Mr. McGill I have no names at this point, I have absolutely no names.

The Court: All we can hope is that Mr. Jackson will talk to Mr. Jamal and try to get them from him and tell him if he doesn't give them to us that they may very well not be permitted to testify. That's all I can do. I can't force him to give them to Mr. Jackson.

Mr. McGill at, I think, I'm sorry, he is still harping about this because you haven't given it to him yet. Two days later, June 26th, '82, pages 137 and 8. Mr. McGill: I was wondering, Your Honor, didn't we understand that I was going to get the names of at least some or at least I requested that I have the names of witnesses.

Mr. Jackson: For the record, I have no names, I still don't have any.

The Court: You mean for character.

Mr. Jackson: For character witnesses, I still don't have any.

Do you recall that exchange, sir?

A. Yes, sir.

Q. You do?

A. Yeah, generally speaking, yeah.

Page 131.

Q. So why couldn't you give Mr. McGill the names if you were in control and you knew who you were going to call?

A. You are still on this control thing.

Q. Yes, and I am going to stay on it.

A. All right. I was in control. Didn't have the names. It doesn't mean I was out of control.

Q. No, he was out of control and you had no control.

MR. WEINGLASS: Objection, Your Honor. I ask that that be stricken. I ask that Counsel be admonished not to make references of that nature on this record: He was out of control. I ask the Court to strike that from the record. Clearly --

THE COURT: Just a minute. Rephrase your question. Rephrase the question.

BY MR. GRANT:

Q. Yes. You were not in control, Mr. Jackson, were you? At any point in this trial were you ever in control?

A. Well, let me just tell you this, Mr. Grant, and I am going to try to tell you for the last time. I have been practicing law for a long time. At no time, at no time that I know of I haven't been in

Page 132.

control, when I was a lawyer. Those times that I wasn't, I went to the Supreme Court. I told them let me out. Then they told me be a backup Counsel. That's when I wasn't in control. I wouldn't do it because I wasn't in control. That's what this whole thing was about.

But for some reason you seem to think Mr. Jamal was in control. Mr. Jamal was in control when he got the Commonwealth to respond to some political thing. When I was the lawyer I was the lawyer, I was doing what I wanted to do. When Mr. Jamal wanted me to do something I said Your Honor, Mr. Jamal wants me to do this. Mr. Jamal is ordering me to do this. If I didn't preface my remark that way, I was in control.

Now, you could go on and ask me anything else. I didn't give those names because I didn't have the names. So that means if I don't have the names I'm out of control. If that's your characterization I accept it, but now you can at least understand what I feel.

Q. Why didn't you have the names, then?

A. Because he didn't give them to me, I suspect.

Q. So you suspect that. When his case -- well, on 7-l-82, at pages 32 through 35, the Judge is

Page 133.

complaining why aren't you telling us who you want to call next. You call them at the last minute and then you complain because they don't appear out of the woodwork.

You say, I was forced to try and remember everything that everybody said and I couldn't do it. And you said, your reference was back to I don't have the statements anymore?

A. That is something, trust me, I know that is in a different context.

Q. Oh, is it?

A. Yes, sir. It's different than character witness. I don't have to remember anything about character witnesses, all I do is call the name. What I was saying, what I talked about, what I had to remember was I had 150 different interviews and, again, I'm doing this by myself. Remember, the District Attorney, you have two assistants helping him. I'm doing this on my own. I had to remember each and every witness who might testify, who could testify, and make an immediate decision when and how to do it. And sometimes I guess I didn't quite remember when I needed to.

Q. Well, if you had a piece of paper and a pen you could write down the names of people you are

Page 134.

going to ask questions, that's pretty simple, isn't it, if you were in control?

A. Hmm-hmm. Well, it isn't that simple, is it?

Q. Well, not in this instance, I imagine. Let me ask you this. On June 29th of 1982, pages 5 through 7, there is a discussion here, I would like you to listen to this, I would like you to tell me if in fact you are still going to maintain this position that you were in control.

Mr. McGill: Also, Your Honor, just for the record, there has been a discussion this morning between the Defendant and Mr. Jackson. I don't know what they were talking about but there's been discussions and during the course of that time Mr. Jackson would come to see me and ask me for statements in reference to witnesses, and I would give it to him and then he would go through them and then he would talk to Mr. Jamal. Again, I don't know what they are talking about. However, I want the Court to know and the record to reflect the continuing effort by Mr. Jackson to represent his client in the very best possible way and at the same time have a continual communication between Mr. Jamal and Mr. Jackson without my knowing what it's all about. Nonetheless, efforts are being made. So if

Page 135.

Mr. Jamal does not wish to assist in any way with Mr. Jackson, he certainly has had the opportunity to speak to him.

You say... I would like to say for the record, Your Honor, that

most of the communication has been one way in that aside from Mr. Jamal not wanting to cooperate with me, I nevertheless at each instance that he has been brought into the Courtroom, I have tried to tell him what I intended to do or, when necessary, he is not in the Courtroom, either tell him what has happened or what I intend to do. That has essentially been the extent of the conversation, although today there was a question that I posed to him with regard to some information, and he suggested, he suggested a name and he further suggested in which statement I could find the information.

Mr. McGill: And did you find the information.

Mr. Jackson: Yes. Yes. Mr. McGill gave me the information.

Mr. McGill responds, okay, so he asked you information about a witness that you may call, and then you got the information and communicated to him what the information was. Is that, that was the

question. So you communicated to him what the information was.

Mr. Jackson: No, I gave him the information. He told me the name, that was with regard to his brother -- referring to William Cook -- having blood on his hands. I think he said it was Shoemaker but actually it was Magilton. Mr. Magilton was a witness who testified, a cab driver who was at the scene.

A. Hmm-hmm.

Q. Now, if you recall tell us what that was all about?

(Pause.)

A. I'm thinking, I don't know for certain. I'm thinking that obviously I did not have a statement of a witness. And that there was information I needed to find out about a witness. I mean I guess that would be the only reason for me to ask Mr. McGill to look at his statement. And I suspect Mr. Jamal didn't have a copy of the statement either. We were both without the statement. And it may have been something came up, either one of us or maybe Mr. Jamal remembered it. I really don't remember. I don't know. You said why did I ask Mr. McGill to look at his statement. That's the only reason I

could think of: I didn't have it.

Q. Mr. Jackson, in that regard, and in the context of the statement, it's become clear during the course of reading these transcripts to you, it's dawning on me that Mr. McGill, through his comments throughout the record, knew you were in a difficult situation?

A. Every trial is a different situation.

Q. And he got witnesses for you. He gave you statements, he looked for witnesses, he gave you addresses. In light of all that --

A. Mr. Grant --

Q. In light of all that, why would you insinuate that the man is withholding or suppressing evidence from you?

A. All right, you are going to go back.

MR. WEINGLASS: Objection.

THE COURT: Overruled.

THE WITNESS: I will answer that again.

MR. WEINGLASS: Objection.

THE COURT: Overruled.

MR. WEINGLASS: Your Honor is overruling me before I made the objection.

THE COURT: Well, it is a general

objection, I'm overruling it.

MR. WEINGLASS: It is not a general objection, it is specifically directed to the question.

THE COURT: Well; it is overruled, okay. This is cross-examination. He is asking him a question he could answer.

MR. WEINGLASS: This is the first time I've had a question I haven't had a chance to object to to be overruled.

MR. GRANT: Your Honor, I believe Counsel is merely trying in vain to interrupt my flow of thought and he will think I will forget where I was, I would ask him to make his objection, admonish me, and have a seat somewhere.

MR. WEINGLASS: I tried to make it and you overruled it.

THE COURT: I am overruling it no matter what it is. I don't have to -- it's overruled, okay.

THE WITNESS: I will answer your question, Mr. Grant.

BY MR. GRANT:

Q. Yes?

A. Tell you again, unless you could tell me otherwise, I think the statement law holds true: Regardless of who along the chain of command had total control, the D.A. is responsible for any missing information.

Q. Oh, okay.

A. Wait a minute, I'm not finished. You are saying when the District Attorney did all these wonderful things to help me by getting witnesses. Well, remember what I said: The District Attorney is the one that had all of the names, all of the addresses of the witnesses. He is doing me a favor by not letting me talk to them. So he gets those witnesses, so I should be so happy that it's like now I'm not going to let you interview this witness, tell me what witness you want and I will get them for you. He is doing me a favor. I didn't think it was a favor. I had no other alternative. I had no access to the witnesses. That did not please me. So it wasn't, I don't think that that was something that he was doing that was so great.

Q. Well, let me ask you about that. You didn't have to know, you didn't have to be a rocket scientist, Mr. Jackson, to figure out by reading the statement of two out of the three eyewitnesses, or

four eyewitnesses, that two of them, if not three of them, were cab drivers. Now, you had their names, and you had everything except where they lived. Now, how many cab companies do you think there are in Philadelphia? You paid the guy 600 bucks, don't you think he could figure that out?

A. Okay. You think Mr. McGill had the three of them.

Q. I don't think he has to.

A. No, because somebody gave them to him, that is the point I am making.

Q. But he is not getting money from the Court to go out and do it. He is not being paid money to go out and hire investigators. He got the money, what did he do for it? You paid him.

A. Well, as I said, you want to give Mr. Greer $600, you want him to contact all the cab drivers.

Q. No, all I want him to look for is two names, X name and Y name and the cab companies that existed. He didn't have to walk one step. He could put his face in a phone and punch some numbers, that's all he's got to do?

A. Okay, Mr. Grant, I don't disagree with you.

Q. I am not even an investigator, I can figure that out.

MR. WEINGLASS: The witness has to be given an opportunity to answer.

THE COURT: Just a minute, he will answer.

Go ahead.

THE WITNESS: Mr. Grant, I am not going to disagree with you. My whole philosophy, my whole position has been and still is: Why should the Court have to pay somebody to find some information that the District Attorney has. Joe McGill preparing for this case, he could talk to the investigator, he could read the

statement, he had the address. Why should I be disadvantaged? Why should I be disadvantaged? Because I represented Mr. Jamal? Why should he have all the information? He doesn't have to call up any cab companies. He doesn't have to make any phone calls. And you are saying I should do it because I am getting money from the Court. Mr. McGill works for the Courts, he is a D.A. So what are you saying? Well, we don't want to pay it out on this end, we will pay it out on the other end. It doesn't make sense to me. I understand you disagree with me, it is a point of disagreement.

Page 142.

Anthony Jackson, Esq. - Cross

BY MR. GRANT:

Q. When this case was appealed and Miss Gelb became the appellate lawyer, did you meet with her?

A. Yeah.

Q. You said yeah but you gave an expression that was somewhat quizzical, as if you were trying to recall whether in fact it was true.

A. No. How many times I met with her. I know I met with her, oh, sure, I gave her, I mean she got my file so I know I met her. Oh, yeah, I met her.

Q. Did you meet with her son who also worked with her on the case?

A. Yeah, I think Jeremy, her son Jeremy, yeah, I think he was there. Yeah. I am going to say yes.

Q. And when you say you turned over your file to them, did your file include the notes of testimony from the trial and the pre-trial proceedings of this matter?

A. It contained everything I had.

Q. I didn't ask you that.

A. Well. I know you didn't ask me but I am telling you that it had. Because now you ask me specifically what was in the file. I am going to tell you, Mr. Grant, I do not know what was in that file 13 years ago other than everything that I had.

Page 143.

Anthony Jackson, Esq. - Cross

Q. Did you order anything that slightly resembles what is sitting in front of you, which is called a booklet of notes of testimony from the trial proceeding? Did you order those to complete the file, sir? As a matter of fact, you get it for free when you are Court appointed, don't you?

A. You know what, I am going to assume that I did. Because I think I argued post-trial motions in this case so I assume that I did have the notes.

Q. I most certainly assume you did. So why won't you just answer my question, Mr. Jackson, and say you gave her the notes?

A. Because I don't know if I gave her the notes.

Q. Do you know whether you had the notes? You know you had the notes because they make them available to Counsel free of charge?

A. You are asking me if I had the notes or I gave her the notes? They are two different questions, Mr. Grant, now what question do you want me to answer?

Q. The first one.

A. Did I have the notes. I had the notes at post-trial motions. Now ask me that question.

Q. Did you give them to her?

A. I don't know, I assumed that I gave her them, but I may have given it to Mr. Jamal. I was no

Page 144.

Anthony Jackson, Esq. - Cross

longer his lawyer after that. So you ask me if I specifically remember if I gave it to her, I tell you no. I tell you I gave her everything that I had. If I had the notes at that time, I gave it to her. If I didn't have the notes at that time, obviously I didn't give it to her. How can you ask me to answer any other way?

Q. I am asking you did you give her the notes or didn't you, and you are telling me you don't know?

A. I answered the question, sir.

Q. Thank you. Did you work on any part of the appellate process for Mr. Jamal?

A. No, sir. No, sir.

Q. According to your affidavit, on page 2, Counselor, you say you devoted substantial time and energy to the preparation of cross-examination, you say.

A. Yeah.

Q. So you are admitting that you put in time and effort and preparation to cross-examine the Commonwealth's case?

A. A little bit.

Q. No, not a little bit. That's not called substantial time and energy. That's called a little bit.

Page 145.

Anthony Jackson, Esq. - Cross

A. I put in substantial time, trust me.

Q. So you put in a lot of time and energy?

A. I put in a lot of time, yeah.

Q. So you think you were pretty well versed, at least for cross-examination, then, by your statement in this affidavit -- which you declare under penalty of perjury, right (displaying)?

A. Yeah, for most of it, for those witnesses, yeah, I prepared.

Q. And from your training in the Police Department you were already pretty well versed on how to attack the forensic and physical evidence offered by the prosecution, weren't you?

A. No, sir.

Q. You weren't?

A. I wasn't an expert. I collected evidence, I didn't analyze it. Fingerprints, I didn't do forensic stuff.

Q. Well, that also encompasses your experience as a lawyer with 20 homicide trials under your belt?

A. Well, it wasn't -- I am not an expert. You want to make me an expert. I am no dummy either, all right. So I had to prepare. I told you Mr. Fassnacht, he assisted me. The pathologist that I talked to, he assisted me. I had books. During the

Page 146.

Anthony Jackson, Esq. - Cross

trial I had the books, I had to read them. I mean I became, I was as well versed in the different areas of forensic science as I possibly could be to examine the witnesses that appeared on the stand. And if it looked like or sounded like an expert then I pulled it off.

Q. Well, you pulled it off. Now, when you are in the same building and don't talk to these witnesses that you claim that you didn't know the addresses for, that was primarily because they don't want to talk to you or your investigator, not because the Commonwealth stashed them in some hole in the ground somewhere, isn't that so?

A. I had no way of knowing since I couldn't get to talk to them.

Q. 600 bucks, find an important witness, and all he does is look at that witness from a distance for six months and gives you two interviews. You mean to tell me you couldn't find one of these people, just to talk to them or to call them on the phone?

A. Well.

Q. I don't believe you, Mr. Jackson. I want you to tell me that that's true?

MR. WEINGLASS: Objection, Your Honor. I believe the comment to Mr. Jackson is utterly

Page 147.

Anthony Jackson, Esq. - Cross

inappropriate.

MR. GRANT: Yes, I agree with you, I move to strike it. I apologize to the Court and Counsel.

THE COURT: Okay...

MR. GRANT: And to you, Mr. Jackson.

THE WITNESS: Excuse me. I didn't do any investigation in this case. I needed an investigator to do as much as I could do. I had some primary witness. Cynthia White was a primary witness. I only had limited funds. Out of 150 witnesses.

BY MR. GRANT:

Q. More than a hundred?

A. Whatever the number is.

Q. All right.

A. I had to try to remember files. Under which file it is going to be. And you keep talking about this $650 like it is a lot of money for all of these witnesses. Do you think he was going to find all of these witnesses? If that's what you believe that's what you believe. It didn't happen. He didn't find the witnesses. Maybe he was a poor investigator. When I see him I'm going to tell him and ask him for the money back.

Page 148.

Anthony Jackson, Esq. - Cross

Q. I will tell him when he gets on the stand, don't worry about it. Now, $600 in 1981, I don't know what the cost of living increase with the inflation rate has been for the past 15 years, but that could probably be worth a thousand bucks today, right? Today if you sent your investigator out and gave him a thousand bucks you could get a lot of investigation, couldn't you?

A. Yeah, unless he was shaving.

That's right.

Q. That's right, you could get a lot of investigation for that money. Now, the fact that your case was limited to the witnesses you called to testify was not because you had no investigator, Mr. Jackson, but because there were no witnesses that existed to support Mr. Jamal's version of events, wouldn't you say that that's true?

A. How could I say that, Mr. Grant? You know as a lawyer, how could you say that the witnesses wouldn't support Mr. Jamal if you haven't talked to them?

Q. Well, you did put up witnesses on the stand?

A. Those that I could, sure. You know, all I am really saying is this. Look, I'm not saying that if we had the addresses, and I don't think I have the

Page 149.

Anthony Jackson, Esq. - Cross

burden of showing that if we had the addresses and talked to them, that their story, we could have gotten something more beneficial.

Q. No, that is no burden, that is precisely what the issue is in this law proceeding.

MR. WEINGLASS: Objection. The witness was interrupted midway through the response. I ask Counsel to give the witness some courtesy.

BY MR. GRANT:

Q. I just want to correct the record as to what the legal standard is for PCRA litigation.

A. I am not talking about that now, I am talking about something else.

Q. In other words, it makes --

A. Sorry, Mr. Grant, what I am talking about: At the time of trial, if I had the address of a witness Joe Blow, he says I saw Mr. Jamal shoot him and say I shot the mother fucker and I hope that he dies, fine. And if I have his address I go to visit him he may say the very same thing. And you say well, you wasted time. Or he may say, no, I didn't say that.

So when you say well, don't you think that those witnesses would hurt him -- how can I tell? The police are in control of all of the

Page 150.

Anthony Jackson, Esq. - Cross

witnesses. I don't know what they would say to me if I talked to them. That's why I wanted the investigator. That's why I wanted their addresses. Now, again you could tell me about the policy here in this criminal justice system and how much you got. Fine, but it just seems to me common sense tells you that if you had an opportunity to talk to the witnesses, there may be some possible changes in their testimony.

Certainly every time the Police Department -- well, again you are going to say this is a conspiracy. But each time the Police Department 's witnesses testified in this case, they changed their testimony. And, again, it helped them. Because they had access to the witnesses. Who knows if I had access to the witnesses, they may have changed their testimony as well. And I could give you the whole list of them. They all changed their testimony to the Police Department and helped the prosecution. And again, I am not suggesting that anyone did anything wrong. It certainly could have been coincidental. But again, if I had access to the witnesses, I may have had some beneficial coincidences.

Q. Have you ever heard of the case of

Page 151.

Anthony Jackson, Esq. - Cross

Commonwealth versus Brady?

A. Heard of it, sure have.

Q. And it's progeny, there are a number of cases now?

A. Yeah.

Q. Because in 1981, people lied to police first and then they would tell the truth, now they tell the truth first and then when they come in Court they lie. So they have developed that rule of law which was departing from everything the Commonwealth ever followed because they say there has got to be a way to deal with this situation. So you could bring the person's statement up that they made the first or the second time and say come on, which one is the truth. Do you know that is the law now?

A. Yeah.

MR. WEINGLASS: Objection, Your Honor, to the form of the question.

BY MR. GRANT:

Q. Do you know that is the law now?

A. Sure I do.

Q. And do you realize that no one is accusing the defense lawyers of controlling those witnesses when they come up on the stand now and they say I don't know nothing, I didn't say nothing? But you are

Page 152.

Anthony Jackson, Esq. - Cross

saying that about the Commonwealth, aren't you?

A. I am saying two different things. I am saying the Commonwealth was in control of the witnesses, that's one thing. And I'm saying yes, witnesses changed their testimony. I am not saying because they were in control that made them change their testimony. I am simply saying that they had access to them and their statements changed. You know, we wouldn't have this argument if I had access to those witnesses. Wouldn't have this argument at all. All you have to do is give Tony Jackson the addresses and we wouldn't have this big debate. And maybe it is philosophical, Mr. Grant, and I don't mean to do it. I am simply saying that I don't have access to those witnesses and I don't think it should have been.

Q. I am not going to revisit that issue.

A. Okay.

Q. But I would like to inquire of you about your possession of the Internal Affairs statement given by Gary Wakshul.

A. Right.

Q. You said Mr. Jackson had some statements and you had some statements. But Mr. Jamal does not receive the statements from the District Attorney?

Page 153.

Anthony Jackson, Esq. - Cross

A. That's right.

Q. The lawyers do?

A. Oh, yeah.

Q. So if he had it, you had it?

A. I said yes.

Q. Do you recall Mr. Jamal giving a summation to the Jury after they convicted him of murder in the first degree?

A. Yes.

Q. And do you recall him to quote John Africa, when a lawyer chooses to follow the conditions of the court he compromises his obligation to his client. He is referring to you there, by the way.

A. Yes, sir.

Q. It was a legal-trained lawyer who followed Sabo's direction not to introduce the testimony of Mr. Gary Wakshul. A cop who according to his statement of 12-9-82 -- he meant '81 -- arrested me, carried me to a wagon, accompanied me to Jefferson Hospital, guarded me and returned to Homicide later that morning to make a statement. According to Wakshul, quote, we stayed with the male at Jefferson until we were released. During this time the Negro mail made no comments, unquote. He further states, according to Wakshul's statement of February llth,

Page 154.

Anthony Jackson, Esq. - Cross

1982 -- which is the one I gave you this morning from IAB, over two months later, Wakshul recalls, quote, oh, yeah, Jamal said I shot him, I hope the M'F'er dies. Did he consider that comment.

Now, this is in the closing argument at the penalty phase of capital litigation.

MR. WEINGLASS: Objection, it was not closing argument. I just want to correct Counsel.

MR. GRANT: Well, Your Honor --

MR. WEINGLASS: Mr. Jackson made the closing argument.

MR. GRANT: If the Court pleases: Mr. Jamal considered it closing argument because he didn't think he would be cross-examined. Much to his dismay, he was.

MR. WEINGLASS: It wasn't closing argument. You can't cross-examine someone on closing argument.

THE COURT: He was just saying what he thought Mr. Jamal said.

MR. WEINGLASS: Pardon?

THE COURT: Do you have problems hearing?

MR. WEINGLASS: I can't hear you,

Page 155.

Anthony Jackson, Esq. - Cross

Judge, I'm sorry.

THE COURT: I said he just made the comment as to what Mumia Abu-Jamal thought he was doing. We understand he was cross-examined on that. Supreme Court had ruled on that issue. Okay.

Go ahead.

BY MR. GRANT:

Q. Mr. Jackson?

A. Yes, sir.

Q. Unless somebody snuck into your office in the dark of night, rifled your files looking for one statement, and ran out with it undetected, and in no other way, could Mr. Jamal get that statement unless you gave it to him; wouldn't that be fair to say?

A. Absolutely you are right.

Q. So you would admit you had that statement?

A. I must have had that statement.

Q. So when you didn't call Mr. Wakshul to the stand, do you think more probably than not that it was because of your strategic decision based on what was in that statement not to present that to the Jury?

A. Again, I don't ever remember, and I am saying this with all sincerity, I don't ever remember seeing

Page 156.

Anthony Jackson, Esq. - Cross

the statement.

Q. Okay.

A. It is obvious, and I am telling you now, if Mr. Jamal had the statement I had the statement. I don't ever remember seeing that statement. Now, if I did, I just don't remember. And if I read the statement, it may be a tactical decision not to do it. But I don't remember having to make that tactical decision.

Q. Okay. That's fair enough. You stated in your affidavit, paragraph 4 -- sorry, paragraph 3 on page 4 -- that you called to the witness stand Miss Veronica Jones and Mr. Hightower to testify for the defense. And you said yesterday that you didn't know how you got in touch with Miss Jones.

A. Yeah.

Q. But she suddenly appeared and was available for you on the day you needed her?

A. Yes.

Q. Do you consider that an incredible statement?

A. Yes.

Q. In other words, not worthy of belief?

A. Pardon me?

Q. Incredible means not worthy of belief?

A. Well, if that's what incredible means. To

Page 157.

Anthony Jackson, Esq. - Cross

this day I still don't remember how I got her to come to Court. Other than I told the D.A.

Q. Well, you think you sent out some telepathy vibes and she said man, Anthony wants me in to testify today?

A. No, I don't think that was the way. I think, I'm saying I don't know how I got her into Court. I really don't.

Q. Maybe it's because you had her address?

A. Okay, fine. Maybe I did. I don't know how I got that address. Maybe, I don't remember.

Q. Okay.

A. Tell me. I don't remember 13 years ago.

Q. And you said these were the only two eyewitnesses available for the defense in your affidavit?

A. Yeah, you know, I think Dessie Hightower and his friend, the way we were able to get their addresses, I think because of some admixture of their statements we could glean their addresses.

Q. Ahh. Just like if you had a guy who said I drove a cab for United and you know United Cab's office is at 12th and Locust and his name is X, then you could call up and say do you have so-and-so there?

Page 158.

Anthony Jackson, Esq. - Cross

A. No, it is different, but I am not going to argue with you.

Q. All right.

A. But anyway, the address was in the statement somewhere, that's how we got their, that's how we got those addresses. If you say I had Veronica Jones' address then fine, I don't remember. I didn't remember that we had her. I think it was just Dessie and one other person. If I had Veronica's then fine.

Q. When you said that these were the only two eyewitnesses available for the defense, what you really meant to say was that of the people who saw the killing, these were the only ones from whom you could create an impression that Mr. Jamal was not a murderer, isn't that what you mean?

A. No, sir. Debbie Kordansky is one.

Q. Oh, really?

A. I would think based on the statement that I had, that she saw somebody else running away. And everyone else -- the cab driver, one time, as you know, he said he saw a man run up, shoot the police officer and run away. Of course he changed his testimony. But when you say these are the only two, when you said these are the only two witnesses I could find for the defense, Debbie

Kordansky in my

Page 159.

mind --

Q. You said these were the only two eyewitnesses --

MR. WEINGLASS: Objection.

BY MR. GRANT:

Q. -- available for the defense?

A. I'm sorry, I forgot the eye --

MR. WEINGLASS: Once again the witness was interrupted midway through.

THE COURT: Well. He is refreshing his memory.

BY MR. GRANT:

Q. These are the only two eyewitnesses that you mentioned. Now, isn't it a fact that not even Mr. Hightower was an eyewitness by his own statements: He hears five shots and he is around the corner of a building and he comes out when there is no more shooting because he was afraid to come out, and that's what he testified to at trial, didn't he, sir?

MR. WEINGLASS: Objection to the form of the question.

THE COURT: Overruled.

BY MR. GRANT:

Q. Didn't he, sir?

MR. WEINGLASS: It omits the fact --

Page 160.

MR. GRANT: I would object to him preparing the witness. If you want to prep him prep him before.

THE COURT: If you want to see me at sidebar ask, but please don't try to tell the witness what to say.

MR. WEINGLASS: I am not doing that. I don't know on what basis the Court makes that observation, also, unless it is an improper observation. With all due respect, I object.

THE COURT: With all due respect, the objection is overruled.

THE WITNESS: To answer your question --

BY MR. GRANT:

Q. He was not an eyewitness, was he, to the shooting?

A. To answer your question: If I called in the eyewitness I must have had a reason to call in the eyewitness at that time. And his testimony was whatever it was.

Q. What was it, was it an eyewitness, or did he say he didn't see the shooting? You certainly could remember that. It is the only death penalty you have ever tried and lost. You remember that, tell us you

Page 161.

remember that?

A. I don't think he saw the shooting.

Q. Thank you.

A. You're welcome.

Q. And neither did Debbie Kordansky, according to her statement, did she?

A. No.

Q. So those weren't eyewitnesses that weren't available to you, were they?

A. Now, see, Mr. Grant --

Q. Yes or no, sir?

A. Mr. Grant --

MR. WEINGLASS: Objection, Your Honor.

THE COURT: Well, he could answer yes or no and then explain it if he has to.

BY MR. GRANT:

Q. Yes or no, sir?

A. She was an eyewitness.

Q. Oh.

A. Now, see, but you're making the distinction and trying to make me buy into what you want me to say. She was an eyewitness to -- you are saying she wasn't an eyewitness to the shooting. Fine. But she was an eyewitness to seeing the man run away. There are differences. And I am not going to buy any of

Page 162.

what you say. So when I say she was an eyewitness, I still say she was an eyewitness. She eyes the man running away. Doesn't that make her an eyewitness?

Q. Yes.

A. Thank you.

Q. She witnessed something with her eyes, is what you mean. You implied during the trial that the person seen running away was the shooter of Officer Faulkner?

A. I sure would like to know who he was.

Q. No.

A. Maybe I did.

Q. Did you or didn't you?

A. I must have. At times I don't know who he was.

Q. At times you didn't even know the person existed but that's what you implied throughout the trial?

A. All I know is what those people say. If they said it, I wasn't there. They said they saw the man run, so what should I say, oh, they're lying?

Q. Well, not exactly.

A. Oh, okay then.

Q. Mr. Hightower claimed to see someone running away and he didn't know if it was a man or a woman;

Page 163.

that was his testimony, wasn't it?

A. Fine, but who was it who ran away?

Q. What was his testimony? It could have been a woman who shot Police Officer Faulkner in the back and stood over him and shot him in the face: That was his testimony, wasn't it?

MR. WEINGLASS: Your Honor, may the testimony be given by the witness?

THE COURT: Well, if he doesn't remember.

THE WITNESS: Look, I will accept that. If you are saying he said it, fine. I mean I am not going to try to remember the specific testimony of these witnesses. If you say he says it I have no reason to disagree. He said whatever he said.

BY MR. GRANT:

Q. Thank you. Now, the truth is that no matter how much investigation you did, over how much time, and notwithstanding all the resources and groups available to Mr. Jamal and to you, and notwithstanding all the organizations offering monetary and other support, you just did not find any evidence that showed him to be innocent; isn't that the simple truth in this case?

Page 164.

A. I did. The simple truth is I didn't find it. That's right. If I had more resources I may have. I don't know.

Q. And you may have found out that there was no such evidence that you could unearth no matter how much money or how much time you could have had?

A. You are absolutely right.

MR. WEINGLASS: You may have found out: I object, it is a speculative question. You can't ask the witness to speculate.

MR. GRANT: He gave a speculative response and I was giving him the converse of what he stated.

MR. WEINGLASS: May I have a ruling?

THE COURT: Objection overruled.

Go ahead.

Quiet.

BY MR. GRANT:

Q. Now, the people that you called as character witnesses in the guilt phase that testified on Mr. Jamal's behalf, none of them were called in the penalty phase and in your -- this is a declaration as opposed to an affidavit; is that right?

A. Yeah.

Q. Okay. Those people did not testify at the

Page 165.

penalty phase and you say in your affidavit, sir, I had no tactical or strategic reason for not putting on mitigation evidence on behalf of Mr. Jamal. And you know very well what the legal effect of saying that in a proceeding like this is, don't you?

A. Yeah.

Q. What is the legal effect of it?

A. No tactical reasons, must have been for ineffectiveness, sure, I understand that.

Q. Yes. If that is accepted by the Court, if that bald assertion that is in your affidavit is accepted, what happens as a result of that?

A. The Court has the option of granting a new trial or some other remedy.

Q. Yes, precisely. Now, you didn't build ineffectiveness into this record so that if you lost he would be guaranteed a new trial, did you?

A. Never have, never will.

Q. And the people that you didn't put on at the penalty phase that were called at the guilt phase who testified as to character, more than likely you passed them as you came into the Court and you probably looked in their faces as you walked into the room on the very day of the penalty hearing, because they attended the trial in this case, they came to

Page 166.

Court and followed the case, didn't they?

A. No, no, no, no.

Q. They didn't?

A. No, most of the people weren't. I think there may have been one or two. Most of these people did not attend the trial everyday, no. Not the character witnesses, no, sir.

Q. Now, Mr. Jamal -- well, strike that question. Are you telling the Court that you don't know why you didn't call these people at the mitigation phase?

A. No. I don't know why. I don't know why.

Q. Well, tell us some reasons that could have gone through your mind, since your recollection is faulty and you don't want to read the notes of testimony to refresh it for whatever reason that may be, tell us why you tactically may not have used them?

A. Tactically?

Q. Yes, sir.

(Pause.)

A. I can't think of any tactical reason not to put them on.

Q. How about practical instead of tactical?

A. Practical, they weren't here.

Q. Well, how about another one?

Page 167.

A. Such as?

Q. Such as Mr. Jamal was saying all along that you were working for Judge Sabo, that you were going to get him killed, and that you were a no-good, law-trained lawyer, and even shouted this on a number of occasions in this very Courtroom out loud, that you were going to get him convicted, didn't he, to your face, didn't he?

MR. WEINGLASS: Objection, Your Honor, to the form of the question, number one.

THE COURT: Overruled.

MR. WEINGLASS: He never shouted.

MR. GRANT: How do you know?

THE COURT: You weren't here, Counselor, I was. And your objection is overruled. He could answer.

MR. WEINGLASS: The questioner wasn't here either.

THE COURT: Well, he was the attorney.

MR. WEINGLASS: Well, the questioner puts it in the record.

THE COURT: Well, that's all right, he could answer. His answer is what counts, not his question.

MR. WEINGLASS: No, I objected.

Page 168.

THE COURT: Counselor, I have overruled the objection. Please sit down.

Go ahead.

BY MR. GRANT:

Q. He shouted in your face a number of times, didn't he?

A. He may have, sure.

Q. No, Mr. Jackson, you have never been so humiliated in any case, you can't remember that?

A. Mr. Jamal called me a bunch of names, a whole bunch of things to me.

Q. In other than conversational tones at times, didn't he?

A. Oh, yeah, sure.

Q. Would it be fair to say that he shouted things at you during the course of the trial in a public forum?

A. Okay, fine.

Q. Why do I have to spar with you for every answer if you are telling the truth here?

MR. WEINGLASS: Objection. Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Mr. Grant, let me tell you, this is why you are sparing -- and I don't

Page 169.

mean to spar with you -- but you are asking me about specific words that somebody said 13 years ago and you want me to give you an answer with absolute certainly. Don't you think that that may be part of the reason why I said I don't really know? That is the reason. I do not know word-for-word what he said or anybody. I don't know what I said 13 years ago, let alone what somebody else said. That is the reason, sir.

BY MR. GRANT:

Q. A shout doesn't have to even be a word, shouting at someone could be nonverbal?

A. Mr. Jamal shouted at me a number of times, I agree.

Q. Thank you.

A. If that's all you wanted to know, if he shouted, say shouting. Yes, he shouted at me.

Q. Okay. Now, 13 years ago your memory is not too good when it comes to answering my questions, but you detailed chapter and verse in your affidavit or your declaration here all the things from memory 13 years ago after talking with Mr. Weinglass on only a few occasions?

A. Sure.

Q. How come your memory is so great for him and

Page 170.

so lousy for me?

A. Good explanation: Mr. Weinglass talked to me and showed me the notes. You didn't bring me over to your office to look at the notes.

Q. I showed you notes every day since you have been here and I have been talking to you for eight hours?

A. But Mr. Weinglass wasn't cross-examining me when he was, when the affidavit was there and he could find the transcript and say well, during the time of this part of the declaration, here is the transcript. What you are doing is you are asking me a question and giving me a transcript all at the same time and asking me to remember. I'm not that good.

Q. Well, a practical reason why you may not have put those witnesses on, sir, is after he berated, humiliated and degraded you in public, and basically had been saying throughout the trial that no law-trained lawyer could acquit him except John Africa who wasn't a lawyer, when he got the verdict of murder in the first degree and was facing death, he told you in no uncertain terms anybody could have done that and if that's what 20 years of education gets you I don't need you, from now on this is my show, I don't need you for the penalty phase, I will

Page 171.

tell you what I am going to do, I am going to give my own statement, you don't do nothing for me -- isn't that what happened to you?

A. Didn't happen.

Q. Isn't that why you were afraid to go to the cell room?

A. I was afraid?

Q. Apprehensive, whatever you want to call it? You testified that you were yesterday?

A. Yeah. I maybe, I mean I wasn't afraid but I am telling you that never happened what you said. Never happened.

Q. Never happened?

A. Never happened.

Q. So you were in control of the penalty phase too?

A. There you go with the control again.

Q. Yes, I am.

A. Listen, one of the things, if you are saying that he told me he didn't want me to do something: As I recall, I did speak during the penalty phase. So if I was following orders then I wouldn't have said anything. I did. I talked for a good while.

Q. But when you found out that Mr. Jamal was going to read a declaration to the Jurors, was it

Page 172.

something that was written?

A. I think. I think he had something written. I don't know if the entire address to the Jury was from a prepared statement, though. But he did have something written.

Q. And did you see that before he delivered it?

A. No, sir.

Q. Did you ask him for it?

A. No, sir.

Q. And you knew you'd better not, didn't you?

A. I have never been -- I mean if that's what he wanted to do what difference does it -- yeah, that's right, why would I want to ask and see it? I don't know what it contained. He wanted to exercise his right. That's his right. I am not going to trample it. Who am I to do that?

Q. Well, who are you, you are the person that said basically because I didn't do those things I was totally ineffective as Counsel at the penalty phase. That's why I'm asking you these questions. Why didn't you look at it? Because you were afraid of the man, because you failed him in his mind and you didn't want to quarrel with his decisions thereafter; isn't that so?

A. At no time up until now have I ever been

Page 173.

afraid of Mr. Jamal or any other man.

Q. Well, how about being apprehensive of contact physically or verbally?

A. What was he going to do? I have been called a lot worse names than Mr. Jamal has called me, believe me, a lot worse names. So that was it. I wasn't afraid of being called names. I wasn't afraid of him beating me up. I don't know what else I was supposed to be afraid of. I mean what are you trying to say?

Q. I am trying to say you didn't have a clue as to what he was going to say but sit in that chair and say nothing at all at the penalty phase, let him get up and read a statement, or basically outburst as he had been doing all trial, because he was going to tell you what he was going to do because he no longer had any confidence in you?

A. Well, he didn't have any confidence in me. Mr. Jamal wanted to make this address to the Jury. All along he had been claiming that the Court, through me, through Mr. McGill and Judge Sabo, had been trampling on his rights and not letting him exercise his rights. If he wanted to address the Jury and he had a right to address the Jury, I was not going to stand in the way. Plain and simple.

Q. In other words, you didn't abdicate your

Page 174.

responsibility, you were giving him the freedom and the latitude to do what he thought he had to do to save his life?

A. Yes, sir.

Q. Would that be fair to say?

A. Yes, sir.

Q. Why would you call it ineffectiveness, then?

A. I didn't call that ineffectiveness.

Q. You most certainly did.

A. When Mr. Jamal rose to address the Jury during the sentencing phase I had no knowledge of what he was about to say. He indicated to me that morning when I met with him in the holding cell prior to the start of Court, he wanted me to call him up to the stand for the purpose of making a statement. I complied.

Q. Sounds like you are taking orders again. But I did not see the statement --

MR. WEINGLASS: Objection. Objection for the record: Form of the question.

THE COURT: I will interpret it. Go ahead.

MR. WEINGLASS: Is my objection overruled?

THE COURT: I said that I am not

Page 175.

listening to what his interpretation is, I will interpret it myself at the proper time.

BY MR. GRANT:

Q. I did not see the statement, I did not see the statement, counsel him on the consequences of his doing so, did not discuss what impact his appearance might have, and did not advise him of the risk inherent in such a move, including cross-examination. No strategic or tactical reasons governed my actions in not preparing for the sentencing phase. And you already told us, sir, that you know that that means the possibility of a new trial just by those magic words. What do you mean you are not claiming your own ineffectiveness?

A. Okay, Mr. Grant, I didn't say it was ineffective of me to allow Mr. Jamal to address the Jury. The penalty phase is where I said there was -- see, you are, you are trying to confuse me. You know how you lawyers are.

Q. Yeah, I know how.

A. Listen, what I am saying was during the time that he made the address I had no, he made the address to the Jury, I felt that there was no reason for me to interfere with his right to address the Jury. I still feel that way. Because of all that

Page 176.

had gone on before that time. And I concluded the declaration of course by saying that there was no strategic reason or tactical reason for me not to prepare for the penalty phase. That's all inclusive.

Q. I am almost through, Mr. Jackson.

A. Well, take your time, sir.

Q. Page 6, paragraph 1 of your affidavit. You state -- I'm paraphrasing because I don't have the exact quote -- Gary Wakshul, the police officer whose name has been bandied about so often in this Courtroom in the last three weeks, went on vacation despite a notation on Wakshul's report that he not be allowed to go on vacation during the trial. Now, what report are you talking about, and what notation are you describing?

A. As I recall, and I think Mr. Weinglass had shown me a statement, but I didn't have the statement when I did it.

Q. Oh, he showed you a statement that had some writing on it?

A. Or something of that sort. I mean that's the only way.

Q. Was that a police statement that he gave about this crime?

A. I mean I had to get it from somewhere, it

Page 177.

certainly wasn't something that I recall. And of course I don't have the statement.

Q. Well, Mr. Weinglass had it then he showed it to you, right?

A. He showed me a statement or another report or something. I don't know whether it was... I don't think it was his statement. I don't know what it was, I don't remember. See, I don't even remember something within the last year, so. I mean that's the only reason I would have said it.

Q. Well, maybe Mr. Weinglass remembers?

A. Maybe.

MR. WEINGLASS: Your Honor, it was read into the record at trial. And if Counsel will look at the page reference for July lst, he will see that Mr. Jamal read into the record with the statement in front of him the words no vacation which appears on the front of the December 9th statement of Officer Gary Wakshul.

I'm sorry Counsel has overlooked the statement himself. Maybe he's read it 10 times and he overlooks parts of the statement. But the fact remains it is on the statement.

MR. GRANT: December 9th statement of Gary Wakshul.

Page 178.

MR. WEINGLASS: Yes.

MR. GRANT: Ahh, I see. Now we are getting down to cases, aren't we.

BY MR. GRANT:

Q. You know what this means, don't you, Mr. Jackson? You worked in the Police Department. I want you to look at this so you could tell Counsel from New York City what this means?

A. No, I am not doing that.

Q. Yes, you are going to do that.

A. Not unless you order me.

Q. Yes, you are going to do that.

THE COURT OFFICER: Quiet in the Courtroom, please.

BY MR. GRANT:

Q. Why don't you look up there in the upper left-hand corner, sir?

A. Upper left-hand corner.

Q. Now we are starting to figure out what this mystery is all about. Tell us in Philadelphia how things work. Up in the corner it gives the police officer's name, badge number and district, doesn't it?

A. Yes, sir.

Q. And it has in the parentheses no dash V-A-C:

Page 179.

Vacation, right? Now you tell this man what that means, sir, and you tell the Judge what that means to you?

A. No vac?

Q. Yes.

A. Umm, well, just like I couldn't elaborate on the 44 C-A-L, I don't think I better elaborate on this either.

Q. I don't think you want to elaborate on it.

A. It doesn't matter whether I want to or not, and I think the same thing is true.

Q. Tell me what you think it means now? Because you are telling everybody else what you thought it meant, now tell us what you thought it means?

A. No vacation.

Q. No. Not scheduled in 1981? Not scheduled for the next three months? What does it mean to you, having been a former member of the Police Department, or at least an employee?

A. That he worked in 3 squad.

Q. Yeah?

A. Group zero. No vacation.

Q. And does that mean if this trial goes to Court in the next 10 years he is not going to be on vacation?

Page 180.

A. I don't know.

Q. Was the trial date set on 12-9-81 for a murder that happened on 12-9-81?

A. No, sir.

Q. Well, how could anybody say he wasn't going to be on vacation when the case went to trial? Tell me that?

A. I made a mistake, then.

Q. Yeah, you sure did. Give me that, sir?

A. Yes, sir (handing).

Q. So that notation that Mr. Jamal is reading, did you interpret it the same way in 1982?

A. No, sir, I didn't. I didn't pay any attention to it.

Q. Because you knew it had no significance in terms of whether this man was allowed to take a vacation at any time in his life. At that time in the interview he was not scheduled to be on vacation in the foreseeable future. And as a matter of fact, you know as a matter of practice by you working there you don't even submit your vacation requests until May of the following year for the next year's vacation, don't you know that?

A. You flatter me a little bit too much. I was a civilian, it was different. I am not quibbling with

Page 181.

you. But again, at the time of the trial, I am telling you that it had no particular significance to me. His or anyone else's. I mean that is the first time I really remember seeing anybody else's or whatever. I mean the other police officers, I don't know what they had to do. If you just randomly selected another police officer's statement, it may have the same thing. You don't have to do that, I am just simply telling you I have never paid it any attention.

Q. That is a good point.

A. There was no reason, because all the other police officers I wanted were in Court.

Q. Why didn't you tell Mr. Jamal the significance of that instead of putting it in the declaration?

A. Mr. Grant, I don't really know it has no significance. Let's be

truthful, I really don't.

Q. It was clear enough, it was significant enough to make it a basis to have a new trial for him. It had significance back on December 18th, how could the significance disappear by whatever date we are here today?

A. The significance was the officer wasn't here.

Q. And the significance was that Mr. Jamal didn't ask for him to be here either until that very moment;

Page 182.

Anthony Jackson, Esq. - Cross

isn't that so?

A. We asked for him to be here, he wasn't here, sir. I don't think it really makes any difference whether he was scheduled to be on vacation or not scheduled to be on vacation. I requested that he be here, he wasn't here. That is the thing that is significant, isn't it?

Q. Yes, that's significant, that's very significant. Is that what, the statement that I showed you, is that what Mr. Weinglass showed you?

A. You know, I don't know. It may have been. It may have been a reproduction or something. I just don't know.

Q. Well, the one that I showed you earlier that's been marked C-6 for identification was from the Special Investigations Bureau.

MR. GRANT: Could you show that, Mr. Bullard, to Mr. Jackson?

THE COURT OFFICER: (Handing.)

BY MR. GRANT:

Q. This was taken closer in time to the trial?

A. This doesn't even have anything like that.

Q. Isn't that a miracle. Of course it doesn't. Because maybe he had vacation scheduled then. Did you ever think of that? They write no vacation when

Page 183.

Anthony Jackson, Esq. - Cross

he has none scheduled and they don't put anything when he does have it scheduled, how about that?

A. Mr. Grant, I really don't, I have no knowledge of that.

Q. You are saying things about which you know not, and you put that in your affidavit, didn't you?

A. No, I am saying that I have no knowledge of the hypothetical you are presenting to me right now.

Q. Oh.

A. Your hypothetical is not in my affidavit. But I am simply saying I don't know why they would have it, have it on that statement on those occasions and not on this statement. I don't have any, I have no clue. I have no clue. Why is it on one and not on another?

Q. You had both of those statements at the time of trial, or at least Mr. Jamal had them, therefore you admit you must have had them, and the one of them in 1981 is the year, that had no vacation scheduled, and the other one is the year 1982 and it doesn't say anything about vacation. Now, does that mean in your mind, being a reasonable person, that Gary Wakshul is not allowed to go on vacation on July 1st of 1982 because back on December 9th of 1981 it said he had no vacation scheduled?

Page 184.

Anthony Jackson, Esq. - Cross

A. Okay, Mr. Grant, to answer your question, what does this mean. Because it doesn't say no vacation on it, then, does that mean he isn't going on vacation or that he is?

Q. Well, it means we shouldn't speculate if we don't know, doesn't it?

A. Well, wait. Why does it have it on one and not the other?

Q. I guess you will have to ask Officer Goldberg.

A. Well, it seems to me that what I said now becomes valid. He had no vacation on it. Because it doesn't have it on there doesn't mean he was going on vacation or not on vacation. I don't know what else to say. It has no vacation. That's what it said on the statement. The statement speaks for itself, that's all I could say.

Q. What do you mean it makes it better? Better for Mr. Jamal?

A. Pardon me?

Q. You just said that, having seen this now it makes it better?

A. Yeah.

Q. No, better for Mr. Jamal?

A. You asked me the question and said no, no, no, whichever answer I was giving you. Tell me what the

Page 185.

Anthony Jackson, Esq. - Cross

answer that you want, order me to --

Q. You answer the question that you want to answer and then you answer my question.

A. I want to ask you the answer. You ask me, sir, and I am going to give you my answer, though.

Q. All right, what do you mean that makes it even better, that's my question?

A. Sure. I am simply saying you have two statements, one of them has no vacation, this one has nothing. I am simply saying what does this one mean when it has nothing on it, that he is not on vacation or he is on vacation? It seems to me if the other one has no vacation, he is not going on vacation, so this one has nothing on it so he is going on vacation. If I follow your line of thought.

Q. What is an R-D-O?

A. Pardon me?

Q. What is an R-D-O?

A. I have no idea. I don't know what that is.

Q. That is kind of an acronym for regular days off.

A. Oh. I didn't know that.

Q. For the majority of the human race, regular days off are Saturday and Sunday, but policemen have to work whenever they are told so they have regular

Page 186.

Anthony Jackson, Esq. - Cross

days off but they may be Monday-Tuesday.

A. Right.

Q. Or Wednesday and Thursday of the week.

A. Okay.

Q. That is an RDO.

A. Okay.

Q. Do you know whether Officer Gary Wakshul was entitled to any RDOs because he was a police officer, or should he work seven days?

A. No, he should work five days a week, sir.

Q. And you didn't know that when you wanted him, whether or not that was his RDO, do you?

A. No, sir.

Q. And do you think if you got off on a Saturday that you have to stay at your house and not be allowed to go down the shore if you wanted to just because there may be an Anthony Jackson or a Mr. Jamal somewhere waiting to summon you unexpectedly?

A. No, Mr. Grant, look, I can see that I should have made plans to call the officer early and I didn't. I mean that's all I can say. You know, but this other --

Q. But you didn't see --

MR. WEINGLASS: Objection.

BY MR. GRANT:

Page 187.

Anthony Jackson, Esq. - Cross

Q. I'm sorry, continue. Finish.

A. I am simply saying that I didn't request that the officer be present earlier and I should have. And that's what I am admitting to. I don't understand all this other jargon.. About his regular days

off and his vacation and this. The fact is he wasn't here. He was requested to come and I was told that it was at the last minute, I couldn't get him in. Now, when I made the request I didn't know if he was on vacation. I didn't know if he was on his regular day off. I didn't know if he was outside in the hallway. If he was here we would have put him on the stand and we wouldn't have this discussion.

Q. Well, we would because you said on cross earlier today that if you had read the statement he gave to SIU -- or, I'm sorry, the staff inspector in the Internal Affairs Bureau, you as a good lawyer may very well have made the tactical decision I don't want them to hear what is in his second statement?

A. I may have, that's right.

Q. So maybe it wasn't a mistake that he wasn't on the stand, isn't that so?

A. Listen, I didn't, I wouldn't know this officer if he walked right through this door.

Q. That is not the point.

Page 188.

A. No, but if I requested that he be brought to Court then I must -- when I asked the question, it isn't because I knew he was on vacation. The only tactical advantage I would have to ask for him to be in Court is because I knew he was on vacation. I didn't know he was on vacation. So if he was available they would have brought him in and I would have put him on the stand, right?

Q. Right.

A. Okay.

Q. Page 7, paragraph 8. Your affidavit. Also during our last conversation -- this is you in your affidavit -- I thought perhaps other members of his family -- meaning Mr. Jamal -- who were present might also want to testify. We are talking at the penalty phase here I believe. Yes. Other members of his family were present may also want to testify. When asked Mr. Jamal if he wanted me to put them on, he declined.

A. When is this? What are you reading from?

Q. Yeah, it is puzzling to me too.

A. What are you reading from?

Q. I am reading from your words, if I am not mistaken. Page 7, paragraph 8.

MR. WEINGLASS: May I see that?

Page 189.

MR. GRANT: Yeah, I will read it with you. Come here.

BY MR. GRANT:

Q. Also during our last conversation I thought perhaps other members of his family who were present may also want to testify even though they hadn't been prepared.

MR. WEINGLASS: They hadn't been prepared was omitted in the question.

BY MR. GRANT:

Q. When I asked Mr. Jamal if he wanted me to put them on in any event --

MR. WEINGLASS: In any event.

BY MR. GRANT:

Q. -- he declined. Now, was he controlling whether you put them on in the penalty phase or not?

A. Tell me...

Q. I will rephrase it, it is a control word. Let's forget the control word. He told you don't put my people on?

A. Because they weren't prepared.

Q. So he said you haven't prepared my family so I don't want to take the risk that they will not know how to say good things about me because they've known

Page 190.

me all their life?

A. I am not saying he said those specific words. You could ask me but that's where we get into problems.

Q. Mr. Jackson --

MR. WEINGLASS: Objection, Your Honor. The witness was interrupted again. Please show the witness courtesy.

BY MR. GRANT:

Q. You are under oath, Mr. Jackson.

MR. WEINGLASS: May the witness answer the question?

THE WITNESS: Mr. Grant, you keep and continue to ask me to recall what someone's specific words were 13 years ago. And I am going to tell you again, sir: I do not, do not generally have any specific recall of what anyone's specific words were 13 years ago, not only my own. That's my usual objection, sir. Now, so when you asked the question you said well, he said so and so and so and so. So what am I answering? I don't know if I am answering your question or trying to recall the words. That's the reason that you have problems getting an answer from me, sir.

Page 191.

BY MR. GRANT:

Q. Isn't the very purpose and reason that everybody is sitting in this room because of words that were said 13 years ago, which you remember selectively for him and not for anybody else? That's what we are talking about. That's called a PCRA. That's why you are testifying. That's why you are an affiant, do you understand that?

A. Yes, sir.

MR. WEINGLASS: Objection to the form of the question.

BY MR. GRANT:

Q. Well, why didn't you read the record? If you knew you were going to be on the stand making assertions bald in nature, why didn't you do your own work so you could help everybody reach the truth?

MR. WEINGLASS: Objection to the form of the question. May I have a ruling from the Court?

THE COURT: Objection is overruled.

BY MR. GRANT:

Q. You could answer the question.

A. I did my homework, sir.

MR. WEINGLASS: Is the objection overruled?

Page 192.

THE COURT: I said he could answer.

MR. WEINGLASS: I object on the grounds of form, compound, improper question, argumentative, lacking in foundation, all or any of those grounds.

MR. GRANT: I withdraw the question.

THE COURT: He is withdrawing the question.

Go ahead.

BY MR. GRANT:

Q. I withdraw the question --

A. Yes.

Q. -- that you heard.

A. Yes, sir.

Q. Now, based on what you heard of my withdrawn question -- and you knew you were going to be asked questions about things that occurred 13 years ago?

A. Yes, sir.

Q. Who do you think it would benefit if you didn't read the record, Mr. Jamal, or the Commonwealth, or the truth?

A. Mr. Grant, I did review the record.

Q. What record?

A. You know, I am trying to answer the question but you are

interrupting me. I did review the

Page 193.

Anthony Jackson, Esq. - Cross

record. I did not review the entire record. Now you are upset because I haven't reviewed the part of the record that you wanted me to review. All you had to do was to ask me in advance and I would have done that. I wasn't going to sit here today, take my time and read the transcript of the record for you.

THE COURT: Mr. Weinglass, I appreciate it if you don't nod at the witness.

MR. WEINGLASS: Pardon?

THE COURT: Don't nod to the witness,

MR. WEINGLASS: I am nodding in agreement after I hear what the witness said. I am not nodding in advance.

THE WITNESS: I didn't notice, Your Honor.

THE COURT: Just please don't.

BY MR. GRANT:

Q. What transcripts did you read, then, since you told us yesterday you hadn't read any?

A. When I told you -- Mr. Grant, you are missing -- I never told you. I told you that I did prepare and I did read excerpts of transcripts. I did not read this entire transcript. And you are asking me if I wanted to read -- how long would it take me to read the entire transcript of this trial?

Page 194.

Anthony Jackson, Esq. - Cross

I've already lost three days I am not getting paid. Before I didn't get paid. Nobody gets paid in this thing. Do you understand what I am saying? Why would I read the entire transcript? Why would I want to know what the medical examiner said now? I mean is that relevant? So I only read the portions of the transcript that I thought were relevant.

Now, because it didn't coincide with yours you are chastising me. Well, I will take it. I will take that hit.

Q. I am not chastising you, because I just want to know, tell me which portions you did read so maybe I could examine you on those?

A. The ones that are consistent with the statement that I made in the declaration, sir.

Q. So the things that support the motion for a new trial you read?

A. Yes, sir.

Q. Okay, those are the things that we have been talking about for the last two days, basically, anyway? So you read the important parts, right?

A. Yes, sir.

Q. Okay. Let's just look at a summary of the good things you did like a good lawyer should. Tell me if I'm wrong.

Page 195.

Anthony Jackson, Esq. - Cross

A. Yes, sir.

Q. You filed a motion for discovery, omnibus discovery, meaning typical discovery: You got all the documents a lawyer should get to defend his client?

A. Yes, sir.

Q. And then within 21 days of the shooting you filed the complaint against the police by which you generated a new investigation, and that brought you many possibilities for you to have conflicts in the witnesses' statements so that that could benefit your client; correct?

A. At least that.

Q. And then you filed a motion for a lineup, didn't you, for the eyewitnesses?

A. Yes, sir.

Q. And then you filed a motion to have all kinds of experts appointed to assist your client, didn't you?

A. Yes, sir.

Q. Including an investigator?

A. Yes, sir.

Q. And then you wrote a letter to the then District Attorney Ed Rendell, now Mayor, demanding that in addition to the Homicide investigation and

Page 196.

Anthony Jackson, Esq. - Cross

the Police Internal Affairs Bureau investigation, you wanted him to launch an independent investigation, and then you wrote a letter after that to him, didn't you? Think carefully.

A. Umm, I may have written a letter to him but it certainly wasn't an additional investigation. I don't --

Q. Well, the D.A.'s not the police and the D.A.'s not the Internal Affairs Bureau so it would be an additional investigation if you asked for it, wouldn't it?

A. Well, the way I understood it, or the way it was intended, I didn't expect that there would be two investigations going on by Internal Affairs and the D.A.'s Office. It was just a question, when there is a use of deadly force there is a question whether the District Attorney's Office would conduct the investigation or Internal Affairs. As I understood it. That was the reason for the other request. I wasn't asking for, I didn't want all those investigations going on.

Q. Do you remember writing a letter to the D.A.'s Office demanding the results of discovery from their investigation?

A. Say that again, sir.

Page 197.

Anthony Jackson, Esq. - Cross

Q. Yeah. You demanded an investigation and then you presumed one was conducted, and then you wrote a letter demanding the results from the District Attorney in addition to the Internal Affairs Bureau and the Homicide detectives who investigated the murder; do you recall that?

A. No, I don't recall. But it just seems to me if I did that it must have been I had some reason to suspect that they conducted an investigation. With all the things I had to do, I don't think I would just waste time asking for the results of something that hadn't been done.

Q. I agree with you.

A. So I don't know why I would do it, unless maybe they did. I don't know.

MR. GRANT: C-7, Your Honor, please (handing).

(Letter was marked Commonwealth Exhibit C-7 for identification.)

THE COURT: Do you want to staple that together? Is that stapled?

THE COURT OFFICER: I will staple it, Your Honor. (Handing)

THE COURT: All right.

MR. GRANT: And could I have this

Page 198.

Anthony Jackson, Esq. - Cross

marked as C-8, please (handing).

THE COURT OFFICER: Yes, sir.

(Letter was marked Commonwealth Exhibit C-8 for identification.)

MR. GRANT: By the way, Your Honor: C-7 purports to be a document over the letterhead of Mr. Jackson addressed to Edward G. Rendell, Esquire, District Attorney; and C-8 purports to be a document with the District Attorney's Office letterhead addressed to Mr. Anthony Jackson.

BY MR. GRANT:

Q. While they are looking at those, sir.

A. Yes, sir.

Q. You constantly stayed in communication with Mr. Jamal even when he shunned you, disrespected you, you tried to tell him

things that were going on when he was ejected from the room, you whispered and told him things when he was in the room, when he told you to get away from him you didn't abandon him, you stayed with him, you tried to interpret the rules for him, you basically tried to make it understandable to him, did you not?

A. Yes, sir. Yes, sir.

Q. And you realized while you were dealing with

Page 199.

Anthony Jackson, Esq. - Cross

this man that he was a very intelligent human being, didn't you?

A. Yes, sir.

Q. One of the smartest defendants that you had ever seen?

A. Probably so.

Q. And from reviewing this record, one of the smartest people I have ever seen.

A. Yes, sir.

Q. This man was not a lawyer?

A. Yes, sir.

Q. He was by profession a journalist?

A. Yes, sir.

Q. And he mastered to a certain degree the practice of examination, voir dire, tactics and strategy?

A. Yes, sir.

Q. In the Court six months after having been arrested for his case, isn't that true?

A. Yes, sir.

Q. You admired him and you respected him, did you not?

A. Well, I respected him, yes. I admired what he was doing for himself, yeah, trying to protect his life. I admire a man for doing that.

Page 200.

Anthony Jackson, Esq. - Cross

Q. With his native intelligence and demonstrated ability, and with your assistance, advice and counsel, don't you think you gave him a good trial?

A. Don't you think what?

Q. Don't you think that you give him an effective representation as a lawyer?

A. Mr. Grant, and I am going to tell you this, I did the best that I could. I am simply saying that in retrospect if there are things that I should have done and I didn't do, then I didn't do what I was supposed to. I knew at the time that I did everything that I could do the best I could. Plain and simple answer. And if you are saying well, the best you did wasn't good enough, then I have to accept that.

Q. I am not saying that.

A. Well.

Q. They are saying that. They are saying that.

A. Well, if the law requires a certain degree of proficiency, effectiveness, and I haven't provided it, then it really doesn't matter how good I thought I was. And I'm only saying, I am telling you what happened, what went on. It's not my decision to make. When I use -- it's up to the Court to decide if I am ineffective, and I am simply admitting to

Page 201.

Anthony Jackson, Esq. - Cross

whatever errors I may have committed.

Q. All right. All right, you are looking at C-7 and C-8, sir. Do you recognize the document that purports to be over your signature?

A. Yes, sir.

Q. What is it, sir?

A. C-7 is a letter that I have written to Ed Rendell.

Q. For what purpose?

A. I am reading it now.

(Pause.)

A. Oh, you want me to lead read it out loud?

Q. Not necessarily.

A. Oh.

Q. You are demanding an explanation?

A. Yes.

Q. And an investigation into the alleged brutality of Mr. Jamal; correct?

A. Yes, sir.

Q. By the way, what was the result of all those complaints and demands and all that, was there ever a finding of brutality in that case?

A. Could I finish this for a second?

Q. I don't want to distract you, you could answer that later.

Page 202.

Anthony Jackson, Esq. - Cross

A. Oh, okay.

(Pause.)

Q. What that basically says, sir --

A. Hmm-hmm.

Q. -- is that the D.A. says when police are investigating, when police are investigating these type of cases, we don't belong to the Police Department, we don't interfere, if they make a finding and we think we should prosecute then we will, but they are doing a separate investigation because you asked them, the Homicide Division did an investigation because it is their job, and if things arise that we think we should deal with then we will do that and give you all the results, did he not say that?

A. Yes, essentially.

Q. So basically you were going to get a third set of discovery, weren't you, or you hoped?

A. You know what I was trying to do? I was trying to get as much information as the D.A. had.

Q. That's right.

A. That's what I was trying to do. I was trying to as much as possible be as prepared as the D.A. was. Because I knew I was at a disadvantage. That's what I was trying to do every minute of every moment

Page 203.

Anthony Jackson, Esq. - Cross

that I was trying this case, yes, sir.

Q. And you filed a motion to suppress every one of the statements that the Commonwealth wanted to use at trial, didn't you?

A. Yes, I did. Or in cooperation with Mr. Jamal, yes, sir.

Q. And you filed a petition not to act like the regular routine lawyers have to be dealt with, you wanted all your experts to be paid up front, or as close to up front as possible, and you wanted them to get more money than the normal person gets, and you accomplished both things, didn't you?

A. No, sir.

Q. Well, you got more money than is normally paid, and you got the money before it's normally paid, right?

A. No, I could just tell you something, Mr. Grant, since you asked this now. And this issue came up yesterday, I was talking to some colleagues. I found out there were a lot of other lawyers getting a lot more money for their experts than me.

Q. Oh, yeah?

A. Yes, sir.

Q. Are they here to be cross-examined on this or is this going to be some hearsay you will throw into

Page 204.

Anthony Jackson, Esq. - Cross

the record?

A. Let me just tell you this. You have Mr. Greer coming in

tomorrow. Ask him how much money he's gotten for other investigations for Court appointments, you'll find out.

Q. Well, if he was collecting --

A. He's gotten thousands of dollars for investigation, Court-appointed cases.

Q. If he was collecting it from more than one source, as apparently Mr. Greer was, I am sure he did.

MR. WEINGLASS: Objection, Your Honor. There is no evidence for Counsel's statement. I ask it be stricken. I object to the form.

THE COURT: He said there was some indication that some of the money went to him.

MR. WEINGLASS: There is no indication whatsoever in this record that any money went to Mr. Greer. There is some allusion to the fact, no more than that, that some money went to Mr. Bill Peraneau, the photographer, for work that he did for a committee, which was no part of Mr. Jackson's effort.

THE COURT: Well, whatever is in the record is in the record.

Page 205.

Anthony Jackson, Esq. - Cross

MR. WEINGLASS: Your Honor, I ask the Court rule on my request that Counsel's question be stricken because there is no basis for it in the record.

MR. GRANT: Actually, there is, Your Honor. And I read to Mr. Jackson yesterday from the affidavit of Mr. Robert, Mr. Robert T. Greer, and I read a letter that he had written to an individual making reference to an E. Steven Collins who testified, in which letter he stated I have been retained by the Mumia Abu-Jamal Defense Fund, of which Mr. Jackson claims he knows not about any money. So all he knows about is what he was paid by the Court. And the word retained has a connotation. I think I am entitled to draw the inference that he was getting more money from somebody else.

MR. WEINGLASS: I think Counsel has a point.

MR. GRANT: Thank you.

MR. WEINGLASS: And we are going to hear from Mr. Greer. Who will disabuse him of that point.

THE COURT: All right.

BY MR. GRANT:

Page 206.

Anthony Jackson, Esq. - Cross

Q. Lastly, last thing, Mr. Jackson. I told you by three o'clock. It's only a few minutes after.

A. Yes, sir.

Q. During the course of the trial, the first six Jurors, the first six Jurors were selected but they had not been sequestered, meaning locked up, at that point. And you went on the radio station WDAS, where Mr. Jamal formerly worked?

A. Yes, sir.

Q. Do you recall that?

A. I remember going to a radio station at some point in time, yes, sir.

Q. Do you remember basically being asked by the commentator why there were no blacks on the Jury, do you remember that question?

A. Yes. I assume you are asking me because it was asked, yes. Yes, I really remember that question.

Q. I don't want you, I know you've had a storied and voluminous broadcast and print journalistic history, and it's hard to remember all the quotes you have given to all the various sources that you've had?

A. It really is. I mean sometimes it just, I just don't remember.

Page 207.

Anthony Jackson, Esq. - Cross

Q. Do I like look like I'm kidding? I'm not teasing you.

A. Okay.

Q. You did not claim in that interview, by the way, that race had anything to do with the reason why no blacks were on that Jury, but because blacks don't vote for the death penalty, and basically that's the reason? Didn't you say that?

A. Maybe I, I may have, sure.

Q. Well, no, did you?

A. Did I say that was the only reason?

Q. Well, let's read what you said here. Well, tell me: Did you say that was the only reason? Did you say Mr. McGill was exercising peremptory, racially-motivated strikes, have you ever said that anywhere in the history of this world?

A. That he -- I may not have said it outside of the Courtroom, if that's --

Q. Have you ever said it inside the Courtroom, that Mr. McGill, Your Honor, is using peremptory challenges based on race-motivated reasons and I object and I want the record to reflect that? Did you at any time at any point in this trial raise the Spector that Mr. McGill 13 years ago was exercising peremptory challenges in a race-motivated way?

Page 208.

Anthony Jackson, Esq. - Cross

A. All right, let me answer you this way. Trying cases in City Hall, I know most D.A.'s, most homicides, will get rid of as many blacks as they possibly can, first to the death qualification and then peremptory. Actually, in the beginning of this trial in the Jury selection I asked the Judge to state the race of the Jurors there for that very reason. I wouldn't have asked unless I thought it might be happening.

Q. That was based on your history in trying cases, so you say, and the question now is are you saying that Mr. McGill was exercising peremptory challenges in a racially-motivated fashion?

A. Sure.

Q. You are saying that?

A. Yes, sir.

Q. Did you say that 13 years ago or is that your memory now 13 years later?

A. I don't think I said it then. But I am --

Q. I don't think you did either, sir. When is the last time you practiced criminal law in this town?

A. It's been a few years.

Q. Yes, it has. Would it surprise you to know that the majority of juries that come back have

Page 209.

Anthony Jackson, Esq. - Cross

almost 50 percent black people on it?

A. Yes.

Q. Even the ones that return death verdicts?

A. No.

Q. So maybe your statement then to WDAS was as ridiculous as it is now?

A. But it was true. You may call it ridiculous but it was true, wasn't it?

Q. I don't think so. Mr. Jackson --

A. Yes, it was true.

Q. Okay. I have been practicing in this town since 1981.

A It was true.

MR. GRANT: Mr. Jackson, I have no further questions for you.

THE WITNESS: Thank you, Mr. Grant.

MR. WEINGLASS: Your Honor, there will be a very lengthy, in light of the cross, redirect.

THE COURT: How lengthy?

MR. WEINGLASS: Pardon?

THE COURT: How lengthy?

MR. WEINGLASS: It will go at least several hours, probably.

THE COURT: Do you want to recess

until Monday?

MR. WEINGLASS: I would prefer to do that. I could start with a very small part of, just to deal with some of the most recent issues and then stop at that point maybe 15, 20 minutes down the road. Or I could start on Monday.

THE WITNESS: Your Honor, may I say something? I have some practical problems. I have been here for three days. I haven't been able to work, Your Honor, and I am not Court appointed in this case.

MR. WEINGLASS: Your Honor.

THE WITNESS: I have some other things to do in my life. And this is no disrespect to Mr. Jamal or Mr. Grant or anyone else in this Courtroom. But, you know, I hadn't anticipated being here this long.

MR. GRANT: The only problem I have, Your Honor, is that Mr. Jackson, being an excellent lawyer, knows full well the import of filing something like this (displaying) and he should expect to be here for a month and a day if necessary. Notwithstanding his schedule.

MR. WEINGLASS: All right, and, Your Honor, Mr. Grant has had Mr. Jackson's affidavit

for six weeks. And they are friends. And he never called him in.

THE COURT: I know that, Counselor.

MR. WEINGLASS: He never called him in to review the transcript which would have shortened this questioning, and made it more accurate, as a matter of fact.

MR. GRANT: I apologize.

THE COURT: Do you want to --

MR. WEINGLASS: He is entitled to an apology.

THE COURT: Do you want to proceed today or Monday?

MR. WEINGLASS: I don't want to inconvenience Mr. Jackson anymore. If he refers to continue now, I will continue. If he wants to put it --

THE WITNESS: I will do it. I will stay. I am used to staying with Judge Sabo until six o'clock.

THE COURT: Okay. Go ahead.

MR. WEINGLASS: Your Honor, there is a deep groan from the well of the Court.

THE COURT: I am not, I don't know what a well of the Court is.

MR. WEINGLASS: I will not finish until probably by 6:00. I would prefer to put it over if that's possible. I have an obligation here also.

THE COURT: Well, I know that, but he is your witness and you tell me what you want to do. Do you want to go over until Monday? It's all right with me.

MR. GRANT: What is convenient for you, Mr. Jackson?

THE WITNESS: I just can't be here all day Monday. I mean seriously, I have four days.

THE COURT: Let me say this: Monday morning we have something else, so I don't know what time --

MR. GRANT: Is there any day next week that you have three hours, three hours worth?

MR. WEINGLASS: A couple of hours.

MR. GRANT: From 10:00 to noon any day next week?

THE WITNESS: Yeah.

MR. GRANT: I am not going to recross.

THE WITNESS: Thanks. I am glad to know that.

THE COURT: Well, don't believe that

entirely. Wait until --

THE WITNESS: I know lawyers, Your Honor. He is trying to suck me in. But you say Monday morning. Is Monday afternoon -- I will try to do it Monday afternoon. Is Monday afternoon --

THE COURT: Monday afternoon better for you?

THE WITNESS: All right.

THE COURT: Monday afternoon would be better for him. Could we say one o'clock? Is that all right?

THE WITNESS: Yes, sir.

THE COURT: Okay, how about that?

MR. WEINGLASS: That's fine.

MR. GRANT: That's fine, Judge.

THE COURT: Okay, you could come back Monday at one o'clock.

THE WITNESS: Thank you, sir.

THE COURT: You're welcome. All right, adjourn until Monday morning.

THE COURT OFFICER: 9:30, Your Honor? This Court now stands adjourned until 9:30 a.m. on Monday morning at the call of the Crier.

- - - - -

(The hearing was adjourned at this time.)

- - - - -

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

31. Juli 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358

- - - - -

PCRA Hearing

- - - - -

Monday, July 31, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- STEPHANIE MIDDLETON, ESQUIRE
- GREGORY MELINSON, ESQUIRE
  Deputy General Councel for
  Governor Thomas Ridge

- HOWARD HOLMES, ESQUIRE
  Administrative Office of
  Pennsylvania Courts

- GINA FURIA, ESQUIRE
  Law Clerk for the Honorable
  Albert F. Sabo

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Anthony E. Jackson, Esq.	--	--	74, 165	124
Jeremy Gelb, Esq.	211	231	255, 271	269

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
10	Affidavit	103
2	Medical record	--

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
9	Police interview (D. Kordansky)	126
10	Pa. Supreme Court Opinion	248

Page 3.

- - - - - -

(At 10:05 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - - -

THE COURT OFFICER: Step out, please.

He will not be allowed back in for the rest of the trial.

Sorry for the interruption, Your Honor.

THE COURT: That's all right.

MR. WEINGLASS: Your Honor, I believe a person in the spectator section has been removed for allegedly having a sign. And the sign that he had said, as he stood there quietly and respectfully standing, was standing under protest. Or under duress, I believe it said. And I just think the record should reflect that. Because the gentleman did not interrupt the Court proceedings at all. And he just held up an explanation as to why he was standing. I understand the man's name is Mr. Dubside. He is opposed to standing as a matter of religious scruple. He felt that his religious scruples compelled him to make a note of why he was

Page 4.

standing.

THE COURT: Counselor, I told you before: If they don't want to stand, stay outside until the Court begins and then they could come in. But there are to be no signs in the Courtroom. That's what I specifically ordered. Okay.

MR. WEINGLASS: Yes.

THE COURT: All right, we have a motion to quash on behalf of the State.

MS. WOLKENSTEIN: Your Honor, before we begin --

THE COURT: No, that's what I set for this morning. So once we get finished with that, then we will take up whatever you have.

MS. WOLKENSTEIN: Okay, Your Honor.

MS. MIDDLETON: Good morning, Your Honor. My name is Stephanie Middleton. I am Deputy General Counsel for Governor Ridge.

And with me is Greggory Melinson, also General Counsel.

We have the privilege of representing Governor Thomas Ridge; Paul A. Tufano, General Counsel; William Chadwick, Executive Deputy General Counsel; Syndi Quido, Deputy General

Page 5.

Counsel; Timothy Reeves, Press Secretary to Governor Ridge; and John Taylor, Deputy Press Secretary to Governor Ridge.

The reason we are here is last Monday Governor Ridge was served with a subpoena to appear here on Wednesday to testify and also to produce documents. We filed our motion to quash on

Tuesday, the next day. The subpoena for documents demanded that Governor Ridge produce all files, notes and memoranda regarding the review of the case of Commonwealth versus Mumia Abu-Jamal and the signing of the death warrant for Mr. Jamal on June lst, 1995, and all statements of protocol, memoranda or directives regarding procedures to be followed by the Governor's Office in signing a death warrant, the service of the death warrant, and public pronouncements about signed warrants.

The subpoena for documents served on the Office of the General Counsel requested all files, notes, memoranda regarding review of the case of Commonwealth versus Mumia Abu-Jamal, and the recommendation, if any, that the Governor sign a death warrant for Mumia Abu-Jamal; And it goes on.

Page 6.

The threshold issue in connection with this subpoena, these subpoenas, is whether the material or the testimony requested has any relevancy at all. Whether it could be at all material for the issues before this Court, which was whether there was a fair trial back in 1982.

Another issue before the Court is whether a stay should be granted.

There is nothing that Governor Ridge or any of his staff could add to this proceeding that would affect one way or the other the decision on those issues. The purpose of a subpoena is not to allow counsel to conduct fishing expeditions or to intimidate or harass, which is what we believe is going on here. But rather a subpoena is issued by the court to aid the court in determining the issues before it. And that is the only valid purpose of a subpoena.

So before we even get to the issue of any of the privileges, the issue of relevance and materiality of any of this information that Counsel for defense is seeking must be addressed.

The Counsel for Mr. Abu-Jamal claim

Page 7.

that the Governor rushed to sign the death warrant. In January the Governor announced that he would be signing death warrants. He announced that they would be signed in chronological order based on when the files were sent from the Supreme Court to the Office of General Counsel. And there is no evidence that this warrant was signed out of order at all.

One reason that information from the Governor's Office really has nothing to do with this proceeding is that the Governor's role in this has clearly been ministerial. Under the statute he must sign death warrants within 90 days of receiving the file from the Supreme Court. And his role under the Morganelli case from Commonwealth Court, his role, he really has very little, if any, discretion: He must sign these death warrants. So his deliberative process, his reasons, what his lawyers told him, really have nothing to do with this proceeding.

We have raised several privileges. One clear privilege is the attorney-client privilege. Under the Commonwealth Attorneys Act, the Office of General Counsel is the lawyer for the Governor. And advice given to the

Page 8.

Governor by the Office of General Counsel is clearly protected by the attorney-client privilege. It's also protected by work product privilege.

In addition, this is a very unusual circumstance where a Governor has been subpoenaed. There is an executive privilege recognized by the Supreme Court, Pennsylvania Supreme Court, in the Hancraft case. And that executive privilege has never be weakened in any way. The purpose of the executive privilege and the deliberative-process privilege here, the reason for having it in this case is clear why there is such a privilege. If the Governor, who has now signed nineteen death warrants, could be subpoenaed and have to turn over this sort of information every time a death warrant is signed, it would, first, chill any advice given to him by his Counsel, they would not be able to be candid and frank in reviewing these files. They would have to worry about the fact that it would become public, and it would interfere with the purpose of having Counsel for the Governor review the files from the Supreme Court.

In addition, it would interfere with

Page 9.

the Governor's ability to run the state, which is what he is required to do.

The response to our motion to quash I received just this morning. And it raises an argument that the information from the Governor is relevant, they claim, because he was aware that the PCRA petition was going to be filed on June 5th. He signed the warrant on June 1st.

First of all, if you look at the affidavits that were filed in connection with previous pleadings, what they have done in this response is mischaracterize what was said. In the letter to Mr. Melinson in April they didn't say they would be filing the petition shortly, they said they would file it when they had all the information that they need. Again they have mischaracterized what Syndi Quido allegedly said to someone on the phone. She did not say she had not been asked to commence such a review. And again I haven't seen the Patriot News report that they rely on, but I question whether it says that he was going to file the PCRA Petition on June 5th. He claims that we were aware that his attorneys were visiting him in order to get his signature on a petition, a PCRA petition.

Page 10.

And that's not at all what the letter said. It just said they needed to come by to get his signature on legal documents, which has been going on for a long time.

The last event in this case occurred when the U.S. Supreme Court denied a request for reconsideration back in June of 1991. It was four years later that the Governor signed the death warrant. Under the Morganelli case, waiting for a governor to wait three or four or five years to sign a death warrant was clearly an abuse of the governor's statutory duty. He was required to sign it much more quickly. Now we have a statute that requires him to sign it in 90 days. So the accusation that the Governor acted in haste or didn't completely review the record or had some other motive, it is harassment and intimidation. Governor Ridge will not be intimidated from signing the death warrants as he is required to do by law.

Thank You.

MS. PERKINS: Your Honor, if I may: First of all, I have just looked at the memorandum that defense Counsel has presented to the Governor's Office. And their relevance

Page 11.

argument is that it responds to the argument of intentional delay. Well, perhaps that might be correct, Your Honor, if the entire argument regarding intentional delay had to do with what occurred between June 1st and June 5th of this year. Unfortunately, it's not. The Commonwealth's argument for intentional delay has to do with what has occurred in this Defendant's case, or the lack of proceeding with the case for the past five years. The fact is that Mr. Weinglass has been involved in representing this Defendant and preparing for a PCRA petition for at least the past three years, by his own admission, and then Miss Wolkenstein has been assisting the Defendant for that length of time as well. So their claim that somehow bringing in staff from Governor Ridge's Office or Governor Ridge himself would somehow refute the argument that there was intentional delay I would submit to the Court is simply misguided and does not address the issue that was raised by the Commonwealth.

The newspaper article that Counsel cites is very interesting for the reason; Your Honor, that he omits the fact that there were

Page 12.

also many other newspaper articles where Counsel was quoted as saying as recently, or as late as two years ago, that they would be filing a PCRA petition and were in the process of getting it together. Now they say it takes them two years to do it. I would submit to the Court that it does not take two years to do it and given what has been presented here certainly it didn't take two years to do it because there are so many gaps for what they have presented as their reasons for desiring and being entitled to a new trial.

Furthermore, Your Honor, the purpose of this proceeding is to find out whether or not there is anything involved in the truth-determining process that is somehow suspect or invalid. Whether the Governor signed a warrant on June 1st or not is immaterial to that issue. And that is the reason why they are here for a PCRA: To attack the truth-determining process. And that is an issue for the Court's review. Defense Counsel is simply attempting to revisit the issue of whether or not they are entitled to a stay prior to the PCRA hearing or prior to the actual

Page 13.

execution date. Perhaps if this Court had ruled on the stay question they would have a point. But this Court has not done that. The Court has held the stay issue in abeyance, held it under advisement until such time as it becomes more relevant.

There is no reason to delay these proceedings. There is no reason to revisit that question. The Supreme Court has specifically stated that this hearing was to proceed. The Court has done so. And I would submit to the Court that there is no reason to entertain further this issue regarding a stay at this point or anything that the Governor's Office may have done. It is irrelevant to these proceedings regarding the PCRA. The Court has stated that if a stay is warranted as we approach the execution date, then if this Court has not ruled it will at that time review that issue and the Defendant is certainly entitled seek additional relief from the Supreme Court if so warranted.

So I would submit to the Court that the subpoena that they have submitted to the Governor's Office should be quashed: It is

Page 14.

irrelevant for these proceedings. And it is nothing more than an attempt to revisit issues that have already been resolved for the time being.

MR. WEINGLASS: Very simply: The reasons why this subpoena was issued for the Governor plus five of his aides is very obvious to this record no matter what Counsel now claims. The reason why the subpoena issued -- and it didn't issue until after the accusation was made -- was because the representatives of the Commonwealth in this Court and before the Supreme Court of Pennsylvania made the allegation and repeated it often that Mr. Jamal intentionally delayed filing his Post-Conviction Relief application until after the Governor signed the warrant. The actual fact of the matter is and the truth is that Mr. Jamal announced his intention of bringing his Post-Conviction Relief before a Court of competent jurisdiction, where his 19 claims could be litigated in an orderly proceeding, and knowing that fact, the Governor moved expeditiously, out of order, in violation of his protocols, and after the ordinary course of

Page 16 is missing. Attempts will be made to locate it.

Page 16.

Commonwealth is correct, that Mr. Jamal purposely and deliberately delayed.

Your Honor, I want to try to avoid this if I could. And I make this offer and suggestion. We do not need the Governor, we do not need any of his aides. If the Commonwealth will now withdraw the false accusation that Mr. Jamal delayed until after the Governor signed the warrant, we will withdraw the subpoenas and we can move on. It is a simple concession that they could make. And they have the power to make it. Then this record would be clear, and the record would be truthful, and the record would be honest. That it was the Governor who moved quickly to sign a warrant, knowing Mr. Jamal was coming into Court.

And I will go even further. If the Commonwealth will not make that concession on the record, which I feel in all honesty they ought to, if for no reason but to prevent the Governor from being embarrassed publicly, then I make this offer... that Mr. Jamal will agree to a stipulation without the need for the Governor to appear, if the Governor will stipulate to the time and date that he signed that warrant, and

Page 17.

if he will further stipulate to when he received information that Mr. Jamal was coming to Court on June 5th, and if the Governor's Office will, furthermore, release the protocol under which the Governor is to consider these death warrants, if we have that stipulation, then we will withdraw the subpoenas.

So I offer the Commonwealth two particular ways of resolving this issue without the need for further litigation. One is to concede that Mr. Jamal did not delay. And secondly, to enter into a stipulation as to the time and the date the Governor signed that warrant, as to when he knew that Mr. Jamal was coming to Court, and a submission of the protocol. It would be that simple and I think we could move on and I think the record would be complete on that issue.

When we talk about a warrant, a death warrant, a death warrant is one of the weightiest responsibilities of a Governor of the Commonwealth of Pennsylvania. We are not talking about a minor act. We are talking about the Governor putting the authority of his Office behind a killing of a human being. Is there

Page 18.

anything more weighty than that? Is there anything that calls more for testimony from the Governor than that act? That's why his testimony is essential and important.

Are we asking for what the Commonwealth suggests, the deliberative process? Are we going to ask Governor Ridge what was going through your mind when you signed that warrant? The answer is no. We are merely seeking into a ministerial act: Governor, when did you put your signature on this document, could you give us the time and the date. That is a ministerial act. That is not an act that is subject to the privilege of deliberative process because the time and the date of signing an official public document is a ministerial act, pure and simple. So we are not seeking anything of a privileged nature here.

Beyond that we are going to ask the Governor a second question. When did you receive the information that Mr. Jamal was on his way to Court with a Petition of over 300 pages, with 19 claims. When did you get that information. That also is not a deliberative act. I am not going to ask the Governor what

Page 19.

did you do with that information, how did you process it; I'm just asking him when did you get it. Because if we have the time that the Governor knew Mr. Jamal was coming to Court, and the time he signed the warrant, we will then see precisely what happened on this occasion, which is the Governor running quickly, expeditiously, and in violation of protocol, to preempt Mr. Jamal's litigation.

THE COURT: Which protocol are we speaking about?

MR. WEINGLASS: The Governor's protocol, Your Honor. Counsel referred to it but not precisely. Counsel said that in January when Governor Ridge took office there was a document setting forth the procedures for signing warrants. I believe that's true. That document is a protocol. That document should be made public.

THE COURT: You mean within 90 days?

MR. WEINGLASS: That was the statute.

THE COURT: Well.

MR. WEINGLASS: But within the Governor's Office, the Governor has a staff and he wrote out the procedure for his staff: This

Page 20.

is the way I want the cases reviewed inside, this is the way I want you to handle it.

THE COURT: You mean he has to tell us this?

MR. WEINGLASS: Pardon?

THE COURT: He has to tell us this?

MR. WEINGLASS: I believe it's a written document.

THE COURT: Well, so what? You mean he has to tell us how he does these things?

MR. WEINGLASS: Yes.

THE COURT: If he commutes a death sentence, does he have to tell us why he did it?

MR. WEINGLASS: Oh, I'm not seeking that, Your Honor.

THE COURT: Oh, I know you're not, but you are talking about protocol.

MR. WEINGLASS: Right. If he commutes a death sentence and he does it pursuant to written guidelines, yes, we should have the guidelines.

THE COURT: Why?

MR. WEINGLASS: Because the guidelines, he might be violating his own guidelines.

Page 21.

THE COURT: So what? He is the Governor, he could do anything.

MR. WEINGLASS: No, that's not --

THE COURT: Yes.

MR. WEINGLASS: Not in the United States, Your Honor. We are --

THE COURT: The United States.

MR. WEINGLASS: We are still a government of laws, not of people.

THE COURT: He could commute a death sentence, he could commute a life sentence, he could even pardon. You've heard of that, haven't you?

MR. WEINGLASS: I have vague recollections, yes.

THE COURT: Well, he has that right.

MR. WEINGLASS: Yes.

THE COURT: And if he did that, could this Court complain?

MR. WEINGLASS: Well, we are not asking the Court to complain. If someone --

THE COURT: Well, could the victim's family complain?

MR. WEINGLASS: Could the petitioner complain? The answer is yes. If the

Page 22.

Governor --

THE COURT: What petitioner?

MR. WEINGLASS: If the Govern --

THE COURT: Wait awhile. What petitioner? Who are you talking about? You mean the victim's family could complain?

MR. WEINGLASS: Yes. Judge -- no.

THE COURT: That's what I am talking about. If he would pardon somebody, okay.

MR. WEINGLASS: Right.

THE COURT: Can the victim's family complain?

MR. WEINGLASS: Well, Your Honor, that's an interesting hypothetical.

THE COURT: It is, sure it is, but it doesn't happen.

MR. WEINGLASS: Unfortunately, to my perception it is of no moment to this issue but it is an interesting hypothetical that ought to be posed somewhere.

THE COURT: That's why I say that the Governor has this power. You know, whether or not you like it, we have three separate and distinctive branches of government here: We have the executive, legislative and the

Page 23.

judiciary. The Governor doesn't tell me how to run the Court, I don't really tell him how to run the State. That is his prerogative.

MR. WEINGLASS: Well, Your Honor, my understanding is in the Commonwealth of Pennsylvania very frequently the courts do tell the Governor what he may or may not do, with all due respect.

THE COURT: Only if he violates somehow the Constitution. But under the Constitution he has this authority.

MR. WEINGLASS: Or if he violates a statute. Or if he violates a protocol.

THE COURT: Well, whose protocol?

MR. WEINGLASS: If he violates his internal protocol.

THE COURT: If it is his own protocol, you mean he can't violate his own protocol?

MR. WEINGLASS: Your Honor, this is my position.

THE COURT: I know what your position is. You say this is all important because of the stay. And I told you I have taken the stay under advisement.

MR. WEINGLASS: Yeah.

Page 24.

THE COURT: Well, I told you not to worry about it.

MR. WEINGLASS: Well --

THE COURT: I told you not to worry about it.

MR. WEINGLASS: I appreciate the Court knows what I am trying to say but I would like to have the opportunity to say it.

THE COURT: All right, say it.

MR. WEINGLASS: The question of granting a stay is a discretionary one.

THE COURT: You mean now?

MR. WEINGLASS: At any time.

THE COURT: No, no, no, no. I don't consider it discretionary to any extent.

MR. WEINGLASS: Discretionary one for the Court.

THE COURT: Well, somebody will grant a stay.

MR. WEINGLASS: Acting under their discretion, right.

THE COURT: Because when somebody files his first PCRA petition, he has a right to have that decided all the way up to the Supreme Court, wherever he has to go. I know that, you

Page 25.

know that. So I don't know where you are going.

MR. WEINGLASS: No, Your Honor, if you give us a new trial which we seek --

THE COURT: Well, wait awhile. Wait awhile.

MR. WEINGLASS: We will not go up, we will go to a new trial. It doesn't have to go up.

THE COURT: We are talking about a stay at this moment, we are not talking about a new trial. I haven't heard all the evidence yet.

MR. WEINGLASS: This case will not go anywhere beyond this Court if the Court grants our Petition. But the Court is indicating it's already made up it's mind.

THE COURT: I haven't made up any mind. I said you are asking me to make a decision when I haven't heard the whole case yet.

MR. WEINGLASS: Right.

THE COURT: Right now we are talking about a stay and you are saying that's why you need the Governor here, as far as this stay is concerned.

Page 26.

MR. WEINGLASS: Yes.

THE COURT: I don't need the Governor to make a decision on the stay.

MR. WEINGLASS: You have taken me a little far adrift from my point. Let me just go back to it.

THE COURT: All right.

MR. WEINGLASS: If this Court is told that the Governor violated his own protocol, that might be a fact you want to take into account when you decide whether or not to grant the stay.

THE COURT: I am going to grant the stay on what you told me the law was. It has nothing to do with the Governor.

MR. WEINGLASS: Well, if the Governor --

THE COURT: I don't need the Governor for that.

MR. WEINGLASS: You're looking at the Governor's warrant. It's his document.

THE COURT: Well, you said you want to know when he signed it. Look at it, you could see when he signed it.

MR. WEINGLASS: But --

Page 27.

THE COURT: But I don't need his testimony in order to help me make a decision on the stay.

MR. WEINGLASS: No, you may or may not, but another court might want a record and we are being prevented from completing a record.

THE COURT: No. I took it under advisement, Counselor. And I don't think we need anyone else.

MR. WEINGLASS: But we are preparing a record, if nothing else, and another court might want to know is this a case where Mr. Jamal deliberately delayed as the Commonwealth accuses him.

THE COURT: No.

MR. WEINGLASS: Or is it not.

THE COURT: They are saying you delayed from 1991 or whenever it was the last time, up until the time that you filed it. That's the delay they are talking about. But that has nothing to do with the stay.

MR. WEINGLASS: No. I submit, Your Honor --

THE COURT: No, it doesn't have --

MR. WEINGLASS: It has a great deal.

Page 28.

THE COURT: No, it will not influence me in the stay at all.

MR. WEINGLASS: But it might influence another court.

THE COURT: Well, why would it?

MR. WEINGLASS: You are preventing us from making a record.

THE COURT: Why would it? Why would it?

MR. WEINGLASS: Because another court, seeing that Mr. Jamal did not delay, but that the Governor signed a preemptive warrant, might then on that ground alone issue a stay.

THE COURT: I told you before the purpose of a stay in a situation such as this. Where the Defendant files his first PCRA matter, he is entitled to have that matter go all the way up. We are not talking about a second PCRA or a third PCRA or anything of that nature. This is the first PCRA matter.

MR. WEINGLASS: Right.

THE COURT: And it will be taken care of at the appropriate time.

MR. WEINGLASS: While we are on that issue, which I will follow up to the Court's

Page 29.

comment: Today is August lst, as I understand it.

THE COURT: Yeah.

MR. WEINGLASS: We have an execution date of August 17th.

THE COURT: Oh, that's far away. That's 16 days away, don't worry about it.

MR. WEINGLASS: And the Court is of the opinion that this matter could be heard through it's entirety?

THE COURT: Well, I don't know.

MR. WEINGLASS: And a transcript prepared? And the Supreme Court reviewing it if the Court turns us down? And all that could happen before the 17th?

THE COURT: Well, I don't think so. I don't know, it depends on how long you are going to take. I don't know what you are doing or how long you are going to take. I don't know who your witnesses are. Could you tell me how long you are going to be? I don't have a crystal ball, I don't know.

MR. WEINGLASS: Probably another 10 days.

THE COURT: Okay, take it up --

Page 30.

MR. WEINGLASS: That would put it to August 10th. Could you imagine the transcript being transcribed of the entire hearing and the Supreme Court resolving it on the record?

THE COURT: You said by August the 10th. Why don't you see me on August the l0th?

MR. WEINGLASS: Well, Your Honor, you're talking about a man's life.

THE COURT: I am, I understand that. But see me on August the 10th.

MR. WEINGLASS: For what purpose?

THE COURT: Well, because you will say I'm finished, Judge, I want you to rule. You held under advisement the petition to stay, I want to know what you are going to do. I will give you my decision then.

MR. WEINGLASS: You will be able to make a decision, Your Honor, without reading the record?

THE COURT: I already read the record.

MR. WEINGLASS: No, the transcript of this proceeding.

THE COURT: Oh. I am not basing it on the transcript. I told you before when someone for the first time files a PCRA matter, he is

Page 31.

entitled to have that go all the way up to the Pennsylvania Supreme Court, maybe even into the Federal courts. So I will take it up at that time. I don't think you need the Governor to help you on this.

MR. WEINGLASS: But I observed that the Court is not taking notes during the testimony. And the Court is going to make a decision on this life-and-death issue without reading the transcript?

THE COURT: I am going to make a decision on the stay. Don't get excited, Counselor. And I don't need the Governor or his staff to help me on that.

MR. WEINGLASS: Let me just say --

THE COURT: Let me say this to you: Suppose I had denied the stay, where would you have gone?

MR. WEINGLASS: We are talking hypothetically?

THE COURT: Yes. Of course hypothetically. Because I took it under advisement.

MR. WEINGLASS: If the Court denies the stay.

Page 32.

THE COURT: Yes.

MR. WEINGLASS: And the Court has not done so but is taking it under advisement.

THE COURT: No, I said let's assume for the sake of argument I denied your stay. Where would you run?

MR. WEINGLASS: On August l0th?

THE COURT: I don't care, August l0th, today, tomorrow, August l0th, where would you go?

MR. WEINGLASS: We would go to the Pennsylvania Supreme Court.

THE COURT: Okay. Don't you think they would grant you the stay maybe?

MR. WEINGLASS: Your Honor, I think the Court that we are before has an obligation to consider that on it's own and not pass it off to another court.

THE COURT: I am not asking about another court, I just want to know where you would go. That's where you would go.

MR. WEINGLASS: If we lost.

THE COURT: That's where you ran when I wanted to proceed immediately to take testimony. You wanted August the 1st. As I

Page 33.

said to you before, the Court took the position we're going to give a piece to you and a piece to me. And I said I swallowed mine and I ate it and we started on the 26th. You still refused to swallow yours and proceed on the 26th.

MR. WEINGLASS: We did proceed on the 26th.

THE COURT: Yes, but rather reluctantly. You keep throwing it up to me. You needed to August the 1st.

MR. WEINGLASS: On the 26th we put on four witnesses. We have been going.

THE COURT: I know that.

MR. WEINGLASS: We have been going full-time ever since.

THE COURT: I know that, but you told me you couldn't do it.

You needed August the 1st.

MR. WEINGLASS: There is no question but that we are hampered.

THE COURT: Hampered.

MR. WEINGLASS: I want to state for the record that we can not put this case together in it's adequate form on such short notice.

Page 34.

THE COURT: Well, we are here for a PCRA, not to retry the case necessarily. But a PCRA, you are limited to what the PCRA says you could do. And that's all I am interested in.

MR. WEINGLASS: And the PCRA has 18 claims, which is very hard to prepare with one week's time.

THE COURT: No, it isn't. There is a lot that could be done.

Go ahead.

MS. PERKINS: Your Honor, just to interrupt Counsel's constant rhetoric and posturing.

MR. WEINGLASS: Your Honor, I object to this young woman, this young lady saying Counsel's constant rhetoric and posturing after I stood here this morning without interrupting her. And she had no right to argue because only the Governor's Counsel has a right in this proceeding on the question of subpoena. And she argued and argued long and loud with a lot of rhetoric, and saying things like a lot of newspapers without even appending them to her papers.

MS. PERKINS: Your Honor, that is the

Page 35.

reason why I have stood up.

THE COURT: You submitted newspaper articles to me, didn't you?

MR. WEINGLASS: Pardon?

THE COURT: You submitted newspaper articles to me.

MR. WEINGLASS: Your Honor, you know what's interesting? We did submit newspaper articles. As the Commonwealth came into Court, in response to our position they submitted one exhibit. What was the one exhibit that the Commonwealth submitted? A newspaper article. We submitted 13 affidavits and 47 exhibits. Only the Commonwealth relied on one newspaper article. That's it. In response to about 500 pages.

THE COURT: I don't know, how many did the Commonwealth submit?

THE COURT OFFICER: What I have here, Judge, I have --

MR. WEINGLASS: Not in the hearing. Not in the hearing.

THE COURT OFFICER: 1 through 8.

MR. WEINGLASS: No.

THE COURT: C-l through 8, whatever

Page 36.

they are.

MR. WEINGLASS: No, that is not true. In their written response to the Petition they submitted one exhibit. One. And it was a newspaper article. That's all they relied on in their written response. In the hearing, yes, they are putting in newspaper articles and when they don't put them in Counsel just stands up and says willy-nilly oh, there are lots of newspapers out there, Your Honor. And the Court doesn't stop her. The Court --

MS. PERKINS: Your Honor --

MR. WEINGLASS: The Court doesn't even stop her from interrupting me. The Court doesn't stop her when she has no standing to argue. I won't permit the interruption. I am arguing, I don't allow Counsel to interrupt me.

THE COURT: I will let you go when he finishes.

MS. PERKINS: I don't know when that is going to be.

THE COURT: I don't know either but.

MS. PERKINS: Fine, then I have something to say whenever he finishes.

THE COURT: Okay, whenever you get

Page 37.

finished. I interrupted him because I am trying to find out why we need the Governor here. I don't see that we need the Governor. He is not going to do any good at all as far as I'm concerned. He knows nothing about the case itself. Not as far as PCRA is concerned.

MR. WEINGLASS: Why we need the Governor is the scurrilous accusation that the Petitioner delayed purposely.

THE COURT: What scurrilous accusation?

MR. WEINGLASS: That the Petitioner delayed purposely until after the warrant is signed and then we could move on.

MS. PERKINS: If I can stand up I could respond to that but since I am not allowed by Mr. Weinglass to speak.

THE COURT: Well, what I understood she said was the delay was from 1991 to 1995. That is the delay they are talking about.

MR. WEINGLASS: Let me address myself to that issue. Because we visited that issue before. On that issue I have informed this Court, and you will hear testimony within 24 hours, let me assure the Court you are going to

Page 38.

hear it from the witness stand from the administrator in charge of the Court reporters, that notes of testimony have been lost. Transcripts have been lost. I have been trying to get them. They still don't have them. That's one reason for delay. Another reason for delay: In April of --

THE COURT: Counselor.

MR. WEINGLASS: April of 1995 the FBI provided us with 700 pages of materials on Mr. Jamal. And last weekend...

(Discussion was held off the record at this time.)

MR. WEINGLASS: They provided another hundred. We are still getting them.

THE COURT: Yes, but what does that have to do with the PCRA? I don't control the FBI, what they do or what they investigate.

MR. WEINGLASS: Or the Court reporters.

THE COURT: No, a lot of times notes are lost. I don't lose my notes, Counselor. I have them, I have all the notes that were taken in this particular case. If you want them, I

Page 39.

will let you look at them.

MR. WEINGLASS: We have subpoenaed Judge Ribner. They were all before Judge Ribner. And there is a motion now to quash Judge Ribner's subpoena.

THE COURT: We will take that up too later.

MR. WEINGLASS: Yes, we will. And the Court indicates with a smile on it's face.

THE COURT: What do you want me to do, cry. What do you want me to do, cry.

MR. WEINGLASS: The fact of the matter is, the fact of the matter is we have a client who is on death row.

THE COURT: I understand that.

MR. WEINGLASS: Who faces execution.

THE COURT: So let's proceed.

MR. WEINGLASS: So we do not, as responsible attorneys, file a post-conviction petition until we have the full record, until we have all the documents he is entitled to, and until all the issues are investigated. And in this case, investigated for the first time. And researched. That's why the delay.

THE COURT: How many do you have, 19?

Page 40.

How many issues do you have?

MR. WEINGLASS: 19.

THE COURT: Okay, so you have the 19 issues.

MR. WEINGLASS: Now we have them.

THE COURT: Yes.

MR. WEINGLASS: Did we have them at the start? No. Are we

still getting more? Yes.

THE COURT: Well, I don't know, you mean you could change it?

MR. WEINGLASS: Oh, yes, we are entitled to file an amended petition based on --

THE COURT: No.

MR. WEINGLASS: Based on new information. And we are in the process of working on that.

THE COURT: Okay.

MR. WEINGLASS: Of course. But you are dealing with a death penalty case and you are dealing with post-conviction relief. And you don't file a petition until you have gathered together the transcripts, the trial record, the outstanding documents, the necessary witnesses, and you have investigated the case

Page 41.

thoroughly. That takes time. And that's not delay. That's moving ahead as quickly as you can.

THE COURT: Do you want to answer?

MS. PERKINS: Is it my turn now, Your Honor?

THE COURT: Yes.

MS. PERKINS: First of all, the Commonwealth does not concede that there was no intentional delay and will not stipulate that there was no intentional delay. Now, I suppose the reason why Mr. Weinglass referred to the exhibit, the one exhibit the Commonwealth referred to or attached as an exhibit, is because he knew exactly what I was going to refer to. I am referring to the answer to the Defendant's motion for a stay of execution. On page 12. The Commonwealth, referring to the June 1st date and the June 5th date which they have discussed, but the Commonwealth also argued, indeed according to the February 17th, 1995 edition of the Philadelphia Tribune, Defendant's attorney -- Mr. Weinglass here -- is quoted as having said he admitted that he will file his paperwork with the Common Pleas

Page 42.

Court --

MR. WEINGLASS: Objection, Your Honor. I am not quoted in that article. Counsel is purposely misstating. If she'll look at that article which is in front of her, I am not quoted. That is the journalist's impression. That's very different.

MS. PERKINS: It is a quote from the article, Your Honor.

MR. WEINGLASS: There are a number of quotes from me in that article. That one that she referred to is not quoted.

MS. PERKINS: Again, Your Honor, without interruption --

MR. WEINGLASS: Will she concede that she misspoke? There is no quote on that particular item.

MS. PERKINS: Your Honor, it is an excerpt from the article. I don't know if Mr. Weinglass spoke to these people or not, I didn't see him talk to them. I am presuming that he did because he has spoken to everybody else involved in this case in the media, so I have no reason to believe that he didn't speak to this reporter. But the article does state, Your

Page 43.

Honor, that he admitted he will file his paperwork with the Common Pleas Court seeking a new trial for Abu-Jamal only after Ridge signs his client's death warrant. Now, that's in February of 1995. Assuming it occurred --

THE COURT: All right.

MS. PERKINS: -- again we are at the issue --

THE COURT: Let's get back, though. As I said before, what is the purpose of a stay where the Defendant for the first time files a PCRA petition?

MS. PERKINS: It's whether or not he can litigate those issues before the stay becomes ripe, Your Honor.

THE COURT: Okay, I but how is that done?

MS. PERKINS: You have a hearing, which is what we have asked for.

THE COURT: But where does he go? You know there is an automatic appeal to the Supreme Court.

MS. PERKINS: That's exactly right, Your Honor, he has an automatic appeal to the Supreme Court. If these issues are resolved

Page 44.

before August 17th, and the Court denies a stay, the Defendant can petition the Supreme Court, as he already has done. I wish to remind the Court, however, Counsel is saying that this case will end here if a new trial is granted. I doubt that seriously because the Commonwealth would have the right to appeal.

THE COURT: I understand that. Anybody would. Go ahead.

MS. PERKINS: Again, the claim that he is asserting now has nothing to do with the PCRA. The Act is specifically dealing with the truth-determining process, meaning the trial.

THE COURT: Absolutely. That's why I say I don't know what the Governor could possibly add.

MS. MIDDLETON: Your Honor, I would just like to say one thing. Mr. Weinglass has said this warrant was signed out of order. That is incorrect. There is absolutely no evidence of that.

THE COURT: I don't think for a minute think the Governor signed anything out of order. These things have been up there for a long time. Other governors have been here and haven't done

Page 45.

anything about it. The legislature had to change the statute in order to get things moving. And if he doesn't sign it, the Department of, the Commissioner of the Department of Corrections will sign it. Somebody is going to sign it. So I wouldn't worry about that.

All right, the motion to quash the subpoena seeking to compel the testimony of Governor Thomas J. Ridge; Paul A. Tufano, General Counsel; and William G. Chadwick, Executive Deputy General Counsel; Syndi L. Quido, General Deputy Counsel; Timothy Reeves, Press Secretary to Governor Ridge; and John Taylor, Deputy Press Secretary to Governor Ridge, the motion to quash is granted. Okay.

Is the Clerk here? Because I don't have the original papers here, I would like to sign the originals.

Oh. Do you have the original motion to quash the subpoena?

THE COURT CLERK: I will look for it.

(Pause.)

THE COURT CLERK: (Handing).

THE COURT: No, I don't see any orders

Page 46.

here. Did you file orders?

MS. MIDDLETON: I know we FAX'd them to you.

THE COURT: They were filed?

MS. MIDDLETON: I believe the original with an order was also filed. But I know we FAX'd the order to chambers.

THE COURT: Yes, you did FAX me. But I am talking about the original with the orders. You don't have the originals? You don't have them here?

THE COURT CLERK: There is a lot of papers in this file.

THE COURT: Well, I had orders attached to mine. Which I will sign and make part of the record. And we will send everybody copies.

Is Gina here?

Oh, Gina. Do you have her FAX number?

MS. FURIA: Yes.

THE COURT: All right, we will FAX it to you.

MS. MIDDLETON: Thank you, Your Honor.

MR. MELINSON: Thank you, Your Honor.

MS. WOLKENSTEIN: Your Honor, all

Page 47.

right, two preliminary matters before we begin with continuation with testimony.

First of all, Police Officer Gary Bell was served a subpoena on Friday afternoon by Petitioner and I want to note that he is in the

Court. Pursuant to the sequestration order for subpoenaed witnesses, I would ask for him to be --

THE COURT: Who is he?

MS. WOLKENSTEIN: Gary Bell, Police Officer Gary Bell. He should be ordered to leave the Courtroom and not return until he appears as a witness.

THE COURT: Jeremy Gelb?

MR. WEINGLASS: No, I am talking about Gary Bell, Police Officer Gary Bell.

THE COURT: I don't have him on your list.

MR. WEINGLASS: He is not a witness, Your Honor, today. He is subpoenaed and he is sitting here in the Courtroom and he is not supposed to be because he is a subpoenaed witness. All subpoenaed witnesses have been instructed that they are not to be in the Courtroom until after they have testified.

Page 48.

THE COURT: Do you know if he is in the Courtroom?

MS. WOLKENSTEIN: Yes, he is in the Courtroom.

MR. GRANT: Yes, Your Honor. You see, the problem is Counsel would like to subpoena me so I can't enter this Courtroom. You can't use and abuse the process of the Court merely for your own purposes. Now, Gary Bell was the police officer who testified and was a partner of Police Officer Faulkner on the night that he died. They had been separated for physical reasons to separate patrols but he was there in the hospital. Now, he is not an affiant with respect to their PCRA. They have given us no notice as to what purpose he is here for. There's been no offer of proof.

MS. WOLKENSTEIN: Gary Bell --

MR. GRANT: Excuse me.

MS. WOLKENSTEIN: I could give you the reason.

MR. GRANT: I don't want to hear your reason.

MS. WOLKENSTEIN: You just said --

MR. GRANT: I don't want to hear your

Page 49.

reason while I am talking.

THE COURT: Let me hear what he has to say. I will let you talk.

Go ahead.

MR. GRANT: So for the sole purpose and expedient of removing Mr. Bell from the Courtroom they serve him a subpoena, then they ask Your Honor to roust him from the room. And not even entertaining a motion to quash that subpoena, which is what I am doing at this point in time. Unless there is sufficient relevance and materiality to any testimony he may offer, and further, that it is in support of the PCRA Petition, I would ask Your Honor to quash that as well.

There are a number of subpoenas floating around, one of which is for Judge Ribner. They are subpoenaing everybody in the world, none of which have they alleged are witnesses in their PCRA. And I think they are abusing the Court's process. And at some point in time I am going to ask Your Honor to take some sanctions because I think this is becoming harassment, intimidation, nothing more or nothing less.

Page 50.

MS. WOLKENSTEIN: If there is a specific objection to specific subpoenas I suggest the District Attorney bring a motion to quash on each one as they come up.

THE COURT: Well..

MS. WOLKENSTEIN: As to Gary Bell, Gary Bell is a police officer who, as far as we are concerned, fabricated a confession allegedly made by Mr. Jamal in the hospital. We have said that in our papers, we have said that repeatedly.

We have subpoenaed Police Officer Gary Wakshul, who we believe absolutely rebuts and makes very clear that Mr. Jamal made no so-called statement, confessions that night. Gary Bell is the police officer who filed no reports, no police logs, no investigative reports which gave any indication whatsoever that Mr. Jamal made any so-called statements or confessions on the night of December 9th.

Two months later, in the course of proceeding into the allegations made by Mr. Jamal that he was beaten, Gary Bell comes forward and says oops I forgot, I forgot to mention the fact that Mr. Jamal made a

Page 51.

confession that night of December 9th. We believe that confession was fabricated. I can imagine almost no issue which is more relevant to this hearing than the question of fabrication of evidence by a police officer under the direction and control, as a legal matter, of the District Attorney's Office. This is highly relevant. Highly material.

And Mr. Bell is subpoenaed as a witness in this proceeding. So I would ask that he be requested to leave the Courtroom until such time as defense Petitioner calls him as a witness.

MR. GRANT: If it were highly relevant and highly material, it was highly litigated in this Courtroom 13 years ago. He was cross-examined on that 13 years ago by competent Counsel. The Supreme Court, as a matter of direct primary appeal, litigated the sufficiency of the evidence, and affirmed Mr. Jamal's conviction. And Mr. Bell's testimony took place at that time. So, at least, Counsel is trying to re-litigate issues and claims that have already been raised and been decided on by the highest reviewing authority in this State.

Page 52.

Moreover, he is not part of their PCRA Petition. And I move to strike and quash that subpoena.

MS. WOLKENSTEIN: The issue here is the fundamental question of due process and fairness. It is a question of Brady versus Maryland. The fact that Mr. Bell, obviously, as a working police officer that night, filled out patrol logs, filled out reports in the course of doing his duty. Those records, which I believe absolutely show no evidence of any statements being made by Mr. Jamal, were not turned over to the defense as they should have been under the requirements of Brady versus Maryland.

MR. GRANT: I would ask Your Honor to rule.

THE COURT: Well, I am not going to evict him at this time. I don't think that there is anything that is coming out now that would in any way affect his testimony one iota. He has already testified at the trial itself.

MS. WOLKENSTEIN: Your Honor, we had a Mrs. Lydia Wallace and Representative Richardson testify. After they testified they were excluded from the Courtroom that day.

Page 53.

THE COURT: I didn't exclude anybody from the Courtroom.

MS. WOLKENSTEIN: Your Honor, they were told that they could not come back into this Courtroom after that.

THE COURT: Who told them that?

MR. GRANT: Just a minute, Judge.

MS. WOLKENSTEIN: Let me finish.

MR. GRANT: Very well.

MS. WOLKENSTEIN: Until the next day when there was a whole inquiry with Counsel as to whether or not they were going to be called again as a witness were they allowed into the Courtroom. I believe again there is a question of bias towards the prosecution, prejudice against the defense, and unequal treatment from top to bottom.

THE COURT: That's what you say. Those are words that come out very easily but with no basis for it.

MR. GRANT: Mr. Weinglass could speak to this issue in contravention of what Miss Wolkenstein says. The Sheriffs said there is a lady named Ruth Ballard and Miss Lydia Wallace who would like to come back into the room.

Page 54.

There is a sequestration order in effect. You asked for sequestration, meaning me. I said but they are witnesses as to the Defendant's character and they are relatives, or their neighbors, I don't think they are going to testify again, let me ask Mr. Weinglass. I went and I asked Mr. Weinglass. He said no, that's

the extent of their testimony. I said well, I have no objection if they come back in. And now I hear this turned around and I'm being accused of keeping people out of a Courtroom. I don't know --

MS. WOLKENSTEIN: The point of fact is we have a witness under subpoena, we have a sequestration order which says that no witness is to be in this Courtroom prior to their completion of testifying.

THE COURT: Well, I think, I told you I wanted to have a list of who you are going to call. I didn't see the list.

MS. WOLKENSTEIN: We prepared a list on a day-to-day basis.

THE COURT: If you want to do it on a day-to-day basis I rule on it on a day-to-day basis.

Page 55.

MS. WOLKENSTEIN: Your Honor is denying the sequestration order and asking Police Officer Bell to leave the Courtroom?

MR. GRANT: I am asking Your Honor to quash it unless they should show relevance and materiality in support of their PCRA that hasn't already been litigated. And it has, it has no relevance, it has no materiality. And I am saying not just to not ask him to leave the room, I am asking him to quash the subpoena process.

THE COURT: At the present time I will quash the subpoena.

MR. WEINGLASS: I object to that.

THE COURT: Okay, your objection is overruled and you are given an exception. But the thing is, if you are going to subpoena him in the future, please attach an affidavit to it so we know exactly what the issue is with him, so the District Attorney could be alerted.

MS. WOLKENSTEIN: Your Honor, there is another matter here. I wanted to present to the Court a copy of a letter I sent to Sheriff John D. Green this morning. Also I want to give the District Attorney's Office a copy of said letter

Page 56.

(handing). And bring this matter to the Court's attention. I think the Court recalls that a few days ago I requested that all participants, all observers in the Courtroom be treated equally as they came into the Courtroom. And that included going through metal detectors. The purpose of that was to insure that no one, one of the purposes was no one was being treated differently. And that anyone who was carrying weapons would in fact not be allowed to bring their weapons into the Courtroom.

THE COURT: If you remember, if you remember, I said that didn't apply to police officers.

MS. WOLKENSTEIN: No, I don't recall you saying that.

THE COURT: Yes, I did that the other day, last week.

MS. WOLKENSTEIN: I don't recall you saying that. In any event --

THE COURT: Counselor, they are in here for my protection, okay.

MS. WOLKENSTEIN: I am not talking, Your Honor, about people who are part of the Sheriff's Office and are on duty. I am talking

Page 57.

about police officers.

THE COURT: I am talking about any police officer that is in here is authorized to carry a gun, as far as I am concerned, 24 hours a day.

MS. WOLKENSTEIN: Your Honor, my --

THE COURT: And he is here for my protection.

MS. WOLKENSTEIN: Your Honor, an off-duty police officer, in our opinion, should be treated the same as any other citizen who comes into this Courtroom.

THE COURT: No, no, it's all together different.

MS. WOLKENSTEIN: And we are requesting, have made the request --

THE COURT: All together different. I consider the police officers for my protection in this Courtroom. I will make the decision who can carry a gun in this Courtroom and who can't.

MS. WOLKENSTEIN: Your Honor, there are people attending this Courtroom getting designated seats as representatives of the Fraternal Order of Police as part of a contingency of people who have a position in

Page 58.

opposition to Petitioner Jamal.

THE COURT: What does that have to do with carrying guns?

MS. WOLKENSTEIN: Some of these people I understand are police officers. They come into this Courtroom as spectators, as members of the public. They are off duty. We are requesting of the Sheriff's Department that those police officers be treated the same as any other citizen and they not be allowed to come into the Courtroom carrying their weapons. We believe that this situation is not, is a violation of security and dangerous to Mr. Jamal. We believe --

THE COURT: Dangerous to whom?

MS. WOLKENSTEIN: A form of intimidation to the other people who are in this Courtroom who are supporters of Mr. Jamal. And we believe, then, in a highly charged and emotional situation, this is potentially volatile and dangerous.

I further represent that this is a very important issue because the Chief of the Fraternal Order of Police has made many representations, including in the past few

Page 59.

weeks, publicly that Mr. Jamal's supporters, including his attorneys, are a bunch of terrorists. And with that as their attitude and that as their position, I believe that speaks to the fact that the Fraternal Order of Police does not believe that people have the Constitutional right and ability to, to take a stand in support of Mr. Jamal. That indicates a state of mind that I believe is highly dangerous and a provocation in this Courtroom during these proceedings. So the request has been made of Sheriff Green to establish and set forth security procedures that make it clear that off-duty police officers who are attending this Courtroom as spectators be treated like any other member of the public, which is they do not bring their weapons inside this Courtroom.

MR. GRANT: I don't know if this exercise of polemics, Judge, is a filibuster to avoid proceeding with more evidence in this case. But in any event, under Police Department guidelines, every active police officer, whether on duty or off, as a peace officer, must carry his weapon. Now, I don't know if Sheriff Green has the authority to disarm these individuals,

Page 60.

but I would tend to doubt it.

In any event, I think this is a lot of rhetoric and I would like to proceed with the proceedings if we may.

THE COURT: Let me say this: I decide the procedure of what is going to happen in this Courtroom. I make that decision. And I told you last week that the police officers are entitled to carry their gun in this Courtroom. All right.

All right, anything else before we go forward?

MR. GRANT: No, Your Honor.

THE COURT: I understand that they wanted to call Mr. Jackson.

MR. GRANT: Mr. Gelb, Mr. Gelb is supposed to be coming this morning and Mr. Jackson at one o'clock, as I understand.

MR. WEINGLASS: No.

THE COURT: He said they were changing that now.

MR. GRANT: I am glad they let me know these things.

MR. WEINGLASS: Yes.

THE COURT: Who is coming in now?

Page 61.

MR. WEINGLASS: I spoke to Mr. Jackson when he got off the stand Friday and indicated that perhaps it would be better if he started Monday morning so that there would be continuity. He said he would come Monday morning.

THE COURT: Is he here?

MR. WEINGLASS: He called this morning. I spoke to him on the Court's telephone.

THE COURT: Is he here?

MR. WEINGLASS: At 9:30 he said he would be here at 10:30.

MR. GRANT: They have no witness, what they are saying is they have no witness.

THE COURT: Wait awhile. It is 11:00 o'clock. Is he here?

MR. WEINGLASS: Pardon?

THE COURT: Do you know, is he here?

MR. WEINGLASS: No, I don't know.

THE COURT: Is Mr. Jackson here?

THE COURT OFFICER: I have not seen him, Your Honor, but I will check.

THE COURT: Check it again, if he is here we will take him.

Page 62.

MR. GRANT: I would like to make a request.

MR. WEINGLASS: If he is not here we have another witness.

THE COURT: Okay.

MR. GRANT: Counsel knew, Counsel knew that he was going to change the order after he advised me what the order was going to be. He advised you as to the change.

THE COURT: I know, one o'clock.

MR. GRANT: I am kind of getting a little tired of this gamesmanship and I think we are here to try the case or to litigate the issues. If Counsel doesn't want to obey the protocol of the legal profession, at least he could give some notice that we are having a trial by ambush so we could both participate.

THE COURT: Yes, when I left on Friday I was convinced that he was going to be here at one o'clock.

He is not here. Well, I think he is not here.

MR. WEINGLASS: Well, the Court is again jumping to a conclusion.

THE COURT: I have somebody checking.

Page 63.

Why didn't you tell the D.A. you were going to call him?

MR. WEINGLASS: Your Honor, I don't want to quarrel with Mr. Grant. I spoke to Mr. Jackson right here in the well of the Court. It was my impression -- and I have no way of knowing if Mr. Grant heard it; I assumed he did but apparently he did not -- I apologize for that -- I thought this was an understanding with all Counsel. If Mr. Grant didn't hear it I'm sorry.

THE COURT: I didn't hear it because when I left on Friday I was convinced that he was going to be here at one o'clock.

MR. WEINGLASS: You had already left.

THE COURT: Is he back there?

THE COURT OFFICER: He is not here, Your Honor.

THE COURT: He is not here. Okay, what will we do in the meantime?

MR. GRANT: Okay, the Commonwealth could bring some witnesses if you have none. Have you any?

MR. WEINGLASS: We have, sure. We will call Peggy Garvin.

Page 64.

THE COURT: You are not taking them in the order you have on this sheet.

MR. WEINGLASS: Pardon?

THE COURT: You won't take them on the order you have on this sheet?

MR. GRANT: May we have an offer of proof as to this person?

THE COURT: This one you don't have either?

MR. GRANT: Of course not.

THE COURT: Why don't you tell somebody. Come on. Why do you do this?

MR. WEINGLASS: I can't help Counsel if he is not familiar with the record. We provided 10 days ago a series of exhibits appended to the findings of fact which included, I believe, reference to Peggy Garvin. The fact that she is a Court administrator in charge of the trial notes, and that she has indicated that four days of pre-trial hearing notes are missing. And we are calling her to establish the fact that notes pertaining to Mr. Jamal's pre-trial hearings are missing and not available. This morning, after I came to Court, I was informed that they have just, just now,

Page 65.

found three of those four hearings. One is still missing. And so as we stand here on August lst, 1955, the Court reporters are still in the process of assembling the record in this case. And I want to call Miss Garvin to establish that fact. It's very simple.

THE COURT: Well, we don't need her. If that's what is happening, fine.

MR. GRANT: Plus Counsel misrepresents, as usual, the truth of the matter. I have received nothing with Miss Garvin's name on it and I suggest to Your Honor if you required of Mr. Weinglass what document he refers to, it will probably be dated this morning, which we have not received. I move to preclude this witness and any other witness from now on that he hasn't given us notice of.

THE COURT: All right, we will exclude her at the present time.

MR. GRANT: May I have the Court's indulgence for one moment?

THE COURT: When you get the notes let us all know.

(Discussion held off the record at this time.)

Page 66.

MR. WEINGLASS: Is the Court precluding us from calling to the stand the Court reporter administrator in the Common Pleas Court of Philadelphia for the purpose of establishing that the full record in Mr. Jamal's case is not yet completed?

THE COURT: At this time, yes. Because you told me that they are getting three of the dates completed. So let's wait and see what it's all about.

MR. WEINGLASS: Yes.

THE COURT: I want to see whether it has any materiality as far as this PCRA matter is concerned.

MR. WEINGLASS: But I think it is important for the record to indicate, in light of the charges made by the Commonwealth, that the record in Mr. Jamal's case was not completed and is still not completed as of August lst, 1995.

THE COURT: Well, but see, these are records that are preliminary matters that may not really be relevant in any way. But if they could get them together, fine. They will get them together when they get them together. All

Page 67.

I am saying: At the present time we don't need her to testify to that.

MS. PERKINS: Your Honor, it is a little amazing to me that now these three documents have surfaced when I believe we had Mr. Weinglass' representations a week or two ago that he had exhausted every effort to find them. And now they are, they can be retrieved. So.

THE COURT: Well, let's wait until they retrieve them and transcribe them, let's see what they say. Let's see whether they have any bearing on this PCRA matter.

MR. WEINGLASS: Yes. Counsel is right: I didn't know that I had them until this morning.

THE COURT: Okay. So calling her to tell me that they are going to look for them, I don't need that. If you say to me that the three of them have been found, and they are going to transcribe them, that's good enough.

MR. WEINGLASS: I don't, I have to look through them because I don't know which one is still missing.

THE COURT: Okay, we will find out when you get the three. We will see what's

Page 68.

missing.

MR. GRANT: Your Honor, I would like Your Honor to know that

-- and I invite Your Honor's attention to the series of events this morning -- Counsel engaged in what appeared to have been a rhetorical diatribe, filibuster, extensive rhetoric. And I was curious as to why this was going on and why the issue just wasn't presented and dismissed or disposed of with a ruling. And now I understand they were supposed to have Jeremy Gelb here this morning, they knew that present he was not. They changed the order of witnesses and they were supposed to have Mr. Jackson here instead, and lo and behold he is not. So they try to hurry down a Court administrator to fill in the gap because they have no witnesses, knowing the relevance and materiality of that was remote at best. So now we are faced with the prospect of them asking for a continuance until the afternoon. And what they are trying to do is to not have these claims litigated. And as it gets closer to the date proposed for the execution of Mr. Jamal, they will say whoops, see, we have to ask for a stay now Judge.

Page 69.

And therefore, I am asking Your Honor at each instance where this occurs to allow the Commonwealth to reverse bifurcate the proceedings and we will put on evidence to meet whatever burden that exists on the Commonwealth after the presentation of their claims. We do have a witness here this morning. If they would like to have one heard. I would suggest to Your Honor that it is a waste of everybody's time to sit here while they decide what they are going to do on a moment-by-moment basis.

MR. WEINGLASS: We have, Your Honor, the Court attendants will inform the Court...

(Pause.)

THE COURT: Well, we have here, let me see what he said. You see, Wakshul is available right now.

MR. WEINGLASS: As the Court read into the record on Friday a note.

THE COURT: Yes, he said he would be available until 1:45 p.m. It's now nine minutes after 11:00. He is available now. Do you want to call him? We could have him here in no time at all.

MR. WEINGLASS: We have Mr. Gelb on

Page 70.

his way here, he should be here momentarily. We have Mr. Jackson on his way here. He should be here. Mr. Wakshul informed the Court that he couldn't come to Court because of a medical condition.

THE COURT: No, no, no, that's not what I read. I read he will be available on Monday until 1:45 p.m, when I again leave for therapy and also on Tuesday. So he would be available today to 1:45 and tomorrow until 1:45. In other words, you have to get him in the morning.

MR. WEINGLASS: If we may have a moment, Your Honor.

MR. GRANT: Your Honor, if I may: They subpoenaed him, if I am not mistaken, two weeks ago. So they were ready for him to testify then. And I assume he is under a continuing subpoena. So they are prepared to present him as a witness. It is just whether or not they choose at this time to find it convenient.

MR. WEINGLASS: In the ordinary course of things, when the witness is called to the stand and cross-examined for a day-and-a-half,

Page 71.

and then is asked to do redirect, it would appear that the Court would be interested in hearing that witness in the regular order --

THE COURT: But the thing is, he said he wouldn't be available until one o'clock today and I agreed to that. Now you tell me that you changed it somehow.

MR. WEINGLASS: I did not change it.

THE COURT: I don't know anything about that.

MR. WEINGLASS: I did not change it. And I want the record to be clear on this.

THE COURT: I want the record to be clear too. When we left on Friday, I was under the impression he was going to be in at one o'clock. We were going to take up the motion to quash first thing in the morning.

MR. WEINGLASS: Right. And I want the record to be clear on this. Mr. Jackson called this Courtroom and the Court's attendants asked me to take the call. It was about 9:40 this morning. He said he would be here at 10:30.

THE COURT: Okay. But what I am saying to you, Counselor, it's 11 minutes after 11:00 and he's not here.

Page 72.

MR. WEINGLASS: Right.

MR. GRANT: All Counsel is doing --

THE COURT: We have a witness that you could bring in who you've had on the list for Friday. July, yes, July 27th. Gary Wakshul.

MR. WEINGLASS: No, we indicated the next witness after Mr. Jamal would be Jeremy Gelb.

THE COURT: Today you gave me that list. This morning I just picked that up.

MR. WEINGLASS: No, it was discussed on Friday.

THE COURT: No, no, no, no. On Friday the list that I had was Jeremy Gelb.

MR. WEINGLASS: Right.

THE COURT: Gary Wakshul, Joe McGill and Robert Greer. That's what I had on Friday.

MR. WEINGLASS: Right. I represent to the Court that Mr. Gelb will be here within 10 minutes. His office is here in downtown Philadelphia. He is a practicing attorney. As a courtesy to counsel I had him on call. He is available, he is on his way, he will be here in 10 minutes. We are dealing with a practicing attorney and I ask the Court to give him the

Page 73.

opportunity to come here and testify.

MR. GRANT: I would ask, Your Honor, you see what he is doing is more filibustering. He is trying to buy time, I don't know what for. I would ask Your Honor to either make Mr. Wakshul come down, who they subpoenaed for last week to be here and they obviously felt he was ready to testify, or to allow the Commonwealth to put on it's witnesses. I don't think we should need to engage in anymore extended rhetorical conversation.

MR. WEINGLASS: We don't need anymore conversation. Mr. Jackson is here. We can put him right on now.

MR. GRANT: Fine.

THE COURT: Well, you stalled long enough.

(Pause.)

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Anthony E. Jackson, Esquire, having been duly affirmed, was examined and testified as follows:

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REDIRECT EXAMINATION

- - - - -

Page 74.

Anthony Jackson, Esq. - Redirect

BY MR. WEINGLASS:

Q. Good morning, Mr. Jackson.

A. Good morning, Mr. Weinglass.

Q. Mr. Jackson, you testified for approximately 10 hours, I am sure it seems much longer to you by now, but I just wanted to ask you some questions on redirect pertaining to the answers you have given in your cross-examination. Incidentally, have we had an opportunity to discuss your testimony since you testified on Friday?

A. No, we haven't, sir.

Q. Now, your affidavit was presented to the Court and to the Commonwealth on June 5th. That's approximately six weeks ago. In the interim and prior to your testimony last Thursday, which is July 27th, were you contacted by any representatives of the District Attorney's Office and asked to be interviewed between June 5th and July 27th?

A. No, sir.

Q. If you had been contacted by representatives of the District Attorney's Office (indicating) and asked to come in to be interviewed, would you have gone?

A. Certainly.

Q. As a matter of fact, you would consider among

Page 75.

Anthony Jackson, Esq. - Redirect

persons who are your acquaintances, if not your friends, the Assistant District Attorney who cross-examined you: Mr. Grant?

A. Yes, I did before he cross-examined me. Yes, sir.

Q. So you would have responded if he had asked you Tony, I would like to talk to you about this matter that happened 13 years ago?

A. Yes, I would have, sir.

Q. And so you were asked on Thursday and Friday about matters that happened 13 years ago, about matters that you hadn't reviewed previously with the District Attorney; is that correct?

A. That's correct.

Q. Was it your impression as trial Counsel that they were attempting to put a surprise into your testimony?

MR. GRANT: I would object to Counsel leading his witness. It's clearly his witness.

THE COURT: I will have to sustain that. Please don't lead your witness.

BY MR. WEINGLASS:

Q. Now, Mr. Jackson, you were asked a series of questions by Mr. Grant about your prior experience before being appointed to the Jamal case in December

Page 76.

Anthony Jackson, Esq. - Redirect

of 1981; do you recall that?

A. Yes, sir.

Q. And in the seven years since you graduated law school and were admitted in 1974, and the time that you started the defense of Mr. Jamal, as I understand your answers to Mr. Grant, you worked for the District Attorney's Office for a brief period of time, for a Federal monitor, and for a public interest office; is that correct?

A. Yes, sir.

Q. And in those seven years when you held those positions, do you recall how many death penalty hearings you were involved in?

A. One as co-counsel and I believe -- excuse me -- two others as counsel.

Q. Incidentally, it would be correct to say, would it not, that in your last three years when you worked with the public interest office full-time as the director, you were not doing death penalty cases in those three years prior to '81?

A. Well, actually, I think I did one or two because I was appointed to those cases before I began at the public defender's office. I don't recall specifically but I assume one or two.

Q. You haven't had occasion to check a calendar?

Page 77.

Anthony Jackson, Esq. - Redirect

A. No.

Q. Going back to 1978?

A. I certainly have not, sir.

MR. GRANT: Your Honor, if Counsel asked the question he doesn't know the answer to, and he gets the answer he doesn't want to hear, I would ask that Your Honor not allow him to lead and make gratuitous comments to the witness.

THE COURT: Please, no leading. He is your witness now, come on.

BY MR. WEINGLASS:

Q. Now, in your recollection, in those cases that went to a penalty phase hearing, do you recall if you put witnesses on in the penalty phase other than the defendant?

(Pause.)

A. Well, first of all, the one, the case I was acting as co-counsel, I, I was not in the decision-making position so that case I won't decide. The... other case, again, as I said I believe on cross-examination, before Judge Sabo, I don't recall whether that was before Mr. Jamal's case or after Mr. Jamal's case.

And a third case... I believe I put on

Page 78.

Anthony Jackson, Esq. - Redirect

evidence other than the defendant.

Q. Do you recall the name of that case?

A. No, sir, I sure don't. I don't, I don't remember. I remember the name of the case I was co-counsel; I don't remember the case, those two cases where I was, where I was counsel.

Q. So that would be a total of three?

A. Yes, maximum.

Q. Including one where you were co-counsel?

A. That's correct, sir.

Q. And are you sure these are all prior to 1982?

A. I'm sure of two. As I say, the one before Judge Sabo, I just don't recall whether or not that was before or after Mr. Jamal's case.

Q. And in any of those cases which involved the penalty phase, do you know if the defendant had a prior criminal record?

A. Yes. There was one -- umm... I'm trying to think if... co-counsel case, the defendant had a prior record. The case before Judge Sabo, the defendant had a prior record. The other matter, I believe it was before Judge Latrone... I don't... I don't remember. I just don't.

Q. To your recollection, was Mr. Jamal's case the first case that went to the penalty phase hearing

Page 79.

Anthony Jackson, Esq. - Redirect

where the Defendant had no prior criminal record?

A. Other than the one that I don't recall, he would have been the only one.

Q. And to your recollection, was Mr. Jamal's case the first case that went to a penalty phase where the Defendant had a professional background?

A. First one, sir.

Q. And do your recall, was this the first case that you had tried that went to a penalty phase where the Defendant was the president of a professional organization?

A. It's the first one, sir.

Q. And do you recall if this is the first case you handled where the Defendant went to a penalty phase and the Defendant had a state legislator from the Commonwealth of Pennsylvania who testified at his bail hearing?

A. First one, sir.

Q. Now, you were asked by Mr. Grant on Friday if you had filed on behalf of Mr. Jamal a complaint against various police for allegedly abusing Mr. Jamal when he was in the Jefferson Hospital. Do you recall those questions of you?

A. Yes, sir.

Q. What, Mr. Jackson, if any, was the information

Page 80.

Anthony Jackson, Esq. - Redirect

that was available to you at that time, if you recall it, that led you to file that complaint?

A. Two matters. Number one, the fact that Mr. Jamal was shot. Contrary to what the District Attorney and prosecution evidence was to suggest that it was: He was shot in response to shooting Officer Faulkner -- my understanding and belief was to the

contrary, that there was no reason for Mr. Jamal to be shot.

The other was that Mr. Jamal was also abused at the scene and as he was being transported to the hospital. And I believe at the hospital as well. When I say abused: He was struck, he was pushed, things of that sort. And that caused me to file a complaint, sir.

Q. Now, you also indicated in response to Mr. Grant that because you had filed that complaint Mr. Jamal's defense received the benefit of additional discovery. Do you recall being asked that question?

A. Yes.

Q. And giving that answer?

A. Yes, sir.

Q. Now looking back at the discovery that that produced, do you recall having read all the police statements that were given to you in the regular

course of discovery?

A. Yes, sir.

Q. And the statements that were given you with respect to the investigation of the complaint, whether or not anyone in the regular course of discovery in the criminal matter had indicated in any statement that Mr. Jamal had ever uttered any statement at the Jefferson Hospital on the morning of December 9th, 1981?

(Pause.)

A. Mr. Weinglass, sir, I really don't -- excuse me. I really don't have any specific recall. The sequence of events was that of course Mr. Jamal was arrested, he had a preliminary hearing, and at the preliminary hearing there was a statement. And I may have -- because I know that there was a, a lieutenant or captain Giordano, or something of that sort. And I think I, I don't believe I got discovery until after the preliminary hearing. And as I recall, this lieutenant, he testified at the preliminary hearing. So to answer your question...

Q. Directing your attention to the Jefferson Hospital statement.

A. Yeah... I just don't know, I just don't know when I found out. I just can't make that distinction

whether it was when I got the regular discovery or after the abuse complaint was filed.

Q. Let me ask it the other way. Do you have a recollection of whether or not the first time you read in a report that Mr. Jamal had allegedly uttered a statement at the hospital was after the investigation into your complaint?

(Pause.)

A. Let me answer it this way. I recall after having filed the complaint I felt -- or I remember hearing all kinds of admissions. And I felt it was only in response to filing the complaint. Now --

MR. GRANT: Objection. Move to strike what he feels as opposed to what he knows.

MR. WEINGLASS: Recording his recollection.

MR. GRANT: He is recording his vague remembrances and I move to strike them.

MR. WEINGLASS: According to his recollection. I think it is allowed.

THE COURT: It is stricken, what he is assuming.

If you don't remember, fine. But if you can be specific it makes it a lot easier for the fact-finder.

THE WITNESS: Your Honor, I am doing the best I can.

THE COURT: I know.

BY MR. WEINGLASS:

Q. Now, in your experience at Pilcop, where you initiated complaints and suits against the police --

A. Yes, sir.

Q. -- what if anything did you observe as a pattern or practice that the police would do if someone had initiated a complaint against the police?

MR. GRANT: Objection: Relevance as to what the pattern and practice was and it's relevance to what happened in this case, Judge.

THE COURT: Could you rephrase your question to this case and time.

BY MR. WEINGLASS:

Q. Did you develop as a result of your experience at Pilcop an understanding of what pattern the police would use to respond if a complaint was made against the police of abusive treatment?

A. Well, generally speaking, when there were confrontations between the police -- in some cases, confrontations between a police and a citizen, oftentimes the citizen would have cover charges. Cover, you know what the cover charges mean. Those

charges can be assault on an officer, resisting arrest and disorderly conduct. The officers would thereby be in a position, well, the prosecution would thereby be in a position of course to drop those charges against the individual if the individual would withdraw or refrain from filing any complaint against the police. Once a complaint was filed, it tended to reinforce a police officer's posture if possible to prosecute the case or to continue with the case.

Q. Would you say, therefore, Mr. Jackson, that it was your impression that if a complaint were filed that that would be retaliation against the defendant by the police?

MR. GRANT: Could Mr. Weinglass be sworn since he will be testifying here today.

THE COURT: Please, Counsel, he is your witness, stop leading him.

THE WITNESS: I didn't hear the question.

THE COURT: Okay. Rephrase your question.

BY MR. WEINGLASS:

Q. Did you reach any conclusion based on your work at Pilcop as to what the police would do by way

of retaliation if anything, if anything, for a complaint that was filed?

MR. GRANT: Objection: Relevance, as to what they would do.

THE COURT: I will sustain that objection. Stick to this case.

BY MR. WEINGLASS:

Q. Mr. Jackson, you were --

MR. WEINGLASS: No, Your Honor, I am going into the areas that were probed on cross on his experience at Pilcop. We heard a lot about that and I am asking him about his experience, the same as the District Attorney did on cross.

MR. GRANT: Well, Your Honor, what he is talking about is he wants to re-litigate that complaint that Mr. Jackson filed, which it is my understanding was unfounded. He can't found it here today. And so it doesn't matter what the result of that was. And even though it is redirect, I didn't go into police retaliation and police intimidation or any of that. And I object.

BY MR. WEINGLASS:

Okay. I want to show you a document that was

shown to you by the District Attorney of an interview of Officer Wakshul that was conducted on December 9th, 1981 (handing). And direct your attention to the second page where at that time Officer Wakshul in that interview indicated that the male Negro

made no comments.

A. Yes, sir.

Q. Do you see that?

A. Yes, sir.

Q. And that was a document that you were relying on, right?

A. Yes, sir.

MR. GRANT: Move to strike the answer. And move to object to leading. Continual leading.

THE COURT: Please remember, he is your witness. You are not supposed to lead your own witness.

BY MR. WEINGLASS:

Q. I now show you the interview of February llth, 1982 (handing) of the same police officer, Officer Wakshul, and directing your attention to the third page of that interview (handing).

Does Officer Wakshul there indicate that he claimed that he heard an utterance by Mr.

Page 87.

Jamal?

A. Yes, sir.

Q. Now, that second one, on February llth, 1982, that interview was conducted with Officer Wakshul after you had filed your complaint against the police; isn't that true?

A. I believe so. Because I believe I filed the complaint in January.

Q. So the two statements of Officer Wakshul, one where he said he heard nothing, and the other where he said he heard a so-called confession, were separated in time by the fact that you had filed a complaint against the police?

A. That is correct, sir.

Q. Now, you indicated in response to Mr. Grant that you had some involvement or contribution in a case that was brought by the Justice Department of the United States against the Philadelphia Police Department in 1979; is that correct?

A. That's correct, sir.

Q. Do you recall in that complaint brought by the Justice Department that one of the allegations that the Justice Department made against the Philadelphia Police Department is that they were intimidating and threatening witnesses who filed complaints against

Page 88.

the police for police abuse?

A. Absolutely, yes, I do recall that.

Q. And that was an allegation by the United States Department of Justice?

A. That is correct, sir.

Q. To your knowledge, had the Department of Justice of the United States ever made such an allegation against an entire police department of any city in the United States?

MR. GRANT: Objection: Asked and answered on direct.

MR. WEINGLASS: He could answer: It was gone into on cross.

THE WITNESS: Answer?

THE COURT: Go ahead.

THE WITNESS: It is the first time it had ever been done in the history of the United States, sir.

BY MR. WEINGLASS:

Q. And you, Mr. Jackson, had contributed information to the Department of Justice that led to that very lawsuit?

A. Yes, sir, substantially.

Q. Now, you were also asked a series of questions by Mr. Grant about your work in trial preparation in

Page 89.

this case. Do you recall that?

A. Yes, sir.

Q. I just want to go over it with you for a moment in segments. Let's first look at the first four months of your involvement in the case, from December 15th, 1981 to April 15th, 1982. Those first four months.

A. Yes, sir.

Q. And this is the period when you're opening your private practice; is that correct?

A. That is correct, sir.

Q. You're leaving Pilcop?

A. Yes, sir.

Q. You are working, essentially, on your own?

A. That's right.

Q. You had no paralegals?

A. No, sir.

Q. No investigators?

A. No, sir.

Q. You had a part-time secretary?

A. Well, I shared a secretary with another attorney, yes, sir.

Q. And in those four months you conducted a preliminary hearing in this case?

A. I did.

Page 90.

Q. You conducted a bail hearing in this case?

A. Yes, sir.

Q. You applied to the Pennsylvania Supreme Court after bail was denied?

A. Yes, sir.

Q. You prepared and filed a motion for the appointment of an investigator?

A. Yes, sir.

Q. You prepared and filed a motion for the appointment of a ballistics expert?

A. Yes, sir.

Q. And you did the same for a photographer?

A. Yes, sir.

Q. You filed a motion to suppress?

A. Yes, sir.

Q. Statements?

A. That is correct.

Q. You filed a motion for a lineup?

A. That's correct, sir.

Q. You filed a motion for the production of a police file: Officer Faulkner?

A. Yes, sir.

Q. You engaged -- you asked for discovery?

A. That is correct.

Q. And you also handled a number of special

Page 91.

issues related to Mr. Jamal's physical condition having been shot and operated on and hospitalized as well as his dietary needs with a Superintendent Owens?

A. With Superintendent Owens and Judge Ribner, yes, sir.

Q. And the Judge. And you filed a complaint for police abuse?

A. That's correct.

Q. Now, did all of these things that you did in those first four months occupy most of the time that you committed to this case?

A. When you say all of those things occupy most -- did I spend more time doing that than I did the actual trial, is that what you are saying?

Q. No.

A. I don't --

Q. Did you have any time left over?

A. Oh, had very little time to do very much else.

Q. That's what I am asking. And, Mr. Jackson, this wasn't your only case, you had other cases you had to look after also?

A. Yes, sir, I was certainly trying to.

Q. You had responsibilities to those cases?

A. Absolutely.

Page 92.

Anthony Jackson, Esq. - Redirect

Q. As a lawyer?

A. Yes, sir.

Q. So after you performed all of these things in the first four months that we set out which was all necessary for the case --

A. Right.

Q. -- you had little time for trial preparation?

A. Well, absolutely. In effect, many of these things were of course to assist me in trial preparation. So actually, well, that's right, there was very little time to do anything else but to file all of these motions and to argue the motions themselves.

Q. Now, so on April 29th, 5 weeks before the trial, you came into Court and you asked Judge Ribner to appoint another lawyer to help you because you couldn't prepare for the trial in the time that was left?

A. That's correct, sir.

Q. And Judge Ribner denied you?

A. That's right.

Q. And as your affidavit indicates, you had been asking throughout February, March and April for more money for your investigator, and that was denied?

A. That's correct, sir.

Page 93.

Anthony Jackson, Esq. - Redirect

Q. And you were asking for money for pathologists, and that was denied, other than $150?

A. That's correct, sir.

Q. And for a firearms expert?

A. That's correct, sir.

Q. We are going to come back to those in a minute. But I'm just trying to set the stage here for what was happening to you as this case is moving into trial. April 29th we've already covered. Then within two weeks, on May 13th, Mr. Jamal asked to represent himself; is that correct?

A. That's correct, sir.

Q And you were asked to be backup Counsel. Is that correct?

A. That's correct, sir.

Q. And you immediately protested that order that you be backup Counsel?

A. Immediately.

Q. Because as you have told us over and over, you had never been backup counsel, you didn't know what the responsibilities were of backup counsel; is that right?

A. That's correct, sir.

Q. Now, you remained backup Counsel from May 13th when Mr. Jamal took over the case until June 18th,

Page 94.

Anthony Jackson, Esq. - Redirect

when you were directed by both Judge Sabo and the Pennsylvania Supreme Court to take over the case as Counsel, trial Counsel?

A. I believe these are the dates.

Q. And is it your testimony that between May 13th and June 18th, which is the date opening arguments were to be given, you were serving as backup Counsel?

A. Yes, sir.

Q. So for the five weeks preceding the giving of evidence in this case, you were backup Counsel from May 13th to June 18th?

A. That is correct.

Q. And it's in that period of time that you have told this Court you didn't know what your role ought to be?

A. Didn't know what my role was, sir, didn't do anything.

Q. And no one would tell you what your role was?

A. Well, quite the contrary. Everybody told me what my role was.

MR. GRANT: Your Honor, could Mr. Weinglass phrase a question that isn't leading or isn't testifying? I haven't heard one yet. I am trying to be fair with the man.

THE COURT: He answered that, he said

Page 95.

Anthony Jackson, Esq. - Redirect

everybody was telling him what his role was.

MR. GRANT: Could Your Honor advise Mr. Weinglass not to ask leading questions.

THE COURT: I told him not to lead his own witness but evidently he doesn't pay attention.

BY MR. WEINGLASS:

Q. Did you know yourself what your role was to be?

A. No, sir, I sure did not.

Q. Mr. Jackson, in your way of thinking back then, does backup counsel plan trial strategy?

A. Certainly not.

Q. In your way of thinking back then, does backup counsel plan trial tactics?

A. No, sir.

Q. To your way of thinking back then, does backup counsel prepare the case for trial?

A. No, sir.

Q. And in the last five weeks before evidence was taken in this case you did none of those things?

A. No, sir. I did not.

Q. In your experience as a trial attorney, are the last five weeks prior to the taking of testimony a very critical time in terms of the preparation of

Page 96.

Anthony Jackson, Esq. - Redirect

your case?

A. Unquestionably.

Q. Would it be fair to say that it's the most critical time when an attorney begins to focus on his case?

A. I would say that's the most critical time, sir.

Q. And during that time you were backup Counsel, and not knowing what your role ought to be?

A. That is correct, sir.

Q. Incidentally, they have quoted you in Philadelphia Magazine as saying that you believed it was Mr. Jamal's show. Was it during that period of time that Mr. Jamal was Counsel and you were backup Counsel that you believed it was now his show?

A. No, Counsel, I can only answer you the same way that I answered Mr. Grant. I really don't remember the context of the question from the Philadelphia Magazine. I don't know if I was talking about while he was Counsel, whether I was talking about some other aspects of his affiliation with MOVE. I just don't know the answer, quite frankly. When I made that response. Assuming I made that response, I don't know what it refers to.

Q. Now, would it be fair to say, Mr. Jackson --

Page 97.

Anthony Jackson, Esq. - Redirect

correct me if I am wrong -- that on June the 19th, after you went to

the Pennsylvania Supreme Court --

A. Yes, sir.

Q. -- and after Judge Sabo directed you to proceed, that at that point you had reacquired control of the case?

MR. GRANT: Objection, and leading.

MR. WEINGLASS: I phrased it if it's his belief.

THE WITNESS: Okay, well, once the Supreme Court, once the Supreme Court told me I had to remain in the case, then came back to Judge Sabo and Judge Sabo directed that I then participate, I had no choice. I had no choice. And when you say reacquired control of the case, well, I guess because I was then made Counsel, yes, sure.

BY MR. WEINGLASS:

Q. And so would it be fair to say that you reacquired control of the case on the day that you had to give an opening statement?

A. That is correct, sir.

Q. Now, you were asked a lot of questions by Mr. Grant on whether or not Mr. Jamal had at various times ordered you to do things or directed you to do

Page 98.

things or requested that you do things. And I want to ask you this question about that. Assuming that all of that had occurred, did that in any way interfere with your ability to call witnesses in the penalty phase of the case?

A. No, sir.

Q. Did Mr. Jamal ever direct you not to call witnesses in the penalty phase of the case?

A. No, sir.

Q. Now, the issue came up in cross-examination about the question of race in the selection of the Jury in this case. Do you recall Mr. Grant asking you a series of questions about that?

A. Yes, sir.

Q. Did you prior to the questioning of jurors in 1982 request that the Court put on the record the race of the jurors who were questioned?

A. Yes, sir.

Q. And why, Mr. Jackson, did you do that?

A. Well, it was my understanding of the state of the law at that point that the only way that an appellate court could review the argument with regard to discriminating against one race or another is to have the race of the prospective juror on the record. So I requested the Court to inquire as to the race of

Page 99.

the individual, as opposed to defense Counsel asking the prospective jurors what race are you, because I thought it might be offensive to the juror coming from me.

Q. And in the eight or nine days of Jury selection, was it your understanding that the representative of the Commonwealth in selecting the Jury used both peremptory and cause challenges in a racial way against otherwise qualified black venire persons?

A. There is no question about it. The majority of his peremptory challenges were used against African Americans.

MR. GRANT: I object and that is not the question.

THE WITNESS: I mean --

MR. GRANT: Being the fact it is not the question, the question is not what the race was, but what the intention of the prosecutor was. As I remember.

THE WITNESS: Oh --

MR. GRANT: I move to strike his prior answer.

THE COURT: I will strike it. And rephrase your question.

Page 100.

THE WITNESS: I don't know what his intention was. I know what the result was.

MR. GRANT: Thank you.

BY MR. WEINGLASS:

Q. Was it your, having gone through the process with the representative of the District Attorney's Office, were you left with the impression that the District Attorney's Office had used racially-motivated peremptory strikes?

A. Yes. It was my belief and my strong feeling and impression that in fact the prosecutor had used peremptory challenges to exclude African Americans from the Jury.

Q. Right. And as a matter of fact, Mr. Jackson, you filed an affidavit with the Supreme Court of Pennsylvania saying precisely that?

A. That's correct, sir.

Q. And in that affidavit you noted the 11 persons of African-American backgrounds who were struck peremptorily by the Assistant District Attorney?

A. That is correct, sir.

Q. So the issue of racial exclusion in this trial was not something that came up during the PCRA, it was with this case from day one?

A. From the first day I was on the case, sir, I

Page 101.

brought it up as an issue. I thought it was part of the case and to the best of my ability I tried to make it an issue that the Court could deal with.

MR. GRANT: Objection. I believe he said he brought up an issue of racially-based peremptory challenges from day one.

THE COURT: That's what he said.

MR. GRANT: That's what the question was, and that was his answer. I want to be clear before we go any further.

THE WITNESS: Okay, obviously, day one we didn't start the peremptory challenges. Let me back up. I thought race was an issue in the case from, in the case from day one.

BY MR. WEINGLASS:

Q. And on day one of Jury selection you indicated to the Judge you wanted the race of the jurors noted?

A. Certainly; that was simply another aspect of the race issue within the case. It's implicit in the case, there is no way I could get around it. We have a black Defendant shooting a white police officer. Contrary to what anyone and everyone might want to believe, race was an issue.

Q. And you saw the District Attorney eliminating African-American jurors through the use of peremptory

Page 102.

challenges?

A. Yes, sir.

Q. And you called that to the attention of the Pennsylvania Supreme Court?

A. I did, sir.

Q. Incidentally, Mr. Jackson, to your knowledge as it existed in 1982, as a criminal law practitioner in Philadelphia, was that the pattern and practice of the District Attorney's Office of Philadelphia?

MR. GRANT: Objection.

THE COURT: Sustained.

MR. WEINGLASS: I would like to show you an affidavit, a copy of an affidavit which was filed with the Pennsylvania Supreme Court.

Showing Counsel a copy (handing).

And ask you to identify it.

That would be marked as Petitioner's next exhibit.

(Copy of affidavit was marked

Commonwealth Exhibit D-l0 for identification.)

(Pause.)

THE COURT OFFICER: D-10, Your Honor. Do you want to see it, Judge?

THE COURT: No, I don't want to see it.

Page 103.

Anthony Jackson, Esq. - Redirect

BY MR. WEINGLASS:

Q. Mr. Jackson, would you examine a two-page document that's been marked P-l0 and indicate whether or not it is a copy of the affidavit with your signature appearing?

A. Yes, sir.

THE COURT OFFICER: P-10, sir (handing).

(Pause.)

THE WITNESS: This is my affidavit, sir.

BY MR. WEINGLASS:

Q. And it is the affidavit that you were referring to in your last few questions and answers?

A. That is correct.

Q. Moving on. You were asked questions about the witness Chobert, Robert Chobert, the cab driver, by Mr. Grant on Friday. Do you recall being asked questions?

A. Yes, sir.

Q. Now let's examine that witness for a moment.

First, do you recall if you had a statement from a witness named Veronica Jones who was a prostitute on the corner of 12th and Locust who said that she saw two men run from the scene to the

Page 104.

Anthony Jackson, Esq. - Redirect

police?

A. I had a statement from her. I recall that she said one or two men had run from the scene, I do recall that.

Q. Do you recall if you had a statement from a witness named Dessie Hightower, who said he saw a man run from the scene?

A. Yes, sir.

Q. Do you recall if you had a statement from a Debbie Kordansky who said that she saw someone run from the scene but it was unclear in her statement whether that person had run from the scene before or after the police had arrived?

A. That is correct, sir.

Q. And lastly, did you have a statement from a fourth witness, Robert Chobert, who said he saw the shooter and the shooter ran from the scene 35 steps going east down Locust?

A. I don't entirely remember it. I believe he said the man was 200 pounds, and height I don't recall. But I always remember him saying in this statement that he saw a man run from the scene who was the apparent shooter. And he weighed I believe in excess of 200 pounds. And the reason I remember that is because I think at the time Mr. Jamal weighed

Page 105.

Anthony Jackson, Esq. - Redirect

a hundred and, about 157 pounds, something like that.

Q. So you had in your hands a potential of four witnesses -- Chobert, Kordansky, Hightower and Veronica Jones -- who told the police that they had seen someone run from the scene?

A. That's correct, sir.

Q. And the three who identified the direction all had that person running in the same direction?

A. That's correct, sir.

Q. And was it your belief that Officers Shoemaker and Forbes, who were the first to arrive on the scene, also wrote a statement saying that Mr. Jamal was laying on the sidewalk when they arrived moments after the shooting in a pool of blood?

A. That is correct, sir.

Q. Now, at trial Robert Chobert withdrew his statement that he saw someone run 35 steps down Locust and said he was mistaken; isn't that correct?

A. That is correct, sir.

Q. And you wanted to cross-examine him on his change of position?

A. Yes, sir.

Q. And so it would have been helpful for you, would it not, to have been able to attack his credibility on the basis of his bias for having been

Page 106.

Anthony Jackson, Esq. - Redirect

on probation at the time for an arson for hire?

A. Yes, sir.

Q. Do you recall that another witness called by the prosecution...

MR. WEINGLASS: Hold on just a minute, if I may.

(Discussion was held off the record at this time between defense Counsel.)

MR. WEINGLASS: We will come back.

BY MR. WEINGLASS:

Q. So you have Mr. Chobert changing his story?

A. That's right.

Q. And you have Veronica Jones doing the same thing?

A. That's right, sir.

Q. So two changed their story, and Debbie, and Debbie Kordansky wouldn't come to Court?

A. At least not for me, sir.

Q. So you lost three of the four in terms of your ability to project what they told the police?

A. Yes, sir.

Q. Now let's talk for a moment about Debbie Kordansky. Because Counsel read to you parts of the record about Debbie Kordansky.

MR. WEINGLASS: If I may have just a

Page 107.

Anthony Jackson, Esq. - Redirect

moment.

(Pause.)

BY MR. WEINGLASS:

Q. Now, this is a most peculiar situation. Debbie Kordansky you spoke to in the, from the Judge's chambers on the Judge's telephone. Isn't that correct?

A. Yes, sir. During the midst of the trial.

Q. And do you recall her saying this to you?

Page 5, Counsel. June 30th, 1982.

As reported in the record. She said I'm afraid to tell you what I said because I really don't want to help you. You said I read the statement to her. And she said I really don't want to help you. And she says she doesn't like black people. She says I was raped by a black male about five years ago, and if I could avoid coming into Court I will.

Do you recall that?

A. Yes, sir.

Q. So you lost Debbie Kordansky as well?

A. Sure did, sir. I would have called her in any event if I knew where she was. It didn't matter to me if she liked black people or not, if she was going to make a statement consistent with what she had

Page 108.

Anthony Jackson, Esq. - Redirect

given the police it certainly would have been beneficial to the Defendant.

Q. And as you recall her statement, it was unclear, she had written it out in longhand, and she said that she was watching television, it

was 3:45 in the morning, she heard shots, she got up, she looked outside, she saw police there, and then she wrote at the bottom of it I saw a man run from the scene?

A. That is correct, sir.

Q. And you didn't know whether that was before the police arrived or after but you sure wanted to talk to her?

A. Well, certainly, because certainly there had not been any others -- her statement about a man running from the scene was consistent with the statements of the other witnesses. There was no one else that said that they saw someone run from the scene after the police arrived. If in fact she saw it then or after that point in time, I certainly thought it was worthwhile exploring. But it was certainly consistent with the statement of the other witnesses that the shooter or someone else at or about the time the shots were fired ran in the same direction that Miss Kordansky saw this person run. So it seemed consistent to me, it seemed to confirm

Page 109.

the statements of the others that someone ran from the scene. And obviously it was something significant for the defense to explore.

Q. Moving on. Officer Gary Wakshul. The officer who did not appear to testify.

A. Yes, sir.

Q. Mr. Jackson, did you want Officer Wakshul as a witness?

A. Yes, sir.

Q. Did Mr. Jamal want Officer Wakshul as a witness?

A. Yes, sir.

Q. Did the two of you argue at length with the Court, pleading with the Court for a continuance so that Officer Wakshul could be brought in?

A. Yes, sir.

Q. As a matter of fact, did Mr. Jamal indicate -- I'm sorry to get into this -- on the record that he in part blamed you for not bringing in Officer Wakshul in that heated moment? And I will read from you the record --

A. I believe he did blame me, sir, yeah.

Q. Do you recall -- page 48, Counsel, July lst, 1982 -- the Defendant: I told him -- meaning you -- at the motion to suppress and he didn't show up.

Page 110.

And then on page 50 of the same day: I told him -- meaning yourself -- about pertinent information. He had the statements for months. And he can't find the man. The man is on vacation. It's not my fault, Judge.

Do you recall Mr. Jamal saying that?

A. Yes, sir.

Q. Indicating that at that moment he thought you had the information and the statements and that he had told you back in June at the suppression hearing to bring in Wakshul?

A. Yes, sir. I recall him saying that, yes, sir.

Q. Now, you were shown an Exhibit which I think is in front of you of Mr. Wakshul's interview of February llth, 1982?

A. Yes, sir. It is --

Q. Do you have that in front of you?

A. Yes, I do, sir.

Q. Would you look at the last page, which is page 4, the very last line. If you can make it out. Where Officer Wakshul tells the police on February llth, 1982 the reason why he didn't recall Mr. Jamal allegedly confessing in the hospital was because --

A. I'm sorry.

Q. Yes.

Page 111.

A. Yes, sir.

Q. What does he say? Because I didn't attach any importance to it?

A. That's essentially what he says, sir.

Q. Do you think you might have had a field day in front of the Jury with that comment?

A. It seemed awfully strange to me that it wasn't until this time that he thought it was significant to tell someone that the Defendant admitted the crime to him. He didn't think it was important before that time. I... It boggles my mind that a police officer wouldn't think an admission was important.

Q. An admission of shooting a fellow police officer is something that Officer Wakshul claimed in that February 11th interview that he didn't attach any importance to it?

A. That's what he said, sir.

Q. Is that conceivable?

A. Not in my mind.

MR. GRANT: Move to strike what's conceivable in the mind of another. Since his mind is not in question.

THE COURT: I will.

BY MR. WEINGLASS:

Q. As a matter of fact, Mr. Jackson, if you had

Page 112.

Officer Wakshul saying that kind of thing in front of a Jury, would that have given you the basis to argue to the Jury that the police were lying in this case and this is the proof?

A. I think so, sir. I don't think there is any question. I just couldn't imagine someone believing that the officer was not attaching any importance to hearing a Defendant admit that he shot a police officer. And he said he didn't think it was important until later on. I just -- and I, I just couldn't imagine that all 12 Jurors would believe that statement. Or any of it, for that matter.

Q. Yes, would it have given you an opening in the case to attack the whole case?

A. Absolutely.

MR. WEINGLASS: Your Honor, could we break at this point? I'm just about halfway through.

THE COURT: Any objection to breaking?

MR. GRANT: Yes, I do, Judge. I would just like to get on with the program. He stalled this morning for an hour and a half.

THE COURT: The Court will just take a two-minute recess.

THE COURT OFFICER: The Court will

Page 113.

take a brief recess to the call of the Crier.

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(Brief recess.)

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MR. WEINGLASS: I am going to try to finish by going quickly.

BY MR. WEINGLASS:

Q. I want to talk briefly about something that Mr. Grant discussed with you at great length. That is the resources that were available to you and the funds that were available to you and the experts. I want to draw your attention to the transcript of June 3rd, 1982, just as the trial is about to begin, that is Jury selection.

Counsel, page 3.92 on June 3rd.

Did you indicate to the Court on June 3rd the following? Quote, at this point Mr. Jamal has no funds to pay that investigator. I have paid that investigator out of my pocket. I have no additional funds to pay him. He -- meaning Mr. Jamal -- is without any investigator, Your Honor.

Did you make that statement to Judge Sabo on the record on June 3rd?

A. I did, sir. As I had indicated before, Mr. Greer agreed to accept the job of investigating

Page 114.

this case. However, asking him to wait until the Court paid the money would work a hardship. Notwithstanding the hardship it worked on me, I was able to provide him some funds in advance of the conclusion of the case.

Q. And as a matter of fact, directing your attention to May 23rd, 1983 -- this is one year after the trial had concluded, approximately, and it was on the motion for a new trial which you had filed, argued before Judge Sabo -- do you recall Judge Sabo saying --

-- on page 41, Counsel, of the transcript --

-- to you I didn't even see this investigator?

A. Absolutely.

Q. That you put a bill in for?

A. Yes, sir.

Q. He wasn't even in the Courtroom?

A. I think -- well, yes, I recall the Judge saying that, yes, sir.

Q. Now I want to for a moment go over something with you that I don't completely understand. I want to show you what Counsel has used, which was the Exhibit that Judge Sabo brought to Court the other

day, namely, your petition for fees. And I want to direct your attention to page 1 of that document, particularly where the amounts --

MR. WEINGLASS: May I approach, Your Honor?

THE COURT: (Indicating).

MR. WEINGLASS: Thank you.

BY MR. WEINGLASS:

Q. Where the billing amount is indicated for the investigator, and where the approval amount is indicated for the investigator. Do you see those two numbers (handing) If I have them right.

A. Yes, sir. It appears from this that I was reimbursed $562.50, but only $150 was approved for the investigator.

Q. In other words -- correct me if I am wrong -- and I don't know these critiques -- is it true that you asked for $562.50, for an investigator and Judge Sabo would only approve $150?

THE COURT: Counselor, please: If you don't know the procedure, don't infer that I did anything with this. This was beyond my jurisdiction. It goes to the President Judge.

THE WITNESS: Yeah, I think in all fairness to the Court, I think the $150 was

approved even prior to Judge Sabo. I think I may have requested some additional funds from Judge Sabo and was denied.

Why I took, why I took a chance on paying the investigator more than what's approved, well, I did for whatever reason.

BY MR. WEINGLASS:

Q. And my question is -- and with all due respect to the Court, I don't know the procedure --

THE COURT: I know. That's why you should be talking to your home Counsel.

MR. WEINGLASS: Well, I'm asking the witness.

BY MR. WEINGLASS:

Q. Does that document indicate that the amount that was finally approved for your investigator was $150?

A. Yes, sir. Prior to, prior to the time $150 was approved. Or prior to and during the time, as far as I know, from reading this, $150 was approved.

Q. And you told this Court, Judge Sabo, on June 3rd, as you are about to go to trial, Mr. Jamal doesn't have an investigator?

A. That's correct. Because I think at that point I may have exhausted my funds at that time in even

paying the investigator.

Q. All right. Now, again talking about May 23rd, 1983 -- Counsel, on page 36 -- in argument for a new trial, did you inform Judge Sabo, quote, I talked personally to six forensic pathologists. The cheapest forensic pathologist that I spoke to indicated that there would be an initial fee of $300 up front before he would do anything else. That amount did not include any examination, nor did it include any testimony. For that reason, Your Honor, we are saying simply that by virtue of Mr. Jamal's being indigent he was denied due process of law. Do you remember saying that to the Court?

A. Absolutely.

Q. You had talked to six pathologists and not one would take this case for the $150 that was authorized?

A. That is correct, sir.

Q. Now, there was much discussion with Mr. Grant about the photographer Bill Peraneau. Do you remember that?

A. Yes, sir.

Q. And whether or not Bill Peraneau had received money from other people besides yourself?

A. Yes, sir.

Q. As a matter of fact, do you recall -- page 44, Counsel, of May 23rd, 1983 -- you engaged in this colloquy with Judge Sabo?

The Court: How about all the money that was collected for him by his group.

Mr. Jackson: That was not for any defense purposes that I know of, sir.

The Court: What was it for then.

Mr. Jackson: Let me beg your pardon. One fee for the photographer was paid out of that. $300, as I remember.

So you did inform the Court, did you not, back in 1983 that Bill Peraneau had received $300 from a support group?

A. I guess I did, sir, I can't recall at the time.

Q. And that was for, do you know if that was for photographs that the committee wanted that Bill Peraneau had taken for your purposes but they wanted copies and they paid Mr. Peraneau for those copies?

MR. GRANT: I object to leading.

THE COURT: I will have to sustain that. Please, Counselor, stop leading your witness, will you.

BY MR. WEINGLASS:

Q. Now, you were questioned about a Philadelphia Inquirer article by Mr. Grant that appeared on July 23rd, 1995. And he asked you the question as to whether or not there was a thousand dollars that was raised and available. And he read part of it but he didn't read this part. Jackson said he never received any private money raised to help the defense.

Did you tell the Philadelphia Inquirer that?

A. I'm sure I did, I told everyone. I've never received any money in my hand, even the money of Bill Peraneau went directly to him. I never received any funds outside of what the Court gave me from any source, from anyone at any time.

Q. Now I just want to go back once again briefly and revisit the questions in a short period of time of your ability to gather witnesses prior to trial. And I want to call your attention to the transcript from April 29th, 1982 on the bottom of page 6 where you informed Judge Ribner of the following. You may recall, Your Honor, that I had asked in fact for the addresses of several witnesses that the Commonwealth had interviewed, some of whom we have been able to

Page 120.

Anthony Jackson, Esq. - Redirect

contact by other means. And I find that notwithstanding Counsel for the Commonwealth's representation that these witnesses would not speak to me, that in fact they will speak to me. I'm not suggesting that Mr. McGill has been sledding me, I don't know. Nevertheless, some of those witnesses are talking to me. And in fact those witnesses have proven to be important.

Do you recall informing the Court of that?

A. Yes, I do, sir.

Q. So you didn't have the names and addresses of the witnesses; is that right?

A. Didn't have the addresses of the witnesses.

Q. I'm sorry?

A. I had the names.

Q. You had the names?

A. Yes, sir.

Q. You didn't have the addresses or the telephone numbers?

A. That's correct.

Q. And there were representations made to you that they didn't want to speak to you in any event?

A. That's right, Mr. McGill had suggested that the addresses weren't important because people either

Page 121.

Anthony Jackson, Esq. - Redirect

didn't want to talk to me or they would not be helpful to me.

Q. And you found out the end of April that people did want to talk to you?

A. That's correct.

Q. I am not saying intentionally mislead but he did mislead your work on the case?

A. Absolutely. I didn't have the addresses to pursue the witnesses. Mr. McGill made certain representations again, as I said, that either witnesses did not want to speak to me or they would not be helpful. As if to suggest that I didn't need resources in which to find those witnesses. It just seemed inappropriate of course for the prosecution to be suggesting or trying to influence what witnesses the defense would interview. But I think it was part and parcel of the whole scenario of not being able to obtain or go to the witnesses. And I have said it throughout my testimony, and my arguments to the Court then and here, just seemed patently unfair that the Defendant wouldn't have equal access to the witnesses.

Q. Now, to conclude -- I am cutting this short -- you testified on Friday that you did the best that you could do. That's true, is it not?

Page 122.

Anthony Jackson, Esq. - Redirect

A. Yes, sir. I sure did.

Q. But at trial did you have a firearms expert to testify?

A. No, sir.

Q. At trial did you have a pathologist to testify?

A. No, sir.

Q. During the trial did you have an investigator actively involved in finding witnesses?

A. No, sir.

Q. At the time of trial, during the trial, you had no opportunity to interview Dessie Hightower, Veronica Jones, or Dr. Colletta before putting them on the stand?

A. No, sir, I could not interview them before them being on the stand.

Q. And at trial you were denied the witness Wakshul?

A. That's correct, sir.

Q. And during the five weeks immediately preceding the taking of testimony, you were in this never-never land of being a backup Counsel?

A. That's correct, sir.

Q. In other words, Mr. Jackson, is what you are saying that you were doing is the best you could

Page 123.

Anthony Jackson, Esq. - Redirect

under all those circumstances?

A. Sure, I assume, yes. It was, I did the best that I could under extremely adverse circumstances. Under the circumstances we just went over, I did the best that I could under those circumstances. No money, no investigator, no experts, no prior preparation with the witnesses. I did the best that I could, sir.

Q. You were in effect like a boxer in a ring with both arms tied behind your back doing your best to bite your opponent?

A. That's about as close to it as I could characterize it.

MR. WEINGLASS: I have no further questions.

MR. GRANT: I have very brief recross, Your Honor.

THE COURT: Are you going to cross or do you want to break for lunch or what?

MR. GRANT: I think we could dispose of Mister, we can let Mr. Jackson go.

THE COURT: Go ahead, then.

MR. GRANT: If I may.

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RECROSS-EXAMINATION

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Page 124.

Anthony Jackson, Esq. - Recross

BY MR. GRANT:

Q. Mr. Jackson, I am not going to belabor points.

A. That's all right, sir.

Q. I am not going to ask you leading questions. What was the result of the complaint you filed with the Police Department charging police misconduct in this case, sir?

A. I think it was unfounded, sir.

Q. You think it was unfounded?

A. Yes.

Q. You know it was unfounded?

A. All right, I know it was unfound -- yes, sir, I know it was unfounded.

Q. And you know that when you file such complaints that these complaints are not brought before a jury of 12 or before a bench trial, they are brought before an administrative board of police personnel and perhaps sometimes community persons; isn't that so?

A. Not at that time.

Q. So was it brought before a court of law?

A. No, sir.

Q. So if it's not brought in a court of law, and it's brought before the police review board --

Page 125.

Anthony Jackson, Esq. - Recross

A. No, sir, it wasn't, there was no police review board at that time, sir.

Q. Okay. What do you call it, then?

A. The Police Commissioner.

Q. Okay. It was brought before the Police Commissioner. Is it important then whether or not a person is on vacation? In other words, does the Police Commissioner have a right to say to the officer who is in question get in here and answer these questions whether you are on vacation or not?

A. Sure. I would assume so.

Q. So if a person from the Internal Affairs Bureau doesn't write what the person's vacation is on the interview they are taking regarding police misconduct, does that have any relevance

whatsoever as to whether the Commissioner is going to bring him in?

A. As far as I know it doesn't.

Q. You mentioned that Miss Kordansky, who you felt to be a crucial witness for you, was crucial because she said that after she heard the shots she looked out her window and she saw someone run from the crime scene; isn't that right?

A. That's correct, sir.

MR. GRANT: Could I have this marked

as Commonwealth Exhibit 9 for identification.

(Police interview of Debbie Kordansky was marked Commonwealth Exhibit C-9 for identification.)

THE COURT OFFICER: C-9, Your Honor. C-9, sir (handing).

THE WITNESS: Thank you. Yes, I have it.

BY MR. GRANT:

Q. Why don't you read that, sir, into the record?

A. Certainly. I was watching --

Q. Do you recognize what that is?

A. Yeah, this looks like the investigation statement that was provided to me after the address and things of that sort during discovery.

Q. And it looks like the original, does it not?

A. I would assume so, yes, it looks like it.

Q. Very well.

A. Okay. This is Debbie Kordansky. She was interviewed 12-9-81 in reference to the shooting of police officer, 1234 Locust Street. I was watching TV and I heard about five gunshots sometime between 3:45 a.m. and 4:00 a.m. The gunshots seemed to be in succession. I thought that it was firecrackers. I didn't look out the window at first. I heard sirens

a short time later. I saw about 10 squad cars and two vans at 13th and Locust. I saw a male running on the south side of Locust Street.

Q. Now, does that say I saw somebody run from the crime scene?

A. No, it doesn't say those words.

Q. It could have been somebody running to a phone booth, into her hotel, running to assist other officers, it doesn't say I saw someone running from the crime scene, does it, sir?

A. No, you would have to know where the crime scene was.

Q. No, you would have to be able to read English. Look at the statement and read it again?

A. Sure, I will read it again.

Q. The last line.

A. I saw a male running on the south side of Locust Street.

The south side of Locust Street is where the shooting occurred. I made what I considered to be a reasonable assumption that he was running from the crime scene.

Q. Okay. Let's look at that and be practical about it.

A. Okay.

Q. The crime scene is in the middle of Locust between 12th and 13th?

A. That is correct, sir.

Q. Now, if the person is running south from 13th, they are going to run right into the dead police officer or the police officers who are attending him?

A. Well.

Q. Right?

A. No, that isn't true.

Q. Okay.

A. Because you have to assume what, what you want me to buy into is that she is giving it in succession. It is really not clear. She simply gave, in my mind she simply stated a number of things that she saw and heard. Not necessarily in succession. The fact that she saw a male running on the south side of Locust Street doesn't tell me that she saw that after the police officers were there. She said she heard the sirens, she said that she saw the police cars, and she said she saw a man running. She didn't say one happened first, second and third.

And, Mr. Grant, I don't know: It may be that in fact this is the succession that she saw it. But what I'm saying is I wanted the opportunity to talk to her so I could nail it down, because it

was unclear.

Q. Okay, Mr. Jackson, you said that you were ready, willing and available to have a conversation with me at any time prior to your testimony so that we could review your testimony?

A. Yes, sir.

Q. Yes, you did. And what is your office address?

A. 6800 Stenton Avenue.

Q. Where is that published?

A. Where is what?

Q. Where is that published?

A. It is not published, sir.

Q. Oh. What is your office phone number?

A. Ahh, 849-7190.

Q. No, sir, that is a Mt. Airy exchange. Is that your home?

A. Oh, no, I have another number for my home, it is not published.

Q. Where is your phone number published?

A. My home number is not published.

Q. You have no published numbers, do you? Now what am I supposed to be, a clairvoyant?

A. No, you are a very able Assistant District Attorney, sir, and I am sure if you wanted to get in

touch with me you would have found some way to get in touch with me.

Q. So in other words, you weren't readily available to anyone except who you wanted to be available to and who knew your personal numbers; isn't that true?

A. Well, I still say no.

Q. Didn't you get my beeper page? I paged your beeper number, I never got a response. Did you ever get a beep from the D.A.'s Office?

MR. WEINGLASS: Objection. Could we have the time? I believe the beeper was last week.

MR. GRANT: Oh, really, you know about it?

MR. WEINGLASS: Yeah, he told me.

BY MR. GRANT:

Q. Okay, how come you didn't respond to that beeper since you were so ready, willing and able to come down here and talk to me?

A. Oh, I don't, Mr. Grant -- typically, if I get a number that I am not familiar with, I may not call it back.

Q. I said --

A. But if you have a voice mail or number, if you

would have said, ahh, this is Joey Grant, I would have called you.

Q. Oh, most certainly?

A. Sure.

Q. You don't know what a 686' number is, do you?

A. Sure, Mr. Grant, I don't recall. That's the Municipal number.

Q. That is a what?

A. Municipal number.

Q. That is a City number for City employees and City institutions?

A. Yes, sir.

Q. Easily a D.A.'s number also?

A. Yes. Mr. Grant, I assure you, I do not recall receiving a message from you. If I had gotten the message from you I would have called you at least and told you that I was busy. At least.

Q. I am sure you would have, sir. Now, you said you had very little time because of all the things that you were doing for Mr. Jamal in trial preparation, looking for witnesses, strategy, tactics, filing numerous motions in the courtroom, et cetera, and therefore you had no time for anything else?

A. Pretty much so.

Page 132.

Anthony Jackson, Esq. - Recross

Q. Well, then how did you have time to practice law and handle these other cases that Mr. Weinglass brought out that you were handling?

A. Well, as a result of this case, I wasn't able to handle very many. Some of which I was able to request the assistance of others to take over. But again, as you recall, I just left Pilcop, so it isn't that I had a large practice. I mean I was back to private practice. Well, three weeks prior to going back to private practice is when I got this case. So it wasn't that I had a tremendous amount of cases. But I had some.

Q. Yeah. You had this case and this case alone, and you didn't have any other cases that you were actively pursuing while this case of your career was being tried -- now admit that, will you?

A. To admit that would be to admit a lie. How was I to eat? I didn't get paid for a year and a half after this case. I had to eat somehow. So why would I admit that? No, I had other cases that provided me with a way of eating everyday and paying my rent, sir.

Q. Okay.

A. So there were other cases, trust me.

Q. Okay, Mr. Jackson, I trust you. By the way,

Page 133.

Anthony Jackson, Esq. - Recross

you said that Debbie Kordansky, according to you she was made less than available because the D.A. was misleading you as to what her willingness to come in and testify was; correct?

A. Well, I made one statement earlier with regard to all of the Commonwealth's witnesses. And then specifically with regard to Debbie Kordansky, made that in front of Judge Sabo. I think the earlier remark was made in front of Judge Ribner with regard to obtaining the addresses of the witnesses. When I said something to the effect that notwithstanding the remarks by Mr. McGill that the witnesses either didn't want to talk to me or would help me, I think I told him at that time that two or three of the witnesses indeed had talked to me and in fact were helpful. And I think at that time I was probably talking about Debbie -- Dessie Hightower and perhaps another witness. I'm not really certain. But then I think later on during the trial, in the midst of trial is when I specifically referred to Debbie Kordansky who I couldn't get in touch with.

Q. So you couldn't get in touch with Debbie Kordansky, Dessie Hightower, Dr. Colletta and Veronica Jones?

A. No, sir, I am not saying, no, no, no, no.

Page 134.

Anthony Jackson, Esq. - Recross

Q. Who couldn't you got in touch with that you wanted to get in touch with, Mr. Jackson?

A. Everyone -- I couldn't get -- I got in touch with Dessie Hightower. There was another person, a friend of his who was with him.

Q. Robert Pigford?

A. Robert Pigford.

Q. Who else?

A. And I think Veronica Jones, and I think, as you correctly pointed out to me, that I did have her address. I think that was one of those.

Q. Yes?

A. One of those cases that slipped through the crack, I got her address on the statement.

Q. One of those peoples' names who slipped your mind who you had her address?

A. Whichever way you want to characterize it.

Q. No, I want to characterize it the correct way. And you had her address and it slipped your mind?

A. What slipped my mind?

Q. Her address, your ability to contact her?

A. We did contact her.

Q. That's what I am saying. So that wasn't deprived you by the Commonwealth, was it?

A. No, that was the only one that the

Page 135.

Anthony Jackson, Esq. - Recross

Commonwealth provided. She was the only witness that the Commonwealth provided out of over a hundred witnesses, there was one witness the Commonwealth provided the address to. Veronica Jones, yes, sir. I admit that, they were generous.

Q. Okay. Now, Mr. Jackson --

A. Yes, sir.

Q. -- Dessie Hightower, which you say you were deprived of speaking to him, is that right? Did you get the statement that you paid your investigator for of Dessie Hightower, and listened to it, I believe it was tape recorded?

A. Yes, sir.

Q. On page 4 of that statement which was attached as an exhibit to your affidavit here, at the very bottom, question: Did the police say they wanted you to testify in this case.

Answer: They just got my statement. And they've been very cooperative as far as I'm concerned. They haven't been leaning on me. They haven't tried to force me into saying anything. They can't. I'm only going to say what I seen.

Does that sound like people are trying to hide this guy from you? Your own investigator wrote this down.

Page 136.

Anthony Jackson, Esq. - Recross

A. I never said they were trying to hide them from me. Never said that, never said that at all. I simply said the District Attorney wouldn't give me his address.

Q. Let me take you to the next interview of your investigator: Robert Pigford.

A. Yes, sir.

Q. That is also attached as an evidentiary item here, apparently they have some value to the defense as an exhibit to Mr. Greer's affidavit. On the last page of that interview, last question: Were you ever told not to talk to me or anyone else involved with the defense of Mumia.

Answer: No.

You read that, didn't you?

A. Yes, sir.

Q. Now back to Mr. Hightower. First page of his affidavit. Mr. Hightower -- this is Mr. Greer, your employee, speaking --

A. Yes, sir.

Q. -- I don't have your statement with me but I have read it. How many times were you questioned by the police.

Answer; Three times.

Did you ever tell the D.A. that you

Page 137.

Anthony Jackson, Esq. - Recross

did not want to talk to me or anyone else connected with this case.

Answer: I told them I didn't want to give a statement to Mr. Jackson. His attorney. I didn't say I wouldn't talk to an investigator or anything like that.

You understand I am working for Mr. Jamal and his attorney.

Yes, you told me that over the phone. I decided what I told them I can tell you.

Now the man doesn't want to talk to you. Miss Kordansky doesn't want to talk to you. You said you were able to contact Veronica Jones. You knew where Cynthia White lived because you had guys walking around following her, at least, couldn't talk to her. The only person that leaves is Dr. Colletta. Now, did you have a hard time finding your way from your offices at Broad Street four blocks to 10th Street where this large edifice called Jefferson Hospital is?

A. No, sir.

Q. Well, why didn't you walk down there then instead of casting dispersions on the --

A. I will continue to cast dispersions against the Commonwealth where they are appropriate. In this

Page 138.

Anthony Jackson, Esq. - Recross

case with regard to the doctor, I believe the doctor indicated his lawyers or some lawyers suggested that he not talk to me. I am not really certain. I have some vague --

Q. Some defense lawyers like yourself?

A. No, I think this must have been another breed, I'm not really certain.

Q. You are not saying they are D.A.'s, though?

A. No, I don't think it was a D.A. It may have been hospital lawyers, I really don't -- I think in fact it may have been hospital lawyers, Mr. Grant, with regard to the doctor.

Q. Why does your testimony always change from the 20 minutes it takes to go from direct to cross, Mr. Jackson?

A. Because the questions are different.

MR. WEINGLASS: Objection to the form of the question.

THE WITNESS: But anyhow --

MR. WEINGLASS: May I have a ruling on my objection? It is argumentative.

MR. GRANT: I think it is an appropriate question.

MR. WEINGLASS: Counsel's opinion.

THE COURT: Well, I don't know if it

Page 139.

Anthony Jackson, Esq. - Recross

is an opinion.

Could you answer that question?

MR. WEINGLASS: Your Honor --

THE WITNESS: I will try to answer. Mr. Grant's questions are always compounded and he asked why they are different. It's because he asks about four or five questions in one question and I try to respond to each of them and then when I give one he stops me. But I will try to answer him because he asked me about each of these different witnesses, he asked me about four or five witnesses in each question, and the answer to each one is different and he thinks my answer is changing. It's only because he has different names and each one requires a different answer. If he wants an answer for each of them specifically I could give him that. But he is trying to make the reason for each one of them the same because, I'm sure it's because he is a great lawyer that he is. But that is not going to get it with me.

MR. WEINGLASS: Your Honor, may we have a ruling on my objection?

THE COURT: He answered the question already, he said he could answer it.

Page 140.

Anthony Jackson, Esq. - Recross

MR. WEINGLASS: So the Court overrules --

THE COURT: All he is saying is please give him one question at a time. That's what he is asking.

Is that right?

THE WITNESS: Yes, sir.

THE COURT: Give him one question at a time.

MR. GRANT: Very well, Your Honor, I will give him one question at a time.

BY MR. GRANT:

Q. This question is going to be preceded, Mr. Jackson, so you could follow me --

A. Yes, sir.

Q. -- by reading from the notes of testimony. And it is talking about race relations. And you are talking to the Court and you are discussing the phraseology of the questions that are going to be propounded to the prospective venire persons.

A. Yes, sir.

Q. Because you, because you were a good lawyer then, you had a questionnaire proposed?

A. Yes, sir.

Q. And it had never been used in a criminal case

Page 141.

Anthony Jackson, Esq. - Recross

in the history of the City of Philadelphia and the City of Philadelphia has been around 300 years?

A. That is correct, sir.

Q. And you were one of the first to propose this and to use it and you even got the Judge to go along with some of the questions from it, didn't you?

A. Yes, sir.

Q. Was that unusual?

A. Yes, sir.

Q. Was that good lawyering?

A. I understand it was, yes, sir.

Q. Well, listen. June 7th, 1982. Pages 17 through 20. You are discussing this issue.

Mr. Jackson: Your Honor, if I could at this point with regard to, quote, what is your race -- which was the question that you were trying to find how to delicately put to the jurors --

A. Yeah.

Q. -- I agree that this may be obvious, but the record of course can not reflect what is obvious to the eye. That is the reason for asking the question. Judge Sabo says, well, you could say, you could in your question say that.

And you say, we can say, quote, you are of the white race and the Defendant is of the

Page 142.

Anthony Jackson, Esq. - Recross

black race, for instance. But then again the problem is you take the chance of offending someone by assuming that there are only going to be two races and someone considers them self something else. So then we run the risk, rather than asking them what is your race, we are going to accuse someone. We would prefer, we would prefer not to run that risk.

At page 20 the Judge then says, well, in other words, are you going to be the one that asks the question.

Mr. Jackson says, 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.

Now, when no questions were asked about race, or when they

were intermittently asked about race, you knew it was incumbent upon you as trial Counsel to ask the question, didn't you?

A. Ahh, well, yeah, I know it was incumbent upon me to take that, to make that decision to take the risk of asking the question, yes.

Q. Weren't you just insinuating that it was requested of the Judge that he ask it, and because it wasn't asked the issue of race wasn't perfected for appeal?

Page 143.

Anthony Jackson, Esq. - Recross

A. Well, because there --

Q. Yes or no, sir, then you could explain. Yes or no?

A. Okay. Yes.

Q. Weren't you inferring it?

A. Yes, I was.

Q. Explain it?

A. Okay. And the reason I want to explain: Because I thought if the Judge asked the question it wouldn't offend. It would cut both ways, towards the prosecution as well as the defense. If I were to ask the question, and again if I were to ask the question when I was conducting the voir dire, because of course some of that time Mr. Jamal was conducting the voir dire, and I think certainly while he was conducting it, it would be even more offensive for him to ask that question. And then when I was asking the question, it might in fact be considered an accusation. And the accusation, the person might respond in such a way that would hurt Mr. Jamal.

Q. What did you just say?

A. What did I just say?

Q. Yeah.

A. What part of it?

Q. Simple five cent words in 25 words or less,

Page 144.

Anthony Jackson, Esq. - Recross

what are you talking about here? Are you saying yes the Judge was denying you the right to voir dire these jurors on race, or no he wasn't?

A. No, he didn't deny me.

Q. Thank you. Yet you were left with the indelible impression and the strong belief, I think are your words, that the prosecutor was peremptorily using racially-based strikes; you said that on direct, didn't you?

A. There was no question about it.

Q. No question. And if there was no question, why is it that in 4,000 pages of trial record you never once opened your mouth and made a peep, not even close to a peep, that something like that was transpiring in front of your face?

A. I don't know that that was true. If it's true, then --

Q. Well, show me in the record where it's not true?

A. Well, I guess if it's true then that is something else that I failed to do, sir. I am sure I would have done it.

Q. You saw some racially-motivated activity and you failed to note it because you were an ineffective lawyer; is that what you are saying?

Page 145.

Anthony Jackson, Esq. - Recross

A. No, I didn't say that; you said that, sir. I am saying that is something if I noted it and I didn't say anything I certainly should have said it.

Q. Wasn't Mr. Jamal being the guardian of the racial issue: Since he was going to ask the question, didn't he tell you to ask the question?

MR. WEINGLASS: Objection to the form of the question.

MR. GRANT: I will withdraw the question.

BY MR. GRANT:

Q. Didn't Mr. Jamal tell you Counselor, ask the race question now?

A. No, sir. Mr. Jamal, I don't know how many -- I think he may have interviewed -- I don't know how many prospective jurors, three, four, I don't know how many he did.

Q. 30? 40?

A. Pardon? Is that how many he interviewed? I don't know.

Q. You were there. I wasn't there.

A. I am telling you, I don't recall how many prospective jurors he questioned. He conducted the voir dire of a number of jurors. Then, of course, I, and we have already gone through the issue of when he

Page 146.

Anthony Jackson, Esq. - Recross

was released of his, yeah, responsibility of being Counsel and I was lead. He didn't tell me what questions to ask as I remember. I know you still want to believe that but --

Q. How many black jurors did you strike?

A. One.

Q. And five years later, five years after a month-long trial, all of a sudden what you couldn't recall while it was happening, oh, I just remembered racial activity was going on and I think I better write an affidavit here and send it up to the Supreme Court; is that the way it happened?

A. No, sir.

MR. WEINGLASS: Objection to the form of the question. May I have a ruling?

THE COURT: Objection is overruled. There is nothing wrong with the question. He could answer it.

BY MR. WEINGLASS:

Q. You could answer it.

A. Yeah, the answer is no. And if I could explain.

Q. Well, you could explain to Mr. Weinglass, I don't want it.

THE WITNESS: May I answer, Your

Page 147.

Anthony Jackson, Esq. - Recross

Honor?

MR. WEINGLASS: Objection to the comment by Counsel.

THE WITNESS: I don't need this.

MR. WEINGLASS: Ask it be stricken. Let the record --

MR. GRANT: He said he doesn't have to explain.

THE WITNESS: I don't. I don't.

THE COURT: I could only hear one of you at a time. Rephrase your question.

MR. GRANT: He doesn't want to explain it, Your Honor.

MR. WEINGLASS: Your Honor, I ask the comment be stricken.

THE COURT: The comment is stricken.

But rephrase your question, whatever it is or whatever you want to bring out.

BY MR. GRANT:

Q. Now, this recollection of this racism that's pervading the trial just so happened to come right on the heals of a U.S. Supreme Court case that had just come down not one-and-a-half years before, 12 months, called Batson versus Kentucky. And it said if

Page 148.

Anthony Jackson, Esq. - Recross

lawyers can say I see racial activity going on, and if they can justify it based on numbers, then maybe we'll consider granting you new trials; isn't that pretty much accurate?

A. Yes, sir.

Q. And after you came up with this brainstorm, did you contact appellate Counsel and say I think I have another issue for you?

A. I don't know if that was the first -- if I didn't bring it up in post-trial motions. I don't know whether it was me or Counsel or Marilyn Gelb who brought it up.

Q. Let's assume you didn't bring it up in post-trial motions --

which was a year later --

A. Okay.

Q. -- but five years later you brought it up. Now, did you bring it up to defense Counsel who was doing the appellate brief for the Defendant?

A. Yeah, that's when it came up. Again, whether it was Marilyn Gelb or myself that brought it up...

Q. Oh. When you were looking for ways to attack the verdict, this just happened to pop up five years later?

A. I don't think it just happened to pop up. Listen, if, if, seems to me if this was ever in the

Page 149.

Anthony Jackson, Esq. - Recross

trial, whether it was by me, the prosecutor or the Judge, I think it would be incumbent upon his appellate Counsel to bring it up. And if there was an error with regard to the selection of the Jury, it is incumbent upon everyone to bring it to the Court's attention if we are all supposed to be serving justice.

Q. I agree. Now with respect to Mr. Hightower, Mr. Hightower, who you felt was to be one of your best witnesses: Do you recall him saying that the person that he saw running from the scene might have been a woman?

MR. WEINGLASS: Objection to the comment. The witness never said it was one of his best witnesses.

THE COURT: Please.

MR. GRANT: I will strike that.

BY MR. GRANT:

Q. Mr. Hightower was a witness put on by you to support the theory that the actual shooter ran away; correct?

A. At least someone ran away, yeah.

Q. So someone now.

A. The shooter, someone ran away. Who was the person who ran away? Sure, it could be the shooter,

Page 150.

Anthony Jackson, Esq. - Recross

I don't know.

Q. Was the shooter thought to be a female by all accounts that you were investigating?

A. According to the police, it was Mr. Jamal who was the male.

THE COURT: Counselor, will you please stop shaking your head no.

MR. WEINGLASS: Your Honor, the witness --

THE COURT: I am watching you now.

MR. WEINGLASS: The witness can not see me. I mean the witness cannot see me, I am blocked in the line of --

THE WITNESS: I can not.

MR. WEINGLASS: And I object to the impression of the Court.

THE COURT: I object to you nodding your head like this (indicating). Don't do it anymore. I told you before.

MR. WEINGLASS: I nodded before and after the question. I cannot see the witness from where I am sitting. The witness cannot see me either.

THE COURT: I don't know whether he could see you or not.

Page 151.

Anthony Jackson, Esq. - Recross

MR. WEINGLASS: The witness is nodding his head no.

THE COURT: I am asking you please not to do it.

MR. WEINGLASS: Your Honor knows that --

THE COURT: I said please don't do that.

MR. WEINGLASS: There was no signaling of the witness.

THE COURT: Counselor, will you please not do that. All right. Now let's cut it out.

MR. WEINGLASS: Well, the Court's implication is --

THE COURT: I said don't do it anymore and that's it. Now sit down, please.

BY MR. GRANT:

Q. Mr. Hightower states in response to a question: Now with reference to this individual you say you saw running, the one I believe you said you were unsure, and correct me if I am wrong, from what your testimony was you are unsure whether or not that was a male or it could even been a female, that's what you said.

A. Yes.

Page 152.

Anthony Jackson, Esq. - Recross

Q. All you saw was the back of the head.

A. Yes. And the sweater.

Q. Now, this witness is the same witness who said they didn't want to talk to you or anybody involved in your case until sometime later when your investigator finally came to them; correct?

A. No, that isn't true. You see, that's what I am saying: Compound question. You said this witness didn't want to talk to me or anyone involved in the case until sometime later on. Some of that is right, some of that is incorrect.

Q. I just read to you what he said. When he said I don't want to talk to Mr. Jackson?

A. That's me. He didn't say anybody else connected to the case. You see, you added that.

Q. The record will reflect what the affidavit states.

A. Yes, sir.

Q. Now getting along: Mr. Chobert said he saw the shooter run 35 feet. Point to somewhere in the Courtroom that is 35 feet from where you are?

A. Oh, 35 feet might be beyond, beyond the Bar of the Court (indicating).

Q. Right, so he saw somebody after the shooting run about this far (indicating)?

Page 153.

Anthony Jackson, Esq. - Recross

MR. WEINGLASS: Your Honor, I object to this form of questioning. Counsel is misstating the record. Mr. Chobert, if Counsel will read the statement --

THE COURT: Councelor, please.

MR. WEINGLASS: -- said he saw the witness run 35 steps.

THE COURT: I don't want you to discuss it. If you want to discuss it I will take you where the witness can't hear our discussion. If you just want to make an objection I will rule on the objection.

MR. WEINGLASS: Objection: Misstates the record.

THE COURT: Okay.

MR. GRANT: I will withdraw the question, I don't want to misstate the record.

BY MR. GRANT:

Q. With respect to the money that you had, sir, on 6-3-82, page 3.91 -- and I am glad that Counsel brought this out, this very area -- I am going to follow that up first or proceed that first, however, by reading what Judge Ribner said you could do if you wanted more money. I am referring to the notes of testimony of January 20th, 1982. Judge Ribner,

Page 154.

Anthony Jackson, Esq. - Recross

attorney Jackson present. Page 36 to 41, by Mr. Jackson: Your Honor may recall that I had also brought to Court, sir, a petition to employ a ballistician, a petition to employ a pathologist, forensic pathologist, and petitions to employ an investigator and a photographer.

Court: That might be proper in this case. All right. Those are the four petitions that you have. Present those four orders and I will sign them.

Mr. McGill: As far as the employment of an investigator, photographer and so forth, forensic pathologist, would there be a dollar limit on that, sir.

At page 38. The Court: Well, I would follow our policy in that regard. We will allow the standard initial amounts and if there is additional work that needs to be done, you can file an itemization with your fee petition and itemize the statement of what was done and the trial judge will give that consideration. Generally, you won't run into any great problem if it's shown that the work was necessary and was relevant to the proceedings.

Do you recall that, sir?

A. Yes, sir.

Page 155.

Anthony Jackson, Esq. - Recross

Q. And then do you recall on 6-3-82, at page 3.92, you discussed your investigator resources and you say there hasn't been an investigator, and Mr. McGill mentioned Robert Greer. Mr. Greer had been working for quite some time. We had requested the Court to increase the $150 that we are allowed. The Court has not seen fit to increase that amount and requested that I submit an itemized bill.

Well, was that so incredible? Why didn't you just submit the itemized bill for additional amounts of time and money?

A. Because that's done at the conclusion of the case.

Q. Oh. Well, let's go, then, to notes of testimony from January 20th, 1982, at page 37. At the bottom... I'm sorry, page 41.

Your Honor -- and you are speaking to Judge Ribner now, who has already told you I am going to give you the money -- Your Honor, one of the problems, and I am not even sure that Your Honor has the authority to resolve this problem, I am not sure the forensic pathologist and the investigator, sir, would want to wait until the case is over and I file a petition as Your Honor suggests. I'm not sure they will want to wait that long to be paid. And I am

Page 156.

Anthony Jackson, Esq. - Recross

wondering whether or not there is some provision or might be some provision for an interim -- meaning in the meantime -- payment?

A. Yeah.

Q. The Court: Well, give me a short memorandum on that and I will look into it. I am not promising you any definite results but maybe we will work something out that will enable you to proceed with the case.

Mr. Jackson: Thank you, sir.

Now, did you file a memorandum or not?

A. I don't...

Q. You don't recall, do you?

A. No, I don't think so. No, I don't think I did.

Q. I don't think you did either, Mr. Jackson. That's why you didn't get the money, isn't that so?

A. That's not the reason I didn't get the money. Mr. Grant, Mr. Grant, I begged, I pleaded with the Judges often. And Judge Ribner, in all due respect, Judge Ribner says yeah, come on, you could ask for more money. Judge Ribner wasn't going to give me more than $150 for anything. I could have walked stark naked in that Courtroom, I could have wrote all kinds of memos: I wasn't getting another penny. I

Page 157.

Anthony Jackson, Esq. - Recross

had a number of things I had to do. One of the things I didn't need to do was waste time filing frivolous motions. And I knew I wasn't getting anymore money. I asked the man over and over again. If he wanted to help me he would have helped me. Why would he need the District Attorney to ask is he just going to be given $150? Why wouldn't the D.A. just be silent about it? Let the Court give me the money that it wants to give me. But I mean I am going back and forth, back and forth. Please give me some money, more than $150, when $150 is patently unfair. And you say why didn't I file a motion. I mean there could be have been a million things I could have done. I know at least based on my sense I wasn't getting another penny. I had other things to do other than to keep on filing a motion where he was just going to tell me, as he ultimately said, go to the trial Judge. That's why I didn't ask him again. I just got tired of it.

Q. All you had to do was do what he asked you, file an itemized receipt, but you didn't want to file an itemized receipt as to what was being done to justify the money being paid, isn't that so?

A. I didn't want to do that because Mr. Jamal would have the assistance of experts, that's right, I

Page 158.

Anthony Jackson, Esq. - Recross

didn't want him to have that assistance.

Q. When you paid your investigator 562 bucks you got reimbursed from the Court for that money?

A. Yes, sir.

Q. You got all of the money, even though you were only entitled based on your itemizing to 150, they still gave you the 560 bucks anyway, didn't they? Yes or no, sir? Before you go on a tirade, yes or no? They gave you the money, and you didn't deserve it, but you got it anyway because the Court gave you the benefit of the doubt, didn't they?

A. What part of that question do you want me to answer?

Q. Did they give you $562 or not?

A. Yes, sir, they gave me that.

Q. Were you entitled to $150 according to this Exhibit here or not?

A. Was I entitled to it or was it approved? 150 was approved; subsequently an additional amount was approved. I had received $562. More than, I believe in fact it may have been more than $562 that I paid out. I think that was the amount that was paid. The problem that I had with this, with the investigator and every other expert, is that you file your petition and you don't know what the Court is going

Page 159.

Anthony Jackson, Esq. - Recross

to approve. And again, as you know, in January I started my practice and this is all during the time I'm trying to represent Mr. Jamal, didn't have a lot of cases, didn't have a lot of money. Put money out of my own pocket for these experts.

MR. GRANT: I only have a few more questions, Judge.

THE COURT: That's all right.

BY MR. GRANT:

Q. Mr. Jackson?

A. Yes, sir.

Q. I have never accused you on cross-examination of illicitly receiving funds raised by groups supporting Mr. Jamal and pocketing it, have I?

A. No, I don't -- no, sir.

Q. Okay. Just so we got that straight.

A. Oh, yeah.

Q. Mr. Weinglass seems to think so, apparently.

A. Oh.

MR. WEINGLASS: Objection to the comment. Ask it be stricken.

THE COURT: Strike the comments.

MR. GRANT: Move to strike it, Judge.

THE COURT: No comments.

BY MR. GRANT:

Page 160.

Anthony Jackson, Esq. - Recross

Q. You stated you were able to contact some witnesses by other means and now the witnesses are talking to me. Name the witnesses you were able to contact without the help of the D.A., sir?

A. Okay, I think at that point it may have been Dessie Hightower.

Q. One.

A. Pigford.

Q. Two.

A. And Veronica Jones.

Q. Three.

A. And let me see if there were --

Q. Cynthia White: You knew where she lived? Your investigator was talking --

A. You ask one question and say Cynthia White. I had not talked -- you said the question was I able to contact other witnesses. I had not contacted Cynthia White.

Q. You were able to?

A. Mr. Grant, you are confused. The question is isn't it a fact you were able to contact. I had not been able to contact Cynthia White so she is different. So that is your answer, not mine.

Q. Okay, let me just give you some simple English terms and ask you a question.

Page 161.

A. That helps.

Q. Able means I have the power, I can, I am able to. Now, if your investigator is watching her working as a prostitute, what is to prevent him from having the power to walk up to her and open his mouth?

A. There may be a reason that I am not aware of, sir.

Q. So don't speculate, then. You had the power to contact her, didn't you?

A. I am not speculating, sir.

Q. Did you have the power to contact the woman that you had in your sight and you knew where she was living or not?

A. Yeah, but she wasn't there.

Q. Thank you.

A. Yes, sir.

Q. Mr. Jackson, you will admit, because you are under oath --

A. Yes, sir.

Q. -- that during the course of your testimony on this stand you have made several, if not many, misstatements of fact which the transcripts reveal were untrue, would you not agree with me?

MR. WEINGLASS: Objection, Your Honor:

Page 162.

Form of the question. Argumentative. Improper.

THE COURT: I will let him answer it if he can.

MR. WEINGLASS: It includes a comment by Counsel which is not founded in the record.

THE COURT: He is asking him if he can.

MR. WEINGLASS: Pardon?

THE COURT: He is asking the witness this question.

MR. WEINGLASS: May I have a ruling on my objection?

THE COURT: The objection is overruled.

THE WITNESS: Answer is yes, I have been corrected by you and Mr. Weinglass on a few occasions.

BY MR. GRANT:

Q. I am not asking you if I corrected you.

A. Oh, I'm sorry.

Q. I am saying did you make misrepresentations while you were under oath on this witness stand which the transcript that occurred with words from your mouth 13 years ago showed to be false?

A. The answer is no. I will repeat, what I did

Page 163.

was I -- there were things that you corrected me, Mr. Weinglass corrected, what I said 13 years as opposed to now.

Q. Well, were these corrections that issued from me or prior to the correction there was a statement by you?

A. Okay.

Q. Were those statements false or true?

A. I guess they were, they were certainly in error. False seems to suggest some intention.

Q. Well, just give me a false or true?

A. Well, we are going to get into semantics. They weren't true. They weren't true.

Q. Were they lies?

A. They weren't true. Lies indicates to me some intentional act, sir.

Q. Yeah, it does. I am asking you.

A. Okay, you see, you are trying to get me to say I lied. I didn't say I lied. I don't recall. And whenever I said I don't recall, you seem to think that I'm lying.

MR. GRANT: Thank you, Mr. Jackson.

THE WITNESS: You're welcome, Mr. Grant.

MR. WEINGLASS: A few questions.

Page 164.

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REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Mr. Jackson?

A. Yes, sir.

Q. During your questioning by Mr. Grant when he was standing here, were you able to see me seated at defense table?

A. No, sir.

Q. Was his body blocking your vision of me?

A. It was, sir.

Q. Could you see my head at all?

A. No, sir.

MR. WEINGLASS: May I have an apology from the Court? No.

MR. GRANT: Before you issue an apology --

THE COURT: I said that you were not to do anything like that. I am not sitting where he is, I don't have any idea. I am looking at you from where I am sitting and I said I don't want you to be shaking your head yes or no or anything like that. You did that. I told you you are wrong.

Page 165.

MR. GRANT: You may recall last week that I felt free to ambulate around the Courtroom on cross. However, I am standing here in this position for a very good reason. And the body movements of Mr. Weinglass were not lost on me either and that's why I am not over there, I'm standing over here.

THE COURT: All right. Is that it?

MR. GRANT: That's it.

THE COURT: Anymore questions?

MR. WEINGLASS: Yes.

THE COURT: Oh, this is a second redirect. Okay.

BY MR. WEINGLASS:

Q. Mr. Jackson, the document which is your petition, which is there --

A. Yes, sir.

Q. -- for payments.

A. It was here. I think Mr. Grant took it back.

MR. WEINGLASS: May I have that document. Oh, I have it here.

BY MR. WEINGLASS:

Q. Is there a date stamped on the upper, right-hand corner of that document?

A. There is July 20th, 1994.

Page 166.

Q. 1994?

A. That is correct. Oh, '84. I'm sorry, '84.

Q. 1984?

A. Yes, sir.

Q. Does that indicate to you that your payment wasn't approved for more than two years after the trial?

A. That's about right, sir.

Q. Now, during the Jury selection procedure, Mr. Grant asked you on recross if you had peremptorily challenged one African-American juror.

A. Yes, I did.

Q. And do you recall when you did that Judge Sabo, without any request from the Commonwealth, called the juror back and asked the juror to state for the record his race?

A. That's correct, sir. It's the only time the Judge asked the question, is when I challenged him, peremptorily challenged a juror. Then the Judge said well, let that witness come back. That juror came back and put his race on the record. Nobody else did that.

Q. Now, the Commonwealth had peremptorily challenged 11 African Americans?

A. Absolutely.

Page 167.

Q. Did the Judge at any time ever ask any of those jurors to state their race for the record?

A. Not once.

Q. Have you testified honestly in this proceeding?

A. I certainly have, sir.

Q. To the best of your knowledge?

A. The best of my knowledge and recollection.

Q. There are some things you couldn't recall completely about 13 years ago?

A. And that's clear and obvious. And as I said to Mr. Grant and to you, I've been mistaken. If he wants to say I lied about things I didn't remember, there are some things I just clearly, sincerely did not remember. It happened 13 years ago. To the extent that you or Mr. Grant corrected me, I stand corrected. I had no intention to lie, falsify any testimony, or to make any misrepresentations to this Court, or anyone else for that matter.

Q. Would it have been helpful to you if Mr. Grant as your friend had reviewed the trial transcript with you before he questioned you?

A. Well, it may have been helpful as a friend but I understand the adversarial process in which we are engaged, sir.

Page 168.

Q. Did I review portions of the transcript with you before you testified?

A. Yes, sir.

Q. When Debbie Kordansky spoke to you on the telephone, did she say to you that she didn't want to help you?

MR. GRANT: Objection. That goes beyond the scope of my recross. I didn't bring up any conversation.

THE COURT: I think we have gone over that before, Counselor. There is no need to go over it a second time.

MR. WEINGLASS: Well, the record will speak for itself.

THE COURT: That's right.

MR. WEINGLASS: If the Court will just give me a moment.

(Pause.)

MR. WEINGLASS: I'm sorry. June 30th, 1982. Page 5.

BY MR: WEINGLASS:

Q. I am afraid to tell you what I said because I really don't want to help you. She said I really don't want to help you. Do you recall now?

MR. GRANT: Objection.

Page 169.

THE WITNESS: Yes.

MR. GRANT: Your Honor just sustained that. Move to strike it.

THE COURT: I just said that was asked before, Counselor. How many times are we going to ask the same question.

MR. WEINGLASS: Your Honor, the question on recross was asked if he was sure of what Debbie Kordansky might say. I'm only pointing out that the witness indicated --

THE COURT: I know, but you had brought that out before that she had said that, and you are doing it again.

MR. WEINGLASS: Right, I just wanted to point out that whatever the witness would have said, the witness indicated to Counsel that she had information that would help him.

THE COURT: Counselor, Counselor, I know all of that already. Counselor, you are beating a dead horse a number of times. It has already come out, let's leave it go at that.

MR. WEINGLASS: Okay. I have no further questions.

MR. GRANT: Nor do I, Your Honor.

THE COURT: All right, you are

Page 170.

excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: Oh. We will break for lunch until, it looks like 2:15?

MR. GRANT: Yes, Your Honor. Can we be informed as to which witness if any is going to appear at that time?

THE COURT: Oh, yes, do you have any idea?

THE COURT OFFICER: Quiet in the room: Court is still in session. Thank you.

THE COURT: Do you know who you are going to call at 2:15, Counselor?

MR. WEINGLASS: Jeremy Gelb.

THE COURT: Do you have that other motion too, with Judge Ribner?

MR. WEINGLASS: We will be ready.

THE COURT: When will we do that?

MR. WEINGLASS: Whenever the Court would like.

THE COURT: Well, whenever you tell me. Because we have to let them know when to come over.

MR. WEINGLASS: 2:15 is fine.

THE COURT: All right. Then after

Page 171.

that who would we have?

MR. WEINGLASS: Jeremy Gelb.

THE COURT: Jeremy Gelb.

MR. WEINGLASS: Yes. And there is a matter in connection with that which Mr. Grant and I will have to discuss and possibly take up with the Court. Which I don't want to go into. Mr. Grant and I will first discuss it.

MR. GRANT: Well, I don't know what I am discussing so I am not taking up anything with the Court.

MR. WEINGLASS: Fine. The courtesy is overwhelming.

MR. GRANT: You act like a lawyer you get treated like a lawyer, Mr. Weinglass.

MR. WEINGLASS: I hope that is on the record also.

MR. GRANT: It is on the record.

THE COURT: All right, we will adjourn until 2:15.

THE COURT OFFICER: Yes, Your Honor.

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(Luncheon recess was held until 2:35 p.m.)

Page 172.

MR. HOLMES: Good afternoon, Your Honor. My name is Howard Holmes; I am an attorney with the Administrative Office of Pennsylvania Courts. I have the honor to represent Judge Paul Ribner, who has been subpoenaed to appear in this matter and testify.

Your Honor, Judge Ribner was originally subpoenaed by a subpoena dated, or subpoena which asked him to appear on Tuesday, July 18th, and for the duration of the proceedings. And to bring with him, quote, any and all records and notes concerning the assignment of judges from December 1981 through June 1982, and then any records pertaining to the composition of judges in 1982, and any sitting in homicide cases in June of 1982. And subsequently Judge Ribner was advised of the postponement of that July 18th hearing date. Approximately July 25th he was notified that he was being asked to appear this afternoon. And I attempted to speak with and finally did speak with opposing Counsel, a Miss, I think it was a Miss West, I may have said Miss Wells but I think it is a Miss West, Valerie West or Valerie Wells, who advised me as to the nature of the

Page 173.

information sought.

And according to Miss West, she said that what she wanted from Judge Ribner was, had to do with the following areas of inquiry. One, when a defendant was removed from a courtroom in or about 1982, but the proceedings continued in his absence, what if any, quote, equipment, unquote, was available to allow that person to observe the proceedings from whatever location he or she had been transferred to.

The second area of inquiry was the race of judges sitting in the homicide program in or about 1982, and how they were selected for the program.

And three, Counsel indicated that she wanted assistance in reconstructing a record which allegedly could not be located. That was, and that was really all that was said about the so-called record: No specific information was provided. Although I was told that I would get a return call with more specific information and I never did.

So with respect to those areas of inquiry, Judge, we have filed a motion to quash on Judge Ribner's behalf on several grounds.

Page 174.

Aside from the issue of relevance, the question is, first of all, does the Judge, what information can the Judge provide as to the so-called equipment or lack of equipment. I think this Court could take judicial notice -- and certainly the attorneys for the Commonwealth and for the Petitioner should be able to agree -- that at the time in question, 1982, there was no video equipment or anything similar provided or available to the court so that somebody who had been removed from the court could observe the proceedings from another room. So I don't think Judge Ribner's testimony is necessary in that regard.

Second, Judge Ribner has no records from which to determine the racial composition of the homicide program judges in that period. And he was not involved in the process by which they were selected for the program. That information should probably come from Court Administration for the First Judicial District and not from an individual judge.

C, with respect to the record, we still don't know what record is being talked about or spoken of; but we respectfully suggest

Page 175.

that at least in the first instance, a sitting judge who has his own criminal docket should not be called to another court to reconstruct a record. A judge is not a court reporter, he is not a transcription machine, he is not a record. So it seems to me that in the first instance the parties should make an attempt to, to put together a record before they attempt to subpoena a judge, or at least one side attempts to subpoena a judge to supply missing information.

THE COURT: Well, Counselor, I think the record you are looking for is what I received a copy of just a short time ago. They were notes that were taken on December 2lst, 1981 before Judge Ribner. Notes of February 22nd of 1982 before Judge Ribner. And April the 1st of 1982 before Judge Ribner. And of course they already had the May 13th, 1982 record.

MR. HOLMES: I can't speak to that, Your Honor, because I was never told. I was never told what the record was that was at issue.

THE COURT: I know, but I think that is the issue that they are talking about. If it

Page 176.

is not that --

MR. HOLMES: We also provided Your Honor with a brief talking in general terms about the case law of calling a judge as a witness in another case concerning matters which hadn't been before him in the previous case. It may be that Counsel, my colleague, Counsel for the Petitioner, would suggest that the assignment of cases is not a judicial act but an administrative act. However, I would certainly contend that it is a judicial act. My familiarity is with the area of civil rights law and I would suggest, and several Federal courts have said, that the assignment of cases by a judge is a judicial act.

Usually the basis of a lawsuit against a judge is I am suing this judge because he assigned this case to judge A as opposed to judge B. That is a judicial act. And I can give Your Honor cites to several cases, recent cases, Federal cases, which have held that assignment of cases is a judicial act.

I say that because much of the case law that has developed about judges testifying has developed in the context of judges should

Page 177.

not be required to testify regarding judicial acts, particularly where, as in this case, they would require, I think, going into the Judge's mentality, state of mind, opinions and so forth. And assignment of cases seems to fall in that category.

So we would respectfully request that Your Honor quash the subpoena, particularly in light of the fact that the record that was at issue has been found.

Thank you, Your Honor.

MR. WILLIAMS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. WILLIAMS: We subpoenaed Judge Ribner, again, in an effort to take advantage of the Court's offer to us to have a full and fair hearing. And the reason why Judge Ribner is needed for a full and fair hearing is that two of the claims of the 19 that we are raising touch upon facts that Judge Ribner could testify to.

THE COURT: What are they?

MR. WILLIAMS: First of all, claim 12 in our Petition, claim 12 in our Petition

Page 178.

concerns in part the issue of the special tribunal. Now, I am from New York, as Your Honor knows --

THE COURT: What do you mean a special tribunal?

MR. WILLIAMS: Well, my understanding is that in Pennsylvania, or in Philadelphia, that there is a special homicide unit.

THE COURT: Yes.

MR. WILLIAMS: And if my understanding is correct, that special homicide unit constitutes a special tribunal. And that is a term of art.

THE COURT: I know that, but Judge Ribner has nothing to do with that.

MR. WILLIAMS: Well, he does, Your Honor, in this sense --

THE COURT: No, he doesn't. He doesn't have a thing to do with it. He was not the calendar judge forever. There's been different

calendar judges even before him and after him. They have nothing to do with the composition of that.

MR. WILLIAMS: Well, he has something to do with the special tribunal, or the homicide

Page 179.

unit, in so far as he was the calendar judge for this case.

THE COURT: I know that, yes, but you said you wanted to know about the composition and how it was selected. He has nothing to do with that. I have nothing to do with that.

MR. WILLIAMS: Let me first address the claim that's at page 154 in our memorandum of law. The claim there is that Judge Ribner assigned the trial --

THE COURT: Yes.

MR. WILLIAMS: -- of Mr. Jamal to you --

THE COURT: Yes.

MR. WILLIAMS: -- for a particular reason. And the reason is that it was his understanding, given Your Honor's reputation, that --

THE COURT: I had no reputation back in '82, Counselor.

MR. WILLIAMS: Well, it appears that you had based upon our motion for recusal, and that has been explored extensively here in Court. But the point is this, that the reputation, as understood by Judge Ribner, and

Page 180.

as understood by other members of the judiciary, is that by having the case assigned to Your Honor, it would maximize the chances that Mr. Jamal would be convicted of the charges.

THE COURT: Oh, I don't think that's true.

MR. WILLIAMS: Well, Your Honor may differ, but that's why we would like to have testimony elicited.

THE COURT: I understand that there is a rule from the Supreme Court, our Supreme Court, that no judge can be subpoenaed to testify in a court without their approval. I think that's still in existence.

Is that still in existence?

MR. HOLMES: The rule exists, Your Honor, but it relates to character testimony.

THE COURT: Oh, just character?

MR. HOLMES: Although apparently Counsel wants to call Judge Ribner as to your character, but I don't think that that's quite what the rule has in mind.

MR. WILLIAMS: Unless, Your Honor, we could show a particularizing need. And that is a particularizing need. That is what I am

Page 181.

articulating to you. Our particular need relates to our claim 12 as to why the case was assigned to Your Honor.

THE COURT: I may have been available at that time, I don't know.

MR. WILLIAMS: And we would like to explore that, that's precisely the point.

THE COURT: But what does that have to do with the PCRA petition?

MR. WILLIAMS: Because if the case was assigned to Your Honor under the conditions that I've just described -- that is to maximum the chances that Mr. Jamal --

THE COURT: You are speculating on that, Counsel.

MR. WILLIAMS: Well, I don't wish to speculate, I wish to have testimony from the witness stand. Isn't that the point?

THE COURT: That is mere speculation.

Yes.

MS. PERKINS: If I may, Your Honor.

MR. WILLIAMS: Your Honor, I haven't completed my argument.

THE COURT: Well, you are talking about this one point that he raised?

Page 182.

MS. PERKINS: This one particular point.

THE COURT: All right, this one particular point.

MS. PERKINS: The Post-Conviction Relief Act is very specific regarding the types of claims that a Petitioner may raise, and this is not one of them. This does not deal with the truth-determining process, meaning the trial. We are not reviewing the evidence that was put before the Jury. These are extraneous issues that the defense has tried to throw into this case, and now go after, now find witnesses to support it. It was, you know, it was a very suspicious claim when they raised it in the Petition; it is still suspicious.

If they want the record, if they want it reconstructed then they could do it in the normal fashion the way things always are reconstructed when the notes, when the notes of testimony are missing.

If they want to establish that there is some sort of special tribunal, this issue has been dealt with in other cases before the State Supreme Court. Specifically, the Career

Page 183.

Criminal Program which used to exist in the Court of Common Pleas in Philadelphia. And it was specifically held that it was not a special tribunal which in any way infringed upon anyone's rights. And the Homicide Program is very similar to that. It is the exact same situation. Judges were put in a program and they handled specific types of cases. That program was upheld as the homicide Program is, and there is absolutely no issue here. It has nothing to do with any claim under the PCRA that is cognizable under the Act.

I would submit to the Court again: The motion to quash is a valid argument, that the subpoena should be quashed. They do not have a relevant issue here or material basis for subpoenaing Judge Ribner or anything that he may have. And we should proceed with this hearing as scheduled, Your Honor.

MR. WILLIAMS: Your Honor, it does go to the heart of the truth-determining process. When a case is assigned to a judge for purposes of maximizing the chances of a conviction, I can't think of another, anything that goes more to --

Page 184.

THE COURT: I didn't manufacture anything in this case.

MR. WILLIAMS: Well, I appreciate the comment, Your Honor, but we would like to have sworn testimony to test that assumption.

THE COURT: You may like to have a lot of things but if it's not cognizable under the PCRA statute, it's not cognizable, period. We are not going to speculate here.

MR. WILLIAMS: That's precisely what I am trying to avoid.

THE COURT: Well, yes, you are trying to bring in a lot of issues that are not proper before this proceeding.

MR. WILLIAMS: So let me understand the Court, as I am trying to understand the Court. Is Your Honor suggesting that even if we could establish that the case was transferred to you under very sinister auspices, that we still would not have a Constitutional claim? If that is the case then Your Honor is correct: We ought not be able to present that witness. But our claim is if indeed the testimony bears out our allegations, we do raise a significant Constitutional claim.

Page 185.

THE COURT: That is a lot of ifs. That is a lot of ifs.

MR. WILLIAMS: Well, it is an if that we would like to answer, that is the point.

THE COURT: Well:

MR. WILLIAMS: We would like to have testimony on this. I am trying to avoid the speculation --

THE COURT: Well.

MR. WILLIAMS: -- the conjecture. We would like to have sworn testimony. And it can be challenged on cross-examination.

THE COURT: Well, I will tell you what: You raised a lot of other issues with the Supreme Court, you could raise that one with them too.

There's already been a case that says it's not an issue, right?

MS. PERKINS: Yes, Your Honor. There is a case that says --

THE COURT: Do you have that case?

MS. PERKINS: It's cited in our discovery answer, I believe it is. A finding that the Career Criminal Program was upheld, that this was not a special tribunal. And the

Page 186.

Career Criminal Program is exactly the same situation as the Homicide Program in the Court of Common Pleas of Philadelphia.

MR. BURNS: Actually, Your Honor, if I may? The case is Commonwealth versus Moore, and it states that the Homicide Program is Constitutional, it is not a special tribunal.

THE COURT: They already said that.

MR. BURNS: That issue was decided by the Pennsylvania Supreme Court in 1993, Commonwealth versus Moore, 633 Atlantic Second, 119, 1993. Certiorari denied by the United States Supreme Court, Your Honor.

MR. WILLIAMS: Your Honor, let me be clear. The claim with respect to Judge Ribner doesn't go to just simply a facial challenge to the homicide panel. What it goes to is the reason why this particular case was assigned to you pursuant to that panel. That's the point. And if Your Honor is suggesting that even if the testimony that's elicited proves what we are asserting in our Petition, that, nonetheless, we do not raise a Constitutional claim, then we will take that issue up with the Supreme Court.

But our contention is -- let me be

Page 187.

clear about this -- that if we can establish our allegations in the Petition, that in fact it was transferred to you for reasons of maximizing the chances of getting a conviction, that raises a severe and important Constitutional issue. And that's why we believe we have manifest need for Judge Ribner on that claim. That is the claim number 12 in our Petition.

THE COURT: All right, could you answer that?

MR. HOLMES: Well, Your Honor, it is the kind of argument that I hear all the time from prison inmates who sue judges claiming that the people have conspired against them, that in the assignment issue that the judge specifically assigned another judge or himself to a case because he wanted to get the inmate. What's always missing is any facts which would lead a judge to say well, we better explore that issue, maybe there is something to it.

In other words, a person could contend anything they want, but without some, some basis for making the statement, it's just fiction. And I respectfully suggest that in the absence of some evidence presented to Your Honor which

Page 188.

would suggest that this is an issue that should be explored by calling a sitting judge to explain his reasons why he performed a judicial act -- and I contend that assigning a case is a judicial act -- that it should not be done. There is a body of case law that says you don't question judges about their judicial acts except in the sense of what's on the record, what are the opinions, what is the conduct.

Also, it seems to me that whatever the motive was for assigning a judge to a case, it's how that judge acted in that case that seems to be important, if I understand the PCRA process correctly. It is how Your Honor performed it, not how some other judge performed. Maybe I am wrong in my understanding of the PCRA, but that seems to be what it's about.

So in the absence, I would respectfully suggest that -- I realize this is a death case and therefore it has that greater urgency and greater importance -- but nevertheless, it is the kind of argument that any inmate is liable to make about any case which is assigned, you know, within the context of a criminal division or a civil division,

Page 189.

criminal division, of any particular judge, that the assignment itself was suspect. And I respectfully suggest in the absence of some evidence which would support that contention, that one should not be questioning the judge who committed the judicial act of assigning the case.

So I would respectfully continue in my motion to quash the subpoena.

THE COURT: Yes, you had Anthony Jackson on the stand, you didn't ask him about anything --

MR. WILLIAMS: Well, I don't think Mister --

THE COURT: Well, he was there. He was there when the case was assigned. I wasn't there. I didn't ask for the case. I've never asked for a case. And I've never refused a case. Whatever is assigned to me I do.

MR. WILLIAMS: Well, the question is not whether you would refuse the case or whether you even solicited the case.

THE COURT: Well, then what does it have to do with this case?

MR. WILLIAMS: The question is not

Page 190.

whether Mr. Jackson had a suspicion in that regard.

THE COURT: Well, the thing is you are making general allegations with no basis to support it.

MR. WILLIAMS: It is a very specific allegation.

THE COURT: No; it isn't. And the only one that could tell us that would be Jackson since he was there.

MR. WILLIAMS: The only one that could tell us is Judge Ribner.

THE COURT: Not Judge Ribner. To get to Judge Ribner you have to put something in evidence first to say that it is an issue for him to come in. At this moment and at this time I am quashing the subpoena for Judge Ribner. Later on --

MR. WILLIAMS: I haven't reached the other basis for it yet so I would appreciate the opportunity to do that.

THE COURT: In the future, if you could come in with some concrete evidence, or at least something that would justify calling him, fine. But he is busy in another case.

Page 191.

MR. WILLIAMS: Your Honor, I understand that.

THE COURT: Okay.

MR. WILLIAMS: The question is whether we can establish a cognizable Constitutional claim by bringing in the only witness that is competent to testify about that subject matter. And the subject matter is why the case was transferred to Your Honor.

THE COURT: Well, why don't you go talk to him. Maybe he will talk to you, I don't know.

MR. WILLIAMS: It seems to me that Counsel's argument puts the cart before the horse. Counsel's argument suggests that we don't have a good faith basis for making the claim, but then at the same time the very witness that we are, that we wish to call who could make out the claim is unavailable to us. That puts --

THE COURT: Well, do you have any cases to supply to me? He is giving me a case.

MR. WILLIAMS: Your Honor, I think this may be a case of first impression.

THE COURT: Well, fine, but give me a

Page 192.

case that would justify my calling, permitting you to subpoena a judge who made a judicial decision. Give me a case. If you don't have a case, Counselor, please, I will quash the subpoena. If you find a case, then I will reconsider. But I am not going to waste time arguing about something. He has given me cases that says you don't have this right. Now, if you could give me a case on point I will reconsider.

MR. WILLIAMS: Very well, I appreciate that.

THE COURT: Well.

MR. WILLIAMS: The other point, Your Honor, is that Counsel has directed, or has advised us to direct our inquiry regarding the homicide panel to the Court Administration for the First Judicial District. And we intend to take up that invitation.

THE COURT: All right.

MR. WILLIAMS: That goes to the issue of timing. We would

need time to pursue that avenue because we are embroiled in this hearing and it is taking up the balance of our time. So we would, in order for us --

Page 193.

THE COURT: You have to show somehow that it has some meaning under PCRA. You could be subpoenaing everybody. You could even start subpoenaing the Supreme Court Justices next. Who else do you want to subpoena?

MR. WILLIAMS: Well, we want to subpoena people who are relevant to the claims that we have articulated in our Petition.

THE COURT: Well, the Supreme Court controls our Judicial District here. Are you going to subpoena every Supreme Court Justice?

MR. WILLIAMS: No; we wish to take up the invitation by Counsel that we --

THE COURT: Well, I don't know if it is an invitation, that is up to you people. If you have an invitation go at that time. But don't look to me, I am not extending invitations.

But as I told you before: If you could give me a case, Xerox a case for me and I will read it, that you have a right to subpoena a judge like in this case, I will be glad to read it.

MR. WILLIAMS: Now, Your Honor, there was a second basis for our need for Judge

Page 194.

Ribner. The second basis goes to claim 6 in our Petition. Claim 6 deals with the fact that Mr. Jamal was banished from the Courtroom during significant portions of his trial.

THE COURT: Yes, by his own conduct. And the Supreme Court has already ruled on that, Counselor, so that's already been decided.

MR. WILLIAMS: And that will be an issue for future courts.

THE COURT: That's all right it is an issue for future courts. But the Supreme Court has already taken up that issue and has ruled on it. It's not a proper thing to rehash now in a PCRA petition.

MR. WILLIAMS: As Your Honor knows, in our Petition, a prong of that argument on the banishment of Mr. Jamal relates to whether the Court had taken sufficient action to insure Mr. Jamal's rights to assist his Counsel and to be apprised of his proceedings.

THE COURT: Counselor, the Supreme Court has already looked at all of that.

MR. WILLIAMS: Well, Your Honor, they didn't have the benefit of whether the Court took sufficient action.

Page 195.

THE COURT: Yes, they did. They went over, they went over the entire record and they made a decision on that. That decision stands.

MR. WILLIAMS: The Court never, the Court was never directed to --

THE COURT: The Supreme Court has already ruled on that issue, Counselor.

MR. WILLIAMS: The Court did not rule on that issue.

THE COURT: Yes, they did. They went into that whole issue.

MR. WILLIAMS: Into the issue of banishment?

THE COURT: Yes.

MR. WILLIAMS: That is just not true, Your Honor.

THE COURT: It is true. Well, you read the decision again. It's another matter you could preserve, you could argue it before the Supreme Court a second time. If they will listen to you, fine.

MR. WILLIAMS: What we need in this hearing is to establish that there were no, the Court did not provide sufficient means by which Mr. Jamal could maintain knowledge of what was

Page 196.

happening in these proceedings.

THE COURT: The Supreme Court... I'm sorry.

MR. WILLIAMS: If I may, Your Honor: Judge Ribner's testimony would be relevant insofar as he could testify to the technological equipment that was available to the Court.

THE COURT: He has already told you we had no such technical equipment.

MR. WILLIAMS: It is indicated that we should accept a stipulation that there were no video equipment or similar aid available.

THE COURT: Well, I didn't have it at the time.

MR. WILLIAMS: We don't want to accept a stipulation, we would like to have it under oath on that subject.

THE COURT: Judge Ribner won't know anymore about that than I do.

MR. HOLMES: I think Your Honor could take judicial notice of the state of Common Pleas Court at that time. Your Honor was sitting at that time.

THE COURT: That's what I was saying to him. So did the Supreme Court. They know

Page 197.

what we have.

MR. HOLMES: The answer is obvious. There was no audio-video mechanism of the kind Counsel is talking about, as far as I know. And Your Honor is in a better position to know than I am.

THE COURT: The only two things were to either tie or gag the defendant or to evict him. The Supreme Court of Pennsylvania had said the better procedure would be to evict him, not to bind and gag him in front of the jury. That was the Supreme Court's opinion back in those days. And that's what I did.

So, Counselor, I have heard enough on the subject. You have an exception to my ruling. I am quashing the subpoena.

MR. WILLIAMS: Let me just be clear in terms of the full and fair and the adequacy of the hearing, that we would like to present testimony to support our claim that Mr. Jamal was not given sufficient, that the devises that were available to the Court were not used to allow Mr. Jamal --

THE COURT: Okay.

MR. WILLIAMS: -- to be apprised of

Page 198.

the proceedings.

THE COURT: Okay, we know about what was available. His attorney, as a matter of fact the notes will show you that his attorney told him what happened during the proceedings. That's the only technological equipment that we had at the time. And I only had one of two choices: Either gag him so he could sit here and listen -- and the Supreme Court wasn't happy about gagging any prisoners in front of the Jury so we didn't do that.

MR. WILLIAMS: Your Honor, with regard to the reconstruction of the record, which also was another reason why we needed to call Judge Ribner --

THE COURT: For what, what record?

MR. WILLIAMS: The missing minutes.

THE COURT: Well, I told you. Which ones are you talking about? I just read you the ones that we have.

MR. WILLIAMS: Right.

THE COURT: Don't you have these?

MR. WILLIAMS: Well, we have --

THE COURT: These copies?

MR. WILLIAMS: We have now been given

Page 199.

the Clerk's copy to review here.

THE COURT: Didn't you get the one for December the 2lst, 1981, the notes before Judge Ribner? And didn't you get the notes dealing with February the 22nd of 1982? And were you not given the notes of April the 1st of 1982 before Judge Ribner?

MR. WILLIAMS: I was given those notes just a moment ago.

THE COURT: Well, that's all I got a moment ago. You said you got them. Go over them.

MR. WILLIAMS: Your Honor, I understand, I am not suggesting

that anything is out of order here. I am just alerting the Court that we just received them.

THE COURT: I know, I just received them myself.

MS. PERKINS: We don't have them at all, Your Honor, and I would request a copy.

THE COURT: You don't have them?

MS. PERKINS: We don't have them at all.

THE COURT: Maybe they are in the process of getting over to you. I just found

Page 200.

them when I went back for lunch, and I found them on my secretary's desk, that's how I found them. But if they don't deliver them to you, let me know and I will have copies made. But I am sure they must be on their way to you.

MR. WILLIAMS: Let me be clear here, that the Clerk has indicated that this is not our copy and we are also awaiting our copy.

THE COURT: You didn't get your copies either?

MR. WILLIAMS: We just got copies to review that the Clerk was kind enough to allow us to look at.

THE COURT: Let me say this to you, Counselor: If you don't get yours either you give us a call and I will make copies of the notes that I have.

MR. WILLIAMS: I appreciate that.

THE COURT: I will get them to you.

MR. WILLIAMS: Now --

THE COURT: As a matter of fact, he shouldn't have even given you the original notes.

MR. WILLIAMS: That is something you will have to take up with him.

Page 201.

THE COURT: Well, you shouldn't give out anything from the original Clerk of Quarter Sessions without the Court's approval. You could have asked me and I would have given you my copies to look at. You should never have those things leave your possession.

THE COURT CLERK: He was just looking at them, Judge.

THE COURT: I don't care what he is doing, you should not let them leave your possession. If he needs copies I will see that he gets copies. Or probably on the way to his office. Because they are not necessary right this minute.

MR. WILLIAMS: Your Honor, if I may -- and again, in defense of the Clerk, I am the one that asked if I could look at them.

THE COURT: I know what you asked and all I am saying is the Clerk of Quarter Sessions should not let anything out of his possession without the approval of the Court.

MR. WILLIAMS: I knew that I would have to argue in front of Your Honor.

THE COURT: No, you are not going to argue. I am not going to have any argument

Page 202.

about it. I was just going to give you copies if you didn't get yours. I assumed because I found these on my secretary's desk when I broke for lunch that you would also have yours. Yours are probably over in your office, probably delivered. Just as the D.A. doesn't have hers either. But if you don't have them there, you give me a call and I will see that you get copies.

MR. WILLIAMS: I will give these back to the Clerk. And may I take up Your Honor's invitation to look at Your Honor's copies?

THE COURT: Later on, if you don't have yours. Because it is not something that we will hear now.

MR. WILLIAMS: It is clear that we have three of the four missing transcripts.

THE COURT: What other one --

MR. WILLIAMS: The March 18th, 1982 minutes are still missing.

THE COURT: March what?

MR. WILLIAMS: March 18th, 1982.

MR. GRANT: Your Honor, you can't resolve this. Your Honor has ruled on a motion to quash. Can we proceed with a hearing? I

Page 203.

think the witness is probably not here again.

THE COURT: I will try to look into it and I will check with the Clerk to see if they have it. If they don't have it I will see what I could do about getting it.

MR. WILLIAMS: The March 18th transcripts are probably the most important of these four. So we are going forward without the benefit of a full record. And in fact --

THE COURT: You are going forward with what witnesses that you have available to testify. They don't need these records. These witnesses that are going to testify certainly do not need these records. You may have them for whatever purpose you want, but these witnesses were not present there. This was something between -- and you should have asked Mr. Anthony Jackson what happened on that day. He was the one who ought to know what happened.

MR. WILLIAMS: That is precisely the point, Your Honor. We had Mr. Jackson on the stand --

THE COURT: Wait awhile. Could I see the Court file, please?

Let's see what happened on that day.

Page 204.

The Court record ought to tell us what happened. Let's see if we could find it.

What was that date again? March 18th?

MR. WILLIAMS: March 18th, 1982.

THE COURT: Didn't we have something the other day, Gina, that had those? Do you have those?

MS. FURIA: (Handing).

THE COURT: Well, March the 18th, '82, docket entries indicate there was an application for a writ of habeas corpus to be released from administrative segregation at the Philadelphia County Prison. It was filed that day. 3-18-82 the application was granted. And it says see the file.

And then right underneath that, same date, petition to distribute questionnaire to venire persons, to proposed venire persons filed. That was when he filed that.

Then I guess they must have had a hearing on it.

MR. WILLIAMS: Well, that sounds like --

THE COURT: Just a minute. Just a minute. That's all those dates were, they were

Page 205.

just dates that he filed. And I think that was heard on April the 1st. And I think when you get the notes of testimony here, you will see that was taken up at that time. But there was no hearing or anything on that date.

MR. WILLIAMS: Your Honor, what's happening now is that we are reconstructing the record as we speak. And it's really not in an orderly fashion. And the accuracy of the way we reconstruct the record is extremely important.

Your Honor is directing us to transcripts of April lst, you are making representations from docket entries. And from my experience, docket entries are often truncated and not complete. We've had Anthony Jackson on the stand, we had to question him without the benefit of the April 1st minutes, which are not insubstantial.

THE COURT: Well, first, why don't you wait until you get copies of this. If you have a problem you bring it up later on again, will you.

MR. WILLIAMS: That's what we had asked for several weeks ago.

THE COURT: Okay, well, bring it up

Page 206.

later on, will you please.

MR. GRANT: May we proceed now, Your Honor?

THE COURT: Let's proceed with this. The motion to quash the subpoena for Judge Ribner is granted. And that's that. You could bring it up later on if it becomes necessary. After you read these notes.

MR. WILLIAMS: On the issue of the reconstruction of the missing transcript of March 18th.

THE COURT: Well, there is no transcript for March 18th, I am trying to tell you that. It's just what Jackson did: He filed something and the Court makes a record of it.

MR. WILLIAMS: That is the record we would like to see. I assume it is in the minutes.

THE COURT: Well, it should be in here somewhere. See if you could find it for the gentleman.

MR. HOLMES: May I be excused while that happens?

THE COURT: Yes.

MS. PERKINS: Your Honor, if they

Page 207.

wanted to reconstruct a record the way to do it is with the parties who were present. They had Mr. Jackson on the stand for three days. Not a single question was asked as to what happened on this date. That's how you reconstruct the record. Now that Mr. Jackson is gone, after he's been there for days on end, now they said oh, we've got to reconstruct this and we have to have the calendar judge to do this. Judge Ribner, you know, did not just preside over this one case. He had many other cases. There's absolutely no reason to believe that he would even remember what happened that date other than what's in the Quarter Sessions file. I submit to the Court we should proceed with their next witness. Let's find out if he's here. I don't see Mr. Gelb in the room. Maybe he is in the back or something, but let's proceed with the testimony.

MR. WILLIAMS: Your Honor, I appreciate their anxiousness to proceed, and we are anxious to proceed, but it's very difficult to proceed when we don't have the confidence in the full, that we have the full record.

THE COURT: You don't need that in

Page 208.

order to proceed with any of these witnesses that you have listed here, that's what I am saying to you. In the future, why don't you wait until you get copies of these notes, read them over, if it doesn't satisfy you let me know. We could take this up at another time.

Let's not stand here and argue forever, Counselor.

MR. WILLIAMS: I beg your pardon, Your Honor, but we don't have the luxury --

THE COURT: Counselor, I have ruled. Proceed with your next witness. Come up later on. If after you get these copies, if that doesn't satisfy you as to what happened on March the 18th, '82, we will see where we go from there. But these witnesses that you are calling, they don't need to know about that. That was something even before trial, with Judge Ribner.

All right, who is your next witness?

MR. WEINGLASS: Petitioner calls Jeremy Gelb.

THE COURT: Is he back there?

MR. GRANT: I think what you'll find, Your Honor, the reason why we spent an hour

Page 209.

talking about something that could have been said in five minutes is because the witness is not here. They knew he was not here, they knew he wasn't there then and they do this everyday at the beginning of the proceedings.

THE COURT: I know. We will wait a few minutes.

MR. WEINGLASS: Excuse me. Did the Court say who is your next potential witness? Robert Greer.

THE COURT: Let's assume he doesn't show.

MR. WEINGLASS: Mr. Gelb is here, Your Honor.

THE COURT: Well, so far he is not here. Assuming that he is not here, who is your next witness?

MR. WEINGLASS: He is here, Your Honor.

THE COURT: I know you keep saying he is here. The Court Officers can't find him. He's here now? Is he here?

THE COURT OFFICER: Yes, Mr. Gelb.

THE COURT: Okay? he's here.

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Page 210.

Jeremy Gelb, Esq. - Direct

Jeremy C. Gelb, Esquire, having been duly sworn, was examined and testified as follows:

- - - - -

THE WITNESS: Good afternoon, sir.

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DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Mr. Gelb.

A. Good afternoon.

Q. Mr. Gelb, would you state your current occupation and employment?

A. I am an attorney.

Q. And do you maintain offices for the practice of law?

A. I do.

Q. Under what title is your office?

A. I am, I am a sole practitioner. I am licensed to practice by the Supreme Court of Pennsylvania.

Q. And in what year were you admitted to the practice of law?

A. 1980.

Q. Now, are you appearing today pursuant to subpoena?

Page 211.

Jeremy Gelb, Esq. - Direct

A. I am.

Q. And did more than one subpoena come to your office?

A. Yes.

Q. Now, have you had occasion prior to today to speak to myself?

A. I have.

Q. On approximately how many occasions?

A. I believe twice. In person.

Q. Did you have an opportunity prior to today to speak to Mr. Grant, who is seated here at Counsel's table?

A. I have spoken to Mr. Grant I believe twice by telephone.

Q. And in the course of speaking to both Mr. Grant and to myself, did you discuss an issue related to another attorney other than yourself?

A. Yes, I did.

Q. And did you bring with you today a document pertaining to the other attorney?

A. Yes, I did.

Q. And was the other attorney subpoenaed as well?

A. Yes.

Q. Do you have the document with you?

A. I do.

Page 212.

Jeremy Gelb, Esq. - Direct

MR. WEINGLASS: Could you present the document to the Court.

And I ask that the Court examine it and seal the document.

THE COURT: What document are you talking about, a subpoena?

MR. WEINGLASS: No, Your Honor.

MR. GRANT: May we approach sidebar, Your Honor?

MR. WEINGLASS: Yes, I would appreciate that.

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(Discussion held in the Judge's robing room was transcribed and was sealed by Court order.)

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BY MR. WEINGLASS:

Q. Mr. Gelb, after your admission and prior to the year 1985, could you briefly summarize for the Court your practice?

A. Yes, my practice during those years was primarily criminal trial and criminal appellate litigation.

Q. And prior to 1985 had you ever filed in your own name an appeal in a death penalty case?

Page 213.

Jeremy Gelb, Esq. - Direct

A. No.

Q. Now, did there come a time in 1985 when you were asked to assist the assigned appellate Counsel for Mr. Jamal?

A. Yes.

Q. Do you know if his assigned appellate Counsel at that time was the first attorney assigned by the Court to handle Mr. Jamal's appeal?

A. I believe the answer to that is no. And I gleaned that only recently from a review of the appellate brief. I believe there was a prior attorney who for some reason was released and I believe that appellate Counsel was thereafter appointed.

Q. So that would explain the time gap from 1982, the date of conviction, followed by a 1983 date of formal sentencing, and then 1985, assigned appellate Counsel being assigned, who was I believe the second --

MR. GRANT: I would object. That is not explaining anything, Your Honor, that is purely speculation. He knows from the time that his firm entered this appearance, that's all he knows.

MR. WEINGLASS: I will move on.

Page 214.

Jeremy Gelb, Esq. - Direct

THE COURT: Because I think the Court records ought to show what happened.

BY MR. WEINGLASS:

Q. Mr. Gelb, did you play any role in the preparation, in the filing of the appellate brief before the Pennsylvania Supreme Court of Mr. Jamal's appeal?

A. Yes, I did. I assisted appellate Counsel in some of their research with respect to many of the appellate issues that were raised in the brief. By that I mean I was assigned to do some of the research, to discuss some of the issues with appellate Counsel. To assist in working and reworking the brief, so to speak. I recall having a hand in doing some of the editing of the brief. That's pretty much it. It was mainly legal research, discussion, editing of the brief.

Q. Do you recall if you reviewed the completed brief prior to it's being filed?

A. I believe that I reviewed a draft of the final brief. Candidly, at this point I don't recall if I actually reviewed the final document word-for-word, but I know that I reviewed at least one draft before it was filed.

Q. And you signed the brief?

Page 215.

Jeremy Gelb, Esq. - Direct

A. No, I did not. Appellate Counsel signed the brief.

Q. In the course of your research of the various issues which you researched in preparation of the filing of the brief, did you draw any conclusions about the strength of any of the issues that you reviewed?

A. Yes, I did. I felt that there were several issues that were very strong issues. In particular, there was a Caldwell issue which we felt was very meritorious. I recall that there had been a decision of the Supreme Court of Pennsylvania, I believe it was Commonwealth versus Baker, which had been decided several years previously, which supported the position that we were taking. Namely, it was directed to certain aspects of the prosecutor's closing argument. And we felt that Mr. Jamal's case was on all fours with Baker and with Caldwell.

There were several other issues that we felt strongly about as well. One had to do, if I recall, with the cross-examination of a character witness for Mr. Jamal, Miss Sonia Sanchez.

Another had to do with really an issue of a first impression in many regards having to do with a question of, involving Mr. Jamal's political

Page 216.

Jeremy Gelb, Esq. - Direct

beliefs and whether the cross-examination of Mr. Jamal contravened his First and Fourteenth Amendment rights under the Constitution, and his similar rights under the State Constitution. Those are the issues that I recall with greatest clarity. And I felt that they were very strong issues.

Q. Incidentally, Mr. Gelb, did you have occasion to meet Mr. Jamal?

A. I have not, no.

Q. Did you, in rendering the assistance you described, engage in a review of the entire trial record for purposes of identifying appellate issues?

A. No, sir, I did not review the entire trial record. I reviewed portions of the record, as the record pertained to the issues that I was asked to research.

Q. Did you discuss with the assigned appellate attorney issues that were ultimately raised in the appellate brief and argued in the Supreme Court?

A. Yes.

Q. And could you describe for us how the research that you performed was directed?

A. Well, I was given an issue, so to speak, and asked to research the law as it pertained to that issue. Obviously, later on in my career I had many

Page 217.

Jeremy Gelb, Esq. - Direct

occasions to review an appellate record or to review a trial record and issue-spot myself. That was not what I was doing myself in this particular appeal. My involvement was not that extensive. Instead, I was simply asked to review the pertinent law with regard to the issues that I had mentioned just a few moments ago and perhaps a few others. And I sort of hit the books and found what I can that supported the position that appellate Counsel sought to take in the brief.

Q. And did you then have occasion to discuss with assigned appellate Counsel the issues that you had researched?

A. Yes.

Q. Did you ever have occasion to discuss with appellate Counsel issues that were not researched by you and not raised in the brief?

A. Okay. Just so I understand your question: You are asking me did I ever discuss issues with appellate Counsel that I did not research and were not raised in the brief?

Q. Correct.

A. Is that correct?

Q. Yeah.

A. I would have to say the answer to that is no,

Page 218.

Jeremy Gelb, Esq. - Direct

I did not. At least not to my recollection.

Q. And in your work on this case on the appeal, and your discussions with appellate Counsel, did you become aware of any decision that was made by appellate Counsel to purposely or consciously reduce the issues that were raised on the appeal out of concern for the length of the brief or for any other tactical or

strategic reasons?

A. No, I recall no such discussions. I will say that the brief was fairly lengthy, to my recollection, but I do not recall a specific discussion concerning the length of the brief or concern for the length of the brief, no.

Q. Have you examined and been provided with a copy of the Petition for Post-Conviction Relief that has been filed in this case?

A. Yes, I have.

Q. And have you had an opportunity to generally review the content of the Petition?

A. Yes, I have.

Q. I draw your attention to an issue that has been denominated point 2A in the Petition which claimed that there was a denial of a continuance so that a key defense witness could appear to testify. Do you recall if you read back in 1985 or '86 that

Page 219.

Jeremy Gelb, Esq. - Direct

part of the trial record dealing with the issue of whether or not the Court had properly or improperly denied a continuance for the appearance of Officer Wakshul?

A. I do not believe I reviewed that portion of the record, no.

Q. Do you recall if you researched the issue of denial of continuance?

A. No, I did not.

Q. Do you recall if you had a discussion with assigned appellate Counsel about that issue?

A. I do not recall any discussion, no.

Q. Do you have any knowledge or information indicating that there was a tactical or strategic decision not to raise the issue of denial of continuance?

A. No.

Q. Drawing your attention to point 2C like in Charley, the allegation in the Petition for Post-Conviction Relief that there was a limitation imposed on the defense in cross-examination of a prosecution eyewitness. Do you have that?

A. May I have just a moment.

Q. 2C.

A. Yes, I have that.

Page 220.

Jeremy Gelb, Esq. - Direct

Q. That was an allegation that the cross-examination of eyewitness Robert Chobert with respect to his prior record was not properly raised by trial Counsel. Did you read that back in 1985 or '86 in the record?

A. No, sir.

Q. Were you asked to research that issue?

A. No, I was not.

Q. Did you have a discussion with appellate Counsel about that issue?

A. Not to my recollection, no.

Q. Do you have any knowledge or information as to why that issue was not raised in the appellate brief?

A. No, I do not.

Q. Drawing your attention to point 2B like in boy, the allegation that the cross-examination of defense -- I'm sorry -- the allegation that the defense was barred from eliciting testimony from defense witness Veronica Jones: Did you read the trial record on that issue?

A. No, sir.

Q. Did you research that issue?

A. No, I did not.

Q. Did you discuss it with appellate Counsel?

A. No.

Page 221.

Jeremy Gelb, Esq. - Direct

Q. To your knowledge was there any tactical reason not to raise it?

A. No.

Q. Drawing your attention to the allegation in point 3 of the Petition that Mr. Jamal's absence from two conferences in camera were improper: Did you read the trial record respecting the two in camera conferences?

MR. GRANT: Objection, Your Honor, as to that question. I believe that's been decided on appeal directly. As to whether or not the right of self representation allows one to absent themselves from sidebar conferences, from the room generally based on their conduct.

THE COURT: Has that already been resolved by the Supreme Court?

MR. WEINGLASS: No, Your Honor, that issue was never raised in the brief nor addressed in the Supreme Court's decision.

MR. GRANT: If that is the case I will withdraw my objection.

THE COURT: Okay.

THE WITNESS: Mr. Weinglass, my answer would be the same with respect to that issue. I did not research it, and I do not have any

Page 222.

Jeremy Gelb, Esq. - Direct

recollection of discussing that with appellate Counsel.

BY MR. WEINGLASS:

Q. Respecting point 4 of the Petition, the ineffective assistance of Counsel in the guilt phase of the proceeding: Did you read the trial record of the guilt phase to determine whether or not that was a viable issue on appeal?

A. I'm sorry, point 4?

Q. Point 4 in the brief. In the -- I'm sorry, the Petition.

A. No, my answer is no, sir, I did not review that.

Q. Did you research that issue?

A. Not, not in the context of this appeal, no, sir.

Q. And you neither had any discussion with appellate Counsel about it, nor were you aware of any tactical decision not to include it?

A. I am not.

Q. I will ask you the same questions with respect to point 5 in the Petition. That deals with the question of Mr. Jamal losing his right of self representation. Now, I am not asking you whether or not you read the trial record or researched the

Page 223.

Jeremy Gelb, Esq. - Direct

question of whether or not the Court improperly stopped him from asking voir dire questions that occurred at one point. Then at a later point subsequently the Court did strip Mr. Jamal of his right to represent himself. Did you read the trial record with respect to the second issue?

A. I don't recall reading the trial record. I recall there were some discussions with appellate Counsel with respect to this issue. It involves, I think the leading case is Foretta. But I just cannot say whether it was with respect to the earlier point in the trial, the Jury selection, or at a later point in the trial. And I did not specifically research that particular point. Beyond that I don't have any specific recollection one way or the other.

Q. In your discussions with appellate Counsel, was there any discussion of whether or not to include that issue as a tactical matter in the appellate brief?

A. Not that I recall.

Q. Referring you to point 6 in the Petition. This has to do with the question of Mr. Jamal's absence in the trial. Do you recall if you read any of the prior record to determine when and under what circumstances Mr. Jamal was absented from the trial?

Page 224.

Jeremy Gelb, Esq. - Direct

A. I personally did not review that aspect of the record. I believe I was aware that Mr. Jamal was absented from the trial at various portions during the trial.

Q. Did you research that issue?

A. I did not personally research that issue, no.

Q. Did you have any discussions with appellate Counsel with respect to that issue, and particularly whether or nat there was any tactical or strategic decision not to include it in the trial brief? I'm sorry, the appellate brief.

A. There was no tactical discussion or decision that I am aware of, no.

Q. Directing your attention to point 7 of the Petition, the allegation that the prosecution engaged in improper guilt-phase summation: Did you, Mr. Gelb, have opportunity to read the trial record of the guilt-phase summation?

A. I believe I did, yes.

Q. Did you research any issues pertaining to improper argument in the guilt-phase summation? Referring now to the guilt-phase summation.

A. I'm sorry, may I just have a moment?

Q. Sure.

A. I think that I'm...

Page 225.

(Pause.)

I do not believe that I did review the guilt-phase summation. I mis heard you, I think.

Q. Right. Was it that you were referring to the penalty-phase summation?

A. Precisely, yes.

Q. Which you did review?

A. Yes, I did.

Q. And it was raised on the appeal?

A. Yes, it was.

Q. Right. Drawing your attention back to the guilt-phase summation: You are indicating you did not review that part of the record?

A. I don't believe so, no.

Q. Did you research the question of improper comment by the prosecutor in the guilt-phase summation?

A. I don't believe so, no.

Q. Was there any discussion between yourself and assigned Counsel as to whether or not there was any tactical reason for omitting it in the appellate brief?

A. Not that I recall, no.

Q. Drawing your attention to point 8 in the Petition, which alleges, among other matters, the

Page 226.

allegation that a note which the Court received from the Juror was improperly handled: Did you read the trial record on that issue?

A. No, I did not.

Q. And did you research that issue?

A. No.

Q. And was there any discussion between you and appellate Counsel as to any tactical reason why that issue was not raised?

A. No.

Q. Lastly, I want to come to the penalty-phase summation by the prosecutor. Do you recall, I think you indicated that you did read that?

A. I believe I did, yes.

Q. And there were portions there that did make it into the appellate brief.

A. That is the Caldwell argument that I referred to earlier, yes.

Q. And also the argument that later became known as the Dawson argument?

A. That's correct, yes.

Q. Both of those --

A. That is correct.

Q. -- are in the appellate brief?

A. Yes.

Page 227.

Q. Now, in point 14 of the Petition the Petitioner alleges a number of other allegations of improper argument by the prosecution. I assume you have looked at those?

A. I did before, yes.

Q. Did you research any of those issues?

A. I can only answer the question in the following way. I was, of course, familiar with the issue of improper argument. We raised the Caldwell slash Baker argument. We did not raise the concerns that you have indicated in your Petition. I can not sit here and give you a reason one way or the other at this point in time for not raising that issue -- those issues. I have no recollection of coming up with an argument similar to the argument that you have made. My only recollection is that I was focused on the Caldwell argument with respect to Mr. McGill's summation and I really can't say one way or the other whether there were other elements of his speech that were considered in a prosecutorial misconduct argument.

Q. In any event, Mr. Gelb, can you recall whether or not there was a discussion with assigned Counsel in which it was decided not to raise any other issues which have been raised now in the Petition for

Page 228.

tactical reasons?

A. I don't recall any such discussion, no.

MR. WEINGLASS: May I have just a moment?

(Discussion was held off the record at this time between Defense Counsel.)

(Pause.)

BY MR. WEINGLASS:

Q. I wanted to draw your attention also to point 15 in the table of contents.

A. Of your Petition?

Q. Yes. And I will read it into the record. Mr. Jamal was sentenced to death without the benefit of adequate assistance of Counsel in the penalty phase.

A. Yes, sir. If your question is the same as the previous questions?

Q. Yes.

A. I do not, I do not recall a specific discussion or discussions with regard to Mr. Jamal's representation to the Jury in the penalty phase. And therefore I don't recall a conscious decision one way or the other as to whether or not that issue should have been raised. I see the argument that you have outlined in your Petition and it just does not ring a bell with me as having been a point of discussion.

Page 229.

Q. You don't recall researching the issue of ineffective assistance of Counsel in the penalty phase?

A. I don't recall researching that issue, no.

Q. Now, there is another issue I would like to call to your attention, it is now known as the Simmons issue. Are you familiar with that, Mr. Gelb?

A. I know a couple of different Simmons cases, Mr. Weinglass. I am not sure which one you mean.

Q. This is a question of whether or not a jury ought to be advised by the court in it's instruction as to the meaning of life without

parole. Was that issue researched by you?

A. Not in connection with this brief, no. No, I had occasion to research it sometime later but not in connection with this appeal. I am familiar with the argument; I do not recall any discussions with regard to that issue in connection with this appeal.

Q. To be fair, the Simmons case came down years later?

A. I seem to recall that, yes.

Q. But what you are indicating is that it wasn't anticipated?

A. It wasn't anticipated or discussed, to the best of my recollection.

MR. WEINGLASS: Thank you very much, Mr. Gelb. I have no further questions.

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CROSS-EXAMINATION

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BY MR. GRANT:

Q. Good afternoon, Mr. Gelb.

A. Good afternoon, Mr. Grant.

Q. In order to perfect Mr. Jamal's appeal --

THE COURT: I don't know, is that microphone working?

MR. GRANT: Yes, Your Honor.

BY MR. GRANT:

Q. In order to perfect Mr. Jamal's appeal, in order to insure that all issues and concerns of appellate Counsel as well as Mr. Jamal were raised, if I am not mistaken, numerous extensions were granted by the Supreme Court, with the agreement of the Commonwealth in this case, to file the appeal; isn't that correct?

A. Mr. Grant, I haven't checked that, I would defer to the record. It would not surprise me in the least. I recall that this was a very large project of the office and that appellate Counsel frequently did request and receive extensions of time without

opposition from the Commonwealth, that is correct.

Q. And it was large in some dimension because not only was there prior appellate Counsel prior to the appellate Counsel that you assisted, but there was also an amicus curiae brief submitted by Mr. Carl Baker on behalf of the Defendant; correct?

A. I recall that, yes.

Q. And the Defendant filed his own pro se appellate brief, did he not?

A. He did.

Q. And was that with or without knowledge of appellate Counsel, if you know?

A. That was with knowledge, with knowledge of appellate Counsel.

Q. And thereafter appellate Counsel requested the Supreme Court to allow the unscheduled brief filing, and the Commonwealth agreed that the brief should be accepted and reviewed by the Court along with appellate Counsel's brief and the amicus curiae brief; correct?

A. I believe that is correct, Mr. Grant. I would have to defer to the record on that as well. But I believe that is correct, yes.

Q. And I know you are going back years, and I know you are not primary Counsel, nevertheless, from

your recollection, you do recall that Mr. Jamal represented himself as appellate Counsel, Mr. Baker as a friend of the Court representing Mr. Jamal, your firm representing Mr. Jamal, and all filed briefs of some sort, or petitions; is that correct?

A. That is correct.

Q. Now, would you explain for the record what an amicus brief is, what it constitutes?

A. An amicus brief as I understand it is a friend of the court brief. And it, I believe that it arose in that Mr. Baker on behalf of an organization, the name of which I'm sorry I don't recall, felt there was a very small, one or two of the issues in particular that were before the Court. And I believe under the Rules of Appellate Procedure one can petition to file an amicus brief. I believe such a petition was filed, I believe the Supreme Court of Pennsylvania granted the petition. I also have a very strong recollection being present at argument before the Supreme Court, and Mr. Baker did in fact argue in support of the position raised in the brief. As did appellate Counsel, obviously.

Q. Does it refresh your recollection that Mr. Baker represented the National Conference of Black Lawyers in arguing as a friend of the Court at that

time?

A. I believe that is the organization, yes. I had known Mr. Baker prior to that time in a different context and that's why I was blanking on the name of this particular organization.

Q. Do you recall -- strike that. Local Counsel assisting Mr. Weinglass and his associates is David Rudovsky. Do you recall Mr. Rudovsky collaborating with Mr. Baker and representing the American Civil Liberties Union and offering parts of and signing that brief?

A. I don't have a recollection one way or the other, I don't.

Q. Okay. This case was not only argued in the Supreme Court, but the petitions were filed for reargument --

A. That is correct.

Q. -- in the State Supreme Court?

A. That is correct.

Q. And thereafter a petition for certiorari before the United States Supreme Court was requested and denied?

A. That is correct.

Q. And re-requested?

A. It could be, I'm not sure.

Q. By Mr. Jamal pro se?

A. I'm not sure. It could be.

Q. And denied?

A. I assume it was denied, yes.

Q. Mr. Gelb, I just have a few questions. In preparation in collaboration with appellate Counsel, did you receive the trial file from trial Counsel? When I say you I mean your offices.

A. Yes, the answer is yes.

Q. And did the trial file contain the transcript of the proceedings in the Court below? When I say that I mean notes of testimony.

A. I know what you are referring to. I don't remember how my office got the notes of testimony. I seem to recall that we received the notes of testimony at an earlier point in time. And that we met later with Mr. Jackson and received the contents of his file. But I don't remember which happened first, but obviously we did get a full set of notes of testimony.

And we also had, we also, I remember, had a meeting, at least one meeting with Mr. Jackson, and Mr. Jackson did bring a rather voluminous file of his own. Which to the best of my recollection contained discovery and some of his motions and

things of that nature.

Q. And when Mr. Jackson brought the file, did he bring it to appellate Counsel's offices?

A. Yes.

Q. And did he just drop the file off or did a discussion ensue between appellate Counsel, perhaps yourself, and Mr. Jackson about the viability of any of the claims that appellate Counsel was considering?

A. I was only present during one meeting and I was only there for maybe 18 minutes. And during that 10 minutes there was a general sort of discussion about the trial and about some of the issues in a very generalized form. I had excused myself in that meeting, I had another court appearance, and Mr. Jackson and appellate Counsel stayed in the office and spoke, as I understand it, for some time and discussed whatever they discussed: I was not there. I can only assume -- well, I can't assume. I don't know what they discussed because I wasn't, I wasn't present. But I understand that there was a rather lengthy conference between them at that time and, I believe, on a subsequent occasion as well.

Q. And do you know of your own knowledge if the second meeting also took place at appellate Counsel's

offices?

A. I don't recall that, I was not present.

Q. Do you recall how many times Mr. Jackson and appellate Counsel met?

A. I believe it was twice.

Q. Now, when you say that you were assigned particular areas to research and then would have legal discussion with appellate Counsel, would you review appellate Counsel's legal research?

A. Well, it was sort of a joint effort in that regard. My recollection is that appellate Counsel had already done some research with respect to some of the issues that were raised in the appellate brief, and I was asked to follow up. As often happens when you are preparing an appellate brief, a lot of the discussions about organization, a lot of the discussions about arguments that can be made, would be argument. So my recollection is it was sort of a joint effort. I didn't research all of the issues but I do recall researching some of the issues.

Q. Twenty points of error, 20 points of error from the trial proceedings were addressed by the Pennsylvania Supreme Court in the case of Commonwealth versus Mumia Abu-Jamal. Did appellate

Counsel, to your knowledge, review the transcript of the proceedings in order to raise any of these claims?

A. Yes.

Q. Did you review any of the transcripts of the proceedings in order to work on the issues that were assigned to you?

A. Yes, I did. Portions of the transcript I did review. And appellate Counsel did review, if not the -- well, I believe the entire transcript. I could only go based upon my observations.

Q. Now, portions of the legal issues were assigned to you, one of which included the Caldwell issue?

A. Yes.

Q. You keep saying. For the record, sir, would you state what that issue is in brief?

A. Well, this was an issue that was raised in the appellate brief. Caldwell was a decision of the U.S. Supreme Court which went to the question of whether the jury is impressed properly with the magnitude of it's duty in imposing a death sentence. And the argument is that if the prosecution makes argument to the jury which attempts to mislead the jury that it's decision is not in fact final, and misleads the jury

into believing that what they do is merely a recommendation and it is really not that important then the jury has in essence been deprived responsibility to decide life or death.

Q. And you did raise that issue and it was decided upon by the Supreme Court and rejected; correct?

A. That is correct.

Q. Now with respect to whether or not the Simmons issue could have been predicted by yourself. And the Simmons issue is whether or not the jury should be told that life without parole is what a life sentence is. You realize, do you not, sir, that that deals with the situation where the aggravating circumstance alleged is the future dangerousness of the defendant, and when a jury is considering that they may consider that the option to future dangerousness is total and complete incarceration forever, and therefore they should be told that? Now --

A. I recall that is the context in which Simmons was decided. I think the flip side of the Simmons argument is of course what's good for the goose is good for the gander. And I think that the issue there becomes if under some circumstances the jury knows that life isn't life, then perhaps under other

circumstances the jury should know that life is life. I agree with you, it arrives under a somewhat different factual context. But I submit that it is an argument that could be made and I think has been made in the context of impressing the jury with the, with it's responsibilities in determining life or death. And in letting the jury know that life, at least in this Commonwealth, really means life.

Q. The aggravating circumstances in this case were, A, the killing of a police officer in the performance of his duty, and B, reckless endangerment to another individual during the course of this killing. If I am not mistaken, the Jury rejected the reckless endangerment -- it happened to be the Defendant's own brother who was in the area at the time -- and they found the aggravating circumstance outweighed any mitigating circumstance, if they found any. So the future dangerousness issue was not before them and therefore Simmons would not legally apply even if it were the law in 1982; isn't that fair to say?

A. I think that the way that you have couched the Simmons argument in the way that Simmons was first decided I would have to agree with you. What I am suggesting to you is that the rationale of Simmons I

believe can be and I believe it has been extended to cover the flip side, the converse, if you will. But I agree with you in the way that Simmons was decided, yes, there was no issue with respect to future dangerousness. And in that limited sense, I don't believe that issue could have been raised.

Q. Now, Mr. Weinglass asked you if you worked on any research regarding whether or not the Defendant was sentenced to death without the adequate assistance of Counsel at the penalty phase. And you indicated that you did work on the penalty phase in some regard on some issues, such as Caldwell. During the course of doing your research, sir, did you read the record, the trial record of the penalty phase, the arguments, the evidence, if any, that was taken?

A. I do recall reading the closing arguments. And I do recall reading the text I believe of Mr. Jamal's statement. And I do recall reading Mr. McGill's cross-examination of Mr. Jamal.

Q. During the course of your research did you determine based on your years of criminal practice that Mr. Jackson ineffectively, ineffectively assisted Mr. Jamal at that phase of the proceedings?

A. I don't recall discussing that particular issue with appellate Counsel. Nor do I recall

treating the issue as such. I do not believe that that was a question, frankly, that was addressed by myself or by appellate Counsel.

Q. You mean to tell me when you are looking at the issue of when a capital sentence has been imposed, you don't look to see whether or not the defendant received adequate representation?

A. Well, I think that's always in the back of one's mind when you

review any record, capital or non-capital. Because the first question is did the defendant receive the process that he was due. I can't, I just can't sit here and recall that an issue was discussed with respect to adequacy of Counsel in the, in the context that we know it today, the ineffective assistance cases that have been decided.

My strong recollection, as I said, is in focusing in on the comments of Mr. McGill. And again, I recall, I believe there was an issue raised with respect to whether Mr. McGill should have been permitted to cross-examine Mr. Jamal. But I do not think that was raised under the guise of ineffectiveness.

Q. Mr. Gelb, perhaps you didn't consider it and you didn't discuss it with appellate Counsel. Can you state here with certainty that that wasn't

considered by appellate Counsel, the ineffectiveness claim, as opposed to guilt, in the sentencing phase?

A. No, I can't. I can't sit here and say that.

Q. Now, appellate Counsel raised the issue which we now know in shorthand terms as the Batson claim. That is the racially-based or non-neutrally based motivation for exercising peremptory challenges. Now, that was raised to the Supreme Court by appellate Counsel, was it not?

A. It was.

Q. Did you work on that issue?

A. No, I did not.

Q. And there was a request by appellate Counsel for Mr. Jackson to submit an affidavit in support of the trial record which was forwarded to the Supreme Court; do you recall that?

A. I do not recall that, no.

Q. Did you have any discussions with appellate Counsel regarding the Batson claim?

A. Very, very generalized discussions. I was not asked to research that. I was aware of the fact that appellate Counsel was researching it. I was aware of the fact that appellate Counsel was engrossed in a dissection of the apartheid record. It is, frankly, something that I did not get involved in.

Q. Appellate Counsel was engrossed in a dissection of the voir dire record?

A. Yes.

Q. And would it be fair to say, sir, where you have the record of what happened, at a trial, and that forms the basis of making any claims that you want to make on appeal, but you go outside the record, and you go back to trial counsel and you get an affidavit from him, would it be fair to say that that, practically speaking, insinuates that the record in and of itself was insufficient to raise the issue without external evidence?

A. That would certainly stand to reason, yes.

Q. Now, at the time that Mr. Jamal was tried, Batson versus Kentucky, a Supreme Court holding, had not come into being at that point in time; is that correct?

A. I don't recall, Mr. Grant, I would have to check.

Q. Well, I will only say that the Supreme Court holding was published in 1984; Mr. Jamal was tried in 1982.

A. Yes, sir.

I believe -- pardon me, sir. I believe Batson according to the brief here was

decided in '86, actually.

Q. '86, okay, that is even later on?

A. Yes.

Q. And that is at or about the same time that you filed your appeal in this instance?

A. I believe that the, yes, I believe the brief was filed in 1986, that is correct.

Q. So that was hot off the press when you filed that, when Counsel, appellate Counsel filed the claim?

A. I believe that's correct.

Q. And did that have anything to do with why Counsel had to go to Mr. Jackson to have him recreate something that did not appear in the record itself?

A. I just don't have any recollection of that, Mr. Grant. I don't know one way or the other.

Q. You don't know that appellate Counsel did not consider issues that were not raised and dismissed them as lacking merit, do you?

A. No, I do not know that. I... I have tremendous regard for appellate Counsel. And I've known appellate Counsel's work for a good long time. And I think Counsel's work has been uniformly excellent over the years. So I can't say one way or the other what was in appellate Counsel's mind at

that time. Unless there was some sort of discussion with me so that I could understand what the thinking was, I just don't know.

Q. You were asked and you responded to Counsel that there were four issues that you felt and appellate Counsel felt were very strong issues on appeal: Namely, the prosecutorial misconduct issue under Caldwell; the prosecutorial misconduct apparently with respect to closing argument; cross-examination of a character witness, Sonia Sanchez; and the alleged questioning of Defendant's political beliefs, which Counsel alleged violated the First and Fourteenth Amendments of the Constitution of the United States, and thereafter the Fifth Amendment and Pennsylvania Constitution. All those claims were rejected, were they not, by the Supreme Court?

A. Yes, they were.

Q. And certiorari was denied by the U.S. Supreme Court on all those issues?

A. Yes.

Q. Correct?

A. Yes.

Q. Now, you said that you did not review the entire trial record. Can you say that appellate

Counsel did not?

A. No, I can not say that.

Q. And you said that you did not meet with Mr. Jamal. Can you say that appellate Counsel did not?

A. No, I can say to the contrary: Appellate Counsel did meet with Mr. Jamal.

Q. You also testified on direct examination, Mr. Gelb, that of the issues which were not researched, and not raised in the brief, you can't think of any tactical or strategic reason why they would not be. You are not saying that they were not considered and thought not to be worthy of appellate merit, are you?

A. No, I'm saying I don't know one way or the other, Mr. Grant. I don't know whether they were considered and rejected or whether they were simply not considered. I have no way of knowing one way or the other.

Q. Now, Counsel raised a number of particular areas and asked you if these matters were considered by you or by appellate Counsel, and if not was there a strategic or tactical reason why not. And he talked about the prosecutor's guilt-phase closing argument.

MR. GRANT: And I have, for the benefit of the Court, a document which I would

move to mark as Commonwealth Exhibit Number 10 in this matter. It is a 260 page photocopy of the opinion of the Pennsylvania Supreme Court decision in this matter authored by Justice Zappala.

(Pennsylvania Supreme Court opinion was marked Commonwealth Exhibit C-l0 for identification.)

BY MR. GRANT:

Q. At head note number 12, sir, it says that, essentially, the prosecutor's guilt-phase closing argument about the possibility of subsequent appeals and reversal of a capital murder conviction didn't deprive the Defendant of a fair trial. So in fact that issue was raised, though not by you but by appellate Counsel; correct?

A. I believe that's correct. That claim may very well have been raised with respect to both the guilt phase and the penalty phase.

Q. And with respect to the penalty phase, head note 14, prosecutor's penalty-phase closing argument about appeals in capital murder prosecutions and about the absence of execution for more than 20 years of a person in Pennsylvania at that time did not create a risk that the Jury would abdicate it's

responsibility to decide the appropriateness of the death sentence. And that is part and parcel of the Caldwell issue in reverse, actually, because if they abdicated their responsibilities and not considered life as the alternative, that's what Caldwell is all about, isn't it, essentially?

A. Well, let me respond this way. I don't know what you mean by the reverse.

Q. Okay.

A. In your question. That is the part that I don't understand, I don't follow. And I haven't, I have a copy of the slip opinion of the Supreme Court's decision but I don't have the head notes here. I'm not sure I follow your question.

Q. Okay. I will withdraw that question. The issue of the appropriateness of the prosecutor's argument as to the death sentence was upheld by the Pennsylvania Supreme Court, cert denied by the U.S. Supreme Court; correct?

A. That is correct.

Q. Evidence as to whether -- head note 9. I know you don't have your brief allocated that way.

A. Right.

Q. But that's why I am reading it for you, for the benefit of you. Evidence as to whether

Defendant's character witness had spoken or written favorably about convicted killers of police officers was relevant in the prosecution for murder of police officer to indicate that witness had enmity towards police officers or to indicate whether community which referred to the Defendant as a peaceful man viewed police officers as oppressors and gave favorable acknowledgement to convicted police killers.

Now, that again dealt with the issue of cross-examining the character witness Sonia Sanchez and that was raised by the appellate Counsel in this case, was it not?

A. Yes, it was.

Q. Head note number 5. The right of self representation is not absolute right for defendant to proceed as defendant sees fit. Pro se defendant is subject to the same rules of procedure as represented defendant.

So that the issue of the Defendant's right of self representation was addressed at least in some measure, was it not?

A. I believe that is correct. I believe it was raised with respect to the Jury selection issue only.

Q. And in that regard: Defendant had no right to

engage in voir dire questioning whether or not he was represented by Counsel, and thus the trial Court's decision to conduct voir dire himself did not deprive pro se defendant of right of self representation.

So that was more specifically dealt with by the Pennsylvania Supreme Court in this decision in this case?

A. That was the basis for the Foretta claim that was raised on direct appeal, and that was how the Supreme Court dealt with it, yes.

Q. And Foretta is a California case that deals with the right of a person to represent themselves, is it not?

A. The leading case.

Q. And head note 6: The manner in which voir dire is conducted is left to the discretion of the trial judge. That is the inception of the issue raised and then the Court proceeded to discuss the issue of self-representation at voir dire and self-representation altogether.

Now, those issues were all raised by appellate Counsel, or by you and the appellate Counsel, and ruled on by the highest Court of this State; correct?

A. Yes, they were.

Q. So you don't have to have a tactical or strategic reason why those issues weren't raised?

A. No, sir, those issues were raised. And I didn't believe Mr. Weinglass was asking me questions with regard to those particular issues. Those were the ones that were raised and, unfortunately, rejected.

Q. I just have a couple more questions, Mr. Gelb. Did you personally have any discussions with Mr. Jackson about his effectiveness as a trial lawyer in this case?

A. No, I did not.

Q. From your review of the record, though you did not raise that claim, did you form any legal opinion as to whether such a claim would have been viable had it been raised?

(Pause.)

A. Well, to the extent that Mr. Jackson's representation, or the question of his ineffectiveness, was bound up in the issues that were raised on direct appeal, then I would say if they were not preserved or if they were not raised properly that yes, I would contend that he was ineffective. However, it's my recollection that there were a number of issues that were raised on

direct appeal where the issues, the merits of the issues were raised in the absence of an ineffectiveness allegation.

So what I am trying to convey here: I know that in reviewing the Supreme Court's decision, that there were I believe two instances -- I believe the Batson claim was one, and there was one other -- where the Supreme Court agreed to review the merits of the claims, notwithstanding the fact that there had been no objection at trial. And to the best of my recollection, had been no post-verdict motion as well.

Q. And you could well imagine that since it didn't come into being for another five years, sir?

A. Well, in the Batson situation, that could well be. Although there were decisions that were decided before Batson. But, but the point I am trying to make here is that capital appeals have what's called a relaxed waiver standard. And that standard was specifically referred to in the opinion. Under normal-circumstances, at least the practice back then was that if appellate Counsel did not assign trial Counsel's ineffectiveness for failing to object, or failing to file a post-verdict motion, then the issue was deemed waived. And in these two particular

respects that I recall in reviewing the Supreme Court's decision, the Supreme Court invoked the waiver standard so it could address

the merits of the issue.

I know that sounds like a roundabout way of answering your question, but Mr. Jackson's ineffectiveness could have been assigned with respect to those two issues.

Q. But the Supreme Court, nevertheless, dealt with both of those issues?

A. That is correct, the Supreme Court did address both those issues under the relaxed waiver standard, that is correct.

Q. Because in capital penalty litigation when a man's life is on the line, the ineffectiveness of Counsel should not be permitted to keep valid claims from before the highest tribunal of the State; is that the idea?

A. I think that's the idea. And I think it's a, I think it's the right idea.

MR. GRANT: Thank you very much, Mr. Gelb.

MR. WEINGLASS: I just have a few follow-up questions.

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Page 254.

REDIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. Mr. Grant asked you about the Baker case and the prosecutorial error or misconduct in undermining the importance of the jury's having to confront the fact that they are composing a death penalty. You recall questions to that effect?

A. Yes.

Q. From Mr. Grant?

A. Yes.

Q. Now, do you recall -- and you said you read the record on this issue -- that Mr. McGill argued, paraphrased to the Jury that Mr. Jamal would have appeal after appeal after appeal?

A. Yes.

Q. Do you recall who argued the case for the Commonwealth in the Baker case?

A. Mr. McGill.

Q. The very same prosecutor?

A. That is correct.

Q. And in that case he said the defendant would have appeal after appeal after appeal; is that right?

A. In at least two contexts, I believe.

MR. GRANT: I object and move to

Page 255.

strike any references to any case but this case. If they are attempting to show a pattern for prosecutorial misconduct they could lay the foundation with the conduct itself and not through counsel who was assisting appellate Counsel and didn't participate in that case. And I move to strike it.

MR. WEINGLASS: Your Honor, the issue immediately before the Court is this. Mr. Gelb is assisting appellate Counsel. He reads the case law. He reads the Baker case.

THE COURT: He didn't argue before the Supreme Court.

MR. WEINGLASS: No, appellate Counsel argued.

THE COURT: Well.

MR. WEINGLASS: And when the Commonwealth representative, as I understand it -- I wasn't there --

THE COURT: Wasn't that decided by the Supreme Court?

MR. GRANT: Yes.

MR. WEINGLASS: It is the Baker case.

THE COURT: Well, they have decided it so what is the issue now?

Page 256.

MR. WEINGLASS: The issue is was Mr. Gelb alerted to the fact that the Pennsylvania Supreme Court would reverse a case if the prosecutor argued to a jury that the defendant would have appeal after appeal after appeal.

THE COURT: I know that, but --

MR. WEINGLASS: And if he was alerted to that fact.

THE COURT: -- what difference does it make: The Supreme Court considered that, didn't they, and made a decision on it?

MR. GRANT: Yes.

MR. WEINGLASS: Yes.

THE COURT: So what are you arguing it a second time for?

MR. WEINGLASS: No, we are, that's preserved in this record.

THE COURT: Preserved?

MR. WEINGLASS: Yes.

THE COURT: The Supreme Court already ruled on it. Whether it was he or appellate Counsel who argued that before the Supreme Court, the Supreme Court considered it and made a decision.

MR. WEINGLASS: Correct. I have no

Page 257.

quarrel with that.

THE COURT: Well, then why are we arguing it a second time?

MR. WEINGLASS: Well, what we are getting at is Mr. Gelb's performance as appellate Counsel. He sits down to review the record in this case. He sees that the prosecutor in this case argued to a Jury using the exact same words that the Pennsylvania Supreme Court reversed on in an earlier case.

THE COURT: I know, and the Supreme Court decided that in this very case and they considered it. And they said it's different.

MR. WEINGLASS: I am not making myself clear to the Court. As Mister --

THE COURT: I am not making myself clear to you.

MR. WEINGLASS: As Mr. Gelb sat down to do his research before Mr. Jamal's case got to the Supreme Court, was he paying attention to the fact that in an earlier --

THE COURT: Let's assume that he wasn't. What difference does it make if the Supreme Court considered it?

MR. WEINGLASS: It makes a difference

Page 258.

in terms of highlighting his work, his preparation on this case.

THE COURT: It doesn't make any difference if the Supreme Court has already decided that issue. And the Supreme Court a lot of times decides issues that are not brought up by appellate counsel because they review the whole record themselves.

What I am saying to you: If they reviewed this and made a decision on it, it's not proper for me to consider it again.

MR. WEINGLASS: No, Your Honor, I have to say this to the Court: We are not asking the Court to review that. Nowhere are we asking this Court to review the Supreme Court's decision on the Caldwell issue. That's been decided by the Pennsylvania Supreme Court. You are right, it's preserved. Of course we will raise it in an appropriate court if and when we have to get there. I am not re-raising that before this Court. It is not in our Petition at all. We are not re-raising the Caldwell case before this Court.

MR. GRANT: Well, can we move on, Your Honor.

Page 259.

MR. WEINGLASS: It's been decided. But then we get to what I was asking him about. Not that issue. I was asking him whether or not he was aware of the fact that in the Baker case, which was reversed, the very same prosecutor used the very same words and that led to a reversal.

MR. GRANT: I am objecting to the irrelevancy and move to strike the answer because that is not the issue here. That's been decided by the Supreme Court. Whether it was --

THE COURT: That's what I said.

MR. GRANT: Whether he had twin brothers, clones or what have you, the issue was decided and it doesn't deal with the individual --

THE COURT: That's what I am saying. I thought the Supreme Court resolved that issue, so why are we going into it again?

MR. WEINGLASS: Okay. I will abandon that line of questioning.

THE COURT: I will sustain the objection.

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Page 260.

Q. Mr. Gelb, as an active practitioner in the appellate courts on criminal issues, you indicated that you are aware and familiar with what's called the relaxed waiver doctrine here in Pennsylvania?

A. Yes.

Q. And I think as a practitioner, you are now aware and you were aware then that that is the rule in Pennsylvania?

A. Yes.

Q. Now, you were asked about the Batson claim and I just briefly want to get into this. Based on Mr. Jackson's affidavit, appellate Counsel presented to the Pennsylvania Supreme Court the fact that the Commonwealth had peremptorily challenged 11 perspective jurors of African-American background; is that correct?

A. Yes, that is correct.

Q. And do you recall that the Commonwealth came back in their brief and they contended that the record indicates that the Commonwealth only challenged eight African-American jurors and that Darlene Sampson, Beverly Greene, and Alma Lee Austin do not appear on the record to be African-American jurors?

A. I remember that there was a dispute over the

Page 261.

number of African-American jurors. I do not remember the names but I do remember that there was a dispute between the Commonwealth and the defense on that issue.

Q. And now directing your attention to D-10, which is the opinion of the Pennsylvania Supreme Court, the Pennsylvania Supreme Court bought the representation of the Commonwealth and decided the Batson issue on the grounds that the Commonwealth representation was accurate and that only eight African-American jurors were excused, not the 11 that your affidavit from Mr. Jackson indicated. Isn't that correct?

A. I believe that's correct. I would need, I would need to review that portion of the opinion, frankly, Mr. Weinglass. I didn't review it but I believe that's correct.

Q. Yeah.

(Pause.)

A. I have the slip opinion where it indicated on page 7 that appears to be the Supreme Court's finding. That... the Court has found eight.

Q. Eight?

A. As opposed to 11.

Q. Right. And now if it turns out that it wasn't

Page 262.

eight, that the Commonwealth under represented by 30 percent the number of African Americans they challenged off this Jury, that that issue ought to be represented accurately?

MR. GRANT: Well, Your Honor --

BY MR. WEINGLASS:

Q. To the Pennsylvania Supreme Court?

MR. GRANT: Unless he is a Fellow Justice I really don't care what he thinks. I think the law is clear as to what should be done. Move to strike the answer if any was given.

THE COURT: Well, I don't think he made an answer but if he did I will strike it. Leave that for the Supreme Court to decide.

MR. WEINGLASS: Your Honor, the only reason why I raise it is because we have those three jurors.

THE COURT: He can't tell us, he didn't even argue before the Supreme Court. He wasn't appellate Counsel, so.

MR. WEINGLASS: We brought before this Court the three jurors who were not mentioned in the brief.

THE COURT: I know, I am saying he

Page 263.

can't give us his opinion.

MR. WEINGLASS: But we need, we have the need for a new record so that the Pennsylvania Supreme Court will decide this case on accurate information.

THE COURT: Counselor, argue that before the Supreme Court if necessary, and if they think additional evidence must be taken they will send it back down again. They do it all the time. All right.

MR. GRANT: Your Honor, on that point, just so that we don't go too far afield, if Counsel wishes to bring in those jurors and state on the record their race I think he should be entitled to do so. So we can dispose of this issue once and for all so when it goes up on appeal they will have Counsels' full and fair claims.

THE COURT: You mean all the --

MR. GRANT: No, the three people that he is talking about bringing in, to say he is supplementing the record.

THE COURT: Well, if you have no objection, I am not going to object. How do I know which three that they are talking about?

Page 264.

MR. GRANT: Well, I don't know, Judge.

THE COURT: Well, how do we know. That's in addition, you would have to really bring in everybody, wouldn't we, to find out who they were?

MR. GRANT: Well, so that Counsel doesn't go too far afield, I think that's ripe for discussion between us to come to some kind of resolution in this matter.

THE COURT: Well, if you can, fine. But I don't know how else you are going to do it.

BY MR. WEINGLASS:

Q. Lastly, Mr. Gelb, I refer you to the brief that was filed on behalf of Mr. Jamal in the Pennsylvania Supreme Court, Roman numeral XIII, and Roman numeral XIV, which is pages 13 and 14 in Roman numerals on the brief.

A. Yes, sir.

Q. And those two pages are denominated statement of the case, are they not?

A. Yes.

Q. And that's the entire statement of the facts that were submitted to the Pennsylvania Supreme Court?

Page 265.

A. That's it.

Q. And you read the Petition that was filed by Mr. Jackson's attorneys in this instance? I'm sorry, Mr. Jamal's attorneys. Have you read --

A. Your Post-Conviction Petition?

Q. Yes.

A. Yes, I have.

Q. And the statement of facts drawn from the record in the Petition now is over 30 pages?

A. I haven't counted them, I will take your word for it. It's much more voluminous. If I may: I recognize that this is not denominated statement of facts, it is denominated statement of

case. This was appellate Counsel's practice. It included a procedural history and factual history and it speaks for itself.

Q. All right. So appellate Counsel going to the Pennsylvania Supreme Court on a death penalty case for Mr. Jamal did not provide the Court with the statement of facts?

MR. GRANT: Objection, Your Honor. There is no denomination statement of the facts in Pennsylvania. There is a statement of the case. And there was one provided by Counsel. He just told him what it was. And if he wrote

Page 266.

out 500 pages of opinion or 300 pages of argument, it still comes down to the simple issue, that was done. I object to Counsel's question. I object to leading.

BY MR. WEINGLASS:

Q. Is there anything in the brief that's denominated statement of facts?

MR. GRANT: Objection.

THE WITNESS: No.

THE COURT: There is no such thing in Pennsylvania.

BY MR. WEINGLASS:

Q. Is there anything in the brief denominating statement of the case?

A. Yes.

Q. And how many pages is the statement of the case?

A. I believe you just said it was two.

Q. Would you settle for a page and a half?

A. Page and three-quarters.

Q. Ah-huh. Page and three-quarters. And that contains the procedural history of the case?

A. Yes. It contains some of the procedural history and it contains a reference to some of the factual issues that appear in the brief. It

Page 267.

certainly does not contain an exhaustive statement of the facts, or statement of the evidence.

Q. And you say it contains two paragraphs of facts of the case?

(Pause.)

A. Well, I don't mean to quibble with you. It speaks for itself, really. But what I am -- the answer is the first two paragraphs do deal, are cursory synopses, if you will, of the facts. And a couple of paragraphs that follow deal with things that occurred during the course of the trial. I don't know whether you designate those factual or procedural.

I think that there are three paragraphs that follow the first two paragraphs that deal with things that occurred during the trial which are germane to the brief. And that's it.

Q. Right. What I am getting at, to be short, Mr. Gelb, is did Mr. Jamal's appellate Counsel inform the Pennsylvania Supreme Court about what happened on the night of December 9th, 1981 on the streets of Philadelphia at 4:00 a.m. in just two paragraphs?

A. Ahh, in the statement of the case, that's correct.

Q. That's all?

Page 268.

A. That's correct.

MR. WEINGLASS: I have no further questions.

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RECROSS-EXAMINATION

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BY MR. GRANT:

Q. Mr. Gelb, was Counsel's statement of the case sufficient for the Supreme Court of Pennsylvania to accept the brief and to independently review the evidence and form their own opinion as to what happened at 4:00 a.m. on December 9th of 1981 on the streets of Philadelphia?

A. The brief was accepted for filing. The appeal was docketed and the matter was presented for oral argument before the Supreme Court. That's all I can say, I don't know what the Justices themselves decided. But --

Q. Do you not know that in every capital penalty case the Supreme Court of this State must enter upon an independent review of the evidence?

A. Absolutely.

Q. And in this case they came to a conclusion and filed an opinion?

A. The Court certainly filed an opinion, yes.

Page 269.

Q. And in it's opinion did it say under the Rules of Appellate Procedure, Counsel's statement of the case should have been five pages?

A. No.

Q. Four pages?

A. There was no statement whatsoever about the length of the statement of the case.

Q. And when Counsel in their supporting affidavit through a Mr. Steven W. Hawkins says that appellate Counsel filed no statement of the facts, I assume he meant no statement of the case, that in fact was --

MR. WEINGLASS: Objection for what Counsel assumed. Improper form of the question.

BY MR. GRANT:

Q. Well, in Pennsylvania do they have a statement of the facts, sir?

A. My understanding of the Rules is that it is denominated statement of the case.

Q. So that the expert witness on behalf of the defense who filed his expert opinion as to what lawyers should do in capital penalty cases was not expert in Pennsylvania law?

A. I don't know whether he read the Rule recently, Mr. Grant. That's about all I could say: I don't know.

Page 270.

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REDIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. Mr. Gelb, in your view, was two paragraphs indicating what happened on the night of December the 9th enough for the Court to make a review of the sufficiency of the evidence?

MR. GRANT: I would object, Your Honor. I think the Supreme Court has to decide that.

THE COURT: Yes. I will have to sustain that. I don't think anybody could second-guess the Supreme Court. What they said they said. They wrote an opinion.

MR. WEINGLASS: Your Honor --

THE COURT: After all, he was only an attorney for five years. I don't think he could criticize what the Supreme Court has done. But they didn't think it was necessary. And as Counsel has brought out: The Supreme Court reviews the entire file, including all the testimony. They don't need counsel to tell them what the facts are.

Page 271.

MR. WEINGLASS: Yeah.

THE COURT: They could read it themselves.

BY MR. WEINGLASS:

Q. Mr. Gelb, as an experienced counsel --

THE COURT: Well, he was not experienced, he was only

assisting the appellate Counsel.

MR. WEINGLASS: He is now.

THE COURT: Well, but he wasn't then.

MR. WEINGLASS: But I am asking him about now.

THE COURT: Well, what happens today is a different story. The important thing is what happened back at that time.

MR. WEINGLASS: No, his opinion now, having read the brief, and having been shown two paragraphs indicating what happened on the night of December 9th, is that sufficient in his view in a death penalty case to inform the Court that has to make a review of the sufficiency of the evidence, or should there be more.

THE COURT: I don't think that's for him or anybody else.

MR. GRANT: He is incompetent to

Page 272.

answer that.

THE COURT: That's for the Supreme Court to decide that.

MR. GRANT: With all due respect.

THE COURT: If they needed his help they would have asked for it. They don't need any help because they review the entire thing. They have all the notes of testimony, they have everything and they review it all. They don't need counsel down here, or me or you, to tell them what they need.

MR. WEINGLASS: Your Honor, in the last two-and-a-half days the Commonwealth's Counsel was invited to ask, and was allowed to ask, I should say, Mr. Jackson if in his view, in his view, his performance was effective.

THE COURT: Well, yes, because you were accusing him of being ineffective. That's okay. Are you accusing the Supreme Court of being ineffective?

MR. WEINGLASS: Your Honor is switching it around.

THE COURT: I am not switching anything. All I am saying to you is the Supreme Court in every capital case reviews the entire

Page 273.

thing, including the notes of testimony.

MR. WEINGLASS: And I --

THE COURT: And for anybody here to say they didn't have enough, Counsel should have done more to inform them -- what more could Counsel do? I don't care if Counsel gives them 10 pages, they are still going to review the notes on their own and make their own decision. And that's exactly what the Supreme Court does.

MR. WEINGLASS: We would like --

THE COURT: So for you or me or anybody to say they didn't have enough, sure they had enough: They had the record, which they reviewed.

BY MR. WEINGLASS:

Q. In your view, Mr. Gelb --

THE COURT: Not my view, that is the view of the Supreme Court.

MR. WEINGLASS: I am about to ask Mr. Gelb another question.

BY MR. WEINGLASS:

Q. In your view does appellate counsel have an obligation to direct the Supreme Court in their written papers to areas of the record that would favor their client?

Page 274.

MR. GRANT: I object. I object, Your Honor.

THE COURT: Yes, because even if you don't, in this case they looked at it on their own. The Supreme Court brought up issues that weren't raised.

MR. WEINGLASS: What we are talking about is the obligation of appellate counsel, that is the issue.

THE COURT: I am talking about --

MR. WEINGLASS: The issue before the Court is the obligation of appellate counsel.

THE COURT: No, it doesn't make any difference. Because regardless of what the appellate counsel does, if the Supreme Court reviews the entire file on it's own, it makes no difference. And if they make a ruling on any issue, that's it.

MR. WEINGLASS: But that is totally reducing the role of appellate counsel.

THE COURT: No.

MR. WEINGLASS: What we are concerned about here is what did appellate Counsel do or what did appellate Counsel not do. And what I am asking the witness as appellate Counsel, or

Page 275.

assisting appellate Counsel, is whether or not in his opinion he had an obligation to inform the Court --

THE COURT: Wait awhile.

MR. WEINGLASS: -- as extensively as possible.

THE COURT: Counselor, he had no obligation to inform anybody. That was the responsibility of the appellate Counsel who was appointed. He wasn't appointed. He was merely assisting that Counsel.

MR. WEINGLASS: And I want to ask him, looking at the final product, two paragraphs in a brief setting forth what happened on the night of December 9th, in his view was that an adequate performance.

THE COURT: Yes, but you would have to ask that of the appellate Counsel. He was merely assisting. He looked at whatever they gave him to do, and that's all.

MR. WEINGLASS: Well, you are blocking me.

THE COURT: I am not blocking you. He is not in a position to make that decision: He was not the appellate Counsel.

Page 276.

MR. WEINGLASS: He is an experienced appellate counsel who could give us the benefit of an opinion on what is produced in the brief.

THE COURT: I don't think we need his opinion. The Supreme Court could give you their opinion on it.

MR. WEINGLASS: Then I will desist from any further questioning.

MR. GRANT: As will I, Your Honor.

THE COURT: All right, you are excused, Counselor.

Anybody else, Counsel?

Anything else?

MR. WEINGLASS: No.

THE COURT: Who do we have for tomorrow?

MR. WEINGLASS: We are going to start --

THE COURT: Do we have a list? Give them the list so --

MR. WEINGLASS: I can read it, it is short, Judge.

THE COURT: What's that?

MR. WEINGLASS: It is a short list but a long day. The first witness will be Mr. Gary

Page 277.

Wakshul.

THE COURT: Yes, you better get him in the morning because he has to go for physical therapy.

MR. GRANT: Is that it?

MR. WEINGLASS: No, the next witness will be Robert Greer. Next witness will be Joseph McGill.

MR. GRANT: Well, we don't know that. We know that there's been a motion to preclude. That there's been a failure to offer proof, an offer of proof with specificity and exactitude. And they have declined to respond to any of those requests. Therefore, I still have a motion pending before Your Honor to preclude his testimony at all.

THE COURT: Did he file it with me?

MR. GRANT: I am sure he didn't, Your Honor. Oh, did I file a formal motion to preclude?

THE COURT: Yes.

MR. GRANT: Well, they haven't formally said we now call Joseph McGill.

THE COURT: Oh, okay.

MR. GRANT: In any event, I look at

Page 278.

this as akin to the subpoenaing of the Governor of Pennsylvania and the presiding Judge of the homicide calendar room: Nothing more than a fishing expedition and nothing less without an offer of proof. So at this point, Your Honor, we have two witnesses scheduled for tomorrow and they don't appear to me that they will take all day, based on anticipated cross-examination.

THE COURT: Okay. Could we notify...

THE COURT OFFICER: Who do we want to notify, Your Honor?

THE COURT: Wakshul, 3797. That we will take him first thing tomorrow morning.

THE COURT OFFICER: Yes, Your Honor.

THE COURT: Then you will have Robert Greer here?

MR. WEINGLASS: Yes.

THE COURT: Then we have the issue with Joseph McGill.

MR. WEINGLASS: Yes.

MR. GRANT: I think we should decide that now so we don't have to inconvenience Mr. McGill, and we could schedule another witness if they are not going to provide the necessary proofs. And Your Honor will have to rule on the

Page 279.

preclusion.

THE COURT: I told him to give you these proofs.

Will you, please. We will always have this problem if you don't do that.

MR. GRANT: I noticed that Counsel has resumed his seat so I assume that he is not going to address this issue. I would move to quash Mr. McGill's subpoena.

THE COURT: Would you please give him that information.

MR. WEINGLASS: I'm sorry?

THE COURT: Would you please give him the information he is requesting.

MR. WEINGLASS: Of why we are offering Mr. McGill?

THE COURT: Joseph McGill, yes.

MR. WEINGLASS: Yes, Joseph McGill was the Assistant District Attorney who prosecuted this case. He provided the Supreme Court of Pennsylvania with an affidavit in which he set forth his conduct during the selection of the Jury indicating the racial makeup of the Jury. We've had a lot of testimony about this. We've heard from Mr. Jackson on this. You've heard

Page 280.

from Mr. Gelb on this. You received an affidavit from Mr. Jackson. Tomorrow there will be an affidavit from Mr. McGill which he filed with the Supreme Court, and the brief in which we feel Mr. McGill was a party to a process that misrepresented to the Pennsylvania Supreme Court by some 30 percent the pattern of racial exclusion which the Commonwealth engaged in in picking this Jury. We intend to question him on that.

We intend to question him on his involvement with Officer Wakshul and his failure, indeed his refusal to make Officer Wakshul available when he was asked. Mr. Jackson testified under oath to this Court that in his experience district attorneys make police officers available. But when he asked Mr. McGill for Officer Wakshul, the rules changed and Mr. McGill did not make Officer Wakshul available. In fact, reported he was on vacation.

We want to talk to Mr. McGill about the materials that were made available to him from police sources drawn from files on Mr. Jamal of a political nature. And that he used

Page 281.

that information in his cross-examination of Mr. Jamal. And he also used information from the Federal Bureau of Investigation and/or the Civil Affairs Bureau of the Philadelphia Police Department in his cross-examination of Sonia Sanchez.

We want to question Mr. McGill about a document known as the Westerman MacKuch -- M-A-C-K-U-C-H -- document which was in the Medical Examiner's file indicating that another police officer had shot Mr. Jamal. And that that document was somehow removed from the Medical Examiner's Office and the file. And that Mr. Jackson, as he testified to here on the stand, got that document from another source, indicating that somebody was removing documents from the prosecution's or the police files, and that even Mr. McGill didn't see all the documents. Because according to Mr. Jackson, Mr. McGill acknowledged to Mr. Jackson that he had never seen the Westerman MacKuch document until Mr. Jackson showed it to him.

So we want to show through Mr. McGill that there was some doctoring of files here. There was some purposeful omission of documents

Page 282.

that were not turned over to the defense. A very crucial position, as Your Honor knows, under Brady versus Maryland, which we are going to explore in greater depth. I want to talk to Mr. McGill about this omission.

He launched a mission in the middle of the trial. And the mission was to bring in Debbie Kordansky for the defense. And in launching that mission he sent out his two aides, Detective Thomas and I believe a Detective Burton. And they met with Debbie Kordansky. And through Mr. McGill, they reported back to the Court. I want to know from Mr. McGill why Debbie Kordansky then wasn't produced by his mission. What happened that kept her out of here and turned her against the defense.

I want to question Mr. McGill about his own trial preparation. And his own questioning of some of the witnesses he produced.

Your Honor will recall that Mr. McGill was the prosecutor in a case called Commonwealth versus Connor -- C-O-N-N-O-R -- where a man in this City was convicted of murder for sexually

Page 283.

assaulting and shotgunning a young woman on top of an apartment house and throwing her body off from the roof, I believe. And Mr. McGill prosecuted that case, he handled the police witnesses. And Mr. Connor was convicted and he did 12 years in prison. And at the end of 12 years, the District Attorney's Office asked the Court to release Mr. Connor because the victim in that case had, it turns out, was not killed by the shotgun, but she was stabbed, I believe, 170 times.

THE COURT: That came out during the course of the trial.

MR. WEINGLASS: And that the --

THE COURT: Because I was the trial Judge in that case.

MR. WEINGLASS: So you know that a man was convicted, did 12 years, and then had to be released.

THE COURT: And who released him?

MR. WEINGLASS: The District Attorney's Office of Philadelphia.

THE COURT: No, who gave him a new trial?

MR. WEINGLASS: I don't believe -- I

Page 284.

don't believe he got a new trial, I think he was released.

MR. GRANT: He got a new trial.

THE COURT: I ordered a new trial. So when you talk about that case you are talking about me. I know about that case.

MR. WEINGLASS: I know, Your Honor.

THE COURT: Nobody was slow to move. But go ahead. Nothing was thrown from the roof.

MR. WEINGLASS: But she was killed on the roof.

THE COURT: Anything else?

MR. WEINGLASS: I want to talk to him about his preparation here, and did he exercise the kind of caution that a District Attorney ought to exercise when he has a statement from a witness, a police officer, on the night of the event that says the male Negro made no comments, and at the same time he is putting on witnesses who are going to testify about belatedly hearing alleged comments. So I think that there is a great deal in that area that we are going to cover.

But I want to be clear. We want to specifically go into Batson with him. We want

Page 285.

to go specifically into the problem around Wakshul. We want to specifically go into the question of his involvement with Westerman and MacKuch. And the fact that he didn't have in his Medical Examiner's report materials that were circuitously given to Mr. Jackson. And how was the turnovers handled in this case. And the documentary materials gathered and safeguarded.

So we have to cover those areas with Mr. McGill and those areas do pertain to the issues raised in the Petition. They involve Batson, they involve new evidence. They involve questions of Brady. They involve questions of prosecutorial misconduct.

MR. GRANT: Now you see why we wanted an offer of proof? Because really all they want to do is they want to try Mr. McGill for trying Mr. Jamal. And they would like to retry the whole case here if they could.

First of all, if they want to bring in a person who is going to tell them what went through Debbie Kordansky's mind when Debbie Kordansky said to Mr. Jackson I don't want to come in and get involved in this case, why don't they bring in Debbie Kordansky? That is the

Page 286.

horse's mouth. Why are you going to bring in the trainer of the horse or the feeder of the horse or the groom of the horse? Debbie Kordansky is available to them. I would ask to preclude testimony from Mr. McGill regarding that person when they have that person available to them. Number one.

Number two, they want to know what involvement Mr. McGill had with Gary Wakshul. One thing they could do is go up to the sixth floor and bring him down here, like they failed to do all these days we have been in Court and hesitate and seem apprehensive about doing. They could do that. And I ask that their offer of proof be rejected.

THE COURT: Who do you mean, Wakshul?

MR. GRANT: Gary Wakshul.

THE COURT: He is coming in tomorrow morning.

MR. GRANT: Yes, and I am sure that the information they need could be gotten from him on the witness stand under oath and they don't have to have it secondhand from Mr. McGill. I would ask Your Honor to preclude their inquiry into that area.

Page 287.

Materials were made available to him of a political nature. I don't know what political nature means, but the Supreme Court has ruled as to whether or not cross-examination may occur when a person gives character witness testimony and it is discovered that that person has praise or even in some way encouraged other people to kill police officers. That issue has been decided and it's moot at this point and it is not the subject of Post-Conviction Relief here in this case.

Counsel next cites -- I would ask that Your Honor limit them in that regard and preclude testimony of that nature: It's already been decided.

Whether the Federal Bureau of Investigation, over which we have no control, and the Civil Affairs Bureau of the Philadelphia Police Department, contributed information or evidence to Mr. McGill, that's of course certainly... interesting. But it never entered into any trial in which Mr. Jamal was tried by any jury in this County and therefore it's totally irrelevant. I don't think that should be the subject of an inquiry.

Page 288.

And this Westerman MacKuch document: I think what you may recall from this trial, Your Honor, is that Mr. Jackson, when he began to put on the defense case at the end of the prosecution's case-in-chief, he asked Your Honor for permission to do a preview of testimony of some people that he may want to put on and may not. But he wanted it on the record so that he could assess whether or not they'd be good for him. And he brought in Sergeant Westerman and he brought in an investigator from the Medical Examiner's Office. And at the time when a murder occurs, the Medical Examiner calls over to Homicide and says what occurred in this case and they try to get a background scenario so they could tell the doctor so as they investigate and internally examine the body they could make some sense and put into context what they are seeing.

Now, it just so happened that as soon as Mr. McGill -- it is in the record -- turned over the M.E.'s file, everything that he had to Mr. Jackson, the next day's story in the press was other cop shoots Jamal, police attempt to assassinate Jamal. That was brought to Your

Page 289.

Honor's attention; there was discussion between yourself, Mr. McGill and Mr. Jackson. How, hmm, convenient it was that on the day after he gets it, this is released to the press.

Obviously, Mr. Jackson had that document and that's the subject that they are trying to raise now, that he didn't in fact have a document. He says I did not reveal any of that stuff, Judge, and I did receive the materials but I didn't reveal it. Nevertheless, let me cross-examine these people, maybe I could put that evidence on in my case anyway. That's what happened with respect to that. That was Mr. Jackson's doing. Why should Mr. McGill have to answer for that? I would ask that you preclude inquiry in that area.

Purposeful omission of documents not turned over to the defense. There has to be some specificity and some showing made that he in fact omitted to turn over documents and what they were. They have been saying this about everybody in this whole town since they got here and they have yet to offer proof of anything. And I think the reason they don't want to have to prove it by putting on evidence, witnesses on

Page 290.

to premise their assumptions before they get to ask other people about them, is because they don't have any.

I would ask that they be precluded from asking anything about discovery. Discovery had been granted. Mr. Jackson admitted he got full discovery. He had the entire M.E. files. He had the documents. If there was anything missing from the M.E.'s documents it was because Mr. Jackson's confidential informants, or whatever they were, purloined documents that the D.A. doesn't even have. So Mr. McGill has to answer for that too? I would suggest that's totally inappropriate.

The question about Mr. McGill's own trial preparation. I don't even know what that means. Were you prepared to try this case Mr. McGill and if you weren't why not. That's ludicrous, Judge. Since when do they have the right to bring in anybody -- are you prepared to sit and preside in this case, why can't they subpoena you and ask you that? What is the relevance of that?

THE COURT: I don't know.

MR. GRANT: Commonwealth versus

Page 291.

Connor. What they want to do, Judge, is bring up some other murder case in which the Commonwealth elected to release this individual, after the granting of a new trial, not because it was tried by Mr. McGill; A, and not because he was innocent, B, but the person who may have been involved -- and there was some question about it -- was dead, and we could never prove that that dead person committed the crime because we had no evidence against him. And out of an abundance of caution, because another person in our Office 15 years later decides that we think that it is a fair thing to do since we have some suspicion, but this man was convicted duly by a jury, perhaps we will try to be fair in this situation and release the individual because the other individual who may be a suspect if he is convicted is dead, and we can't prove that either, so now they want to take that and they want to

tell Mr. McGill you are the D.A. who first prosecuted the guy and convicted him. Well, what's that stand for? It stands for nothing, except that because somebody tries to do what they think is arguably a fair procedure -- and I am sure Mr. McGill did not

Page 292.

agree with that -- that that's to be used at a PCRA for Mr. Jamal? I'm not getting that. And the question is did he exercise proper caution in preparing this case.

Your Honor, I would suggest to Your Honor and submit that if they want to inquire of Mr. McGill with respect to the Batson issue, I think they should be given full latitude so this claim could be litigated once and for all, whatever their additional evidence is. I think everything else they have mentioned -- Gary Wakshul could be gotten from Gary Wakshul. Debbie Kordansky can be gotten from Debbie Kordansky. And all the rest of this is a witch hunt and I would ask Your Honor to so find and preclude an inquiry in that regard.

MR. WEINGLASS: If I could just be a little more specific for the benefit of Counsel. When I asked about the preparation of, Mr. McGill's preparation, I want to inquire as to the following: Was he aware of the use of polygraphs in this investigation. We have evidence that it was used. And was it used selectively.

Two, was he aware of photo arrays used

Page 293.

for purposes of identification. We have some indication it was used. We want to know from Mr. McGill if it was used.

Three, when he put Dr. Hoyer on the stand, who was the Medical Examiner, was he aware of the fact that Dr. Hoyer had found and so indicated on the Medical Examiner's report that Officer Faulkner was shot with a .44 caliber bullet, and that Mr. Jamal's alleged weapon was a .38 caliber.

Finally, did he know when he put Cynthia White on the stand what Veronica Jones testified to. Namely, that she was given the same offer that Cynthia White apparently was given by the police officers at the 6th precinct. And that is if she would turn against Mr. Jamal and offer testimony against him she could work her corner without fear of arrest.

So those are the specific areas. All of them deal with questions of Brady. All of them deal with questions of the prosecution having evidence of innocence and not turning it over. They deal with questions of bias in the investigation.

And I refer the Court to a very recent

Page 294.

United States Supreme Court's decision called Kyles, which came down maybe two months ago, indicating that if there is bias in the investigation, that's tantamount to a Brady violation.

So we would like to ask Mr. McGill these questions. And as the chief prosecutor of the case he is in a position to answer. Because he put the case together, he prepared the case, he either turned over or withheld information from the defense. He either knew of deals that were made with witnesses or he didn't know of deals that were made with witnesses and he should have known. And he either knew that Dr. Hoyer made an entry that was favorable to the defense and he chose not to bring that out in front of the Jury even though he called Dr. Hoyer for whatever reasons. But all of these areas impact the question of Brady. They impact the question of bias, in the investigation. They impact the issue of a fair trial. They impact on issues of depriving the Defendant of the opportunity to present a defense by not having Wakshul, by not having Debbie Kordansky. And they also impact Batson, which is the use of 11

Page 295.

peremptory challenges for racially-motivated reasons. All those reasons are essential for the testimony that Mr. McGill could offer on this record. And we ask that we have a full hearing and a complete hearing and an opportunity to present those matters on the record of this proceeding.

MR. GRANT: And that's what we anticipated happening when he gets on the stand: Oh, we have three more that we forgot to mention to you when we were first talking about what we were going to do with him.

Number 1, polygraph. I subpoenaed a person who could answer that question directly for him. And that is the individual he claimed in his affidavit was given a polygraph. He tells the male not to come to Court. I asked for a bench warrant and he comes and begs and pleads on the man's behalf. Do you want to know about the polygraph? Ask Dessie Hightower. He signed an affidavit. Number one.

Number two, in the State of Pennsylvania, unless you are the defendant and you are given a polygraph examination, there is no such discovery on polygraph examinations

Page 296.

because it's not discoverable. And I could tell you without being the trial counsel in this case whether a polygraph exam was given, and I certainly don't have to. So you don't need Joe McGill to tell you that information. You have the witness, you have the affiant. He signed his affidavit, he claims he was given one. Put him on the stand.

As to Cynthia White, that she was allowed to work her corner without fear of arrest if she would just give testimony favorable to the Commonwealth, this was also extended to another witness, allegedly. I think if Counsel does his research on the case and looks at Cynthia's arrest record, that she was arrested not even 96 hours later in the same area, and that she was rearrested again five days after that for the same crime that he is claiming she has immunity from us for. That is totally ludicrous and he knows it. And he could prove it is ludicrous. But he will never bring it out unless I bring it out, so I am bringing it out. That's ridiculous.

And as to Dr. Hoyer: Since Mr. Jackson had more Medical Examiner case files

Page 297.

than Mr. McGill, and he is Counsel for Mr. Jamal, why isn't he bringing out, if he thinks it is evidence favorable to the Defendant, that information? Your Honor offered to him, when he was going into areas, going into qualifying him as a ballistician, as a neutron activation analyst, gunshot residue analyst, you said Mr. Jackson, he was offered for cause of death, manner of death. If you want to call him as your witness, then you can call him as your witness and qualify him in all these areas. But at this time he is not qualified to give those opinions. Mr. Jackson declined to bring him in and put him on for those reasons. And I think Mr. Jackson knew very well why. The examination came out, he measured the bullets. He doesn't give calibration but he measured the bullets and those bullets happened to be within a millimeter of exactly what the ballisticians found, and they weighed within milligrams of what the ballisticians found them to weigh. And Mr. Jackson knew that if he tried to make that an issue as Counsel tries to make it an issue, he was going to eat it on the witness stand from both Dr. Hoyer, Larry Paul the ballistician, and

Page 298.

William Carlin, the person who performed the tests.

So Counsel could bring that out by bringing in Dr. Hoyer, Dessie Hightower, and he could bring in the arrest record of Cynthia White to show how much latitude she got from the Commonwealth.

Therefore, I would ask you to preclude those areas. And tomorrow they will come up with some new areas when he is on the stand they will give me. That's why I am asking Your Honor to specifically and with exactitude limit the areas that they will be inquiring into with a person who is not an affiant, who is not named to support any of their filings, and he has not made any showing up to now as to any showing as to what he would prove. Thank you.

THE COURT: I think you have to lay your foundation first. He is giving you the opportunity to call these other witnesses. I think that's the way you should handle it. We will keep McGill in abeyance for the time being.

Anything else?

MR. GRANT: No, Your Honor.

THE COURT: Well, is there anyone that

Page 299.

you need the District Attorney to help you to bring in tomorrow? Besides Wakshul and Greer.

MR. GRANT: That is certainly not going to take an entire day, Your Honor. And I would ask --

THE COURT: That's what I am saying.

MR. GRANT: I would ask who else is coming in.

THE COURT: Do you have somebody else that you need help?

MR. WEINGLASS: Yes, we can use your assistance to bring in Officer Trombetta, who was subpoenaed today, I believe.

MR. GRANT: Yes.

THE COURT: Trombetta.

MR. GRANT: I never heard of him either. Didn't get any affidavit from him, no offer of proof for him either.

THE COURT: You see why when you don't do these things --

MR. GRANT: Because they don't want to face the music that they don't have a case, and they don't want to put the evidence on to --

MR. WEINGLASS: Counsel should read the music. Trombetta, for Counsel's

Page 300.

information, was Wakshul's partner. And he was there that night and he was in the hospital and he was standing next to Mr. Jamal and he didn't hear a thing. And we want to put him on the stand.

MR. GRANT: Well, I guess you are going to have to serve him yourself and I would object to you doing this also.

MR. WEINGLASS: This shows you how bona fide the offer of assistance is. When we take him up on the offer we get you're going to have to serve him yourself, Counsel. Same thing that happened to Mr. Jackson at the trial.

MR. GRANT: Judge, if they wanted to bring in witnesses that they have listed, instead of everybody in the world that comes to their mind, instead of putting on those claims that they have made to the world right there -- they have all these people available -- we will go find any of these people which they want to find, of course, but these people. We are not interested in pursuing their wild goose chases around the City for the --

MR. WEINGLASS: I want to put on the man standing next to Mr. Jamal when others said

Page 301.

he made a statement. And that man, who is a police officer in the City of Philadelphia, said that Mr. Jamal made no statement. That is as specific as you can get.

THE COURT: Okay, serve him. Did you serve him with a subpoena?

MR. WEINGLASS: We did serve him. We are asking for the District Attorney to see that he is brought in.

THE COURT: Is he still a police officer?

MR. GRANT: I don't know anything about it, Judge. But just because they want to serve Judge Paul Ribner and bring him in, or the Governor of Pennsylvania, bring them in, I am not going to help them do that. Because that is ridiculous and they don't have a right to do it. They have no basis in law or in fact for doing it. He is not one of their affiants. They have never used him as a witness. But what they want now, they want to avoid doing what they have to do. They want to keep inconveniencing witnesses. Everyday there is going to be somebody different. Anybody but those people. And that's why I am not going to assist him in

Page 302.

doing that, Judge.

THE COURT: Why don't we get the people that you say you have all these affidavits for?

MR. WEINGLASS: We are proceeding in order. Tomorrow morning, police. Tomorrow morning we are hearing from Officer Gary Wakshul.

THE COURT: Right.

MR. WEINGLASS: It seems to us that in the interest of an orderly proceeding, the next witness or the witness after that should be his partner. That's the way to proceed. We've subpoenaed the man. Now we've asked for the D.A., who has offered his assistance, to, quote, to use their street vernacular, to put up or shut up. And now they very clearly are shutting up because they don't want to put up. They don't want Trombetta, who they don't even know who he is, but they certainly don't want him near this Courtroom testifying under oath. That's very obvious.

MR. GRANT: He still hasn't told you who is next besides Wakshul and Greer.

MR. WEINGLASS: Trombetta.

Page 303.

MR. GRANT: I am going to object and move to preclude whoever,this person is.

MR. WEINGLASS: Counsel is now moving to preclude people he doesn't know anything about.

THE COURT: Because you just told him at the last minute. How is he going to be prepared to preclude him before?

MR. WEINGLASS: Anybody who spent five minutes with this record --

THE COURT: You have 19 issues here and you have a lot of affidavits. Why don't we get some of those people in first?

MR. WEINGLASS: Oh, Your Honor has heard from them. You have heard from Anthony Jackson, affidavit number one.

THE COURT: Okay.

MR. WEINGLASS: Tomorrow you will here from Robert Greer, affidavit number two. We are taking them in order. And we are taking the issues in --

THE COURT: Who is affidavit three?

MR. WEINGLASS: Different issue. We will call him within two or three days as we get to that issue.

Page 304.

THE COURT: Wait awhile. But you said he is number three. Why don't --

MR. WEINGLASS: No.

THE COURT: Are they --

MR. WEINGLASS: I am not saying he is number three. I am saying --

THE COURT: I asked you who is number three?

MR. WEINGLASS: He is in the Petition, the third affidavit addressing a different issue than the first two.

MR. GRANT: George Fassnacht.

THE COURT: Oh, Fassnacht. Why don't we call Fassnacht?

MR. GRANT: He has been on my subpoena on call and he is awaiting a call from us. That's why if we don't have a full schedule tomorrow I will be asking to put him on the stand.

THE COURT: I asked you for this. And you said you want to go in that order you put them down. He's number three. Why don't we call him tomorrow?

MR. WEINGLASS: We are dealing with the order correctly, issue by issue. He

Page 305.

addresses a different issue. I am explaining to the Court that tomorrow's issue is --

THE COURT: Well, you told me that you are going according to the affidavits.

MR. WEINGLASS: No, I never said that, you mis heard me. Your Honor mis hears me all the time. There is something wrong in here.

THE COURT: Well, there is something wrong that you are not being very explicit, Counselor.

MR. WEINGLASS: I am as explicit as possible. The Court has aversion --

THE COURT: You are not.

MR. WEINGLASS: The Court has a certain aversion which is obvious in the way you selectively hear things.

THE COURT: I told you in the very beginning: Give me a list of all your witnesses that you intend to call. Give him the affidavits of these people so that he could then be prepared to cross-examine them. You are not doing that, Counselor.

MR. WEINGLASS: You have the list.

THE COURT: I don't have any list. You never gave me a list.

Page 306.

MR. WEINGLASS: Well, that's --

THE COURT: Don't tell me you gave me a list.

MR. WEINGLASS: Your Honor sat on the bench and read from two lists we gave you.

MR. GRANT: Neither one of which was accurate and neither one of which any of the witnesses showed up on any of those days. And I am tired of getting those bogus lists from him.

MR. WEINGLASS: Counsel should take a rest.

THE COURT: Get a list by tomorrow morning so we know where we are going. Get that list together.

MR. GRANT: Your Honor, may I bring in witnesses tomorrow? Since he only has two and it is only going to take us to noon. Then what will we do?

THE COURT: If he doesn't have any witnesses I will listen to your witnesses too.

MR. GRANT: Thank you.

THE COURT CRIER: This Court stands recessed until 9:30 tomorrow morning.

(The hearing was adjourned for the day at 5:15 p.m.)

Page 307.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

1. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358

- - - - -

PCRA Hearing

- - - - -

Tuesday, August 1, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Gary Wakshul	3	108	123	--
Robert Greer	171	182	243	252

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
11	Investigation record (Wakshul)	28
12	Investigation record (Wakshul)	30
13	Investigation record (Wakshul)	30
14	Vacation schedule	97

Page 3.

Gary Wakshul - Direct

(At l0:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - - -

MR. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MR. WILLIAMS: The Petitioner Mr. Jamal calls to the stand Gary Wakshul.

- - - - - -

Gary Wakshul, having been duly sworn, was examined and testified as follows:

- - - - - -

DIRECT EXAMINATION

- - - - - -

BY MR. WILLIAMS:

Q. Sir, let me make sure I pronounce your name correctly. It's Wake-shul?

A. That is correct.

Q. Good morning.

A. Good morning.

Q. Now, Mr. Wakshul, you are appearing here under subpoena?

Page 4.

Gary Wakshul - Direct

A. That is correct.

Q. And were you subpoenaed by, which party were you subpoenaed by?

A. The subpoena didn't say but I am assuming the defense.

Q. Now, you understand the nature of these proceedings, do you?

A. Ahh, only what I have heard about them; I don't know the exact nature, no.

Q. All right. Can you tell us what is your understanding of these proceedings?

MR. GRANT: Objection, Your Honor. That's irrelevant.

THE COURT: Sustained. Just ask him questions.

BY MR. WILLIAMS:

Q. Do you understand, Mr. Wakshul, that Mr. Jamal has filed a Petition for a new trial?

A. I had heard that.

Q. Now, you were a police officer when Police Officer Faulkner was killed?

A. That's correct.

Q. Did you know Police Officer Faulkner?

A. Yes.

Q. Did you work in the same district as Police

Page 5.

Gary Wakshul - Direct

Officer Faulkner?

A. Yes.

Q. And that is the 6th District?

A. Yes.

Q. Were you friends with Police Officer Faulkner?

A. I would say so.

Q. And I take it that you were upset when Officer Faulkner, when you learned of Officer Faulkner's death?

A. Very.

Q. Is it safe to say, Mr. Wakshul, that you hope that the Commonwealth prevails in this proceeding?

MR. GRANT: Objection, Your Honor.

THE COURT: Sustained.

MR. WILLIAMS: I think it goes to his bias.

THE COURT: Not necessarily. Whether or not anybody wins depends on the Court's decision, so.

MR. WILLIAMS: I'm sorry?

THE COURT: I don't think it has anything to do with bias, Counsel.

BY MR. WILLIAMS:

Q. Now, Mr. Wakshul, have you and I ever met?

A. Yes.

Page 6.

Gary Wakshul - Direct

Q. And we met in the witness room back there?

A. That's correct.

Q. Did we engage in a conversation?

A. A short one, yes.

Q. And did I introduce myself as a member of the defense team?

A. Yes.

Q. And do you recall I attempted to talk with you about what I would like you to testify about?

A. Yes.

Q. And do you recall what your reaction was to my request?

A. I said, I believe, something to the effect well, we '11 discuss it in the Courtroom.

Q. In other words, you refused to discuss what you would talk about here in Court in the witness room?

A. I made a decision at that point not to discuss it with anyone, yes.

Q. By the way, have you talked with any member of the prosecution team?

A. I spoke to Mr. Grant on the phone.

Q. Okay, when was that?

A. It would be a couple weeks ago.

Q. And was anybody present on your end of the

Page 7.

Gary Wakshul - Direct

phone?

A. I don't understand.

Q. Were you talking alone or were there other people in the room when you were talking?

A. Umm, I think Mr. Witcher was there.

Q. And who is he?

A. He is a detective.

Q. Where were you when this phone conversation took place?

A. I was in Courtroom 602.

Q. Okay. What did you and Mr. Grant talk about?

A. Umm, Mr. Grant spoke to me about the case, how that the defense would probably want to call me, and he wanted to make sure that I was going to be there one way or the other. And that was the gist of the conversation. It was very short, that I recall.

Q. Was there any discussion about the substance of your testimony, or possible testimony?

A. No.

Q. Was there any discussion about any police reports or interviews that you gave back in 1981 and 1982?

A. Not in that conversation, no.

Q. Was there any conversation?

A. I don't recall if I mentioned to Mr. Grant or

Page 8.

Gary Wakshul - Direct

he mentioned to me anything about them. There was a point where I think Detective Witcher asked me if I could stop at Mr. Grant's office and look at those -- or review those reports. And I don't think that was the same day, I think that was a little later. And I did go over there. Mr. Grant was not there.

Q. So you went to the District Attorney's Office?

A. That is correct.

Q. And did you in fact review some reports?

A. Yes.

Q. What reports?

A. Three statements.

Q. What statements did you review?

A. They were three statements, two of them taken by Homicide, I believe, and one by Internal Affairs.

Q. And those statements were from who?

A. Myself.

Q. Did you recognize those statements when you reviewed them?

A. Yes.

Q. And did you discuss with anyone from the District Attorney's Office the substance of those statements after you had reviewed them?

A. Are you talking about Mr. Grant or an attorney?

Page 9.

Gary Wakshul - Direct

Q. Any member of the --

A. Nobody that I know from the District Attorney's Office, no.

Q. Well, let me ask it this way. Did you discuss what you had just reviewed in the District Attorney's Office with anyone?

A. Well, when Mr. Witcher was there and he asked me if I had any questions and I said no, and that was the only discussion we had on it.

Q. Do you know -- what is it, Richer?

A. Witcher.

Q. Do you know what role Mr. Witcher plays in the defense of this case from the Commonwealth's side?

A. I believe he's just assisting Mr. Grant in contacting people or moving things from one place to the other. I really don't have any other information on it.

Q. Did you discuss at all any aspect of your involvement in the investigation of the shooting death of Officer Faulkner with anyone from the Philadelphia Police Department?

A. Are you talking in this period of time or originally?

Q. Yes, in this period of time?

A. No.

Page 10.

Gary Wakshul - Direct

Q. I will go back to 1981 and '2 later.

A. No.

Q. Now, Mr. Wakshul, when did you join the Philadelphia police force?

A. August 22nd, 1977.

Q. And what is your current occupation?

A. I'm a Tipstaff 2 for the Court of Common Pleas.

Q. Can you explain that to an out-of-towner?

A. Court Crier.

Q. Okay, Court Crier. So at the time of this, of the shooting and then the subsequent investigation, you were a member of the Philadelphia police force for under five years?

A. That's correct.

Q. Can you tell us why you left the police force?

A. I was dismissed from the Police Department.

MR. GRANT: Objection. Move to strike.

THE WITNESS: May I explain?

THE COURT: He's already said it, it's a little late.

THE WITNESS: May I explain my answer, Your Honor?

THE COURT: Sure. If you want to give

Page 11.

Gary Wakshul - Direct

an explanation, go ahead.

THE WITNESS: I was dismissed for an incident that did not occur. I have subsequently gone through court and the Pennsylvania Supreme Court and awarded my job back.

BY MR. WILLIAMS:

Q. And when will you rejoin the police force?

A. I, right now I am in negotiations with the City Solicitor's Office, I believe, for the actual settlement, so I have no idea what the final outcome will be.

Q. So it is your desire to be hired by the Commonwealth as a police officer again?

MR. GRANT: Objection.

THE COURT: Could you rephrase the question somehow.

BY MR. WILLIAMS:

Q. Do you wish again to become a police officer?

MR. GRANT: I have an objection, Your Honor. I thought we were dealing with the events that transpired in 1983. '81, I'm sorry.

THE COURT: What is the purpose of that?

MR. WILLIAMS: The purpose, again,

Page 12.

Gary Wakshul - Direct

Your Honor, goes to -- I hesitate to explain myself in front of the witness -- but it does go to the bias issue.

THE COURT: All right. I will let it in.

MR. WILLIAMS: You will allow it?

THE COURT: Yes.

MR. WILLIAMS: Thank you, Your Honor.

THE WITNESS: Could you repeat?

BY MR. WILLIAMS:

Q. Do you wish to again become an employee -- I'm sorry -- a police officer here in the State of Pennsylvania?

A. At this point it is not my intention to rejoin the Police Department.

Q. I thought you had litigated the matter and for purposes of becoming a police officer?

A. No, I only litigated the matter to get back my status for my years of service, retirement and back pay and things like that.

Q. I see. Now, between August of 1977 when you joined the force, and 1982, had you ever taken a suspect into custody?

MR. GRANT: Objection, Your Honor. In this case he took no one into custody and I

Page 13.

Gary Wakshul - Direct

think these questions are all irrelevant to his lack of testifying at the trial but giving three statements to the investigating detectives.

MR. WILLIAMS: Your Honor, I will make it abundantly clear. I will connect this up with future questions. This is merely foundational questions, questions that I will ask leading to questions I will ask later. It's merely background and foundation.

THE COURT: All right, I will let him do it and later on I will strike it if it's not relevant, okay.

MR. GRANT: Thank you, Your Honor.

MR. WILLIAMS: Thank you.

BY MR. WILLIAMS:

Q. So the question again, Mr. Wakshul, is between 1977 when you joined the police force, and 1982, had you ever been involved in the taking into custody of an individual?

A. Yes.

Q. Did you receive training in that regard?

A. That's a little broad a subject.

Q. Let me put it this way. If someone were to ask me to take someone into custody I wouldn't know how to do it. When you joined the police force did

Page 14.

Gary Wakshul - Direct

somebody instruct you on the proper procedures in taking an individual into custody?

A. I was trained in the Police Academy in the use of handcuffs and of positioning of bodies when you take them into custody. The only experience that I learned it from was actual participation in arrests and those types of things. So I had some training in the Police Academy and I had some on-the-job training as far as taking people into custody.

Q. And between 1977 and 1982, had you ever in that time period been privy to a suspect or an individual in custody having made a statement?

A. What do you mean by statement?

Q. Well, a suspect confesses or utters a remark or anything of that sort, has that ever happened?

A. I have, I have had people utter a remark, yes.

Q. Have you ever had any individual in custody literally confess to a crime between the dates of 1977 and 1981?

A. One person.

Q. Now going back to the Police Academy: Have you ever received training in how to treat and record statements that are taken by people in custody?

(Pause.)

A. I don't recall if I ever had any such

Page 15.

Gary Wakshul - Direct

training.

Q. In your experience, have you learned how to treat and record statements by persons who are in custody?

THE WITNESS: Could you repeat that, please.

MR. GRANT: I would object unless that experience is limited to the time period from 1977 until 1981 when this event occurred.

MR. WILLIAMS: That's fine, Your Honor.

BY MR. WILLIAMS:

Q. Yes. Between the time frame my brother at the bar here mentioned, 1977 and 1981, had you ever received any training or instruction or somehow learned through experience how to handle a statement that a suspect gives?

A. I don't believe there's any one policy. There are several methods of recording that if that's necessary. But I don't believe there's any one, set policy for it.

Q. Could you tell me what those methods are?

A. If I was the arresting officer I might, I might, if there was room, put something on a 48. Or more than likely I would tell it to a detective who

Page 16.

Gary Wakshul - Direct

was investigating any arrest. Or any subsequent investigation, or at the bar of the court.

Q. I'm sorry, what was the last?

A. Or at the bar of the Court.

Q. What is a 48?

A. A 48 is an incident report, it's the initial report done by a police officer.

Q. Now, as a young officer did you learn that statements by a suspect, especially when a suspect incriminates himself, could be valuable evidence in a prosecution?

A. Did I learn that?

Q. Yes.

A. No. But I understood that.

Q. You understood that. And can you make the distinction between learning and understanding? Because it's obvious, isn't it, that when somebody makes an incriminating remark it doesn't take police training to understand that that incriminating remark could be very important in the prosecution of that individual?

A. I'm sure it could be.

Q. And you would agree that it doesn't take any legal training to understand the importance of an incriminating remark by a suspect, right?

Page 17.

Gary Wakshul - Direct

A. I wouldn't necessarily agree with that, no.

Q. Do you think it does take legal training?

A. I think it takes a certain amount, yes.

Q. Okay. If you had a suspect in custody, and that suspect looked you in the eye and said officer, I just shot a man, wouldn't you think that it is obvious that that remark is important?

(Pause.)

A. Yes.

Q. And it wouldn't take three years and thousands and thousands of dollars of legal training to know that it's important, right?

A. I don't think it would. That particular statement.

Q. And you say that particular statement because when a person says officer, I shot that guy, it's a pretty stark statement, right?

A. By stark you mean?

Q. Readily understandable.

A. For the purposes of what you are saying, yes.

Q. Now, as a young officer you also learned, did you not, the significance of thorough and accurate police reports?

A. Yes.

Q. Can you explain to the Court why thorough and

Page 18.

Gary Wakshul - Direct

accurate police reports are important in your work as a police officer?

A. Well, for the administration of justice, to make sure that whatever information that you have is properly conveyed to the court or to whoever is going to be needing it.

Q. For the proper administration of justice it's important to have thorough and accurate police reports?

A. I would imagine so, yes.

Q. And because it's important for the proper administration of justice, when you were a young officer did you take the preparation of police reports and the assisting of others in preparing police reports seriously?

A. Yes.

Q. Did you understand between this time period of 1977 and '81 that police reports can be and in fact are used in criminal trials?

A. Yes.

Q. And did you understand between that time frame -- and so I won't encumber the record with this, when I'm questioning you I'm questioning you solely with respect to this time frame, you understand?

Page 19.

Gary Wakshul - Direct

A. Hmm-hmm.

Q. Okay. Did you understand that the prosecution, the Commonwealth uses police reports to prepare for trial?

A. Yes.

Q. And I take it in this time period before December 9th, 1981 you had been involved in other cases where you had to prepare police reports or you assisted others in preparing police reports? Right?

A. Yes, I've prepared police reports before that time.

Q. And you have been interviewed by investigators and detectives who subsequently then prepared police reports?

A. I would imagine so, yes.

Q. Now let's turn our attention to the early morning hours of December the 9th, 1981, okay. You indicated that you had about, you had over four years on the force?

A. I didn't think it was that long.

Q. Well, you said August of '77. Is my math incorrect? Four, yeah, a little over four years?

A. Yeah, you're right.

Q. And who was your partner?

A. Officer Steven Trombetta.

Page 20.

Gary Wakshul - Direct

Q. Now, in the early morning hours of December 9th, 1981, did you have occasion to be at Jefferson Hospital here in Philadelphia?

A. Yes.

Q. What was your assignment, Mr. Wakshul, at Jefferson Hospital?

A. I had transported Mr. Abu-Jamal to Jefferson Hospital under radio orders for examination.

Q. Radio orders for examination?

A. That is correct.

Q. What does that mean?

A. Ahh, we had Mr. Jamal in the back of our wagon, we were transporting him to Homicide when we received an order over Police Radio from CIl to take him to the hospital. So we changed our destination to the hospital, Jefferson Hospital, and took him inside for an examination.

Q. What was your understanding while you were transporting Mr. Jamal to the hospital as to Mr. Jamal's purpose for being in police custody, or reason for being in police custody?

A. I believed that he was a suspect in the matter, or under investigation in the matter of the shooting of Officer Faulkner.

Q. So he was a suspect in the killing of a

Page 21.

Gary Wakshul - Direct

brother officer?

A. That's correct.

Q. And that, not to put it too finely, is a very, very serious matter?

A. Yes.

Q. Probably the most serious matter that a police officer could be involved in; am I right about that?

A. I would imagine so.

Q. And when you got to the hospital, Jefferson Hospital, what was your assignment?

A. My assignment was as I stated: I was to stay with him until released. And that's about what I did.

Q. Was that also Officer Trombetta's assignment?

A. Transport and guarding, yes.

Q. And you had to guard Mr. Jamal because, as you said, he was a suspect in a very, very serious matter?

A. Yes.

Q. And did you take that job seriously, Mr. Wakshul?

A. Yes, I did.

Q. Did it appear that your partner Officer Trombetta, did it appear that he took it seriously?

MR. GRANT: Objection. Calls for

Page 22.

Gary Wakshul - Direct

speculation.

MR. WILLIAMS: I am asking for his appearance, Your Honor. If he doesn't know he doesn't know.

MR. GRANT: How does a person appear serious about their job?

THE COURT: You have to rephrase your question somehow.

MR. WILLIAMS: Well, Your Honor appears serious about your job.

THE COURT: I don't know how you would appear serious.

MR. WILLIAMS: Very well.

THE COURT: I don't know that there is any facial expressions or any other gestures. You have to save that for Officer Trombetta.

MR. WILLIAMS: Very well.

BY MR. WILLIAMS:

Q. Now, besides Officer Trombetta who was your partner, who else was with you while you were guarding Mr. Jamal?

A. I couldn't tell you. I wasn't with him a hundred percent of the time. And there were several other officers there, none of whom I recall.

Q. Do you recall if a police officer by the name

Page 23.

of Officer Bell -- B-E-L-L -- was present while you were guarding Mr. Jamal?

A. I have no recollection of him being there.

Q. Do you know what Officer Bell looks like?

A. Yes.

Q. So if he had been there you would have recognized him?

A. I might have recognized him but I don't recall him being there.

Q. Let me make sure we are clear. Back in the early morning hours of December 9th, 1981, you were familiar with the appearance of Officer Bell?

A. Yes.

Q. And if Officer Bell had appeared in front of your you would have recognized him as Officer Bell?

A. I would have recognized him.

Q. As Officer Bell?

A. As Officer Bell.

Q. When you were with Mr. Jamal, were there hospital personnel present?

A. Yes.

Q. Do you remember how many?

A. No idea.

Q. Do you remember who they were?

A. No, I do not.

Page 24.

Q. Do you remember the gender of the hospital personnel?

A. No, I do not.

Q. Do you remember if there were any female hospital personnel?

A. No.

Q. Were there any security guards from the hospital among those hospital personnel?

A. I couldn't tell you to this day who was there or how many people of any sort.

Q. Do you recall if any were security guards?

A. No, I do not.

Q. Now, while you were at the hospital guarding Mr. Jamal, you were fully capable of performing your job?

A. I don't understand the question.

Q. Well, you weren't under the influence of any medication or drugs or alcohol or anything like that?

A. No.

Q. That would affect your ability to perform as a police officer?

A. I was not under the influence of any substance at that time.

Q. And so you were mentally alert?

A. I wouldn't say I was at all times, no.

Page 25.

Q. Okay. You say you weren't mentally alert at all times. Can you explain that for us?

A. I was mentally alert when I assisted in getting Mr. Jamal into the hospital and placing him on the floor. At that point Mr. Jamal, there was some discussions, some talk going all around, but I heard Mr. Jamal say I shot him and I hope the mother-fucker dies. I was stunned at that point. I stumbled back into a little alcove and started to cry. Covered myself by going outside, closing up the wagon and getting myself together.

I then went back into the hospital at some period after that. And I have... very little recollection of anything that happened after that point except for some snapshots in my mind of seeing Danny Faulkner's dead feet lying on a gurney, of, of standing next to someplace where I saw Mr. Jamal, and then leaving.

I remember after that being in Homicide but I have no recollection of anything further that night until early in the morning of that morning, the following morning, when I was leaving work in my car, running into a cement pole with my car. And at that point I, I had more control over myself at that point.

Page 26.

Q. After you had hit the cement pole, the experience jarred you to the point where --

A. I realized at that point that I had to pull myself together or I would not be able to get home that morning.

Q. All right. Now let's pick up on what you've just said. You heard Mr. Jamal, as you say, utter the words I shot, I shot him -- what was it again?

A. Him.

Q. I shot him and I hope the mother-fucker dies?

A. Yes.

Q. Did that remark lead you to believe to any degree that Mr. Jamal was the person responsible for the death of a colleague of yours?

A. Are you talking about that night or subsequently?

Q. No, when you heard that remark, when you heard that remark that you said came from Mr. Jamal, did it lead you to believe that Mr. Jamal was responsible for the death of a colleague of yours?

A. I can't tell you what I felt that night exactly then. The remark itself was something so stunning that I was just out of it for most of the rest of the night.

Q. It was stunning. Right?

Page 27.

A. Yes, sir, I'll never forget it.

Q. It was stunning because of it's bravado, right?

A. By bravado you mean?

Q. I shot the man and I hope the mother-fucker dies?

A. I can't say that I recall exactly how it was said. I heard the words approximately 5 feet away from me. And just the weight of the words alone was enough to shock me.

Q. Ahh. It was stunning and now you are saying the weight of the words was shocking. They were very weighty words, were they not?

A. Yes.

Q. Weighty words because a man had just confessed to a killing?

A. Well, at that time I didn't know Officer Faulkner was dead.

Q. Pardon me. Weighty words because the man confessed to shooting a brother officer?

A. Yes.

Q. And weighty words means words that are significant, right?

A. Words that are significant, yes.

Q. Weighty words that are important?

Page 28.

A. Yes.

Q. Now -- pardon me one moment.

(Discussion held off the record at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. Mr. Wakshul, now I want to direct your attention to the statements that you mentioned earlier in your testimony that you reviewed in the District Attorney's Office. Do you understand?

A. Yes.

Q. Now, on December 9th, 1981 at about 5:50 a.m, did you meet with a fellow officer by the name of Kaminsky, detective Kaminsky or investigator Kaminsky?

A. I have no idea who he was.

MR. WILLIAMS: Can I have this marked as defense exhibit... 11.

THE COURT OFFICER: 11.

MR. WILLIAMS: Thank you. Defense Exhibit 11. I would like you to look at Defense Exhibit 11. Direct your attention to the upper, right-hand corner.

(Investigative report was marked Defense Exhibit D-l1 for identification.)

Page 29.

THE COURT OFFICER: D-11, Your Honor.

(Handing.)

THE WITNESS: Thank you.

THE COURT: Are we using D or P?

THE COURT OFFICER: D-11.

THE COURT: P-ll?

THE COURT OFFICER: Defense 11.

MR. GRANT: D as in dog.

THE COURT: I know. But have we been using P before? Are all of them being changed over to D so we keep an accurate record?

THE COURT OFFICER: So far everything has been submitted as D.

THE COURT: Nothing P. I thought I heard P before. But okay, go ahead.

BY MR. WILLIAMS:

Q. Now, does that indicate that you were interviewed by a police officer by the name of Kaminsky?

A. Yes.

Q. Now, on December 16th, a week later, were you again interviewed by a member of the Philadelphia police force?

A. I can't say I remember the date but I remember that there was a second interview.

Page 30.

MR. WILLIAMS: Let me have this marked Defense Exhibit D-11.

THE COURT OFFICER: 12, sir.

MR. WILLIAMS: I'm sorry, 12.

(Investigative report was marked Defense Exhibit D-l2 for identification.)

THE COURT OFFICER: D-12, sir (displaying).

MR. GRANT: Yes. Thank you.

THE COURT OFFICER: D-12, sir (handing).

MR. WILLIAMS: And then if I could, I would also like to mark as Exhibit, Defense Exhibit 13 a statement from February llth, 1982.

(Investigative report was marked Defense Exhibit D-l3 for identification.)

THE COURT OFFICER: D-13, sir (displaying).

MR. GRANT: Yes, sir.

BY MR. WILLIAMS:

Q. Now, on the February 16th -- I'm sorry, the December 16th statement, Defense Exhibit 12 -- do you see that --

A. Yes, sir.

Q. -- Mr. Wakshul? You were interviewed by a man

Page 31.

named Detective Thomas?

A. I see that.

Q. And that occurred, that interview occurred at about 6:50 p.m?

A. I see that, yes.

Q. Now, and then you have the February llth, 1982 report. You were then again interviewed, were you not?

A. Yes.

Q. And that was by an investigator by the name of Goldberg?

A. I see that name, yes.

Q. Let's focus on Defense Exhibit 11. That is the statement from December 9th, 1981, at 5:50 a.m. Do you see that?

A. Yes.

Q. When you were being interviewed for that statement, the December 9th statement, did you have any reason to deceive detective or investigator Kaminsky as to what you observed in your duties that morning?

A. No.

Q. You wanted to be truthful with the investigator; am I right?

A. I would imagine so.

Page 32.

Q. And in fact, is it safe to say that on December 9th you wanted nothing more than to have the person responsible for the killing of Officer Faulkner to be punished?

A. I can't say how I felt at that time.

Q. Well --

A. I have no recollection of how I felt while giving this statement, if this is my statement.

Q. Well, let me put it this way: Would it be safe to say that you would have wanted the person responsible to be punished?

A. I would imagine so.

Q. Now, in the December 9th interview you tried to provide important details to this investigator to help the investigator?

A. Sir, I have no recollection of this statement at all.

Q. Then you could use the statement to help your recollection. Because it is a long time ago.

What if anything in that interview were you able to note for the interviewer regarding the time that you received a radio call?

A. You want me to read this and find that information?

Q. Yes, if it assists you, yes.

Page 33.

A. In response to the first question I told the investigator that the time of the incident was approximately 3:54 a.m.

Q. So you were able to note the time for the investigator?

A. Apparently.

Q. What if anything were you able to note for the investigator regarding the color of an automobile driven by a person who informed you that an officer was shot?

A. In response to the same question I noted that it was a dark-colored auto, possibly a Ford, with New York license plates.

Q. So you were able to note the color of the automobile and the fact that it had New York license plates?

A. I was unable to note the color. It was dark. I was unable to note the exact make. It was possibly Ford. But I do say bearing New York license plates.

Q. You were able to give your impression as to the complexion of the car, that it was dark?

A. Apparently from this, yes.

Q. And you were able to give a sense of it's make, that is it appeared to you as a Ford?

A. According to my response, yes.

Page 34.

Gary Wakshul - Direct

Q. This was in the dead of night, was it not?

A. At 3:54 in the morning, yes, I would imagine so.

Q. And you only saw this vehicle for a very, very short period of time?

A. Umm, I couldn't say exactly how long it was. The car appeared, I spoke with the driver of the car. My partner at that time was calling headquarters so he was at a phone a few paces away from the vehicle. I was able to get him back into the vehicle and then I remember directing the driver of that vehicle to take us to where he saw the police officer shot, which is what he had told me. That I recall. So whatever length of time it took, I can't say.

Q. Not only were you able to describe the complexion of the car, the possible make of the car, the fact that it bore New York license plates, the time that you received a radio call, you were also able to give some sort of description of the person who informed you that an officer had been shot?

A. Yeah, according to this, a white male approximately 42 and well-dressed.

Q. Now, Mr. Wakshul, were you able to help the investigator by telling the investigator the important detail about the positioning of Officer

Page 35.

Gary Wakshul - Direct

Faulkner?

A. I informed the investigator that we saw him lying on the south side of the street on the pavement.

Q. Were you also able to assist the investigator by telling him the other important detail, that is the positioning of Mr. Jamal when you arrived at the scene?

A. The only thing I state in this is that he was on the sidewalk at the curb near a dark-colored, or dark-blue-colored Volkswagen.

Q. And then you also assisted this investigator by informing this investigator about certain identification that Mr. Jamal had? Were you able to do that?

A. Identification?

Q. That Mr. Jamal had certain pieces of identification on him?

A. Yes. I informed the investigator later in that statement that a wallet was recovered, and it had a press card with a Muslim-type name on it.

Q. Now, for your benefit and for my benefit, I had my colleague write down some of these important details that you were able to communicate to investigator Kaminsky (indicating to chalk board).

Page 36.

Gary Wakshul - Direct

When you provided these important details that are abbreviated up here, these seven categories, you were trying to be helpful, weren't you?

A. I would assume so, sir. I do not recall making this statement.

Q. You certainly weren't trying to deceive anybody, were you?

A. I wouldn't imagine I was, no.

Q. That would be inconceivable, wouldn't it?

A. Yes.

Q. Now, would you say, Mr. Wakshul, when you look at these details about the time, about the New York license plate, about the dark-colored Ford, about the description of the civilian who gave you the information that an officer was shot, about the positioning of Officer Faulkner, about the positioning of Mr. Jamal, about the fact that Mr. Jamal had a press pass, would you say all of those important details were somehow more important, more vital than a confession by a person admitting to the shooting of a police officer?

A. That each of these individually or all together was more important?

Q. Individually.

Page 37.

Gary Wakshul - Direct

A. Than?

Q. Would the confession of a person saying I shot a police officer and I hope the mother-fucker dies, is that more important than noting the time that you received the radio call?

A. I don't believe they are more important, no.

Q. You don't think that the confession is more important?

A. I said those items that you mentioned.

Q. Oh, okay. Pardon me. Right. The confession would obviously be more important than each one of those items, am I right, we agree on that?

A. I would say the confession is more important, yes.

Q. In your statement or interview with Mister -- I'm sorry -- investigator Kaminsky, did you tell investigator Kaminsky that you had heard a man utter the remark I shot him and I hope the mother-fucker dies, did you help investigator Kaminsky in that way?

A. I did not mention that to Inspector Kaminsky's one statement to me. My statement is one question and one answer, very brief, and I don't see that here at all.

Q. Well, so you provided these details but you didn't tell him about the, about this so-called

Page 38.

Gary Wakshul - Direct

confession?

A. No, that's not what I said.

Q. Okay, please --

A. I said that I did not see it here. I have no recollection of making this statement.

Q. Okay.

A. So I have no recollection of whether I said it or not. It is not here.

Q. Very well.

A. But I have no recollection of it.

Q. In using that statement, because of your vague recollection, or lack of recollection, do you recall, did you say to investigator Kaminsky, we -- referring to yourself and Mr. Trombetta -- we stayed with the male at Jefferson Hospital until we were released. During this time the Negro male made no comments?

A. Were you asking me if I recall that or if that's what I --

Q. Is that reflected in the statement?

A. That is reflected in the statement.

Q. And is the statement signed by you, Mr. Wakshul?

A. That appears to be from what I could see in the photostat my signature.

Q. Now let's turn to the next interview, the

Page 39.

Gary Wakshul - Direct

December 16th, 1981 interview. Do you see that, sir?

A. Yes, sir.

Q. You were being interviewed, as we indicated earlier, by a man named Detective Thomas?

A. I see that.

Q. Now, you had said earlier that you were distressed in the early morning hours of December 9th and you ran into a cement pole?

A. That is correct.

Q. And that at that point you realized that you had to collect yourself, right?

A. Yes.

Q. Okay. Now we are a week later, right, on December 16th?

A. Yes.

Q. You had several days to collect yourself; am I right?

A. Yes.

Q. And Detective Thomas was the lead investigator in this case, wasn't he?

A. I don't know who he was, I don't recall him.

Q. Do you recall whether Detective Thomas assisted personally Mr. McGill, the assigned prosecutor in this case?

A. No, I'm sorry, I don't remember.

Page 40.

Q. Fair enough. Now, in this interview a week later, after you have had a chance to collect yourself, you provided some more important details to Detective Thomas, didn't you?

A. I don't know how important they were. I submitted answers to questions given to me in furtherance of that investigation, some of which I can't read here.

Q. In furtherance of the investigation?

A. Yes.

Q. Okay, that was clear to you?

A. Yes.

Q. Now, were you able to note the details regarding the color of pants that Mr. Jamal was wearing on the early morning hours of December 9th, 1981?

A. Ahh, not the color. I remember, I said in the statement I remember that they were dark pants.

Q. Okay, the complexion of the pants?

A. Yeah, they were dark pants.

Q. And the type of pants?

A. That I thought that they were denim.

Q. Okay. You were able to note the color of the jacket and the type of jacket that Mr. Jamal was wearing?

Page 41.

A. Yes.

Q. Were you able to note the color of the shirt that Mr. Jamal was wearing?

A. In my statement I said I think he had a dark blue, some kind of shirt under the jacket. I don't remember, something else -- I can't read it.

Q. And to complete the picture of the attire that Mr. Jamal had, you were able to describe the shoes that he was wearing?

A. I can't tell from here. The only word I could make out is boots.

Q. Okay.

A. Right. But that's the only recollection I could have, is boots. Or possibly short shoes -- I don't remember.

Q. In any event, you recognize that you had mentioned something about boots?

A. Yes.

Q. Now, I can understand the rest of it is literally illegible because of the copying, but let's skip down. Do you recognize there that you discussed with Detective Thomas the fact that Police Officer Faulkner earlier in the day had a camera?

A. Yes.

Q. And you went on to talk about that camera?

Page 42.

A. Yes.

Q. And you talked about certain photos?

A. Yes.

Q. So at this point you had a whole week to compose yourself, and you have these details (indicating) regarding the clothing of Mr. Jamal, and the fact that Officer Faulkner had a camera. Okay.

A. Yes.

Q. Detective Thomas, did he ask you -- use the record to refresh yourself -- is there anything you wish to add to this interview? He asked you that, right?

A. Yes.

Q. Did you at that point, when he asked you is there anything you wish to add to this interview, try to help Detective Thomas in investigating this important, serious crime, by telling him that you had heard Mr. Jamal utter a remark?

A. Are you saying did I say that, respond that to him?

Q. Did you respond to him with that question?

A. Yes. I said the response to that question: Nothing I can think of now.

Q. Nothing I can think of now. You weren't trying to deceive Detective Thomas, were you?

Page 43.

A. No, sir.

Q. You were being entirely truthful with Detective Thomas, weren't you?

A. Yes, sir.

Q. Do you remember earlier I asked you about the importance of thorough, thorough police reports?

A. Yes, sir.

Q. And you agreed with me that it's important to have thorough police reports for the good administration of justice?

A. Yes.

Q. And you recall earlier you testified that you took your job seriously that night?

A. Yes, sir.

Q. Those early morning hours?

A. I recall that.

Q. Now, there came a point where you learned that Mr. Jamal had made an accusation of some sort, right?

A. No, sir.

Q. Well, did you learn that Mr. Jamal had accused members of the Philadelphia Police Department of brutality?

A. I recall, I recall that there was an IAB investigation into certain complaints, yes.

Q. Can you share with us what is IAB?

Page 44.

A. Internal Affairs Bureau.

Q. Did you ever meet anyone from the Internal Affairs Bureau?

A. Yes.

Q. In connection with this case?

A. Yes.

Q. You met with somebody from Internal Affairs because Mr. Jamal had filed an accusation against members of the force for police brutality?

A. I didn't know the specifics or the particulars of any accusation but I know that I met with Internal Affairs in response to some complaint of some sort from Mr. Jamal.

Q. Well, if you can look about two-thirds of the way down.

MR. GRANT: Indicating D-13, I believe.

MR. WILLIAMS: Yes, thank you very much. D-13, for the

record.

BY MR. WILLIAMS:

Q. This is your report from February llth, 1982, taken at about 1l:OO a.m. by Mr. Goldberg. Where Mr. Goldberg lets you know that he is investigating a complaint initiated by Anthony Jackson, an attorney representing Mumia Abu-Jamal, which indicates that

Page 45.

Gary Wakshul - Direct

police officers physically and verbally abused his client on December 9th, 1981. Do you see that?

A. I see that, yes.

Q. Now, here is a man who is under custody and indicted for killing a police officer, right?

A. Yes, sir.

Q. That's the subject of this inquiry? And that same man under indictment for killing a police officer you were now told is making an accusation against the Police Department. Does that basically sum up what's happening here on February llth?

A. Yes.

Q. And that made you angry, didn't it?

A. I don't recall having any feelings one way or the other.

Q. You didn't have an emotional reaction to a man under indictment for killing a police officer pointing the finger back at the Police Department?

A. It's not an unusual thing, but I don't have any recollection of my feelings at that time.

Q. It is not an unusual thing. How many times has a police officer that you personally knew from your own district been killed in the line of duty?

A. One time.

Q. This time?

Page 46.

Gary Wakshul - Direct

A. This time.

Q. Police Officer Faulkner?

A. Faulkner.

Q. So it is not an unusual thing, is that what you are saying?

A. No, it is not an unusual thing for someone who has been arrested to make a complaint against a police officer.

Q. No, that I understand. Please understand me here. It is unusual in your experience for someone under indictment for gunning down a police officer to then point the finger back at the Police Department for abusing him?

A. If you say unusual it's because it never happened before in my experience, I would have to agree that that would be unusual. That particular, those particular facts had never happened before, no.

Q. So what I am trying to understand is, did you have an emotional reaction to that?

A. I do not recall any emotional reaction.

Q. All right. Now, after you were informed that this was an inquiry into allegations of police brutality, you were asked a series of questions; is that right?

A. Yeah, I imagine there were a series of

Page 47.

Gary Wakshul - Direct

questions and answers.

Q. Okay.

A. Yes.

Q. And this was two days, this interview of you was two days after a security officer by the name of Priscilla Durham had also given a statement to Internal Affairs?

MR. GRANT: Objection: That assumes facts not in evidence.

BY MR. WILLIAMS:

Q. Are you aware of that?

MR. WILLIAMS: Well, the Commonwealth introduced the minutes of the trial into this proceeding. And I think that was the trial testimony.

MR. GRANT: I will accept that if that's true. If that was part of the trial testimony.

MR. WILLIAMS: Yes.

THE COURT: You are asking him whether he knew it?

MR. WILLIAMS: I am asking him whether he was aware of it, yes.

THE COURT: All right.

BY MR. WILLIAMS:

Page 48.

Gary Wakshul - Direct

Q. Were you aware of that?

A. No, sir, I was not.

Q. Now, did you know Priscilla Durham as an employee of the hospital?

A. Not that I know.

Q. So you didn't know a Priscilla Durham?

A. I don't recognize the name.

Q. You recognized that the hospital employed certain security officers?

A. Pardon me? I didn't hear you.

Q. All right. You recognized that some hospital personnel are security officers?

A. Yes.

Q. Now, in this interview regarding the allegation of police brutality, you added an important detail that you never added on December 9th and December 16th; is that true?

A. I don't know.

Q. Well, let's go to page 3, about a third of the way down. The words after he was placed on the floor; do you see that?

A. Yes, I see it.

Q. So in this inquiry into the allegation of police brutality you now add an important detail, do you not?

Page 49.

Gary Wakshul - Direct

A. I don't know if it was added at this point or not. I have no recollection of what I said in the first interview, but this is the first reported instance where I said that the, I did hear him say I shot him, I hope -- I imagine it is the same statement I made -- I hope the mother-fucker dies.

Q. Now, the December 9th interview you said you had signed, right?

A. I had signed?

Q. That you had put your signature on the December 9th?

A. Yes, it appears I have signed both copies.

Q. That's Defense Exhibit 11.

A. Correct.

Q. And on Defense Exhibit 12, the December 16th, 1981 interview, did you also sign that one?

A. I don't think so. No, it doesn't appear.

Q. Now, you were asked on February llth, after you had indicated that you heard this statement, whether other people were present. Do you see that?

(Pause.)

If I could direct your attention: It would be on the following page.

A. I'm sorry.

Q. About halfway down.

Page 50.

Gary Wakshul - Direct

(Pause.)

A. I see it. When he made this comment were any hospital

personnel in close proximity.

Q. Yes.

A. Right. My response: I didn't see them at all.

MR. GRANT: Could I ask, Your Honor, how many pages of the statement the witness has?

THE WITNESS: This is the next to the last page.

MR. GRANT: Yeah, how many pages is your statement?

THE WITNESS: Four -- five. I'm sorry, five.

BY MR. WILLIAMS:

Q. Do you see about halfway down?

A. On page 4?

Q. Yes, page 4. It says when Jamal made the comment --

A. Hmm-hmm.

Q. -- who else -- I know it's very difficult to read because of the copy -- who else was in close proximity to him that may have heard him make this comment.

A. I see that.

Page 51.

Q. Right. And your answer was what?

A. My partner was near him, there were other officers in the emergency room, I just can't recall who they are.

Q. And then you were asked if there were any hospital personnel present?

A. Correct. And I said I didn't see them at all.

Q. And you earlier testified that security personnel are among hospital personnel? Do you recall that?

A. Security personnel are among hospital personnel?

Q. Yes.

A. Yes.

Q. And you indicated that there were no hospital personnel that you saw?

A. In close proximity to him I didn't see them. I didn't know who they were. I didn't know -- I don't recall who was there at that time, I still don't.

Q. You indicated, I didn't see them at all?

A. That's what it says here, yes. So that was probably my response.

Q. Now, did you indicate in the report that you had seen a brother officer by the name of Officer

Page 52.

Bell?

A. Did I indicate in this report that I had seen him?

Q. Yes. When you were asked -- you are free to look at the entire report, but the most relevant portion is there on 4 where you are being asked who else was present.

A. No, I don't see any, any question or response concerns Officer Bell.

Q. Now, you remember what Mr. Goldberg, the interviewer, what his reaction was when you told him that you heard Mr. Jamal make a remark?

MR. GRANT: Objection as to relevance.

THE COURT: Did he?

MR. WILLIAMS: I am asking him if he saw the reaction of the interviewer.

THE COURT: How could he answer that?

MR. WILLIAMS: Well, it goes again to his impressions. I know Your Honor disagrees with me.

THE COURT: I am asking you.

MR. WILLIAMS: I am asking --

THE COURT: You are asking him to say what somebody else's impression was.

MR. WILLIAMS: No, reaction.

Page 53.

THE COURT: What do you mean by reaction?

MR. WILLIAMS: Was he surprised, did he laugh, did he cry.

MR. GRANT: That's what I am objecting to. What relevance has it to this witness' testimony?

THE COURT: He doesn't seem to remember too much about the report itself. How is he going to remember whether he cried or laughed or shouted or what?

MR. WILLIAMS: Well, if he doesn't remember he is free to say he doesn't remember.

MR. GRANT: It is irrelevant, Judge.

THE COURT: I don't want him to speculate.

MR. WILLIAMS: No, if he doesn't remember, I don't want him to speculate.

MR. GRANT: My objection goes to relevance, Your Honor. Whether he remembers it or not, what's that got to do with it? They could bring that man in but what does it have to do with this gentleman here?

THE COURT: Why don't you bring the person who took the statement in and ask him

Page 54.

what he felt.

MR. WILLIAMS: Your advice is well taken, Your Honor.

THE COURT: All right.

BY MR. WILLIAMS:

Q. Your partner, I take it when you referred to my partner was near him you are referring to Police Officer Steven Trombetta?

A. I would imagine so, he was my partner that night.

Q. Okay. And when you referred to my partner was near him, you are referring to Mr. Jamal?

A. Yes.

Q. And when you indicate the close proximity of your partner to Mr. Jamal, you were referring to the time that you heard this remark by Mr. Jamal?

(Pause.)

A. In response to the question who else was in close proximity I said my partner was near him.

Q. Yes. Who else was in close proximity to Mr. Jamal that may have heard him make this comment.

A. Yes.

Q. And you said my partner was near him?

A. Right.

Q. Referring to being near Mr. Jamal, right?

Page 55.

A. Yes.

Q. And there were other officers who were there near Mr. Jamal?

A. There were other officers in the emergency room, I just can't recall who they are.

Q. Right. And your answer was, is that these other officers were there in the emergency room in response to the question who else was present that may have heard this comment?

A. Right.

Q. And again to be clear: Of all the people that you remember seeing, you don't remember seeing Officer Bell, a face you recognize?

A. No. I don't recall seeing Officer Trombetta and I know he was there because we came in together. But I have no recollection of any police officers or any hospital personnel that I could recall or recognize.

Q. Well, I'm a little confused, I have to say. Because you seem to

have the presence of mind to, the clarity of mind to remember 3:54 a.m. is when you got the radio call. You seem to have the presence of mind to remember New York license plates. You seem to have the presence of mind to remember a dark car that was a Ford. You seemed to have the presence of

Page 56.

Gary Wakshul - Direct

mind to give a description of the person who told you that an officer was shot. You seemed to have the clarity of mind to remember the position of Officer Faulkner. The position of Mr. Jamal. The fact that Mr. Jamal had a press pass. But you don't, but now you say you didn't have the clarity of mind to even know for sure if Officer Trombetta was there.

A. These --

Q. Help me to understand that?

A. These facts all occurred before Mr. Jamal uttered the statement. As I mentioned before, when he uttered that statement, from that point on my recollection is fuzzy.

Q. These things happened before Mr. Jamal uttered the remark?

A. Yes.

Q. But isn't it true that the interview where you gave these details happened shortly after you heard the remark?

A. I don't know how far after they made it, if it was shortly or not.

Q. 5:50 a.m., isn't that true?

A. Yes. According to this report.

Q. So shortly after you heard the remark you still had the clarity of mind, the presence of mind

Page 57.

Gary Wakshul - Direct

to provide those details?

A. Sir, I have no recollection of making that statement or any of the details that are in that statement. So I can not tell you what my presence of mind was at that time or not.

Q. Okay. But you did sign the statement on December 9th?

A. Yes. That appears to be my signature, yes. I would imagine so.

Q. So your testimony today is that back then, at the time, you could remember all those details to assist the investigator, but you were so distraught that you can't even remember who your partner was; is that --

A. No, that is incorrect, sir. I know who my partner was.

Q. Okay, so when you said that you knew that your partner was near Mr. Jamal, you knew that you were referring to Officer Trombetta?

A. Yes.

Q. And when you were asked who else was near Mr. Jamal who might have heard him say these comments, you couldn't identify if Officer Bell was there?

A. That is correct.

Q. And Officer Bell was also a member of the 6th

Page 58.

Gary Wakshul - Direct

District?

A. Yes.

Q. And you knew Officer Bell, as you indicated earlier?

A. Yes, I did.

Q. In fact, did you know that at the time, did you know that Officer Bell was Officer Faulkner's partner?

A. He wasn't that night, but he had been his partner, yes.

Q. Do you remember if --

MR. WILLIAMS: One moment, please.

(Discussion was held off the record
at this time between defense Counsel.)

BY MR. WILLIAMS:

Q. Now let me go back to this important testimony about your being distraught when you heard the remark.

A. Hmm-hmm.

Q. Earlier that morning in the vicinity of 13th Street and Locust you said you saw Officer Faulkner?

A. Before the shooting incident?

Q. No, no, no, after the shooting.

A. Yes.

Q. You described his position?

Page 59.

Gary Wakshul - Direct

A. Yes.

Q. Right? And I know this is difficult, but you saw, you saw that Officer Faulkner had a bullet wound to the face?

A. I saw he had a bullet wound to the head, I didn't know exactly where it was.

Q. And you saw your brother officer lying in a pool of blood?

A. Yes, sir.

Q. And you testified earlier that you were still able and fully capable of performing your duties as a police officer even though you witnessed firsthand this terrible episode, or the aftermath of this terrible episode?

A. Fully capable of performing my duties? Yes, I believe so.

Q. Now, did the interviewer on February 11th in connection with the inquiry into police brutality, did he ask you for an explanation as to why in these other, prior statements you made no mention of a confession? Do you remember him asking you that? Do you see that there in the statement?

A. Not yet.

Q. It is on the last page. Do you see where it says during this statement you have indicated that

Page 60.

Gary Wakshul - Direct

Jamal did make statements. Will you explain this?

A. You have indicated that Jamal --

Q. First let me make sure that you see where it says that.

A. During this statement you have indicated that Jamal made statements, is what I could read.

Q. Will you explain this?

A. Will you indicate --

Q. Yeah.

A. No, I don't think I could read the entire part.

Q. Officer -- Mr. Wakshul, bear with me. It says will you explain this. Do you see that there?

A. Will you explain this, yes, I see that.

Q. Okay, he is referring to your, for you to explain why there is no mention of a statement in either, a confession in either of these earlier interviews, right?

A. I can not tell what he is referring to, sir, I can not read this.

Q. Well, let's go through it together. It says during this statement you have indicated that Jamal did make statements?

A. Okay, did make statements.

Q. Did make statements. Will you explain this?

Page 61.

Gary Wakshul - Direct

Do you see that?

A. Yes.

Q. What was your explanation to investigator Goldberg as to why you didn't mention the confession?

A. I responded -- if I can read this correctly -- what I was referring to when I was guarding him, what I was referring to when I was guarding him. At the time he said what he did say the statement disgusted me and I didn't realize it -- I can't read that word -- any importance until today.

Q. I didn't realize it had any importance until today?

A. All right, if that's what it says. That part is black in mine.

Q. Okay. So let me be clear now. You recognize that all of these things had importance. On the December 9th statement, the seven categories here. On December the 16th you recognized all of these items on the blackboard as having importance. And you told investigator Goldberg that I didn't realize it -- referring to the confession -- had any importance until today. Yes?

A. That's what it says, yes.

(Discussion was held off the record at this time between defense Counsel.)

Page 62.

Gary Wakshul - Direct

BY MR. WILLIAMS:

Q. So after 64 days, 64 days after an officer was slain in this City, suddenly you have an epiphany, you realized the confession was important; is that true?

A. I wouldn't, I wouldn't phrase it as an epiphany. At that time there were several people around when he said it. I had no idea that not everyone would say that he said it.

Q. Okay. We are going to get into that in a moment. So you felt, your testimony was you felt maybe you would not be the one to mention it even though you were right there?

A. No, that's not, that's not correct.

Q. I'm really trying to understand, Mr. Wakshul, because --

A. I will try to explain.

Q. Because you testified earlier that as a young police officer you understood that statements, especially confessions, are important. You remember you said that to us?

A. Yes, sir.

Q. And you earlier testified how important it is to be thorough, you remember you shared that with us?

A. Yes, sir.

Page 63.

Gary Wakshul - Direct

Q. And you remember you testifying that you weren't trying to deceive anybody in all of these interviews?

A. Yes, sir.

Q. But yet you are saying the statement had no importance until today?

A. That's not what I said.

Q. Well, to be fair, you said I didn't realize that it had any importance until today.

A. Yes, that's what it says.

Q. All right. Did the fact that Mr. Jamal's, that Mr. Jamal had the audacity to file a police brutality complaint even though he was under indictment for killing a police officer, did that somehow help you realize the importance of a confession?

A. I don't believe it had any effect on me and what I had to say one way or the other. I was reporting what I heard.

Q. I see. So it's just a coincidence, I take it, that on December 9th you made no mention of it, on December 16th you made no mention of it, but in an investigation of police brutality, suddenly it has importance, that's just a coincidence?

A. Sir, on December 9th the statement I made, if

Page 64.

Gary Wakshul - Direct

that is recorded correctly, I have no recollection of. It's a blank period in my mind. On December the 16th I responded to very specific questions relating to very specific items. And I was never asked it.

Q. Right.

A. And on the Internal Affairs investigation, I was given very detailed questions and which elicited these responses.

Q. Well --

A. And if you look at it, I don't see, I don't see anything that directed me to that except that they were asking me what happened at that time. And I just went through it.

Q. Well, you were asked on the December 16th report, the very last question to you by Detective Thomas, is there anything you wish to add to this interview. Is there anything you wish to add to this interview. And your answer was nothing I can think of now. Isn't that right?

A. That's correct.

Q. Nobody was telling you to keep this confession a secret; is that right?

A. Nobody ever made mention what to do with it, no.

Q. But you did say earlier that confessions are

Page 65.

Gary Wakshul - Direct

important, I did hear you then, right?

A. I believe I said that earlier today, yes.

Q. Now, you testified earlier when you said that you heard Mr. Jamal make the comment, the confession, that it distressed you, and those were weighty words, you said, remember that, you used the word weighty?

A. No, I didn't use that word, that's your word, sir. I said the weight of the words shocked me. What I heard, the thing that I heard was very distressing to me, yes.

Q. The weight of the words, right, you mentioned the weight of the words. And remember I asked you well, the weight of the words (indicating), that means it was important, it was significant, all of those things, right?

A. I believe it was significant, yes.

Q. And so on February 11th when you were being asked questions about police brutality, only then did you realize that these were weighty words?

A. No. Only then did I realize that they might have some meaning because apparently there's no mention of it anyplace else.

Q. Now, you mentioned earlier that because there were other police officers around you thought well, maybe one of the other officers would have told the

Page 66.

Gary Wakshul - Direct

investigator about the confession?

A. No, I did not have the conscious thought of that.

Q. Fair enough. So that was the reason why you didn't mention this statement of the confession earlier, not because you thought other officers had, that was not accurate?

A. I can't recall the reasoning behind that at all.

Q. Well, since you can't remember the reasoning behind it, as you sit here today, would you agree that it is literally astounding that you didn't mention it in the December 9th interview? Would you as you sit here today agree with that?

A. No, sir, I would not.

Q. You would not. Would you say that it is simply astounding that on December 16th when you were asked if there was anything to add you didn't mention the confession at all; you would disagree with that too?

A. I would disagree with that as well, yes, sir.

Q. Now, you said that Police Officer Trombetta was there?

A. Yes.

Q. Okay. I want to direct --

Page 67.

Gary Wakshul - Direct

A. Where?

Q. I'm sorry. You said near Mr. Jamal at the time he made the utterance.

A. Okay, yes.

Q. And you said other police officers were there too.

A. Yes.

Q. I want to focus on that for a moment. And you also said there were no, you didn't see any hospital personnel?

A. I don't recall seeing hospital. I don't know if they were there or not, I don't recall them.

Q. As far as your impression was according to your report, you didn't see any?

A. I don't recall seeing any.

Q. Okay. Now, do you recall how many times Mr. Jamal made this alleged statement?

A. That I heard? Once.

Q. Once. And you said that you can't recall whether he had merely whispered it or uttered it in a normal voice? Do you remember the tone of voice?

A. No, I said that I didn't understand your use of the word bravado.

Q. Oh.

A. He said it... as far as I recall in a normal

Page 68.

speaking voice as far as volume is concerned, that I heard.

Q. So you would disagree, if I hear you correctly, with Priscilla Durham's testimony -- assuming for the moment this is her testimony, and the record will speak for itself on this -- you would disagree with Priscilla Durham's testimony that Mr. Jamal shouted a confession?

A. I would not disagree with that. Our impression and our position of where we were hearing it would be different. I don't know, I don't remember her being there, I don't know what she heard or how she heard it.

Q. Is it possible, your being 5 feet away, that someone could have construed Mr. Jamal's alleged statement as being shouted out?

MR. GRANT: I object. I object unless he is going to assume what is in the mind and would be in the mind of that person, Your Honor.

MR. WILLIAMS: I am asking the tone of voice that it was heard.

THE COURT: He gave you what the tone of voice was but you are now asking him what somebody else hears. Different people see and hear different things. So I don't know that he

Page 69.

is qualified to tell us what somebody else heard or their reasons for what they said. Bring her in and ask her.

BY MR. WILLIAMS:

Q. Let me ask you this, Mr. Wakshul. Did Police Officer Trombetta have a hearing problem?

MR. GRANT: Objection to that as well.

BY MR. WILLIAMS:

Q. That you knew of, that you were aware of?

MR. GRANT: Objection.

THE WITNESS: Not that I know of.

BY MR. WILLIAMS:

Q. Now, are you aware that Police Officer Trombetta was interviewed on December 9th, 1981?

A. I am not aware of it. I would imagine that he was but I have no recollection of it.

MR. WILLIAMS: I would like to have marked --

MR. GRANT: I would object, Your Honor. He will now try to cross-examine Mr. Wakshul with Mr. Trombetta's statement.

MR. WILLIAMS: No, I don't intend --

MR. GRANT: Those are the interviews you are asking now to be marked, sir.

MR. WILLIAMS: I just --

Page 70.

MR. GRANT: Are they not?

MR. WILLIAMS: They are.

MR. GRANT: Your Honor, I object to this line of questioning. It is totally irrelevant and calls for speculation. Bring Mr. Trombetta in.

THE COURT: Call Trombetta in here and ask him about his own statements.

MR. WILLIAMS: We may accept.

THE COURT: He can't comment about anybody else's statements. He just said he assumes he was interviewed like everybody else probably.

MR. WILLIAMS: We may accept that invitation.

THE COURT: You will have to if you want to get this in. I don't think he is qualified to comment on somebody else's statement.

MR. WILLIAMS: So can I not have these marked as exhibits at this juncture?

THE COURT: No, because if you are going to ask him questions about somebody else's statements, get that person in here and ask him about the statement he made.

Page 71.

BY MR. WILLIAMS:

Q. Now, is it a coincidence, Mr. Wakshul, that not only did you not make a statement about Mr. Jamal's alleged confession, but that your partner Officer Trombetta also told the investigator he didn't hear anything?

MR. GRANT: Objection.

THE COURT: Sustained. I already said that. If you want to bring in whatever Trombetta said, bring him in. It is not for him to comment about somebody else, what somebody else's statement is.

MR. WILLIAMS: Well, my question is not what Officer Trombetta said. I am asking for an opinion from him.

THE COURT: Well, he has no expert opinion and he is not making the fact-finding here. So what his opinion is is immaterial.

BY MR. WILLIAMS:

Q. Let me ask you this. Did you see Officer Trombetta, after you say Mr. Jamal made this confession, leave the scene in distress? Did you see that?

A. I have no recollection about what anybody did. I know that I left the scene in distress. And that I

Page 72.

returned sometime shortly thereafter. From that point on I have no clear recollection of what happened the rest of that night, except for pictures that remain in my mind.

Q. Can you explain for us why it is that Officer Bell in an interview on December 16th also didn't mention the interview -- or the confession?

MR. GRANT: Your Honor --

THE COURT: I will have to sustain that for the same reason.

MR. GRANT: Thank you.

THE COURT: Counselor, bring Officer Bell in and ask him.

MR. WILLIAMS: Your Honor yesterday barred us from that.

MR. GRANT: Yes, Your Honor should have barred him because they asked him at trial ad nauseam and this is to litigate any new issues.

MR. WILLIAMS: Well, it is in the record, it is in the record that he didn't say it on December 16th. So I want to question him about it.

THE COURT: You can't question him about somebody else's statement. He wasn't even

Page 73.

in the Courtroom.

MR. WILLIAMS: Well, he may have discussed it with Officer Bell.

THE COURT: Well, you are surmising a lot of things.

MR. WILLIAMS: That's why I am the interrogator, I have to ask.

MR. GRANT: Your Honor, anything that he asks him to assume about the state of mind of another person in the law and as taught in every law school in the country is objectionable.

MR. WILLIAMS: My learned adversary is correct.

MR. GRANT: Thank you.

MR. WILLIAMS: And I am not asking Mr. Wakshul to define what was in the mind of Officer Bell. I'm asking if he finds it to be a coincidence that Officer Bell also said, never indicated that Mr. Jamal confessed to the crime as of December 16th.

THE COURT: Well, he is not the fact-finder. You argue that to me later on, okay.

MR. WILLIAMS: Indeed we will. Just so I don't, in deference to Your

Page 74.

Gary Wakshul - Direct

Honor's ruling, does that hold true for Officer Hinkel, Cook, Dunn, Captain Bob and a security guard --

THE COURT: I am not -- will you listen to me for a moment.

MR. WILLIAMS: Yes, sir.

THE COURT: I am not making any rulings in advance. If the D.A. objects I will rule. Don't tell me what my ruling is in advance. I make rulings one at that time.

MR. WILLIAMS: I didn't want to breach the Court's order. I understand, Your Honor. Let me proceed.

THE COURT: All right.

BY MR. WILLIAMS:

Q. Can you then explain to us if it's a coincidence that Police Officer Heftner also said he didn't hear a confession?

MR. GRANT: I object, Your Honor.

THE COURT: Sustained.

MR. GRANT: I guess we will go through this with every police officer.

BY MR. WILLIAMS:

Q. Can you explain why or if it is a coincidence that Police Officer Hinkel, who also indicated he was

Page 75.

Gary Wakshul - Direct

at the hospital, said he didn't hear a confession?

MR. GRANT: Your Honor, I would, without burdening the record, I don't want to continue to stand up and object. I would pose a standing objection, if Your Honor would permit it; but also I would ask Your Honor to preclude Counsel from making speeches to the audience with inadmissible comments about other peoples' statements that I am sure he doesn't want to put up on the witness stand.

MR. WILLIAMS: I am asking questions.

THE COURT: I know you are asking questions.

MR. WILLIAMS: Which Your Honor told me to ask.

THE COURT: You are asking improper questions. He is now agreeing to let me rule on it so I am ruling on the whole thing.

MR. WILLIAMS: Just so the record is clear.

THE COURT: So you understand that these are improper questions.

MR. WILLIAMS: With respect --

THE COURT: You call in these individuals and you ask them. If they testified

Page 76.

Gary Wakshul - Direct

during the course of the trial, they answered whatever questions were asked. Whatever they said during the course of the trial, that's it.

MR. WILLIAMS: Your Honor, that's fair enough. And that is exactly why before I launched into this series of questions I was telling Your Honor I would ask is that true with respect to all of these. So I wouldn't be unfair.

THE COURT: Counselor, I told you before I don't make general decisions like that. But if the D.A. is willing to agree to that, fine, then I will make such a decision.

MR. WILLIAMS: Okay.

THE COURT: I am not going to do it on my own.

MR. WILLIAMS: Fine, so we are on the same page. So that applies to Officer Hinkel, Cook, Dunn, Captain Bob and security guard Kenney. That is who I would ask the questions to and Your Honor is ruling that I can not. Fair enough.

BY MR. WILLIAMS:

Q. Do you recall, first of all, were you aware that this shooting was covered immediately afterwards

Page 77.

Gary Wakshul - Direct

by the news media? Were there news accounts of this shooting?

MR. GRANT: Objection: Relevance.

MR. WILLIAMS: I will connect it up, Your Honor.

THE COURT: Whatever it was it was. What does that have to do with this phase?

MR. WILLIAMS: My question to this witness is since he heard the confession, I was going to ask him if he knew of any news accounts that Mr. Jamal had confessed.

MR. GRANT: Objection.

MR. WILLIAMS: If he had then maybe it is an explanation for his feeling the need not to tell anyone about the confession: Because it's already public knowledge. That's why I'm asking.

THE COURT: Well, what is your --

MR. GRANT: I will withdraw the objection, Your Honor.

THE COURT: Do you want to withdraw the objection?

MR. GRANT: Yes.

THE COURT: He withdraws the objection then ask it.

Page 78.

Gary Wakshul - Direct

BY MR. WILLIAMS:

Q. Immediately in the wake of the shooting on December 9th or December l0th, do you recall if there were any news accounts on December 9th or December 10th about Mr. Jamal having confessed?

A. I don't recall any such accounts.

Q. Now let's move along to your dealings with the prosecutor, if you did indeed have any dealings with the prosecutor back in 1982, okay. Prior to trial, did you meet with any persons from the District Attorney's Office?

A. I believe either in January or February of '82, having a prep meeting with Mr. McGill in reference to this case.

Q. What do you mean by prep meeting?

A. Umm, I believe he was the assigned prosecutor and he was going over different facets of the case with a large group of parties. Police officers I believe were the only ones, and detectives, who were present.

Q. So he was prepping several people at the same time?

A. It was, it was basically a large round-table discussion of events. I don't recall specifics of it. I believe that there were, there were some

Page 79.

Gary Wakshul - Direct

preliminary reports that he was going over, but I don't really recall in depth what happened.

Q. And did Mr. McGill explain to you at all that the reason to have

a group meeting is to make sure that all the testimony conforms to each other?

A. No, I don't recall any such --

Q. You don't recall him explaining that to you?

A. No.

Q. Did the subject of the confession come up in this meeting?

A. I believe it did.

Q. This, again, was a discussion with all the police officers present in this round-table meeting?

A. Yes. I believe they were all there, whoever was at the meeting.

Q. And was there any inquiry directed at you personally about the troubling fact that you had not mentioned the confession on December 9th or December 16th or thereafter until February llth?

A. No.

Q. No?

A. No, I believe what happened was Mr. McGill said did anybody hear his statement. And I know I raised my hand but I don't recall any further discussion about it.

Page 80.

Gary Wakshul - Direct

Q. How many times did you meet with Mr. McGill?

A. I only recall that one time.

Q. That one meeting. Do you remember the date of that meeting?

A. I'm sorry, I don't. I believe it was sometime in January or February.

Q. Ahh. Early on in the case?

A. Yeah, it was pretty early.

Q. Were you ever instructed that you should keep yourself available for trial?

A. At that meeting?

Q. No, at any point.

A. I believe later on after our vacations were decided on, they were given out, and the trial date came out, being asked not to go away on vacations.

Q. Who asked you not to go away?

A. That I couldn't tell you. That could have come from, that could have come from Mr. McGill, it could have come from supervisors in the Police Department. I don't really recall where it came from. I recall that, you know, we were asked, or, yeah, I believe it was more than one person at the time, was we were asked if you are on vacation during that period, you know, try to stay available, something to that effect. I don't have specific

Page 81.

Gary Wakshul - Direct

recollections of that.

Q. Do you remember approximately when you were, when you received that instruction or instructions?

A. No, it was sometime before the actual trial began but I don't recall the specific dates.

Q. Now, before you received that instruction that you just indicated, had you gotten approval from anyone at that point to go on vacation?

A. I couldn't tell you if that was before vacation assignments came out or after it came out. I would imagine it came after it came out because before the vacations were picked, it wouldn't have made any sense. So.

Q. Exactly. To give you an instruction but at the same time approve a vacation wouldn't make any sense?

A. Right.

Q. So the vacation schedule came out after certain superiors of yours, possibly Mr. McGill, instructed you not to go on vacation?

A. Are you saying the schedule came out after? No, I believe the schedule was out first.

Q. Right.

A. Before any, any request not to go on vacation, or go away on vacation. Not necessarily go on

Page 82.

Gary Wakshul - Direct

vacation but go away on vacation came out.

Q. So the schedule comes out for the vacation?

A. Right, we picked by lottery who gets what vacation periods. And that's usually done anywhere from March through actually up to May I would imagine, I don't know when. It varied, at that time Police Department procedures varied from year to year.

Q. So you got the vacation schedule and I take it you hit the jackpot: You got the July 4th weekend, right?

A. I don't recall the exact dates of my vacation.

Q. Okay. We'll get back to that in a moment. You got your vacation schedule and then sometime afterwards you receive these instructions that you just mentioned about the not to have a vacation at around the time of the trial?

A. To the best of my recollection, these instructions came after vacations were chosen.

Q. Okay. Now, do you recall if you told Mr. McGill or any member of the District Attorney's Office -- and when I say any member, I mean prosecutor, paralegal, or anyone -- that you had a vacation scheduled, did you inform anyone that in that office?

Page 83.

Gary Wakshul - Direct

A. I have no recollection at all.

Q. Can you share with us at the time -- the policies may have changed -- but at the time, 1982, what the policy was for police officers who had vacations scheduled that might conflict with the trial, what is an officer to do?

A. Generally, once your vacation is scheduled, you go on vacation.

Q. So in other words, if you have a vacation scheduled, that takes priority over the administration of justice?

A. Not necessarily. The way the system was at that time was that when the cases were prepared, if a vacation was known by the investigator, he would note that vacation schedule on his reports. And then when they were scheduling cases with the judge or whoever at that time scheduled cases, they would say this is not a good date or this is a good date, the officer's on vacation. Umm --

Q. Let me stop you right there.

MR. GRANT: May the witness finish his answer?

MR. WILLIAMS: Very well.

BY MR. WILLIAMS:

Q. I'm sorry, go ahead.

Page 84.

Gary Wakshul - Direct

A. And if a vacation had not been scheduled already, then they would just note that there was nothing scheduled; and then when it came up for trial, if the officer was on vacation I guess they would try to get a continuance. In the case of this --

Q. Well, I am not asking you about this case, I was asking you about the policy.

MR. GRANT: May the officer finish his answer?

MR. WILLIAMS: His answer is non responsive. I will go into that.

MR. GRANT: How do you know it was non responsive?

MR. WILLIAMS: Because he was referring to this case, he was talking about this case.

MR. GRANT: You don't want to know about this case.

MR. WILLIAMS: I will in due course. In due course.

MR. GRANT: Oh.

BY MR. WILLIAMS:

Q. Okay, let's probe that answer a bit. When an officer has a vacation scheduled and then a case is

Page 85.

Gary Wakshul - Direct

called for trial, you said that someone communicates to the court that an officer is on vacation and they would try to work around that; is that what you are saying?

A. In most cases, yes, that's what would be done. If the officer's on vacation the District Attorney would know earlier on enough I guess to try to arrange a date for that case that doesn't conflict with the vacation schedules.

Q. So the party responsible for informing the court of an officer being unavailable for vacation is the District Attorney?

A. The party informing the court in all cases would be the District Attorney, sir, I imagine that would be it.

Q. So is it your understanding in the Police Department that there is communication between the Police Department and the District Attorney's Office regarding the availability of officers?

A. There were some. I have no idea as to the actual procedures to this day, how that is actually done.

Q. In any event, when an officer requests a vacation, they have to fill out a vacation form of some kind, a request form?

Page 86.

Gary Wakshul - Direct

A. No, if it's an out-of-period vacation, you would ask for a request form and that would be up to your captain's approval according to manpower. During the vacation season there is basically a lottery where all the vacation periods are divided up and all the officers, amount of officers are divided up, and they basically pull from a hat what vacation period they will get. They could make sometimes certain trades with other officers to accommodate their vacations. But once those vacations are pulled you're basically stuck with that vacation unless you take one out of period.

Q. You indicated earlier, Mr. Wakshul, that your being, the scheduling of vacation is noted on an investigator's report?

A. When a detective takes a report on any case that they are investigating from arrest, they, as far as I can recall, usually asked the officer what's your vacation. And if you have taken your vacation, or if your vacation has not been scheduled, you will just say I don't have any, I don't have any vacation yet.

Q. And on December 9th, 1981, did you have a vacation scheduled yet?

A. For the succeeding year? No.

Page 87.

Gary Wakshul - Direct

Q. Can you please look at Defense Exhibit 11. Look up by your name.

A. Yes, I see it.

Q. Do you see there it says no vac: V-A-C?

A. That is correct.

Q. What does that mean?

A. That means that I have either taken my vacation for that year, or my vacation for the next year is not in, hasn't been chosen.

Q. Oh, okay.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. Now, so back on that very first interview within, really, literally a few hours of the shooting of a police officer, there was discussions with you concerning your vacation schedule.

A. I would imagine so, yes.

Q. And that was important enough to note on your report, as it appears?

A. It simply could be here no vacation because I didn't recall, I didn't know if I had a vacation scheduled or not, or if it was taken, I don't know when it is going to be. If they don't have the information they simply note no vacation because they

Page 88.

Gary Wakshul - Direct

don't have that information.

Q. And you are aware as a police officer that felony matters, as this one was, were on a 180-day schedule, that is it has to be tried within 180 days?

MR. GRANT: Objection, Your Honor. Actually, that misstates the law. And as to his knowledge or awareness of the law, that's totally irrelevant.

MR. WILLIAMS: Well, it goes to whether on the vacation issue --

THE COURT: No, it doesn't. He told you, I thought he said in plain English that on that report this means that either he had already taken his vacation for that year, or it had nothing to do with the following year because they don't do that selection until -- When was that? Did you say May?

THE WITNESS: Your Honor, usually it starts somewhere between March and April.

THE COURT: March and April?

THE WITNESS: Even into June.

THE COURT: Of the following year?

THE WITNESS: Yes.

THE COURT: Then you pick for your vacation.

Page 89.

Gary Wakshul - Direct

THE WITNESS: Yes.

THE COURT: Very clear. I don't have any problem with that.

BY MR. WILLIAMS:

Q. Can you recall approximately when you received approval for your vacation?

A. No, sir.

Q. Do you remember if it was cold outside or it was warm outside at that time, the season?

A. I have no recollection when we chose vacations that year.

Q. Would it be safe to say sometime around March or April?

MR. GRANT: Would it be safe to object, because the man said twice he doesn't know.

MR. WILLIAMS: There was reference in the minutes or his testimony earlier about March.

THE COURT: What year are we talking about?

MR. WILLIAMS: 1982.

THE COURT: 1982. I thought he said they don't pick until March.

THE WITNESS: Judge, it would be March

Page 90.

Gary Wakshul - Direct

through maybe even the beginning of June, anytime, I have no idea.

THE COURT: In 1982.

THE WITNESS: In 1982 I have no recollection when vacations were chosen.

THE COURT: Oh.

THE WITNESS: The Police Department puts out schedules every year and sometimes they are early and sometimes they are late. You don't know.

THE COURT: Oh, okay.

BY MR. WILLIAMS:

Q. So it could have been any time from March to June?

A. I am just assuming, yeah, it was in that period.

Q. In any event, the scheduling of the vacations as best as you can recall occurred after this meeting that you referred to, this round-table meeting in January?

MR. GRANT: Or February.

BY MR. WILLIAMS:

Q. Or February? Thank you.

A. I would imagine it occurred after that, yeah. That would be too early.

Page 91.

Gary Wakshul - Direct

Q. And that was the meeting where you raised your hand when asked about the confession?

A. I'm sorry, I missed the first part of that question.

Q. That was the meeting, this January or February meeting, this round-table discussion with Mr. McGill that you raised your hand in response to a question about hearing a confession --

A. Yes, somewhere towards the end of that meeting I remember that.

Q. So let me get the time frame here. You've got January, February you're indicating that you could give testimony about a confession, and then March, it would be sometime between March and June of 1982 vacations are scheduled?

A. Yes.

Q. And then sometime after that you are receiving instructions not to go on vacation to conflict with the trial?

MR. GRANT: Objection, Your Honor: There was no instruction don't take your vacation, I believe.

MR. WILLIAMS: I am going --

MR. GRANT: Don't touch me, and let me make my objection.

Page 92.

Gary Wakshul - Direct

MR. WILLIAMS: I just don't want the objection in front of this witness.

THE COURT: Well, you have done it before.

MR. WILLIAMS: At sidebar.

THE COURT: You have done it before, Counselor.

MR. WILLIAMS: I would ask the witness to be excluded because --

THE COURT: You've had it before, Counselor. What is your objection?

MR. GRANT: My objection, Your Honor, I forget what even the question was.

MR. WILLIAMS: I withdraw the question, then.

MR. GRANT: Thank you. All right.

(Discussion was held off the record at this time between Counsel for the defense and the Commonwealth.)

BY MR. WILLIAMS:

Q. Now, in the Police Department are the summer months for vacation the peak periods?

A. Yes.

Q. And are the dolling out of vacations, does seniority have any factor or role to play?

Page 93.

Gary Wakshul - Direct

A. Not as far as persons getting the vacation that they want. Seniority depends on what type of vacation you get. Persons with a longer period of time get longer vacations.

Q. Hmm-hmm?

A. So if you choose to take -- say if you had a two-week vacation and a three-week vacation. If you choose to take your full three-week vacation you would choose from a different lottery of three-week vacations than the persons who are taking a two-week vacation. Similarly for the four-week vacations. If they choose to take them all in that one period, they would have a separate lottery.

Q. And seniority would have a role to play in whether you could take one of these longer vacations?

A. Yes. If you were entitled to a longer vacation due to your service time then that would be the only decision, which lottery you wanted to take. If you wanted to take, if you had a longer period and only wanted to take a two-week vacation, you had a choice, you could take a four-week vacation, only use two weeks, or you could pull from the two-week vacation, as I recall it.

Q. But in terms of what time frame you were permitted to go on vacation, for example, the July

Page 94.

Gary Wakshul - Direct

4th or the Memorial Day or the Labor Day, those scheduled vacations, the seniority of the person makes no difference?

A. Well, the better vacation times?

Q. Yes.

A. It was purely chance.

Q. Purely chance. No, withdraw it. Now, on June 25th, 1982, for the record -- I think it's obvious -- we were in the midst of trial at that point on the Jamal case. On June 25th, 1982, were you in the City of Philadelphia?

A. Sir, I do not recall when the case specifically occurred. During the early part when it was going on, I believed I was indeed in the City. I was on vacation that I recall. But I was here.

Q. You were in Philadelphia while you were on vacation?

A. As far as I recall, during the early part of the vacation, yes.

Q. And on June 25th is when you commenced your vacation?

A. I couldn't tell you the exact date.

Q. If I show you a printout of your vacation schedule would that help you?

Page 95.

Gary Wakshul - Direct

MR. GRANT: I would object to that. I haven't seen anything like that. It hasn't been authenticated. So I would object to him using what he purports to be his vacation schedule.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. WILLIAMS: Your Honor, just for the record: I am going to refer to a printout that was provided to us by the Philadelphia Police Department pursuant to a subpoena. In any event, I'm going to show it for purposes of refreshing recollection.

MR. GRANT: And I would object for lack of foundation. If it is only to refresh his recollection, I guess he could use a watermelon to do that. But if this purports to be their vacation schedule, I still object as to authentication. But use it for refreshing recollection without any objection from me.

MR. WILLIAMS: Your Honor, we can stand on formalities and in terms of expedition of this hearing because of the execution date, we hesitate to have to go and call some person

Page 96.

Gary Wakshul - Direct

from the Philadelphia Police Department to come into Court to authenticate what they turned over to us pursuant to a subpoena. Your Honor has discretion in this matter to permit us to enter this into evidence as an exhibit. Otherwise, we would be forced to bring somebody in from the Philadelphia Police Department at taxpayer expense, and that's really ludicrous.

MR. GRANT: Your Honor, I don't think you do, with all due respect to your powers, have any such discretion, because you can't authenticate this. It caused them no problem at taxpayers' expense to bring in the Governor of the State, or the Judge of the calendar room. And all I am asking for is the proper legal basis and foundation to be met. Simple.

MR. WILLIAMS: If that is the case then we will call a witness, Your Honor.

THE COURT: All right.

MR. WILLIAMS: The one who responded to our subpoena.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. In any event, I am going to show you a document.

Page 97.

MR. WILLIAMS: Could we just mark it for identification?

THE COURT: All right.

MR. WILLIAMS: Defense Exhibit.

THE COURT OFFICER: 14.

MR. WILLIAMS: Defense Exhibit 14 for identification. Defense Exhibit 14 for identification only. Okay (handing).

(Police Department document was marked Defense Exhibit D-l4 for identification.)

MR. WILLIAMS: If you could look at that for us, please.

THE COURT OFFICER: D-14, sir (displaying).

MR. GRANT: Yes.

THE COURT OFFICER: D-14, Your Honor (handing).

THE WITNESS: Thank you.

MR. GRANT: Your Honor, I just want to say to defense Counsel that had we been given this earlier, just shown these documents -- except whenever they find it convenient to themselves they throw a paper on my desk -- I probably could have agreed to this. I just

don't know what it is. I never know from day to day.

THE COURT: I know, that's why I have asked them. And I want from both sides here a list of your witnesses, of what they are going to say, so I know in advance. Either side. You just can't drop something on them. If you had given it to them in advance he could have checked it out and maybe agreed.

MR. WILLIAMS: Your Honor, Mr. Grant's point is well taken.

THE COURT: Well, then let's do that, would you. I said I want it today. And from both sides.

MR. WILLIAMS: Let me extend my apologies to Mr. Grant through the Court.

THE COURT: Okay.

MR. WILLIAMS: I apologize to him for not providing him this printout.

THE COURT: All right.

BY MR. WILLIAMS:

Q. Now I want you to look down there on the date in the left-hand column -- first of all, up there in the upper right it indicates your name, does it not?

A. Upper left?

Q. Upper left, yes.

A. Yes.

Q. Wakshul, Gary?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Now go down to the date June 25th in the lower, left-hand column.

A. These are dates that I assume, the two at the end?

Q. Yes. Yes.

A. But what do you want, Counsel?

Q. June 25th, do you see that there?

A. Yes.

Q. And then from there going to the next page, all the way to July 8th, do you see that?

(Pause.)

A. Yes.

Q. Does the fact that that printout indicates that from June 25th --

MR. GRANT: Your Honor, I object to anything that it indicates. If it's refreshing his recollection he could indicate what his recollection is. But if he wants to introduce this document through the witness, it's legally

inadmissible.

MR. WILLIAMS: That's what I am about to ask him.

THE COURT: Why don't you come right out and ask him.

MR. WILLIAMS: That's what I am about to do.

MR. GRANT: The question is does it --

THE COURT: Refresh his memory.

MR. GRANT: Right.

BY MR. WILLIAMS:

Q. Does this document and what you have, what I just directed your attention to, the date from June 25th to July 8th, refresh your recollection as to whether you were on vacation? And I refer you specifically to the letters V-A-C there, down the row, on those dates, that you were in fact on vacation for that time period?

A. No, it does not refresh my recollection.

Q. Do you recall taking a vacation at some point in the summer months of 1982?

A. I have a recollection of taking a vacation, of not being in work, yes.

Q. And your recollection is that you were in the City of Philadelphia during that vacation?

A. Not during the whole period. I recall in the early parts of it, yeah, I was waiting. I was basically taking days off.

Q. And when did you, if at all, leave the City of Philadelphia during this period?

A. I don't recall that I left the City of Philadelphia or that I just -- I believe towards the end of that vacation period I did take some time out of the City. But I don't know if it was an eight-day consecutive period or it was several day trips out of the City, I have no recollection.

Q. So just to be clear: When you did take a vacation, whenever you did, whenever that happened, you didn't leave the City for a long stretch of time?

A. Not in the beginning of the vacation, no.

Q. Okay. Then you said possibly you left for a few days towards the end?

A. As I recall from my, from independent recollection. This doesn't help. From independent recollection I believe that's how it was done.

Q. Towards the end?

A. Yeah, somewhere at that point.

Q. Okay. Now, let's see, 1982, July 4th weekend in the City of Philadelphia, City of Brotherly Love, the Liberty Bell and all, 4th of July, do you

remember if you were here in this beautiful City during the 4th of July weekend back in 1982?

MR. GRANT: Objection: Asked and answered.

MR. WILLIAMS: I am directing him to particular dates.

MR. GRANT: Objection: Asked and answered.

THE COURT: I think he said he doesn't. Is that what you are saying?

THE WITNESS: Your Honor, I said I do not recall.

THE COURT: He doesn't recall.

THE WITNESS: Exactly where I was.

BY MR. WILLIAMS:

Q. Okay, you said that you were in the City for the early part but then towards the later end of your vacation you left town possibly?

A. My recollection is in compliance to a request to stay while cases were going on, I was here. And as I recall it, my own independent recollection was that I believed the testimony was over in the case and I was just, I had not been called and I figured I would not be needed and I was, I did take some time.

Page 103.

I couldn't say if it was two or three days towards the end of the vacation. But I do recall that I was still on vacation when the information that I got was, or understood was that the trial had reached a conclusion.

Q. How did you get that impression, Mr. Wakshul?

A. I would be disingenuous to say that I recall. I really don't recall how I got it. It could have come from media, it could have come from gossip, it could have come from anyplace, I really don't recall. But it was my impression that since I was not needed that I had no reason to hang around anymore.

Q. You didn't get it from the defense side, did you, that impression, somebody from the defense?

A. I never spoke to defense or prosecutor during the entire time of the trial that I recall.

Q. Did you, were you in City Hall at any point for purposes of possibly appearing as a witness at any point during the trial, if you recall?

A. I don't recall being here. My impression is that I was not, but I really don't have any independent recollection of it.

Q. In any event, you indicated that during the, that you were in town while testimony was being taken, you had that understanding?

Page 104.

A. Yeah, that's my recollection.

Q. And of course had you been asked by Mr. McGill the prosecutor to testify in this trial, you certainly would have made yourself available?

A. Yes.

MR. WILLIAMS: I have no further questions, Your Honor. Just give me a moment.

(Discussion was held off the record
at this time among defense Counsel.)

MR. WILLIAMS: Your Honor, with the Court's indulgence, if you would just give me a moment to consult with Co-counsel.

(Discussion was held off the record
at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. Mr. Wakshul, my Co-counsel, lead Counsel, is far more experienced than I, reminded me of a set of questions that I forgot to ask so forgive me. You, you are familiar with the term patrol log?

A. Yes. Can you --

MR. GRANT: I would object. I would object to this line of questioning. Patrol log

Page 105.

or otherwise, if he is here -- and I believe he's here because the Commonwealth spirited him away during the trial and sent him on a paid vacation so they wouldn't have him, and that he heard a statement made by the Defendant at some point in time in the hospital -- are the only two areas or bases that they gave as part of their offer of proof. And now, of course, we are going to do what we usually do and go off on some frolic and detour. I object.

MR. WILLIAMS: Let me propose the question that I want to follow up with. He says he is familiar with the patrol log. I just want to ask him --

MR. GRANT: I move to strike that answer so assume he didn't say that.

MR. WILLIAMS: Well, my offer of proof for this line of questioning is I simply want to ask him, Your Honor, if he prepared a patrol log on December 9th, 1981, and where that patrol log is. That's what I am asking.

MR. GRANT: I will withdraw the objection.

THE COURT: Well, I would assume -- go ahead.

Page 106.

BY MR. WILLIAMS:

Q. Did you prepare a patrol log back on December, December 9th, 1981?

A. Going by my duties and my past experience, I believe I was recorder in the wagon at that time so I probably would have been the one preparing a patrol log. So I would assume that a patrol log was prepared. Where it is, I have no idea.

Q. Do you know where patrol logs are lodged after you used them, is there an archives of some kind?

A. I don't really know where they would go. I know they are turned in to my supervisor. The tickets or car stops and various other pieces of paper to go with them are distributed. Where the patrol logs go is still a mystery to me.

Q. Patrol logs are itself something that you carry with you, right?

A. During your patrol for that evening or day or whatever, yeah.

Q. So you can record what is happening?

A. You put down the time you got a call, the address, and the time that you were back from that call.

Q. And do you also put down in an abbreviated form the fact that you made an arrest, or that

Page 107.

somebody reported a crime or some details?

A. Details would vary between officers as to what they do. You could put down what the radio call you received was, you could put down what you do. It could be anything.

Q. Is it safe to say that --

A. It's very extremely abbreviated.

Q. Right. I think in New York we call them memo books. But what I want to ask you is, in these patrol logs, of all the functions that they may serve, and they may serve many functions, is one of the functions that they may serve as a memory aid? That is that you could go back and look and find out what time something happened or where you made an arrest or something like that?

MR. GRANT: Is he asking him what purpose it serves for him?

MR. WILLIAMS: Yes, of course.

BY MR. WILLIAMS:

Q. Did --

A. No.

Q. So it can never have that purpose for you?

A. Generally, once they are turned in I never see them again.

Q. No, while it is in your possession?

Page 108.

A. No, while it is in my possession, no, it is not a memory aid. It is a record that the Police Department asks every 15 to 20 minutes to a half hour what you are doing at that specific time.

Q. Okay. So if that's true; then you remember all of these details back on December 9th, 1981, about the time, the New York license plate, et cetera, et cetera, that was from the fact that you had the presence of mind to remember it?

A. Hmm-hmm.

Q. Not because you had recorded it in a patrol log?

A. That was not recorded in the patrol log, no.

Q. It was from your memory?

A. Yes.

MR. WILLIAMS: Thank you, Officer. Or Mr. Wakshul.

MR. GRANT: Good morning, sir.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good morning, sir.

A. Good morning.

Q. I guess it is afternoon at this point. Mr.

Page 109.

Gary Wakshul - Cross

Wakshul, did you know that the reason that you were here is because on page 6 of the Petitioner's Petition for Post-Conviction Relief -- which is what this is, this hearing is about -- in the declaration of Anthony Jackson, the attorney for the Defendant, Mr. Abu-Jamal at the time of trial stated in the first paragraph near the conclusion of the defense case I realized my error -- that is in not subpoenaing you -- and asked that he -- you -- be produced. The prosecutor refused, claiming Wakshul was down on vacation and unavailable. This despite a notation on Wakshul's report that he not be allowed to go on vacation during the trial.

Now, once your vacation is selected, sir --

A. Yes, sir.

Q. -- and it's done by lottery for these prime vacation periods, other than the Commissioner or at the Commissioner's order, does your sergeant have the right to say you will not take your vacation?

MR. WILLIAMS: I am going to object to what the rights of the sergeant are.

MR. GRANT: Then I will go up the line, okay.

MR. WILLIAMS: I object to that line

Page 110.

Gary Wakshul - Cross

of questioning as to the obligations, duties and rights.

THE COURT: We will find out who is responsible for him being on vacation or not on vacation.

MR. WILLIAMS: Well, let's bring those people in. When I ask similar questions Your Honor constantly referred to --

THE COURT: But he knows. He at that time was a police officer and he knows who says to him you can't go on vacation, you can go on vacation, or whatever it is.

MR. WILLIAMS: He is not competent to testify, with all due respect to my learned adversary here, as to what rights and obligations his superiors have. We ought to have his superiors.

MR. GRANT: I will withdraw the question. I will withdraw the question.

BY MR. GRANT:

Q. On D-11, which was a report on December the 9th, 1981, which purports to be an investigative interview record of your comments that night, sir, up in the top it says name and address and it has 6th District, 3 squad, group C, no dash V-A-C. Now, you

Page 111.

Gary Wakshul - Cross

say you don't recall much about the incident including the investigator, sir. And I think you mentioned I have no idea who he is; isn't that correct? Kaminsky?

A. Yes, that is correct.

Q. Well, would it surprise you to know that Mr. Kaminsky is a Ms. Kaminsky and it is a she?

A. It wouldn't surprise me: I have absolutely no recollection of who interviewed me whatsoever that evening.

Q. Nevertheless, where it says no V-A-C on that statement, whoever Detective Kaminsky is, does she have the authority to tell you you can't go on vacation for a case whenever that may go to trial?

A. To the best of my knowledge in the Police Department, absolutely not.

Q. And by writing that notation, was that indicating to you that you had no right to go on vacation for whenever this case, which just happened that very morning, an hour-and-a-half or whatever before, that you had no right to go on vacation whenever they scheduled this for trial?

A. No, sir. As I explained before, the notation no V-A-C or no vacation is a general notation that's noted by investigators when they ask the person they

Page 112.

Gary Wakshul - Cross

have been interviewing, police officer they have been interviewing if they have a scheduled vacation, and when it is. If I didn't have one or it's already past, they mark no vacation.

Q. Now, did you realize, sir, that on February the llth, when Exhibit D-l3 was taken, or purported to be taken, February 11th of 1982, did you realize that the purpose and the thrust of that investigation was essentially the Internal Affairs Bureau was investigating and contemplating bringing charges against police officers for the allegations in Mr. Jackson's complaint?

A. The only information that I had was that there was a complaint and they were as a routine matter investigating any complaints brought against police officers.

Q. And if --

A. I have no specifics.

Q. And if such complaints were founded, then what?

A. Then they would indeed proceed through the regular procedures to arrest those police officers, or discipline them, depending on the outcome of their investigation.

Q. And Mr. Williams, my brother at the bar,

Page 113.

Gary Wakshul - Cross

stated to you on that date you had an epiphany and you added an important detail that hadn't been mentioned before. Do you recall that on direct?

A. I remember that question, yes.

Q. But in fact you had an epiphany that included two important details? One you recalled was a statement made -- since they are investigating police officers -- by someone to the Defendant or the suspect at that time that he was in the care and custody of the police, did you not?

A. Yes.

Q. And if that were a police officer, did you realize at that time that that would be the subject of an investigation for police misconduct, sir?

A. You are referring to the statement in response to Mr. Jamal: If he dies you die?

Q. Yes, sir.

A. Yes, I was well aware at that time that a police officer, if it was a police officer, was in trouble for that remark.

Q. Nevertheless, you told about that, did you not?

A. Yes, sir, I did.

Q. And at that time, since they were investigating misconduct of the police, did you

Page 114.

Gary Wakshul - Cross

realize that that comment made by, if it was a policeman, that if it was made by a policeman, that that comment was proceeded by another comment made by the suspect who was there at the scene and to whom the comment was directed by this third party?

A. That's correct.

Q. Is that what brought the Defendant's statement to your mind: The fact that somebody else who may have been a cop was making a threat, essentially, to this man's life?

A. I can't say 100 percent that that's what brought it to my

recollection at this particular juncture. I do recall that the statement was made, and I do recall the response to that statement. And if I'm recalling correctly, I was at this point realizing that that statement was probably the complaint that was being investigated. And so both statements had to be made at this time.

Q. Did you take the statement if he dies you die as a threat of death, or serious bodily harm, at least, by whoever made it?

A. I didn't -- I don't think I took it to mean that. Judging by the way that it was said.

Q. In what way was it said, by the way?

A. It was said in a tear-choked, angry, very

Page 115.

Gary Wakshul - Cross

emotional voice by someone. And I took it at that point to mean that that person would face a trial and because of that statement possible execution. And that's what was a response to the statement that was made originally by Jamal.

Q. Now, you said you didn't see Officer Gary Bell, or that you didn't recall during that transition of events whether Officer Gary Bell or your partner or security personnel from Thomas Jefferson Hospital or anybody else, the nurses, doctors, were there. Would it be safe to say that nurses and doctors were on duty at Jefferson Hospital, whether you recall it or not?

A. Oh, yes, yes, they were definitely there on duty at that time.

Q. And would it be safe to say that emergency personnel in charge of the emergency room where persons walk in off the street were there on duty at the hospital, whether you recall them or not?

A. I don't know about persons walking in from the street, but it's quite possible that anybody could have been there at that time. This was an open emergency ward.

Q. No, I am saying, whether or not you recall seeing them, do you think it would be fair to say

Page 116.

Gary Wakshul - Cross

that hospital security personnel who work at Thomas Jefferson, in or about the emergency room, whether you saw them or not, would you think that they were not there on --

A. I would assume that they were there. Especially with all the police there, yes.

Q. Now, despite the fact that you did not see Police Officer, or recall seeing Police Officer Gary Bell at that time the statement was made, would it surprise you to know that Officer Bell was called to the witness stand and testified and he admitted that that statement was made if he dies you die, and he is the officer that made that statement?

A. I can't say I would be surprised. I just don't know who said it. I didn't recognize the voice as it was being said. But it could very well be anyone who was there.

Q. And if in fact Mr. Bell testified, that would be in accordance with what you recall as to what transpired at the time Mr. Jamal made the statement; is that correct?

A. Oh, absolutely. It was an immediate response to the, to Mr. Jamal's statement. It was right afterwards. But I had -- unfortunately, I didn't see who, or hear who said that because as soon as Mr.

Page 117.

Gary Wakshul - Cross

Jamal made his statement I took a step back. And there was a little area I was in. I heard the immediate response within seconds or less.

Q. Do you know Joseph LeGrand or Priscilla Durham, or did you know them in 1981 or '82?

A. I don't know the names. I don't recall them, I have no recollection of those names. I wouldn't know who they were. If I knew them at the time I certainly didn't know their names.

Q. Now, when you finally received your vacation dates, and you looked at what purported to be a submission from the Philadelphia Police Department with dates and letters next to them, acronyms or what have you, does that include regularly scheduled days off for any particular officer, namely, RDO's, to the best of your observation?

A. It does not appear to.

Q. Well, because it does not appear on there, does it mean that you don't get to take a day off or two days off during the week?

A. No, sir, we work six on and two off regularly. At that time that was the Police Department schedule.

Q. So that doesn't accurately reflect the time that you in fact were not working?

A. No, it does not reflect all the times that I

Page 118.

Gary Wakshul - Cross

was working or not working.

Q. Now, sir, after your vacation is approved and if somebody says whenever the trial is scheduled, if you're on vacation see if you can stay around, does that mean see if you could stay within calling distance to make yourself available if you are called to testify? Tell us what you meant by that testimony?

A. In point of fact, I've never been asked that before when I was on vacation. I assumed it would mean because the trial was going on stay around and available in case we want to call you or you're called by someone, and see what transpired. Which is the way I took it at that time. And I did not go away on vacation, most of it was spent at home.

Q. To stay around, does that mean stay around the environs of the Courtroom outside in the hallway, to you?

A. Well, I didn't take it to mean that, no. Since I wasn't working, I did not receive a subpoena, I saw no reason to stay around the Courtroom, no.

Q. If you were given vacation by lottery or whatever method, and you wished to go away, and they are asking you this, is this an order or is this a request?

Page 119.

Gary Wakshul - Cross

A. This was a request, as I recall it.

Q. And if they are requesting you to forego whatever plans you had, are you compensated for that in some way?

A. No.

Q. So --

A. No, I would be using my vacation. So if I was called to Court it would still be -- well, I imagine I could put in a case of being called on duty and not use a vacation day. But those days that I was staying around I was not on duty, I was still on vacation.

Q. Did you receive a subpoena or Court notice from the District Attorney's Office during this trial to appear in Court?

A. No.

Q. And I would like you to assume for the moment for the purposes of this line of questioning and this discussion that the trial began on or about June 3rd or June 1st of 1982. From June lst, 1982, until the 4th of July, 1982, do you recall being asked to come into Court for purposes of testimony or anything else by the Commonwealth?

A. I was never called into Court at any time that I know of. I was never called. I never received any

Page 120.

Gary Wakshul - Cross

subpoena or Court notice.

Q. Did you hang around in the environs of the Courtroom just out of curiosity to see what was going on in the trial?

A. No.

Q. That is here in City Hall?

A. No, I did not.

Q. Do you know what Courtroom this case took place in?

A. No, I do not.

Q. Now, did the defense at any point in time contact you by subpoena or otherwise and ask you to come into Court and testify on behalf of Mr. Jamal?

A. In '82?

Q. Yes, sir.

A. No, sir.

Q. Now, you indicated that when there are vacation dates scheduled and a trial date is also scheduled, that oftentimes the D.A. either, A, as you said and you felt has the responsibility to notify the court of what dates are good and what dates are bad for trial, or to bring it to someone's attention in the Police Department. Now let's look at the scenario such as occurred in this case where you have scores of police officers, and perhaps a dozen, or

dozens of civilians. If the case is scheduled for trial, say, during the month of June, and that is convenient with the schedules of the majority if not all of the police officers involved, except for Gary Wakshul, is it your understanding that the D.A. would ask the Court to continue that case or to cancel that court trial date because one officer is not available?

MR. WILLIAMS: Your Honor, I am going to object to that question because this witness is not competent to address what the obligations of the District Attorney are. We could have Mr. McGill testify as to that.

MR. GRANT: He was competent on direct to give his opinion, I don't see why he can't be competent 25 minutes later.

MR. WILLIAMS: I believe that line of questioning was sustained, Your Honor.

MR. GRANT: It most certainly was not. I didn't even object.

THE COURT: Okay, let the question stand.

BY MR. GRANT:

Q. The question is this. When you have scores of officers and dozens of civilians, and one police

officer's vacation schedule may conflict with the trial date already set, is it your understanding that, the squad leader even in this instance, that they would cancel the trial because of that one officer? --

A. From my experience I don't believe that that is the case. There are often times when a case can proceed without certain witnesses. And they do in fact. And it would be up to the judge also in those matters to make a decision if the District Attorney were to ask for a date. But generally if the case can proceed without a certain witness it proceeds.

Q. Did someone surreptitiously, stealthfully, by telephone or face-to-face conversation with you, ask you to absent yourself from Philadelphia during the course of the trial so that Mr. Jamal could not have the benefit of your services?

A. At no time.

Q. Did anyone suggest to you that we would like you to leave town, we will pay for your vacation so you won't be around in the unlikely event Mr. Jamal needs your testimony?

A. At no time. Nobody ever offered to pay for my vacation.

MR. GRANT: I have nothing further.

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REDIRECT EXAMINATION

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BY MR. WILLIAMS:

Q. Now, Mr. Wakshul, you would agree, would you not, that the administration of justice is not beholding to a police officer's vacation?

MR. GRANT: Your Honor, was that a question? And if it is, I would like to object because I don't quite understand it. But could counsel rephrase that.

MR. WILLIAMS: I will try.

BY MR. WILLIAMS:

Q. Is it your understanding that the administration of justice takes priority over an individual officer's vacation schedule?

MR. GRANT: Your Honor, if there is a policy, I have no objection.

MR. WILLIAMS: Not a policy, if it is his understanding.

MR. GRANT: Well, his understanding has to be based on something. And it doesn't matter what his personal opinion is, that is irrelevant and I object to it on that basis. But if there is some Police Department

regulation, I will withdraw my objection.

BY MR. WILLIAMS:

Q. Is there an understanding? And I will ask you what the basis of that understanding is if there is one.

A. As I recall and understand vacation policy in the Police Department at the time, historically there have been complaints from the FOP that when an officer schedules a vacation, especially if they have plans to go away, and then they are called into court, it is financially disruptive to them as well as to their families. So that I believe before I came on the Police Department that an agreement was reached, an amicable agreement that when a police officer is scheduled on vacation, that the Courts and the District Attorneys and the private attorneys or Public Defenders would arrange those dates around the police officer's schedule, if at all possible. But the police officer, as far as policy is concerned, when he had a vacation, was told you may go on your vacation.

Q. So your understanding was that there was in these Courts and in this Court system, that there is some kind of arrangement whereby the participants in the administration of justice -- that is the District

Attorneys, Judges, and indeed even defense counsel, that they will try to work around police officers to the best of their ability?

A. In the scheduling of the beginning of cases, yes.

Q. And for that to work to accommodate the vacations of police officers, that would entail communication between the Police Department and members of the prosecution staff, would it not?

A. I can only render an opinion that that would be so.

Q. Well, it stands to reason, does it not, it is common sense?

MR. GRANT: I would object. He is saying that's speculation and I don't want to comment, and I agree with him. I move to strike that.

MR. WILLIAMS: I am going by his understanding, Your Honor. That was the line of questioning, if it is his understanding as to the open channels of communication so that the District Attorneys would know whether someone is on vacation.

THE COURT: I am not denying that the District Attorney would know. What's that got

to do with this issue?

MR. WILLIAMS: Well, I think the issue --

THE COURT: You are on recross now as to what he brought up.

MR. WILLIAMS: Right, I am following up on that.

THE COURT: What did he bring up that you have to get into this?

MR. WILLIAMS: He brought up the whole aspect of whether Mr. Wakshul went on vacation suggesting it was without the knowledge of the District Attorney.

MR. GRANT: I didn't suggest anything of the sort.

THE COURT: He said --

MR. WILLIAMS: If the position is that the District Attorney's Office indeed knew he was going on vacation, then if they so state that I will withdraw the line of questioning.

MR. GRANT: I didn't state that and I won't state that.

MR. WILLIAMS: That's what I am trying --

MR. GRANT: I am saying it is beyond

Page 127.

my cross.

MR. WILLIAMS: That's exactly what I am trying to pin down.

THE COURT: He is saying it is beyond what he brought up on cross.

MR. WILLIAMS: And, Your Honor, I am saying it isn't. My notes indicate that he was asking questions about the circumstances under which he went on vacation.

THE COURT: Well, he already testified that he was here in the early part, he was here in the City. So what's the problem?

MR. WILLIAMS: Well, there is a big problem, Your Honor, in that he left during --

THE COURT: He left because he felt that he wasn't needed towards the end of his vacation. So what's wrong with that?

MR. WILLIAMS: Well, what's wrong with that is a man is being sentenced to death without the benefit of his testimony.

THE COURT: No one bothered to tell him, as far as I could understand from him.

MR. WILLIAMS: Isn't that the issue: Nobody bothered to tell him? You just heard Mr. Jackson testify that there was no reason, no

Page 128.

tactical reason for not calling Mr. Wakshul. In fact, he testified that had he had the reports that I had, he could have done perhaps a better job than I did in questioning Mr. Wakshul. And I certainly think --

MR. GRANT: He misstates the witness. I object. He misstates what Mr. Jackson said. Mr. Jackson said invariably he had the statement because Mr. Jamal couldn't have had it, and we know he did because he gave his summation on his death speech from that, number one. And number two, Mr. Jackson in the notes of testimony from the very day when they asked for Mr. Wakshul asked the Defendant why didn't you tell me, and the Defendant said I did tell you, I told you back at the motion to suppress. I object to Counsel misstating the record in order to get his way with this witness. I still object to the line of questioning.

MR. WILLIAMS: I only seek to inquire into the pivotal question here, not simply on the prejudice aspect of the ineffective assistance claim, Your Honor, but also on the claim regarding the bona fides of his going on

Page 129.

vacation. And that is the Brady aspect of our Petition. That a defense witness was sent away on vacation, or at least --

THE COURT: Wait awhile now. Sent by whom?

MR. WILLIAMS: By the District Attorney's Office.

THE COURT: He said nobody told him.

MR. WILLIAMS: Or -- but I didn't get to complete my sentence -- or that he was allowed to go on vacation with the complete acquiescence of the prosecution knowing well full that he was a pivotal witness on the confession.

THE COURT: The only evidence I know about that is at the last minute when the defense asked for him.

MR. WILLIAMS: Yes, you are fully familiar. And you indeed told Mr. Jamal that you and your attorney goofed. That's exactly right. And we did indeed have Mr. Jackson, who said it was his obligation, did indeed goof. Now the question is --

THE COURT: Mr. Jackson said all along that he didn't know who he was going to call

Page 130.

next, he has to confer with the Defendant here and decide who he wants to put on.

MR. WILLIAMS: Yes, but I am a trial lawyer myself and I know that --

THE COURT: Yes.

MR. WILLIAMS: -- that you consult with your client but also you make an independent judgment as to who you should call.

THE COURT: Not in this case. Because my memory of the case is Mr. Jamal was running the case.

MR. WILLIAMS: Your Honor instructed Mr. Jackson that he had a moral and ethical and a legal obligation to defend Mr. Jamal to the best of his ability.

THE COURT: Right.

MR. WILLIAMS: Independent of Mr. Jamal.

THE COURT: Right, because the Supreme Court, what happened there was Mr. Jamal didn't want Mr. Jackson to do anything. Not to even cross-examine witnesses. I didn't know at that time that Mr. Jackson had represented the MOVE members. And they caught me up here on, just as I was get getting ready to go out. And I told

Page 131.

him, I said the Supreme Court in the MOVE case has said that you are not to listen to him if he doesn't want to call anybody or he doesn't want you to cross-examine anybody. You are to do it to the best of your ability. And that's what I told Mr. Jackson to do. But Mr. Jackson already knew that because he had represented the MOVE. Now, I didn't know that.

MR. WILLIAMS: And Your Honor --

THE COURT: I thought I was telling him something.

MR. WILLIAMS: And I endorse that. Exactly right. He did have a legal obligation to defend Mr. Jackson.

THE COURT: I know. He said he didn't even know what witnesses to call. He was under, really he was under threats. He really --

MR. WILLIAMS: Your Honor, where in the record --

THE COURT: From my talking to him I got that impression.

MR. GRANT: Your Honor, if I withdraw my objection is that going to stop Counsel from testifying and just get on with this matter?

MR. WILLIAMS: Of course it would.

Page 132.

THE COURT: Are you withdrawing your objection?

MR. GRANT: Yes, Judge.

THE COURT: All right, he is withdrawing the objection, all right. Now come on, let's go.

BY MR. WILLIAMS:

Q. Now, is it your understanding, you just described that the Court system and the participants in the administration of justice -- which would include the prosecutor, the judge, and the defense -- would try to accommodate the vacation schedules of police officers. My question to you is, does that suggest to you or are you aware, therefore, for this system of accommodating officers to work, that requires an open channel of communication between the prosecutor and the Police Department?

A. I would imagine so.

Q. And that's because it stands to reason: Obviously the prosecution would need to know the vacation schedules of police officers in order to tell the Court of any possible conflicts; is that not true?

A. It happens. There is also experiences where the prosecutor has absolutely no idea when an officer

Page 133.

is on vacation.

Q. And in those circumstances when the prosecutor is derelict in finding out the vacation schedule of police officers --

MR. GRANT: I object to the use of that term also.

THE COURT: Rephrase your question, will you.

MR. WILLIAMS: I will rephrase it, Your Honor.

THE COURT: Without the derogatory remarks.

MR. WILLIAMS: I will rephrase it, Your Honor.

BY MR. WILLIAMS:

Q. So in those instances when the District Attorney is unaware of the police officer's vacation schedule, then he is unable to apprise the court and the defense that a potential witness, a potential police officer witness, would be unavailable?

A. I believe that would be the outcome of it. If he didn't know he would be unable to tell the court, sure.

Q. And in this description that you gave of how the administration of justice works in this City, if

Page 134.

a police officer doesn't ask, or there is no open channel of communication, and that breaks down, so the police officer is unaware of vacation schedule, that would affect the orderly administration of justice, does it not?

A. Are you saying if a police officer doesn't know when his vacation --

Q. No, when the District Attorney doesn't know. If in those instances where the District Attorney is unaware of a police officer's vacation schedule, and is therefore unable to tell the court or defense counsel, that would impede the orderly function of the administration of justice?

A. It can.

Q. It can. And indeed it did in this case, did it not?

A. I have no idea.

Q. You were unavailable on July lst, were you not?

MR. GRANT: Objection: He said he doesn't recall his whereabouts. And whether it impedes the administration of justice is up to the fact-finder of this Court and the Supreme Court of this State. He is not competent to make a comment on that at all. As Counsel well

Page 135.

knows.

BY MR. WILLIAMS:

Q. Now, by the way, you were required to provide in your personnel file and possibly other files your home telephone number so that you could be reached by superiors if necessary?

A. Yes, I believe that was a requirement.

Q. And therefore, if a District Attorney were in need of your testimony, you could be reached at home?

MR. GRANT: Objection. That presumes that we have his personnel files and they should know now by their subpoena process that is not so.

BY MR. WILLIAMS:

Q. Is it possible for a District Attorney if you were needed to testify, through contacts with any superiors in the Police Department, to contact you at home?

MR. GRANT: I object to what is possible. Anything is possible.

BY MR. WILLIAMS:

Q. Well, given the fact that his superiors have access to his home phone number, would that permit a prosecutor to contact you at home, through contact of the superior?

Page 136.

MR. GRANT: Objection.

THE COURT: Well, I think it's obvious that that's a possibility. So what?

MR. WILLIAMS: So I would like to have an answer to that question.

THE COURT: You don't have to ask him, you could ask me. But go ahead.

BY MR. WILLIAMS:

Q. Do you agree with His Honor that it is obvious that of course a prosecutor could --

A. It is certainly possible to get my phone number. Many people have gotten it recently that had no business having it.

Q. Is that the same phone number that you had back in 1982, by the way?

MR. GRANT: Objection, objection.

THE COURT: I will sustain that.

MR. GRANT: I don't think you have to get into this personal matter.

MR. WILLIAMS: You are right.

BY MR. WILLIAMS:

Q. In any event, it is evident and it is clearly evident to you as you sit here today that people could reach you by phone?

A. I'm sure people could reach me by phone, yes.

Page 137.

Q. You had indicated, or Mr. Grant had indicated to you that the February 11th interview, that the thrust, I think was his word, the thrust of that interview related to an investigation into brutality?

MR. GRANT: I said misconduct.

MR. WILLIAMS: I'm sorry, you are right.

BY MR. WILLIAMS:

Q. Misconduct; is that right?

A. It was an Internal Affairs investigation and by nature that is some sort of police misconduct.

Q. And the interviews that we discussed this morning -- December 9th and December 16th -- didn't deal with misconduct of police, it dealt with the critical question of who shot Officer Faulkner?

MR. GRANT: Objection. He tries to get beyond the scope of my cross by using one document, and after he raises that issue, then he goes back into something which of course he has no right to do. I object: It's beyond the scope. That was very clever.

THE COURT: This is recross and if you want, I think you have gone into that on direct anyway a long time ago. So let's move forward.

MR. WILLIAMS: Very well.

Page 138.

BY MR. WILLIAMS:

Q. Now, you indicated the remark that you have in the February 11th report that you were asked about, the remark being if he dies you die, or something to that effect; do you recall that?

A. I recall the remark, yes.

Q. Okay. And that is in your February 11th report?

A. IAB report, yes.

Q. And the IAB investigator who was questioning you was not only questioning you about potential or possible verbal abuse, but also about physical abuse?

A. Umm, I don't recall any direct questions on that.

Q. No?

A. There is, one of the, the initial statement of the staff inspector, it says I am investigating a complaint which indicates that police officers, I believe the word is, physically and verbally abused his client.

Q. Right, right.

A. Yes.

Q. Now, you testified on direct that when you heard Mr. Jamal allegedly make this confession, that you noticed that your partner was near him; correct?

Page 139.

Gary Wakshul - Redirect

A. I stated that I read that in the report, my partner was near him, on questioning from the investigator, yes.

Q. Right. And your testimony on cross was that immediately after that confession there was this response if he dies you die?

A. By immediate, if you mean within a few seconds, yes.

Q. Yes. So you hear the confession, and when you hear the confession you notice your partner is near him, and you hear the remark if he dies you die: I have that right?

A. Not really, no.

Q. Tell me where I am wrong?

A. I did not take specific notice of where my partner was. My partner was with me, I imagine he was near me, and I was very near Mr. Jamal at the time.

Q. Okay.

A. When I heard the first statement by Mr. Jamal while he was sitting on the floor, I shot him, I hope the mother-fucker dies, I immediately was turned around. I turned myself around, there was a little area, I believe it was like an alcove for a doorway or something and I turned into it. And as soon as

Page 140.

Gary Wakshul - Redirect

that happened I heard the second remark, if he dies you die.

Q. So the person who uttered the remark if he dies you die was also an officer that was present?

A. I have no idea who said it. I don't know if it was an officer. I don't know if it was an officer. It was some person present at that location.

Q. And obviously it was near enough to hear this remark?

A. Yes. I would --

Q. And you testified earlier that you knew what Officer Bell looked like?

A. Yes.

Q. And that he was a colleague of yours in the 6th District, right?

A. Yes, he was.

Q. And yet you say you don't recall seeing Officer Bell present when this remark was made?

A. No, I don't recall.

Q. And according to your report, the only person that you recall being there with you, other than a lot of officers, is your partner?

A. And I only recall my partner because he is with me all night. I can't say that I recall where

Page 141.

Gary Wakshul - Redirect

his face was or where he was actually standing. I don't recall that at all. But I know he was there.

And there were several police officers in uniform. There were at least two others because I needed two others to assist us in getting him into the emergency room. And I don't recall who the other people were.

Q. So my question to you, then: Of all these police officers that you say were there, is it surprising to you that not a single one told an investigator that night or the day after or the day after that, or a week later, or a month later, that a confession was made by Mr. Jamal? Is that surprising to you?

MR. GRANT: Objection. And I think I had a standing objection to, despite his histrionics, it is still the same question that he was barred from asking before. And I would ask that Counsel be admonished for his theatrics, good though they are. It is still trying to evade Your Honor's ruling.

THE COURT: I already ruled on that, Counselor.

MR. WILLIAMS: And the rule is?

THE COURT: The same as it was then.

Page 142.

Gary Wakshul - Redirect

Bring him in. If you want these witnesses in here, bring them in. Whether he is surprised or not doesn't make any difference. Bring them in.

BY MR. WILLIAMS:

Q. In any event -- withdraw it. Would you have honored a defense subpoena had you been served with one?

MR. GRANT: Beyond the scope: Objection.

MR. WILLIAMS: He was asked, he was asked if he had been given a defense subpoena. I am merely asking a follow-up.

MR. GRANT: I didn't ask that. Why do you misstate the evidence and the record continually, Counsel? I asked him was he ever served. That's beyond the scope: I object.

MR. WILLIAMS: Your Honor, of course the Court's recollection holds.

THE COURT: But it's strictly speculation, whether he would or would not. He wasn't served, period. So let's not speculate what he would do.

MR. WILLIAMS: Your Honor, that's precisely what I am trying --

THE COURT: No, because he was already

Page 143.

Gary Wakshul - Redirect

here and available. He said that.

MR. WILLIAMS: Okay, so if I understand the Court's comment correctly, if Your Honor is concluding that he was here and available then I need not ask the question, if that will be your finding of fact.

THE COURT: He is speculating as to what he would do. Because if it was necessary, the Court would order him in. So what's the difference what he would want to do?

MR. WILLIAMS: My concern is -- and maybe the Court has allayed my concerns -- is that I am simply trying to establish the fact, which I would ask Your Honor to find at the end of this hearing, that indeed at least for part of the time, as he has testified, he was available to testify.

THE COURT: Well, it's obvious that's what he said.

MR. WILLIAMS: Very well. The Court has indicated it would find that fact, I need not ask that question.

MR. GRANT: I don't believe the Court has indicated it would find any such fact.

MR. WILLIAMS: That is precisely why I

Page 144.

Gary Wakshul - Redirect

need to ask the question. Because I need to establish that fact.

THE COURT: What fact?

MR. WILLIAMS: That he was available to testify.

THE COURT: Well, he said, and I am sure he is telling the truth, that he was here in Philadelphia and hadn't left in the beginning part.

MR. WILLIAMS: And would he honor the subpoena.

MR. GRANT: That's beyond the scope.

MR. WILLIAMS: Is he saying, I mean I think the answer is going to be obvious, and of course he would. But for the benefit of the record, I think we ought to close that gap. Otherwise, we may have in a future submission we would receive from the Commonwealth that there is no testimony that had he been given a subpoena he nevertheless would have or would not have come. I just want to insure that the Commonwealth will not invoke that argument.

MR. GRANT: That is not a basis to avoid the rules of evidence,

just because he wants to close gaps and he wants to be sure. We

Page 145.

Gary Wakshul - Redirect

have rules here. Whether you come from New York City or you live in this State, you walk in the room here, the rules of evidence apply in this room.

MR. WILLIAMS: Right.

MR. GRANT: It is beyond the scope: I object.

MR. WILLIAMS: The rules of evidence allow me to ask if he --

THE COURT: It was beyond the scope of cross. This is recross now, okay.

MR. WILLIAMS: I think the answer is obvious but nonetheless --

THE COURT: Counselor. It's beyond the scope.

MR. WILLIAMS: Very well.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. You indicated on direct and reiterated on cross -- well, I'm sorry, perhaps not on cross -- you indicated on direct that you would have testified had Mr. McGill asked you to testify?

MR. GRANT: Objection.

MR. WILLIAMS: Do you remember that?

MR. GRANT: If he indicated on direct

Page 146.

Gary Wakshul - Redirect

as their witness, and he didn't indicate on cross, it's clearly beyond the scope of cross. Is that a difficult concept, Your Honor.

MR. WILLIAMS: Your Honor.

THE COURT: Counselor.

MR. WILLIAMS: I didn't ask the follow-up question. I was directing his attention to an area.

THE COURT: Counselor, he is correct on that issue. Counselor, I have ruled he is correct on that issue.

MR. WILLIAMS: If I can.

THE COURT: Counselor, I have made a ruling. You have an automatic exception. Let's not argue with the Court.

BY MR. WILLIAMS:

Q. Now, you indicated that you weren't, you don't recall physically being in this building at the time the trial was being conducted on cross-examination; do you recall that?

A. That I don't recall?

Q. You were asked on cross-examination?

A. As far as I know, I was not here during the trial, during the time of the trial in this building.

Q. Okay. Okay. Do you mean to suggest when you

Page 147.

Gary Wakshul - Redirect

answered that question on cross-examination that therefore you were unavailable to testify if the Commonwealth had called you as a witness?

MR. GRANT: Objection to the speculation and the indirection.

THE COURT: I will sustain that. You are trying to get in the back door what you can't get in the front door, Counselor. Please. All right.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. Now, on the February 11th interview regarding the inquiry into physical and verbal abuse -- and you commented that perhaps there might have been verbal abuse in the form of a threat to Mr. Jamal -- my question to you is did you see any physical abuse?

MR. GRANT: Objection: Beyond the scope of cross.

MR. WILLIAMS: That was a subject that was explored directly by Counsel.

MR. GRANT: I didn't ask him anything about physical abuse at all.

MR. WILLIAMS: Your Honor, I am not required to re-ask questions that are on cross.

Page 148.

Gary Wakshul - Redirect

If I am exploring an area --

THE COURT: The thing is, if you could bring it up in direct you should bring it up in direct. You introduced this in direct. Now, if you wanted to bring out anything about physical abuse, you should have done it then.

MR. WILLIAMS: I didn't want to make an issue of it until --

THE COURT: Why not?

MR. WILLIAMS: Because if Mr. Grant wants to make an issue of it then I will direct his attention to it on redirect.

THE COURT: No, if you didn't want to make an issue of it in direct you can't do it in recross.

MR. WILLIAMS: In redirect.

THE COURT: Or redirect. You should have done that, you should have done that at that time.

MR. WILLIAMS: Your Honor, I can re-raise it if it is raised in cross.

THE COURT: It wasn't raised in cross, nothing about physical, only --

MR. WILLIAMS: The issue of abuse was. Are we going to slice the baloney that thin that

Page 149.

Gary Wakshul - Redirect

since he could only raise, he can raise the issue of verbal abuse, that somehow the whole category of physical abuse is --

THE COURT: I am saying to you, Counselor, in plain English: If you could have raised this in direct you should have done it at that time. Otherwise it's out.

MR. WILLIAMS: I know of no rule of evidence that fits that.

THE COURT: Well, I'm sorry if you don't know of any rule of evidence. I realize you are from New York, but we're dealing with Pennsylvania law here.

MR. WILLIAMS: I'm becoming acutely aware of that.

THE COURT: Counselor, I have ruled on it. Please don't argue with me anymore.

THE COURT OFFICER: Quiet in the Courtroom, please.

MR. WILLIAMS: Very well.

BY MR. WILLIAMS:

Q. Now, you have testified on cross-examination and your answers on cross-examination indicated that a case often can proceed without a witness if there are, say, scores and scores of other police officers

Page 150.

Gary Wakshul - Redirect

who could testify, if one officer is unavailable, perhaps a case nonetheless could go forward; do you recall that?

A. I recall that discussion, yes.

Q. By Mr. Grant?

A. Yes.

Q. Is it your understanding that it is appropriate for a case to proceed where there are scores and scores of prosecution witnesses that are police officers, that they can proceed without the benefit of a police officer who is helpful to a defendant; is that your understanding?

MR. GRANT: I object.

MR. WILLIAMS: Your Honor, that is squarely within an inquiry by Mr. Grant.

MR. GRANT: I didn't say it was beyond, I didn't say it was beyond the scope, Counselor. I think it's totally immaterial and irrelevant and there is no suggestion whatsoever by either direct or

cross that that is the situation.

MR. WILLIAMS: Your Honor, all I am asking for is some intellectual tenure here. Now, he asked the question can the case proceed if there are scores of officers and if there is

Page 151.

one officer that has a vacation. I am asking the crucial question: What if that one officer that went on vacation happens to be an officer that helps the defense.

THE COURT: Well, you are assuming things here.

MR. WILLIAMS: What am I assuming?

THE COURT: You are assuming that he is going to help the defense.

MR. WILLIAMS: I thought I spent the morning demonstrating that.

THE COURT: I know you have been trying to do that. But there were other officers there and that you say made certain statements. You could have used them.

MR. WILLIAMS: The point is could we have used Officer Wakshul.

THE COURT: Well, whether you could or couldn't, he wasn't here. All right, Counselor.

MR. WILLIAMS: So my question to him, Your Honor, I said if there are scores of officers who were available to testify --

THE COURT: Well, that's something you should argue to the Court, not with the witness.

MR. WILLIAMS: So Your Honor is

Page 152.

barring me from that question?

THE COURT: I am barring you from that question, yes.

MR. WILLIAMS: Very well. In that event, I have no further questions.

MR. GRANT: Nor do I, Your Honor. Thank you, Mr. Wakshul.

THE WITNESS: Thank you, Your Honor.

THE COURT: Let's take a luncheon recess until 2:15.

THE COURT OFFICER: 2:15, Your Honor? This Court now stands in luncheon recess until 2:15 this afternoon at the call of the Crier.

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(Luncheon recess was held until 2:40 p.m.)

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THE COURT OFFICER: Quiet in the room, please. Court is now reconvened. Thank you.

MR. GRANT: Before we proceed, Your Honor, I would like to bring something to the Court's attention which I think is of serious, if not of grave, importance. There is a gentleman whose name was Mr. George Ewalt.

Page 153.

THE COURT: Who?

MR. GRANT: Mr. Ewalt 13 years ago happened to be the foreperson of the Jury in Mr. Jamal's case. Mr. Ewalt received a subpoena from the defense to appear here in this Courtroom to testify for tomorrow morning.

I would just like to invite Your Honor's attention to a couple of salient features regarding this subpoena which I think is indicative of the defense's abuse of your authority to do this over and over again to person after person in this case for which there is no affidavit, there is no averment that they have any material testimony to provide, and they are not making offers of proof. And they are not notifying us until the day it happens. Of course they didn't notify me of this either but it just so happens that things come to peoples' attention.

Now, they have what is called in Pennsylvania law, including most other jurisdictions, in this case including New York City, what is known as the no impeachment rule. And that means once the juror has given their verdict, it's been read by the foreperson into

Page 154.

the record, there's been a polling of the jury -- and in this case the Jury was polled both as to guilt and as to penalty by Mr. Jackson -- and the verdict is thereafter recorded and in the Quarter Sessions file, unless counsel is bringing to the attention of the court some external or third-party influence impacting upon the jurors' deliberations, the jurors are incompetent, incompetent to testify about their deliberative process. That is, what went on in their minds that led to their verdicts. And if there is interaction among jurors or a lack of it, that still is not subject to impeachment by interview by Your Honor, by affidavit by defense counsel, by investigation and inquiry by investigators.

Now, you may note, Your Honor, that the defense submitted to you the affidavit of one Steven Wayne Hawkins who appeared before Your Honor as an attorney at the Bar of this Court on Wednesday, July 12th, the first day of this proceedings. He is the young man that said he had six years of death penalty experience and went on to state his opinion as to what the law is. He interviewed an individual Juror who sat

Page 155.

on the Jury and deliberated -- and her name was Savannah Davis. Because of his expertise, I imagine, as a death penalty counsel, Mr. Hawkins must have known very well that he can not bring an affidavit from a Juror into this Court or have her sit on this witness stand and testify about the deliberative process of the Jury. So instead of doing that, he crafts an affidavit where he purports to relate his questioning of her and her responses.

Now, if that weren't enough, Counsel now purports to bring in the foreperson of the Jury for much, I assume, the same thing. I would refer Your Honor's attention, because I did a little research into New York law to find out if there is something that goes on over there at that table that is different than other parts of this world. And I found out, Your Honor, that their activities are proscribed by and illuminated by a case called Stein versus New York State, which is cited at 346 United States Supreme Court, 156; secondarily cited at 73 Supreme Court, 1077. And as to the pages of the particular, from the U.S. Reporter, it's 178, and from the Supreme Court Reporter it's

Page 156.

1089.

This case is 42 years old. And it stands for the proposition that -- in New York State, by the way, allegations raised by affidavits such as Mr. Hawkins' involving either third-party information -- which clearly from his affidavit did not -- and therefore improperly introduced into the deliberations and not without any objectively demonstrated effect to attempt to impeach the verdict of the Jurors -- in Stein versus New York, the Appellate Division of the New York City Courts, I imagine it is, dropped a footnote in which they said, we disapprove of the conduct of defendant's counsel in obtaining a juror's affidavit. And they cite civil rights laws under the State of New York, People versus DeLucia and People versus Straff, among other cases. And it said, the procuring of such affidavits and the failure to make timely notice to the court of their existence may in fact conflict with disciplinary Rule 7-108 B of the Code of Professional Responsibility. The Code of Professional Responsibility is basically called the ethics board. And it governs the

Page 157.

practices of attorneys like us.

It is not only illegal now, it apparently is unethical. And that's been the law where they come from for 42 years. Now, I don't know what they think 'the law is here, but I am going to cite their attention if I may to three cases: Carter versus U.S. Steel, 529 PA Supreme Court 409, a 1992 case; Commonwealth versus Jeffrey Carr, a Pennsylvania Superior Court case cited at 370 PA Super, page 1, a 1987 case; and Pittsburgh National Bank versus Mutual Life Insurance Company, another Supreme Court case, at 493 PA 96.

The rule in Pennsylvania, as well as in a majority of jurisdictions, is that a juror is incompetent to testify as to what occurred during

the deliberations. This rule is often referred to as the no-impeachment rule.

Now, when it is said as well in a majority of jurisdictions, I want to make it known to the Court that that majority encompasses the State contiguous to ours, that the law still exists there: It hasn't changed since they crossed the state lines. I highly resent what they are trying to do, I highly

Page 158.

resent they are trying to intimidate these people. And I ask Your Honor to have a hearing right now as to who served that subpoena and what their intention was. And if they attempted third-party interference with what the deliberative process was, I would like Counsel sanctioned.

THE COURT: Do you want to answer?

MR. WEINGLASS: There is really no need to answer.

THE COURT: Why not?

MR. WEINGLASS: Because, number one, we did not, we never have, and we don't intend to produce an affidavit of a Juror. We produced affidavit number 10, which is appended to our Petition, which is not an affidavit of a Juror, but an affidavit of Mr. Hawkins. Point number one.

Point number two: It would save the Court a lot of time and this record a lot of time if Counsel had read that affidavit. Because -- please, Your Honor.

THE COURT: Let me just say one thing.

MR. WEINGLASS: I am at the Bar of the Court. The Court sat here for 10 minutes

Page 159.

listening to utter nonsense. Now I am trying to correct the mis impression that was given to this Court.

THE COURT: Okay. Okay, go ahead. All right.

MR. WEINGLASS: Okay.

THE COURT: When you are done I have something to say.

MR. WEINGLASS: That's how I thought things are ordinarily done.

THE COURT: Don't tell me how to run this Courtroom.

MR. WEINGLASS: I am not, I am only making observations.

THE COURT: Don't make observations, okay.

MR. WEINGLASS: The law is clear beyond dispute that you can not impeach a jury's verdict. If we were trying to impeach a jury's verdict, we are wrong. The fact of the matter is, when you read the affidavit, we are not attempting to in any way impeach a jury's verdict. What the affidavit of Mr. Hawkins alleges is the very exception that Counsel cited to the rule. You may always show outside the

Page 160.

deliberation room jury misconduct. And that's what we are trying to show in this instance. And we are showing it by way of an affidavit from Mr. Hawkins, who says that he had talked to a Juror not about deliberations, but about what went on in the hotel after Court. And what he got from that Juror is that the Jury foreman --

MR. GRANT: I object to him repeating on this record what he got.

MR. WEINGLASS: It's public, it's public.

MR. GRANT: Yeah, that's public. That's improper.

MR. WEINGLASS: I will read from it then, I will read from it.

MR. GRANT: I object, Your Honor.

MR. WEINGLASS: I will read from it.

MR. GRANT: What he is doing is placing the Jury's deliberative process before Your Honor.

MR. WEINGLASS: It is not deliberative process, it is the hotel. It is the hotel, it has nothing to do with the deliberations.

MR. GRANT: If it is not outside influence, it is improper.

Page 161.

MR. WEINGLASS: Paragraph 3. The youngest woman on the Jury became very friendly with the Jury foreman George Ewalt. After the first few days of the trial, they were soon joined by a third Juror, who was a young white male. The three Jurors formed a, quote, pact, and they would meet after dinner in Mr. Ewalt's room, which was next to Miss Davis' room. They would meet in Ewalt's room and have the door closed, which was in violation of Judge Sabo's order. Every night Miss Davis heard these Jurors discussing the evidence presented that day at trial. Also parenthetically, I might add, in violation of Your Honor's order. They would discuss witnesses' testimony, and whenever one of them had a different view of the evidence than the others, the dissenting voice was invariably silenced and made to go along.

This is classic juror misconduct in violation of two orders of this Court. It has nothing to do with deliberation. It has nothing to do with any of the cases he cited. And it's entirely appropriate to be brought before this Court. That's why Mr. Ewalt was subpoenaed: In furtherance of this allegation.

Page 162.

THE COURT: All right. Just one minute. I said at the very beginning I wanted a list of every witness you were going to call. I wanted to know the purpose of that witness, what the witness was going to testify, and why is it important in this case, what is the relevancy of that witness. You have not given me that. And I told you I wanted it today. And if you don't give it to me, I am not going to allow you to go out and subpoena anybody and bring anybody in here whenever you choose. I want that list from both sides. Both from the Commonwealth and from the defense. And I want it spelled out, the purpose of that witness. The relevancy of that witness.

MR. WEINGLASS: As I have informed this Court from day one, we are operating under enormous time pressure. Mr. Ewalt --

THE COURT: Counselor, that has nothing to do with you giving me a list of the names so I have it in advance. And they have it, they know exactly who you are going to call, why you are going to call that person. You are the one that's delaying these proceedings. If they had this information, they wouldn't be able

Page 163.

to complain about it now.

MR. WEINGLASS: Mr. Ewalt --

THE COURT: We have no idea who you are going to call. I don't have the slightest idea. And I asked for that at the very beginning. And I'm asking for it one more time from both sides.

MR. WEINGLASS: You got two lists at the very beginning.

THE COURT: I don't have anything.

MR. WEINGLASS: Which you read into the record, incidentally.

THE COURT: Well, that was only a couple of names. And every time I look at the name he says well, I don't know anything about this, there is no affidavit, there is nothing, I don't know why you are calling him.

MR. WEINGLASS: The name George Ewalt was given to them on June 5th, seven weeks ago.

THE COURT: Did you give them a statement?

MR. WEINGLASS: His name is contained in an affidavit. If they had read it they would know it. They just apparently haven't read it.

MR. GRANT: Well, we did read it,

Page 164.

Judge. This was in the affidavit of Counsel for them, who purports to be a witness for the Defendant, who took an affidavit of a Savannah Davis, wherein -- who is a Juror, by the way -- wherein Savannah Davis mentioned Mr. George Ewalt in a conversation with Mr. Steven Hawkins. That is putting us on notice that is a witness they are calling? That is ridiculous.

THE COURT: As I said, I don't have it. I want that list, Counselor. And I want it immediately. If you don't give it to me, I am not going to allow you to call any witnesses.

I want it from both sides; I want it no later than tomorrow morning so I know where we are going.

MR. WEINGLASS: I would ask that Mr. Ewalt's subpoena be quashed.

THE COURT: I am quashing it at the present time. Get me that

list no later than tomorrow morning, okay. We will proceed with whatever witness you have here now. Which is Mr. Greer, as I understand it. And tomorrow morning I want that complete list from both sides. And I want both sides to be supplied with why it is important, the relevancy of that

Page 165.

witness. What, basically, the witness is going, roughly what he is going to testify. What he is going to bring to the Court's attention.

MR. WEINGLASS: The time constraints the Court imposed on us makes it entirely impossible.

THE COURT: It is not impossible. It is an order that I am giving you now. It is not impossible. If you had done it at the very beginning it would have been no problem at all. Because I am wasting more time when you are calling a witness and the D.A. says I don't even know why you are calling him.

MR. WEINGLASS: That's because he hasn't read the Petition.

THE COURT: Counselor, give me that list by no later than tomorrow morning. Both of you.

MR. GRANT: Yes, Your Honor.

THE COURT: Okay. Now let's get finished with Mr. Greer and then we will worry about tomorrow, see who will be next.

MR. WILLIAMS: Good afternoon, Your Honor. Before we call Mr. Greer, let me, because I think this is probably the best time

Page 166.

to raise this issue -- and it was touched upon yesterday -- it concerns Police Officer Bell. And I know Police Officer Bell is in the Courtroom. And we did subpoena Mr. Bell and you quashed that subpoena.

THE COURT: Yes, because you have not given me a list. And I am going to tell you for the last time: Get me that list by tomorrow morning, okay. I want to know who you are going to call, what they are going to testify, what is the purpose, the relevancy of that witness. So that you put the Commonwealth on notice and they can't complain later on. That's why they complain. Because if you had given me this list in the very beginning like I asked you, we wouldn't have this problem.

Now let's proceed. Tomorrow morning give me that list, okay.

MR. WILLIAMS: And, Your Honor, Police Officer Bell will be on that list and we will --

THE COURT: Well, if he is on the list tomorrow morning we will see what he is going to testify to and we will see the relevancy and I will take it up tomorrow morning.

MR. WILLIAMS: Fair enough. The other

Page 167.

matter is just briefly: As I understand it, there are two police reports that were handed over to the defense pre-trial that we do not have in our possession. As to why we don't have it I can not enlighten the Court. All I can say to the Court is that we don't have the police reports reflecting the statements of two individuals, a Harry Fairclough -- that's F-A-I-R-C-L-O-U-G-H -- and Arnold Howard. They are civilians and they apparently gave statements to law enforcement. And again they were given to defense Counsel, I believe, pre-trial.

And I am asking the Court to request of the Commonwealth that they extend the courtesy -- and I understand it is a courtesy -- of replenishing those reports to us. And I apologize for the inconvenience of that, but I just would appreciate the courtesy.

MR. GRANT: I will tell him the same thing as I told Mrs. Wolkenstein, and because you may have more pleasing personality, the result is still the same. We extended the courtesy before. Of course they were precise and specific in what they wanted, we gave them

Page 168.

what they wanted. And it doesn't matter how much we give them they are always going to want something else as a courtesy because they know there is no Post-Conviction discovery rule. Now they think that they can play fast and loose with the rules of evidence and ethics and morality here and we will continue to abide by their requests.

But with all due respect to Your Honor, since there is no discovery provision, I would deign to think that perhaps it's strictly up to me on a voluntary basis, and I would decline their courteous suggestion.

MR. WILLIAMS: Well, Your Honor, this is not about personalities, it's about whether we can pursue a hearing in a fair and proper manner. And all I am asking, I am not asking for new discovery, what I am asking is that we have the same fund of information that was available.

THE COURT: Well, did you ask the appellate Counsel if they had it?

MR. WILLIAMS: We did. We have attempted to get all of the materials from both appellate Counsel, from trial Counsel, and from

Page 169.

every other source.

THE COURT: And Mr. Jamal?

MR. WILLIAMS: And from Mr. Jamal. From every source that's possible before we go to the Commonwealth. We go to the Commonwealth in the last instance. And I understand that they are busy. We're busy and they're busy. But all I am asking for is the same fund of information.

THE COURT: Well, see, if you tell the Court why it's necessary maybe I could help you. But I don't know anything about this because you have not given me any list. You haven't given the list to the Commonwealth.

MR. WILLIAMS: This has nothing to do with witnesses that will testify.

THE COURT: Well, if it has nothing to do with witnesses who are going to testify then why is it relevant to this proceeding? Why is it relevant to these proceedings?

(Discussion was held off the record at this time among defense Counsel.)

THE COURT: Counselor, let's take it up another time. Let's get this --

MR. WILLIAMS: No, Your Honor, because

Page 170.

of this time frame that you have imposed upon us --

THE COURT: I have imposed it from the very beginning. If you had listened to me you would have had it all in.

MR. WILLIAMS: No, these two names came to our attention in connection with our investigating for purposes of presenting evidence in this hearing. We believe --

THE COURT: Why don't you --

MR. WILLIAMS: We believe that these two individuals who provided information to the police, that are memorialized in reports that we do not have, have relevant testimony in this hearing. And that's what we are asking.

THE COURT: Go out and talk to them.

MR. WILLIAMS: The point is, Your Honor, we don't have their police statements. And this is not an idle request.

THE COURT: Did you go out and talk to these people? Did your investigator who you are now going to call, does he know them?

MR. WILLIAMS: We need these reports of these individuals.

THE COURT: No, you don't. Talk to

Page 171.

them. Why don't you ask them what they said?

MR. WILLIAMS: Their statements are memorialized in police reports. Is Your Honor suggesting --

THE COURT: I am not suggesting anything. I am saying that we will --

MR. WILLIAMS: Yes, you are.

THE COURT: I am saying that we will proceed right now with the witness you listed for today. Let's put Mr. Greer on. Try to work it out among yourselves. If you can't, then, fine, come to me later.

But let's get moving.

MR. WILLIAMS: Your Honor, I will try to do that.

THE COURT: All right. Bring Mr. Greer in, please.

- - - - -

Robert T. Greer, having been duly sworn,
was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Mr. Greer.

A. Good afternoon, sir.

Page 172.

Q. Mr. Greer, would you state for the record your present occupation and employment?

A. I am a security supervisor for SOS Security.

MR. GRANT: Where?

THE WITNESS: SOS Security.

MR. GRANT: Thank you, sir.

BY MR. WEINGLASS:

Q. Directing your attention back to January of 1982, what was your occupation and employment at that time?

A. I was a private investigator.

Q. Were you a licensed private investigator in the Commonwealth of Pennsylvania?

A. Yes, I was.

Q. And did you maintain an office in the City of Philadelphia at that time?

A. Yes, I did.

Q. And how long had you been a licensed investigator prior to January of 1982?

A. Hmm, approximately three years.

Q. Now, in that month, January of 1982, did you know an attorney in the City of Philadelphia by the name of Anthony Jackson?

A. Yes, I do.

Q. And did there come a time where you were

Page 173.

contacted by Mr. Jackson relative to your performing investigative services in the case of Commonwealth V. Jamal?

A. Yes, there did.

Q. And did he ask you if you would assist him in conducting an investigation in the defense of Mr. Jamal?

A. Yes.

Q. And as a result of his request, did you in fact become involved as an investigator in the defense of Mr. Jamal?

A. Yes, I did.

Q. Incidentally, are you appearing today pursuant to a Court subpoena?

A. Yes and no. I've been asked to come and I was subpoenaed last week and earlier this week.

Q. And who asked you at that time?

A. I was subpoenaed by the District Attorney this week and by you last week.

Q. Now, back in 1982, did you accept a Court appointment as an investigator on the defense of Mr. Jamal?

A. No, I didn't.

Q. And could you explain why that was?

A. Why I didn't accept the appointment?

Page 174.

Q. Yes.

A. It didn't pay enough money.

Q. Were you still working as an investigator for the defense in the Jamal case when the case went to trial in June of 1982?

A. No, I wasn't.

Q. And why was that?

A. I was only offered $150 on the appointment, it just wasn't enough money.

Q. Now, while you were working on the defense case, prior to June of 1982, did you have occasion to examine the discovery materials that were turned over to Mr. Jackson?

A. Yes, I did.

Q. And was that the first thing that you did in the course of your working as an investigator on the case?

A. No, sir. The first thing I did was talk to Mr. Jackson and Mr. Jamal.

Q. And after that?

A. When the discovery came I studied that discovery.

Q. And after that did you have occasion to visit the scene where the shooting occurred?

A. Many times.

Page 175.

Q. Do you recall if, Mr. Greer, whether or not you had occasion to investigate an individual known as Cynthia White?

A. I saw her several times; I've never talked to her.

Q. And did you see her at her residence?

A. No. She never was home.

Q. Where did you see her?

A. Most of the time I saw her on the corner of 12th and Locust.

Q. And on those times that you saw her, was that more than once?

A. Oh, yes.

Q. Did you have occasion to talk to her?

A. No, I didn't.

Q. Why was that?

A. There was always a car parked adjacent to her with two people in it that appeared to be two plainclothes police officers.

MR. GRANT: I object to what it appeared to be unless he could substantiate that.

THE COURT: Strike that last phrase.

BY MR. WEINGLASS:

Q. Now, Mr. Greer, at this time you had been an

Page 176.

investigator for four years?

MR. GRANT: I believe he said three.

THE WITNESS: Three years.

BY MR. WEINGLASS:

Q. Three. You knew what a plainclothes policeman looked like?

A. Yes.

MR. GRANT: Objection. Move to strike that.

BY MR. WEINGLASS:

Q. To your experience and observation, were those plainclothes police officers who were near Miss Cynthia White?

A. They appeared to me, yes.

Q. Did you ever have an opportunity to talk to her?

A. No, I didn't.

Q. Was there ever a time to your observation that these individuals who were in a car left the area when she was there?

A. No, I never stayed there and watched her. The only time I saw her they were there also.

Q. So you never saw her without them?

A. No, I didn't.

Q. And could you, to the best you can recall,

Page 177.

Robert Greer - Direct

describe what these individuals looked like who were at or near her?

A. They were both white, one male, one female. They were in a little red car.

Q. Was the car just parked at an intersection or was it moving?

A. Parked at the curb, yes.

Q. And was it parked at a curb near where she was standing?

A. Yes.

Q. Now, were there any other, was there any other individual who you spent time attempting to locate for the purpose of questioning?

A. I attempted to locate a gentleman who fit the description of the person that was seen running away.

Q. And could you describe the height and the weight of the gentleman who you were trying to locate?

A. I believe it was approximately six-foot-two, over 200 pounds, dreadlock hair, red fatigue or Army-type clothing.

Q. And his race?

A. He was black.

Q. And what information had you received relative to that individual in the locale where the shooting

Page 178.

Robert Greer - Direct

occurred?

A. In statements he was described as running away from the scene.

Q. Now, did you prior to this time know of an individual, know of an individual who fit that description?

A. There was an individual that fit that description, he had been there for years, to my knowledge.

Q. And did you try to find him?

A. I looked for him.

Q. Were you able --

A. No, I never was able to find him. I looked for him many times.

Q. Do you know a gentleman who is an attorney at that time by the name of Ben Johnson?

A. Yes, I do.

Q. Did you discuss this with Mr. Johnson?

A. Yes, I did.

Q. Did he know of this individual?

A. Yes, he knew him.

Q. Was his office located near the intersection of 13th and Locust?

A. No, his office wasn't there, but he, ahh, he was there quite often.

Page 179.

Robert Greer - Direct

Q. And he indicated to you he knew who this individual was?

A. Yes.

Q. And when did you abandon your efforts to find this person?

A. I'm not sure I ever did. I still looked for him when I go down that way.

Q. Even down to this day you look for him?

A. I looked for him the past 14 years. I've never made a concerted effort but I always looked to see if he was around. Because he was always there prior to this.

Q. And to your knowledge, from December 9th, 1981, has anyone ever located him again at that intersection?

A. Not to my knowledge.

Q. Now, were you ever asked by Mr. Jackson to locate an individual by the name of Debbie Kordansky?

A. Not that I remember.

Q. Did you in the course of your work as an investigator on the case have occasion to locate and interview a witness by the name of Dessie Hightower?

A. Yes, I did.

Q. And did you tape record his statement? With his permission?

Page 180.

Robert Greer - Direct

A. I'm not sure -- yes, yes, I believe I did tape record his statement. With his permission, of course. If I recorded it I asked him first.

Q. Right. And did you also locate and tape record a statement by a gentleman by the name of Robert Pigford?

A. Yes, I did.

Q. Now, how were you able to locate these two individuals?

A. These two individuals' statements still had their address on it.

Q. And to your knowledge did any of the other statements that were received in discovery have the address of the individuals?

A. I don't believe they did, sir.

Q. Have you in the course of your experience working as an investigator for the defense received discovery materials where the address is indicated in the police statement?

A. The address is always there, yes, sir. Normally.

Q. But it wasn't given in this instance?

A. No, sir.

Q. Now, Mr. Greer, do you recall if you submitted a bill to Mr. Jackson for the work that you did in

Page 181.

Robert Greer - Direct

the case?

A. Yes. He told me to submit a bill for the time that I had spent, yes.

Q. Do you recall approximately how much your bill was?

A. Approximately $500.

Q. And was that money that Mr. Jackson had paid you himself?

A. As far as I know he did, yes. He gave it to me.

Q. Did he give it to you when you started your work?

A. No, sir.

Q. When did he pay you?

A. I don't remember exactly but it was during the course of the investigation. Towards the end he indicated that he was having a problem with getting money for me so he told me just submit my bill. And I did.

Q. And the hours that you have indicated, you spent 22.5 hours, they were all spent prior to trial?

A. Say that again, sir.

Q. The hours that you indicated in your bill that you spent 22.5 hours on this case was all spent prior to the trial?

Page 182.

Robert Greer - Cross

A. Yes, it was.

Q. And you were no longer available to Mr. Jackson, or Mr. Jamal, during the trial because there was no money available?

A. That is correct.

MR. WEINGLASS: May I have just a moment?

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: Thank you, Mr. Greer. I have no further questions.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good afternoon, sir.

A. Good afternoon.

Q. You've been a policeman in the past, Mr. Greer?

A. That is correct, sir.

Q. And how long, sir?

A. Ahh, 12 years, 14 years.

Q. Were you ever elevated to the rank of detective?

A. No, sir.

Page 183.

Robert Greer - Cross

Q. You never were trained as a detective?

A. No.

Q. And what were your duties as a police officer when you worked as a policeman?

A. I worked in traffic, I worked in intelligence.

Q. So when you worked in traffic, tell the Court what you do?

A. In traffic?

Q. Yes.

A. Various duties. From details, traffic assignments, crime. We did everything.

Q. When you say crime, what do you mean by that, sir?

A. We worked the regular crime patrols. We patrolled certain areas, in high crime areas.

Q. And did the Traffic Division wear white hats back then like they do now?

A. We wore white hats and helmet, yes, sir.

Q. And when you say you patrolled high crime areas, was this on the highway?

A. No, in City streets.

Q. In the City streets. Can you tell me how that worked, who you received your assignments from and things of that nature?

A. Well, after traffic was over, we were still

Page 184.

Robert Greer - Cross

working, we went out and we patrolled certain areas. Center City, South Philadelphia, West Philadelphia. We received our assignments from our district.

Q. From your district --

A. Yes, sir.

Q. -- commander? And of the 12 years that you put in with the Police Department, how much time do you think was spent in the high crime areas, as you say, patrolling, if you could give me a percentage?

A. That would be pretty hard to say. I couldn't even estimate that, sir, I'm sorry.

Q. Would you say that once you began being an investigator, knowing the detectives that you knew in the detective divisions, that being a private investigator was very much like being a detective for the Police Department except that you had a different paycheck method?

A. I don't think so, no. It was quite different.

Q. Tell me what the differences are, sir?

A. The difference was you worked alone. You had to do all of your studying within yourself.

Q. I'm sorry?

A. You had to do everything within yourself. You had to study what you were doing. Like when I got an assignment, I would take the assignment and study it.

Page 185.

Robert Greer - Cross

I would read the discovery first. Then I would determine from the discovery who I needed to talk to to reconstruct the crime or the scene. But the difference is I had to do it all myself, I had to take it from beginning to end.

Q. And as a private investigator, when a person would hire you and other ancillary services to yours, such as a photographer, since you talked to Mr. Jamal, you talked to Mr. Jackson, you were familiar with the crime scene there between 12th and 13th and Locust Street, would you direct the photographer's efforts?

A. Would I direct his efforts?

Q. Yes, sir.

A. I would take him along for pictures if I needed pictures.

Q. You would take some yourself?

A. Oh, yeah.

Q. You had your own camera?

A. Yes.

Q. When you submitted your bill, your petition for payment or reimbursement, did that include any expenses you incurred for taking photographs?

A. If it was applicable, yes, sir.

Q. Was it applicable?

Page 186.

Robert Greer - Cross

A. In this case, no, sir. I didn't get to that point.

Q. So did you direct the photographer or not?

A. No, sir.

Q. Now, you say at that time you had been a private investigator -- now we are talking December of 1981 -- you had been a private investigator for three years?

A. About that, yes.

Q. And this was immediately after you left the Police Department, or did you have a job in between?

A. No, I had jobs in between. I worked as an investigator with the Strawbridge and Clothier.

Q. Strawbridge and Clothier?

A. Yes, I did.

Q. What else?

A. Well, what else did I do? I worked as a special investigator for SEPTA. Ahh... I believe that was, that was it as far as in that field.

Q. Okay. Now, in 1981 you had interacted with detectives and personnel from the detective bureaus I guess throughout the City, would that be fair to say, in your 12 years?

A. Oh, yeah.

Q. And some of those observations and

Page 187.

Robert Greer - Cross

interactions involved undercover police officers, people in plainclothes; correct?

A. Yes.

Q. And have you ever been on any undercover assignments, sir, while you were a policeman?

A. Yes.

Q. And did you work plainclothes?

A. Ahh... I think I did. I'm not sure, it was a long time ago.

Q. Well, it would be kind of hard to be incognito walking around in a police uniform and a white hat, wouldn't it?

A. It would be. It would be, yes, sir.

Q. So you used plainclothes, then, I assume when you were on these?

A. Maybe I misunderstood what you said, undercover. I had worked in places where it was like takeouts. I would not be undercover the way that you described it.

Q. So you never worked as an undercover officer?

A. As such, no.

Q. But you have seen detectives who are in plainclothes; correct?

A. That is correct.

Q. As a matter of fact, there is no uniform for a

Page 188.

Robert Greer - Cross

detective in the City of Philadelphia and never has been, so they are always in plainclothes; correct?

A. Correct.

Q. So when you say you saw these people who were working undercover, you just meant that they appeared to you to be detectives from the Philadelphia Police Department?

A. They appeared to be police officers, yes, sir.

Q. How does a police officer appear?

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

Q. Well, let me ask you this, Mr. Greer.

A. Yes.

Q. When Mr. Jackson sent you out to embark upon this mission to interview these witnesses, you of course had a photograph of each person that you sought out and wanted to interview; correct?

A. That's not correct.

Q. That's incorrect. Well, you knew Cynthia White from having had personal dealings with her, I take it?

A. That's also not correct.

Q. Well, then you knew Cynthia White because she

Page 189.

Robert Greer - Cross

was related to you?

A. That's not correct either.

Q. Well, then you knew Cynthia White and would recognize her face because she was a friend of a friend of yours?

A. Not correct.

Q. Well, then tell us how you knew what she looked like?

A. Cynthia White came to the Court. But I knew Cynthia White because people out on the street that knew her pointed her out to me.

Q. Oh. So you went up to persons. Well, who are those people that pointed her out?

A. It was 14 years ago, I really couldn't even tell you about that. People that knew her. Cynthia White was a prostitute that worked the area. I knew people that worked near her.

Q. And Cynthia White, that's a female name, is that any more or less common than John Brown or Mary Jones?

A. It's probably not as common.

Q. And do you know any other Cynthia Whites, have you come across any persons named Cynthia White in your years as an investigator and human being?

A. Not that I can remember.

Page 190.

Robert Greer - Cross

Q. But you were an investigator at that time, right?

A. That is correct.

Q. And you walked up to people and said do you know Cynthia White and they pointed to some person over there and they said that's her. So you went over there and watched her, right?

A. It wasn't quite that simple. The people that I talked to were people that I knew and people that knew me. But when I asked if they knew Cynthia White, they wouldn't respond unless they did know her.

Q. They knew a Cynthia White?

A. They knew the one I was talking about, sir.

Q. How do you know?

A. Because I had a description of her.

Q. What was it?

A. Short, dark skin, black female. Approximately 20 to 23 years of age.

Q. And are you dark skin?

A. Yes, I am.

Q. Am I dark skin?

A. Yes, you are.

Q. Was she? After you got the description and then you saw the person, did you determine that yes

Page 191.

Robert Greer - Cross

in fact she was dark-skinned, sir?

A. Yes, I did.

Q. Was she as dark as me?

A. That's 14 years ago, I don't remember really what she looks like now.

Q. I am not asking you that. I am not asking you what she looked like. I am just asking you how dark her complexion was?

A. If I remember, sir, she probably was as dark as you, sir.

Q. Was she as dark as you?

A. I don't remember that.

Q. So you don't remember her complexion?

A. I don't see myself every other day so I can't tell you how dark I am.

Q. Well, you look in the mirror like everybody else?

A. I am not the type that looks in the mirror constantly. I look at other people.

Q. I see. Now, sir, you didn't have a picture of this person, and you didn't know her of your own personal knowledge, and you took somebody's word for who she was. Did you try to go about any independent investigation on your own to verify that this person was who Mr. Jackson was going to pay you bucks to

Page 192.

Robert Greer - Cross

watch?

A. I was positive after talking to the people that I talked to that she was the correct person.

Q. I see. And who trained you to be a private investigator?

A. My experience came from being an investigator at Strawbridge and Clothier and being with the Police Department. I put in law enforcement at that time about 35 years. I was absorbing knowledge from other people.

Q. And you refused to take a Court appointment in this case; is that right?

A. I couldn't afford to take the Court appointment, sir.

Q. Could you afford to take Court money?

A. I took no Court money for this.

Q. Oh. You didn't receive any monies from the Court of Common Pleas even if they had been allocated to you for that purpose?

A. I did not.

Q. You said you worked 22 hours on this case, 22-and-a-half hours?

A. 22-and-a-half hours is what I billed him for, sir.

Q. How do you know that?

Page 193.

Robert Greer - Cross

A. How do I know what I billed him for?

Q. How do you know how many hours you worked?

A. I only billed him for 22-and-a-half hours, I worked a lot more than that. But the money, he could only raise approximately $500. So I kept my bill around the money that he had.

Q. How long, for what period of months did you work for Mr. Jackson on this case?

A. To what period of months? I think I first talked to him in January.

Q. Yes, sir.

A. I probably finished up with him after talking to High, Hightower, yeah, after talking to Hightower.

Q. I know, but I don't know when you --

A. Probably May, April or May.

Q. So you worked four or five months on it, on this case?

A. Off and on, yes.

Q. Did you know that Mr. Jamal was the client Mr. Jackson wanted you to investigate for?

A. I beg your pardon?

Q. Did you know that Mr. Jamal was the Defendant in this case?

A. Yes, I did.

Q. Did you know what the charges were?

Page 194.

Robert Greer - Cross

A. Yes, I did.

Q. Did you know that he was charged with a capital murder offense for which his life could be taken?

A. Yes, I did, sir.

Q. Yes, you did?

A. Yes, I did, yes.

Q. Well, you say you worked 22-and-a-half hours. Do you have any proof of that here today?

A. No. I don't have records with me today, no.

Q. Well, did you not receive a subpoena duces tecum to bring any and all records reflecting your pay schedules, your billings, your accounts receivable and any and all money received in this case, did you not receive such a subpoena?

A. A subpoena was left at my mother-in-law's house. I never received the subpoena, I was just told what day to come here.

Q. No, you directed that the subpoena be left at your mother-in-law's house?

A. Yes, I did.

Q. So it was left where you said to send it?

A. Yes.

Q. So you saw it, right?

A. I never knew it was there.

Page 195.

Robert Greer - Cross

Q. Why didn't you look or ask?

A. Actually, I didn't know what the subpoena said; I only thought you wanted me and records of my investigation for Mr. Jamal. I didn't know anything about the other things you were talking about.

Q. Oh, okay, well, tell me where you came up with 22.5 hours?

A. Where I came up with 22.5?

Q. Yes.

A. That was the approximate hours that I billed him for. I worked a lot more than that.

Q. How do we know that you billed him only for those hours? I mean what do you have 13 years later that proves that?

A. I don't have anything, sir.

Q. Well, is it possible --

A. Anything that I billed him for would have been with the Court records.

Q. With the Court records?

A. With his records, his records with the other attorney.

Q. He said he doesn't have any records. Mr. Jackson testified.

A. He doesn't have any records?

Q. No, sir.

Page 196.

Robert Greer - Cross

A. Oh.

Q. So we have to take your word for it, and this is a 13-year-old recollection?

A. I only billed him for the 22-and-a-half hours and I only received the $500 from him. That's all I received.

Q. You didn't receive $562 from him?

A. I received $500 from him.

Q. Well, when you went out to interview these people, who did you tell them you represented and who did you say paid you?

A. I didn't tell them anyone paid me. I told them I was working for the defense of Mumia Abu-Jamal. If they asked.

Q. If they asked?

A. Yes, sir.

Q. And if they didn't ask you didn't say?

A. I didn't say.

Q. Why did you use that, why didn't you just say you worked for Mr. Jamal through Anthony Jackson?

A. Because that's who I was working directly for, Mr. Jamal. Anthony Jackson was the person I reported to, the person that paid me.

Q. Who?

A. Anthony Jackson.

Page 197.

Robert Greer - Cross

Q. Well, Anthony Jackson, he doesn't have a middle name that he's called Anthony Mumia Abu-Jamal Defense Committee Jackson, does he?

A. I don't think he does, no.

Q. Nor I don't think he does either. And working for the defense of Mr. Jamal, was he being defended by a committee?

A. I didn't say a committee. I don't know, I didn't know anything about a committee.

Q. No, I didn't think you did. But back in March of '82 you did --

A. Back --

Q. Let me read you something. You submitted this as part of your affidavit to Mr. Weinglass.

A. Yeah.

Q. And this is a letter to Mr. Thomas Leon Graves, address I will omit, here in Philadelphia, March 16th, 1982. You are Robert T. Greer, Investigator, 805 One East Penn Square -- or you were then?

A. That is correct.

Q. Dear Mr. Graves, this letter is in response to your phone call to Mr. E. Steven Collins -- who testified here, by the way, earlier in the proceedings -- of the Georgie Woods Show. I have

Page 198.

Robert Greer - Cross

been retained --

Does that word have a special meaning to you: Retained?

A. The word has a meaning to me, sure.

Q. What does it mean to you?

A. It means that I have been paid by.

Q. That's what I thought. I have been retained by the Mumia Abu-Jamal Defense Committee to investigate the incident of his arrest. Now, who was the head of that committee that paid you?

A. I didn't write the letter. I signed the letter but the letter was written by Anthony Jackson, it was dictated to his secretary --

Q. Wait, wait, wait. First --

MR. GRANT: May I approach, Your Honor?

THE COURT: Yes.

BY MR. GRANT:

Q. You didn't write this letter but you signed this letter?

A. I signed -- there were several letters sent out of that nature. I didn't write any of them.

Q. Well, let me ask you is this your signature on this particular --

Page 199.

A. That is my signature. I have seen this.

Q. You have seen this?

A. That's right.

Q. As a matter of fact, you attached this to their exhibits?

A. I didn't attach anything to their exhibits.

Q. You submitted this to Mr. Weinglass so he could attach it, didn't you?

A. I submitted nothing to Mr. Weinglass.

Q. What if they were saying in this letter that you didn't read I am the person who killed Police Officer Faulkner?

A. I didn't say I didn't read it, I said I did not write it.

Q. Oh. But you knew what it said?

A. I knew what it said. But it had no significance to me then.

Q. Well, the word retained has significance to you today, though, doesn't it?

A. It has a significance, but it still doesn't mean anything because I wasn't retained by them, I didn't know, I didn't really know who they are.

Q. You were lying to Mr. Graves, you were trying to psych him out?

A. I did not write that.

Page 200.

Q. You adopted the letter by signing it so you presented false statements?

A. I was asked to sign it by Mr. Jackson. He sent out several letters of that nature of people that he was familiar with.

Q. So Mr. Jackson basically was the head of the Abu-Jamal Defense Committee then?

MR. WEINGLASS: Objection.

THE WITNESS: As far as I knew, yes, he was.

BY MR. GRANT:

Q. As far as you knew yes he was?

A. Anybody was the head of any committee, because he was the one that retained me.

Q. Well, Mr. Jackson testified that he was a member of no committee and received no funds from any such committee?

A. Then it must be true. I am not saying he was, I am saying he was the one that retained me.

Q. Well, how much money did you get from Mr. Jackson and how much money did you get from the committee and how much money did you get from the Court?

A. I got absolutely nothing from any committee, nothing from any Court. And $500 from Mr. Jackson.

Page 201.

Q. And you have no records to prove any of that?

A. I have no records to prove anything other than the fact that -- I have no records, period. I did not take the appointment so I couldn't have gotten any money from them.

Q. Well, for the 22-and-a-half hours, sir, that you were investigating this case -- well, let me go back for a second. Of all the plainclothes investigators that you have met in your lifetime that worked for the Police Department, and of all the undercover detectives that you've known or seen in action, how many of them do you think would be so indiscreet as to be caught out in the street in a little red car?

A. How many would be?

Q. Yeah. How many undercover cops have you seen driving around in a red car?

A. I have no idea, I really couldn't comment on that.

Q. You have no idea because you've never seen or heard of it, have you?

A. I saw two people sitting in the car watching or protecting Cynthia White, or appear to be protecting Cynthia White.

Q. Okay. Let me sit in this car right here

Page 202.

(indicating). Cynthia White is walking down the street. Show me how I protect her?

A. Cynthia White was standing on the corner. She was the only one standing on that corner. They were parked directly in front of her. They stayed there. If she left, they were not there.

Q. Did you see this red car with the same white male and white female every time you went to look for her?

A. If I saw her. I only saw her there a few times. If I saw her I saw them.

Q. How many times is a few?

A. It's been a long time.

Q. How many times is a few?

A. More than three.

Q. How many is a few?

A. At least more than three times.

Q. Every time you saw her you saw the red car and the same man?

A. If the red car wasn't there --

Q. Excuse me, let me you ask you the question first.

A. I'm sorry.

Q. Every time you saw her you saw the same red car with the same man and the same woman and they

Page 203.

were in approximately the same position with relationship to her, right?

A. I can't say that's true.

Q. I'm sure. And you being an investigator with keen thoughts and swift mind of course wrote down the license plate and went back to Mr. Jackson and said I think we ought to check these people out and see if they are cops? Did they have a Municipal license plate on their car?

A. No, they didn't.

Q. Well, did they have an FOP sticker on the side of the glass?

A. No, they didn't.

Q. Did you see a policeman's hat in the back window above the seat?

A. No, sir, I didn't.

Q. Did you ever see any of these individuals flash a badge?

A. No, sir, I didn't have to.

Q. Oh, you didn't have to?

A. Hmm.

Q. Did you see Cynthia White ever lean into the window and engage in any conversations on any occasions with these people?

A. No, she didn't.

Page 204.

Q. Well, Cynthia White was a prostitute, was she not?

A. I was told she was.

Q. Over what period of time did this phenomenon occur?

A. I think I asked -- that's hard to remember. I saw her there at

least three times. At least three times someone else was there with her.

Q. I know that, sir, but over --

A. I can't tell you exactly, a couple weeks.

Q. For a couple of weeks. For a couple of weeks you saw this recurring scenario. Describe the white woman?

A. Can't do that.

Q. Describe the white male?

A. I can't do that.

Q. Well, were they blond or brown-haired?

A. I don't remember. Young, that's all.

Q. Were they old or young?

A. They were young.

Q. Like younger than me? Younger than you? A teenager? What?

A. Probably younger than both of us.

Q. Are you insulting me?

A. No, it's really hard to tell how old they

Page 205.

Robert Greer - Cross

were. They were sitting in the car with their backs to me. I didn't stay on the corner. I walked up to the corner, I observed what was happening, and I left. I came back about three hours later, I observed the same thing.

Q. Do you know that there are people on this planet and in this City, men and woman who may like one another but they may want to procure the services of a prostitute for their own personal entertainment?

A. Not personally, sir, no.

Q. No, I am not asking you personally if you know that, but you know that does occur, don't you?

A. I heard it does, yes, sir.

Q. Yes. Do you know whether or not these people were so inclined?

A. No, I don't.

Q. As opposed to being undercover investigators, who you didn't even see their bandages?

A. They could have been anything else but I still believe that these two people I saw were police officers.

Q. Well, besides the fact that they sat there and they didn't move, tell me what else defines an undercover cop?

A. The fact that they were there watching her

Page 206.

Robert Greer - Cross

with no one else around started me to thinking of who they were. When I left and I came back I saw these same two people still sitting in that same car and she standing on the corner looking perplexed. I was positive that they were there and they were there to protect her.

Q. Okay. Now, this was over a two-week period, more or less?

A. Yes, about that.

Q. But Cynthia White, even though she was a prostitute, was a human being and had to sleep somewhere, sometime; correct?

A. That is correct.

Q. And being an investigator you're keenly aware that basically the best time to find somebody unsuspecting is when they sleep early in the morning, late at night?

A. That is correct.

Q. So you found out where her house was, right?

A. I did.

Q. How did you do that?

A. I'm an investigator, I found her.

Q. You found her because you're an investigator?

A. That is correct.

Q. Since you are an investigator and you found

Page 207.

Robert Greer - Cross

out where she lived -- and she was somewhat of a transient person; is that true or false?

A. Say that again, sir.

Q. Was she transient? Does she have a fixed place of address, a fixed abode?

A. I assumed she has a fixed address at that time because when I went to the place where she was living, they say she did live there, they invited me in.

Q. Did they?

A. Hmm.

Q. So you stayed and waited for Cynthia?

A. No, I didn't go in.

Q. You didn't go in?

A. It didn't look like a place I wanted to be found in.

Q. Yeah, I know that, but that's why they pay you money, to go into these places, isn't it?

A. No, sir, they pay me money to investigate, sir.

Q. Okay? so you knew where she lived?

A. I knew that.

Q. And you wouldn't enter her house because it wasn't as important for you to get an interview for Mr. Jamal's defense as it was for you to not be in a

Page 208.

Robert Greer - Cross

place that you thought undesirable?

A. No, what I did was I went and asked if she lived there. After I ascertained that she lived there I sat outside the house and watched and waited for her to come home.

Q. And how long did you wait?

A. I don't remember but it was long enough I thought she should have been there. I didn't do that once, I did that several times.

Q. Wait a minute now. You are using the mentality and the mind of a citizen: Long enough so that you thought she should have been there. Did you forget that she was a prostitute?

A. Yes -- no, I didn't forget she was a prostitute.

Q. What makes you think she keeps your hours, sir?

A. I didn't know what hours she kept, that wasn't my concern. It was because I figured after a certain point she would leave the area that she frequented. And no where else would she go to my knowledge but home.

Q. So when she didn't come home, is that when you kept going back to 12th and Locust?

A. Yeah.

Page 209.

Robert Greer - Cross

Q. And when you went there, of course you knew that these were two plainclothes cops because you walked up on the scene in an attempt to interview her with your pad and pencil, and you walked by this vehicle and looked inside and saw the male and female; correct?

A. I did not walk by. I observed them from a distance.

Q. Well, you observed them from a distance so that they wouldn't see you, right?

A. Correct.

Q. So you were at all times behind their line of vision, in other words, you were behind the little red vehicle, right?

A. I can't hear you, sir. I can't hear you.

Q. You were behind the red car?

A. That is correct.

Q. Well, behind the red car. Were they parked on Locust? Were they parked on 13th?

A. They were parked on 12th Street.

Q. On 12th Street, which is a southbound street?

A. That is correct.

Q. And they were parked at the intersection of 12th and Locust?

A. They were parked just behind the intersection

Page 210.

Robert Greer - Cross

on the southwest corner.

Q. On the southwest corner. So you were parked where?

A. I was parked on 13th Street.

Q. What?

A. I didn't drive my car there, I walked up to the scene.

Q. Oh, okay, so you did walk up?

A. Yes.

Q. But you never walked by?

A. I didn't walk by.

Q. How close did you get?

A. From?

Q. From behind?

A. I was on the other side of the street on the northwest corner.

Q. On the northwest corner. Well, if you were on the northwest corner you were kind of on an angle like I am to the Sheriff sitting right there in the front row?

A. Approximately. Possibly.

Q. Well, I am looking right in his face. I am not behind him and I get a good look at his face. Did you?

A. The car was facing the other way.

Page 211.

Robert Greer - Cross

Q. Oh, this car was turned around. You are making this difficult.

A. The car was facing south.

Q. The car was going that way (indicating)?

A. Facing south.

Q. So you saw the back of his head?

A. I saw the side, the side of the face and the back of the head too.

Q. And you saw the back of the female's head?

A. And the side of her face.

Q. And the side of her face. And that is the best vantage point you got?

A. That's the only vantage point I wanted at that time. I didn't want anyone to know that I went there to talk to her. I figured if they knew that I wanted to talk to her, that was fine, but I wasn't going to tell them.

Q. I know that, sir.

A. Hmm.

Q. But you were being paid $25 or $30 an hour just for that purpose, yet you had her in your vision on a number of occasions, you were at her house sitting waiting for her, you were outside her property waiting for her, and you never thought it was worth the money you were earning to just wait

Page 212.

Robert Greer - Cross

long enough or to walk up to her in front of somebody else, to at least contact her, give her your card and say would you please give me a call when you get in?

A. Not at that time, no.

Q. Well, at what time did you?

A. The opportunity really didn't come up. Things aren't easy as you suggested.

Q. I am not saying it's easy, sir, but I am saying that you were charging about 30 bucks an hour then, weren't you?

A. 25.

Q. 25. And you worked 22-and-a-half hours from January to May, more or less?

A. More or less, yes.

Q. And did you know that that comes out to about one hours worth of work a week for that time period, so you spent four hours a month during this period to save this man's life?

A. That was the hours that I billed him for. I put in a lot more hours than I billed him for.

Q. Well, did you have photographs of Dessie Hightower, Robert Pigford?

A. No, sir.

Q. Did you have the photograph of Debbie Kordansky?

Page 213.

Robert Greer - Cross

A. I don't know anything about Debbie Kordansky. I don't remember her.

Q. And Mr. Jackson never sent you on a mission to look for her, did he?

A. Not that I remember.

Q. And you talked to Mr. Jamal in this case too, didn't you, when you were first retained?

A. That is correct.

Q. And Mr. Jamal never told you to look for her, did he?

A. No.

Q. There was a lawyer named John Black who was assisting Mr. Jackson. Did you ever meet him?

A. Who?

Q. John Black?

A. No, I never met him.

Q. Never met him?

A. Never met him.

Q. Did you ever talk to him by phone?

A. I don't believe so.

Q. How often would you report to Mr. Jamal and/or to Mr. Jackson the fruits of your labor?

A. I talked to Mr. Jamal once when I advised him in the hospital. I talked to Mr. Jackson periodically. Almost everyday.

Page 214.

Robert Greer - Cross

Q. Almost everyday.

A. Yes.

Q. And is it true that you spent most of your time on this case looking for Cynthia White?

A. That's very possible.

Q. No, no, no. Is it true that you spent most of your time looking for Cynthia White to interview her?

A. I spent a lot of time looking for Cynthia White, but I don't think it was the most of my time. I spent the most of my time looking for the other individual.

Q. What other individual?

A. The street priest or the large gentleman who was seen running away.

Q. Well, when you said in your interview, in your affidavit, having been duly sworn upon oath, that in addition I recall doing the following investigative work. A, make measurements. B, I spent most of my time attempting to interview Cynthia White the prostitute. Now, if you didn't spend most of your time doing that as you have testified under oath, then what you wrote under oath is false; correct?

A. That was the longest time that I billed him for.

Q. I'm sorry?

Page 215.

Robert Greer - Cross

A. That's what I billed him for.

Q. Oh, you spent --

A. I spent a lot of time out there for hours that I did not bill anyone for. I did that on my own.

Q. I know. Of the time that you were paid, most of that time was spent -- well, no, most of that time was not spent attempting to interview Cynthia White, right?

A. You lost me. What did you say?

Q. Yeah, you just testified --

A. What did you say?

Q. You just testified that you did not spend most of your time trying to interview her?

A. No, not most of my time. Most of my time I spent trying to find that preacher, yes.

Q. By the way, you mentioned a description of the person you were trying to find?

A. That is correct.

Q. And I think I was writing this down properly. You said that you were looking for a person who was the suspect who apparently or allegedly was running away from the crime scene at the time of the shooting, right?

A. Correct.

Q. By the way, were you at the crime scene during

the shooting?

A. Say that again.

Q. Were you there?

A. During the time of the shooting?

Q. Yes, sir.

A. No, I was not.

Q. Well, then you couldn't know that anybody was, quote unquote, running away unless somebody told you someone was running away; correct?

A. That is correct.

Q. Who told you that someone ran away?

A. I believe it was, I believe it was Dessie Hightower. And also read it in the first statement given by Cynthia White.

Q. And he said the person was running away or the person ran?

A. The person ran away from the scene.

Q. Well, the person you described, I guess you spent off and on 14 years diligently looking for, you described as about six-foot-two?

A. Correct.

Q. Over 200 pounds?

A. That is correct.

Q. Dreadlock hair?

A. Yeah.

Q. Army jacket?

A. Army clothing, yes.

Q. Army clothing. That sounds like Mr. Jamal on the night in question?

A. I don't believe Mr. Jamal was quite that large.

Q. Well, look at him now.

A. That was then we are talking. This is now I am talking about, now.

Q. How tall do you think Mr. Jamal was then? Since you personally saw him at the hospital and you personally interviewed him, give us a description of what you thought he was, sir, 13 years ago?

A. At that time about five-nine or ten, 150 pounds.

Q. Really?

A. Yeah.

Q. What if I showed you a picture and he was measured in that picture and weighed and he was six-foot-one and 180 pounds, would that refresh your recollection?

A. Actually, no. But when I saw him he was in a hospital bed. I didn't see him standing up.

Q. So you were giving the height of a person who is laying down?

A. Approximately, yeah, that's what you asked for.

Q. Well, I asked you how tall he was, I didn't ask you how tall you assumed he was had he been standing up.

A. Well, I saw him lying down, I didn't see him standing up.

Q. So you can't say for certain that he was five-foot-nine, which is about my height?

A. Yeah.

Q. And 150 pounds, which is like 20 pounds less than me?

A. Hmm.

Q. You can't say that, can you?

A. What, now or then?

Q. Either one.

A. Then he appeared to be that.

Q. In a hospital bed?

A. In the hospital bed.

Q. And how long were you with him in a hospital room?

A. 15, 20 minutes.

Q. Well, didn't it occur to you, sir, when you were there and the description you had was -- except for your description of the person's height, and

clothes which we can change everyday -- as an investigator and a keen, sharp person who is investigating crime, didn't it occur to you that hey, the person that guy is describing looks like him? Didn't you have a question in your mind how tall are you and how much do you weigh, did that ever occur to you?

A. No, it didn't. It didn't occur to me because the person ran away, Mr. Jamal was sitting on the curb.

Q. No, someone told you the person ran away, right?

A. That is correct.

Q. Okay. Now, by the way, you didn't spend a lot of time looking for Dessie Hightower, did you?

A. No, I didn't.

Q. You found him right away?

A. I had his address.

Q. And you didn't have a hard time looking for Robert Pigford, did you?

A. No, I didn't.

Q. What other witnesses did Mr. Jackson want you to interview, do you know?

A. Cynthia White.

Q. And you found her relatively soon, didn't you?

A. I found her, yes.

Q. As a matter of fact, you found the address for Cynthia White and you found the location where you could find Dessie Hightower and Robert Pigford all within two weeks after you were given the assignment, because you are that good, isn't that so?

A. No, I didn't have their statements then. After I got the statements.

Q. How soon after you got the statements?

A. I don't know, I am not aware exactly when discovery came. We didn't get the discovery at first.

Q. You went up to Mr. Hightower and you said to him I want to interview you, I don't have your statement with me but I have read it, how many times were you questioned by the police, and he said three times. You asked him the question -- and I am going to ask you after I read this question and answer why you asked him that -- did you ever tell the D.A. that you did not want to talk to me or anyone else connected with this case. You asked him that, right?

A. Yes, I did.

Q. Why did you ask him that?

A. Because that was a comment that was made when Mister, I think Mr. Jackson had attempted to talk, to

Page 221.

Robert Greer - Cross

talk to him.

Q. Were you there?

A. No.

Q. Well, you keep saying these things that somebody else told you. Now, who made the comment? Mr. Jackson made it to you?

A. Yes, he did.

Q. Oh. And you found out that that was a lie, right?

A. No, it wasn't a lie.

Q. Well, what was the answer? I told them I didn't want to give a statement to...?

A. Jackson.

Q. Mr. Jackson, his attorney. I didn't say I wouldn't talk to an investigator or anything like that. Now, you are an investigator, right?

A. That is correct.

Q. So you didn't have any trouble finding him because the D.A. was hiding him from you, did you?

A. No.

Q. Nor Mr. Pigford?

A. No.

Q. Nor Miss White?

A. Ahh, I did not have an address on Miss White with her statements. No.

Page 222.

Robert Greer - Cross

Q. I didn't ask you that.

A. I had no trouble finding her because I knew how to find her.

Q. Did the D.A.'s Office interfere with your attempts to locate her?

A. They did not interfere but they did not supply her address either.

Q. Well, that's why you get paid money, isn't it?

A. Yes, sir, that is.

Q. Okay. Thank you. Now, you interviewed Dessie Hightower, you tape recorded that, right?

A. Yes, I believe I did.

Q. And you asked him a question, but you didn't see the actual shooting. And he said no, isn't that so?

A. That is correct.

Q. Now, he says I couldn't see anything, didn't hear anymore shots going off because he was behind the wall hiding because he didn't want to get shot, right?

A. Right.

Q. And when he stuck his head out he said I couldn't see anything so I walked towards Whispers. Now, Whispers is right on the corner of 13th and Locust, right, or it was at that time?

Page 223.

Robert Greer - Cross

A. Yes.

Q. And he continues. And by then it was flooded with other police officers. He said that, didn't he?

A. I believe he did.

Q. Well, would you like to look at it yourself or you take my word for it?

A. I'll take your word for it for now, yes, sir.

Q. Now, he sees a place flooded with cops. Now, you know that the shots went off and the place wasn't flooded with cops right away, so his time frame is obviously taking a little longer than the reality of the situation; would you agree with that?

A. Correct.

Q. Correct. So when he sees this place flooded with cops, the cops at that point are all over Mr. Jamal, and they are taking Police Officer Faulkner bodily in and out of vehicles trying to save his life, and they have Mr. William Cook up against the wall -- from your investigation you figured that out, didn't you?

A. I don't believe that's what he said.

Q. No, that's not what he said, but I am saying, from your investigation you figured that out, that by the time the place was swarming with cops, the

Page 224.

Robert Greer - Cross

shooting's over, the incident's over, you realize that, don't you?

A. The incident is over, yes. But your description of the scene I believe was incorrect.

Q. Okay.

A. Because he also said other things.

Q. Okay. Well, let's just assume that my description of the scene is irrelevant. But by the time he did finally walk towards Whispers -- and he still is about half a block from the crime scene, right?

A. Not quite, but he's away from the scene, yes, sir.

Q. Well, wait a minute. The crime scene is almost midpoint directly between 12th and 13th?

A. Almost, yes.

Q. And he is not even at 13th yet?

A. Okay.

Q. So he is more than half-a-block away?

A. All right.

Q. All right. I walked towards Whispers and by then it was flooded with other police officers and I saw somebody running past the hotel. I don't know if they were running because of gunshots or what. Now, he didn't say I saw somebody run

Page 225.

Robert Greer - Cross

away from the crime scene, did he?

A. Not in that description, no.

Q. Well, which one, in which description he gave you did he say so?

A. Actually, maybe I put two statements together.

Q. No, no, no. You recorded this one?

A. You are right, he did not say that.

Q. Yes, he did not say that. As a matter of fact, as far as you knew, that person could have been running into the hotel to try to call the ambulance and get more help there; isn't that so?

A. Anything is possible.

Q. He could have been running to a phone booth anywhere around there because he is a friend who is trying to help this officer who is dying on the street; isn't that so?

A. That's correct.

Q. And you chose to accept the version that this person was the shooter and he was running away from the scene of his misdeeds; correct?

A. I chose the person to be a witness and he possibly saw what

happened, that's what I --

Q. Oh, so you weren't looking for this six-foot-two, over 200 pound, dreadlock-wearing, Army-attire wearing male because he was the doer?

Page 226.

Robert Greer - Cross

A. He could have been the shooter or he could have just been a witness.

Q. You were looking for him as the missing witness?

A. That's right.

Q. I see. Did you ever talk to Cynthia White one time, just utter one word to her?

A. No.

Q. How many opportunities when she was in your vision did you have?

A. I believe about three times.

Q. But you knew where she stayed everyday: Basically she was a prostitute and --

A. I knew where she supposedly lived. But I never caught her there.

Q. Yes, sir, my question is: You knew where her place of business was; correct?

A. Her place of business?

Q. You know what I mean.

A. I knew she frequented that particular corner, but she frequented other places too.

Q. Well, did you go to visit those other places?

A. Everywhere, yes.

Q. But the only place you saw her was at 12th and Locust?

Page 227.

Robert Greer - Cross

A. Yeah.

Q. Where this murder happened?

A. That's right.

Q. So you knew that's where you could find her?

A. Possibly. I had a better chance of finding her there.

Q. Have you ever seen those two undercover white persons seen from the side and back of their head in a little red car ever again?

A. I -- no I no, no, I haven't seen them since then.

Q. And you haven't looked for them for 14 years, have you?

A. She left town, she left town after that week.

Q. Well, when did she leave town, Mr. Greer?

A. I have no idea but I know she left there.

Q. How do you know that if you have no idea?

A. Because she was arrested in Boston for prostitution, sir.

Q. And she was arrested in Boston in May of '82, isn't that so?

A. Possibly. I am not sure where she was when she was arrested, to be honest with you.

Q. So you from January to May looked for her to interview her?

Page 228.

Robert Greer - Cross

A. That's right, I didn't see her any longer until I officially was out of it. I stopped looking for her.

Q. Wasn't it a fact that you only looked for her for the two weeks that you saw these alleged plainclothes detectives and then you didn't look for her after that anymore because you started looking for everybody else?

A. I never stopped, really, looking for her, to be honest with you.

Q. Did you have any problem finding Veronica Jones?

A. I didn't look for Veronica Jones.

Q. Why not? Weren't you asked by Mr. Jackson?

A. No.

Q. You weren't?

A. No, I wasn't.

Q. Now I want you to think back, it has been a long time. I want you to think carefully. Did Mr. Jackson ever ask you to look for Veronica Jones?

A. I don't remember him asking me to look for Veronica Jones, no.

Q. Did he ever ask you to locate any Philadelphia police officers?

A. Not to my knowledge. Not that I can remember,

Page 229.

Robert Greer - Cross

I'11 put it that way.

Q. Who were you paid to look for besides Cynthia White, Dessie Hightower, and Robert Pigford?

A. Just the preacher that I told you about.

Q. Just the what?

A. I was paid to look for everyone on that particular, everybody who gave a statement. I didn't have an opportunity to look for all of those people.

Q. You didn't do very much work on this case, an hour a week for five months, did you, for 500 bucks?

A. That's not true. These kind of jobs you never get off of them, you work on them constantly.

Q. Well, did you think based on the amount of work that you were -- you only took two statements, sir, you took two lousy statements in five months, and $562 later, according to Mr. Jackson, not counting the defense committee retainer, whatever that means, and you got two lousy statements?

A. That's all I gave him, sir, that's all I took.

Q. And you didn't take one from Cynthia White?

A. No, I didn't.

Q. And you said you were looking for all these people on the list and you talked to two people?

A. I was looking primarily for the people that he and I discussed. Now, he never discussed Ver --

Page 230.

Robert Greer - Cross

well, whatever the name was.

Q. Jones?

A. Veronica Jones. He never discussed my talking to her. He probably would have gotten around to her but we hadn't at that point.

Q. Didn't he tell you words to this effect: There was a lot of people on this list that the police have interviewed, Mr. Greer -- did he call you Bob or did he call you Mr. Greer?

A. He probably called me Mr. Greer.

Q. Mr. Greer. But there's only three people that I'm really interested in, two people were together, two males, and I think if I can get them in and get statements from them I can create the impression that the real shooter ran away from the scene, did you have a conversation like that?

A. No.

Q. Did he tell you why he was so keenly interested in Mr. Hightower and Mr. Pigford? Since they were not eyewitnesses, you know that, right?

A. I don't know who they were, they were witnesses. They were people that the police took statements from.

Q. Oh. You know they weren't eyewitnesses because they told you that they weren't eyewitnesses

Page 231.

Robert Greer - Cross

to the shooting?

A. Oh, no, not eyewitnesses, no.

Q. Well, did he ever tell you why he was so desperate to get these

two men?

A. I don't believe I remember him saying so.

Q. I'm sorry?

A. I don't remember.

Q. You may have had that conversation with him?

A. Not that conversation, no. He never said anything about a diversion and all trying to give an illusion of something else happening. That's not him.

Q. I know. Is it Mr. Jamal?

A. I talked to Mr. Jamal one time.

Q. So you don't know whether it is Mr. Jamal or not?

A. My impression of Mr. Jamal was that he was probably the most gentle person I'd ever met. He didn't have any devious thoughts that I knew of.

Q. No. Was he controlling any of your efforts?

A. Mr. Jackson was the only person that I talked to about what I did out there on the street.

Q. Okay. Mr. Pigford told you that the police didn't try to prevent him from talking to you or didn't tell him anything along those lines either?

A. That is correct.

Q. As a matter of fact, he said the police were gentlemanly to him and cooperative with him?

A. That is correct.

Q. And so did Mr. Hightower?

A. Correct.

Q. Did they ever tell you that the police were trying to prevent you from getting to them?

A. No.

Q. Did you interview anybody in this case in all the 22 or 25 hours you put in, did you ever meet with one person or talk to any person, whether you wrote it down or not, who told you the police told me not to speak to you, or they are trying to hide me from you?

A. No.

Q. Are you certain?

A. Positive.

Q. Well, you are the investigator that tried to reach these people for Mr. Jackson; correct?

A. I didn't reach the people that you are referring to because I didn't have addresses for them and I hadn't found them yet. But I would have found them eventually.

Q. And since you were the person that was Mr.

Jackson's eyes and ears, and who was first in contact with any witnesses that he would come in contact with -- because you would bring them to him, wouldn't you?

A. Say that again.

Q. You would bring him the witnesses once you found out who they were, you would like arrange for them to talk to him, right?

A. If need be, yes.

Q. If need be. Did the need arise?

A. Not with the two that I gave the statements, that I gave him the statements for.

Q. Because you had 10-page, tape-recorded statements from Dessie Hightower and Robert Pigford, right?

A. Probably, yeah.

Q. Now, can you explain, since you would have personal knowledge, as to why Mr. Jackson would come here under oath and say that the Commonwealth was trying to keep him and his investigative team from talking to these witnesses?

A. If that's his belief, sir, I can't explain why he would believe that.

Q. But you don't know of any basis for it, do you?

A. For him feeling that way?

Q. For him saying these words under oath?

A. Not personally, no.

Q. Since you knew people who pointed out Cynthia White to you, and you didn't even have a description of her, but you did frequently see this six-foot-two, over 200 pound, dreadlock, Army-jacket person who allegedly ran past the hotel but not necessarily leave the scene, you knew what he looked like personally, didn't you, you had seen him?

A. The person that I was looking for was someone I had seen many times before.

Q. Ahh. So you had seen that person yourself?

A. That is correct.

Q. And you haven't seen that person one time in the last 13 years; correct?

A. That is correct.

Q. And you want the fact-finder here to believe that person ever existed?

A. The one person never existed.

Q. Never existed?

A. Oh, he existed. He was a preacher. He preached on Walnut Street, Chestnut Street.

Q. He was one of those street corner preachers?

A. Oh, he was, he was always down there, day and

night.

Q. Who else do you know who knew him?

A. Only Ben Johnson, he was the only one that I had.

Q. And Ben Johnson was an accomplished and legendary lawyer in this town at that time?

A. Yes, he was. Yes, he was.

Q. And did you use his investigator to try to find out who this guy was?

A. I was his investigator.

Q. So you were three years experienced and you were his investigator and Mr. Jackson's investigator at the same time?

A. On different cases, yes.

Q. Well, Mr. Ben Johnson had hundreds of clients; would that be fair to say?

A. Well, he wouldn't hire an investigator on all of those cases.

Q. No, I am not asking you --

A. I don't know how many clients he had.

Q. He had lots and lots and lots, more than Mr. Jackson, didn't he?

A. Oh, yes.

Q. And were you working for Mr. Johnson and getting paid while you were working for Mr. Jamal?

A. I doubt it, no.

Q. Why do you doubt it?

A. Because I wasn't doing anything with Ben at that particular time. I worked for a lot of different attorneys.

Q. Well, how many were you working for while you were employed by Mr. Jamal? Since you could only bill what you claim was 22-and-a-half hours and it was under really what you did, but 22-and-a-half hours over five months is not much work, who else were you working for?

A. I probably worked for Tom McGill. Probably worked for Ben Johnson. At least those, those two.

Q. And Anthony Jackson?

A. Of course Anthony Jackson.

Q. And all of those are very accomplished lawyers you worked for with a client base?

A. Yes, but they are all different cases. We couldn't work on those all at the same time.

Q. Did Debbie Kordansky ever tell you she didn't, want to talk to you?

A. I don't even know who Debbie Kordansky is.

Q. Did Mr. Jackson pay you out of his pocket cash, did he pay you in a cashier's check, did he pay you by way of a client's fund check, or did he pay

Page 237.

you by money order?

A. He probably paid me by personal check but I am not certain of that.

Q. You filed your taxes on this case, right?

A. Definitely.

Q. So you would have some kind of record, wouldn't you?

A. Not after 14 years, I still wouldn't have that.

Q. Yeah, I guess that's true. Mr. Greer.

A. Yes, sir.

Q. Did you ever interact with a group called the Mumia Abu-Jamal Defense Committee?

A. No, sir. I don't even know who they were. Honestly, I have never known them.

Q. Did you ever have any contact with people who claimed to be runners, legal runners, for Mr. Jamal, who would come up and seek you out and ask you for information or give you information?

A. No.

Q. Did you ever come into contact with William Peraneau?

A. I don't believe so, the name is not familiar to me.

Q. He is the photographer who worked for Mr.

Page 238.

Jackson on this case?

A. If he did, I had no contact with him.

Q. So you didn't point out to him the crime scene, this is where the weapon was found that belonged to Mr. Jamal, this is where the body was found of Officer Faulkner, this is where the spent shell, spent missile was found embedded in the brick wall, you didn't do any of that with the photographer, right?

A. Not me.

MR. GRANT: May I have the Court's indulgence for just a moment.

BY MR. GRANT:

Q. Did you tell Mr. Jackson that there was any work that you felt that should be done before you ceased your duties on his behalf?

A. Well, there was a lot of work that should have been done, yes.

Q. Like what?

A. Finishing interviewing all of the witnesses.

Q. All of which ones? The ones he wanted you to interview?

A. The ones that police gave statements to -- that gave the police statements.

Q. Well, let me say this. The police interviewed

Page 239.

50 people?

A. Hmm-hmm.

Q. Some of them more than once, so there may have been some duplication, maybe 65 police interviews. 60, 70 percent of those are police persons. Did you want to interview those police persons also?

A. If need be. But then most of the time we, we don't bother with them.

Q. Right. You are just looking for the civilians?

A. Civilians, yes.

Q. So the people that you are talking about that were left to be interviewed that you wanted to are... about 13 people, 15 people, whatever the number. That's the number that you are actually talking about, the civilians who may have had information about the shooting; correct?

A. Correct.

Q. But you never attempted to find any of them, did you, besides Mr. Hightower, Cynthia White and Robert Pigford, not in five months, not in 22-and-a-half hours, not any hours, you never attempted to find any of those other people, did you?

A. I made no attempt to find any of the other witnesses, correct.

Page 240.

Q. So the fact that you didn't look for them is the reason that you didn't find them; would that be fair to say?

A. I wasn't ready to look for them then, that's correct.

Q. How did you plan to get ready to look for them?

A. When I was told to find them I would have found them. But I was told to go find these people, I never was told to find them.

Q. So you were waiting for the order to go out for these people?

A. When it became necessary to look for them, yes, sir.

Q. Did Mr. Jackson tell you well, I am ordering you to go look for the people that are most important for me first and then we will get to the other ones later?

A. Correct. He did tell me to look for a cab driver. I was getting ready to start looking for him.

Q. There was a couple cab drivers that saw this killing?

A. I didn't remember which one it was.

Q. But you didn't have to look for the cab driver

Page 241.

because you could let your fingers do the walking in the Yellow Pages, couldn't you?

A. I don't know what you are referring to.

Q. Telephone?

A. Yeah, telephone's working. But I don't remember exactly who the guy was. Or what the cab company he worked for. But I could have found him, yes.

Q. Yes, you could have easily found him, because you were good at this?

A. Hmm.

Q. The best lawyers in town hired you, didn't they?

A. That's correct.

Q. So they were confident of your skills and so were you and if you really wanted to find Mr. Chobert, one cab driver, Mr. Magilton, second cab driver, you could have found them, couldn't you?

A. When I was ready to find them I think I could have found them.

Q. But you weren't told to go find them?

A. That is correct.

Q. You were only told to find the people --

A. I was told to find the one cab driver, I don't even remember which one it was.

Page 242.

Q. So you were asked to find the primary Commonwealth witness

who was a prostitute who was on that corner who saw the whole thing, and two people who didn't see anything except the aftermath but who said someone was running past the hotel; correct?

A. Correct.

Q. Thank you, Mr. Greer. Oh, by the way, since that's all you did, and you only submitted a bill for 22-and-a-half hours, how much time did you actually work on the case?

A. You are talking about actually worked?

Q. Yes.

A. It's hard to say. Umm...

Q. Twice that much?

A. Probably three times that much.

Q. So you probably worked almost 70 hours?

A. Yeah.

Q. And that would have ended up in a bill of about 1500, 2,000 bucks?

A. Yeah. Uhh --

Q. And you only found two people and you only looked for three?

A. I found the ones that I was looking for. There's more to it than that. You are trying to oversimplify this, and you know it, so I won't even

Page 243.

comment.

Q. Okay. How many red cars have you seen undercover detectives using since the date of this observation, if any?

A. I have no idea.

Q. If any.

A. I have no idea, I haven't looked for it since then.

Q. No, no, no. How many police personnel, who you felt by looking at them were undercover or plainclothes officers, how many of them since 1982 have you ever seen driving a little red car, sir?

A. I have no idea. I don't know, I haven't been looking for it so I probably haven't seen any. Is that the answer that you want, sir?

Q. No, I want the answer that's true.

A. I have no idea.

MR. GRANT: Okay. Thank you, Mr. Greer.

THE WITNESS: Thank you.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Mr. Greer, how many days have you been in the

Page 244.

Courthouse prior to testifying today?

A. About four.

Q. Four days. And in the four days that you were here, did Mr. Grant ever put his head in the witness room and say to you Mr. Greer, did you bring any of your records with you to Court?

A. He asked me something about records the first day that I was here. But he didn't elaborate on what they were.

Q. He didn't?

A. He asked me if I had records, I told him no.

Q. Did he show you the subpoena?

A. No, he didn't.

Q. And that was the first day?

A. That's right.

Q. And you came back another day?

A. Yes, sir.

Q. And you came back another day?

A. Yes, sir.

Q. And another day?

A. Yes, sir.

Q. And he never again showed you the subpoena or asked you for specific records?

A. No, sir.

Q. Now, you told us you read the discovery in

Page 245.

this case?

A. That's right.

Q. Many, many statements; is that right?

A. Yes, quite a few.

Q. Would you say over a hundred?

A. I don't remember exactly how many there was.

Q. But there were only two statements of all those statements that had the address of the person being interviewed; isn't that correct?

A. That is correct.

Q. And that was Dessie Hightower and Robert Pigford?

A. That is correct.

Q. And that's why you went to interview them?

A. That's why.

Q. Because you had their address?

A. That is correct.

Q. And you didn't interview them until April 29th in the case of Mr. Pigford, and May 3rd in the case of Dessie Hightower, as your transcript indicates?

A. Yeah.

Q. So you didn't even get to those two witnesses until just a month before trial?

A. That's correct, yes.

Q. Now, in reading the discovery you recall you

Page 246.

read a statement by cab driver Robert Chobert in which he described the shooter as being six-foot-two about 225 pounds, and he ran away about 35 steps; do you remember reading that statement?

A. I remember it vaguely, sir, I can't honestly say I remember what he wrote.

Q. Is that, in your recall, what made you think, after reading Commonwealth witness Robert Chobert's statement to the police that night, that this man who you referred to as the preacher, six-foot-two, six to six-two, 225 pounds, might have been the shooter?

A. That's one of the things, yes.

Q. And the cab driver told one of the first officers who appeared on the scene, who also wrote a statement, Officer Giordano, told him that the guy ran away? Is that right?

A. I believe so.

Q. Now, about Cynthia White. Do you know if you saw her when she appeared here in Court at the preliminary hearing and at the bail hearing, both of those occurring in January of 1982?

A. Repeat your question, sir.

Q. Did you see Cynthia White?

A. I caught a glimpse of her. I didn't come into the Courtroom, I just looked in here so I got a vague

Page 247.

description of her, yes.

Q. But you caught a glimpse of her here in person?

A. Vague description -- yeah, I was looking through the door

when the door opened because I didn't come in. I knew generally what her description was, yes.

Q. So you had seen her before you tried to find her and she was the person you saw in the street?

A. Yeah.

Q. And in all those times that you saw her on the street, you never saw her without a car and several people in the car parked near her?

A. I never saw her without a car parked right in front of her with two people in it.

Q. Was it is always the red car, Mr. Greer?

A. That's the only car that I saw.

Q. Now, you tape recorded the statement of Dessie Hightower; isn't that right?

A. That's correct.

Q. With his permission?

A. Of course.

Q. Is that a good investigative technique?

A. I think it is.

Q. In all of the 40, 50, 60 witnesses that the

Page 248.

Commonwealth had interviewed in this case prior to trial, to your knowledge did they tape record one witness?

A. I have no idea, sir.

Q. Did you ever see a tape recording of a witness?

A. No, I haven't.

Q. The process they use is they would have, they would interview a witness and the police officer would write a statement in most instances, or type it; is that correct?

A. That is correct.

Q. In your experience is that the way in which the investigators for the Homicide Division or the District Attorney's Office controls what a witness purportedly says in an interview?

A. That's a loaded question. I have no idea, sir. I can't answer that.

Q. Now, you weren't here during the trial, were you?

A. No, I wasn't.

MR. WEINGLASS: Page 28.15, Counsel. June 28th.

BY MR. WEINGLASS:

Q. Question: Mr. Hightower, before the police

Page 249.

officers arrived, did you see anyone leaving the scene.

Answer: Going back to the hotel to the best of my recollection at this point in time it was three, I had seen somebody with a red-and-black sweater on. It was very brief. I glanced for maybe a second or two, I didn't pay it full attention, going, first was going in the opposite direction from where the incident happened.

Now, did you have a discussion with Mr. Hightower off the tape as to whether or not he saw people or persons running from the shooting before the police arrived?

A. No, I didn't. I only talked to him on the phone and let him know that I wanted to talk to him. And our return conversation I recorded.

Q. So based on your experience directly with Mr. Hightower, you don't know what the sequence was, whether he saw someone run before the police arrived or after the police arrived?

MR. GRANT: Objection. He took the statement where he said the police were swarming all over the place. What is Counsel trying to do? I object.

BY MR. WEINGLASS:

Page 250.

Q. You don't know yourself, do you, based on your conversation with him?

A. No. I assume when I talked to him that the person ran before the police arrived. That was my assumption. Now, I could be wrong.

Q. But when you spoke to him he wasn't under oath?

A. No, he wasn't.

Q. And when he was under oath, it was clear that the person ran before the police arrived?

MR. GRANT: Objection. How does he know that? He wasn't there.

MR. WEINGLASS: I read it, it is part of the record. Counsel put the entire record in.

THE COURT: Are we asking him now for his opinion?

MR. WEINGLASS: Right, under oath.

THE COURT: What's that got to do with this case?

MR. WEINGLASS: Well, it has something to do with the cross-examination.

THE COURT: It has something --

MR. WEINGLASS: Which I am entitled to go into in redirect.

Page 251.

THE COURT: I know that, but what does it have to do with the case? What does his opinion mean?

MR. WEINGLASS: Your Honor, I will abandon it rather than proceed.

THE COURT: Yes.

BY MR. WEINGLASS:

Q. Just so that it's clear once again, Mr. Hightower -- I'm sorry -- getting late for me -- Mr. Greer, you received no money from any committee?

A. No.

Q. You only received $500 from Anthony Jackson?

A. That is correct.

Q. And when that money ran out you stopped?

A. That is correct.

Q. And you weren't here for the trial?

A. No, I wasn't.

Q. And of all these witnesses, potential witnesses whose statements you saw in discovery, the only two you really talked to were the two that you had addresses for: Dessie Hightower and Pigford?

A. That's correct, sir.

Q. And that was just about a month before the trial began?

A. I believe so.

Page 252.

Q. And to your knowledge, that's the sum total of all of the investigative information that was available from your work to Mr. Jackson?

A. That's correct.

MR. WEINGLASS: Okay. Thank you. I have no further questions.

MR. GRANT: I just have two questions.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. First of all, sir, when you came to Court and you met me in that room right behind this wall --

A. Hmm-hmm.

Q. -- didn't you show me a copy of your subpoena and ask me about it?

A. No, sir, I didn't.

Q. You didn't bring a copy of your subpoena with you that day?

A. No, I didn't have it.

Q. Do you have it today?

A. No, all I had was the two statements of Dessie Hightower and Robert Pigford. That's what I had in my hand.

Q. Oh, that's what you were showing me?

Page 253.

A. I told you that's what I had, I didn't have any records.

Q. Oh. You were saying this is the only things that I brought in connection with this case are these two statements?

A. That's correct.

Q. Oh, I see. Now, since you reviewed all the discovery in this case, and Mr. Weinglass brought up how the Commonwealth, apparently, or police officers attempt to manipulate witnesses' testimony, you do in fact know that the primary eyewitness in this case Cynthia White was tape recorded, don't you?

A. I don't know whether she was or not. If she was, I have no knowledge.

Q. Well, you reviewed the discovery received by Mr. Jackson, didn't you?

A. Yes, I did. But I don't remember if she was or not. That's what made me say I don't know.

Q. I see. So it is possible that she was tape recorded and you were aware of it in 1981 and you just weren't aware of it now?

A. It's very possible, yes.

Q. Since you saw Miss White in Court that means you got a chance to know what she looked like?

A. I got a glimpse of her, I knew a general

Page 254.

description of her. I didn't have a chance to come in and look at her for any length of time.

Q. So you didn't really get a good look at her, you didn't know what she looked like?

A. Not really, no. I really got to know who she really was by someone telling me that's her.

Q. And that's why you had to ask him what she looked like and who she was, because when you saw her in Court you really didn't get a chance to see her well?

A. That is correct.

MR. GRANT: Okay, thanks. Thank you, Your Honor.

THE COURT: You are excused, I think.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right, gentlemen, until tomorrow morning.

MR. WEINGLASS: Your Honor, we have a witness here who has been here all day.

THE COURT: Well, bring them back tomorrow. I am a little tired. I am tired.

MR. WEINGLASS: Please don't leave the bench in the midst of my --

THE COURT: Well, I adjourned for the day. Whatever you want to say, save it for

Page 255.

tomorrow.

MR. WEINGLASS: I am trying to avoid a problem for tomorrow, Your Honor. It is a witness who I have advised Counsel on the other side who was not on the list but who is available. Her name is Carol Young. She was interviewed by the prosecution, they have her statement. We would like to put her on. And I am asking for the Court, I would like to put her on.

THE COURT: I told you I am finished for the day. I am tired. We had a long day, I have to get some rest too.

MR. WEINGLASS: May we put her on tomorrow?

MR. GRANT: I object.

THE COURT: Take it up with me tomorrow. I told you to leave it go until tomorrow morning.

MR. WEINGLASS: I don't want to inconvenience this person.

THE COURT: I'm sorry. I'm sorry, we are all working people.

MR. WEINGLASS: Her name is Carolyn Young, Your Honor.

Page 256.

THE COURT: Fine. Bring her in tomorrow morning then.

MR. WEINGLASS: We will do that.

THE COURT: Okay.

THE COURT OFFICER: This Court stands recessed until 9:30 tomorrow morning.

- - - - -

(The hearing was adjourned
for the day at this time.)

- - - - -

Page 257.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

2. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Tuesday, August 2, 1995
Courtroom 253, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- ARLENE FISK, ESQUIRE
- LINDA PERKINS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- JULES EPSTEIN, ESQUIRE
  Councel for Rachael Wolkenstein

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
George Fassnacht	44	82	160	171
Robert Harkens	193	--	--	--

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
15	FIU REPORT	164

Page 3.

- - - - -

(At l0:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - -

THE COURT: When I returned to my office yesterday at the conclusion of the day I found on my desk a motion to quash... subpoenas on behalf of Mr. Pines and Mrs. Radwanski, who are employed by the Administrative Office of the Pennsylvania Courts.

I assume Counsel has received copies of that motion?

MR. GRANT: I have, Your Honor.

THE COURT: Well, I read over the motion and I have signed an order quashing those subpoenas.

I think it is time for the Court to take back reins on the Defendant here. Because I have been a little, I guess a little bit lax. I don't know if it's lax, but it's like leaving a bull unattended in a china shop and that just goes through and knocks everything down.

The procedure we are going to follow from here on in is this. The defense had filed

Page 4.

a Petition alleging, I think, 19 issues to be resolved. At this juncture we will concentrate solely on those issues. When those issues have been resolved, or all the evidence is in on them, if the Defendant wishes to file supplemental issues, you will have to seek permission from the Court. And if the Court gives you permission you will have to put it in writing, the same as you did with your original Petition, and serve it on the District Attorney's Office for reply. We are not going to go afield, all over the map of the City of Philadelphia. We are going to concentrate solely on those issues that were raised in the Petition, the original Petition at this time.

Now, I have a list here, I really don't know out of that list who you intend to call today and whether or not the District Attorney has signed affidavits or any other written memoranda that would enable them to proceed with that witness.

Which witnesses do you intend to call today?

MS. WOLKENSTEIN: Your Honor, before we get to that, you indicated that you wanted us

Page 5.

to proceed per our Petition. And I would inform the Court that claim Number 9 deals with the geographical and racial disparity question.

THE COURT: They have given you whatever they have in the file, Counselor.

MS. WOLKENSTEIN: This was the subject of our --

THE COURT: Counselor. Counselor.

MS. WOLKENSTEIN: Of our subpoena.

THE COURT: Counselor, no more. I have ruled on that issue, you have an exception. Counselor, I have ruled.

MS. WOLKENSTEIN: Your Honor, your --

THE COURT: If you keep talking you are going to find yourself up in the cell room. I am telling you I have ruled on those. I have ruled on that. You have an exception to my ruling.

MS. WOLKENSTEIN: Your Honor --

THE COURT: All right, Sheriff, take her out of here, please.

MS. WOLKENSTEIN: Fine. Your order says, Your Honor --

THE COURT: I don't want --

MS. WOLKENSTEIN: Respondent's reply

Page 6.

to this indicating that we --

THE COURT: Okay.

MS. WOLKENSTEIN: That we --

THE COURT: And I have already made a ruling on that, okay. I have ruled on it, that's it.

MS. WOLKENSTEIN: Your order was decided --

THE COURT: Take her out of here.

MR. WEINGLASS: Your Honor, may I have a moment?

THE COURT: She is in contempt of Court.

MR. WEINGLASS: May I have a consult?

THE COURT: You could consult with her up there.

MR. WEINGLASS: No, Your Honor.

THE COURT: I am telling you, I will not tolerate this. When I make an order, that's it.

MS. WOLKENSTEIN: Could I put my --

THE COURT: Counsel will take care of that.

(At this time Ms. Rachel Wolkenstein, Esquire was placed in custody and escorted from the Courtroom by Sheriffs.)

Page 7.

MR. WEINGLASS: Your Honor...

THE COURT: For everybody's edification: I am not going to tolerate this nonsense in this Courtroom. I make an order, that's it. You have an exception. Take it up with the Supreme Court at the proper time. I am not going to stand here and argue with you.

MR. WEINGLASS: Nobody argued. The only point she was trying to make she didn't have a chance.

THE COURT: I know what she is talking about, I have read it. I am convinced that it is not proper at this time.

THE COURT OFFICER: Court is in session.

THE COURT: I think what you better do in the future: If you are going to issue subpoenas like that, bring it to my attention first. I think the fact that you are harassing these people by these subpoenas is intolerable. The Court will not stand for it. Besides, I don't have any jurisdiction in that issue. That's a matter for the Supreme Court.

MR. WEINGLASS: Based on a record to

Page 8.

be made here.

THE COURT: The Supreme Court has it's records up there. I don't rule on that, they have the records there, Counselor. And they gave you whatever they had. They gave you that information. So let's not deal with that nonsense anymore. Tell me what witnesses you are going to call today. Let's proceed.

MR. WEINGLASS: We will just start with the witness right away.

THE COURT: Well, which witnesses? I want to see if the Commonwealth knows where we are going to give them an opportunity if they have any objections. Which ones do you want to call?

MR. WEINGLASS: We are calling the number one witness on the list.

THE COURT: Who is that?

MR. WEINGLASS: Carol Young. I just want to say this: Miss Young, who is a registered nurse, was here all day yesterday, and I mentioned to the Court --

THE COURT: We have all been here, a lot of witnesses have been here from day-to-day. I can't help that. If you wait until 4:30 to

Page 9.

try to call another witness and I tell you I am tired, we will adjourn for the day and that's it. The fact that she has to come back today, I'm sorry about that, but I am not going to kill myself over this case. So you are going to call Carol Young. Who else?

MR. WEINGLASS: George Fassnacht.

THE COURT: George Fassnacht. Who else?

MR. WEINGLASS: Jerry Kracoff.

THE COURT: All right. Who else?

MR. WEINGLASS: Steve Hawkins.

THE COURT: Steve Hawkins? Oh, he's down below. Okay. Who else?

MR. WEINGLASS: Robert Harkins.

THE COURT: Robert Harkins. That's one, two, three four, five.

MR. WEINGLASS: I believe the prosecution has that witness. Gary Bell.

MR. GRANT: Has what witness?

THE COURT: He says you have Robert Harkins.

MR. WEINGLASS: Yes, they have indicated several times on the record that they brought Mr. Harkins to Court.

Page 10.

MR. GRANT: We didn't bring him to Court; he was in here pursuant to your subpoena. And since, since Your Honor is allowing them to proceed when they are proceeding, we haven't subpoenaed him. We don't have the witness but we are willing to go get the witness if you like.

MR. WEINGLASS: Fine. Thank you.

MR. GRANT: As to those first, we have objections as to all but two.

THE COURT: What objections do you have to what ones?

MR. GRANT: As to Carol Young.

THE COURT: Right.

MR. GRANT: Based on their page 3, they say she is a registered nurse who was on duty at Jefferson Hospital on the night of December 9th of '81 and could have testified that Mr. Jamal made no statement, basically. And that she observed the police officers verbally and physically abusing Mr. Jamal.

First of all, she is not in support of any claim that is cognizable here. The issue as to whether or not Mr. Jamal made the statement was litigated by the Jury. Number one.

Page 11.

Number two, she did give a statement to the police and she categorically denied that the police leveled any verbal abuse or physical abuse at Mr. Jamal. And this is an outright fabrication.

Number three, Judge, whether she could have or would have been called is an issue of strategy and tactics and I don't see in here alleged that Mr. Jackson, if he had put her on, she would have affected the case. So we object to that. They never noticed us, they held her all day not even letting us know she was here. Last night they said we have a witness. I object to that witness.

Number two, Jerry Kracoff is an attorney representing Mr. Jamal from Pittsburgh. He said that some prison official read Mr. Jamal's mail. Now, I don't think that reading his mail occurred during the course of the proceedings where he was convicted 13 years ago but probably happened about two or three years ago at the earliest. So what we are talking about is post-trial information. That's not cognizable by Your Honor.

Lastly, Mr. Hawkins. Mr. Hawkins is

Page 12.

Counsel for them. Mr. Hawkins has two affidavits which are objectionable for three reasons. He takes hearsay testimony from a Juror and he purports to have it brought before Your Honor. Number one. The Juror has to testify and not him because that is not admissible, but the Juror is incompetent to testify. So testimony in that are regard is incompetent, we would submit to Your Honor.

Secondly, he took an affidavit purporting to say I reviewed appellate Counsel's work in this case and being a legal expert of six years in the profession, or six years doing death penalty cases, I find in my expert opinion beyond a reasonable degree of legal certainty that she was ineffective. Well, frankly, the Supreme Court has already stated, or the Superior Court has already stated that a lawyer's, another lawyer's opinion as to whether a second lawyer is incompetent is strictly within the purview of the court reviewing counsel's performance. They don't give a whit as to what that lawyer thinks because those lawyers who are called judges decide that issue. Moreover, he is Defendant's Counsel.

Page 13.

He, besides being incompetent testimony from a Juror, being hearsay testimony, and his legal opinion being of no import, he has no reason to be on this list.

So Mr. Kracoff does not go to the truth-determining process. Carol Young is offered for purposes that have already been litigated by the Jury. And Mr. Hawkins' testimony is totally incompetent in every respect.

And I would note for the record that the list they gave you claims to be only a list until Friday, which implies that if this goes beyond Friday they have another list for Your Honor. And you specifically asked for the list of witnesses for the remainder of the proceedings and an offer of proof as to what they would show. Which we submitted to Your Honor and gave a copy to Counsel.

MR. WEINGLASS: Counsel has a way of reading documents where he only reads portions of the documents that he likes and he conveniently omits those portions of the document that he doesn't like because they undermine totally his position. Let me give you

Page 14.

an example quickly and briefly.

Witness number one is Carol Young. This is a witness whose statement to the police they have had for 14 years. And we intend to call her in connection with that statement. Counsel says she has nothing to offer. But he hasn't read the statement. Because what did she tell the police? Back in 1982 she told the police that when she was in the process of treating Mr. Jamal, a police officer said to her, quote, you should let the son of a bitch die. Then when she continued with her treatment of Mr. Jamal, another police officer said to her don't waste your time on him. In addition to that, she'll tell this Court if she is allowed to testify today that a police officer was standing on Mr. Jamal's catheter bed while he was being treated in the intensive care unit and under critical conditions. An act which ordinarily one might assume was an attempted murder, and yet there was no complaint filed against any police officer as a result of Mr. Jackson's filing a complaint. All of that this witness will testify to. She was a registered nurse. She was the supervisor of the operating

Page 15.

room. She had serious responsibility in the hospital and she was attempting to carry them out that night. She'll tell this Court that her observation of Mr. Jamal that night is that he was subdued. Her observation of the police that night is that they were unprofessional. This is something that the Jury never heard.

They didn't hear it, we contend, and this goes to an issue we raised because Mr. Jackson, as he pointed out to this Court, in the rush of preparing this case and under pressure from the Court and being rushed along, he failed to call registered nurse Carol Young. We think she should be called to the stand. She should be asked if she was available then. She should be asked if she gave the police a statement. And this record should contain her testimony so that a reviewing court could make a determination, which they must, if they have to, as to whether or not Miss Young's testimony was important for the defense and Mr. Jackson's failure to call her was a factor that goes to the issue we raised, namely, the ineffective assistance of Counsel. So that's our first witness. And she would testify to that.

Page 16.

THE COURT: All right. What is your answer to that?

MR. GRANT: Mr. Jackson was on the stand and they never asked him if he did not call her for strategic or tactical reasons, first of all. Secondly, Judge, I could say I hope Judge Sabo falls down and breaks his leg but if I don't say that to Judge Sabo I am not verbally abusing you. I'm talking unpleasantly about you but I am not verbally abusing you. Certainly that doesn't amount to physical abuse. That's what they are claiming these statements this nurse received from fellow officers of Mr. Faulkner amounts to. It's not true.

Obviously I did read the statements, Counselor.

Secondly, Judge, if they have him on the stand, Mr. Jackson, and they establish that he didn't call her and it was not because of tactical or strategic reasons to advance the interests of his client, that is not ineffective assistance. And they have not established that. There is no foundation for this witness.

THE COURT: All right, what I will do temporarily, I will hold up on Carol Young,

Page 17.

Jerry Kracoff and Robert Harkins, and I will allow you to submit to me any cases that you can find on that issue. Just Xerox the case, I don't want a brief.

MR. GRANT: I think Robert Harkins is an appropriate witness. They have alleged that he saw photographic arrays and that was --

THE COURT: I thought you said he was the attorney.

MR. GRANT: No, Kracoff.

THE COURT: Kracoff was the attorney.

MR. GRANT: Kracoff is the attorney.

THE COURT: Well, who is Robert Harkins?

MR. GRANT: He is a witness that they claim saw a photo array and that knowledge was suppressed from them.

THE COURT: Oh, okay. So then all you are talking about then is Carol Young and Kracoff.

MR. GRANT: And Steven Hawkins.

THE COURT: Well, who is he?

MR. GRANT: He is one of Mr. Jamal's Counsels.

THE COURT: Oh, he is the attorney.

Page 18.

MR. GRANT: Who purports to be a witness as well.

THE COURT: All right, I made a mistake. Then it will be Carol Young, Jerry Kracoff and Steve Hawkins.

MR. WEINGLASS: If the Court please.

THE COURT: They will be held in abeyance and give me any cases on the issue that will support your position. I don't want to hear anymore argument because all I am getting is a lot of hot air from everybody. Give me a Xeroxed case on the subject, that is the best way. Let me read the case and if I find out that you are right, I will reverse myself.

MR. WEINGLASS: Case on?

THE COURT: Give me a case.

MR. WEINGLASS: On what? On what?

THE COURT: Well, give me a case, Xerox the case for me, let me read it. I don't want you to tell me --

MR. WEINGLASS: On what issue? So I have direction here.

THE COURT: That's what I am telling you to do.

MR. WEINGLASS: On what issue, Your

Page 19.

Honor?

THE COURT: On any issue dealing with --

MR. WEINGLASS: With respect to Carol Young.

THE COURT: For the reason that he's already said. You haven't asked that question. You haven't laid the foundation. You want to call your attorney back again, Anthony Jackson, fine. Call him back in, let's lay the foundation.

MR. WEINGLASS: Could --

THE COURT: But the other two. Whatever cases you have on it just Xerox the case for me and give it to me. I will read it, okay.

MR. WEINGLASS: May Carol Young, may Carol Young, who is a registered nurse, be excused then?

THE COURT: Oh, yes, sure.

MR. WEINGLASS: Subject to recall.

THE COURT: That's right, subject to recall when a proper foundation is laid, okay.

MR. WEINGLASS: Now, Your Honor, I make this request of the Court. Our next

Page 20.

witness, who is here and we will put him on the stand, is George Fassnacht.

THE COURT: Okay.

MR. WEINGLASS: And his affidavit is appended to the Petition.

THE COURT: Okay.

MR. WEINGLASS: In order for me to conduct a proper examination of Mr. Fassnacht I do need Miss Wolkenstein here. I will be doing the questioning; she has done the evaluation of the very lengthy Firearms Unit report and the ballistics report. I need her assistance for this examination.

THE COURT: Let me say this: If she apologizes to the Court and assures me that she is not going to argue with me anymore about any ruling that I make, I will let her come back down. Now, you better go talk to her. I will take a short recess.

THE COURT OFFICER: This Court will take a short recess.

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(Brief recess.)

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THE COURT: Mr. Weinglass, what is the

Page 21.

situation?

MR. WEINGLASS: I have talked to Miss Wolkenstein. She indicated she would make the representations to the Court that the Court indicated.

THE COURT: Did you have her brought down?

MR. WEINGLASS: While we are waiting, may I bring up --

THE COURT: Yes, while we are waiting I want to bring up one thing. I see that this list that you have given me is only to August 4th. I asked for a complete list.

MR. WEINGLASS: That's right, our, we are operating under a time pressure that precludes our having a complete list.

THE COURT: No, no, no, no. There is no time pressure. You have 19 issues.

MR. WEINGLASS: Right.

THE COURT: I am hearing only evidence on those 19 issues at this time.

MR. WEINGLASS: Right.

THE COURT: So anybody that is on this list that is not on that 19 issues, just scratch them off.

Page 22.

MR. WEINGLASS: They are all to the 19 issues.

THE COURT: Okay, well.

MR. GRANT: There is the Jury Commissioner of the County of Philadelphia on here, Judge.

THE COURT: He wasn't even Jury Commissioner at that time so he wouldn't know anything about anything.

MR. GRANT: I would move that that subpoena be quashed.

THE COURT: Is that Michael --

MR. GRANT: Michael McAllister, the last person on page 1.

THE COURT: Yes, he is out.

MR. WEINGLASS: Your Honor, we do make an allegation of disparity in the jury system.

THE COURT: He doesn't have that information, Counselor.

MR. WEINGLASS: Well, it is in the office. And we have subpoenaed him duces tecum to bring the information.

THE COURT: No, it is not part of your PCRA matter.

MR. WEINGLASS: It is a separate item.

Page 23.

THE COURT: Where does it fit in under the PCRA? Where does it fit in under section 9501?

9501? 9543.

(Discussion was held off the record at this time.)

THE COURT: Counselor, I want you to look at that section. And I want not only their names, but a statement of who they are, what they are going to talk about, and how it fits into your Petition. You haven't given me that. And I want all of the names, not just until August the 4th. You had 10 lawyers here when you started. Now you are down to three or four. And you have your Philadelphia lawyer here. Let him do some work for you.

MR. WEINGLASS: The matter I wanted to bring before the Court is the following. I believe yesterday an attorney unknown to me but whose name is somehow associated with an attorney by the name of Capone -- C-A-P-O-N-E -- also unknown to me -- brought to Court and handed to me personally a handwritten letter from a William C. Harmon -- H-A-R-M-O-N. And the part of the letter that's germane to our

Page 24.

proceeding is the following from Mr. Harmon.

I would like you to contact the defense lawyers for the Mumia Abu-Jamal case and tell them I could be a witness in that case because I was there that night that he was supposed to have killed the officer in question. I was there and I know Mumia did not kill that officer. I wrote to the Daily News, to Gregory Charles, and told him some of the things I saw. But I haven't received any answer as of yet. And if I can help in some way I would like to.

The reason why --

THE COURT: Fine, Counselor. You have Greer, he is an investigator, let him go investigate.

MR. WEINGLASS: Mr. Greer is not my investigator, never was.

THE COURT: Whatever investigator you have now.

MR. WEINGLASS: Right, now --

THE COURT: Counselor, whoever you have who is your investigator now, give him the letter, let him try to find him. I am not here to try to find witnesses for you, that is not my job.

Page 25.

MR. WEINGLASS: I am not asking that. The letter was given, as I understand it, to also the District Attorney.

THE COURT: Well, there is a lot of things I have. Do you want to see all the letters I got? Holy smokes, there is a lot of letters. I can't, I can't decide issues on letters. That doesn't mean a thing to me.

MR. WEINGLASS: No.

THE COURT: Locate him, get a statement from him, file it as a supplemental. At the end, after we have dealt with these 19 issues that you have here, the Court will take it up at that time.

MR. WEINGLASS: The point I wanted to make to the Court is that the District Attorney's Office, I am told, also received a copy of this letter.

THE COURT: So what?

MR. WEINGLASS: I think the District Attorney's Office has an obligation, since this is evidence of innocence --

THE COURT: No, no, no, no. This is --

MR. WEINGLASS: -- to pursue this.

Page 26.

THE COURT: This is your obligation. This is a PCRA; they could just sit back here and do nothing. You have the responsibility.

Go ahead, I will listen to you. Go ahead. What is your position in this? Do you have responsibility here?

MS. PERKINS: Yes, Your Honor, yesterday morning around lunchtime, I don't remember where we were in the proceedings, some man walked into this Courtroom who I have never seen before and handed me this photostatic copy of a letter, not an original letter, that was addressed to a Mr. Capone. Now, there is a defense attorney named Mr. Capone who knows me personally. I have not gotten any calls from Mr. Capone. I didn't know who this man was. This case has been so publicized everybody is getting FAXs from people all over the universe that say they know things about this case. I have heard things from people working in the Clerk of Quarter Sessions that they have to turn off their FAX machines because there is so much extraneous information that is coming in.

He said, he handed me the letter. I started looking at it. He originally says to me

Page 27.

it's another PCRA Defendant, someone who is incarcerated. I don't recognize the name from handling PCRA petitions. I looked at him, I said I don't know who this man is. He then walks away, comes back to me and says well, you're going to give it to Counsel, aren't you. And I said to him, look, this is the first I've heard of it. I don't know who you are, I have never seen you before. I don't recognize this name. It's not an original document. They are sitting right there. If you want to walk this letter the other 10 feet to the other side of the room and hand it to defense Counsel you are welcome to do so.

I do not have that letter. The copy that he had, as far as I know, which I saw, he gave to Mr. Weinglass. I don't even have a copy of it at this point. I think it's entirely suspect that somebody, a total stranger comes into these proceedings with something and only has one copy which he then gives to them.

THE COURT: That's why I say, let his investigator, he has an investigator, let him try to investigate it.

MR. WEINGLASS: And, Your Honor, I

Page 28.

would ask --

THE COURT: If it is addressed to somebody, Capone, let him go see Capone and let's see if Capone knows who this person is. Let them do whatever they have to do but that is their responsibility.

MS. PERKINS: I am requesting that any interviews, statements, anything recorded, dealing with this Mr. Harmon or anyone else connected to this alleged statement and information, that it be provided to the Commonwealth forthwith.

THE COURT: It would have to be provided to you before you could call any witnesses. That's what I am saying. That's why I want a list, a complete list, and what these people are going to testify to. You are giving me a big story but I have to have some idea of who they are.

MR. WEINGLASS: Your Honor, I understood the Commonwealth's position right up to this moment was that there is no discovery in a PCRA, and I am glad now they finally relent and they are asking for discovery.

THE COURT: No, they are not. They

Page 29.

are just saying they don't have anything on it --

MR. WEINGLASS: No, the request is now, just now is they want discovery from our witnesses.

THE COURT: No, you are going now to the issue of his innocence. If you could bring in here proof that somebody else killed this officer, fine, bring them in.

MR. WEINGLASS: Your Honor, and I want to say one other thing.

THE COURT: Because as far as I am concerned, if you read the record, the police arrived on the scene within 45 seconds. 45 seconds. That's pretty good time.

MR. WEINGLASS: Is the Court indicating it's impression of guilt or innocence?

THE COURT: No, I am talking about the original record. You see, you weren't here for the trial. That's unfortunate.

MR. WEINGLASS: I have read the record.

THE COURT: Well, then, fine. Then you know that the police arrived in 45 seconds.

Page 30.

There were only three people there: Officer Faulkner, the Defendant, and his brother.

MR. WEINGLASS: Has Your Honor read the Petition?

THE COURT: I have read your Petition but now you have to prove that.

MR. WEINGLASS: Does Your Honor see in the Petition an explanation as to what happened?

THE COURT: Yes. But you have to prove that. The Petition is not evidence in itself.

MR. WEINGLASS: We are getting that.

THE COURT: Fine. But now you are talking about somebody walking into this Courtroom and handing a piece of paper. We don't even know who he is. He has disappeared. But you have the name somehow on there. Investigate it.

MR. WEINGLASS: I am asking two things. I am asking for the opportunity to investigate.

THE COURT: Well, sure you have the opportunity.

MR. WEINGLASS: I can't do it because I am here in Court everyday.

Page 31.

THE COURT: Well, get on your Philadelphia Counsel here. He is not here everyday. Or use one of your other attorneys here. You don't need all of them here in Court. Where is the fourth one? Let him do some work. But let the investigator --

MR. WEINGLASS: Fourth one's in lockup.

THE COURT: Well, then, fine, he is in lockup, wherever he is. But you have an investigator. Let him do the work initially and get it to you and see if it makes any sense. But I am not going to --

MR. WEINGLASS: Will the Court issue --

THE COURT: No, come on.

MR. WEINGLASS: Issue a habeas affia cundum so this witness could be brought here?

THE COURT: What witness?

MR. WEINGLASS: He is in lockup. This witness Harmon is in lockup.

THE COURT: You have to tell me what he is going to say. Did you interview him?

MR. WEINGLASS: He has to be brought here so I may interview him.

Page 32.

THE COURT: Go see him wherever he is.

MR. WEINGLASS: No, he is out near Pittsburgh and I am in Philadelphia.

THE COURT: Oh. Well, I am not going to send you to Pittsburgh. Go to Pittsburgh. You have an attorney here, you have Philadelphia attorneys here not doing anything. Send then out to Pittsburgh.

MR. WEINGLASS: I am requesting the Court to bring him here to Philadelphia.

THE COURT: No, you go to Pittsburgh.

MR. GRANT: Mr. Kracoff is in the back, he is Pittsburgh Counselor, he would like to interview him.

MR. WEINGLASS: He is civil counsel: He knows nothing of this case.

THE COURT: Do you want to talk to him?

MR. WEINGLASS: There is one other item.

THE COURT: Yes.

MR. WEINGLASS: Counsel represented to the Court, if I heard right, that they are receiving a lot of information. If they received --

Page 33.

THE COURT: No, it is a lot of...

Well, I get a lot too, but I don't know that I received anything that's material in this case.

MR. WEINGLASS: Well, it seems to me that only one person, one, has written in saying I was there, Mr. Jamal did not do the shooting.

THE COURT: Fine, investigate it.

MR. WEINGLASS: That one is not an insignificant person.

THE COURT: Fine, investigate it, will you please.

MR. WEINGLASS: I can not do that in the middle of a PCRA hearing.

THE COURT: Well, you have an investigator, let him go to Pittsburgh. Let him get a sworn statement from him. I am not here to do your work for you, Counselor. You have a $100,000 fund,

don't you, or more?

MR. WEINGLASS: I don't know what the Court's reading in the press.

THE COURT: Well, I think I read it in the Time, I think, something about 100,000.

MR. WEINGLASS: The Court is misinformed from the media.

THE COURT: Okay, media, you see, he

Page 34.

says you are wrong. You are misinterpreting him now, okay. The media is wrong.

I agree with you. They are wrong sometimes. But sometimes they are right.

MR. WEINGLASS: Well, we feel that the Philadelphia Inquirer was right in 1991.

THE COURT: I am sure, I am sure you felt the Philadelphia Inquirer --

MR. WEINGLASS: Did a long report on Your Honor.

THE COURT: Of course they're right. Anybody that's on the liberal end of the stick is going to say you're right, but.

MR. WEINGLASS: Also 30 percent of the members of the Bar of Philadelphia.

THE COURT: Oh, yes? Well bring that 30 percent in here. That means 70 percent don't agree with you.

MR. GRANT: Could Miss Wolkenstein be brought down?

THE COURT: Yes, is she coming down?

THE SHERIFF: She is on her way down.

THE COURT: Where is she going, by South Philadelphia? She ought to be down here by now. Bring her down in that elevator.

Page 35.

THE SHERIFF: She'll be down.

THE COURT: All right, that's enough discussion for today. As soon as she comes down you talk to her and I will be right back out.

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(Brief recess.)

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MR. WEINGLASS: As Miss Wolkenstein is getting ready, there was a holdover matter from yesterday. A defense witness by the name of Arnold Howard gave a police report. We have asked the Court to ask the District Attorney to provide us with a copy of that. We do not have a copy. We would like --

THE COURT: Who?

MR. WEINGLASS: Arnold Howard.

THE COURT: Where is he? Oh, he is the last one on your list.

MR. WEINGLASS: Yes.

THE COURT: What is he going to testify to?

MR. WEINGLASS: He, he gave a report to the police 14 years ago.

THE COURT: Yes, but who is he? I think these witnesses don't mean anything

Page 36.

because you didn't give me what I asked for.

MR. WEINGLASS: He is a civilian witness.

THE COURT: He is a civilian witness. What is his occupation, what does he do?

MR. WEINGLASS: He is not, he is a civilian, he has gainful employment.

THE COURT: Well, what does he do?

MR. WEINGLASS: He was interviewed by the police. And we would like to have the police report.

THE COURT: You mean one of the 150 witnesses that were interviewed?

MR. WEINGLASS: He might have been, but we don't have a copy of his report.

THE COURT: You don't mean a report, you mean a statement, don't you?

MR. WEINGLASS: We need a statement.

THE COURT: Well, you talk a about report and I am thinking of some sort of a specialist.

MR. WEINGLASS: I'm sorry, it is a report of his interview.

THE COURT: Well, you are talking about a statement that he allegedly made?

Page 37.

MR. WEINGLASS: Yes.

THE COURT: Well, I am not going to hold up the proceedings. You look into the matter, see if there is a problem with that, okay.

MS. PERKINS: Your Honor, if --

MR. WEINGLASS: Is the Court addressing the Commonwealth attorneys?

THE COURT: I am not addressing, I am saying both of you. It is something that you could do some other time.

MR. WEINGLASS: We brought --

THE COURT: Don't take up the Court's time now.

MR. WEINGLASS: I wish we wouldn't have to.

THE COURT: Well, I am telling you don't.

MR. WEINGLASS: We tried last night, the Court invited us to talk to Counsel. We talked to Counsel this morning and we were told we wouldn't be given the statement.

MS. PERKINS: If I could speak, Your Honor?

THE COURT: Yes, sure.

Page 38.

MS. PERKINS: Just for five seconds.

Yesterday, Counsel requested the exact same statement. The reason why we declined to give it to them yesterday, among the reasons Mr. Grant expressed, was also that two weeks ago when we were here and we went through the discovery, we asked them what is it that you don't have that you need that the Commonwealth can provide as a courtesy. They pointed us specifically to paragraph 8 in their discovery request, which listed the names of people for statements that they did not have any longer that were provided as part of the original discovery. The original discovery included a statement from this Mr. Howard person. Therefore, it was an entirely reasonable presumption that they had this statement. Now suddenly they don't. So they have included a complete list of the people who they were missing from that letter, giving them the original discovery. Now we find out that there are others that they still don't have.

Now, to put this issue to rest we will give them the statement of Arnold Howard, if that will make this proceeding move along.

Page 39.

THE COURT: Okay. All right, we will take that up later.

Now, wait awhile, Counselor.

MR. GRANT: Not anymore.

THE COURT: No. Counselor, please. (indicating). Do you want her in here?

MR. WEINGLASS: There is also a Harry Fairclough.

THE COURT: Well, do it later on. Please don't take up my time now. You had everybody waiting here to hear this next witness that you want to bring in.

MR. WEINGLASS: Correct.

THE COURT: Now, Counselor, do you have something to say to me?

MS. WOLKENSTEIN: Yes, Your Honor.

MR. EPSTEIN: Your Honor, good morning. I'm sorry.

THE COURT: Good morning. It is still morning but it will be afternoon pretty soon. But go ahead.

MR. EPSTEIN: Jules Epstein, Counsel on behalf of Miss Wolkenstein.

THE COURT: Okay.

MR. EPSTEIN: If Your Honor please,

Page 40.

may I address the Court briefly?

THE COURT: No, I would appreciate if you don't. I said I would let her back in if she apologized to the Court and because Mr. Weinglass says he needs her. Now, if she is willing to apologize to the Court, I will consider it. I don't need any discussion about it. I want to proceed with the hearing.

MR. EPSTEIN: Of course.

THE COURT: Okay. Do you have something you want to say?

MS. WOLKENSTEIN: Yes, Your Honor. I want to say that frustrations are running very high in the defense table.

THE COURT: Well, I am running pretty high too, so.

MS. WOLKENSTEIN: And that I felt the need to complete a record based upon Your Honor's ruling.

THE COURT: Counselor, you don't need to complete anything. I make a ruling -- and I told you before -- you have an automatic exception to anything, any ruling that I make. I don't want to hear argument on it. I am tired of arguments. If you have a case on the issue,

Page 41.

Xerox the case, give it to me, I'll read the case. If it says what you say it says, I will reverse my decision. But I don't want to listen to a lot of hot air. I have been getting a lot of that. I want the law that's involved. And the only way you could give me the. law, you give me a case. Xerox the case. I don't want a brief, just Xerox the case. I will read it. If it's on point, and it covers your position, I will grant whatever you are asking. That's it.

Now, are you apologizing to the Court? I haven't heard an apology yet.

MS. WOLKENSTEIN: Your Honor, I am stating to the Court that I will not interrupt the Court. And I just need the opportunity to be able to respond before a decision is made. And I needed to be able to complete the record on behalf of my client.

THE COURT: Counselor, I told you you didn't need to do that. All you have to do is, there are no responses, I don't want to hear responses. I want to look at the law. I want you to give me a case. The law. I still haven't heard an apology from you.

Page 42.

MS. WOLKENSTEIN: I agreed to give Your Honor cases.

THE COURT: Well, give me those cases. And no long dissertations. Are you apologizing or are you trying to justify what you have done?

MS. WOLKENSTEIN: I am indicating to the Court that I have to make the complete record for my client and without interrupting the Court if the Court gives me an opportunity.

THE COURT: I am telling you the way to do that is just give me a Xerox copy of a case.

MR. WEINGLASS: Fine.

THE COURT: I haven't heard an apology yet.

MS. WOLKENSTEIN: Your Honor, I have to indicate to the Court --

THE COURT: Well, I am taking it that you are not willing to apologize to the Court. Is that it?

MR. WEINGLASS: If the apology means that I didn't make a complete record --

THE COURT: Are you going to apologize?

Page 43.

MS. WOLKENSTEIN: Okay, Your Honor, I do.

THE COURT: You do what?

MS. WOLKENSTEIN: Okay? I apologize to the Court.

THE COURT: Okay, I accept your apology. But next time I am not going to accept apologies. I am not only going to evict you from the room but I am going to fine you a thousand dollars. So you know in advance what I am going to do. I don't want anymore arguments. That goes for everybody, okay.

MR. WEINGLASS: There is no need for a threat, Your Honor.

THE COURT: I am not, that is not a threat. That's a promise. That's a promise. It is not a threat.

MR. WEINGLASS: It was perceived as a threat.

THE COURT: No, not at all. It was a promise. I want you to know exactly what I am going to do. So if I do it you can't say I didn't know the Judge was going to do that. So I am telling you in advance I don't want anymore of this.

Page 44.

So let's have that witness out here, please.

MR. WEINGLASS: Miss Wolkenstein will assist me?

THE COURT: Sure. Yes, please.

- - - - -

George E. Fassnacht, having been duly sworn, was examined and testified as follows:

- - - - -

MR. WEINGLASS: May I inquire?

THE COURT: Yes, sure.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Mr. Fassnacht.

A. Good morning.

Q. Mr. Fassnacht, would you state for the record your present occupation and employment?

A. Yes; forensic firearms consultant.

Q. And are you employed?

A. Yes.

Q. By whom?

A. International Advisory Group, Incorporated.

Page 45.

Q. And how long have you been employed by the International Advisory Group, Incorporated?

A. Approximately three years.

Q. And prior to that time what was your employment?

A. I was self-employed.

Q. And how long were you self-employed?

A. Ahh, about 15 years.

Q. In what capacity?

A. As a forensic firearms consultant.

Q. Would you just briefly state your educational background?

A. Yes; I have a BA in government from LaSalle University.

Q. Have you ever had occasion to be employed by the City of Philadelphia in any agency or department of the City?

A. Yes.

Q. And in what capacity?

A. Ahh, by the Philadelphia Police Department as a firearms examiner and the supervisor of the Ballistics Unit, later called the Firearms Identification Unit.

Q. Right. Do I understand correctly that you were the supervisor of the Police Department's

Page 46.

Ballistics Unit?

A. Yes.

Q. And how long were you the supervisor of the Ballistics Unit?

A. Ahh, about half of my term with the Philadelphia Police Department, which was about five years. So the later half, about

two-and-a-half years.

Q. Other than what you have already indicated, have you ever been employed in any capacity in a position calling for expertise in firearms?

A. Yes.

Q. And could you just relate that for the record?

A. Yes; by the Ordnance Technical Intelligence Service at Aberdeen Proving Ground, Maryland, where I was assistant to the chief of small arms and aircraft weapons branch. And subsequent to my employment with the City of Philadelphia, as a firearms and ordinance expert with the United States Central Intelligence Agency.

Q. Mr. Fassnacht, who is Joseph E. Smith?

A. He's the author of Small Arms In The World. And he's deceased now. And it is a standard compendium of military small arms.

Q. Is it one of the leading authorities in the

Page 47.

George Fassnacht - Direct

world?

A. Yes.

Q. And did you have a relationship with Mr. Smith?

A. I was his assistant for three years.

Q. Have you been qualified as an expert in firearms in any states of the United States and in any Federal courts?

A. Yes. About a third of the states in the United States, numerous Federal courts. The U.S. Virgin Islands, Puerto Rico and overseas.

Q. Have you been qualified as an expert in firearms in the State court of the Commonwealth of Pennsylvania?

A. Yes.

Q. Approximately how many times?

A. Ahh, many hundreds, I have no... actual count.

Q. Many hundreds of times?

A. Many hundreds of times.

Q. You have testified in the Commonwealth Court?

A. Yes.

Q. And have you ever been found not qualified by any court?

A. No.

Q. Now bringing your attention back to early

Page 48.

George Fassnacht - Direct

1982: Did you have occasion at that time to have a conversation with an attorney practicing in the City of Philadelphia by the name of Anthony Jackson?

MR. GRANT: Excuse me, Your Honor. If Counsel is offering the witness to me for voir dire on qualifications, I accept, and I will state that Mr. Fassnacht is well qualified. Thank you.

THE COURT: That's what we usually do here in Pennsylvania, Counselor.

MR. WEINGLASS: Offer to have agreement so quickly?

THE COURT: Well, usually you ask if the other side has any questions on qualifications. That's the way we do it here in Pennsylvania. I don't know how you do it in New York, maybe it's different, but that's the way we do it in Pennsylvania. But go ahead.

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Q. Now drawing your attention back to early 1982: Did you have occasion at that time to have a conversation with an attorney here in the City of Philadelphia by the name of Anthony Jackson?

A. Yes, I did.

Page 49.

George Fassnacht - Direct

Q. And could you just briefly, if you can, relate the substance of that conversation?

A. Yes. Mr. Jackson called me and asked me if I was available to take a criminal case, to assist him on a criminal case on which he was working.

Q. And did you indicate agreement?

A. Yes.

Q. And was that the case of Commonwealth versus Jamal?

A. Yes.

Q. And did you then have occasion to have any further conversations with Mr. Jackson?

A. Yes. I subsequently visited his office in central Philadelphia.

Q. And did you have occasion to meet with Mr. Jamal?

A. Yes.

Q. And do you recall where that was?

A. That was at Holmesburg Prison.

Q. And was that prior to the trial?

A. Yes.

Q. Did you have occasion to examine the physical evidence in the case of Commonwealth V. Jamal?

A. No.

Q. Did Mr. Jackson provide you with any of the

Page 50.

George Fassnacht - Direct

written reports that were issued by the Firearms Identification Unit or the Police Laboratory in connection with their tests of the physical evidence?

A. No.

Q. Did you provide Mr. Jackson with any written reports?

A. No.

Q. Now, was there a reason why you agreed to enter the case and you didn't test the evidence or review the reports or render a report?

A. Yes.

Q. And what was that reason?

A. Well, I was advised of course that it was, initially it was a Court-appointed case. And that his retaining me was predicated on his obtaining funds to pay me and whatever other experts he had to hire. And I believe I billed him for some work and somewhere down the line I was informed that no further funds would be available and that was my end of my involvement in the case.

Q. So it was due to a shortage of funds to pay you that you had to leave the case before you could do any tests or testify or even review the written reports?

A. That's correct.

Page 51.

George Fassnacht - Direct

Q. Did you in fact, Mr. Fassnacht, stop taking appointed cases at that point?

A. It was soon after that that I stopped taking Court-appointment cases in Philadelphia for a period of close to 10 years. With two exceptions, I believe, because I knew the judge who was involved in the case.

Q. And you stopped taking those cases for what reason?

A. Because Philadelphia either wouldn't pay sufficiently, would arbitrarily slash the bill in half, or make you wait one, two years for payment.

Q. Did Mr. Jackson pay you for the services you rendered to him?

A. I don't recall if I received a check for $150 or not. That figure sticks in my mind. I know I billed him for 350.

Q. And when you billed him for 350, did you bill him by the hour?

A. I believe I gave him a daily rate. At that time I was charging $50 an hour or 350 a day. And if the day ran to 8 hours, it was 350.

Q. Now, you did render some services to Mr. Jackson?

A. Yes.

Page 52.

George Fassnacht - Direct

Q. And do you recall what particular matter consumed most of the time that you worked on this case?

A. Ahh, it probably was the review of literature for possible impeachment of the comparison process. At that time the publication, I believe 1978 the year was, of the Law Enforcement Assistance Administration's Crime Laboratory Proficiency Testing Program was rather new. And I believe I found a reference to it in the second edition of Scientific and Expert Evidence edited by Fred and Winkler Reed. And because it was new and I believe useful in comparison work, we concentrated on that for starters. So that he would be in a position to impeach the entire process of forensic comparisons involved in bullet specimens.

Q. So you spent most of your time just giving him general information on the science of ballistics?

A. Yes; I had to track down the study itself. When I found the study I had to go through it and make a summation. And, essentially, that's the information that I provided to him.

Q. Just briefly, what did that study involve?

A. Well, it was a blind test involving perhaps 200-and-some laboratories in the United States. And

Page 53.

George Fassnacht - Direct

the laboratories who agreed to participate were coded so that the identity of any one laboratory was controlled by a key which was destroyed so that, obviously, a laboratory who had done, or which had done badly could not be identified. And reap the consequences.

So the laboratories were provided with test specimens obtained under ideal conditions, various types. It not only included firearms, it was also hair, glass, fibers, drugs and so forth. Obviously, my concern was only with the firearms.

This was divided into three sections. In the pertinent section, which was the identification of bullet specimens as having been fired from a particular gun, there was an error rate of 3.8 percent. Bear in mind that these bullet specimens that were used were obtained under ideal conditions. They were not fired through bone, tissue, whatever. And the error rate of 3.8 percent was astonishing. The matter that Mr. Jackson was involved in I felt could make good use of this study.

Q. So you provided him with information which attacked the general science?

A. To impeach the science. Not science, art, if you will. To impeach the art.

Page 54.

George Fassnacht - Direct

Q. Right, of comparison?

A. Yes, to show that mistakes could be made, that it was not an infallible art.

Q. And to your knowledge, did Mr. Jackson use the information that you gave him?

A. Yes, from my reading subsequently the transcript of the trial, I believe he did. Or he attempted to.

Q. He attempted to?

A. Yes.

Q. Was he able to?

A. I don't think he was successful in conveying that it was not germane to the case here in Philadelphia but that it was an impeachment, or should have been an impeachment, of the entire art.

Q. What prevented him from using that information?

A. I believe he was interrupted several times.

Q. He was interrupted?

A. Yes.

Q. So other than this general information about a nationwide study reflecting on the validity of the comparisons that are being made by police laboratories, did you give him any information particular to this case that he could use?

Page 55.

George Fassnacht - Direct

A. No. He gave me some details of the case and suggested that I talk to the Defendant at the prison. Which I did.

And I believe we had one long consultation by telephone subsequently. And that was the extent of my involvement in the case.

Q. That was it?

A. Yes.

Q. Incidentally, do you remember how much time you spent in going out to Holmesburg and back?

A. I was at Holmesburg quite awhile waiting for them to produce the Defendant. I believe he was involved in some activity at the time I arrived there. And I spent probably a couple hours waiting.

Q. In the couple hours that you waited at Holmesburg, was that the most time that you had spent working on this case?

A. No, I believe my review of the literature for the defense was probably a greater part, and obtaining the literature, was the greater part of time.

Q. And was the Holmesburg visit the second most

A. I believe so.

Q. -- consuming?

Page 56.

George Fassnacht - Direct

A. Yes.

Q. So you reviewed general literature, you talked to Mr. Jackson, you went to Holmesburg, and that was it?

A. Yes.

Q. No tests, no review of laboratory reports?

A. That's correct.

Q. No testimony?

A. Right.

Q. And because you didn't have funds?

A. That is correct.

Q. Were you willing in 1982 to go forward if funds were available?

A. At that time, yes.

Q. Now, sometime in 1994 did you have occasion to have a conversation with myself?

A. Yes.

Q. And did we meet on occasions also?

A. Yes.

Q. And subsequently were you provided with any materials pertaining to firearms reports or information on this case?

A. Yes, I was.

Q. Do you recall what materials you were provided?

Page 57.

George Fassnacht - Direct

A. I believe a copy of the ballistics report of the, the Firearms Identification Unit report, rather. A crime lab or chemical laboratory report. Two sections of the transcript, I believe of Mr. Tumosa's testimony and the other one of Mr. Paul's testimony.

Q. Did you review those materials?

A. Yes, sir.

Q. And were you asked to review those materials for a particular purpose?

A. Yes.

Q. And what was that purpose?

A. To determine if there was work that should have been done that

was not accomplished, services to be rendered to the defense that were not done.

Q. Work that should have been done back in 1982 that wasn't done because of the lack of funds?

A. Yes.

Q. And were you able to identify areas based on your review of those materials where you felt work should have been done in 1982 and wasn't done for lack of funds?

A. Yes. I believe that the powder residue testing should have been duplicated by the defense to ascertain why lead residue was found, primer gun residue was found on the jacket, and no powder, no

Page 58.

George Fassnacht - Direct

gunpowder residue. And an examination of the bullet itself to, the bullet that was removed from Officer Faulkner, to determine if there were any markings on there which would identify it or rule it out as being fired from the evidence weapon.

The absence of any mention in the reports of testing of the Defendant's revolver to determine whether or not it had been recently fired, most common of which is smelling it. There is a particular smell to a recently-fired firearm which lasts for several hours.

And the last item I believe was the testing of the Defendant's hands, which probably could have been accomplished without too much difficult, to determine if in fact he had fired a firearm.

Q. So when you read this record did you feel that you should have been right there at Counsel's table advising Mr. Jackson in all these areas, conducting tests in your laboratory to support your advice?

A. Yes. Both the, the examination of evidence should have been done prior to trial, but most assuredly, Mr. Jackson should have had an expert at Counsel's table with him.

Q. Do you also feel, having read the record of

Page 59.

George Fassnacht - Direct

the testimony of Mr. Tumosa and Mr. Paul, that you probably should have been called as a witness and rebuttled what they were saying?

A. Yes.

Q. Do you feel that would have helped the defense in this case?

A. I believe it was important and very well could have affected the outcome of the trial.

Q. Now let's look at the some of these issues that you raise.

Let's talk firstly about an issue that you found you could have helped, and that is the question of the bullet specimen that was removed from the body of Officer Faulkner.

A. Yes.

Q. Could you explain to the Court what are general rifling characteristics?

A. General rifling characteristics differ from particular rifling characteristics. The particular being the small stria or scratches which identify a particular bullet as having been fired from a particular firearm. General rifling characteristics are the caliber, the number of lands and grooves, the direction of twist. The depth and width of the lands and grooves.

Page 60.

George Fassnacht - Direct

Q. Now, when you looked at the report of the police laboratory, or the Firearms Identification Unit, did that report describe the general rifling characteristics of the bullet specimen that was removed from Officer Faulkner?

A. It did.

Q. And to your recollection, how did it describe it?

A. It said that the general rifling characteristics were indeterminable. And then in the next breath and the same line it gave one of the general rifling characteristics as being right-hand direction of twist.

Q. Did you find that to be a contradiction of terms, that on the one hand they say it is indeterminable and on the other hand they give one of the characteristics?

A. Yes, I do.

Q. Is there any explanation for that?

A. Umm, none that occurs to me at the moment.

Q. And you would have brought that out to a jury?

A. Certainly.

Q. As a contradiction within the report?

A. Yes.

Q. And then did you read the testimony that was

Page 61.

George Fassnacht - Direct

offered to the Jury by Mr. Anthony Paul?

A. Yes, I did.

Q. He was the expert firearms expert called by the Commonwealth?

A. Right.

Q. Was there any further contradiction on rifling characteristics offered by Mr. Paul's testimony?

A. Yes. In direct examination by the prosecutor he described again that the general rifling characteristics were indeterminable and again said that they had a right-hand direction of twist. Further on he stated, and used the word emphatically, that this bullet could not have been determined to have been fired from a particular gun. On cross-examination subsequently he -- oh, I'm sorry. Before that he allowed as how the general rifling characteristics were consistent with Charter Arms revolvers.

Q. Does the word consistent appear in that record before the Jury?

A. Yes, it does, it does. And subsequently on cross examine -- I'm sorry, on cross-examination, yes, I believe that Mr. Jackson questioned Mr. Paul, and at that time the... specification of eight lands and eight grooves with a right-hand direction of

Page 62.

George Fassnacht - Direct

twist as is found in the Charter revolver were somehow connected with this bullet that was the subject of his testimony.

Q. But there was according to the laboratory report no eight lands and grooves that were found on this bullet; isn't that right?

A. That's correct.

Q. And yet it was made to the Jury that there was?

A. Yes.

Q. Would you have corrected that if you were a witness?

A. Certainly.

Q. Now, when you looked at that laboratory report, did you find any deficiency in terms of the efforts by the police technicians to conduct the tests that ought to be conducted when you are trying to determine if a particular bullet specimen was fired from a particular gun?

A. The evidence should have been examined by an expert for the defense to determine if in fact the findings were correct. And this was not done.

Q. And to your expertise examining the police report, the ballistics report, did you find that the police did a sufficient amount of testing to

Page 63.

George Fassnacht - Direct

determine whether or not this bullet, the specimen bullet, was fired from the suspect gun?

A. I believe that more effort should have been put into determining if in fact you could tell that the rifling was in the right-hand direction of twist. That more effort should have been put into attempting to determine the width and depth of any remaining lands or grooves. Which lands or grooves are used to determine the direction of twist.

Q. In other words, if I understand you correctly, the police laboratory did not perform the tests that would have indicated whether or not this specimen bullet in fact was fired from this suspect gun?

A. Not to my knowledge. I don't know what test they conducted except that which is stated in their report.

Q. The lab report doesn't reflect any such test?

A. That is correct.

Q. Might it have been that the police actually did those tests and not being satisfied with the result they didn't put it in the lab report?

MR. GRANT: Objection.

THE WITNESS: Yes.

THE COURT: Sustained.

MR. GRANT: Move to strike.

Page 64.

THE COURT: Yes. I guess he answered that.

BY MR. WEINGLASS:

Q. Now, when they say the characteristics are consistent, namely the right-hand twist, to your professional way of looking at it, is that a word you would have used in this context?

MR. GRANT: Objection: It's irrelevant.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Would you as an expert in the firearms field, given what's in that police report, have said under oath to a jury that you were satisfied that the rifling characteristics are consistent with the suspect gun?

MR. GRANT: Objection, unless he would say under oath within a reasonable degree of scientific or artistic -- if that's what he considers his profession -- certainty that his statements were correct, then I will withdraw my objection.

THE COURT: Rephrase your question.

BY MR. WEINGLASS:

Q. Incorporating Counsel's suggestion, would you

Page 65.

have said that based on what is in the laboratory report?

A. No. The only thing consistent about them was that they were bullets and that they, according to the police report, had a right-hand direction of twist. Which half of the guns made probably have right-hand direction of twist.

Q. In other words, so it is of no scientific moment?

A. No.

Q. That it has right-hand direction of twist?

A. No.

Q. You would have to do much more thorough exploration of the specimen bullet to reach that conclusion?

A. Yes. The possibilities are so vast that if you could narrow it to the number of lands and grooves, that certainly would introduce some consistency. But the simple fact that, if in fact it were, that the simple fact that it were a right-hand direction of twist is...

Q. Practically meaningless?

A. It's an enormous amount of firearms.

Q. In the millions?

A. Many, many millions.

Page 66.

Q. Many millions?

A. Yes.

MR. WEINGLASS: If I may.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WEINGLASS:

Q. Now let's move on to another area. You indicated one of the areas that you felt you could have rendered assistance in was the area of the tests that should have been performed on the suspect gun which was recovered within minutes of the alleged shooting to determine if that suspect gun had been recently fired. Do you recall indicating that?

A. Yes.

Q. And, Mr. Fassnacht, what test could the police have done that night on the suspect gun to determine if it had been recently fired?

A. Simply sniffing it.

Q. Smelling, sniffing?

A. Yes.

Q. And why do you say smelling and sniffing, what can you tell by smelling and sniffing?

A. Well, the nose is very sensitive, more so than many sophisticated machines, for detecting odors.

MR. GRANT: Your Honor, with all due

Page 67.

respect to Mr. Fassnacht's expertise, I don't believe medicine or biology is one of them. And any comment he makes about the human nose I would ask to be stricken from the record.

THE COURT: Strike that from the record.

MR. WEINGLASS: The nose is going out?

THE COURT: The nose is going out.

THE WITNESS: All right, it's possible to smell a recently-fired firearm. The unmistakable odor lingers for several hours.

BY MR. WEINGLASS:

Q. Right. Mr. Fassnacht, do not mention the organ of the body --

A. Yes, sir.

Q. -- through which one smells, that's out. Now, how long after could you smell the unmistakable odor of gunpowder after a gun is discharged?

A. Persistence can be up to six hours.

Q. Up to six hours?

A. Yes.

Q. And if that gun was fired allegedly with Plus P ammunition, and was fired five times, you would have no difficult in smelling if it was recently fired?

Page 68.

A. That is correct.

Q. Is there any evidence here that, anything that is presented to you, that indicates that the officers even conducted that test?

A. None that I saw.

Q. And this is an area that you would have testified about if you were called as a witness in 1982?

A. Yes.

Q. Now, another area which you mentioned is the area of the performance of tests on the hands of a suspect shooter to determine if the suspect shooter recently fired a weapon.

A. Yes. The tests were available at the time of this incident.

Q. Pardon?

A. The tests were available at the time of this incident. And I see no mention of it having been conducted.

Q. What tests are you referring to?

A. A hand-wipe analysis to determine if the person whose hands are being tested had recently fired a firearm.

Q. And there is no indication here that that was done?

Page 69.

A. That is correct.

Q. And was that test or analysis done, to your knowledge, as a matter of course in 1981 and '82 in the City of Philadelphia?

A. The test was available to them, I don't know how often they used it.

Q. Right. Do you know if the Police Department had kits to perform that test?

A. I believe they did.

Q. And so the record is clear, could you just briefly describe how that test is performed and how complicated or simple that test is?

A. Umm, it's much simpler today. And there are three ways, basically, of conducting the test.

MR. GRANT: Your Honor, we only want to know what he knows about 1982. Because science and human beings have prospered vastly since then. That's the issue.

MR. WEINGLASS: Counsel is correct.

THE COURT: Strike the last answer and do it over again.

MR. WEINGLASS: I'm sorry, I should have included it in the question.

THE COURT: All right.

BY MR. WEINGLASS:

Page 70.

George Fassnacht - Direct

Q. You can only testify about the state of the art or science in 1982 because that's when we are examining these issues. In 1982 could you describe what the test was?

A. Yes. The principal or first test that was developed was called the neutron activation analysis test. And this was complicated to analyze but very simple to take. The analysis had to be performed by a laboratory with access to a warm thermal neutron bath, which is basically a reactor. Procedure was for most police departments who did not have such access to do the swabs and then forward the swabs to the FBI for analysis.

The second method was atomic absorption analysis, which was much simpler and could be performed in many laboratories with existing equipment.

A third test which was to be used, could be used, was only very infrequently used at that time. And to clarify, it is now much more used, was the scanning electron microscope. Which Philadelphia now uses at the present time.

Q. All right. Now let's just focus on the two tests that were being used at the time. When you talk about a wipe, could you describe that in lay

Page 71.

George Fassnacht - Direct

terms? What does a police officer who wants to conduct this test have to do in order to do the test?

A. Well, the materials are available in a small plastic box. They are not very complicated. There is a few cotton swabs, some vials. A small vial of fiber solution of nitric acid, and the swabs are dipped in the vial of acid and it's rubbed on the palm or on the dorsal surface of the hand and then returned to the clean vial. And two swabs I believe are retained as controls. And the test is then complete.

Q. That's it?

A. That's it.

Q. How long does it take a police officer to complete that test?

A. A few minutes.

Q. A few minutes?

A. Yes.

Q. And all he needs are a couple of cotton swabs?

A. Well, the ones from the kit.

Q. From the kit?

A. Yeah, they are sterile and clean.

Q. And a cotton swab, that is like a Q-Tip?

A. Yes.

Q. So all the officer does in a few minutes is he

Page 72.

George Fassnacht - Direct

rubs this swab on the palm of the hand of the suspect?

A. Yes.

Q. And you indicated on the...?

A. Yes, the back of the hand, especially between the thumb and forefinger area.

Q. And that's it?

MR. GRANT: Indicating for the record the web area between index finger and thumb.

THE WITNESS: That's correct.

MR. WEINGLASS: Thank you.

BY MR. WEINGLASS:

Q. That just takes a few minutes?

A. Yes, sir.

Q. Now, if the police have a suspect who is suspected of shooting a police officer within minutes of the alleged shooting, is that a test that you would expect to see the police perform?

A. I would expect them to have performed that test.

Q. And there is no evidence that such a test was performed in this case?

A. Not that I have seen.

Q. Was that testimony you would have offered to this Jury in 1982?

Page 73.

George Fassnacht - Direct

A. Yes.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WEINGLASS:

Q. And aside from police officers, if there were Homicide detectives who are experienced at the scene, would you have expected them to smell the gun?

A. Yes.

Q. Would you have expected them to move swabs across the hand of the suspect?

A. They probably would have left that task to the criminalistics people, crime scene investigators.

Q. Is Mr. Land one of those?

A. I have no idea.

Q. Or Mr. Tumosa?

A. Ahh, I believe he works, to the best of my recollection, I believe he is rather in the laboratory, in the laboratory as opposed to in the field.

Q. Now, have you also had occasion recently to review or examine portions of the Medical Examiner's report in this case?

A. Yes, sir.

Q. And did you note that portion on page 1 of the Medical Examiner's report where it's indicated that

Page 74.

George Fassnacht - Direct

the coroner conducting the examination retrieved a bullet specimen which he noted was a point 44 caliber?

A. Yes.

Q. Do you know of your own personal knowledge what he based that finding on?

A. No.

Q. Incidentally, what is the diameter of a .38 caliber bullet?

A. Point three-eighths or 38 hundredths of an inch.

Q. 38 inches?

A. Yes, sir.

Q. And what was the reported diameter of the specimen bullet that was retrieved from the body of Officer Faulkner?

A. Ahh, 10 millimeters, which is approximately 40 or 40 thousandths -- or 40 hundredths, I'm sorry, of an inch. .40 caliber.

Q. So would it be correct to say it was a .40?

A. Yes.

Q. Of an inch?

A. That is correct.

Q. Now, Mr. Faulkner, can you fire a bullet that has a diameter -- I'm sorry. I'm very sorry. Mr.

Page 75.

Fassnacht, can you fire a bullet that has a diameter of .40 inches, which is the diameter of the bullet reported to be retrieved from Officer Faulkner's body, with a gun that's a .38 caliber gun?

A. No.

Q. Did you note if Dr. Hoyer, the Medical Examiner in this case, found a fragment of a bullet, as well as the specimen bullet, in Officer Faulkner?

A. Yes.

Q. Is it common for a fragment of a bullet to be knocked off from the bullet?

A. Yes, it happens frequently.

Q. And to your review, the Medical Examiner appropriately noted that he had retrieved from Officer Faulkner's body both the specimen bullet and a fragment of the bullet?

A. Yes, that is correct.

Q. Now, when you read the police laboratory report, or the forensic report -- or, I'm sorry -- the firearms report, was there any reference in those reports to a fragment of a bullet?

A. Not associated with that particular bullet, no.

Q. Do you have any idea what happened to the fragment, having read the record?

Page 76.

A. No.

Q. Is it common for a fragment removed from the body of the deceased to be lost?

A. No.

Q. Are steps usually taken to preserve the fragment?

A. Yes.

Q. Do you have any explanation as to how that fragment was lost between the Medical Examiner's Office and the police laboratory?

MR. GRANT: Your Honor --

THE WITNESS: No.

MR. GRANT: -- there is no evidence that anything was lost. And I would ask that all speculation be stricken.

THE COURT: All right, the last question and answer is stricken.

BY MR. WEINGLASS:

Q. In addition to noting that he had removed a fragment, as well as a bullet, from Officer Faulkner's body, did the Medical Examiner also note the measurements of the fragment?

A. Yes.

Q. And noted the measurements of the bullet?

A. That's correct.

Page 77.

Q. So both appear in the Medical Examiner's report?

A. Yes.

Q. And again, there is no mention of that fragment in the ballistics report?

A. To the best of my recollection, that's correct.

Q. Now, is one of the ways that you determine the caliber of a bullet weighing the bullet? Is it one of the considerations?

A. It can be a consideration.

Q. And so if you are trying to decide if a bullet is a .38 caliber or a .44 caliber bullet, one of the things you might do as an expert is to weigh the bullet?

A. Yes, that's possible.

Q. And if a fragment of the bullet is not available to be weighed, would that affect your ability to determine precisely the caliber of the bullet?

A. It could under certain circumstances.

Q. So under certain circumstances, the fact that a fragment was missing would impact the determination as to what caliber the bullet was if you are weighing them for that purpose?

Page 78.

A. If you are weighing them for that purpose, yes.

Q. Since there was one fragment found in Officer Faulkner's body in addition to the bullet, is it possible that there were other fragments as well?

MR. GRANT: Objection. Anything is possible.

THE COURT: Could you rephrase your question somehow.

MR. WEINGLASS: I will rephrase it.

BY MR. WEINGLASS:

Q. Does the fact that one fragment is found indicate to you the possibility, because of that fact, that there are others, or might have been others?

MR. GRANT: Same objection, Your Honor.

THE COURT: Anything is possible in this world.

MR. WEINGLASS: No, Your Honor, what I am asking is not --

THE COURT: Well, then, rephrase your question.

MR. WEINGLASS: The fact that one --

THE COURT: Well, rephrase your

Page 79.

question.

MR. WEINGLASS: That's what I am in the process of doing.

THE COURT: Okay, go ahead.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Does the fact that a fragment is found of the bullet alert the expert to any possibilities of other fragments also being present?

A. Well, that would depend on the Medical Examiner. I would assume that he would use radiography to locate radio opaque specimens which would represent other fragments.

Q. Right.

A. In conjunction with the weight of a bullet, the weight of the fragment could be considered. And if the total of the weight of the fragment and the weight of the bullet constituted the general normal weight of a bullet, one could infer that in fact you had all of the pieces.

Q. I see. You mentioned radiology. Does that, are you saying that the Medical Examiner would conduct an X-ray of the, of the deceased?

A. Yes. To locate the bullet itself and any fragments.

Page 80.

Q. Right. And in your experience, an X-ray would reveal, particularly an X-ray of the head, the brain area, would be capable of revealing whether or not there were other fragments?

MR. GRANT: I don't think he is a radiologist either.

MR. WEINGLASS: No.

MR. GRANT: So I would move to strike any speculation by Mr. Fassnacht that's not within his field of expertise.

MR. WEINGLASS: Well.

THE COURT: The objection is well taken.

MR. WEINGLASS: I am not asking him the question as a doctor.

THE COURT: Well, he is answering as a doctor.

MR. WEINGLASS: Right, in his experience.

THE COURT: He is answering as a doctor.

MR. WEINGLASS: Right.

THE COURT: Objection is sustained.

MR. GRANT: He has to have experience as a radiologist in order to give that opinion.

Page 81.

I am sure he doesn't. Do you, Doctor?

THE WITNESS: No, I do use X-ray machines but not on bodies.

MR. WEINGLASS: Do you want to withdraw that question?

THE COURT: You gave the question, he gave the answer.

MR. GRANT: No, that is my line. Do you want to withdraw the question?

MR. WEINGLASS: I don't remember what question it is anymore.

BY MR. WEINGLASS:

Q. Let me ask you this, Mr. Fassnacht. In working over 20 years in your field, you worked with medical examiners?

A. Yes.

Q. Have you worked with radiology equipment yourself?

A. Yes.

Q. And do you use radiology equipment sometimes in an attempt to locate fragments of a bullet in the deceased's body?

A. I have never radiographed any person or tissue. My use of radiography is for failure

Page 82.

analysis to determine cracks, flaws in metal and so forth.

Q. But in your experience do medical examiner's use it for that purpose?

A. Medical examiners do use it for locating fragments of bullets which are radio opaque.

MR. WEINGLASS: May I have just a moment?

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: Thank you, Mr. Fassnacht. I have no further questions.

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CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good morning, Mr. Fassnacht.

A. Good morning, Mr. Grant.

Q. You have testified, sir, that prior to your present three-year assignment I believe you worked for International Advisory Group, Inc.?

A. That's correct.

Q. Prior to that, for 22 years, you identified yourself as an independent expert in forensic firearms; correct?

Page 83.

A. That's correct.

Q. And as a consultant you would offer advice to people who were willing to pay you money for matters requiring expertise in munitions, ordnance, firearms, comparisons of missiles, fired cartridge casings and the like?

A. That is correct.

Q. And you have been qualified, according to your curriculum vitae, in about 16 states and two U.S. territories?

A. And overseas, yes.

Q. And overseas. And since you have become an independent expert, Mr. Fassnacht, on approximately how many occasions in the State of Pennsylvania have you appeared to give your opinion on behalf of the government of the United States, or the Commonwealth of Pennsylvania, when prosecuting an individual for murder?

A. None.

Q. And how many times have you appeared and testified as an expert on behalf of the people of the State of New York when they are prosecuting a person for shooting someone?

A. None.

Q. And how many times have you ever testified on

Page 84.

behalf of the prosecution authorities, whether it be the Attorney General, the State's Attorney, the District Attorney of the various districts, or any law enforcement agency prosecuting a person for weapons violations in the State of New Jersey?

A. None. But I have to retract my answer on one of your questions. I recall after I had left the City, and I'm not certain if it was a case that I had worked on while I was working for the City -- because there were a number of those, obviously --

Q. Yes.

A. -- which I had to come back from Federal service to testify in the City. I believe I testified once for Richard Sprague while he was District Attorney in a case.

Q. Let's clarify that. You had worked on the examination of those particular evidentiary items before you left and you were getting paid by the City to do that; correct?

A. On that one case, sir, I'm not sure. I think that may have been the exception. The only exception.

Q. Well, if you are not sure are you changing your answer or --

A. Yes, yes, I am qualifying my answer to include

Page 85.

that there may have been one case, and one only, where I was retained by Richard Sprague, who was then D.A. Or I think he was Chief of the Homicide Division.

Q. Are you saying, are you saying, sir, that you had worked on the case on which Mr. Sprague retained you, you had done work while you were getting paid to do work on it by the City before you left?

A. I don't believe it was. That's the reason, that is the reason I am excepting. It is a possibility, again, I am not sure.

Q. And you can't say with any certainty?

A. No, I can not.

Q. Even that that's true?

A. No, I just --

Q. Okay.

A. I just want to make sure that you are aware of that.

Q. I appreciate that and I'm so advised. How about in the State of Ohio where you were an expert?

A. No, sir.

Q. Never testified on behalf of the Cuyahoga County District Attorney's Office ballistics firearms examiners to confirm their findings?

A. Not to my recollection.

Page 86.

Q. How about in the State of West Virginia?

A. For the state?

Q. Or the county or the city or --

A. No.

Q. Or the borough or the hamlet?

A. No. All of these people have their own independent laboratories. If they don't have one themselves, they have access to the next higher governmental unit. And there is no reason really for a private, under most circumstances, unless there is a conflict of interest of some type, there is no reason for the law enforcement community to step outside of it's own available laboratories.

Q. So you are qualified, in addition to those states that I have mentioned, in Kentucky; correct?

A. Sure.

Q. California?

A. Yes.

Q. Rhode Island?

A. Yes.

Q. Virginia?

A. Yes.

Q. Tennessee?

A. Yes.

Q. Illinois?

Page 87.

George Fassnacht - Cross

A. Yes.

Q. Kansas?

A. Yes.

Q. Michigan?

A. Yes.

Q. Maryland?

A. Yes.

Q. Florida?

A. Yes.

Q. Wyoming?

A. Yes.

Q. Puerto Rico?

A. Yes.

Q. U.S. Virgin Islands?

A. Yes.

Q. Never once have you ever testified that the police department of those various states or any of the agencies who did their firearms work did a good job or did the correct job, have you?

A. No, as I say, they have their own facilities.

Q. But I asked you: Have you ever testified, taken the stand and said yes, those guys were right, in any of these states in the Union and outside the country?

(Pause.)

Page 88.

George Fassnacht - Cross

A. Right as opposed to wrong, I think.

Q. No, no, no, we don't have to quibble.

MR. WEINGLASS: Your Honor, may the witness be allowed to answer? He was cut off.

THE WITNESS: I think that there are categories that would not be so sharply defined. There may have been a murder charge placed on someone, as a West Virginia case was, wherein the prosecutor did not realize that the gun could discharge accidentally or inadvertently which resulted in a change. Now, that of course was something that the police had overlooked. And if you weren't aware of it, and if you want to consider that wrong, yes, I would agree with you.

BY MR. GRANT:

Q. I agree with you there are fine shadings of distinction.

A. Yes.

Q. Let me give you something that is more to the point. Whenever you have testified it's been, for all intents and purposes, to criticize the work that was done or the work that was not done by all the law enforcement agencies, police departments, what have you, in all these states; correct or incorrect?

Page 89.

George Fassnacht - Cross

A. Umm. I would have to say, adopting your phraseology, correct.

Q. Okay. So would it be fair to say that in virtually 100 percent of the times that you have been qualified as an expert in the field of forensic firearms expertise, you've always attacked or attempted to destroy the prosecution or the police department or the state's case?

A. I don't know that I would use the words attack and destroy. The object of any court proceeding is not to attack or destroy, it's to find the truth. And my efforts have been in that direction, I believe.

Q. Okay. And in your efforts to determine the truth, 100 percent of the time it has been for the person accused, if it's a murder, of the murder, right?

A. If it were a murder.

Q. And if it were a shooting that the person fortunately lived through by the miracle of science, you would still be testifying for the person who did the shooting or was accused of it, right?

A. Yes. With the caveat that, again, the police departments and the law enforcement bodies have access to their own laboratories. The defense can

Page 90.

George Fassnacht - Cross

only rely on independent experts, unless it wants to accept the, the prosecution's version without question. Given we have an adversarial system, that would be foolish.

Q. Back in 1981, sir, how much did you charge for the hour?

A. I believe I charged $50 an hour at that time.

Q. And how much money did you get paid by Mr. Jackson or Mr. Jamal or persons on their behalf at that time?

A. I am not sure that I got paid. If I did get paid there are two numbers that stick in my mind: 150 and 350. I might have gotten one or the other or I might have billed for 350 and gotten nothing.

Q. Was it possible that you billed for 150 and 350 and you got both?

A. I just, I specifically said it was definitely not both. I recall it.

Q. I asked you, did I not, pursuant to a subpoena duces tecum, to bring with you any and all records that you presently possess of any of your work done, billing sent out, in this case; correct?

A. Yes.

Q. Did you bring them?

A. No, I have no records going back that far.

Page 91.

George Fassnacht - Cross

Q. Where were you --

THE COURT: Counselor. That noise out there, it's sort of affecting this thing. Sheriff, send somebody outside and get rid of that.

BY MR. GRANT:

Q. Are you able to hear me?

A. Sir?

Q. Are you able to hear me?

A. I can't hear.

THE COURT: Are you able to hear him?

THE WITNESS: Yes.

THE COURT: Okay. That is the problem. That's why I have to get rid of that noise out there. I know you can't hear him.

BY MR. GRANT:

Q. Where were your offices located in 1981 and '82 when you

were acting on behalf of Mr. Jamal, sir?

A. At my home.

Q. At your home?

A. Yes. That is correct.

Q. And where did you keep your records?

A. At my home.

Q. Were they kept in a storage facility of some sort that would allow you to retain them for a number

Page 92.

of years?

A. Well, they were kept in a file cabinet for a couple of years.

Q. And then you destroyed them?

A. Yes, I threw them out.

Q. By the way, back in those days, sir, did you charge a different rate for people who were indigent, that is to say they didn't have money for counsel of their own, versus those who could afford to have a lawyer of their choice?

A. No. Not really. I have done pro bono work but under very stringent conditions. I would do pro bono work if the attorney represented to me that he wasn't being paid either. So I did do, I did do some cases like that.

Q. When did you stop doing court-appointed work for defendants who needed your services?

A. In Philadelphia?

Q. Yes, sir.

A. Sometime in the early to mid-8O's, I would guess.

Q. Well, early to mid-80's is 1981-'82?

A. Oh, well, it's obviously after that.

Q. So you stopped doing it after Mr. Jamal's case?

Page 93.

A. Sometime after that, yes.

Q. How much in a distance after that?

A. I'm not certain, but it was eight or 10 years. As a matter of fact, I could tell you the first case that I took recently which broke that cycle, if you will, was with Joel Moldovsky in this past autumn.

And only because the City of Philadelphia has reformed it's payment system.

Q. How about in August --

MR. WEINGLASS: The witness was about to finish. Counsel inadvertently interrupted the witness.

MR. GRANT: I'm sorry. I thought he was through.

BY MR. GRANT:

Q. Please answer.

THE COURT: I'm sorry, I can't hear him either because of that noise out there. We may have to just hold up.

Sheriff, take those people into custody, all right. We will get rid of the noise once and for all.

MR. WEINGLASS: Your Honor --

THE COURT: I'm ruling here. Take them into custody if they don't move. I don't

Page 94.

want that noise out there. I can't hear in here.

MR. WEINGLASS: I think the record should be clear.

THE COURT: The record should be clear that they are disturbing and trying to intimidate this Court, okay. And I say if they don't leave and stop that shouting I'm going to take them into custody. All right.

MR. WEINGLASS: The Court is not referring to anyone in the Courtroom.

THE COURT: No, not in the Courtroom. Outside.

MR. WEINGLASS: I think the record should show that.

THE COURT: What do you think I am talking about?

MR. WEINGLASS: I think the record doesn't make that clear.

THE COURT: The record makes it very clear: I said the noise outside.

MR. GRANT: May I proceed?

THE COURT: Okay.

BY MR. GRANT:

Q. I'm sorry if you hadn't finished your answer.

Page 95.

I thought you had finished your answer, sir.

A. Ahh, yes, there is now in effect a payment system whereby expert witnesses are guaranteed a payment of 650 a day, or half of that for half a day. And at the conclusion of their work each day, whether it is a half day or full day, a slip of paper is submitted to the judge to certify that they are there present; and that payment is then taken and, that slip is then taken by the defense attorney and turned in to a City office and payment is guaranteed within 30 days. The reason for that system being in practice is because a lot of people no longer took Court-appointed cases because they didn't like waiting two years to get paid, if they got paid at all. Or got paid half of what they asked for.

Q. Number one, sir, you don't know if you got paid at all, right?

A. That is correct.

Q. And if you did get paid, since that is the obvious converse of what you don't know, you might have got paid before the time it normally takes; correct?

A. I haven't gotten paid?

Q. In this case --

A. Yes.

Page 96.

Q. -- it's possible that you got paid, and not only that, but you got paid on an expedited basis?

A. It's possible that I received a check for that bill that I submitted to Mr. Anthony Jackson, it's quite possible.

Q. And earlier than you were accustomed to receiving it?

A. If in fact I did receive it.

Q. Yes?

A. Yes.

Q. Now, how long had you been taking these appointments before you decided it wasn't worth it?

A. For about six years or so.

Q. And you really don't know when you stopped taking these appointments, do you?

A. I would say somewhere '84 or '85, somewhere in there.

Q. And the normal rate for payment was an initial fee of $150 and if you did additional work then you could, your attorney, the attorney you worked for, could apply to the Court for more monies to pay you for any work that you felt was material and needed; right?

A. I have no idea of how the attorney was reimbursed because my funds came from him and not

Page 97.

directly from the City.

Q. Oh, I see. I see. So you did know that the normal rate, because Mr. Jackson told you, was $150, right?

A. I don't know that that is a normal rate. It is an observed rate.

Q. Is that the rate he quoted to you?

A. That figure was mentioned, yes. I don't know whether or not Mr. Jackson told me that or not, but.

Q. Well, let me ask you this. Mr. Jackson contacted you by phone

or in person initially?

A. By telephone.

Q. And he said I have a case, I would like to know if you are available to take it, a criminal matter, and assist me; correct?

A. Yes. Correct.

Q. And you agreed, that's what you said on direct, didn't you?

A. Yes.

Q. Well, from six years experience you knew what you were agreeing to, didn't you?

A. No. Because some people pay their bills promptly. And as a matter of fact, there is one judge who is the exception in that eight-year or l0-year hiatus who personally went up to the clerk in

Page 98.

George Fassnacht - Cross

the Chief Justice office and got the funds for me. By personal intervention.

Q. And since that's the exception --

A. Yes.

Q. -- your knowledge of six years experience says that the rule was that you knew what you were agreeing to?

A. The rules --

Q. Yes or no, sir?

A. No, the rules were arbitrary and capricious. And those two words could not be better used in the English language than to describe the payment system that was in effect at that time for experts at that time.

Q. Nobody is contending, Mr. Fassnacht, that the City of Philadelphia is the paragon of fiscal accountability. That's not why we are here. And they have reformed it I think presently to your satisfaction now?

A. Now.

Q. Well, I certainly appreciate that. Well, when you worked in the ballistics laboratory, sir, did you feel that your work was accurate and well done?

A. Certainly.

Q. And during those two-and-a-half years when you

Page 99.

George Fassnacht - Cross

were the supervisor of those who worked for you, did you feel that the people that you supervised and for whose work you were responsible was accurate and well done?

A. Yes, Philadelphia has an excellent ballistics laboratory.

Q. Well, I guess it must have changed in 1981 when Mr. Paul examined the ballistics material in this case; is that the idea?

A. Ahh, I have no idea what was going through his mind or the mind of the other experts who had signed that report, but obviously you don't have to be an expert to see that there is something wrong.

Q. Yes, I see. Now, in order to arrive at your expert opinion, is it necessary to talk to the accused?

A. No. That was done at the request of Mr. Jackson.

Q. And you billed him for that; correct?

A. That was part of what was included in my services, certainly.

Q. I see. And what scientific or expert information or insight did you get from Mr. Jamal?

A. None that contributed anything to the case.

Q. And you knew that before you went there,

Page 100.

George Fassnacht - Cross

right?

A. I went there because Mr. Jackson asked me to. And for all I know, maybe Mr. Jamal had asked him to ask me to do that. I have no idea. You'll have to ask Mr. Jackson why he asked me to go to the prison.

Q. Now, you told Mr. Jackson your hourly rate at the time he first contacted you by phone, I take it?

A. Yes.

Q. And what was that rate?

A. $50 an hour. 350 a day.

Q. And did you give him the daily rate or the hourly rate?

A. Whichever is cheaper. It goes to 8 hours it's 350.

Q. And you were available and consulting with Mr. Jackson with your expertise from the first day he contacted you up until almost the very last day of this trial, weren't you?

A. I don't know when he last called me.

Q. How about June 3Oth, 1982?

A. What is the date, sir?

Q. June 3Oth, 1982?

A. I don't know.

Q. Is it possible that you were consulting and advising him even though you were working for peanuts

Page 101.

George Fassnacht - Cross

up until the very last day of the testimony?

A. I might as a consideration have talked to him and given him some consultation even though I wasn't being paid for it. And again, that's not unusual.

Q. And do you know or recall when you were first retained to start your billing meter to tick?

A. Somewhere in the late winter or early spring.

Q. Late winter would be what, March?

A. March, April. Spring I guess would be April.

Q. March, April, May, June. Assuming that there was conversations with Mr. Jackson offering your expertise, and you so testified, up until and on the day of June 30th for an hour and a half I believe on that date, you did all that for 350 lousy dollars?

A. I may have done that for no lousy dollars, for all I know.

Q. I see.

A. Given the track record of the City of Philadelphia in paying their bills to expert witnesses at that time.

Q. I understand your problems with Philadelphia's fiscal policy, I understand. Now, you reached four conclusions in this affidavit that you signed on behalf of Mr. Jamal. A, you would have expected to find gunpowder residue on Police Officer Faulkner's

Page 102.

George Fassnacht - Cross

jacket where the bullet entered his back. That's one of them?

A. Yes.

Q. B, that the Firearms Identification Unit report was incomplete in that there was no mention of the number, width or depth of the lands and grooves in the recovered bullet.

A. Yes.

Q. Three, that no one tested the gun for recent firing by the olfactory nerve: Smelling?

A. Yes, sir.

Q. And lastly, that no one performed a neutron activation test, or scanning electron microscopy test, or atomic absorption test on the hands of Mr. Jamal to see if there was gunshot residue on them; correct?

A. Correct.

Q. Now, you further claim in your affidavit, I note, that you were surprised that the laboratory didn't perform one of these tests, and the test you are referencing is, to be simplistic about it, to stick the gun barrel in your nose and take a sniff: That's a scientific test that you are surprised that they didn't take?

A. Yes, you don't have to stick it in your nose.

Page 103.

George Fassnacht - Cross

You get it within a couple inches. Yeah, I'm surprised because it's so very easily done.

Q. Well, why is it that the smell dissipated nearly 20 percent from the time you wrote this affidavit until you got on the witness stand; do you know what I mean?

A. No, sir.

Q. Well, in your affidavit it said the smell lasts for four to five hours. And all of a sudden you get up on the stand and now it's lingering in there for six hours?

A. I said persistence can be as high as six hours. As we all know, it depends on humidity, heat, and various other factors.

Q. And the human nose?

A. Well.

Q. That is a factor, isn't it?

A. Well, assume that you are not smoking a pipe with some noxious mixture in it. Unless your nose, your olfactory nerves have been completely destroyed, you should be able to smell it.

Q. How about cigarette smokers?

A. Some of them can't taste their lunch, some can. I don't know, that is a medical question.

Q. So depending on whether they smoke cigarettes

Page 104.

or pipes or can't taste their lunch, this test would have little or a lot of value?

A. It's pretty strong and I really, not speaking too closely, I think that any normal person should be able to smell it rather easily.

Q. Do you know how long after this weapon was confiscated, how long, how much time elapsed before the Firearms Identification Unit received it?

A. No.

Q. Well, based on the notes of testimony that transpired in the peoples' testimony, Police Officer Forbes got the guns, took them to the ballistic lab, received a property receipt for them identifying them and where they came from, then took them to the chemical lab where they were dusted for fingerprints. The guns remained there for the completion of the test and Officer Forbes then took it back to the Firearms Identification Unit for safekeeping to await testing by the Firearms Identification Unit. Now, you don't know how long it was before people with your expertise even received that weapon, do you?

A. No.

Q. Then if you don't know this information, why are you surprised that they didn't perform this scientifically advanced sniff test?

Page 105.

A. This is not scientifically advanced and any police officer in his training, this should be included in the syllabus, that upon recovering a gun the first thing he should do, among other things, is to sniff it to see if it's been recently fired. I mean he is taught not to do anything that would damage the interior of the barrel and to preserve other parts of firearms evidence. I don't know why this can't been included. It's, it's dirt simple.

Q. Well, were you trained to do that by Joseph E. Smith? I believe that was your mentor, wasn't it?

A. No, I was not trained to do that by him. That work was completely different and did not involve forensics at all.

Q. Who turned you on to this sniff test, Mr. Fassnacht?

A. The people I worked with in the ballistics laboratory when I was there.

Q. Well, I take it that you stay abreast of the literature in your field of expertise, and you try to remain current and review studies that are done, research efforts made and general publications in the area, I take it, do you not?

A. I try.

Q. Do you think that you succeed?

Page 106.

A. I hope so.

Q. And because you stay abreast with these publications, books, research studies and the like, you are of course familiar with a work done by a Major General Julian Hatcher, it is titled 'Firearms Investigation Identification And Evidence,' first published in 1957, at about the time you were cutting your teeth in this field, right?

A. Ahh, no, sir. That was before I got involved in the forensic end of it. And actually there are three books with Hatcher.

Q. Yes, that's right?

A. Hatcher is involved in, Hatcher, Weller and Jerry being the last one. Is that the one you are speaking of?

Q. No, I am not speaking of that one. But you are right, he has published more than one.

A. Yes.

Q. This was published in 1957, was called 'Firearms Investigation Identification and Evidence.' And you are familiar with Mr. Hatcher, are you not?

A. General Julian Hatcher, certainly.

Q. And you, like other experts in your field, respect his opinions and feel that he enjoys a good reputation in the community in which you operate,

Page 107.

don't you?

A. Yes. He is somewhat dated and there have been a lot of advancements since then but he is one of the people that was in on the ground floor, if you will.

Q. Yes. There's been a lot of advancements since then but we are in 1995 and you are still sniffing gun barrels, right?

A. Yes.

Q. Okay, let me read you this excerpt from Chapter 11, page 299 of this particular volume. Quote, a general idea of the time since the weapon was fired can usually be determined but not however within any precise and close limits. For instance, a bore -- that is the inside rifling of the barrel, right?

A. That is correct.

Q. A bore which shows dust, red rust, the accumulation of lint or tobacco fragments or the like, probably has not been fired for some time. A similar weapon which smells characteristically of powder was probably fired a relatively short time ago.

That appears to be in agreement with you, does it not?

A. So far.

Page 108.

Q. Yes, that's right.

However, this smell test is not really worth anything at all because few men are sufficiently trained both as smellers and as shooters to know the difference between one brand of powder and another.

Would you agree or disagree with that statement?

A. Well, that's an interesting statement. What's it got to do with brands of powder? If he is speaking on discerning the brand of powder, that is quite impossible to do. We are talking about relatively recent firing, and that's a different story. And as I say, people, I think people being trained in the use of firearms, every policeman is trained in the use of firearms, every policeman is trained in the proper recovering of evidence, the handling and use of firearms. And it would be a simple matter to teach them to check the smell of the bore of a recently-fired gun, and on a firing range they could do that.

Q. Doesn't gunpowder come in different strengths and different compounds, by the way?

A. It does but something burnt smells like something burnt recently. Whether it's cornine, or

Page 109.

double base, or single base powder, you can smell it.

Q. So the same person that has this expertise in smelling guns can smell a chimney fireplace because something burnt is something burnt; is that what you are suggesting?

A. Well, the odor of gun powder, because of the guncotton substance they are all based on, has a peculiar odor.

Q. Gunpowder is the base and there are various types?

A. Smokeless gunpowder.

Q. Smokeless gunpowder?

A. Smokeless.

Q. They started using smokeless gunpowder and stopped using black powder about how long ago?

A. Oh, 100 years ago.

Q. So gunpowder does affect the type of smell you are smelling and if you use different kinds of powder you are going to have different strengths, are you not?

A. No, the smell of a freshly-fired firearm bore smell is distinct and self-evident.

Q. Okay. Well, what does the term analytical study mean in connection with your expertise, Mr. Fassnacht?

Page 110.

A. Analytical study pertaining to what?

Q. Firearms identification. Smells characteristic of gunpowder firing.

A. The smell of the muzzle or the breach of a recently-fired firearm is distinct. And we have, I have been warned off comparing the human olfactory organ, I won't use the word, because I'm not a doctor. But I can assure you that mine works and I've tested it frequently and my results are as I say: I can tell a recently-fired firearm from one that hasn't been fired for awhile.

Q. Have you ever subscribed to the Crime Laboratory Digest? It is a forensic journal published by the FBI Laboratory Division of the U.S. Department of Justice?

A. I don't believe I get that particular journal.

Q. Did you ever skim through it, whether you subscribed to it or not?

A. I can't recall. I don't think so.

Q. Well, let me read to you from January 1995, Volume 22, Number 1, at page 5, a statement by them, and see if you agree with it or disagree. Until recently there was no reliable analytical method to determine the recency of discharge of a firearm due to problems associated with the identification and

Page 111.

detection of elements or compounds in gunshot residues which change with time.

Now, until recently -- and January of '95 is pretty recent -- apparently the U.S. Department of Justice says that, and the FBI Laboratory Division says that your nose is not very reliable?

A. I don't read, I don't get that from what you just read to me.

Q. What do you get from it?

A. We are talking about an analytical test.

Q. That's why I asked you what your definition was?

A. It means laboratory analysis in this context.

Q. Oh?

A. And the context, in the context definition that you asked for it is meaningless for me. This has nothing to do with smell.

Q. That's right, so they are saying that even with laboratory machines and tools --

A. Yes.

Q. -- they still can not reliably say when a weapon was fired?

A. What's that got to do with smell?

Q. And you are saying that your nose is better

Page 112.

than all these analytical tests?

A. I don't want to use that word, I have been warned off it, but my human olfactory organ is very sensible to the smell of freshly burned gunpowder. And I assure you anyone can tell the difference between a recently-fired firearm and one that's been fired, say, more than six hours ago.

Q. Do you consider what you do an art or a science?

A. The identification of fired projectiles as being fired from the same firearm is an art. It is not science.

Q. And art is subjective to the beholder?

A. You have described it precisely. I couldn't have used the word better myself. It is exactly subjective. It is entirely a subjective judgment. The science of fingerprinting, if you will, of determining whether or not your fingerprints match those found somewhere, is a science because there is a certain number of points without which you do not have an identification. Doesn't exist in forensic firearms examination. It is entirely a subjective judgment in the mind of the examiner. You've phrased it very well.

Q. So your opinions are no more valuable or as

Page 113.

limited as the next firearms examiner because it's up to you what you think you got, right?

A. I think a good question for any firearms examiner would be have you ever had a disagreement with your confreres as to whether or not a forensic comparison was in fact valid.

Q. So your answer is?

A. Sir?

Q. So your answer is this is just your opinion and your opinion only?

A. For what it's worth.

Q. And all people in your position have their own opinion about what you are saying?

A. I suppose.

Q. Now, in section D in your affidavit you say that the gunshot residue tests weren't performed on Mr. Jamal; correct?

A. Yes.

Q. What do you know about Mr. Jamal's physical activity, especially involving his hands, immediately following the firing of this weapon?

A. Nothing.

Q. You didn't read any trial testimony from the transcript that Mr. Weinglass gave you?

A. I did not receive any pertaining to any

Page 114.

physical activity.

Q. Okay, well, let me give you some background to see if you could examine your views on this neutron activation analysis. Page 2.20, June 2nd, 1982. Based upon the trial testimony of Cynthia White, upon direct examination by the prosecutor, police arrived within 30 to 60 seconds following the shooting. On June lst, 1982, page 54, according to Police Officer Shoemaker, from the time he received the initial call made by the officer who was later killed until his arrival on the scene 45 seconds transpired.

Now, at that point Mr. Jamal began struggling with several policemen at the scene of the crime, he attempted to keep his hands from being handcuffed behind his back by flailing his arms. It took several officers to bring his hands behind his back in order to properly handcuff him. You were not aware of that, were you?

A. No.

Q. I assume you were also not aware that after Mr. Jamal was

transported to Jefferson Hospital to be treated for the gunshot wound he received from Officer Faulkner, that upon being removed from the police wagon he then engaged in another struggle with the police, refusing to be removed from the wagon,

Page 115.

George Fassnacht - Cross

then refusing to walk on his own and then refusing hospital treatment, all the time resisting police. It got to the point where a Municipal Court judge had to order the hospital because of his refusal to comply with their requests, she ordered the doctors to save his life if they could despite what he was doing. Defendant was handcuffed to the hospital gurney while awaiting this order for medical personnel to provide their services. Then the emergency room personnel removed his clothing, which consisted of a jacket and two shirts, in order to operate on him, of course. Then he was operated upon and remained in the hospital several days.

Now, we are talking about, the area that you're, I guess, referring to is the web (indicating), the surface right here (indicating)?

A. And the palm.

Q. And the palm. And you have already said that you remain abreast of literature in the field and you try to, basically, consider these factors, don't you, when you give your expert opinion?

A. The factors that you have just annunciated?

Q. Yes.

A. The struggles and various --

Q. Yes.

Page 116.

George Fassnacht - Cross

A. Well, it is entirely possible that during a struggle, I don't know where he was grasped, but if you are saying that they had contacted his hands, particularly where a great deal of pressure was applied, they could have very well destroyed traces of powder residue if in fact such did exist. That is a possibility.

Q. Yeah, well, let's just assume that when you are handcuffed behind your back most people are handcuffed like this (displaying)? Can you see me?

A. Yes.

Q. This means that that web surface that you are describing is in direct contact with your body surfaces or the clothing that he wears; would that be fair to say?

A. Is that what, sir?

Q. Would that be fair to say?

A. I didn't catch the last few words.

Q. This portion between the index finger and the thumb would generally be in direct contact --

A. Yes.

Q. -- with the body surfaces and the clothing he wears?

A. That's reasonable, yes.

Q. Well, I would like to read for you an excerpt

Page 117.

George Fassnacht - Cross

from a text by, which was edited by the doctor slash attorney -- both a doctor and a lawyer, I guess -- Cyril Wecht?

A. I know him well.

Q. You know him well?

A. Yes, sir.

Q. His book was published in 1981, just about the time this murder was occurring. It's called 'Forensic Science, Law, Science, Civil and Criminal.' Dr. Wecht's publication, is his publication relatively widely known in your profession?

A. Yes; it is a three-volume set which is frequently updated, I guess, like an lot of legal texts, once a year.

Q. That's right. This is volume three.

A. Yes.

Q. And to quote it it says, firearm discharge residues that may be deposited on the shooter's hands can easily be washed off, wiped off, or, after a short period of time, worn off. Research has indicated that after approximately two hours of a normal day's activity, substantial amounts of the residue will be spontaneously lost, making it difficult to conclude that gunshot residue was present on the suspect's hands.

Page 118.

George Fassnacht - Cross

Would you agree with that?

A. Not entirely.

Q. What part don't you agree with?

A. I would, I would say if you adopted Dr. Wecht's statement as it stands there would be no further use for a police department using this test. But in fact they do. And why? Because they expect to find something. So why do this, why spin wheels, why do a test if you don't expect to find the residue?

Q. Well, no test was done, was it, in this case?

A. No.

Q. So they weren't spinning their wheels, were they?

A. Well, they didn't do the test. They didn't attempt to do the test.

Q. Well, let me read you this.

A. But is the test still available is the question and is it presently used and if so why if it has no value?

Q. Well, I guess I will ask the questions for a little bit longer.

A. Well, I don't mean to put that in interrogatory fashion. I am aware of my position, I am not asking you a question. It's rather a, by way

Page 119.

George Fassnacht - Cross

of explaining.

Q. Okay.

A. It is a rhetorical question, if you will.

Q. Yes. You likewise are familiar, of course, I am sure with a work called 'Techniques of Crime Scene Investigation,' it is the third edition, by authors Svensson, Wendell and Fisher?

A. Yes.

Q. Yes. At page 240-241 of that text, which is, that chapter is entitled Gunshot Residue Analysis?

A. Yeah.

Q. They say that when primer is detonated, microscopic particles of gunshot residue are deposited on the hands of the shooter. They are present on the hands of the shooter with the greatest concentration being in the web area. The area that you described?

A. Yes.

Q. These particles adhere to the hands but are removed by washing, wringing the hands, placing the hands in the pockets, and even handcuffing behind the back. Studies have shown that gunshot residue material will remain on the shooter's hands for up to about six hours. The particles are in the highest concentration immediately after the shooting and are

Page 120.

George Fassnacht - Cross

eventually all lost over time, depending on what actions the shooter takes.

Now, in addition to disagreeing with doctor-attorney Cyril Wecht, do you disagree with that statement?

A. Well, I would say first off I observed that they disagreed with Cyril Wecht. Because he says two hours. And it seems to be a disagreement among the published experts.

Q. Not as to the activity that removes it?

A. We agreed on that.

Q. That what?

A. I believe I agreed with you that being handcuffed with the hands behind the back could expose the web surfaces to the

clothing and result in the loss of residue.

Q. If you were them, the Philadelphia Police, knowing the activity that I have described to you that Mr. Jamal was engaging in, tell me when you would have snuck in there and taken that test from him, at what juncture, at which struggle?

A. Well, if they really wanted to take the test and if there were enough officers on hand I suppose he could have been spread-eagled and his hands held out and somebody grabbed a leg or two. It sounds

Page 121.

George Fassnacht - Cross

preposterous but if he were struggling that vigorously, I suppose that would have been the only way to do it. And in light of what you told me, that test may have been very difficult to perform.

Q. And when he was finally released from the hospital days later, are you suggesting that they should have taken the test then?

A. Oh, certainly not. That's --

Q. Certainly what?

A. Certainly not. That's preposterous. The test has to be done almost immediately.

Q. Well, what did they do that you are criticizing, sir?

A. The test as a tool, as an investigative tool to law enforcement, was available. The test was in use by the Philadelphia Police Department at the time. The test could have been used to determine whether or not in fact this gentleman had fired a firearm at the time he was alleged to. And the test was not used, whether there are reasons that it could not be effective or there was no attempt to use the test.

Q. What do you think would have been the likely results if they had taken this residue at any point?

A. That would be speculation on my part.

Page 122.

George Fassnacht - Cross

Q. And it would be fair to assume that they would have gotten no results because if people lose these particles 100 percent over the course of an ordinary day -- and they are not handcuffed behind their back and fighting with lots of police, are they?

A. No.

Q. -- would it be reasonable to assume, Mr. Fassnacht, that it would have been a futile act and worth nothing at all?

MR. WEINGLASS: Objection, Your Honor. Because Counsel's hypothetical did not include the fact that Mr. Jamal's hands were handcuffed to a stretcher within a half hour of the shooting when he was in the hospital but he did not include that in the hypothetical. So I object to the question as not being inclusive of all the facts in the record and available to Counsel who questions him but who conveniently omits key facts and then asks hypotheticals with those facts omitted.

MR. GRANT: I will rephrase the question.

BY MR. GRANT:

Q. If we add in Counsel's little addition here, that would be all the more reason why it would be a

Page 123.

George Fassnacht - Cross

likely failure to show anything on this test -- now we got another handcuffing of the hand -- does that help show that there is more residue or make it less likely that there is residue?

A. It depends on where the handcuffs, as you have stated, where the hands were handcuffed. Where they remained. You have given me a position behind the back with the dorsal surface of the hand against the clothing, the back of the coat jacket, whatever. And we agreed that that could result in the destruction of residue. But if, on the other hand, somebody had a hand handcuffed and it was stretched out there is no reason the test couldn't be performed.

Q. So does Mr. Weinglass' addition aid you in this inquiry?

A. Well, I believe as I understood just now what he said, that a hand was handcuffed --

Q. Yes.

A. -- not behind the back.

Q. Yes.

A. And that hand would have been proper, a proper subject for the test we've discussed.

Q. Does that aid you in answering this question, Mr. Weinglass' addition?

A. I think I just answered it.

Page 124.

George Fassnacht - Cross

Q. I didn't --

A. Unless I missed something, I'm sorry.

Q. I didn't hear an answer in those words. I was wondering.

A. Well, I am saying that given the conditions that he has --

Q. Yes?

A. -- set forth, that there would be purpose in doing the test and one could expect reasonably to find residue. Is that --

Q. Are you saying here today, that within a reasonable degree of, I guess for you it's artistic certainty, you after all that activity would have expected to find gunshot residue on the hands of Mr. Jamal?

A. First off I have to, all of this business is not art. Only the forensic comparisons of fired bullet specimens and fired cartridge cases. The rest is science.

Q. The part you are talking about is science?

A. Yes.

Q. Are you saying within a reasonable degree of scientific certainty you expect to find gunshot primer residue on Mr. Jamal's hands?

A. It's possible.

Page 125.

George Fassnacht - Cross

Q. No, beyond a reasonable degree of scientific certainty is beyond possibly, it is beyond --

A. It would be speculation on my part. In fact you are speculating that the residue had been destroyed and therefore there would be no point in taking the test. But in fact you don't know that the residue was destroyed. You're assuming that because of certain activity that took place, that this residue is gone and therefore it would be pointless. I don't know that.

Q. So when you were working on behalf of Mr. Jamal, you would have testified before the Jury within a reasonable degree of scientific certainty that the tests probably would have shown that he had fired the gun recently?

A. I wouldn't have, no.

MR. WEINGLASS: Objection to part of the question. The question to the expert should be should the test have been taken and not what the test would have shown.

THE COURT: No, he has a right to ask his questions the way he wants. You will be able to ask any questions you want the way you want to ask it.

MR. WEINGLASS: It is just an improper

Page 126.

George Fassnacht - Cross

question.

THE COURT: No, okay.

MR. GRANT: At this juncture I believe the standard is that had he testified, the outcome of the trial would have been different.

BY MR. GRANT:

Q. So my question is, are you saying here now that in 1981 you would have testified beyond a reasonable degree of scientific certainty that had the test been performed it would have revealed whether or not Mr. Jamal fired that weapon?

A. No, I wouldn't phrase it like that.

Q. Well, would you answer my question, though?

A. Yes.

Q. Would you have so testified, Mr. Fassnacht?

A. No, I wouldn't have so testified.

Q. Thank you. You also say that some of the elements or chemical components of gunshot residue were not found on the jacket surface or the interior of the jacket of Police Officer Faulkner upon examination; correct?

A. Yes.

Q. And the significance of that is what?

A. They're missing.

Q. Does that show that Mr. Jamal did not shoot

Page 127.

George Fassnacht - Cross

the officer in the back?

A. Ahh, it shows that the distance determination could have been made if the residue was found and residue was not found and I don't know why. The test should have been repeated. I believe it was repeated by the prosecutor to determine the deposition of primary nitrates -- primer residue, I'm sorry -- which is largely zinc or lead stiffening. That's different in this case. I don't know why the gunpowder residue was not found but I certainly think an investigation on the part of the defense should have been done to determine why.

Q. I see. This gunshot residue, what you are saying, describing here, actually encompasses three components --

A. Exactly.

Q. -- to this phenomenon? This residue is shown in various ways. Like scorching and burning is like evidence of the closest range of firing?

A. Exactly.

Q. And then there is this fine particulate matter, like dust deposits?

A. Soot.

Q. Soot?

A. Yes.

Page 128.

George Fassnacht - Cross

Q. And then there is those partially burned or unburned rings of powder that don't get oxidized or burned up because they don't for whatever chemical reason?

A. Yes. That's correct.

Q. Now, they found some of that on his jacket, didn't they?

A. No, from my reading of the report as I recall it they found lead residue.

Q. Okay.

A. Which is, which is a fourth product of combustion of a small arms cartridge which results from the primer. And that's found from contact out to about 18 inches maximum.

Q. From contact to 18 inches lead primer residue --

A. Yes.

Q. -- would show up?

A. Yes.

Q. And so you are saying that whoever shot Officer Faulkner shot him from probably no more than 18 inches away?

A. If the lead residue test is accurate, that's what would be the determination. But I didn't see the lead residue test they did. And obviously they

Page 129.

George Fassnacht - Cross

must have, one hopes they did a comparative test on another surface to determine, using the same type of ammunition, the same barrel of the gun and so forth, at what distances they would expect to find that amount of lead stiffening that they found on the jacket.

Q. You read Mr. Tumosa's report, did you not, the criminalist?

A. Yes, sir.

Q. He testified in this case, did he not?

A. Yes.

Q. He testified that the man was shot in the back from a distance of 12 inches, more or less?

A. Yes.

Q. Is his testimony inconsistent with yours here today?

A. With mine?

Q. Yes, are you are saying --

A. No, I am only questioning the absence of the gunpowder residue.

Q. Okay.

A. Two types of which should have been present at that distance.

Q. You said that given the factors relied upon by the prosecution, the failure to find gunpowder

Page 130.

George Fassnacht - Cross

residue raises questions about whether or not Mr. Jamal's weapon was involved. You said that in your affidavit, didn't you?

A. Yes.

Q. Are you saying here, and would you have testified in 1981 to a jury, that within a reasonable degree of scientific certainty, finding this primer lead on his jacket but not finding the other parts of the gunpowder residue you want to find would show that Mr. Jamal's weapon did not shoot that officer?

A. No, I would have testified only after I had access to the weapon in question and had conducted my own tests. Then I would have testified to whatever I had found.

Q. Well, let me enlighten you a little bit. You didn't read the trial testimony involving the jacket possessed by Police Officer Faulkner either, did you?

A. If it was in Mr. Tumosa's testimony I must have.

Q. Well, it was not.

A. Oh.

Q. First of all, the officer was shot in the back, spun around, and fell onto the ground onto his back. Officer Shoemaker then testified at this time I walked over to Officer Faulkner who was lying on

Page 131.

George Fassnacht - Cross

his back unconscious and bleeding very heavily. There was testimony from an eyewitness who said Officer Faulkner was, after being upon his back, was shot in the face which caused his whole body to jerk while lying on his back. Officers then came to rescue him, picked him up from the sidewalk, while on his back, grasping him underneath his shoulders and arms, which would be in that very area, would it not?

A. Could be.

Q. And tried to place him in the back seat of a small vehicle to rush him to the hospital.

Question by Mr. Jackson -- the person paying you -- of Officer Heftner on 6-21-82, page 4.13. Cross-examination. Question: What was the very first thing you did to Officer Faulkner.

I picked him up underneath his shoulder. By his shoulders. Underneath his arm.

Question: So it would be fair to say that you stood at his head with your hands under respective arm pits.

That's correct.

At that point multiple officers then removed Officer Faulkner from the vehicle that was too small, placed him in a police van. In transport to the hospital, they then removed Officer Faulkner's

Page 132.

George Fassnacht - Cross

clothing while inside the moving vehicle in order to uncover the wounds that he had suffered.

Now, knowing that this jacket that you are questioning went

through these various exercises, for lack of a better word -- add to that that the officer who removed that clothing then took that jacket, placed the property receipt with it and stuffed it into a plastic bag and took it to the evidence locker room -- now, does that give you some additional insight upon which to base an opinion here today?

A. The opinion is, my opinion would be that an independent expert should have verified or conducted a test to determine if in fact the test done by the Police Department was in fact accurate. And at that time I imagine he would have been supplied with the data that you have just related and have to take that into consideration as to whether or not it would cause the loss of the powder residue. Which in fact, as you have explained, it probably could.

Q. Isn't it a fact, sir, that these trace metals that you are talking about -- and what metals are we talking about, by the way?

A. Well, they are not trace metals. We have been talking about the gunpowder residue, which is

Page 133.

George Fassnacht - Cross

nitrites and nitrates.

Q. Copper?

A. No, nitrates and nitrites.

Q. It is what, a nitrite?

A. Well, gunpowder starts off as a nitrate in cellulose and they may add nitroglycerin to it. And the element nitrogen in compound with other elements constitutes a nitrate or a nitrite. And these are the particulate things we are looking for exclusive of the burning and charring.

The lead, so we don't confuse it, that being a separate item, the lead stiffening residue from the primer is something entirely different. That's, that's lead. That's the element of lead they are testing for. It is a different test, it is a chemical test.

Q. Isn't it a fact, sir, that these nitrites and nitrates are known even by experts such as yourself to fall off with handling, moving the item of clothing that's involved, and that they drop off in the regular course of everyday exercise when they are subjected to these kind of stresses -- excuse me, let me finish.

A. Yes.

Q. When they are subjected to the stresses I have

Page 134.

George Fassnacht - Cross

described to you, it is not uncommon at all, as a matter of fact it is usual, that these elements that you are talking about are found to be missing; isn't that so?

A. Well, you are partially right. And the one thing that you didn't include in your consideration is the type of material, the surface to which the residue is attached. Some things like rip-stop nylon, if you are familiar with that.

Q. That's like Macy jackets that they wear now?

A. Like golf, like golf jackets. Rip-stop nylon will create less of a base for the adherence. Loosely-woven wool, wool fabric, are much more conducive to retaining the particulates. Of course, rough handling can dislodge them. But again, it determines, it is determined by the distance from the muzzle to target. Obviously, the further away the softer the adhesion of the particles. And they would be lost first. Rough handling could cause successively closer particles to be dislodged, until you get to a point where the soot markings may be the only thing left.

Q. Right. And you didn't know because you didn't look at the jacket that this was one of those polyester, shiny jackets with a little fur collar

Page 135.

George Fassnacht - Cross

that police officers wear in the wintertime and it wasn't a police officer's jacket like you may see on some Court officers, for instance, and shiny polyester material is less conducive to these metals -- excuse me, sir. You don't mind me asking you this question, do you, sir?

A. No, sir.

Q. These kinds of fabrics are less conducive to controlling or containing or holding those nitrates and nitrates that you are describing; isn't that so?

A. It depends on the weave. If the weave is very tight, as I said, if it's rip-stop nylon, which the weave is almost invisible, like a golf jacket, it's rain proof, then the possibility of adhesion is much less.

Q. Well, you have seen the jackets that I am describing, haven't you?

A. No.

Q. Oh, so you don't have an idea of the type of fabric we are talking about here?

A. No, sir.

Q. Well, if you are going to do these tests and you say that it would be helpful to the Defendant and you would have so done had you been paid more money, you can 't do those tests by just taking a gun and

Page 136.

George Fassnacht - Cross

shooting it into a police jacket, you have to try to duplicate the conditions so that they are substantially similar before that even gets into evidence; isn't that so?

A. I would have to duplicate the surface onto which the test was done. Same type of material, as you just explained. I would have to duplicate the gun and the cartridges.

Q. The bullets and their powder charge?

A. The exact same type of ammunition.

Q. Back in 1981?

A. Yes, yes, same type of ammunition.

Q. And wouldn't you have to duplicate -- and how would you propose to do this -- the blood and body fluids that passed through the holes in an officer's body through the hole in that coat? How are you going to duplicate that to give validity to your ballistics test?

A. That's not necessary to duplicate. Exudation of serous exsanguination, excessive bleeding, could cause the loss of powder residue if it were there. If I saw the jacket and I saw evidence of sufficient bleeding, then obviously I would know that I would not be able to find evidence of powder residue. But blood flows usually in one direction. There are

Page 137.

George Fassnacht - Cross

exceptions. There are exceptions.

Q. How do you propose to reproduce the body movements of Officer Faulkner on his back, on that very surface you want to examine, in the throes of death?

A. One doesn't attempt to reproduce such things. One either finds the residue or doesn't find it. A factor to be considered is exsanguination.

Q. You can't reproduce two of the variables that are going to effect the decision that you would make, even if you could get a substantially similar jacket, substantially similar weapon, substantially similar ammunition; correct?

A. No. Because if you are telling me that the whole jacket was covered with blood, that there were no remnants of the circular pattern left that were not damaged by blood, from which undamaged part we could deduce what we are trying to do. If you are telling me that, say, half of the, of the pattern were damaged, if you are telling me that then we can not perform a scientific test, no, I wouldn't agree with you.

Q. And how do you propose to duplicate all the body movements contributed by these other police officers trying to save this man's life?

Page 138.

George Fassnacht - Cross

A. Either -- that couldn't be done. If it happened, that would be a

reason for the loss of the gunpowder residue. Less for the soot. I'm surprised the soot wasn't found at that distance. But it's possible. These are things you take into consideration. But now all we have is the representation by the prosecution that in fact this test revealed whatever they said it was.

Q. Did you ever work --

A. It has not been verified by independent examination by a defense expert.

Q. Did you ever work with Anthony Paul?

A. Sure. Oh, I'm sorry, did I work with him?

Q. Yes, sir.

A. Did I work alongside of him at the same time? Or in an adversarial fashion? The second is correct.

Q. Okay.

A. Yes.

Q. Do you respect his work?

A. Yes, he's, he's, he's improved quite a bit.

Q. Does he respect yours?

A. I don't know.

Q. Okay. So you are telling us that it would be impossible to do what you propose to do for the Defendant, which is to duplicate using similar fabric

with the same weapon and come up with what you think should have been the results obtained by the Firearms Identification Unit; was that fair to say?

A. No, because I haven't seen the evidence.

Q. Didn't you look at the pictures provided you by Miss Wolkenstein, sir?

A. I haven't seen any pictures.

Q. Did you ask Mr. Jackson for any pictures?

A. I didn't, Mr. Jackson didn't give me any pictures.

Q. Well, you charged him $350?

A. Maybe.

Q. Maybe. And you say that the majority of what you charged him for was for you to brush up on your own expertise and find out things that you probably were getting paid for because you knew it already; correct?

A. Wrong.

Q. Well, most of the time consumed was in reviewing literature -- and we concentrated on that -- tracking down the study and reading it, you got paid for doing that, right?

A. Yes. If I got paid. Probably did.

Q. Isn't that why he was paying you: Because you know that kind of stuff already?

A. No, ESP is not one of my fortes. This was a recent scientific test that had been just published in the literature, if I recall, in 1981. The test had been conducted in 1978. In order for me to make use of it, and pout it in a fashion that Mr. Jackson could make use of it, or attempt to, it would be necessary for me to first get the test and then study it and then reduce it to a synopsis that he could use in his Court work.

Q. So you were doing on-the-job training at Mr. Jamal's expense, is that the idea?

A. I don't know if it was at my expense or Mr. Jamal's or the Commonwealth's or nobody's. I highly suspect the later.

Q. So, sir, are you saying that had you conducted those tests, despite all the problems of duplicating the situation, that you could sit here and testify, and could have done so in 1981 before a jury, that beyond a reasonable degree of medical certainty, without being able to reproduce these events, you could state that Mr. Jamal's weapon probably did or did not fire the bullet that went into Officer Faulkner's back?

A. Based on the study of the bullet.

Q. Based on the primer residue found or not

found?

A. That only concerns the distance from which the gun was fired.

Q. Okay. So what would that have --

A. It has nothing to do with the identification of a gun having fired that bullet. If in fact we found some disparity because of the short barrel and the deposition of the powder residue in a test we would have a question.

Q. What does distance have to do with this case, then?

A. It must have something to do with the case because the prosecution used it in the case as one of the points of evidence.

Q. What would you have used it for or what are you using it for now?

A. The question is was it ever, was it ever questioned or possibly refuted by an independent examiner employed by the Defendant. And the answer is no.

Q. In other words, it has no significance from your point of view as an expert ballistician?

A. I don't recall saying that. What I said was that we have only the prosecution's findings. We don't know that an independent test and review of

that material would have led us to another conclusion.

Q. I see.

A. Or would have verified that test. It wasn't done.

Q. And if you found that you didn't have enough information because there wasn't enough gunpowder, that still would not have refuted or proven anything because there are reasons you have just given us why you may not find that evidence on the jacket; correct?

A. That would certainly have to be taken into consideration, certainly.

Q. Lastly, you say in your affidavit you want to know the number, the width and the depth of the lands and grooves despite the mutilated nature of the bullet taken from between Officer Faulkner's eyes; correct?

A. Yes.

Q. I believe you say if I would have had the opportunity to examine the alleged murder weapon and bullet specimen, I might have been able to determine the number of lands and grooves, their width and their depth. That's the statement from your affidavit; correct?

A. Yes.

Q. Are you familiar with the works of Dr. J. H. Matthews, who is a Harvard-educated scholar and author of a work entitled 'Firearms Identification'?

A. Yes, three-volume set, last one done after his death.

Q. That's right, Volume 1, Chapter 2, page 19. The depth of the grooves on a fired bullet has little application to the problem of identification of a firearm. While it is fairly easy to determine by measurement the depth of the grooves in a rifled barrel, it is very difficult to measure the depth of a groove on a fired bullet, and even when measurements are possible, they ordinarily have little meaning.

Now, you of course, obviously, disagree with this?

A. Obviously, I do.

Q. And do you agree or disagree with the commentary of Charles and Jack Gunther -- you are familiar with the Gunther brothers?

A. Yes, that's an old, old, old, old book. You are going back to, to the beginning of this as an art.

Q. Well, if it is an art, and if it is not a

Page 144.

George Fassnacht - Cross

science, I guess anybody's opinion is as good as anybody else's, right?

A. It is opinion.

Q. Okay. They state, although it is possible to obtain by appropriate measurements the class, characteristics of the firearm from which the bullet was fired, it is perhaps a better plan to compare the questioned bullet -- that is the bullet you want to find out about -- with bullets fired from known types and makes of firearms --

A. Exactly.

Q. -- using the comparison microscope for this purpose.

A. Exactly. That's perfectly correct.

Q. And that's exactly what the Firearms Identification Unit did, didn't they?

A. I don't know.

Q. Pardon me?

A. I don't know that. I imagine they attempted to do that.

Q. Oh. You don't know?

A. Unsuccessful.

Q. I see. I see.

A. What we are talking about now is the attempt on the fired bullet specimen, the damaged bullet, to

Page 145.

George Fassnacht - Cross

learn if there are any sections of that that could be measured which would possibly exclude the evidence gun.

Q. I see. And that's a nice theory if you have an undamaged bullet and all things are relatively equal?

A. Depends on the damages and degrees, like anything else.

Q. Okay.

A. It could be damaged and still be very valuable. It could be damaged and be totally useless. And it could be damaged to the point where there are no general rifling characteristics.

Q. Right. And this bullet was described, I believe, as extremely mutilated, distorted, gouged, bearing numerous foreign markings destroying the major portion of the rifling markings. And the base edge was distorted and mutilated; correct?

A. Right. What's major? And again a rhetorical question, sir, I am not questioning you. What is major? Is there sufficient, is there a sufficient quantity left -- a minor quantity, if you will -- which would enable us to make a measurement and determination under the proper microscopy techniques. I don't know.

Page 146.

George Fassnacht - Cross

Q. Let's take some recourse to Dr. Matthews again and his volume. He states, if all fired bullets were undamaged and perfectly symmetrical and if each represented precisely the cross section of the barrel, measurements could be made and they would have some significance. But these bullets do not exist. No two bullets even when fired successively will be the same in every particular. The majority of bullets brought to the laboratory show some degree of mutilation and many of them show extreme mutilation.

So what makes you think that you could do better?

A. I would refer to a later book prepared at the taxpayers' expense called the CLIS, or the Crime Laboratory Information Service, compendium of rifling markings, wherein the FBI set forth, first on a computer, now in printout, various careful measurements of the bores of various firearms, including the lands, widths and depths, so as to enable investigators to determine if a particular bullet could have been fired in a particular type of firearm. If this lands and width measurement is so useless, then the taxpayers have been had once again.

Q. When was this study performed, sir?

Page 147.

George Fassnacht - Cross

A. It is the current study, last one I have is 1992. It's been going on for years.

Q. Yeah, when did it start?

A. I don't recall.

Q. Well, that's nice that you recall that, or don't recall that, but we have to put our minds and our thought processes back to what was the state of the art in 1981. Because as good as they were, perhaps they can't predict the future, nor can they live in the future. So go back to 1981 and tell us what the state of the art was then in answer to this question?

A. I believe the CLIS program was in effect then except the FBI did not release it to the public, it was on computer and available only directly to police departments. I am sure the people from the ballistics lab could give you the particulars.

Q. So now you are sure that they had availability when just 10 seconds ago you didn't know when?

A. I didn't know when it started but I believe, you asked me for a date. You didn't ask me did this date overlap this particular incident. And I think it probably did.

Q. Now, the firearms examiner's report concluded, and was so testified to, fired bullets from Mr.

Page 148.

George Fassnacht - Cross

Jamal's gun, when compared with the bullet removed from Daniel Faulkner -- and that phrase is important because you said you didn't know whether they compared the bullet that they took from Officer Faulkner's body with the test-fired bullet from Mr. Jamal's gun, didn't you?

A. No. I said that that test that you are referring to was made in order to determine if there were sufficient markings. Striae, if you will. Fine scratches, fine lines, peculiar to one gun. That if those were present on the evidence bullet, which would specifically then identify it as being fired from the gun which killed Officer Faulkner. That's the comparison that I understand that you are talking about.

Q. Well, I didn't think so but maybe you're right.

A. Oh.

Q. Test-fired bullets from Mr. Jamal's gun when compared with the bullet removed from Officer Faulkner, although insufficient to permit a positive comparison, are nevertheless consistent with the rifling characteristics of Defendant's Charter Arms revolver.

Now, they didn't say that the

Page 149.

George Fassnacht - Cross

Defendant's gun shot the bullet in Officer Faulkner, did they?

A. No, but they also said that the general rifling characteristics were indeterminable. This is very strange. This is very strange.

Q. To you it's strange?

A. It sure is.

Q. Let us consider the Gunther brothers -- who you think, I guess, are archaic?

A. Who, sir?

Q. The Gunther brothers, Charles --

A. Charles.

Q. The lawyer and the --

A. Yes.

Q. -- mathematician?

A. Yes.

Q. If the evidence bullet is so distorted and mutilated that only a small portion of the signature -- that is the identifying markings --

remain intact, it will often be impossible to reach any definite conclusions. In some cases it may be possible to determine definitely only whether or not the evidence bullet was fired from a firearm with the same class characteristics as those of a suspected firearm.

Page 150.

George Fassnacht - Cross

Now, that is exactly what the lab concluded and did, right?

A. The lab said that the general rifling characteristics were indeterminable. In plain English.

Q. Well, you have opined that since you didn't have a chance to look at the evidence, test the evidence -- all you did was read a report?

A. Yes.

Q. And you did not, basically, inspect the bullets, inspect the weapons, test-fire the weapons, visually compare under the microscope any of the bullet specimens, or inspect the fired cartridge cases, you could have made a difference in Mr. Jamal's case back then, right?

A. It's possible.

Q. Is it in your opinion to a reasonable degree of scientific certainty that you would have made a difference?

A. Only if you can predict with a reasonable degree of scientific certainty what a jury will do, and I don't think anybody in this world can. I can't.

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

Page 151.

George Fassnacht - Cross

A. Would I be willing to reexamine this evidence?

Q. Yes.

A. No, I would not.

Q. Oh. Well, you wrote this affidavit, you challenged the competency of the lab, you found that their reports were deficient, their tests were deficient: Certainly you would want to prove that you are right and they are wrong, wouldn't you?

A. I believe it would be unethical for me to do so.

Q. Why?

A. Because I have been retained by the defense and because I believe that if my report was adversarial you would go out and hire another expert anyway. So why waste time?

Q. I am not asking you to work for me.

A. Yes.

Q. So you could still be ethical and work for them.

A. I think they should hire someone who has not been involved to reexamine the evidence, if they are going to do that, if the Court so permits.

Q. I will talk your game but I am not going to back this up?

A. I don't think that is quite, this is not a

Page 152.

George Fassnacht - Cross

game and it's my observations. I believe that the evidence should have been examined in the first place. I believe that if the Court is so disposed, that it should be done again. And you are asking me will I do it and I am not interested in doing it.

Q. Of course you are not. What if you were the Court's expert and we would rely on your opinion, sir, and you would have to take the money whatever your fee is -- and we have the evidence here today -- we scrounged all over City Hall for this, and other places -- wouldn't you want to take a shot?

A. I, I really don't want to re -- to examine this evidence for the reasons that I have explained. I think it's unethically -- it's unethical.

Q. It's unethical?

A. Yes, sir.

Q. Was it unethical to give your reminiscences in this affidavit, sir?

A. Reminiscences?

Q. Well, you are talking about possibility and speculation and I am talking about reality here?

A. I've analyzed the evidence that was proffered as far as ballistics go. And I've given my opinion as to whether or not the Defendant had adequate assistance in this particular area, for ballistics.

Page 153.

George Fassnacht - Cross

And my opinion is that he did not. Now, that doesn't mean that I want to undertake to do it. And besides which, I don't want to open myself to the, to the accusation of churning.

Q. Well, let me say this to you.

A. That is of making work of attacking someone's findings to generate more work for myself.

Q. No one is accusing you of that.

A. Well.

Q. Let's assume that if you looked at these items -- excuse me -- if you looked at these specimens that you could determine that Mr. Jamal's gun was not the murder weapon. Wouldn't you want to do that, based on what you said in this affidavit?

A. Would I want to do it?

Q. Yes, sir.

A. As I say, there are competent people out there. I really feel that it would be unethical for me to do it at this point.

Q. What if the defense asked you? They are the ones paying you now, right?

A. I still, I will still, I would have to give it some serious thought and talk to them about it.

Q. How much are they paying you to come in here and say this today?

Page 154.

George Fassnacht - Cross

A. I hope that they'll pay my daily rate.

Q. Which is?

A. 750 a day.

Q. $750 a day?

A. Yes, sir.

Q. And that includes each day that you come down to Court?

A. Unfortunately not.

MR. GRANT: Thank you.

THE COURT: Could we recess for lunch?

MR. WEINGLASS: There is redirect. There is redirect.

THE COURT: At 2:30.

THE COURT OFFICER: This Court now stand in luncheon recess until 2:30 this afternoon at the call of the Crier.

(Luncheon recess was held until 3:00 p.m.)

MR. GRANT: Your Honor, Mr. Fassnacht is on the stand and has not begun redirect yet and there was an area about .44 bullets that I failed to inquire into and I would like to have leave to reopen and ask him about that .44

Page 155.

George Fassnacht - Cross

bullet.

THE COURT: Okay.

MR. WEINGLASS: I object to this, Your Honor. Because yesterday Mr. Williams asked to reopen and he was denied that privilege by the Court. And I think those applications, if they are denied on one side, in fairness ought to be denied to the other side as well.

MR. GRANT: He didn't ask to reopen, Judge. He hasn't cross-examination.

THE COURT: Okay. I will allow you to proceed.

MR. GRANT: This will be very, it will be very brief.

(George Fassnacht, having been previously sworn, was examined and testified as follows:)

CROSS-EXAMINATION (Continued)

BY MR. GRANT:

Q. Good afternoon, sir.

A. Good afternoon.

Q. You mentioned that Dr. Hoyer measured the base

Page 156.

of the bullet taken from Officer Faulkner.

A. Yes, sir.

Q. And you said it measured 10 millimeters?

A. That is correct.

Q. And then you expressed how it was four-tenths of an inch, that is the equivalent of 10 millimeters?

A. Yes, that's right.

Q. What is the true diameter of a .38, such as the snub-nose used by Mr. Jamal, what would that be?

A. .35 inches.

Q. In millimeters?

A. 9 millimeters.

Q. So the distinction we are talking about between the .38 and the measurement of Dr. Hoyer was 1 millimeter; is that right?

A. No, it's more like 5 millimeters.

Q. Well, no, between a 9 millimeter measurement --

A. Oh, millimeters, I'm sorry. I'm sorry, I'm thinking in terms of tenths of an inch or -- yeah, you are quite correct: 1 millimeter.

Q. A true .38 snub-nose, the diameter across would be 9 millimeters?

A. Yes.

Q. The bore?

Page 157.

A. The bore.

Q. And this bullet was measured at 10 millimeters?

A. That is correct.

Q. So we are talking about 1 millimeter?

A. Yes.

Q. Now, did you know, from reading the report or from reading the autopsy report or the FIU report, that this bullet had a hollowed base?

A. I believe so.

Q. And what is the significance of that in terms of the expansion of the base upon firing, sir, from a short-barreled weapon?

A. Ahh, from a short-barreled weapon it could expand.

Q. Do you think it could expand as much as half a millimeter on either side of the bullet base?

A. Possible.

Q. And you don't know whether or not Dr. Hoyer was measuring this bullet with a simple ruler, do you?

A. I have no idea.

Q. If you were going to give your expert opinion in this area of ballistics, would you use precision instruments or an everyday ruler?

Page 158.

A. Probably an optical instrument.

Q. Meaning a microscope?

A. Or a, there are a number of optical measuring devises you could use, sure. A microscope -- short of a microscope. You could use a microscope of course.

Q. And the last thing is that the base of this bullet was mutilated and distorted on the base edge; correct?

A. Yes.

Q. Now considering all those three variables, is it unlikely -- strike that. Considering those three variables -- the only distinction we are making here is 1 millimeter, mind you -- is that explainable by looking at the fact that this is a hollow-based bullet which expands upon firing from a short-barrel gun, that the base of the bullet when found was mutilated and distorted, and precision instruments may not have been used, would that explain the millimeter?

A. Yes.

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

Page 159.

A. Yes.

Q. It's consistent, if anything, with a .38 caliber bullet, isn't it?

A. Or a .40 caliber bullet. I haven't seen it so I can't tell.

Q. .40 caliber bullet? How much would a .40 caliber bullet weigh, anyway?

A. Oh, I don't know. There are .40 caliber automatics and --

Q. Well, can you tell that this bullet was fired from an automatic as opposed to a revolver?

A. You should be able to if it hadn't been too badly distorted.

Q. And if it was fired from a revolver and not an automatic --

A. There is also a 10 millimeter automatic which is roughly the same.

Q. But I am not talking about automatics, I am talking about revolvers.

A. I am just giving you types of guns in response to your question.

Q. No, my question is considering revolvers only.

A. Yes.

Q. What's the closest approximation in terms of diameter that this bullet would have come from were

Page 160.

it not an automatic?

A. I would say a .38. But there's also a .4l caliber revolver.

Q. I am sure. Is that an automatic too?

A. No, it is a revolver.

Q. To your knowledge, is there any indication in this case whatsoever of a .41 caliber weapon?

A. No, no, not at all.

Q. And if Dr. Boyer, or anybody, said that the bullet that was taken from Daniel Faulkner's skull was .44 caliber, you, even you, paid by them, would say that can not be, wouldn't you?

A. Was .44 caliber? I haven't seen it.

Q. No, but I didn't ask you that.

A. Yes.

Q. If it were .44 caliber -- you saw the FIU report: You based your testimony on reading it?

A. Yes.

Q. Considering what you read, you must admit to a reasonable degree of scientific certainty that a .44 caliber that was not?

A. Yes, I would agree with that.

MR. GRANT: Thank you.

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REDIRECT EXAMINATION

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Page 161.

BY MR. WEINGLASS:

Q. Based on what you read of the police laboratory. But if that information was in error you would have to change your opinion?

A. Yes, that's true also.

Q. You haven't had a chance to see that bullet yourself?

A. That is correct.

Q. So what you were doing is you were answering Counselors' question on the assumption that the police laboratory was accurate?

A. Yes.

Q. And you found the police laboratory in other instances to be contradictory?

A. Yes.

Q. And also incomplete?

A. Yes.

Q. Now, you were asked a series of questions about your performance as an expert over the last 20 years. Do you recall that?

A. Yes, sir.

Q. And you indicated that you primarily or almost exclusively, I believe, testified for the defense?

A. Yes.

Page 162.

George Fassnacht - Redirect

Q. Mr. Fassnacht, if you had been asked by any agency of the United States, or any state government involved in law enforcement or prosecution, to testify as their expert, would you have done so?

A. Certainly.

Q. So it isn't that you have a bias against prosecutions, it's just that you have been asked and employed by one side of a criminal case?

A. Yes.

Q. And in your background at Aberdeen Proving Ground, who employed you there?

A. The United States Army.

Q. And were you also employed by the Central Intelligence Agency?

A. Yes.

Q. Were you also employed by the Police Department of Philadelphia?

A. Yes.

Q. Are you a person who has a bias against law enforcement?

A. No.

Q. Are many of your friends in law enforcement?

A. Yes.

Q. And when you testified for the defense in the ordinary course, would you indicate to the Court how

Page 163.

George Fassnacht - Redirect

you ordinarily enter a case?

A. Well, I'm requested by the attorney to, who believes that he has a case, to examine the evidence and render an opinion.

Q. And in your experience does the attorney do a pre screening of the ballistics material that he has before he or she brings you in?

A. Yes, usually the attorney wouldn't attempt to hire an expert unless he felt that he had something to hang his hat on that was worth looking into.

Q. So there is, so far as you know, a preliminary decision made that there is something in the case that they want you to look at?

A. That bears looking into. Bears investigation, yes.

Q. Now, in some of those cases when you are brought in and you examine the ballistics material, usually by a police laboratory or by the FBI, do you find on occasion that the ballistics information or work done by law enforcement was correct and accurate?

A. Certainly.

Q. And do you tell the attorneys that?

A. Yes.

Q. So you don't always find police or law

Page 164.

George Fassnacht - Redirect

enforcement work to be inaccurate or wrong?

A. That's correct.

Q. Now, when you worked for the City of Philadelphia Police Department, did you also teach at the Police Academy?

A. Yes.

Q. And who would you teach at the Police Academy?

A. The training class of police, as they came through each class received a lecture from someone at the Firearms Unit.

Q. And you would lecture them on firearms?

A. Yes.

Q. And in those lectures that you gave the new police officers, or the new police officers to be, would you tell them about this test of smelling the barrel of a gun to see if it had recently been fired?

A. Yes.

Q. And that was part of their training?

A. Yes.

MR. WEINGLASS: May I have this next object marked?

THE COURT OFFICER: D-15.

(FIU report was marked Defense Exhibit D-l5 for identification.)

MR. WEINGLASS: Showing Counsel a

Page 165.

George Fassnacht - Redirect

four-page document marked Commanding Officer, Homicide Division, Firearms Identification Unit, marked D-l5 (handing).

(Pause.)

MR. GRANT: Thank you, Counselor.

MR. WEINGLASS: Could the document be shown to the witness?

THE COURT OFFICER: D-15, sir (handing).

BY MR. WEINGLASS:

Q. Now, preliminarily, Mr. Fassnacht, I would like to ask you this. Do you recall on cross-examination with respect to the smell test to determine recent firing, Counsel asked you if you knew when the Firearms Identification Unit received the gun, the suspect gun in question? Do you remember being asked that question?

A. Yes.

Q. And you indicated that you didn't know.

A. Right.

Q. Could you read the first full paragraph of that report?

A. Examination has been made December 9th, 1981 of the following evidence received from Police Officer J. Forbes, Number 9811, Stakeout Unit,

Page 166.

George Fassnacht - Redirect

December 9, 1981, at 5:55. It looks like a.m. but... the letter is partially occluded.

Q. Having looked at that Exhibit now, does that refresh your recollection that the Firearms Identification Unit had the guns at 5:55 a.m.?

MR. GRANT: Objection to leading.

MR. WEINGLASS: I am asking if it refreshes his recollection. He might say no.

MR. GRANT: I will withdraw my objection.

THE COURT: I thought he said he wasn't sure what it said because he couldn't read it, it was smudged or something.

MR. WEINGLASS: He said he thought it was a.m.

THE COURT: Well, he wasn't sure.

MR. WEINGLASS: Well, I appreciate the Court's observation.

THE COURT: That's what he said. I am only repeating what he said. I didn't see the document, I don't know. Do we have a better document here?

MR. GRANT: I do (handing).

MR. WEINGLASS: Thank you. Counsel generously gave me his document which is a

Page 167.

George Fassnacht - Redirect

clearer document.

THE COURT: What does it say?

MR. WEINGLASS: It says -- if we can agree -- a.m.

THE COURT: A.m.?

MR. GRANT: We can agree. And I object because it doesn't say that testing was done, it said they got the gun from the officer at that time.

THE COURT: Okay.

MR. WEINGLASS: Yes, thank you (handing).

BY MR. WEINGLASS:

Q. So according to this document, the Firearms Unit had the suspect weapon at 5:55 a.m.?

A. Yes, sir.

Q. Within about two hours of the alleged shooting?

A. Yes.

Q. Right. And your testimony was that the smell test could be employed between four and five hours, and possibly up to six hours?

A. Yes.

Q. Any indication in the Firearms Unit report that they smelled the gun at 5:55 or any time

Page 168.

George Fassnacht - Redirect

thereafter?

A. Hmm, none that I have seen.

(Discussion was held off the record at this time among defense Counsel.

BY MR. WEINGLASS:

Q. With respect to your expertise, the fact that the report is silent with respect to any odor from the gun, does that indicate to you that there was no odor coming from that gun?

MR. GRANT: Objection, Your Honor. How is he going to answer that?

THE COURT: I'll sustain that.

BY MR. WEINGLASS:

Q. Now, you were asked a hypothetical about the evening in question with respect to whether or not a trace metal detection test could have been employed on Mr. Jamal. And I want to ask you this hypothetical. If Mr. Jamal was taken into custody at approximately 3:54 a.m. on December 9th, 1981, and he was in a hospital within 20 minutes and his hands were handcuffed to a stretcher, if you were present in the hospital at that time and you were in charge of the law enforcement investigation, as an expert would you have requested that a, a test, the swabbing test be employed to see whether or not he had

Page 169.

George Fassnacht - Redirect

recently fired a weapon?

A. Yeah.

MR. GRANT: Your Honor, first of all, he was not handcuffed to any stretcher. A stretcher was never used. If he is going to use a hypothetical he must quote from the record the facts that existed, not the ones he would like.

MR. WEINGLASS: Strike stretcher and use gurney.

MR. GRANT: And that didn't happen until after he was in the hospital and about to be operated on.

THE COURT: Rephrase your question so it's not objectionable.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. If he were --

THE COURT: He says quote from the record itself.

MR. WEINGLASS: I don't have it available immediately. And I might point out Counsel didn't quote from any record when he used his hypothetical with the Court's blessing.

MR. GRANT: If he objected I would have. I have it right here before me

Page 170.

George Fassnacht - Redirect

MR. WEINGLASS: I hear no objection so I am proceeding.

BY MR. WEINGLASS:

Q. Now, Mr. Fassnacht, if he had been arrested at about 3:54 a.m., admitted to the hospital at 4:10, and placed in a treatment area, and if you were present at that time, would you have requested that he be tested to determine whether or not he had recently fired a weapon?

A. Yes.

Q. Now, when you were questioned on direct, were you offering any expert opinion as a, with a reasonable degree of scientific certainty as to what tests would have shown in 1982, tests that you never performed?

A. I ...

Q. On direct.

A. Yes.

Q. Could you offer any expert opinion to a reasonable degree of scientific certainty on a test that you never have performed?

A. No.

Q. On your direct testimony the only expert opinion you were offering, was it not, was that you should have been able to conduct such tests so that

Page 171.

George Fassnacht - Recross

you would have been able to testify before a jury?

A. That's correct.

Q. And you wouldn't venture an expert opinion with respect to a test that you hadn't yet conducted?

A. Yes.

Q. And based on your review of the materials that were provided to you, you determined that you should have been employed as an expert back in 1982 since you could have offered evidence in support of defense contentions in that trial?

A. Yes.

Q. And that you weren't because there were no funds available to retain you?

A. That's correct.

MR. WEINGLASS: Fine. I have nothing further.

RECROSS-EXAMINATION

BY MR. GRANT:

Q. Sir, he just asked you a series of questions and what those questions went to was that if you had been given the money you wanted when you were employed beginning in late March, early April, you could have conducted tests on Mr. Jamal's hand to

Page 172.

George Fassnacht - Recross

tell whether he shot that gun five months before?

A. No.

Q. That's what he just asked you and you just said yeah.

MR. WEINGLASS: Objection. He wasn't asked that.

THE WITNESS: I didn't understand the question to be that at all.

BY MR. GRANT:

Q. What did you understand it to be?

A. He said should that test have been conducted, and the last question that he asked was pertaining to the examination of evidence that was examinable after the fact.

Q. I thought he said to you --

A. Not my understanding, sir.

MR. GRANT: Well, we could read the record back and we will resort to that.

MR. WEINGLASS: Could we read the record back? I accept Counsel's request.

THE COURT: Just sit down, will you please. Let him rephrase his question.

MR. WEINGLASS: Well, Counsel asked that the record be read back. I join in that.

MR. GRANT: I did not ask and I will

Page 173.

ask when I am ready.

MR. WEINGLASS: No wonder you didn't ask, because you are wrong again.

THE COURT: Strike all of those extra comments by the attorneys. Strike them from the record, please.

MR. WEINGLASS: Now, Your Honor, you always permit leeway to the other side.

THE COURT: I will not have this record cluttered with unnecessary comments. Just strike the comments from both sides. Okay.

MR. WEINGLASS: You never struck the other side's comments.

THE COURT: Did you ever ask?

MR. WEINGLASS: Many times. And I will from now on.

THE COURT: Okay.

BY MR. GRANT:

Q. Mr. Fassnacht --

A. Yes, sir.

Q. -- do you not recall attorney Weinglass saying to you, and do you feel that you should have been able to conduct the tests on Mr. Jamal so that you could have offered evidence to support the defense position, and he was asking you at that time about

Page 174.

gunshot residue from the shooter; do you recall that question?

A. No, I don't. And I don't recall understanding his question in that fashion.

MR. GRANT: Could I go back to that portion of the record if I may, Your Honor. And ask, I think it was the last four questions Mr. Weinglass asked.

THE COURT: If he can find it.

(The Court reporter read the following questions and answers at this time:

Question: On your direct testimony the only expert opinion you were offering, was it not, was that you should have been able to conduct such tests so that you would have been able to testify before a jury?

Answer: That's correct.

Question: And you wouldn't venture an expert opinion with respect to a test that you hadn't yet conducted?

Answer: Yes.

Question: And based on your review of the materials that were provided to you, you determined that you should have been employed as an expert back in 1982 since you could have

Page 175.

offered evidence in support of defense contentions in that trial?

Answer: Yes.

Question: And that you weren't because there were no funds available to retain you?

Answer: That's correct.)

THE COURT: Read that first one again, please.

(The Court reporter read the following question and answer at this time:

Question: On your direct testimony the only expert opinion you were offering, was it not, was that you should have been able to conduct such tests so that you would have been able to testify before a jury?

Answer: That's correct.)

MR. WEINGLASS: Could Counsel apologize to the Court? It was misstated so now we know.

THE COURT: No comments, please.

BY MR. GRANT:

Q. What that question said, was that your position: You should have been able to conduct that test?

Page 176.

MR. WEINGLASS: Such tests. Counsel is still misstating even after it's been read twice. Your Honor, this is hopeless. Counsel can't hear what he's just been read and he is misstating it.

BY MR. GRANT:

Q. By such tests --

MR. WEINGLASS: Could it be read a third time?

THE COURT: Counselor, please.

BY MR. GRANT:

Q. By such tests, that includes the swabbings you were talking about taking from Mr. Jamal's hand, sir?

A. Certainly not.

Q. Because that would be a ridiculous position to take?

A. Preposterous, absolutely preposterous.

Q. And there is no way that you would ever, no matter how much money they gave you, take a test for gunpowder residue on a person three months down the road, would you?

A. It's ludicrous. That's not what he was talking about, as I understood it.

Q. All right, now, sir, you said that this smell test, this sniff test or whatever it is --

Page 177.

A. Yes.

Q. -- is it a generally accepted method to determine recent firing?

A. Yes.

Q. Is it used in the Los Angeles Police Department?

A. I'm afraid to speculate on what the Los Angeles Police Department might do.

Q. Do you know anybody --

THE COURT: Okay.

THE COURT OFFICER: Order in the Court.

BY MR. GRANT:

Q. Do you know anybody in the Chicago Police Department that uses this?

A. So that you won't think that I'm referring to the wrong thing, or the wrong event, we all know, what I am referring to is the fact that the Los Angeles Police Department Ballistics Laboratory was fired en mass, every last man jack of them, and replaced by outside help because they made so many errors. In this science, as some of us think.

Q. Do you know if anybody in the Chicago Police Department smells guns when they get them?

A. I have no idea.

Page 178.

George Fassnacht - Recross

Q. Do you know of anybody that works for them?

A. No.

Q. Do you know of anybody that works in the San Francisco Police Department that smells guns when they get them?

A. No.

Q. Do you know of anybody in any major urban area that you personally know that sniffs guns?

A. I don't personally know any of them.

Q. Well, how can you say in your affidavit under penalty of perjury that this is a generally accepted method of determining recent firing?

A. It is the only method and it is generally accepted by people.

Q. By whom?

A. By people in my field.

Q. But you don't know any of them, do you?

A. Certainly I know --

Q. Name two?

A. Howard Montgomery, who was former supervisor of the Philadelphia Police Department, now in Delaware County with the State Police.

Q. So was he your teacher?

A. My teacher?

Q. Yes, was he your boss at some point and taught

Page 179.

George Fassnacht - Recross

you how to smell guns?

A. It was the other way around.

Q. You taught him to smell guns?

A. He knew that without being told.

Q. So the only people you know to do this are people you told to do this?

A. It's something that anyone who has a lot of experience with firearms realizes.

Q. Could that test be reproduced so that defense counsel, when they want to go back and say I want to test to see if that person's nose was accurate, can you reproduce that test so they can check it out?

A. No more so than you could reproduce an eyewitness' vision of the scene, no, certainly not.

Q. Are your answer is no?

A. No.

Q. And except for your version of what your nose smells, you could say that right on the report, condemn an individual to a prison sentence or worse, and there is no way that they can challenge it?

A. That is a test that can not be reproduced, if that's what you are driving at.

MR. GRANT: Thank you.

(Discussion was held off the record at this time among defense Counsel.)

Page 180.

MR. WEINGLASS: I have no questions.

THE COURT: You are excused, Mr. Fassnacht.

Mr. Weinglass? Robert Harkins?

MR. WEINGLASS: No, our next witness is present, Steve Hawkins. The affidavit has been submitted with Mr. Hawkins on Mr. Hawkins' testimony.

THE COURT: Okay? wait awhile. I thought I ruled he was out.

MR. GRANT: Yes, Your Honor, I thought they were supposed to submit cases on him as to why he should even be allowed to testify in this Courtroom.

THE COURT: Yes, that's what I said.

MR. GRANT: We have a case here for you, it is called Commonwealth versus Neal and it is cited at 618 Atlantic 2nd, page 438. It is a Pennsylvania Superior Court case, 1992 vintage. And I would be glad to hand it up to this Court.

MR. WEINGLASS: I am familiar with that case and it has no application to Mr. Hawkins' testimony. We are not calling him as an expert on any area in this case, we are

Page 181.

calling him as a fact witness.

MR. GRANT: Well, then his affidavits were in the area of I'm an expert in death penalty litigation and I found -- just a minute -- and I found ineffectiveness. If that's not an expert opinion I don't know what is.

The other affidavit dealt with I talked to a Juror and I asked her about what went on in her mind in the Jury room and outside the Jury room. But not because some third party intervened or a foreigner came in, but among the Jurors what happened. And that is incompetent.

So he is a legal expert and he is not permitted to testify as an expert, or he is a hearsay representative of what a Juror said and that is incompetent testimony.

MR. WEINGLASS: Once against Counsel omits or he hasn't read Mr. Hawkins' affidavit. He says some of those things that Counsel alludes to but he says more, and that's what he will be --

THE COURT: Give me a copy of that and when I get a chance tonight I will be glad to read it over.

Page 182.

MR. WEINGLASS: Your Honor has it.

THE COURT: I don't have them with me, okay. All right.

MR. WEINGLASS: Sorry you didn't.

THE COURT: Counselor, I want to read the case too.

MR. WEINGLASS: Sure.

THE COURT: Do you have any cases to give me?

MR. WEINGLASS: None are necessary.

THE COURT: Okay, fine. I will take it under advisement.

MR. GRANT: Your Honor, with respect to, with respect to the Juror incompetence, I do have -- Are you going to contest that, Counsel?

MR. WEINGLASS: The Neal case?

MR. GRANT: No, are you going to contest whether or not he is allowed to comment about the Juror's statements, hearsay statements?

MR. WEINGLASS: We are going to -- I will answer Counsel's question. I am not accustomed to being questioned by Counsel.

Page 183.

MR. GRANT: I'm sorry.

MR. WEINGLASS: But I will answer it anyway. Mr. Hawkins was tendered in exhibit 10 and exhibit 11, both of which are sworn affidavits by Counsel.

MR. GRANT: I will give the Court cases on the Juror issue (handing). I just have excerpts, I don't have the copy of the case but I do have citations for Your Honor.

MR. WEINGLASS: One affidavit, which is exhibit 10 by Mr. Hawkins, deals with the issue of the Jurors. The second affidavit, which is exhibit 11, deals with the question of ineffective assistance of Counsel on the appellate stage of the proceedings.

Now dealing with number 11 first: Mr. Hawkins' testifies under oath in the affidavit that he personally interviewed appellate Counsel. And that in response to an inquiry by him, appellate Counsel acknowledged to him that the trial record was never read.

MR. GRANT: It does not say that here.

MR. WEINGLASS: It does, Counsel, paragraph 3A.

MR. GRANT: Read it into the record.

Page 184.

MR. WEINGLASS: Right. During the course of my interview -- I will transliterate -- with appellate Counsel --

MR. GRANT: No. Well, yes.

MR. WEINGLASS: With appellate Counsel.

MR. GRANT: Yes.

MR. WEINGLASS: During the course of my interview with appellate Counsel, as well as after reviewing her files, I learned of several irregularities --

MR. GRANT: That's what I am saying: It doesn't say she told me anything.

MR. WEINGLASS: -- that occurred in her representation of Mr. Jamal. A, appellate Counsel never read the trial record in Mr. Jamal's case.

MR. GRANT: It doesn't say she told him that.

MR. WEINGLASS: He will say that on the stand, I represent that.

MR. GRANT: May we go to sidebar? I think Counsel wants to go to sidebar.

THE COURT: All right, back here.

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Page 185.

(Discussion held in the Judge's robing room was transcribed and was sealed by Court order.)

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THE COURT OFFICER: Court is back in session.

MR. WEINGLASS: The Court has made a ruling with respect to exhibit 11. We take exception to that ruling.

THE COURT: You don't have to take exception: It's automatic.

MR. WEINGLASS: Referring to exhibit 10, which deals with the question of the Jurors. And if you read exhibit 10, there is one thing that has to be said right at the outset, and it's this: Mr. Hawkins will not testify at all about the deliberative process that the Jury engaged in, or any aspect of any Juror's conduct, thinking in the course of deliberative, the deliberative process. He will only testify as he is entitled to testify, about Juror misconduct that happened after the Court hours. That happened in the hotel. And that involved named Jurors that are named in his affidavit.

And so I want to be clear at the

Page 186.

outset: We are not talking about attacking a verdict by inquiring of the deliberative process. We are talking about Jury misconduct, the violation of two Court orders by Jurors. And that this witness Mr. Hawkins had received this information directly and personally in a conversation with a Juror, who informed him that Jurors met in the hotel behind closed doors and conducted what, according to the one Juror, appeared to be private deliberations by a group of three Jurors out of the presence of the others while the case was being tried and prior to the conclusion of the evidence.

And I think that's evidence that the Court should hear at this time. Because, Your Honor, if we are talking about Juror misconduct, we are talking about the core of the truth-seeking process. Where because of acts taken by Jurors, the entire process is infected by wrongdoing and therefore has no credibility and has to be set aside. I think the law on that is very clear. I think jury misconduct always leads to a new trial in the interests of justice. And I think there is evidence of that here and it's direct evidence from one of the

Page 187.

seated Jurors to Mr. Hawkins. And he's here to testify about that under oath.

MR. GRANT: And that's not admissible either. Let's assume that he was allowed, if he were allowed to present this. That means he would have to bring that Juror in and subject that Juror to cross-examination so he could say well, how did you, through closed doors, cordoned off from these people that you say were involved in open wrongdoing, did you hear this. Did you have a hole. Did you see through a window. Have a glass door. And he knows very well that is not admissible testimony. What has to be shown for them to get into that is some third-party or outside influence on the Jury. What he is accusing the Jurors of is interfering with themselves. It doesn't matter whether it is in a hotel room, in the basement of this building, or in a subway station, it is not an outside influence, it is the influence that they have on one another. And Counsel is not giving you any cases because he knows the law is the same in New York as it is in Pennsylvania. And the cases say you can't do it. And if he could find a case that says he can do it I would agree

Page 188.

with him.

THE COURT: All right.

MR. WEINGLASS: I never wanted to have to make reference to this particular trial and this case but I am afraid I am going to have to. In a noted case that's being tried right now in the state of California, 10 jurors have been dismissed, not because of any outside influence, but because of an interaction within the jury, that the sitting court there, under the same law that governs Pennsylvania and New York --

THE COURT: I don't want to get involved with California or OJ Simpson. All I am saying to you --

MR. WEINGLASS: Apparently anybody who reads the newspaper incisively is familiar with what is happening, and it is all what Counsel referred to: Interrelations of an improper nature between the jurors.

THE COURT: Counselor, give me a case on it. Research the law, give me a case on it, I will read it. If you are right I will let it in.

MR. WEINGLASS: I believe our memorandum of law does give the --

Page 189.

THE COURT: I don't want a memorandum, I want a Xerox of the case. Get me the case so I can read it myself.

MR. WEINGLASS: Well, we gave you a memo.

THE COURT: In the meantime I will hold him in abeyance. Let's go on with the next witness.

MR. WEINGLASS: Your Honor, we gave you a memorandum of law on this issue on June 5th.

THE COURT: I want a Xerox copy of the case. Don't give me the memorandum, okay.

MR. WEINGLASS: Your Honor, we call witnesses to Court and prior to putting them on the stand --

THE COURT: Well, he is an attorney and he is available to you at any time. There is no big deal.

MR. WEINGLASS: He doesn't practice in Philadelphia.

THE COURT: I can't help that.

MR. WEINGLASS: I know but.

THE COURT: I will hold that under advisement. Give me a case. Xerox the case for

Page 190.

me, I will be glad to read it. And if you are right then I will let you do it.

MR. WEINGLASS: The proposition the Court wants to hear about is what constitutes juror misconduct as opposed to deliberative process?

THE COURT: Counselor, please. I think you understand what his objection was from the D.A.'s Office.

MR. WEINGLASS: But he is not the Judge.

THE COURT: I know that but he has given me a case to read. You give me a case to read and I will be glad to read it.

Counselor, I have made a ruling. Now please. Please. Okay, let's go. If you have any other witness today give me the other witness.

MR. WEINGLASS: Here are the cases, Your Honor.

THE COURT: I don't want to hear the cases.

MR. WEINGLASS: United States --

THE COURT: I am not going to look them up. You Xerox the case for me and give it

Page 191.

to me and I will read them. I didn't ask you for a brief. I said Xerox the case for me.

MR. WEINGLASS: One is a Pennsylvania case. Does Your Honor have the Court Reporter?

THE COURT: Don't give me that. Xerox the case for me. I want to take it home with me.

MR. WEINGLASS: I can't give it to you by the time you go home. I have to go home too.

THE COURT: Well, okay. We will all go home.

MR. WEINGLASS: We all go home.

THE COURT: Who is your next witness? Xerox it for me.

MR. WEINGLASS: I thought the Court was directing us to --

THE COURT: Counselor, please. No more comments like that. I don't want to have to hold you in contempt. So please. Let's go. I said I would take it under advisement. I will read this. And Xerox the cases for me. You have a Philadelphia attorney here: Call him on the phone, let him Xerox it for me and bring it in.

MR. WEINGLASS: At this point we would

Page 192.

like to call attorney Kracoff. K-R-A-C-O-F-F.

THE COURT: That one is out too according to my notations here.

MR. GRANT: Yes.

MR. WEINGLASS: That one's out?

THE COURT: Yes.

MR. WEINGLASS: We submitted an affidavit.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. WEINGLASS: He is a Pittsburgh attorney.

THE COURT: Wait.

MR. WEINGLASS: He is out also?

THE COURT: For the time being he is. How about Robert Harkins?

MR. WEINGLASS: Hold on just a minute.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. WEINGLASS: Your Honor, we have lost three out of our four witnesses today.

THE COURT: I know that.

MR. WEINGLASS: It imposes a certain

Page 193.

Robert Harkins - Direct

hardship.

THE COURT: How about Harkins? You said you --

MR. WEINGLASS: District Attorney has made him available. I want to thank him for that.

THE COURT: Okay.

MR. WEINGLASS: We will call Robert Harkins.

THE COURT: Robert Harkins, please.

THE COURT OFFICER: Yes, Your Honor.

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Robert Harkins, having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Harkins, right? Good afternoon.

A. How do you do?

Q. Now, you and I have never met, have we?

A. I don't think so.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

Page 194.

Robert Harkins - Direct

BY MR. WILLIAMS:

Q. Mr. Harkins, if you could do us a favor: If you could pull the microphone a little closer to you I would appreciate it, okay. Do you need assistance with your chair or anything?

Now, Mr. Harkins, do you understand what these proceedings are about?

A. A little bit.

Q. A little bit. Do you understand that there has been a Petition filed by Mr. Jamal, seated here (indicating), for a new trial?

A. Yes.

Q. Now, were you ever contacted by any member of the District Attorney's Office since June of this year?

A. No, I don't think so.

Q. Were you ever contacted by any member of law enforcement since June of this year?

A. Only down the Roundhouse to talk to them for routine records.

Q. I'm sorry, I didn't --

A. I go down to give another statement to them.

Q. Oh, somebody from law enforcement asked you to give another statement?

A. No, come down and ask me to read the statement

Page 195.

Robert Harkins - Direct

they already had.

Q. To read the statements?

A. Yes, sir.

Q. Do you remember who that was?

A. Who came out to see me?

Q. Yes.

A. Detective Welsh and Detective Miller.

Q. Do you remember when that was?

A. No, in July sometime, I think, if I am not mistaken.

Q. Just a few weeks ago?

A. Yes. Ahh...

Q. I'm sorry?

A. I am trying to remember the date, but.

Q. Dates are difficult, I know. But in any event, sometime in July two detectives went to see you and asked you to come to the police precinct?

A. No, they didn't come to ask me to go to the police station. They come up to where I work at and they asked me to talk about the case. And I said I won't talk to nobody until I go down the Roundhouse and talk down there. Because I didn't know who they was.

Q. And you did do that?

A. Yes, they come back with a car and picked me

Page 196.

Robert Harkins - Direct

up and took me down.

Q. Did they tell you what they wanted or how they wanted you to help them?

A. No, this one told me the trial would be reopened and they just wanted me to give them a statement if I could remember what I told them back in '81.

Q. And what did you tell them when they asked you that?

A. I said I remember some of it.

Q. And did you read some police reports containing your statements that you gave back in 1981 and '82?

A. Yes, I did.

Q. And did that help you refresh your recollection?

A. A little bit.

Q. A little bit. Okay. And did they discuss anything about what's happening here in this Courtroom?

A. No, they haven't.

Q. Did they talk to you about whether people from the defense side of the case or an individual from the defense side of the case had ever talked to you or tried to talk to you?

Page 197.

A. No, they did not tell me to say anything to anybody, I did that on my own. I told them I wouldn't talk to anybody until I went down the Roundhouse.

Q. Until you...?

A. They took me down the Roundhouse. I talk to them down there.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

BY MR. WILLIAMS:

Q. Before those detectives visited you, had you talked with any detectives or anybody from law enforcement since 1982?

A. No, I have not.

Q. Now, do you remember back in January of 1994 -- to be specific, January 9th, 1994 -- receiving a visit from an investigator named Robert Bugler?

A. That I don't remember, no, sir.

Q. You don't remember?

A. No.

Q. Being visited by an investigator?

A. There were so many came around, so many different ones came around. They come up my, where I

Page 198.

work at and came down my house, and I told them I didn't want to talk to them.

Q. Let me get this straight. You are saying many people came to visit you?

A. In -- let's see. It was about two of them came up the gas station where I worked at. Then a couple of them came to the house. And a couple more came to the house. Since after it started and I told them I wasn't talking to anybody.

Q. I see.

A. And the last two that came around I told them that I won't talk to them unless it was in a courtroom.

Q. Now, back in January of 1994, do you remember a man named Mr. Bugler talking to you?

A. No, I don't.

Q. Do you remember having a discussion of some kind with some individual where you told that individual that the detective downtown told you not to talk to anybody?

A. No, I never said that to anybody.

Q. Were you aware, Mr. Harkins, that there was an affidavit filed in this case where your name was mentioned?

A. No, not till Detective Welsh and Morgan came

Page 199.

up the gas station and told me that.

Q. They told you that?

A. Yeah.

Q. Did you see that affidavit?

A. Hmm, no, I don't think so.

Q. Did anybody read to you that affidavit where your name is mentioned?

A. No, I don't think so. I can't remember.

MR. WILLIAMS: If you could pardon me for one moment.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. But you're aware that there is such an affidavit that contains your name, somebody told you that?

A. What do you mean by affidavit?

Q. Well, an affidavit is a sworn statement that, a sworn statement has been filed in this Court that contains your name in it. Not that you signed it but that you were mentioned in an affidavit. Are you aware of that?

A. I don't think so.

Q. You don't think so?

A. No, I don't remember.

Page 200.

Q. Now, you mentioned that you had given some interviews with the police many years ago, back in 1981 and '82?

A. '81, I think it was.

Q. Now I want you -- and I know it's difficult -- but I want you to focus on that for a little while. I am going to ask you some questions about that; do you understand?

A. Hmm-hmm.

Q. Now, on December 9th, 1981, at about 6:00 a.m. in the morning, do you remember being interviewed by a detective?

A. I think the detective did come down that morning at the gas station where I used to work at.

Q. What was your occupation back then?

A. I was a manager and a mechanic for United Cabs.

Q. Did you ever drive a cab?

A. I drove off and on, not for there. One guy came in I might take the cab. And that night I was driving a cab to go out and push another cab in which broke down.

Q. I see. Now, you know what the significance of December 9th, 1981 is, don't you? You know why that date is important?

Page 201.

A. Yeah, I think the date the officer got shot.

Q. You saw that?

A. Yeah.

Q. And is that why some police officer or detective on that, actually that morning, December 9th, wanted to talk to you?

A. I think so, yeah.

Q. And you tried your best to tell them what you saw?

A. Yes, I did.

Q. Now, and you reviewed that report that was written by the detective which reflected what you told that detective, right?

A. Yes.

Q. Do you remember telling that detective that the first thing you saw was Police Officer Faulkner grabbing a guy?

A. They both had one another.

MR. GRANT: Objection, Your Honor. This witness, according to their supporting affidavit and claims of error, the only relevance of this witness is because they say he was shown photographic arrays or in person line-ups and the Commonwealth did not alert them or tell them, therefore we suppressed the

Page 202.

evidence. We are not here to try the case. And I would ask that they be restricted to their proofs.

MR. WILLIAMS: Your Honor --

THE COURT: You are restricted to your affidavit, okay.

MR. WILLIAMS: What I am endeavoring to show -- and I hesitate to do it in front of the witness -- but what I am endeavoring, I am leading up to the critical point that Counsel has raised regarding the photographic array. I need to lead him up to that, Judge.

THE COURT: I don't think you have to lead him up to that.

MR. WILLIAMS: I feel that you do.

THE COURT: I don't think that you should. We are not here to rehash that. You gave an affidavit for a certain purpose, now let's stick to that.

BY MR. WILLIAMS:

Q. Do you remember what you told Detective Sutton on December 9th, 1981?

A. About the shooting?

Q. About what you saw, yes.

A. I was coming down, coming down Locust Street,

Page 203.

Robert Harkins - Direct

17th and the Warwick --

MR. GRANT: Objection.

THE COURT: Objection is sustained.

MR. GRANT: Move to strike.

THE COURT: If you are leading him, lead him right to the issue that is involved.

MR. WILLIAMS: That's what I am trying to do.

THE COURT: No, you are not.

MR. WILLIAMS: I am trying to.

THE COURT: No, you are not.

MR. WILLIAMS: I am going to the photographic array that is referred to.

THE COURT: Well, ask him about it.

MR. WILLIAMS: I need to lead him up to it.

THE COURT: You don't have to lead him up to it. You could ask him about it.

MR. WILLIAMS: It seems to me, Your Honor, we call an issue we want to explore a wish. We want to explore an issue and it goes to what he recollects about what he told the police.

THE COURT: Well, Counsel --

MR. WILLIAMS: What happened at the

Page 204.

Robert Harkins - Direct

police station.

THE COURT: Who made up that affidavit, you?

MR. WILLIAMS: Mr. Bugler, our investigator.

THE COURT: Okay? You are stuck with the affidavit.

MR. WILLIAMS: And we intend to explore what is precisely in that affidavit.

THE COURT: Well, go right to it. That's what I am trying to tell you.

MR. WILLIAMS: That's what I am doing. I am going into what happened at the precinct.

THE COURT: All right, you said he was shown some photographs. So ask him that. Get right into it.

MR. GRANT: Your Honor, I will read into the record what they allege this witness has to do with this case, if I may, from their supporting papers.

MR. WILLIAMS: Your Honor, that is in the record, there is no need to read it into the record. The Petition has been filed, it is in the record.

THE COURT: Well, stick to it.

Page 205.

Robert Harkins - Direct

MR. WILLIAMS: Your Honor, that is exactly what I am doing.

THE COURT: No, you are not.

MR. WILLIAMS: I am inquiring as to what happened within the four corners of the precinct.

THE COURT: No, your affidavit talks about photographs being shown. So let's go right to it.

BY MR. WILLIAMS:

Q. Let me ask you this, Mr. Harkins. There were discussions, were there not, on December 9th, 1981 about what happened, right?

A. Yes.

Q. And you told the police that you were very near where the shooting happened, right?

A. Yes.

Q. And that you saw the shooter; is that right?

A. Yes.

Q. You didn't see the shooter get shot, did you?

A. No, I did not.

Q. And how many people did you see there when you witnessed this shooting?

A. Two.

Q. You saw the shooter?

Page 206.

Robert Harkins - Direct

A. Hmm-hmm, and the cop.

Q. And the police officer?

A. Yes.

Q. You didn't see a third person, did you?

A. I wasn't looking around.

Q. So when you were trying to describe people you were only trying to describe the officer and the shooter?

A. Right.

Q. Is that right?

A. Right.

Q. Did you see a man running across the street?

A. No, I did not.

MR. GRANT: That certainly sounds like a photo ID to me, Judge. I object. I move to strike it. This whole line of questioning I object to.

THE COURT: He said he didn't see anybody running across the street.

MR. WILLIAMS: Precisely.

MR. GRANT: I object to him continually trying to do the same thing. Could we get to the point.

THE COURT: Would you get right to the issue here, Counselor.

Page 207.

Robert Harkins - Direct

BY MR. WILLIAMS:

Q. This was on December 9th, right?

A. Yes.

Q. Were you asked if you could identify the shooter?

A. Yes, I was. And I told them maybe.

Q. You told them maybe?

A. Right.

Q. Because this all happened very fast?

A. Right.

Q. Did you try to give a description of the shooter?

A. Hmm, no.

MR. GRANT: Objection.

BY MR. WILLIAMS:

Q. Did anyone ask you to look at any photographs on December 9th?

A. No.

Q. Now, do you remember being interviewed again?

A. Yes, I was taken down again but the date I couldn't tell you. But I remember being taken back down the Roundhouse but I don't remember what date it was.

Q. Some detectives came to your house and did they bring you to the police station?

Page 208.

Robert Harkins - Direct

A. No, they came by and I drove myself down to the Roundhouse.

Q. Okay. So you went to the Roundhouse because some police officers or detectives asked you to?

A. Yes.

Q. Do you remember when that was?

A. No, I do not.

Q. Was that about a week later?

A. I don't remember.

Q. Okay. Well, in any event, when you had to go down to the Roundhouse the second time, do you remember who was there?

A. No, I do not.

Q. Was there some law enforcement people there?

A. A couple of detectives and stuff and all were there, yes.

Q. And were they interested in asking you some questions about what you saw on December 9th?

A. They asked some questions and all but I couldn't tell you what, I don't remember.

Q. Did they ask you questions about who did the shooting?

A. No, I just, they just said, I just told them I seen the guy, he shot the thing, having the gun, the guy was laying there. They were spinning around the

Page 209.

Robert Harkins - Direct

pavement.

Q. I'm sorry, who was spinning around on the pavement?

A. The cop and the -- and they was like wrestling a little bit and the cop fell down.

Q. Right, you explained all of that to the detective?

A. Yes.

Q. And the detective wanted you to help them find out who the shooter was? Was that your understanding?

A. I don't understand the question.

Q. When they were talking to you, Mr. Harkins, did the detectives, were they trying to find out who the shooter was?

A. I guess so.

Q. And you told them that the person, the police officer fell down and that's when the shooting happened?

A. Well, he leaned over and two, two to three flashes from the gun. But then he walked, sat down on the curb.

Q. The guy that done the shooting walked and sat down on the curb?

A. On the pavement.

Page 210.

Robert Harkins - Direct

Q. When you talked to the police on December 17th, 1981, did they ask you about the description of the shooter?

MR. GRANT: I object. We are not here for descriptions, we are here for identifications in the form of photographic or other IDS.

THE COURT: Why don't you get right to it, Counsel. Get right to it, will you.

BY MR. WILLIAMS:

Q. Do you remember whether anyone asked you, Mr. Harkins, whether you could identify the shooter?

A. I told them --

Q. First of all --

A. When he asked me I told him maybe.

Q. You told him maybe. Did they ask you if you could look at any photographs?

A. I told them -- no, nobody asked me.

Q. Nobody asked you that?

A. Nobody either side.

Q. Do you know why they asked you to come back a week after the first interview?

A. No, I do not know.

(Discussion was held off the record at this time between defense Counsel.)

Page 211.

Robert Harkins - Direct

BY MR. WILLIAMS:

Q. Now, you mentioned something about the shooter sitting down. Do you remember that?

A. Yes.

Q. Did you tell that to any of the detectives?

MR. GRANT: Objection.

MR. WILLIAMS: It's his testimony, Your Honor.

THE COURT: I know that. But that's not part of the affidavit.

MR. WILLIAMS: Then I move to strike that testimony. If I can't inquire into it I move to strike it.

THE COURT: You asked the question.

MR. WILLIAMS: No, that was non responsive to my question.

THE COURT: Well, you should have objected then and asked to strike it.

MR. WILLIAMS: I now move to strike it.

THE COURT: Too late, it's there.

MR. WILLIAMS: Your Honor, I have never read any evidence code that puts a time frame on when I can move to strike.

THE COURT: Well, sorry about that,

Page 212.

Robert Harkins - Direct

Counselor. I can't help what you read.

(Discussion was held off the record at this time between defense Counsel.)

MR. WILLIAMS: Your Honor, I may be a young lawyer but I am simply flabbergasted by the rulings. Let me say this. I am trying, I am getting an answer from a witness --

THE COURT: Counselor, I will tell you one more time. Look up the law. Xerox the case for me. If you are right, I will do it accordingly, all right. Okay.

MR. WILLIAMS: By that time Mr. Harkins is long off the stand.

THE COURT: Okay.

MR. WILLIAMS: What I am trying to do now is, I got an answer from Mr. Harkins -- with all due respect to you, sir -- and I am attempting now to impeach him. Impeach the witness with the police reports. I am entitled to do that.

MR. GRANT: While he is trying to impeach him -- if I may, Mr. Williams, so we could focus on the issue -- they are saying the Commonwealth hid Brady material that he identified someone else, or implied that he

Page 213.

Robert Harkins - Direct

identified someone else, not the Defendant, therefore, the Defendant may be innocent. May be an innocent man.

THE COURT: Yes.

MR. GRANT: And that the police told him don't talk to them. He has denied both of those things, so now let's go and try the case. Let's try to impeach him about what did you really see anyway. We are not talking about photographs anymore because they lost that one. Let's just talk about the case. Which he is not here for.

MR. WILLIAMS: Let me be clear to Mr. Grant. If he wants to throw the gauntlet down, if I were allowed the latitude to question Mr. Harkins I could demonstrate to the Court that in fact his scenario, his own testimony exonerates Mr. Jamal. I say that to the Court.

THE COURT: Well, you didn't say that in your affidavit. You just said that he was --

MR. WILLIAMS: Now, if Mr. Grant wants to throw the gauntlet down (indicating), I pick up the gauntlet. I could demonstrate that Mr. Jamal's scenario is the scenario that Mr. Harkins would testify to, it would exonerate

Page 214.

Robert Harkins - Direct

him. That's what I am asking the Court: To give me the latitude to do that. I could assure the Court of that.

MR. GRANT: We don't know what Mr. Jamal's scenario is and it really doesn't matter because he is here on photographic ID and the accusation that I, and us, hid evidence from them.

MR. WILLIAMS: He is afraid that we could show innocence. We could always show innocence. Actual innocence is, as I understand it, notwithstanding any language by the United States Supreme Court, is a grounds for a new trial. I can demonstrate actual innocence through Mr. Harkins. He has already indicated that there were only two people at the scene, the shooter and Officer Faulkner.

THE COURT: Yes, but that's what he saw.

MR. WILLIAMS: Exactly. An eyewitness.

THE COURT: I know that, but everybody sees things differently.

MR. WILLIAMS: Isn't that the essence of this tribunal? That's exactly right.

Page 215.

Robert Harkins - Direct

THE COURT: Right, the fact that he only saw two people there doesn't mean that there wasn't three.

MR. WILLIAMS: That is only the first question. I want to explore that, and what I am telling the Court --

THE COURT: Your affidavit should have so stated. That is not what your affidavit said. You were calling him for a specific purpose, for which the Commonwealth is ready to answer, okay.

MR. WILLIAMS: What Your Honor is saying is -- and I appreciate the Commonwealth's fear in my questioning this witness -- what I am saying to the Court is that I could demonstrate actual innocence through this witness.

THE COURT: Counselor, you show me --

MR. WILLIAMS: The Court is barring me from doing that.

THE COURT: I will limit you to your affidavit, that's what you filed.

MR. WILLIAMS: Well, let's accept that as true. Let's accept that as true.

THE COURT: Aren't we here, how does that advance the cause of justice? Plain and

Page 216.

Robert Harkins - Direct

simple. How does it?

MR. WILLIAMS: To seek justice.

THE COURT: What do you mean by justice?

MR. WILLIAMS: To insure that an innocent person is not executed.

THE COURT: How about when it is guilty.

MR. WILLIAMS: If I could demonstrate through this witness actual innocence.

THE COURT: It's already been demonstrated to a prior Jury. Counselor, justice is an emotional feeling. That's all it is. If I win my case --

All right, quiet in the room or you will be asked to leave. You are going to go out.

Justice is an emotional feeling. When I win my case, it's justice. When I lose my case, I didn't get justice, you know. So take it from there.

MR. WILLIAMS: I think there is a concept that we call truth.

THE COURT: That's right, truth. And you are bringing him in here because you have

Page 217.

Robert Harkins - Direct

accused the District Attorney's Office of doing something. Let's concentrate on that.

MR. WILLIAMS: Exactly.

THE COURT: Okay. Get to the photographs.

MR. WILLIAMS: What I am trying to demonstrate is actual innocence, which is always available --

THE COURT: You didn't say you were going to call him to show that there was actual innocence. You said you were calling him to show that the District Attorney's Office did something wrong.

MR. WILLIAMS: Okay, let me offer this to the Court. What we will then do is make a motion to amend the Petition naming Mr. Harkins as a witness that would demonstrate actual innocence. Then we could call him back in support of that allegation in our amended petition. Fair enough, Your Honor?

MR. GRANT: The amended petition, as I understand Your Honor's ruling, must be in writing. And if it is going to be in writing -- and he is already your witness, you are leading him all over the place, I haven't objected --

Page 218.

Robert Harkins - Direct

can't we just do this according to the rules of evidence?

MR. WILLIAMS: The objection is to whether I could inquire into a certain line of questioning. What I am asking is, I would like to be able to pursue that. I will use open-ended questions, if that's what they are asking.

THE COURT: I don't know what they are asking.

MR. WILLIAMS: I don't either.

MR. GRANT: I am asking if they don't have anymore questions about photographs and line-ups and us telling him don't talk to them, then he should be excused. And let's put the next witness on that satisfies anything in their filing, moving papers.

MR. WILLIAMS: Fine. What I am proposing to the Court is this: We will amend the Petition.

THE COURT: I will say to you, Counselor, you will have to do it another time. As far as I know he didn't sign that affidavit.

MR. WILLIAMS: No.

THE COURT: One of your people signed

Page 219.

Robert Harkins - Direct

it.

MR. WILLIAMS: Exactly.

THE COURT: Okay, you said you wanted to bring him in for a limited purpose. So that's what you are limited to.

MR. WILLIAMS: Well, now I am saying I want to bring him in for purposes of showing actual innocence.

MR. GRANT: I object.

MR. WILLIAMS: Of course they object. Of course they don't want the actual innocence evidence to come out.

THE COURT: You will have to do that at another time.

MR. WILLIAMS: We will have to burden Mr. Harkins to come back at another time.

THE COURT: Okay, burden him.

MR. WILLIAMS: Very well.

MR. GRANT: I have no questions of Mr. Harkins.

MR. WILLIAMS: Mr. Harkins, I --

MR. WEINGLASS: This morning the Court I believe invited the

defense to put on a witness of actual innocence, and we have.

THE COURT: Not necessarily. If you

Page 220.

Robert Harkins - Direct

want to amend it, have him sign some affidavit, fine.

MR. WEINGLASS: In the Petition itself before the Court we claim actual innocence.

THE COURT: I made a ruling already. You have an exception. Now, come on.

MR. WEINGLASS: We have a witness --

THE COURT: If you want to supplement your Petition, do it in the proper way, all right.

MR. WEINGLASS: It's already in our Petition: Actual innocence.

THE COURT: No, it is not. In that it says merely that somehow the District Attorney's Office did something wrong. That's the only reason he's here today.

MR. WEINGLASS: They didn't put him on the stand in the trial. They didn't.

THE COURT: So what does that mean?

MR. WEINGLASS: Maybe the closest person to the shooting. Does that say something?

THE COURT: Maybe he wasn't, maybe he wasn't.

MR. WEINGLASS: He was. If you let

Page 221.

Robert Harkins - Direct

him testify.

THE COURT: Counselor, if you want to, if you could get an affidavit from him as to what he is going to say, fine.

MR. WEINGLASS: Your Honor, we have a witness here today who was the closest person to the shooting who they didn't produce.

THE COURT: You could bring him back tomorrow. You could bring him back the next day. You could bring him back the day after that. Bring him back whenever you want, but amend your Petition. And get an affidavit from him as to what he is going to say so that the District Attorney --

MR. WEINGLASS: He won't talk to us, that is the problem. We have tried to talk to him. He will tell you on many occasions we went to his house, we went to his place of business. The witness exercised his right not to talk to us. So we can't talk to him. Only the D.A. could talk to him. And only the D.A. talked to him in '81, but they wouldn't put him on the stand. Now we have him on the stand. And we want him to tell this Court his story.

THE COURT: Okay, Counselor, I say to

Page 222.

Robert Harkins - Direct

you again: You show me in the law, give me a case that says I could compel him to testify to anything, all right.

MR. WILLIAMS: He is here ready to testify.

THE COURT: I know he is here already.

MR. WILLIAMS: We are not --

THE COURT: He is here only for one purpose. Look up the law, give me a Xerox copy of the case, Counselor. Please, I won't argue with you anymore. I have made a decision, that's it. Now give me a case on the issue, all right. Give my a case on the issue. I don't want anymore arguments as to what he is going to do, what he is not going to do.

MR. WILLIAMS: I am not here to quarrel with the Court.

THE COURT: I told you what I am saying, okay. Listen, just listen to me.

MR. WILLIAMS: I will.

THE COURT: Xerox a case and give it to me, okay.

MR. WILLIAMS: I understand that.

THE COURT: Okay, that's all I want to hear from you.

Page 223.

Robert Harkins - Direct

MR. WILLIAMS: But I want to give Your Honor a case that addresses your concerns. You want a case that says that we can show, if we can show --

THE COURT: Counselor, whatever you want to do, whatever you want to do, you give me a case that shows that you can do it. That's all. I am not going to limit it to what I want. It's what you want to do. Give me a case. Xerox the case that says you can do it, that is all I am saying.

MR. WILLIAMS: A case that says that we can put on evidence?

THE COURT: Whatever you want to do, Counselor. I can't make it any clearer to you. I am not confining you to any particular area. Xerox the case and give to it me and I will read it and if you are right you are right.

MR. WEINGLASS: Your Honor, could the witness testify subject to being struck if it turns out he is not relevant to any issue?

THE COURT: No, no, no, no, no.

MR. WEINGLASS: Frequently that is done by courts when the witness is already here.

THE COURT: Frequently, but we are not

Page 224.

Robert Harkins - Direct

going to do that here. Give me a case that says that you can do whatever you want to do.

MR. WEINGLASS: This morning Your Honor implored me to bring a witness to establish innocence. You have one.

THE COURT: Counselor, I don't know what we have here.

MR. WEINGLASS: Well, let's explore it.

THE COURT: No, we are not going to explore it. You are going to do it the proper way. You are going to put it in, amend your Petition, serve the D.A. with it, let them answer it if they want to answer it. In the meantime, look up your cases. You have a lawyer here in Philadelphia, let him look it up for you, okay.

All right, can the witness be excused?

MR. GRANT: I have no questions of Mr. Harkins, Your Honor. Thank you, sir.

MR. WEINGLASS: Your Honor, before Mr. Harkins leaves, just one thing: Could the Court request that the witness talk to defense Counsel?

Page 225.

Robert Harkins - Direct

THE COURT: Hey, I can't tell anybody to do anything.

MR. WEINGLASS: I am not asking you to order or direct.

THE COURT: I am not going to order him, I am not going to ask him, I am not going to do anything. That is not my prerogative. I am not here as an advocate for you or the Commonwealth or anybody.

MR. WEINGLASS: The witness is leaving.

THE COURT: It is all right if he wants to talk to you, it is all right with me.

MR. WEINGLASS: Is it all right with the Court if he wants if he talks to me?

THE COURT: Anytime. Anytime. If he wants to talk to you he can talk to you. But I am not ordering him and I am not suggesting that he --

MR. WEINGLASS: While Mr. Harkins is here: Would Mr. Harkins be willing to talk to us?

MR. GRANT: Your Honor, if I may --

MR. WEINGLASS: Again the prosecution

Page 226.

Robert Harkins - Direct

interferes.

MR. GRANT: Finish your question.

MR. WEINGLASS: Thank you. Mr. Harkins, would you be

willing to talk to the lawyers in this case?

THE WITNESS: Well, mainly every time I say something you come back with something different than what I say to you, and I don't like that.

MR. WEINGLASS: We never talked.

MR. GRANT: May the record reflect what the man just said to Mr. Weinglass.

THE COURT: I think he has it.

MR. GRANT: He said every time, he said I don't mind talking to you --

THE WITNESS: If you call up the gas station.

MR. GRANT: -- and you say I said something else and I don't like that.

MR. WEINGLASS: We could meet not at your house but at a place that's convenient for you.

THE WITNESS: Can I say something? Can one of the detectives from Homicide be there when you talk to me?

Page 227.

MR. WEINGLASS: If you feel more comfortable that.

THE WITNESS: Yes, I would like Detective Welsh there.

MR. WEINGLASS: Detective Wells?

THE WITNESS: Yes.

MR. GRANT: Detective Walsh, W-A-L-S-H.

THE WITNESS: Walsh.

MR. WEINGLASS: Could we meet then -- is it best now?

THE WITNESS: I just took some medication. I worked last night and I didn't get done until eight o'clock. And I had to go to the doctor. I got home from the doctors, and I had to come down today and I'm very tired.

MR. GRANT: Would the record reflect that the highly unusual plea is from Mr. Weinglass -- nobody is interfering with him, but Detective Walsh is asked to be there -- who is charging us with crimes of criminal behavior.

MR. WEINGLASS: I am overwhelmed by the courtesy and I will be there.

THE WITNESS: A detective or police officer, anyone could be there.

Page 228.

THE COURT: Just somebody from the --

MR. WEINGLASS: What we will do is we will talk to Detective Welsh and he will talk to you about what's a good time for you, all right.

THE WITNESS: All right.

MR. WEINGLASS: Then we will all get together.

THE WITNESS: All right, Detective Welsh.

MR. WEINGLASS: Thank you.

THE COURT: Do we have anyone else for today?

MR. GRANT: I only brought in one for him, Judge, I didn't know if he wants more.

THE COURT: Who else?

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. WEINGLASS: I think that exhausts...

THE COURT: Well, who are you going to bring in tomorrow, so they have a chance to...I don't want to delay.

MR. WEINGLASS: Our list.

THE COURT: I don't know on your list.

Page 229.

I know you have a whole list here but which ones are you going to bring in? You are skipping all over the list.

MR. WEINGLASS: Gary Bell.

MR. GRANT: That subpoena was quashed yesterday, Your Honor.

THE COURT: So.

MR. GRANT: And he was a witness at the first trial. And the offer of proof they made was basically retry the case through him. That is not the subject of this proceeding.

MR. WEINGLASS: Gary Bell, I beg to differ, was not quashed but the Court indicated after it heard from Officer Wakshul that it would consider Mr. Bell. Your Honor will recall.

THE COURT: I quashed it yesterday.

MR. GRANT: He did. He quashed it.

THE COURT: Sorry if you didn't remember that. Who else do you want?

MR. WEINGLASS: I can't keep up with it.

THE COURT: Well, I'm sorry.

MR. WEINGLASS: Deborah Kordansky, who we would ask the District Attorney to make

Page 230.

available.

MR. GRANT: I will try to contact her.

THE COURT: Okay. Who else?

MR. WEINGLASS: Dessie Hightower, the defense will call.

William Thomas was the Homicide detective in charge of the investigation. We have subpoenaed him but I got a message from the Court attendant today that he wanted another subpoena for his work: He is no longer a police officer. And we are going to have to try to talk to Mr. Thomas, if the District Attorney could --

MR. GRANT: I could help you contact him but he is going to need a subpoena because he is not a police officer.

MR. WEINGLASS: Right, he needs a subpoena. We did subpoena him. And there was some question about the subpoena. Oh, he was served again.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. WEINGLASS: Okay, we don't have a problem, I'm sorry.

Page 231.

THE COURT: Will he be available tomorrow?

MR. GRANT: Yes, Your Honor.

THE COURT: Oh, okay. Who else?

MR. WEINGLASS: Mr. Hawkins. Well, we need a case to bring Mr. Hawkins back.

THE COURT: Yes. Who else?

MR. WEINGLASS: May I have just a moment?

THE COURT: Yes, sure.

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: I'm sorry. Page 2.

THE COURT: Oh, page 2.

MR. WEINGLASS: Kenney, Heftner, Hinkel, Cook.

THE COURT: Wait awhile. Wait awhile.

MR. WEINGLASS: They are in order: Kenney, Heftner, Hinkel, Cook, Dunn and Bob.

THE COURT: All of them for tomorrow?

MR. WEINGLASS: Well.

MR. GRANT: Well, Judge, first of all, what is the offer of proof, sir?

MR. WEINGLASS: They were all mentioned in Mr. Williams' direct examination of

Page 232.

Officer Wakshul. These are officers who were present at the same time, submitted to interviews, the Commonwealth has copies of all their interviews. And we wanted to call them because the Court invited it when the Court refused to allow Mr. Williams to go into that area. And so in response to the Court invitation, we subpoenaed them. They were all police officers present at the

hospital.

MR. GRANT: I forgot to mention something yesterday, Your Honor, and that is the same thing they were trying to do with Mr. Harkins here today. They brought in Mr. Wakshul because their claim was that he was not allowed to go on vacation, we found out they wanted him and we whisked him away. Now, that's the only reason that man was sitting on the stand. The only reason, by the way. But they wanted to go into his statements and the times when he didn't say something, when he did say something. But the only reason he was there was because we sent him on vacation, you see.

Now they want to bring in these other officers to talk about something that had nothing to do with their claims but just to

Page 233.

expand upon something that he said because they lose these battles and then they want to go play in another playground.

I object to these people, some of whom were witnesses at the first trial. We are not trying this case again.

THE COURT: Well, I don't want to try it again, of course. I mean at least not in this PCRA. That is not the purpose of a PCRA.

MR. WILLIAMS: Your Honor, there is another claim that Mr. Grant is ignoring. The other claim is ineffective assistance of trial Counsel. There's two prongs to that claim.

THE COURT: Well, I know that, but you had him on the stand.

MR. WILLIAMS: Had who on the stand?

THE COURT: Anthony Jackson.

MR. WILLIAMS: Yes, to establish prong number one, that is that his performance was objectively deficient.

THE COURT: But where. You had to be specific.

MR. WILLIAMS: The second prong is the prejudice prong. That is what didn't Mr. Jackson do and what effect did it have on the

Page 234.

Jury.

MR. GRANT: Wrong, that is not the prong. The prong is if you didn't do something did you have a strategic or tactical reason. And I didn't ask him because this wasn't even in contemplation in your mind. Counselor, you are making it up as you go, and you know it.

THE COURT: Wait awhile. I thought they were going to bring Anthony Jackson back anyway.

MR. GRANT: I doubt that, Judge.

THE COURT: Well.

MR. WILLIAMS: Your Honor, we inquired into the whole aspect of the confession. Mr. Jackson's testimony was that he did not respond to or refute the confession, which he indisputably could have done at the time of trial. And that he had no tactical reason for doing that.

THE COURT: Did you ask him why he didn't bring in certain witnesses?

MR. WILLIAMS: We asked why didn't you refute the confession.

THE COURT: Wait. That is a general statement. Did you ask him why he didn't bring

Page 235.

in certain witnesses? You are talking about the emergency room in a hospital: There are a lot of people there.

MR. WILLIAMS: Exactly.

THE COURT: And I am sure there was a lot of commotion there, and I am sure there was a lot of noise there.

MR. WILLIAMS: Right.

THE COURT: And I am sure there was a lot of people that heard things that other people didn't hear things.

MR. WILLIAMS: But what is remarkable is that no one heard the confession until two months later they recalled it. That's what is remarkable. Or three months later.

THE COURT: What do you mean recall it? There was a guard there that recalled it right away. She was not a part --

MR. WILLIAMS: Are you are talking about Priscilla Durham?

THE COURT: She was not part of the police.

MR. WILLIAMS: The only publicized report of her hearing the confession is in February, two days before Mr. Wakshul recalls

Page 236.

the confession.

THE COURT: No, if you read the notes you would have found out she testified that she gave a copy of that to her supervisor.

MR. WILLIAMS: And I have never seen that exhibit.

THE COURT: Well, I'm sorry you didn't see it but you weren't here for the trial.

MR. WILLIAMS: I have looked at the exhibits, there is no statement handwritten by Miss Durham.

THE COURT: This is 13 years, 14 years later. I don't know where the statement is either.

MR. WILLIAMS: There is no statement.

THE COURT: Well, that is your statement.

MR. WILLIAMS: There is no statement.

THE COURT: That is your statement.

MR. GRANT: They didn't ask Mr. Jackson if he had a reason for not doing it.

THE COURT: That's what I am trying to say.

MR. GRANT: But I asked Mr. Jackson can you see any strategic or tactical reason why

Page 237.

he wouldn't bring in Mr. Wakshul to refute the confession and he said certainly. And the portion that he read into the record, or I read with him was, he said he had a bad copy, was the very reason. And that was the 2-11-82 statement as to what Mr. Wakshul said as to why he wouldn't touch Mr. Jamal any further, why he went out in the hallway. That was Counsel's statement. Counsel stated that, if you believe him, he had a strategic or tactical reason. And you can't get over that hump by bringing in more evidence: You've got to deal with that. And they didn't want to deal with it, they didn't deal with it.

THE COURT: Well, you have to bring Anthony Jackson back if you want to.

MR. WILLIAMS: The redirect examination --

THE COURT: Counselor, for the time being, they are not going to be called. If you want to get around that, you call Mr. Jackson back and let's find out why he didn't call them, okay. Anything else?

MR. GRANT: Yes, Your Honor. There is

Page 238.

a Mr. Kracoff, one of their affiants, who is in the room.

THE COURT: Who?

MR. GRANT: Mr. Kracoff from Pittsburgh, he was here this morning. If he is going to be a witness I would ask that he be --

THE COURT: You are talking --

MR. GRANT: -- sequestered. But if he is not going to be I would like them to state so on the record.

THE COURT: Where is he on the list?

MR. GRANT: He is on page 1, Your Honor. He was right after the other lawyer they wanted to make a witness.

THE COURT: What is his name?

MR. GRANT: He is the third one down, Mr. Jerry Kracoff.

MR. WEINGLASS: Your Honor will recall a half hour ago I asked for Mr. Kracoff to be called as a witness and the Court quashed him.

THE COURT: Yes, I said he was out.

MR. WEINGLASS: He is a quashed person.

MR. GRANT: Very well. Okay. Thank you, Your Honor.

Page 239.

MR. WEINGLASS: He has joined the legions of our quashed

witnesses.

THE COURT: But who else? Just those three, then, for tomorrow?

Anybody else on here that you could think of?

MR. WEINGLASS: Are we calling all the police officers?

THE COURT: No, I said no. We are not calling those police officers. That's what I said.

MR. WEINGLASS: The way this happens is Mr. Williams' questions, he is invited by the Court to call the police officers, we subpoena them, they come here and the Court quashes the subpoena.

THE COURT: Regardless of what I suggest to anybody, you have to do it properly. You have to ask Jackson why he didn't call these people. Let him tell us why, okay.

MR. WEINGLASS: Anthony Jackson, I will try to respond to that invitation as well. But --

THE COURT: Okay.

MR. WEINGLASS: -- each time we do so

Page 240.

when the witness appears we are told we can't use them.

THE COURT: Counselor, I am not going to tell you again: You have to first do it through Mr. Jackson. He has got to tell us why he didn't call them.

MR. GRANT: He already told us, Judge, first of all.

THE COURT: If he did he did. Get the notes, order the notes and if it's in there.

MR. WEINGLASS: That's it. I invite them to order the notes. It is the same as when they had them read back this afternoon.

THE COURT: Okay.

MR. WEINGLASS: What Counsel says is not in the notes.

THE COURT: Okay. Besides that you have a lot of other names here. Are you going to call any of those other people?

MR. WEINGLASS: We would like to, in light of the testimony that was given, in light of the cross-examination of Mr. Fassnacht this morning, where Counsel asked Mr. Fassnacht a hypothetical which included struggles inside the Jefferson Hospital, we would like to call,

Page 241.

recall witness Carol Young, who is a registered nurse who was in the emergency area, who will testify concisely to the fact that there was no struggle.

MR. GRANT: Your Honor --

MR. WEINGLASS: That Mr. Jamal was laying on the floor and there was no struggle. And so now that they have brought it up in the cross-examination of Mr. Fassnacht, we would like to renew our application that Carol Young come in here to testify as to what happened inside the Thomas Jefferson emergency room.

MR. GRANT: That's nice. That same old thing. Judge, in the trial, and I gave a hypothetical and on each point I am referring to places in the notes of testimony of witnesses who testified before that Jury. I don't give hypotheticals based on what I want to hear like Mr. Weinglass. I give it based on trial testimony, which is what the law requires. And if he wishes me to cite him to page number and volume I will do it right here in the record.

But absent that, you can't bring in some person 13 years later and say yeah, I didn't see this or I did see that. That's not

Page 242.

the basis of a hypothetical and I object.

And this morning they were told you have to supply some law, bring me a case. Now, they don't want to do that. They haven't brought the case this afternoon, by the way, but they still didn't tell me her name because they always want to go around the back door to see if it is open or not. They always want to do that.

THE COURT: Well, maybe they ought to spend the rest of their time looking up cases, I don't know. But if you have nobody else, you just want to call those three, it's all right with me.

MR. GRANT: I am always watching the back door, Mr. Weinglass.

THE COURT: Then for tomorrow all we have is those three.

MR. GRANT: I could make some witnesses available tomorrow to them.

THE COURT: Which ones?

MR. GRANT: Dr. Hoyer I believe is one of the persons that they are claiming is incompetent and he affected the outcome of the trial. I will object. Would you like me to?

(Discussion was held off the record
at this time among defense Counsel.)

Page 243.

MR. WEINGLASS: We would prefer Mr. McGill.

MR. GRANT: Well, if we could establish those foundation area bases that the Court ordered you to produce with Mr. Hightower, Miss Kordansky and those other people, then we could deal with the issue of whether you will even get him legally.

THE COURT: Who is this Dr. John Hayes, who was he?

MR. GRANT: He is a doctor that says Dr. Hoyer is incompetent.

THE COURT: Oh.

MR. GRANT: Why don't we bring him in here. A New York doctor.

MR. WEINGLASS: Well, Your Honor, Your Honor, Dr. Hayes has filed an exhibit which is an affidavit attached to the Petition in which he sets forth what he would testify about. None of it has to do with what Counsel just represented. If the other side doesn't read our Petition, and if the Court doesn't read our Petition, but misrepresentations are made here, and rulings are made on the basis of

Page 244.

misrepresentations, it's very difficult to proceed.

Dr. Hayes is a practicing doctor, a pathologist. The assistant coroner in New York. He is available Friday morning. And he will be here Friday morning.

MR. GRANT: And he did say in his affidavit, page 2, line 6, or paragraph 6: Furthermore, I was asked to and did examine the Medical Examiner's findings respecting the cause of death of Officer Daniel Faulkner. I strongly disagreed with the medical --

MR. WEINGLASS: Pardon --

MR. GRANT: -- conclusion that the gunshot wound to Officer Faulkner's back was a contributing cause of death. Given the fact that the protocol recites that the pathway of the bullets which struck Officer Faulkner's back went through soft tissue in the upper back and neck and exits in the left side of the neck without impacting or injuring regional blood vessels or nerves and causing no significant injury, it was inappropriate to list that as a contributing cause of death. I read him.

MR. WEINGLASS: Right, but that's --

Page 245.

THE COURT: What does the death certificate say he died of?

MR. GRANT: Gunshot wound, manner of death was homicide.

THE COURT: Okay.

MR. WEINGLASS: Counsel is misreading that.

THE COURT: Yes.

MR. WEINGLASS: The cause of death listed in the Medical Examiner's report --

THE COURT: Not the Medical Examiner.

MR. WEINGLASS: -- is gunshot wound to the head and to the back. And that's where, that is past --

THE COURT: You mean he didn't die from something else?

MR. WEINGLASS: I'm positive. He did not die from a gunshot wound to the back. He would have to be in the middle of the Sahara.

THE COURT: That was only one of the injuries that he suffered.

MR. WEINGLASS: Right, but no responsible doctor would have put it that way.

THE COURT: Well, what is the difference how you put it? The man is dead and

Page 246.

he died as a result of gunshot wounds.

MR. WEINGLASS: No, in the Medical Examiner's report, as I understand it, it has to be put accurately. And this was inaccurate. And it was inaccurate for a reason. But Counsel read only part, and the last part. It starts with furthermore --

THE COURT: Okay, you said you will have him here Friday morning, okay.

MR. WEINGLASS: We will have him here Friday to testify about matters other than what's been read.

THE COURT: Okay. All right. You are going to have him Friday. Anybody else for tomorrow? Just those three?

MR. WEINGLASS: And Mr. McGill.

THE COURT: No, he is not available. I am sure he is going to be a long time if he gets on.

MR. WEINGLASS: What does the Court mean he is not available?

THE COURT: I am talking about at the present time. You were supposed to do the foundation before you were going to put him on. Now, you haven't laid the foundation yet.

Page 247.

MR. WEINGLASS: We have laid the foundation.

THE COURT: You are premature with McGill. Now, is there anybody else that you want tomorrow?

MR. WEINGLASS: Commissioner of jurors.

THE COURT: Who?

MR. WEINGLASS: Michael McAllister.

THE COURT: I struck him off this morning. He wasn't even the Jury Commissioner at the time this occurred.

MR. WEINGLASS: It is a duces tecum subpoena. It is bringing the records of his office.

THE COURT: What records?

MR. WEINGLASS: The records indicating the way the jurors were selected.

THE COURT: Juries, they were selected from a jury panel. The voting list that we have.

MR. WEINGLASS: It is a question of whether the panel was Constitutionally selected.

THE COURT: Oh, we are not getting into that now. Please. Please.

Page 248.

MR. WEINGLASS: That's in our Petition, Your Honor. If you read it.

THE COURT: Yes, I know.

MR. WEINGLASS: It's there.

MR. GRANT: Oh, Mr. McAllister, I think why they are bringing Commissioner McAllister in is the case of Commonwealth versus Rosa. And that was a case where the Defender's Association of Philadelphia litigated a claim that jury selection which was done based on voter registration was not fairly done and there were not randomly selected panels at certain times of the year. For instance, when they would take certain people from certain districts, some are smaller than others, and at certain times of the year there is an inequitable distribution of people from different segments. Judge Arnold New decided that issue. It's a case of the Court of Common Pleas level. And he decided that even if randomness, or what Counsel calls unrandomness, if it affects jury decisions, the jurors are picked fairly throughout those available even though at times it fluctuates based on how many people are in a certain section. And therefore

Page 249.

he found no improper jury pools impaneled. But they are bringing Mr. McAllister in as a witness in that. And after hearing his testimony and the reputation of the Defender's Association, the Judge made his finding. It has been written and recorded and they know it. And they know the claim they are making has already been decided here in this jurisdiction and they lost but they are going to try to revisit it by bringing in the Jury Commissioner and putting him up there and making him go through all this, when the precedent has been set and it's already been litigated and the rule of law already exists.

THE COURT: Can you give me a Xerox copy of that case?

MR. GRANT: I think I can: I happen to be the one that tried the case.

MS. WOLKENSTEIN: In point of fact, Commissioner McAllister could testify to the fact that the jury pool system was changed during or after the Rosa case. In fact, he changed the entire way the jurors were selected in this district. Whether it exactly came from the Rosa case or other determinations, in point

Page 250.

of fact the way that the jury panels are structured now and drawn from is totally different from the way it was at the time Mr. Jamal was tried.

It is our contention that the way those pools were selected is in violation of Constitutional law. It is a violation.

THE COURT: Will you give me cases on that?

MS. WOLKENSTEIN: The cases are in our Petition, they are cited in our Petition.

MR. GRANT: The rules change.

THE COURT: Xerox them for me, please.

MR. GRANT: Jury selection changed because the Commonwealth asked Mr. McAllister to include drivers' licenses, and put them in the pool if you have a license. In addition to voter registration. Some people don't want to vote, they don't care about that. To include drivers' identification cards. Meaning some people don't drive but they still, the State gives them ID.

We suggested a number of things to expand the jury pool to bring more people in. And it is not because anybody sued, it is

Page 251.

because the Commonwealth requested it, Miss Wolkenstein.

And I will bring Your Honor a copy of that case. And by the way, that was 1993, if I am not mistaken. So I don't know --

MS. WOLKENSTEIN: The testimony of that hearing, there was a stipulation between Commissioner McAllister and the people bringing the lawsuit that said that the jury pool had been selected in the same way for the prior 20 years. Which covers the period of time that Mr. Jamal was tried, and the period of time that that jury pool was selected.

MR. GRANT: And found to be Constitutional.

THE COURT: All right.

MR. WEINGLASS: May we have a ruling on Commissioner McAllister?

THE COURT: Yes, I said it's not relevant to the issue. It's already been resolved. He is going to Xerox me a case.

MR. WEINGLASS: The Court is going to wait until it receives the case?

THE COURT: He says he is going to give it to me. I am assuming he is going to

Page 252.

give it to me.

MR. WEINGLASS: Is the Court ruling on whether or not the Commissioner could testify?

THE COURT: Yes, based on his assertions.

MR. GRANT: In order for that to have happened, Mr. Jackson would have to raise that claim to preserve it for them to tag along now and get it. And he didn't raise it. He couldn't predict future events, nor could he predict that somebody would question it and it would be found to be okay. Even the greatest lawyers don't have a crystal ball to look at. They don't have a basis to subpoena him.

THE COURT: I know that.

MR. GRANT: And that claim's been waived.

MR. WEINGLASS: Has the Court ruled?

THE COURT: Anybody else?

MR. WEINGLASS: I am unclear on the Commissioner McAllister.

THE COURT: I said for the time being he is out. Who else do you have for tomorrow, if anybody?

MR. GRANT: There are only a few

Page 253.

witnesses left on this list, Judge. We should get through with this hearing by Tuesday.

(Pause.)

THE COURT: Is that it?

MR. WEINGLASS: That's it, Judge.

THE COURT: All right, I guess we will have to adjourn until tomorrow morning.

THE COURT OFFICER: This Court stands adjourned until 9:30 tomorrow morning.

- - - - -

(The hearing was adjourned for the day at this time.)

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Page 254.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

3. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358

- - - - -

PCRA Hearing

- - - - -

Thursday, August 3, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- CHARLES GRANT, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
- ARLENE FISK, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Dessie Hightower	16	28	85	103
Det. William Thomas, Ret.	110	194	196	--
Deborah Kordansky	201	250	251,255	253

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
16	Investigation record (Hightower)	19
17	Investigation record (Howard)	160
18	Investigation record (Nelms)	162
19	Investigation record (Officer Schu)	174
20	Investigation record (Kordansky)	206
21	Investigation record (Kordansky)	218

COMMONWEALTH EVIDENCE

11	Investigation record (Hightower)	53
12	Polygraph Exam Pre-test background	53
13	Polygraph Examination Report	53
14	Polygraph questions	53
15	Polygraph Examination Agreement	53

Page 3.

- - - - - -

(At 11:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - - -

THE COURT: Good morning, everyone.

MR. WEINGLASS: May it please the Court: Today is August 3rd, which means that there's two weeks, or 14 days, to August 17th, which is the date of execution under the warrant signed by the Governor. We have made earlier motions for a stay which were deferred. At this time on behalf of Mr. Jamal I renew the motion for a stay of the date of execution.

MR. GRANT: Your Honor, based on the witness list submitted by the defense, this proceeding is nearly complete. I don't see why on the eve of completion Your Honor has to make a ruling that's already been held in abeyance, and that taking it under advisement has been affirmed by the Supreme Court and they ordered that had these proceedings take place. And I assume when they ordered it to take place they didn't mean to take place up until the penultimate day of conclusion, but to take place

Page 4.

until conclusion, and thereafter they would reconsider, or Your Honor would reconsider.

And I ask you to abide by the order from the Supreme Court, and Your Honor's own dictates, and complete this evidence. I would suspect that at the latest the defense will be resting on Monday morning, and probably as soon as tomorrow. That being the case, I don't see any reason to entertain this motion at this time.

THE COURT: All right, it is still held in abeyance.

MR. WEINGLASS: I'm sorry, I didn't hear it.

THE COURT: I am still holding it in abeyance, okay.

MR. WEINGLASS: I'm sorry, Your Honor. I can only hear the air conditioner.

THE COURT: I don't know, do you want to go to the seventh floor? You will be able to hear better there.

MR. WEINGLASS: Am I being invited to the seventh floor? My Co-counsel was there yesterday.

THE COURT: They have courtrooms up

Page 5.

there.

MR. WEINGLASS: Oh, courtrooms.

THE COURT: Forget it, Mr. Weinglass. Forget it.

MR. WEINGLASS: All right.

THE COURT: My previous order still holds.

MR. WEINGLASS: But Your Honor didn't make an order, you deferred the order.

THE COURT: Well, that's what I am still deferring.

MR. WEINGLASS: But, Your Honor, there is 14 days.

THE COURT: I know. I can count.

MR. WEINGLASS: Right.

THE COURT: I went to school too, you know. I know what

August 3rd is, I know what August 17th is. I have a calendar.

MR. WEINGLASS: But it's impossible for this proceeding to be completed and as the Court --

THE COURT: I don't know that. I don't know that.

MR. WEINGLASS: If the Court will please bear with me. And the Court has

Page 6.

indicated on the record that you anticipate, no matter what your decision, that this matter will have to be reviewed, or will be reviewed.

THE COURT: That's right.

MR. WEINGLASS: By the Supreme Court of Pennsylvania.

THE COURT: Absolutely.

MR. WEINGLASS: And as a jurist you know full well that that review will not be completed and cannot be completed.

THE COURT: I understand.

MR. WEINGLASS: In 14 days.

THE COURT: Counselor, I understand all of that, okay. And I told you don't worry about it. I know when the 17th is coming. And if I don't know, I'm sure the Supreme Court knows.

MR. WEINGLASS: But, Your Honor, in order for --

THE COURT: Counselor, please. I have heard your argument. Please. Let's proceed with your witnesses that you have for today.

MR. WEINGLASS: I want to inform the Court of one other thing in relation to the argument.

Page 7.

THE COURT: Yes.

MR. WEINGLASS: We are this afternoon on behalf of Mr. Jamal filing a petition in the Supreme Court of Pennsylvania seeking a stay.

THE COURT: Counselor, I can't stop you from doing anything you want to do. If the Supreme Court wants to entertain it, that's up to them.

MR. WEINGLASS: Right. I want to inform --

THE COURT: I can't dictate to the Supreme Court. You do whatever you think you have to do, okay.

MR. WEINGLASS: I'm asking you not to dictate, but to assist the Supreme Court since I have to --

THE COURT: They don't need my assistance, believe me they don't. They know how to count too. Better than I do. They don't need my assistance.

MR. WEINGLASS: In order for us to apply to the Supreme Court of Pennsylvania, I have to make representations to that Court as to whether or not this Court has denied the stay. So I ask the Court to indicate on the record

Page 8.

what it's --

THE COURT: You tell them exactly what I said. I told you I was not denying the stay.

MR. WEINGLASS: And you are not granting the stay.

THE COURT: And I am not granting it. I am not denying it, I am not granting it. I am taking it under advisement, okay.

MR. WEINGLASS: Okay.

THE COURT: Let's get your next witness.

MR. WEINGLASS: I would. There are several matters that I have to put on the record and my witness is here.

Yesterday the defense received from the Court Administration three volumes of transcripts from the pre-trial proceedings in 1982. We have not had an opportunity to fully review them. We note there are matters of substance in them which we did not previously know. One of the items is that Mr. McGill on April 1st moved for an order to remove the addresses, not the names, the addresses and telephone numbers of all of the witnesses that the Commonwealth was interviewing. We did not

Page 9.

know until yesterday afternoon at a quick glance at that volume that it was done in that manner. So as we're reviewing these transcripts of 1982, proceeding at the same time in this Court, we are now advised that another volume, of another hearing date, March 18th, 1982, will be provided to us in the middle of next week.

And so given the fact that we are proceeding in a PCRA without having the record of the trial below available, I ask this Court to continue these proceedings so that we may review the pre-trial record of the earlier trial and then after review of that record we will file an amended petition reciting facts that are contained in that record. We cannot do that as of now because we don't have the volumes. So I ask the Court to grant the continuance until we get the full set, which I'm told we'll have in the middle of next week, and then we will file an amended petition.

MR. GRANT: Your Honor, to call these pages volumes is I think something like hyperbole. We know what those volumes are because you gave them those volumes about three days ago, and they consist of volumes of about

Page 10.

four or five pages each. There is no secret that they were without the names and addresses of the witnesses, because they put it in their affidavit which they signed back in May of 1995. They are now getting copies of what they already read. It doesn't take a lot of research but because he says the names are missing, now we find out it was by Court order, and now we know it was not a discretionary, arbitrary and capricious act by the D.A., but a considered opinion by the Court who exercised discretion.

The only thing we are missing is a volume of 3-18-82. And you read to them from the transcript docket exactly what transpired on that date. It is not substantive. The Quarter Session File is the official record. It has been moved into evidence and they know precisely what it entails. I would ask Your Honor to proceed.

MR. WEINGLASS: Your Honor, please, I don't think the Court read the entire docket of March 18th.

THE COURT: Well, you could look at it. All it says is that Mr. McGill filed certain papers.

Page 11.

MR. WEINGLASS: There were a number of motions referred to.

THE COURT: I know, but he filed them. He just filed them and they made a record that he filed them. There was no hearing on it until later on.

MR. WEINGLASS: Well, Your Honor wasn't the Judge. And I wasn't there.

THE COURT: I know that.

MR. WEINGLASS: And this is no way to litigate: On guesswork.

THE COURT: It is not guesswork.

MR. WEINGLASS: We should have the document.

THE COURT: How could I give you a document that doesn't exist?

MR. WEINGLASS: Exactly.

THE COURT: Well, because the Court Officer here only put in the fact that somebody filed a paper. It's like when you file a complaint, they say complaint filed.

MR. WEINGLASS: How could I protect Mr. Jamal's rights when I don't have the record?

THE COURT: You have the records, Counsel.

Page 12.

MR. WEINGLASS: I do not have March 18th and I just received the four others.

MR. GRANT: May we proceed, Your Honor?

THE COURT: Yes, let's proceed.

MR. WEINGLASS: I would want to point out the Court yesterday asked us to file an amended petition.

THE COURT: Counselor.

MR. WEINGLASS: And we will be --

THE COURT: I don't have to tell you what to do. You do

whatever you think you have a right to do. Do it. Don't ask for my permission. Do whatever you want. If you think --

MR. WEINGLASS: We will be filing an amended petition but because we are involved in these proceedings, we will not be able --

THE COURT: Well, you had 10 lawyers here when you started out. Give it to one of those others. You have three or four lawyers here. Give it to one of the other lawyers.

MR. WEINGLASS: The Court is mis characterizing what's visible in the Courtroom.

Page 13.

THE COURT: Well, I can't help it if one of your attorneys is missing.

MR. WEINGLASS: There are two lawyers in the Courtroom.

THE COURT: Well, two of them are missing.

MR. WEINGLASS: Pardon?

THE COURT: Two are missing. I don't know where they are.

MR. WEINGLASS: All right, I will tell you where they are. One is out interviewing a witness and the other one is working on research which the Court ordered yesterday afternoon, plus an amended petition which the Court invited yesterday morning. Plus a stay in the Pennsylvania Supreme Court, which we are doing while we are right here in Court with the trial lawyers.

THE COURT: Fine, but in the meantime, Counsel, in the meantime you said you were going to have three witnesses today: Kordansky, Hightower and Thomas. Let's proceed with that. Let the other lawyers do what they have to do. You do what you have to do.

MR. WEINGLASS: Well, Your Honor, I'm

Page 14.

asking for time so that we can perfect this proceeding.

THE COURT: No time. You are here now, let's proceed with these witnesses.

MR. WEINGLASS: We are not --

THE COURT: You could have plenty of time maybe later on. But right now we are all here, we're all gathered here. We didn't come here just for nothing. We came here because you told me that you were going to have three witnesses today. Let's start with those three witnesses.

MR. WEINGLASS: And the Court is denying a continuance?

THE COURT: Right, absolutely.

MR. WEINGLASS: Okay.

THE COURT: I don't know how many times I have to tell you that.

MR. WEINGLASS: One other thing I wanted to make note of. Yesterday afternoon in the midst of this hearing photographs were taken of physical evidence with the assistance of representatives of the District Attorney's Office. Those photographs will be developed and they are going to be examined by an expert

Page 15.

probably on Monday of next week. And I am just putting the Court on notice that while we are here in Court proceeding, we are also filing amended petitions, we are also preparing petitions to the Supreme Court, we are photographing evidence. We are trying to get the photographs to experts. We do not have an opportunity to present our case in full under these circumstances.

THE COURT: Well, Kordansky, Hightower and Thomas. Let's get them on. Let's go.

MR. WEINGLASS: The Petitioner calls Dessie Hightower.

THE COURT: Okay.

MR. WEINGLASS: While we are waiting for Mr. Hightower, we could use the few minutes. There is one matter, we provided Counsel and the Court with an indication that we would like to call witness Ward Churchill. And Mr. Churchill, we represent, is an expert in the area of domestic surveillance by law enforcement, particularly the working relationship between the FBI and Philadelphia Police Department. We just wanted to indicate to the Court we will be calling Mr. Churchill.

Page 16.

MR. GRANT: We have a response, Your Honor, but we will reserve it until they actually call this so-called witness.

THE COURT: Okay.

MR. GRANT: Thank you.

- - - - -

Dessie Hightower, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Mr. Hightower.

A. Good morning, gentlemen.

Q. Are you appearing here today pursuant to subpoena?

A. Yes, I am.

MR. WEINGLASS: Could the microphone...

BY MR. WEINGLASS:

Q. Mr. Hightower, what is your present occupation and employment?

A. Caterer.

Q. Are you a caterer here in the City of Philadelphia?

Page 17.

A. Yes, I am.

Q. Drawing your attention back to the end of the month of June 1982: Do you recall appearing as a witness in the trial of Commonwealth versus Jamal?

A. Yes, I do.

Q. Were you called by the District Attorney's Office or were you called by the defense in that case?

A. Defense.

Q. And you did take the stand, did you not, and testify?

A. Yes, I did.

Q. Do you recall who it was who asked you the questions initially?

A. Yes, I do.

Q. And who questioned you in the Courtroom initially?

A. Tony Jackson.

Q. Do you need a glass of water?

A. No, I'm fine.

Q. Did you meet with Mr. Jackson before you took the stand to testify?

A. No, I did not.

Q. Now, prior to giving testimony in Court, were you interviewed by representatives of the police

Page 18.

department?

A. Yes.

Q. Do you recall on how many occasions?

A. Two or three times.

Q. Were you also interviewed by an investigator for the defense?

A. Yes, I was.

Q. And was his name Robert Greer?

A. Yes, it was.

Q. And to your knowledge, did he tape record you?

A. I believe so but I can't actually remember. I believe so, yeah.

Q. Now directing your attention to your first interview with the police: Was that on the night of the shooting, December 9th.

A. That morning, yes.

Q. That morning?

A. It was the a.m.

Q. And do you recall where that occurred?

A. Ahh, I don't know what's... I'm, ahh, I'm not quite sure.

Q. That night when you were interviewed, or early morning when you were interviewed by the police, did you indicate to them that you saw someone run away after the shooting?

Page 19.

Dessie Hightower - Direct

A. Ahh, let me make this clear. When I was interviewed by I believe it was a detective that evening, that morning, I'm not quite sure, I told him that I did see someone fleeing, ahh, that area before any officers arrived on the scene. I seen someone fleeing towards I believe 12th and Locust area.

Q. And were you then interviewed by detectives a second time?

A. Yes, I was.

Q. And was that approximately one week later?

A. Yeah, approximately, yeah, one week from the incident itself, yes.

MR. WEINGLASS: May I have this document marked next in order for identification.

THE COURT OFFICER: D-16.

(Investigative report was marked
Defense Exhibit D-l6 for identification.)

THE COURT OFFICER: D-l6 (handing).

MR. WEINGLASS: Could the witness be shown what's been marked --

THE COURT: Just a minute, he is looking at it.

MR. WEINGLASS: Oh, I'm sorry.

(Pause.)

Page 20.

Dessie Hightower - Direct

MR. GRANT: Thank you, Your Honor. Thank you.

THE COURT OFFICER: D-16, sir. D-16,sir (handing).

BY MR. WEINGLASS:

Q. Now, Mr. Hightower, that second interview by the detectives... Do you know what time of day that started? Let me strike that.

Do you know what day it was that you were interviewed a second time?

A. 12-15.

Q. Are you referring to the document that's been marked?

A. Yes, I am.

Q. D-16?

A. Yes.

Q. Does that help your recollection on what day it was?

A. Yes, now it does, yes.

Q. So it was December 15th, about a week later?

A. Yes, sir.

Q. And does that, referring you to the front page of that document, does it indicate what time that interview began?

A. Yes. 4:00 p.m.

Page 21.

Dessie Hightower - Direct

Q. 4:00 p.m?

A. Yes.

Q. Now I refer you to the last page of D-16. Does that indicate what time the interview ended?

A. This is 12-15-81, right?

Q. Yes.

A. Okay, 9:40 p.m.

Q. 9:40 p.m?

A. 9:40 p.m.

Q. Does that mean that you were interviewed on that occasion for five hours and 40 minutes?

MR. GRANT: If the Court pleases, Your Honor, what purports to be D-16, a statement, is actually a composite of at least two statements, for Counsel's benefit. So there were two different interviews at least.

MR. WEINGLASS: Right, thank you.

BY MR. WEINGLASS:

Q. Let me ask you this. Do you remember how long you were interviewed on December 15th? Do you remember that now?

A. Yes, I do.

Q. Approximately how long?

A. 5 hours. 5 hours and 40 minutes.

Q. Now, on that occasion were you asked again

Page 22.

Dessie Hightower - Direct

what you saw on the night in question?

A. Yes, I was.

Q. Did you indicate on that occasion that you saw someone flee the scene after the shooting?

A. Directly after the shooting?

Q. Yes.

A. Yes, I did.

Q. So you told the detectives on the night of the occurrence and a week later essentially the same thing?

A. It was exact same thing, sir.

Q. Did you indicate on those occasions whether you saw this person flee before or after the police arrived?

A. Is states in the interview record here that I stated to the officers that I seen someone flee before the officers came on the scene.

Q. Do you know where this second interview took place?

A. I was at a precinct, I don't know exactly where, though.

Q. It wasn't at the Roundhouse where --

A. I don't believe so, no.

Q. Were you interviewed the first time at the Roundhouse?

Page 23.

Dessie Hightower - Direct

A. It's been almost 14 years ago, I don't know. I'm not sure. But I do believe so.

Q. Did you describe the person who you claimed you saw fleeing?

A. To the best of my ability I described the male. It was a male approximately six-foot, what I seen -- again this is 14 years ago -- with a red-and-black sweater on, fleeing towards 12th and Locust. Past a hotel that was there then, I don't know if it's there now or not.

Q. Now, what happened -- strike that. Did anything happen in that second interview after you indicated to the detective that you saw someone flee?

A. I don't understand you.

Q. All right. Did the detective make any suggestion to you after you told him you saw someone flee in that second interview?

A. I can't remember him making a suggestion to me.

Q. Did there come a point in time when you were asked to take any kind of a test?

A. During the second interview?

Q. Yes.

A. I took a polygraph test. That's the only

Page 24.

Dessie Hightower - Direct

test. It wasn't a written test, it was a polygraph test. Is that what you are saying?

Q. Yes. Is that what it was?

A. That's what I took.

Q. Now, would you describe for the Court what you mean when you say a polygraph test?

A. Well, it is a machine, I take it, that gauges whether or not you're telling the truth or you're not telling the truth.

Q. Did you see the machine?

A. It was applied to me, yes, I did.

Q. And did you see what the machine was doing?

A. Umm, I seen the needle on the paper, I seen it moving, so...

Q. Was there anything attached to your body at that time?

A. Whatever the apparatus is that they put on you when the machine is working, that was applied to me. I haven't had one done since then so I can't, I don't know was it a wire or some type of apparatus was applied to my arms.

Q. To your arms?

A. Yes, sir, arm area (indicating).

Q. And were you asked questions?

A. Yes.

Page 25.

Dessie Hightower - Direct

Q. Do you remember any of the questions that you were asked while the wires were attached to you and you saw the machine?

A. Not in detail. You mean --

Q. Well, were you asked if you saw someone run away?

A. I was asked several questions. Ahh... ahh, I was asked that question. I was asked whether or not Mr. Jamal was the actual shooter. I was asked was this someone fleeing the scene. And I was asked several other questions but I said I can't remember all of them right now.

Q. But there were several questions?

A. Yes, there were.

Q. Now, later on were you interviewed by, you indicated, Mr. Greer, the investigator?

A. Yeah, Robert Greer, I believe his name was.

Q. And you said you were -- by the way, does May 3rd as the date of this interview ring any bells for you?

A. Ahh, I believe that was several days before I had to -- before I came to Court, so it doesn't ring a bell. But it was in the springtime.

Q. Now, had you previously told anyone in the District Attorney's Office that you didn't want to

Page 26.

Dessie Hightower - Direct

talk to Mr. Jackson?

A. I don't remember telling anybody at the D.A.'s Office that. I had a problem with Mr. Jackson. I believe he was to meet with me and he never showed up. So I got a little ticked off about that and I didn't want to meet with him.

Q. You didn't want to meet with him?

A. No, that's how I came to be interviewed by investigator Greer.

Q. Okay. You told Mr. Greer that?

A. Yes, I did.

Q. But you were willing to meet with Mr. Greer?

A. Yes, and I did.

Q. And after that you never met with Mr. Jackson again?

A. No, I haven't. No, I didn't, rather.

Q. And you came in here to testify without having met with Mr. Jackson?

A. Yes.

Q. He never tried to get in touch with you to your knowledge?

A. No.

MR. GRANT: Objection, move to strike that. It calls for speculation. He doesn't know.

Page 27.

Dessie Hightower - Direct

MR. WEINGLASS: Well, he knows he never got in touch with somebody.

MR. GRANT: Well, trying to get in touch with somebody is not anything he could testify to.

THE COURT: Are you withdrawing that question?

MR. WEINGLASS: Yes.

BY MR. WEINGLASS:

Q. Did he ever get in touch with you?

A. No.

Q. Incidentally, when you took what you described as the polygraph test, did the detectives indicate to you the results of that test?

A. Ahh, I believe they did. I had passed the test.

MR. WEINGLASS: Thank you, Mr. Hightower.

MR. GRANT: Your Honor, just so the record is clear: The reason Mr. Hightower is on the stand, as I understand it from the supporting papers of their Petition, is because there is an allegation that the Commonwealth suppressed evidence that was discoverable under Rule 305 of the Pennsylvania Rules of Criminal

Page 28.

Dessie Hightower - Cross

Procedure. That being that the defense is entitled to polygraph information. Unless the defendant is the person polygraphed, under Rule 305 there is no such right. And we have turned over all three documents arising from it. Nevertheless, because they wish to complete these proceedings, we are not waiving our right to say that this is total surplusage. And under those circumstances, I will be cross-examining Mr. Hightower.

THE COURT: Okay.

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CROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. Good morning, sir.

A. Good morning.

Q. Now, Mr. Hightower, you said when Mr. Weinglass asked you just a moment ago whether the detectives told you the results of the test, you said --

A. No, I said I passed, me. I don't know what that meant.

Q. You said, I believe they did, I passed.

A. That's what I said, yes.

Page 29.

Dessie Hightower - Cross

Q. Now, you believe they told you the results?

A. Well, again, this is 14 years ago. I'm pretty sure they did.

Q. And you just confirmed that you passed, you said it again pursuant to my question, right?

A. Yes.

Q. And you signed an affidavit and swore to it --

A. It was just the same. Would you show that to me, please?

Q. No, it is a different thing.

A. Thank you.

Q. An affidavit is a document --

A. Could you show it to me, please?

MR. GRANT: Yes, sir. May I approach, Your Honor?

THE COURT: Yes, sure.

BY MR. GRANT:

Q. (Handing) Referring to the Petition for Post-Conviction Relief, exhibit number 5, affidavit of Dessie Hightower. This page and that last page.

Start at page 4, paragraph number 4, sir, would you please read so that this gentleman can type down what it says?

A. Read from?

Q. Paragraph 4. Back to where you started at the

Page 30.

bottom of the page. And read into the microphone so I could hear you.

A. Okay. During one of the police interviews after I told them that I saw someone, black male about five-eleven to six-foot with long hair, possibly dreadlocks, run from the scene and -- should I complete this page?

Q. Yes.

A. Past the hotel on Locust after the shooting, they asked if I would, then they asked if I would take a polygraph test of the observation. I agreed. A test was administered and I was told that I passed. Is that what you want me --

Q. Yes, sir. And you signed that? Could I have that, please?

THE WITNESS: (Handing).

THE COURT OFFICER: (Handing).

THE WITNESS: That is my statement there, yes, it is.

BY MR. GRANT:

Q. You swore to somebody that was true, right?

A. At that point in time? I can't remember.

Q. What do you mean?

A. When you say did I swear that to somebody that was true, at that point in time?

Page 31.

Q. Yes, sir.

A. If that was during the trial, yes, I did. But if that wasn't during the trial, I can not remember whether I --

Q. Okay, I appreciate that.

A. Okay, thank you.

Q. Mr. Hightower, I know this is going back 13 years.

A. Yes.

Q. And back then you were a young man?

A. Well, hopefully I think I still am somewhat young.

Q. I understand that. But when you signed this it was less than 90 days ago?

A. Is that now? Or is that back in '81?

Q. You never saw this before, did you?

A. Yes, I have.

Q. When did you see it?

A. Are you -- is that the affidavit that the defense had given me, sir, is that what you are asking me?

Q. Well, you read it, you tell me?

A. Yes, that is what I said to him. They was talking about that was the attorney Weinglass had given to it me, yes.

Page 32.

Q. And that was on May --

A. Okay.

Q. On May 17th -- May 10th of this year?

A. Yes.

Q. And you said if it --

A. I was confused, okay. Thank you. Just clear --

Q. This man could only type down one of us talking at a time.

A. Okay.

Q. When I start talking, you listen; when you start talking, I'll listen.

A. Thank you.

Q. Okay? Now, you said if those words were what I said at the trial, it was true, and if it's not, I'm not sure. What do you mean by that?

A. Obviously, I was confused with the dates. No, I did make that statement and I did sign the affidavit, yes.

Q. And you swore it was true?

A. Yes, I did.

Q. And you swore it was true because you know it's true, not because you think it's true?

A. Because I know it's true.

Q. Would you like to reconsider that before I go

Page 33.

any further?

A. No, I wouldn't, no.

MR. GRANT: Could we have Detective Thomas and Officer Sterling come into the room, please.

BY MR. GRANT:

Q. While they are doing that, sir.

A. Okay.

Q. Do you recall testifying at the trial when you testified on behalf of Mr. Jamal here that at some point you told the detectives you didn't know if the person you saw running was a male or female?

A. Ahh, I do believe I said it was a -- to me what I observed at that point in time, it looked to be a black, to be a black male by the size and the build.

Q. Yes, sir. My question was, do you recall testifying at trial that you had told the detectives investigating this case and interviewing you that at some point you had stated to one of these investigators that you didn't really know if it was a male or female?

A. The only way I possibly could have said that is because of the hair.

Q. Well, did you say it or did you not say it?

Page 34.

A. I can't remember.

MR. GRANT: Please step up and identify yourself for the record.

MR. THOMAS: William E. Thomas, Detective, 744, retired.

LIEUTENANT STERLING: Lieutenant Craig Sterling, Philadelphia Police Department, Badge number 330.

BY MR. GRANT:

Q. Mr. Hightower, I would like you first to look at the gentleman here who says his name is Mr. William Thomas (indicating), retired detective. Do you recognize this person?

A. No, I don't.

Q. Never have seen him before in your life?

A. I don't recognize him.

Q. This person here, Officer Craig Sterling: Have you ever seen him before?

A. Faintly remember but I can't say I do.

Q. And as to this faint recollection, where do you faintly recall seeing his face?

A. Ahh, possibly one of the detectives that interviewed me, I believe.

Q. Oh. Which interview was that?

A. Sir, I don't know if it was the first or

Page 35.

second interview.

Q. And was he the person asking you the questions?

A. I don't know. I really can't answer that. Maybe he asked me some questions, maybe the other gentleman did. If he did interview me. I can't say yes, I can't say no.

Q. And perhaps both of them asked you questions, right?

A. Yes, perhaps.

Q. And would it refresh your recollection if I said maybe this gentleman -- Mr. Sterling -- is the one that attached those instruments to your body and gave you the polygraph?

A. No, that wouldn't refresh my recollection.

MR. GRANT: Thank you, gentlemen.

BY MR. GRANT:

Q. Now, when I said to you did you ever tell the detective, did you ever testify whether or not this person you saw was either a man or a woman and you said it's possible, did you or didn't you?

A. Yes, that is in the, in the transcript, sir. Can you show me where I said that at, please?

Q. Yes, sir. I will refer your attention, and Counsels', to June 28th, 1982, page 28.148. I will

read it to you and then I will give it to you.

A. Thank you.

Q. This is Mr. McGill, he is the Assistant D.A., he was cross-examining you.

A. Yes.

Q. Meaning that after Mr. Jackson had talked to you, the D.A. got up and asked you some questions?

A. Okay.

Q. Beginning at page 147 he said, question: Now, Mr. Hightower, when you came back, when you heard the shots, you were still covered, were you not, from the wall in the parking lot where all the shots were fired.

Do you understand what he is saying at that point?

A. Yes, I understand.

Q. He is saying you are behind the wall, you are afraid to look out because you hear shots?

A. Yes.

Q. And you say oh, yes. Question: You were not outside at all. Meaning beyond the wall?

A. Okay, yes.

Q. You say no. Question: As a matter of fact, in one of your statements you said, and you were understandably quieted -- I think it means you were

understandably quoted -- as saying -- and this is your last statement to Counsel -- I wasn't going to peek my head around the corner, not knowing where the shots were coming from, I didn't want to catch a stray bullet. Isn't that something that you said.

And do you recall that?

A. The shots.

Q. And you answered yes, yes. This is what I want you to focus on.

A. Okay.

Q. Now, in reference to this individual you say you saw running, the one I believe you said that you were unsure -- and he stops and says and correct me if I am wrong -- your testimony was you were unsure whether or not that was a male, or it could even be a female, that's what you said.

Answer: Yes.

Question: All you saw was the back of the head, right.

Answer: Yes. And a sweater.

Would you like to see this?

A. Yes.

Q. Would you like to see this?

A. No, that's clear.

Q. Okay. So you did indicate that, you did tell

the police you didn't know whether it was a man or a woman?

A. I think I -- okay, if that's what the testimony said, that's what I said, yes.

Q. And you would agree that your recollection of the events of that night of December the 9th, 1981 were much clearer six months later than it is 13 years later; would you agree with that?

A. Yes, I would.

Q. Now, you said that Mr. Jackson and you didn't have a... a very good relationship because he stood you up on an occasion for a meeting, right?

A. To the best of my recollection, yes. Yes.

Q. And you don't know whether he had a pressing engagement in court?

A. No, I, no, I don't.

Q. You don't know whether he went to the hospital?

A. Well, whatever the situation was, I didn't meet with him.

Q. And you didn't know whether he was with Mr. Jamal attempting to assist him in his case?

A. Whatever the situation was, I didn't meet with him.

Q. I see. But you did meet with his

investigator, right?

A. Yes, sir, I did.

Q. And you told his investigator that you didn't want to meet with Anthony Jackson, right?

A. I just said that talking, what you just said. But, yes, it came across that way: I would prefer not to meet with him.

Q. Okay. And when you dealt with the Police Department, Mr. Hightower, did they treat you in a professional and courteous manner?

A. For the most part.

Q. And they respected you as a man and didn't try to change anything you said, did they?

A. No, they didn't try to change any of my statements.

Q. And did they ever tell you I don't want you to cooperate with Mr. Jackson or anybody that works for Mr. Jamal in this case?

A. No, that wasn't stated to me at all.

Q. And were you trying to hide from Mr. Jackson's investigator or did you meet him when he contacted you?

A. I met him when he contacted me.

Q. So there was no problem between you and Mr. Greer, who was the investigator, a tall black

man?

A. Yeah, I remember vaguely, a very big guy.

Q. Yes. And he treated you with respect, did he not?

A. Ahh, yes.

Q. And he took an interview from you?

A. Yes, he did.

Q. And your recollection is, although it's been 13 years, you think he tape recorded you, right?

A. Yeah, but I'm not quite sure. I am not quite sure that he did.

Q. In any event, before you took the stand to testify for Mr. Jamal, whether it was tape recorded or otherwise, it was reduced to

writing in some form and they gave it to you to read so that you could remember what you said -- look at me when I'm talking. Don't look at Mr. Weinglass.

A. I'm not looking in that direction.

Q. Okay, let me stand over here for you.

A. Okay, that's no problem.

Q. You did look at the statements that you gave to Mr. Greer in preparation to testify, right?

A. Yes, I did.

MR. WEINGLASS: Objection: It's confusing. It is unclear whether it was back

Page 41.

Dessie Hightower - Cross

then or now.

MR. GRANT: I am going to unconfuse him right now.

THE COURT: They are interviewing him now?

MR. WEINGLASS: Pardon?

THE COURT: Is Greer interviewing him now?

MR. WEINGLASS: No, Your Honor didn't hear the question. The question was did you look at the statement.

THE COURT: Before he testified at the time of the trial?

MR. WEINGLASS: Well, that clarifies it if that's the question. But at the time of the trial wasn't part of the question.

MR. GRANT: May I approach, Your Honor?

THE COURT: Yes, sure.

BY MR. GRANT:

Q. I am going to show you, Mr. Hightower, what purports to be a statement taken from you by Mr. Greer on May 3rd, 1982, and I want you just to flip through the pages, take your time and see if that is in fact the interview that you recall having

Page 42.

Dessie Hightower - Cross

given him?

You could just go back until it stops, it's about seven pages. Take your time, sir.

(Pause.)

A. All right. Thank you.

Q. I know this is stressful.

A. Okay.

Q. Just relax.

(Pause.)

MR. WEINGLASS: The record should reflect that we have just been handed a confirmation of what we alleged in the Petition and what the witness has testified to: The results of a polygraph test that was administered to this witness on December 15th --

THE COURT: Well, Counselor, could you leave that for later on. Let's finish with the cross-examination.

MR. WEINGLASS: I just --

THE COURT: We will take that up later on.

MR. WEINGLASS: No, Your Honor --

THE COURT: Not in front of the witness. If you want to see me back here I will talk to you.

Page 43.

Dessie Hightower - Cross

MR. WEINGLASS: He is about to be shown it by Counsel.

MR. GRANT: No, he is not, but he will be soon.

I did, in fact, hand him a copy. At this stage he is not entitled to it, actually, at all but I am out of courtesy.

MR. WEINGLASS: It wasn't included in the Response to the Petition where we alleged this.

THE COURT: Okay, all right.

MR. WEINGLASS: When they should have informed us.

THE COURT: Okay, Counselor.

MR. GRANT: By the way, Your Honor, our Response in discovery was not that we didn't have it, but that we have no such document where he passed a polygraph. And that's what they alleged.

BY MR. GRANT:

Q. Do you recognize that, sir?

A. Yes, I do.

Q. Is that the statement that you gave Mr. Greer?

A. Well, not really verbatim. Yes, it looks to be.

Page 44.

Dessie Hightower - Cross

Q. You say you don't know if it's verbatim?

A. I said I didn't read it verbatim, it looks to be.

Q. Okay, it looks to be. If there is any confusion as to any part I am talking about, I will give it back to you.

A. Thank you.

Q. You're welcome. While I'm here, so we are together --

A. This was back in '82? Right?

Q. Yes, May 3rd, '82.

A. Okay. I am keeping my dates straight.

Q. Okay.

A. Thank you.

Q. I am not going to try to confuse you on these dates.

MR. GRANT: I am here because he may want to have recourse to this (displaying).

THE COURT: Okay.

BY MR. GRANT:

Q. Question by Mr. Greer: Mr. Hightower, I don't have your statement with me but I have read it. How many times were you questioned by the police.

And you say three times, right? I am right here.

Page 45.

Dessie Hightower - Cross

A. Okay, if it says that.

Q. Okay (indicating)? Did you ever tell the D.A. that you did not want to talk to me or anyone else connected with this case.

Answer: I told them I didn't want to give a statement to Mr. Jackson, his attorney. I didn't say I wouldn't talk to an investigator or anything like that.

Now, you understand I am working for his attorney.

A. Say again.

Q. I am working for Mr. Jamal and his attorney. You said yes, you told me that over the phone. I decided that what I told them I can tell you.

Meaning what you told the police, you feel like it is okay to tell this investigator?

A. Yes, I did.

Q. And he says to begin, you were going to Whispers. Did you see the police car during the time you were trying to get into Whispers.

And they are talking about Officer Faulkner's police car, the officer that was slain that night.

A. I understand.

Page 46.

Dessie Hightower - Cross

Q. And you said, I seen him pull up and I seen him get out of the car and walk to the passenger side. I was looking out the side of my eye, I really didn't pay any attention, it probably was a routine thing. I was walking back, you know, where the wall is. Walking back towards the car. I heard the shots go off. Maybe three or four, probably two or three seconds in between. I walked back and peeped from behind the wall. I couldn't see anything. I didn't hear anymore shots going off, okay. So I walked towards Whispers,

and by then it was flooded with other police officers. I saw somebody running past the hotel.

A. Oh, may I --

Q. Yes.

A. -- say something?

Q. Yes.

A. When I gave that statement to investigator Greer, the part where I seen someone running from the scene, that was prior to the, umm, backup or whatever, the police that came. When I actually seen someone running from that scene, that was prior to the arrival of the additional officers. I want to clarify that, sir.

Q. And you told Mr. Weinglass that, I understand

Page 47.

that.

A. Well, I'm telling you so you also know that. Because the way it was tooken down, it wasn't in sequence, that's what I'm saying to you.

Q. Well, are you saying that Mr. Greer got it backwards?

A. Yes. That's what I am saying to you.

Q. Well, could it be that you said it backwards instead of him writing it down backwards, or tape recording it backwards?

A. I'm clarifying that now, if I can actually do that, okay.

Q. You can do that.

A. Okay. Thank you.

Q. You say, and by then it was flooded with other police officers. I saw somebody running past the hotel. I don't know if they were running because of the gunshots or what.

A. Hmm-hmm.

Q. Now, you said I don't know if they were running?

A. That person. It wasn't multiple, it was single. It was just one person.

Q. And at that time, Mr. Hightower, you were just a nice guy who saw something and you wanted to

Page 48.

cooperate with the police and tell them what happened, you wanted to cooperate with the police, tell them honestly what you knew, and that's all that was going on here; correct?

A. At that time that's what I seen, yes.

Q. Yes. And you really have not really changed that no matter how many times you have been interviewed, have you?

A. I believe I have been consistent.

Q. Hmm?

A. I believe I've been consistent.

Q. Yes. Now, you said that you were given a polygraph. At any time did anyone tell you why they wanted to give you a polygraph, sir?

A. Again, we are going back 14 years ago. You are asking me something I really can't answer honestly.

Q. But you can honestly answer that you in fact were given one?

A. Yes, I could honestly answer that.

Q. And you could in fact honestly answer you passed one?

A. I could honestly answer that, but I can't say who explained to me why they are giving it to me or what was the reasons. No.

Page 49.

Q. Okay. Now, this occurred about a week after you gave your first statement?

A. (Witness shrugged shoulders.)

Q. Is that a yes or --

A. Yes.

Q. Is your middle name Delmar?

A. Yes.

Q. At that time did you live at 5452 Arlington Street?

A. Yes, yes.

Q. And at that time you were unemployed, were you not?

A. I believe so.

Q. And this wasn't your first experience back in 1981 taking a polygraph examination, was it?

A. No, I think I took one prior to that for a job.

Q. And after you took the polygraph examination, then the person --

A. Are you saying for this case or for the job?

Q. I am not going to talk about that job interview anymore.

A. Okay.

Q. Everything I am going to talk about is about this case.

Page 50.

A. All right, thank you.

Q. The person that gave you the polygraph examination was different than the person that was asking you the questions that were reduced to writing in your police interviews, were they not, two different people?

A. You, you are kind of mixing me up here.

Q. Okay. The person that first interviewed you and took down --

A. I believe so. What you are saying now, I believe so.

Q. You believe there were two different people involved?

A. I believe.

Q. After the first person interviewed you he took you to another person in a different place where they had a polygraph machine; correct?

A. Now are you talking about the same day or two different, the first interview or second interview?

Q. Okay. They only polygraphed you once?

A. Right.

Q. And they only polygraphed you on the day when you were there for five hours, as you say?

A. If that's what the documents say, sir.

Q. Right?

Page 51.

A. Right.

Q. And that was the second time you were there, not the first time?

A. Yes, okay.

Q. Don't try to confuse me.

A. Don't try to confuse you? Okay.

Q. You were there, you were interviewed by the detective?

A. Yes.

Q. You then were taken to a room where this machine was standing there lurking in your face, right?

A. Oh... yes, if you want to put it that way, yes.

Q. All right. And at that point in time the man affixed these various wires and gadgets to you, cuffs on your arms, and things on your pinkie and fingers and what not, and the needle started moving around and all that?

A. Yes.

Q. And while he had those things on you he asked you some questions, didn't he, just to see what it's like, what your body acts like when you are not telling the truth and you know it; didn't that happen?

Page 52.

A. My body -- no, you really got me confused now --

Q. Test questions?

A. I don't, I don't know. Maybe he did, I don't know.

Q. Let me see if I could refresh your recollection.

A. Okay, thank you.

Q. He asked you if you lived in the United States, and did you personally tell Ralph Baldwin you saw Police Officer Faulkner killed. And he described this person to you, Ralph Baldwin, as a six-foot-ten-and-three-quarter-inch --

A. Six-foot-ten?

Q. Yes, sir. Now listen to me.

A. Okay.

Q. Six-foot-ten-and-three-quarter inches, 175 pounds, and I believe that he said his hair was black with a white streak in it.

A. Oh, these are test questions, sir?

Q. Yes, sir. Do you remember that?

A. Again, I can't say that I do.

Q. Okay.

A. But.

Q. It's all right.

A. Yeah.

Page 53.

Dessie Hightower - Cross

MR. GRANT: I would like marked as Commonwealth's Exhibits 10, 11, 12, 13 and 14 -- I believe that would be next in order.

THE COURT OFFICER: 11 is next.

MR. GRANT: Okay, 11, 12, 13, 14, 15. Previously submitted to Counsel for the Defendant.

(Set of polygraph examination documents were marked Commonwealth Exhibits C-11, C-12, C-13, C-l4 and C-l5 for identification.)

BY MR. GRANT:

Q. I am going to show you some papers, Mr. Hightower.

A. Okay.

Q. I am going to ask you when he shows them to you if you recognize your signature?

A. Yes.

THE COURT OFFICER: Excuse me. C-15, Your Honor, starting with C-l1 (handing).

BY MR. GRANT:

Q. You could look at all of them.

A. I see it.

Q. One is a document Mr. Weinglass has already shown you. Look them over, don't say anything, just

Page 54.

Dessie Hightower - Cross

look them over.

A. Should I read the whole thing or just look for my signature?

Q. No, you could look at everything because I am going to ask you some questions about those documents.

A. Okay, could you give me a minute, please?

Q. Pardon?

A. Could you give me a minute, please?

Q. I could give you an hour, don't worry it, just take your time.

A. Okay.

(Pause.)

THE WITNESS: (Indicating).

BY MR. GRANT:

Q. Are you ready, sir?

A. Yes.

Q. Okay, do you recognize from having looked at it now, does that refresh your recollection?

A. Yes.

Q. As to the event that we are talking about?

A. Yeah.

Q. It is coming back to you because you recognize some words?

A. Some of the wording, yes.

Page 55.

Dessie Hightower - Cross

Q. Yes. As a matter of fact, at that time you had at least a year of college under your belt, didn't you?

A. Two.

Q. Two, okay. Now, one document I would like you to look for there -- you could spread them out.

A. Okay, just tell me, I could pull it.

Q. Okay. It says polygraph examination agreement?

A. That's C-15?

Q. I don't have the number, that's why I am asking you to spread them out.

A. Yes, the agreement, yes (displaying).

Q. What does that say, sir?

MR. WEINGLASS: Your Honor, I am going to object. This is all hearsay. Detective Sterling is here, and if are we are going to have polygraph results introduced, I think it has to be introduced through the detective who took the test, not by asking the witness whether he believed the detective did right or wrong.

So I think it's improper to be asking the witness these questions. First, without laying a foundation; and secondly, without calling the officer who took the test to

Page 56.

Dessie Hightower - Cross

describe what he did.

MR. GRANT: I agree 100 percent. And in order to verify and authenticate that these are his, I have to ask him is this your signature, did he ask you the questions. Kind of a foundation.

THE COURT: Go ahead.

BY MR. GRANT:

Q. Would you read into the record -- by the way, on that document that says polygraph examination agreement, is that your handwriting on that document in two places?

A. You asked about my signature?

Q. Yes, sir.

A. That is my signature.

Q. Yes, it is. Read what it says into the record?

A. I hereby voluntarily and willingly submit --

Q. No, no, no, you have to speak out. You have to slowly say it.

A. I do hereby voluntarily and willingly submit to a lie detector examination in order to show that possible truth or honesty of my statements. And I hereby release from the Police Department and examiner Detective Sterling, I guess it is his badge

Page 57.

Dessie Hightower - Cross

number, 845.

Q. What it really says: I, Dessie Hightower, do hereby voluntarily and willingly submit to a lie detector examination in order to show if possible the truth and honesty of my statements. And I hereby release the Philadelphia Police Department and the examiner C. Sterling -- that was the person I showed you, the white male, a moment ago.

A. Well, you just read it for me: I don't have to read it then, right?

Q. Well, yes, that's right, I am reading it for you because you didn't finish reading it.

A. Oh, okay.

Q. From any and all claims resulting from or arising out of this examination.

And then you sign it again, put your address and the date 12-15-

81, right?

A. (Witness nodded head affirmatively.)

Q. Then the examiner starts asking you some questions just to see?

A. Are we going to another document now?

Q. Yes, we are going to another document. It consists of two pages.

A. Okay.

Q. Strike that. Take the long one out

Page 58.

(displaying).

A. Just keep me abreast when you go to another document, thank you.

Q. You're right. I'm sorry.

A. Okay.

Q. The next document, what number is that document up at the top?

A. That's C-12.

Q. Okay, I will write them on mine so I know. Okay, that's C-12. That gives your date of birth as 10-19-59, says you were 22 at that time, right?

A. Ahh, yes, it does.

Q. So we know that's you, right?

A. This is me.

Q. Okay. And he asked you a bunch of background information to make sure you are not sick or on drugs or using alcohol, because those kind of things affect the machine, did he tell you that?

A. Ahh, yes, I guess.

Q. Okay. And then he said at the bottom, he said this test concerns the shooting death of Police Officer Daniel Faulkner, 26-year-old white male, which occurred on 12-9-81 at about 3:55 a.m, 1200 block of Locust Street.

A. It says the shooting death of --

Page 59.

Q. Yes.

A. -- Officer Faulkner.

Q. Yes, the shooting death of Officer --

A. Which occurred on 12-9-81 at about 3:55 a.m.

Q. Okay? Now, as a result of him telling you that he then asked you a question and then he asked you to give him an answer.

And tell me if I'm wrong: Before he started giving you the test he said I'm going to give you all the questions that I'm going to ask you in this test, before you even take the test?

A. I can't remember that, sir.

Q. Okay. Read the question that he wrote down that he asked and what answer he said you gave?

A. You are asking me to read it again?

Q. Yes, slowly and loudly, please.

A. You seem to do it better than me. Could you?

Q. Do you want me too?

A. Yeah, I would prefer it.

Q. All right.

A. Thank you.

Q. Question: What can you tell me about the shooting of Police Officer Faulkner.

Answer: I didn't see any shooting, but I heard three shots close together, then two

Page 60.

later. I got to 13th and Locust Streets and I saw the first car pull up and then there were police all over. And the -- I think that's supposed to mean they -- they got the suspect -- and you have in parenthesis Jamal -- and his brother, and they put the officer and Jamal into separate wagons. They asked me if I could identify Jamal as shooting the cop and I told them no.

Now, this is a week after the killing: 12-15-81? It says so up at the top, right-hand corner, right?

A. Yes. Yes.

Q. Now, at that time you knew Mr. Jamal's name?

A. Say that again, please.

Q. At that time you knew Mr. Jamal by name?

A. Yes -- yes.

Q. And you knew his brother?

A. No, I did not know his brother. I guess because of the media reports and things of that nature.

Q. But you didn't rely on the radio reports to know Mr. Jamal's name, did you?

A. I don't know where you are going with that. I don't understand.

Q. You don't have to, just answer it.

Page 61.

A. I don't understand.

Q. You knew Mr. Jamal's name before you had to read the paper and the radio, right?

A. I had knew his name?

Q. Yes.

A. Umm... I knew his name.

Q. And you knew his face?

A. No, I can't say I knew his face. I knew his name.

Q. Where did you first meet him?

A. When did I first meet Mr. Jamal?

Q. Yes.

A. Ahh, it's been, it was I guess maybe four or five years prior to that. I believe he was a reporter for WDAS at that time. And I was president of the Philadelphia Student Union. And he interviewed me in the park or at the station briefly in reference to the Student Union.

Q. Was he wearing dreadlocks when he interviewed you?

A. I don't remember.

Q. And you didn't recognize this same person that talked face-to-face with you?

A. No, I did not.

Q. Okay. And you knew once you read the papers

Page 62.

that this was the same guy that interviewed you four or five years before, right?

A. Yeah, well, it came back, it came back to me, yeah.

Q. Now he said that is the question I am going to ask you, did he not?

A. Say that again, sir. Could you repeat the question?

Q. Did Detective Sterling say to you now, Mr. Hightower, this is not difficult, that's the question I am basically going to test you on? Do you recall him telling you that?

A. No. But if it's in the documents. Again, you are asking me a lot of things I can't remember, sir. So you are refreshing my memory.

Q. Yeah, I'm trying to.

A. Thank you.

Q. All right. And to verify that this is you, would you look at the next document? It's two pages.

A. 13.

Q. Two pages?

A. Two pages.

Q. Has some scribbling out in the middle and so forth. It is attached, it is stapled pages.

A. Two pages?

Page 63.

Q. Yes.

A. Okay, that's C-14.

Q. Okay. And there is a series of questions and answers on there, right?

A. Yes, it is.

Q. After looking at both pages, do you remember telling him any of those things on there?

A. Say it that again, please. Would you say that again?

Q. Yeah. Let me get closer to you.

A. Thank you.

Q. Do you remember telling him anything on those pages? After looking it over, does it refresh your recollection?

(Pause.)

Q. You recognize that, don't you?

A. Yeah...

Q. Well, did you put tacks on the teacher's chair when you were 9 years-old and get caught or not get caught? You did that, didn't you?

A. I did that, yeah.

Q. Yes, you did that. And you beat up a girl when you were 8 years-old and you got caught for it, and they caught you fighting and your mom said that's not right?

Page 64.

Q. (Handing) We have a signature at two ends.

A. Yeah.

Q. And you beat up a boy when you were 16 years-old and you got caught for that punch, right?

A. Oh, boy, yeah.

Q. This is you, isn't it?

A. This is me.

Q. All right. Now, they gave you the test, and before they started the test they said this is your piece of paper, it is going to have squiggly lines on it, it is going to be charts and graphs, but it's yours, and before we start I'm going to put it in here, and I want you to sign it at the beginning, and when I take it out I want you to sign it at the end, because I don't want anybody to say this isn't your test; do you remember doing that?

A. This is the polygraph test you are speaking on?

Q. Yes, the test itself, a piece of paper?

A. Possibly.

MR. GRANT: Okay, let me see if I have that (handing).

MR. WEINGLASS: (Handing).

BY MR. GRANT:

Page 65.

This is the top.

A. That is my signature, yes, it is.

Q. What date is that?

A. 12-15-81.

Q. Okay, at the end of the paper we have another signature. Whose name is that?

A. That's my signature.

Q. Okay. Do you remember signing these?

A. Yes, that's my signature.

MR. WEINGLASS: Counsel, is there a time indicated?

BY MR. GRANT:

Q. Is there a time indicated there?

A. Yes, last part, 8:54 p.m.

MR. WEINGLASS: 8:54.

THE WITNESS: 8:54 p.m.

BY MR. GRANT:

Q. And you were released, according to your statement, at 9:40 because you were there 5 hours and 40 minutes, right?

A. Yes.

Q. So this occurred about 45 minutes before you left, this ended 45 minutes before you left, right?

A. Yes, approximately.

Q. And after you took this test you stayed there

Page 66.

another 45 minutes, didn't you?

A. Well, I guess I did, if I left at 9:40.

Q. Right. And the reason you stayed another 45 minutes is because they told you -- didn't they? -- Mr. Hightower, we asked you this question and we detected deception: Last Wednesday did you see Jamal with a gun in his hand. Your answer was no. And they said we think you're lying and I want to turn you back over to this detective and I want you to talk to him.

Do you recall them telling you that?

A. No, I don't.

Q. Well, do you recall this two-page document that has the writing on it that Mr. Weinglass showed you before?

A. No, what's there?

Q. It says Dessie Hightower, has a number 9 there?

A. Yeah, okay, page 9 is it? Yes.

Q. Do you want to -- I am going to read the question and read the answer and see if it refreshes your recollection as to what they told you before they gave you this.

Question: After having spoken to Detective Sterling, do you have anything to add to

Page 67.

your prior interview.

Answer: I know that I didn't see him with the gun, I didn't see Jamal with the gun.

Do you remember saying that to them?

A. I believe so, Counselor.

Q. Well --

A. You are asking me about something 14 years ago; and this is not my handwriting either.

Q. I know it is not but it is on the bottom, isn't it (displaying)?

A. Okay, yeah, okay.

Q. Is it or not?

A. This is my signature, yes, it is.

Q. Go to the next page. Is your signature on the bottom of that?

A. Yes, it is.

Q. You seem like a prudent and careful man. You didn't sign something you didn't read, did you?

A. Well, sir, again, it's been 14 years ago so you're telling me something that I may have forgot.

Q. Okay.

A. Okay.

Q. Why were you saying I didn't see, I know I didn't see the gun in his hand? Were they accusing you of having seen it in his hand?

Page 68.

A. Well, maybe the question was geared that way. Again, it's speculation.

Q. Okay.

A. But I'm not quite sure. If I took that tone, it must have been something because it wasn't conducive to what I was saying.

Q. Right.

MR. WEINGLASS: Objection: Counsel again is misreading a document, this one right in front of him. I could only assume he is doing it purposely. He didn't say what Counsel just told him he said. He said I know I didn't see him with a gun. I didn't see him, Jamal, with a gun. Counsel adds did you see him with a gun in his hand. It's very different when he reads it.

MR. GRANT: Did I say that?

MR. WEINGLASS: Yes.

MR. GRANT: I'm sorry.

MR. WEINGLASS: The document is right in your hand. I would think you would at least have the decency to read it right.

BY MR. GRANT:

Q. Are you reading along with me?

A. Now I will be.

Page 69.

Q. I know I didn't see him with a gun, I didn't see Jamal with a gun.

Do you remember saying that to them?

A. Counsel, if it's down here and I signed it, I assume that I did.

Q. Next question: The male that you saw running, did he have a gun.

What was your answer?

A. It says no.

Q. Question: Did anyone tell you Jamal had a gun.

What's your answer?

A. I don't recall anyone saying that Jamal had a gun.

But you said did anyone tell me. Did anyone tell you that Jamal had a gun. My answer to that was I don't recall anyone. No, I don't.

Q. Yes. Do you know why they are asking you all these different reasons why or if Mr. Jamal had a gun? Did they tell you why they are asking you these things?

MR. WEINGLASS: Objection to the form of the question. The witness can't know why the police --

THE COURT: He is asking him if they

Page 70.

said that to him. Listen to the question, Counselor.

MR. WEINGLASS: I did. It could be read back. Could the question be read back? I ask for the privilege of having the question read back. The first part.

(The Court reporter read the last question.)

BY MR. GRANT:

Q. Did they?

MR. WEINGLASS: I object to the form of the question. You know the reasons why. How could he know the reasons why?

MR. GRANT: I will rephrase it. I will withdraw the question.

THE COURT: All right.

BY MR. GRANT:

Q. Did they tell you why they were asking you in these different ways if you saw him with a gun?

A. No, I don't remember that, sir.

Q. Didn't they show you on your chart?

A. Oh, are we back to --

Q. No, on that long piece of paper, I showed you at both ends you signed it. Didn't they point to that and say you see right here, when I asked you

Page 71.

this question about did you see the man with the gun you said no and this needle went up here like this? Do you recall that?

A. Are you speaking on this C-12?

Q. Listen to me.

A. You asked me to read --

Q. Listen to me.

A. Okay, thank you.

Q. The piece of paper that I was holding up for you (displaying).

A. Yes, the polygraph.

Q. It showed names at both ends?

A. Yes.

Q. Didn't they point to that where they had written a question and say this needle says you're lying about this one question?

A. I can't remember that.

Q. Okay, fine. Next question: When you first saw Jamal, did you know who he was.

What's your answer, sir?

We are back on, we are back on C --

A. C-l1 is it?

Q. I guess it's 13.

A. I believe it is. Let me know when I keep flipping these papers.

Page 72.

Q. I'll let you keep up. Go ahead.

A. Thank you.

Q. When you first saw Jamal did you know who he was?

A. Ahh, my answer was no. I didn't know until I heard it on the radio.

Q. No, no, wait, we don't want Mr. Weinglass to get upset. Read the whole thing?

A. Excuse me, did I read that wrong?

Q. Yes.

A. Then you read it for me.

Q. No, I didn't know that until I heard it at home on the radio.

A. On the radio, yes.

Q. Oh.

A. Okay.

Q. Question: Did you see anyone besides other police on the scene with guns.

Answer: No. When he -- Detective Sterling -- asked me if I saw Jamal with a gun in his hand --

A. It says when Detective Sterling asked me.

Q. It says what?

A. When he: Detective Sterling.

Q. No, when he --

Page 73.

A. Yes.

Q. -- Detective Sterling -- asked me if I saw Jamal with a gun in his hand, I could picture him with a gun but I didn't see him with one?

A. Now, that's, that part right there I don't understand. Umm, I didn't, I signed this but I do not believe me saying I could picture him with a gun.

Q. Yeah, everything so far is --

A. No.

MR. WEINGLASS: Objection, Your Honor. The witness has to be allowed to answer. He is being cut off.

BY MR. GRANT:

Q. Are you finished?

A. No, I wasn't, Counselor.

Q. Finish?

THE COURT: Go ahead.

THE WITNESS: No, I do not believe that I put that. I signed this but I do not believe that I put I could picture him with a gun. That doesn't even sound conducive to what I have been saying all along.

BY MR. GRANT:

Q. I know. That's the problem?

A. The word I could picture him with a gun, okay.

Page 74.

That's what I think they should have said, sir.

Q. And you read this before you signed it?

A. Well, sir, I was there, it was just so many hours, maybe I was extremely tired at that time. I am not making excuses up but I am simply telling you the truth. That does not sound conducive to what I have been saying.

Q. Why are you looking --

A. I am not looking in that direction.

Q. Why are you looking at this man when you are talking to me?

A. Well, you stand over here, Counselor, I will talk to you.

MR. WEINGLASS: Objection to the false accusation against the witness. Counsel has been wrong in repeating the record, wrong in reading documents, and he is wrong again and falsely accusing the witness.

THE COURT: All right, okay.

MR. WEINGLASS: I ask the Court to admonish Counsel.

THE COURT: Stand over there (indicating).

MR. GRANT: Yes, Your Honor.

THE COURT: So he can't. Or if you

Page 75.

have to, get right up close here maybe, so there is no misunderstanding.

MR. WEINGLASS: So we can't what?

THE COURT: No, I said so that he knows what documents he is looking at, because his documents don't have the numbers on it. For the record, refer to the number.

MR. GRANT: Yes, Your Honor.

THE COURT: Do you have the number on this that you are talking about? I don't know if it's in the record.

THE WITNESS: C-11.

THE COURT: C-l1 you are talking about?

MR. GRANT: I believe so, Your Honor. (displaying).

THE WITNESS: His is not --

MR. GRANT: Numbered.

THE WITNESS: -- numbered.

THE COURT: His isn't?

THE WITNESS: His isn't, the attorney's.

MR. GRANT: We are on the same page, aren't we?

THE COURT OFFICER: Same document.

Page 76.

THE COURT: Mark it so when you are talking about it you can refer to C-11.

BY MR. GRANT:

Q. Now, you don't have recollection independently just from going back in your mind 13 years about these questions and answers on here, do you?

A. Say that again, please, Counsel.

Q. Yes. You don't have recollection independently, just from your memory, with your own mind, going back to this time when this was happening?

A. No, I can't recall every word verbatim again what you are asking me. But what I am saying is -- if I could finish what I am saying. Thank you. That the questions the way they formulated some of them do look like what I said. Because I can kind of feel me saying that. If you understand what I am saying.

Q. Which ones on there look like you didn't say them besides the one that you have identified which --

A. The one -- go ahead, I'm sorry I cut you off.

Q. It's okay. Besides the one you say I don't recall saying that -- which was I could picture him with a gun but I didn't see him with one -- you didn't say that, according to you?

Page 77.

A. It doesn't sound like anything, it doesn't sound conducive to what I was saying all along.

Q. Well, when you say it doesn't sound conducive, that means this is contradicting the statement that you gave to Mr. Weinglass' investigator, the investigator -- just a minute -- and it contradicts what you had told the police earlier; is that what you mean?

A. Umm, Counselor, that part of the statement I can not actually say that I said it. It doesn't sound like that. As far as whatever else you said as far as what I told attorney Weinglass or the police, I don't know anything about that. I am just simply saying about that one part of this last question does not sound like me, okay. I'm telling you something that I'm feeling from my heart. If you could understand that. If you can't, what can I say?

Q. Well, you could say this, you could say any other thing in here, is there anything else in here that you feel from your heart is not true as well?

A. Well, do you want to give me a second, I will read the whole thing over again.

Q. Take your time.

A. Thank you, sir.

(Pause.)

Page 78.

MR. WEINGLASS: When Counsel says in here, what is he referring to?

THE WITNESS: He is saying C-11.

THE COURT: He is reading over the thing that he wants to read over, Counselor.

MR. WEINGLASS: But when Counsel says in here, is it all of the testimony? All of the record? The one or two pages in front of the witness?

MR. GRANT: I think the witness --

THE COURT: That's what he is looking at right now.

MR. GRANT: If the witness understands, I don't think it is required that he understands.

MR. WEINGLASS: The witness may be misled. It's not that the witness understands.

BY MR. GRANT:

Q. Do you understand, Mr. Hightower?

A. I am trying to desperately.

Q. Do you understand what I am saying to you, do I need to state it to you differently?

A. Are we talking about document C-ll? If you are talking about this document, I understand what you are saying about this document.

Page 79.

Q. Which one do you have in your hand?

A. I have C-l1 in my hand.

Q. Which one have we been talking about for the last five

minutes?

A. I believe it is C-11. So we are on that same Page.

Q. Answer my question.

(Pause.)

A. The rest of these questions and answers seem to be, seem to be in order, or conducive as to what I have been prior to this saying.

Q. You mean it matches what you were saying before you took that test? What does conducive mean, that's what I am trying to figure out?

A. Do we have a dictionary around maybe.

Q. No, but I'm pretty good. Try me.

A. Okay, what I am saying to you, Counselor, is that what my prior statements or affidavits or testimony, to me, what I am saying, everything I said I said over and over again. I didn't have to shy away from anything. Because what I'm saying is the truth.

Q. Yeah.

A. Okay. And can I say something, please? May I?

Page 80.

Dessie Hightower - Cross

Q. Say whatever you feel.

A. I could take some offense to you saying I'm looking over to defense attorney Weinglass. I have a mind of my own, Counselor, and I can say what I'm thinking and what I'm feeling. I don't need, I don't need -- excuse me. I am not trying to make it a thing here. I just want you to talk to me as a human being. As a man. I think we could go from there.

Q. Were you looking at him? Did you look to him, yes or no?

A. I'm looking all over this room. I am in a confined area.

Q. Oh, all right. Now, the only thing that's not right is something that is not conducive to what you said before in that piece of paper; correct?

A. You are talking about the last statement?

Q. Yes.

A. The last part of the last statement.

Q. Yes.

A. Seems to be.

Q. And from what you saw in the interview you gave to Mr. Greer, the investigator for Mr. Jamal, the only thing that wasn't conducive to what you were saying there is the cops were all around you when you saw that person running, but you are telling us that

Page 81.

Dessie Hightower - Cross

was out of sequence too?

A. No, I did not see the cops around when the person started to run. The cops were not even on the scene when I seen the person flee from the crime area.

Q. Yet that's what it said in Mr. Greer's interview, right? I read it?

A. Well, yet, I also did not read his interview intentionally enough or he wrote down what I said wrong.

Q. And as soon as you got a subpoena from the D.A.'s Office because we wanted you to come here and tell the Court what you claimed in this, in this book here, this document, that Petition, what's the first thing you did?

A. I don't understand what you are saying.

Q. What's the first thing you did when a subpoena was served at your house two weeks ago? You called Mr. Weinglass, didn't you?

A. No, I did not call Mr. Weinglass -- I mean what is the first thing I did. I signed the subpoena.

Q. Did you call Mr. Weinglass immediately afterwards?

A. I don't recollect that.

Page 82.

Dessie Hightower - Cross

Q. Did you call him at any time after you got it?

A. Either, he had contacted me. I didn't have his phone number or where he was at so I believe he contacted me.

Q. And the day you got the subpoena you didn't come to Court, did you?

A. Well, uhh --

Q. Yes or no, sir?

A. No, I did not.

Q. And you didn't come to Court but you called Mr. Weinglass, didn't you?

MR. WEINGLASS: Objection. The witness indicated that I had called him. After I was informed in Court here that he had been served.

THE COURT: Counselor, this is cross-examination, please.

MR. WEINGLASS: The witness already gave the answer. Counsel is misstating it.

THE COURT: This is cross-examination.

MR. WEINGLASS: No, you can't misstate a prior answer. You cannot do that to a witness.

THE COURT: This is cross-examination. Counselor, please sit down. Please.

Page 83.

Dessie Hightower - Cross

MR. WEINGLASS: Let the record show the Court in an angry voice is pointing a threatening finger.

THE COURT: And you in an angry voice are speaking to the Judge in disrespect. I asked you please to sit down.

MR. WEINGLASS: I don't want to be pointed at in this Courtroom, Your Honor.

THE COURT: Counselor, please, sit down. Go ahead.

BY MR. GRANT:

Q. You called Mr. Weinglass to tell him I got a subpoena here --

MR. WEINGLASS: Objection.

BY MR. GRANT:

Q. -- did you not?

THE COURT: Objection is overruled.

THE WITNESS: No, I don't remember saying that. Excuse me, please.

BY MR. GRANT:

Q. The answer is no?

A. No, I don't remember saying that also.

Q. Did you call him?

A. I just stated to you, I think, I do believe

Page 84.

Dessie Hightower - Cross

Mr. Weinglass had contacted me. And how would you know that I said that to Mr. Weinglass? Was my phone tapped or something? I didn't say it to the Court or anything.

Q. No, I will --

A. What are you saying, sir?

Q. I will tell you how I know: Because you called and left a message for me to call you, and you said when I called you, didn't you, I talked to Mr. Weinglass, I called him, he had worked this out?

A. After he contacted me.

Q. That's how I know. I am not tapping your phone, you told me with your mouth; do you recall that?

A. Just refreshing my memory.

Q. Why do I have to keep refreshing your memory?

A. Because I am asking you.

Q. You are sure about everything that you said about what you think isn't conducive to you?

MR. WEINGLASS: Objection: Argumentative, form. May I have a ruling?

MR. GRANT: I think it is a proper question. I asked him a question.

MR. WEINGLASS: May I have a ruling? It is argumentative and --

Page 85.

THE COURT: It is overruled. Come on, let's go.

BY MR. GRANT:

Q. Sir, you flunked the box, and you know they told you you flunked the box, and you signed an affidavit?

A. Say it again, please. The box?

Q. The box: The polygraph machine.

A. Well, I don't know, you are saying the box, I don't know what you mean by the box.

Q. No. Polygraph. You flunked it and they told you you flunked it, yet you signed this document under oath swearing to it that you passed it, right?

A. No, they did not tell me I flunked it.

MR. GRANT: Thank you, sir.

THE WITNESS: Okay.

MR. GRANT: Nothing further.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Let's get one thing straight right away, Mr. Hightower --

THE WITNESS: You know, you know, could I say something, please?

Page 86.

MR. WEINGLASS: Sure.

THE WITNESS: I came here today to tell the truth. I didn't come to get into a mess with you or with the Judge or with the defense.

THE COURT: Wait awhile. You haven't been shouting with me.

THE WITNESS: Well, I came to tell the truth.

THE COURT: But that's for the Court to decide.

THE WITNESS: Judge, could I finish what I am saying?

THE COURT: Go ahead.

THE WITNESS: Thank you. If what I am saying is not up to liking or is not -- could I use the word conducive again? -- to what you might want me to say, well, I'm sorry, sir.

BY MR. WEINGLASS:

Q. You're welcome. Mr. Hightower, when you were served with the Commonwealth's subpoena were you asleep?

A. I was in the bed sick that night. I just took two, ahh, soft gel, Nyquil soft gel tablets. And if you know what they do to you, I was out of it.

Page 87.

Q. And it wasn't in the afternoon that you were --

A. It was in the evening hours, sir.

Q. Do you know that Mr. Grant here represented to the Court that you were served in the afternoon?

A. Well, he misled the Court.

MR. GRANT: Objection: I said in the daytime.

MR. WEINGLASS: Let's check the record. The word is afternoon, Counselor.

THE COURT: Well, he is saying now that you are misquoting. Come on, let's get moving. Regardless of what he said before, you are on redirect. Let's limit it to redirect.

MR. WEINGLASS: Well, there was a misrepresentation made here to the Court.

THE COURT: Redirect means redirect. Now let's get into redirect. We are not here to argue what he said or what somebody else said.

MR. WEINGLASS: Okay.

BY MR. WEINGLASS:

Q. Let's start, Mr. Hightower, at the beginning.

A. You are talking the night of the incident?

Q. Pardon?

A. You are speaking of the night of the incident?

Page 88.

Q. The night of the incident. Did you go down to a police station and be interviewed on that night?

A. Yes, I did, Counselor.

Q. Was it about 5:00 in the morning when you went down?

A. Somewhere in there, 3:00, 4:00. Between 4:00 and 5:00, I guess.

Q. At that time did you know that Mr. Jamal was the person involved in this case?

A. No, I didn't.

Q. Did you know who was the suspect who was taken into custody?

A. You mean at that point in time?

Q. Yes.

A. No, I did not.

Q. And you were interviewed, were you not?

A. Yes.

Q. That night?

A. Yes, I was.

Q. Did you go down to the police station voluntarily?

A. Yes, I -- yes, I did. I believe so.

Q. And you sat there and you were asked questions and you gave answers?

A. Yes.

Page 89.

Q. Do you remember telling the police that night, within one hour of the shooting, when you didn't know who was the suspect, you said, quoting Counsel, I seen a male run away wearing a red-and-black sweater. And then later you said I did see the guy who ran and he looked Jamaican too. And then later you said I just seen the back of him. He had on dark-colored pants and a red-and-black sweater, that's all I seen. He was about five-foot-eleven or six-foot.

A. I do remember, yes.

Q. Now, were you telling the police the truth at 5:00 in the morning on December 9th, 1981?

A. Yes, I was.

Q. Were you making up any stories?

A. For what purpose -- no, I wasn't, no.

Q. Incidentally, Mr. Hightower: Have you ever attended a rally held on behalf of the supporters of Mr. Jamal?

MR. GRANT: Objection. That's beyond the scope of my cross.

THE COURT: Sustained.

MR. WEINGLASS: Pardon?

THE COURT: Yes, it is beyond the scope.

MR. WEINGLASS: No, Your Honor, there

Page 90.

were questions on cross on whether or not he had met Mr. Jamal. Whether he knew him.

THE COURT: Before. Before. Before the incident.

MR. WEINGLASS: Yes. And that opens the door to questions on

--

THE COURT: Before, before the incident.

MR. WEINGLASS: Your Honor, the implication is he is biased in favor of Mr. Jamal because he knew him. I am asking him now whether --

THE COURT: How do you know that's what it is?

MR. WEINGLASS: Oh, that's the implication.

THE COURT: No, it is not the only implication.

MR. WEINGLASS: That is one implication.

THE COURT: Well, maybe.

MR. WEINGLASS: I have a right to correct it. Is the Court preventing me from asking that question?

THE COURT: Counselor, there was an

Page 91.

objection, I ruled on it. If the D.A. wishes to withdraw his objection, I have no problem with it. I only rule when I have to rule.

MR. WEINGLASS: And what is the basis for the Court's sustaining the objection?

THE COURT: I don't have to give you a basis, Counselor. I will do it at the appropriate time.

BY MR. WEINGLASS:

Q. So that night, that morning, you said I seen a male, I saw a guy and he looked Jamaican and you described the male again. And you said he was five-foot-eleven to six-foot tall.

A. Approximately, yes.

Q. And that was within one hour of the shooting?

A. Yes, it was, Counselor.

Q. Had you talked to any of Mr. Jamal's lawyers before you made that statement?

A. No, I did not.

Q. Had you talked to any investigators for Mr. Jamal?

A. No, I did not.

Q. Were you telling the police just what you saw on the morning of December 9th?

A. I was telling the detectives at that time what

Page 92.

I had, what I had observed to the best of my knowledge.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. And you had no reason to deceive or to tell a lie to the investigators that morning?

A. No, I did not, Counselor.

Q. One week later, approximately, on December 15th, you told us you were again interviewed by the police. Right?

A. Yes.

Q. This time they kept you there for over five hours; is that right?

A. 4:00 p.m. to 9:40 p.m.

Q. It's almost six hours?

A. 5 hours and 40 minutes, Counselor, yes.

Q. Now, Mr. Grant asked you on cross did the police treat you well, or the detectives, and you've said to him -- and I wrote down your answer -- for the most part. What do you mean by that?

A. From what I could recollect for the most part they were pretty fair with me. It was inconvenience waiting around and, you know, for different questions and answers to be, and waiting around for the

Page 93.

polygraph test and all that. So for the most part they were pretty fair with me.

Q. But on that occasion, in 5 hours and 40 minutes, did you tell them again -- and I am reading from an exhibit -- I then looked and I saw a man in a black, a red-and-black sweater run past the hotel down Locust Street? And did you also tell them when they asked you... how much time elapsed between hearing the last shot and seeing the man, the running man, and you said about 15 seconds. And then they asked you can you describe the man as to his height and general build, color, and if he had a hat on or not. And you said he was black, about five-nine to six-foot, he seemed to have dreadlocks.

Did you tell them that?

A. Yes.

Q. On the second interview, less than one week later?

A. Yes, Counselor.

Q. Incidentally --

(Discussion held off the record between defense Counsel.)

BY MR. WEINGLASS:

Q. You weren't alone that night, or the early morning hours when you saw these events on the

Page 94.

street, were you?

A. No, I was not.

Q. You were with another gentleman, weren't you?

A. Yes.

Q. And his name is Robert Pigford; isn't that correct?

A. Yes.

Q. And he's now, to your knowledge, a police officer with the City of Philadelphia; isn't that correct?

A. Yes.

Q. To your knowledge, is the Commonwealth going to bring him in here? Have you heard from him that he's been subpoenaed?

A. No.

Q. You told him about what you saw too, you told Mr. Pigford?

A. That night or recently?

Q. Any time.

A. Yes, I told him.

Q. And he is now a police officer?

A. Yeah. Yes, he is.

Q. By the way, by the way, before you testified in June of 1982, had you ever testified in a court of law before?

Page 95.

A. No, I don't believe so.

Q. That was your first time?

A. Yes.

Q. And you haven't talked to Tony Jackson before you took the stand?

A. No, I already stated that, no, I haven't.

Q. And when they asked you on cross-examination, when the District Attorney asked you now in reference to this individual you say you saw running, the one I believe you said that you were unsure, and correct me if I am wrong, from what your testimony was you were unsure whether or not it was a male or could even be female, that's what you said?

A. Repeat that, please.

Q. Yes. Do you want to see it?

A. Yes, thank you, Counselor.

MR. WEINGLASS: I will mark it, it is page 28, 148. Counsel questioned.

MR. GRANT: For the record, June 28.

MR. WEINGLASS: June 28.

THE COURT OFFICER: (Handing).

THE WITNESS: Repeat your question, please. I've read this. Could you repeat your question?

Page 96.

BY MR. WEINGLASS:

Q. Having read that, that question that was asked you in Court when you were testifying for the first time, do you remember saying anything to anyone that you were unsure if it was a man or a woman before you were in Court?

A. I said it was a black male.

Q. Pardon?

A. I said it was a black male, five-eleven to six-foot.

Q. That's what you have always consistently said?

A. I said it was a black male, five-eleven, six-foot.

Q. Do you know if you've ever described the person you saw running as a female?

A. No, I don't.

Q. But the prosecutor in questioning you suggested that you were unsure. Is that right?

A. (Witness shrugged shoulders.)

Q. Were you unsure?

A. I said it was a black male, five-eleven to six-foot.

Q. As a matter of fact, when you were tape recorded by Mr. Greer, did you say I couldn't identify anybody but whoever he was he was a black

Page 97.

man with possible dreadlock hair; isn't that right?

A. If that's what I signed in a signed statement I said it.

MR. GRANT: It is not signed.

MR. WEINGLASS: Oh. It is the transcript of your tape-recorded statement (displaying).

THE WITNESS: So.

BY MR. WEINGLASS:

Q. In asking you if you were unsure, do you think Mr. McGill there was playing a lawyer's game of twisting your words?

A. I don't know what Mr. McGill was trying to do. You have to ask Mr. McGill that, Counselor.

Q. Now, when you were questioned with the polygraph --

A. Yes.

Q. -- did they ask you on the polygraph if you saw someone running away?

A. I believe so.

Q. Is that in any of the documents that were shown to you by Counsel?

A. Yes, it was.

Q. In connection with the polygraph?

A. Yes, it was...

Page 98.

(Pause.)

A. Go ahead, Counselor, I am trying to read with you there.

Q. Pardon?

A. No, go ahead.

THE COURT: Next question.

BY MR. WEINGLASS:

Q. They never tested you by polygraph, did they, on if you saw someone running away?

A. I don't see the question, the question, all the questions that were --

Q. Right there is a document with all the questions on it. Which is this document. (displaying).

THE COURT: Do you have a number on that?

THE WITNESS: No.

THE COURT: What is the number?

THE COURT OFFICER: Let me see your documents. That would be C-14.

THE COURT: Write C-l4 on your documents, if you are asking him any questions. Right there, over there. It's yours.

BY MR. WEINGLASS:

Page 99.

Q. When you read over these questions, they never even asked you that when you were hooked up to the polygraph?

A. That question's not down here.

Q. Right, so you were telling them on the morning of the occurrence, you were telling them a week later, you consistently said you saw the man run away after the shooting, and when they hooked you up to the polygraph they didn't even ask you that question?

A. The question's not down here, Counselor.

Q. Does the description five-foot-eleven to six-foot sound to you like you were talking about a woman running away?

A. I do know women that height but, no, it doesn't, no, I don't believe it was a woman.

Q. You don't believe it was a woman?

A. No, I don't.

Q. Did you know someone named Veronica Jones that night, a prostitute?

A. Ahh...

MR. GRANT: Objection: Beyond the scope.

THE COURT: Sustained.

MR. WEINGLASS: Your Honor, the position the Commonwealth took --

Page 100.

THE COURT: I said sustained.

MR. WEINGLASS: -- during the trial was that he saw a young prostitute running away who was a very small woman.

THE COURT: Counselor, I said sustained. Remember, you are on redirect now.

MR. WEINGLASS: Yes.

BY MR. WEINGLASS:

Q. So you took the polygraph about 8:00 to 8:54 that night; is that right?

A. Yes, that's what it said.

Q. So you were there for four hours before they hooked you up to the machine; is that right?

A. Yes.

Q. And you signed off at 8:54 on the tape, or the scroll, right?

A. Yes, I did.

Q. And then you were there almost another hour, or 45 minutes to an hour with Detective Sterling questioning you, right?

A. If that's the detective's name on the documents here, yes.

Q. Well, I'm not sure it is detective. But in any event, directing your attention to --

MR. WEINGLASS: What is the C number?

Page 101.

THE COURT OFFICER: C-11. This one.

BY MR. WEINGLASS:

Q. Showing you C-11: That's not your handwriting on that document, is it?

A. My signature.

Q. But not your handwriting?

A. No, it's not.

Q. So it was the police or the detective who interviewed you who wrote down what you allegedly said?

A. Yes.

Q. Did they tape record you?

A. I don't remember, Counselor.

Q. Have you ever seen the tape?

A. No, sir.

Q. Do you know if they have tape recorders in a police station?

A. I would assume so.

Q. And you were, if I recall correctly, you were in your first year at Temple at that time, or had been to Temple?

A. Community College.

Q. Community College for how long?

A. I think it was like my second or third semester, I can't remember back.

Q. Did anyone ask you to write down what you saw in your own handwriting?

A. I believe so. I think it's here.

Q. Is this any... (displaying). Would you, would you give me --

A. C-12.

Q. C-12. And that's what you read, or was read into the record. I didn't see any shooting but I heard three shots close together, then two later.

A. Yes, I'm reading with you.

Q. Pardon?

A. Yes, I see it.

Q. That's all that you were asked to write that night?

A. No, it's... it's more here. After that there's more.

Q. Right. But it's all that is contained on C-ll?

A. Oh, excuse me, that's C-12.

Q. C-12?

A. Yes.

Q. Now, when you used the word conducive, is it possible here in Court you meant to say consistent?

A. Well, to -- yes.

Q. You were saying the same thing consistently?

A. Yes.

Q. You never altered what you said you saw that night?

A. No, I didn't, Counselor.

Q. And what you saw that night is you saw, you heard shots, you saw a man run away, and then the police arrived?

A. Yes, that's what I am saying, Counselor.

MR. WEINGLASS: I have no further questions.

MR. GRANT: Briefly.

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RECROSS-EXAMINATION

- - - - -

BY MR. GRANT:

Q. The person you described, sir, you said that you saw run away was a five-foot-eleven to six-foot person, right?

A. I said black male.

Q. Well, at one point you said black male and I read you what you said at trial. Okay?

A. Okay, person.

Q. Person.

A. Person.

Q. Five-foot-eleven to six-foot person, Jamaican

possibly. What's that mean?

A. Because of the dreadlocks, I believe I seen flapping up and down as the person ran away.

Q. Oh, the person had dreadlocks flapping?

A. Seemed to be.

Q. Seemed to be?

A. Seemed to be.

Q. Okay. By the way, the police took you to the wagon where they had Mr. Jamal right there at 12th and Locust and they asked to you look in?

(Pause.)

Q. Do you recall that?

A. I am trying to but I can't recall that though.

Q. You described that person you saw running seemed to have dreadlocks, who could have been approximately six-foot tall, and they had a red-and-black sweater, right?

A. The person that was running was running towards 12th and Locust. Mr. Jamal was on the corner of 13th and Locust. I do believe.

Q. He was on the corner of 13th and Locust?

A. I do believe.

Q. What was he doing there?

A. I don't know, I just seen the police officers after they apprehended him beating him up putting him

in the wagon.

Q. Oh, I see. Did Mr. Jamal have dreadlocks that night?

A. I can't remember, Counselor.

Q. Oh. Was he about six-foot that night?

A. Is he six-foot now? I don't know.

Q. Oh. What color is my suit?

A. It's a dark-colored suit. If it is black or, I don't know if it is black or navy blue.

Q. Right. Did you know that Mr. Jamal was wearing a red-and-black shell with a dark blue shirt, had dreadlocks and was about six feet tall that night?

MR. WEINGLASS: Counsel has problems with color, not the witness.

THE COURT: Counselor, this is cross-examination. You brought it up.

MR. WEINGLASS: He is misrepresenting now the evidence in the case.

MR. GRANT: Okay. I will say that on property receipt 854920, which was admitted into evidence and is part of this record, made available to Mr. Weinglass, that's what was admitted.

BY MR. GRANT:

Q. Did you see Mr. Jamal that night with that clothing on?

A. I can't recall that, sir. Being honest with you. I can't say that yeah, I seen him with that sweater on, no, I can't say that. You remember you asked me to be honest and I am telling you.

Q. Okay, did you see two people with dreadlocks about six-foot tall?

A. I said I seen one person.

Q. You didn't see two people wearing the same things looking like twins, did you?

A. No, now you are confusing me, no.

Q. You are not confused, sir. You didn't see two?

A. I just said you are confusing me and you are telling me I am not confused.

Q. You only saw one person that night wearing the clothing I described?

A. In that area, yes.

Q. In that area?

A. That is correct, towards 12th and Locust Street.

Q. And later on, before you went down to the police station, did you see another person looking the same way with the same clothing and dreadlocks

Page 107.

about six-foot?

A. No, I didn't.

MR. GRANT: Thank you very much.

THE WITNESS: Thank you.

THE COURT: All right, we will recess for lunch until, what's that? 2:15.

THE COURT OFFICER: This Court will take a luncheon recess until 2:15.

(Luncheon recess was held from 1:l0 p.m. to 2:45 p.m.)

THE COURT: Good afternoon, everyone. Next witness.

MR. WEINGLASS: If it please the Court: This morning we received the Court's order dated August 2nd quashing subpoenas on 11 individuals: Kracoff, Bell, Cranshaw, Campbell, McAllister, Kenney, Heftner, William Hinkel, Cook, Dunn and Bob.

Am I permitted to re-argue any of these or --

THE COURT: No, you were told then if you want to bring Anthony Jackson back, bring him back. All right, we will --

Page 108.

MR. WEINGLASS: I'm sorry.

THE COURT: Who are you going to call now?

Trial attorney Anthony Jackson, do you want to bring him back to lay a foundation?

MR. WEINGLASS: I heard the name, I didn't hear what the Court said before.

THE COURT: I said do you want to bring him back?

MR. WEINGLASS: Anthony Jackson?

THE COURT: Right.

MR. WEINGLASS: We are attempting to locate him.

THE COURT: Okay, fine, but who are you going to call now?

MR. WEINGLASS: Well, there are people on this list, and the Court --

THE COURT: Well, Counselor, yesterday you told me that there were three you were going to call today: Deborah Kordansky, Dessie Hightower, and William Thomas. I have that down here. Now, which one of those two remaining are you going to call now?

MR. WEINGLASS: We also have some of the witnesses, we didn't know their subpoenas

Page 109.

were going to be quashed until we came here. The witnesses --

THE COURT: No, you were told that yesterday. You were told that yesterday. Please.

MR. WEINGLASS: Well, not as to all of these.

THE COURT: Yes. All of those.

MR. WEINGLASS: So their subpoenas are quashed?

THE COURT: Right. Kenney, Heftner, Hinkel Cook, Dunn, and Howard Bob, okay. And you said you were going to call these three today so let's call them.

MR. GRANT: Could I have the Court's indulgence for one moment, please?

THE COURT: Yes, if it will expedite things.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. WEINGLASS: We are ready to proceed.

THE COURT: Okay, which one?

(Discussion was held off the record at this time between defense Counsel.)

Page 110.

MR. WEINGLASS: Sorry, Your Honor.

THE COURT: That's all right, which one?

MR. WILLIAMS: Good afternoon, Your Honor. The Petitioner calls...

William Thomas.

THE COURT: Okay.

- - - - -

William E. Thomas, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Good afternoon, Mr. Thomas.

A. Good afternoon.

MR. GRANT: Before we start, Your Honor: Since he is not an affiant, and there has never been an offer of proof, and he hasn't given any statements, I would like to know the parameters of where we are going with this witness.

THE COURT: I thought they had given you that.

Page 111.

MR. GRANT: No, Your Honor.

THE COURT: Tell him.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MR. GRANT: Your Honor, there is apparently a wide-ranging list of events that Counsel would like Mr. Thomas to testify to, many of which were covered at the time of trial. However, he does say that this witness will testify as to whether or not a Commonwealth eyewitness Cynthia White was given police protection while she plied her craft, which I think is legitimate.

He also is indicating that he wants to ask him about photo IDS; and Mr. Harkins, their witness, established there were none.

And he wants to ask him about selectivity in the selection of polygraph examination interviewees, which I think is improper.

So I am going to move to object, except as to whether or not police protection was provided for Cynthia White, whether there was a plea agreement with Cynthia White. And

Page 112.

anything about polygraphs I think is totally speculative.

MR. WILLIAMS: Your Honor, the issue of the polygraphs is the extension of what we heard this morning from Mr. Hightower. And the claim is in our Petition that there was bias in the investigation of this case. We root that claim in a new Supreme, United States Supreme Court decision, the decision of Kyles versus Whitley, which apparently expanded the concept of Brady to encompass a claim of bias in the investigation. And we take advantage of that new ruling in Kyles versus Whitley in our Petition.

And part of that, part of that claim is that in the selective use of polygraph examination. That buttresses our claim of bias in the investigation in as much as the polygraph was used solely on an accounting student, that is Mr. Hightower, and not on other witnesses, all of whom had criminal records. In particular, most

egregiously, Cynthia White.

So we intend to inquire into that to support our Kyles versus Whitley bias in the investigation claim.

Page 113.

Detective William Thomas, Ret. - Direct

MR. GRANT: I object. The reason I object, Your Honor, is the reason Mr. Hightower testified is because they said he passed a polygraph and we say no you didn't. Now they want to talk about well why did you pick him in the first place. But that is not the issue they raised in their claim. Their claim is you kept from us the fact that he passed the polygraph -- even though it is not admissible in Court -- that still would have made us believe him better, I guess.

MR. WILLIAMS: That is just not true. Our Petition is clear that we raise the claim of bias in the investigation. How they treated Cynthia White was one prong of that.

THE COURT: Well, what is your problem? I don't see --

MR. WILLIAMS: So I am offering, giving an offer of proof as to areas of inquiry for Mr. Thomas.

THE COURT: You mean this officer has the authority to decide who takes a polygraph and who doesn't?

MR. WILLIAMS: That's what I want to inquire.

Page 114.

Detective William Thomas, Ret. - Direct

THE COURT: Why didn't you talk to him before so you could have filed some sort of affidavit here before? To me it looks like almost --

MR. GRANT: A fishing expedition.

THE COURT: A fishing expedition, sure. You should have talked to him before, found out what he knows.

MR. WILLIAMS: Your Honor, we have testimony from Mr. Thomas from the trial where he describes himself as the hub of the wheel. The wheel being the investigation and he was the hub. He was in charge of this investigation. Based upon that sworn testimony in the trial, we have reason to believe that he is competent and equipped to answer questions as to what was happening in an investigation that was under his auspices.

MR. GRANT: I would just object as the questions I feel are objectionable arise, rather than stand here.

THE COURT: Okay.

MR. WILLIAMS: May I inquire, Your Honor?

THE COURT: Yes, please.

Page 115.

Detective William Thomas, Ret. - Direct

MR. WILLIAMS: Thank you.

BY MR. WILLIAMS:

Q. Mr. Thomas, I am feeling a little under the weather and I don't have the benefit of a microphone so --

THE COURT: That's all right, you shout pretty loud. You are not as quiet as Mr. Grant. Mr. Grant needs a microphone, you don't.

MR. WILLIAMS: Well, I've never had a problem hearing Mr. Grant.

BY MR. WILLIAMS:

Q. Mr. Thomas, can you tell us what your current occupation is?

MR. GRANT: Objection as to relevance.

MR. WILLIAMS: I am only, this is so someone reading this record could know who is the witness.

THE COURT: If you want to find out if he is still a police officer, ask him.

BY MR. WILLIAMS:

Q. What is your occupation, sir?

MR. GRANT: Objection.

THE WITNESS: I am --

MR. GRANT: Judge, the record knows he is a retired police officer who was the assigned

Page 116.

Detective William Thomas, Ret. - Direct

detective. That's all the record needs to know. We don't need to know where he works or who he is.

THE COURT: He is a retired police officer. Let's go, come on.

BY MR. WILLIAMS:

Q. You are a retired police officer, sir?

A. I am a retired detective, sir.

Q. When did you retire?

A. The last day of February, 1989.

Q. And how long were you with the Philadelphia police force?

A. Counting my military time, approximately 24 years.

Q. Now, have you had discussions with the prosecution team in this matter since June 5th, 1995?

MR. GRANT: I object to the characterization. What is that: Prosecutor team?

BY MR. WILLIAMS:

Q. The District Attorney's Office, pardon me. Have you had discussions with the District Attorney's Office since June 5th, 1995?

A. No, sir. Several members, police detectives that are present in and around the Courtroom now are

Page 117.

Detective William Thomas, Ret. - Direct

personal friends of mine outside of this jurisdiction. And I have had conversations with them. But nothing involving these proceedings or this incident.

Q. So you have never discussed this proceeding with any member of the District Attorney's Office since the filing of the PCRA?

A. I don't know when that's filed.

Q. June 5th, 1995.

A. Not any of the particulars or anything like that, you know. Like at lunch time I mean I may talk with one of the detectives about years gone by when we worked on several other cases, stuff like that. But, no, none of the facts.

Q. Now, would you share with us and for the benefit of the record what role did you play in the Faulkner shooting investigation back in late 1991 and -- I'm sorry -- 1981 and 1982?

A. I was the assigned detective. I was assigned by my supervisor in the Homicide Unit to handle this investigation.

Q. What does it mean to be assigned to handle the investigation?

A. The assigned detective is, you would be responsible for all of the paperwork, the reports, et

Page 118.

Detective William Thomas, Ret. - Direct

cetera, that they be compiled, put together and disseminated to the D.A.'s Office and other pertinent units or what have you.

Q. What role did you play in terms of how the investigation was conducted?

(Pause.)

A. Well, investigation was conducted under the supervision of my supervisor at that time, which would have been, I believe, Sergeant Givens and I think Lieutenant McGowan, they would have been the overall supervisors.

Q. Do you recall in the trial of this matter back in 1982 describing yourself as the hub of the wheel in the investigation?

A. Yes, sir.

Q. What does that mean: The hub of the wheel?

A. In other words, in Homicide in a squad you have numerous separate detectives, you have separate supervisors. When you're assigned to a particular investigation, that is your investigation. All of the detectives in your particular squad, or in this case you may have 1 squad and 3 squad, I'm going to look at almost every interview or everything that comes in in the particular case and what have you. Whereas a certain detective in 1 squad may only

see

Page 119.

Detective William Thomas, Ret. - Direct

what he does, I may see all of it.

Q. So if I understand you correctly, being the hub of this wheel permitted you to have an overview of the direction of this investigation?

A. Somewhat, but not as much as my supervisor would have because they were able to be stationary.

Q. And how about the scope of the investigation? Were you able to, during the time that you were the hub of this wheel?

A. I don't understand the question.

Q. The scope of the investigation.

THE COURT: He said he didn't understand your question.

BY MR. WILLIAMS:

Q. You don't understand what I mean by the scope of the investigation?

A. No, sir.

Q. Well, did you have an understanding as to how many detectives and investigators were interviewing witnesses?

A. No, sir, that would be something for a supervisor to know.

Q. So you didn't know that?

A. I would have an idea.

Q. And what was that idea?

Page 120.

Detective William Thomas, Ret. - Direct

A. But I would not -- excuse me.

Q. What was your idea as to how many, how much manpower was devoted to the investigation?

A. You are talking about on the specific night of the incident?

Q. No, the investigation was ongoing, was it not, after the incident?

A. An investigation in a Homicide Unit will use any and all parts of the Homicide Unit that the supervisors feel that are necessary. And anything that's within the Police Department.

Q. And what was your understanding as to how much was necessary?

A. That doesn't go into the scope of me as a detective, that's the supervision.

Q. So you did not know?

A. I may have been aware of who was working on what, but the scope of how many people, that's not within my duties as an investigator or detective.

Q. Now, did you assist the assigned prosecutor in this case, a Mr. McGill, during the course of the trial itself?

A. Yes, I was with Joe McGill during the trial.

Q. What was your assignment or duties during that period of the case?

Page 121.

Detective William Thomas, Ret. - Direct

(Pause.)

A. I was subpoenaed to come to Court. I bring the records, a file like this (indicating), this is what we call, we have numerous reports, documents, photos, et cetera. And the originals et cetera are in my file. And I have to keep tabs. If somebody wants page 1, or property receipt number 99, I've got to be able to locate it and I have to have that there. You know, any number of things that I may have to do while I'm on subpoena from the D.A.'s Office.

Q. So to effectively assist Mr. McGill during the course of the trial, you had to be familiar with all the police reports that were prepared in this case?

A. I have probably seen every report that was prepared in this case, that's correct.

Q. Now -- pardon me, Mr. Thomas.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WILLIAMS:

Q. Now, during the course of the investigation prior to the commencement of the trial, did you attempt to keep abreast of how the investigation was going?

(Pause.)

Page 122.

Detective William Thomas, Ret. - Direct

A. What do you mean by that, Counselor?

Q. Well, did you try to keep abreast of the status of the investigation: Whether all the witnesses that needed to be talked to were talked to, whether witnesses had to be re interviewed, things of that sort?

A. The scope of usually determining whether someone is to be re interviewed, et cetera, is usually determined by the supervisor.

Q. Who was that supervisor, Mr. Thomas?

MR. GRANT: Objection: Asked and answered. Herbert Givens and Lieutenant McGowan.

MR. WILLIAMS: Very well, I will accept that answer from Mr. Grant.

BY MR. WILLIAMS:

Q. Now, you mentioned the police reports. And that you were familiar with all the police reports. Can you tell us -- pardon me.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WILLIAMS:

Q. Can you tell us why the addresses of the civilian witnesses were redacted from those police reports?

Page 123.

Detective William Thomas, Ret. - Direct

MR. GRANT: He could if he were the Judge. That was redacted, Your Honor, and ordered to be so. So I object.

THE COURT: Objection is sustained.

BY MR. WILLIAMS:

Q. Could you tell us when the addresses were redacted, Mr. Thomas?

MR. GRANT: I object. That is an irrelevancy since that is not a decision of the investigator in any event.

MR. WILLIAMS: Well, if he knows.

MR. GRANT: I think it is irrelevant if he knows.

MR. WILLIAMS: Mr. Grant is representing to the Court these addresses were redacted pursuant to a Court order. My understanding is that order was given on April 1st, 1982.

THE COURT: Don't you think the District Attorney is also involved in it? He is not the Judge. He was in Court.

MR. WILLIAMS: Mr. Thomas is here, I would like to know if it happened prior to April 1st, 1982.

THE COURT: Why don't you say that.

Page 124.

Detective William Thomas, Ret. - Direct

MR. WILLIAMS: I am asking when.

MR. GRANT: May I ask what claim this is supposed to advance that they haven't noticed us on?

MR. WILLIAMS: The ineffective assistance of Counsel. Mr. Jackson testified ad nauseam about the fact that addresses were redacted. And it impeded efforts to perform as a competent attorney.

MR. GRANT: He gave a very specific offer of proof. Now, of course, this is not one of the many offers that he's made to me, but I object to it because it's beyond the scope of what his own offer is, and, furthermore, it is irrelevant.

THE COURT: You see, you didn't give it in written form here. Stick with what you told the District Attorney you were going to prove with this witness. Stick to that. You made a statement to

him.

MR. WILLIAMS: Your Honor is barring me from asking questions about that?

THE COURT: I am not barring you from anything. If you had properly done what you should have done he would have had all this

Page 125.

information. He only found out just awhile ago what you hoped to prove by this witness. Now, you gave him a statement, stick within that statement.

MR. WILLIAMS: Your Honor, they've had our Petition since June 5th.

THE COURT: They may have but you never gave them anything in writing. You never gave them an affidavit or anything as to what you intend to prove by this witness until right this moment. And I told you before, at the beginning, I wanted you to do this.

MR. WILLIAMS: From the very outset of this case --

THE COURT: From the outset of this case I told you to give them the list of names and give them written statements of what you hoped to prove. You didn't do that with this witness and you evidently didn't do it with a lot of other witnesses. You said to the D.A. now you were going to go into a certain area and I am limiting you to that area, okay.

MR. WILLIAMS: Your Honor --

THE COURT: Counselor, I have made a ruling. You have an exception to my ruling.

Page 126.

Now let's proceed, okay.

MR. WILLIAMS: Very well.

BY MR. WILLIAMS:

Q. Being the hub of the wheel of this investigation, Mr. Thomas, were you aware of whether any witnesses expressed a reluctance to assist in the investigation, that is to offer a statement as to what was or was not observed at the time of the incident?

MR. GRANT: I would ask that he be specific as to which party, the Defendant or the Commonwealth, as to whether they were reluctant to offer assistance.

MR. WILLIAMS: Oh, I'm sorry.

BY MR. WILLIAMS:

Q. To any law enforcement personnel, any witnesses express reluctance to law enforcement personnel who were investigating the shooting death of Officer Faulkner?

A. Let me make sure I have this straight, Counselor. You are asking me if I know of any civilian witnesses who reported to myself or other police personnel that they were reluctant to testify in this matter?

Q. Or just to assist, that is to offer a

Page 127.

statement.

A. At this juncture, I don't recall of any. I don't recall of any.

Q. Was Cynthia White available and willing to assist in the investigation of this matter, or did she ever express a reluctance?

A. Cynthia White had some fears from certain retaliations but she never mentioned to me not wanting to testify.

Q. Did she ever express reluctance to discuss what she allegedly observed on December 9th, 1981 with any law enforcement personnel?

MR. GRANT: Objection. Calls for speculation on his part.

MR. WILLIAMS: Unless he is the law enforcement personnel. If he knows. I am only asking if he knows.

MR. GRANT: Withdrawn.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. If you know, sir?

A. The word in there that keeps getting me sort of unclear on your question is reluctance. In other words, you're asking me to determine her reluctance?

Q. Yes. Did she express any?

Page 128.

A. Not reluctance, no.

Q. She expressed fear?

A. There was an indication that she did do that, that is correct.

Q. Okay.

(Discussion was held off the record at this time among defense Counsel.)

MR. GRANT: Could I ask Mr. Thomas to pull the microphone closer so we could hear him.

THE WITNESS: I'm sorry, Counselor.

MR. GRANT: Thank you, sir.

THE COURT: Mr. Williams, please will you come over here. Could we move forward.

MR. WILLIAMS: Yes, Your Honor.

THE COURT: You are wasting a lot of time.

MR. WILLIAMS: Well, Your Honor, I am trying --

THE COURT: I said luncheon was supposed to be 2:15. You didn't start until 2:45. So let's try to move along.

MR. WILLIAMS: I am trying to be as complete and as careful as I must be.

THE COURT: Well, we know that but let's move along.

Page 129.

BY MR. WILLIAMS:

Q. You were present at the trial of this matter, were you not?

A. Counselor, during this case I was outside the door and what transpired inside the door for the most part I could not comment on. I wouldn't know from personal knowledge.

Q. Were there times, Mr. Thomas, where you sat at the prosecution table during the course of the trial?

A. Yes, sir.

Q. And what determined when you would do that?

MR. GRANT: Objection as to relevance. And as to what area that purports to support.

THE COURT: Rephrase your question somehow.

BY MR. WILLIAMS:

Q. Well, let me put it this way. Were you aware that a witness by the name of Veronica Jones testified in the trial of this matter?

MR. GRANT: Objection: Cynthia White was his offer of proof as to the bias on behalf of the Commonwealth.

MR. WILLIAMS: If Your Honor will indulge me just a few questions and you will see the relevance of this, Your Honor.

Page 130.

MR. GRANT: I think I know the relevancy right now. The same relevance that was brought out here in the course of the trial when he was having Veronica Jones say what was in the mind of Cynthia White as to what treatment she would get. That's been litigated.

MR. WILLIAMS: I am not going to inquire into that.

MR. GRANT: Well, this is an irrelevant line of questioning.

THE COURT: Why don't you stick to what you told the D.A. you hoped to prove.

MR. WILLIAMS: I am going precisely into that.

THE COURT: Well, he says that is not so.

MR. WILLIAMS: Your Honor has a peculiar way of always

finding --

THE COURT: Counselor, please, I do not know what you said to him because I was not privy to that discussion.

MR. WILLIAMS: But you are willing to accept what he says willy-nilly.

THE COURT: Are you calling him a liar?

Page 131.

Detective William Thomas, Ret. - Direct

MR. WILLIAMS: No.

THE COURT: Are you calling him a liar?

MR. WILLIAMS: I am not calling my friend a liar.

THE COURT: Okay. You spoke to him. I wasn't part of that conversation.

MR. WILLIAMS: But I may have a difference of opinion as to what was represented.

THE COURT: Well, talk to him about it. I can only go by what he said about the area that you were going to cover. Now cover that area. Maybe I should have let you say it so the record could have it.

MR. WILLIAMS: I am trying to do that.

THE COURT: Well, then do it.

BY MR. WILLIAMS:

Q. Mr. Thomas, were you aware, were you aware that Veronica Jones testified that she was offered the same deal as Cynthia White: that is that she would be allowed to prostitute herself without fear of arrest, were you aware of that?

A. No, sir, I wasn't aware of nothing like that.

Q. You were unaware of that fact?

Page 132.

Detective William Thomas, Ret. - Direct

A. At this juncture, yeah, I was either unaware of it or I don't recall it, sir.

Q. You are either unaware of it or you don't recall it?

A. I don't recall it.

Q. Had you had -- withdrawn. Now, your understanding was that Cynthia White was a prostitute; is that true?

A. That's correct.

Q. And was your understanding that Veronica Jones was also a prostitute?

A. At this juncture I don't remember who Veronica Jones is, what her part is in the case. Counselor, you are going 13, 14 years back. And the number of people that was interviewed at that time, like I said, I didn't even peruse anyone's file, I came here at your request. And all --

Q. Okay.

A. And I couldn't recall any, all the names that was in these files.

Q. Fair enough. Let me ask you this. In your experience as a seasoned, retired detective --

THE COURT: He means retired as a detective.

MR. WILLIAMS: Well, he has been

Page 133.

Detective William Thomas, Ret. - Direct

retired for quite some time.

THE COURT: I know that, but what is the seasoned? You mean before he retired?

MR. WILLIAMS: No, he was a seasoned detective and now he is a seasoned retired detective.

THE COURT: Oh. I am a Senior seasoned retired Judge?

MR. WILLIAMS: I won't venture to speculate on that.

THE COURT: Oh, okay.

BY MR. WILLIAMS:

Q. But nonetheless, as an individual with many years of experience in law enforcement, is it your experience that prostitutes are vulnerable to police pressure because they can be arrested for attempting to earn a livelihood?

MR. GRANT: I object. As opposed to dope dealers and murderers?

MR. WILLIAMS: Yes.

MR. GRANT: And pimps and thieves?

MR. WILLIAMS: Yes.

MR. GRANT: Obviously, he is not a psychiatrist, he is not qualified as an expert in that field. So I think the question is

Page 134.

Detective William Thomas, Ret. - Direct

ludicrous, Your Honor, and I object to it.

MR. WILLIAMS: I think law enforcement --

THE COURT: Why don't you get right to the heart of it.

MR. WILLIAMS: This is the heart of it.

THE COURT: No, the heart of it is did he do anything. Is that what you are saying?

MR. WILLIAMS: Not at all, Your Honor. I am not suggesting that at all.

THE COURT: Well, what are you suggesting?

MR. WILLIAMS: If Your Honor had read the Petition and the memorandum of law you would know.

THE COURT: Counselor, I don't know what you told him you were going to prove. If you want to make a public announcement and tell me what you intend to prove with this witness then I would be in a better position, because I was not privy to your private conversation.

BY MR. WILLIAMS:

Q. Mister --

THE COURT: Are you going to give me

Page 135.

Detective William Thomas, Ret. - Direct

that or not?

MR. WILLIAMS: Well, I don't want to do it in front of the witness.

THE COURT: Well, that's why I told you to talk to him in private.

MR. WILLIAMS: Mr. Grant stood up and reported the substance of our conversation to Your Honor.

MR. GRANT: I did, Your Honor. And it didn't include any of this. Every time I object it's because it's not what he purported to represent to me.

MR. WILLIAMS: With Your Honor's indulgence.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

THE COURT: Do you see why I want you to put it in writing before you call any of these witnesses? So that the D.A. will have it, I will have a copy of it, I will know where you are going to go. Would you please do that in the future. I told you that at the very beginning of this case.

MR. WILLIAMS: Your Honor --

Page 136.

Detective William Thomas, Ret. - Direct

THE COURT: Just remember what I said, all right. In the future please get it in writing.

MR. WILLIAMS: What mystifies me is that is what we offered at the very beginning.

THE COURT: Counselor, you did not put it in writing. I don't have anything in writing. He doesn't have anything in writing. Would you please do that in the future.

BY MR. WILLIAMS:

Q. Now, Mr. Thomas, is it fair to say that the livelihood of prostitutes depends upon whether they can avoid arrest?

MR. GRANT: Objection. Unless he is a prostitute.

BY MR. WILLIAMS:

Q. In your experience in law enforcement, is that your understanding?

MR. GRANT: Objection.

THE COURT: Is it what?

MR. WILLIAMS: That their livelihood depends upon their ability to avoid being arrested.

THE COURT: I don't know, their livelihood is catching somebody that is willing

Page 137.

Detective William Thomas, Ret. - Direct

to pay. If they don't have anybody that is willing to pay, whether they get arrested or not is not going to affect it at all.

MR. WILLIAMS: Certainly if they get --

THE COURT: They have to have somebody that is willing to pay.

BY MR. WILLIAMS:

Q. And to be able to elicit somebody who is willing to pay for their services, they also have to avoid being arrested; is that true?

MR. GRANT: Your Honor, I object to this line of questioning.

THE COURT: I don't think necessarily that that's true. I think they consider that as a sort of taxation. If you want to get into the specifics of this case here, that's a different story.

Let's find out what they did as to this. Not hypothetical questions. Because I could answer them for you.

BY MR. WILLIAMS:

Q. Now, earlier in this proceeding we heard testimony from a Mr. Greer, who testified that he observed Miss White attempting to elicit the

Page 138.

Detective William Thomas, Ret. - Direct

services, elicit customers but with the protection of certain law enforcement personnel.

MR. GRANT: Objection. That's not true. The record reflects that he saw Miss White on a street corner standing there with two people in a red car beside her.

THE COURT: That's what he said.

MR. GRANT: There was no solicitation testimony.

BY MR. WILLIAMS:

Q. Were you aware that there were two individuals parked near Miss White on numerous occasions? Were you aware of that?

A. First of all, I didn't hear the, umm, testimony. But to your comment of -- I'm not aware of two people in a car watching Mrs. White -- Miss White.

Q. You were not aware of that?

A. No.

Q. Okay. Were you at all involved in the questioning of Miss White?

A. Counselor, there was so many interviews in this case. Which ones I was involved in at this juncture, you'd have to look at the interview. Normally we would acknowledge who was present in the

Page 139.

Detective William Thomas, Ret. - Direct

interview and all. For me to tell you. You know, I spoke with Miss White on many occasions, but whether I was there with these interviews or whatever, I can't remember.

Q. Okay, you indicated that Miss White was interviewed on many occasions. Certain individuals were interviewed on more than one occasion?

A. No, correction: I just said that I spoke with Mrs. White on several occasions. I didn't say interview, I said spoke.

Q. Okay, spoke. So I will rephrase my question. Certain individuals were spoken to on more than one occasion in connection with this case? Is that true?

A. A lot of my conversation with Miss White may not have been in reference to this particular case; it may have been a personal conversation between two human beings.

Q. Do you recall what Miss White looks like?

A. I haven't seen Miss White I guess since this case, or maybe a year or so after this case.

Q. But at the time, back in 1981 and '82?

A. I have her pictured in my mind somewhat. I think she was sort of a slender young lady.

Q. Could you share that with us, that picture in your mind?

Page 140.

Detective William Thomas, Ret. - Direct

A. I really... would not like to try to describe someone. Because in my mind, when I try to go back 13 or 14 years, 12 years, whatever it is, I picture her one time maybe in slacks, maybe one time in a dress. She was tall, maybe five-foot-three, five-foot-four, slender build, maybe 100 pounds, something like that, brown-skin young lady. That's what I have in my head maybe. I can't describe to you verbally at all but that's the best I could come up with right now.

Q. Was she white or was she an African American?

A. She was a black lady.

Q. Do you recall the complexion of her skin: Dark, light skin?

MR. GRANT: Objection: Asked and answered. He said she has brown skin.

BY MR. WILLIAMS:

Q. Now, were certain individuals interviewed, as opposed to spoken to, interviewed by law enforcement in connection with this case?

A. When you say were certain individuals interviewed in regards to this case, I have no idea who you are talking about.

Q. Well, I'm asking were there certain civilian witnesses interviewed on more than one occasion?

Page 141.

Detective William Thomas, Ret. - Direct

A. In my binder -- we make up a binder in Homicide. Each individual who was interviewed. And each one of their interviews was placed in this binder. There's also a section in this binder for all documents related to the criminal lab, to the ballistics lab. There's also another section in there for property receipts concerning firearms, and other documentation, et cetera, and all. There's also a section in this thing for photographs, et cetera, et cetera, from the crime lab, that was taken from the crime scene. So there were some people interviewed more than one time.

Q. That's what I am asking you.

A. Which ones they would be or if they were interviewed more than one time, I would have to look at that binder to tell you.

Q. I am not asking for particular individuals but you just indicated certain individuals were interviewed on more than one occasion?

A. Certain individuals may have been interviewed. If they were interviewed their interview would be in the binder.

Q. Okay. Now, do you know if Cynthia White in particular was interviewed on more than one occasion?

A. Counselor, at this juncture I couldn't tell

Page 142.

Detective William Thomas, Ret. - Direct

you how many times Cynthia White was interviewed or anyone else.

Q. Did you regard Miss White as an important witness for the prosecution?

A. A witness is a witness. Every witness is important.

Q. Are some witnesses more important than others?

MR. GRANT: Objection: Asked and answered.

MR. WILLIAMS: I don't think it is.

THE COURT: He said one witness is as important as another witness.

BY MR. WILLIAMS:

Q. Were you implying it to mean that they are equally important?

MR. GRANT: Objection. Sounds like the spoken words.

MR. WILLIAMS: I am following up as a lawyer ought to, Your Honor.

THE COURT: Is that his job or is that the job of the District Attorney: To decide which witness is more important than somebody else? He is not going to try the case. Is he going to try the case?

MR. WILLIAMS: No, my understanding

Page 143.

Detective William Thomas, Ret. - Direct

is, and it is an elementary one, is that law enforcement makes judgments about the qualities of witnesses.

THE COURT: Well, I don't think the detective decides that. The D.A. decides who they will prosecute, who they are not going to prosecute.

BY MR. WILLIAMS:

Q. Let me put it to the witness, then: Do you as an investigator make determinations as to the qualities of different witnesses, whether one witness is more truthful than another, or more credible than another witness, do you do that in law enforcement?

MR. GRANT: I would object. If he doesn't he doesn't. He can't speak for the world.

BY MR. WILLIAMS:

Q. I am asking you as a law enforce --

THE COURT: Are you asking him if he did that?

MR. WILLIAMS: Yes.

THE COURT: Oh. Then why don't you rephrase your question.

BY MR. WILLIAMS:

Q. Did you as a detective make evaluations of

Page 144.

Detective William Thomas, Ret. - Direct

witnesses in the fashion that I described?

A. As a detective I've always worked under the precept that you locate, interview and put on paper every witness that you can find, all the evidence that you can find, and it will be coming to a place like this and these people that will sit over there, or a judge that will sit here, and you counselors will be there, and will give the decision on what is facts and what isn't facts. A detective's job is just to get the facts, get the witnesses, put them out there. I don't, I don't judge anything further than that.

Q. So it is your understanding as a law enforcement officer that it's important -- pardon me -- that it's important for the jury to hear all of those facts that you can gather; is that true?

A. That's not the scope of my job, sir. My job is just to find the facts, find the witnesses, and turn them over...

Q. To the District Attorney?

A. To the District Attorney.

Q. And some of those facts concerned Mr. Wakshul, right?

MR. GRANT: Here we go.

THE COURT: Okay, I will have to

Page 145.

Detective William Thomas, Ret. - Direct

sustain that.

MR. GRANT: Did you mention Mr. Wakshul to me, Mr. Williams?

MR. WILLIAMS: I did.

MR. GRANT: Okay, then I object.

MR. WILLIAMS: On what grounds? It goes to one of our claims.

MR. GRANT: On what grounds are you asking him about Mr. Wakshul?

MR. WILLIAMS: It is supporting our claims on Mr. Wakshul and what he testified to.

MR. GRANT: The claim they brought for Mr. Wakshul was he went on vacation and he wasn't allowed. Now, what's he got to do with that?

MR. WILLIAMS: That's why I am inquiring, Your Honor, that's why I am inquiring.

MR. GRANT: I object.

THE COURT: Objection is well taken.

MR. WILLIAMS: We have a valid claim, Your Honor, a viable claim, and we have foundational testimony from Mr. Wakshul. And now I have another witness on the stand and you're barring me from inquiring into it. Is my

Page 146.

Detective William Thomas, Ret. - Direct

understanding correct?

THE COURT: Are you saying he knows where Mr. Wakshul was?

MR. WILLIAMS: I am not. I am inquiring into it.

THE COURT: Well, did you put that in writing for the D.A.? You see the problem we have here. If you gave a list to me in the very beginning and put it in writing what you hope to prove by the witnesses, he would then have it.

MR. WILLIAMS: What Your Honor is suggesting is that for every --

THE COURT: I am suggesting that if you had done that in the beginning, just as you did with the other affidavits that you filed --

MR. WILLIAMS: I am not going to quibble with the Court. The Court is barring me from inquiring into it, then so be it.

THE COURT: Okay.

MR. WILLIAMS: Your Honor is barring me?

THE COURT: He made an objection, I sustained it.

MR. WILLIAMS: Very well.

THE COURT: If you consider that

Page 147.

Detective William Thomas, Ret. - Direct

barring you, then I'm barring you. But I don't consider that as barring you.

MR. WILLIAMS: After yesterday, in view of yesterday I could only accept it as a bar.

THE COURT: You could accept it either way, but when somebody makes an objection I will either sustain it or overrule it.

BY MR. WILLIAMS:

Q. Getting back to Cynthia White, Detective Thomas, was Cynthia White arrested between the dates of December 9th, 1981 and June of 1982?

A. Was Cynthia White arrested between December?

Q. Was she ever arrested, yes?

A. I have no idea.

Q. You do not?

A. At this juncture, you know, I don't, I don't know whether Cynthia White was arrested, no, I don't. I don't. You know, you are asking me to give you a time between a 12-month span 12 years ago was someone arrested. I don't know.

Q. Okay. Do you know, as the hub of the wheel of this investigation, how Miss White, a transient and a prostitute, was monitored to insure her availability at trial?

Page 148.

Detective William Thomas, Ret. - Direct

MR. GRANT: Objection. She had a fixed abode, she was not a transient. Based on the record of this trial.

MR. WILLIAMS: That may very well be Mr. Thomas' answer.

THE COURT: He is objecting to how you phrased your question. If you could rephrase your question somehow that it is not objectionable then go ahead.

MR. WILLIAMS: My question was how was she monitored to assure availability.

THE COURT: You're assuming that she was monitored.

MR. WILLIAMS: Well, if they had her address then that's fine,

that is a form of monitoring.

THE COURT: No, it is not. The fact that I am a witness and I give them my address, does that mean that they are going to monitor me?

BY MR. WILLIAMS:

Q. Mr. Thomas, how did you as the hub of the wheel of this investigation satisfy yourself that Miss White would be available to testify at trial?

A. I prefer to be called the assigned detective,

Page 149.

Detective William Thomas, Ret. - Direct

sir. But as far as availability, I give the witness to the D.A.'s Office, the D.A. has D.A. detectives to serve the subpoenas and get their witnesses in.

Q. I see. So you played no role in insuring that witnesses and the whereabouts of those witnesses were known to the assigned District Attorney?

A. No, sir. Here, this was not the only case that I had then or thereafter in Homicide. Everyday you have a wheel and everyday someone else gets assigned to another case. And you can't just go around and what you want me to say. I can't just follow people around, whatever you want me to say I'm doing.

Q. I understand that, Mr. Thomas. But what I am saying is you would transmit the police reports that were prepared for a witness such as Miss White and then the assigned District Attorney then has the burden and obligation of assuring that witnesses' availability; is that your understanding?

A. It is the responsibility of the D.A.'s Office to get the witnesses in. They subpoena who they want in. You subpoenaed me.

Q. Okay. So the District Attorney bears that responsibility?

A. That is correct. Or the defense attorney.

Page 150.

Detective William Thomas, Ret. - Direct

Q. Or the defense attorney?

A. Each of you have the equal thing to go to the judge and ask for a subpoena.

Q. Now, are you aware and were you aware back in 1981 and 1982 that members of the Philadelphia Police Department had the capacity to administer polygraph examinations?

A. We had a polygraph unit in the Philadelphia Police Department back then, that is correct.

Q. And which police officers or law enforcement personnel administer those polygraph examinations?

A. Honestly, at this juncture I can't recall.

Q. Back in 1981 and '82.

A. Like I said, I don't know, I don't remember.

Q. Do you know what kind of training those police officers have who administer those polygraph examinations?

A. No, sir, I have no idea what their qualifications for their job is.

Q. Do you know anything about the validity or the method of appropriately administering a polygraph examination?

MR. GRANT: Your Honor, if he is qualifying him, or attempting to qualify him as a polygrapher, then I object. It's beyond the

Page 151.

Detective William Thomas, Ret. - Direct

scope of what his offer of proof was.

MR. WILLIAMS: Your Honor, I told Mr. Grant that I would inquire into the area of polygraphs.

MR. GRANT: No, you didn't. You told me you would inquire into the bias of selectively using the polygraph. Well, let's get to it.

MR. WILLIAMS: Yes, I am going into that.

THE COURT: He is talking about qualifications. He doesn't hire anybody to be a polygraph operator.

MR. WILLIAMS: I am simply --

THE COURT: The City of Philadelphia does, and they have records as to the qualifications.

MR. WILLIAMS: Is Your Honor barring me from inquiring?

THE COURT: I am not barring you, I am trying to educate you. But if you don't want to take my advice, fine. He has nothing to do with it: He doesn't hire or fire any operator who operates the polygraph machine.

BY MR. WILLIAMS:

Page 152.

Detective William Thomas, Ret. - Direct

Q. Well, let me ask you this, Mr. Thomas: We heard testimony this morning that Mr. Hightower was administered a polygraph examination four hours into his interviewing. Is it your understanding that that is a valid method for administering a polygraph examination?

A. I didn't testify to anything this morning, Counselor.

Q. Mr. Hightower, I am saying, testified to that. That he was given a polygraph examination about four hours into an interview. I'm asking you, do you have an understanding as to whether that is a valid and appropriate method of administering a polygraph examination?

A. I don't have anything to do with the polygraph unit now, sir.

Q. So the answer is you don't know?

A. I don't know.

Q. So you don't know if it affects the results of a polygraph examination?

A. I have no idea.

Q. Now, were you aware that polygraph examinations were used in this case, in this investigation?

Page 153.

Detective William Thomas, Ret. - Direct

A. Without me going into what you just transpired and all, I don't have personal knowledge of who may or may not have been polygraphed or whatever. That's not -- who, that is a decision not made of me. That's made by supervision.

Q. So let's be clear: I wasn't asking if you knew in particular which individuals were polygraphed. My question was, did you know whether polygraph examinations were used at all in this investigation?

A. At this juncture of, personal knowledge that I remember, I don't recall, sir.

Q. You don't recall?

A. I don't recall.

Q. In any event, we heard testimony this morning -- and I don't think it is a subject of dispute -- that polygraph examination was used in this investigation. So my question to you, sir, is what is, what is your understanding as to the policy regarding when polygraph examinations are administered to a civilian witness?

A. Could you rephrase that question, Counselor? I don't understand it. I don't have anything to do with the policies of polygraph, that's not me.

Q. What I am asking is do you have an

Page 154.

Detective William Thomas, Ret. - Direct

understanding as to the policy regarding when polygraph examinations are administered to civilian witnesses?

A. No, sir, I don't have anything to do with that. That's supervision, my supervisor would dictate that.

Q. Do you have an understanding or did you have an understanding as to what is the purpose behind administering a polygraph examination?

A. I understand why you have a polygraph test done, yes.

Q. Can you share that with us, please?

A. It can be used sometime to make me feel a little bit more comfortable in that I believe a person to be telling the truth; and it could also be used to make me a little more comfortable that a person is telling a falsehood. But how the polygraph works, things

of this nature, that's not my bailiwick. And in our Homicide unit that is a decision made by supervisors, on whether you go to the polygraph unit with anyone, at that time.

Q. As a onetime seasoned detective, would you feel more comfortable with a polygraph examination of a prostitute with some 38 arrests?

MR. GRANT: I object, Your Honor. I

Page 155.

Detective William Thomas, Ret. - Direct

mean it depends on which lie he thinks she may tell or what she said. But I mean this is ridiculous: It is a hypothetical based on what?

MR. WILLIAMS: Your Honor, it goes directly to the selective use of polygraph examination.

THE COURT: He said he didn't have anything to do with that.

MR. WILLIAMS: I am asking him if it increases his comfort level. He described the purpose of the polygraph examination from his perspective as providing a certain amount of comfort.

MR. GRANT: Objection.

THE COURT: Yes, but the thing is did he do it in this case.

MR. WILLIAMS: And that's what I am asking, Your Honor.

THE COURT: No, you didn't ask him that. Rephrase your question.

BY MR. WILLIAMS:

Q. Do you know whether any polygraph examination was given to the witness by the name of Cynthia White, a woman who had over 38 arrests?

A. I don't know whether one was given or not,

Page 156.

Detective William Thomas, Ret. - Direct

Counselor.

Q. Would it have increased your comfort level if you had a polygraph result on what she allegedly observed on the morning of December 9th, 1981?

MR. GRANT: Objection, Judge.

THE COURT: I have to sustain that. Whether he is comfortable or not is immaterial. He doesn't know if one was given, had nothing to do with it.

BY MR. WILLIAMS:

Q. And what about --

THE COURT: Whether he is comfortable or not, what is the relevance of that?

BY MR. WILLIAMS:

Q. Mr. Thomas, do you know whether a polygraph examination was given to a witness by the name of Robert Chobert?

A. At this time I don't recall. I don't really know, I don't know.

Q. You don't know. And what about a witness by the name of Magilton?

A. I have no personal knowledge of anyone that I could give you a name and say that they had a polygraph test at this juncture at this time, Counselor. You know, I don't know of anyone that was

Page 157.

Detective William Thomas, Ret. - Direct

given a polygraph test off the top of my head.

Q. And would that also include Mr. Scanlan, another prosecution witness?

MR. GRANT: Objection: Asked and answered.

THE COURT: I think he has already answered that question, Counselor. He said he has no idea of anyone being given a polygraph test.

MR. WILLIAMS: Maybe the name of Mr. Scanlan would refresh his recollection.

THE COURT: Hey, maybe.

MR. WILLIAMS: That's why I am asking.

MR. GRANT: I object.

THE COURT: Well.

MR. GRANT: He has answered the question.

THE COURT: I think he has answered. At this time he has nothing. Now, if you have something there you want to show him that might refresh his memory, fine. But just to ask him a question over and over again when he said that he has no idea...

BY MR. WILLIAMS:

Q. Are you aware as to whether a person by the

Page 158.

Detective William Thomas, Ret. - Direct

name of Arnold Howard was asked if he would submit himself to a polygraph examination?

MR. GRANT: I believe the foundational question is has Arnold Howard ever been an interviewee in the case of Commonwealth versus Mumia Abu-Jamal, and if he has been, do you know if he was polygraphed.

THE COURT: Could you rephrase your question that way. He is not going to object, you will get it in.

BY MR. WILLIAMS:

Q. Well, Mr. Thomas, are you aware of whether an individual by the name of Mr. Arnold Howard was interviewed by a detective in connection with the investigation of this matter?

A. Counselor, the names you are throwing out to me right now --

MR. WILLIAMS: May I have this marked to refresh his recollection Defense Exhibit...

THE COURT OFFICER: 17.

MR. GRANT: I would object. Was Mr. Howard the subject of whatever you told me about?

MR. WILLIAMS: I am trying to refresh his recollection.

Page 159.

Detective William Thomas, Ret. - Direct

MR. GRANT: No, my question is did you say you were going to interview him, cross-examine him about some guy named Howard, did you say that, sir, to me or not?

Never heard the name before out of your lips until just this moment.

MR. WILLIAMS: Well, first of all, Your Honor, I feel very uncomfortable in a Court of law having my adversary address me personally.

THE COURT: Well, I feel out of whack too. And I told you in the beginning put it in writing. Serve him a copy, give me a copy, and then I could rule on these questions. You didn't do it. And since he says -- and I will have to take his word: He is an Officer of the Court just as you are -- and he said you didn't discuss that with him, I will have to sustain his objection.

MR. WILLIAMS: What I discussed with Mr. Grant was I was going to inquire into the selective use of the polygraph examination.

MR. GRANT: Yes.

MR. WILLIAMS: Mr. Howard, according to his police report, was asked if he would

Page 160.

Detective William Thomas, Ret. - Direct

subject himself to a polygraph examination.

THE COURT: All right, and you are objecting, or are you withdrawing your objection?

MR. GRANT: Yes, I am withdrawing it. I have his statement here.

THE COURT: Okay.

THE COURT OFFICER: D-17.

(Investigative report was marked
Defense Exhibit D-l7 for identification.)

THE COURT OFFICER: D-17, sir.

MR. GRANT: Yes, I have it.

THE COURT OFFICER: D-17, Your Honor. D-17, sir (handing).

THE WITNESS: Thank you.

THE COURT: All right, Mr. Williams, he is looking at it. What do you want to do with it.

MR. WILLIAMS: Thank you, Your Honor.

BY MR. WILLIAMS:

Q. Now, does that refresh your recollection at all as to whether Mr. Howard was the subject of an interview in connection with this matter?

(Pause.)

A. Yes, sir.

Page 161.

Detective William Thomas, Ret. - Direct

Q. And in looking at that document, does it indicate whether -- I believe it's highlighted if I am not mistaken -- whether this individual was asked whether he would submit to a polygraph examination?

(Pause.)

THE COURT: I want the record to indicate that the attorneys are having a discussion with Mr. Abu-Jamal. I don't know. I don't know. Will you proceed or do you want to get your direction first?

MR. WILLIAMS: No, I am awaiting Mr. Thomas.

THE COURT: Oh. You asked him whether it was on there.

MR. WILLIAMS: There is a question pending, yes.

THE WITNESS: Yes, I see it on page 4.

BY MR. WILLIAMS:

Q. And Mr. Howard was questioned because his license was found in the Volkswagen that was the subject of this case; is that right?

A. From reading this that appears to be right, that is correct, sir.

Q. And are you aware that Mr. Howard was arrested

Page 162.

Detective William Thomas, Ret. - Direct

in connection with this case?

MR. GRANT: Your Honor, I object. He asked him was he asked to take a polygraph. He said it's in there on the page. The next question is was he given one. If not he is showing selectivity. What Mr. Howard's involvement in this case was is irrelevant to this witness and his offer of proof. Judge, that's what I keep trying --

THE COURT: That's what I told you in the beginning: Put it in writing.

BY MR. WILLIAMS:

Q. Mr. Thomas, was Mr. Howard given a polygraph examination?

A. I don't know.

MR. WILLIAMS: I would like to have marked Defense Exhibit 18 --

Is it Defense Exhibit 18?

It is a shorter document, Mr. Thomas. I would like you to review that as well.

(Investigative report was marked
Defense Exhibit D-l8 for identification.)

MR. WILLIAMS: The question that you should have in mind after reviewing it is whether this individual, the subject of this

Page 163.

Detective William Thomas, Ret. - Direct

interview, a Mr. Nelms, was asked whether he would submit to a polygraph examination.

THE COURT OFFICER: D-18, sir (handing).

(Pause.)

BY MR. WILLIAMS:

Q. Are you in a position to answer the question, sir?

THE COURT: Do you think maybe you could agree among yourselves? I don't know.

(Discussion was held off the record at this
time between Commonwealth and defense Counsel.)

(Pause.)

THE WITNESS: Counselor...

THE COURT: I think he wants to know your question again, Counselor.

BY MR. WILLIAMS:

Q. Yes. With respect to Mr. Nelms, the subject of the interview report of Defense Exhibit 18, can you tell us whether he was asked if he would submit to a polygraph examination?

A. Counsel, I see a question in there would you be willing to take a polygraph examination. My only question is, this is an interview from Staff

Page 164.

Detective William Thomas, Ret. - Direct

Inspector Weldon Jones? Which wouldn't be in the Homicide, it wouldn't be within my scope. And it's dated November the 9th, 1981. And it just has a police officer, doesn't have any name.

THE COURT: It is November '81? That is prior to this incident, Counselor. Is that prior to this incident?

MR. WILLIAMS: That is a document that was turned over by the District Attorney's Office.

THE COURT: I know that, but he said something about November of '81. Is that prior to this incident?

MR. WILLIAMS: Yes. Apparently it is.

THE COURT: Well, what does it have to do with this case?

MR. WILLIAMS: Well, it was turned over by the District Attorney's Office.

THE COURT: Well, they turned it over. Maybe they turned it over, I don't know, but I am asking you what does it have to do with this case?

Would you look at it with him, Mr. Grant.

MR. GRANT: This is mis transcribed,

Page 165.

Detective William Thomas, Ret. - Direct

Your Honor: It is supposed to be 12-9-81. However, it is not, it is not the Homicide detective division, it is special investigation resulting from the complaint filed by Mr. Jackson. This is an IAB interview.

MR. WILLIAMS: That's not true.

THE COURT: Oh.

MR. WILLIAMS: The date of the interview is 12-9-81.

MR. GRANT: I agree.

MR. WILLIAMS: And no complaint was filed.

MR. GRANT: Oh, okay.

MR. WILLIAMS: Until sometime thereafter.

MR. GRANT: Maybe that date is wrong. It clearly is wrong.

BY MR. WILLIAMS:

Q. In any event -- leaving aside the date, which is obviously an error -- the subject, have you read this document?

A. No, sir, I got to the top of it and I wanted to get a clarification before I --

Q. If you read the document (handing)...

Tell me if you are not satisfied that

Page 166.

Detective William Thomas, Ret. - Direct

that document relates to the investigation of the shooting death of Officer Faulkner?

(Pause.)

(Discussion was held off the record at this time
between Commonwealth and defense Counsel.)

(Pause.)

THE WITNESS: Yes, sir.

BY MR. WILLIAMS:

Q. Yes, now having reviewed that document, that document does relate to the shooting death of Officer Faulkner; isn't that true?

A. It gives a synopsis similar to the incident of Officer Faulkner but without mentioning any names. And this being a printed copy, I'm not going to say under oath this relates to that thing. It is an incident similar to that, that's as far as I want to go.

Q. I appreciate your carefulness. In any event, is there a reference in that document as to whether the individual interviewed was asked if he would submit himself to a polygraph examination?

MR. GRANT: Objection.

THE WITNESS: Yes.

MR. GRANT: Objection because it is

Page 167.

Detective William Thomas, Ret. - Direct

not relevant to this proceeding. It can not be authenticated as having a relationship to this.

MR. WILLIAMS: Well, then --

MR. GRANT: It is not done by Homicide investigating a homicide, apparently. From the face of the document.

MR. WILLIAMS: Well, is the prosecution claiming now that that document has no relationship to this case?

MR. GRANT: I am saying it can't be authenticated as proving that anybody at the direction of Homicide caused or didn't cause polygraph examinations to be taken in this particular murder.

THE COURT: All right, okay. So go back and --

MR. WILLIAMS: If I could have the document back, please.

BY MR. WILLIAMS:

Q. Do you recall of the four prosecution alleged eyewitnesses -- that is Cynthia White, Mr. Chobert, Mr. Magilton and Mr. Scanlan -- whether all of them had prior criminal, prior criminal history?

MR. GRANT: Objection.

THE COURT: The basis of your

Page 168.

Detective William Thomas, Ret. - Direct

objection?

MR. GRANT: The basis of my objection, Your Honor, is I mean if he wants to impeach the witness after the Jury reached their verdict that's one thing, but that is not the, that is not within the scope as I understood his offer of proof.

MR. WILLIAMS: Your Honor, sometimes a question is proffered or posited to a witness and it's relevance can only be understood in the context of other questions. I need an answer to this question to proceed to my next one.

THE COURT: Well.

MR. GRANT: His next question is going to be and did you offer them polygraphs. And the reason he is asking the first question is because they are criminals, have criminal histories that maybe they shouldn't be believed, so is that the basis for it. And I am saying if he could just ask the question a person could be lying and still have committed crimes.

MR. WILLIAMS: I will ask the question. I was trying to avoid a long-winded question but I will ask it all in one question.

BY MR. WILLIAMS:

Page 169.

Detective William Thomas, Ret. - Direct

Q. Can you explain to us why, Detective Thomas, as you sit here today, why four prosecution alleged eyewitnesses, all of whom have criminal records, were not given a polygraph examination, but a young accounting student was given a polygraph examination, can you explain that for us in this Courtroom?

A. No, sir.

Q. Can you explain for us why a young accounting student was kept in the precinct for over four hours, given a polygraph examination when none of the other prosecution witnesses, all of whom have criminal pasts, were never required to endure that?

MR. GRANT: Judge, we don't know that these witnesses weren't given polygraph examinations. He is assuming facts not in evidence.

MR. WILLIAMS: Well, I am asking him.

THE COURT: He told you he didn't have anything to do with authorizing polygraph tests so how could he answer that question?

BY MR. WILLIAMS:

Q. To your knowledge were any of those prosecution witnesses, all of whom have criminal records, ever subjected to a polygraph examination?

A. Counselor, I have no idea who was polygraphed

Page 170.

Detective William Thomas, Ret. - Direct

and who was not polygraphed at this time.

Q. So -- I'm sorry, I didn't want to interrupt.

THE COURT: He said he didn't know who was given or who wasn't given a polygraph, that's all.

BY MR. WILLIAMS:

Q. So you can't explain why a young accounting student who saw a man fleeing the scene, who ultimately testified for the defense, was given a polygraph examination, and the four witnesses who testified for the prosecution were not? You can't explain that in this Courtroom today?

MR. GRANT: Objection. Counselor can't prove that the four were not. Therefore, the question --

THE COURT: That's why I sustained the original objection. We are still going over this. It's like beating a dead horse.

BY MR. WILLIAMS:

Q. Now, if I were to show you -- pardon me for one moment.

(Discussion was held off the record at this time among defense Counsel.)

MR. WILLIAMS: Your Honor, I would ask at this juncture, then, in light of the

Page 171.

Detective William Thomas, Ret. - Direct

objection, that the defense be given discovery in regards to whether any witness, any prosecution witness was given a polygraph examination.

THE COURT: I had already ruled that discovery was not available in a PCRA.

MR. WILLIAMS: Now it's patently obvious that we can root that discovery request in a claim.

THE COURT: No.

MR. WILLIAMS: In our PCRA.

THE COURT: There are ways to do it but I am not here to tell you how.

MR. GRANT: I will make it easy for them, Judge: Nobody was given a polygraph.

MR. WILLIAMS: I appreciate the representation by Mr. Grant.

BY MR. WILLIAMS:

Q. Given that representation by Mr. Grant, Mr. Thomas, you can not explain why a polygraph examination was administered to a young accounting student who ultimately testified for the defense, and not for those witnesses who testified for the prosecution, all of whom had criminal records?

A. Supervisory decision, sir. Polygraph tests

Page 172.

Detective William Thomas, Ret. - Direct

and who gets them and who doesn't get them is not within the scope of my decision to make.

Q. And you can't help us to understand why the polygraph examination that was administered to Mr. Hightower didn't involve the crucial question as to whether he was lying about seeing a man fleeing from the scene?

MR. GRANT: Crucial to whom, Judge?

MR. WILLIAMS: Crucial to the defense.

MR. GRANT: Well, not to the polygrapher, apparently.

MR. WILLIAMS: That is precisely the point, not to the polygrapher.

THE COURT: This witness can't answer that question.

MR. WILLIAMS: If he can't he could say so.

THE COURT: It is obvious that he can't. He had nothing to do with who got a polygraph in the first place. And he is not a polygrapher, he can't tell what questions were asked.

MR. GRANT: Your Honor, perhaps the polygrapher believed that Mr. Hightower saw a person running from the scene and that wasn't

Page 173.

the focus of his inquiry as to why he was lying.

THE COURT: Maybe, but I don't know how this witness could help him on that score.

BY MR. WILLIAMS:

Q. Picking up on the issue of the man fleeing from the scene: The fact of the matter is three of the four, three witnesses other than Mr. Hightower also saw someone fleeing the scene, was that your understanding, sir?

A. Counselor, 12 years later I don't recall all the facts. There's been too many cases after this, too many cases before this. And I'm in a new career now, even that I could remember each person, each witness to this incident. Especially in the manner in which I, you know.

Q. Now, during the trial, while you were assisting Mr. McGill, do you recall ever being requested by Mr. McGill that you attempt to bring to Court a woman by the name of Deborah Kordansky?

A. I don't recall. I don't recall even the name.

Q. Do you recall being requested to try, attempting to contact a witness for the benefit of the defense? Do you recall that?

A. I don't recall that.

Q. Do you recall whether you visited a witness in

Page 174.

an effort to bring that witness to Court for the benefit of the defense?

A. I don't recall that, Counselor.

Q. You don't recall that. Do you recall whether any individuals who were interviewed by law enforcement were shown photos of Mr. Jamal?

A. Counselor, at this time I don't remember that either. I can't.

Q. You can't recall?

A. I don't remember it.

MR. WILLIAMS: I would like to have this marked as Defense Exhibit 19.

(Investigative report was marked
Defense Exhibit D-l9 for identification.)

THE COURT OFFICER: D-19, sir (handing).

BY MR. WILLIAMS:

Q. Now, to aid you in your reading of that document, I just want to ask you in connection with that document as to whether any police officers in the investigation of the shooting death of Officer Faulkner showed a photograph of Mr. Jamal to any civilian witnesses or civilian persons?

MR. GRANT: Your Honor, I think the question is were any photographs shown to

Page 175.

civilian witnesses that the Commonwealth didn't turn over to the defense and as a result suppressed exculpatory evidence. That's their claim. This is not even a photo array.

THE COURT: Rephrase your question.

MR. WILLIAMS: I am first establishing whether photos were shown and then I will proceed from there. Your Honor, I would like to think of this as one brick at a time: Put a brick down and then the next question is another brick. But you are forcing me to bring in the whole house.

THE COURT: I am not forcing you to do anything, Counsel. But if I get an objection I want to find out what the situation is. You people have been playing around with this case for years. I haven't.

MR. WILLIAMS: Exactly, that's why we will present it one brick at a time.

THE COURT: Right. But let them know.

MR. WILLIAMS: One question at a time.

THE COURT: But let him know so maybe he won't object. You see what I am talking about?

MR. WILLIAMS: Your Honor, I just have

Page 176.

had a conversation with Mr. Grant. I showed him the document.

THE COURT: Okay.

MR. WILLIAMS: I am just presenting one question at a time.

THE COURT: Right. And I say just discuss it among yourselves; and if he is not going to object, I am not going to rule.

MR. WILLIAMS: If he doesn't object then you allow the question. If he does object you sustain the objection. That's what is happening here.

THE COURT: All right, Counselor, another wise remark like that and you will be in contempt of Court. I don't want any snide remarks from you. You will show the proper respect to this Court. Do I make myself clear?

MR. WILLIAMS: Abundantly clear.

THE COURT: Okay. Now cut it out. I don't want the snide remarks. I rule because I think I'm right, that's why I rule.

All right, you act up you will go outside. Anybody acts up you are going to go out.

See what you have caused?

Page 177.

MR. WILLIAMS: I don't know if that's worthy of comment from me, Your Honor.

THE COURT: It better not.

MR. WILLIAMS: I've been nothing short of respectful for the Court.

THE COURT: No, you haven't. You give me the snide remarks and I don't like it. Cut it out.

MR. WILLIAMS: I merely made an observation.

THE COURT: I don't care about your observation. You don't tell me how to make rulings. You have an exception to every ruling that I make. If I'm wrong I will be overruled. If I'm right I will be affirmed. But I don't need your snide remarks. That's what I am objecting to. Just so we understand one another.

MR. WILLIAMS: I think we do, Your Honor.

THE COURT: Well, fine.

BY MR. WILLIAMS:

Q. Mr. Thomas, can you tell us whether any law enforcement personnel displayed a photograph of Mr. Jamal to any civilian witnesses?

Page 178.

A. This officer states he showed a gentleman a photograph of Mr. Mumia Abu-Jamal which was in the newspapers.

Q. So the answer is that a photograph was shown to a civilian witness, at least one, right?

MR. GRANT: Your Honor, I object. This was not a civilian witness. The man was nowhere within 50 miles of the shooting

scene. He owned the cab in which they found the engine running and Mr. Jamal had gotten out of. They were trying to establish is this your cab. They had showed him a picture. Did you loan it to this man.

MR. WILLIAMS: I wasn't suggesting that he was an eyewitness.

MR. GRANT: You have to do it with the photo array.

MR. WILLIAMS: That is not true, I was not suggesting a photo array. I merely asked if this individual was shown a photo.

THE COURT: Well, I think you attorneys could have agreed to this without even asking this witness.

MR. WILLIAMS: Well, now I want to ask the follow-up question.

Page 179.

Detective William Thomas, Ret. - Direct

BY MR. WILLIAMS:

Q. Were any other civilians shown photographs like the individual mentioned in Defense Exhibit 19?

A. Not that I recall, Counsel.

Q. Do you recall whether any individuals were shown a series of photographs, one of the photographs being of Mr. Jamal, in what is known in our field as a photo, photographic array?

A. I don't recall whether a display or array with Mr. Jamal was shown to anyone, I don't recall at this juncture.

Q. So given that you don't recall, it is possible, is it not?

MR. GRANT: Objection.

THE COURT: Sustained. Anything is possible. He said he doesn't recall, period.

MR. WILLIAMS: Well, let me put it the other way.

BY MR. WILLIAMS:

Q. As you sit here today, you can not state with any certitude that a photographic array that included a photo of Mr. Jamal was not shown to any witnesses? Isn't that true?

A. That's true, I can't.

Q. It's --

Page 180.

Detective William Thomas, Ret. - Direct

A. That's true.

Q. Now, you were aware during the course of the trial that there was testimony concerning an alleged confession by Mr. Jamal. Right?

A. Counselor, what went on during that trial, I don't recall all the facts and things of it.

Q. I am not asking you to recall all the facts.

A. I don't recall that.

Q. You don't recall whether there was evidence of Mr. Jamal having confessed to the crime?

MR. GRANT: Objection: It's beyond the scope of his offer.

MR. WILLIAMS: Your Honor, I did mention to Mr. Grant that I would inquire into what I referred to as the Wakshul matter.

MR. GRANT: And I object. And I said each time he brings up something that doesn't support his position in his Petition, then I would object to it. Mr. Wakshul did or did not go on vacation at the instance of the Police Department. That was the only reason he was on the stand. Now you want to talk about a -- confession from Mr. Jamal?

MR. WILLIAMS: No, what I was going to inquire -- and I am directing his attention to

Page 181.

Detective William Thomas, Ret. - Direct

Mr. Wakshul -- by doing that through the avenue of the fact that there was testimony or evidence of an alleged confession. I am directing his attention to that.

THE COURT: Yes, but we went through all of that already. I don't know where --

MR. WILLIAMS: I am attempting to explore -- is there a rule of evidence that says you could only explore an issue through one witness?

THE COURT: You see, Counselor, that's why I said to you in the beginning would you please put in writing what you hoped to do. I asked you to do that. You still haven't done it for me.

MR. WILLIAMS: That was the purpose of the Petition and the memorandum of law. It goes into --

THE COURT: I said with any witness that you were going to call. So that the District Attorney would be alerted to everything that you hoped to bring up so he could object if he wants to, or maybe not object, but at least he would be put on notice of what you intend to do.

Page 182.

Detective William Thomas, Ret. - Direct

MR. WILLIAMS: Your Honor, and I mean no disrespect to the Court in saying this, but on the very first day when Your Honor ordered us to proceed to a hearing, we made the offer of proceeding in an orderly fashion by way of garnering all the statements we needed.

THE COURT: Counselor, Counselor, that is all past. You went up to the Supreme Court and they said start July 26th and we started July 26th.

MR. WILLIAMS: And we are proceeding as fast as we can.

THE COURT: Okay, but you can't tell me you couldn't have taken a few minutes to write something out and give it to the District Attorney. You knew you were going to call him today. Come on, cut out this stuff in the future, will you please. And we could avoid all of this. It doesn't take you that long to write something up. You did it with the other witnesses. Do it in the future, please.

BY MR. WILLIAMS:

Q. Mr. Thomas, in connection with the evidence that was adduced at trial regarding an alleged confession made by Mr. Jamal, were you aware that

Page 183.

Detective William Thomas, Ret. - Direct

there was a witness by the name of Officer Wakshul, or Wake-shul, that had relevant testimony concerning that evidence that was adduced at trial?

A. I'm aware that there was an Officer Wakshul involved in this case.

Q. Do you know whether Officer Wakshul was ever asked by the prosecution, by Mr. McGill or anyone assisting Mr. McGill, whether he should be available to testify for the prosecution?

A. I have... no way I'm going to know that. I have no idea.

Q. Well, let me ask you this. Were you present at a meeting in January or February of 1982 with Mr. McGill and a number of police officers connected with this case meeting in a room with a round table discussing how they were going to present this case to a jury, were you present for that meeting?

A. Counselor, you are saying a meeting sometime in January. I was at so many meetings and so many things doing this case, we seemed like we spent our, lives in little rooms. And I was even commenting when I came in here today they got air conditioning now, when we did this we didn't get no air conditioning. And it was little rooms with little round tables. And I spent almost a year or a year

Page 184.

Detective William Thomas, Ret. - Direct

and a half with these officers and Joe McGill and what have you on this matter. I spent almost a year on this as well as my other duties in Homicide. I can't remember every meeting we had and what was said and what was transpired.

Q. Okay. In any of those meetings do you recall whether Officer Wakshul was asked to be available to testify at trial?

A. I can't recall what was asked of Officer Wakshul by whatever officer, Detective Goldberg. What was asked of Detective Thomas even, at this juncture, Counsel.

Q. Could you help us to understand why Officer Wakshul, who

had evidence concerning an important aspect of this case, if not the most crucial aspect of this case, why he was permitted to go on vacation? Do you have any information as to that?

A. Would you repeat that question? This is something about Officer Wakshul going on vacation when, Counselor?

Q. During the course of this trial, the trial of Mr. Jamal. Can you help us to understand why he was permitted to go on vacation?

A. By Civil Service regulations he gets two or three weeks a year if he puts in his for vacation. I

Page 185.

Detective William Thomas, Ret. - Direct

have no idea here, Counselor. You would have to -- I have no idea.

Q. I'd have to what?

A. I have no idea.

Q. You have no idea why Mr. Wakshul was let go on vacation?

A. You'd have to ask Officer Wakshul: He went on vacation, not Detective Thomas.

Q. He asked us to ask someone else as to whether, as to why he was let go on vacation.

MR. GRANT: I object, Judge.

THE COURT: No, come on, now, Counselor. I told you who to ask.

BY MR. WILLIAMS:

Q. Now you testified earlier this afternoon that one of your obligations was to maintain the files; do you remember that?

A. I testified that I put the Homicide binder together.

Q. Right. And that you would assist Mr. McGill in giving him whatever documents he needed, right?

A. On occasion over that year's time I've handed him documents. I'd give him a number of documents. There were so many things that I did for him, or the defense even, and what have you during that trial.

Page 186.

Detective William Thomas, Ret. - Direct

And I don't recall everything that I did. Especially something as you want me to remember, giving him a piece of paper. I can't remember everything I did.

Q. Well, I'm not asking you about particular pieces of paper, I'm only asking whether you had provided documents to Mr. McGill upon his request. And your answer is yes. My next question --

A. No, Counselor, hold on. You are asking did I provide him with documents?

Q. Yes.

A. I mean he had the whole case binder. What I am saying I provided him with it: I may be just giving him a number, look at C-44, whatever.

Q. Okay, fine.

A. But like I said, I could hand him a piece of paper, I could hand him a document. Counselor, it is 12 years ago. Whatever I did with Joe McGill, I don't recall everything I may have done.

Q. Now, you also testified earlier this afternoon that one of the things that you did was helped keep control of the witnesses, that is to bring witnesses in if they needed to be brought in?

MR. GRANT: I don't believe he said that.

THE WITNESS: I don't remember

Page 187.

Detective William Thomas, Ret. - Direct

testifying to that, Counselor.

THE COURT: No. He said he doesn't remember testifying to that.

MR. GRANT: He said specifically that he didn't do that.

THE COURT: He said that is the District Attorney's responsibility. You see, that is the difficulty: You don't know the setup here. The District Attorney has it's own investigators. I don't know what they have to do at work but that's what we have here in Philadelphia.

BY MR. WILLIAMS:

Q. Mr. Thomas, are you aware of any efforts by the District Attorney's Office, by any law enforcement personnel, to secure the attendance of Mr. Wakshul to appear in the trial of Mr. Jamal? Are you aware of any such efforts?

A. Counselor, I have no idea what may have transpired from the Police Department, from the D.A. 's Office, even from myself, according to your question, because I don't recall.

Q. You don't recall whether any efforts were made?

A. That's correct, sir, I don't recall it.

Page 188.

Detective William Thomas, Ret. - Direct

Q. Let me ask you this. Being, having extensive experience in the Philadelphia Police Department, if efforts were made to locate Officer Wakshul within the Police Department, could he have been located?

MR. GRANT: Objection.

THE COURT: Sustained.

MR. WILLIAMS: What is the basis for that objection, Your Honor?

MR. GRANT: The objection is how does he know where the man was and how does he know what effort could be made by somebody else. Clearly it is speculation in his mind as to what they might be doing.

MR. WILLIAMS: I predicated the question in his experience -- and it is an extensive one -- as to whether he could be located.

THE COURT: Let me say this, Counselor. If this was the only case he handled in the course of his career, I might agree with you. But I would venture to say there must have been hundreds, maybe even thousands of cases that he handled. So how do you expect him to remember every case?

MR. WILLIAMS: I am not asking in

Page 189.

Detective William Thomas, Ret. - Direct

every case.

THE COURT: Well, he already told you that it would be up to the District Attorney's Office to locate a witness.

MR. WILLIAMS: But in the hundreds of cases that he has been involved with, perhaps he has come across a situation where a witness was located by law enforcement. Or indeed a brother officer.

THE COURT: It depends on what you are talking about in law enforcement. The District Attorney detectives are law enforcement officers, the investigators are law enforcement officers.

MR. GRANT: My objection is, Judge, maybe he has that experience, maybe he doesn't, but on any particular day when police officers can find the guy who is on vacation, if he is in town or out of town or whatever, there is no general rule that you could make, either an individual can be found or not. So there is no general rule about whether cops can find other cops.

BY MR. WILLIAMS:

Q. Well, let me ask this, then. Are the home

Page 190.

Detective William Thomas, Ret. - Direct

phone numbers of police officers available to the superiors, that is the supervisors of those police officers?

A. The -- yes.

Q. Okay.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WILLIAMS:

Q. And indeed, in the police statements that were prepared in this case, those police statements contained the addresses and phone numbers of the persons interviewed; isn't that true?

A. You are referring to civilian or police personnel?

Q. Both.

A. No, sir.

Q. Well, a police officer's, were the addresses and phone numbers contained in the police reports?

A. No, sir.

Q. Just the precinct -- just the --

MR. WILLIAMS: What is it.

(Discussion was held off the record at this between Commonwealth and defense Counsel.)

BY MR. WILLIAMS:

Q. The district?

Page 191.

Detective William Thomas, Ret. - Direct

A. That's correct, sir.

Q. So one would have to refer to the personnel file of the brother police officer, of the relevant police officer to find the home phone number?

A. One would have to go to the district roster, or personnel has, I believe, an alphabetical roster, or you can go to a roster by badge number. There is a whole lot of cross reference I believe in the Police Department. It's probably changed since I left but at that time I believe it was there.

Q. Do you know who directed Mr. Wakshul not to go on vacation before --

MR. GRANT: Objection: Assumes a fact not in evidence.

MR. WILLIAMS: Mr. Wakshul testified to that.

THE COURT: Fine, ask Mr. Wakshul that.

MR. WILLIAMS: I am asking who that person is.

MR. GRANT: It assumes a fact not in evidence, is my objection, because he didn't testify to that.

MR. WILLIAMS: He testified one, possibly more than one person directed him not

Page 192.

Detective William Thomas, Ret. - Direct

to go on vacation.

MR. GRANT: No, he asked him if he would stay around if he was on vacation. That's different.

MR. WILLIAMS: Fine, I will ask that question.

BY MR. WILLIAMS:

Q. Do you know who told Mr. Wakshul to stay around if he was on vacation?

A. I have no idea.

Q. Now, as a onetime seasoned detective, is it unusual for you, is it unusual for a police officer to not know the significance or the importance of a confession?

MR. GRANT: Objection: Beyond the scope.

THE COURT: Sustained.

MR. WILLIAMS: It goes directly to the claim of officer --

THE COURT: I sustained the objection, Counselor.

BY MR. WILLIAMS:

Q. As a seasoned detective, or once seasoned detective, is it unusual for you, or unusual to you, that not a single police officer reported hearing a

Page 193.

Detective William Thomas, Ret. - Direct

confession within two months of the time that that confession allegedly was uttered, is that unusual for you?

MR. GRANT: Objection. Objection.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. Now, certain individuals, certain individuals noted to law enforcement on the night, or the morning of the shooting of Officer Faulkner, that they had seen an individual fleeing the scene. Did you do any follow-up investigation in light of that information?

MR. GRANT: Objection: That was litigated at the time of trial. It's beyond the offer of proof that he made. And I would like to ask the Court if it will inquire what other lines of questioning we are going to go through with this witness.

THE COURT: Sustain the objection, Counselor.

MR. WILLIAMS: In light of the sustaining of that objection, I have no further questions.

MR. GRANT: I just have three, Judge.

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CROSS-EXAMINATION

- - - - -

Page 194.

Detective William Thomas, Ret. - Cross

BY MR. GRANT:

Q. Have you ever met Mr. Williams before (indicating)?

A. No, Counselor, I have not.

Q. Ever seen him in your life?

A. No, sir, I have not.

Q. Ever seen Mr. Weinglass here (indicating)?

A. No, sir, I have not.

Q. Miss West over there (indicating)?

A. No; I believe Miss West called me on my phone.

Q. Did they ever give you the courtesy, sir, of saying we are representing Mr. Jamal and we would like to show you the paperwork that was involved in this murder so you could know and answer our questions intelligently instead of saying I don't recall, it's been 12 years, I don't know; did anybody do that for you?

A. No, sir. Counselor, I even asked the Court Crier to ask them if they want to speak to me when I got here this morning. They didn't want to come back and see me.

Q. So the first time you are speaking to them is from the witness stand under oath?

A. That is correct, Counselor.

Page 195.

Detective William Thomas, Ret. - Cross

Q. Did they ever show you any photographs?

A. No, sir.

Q. Did they ever discuss any statements any witnesses made with you?

A. No, sir.

Q. Did they ever tell you we're going to ask you about a guy named Wakshul?

A. No, sir.

Q. Did they ask you or show you a vacation log for any individuals?

A. No, sir.

Q. They just gave you a subpoena and Miss West coordinated your schedule for you to come?

A. Their investigator came to my house and misrepresented himself and tried to force a subpoena on my wife while I was absent. And then later they came up on the Turnpike and I received a subpoena from the investigator.

Q. On the Turnpike?

A. That's correct, while I was working. They went to my office and they got someone out of line at my office and trying to see what I looked like on pictures that are displayed around my office and what have you. And so my office called me while at my work station, where my duty station was that day.

Page 196.

Detective William Thomas, Ret. - Cross

And I told them, I talked to my supervisor up there, I told them to

bring it up to Exit 26 of the Turnpike, I'll wait there for the subpoena.

I had contacted this Court on Monday and told them I was back, I had been out of town three weekends in a row plus five straight days. And I notified them that I was here on Monday. And nobody called. I made arrangements for them to meet me in my job at eight o'clock, between 8:00 and 9:00, and I would come right down, I just want to show the subpoena to my job. Nobody showed up then. They showed up after lunch yesterday. And all of them, I don't think the people in my employment appreciated it. I definitely didn't appreciate someone coming to my home, misrepresenting themselves as a member of a youth organization that I belong to dealing with black kids, and trying to force my wife to take the subpoena. I didn't appreciate that at all.

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REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Thomas, you were shown several documents during the course of my examination of you during the direct examination. Do you remember that?

Page 197.

A. Yes, sir, Counselor. Those documents just as easily could have been shown to me this morning so I could peruse either those documents or the Homicide file, of which I'm pretty sure Mr. Grant would have let me see, so that I could have been a, you know.

Q. Now, and showing you those documents during the direct examination apparently didn't refresh much of your recollection, did it?

A. I could see that they had been asked about the polygraph machine. Polygraph test.

Q. Let me ask you this, Detective Thomas. Are you of the mind that you would be willing to help Mr. Jamal get a new trial in this matter?

MR. GRANT: Judge.

THE COURT: Yes. This has got nothing to do with redirect. The objection is sustained. Please.

MR. WILLIAMS: I have no further questions. Well, one other question.

BY MR. WILLIAMS:

Q. Having been a long-time employee of the City of Philadelphia, did you ever ask anybody in the prosecution team -- I'm sorry -- the District Attorney's Office, to review any materials in preparation for your testimony here?

Page 198.

MR. GRANT: We didn't subpoena him. It is not our obligation.

BY MR. WILLIAMS:

Q. Were you aware that you were on a witness list for the District Attorney's Office in connection with this matter?

MR. GRANT: Objection.

BY MR. WILLIAMS:

Q. Did you know that?

MR. GRANT: It is irrelevant whether he knew it or not.

MR. WILLIAMS: It is relevant to whether he was prepared.

THE COURT: You called him.

MR. WILLIAMS: He was also on the witness list for the District Attorney.

MR. GRANT: Judge, we put on evidence to rebut their claims. And if we needed him to rebut their claims we would have called Mr. Thomas. We don't even know what their claims are at this point. We are just waiting.

And we didn't subpoena him, you did.

MR. WILLIAMS: Mr. Grant made an offer of proof as to why he would call Mr. Thomas.

MR. GRANT: That's right, because I'm

Page 199.

supposed to, Your Honor.

Unlike yourself, I did what he asked me.

BY MR. WILLIAMS:

Q. And so my question is did you review any documents to prepare yourself to testify on behalf of the District Attorney?

A. You subpoenaed me, Counselor. And honoring that subpoena I would not converse with anyone from the D.A.'s Office or anyone else on this case whatever. I didn't talk about this case to anyone.

Q. I didn't ask you to talk, I am asking did you review any documents or prepare yourself in any way to testify on behalf of the District Attorney?

THE COURT: He answered that question.

THE WITNESS: Not knowing why I was subpoenaed to this case, there was no documents that I could review. I have no idea why you subpoenaed me. But I came in this morning.

MR. WILLIAMS: Mr. Thomas, I appreciate your trouble for coming here. Thank you very much.

THE COURT: All right, you are excused.

MR. GRANT: I would like to bring to

Page 200.

the Court's attention, Your Honor, that at the request of Counsel, because she was a witness that they wanted second on the list, I brought in and had the detectives go find Miss Deborah Kordansky.

THE COURT: She is here?

MR. GRANT: She has been here since this morning. I notified them that she has child care problems and that she has to leave at a certain time. They knew that when this man was being sworn. They knew she was here and they chose to not put her on. Now, I would ask that we be, that they put her on and let her go. She has been here more than once, more than twice, more than three times.

THE COURT: All right, is she here? Let's bring her out. Come on.

- - - - -

Deborah Kordansky, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Miss Kordansky.

Page 201.

A. Good afternoon.

Q. Do I have your name correct?

A. Yes.

Q. Deborah Kordansky?

A. Yes. K-O-R-D-A-N-S-K-Y.

Q. Pardon?

A. K-O-R-D-A-N-S-K-Y.

Q. Miss Kordansky, since coming here to Court, have you had occasion to discuss the case that we are presently involved in with any individual?

A. Yes.

Q. And who did you talk to?

A. I spoke to some of the detectives. I spoke to the, ahh, I spoke to my husband, of course. And my, I think my brother as well.

Q. Could you move the microphone a little closer. I'm sorry. You spoke to detectives?

A. Yes.

Q. Yes. Do you remember who?

A. Detective Joe Walsh. And I think Detective Miller, if I am not mistaken. Is it Miller? I'm not sure if that's correct. But another, yeah, two detectives.

Q. Just two detectives?

A. Well, ahh, three. I mean I alluded to it some

Page 202.

Deborah Kordansky - Direct

officially maybe to... to a man from Internal Affairs. But, you know, more like oh, this is going on for a long time. Oh, do you think they'll call me. Things like that.

Q. So you spoke to three individuals, but only two about matters of substance?

A. Yeah, I believe so. As far as my memory goes, yes.

Q. And the two detectives that you spoke to, do you recall the nature of the conversation?

A. Yes. We talked about, well, of course the detectives brought a subpoena. And they issued that to my husband for me. But the day before that they came to tell me that I was probably going to be subpoenaed to testify for the defense. And we spoke a little bit about my statement, I mean reviewed it, because I didn't really remember very well actual events.

Q. So you were shown your statement by the detectives?

A. Yes.

Q. And that was before you were subpoenaed?

A. Ahh... I guess so, yeah.

Q. I don't want to ask you your address. But you live in the general area of Philadelphia?

Page 203.

Deborah Kordansky - Direct

MR. GRANT: Objection as to relevancy.

THE WITNESS: I'd rather not answer that.

MR. GRANT: Move to strike it.

THE COURT: She lives in Philadelphia, period. I assume.

BY MR. WEINGLASS:

Q. In Philadelphia?

MR. GRANT: I object. I object.

BY MR. WEINGLASS:

Q. Am I correct?

MR. GRANT: Does he need to know where she lives personally?

MR. WEINGLASS: I am not asking for her address.

THE WITNESS: I would prefer not to answer the question.

THE COURT: I prefer not to answer that.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Do you remember when a detective or detectives came to your house?

MR. GRANT: 1981?

BY MR. WEINGLASS:

Page 204.

Deborah Kordansky - Direct

Q. No, just we are talking about this proceeding.

A. Yes, just recent past. Umm, a couple of weeks ago.

Q. A couple weeks ago?

A. Yes.

Q. And they came once? I'm sorry. When I say they, was there more than one?

A. Two detectives, yes.

Q. Was that also Detective Welsh?

A. Walsh.

Q. Walsh and Miller?

A. I believe Detective Miller, yes.

Q. And how long did they stay when they came to see you?

A. Maybe 15 or 20 minutes.

Q. That's when you reviewed the statement with them?

A. Yeah. Yeah.

Q. Was this a statement in your own handwriting?

A. No.

Q. It was a typed statement?

A. I believe, yes.

MR. WEINGLASS: If the Court please: I don't have a typed statement of the witness. I asked for discovery on that issue.

Page 205.

Deborah Kordansky - Direct

MR. GRANT: The statement she is referring to is the statement that you got. I got another copy for you right here. It's handwritten. And we went there at the request of the defense on every occasion because they said they couldn't locate the witness and they intended to call her. We served subpoenas for them on these occasions.

I don't appreciate the inference, Counsel.

MR. WEINGLASS: The inference is the witness was shown the statement I don't have.

MR. GRANT: You have it in your hand.

MR. WEINGLASS: The witness said it was typed.

MR. GRANT: Ask her.

BY MR. WEINGLASS:

Q. Was it a typed statement that you were shown?

A. Yes, I think so.

Q. Yeah, it is this statement which I am holding in my hand, right (displaying)?

THE COURT: Why don't you give it to the Clerk.

MR. WEINGLASS: Yes, please.

THE COURT OFFICER: (Handing.)

Page 206.

Deborah Kordansky - Direct

THE WITNESS: It doesn't look like it is.

THE COURT OFFICER: D-20. Do you want this marked?

MR. WEINGLASS: Yes, please.

THE COURT OFFICER: D-20.

(Investigation interview record was marked Defense Exhibit D-20 for identification.)

BY MR. WEINGLASS:

Q. Now showing you D-20: That is not a typed statement, is it?

A. No. No, but you know what, it's printed. So it could very well have been the statement that I was shown. Because I do remember printing. I'm sorry, I don't remember exactly if it was typed or printed, though.

Q. Oh. So having seen D-20, that refreshes your recollection that you were shown a statement which could have been printed or typed?

A. Yes.

Q. And D-20 is a hand-printed statement?

A. Yes.

Q.And that is the statement that you were shown?

(Pause.)

A. This is the same contents of the statement

Page 207.

Deborah Kordansky - Direct

that I was shown, yes. I don't know if this is the exact replica of what I had written but it is the contents of the statement.

Q. And so a couple weeks ago detectives came to your house and then you came down here to Court, you came today. I believe you

might have come some other days as well; is that true?

A. One day.

Q. One other day?

A. Yes.

Q. This is your second day?

A. Yes.

Q. And did you on the last day, not today, the first day you came, did you talk to the detectives on that occasion?

A. Yes. I don't remember exactly, that was the day my mother died so things were a little bit of a blur.

MR. GRANT: Could you speak into the mike, ma'am. or pull it up, please.

What was the last answer?

MR. WEINGLASS: Right, so Councel wants you to repeat your last answer.

THE WITNESS: The day my mother died was the Tuesday I was subpoenaed to be here.

Page 208.

Deborah Kordansky - Direct

And I was here. But I really don't remember much of the conversation that I had that day. Because it was the day my mother died.

BY MR. WEINGLASS:

Q. I see. And that was a Commonwealth's, that day you were subpoenaed by the District Attorney?

MR. GRANT: Your Honor, we brought her in for Mr. Weinglass, for the second time.

MR. WEINGLASS: I never asked this witness to be here on that day. Never. They brought her in on a day they selected. And it is unfortunate they brought her in on the day her mother died in order to influence the witness in some way against us.

THE WITNESS: They didn't know my mother had died.

BY MR. WEINGLASS:

Q. But you now know we didn't ask you to be here that day, it was the District Attorneys who brought you. Now, I assume on that day you didn't have much conversation with the detectives given --

A. No, no, I didn't learn of my mother's death until after I was here.

Q. I see.

A. But my memory is pretty hazy as a result of

Page 209.

Deborah Kordansky - Direct

that. I did have conversation with the detectives, talked about the neighborhood, whatever, you know, different things. But I don't remember much.

Q. Now directing your attention not to the night of the occurrence -- which is December 9th, 1981 -- but -- and we'll come to that -- but to the time of the trial, which is June, the end of June 1982. Were you still here in the City of Philadelphia?

A. Yes, I was.

Q. And did you have any conversation from December of '81 to June of '82 with representatives of the District Attorney's Office, either detectives or District Attorneys?

A. Referring to this statement?

Q. Well, the statement or any other conversation.

A. I don't think so, no.

Q. You did not?

A. I don't remember.

Q. Did any detectives come to where you were living after you made the statement to see you?

A. I don't know. I don't recollect.

Q. Did you have any conversation with a District Attorney named Joe McGill?

A. Not that I recollect.

Q. Did you have any conversations with an

Page 210.

Deborah Kordansky - Direct

investigator named Robert Greer for the defense?

A. Maybe. Maybe.

Q. Is there --

A. I can't remember if I spoke to the attorney Mr. Jackson or Robert Greer. I always assumed that I had spoken to the attorney.

Q. Yeah.

A. But I don't know. I'm not sure.

Q. Right. Well, now that we have Mr. Jackson in the picture, you do remember talking to Mr. Jackson?

A. I thought so. But that's only in retrospect after I read newspaper articles and realized he was the defense attorney. So I thought well, that's probably the person I spoke to.

Q. And you do remember talking to a gentleman who said he was Mr. Jackson on the telephone?

A. Yes.

Q. Was that once or more than once?

A. I don't know. I think once or twice, I believe.

Q. And in those conversations did Mr. Jackson ask you to come to Court to testify?

A. I don't remember if he said will you come to Court or will you help us, how he put it.

Q. Did you indicate what your feelings were about

Page 211.

Deborah Kordansky - Direct

coming to Court, whether you would or would not come to Court?

A. Well, I felt some reluctance, of course, you know, it's a lot to do. But, umm, I also, if I remember correctly, when I spoke to him I had been in a bike accident - And I had very bad facial injuries, head wounds. And umm, I wasn't in the greatest state of mind.

Q. And do you remember if he asked you what your address was?

A. I don't remember.

Q. Would you have given him your address?

A. I don't know.

Q. Do you remember whether or not there was any discussion between you and Mr. Jackson about your attitude towards black people?

A. Yes.

Q. And could you recall what that was?

A. Well, I wasn't specific. I never said that I had an uncomfortable attitude about black people. I had an uncomfortable attitude about black men. Because I had been raped in 1978.

Q. And you told Mr. Jackson that?

A. Yes.

Q. And was that the reason why you didn't come to

Page 212.

Deborah Kordansky - Direct

Court?

A. I don't think so, no.

Q. What was the reason why you didn't come to Court?

A. Well, I wasn't called to Court, I don't believe.

Q. Well, didn't he request that you come to Court?

A. I don't know. Umm, I felt some reluctance because I had been in a bike accident. And I really, I wasn't getting around too well. But I mean I had bandages all over my face.

Q. And Mr. Jackson, you indicated -- correct me if I am wrong -- Mr. Jackson asked you if you would help us?

A. I think.

Q. And did you tell him you didn't want to help him?

A. No, I think I said that I don't think I could be of any help because I felt that the, what I had witnessed and the statement basically stood on it's own. And at that point especially, I had lost memory of what had gone on really in the case. But I knew that my testimony, my written testimony was the most accurate it could possibly be.

Page 213.

Q. You had lost memory from December to June?

A. I think that in a case like this, when there is a lot of media coverage, you lose memory within days because there's so much other influence, you know, so much other stimuli.

Q. Did you tell that to any detectives who interviewed you after the event?

A. No.

MR. GRANT: Objection: That presumes that there were interviews after this one interview.

BY MR. WEINGLASS:

Q. Now, are you saying -- and correct me if I am wrong -- that you no longer in June of 1982 had confidence in the accuracy of your recall because of the stimulation from news media reporting about the case?

A. At that time in 1982, you know, six months later, yes, I would imagine that, yes.

Q. Now, so, Miss Kordansky, you are of a mind that if you can't remember things accurately and confidently, you don't want to speculate because you might be wrong, given the fact that you watch media?

A. I mean that's what -- unless I am seeing it I am speculating.

Page 214.

Q. Unless what?

A. Unless I am presented the statement this is speculation.

Q. Fine. And there was a great deal of media about the case after the event? Is that correct?

A. Yes.

Q. And you watched it?

A. Not religiously but, you know, it came up here and there.

Q. And by watching it I am inferring television. Did you also read about the case?

A. Yeah, I read.

Q. So by June of 1982 you had some idea from the media about who Mr. Jamal was?

A. Yes.

Q. And you had some idea from the media about what some of the issues were surrounding this case?

A. Ahh, I don't think so. Actually --

Q. You don't think so?

A. Not, not in full detail, no. I knew some what was superficial information, I would say.

Q. But when Mr. Jackson called you in June and asked you about being a witness in this case, you knew what case he was talking about?

A. Oh, yes, of course.

Page 215.

Q. And you knew it involved Mr. Jamal (indicating)?

A. Yes.

Q. And didn't you say to him I don't want to help you?

A. I think you asked me that before.

Q. Did you say that?

A. No. I said I don't think I could be helpful for you.

Q. And that's because your memory was conflicted or impaired by what you saw on TV or read?

A. Many reasons; that was one reason. I also felt that my statement was as accurate as it could possibly be and it was a simple statement. I did not witness the crime.

Q. Now, you said that you were interviewed, you made a statement that night -- or that morning, to be more accurate?

A. Yes.

Q. Right?

A. Yeah.

Q. And you don't remember talking to any detectives from that morning until, until you were subpoenaed in connection with this proceeding?

A. No, I don't remember that, no.

Page 216.

Q. You don't remember talking to Sergeant Farkas -- F-A-R-K-A-S -- of the Internal Affairs Bureau on April 13th, 1982?

A. No. But if you go into more detail I might remember.

Q. Now, when the detectives came to see you about appearing in this proceeding, did they show you a statement that was given to Sergeant Farkas in April of '82?

A. I don't know when this statement was written. I don't know.

Q. The statement you are pointing to is the statement that you hand wrote in the early morning hours of December 9th. The statement that I am referring to is a two-page statement.

A. Okay.

Q. That you gave, allegedly, to Sergeant Farkas on April 13th, 1982. Did the detectives who brought you here and interviewed you in connection with this proceeding show you the two-page statement?

A. No.

Q. They never did?

A. No.

Q. They didn't when they saw you at home?

A. No.

Page 217.

Q. They didn't when they saw you the first day you were here?

A. No.

Q. They didn't when they saw you today?

A. No. As a matter of fact, that's why I don't remember being interviewed by Detective Farkas: Because I was not told about this statement.

Q. You were never given this statement (displaying)?

A. No.

Q. By any representatives of the District Attorney's Office?

A. No.

MR. GRANT: May I see it?

MR. WEINGLASS: I would like to show you this document.

MR. GRANT: May I see it?

MR. WEINGLASS: Oh, I'm sorry (handing).

(Pause.)

MR. GRANT: May the record reflect this is the first time in my life I have ever seen this statement.

MR. WEINGLASS: Okay. Apparently the police are still keeping statements from the

Page 218.

District Attorney's Office. Even today.

THE COURT: That's Internal Affairs, Counselor.

MR. WEINGLASS: Pardon?

THE COURT: That is Internal Affairs.

MR. WEINGLASS: They are members of the police.

THE COURT: Yes, but that is a separate unit.

MR. WEINGLASS: They all seem to be working in sync.

THE COURT: No, they are not working together. All together different. If you don't know about that you have a problem.

MR. WEINGLASS: I'm learning.

THE COURT: Okay, hopefully you are. Well, wait awhile. Was that marked?

THE COURT OFFICER: No, it is not marked.

(Investigation interview record was marked Defense Exhibit D-21 for identification.)

THE COURT OFFICER: D-21, Your Honor.

BY MR. WEINGLASS:

Now, you told us one of the reasons why you felt that you couldn't testify in the trial was

Page 219.

because of the confabulation of what you saw, read, and what you recall that night, that you felt that you couldn't be accurate, that was one reason?

A. Yes.

Q. Could another reason be that, Miss Kordansky, you also tend to block negative things?

A. No, no, I obsess on negative things.

Q. You obsess on negative things. Does that mean -- what does that mean?

A. Usually with something negative, something with, something bad, when something bad occurs, I think about it a lot.

Q. And so you have good memory of it?

A. No. Not always. Sometimes I distort.

Q. Pardon?

A. Sometimes I'll distort with memory too.

Q. Sometimes you distort?

A. Sometimes, yeah, when a person obsesses they can distort negative information as well.

Q. So if you obsess you may distort but you don't block --

MR. GRANT: Your Honor, I object. I believe the basis of this witness is that Mr. Jackson is ineffective because she could offer exculpatory evidence. Now, I don't want to get

Page 220.

into paranormal psychology, or psychiatric undertones, or anything like that. But I would like to hear the exculpatory evidence that he was ineffective for not bringing out, please. I object to anything that's not that.

THE COURT: All right.

MR. WEINGLASS: We are talking about a statement that the District Attorney's Office should have had for 14 years. It's all in the statement.

THE COURT: Yes, should have had. He didn't have. Why don't you show her the statement.

MR. GRANT: Yes.

MR. WEINGLASS: One moment, Your Honor. I am entitled to question the witness.

THE COURT: It is not fair to be asking about a statement she doesn't remember. Unless you give it to her so she could read it and refresh her memory. Then you could ask her any questions you want.

MR. WEINGLASS: We will get to that. I am following, Your Honor, the same path of examination that Counsel followed with Mr. Hightower this morning. First the question and

Page 221.

then the clarification from the statement.

BY MR. WEINGLASS:

Q. So that I am clear -- and I will move off of this -- you do not block negative things?

MR. GRANT: Objection. Everybody does. All the time.

MR. WEINGLASS: Oh. Your Honor --

MR. GRANT: Mr. Weinglass blocks them out from day-to-day talking to me.

MR. WEINGLASS: Wish I could.

THE WITNESS: I wouldn't make an absolute statement.

BY MR. WEINGLASS:

Q. You wouldn't make an absolute statement?

A. No.

Q. But when I asked you a few minutes ago if you block negative things you said you obsess?

A. I guess I was referring to things that happened to me personally.

Q. And what about other things, do you block other things?

A. Sometime.

Q. Sometimes. And isn't it a fact that one of the reasons why you couldn't remember in April what happened in December was because you have certain

Page 222.

prejudices around police and around black people?

A. No.

Q. Okay. I now want to show you what's been marked D-21 and direct your attention to the next to last question on page 2 of that statement.

MR. GRANT: Your Honor, we are not here to prove if she can remember that and why. We're here to prove what she saw and if it would have made a difference in the outcome of the case. That's what they alleged and that's what we are supposed to be proving. What her prejudices are, who cares. It is what she saw.

THE COURT: It is her original statement that tells us what she saw.

MR. GRANT: Exactly, but they don't want to talk about that. And I am just saying I object to the line of questioning: It doesn't go to what she saw and how it would have changed the outcome of the case.

MR. WEINGLASS: The last line of questioning -- and we are leading up to what she remembers of what she saw as of April -- I am talking about April of 1982 -- the question is what could she have testified to in June of 1982. Here in her statement in April --

Page 223.

THE COURT: Well, then let her read the whole statement so she knows what you are talking about. Let her read the whole statement. And then you could ask her anything that you want. It is not fair. This is your witness, you know. You ought to be prepared for your own witness and let the witness at least read the statement so she knows what you are going to ask her.

THE WITNESS: (Indicating).

BY MR. WEINGLASS:

Q. Now, Miss Kordansky, having read what has been marked as C-18, I believe --

THE COURT: C-l8 or D-18? Boy, don't get the record all fouled up.

THE WITNESS: D-21.

BY MR. WEINGLASS:

Q. D-21. Do you remember being asked this question in April of 1982: Can you explain why you can't remember? And your answer was I have certain prejudices that affect my memory against and for police. And black people. And newspaper accounts affect my memory. It's been such a long time and I can't remember and I tend to block negative things. Did you tell Sergeant Farkas that in

Page 224.

April of 1982, two months before this trial?

A. I don't remember.

Q. Well, does your signature appear --

A. Yes.

Q. -- on D-21?

A. That is my signature.

Q. That is your signature. Is it true what's written here?

A. My feelings at that time? I imagine I felt some feelings like that at the time. But it never precluded my sense of honesty and my sense of wanting to do the right thing.

Q. Right. It did affect your memory, as you said here?

A. I don't know how accurate I was when I said that. But... If I said it, maybe I felt that way then.

Q. Were you trying to be accurate with the police when the Sergeant Farkas questioned you?

A. Yeah. Of course.

Q. So it is accurate?

MR. GRANT: Your Honor --

THE WITNESS: I don't know.

MR. GRANT: I object to that question.

BY MR. WEINGLASS:

Page 225.

Q. You don't know. Does having read D-21 refresh your recollection as to whether or not you indicated to attorney Jackson when he spoke to you on the phone that one of the reasons why you wouldn't come to Court was because you have certain prejudices against black people?

MR. GRANT: I believe that question was asked and answered by the witness.

BY MR. WEINGLASS:

Q. Now that the witness has read her April statement and her recollection might be refreshed, does it now refresh your recollection that that's what you said to Mr. Jackson?

A. I think I really, my biggest emphasis was that the testimony that I had made didn't seem relevant enough and important enough for me to come to Court.

Q. You made that judgment?

A. Yes, I did.

Q. Right. And he was asking you to come to Court?

A. I don't know if he was asking me or saying will you help us or something like that. I'm not sure --

Q. And you said no?

A. -- to be specific, I don't know if I said no

Page 226.

or I don't want to, I don't think I can be helpful to you.

Q. Do you remember about that time two detectives by the name of Thomas and Morton came to see you?

MR. GRANT: Objection.

BY MR. WEINGLASS:

Q. And asked you if you would come to Court?

MR. GRANT: Objection. I don't believe this is anywhere noted in the record that anybody even knew where this lady lived, so they couldn't come to see her.

MR. WEINGLASS: I want to represent this to the Court: Mr. McGill in the record said he was going to send two detectives, Detective Thomas -- who just left the stand -- and Detective Morton to go see Miss Kordansky to see if she would come. They then reported back to Court through Mr. McGill that they had seen Miss Kordansky and that Miss Kordansky said she would not come.

MR. GRANT: If he could point you to that in the record I will give him $50.

MR. WEINGLASS: Oh. May I have a moment?

THE COURT: Sure.

Page 227.

(Pause.)

MR. WEINGLASS: I am doing this piecemeal. On June 3Oth, 1982, on page 13 Mr. McGill says the following to the Court. I will do this. I understand the situation and there has been another case where this came up, although I will admit in other cases I was at least advised a little bit more than one day before. But in this case, Judge, I will have one of my detectives also call her to see what the situation is, because we don't know her address either. We can't subpoena somebody when we don't know where they live.

THE COURT: Well, that is a little different from what you just said.

MR. WEINGLASS: Yeah, then there is a report back.

THE COURT: Yes.

MR. WEINGLASS: From Mr. McGill after his detectives completed their mission. And I'm just doing this by way of introduction.

THE COURT: Yes, okay.

MR. WEINGLASS: Yeah. Does the offer of $50 stand until morning?

THE COURT: No, Counselor, this

Page 228.

witness is on the stand.

MR. WEINGLASS: I am not asking the witness to stay. I am just saying I will bring it in tomorrow morning.

THE COURT: I can't condone gambling. If you were to do this.

MR. WEINGLASS: I didn't make the offer. I am willing to make the acceptance but I didn't make the offer.

THE COURT: Whatever you do with the D.A. is all right but do that out of my hearing. I can't condone any gambling in this Courtroom. Please.

MR. GRANT: I apologize, Your Honor, to put you in this compromising position.

THE COURT: I realize that.

BY MR. WEINGLASS:

Q. In any event, Miss Kordansky, you don't remember whether or not detectives came to see you or called you on the phone, around the time of the trial?

A. No.

Q. Is it that you do remember and they didn't or you don't remember?

A. I don't remember.

Page 229.

Q. And they might have?

A. I don't remember and they might have.

Q. Now let's go to December 9th, 1981. Where were you living at that time?

A. That's the date of the crime?

Q. Yeah.

A. At the St. James House.

Q. And where is the St. James House located?

A. 13th and Walnut Street.

Q. And does the St. James House overlook -- no, strike that. Your apartment in the St. James House overlooked the intersection of Locust and 13th?

A. Yes.

Q. And there is a parking lot before you and so you could look out

over the parking lot?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And are you able to see the entire block from 13th to 12th on Locust or only a portion of Locust?

A. You are talking in the present tense. I am not still there so I am not that accurate as to how far I could see. But I think I could only, I think I could only see part of the street, part of Locust Street.

Page 230.

Deborah Kordansky - Direct

Q. Part of Locust --

A. And all of -- most of 13th.

Q. From 13th you would be able to see looking east a part of Locust?

A. Yes. Except I think my window faced, I think it faced Locust, one of my windows. It was a corner apartment, so it faced Locust.

Q. Facing Locust, approximately, just then, give me an estimate of how much of Locust you could see? Would it be 200 feet? 300 feet? Looking east from 13th.

A. Yes, that's nearly impossible for me to say. Less than half of the street.

Q. Less than half going down to 12th?

A. Oh. Okay. Wait a minute. Yeah, right, right, yes, going east.

Q. Is that right?

A. Yeah.

Q. So from 13th going towards 12th you could see half of Locust?

A. No more than half. So I don't know if it was like a quarter, you know, or half of Locust or how much.

Q. And did you have an unobstructed view of that part of Locust?

Page 231.

Deborah Kordansky - Direct

A. Well, there were buildings below me but I was on a higher floor so I believe I did have an unobstructed view.

Q. And you were in a higher floor?

A. Yes, than the buildings, some of the buildings, I believe.

Q. Right. Would you be up above the 10th floor?

A. I don't remember what my apartment number, what floor I was on.

Q. Without being precise, you were above, let's say, the first four or five floors?

A. Yes, yes.

Q. So there was no building obstruction looking out to Locust, right?

A. I don't think so.

Q. And how far were you from the sidewalk on the north side of Locust? Sorry. The south side? Sorry.

A. The St. James House borders Chancellor Street, I believe it's Chancellor Street. And then below that is Locust Street. Chancellor Street is like a little half-a-block street, sort of.

Q. How far would you be, would you say you were 100 feet from the sidewalk on Locust, on the south side, or were you more like 500 feet?

Page 232.

Deborah Kordansky - Direct

A. I can't estimate. I... let's see... I don't know.

Q. Well, is it further than from here to the back of the Courtroom?

A. I think a little bit further, yes.

Q. From where you were to the sidewalk on Locust Street?

A. Yes. I guess quite a bit further.

Q. Twice as far as from you to the back of the Courtroom?

A. It could be, but I'm not, I'm not sure.

Q. Now, that night around 3:45 to 4:00 a.m. in the morning you heard gunfire; isn't that correct?

A. Yes, but I didn't know it was gunfire, at first I thought it was firecrackers.

Q. Right. But you heard either firecrackers or gunfire and you looked out your window?

A. No.

Q. What did you do?

A. Ahh, you know, continued whatever I was doing in my apartment.

Q. I see. So after you heard -- you do remember hearing firecrackers or gunfire?

A. (Witness nodded head affirmatively.)

Q. And it is your testimony that when you heard

Page 233.

Deborah Kordansky - Direct

it you did not look out your window?

A. No, I did not.

Q. What were you doing at the time?

A. God knows. I really don't know. It's a long time ago.

Q. And did you then go downstairs?

A. No.

Q. Did you then go to the Police Department?

A. No.

Q. Did you then contact any police investigator?

A. No.

Q. Or police?

A. No.

Q. That night? That morning?

A. After I heard the shots?

Q. Yeah.

A. No.

Q. Did any investigators contact you that morning?

A. No. You mean right after the shots?

Q. Yeah.

A. No.

Q. Or, let's say, before eight o'clock in the morning?

A. I don't remember. I know I, did I make my --

Page 234.

Deborah Kordansky - Direct

I don't remember when I made my statement but I imagine it was right after the crime. But I don't think I -- I don't know if anybody contacted me right afterwards.

Q. Well, did you remember you made a statement?

A. Yes.

MR. GRANT: On what occasion, Your Honor.

BY MR. WEINGLASS:

Q. Right after the crime?

A. To tell you the truth, I distinctly don't remember whether it was right after the crime or the next day.

Q. I see. But you remember writing something out?

A. Yeah.

MR. GRANT: Objection. There has been no testimony that she wrote this document (displaying).

MR. WEINGLASS: Okay, fair enough.

BY MR. WEINGLASS:

Q. Did you write something out?

A. It's not my, it's not my writing.

Q. It is not your writing?

A. No.

Page 235.

Deborah Kordansky - Direct

Q. So, then, Miss Kordansky, you never wrote something out?

A. I don't think this is my writing.

Q. Right. Did a uniformed police officer write this statement?

A. I think so.

Q. And where was that uniformed police officer when he wrote this statement?

A. I don't remember. Possibly in the lobby of my, of my building. Or possibly on the street, I'm not sure.

Q. So you saw a police officer in the lobby or on the street?

A. Yes.

Q. And did you have a conversation with him?

A. Yes. But this is in... what is the time sequence of this that we are talking about anyway? We are talking about right after the gunshots, or right after the gunshots, sirens, et cetera?

Q. After the gunshots and the sirens, et cetera.

A. Oh, okay. After. After that, yes, I went downstairs.

Q. You went downstairs?

A. Yes.

Q. After the gunshots and the sirens?

Page 236.

Deborah Kordansky - Direct

A. Yes, I'm pretty sure I did.

Q. You went downstairs?

A. I'm positive I did, yes.

Q. And there were other people downstairs?

A. Umm, the doorman, but I don't know about other people.

Q. And there was a police officer there?

A. Not right there, no.

Q. Well, did a police officer come there?

A. Not into the building that I know of, no. I walked outside of the building and walked around the block.

Q. And when you walked around the block, did you walk on towards Locust or did you walk the other way, towards around Walnut?

MR. GRANT: I object to this line of questioning. He has yet to even approach what she saw and how that would have changed the outcome of this case at trial in 1982.

MR. WEINGLASS: We are getting to the statement. Which is why we asked her.

THE COURT: Let's get to the statement.

MR. WEINGLASS: We are getting there.

THE COURT: It sounds almost like you

Page 237.

Deborah Kordansky - Direct

are trying to impeach your own witness before you even get to the statement. Let's get to the statement.

BY MR. WEINGLASS:

Q. When you walked, was it after you walked that you found the police officer who you talked to who wrote the statement?

A. Yes.

Q. And was that officer on Locust when he wrote the statement?

A. I don't know.

Q. Were there other police officers in the vicinity?

A. After the crime? Ahh, yes, yes.

Q. So when this officer wrote the statement there were other police officers around?

A. Yes. I don't know if they watched him writing the statement, but I saw around that block other police officers.

Q. Other police officers?

A. Yes.

Q. Now, can you recall today what you told that police officer?

A. Yes.

Q. You can recall that?

Page 238.

Deborah Kordansky - Direct

A. Well, no, I can't recall what I told the police officer. I could recall today what I saw and heard, I think.

Q. You think.

A. Yeah.

Q. Yeah?

A. I'm sure I heard gunshots. I saw police cars. I also remember -- there are two vivid images in my mind from this. One was the squad cars and the police van. And the other vivid image was going around the block and seeing a squad car with two policemen in it crossing themselves because they had just gotten word from the hospital that Faulkner was dead.

Q. And those are the images that remain with you?

A. Yes.

Q. But, Miss Kordansky, didn't you tell the police that night, the policeman you saw, who wrote a statement, that you saw a man, a male running on the south side of Locust Street?

A. (Witness nodded head affirmatively.)

Q. Didn't you tell them that?

A. Yes.

Q. Did they ask you to sign any statement that night?

Page 239.

Deborah Kordansky - Direct

A. Umm, I don't know.

Q. Well, will you look at the statement that's there right next to you?

A. Yes.

Q. Does your signature appear on it?

A. No.

Q. Pardon?

A. No, it doesn't.

Q. Did they ask you to go down to the Roundhouse or the police headquarters to be interviewed?

A. No.

Q. Did they ask you to take a lie detector test, or a polygraph?

MR. GRANT: Objection: Beyond the scope of this witness and their offer of proof as to this witness.

THE COURT: I will sustain that.

BY MR. WEINGLASS:

Q. Did they ever come back to you, to your recollection, and say to you what did you mean, Miss Kordansky, when you said you saw someone running south on Locust Street?

MR. GRANT: Objection. It doesn't say running south on Locust because if it were she wouldn't be on Locust --

Page 240.

Deborah Kordansky - Direct

BY MR. WEINGLASS:

Q. That you saw a male running on the south side of Locust Street? Sorry.

A. (Witness nodded head affirmatively.)

Q. Did they ever come back and ask you that?

A. No.

Q. Okay.

A. I don't remember. I mean, I don't remember that.

Q. Did they ever ask you to write a statement in your own hand?

A. I don't remember.

Q. And have you ever seen a statement of yours in your own handwriting?

A. No.

Q. In connection with this case?

A. No. --

Q. Miss Kordansky, did they ask you when it was that you saw the man, a male running on the south side of Locust Street?

A. Well, I told them the sequence of events. First hearing the gunshots. Then hearing sirens. Going to my window. Looking out seeing police cars and vans. And then seeing someone running.

Q. Do you recall today in August of 1995 that you

Page 241.

Deborah Kordansky - Direct

gave them that precise sequence? Do you really recall that today?

(Pause.)

A. It's logical.

Q. It's...?

A. It's the way my mind would work. I know I wouldn't go to a window if I heard firecrackers but I would go to a window if I heard a siren, yes.

Q. And that's how you piece it together: It isn't really your recall, it's your belated logical piecing together of what you think is logical?

A. Let me think for a minute.

MR. GRANT: Your Honor, it is written down the same night at 4:56, less than an hour later. So we are not really talking about recall here, we are talking about being able to read and write.

MR. WEINGLASS: Not written down by this witness. Written down by a police officer.

THE COURT: Given by this witness she said.

MR. WEINGLASS: Oh, okay.

THE COURT: She told us that she could remember she told the police officer.

BY MR. WEINGLASS:

Page 242.

Deborah Kordansky - Direct

Q. You were about to say something and you were interrupted?

A. I was trying to think about whether I could remember... the thing is I remember distinctly sounds of gunshots, and distinctly I could remember the, seeing, hearing the sirens and seeing the cars. Those are the two things that I distinctly remember.

Q. Those are the two things you remember?

A. Distinctly.

Q. And it could be, Miss Kordansky, that you saw a male running on the south side of Locust Street between those two things?

MR. GRANT: Objection.

THE WITNESS: Absolutely not.

BY MR. WEINGLASS: --

Q. Why do you say that?

A. Because I wouldn't go to the window -- first of all, if I made this statement I wouldn't lie.

Q. But you didn't make this statement: It was written by a police officer?

THE COURT: Well.

MR. GRANT: He is impeaching his own witness.

THE COURT: Yes, please. This is your witness.

Page 243.

Deborah Kordansky - Direct

MR. GRANT: In addition to which because she said she wouldn't lie but he said well, this was made by a police officer. What is the implication of that?

MR. WEINGLASS: Whatever.

THE COURT: Well, I think they interrupted you. Did you want to say something?

THE WITNESS: I just know in my own logic that I wouldn't go to a window for firecrackers. I mean there are a lot of noises in that area. But the sound of sirens I would go to the window for.

BY MR. WEINGLASS:

Q. There are a lot of sirens, too, in that area, aren't there, a lot?

A. No.

Q. There aren't many sirens in that area?

A. Not of the magnitude of 12, 10 or eight police cars, no.

Q. Well. It is --

A. It's not usual.

Q. But in April of 1982, more than 13 years ago, you told the police who interviewed you why you couldn't remember it, and you said I have prejudice that affects my memory against and for police and

Page 244.

Deborah Kordansky - Direct

black people?

MR. GRANT: Objection.

BY MR. WEINGLASS:

Q. Is that why?

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

Q. What we are talking about is your inability to remember, period. And what I am questioning you about is: You've never made a written statement on your own, you've never made a tape recording, you haven't even seen your April '82 statement, and here 13 years later you are trying to recall but you acknowledge that your memory is not that good?

A. Yes.

Q. Was your memory better in June of 1982 than it is now?

A. Umm, was that the time of the bike accident?

Q. No, June of '82 is the time of the trial.

Page 245.

Deborah Kordansky - Direct

A. If...

Q. Most of us lose some memory in 13 years?

A. Oh, of course, absolutely.

Q. And you also have lost memory?

A. The most accurate I could be is the statement I gave. That was the most accurate I could possibly be.

Q. But you never wrote a statement?

A. I gave it, then.

Q. You gave it and when did you next see this statement that you gave?

A. Recently.

Q. For 13 years you haven't seen it?

A. No.

Q. You can't testify whether it's accurate or not?

MR. GRANT: Your Honor, I believe --

BY WEINGLASS:

Q. Can you?

MR. GRANT: I believe what the witness is stating is that this contemporaneously recorded document was true when given, so it is what is called in evidence past recollection recorded which she now adopts. So this becomes the witness, for all intents and purposes - And

Page 246.

Deborah Kordansky - Direct

he keeps trying to impeach her instead of that.

MR. WEINGLASS: Past recollection recorded from law school.

MR. GRANT: Thank you.

MR. WEINGLASS: With the author on the stand. When the author writes something down and takes the stand, the author can refer back to his or her writing. She never wrote anything down.

THE COURT: Why are you questioning her about that? She said she gave the statement to the police officer.

MR. WEINGLASS: Well, we are testing that, she hasn't seen it in 13 years.

THE COURT: Well, then, Counsel --

MR. BURNS: Under Pennsylvania law it is not necessary for the declarant to record the statement of a past recollection, it could be written down by someone else.

MR. WEINGLASS: That's refreshing recollection. Which is different.

MR. BURNS: Mr. Weinglass is incorrect, Your Honor.

THE COURT: Okay.

BY MR. WEINGLASS:

Page 247.

Q. So you haven't seen the statement for 13 years?

A. No.

Q. All right. And the two things that you remember, the salient things, were the officers in the police car crossing themselves, and the sirens?

A. And the gunshots, yes.

Q. And the gunshots?

A. Yes.

Q. That's what you remember?

A. Yes. I vaguely remember there was somebody running.

Q. And you remember somebody running?

A. I vaguely remember that.

Q. Vaguely remember?

A. Yes.

Q. When you talked to the police officer that night, were you trying to help the police in solving a crime?

A. Yes... I'm sorry, it seems like an absurd question.

Q. You were trying to help?

A. If I could, you won't restate it. I was trying to be a good citizen.

Q. All right, that is a better way of putting it.

Page 248.

A. Thank you.

Q. And it would help the police, would it not, and make sense that it would help the police, by saying, in effect, you saw someone running away who was probably the shooter and you were telling the police right then and there the shooter ran away?

A. I didn't say --

Q. You said you saw a male running?

A. Yes.

Q. You were trying to help, you were being a good citizen?

A. I didn't say when.

Q. Pardon?

A. I did not say away.

Q. You saw him running?

A. I saw someone running.

Q. And you were trying to be a good citizen and you were trying to help the police. And aren't you trying to tell the police in helping them that the person -- this is my inference -- that the person, you were telling the police, you were directing them that the shooter ran away, and as a good citizen you are telling them I saw him run away and you ought to try to catch him? Isn't that why you told the police that?

Page 249.

A. That's the cops and robbers way of looking at it from television, yes.

Q. This is a cops and robbers event?

A. But that's not how I think. I am a little for --

Q. You thought it would be helpful for the police to know that after they were all there with tens of police cars and vans, you thought it would help the police to tell them that after all you folks were here I saw someone run?

A. No, I think the running was part of the flow of the whole situation. There was a man killed, there's panic. Someone was running, maybe two people are running, maybe three people are running, you know. There's police, there's news crews, et cetera.

Q. And that's the sequence; isn't that right?

A. That's the sequence.

Q. What you just described is the sequence that you saw.

A. That I don't know. Because I didn't --

MR. WEINGLASS: All right, we will leave it at that. Thank you.

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CROSS-EXAMINATION

- - - - -

Page 250.

BY MR. GRANT:

Q. Miss Kordansky, good afternoon. I just have two questions. Do you know whether it was a male or female that you saw running? If you could answer it. If you can't, don't.

MR. WEINGLASS: Statement is available right there. If you --

THE WITNESS: I assumed it was a male because the person was wearing pants, but you can't see, it is quite a distance.

BY MR. GRANT:

Q. Right on your statement there, ma'am, it says you were living at that time 10 floors above the City street: lOOl? Is that right? Is that correct?

A. Yes, above the street of Chancellor Street.

Q. And you were interviewed, it says here, at St. James House; does that refresh your recollection?

A. Yes.

Q. And it was at 4:56 a.m., and you said when you looked out your window you are telling us today you saw police cars and vans, a number of them, and when you saw this person running were they running to a phone?

A. I can't say.

Q. When they ran did they run out of your line of

Page 251.

vision?

A. I -- no, I don't know.

Q. Did you see that person with a gun in their hand, with dreadlocks and a red-and-blue sweater?

A. No. I don't even think I could have seen colors on a person - I could see the colors -- well, I don't even know if I saw the colors of the police cars, but I saw the lights.

Q. Could you tell us whether or not that was a policeman running?

A. I couldn't tell, no.

MR. GRANT: Thank you, ma'am.

REDIRECT EXAMINATION

BY MR. WEINGLASS:

Q. That person you saw running, your vision of that person running on the south side of Locust was cut off because that person ran in a building and a building was obstructing your view; isn't that correct?

MR. GRANT: Your Honor, first of all, he is impeaching his own witness and she didn't say that.

MR. WEINGLASS: I am just asking.

Page 252.

Deborah Kordansky - Redirect

THE WITNESS: I don't know where, which way they were running.

BY MR. WEINGLASS:

Q. You don't know which way they were running?

A. I don't think. I mean when I look back at my memory it looks like they were going east.

Q. Yes.

A. But I don't know.

Q. Right. But your best memory, that's fair, is that this person was running on the south side going east, right?

A. That is an image that is in my mind, yes.

Q. All right. And it was a male, your best memory?

A. I thought so because --

Q. You told the police that?

A. Yeah, I thought so.

Q. The bottom line, Miss Kordansky, that night is one hour after the shooting you provided information to the police which you thought would help the police; isn't that the bottom line?

A. Yes, I was trying to be a good citizen, right.

MR. WEINGLASS: Thank you.

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RECROSS-EXAMINATION

Page 253.

Deborah Kordansky - Recross

- - - - -

BY MR. GRANT:

Q. Ma'am, when that person or those persons were running east, were they running towards the congregation of police vans and vehicles?

A. I don't remember.

Q. Well, were they running east from 13th?

A. That's what I thought.

Q. Going towards 12th?

A. That's the image that's in my mind, but I don't remember.

Q. Okay. Do you know that Officer Faulkner was in the middle of the block where he was killed, between 12th and 13th?

A. I didn't know where it was.

Q. I am telling you that and assume that is the case.

MR. WEINGLASS: It wasn't in the middle, Your Honor. According to Officer Land who measured it for the District Attorney it wasn't in the middle.

MR. GRANT: Excuse me, Counsel.

MR. WEINGLASS: Well.

BY MR. GRANT:

Q. Assuming he was in the middle of the block,

Page 254.

Deborah Kordansky - Redirect

ma'am --

MR. WEINGLASS: I appreciate the offer. Now that he sees the jacket was red and blue and this morning it was red and black, I think he is learning a little something here, gradually.

MR. GRANT: My jacket's blue, it looks black.

BY MR. GRANT:

Q. Assuming he was in the middle of the block and you saw the person running east --

MR. GRANT: Will you stop it. You made your objection.

BY MR. GRANT:

Q. Would that person have been running towards the police congregated towards the middle of the block, or were they already beyond the middle of the block and they were running, going now almost at 12th Street?

A. They were going east. But I don't know if they were running away from the vans, I am -- not away. If they were running towards the vans, if they were in the middle of the street, or away from them.

MR. GRANT: Okay. I appreciate that. Thank you, ma'am.

Page 255.

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REDIRECT EXAMINATION

- - - - -

Deborah Kordansky - Redirect

BY MR. WEINGLASS:

Q. You are clear, though, it was on the south side of Locust? Your statement does say that?

A. Okay.

Q. On the south side running east?

A. That's the image that comes to mind. But I'm not, I can't be that definite about it, yes.

MR. GRANT: I have nothing further, Your Honor.

THE COURT: Okay. You are excused. Who do we have for tomorrow, gentlemen?

MR. WEINGLASS: Yes, we have, we have unquestionably Dr. Hayes from New York City.

THE COURT: Okay. Who else?

MR. WEINGLASS: We have Ward Churchill.

THE COURT: Okay.

MR. WEINGLASS: Counsel indicated this morning that there was a question about Ward Churchill. Is there a question?

MR. GRANT: Yes, a lot of questions

Page 256.

about Ward Churchill. We have objections.

MR. WEINGLASS: I thought you would.

THE COURT: Who else? Who else? Gentleman, if you don't know, it's 23 minutes of 6:00 already. Could I have the names, please.

MR. WEINGLASS: Your Honor, what happens to us --

THE COURT: Counselor, just give me the names, don't give me any sad stories. All I want to know is who are you calling tomorrow.

MR. WEINGLASS: I will be as brief as I can. When we are told this morning that 11 of our subpoenas are quashed we have to do a little scrambling.

THE COURT: You were told that yesterday, Counsel. Don't bring up that material again. The only reason you got it today is because I didn't have the order to sign yesterday. But orally in the Courtroom I told you that.

Now, please, you have two. Come on, elect somebody else. Who else do you want?

MR. WEINGLASS: We have entered into a stipulation I believe with the Commonwealth on three witnesses: Darlene Sampson --

Page 257.

THE COURT: Wait awhile.

MR. WEINGLASS: Beverly Greene.

THE COURT: Wait awhile. Darlene Sampson: You don't have her on your list, I don't believe.

MR. WEINGLASS: She was one of the suppressed, she was one of the quashed-subpoenaed witnesses. But we have entered into a stipulation which --

THE COURT: Where is that on your list? I am trying to find it on my list.

MR. GRANT: Judge, these were people that they offered earlier

on before they even began giving us lists.

THE COURT: Oh, okay.

MR. GRANT: Jurors who would say I was on the panel that was impaneled for selection in the case of Commonwealth versus Mr. Jamal. And they would, our stipulation is that they would come into Court and they would say -- and we are not verifying the accuracy of it -- that they would come into Court and they would say I was voir dired and I was released, I am a black person.

THE COURT: Okay.

Page 258.

MR. WEINGLASS: No, they would say I was peremptorily challenged.

MR. GRANT: Peremptorily challenged.

MR. WEINGLASS: By the District Attorney.

MR. GRANT: No, that is not the stipulation.

THE COURT: What is the last name: Darlene what?

MR. WEINGLASS: Sampson.

MR. GRANT: Sampson.

THE COURT: S-A-M-P-S-O-N.

MR. GRANT: Yes, Your Honor.

THE COURT: Who is the other one?

MR. WEINGLASS: Beverly Greene.

THE COURT: Wait awhile.

MR. WEINGLASS: Alma.

THE COURT: Beverly Greene. Go ahead.

MR. WEINGLASS: Beverly Greene and Alma Lee Austin.

THE COURT: Alma Lee Austin. How do you spell that?

MR. WEINGLASS: A-U-S-T-I-N.

THE COURT: Austin, A-U-S-T-I-N. What is your agreement?

Page 259.

MR. GRANT: The stipulation is that these three individuals would under oath state to Your Honor that they were among the venire persons drawn and congregated in 253, that they were voir dired by both sides, and that they were all three peremptorily struck. And they would identify themselves as African Americans, at that time. And the record will reflect who struck them.

Correct?

MR. WEINGLASS: Agreed, that stipulation we will agree, including the reference to the record.

THE COURT: Then we don't need them.

MR. WEINGLASS: We don't need them, that's why --

THE COURT: We have two we need.

MR. GRANT: Of course, we are not saying these people are them.

THE COURT: I understand that. Of course.

MR. WEINGLASS: You are not saying that they are them?

MR. GRANT: No, I am saying that they are saying they are them. What else are you

Page 260.

going to do, bring in fingerprints and ID's? I don't know.

(Discussion was held off the record at this time among defense Counsel.)

THE COURT: All right, who else besides Dr. John Hayes and Ward Churchill? I mean who else? Live witnesses, now. I am trying to...

MR. WEINGLASS: Yeah, Ward Churchill. Is Ward Churchill --

THE COURT: You gave us that already.

MR. WEINGLASS: Is he an agreeable witness?

MR. GRANT: No, disagreeable.

MR. WEINGLASS: Well, could I hear, Your Honor --

THE COURT: Well, give me all you are going to call and we will worry about it tomorrow. Who else are you going to call?

(Discussion was held off the record at this time between defense Counsel.)

THE COURT: How about, you have an Alma Rachael. Who is that?

MR. GRANT: That is the same person with a married name. Alma Lee Austin. She's

Page 261.

off.

THE COURT: Oh, that's Austin.

MR. GRANT: Yes.

THE COURT: Oh. That's Alma Lee Austin. Who is this Debbie Sampson?

MR. GRANT: That's Darlene Sampson with a married name. She is off. That's one of the three.

THE COURT: Darlene Sampson?

MR. GRANT: Yes, Your Honor.

THE COURT: But it says Debbie. All right, Darlene Sampson. I am trying to find out who is George Ewalt?

MR. GRANT: He was the fore person whose subpoena was quashed.

THE COURT: Oh, okay. Who is William Harmon?

MR. GRANT: That's this person that they found who is going to prove --

THE COURT: The one in prison?

MR. GRANT: Yes, Your Honor.

THE COURT: That's where the other attorney is today? Okay. And who is John Lambert?

Page 262.

MR. GRANT: Apparently he is a --

I am giving all the information about your case.

He is a Temple professor who is going to say that --

THE COURT: Temple professor?

MR. GRANT: Psychiatric kind of stuff about jury deliberations.

THE COURT: Okay.

MR. WEINGLASS: I am told the professor can't be here until Monday.

THE COURT: Well, he may not be here at all, period. So while you guys argue it out look up the law on this.

How about Arnold Howard: Who is he? That is the last one on the list that I have here.

MR. WEINGLASS: He is not available. We are trying to locate him.

THE COURT: Who is he? You see, you don't give me anything, I don't even know who he is.

MR. GRANT: I will tell you who he is.

THE COURT: Who is he?

MR. GRANT: When Police Officer

Page 263.

Faulkner was found dead, apparently he had taken somebody's identification, that temporary tag from Bassett's travel or Bassett's car tag place up on Broad Street. And they were asking people who is this guy, is this yours. And he said yes, I lost it in the back seat of -- I believe it was... hmm.

(Discussion held off the record at this time among Commonwealth Counsel.)

MR. GRANT: In Mr. Jamal's brother's vehicle. So of course that's going to be the person that committed the crime, I'm sure.

THE COURT: Oh, okay. He is the owner of the car or --

MR. GRANT: He is the owner of the tag that belonged to, the tag on the license plate.

THE COURT: The owner of the tag. On the car?

MR. GRANT: I will tell Your Honor exactly what --

THE COURT: Just roughly.

MR. GRANT: Let me just check, Your Honor.

THE COURT: Okay.

Well, are you going to call him?

Page 264.

MR. WEINGLASS: We don't have him available for tomorrow.

MR. GRANT: Of course we are going to ask for his relevance. Photostatic copy of an application for a duplicate driver's license is what was found. And they merely inquired when he lost it, and when did he realize it was lost, Judge. That's basically it. And this apparently was lost from November 30th, 1981, three weeks before this crime occurred. And he lost it in Mr. Cook's Volkswagen that was involved in this incident. That is the vehicle that was stopped by Police Officer Faulkner.

THE COURT: Okay.

MR. GRANT: And I would object to evidence of this nature: It doesn't support any of their Petition.

THE COURT: All right. Anything else?

MR. WEINGLASS: No, I want to ask if Mr. Churchill will be permitted to testify, Your Honor. He is a, he is a native American writer, author, lecturer, and --

THE COURT: Well, did you tell him what you wanted him to testify to or why?

MR. WEINGLASS: Yes.

Page 265.

MR. GRANT: First, let's reach the threshold question first. Is that going to be your last witness, sir?

MR. WEINGLASS: No.

MR. GRANT: Who are your witnesses?

MR. WEINGLASS: There are other witnesses.

THE COURT: Who are they?

MR. WEINGLASS: We are in the midst of --

THE COURT: Well, Counselor, I asked you for a complete list.

MR. WEINGLASS: Right. And then you quashed 11 subpoenas.

THE COURT: Okay.

MR. WEINGLASS: And now we are reassembling our case.

THE COURT: Reassembling?

MR. WEINGLASS: Yes, we would have had 11 more witnesses that would have gone until next Wednesday. Now that we found ourselves with quashed witnesses we have to remake our case.

THE COURT: Counselor, this PCRA is taking longer than the trial. The trial I don't

Page 266.

think was this long. But go ahead. You don't have anybody else, then?

MR. WEINGLASS: It was run with about the same speed.

THE COURT: Counselor, do you have anybody else?

MR. WEINGLASS: No. For tomorrow.

MR. GRANT: And we will not agree to Mr. Churchill. That is a lot of mumbo-jumbo as far as we are concerned.

MR. WEINGLASS: What is going to happen to Mr. Churchill?

THE COURT: I don't know. Be prepared to give me some cases on it.

MR. GRANT: Could we have anybody else that they are going to call tomorrow, Judge?

MR. WEINGLASS: That's it for tomorrow.

THE COURT OFFICER: This Court will now stand adjourned until 9:30 a.m. tomorrow morning. And Court will be held in Courtroom 653.

(The hearing was adjourned for the day at 5:45 p.m.)

Page 267.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

4. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358

- - - - -

PCRA Hearing

- - - - -

Thursday, August 4, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
John Hayes, M.D.	12	46	80, 105	97, 112

Direct Examination on Voir Dire - 8

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
22	Diagram	17
23	Photographic slides	35

COMMONWEALTH'S EVIDENCE

WITNESS	DE	CE	RDE	RCE
Lt. Craig Sterling	121	127	160	162

Page 3.

- - - - - -

(At 10:25 a.m. the hearing was convened in the presence of the Court and the attorneys.)

MR. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MR. WILLIAMS: Two matters before we call our first witness. The first concerns what occurred yesterday regarding the introduction of results of a polygraph examination of Mr. Dessie Hightower. We are endeavoring at the moment to retain a qualified polygrapher to perform a competent examination of those results. I am referring to the polygraph results.

I've requested of the Commonwealth the opportunity to have an expert retained by the Petitioner to examine those results. And we agreed, assuming we reach the threshold issue regarding discovery of the polygraph results, we have agreed that we would work out an arrangement whereby our expert would examine those results. We think that we are entitled to have an expert retained by the Petitioner to

Page 4.

examine the polygraph results and to come up with an analysis that we can include in the record.

THE COURT: Well, let me say to you the same thing I have said all along: Give me a case on it.

The District Attorney, if you don't agree with it, you give me a case on it, and I will study it.

MS. FISK: Good morning, Your Honor.

I would be happy to respond at this juncture with regard to that request. The issue in this case is not whether or not Mr. Hightower passed or did not pass a polygraph test. Mr. Grant's statement to the Court yesterday prior to Mr. Hightower's testimony was that it was the Commonwealth's position that the entire issue regarding the polygraph test was not relevant at this juncture but nevertheless we were conceding to his being called, and permitted it without waiving our objection.

The issue in this case is not whether or not Mr. Hightower passed; it is whether or not Mr. Hightower was told he was passed or whether he was told that he did not pass. The

Page 5.

documents which were shown yesterday clearly reflect that it was written by the person who performed the polygraph that deception was indicated and that Mr. Hightower was so advised. That was the sole issue with regard to impeaching Mr. Hightower's credibility with regard to his affidavit. The actual results of the test are irrelevant. They are inadmissible, not scientifically accepted, and therefore it is completely unnecessary and irrelevant.

THE COURT: Basically, what you are saying is true. Because I would not have permitted it to be brought out at the time of the trial. And Hightower testified at that time. So whether he passed it or flunked it is of no moment as far as the PCRA Petition is concerned.

I am denying it but I will let you research the law, do whatever you want to. Give me the cases and if I think I'm wrong I'll reverse myself.

What is your other problem?

MR. WILLIAMS: Your Honor, without quarreling with the Court's order, let me just --

Page 6.

THE COURT: Well, please don't.

MR. WILLIAMS: I just want to have the opportunity --

THE COURT: Counselor, please, I have already ruled. That's it. You have an exception. I told if you have got a case that says it's important, fine. Counselor --

MR. WILLIAMS: Fine. The Commonwealth --

THE COURT: Counselor, I have ruled on it. What is your next problem?

MR. WILLIAMS: Well, it is not so much a problem, it is a request. We would request that our witness Ward Churchill -- who we have informed the Court we would intend to present -- be permitted to testify on Monday. He is unavail --

THE COURT: No, absolutely not. You told me he was going to testify today. Well, I don't even know whether the defense is objecting to it.

MR. WILLIAMS: You mean the Commonwealth.

THE COURT: I'm sorry, the Commonwealth. Let's do this. You have a

Page 7.

witness here, let's get that witness on. He is a doctor, you are holding him up. I am sure he's got a lot more things to do. Put him on, let's get finished with him, and if you want to bring it up at that time, bring it up at that time.

MR. WILLIAMS: Your Honor --

THE COURT: Because he is not here. Counselor, I have said what you are supposed to do. Don't stand there and argue with me. Counselor, please, sit down. Let's bring in the doctor, finish with the doctor and then I will take up whatever you want to bring up at that time. I don't want to hold up the doctor, it's not fair to him.

MS. FISK: I believe the doctor is in the Courtroom, Your Honor. I have no objection to him being presented.

THE COURT: He has been here, I am sure he has a lot of other things he could be doing. So let's put him on so we could excuse him to go back to work.

MR. WEINGLASS: At this time the Petitioner calls Dr. John A. Hayes. H-A-Y-E-S.

- - - - -

Page 8.

John Hayes, M.D. - Direct on Voir Dire

John A. Hayes, Junior, M.D, having been duly sworn, was examined and testified as follows:

- - - - -

MR. WEINGLASS: May I proceed?

- - - - -

DIRECT EXAMINATION ON VOIR DIRE

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Dr. Hayes.

A. Good morning.

Q. Dr. Hayes, what is your current occupation and employment?

A. I'm an associate city medical examiner in New York City.

MR. WEINGLASS: Is the microphone on?

THE COURT: It's on.

THE COURT OFFICER: There you go, sir.

THE WITNESS: I'm sorry, Counselor. I am an associate medical examiner for New York City.

BY MR. WEINGLASS:

Q. And do you have any particular office within the medical examiner's office of New York City?

A. I'm, I don't understand the question.

Page 9.

John Hayes, M.D. - Direct on Voir Dire

Q. Yes, are you a senior?

A. I'm one of the senior staff forensic pathologists in the Manhattan office.

Q. They have senior and junior?

A. That is correct.

Q. And you are a senior forensic pathologist?

A. That is correct.

Q. Do you also maintain an office for the private practice of medicine?

A. Yes, I do.

Q. And could you just briefly describe the function of that office?

A. For consultation in legal issues relevant to forensic pathology. This may involve malpractice cases, this may involve cases of assault. This may involve homicide.

Q. And, Doctor, how long have you been a forensic pathologist?

A. I've been a forensic, this is my sixth year now.

Q. Are you Board certified?

A. Yes, I am.

Q. And just briefly, at what institution did you receive your education?

A. I trained in medicine at the University of

Page 10.

John Hayes, M.D. - Direct on Voir Dire

London. After graduating I did internships in medicine and surgery in the Greater London area.

I then moved to the United States to Boston. I trained in pathology at Boston University Medical Center for three years. And in my final year there I was the chief resident in anatomic pathology.

Subsequent to that I took a fellowship in Miami, Dade County, Florida, which was a one-year position.

Q. So you've completed an internship, a residency, and, as I understand it, a fellowship?

A. That's correct.

Q. Is it all in the field of pathology?

A. Yes, it is. With sub-specializations in forensic pathology.

Q. Are you a member of any professional associations?

A. I am a member of the American Academy of Forensic Sciences.

Q. Doctor, are you presently teaching at any institution?

A. Yes, I am. I am lecturing in pathology in Boston University School of Medicine. I am a clinical assistant professor of forensic medicine in New York University School of Medicine. I run a

Page 11.

John Hayes, M.D. - Direct on Voir Dire

course in forensic pathology at the Mt. Sinai Hospital Medical Center in New York. I teach frequently to the New York City Police Department and elsewhere.

Q. Do any of the courses you teach or any of your lectures specifically deal with the area of gunshot wounds?

A. Yes, they do.

Q. Now, have you attended any specialized courses on basic or advanced pathology offered by any agency of the government of the United States?

A. Yes, I have. I attended a course in basic forensic pathology at the Armed Forces Institute of Pathology in Washington, D.C. I attended a course in advanced forensic pathology at the FBI Academy in Quantico, Virginia.

Q. Have you been previously qualified as an expert in the field of forensic pathology in any court of the United States?

A. Yes, I have.

Q. And just approximately on how many occasions?

A. I would estimate a little bit over 100 times.

Q. And on how many occasions have you testified as a forensic pathologist for the prosecution in a criminal case?

Page 12.

John Hayes, M.D. - Direct

A. Ahh, the great majority of those times, probably about 100.

Q. And on how many occasions have you testified for the defense as a forensic pathologist in a criminal case?

A. I think this will be my fourth time.

Q. So it would be fair to say that in the great majority of cases, the overwhelming majority of cases you are an expert witness for the prosecution?

A. That's correct.

Q. Have you ever been denied qualifications as an expert in the field of forensic pathology in any court of the United States?

A. No, I have not.

MR. WEINGLASS: Your Honor, at this time the Petitioner tenders Dr. Hayes as an expert in the field of forensic pathology. And I turn Dr. Hayes over to Counsel for cross-examination.

MS. FISK: I have no questions, Your Honor.

THE COURT: Okay. Go ahead. He is accepted. Go ahead.

- - - - -

DIRECT EXAMINATION

Page 13.

- - - - -

John Hayes, M.D. - Direct

BY MR. WEINGLASS:

Q. Dr. Hayes, have you been retained by Counsel for Mr. Jamal in this case to render expert opinions in the field of forensic pathology?

A. Yes, I have.

Q. And pursuant to your being retained, were you asked to examine certain written materials for the purpose of rendering such an opinion?

A. Yes, I was.

Q. And based upon your reading of the materials that were provided to you, were you asked to render opinions with respect to the cause of death of Police Officer Daniel Faulkner?

A. Yes, I was.

Q. And based upon your reading of the materials, were you also asked to render an expert opinion respecting the gunshot wound sustained by Mr. Mumia Abu-Jamal?

A. Yes, I was.

Q. Incidentally, Doctor, did you have occasion or an opportunity to examine the body of the deceased in this case?

A. No, I did not.

Q. And have you had an opportunity to examine

Page 14.

John Hayes, M.D. - Direct

photographs of the deceased?

A. Yes, I have.

Q. And we'll come back to that momentarily. Now first directing your attention to the gunshot wound sustained by Mr. Jamal: Do you recall what records you examined to assist you in the formulation of any expert opinion with respect to the gunshot wound sustained by Mr. Jamal?

A. Umm, I reviewed the Jefferson Hospital medical record from Mr. Jamal. Trial testimony and statements made by Mister -- Dr. Colletta, the examining physician at the time.

Q. Have you had an opportunity to examine portions of the trial testimony of a Charles Tumosa, criminalist?

A. Yes, I have.

Q. Now, based on your review, were you able to reach certain medical conclusions to a reasonable degree of medical certainty?

A. Yes, I was.

Q. Doctor, I will now proceed to ask you a series of questions pertaining to those conclusions. And all the time at this moment we are speaking of the gunshot wound sustained by Mr. Jamal.

First, were you able to ascertain from

Page 15.

John Hayes, M.D. - Direct

the records and the materials made available to you whether or not Mr. Jamal in fact sustained a gunshot wound?

A. Yes, I was.

Q. And would you tell the Court where on his body the gunshot wound was inflicted?

A. Mr. Jamal was shot once in the right side of the chest, just below the right nipple [indicating).

Q. And were you able to ascertain from the materials that were provided to you the parts of the body that were impacted by the bullet projectile?

A. Yes, I was.

Q. And could you describe what parts of the body were impacted by the bullet projectile?

A. The bullet passed just below the fifth rib. It goes through the right lung (indicating), through the diaphragm muscle, which is a sheathe-like muscle dividing the chest and the abdomen region. It passes through the right side of the liver, and then it strikes the twelfth rib towards the back, with the bullet ending up next to, between the twelfth vertebrae of the spine, of the thoracic spine, and the first lumbar vertebrae. That is to say towards the back, just on the right-hand side.

Q. Now, were you also able based on the materials

Page 16.

John Hayes, M.D. - Direct

that were provided to you to trace the direction or the pathway of the bullet as it passed through his body?

A. Yes, I was.

Q. And what did you find with respect to direction and pathway?

A. The bullet passes from the right side of the chest backwards, downwards, and towards the left (indicating).

Q. Incidentally, did the bullet exit his body?

A. No, the bullet stayed inside his body.

Q. From your reading, was the bullet recovered?

A. Yes, the bullet was recovered by the surgeons at Jefferson Hospital.

Q. Now, did the bullet -- and we'll deal with this in more detail later -- did the bullet go through the body in a straight line?

A. Yes, it did.

Q. Now, did you have occasion to draw a diagram indicating the point at which the bullet entered the body, where it came to rest, and describing the pathway through the body?

A. Yes, I did.

MR. WEINGLASS: May the witness be shown D-22.

Page 17.

John Hayes, M.D. - Direct

And I first want to hand it to Counsel (handing).

This particular exhibit was appended to a report of Dr. Hayes and it is, it is contained in exhibit 4 to the Petition.

(Diagram was marked Defense Exhibit D-22 for identification.)

THE COURT OFFICER: D-22, Your Honor. D-22, sir (handing).

THE WITNESS: Thank you.

BY MR. WEINGLASS:

Q. Showing you D-22, is that the diagram that you drew based upon your examination of the written materials?

A. Yes, this is a standard diagram which I've labeled based on my examination of the written materials.

Q. And does that diagram as you see it now comport with the testimony you have just given?

A. Yes, it does.

Q. Did you become aware of any testimony offered in this trial in 1982 which indicated the range of fire or the distance from the

shooter to Mr. Jamal at the time he was shot?

A. Yes, I did.

Page 18.

Q. And could you indicate what information you received in that respect?

A. Mr. Tumosa, the criminalist, testified that the range of fire was approximately 12 inches.

Q. And was that a fact you have taken into account as well in formulating your opinions?

A. Yes.

Q. Based on the findings which you've just recited, and your diagram which is D-22, were you able to reach any conclusions to a reasonable degree of medical certainty respecting the relative positions of the shooter and Mr. Jamal at the time that the shooting occurred?

A. Umm, the gunshot has to be angled downwards towards Mr. Jamal. This would be consistent with a shooter above Mr. Jamal, possibly with Mr. Jamal slightly bent and a standing shooter firing horizontally.

MS. FISK: I'm sorry, I did not hear the second part of that response.

(The Court reporter read back the last answer.)

BY MR. WEINGLASS:

Q. Dr. Hayes, do you have an expert opinion based on your review of the materials to a reasonable

Page 19.

degree of medical certainty as to whether or not a standing Mr. Jamal could have been shot by a falling shooter?

A. If Mr. Jamal is standing, he sustained a gunshot wound which goes downwards, backwards and from right to left, a falling shooter would be firing upwards at a standing man and therefore the wound pathway would be upwards through Mr. Jamal's body. That would be inconsistent with the scenario you just proposed.

Q. So it would be inconsistent with your findings?

A. That is correct.

Q. In short, would it be fair to say that your findings indicate that Mr. Jamal could not have been shot by a falling shooter?

A. While --

Q. Pardon?

A. While he was in a standing position, that is correct.

Q. Now, is it possible, Dr. Hayes, for a bullet to ricochet or tumble as it passes through a body?

A. Those are two separate things. Ricochet is what happens when a bullet strikes a hard substance or an object inside the body and is deflected. So

Page 20.

that sometimes does happen and typically the situation in which you see a ricochet is when a bullet strikes a hard bone and is deflected and changes it's angle.

As far as whether bullets tumble inside a body, this is more debatable. Bullets, while the bullet itself may tumble, that won't change the angulation of the wound tract. So the bullet itself may rotate as it passes through a wound, as it causes a wound cavity, but that won't change the overall direction of the bullet.

Q. And was there any evidence in your review of the written materials with respect to the wound suffered by Mr. Jamal that would indicate that the bullet that struck him ricocheted?

A. No, there was not.

I'm sorry, could you repeat the question, please? I may have misunderstood it.

THE COURT: Repeat the question, he said, he may have misunderstood you. Will you repeat the question for him.

MR. WEINGLASS: Thank you. I understood that the witness was gesturing to have the same. But to save the Court reporter the effort I will ask the

Page 21.

question again.

BY MR. WEINGLASS:

Q. Was there any evidence in the materials that were submitted to you for examination that indicated that as the bullet entered Mr. Jamal's body and passed through it it had ricocheted?

A. No. Dr. Colletta on the witness stand testifying speculated that there might have been some sort of ricochet. There is nothing in the evidence available to indicate that there was any form of ricochet.

MS. FISK: Objection, Your Honor: Except that Dr. Colletta testified to it and that is certainly evidence available.

THE COURT: I will let you bring that up on cross.

BY MR. WEINGLASS:

Q. In your review of the written materials, putting aside Dr. Colletta's testimony, did you find in the hospital records, the medical records of Mr. Jamal, any evidence that would indicate to you as an expert forensic pathologist that the bullet had ricocheted after it entered Mr. Jamal's body?

A. No, the bullet goes into the chest and passes through soft tissues until it strikes the rib at the

Page 22.

back of the body. There is no point of ricochet inside there, inside that wound pathway.

Q. As a matter of fact, as it strikes that rib at the back of the body, the twelfth rib, does it fracture that rib?

A. It fractures that rib, yes.

Q. Is that the kind of evidence you would expect to see if the bullet had struck a rib in the upper portion of the body before it passed through the body?

A. If the bullet had struck a rib in the upper portion of the body you would expect that rib to be fractured too. And possibly the bullet would have been slowed and would have not fractured the rib at the back.

Q. So since you found no evidence of fracture or any markings on any of the upper body ribs, did that lead you to deduce in part that the bullet passed in a straight line and did not ricochet?

A. That's correct.

Q. And you indicated in your reading of Dr. Colletta's testimony -- strike that. Did Dr. Colletta in your reading of his testimony indicate that he himself was merely speculating?

A. Yes.

Page 23.

MS. FISK: Objection, Your Honor.

THE COURT: Yes, he is your witness, why don't you let him testify. Stop leading your own witness, will you please. Rephrase your question.

BY MR. WEINGLASS:

Q. Was there anything about your reading of Dr. Colletta's testimony that indicated to you as an expert forensic pathologist that he was testifying without a basis in the medical record?

MS. FISK: Objection, Your Honor. He is asking this defense witness to speculate as to the basis of another defense witness' testimony. The record speaks for itself as to the substance of Dr. Colletta's testimony.

MR. WEINGLASS: No, I think Counsel misunderstands it. Perhaps it was lack of artfulness on my part.

THE COURT: Well, rephrase your question so she'll understand it, will you.

BY MR. WEINGLASS:

Q. Did you find anything in the hospital records of Jefferson or in any of the medical records that supports any opinion by Dr. Colletta that there was a ricochet here?

Page 24.

John Hayes, M.D. - Direct

A. No, I do not.

Q. Now turning your attention to the Medical Examiner's report authored by Dr. Hoyer with respect to the autopsy of Officer Faulkner. Did you have occasion to read portions of Dr. Hoyer's testimony that was offered in the trial?

A. Yes, I did.

Q. Was Dr. Hoyer Board certified at the time he did the autopsy?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: It's in the record.

MS. FISK: Precisely the reason for my objection.

MR. WEINGLASS: No, it is a lead-in question, Your Honor. I asked him did he see that there was a wound here and that leads into the whole discussion of his expert opinion. I am now asking him if he read the doctor's report, the doctor's testimony, who performed the autopsy, and in his testimony did he indicate if he was Board qualified.

MS. FISK: I didn't object to those first questions because they were proper. Whether or not Dr. Hoyer stated to the Court he was Board qualified is not relevant to the

Page 25.

John Hayes, M.D. - Direct

affidavit submitted with regard to this doctor.

MR. WEINGLASS: I submit it is because in his affidavit Dr. Hayes offers an opinion as to the efficacy of Dr. Hoyer's work. And part of that opinion is based on the fact that Dr. Hoyer was not a Board-certified pathologist at the time he did the autopsy. It's part of the facts he considered. Clearly it's admissible.

MS. FISK: I would note first, Your Honor, that according to Dr. Hayes' report, Dr. Hoyer's testimony at trial was not considered by Dr. Hayes in rendering his opinion. He lists only the pathology report from the Office of the Medical Examiner as a basis for any opinion he gave with regard to the cause of death of Officer Faulkner.

MR. WEINGLASS: But it is in the affidavit. And he is testifying from his present --

THE COURT: Well, read where it is in the affidavit.

MR. WEINGLASS: Although I am not familiar with the full trial record, it would appear that since I disagree with the Medical Examiner's findings with respect to cause of

Page 26.

John Hayes, M.D. - Direct

death, and Dr. Colletta's postulation of a ricochet. So in his affidavit he indicates that he disagrees.

THE COURT: Well, that's all right, he could disagree. But the question you have asked she is objecting to.

MR. WEINGLASS: No.

THE COURT: And I sustained the objection.

MR. WEINGLASS: Your Honor, the --

THE COURT: He could disagree because he could make his own decision. I have sustained the objection. Now ask him whatever other questions you want.

MR. WEINGLASS: His disagreement is based in part on the fact that --

THE COURT: He doesn't say that in the affidavit, Counselor.

MR. WEINGLASS: It does.

THE COURT: I have made a ruling, Counselor. The objection is sustained. He could disagree with anybody that he wants to. That's his privilege.

MR. WEINGLASS: But he disagrees because he is not Board certified.

Page 27.

John Hayes, M.D. - Direct

THE COURT: You are not testifying here, he is. He didn't have that in his affidavit.

MR. WEINGLASS: It is in the trial record.

THE COURT: The objection is sustained. Now come on, let's proceed, will you.

BY MR. WEINGLASS:

Q. To your knowledge, based on your review of the record, how long had Dr. Hoyer been in the Medical Examiner's Office at the time he performed the autopsy?

A. Six months, I believe.

Q. Six months?

A. From, I believe he began in June of 1981 and performed the autopsy in December of 1981.

Q. In your opinion, was Dr. Hoyer qualified to render an autopsy in this particular case?

MS. FISK: Objection, Your Honor.

THE COURT: I will sustain that. He has his own opinion. Let him give us his opinion. He can't decide whether or not somebody else is qualified. The Court had accepted him as being qualified at the time, so.

Page 28.

John Hayes, M.D. - Direct

MR. WEINGLASS: That doesn't preclude --

THE COURT: Counselor.

MR. WEINGLASS: -- Dr. Hayes having an opinion.

THE COURT: He could have his opinions, I am not disputing that. Ask his opinion. But not his opinion about another pathologist. He can disagree with him and the Court will make that factual decision. But let's go ahead. Let's find out what he thinks, what his opinions are as to the cause of death.

BY MR. WEINGLASS:

Q. In making whatever opinions you made concerning cause of death, did you take into account Dr. Hoyer's lack of qualifications and his lack of tenure in the office?

MS. FISK: Objection, Your Honor.

THE COURT: I will sustain that again. Now, come on, Counselor, you can't get in the back door what I am not letting you get in the front door. Now cut it out.

MR. WEINGLASS: I am only asking if he took it into account.

THE COURT: I don't care if he took it

Page 29.

John Hayes, M.D. - Direct

into account or not. He is a pathologist, he could give his own opinions. Let him give us his opinions. I will listen to him.

MR. WEINGLASS: His opinions are based on facts.

THE COURT: His opinions are based on what he read.

MR. WEINGLASS: And what he read about Dr. Hoyer.

THE COURT: Well, he didn't give that in his affidavit. Now, come on. Just as it is not proper for one lawyer to criticize another lawyer, it is not proper for a pathologist to criticize another. He could give us his opinion as to the cause of death, that's fine. But let him do that.

BY MR. WEINGLASS:

Q. Now, did the Medical Examiner's report indicate the cause of death?

A. Yes, it did.

Q. And what was indicated?

A. Gunshot wounds of face and back.

Q. Now, based upon your reading of the Medical Examiner's report, and your reading of the hospital record, and your reading of Dr. Hoyer's testimony,

Page 30.

John Hayes, M.D. - Direct

were you able to reach an expert opinion to a reasonable degree of medical certainty as to the cause of death of Officer Faulkner?

A. Yes, I was.

Q. And what was that opinion?

A. Umm, that Officer Faulkner died as the result of a gunshot wound of the face.

Q. And what do you base that opinion upon?

A. The gunshot wound of the face is a, as Dr. Hoyer says, is an instantaneously lethal injury. The bullet strikes the brain and causes instant death.

Q. Now, in your expert opinion, Dr. Hayes, was the gunshot wound to the back a contributing cause of death?

A. No, it was not.

Q. And on what do you base that opinion?

A. The fact is that this gunshot wound of the back, the bullet just goes underneath the skin and causes no injuries other than soft-tissue injuries. There are no injuries of nerves or vital structures. As a result, it could not by itself cause death.

Q. Did that bullet exit the body?

A. Yes, it did.

Q. But did it exit the body after striking any major portions or vital organs of the body?

A. Not according to Dr. Hoyer's report. Dr. Hoyer says there is no significant injury in association with that wound.

Q. So a bullet that passes through the body as Dr. Hoyer describes in his report is a bullet that could not be a contributing cause of death?

A. Well, this particular gunshot wound the bullet just passes underneath the skin and exits the body. So, no, it does not contribute to death, particularly in the presence of a gunshot wound which is instantly lethal.

Q. Now directing your attention for the moment to the neck of the deceased: Was there any mention of a wound to the neck of the deceased in the Medical Examiner's report?

A. Yes, there is.

Q. And what is reflected in the Medical Examiner's report with respect to the wound to the neck?

A. The Medical Examiner's report describes a bullet entry wound of the back of the neck and a bullet exit wound on the left side of the neck on the front (indicating).

Q. And having read the hospital reports, having examined the photographs, and having read the

testimony of Dr. Hoyer, in your opinion how many wounds appear on the neck of the deceased?

A. There are actually not one but two wounds on the front of the neck of the deceased (indicating).

Q. Is it therefore your opinion that the Medical Examiner's report missed a wound?

A. That's correct.

Q. Is that an unusual occurrence in your experience?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that, whether it's unusual or not. He has said that he missed it, let it go at that.

BY MR. WEINGLASS:

Q. Without categorizing it as unusual or not, have you before in your experience come across a medical examiner's report that missed a wound to the deceased's body?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Now, looking at the available medical materials, could you determine whether or not the second wound to the neck, not described in the Medical Examiner's report, was an exit wound or an

entry wound?

A. The slide photographs of it aren't very clear. I can't say whether it is an entrance or an exit wound.

Q. So based on the information that's available in the Medical Examiner's report, and the other information available to you, can you tell if Officer Faulkner, how many times, how many times Officer Faulkner was shot?

MS. FISK: Objection, Your Honor. My objection, Your Honor, is based on the fact that Counsel is far exceeding the offer of proof which is included in Dr. Hayes' affidavit, which was limited to two points, one having to do with the wound to Mr. Jamal, and the second having to do with an allegation that Dr. Hoyer's report defining the gunshot wound to the back as a cause of death was inaccurate. There is no allegation that there was any error with regard to failing to cite additional wounds or whether there was an additional exit or entrance wound. For that reason I make my objection.

MR. WEINGLASS: Well, Your Honor, we have Dr. Hayes here. He has --

THE COURT: I know.

MR. WEINGLASS: He has now examined the photographs.

THE COURT: I know, but he gave an affidavit and we will stick with that.

MR. WEINGLASS: But the affidavit doesn't limit him.

THE COURT: Oh, yes, it does.

MR. WEINGLASS: Oh, Your Honor.

THE COURT: Counselor, look up the law. Give me a case.

MR. WEINGLASS: The case is elemental. You have an expert on the stand.

THE COURT: That's why I am sustaining the objection. It is so elemental that I'm sustaining the objection. If you could get a case on point, I will be glad to let you bring the doctor back and we could proceed into that area.

MR. WEINGLASS: As elemental as giving the defense time to prepare a hearing, Your Honor. With all due respect. So found by the Supreme Court in an extraordinary writ.

THE COURT: Oh, yes, sure. They gave you half of the apple and they gave me half of the apple.

MR. WEINGLASS: No, they reversed Your Honor when you said no stay.

THE COURT: No, they did not.

MR. WEINGLASS: They did.

THE COURT: They reversed you because you wanted August the 1st and they said no.

MR. WEINGLASS: You wanted the hearing to begin the next day.

THE COURT: Right, so they gave you half an apple and they gave me half of an apple.

MR. WEINGLASS: No, sir.

THE COURT: Now, Counselor, no more arguing with the Court.

MR. WEINGLASS: Let the record show --

THE COURT: Let the record show that if you do it is a thousand dollar fine. Now cut it out. I am not going to fool around with you anymore. We have a witness here, now let's get his testimony on record.

(Photographic slides were marked

Defense Exhibit D-23 for identification.)

MR. WEINGLASS: I am doing my best.

THE COURT: Okay, fine. Do your best. Counselor, you will do it according to the rules of law of Pennsylvania. I don't know

Page 36.

John Hayes, M.D. - Direct

what you do in New York. We are in Pennsylvania now.

MR. WEINGLASS: Let the record show another reference to the fact that I'm an out-of-state Councel.

THE COURT: Well, you are. You may not know the procedures here. But come on, start asking questions.

THE COURT OFFICER: D-23, Your Honor.

THE COURT: Oh, D-23.

MR. WEINGLASS: I make this offer of proof for the record, while Counsel is examining. If Dr. Hayes were permitted to testify, he would have indicated that there is no way of -- it is an offer of proof.

THE COURT: No, Counselor, please. You do that back in chambers if you want to. You have given us something, D something. D-23. Whatever it is it is.

MR. WEINGLASS: There is no jury here, Your Honor, I can't make an offer of proof?

THE COURT: Well, Counselor --

MR. WEINGLASS: It's just for the record. I have a doctor here, he is being precluded. May I make an offer of proof as to

Page 37.

John Hayes, M.D. - Direct

what he would say?

THE COURT: Counselor, if you want to take the doctor back in chambers and we have an in camera as to what he is going to say, fine, okay. I am not making it part of this record as to what he is going to say because I've already ruled that it's not proper what you are trying to do. Now come on.

MR. WEINGLASS: But it is part of the record if he testifies in camera.

MS. FISK: Your Honor, Your Honor, if we could move forward I will withdraw the objection. I will not object to Counsel going beyond the scope of the affidavit. Let's just go on.

THE COURT: All right, if she is willing to waive it, fine. If there is no objection I don't have to make a ruling. She is withdrawing her objection, do whatever you want.

THE COURT OFFICER: D-23 (handing).

BY MR. WEINGLASS:

Q. Dr. Hayes, based on your examination of the Medical Examiner's report, can you tell how many times Officer Faulkner was shot?

A. No, I can not.

Page 38.

John Hayes, M.D. - Direct

Q. Now, in your experience --

A. Wait, may I expand on that answer? According to the Medical Examiner's report, two separate gunshot wounds are described. And examining the photographs from the autopsy, a third wound is, is mentioned, a separate wound is mentioned on the neck (indicating). This is what really causes problems for me.

Q. Right, and you can't tell whether that is an exit wound or an entry wound?

A. No, I can't. It is not described in the autopsy report and the photographs of it are unclear.

Q. And so as an expert you can't tell how many times he was shot?

A. Yeah, I can't give an opinion as to the nature of the third wound. The second neck wound (indicating).

Q. Is that unusual for an autopsy to be completed and for a forensic pathologist examining it not to know how many times the deceased was shot?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. I think you asked him whether or not he could tell.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Page 39.

John Hayes, M.D. - Direct

Q. In your experience, have you previously examined the Medical Examiner's report and found that you couldn't tell based on the information in the report how many times the deceased was shot?

MS. FISK: Objection.

THE COURT: What is the basis of your objection?

MS. FISK: I would ask that the question be limited to this doctor's opinion with regard to what he has seen, not his analysis of what other people might have, could have, or should have or would have discovered.

THE COURT: Based on that the objection is sustained.

BY MR. WEINGLASS:

Q. Now, as a forensic pathologist, is it important in your field of expertise for the report of the medical examiner to be complete?

A. Yes, it is.

Q. Did you find the report of Dr. Hoyer to be complete?

MS. FISK: Objection, Your Honor. My understanding at this point is that this Court ruled that the doctor could not give his opinions as to the qualifications or opinion of

Page 40.

John Hayes, M.D. - Direct

another expert, he was simply to give his opinion.

THE COURT: That's right.

MR. WEINGLASS: Simply to --

THE COURT: All I want is his opinion as to what he sees and what he finds. What his opinion is as to the cause of death. No criticism of somebody else. The fact-finder will decide what value it has.

MR. WEINGLASS: Right, I am trying to give the fact-finder facts.

THE COURT: Just give me the facts. Just let me know what he thinks.

MR. WEINGLASS: Right, I will try right now.

BY MR. WEINGLASS:

Q. Was the Medical Examiner's report complete?

THE COURT: Well.

THE WITNESS: No, it was not.

BY MR. WEINGLASS:

Q. It was not, okay. Now, was it noted in the Medical Examiner's report that a fragment was found as well as the bullet in the deceased's body?

A. Yes, it was.

Q. And did the Medical Examiner, according to his

Page 41.

John Hayes, M.D. - Direct

report, measure the fragment?

A. Yes, he did.

Q. And was the fragment a small fragment or a relatively large fragment?

MS. FISK: Objection, Your Honor. Again we've gotten into yet another area that is completely outside the scope of the offer as is included in this doctor's affidavit.

MR. WEINGLASS: Not at all. We are talking about the Medical Examiner's report and what was in the report. That's completely within the scope of what is in the affidavit.

MS. FISK: No, Your Honor.

MR. WEINGLASS: I am talking about the report, the Medical

Examiner's report.

MS. FISK: And this doctor's affidavit is with regard to the death of Officer Faulkner.

MR. WEINGLASS: Yes.

MS. FISK: It is his opinion that the cause of death was incorrectly stated as gunshot wounds to the back and head and in his opinion only the gunshot wound to the head was the cause of death. That is the sole expression of opinion that this doctor gave in his affidavit.

MR. WEINGLASS: That's right.

Page 42.

THE COURT: Let's limit it to that.

MR. WEINGLASS: That's right, we are talking about the bullet that caused the death.

BY MR. WEINGLASS:

Q. Is the bullet that caused the death of Officer Faulkner indicated in the Medical Examiner's report?

A. Yes, it is.

Q. And was there also a fragment with that bullet?

A. Yes, there was.

Q. And that fragment was measured by Dr. Hoyer?

A. Yes, he did measure it.

Q. And how would you describe the size of the fragment?

A. He described it as I believe 10 millimeters by 3 millimeters by 2 millimeters.

Q. Now, was that fragment submitted to the ballistics laboratory, if you know?

A. I do not know.

Q. Should it have been?

MS. FISK: Objection, Your Honor.

THE COURT: Well, it has been. The records will show that. Now come on. The objection is sustained. Counselor.

MR. WEINGLASS: Right.

Page 43.

THE COURT: He doesn't know. He didn't read it. He wasn't here for the trial.

BY MR. WEINGLASS:

Q. In your experience do you submit fragments of bullets?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Now, to your knowledge was the deceased's body X-rayed by the coroner?

A. I do not know.

Q. When you do an autopsy do you X-ray the body?

A. If there's a penetrating injury such as a gunshot wound or a knife wound, yes, we do.

Q. And what is the purpose of X-raying the body?

A. To determine the location of, or the presence and location of ballistic evidence.

Q. And there is no indication here it was done in this case?

A. Ahh, no.

Q. Is that part of the reason why you find the Medical Examiner's report incomplete?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Page 44.

Q. Now, did you render a report on your findings in this case?

A. Yes, I did.

Q. And did you sign an affidavit --

A. Yes, I did.

Q. -- for the Court? And have you examined exhibit 4 of your affidavit and does your --

A. Could you repeat that?

Q. Does your report, your affidavit and your vitae appear as exhibit 4 attached to the Petition?

A. It is an exhibit in the Petition; I'm not sure what the number is.

MR. WEINGLASS: If I may have a moment.

(Discussion held off the record between defense Counsel.)

MR. WEINGLASS: Your Honor, at this point I would ask for discovery of the District Attorneys with respect to the X-rays, if any, that were performed on the deceased's body. And I ask that they turn over those X-rays which we have not received so that those X-rays may be examined by a qualified expert.

MS. PERKINS: Your Honor, if I may: First of all, there is no evidence that there

Page 45.

were any X-rays taken of Officer Faulkner's body.

MR. WEINGLASS: They could represent that and I will accept the representation.

THE COURT: Counselor, please.

MR. WEINGLASS: I will accept the representation.

MS. PERKINS: If I may, Your Honor?

THE COURT: Go ahead.

MS. PERKINS: Counsel has already requested from the City Solicitor's Office the Medical Examiner's Office, the complete record that they have in this case. Everything that was done. They have the slides that were recorded of Police Officer Faulkner's body. I don't know if they told them there were any X-rays taken. I doubt it seriously because I don't believe that today there is even a practice in the City and County of Philadelphia to X-ray deceased people. But if they have the information they should find it out or they should present it to the Court. I don't have any information to that effect. And it's not our responsibility to find it out for them.

MR. WEINGLASS: All I wanted was a

Page 46.

representation that the District Attorneys do not have any X-rays of the deceased's body. And I accept that representation.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MS. FISK: (Handing).

MR. WEINGLASS: We have completed. Thank you, Dr. Hayes.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes, sure.

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CROSS-EXAMINATION

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BY MS. FISK:

Q. Dr. Hayes, let me start with this, sir. Your curriculum vitae, which is attached to your report, sir --

A. Yes.

Q. -- is very specific with regard to the years of your internships and residences. There is no date, however, next to the first mark, which is the date, I assumed, of your graduation from medical school?

A. It was July 1985.

Page 47.

Q. In June 1982, then, Doctor, would I be correct that you were a university student?

A. I was in medical school at the time.

Q. You were in medical school at the time?

A. Yes.

Q. I take it, then, in June 1982 you were not a doctor?

A. That is correct.

Q. You did not have expertise in the field of forensic pathology?

A. That is correct.

Q. And in fact could not have testified at the trial of the case of Commonwealth versus Jamal as an expert?

A. That's correct.

Q. Is that correct?

A. That is correct.

Q. Now, your graduation in 1985 from medical school led to subsequent internships and residences and a fellowship. And led to your becoming a forensic pathologist in 1990, a full-time employed forensic pathologist; is that correct?

A. Yes, 1989, the summer of 1989, I believe.

Q. 1989?

A. I'm sorry, after fellowship, yes, yes.

Page 48.

John Hayes, M.D. - Cross

Q. Your curriculum vitae reflects your current position as associate medical examiner in New York beginning in 1990; is that correct?

A. Yes, that is accurate.

Q. So your experience in terms of the practice of the field of forensic pathology and the manner in which the science of forensic pathology is conducted results from this last six years of experience you have had in the field as a full-time employed forensic pathologist; is that correct?

A. That's correct. In addition to exposure during my general for -- during my general anatomic training, yes, that is correct.

Q. I'm sorry, you said in addition to your exposure...?

A. During my general anatomic pathology training. When I was in Boston University Medical Center.

Q. Which began in 1986?

A. That is correct.

Q. All right. So for the period 1986 to now is what you based your opinions on as to what a proper, qualified forensic pathologist should do in the course of post-mortem examination; is that right?

A. That is correct.

Q. I take it, Doctor, that you have not done

Page 49.

John Hayes, M.D. - Cross

historical studies into your science; is that correct?

A. That is correct.

Q. When, Doctor, when you arrived at the medical examiner's office in New York, did they have the X-ray machines up and running?

A. Yes, they did.

Q. Do you know when they arrived in New York?

A. No, I don't.

Q. Do you know whether in fact even in New York they had the technology available to X-ray bodies of deceased victims in 1981?

A. I do not know.

Q. Well, Doctor, let me ask, then: You just gave an opinion just a moment ago that in your opinion the body of Officer Faulkner should have been X-rayed, was that your opinion?

A. Ideally, every victim of a penetrating injury should be X-rayed.

Q. Ideally, and as the technology allows in August 1995, certainly the state of the art permits you to do that in New York City; is that correct?

A. That is correct.

Q. Do you have any idea as to whether or not technology permitted that to be done or was available

Page 50.

John Hayes, M.D. - Cross

to have that done in 1981?

A. In 1981 I think the technology permitted it but I don't know if it was available to the Medical Examiner's office here.

Q. So in suggesting that any other person who would not have performed such an examination, that is X-ray examination, was not doing a sufficient job or a proper job is in fact incorrect on your part; isn't it?

A. I don't recall suggesting that.

Q. And you certainly would not, would you? If, if the X-ray machine wasn't available? My question is you don't even know whether it was?

A. That is correct, I don't know whether it was.

Q. So you can not possibly suggest that it was ineffective for a pathologist in 1981 not to perform an X-ray; isn't that right?

A. That is correct.

Q. All right. Now, Doctor, you told us, and let, we will stay with Officer Faulkner's wound. That wound's first. You told us that there were two gunshot wounds on the body of Officer Faulkner?

A. As described in the autopsy report, yes.

Q. And as evidenced by -- I'm sorry. You said

Page 51.

John Hayes, M.D. - Cross

it's described by the autopsy report; isn't that right?

A. Yes.

Q. And in fact you prepared a report in this case?

A. Yes, I did.

Q. And I take it that you were as thorough as you can be in that report to make sure that it was complete and accurate?

A. That is correct.

Q. I note that that report does not have a date on it. Could you provide me, please, with the date on which that report was prepared?

A. I don't have a date for it but it was mid 1992.

Q. I'm sorry, you said you don't have?

A. I don't know the date I prepared it but it was in mid 1992. Early autumn.

Q. Is it typical that you prepare reports that are undated?

A. No, generally I date my reports.

Q. Can you explain why this report does not bear a date?

A. Well, my private business is not very active so I'm not used to doing reports. So it wasn't an

Page 52.

John Hayes, M.D. - Cross

intentional omission.

Q. Now, since the date you prepared that report, have you received additional information?

A. Yes, I have.

Q. As a result of receiving additional information, have you prepared an addendum to this report?

A. No, I have not.

Q. Now, I note, for example, that your report reflects that with regard to your opinion on Officer Faulkner, that the materials reviewed include the Medical Examiner's findings. That would be the Medical Examiner's report, would it not?

A. That is correct.

Q. Since preparing that report, what additional, if any, materials have you received relative to your opinion regarding doctor Faulkner?

A. I received --

Q. I'm sorry, Officer Faulkner. I apologize.

A. I received Dr. Hoyer's trial testimony; I received the Jefferson Hospital records on Officer Faulkner. And I also received... I saw the photographs for the first time.

Q. When did you receive Dr. Hoyer's testimony?

A. I first saw it yesterday.

Page 53.

Q. Had you asked for it prior to yesterday, sir?

A. No, I had not.

Q. Were you aware prior to yesterday that Dr. Hoyer had testified in the trial?

A. I don't recall.

Q. In your private business, Dr. Hayes, is it generally your practice to ask the person who is retaining you to provide you with all documents and records that would assist you in reaching an opinion?

A. That is my practice, yes.

Q. Now, your affidavit reflects that you were retained in this matter sometime in midsummer 1992; is that right?

A. That's correct.

Q. And at that time in midsummer 1992, after being retained, did you make that request of defense Counsel in this case, that you be provided with any and all records relating to the area that you were being asked to give an opinion on, specifically the cause of death of Officer Faulkner?

A. Yes, I did.

Q. Now, am I correct that in response to that request, the sole document which you received was the Medical Examiner's report of Dr. Hoyer?

A. I got Dr. Hoyer's medical -- the Medical

Page 54.

Examiner's report, and some statements from Dr. Colletta.

Q. But the statements of Dr. Colletta -- I am not trying to confuse you -- those related to Mr. Jamal's injuries, did they not?

A. That is correct.

Q. We will just break it down. We are focusing now only on the request to evaluate the cause of death on Officer Faulkner.

A. That's correct.

Q. So I am correct, then, that you asked for any and all documents relating to the cause of death of Officer Faulkner?

A. Yes.

Q. You were provided with the post-mortem examination report prepared by Dr. Hoyer?

A. That's correct.

Q. And from 1992 until yesterday you never received any additional documents or information?

A. I received the documents within the last week. But --

Q. The records from Jefferson Hospital you also received within the last week?

A. Yes.

Q. And the photographs and slides you also

Page 55.

received within the last week?

A. Yes.

Q. And Dr. Hoyer's testimony you received within the last week?

A. Yes.

Q. Does that strike you as a little odd, Doctor?

A. I assumed it was unavailable until that time.

Q. You have no idea whether or not in fact it was unavailable?

A. Ahh, no, I don't.

Q. Now, your testimony in this case is that Dr. Hoyer was incorrect, as I understand your testimony, in stating in his Medical Examiner's report that the cause of death were the gun shot wounds to the face and back of Officer Faulkner; is that right?

A. That is correct.

Q. Am I correct, however, that the -- bear with me for a moment, sir. Am I correct, sir, that that back wound to Officer Faulkner was not a significant cause of his death, would you agree with that statement?

A. Yes, I would.

Q. And if Dr. Hoyer so testified at trial, that that back wound was not a significant cause of death, would he be correct in so stating?

Page 56.

A. It isn't a contributing factor in his death.

Q. No, my question, Doctor, was if Dr. Hoyer testified that the back wound to Officer Faulkner was not a significant cause of death, would he have been correct in so stating?

A. It was not a significant cause of death.

Q. So is your answer that he would have been correct in so stating?

A. He would have been correct, yes.

Q. And in fact, Dr. Hayes, when you were provided Dr. Hoyer's testimony within the last week, did you in fact read that that was precisely Dr. Hoyer's testimony?

A. That it was not a significant -- I can't remember the exact wording. He maintained that it was a contributing factor in the death.

Q. Let me read it to you, then, sir.

MR. WEINGLASS: Could I have the page?

MS. FISK: Certainly, as soon as I get to it.

June 25th, 1982. Last question starting on the bottom of page 8, 183.

BY MS. FISK:

Q. Question -- and this is on cross-examination of Dr. Hoyer by Mr. Jackson. Of Dr. Hoyer. Now,

Page 57.

when you indicate that your finding of death is gunshot wounds, it's really just the facial wound, isn't that true.

Dr. Hoyer answered: There is a small contribution from the back wound, it would not be a large contribution. But there is a small, finite contribution from the back wound.

Next question: Well, if you could venture some estimation in terms of percentage, would 99 percent of the death be caused by the facial wound. Would that be fair to say.

Answer: I tend not to put percentages. I don't think these things are well suited to put percentages on.

Question: Okay, forgive me. Well, let me try it this way, sir.. Would the cause of death, the contributing nature of the back wound be a result of the loss of blood only.

Answer: That would be a major component of it.

Would you agree with that testimony, sir?

A. That, that the -- specifically which part of that testimony?

Q. Is there any of that testimony that you agree

Page 58.

with?

A. I, I... I don't, I don't agree that the blood loss would be a major component of his cause of death there.

Q. Did Dr. Hoyer say it would be a major component, is that how you understood it?

A. As I understood you from that reading.

Q. Oh. Other than not agreeing that the blood loss would be a

major component of the cause of death, did you agree with Dr. Hoyer's statement that the gunshot wound of the back, that there is a small contribution from the back wound, it would not be a large contribution but there is a small, finite contribution from the back wound?

A. I disagree: There is no contribution from the back wound.

Q. No contribution at all?

A. No contribution from the back wound.

Q. Is it your experience, Doctor, that in treating individuals who have gunshot wounds to the head, that a form of the treatment includes a gunshot wound to the back?

A. I'm sorry?

Q. Is it your experience, Doctor, that in treating individuals who are suffering from a gun

Page 59.

shot wound to the head, that they be given a gunshot wound of the back?

A. Of course not.

Q. So the gunshot wound to the back doesn't help, does it, sir?

A. It doesn't help but --

MR. WEINGLASS: Objection, Your Honor, to the form of the question. We are talking about cause of death, not treatment of wounds. Obviously if someone is wounded the wound is treated, but that doesn't mean that it is a contributing cause of death. So I object to Counsel's form of the question. It's way off the mark.

THE COURT: Rephrase your question.

MS. FISK: All right.

BY MS. FISK:

Q. The gunshot wound to the back did not help; is that correct, Doctor?

MR. WEINGLASS: Objection, Your Honor. Of course someone isn't helped by a gunshot wound to the back.

MS. FISK: And I believe that was precisely Dr. Hoyer's point, Your Honor.

MR. WEINGLASS: Dr. Hayes has to be

Page 60.

questioned on contributing causes of death. That is a separate category.

MS. FISK: No, he doesn't, Your Honor. I am permitted to cross-examination based on his opinion.

THE WITNESS: Counselor, Officer Faulkner died as a result of the gunshot wound to the face and injury to the brain. As Dr. Hoyer says, this is an instantaneously lethal thing, I think is his expression. It doesn't matter whether or not he was bleeding from the injury of the back, he died as a result of brain injury.

BY MS. FISK:

Q. How do you define instantaneously lethal, Doctor?

A. Resulting in effective immediate death.

Q. At the moment the wound is received?

A. That is correct.

Q. You just advised us that you are in receipt of Officer Faulkner's hospital records?

A. Yes, I am.

Q. Do they reflect his time of death?

A. They reflect his official time of death, yes.

Q. What is the time of death reflected as?

Page 61.

A. I don't have the record with me, Counselor, but as I recall, it's approximately 5:00 a.m.

Q. And based on the information that you have received in this case, at what time did Officer Faulkner receive that instantaneously fatal gunshot wound to the head?

A. Around four o'clock in the morning.

Q. So the instant lasted approximately an hour; is that your testimony?

A. No, he was pronounced dead at five o'clock in the morning. When he is admitted to the hospital he has no blood pressure, no pulse, no respiration. His pupils are fixed and dilated. He is clinically dead. They attempted to resuscitate him for one hour but were unable to do so.

Q. That's correct, lifesaving measures were being taken for the period of time of an hour; is that correct?

A. That is correct.

Q. And he was not pronounced dead, that is he was not found to be beyond any hope of having life until one hour after receiving the gunshot wound to the head; is that correct?

A. That is correct.

Q. And that meets your definition, Doctor, of

Page 62.

instantaneously fatal, is that my understanding?

A. Yes, it is, when he is admitted to the hospital he is effectively dead.

Q. Effectively dead?

A. Yes.

Q. And that is the same as pronounced dead?

A. No, he is pronounced dead one hour later.

Q. Yes. Now, the gunshot wound to the back that Officer Faulkner received I take it caused there to be a hole in his body; is that correct?

A. That's correct.

Q. And that gunshot wound so far as you can tell from the report and the slides exited in the vicinity of Officer Faulkner's neck; is that right?

A. That's correct.

Q. The gunshot wound to Officer Faulkner's head caused a projectile, and a fragment, according to the report, to be lodged in the area of Officer Faulkner's head; is that correct?

A. That's correct.

Q. And then you have given testimony today that there is an additional wound on Officer Faulkner's neck?

A. That is correct.

Q. And you have advised us that you are unable to

Page 63.

give an opinion as to whether or not that additional wound is an exit or an entrance wound, that is your testimony?

A. That is my testimony.

Q. Are you certain that that wound is in fact related to a bullet?

A. No, I'm not.

Q. You don't know what Officer Faulkner was doing 45 minutes or an hour prior to being shot, do you, sir?

A. No, I don't.

Q. You have no idea whether or not on the evening of his death or the morning of his death, he had sustained wounds or injuries to his body unrelated to his being shot and killed, do you, sir?

A. I do not have any idea.

Q. Now, is it your experience, Doctor, that when a projectile, a bullet is fired at a human being, the bullet does one of two things: It either stays in that human being's body or it exits that human being's body?

A. That is correct.

Q. Those are the only two options; is that correct?

A. That's correct.

Page 64.

Q. Am I correct as well that the hole in which a bullet enters a human being's body is never the same hole from which the bullet exits?

A. On rare occasions that can happen but those are exceedingly rare occasions.

Q. Okay, let's put those rare occasions aside unless you see the need to address it again. Would it be correct to say that if that wound which you saw on doctor -- I'm sorry -- on Officer Faulkner's body was an additional entrance wound, that you would expect to see either an additional exit wound, or an additional bullet in the officer's body?

A. That's correct.

Q. And are either of those two things seen?

A. None are described.

Q. If that wound on Officer Faulkner's body was another exit wound from a third projectile, am I correct that you would expect to see another entrance wound?

A. You would.

Q. And do you see another entrance wound?

A. It's not described in the autopsy report and examination of the slides, I don't think the back is properly shown, and the right side of the body. But no, I do not see another entrance wound.

Page 65.

Q. Well, would it be correct, then, Doctor, that since it does not likely appear to be another entrance wound because there's no other exit wound or any other projectile, or it does not appear to be another exit wound because you don't see any or read a description of any other entrance wound, that this other wound on the neck is either, A, unrelated to the wounds Officer Faulkner had, or related to one of those two gunshot wounds that he suffered?

A. Assuming that there are no other injuries?

Q. Well, I am not asking you to assume: You have all his records and reports?

A. His records also don't reflect the injury on his neck and I know that's there.

Q. Well, you see it in the picture, right?

A. I see it in the picture but I am saying I can't see pictures of the right side of the head or the back so I don't know if there are any others. What I am saying is I can't evaluate that injury properly, it is not properly described in the autopsy report.

Q. So you are suggesting that a bullet entrance wound was not described, is that --

A. No, I am suggesting that there is a wound, I am stating that there is a wound in the left side of

Page 66.

the neck which is not described. I don't know whether it is an entrance, I don't know whether it is an exit, it could even possibly be unrelated. I just don't know because the pathologist has not described it and it is not properly photographed.

Q. Well, in fact the pathologist at trial didn't describe it because the defense attorney objected to him describing it; is that correct, sir?

A. I believe that is correct.

Q. Now, you've described that neck wound as just going through really underneath the skin and then exiting; is that correct?

A. That is correct.

Q. And is the skin in the area of the neck generally very flexible, that is that it folds when one moves one's head?

A. It's fairly lax, yes.

Q. Would you, would it be possible when, would it be possible that when a gunshot wound is exiting an individual's neck, that the folds of the skin would cause a single projectile to eject itself from more than one part of that individual's neck?

A. You mean for the bullet to split over the skin?

Q. No, the skin is folded over in the area where

Page 67.

the bullet is leaving the body (indicating)?

A. You mean, you mean on occasion if the skin, if the skin is folded like that the bullet may leave one part of the body and reenter to cause a separate, second wound?

Q. Yes, like when a bullet goes through the arm and reenters the chest (indicating)?

A. That's correct.

Q. My next question is, then, if the bullet is exiting the portion of the neck where Officer Faulkner's neck were folded over in this way, isn't that also a part of the body where the skin could fold over and cause the bullet to, in effect, exit two parts of the skin at one time?

A. Well, not really. One bullet can not only go out once, it can go back into the body and then leave a second time?

Q. That's right. And if the neck were folded in such a fashion to cause a bullet to exit and then reenter and exit again, wouldn't that cause more than one hole in the area of the neck?

A. I would expect three holes there.

Q. You don't see that in the photographs?

A. I don't see three holes in the neck.

Q. If a bullet which entered an individual's body

Page 68.

were to fragment and both fragments were to leave that individual's body, would that cause two exit wounds?

A. Yes, it would.

Q. And are you able to determine whether or not that occurred with regard to the bullet which exited Officer Faulkner?

A. Ahh, that scenario describes a completely subcutaneous pathway, a short subcutaneous pathway with no description of any injury of a solid structure so there is nothing there to cause the fragment to stop during it's short course.

Q. So in your opinion that did not occur?

A. I don't think so.

Q. Now I would like to turn briefly to the injuries on Mr. Jamal. You told us today that in your opinion -- oh, I'm sorry. Let me start by again going back to your report which was prepared sometime in 1992. In your report you reflect that the materials which you reviewed regarding the injury to Mr. Jamal were medical reports from Thomas Jefferson University Hospital, the Philadelphia Police Department interview of Dr. Colletta, and Dr. Colletta's trial testimony. Is that correct?

A. That is correct.

Page 69.

Q. So you received those items back in, prior to mid 1992?

A. That's correct.

Q. Apparently Dr. Colletta's trial testimony was available; is that correct?

A. Yes, that is correct.

Q. And you received those items in response to your request again that you be provided with any and all records that you could utilize?

A. That is correct.

Q. Do you have any idea -- and I am going to jump back to Officer Faulkner -- why you were not given Dr. Hoyer's testimony, then, back in 1992?

A. I don't know what was available to the defense at that time.

Q. When you received it earlier this week did you ask about that?

A. No, I didn't.

Q. That did not puzzle you in any way?

A. It didn't occur to me to be puzzled about it, no.

Q. Now, am I correct that since receiving -- again back to Mr. Jamal's injuries -- since receiving those three items, which you relied upon for rendering an opinion regarding Mr. Jamal's injuries,

Page 70.

John Hayes, M.D. - Cross

have you received anything else?

A. In regard to Mr. Jamal?

Q. Yes, sir.

(Pause.)

A. Oh... no, I don't think so.

Q. Well, earlier in your testimony didn't you refer to having reviewed the testimony of Dr. Tumosa?

A. Yes.

Q. When did you receive Dr. Tumosa's testimony?

A. Last night.

Q. Last night?

A. Yes.

Q. So that is information that you have received since preparing that report?

A. Yes, that is correct.

Q. Did you receive that last night based upon an additional request that you made to review that or was it just provided to you?

A. Umm, I asked if there was any information about the clothing of Mr. Jamal.

Q. Was last night the first time that you asked that question?

A. Yes, it was.

Q. Doctor, in your career as a forensic pathologist, clearly you rely upon the bodies of the

Page 71.

John Hayes, M.D. - Cross

deceased: I mean they are before you; is that correct?

A. That is correct.

Q. But am I correct that forensic pathologists by definition rely upon other items of information in giving opinions with regard to cause and manner of death?

A. That's correct.

Q. And am I correct that, for example, the, well, the toxicology results are included in that?

A. That is correct.

Q. Interviews of witnesses as to what happened or how someone's injuries happened are considered by forensic pathologists?

A. That is correct.

Q. No forensic pathologist's opinion or report would be complete until they had at least an opportunity to know what those interviews said; isn't that right?

A. That's correct.

Q. And included within those kinds of standard items that a forensic pathologist considers prior to giving an opinion, would you agree with me that one of those items, particularly where a victim has suffered a gunshot, would be the clothing of that

Page 72.

John Hayes, M.D. - Cross

individual?

A. That's always useful information.

Q. Because the clothing of that individual could disclose a great deal about the distance of muzzle to target?

A. That's correct.

Q. It could also even provide information about the direction of fire, depending on the kind of clothing the individual had?

A. That's a bit less likely but on occasion, yes.

Q. So that was certainly the kind of information that you as a trained forensic pathologist would always want to see before rendering an opinion as to the nature of or cause of a particular wound; isn't that right?

A. It's best to have as much information as possible, yes.

Q. No, my question was, that information regarding the clothing of the individual would always be the kind of information that you as a forensic pathologist would want prior to rendering an opinion as to the cause of an injury?

A. Not so much the cause but in the issue of the gunshot wound, yes, it is useful information in determining the range of fire and would be useful in

Page 73.

John Hayes, M.D. - Cross

determining --

Q. That was not my question. My question is not would it be useful, my question is is it the kind of information which you determine is or is not available so that you could have it before rendering an opinion?

A. I don't routinely ask for the clothing but on occasion I will.

Q. You don't routinely ask for the clothing, Doctor?

A. I don't routinely ask for the clothing.

Q. Did you not say just a few moments ago that you got as much information as you can?

A. Yes.

Q. And that the clothing of the individual is certainly among those items of information if it existed you would want to know about?

A. That's true.

Q. Yet what you are telling us is that as a trained forensic pathologist who was asked to under oath render an opinion in courts of law in New York and around the country, you only take what people give you?

A. That's correct.

Q. And you don't request whether or not there is

Page 74.

John Hayes, M.D. - Cross

any other specific information which you know in your opinion as an expert would assist you in giving a more complete and thorough opinion?

A. Okay, well, I did ask for it last night.

Q. And from 1992 until -- today is August 4th -- until August 3rd, 1995, you never made that request?

A. I did not.

Q. And last night you did for the first time?

A. Yes, I did.

Q. Why is that?

A. Because I was considering possible different positionings of the body with different circumstances for the shooting.

Q. That's because the clothing of the individual might give you some information inconsistent with the opinion that you've rendered; isn't that correct?

(Pause.)

A. Could you repeat that question, please?

Q. You advised us that you asked last night whether or not there was any evidence regarding the clothing of Mr. Jamal; isn't that right?

A. Yes, I did.

Q. Because you were concerned about -- I don't want to misstate you -- you were concerned about the different positions of the shooter and the victim?

Page 75.

John Hayes, M.D. - Cross

A. More a question I was concerned about range of fire.

Q. I can not hear you.

A. All right, I'm sorry. It was more a question I was concerned about the range of fire.

Q. Why was that, sir?

A. Why was I concerned about the range of fire?

Q. Yes.

A. Because it would be relevant to determining the positions of the, of the victims -- I mean the distance from the shooter and victim at the time of the incident.

Q. So the distance of the shooter to victim would affect the position of the relative bodies, that is the gunshot of Officer Faulkner and the body of Mr. Jamal; is that right?

A. That is correct.

Q. You did not have that information regarding those, that item when you issued your report in 1992?

A. That is correct.

Q. Yet you were comfortable in putting your name on that report and noting that it was correct; is that right?

A. Yes, I was.

Q. And you merely checked yourself last night

Page 76.

when you asked to see whether or not there was evidence which showed you were right, is that --

A. Essentially. I should have asked for it before, yes.

Q. Now, am I correct that, or is there anything in the testimony of Dr. Tumosa which causes you to change your opinion?

A. No, there's not.

Q. Okay, you lucked out on that one?

MR. WEINGLASS: Objection. Ask that it be struck.

THE COURT: Well, the last comment is struck.

BY MS. FISK:

Q. Now, you told us, Doctor, that in your opinion... the gun which fired the bullet which struck Mr. Jamal had to be angled downward towards Mr. Jamal; is that right?

A. That is correct.

Q. And you have described the relative positions of the Defendant and Officer Faulkner as being the Defendant was slightly bent and the shooter was firing horizontally?

A. That was one alternative I suggested.

Q. And the other was, as noted in your report as

Page 77.

well... includes a standing shooter firing down at a prone Mr. Jamal?

A. Or kneeling, yes.

Q. Pardon me?

A. Or kneeling.

Q. Kneeling shooter or kneeling Mr. Jamal?

A. Standing shooter firing downwards towards Mr. Jamal, who was in the lower position.

Q. I see. Now my question to you, sir, is what do you mean by slightly bent? You said in your direct examination that the Defendant Mr. Jamal would have been slightly bent and the shooter firing horizontally?

A. The shooter is firing horizontally, Mr. Jamal is bent over like this (indicating) at perhaps a 30-degree angle from the vertical, maybe a little bit more, 40-degree angle from the vertical, that would account for a wound like that.

Q. You are indicating bent at a 30 or 40-degree angle from the waist bending forward?

A. That is correct.

Q. And when you say a shooter firing horizontally, what do you mean by that?

A. Where the weapon is held with the barrel pointing horizontally, parallel to the ground.

Page 78.

Q. Now, any change or deviation of the weapon could of course be matched by a change in the position of Mr. Jamal to keep the course of the wound as you observed it consistent, wouldn't that be?

A. That is correct.

Q. So if Mr. Jamal, if the barrel were slightly downward, Mr. Jamal's body could be slightly less bent and the track of the wound would still be consistent; is that accurate?

A. That is correct.

Q. And if the barrel were more slightly upward, Mr. Jamal's body could be more significantly bent forward and perhaps in a 45-degree angle and the course of the wound would still be consistent with what you saw?

A. That is correct.

Q. Now, am I correct, Dr. Hayes, that other than those items of trial testimony which you have told us about -- testimony of Dr. Hoyer, the testimony of Doctor... Colletta, and the testimony of Mr. Tumosa -- that you have not reviewed any other trial testimony?

A. That is correct.

Q. Well, let me pose this to you, then, Doctor. If an individual with a gun came behind another

Page 79.

individual and fired a gunshot wound into the back of that individual consistent with the gunshot wound that Officer Faulkner suffered, that the person who received that gunshot wound to the back as a result of feeling that gunshot wound took a weapon, spun around and fired at the person who had shot them before that person then falls as a result of the impact of that wound, could such a person cause a wound on the original shooter consistent with what you saw on the body of Mr. Jamal?

A. Turning around and firing...

Q. At the person who has just fired upon him?

A. If, if Mr. Jamal were bent over, were bent over, bent forward, it's possible.

Q. Did you ask, Doctor, to see any of the transcripts from trial relating to how Mr. Jamal received the wound -- I'm sorry -- relating to what witnesses observed between Mr. Jamal and Officer Faulkner at the time Officer Faulkner received his injuries?

A. No, I did not.

Q. Do you think, Doctor, that the review of such information would assist you in more definitely being able to state the cause and nature, manner of Mr. Jamal's wounds?

Page 80.

A. It would depend upon the reliability of the witnesses.

Q. Just so I'm clear: Your definition of a standing shooter is the shooter who is not down on the ground?

A. Who is standing vertically, yes, who is standing vertically.

Q. But not necessarily in a full upright, erect posture, they could be moving in some fashion?

A. Yes.

Q. Because really what you are looking at is the direction the barrel is facing: The relative position of the person holding the barrel is less relevant?

A. That's correct.

MS. FISK: Thank you. Thank you, Doctor. I have nothing further.

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REDIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. Doctor, with respect to the last part of the questioning: Were you informed that in the trial record, and did you rely on this information, that there was only one witness who claimed that she might

Page 81.

John Hayes, M.D. - Redirect

have seen Mr. Jamal get shot by Officer Faulkner?

MS. FISK: Objection, Your Honor, as to whether he was informed.

MR. WEINGLASS: I am asking if he relied on it. The same question.

MS. FISK: I withdraw that objection.

THE WITNESS: I was informed that there was only one witness who had said that.

BY MR. WEINGLASS:

Q. Only one witness?

A. Yes.

Q. And were you informed and did you rely on the fact that that witness stated that Officer Faulkner appeared to be grabbing at something as he was falling?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: Did you rely on that information.

MS. FISK: I will withdraw that.

BY MR. WEINGLASS:

Q. Did you rely?

A. Yes.

Q. And did you rely on the fact that that witness never said that she actually saw the weapon if Officer Faulkner retrieved the weapon from whatever

Page 82.

John Hayes, M.D. - Redirect

he was grabbing at?

A. That wasn't the verbatim part of my conclusion.

Q. And did you rely on the fact that the witness said she never actually saw Mr. Jamal get shot?

(Pause.)

Q. Let me withdraw that and ask it, break it down.

MS. FISK: I would ask that the witness be permitted to answer.

THE COURT: Let him have time to think about it.

MR. WEINGLASS: I can withdraw, as a questioner I could withdraw.

THE COURT: Let the record show he is now withdrawing that question.

MR. WEINGLASS: Of course the record shows that.

THE COURT: Okay.

MR. WEINGLASS: And the Court needn't add relish to what it perceives to be something that the Court enjoys.

THE COURT: Let the record show I am not enjoying anything, Counselor.

BY MR. WEINGLASS:

Page 83.

John Hayes, M.D. - Redirect

Q. Let me ask you this. The only information that you were given and relied upon was that the only witness to observe a possible shooting of Mr. Jamal at the moment said that she saw the officer as he was falling grab at something?

A. That is correct.

Q. And so when you gave your opinion, did your opinion rely on that information that Mr. Jamal was shot by a falling officer?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: All that's in the record.

MS. FISK: Objection, Your Honor. It is obviously not all that is in the record. The Jury found that there was sufficient evidence to support a finding that Mr. Jamal was shot by Officer Faulkner.

THE COURT: I will let you cross on that issue. I don't know of --

MR. WEINGLASS: The Jury made no such finding. The Jury made no such finding.

MS. FISK: Judge --

MR. WEINGLASS: That Mr. Jamal was shot by Officer Faulkner. They made no such finding. No one has been able to explain how

Page 84.

John Hayes, M.D. - Redirect

Mr. Jamal was shot and it was no part of the Jury's finding.

THE COURT: What do you mean it was --

MR. WEINGLASS: It was no part.

THE COURT: Nobody asked. Well, nobody asked him a question but the Jury heard it and I'm sure they considered it.

MR. WEINGLASS: And the Jury heard one thing. And if Counsel --

MS. FISK: I withdraw my objection to the question.

MR. WEINGLASS: All right.

THE COURT: Go ahead.

THE WITNESS: That's correct.

THE COURT: What is correct? Wait a while. I don't know that there is anything pending here yet.

MR. WEINGLASS: There is.

MS. FISK: There was a question.

THE COURT: Give him a question. So I find out what he is talking about being correct.

BY MR. WEINGLASS:

Q. Did you rely on the fact that the information that was given to you was that Mr. Jamal was shot by Officer Faulkner as he was falling?

Page 85.

John Hayes, M.D. - Redirect

A. Yes, I did.

MR. WEINGLASS: Now, if Counsel has anything in the record that indicates otherwise she may question on it.

THE COURT: Counselor, please. When she gets to cross let's find out what she wants to do.

MR. WEINGLASS: I represent to the Court that all that's in the record.

THE COURT: Counselor, please, just ask your questions. No more comments, will you.

BY MR. WEINGLASS:

Q. So your opinion that it could not have happened that way was based on information which you relied on that the only witness to see Mr. Jamal being shot said that he was shot by someone who was falling?

A. That is correct. That is addressed in my affidavit.

Q. Now, you're here giving your opinions today; is that correct?

A. That is correct.

Q. Based on your preparation for this appearance?

A. That is correct.

Q. Correct? In your affidavit did you say the

Page 86.

John Hayes, M.D. - Redirect

following? I was advised that Mr. Jamal did not have the services of a forensic pathologist available to him at trial. Although I am not familiar with the full trial record, it would appear that since I disagree with both the Medical Examiner's findings with respect to cause of death, and Dr. Colletta's postulation of a possible ricochet to explain the trajectory of the bullet through Mr. Jamal's body, Mr. Jamal's defense required and would have been well served by the testimony of a qualified forensic pathologist?

A. That is absolutely correct.

Q. And that was the limited purpose for which you were brought to Court today; isn't that correct?

MS. FISK: Objection, Your Honor.

THE COURT: Well, it was a lot more than that.

BY MR. WEINGLASS:

Q. That was the limited purpose, weren't you told that?

A. That's correct.

Q. So you weren't told to recreate completely what happened in '82, you were asked if based on what was available to you --

THE COURT: Counselor.

Page 87.

BY MR. WEINGLASS:

Q. -- Mr. Jamal should have had a forensic pathologist?

THE COURT: Counselor, that's '81.

MR. WEINGLASS: No, the trial was '82.

THE COURT: I know, but the incident occurred in '81.

BY MR. WEINGLASS:

Q. I know but Mr. Jamal needed a forensic pathologist in '82?

A. Yes, he certainly did.

Q. Yes. And so the fact that you, what you had available to you in 1992 to examine helped you to the conclusion that Mr. Jamal should have had a forensic pathologist?

A. Most definitely.

Q. Is there anything that you've seen since that changes your mind?

A. Absolutely not.

Q. As a matter of fact, what you have seen since, does that even further fortify the fact?

A. Yes, it does.

Q. That he should have had a forensic pathologist?

A. He most certainly should have had a forensic

Page 88.

pathologist.

Q. Now, the photographs that you looked at which are D-23: Do you know when the defense obtained them through subpoena?

A. No, I don't.

Q. Do you know if they were obtained last week?

A. No, I don't.

Q. If a forensic pathologist were available to Mr. Jamal in 1982, would his Counsel have been able to subpoena those photographs and show them to the pathologist before he testified?

MS. FISK: Objection, Your Honor. How could he know that?

THE COURT: Well, I only thought he was a pathologist. That's something for an expert in the legal field.

MR. WEINGLASS: Yes, let me just, I will withdraw that and ask this.

BY MR. WEINGLASS:

Q. The hospital records that you've seen for Officer Faulkner, the photographs that you've seen just recently, and the testimony that was offered at trial by Dr. Hoyer, would that in your experience have been available to the forensic pathologist in 1982 at the time that he was called by the defense?

Page 89.

MS. FISK: Objection, Your Honor. What forensic pathologist? This doctor was in medical school then.

THE COURT: I don't think --

MR. WEINGLASS: I am not asking for him. He is not Mr. Fassnacht. Of course Dr. Hayes wasn't available. I'm asking if a forensic pathologist in 1982 would have had all those things available to him, to a forensic pathologist.

THE COURT: Well, Counsel, he is not qualified to testify on that. He is no legal expert.

MR. WEINGLASS: Well, Your Honor, he's looked at three --

THE COURT: I know that. He's here only as a pathologist.

MR. WEINGLASS: Right.

THE COURT: And he is an expert in that field. That's the only field in which I have allowed him to testify.

BY MR. WEINGLASS:

Q. Would the photographs have been available in 1982, to your knowledge?

MS. FISK: Objection.

Page 90.

THE COURT: I will have to sustain that.

BY MR. WEINGLASS:

Q. Would the hospital records of Officer Faulkner be available in 1982?

MS. FISK: Objection.

THE COURT: I will have to sustain those objections, Counselor. Please. How could he answer that, he wasn't even a doctor yet in '82.

BY MR. WEINGLASS:

Q. Is there a difference in your view, Doctor, between what is recorded as an official time of death and a time at which a person is medically dead?

A. Yes, most definitely.

MS. FISK: I'm sorry, could we perhaps turn the doctor's microphone back on.

THE COURT: It's on.

MS. FISK: Well, it stopped picking up.

THE COURT: Did you check that? To make sure that thing is on.

THE COURT OFFICER: It's on, sir.

THE WITNESS: Maybe a loose connection there, I will try not to touch it.

Page 91.

THE COURT: Go ahead. Did you hear the last answer? Did you hear the last answer?

MS. FISK: I heard it, Your Honor. I was just asking that we make the rest of the answers easier. Thank you, sir.

THE COURT: Go ahead.

THE WITNESS: You were asking me about the official time.

THE COURT: He hasn't asked you anything.

MR. WEINGLASS: I was, he was in the middle, he was cut off.

THE COURT: No, he had already answered that, she heard that. Do you have another question.

BY MR. WEINGLASS:

Q. Right. Is there a difference between the official time of death that's recorded by a hospital and the medical time of death?

A. Yes, there is.

THE WITNESS: I'm sorry, is this working still?

THE COURT OFFICER: One second, Your Honor. One second.

Page 92.

THE WITNESS: I'm sorry.

BY MR. WEINGLASS:

Q. Is there a difference between the two times of death?

A. Yes, there is. Yes, there is the official time of death, is the time in which the person is pronounced dead. And that can be up to years from the time of actual death. For example, in the case of a skeleton found in a wood. When the skeleton is found the body is pronounced death. That is the official time of death. Obviously, in an extreme example like that death would have occurred much

earlier.

Q. I see. And in your view, when was the time of death of Officer Faulkner?

A. It would be instantaneous on sustaining the gunshot wound. When he was admitted to the hospital his heart wasn't beating, he wasn't breathing, and his pupils were fixed and dilated. They went all out but there was nothing they could have done because he was dead on arrival at the hospital.

Q. Was this literally an attempt by the hospital personnel to bring someone back to life who was actually dead?

A. Effectively, yes.

Page 93.

Q. Now, you were questioned about that second wound on the neck, whether that wound was an entry wound or an exit wound or a nick that was caused by shaving in the morning, or something that was inflicted in the mid-afternoon prior to the occurrence. Should that wound have been noted by the Medical Examiner?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. You were questioned about if you knew when that second wound was inflicted. Or when it occurred. Is that difficult for you to answer because the Medical Examiner failed to note the wound in the Medical Examiner's report?

A. Yes. And he has failed to describe it.

Q. He failed to describe it?

A. Yes.

Q. If there would have been an adequate description of that second wound, would you have been able to give an expert opinion as to what caused that second wound and whether or not it was related to the incident?

MS. FISK: Objection, Your Honor: That calls for speculation.

Page 94.

THE COURT: Yes.

MR. WEINGLASS: Experts are paid to speculate, as long as they have the expertise.

THE COURT: Expert opinions are within a reasonable degree of medical certainty. No speculation.

BY MR. WEINGLASS:

Q. Within a reasonable degree of medical certainty, would you have been able to give an opinion if that wound had been described in the Medical Examiner's report?

A. If the wound had been described and appropriately photographed, I would have been able to give more information, at least some information.

MR. WEINGLASS: Could I have just a minute.

(Discussion held off the record between defense Counsel.)

BY MR. WEINGLASS:

Q. Dr. Hayes, is one of the functions of the medical examiner's report to inform the reader so that various hypotheses can be developed as to what occurred at the time of the incident?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. If it's there

Page 95.

it's there.

MR. WEINGLASS: Pardon?

THE COURT: Whatever is there is there. And if you are a good attorney you will be able to cross-examine. Go ahead.

BY MR. WEINGLASS:

Q. Does the medical examiner's report serve to inform the reader as to what occurred at the time of the incident?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. And would an incomplete medical examiner's report fail to accurately provide information to the reader so that hypotheses could be developed as to what occurred at the time of the incident?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Will a medical examiner's report that is properly and fully prepared inform the reader as to the possible positions of the parties involved in the episode?

MS. FISK: Objection, Your Honor, to the form of the question.

Page 96.

THE COURT: Sustained. It takes a lot more than a medical report, Counselor.

MR. WEINGLASS: The medical report is a good place to begin.

THE COURT: It goes to the cause of death. There are a lot of other things that go into determining positions and everything else.

MR. WEINGLASS: Your Honor, it describes the wound.

THE COURT: Counselor.

MR. WEINGLASS: The wound, the path of the bullet.

THE COURT: That's all. And as to the cause of death.

MR. WEINGLASS: And if it doesn't describe the wounds --

THE COURT: But there are other factors that will enter into it, Counselor. You can't just look at the medical report.

BY MR. WEINGLASS:

Q. Is one of the reasons why you've given us the opinion and you have asserted in your affidavit that Mr. Jamal needed the services of a forensic pathologist at his trial in 1982 was because the opinions of that forensic pathologist would have

Page 97.

contradicted the testimony offered by an eyewitness?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that, that's really speculation now.

BY MR. WEINGLASS:

Q. In any event, in your view, any testimony that Mr. Jamal was shot by a falling Officer Faulkner would have to be false; isn't that true?

MS. FISK: Objection, Your Honor: That's been asked and answered.

MR. WEINGLASS: Not in that form.

THE COURT: Yes, it has. We are going over the same thing over and over. This is redirect. Come on, Counselor, move on. We are not going to be --

MR. WEINGLASS: I have nothing further.

MS. FISK: I have a couple, Your Honor.

THE COURT: Go ahead.

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RECROSS-EXAMINATION

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BY MS. FISK:

Q. As I understood it, about five questions back

Page 98.

you were asked whether, had the nature of this other neck wound on Officer Faulkner been more specifically described, whether you could give an opinion to a reasonable degree of medical certainty as to it's cause. Do I understand your answer to that

question was no, you could not assure us of that?

A. I would be able to give more information. I may not be able to identify it, but if they evaluated the wound properly I would also have been able to give input.

Q. So your answer to that question was no, you could not assure us you could give an opinion to a reasonable degree of medical certainty as to it's cause; is that correct?

A. If it included adequate information about the wound, yes, I could have.

Q. Now, you could have, but when Mr. Weinglass asked you you said you could give more information but you did not say that yes you could give an opinion?

A. I said if I had more information about the wound I would be able to give an opinion about the wound.

Q. Well, that is not what you said, is it?

THE WITNESS: I'm sorry.

Page 99.

MR. WEINGLASS: Objection: Argumentative. The record speaks for itself. And Counsel is misstating the record.

MS. FISK: Oh, I am not, Your Honor. The witness testified he might be able to give more information. He did not say he might be able to give an opinion, but he could give more information. But I will move on.

BY MS. FISK:

Q. Let me go back again to the information you were provided as to the manner in which Mr. Jamal may or may not have received a gunshot wound. It is clear, do I understand, that Mr. Jamal received a gunshot wound?

A. That's correct.

Q. And in fact that he received a gunshot wound close in time as to when Officer Faulkner received two gunshot wounds; is that also clear from the record you have received?

A. Yes.

Q. Now, you told us that and you agreed that a forensic pathologist in addition to looking at slides and bodies also looks at interviews and reports and chemical analyses and the like in order to more thoroughly create an opinion as to what occurred and

Page 100.

what caused a particular injury?

A. That is correct.

Q. And in fact when I asked you earlier about whether certain information would be helpful to you or not, your response to me was well, it depended upon the reliability of that information; is that right?

A. That is correct.

Q. And the reliability of that witness?

A. That is correct.

Q. Is that correct? All right. Now, as I understand your testimony today -- and correct me if I am wrong -- you have in this case accepted all the representations regarding how the shooting occurred from a summary that Mr. Weinglass or some other persons retained on behalf of Mr. Jamal have presented to you?

A. I was informed of the prosecution theory of the shooting and I addressed that in my response -- in my report.

Q. Was it a prosecutor who informed you of the prosecution theory?

A. No, it was not.

Q. Who was it, sir?

A. Mr. Weinglass.

Page 101.

Q. Oh, so Mr. Weinglass knew what the prosecution theory was?

A. I believe so, yes.

Q. You believe so?

A. Yes.

Q. Are you certain?

A. Umm, as I understood it, the summary of the testimony was that a witness claimed to have seen Officer Faulkner reaching for his gun and, and apparently while falling, and then Mr. Jamal was shot.

Q. Is that the extent of the information that you were provided by Mr. Weinglass?

A. Effectively, yes. I don't remember the specifics.

Q. Do I take it, then, that you were unaware that that witness was on the witness stand for something in excess of two days?

A. I was unaware of that.

Q. Do you believe that perhaps in the course of the two days of that witnesses' testimony some additional details might have been gleaned with regard to her description of how that shooting occurred?

MR. WEINGLASS: Objection to the form:

Page 102.

Do you believe that perhaps some information might have been. Double speculation in one question.

THE COURT: Make it into two questions, then, will you.

MS. FISK: Okay.

BY MS. FISK:

Q. In the course of two days of testimony, does an individual say more than what you just told us Mr. Weinglass told you?

A. Yes.

Q. Might there be more details in that witness' testimony than that which Mr. Weinglass gave you?

A. There might be but I was asked specifically to respond to a scenario how would the findings as reflected in the information I was provided relate to a scenario in which that occurred.

Q. So that I'm clear, then: You were asked expressly to give an opinion based upon the summary of a witness as interpreted by Mr. Weinglass; is that correct?

A. Mr. Weinglass asked me if those wounds would be consistent with a falling shooter shooting the victim.

Q. That being Mr. Weinglass' interpretation of

Page 103.

how the wound occurred?

A. Perhaps.

Q. As a forensic pathologist, do you ordinarily accept such secondhand information when firsthand information is available?

A. You mean the witness' testimony?

Q. Yes.

A. I was responding specifically to a hypothesis. I didn't need to see anymore detailed witness testimony. It is a specific hypothesis.

Q. So that all of the testimony that you have given today is merely hypothetical; is that correct?

A. No, it is on the basis of the records that were supplied to me that I have available.

Q. Well, isn't it also based -- I thought you just said, Doctor, and perhaps I'm not hearing correctly -- that it was a hypothesis --

MR. WEINGLASS: Objection.

BY MS. FISK:

Q. -- based upon the description of a falling shooter; is that right?

A. The hypothesis of how the injury occurred?

Q. Yes.

A. Yes.

Q. So that the opinion that you have provided is

Page 104.

hypothetical because you're relying upon a hypothesis?

MR. WEINGLASS: Objection, Your Honor. Counsel is confused and is trying to confuse the witness.

THE COURT: No, this is cross-examination, Counselor.

MR. WEINGLASS: No.

THE COURT: Your objection is overruled.

MR. WEINGLASS: Judge --

THE COURT: He could answer that question.

MR. WEINGLASS: There is a difference between hypothesis and hypothetical. The witness --

THE COURT: If he doesn't understand it, he is a doctor, he'll say I don't understand the question. Rephrase it.

MR. WEINGLASS: That doesn't mean an improper question may be asked.

MS. FISK: Your Honor, I withdraw the question. I have no further.

MR. WEINGLASS: Good.

Page 105.

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REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Dr. Hayes, you are here in Court today, would you offer an opinion based on a hypothesis of what the testimony of Cynthia White was offered right now by the Commonwealth's Counsel?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Do you know that the transcript --

THE COURT: You have to understand now this is redirect for the second time.

MR. WEINGLASS: Yes.

THE COURT: For the second time.

MR. WEINGLASS: I am talking about hypothesis, which Counsel brought up.

THE COURT: She withdrew the question and there is nothing more to say about that. She withdrew her question.

MR. WEINGLASS: Right, and I am entitled to go within the realm of those

Page 106.

questions.

THE COURT: No, she withdrew that question.

MR. WEINGLASS: She asked three or four before it.

BY MR. WEINGLASS:

Q. Dr. Hayes --

THE COURT: Oh, boy.

BY MR. WEINGLASS:

Q. If Counsel right now seated at this table for the District Attorney's Office gives you page and chapter and verse of Cynthia White's testimony, as to what she saw when Mr. Jamal was shot, would you offer an opinion based on your reading of the medical evidence that's before you?

MS. FISK: With all due respect, Your Honor, I do not recall hiring Dr. Hayes as my expert witness. Therefore, I do not recall obtaining an obligation to adequately prepare him for his testimony by providing all records of the trial.

THE COURT: I understand that. The objection is sustained. Now, if you don't have anything further, something new to bring up, Counselor, I am going to break for

Page 107.

lunch. If you want to bring him back. If you won't --

MR. WEINGLASS: Your Honor, I just have a few.

THE COURT: Well, wait awhile. Wait awhile. It's 20 after 12:00. We will recess until --

MR. WEINGLASS: No, Your Honor.

THE COURT: We will recess until --

MR. WEINGLASS: All right.

THE COURT: We will recess until 2:30 for lunch.

MR. WEINGLASS: In light of the Court's observation, I have no further questions. And I do so under protest.

THE COURT: No, you are not going to do that under protest. We are breaking for lunch.

MR. WEINGLASS: I have no further questions. I ask that the witness be excused.

THE COURT: You are not excused.

MR. WEINGLASS: Your Honor --

THE COURT: You are not excused. Until 2:30, we will bring him back here if you want to ask him more questions.

Page 108.

MR. WEINGLASS: That is simply punitive.

THE COURT: No, it is not punitive.

MR. WEINGLASS: It is punitive. I have no further questions of the witness.

THE COURT: But you are saying it is under protest.

MR. WEINGLASS: I have no further questions. Let the record speak for itself as to what is happening here.

THE COURT: Well, I am giving you an opportunity to go further but we will do it at 2:30. I want lunch.

MR. WEINGLASS: I have no further questions of the witness. The Court can have it's lunch.

THE COURT: And you don't want to call him back?

MR. WEINGLASS: No.

THE COURT: Then you are doing it at your own peril.

MR. WEINGLASS: Let the record show why I am doing it.

THE COURT: Let the record show that I made him available to you after lunch to

Page 109.

continue your redirect. We will recess for lunch.

MR. WEINGLASS: No further questions. The witness is excused.

MS. FISK: Your Honor, may I inquire as to what other witnesses Counsel intends to produce this afternoon?

THE COURT: I don't know, I will wait until 2:30, we will be back.

MS. FISK: Mr. McGill is entitled to know.

THE COURT: As far as I am concerned, he is still here.

MR. WEINGLASS: Your Honor, I ask that he be excused.

THE COURT: If you want to excuse him you do it at your own peril. I am making him available for further questions at 2:30.

MR. WEINGLASS: I ask he be excused. I have no further questions. This is an extraordinary exercise of punitiveness on the part of this Court.

THE COURT: No, you could do whatever you want to do at 2:30. Bring him back at 2:30.

THE COURT OFFICER: This Court is

Page 110.

recessed until 2:30.

(Luncheon recess was held at this time.)

THE COURT: Good afternoon, everyone.

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John A. Hayes, Junior, M.D., having been previously sworn, was examined and testified as follows:

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BY MR. WEINGLASS:

Q. Dr. Hayes, were you given a factual hypothesis to direct your work in this case?

A. Yes, I was.

Q. And what was the factual hypothesis?

A. That --

MS. FISK: Objection, Your Honor. That was previously testified to.

THE COURT: Yes.

MR. WEINGLASS: Reopened on cross. Opened on cross.

THE COURT: Yes, but it was opened on cross because on redirect, the first redirect you brought it up.

Page 111.

John Hayes, M.D. - Redirect

MR. WEINGLASS: No, I didn't complete my first redirect, I was cut off by lunch.

THE COURT: No, no, you are on your second redirect now when we broke for lunch, not your first. You are forgetting the scenario here. This is the second redirect.

MR. WEINGLASS: May I continue?

THE COURT: Yes, but the objection to that question is sustained.

BY MR. WEINGLASS:

Q. And what was the factual hypothesis?

MS. FISK: That was the objection, Your Honor.

THE COURT: That was sustained, Counselor. We have gone through that already. This is the second redirect. Please.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Were your answers that you gave here today, Dr. Hayes, hypothetical answers?

A. Umm, to which questions?

Q. To your expert opinions, were your expert opinions hypothetical?

A. No, they were not.

Q. Were your expert opinions based on a

Page 112.

John Hayes, M.D. - Recross

reasonable degree of medical certainty?

A. Yes, they were.

Q. And were they based on your review of the written materials that were provided to you?

A. Yes, they were.

Q. Is there a difference between a working hypothesis and hypothetical answers?

A. A hypothetical answer -- I mean this is, I think, legal talk -- but a hypothetical answer I think... I'm really not sure how to answer that question, I'm sorry.

Q. Okay. In any event, what you testified to today as an expert has been in response to the working hypothesis of whether or not Mr. Jamal could have been shot by a falling Officer Faulkner?

A. That's correct.

MR. WEINGLASS: Nothing further.

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RECROSS-EXAMINATION

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BY MS. FISK:

Q. And so I understand your testimony, Doctor: Your answers which are not hypothetical include your opinion to a reasonable degree of medical certainty that Mr. Jamal could have been shot if, after he shot

Page 113.

John Hayes, M.D. - Recross

Officer Faulkner from behind, Officer Faulkner spun around with his gun in hand and fired a shot at Mr. Jamal who was standing anywhere from a 30 to 45-degree angle from his waist before Officer Faulkner fell to the ground; is that correct?

MR. WEINGLASS: Objection. Objection. There's no record, there is no factual predicate for that question. If Counsel can cite Dr. Hayes --

THE COURT: Not on yours either, Counselor. The objection is overruled. I think he already answered but for one more time I will let him answer.

MR. WEINGLASS: That is a lay question without a factual reference to the record.

THE COURT: Frankly, I don't even know why we are so concerned about how he got shot, but go ahead. Go ahead, ask the question. Answer it and let's go.

MR. WEINGLASS: Now --

THE COURT: The objection is overruled. Please.

THE WITNESS: Your Honor, I am not quite clear on the difference between --

THE COURT: Well.

Page 114.

John Hayes, M.D. - Recross

THE WITNESS: I don't quite understand the difference between a hypothesis and a hypothetical here.

BY MS. FISK:

Q. I will eliminate all those words. Is it your opinion that Mr. Jamal could have sustained the gunshot wound which he sustained in the following manner? And that is that he approached Officer Faulkner, fired a shot at Officer Faulkner in the back, that Officer Faulkner turned around with his gun in his hand and fired a shot at Mr. Jamal, who was standing and bent forward at the waist anywhere from 30 to 40 degrees, 30 to 45 degrees?

A. Well, Officer Faulkner was standing.

Q. Yes, sir?

A. And so Officer Faulkner was standing and Mr. Jamal would be bent over.

Q. From 30 to 45 degrees was your testimony; is that right?

A. Could be consistent with that.

Q. And by standing you mean not lying on the ground, and not in the process of falling; is that correct?

A. Standing.

MR. WEINGLASS: Objection: That

Page 115.

John Hayes, M.D. - Recross

question is compound. I have no objection to ask while standing he means not falling.

BY MS. FISK:

Q. We have established, Doctor, that you mean by standing postures other than completely erect; is that correct?

A. You mean by standing vertically.

Q. Standing in an upright fashion?

A. Correct.

MS. FISK: Thank you, sir.

BY MR. WEINGLASS:

Q. But if he was falling --

THE COURT: All right, that's enough. We have gone through this too many times. That's finished.

BY MR. WEINGLASS:

Q. But if he was falling, Doctor --

THE COURT: Counselor, that is all. You won't have a third redirect. It is not a question of who has the last say here. You have gone over this ad infinitum.

MR. WEINGLASS: We brought the doctor back from lunch.

THE COURT: Yes, because she had not had a chance to cross on your second redirect.

Page 116.

This is the completion of the second redirect.

MS. FISK: I had advised Counsel prior to lunch that I had no objection to the doctor leaving and I had no further questions, but that's fine.

THE COURT: That is a different issue. The issue was you had not been given that opportunity. Doctor, you are excused. Thank you very much.

MR. WEINGLASS: Over the defense objection.

THE COURT: Sure. You paid for his lunch, what are you complaining about? Do we have any other witnesses for today?

MR. WEINGLASS: The other witnesses on our list included 11 witnesses whose subpoenas were quashed.

THE COURT: I know that, forget them. Do you have any witnesses here that you want to put on?

MR. WEINGLASS: Those are the witnesses we would have called.

THE COURT: Well, you would have

Page 117.

called them long ago. But their subpoenas were quashed.

MR. WEINGLASS: No, Your Honor, they were on our list for Thursday and Friday. Today is Friday.

THE COURT: No, the only two you have on Friday, for today, was Dr. Hayes and Ward Churchill. Now you are telling me Ward Churchill is not here?

MR. WEINGLASS: Ward Churchill is in Colorado and he could be here if the Court permits him on Monday.

THE COURT: Well.

MS. FISK: That is a witness whose testimony we object to but we will take it up when he is presented.

THE COURT: Okay.

MS. FISK: Your Honor, I did advise --

THE COURT: Then you have no other witnesses for today?

MR. WEINGLASS: No.

MS. FISK: Your Honor, I previously advised Counsel, and I will make an issue of this, Counsel has on it's witness lists Mr. Joseph McGill, the prosecutor who handled

Page 118.

this trial. Because Mr. McGill has been advised that he is a potential defense witness he has remained available on call throughout the pendency of these proceedings. Mr. McGill is now an attorney in the private practice of law. He does not have the facility, Your Honor, to stay on call forever. He is available this afternoon. I would like word from the defense whether or not they are going to call him. If they are, he is available this afternoon. And obviously so is the Court. If he is not, Mr. McGill can be advised so he does not have to hold himself available.

(Discussion held off the record
between defense Counsel.)

MR. WEINGLASS: Your Honor, you will recall, and Counsel wasn't here yesterday afternoon --

MS. FISK: Indeed I was.

THE COURT: She was.

MR. WEINGLASS: I'm sorry. Mr. Grant agreed to a stipulation on the record so that three of the jurors who we wanted to call were excused.

THE COURT: I know, he said that

Page 119.

yesterday, Counselor. Counselor, will you stop rehashing old stuff.

MR. WEINGLASS: Right.

THE COURT: It is on the record already, I know about that. Now she says do you want to call Joe McGill.

MR. WEINGLASS: That was precisely what I am attempting to address. That precise question. And I would appreciate me being given the opportunity to address it.

THE COURT: Do you want him or don't you?

MR. WEINGLASS: I want to address that issue. Mr. McGill --

THE COURT: Do you want him or don't you want him?

MR. WEINGLASS: Mr. McGill was going to be called here for the following reason. He was going to be called to ask him questions pertaining to the jurors he struck and the representations made to the Supreme Court of Pennsylvania. We now have a stipulation in the record as of five o'clock yesterday, I believe, that the three jurors who he struck were all African American. With that representation in

Page 120.

the record, we don't need the testimony of Mr. McGill.

MS. FISK: I would note, Your Honor, I will note if I am allowed, I would note however that Counsel did misrepresent the stipulation. The stipulation was that those three individuals would testify that they were the persons who were on that panel.

I will so advise Mr. McGill, Your Honor, that he is no longer considered a potential witness in this proceeding.

THE COURT: All right, fine. What do we have, then, for Monday?

MS. FISK: If the Court wants to save some time I have a Commonwealth witness who is available this afternoon if you would like to do that.

THE COURT: All right.

MS. FISK: He said he would be here, he thought he would be here around two o'clock. If they could find out.

THE COURT: Well, it almost two o'clock, but.

THE COURT OFFICER: Name?

MS. FISK: Lieutenant Sterling.

Page 121.

THE COURT OFFICER: Yes, he is here.

MS. FISK: It would be very brief, Your Honor.

THE COURT: Okay.

THE COURT OFFICER: Should I bring him out, Your Honor?

THE COURT: Yes.

MS. FISK: May I have those Commonwealth Exhibits that were marked when Mr. Hightower testified? I think it was 9, 10, 11, 12.

THE COURT OFFICER: Yes, sure. 11 to 15, Counsel.

MS. FISK: Yes, that sounds about right.

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Philadelphia Police Lieutenant Craig Sterling,
Badge number 330, Internal Affairs Division,
having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

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BY MS. FISK:

Q. Lieutenant, we are proceeding a little bit out

Page 122.

of order. You are being called as a Commonwealth witness because we have a break in the proceedings. But you are being called as a Commonwealth witness. Lieutenant, by whom are you employed?

A. City of Philadelphia Police Department.

Q. And how long have you been employed in that capacity?

A. A week from today it'll be 25 years.

Q. Happy anniversary. Back in 19, let's see, back on December

15th, 1981, then you were a police officer?

A. I was a detective.

Q. Detective. And what was your assignment?

A. Polygraph unit.

Q. When did you get to the polygraph unit as a detective?

A. In October of 1979.

Q. And when did you stay in the polygraph unit until?

A. Until I was promoted to sergeant in 1984.

Q. Now, Detective -- I'm sorry -- Lieutenant Sterling, in your capacity as a detective in the polygraph unit on December the 15th, 1981, did you have occasion to administer a polygraph test to a Mr. Dessie D. Hightower?

Page 123.

Lt. Craig Sterling - Direct

A. Yes, I did.

Q. Where did that test take place?

A. In the polygraph unit of the Philadelphia Police Department, in the basement of the Police Administration Building.

Q. Who brought Mr. Hightower to you for the purpose of your conducting that examination?

A. Homicide Detective William Hart. William McCarthy.

Q. William. Now, did you conduct a polygraph examination of Mr. Hightower?

A. Yes, I did.

Q. And was it along subject matter lines that you chose or that someone other than you proposed?

A. The Homicide detective would explain to me what they were trying to determine from examination and I would determine the questions from what they wanted to know.

Q. And what were you told they were trying to determine?

A. Whether Mr. Hightower had been a witness to the shooting of Officer Faulkner or whether he had seen Mr. Jamal with a gun in his hand just prior to the shooting.

Q. And based on being told that was the area of

Page 124.

Lt. Craig Sterling - Direct

inquiry, did you then design the relevant and necessary questions of Mr. Hightower?

A. Yes, I did.

Q. And were you able to perform a polygraph examination on Mr. Hightower?

A. Yes, I did.

Q. How long did that take?

A. The whole procedure takes approximately two hours.

Q. At the completion of the procedure, where did Mr. Hightower go, at the completion of the actual asking of questions when the little needle is going back and forth?

A. He would have remained in the examination room until the Homicide detective took him back out of the polygraph unit.

Q. Now, when the procedure was completed, what did you do? That is, when the questioning of Mr. Hightower was completed, what did you do?

A. After I analyzed the charts I would explain to him that the test showed that he was deceptive, that he hadn't been telling the whole truth about what he knew about the shooting.

Q. And did you so advise Mr. Hightower?

A. Yes, I did.

Page 125.

Lt. Craig Sterling - Direct

Q. Where did you advise Mr. Hightower?

A. In the examination room.

Q. Now I'll have shown to you -- and I believe that you might have brought your own copies -- but I will show to you Commonwealth Exhibits 11 through 15 (handing). With particular emphasis on Commonwealth Exhibit 13 (handing).

THE COURT OFFICER: (Handing).

BY MS. FISK:

Q. And ask whether -- I will stick with Commonwealth Exhibit 13. Do you recognize that document?

A. Yes, I do.

Q. And is that the document which shows that in fact on the date that I gave you the polygraph examination was administered to Mr. Hightower?

A. Yes.

Q. And did you place on that document, or on the original of that document, the results of the polygraph examination, or your conclusion as to the results of it?

A. Yes, I did.

Q. Of the polygraph examination? Was it before or after you placed your conclusion as to those results on that document, Commonwealth Exhibit 13,

Page 126.

Lt. Craig Sterling - Direct

that you told Mr. Hightower what the results were?

A. This is the typed report which was done maybe a few days after the examination. The larger sheet, which is called a pre-test background interview, at the top of that I have circled the results.

Q. Would you look through the documents that you have and tell me --

A. That would be C-12.

Q. On C-l2 the results are circled?

A. Yes.

Q. And what did you circle?

A. It's called specific responses, which is deception indicated.

Q. Following your circling specific responses, as best you can recall, what did you tell Mr. Hightower?

A. That he had not told me the whole truth about the shooting.

Q. Where was Mr. Hightower when you said that to him?

A. In the examination room of the polygraph unit.

Q. How far away from you was he?

A. Ahh, across the desk (indicating).

Q. Did you speak to him in the same manner that you had been speaking to him over the course of the polygraph examination that you conducted of him?

Page 127.

Lt. Craig Sterling - Cross

A. Yes.

Q. Did he give you any indication that he didn't understand the words that you were saying to him?

A. Not at all.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Detective, did you ever write up a report in which you wrote that you told Mr. Hightower that he had failed the test?

A. In those words, no.

Q. You never wrote that up; isn't that right?

A. I never wrote down that I told him that he failed, no.

Q. Right. And now 14 years later you're relying on your recollection that you told him; isn't that true?

A. I know what I did when someone fails a test, yes.

Q. How many tests have you administered?

A. Approximately 1300.

Q. You have administered 1300 tests and 13 years

Page 128.

Lt. Craig Sterling - Cross

later you can recall without notes what you told Mr. Hightower?

A. I know what the results of the test were and I know what I would have told him, yes.

Q. All right, you know what the results of the tests were, you say, because it's written down in a document; isn't that right?

A. That's correct.

Q. But what you claim today you told him is not written down anywhere; isn't that right?

A. That's correct.

Q. Now, were you an investigator on the case?

A. No, sir.

Q. You were just in the polygraph unit at that time?

A. That is correct.

Q. And as you told us on your direct, you were told by the Homicide detective what area they wanted you to test in?

A. That's correct.

Q. And then it's your role to prepare or, as you say, design the questions?

A. Yes.

Q. And you do that within the realm of your understanding of the art or science of giving

Page 129.

Lt. Craig Sterling - Cross

polygraphs?

A. Yes.

Q. Now, did the detectives ever say to you words to the effect that they wanted you to test Mr. Hightower to see if he was truthful in his statements that a male ran from the scene of the shooting?

A. Not that I recall.

Q. They never asked you to test for that?

A. No, sir.

Q. Incidentally, Detective, do they show you his prior statements that he's given to the police, or do they merely inform you orally in a conversation what the area is they want you to test?

A. They would normally show me previous interviews.

Q. Did you look at his previous interviews?

A. Before the test.

Q. Yes.

A. Yes.

Q. And you saw where he said he saw a male running away?

A. If that was in the interview then I would have seen it, yes.

Q. Don't you recall that?

A. No, I do not.

Page 130.

Lt. Craig Sterling - Cross

Q. I'll read the portion to you and if you want you could examine the document in it's entirety.

MS. FISK: Objection, Your Honor. The lieutenant has testified that he designed questions based on a field of inquiry provided to him by detectives. Whatever Mr. Hightower said was not the basis on which he designed his questions. That was his testimony.

MR. WEINGLASS: But he said --

THE COURT: Designed his questions?

MS. FISK: Of Mr. Hightower, yes, sir.

MR. WEINGLASS: He said he read the statements before he gave the test and I am now going into it to see what he read.

THE COURT: He may have read it, there is no question about that. But he said he designs his questions based on the area that the detective wanted him to inquire about. He doesn't decide that area on his own. So whether it's in there or not makes no difference. He designs these questions based solely on what the detectives say they are interested in. If they didn't tell him they were interested in that particular phase, he's not going to ask any questions about it.

Page 131.

Lt. Craig Sterling - Cross

BY MR. WEINGLASS:

Q. What was your purpose in reading the reports?

MS. FISK: Objection, Your Honor. I'm sorry I interrupted Counsel's question but I object.

THE COURT: Well, I don't know that he said that he read them. He said sometimes they show it to him. And if they are interested, I guess, in a specific area, they'll say I'm interested in this area here and then he will design his questions accordingly.

MR. WEINGLASS: Now I understand.

BY MR. WEINGLASS:

Q. So it's the detectives who are doing the investigation who determine what's important to be tested?

A. That is correct.

Q. Did those same detectives bring to you for testing a witness by the name of Cynthia White?

MS. FISK: Objection, Your Honor: It is beyond the scope of direct examination.

THE COURT: I have to sustain that.

MR. WEINGLASS: Pardon?

THE COURT: I'll sustain that. He is in here only for Hightower.

Page 132.

Lt. Craig Sterling - Cross

MR. WEINGLASS: Well, Your Honor, he's here for the broader question of the way polygraphs were used in a biased investigation.

THE COURT: No.

MS. FISK: Your Honor, I beg to differ. And furthermore, there was a stipulation yesterday by Mr. Grant, he agreed that no other witnesses were even polygraphed, as I recall, so it would be completely unnecessary to ask the lieutenant something which we've all agreed did not occur.

THE COURT: Not only that, I don't think he's here today to even answer any questions on that.

BY MR. WEINGLASS:

Q. Now, you indicated -- and by the way, Detective, what is your background in polygraph?

A. Excuse me?

Q. What is your background? Have you been trained, educated on the polygraph?

MS. FISK: I object.

THE WITNESS: Yes, I have.

MS. FISK: Well, I don't object to that.

BY MR. WEINGLASS:

Page 133.

Lt. Craig Sterling - Cross

Q. Go ahead, I think you were interrupted by Counsel, when she heard you she liked what you were saying so you could continue.

MS. FISK: No, Your Honor, I did not object to whether he was trained, but the description of his training I do object to. The lieutenant has not been called as an expert in any post art or science of polygraphy. He has been called solely as a witness with regard to the credibility of Dessie Hightower, who signed an affidavit swearing under oath, and testified, that he had been told that he passed a polygraph test. This is a witness who is testifying that he told Mr. Hightower that he did not pass. Rather, that he was not telling the truth. He is not being called as an expert in any field.

MR. WEINGLASS: My notes on the direct indicate he was asked the following question: Do you analyze charts. Yes. Did you

analyze this chart. Yes. Did you determine that Mr. Hightower had not told the truth. Yes, I determined he hadn't been telling the truth. All of that he testified to on direct.

THE COURT: Well.

MR. WEINGLASS: I am now asking him

Page 134.

Lt. Craig Sterling - Cross

questions about whether or not he can analyze charts.

THE COURT: No, whether he can or can't makes no difference. I will assume for the sake of argument that he can't. He's only up here as a witness to say I told him a certain thing. Whether that thing is right or wrong doesn't make any difference, he is just saying that's what he told him. And that's the only issue for which he was put on this stand.

MR. WEINGLASS: Mr. Hightower said he was told he was telling the truth and he was extensively cross-examined for credibility. Now this witness says I never told him that.

THE COURT: Well.

MR. WEINGLASS: I told him he was not telling the truth. Now I'm examining the witness on the issue of his credibility. And the question of his credibility is --

THE COURT: I am telling you, assuming that he is not competent, right.

MR. WEINGLASS: Strike competence. Assuming, assuming he is not telling the truth. Then --

THE COURT: Wait awhile. The truth is

Page 135.

Lt. Craig Sterling - Cross

did he tell him or didn't he tell him. That's the thing.

MR. WEINGLASS: How do we determine his credibility on that issue?

THE COURT: I am not here to tell you how to do that.

MR. WEINGLASS: Well, I am examining him now.

THE COURT: You tell me. But I'm sustaining her objection because he was not put on here as an expert in this field. He was put on only for one purpose: To rebut Hightower's assertion that he wasn't told.

MR. WEINGLASS: With all due respect, Your Honor has much too narrow a view of this issue. If in fact, if in fact -- Your Honor, just bear with me a second. If in fact the test results indicated that Dessie Hightower was telling the truth in the test, wouldn't that support Dessie Hightower's claim that he was told that? How do we get away from that?

THE COURT: Not necessarily.

MR. WEINGLASS: Of course it would.

THE COURT: No, it wouldn't.

MR. WEINGLASS: Because if he passed

Page 136.

Lt. Craig Sterling - Cross

then the likelihood is Dessie Hightower is telling the truth.

THE COURT: Let's say he passed and he was wrong but he said that to him, that's the issue.

MR. WEINGLASS: But if he passed it increases the likelihood that he was told he passed. And that's what we're questioning him on.

THE COURT: No, it isn't. It's just one person saying he wasn't told and another person saying he was told.

MR. WEINGLASS: And we have the test, we have the test which will support Dessie Hightower. That's why we have to get into the test.

THE COURT: Why, do you have an expert that's going to come in here and support that?

MR. WEINGLASS: We are about to. We've asked --

THE COURT: Why don't you wait until you do that.

MR. WEINGLASS: Well.

MS. FISK: Because, Your Honor, the test and the actual results of the test are

Page 137.

Lt. Craig Sterling - Cross

irrelevant to the issue of what Mr. Hightower was told. The records which are relevant are the police records which were signed by the officers, by the detectives, by the lieutenant which indicates that deception was indicated, that was circled while Mr. Hightower was down there, that was typed several days later. Which all refreshed this witness' recollection of the fact that that is what he told this witness.

Sixteen people, the reason polygraph results are not admitted in court is because 16 people can look at the same results and come up with 16 different results. What only is relevant is the fact that this witness is testifying that it was his perception of the results that caused him to believe deception was indicated, leading him to tell that to Mr. Hightower, not in fact what the results were.

MR. WEINGLASS: We are prepared to produce an expert who will examine this test and come into court and testify that Mr. Hightower passed this test. And in all likelihood from that Your Honor could infer that he was telling the truth when he was told that.

THE COURT: Well, we will take that up

Page 138.

Lt. Craig Sterling - Cross

at a later time, Counselor.

MR. WEINGLASS: Pardon?

THE COURT: Take that up at a later time. He is here for just one thing. Let's get finished with that one thing so he could go. If we want to bring him back later on we will bring him back later on, okay.

BY MR. WEINGLASS:

Q. Now, Detective, you indicated that you analyzed the charts; is that correct?

A. That's correct.

Q. And you personally analyzed them?

A. That is correct.

Q. And in the art of polygraph, the analysis of the chart is a critical function of the polygraph operator?

MS. FISK: Objection, Your Honor.

THE COURT: I suppose it is subjective to a certain extent, isn't it.

MS. FISK: Again, whether or not it is a critical function, an important function, a relevant function, does not allow us to go forward in the inquiry for purposes of this witness.

THE COURT: I agree with you. We have

Page 139.

Lt. Craig Sterling - Cross

gone far afield here. This is a PCRA Petition in which you have alleged that the Defendant is innocent, okay. Number one. And second, that somehow trial Counsel was ineffective. Let's stick to those issues. I'm not here to judge his qualifications. He's here only for one purpose: To refute what your witness Hightower said that he was told that he passed. He says he told him he flunked it, okay. Let's go with that, for whatever it's worth.

BY MR. WEINGLASS:

Q. Now, what training have you had, Detective, in the analysis of polygraph charts?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. For the reason I've already indicated to you, Counselor.

BY MR. WEINGLASS:

Q. Now, when you conduct a polygraph test, do you write out the questions?

A. Yes, I do.

Q. And those questions are in your hand, are they not?

A. Yes, they are.

Q. Now, in your experience, are the written-out questions given in discovery when a polygraph test is

Page 140.

Lt. Craig Sterling - Cross

used to defense counsel as part of the materials that are to be turned over in discovery?

MS. FISK: Objection.

THE COURT: Yes, sustained. He has no control over that. Whether it is given over depends on the court's order and the issues. He has no control. It is not his decision whether or not it's turned over.

BY MR. WEINGLASS:

Q. Am I correct in assuming that Mr. Hightower was brought to the precinct at the time indicated in the report that's in your hand, which is approximately, I believe, 4:15 p.m?

MS. FISK: Objection, Your Honor. Unless the lieutenant has personal knowledge. My understanding is that the polygraph unit is in a different place from where Mr. Hightower is.

THE COURT: Yes, they are separate, Counselor. I could tell you that, they are separate units.

BY MR. WEINGLASS:

Q. What time of day did you see Mr. Hightower?

A. He came into the polygraph unit at 7:33 p.m.

Q. Did you know that he had already been

Page 141.

Lt. Craig Sterling - Cross

questioned for about three hours before he was brought to the unit?

A. No, I did not.

Q. Would that fact, if you were told that he was subjected to interrogation for three hours, have affected the results of the polygraph test?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Do you know what he was questioned about?

MS. FISK: Objection, Your Honor.

THE COURT: I have to sustain that. I am sure he wasn't told what he was questioned about. The detective comes in and says I want you to polygraph this man and he tells him whatever he wants to cover. That's it, Counselor.

BY MR. WEINGLASS:

Q. But they didn't come in until 7:30; is that correct?

A. That's correct.

Q. And you polygraphed him for two hours?

A. The actual running of the charts is not two hours. He was in the polygraph unit for approximately two hours.

Page 142.

Lt. Craig Sterling - Cross

Q. Were you alone there with him?

A. During the actual testing I was alone in the examination room with him.

Q. Prior to that time?

A. Prior to that time the Homicide detective and whoever else was working in the polygraph unit at the time would have been in the outer office.

Q. Is that where you saw him first?

A. When he came in the door, yes.

Q. So you spent about an hour and a half with him in an outer office?

A. No.

Q. How long did you spend with him?

A. He came in the door, he would immediately be taken into the examination room. And then I would discuss with the Homicide detective what they wanted to know and then I would enter the examination room with Mr. Hightower.

Q. And that took two hours?

A. From the time he came in until the time he left, a little over two hours.

Q. And to your knowledge he was let go, right, after you finished, or shortly thereafter? If you know.

A. I have no idea.

Page 143.

Lt. Craig Sterling - Cross

Q. Well, what happened after your conversation with him that you were able to see if anything?

A. The Homicide detective would remove him from the polygraph unit.

Q. And who was that?

A. Detective McCarthy that brought him down.

Q. And was he the same who removed him?

A. Yes.

Q. Do you know where he was taken to, if you know?

A. No idea.

Q. Now, in your work in the polygraph unit do you work mainly with homicide cases?

A. It might be the majority of the cases we handle, yes.

Q. And in the typical homicide case do you polygraph more than one person?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. I am sure he does. A lot of people he interviews, Counsel, over the course of how long he's been there. Come on.

MS. FISK: There is also no such thing as a typical homicide.

THE COURT: I don't know. Homicide

Page 144.

Lt. Craig Sterling - Cross

case is a homicide case.

BY MR. WEINGLASS:

Q. Now, there are factors, are there not, that you know of that affect the validity and the accuracy of a polygraph test?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He is not here for that purpose. She did not bring him in as an expert in that field. He is here for a limited purpose only, Counsel.

BY MR. WEINGLASS:

Q. To your observation, was the polygraph test you administered to Mr. Hightower one that caused stress in Mr. Hightower?

MS. FISK: Objection.

THE COURT: I don't know how he could tell whether there was stress on Hightower. Only Hightower could tell us if he had any stress.

MR. WEINGLASS: Well, Your Honor --

THE COURT: He is not a doctor.

MR. WEINGLASS: No, he is a polygraph person, I'm told.

THE COURT: That's right. But he doesn't know whether he was under stress. You

Page 145.

Lt. Craig Sterling - Cross

should have asked that of Hightower. He could tell us.

BY MR. WEINGLASS:

Q. Did you observe anything about Mr. Hightower when you gave him the test that indicated that he was under stress, did you observe anything about him?

A. Not that I recall, no.

Q. Do you recall him?

A. Yes, I do.

Q. Now, was it your decision to have Mr. Hightower polygraphed?

A. No, sir.

THE COURT: He already answered that.

BY MR. WEINGLASS:

Q. It was someone else's decision, the detectives?

A. Normally, we need the approval of a supervisor.

Q. The supervising detective or the supervising polygraph person?

A. No, some supervisor from the detective bureau.

Q. So in the way you were working in 1981, December, the detectives who were working the case would have to gain approval from a supervisor in order for the polygraph to be undertaken; is that

Page 146.

correct?

A. That's correct.

Q. And do you know, do you recall who the supervisor was?

(Pause.)

A. Let me see if I have it on my report.

Lieutenant Smith.

(Discussion held off the record between defense Counsel.)

THE COURT: Counselor, did you hear him? Detective Smith.

MR. WEINGLASS: Yes, I heard. Thank you.

BY MR. WEINGLASS:

Q. And you saw that on the documents that are in front of you?

A. That is correct.

Q. Could you identify the document by C number?

A. It's C-12, and it's also on C-13. The supervisor was notified of the test results and the request by him.

Q. And you had to refer, though, to those documents to remember who the supervisor was; am I right?

A. That is correct.

Page 147.

Q. And yet you're telling this Court that 13 years later, 14 years and 1300 tests later, you can remember who Dessie Hightower is?

A. That's correct.

Q. And you don't remember who the supervisor was?

A. No, sir.

Q. In your field of performing these polygraph tests, these tests are sometimes used, are they not, in the interrogation process as a way of intimidating a witness?

MS. FISK: Objection.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Have you seen the printout of the test recently?

A. The charts?

Q. Yes.

A. Ahh, last week sometime.

Q. Last week? To your knowledge they still exist?

MS. FISK: It was marked in the Courtroom yesterday, Your Honor.

THE WITNESS: That's correct.

BY MR. WEINGLASS:

Q. And in the form that you've seen them, they

Page 148.

could be examined by a polygraph expert and an analysis could be performed on your charts to see if Mr. Hightower was deceptive or telling the truth?

MS. FISK: Objection, Your Honor.

THE COURT: Yes, sustained. The objection is sustained for reasons I've already gone into a number of times.

MR. WEINGLASS: Your Honor, I'm asking that question --

THE COURT: I told you the only issue he is here for is one issue and that's it.

MR. WEINGLASS: But you have a credibility contest.

THE COURT: No, you don't.

MR. WEINGLASS: Yes. You have Mr. Hightower saying --

THE COURT: I am assuming for the sake of argument that maybe he is wrong. So what? The question was did he tell him something.

MR. WEINGLASS: Assuming for the sake of argument maybe he's untruthful, how is the Court going to determine if Dessie Hightower is telling the truth or he is?

THE COURT: Because I see him on the stand, I see Hightower on the stand, and I will

Page 149.

make a decision accordingly.

MR. WEINGLASS: Now having just looking at two people Your Honor has a scientific graph which will indicate who is telling the truth?

THE COURT: Well --

MR. WEINGLASS: You are depriving us --

THE COURT: That's what the fact-finder is supposed to do, Counselor. That's what a jury does when they hear a case.

MR. WEINGLASS: Exactly.

THE COURT: Okay.

MR. WEINGLASS: So this is an aid here to the Court.

THE COURT: Counselor, Counselor, you do whatever you want to do. If the law permits you to do it. And I want to remind you one more time: We are proceeding under a statute which designates what you can bring forward in a PCRA matter. If you're within that PCRA as it's laid out in the statute, you certainly could bring it in. If you can not then you can't bring it in, it is as simple as that.

MR. WEINGLASS: We brought in Dessie

Page 150.

Hightower.

THE COURT: Counselor, I don't care who you bring in. I'm saying you are operating under the statute of a PCRA, a Pennsylvania statute.

MR. WEINGLASS: Right.

THE COURT: Now, I suggest you read that statute again and see if you could do what you are trying to do.

MR. WEINGLASS: I --

THE COURT: If you could find any cases that say you can do it, Xerox the case for met bring it in here, and we will act accordingly. In the meantime, whatever you want to do, you go ahead and do. You got money to spend, spend it.

MR. WEINGLASS: I suggest most respectfully that the Court --

THE COURT: I am not talking about your PCRA Petition. I'm talking about the statute itself.

MR. WEINGLASS: We lay out --

THE COURT: Go and read that statute, Counselor.

MR. WEINGLASS: We lay out in the

Page 151.

Petition --

THE COURT: Counselor.

MR. WEINGLASS: -- why we brought in Dessie Hightower.

THE COURT: Counselor, I am not here to argue about why you brought anybody in here. What I am telling you: You are proceeding under a specific statute. Limit yourself to that statute. And don't tell me about your PCRA Petition. I'm talking about the statute itself. You have Philadelphia Counsel here who will be glad to provide you with that statute and give you his opinion as to what you could do.

MR. WEINGLASS: What we are attempting to do -- and all PCRAs so far as I know across the United States permit it -- you can show a Brady violation.

THE COURT: Counselor.

MR. WEINGLASS: A Brady violation in any PCRA.

THE COURT: Counselor, you show me a Pennsylvania statute that you can do this, if that's what you are dealing with here, Xerox the case for me and I will be glad to read it. If you are right then I will let you do whatever

Page 152.

you want to do.

MR. WEINGLASS: Violations of Brady may be shown at any time. Any time.

THE COURT: Counselor, please. Fine, get --

MR. WEINGLASS: In any Court.

THE COURT: Give me a case that says what you want to do, that you could do it. That's all I am asking.

MR. WEINGLASS: That is elemental. It is elemental.

THE COURT: Fine, if it is elemental then I will determine elemental. But I am telling you give me a case. And I don't know how many times I have to tell you that.

MR. WEINGLASS: I will give you a case: Brady V Maryland. Brady V Maryland.

THE COURT: Xerox it for me and --

MR. WEINGLASS: Your Honor, don't indicate you haven't read Brady. Everyone in law school has read Brady.

THE COURT: Counselor, Xerox whatever case you want and give to it me. And the Commonwealth will have an opportunity, you give her a copy. If she wants to give me some cases

Page 153.

I will read those too. But there is no sense in you standing here and arguing with me. Do whatever you want to do.

MR. WEINGLASS: Here is a case, Your Honor: Commonwealth versus Smith. We have the Xerox copies all ready for you.

THE COURT: Fine. But that has nothing to do with this witness on the stand now. Right?

MR. WEINGLASS: Supreme Court.

THE COURT: Right?

MR. WEINGLASS: Supreme --

THE COURT: Counselor, I don't want you to read anything for me. I went to law school too. Allow me to read it on my own.

MR. WEINGLASS: Right (handing). Commonwealth V Smith, coming up.

THE COURT: Let's get finished with this witness, please.

MR. WEINGLASS: The Court has the case before it.

THE COURT: I don't have the case in front of me. And I've already made certain rulings as to what he was brought here for and what you could cross-examine him on. That's it,

Page 154.

period.

MR. WEINGLASS: Commonwealth V Smith stands for the proposition that the defense in a PCRA may show prosecutorial misconduct and the failure to comply with Brady V Maryland. And that's what we are doing by bringing Dessie Hightower in and that's what we are doing by cross-examining this witness.

MS. FISK: Your Honor, the case law on this in the Commonwealth makes it abundantly clear that unless a polygraph is administered of the defendant, that the defense is not entitled to discovery of polygraph test results of witnesses. There was no Brady violation. That has been determined in the discovery matters in this case. And the failure to provide, as Counsel cites, the polygraph examination is clearly settled by the appellate laws in this Commonwealth as not being a Brady violation.

MR. WEINGLASS: If I may continue.

BY MR. WEINGLASS:

Q. So, Detective --

MS. FISK: Lieutenant.

BY MR. WEINGLASS:

Q. Just so that we're clear: The physical

Page 155.

evidence of the test that still exists is something that could be read by any analyst even at this date who could tell whether or not Dessie Hightower passed that test; isn't that true?

MS. FISK: Objection, Your Honor. Unless I have missed something, polygraph results have not yet been admitted in a court of law.

THE COURT: At least not so far in Pennsylvania that I know of. But you could get anybody you want to look at it. Counselor, be my guest. But the thing is, he's not here to testify to that.

MR. WEINGLASS: No, the Commonwealth has admitted a polygraph test. Why have they done it? They have done it to support the testimony of their witness.

THE COURT: No, they only did it, they only did it to show that this is what he said to the gentleman.

MR. WEINGLASS: No, exactly.

THE COURT: Well.

MR. WEINGLASS: Now, if it turns out that Dessie Hightower passed, then the likelihood is he never told him what he is

Page 156.

saying he told him.

THE COURT: Well, that doesn't necessarily follow, but if you could --

MR. WEINGLASS: It is helpful to the fact-finder.

THE COURT: Well, you can argue that to the fact-finder, fine.

MR. WEINGLASS: But we need the facts to argue to the fact-finder.

THE COURT: Well, the facts, you will have to get it some other way. He was not brought in here as an expert for that purpose.

MR. WEINGLASS: We will try to get the facts another way.

THE COURT: Okay, get it another way.

MR. WEINGLASS: So I renew my request that I be given the chart so our expert could come in and testify from the chart.

THE COURT: Well, you will have to do that somehow. I don't think they could give it to you, it is part of the Court records now. If you want to bring your expert in here and have him look at it while it's here.

MR. WEINGLASS: No, the customary way is you copy the chart and you send it to your

Page 157.

expert who gives you an opinion, then you bring in the expert. That's the way we want to proceed.

THE COURT: Well, do you have any objection to that?

MR. WEINGLASS: Could we copy the chart?

MS. FISK: It is clear to me, Your Honor, that there is no testimony from anybody which would be relevant and admissible in this proceeding, so the answer is yes.

MR. WEINGLASS: The answer is yes.

THE COURT: Wait awhile. Why don't you just give me Xerox cases on the point that you are arguing now. And you the same. If you have any against what she's saying.

MS. FISK: Fine, sir.

THE COURT: Give me the cases. Xerox the cases, I'll read them and I will make a final decision. At the moment my decision stands. But I will be glad to correct it and reverse it if you can prove that you're right.

MR. WEINGLASS: That we are entitled to the chart?

Page 158.

Lt. Craig Sterling - Cross

THE COURT: Right. Okay.

MR. WEINGLASS: So that our expert could test it?

THE COURT: Yes, that you are right. She said that it's not admissible in Pennsylvania under the circumstances. We will see. I am going to have her give me Xerox copies of the case, you can also do the same. Now let's go forward.

MR. WEINGLASS: We are seeking the admission for the limited purpose of supporting the credibility --

THE COURT: Counselor, whatever you want to do, just give me the cases first, will you please. And I will read them. Let me read her cases. She's made statements, you've made statements. I want you both to shut up and just give me cases. Let me look at the law. Let me read the case. Because you can cite the case and you interpret the case your way, and she can cite the case and interpret it her way. What I want you to do: Give me the cases and let me interpret it my way. I went to law school just like you did and just like she did. And I've been a lawyer longer than you. I've been a

Page 159.

Lt. Craig Sterling - Cross

judge for a good many years. So I'm one of those, how do I say -- what would you call them?--- Senior Judges or something...

MR. WEINGLASS: Retired.

THE COURT: No, a Senior Judge. I'm not retired, I'm in here everyday. I'm not retired.

MR. WEINGLASS: Under the Constitution --

THE COURT: Under the Constitution I get a pension. But under the Constitution --

MR. WEINGLASS: You are retired.

THE COURT: -- I could work everyday. As long as the Supreme Court wants me to work.

MR. WEINGLASS: Right. But you are --

THE COURT: And that's what I've been doing. I am an active Senior Judge. Active. A-C-T-I-V-E. I'm here everyday, okay.

MR. WEINGLASS: By special appointment after retirement.

THE COURT: Right. Right, I understand that.

MR. WEINGLASS: You have been retired by the Constitution of Pennsylvania.

THE COURT: Right, I understand that.

Page 160.

Lt. Craig Sterling - Cross

I understand the Constitution of Pennsylvania very well, Counselor.

MR. WEINGLASS: Good. Then you understand you're retired.

THE COURT: I am an active Senior Judge, period. If you don't understand that --

MR. WEINGLASS: Special designation.

THE COURT: -- go back and read the Constitution. You could take that argument up with the Supreme Court too. Now let's go forward. Do you have anymore questions of him?

MR. WEINGLASS: To assist the Court I just want to say this -- and it's just a clarification. We are going to bring the Court a case which will support the fact that we can show Mr. Hightower was telling the truth.

THE COURT: Whatever you could do, fine, do it. Anything else? Anymore questions, Counselor?

MR. WEINGLASS: No.

MS. FISK: I just have one or two.

MR. WEINGLASS: Not at this time.

- - - - -

REDIRECT EXAMINATION

- - - - -

Page 161.

Lt. Craig Sterling - Redirect

BY MS. FISK:

Q. Lieutenant Sterling, Mr. Weinglass was asking you a number of questions regarding the period of time Mr. Hightower spent in polygraph and how the detective brought him down and then how you then spoke to the detective about the areas of inquiry and then conducted the examination; do you recall those?

A. Yes.

Q. And was your answers to Mr. Weinglass that he elicited based upon the custom and practice that you have utilized as a member of the polygraph unit for the five years that you were employed there?

A. Yes, that is correct.

Q. And is it further your testimony regarding the manner in which you alert someone, an individual who has been polygraphed to the results of their polygraph, is based upon that same custom and practice that you utilized over those five years?

A. That is correct.

Q. Now, were you here outside the Courtroom yesterday, Lieutenant?

A. Yes, I was.

Q. And did you have occasion to see yesterday Mr. Dessie Hightower?

A. Yes, I did.

Page 162.

Lt. Craig Sterling - Recross

Q. Did the seeing of Mr. Dessie Hightower outside the Courtroom yesterday refresh your recollection and enable you to remember something about him?

A. Yes, it did.

MS. FISK: Thank you, sir.

- - - - -

RECROSS EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Are you saying that your seeing him yesterday outside the Courtroom -- for how many minutes?

A. It was in the Courtroom.

Q. In the Courtroom when you stood right here where I'm standing?

A. That is correct.

Q. Less than five minutes?

A. Approximately.

Q. At a distance of 20 feet?

A. Yes.

Q. And that view for less than five minutes at a distance of 20 feet caused you to remember that 14 years ago you told him something in a conversation?

A. No, sir.

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: I have nothing

Page 163.

Lt. Craig Sterling - Recross

further.

THE COURT: Anything further?

MS. FISK: No, Your Honor.

THE COURT: Okay, you are excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: Anyone else?

MS. FISK: I have no other Commonwealth witnesses available, Your Honor.

THE COURT: All right, I guess it's going to be an early day off today.

MS. FISK: I would ask for notices as to --

THE COURT: Well, how about who you are going to bring next on Monday, Counselor?

MR. WEINGLASS: Your Honor, with respect to that, I want to inform the Court that we have now taken the photographs of the evidence, the ballistics evidence, we have sent the photographs to be analyzed. We expect a report on that probably on Monday. That's working expeditiously, as expeditiously as we can. That we have gone to get the Quarter Session file, so that we could have a copy of the Quarter Session documents on this case. And we are told, we don't have them yet but we are

Page 164.

told that we'll get copies shortly.

(Pause.)

MS. WOLKENSTEIN: It is clear we need to have access to the file during non-working --

THE COURT: Well, you could do that in the Clerk of Quarter Sessions Office. Bring in your own copier or whoever he is, let him Xerox the things there.

MS. WOLKENSTEIN: Could we have permission, Your Honor?

THE COURT: To leave?

MS. WOLKENSTEIN: No, Your Honor, for the file to be able to be removed from Court during Court time. We are willing to go to try and do that now, after the Court is over.

THE COURT: No, you go up to Quarter Sessions, then call whoever you are going to get to do it, to do the copying, and you could do it up there.

MS. WOLKENSTEIN: The file's in the Courtroom now.

THE COURT: Well, the file's going to leave the Courtroom, it goes back to the Clerk of Quarter Sessions. They don't stay in here overnight. Go to the Clerk of Quarter Sessions.

Page 165.

It doesn't stay here. It's within their control at all times. It's not left in the open courtroom, the courtroom is closed.

MS. WOLKENSTEIN: If we can do it this afternoon that would be just wonderful.

THE COURT: I don't care when you do it, but go to the Clerk of Quarter Sessions and they will make arrangements for whoever you are going to have to bring in and you could Xerox it or whatever you have to do with whatever is in there.

MR. WEINGLASS: Now, we are also attempting to obtain the photographs that were introduced into evidence at the trial. And we're having a little difficulty, we are trying to track them down. We're told now that they are in the Police Evidence Room. These are photographs of the scene. They are important for our witnesses. And we're still trying to get them.

THE COURT: Well, Counselor, I am trying to find out who your witnesses are and why it's so important for all of this information for you to have.

MR. WEINGLASS: Yes.

Page 166.

THE COURT: Who are your witnesses? I asked you for all the witnesses. Not only just for today, but all your witnesses. You haven't given them to me.

MR. WEINGLASS: Yes, we have. At the Court's suggestion we've gone to see a potential witness in the western part of the State of Pennsylvania who was incarcerated, we are awaiting a report on that witness. We will be evaluating it over the weekend.

THE COURT: Okay. But what I am concerned with: Who are you going to call on Monday, and have you given the D.A. either an affidavit or a written summary or something so that we don't have to have all of this hassle about whether they are prepared to go forward on this case.

MR. WEINGLASS: On the amendment, an amendment to the Petition which we will file on Monday --

THE COURT: Counselor, I didn't ask you what you are doing. Do whatever you have to do. You don't have to confess to me what you are doing. All I want to know is what witnesses are you going to call on Monday.

Page 167.

MR. WEINGLASS: All of the witnesses that we are going to call on Monday depend on the work that I'm laying out for the Court.

THE COURT: Well, then maybe --

MR. WEINGLASS: This is a work in progress!

THE COURT: Well, maybe you are saying we should start on Tuesday?

MR. WEINGLASS: That would be helpful.

THE COURT: No.

MR. WEINGLASS: We would then have the photographs, the Quarter Sessions --

THE COURT: Are you telling me you don't know at this time who you are going to call on Monday?

MR. WEINGLASS: We have to go over --

THE COURT: I am saying, are you saying to me you can't give me the names of anyone that you could call on Monday?

MR. WEINGLASS: I can't give you a definitive list until I have my witnesses look at the materials we are now in the process of procuring.

THE COURT: Yes, when you do --

MR. WEINGLASS: We don't have the

Page 168.

material.

THE COURT: When you do that, give a copy to the D.A. so that they'll know the witnesses you want to call on Monday. And you give them either an affidavit or a summary or whatever it is that they need in order to prepare to go forward. Give it to them.

MR. WEINGLASS: If we have until Tuesday.

THE COURT: They may be ready to go Monday, I don't know. Counselor, I will see you back here on Monday, okay. And give them whatever you have over the weekend. If you want to work over the weekend, they want to work over the weekend, fine.

MR. WEINGLASS; We are working over the weekend.

THE COURT: Okay, so is the D.A.

MR. WEINGLASS: I do want to ask for a continuance until Tuesday so I could comply with the Court's request.

THE COURT: No, because maybe they will be ready. Maybe they will call some of their witnesses on Monday.

MR. WEINGLASS: I know the Court's

Page 169.

concerned about the D.A.'s but there are two parties here.

THE COURT: No, I am concerned about getting witnesses on that witness stand and testifying under oath in this Courtroom as to what they know about this case. That's what I'm interested in. I'm not interested in a lot of hot air. I've had enough of that. It's hot enough outside, I don't need anymore. What I need, what I need is some live witnesses to take that stand and tell us what they know.

MR. WEINGLASS: I wish the Court wouldn't characterize advocacy as hot air. I think it's inappropriate.

THE COURT: Well.

MR. WEINGLASS: And I think it is injudicious and I cite the Court to the Canon of Judicial Ethics which prohibits this Court from doing --

THE COURT: Counselor, what I am saying to you, and --

MR. WEINGLASS: No, you are saying it to the media, which you read regularly.

THE COURT: You say everything to the media. You leave here and you have the whole

Page 170.

thing out here. Let the media come in here and listen to the witnesses and let them write down what the witnesses say.

MR. WEINGLASS: They have been doing that.

THE COURT: Well, I don't know.

MR. WEINGLASS: They have been writing down --

THE COURT: I have read some of the articles. I don't know that they are here. I think they are writing down what you tell them. And if anybody is talking to the media, you are.

MR. WEINGLASS: Well, let the record reflect the Court pointed an accusing finger.

THE COURT: Well, sure. It wasn't me.

MR. WEINGLASS: And directed it to me at an angry voice.

THE COURT: You didn't talk to the news media?

MR. WEINGLASS: The use of the words hot air.

THE COURT: You didn't talk to the news media?

MR. WEINGLASS: It is designed for media consumption. It is injudicious, it is

Page 171.

inappropriate.

THE COURT: No, you already used that terminology, Counselor. I am only picking up what you have said. Counselor, be back on Monday.

MR. WEINGLASS: You have a robe on and they don't.

THE COURT: Right, I don't talk out of Court.

MR. WEINGLASS: You should conduct yourself as the Canon of Judicial Conduct requires.

THE COURT: Don't tell me how to conduct myself. You are a New York attorney. When you come to Pennsylvania you show the proper respect to this Court. And I am telling you one more time I am not only going to evict you but I am going to fine you a thousand. As I told you before: That's not a threat, that's a promise. Okay.

MS. FISK: Your Honor, is it my understanding that the Commonwealth is to be provided a list by the end of work today or --

THE COURT: Well, before, if you get it on Monday we'11 take it up on Monday.

Page 172.

MS. FISK: Very well, Your Honor.

THE COURT: Okay, see you on Monday.

THE COURT OFFICER: This Court stands adjourned until 9:30 Monday morning.

(The hearing was adjourned for the day at 2:45 p.m.)

Page 173.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

7. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Monday, August 7, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- GINA FURIA, ESQUIRE
  Law Clerk for the Honorable Albert F. Sabo

INDEX

WITNESS

Gina Furia, Esq.

By Ms. Fisk - 79

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
24	Letter	31
25	Affidavit and c.v.	74

Page 3.

- - - - -

(At l0:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - -

THE COURT: Good morning, everyone. I see that you have a petition here to bring in a prisoner from Pittsburgh. I don't see what they say, they talk in generalities.

MS. FISK: Now apparently the affidavit of the witness is missing from my copy.

THE COURT: I don't have any either, that's what I was looking for. Do you have an affidavit from this person?

(Discussion held off the record between defense Counsel.)

MS. WOLKENSTEIN: Your Honor, as I think the Court is aware, I went to S.C.I. Mercer to see this new potential witness. We had learned about him only a day or so before and I went to see him. I had a meeting with him that was cut short. I discussed with him what he saw. He indicated to me that he has information that is exculpatory, specifically

Page 4.

that Mr. Jamal was not the shooter. And that somebody else shot this police officer.

THE COURT: Is he willing to testify as to what he saw?

MS. WOLKENSTEIN: He would testify as to what he saw.

THE COURT: In other words, he was saying he was there at the time?

MS. WOLKENSTEIN: Yes, he has told us that he is a witness.

THE COURT: Well, why don't you fill out an affidavit? If he can't sign it, you sign it.

MS. WOLKENSTEIN: Your Honor, Your Honor, it was not my understanding that was the procedure.

THE COURT: Yes, it is.

MS. WOLKENSTEIN: I'm sorry, Your Honor, I checked with local Counsel. In fact I was told that the normal thing was to simply come in and make a request. And the fact that we were doing this in writing was even much more formal than what is normally the practice in this Court.

THE COURT: Everything else you filed

Page 5.

was by an affidavit either by the persons themselves or someone on your staff. So you talked to him, why don't you write out an affidavit.

MS. WOLKENSTEIN: I am happy to do a handwritten verification.

THE COURT: That's okay. I will be glad to bring him in, but you are going to have to sustain the cost.

MS. WOLKENSTEIN: Have to what?

THE COURT: You are going to have to pay the cost.

MS. WOLKENSTEIN: What does that mean, Your Honor?

THE COURT: You have to pay. Take it up with the Sheriff. I don't know what their costs are to go out there and bring them in. I suggest you talk to the Sheriff and find out what their cost will be.

MS. WOLKENSTEIN: The Court is requiring the Defendant to pay for bringing in a witness who is exculpatory during the course of this hearing?

THE COURT: Yes. Because you have the funds to do that.

Page 6.

MS. WOLKENSTEIN: Your Honor, there is nothing on the record to indicate that we have the funds to do anything.

THE COURT: You are not Court appointed. You are privately retained.

MS. WOLKENSTEIN: Is this in some regulation that says that?

THE COURT: Yes, it is. It has been done. Talk to the Sheriff and he will explain it to you. Otherwise, I could have the prison itself

bring him down but I don't know when they do that.

MS. WOLKENSTEIN: The prison would have to bring him down, there is no way we could bring him down.

THE COURT: I know that, I am not saying you personally. The Department of Corrections does make transfer of prisoners. I don't know when they will be doing that. I would have to call them and find out. In other words, if you don't want to pay the cost, if you don't want the Sheriff to run up there immediately and get him and bring him down here immediately for you, we could have him transferred by the State. You see, they make

Page 7.

transfers every week. I just don't know. Years ago I know it was on a Wednesday but I'm not too sure what it is today, I would have to call them and find out. Do you know anything about that?

MS. FISK: Your Honor, upon receiving this petition this morning I did ask one of the Sheriffs who were present to check. My understanding is that the Sheriff does make regular visits to each of the State prisons.

THE COURT: This is something special. He wouldn't be making --

MS. FISK: I've asked them to check when the next regularly scheduled trip to this facility is.

THE COURT: That's why I say take it up with the Sheriff, they will let you know.

MS. WOLKENSTEIN: Your Honor, we will talk with them in the course of the morning or the lunch break.

THE COURT: Okay.

MS. WOLKENSTEIN: And I would renew the application.

THE COURT: I have it here, no problem.

Page 8.

MS. WOLKENSTEIN: A continuance for enough time to bring him in here in whatever fashion that is.

THE COURT: Well, okay. In the meantime check it out and find out and let me know. Otherwise, I'll call the Sheriff when I get a chance if you want me to.

MS. WOLKENSTEIN: That's fine.

THE COURT: But get that affidavit together for the D.A. Any preliminary things that you have that are still in abeyance?

MR. WILLIAMS: Good morning, Your Honor.

THE COURT: Besides my stay order.

MR. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MR. WILLIAMS: We have filed this morning and handed to Your Honor, to your law clerk, a courtesy copy of our Amended Petition and the motion attached to that Amended Petition. The motion for leave to file the Amended Petition. I just want to make clear for the Court that we have yet to receive the

Page 9.

minutes for a proceeding in March 18th, 1982. We expect to receive that on Wednesday or Thursday. And we want to make clear that we reserve the right to then amend the Petition further if it's necessary. If upon reviewing the March 18th, 1982 transcripts there is matters of substance that bear upon any of the claims in the Petition.

The other thing, Your Honor, that we have filed is, pursuant to Your Honor's directive, we have provided the Court with a series of cases, photocopies of cases, that are applicable to various issues and controversies that have arisen during the course of the evidentiary portion of this hearing. And we attached a cover letter dated August 7th, 1995, filed that as well along with a courtesy copy to Your Honor.

And in order to proceed in a expeditious fashion, which we are all interested in doing, we have a lot of witnesses that are in abeyance at the moment and that's precisely why we've complied with Your Honor's directive. We've outlined in our letter what issues each case goes to and what witnesses are impacted by

Page 10.

each of those cases. So we would need a ruling so as to determine which witnesses to prepare and proffer for the Court. In light of the fact that Your Honor has the photocopies of the applicable precedent.

And that's especially true, I'm informing the Court, of one of the witnesses: Savannah Davis. For internal logistical reasons we need a ruling for her. But actually we need a ruling for all of our witnesses. In order for us to be able to put the witnesses on in some kind of coherent fashion.

MR. BURNS: Your Honor, it is not clear whether Counsel is referring to exclusively witnesses who have had subpoenas quashed by the Court. And if so I think the Court has already ruled on that.

We just received this document this morning. We would like some time to have a look at it. Perhaps file a response if necessary. But I think we need a clarification as to whether the references are to people who have had their subpoenas quashed, people who have had their subpoenas quashed and additional witnesses who haven't yet been presented.

Page 11.

THE COURT: Well, they have to be more specific. If it is not specific just let me know.

And I'm telling you, defense, to be as specific as possible.

So that you will know where they are going and what they hope to prove.

MR. WILLIAMS: I can enlighten Mr. Burns. I think the letter is very specific; and we are not seeking to re-adjudicate the quashed subpoenas, except I think for one exception and that is on the issue of the jury, the jury pool. That entails calling the Commissioner of Jurors, which I believe the Court has quashed that subpoena. If I'm not mistaken. If I am the record will correct me.

THE COURT: That's right, yes, I have.

MR. WILLIAMS: And Judge Ribner. Other than that, all of the other witnesses that are addressed in this letter are witnesses that Your Honor has held in abeyance pursuant --

THE COURT: Until you specified which witness you are talking about.

MR. WILLIAMS: Exactly.

THE COURT: He says in the letter,

Page 12.

Counselor, that he has specified which witnesses he is talking about.

MR. BURNS: Well, for instance, there are certain references to police officers. They were subpoenaed.

THE COURT: He has to be more specific than that.

MR. BURNS: Their subpoenas were quashed. They were specifically mentioned in the letter which, as I said, we just received this morning.

THE COURT: Well, you look it over and if you think it's not specific enough for you to answer it, just let me know.

MR. BURNS: I am sure the letter is specific enough so that we could answer it. Is Counsel saying that they have other witnesses that they are presenting now?

THE COURT: Oh, I don't know. They don't take me into their confidence, I don't know. They would have to tell you that.

MR. WILLIAMS: What we have done, Your Honor, is one of the witnesses -- and we regard this as a crucial witness on several of our Constitutional claims -- that we've not yet

Page 13.

proffered but we took the liberty of mentioning that witness in this letter. And I am referring for Mr. Burns' benefit as well as for the Court's, the proffered testimony of Dr. John Lambert, a psychology professor here at Temple University. He is relevant to three of our Constitutional claims relating to Jury matters. And on page 10 and page 11 of our letter we set forth precisely what he would testify to.

THE COURT: Yes, I know that, but are you saying that somehow the trial attorney was ineffective for not doing something?

MR. WILLIAMS: No, those are not, Dr. Lambert will not testify on the ineffectiveness claim except as to the impact of the failure to present mitigation witnesses. That is one prong of his testimony. The other two prongs --

THE COURT: Well, I will let the D.A. answer it. If you answer it I will look at it.

MR. BURNS: As Your Honor knows, it is well established that expert testimony, or so-called expert testimony, is inadmissible on the question of whether or not an attorney was ineffective. That is a question for the Court. The Court is the expert in that area. As to

Page 14.

whether or not evidence was to have a greater or lesser impact on the jury, that too is an area in which the Supreme Court has repeatedly held that expert testimony is inadmissible because it is the jury's sole and exclusive function to determine what weight evidence is going to have. The jury is not permitted to be contaminated by expert testimony in this area.

Furthermore, the Supreme Court has held that the jury does not require the assistance of an expert witness in order to determine what weight to give evidence.

MR. WILLIAMS: Your Honor, let me just address what Mr. Burns has just noted.

THE COURT: Do you have cases on that?

MR. BURNS: I do, Your Honor. I will hand them up now.

THE COURT: Okay, and you have contra cases on that?

MR. WILLIAMS: We do.

THE COURT: Okay, then submit it and I will read it.

MR. WILLIAMS: Let me just be clear on this because I am now apprised of their position for Your Honor's benefit. On the issue of the

Page 15.

mitigation witnesses, we are not asking the Court to consider expert testimony on the first prong of the Strickland test, which is whether counsel is, counsel's performance was objectively deficient. We agree with Mr. Burns and the Commonwealth that expert testimony on that question is not allowed, that Your Honor under the case law is competent to consider the objective unreasonableness of Mr. Jackson's performance.

However, on the Issue of the prejudicial impact of that deficient performance, expert testimony is allowed and has been allowed by many courts.

THE COURT: Well, are you saying I need that expert to tell me something?

MR. WILLIAMS: To assist you on the prejudicial impact question, yes.

THE COURT: I don't think I need an expert to tell me that.

MR. WILLIAMS: Well, I think whether you need --

THE COURT: But I will let you present any case that you have on the issue. I will be glad to read it.

Page 16.

MR. WILLIAMS: Very well.

MR. BURNS: Cases we have introduced, Your Honor, have to do with whether or not an expert can testify as to credibility. Which of course is the question of weight. That largely being the area which the cases talk about. There's also the fact that experts are unnecessary in the area of determining what weight a jury is going to give whatever evidence they are presented. And this is of course a feature of Pennsylvania law. I'm sure Counsel may be able to find cases from other states in which courts reached different conclusions. In Pennsylvania this kind of evidence is not admissible.

MR. WILLIAMS: Nonetheless, I think the case law as well as our submissions and Mr. Burns' submissions speak for themselves and we proffer them for the Court's consideration.

MR. BURNS: Just as an addition, Your Honor: The defense offer says that Dr. Lambert would also testify that jurors harbor the misconception that life imprisonment means incarceration for 12 years. That is a fact question.

Page 17.

MR. WILLIAMS: Well, he has done studies in Philadelphia with Philadelphia capital jurors. And as I understand it, he had the imprimatur of Judge Jackson here in Philadelphia. He is a Temple University professor. We are not talking about somebody who has done research in Los Angeles.

THE COURT: We are talking about 1982.

MR. BURNS: And what this particular Jury understood.

THE COURT: That's right, we are talking about 1982, we are not talking about 1995.

MR. WILLIAMS: And he will not comment about the jurors' understandings at this juncture in history. But he will be able to comment on jurors' understanding of what life imprisonment meant at the relevant time period. And that's why we proffer him.

THE COURT: What do you think it meant?

MR. WILLIAMS: I'm sorry?

THE COURT: What do you think it meant?

MR. WILLIAMS: That life -- well, as a

Page 18.

lawyer I have an understanding of what life imprisonment means.

THE COURT: Yes.

MR. WILLIAMS: The question is what do 12 lay people --

THE COURT: What do you think it means?

MR. WILLIAMS: What do I think it means?

THE COURT: Yes.

MR. WILLIAMS: Well, in New York City life imprisonment --

THE COURT: I am not talking about New York City. We are in Pennsylvania.

MR. WILLIAMS: You are asking a lawyer to comment on a legal concept of life imprisonment. I look at a statute. Lay people hear life imprisonment and they have understandings that are colored by the media, by what they read.

THE COURT: Are you saying, then, that Jackson was ineffective for not asking for some detailed explanation of what life imprisonment meant?

MR. WILLIAMS: Well, we do make

Page 19.

that --

THE COURT: In 1982.

MR. WILLIAMS: We make that argument, among others.

THE COURT: You could ask. You didn't ask Jackson that question.

MR. WILLIAMS: I'm sorry?

THE COURT: You didn't ask Jackson that question.

MR. WILLIAMS: We also raised, I think it is in claim 15.

THE COURT: Counselor, we could stay here and argue forever. I don't have time to read all this material you are giving me. Give me any cases you have on it, I will be glad to read it.

MR. WILLIAMS: Your Honor, we have done so, it is attachments to our letter.

THE COURT: Okay, I will read it. I will read it and then I'll be able to better understand it. If you have any additional cases, though, one way or the other, submit them.

MR. WILLIAMS: Is Your Honor in a position to rule on any of the other witnesses

Page 20.

for which we have attached cases?

THE COURT: Well, how am I going to do that? I haven't even read your cases. You waited until now to give it to me this morning and you think I could read through all of that that you have there in 10 seconds?

MR. WILLIAMS: No.

THE COURT: 20 seconds?

MR. WILLIAMS: I am not suggesting that at all.

THE COURT: Well, okay, let me read it, Counselor, then I will be in a better position to answer your questions. I can't answer them now. You just handed them to me. You should have given it to me long ago. Long ago.

MR. WILLIAMS: Your Honor asked for these cases last week.

THE COURT: I know, I asked for them long ago. I said if you did your job properly you would have had these cases available to me at the time you wanted to present these witnesses and handed it up and I could have read it. But you gave me a whole big bundle now and you are going to have me read through all of

Page 21.

that. I don't know what you have there.

MR. WILLIAMS: That's because Your Honor ruled in quashing the subpoenas on Thursday.

THE COURT: I cautioned you in the very beginning, let all this stuff out that you say that you have.

MR. WILLIAMS: It is laid out here.

THE COURT: I know that, but you are just giving it to me this morning. What do you think I am?

MR. WILLIAMS: That's because you quashed the subpoenas on Thursday.

THE COURT: Well, sure I quashed them long ago. And I'm still quashing them. But that's not the point. You are asking me to read through that stuff. And I'll read through it but give me time to read through it.

MS. FISK: Your Honor, we would also request an opportunity to review, we have not even finished reading the documents handed to us this morning by Counsel.

I would also note for the information of the Court and Counsel, in response to my request to the Sheriffs, I'm advised that the

Page 22.

trip, the scheduled Sheriff's trip to the State Correctional Institution at Mercer is a scheduled two-day trip.

THE COURT: When they --

MS. FISK: Yes, I am advised that the Sheriff's Department is scheduled to go to Mercer tomorrow and that the witness could be picked up Wednesday to be available for Court on Thursday. And if he is sought by the defense, they need to provide his name and state number to the Sheriff's Department as soon as possible. They will need a writ from this Court to permit the Sheriffs to transport him but he could not been here --

THE COURT: You have a number here: CK2563.

MS. FISK: That information will need to be given to the Sheriffs. My understanding is that this Court will have to sign a writ but the witness in the ordinary course of the Sheriff's duties could be presented to the Court not before Thursday.

THE COURT: On Thursday.

MS. FISK: Yes, that is my understanding from the Sheriffs.

Page 23.

THE COURT: Okay.

MR. WILLIAMS: In light of Miss Fisk's information, I propose the following. Because we are all under enormous time pressure as well as just the nature of the case, I propose that, to give Your Honor the benefit to read through a voluminous submission, there be a continuance.

THE COURT: We are only talking about this guy, I could have him in here by Thursday.

MR. WILLIAMS: Fine, we would ask for a continuance while we await this witnesses' appearance.

THE COURT: No, because we may have somebody else you could put on.

MR. WILLIAMS: That's what this submission is all about. And Your Honor would then be given --

THE COURT: I am saying, you have no additional witnesses to present? Is that what you are saying?

MR. WILLIAMS: I am not saying that.

THE COURT: Well, then say something that the Court could understand where you are going.

MR. WILLIAMS: The witnesses that are

Page 24.

the subject of this submission are covered by the parameters of the evidence that we submitted thus far.

THE COURT: I know that. I understand that.

MR. WILLIAMS: We are talking about a way of presenting our evidence in a coherent fashion.

THE COURT: Well, all I am asking you: Do you have any new witnesses other than the ones that you are hoping to bring in after I read all of this material that you are giving me? If you have any, would you please give the District Attorney notice of who they are together with an affidavit as to what they are going to say so that they could be prepared to go through with that witness, whoever that witness may be?

MR. WILLIAMS: (Handing) I have just served and handed up to the Court a list of witnesses pursuant to Your Honor's directive. But I think the point still remains that --

THE COURT: Well, Counselor, is this the list that you are talking about?

MR. WILLIAMS: This is the list of

Page 25.

witnesses that are not engraved by our submission (displaying).

THE COURT: I know, but you have FBI documents. How are we going to put the documents on the witness stand?

MR. WILLIAMS: Well, we have a, they are authenticated by the FBI. And if the Court requires we'll have an authentication witness. Nonetheless, we do have an authenticating document to authenticate these FBI exhibits.

THE COURT: Well, what's the relevancy of it? We are here on a murder case. I'm not here to decide what the FBI did or whether it was proper or whether it was improper, or whatever it was. What does that have to do with the murder case here of this officer?

MR. WILLIAMS: I could only tell the Court we addressed that in our Petition, our Amended Petition, and in the written letter.

THE COURT: I know that.

MR. WILLIAMS: The submission we have given the Court today.

THE COURT: I know, but the D.A.'s answer says it's not relevant.

MR. WILLIAMS: Yes, but there are two

Page 26.

sides to this litigation. They say it's not relevant.

THE COURT: They are one side. The question is who shot and killed Officer Faulkner. That's the only issue here. You say that the Defendant didn't shoot him, that he's innocent. I say to you fine, you've said that to the news media plenty of times. You said you had plenty of witnesses to prove it. Well, bring those witnesses in. FBI documents are not going to tell us who killed Officer Faulkner.

MR. WILLIAMS: Your Honor is suggesting that without having read the documents or having heard any evidence concerning the documents.

THE COURT: Well, you tell me how it's relevant? I don't know how it's relevant. What is the relevancy of those documents, or what the FBI did? Let's say the FBI had him under surveillance for years. So what?

MR. WILLIAMS: Well, it raises two, it addresses two issues.

THE COURT: What's that?

MR. WILLIAMS: The first issue -- and I will go with the penalty phase issue first.

Page 27.

The FBI documents reveal that Mr. Jamal was under intensive surveillance for several years. During that, that time frame when he was under surveillance, the FBI and local law enforcement never discovered that he engaged in any kind of criminality or he was never convicted.

THE COURT: I know. The Jury knew that. Nobody brought anything in here that said he committed any prior crimes.

MR. WILLIAMS: I will tell you why the Jury should have heard about the surveillance. It is one thing for the jury to hear that a person has no criminal history. It's quite another to say he has an unblemished criminal history and he's been surveilled by law enforcement.

THE COURT: Well, you show me a case that says that, Counselor. Show me a case. Xerox the case and give it to me that says that, okay.

MS. WOLKENSTEIN: Kyles V Whitley, Your Honor, which is attached to the documents that you've been, that you've been handed, deals with all Brady questions. And one of the Brady questions gone into in the Kyles case, a recent

Page 28.

Supreme Court decision, is the question of bias in the prosecution. Bias in the police investigation. What these FBI files show is that the Philadelphia Police Department, we are submitting them because they indicate the activity of the Philadelphia Police Department in surveilling Mr. Jamal around the clock from a period of 1968 now through 19, the 19, early 1980's. The point of this is that there has been intensive activity, intensive bias against Mr. Jamal. Because all these files show is that he engaged in political activities, speech and association, but nonetheless it made him a subject of massive surveillance, eavesdropping, attempts to frame him up on other charges, including another murder charge.

THE COURT: Their police investigation didn't help any, because if it had he wouldn't have been able to shoot Officer Faulkner.

MR. BURNS: The problem we have here is one of laying a foundation.

MS. WOLKENSTEIN: The fact is it lays the question of whether or not there is information in the police files that Mr. Jamal did not shoot this officer.

Page 29.

THE COURT: Submit a case.

MR. WILLIAMS: We have submitted a case: Exhibit V, Spaziano versus Florida is the case we are referring to.

THE COURT: Okay, I will read the cases, Counsel.

MR. WILLIAMS: What troubles us, Your Honor, is that you seem --

THE COURT: I want to hear what is the position of the District Attorney's Office in this.

MR. BURNS: Thank you, Your Honor. Your Honor, Counsel have made, not for the first time, a number of factual statements about police surveillance, about an FBI conspiracy. And what they offer to do is put documents into the record without any kind of foundation. They don't want to produce any evidence saying that any of the specific officers were involved in this case. Or were somehow cognizant of the alleged information in the FBI documents. Your Honor, what they need to do is put on a witness to testify to some sort of fact that would establish a foundation for talking about FBI documents.

Page 30.

This was a murder case that happened in Philadelphia, that was investigated by specific officers of the Philadelphia Police Department. And absent some showing that any of these officers were aware of the alleged information that exists or purportedly is shown from these documents, there is no basis for introducing the documents. And of course there is no way to introduce the documents without a witness who will testify as to how they pertain to the case. So we are just running around in circles here. The defense assumes that something is true, and then they would like to put evidence in and put witnesses on to talk about it as though it was true without actually proving that it's true.

THE COURT: All right. Whatever cases you can give me on it I will be glad to read the cases. In the meantime, I will take it under advisement.

MR. WILLIAMS: For the benefit of the Court and for the Commonwealth, I would, I am serving on the Court a letter dated August 3rd, 1995 from the United States Department of Justice, the Federal Bureau of Investigation,

Page 31.

which authenticates our proffered exhibits. And I would like to make this part of the Court file, Your Honor.

THE COURT: Yes, I know. I am telling you, give me cases that say it's admissible and what's the value of it.

MR. WILLIAMS: I am asking the Court to look at Exhibit V: Spaziano versus Florida.

THE COURT: I know. If you gave me a case I will read it. Is that for me?

THE COURT OFFICER: D-24, sir.

(Letter was marked Defense Exhibit D-24 for identification.)

MR. WILLIAMS: D-24.

MS. WOLKENSTEIN: D-24.

THE COURT: Is that for me?

MS. WOLKENSTEIN: Yes, Your Honor. As D-25 we have the FBI files here. We have 600 pages that have been authenticated by the FBI that I want to submit into evidence as well.

MR. BURNS: We object to that, Your Honor.

THE COURT: Okay, I will take it under advisement.

MS. WOLKENSTEIN: Okay.

Page 32.

MR. BURNS: As to the additional witnesses on the list, Your Honor, we would like to have some kind of offer of proof. We would like to have the offer of proof in writing for the witness they will bring in from Mercer in the absence of an affidavit.

THE COURT: Somebody has to present an affidavit of some sort.

MR. BURNS: We would also like an offer of proof as to all of these witnesses on this handwritten list which we obtained five minutes ago.

THE COURT: I know, that's what I asked them to do.

MS. WOLKENSTEIN: Ward Churchill is a witness we have raised several times.

THE COURT: Put it in writing.

MS. WOLKENSTEIN: It is in writing. It was submitted several days ago in writing.

MS. FISK: Ward Churchill is a witness we have been given a one or two-sentence review of which we have advised the Court that we would object to at such time as he is called. We are advised that he is an expert in the field of domestic surveillance who was going to proffer

Page 33.

testimony regarding the relationship between Federal, State and City undercover surveillance.

MR. BURNS: This is the same situation as before. The witness is going to talk about something that doesn't exist. He is going to talk about something that the defense assumes is true without actually having any foundation evidence to prove it is true in the first place. He will just talk about this fantasy scenario.

MS. WOLKENSTEIN: Your Honor, we have 600 pages from the FBI that in every single page documents the truth, the truth that the police worked hand in hand with the FBI here.

THE COURT: Counselor, you are proceeding under a PCRA statute. Show me the relevancy of that to this proceeding, okay.

MS. WOLKENSTEIN: Brady. Brady, Your Honor.

THE COURT: Oh, Brady. Okay.

MS. WOLKENSTEIN: And the prosecution has admitted that Brady is applicable to this proceeding.

THE COURT: Give me case, will you please. Xerox a case for me.

MS. WOLKENSTEIN: It has been done.

Page 34.

MS. FISK: I would note, however, Your Honor, that my understanding of Brady is that it applies to documents which are wholly within the control of the Commonwealth which the

Commonwealth fails to provide. It appears to me that the 600 pages of documents are currently sitting in front of Miss Wolkenstein, who is, or is attempting to provide them to the Court. They are apparently documents which the defense has been able to obtain on it's own through it's own request or subpoena. And therefore I presume they are available and have been available to the defense. Brady does not cover those kinds of documents.

MS. WOLKENSTEIN: Your Honor, I am glad Counsel raised this. What this goes to is the fact that our subpoenas for the Police Department records have been quashed. And we believe these documents establish absolutely that the Philadelphia Police Department maintained records that were under the control of the Police Department and of the Commonwealth during the time of this prosecution. Those records should have been turned over to the defense as Brady material. They show both bias

Page 35.

and, as was also gone into, they also show mitigation. That is the proof.

THE COURT: Counselor.

MS. WOLKENSTEIN: That is the purpose of these FBI files.

THE COURT: Okay, give me some cases on it and I will read it and make's second decision.

MS. WOLKENSTEIN: As indicated, they are also in Your Honor's possession, several times over.

THE COURT: Not several times over, I just got it this morning.

MR. WEINGLASS: Your Honor, with respect to an unrelated matter: Present in Court this morning from Chicago is the Reverend Jesse Jackson.

THE COURT: All right. Counselor, why don't you save that for the news media outside. Unless he has something to offer this Court.

MR. WEINGLASS: Yes, I want to make a request of the Court. Reverend Jackson is here to offer counsel to Mr. Jamal. Your Honor knows an execution date is set 10 days from today.

THE COURT: I am going to take that up

Page 36.

today. Go ahead.

MR. WEINGLASS: I'm sorry?

THE COURT: I am going to take that issue up today.

MR. WEINGLASS: Okay. Would the Court order the opportunity for the Reverend Jackson to meet with Mr. Jamal during a break that we have today? Without interrupting the proceedings of the Court.

THE COURT: Counselor, you have to take that up with the Sheriff. The Defendant is not in my custody. He is only in my custody when he is in this Courtroom. The rest of the time he is in the custody either of the State Correctional Department or the Sheriff. Take that issue up with the Sheriff or the State Correctional Department. It's not for me to order the Sheriff to do anything.

MR. WEINGLASS: Well, the Sheriffs, as I understand it, will follow the orders of this Court. If the Court requests it I am sure the Sheriffs will see to it that it can happen.

THE COURT: Why don't you go to the Sheriff and ask him. And let him deny it and then come back and see me, okay.

Page 37.

MR. WEINGLASS: Well, Your Honor, Reverend Jackson is here from Chicago and we don't have that much time.

THE COURT: Counselor, I will be here all day long. So what I am saying to you: Please go to the Sheriff first and ask him. If he allows it he allows it. If he doesn't then come back to me. We already had this spiritual advisor thing decided and you know that the State Correctional Department took the position that I was wrong in ordering them to do something. And you agreed with them and you entered into an agreement. And whatever agreement you entered into is fine, I have no objection to that. Take it up with the Sheriff. Let's give the Sheriff an opportunity before we jump to conclusions.

MR. WEINGLASS: May I have five minutes so that I can confer with the Sheriff and report back? Reverend Jackson has a busy schedule. He has come here, it is a specific mission.

THE COURT: I know that.

MR. WEINGLASS: I just want five minutes to talk to the Sheriff's personnel to

Page 38.

see that this is resolved.

THE COURT: Not the personnel, talk to the Sheriff. He is down on the third floor.

MR. WEINGLASS: I would be pleased to go down there if the Court would give me just a few minutes.

THE COURT: Why don't you wait until we finish up what we are going to do today. I am trying to find out where we are going.

MR. WEINGLASS: Well, we have a witness. We have a witness here, I'm told. And the witness will testify.

THE COURT: What witness is that?

MR. WEINGLASS: Who is that?

THE COURT: Pardon? Who is that?

MR. WEINGLASS: Sharon Greely Smith.

MS. FISK: We have no offer of proof with regard to that witness, as I understand it.

THE COURT: They don't know a thing about this. This is what I keep telling you. Give them notice and give them an affidavit or a statement or something so they know what you are going to do. That's what I have been telling you from the very beginning. But you have been ignoring that. So I don't know that you have

Page 39.

anybody to testify today.

MR. WEINGLASS: We do.

THE COURT: Well, give them the information first.

MR. WEINGLASS: They have been given the list.

MS. FISK: We received that five minute ago, Your Honor. And we have not yet received an offer of proof with regard to Sharon Smith, Vernon Jones and C --

THE COURT: All right, I will hold it in abeyance until you get that information.

MR. WEINGLASS: In five minutes we could give them all the information. We will be glad to confer with Counsel. If the Court will give us just a few minutes we can settle this whole thing of their not being prepared. We are all under pressure.

MR. BURNS: I object to that characterization. We got this handwritten list 10 minutes ago and he is saying we weren't prepared for a witness when we don't know who they are or what they are going to say. It is a little silly, a little facile.

MR. WEINGLASS: We got their response

Page 40.

at two o'clock and we were told to proceed the next morning at 9:00. Their response was over 40 pages and we had to be ready to go the next morning. Something which the Pennsylvania Supreme Court found to be egregious.

THE COURT: No, they didn't. They didn't.

MR. WEINGLASS: They stopped this Court.

THE COURT: No, no, no, you keep forgetting what they said. You wanted until August 1st and I wanted you to go on July, I forget the date, but immediately. They cut it in half and they said start on the 26th of July. So we started on the 26th of July, okay.

MR. WEINGLASS: After Your Honor wanted to start on the 18th they said no.

MS. FISK: We have been over this, Your Honor, at least five times in the last two days. May I ask if we could have an offer of proof?

MR. BURNS: On the record.

MS. FISK: For Sharon Smith on the record so we could know whether or not this is a witness that could be proffered.

Page 41.

MR. WEINGLASS: Could we have just the five minutes to make the offers to Counsel directly, to confer with the Sheriff, so that the Reverend Jackson could be admitted and then be on his way?

THE COURT: Well, the thing is he won't be able to see him until we break because he is going to have to go back upstairs.

MR. WEINGLASS: I agree. But we have to get the permission so that the Reverend will stay here for the break. I'm not asking to interrupt the Court's time for that.

THE COURT: Well, it is going to interrupt it because it will take time for him to go back up for the interview, whatever it is going to be. I have no objection to it.

MR. WEINGLASS: It is the lunch hour.

THE COURT: It is not lunch, it is eleven o'clock.

MR. WEINGLASS: No, I mean, okay, at that point.

THE COURT: It is eleven o'clock, you are asking me to break now.

MR. WEINGLASS: Just for a few minutes.

Page 42.

THE COURT: You just want to ask the Sheriff if he could see him in the lunch hour?

MR. WEINGLASS: Yes.

THE COURT: At the lunch hour.

MR. WEINGLASS: Yes.

THE COURT: Okay I we will take a short recess while he calls the Sheriff. Call him on the phone back there if you want. Or if you want to go downstairs and see him it's perfectly all right. But I don't know how you are going to do it in five minutes.

MS. FISK: I assume there is someone who could provide us with the offer of proof during the same period of time.

MR. BURNS: I would like the offer of proof to be on the record because if we have any objection we will just have to put it on all over again when we're done.

(Discussion was held off the record at this time.)

THE COURT: Do you want to use the phone back there.

MR. WEINGLASS: Fine.

THE COURT: Okay, we will take a short recess.

Page 43.

THE COURT OFFICER: This Court will take a short recess.

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(Brief recess.)

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THE COURT: I understand the Sheriff agreed to let him see him?

MR. WEINGLASS: Yes, Your Honor. I've had a conversation with the Sheriff and the Sheriff has agreed to make a room available at twelve o'clock for purposes of having a consultation.

THE COURT: Okay.

MR. WEINGLASS: Thank you, Your Honor.

MS. FISK: Your Honor, with regard to the offer of proof regarding this Ms. Smith: I have been advised that Ms. Smith is being offered to the Court for two purposes. It is being alleged that she apparently is a witness who on the morning of December the 9th, 1981 heard gunshots, looked out a window and saw police officers beating up a black man severely. And this is being offered to show bias in the investigation on the course of the police. I would argue first that this is, this does not

Page 44.

show bias in the investigation. There was evidence proffered at trial by Mr. Jackson through cross-examination as well as through direct witnesses alleging that Mr. Jamal was beaten. This is evidence which was presented to the Jury and that portion of Ms. Smith's testimony presents nothing new that was not presented at time of trial.

In addition, it is being alleged that Ms. Smith would testify that she knows a street vendor who used to hang out in the intersection near where Officer Faulkner was shot. It is alleged by the defense that this is the same street vendor that Mr. Greer the investigator referred to as being the priest whom he knew who hung out at that intersection. And Ms. Smith would testify that said person has been conspicuously absent since this incident. It is alleged by defense that this offer goes to the claim of actual innocence because it is possible, I'm advised, that that person, since he hasn't been there since that might, might in fact be the actual shooter.

With regard to that allegation, first, that is mere supposition and does not come near

Page 45.

to the standard required of the defense at the Post-Conviction Relief Act stage.

Secondly, there has never been any affidavit signed by this woman that has been provided to the Commonwealth.

And third, with regard to both of these claims, there is absolutely no allegation that, A, she was unavailable at time of trial and is after-discovered; or she was available at time of trial and that Mr. Jackson did not have a legal or a rational strategy basis for not calling her. I note that Mr. Jackson was not questioned, as I understand it, with regard to whether or not he knew about this witness and why he failed to call her.

For all those reasons there is currently not sufficient notice and there is absolutely no adequate basis on the record which would permit defense to present this testimony.

THE COURT: Well, I will delay ruling on that pending further research by the defense team. I don't know what, get some affidavit or something in here or do whatever you have to do to fit it within the PCRA statute. At the present time, it's not of any use to the Court.

Page 46.

MR. WILLIAMS: Your Honor, I would then direct Your Honor's attention to exhibit A in our letter submission to the Court: Kyles versus Whitley. And the issue of actual innocence is addressed in the PCRA explicitly. And we invoke that.

THE COURT: Did she sign that affidavit?

MR. WILLIAMS: I'm sorry?

THE COURT: Did she sign that affidavit?

MS. FISK: There is no reference to this witness anywhere in the affidavit so far as I am aware.

MR. WILLIAMS: Precisely, because she is newly discovered and she would testify --

THE COURT: Okay, get something from her. Get something in writing, an affidavit from her. And give it to the District Attorney, a copy of it, and let's see if it applies. So we'll have to just hold up on her for the time being until you do this thing properly.

And I would like to know: I have told you before time and time again, please give me a list of all the witnesses that you intend to

Page 47.

call together with the necessary affidavits attached to them. So that the Court can properly rule on whether they are admissible or not admissible. And the District Attorney is then on notice as to how to be prepared to proceed with cross-examination of these witnesses. If you don't do that, I'm just going to prevent you from presenting these witnesses.

I have told you that in the very beginning and I've asked you that time and time again. But I don't seem to be getting anywhere with you, so. I will have to take that position.

We still have the question of the stay of execution here. And today is August 7th. The execution date is August 17th. It's getting rather close. And at the rate we're going I don't see when, I don't even know when we're going to finish. And then from here it is an automatic appeal to the Pennsylvania Supreme Court. I am sure they are not going to be able to resolve that issue before August the 17th. And from there you are going into Federal Court. And I'm sure no one along that line is going to be able to make all of these decisions before

Page 48.

August the 17th of 1995.

Based on that reason alone, because this is his first PCRA Petition, as I understand it, he is legally permitted to argue that one all the way up to the highest Court in the land, including the United States Supreme Court. And I can't see that happening before August the 17th of 1995, and for that reason and that reason alone, I will grant your stay of execution.

Calm down, don't be too happy because that's only for this one. And that's, as I said to you, solely because this is his first PCRA Petition. And he has an absolute right to be heard by the highest Court in the country. That's the United States Supreme Court. And that can't possibly be done by August the 17th. And that reason and that reason alone is the only reason why I'm granting the stay at this time.

Is there anything else that we have to take up at this time?

MS. WOLKENSTEIN: Your Honor, there is one other matter which is outstanding. We had requested getting copies of the photographs that

Page 49.

were Exhibits. And we've tried, we have done all the things requested by the District Attorney's Office. We've gone to Room 685. The Quarter Sessions Clerk. They have told us that they do not have the photos there. They have told us again to go to either the Police Evidence Room, where we've already been told the photos are not, or in fact they've sent us back to the District Attorney's Office.

I request the Court to request that the District Attorney search their files, find the proofs that I was already informed that they had in their possession. We would gladly pay the cost for the reprinting of those photographs.

THE COURT: What photos are you talking about?

MS. WOLKENSTEIN: These are photos of the scene taken sometime shortly after the event.

THE COURT: Wait awhile. Your own photographer took photos of the scene.

MR. WEINGLASS: Your Honor, it is changed --

THE COURT: No, I am talking about the

Page 50.

investigator Mr. Greer.

MS. WOLKENSTEIN: Mr. Greer did not take photographs, to my understanding.

THE COURT: He had a photographer. He submitted a bill to the Court which was paid.

MS. WOLKENSTEIN: Your Honor, we do not have them.

THE COURT: Counselor, the defense's own photographer took pictures. Why don't you go to him and ask him to give you copies.

MS. WOLKENSTEIN: Your Honor, we have. Mr. Jackson does not have them. The appellate Counsel does not have them. Mr. Greer does not have them.

THE COURT: You know who the photographer was, don't you?

MS. WOLKENSTEIN: There are photographs --

THE COURT: Counselor, do you know who the photographer was?

MS. WOLKENSTEIN: Your Honor, there were photographs.

THE COURT: Counselor, answer my question, will you.

MS. WOLKENSTEIN: Yes, we know, Your

Page 51.

Honor.

THE COURT: All right, go to that photographer and ask him if he has copies. Please.

MS. WOLKENSTEIN: Your Honor, they were Commonwealth Exhibits. They were photographs, I believe, taken by the Commonwealth --

THE COURT: Well, this is part --

MS. WOLKENSTEIN: -- that night. That night. We want the Commonwealth Exhibits. We have no access to them absent the District Attorney's Office.

THE COURT: I don't know where they are. You say they were admitted into evidence?

MS. WOLKENSTEIN: Yes, they were.

THE COURT: Well, they should have been with the Clerk of Quarter Sessions, they should have been with the files.

MS. WOLKENSTEIN: But they are not, Your Honor, and we have --

THE COURT: Well, I can't help that, and I can't help you. I can't create photos for you. Go to the Clerk of Quarter Sessions and ask them what they did with the photos.

Page 52.

MS. WOLKENSTEIN: Your Honor, we have. We've also been told, I was informed by the Detective Welsh about a week and a half ago that there were proofs that the District Attorney's Office had. I ask for the District Attorney's Office to be requested to print those proofs so we can have a copy of what were Commonwealth Exhibits during the trial.

THE COURT: Okay. All right, I heard enough from you. What's your answer to that?

MR. BURNS: Your Honor, we will refer the defense to the Supreme Court's order of several weeks ago denying discovery.

THE COURT: Oh, they denied that? They denied the discovery.

MR. BURNS: They affirmed your ruling in denying discovery.

THE COURT: Okay, that's.

MS. WOLKENSTEIN: These are part --

THE COURT: Counselor, that is it. If the Supreme Court of Pennsylvania has denied your discovery motion then that's it.

MS. WOLKENSTEIN: Your Honor, your file is absent exhibits.

Page 53.

THE COURT: Counselor, Counselor, if the Pennsylvania Supreme Court already ruled on it, go back up to the Supreme Court if that's where you want to go. But as far as I'm concerned, they've ruled on it and that's it. I am not fighting with the Pennsylvania Supreme Court. I'm only a little Judge here in Philadelphia, I'm not a Supreme Court Justice.

MS. WOLKENSTEIN: This isn't discovery, this is to get a copy of what is supposed to be a part of the Court record.

THE COURT: Tell the Supreme Court it is not discovery. As far as I am concerned it is discovery.

MS. WOLKENSTEIN: These are missing Exhibits from the Court file.

THE COURT: Argue that when you get back up to the Supreme Court.

MS. FISK: Your Honor, on the list of proffered witnesses for today also included is Paul Hoyer, who is the Medical Examiner in this matter, and Vernon Jones.

THE COURT: Is that what that says? I can't even read his writing.

MS. FISK: That's my best guess, Your

Page 54.

Honor.

THE COURT: Would you please either print or have it typed. I can't read this.

MS. FISK: And there is also a Vernon Jones, who I am assuming is the Vernon Jones who was a police officer who was on Locust Street the morning of Officer Faulkner's death. I would ask with regard to each of those witnesses that the Commonwealth be provided with a written offer of proof and an affidavit.

THE COURT: Well, I told them that if they don't give it to you I won't let him testify. I told them that in the very beginning. I keep telling them time and time again but they don't listen. I guess the only way to make them listen is to say I won't let them testify.

All right, is there anything else? Because I want to break for lunch in order to give him an opportunity to see...

MR. WEINGLASS: Thank you, Your Honor. We would appreciate that.

MS. FISK: Your Honor, is there anything that's being offered this

afternoon?

THE COURT: I don't know, I will come

Page 55.

back and see if they have anything to offer by then.

MS. FISK: My understanding, Your Honor, is that we have not -- I made a response with regard to Sharon Smith. We object to her being called based on the current state of the record.

We have not received any offer of proof with regard to Vernon Jones and Paul Hoyer. I understand that the Court has already made it's rulings barring Dr. Lambert or Mr. Churchill and the FBI documents from testifying. Those appear to be all the proffered witnesses that the defense has on this day.

THE COURT: Well, maybe they don't have anymore witnesses, I don't know.

MR. WEINGLASS: May we have the break for lunch and we will inform the Court immediately after lunch?

THE COURT: All right. Okay.

MR. WEINGLASS: Thank you.

THE COURT: Recess for lunch until one o'clock.

MS. FISK: Yes, sir.

Page 56.

MR. WEINGLASS: That's fine. Thank you.

THE COURT OFFICER: Court will take a luncheon recess until 1:OO p.m.

- - - - -

(Luncheon recess was held from 11:15 a.m. to 1:30 p.m.)

- - - - -

THE COURT: Good afternoon.

MS. FISK: Your Honor, I have an application to make with the Court.

THE COURT: Well, before the Court takes any applications: I understand that there is some misunderstanding about my order this morning. So for the benefit of everyone that's here, including the news media, I will read you my order as I signed it. If anyone wants a copy of this order, we will be glad to give it to them.

The order reads as follows. And now to wit, this 7th day of August, 1995, it is hereby ordered and decreed that the Petitioner's motion to stay his execution scheduled for August 17th, 1995 is hereby granted. While this Court's order is not an expression of an opinion

Page 57.

on the merits of Defendant's motion for Post-Conviction Relief, the law dictates that this Court grant the Defendant ample time to have these proceedings reviewed by the highest Court of this Commonwealth, and the highest Court of the United States. Therefore, since further appellate review is certain, the necessity of this order is obvious. By the Court, Albert F. Sabo.

The Court will make this a part of the original records. And if any news media wants a copy of this order I will be glad to give it to them. I think we have given copies to the Commonwealth and the defense.

Now, what is your position?

MS. FISK: Your Honor, I have an application and it is with regard to the right of the defense to file subpoenas and subpoenas duces tecum on witnesses in this matter. It has been previously raised by the Commonwealth in this case that there is a process which it appeared to the Commonwealth was being abused by the defense, and I have another instance of just that abuse of subpoena power.

We received a telephone call, it was

Page 58.

received in the District Attorney's Office this morning while we were in Court. It was a telephone call from a Mr. Al Giordano. Mr. Giordano was a police officer in 1981, was a lieutenant who arrived on the scene where Mr. Jamal was in custody in the police wagon before being taken to Jefferson Hospital. Mr. Giordano in fact as a lieutenant heard a confession from Mr. Jamal on the night of the incident which was recorded and that at a motion to suppress prior to trial this Court ruled that that statement of the Defendant would be utilized at time of trial. Nevertheless, Officer Giordano, Lieutenant Giordano was not called at trial. Mr. Giordano is no longer on the police force. He is a businessman, he owns his own small business.

He advised me when I spoke to him at lunch this afternoon that at 10:55 this morning a man walked into his small establishment, handed him a subpoena for 9:00 a.m. this morning, and advised him to be in this Courtroom at two o'clock this afternoon as a defense witness in this matter.

I advised Mr. Giordano simply to call

Page 59.

the Courtroom because he was not on the list of witnesses being proffered for today by the defense, which list was received by the Commonwealth at 10:15 this morning.

This is just another example of the abuse the defense is making of their subpoena powers. The fact that at 10:55 they feel that they are permitted to serve someone with a subpoena for 9:00 a.m., tell them to show up, and it has already been conceded in this Courtroom by the defense that he is not a witness in the case, certainly not a witness for today, was not on the list for today. And I would note that as far as Lieutenant Giordano's statement, there is no affidavit from Officer Giordano, no averment of a recantation, and absolutely no mention in either the original Petition or the Amended Petition regarding Mr. Giordano's testimony and the effect if any that it would have on this proceeding.

For all of those reasons I would ask that at this moment the Court advise the defense that they are no longer permitted to issue subpoenas upon individuals unless they have express permission by this Court.

Page 60.

THE COURT: I thought I said that on Friday.

MS. FISK: Unless this Court gave them permission to subpoena Mr. Giordano --

THE COURT: I didn't give them permission at all.

MS. FISK: -- apparently, that is not being abided.

THE COURT: I told them on Friday I didn't want them to abuse the process any further. That they would have to first give me a list of everybody that they wish to call, and an affidavit from that person as to what he would say. Or why it's material in these proceedings. Evidently they are not doing it. So any subpoena that they issued for him is quashed.

And it will be quashed for any other witness unless you follow the procedure that I told you to follow initially. If you don't do that I am just going to quash them all.

Now if you want to go see the Supreme Court about that one, go ahead. If they want to listen to you, that's their prerogative.

MR. WEINGLASS: Is the Court

Page 61.

indicating it is going to quash all of our subpoenas?

THE COURT: I am going to quash them unless you follow my orders. I want from you, and I told you, I want a list of the witnesses you're going to call. And attach affidavits to those so that the Commonwealth will know what you are going to do, so the Court will know what you are going to do.

MR. WEINGLASS: The local rule requires 30 days and we indicated that to the Court in the beginning of this proceeding.

THE COURT: It is not required 30 days now for a subpoena. We are now in the process of calling witnesses. I told you I want a list from you of what witnesses you intend to call. For instance, give us a list, what witnesses you hope to call tomorrow. And attach affidavits to that so that everybody knows what those witnesses are going to testify to. And to see whether or not it's relevant so that the Court can make a logical and correct decision. But you're not doing that. You're just going ahead and doing whatever you are pleased to do. And I said to you then that I would quash any such

Page 62.

subpoenas. And that's what I am doing with this one that you just filed. I don't know if the witness is here or not but if he is not it's quashed. Follow the directives of the Court. If you don't do that, I'm not going to let you call these witnesses.

MR. WEINGLASS: I think the record --

THE COURT: Yes.

MR. WEINGLASS: The record should show we did talk to Officer Giordano over lunch as well.

THE COURT: You may have talked to him. But you have not filed in advance with this Court the witnesses that you hope to call. Now I'm asking you give us a list of the witnesses that you hope to call tomorrow. Attach to that list the affidavits as to what they are going to testify and why it's relevant to the proceedings we're now going through: The Post-Conviction Hearing Relief Act. That's what I am asking you to do.

MR. WEINGLASS: We can't do that under the time constraints that have been imposed upon --

THE COURT: You don't have any time

Page 63.

constraints. You haven't been doing anything all day. We have been sitting around doing nothing. You said at the very beginning of this case you had a lot of witnesses. Well, where are they?

MR. WEINGLASS: Your Honor denied us --

THE COURT: As I told you in the beginning, I want a list.

MR. WEINGLASS: You denied us our two witnesses this morning.

THE COURT: What two witnesses? You never told me on Friday which one you were going to call. You never attached to it any affidavit as to what they are going to say.

MR. WEINGLASS: Well, we informed the Court by writing today of our list of witnesses.

THE COURT: You don't --

MR. WEINGLASS: And the Court has quashed them.

THE COURT: What witness have you given me today? This little piece of paper here?

MR. WEINGLASS: Yes, it is a list of the witnesses.

Page 64.

THE COURT: No, I want a list of the people that you are going to call in the future, including tomorrow. And attach to it an affidavit as to each one. So I know exactly what that witness is going to say.

MR. WEINGLASS: The problem --

THE COURT: The reason you are bringing them. So in case the Commonwealth has any objections to it they could raise the objection and then I could make a ruling. And you have an automatic exception and you take it up with the Supreme Court when this matter gets up there.

MR. WEINGLASS: The problem we ran into was on Thursday morning the Court quashed 11 witnesses and we have been trying --

THE COURT: Right. I cautioned you. You didn't do exactly what I told you to do.

MR. WEINGLASS: We gave you their names and we gave you what they would testify about.

THE COURT: If I quashed it it was because of legal reasons. And I told you then you have an exception to that. You don't have to even ask for it. You have an automatic

Page 65.

exception to any ruling I make. And you could take it on appeal to the Supreme Court. If the Supreme Court feels that this Court should hear those witnesses, they'll send the matter back down to me to hear them.

But at this moment I have ruled that they are, the subpoenas are quashed, okay. All right.

MR. WEINGLASS: I am not rearguing those quashes.

THE COURT: All right, because all you are doing is wasting a lot of my time. Why don't you for tomorrow, we don't have anything for today as I could see it here. Why don't you for tomorrow give us a list of who you hope to call tomorrow. Attach affidavits to it so that the D.A. could look it over. And if they are going to object for any reason to the legality of those proceedings, let them do it. And then I will make a ruling on it.

MR. WEINGLASS: Your Honor, I do have an affidavit for the Court. I hand it up to the Court.

THE COURT: Well, give the defense --

MR. WEINGLASS: I have given the D.A.

Page 66.

a copy.

THE COURT: Oh, all right.

MR. WEINGLASS: This is Dr. Charles Honts.

Would you please stand.

This is an affidavit of Dr. Charles Honts. Dr. Honts is a professor at Boise State University in Idaho. He is a Ph.D psychologist and he is a member of the faculty. And he's here to testify about the polygraph test that was administered to Dessie Hightower, where the Commonwealth contends that Dessie Hightower failed that test. Dr. Honts is here to examine the test results and to offer expert testimony to the Court on whether or not Mr. Hightower in fact failed or passed that test.

We feel this is very important evidence. And we've brought Dr. Honts here, he flew in today. He's not on our witness list for today because he got here at approximately ten o'clock this morning. But he's here nonetheless. The Commonwealth has the test results and we would like the Commonwealth to provide the graph results to Dr. Honts so that he could make an analysis of the graft results

Page 67.

and then before the Court as to whether or not Dessie Hightower passed that polygraph exam.

MS. FISK: Your Honor, this was the basis of my second application before the Court this afternoon. I would note first that Dr. Honts' affidavit, which apparently was signed yesterday, was handed to the Commonwealth about four-and-a-half minutes ago. And attached to his affidavit is a 24-page curriculum vitae of the doctor's which we have never been given an opportunity to review.

I would note as well that the affidavit of the doctor which has been given is that the doctor at this point is unable to render an opinion as to the result of Mr. Hightower's polygraph examination for stated reasons, so at this point his testimony is irrelevant. First.

Second, the Commonwealth does not have possession of the polygraph results. As the Court and Counsel reflects, they have been marked and entered into evidence, they are part of the Court file.

Third, it was raised last week: Whether or not Dessie Hightower passed the

Page 68.

polygraph examination or did not pass the polygraph examination is not the issue before this Court. The issue before this Court is whether or not Dessie Hightower was told he passed the polygraph examination or whether or not whether he was told he did not pass the polygraph examination. And there is no scientific test which any expert can conduct which could bring us any closer to that determination. The sole determination with that is a credibility determination for this Court to make between the testimony of Mr. Hightower and Lieutenant Sterling, the two parties who had the conversation, Mr. Hightower saying that he was told he passed, and Lieutenant Sterling saying he told him a deception was indicated.

For all those reasons the Commonwealth on Friday addressed the Court and argued that a polygraph expert cannot in this case come in and tell us whether or not Dessie Hightower passed that polygraph exam. That is not relevant to any of the issues currently before this Court as raised by the defense at this stage.

THE COURT: I thought that's what I said on Friday.

Page 69.

MR. WEINGLASS: The argument on Friday, as I recall it, Your Honor, was that we asked for the polygraph results to be given to us so that we could send them to Dr. Honts.

THE COURT: I know that, but the issue --

MR. WEINGLASS: Right.

THE COURT: -- before the Court was not whether he passed or flunked that, because I don't see the relevancy in the PCRA Petition, but whether or not he was told. That was the issue. That was the issue why you brought Hightower in here in the first place. He alleged that he was not told that he flunked the test but rather was told that he passed it. And that was the only issue why Hightower was here.

And then the Commonwealth in reply to that brought in the lieutenant solely for the purpose of saying that he did tell him that. And that's the only issue here. The Court is not concerned with whether he passed or flunked it. Because Hightower took the stand during the course of the trial. He testified. And he was cross-examined by the Commonwealth. And nothing came up about a polygraph, and rightfully so.

Page 70.

MR. WEINGLASS: It was hidden by the polygraph unit.

THE COURT: It doesn't make any difference, it did not come up during the course of the trial.

MR. WEINGLASS: They didn't tell his lawyer about it.

THE COURT: The Jury never had that. And even if the Jury knew about it, if anybody tried to introduce it I would have denied permission to introduce the results of a polygraph test. Because that's the law here in Pennsylvania so far. Unless the Pennsylvania Supreme Court is going to change the law on that subject.

Now, I have said enough about it. The subpoena is quashed. I'm not going to allow him to testify as to that. And you have an automatic exception, you could take that up with the Supreme Court. If the Supreme Court says I'm wrong they'll send it back down again to hear his testimony.

MR. WEINGLASS: Your Honor, this witness, Dr. Honts, is not subpoenaed.

THE COURT: Well, whatever he is --

Page 71.

MR. WEINGLASS: The Court on Friday, I asked to be able to take out the results of the polygraph test and the Court said to me bring your expert here.

THE COURT: No, the D.A. said to you when he was brought here properly and you offered him to testify he will then make his objections noted. But I understood that he was going to be solely on the grounds, as I have just already said, as the District Attorney has said here. And that's the only reason why I'm denying him the right to take the stand.

You have an exception, Counselor. The Supreme Court will review it. If they think I'm wrong they will send it back down and then we will have it.

MR. WEINGLASS: If the Court permits, since it's been marked in evidence, Dr. Honts to take the graph of the polygraph into a room and examine the graph?

THE COURT: No, for the simple reason that I am not going to hear any evidence as to what was on that polygraph test. That's not the issue here. I don't care whether somebody said he passed it or flunked it. That's not the

Page 72.

issue. The issue is whether or not he was told a certain thing by the officers, okay. And the officer denied that he said anything like that.

MR. WEINGLASS: Right.

THE COURT: Hightower said the other thing. I don't need, I don't need a polygraph operator to tell me how to resolve that issue.

I've ruled, Counselor. You have an exception. Please don't argue anymore with me about it. Give me a list for tomorrow, will you. So we could see where we are going to go tomorrow.

MR. WEINGLASS: Will the Court just give me a moment to release Dr. Honts?

THE COURT: Okay.

MR. WEINGLASS: He's come here, he's flown here.

THE COURT: Okay.

MR. WEINGLASS: He arrived this morning.

THE COURT: Okay.

(Pause.)

MR. WEINGLASS: Just so that's clear: The affidavit of Dr. Honts and his curriculum vitae, I assume, are now part of the record.

Page 73.

MS. FISK: I would object to that, Your Honor.

THE COURT: Well, it is not part of the record.

MS. FISK: This conversation is a part of the record.

THE COURT: This conversation is part of the record, yes. But --

MR. WEINGLASS: Well, then may we have his affidavit marked as the next exhibit for the defense?

THE COURT: Well, if you want to mark it for identification purposes, all right. But it is not being admitted as evidence.

MR. WEINGLASS: All right. May we have the Court's copy?

THE COURT: You mean you don't have a copy for them?

MS. WOLKENSTEIN: There are two copies, Your Honor.

THE COURT: There are two copies here?

MS. WOLKENSTEIN: Yes.

THE COURT: I guess, yes, that looks like there's two copies.

(Affidavit and c-v. was marked Defense Exhibit D-25 for identification.)

Page 74.

MS. WOLKENSTEIN: Your Honor, before we proceed: I submitted to the Court and to the District Attorney's Office my affirmation as requested this morning. Under penalty of perjury I state the following. On August 3rd, 1995, I interviewed William Harmon, CK2563 at S.C.I. Mercer. During that interview Mr. Harmon told me, one, that he was present at 13th and Locust Streets at approximately 3:50 a.m. on December 9th, 1981. Two, that he witnessed the shooting of Mr. Jamal by Police Officer Faulkner. Three, that another black male shot the police officer. And four, that Mr. Jamal did not shoot the police officer. Dated that today, signed it.

Your Honor, that's our submission for the habeas corpus testificandum.

THE COURT: Where is that writ? Where is the Clerk of Court?

MS. WOLKENSTEIN: I have another copy.

THE COURT: No, no, no, I have one up here. I had it up here.

MS. FURIA: We don't have a copy.

THE COURT: All right, get another

Page 75.

copy and she will prepare a writ on that. Give it to the Clerk of Court.

Give it to the Clerk of Court, she'll make a writ from that.

Where is he now?

MS. WOLKENSTEIN: Mercer, Your Honor, Mercer.

THE COURT: Mercer County. And he will be here on Thursday.

MS. FISK: Your Honor, I would note that the Amended Petition filed by defense this morning includes as well as Mr. Harmon an averment to additional newly-discovered evidence which includes allegations of statements made by Ms. Sharon Smith, the woman whose offer of proof was made to the Commonwealth this morning. We would ask in compliance with Post-Conviction Relief Act requirements that we be provided with a signed and sworn affidavit by Ms. Smith.

THE COURT: I told them that. How many times am I going to tell them. I am only going to tell them once. This is it. I mean this is the last time I am going to tell them. If they don't give it to you, just let me know and I will quash the subpoena or anything else

Page 76.

that has to be done. I am tired of saying the same thing over and over again.

MR. WEINGLASS: The rule that Counsel cites is the rule we asked the Court to abide by and the Court said that rule doesn't apply to this Court.

THE COURT: No, that rule does apply. As for giving the affidavits, it does apply.

MR. WEINGLASS: Then we have to have a 30-days continuance.

THE COURT: They are not asking for a 30-day continuance to answer it. Just give it to them. If they want 30 days they will ask me for 30 days.

MR. WEINGLASS: We are asking for the time that is needed to prepare --

THE COURT: No, no, no.

MR. WEINGLASS: -- the affidavits of witnesses.

THE COURT: No, you have to do that before. You do that first. They have 30 days to respond. But if they don't ask for the 30 days, I'm not going to give them 30 days.

MR. WEINGLASS: Right.

THE COURT: But it's up to them to ask

Page 77.

for it.

MR. WEINGLASS: We have to be given the time to prepare the affidavits.

THE COURT: What time? How long does it take you to prepare an affidavit for somebody to sign it? You did it on all those other 19 issues that you have raised.

Counselor, I am not going to sit here and argue with you anymore. This is getting a little too much. Please follow my orders. Attach an affidavit to the witness you're going to call, serve it on the Commonwealth. If the Commonwealth needs time to answer that, they will ask for time. If they don't ask for time I'm not giving them time, okay.

MR. WEINGLASS: Well, this is a --

THE COURT: But that's not for you to ask for time for the Commonwealth.

MR. WEINGLASS: The affidavit rule being imposed on us is a new rule.

THE COURT: No, it is not a new rule. Counselor, please. The Supreme Court has said start this matter July 26th. It's now August 7th. We're not going to be delaying anymore. Give them whoever you want to call. Whoever you

Page 78.

want to call, give it to them and attach the affidavit to it. Please.

MR. WEINGLASS: From July 26th to today, we have over 30 witnesses. The Court has quashed approximately 20.

THE COURT: Don't worry about what I quashed. Worry about the ones you still want to call. Give them notice on that and the affidavit. And they'll, if they need time to answer they'll ask for it. I am not saying I am going to grant them time, but they'll have to ask for it, not you.

MR. WEINGLASS: Well, we're asking for time.

THE COURT: I am not giving anybody time. I may not even give the Commonwealth any time. But this is what you'll have to do. Look, we are not going to be here until Christmas, Counselor.

MS. FISK: Your Honor, I understand further that based on Ms. Wolkenstein's allegation this morning that the photographs were missing from the Quarter Sessions file that in fact a check was made by Your Honor's clerk and in fact they are in the PCRA unit, where

Page 79.

they have always been and they were available. They have been obtained by your clerk. I understand that your clerk is available to provide testimony if that is needed but that she was able to find them at the luncheon recess where she had seen them some two-and-a-half or three weeks ago. And apparently those are available.

THE COURT: Do you want to put on the record whatever you did, Gina, please. Do you want her to take the stand? I don't care. Either.

MS. FISK: I wasn't calling her as a witness, Your Honor, but fine.

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Gina Furia, Esquire, having been duly sworn, was examined and testified as follows:

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BY MS. FISK:

Q. Would you please explain for the record whether you have in fact found the photographs that were introduced at trial and if so where you have located them?

A. The photographs called Commonwealth versus Mumia Abu-Jamal a/k/a Wesley Cook, were found

Page 80.

upstairs in Room 788, the PCRA unit, where they have been for the last three weeks at least. I saw them there when I reviewed the file several weeks ago. I brought this to the attention of Detective Walsh. I told him to please tell the Defendant's, or the defense team to look in 788, in order not to get involved with either side of the case. I was informed in Court he did tell them to look in 788.

I spoke with Miss Wolkenstein during our break and indicated that she should probably look in 788. She told me she did. I went up at lunch and the pictures were there.

MS. WOLKENSTEIN: Do you want my testimony now, Your Honor? I don't think it's necessary. I just want to indicate thank you very much for finding them. What we need to do is get copies of them made. We will do whatever is necessary to secure copies of them, as opposed to simply Xeroxes, which are absolutely unusable.

MS. FISK: Your Honor, this evidence, as with all the others, will be placed into the custody of Detective Walsh who has been acting as liaison with regard to defense access to all --

Page 81.

MS. WOLKENSTEIN: Why weren't they in the custody of Detective Walsh when I went to the evidence room when I wanted to see them? You can't have it both ways.

THE COURT: You should have taken the advice of my law clerk when she told you where to go.

MS. WOLKENSTEIN: No, she didn't, Your Honor.

THE COURT: You did? As a matter of fact, what did she say to you when you told them?

THE WITNESS: That somebody had gone to look for them but they were not there.

THE COURT: Okay.

MS. WOLKENSTEIN: I was told by Detective Walsh that they were not findable and that there was proofs. That is the last conversation I had with Detective Walsh except for him telling me to talk to the District Attorney's Office. Now, we could each get sworn on this. I don't really think this is necessary.

THE COURT: I don't think it is necessary either.

Page 82.

MS. WOLKENSTEIN: Right.

THE COURT: My law clerk was able to get them for you. We will turn them over to Detective Walsh. They will be in his custody. And make arrangements to see them or do whatever you want with them.

MS. WOLKENSTEIN: I would like copies of them.

THE COURT: Detective Walsh will make copies for you. I don't know, I assume.

MS. WOLKENSTEIN: Thank you very much, Detective Walsh.

Is there any objection to copies being made from the District

Attorney's Office or from Detective Walsh?

THE COURT: I don't care who makes copies of them, to tell you the truth. They are here, we found them for you. Give them to the detective, they will be in his custody. Because I have to have somebody who is going to be responsible for all this evidence.

MS. WOLKENSTEIN: Okay, I trust the Court has no objection to copies being made.

THE COURT: No, you could go, you could get your copier, in his preference you

Page 83.

could make copies.

MS. WOLKENSTEIN: I need copies, Xeroxes of the photographs just simply done --

THE COURT: Well, I don't know if he could make copies of that. You talk to him about it. I'm not here to do these things. I gave it to him. Get in touch with him and see if you could work out whatever you have to work out, okay.

Anything else we have to take of outside of that? I don't see anything else.

How about the list of the names for tomorrow, do you have any?

MR. WEINGLASS: We will provide that.

THE COURT: When, tomorrow morning?

MR. WEINGLASS: They will be provided tomorrow morning.

THE COURT: No, that's too late. That's what I am trying to tell you. Do it now.

MR. WEINGLASS: Your Honor, today we had Dr. Lambert, Ward Churchill, Dr. Honts, Sharon Smith. They have all been eliminated.

THE COURT: Yes, because you didn't follow my instructions to let us know in advance who you're calling.

Page 84.

MR. WEINGLASS: Well, we did.

THE COURT: No, you didn't, Counselor. Don't tell me you did. You didn't.

MR. WEINGLASS: Ward Churchill was on that last list for three days. He was on the list for Thursday. He was on the list for Friday.

THE COURT: When did you hand this to the D.A.'s Office? Just a while ago.

MS. WOLKENSTEIN: Wednesday.

MR. WEINGLASS: Wednesday.

MS. WOLKENSTEIN: Those names were on Wednesday.

THE COURT: I am talking about the affidavit.

MS. WOLKENSTEIN: Along with offers of proof. Very similar to the District Attorney's Office.

THE COURT: So she could now argue whether or not this is a permissible witness. That's why I am telling you to do it in advance. You are going to wait until tomorrow morning. I could see we are not going to do much tomorrow either. You should do that today. File it today so that she knows. When she comes in

Page 85.

tomorrow morning she could argue whatever she wants. Or be prepared to cross-examine whatever witness the Court allows you to present. I don't know what their position is. So give her the list today. And attach the affidavits or whatever you have to attach to it. Will you get it to her today?

MR. WEINGLASS: We'll do our best.

THE COURT: Okay.

MS. FISK: Your Honor, it might be, in light of the fact that Mr. Harmon is not going to be available until Thursday, and we have not received what we consider to be timely notice of any additional witnesses, that a recess might be in order for a day.

THE COURT: You mean until when? Today is Monday.

MS. FISK: Perhaps until Thursday, or until Wednesday if we could be given a list tomorrow for witnesses being proffered for Wednesday.

MR. WEINGLASS: It's possible. Also, we are getting the transcript of the pre-trial hearing of March 18th on Wednesday. That will be of assistance to us.

Page 86.

THE COURT: Well, we will adjourn, then, until tomorrow to wait for the list. And then see who is going to testify on Wednesday. Because you know the other one will be available on Thursday.

But where is that writ for him? Is this it?

THE COURT CLERK: I have it.

THE COURT: You prepared a writ?

THE COURT CLERK: I have two.

MR. BURNS: I understand, Your Honor, that we will receive a list of witnesses tomorrow for Wednesday?

THE COURT: Tomorrow, as I understand it, because he doesn't have it today, so.

MR. BURNS: Tomorrow morning specifically, Your Honor?

(Pause.)

THE COURT: We're going to need a commit for this witness for Graterford.

THE COURT CLERK: We do get the commit, you don't have to sign that.

THE COURT: And a bringup.

THE COURT CLERK: Yes.

THE COURT: It's not necessary for

Page 87.

civilian clothes but if he's got them it's all right. If he doesn't it's okay too. I don't care, there is no jury here.

All right, then we will adjourn until tomorrow. Have your list prepared, please, so that she can argue.

MR. WEINGLASS: I thought Counsel had asked that we adjourn tomorrow and meet on Wednesday.

THE COURT: No, we adjourn until tomorrow so that you could give them the list and we decide which ones are to be called on Wednesday. And which ones you are going to call -- well, Thursday we are going to allocate, I guess, to Mr. Harmon.

MR. BURNS: May it please the Court: It is probably not necessary for us to gather here tomorrow just for defense Counsel to present us with a list. I think it would be satisfactory, if it please the Court, for the defense to convey the list to us out of Court. As long as it arrives in the morning. And that we reconvene on Wednesday.

THE COURT: What time do you want the list?

Page 88.

MR. BURNS: I think 10:00 a.m. would be fine.

THE COURT: Could you have the list to them tomorrow morning by 10:00 a.m?

MR. WEINGLASS: We will have the list by 10:00 a.m.

THE COURT: Okay, then we will adjourn until Wednesday.

MR. BURNS: Yes, Your Honor.

THE COURT: Okay.

MR. BURNS: Thank you, Your Honor.

THE COURT: We will adjourn until Wednesday.

THE COURT OFFICER: This Court is recessed until Wednesday.

- - - - -

(The hearing was adjourned for the day at 2:00 p.m.)

- - - - -

Page 89.

I hereby certify that the proceedings and evidence are contained fully and a 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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

9. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358

- - - - -

PCRA Hearing

- - - - -

Thursday, August 9, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- LINDA PERKINS, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Arnold Howard	4	24	104	--
Sharon Smith	112	119	129, 133	132
Paul Hoyer, M.D.	135	190	196, 200, 201	199, 200

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
26	Medical Examiner's Report	138
26	Re-marked Medical Examiner's Report	143

COMMONWEALTH'S EXHIBITS

NO.	DESCRIPTION	PAGE
16	Interview record (A. Howard)	63
17	Logbook excerpt	95

Page 3.

- - - - - -

(At 10:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - - -

THE COURT: Before we begin I just want to make a comment. I see Mr. Weinglass has scooped the news media once again: He's telling them why I issued the stay. I did not issue the stay because Jesse Jackson had anything to do with it. Nor did I issue the stay because of any national or international pressure. I did it because the law required it to be done. Or dictated that should be done. And that's the reason. It was part of my order.

I told you at the very beginning, Mr. Weinglass, that this little old Judge in this little old Courtroom will not buckle under any kind of pressure, whether it be national or international. And I repeat that once again for your benefit.

All right, we will proceed. I see you have a list here of witnesses. Which one is first?

Page 4.

Arnold Howard - Direct

MR. WEINGLASS: Defense calls Arnold Howard.

- - - - -

Arnold Howard, having been duly sworn,
was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Mr. Howard.

A. Good morning, Mr. Weinglass.

Q. Mr. Howard, have you and I spoken before?

A. Yes.

Q. Do you recall when was the first time we talked?

A. Umm, Monday.

Q. This past Monday?

A. Yes.

Q. That was the first time in person; is that correct?

A. Yes, sir.

Q. First time you met me?

A. yes, sir.

Q. Prior to that time did we have occasion to talk on the telephone?

Page 5.

Arnold Howard - Direct

A. Yes. Just once.

Q. And was that call initiated by you or by me?

A. By the both of us.

Q. I see. But did you call me or did I call you? If you can recall.

A. No, you called my mother and she got in contact with me and I called you back.

Q. And do you recall how long ago that was?

A. Friday, I think it was.

Q. Now, do you know Mr. Jamal, the Petitioner in these proceedings?

A. Yes, I do.

Q. And how long have you known Mr. Jamal?

A. All my life. We grew up together in the same neighborhood.

Q. And in 1982 did you know Mr. Jamal?

A. Yes, I did.

Q. Now directing your attention to the day of December 9th, 1981, what do you recall if anything of an unusual occurrence happened to you on that day?

A. Yes, I was taken down to, umm, Homicide.

Q. And when you say you were taken down, were you accompanied by officers?

A. Yes, I was.

Q. Were you arrested?

Page 6.

A. No.

Q. And what occasioned, did they indicate to you why they asked to you come down to Homicide?

A. Yes, they had came to my home and said my license was found in Officer Faulkner's hand.

Q. In Officer Faulkner's hand? And it was your license?

A. Yes, they were.

Q. And did you go to Homicide that day?

A. I had no choice.

Q. Why do you say that?

A. They came and got me.

Q. How many of them were there?

A. About five of them.

Q. Were they in uniform or out of uniform?

A. Cars outside in uniform and a couple detectives came to my home.

Q. Do you recall what time of day it was on December 9th that they came to your home?

A. No, I can't remember, that's too far back.

Q. Was it in the afternoon?

A. No, it was in the evening, at night. Before daybreak.

Q. Before daybreak. So would that be the early morning hours?

Page 7.

A. Yes, sir, the early morning hours.

Q. And how long did you remain at Homicide?

A. It was the thing that they were shifting me around for about 72 hours.

Q. 72 hours?

A. Yes.

Q. Were you then released?

A. Yes, I was.

Q. Now, when you were at Homicide were you questioned?

A. Yes, I was.

Q. And where you asked to sign a statement?

A. Yes, I was.

Q. And were any tests performed on you while you were there?

A. Yes.

Q. Could you describe the test?

A. They looked at my hands and put some kind of powder on my hands.

Q. They put powder on your hand?

A. Right.

Q. And when you say they looked at it, could you describe what they did?

A. They was checking my hands for to see if I fired a gun or something of --

Page 8.

MS. FISK: Objection, Your Honor, as to why.

THE COURT: Yes, that part will be stricken.

BY MR. WEINGLASS:

Q. Did the officers tell you why they were checking your hands?

MS. FISK: Objection, Your Honor. I will withdraw that objection.

THE WITNESS: Yes, they said by my license being found at the scene of a homicide, that I was somewhat involved in it.

BY MR. WEINGLASS:

Q. I'm sorry, that you were...?

A. Somewhat involved in it. They was thinking that I was some kind of fourth person that was supposed to be down there.

Q. The fourth person?

A. Right.

Q. Now, Mr. Howard, how tall are you?

A. Six-three-and-a-half.

Q. And back in 1981 in December, how would you describe your build?

A. About the same build, I don't gain no weight or lose no weight.

Page 9.

Q. And approximately how much do you weigh now?

A. 160.

Q. Would you say that you were on the thin side?

A. Yes, on the thin side.

Q. Now, besides this test of your hands or whatever was done with your hands, were you asked to participate in any other kind of a process?

A. Yes, they put me and a Kenneth Freeman into a lineup.

Q. In a lineup?

A. Yes.

Q. And you mentioned another name?

A. Kenneth Freeman.

Q. And who is Kenneth Freeman, if you knew then and know now?

A. That's, he's known as Poppy.

Q. Poppy?

A. Right.

Q. And did you see him down there when you were in Homicide?

A. Yes, I did.

Q. And what relationship did you have to Kenneth Freeman at that time?

A. We all grew up together in the same neighborhood.

Page 10.

Q. And did he have any relationship to your driver's license?

A. Yes, he did.

Q. What was that?

A. I lent it to him.

Q. You loaned him your driver's license?

A. Yes, I did.

Q. And that was the license that they told you was found with Officer Faulkner?

A. Yes.

Q. Did Kenneth Freeman indicate to you what he had done that night with the driver's license?

MS. FISK: Objection, Your Honor, to anything beyond a yes or no.

BY MR. WEINGLASS:

Q. Okay, did Kenneth Freeman indicate he had driven the Volkswagen that night?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that.

MR. WEINGLASS: On what basis, Your Honor?

MS. FISK: It's hearsay.

THE COURT: I will base it when it is time for me to explain to a higher Court. For

Page 11.

now I am sustaining the objection.

BY MR. WEINGLASS:

Q. Did you sign an affidavit, Mr. Freeman?

A. I'm Howard.

Q. I'm sorry. Howard.

A. Yes, I did.

Q. Yeah. And when did you sign the affidavit?

A. Yesterday.

Q. Are the statements in the affidavit true?

A. Yes, they are.

Q. Now, was Mr. Kenneth Freeman there to your knowledge for the same reasons you were there?

A. Yes.

Q. Was he there before you got there?

A. Yes.

Q. And was there anyone else who was in Homicide connected to the shooting of the officer?

A. Yes.

Q. Who else?

A. Some guy named Sweet Sam, that's all I know him by.

Q. Sweet Sam?

A. Yes.

Q. And did Mr. Sam remain with you throughout the 72 hours?

Page 12.

A. Not he didn't.

Q. What happened to him that you could see?

A. All he said, he'd been in about an hour.

MS. FISK: Objection to what he said, Your Honor.

THE COURT: Objection sustained.

BY MR. WEINGLASS:

Q. What did you see happen to Sweet Sam?

A. Two people came to the door and took him out and I haven't seen him since this incident.

Q. You haven't seen him since?

A. No, sir.

Q. How were those people dressed?

A. In suits.

Q. Now, in the course of being interviewed, did the detectives who were interviewing you indicate why you were being questioned?

A. Yes.

Q. What did they say?

A. That I was supposed to have been the fourth person that was there.

Q. Did they indicate what if anything they believed you had done?

A. Yes.

MS. FISK: Objection, Your Honor.

Page 13.

Withdraw that objection.

THE WITNESS: They said I was implicated into an officer's homicide.

BY MR. WEINGLASS:

Q. Did they indicate whether or not they thought you were the person who ran away?

A. Yes.

Q. Incidentally, Mr. Howard, were you there?

A. No, sir.

Q. Did you produce proof to the detectives as to your whereabouts at the time of the occurrence?

A. Yes, I did.

Q. What did you offer them?

A. A sales receipt from Pathmark on Aramingo Avenue.

Q. And the sales receipt from Pathmark, did it indicate what time you had been at Pathmark?

A. It had the time I checked out the same time as the incident happened.

Q. About 4:00 in the morning?

A. Yes.

Q. Were you asked to take a polygraph?

A. Yes.

Q. Did you take a polygraph?

A. I can't remember back that far if I took it or

Page 14.

not.

Q. Did you agree to take a polygraph?

A. Yes, I did.

Q. Were any photographs taken of you that night?

A. Yes, some man came. Of Kenneth Freeman they were.

MS. FISK: I'm sorry?

THE WITNESS: Yes, there were two photographs taken of me and Kenneth Freeman.

BY MR. WEINGLASS:

Q. To your knowledge was Ken Freeman a friend of Billy Cook at that time?

A. Yes.

Q. Did they have a vending stand together?

A. Yes.

Q. Was it a stand that you occasionally worked at?

A. Yes, I did.

Q. Do you recall where that stand was?

A. 18th Street. I mean 16th Street, excuse me.

Q. And Chestnut?

A. Yes, 16th and Chestnut.

Q. Could you describe for us this man who you referred to as Sweet Sam?

A. Ahh, he was tall, he was a pimp down there on

Page 15.

Locust Street.

Q. He was tall?

A. Right, had a Jerry curl.

Q. Pardon?

A. He had a Jerry curl.

Q. A Jerry curl hair?

A. Yes.

Q. His race?

A. A Negro.

Q. And so far as you knew, at the time you indicated that he was a pimp, is that --

A. Yes.

Q. In the area of 13th and Locust?

A. Yes, sir.

Q. Now, do you know any of the women who worked for him?

A. The girl that's, umm, involved in this case.

Q. Is that Cynthia White?

A. Yes.

MS. FISK: Objection, Your Honor.

THE COURT: Counselor, please stop leading. You are not testifying. You didn't take the oath here. Stop leading. He is your witness, let him tell us, will you.

MS. FISK: I move to strike, Your

Page 16.

Arnold Howard - Direct

Honor.

THE COURT: Well.

MS. FISK: I also, Your Honor, object because this goes beyond the affidavit of the witness and which I presume, therefore, is the offer of proof for which this witness was being called. There is no reference to Sweet Sam being a pimp and having any relationship to any prostitutes who have any relationship to this case. I therefore object.

MR. WEINGLASS: Sweet Sam is named in paragraph 8. That doesn't mean that we are limited to the precise words of the affidavit. He is referred to, and he is referred to as a person who was in custody that night. Now I am entitled to ask him who is Sweet Sam.

THE COURT: He said he was a pimp. So what?

BY MR. WEINGLASS:

Q. Does he have any relationship to your knowledge to anyone that's involved in this case?

A. Yes, the girl.

Q. Do you know her name?

A. I forgot her name, actually, now.

Q. You forgot it?

Page 17.

Arnold Howard - Direct

A. Yes.

Q. Does the name Cynthia White aid you in your recall?

A. Yes, sir.

Q. Is that the name of the girl?

A. Yes.

THE COURT: I said you testify very well.

MR. WEINGLASS: Pardon?

THE COURT: You testify very well.

MR. WEINGLASS: I testify well?

THE COURT: Yes, you are doing a pretty good job.

MS. FISK: He said you testified very well.

MR. WEINGLASS: Oh, I testified.

THE COURT: Yes, that is what you have been doing. Come on, let's go.

BY MR. WEINGLASS:

Q. Have I shown you the police report that the police typed up and had you sign?

A. Yes.

Q. Was the police report accurate?

A. Some of it was but they added on a lot of stuff. And somebody signed my signature on one of

Page 18.

Arnold Howard - Direct

them things.

Q. They added on to the police report?

A. Yes.

Q. Some of it is accurate?

A. Right.

Q. Do you know how long you were questioned?

A. Like I said, I was on ice for 72 hours. Transferred from police station to police station, asking the same thing over and over.

Q. So you were questioned for hours?

A. Yes.

Q. Could you estimate how many hours?

A. More or less 72 hours, that's how long I was gone.

Q. Did you mention Kenneth Freeman to the police?

A. Huh?

Q. Ken --

A. Yes, I did.

Q. Did you mention Sweet Sam to the police?

A. Yes.

Q. Do you know if their names appear in this report (displaying)?

A. No.

Q. Do you know, did you appear in a lineup once or more than once?

Page 19.

Arnold Howard - Direct

A. It was once.

Q. One. And was there anyone in the lineup with you?

A. Yes.

Q. Who you could recognize?

A. Kenneth Freeman.

Q. To your knowledge, did he appear more than once in a lineup?

A. I don't know, he kept getting picked out, they put me in a separate room.

Q. He got picked out?

A. Yes.

Q. Do you know who was looking at you?

A. All I know, he said that girl behind that glass.

Q. There was a girl behind the glass?

A. Right.

Q. And her race?

A. African American.

Q. And Ken got pick out?

A. Yes.

Q. To your knowledge where is Ken Freeman today?

A. Deceased.

Q. Do you know approximately when he died?

A. Around '83, '4.

Page 20.

Arnold Howard - Direct

Q. Do you know anything about the circumstances of his death?

MS. FISK: Objection, Your Honor, unless it bears any relevance to these proceedings.

THE COURT: The relevancy is, he is dead?

MR. WEINGLASS: Yes, Your Honor.

THE COURT: Well, do you have a death certificate if you want to prove how he died? But that's not relevant. You can't bring him in now, can you?

MR. WEINGLASS: Unfortunately, it's true.

THE COURT: Okay. So he's dead.

BY MR. WEINGLASS:

Q. What is your understanding of the way he died?

A. He was --

MS. FISK: Objection, Your Honor, unless it bears any relevancy to these proceedings.

THE COURT: I will have to sustain that, Counselor.

MR. WEINGLASS: My understanding is that the witnesses' answer will bear relevancy.

Page 21.

Arnold Howard - Direct

THE COURT: I don't know, unless you want to see me at sidebar.

MR. WEINGLASS: Well, we don't have a jury here, Your Honor.

THE COURT: I know that, but.

MR. WEINGLASS: The Court could accept or not accept or disregard.

MS. FISK: Oh, fine.

THE COURT: But the thing is, by you saying it in open Court he could hear what you are saying.

MR. WEINGLASS: No, Your Honor, I have interviewed the witness. I know what his answer's going to be. He has told me.

THE COURT: All right, what is your position? Still objecting?

MS. FISK: I will withdraw the objection based on Mr. Weinglass' representation that it is relevant to these proceedings.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. What is your understanding?

A. My understanding is he was handcuffed and shot up and dumped up on Grink's lot on Roosevelt Boulevard buck naked.

Page 22.

Arnold Howard - Direct

Q. He was handcuffed?

A. Yes.

Q. And shot?

A. No, shot up with drugs.

Q. Oh, shot up with drugs.

What is the state of your health now?

A. I was shot in '89 five times. It's not too well.

MS. FISK: I'm sorry, shot in '89 by...?

I missed it. You said you were shot in '89 by...?

THE WITNESS: I don't know.

MS. FISK: Oh.

BY MR. WEINGLASS:

Q. Are you suffering any after effects from that wound?

A. Yes, I am.

Q. And just briefly, could you describe what it is?

A. I have a reconstructed stomach.

Q. Now, when you were questioned by the police on December 9th and thereafter, 1981, or by the detectives, I should say, were any, were there questions suggesting the answers to you?

Page 23.

Arnold Howard - Direct

A. Yes, they were.

Q. And prior to December 9th, 1981, what if anything did you do with your license?

A. Like I said, they had, when I lent my license out I never got my license back, they were suspended for 13 years behind the incident.

Q. But before the morning of December 9th, 1981, what did you do with your license?

A. I lent it to Kenneth Freeman.

Q. You lent it to Kenneth Freeman?

A. Right.

Q. And to your knowledge did he have it on the night in question?

A. Yes, he did.

Q. To your knowledge was he driving on the night in question?

MS. FISK: Objection, Your Honor.

THE WITNESS: Yes.

MS. FISK: Objection and move to strike. He has told us he wasn't there.

THE COURT: Come on, Counselor. Unless you want to take the stand and testify for him.

MR. WEINGLASS: May I just have a moment?

Page 24.

Arnold Howard - Cross

(Discussion held off the record between defense Counsel.)

MS. FISK: Excuse me, Your Honor.

(Discussion was held off the record at this time among Commonwealth Counsel.)

MR. WEINGLASS: Thank you, Mr. Howard. I have no further questions.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

- - - - - -

CROSS-EXAMINATION

- - - - - -

BY MS. FISK:

Q. Mr. Howard, before I begin: Are the glasses that you are wearing prescription glasses?

A. Yes, they are.

Q. Would it be possible for you while at least you're answering questions to remove them.

A. (Witness complies with request.)

Q. I am asking, for the record to reflect, because they are sunglasses, so I could see your face.

A. They are not sunglasses, they are prescription glasses.

Q. They have dark glass, right?

Page 25.

Arnold Howard - Cross

A. All right.

Q. Thank you, sir. If in the course of any of the questions that I have there is something you need to read or review, obviously I have no objection with your utilizing those glasses. All right, sir?

A. All right.

Q. Now, Mr. Howard, you have identified yourself today as Arnold Howard. Is it correct, sir, that you have a date of birth of 4-2-54?

A. That's my wrong birth.

Q. That is your wrong birth?

A. Right, it is an error, it is a computer error. My birthday is 4-2-52.

Q. When you say it is a computer error, was a computer --

A. Some way '54 keep jumping up every date on my birthday.

Q. Comes jumping up every time where?

A. On the back of my birth date.

Q. Where does your birth date jump up wrong as a result of computer error, sir?

A. For some reason, like I said, it jumps up '54. I was born in '52.

Q. Right. I understand. Where does it jump up?

A. On a lot of applications.

Page 26.

Arnold Howard - Cross

Q. I see. Also, Mr. Howard, do you reside --

MS. FISK: May I read his address in open Court?

MR. WEINGLASS: Objection, Your Honor. Objection.

MS. FISK: May I approach the witness and show him his address so he could tell me whether or not that is his address?

THE COURT: All right.

MS. FISK: Thank you. I will have to show it to Counsel first.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MS. FISK: You may need your glasses, Mr. Howard, I don't know.

THE WITNESS: I am totally blind.

BY MS. FISK:

Q. Is that your address, sir (displaying)(indicating)?

A. Yes, it is.

Q. All right. I have just shown you a document, Mr. Howard, and you have advised us that the address on the document is in fact your address?

A. Yes, it is.

Page 27.

Arnold Howard - Cross

Q. Am I correct, then, sir, that you were arrested in April 1976 and subsequently found guilty and sentenced in May 1976 for the crime of forgery; is that correct, sir?

A. I've been locked up a lot of times.

Q. All right. And particularly you were sentenced in May 1976 and convicted of forgery and also of theft by receiving stolen property; is that correct, sir?

A. Yes.

Q. And is it also correct, sir, that you were arrested in August 1975 and convicted and sentenced on April 23rd, 1976 for the crime of burglary?

A. It's criminal trespassing.

Q. No, sir, it was criminal trespass in -- if I could refresh your recollection... Do you recall being arrested on January 28th, 1974 and pleading guilty in front of Judge Smith, and in May 1974 being placed on probation for criminal trespass?

A. Yes.

Q. But I was asking you, sir, about an arrest... on August l0th, 1975, which lead to a negotiated guilty plea in front of Judge Jenkins?

A. Yes.

Q. And a sentence on April 23rd, 1976 for

Page 28.

Arnold Howard - Cross

convictions of the crime of burglary? Burglary?

A. Yes.

Q. And you were placed on, in fact you were given a prison sentence at that point by Judge Jenkins; is that correct?

A. Yes, the plea.

Q. So that wasn't criminal trespass, that was burglary?

A. Yeah, that was burglary.

Q. Do you also recall, sir, being arrested on December the 29th, 1975 and being charged again with burglary and pleading guilty in front of Judge Kane and being sentenced on May the 3rd, 1976, and also receiving a prison sentence for that guilty plea?

MR. WEINGLASS: Objection.

THE WITNESS: It was time served on that.

MR. WEINGLASS: Yes, objection. References to burglary, as I understand, it is not proper cross-examination unless it can be shown that burglary, the underlying circumstances was crimen falsi. And there's been no showing here. We've only been talking thus far about burglaries which, I understand, are not proper impeachment. unless there is a

Page 29.

Arnold Howard - Cross

representation to the underlying circumstance.

MS. FISK: It is my understanding of the law, Your Honor, that the crime of burglary is a crimen falsi.

MR. WEINGLASS: Is the Court going to permit it?

THE COURT: I will strike it if I research the law and it's not crimen falsi, okay.

MS. FISK: Thank you.

BY MS. FISK:

Q. Mr. Howard, were you also arrested -- and we will move away from burglary if Counsel would like -- let's turn to your most recent arrest on August -- I'm sorry -- on November the 16th, 1991. Were you arrested then and charged with two counts of forgery, to which you pled guilty in front of Judge Gordon and were sentenced on August the llth, 1993?

A. Yes, to the two years probation, right.

Q. I'm sorry?

A. Two years probation, right.

Q. Would it be accurately three years probation, sir?

A. I say two years.

Q. Were you in fact given three years?

Page 30.

Arnold Howard - Cross

A. Two years.

Q. Are you still on that probation, sir?

A. I'm off probation next year.

Q. I can't hear you, sir.

A. I come off probation next year.

Q. So you are still on probation?

A. Yes.

Q. And those were for two, or at least one of those counts of forgery is marked, well --

A. It was job related.

Q. Job related?

A. Yes, I was being paid with bad paychecks.

Q. Yes, sir. Now, Mr. Howard, you have told us that in the very early morning of December the 9th, before the sun came up, you were taken out of your home?

A. Yes, I was.

Q. And was that home the same address which I just showed you on the document when I came up to where you are sitting?

A. Yes, it was.

Q. And that is the same address as, the address you are living at now is the same address you were living at back in 1981?

A. I'm not saying where I'm living at.

Page 31.

Arnold Howard - Cross

Q. The address which I showed you was your address; is that correct?

A. Yes.

Q. Oh. And was your address back in December 1981; is that right?

A. Yes.

Q. And you have told us that sometime before the sun came up that morning, both uniformed and non-uniformed officers came to your home?

A. Yes.

Q. How many non-uniformed officers came to your home?

A. I didn't count them, they all came and got me.

Q. Was it more than two?

A. Yes.

Q. Do you know how many more?

A. A whole lot more.

Q. Were you handcuffed when they came for you?

A. Yes, I was.

Q. And did they put in you an unmarked car? A marked car? A wagon? How did they transport you when they came and got you

from your home?

A. In my drawers.

Q. I'm not asking what you were wearing, I'm asking what kind of vehicle you were transported in?

Page 32.

Arnold Howard - Cross

A. Huh. A wagon.

Q. A wagon. So you were handcuffed and placed in a police wagon?

A. I was thrown back in the wagon.

Q. And that police wagon then drove while you were in it, right?

A. Yes.

Q. And when the police wagon stopped and the doors were opened, where were you?

A. In the basement of the Roundhouse.

Q. And what did you do, or what happened to you after you found yourself in this wagon in the basement of the Roundhouse while you had handcuffs on?

A. I asked for my pants.

Q. All right, did you get your pants eventually?

A. Yeah, they gave them to me.

Q. Fine, sir, I am not asking you questions about your clothing, I am asking you about physically where you moved from place to place.

A. From there to Homicide.

Q. How did you get from the basement of the cell room up to Homicide?

A. Through the door.

Q. Through the door?

Page 33.

Arnold Howard - Cross

A. Right.

Q. Did they put you on an elevator from the cell room, took you right up to Homicide?

A. They took me through the door, they put me on an elevator.

Q. So you went, so I understand, you went from the cell room up to Homicide?

A. Yes.

Q. Did you remain in handcuffs that entire time?

A. Yes, I did.

Q. So when they took you up to Homicide, you still had those handcuffs on; is that correct?

A. Yes.

Q. Now, I thought, sir, that when Mr. Weinglass on direct examination asked you whether or not you had been arrested that morning you said no?

A. After they came and got me.

Q. Do you remember Mr. Weinglass asking you whether or not you were arrested?

A. All he came and got me.

Q. Were you arrested that morning?

A. All he came and got me. He didn't say nothing. They stomped up my mother's steps.

Q. My question is --

A. I am giving you the answer. They never said

Page 34.

Arnold Howard - Cross

if I was arrested or not.

Q. Well, let me ask you this. Did you sign an affidavit for Mr. Weinglass...

When was this signed, yesterday?

A. Yes, I did.

Q. And did you on that, on that affidavit say that at approximately 6:00 a.m. on December 9th, 1981 I was arrested by Philadelphia Police and taken to the Homicide Department for interviews?

A. What you call it, they came and roust you that time of the morning and put handcuffs on you and take you out of the house?

Q. That's why I was asking you the question, sir, were you arrested?

A. All they told my mother, they was taking me down to the Roundhouse.

Q. But you signed an affidavit yesterday in which you swore before a notary that you were arrested?

A. They didn't say I was under arrest when they came to my home.

Q. Now, Mr. Howard, after they took you up to Homicide -- and this was still, I assume -- or correct me if I am wrong -- before the sun fully came up, very early in the morning of December 9th?

A. They don't have any windows up there, I don't

Page 35.

Arnold Howard - Cross

know if the sun was up or not.

Q. They have no windows up in Homicide?

A. No, not where I was.

Q. And where were you?

A. In a room, handcuffed to a chair.

Q. And how long were you in that room up in Homicide?

A. I didn't have no watch on.

Q. Well, you have been able to tell us today that you were kept on ice, as you put it, for 72 hours?

A. Right.

Q. So you were able to estimate?

A. Right.

Q. How long were you in Homicide before --

A. A good while.

Q. Well, when you say a while, were you still there at lunch time?

A. They didn't bring me no lunch, I wouldn't know.

Q. Well, were you still there at dinner time?

A. No, they didn't bring me no dinner, I wouldn't know.

Q. Well, did you get hungry while you were there?

THE COURT OFFICER: Order in the Court.

Page 36.

Arnold Howard - Cross

THE COURT: Be quiet or you will be moved out of here.

BY MS. FISK:

Q. Before you got hungry?

A. Say that again.

Q. Did you get hungry while you were there?

A. Yes, I did.

Q. So you got the impression that you missed a meal?

A. Yes, I did, a lot of meals.

Q. A lot of meals. You got the impression that while you were in Homicide you were missing a lot of meals?

A. Yeah.

Q. Is that right?

A. Right.

Q. Would you estimate, or could you estimate what portion of the 72 hours that you were kept on ice you spent in Homicide? Most of it? Half of it? A third of it?

A. About a day of it.

Q. About a day. So your estimate is that you were in Homicide for about 24 hours; is that right?

A. More or less.

Q. How much more or less? I mean you are

approximating, right, you could be off an hour or two; is that right?

A. Look here, I went to sleep in there, so I was bored.

Q. All right. All right, so your best estimate is that you got there sometime early in the morning of December 9th, 1981 and you remained there until sometime early in the morning of December l0th, 1981; is that right?

A. Yes.

Q. Okay. Where did you go after that?

A. They took me to another police station.

Q. How did you get from Homicide to another police station?

A. In the back of a wagon.

Q. So do I take it again that you left Homicide -- are you still in handcuffs at this point?

A. Yes.

Q. All right. And are you taken directly then back down to the cell room, to the cell room, the basement of the Roundhouse?

A. Yes.

Q. Were you put back into another wagon?

A. Yes.

Q. And you were then driven someplace?

A. Right.

Q. Where?

A. I don't know.

Q. You don't know?

A. Unh-unh, I'm not a police station freak.

Q. Well, when you got out of the wagon were you able to see where you were?

A. No. All I know, I was in another police station.

Q. Another police station?

A. Right.

Q. Now, the persons that you spoke to at this second police station, were they the same persons you had seen in Homicide or different persons?

A. They just put me in a cell.

Q. Yes?

A. And kept me there.

Q. Oh, you weren't questioned at the second police station?

A. A cop came back there and asked me some questions, I looked at him like he was dumb.

Q. So you didn't answer any question?

A. Right.

Q. Was the cop who came back there the same cop that you had seen in Homicide or somebody new?

A. Another cop.

Q. New cop?

A. Yeah.

Q. How long did you remain at this second police station?

A. Awhile.

Q. Did you see any persons at the second police station that you recognized?

A. No.

Q. Do you know the names of any of the police officers from the second police station?

A. No.

Q. And as I understand it, you are unable to tell us even in what part of the City this second police station was?

A. I know I wind up at Harbison and Levick. I know that one because I've been out in that one before.

Q. You wound up at Harbison and Levick when?

A. Huh?

Q. Is that the second police station or a later police station?

A. It's one of the police stations I was at. I remember that one.

Q. Okay. Well, is that this one that we are

talking about, the second one? The one that you went to directly from Homicide?

A. No.

Q. Okay. So you were at this second police station awhile?

A. Yeah.

Q. And again, can you tell us what percentage of the 72 hours that you were at this second police station?

A. I was there awhile, that's all I could tell you.

Q. And other than this one officer who you had not seen before asking you questions, and you're looking at him like he was dumb, did anyone else speak to you at the second police station?

A. They would come back there and look.

Q. But you never answered anything?

A. No.

Q. At some point you were then moved someplace else?

A. Yes.

Q. Where is that, sir? How did that occur?

A. The same way, in a wagon.

Q. All right. And the same way you ended up in another police station?

A. Right.

Q. And was it basically the same thing, you didn't see anyone you recognized?

A. No.

Q. You don't know the names of any of the cops?

A. No.

Q. Was Harbison and Levick this third --

A. Harbison and Levick was the last one I wind up at.

Q. Well, was this one the last one you wound up at or were you at more than three?

A. About three of them.

Q. Pardon?

A. I think it was about three of them I wound up at.

Q. Okay, so you started at Homicide, you were taken to a second one, and now you were at the third one, is that Harbison and Levick?

A. Yeah, Harbison was the last one, I was there too. Then I was brought back to the Roundhouse.

Q. Wait, we are not up to there yet. At Harbison and Levick, did you see any officers you knew there?

A. No.

Q. Did you see any other persons you knew there?

A. No.

Q. Did you speak to anyone there?

A. No. The cop just came back and asked me questions.

Q. All right. A new cop?

A. A cop.

Q. Was it a new cop, was it one that you had not --

A. It was a detective, that's all I knew he said he was.

Q. My question to you is was it someone that you had seen either at Homicide or at your home or in the second police station, or was it a new cop?

A. It was another cop, that's all I know it was, a cop. I didn't pay no attention to him.

Q. Well, had you seen him in those prior 36 hours?

A. No.

Q. Okay. You didn't answer his questions, though, right?

A. No.

Q. How long were you at Harbison and Levick?

A. Awhile before they took me back to the Roundhouse.

Q. Okay. They bring you back to the Roundhouse again, sir, in handcuffs, right?

Page 43.

Arnold Howard - Cross

A. Right.

Q. Wagon?

A. Right.

Q. Into the basement of the Roundhouse?

A. Right.

Q. And then taken directly from the cell room up to Homicide? Is that right?

A. They didn't put me in the cell room, they took me straight through the doors straight up to Homicide.

Q. Straight through what doors?

A. The doors -- when you come into the Roundhouse they have a door. You go through the door and go to the elevator to take you up to Homicide.

Q. Now, were you handcuffed when --

A. Yes, I was.

Q. Now, do I understand, sir, that you were in the wagon, yes?

A. Yes.

Q. The wagon this time did not go into the basement of the Roundhouse?

A. Yes.

Q. Oh, it did. It went into the cell room?

A. The same way going all the time.

Q. Oh, you will agree with me, sir, that the

Page 44.

Arnold Howard - Cross

wagons that go to the Roundhouse go to the cell room, or the tank, which is in the basement of the Roundhouse?

A. Right.

Q. But they didn't put you in any cells?

A. No.

Q. They took you directly from that open area, into the tank, on the el --

A. I never was in the tank.

Q. Oh, they took you from the basement of the Roundhouse --

A. Right.

Q. -- straight up to Homicide?

A. Right.

Q. Got you, okay. You are still handcuffed, taken to Homicide and put back in the little room again?

A. Right.

Q. All right. Then what?

A. I was there awhile. The next day they opened the door and told me I could leave.

Q. You stayed there awhile?

A. Right.

Q. Now, how long were you there at Homicide this second time?

Page 45.

Arnold Howard - Cross

A. Awhile, that's all I know, awhile.

Q. Was it less than the first time? You told us the first time was about 24 hours, right?

A. I say a couple hours I was there.

Q. A couple hours?

A. Yeah.

Q. Did anyone speak to you this second time now that you are at Homicide -- in your estimate which is approximately three days later, right?

A. Yeah.

Q. Anybody speak to you?

A. The same detectives that was talking to me.

Q. The same ones that had spoken to you?

A. Right.

Q. And did they take any further statements from you?

A. I wouldn't say nothing else to them.

Q. Pardon?

A. I wouldn't say nothing else to them. I told them I told them all I knew.

Q. All right. Now, these same detectives, can you describe these detectives in any way? Were they black men or white men? Or were they men, let's start with that? Were the detectives men at Homicide?

Page 46.

Arnold Howard - Cross

A. Yeah.

Q. Black or white?

A. White.

Q. Both of them?

A. Yeah.

Q. Yeah. And were there two of them, in fact?

A. There was a couple of them.

Q. Oh. A couple means two: Would you agree with me?

A. No, more than two.

Q. More than two?

A. Yeah.

Q. Who took your statement the first time?

A. Two took my statement.

Q. Oh.

A. They played the game good cop-bad cop.

Q. That was when they took the statement?

A. Right.

Q. Now, when you're brought back to Homicide after having been in this other police station in Harbison and Levick for a period of days, now end up at Homicide the second time, is it my understanding from you that these same two white cops who played good cop-bad cop with you the first time you had been there, are coming in to try to talk to you more this

Page 47.

Arnold Howard - Cross

second time?

A. Yeah.

Q. Yes?

A. Yes.

Q. And as I understand it, this would now be December 12th, approximately, right, three days --

A. I don't know.

Q. -- after December 9th?

A. Yes.

Q. By your estimate of 72 hours?

A. Right.

Q. Did you see anyone else at Homicide that you recognized other than these same two detectives that had interviewed you initially?

A. Yeah, the same, a lot of cops was when I first came they was there.

Q. But the only two that came to speak to you were the same two that had spoken to you the first time?

A. A couple other cops.

Q. A couple other cops did too?

A. Yes.

Q. But this time you gave no additional statements?

A. Right.

Page 48.

Arnold Howard - Cross

Q. At some point, you said, they released you?

A. Yes.

Q. Were you released from --

A. There.

Q. From Homicide?

A. Right.

Q. So they took your handcuffs off?

A. Right.

Q. This is the first time your handcuffs were off in 72 hours?

A. I was handcuffed to a chair the majority of the time.

Q. Oh. And when they took your handcuffs off from the chair, how did they have you leave the PAB, the Roundhouse?

A. They took me down.

Q. They took you down?

A. Right. Asked me did I want a ride home. I told them I didn't want.nothing from them.

Q. Okay. When they took you down did you go back through the cell room?

A. No.

Q. You went out through a different door?

A. Right.

Q. And what door is that, sir?

Page 49.

Arnold Edward - Cross

A. They take you down, they bring you down, you go down on... let's see. Race. No, behind the Roundhouse, you go through where the bail room at.

Q. And so I'm clear, in all of your visits to the Roundhouse in that period of three days, that was the first time that you were in that doorway, right, the one that goes behind the Roundhouse, because all the other times you had come in and out on a police wagon that pulled into the basement?

A. Right.

Q. Okay. So you left Homicide for the second time approximately December the 12th, and you left through that door that opens up onto the parking lot behind the Roundhouse?

A. Right.

Q. And you chose not to take a ride from the police?

A. Right.

Q. And you left?

A. Right.

Q. Okay. That doorway -- incidentally, Mr. Howard, had you been in that doorway before?

A. A lot of times.

Q. And that was when you were coming in perhaps to speak to police officers and the like?

Page 50.

Arnold Howard - Cross

A. No, when I be getting out of being incarcerated.

Q. I can't hear you?

A. From being incarcerated in the Roundhouse, you go out that doorway.

Q. You go out that doorway?

A. Right.

Q. Would that be after you make bail or something?

A. Right.

Q. Well, let me ask you this. When you are incarcerated, would you agree with me that you have never come into the Roundhouse from that door?

A. Huh? Say that again.

Q. When you've been incarcerated?

A. Right.

Q. Would you agree with me that you never entered the Roundhouse through that door?

A. I don't go down there and look.

Q. You just told us that you have been in that doorway before?

A. Coming out that doorway. Coming out that doorway.

Q. Right. You had come out that doorway?

A. Right.

Page 51.

Arnold Howard - Cross

Q. And because, and so the record is clear, in times past when you've been incarcerated, you are taken down to the Roundhouse so you could have your preliminary arraignment?

A. Right.

Q. At the arraignment Court there, right?

A. Right.

Q. And you are transported to the Roundhouse from whatever district in the City you were arrested in?

A. Right.

Q. And you're taken by a wagon, presumably, or in some fashion you are taken to the Roundhouse and you are taken to the cell room in the basement of the Roundhouse?

A. Right.

Q. Yes?

A. Right.

Q. And you're held down there in what is commonly referred to as a tank, but there are cell rooms down there, right?

A. Right.

Q. So all times that you have entered the Roundhouse, including on December the 9th and within 72 hours after that, you always came in through that basement entrance into the cell room area?

Page 52.

Arnold Howard - Cross

A. Yeah.

Q. Okay. The only times you left the Roundhouse through that door which opens onto the parking lot is when you were not in custody?

A. Right.

Q. Because you can't come into that door in custody, right?

A. I don't know.

Q. Well, whenever you have been in custody you have come in through the cell room, right?

A. I always come through the basement.

Q. Right. Have you ever come to the Roundhouse, Mr. Howard, at a time when you were not in custody?

A. Yes.

Q. Arrived in the Roundhouse?

A. Yes.

Q. And when was that, sir?

A. I came down to bail people out before.

Q. Okay. And when you came to the Roundhouse when you were not in custody, to bail people out before, am I correct that you entered the building through that same door that we're talking about that you exited from when you were not in custody?

A. Right.

Q. And again, you were talking about the entrance

Page 53.

to the Roundhouse which opens to the parking lot behind, was that behind Race Street, right?

A. Yeah, behind Race Street.

Q. You know what parking lot I'm talking about?

A. Right.

Q. Okay. Now, when you came in to bail people out, you walked in that door and you turned to the right to go to the arraignment Court, right?

A. Right.

Q. And that's where the bail window was?

A. Right.

Q. And you didn't have to sign anything to get into that because that is a courthouse, right?

A. Right.

Q. Now, did you ever when you entered that building to bail somebody out, after you entered the little foyer area, try to turn and go to the left through the glass doors?

A. No.

Q. Into the main lobby of the Roundhouse?

A. No.

Q. Now, you would agree with me, sir, that when you walk into that door of the Roundhouse there has always been a police officer in that foyer area behind that little window?

Page 54.

A. Yes, there was.

Q. Checking people in, right?

A. Yeah.

Q. And people who want to go to the right to arraignment Court are free to do that, right?

A. Yeah.

Q. But the doors that permit you to go to the left are blocked?

A. Right.

Q. They're locked?

A. Not all the time, I've seen them open.

Q. But there is a police officer there?

A. Right. At the window.

Q. Okay. Have you seen, when you have been there, sir, that people who want to go to the left into the building who were not police officers are presented with a book so that they can sign their name?

A. I don't pay no attention when I go out of there.

Q. Mr. Howard, let me ask you this. You told us, sir, that when you were brought to Homicide at about sometime before the sun came up on December the 9th, 1981, you were put in a little room and you were kept there for about 24 hours, right?

Page 55.

A. Yeah, more or less.

Q. Okay. Now, you've also told us that at some point during those 24 hours two white men who played good cop-bad cop questioned you and took a statement from you?

A. Yeah.

Q. Within those 24 hours that these officers took, that is, typewrote a statement from you, was it in the first half of your stay of those 24 hours or the second half?

A. Just around the second half. Because I wouldn't say nothing after that.

Q. Pardon me?

A. I wasn't saying nothing.

Q. So for the first 12 hours you were at Homicide you didn't say anything to them?

A. No.

Q. So it wasn't until in your estimation 12 hours passed?

A. No, I don't know how many hours passed.

Q. Well, you said the second half, right?

A. Like I said, I don't know how many hours passed.

Q. Well, am I correct that you just estimated it was in the second half of your stay in Homicide --

Page 56.

MR. WEINGLASS: Objection: The question has been asked and answered three times. The witness has indicated he doesn't know.

THE COURT: No, she hasn't really gotten a definite answer.

MR. WEINGLASS: Your Honor, you are questioning a witness about 14 years ago, asking specific times. And Counsel has the time right there on the statement. And trying to pin the witness down when she's already gotten three answers to the same question.

MS. FISK: I also have a statement which is completely contrary to the testimony of the witness, Judge. So I am not sure what Counsel wants me to rely on and what he doesn't. And that is precisely why I am asking those questions, Your Honor.

MR. WEINGLASS: The hour was noted by the investigating detectives and it is right there. I won't mention it but for her benefit her detectives wrote --

MS. FISK: Is Counsel going to agree that the entirety of this statement is accurate? And if not, I have a right to question the

Page 57.

witness.

MR. WEINGLASS: The witness said some of it is and some of it isn't.

THE COURT: Are you saying that the time that's listed on that is correct?

MR. WEINGLASS: I'm not sure but it might refresh the witnesses' recollection.

THE COURT: Well, she is trying to find out from this witness. If you are willing to admit the time listed on there is correct then there is no sense in going into that line of questioning.

MR. WEINGLASS: Oh, I think the witness should be shown and asked if it refreshes his recollection. He obviously doesn't have a recollection.

THE COURT: Counselor, before that she has the right to try to do whatever she wants to do. You have redirect.

MR. WEINGLASS: I have an objection.

THE COURT: On redirect you could do whatever you want to do.

MR. WEINGLASS: Well, I didn't object.

THE COURT: All I am asking you, if you are willing to admit that that time on there

Page 58.

is correct then I will agree with you, I will stop the questioning.

MR. WEINGLASS: I have no idea. I think it should have been shown to the witness.

THE COURT: Well, you may think that but you are not running the Court.

MR. WEINGLASS: No. I object. When it was asked twice, the third time it was asked I objected.

THE COURT: I haven't had a definite answer here, either. I am listening too, I am trying to find out what he really remembers. Go ahead.

BY MS. FISK:

Q. Mr. Howard, am I correct that a moment ago I asked you whether the statement which you gave to these two white detectives who played good cop-bad cop was recorded by them, typewritten in the first half of your stay in Homicide or the second half, and that your estimation was that it was given in your second half of your stay at Homicide because for the first half you remained silent?

A. I don't know the second -- I told you I went to sleep. Didn't I tell you that? I told you that. Wait a minute. I told you I went to sleep.

Page 59.

Q. So you went to sleep --

MR. WEINGLASS: Objection, Your Honor. The witness isn't being given the opportunity.

THE COURT: He said he went to sleep. Now let's find out when he went to sleep. Come on? Counselor.

BY MS. FISK:

Q. And my question to you is did you go to sleep before you ever gave the statement? That's what I am trying to find out. I am just trying to find out the times, Mr. Howard?

A. Like I said, all I know, they asked me some questions.

Q. Right.

A. I don't know what time it was. They don't have no clock in Homicide.

Q. Right.

A. When you're in there you're in a room.

Q. Right.

A. Don't know what time it is. They could tell you it's daytime, it might be nighttime.

Q. Right. But you know that you got there very early in the morning before the sun went up, right?

A. Yes.

Q. And you estimate that you were there for

Page 60.

approximately 24 hours, right?

A. Right.

Q. And you know that at some period while you were there you went to sleep because you were bored, right?

A. Right.

Q. Was the time when these officers came into that room and asked you questions which resulted in a statement, which Mr. Weinglass asked you about, did that occur early in your time there or towards the end of your time there?

MR. WEINGLASS: Objection.

MS. FISK: In the first half or second half. It is a reasonable question, Your Honor.

MR. WEINGLASS: Objection: Asked and answered no matter how reasonable it is. It's a continual process of cross-examination by browbeating a witness by repeatedly asking the same question. I object to it. Counsel has the time on the statement, the witness said he can't recall.

THE COURT: I know that, Counselor. I said to you, are you admitting that the time on the statement is correct?

MR. WEINGLASS: I think if it's in

Page 61.

there it should be shown to the witness.

THE COURT: Well.

MR. WEINGLASS: I don't know what kind of a game we are playing here. They have the time on the statement.

THE COURT: You put him on, Counselor. She has a right to cross-examine.

MR. WEINGLASS: No, she can't ask the same question over and over.

THE COURT: I will decide what she can do.

MR. WEINGLASS: Well, the law indicates that you are not allowed to ask questions over and over again. And that's the basis for an objection. Asked --

THE COURT: Counselor, I haven't heard a true answer yet as to when it happened. That's what I am trying to find out for my benefit. Did it happen in the first half or the second half, in the beginning or at the end. I would like to know that. Now, he's the only one that could tell us, unless you are willing to admit that's correct.

MR. WEINGLASS: He said he can't remember.

Page 62.

THE COURT: Okay, he can't remember. But she in cross-examination could try to find out if he can remember. This is cross-examination, Counselor.

MR. WEINGLASS: You can't ask the same question over and over and over.

THE COURT: Counselor, please.

MS. FISK: I would note, Your Honor, that this witness has already testified that it was in the second half of his stay in Homicide. That was an answer some 10 minutes ago that is on the record by this witness. And what I am attempting to do is try to pin that down further. That's what I am trying to find out, Judge.

MR. WEINGLASS: No, and then in a follow-up question the witness indicated he didn't know what hour it was.

MS. FISK: Which is why I am trying to explore the contradictions in the witnesses' testimony.

MR. WEINGLASS: There is no contradiction and the time is in the statement.

THE COURT: Counselor, the objection is overruled.

Page 63.

Come on, let's go.

BY MS. FISK:

Q. Are you able to answer the question, sir?

A. I answered to the best of my knowledge.

Q. Which is what?

A. I don't know what time it was.

Q. Now, Mr. Howard, I understand from your questioning on direct examination that Mr. Weinglass has at some point shown you the statement which was recorded?

A. Right.

MS. FISK: May I ask that this copy be marked, Your Honor, Commonwealth Exhibit...

THE COURT OFFICER: 16.

MS. FISK: 16. And shown to Mr. Howard.

(Investigation interview record was marked Commonwealth Exhibit C-l6 for identification.)

MR. WEINGLASS: Is that for identification?

THE COURT: Well, at this time it's for identification.

MR. WEINGLASS: For identification.

THE COURT OFFICER: (Displaying).

Page 64.

Arnold Howard - Cross

MR. WEINGLASS: Right.

THE COURT OFFICER: C-16, Your Honor (handing).

BY MS. FISK:

Q. Mr. Howard, please look at that document, each of the pages, and tell us whether or not you recognize that as a statement given by you on December the 9th, 1981?

A. Yes.

Q. Is that your signature which appears at the bottom of each page?

A. Two of the top ones are but the other ones I'm sure are not.

Q. Tell us, please, which two pages do not bear your signatures?

A. These two (displaying).

Q. Well, when you say these two, start from the Page 1 -- you have page 1, page 2, page 3 and page 4, do you not, sir?

A. Yes.

Q. All right. What numbered pages -- 1, 2, 3 or 4 -- do not bear your signature?

A. 4.

Q. All right. Any others?

I thought you said that there were two

Page 65.

Arnold Howard - Cross

pages that didn't?

A. Right, I'm telling you the other pages. And the bottom of number 5.

MS. FISK: May I have the document back, please.

THE COURT OFFICER: (Handing.)

BY MS. FISK:

Q. All right, so I understand, Mr. Howard, Commonwealth Exhibit 16 -- I misspoke -- is a five-page document; is that right?

A. Right.

Q. And what you have told us is that the signature which appears at the bottom of page 4 is not your signature?

A. No.

Q. Now, on page 5 there are two places where a signature appears?

A. Right.

Q. And as I understand your testimony, the bottom one is not your signature?

A. No, it's not.

Q. But the top one is?

A. Right.

Q. Oh. Now, am I correct, then, that the signature which appears at the bottom of pages 1, 2

Page 66.

Arnold Howard - Cross

and 3 are your signatures?

A. Yes.

Q. And did you place your signature on those pages after the words which appear on this document were typed there?

A. On the top one I did.

Q. On those three pages I am talking about?

A. Right, there's only three pages I signed.

Q. Yes, sir.

A. Yeah.

Q. And my question is with regard to those three pages, did you sign them after the words were typed in?

A. I don't remember.

Q. Or did you sign a blank piece of paper?

A. I signed a piece of paper, he had wrote the stuff down I said to him and I signed it.

Q. Before you signed it did you read what was typed on those pages?

A. All he asked me did I have, did I knew who I had lent my driver's license to and I told him.

Q. That is not my question. My question is, before you signed the first page, the second page and the third page, did you read what was written on those pages?

Page 67.

Arnold Howard - Cross

A. Not really.

Q. Did you look at it at all?

A. I read the top page.

Q. And you were given, I take it, then, an opportunity by these detectives to read it?

A. I threw it at them.

Q. You threw it at them?

A. Right.

Q. After you signed these three pages?

A. Right.

Q. Now, you have told us that this is not your signature on page --

A. The bottom one isn't. You can look at that and see.

Q. On page 4 is not your signature, right?

A. No.

Q. But on page 5 you said that your signature does appear, the top signature is yours?

A. Right.

Q. Did you sign that page at the same time that you signed the other three?

A. I don't remember back that far, okay. All I remember is signing the top paper. Statement of who I gave my license to.

Q. I see. So now you are telling us that the

Page 68.

Arnold Howard - Cross

only signature --

A. They got a lot of stuff added in on that statement.

Q. And we are going to get into that and you will have an opportunity to tell us what is correct and what isn't, Mr. Howard. But am I understanding you correctly that the only page which you know you signed was the first page?

A. No.

Q. So you know that you signed the second page and the third page?

A. Right.

Q. And you know that you signed the fifth page, or one time, the top part, right?

A. Right.

Q. Well, let me ask you this, Mr. Howard. Am I correct that the two white detectives who played good cop-bad cop were there while this statement was being --

A. No, one left out.

Q. One left out? The good cop or the bad cop?

A. I don't remember who left, all I know, one of them left out.

Q. And the one who remained, did he type, was he typing while he was talking to you and while you were

Page 69.

Arnold Howard - Cross

talking to him?

A. He was writing.

Q. Well, you would agree with me that this is a typewritten statement?

A. Yes.

Q. And is this the statement that was shown to you by the detective after he spoke to you?

A. I'm not even sure. All I did was sign, I thought I was signing what I told him.

Q. Did you tell the detective -- I will start at the beginning, I will start at the very top. Does this document, which has your signature on it on the first page which you remember signing (displaying) -- (indicating), does it reflect that you were brought into Homicide by Detective D'Amato and Detective Williams at 12:25 p.m. on December the 9th, 1981?

A. Say that again.

Q. I'll come show it to you.

MS. FISK: If I may, Your Honor?

BY MS. FISK:

Q. Does this document, sir, reflect that you -- Arnold Howard -- were brought in, that is brought into Homicide, by Detective D'Amato and Detective Williams on 12-9-81 at 12:25 p.m., or 12:25 in the afternoon?

Page 70.

A. No.

Q. Is that what it says?

A. That's what it say but it wasn't, that is the wrong time you got down there.

Q. Because you were brought in when it was still dark out, right?

A. Look here, I know I was in the bed.

Q. Yes, sir.

A. When they came and got me.

Q. Well, was it dark out or was it light out?

A. It was before daybreak.

Q. Okay. Do you also note that it shows the place of interview is Room 104 PAB, which is Homicide, at the Police Administration Building?

A. Right.

Q. That is correct, that's where you were questioned?

A. Yes, I think so.

Q. And does it show that the date and time when this is now being taken is 12-9-81 at 12:35 p.m?

A. That's what it say.

Q. Does that refresh your recollection as to what time you were interviewed?

A. No, it doesn't.

Q. All right. Now, do you remember, sir, being

Page 71.

asked by the detective, Arnold, last night a police officer was shot and killed at 1200 Locust street. What can you tell me about the shooting. And you said nothing.

A. Right. Because I wasn't there.

Q. Right. That's what you were asked and that's what you said?

A. Right.

Q. Okay. Now, do you remember being asked this? Arnold, I'm going to show you a photostatic copy of the application for a duplicate driver's license. What can you tell me about this application. And then it shows in parentheses, Howard was then shown by Detective D'Amato a copy of a Bassett's application for a duplicate operator's license made out in his name. And your answer was it's mine?

A. Right.

Q. So that's what you were asked and that's the answer you gave?

A. Right.

Q. Now, were you then asked the question, when and where did you get it, and your answer was I got it from Bassett's at Broad and Poplar on the 27th of November?

A. Right.

Page 72.

Q. That's right?

A. Right.

Q. And this is the first page, which you read before signing, right?

A. Yes.

Q. Okay. Now, do you remember being asked the question, when was the last time you saw this Bassett's application, and you answered the Monday before last. And then it shows Howard was then shown a calendar by Detective Williams and stated the 30th of November. Do you remember that, sir?

A. No, I do not, it is too far back for me to remember.

Q. Do you remember saying that it was the Monday before last?

A. No.

Q. Well, do you remember being asked this? Where were you when you saw this application on November 3Oth, and your answer at 18th and Chestnut at the Chuckwagon, I was eating inside there?

A. Right.

Q. Do you remember giving that answer, sir?

A. Right.

Q. And that was correct?

Page 73.

A. Right.

Q. Okay. Do you remember being asked, what did you do with this Bassett's application at the Chuckwagon, and giving your answer, I had it in my pocket then, I didn't discover it missing until this past Saturday, the 5th of December?

A. No, I told them what I did with my license.

Q. That you what?

A. I told them who I gave my license to. A copy of my license to.

Q. My question, sir, is did you say to them I had it in my pocket then, I didn't discover it missing until this past Saturday, the 5th of December?

A. I'm telling you I told the officers who I gave my license to, they put that in there.

Q. Well, Mr. Howard -- I'll be happy to come show you -- I am still reading, sir, from the first page of this document.

A. Right.

Q. Which is the page which you have told us you read before signing it.

MR. WEINGLASS: Your Honor, he didn't indicate he read it. The witness indicated otherwise, as a matter of fact.

MS. FISK: I thought he said he read

Page 74.

the first page.

MR. WEINGLASS: No.

THE COURT: The record will show, Counselor, all right. Go ahead.

BY MS. FISK:

Q. Do you remember being asked this question? Sir, do you know how you lost it. And your answer was I believe I had lost it in the back of that Volkswagen. Do you remember saying?

A. Wait a minute. No, no, no, no. I said who I gave my license to. You ain't putting no words in my mouth with that.

Q. My question is --

A. You can't put words in my mouth. I told you who I gave my license to.

Q. My question, Mr. Howard, is whether you remember being

asked this question and giving this answer. I am not asking you right now whether or not it was truthful, I am just asking you if you remember being asked the question and giving the answer, okay.

So do you remember being asked do you know how you lost it and answering I believe I had lost it in the back of that Volkswagen?

A. They never was lost.

Q. So do I understand from that that you don't

Page 75.

Arnold Howard - Cross

remember giving that answer?

A. No, I told them who I gave my license to.

Q. Okay.

A. Over and over. That's why my license was suspended for 14 years.

Q. Incidentally, Mr. Howard -- and I will get back to the document C-l6 in a moment. You told us on direct examination that in addition to being put on ice for these 72 hours -- and you have now described to us where you went and how you went there -- that there was a period of time when you were placed in a lineup with Kenneth Freeman, yes?

A. Right, and me and Ken Freeman's picture was taken together.

Q. All right. Well, I am going to ask you about that picture in a minute. Let's focus on the lineup for a moment. You say that you and Kenneth Freeman were placed in a lineup?

A. Right.

Q. Now, was that at Homicide, sir?

A. Yes.

Q. Okay. Was that while you and Kenneth Freeman were in one of the little rooms in Homicide, or were you and Kenneth Freeman out in the open area of Homicide?

Page 76.

Arnold Howard - Cross

A. No, there ain't, they don't put you in the open area in Homicide.

Q. I'm sorry, I didn't understand you?

A. They don't put you in an open area in Homicide, they put you in a little room like you're an animal.

Q. So you and Kenneth Freeman were in a little room?

A. He was in one room at first and I was in the other room. And then they put us together.

Q. You told us, sir, that you were in a lineup. Were you with Kenneth Freeman when you were in a lineup?

A. Yes, I was.

Q. And how is it, sir, that you know that you were in a lineup?

A. It ain't the first lineup I've ever been in.

Q. My question, Mr. Howard, is did the people who were viewing the lineup come into the same room you were in?

A. No, they didn't come inside the room, they was behind the glass.

Q. So were you able to see persons who were behind the glass?

A. No.

Page 77.

Arnold Howard - Cross

Q. My question, then, is how do you know that there were persons looking at you from behind the glass?

A. Because I've been in a lineup before.

Q. So you're telling us that you are assuming that people were looking at you because you and Kenneth Freeman were in a room that had glass?

A. It was five other people, I think it was about four other people in that room with us. Up standing up on like a stage.

Q. Oh. Oh.

A. I didn't know what it was.

Q. There were --

A. Other people in the lineup.

Q. There were a total of six of you in sort of like a big area that was enclosed by glass; is that it?

A. Enclosed by glass. Glass was in front of us.

Q. Pardon?

A. The glass was in front of us.

Q. And is there a wall behind you that has a series of lines on it which shows how tall the people are?

A. Let me explain something to you.

Q. What?

Page 78.

Arnold Howard - Cross

A. I don't remember back that far. All I know, I was in a lineup down there.

Q. And you were in the lineup at Homicide?

A. Yeah, I don't know if it was Homicide, they took us on the other side.

Q. Pardon?

A. They took us out the room and took us on the other side.

Q. I'm sorry, I didn't understand what you just said?

A. They took us out of the little rooms we were in.

Q. Right?

A. And took us to the other side of the room in Homicide.

Q. Right?

A. It's glass like.

Q. All right.

A. They put us in another room, it has a wall, had all of us standing up against the wall.

Q. And it had a little stage?

A. It looked like a stage, you had to walk up on it, something.

Q. I see. Now, you have been in other lineups before, Mr. Howard, in the course of being arrested

Page 79.

Arnold Howard - Cross

in the past; is that correct?

A. Yes.

Q. And in fact you have told us you knew what it was because you have been in lineups before?

A. Right.

Q. Now, am I correct, Mr. Howard, that when you have been in lineups before that time, and in fact since that time --

A. Whoa. Not since that time.

Q. Not since that time. All right, so before that time, you walked into a little room and up on a stage that was surrounded by glass, right?

A. Right.

Q. And that little room is up at the Detention Center on State Road?

A. They got one up there and they got one down Homicide. They took it out of there. It is a room up in there. They put you up against the wall and they look at you like you're an animal.

Q. Now, did someone take your picture as you were standing in that lineup?

A. No, they did not. They took me and Ken Freeman' picture separate.

Q. So was your picture taken while you were standing in the lineup, to the best of your

Page 80.

Arnold Howard - Cross

knowledge?

A. I don't remember.

Q. Okay. But you do remember that your picture with Mr.

Freeman was taken when the two of you were together?

A. Yes.

Q. Now, were the two of you together in this area where the lineup was conducted or were you together someplace else?

A. On the other side.

Q. When you say the other side, are you talking about the side of Homicide where the interrogation rooms are?

A. The rooms.

Q. Were the two of you in one of those rooms?

A. Yes, we were.

Q. And who took your picture?

A. How am I supposed to know?

Q. Did you see your picture get taken?

A. Yes, I did.

Q. All right, who took your picture?

A. A man, that's all I knew, took my picture.

Q. Black man or white man?

A. A white man.

Q. In uniform or in plainclothes?

Page 81.

A. Plainclothes.

Q. Was he using a Polaroid or an insta-matic; do you remember?

A. I don't know nothing about no cameras.

Q. Did you see a piece of (indicating) --

A. Yes, the film came out.

Q. You saw the film come out as soon as he took it?

A. Yes.

Q. Did you get to see the picture?

A. Yeah, I seen the picture.

Q. And it was a picture of you and Ken?

A. Yes.

Q. And that was shown to you immediately after it was taken?

A. Not immediately. They had them on the desk when they brung us back out.

Q. Now, did this all occur, sir -- the taking of your picture with Kenneth Freeman, the placing of you in the lineup with five other men -- did this all occur before you gave this statement Commonwealth Exhibit 16 (displaying) to the detective or after?

A. First of all, I don't remember when exactly that statement --

Q. You don't know what?

Page 82.

A. I don't know when.

Q. You don't remember?

A. I don't remember what date I gave that statement.

Q. I thought, sir, that you told us that it was that morning that you were awakened up out of bed before the sun came up and taken to Homicide that you gave the statement?

A. I didn't give no statement right away in the Homicide.

Q. Mr. Howard, maybe I'm confused, but let me go back a little bit. Didn't you tell Mr. Weinglass on direct examination that after they woke you up that morning and took you to 8th and Race, and you spent some 24 hours there --

A. Yeah.

Q. -- at sometime during that period of time when you were taken out of bed and taken to Homicide, that you gave a statement to detectives?

A. Yes.

Q. All right?

A. But I don't know when I gave it to them.

MR. WEINGLASS: Objection. Objection, Counsel might be confused. She inadvertently added in her question that the statement was

Page 83.

given in the morning. And the witness had never said that. I think if Counsel could have the question read back you will see that you made an inadvertent error which threw the witness off. I will ask that that question be read back.

MS. FISK: I have no problem with that.

BY MS. FISK:

Q. Was that the problem, Mr. Howard, is that what I said that confused you?

A. I believe so.

Q. Fine. My question, then, sir, is the statement which you gave at Homicide sometime that day when you were brought there after being woken up in your house, was that, was that given by you before you were placed in this lineup and had your picture taken with Mr Freeman or after you were placed in this lineup and had your picture taken with Mr. Freeman?

A. It's hard to say when.

Q. Okay. Now, do you remember being asked, sir -- and I am going back to Commonwealth Exhibit 16, this statement -- I am now starting to read from the top of page 2. Which is again a page that bears your signature (displaying) (indicating). Do you

Page 84.

remember being asked by the detective who was questioning you -- I'm sorry -- well, what Volkswagen would that be. And your answer was William Cook's Volkswagen?

A. Yeah, I know William had a Volkswagen, he used to take me to work in it.

Q. Did the detective ask you what Volkswagen would that be, and you said to him William Cook's Volkswagen?

A. No, I don't remember.

Q. Do you remember being asked when were you in William Cook's Volkswagen?

A. I never was asked was I in William Cook's Volkswagen.

Q. Pardon?

A. I never was asked if I was in that Volkswagen.

Q. Okay, let me read the entire question and answer and you could say that again. Do you remember giving this answer to that question? The Monday I was in the Volkswagen, William is a vendor in Center City, I ran into him when I left the Chuckwagon. In front of the Duke and Duchess Movie. He gave me a ride to 8th and Spring Garden.

Did you give that answer to that question?

Page 85.

A. I can't remember.

Q. Oh. Do you remember being asked this question? Who was in William Cook's auto besides you and him when he gave you the ride on that Monday, and your giving this answer, just him. He had a lot of stock in the car, incense and gloves and umbrellas. Do you remember giving that answer to that question?

A. I may have.

Q. Was that accurate: Is that the kind of stuff William Cook kept in his car?

A. It wasn't his stuff.

Q. Well, was that the kind of stuff he kept in his car?

A. Not normally.

Q. But you may have given that answer?

A. Yeah, I may have.

Q. Do you remember being asked this question? Where did you sit in the Volkswagen when he gave you the ride, and your answering

I sat in the back. The front seat was full of stuff. Do you remember that answer to that question?

A. No, not really.

Q. Well, let me ask you this. Do you remember

Page 86.

Arnold Howard - Cross

being asked when was the last time you saw William Cook, and your answer was that was the last time, that Monday about five o'clock in the afternoon?

Did you give that answer to that question?

A. I may have.

Q. Do you remember being asked do you know Wesley Cook?

A. Yes.

Q. And answering yes, I know them both?

A. Right.

Q. And that's correct?

A. Right.

Q. Do you remember being asked how do you know Wesley, and you answered we all grew up together in the Spring Garden project, do you remember that, sir?

A. Right. Yes.

Q. And that is the answer that you gave?

A. Yes.

Q. And do you remember being asked when was the last time you saw Wesley Cook, and answering I ain't seen Wesley in almost a month?

A. Yes.

Q. Did you give that answer?

A. More or less.

Page 87.

Arnold Howard - Cross

Q. More or less?

A. I seen him and I didn't see him.

Q. Was that the answer you gave?

A. More or less.

Q. And it is correct?

A. It may have, maybe not.

Q. Do you remember being asked this question, or the next question? Did you know where your driver's license application was before today. And your giving an answer no. I thought I had lost it on the street because I lost a phone book with it. I thought my wife had it because I had a lot of girls' phone numbers in it?

A. First of all, I told them who I gave my license to.

Q. So my question, then --

MR. WEINGLASS: Objection, Your Honor: The witness has to be given an opportunity to answer.

THE COURT: No, he is not answering that question. He could then proceed if he has to. It is a specific question. Let him answer that and then he could go on with whatever he wants. But answer that question.

BY MS. FISK:

Page 88.

Arnold Howard - Cross

Q. My question is did you give that answer to that question?

A. No.

Q. Do you remember being asked, do you know where Wesley Cook lives, and answering he was living with his mother at 7th and Wallace?

A. Yes.

Q. I think 704 Wallace?

A. Yes.

Q. And was that correct?

A. Hmm, I think so.

Q. Do you remember being asked do you know where William Cook lives and answering in the same place with his mother?

A. Yes.

Q. And you gave that answer?

A. More or less.

Q. And that was correct?

A. More or less.

Q. Do you remember being asked at the -- I am at the top of page 3 -- when did you hear about the officer being shot last night. And answering this morning on the radio?

Q. Did you give that answer?

A. No.

Page 89.

Arnold Howard - Cross

Q. To that question?

A. No.

Q. Do you remember being asked, did you know then that Wesley and William Cook had been arrested, and giving this answer, no, but I heard on Mary Mason that Mumia had been arrested and I know Mumia to be Wesley Cook, that's his Muslim name?

A. Huh. No.

Q. You never gave that answer?

A. No.

Q. Do you remember giving this question and giving this answer to it? When did you know that your driver's license application was found, and your answer being after I got your message to call the Roundhouse and I spoke to a Detective Thomas. He had asked me my phone number?

A. No, they came and got me. Nobody didn't call my house.

Q. So you never gave that answer to that question?

A. No.

Q. Do you remember being asked do you know where we found your Bassett's application and answering no?

A. When they came and got me they told me my license was found in the officer's hand.

Page 90.

Arnold Howard - Cross

Q. Do you remember being asked, when I first asked you if you knew how you lost your application you answered I believe I had lost it in the back of that Volkswagen. What made you say that. And answering, because of what the officer had said to me on the phone, he said you found a duplication license with my name on it. Do you remember giving that answer to that question?

A. No.

Q. Do you remember being asked, did he say where we found it, and you said no, all he said is that you found it. Do you remember that answer to that question?

A. No.

Q. Do you remember being asked how did you know about a Volkswagen, and answering I read it in the Daily News and I know the Volkswagen was William's?

A. No.

Q. Do you remember being asked what can you tell me about Wesley Cook? And your answer was all we did was grow up together, gang warred together. We were in the Black Panther Party together around '69 or '70?

A. No.

Q. You didn't give that answer?

Page 91.

Arnold Howard - Cross

A. No.

Q. Is that true?

A. Yeah, we all hung out together. But I'm not saying what we

were in.

Q. Were you in the Black Panther Party?

A. I'm not saying, I'm in no party.

Q. So you never gave that answer?

A. I'm not saying I was in no party, put it like that.

Q. Did you ever give that answer?

A. No.

Q. Do you remember being asked is there anything else you could think of that would help us in our investigation of the shooting of Police Officer Faulkner, and your answer was that's all I know, what I read in the paper?

A. How could I read it in the paper and I was incarcerated.

Q. So you didn't give that answer?

A. No.

Q. Do you remember being asked do you know Officer Faulkner and your answer was I may know him. I'm the secretary of the Town Watch in Spring Garden and I know Officer Redden at 11th and Winter?

A. Who?

Page 92.

Arnold Howard - Cross

Q. Officer Redden -- R-E-D-D-E-N -- at 11th and Winter?

A. Right. I know Officer Redden.

Q. Did you give that answer to that question?

A. Yes.

Q. Now I'm going to page 4, sir, which you said is the page which, which you did not sign; is that correct?

A. Yeah.

Q. Do you remember being asked this question? Did you see Officer Faulkner's picture in the paper today and your answer was yes?

A. No.

Q. You weren't asked that question, didn't give that answer?

A. No. I didn't know.

Q. Do you remember being asked did he look familiar to you and your answer was somewhat?

A. No.

Q. Do you remember being asked do you know how police, Police Officer Faulkner would have your Bassett's application, and your answer was no?

A. No.

Q. You don't remember being asked that question?

A. I might have been asked it.

Page 93.

Arnold Howard - Cross

Q. Did you say no?

A. I don't remember what I said back then.

Q. Do you remember being asked, have you been stopped by the police recently for anything?

A. Back then I was stopped a whole lot.

Q. Do you remember saying yes, this past Monday night?

A. I don't remember.

Q. Well, do you remember this? Do you remember being asked where was that that they stopped you, and your answer was at 7th and Fairmount. The question was what time was that. And your answer was about eleven o'clock that night. We were making our rounds at the project, me and some people from Town Watch. They saw my walkie-talkie and stopped me. I showed them my Town Watch card with my name on it and they let us go after they listened to our walkie-talkie and heard our base station?

A. I don't remember that.

Q. Does that sound familiar, sir?

A. I know we had a Town Watch back then.

Q. What?

A. I know we had a Town Watch back then.

Q. You know you were in Town Watch back then?

A. Right.

Page 94.

Arnold Howard - Cross

Q. So is that the answer that you gave to those series of questions?

A. Nah... no.

Q. You don't know?

A. No.

Q. Do you remember whether or not you ever told the detective who was questioning you that you were in Town Watch?

A. They might have found that card in my wallet.

Q. Do I understand that you never told them you were in Town Watch?

A. I am not saying what I told them, I don't remember what I told them since '81. I don't have a photostatic memory.

Q. Now, Mr. Howard, does the name Detective D'Amato sound at all familiar to you?

A. No. I don't know.

Q. How about the name Detective Williams, Jim Williams?

A. I don't remember them cops' names, I don't want to remember their names.

Q. Do you think that you would recognize any of those cops or any of the cops who were the good cop-bad cop that questioned you these two times at Homicide?

Page 95.

Arnold Howard - Cross

A. I might, I may not.

MS. FISK: Can Detective James Williams please be asked to come into the Courtroom. I believe he is out in the hallway.

(Pause.)

MS. FISK: May I simply ask the Detective to state his name for the record.

DETECTIVE WILLIAMS: Detective James Williams, number 730, Central Detective Division.

BY MS. FISK:

Do you recognize this man, Mr. Howard?

A. (Witness shakes head.)

Q. You are shaking your head, we have to write it down.

A. No. I wouldn't know what he looked like if I seen him today.

Q. I'm sorry?

A. If I seen him after he left this Courtroom I wouldn't know who he looked like.

MS. FISK: All right, thank you.

May I ask, Your Honor, that this document be marked Commonwealth Exhibit 17, a copy for defense Counsel if they would like.

(Excerpt from PAB logbook was marked Commonwealth Exhibit C-l7 for identification.)

Page 96.

Arnold Howard - Cross

THE COURT OFFICER: C-17, Your Honor.

MS. FISK: May I approach the witness, Your Honor?

THE COURT: (Indicating).

BY MS. FISK:

Q. Mr. Howard, you are being shown a photocopy of a sheet of paper. I want to ask you whether you see about halfway down your name written in the second column which says name? Do you see the name Arnold Howard?

A. Yeah.

Q. You have to speak into the microphone.

A. Yes.

Q. All right, I just want to make clear: Let's go two names above where the date is 12-9-81, all right?

A. Yes.

Q. Now, next to your name it just says 12-9; is that correct, sir?

A. That's what it say on that piece of paper.

Q. Is your name Arnold Howard?

A. Yes, it is.

Q. The next column over, sir, on the top says Unit; do you see that, sir?

Page 97.

Arnold Howard - Cross

A. Yes.

Q. And next to your name there is the letters H-O-M?

A. Yes.

Q. Now, the next column there are two columns, time in and out; do you see that, sir?

A. Yes.

Q. All right. And the enter column next to your name shows 12:30; do you see that, sir?

A. Yes.

Q. And the out column next to your name shows 2:30; is that correct?

A. No.

Q. Pardon?

A. No.

Q. It does not show 2:30?

A. I can't even see that.

Q. Why don't you look.

A. That looks like a seven.

Q. That looks like a seven?

A. Yes.

Q. There is a line -- fine. And then on the third column -- I'm sorry -- the final column, which is at the top marked escort, there is a signature?

A. Looks like a signature.

Page 98.

Arnold Howard - Cross

Q. And that is not your signature?

A. Right here?

Q. Yes, sir.

A. That's not my signature.

Q. No, that is not your signature?

A. No.

Q. Have you ever seen this piece of paper before?

A. No.

Q. Have you ever seen the logbook which is at the front window of the Roundhouse by the door which opens up to the parking lot?

A. Yes.

Q. Is this what pages in that logbook look like?

A. I wouldn't, I wouldn't know. I just know there is a book right there.

Q. Pardon?

A. All I know, there's a book right there.

Q. Now, sir, you also testified that at some point your hands were tested, right?

A. Yes.

Q. And was that also at Homicide?

A. Yes.

Q. Was that the first time you were at Homicide, as opposed to the second time?

A. The first time I was there... I don't remember

Page 99.

Arnold Howard - Cross

when they did it, all I know, they put this stuff on my hands.

Q. You don't remember, am I correct, that it was the first time you got there or the second?

A. It was the first time when I was there.

Q. Do you remember how long you were at Homicide when they put that stuff on your hands?

A. I didn't have no watch on.

Q. Well, was the stuff put on your hands, if you know, before you were in the lineup or after you were in the lineup?

(Pause.)

A. Before, I think, I'm not sure.

Q. Do you know whether or not the stuff was put on your hands before or after you spoke to the detective and gave a statement (displaying)?

A. So much was going on in there, I didn't remember.

Q. Who was the person who put the stuff on your hands -- I recognize you don't know anyone's names -- but, again, was it a detective?

A. I don't know if it was a detective or not.

Q. Well, was it a person in a uniform or not in a uniform?

A. Out of uniform.

Page 100.

Arnold Howard - Cross

Q. Pardon?

A. Out of uniform.

Q. Out of uniform. Was it a male or female?

A. A man.

Q. White or black?

A. White.

Q. Now, I take it, Mr. Howard, that you were pretty angry about being kept on ice for these 72 hours?

A. Yes.

Q. So when you were finally released from Homicide you made an immediate complaint to someone?

A. I might have.

Q. Pardon?

A. I might have, I don't remember. I told my people about it.

Q. And who are your people, sir?

A. My family.

Q. Did you make any complaint to the Police Department?

A. I don't really remember.

Q. You don't remember?

A. No, it's been since '81, how would you remember something that far back?

Q. Would you agree with me that when a person who

Page 101.

Arnold Howard - Cross

has done nothing wrong such as yourself is woken up out of his bed at 6:00 in the morning and kept on ice for 72 hours, that your response naturally would be to complain to the Police Department?

A. No, they don't have no win at the Police Department.

Q. Pardon?

A. They don't have no win at the Police Department.

Q. Don't have no...?

A. Win.

Q. Win?

A. Right.

Q. How about an attorney, did you contact an attorney?

A. My family asked me to leave the matter alone.

Q. Oh. And based on that request by your family you left the matter alone?

A. Yes.

Q. And you didn't tell anyone about it, as I understand it, until you spoke to Mr. Weinglass about it on Friday?

A. No, there were a lot of people who knew about what went on because I told a lot of people what went on.

Page 102.

Arnold Howard - Cross

Q. Okay. And you told a lot of people when it occurred about it, is that it?

A. Yes.

Q. Now, Mr. Howard, when you were interviewed by Mr. Weinglass in person the other day, did he take a statement from you?

A. I told him what I knew.

Q. And was he writing down what you told him?

A. Some things.

MS. FISK: I would ask, Your Honor, access to that statement.

THE WITNESS: It wasn't no statement.

MR. WEINGLASS: These are obviously, if you are referring to my notes, they are work product. I'm Counsel for the Petitioner.

MS. FISK: I am asking, Your Honor, for, if there are any verbatim records of the contact that Counsel had with the witness, that constitutes a statement.

MR. WEINGLASS: No verbatim.

MS. FISK: That's what I am saying.

MR. WEINGLASS: No verbatim record.

MS. FISK: Very well.

MR. WEINGLASS: While we're on it: With respect to C-17, could I have a

Page 103.

Arnold Howard - Cross

representation from Counsel as to what this document is from? It's just --

MS. FISK: Certainly. This is a photocopy from the logbook maintained at the front door of the Police Administration Building. That is the public door of the Police Administration Building. Those books being maintained over the years in the custody and control at the Police Administration Building. This is a photocopy from the page which records on, starts from some persons coming in on December the 8th, and runs through December the lOth, 1981, making a record of those persons coming in through that public door of the Roundhouse, reflecting the time that they are coming in and out, if that time is available when the person is so ready to leave.

MR. WEINGLASS: Right. What troubles us, number one --

MS. FISK: Your Honor, could I complete my cross-examination?

MR. WEINGLASS: Talking about C-l7 for a moment.

MS. FISK: I understand. Could I complete my cross-examination?

Page 104.

Arnold Howard - Redirect

THE COURT: They introduced it for identification at this time. If you have a problem about it, let's take it up later. Let's get finished with the witness so he could go home or wherever he wants to go.

BY MS. FISK:

Q. Now, Mr. Howard, just so I'm clear: You were never arrested, that is in any formal fashion, on December the 9th, December the lOth, December the llth, or December the 12th of 1981; is that right?

A. Say that again.

Q. Sure. You were never formally arrested on any of those dates that I just gave you?

A. I never was charged with nothing the whole time they had me down there. They just had me down there.

Q. Right, for the 72 hours you were kept on ice?

A. Right.

MS. FISK: Your Honor, I have no further questions of this witness.

MR. WEINGLASS: Just a few questions, Mr. Howard.

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REDIRECT EXAMINATION

- - - - -

Page 105.

Arnold Howard - Redirect

BY MR. WEINGLASS:

Q. Was it an application for a driver's license or the driver's license itself that you testified to that you gave to Kenneth Freeman?

A. I gave him the license. Because back then you could get photostatic copies of your license.

Q. And so when the statement that was read to you by Counsel indicated that it was an application, that isn't what you recall telling the police?

A. No, I told them I gave to him my permanent driver's license, a copy of my driver's license.

Q. And you gave him the name of the person you gave it to?

A. Yes.

Q. And that was the person you saw in the precinct that night?

A. Yes, sir.

Q. The person who was in a lineup?

A. Yes, sir.

Q. And the person who they photographed with you?

A. Yes, sir.

Q. Now, you were asked about being interviewed by me. Has anything happened with respect to your mother or your family since you've been in contact with me?

Page 106.

Arnold Howard - Redirect

MS. FISK: Objection, Your Honor. It's beyond the scope of cross-examination.

MR. WEINGLASS: No, the question, he was specifically asked about meeting me and my taking a statement, etcetera.

BY MR. WEINGLASS:

Q. I'm asking him now as a result of that has anything happened?

A. Yes.

MS. FISK: Objection, Your Honor.

THE COURT: Wait awhile.

MR. WEINGLASS: Personal knowledge.

MS. FISK: I would note as well that when he was interviewed by Mr. Weinglass is irrelevant in light of the fact that we received this affidavit at 5:30 yesterday afternoon. He could have been interviewed a year-and-a-half ago, we were notified as to the subject of this witness' testimony 5:30 yesterday afternoon.

MR. WEINGLASS: Well, Counsel wasn't listening to the direct very carefully because I asked him when was the first time he had any contact with me. And it wasn't a year ago.

THE WITNESS: Yes, sir.

MS. FISK: It was last Friday.

Page 107.

Arnold Howard - Redirect

MR. WEINGLASS: Right.

MS. FISK: But I still don't understand the content of the question and why it is at all relevant to cross-examination. It is beyond the scope and I object.

MR. WEINGLASS: Find out in a moment.

MS. FISK: I object, Your Honor.

BY MR. WEINGLASS:

Q. What has happened to you and your family since I've had contact with you?

A. I don't appreciate my mother being brought to the police station.

MS. FISK: I am objecting. You have to wait, sir. Thank you. I object, Your Honor: It is beyond the scope of cross-examination.

MR. WEINGLASS: Let me ask the question more specifically, I will withdraw it.

THE COURT: All right.

BY MR. WEINGLASS:

Q. Has your mother been harassed by the police since you talked to me?

A. Yes.

MS. FISK: You see, Your Honor, that was an improper question. I objected to the

Page 108.

first so Counsel instead is introducing the improper question. And I object to that and ask that that be stricken.

THE COURT: I will have to strike it too. If you want to call his mother, fine. Okay.

BY MR. WEINGLASS:

Q. Do you have personal knowledge of what was happening to your mother?

THE COURT: I said if you want to call his mother, fine.

MR. WEINGLASS: I am going to ask him of personal knowledge.

THE COURT: No, no personal knowledge.

MS. FISK: I object. I don't care if Martians have landed on this man's roof. This is a man that we were notified about at 5:30 last night. To suggest that anything that has happened to him or his mother since he spoke to Mr. Weinglass is attributable to anybody other than Mr. Weinglass is to misrepresent the truth.

MR. WEINGLASS: They had a statement for 14 years.

MS. FISK: That's right, and he wasn't called to trial because this man doesn't know

Page 109.

anything about the murder of Officer Faulkner, has nothing to do with the guilt or innocence of this Defendant, which is the purpose of this hearing, is nevertheless called by the defense. And we didn't care about speaking to him and did not.

THE COURT: I sustain the objection. You have an exception. Let's go. Anything further with this witness?

MR. WEINGLASS: Nothing further.

THE COURT: Thank you, Mr. Howard. You are excused.

All right, who is your next witness?

MR. WEINGLASS: Your Honor, I do want to bring up the question of C-17.

THE COURT: Well, bring it up later, please. I want to know now who is your next witness. You have people here. For instance, you have Dr. Hoyer. Are you going to call him?

MR. WEINGLASS: We have Professor Lambert as our next witness.

MS. FISK: Your Honor, Professor Lambert is a witness we have previously objected to, I understood.

THE COURT: Did I rule on that

Page 110.

already?

MS. FISK: I thought you did, Your Honor, but I will re-raise our objection on the basis of the offer of proof that we have been presented. Apparently, Dr. Lambert is a person who in the nineties interviewed about 35 people who were jurors on Judge Jackson's death penalty cases. And as a result of those interviews has opinions about jurors in general. That is irrelevant and inadmissible testimony with regard to what was in the minds or retentions of the 12 Jurors on this Jury in 1982. We, therefore, object.

THE COURT: All right. He's out.

MR. WEINGLASS: He's out, Your Honor?

THE COURT: Yes.

MS. FISK: I would note, Your Honor, I believe the Court previously ruled on this witness.

THE COURT: I probably did. The notes will tell us that.

I hope you are typing up all of these notes.

MR. WEINGLASS: The Court wanted an affidavit and we gave the Court a long

Page 111 is missing. We will attempt to locate it.

Page 112.

MR. WILLIAMS: We don't have any problem with him being released during the lunch hour.

THE COURT: If Dr. Hoyer is around tell him he could go until two o'clock.

Okay, call Sharon Gaines Smith.

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Sharon Smith, having been duly
affirmed, was examined and testified as follows:

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MR. WILLIAMS: May I inquire, Your Honor?

THE COURT: Yes, sure.

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DIRECT EXAMINATION

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BY MR. WILLIAMS:

Q. Miss Smith, thank you for coming in. Can you tell us where you live?

A. Philadelphia.

Q. How long have you lived in Philadelphia?

A. All my life.

Q. Back on December 9th, 1981, were you living in Philadelphia on that date?

A. Yes.

Page 113 is missing. We will attempt to locate it.

Page 114.

Q. Did it sound like more than, obviously more than one person, right?

A. Yes.

Q. And then you said you heard gunshots?

A. Yes.

Q. Do you remember about how many gunshots you heard?

A. I'd say two, maybe three.

Q. What happened next?

A. I looked. When I looked out the window I seen a lot of police officers beating a black man with dreadlocks.

Q. Okay, you are talking about the window to your apartment?

A. Yes.

Q. And you were looking where, down on the street?

A. Yes.

Q. And you said you saw police officers?

A. Yes.

Q. About how many police officers did you see?

A. About five, maybe six.

Q. Five, maybe six. And again tell us what you saw these five or six police officers doing?

A. They were beating the black man with the

Page 115.

dreadlocks with them sticks they carry. And with their feet.

Q. With sticks and their feet?

A. Yes.

Q. Were they kicking the man?

A. Yes.

Q. Did you hear if these police officers were saying anything while they were hitting him with the sticks?

A. Yes.

Q. And kicking him?

A. Yes.

Q. What kind of things were they saying?

A. Kill the black mother fucker, beat the shit out of the black mother fucker.

Q. So it was racial in nature?

A. Yes.

Q. Did you have an impression back in December, on December 9th, 1981, as you were looking on this scene, as to who was being beaten? Talking about your impression now.

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: Your Honor, it is directly relevant to why we're calling this witness. This is the crucial aspect of her

Page 116.

testimony.

MS. FISK: It may be crucial but if it's her impression, that is not a fact that the witness can attest to.

THE COURT: Yes.

MR. WILLIAMS: It is her state of mind. Witnesses always testify to their state of mind, or often testify.

MS. FISK: It is offered for the truth and not for any purpose --

MR. WILLIAMS: That's why it is admissible.

THE COURT: Isn't that for the fact-finder to decide? Just give me the facts and I will go from there.

MR. WILLIAMS: One of her facts is her state of mind. I am asking for state of mind. We all know the state of mind exception to the hearsay rule. State of mind is often relevant.

THE COURT: Are you still objecting?

MS. FISK: Yes, this is not hearsay. This is simply not a fact known to the witness. It is a guess and an impression.

THE COURT: Okay, I will let it in. If I rule that it's inadmissible I will just

Page 117.

disregard it and strike it from the record later. Let's go.

MR. WILLIAMS: Fair enough, Your Honor.

BY MR. WILLIAMS:

Q. Now, as you were looking out that window on December 9th, 1981, did you yourself have an impression as to who was being beaten?

A. I thought it was the man that we usually see in the neighborhood giving out pamphlets talking about black people.

Q. So you thought it was a man who you have seen in the neighborhood on other occasions?

A. Yes.

Q. And what kind of hair did this man have?

A. Dreadlocks.

Q. And the man you saw being beaten had dreadlocks?

A. Yes.

Q. And this man with dreadlocks that was being beaten you thought was a man who in the past had handed out pamphlets?

A. Yes.

Q. And you said talked about black people?

A. Yes.

Page 118.

Q. And did this man hand out pamphlets and talk about black people with the dreadlocks in the vicinity of 13th and Locust?

A. Yes.

Q. By the way, what was your reaction when you saw the beating taking place?

A. I was real scared and nervous and I started vomicking.

Q. You started vomiting?

A. Yes.

Q. It was that upsetting to you?

A. Yes, I've never seen anything like that before.

Q. You've never seen anybody being beaten like that before?

A. No, no.

Q. Now, after this incident that you saw on December 9th, 1981, did you ever see this man with the dreadlocks selling, giving out pamphlets in that area again?

A. No.

Q. Never have again?

A. No.

(Discussion held off the record between Defense Counsel.)

Page 119.

MR. WILLIAMS: Miss Smith, thank you very much. The prosecutor's going to now ask you some questions.

THE WITNESS: Oh, okay.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Good morning, Miss Smith.

A. Good morning.

Q. Miss Smith, may I just determine: Are you the woman who is currently on probation for a guilty verdict finding you guilty of simple assault before Judge New?

A. Yes.

MR. WILLIAMS: Your Honor, I am going to object to that and move to have it stricken:, It deals with an alleged assault.

MS. FISK: No, Your Honor.

MR. WILLIAMS: Not crimen falsi.

MS. FISK: That is correct, the fact that the witness is currently on probation is relevant as it does go to the bias of the witness.

MR. WILLIAMS: Oh, we agree with that,

Page 120.

certainly.

MS. FISK: That is correct, and she is on probation, that was the extent of my question.

MR. WILLIAMS: The point is so was Mr. Chobert when he testified at trial.

THE COURT: Counselor, are you withdrawing that objection?

MR. WILLIAMS: I am withdrawing it.

THE COURT: Well, if there is nothing for me to rule on let's go.

MS. FISK: Thank you, Your Honor.

BY MS. FISK:

Q. Now, Ms. Smith, you were so horrified by this beating; is that right?

A. Yes.

Q. And you had never seen anything like it before?

A. No.

Q. You, I take it, have never seen anything like it since: It was that horrible?

A. No, I haven't.

Q. So I take it, ma'am, that in the hours that passed that beating you saw a huge number of additional police officers remain at that

Page 121.

intersection?

A. Yes.

Q. And I take it that you went down to report that to someone?

A. No.

Q. And that was because you were afraid of the police now: They had beaten someone?

A. Yes, plus my husband told me to stay out of it. Mind my business.

Q. Told you to stay out? In the 14 years since that time, have you made a formal report or a formal complaint about that beating to any person?

A. No.

Q. To any attorney?

A. No.

Q. To any judge?

A. No.

Q. To any committee investigating police brutality or police conduct?

A. No.

Q. How is it, Miss Smith, that you have come to be a witness here today?

A. Well, I feel as though he shouldn't be executed. You don't know if he did it or not.

Q. Yes, ma'am. All right, you feel as though Mr.

Page 122.

Jamal should not be executed because you don't know whether he did it or not?

A. You don't know.

Q. I don't know whether he did it or not. Yes, ma'am, how does that lead to your being a witness today?

A. Excuse me?

Q. Having said that, how does that lead to your being a witness here today?

A. Well, I was talking with friends and family and they introduced me to him, to the lawyers.

Q. Introduced you to...?

A. The lawyers (indicating).

Q. To which? To Mr. Weinglass or Mr. Williams? To Miss Wolkenstein? One of these lawyers here?

A. All three of them.

Q. All three of them. And when is it that you were introduced to them?

A. Last month.

Q. And was it last month after you were introduced to them that you told them what you have told us today?

A. Yes.

Q. And that was the first time that you had ever told any person what you had seen?

Page 123.

A. No, that's not the first time I told anybody what I had heard.

Q. Who had you told?

A. My neighbor Jerry. My family members.

Q. Incidentally, when you heard these shots and this argument out your window from the Midstown Hotel, what floor were you on?

A. Third.

Q. And were your windows open?

A. Cracked just a bit.

Q. And it was the winter: Was it cold outside?

A. Yes, the rooms are very hot.

Q. I see. And you were able to through the crack open in the window to hear these things that were taking place?

A. Yes, we could hear, they were very loud.

Q. Well, could you hear what the argument was before you heard the gunshots?

A. No.

Q. Could you hear how many voices you heard?

A. About three, maybe four.

Q. Could you tell if they were male or female voices?

A. Sound like men.

Q. Now, did you look out the window when you

Page 124.

heard the argument?

A. No.

Q. Then you told us you heard gunshots, two or three, right?

A. Yes.

Q. Now, did you then look out the window immediately after hearing those gunshots?

A. Yes.

Q. Now, is it my understanding then that, well, what is your definition of immediately?

A. Excuse me?

Q. I asked you if you looked out your window immediately after hearing the gunshots. And by that I mean you heard the gunshots and within a second you were looking out your window?

A. I'd say about three seconds.

Q. Okay, so within three seconds of hearing these two to three gunshots you looked out and saw five to six police officers beating this black man with dreadlocks using their sticks and their feet?

A. Yes.

Q. And did you see any police vehicles or just these?

A. Yes, it was police cars outside.

Q. How many police cars?

Page 125.

A. Say about four.

Q. Did you see any other person on the ground other than the black man with dreadlocks who was being beaten?

A. No.

Q. Now, the nature of the beating that you saw, you said that it was so horrible it made you ill?

A. Yes.

Q. What part of this man's body was being kicked and hit with the sticks?

A. Everywhere.

Q. Did it appear to you that every bone in this man's body is going to be broken by this beating?

A. I thought he was going to die.

Q. So that the force of the beating was so horrible that you thought he was going to be killed as a result of the force of being beaten?

A. Yes.

Q. And do I understand it he was being kicked in the head, yes?

A. Everywhere.

Q. Everything that you could see was being kicked and hit, multiple times?

A. Yes.

Q. And am I correct that it appeared that it

Page 126.

Sharon Smith - Cross

looked like every bone in this man's body was being broken?

A. Yes.

Q. But you are not a medical doctor, you can't make that determination?

A. No.

Q. But the force was that brutal?

A. Yes.

Q. Now, the man that you thought it was, this man who sold pamphlets, did he usually sell pamphlets during the day?

A. Sometimes.

Q. Well, when would you see this man who sold pamphlets?

A. During the evening.

Q. When you say evening, what do you mean?

A. Say around 4:30, five o'clock, in that time.

Q. In the afternoon?

A. Yes.

Q. Is that the period of the day that you had seen this man with pamphlets at that intersection before?

A. Yes.

Q. And that was generally the time of day you saw him?

Page 127.

Sharon Smith - Cross

A. Yes; it was usually the time we were going in the building.

Q. Pardon?

A. That's usually the time we were going in the building with our children.

Q. Oh, all right. How long had you been living at that building about?

A. Ahh, about seven, eight months.

Q. And in the seven to eight months you would see this man selling pamphlets at about 4:30 or five o'clock in the afternoon?

A. Yes.

Q. And that's the only time of day you would see that man?

A. Yes.

Q. You had never seen that man out on the corner at three o'clock in the morning?

A. No.

Q. Is that right?

A. Excuse me?

Q. You had never seen that man outside on the corner at three o'clock in the morning; isn't that right?

A. No, I wasn't outside at three o'clock in the morning.

Page 128.

Sharon Smith - Cross

Q. And you never looked out your window at three o'clock in the morning?

A. Sometimes.

Q. And on occasions that you had looked outside of your window at three o'clock in the morning, you had never seen him out there?

A. I don't know. I don't know. There was a lot of people out that time.

Q. Now, I take it that you discovered sometime in the course of that morning that a police officer had been shot?

A. I found out during the news, yes, the next couple days.

Q. Did you call the police officers and let them know that there was a man who sold pamphlets at that corner with dreadlocks?

A. No, I just told you I didn't inform any police officers.

Q. Well, when you went to the window after hearing the gunshots, was your husband awake?

A. Excuse me?

Q. When you went to the window after hearing the gunshots -- I will rephrase that question. When you went to the window after you heard the gunshots, did anyone else in your family go to the window with you?

Page 129.

Sharon Smith - Redirect

A. My husband.

Q. Now, what is his name?

A. Wendell Gainey.

Q. MS. FISK: Thank you, ma'am.

I have nothing further, Your Honor.

MR. WILLIAMS: Just briefly, Your Honor.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Miss Smith, where were you inside your hotel room when you heard the gunshots?

A. We was laying down.

Q. You were laying down in bed?

A. Yes.

Q. And was your husband in bed with you?

A. Yes.

Q. And your children were there?

A. Yes.

Q. How old are your children?

A. Now?

Q. Back in 1981.

A. My oldest daughter Sharon was getting ready to be a year. And my daughter Shawinda had just turned

Page 130.

Sharon Smith - Redirect

two months.

Q. Okay. And what was your physical condition on December 9th, 1981?

A. I was pregnant.

Q. You were pregnant?

A. Yes.

Q. And when you heard the gunshots did you comment about it with your husband, to your husband?

A. Yes.

Q. And did he say something back to you?

A. He told me to lay back down and mind my business.

Q. He told you to lay back down and mind your business. And what did you say back to him?

A. Nothing, I just scooted down (indicating). But I was still looking out the window.

Q. You were curious?

A. Yes.

Q. So you heard the gunshot and then you talked about it with your husband?

A. Yes.

Q. And then he said mind your business?

A. Yes.

Q. And you didn't want to mind your business?

A. No.

Page 131.

Sharon Smith - Redirect

Q. So that eventually you got out of the bed?

MS. FISK: Objection, Your Honor. That was not her testimony.

MR. WILLIAMS: This is redirect, Your Honor. Following up from the --

MS. FISK: But it's also non-leading direct examination. And it's misrepresenting the testimony.

MR. WILLIAMS: Fine, I will rephrase it.

BY MR. WILLIAMS:

Q. At some point after your husband told you to mind your business, I take it you got out of bed?

A. I was just scooting on the end of it, peeking out the window.

Q. Okay. Scooting out of the bed?

A. Yes.

Q. Now, about this man who had dreadlocks and sold, or gave out pamphlets. Did you ever have a reason, before December 9th, 1981, ever have a reason to look out the window at three o'clock in the morning to see if this man giving out pamphlets is out there in the street?

A. No.

Q. No reason to do that?

Page 132.

Sharon Smith - Recross

A. No.

MR. WILLIAMS: No further questions.

MS. FISK: Just a couple.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Ms. Smith, how many months pregnant were you in December of 1981?

A. Hmm... I was almost two.

Q. So your sleep was already being interrupted by your pregnancy?

A. No, I wasn't asleep. I wasn't asleep.

Q. When you heard the gunshots?

A. I wasn't asleep, I was laying down.

Q. I understand that. But on the night, you told us on cross-examination that there had been other nights that you had looked out the window, right?

A. Yes.

Q. On how many occasions?

A. I don't know.

Q. More than five?

A. No, I don't know.

Q. On none of the occasions that you had ever looked out the window before do you remember ever

Page 133.

Sharon Smith - Redirect

seeing that man with dreadlocks?

A. I wasn't really looking to see him.

Q. So you don't know if he was there or not?

A. True.

Q. So the only time you know he was there was about 4:30 or five o'clock in the afternoon when you would come into the building?

A. Right.

MS. FISK: Thank you, ma'am.

THE COURT: Okay.

MS. FISK: I'm sorry, I just have one question.

BY MS. FISK:

Q. Were you aware, Miss Smith, or were you living in Philadelphia in June and July 1982?

A. Yes.

Q. And were you aware that the trial for Mr. Jamal involving the murder of Police Officer Faulkner was going forward?

A. Yes.

MS. FISK: Thank you.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Page 134.

Sharon Smith - Redirect

Q. Well, picking up from that: Did you voluntarily ever step forward to tell a lawyer that you had seen this man being beaten?

A. No.

Q. Okay. Can you explain to us why?

A. I was afraid.

Q. You were afraid?

A. Yes.

Q. And did your husband encourage you to step forward?

A. No.

Q. Did he -- I'm sorry, go ahead.

A. No.

MR. WILLIAMS: No further questions.

THE COURT: All right, you are excused.

We will take a luncheon recess until 1:30.

THE COURT OFFICER: Court stands in recess until 1:30 p.m.

- - - - -

Luncheon recess was held until 2:00 p.m.

- - - - -

MS. WOLKENSTEIN: Your Honor, before

Page 135.

Paul Hoyer, M.D. - Direct

we begin the next witness, I want to on behalf of the Petitioner review our motion for discovery. I want to note several things that were obtained very --

THE COURT: Could we do that after we finish with the next witness? Let's take the next witness so he could leave. If that's Dr. Hoyer, I am sure he has much more important things to do than just sit around and wait to be called.

MS. WOLKENSTEIN: I will wait until the witness is completed.

THE COURT: Okay. Dr. Hoyer.

Paul J. Hoyer, M.D, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Dr. Hoyer.

A. Good afternoon.

Q. Dr. Hoyer, are you the same Paul J. Hoyer who testified in this proceeding during the trial on June 25th, 1982?

Page 136.

Paul Hoyer, M.D. - Direct

A. I have no specific recollection of appearing.

Q. You have no recollection of appearing and testifying in this

case?

A. That's correct.

Q. Right. Were you serving in any capacity with the City of Philadelphia in June of 1982?

A. Yes.

Q. And what capacity was that?

A. Assistant Medical Examiner.

Q. And would it refresh your recollection if I handed you what purports to be a copy of the transcript of June 25th, 1982 in which a Paul J. Hoyer, Assistant Medical Examiner for the City of Philadelphia, was duly sworn and testified?

A. I'll have to look at it.

MR. WEINGLASS: The record reflects that I'm handing a -- I should show Counsel...

THE COURT OFFICER: I'm sorry (handing).

MS. FISK: Thank you very much.

MR. WEINGLASS: Let the record reflect I'm handing a copy of what purports to be a copy of the transcript of June 25th, 1982, having shown a copy of that transcript to Counsel.

MS. FISK: A portion of that day's

Page 137.

transcript, I would add.

MR. WEINGLASS: That's correct.

THE COURT OFFICER: (Handing).

(Pause.)

THE WITNESS: No, it does not.

BY MR. WEINGLASS:

Q. It does not refresh your recollection?

A. That is correct.

Q. Having looked at the transcript you still can't say that you were the Dr. Paul J. Hoyer who testified in this trial?

A. Not of my own, not of my own memory.

Q. Well, but having looked at the transcript, the transcript does not serve to refresh that recollection?

A. That is correct.

Q. Strike it. Did you maintain a daily diary of your activities as the Assistant Medical Examiner of the City of Philadelphia in June of 1982?

A. Not that I recall.

Q. Were you subpoenaed here today?

A. Yes.

Q. Did the subpoena ask you to bring any documents with you?

A. Yes.

Page 138.

Q. What did it call for?

A. It called for me to bring any documents or photographs that are in my possession.

Q. All right. Is there anything in your possession?

A. Pursuant to that subpoena?

Q. Yes.

A. No.

Q. There is nothing. And when you came to Court today were you provided with any documents by Counsel?

A. I was provided with some photocopies of documents from the file of the Medical Examiner's Office.

Q. Right. Did you recognize those documents?

A. As to form, yes.

MR. WEINGLASS: And may this be identified as the next Exhibit in order.

THE COURT OFFICER: D-26. D-26, Mr. Porterfield.

(Medical Examiner's report was marked Defense Exhibit D-26 for identification.)

THE COURT OFFICER: (Handing).

BY MR. WEINGLASS:

Q. Handing you D-26: Is that the document that

Page 139.

you were shown this morning?

(Pause.)

A. This might be a similar photocopy but it's not the document.

Q. And what differences do you notice, Doctor?

A. Well, I initialed, initialed and dated the upper right-hand corner of the front page of the document that I was given this morning. And this is not initialed and dated so I know it's not, not the identical document. It may well be a photocopy, but it's not the identical thing you gave me.

Q. Other than your initials in the upper, right-hand corner of the first page, do you notice any differences in that document?

(Pause.)

A. I do not see any differences but since I didn't keep a record of exactly what was present I couldn't say it was identical.

Q. Right. Now having looked at both the document you were shown this morning and now D-26, does that refresh your recollection at all that you were the Dr. Paul J. Hoyer who conducted the autopsy examination on Officer Daniel Faulkner in December of 1981?

A. I have no refreshed recollection. It appears

Page 140.

to be my signature on the report but I have no recollection of performing the autopsy.

Q. You have no recollection, even having read your Medical Examiner's report?

A. That is correct.

Q. But that is your signature on the report, is it not?

A. It appears to be a photocopy of my signature, that's correct.

Q. Now, Dr. Hoyer -- incidentally, how many autopsies have you done of police officers?

A. Ahh, I'm sorry, as to what, as of what date?

Q. As of now, today.

A. Ahh...

Q. Could it be one?

A. No, I don't think so.

Q. Two?

A. I don't recall an exact number.

Q. Under three?

A. You could slice it and dice it, I don't remember an exact number.

Q. Give us the name, if you can, of one other police officer whose autopsy you have performed since you were Board certified?

MS. FISK: Objection, Your Honor.

Page 141.

THE COURT: What is your objection?

MS. FISK: It's not relevant, any autopsy of any other police officer that the doctor autopsied since he was Board certified is not relevant to these proceedings.

MR. WEINGLASS: I'm trying to attempt to refresh the doctor's recollection. In this instance he performed an autopsy of a police officer. I'm trying to indicate to the doctor if it's possible that he's only done one of these in his entire career and therefore that might help him refresh his recollection.

THE COURT: I'm sure it must have been more than just one police officer. But don't you have the original thing he saw this

morning? He said you gave him something and he reviewed it. Where is that?

MR. WEINGLASS: Yes.

THE COURT: Where is that?

(Discussion held off the record at this time.)

BY MR. WEINGLASS:

Q. You were given a document this morning, were you not?

A. Yes.

Page 142.

Paul Hoyer, M.D. - Direct

Q. What did you do with that document?

A. I handed it to the Court Officer when I was told I could leave for lunch.

MR. WEINGLASS: May we have that document?

THE COURT: Does anybody have the document here?

MR. WEINGLASS: While that's being found.

THE COURT: Wait awhile.

THE COURT OFFICER: (Handing).

MR. WEINGLASS: I will now hand you another document which -- could we mark it --

THE COURT: Let's mark it the same number. What is that?

MR. WEINGLASS: D-26.

THE COURT OFFICER: The next one is D-27.

THE COURT: Wait awhile. What was the one that was just handed to him, what is the number on that?

THE COURT OFFICER: D-26.

THE COURT: All right, put D-26 on this one and let's just make an exchange.

MR. WEINGLASS: Okay.

Page 143.

Paul Hoyer, M.D. - Direct

THE COURT: That should be very difficult for anybody to do.

(Copy of report was re-marked Defense Exhibit D-26 for identification.)

THE COURT OFFICER: D-26.

THE COURT: Same as that other piece of paper? All right.

Look, please, let him give it to him, see if that is his document, then we could move along here. He got the document for you, let's just go ahead.

MS. FISK: Your Honor, I've not had an opportunity to view it but the representation from Counsel is that that is identical to the document initially marked D-26.

THE COURT: Well, he is not using that one, so.

MS. FISK: Then I need to see that one.

THE COURT: Alright, let him first look at it and tell us if that is the one he looked at.

THE WITNESS: Yes, this is the document that I looked at this morning.

BY MR. WEINGLASS:

Page 144.

Paul Hoyer, M.D. - Direct

Q. Is the document --

THE COURT: Just a minute. Let the D.A. see it.

MS. FISK: Mr. Weinglass has assured me that that is identical to the document previously marked as D-26. I am satisfied with that.

MR. WEINGLASS: I would offer both.

BY MR. WEINGLASS:

Q. Doctor, you said the document that you were shown this morning has your initials on it; is that right?

A. Yeah.

Q. You don't mean to imply that the original document had your initials on it, did you?

A. No, only the copy that you gave me.

Q. Oh. So as a matter of fact, you wrote your initials on it just this morning?

A. Yes, when you gave me the copy, right.

Q. Fine. So --

THE COURT: That's what he said, Counselor. He said that before.

MR. WEINGLASS: No, Your Honor, the record --

THE COURT: He said that before.

Page 145.

Paul Hoyer, M.D. - Direct

Because you gave him a copy that didn't have his signature on there and he was questioning whether that was the same one you gave him this morning. He now has said that's it. Now let's go ahead.

MR. WEINGLASS: Yes, but, Your Honor, the fact of the matter is he put his signature on it this morning.

THE COURT: Right, so he would remember what he looked at.

MR. WEINGLASS: Right, okay.

THE COURT: Counselor.

BY MR. WEINGLASS:

Q. Now that you have --

THE COURT: He wanted to make sure you didn't slip him a different one later on so he had his initials on there.

MR. WEINGLASS: I see.

THE COURT: Now he says that's it so let's go forward.

BY MR. WEINGLASS:

Q. Now having looked at the one that bears the signature you put on it this morning, does that refresh your recollection?

A. That I saw it this morning. Beyond that, no.

Page 146.

Paul Hoyer, M.D. - Direct

Q. Beyond that no?

A. Correct.

Q. So having looked at the transcript of your testimony on June 25th, and having looked at 11-26 now, which is an autopsy report which bears your signature, you have today no recollection?

A. That is correct, Counselor.

Q. Do you have any problems with your memory, Doctor?

A. Involving things that happened 13 years ago? Yes, I do.

Q. And in the 13 years since, how many autopsies of police officers have you performed?

MS. FISK: Objection, Your Honor. I thought that was asked and answered.

MR. WEINGLASS: It wasn't answered, as a matter of fact. The witness indicated he couldn't answer it so I am asking it again.

THE COURT: He said he didn't know how many.

BY MR. WEINGLASS:

Q. Did you do one?

MS. FISK: Objection.

THE COURT: He has already answered that: He said he doesn't know how many.

Page 147.

Paul Hoyer, M.D. - Direct

MR. WEINGLASS: Your Honor, I ask for the same privilege accorded Counsel this morning with a witness who is having difficulty recalling.

MS. FISK: Except I was cross-examining a witness and this is Mr. Weinglass' witness.

THE COURT: Yes, this is your witness. I mean you understand that. You are calling him as your witness.

BY MR. WEINGLASS:

Q. Have you done one examination of a police officer in the last

13 years other than the one that's indicated in this case?

MS. FISK: Objection, Your Honor.

THE COURT: He has already answered that and said he doesn't know. I'm sure he must have done many, many autopsies. And I don't know that anybody could have a memory. Even I don't remember specifically every one that I've handled.

MR. WEINGLASS: Please, I would appreciate it if the Court would not offer testimony in the presence of a witness.

THE COURT: I am not offering

Page 148.

Paul Hoyer, M.D. - Direct

testimony, Counselor: He has already answered the question.

MR. WEINGLASS: As a matter of fact, Your Honor, my question wasn't how many autopsies, it was how many autopsies of a police officer.

THE COURT: I know.

MR. WEINGLASS: That's a very particular question.

THE COURT: I know that but he said he doesn't know, okay.

MR. WEINGLASS: But he didn't say he's done many.

THE COURT: I didn't say he did many either. He said he doesn't know.

BY MR. WEINGLASS:

Q. Have you done one?

A. I'm done more than one.

Q. Have you done three?

A. I don't have an exact count.

Q. Give me the name of the one that you did other than this one?

A. I don't recall his name at this point.

Q. Did you have occasion since you have been subpoenaed to talk to any of the attorneys

Page 149.

Paul Hoyer, M.D. - Direct

representing Mr. Jamal?

A. Yes.

Q. When was that?

A. Umm, yesterday and, yesterday and today.

Q. And did you discuss Mr. Jamal's case and the autopsy you performed in that case with that attorney?

A. I answered some questions that I was asked.

Q. And so yesterday you did recall the autopsy in this case?

A. No.

Q. You were answering questions without recalling; is that your testimony?

A. No.

Q. Well, on what basis did you answer questions?

A. That I had, that I had a copy of the transcript, or what purported to be the transcript. I also, umm, I'm not sure that I was answering them to the level of certainty that's required in Court.

Q. Are you saying, Dr. Hoyer, that talking to a lawyer in this case you were giving information that you're not even sure of?

A. That may be the case, yes.

Q. Do you do that as a matter of practice?

A. Ahh, where I occasionally give information

Page 150.

Paul Hoyer, M.D. - Direct

that I'm not sure of but where I believe it to be accurate.

Q. Did you believe what you said to this lawyer yesterday was accurate?

A. Yes.

Q. Okay. Let me ask you this. In 1981, December of 1981, did the Medical Examiner's Office of the City of Philadelphia have X-ray equipment?

A. I believe so.

Q. And were X-rays used in the performance of autopsy examinations on occasion?

A. I believe so.

Q. Now referring you to D-26. If you will bear with me for just a minute. Do you find in your examination of D-26 today that there was an injury that the deceased officer sustained in the area of the head?

A. Yes.

Q. And in that report do you indicate whether or not you had recovered a bullet missile from the skull or the head portion of the officer?

A. Yes, I did.

Q. And did you indicate whether or not there was a fragment which you recovered as well as the bullet missile?

Page 151.

Paul Hoyer, M.D. - Direct

A. Yes.

MS. FISK: I object, Your Honor, to the use of the word fragment. The report refers to a separate piece of lead.

MR. WEINGLASS: Thank you. I will adopt that.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. So you found, so the record is clear, you found a bullet specimen and a separate piece of lead?

A. Yes.

Q. And you measured that piece of lead, did you not?

A. Yes.

Q. And what was the measurement of that separate piece of lead?

A. 10 by 3 by 2 millimeters in greatest dimension.

Q. Was it your belief then as indicated in this report, that that separate piece of lead was related to the bullet?

A. Ahh, I don't know what my belief was then.

Q. Well --

A. I mean I have the report in front of me. I could hypothesize based on the report but I have no

Page 152.

Paul Hoyer, M.D. - Direct

recollection.

Q. What's your hypothesis, Doctor?

A. That would be based on an expert opinion. I'm not here to offer an expert opinion.

Q. Well, you have no expert opinion or you're not here for that?

A. I haven't formed one on this, issue.

Q. You haven't formed one?

A. Not on this issue, no.

Q. Oh. Okay. Doctor, in the course of the autopsy you examined the brain area of the deceased; is that right?

A. Yes.

Q. And you found a bullet in the brain area; is that right?

A. That's what is described in the report, yes.

Q. And you found a separate piece of lead also?

A. Yes, that's described in the report.

Q. Is it your testimony that you don't have an opinion as to whether that separate piece of lead was related to the bullet?

MS. FISK: Objection, Your Honor. I believe the doctor has said he could only hypothesize with regard to it.

BY MR. WEINGLASS:

Page 153.

Paul Hoyer, M.D. - Direct

Q. Within a reasonable degree of medical certainty, Doctor, do you believe that that other piece of metal, lead, belonged to the

bullet?

A. I'm not here as an expert, sir.

Q. Well, you're testifying on the basis of a report that you gave as an expert. Could you give us the benefit of your opinion?

A. I didn't express an opinion then. I'd have to review all the available materials to be able to express an opinion now.

Q. I see. And your review of the materials this morning -- by the way, how long were you in the witness room?

A. From ten, approximately ten o'clock this morning until noon.

Q. So you had two hours with this document, which is D-26?

A. I said all the materials in the case, sir.

Q. Yeah, Doctor, you keep glancing over at the table for the District Attorney. Would you mind just looking in this direction.

A. I try and pay attention to what goes on in the Courtroom, but I will direct my attention to you.

Q. What is going on is you are being questioned by myself. So you should look in this direction,

Page 154.

please.

And in those two hours did you read D-26?

A. Yes.

Q. How many times did you read it?

A. Once.

Q. And in reading it once were you able to form any opinion as to whether or not that piece of metal, the lead that was taken from the brain, was related to the bullet missile?

A. Ahh, not, as I just said, I have not been given an opportunity to review all the materials in the case. And I would choose not to form opinions until I've reviewed all the available information.

Q. Right. What other information would you want to review, Doctor?

A. Photographs, the full file of the Medical Examiner's Office, any expert reports that are available.

Q. And you would review those materials if they were made available to you?

A. If, if I were required to do so I would.

Q. Okay. Where are these materials ordinarily kept?

A. Ahh, photographs are normally kept, filed in

Page 155.

the record room of the Medical Examiner's Office. Expert reports could be in the Medical Examiner's files, it could be in other places, I couldn't specify --

Q. But when you complete an autopsy, you then turn the material, the written materials that you've generated over to a file in the Medical Examiner's Office?

A. Yes.

Q. And that file has a name on it, does it not?

A. Yes.

Q. It's the name of the deceased?

A. Yes, it does have that name.

Q. And if you had tape recorded during the course of your autopsy, that would be in there as well?

A. No.

Q. Why would that not be?

A. Because the recordings are, the tapes are routinely erased and reused.

Q. Well, are you saying, Doctor, that the Medical Examiner's Office erases the tape you made in the course of an autopsy?

A. Absolutely.

Q. That's as a matter of practice?

A. Yes.

Page 156.

Q. Are the X-rays saved as well if there were X-rays?

A. Ahh, X-rays have been saved in an irregular fashion and are not saved in an organized file.

Q. What do you mean by that?

A. The last time I saw X-rays they were arranged in a giant heap.

Q. In a giant heap?

A. Yep. Exactly.

Q. You mean there's just a stack?

A. Yep.

Q. And they don't take the X-rays and put them in the file of the deceased?

A. No, they do not.

Q. Do you know -- strike that. If you find a bullet and what appears to be separate piece of lead with the bullet, is that an instance where you might X-ray, for instance, a brain in order to see if there are other fragments in the brain?

A. I'm sorry, are you asking about my practice now or my practice then?

Q. The practice in December of 1981.

A. Ahh, my vague recollection is that we did not.

Q. You would not X-ray?

A. That's correct.

Page 157.

Q. And why would that be?

A. Didn't have time, didn't have resources.

Q. Just a question of time and money; is that right?

A. That's correct.

Q. But --

A. Not -- I didn't say necessarily money, I said resources.

Q. Resources. But as a matter of medical practice, you would agree, would you not, Doctor, that if the resource were available, it would be best to X-ray a head where there is an indication of two fragments found in the head?

MS. FISK: Objection, Your Honor, as to what would be best and what would be perfect. It is all wonderful but that is not the question or the issues in this hearing.

THE COURT: Can you answer that?

MR. WEINGLASS: Pardon?

THE COURT: Do you want to answer what she's saying?

MR. WEINGLASS: Yes.

THE COURT: No, answer what she said.

MR. WEINGLASS: Yes, it's our contention that the Medical Examiner's report in

Page 158.

this case, which was turned over to the defense, was so incomplete and deficient that it amounted to a Brady violation and possibly evidence of prosecutorial misconduct. So I'm questioning the doctor on why what was acceptable medical practice was not followed in this case.

MS. FISK: And I object, Your Honor. The doctor has not testified that he did not do something which was proper or standard procedure. What he has testified to is the standard procedure in 1981 was not to take X-rays under these kinds of circumstances. Now, whether in a perfect world they would be done does not establish whether or not it was intentionally not done in this case. The doctor's already testified as to the standard practice in these kinds of procedures back at that period of time.

MR. WEINGLASS: He has testified that it was not done because of lack of resources, not because the Medical Examiners didn't think it was necessary or important, or that it was consistent with

proper medical standards. But it was not done because there wasn't resources. And that fact has infected this entire case and

Page 159.

Paul Hoyer, M.D. - Direct

that's what we are trying to show. That Mr. Jamal's attorneys were not given the information in 1981 and, two, that they were entitled to, because of lack of resources, because of determinations made by the Police Department, the District Attorney's Office and other experts.

We now know that the Medical Examiner's report was deficient. We now know the Firearms report was deficient. We now know the polygraph information was hidden. And we know a number of other things. And this is part of it.

THE COURT: As I told you before, it was not admissible. It was not admissible, period. So you are going with a red herring here. I wouldn't have admitted it even if they had it. I wouldn't let the D.A. use it, I wouldn't let the defense use it. So to argue that is silly. You are beating a dead horse on that issue. I told you it was not admissible, period. The Court would not have admitted it even if they had it so why are we going into that?

MR. WEINGLASS: Your Honor admitted it

Page 160.

Paul Hoyer, M.D. - Direct

in this hearing.

THE COURT: Well, because nobody objected to it. And it was admitted for a limited purpose. We don't have a jury here. I would not have admitted it at the time of the trial. That's the issue. That's the important issue. Not whether I heard about it now. It was admitted only for a limited purpose only.

MR. WEINGLASS: You only admitted one side we tried to put in.

THE COURT: No, I admitted it for both sides. It was admitted for a limited purpose only. Period. And it would not have been admissible at the time of the trial. So why are we going into that?

MR. WEINGLASS: Okay, I will move on.

BY MR. WEINGLASS:

Q. In any event, your medical record, your Medical Examiner's report indicates only two pieces of metal that were found in the deceased's brain; is that correct?

A. Yes.

Q. And you will allow, will you not, Doctor, that there might have been others that were not picked up because the head was never X-rayed?

Page 161.

Paul Hoyer, M.D. - Direct

MS. FISK: Objection, Your Honor: That calls for speculation.

MR. WEINGLASS: He is an expert.

THE COURT: Yes, but even experts can't speculate.

BY MR. WEINGLASS:

Q. In the course of your work, when you find two pieces of metal in the brain of an individual, do you, consistent with the standards of medical certainty and medical science, look to see if there are other fragments in the brain?

(Pause.)

A. I, at all times I attempt to do careful and though autopsies, which would include looking for bullets and bullet fragments, however many are present.

Q. And you would be assisted in that search, would you not, Doctor, if you had an X-ray?

MS. FISK: Objection, Your Honor: It calls for speculation.

MR. WEINGLASS: No, that does not. If the doctor knows whether an X-ray will help him find a fragment.

THE COURT: I thought he said he didn't use one at that time. So what are we

Page 162.

Paul Hoyer, M.D. - Direct

going through this for?

MR. WEINGLASS: He said he didn't do it to his knowledge.

THE COURT: So he didn't do it, period.

MR. WEINGLASS: But I don't know.

BY MR. WEINGLASS:

Q. Doctor --

MR. WEINGLASS: Let me just follow up on the Court's question.

THE COURT: Not my question.

BY MR. WEINGLASS:

Q. Do you have a recollection now of whether or not you used an X-ray in this autopsy?

A. Not specifically, no.

Q. So you might have?

A. Anything is possible.

Q. But you might have?

THE COURT: That's what he said: Anything is possible, Counselor. Now we are really speculating.

BY MR. WEINGLASS:

Q. Now, we are not talking about anything, Doctor, we are talking about you finding two pieces of metal in a deceased's brain, and do you think as a

Page 163.

Paul Hoyer, M.D. - Direct

matter of practice you would have taken an X-ray to see if there were other pieces that could be located?

A. At that time it would not have been my practice to X-ray this type of case.

Q. And that's because of resources?

A. In part.

Q. This type of case, you're talking about a police officer who was shot?

A. Counselor, every person that's shot is equally important. Every case requires the same level of care and thoroughness.

Q. And that level of care in your expert opinion requires that an X-ray be taken when fragments are found in the brain, does it not?

MS. FISK: Objection, Judge. I think we are going in circles. I believe that question has been answered, the doctor has answered it.

THE COURT: I think he has answered it, all right. That is the kind of argument that you give to the Court.

BY MR. WEINGLASS:

Q. Now, Doctor, did you find indications of an exit wound on the deceased in the area of the neck?

A. There is an exit wound described in the

Page 164.

Paul Hoyer, M.D. - Direct

autopsy report.

Q. Now, do you recall, Doctor, when you testified in this case you indicated that the report was in effect wrong because when you were on that stand testifying and looking at photographs you found a second exit wound? Do you recall that?

A. No.

Q. Has that ever happened to you since, that you have testified in a case where while on the stand testifying you noticed for the first time that there was a second exit wound that's not in your report?

MS. FISK: Objection, Your Honor, as to what has happened in any other case.

THE COURT: I will have to sustain that.

MR. WEINGLASS: Testing his recollection. This is the only time --

THE COURT: You will have to save that, Counselor. I will have to sustain it, Counselor. I will have to sustain it. I am only interested in this case.

MR. BURNS: The question also assumes facts not in evidence. The witness did not testify that there was an exit wound separate

from the one he testified to.

Page 165.

MR. WEINGLASS: Fine, let's look at the transcript.

Could I have the transcript returned, please.

THE COURT OFFICER: (Handing).

(Pause.)

BY MR. WEINGLASS:

Q. Okay I with respect to page 172: Do you remember being asked this question by Mr. McGill? Well, in your entire review of the report, and of your findings in reference to the post-mortem examination, did you find any other exit wounds around the neck area, and if so where.

MS. FISK: I'm sorry, Counsel, what is the page you are at?

(Discussion was held off the record at this time.)

MS. FISK: Thanks.

MR. BURNS: For the record, that's page 169.

THE COURT: 169. Okay.

BY MR. WEINGLASS:

Q. Answer: Okay I in reviewing the slides, the Kodachrome slides of this case, there is a second, smaller exit wound on the interior surface of the

Page 166.

neck, a little above and a little closer to the midline from the major exit wound. And then there is an objection because that doesn't appear in your report.

Does that refresh your recollection, Doctor, that when you were on the stand you revealed for the first time a second exit wound that's not contained in your report?

MR. BURNS: Objection: That is not what the record says. The man was asked a question.

BY MR. WEINGLASS:

Q. In response to a question that you were asked, did you reveal for the first time a second exit wound?

MR. BURNS: Objection, Your Honor. The question wasn't answered.

THE COURT: He said there was an objection. Did I rule on the objection?

MR. WEINGLASS: Your Honor, there was an answer, Counsel's in error. In reviewing the slides, the Kodachrome slides of this case, there is a second, smaller exit wound. The witness testified to that fact.

BY MR. WEINGLASS:

Page 167.

Q. Now having been told that, Doctor, having that transcript read to you, did you in response to a question reveal a second, smaller exit wound that does not appear in your report?

A. That information appears in the transcript, I have no recollection of it.

Q. You have no recollection of it?

A. That is correct.

Q. Would you say, Dr. Hoyer, that it is somewhat irregular to testify about a second exit wound when a report of a Medical Examiner over your signature only indicates one exit wound in the neck?

MS. FISK: Objection, Your Honor, as to whether or not it is irregular.

THE COURT: I will sustain that. If you could somehow rephrase your question. You brought it out that that's what he testified to, fine. Okay. I don't know the relevancy, but.

BY MR. WEINGLASS:

Q. How many exit wounds are in your report, in the neck of the officer?

A. There's one, there is one exit wound described.

Q. One?

A. Yes.

Page 168.

Q. Do you recall now, having heard my re-reading of your testimony, that when you testified in this trial you reported a second, smaller exit wound?

A. I do not.

Q. You don't remember that?

A. That is correct.

Q. But if you did so testify, wouldn't it be irregular, Doctor, for your report to only report one exit wound and for your testimony to indicate there is a second?

MS. FISK: Objection to that question, as to whether or not it would be irregular.

THE COURT: Unless you could somehow rephrase your question I will have to sustain the objection.

MR. WEINGLASS: Okay.

BY MR. WEINGLASS:

Q. Doctor, can you explain the discrepancy between what appears in your testimony and what appears in the Medical Examiner's report with respect to the number of exit wounds on the officer's neck?

A. On the basis of the record it appears as though there was a second, smaller exit wound that was not described in the report. I'm not sure why it wasn't described in the report but it is obviously

Page 169.

not described in the report. It is a second, smaller exit wound that is visible in the photographs. And I mean that's what's there.

Q. Right. Now, would it be fair to say, Dr. Hoyer, that you have never before or since ever missed an exit wound on a deceased's body?

MS. FISK: Objection, Your Honor, to what the doctor has done in other cases.

MR. WEINGLASS: It just goes to how irregular, unusual, inexplicable this is.

THE COURT: Counselor, maybe so, but I don't know the relevancy of it. Are you contesting that he died of something other than the one shot to the head?

MR. WEINGLASS: What I am contesting, Your Honor, is a very simple proposition. And that is that Mr. Jamal's attorneys were given a defective, deficient, incomplete medical report. And on top of that, they didn't even have a pathologist. And this is part of what skewed the first trial.

THE COURT: Well, your own pathologist that you brought in here said he died of that gunshot wound to the head.

MR. WEINGLASS: Yes.

Page 170.

THE COURT: So what's the problem?

MR. WEINGLASS: Dr. Hayes said that this report of Dr. Hoyer was incomplete, in error.

THE COURT: Right.

MR. WEINGLASS: And misled the defense.

THE COURT: But he didn't say that he died, that the officer died of anything other than the gunshot wound to the head.

MR. WEINGLASS: I'm not now contesting that.

THE COURT: Well, that's the only issue here: What caused his death.

MR. WEINGLASS: That's not, with all due --

THE COURT: The fact that there are two exit wounds to the neck, superficial wounds there, what difference does it make? What difference does it make here?

MR. WEINGLASS: It makes this difference.

THE COURT: I mean he didn't die of anything else.

MR. WEINGLASS: Your Honor, an

Page 171.

autopsy, properly done, is a document which tells a story of what happened.

THE COURT: No, what caused the death, that's all it really tells us.

MR. WEINGLASS: No, it tells us the position of the parties at the time of the shooting.

THE COURT: Oh, yes, the position of the parties at the time of the shooting is really speculative. The examiner's not there. He could only tell us what the trajectory is and then you could assume different positions to accomplish that.

MR. WEINGLASS: Right.

THE COURT: But what does that have to do with the officer? He's shot with a bullet between the eyes which is the cause of death in this case. What difference does it make if he had six other wounds to the body that didn't cause his death? That's what caused his death. He didn't die from pneumonia, he didn't die from exposure, he didn't die of poison. He died of the gunshot to the head between the eyes. That's what killed him. That's all.

MR. WEINGLASS: By the way, that's not

Page 172.

what Dr. Hoyer found. The Court has a difference of opinion with the coroner.

THE COURT: No, I don't have a difference of opinion.

MR. WEINGLASS: Yes.

THE COURT: I am saying that is the key issue here, that's all.

MR. WEINGLASS: Because that wasn't the coroner's opinion, Your Honor.

THE COURT: Well, I have --

MR. WEINGLASS: Maybe Your Honor hasn't read the report. But the coroner's opinion was not the Court's.

THE COURT: I was here for the trial, Counselor.

MR. WEINGLASS: Pardon?

THE COURT: I was here for the trial. And I don't know why you're bringing him in here about this issue. The proof of claim that you give me here is he will testify about what equipment was there, what is the normal practice, and whether he retained any bullet fragments from Officer Faulkner's head. Well, okay. That's what you said here (displaying). I don't know where else you are going.

Page 173.

MR. WEINGLASS: We'11 get right to the point that the Court just raised.

THE COURT: I wish you would. I wish you would get right to the point on all the issues.

BY MR. WEINGLASS:

Q. Dr. Hoyer, did you make a finding as to cause of death?

A. Yes, I did.

Q. What was your finding?

A. Gunshot wounds to face and back.

Q. To face and back?

A. Yes.

Q. Was it your expert opinion at that time that Officer Faulkner's injury to the back was a contributing cause of death?

A. Yes.

Q. Is that an opinion you stand by?

(Pause.)

A. I would say --

MS. FISK: Objection, Your Honor. This is beyond the offer for which the witness was called. This is also an area in which Dr. Hoyer was completely and fully cross-examined at time of trial.

Page 174.

MR. WEINGLASS: By a lawyer who didn't have a pathologist.

THE COURT: Well, you don't need a pathologist for that. When I practiced law, I defended a man in a murder case and I didn't have a pathologist. I was able to handle that very well.

MR. WEINGLASS: I don't know when that was and I don't want to inquire.

THE COURT: Years ago.

MR. WEINGLASS: The Court's age came up on the first day of the hearing.

THE COURT: A long time ago, Counselor. I didn't have a pathologist.

MR. WEINGLASS: Right, but in this particular case you've heard from Dr. Hayes who indicated in his expert opinion Mr. Jamal needed the services of a pathologist.

THE COURT: No, he didn't, he said as to how Jamal was injured.

MR. WEINGLASS: No.

THE COURT: That's what I remember him saying. The record will show that. He didn't need any pathologist to tell him how the officer died. Because your expert said without a doubt

Page 175.

he died as a result of the gunshot wound right between the eyes.

MR. WEINGLASS: And our doctor said without a doubt Dr. Hoyer was in error when he said that the back wound was a contributing factor.

THE COURT: So even if he did, even if he did, the cause of death doesn't change. It's still the bullet wound to the head, okay.

MR. WEINGLASS: But it goes to the completeness of the report and the misleading of the defense in this case.

THE COURT: There was no misleading. It was for the Jury to decide what caused his death. They heard it.

MR. WEINGLASS: They heard it inaccurately from Dr. Hoyer.

THE COURT: Well, whatever the notes of testimony from the first trial shows, that's what they heard.

MR. WEINGLASS: Right.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. Do you recall, Dr. Hoyer, being questioned about the cause of death in the first trial?

Page 176.

A. No, I do not.

Q. Do you have any reason to believe today that your opinion given in December of 1981 that the wound to the back was a contributing cause of death was in fact in error?

MS. FISK: Objection, Your Honor.

THE COURT: What is the basis of the objection?

MS. FISK: The doctor has testified that he has no recollection of the testimony he gave. Under those circumstances I don't know how he could be asked to answer a question as to whether what he said was true or not. If he has no recollection as to it, I believe that we are left with the record from the trial.

THE COURT: That's what I said, the record of the first trial is what the issue is. Whatever he said then he said. The appellate court had that to review.

BY MR. WEINGLASS:

Q. Based on your examination of D-26 this morning, do you have any reason to believe that the opinion you gave that the back wound was a contributing cause of death was in error?

A. I have no reason to believe it. But as I

Page 177.

Paul Hoyer, M.D. - Direct

said, I have also not reviewed all the evidence in the case.

Q. Now, Doctor, do you recall, now having read D-26, whether or not you preserved both the bullet and the fragment that you recovered?

A. I have no recollection as to that issue.

Q. And reading D-26 does not refresh your recollection that you preserved the bullet and the fragment?

A. That is correct.

Q. Now directing your attention to... to page 3 of D-26, Internal Evidence of Injury And Therapy, do you see that portion?

A. Yes.

Q. And in describing the head injury you indicate that the hemorrhagic tract begins at the entrance of the gunshot wound of the face and the tract proceeds through the nasal sinuses and along the orbital surface of the left frontal lobe. Do you see that, Doctor?

A. Yes.

Q. Does that indicate to you, Doctor, that the bullet entered, went up through the nasal sinus and along the surface of the left frontal lobe; is that correct?

Page 178.

Paul Hoyer, M.D. - Direct

A. I have -- no, figuring out exactly how these things look on a particular person you have to use the best evidence that's available. I have not been given that evidence to review.

Q. Right, but what do you mean -- just help me with this -- what do you mean when you say proceeds along the orbital surface of the left frontal lobe?

A. It means that it's the orbital surface of the brain, it is proceeding along the bottom of the orbital lobe. Sort of in here (indicating).

Q. Indicating slightly above the eyes?

A. Well... sort of.

Q. Does that, when you say the bullet proceeded along the orbital surface, does that mean the bullet penetrated the lobe or proceeded along the surface of the lobe?

(Pause.)

A. I believe that that means that it travels through the brain at that point.

Q. Through the brain?

A. Yeah.

Q. Do you recall testifying to this effect in your testimony?

MR. WEINGLASS: Page 38, the left-hand margin.

Page 179.

Paul Hoyer, M.D. - Direct

BY MR. WEINGLASS:

Q. The hemorrhagic tract begins at the entrance of the gunshot wound in the phase -- should be face -- received through the nasal sinuses, along the orbital surface of the left front lobe, it goes through the left bone of the face, enters the cranial cavity where the brain is and starts traveling along the surface of the brain.

Now, having heard that reading of your testimony, does that refresh your recollection that the bullet traveled on the surface of the brain as opposed to penetrating through the brain?

MS. FISK: I would note, Your Honor, that the answer continues on the top of the next page where there is further description by the witness of the wound tract.

BY MR. WEINGLASS:

Q. Just answer this question and we will get to the rest of your testimony.

A. I have no recollection of the testimony.

Q. Do you know what you meant when you said that the bullet travels along the surface of the brain?

A. I don't know -- since I have no specific recollection of that time I can't specifically say what I meant, meant at that time. I believe what

Page 180.

Paul Hoyer, M.D. - Direct

that means is that it makes sort of a gutter wound.

Q. It makes sort of a what?

A. Gutter wound.

Q. A gut...?

THE COURT: Gutter wound.

MR. WEINGLASS: I'm sorry, I still don't hear the word.

THE WITNESS: Gutter: G-U-T-T-E-R.

BY MR. WEINGLASS:

Q. A gutter wound?

A. Yes.

Q. What is a gutter wound?

A. That makes, sort of like cuts a groove. Rather than drilling a hole, it's sort of like an ungrooved hole, it cuts a groove (indicating).

Q. You were indicating with your fingers but I'm not sure I understand you. Instead of penetrating directly, are you indicating the bullet does something else?

MS. FISK: Objection, Your Honor, insofar as this goes beyond the offer of proof, the issue as to cause of death was not raised with regard to the offer of proof for Dr. Hoyer.

THE COURT: I read what you said you hoped to prove by him and that isn't in there,

Page 181.

Paul Hoyer, M.D. - Direct

so. I don't know where you are going.

MR. WEINGLASS: Okay, let me just try, I will try to make it clear.

BY MR. WEINGLASS:

Q. Doctor, in your testimony and in your medical report -- I will deal with your medical report since you reviewed that... you've indicated... that the, that the wound to the head caused instantaneous disability and death.

MS. FISK: Where are you reading that?

BY MR. WEINGLASS:

Q. Do you recall that?

THE COURT: What page is that?

MR. WEINGLASS: Yes, Your Honor, just one moment.

BY MR. WEINGLASS:

Q. Well, without reference... without reference to the report, having read the report, Doctor, it's your opinion, is it not, that the wound caused instantaneous disability and death? To the head.

A. Is that, do you want my lay opinion or my expert opinion?

Q. Your expert opinion.

A. I'm not here as an expert. You told me that.

Q. Pardon?

Page 182.

Paul Hoyer, M.D. - Direct

A. I'm not here to render an expert opinion. You told me that. Counselor, you told me that.

Q. Having read your report, you have no opinion as to whether or not this wound caused instantaneous disability and death?

MS. FISK: Objection, Judge, that was not his answer.

THE COURT: Counselor, he said that you told him that he was not being called here as an expert.

MR. WEINGLASS: Right.

THE COURT: Now, what are you asking him expert questions

for? You told him he is not going to be here as an expert.

MR. WEINGLASS: At this point, Your Honor, the doctor did testify at the trial as an expert.

THE COURT: Whatever he said at the trial we already have that, it is on record, period.

MR. WEINGLASS: Right.

THE COURT: But he said when talking to you you said he was not being called here today as an expert. Now why are you trying to ask him questions about his expert opinion?

Page 183.

MR. WEINGLASS: Because he was qualified as an expert at the trial.

THE COURT: I know that but you told him he wasn't going to be called for that purpose.

MR. WEINGLASS: I never talked to him. I never talked to him.

THE COURT: Well, whoever talked to him. Somebody from your staff talked to him.

MR. WEINGLASS: That doesn't mean that we cannot now ask that he be qualified as an expert. He is here, he testified at trial as an expert.

THE COURT: I know that but then he had more material with him and he looked over more material.

MR. WEINGLASS: I'm only asking him, having read D-26, does he have an expert opinion.

THE COURT: Well, what does D-26 say about that?

MR. WEINGLASS: That is his medical report.

THE COURT: What does it say about that?

Page 184.

MR. WEINGLASS: It describes the wound in detail.

THE COURT: Okay, what does it say?

MR. WEINGLASS: It describes the wound which we have just gone over as a bullet shot to the head and it describes where the bullet went in the body. And I'm asking him, having read his own description of the path of the bullet and the nature of the wound, in his expert opinion did that produce immediate death.

THE COURT: Does he say that in the report?

MR. WEINGLASS: He said it at trial under oath.

THE COURT: I know that. He is saying he doesn't remember what he said at trial, Counselor. But you are talking about the report now that you gave him to read.

MR. WEINGLASS: Yes.

THE COURT: Is there anything that you want that is in the report? Ask him about that.

MR. WEINGLASS: Having read the report I now ask him if that caused instantaneous death.

BY MR. WEINGLASS:

Page 185.

Q. Do you have an opinion on that, Doctor? Don't look at the prosecution's table, please. I'm asking you the questions. Did that cause instantaneous death?

A. Ahh, as a lay person I would say a bullet through the brain would kill, yeah.

Q. Pardon?

A. I haven't had an opportunity to review the full, all the records that are available. You know, preliminary reading would suggest that this is an immediately disabling and immediately lethal injury. That is an expert opinion.

Q. That's what the report suggests?

A. The report does not have that opinion in it. You've asked for an expert opinion.

Q. And that's your present expert opinion?

A. Yes.

MR. WEINGLASS: If I may have just a moment.

(Discussion held off the record between defense Counsel.)

BY MR. WEINGLASS:

Q. Doctor, looking at the front page of D-26, your report... toward the lower, left-hand corner of page 1 do you note under comments that this officer

Page 186.

was shot... by or with a .44 caliber bullet by your finding?

A. I'm sorry, you are looking at the front page of the post mortem report or --

Q. Page 1 (displaying).

A. Of?

Q. D-26.

A. D-26, yes, I see the notation there.

Q. You noted that?

A. I see that notation there, yes.

Q. Is that your handwriting?

A. It looks like it but I would prefer to see the original document rather than a photograph.

Q. But it looks like your handwriting?

A. Yes.

Q. And that is your conclusion?

A. No.

Q. That's your opinion?

A. No.

Q. What is it, Doctor?

A. It's a notation that I made on a piece of paper that was normally, normally discarded.

Q. Right, and when you note anything in an official report of the Medical Examiner, you want that notation to be accurate, do you not?

Page 187.

A. Sir, this is a piece --

Q. Would you answer it yes or no, Doctor. Do you want your notations to be accurate?

A. Absolutely on those pieces of paper that I would expect to appear in the final work product. This is an intermediate work product. It may reflect -- I don't know why I wrote that particular thing on the report. It could have been based on something I saw, it could have been based on something I was told. I can't tell you why it's there.

Q. You mean someone told you that that was a .44 caliber bullet?

MS. FISK: That's not what he said, Judge.

BY MR. WEINGLASS:

Q. Are you indicating that?

MS. FISK: Objection, Judge: That is not what he said.

THE COURT: What he said he has already said, period.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Doctor, is this a preliminary report: D-26?

A. No, D-26 is in evidence. The particular page

Page 188.

you are talking about is the findings of the Medical Examiner. At that time those were initially handwritten and then were typed, and the typed report was the one, the typed findings sheet was the one that was supposed to go out. I don't know where the handwritten finding sheet came from. I am not going to tell you it wasn't the handwritten file sheet but I am telling you it is an intermediate

work product.

Q. It is in your handwriting?

A. Partially.

Q. .44 caliber is in your handwriting?

A. As I already explained: It looks like my handwriting but I would like to see the original document.

Q. You wouldn't want to mislead anybody on the terms of an intermediate report would you, Doctor?

A. No, but -- as I explained to you, I don't know why I made that notation. It may have been written as a notation to myself. I can't tell you why it's there or what it means.

Q. You make independent notes, do you not, when you do an autopsy? You make handwritten notes, do you not, independent of this report?

A. I'm sorry, independent of which report?

Q. Independent of D-26 (displaying).

Page 189.

Paul Hoyer, M.D. - Direct

A. At times I do.

Q. Yes. And those notes are thrown away and this report becomes the intermediary report, does it not?

A. I'm sorry, I'm confused.

Q. Doctor, on looking at D-26, it's in front of you.

A. I'm sorry, the first page of D-26?

Q. First page.

A. Yes.

Q. Did you fill out what's contained on the first page of D-26 that's in handwriting?

A. Partially.

Q. And what part didn't you fill out?

A. I did not fill out the part, the initials in the sort of middle towards the bottom. Initials in a circle.

Q. Just three letters: A-S-C?

A. Yes.

Q. Other than that you did the whole page?

A. Ahh, I'm not sure who did the check marks next to those initials.

Q. Okay. A-S-C and check marks. But you did, there is a box called comments, isn't there?

A. Yes.

Q. And in the box called comments, after you

Page 190.

Paul Hoyer, M.D. - Direct

finished this autopsy you made one comment, right?

A. No.

Q. Tell us what's in the box called comments?

A. It says S-H-O-T, space, C bar, 44 C-A-L, period.

Q. Right. That's all that's in the comment?

A. Yes.

Q. Shot, C, space, 44 caliber?

A. Yes.

Q. That's your only comment on the first page of the Medical Examiner's report?

A. It's my only comment on the findings sheet of the Medical Examiner.

MR. WEINGLASS: Thank you, Doctor.

THE COURT: Do you have any cross?

MS. FISK: Yes, thank you.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Good afternoon, Dr. Hoyer.

A. Good afternoon, Counselor.

Q. Dr. Hoyer, in 1981 you were employed as a Medical Examiner, and that was the area of your training; is that correct?

Page 191.

Paul Hoyer, M.D. - Cross

A. Yes.

Q. Am I correct, sir, that you've never had training in the field of ballistics and firearms identification?

A. I never had formal training in that, that's correct.

Q. And am I correct that in 1981 you were by no means an expert in that field?

A. That is correct.

Q. Am I correct further, Doctor, that if you had thought that something was or was not a .44 caliber, that would not have been an opinion of an expert, that would have been, as you referred to it, a lay opinion, just a wild guess?

MR. WEINGLASS: Objection, Your Honor, because the document speaks for itself. The doctor did not say .38 caliber, he didn't say .40. He didn't say .41.

MS. FISK: And Mr. Fassnacht when he was here called by the defense said that the description is that of a .38 caliber. So I, frankly, don't understand what Counsel's point is but he raised it.

MR. WEINGLASS: The document speaks for itself.

Page 192.

Paul Hoyer, M.D. - Cross

THE COURT: Not when he is not an expert in that field. Go ahead, Counselor.

MS. FISK: I had a question pending. Do you want me to repeat the question, Doctor?

THE WITNESS: Please.

MS. FISK: Thank you.

BY MS. FISK:

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

A. Correct.

Q. Now, am I correct, Doctor, that, and as you have stated, the notation that Counsel just asked you about with regard to 44 C-A-L is on an intermediary finding sheet of the Medical Examiner's Office?

A. Ahh, I believe I said an intermediary work product.

Q. Okay. Does that mean that it is not the final product which is reviewed by you before you sign it?

A. That's correct.

Q. Now, the final work product is the post-mortem report which begins I believe on the third page of the document which has been marked in front of you;

Page 193.

Paul Hoyer, M.D. - Cross

is that correct?

A. No. That is a final work product. There is a, there is at that time a typed version of the findings sheet was created in homicide cases.

Q. And that typed -- no, I'm sorry.

A. It's not present in the D-26.

Q. I see. The post-mortem report, however, is also a final product?

A. Yes.

Q. Completed?

A. Yes, that is a final product.

Q. I see, and you are saying that there is also a final findings sheet which is typed?

A. Yes.

Q. I understand. And you don't see that in front of you?

A. That's correct.

Q. I understand. Now, Doctor, back in 1981 you have testified that though X-ray equipment was available at the Philadelphia Medical Examiner's Office, it would not be used in this kind of case, that is a case such as the manner in which Officer Faulkner was shot and killed; is that your testimony?

A. Yes.

Q. Now, you have testified today that that was in

Page 194.

Paul Hoyer, M.D. - Cross

large part based on resources of time and other resources? Is that right?

A. Yes.

Q. Now, would it also be fair to say that the only time that X-rays or other kinds of means of looking inside the body would be used is when there was reason to believe that not all the projectile was being recovered? Or when the projectile could not even be found?

A. Yes.

Q. And does that even continue to be the standard today?

A. Ahh, I can't speak to the standard today in the Office because I'm not in the Office.

Q. Very well. Was that the standard back in 1981, however, that you only look if you can not find a projectile?

A. Yes.

Q. And was it a very small percentage of gunshot wound cases in which X-rays were being taken because it appeared in most cases that the projectile was being located?

A. Yes.

Q. Based on your reading of this report prepared by your which has been marked defense Exhibit 26, is

Page 195.

Paul Hoyer, M.D. - Cross

there anything in this report which leads you to believe that all the projectiles were not recovered from the head of Officer Faulkner?

A. Nothing.

Q. And it would have been your practice to look in the area of the wound tract; is that correct?

A. Yes.

Q. So would that be yet another reason that an X-ray would not have been appropriate in this case: Because there didn't appear to be anything to look for?

A. Correct.

Q. Now, based upon your review of this post-mortem report, the final typewritten report, does it also appear to you that the injury caused by the gunshot wound to the officer's back was minimal in terms of leading to the cause of death of Officer Faulkner? Are you able to testify to that?

A. Based on my review of the autopsy report and my testimony at that time, I would say that it had a minimal contribution.

Q. And the primary cause of death based on your review of this report appears to have been from the gunshot wound to the face?

A. Yes.

Page 196.

Paul Hoyer, M.D. - Redirect

Q. Incidentally, Doctor, did...

(Discussion was held off the record at this time between Counsel for the Commonwealth.)

BY MS. FISK:

Q. Incidentally, Doctor, based on the records that you have been provided today, does it appear that Officer Faulkner was afforded any medical treatment at the hospital after he received these gunshot wounds and before his remains were taken to the Office of the Medical Examiner?

A. Yes.

Q. And did that medical treatment include a tracheotomy, based on the records that you have in front of you?

A. Tracheostomy, yes.

Q. Yes, thank you, it did. And is that something that is done to the area of the neck of an individual?

A. Yes.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

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REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Page 197.

Paul Hoyer, M.D. - Redirect

Q. Doctor, you wouldn't confuse a wound from a tracheostomy with an exit wound of a gun, would you, from a gunshot?

A. Ahh...

Q. Please don't look at Counsel's table, Doctor.

A. What setting?

Q. With respect to the last question. There was a tracheostomy performed on the deceased at the hospital. You don't mean to imply that that tracheostomy was what you later found to be a second exit wound?

A. No, I would not say that, no.

Q. Right. This autopsy that you performed, this wasn't your first autopsy, was it?

A. No, sir.

Q. You had done about 1,300 autopsies before; isn't that correct?

A. I don't recall an exact count, sir.

Q. But if you testified to 1,300 would you accept that? In June of 1982 you said you had done 1,300?

A. It's certainly possible.

Q. Right. Many of those were gunshots, were they not?

MS. FISK: Your Honor, my objection is that if Dr. Hoyer had done 1,300 in June of

Page 198.

Paul Hoyer, M.D. - Redirect

1982, that does not reflect what he had done in December of 1981. And it's not clear to me that Counsel is making that distinction in his questions.

THE COURT: Well, we are on redirect here and I am not quite sure I know where you are going.

MR. WEINGLASS: Right. I am going to -- I will ask the doctor.

BY MR. WEINGLASS:

Q. You had done a number of autopsies involving gunshot wound by December of 1981, isn't that true, and participated in autopsies?

A. Yes.

Q. So by December of 1981 you knew the difference between a .38 caliber and a .44 caliber, didn't you?

A. I'm sorry, you are asking me as an expert?

Q. Yes, you knew the difference then?

A. Yes.

Q. And you wrote down .44 caliber; isn't that right?

A. Yes; as I explained, that does not necessarily represent my finding.

Q. That's what you wrote down?

A. That's correct. But often those notes were

Page 199.

Paul Hoyer, M.D. - Recross

written before I did the autopsy.

Q. And incidentally, when you testified before the Jury in June of '82, no one asked you anything about this notation of a . 44 caliber shot in your Medical Examiner's report did they?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: Well, the record will speak for itself.

MS. FISK: Precisely the basis of objection.

THE COURT: Anything more?

MS. FISK: Yes, I do have just one or two questions.

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RECROSS-EXAMINATION

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BY MS. FISK:

Q. Dr. Hoyer, what method did you use to measure items and dimensions you gave in reports back in December of 1981?

A. I would have placed the item against a millimeter ruler and measured it visually.

Q. And, I'm sorry, did you just testify that the comments which appear on your intermediate sheet are oftentimes written by you before you perform the

Page 200.

autopsy?

A. Yes.

Q. And that could have been based on other information you were receiving separate from the post-mortem examination itself?

A. Yes.

Q. And do I understand that you have, am I correct that you have no memory in this case as to when or based upon what you made that notation?

A. That is correct.

MS. FISK: I see. Thank you, sir.

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REDIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. Just one last. If you measured the fragments you would preserve them, would you not, Doctor? Whatever you measured in terms of what was removed from the officer's brain was preserved by you, was it not?

A. Generally it would be, yes.

Q. Generally that would be the practice, would it not?

A. Yes, it would.

MR. WEINGLASS: Okay. Thank you.

Page 201.

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RECROSS-EXAMINATION

- - - - - -

BY MS. FISK:

Q. Do you have an independent recollection as to whether or not you did preserve both the head projectile and the separate, smaller l0-by-3-by-2 piece of lead, Doctor?

A. I do not.

MS. FISK: Thank you, sir.

- - - - - -

REDIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. Just last, as a matter of fact, with respect to your recollection and your indication that you might have gotten the information on the .44 caliber before you began the autopsy: That is shear speculation on your part today, is it not?

A. Yes, it is.

MR. WEINGLASS: Thank you. Nothing else.

THE COURT: Anything else?

MS. FISK: No, Judge.

THE COURT: Okay, fine.

Page 202.

You are excused, Doctor.

MS. WOLKENSTEIN: Okay, Your Honor, there are a few additional --

THE COURT: Wait awhile. We have some more witnesses here. Which ones are we going to go for next? Are you calling anymore witnesses, Counselor?

MS. WOLKENSTEIN: No, Your Honor.

THE COURT: Why not?

MS. WOLKENSTEIN: We thought Dr. Lambert would be allowed to testify.

THE COURT: No, I told you yesterday that he wasn't.

MS. WOLKENSTEIN: Well, Your Honor, the other witness who I believe was on our list is William Harmon, which brings me to the next point that I wanted to raise.

THE COURT: Yes, what's that?

MS. WOLKENSTEIN: William Harmon is the inmate from Mercer. It is my understanding that he is being brought during the day today.

THE COURT: Yes.

MS. WOLKENSTEIN: To Philadelphia. I further understand from the Sheriff that he is going to arrive in the Philadelphia area quite

Page 203.

late this evening. And he's going to be housed at the County facility rather than at Graterford.

THE COURT: County?

MS. WOLKENSTEIN: Yes, that is my understanding, Your Honor, from the Sheriff. The request is this, Your Honor: We would like time prior to him appearing in the Courtroom to be able to talk with him.

THE COURT: You could go to the County --

MS. WOLKENSTEIN: That is fine. That would mean, Your Honor, we would need more time, at least if not today --

THE COURT: Why don't you go there tonight.

MS. WOLKENSTEIN: I can't, I have already requested and tried to find out what time he would arrive. I have been told several times over that he is not going to be arriving until too late tonight to be able to visit.

THE COURT: No, that is not true. That is not true.

MS. WOLKENSTEIN: That was my information, Your Honor.

Page 204.

THE COURT: Do you know when he is going to arrive, any of the Deputy Sheriffs?

THE SHERIFF: We will find out.

THE COURT: Find out.

THE SHERIFF: Yes.

THE COURT: Okay. And check to see if they could visit him tonight at the prison. If they need a Court order from me I will sign it. Okay?

MS. WOLKENSTEIN: Okay, that was --

THE COURT: Well, see. Let's see. He'll check and find out.

MS. WOLKENSTEIN: Fine. Your Honor, the other matter is I want to renew the discovery request made by the Petitioner. I want to note that even this morning several items came out in the course of testimony that indicate the need for discovery. One thing is --

THE COURT: Counselor, I don't care if it came out or didn't come out. If it came out and nobody made an objection, I don't get involved.

MS. WOLKENSTEIN: We did object, Your Honor. We indicated that we wanted more

Page 205.

information and to have a discussion in terms of the log that was maintained.

THE COURT: No, Counselor.

MS. WOLKENSTEIN: You said that we should wait until this afternoon.

THE COURT: Counselor, I said that you have no discovery under PCRA. If you have a case that says that you are entitled to it, I said to Xerox the case, give to it me and I will reconsider.

MS. WOLKENSTEIN: Those have been presented to the Court.

THE COURT: Well, I have not read any that said that you were entitled to discovery in a PCRA matter.

MS. WOLKENSTEIN: We requested, Your Honor, the logs of people who visited the Roundhouse, the Homicide logs as well. As well as information about Kenneth Freeman. As well as information about photo arrays and photo lineup identifications. All of those things were requested. There is testimony that indicates that all of those items exist. In fact, one of them is being used by the prosecution now. We are requesting discovery of

Page 206.

those items.

THE COURT: Counselor, I am telling you unless you could show me a case that says that you are entitled to discovery in a PCRA matter, I am not granting it, period. The fact that they give you certain things or it comes out during the course of these proceedings is not up to me. I have ruled on it and that's it. You have an exception. You could take it up with the Supreme Court when you get there. And if they think that you are entitled to it, they'll send it back down to me with directions to give you that privilege.

MS. WOLKENSTEIN: Right, Your Honor. I just want to refer you again to Mayberry V Petsock, 821, F 2nd, 179, it is a Third Circuit 1987 case. This was presented to Your Honor several weeks ago.

THE COURT: I know that, but we're dealing with a PCRA matter. That is strictly a State statute governed by State law. Now, give me a case from State law that indicates that you are entitled to discovery and you'll have it.

MS. WOLKENSTEIN: Yes, Your Honor. That case does encompass all habeas corpus

Page 207.

proceedings and proceedings here before this Court in this Circuit, the Third Circuit.

THE COURT: No, Counselor, it does not. PCRA is a specific State statute.

MS. WOLKENSTEIN: Right, and, Your Honor, I want to refer you to the actual language of the PCRA statute.

THE COURT: I know about it, I read it.

MS. WOLKENSTEIN: Which encompasses all issues and issues brought up in the Federal habeas corpus.

THE COURT: Okay.

MS. WOLKENSTEIN: Your Honor, there is a last issue here. Petitioner requests that the caption on these proceedings be amended so that it indicates Commonwealth versus Mumia Abu-Jamal. That is Mr. Jamal's legal name. He changed it by law, by application to the courts in 1970. He is not a/k/a Wesley Cook. And furthermore, I want to note that, I'm sure inadvertently, but nonetheless as a matter of fact, that the stenographer's notes of this proceedings have been indicating Commonwealth versus Wesley Cook. We would like the record to

Page 208.

indicate and the Court to direct that the caption of this case is Commonwealth versus Mumia Abu-Jamal.

THE COURT: Could you answer that? I don't know why the caption --

MR. BURNS: Because, Your Honor, I think that the case has already gone up to the Pennsylvania Supreme Court. And the caption of the case in that Court is Commonwealth versus Mumia Abu-Jamal a/k/a Wesley Cook. I don't know if the Court has the authority to change the caption of the case at this point.

THE COURT: Well, I wouldn't at this point. If everything has gone up there that way and it passed.

MR. BURNS: Of course Counsel could make an application to the Pennsylvania Supreme Court.

THE COURT: Yes, maybe they will allow the change.

MS. WOLKENSTEIN: We will just request to the stenographer that the Commonwealth make clear that it is Commonwealth versus Mumia Abu-Jamal. So that we --

THE COURT: So that we keep the papers

Page 209.

and the documents all the same way as they were originally and as they were when they came up to the Pennsylvania Supreme Court of Pennsylvania, and as they went to the United States Supreme Court. So that there is no confusion. Same caption. Supreme Court wants to change the caption, fine. But I'm not changing the caption.

All right. So then what we have for tomorrow then is William Harmon. And evidently two other witnesses. Cranshaw. Darlene Sampson. Is that where we stand?

MS. FISK: I understood, Your Honor, that Alma Cranshaw and Darlene Sampson were the subject of a stipulation.

THE COURT: Well, that's what I thought. I don't know. I didn't prepare this slip. Okay. So then what you are telling me: The only one we have for tomorrow then is William Harmon. Whatever it is, that's it then, right?

MS. WOLKENSTEIN: As of today, Your Honor.

THE COURT: As of today.

MS. FISK: Your Honor, we would ask to

Page 210.

be notified before the end of business today if there is anything in addition. We found out about today's witnesses at five o'clock yesterday, despite a Court order advising them we would be notified at ten o'clock yesterday.

THE COURT: If they do that I just will not allow the witness to testify. We are not going to have this last minute deal. If we are going to call somebody, let the D.A. know in advance.

All right, since there is nothing further to do today, we'll adjourn until tomorrow morning.

THE COURT OFFICER: This Court stands adjourned until 9:30 a.m.

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(The hearing was adjourned for the day at this time.)

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Page 211.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

10. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Thursday, August 10, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS

William Harmon

By Mr. Weinglass - 45, 158

By Ms. Fisk - 76, 166

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
27	Copy of letter	48
28	Affidavit	50

Page 3.

- - - - -

(At l0:30 a.m. the hearing was convened in the presence of the Court and councel.)

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THE COURT: Good morning, everyone.

MS. FISK: Your Honor, I understand that Counsel has a request to put something on the record at sidebar if we may, please.

THE COURT: Well...

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(Discussion held at sidebar on the record as follows:)

MR. WEINGLASS: Good morning, Your Honor.

THE COURT: Good morning.

MR. WEINGLASS: Yesterday afternoon Miss Fisk gave me a sealed envelope containing the name of a person who came forward to the District Attorney's Office indicating they had relevant information on the case. I have examined the letter and the letter contained the name and the address of the individual. And last night we went out to his home and he was not there. We are told that he is not available

Page 4.

at the moment; but I went with an investigator who left his card and instructed people at the home to contact me as soon as they have heard from this individual.

I just wanted to make a record of it. I appreciate the District Attorney's Office coming forward immediately with an individual who came to their office and providing the information. And I just wanted to indicate for the record that we are following up on this information but we haven't had contact with this person yet.

MS. FISK: Could I borrow the letter for a minute?

Your Honor, just so the record is complete: The letter dated August 9th advises Counsel that a Mr. Michael Jones, whose address is given to Counsel as we received it from Mr. Jones, came to the District Attorney's Office yesterday. Also pursuant to our obligations established by the United States Supreme Court, we advised Counsel that Mr. Jones advised personnel at our office that he was a witness to the shooting of Officer Faulkner and that it was Mr. Jamal's brother who was the

Page 5.

person who shot Officer Faulkner, when Officer Faulkner was shot. I also advised Counsel this morning this morning that after detectives, persons heard that information come from Mr. Jones, that Mr. Jones was advised that he would be wanted by the defense. He was provided with the address at the hotel where the attorneys -- I'm sorry -- where the detectives understood the defense attorneys were staying and was advised to go to that hotel immediately to speak to the defense attorneys.

So it was immediately after Mr. Jones left our office that we came back to Court and I provided that information to Counsel.

MS. WOLKENSTEIN: And we wouldn't have been there at that time, just so the record, I just want to make it clear.

MS. FISK: I didn't know where else to send them.

MS. WOLKENSTEIN: Fine, but at that point we wouldn't have been there because we were in Court or lunch break.

MS. FISK: We assumed that this was a hotel and there was an individual we could leave a message with.

Page 6.

MR. WEINGLASS: For future reference: We do have people staffed at the Rudovsky office.

MS. FISK: We will send them there in the future.

MR. WEINGLASS: Could we have this portion of the record sealed so it doesn't become public information? Is there any objection to that?

THE COURT: I don't know how anybody will know that, he is not typing it up yet. So unless somebody says something, it's there for what it's worth.

MR. BURNS: What is the point of sealing it?

MR. WEINGLASS: Well, I think giving this information to the public, number one, impedes our ability to contact this person. It impacts our ability to talk to other witnesses. It creates a rumor based on information that hasn't been obtained or evaluated. And I

just think it's very detrimental to the defense as a whole. I just ask that it be sealed.

MS. FISK: Well, Your Honor, I am certainly not going to tell anybody about it. I

Page 7.

fulfilled my obligations under the law by notifying defense Counsel. I would assume, therefore, that if it becomes public knowledge it came from a source other than me. And sealing this record would not prevent any persons who already know this information from divulging information.

MR. BURNS: There are allegations that information has been hidden by the defense throughout this case. And I don't think it is appropriate to be sealing parts of the record.

MR. WEINGLASS: There already have been parts sealed.

MR. BURNS: Well, I think there is no point to sealing this part of the record.

THE COURT: Well, I don't know the necessity of sealing it. I am assuming nobody is going to talk about it. But you have put it on the record for what it's worth. I don't intend to talk to anybody. I don't talk to the news media anyway. But you people talk to the news media so you keep it quiet. I'm not going to say anything. All right?

MS. FISK: Yes, sir.

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(Discussion held at sidebar was concluded at this time.)

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Page 8.

THE COURT: Do we have that witness...

Do we have William Harmon here?

MR. WEINGLASS: Your Honor, we'll have to be... Mr. Harmon, William Harmon is indeed in the Courthouse today. He was made available to defense Counsel this morning. It's the first time I've met the gentleman. As the Court is aware, he did not testify in 1982. We are dealing with an individual who has written to his attorney on July 29th and his attorney made known to the prosecution and the defense Counsel his name, I believe on August 2nd or 3rd. And one of the defense Counsel, Rachel Wolkenstein, visited him on August 3rd, immediately thereafter. And I spoke to him for the first time this morning, just before Court.

He is a person who claims he was there at the time of the shooting. He claims he witnessed the shooting, both of Mr. Jamal and of Officer Faulkner. Understandably, his recollection is affected by the passage of time. He asked to see photographs of the scene so that his recollection could be refreshed. We had

Page 9.

hoped that we would have photographs by this time. We had asked for photographs going back and when the Court was in adjournment an Tuesday, the day before yesterday, we understood that we would be hearing from inspector detective or lieutenant Walsh, and we did hear at five o'clock on Tuesday and then we were informed I believe yesterday that we wouldn't have crime scene photographs until early next week.

So I would ask that we be provided with the photographs so the witness may examine the photographs so that his recollection going back over 13 years could be refreshed by photos of the scene. I represent to the Court that the defense does not have photographs. I don't know what happened to the photographs that were taken by Mr. Peraneau and apparently given to Mr. Jackson. But in any event, I represent to the Court I have never seen them. And we do not have photographs to show this witness. There are photographs in existence. And we will have them I'm told on Monday or Tuesday.

So that I would ask first that the photographs be provided to the witness and shown

Page 10.

to the witness prior to his testimony. I don't think that is an unreasonable request given the fact that this gentlemen is trying to recall an event that happened 13 years ago.

THE COURT: So is everyone else, Counselor.

MR. WEINGLASS: Pardon?

THE COURT: Everyone else has the same problem. Every witness that took that stand has the same problem. It's 13 years, 14 years.

MS. WOLKENSTEIN: No, no, Your Honor, Dessie Hightower, for instance, testified in June of '82 and he drew diagrams and he was shown pictures. And it was all available to him then. And certainly he is in a much different position than this witness is.

THE COURT: Counselor, if it becomes necessary I will let him continue in that area. If it becomes necessary. But I think he should take the stand now and proceed to tell us what he can recollect as of this time, okay.

MR. WEINGLASS: If I may continue. Secondly, I want to make this point. The witness informs us that he has revealed what he saw to several people, including his daughter.

Page 11.

And he has given us the name and the address of several people. We have not been able to locate these people. We can not confirm whether or not he has told this to anyone previously. I ask for time so that we can locate the people and see whether or not his story can be confirmed.

THE COURT: Fine, you could call those people later on. If you could find them. In the meantime, let's put him on, let's find out what he has to tell us.

MR. WEINGLASS: Thirdly --

THE COURT: I have been waiting breathlessly to hear what he has to say.

MR. WEINGLASS: Well, thirdly, I must say for the record any testimony given by this witness is utterly unevaluated by the defense. We have not had an opportunity to check his story. We have not had an opportunity to talk to confirming witnesses. He names other people who were there. We've not had an opportunity to show him photographs.

THE COURT: Well, are you saying you have no confidence in this witness?

MR. WEINGLASS: I am saying, Your Honor, I am --

Page 12.

THE COURT: Are you saying that he is going to lie when he gets on that stand?

MR. WEINGLASS: Of course not.

THE COURT: Well, then bring him in and let --

MR. WEINGLASS: I am saying that no lawyer, no lawyer can tell anything about any witness if he wasn't at the scene himself until he checks out the story. And we are talking about a death penalty case and the Court is very anxious to hear from a witness whose story has not been checked out. This is utterly and grossly unfair to Mr. Jamal. And this is what happened in '82, and it's happening again. Tony Jackson put witnesses on the stand who he never talked to. I am not about to repeat that same mistake a second time. This is why we're here today, because that error was made in '82. And the Court is forcing me to repeat the same error that Tony Jackson made under the pressure of the time restraints that this Court imposed on him.

THE COURT: No, I am not doing that.

MR. WEINGLASS: Well, you are.

THE COURT: I am letting him get on the stand and if it becomes necessary, you have

Page 13.

to check it out or he says he has to take time or he has to see certain things, well, I will let him come back later on those issues after you have shown it to him. But let's hear what he has to say.

MR. WEINGLASS: No, this is not a Municipal Court proceeding with a traffic ticket.

THE COURT: I am not saying it is.

MR. WEINGLASS: I can't put a witness on whether he is truthful or not truthful until I know for myself whether what this witness is saying is truthful or not. I don't know now. I can't tell. The

gentleman tells a story.

THE COURT: Well, let him tell us the story he told you.

MR. WEINGLASS: You can not --

THE COURT: That's all.

MR. WEINGLASS: You can not proceed that way.

THE COURT: Yes, you can.

MR. WEINGLASS: I am being put in a position of calling a witness whose story I can not vouch for. I am not permitted to do that.

THE COURT: You are stalling.

Page 14.

MR. WEINGLASS: I am not permitted to do that.

THE COURT: Okay? if you are going to do that I am going to sequester him so nobody could talk to him. Nobody could talk to him. No one. All right.

MR. WEINGLASS: What is the purpose of that?

THE COURT: The purpose is so that he doesn't change his story. That's the purpose. I want to hear from him. I want to hear his own interpretation of what happened.

MR. WEINGLASS: 13 years ago, without looking at photographs. Without having Counsel had the opportunity to determine --

THE COURT: You called other witnesses without all of that information, so what is the difference?

MR. WEINGLASS: I hope I have not.

MS. FISK: Sharon Smith as far as I could tell never testified until yesterday and there was certainly no requests that she look at photographs before she took the witness stand. He certainly has.

MR. WEINGLASS: Her testimony was

Page 15.

about a single event: What she saw when she looked out the window.

THE COURT: This is a single event of what he said he saw.

MR. WEINGLASS: It is not that simple.

THE COURT: I am going to allow you to do that, bring your witness forward.

MR. WEINGLASS: If this Court forces me --

THE COURT: Yes, I am forcing you.

MR. WEINGLASS: -- to put a witness on the stand who I haven't evaluated, I want the record to reflect that I am being put in that position.

THE COURT: All right, let the record so show.

MS. FISK: Let this record also show that the Court has offered defense Counsel an opportunity to meet with the witness and also an additional preview but said that the witness would not be made available for further interviews until he then testifies, but that Counsel would have the opportunity to investigate the names and other information he obtained from that witness today.

Page 16.

The record should also reflect, Your Honor, that Miss Wolkenstein had the opportunity to spend I believe four hours with this witness in Mercer County Prison on August the 3rd. And in addition, Your Honor made special arrangements this morning to allow Counsel into the cell room at eight o'clock this morning. Counsel did not enter the Courtroom today until sometime after ten o'clock this morning. so I could only assume that they had access to him for another two hours this morning, in terms of preparing his testimony.

MR. WEINGLASS: That assumption is utterly wrong. We were with Mr. Jamal for half the time. Counsel is making assumptions and putting it on the record.

THE COURT: Well, you asked permission to see him this morning. I made arrangements with the Sheriff so that you could see him. If you choose to spend your time with somebody else other than the witness you do so.

MS. WOLKENSTEIN: We have to consult with him. I also want to correct the record.

THE COURT: You had to consult with him. That's what Anthony Jackson had to do at

Page 17.

the initial trial.

MS. WOLKENSTEIN: I want to make the additional point that I was not with Mr. Harmon for four hours. In fact, it was two-and-a-half hours, and it was interrupted at the very end with two guards banging on the door insisting that I leave without prior notice. That should be clear for the record. That interview was interrupted and I was given contrary instructions earlier that I would be able to be there until four o'clock. In fact, at three o'clock I had guards knocking on the door insisting they come in and pull Mr. Harmon out immediately. Let the record be clear.

MS. FISK: Your Honor, the Pennsylvania Department of Corrections visitor tracking system passed visitors inmate record reflects that Mr. Williams C. Harmon CK2563 on August 3rd, 1995 received Ms. Wolkenstein, Rachel Wolkenstein, an attorney, as a visitor at 11:37:47, is time in, and time out is reflected as 15:32.14.

MS. WOLKENSTEIN: Mr. Harmon was not produced until 12:30. The guards were knocking on the door at 3:15. Three o'clock from 3:15

Page 18.

was when I left there, after I was interrupted at the end by three guards. We are not talking about checkout times, we are talking about the times that one gets to actually see an inmate.

MS. FISK: And that was, obviously, part of the ongoing conspiracy being contrived by the police and the D.A.'s Office.

May I be advised as to whether Counsel is choosing to put Mr. Harmon on today or keep Mr. Harmon further sequestered so they could further investigate his story?

(Discussion was held off the record at this time among defense Counsel.)

THE COURT: Let the record show Counsel are conferring with the Defendant Mumia Abu-Jamal.

Has the Defendant made up his mind for you, Counselor?

MR. WEINGLASS: The choice, Your Honor -- and I object to those references by this Court.

THE COURT: Well, you are talking to him, aren't you?

MR. WEINGLASS: I am Counsel in this case.

Page 19.

THE COURT: I know.

MR. WEINGLASS: And I am making up my mind.

THE COURT: Okay.

MR. WEINGLASS: And I object to this Court sequestering a witness and preventing us from further interviewing a witness who you are insisting we call. I want the witness --

THE COURT: I am not insisting you are calling him. I will call him. The Court will call him for you. Anybody could ask him any questions they want. I will call the witness for you, okay.

MR. WEINGLASS: But it is our record and it is our claim. And we have a right to either put on testimony or not put on testimony.

THE COURT: I'm here seeking justice. The truth. And I will put him on. If you don't want to put him on I will put him on and anybody could ask him whatever they want to ask him.

MR. WEINGLASS: If you put him on in this state without him seeing the photographs, without our confirming his story, you are putting him on over our objections.

THE COURT: Okay, I will put him on

Page 20.

over your objection.

MR. WEINGLASS: And we strenuously object to the Court putting on this witness. You are compromising a potential witness for the defense.

THE COURT: No, I am not.

MR. WEINGLASS: Yes, you are.

THE COURT: I just want to know what he remembers he saw, that's all.

(Discussion was held off the record at this time between Commonwealth and defense Counsel.)

MS. FISK: Is Counsel requesting a recess, Your Honor, so they could determine whether or not they wish to call Mr. Harmon today or at a later time after they have investigated this information?

MR. WEINGLASS: The Court made a ruling, the Court is calling the witness over our objection.

MS. FISK: No, I understood --

MR. WEINGLASS: We are not calling the witness. We are not calling an unprepared, unconfirmed --

THE COURT: All right, then.

Page 21.

MR. WEINGLASS: -- unevaluated witness.

MS. FISK: Do I understand, then, Your Honor, that Counsel is accepting the Court's proposal that the witness remain sequestered until such time as they have fully investigated his story and made a determination as to whether or not they wish to call him? If that is the case I have no objection to that. The witness can remain sequestered, unavailable to the defense; the defense can investigate whatever information they have. The Commonwealth has absolutely no information. We don't have a letter, we have nothing other than Miss Wolkenstein's two-sentence offer of proof. We have no objection waiting until Monday, Tuesday of next week. Counsel could talk to his daughter, his mother, his priest, and they can then be prepared to call the witness as their witness and we could go forward.

THE COURT: Well, I thought they gave us an offer of proof as to what he is going to say.

MS. FISK: Your Honor, this is a three-point offer of proof signed by Miss

Page 22.

Wolkenstein. There is nothing under oath by this individual. And the offer of proof by Miss Wolkenstein is very general in nature. The Commonwealth also has not had access to the letter which Mr. Harmon allegedly wrote to his attorney other than we saw Mr. Weinglass standing at the bar of the Court at some point holding it.

MS. WOLKENSTEIN: We read it into the record. It has been available since the beginning (handing).

MS. FISK: Thank you.

MR. WEINGLASS: The District Attorney who was present at that time said a copy was handed to her at the same time I got my copy. But they didn't want it.

MS. FISK: And Miss Perkin's statement on --

MS. WOLKENSTEIN: The District Attorney's Office, either.

MS. FISK: That is correct, Miss Perkins' statement to the person who handed it to them was if you want this to go to the defense, you give it to them. She advised that she then handed it back to the individual and

Page 23.

that individual walked away from her and the Commonwealth never had it in it's possession.

MR. WEINGLASS: It was offered to the Commonwealth and they rejected it.

THE COURT: They thought it was not proper to give to it them. Give it to you. That's what they told the individual to do.

MR. WEINGLASS: I object very strenuously to this witness being sequestered. That is a punitive act by this Court that is unprecedented in this proceeding. No one else has been sequestered. If this witness is sequestered you are interfering with the witness, you are interfering with the defense. You are not giving us an opportunity to show him the photographs. You are not giving us an opportunity --

THE COURT: Well, if he needs to look at the photographs later on we will permit that. You will be permitted to bring him in later on if this is a continuing thing.

MR. WEINGLASS: This is no way to treat a witness who is coming forward after 13 years. He should be shown the photographs before he testifies.

Page 24.

I do want to say one other thing, Your Honor. I did spend some time --

THE COURT: Well, the suggestion has been offered to me: Suppose you take the witness, the Sheriff takes the witness and takes him right to the scene. Not to look at any photographs, take him to the scene right now. He could look at the scene and then come back in here and testify.

MR. WEINGLASS: No, Your Honor.

THE COURT: What do you mean no? What do you mean no?

MR. WEINGLASS: Of course not.

THE COURT: Why?

MR. WEINGLASS: I will give you one small example, and it is a small example.

THE COURT: Yes.

MR. WEINGLASS: This gentleman contends that his car was parked right near the scene.

THE COURT: Okay.

MR. WEINGLASS: I believe that car might be in a photograph. He also has to look at the photographs --

THE COURT: Counselor, that's

Page 25.

perfectly all right. He could say that.

MR. WEINGLASS: No, we have to see the photographs to confirm it. Don't you see? We are being interfered with here.

THE COURT: No, no, no, no, no.

MR. WEINGLASS: Of course.

THE COURT: No. He could testify that his car was parked there.

MR. WEINGLASS: It is not the way the street looks now. There are photographs.

THE COURT: You mean if he looks at a photograph and his car is not there, he is not going to say that his car was there?

MR. WEINGLASS: No, I'm not sure what the photographs show.

THE COURT: Well, that's what I am saying to you. What is the purpose? Is he going to say my car was there, and then if you show him a photograph that doesn't show his car there, he is going to say well, my car must have been over here, or my car wasn't there? Is that what you are telling me?

MR. WEINGLASS: Why is the Court speculating so negatively?

THE COURT: Well, because you are

Page 26.

speculating. And I am giving you the opportunity to take him down there in the custody of the Sheriff and let him look at the scene and then come back in. That's better than the photographs.

MR. WEINGLASS: No, this is an utter shell game.

THE COURT: No, it is not a shell game.

MR. WEINGLASS: They have the photographs, they won't give them to us.

MS. FISK: That is not correct, Your Honor.

MR. WEINGLASS: We can't show them to a witness. The witness is being sequestered and punished. This is no way to run a proceeding. I say this respectfully.

THE COURT: Counselor, Counselor, I know you are saying it respectfully.

MS. FISK: With respect to the photographs, Your Honor, Counsel was told yesterday, and I believe before yesterday as well, that when those photographs were found by Your Honor's clerk on Monday afternoon they were given to Detective Walsh. Based on statement

Page 27.

made by Counsel in the Courtroom on Monday, that they wanted copies of those photographs, Detective Walsh took those photographs directly to the police laboratory where they have the facility of making copies of photographs using the photographs. That process is ongoing. And are there are multiple photographs, I believe more than 30. Detective Walsh has been told that those photographs which are currently being copied will be completed on Monday. If those photographs are taken out of the chem lab, the process will stop and there will be further delay before copies of those photographs would be available for the defense. This is in fact the reason the photographs cannot be in the Courtroom, is because they were immediately taken to the necessary laboratory to be copied on Monday night. After they were finally discovered by Your Honor's clerk up in Room 788 where the defense had been told they were for the two weeks preceding the date Your Honor's clerk found them.

I would agree with Your Honor's assessment that the showing of photographs to permit a witness to conform his testimony to

Page 28.

what is in fact the physical scene would not assist us in reaching whether or not this witnesses' testimony is the truth. I again have no objection to the Court's suggestion that the witness can remain sequestered to permit defense Counsel to further investigate his story. If they wish to do that, I have no problem with that. They can investigate other witnesses. They have had opportunity on the 3rd and an opportunity today to speak to him. According to Ms. Weinglass, they have received from the witness the names of other persons who they claim can support this witness' testimony. And if this witness remains in a sequestered state and additional persons are investigated and we come back on Monday, on that date, or on Tuesday, the photographs will have been duplicated, will be available to Counsel, and when the witness testifies they can be shown to the witness on the witness stand. I have no problem with any of those suggestions.

If Counsel doesn't want to do that, then they have the right to call that witness or not call that witness.

MR. WEINGLASS: We object strenuously

Page 29.

to this witness being put in a sequestered state. Which will be perceived as punishment. It isolates him from us.

THE COURT: Not punishment. I just don't want anyone to get to him.

MR. WEINGLASS: But, Your Honor, as lawyers we have to talk to our witnesses.

THE COURT: I know that but you don't have to talk to him until you get the photographs.

MR. WEINGLASS: After we get the photographs we could meet with him and talk to him.

THE COURT: Do you have any objection to that?

MS. FISK: My understanding was he would be shown the photographs when he was brought in to testify.

MR. WEINGLASS: No, that is no way to hold a hearing. They would never put a witness on without showing the witness the documentary proofs or photographs. We are being asked to do that in death penalty litigation. This is unheard of.

THE COURT: I will tell you what. You

Page 30.

better start digging up law on this subject, the both of you. I am not about to continue this matter. You told me you have a witness you were ready to bring today and all of a sudden you are not ready.

MR. BURNS: Your Honor, given the surprise nature of this situation, we do not have the position prepared for the situation in which the defense was going to call a witness today and now says that they do not know whether they want to call him or do not know whether they are going to call him in the future based on whether or not they are going to be allowed to show him photographs or talk to his relatives. The Court is correct: We should have some time to find some law on this subject. And I would suggest that we recess for an hour or so so that we could do exactly that.

THE COURT: Well, it's eleven o'clock. Do you want to recess until one o'clock?

MR. BURNS: That's satisfactory, Your Honor.

THE COURT: All right. Recess to one o'clock. Look up the law.

In the meantime, I don't want that

Page 31.

witness to be near anybody else. Sheriff. You keep him isolated upstairs, please.

MR. WEINGLASS: Are we being denied the opportunity to talk to a witness?

THE COURT: Yes, because you can't talk to him now because you said you have to have the photos first. We don't have the photos so there is no necessity for you to talk to him now.

MR. BURNS: We are talking about two hours, Your Honor, in order for us to decide what we are going to do in the future. The defense has had several hours to speak to the witness already.

THE COURT: They had plenty of time to speak to him this morning. So you keep them separate, Sheriff.

THE SHERIFF: Yes, Your Honor.

THE COURT: Okay, thank you.

MR. WEINGLASS: Over our objection.

THE COURT: Of course, I know it is over your objection.

THE COURT OFFICER: This Court is recessed until one o'clock.

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Page 32.

(Court was reconvened at 1:15 p.m.)

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THE COURT: Good afternoon, everyone. I have issued an order to get the films that are involved in this case.

(Pause.)

THE COURT: I count 33 photos. Is that right?

MS. FISK: That was the reference made, I believe, at trial, Your Honor. That was the number I remember hearing.

THE COURT: All right, we will bring the witness down and I will give him an opportunity to look at these before anybody talks to him.

MR. WEINGLASS: No, objection. We object to this process very strenuously. We do not believe that we have had an opportunity to go over these photographs with the witness. The witness is unprepared, the witness is uninvestigated, the witness is unevaluated.

Furthermore, the Court asked us to do research over the hour and I assume when the Court asks that the Court wants the product of the research. So I will give the Court the

Page 33.

product of our research. The product of our research is contained - -

THE COURT: Well, just give it to me, let me read it.

MR. WEINGLASS: The Court has already been given this days ago.

THE COURT: Give it to me again and I will read it again, Counselor.

MR. WEINGLASS: We will give it to the Court again (handing). The case is --

THE COURT: Do you have any cases that you want to give me?

MS. FISK: No, sir. I'm sorry, on which issue, Your Honor?

THE COURT: Well, he said this issue.

MR. BURNS: For the enlightenment of Counsel for the Commonwealth, which case?

THE COURT: The Government of the Virgin Islands versus Paul Mills.

MR. WEINGLASS: Third Circuit Court of Appeals. The same Federal Circuit that governs this Court.

MS. FISK: It doesn't govern this Court.

MR. WEINGLASS: Yes, believe it or

Page 34.

not, the Federal Circuit Court of appeals do govern this Court.

THE COURT: Not as far as State law is concerned.

MR. BURNS: I can refer to the relevant parts or I could simply hand them to you, if you wish. They have to do with the Court's authority to deny a continuance in order for defense Counsel to interview a witness.

THE COURT: Okay. I will look at it. Do you want to underline it or anything or pinpoint whatever you want me to review.

MR. BURNS: I will hand it up, if that is the Court's preference.

THE COURT: All right, I will take a short recess while I look them over.

THE COURT OFFICER: This Court will take a short recess until the call of the Crier.

(Brief recess.)

THE COURT: The defense's case, The Government of the Virgin Islands versus Mills is not on point with the issue that we have here. There the judge didn't allow a witness to

Page 35.

testify. It's not that I am not allowing a witness to testify, I'm encouraging him to testify. He has indicated to the Court that he has knowledge about this case and the Court wishes to hear what he has to say about it.

The cases that the Commonwealth had given me to read talk about whether or not the Court has a right not to allow a continuance, and that is on point here.

Will you give this back.

MR. WEINGLASS: I just wanted to put on the record the fact that during this 15 or 20 minute recess, at the start of it I asked the Court personnel to request of the Court that we be permitted to examine the 33 photographs which we've never seen and which were marked as Court Exhibits in the trial below, and the Court sent word back that Counsel was denied the right to look at the photographs.

THE COURT: Well. I want to be here when you are looking at them, if you don't mind.

MR. WEINGLASS: Pardon?

THE COURT: I said I want to be here when you look at them, if you don't mind.

MR. WEINGLASS: Yes. May we look at

Page 36.

them now? I don't know why the Court insists on it's presence if we look at them.

THE COURT: I want to be here and you don't mind if I am here, do you?

MR. WEINGLASS: I take it as an affront.

THE COURT: Well, take it any way you want. I want to be here while you are looking at them, okay.

MR. WEINGLASS: It is, I think, the question of the Court's bias.

THE COURT: I am, sure, real biased. That's why I want to be here.

MR. WEINGLASS: I take it as a personal affront.

(Pause.)

THE COURT: (Handing).

(Pause.)

MR. WEINGLASS: Having seen the photographs of the crime scene and just the photographs of the crime scene, I'm asking the Court that I be granted the opportunity to review those photographs with the witness for the purpose of refreshing the witness' recollection and preparing him for testimony.

Page 37.

THE COURT: I am going to give him all the time in the world he needs when he comes down here to review these photos before anyone asks him any questions, any questions at all. If he needs to refer to these photographs to help him out in any way, he has a perfect right to do that.

MR. WEINGLASS: Well, the Court is compelling this witness to testify without reviewing the photographs or reviewing them with Counsel.

THE COURT: No, he will review them.

MR. WEINGLASS: Then I protest this witness being brought here to this Courtroom to testify under these circumstances.

THE COURT: Counsel, if you don't want to call him that's fine, I will call him as my witness and anybody could cross-examine him. He says he knows something about this case. I want to know what he knows about the case. May I have my photos back, please.

MR. WEINGLASS: (Handing).

THE COURT: Thank you.

MR. WEINGLASS: I did want to state one other thing which I omitted -- I'm sorry --

Page 38.

this morning. The witness informed me that he arrived here last night at approximately 9:00 p.m. He was told that there were no cells available. And he was given a wooden bench to sleep on. He indicated to me that he had difficulty sleeping or he couldn't sleep. And that he, he has some feeling today of sleep deprivation and is tired. And I wanted to make that statement on the record as well.

THE COURT: The Court will take that under consideration when he testifies.

(Pause.)

THE COURT: All right, I count 33. Is that correct? Okay.

All right, bring the witness down.

MR. WEINGLASS: The record should indicate that the Court counted the photographs twice after it was handed back by defense Counsel.

THE COURT: Right, I wanted to make sure there wasn't any mistake because when I hand them to him I want to tell him he has 33 photographs to look at. I just wanted to make sure I was correct, I didn't want to mislead the witness.

Page 39.

Would you bring him down, please.

Bring him down.

(Pause.)

William Harmon, having been duly
sworn, was examined and testified as follows:

THE COURT: Mr. Harmon, before anyone asks you any questions: I am going to hand you 33 photos that were taken at the scene to help you recollect what you may remember of this happening. And during the course of any cross-examination, or by anyone, if you need to refer to them, feel free to do so, okay. But look at them now.

(Long pause.)

THE COURT: Mr. Harmon, if you feel any of them are important just put them aside for your benefit. If you think any of them are important to you, just put it aside for yourself. But go through all of them.

(Pause.)

THE WITNESS: (Indicating)

THE COURT: Hold onto them. How many have you put aside that you

Page 40.

think will help you in this case? Count them.

THE WITNESS: 16.

THE COURT: 16. All right, will you put them over on the side there for you. And will you take a second look at those others to make sure, you might decide you want to look at one of those. Take a second look.

(Pause.)

THE COURT: Is it still 16?

THE WITNESS: Yes.

THE COURT: All right, let me have those other ones here.

THE WITNESS: (Handing.)

THE COURT: Look, I will keep them right here. Right here. Those that you need are right over there (indicating). Now, if perchance you have to go to these again, you can. Understand?

THE WITNESS: Yes.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, let the record show that the witness took 14 minutes to look at the photographs.

THE COURT: Because I asked him to a

Page 41.

second time.

MR. WEINGLASS: Right.

THE COURT: And I had him look at all of them a second time. So that is seven minutes for each.

MR. WEINGLASS: No, it wasn't broken down that way exactly.

THE COURT: Yes, he looked through all of them including the ones he had initially selected. I am watching him, Counselor.

MR. WEINGLASS: But we are watching the clock also.

THE COURT: You watched the clock, I'm watching the witness. He looked through the photos, all 33 photos, two times, okay.

MR. WEINGLASS: Right. Also at this point, these are photos that were introduced into evidence. I would like to ask if the District Attorney's Office has in it's possession other photographs that were not produced into evidence at the trial below?

THE COURT: Well, I don't know about that, Counselor. This is not the time for any discovery. You said you wanted to look at those photos and I have gotten them for you.

Page 42.

MR. WEINGLASS: Those are the only available, but now I would like to ask if the District Attorney has other photographs. The District Attorney's staff is here, they could find those photographs. And it would assist this witness.

THE COURT: Well, if he needs any further photos he'll let us know.

MR. WEINGLASS: Well, could we have a representation on the record whether they have other photographs?

THE COURT: Counselor, I had denied discovery in this matter. I have bent over backward for you. I've gotten the photos that were introduced as evidence in the case. We are not here to retry that case at this time.

MR. WEINGLASS: But we are here to attempt to assist the witness to look at all the photographs of the scene of 13 years ago. And the District Attorney's Office might have other photographs.

THE COURT: If he wants to visit the scene, we'll take him, I will have the Sheriffs take him down to 13th and Locust and he could look at the scene.

Page 43.

MR. WEINGLASS: This is 13 years later, there are photographs of 1981.

THE COURT: It is not my fault that it's 13 years later, Counselor. I can't help that.

MR. WEINGLASS: But there are photographs from 1981 which the District Attorney's Office has --

THE COURT: There are photographs that you people took and you people don't even know where they are.

MR. WEINGLASS: I represented I don't have them.

THE COURT: You don't have them. Well, I don't have them either.

MR. WEINGLASS: But they do.

THE COURT: How do you know they do?

MR. WEINGLASS: Because they are sitting quietly and not responding.

THE COURT: I don't know that they have to respond to you.

MS. FISK: We are sitting quietly, Your Honor, because the Court has ruled on multiple occasions over the past few weeks with regard to the discovery requests. We sit

Page 44.

quietly after the Judge gives a ruling. We don't keep fighting.

MR. WEINGLASS: I take that as an admission that they have photographs.

MS. FISK: Take it however you want, Counselor. I am responding to the Judge's ruling.

MR. WEINGLASS: It is grossly unfair to the witness who asked for photographs.

THE COURT: Let's see if he needs anymore. He selected 16 of them. That ought to be enough to help him to tell us what happened. If he could remember.

MR. WEINGLASS: There are more and the witness asked me for photographs.

THE COURT: Counselor, do you want to ask him any questions? Let's proceed.

MR. WEINGLASS: Under the terms already stated.

THE COURT: Okay.

MR. WEINGLASS: I will question the witness.

MS. FISK: I don't believe the witness has been sworn.

THE COURT: I thought he was sworn.

Page 45.

MR. WEINGLASS: He was.

MS. FISK: My fault.

THE COURT: He was sworn, wasn't he?

THE WITNESS: Yes.

THE COURT OFFICER: Yes, sir, he's been sworn.

BY MR. WEINGLASS:

Q. Mr. Harmon, when did we first meet?

A. This morning.

Q. And when did you arrive here in Philadelphia?

A. Last night.

Q. And where do you ordinarily reside?

A. Ahh, while I'm incarcerated?

THE COURT: He means out in -- where did you come from, Mercer County?

THE WITNESS: Oh, Mercer County, Pennsylvania.

BY MR. WEINGLASS:

Q. Are you in custody now?

A. Yes.

Q. And you are serving a prison term?

A. Yes.

Q. And you came here last night?

A. Yes.

Q. By what means?

Page 46.

A. Ahh, Sheriffs.

Q. And do you recall approximately when you arrived last night?

A. Around 8:30.

Q. And did you, were you given a bed and a cell?

A. No, I wasn't.

Q. You were not?

A. No.

Q. Did you sleep last night?

A. On the floor.

Q. On the floor?

A. (Witness nodded head affirmatively.)

Q. Do you feel that you've had enough rest from last night?

A. No.

MR. WEINGLASS: Your Honor, I request that the witness be given an opportunity to have a night's sleep and testify when he's rested.

THE COURT: Did you have any sleep up in the cell room?

THE WITNESS: About an hour.

THE COURT: An hour, okay.

MR. WEINGLASS: May the witness be given an opportunity of rest so that he could testify about an event 13 years ago in a

Page 47.

William Harmon

rested-up state?

THE COURT: I don't think he needs any further continuance.

BY MR. WEINGLASS:

Q. Mr. Harmon, what is your age?

A. 52.

Q. And how long have you been in prison?

A. 16 months.

Q. 16 months?

A. (Witness nodded head affirmatively.)

Q. And how much longer do you have to serve?

A. 18 months.

Q. And prior to this term that you're serving, when was the last time that you were in prison?

A. '69.

Q. Approximately 25 years before?

A. Yes.

Q. So for 25 years, between '69 and about 1993 or '4, you were not incarcerated or in prison; is that correct?

A. Yes.

Q. You understand that you're testifying here today as a Court's witness?

A. Yes.

Q. Now, Mr. Harmon, do you understand how it is

Page 48.

William Harmon

that you're brought to Court today to testify, how that process that brought you here began?

A. Yes.

Q. How did it begin?

A. I wrote a letter to my lawyer, Mr. Joseph Capone. And I told him since there wasn't anything else he could do for me in my case, there was something that I could do for him. And would he do -- was it -- could he do something for me. And that was would he contact Mr. Jamal's lawyers for me. Because I, I didn't know anything about it. And to let them know that I knew about what happened that night in '81.

THE COURT OFFICER: Excuse me, sir.

THE COURT: Speak into that microphone.

MR. WEINGLASS: May this be marked next?

THE COURT OFFICER: Yes, D-27.

(Copy of letter was marked Defense Exhibit D-27 for identification.)

BY MR. WEINGLASS:

Q. Mr. Harmon, I am handing you a document that has been marked D-27. And I'll ask you if you recognize that as a copy of the letter that you wrote

Page 49.

William Harmon

your lawyer on July 29th, 1995 (handing)?

THE COURT OFFICER: D-27 (handing).

(Pause.)

THE WITNESS: Yes.

BY MR. WEINGLASS:

Q. You recognize your signature on that letter?

A. Yes.

Q. And you wrote him that letter from prison, did you not?

A. Yes.

Q. Prior to writing that letter, had you talked to any attorneys for Mr. Jamal?

A. Prior to writing this letter?

Q. Yes.

A. No.

Q. Did anyone ask you to write that letter?

A. No.

Q. Now, after you wrote that letter, were you visited by an attorney for Mr. Jamal?

A. Yes.

Q. And was that last Thursday, August 3rd?

A. Yes.

Q. And do you recognize Rachel Wolkenstein (indicating)?

A. Yes.

Page 50.

William Harmon

Q. Seated here at the table? About how much time did you have with Miss Wolkenstein when she visited you?

A. About two-and-a-half hours.

(Discussion was held off the record at this time between defense Counsel.)

THE COURT OFFICER: Next number is 28. That letter was 27.

MR. WEINGLASS: May I have this document marked D-28.

THE COURT OFFICER: D-28, sir.

(Affidavit was marked Defense Exhibit D-28 for identification.)

THE COURT OFFICER: (Handing.)

MS. FISK: Your Honor, I object. This Court specifically asked -- and I haven't read this yet -- but this Court specifically asked Counsel last week if they had or could provide an affidavit from this witness. And instead of an affidavit from this witness being provided to the Court, we were advised that because the witness was out near Pittsburgh, Counsel were unable to obtain an affidavit from the witness and instead Miss Wolkenstein simply provided to the Court a three-line statement giving a

Page 51.

William Harmon

summary of the information that Mr. Harmon was going to testify to.

We are now being handed a document with the caption in this case, which appears to be an affidavit of this witness dated August the 3rd, 1995. Which suggests that perhaps there was a misrepresentation made to the Court about the inability of Counsel to present an affidavit. And none has ever been presented to the Commonwealth, and certainly to the Court, prior to it being shown to me after being marked.

MR. WEINGLASS: We will correct that right now in question and answer.

THE COURT: Wait awhile. Wait awhile. Do you need time to look that over?

MS. FISK: Pardon?

THE COURT: Do you need time to look it over?

MS. FISK: Yes.

THE COURT: Take all the time you need to look it over.

(Pause.)

MS. FISK: Your Honor, could I have an opportunity to be provided with a copy on direct

Page 52.

William Harmon

examination?

THE COURT: You don't have a copy yet?

MS. FISK: No, Your Honor, this is the Court exhibit which has been marked.

THE COURT: Give her a copy.

THE COURT OFFICER: Show it to the witness, sir?

D-28 (handing).

MR. WEINGLASS: Let the record reflect that the District Attorney has been given a copy of D-28.

BY MR. WEINGLASS:

Q. Mr. Harmon, before you turn your attention to that document. Have you had anything to eat today?

A. A sandwich.

Q. A sandwich? And it's now after two o'clock, that's all you've had this morning?

MS. FISK: Frankly, Your Honor, that's more than I've had this morning. Could we please go forward.

THE COURT: Counselor, are we here to find out what his menu was for today or are we here to find out what he knows about this case.

BY MR. WEINGLASS:

Q. Mr. Harmon, you appear to be tired. Are you

Page 53.

William Harmon

exhausted or tired or hungry?

MS. FISK: Objection.

THE COURT: You didn't ask me if I was tired.

THE WITNESS: Cold.

THE COURT: You didn't ask me if I was tired. Come on. I'm tired too, but let's go. Let the record show we turned off the air conditioner for the witness: He was cold. Now let's go.

BY MR. WEINGLASS:

Q. Now directing your attention to D-28. A three page document. Have you seen that document before?

A. Yes.

Q. And when did you first see that document?

A. When I signed it.

Q. Which was August 3rd?

A. Yes.

Q. Last Thursday?

A. Yes.

Q. And let me ask you this: Is there a notary public out at the Mercer Prison facility?

A. Yes.

Q. Was a notary public available on August 3rd?

A. No.

Page 54.

William Harmon

Q. Did you attempt to get a notary?

A. Yes.

Q. And one was not available?

A. Right.

Q. So you signed an un-notarized statement?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now directing your attention back to December of 1981: Did you know who Mumia Abu-Jamal was in December of 1981?

A. Yes.

Q. And how did you know who he was?

A. From the radio station and from a friend of mine that I used to work for. I used to work for Sonny Hopson. And he was a friend of Mumia's. And I met him through Sonny.

Q. Did you ever go to Mr. Jamal's house?

A. No.

Q. Did he ever come to your house?

A. No.

Q. Did the two of you ever go spend an evening together anywhere?

A. No.

Q. So you just knew who he was?

Page 55.

William Harmon

A. Yes.

Q. And you could recognize him by sight?

A. Yes.

Q. Now directing your attention to December the 9th, 1981, at approximately three in the morning, or thereafter, 3:30: Do you recall where you were at about 3:30 in the morning on December 9th, 1981?

A. Yes, I do.

Q. And where were you?

A. In a restaurant at 13th Street right off of Locust, between Locust and Walnut.

Q. So the restaurant is situated on 13th between Locust and Walnut?

A. Yes.

Q. Is this like a small alleyway?

A. Yes.

Q. On 13th between Locust and Walnut?

A. Yes.

Q. And where is the restaurant with respect to that alleyway?

A. Right next door.

Q. Right on the alleyway?

A. Yes.

Q. And is it on the west side of the street or the east side of 13th?

Page 56.

William Harmon

A. Hmm...

Q. Well, let me ask it this way. If you're standing on the corner of Locust and 13th and you look up 13th, would it be on your left-hand side or your right-hand side?

A. My left-hand side.

Q. Your left-hand side.

MS. FISK: I am not sure what looking up 13th means. Unless you are talking about looking north.

THE WITNESS: Yes.

BY MR. WEINGLASS:

Q. Looking north, okay. 13th is a one-way street that goes north?

A. Going north, yeah.

MS. FISK: I'm sorry, the response was it was on your left-hand side?

THE WITNESS: Left-hand, yes.

BY MR. WEINGLASS:

Q. And were you alone in that restaurant?

A. No, I wasn't.

Q. Who if anyone was with you?

A. Ahh, at the time I had my girlfriend, Tina Santiago.

Q. Tina Santiago. Did you give Tina Santiago's

Page 57.

William Harmon

name to Miss Wolkenstein when she interviewed you?

A. Yes.

Q. Have we indicated to you whether or not we have been able to locate her?

A. Ahh, you told me that you got Tina Harmon. She's using my last name.

Q. Have we indicated whether or not we have been able to talk to her yet?

A. No.

Q. Now, you were with Tina?

A. Santiago.

Q. Santiago. And were the two of you eating?

A. Yes.

Q. And did there come a time when you left Tina Santiago?

A. Yes.

Q. And why did you leave her?

A. I seen Mumia standing out front the restaurant.

Q. And what did you do after you saw Mumia standing in front of the restaurant?

A. I got up my seat, out of my seat, excused myself. And told her, I said there go Mumia, I'm going to go out there and holler at him.

Q. Did you go out and meet with Mumia?

Page 58.

William Harmon

A. Yes.

Q. Did you have a conversation with him?

A. Ahh, for about two or three minutes, maybe.

Q. Now, in that conversation, did he indicate to you why he was there?

A. No, he didn't. He said he was, I asked him what he was doing down here, because it was funny seeing him down here, you know. Big, you know, personality like that, you know, down 13th Street. So he says, he says he's coming down here to meet his friend, a friend of his brother or something. So I said okay.

Q. Did he say whether it was his brother or a friend?

A. A friend, yeah, I think he said a friend.

Q. Do you recall if you indicated to us this morning that he said that he was going to meet his brother?

A. Yes, I did.

Q. Well, do you know whether he said he was going to meet his brother or not?

A. Uhh, I really I -- I can't recall. But... as I'm thinking, I think he said his brother.

Q. Now, how did you arrive to the restaurant that night, if you could recall?

Page 59.

William Harmon

A. In my car.

Q. And what kind of a car was it?

A. I got a '64 -- well, I had a '64 Electra 225, four-door, dark blue.

Q. Did you park it --

MS. FISK: I'm sorry, I missed the last part of that answer. '64 Electra 225?

THE WITNESS: 225, four-door.

MS. FISK: Yes.

BY MR. WEINGLASS:

Q. And blue?

A. Dark blue.

Q. Dark blue. And was the car with you that night?

A. Yes, it was.

Q. Did you park it that night?

A. Yes, I did.

Q. Where did you park it?

A. I parked it in between the restaurant and... and the, the club next to the restaurant, I think it was Johnny Cadillac or --

Q. Could it be called Whispers?

A. It's in between Whispers and the restaurant.

Q. Between Whispers and the restaurant?

A. Yes.

Page 60.

William Harmon

Q. And again, as you stand on the intersection of Locust and 13th looking north, would it be on the left-hand side of the street or the right-hand side?

A. On the left-hand side.

Q. On the left-hand side. So your car would be parked on the left-hand side facing north on 13th Street?

A. Yes.

Q. Between Whispers and the restaurant?

A. Yes.

Q. Now, while you were talking to Mr. Jamal, did you hear anything unusual?

A. Well, not for that, ahh, area was it unusual, but I did hear a loud talking.

Q. Loud talking?

A. Yeah, loud voices.

Q. Did it sound like an argument?

A. Yes.

Q. It sounded like an argument?

A. Yes.

Q. And from which direction did that come?

A. Ahh, it was coming from Locust Street, at 13th.

Q. Near the intersection?

A. Yes.

Page 61.

William Harmon

Q. And when you heard that loud argument, what if anything did you see Mr. Jamal do?

A. He, ahh, he immediately stopped talking to me and started walking towards the parking lot. He walked across the street, walked towards the parking lot.

Q. Did he walk through the parking lot?

A. Yes.

Q. So he crossed 13th?

A. Yes.

Q. And walked through the parking lot?

A. Yes.

Q. And what did you do at that time?

A. I followed him, you know, to a few steps behind him.

Q. Did you cross 13th?

A. Yes.

Q. And did you walk through the parking lot?

A. Yes.

Q. And did anything happen while you saw him walking through the parking lot?

A. Yes.

Q. What happened?

A. I heard a shot. And --

Q. Was that one shot?

Page 62.

William Harmon

A. One shot.

Q. Was it a gunshot?

A. Yes. I think it was a gunshot, you know.

Q. And at that time where was Mr. Jamal?

A. He was still in the parking lot, on the way across the street.

Q. Ah-huh. And after you heard that shot, what did you see Mr. Jamal do?

A. Continued to walk across the street. I mean through the lot, through the lot, across 13th -- across Locust Street.

Q. Across Locust?

A. Yes.

Q. Did he walk to the other side of Locust Street?

A. Yes.

Q. The south side?

A. Yes.

Q. And did you walk to the south side of Locust Street?

A. No, I didn't.

Q. Where did you position yourself?

A. I stopped in, in little -- I was in the parking lot but it's two entrances to the parking lot, one that comes out on 13th Street and one goes

Page 63.

William Harmon

in on Locust. And I was in between the two entrances.

Q. Right. And, Mr. Harmon, why didn't you go further on?

A. Because I seen -- I seen -- I seen -- I heard a shot. I looked over at the, the... at the place where I heard the shot at. And I seen the officer fall. I seen Mumia walking towards the officer. Then I heard another shot. And then I seen Mumia fall. So I stopped right there.

Q. Now, at the time you heard the first shot --

A. Yeah.

Q. -- where was Mr. Jamal?

A. He hadn't gotten across -- he hadn't got out of the lot yet.

Q. Right, and at the time you heard the second shot where was Mr. Jamal?

A. He was almost across the Street, on the south side.

Q. And when you heard the second shot what did you see happen to Mr. Jamal?

A. I seen him fall.

Q. Now, prior to hearing the second shot, did you see where the officer was?

A. He was laying against the wall with a gun,

Page 64.

William Harmon

with his gun out.

Q. He was laying?

A. With his back against the wall.

Q. Was he down on the pavement?

A. Yes.

Q. And his gun was out?

A. Yes.

Q. Now, after -- and his gun was out when you saw Mr. Jamal walk towards him?

A. Yes.

Q. After you heard that first shot that you told us about, did you see anyone leave the area?

A. I seen somebody leave down 12th Street -- down Locust Street running towards 12th Street. I don't know who it was. And...

Q. Right, was this person on the south side of the street?

A. The person was next, talking to the cop, I believe.

Q. And you saw him run on the south side?

A. Yes.

Q. Of the street?

A. After the shot.

Q. Towards 12th Street?

A. Yes.

Page 65.

William Harmon

Q. That would be running east?

A. Yes.

Q. Do you know how far Mr. Jamal was from the police officer at the time you heard the second shot?

A. It may be about 10 feet.

Q. Pardon?

A. About 10 feet.

Q. Okay. But you were back in the parking lot?

A. Yes.

Q. Did you see Mr. Jamal front or back as he approached the officer?

A. I seen his back.

Q. His back?

A. (Witness nodded head affirmatively.)

Q. And did you see the officer's front or back as Mr. Jamal was approaching?

A. Well, I couldn't see the officer because Mr. Jamal was in front of him.

Q. Right. But just prior to your losing vision of the officer?

A. Yeah.

Q. You say you saw the officer down on the pavement?

A. Yes.

Q. The sidewalk?

Page 66.

William Harmon

A. Yes.

Q. With his back against the wall?

A. Yes.

Q. And his gun was out?

A. Yes.

Q. And after you heard that second shot once again what did you see Mr. Jamal do?

A. Fall.

Q. Fall. Did you see any movement of his hands?

A. No. He grabbed his hands and put them to his chest (indicating) like, you know, like any ordinary person would do when they've been hit.

Q. And then he fell?

A. He fell.

Q. Having seen the photographs now, do they help refresh your recollection?

A. Yes.

Q. Did you ask me this morning if you could look at photographs?

A. No.

Q. You don't recall saying that to me?

A. Could I look at the photographs?

Q. Of the scene.

A. Oh, yes, I did, yes, I did.

Q. Now, let me ask you a few questions about Mr.

Page 67.

Jamal's brother Billy.

A. Yes.

Q. Did you know Billy in December of 1981?

A. Ahh, yeah, I knew him. From seeing -- he had a vending, he had a vending station I think. At 16th Street. And I used, when I got off the El I used to see him.

Q. Okay.

A. But I didn't know him personally.

Q. You didn't know him personally?

A. No.

Q. Did you see him that night?

A. I don't think I did.

Q. Do you know the young woman named Cynthia White?

A. Do I know her?

Q. Did you know her then?

A. Yes.

Q. And how did you know her?

A. Well, my woman was a prostitute.

Q. She was a prostitute.

A. And that's the kind of work that she was in.

Q. Did you see her that night?

A. No, I didn't.

Q. After you heard the second shot, did you run

Page 68.

to the scene of the shooting or what did you do?

A. After I heard the second shot and I seen Mumia fall, a car came up beside him. And a guy got out of the car and pointed a gun at the cop and shot again, got in the car, backed the car up to 13th Street, and went down 13th Street the wrong way. They went, it went south on 13th.

Q. How much time elapsed between the time you saw Mr. Jamal get shot as you described and that car arriving?

A. About 20 seconds.

Q. And did that car pull in behind the police car?

A. Yes.

MS. FISK: Objection, Your Honor. There has been no testimony about a police car.

MR. WEINGLASS: I will withdraw the question.

BY MR. WEINGLASS:

Q. That night as you were in the parking lot looking south towards Locust Street --

A. Yes.

Q. -- did you see cars parked on the south side of Locust Street?

A. Ahh, yes. Ahh, one car must have been, ahh,

Page 69.

just in front of the cop car.

Q. Did you see a cop car?

A. Yes, I did.

Q. And you saw another car in front of the cop car?

A. Yes, yes.

Q. Did you see any cars behind the cop car?

A. No, I didn't.

Q. When this car that you have described came, where did it stop?

A. In back of the cop car.

Q. And did you see anyone get out of that car?

A. Yes, I did.

Q. The passenger side or the driver's side?

A. The passenger side.

Q. And what did you see that person do?

A. Get out the car, pull out a -- well, he must have had it out but I seen him looking at, you know, get out the car and point the gun down to the cop and shoot one time. Get in the car, the car backed up across 13th Street and went down 13th Street (indicating), the one way.

Q. Did you see what effect if any that shot had on the police officer?

A. Well, when I seen, after he was shot, he was

Page 70.

shot, he had to be shot in the head or face or somewhere because his face was bleeding.

Q. His face was bleeding?

A. Yes.

Q. After you saw that, what did you do, Mr. Harmon?

A. I immediately backed up, went in the restaurant, got Tina, and told her let's get out of here. She said what's wrong. I said ahh, I don't know, but I'd like to get out of here. So when she got in the car, we drove down, we drove 13th and Walnut and made a left down Walnut. And I was telling her what happened. I said somebody got shot.

MS. FISK: Objection to what he said to her at the time, Your Honor.

MR. WEINGLASS: Well, I think the witness is permitted to testify as to his own statement.

THE WITNESS: The cop got shot and Mumia got shot and I don't want to be around here. Because I don't want to be involved, you know.

BY MR. WEINGLASS:

Q. When you went to your car after you got Tina -- did you leave the restaurant immediately?

Page 71.

A. Yes.

Q. And when you got back to your car did you see police in the area?

A. As I was starting the car up to leave, they were, I seen them coming.

Q. You saw them coming down 13th?

A. Yes.

Q. But when you got in the car did you see police cars on Locust?

A. Ahh, no. Maybe it was one... coming from Broad. They got there so fast, I don't know why the guy in the car went down 13th Street and didn't get, get stopped. Because the cops was right there on the button.

Q. Okay. Now, I'm sorry to get into this, Mr. Harmon. Could you indicate to the Court what your work was, or employment at that time?

A. I was a pimp.

Q. And was Tina someone who was working with you at that time?

A. Yes.

Q. And was that the reason why you fled the scene?

A. Yes.

Q. Was that the reason why you didn't come

Page 72.

forward?

A. No.

Q. Why didn't you come forward?

A. I had a mother and, ahh, I spoke to her about it. And she said Bippy, you're downtown every night, you see everything going

around, don't get involved. Don't get involved, you'll get yourself in trouble.

Q. Did you contact anyone in the Police Department?

A. No.

Q. Or in the District Attorney's Office?

A. No.

Q. Did you contact anyone on the defense side?

A. Nope.

Q. You said you told your mother about this?

A. Yes.

Q. Did you tell anyone else?

A. Umm... I don't think I did. Maybe... in conversation. You know, like it might have came up.

Q. How about Krystal?

A. My daughter.

Q. Yeah?

A. Well, I tell her everything. That's my baby. I told her.

Q. Right. Does she live in the State of, in the

Page 73.

William Harmon

Commonwealth of Pennsylvania?

A. No, she doesn't.

Q. She lives out of State now?

A. Yes.

Q. Do you know where Tina Santiago lives now?

A. No, I don't.

Q. With respect to the person who you saw shoot the police officer, the person who came out of the car, did you see that person's face?

A. No, I just seen the back of him.

Q. Did you notice anything with respect to his hair?

A. Yes, it was long and it hung on his shoulders (indicating).

Q. Right?

A. Straight.

Q. It was straight?

A. Yes.

Q. Do you know the size of that individual?

A. No, umm, about -- I guess -- well, I wasn't paying attention to what he weighed or how big he was, I was trying to take cover.

Q. Oh. Did you know an individual at that time who went by the name of Sweet Sam?

A. The name sound familiar.

Page 74.

William Harmon

Q. Did you know an individual at that time by the name of Detroit?

A. Yes.

Q. How did you know, who is Detroit?

A. Detroit was another pimp.

Q. Was he working in that area at that time?

A. Yes.

Q. And could you describe his height?

A. Ahh, Detroit, he must have been about five-seven, 130, 140.

Q. And how did he wear his hair, do you remember?

A. Ahh, straight. Ahh, like a Johnny Mathis style.

Q. Pardon?

A. You know, how Johnny Mathis wear his hair.

Q. Yeah?

A. Yeah, straight.

Q. You are indicating with your hands that it hangs down?

A. Well, shoulder length.

Q. Shoulder length?

A. Yes.

Q. Straight down to the shoulder?

A. Yes.

Q. You saw Mr. Detroit that night before this

Page 75.

William Harmon

happened?

A. Ahh... I'm not sure if I seen him before then. I knew I seen him after. After, because we, we were in the restaurant talking. It's a meeting place for all the gang, you know.

Q. That was later?

A. Yeah.

Q. Much later. Now, you know that car that pulled up, had you seen that car around before?

A. Which car?

Q. The car that pulled up with the shooter in it.

A. I never seen the car.

(Pause.)

Q. Did you see Mr. Jamal shoot the officer that night?

A. No, I didn't.

Q. Did you see Mr. Jamal get shot?

A. Yes, I did.

Q. And it's your testimony Mr. Jamal was shot before the officer was shot in the face?

A. Yes.

Q. And he was shot after the officer was on the pavement?

A. Yes.

Q. And the officer had his gun out?

Page 76.

William Harmon

A. Yes.

Q. You indicated in your statement that after Mister, after you saw Mumia fall back, he put his hands to his chest and he landed against the car. Did you see him land against the car?

A. Yes. He fell against the car and then he fell on the ground.

MR. WEINGLASS: If I could have...

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WEINGLASS:

Q. Did you see Mr. Jamal with a gun that night at any time?

A. No.

MR. WEINGLASS: I have no further questions.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes, sure.

BY MS. FISK:

Q. Let me make sure I understand this, Mr. Harmon. You were at a restaurant with Tina?

A. Yes.

Q. And then at some point you see outside the door of the restaurant the man you know as Mumia Abu-Jamal?

Page 77.

William Harmon

A. Yes.

Q. And you said you knew him from Sonny Hopson?

A. Yes.

Q. Who is Sonny Hopson?

A. He is a disk jockey on WHAT.

Q. And how did you know Sonny Hopson?

A. I used to work for Sonny. I used to drive the funny car. They used to have a car that goes around the neighborhood and he used to give records away with pictures. And he used to --

Q. When had you done that, sir?

A. This was in the late seventies.

Q. During what period of time in the late seventies did you drive that funny car for Sonny Hopson?

A. Ahh... few... '76, '75.

Q. And how in the course of that employment did you have an opportunity to meet Mr. Jamal?

A. Well, like I said, you know, I'm, I'm an all-around man, I used to go around the City, you know, with the car. And I met a lot of people. And, ahh, I think I went to the station one day and met, ahh, Mr. Jamal.

Q. When was that?

A. I, I didn't know exactly the date.

Page 78.

William Harmon

Q. Well, was that in the period of '75-'76 when you were driving the funny car?

A. No, this was like maybe '78, '79.

Q. Did you have any other opportunity to meet or see Mr. Jamal between then and December 9th, 1981?

A. Ahh, I think I've seen him in the club a couple times.

Q. Which club?

A. Whispers, Kim Graves. Ahh... ahh... all the local clubs that...

Q. Now, sir, when you would see him in the club, would you speak to him?

A. Yes, I would.

Q. I take it you knew Mr. Jamal by name?

A. Yes.

Q. Did he know you by name?

A. Not William Harmon, no.

Q. What name did he know you by?

A. Bippy.

Q. And everybody knew you as Bippy, right?

A. Everybody.

Q. And he certainly knew your name was Bippy?

A. Yes.

Q. Now, when you saw Mr. Jamal outside the restaurant, you told us that you decided to go out to

Page 79.

William Harmon

holler at him?

A. Yes.

Q. What were you going to holler at him about?

A. Well, that's an expression we use. Went out to speak to him.

Q. Did you have something particular that you needed to speak to him about?

A. Yes, I wanted to, ahh, tell him that Tina loved the way he talked on the tel -- on the radio, and, you know, he had a sound in his voice and the women loved it. You know, the quiet storm type voice.

Good morning, this is Mumia, Mumia Abu-Jamal.

You know, women liked that.

Q. So when you went out to speak to him I take it you took Tina with you so she could meet him?

A. Yes.

Q. All right, so Tina went outside the restaurant?

A. No, well...

Q. Oh?

A. Right there in the restaurant, it's, the tables and the stools were right there and she didn't even have to get off the stool, you know. Like I

Page 80.

William Harmon

went out there to tell him I wanted him to meet Tina. And that's when all the commotion started.

Q. Well, you told us that you were out there and talking to him for about two to three minutes; is that right?

A. Yes. I wasn't talking to him about Tina. I was talking to him about me and him, you know, like I like, I liked -- my mother even liked his voice.

Q. Well, you just told us that you were going out to tell him that Tina liked his voice?

A. Yes, I was going out there to tell him but I got cross -- I got sidetracked.

Q. You talked about something different instead, by the time you got from your stool to the front of the restaurant you forgot what you were going to go out there for and talked to him about something different?

A. Yeah, because I hadn't seen him in such a long time.

Q. How long had it been?

A. I don't know. And you, you don't see him that often in the street, so when you do see him it's a big thing, you know.

Q. But you just told us that you would often see him down at the clubs there, Whispers and the other

Page 81.

William Harmon

clubs?

A. I seen him all the time.

Q. Right.

A. I'm saying but the public doesn't see him like that. And Tina wasn't in the public, she was working.

Q. Did you tell us a moment ago that you would run into him frequently?

A. Yes.

Q. At the various clubs in the vicinity of 13th and Locust Street?

A. Yes.

Q. And those clubs included Whispers?

A. Yeah.

Q. What other clubs down there?

A. The Serendipity. Ahh... on 20th and Sansom, Kim Graves. You know. In that area.

Q. Center City?

A. Yes.

Q. So it wasn't at all unusual to see him downtown because he would often be in those clubs and you knew that, right?

A. Not often. He wasn't there every night.

Q. Right?

A. Like I was. Like when you did see him it was,

Page 82.

William Harmon

you know, like you were glad to see him, you know, because he was out. He didn't come out that much.

Q. And it wasn't unusual to see him down there?

A. Yes, it was an unusual event. For most people.

Q. For you, Mr. Harmon?

A. Oh.

Q. I'm asking about for you.

A. Okay.

Q. Not for anybody else.

A. Yes.

Q. Was it unusual for you to see him down there?

A. Yes.

Q. It was?

A. Yes.

Q. Even though you saw him at these clubs?

A. On several times. But in the course of weeks, months. I mean it wasn't everyday I saw him. So if I didn't see him for like three weeks, that would have been a, a, a, you know, an event.

Q. So you went outside and you forgot to talk to him about Tina and you started talking to him about something else, right?

A. Yeah.

Q. And while the two of you were out there before

Page 83.

William Harmon

there was any shooting, who else was out there on the street?

A. I can't recall who was out there on the street.

Q. Do you know?

A. Where we were at. Where we were standing at it was just him and I.

Q. Well, did you see anybody else out there where you were or within your field of vision?

A. I didn't see nobody until I heard somebody's voices.

Q. And that's the argument that you told us you heard, right?

A. Yes.

Q. Well, did you look when you heard the argument?

A. Yeah, I looked.

Q. And where was the argument coming from?

A. The southeast corner of 13th and Locust.

Q. And when you looked there, did you see any persons there?

A. I seen a guy talking to a, looked like he was talking to the cop.

Q. Did you recognize the cop?

A. Ahh, not right then.

Page 84.

Q. Did you recognize the guy?

A. No, I didn't know him at all. Because that's a, you know, like it's pretty far distance just to be looking and to pick out somebody. I couldn't, you know... really. Really couldn't tell you who he was if he's standing in back of the room because that's about as far as it was.

Q. What were they arguing about?

A. I have no idea.

Q. Did you see any anything other than those two persons arguing on the southeast corner?

A. No, I didn't.

Q. Did you see any vehicles at that point when you heard the argument?

A. I seen a cop car and a, I seen a Volkswagen.

Q. Volkswagen?

A. Yes.

Q. How is it you remember that you saw a Volkswagen?

A. Because obviously the cop was talking to whoever was driving the Volkswagen. I thought it was a cab maybe at first. But a cab was on the corner. I don't know which, which direction. It was a cop car, a cab, then a Volkswagen.

Q. Let me just get it straight. You saw a cop

Page 85.

William Harmon

car. Was the cop car closest to the intersection of 13th and Locust?

A. Yes.

Q. And it had, if the cop car had been proceeding...

A. Had a cab stopped.

Q. So just so I understand the order of the cars: You had a cop car and then was the cab in front of the cop car or behind the cop car?

A. In front of it.

Q. The cab is in front of the cop car and then in front of the cab is the Volkswagen?

A. Yes.

Q. And so you had three cars. Are they all parked or all in the driving lane?

A. They're all on the right-hand side going north -- going east down Locust. But that would be in the driving lane.

Q. Oh. And as I understand it, the cop car was the car that was closest to the intersection?

A. Yes.

Q. And then the cab was further east?

A. Yes.

Q. And the Volkswagen was further east of that?

A. Yes.

Page 86.

William Harmon

Q. Now, do you know whether the person that was talking to the cop was the driver of the cab or the driver of the Volkswagen, if you know?

A. No, I don't.

Q. Okay. Well, did you see any other driver?

A. No, I didn't.

Q. Did you see anyone in any of those cars when you looked over and saw these two people arguing?

A. No, I didn't.

Q. Now, you told us that after you heard that arguing for a little bit of time, that's when Mr. Jamal stopped talking to you?

A. Yes.

Q. Did he say something to you before he left where you were standing?

A. Ahh, well, he was a little rude: He just walked away from me. You know. And, ahh...

Q. Incidentally, I'm sorry, I didn't mean to interrupt you. When you went out to him that night, when you went out to the front of the restaurant?

A. Yes.

Q. Did you call him by name?

A. Yes.

Q. And did he call you by name?

A. No.

Page 87.

William Harmon

Q. What did he say to you?

A. Hey, man, what's up.

Q. And what did the two of you talk about in the two to three minutes before he walked away?

A. Well, like I said, I told him about, you know, the women that I was involved with loved to hear him talk, you know, and my mother even liked to hear him talk. And, ahh, just conversation like what's up, where you going, where you been, you know. Like I told him, I said I was taking the lady's breakfast.

Q. So you told him what you were up to?

A. Yeah.

Q. And, now, you said that after about two to three minutes --

A. Yes.

Q. -- is when Mr. Jamal started walking towards the sound of the argument?

A. Yes.

Q. And that caused him to walk diagonally through the parking lot?

A. Yes.

Q. Which had been directly across the street from where the two

of you were standing?

A. Yes.

Q. And you followed behind him?

Page 88.

William Harmon

A. Yes.

Q. Now, as I understand your testimony, at some point while Mr. Jamal was still in the parking lot --

A. Yes.

Q. -- you heard the shot? Or was Mr. Jamal in the street when you heard the first shot?

A. The first shot, he was in the... the parking lot.

Q. He was in the parking lot?

A. Yes.

Q. Now, you told us that at the time of the first shot you were in the parking lot halfway between the two entrances; is that right?

A. It's a big parking lot.

Q. Yes, sir.

A. So by him being in the parking lot going through the entrance that comes on Locust Street, and me going in on the entrance in 13th street, it would have still made us both be in the parking lot at the same time.

Q. Yes. Now, I take it that since you are now following Mr. Jamal towards the sound of the argument --

A. Yes.

Q. -- you're watching where you're going?

Page 89.

William Harmon

A. Yes.

Q. And you are, obviously, getting closer to the area --

A. Yes.

Q. -- you are walking towards the entire time?

A. Yes.

Q. As you were walking closer, do I understand, though, that you still were unable to see who it was that the officer was arguing with?

A. Yes.

Q. You never were able to see who that was or you would never recognize who that was, is that it?

A. Ahh, I couldn't recognize who shot the cop because when I got that close, I heard the shot and then that unidentified person ran down Locust Street. And that's when the cop was knocked back against the wall.

Q. Now, when that happened -- just so I understand -- after that unidentified person ran down on Locust Street, was the only person, so I am clear, the only single person who was on that sidewalk on the south side of Locust Street was now the cop; is that right?

A. Yes.

Q. There was no one else there?

Page 90.

William Harmon

A. Maybe on the north side of 13th Street.

Q. Right. No, I am talking about that south side. The north side of --

A. No, ahh, the north side of Locust Street.

Q. Right?

A. No, the south side of Locust Street. The southwest side.

Q. The southwest corner?

A. Yes, southwest corner.

Q. Who was there?

A. Might have been somebody there.

Q. Oh?

A. But nobody was there on the southeast corner but the cop.

Q. And the cop, as soon as this unidentified person that he had been arguing with ran away?

A. Yeah.

Q. The cop you are certain fell down and up against the building?

A. Yes.

Q. And was he in a seated position sort of or was he on his stomach or was he on his side? What was his relative position?

A. He had his back against the wall, his gun out, like this (indicating).

Page 91.

William Harmon

Q. And do I take it that his --

A. He was holding.

Q. He was sitting?

A. He was holding something. I don't know if it was his chest or his stomach or what, but he was, he had the gun out like this (indicating).

Q. But so I want to understand, though, his back was in against the wall and he was in a seated position?

A. Yes.

Q. And his feet were in front of him?

A. Yes.

Q. Now, you told us that you were about halfway between the two entrances of the parking lot?

A. Yes.

Q. Mr. Jamal was some distance in front of you?

A. He was in the street by now.

Q. Oh, so he was in the street?

A. Yes.

Q. So he was in the street when you heard the gunshot?

A. No, no, no, no, after he heard the gunshot he ran towards the officer.

Q. Right.

A. The officer had the gun out looking up at him.

Page 92.

William Harmon

And, ahh, the next sound I heard was another shot. And I seen Jamal fall.

Q. Mr. Harmon, you were so far away that you were unable to see who this unidentified person was who ran down Locust Street, right?

A. Well, yes.

Q. But you were close enough that you were able to see that the cop was looking at Mr. Jamal before he fired his gun; is that right?

A. Yes.

Q. So the cop was that much closer to you than this man who had shot the cop?

A. Yes.

Q. I see. How much distance was there between the man who shot the cop and the cop?

A. Well --

MR. WEINGLASS: At what point in time? Objection. I want the question clarified.

BY MS. FISK:

Q. When you saw the two men arguing?

A. Yes.

Q. That is the cop and this other man?

A. Yes.

Q. Were they standing facing each other?

A. Ahh, yes. Arm's length.

Page 93.

Q. Within touching distance?

A. Yeah, yeah.

Q. When you heard the shot fired were they still in that same position to each other?

A. Ahh, yes.

Q. And what you are telling us is that the cop, his position to you and his distance to you allowed you to see where his eyes were looking, but the guy who shot the cop who was arm's length from the cop was too far away from you to allow you to see his face, right?

A. Well, first of all, when I seen the gun I didn't look at nothing. That's number one. See. So when I heard the shot, I immediately didn't see nothing. He went one way, the cop fell down, and I stopped in my tracks. And --

Q. Did you close your eyes?

A. No, I didn't close my eyes.

Q. You kept looking, right?

A. Yes.

Q. Because you're telling us things that you saw happen after that shot, right?

A. Yeah, but I close -- I, I, uhh, I went to the point where, ahh, I watched Mumia fall. After I heard that second shot, and I looked at him, I said

Page 94.

oh, let me get out of here. And I backed up. Went back through the parking lot to the restaurant. Before then another car sped right beside him and shot again.

Q. We are going to get to that in a second.

A. All right.

Q. Now, that was, you're getting a little bit ahead of me but that's all right. The guy who ran away after you heard the first shot?

A. Yes.

Q. You said that he went south on Locust Street? I'm sorry, he went east on Locust Street?

A. Yes.

Q. Where did he go when he went east on Locust Street?

A. I have no idea.

Q. Well, did you see him get to 12th Street?

A. No, I didn't.

Q. Did you see if he went into a building?

A. No, he might have got in another car down there.

Q. Well, did you see him get into a car?

A. No, I didn't.

Q. You didn't watch where he ran?

A. No, I didn't.

Page 95.

Q. Well, this was the guy with the gun, right?

A. Yes.

Q. And this was the thing that made you afraid because there's somebody down there shooting and you're real close, right?

A. Yes.

Q. And in fact you told us that when you heard the shot what you watched was the gun, right?

A. Yes.

Q. So when the guy started running did you see where the gun was going?

A. Yeah, the gun went east on Locust Street.

Q. And how far did you watch him as he went east on Locust Street?

A. Until he went out of sight.

Q. And how far was that? Where was he when you lost sight of him?

A. He was... a little more than halfway down the block.

Q. Now, so I understand: This guy who ran, did you see this guy shoot the cop or you just heard that shot?

A. I just heard the shot.

Q. Before you heard the shot you had been hearing the argument; is that right?

Page 96.

A. Yes.

Q. And in fact before you heard the shot and you were listening to the argument you were walking towards the cop and this guy, right?

A. Yes.

Q. And you were watching the both of them as you are walking towards them?

A. Yes.

Q. And they were continuing to argue at arm's length to each other?

A. Yeah.

Q. Before you heard the shot?

A. Yes.

Q. And that was the extent of their contact with each other?

A. Yes.

Q. They were arguing?

A. Yes.

Q. Nobody was hitting anybody, right?

A. No.

Q. Okay. Nobody was handcuffing anybody?

A. No.

Q. Nobody was putting anybody up against the car?

A. I couldn't tell.

Q. Now, you told us that there was a line of

Page 97.

three cars parked on Locust Street. Closest to 13th was the cop car, then in front of the cop car there was a cab, and then in front of the cab there was this Volkswagen?

A. Right.

Q. Where in that line of cars were the cop and this guy who eventually ran away?

A. Between... Between, between the cop car and the cab. Like when the cop pulls up on a car to stop it, it leaves about maybe 4 or 5 feet in between. So if the cop got to go around the cars, so it's right in between those two cars.

Q. And this was a typical Yellow Cab?

A. No, it was a United Cab.

Q. A United Cab?

A. Yes.

Q. Okay. Painted the color yellow? I didn't mean --

A. Yeah.

Q. Okay. Now, you told us that after the first shot and after that guy ran about half of a block when you lost sight of him, Mr. Jamal was continuing to go across the street towards where the cop was, right?

A. Yes.

Page 98.

Q. And your testimony was that he was in the street when you heard that second shot?

A. No, he was on the pavement.

Q. On the pavement?

A. Yes.

Q. On the other side of the street?

A. Yes.

Q. And at that point that you heard that second shot --

A. Yes.

Q. -- Mr. Jamal, I assume, was walking towards --

A. Towards.

Q. -- the direction where the officer was?

A. Yes.

Q. Would you define his posture as erect? He was standing?

A. Yes.

Q. And am I correct that the police officer was still in the position the officer had been in when you had seen him fall against the wall?

A. Yes.

Q. So he was down below him?

A. Yes.

Q. And how was the officer holding his gun?

A. Ahh, like he was pointing it.

Page 99.

William Harmon

Q. Well, in what direction was he pointing it?

A. Well, I couldn't tell because Mr. Jamal was standing in front of him. And when I heard the second shot, he obviously had to be pointing it at Mr. Jamal because he fell.

Q. And did you hear anyone say anything when you heard that second shot?

A. Yeah, I heard him slur some words, you know, you son of a bitch you, you know, things like that.

Q. And who was saying that?

A. The cop.

Q. The cop was?

A. Yes.

Q. Did you hear Mr. Jamal saying anything?

A. No, I didn't.

Q. Now, you then saw Mr. Jamal go where after that second shot was fired?

A. On the ground.

Q. Where, did he fall right where he had been standing?

A. No, he fell on the car and then he fell on the ground.

Q. Which car did he fall against?

A. He fell between the cop car and the cab.

Q. And when he fell between the cop car and the

Page 100.

William Harmon

cab, what was the last position you saw Mr. Jamal in? Again, was he sitting upright? Was he lying flat on the ground? Was he standing? Leaning against the cab? Leaning against the cop car? As best you can describe, what was the position he was in?

A. He was laying on the side, holding his side (indicating).

Q. He was holding his side?

A. Yeah. I think. I'm not -- I can't, I wouldn't swear to it.

Q. When you say he was laying, was he laying up against something or was he laying flat on the sidewalk or laying on the street?

A. On the car. Leaning against the car.

Q. Leaning against the car. I see. And you didn't hear him say anything?

A. No.

Q. Now, am I correct that at that point where you heard the second shot, the only persons that you saw on that south side of Locust Street --

A. Yes.

Q. -- east of 13th Street --

A. Yes.

Q. -- is now Mr. Jamal and the cop?

A. Yes.

Page 101.

William Harmon

Q. And there is no one else there?

A. No.

Q. And you are certain of that?

A. I'm positive.

Q. Okay. In fact, the third person, or the next person closest to the cop, with the exception of Mr. Jamal, was you?

A. Right.

Q. And there was nobody else in your field of vision?

A. I was across the street in the lot.

Q. Yes, sir. That's what I mean.

A. Yes.

Q. You didn't see anyone else out there?

A. No, I wasn't looking for nothing. Nobody.

Q. All right, so you weren't looking all over the place?

A. No, I wasn't.

Q. But you were looking where the cop was and where Mr. Jamal was?

A. Yes.

Q. And you are certain of what you saw in that area?

A. Yes, I do.

Q. And there was nobody else there?

Page 102.

William Harmon

A. No.

Q. Now, after that second shot you told us that Mr. Jamal now fell up against one of the cars and was grabbing his side?

A. Yes.

Q. And then you said that a car... a car came up. Yes?

A. Yes.

Q. And you've told us, I believe, that in your estimate that car came up about 20 seconds after you had heard a shot, right?

A. Yes, maybe it was a little, ahh, maybe I exaggerated a little bit. It might have been two or three seconds later. As soon as Mumia fell a car pulled up. It might have been parked on the other side of the street and just turned it's lights on and came across. I don't know, I wasn't paying attention. But the car stopped right beside -- behind, beside the cop car, got out, pulled a gun out, shot the cop.

Q. All right, let me stop you for a moment. As I understand you, the car came on Locust Street, right, it didn't turn off 13th Street?

A. No, no, no.

Q. So it came from Locust Street but you don't

Page 103.

William Harmon

know how far up the street it had been?

A. Right.

Q. And you saw the car pull up alongside the cop car?

A. In back of it.

Q. Behind the cop car?

A. Yes.

Q. So was it blocking the intersection?

A. Yes.

Q. Okay. So it pulls behind the cop car?

A. Yes.

Q. And it's lights are on?

A. Yes.

Q. What kind of car is it?

A. Midsize, Malibu I think. I think it was a Malibu.

Q. Do you think you know what color it was?

A. Gray.

Q. And did you say that you thought it was a two-door or four-door?

A. Two-door.

Q. And how many persons were in the car?

A. Two.

Q. Male or female?

A. Two males.

Page 104.

Q. Black or white?

A. Black.

Q. Can you describe the driver to us?

A. No, I couldn't describe the driver at all. I wasn't focusing on the driver, I was focusing on who got out of the car.

Q. And the person who got out of the car got out from the passenger side?

A. Yes.

Q. And as I understand your position, the passenger side was the far side of the car from you?

A. Yes.

Q. Okay. Now, the person got out from the passenger side, kept the door open, and pointed a gun in the direction of the officer?

A. Yes.

Q. Now, the officer was still up against the building?

A. Right.

Q. About what, 10 feet from this car now? 15? You tell me.

A. Maybe... ahh, like where you're sitting at.

Q. Yes.

A. Where that officer is sitting in back of you.

Q. This uniformed officer here (indicating)?

Page 105.

A. Yeah, yeah.

Q. So that the distance from the guy who got from the car --

A. Yeah.

Q. -- to the officer that he shot --

A. Right.

Q. -- was from where I am to the Sheriff?

A. Yes.

MS. FISK: Who, for the record, is in Courtroom 653 sitting at the bar, Your Honor, separating the public seating from the attorneys' area.

BY MS. FISK:

Q. All right?

A. Yes.

Q. And it's what -- I'm not good -- 10 feet?

A. 10 feet, yeah.

Q. Okay. So from that distance of 10 feet this person who got out from the far side of the car from you --

A. Yeah.

Q. Who had Johnny Mathis style hair?

A. Yeah.

Q. And was about five-foot-seven?

A. Right.

Page 106.

Q. Fired a single shot?

A. Right.

Q. What was that person wearing, the part of their body you were able to see?

A. Well, it was cold so he was wearing a black leather jacket I think.

Q. Black leather jacket?

A. Yeah, I think it was black. I'm not sure of the color but it was a dark, ahh, coat of some kind.

Q. And it appeared to you to be leather?

A. Yes.

Q. Could you see whether the person had anything on their head?

A. No, I didn't.

Q. He just had his hair down?

A. Yeah.

Q. Johnny Mathis style?

A. Yeah.

Q. And the hair was loose, it wasn't in a --

A. It was straight.

Q. -- ponytail? Now, after that guy shot that shot, did that guy, the passenger in this Malibu, did he say anything when he shot that shot?

A. He called him a son of a bitch.

Q. He seemed to be directing that to the officer?

Page 107.

A. Yes.

Q. Other than saying -- did he just say son of a bitch?

A. No, he said you son of a bitch you. And got back in the car and backed up. The driver backed the car up and made a right on 13th and went the wrong way on 13th Street towards Pine, I guess that is. Pine there. Spruce.

Q. So the passenger after firing that shot got back in the car?

A. Yes.

Q. The car backs up to the other side of the intersection?

A. Yes.

Q. And then the driver made a right turn?

A. Right.

Q. Up 13th Street?

A. Right.

Q. Okay. Now, where were you during this part of the shooting?

A. I was ducked down on the side of one of the cars that was in the lot.

Q. I have no problem with you leaning back, but move microphone closer to you if you are going to do that, okay?

Page 108.

A. Oh. I was ducking down behind the cars that was in the parking lot.

Q. Do you remember what car you were ducking down behind?

A. No, no, no. My car was across the street.

Q. Now let me ask you this. Just so I understand. The person that was arguing with the officer the first time, who fired the, or who ran after you heard the first shot, was that person wearing a black leather jacket?

A. I don't know, I think he had a... No, I'm not sure if he had a black leather jacket or not. He had a jacket of some kind, I don't know what style it was or what color it was.

Q. How did he wear his hair?

A. Ahh...

Q. Now we are talking about the first guy.

A. The first guy.

Q. Hight.

A. I think he had extensions, dreadlocks like (indicating).

Q. So it's clear to you, just so I understand, that this second guy who came out of the passenger side of the car --

A. Yeah.

Page 109.

William Harmon

Q. -- and who fired the shot, was not the same as the guy you had seen running on Locust Street?

A. No, definitely.

Q. And am I correct that the person who was the driver of this car is also not the guy you had seen running on Locust Street?

A. Well, I couldn't say. Because I didn't pay the driver any attention at all.

Q. Oh, okay. Now, how far south on 13th Street did you watch this car drive after it turned right?

A. I seen him turn left -- no, I seen him go down south, down 13th Street until he got out of sight.

Q. I'm sorry, you saw it turn what direction?

A. It must have turned right. Because that's the only street that goes, ahh, west.

Q. I'm sorry, I am confused, Mr. Harmon.

A. Pine Street goes west I think. 13th and Pine goes towards Broad.

Q. No, it doesn't.

A. No. Pine Street.

Q. Pine Street runs towards the Delaware River, Mr. Harmon?

A. Oh, okay. What's the next street from Locust?

Q. You tell me: You're the one who hung out at that corner so often?

Page 110.

William Harmon

A. Spruce, Spruce.

Q. Spruce is the street below Locust?

A. Yeah. Yeah. No, that's Pine Street. That's Pine after Locust.

Q. All right. That's your recollection?

A. Yeah.

Q. Mr. Harmon, after this car, after the shooter got back in this car, the car backed up on Locust?

A. Yes.

Q. Towards Broad Street, right?

A. Yes.

Q. And then the car turned on 13th Street?

A. Yes.

Q. Right or left?

A. Right.

Q. After the car started travelling on 13th Street, did you see the car turn again?

A. I didn't, I wasn't looking.

Q. Well, what were you looking at?

A. I was looking, after I seen the car pull down the street, I said what the hell's going on here. I immediately walked over to the restaurant, got Tina and said c'mon baby, let's get out of here.

Q. All right, now let me make, let me ask you this. Where was Mr. Jamal at that point?

Page 111.

William Harmon

A. Where was he at?

Q. Yes, sir.

A. He had, he was laying against the car.

Q. So he was still leaning up against the car?

A. Yeah.

Q. Sort of in an upright position, sort of leaning up against the car, he wasn't on the ground?

A. Yeah, he was on the ground.

Q. Oh, he was on the ground?

A. Yes.

Q. Leaning against the car?

A. Yes.

Q. Which car?

A. Ahh... it was...

MR. WEINGLASS: Let the record show the witness is looking at the photographs. Which he hasn't looked at before.

MS. FISK: Let the record show that they have been there the entire time of his testimony and the Court made very clear he could utilize them at any time.

THE WITNESS: Yeah... he was leaning on the cop car.

BY MS. FISK:

Q. The cop car. Now, after you saw this car that

Page 112.

William Harmon

the shooter went back into turn right on 13th Street and drive away?

A. Yes.

Q. Is when you turned around and went back into the restaurant?

A. Yes.

Q. Now, you were still, as I understand it you were still about in the middle of the parking lot?

A. Yes.

Q. When you were seeing all this?

A. Yes.

Q. So you had to walk halfway back through that parking lot?

A. Yes.

Q. Across 13th street?

A. Yes.

Q. Into the restaurant?

A. Yes.

Q. You had to tell Tina that the two of you were leaving?

A. Yes.

Q. Okay. And she asked you what it was about?

A. Yes.

Q. And you said what?

A. I told her, I said I'll tell you when we get

Page 113.

William Harmon

out of here.

Q. Okay. I will tell you when we get out of here. The two of you stopped to pay your bill?

A. Yeah, well, I paid -- well, she paid the bill.

Q. At that point when you walked in --

A. Yes.

Q. -- you picked up the check?

A. She had paid it already. She was just waiting for me to come back.

Q. You go in, say c'mon, I'll tell you about it later?

A. Yes.

Q. The two of you walk out of the restaurant?

A. Yes.

Q. The two of you go up to your car?

A. Yes.

Q. Your car is parked on 13th Street?

A. Yes.

Q. Closer to Locust Street than the club was?

A. No, closer, closer to the restaurant. Right, when you come out the restaurant door you could go right to my car.

Q. Your car's in front of the restaurant?

A. Yeah.

Q. Okay. And she gets in your car?

Page 114.

William Harmon

A. Yes.

Q. You got into your car?

A. Yeah.

Q. And you drive away north on 13th Street?

A. Yes.

Q. Now, at that time, as you are driving away north on 13th Street, do you see any additional police cars?

A. Yes.

Q. And where are these additional police cars that you see?

A. Coming across Locust Street, coming down Walnut Street. Coming down 13th Street. I had to pull my car over to let them get by.

Q. Oh, so the police car drove right past you?

A. Yeah.

Q. And that was a police car, what, coming the wrong way up 13th Street?

A. Yes, yes.

Q. Did you have your headlights on at that point?

A. Yes. Yes.

Q. Yes?

A. Yes, ma'am.

Q. And you pulled over and a police car passed you going the wrong way?

Page 115.

William Harmon

A. Yeah.

Q. Yes?

A. If I recall, yes.

Q. And you additionally saw police cars on Locust Street?

A. They were coming down Juniper Street. And coming down Locust. Pulling up on the sidewalk. And parking lot. But I was gone by then.

Q. Now, at that point, then, as you got into your car with Tina?

A. Yes.

Q. And drove north on 13th Street?

A. Yes.

Q. You were leaving the officer up against the building?

A. Yes.

Q. And Mr. Jamal, who was leaning up against the police car?

A. Yes.

MR. WEINGLASS: Objection. The witness indicated he was on the ground. Counsel is misstating the witness' answer.

THE WITNESS: Yeah.

THE COURT: I think he said his body was leaning against the police car.

Page 116.

William Harmon

MR. WEINGLASS: And then he said he went on the ground.

THE WITNESS: Yeah.

BY MS. FISK:

Q. He was on the ground leaning against the police car; isn't that what you said?

A. Yeah, that's what I said.

Q. That's what I thought you said. Those were the only two people you were leaving on that section of Locust Street, right?

A. Yes.

Q. And as you and Tina drove away you knew based on what you had seen that those were the two people who were there?

A. Yes.

Q. And the police were arriving to give them assistance?

A. Yes.

Q. Because it was clear to you that these two people needed hospital assistance?

A. Yes.

Q. So where did you and Tina go?

A. We went to 58th and Hoffman Street, in our apartment. 1209 South 58th Street.

Q. Well, did there come a time after you and Tina

Page 117.

William Harmon

left this location that you learned that the officer had been killed?

A. Yes; my mother told me.

Q. Your mother told you?

A. Yes, the next morning.

Q. That next morning?

A. Yes.

Q. And did your mother also tell you that Mr. Jamal had been charged with the shooting?

A. Yes.

Q. Now, I take it, Mr. Harmon, that it immediately occurred to you that this was a terrible mistake?

A. Yes.

Q. You knew that Mr. Jamal had had nothing to do with that shooting?

A. Yes.

Q. And that in fact he himself had been a victim of a horrible circumstance?

A. Yes.

Q. So as soon as you heard that Mr. Jamal, this famous person who people were delighted to listen to and happy to see on the streets, had been charged mistakenly, you immediately called the police and told them that they had made a horrible mistake?

Page 118.

William Harmon

A. No, I didn't.

Q. Not that day?

A. No, I didn't, at all.

Q. Not the next day?

A. No.

Q. And not any day for the next 14 years; is that right?

A. No -- yes.

Q. Well, you certainly called Mr. Jamal and said to him hey, you know, I could clear you on this, right?

A. No, because Mr. Jamal was in custody.

Q. Well, you knew Mr. Jamal's brother, didn't you?

A. I, I, I didn't know him personally. Like I said, I seen him before, I didn't know him personally.

Q. And you knew where his business was: You told us that?

A. Yes, yes.

Q. His business was at 16th and Chestnut Streets?

A. Yes.

Q. Yes?

A. Yes.

Q. So you walked up to his brother's business and

Page 119.

William Harmon

told his brother hey, I can be a witness for your brother because I was out there that night?

A. No, I didn't say that.

Q. You didn't do that?

A. I didn't do that.

Q. Well, did you go up to his brother and his vending business and say anything to him?

A. No, his brother wasn't around.

Q. So you went to look for his brother?

A. No, I didn't go look for him. But when you go in that area and you don't see him, you know he's not around. Because he was there everyday.

Q. Well, did you call your good friend Sonny Hopson?

A. Hopson, no, I didn't.

Q. And say hey, you know, your friend Jamal's being charged and this is a big mistake and let him know to get in touch with me, I could clear him?

A. I knew he would have found out anyway.

Q. Pardon?

A. I knew Mr. Hopson would have found out anyway like everybody else did.

Q. You knew Mr. Hopson would have found out what?

A. That Mr. Jamal was charged with a, with a shooting. Because it was on the news. And Sonny

Page 120.

William Harmon

listens to the news.

Q. I am not talking about advising Mr. Hopson that Mr. Jamal had been arrested, I'm talking about calling Mr. Hopson so he could help you get in touch with Mr. Jamal or Mr. Jamal's lawyer or Mr. Jamal's family to let them know that hey, don't forget to remind Jamal that Bippy was out there with him right before the shooting and he should give me a call because I saw what happened; did you do that?

A. No, I didn't.

Q. So you never notified anyone with the exception of your mother?

A. Yes.

Q. What you saw?

A. Yes.

Q. And six months went by and then the case went to trial, right?

A. Yes.

Q. And you were in town when that case was tried, weren't you?

A. I'm not, I'm not -- when did the trial start? I could tell you where I was at. I'm not...

Q. Trial took place in June and July 1982.

A. Ahh, yes, I was in town.

Q. And were you aware that the case was being

Page 121.

William Harmon

tried?

A. No, I wasn't.

Q. Did you have a TV set?

A. Yes, I did. Three of them.

Q. Did you have a radio?

A. Yes, I did.

Q. Did you read the newspapers?

A. Yes, I did.

Q. And did you see on any of those things that the case was currently on trial?

A. Yes, I did.

Q. So you were aware that the case was on trial?

A. Yes.

Q. Well, did you walk yourself down to City Hall and stick your head in and see what was going on at the trial?

A. No, I didn't.

Q. Did you pick up a telephone and call an attorney or City Hall information or a newspaper?

A. No, I didn't.

Q. And say hey, I know something about this case?

A. No, I didn't.

Q. You chose to tell no one about what you knew?

A. But my mother.

Q. Except your mother? Is that it?

Page 122.

William Harmon

A. Yes. And my daughter.

Q. And your daughter?

A. Yes.

Q. Incidentally, Mr. Harmon, throughout this period, were you living in the same place?

A. Yes.

Q. You weren't a hard guy to find, right?

A. No.

Q. So if, for example, someone contacted Sonny Hopson and said hey, we're trying to get a hold of Bippy, do you know where he is, Sonny Hopson knew how to find you, right?

A. Sure.

Q. Now, as I understand it, Mr. Harmon, this information remained with you and your mother until... July 29th, 1995 (displaying)? Is that right?

A. Yes. My mother was, she died June the 3rd, 1994. And I've, I've felt as though it still didn't occur to me because it wasn't nothing in the news about that then. And when I got to Mercer County, I started hearing all these things and reading in the paper about Mumia Abu-Jamal is going to be executed on the 17th and this and that. And I said oh, no, he can't, this can't be done. I told a couple of the

Page 123.

William Harmon

inmates up there that I promised my mother I wouldn't get involved. He said man, your mother's dead now, so if you could help the brother, help him. So.

Q. So as I understand it, in all those years from December 1981 until the date of your mother's death --

A. Yes.

Q. -- in June 1994, the reason you never contacted anyone was because your mother told you not to get involved?

A. Not -- yes, yes.

Q. And is that because, then, that you wanted to protect your mother or not involve her?

A. Somewhat.

Q. Well, did your mother tell you not to get involved, Mr. Harmon, when in August 1961 you were convicted of unauthorized use of an automobile in New Jersey?

A. Ah, ha-ha, she told me that too.

Q. But she knew about that conviction, right?

A. That wasn't -- that was a... yeah. Yeah.

Q. Well, did you?

A. I was a kid.

Q. I'm sorry?

A. Go ahead.

Page 124.

William Harmon

Q. Well, did your mother tell you not to get involved when you were convicted on January 30th, 1964 of forgery here in Philadelphia?

A. Yes, she knew about it.

Q. And did your mother tell you not to get involved when you were convicted on November the 2nd, 1965 and charged with uttering and publishing a forged instrument?

A. Yes, she did.

Q. Did your mother tell you not to get involved on January the l0th, 1967 when you were convicted here in Philadelphia of forgery?

A. Yes, she did.

Q. Did your mother tell you not to get involved when you were convicted of larceny in Haverford Township in Montgomery County on January the 13th, 1967?

A. Yes -- no, she didn't know that.

Q. She didn't know about that?

A. No, she didn't know that.

Q. Did your mother tell you not to get involved when you were convicted on December the 19th, 1967 of forgery and uttering a forged instrument here in Philadelphia?

A. Yes.

Page 125.

William Harmon

Q. And how about your conviction of May the lst, 1969 for forgery, uttering a published instrument, and receiving stolen property here in Philadelphia: Did she tell you not to get involved then?

A. That was mine, yes, she told me, she thought, ahh, something was wrong with me. And you can't forge your own name.

Q. She thought something was wrong with you why, sir?

A. Because they were charging me for forgery. And it was my check.

Q. You were convicted of forgery, uttering a published instrument, receiving stolen property and burglary; is that right?

A. Yes. I couldn't steal my own check.

Q. Well, that is true, you couldn't?

A. Right.

Q. But you were convicted of burglary, weren't you?

A. That's what the judge said I was convicted of, burglary.

Q. I see.

A. That means I stole my own check to cash it.

Q. Stole your own check to cash it?

A. Yes. That's impossible.

Page 126.

William Harmon

Q. You had a trial, sir?

A. Yes, I did. I got one.

Q. Judge found you guilty?

A. One to two years.

Q. And how about your May 7th, 1969 conviction for larceny and receiving stolen goods and forgery: Did your Mom know about that?

A. I don't know if she knew about that because I was already in jail.

Q. Do you remember that conviction in front of Judge Jamieson, it was a guilty plea for larceny and receiving stolen goods, you were sentenced on May the 7th, 1969? You got five years probation?

A. Oh, okay, she might have knew about that.

Q. And how about a conviction on that same day, May 7th, 1969 in which you were convicted of fraudulent instruments: Did she know about that?

A. She had to know about it: She got me out on bail.

Q. How about May the 4th, 1971, your conviction for fraudulent use of a credit card for under $50: Did your mother know about that?

A. Yes, yes.

Q. How about your August 12th, 1971 conviction for fraudulent instruments and fraudulent

Page 127.

William Harmon

conversions: Did your mother know about that?

A. What, when was that?

Q. August 12th, 1971, fraudulent instruments and fraudulent conversions in front of Judge Meade, it was a guilty plea, you were placed on probation.

A. Yeah, she must have knew about that.

Q. She knew about that?

A. Yes.

Q. You didn't protect her from that, though?

A. No, I couldn't protect her from that because I needed protection.

Q. How about your June 20th, 1975 conviction for theft and receiving stolen property and theft by deception: Do you remember that one?

A. '75?

Q. Yes.

A. Not guilty.

Q. Not guilty?

A. Yes.

Q. So if the Court records show that under Common Pleas Court term and number 75-02, 0981, you were arrested on January 24th, 1975 and before Judge E.S. Pawelac P-A-W-E-L-A-C were sentenced on June 20th, 1975 to a count of theft, receiving stolen property, and theft by deception, as a result of a

Page 128.

William Harmon

guilty plea, and sentence was imposed of probation, the Court records would be wrong?

A. I pleaded guilty?

Q. That's what I'm asking you, sir?

A. I don't think so.

Q. You don't remember that?

A. I don't remember that.

Q. How about January 6th, 1977, a conviction in Federal Court for mail fraud: Do you remember that?

A. Yes, yes.

Q. And your mother knew about that, right?

A. Yes.

Q. And you were also convicted for use of a fictitious name, right?

A. Yes.

Q. And, now, you were also convicted most recently on March the 2nd of 1994, weren't you, sir?

A. No.

Q. From the Morton Police Department, convicted for retail theft?

A. When?

Q. You were arrested on August 26th, 1993 and convicted on March the 2nd, 1994 for retail theft from the Morton Police Department?

A. I don't remember that.

Page 129.

William Harmon

Q. You don't remember that?

A. No.

Q. But that's because there were so many you might tend not to remember; is that right?

A. Yeah. If they wasn't forgeries I don't remember.

Q. It's only the forgeries that you remember?

A. Yes, yes.

Q. Is it correct, Mr. Harmon, that throughout this period of time that these convictions occurred that you were something of a scam artist in town?

A. Will you explain what a scam artist is?

Q. Yeah. You were cheating people left and right; is that correct?

A. Out of what?

Q. Money.

A. Who?

Q. Anybody you could get a nickel from.

A. No, that's not right.

Q. Well, is it correct, Mr. Harmon, that you became so well-known throughout the City for dropping bad checks that your picture was sent to every bank in the Philadelphia area?

A. No, it's not right.

Q. That's not correct?

Page 130.

William Harmon

A. No.

Q. Well, Mr. Harmon, you were in Court back in, was it May of last year when Judge New sentenced you? Weren't you?

A. Yes, yes.

Q. And that is a sentence that you are currently serving?

A. Yes.

Q. A sentence of 33 months to 10 years?

A. Yes.

Q. And that followed a conviction for possession with intent to deliver a controlled substance, right?

A. Yes.

Q. And at the time of sentencing, do you recall having an opportunity to review the pre-sentence report that was prepared and that discussed your background based on an interview with you and other items that the pre-sentence investigator had a chance to review?

A. Yes.

Q. And do you remember having an opportunity to review that with your lawyer and having the judge have an opportunity to review that?

A. Yes, I do.

Q. And am I correct that the presentence

Page 131.

William Harmon

investigator in that report characterized you as someone who became so notorious --

MR. WEINGLASS: Objection: It's hearsay. If they want to put that investigator on the stand that is allowed. They can't read in an out-of-court statement which is hearsay.

THE COURT: Well, I was under the impression that he read this.

MR. WEINGLASS: It is still hearsay.

THE COURT: I know that, but the question is did he read it.

MR. WEINGLASS: The objection stands, even if he read it.

THE COURT: Well, that he knew about it then.

MR. WEINGLASS: The question can be did you read the report and he could answer. But you can't read from a report.

THE COURT: No.

MR. WEINGLASS: That was a hearsay document.

THE COURT: No, he already said he read the report with his attorney.

MR. WEINGLASS: That's as far as it could go.

Page 132.

William Harmon

MS. FISK: I will restate the question, Your Honor.

THE COURT: Okay.

BY MS. FISK:

Q. Let me know, Mr. Harmon, whether you agree or disagree with this characterization of you. From 1964 through 1977 the Defendant was repeatedly involved with schemes involving the cashing of stolen checks. He became so notorious at this unlawful activity that Court records reflect that his picture was sent to every bank in the Philadelphia area.

A. That's the first time I heard that.

Q. Did you read the pre-sentence report before you were sentenced by Judge New?

A. No, I didn't.

Q. Oh, you didn't?

A. No.

Q. Just a minute ago I asked you if you read it and you said you did, didn't you?

A. I read what the pre-sentence investigator told me what was going to happen to me. He told me I was going to get six months.

Q. Pre-sentence investigator did?

A. Yes.

Q. Who is that person who told you that?

Page 133.

William Harmon

A. I have no idea. And I end up with 33 months.

Q. You ended up with a mitigated-range sentence, didn't you?

A. Yes.

Q. And the pre-sentence investigator told you nevertheless that even though the guidelines called for a mitigated-range sentence of 31 to 36 months, that you were going to get six months?

A. He told me I would get six months in-house arrest for one year.

Q. Was that on the day you received sentence that that pre-sentence investigator told you that?

A. No, that was March. That was March.

Q. Right after your conviction?

A. Yes.

Q. Did you tell your lawyer that your pre-sentence investigator had told you that?

A. Yes, I did.

Q. Now, as I understand it, following that conviction in March 1994, you did file a Post-Conviction Relief Act petition?

A. Yes.

Q. And you filed initially a pro se petition?

A. Yes.

Q. Do you have a copy of that with you today?

Page 134.

William Harmon

A. No, I don't.

Q. Now, that petition, as I understand it, was assigned to an attorney?

A. Yes.

Q. And that attorney was, you told us...?

A. Joseph...

Q. I think you told us his name is Joseph Capone?

A. Yes.

Q. Now, did you have an opportunity to meet with Mr. Capone?

A. No.

Q. He just sent you some letters?

A. Yes, sir. Letters.

Q. And were the letters letters that indicated to you or said to you that he could find no basis for you getting a new trial?

A. Yes.

Q. Now, when did you receive those?

A. All last year. Umm... From October of seven -- I mean of ninety, ahh, four. Until, ahh, a couple of months ago. The last letter that I received he sent me a Finlan -- Finley letter, is it?

THE COURT: Finley.

THE WITNESS: Finley.

THE COURT: Is that what he said?

Page 135.

William Harmon

THE WITNESS: Yes, he sent me a Finley letter. Is that correct?

THE COURT: That's the term they use.

THE WITNESS: Well, he sent me a letter and told me I was denied, he didn't have any grounds. My lawyer was incompetent. I mean he was, ahh, he was straight, he knew what he was talking about. I didn't have any grounds to file.

BY MS. FISK:

Q. And is that the letter that you received last October?

A. No, that was the one I received in June.

Q. In June?

A. Yes. This year.

Q. All right. So you didn't receive that letter in July of this year?

A. No.

Q. Now, after you received that letter, I understand it you wrote a letter back; is that right?

A. Yes, I did.

Q. So if in that letter you said that you received the attorney's letter on July 1st you would have been wrong; is that right?

A. Yes.

Page 136.

William Harmon

Q. You didn't receive it July lst?

THE COURT: Do you have it there?

THE WITNESS: Yeah.

THE COURT: Look at it.

THE WITNESS: I wrote, I wrote this back to my lawyer the 29th of July.

BY MS. FISK:

Q. Right. And you see where it says I received your letter on July lst?

A. Oh, yeah. I received your letter on July 1st.

Q. Well, did you receive it on July 1st or did you receive it in June?

A. I received it July 1st.

Q. All right, so when you said you received it in June you were mistaken?

A. Where does it...?

Q. You just told us?

A. It says on the letter here July 29th, 1995. And it says here I received your letter on July 1st.

Q. Yes.

A. The letter, the Finley letter.

Q. So that's when you received it?

A. I received.

Q. Okay?

A. Okay.

Page 137.

William Harmon

Q. And you also say in that letter to him that the only thing that was untrue in the case history was the police officer said they had a warrant which they never had?

A. Right.

Q. And my mother nor I signed our names on a warrant. You know why. Because they never had one?

A. Yes.

Q. That is because it is your position, sir, that the police lied on you in your trial, is that it?

A. Yes.

Q. Because the police at your trial said that drugs were being sold out of the house that you and your Mom shared, right?

A. Yes.

Q. And that was the evidence at trial, right?

A. Yes.

Q. That drugs were being sold in front of your infirm mother?

A. Yes.

Q. Who was in a wheelchair?

A. Yes.

Q. And of course that wasn't true?

A. What?

Q. That drugs were being sold in front of your

Page 138.

William Harmon

infirm mother?

A. No.

Q. Who was confined to a wheelchair?

A. No.

Q. Because you would certainly never allow drugs to be sold in front of your infirm mother, right?

A. Of course.

Q. You wouldn't even let your mother be involved with this case by reporting the fact that you had seen a murder to the police, right?

A. Yes, yes.

Q. So the verdict of the court in that case was completely incorrect; is that right?

A. Incorrect.

Q. Completely?

A. Completely.

Q. But nevertheless, you advised your attorney to tell the defense attorneys that you wanted to share the information now that you have?

A. Yes.

Q. That you have given us today?

A. Yes.

Q. Do you know somebody named Vincent Silaberti?

A. No.

Q. No?

Page 139.

William Harmon

A. Vincent Silaberti?

Q. Yes.

A. Vincent Silaberti... no.

Q. A cop?

A. Oh, Vinny. Yeah. Yes, I do know.

Q. And how about somebody named Gene Geary?

A. I knew -- yeah, I knew Gene.

Q. Tell us how you know Vinny and Gene?

A. Ha-ha, oh... well, they were the first officers that arrested me.

Q. Way back in 1961?

A. No, not '61.

Q. Earlier?

A. No. '65.

Q. '65?

A. Yeah.

Q. But that wasn't the only time you ever met them, when they were the first cops who arrested you back in '65, right?

A. As I can recall, yes.

Q. The only time you ever came in contact with them?

A. I mean several times after that, I mean. They arrested me a few times.

Q. They were the check squad up in West

Page 140.

William Harmon

Detectives, weren't they?

A. Okay, yes, yes, ma'am.

Q. They investigated bad checks?

A. Yes.

Q. Fraudulent checks?

A. Yes.

Q. That was something you knew a lot about, right?

A. Yes, yes.

Q. And wouldn't it be correct to say that throughout the sixties and throughout the seventies into the mid-seventies you would regularly give them information about bad check schemes that were going on in their district?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. You worked as an informant for them, didn't you?

A. No.

Q. You gave them information?

A. I told them -- ahh, they would ask me about different things in the area. And I would tell them what I knew. But I didn't inform, inform them of any information.

Page 141.

William Harmon

Q. And sometimes you would give them that, tell them what you knew by coming up to West Detectives and asking for them and going up into a room in West Detectives and talk to them, wouldn't you?

A. No, after they came and got me. I never volunteered to went up there.

Q. You never just walked into West Detectives and asked for them?

A. No, no, no, no, no.

Q. Are you sure about that?

A. I'm positive.

Q. But you did provide them with information throughout the seventies, maybe up as late as '78, about check cashing schemes that were going on, right?

A. Well, from 1970 when I get out of jail, until '78, I had a dancing school. My own dancing school. So I wasn't doing anything wrong.

Q. Is that the dancing school that you folded and took everybody's money and went out west with?

A. No, that was dancing school I had at 52nd and Spruce Street. And it was still standing.

Q. This was a dancing school that you opened and took money from people and then ran out west with the money; isn't that right, Mr. Harmon?

Page 142.

William Harmon

A. No, no, that's not right.

Q. You never did that?

A. No.

Q. Am I correct that from '71 through the seventies was when you provided what you knew to Detectives Silaberti and Geary about check cashing schemes?

A. Hmm-hmm, yes.

Q. Nothing bad ever happened to you when you gave them what you knew, right?

A. No.

Q. Incidentally, on this morning of December 9th, 1981, had you been drinking that night?

A. No.

Q. Were you high?

A. I don't drink.

Q. Oh, okay. Do you use drugs?

A. I didn't do drugs either. Then.

Q. In the period from 1979 through 1985, would it be fair to say that you smoked cocaine?

A. No, it wouldn't be fair. No, it wouldn't be fair.

Q. It wouldn't be fair?

A. No.

Q. When you were placed on probation by the

Page 143.

William Harmon

Federal Court for your mail fraud conviction in 1977, wasn't it an order of your probation that you receive treatment for your compulsive disorders?

A. No.

Q That was never a condition of your probation?

A. Never, never.

Q. So if I brought in that Federal probation file and it showed that you were sent to clinical therapy for compulsive disorders and that you were resistant to the clinical therapy programs, that would be completely incorrect?

A. Incorrect.

Q. And if the pre-sentence reports that have been prepared on you last year reflect that you had a past history of using cocaine, those would be completely incorrect?

A. No.

MR. WEINGLASS: Objection: Hearsay.

THE WITNESS: They would be right.

BY MS. FISK:

Q. Well, when did you use cocaine?

A. Umm, I stopped using -- I started in '81, '82, and I stopped in '85. I started back up in '87.

Q. Do you remember meeting Mr. William Strum, the pre-sentence investigator who interviewed you

Page 144.

William Harmon

following your conviction before Judge New?

A. Yes.

Q. And did you meet with him on the day of your conviction?

A. Yes.

Q. And he interviewed you?

A. Yes.

Q. Did you tell him that you smoked cocaine from 1979 until 1985

but never had an addiction problem?

A. I didn't, I don't, I don't remember the dates. But I did tell him that I was a smoker.

Q. My question is: Did you tell him that you smoked cocaine from 1979 until 1985 but never had an addiction problem?

A. My answer is no.

Q. You didn't tell him that?

A. No.

Q. So if he wrote that down he was wrong?

A. Yes.

Q. But you did tell him that you don't drink any alcohol?

A. Right.

Q. Because that's correct?

A. Right.

Q. Who is Dyon Anderson, Mr. Harmon? D-Y-O-N

Page 145.

William Harmon

Anderson, a 45-year-old female.

A. Diane Anderson.

Q. Oh, I'm sorry, I mispronounced it. Yes, sir, Diane Anderson?

A. Who is she?

Q. Yes, sir.

A. One of my female friends.

Q. And how long has she been one of your female friends?

A. Since the seventies.

Q. And since the seventies have you had occasion to visit her?

A. No.

Q. Never been to her home?

A. No.

Q. Do you know where she lives?

A. No.

Q. Would it surprise you to learn that she lives on the 700 block of North 8th Street, about four or five blocks away from Mr. Jamal's family home?

A. No, it wouldn't surprise me.

Q. Because you have never been to her home?

A. No.

Q. Have you ever been to Mr. Jamal's home?

A. No.

Page 146.

William Harmon

Q. Mr. Harmon, in addition to giving information to Detectives Silaberti and Geary in that period in the seventies, what other police officers or Federal agents have you shared information with in the past?

A. The Federal police, I don't recall their names. But I told them that I had information of the kidnap, the kidnaper that... that was killing them kids in Atlanta.

Q. You were able to give them information?

A. No, he asked me, that's the information he asked me about.

Q. And were you able to give him information about that?

A. No, I couldn't. He showed me pictures of certain individuals, I didn't --

Q. And when was that, that he was showing you those pictures and you were trying to help him with that information?

A. Yeah.

Q. When was that?

A. I guess back in the late seventies.

Q. I take it nothing bad ever happened to you when you spoke to that Federal agent; is that right?

A. No.

Q. Yet despite all of those past relationships

Page 147.

William Harmon

with police officers, and despite the fact that your mother was aware that you had been convicted in excess of ten times for bad things that you yourself had done --

A. Hmm-hmm.

Q. -- in order to protect your mother, you decided never to tell any police officer or defense personnel about what you saw on December 9th, 1981; is that right?

A. Yes.

Q. Wouldn't have anything to do with the fact that you're making it up today; is that right?

A. No.

Q. Wouldn't have anything to do with the fact that you're in it for the quick buck once again, would it, Mr. Harmon?

A. I haven't been offered nothing.

Q. You're getting out of jail in what, 18 months?

A. Yes.

Q. Have you got a job lined up?

A. I don't know.

Q. And in fact now your mother is deceased, right?

A. Yes.

Q. So you don't have that apartment available to

Page 148.

William Harmon

you, do you, sir?

A. No.

Q. Now, this guy that you saw get out of the car and fire the shot?

A. Yes.

Q. You know that is the guy --

A. Yes.

Q. -- that fired the second shot in the officer: You told us today that other than being a black man with Johnny Mathis hair, you can't describe him further; is that right?

A. Nah. Brown skin fellow. Medium built.

Q. Medium built. And his height?

A. I couldn't tell the exact height because it was on the other side of the car.

Q. Right, because you didn't have a good perspective, right?

A. Yeah.

Q. Now, this affidavit that you wrote, Mr. Harmon, (displaying), when did you write this?

A. Last Thursday.

Q. Was it while Miss Wolkenstein was visiting you or was it before she came or after she left?

A. While she was visiting me.

Q. While she was there?

Page 149.

William Harmon

A. (Witness nodded head affirmatively.)

Q. So while she was there and after the two of you had an opportunity to talk you wrote this in her presence?

A. Yes.

Q. And did you give a copy of it to her at that time?

A. Yes.

Q. So when she left the prison facility last August the 3rd, to the best of your knowledge, Miss Wolkenstein had -- what was it, a copy or the original of this affidavit, which has been marked Commonwealth -- I'm sorry -- Defense Exhibit 28?

A. She had a copy of it.

Q. Or did she have the original, that's what I am asking you?

A. I think she had the original.

Q. You gave her the original?

A. Yes.

Q. And that was on August the 3rd?

A. Yes.

Q. Last week? And you told us that because there was no notary public available when you and she were talking --

A. Yes.

Page 150.

William Harmon

Q. -- that you signed this without benefit of a notary public?

A. Yes.

Q. Miss Wolkenstein didn't offer to tell you that she was a notary public?

A. No, she didn't.

Q. Did you ask her?

A. No, I didn't.

Q. Did you tell her you needed a notary public for it?

A. Yes --

Q. Did she tell you you needed a notary public?

A. Yes.

Q. Now, you told us today that other than this man who was the shooter being a brown-skinned man with Johnny Mathis style hair, shoulder length, with a jacket which you think is leather --

A. Hmm-hmm.

Q. -- and may be black, he came out of the car, that you can't describe him further, right?

A. No.

Q. Yet last week on August the 3rd, am I correct in the middle of the second page you described him as a black man, tall and medium built with shoulder-length hair?

Page 151.

William Harmon

A. Well, anybody who is taller than me is tall.

Q So you described him last week as tall?

A. I told him that he was taller than I was.

Q. Well, is this written in your handwriting or Miss Wolkenstein's handwriting? I am talking about this affidavit. This handwritten document.

A. What part?

Q. Well, my first question is who wrote this out, you or Miss Wolkenstein?

A. Miss Wolkenstein.

Q. Turn to the second page. Well, let me ask you this, Mr. Harmon, before we talk about the second page. After Miss Wolkenstein wrote this out, did you read it fully?

A. Yes, I did.

Q. And did you make sure that it was correct?

A. Yes, I did.

Q. And was it after you read it fully and made sure that it was correct that you placed your signature on the bottom?

A. Yes.

Q. Now, do you see in the middle of that second page the fourth full paragraph that begins a black man, tall and medium built with shoulder-length hair?

Page 152.

William Harmon

A. Yes.

Q. Do you see that?

A. Yes.

Q. It doesn't say taller than me, does it?

A. No, it doesn't.

Q. It just refers to him as tall?

A. Yes.

Q. And is that how you described him last week?

A. Yes, I did.

Q. Yet today you told us that you couldn't describe his height at all because he was on the other side of the car; is that right?

A. Yes, I did.

Q. Now, when you drove away, sir, you told us today that as you drove away the only people you were leaving back there was Mr. Jamal and the officer, right?

A. Yes.

Q. Nobody else was out there that you saw, right?

A. That I saw.

Q. Right, yet do you see here two paragraphs down on this affidavit --

THE COURT: Is that the same page for him?

MS. FISK: Same page, two paragraphs

Page 153.

William Harmon

down.

THE COURT: Okay.

BY MS. FISK:

Q. You already talked about the black man doing the shooting and the car going the wrong way, and then the paragraph says during this time people were coming on the street from the clubs, restaurants and parking lots. Do you see that, Mr. Harmon?

A. Yeah.

Q. Well, which was it: Were people coming on the street from the clubs, restaurants and parking lots, or was Mr. Jamal and the officer the only two people back there?

A. After the shootin'?

Q. Yes, sir.

A. After the shootin' people started coming out of the building then. It wasn't nobody out there during the shooting.

Q. Mr. Harmon, were you here about 30 seconds ago?

A. Yes, I was.

Q. When I asked you whether as you were pulling away the only two people you left back there were Mr. Jamal and the officer, did you hear me ask that

Page 154.

William Harmon

question?

A. Yes, I did.

Q. Was my question confusing to you, sir?

A. No, it wasn't.

Q. Did you understand my question?

A. No, I understood it.

Q. And when I asked that question and you understood it, did you agree that the only two people who were back there were Mr. Jamal and the officer?

A. From what I saw.

Q. So you didn't see anybody else, right?

A. After that, no, after -- I got in my car and started driving off I didn't see anybody. But when I got to the corner I started seeing people coming out of the clubs and bar and, ahh, the restaurant.

Q. When you got to which corner?

A. Just before I got to Walnut Street.

Q. So the people that were coming out of the clubs were coming out clubs on Walnut Street?

A. No, no, no, no. They were coming out of the, coming out of Whispers, the restaurant, ahh... it was... it's a sleazy little topless bar there on, right next to between Whispers and the restaurant. And, ahh, when I got to Walnut Street, you know, I looked in my

mirror and I see, you know, a crowd of

Page 155.

William Harmon

people. It must have been time to let out.

Q. Now, Mr. Harmon, I understand that you had an opportunity this morning to speak to defense Counsel; isn't that right?

A. No.

Q. That's not right?

A. What, what did you say?

Q. I understand that you had an opportunity to, this morning --

A. Yes.

Q. -- to meet with defense Counsel?

A. Yes.

Q. Now, are you aware, sir -- well, let me ask you this. Did you, and as I understand it, you asked the defense attorney if you could review the photographs that were taken of the crime scene?

A. Yes.

Q. Am I correct, sir, that the reason, or one of the reasons that you wanted to look at those photographs was because you told the defense attorney that you might be able to see a picture of your car in those pictures?

A. Yes.

Q. Now let me ask you this, Mr. Harmon. If within 10 seconds or 15 or 20 of the police officer

Page 156.

William Harmon

and Mr. Jamal being shot you drove your car away on 13th Street and ended up in West Philly, how could a picture of your car end up in any photos taken of that crime scene?

A. Because I have two cars.

Q. Oh. And what do you do, you have one foot on each gas pedal as you drive into the neighborhood (indicating)?

A. No, I don't.

Q. You just keep one parked down there?

A. Sometimes.

Q. Which car is it that you keep parked down there?

A. The Cadillac.

Q. What kind of Cadillac?

A. I got a, I had a '74 Coupe DeVille Cadillac. Yellow.

Q. And you let that sit parked there while you drove -- what was this car you were driving?

A. A Buick.

Q. -- while you drove a Buick around?

A. Yes.

Q. Was it too much mileage on the Coupe DeVille?

A. No. I keep the car parked in that parking lot sometime. Just in case I wanted to change up while I

Page 157.

William Harmon

was in town.

Q. How would you get to town?

A. I drove one car.

Q. All right. So if you had one car that you were driving around you still needed to have a second car parked in that parking lot with your stuff?

A. Oh, I had, well, I had my buddy with me sometime and he drove one down.

Q. Well, let me ask you this. Do you see your yellow Coupe DeVille in the parking lot in any of the photos?

A. No, I don't.

Q. Do you remember the tag of that car?

A. My Cadillac?

Q. Yes, sir, your Cadillac?

A. No, I don't.

Q. Who was it registered to?

A. Me. William Harmon.

Q. As you sit here now do you remember whether or not that Cadillac was parked in the parking lot that morning?

A. No, I don't. No.

MS. FISK: May I have a moment, Your Honor. Thank you.

(Discussion was held off the record at this time among Commonwealth Counsel.)

Page 158.

William Harmon

BY MS. FISK:

Q. Mr. Harmon?

A. Yes.

Q. Do you see the gentleman, the gentleman right here (indicating)?

A. Yes.

Q. Do you know that gentleman?

A. No, I don't.

Q. You never saw him before in your life?

A. He looks familiar.

Q. If I were to suggest to you that his name is Charles Brown and that he was also a detective at West Detectives in the seventies, would that help refresh your recollection as to who he is?

A. Not really.

Q. Not really?

A. No.

MS. FISK: I have no further questions, Your Honor.

BY MR. WEINGLASS:

Q. Mr. Harmon, are you a little tired?

A. Yeah.

Q. Okay. I won't be long with you. Your record has been read here?

Page 159.

William Harmon

A. Yes.

Q. Quite lengthy. Is that right?

A. Yes.

Q. In 1969 when you were last in prison you were about 26 years old, as I recall?

A. Hmm-hmm.

Q. Is that right?

A. Yes.

Q. And from the time that you were 26 years old until the time that you were about 50 years old, you stayed out of prison?

A. Yes.

Q. After that first experience you didn't want to be back in prison?

A. Yes.

Q. And I assume you're not enjoying your time in prison now?

A. No.

Q. And I assume you understand that coming to this Court and testifying about Mr. Jamal's innocence is going to make the rest of your stay in prison pretty miserable?

A. Yes.

MS. FISK: Objection, Your Honor. Objection, Your Honor. It might be quite the

Page 160.

William Harmon

opposite in fact.

THE COURT: Yes, I don't know that we could make that

assumption.

MR. WEINGLASS: I'm asking the witness if it's his assumption.

THE COURT: Oh. I don't know what he is going to base it on. But that's all right.

BY MR. WEINGLASS:

Q. Let me ask you this, Mr. Harmon. Are you testifying here today so that your life in prison will be a better one, or do you think testifying here today will make your life in prison pretty miserable?

A. I can't answer because I don't know what's ahead of me.

Q. Okay. Well, let me ask you this. You were giving information to the police when they asked you; is that right?

A. Yes.

Q. You gave information to Federal agents when they asked you; is that right?

A. Yes.

Q. You have nothing against police, do you?

A. No.

Q. You have nothing against Federal agents, do you?

Page 161.

William Harmon

A. No.

Q. And you were in part cooperating with the police and the Federal agents as a way of staying out of prison, were you not?

A. Yes. You could say, I guess.

Q. So you were trying your best to stay out of prison from --

A. Yes.

Q. -- from the time you were 26 until you were 50?

A. Yes.

Q. Do you know when for sure you'll be getting out of prison now?

A. After this, I don't know.

Q. Why, do you think this might extend your stay?

A. Yes.

Q. Because you're testifying for Mr. Jamal?

A. Yes.

Q. You think you might have to be in prison longer?

A. Yes.

Q. So your appearing here today is going to hurt you, is it not?

A. Yes.

MS. FISK: Objection, Your Honor.

Page 162.

William Harmon

That's what he thinks. Not whether he will.

BY MR. WEINGLASS:

Q. You think it will hurt you?

A. Yes.

Q. So what's in it for you?

A. I can sleep better at night now, knowing that I came forward and said to what I thought happened.

Q. No matter what your record is with respect to receiving money or larceny, you have a conscience?

A. Yes, yes.

Q. And that's why you're testifying?

A. Yes.

Q. When you gave information to the police or to the Federal agents, did they accept your information?

MS. FISK: Objection, Your Honor.

THE WITNESS: No.

MS. FISK: Withdraw the objection.

BY MR. WEINGLASS:

Q. Did they come back to you more than once?

A. Yes.

Q. Did they come back to you over a period of months?

A. Hmm, no, after the first couple of times they found out what I was telling them wasn't getting them no where, they just forgot.

Page 163.

William Harmon

Q. Okay. Have you and I had a chance to review your prior criminal record, the way it was laid out here in Court today?

A. Yes.

Q. We haven't talked about your record this morning, did we?

A. No.

Q. To your knowledge, to your knowledge did Billy Cook know that you were there that night?

MS. FISK: Objection, Your Honor. There's no testimony from this witness that Billy Cook was there that night.

MR. WEINGLASS: Right. I will accept that stipulation.

MS. FISK: It is not his stipulation, that is the witness' testimony. He saw Mr. Jamal and the cop, nobody else. It's clear that Mr. Jamal knew he was there that night, though.

BY MR. WEINGLASS:

Q. Why didn't you go to Mr. Jamal's brother?

A. What was that?

Q. Why didn't you go to Billy Cook and tell him what you saw?

A. Well, to tell the truth, I didn't know what to

Page 164.

William Harmon

do after I seen all that. I was downtown, illegally downtown with two prostitutes. And I really didn't want to... ahh, be questioned about what I'm doing or where I'm at, you know, I didn't need all that.

Q. You didn't want to get involved in this case?

A. Yes.

Q. And you did your best to keep from getting involved?

A. Yes.

Q. That red Malibu, that two-door, red Malibu, do you recall telling me this morning that you had seen that car around that area for some time?

A. I've seen it be, I've seen it before in the area.

Q. And do you recall telling me that you thought it was involved in some kind of pimping operation?

A. Yes.

Q. When you saw the passenger get out of that car, was he moving towards the police officer when he shot at the police officer?

A. No.

Q. What was he doing?

A. He just got out the car and pointed the gun towards the officer and shot.

Q. He was standing on the sidewalk at that point?

Page 165.

William Harmon

A. Yes.

Q. And his arm was extended?

A. Extended.

Q. Would you take a look at the photographs of the cars on Locust --

MS. FISK: Objection, Your Honor. The photographs were never referred to on cross-examination. This is beyond the scope.

MR. WEINGLASS: The witness did refer to photographs in cross-examination. As a matter of fact, the Court noted it.

THE COURT: I noted what?

MR. WEINGLASS: That the witness had referred to photographs

on cross-examination.

THE COURT: I don't remember noting anything, but.

BY MR. WEINGLASS:

Q. Now that you see the photographs, does that in any way refresh your recollection about the order of the cars that were on the south side of Locust Street that night?

A. Yes.

Q. And what was the order of the cars, going from the intersection of 13th and Locust heading east towards 12th?

Page 166.

William Harmon

A. A police car, a Volkswagen. And I think this is... A Ford.

Q. And in that order going east towards 12th?

A Yes, yes.

Q. Was there anything behind the police car towards the intersection of 13th in those photographs?

A. Behind the police car?

Q. Yes.

A. No.

Q. And looking at those photographs, does that refresh your recollection of what you saw when you were in the parking lot looking south towards Locust?

A. Yes.

MR. WEINGLASS: Thank you. I have nothing further.

MS. FISK: I've got a couple more questions, Your Honor.

THE COURT: Go ahead.

BY MS. FISK:

Q. Just so I understand, Mr. Harmon: Before you began answering any questions today --

A. Yes.

Q. -- His Honor gave you a pile of photographs to look at; isn't that right?

Page 167.

William Harmon

A. Yes, yes.

Q. And you will recall that in fact Mr. Weinglass said when you were done looking at those photos that you had spent, you had spent 14 minutes?

A. Yes.

Q. Looking at those photos and you had gone through each of them twice?

A. Yes.

Q. And you had as much time as you needed to look at all those photos and refresh your recollection as to what that corner looked like; am I correct?

A. Yes, yes.

Q. And your recollection was fully refreshed when you started answering questions about what that scene looked like; is that right?

A. Yes.

Q. Now, am I correct that having had that opportunity this morning to look at those photographs -- I'm sorry.

MR. WEINGLASS: That was this afternoon.

BY MS. FISK:

Q. This afternoon when you took the witness stand, plus your own recollection of the events, that when you started answering the questions today, you

Page 168.

William Harmon

were doing so based both on your recollection and as it was refreshed by photographs that you had had 14 minutes to look at?

A. Yes.

Q. And am I correct, sir, that having had that opportunity and that review, when I was asking you questions about the vehicles that you saw on Locust Street, that you were absolutely certain and there was no doubt in your mind that you saw a police car nearest the corner and in front of the police car you saw a, in fact a United Cab, not a Yellow Cab?

A. Yes.

Q. And in fact in front of that cab you saw the Volkswagen?

A. Yes, right.

Q. And is that how you recall it still?

A. I -- yes. I...

Q. Mr. Harmon, do you understand my question?

MR. WEINGLASS: Objection.

THE WITNESS: Yes, yes.

MR. WEINGLASS: The witness has to be given an opportunity to answer that question.

THE WITNESS: I see a cop car, the Volkswagen, and a cab.

BY MS. FISK:

Page 169.

William Harmon

Q. Right. In your testimony on cross-examination, do you recall saying -- and this was after you had the chance to look at these same pictures in which you see what you told us you see -- do you recall telling His Honor that you saw a cop car, a cab, and a Volkswagen?

A. Yes. I do remember seeing the opposite, the other.

Q. And that's how you remembered it, right?

A. Yes.

Q. And that recollection is as clear in your mind as everything else you recollect about that morning back on December 9th, 1981; isn't that right, Mr. Harmon?

A. No.

Q. Oh, it's not?

A. No.

Q. There are other things that are clearer than that, sir?

A. Yes.

Q. I would take it, then, that what is clearer than that was the fact that as you look at that corner and the officer is against the wall and Mr. Jamal is up against the car, that there is nobody else on that side of Locust Street, that's equally

Page 170.

William Harmon

clear in your mind; is that right?

A. Yes.

Q. You were just asked about your working hard to stay out of prison after you got out in 1969, right?

A. '70.

Q. You got out in 1970?

A. Yes.

Q. Now, you were arrested many times between 1970 and now, right?

A. Well, no -- yeah, okay.

Q. Isn't that right?

A. Then it didn't occur or nothing.

Q. You received probation for all those convictions in the seventies?

A. Yeah.

Q. But when you were arrested you didn't know you were going to get probation, right?

A. Yes.

Q. In fact, even when you were arrested in 1982, a case that didn't result in a conviction, there was a chance you would go to jail, right?

A. '82?

Q. Yes, sir. Do you remember being arrested in 1982?

A. No.

Page 171.

William Harmon

Q. You don't?

A. No.

Q. If the Court records reflect that you were arrested on August llth, 1982, they would be incorrect?

A. Where?

Q. In Philadelphia.

A. For what?

Q. For promoting prostitution.

A. That would have been incorrect.

Q. You were never arrested and charged with that?

A. Yeah, I was charged with it, yeah.

Q. I said arrested, sir, I am just talking about being arrested. When --

MR. WEINGLASS: It was dismissed for lack of evidence.

MS. FISK: That is correct, Your Honor.

THE WITNESS: Yes.

THE COURT: I know.

BY MS. FISK:

Q. But when you were arrested in 1982, even there there was a chance that you would go to jail because you were being arrested and charged with a criminal offense again, right?

Page 172.

William Harmon

A. Not really.

Q. No?

A. No.

Q. You figured you'd never go to jail?

A. No, not for prostitution, no.

Q. Well, when you were arrested in 1975 -- I'm sorry, strike that. When you were arrested in 1989, again in a case which resulted in charges being dismissed or discharged, but when you were arrested, you knew you faced the possibility of going to jail, right?

A. No.

Q. No. When you were arrested in 1993 and charged with these drug offenses, you knew you faced the possibility of going to jail, right?

A. Yes.

Q. And you knew you had something to trade, right?

A. No.

Q. You had the information which solved one of the most famous murder trials in the City of Philadelphia, didn't you?

A. But I didn't realize I had that until two weeks ago when I read it in the paper, you know. I wasn't using that to trade for nothing because if I

Page 173.

William Harmon

did I would have used it before I went to Court --

Q. Because you would have used it if you had it, right?

A. If -- not really. I wanted to help the brother out. And it didn't make any difference to me at the time what I had to do to do it. My mother's passed, she can't chastise me. So I figure I should help him, come forward.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

(Discussion was held off the record at this time between defense Counsel.

MR. WEINGLASS: Thank you, Mr. Harmon. I have no further questions.

THE COURT: Anything further today, gentlemen?

MR. WILLIAMS: Your Honor, there is one other matter. Regarding the August 7th letter to the Court where we attached numerous exhibits, in particular Xerox cases pursuant to Your Honor's directive, we now ask the Court, for our own scheduling purposes, if Your Honor's reconsidering any of the rulings that are addressed?

THE COURT: Well, what rulings are you

Page 174.

talking about?

MR. WILLIAMS: Well, for example --

THE COURT: Be specific. What do you want?

MR. WILLIAMS: For example, in the letter we ask that we be permitted to call numerous police officers concerning the confession. In particular, Police Officer Bell, Heftner, Hinkel, Cook, Dunn, Captain Bob, Security Guard Kenney. The nurse.

THE COURT: Were they the ones that testified at the trial?

MR. WILLIAMS: Ahh, well, I know that Mr. Bell, Officer Bell testified at the trial.

THE COURT: Security guard testified.

MR. WILLIAMS: But not Security Guard Kenney. I believe that was Security Guard Durham.

THE COURT: Well, who is Kenney?

MR. WILLIAMS: He was another security guard at Jefferson Hospital.

THE COURT: Well, he may have but what does he have to do with this case?

MR. WILLIAMS: It is all fully addressed in the letter.

Page 175.

THE COURT: I know the letter. What did you give the D.A. as to -- did you get an affidavit from him or anything?

MR. WILLIAMS: No, there are police reports. They know full well what Mr. Kenney would testify to. I would expect that he would testify in conformity to his police reports. And that's why we would like to call him.

MS. FISK: I'm sorry, Your Honor, these are all witnesses that we objected to their being called when it was suggested by defense Counsel because none of these witnesses are witnesses about whom Mr. Jackson was asked a basis for not calling.

THE COURT: Right.

MS. FISK: Our position was, without any explanation from Mr. Jackson, Counsel at this juncture has no right to call them.

THE COURT: Do you want to call Mr. Jackson back again?

MR. WILLIAMS: No, we do not. We should do that, but I did address that point in the letter. If Your Honor will recall.

THE COURT: If you want to call Jackson back again call him.

Page 176.

MR. WILLIAMS: So Your Honor is denying our application?

THE COURT: What I have done before I've done.

MR. WILLIAMS: And what about the rest of the witnesses addressed in that witness letter?

THE COURT: Anything I have done before I have done. I see no reason why I should change any ruling I have made.

MR. WILLIAMS: In light of the August 7th letter.

THE COURT: I said whatever I have ruled on I have ruled. And you have an exception.

MR. WILLIAMS: That's all I am asking: If you have reconsidered your ruling.

THE COURT: Why would I have second guesses about my ruling? I wouldn't have made it in the first place.

MR. WILLIAMS: Your Honor asked for case law. We provided that case law.

THE COURT: Yes, I know.

MR. WILLIAMS: So I am only here asking Your Honor if in light of the case law --

Page 177.

THE COURT: I changed my opinion?

MR. WILLIAMS: Yes.

THE COURT: No, it hasn't changed my opinion.

MR. WILLIAMS: Very well.

THE COURT: Do you have any other witnesses?

MR. WILLIAMS: I don't think we have any other witnesses today. But let me confer with my Co-counsel.

(Discussion held off the record among defense Counsel at this time.)

MR. WILLIAMS: No other witnesses today.

THE COURT: All right, do you have a list of witnesses for tomorrow?

MS. WOLKENSTEIN: Your Honor, there are two other matters.

THE COURT: No other matters. I want to know, do you have a list of witnesses for tomorrow? So you could give it to the D.A. so we don't lose anymore time. If there are no witnesses for tomorrow we could take up whatever you want to discuss tomorrow.

MS. WOLKENSTEIN: We will take it all

Page 178.

up tomorrow, Your Honor.

THE COURT: Okay, do you have any idea of any witnesses?

MR. WEINGLASS: We will inform the District Attorney's Office.

MS. FISK: Well, Your Honor, the Commonwealth --

THE COURT: I had asked you for a list long ago and I would like to know where we are going.

MS. FISK: I had also advised the Court that the Commonwealth at some point when Defense rests will be prepared to rebut some witnesses raised in these proceedings. Some of those witnesses are not police officers, and it is inconvenient to keep them in Court. So I would like some indication as to when the defense will be completed with it's presentation of witnesses so I will know when to have those Commonwealth witnesses available to Court.

THE COURT: Yes, I would like to know where we are going too. By the way, are you going to call the Defendant? Or his brother?

MR. WILLIAMS: Umm, Your Honor, we don't intend to call any further witnesses. All

Page 179.

we would ask is a witness list, if it's in any way altered from the witness list that we've already received. As well as affidavits from those witnesses.

THE COURT: Okay.

MS. FISK: Your Honor, if defense has no intention of calling any additional witnesses --

MR. WILLIAMS: Well.

THE COURT: She doesn't want to put on her case until you say you have no more witnesses.

MS. FISK: I thought he just did say that.

MR. WILLIAMS: I may have misspoke.

MS. FISK: I will sit down.

THE COURT: You may call the Defendant?

MR. WILLIAMS: Your Honor, I didn't say that. I didn't say that.

THE COURT: Okay. How about his brother?

MR. WILLIAMS: We have no intention of calling Billy Cook to the stand.

THE COURT: Okay. Then why don't you

Page 180.

let me know tomorrow what you intend to do so I could then advise the D.A.

MR. WILLIAMS: Tomorrow, that's what I was referring to.

THE COURT: That's what I say, tomorrow you will let me know.

MR. WILLIAMS: Tomorrow we will not be calling any defense witnesses.

THE COURT: Tomorrow you will let me know if you have no more witnesses at all. And then I will give her a chance to prepare her list and get it over to you. We will do that on Monday.

MS. FISK: So the Commonwealth is not expected to have any witnesses available tomorrow; is that correct?

THE COURT: Well, I don't know. Are you saying that you want them to have witnesses for tomorrow?

(Discussion was held off the record at this time between defense Counsel.)

MS. FISK: That's precisely what I was driving at.

THE COURT: Oh, you want her to get a list for tomorrow?

Page 181.

MR. WILLIAMS: If they could produce witnesses for tomorrow it might be a good way to use up the day.

THE COURT: I only have one question: You are not going to call the Defendant?

MR. WILLIAMS: I have already indicated.

THE COURT: I know that, but I would like to hear from the Defendant.

MR. WILLIAMS: I don't believe that that's required, Your Honor.

THE COURT: Well, I don't know, I don't want to have a second PCRA hearing.

MS. FISK: That was going to be my request, that at some time, Your Honor -- and I will make that request at the appropriate time when the defense indicates it is calling no further witnesses -- I would make the request on the record to establish that that is in fact --

THE COURT: I want a colloquy to make sure that the Defendant understands that he has a right to take the stand if he wishes and he also has a right not to. All I want to know is whether this is his wish. Because I don't want to get another, second PCRA against you

Page 182.

gentlemen from New York accusing you of preventing him from taking the stand.

MS. FISK: I would also ask, Your Honor, to place on the record -- with the exception of those witnesses whom the defense offered whose subpoenas were quashed who were in the Courtroom and not permitted to testify -- I would ask whether there were any additional witnesses who they are not calling and if they are not calling them that it is as a result of an intentional, strategic decision and for no other basis?

THE COURT: Do you want to think about it until tomorrow?

MR. WILLIAMS: Let's bring it up tomorrow.

THE COURT: Okay, let's think about it until tomorrow. Okay, adjourn until tomorrow.

THE COURT OFFICER: Court stands adjourned until 9:30.

(The hearing was adjourned for the day at this time.)

Page 183.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

11. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358

- - - - -

PCRA Hearing

- - - - -

Friday, August 11, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- GINA FURIA, ESQUIRE
  Law Clerk for the Honorable
  Albert F. Sabo

INDEX

COMMONWEALTH EVIDENCE

WITNESS	DE	CE	RDE	RCE
Officer Joseph Brown	61	87	--	--
Cap. Edward D'Amato, Ret.	117	139	170	--
Ian Hood, M.D.	188	197	--	--
Direct Examination on Voir Dire - 180				
Cross Examination on Voir Dire - 184				

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
18	PAB Logbook	72
19	Copy of transcript (Singletary)	308

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
William Singletary	204	225	298	307

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
29	Interview record (W. Singletary)	213

Page 3.

- - - - -

(At 10:15 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

THE COURT: Good morning, everyone.

For the record, I adjourned yesterday to today to give the Defendant an opportunity to consider whether or not he wishes to testify in this case.

Mr. Mumia Abu-Jamal, will you please come up here to the front.

MR. WEINGLASS: Your Honor, on advice of Counsel, Mr. Jamal has no statements to make to the Court.

THE COURT: Well, he will have a few statements to make to me. I said, I know, you can advise him all you want.

MR. WEINGLASS: And he is acting pursuant to that advice. He is not going to make a statement to the Court.

THE COURT: Counselor, I will remove you from the case.

MR. WEINGLASS: Because I advise my client?

Page 4.

THE COURT: No, because you are interfering with the Court. I want to talk to him personally. I want to hear him say that he doesn't want to take the stand, okay.

MR. WEINGLASS: Your Honor, he has verified the Petition. His position is clear in this Court.

THE COURT: Counselor, please. I don't know how you handle matters in New York, but in Pennsylvania we have a certain way of handling these matters. This is what I want to hear from your client.

MR. WEINGLASS: I think the right to Counsel covers both jurisdictions. And I think the Fifth Amendment covers both jurisdictions.

THE COURT: Counselor, we have an obligation to ascertain whether or not this is his decision. You can give him advice but he himself has to make that decision. That's what I want on the record.

So will you please get up here, please, Mr. Mumia Abu-Jamal.

MR. WEINGLASS: Could I have a moment.

(Discussion was held off the record at this time among defense Counsel.

Page 5.

THE COURT: If you wish, Counselor, you could stand next to him. Give him whatever advice you want to.

- - - - -

Mumia Abu-Jamal, having been duly affirmed, was examined and testified as follows:

- - - - -

THE COURT: Mr. Mumia Abu-Jamal, good morning.

THE DEFENDANT: Good morning.

THE COURT: Did you have a nice night's sleep?

THE DEFENDANT: I had a fair night's sleep. A fair night.

THE COURT: Yes. You had your breakfast?

THE DEFENDANT: Yes, I did, Your Honor.

THE COURT: Okay, good. You are feeling all right today?

THE DEFENDANT: I feel fair.

THE COURT: Good. Now I just want to ask you a few questions. I am required to do this.

Are you under the influence of any

Page 6.

drugs or alcohol today?

THE DEFENDANT: I'm under the influence of Motrin.

THE COURT: What is it?

THE DEFENDANT: Motrin.

THE COURT: And when did you take that?

THE DEFENDANT: 6:00 a.m.

THE COURT: 6:00 a.m. Even though you have taken that medication, do you feel that you understand everything that's going on here?

THE DEFENDANT: Yes, Your Honor, I do.

THE COURT: All right. You know that you have a right to take the stand if you wish. You also have a right not to take the stand. But that must be your decision. I know you've conferred with Counsel and Counsel tells you the benefits of taking the stand and the disadvantages of taking the stand. But ultimately you yourself have to make that decision.

Have you considered what your attorney has told you?

THE DEFENDANT: May I confer, Your Honor?

Page 7.

THE COURT: Confer, yes.

(Discussion was held off the record at this time between the Defendant and Mr. Weinglass.)

THE DEFENDANT: I have, Your Honor.

THE COURT: Okay. And is it your position today that you do not wish to take the stand?

THE DEFENDANT: It is my position today to follow the advice of Counsel.

THE COURT: Okay. That's perfectly all right, but all I want to know is is it your decision and yours alone -- because you must make that, even though Counsel is giving you advice, you must make that decision yourself -- is it your decision that you do not wish to take the stand?

THE DEFENDANT: I understand your question, Your Honor. My response is that it is on the advice of Counsel not to take the stand.

THE COURT: Well, then I assume that by that you mean you do not wish to take the stand.

THE DEFENDANT: I think I've answered, Your Honor.

Page 8.

THE COURT: No, you haven't.

THE DEFENDANT: I am following the advice of Counsel.

THE COURT: I know that. But all I want to know is following the advice of Counsel, do you wish to the take the stand or do you not wish to take the stand? It is a simple question.

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: Excuse me just a moment.

(Discussion was held off the record at this time among defense Counsel.)

THE DEFENDANT: On the advice of Counsel my wish is not really relevant. I am following the advice of Counsel.

THE COURT: Well, then I take it that you are following the advice of Counsel and based on that advice you do not intend to take the stand?

THE DEFENDANT: On the advice of Counsel.

THE COURT: Yes. But you're making that decision yourself?

Page 9.

THE DEFENDANT: On the advice of Counsel.

THE COURT: Okay. Now you are mincing words with me. But I am not going to worry about that too much. Are there any other witnesses you want to call?

MR. WEINGLASS: Yes.

THE DEFENDANT: That's Counsels' decision, if I may withdraw, Your Honor?

THE COURT: Are there any other questions you want to ask him?

MS. FISK: No, Your Honor. As I stated yesterday, at the time the defense is prepared to rest on this Petition, I will ask for a statement from Counsel that any witnesses whose subpoenas had not been quashed or had not been barred in testifying who nevertheless are not being called are not being called for a strategic or other reasonable basis. But at this time I have no further questions.

MR. WEINGLASS: If I may, there is one additional witness who is referred to in the Petition which Counsel has had now for two months. And this is a witness who is a person whose recollection of what happened on the night

Page 10.

in question we believe to be not entirely accurate. We believe his recollection today is not entirely accurate. We believe his recollection which was given in a sworn statement in 1990 was not entirely accurate. However, this is a witness who advises us, and we have no reason to disbelieve this, that he was with Cynthia White on the night of the occurrence.

Your Honor will recall she testified that she was with a gentleman whose name she didn't remember, she described him I believe as being about five-foot-eight to five-ten, husky build, dark-skinned, male African American. She described that man but he was not produced at trial. She didn't know his name. And Officer, a highway patrolman named Vernon Jones filed a police report that night in which he said he came upon the scene sometime shortly after the shooting in response to a radio call and while he was there he met a gentleman who was also there who he had known. And he knew this man as Dales. And upon further investigation, he indicated that Dales was William Dale Singletary, a gentleman who he saw that night,

Page 11.

who he talked to, who had a tow truck which the Officer Vernon Jones frequently interacted with and therefore confirmed that he knew William Dale Singletary.

William Dale Singletary then went down to the police station that night and he was interviewed. And a statement exists in the record which the police took from William Dale Singletary that night. I am merely indicating that he is someone who Cynthia White I believe said she was with at the time of the occurrence, somebody which, who a highway patrolman said he saw on the night of the occurrence at the corner of 13th and Locust shortly after the shooting, and someone who was interviewed by the police a little later within the hour at the, at Homicide.

William Dale Singletary then came forward in 1990 and went to the office of Mr. Jamal's then Counsel who had completed the appeal but was apparently still Counsel for purposes of petition to the United States Supreme Court. And appellate Counsel met with him and appellate Counsel took a statement from him which is in a deposition format.

Page 12.

MS. FISK: Your Honor, I am going to interrupt for one reason. And that is because, I know that Counsel would like everybody to know all about this witness and how it would change the result of this trial. The problem is that Mr. Singletary was a person known to the defense at the time of trial in 1982. A person who had given a statement to the police in 1981. He therefore cannot be considered an after-discovered witness. And my understanding is that Mr. Jackson was not questioned regarding his failure to call Mr. Singletary or any basis for having called or not having called Mr. Singletary. And unless and until such a foundation is established through Mr. Jackson, no information about Singletary becomes relevant.

MR. WEINGLASS: If Counsel will just please, please, I beg you to give me the courtesy of completing my statement. Because your assumption is utterly in error. Mr. Singletary is not a newly-discovered witness.

MS. FISK: Nor is he --

THE COURT: That's what she said.

MR. WEINGLASS: He is not.

Page 13.

THE COURT: Okay.

MR. WEINGLASS: But the assumption that she had was that that's why we were calling him. That is not why we are calling him.

THE COURT: No, she said that you never asked Anthony Jackson who was the attorney at the time why he didn't call him.

MR. WEINGLASS: Right, right, right. Now let me --

THE COURT: That is the issue.

MR. WEINGLASS: Let me continue and I will explain why we didn't do that and why we are calling the witness.

THE COURT: Well, is he here?

MR. WEINGLASS: Ahh, he is, I have just been handed --

THE COURT: Is he here?

MR. WEINGLASS: He will be here momentarily. But please, will the Court let me complete?

THE COURT: Wait awhile. I don't have to worry about that.

MR. WEINGLASS: No, Your Honor, I have to state on the record why we are calling Mr. Singletary. You are not giving me a chance

Page 14.

to do that.

THE COURT: Well, you said he has something to add to this case.

MR. WEINGLASS: No, Your Honor, he has something very precisely to add. If the Court will please give me five minutes to state on the record why we are offering the witness. The witness gave a statement to the police that night.

THE COURT: I heard that.

MR. WEINGLASS: And that statement was turned over to Mr. Jackson.

THE COURT: Right.

MR. WEINGLASS: That statement, according to what the witness tells us, is a completely false statement typed in by the police. He tells us that he gave the police an entirely different statement that night. As a matter of fact, he said he wrote out in his own hand several statements which the police then tore up in his presence and forced him to write this statement. Thereafter he, he says, he tells us that he was subject to -- and I won't go into the details -- a pattern of harassment and intimidation which ultimately caused him

Page 15.

great personal harm and disadvantage and disrupted his business. And ultimately had a very negative effect on his business and his personal life.

We contend this witness is a Brady witness. We do not offer him as a newly-discovered witness. And we contend he's Brady because the statements he gave the police that night about what he remembers which he no longer can recall with accuracy were tore up by the police and never turned over properly to the defense.

Now, if you look at our Petition, in our Petition we name Mr. Singletary and we put him in the category of a Brady witness.

THE COURT: Okay. I understand your position.

MR. WEINGLASS: Right.

THE COURT: What is your objection to that?

MS. FISK: Well, first, Your Honor, the Commonwealth has never received an affidavit from this witness. In Counsels' Petition they make reference to Mr. Singletary and claim in huge letters that because this person has been

Page 16.

so harassed by the police for so many years, unless and until the Court issues a protective order for him, we're not presenting his affidavit or any information about him. I am not aware that Counsel has ever come into this Court and requested the issuance of such a protective order, has never sought to take the necessary action so that the Commonwealth could receive an affidavit from this witness. With the exception of a statement which was signed by him given in 1981, we have received no affidavit regarding Mr. Singletary from Mr. Singletary or any other individual.

MR. WEINGLASS: I am now asking -- I am being interrupted and then I am being --

THE COURT: Well, that's all right.

MR. WEINGLASS: Criticized. I am asking for pro --

THE COURT: She said she never received an affidavit which you are required to submit.

MR. WEINGLASS: There is a deposition for him and I'm asking for a pro --

THE COURT: Deposition for him?

MR. WEINGLASS: Yes, I'm asking for a

Page 17.

protective order for this witness.

THE COURT: Protective order for what? I didn't issue a protective order for the last witness. You said his entire circumstances. I didn't give a protective order for anybody.

MR. WEINGLASS: It is my impression that this man is living in fear.

THE COURT: Well, that is your impression.

MR. WEINGLASS: Well, we have tried to bring him to Court, Your Honor.

THE COURT: Yes.

MR. WEINGLASS: And we have been unable to bring him until today. And my impression is, and it is my impression, that the man is utterly afraid to come here. Because of what he heard about what this Court has done and it's practices.

THE COURT: What have I done? I let them get on there and tell me anything they want to tell me.

MR. WEINGLASS: Yeah, you put a witness on the stand yesterday over our objection.

THE COURT: Counselor, when the whole

Page 18.

record is transcribed everybody will know the situation, okay.

MR. WEINGLASS: I hope so.

THE COURT: I hope so too. Including our sidebar conference. Everybody will know.

MR. WEINGLASS: Well.

THE COURT: That was not sealed.

MR. WEINGLASS: The witness yesterday, without sleep, without adequate food --

THE COURT: Oh, yes, I know.

MR. WEINGLASS: Without seeing the photographs.

THE COURT: Well, he saw the photographs, I gave them to him.

MR. WEINGLASS: That is no way to conduct a hearing.

THE COURT: Yes, that's the way. That is the way.

MR. WEINGLASS: That is a certain way.

THE COURT: Right. When all the notes are transcribed it will be obvious to everybody, okay.

MR. WEINGLASS: Well, I'm asking for a pro --

THE COURT: I will not issue a

Page 19.

protective order. He could come in here like everybody else. What is wrong with that?

MS. FISK: Your Honor, I would object to the granting of a protective order.

THE COURT: I am not granting any protective order.

MS. FISK: My basis for objecting, Your Honor, is because the Commonwealth has now concluded that we can no longer accept representations of Counsel that are made at the bar of the Court. And I point specifically to the fact that the witness who testified yesterday, Mr. Harmon, was a witness who after he was discovered and after we learned Miss Wolkenstein traveled to Pittsburgh to meet with him, Counsel advised us that they were unable to provide the Commonwealth with an affidavit as was requested by the Court because the witness was in Pittsburgh.

MR. WEINGLASS: And we didn't have an affidavit.

THE COURT: Just a minute, Counselor.

MS. FISK: Nevertheless, we learned yesterday from Mr. Harmon that the document which was handed to him by defense Counsel is a

Page 20.

document in the handwriting of Miss Wolkenstein, it is written as an affidavit, that that original was in Miss Wolkenstein's possession when she left.

MR. WEINGLASS: If Counsel doesn't know the difference between a statement and an affidavit she is going to have to learn. We were asked about an affidavit and there was no affidavit. We were never asked about a statement.

MS. FISK: I never remember hearing this Court demand that the affidavits that were submitted from any witnesses be notarized. That is an affidavit, it is simply not notarized. And as the Court would look, if you saw in the Petition, Miss Wolkenstein herself notarized some of the documents that are in this Petition and she very easily could have notarized that.

MS. WOLKENSTEIN: I am not a notary in this Commonwealth of Pennsylvania. This is absurd.

THE COURT: Well, she said you notarized --

MS. WOLKENSTEIN: This is absurd. I am not qualified in the Commonwealth of

Page 21.

Pennsylvania as a notary.

THE COURT: Well, she said you notarized some other things.

MR. WEINGLASS: All in New York State. Your Honor keeps reminding us that there is a difference between the Commonwealth and New York, but in this instance, those differences are blurred.

THE COURT: All right.

MS. FISK: Your Honor, it is the impression of the Commonwealth that Miss Wolkenstein and the defense Counsel made material misrepresentations to the Court last Friday regarding their inability to present the Commonwealth and the Court with any affidavit of Mr. Harmon.

MR. WEINGLASS: Yes.

MS. FISK: Based on our conclusion that Counsel has made material misrepresentations at the bar of the Court, we do not accept Counsel's representations made today at the bar of the Court regarding this witness and the fact that he needs a protective order. And for that reason we object to any granting of a protective order.

Page 22.

MR. WEINGLASS: The Court has already denied the protective order.

THE COURT: I am not granting any protective order.

MR. WEINGLASS: You see, there is no problem.

THE COURT: I am not granting a protective order.
MR. WEINGLASS: No.

THE COURT: I see no need for it. Now, the situation is he wants to put him on the stand.

MS. FISK: Your Honor, we have a right to review whatever documents, affidavits or depositions or unsworn statements they have.

THE COURT: Do you have any affidavits from this witness?

MR. WEINGLASS: Yes, we do.

THE COURT: Why don't you give it to her.

MR. WEINGLASS: We will provide it right now.

THE COURT: Okay.

MR. WEINGLASS: In the meantime, there are other matters that Counsel will have an, if

Page 23.

Counsel will have --

THE COURT: What other matters?

MR. WEINGLASS: Pardon?

THE COURT: What other matters?

MR. WEINGLASS: Just some housekeeping and some other evidential matters that we wanted to submit for the record.

(Discussion was held off the record at this time between Commonwealth and Defense Counsel.)

MR. WEINGLASS: I did also want to state for the record that yesterday, August the --

THE COURT: 10th.

MR. WEINGLASS: 10th -- thank you -- I received a copy of the March 18th transcript, 1982. It's 80 pages in length.

THE COURT: You received those a week ago, didn't you?

MR. WEINGLASS: Pardon?

THE COURT: You received that long ago.

MR. WEINGLASS: No, I received a week ago December 2lst, April 1st and February 22nd. It wasn't until yesterday that I got March 18th.

Page 24.

And March 18th is a substantive hearing. It's 80 pages in length. It involves major issues of --

THE COURT: Well, read it. I will give you time to read it. Read it now.

MR. WEINGLASS: In the middle of a PCRA hearing?

THE COURT: Sure. You're a lawyer, you can read that in no time. Read it.

MR. WEINGLASS: Well, Your Honor, this is no way to conduct a hearing.

THE COURT: We will take a short recess.

MR. BURNS: Could Counsel give us a copy so we could read it too?

MR. WEINGLASS: I only have one. Everyone is operating in the dark here. The Court, Counsel. This is no way --

THE COURT: The Court's not operating in the dark. Maybe you are but I'm not.

MR. WEINGLASS: Well, maybe the Court enjoys the dark more than I.

MR. BURNS: The offer of proof is turning everything over at the last possible moment.

Page 25.

MR. WEINGLASS: Pardon?

THE COURT: Counselor, I warned you before: Anymore snide remarks about the Judge is going to cost you a thousand dollars. Now, no more of that nonsense.

MR. WEINGLASS: I have been the recipient of some snide remarks.

THE COURT: Well, that's all right, take it up with the Supreme Court. But you don't do that to this Court in this Courtroom. A thousand dollars it will cost you. Now cut it out. I will give you time to read it.

MS. FISK: Your Honor, I would note for the record that the Commonwealth did provide defense Counsel this morning with an amended list of witnesses for today's date listing three witnesses, all of whom are witnesses offered to rebut testimony we've heard on the last two days. And my query to the Court is whether we are going to reach that? I know we don't know that for the next 15 minutes, I am simply advising the Court of that.

THE COURT: Yes, well, if necessary we will work as long as

necessary today to get it all over with.

Page 26.

MS. FISK: At least one of those witnesses today is no longer a police officer, is someone who is taking time away from his business to remain available to the Court.

THE COURT: Well, we will take him first as soon as we have the opportunity.

MS. FISK: He has to be taken second just as a matter of introducing documents.

MR. WEINGLASS: As I understand it, all the witnesses pertain to the witness Arnold Howard?

MS. FISK: No, not all of them, Your Honor.

THE COURT: Well, talk among yourselves. Read your transcript. And, Gina, do we have an extra copy of that?

MS. FURIA: The Court's never received a copy of it.

THE COURT: We never received it either?

MS. FURIA: No.

THE COURT: All right. If necessary we'll read it too. But go ahead. Read it. Take a short recess.

Page 27.

THE COURT OFFICER: This Court will take a brief recess to the call of the Crier.

- - - - -

(Brief recess.)

- - - - -

THE COURT OFFICER: Court is back in session. Please take your seats.

THE COURT: Where is the... is he back there?

THE COURT OFFICER: She's right here.

THE COURT: You don't have to take the stand. Will you please just go down there at the front of the bar, please. Will you tell us who you are and your title.

MS. GARVIN: My name is Peggy Garvin. I'm a Court Administrative Officer for the Court of Common Pleas.

THE COURT: There is some question about some notes of testimony. Were you in charge of seeing that they were delivered?

MS. GARVIN: Yes, I was.

THE COURT: Do you have that information in front of you?

MS. GARVIN: Yes, I do.

Page 28.

THE COURT: And what was the date of that, March the...?

MR. WEINGLASS: 18th.

THE COURT: March the 18th.

MR. WEINGLASS: 1982.

MS. GARVIN: March the 18th, it was delivered last Wednesday.

THE COURT: By whom?

MS. GARVIN: I brought them to this Courtroom and I gave them to the Court Officer... I don't see him. It was a sort of stout, dark-brown-skinned gentleman. I came to the back and I was standing back there. And he said I could go and one of the Sheriffs called him over and I gave him the volume and he brought them up here to the front.

THE COURT: Whose volumes were they, do you know?

MS. GARVIN: Say that again.

THE COURT: Were they for me?

MS. GARVIN: No, sir, yours had been delivered that Monday and this was Wednesday when I brought over these.

THE COURT: Oh, you delivered mine to my chambers over there?

Page 29.

MS. GARVIN: Yes, sir.

THE COURT: On Monday. But the other two -- how many did you bring? Two? Three?

MS. GARVIN: One volume was delivered this past Wednesday and three volumes were delivered the Wednesday of August the 2nd.

THE COURT: Well, which ones were delivered? I mean what days were they for?

MS. GARVIN: This past Wednesday I delivered here to the Courtroom for attorney Weinglass a volume dated 3-18-82.

THE COURT: Okay. And how about the District Attorney?

MS. GARVIN: District Attorney's Office picks up the notes of testimony from our copy center and they've never been picked up.

THE COURT: Oh, they didn't pick them up?

MS. GARVIN: No, they didn't. I brought them with me.

MS. FISK: I was advised by a Court Officer that apparently a message was left on Mr. Grant's telephone that the notes were ready. As this Court is aware, Mr. Grant has been away this week. And I certainly haven't been

Page 30.

collecting his messages.

MS. GARVIN: The message was left on Mr. Grant's phone that the notes were ready on 7-31 and Mr. Grant was not on vacation at that time.

THE COURT: Okay, will you give her the notes, then.

MS. FISK: Thank you.

THE COURT: She is giving her copies of the notes.

MS. GARVIN: (Handing).

THE COURT: Does anybody else have any questions that they want to ask the Court administrator?

MS. FISK: Thanks (handing).

THE COURT: All right, thank you very much.

MS. GARVIN: Okay, I thank you.

THE COURT: Sorry to inconvenience you.

MS. GARVIN: No problem.

MR. WEINGLASS: I think when the witness indicated last Wednesday she was referring to August the 8th, two days ago. And I got my copy yesterday, August the 9th.

Page 31.

THE COURT: Well, I thought you said you got it today.

MR. WEINGLASS: Pardon?

THE COURT: I thought you said you got it today.

MR. WEINGLASS: No, I got it yesterday. It was delivered to my hotel room after Court yesterday. And I found it this morning.

THE COURT: Who delivered it to you?

MR. WEINGLASS: I don't know. I actually don't know. But I found it in a pile of papers this morning... and I got it.

But I just read it, and in reading it I find matters of substance in this transcript. Mr. Jackson, Anthony Jackson on March 18th, 1982, about five, six weeks before the trial, accused the prosecution of impropriety in keeping witnesses from him. And that is something that we didn't have.

THE COURT: Wait awhile. That was in front of Judge Ribner.

MR. WEINGLASS: Yes.

THE COURT: I'm sure Judge Ribner took care of that.

Page 32.

MR. WEINGLASS: Ahh, no, but --

THE COURT: What do you mean no? He did. If it was done in front of Judge Ribner he took care of it, whatever the problem was.

MR. WEINGLASS: Has Your Honor read the transcript?

THE COURT: Yes, I must have, it's delivered to me on Monday. I think I went through it and I put it in the box where I have all the other notes.

MR. WEINGLASS: Well, then Your Honor knows that it wasn't in fact dealt with.

THE COURT: Why wasn't it?

MR. WEINGLASS: Well... the Court said to him, you're getting very close to accusing someone of impropriety.

MR. BURNS: Could we have a page, Your Honor?

MR. WEINGLASS: Page 53.

MR. BURNS: Thank you.

MR. WEINGLASS: Mr. Jackson said yes, sir, I understand I am.

> The Court: And you think somebody from the District Attorney's Office is telling these witnesses not to talk to you.

Page 33.

> Mr. Jackson: I don't know, Your Honor. You've asked me and I have said I don't know. I said someone, I don't know whether it's in the District Attorney's Office or --
>
> And then he is cut off by the Court: Then you know of your own personal knowledge that someone has contacted these witnesses and said don't talk to Mr. Jackson.
>
> I don't know personally.
>
> The Court: Then all this is speculative on your part.
>
> Mr. Jackson: Not totally, Your Honor.
>
> The Court: In what way isn't it totally.
>
> Mr. Jackson: I have reason to believe that these witnesses, or at least some of these witnesses, have been told not to talk to the defense.

Now, these are very important issues.

THE COURT: All right, go ahead, keep reading. The Judge must have said something.

MR. WEINGLASS: Okay? based --

> The Court: Okay, what's your reason.
>
> Mr. Jackson: Based on some privileged investigation that has been provided to me, Your

Page 34.

> Honor.
>
> The Court: Specifically what.
>
> Mr. Jackson: I'm not in a position to disclose that, Your Honor.
>
> The Court: What's the big secret. You're asking the District Attorney's Office to reveal everything but the kitchen sink. What's the reason for not divulging that information?
>
> Mr. Jackson... I think the rights and duties of the Commonwealth as opposed to the Defendant are different. Whether we agree or not, we are different.
>
> The Court: What reason do you have to believe that someone in the District Attorney's Office told a witness not to say anything to you.
>
> Mr. Jackson: I've never said anyone in the District Attorney's Office has done that.
>
> The Court: If you are going to give the impression that somebody in this case is conspiring to keep information from you, let's get it out in the open. If not, you're going to have to back off. Because there is no conspiracy that I can see here.
>
> Mr. Jackson: I can't go into that

Page 35.

> right now, Your Honor.

And it goes on. So it was, the point I'm making, Your Honor: There was a record made of Mr. Jackson's complaints.

THE COURT: Yes.

MR. WEINGLASS: Which we didn't know about until I just read it this morning.

THE COURT: Counselor, it's been resolved already through the Court there. These are pre-trial matters. I am not going to get into any of that nonsense. It's already --

MR. WEINGLASS: It's not nonsense.

THE COURT: Counselor, take it up with the Supreme Court when the case gets there, all right.

MR. WEINGLASS: I would also say this transcript contains other matters, such as Mr. Jackson's attempting to get resources.

THE COURT: I know that. We went through all of that when he was there on the stand. And you could take it up with whomever you wish at the proper time. As far as I am concerned, that issue is over, period. Now let's go forward.

MR. WEINGLASS: Your Honor, with

Page 36.

respect to the witness Singletary, I wasn't able to complete my recitation on the witness. This morning I spoke to Mr. Singletary and I asked him if he would come to Court. He was in bed.

THE COURT: Just awhile ago you told me he was here.

MR. WEINGLASS: No, I said he was on his way.

THE COURT: When is he going to get here?

MR. WEINGLASS: I asked him to come to Court. If Your Honor will please bear with me.

THE COURT: All right.

MR. WEINGLASS: He said that he was too ill to come to Court. I know the man's medical record, I have gone over his medical history. He said he was too ill, he could not testify. I said what do you mean. He said if I get on the stand today, I probably wouldn't even know your name. I said well, what's happening. He said I haven't slept in three days. He's a diabetic. He suffers from hypertension and he suffers from high blood pressure. He is on four different medications.

THE COURT: How long am I supposed to

Page 37.

wait for him?

MR. WEINGLASS: Well, Your Honor.

THE COURT: How long am I supposed to wait for him? Do you have a doctor to come in here and tell me when he is going to be available to testify?

MR. WEINGLASS: I do not have a doctor.

THE COURT: Well, then you better get one, because as far as I am concerned I am not going to sit around and wait. This Court has other matters to take care of. This case is not the only case, you know. I have other cases, all right.

So is he the only other witness you are going to call?

MR. WEINGLASS: Umm... well, there are other issues around other witnesses.

THE COURT: No, don't give me other issues. Who do you want to call? Don't hesitate. Don't give me that stuff I have to decide. I am under a duty too.

MR. WEINGLASS: There are additional matters we would like to introduce into evidence which we will do right now.

Page 38.

MS. WOLKENSTEIN: Your Honor, a couple of days ago a statement of authentication from the FBI was presented and marked for identification with the Court. They concern these six volumes of FBI files which indicate Philadelphia Police Department surveillance of Mr. Jamal in the period of 1968 through, heavily, through 1974 with other additions going up as far as 1986 and '87. These records we believe are relevant.

THE COURT: '86 and '87?

MS. WOLKENSTEIN: Yes.

THE COURT: He was in jail.

MS. WOLKENSTEIN: Yes, he was. But nonetheless, activities of his defense, of people who visited him in prison, they are contained in here.

So I would like these to be admitted into evidence as part of the record, as one of our claims in our Petition dealing with the question of both bias as well as mitigation, and Brady violations. And I would submit these into evidence at this time based upon the authentication document which has already been delivered to the prosecution as well as to the

Page 39.

Court, as well as into the Exhibits file.

MS. FISK: Your Honor, my understanding is that this was sought and ruled on by this Court sometime within the past week. This Court ruled that these records are not relevant to these proceedings, that there has been no foundation established. The fact that the FBI has records, and whether or not, frankly, these are the records is unknown to me. And the fact that there is a letter presented saying that something is authentic does not tell me or the Court whether what Miss Wolkenstein is now contending is authentic. Or the affidavit she took from a witness last week.

THE COURT: What I am concerned about: What does that have to do with who killed Officer Faulkner?

MS. FISK: Your Honor, it was on the basis of that question and the fact that these were not, there has been no relevance shown with regard to these proceedings that this Court several days ago ruled that those records are not to be admitted. That was previously ruled.

My understanding is when the Court rules you accept that ruling. You may not like

Page 40.

it but you accept it. Your Honor has previously ruled that these records are not to be marked and not to be admitted into evidence.

THE COURT: If I previously ruled, that ruling still stands.

MS. WOLKENSTEIN: Your Honor, your ruling was --

THE COURT: What I have already ruled, what I have said I have said. Take it up with the appellate Court.

MS. WOLKENSTEIN: Your Honor is even refusing to mark it so it could go up on appeal to make a determination whether or not this Court was in error or not?

THE COURT: Hold on to them. If the Supreme Court wants them they will ask for it. But that is my ruling, it wasn't to be admitted. That's it. What else do you have?

MS. WOLKENSTEIN: All right, next issue: We had a ballistics expert -- what?

(Discussion was held off the record at this time among Defense Counsel.)

MS. WOLKENSTEIN: Okay, I just want to, Counsel is reminding me that I wanted to make clear for the record that this was the

Page 41.

product of three years of attempt to be able to get information from the FBI that we believed was absolutely relevant and crucial to our defense of Mr. Jamal and for this hearing.

THE COURT: Okay.

MS. WOLKENSTEIN: And I wanted to indicate to you we only got these documents in April of 1995.

THE COURT: Okay.

MS. WOLKENSTEIN: After three years of attempts. The last volume we got was while the hearing was taking place here.

THE COURT: Okay, you made your point.

MS. WOLKENSTEIN: Okay.

(Discussion was held off the record at this time among Defense Counsel.)

MS. WOLKENSTEIN: Could these be marked for identification only?

THE COURT: No, they will not. If the Supreme Court wants them they'll ask for them.

MS. WOLKENSTEIN: All right. Your Honor, the next issue is the following. About a week ago, a week ago Wednesday, we had Ph.D students of Dr. Peter Deforest, who is a ballistics expert, take photographs of the

Page 42.

bullet that was taken from Officer Faulkner's head and the other bullets and fragments that were with the evidence as well as the weapons. The purpose of this was to try and get at least a preliminary opinion as to whether or not it would be possible to measure the lands and grooves on these, on the bullet in question. The key bullet which is the one taken from Officer Faulkner's brain.

The examination of these photos, which are one-to-one photos by Dr. Deforest, indicated according to him the following, that the land impressions --

MS. FISK: Your Honor, I would object to what it indicated to Dr. Deforest. My understanding was there was going to be representation to whether or not any additional witnesses are being called.

MS. WOLKENSTEIN: I am pursuing that, Your Honor.

THE COURT: Well, are you calling him?

MS. WOLKENSTEIN: Your Honor, I have --

THE COURT: Are you calling him?

MS. WOLKENSTEIN: There is a

Page 43.

preliminary question.

THE COURT: I don't need your preliminary question. I don't want to hear about all of this.

MS. WOLKENSTEIN: The point, Your Honor, is that the land impressions are wider than the groove impressions on this bullet.

THE COURT: All I want to know, Counselor, please, all I want to know is are you going to call him?

MS. WOLKENSTEIN: Your Honor --

THE COURT: Are you going to call him?

MS. WOLKENSTEIN: Your Honor, the point, Your Honor --

THE COURT: No, the point is are you going to call him?

MS. WOLKENSTEIN: At this point we can not call him, Your Honor, for the following reason.

THE COURT: Well, I don't want to hear anything more. I don't want to hear anything more.

MS. WOLKENSTEIN: The impression --

THE COURT: Counselor, I don't want to hear anymore argument from you on this issue.

Page 44.

If you are going to call him call him. If you are not going to call him don't give me any story about what he is going to do. You want to do that out on the street when you have people out there, do that out there, not in this Courtroom. You either call that witness or you don't.

Now, what else?

MS. WOLKENSTEIN: Okay, Your Honor, there is another issue here which was the question of the, the question of these photographs. Various representations were made on the witness stand, sworn testimony by Your Honor's clerk. And I wanted it to be clear for the record -- and Miss West is here, she can state for the record -- that on July 18th she visited the PCRA unit and requested these photos. And she was told at that time, in the PCRA unit, on July 18th, that all exhibits, including the photos, were in the Police Evidence Room. And then the Police Evidence Room said that we needed a Court order or the D.A.' s presence to get these.

THE COURT: Well, that's what you are saying.

Page 45.

MS. WOLKENSTEIN: And that is what led -- well, your clerk testifies --

THE COURT: You got the photos.

MS. WOLKENSTEIN: That led, Your Honor, to the order, the order of this Court, dated July 2Oth, 1995, allowing us to see those photos and to do this.

THE COURT: I know that.

MS. WOLKENSTEIN: And putting all the evidence in the custody of Detective Walsh.

THE COURT: I know that. We have gone through all of that.

MS. WOLKENSTEIN: Following my review of the physical evidence, and when the photos were not there, I already made representations as to what Detective Walsh told me, I submitted a

letter to the District Attorney's Office and to the Court on July 25th, 1995 indicating that those photos were not available. I just want --

THE COURT: Okay.

MS. WOLKENSTEIN: I just wanted the record to be clear, since there has already been sworn testimony on this, that in fact we did go to the PCRA unit, we did check to see if they were there. And we were told they were not. I

Page 46.

want that record to be clear.

THE COURT: All right. Okay I and I ordered them to recoup them and we gave them to the officer to have copies made for you. So what. Let's go forward. Do you have anymore witnesses?

MS. WOLKENSTEIN: All right, I had had one other matter, and then there is a couple...

My matter, Your Honor, additional one, is after Court yesterday I attempted to see Mr. William Harmon to say thank you for him being willing to come in. He had already testified. And I was told by the officers up there that I was not allowed to see him because he was still under a sequestration order.

THE COURT: So write him a letter.

MS. WOLKENSTEIN: I want to object to that.

THE COURT: No, write him a letter and thank him for testifying, Counselor. I am not going to get into this nonsense. I am only here now on a PCRA matter and all you are doing is stalling me.

MS. WOLKENSTEIN: No, I am making a record.

Page 47.

THE COURT: No, don't make any record. Because it doesn't mean anything. If you want to thank him write him a letter and thank him.

MS. WOLKENSTEIN: In point of fact for no good reason he was under a sequestration order.

THE COURT: Yes, okay.

MS. WOLKENSTEIN: After he testified.

THE COURT: Yes, okay.

MS. WOLKENSTEIN: Okay, these are the FBI files, I am serving this copy on the District Attorney (handing).

MS. FISK: I am not accepting service for anything from Miss Wolkenstein, Your Honor (handing). Or Defense Counsel. They can have them. I don't know what they are. I have already made a personal determination as to Miss Wolkenstein's credibility at the bar of the Court and I am not accepting anything.

MR. BURNS: Could we put an end to this childishness and begin presenting evidence and get on with this case?

THE COURT: I am hoping they are going to get to that point. I would like to get to that point.

Page 48.

MR. BURNS: This is puerile, Your Honor.

THE COURT: I know. Write a letter to Mr. Harmon. He will be glad to get your letter.

MR. WEINGLASS: There have been previously filed with the Court an Amended Petition which I ask that that be moved into evidence.

THE COURT: Amended Petition?

MR. WEINGLASS: Yes, we filed a --

THE COURT: Well, did you file it with the Court?

MS. WOLKENSTEIN: Yes.

MR. WEINGLASS: Yes.

THE COURT: Then it is in there, it is in the Court records.

MR. WEINGLASS: We filed it with an order asking the Court to grant the Petitioner leave to file the Amended Petition. Has the Court --

THE COURT: Well, it's in there.

MR. WEINGLASS: Has the Court signed the order?

THE COURT: I haven't signed any order

Page 49.

but it's in there. All I want to know: Do you have anymore witnesses? That's all I am asking you now.

MR. WEINGLASS: The next point depends on whether or not the Court will sign the order for the Amended Petition. We have to Petition the Court for leave. And I am now asking --

THE COURT: You don't have to. All I have been asking you all along is do you have anymore witnesses.

MR. WEINGLASS: Yes, but.

THE COURT: Who do you have?

MR. WEINGLASS: The next point, Your Honor, that I am going to go into is contained in the Amended Petition.

THE COURT: All right, don't worry about it. Who do you want to call?

MR. WEINGLASS: Will the Court grant us leave to file the Amended --

THE COURT: Who do you want to call?

MR. WEINGLASS: I want to put into evidence two affidavits.

THE COURT: Who do you want to call as your next witness?

MR. WEINGLASS: I am submitting

Page 50.

affidavits at this point.

THE COURT: All right. Well, who are they?

MR. WEINGLASS: Two affidavits. The affidavits of Alma Lee Austin, who now goes by the name Alma Cranshaw. And the affidavit of Darlene Sampson, who now goes by the name of Darlene Campbell. Those two affidavits are appended to our Amended Petition. That's why I wanted the Court to enter an order permitting us --

THE COURT: Don't worry about it. Did you get copy of these?

MS. FISK: Your Honor, these are two persons who were, two of three persons who were the subject of a stipulation between Counsel.

THE COURT: Oh, you mean that stipulation Grant entered into?

MS. FISK: Yes, sir.

THE COURT: Well, that is on the record already.

MS. FISK: There is a stipulation. The Commonwealth objects to any affidavit being accepted as a matter of evidence.

THE COURT: No, it's stipulated and

Page 51.

it's in the record, that's it.

MR. WEINGLASS: Well, the stipulation wasn't to our satisfaction.

THE COURT: Well, I'm sorry about that. But a stipulation was entered into and it's part of the record and that's it.

MR. WEINGLASS: Right.

THE COURT: Period. That's why I am not going to sign any further orders. Do you have anybody else brought in?

MR. WEINGLASS: There is an additional affidavit, I would like to have it marked as the next defense exhibit. I am providing a copy to Counsel.

MS. FISK: Your Honor --

MR. WEINGLASS: I am submitting this into evidence.

THE COURT: Well, Counselor, submit it to the Supreme Court, I am not going to take it here. There's already a stipulation, it's there for what it's worth, and I am not going to take it.

MR. WEINGLASS: It is the affidavit of Beverly Greene.

THE COURT: I don't care who it is an

Page 52.

affidavit of.

MR. WEINGLASS: We use it as a basis for withdrawing our portion of the stipulation.

THE COURT: No. Take it up with the Supreme Court. You entered into a stipulation, that's it, period.

MR. WEINGLASS: We feel the stipulation is no longer accurate and we want to correct the stipulation.

THE COURT: Okay, fine, correct it up at the Supreme Court. Let's go forward. Do you have anybody else?

MR. BURNS: Could we have a moment, Your Honor?

MR. WEINGLASS: I want the record to show that I attempted to put in the affidavit of Beverly Greene.

THE COURT: Okay.

(Discussion was held off the record at this time between Counsel for the Commonwealth.)

MR. BURNS: Your Honor, this document states in the second page, there is a handwritten notation on whatever I was handed, it says I am not the Beverly Greene described in this paper, 8-7-95, and it's signed Beverly

Page 53.

Greene.

THE COURT: Not the person.

MR. BURNS: What kind of affidavit is this?

MS. FISK: It is not an affidavit.

THE COURT: Maybe you ought to let him put it in.

MR. WEINGLASS: It is an attempt on the part of the defense to correct the stipulation.

THE COURT: Okay. All right. I have ruled already, let's go. Anything else?

(Discussion was held off the record at this time between Defense and Commonwealth Counsel.)

MS. FISK: Your Honor, I do object to a document which is, frankly, not signed by anyone being marked even for identification.

THE COURT: Counselor, if he wants to take it up with the Supreme Court, the Supreme Court wants to look at it, that's fine.

MR. WEINGLASS: Fine, fine.

THE COURT: I don't want it here, okay.

MR. WEINGLASS: Just for the record:

Page 54.

It is a signed document.

MS. FISK: Well, it is signed by someone other than about whom it is written.

MR. BURNS: What is signed is a statement that that is not an affidavit of the witness.

THE COURT: If it is important enough they will send it back down to me, I'm sure. Are there any other witnesses you want to call? How about the Defendant's brother, are you going to call him?

Are you going to call the Defendant's brother?

MR. WEINGLASS: Ahh, we are not.

THE COURT: Okay.

MR. WEINGLASS: There is one other matter which is part of the Amended Petition. And it is an August 19th, 1979 news report.

THE COURT: Okay.

MR. WEINGLASS: Of a United States government lawsuit against the Philadelphia Police alleging, among others, abuse and intimidation of witnesses.

THE COURT: Counselor, it is not a proper thing before this Court at this time. If

Page 55.

you want to give it to the Supreme Court, if they are willing to consider it, fine.

MR. WEINGLASS: I would --

THE COURT: To me it is not relevant at this time. I will not accept anything about any article in the newspaper and that's it, Counselor.

MR. WEINGLASS: Okay. Then --

THE COURT: I said that's it, Counselor.

MR. WEINGLASS: There is another item which I would like to have marked, which is a Philadelphia Daily News piece of August 7th, 1995 entitled Fraternal Order of Protest.

THE COURT: Fine.

MR. WEINGLASS: Which indicates that the police were --

THE COURT: That is another newspaper article, I will not except that.

MR. BURNS: If it please the Court, Your Honor: I had something from the Daily News I was planning to put on the record so perhaps we should let these things in.

THE COURT: No, no, no, if the Supreme Court is interested in reading any news article

Page 56.

they will say so. If not --

MR. BURNS: It goes to the defense motion to seek reconsideration of the recusal motion. This was a notation in the August 9th Daily News saying that, saying that the defense encouraged the March on the Judge's house back in July.

THE COURT: I know, okay.

MR. BURNS: I thought that was an interesting statement.

THE COURT: Let him present it to the Supreme Court. If they think it is important they will put it in the record.

MR. BURNS: Thank you, Your Honor.

MR. WEINGLASS: I just thought I wanted it to be marked for identification only.

THE COURT: No, I am not marking any newspaper article for identification.

MR. WEINGLASS: Right. This goes to the current attitudes of police activity around this case.

THE COURT: I know, I know. All right, Counselor, take it up with the Supreme Court. Any other witnesses that you want to call?

Page 57.

THE COURT: Any other witnesses? I asked you a question, Counselor, I am expecting an answer. Are there any other witnesses that you intend to call?

MR. WEINGLASS: As I indicated to the Court: I am awaiting the arrival of Mr. Singletary but I'm very concerned about his condition.

THE COURT: I know that, you told me he's sick. If he doesn't come here today, that's it.

Anything else?

(Discussion was held off the record at this time among Defense Counsel.)

MS. FISK: The record should reflect with regard to Mr. Singletary, Your Honor, that according to this document which has been handed to us about 20 minutes ago, that they have been aware of his relevance to a PCRA proceeding since August the 3lst, 1990, when he allegedly made a statement to Ms. Wolkenstein in Philadelphia.

THE COURT: Okay. All right.

MS. FISK: And that today was the first time that --

Page 58.

MR. WEINGLASS: No other witnesses.

THE COURT: Then you are resting?

MR. WEINGLASS: Well, he is not available.

THE COURT: Okay. Then you are resting?

MR. WEINGLASS: Well, he is not available to us.

THE COURT: Well, then you are resting?

MR. WEINGLASS: Well, he is not here, Your Honor.

THE COURT: Then you are resting?

MR. WEINGLASS: It is up to the Court.

THE COURT: Okay. Do you want to present any evidence?

MS. FISK: Yes, Your Honor.

THE COURT: Did you give him copies of whatever you want to do?

MS. FISK: I handed an amended list of witnesses to Counsel this morning, yes.

THE COURT: Okay.

Have you had a chance to look it over?

MR. WEINGLASS: I'm sorry, I just didn't hear that.

Page 59.

THE COURT: She said she gave you a list of --

MR. WEINGLASS: Oh, yes, we have the list.

THE COURT: And --

MR. WEINGLASS: We got it this morning.

THE COURT: I know that. Well, that's when I got it too. She didn't know when you were going to finish up.

All right, do you want to call your witnesses then?

MS. FISK: Yes, Your Honor. Just as a matter of scheduling purposes, Dr. Hood is one of the witnesses on the list. In light of the hour, may I presume that Dr. Hood will not testify until after lunch? Or I could have him come and we could go straight through?

THE COURT: No, why don't you tell me when. What time is he available?

MS. FISK: I can call him and have him here in 20 minutes. I could have him come while the first two witnesses testify, as long as we then go forward I have no problem with that.

THE COURT: Don't you want to have

Page 60.

lunch? Why don't you call him after lunch, then.

MS. FISK: All right, I will.

THE COURT: Because it's 11:30 now and we haven't done a thing all morning and I would like to get moving.

MS. FISK: Right.

THE COURT: If we tried all our cases like this we'd never get rid of any backlog. So whoever you have put him on and we'll take him up after lunch.

MS. FISK: Fine, that's just what I wanted to find out: Whether you wanted me to bring him here now. I will not.

I first call Officer Joseph Brown, Your Honor.

- - - - -

Philadelphia Police Officer Joseph E. Brown,
Badge number 1247, Police Security,
Police Administration Building, having been duly
sworn, was examined and testified as follows:

- - - - -

MS. FISK: May I proceed, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Thank you.

Page 61.

Officer Joseph Brown - Direct

- - - - -

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Officer Brown, how long have you been a member of the Philadelphia Police Department?

A. Since August 15th of 1966. Approximately 29 years.

Q. And you are still an active, uniformed police officer, sir?

A. Yes, ma'am.

Q. Now, what is your current assignment in the Police Department?

A. I am assigned to the Police Administration Building Security Unit.

Q. What does that mean?

A. That's to secure, make sure that the security is up to par. Checking people that come in and out of the building. Checking the parking lots and so forth and so forth.

Q. Now, when you say the Police Administration Building, is that the building also sometimes known as the Roundhouse located at 8th and Race Streets in Philadelphia?

A. Yes, ma'am.

Page 62.

Officer Joseph Brown - Direct

Q. Now, how long have you been a member of the Police Administration Building Security Unit?

A. Approximately a year and two months.

Q. Now, when you talk about making sure that the security in the building is maintained appropriately, does your position at the Police Administration Building Security Unit include monitoring the front door?

A. Periodically, yes, ma'am.

Q. Now, when I say the front door, could you explain to the Court what the front door for the public is of the Police Administration Building?

A. There's two entrance doors.

Q. Could you move that microphone closer to your mouth, perhaps. Thank you.

A. There is two entrance doors. Right when you, right when you come through the two entrance doors there is a secured area where a police officer is stationed at. Anyone who enters, anyone who enters the doors will stop and talk to the police officer who is there and state their business. And whatever businesses it is, then the police officer tries to help them out with it.

Q. Now, those two doors that you enter into before coming into that secure area, do those two

Page 63.

Officer Joseph Brown - Direct

doors then when you exit open to the parking lot?

A. Yes, ma'am.

Q. Which is behind the PAB?

A. Yes, ma'am.

Q. Now, is that the only public door to the PAB?

A. Yes, ma'am.

Q. Now, if an individual is to enter through those public doors and go to the right, would they then go to the arraignment Court?

A. Yes, ma'am.

Q. And is that a public area?

A. They would go through either the arraignment Court area or if they were going down to post bail or someone they would go to the bail, ahh, area. And that is a public area.

Q. So anyone can enter the public doors of the PAB and turn to the right?

A. Turn to the right, right.

Q. Now, if an individual wants to, if an individual enters those public doors for the purpose of turning to the left, where would they go if they turn to the left?

A. They wouldn't go anywhere: They would be stopped, they would be stopped right at the desk by the officer that's standing right there at the desk.

Page 64.

Officer Joseph Brown - Direct

Q. If the person was able to satisfy the officer at the desk that they had legitimate business going to the left, if an individual were to be permitted through to the left, where would they find themselves?

A. Where would they find -- they would find themselves in the lobby of the PAB.

Q. And then have access to the building via use of elevators?

A. No, ma'am, not unless they would have an identification card

with them, or whether they were being escorted into the building by someone for whatever pertinent business. Or if they were coming in to do some type of maintenance. But they then, they are just not allowed to walk through, they have to come over, they have to sign into a book and state whatever room they're going to.

Q. Now, if an individual comes to the public doors of the PAB, into that secured foyer, and they are accompanied by police officers or police detectives for the purpose of going someplace in the building to give a statement or the like, do they still have to stop and check in and state their purpose with you or the other security officers at that front door?

Page 65.

Officer Joseph Brown - Direct

A. As long as the officers are in uniform, they can come through the front, they can come through the left-hand side doors. But they must stop at the front desk and sign whoever they are bringing into the building into the book and what unit they are taking them to.

Q. Now, would that signing in be done by the individual civilian or by the officers who were escorting that individual?

A. It would depend on the circumstances. Sometimes, sometimes the individual civilians will sign their names, sometimes the officers will sign their names.

Q. Based upon police directives which are in effect, is there ever a situation where the civilians could come in through those front doors with a police officer and not sign in or have their name recorded in the book?

A. No, ma'am. Under Police Commissioner's orders, if a person is being escorted into a building to go to a specific unit for an investigation or interrogation or polygraph, he has to be accompanied, the book has to be signed.

Q. Now, if the officers were to come to that front door with an individual for the purpose of

Page 66.

Officer Joseph Brown - Direct

taking them someplace for investigation and that individual was handcuffed, would they be permitted access through those front doors?

A. No, ma'am.

Q. Why is that, Officer?

A. The Commissioner's orders that no one will be permitted to come through those front doors in handcuffs.

Q. Now, those orders, you have been at the Security Unit you have told us for one year and two months. You have been a police officer for 29 years. Based upon your knowledge as a police officer, how long has that been the Police Directive and the Police Commissioner's orders?

A. Well, I also, before I came up to security I also worked the cell room for 19 years, which is part of, almost, security.

Q. Right?

A. And that's been in effect ever since I could remember.

Q. So for even 19 years before the year and two months you have been in the Security Unit --

A. Well, for the 29 years that I have been on the police force, no one has ever been allowed to take a prisoner or a person into the Police Administration

Page 67.

Officer Joseph Brown - Direct

Building through the front door.

Q. Well, now, you just told us prior to your assignment at the Security Unit you were assigned to the --

A. Police Detention Unit, which is called the cell room, if you want.

Q. All right. And the Police Detention Unit is the cell room also located in the Police Administration Building?

A. In the basement of the Police Administration Building building.

Q. And what was the period that you were a member of the Police Detention Unit?

A. Approximately 19 years.

Q. And were those the 19 years immediately preceding your one year and two months at the Security Unit?

A. Yes, ma'am.

Q. So would it be fair to say that in 1981 you were a police officer assigned to the Detention Unit?

A. I was assigned to the Detention Unit June 12th of 1975.

Q. Until sometime in 1994; would that be accurate?

A. Until 4-4-94.

Page 68.

Page 68 is missing. Attempts will be made to locate it.

Page 69.

Officer Joseph Brown - Direct

Administration Building Security Unit the custodian, the person responsible for keeping custody of all past, completed logbooks which are maintained or have been used at the front lobby of the Police Administration Building?

A. Technically, yes, because where the logbook is, there is only one key. And that's usually locked up with the sergeant's keys. And whenever anyone requests a logbook that has already been filled up, we have to get the key, have to open the cabinet up, and then get that logbook out.

Q. Was there a situation in the last several days when there was such a request for an old logbook to be, to be obtained?

A. Yes, ma'am.

Q. Do you recall when that request was received?

(Pause.)

A. Well, this request was received on 8-9 of '95. It was a subpoena for the book.

Q. And that would have been, then, this past Wednesday?

A. It would have been two days ago, yes, ma'am. For the appearance of this book to be here for yesterday, for the 10th.

Q. And based upon that request received on 8-9,

Page 70.

Officer Joseph Brown - Direct

was on 8-9 this book, or a book obtained by you from the locked facility where these old books are maintained?

A. No, ma'am, it was obtained by the sergeant.

Q. And was a photo copy of any page from that book made on Wednesday, August the 9th?

A. Not to my knowledge. I wasn't, I wasn't aware of any.

Q. All right. Do you have before you, Officer Brown, the original police logbook which covers the date of December 9th, 1981, which was maintained in the lobby of the Police Administration Building?

A. Yes, ma'am.

Q. And can you certify to the Court that this is indeed the authentic logbook which covers persons being signed in to the Police Administration Building on the date December 9th, 1981?

A. Yes, ma'am, this book covers from May 1st of '81 to October 1st of '82.

Q. So within that period is the date December 9th?

A. Right.

Q. And have you had an opportunity to look at that book and satisfy yourself that that is in fact the authentic book for that period May 1981 to

Page 71.

Officer Joseph Brown - Direct

October 1982.

A. Yes, ma'am.

Q. And is it the authentic book?

A. Yes, ma'am.

Q. Would you turn, please --

MS. FISK: Or, Your Honor, may I ask that the book be marked as a Commonwealth exhibit?

THE COURT: Well, we can't keep the book.

MS. FISK: That is true but I believe Counsel will, should have an opportunity to review the entire book.

THE COURT: Okay. We will mark it.

MS. FISK: I would agree that it can't be kept and it will have to be returned to police custody in the police unit at the completion of the officer's testimony.

MR. WEINGLASS: We have no objection so long as we could examine it.

MS. FISK: And I have no objection if Counsel wishes to examine it now before I ask any additional questions. I have no objection.

THE WITNESS: It's right there (handing).

Page 72.

(PAB entrance logbook was marked Commonwealth Exhibit C-l8 for identification.)

THE COURT OFFICER: C-18.

THE COURT: Let the record show that Counsel is looking over the logbook.

(Pause.)

MR. WILLIAMS: Your Honor, in order not to detain the proceedings, so we can proceed, we have examined it. The photocopy matches the original, but we may want to look further into this logbook at a time that won't interrupt the questioning. So with that...

MS. FISK: Okay.

THE COURT OFFICER: C-18, sir (handing).

MS. FISK: Can Officer Brown please be shown what has previously been marked as --

THE COURT OFFICER: C-17?

MS. FISK: Thank you.

THE COURT OFFICER: C-17, sir (handing).

BY MS. FISK:

Q. Officer Brown, you are being shown what has previously been marked as Commonwealth Exhibit 17. Could you tell us, please, whether or not you

Page 73.

recognize this document?

A. It's a Xerox copy of the page that I have in this book here (indicating).

Q. And does this photocopy accurately and fully reflect page 108 in this logbook?

(Pause.)

A. Yes, ma'am.

MS. FISK: May I see the log book for a moment, please.

THE COURT OFFICER: (Handing.)

MS. FISK: Thank you. I couldn't tell from the photocopy. Thank you.

BY MS. FISK:

Q. Now, does the notation, Officer, 108 on the upper, left-hand corner reflect that this is indeed the 108th page of this logbook?

A. Yes, ma'am.

Q. There are 107 pages before it dating from May 1981 up to December the 9th, 1981?

A. Yes, ma'am.

Q. And what is the final page on this logbook? Just so the record is clear as to it's total size.

A. The final page is page 247. That is the signing in. There are other, blank pages, but the

Page 74.

final signing-in page is 247.

Q. And these are persons signing in in October 1982?

A. They are... the last, the last signing in in this here is September the, September the 30th of 1982.

Q. Fine. All right, now returning to page 108. About, just a little short of halfway down, is there a notation for an individual being brought into the Police Administration Building by the name of Arnold Howard?

A. Yes, ma'am.

Q. And does it reflect that Mr. Howard was being taken up to the Homicide Unit?

A. Yes, ma'am.

Q. Does the logbook reflect the time that Mr. Howard was signed in?

A. 12:30.

Q. Does the logbook reflect what time Mr. Howard was signed out?

A. 2:30.

Q. Now, is there a notation or a signature in the column marked escort?

A. Yes, ma'am.

Q. Are you able to read that?

Page 75.

A. No, ma'am.

Q. Now explain to us, please, sir, well, first tell us: When Mr. Howard was signed into the Police Administration Building at 12:30 on December 9th, 1981, could Mr. Howard have been in handcuffs?

A. No, ma'am.

Q. And why is that?

A. As I stated earlier, it is the Police Commissioner's orders that no one will be permitted through the lobby in handcuffs.

Q. Now, is there a place to bring persons into the Police Administration Building if they're in handcuffs?

A. Yes, ma'am.

Q. And that would be through the Detention Unit?

A. That would be through the Detention Unit, commonly called the cell unit, yes.

Q. Just so the record is clear: The person who was signed into the Police Administration Building immediately before Mr. Howard appears to be someone named Jean Broadley?

A. Bradley, Broadley or Broodley, yes.

Q. Being taken to something called SD, whatever that is; is that correct?

A. Yes.

Page 76.

Q. And does it reflect that that person Jean Bradley was signed into the Police Administration Building at twelve o'clock?

A. Yes, ma'am.

Q. And the line directly below Mr. Howard on that same date, 12-9, a J. Jodes, being signed into the unit N-A-R-C -- Narcotics -- does the record reflect, or the sheet reflect that that person was being signed into the Police Administration Building at 1:00 p.m?

A. Yes, ma'am.

Q. Now, when an individual is signed in through the lobby, you have told us that that individual could not be in handcuffs?

A. Yes, ma'am.

Q. Are there occasions when individuals who are signed in, at some point after getting into the Police Administration Building, are placed under arrest and therefore are taken out of the building in handcuffs, or under arrest?

A. Not through, not through the police -- not through the lobby or not through the open areas or the public area.

Q. That is my question.

A. No, ma'am.

Page 77.

Officer Joseph Brown - Direct

Q. My question is does it occur when individuals come into the building uncharged, not under arrest, that once entering the building they are placed under arrest?

A. Okay.

Q. Could a person who once entering the building who is placed under arrest inside the building be signed out of the building through the public door?

A. No, ma'am.

Q. And why is that, sir?

A. If he was taken up to either the Homicide Unit or the Narcotics Unit, and he was placed under arrest at that time, the detectives in the Homicide Unit or at the time the Narcotics Unit would make up all their paperwork, would handcuff him, would take him from their unit to a back elevator, down into the basement and into the cell room.

Q. Now, as a member of the Detention Unit back in 1981, was that the procedure that was used back then: If an individual was arrested up at Homicide they would be taken directly down to the Detention Unit?

A. Yes, ma'am.

Q. And would such a person be able to have their name reflected as being signed out?

A. No, ma'am.

Page 78.

Officer Joseph Brown - Direct

Q. On this front logbook?

A. No, ma'am.

Q. Would there simply be no notation next to the out time on the logbook?

A. Probably not. If I'm following you right, a person comes in un-handcuffed but upon investigation upstairs they -- there shouldn't be any notation, no notation of him signing himself out.

Q. Would they be able to be signed out?

A. No, ma'am, that's what I'm saying.

Q. Okay. What, therefore, does it tell you with respect to Mr. Howard's status on December 9th, 1981 as to whether or not he was in custody of police in handcuffs at 2:30 p.m?

A. No, ma'am. It tells me that he left the Police Administration Building at 2:30 p.m.

Q. And that he was not in custody?

A. I don't think we would have let him out of the building if he was in custody, no, ma'am.

Q. Now --

MR. WEINGLASS: I'm sorry, did we just indicate p.m.? Because the document doesn't state.

MS. FISK: No, it doesn't.

MR. WEINGLASS: Pardon?

Page 79.

Officer Joseph Brown - Direct

MS. FISK: No, it doesn't.

MR. WEINGLASS: How could the witness say that?

THE WITNESS: The witness did not say 5 p.m. It was brought up from the table out there.

MR. WEINGLASS: Yes, so you don't know, Officer?

THE WITNESS: I don't know p.m. or not. I know what time it's got in the book: 2:30.

MR. WEINGLASS: It could be a.m?

THE WITNESS: I don't know that.

MR. WEINGLASS: It could be either one.

THE WITNESS: I just said I didn't know that, Counselor.

THE COURT: Why don't you wait for cross-examination instead of interrupting the proceedings.

MR. WEINGLASS: Counselor recited something that is not in the record.

THE COURT: Counselor, you have a chance to cross-examine. Bring it up then.

BY MS. FISK:

Page 80.

Officer Joseph Brown - Direct

Q. Now, Officer Brown, I now want to talk about the Detention Unit at the Police Administration Building.

A. Yes, ma'am.

Q. To which you were in fact personally assigned from the period of 1975 until 1994, which included the period of 1981. Is that the portion of the Police Administration Building building into which an individual can be brought who is in custody?

A. Yes, ma'am.

Q. If an individual is brought into the Detention Unit who is in custody, but is being brought into the building just to be taken up to a detective division to be spoken to, do they still come through that Detention Unit or do they go through the front door?

A. No, ma'am, they are coming in as a potential defendant or something in handcuffs, they come in through the cell room bay area. They go through the cell room, they pass by two metal doors, they go to a back elevator. And whichever floor the unit is on that they are going to be going to, that's what floor they go to.

Q. Does the person enter their name in a logbook down in that rear area?

A. No, ma'am.

Page 81.

Officer Joseph Brown - Direct

Q. There is no logbook down there?

A. Oh, yes? there is. But the only people that are entered in the logbook in the cell room area are the people that have been arrested.

Q. So people --

A. Charged, whoever has been charged with something. If someone is just bringing someone in in handcuffs to take them to Homicide or Narcotics or whatever special unit that may be up there, they just, they just walk him right on through the doors and up to the unit. Well, to the elevator and then up to the unit.

Q. Now, do those persons' names ever get transferred to the logbook at the front door?

A. No, ma'am.

Q. Now, isn't it correct that there are also situations where persons who are not in custody are also brought into the building through the Detention Unit if they are being brought to the building from the scene of a crime, say, via police wagon or other police vehicle?

A. Yes, ma'am.

Q. Would you explain to us how that occurs?

A. Well, if there's a, if there's a multitude of, say, witnesses and a police wagon would have, would

Page 82.

Officer Joseph Brown - Direct

happen to bring them through, they are escorted the same way as a handcuffed prisoner, but of course they are not handcuffed. They go right through the cell room, through the two doors to the back elevator and up to whatever floor that they are going to.

Q. And is that because the vehicle that brought them into the building was an official police vehicle?

A. Yes, ma'am.

Q. If there is a situation where there are many witnesses but some of them use their own vehicles to get to the Police Administration

Building, would a person who has arrived in his own vehicle be permitted to enter with that other multitude of witnesses through the Detention center?

A. No, ma'am, the person who came in their own private vehicle would have to come in through the lobby area, stop at the front desk, notify the officer that's on duty who he wants to contact. The officer on duty would contact the person, the person would come downstairs and escort this individual up to wherever they were going after signing him into the book.

Q. So that person' s name would appear in the book?

Page 83.

Officer Joseph Brown - Direct

A. Yes, ma'am.

Q. And these procedures that you are describing, are these all procedures that were in effect in December 1981?

A. They go back as far as since 1966, as far as I could remember.

Q. So as long as --

A. They have never been changed as far as I know.

Q. And in particular, in 1981 they were certainly the procedures in effect?

A. They were certainly the procedures, just as they are today.

Q. And that was my next question. As a Security Unit officer you are aware that those are still the procedures in effect with regard to the entrance into the building through the Detention Unit and through the front door?

A. Yes, ma'am.

Q. Now, as a police officer since 1966, a police officer assigned to the Police Administration Building for 19 years, and the Detention Unit, and a police officer who has remained at the Police Administration Building in the Security Unit for the last year and two months, are you familiar with the layout of the Police Administration Building in

Page 84.

Officer Joseph Brown - Direct

total?

A. Yes, ma'am.

Q. And have you had an opportunity in your 29 years as a police officer, more than 20 of them assigned to the Police Administration Building, to be familiar specifically with the layout of the Homicide Unit at the Police Administration Building?

A. Roughly.

Q. And have you been to that Homicide Unit?

A. Several times.

Q. And was that for the purpose of bringing witnesses up or prisoners up?

A. When I was working the street, yes, it was.

Q. So that was in the period before you were sent to the Detention Unit?

A. Right, before '75.

Q. And when you began working at the Detention Unit did you also have occasion throughout your 19 years to be up in the Homicide Unit?

A. Yes, ma'am, I had many occasions to go up to the Homicide Unit.

Q. And would your opportunities to go to the Homicide Unit have included the period of December 1981?

A. It's quite possible. I mean I'm not sure --

Page 85.

Officer Joseph Brown - Direct

in 1981 as I was working the cell room it's quite possible I might have had to go upstairs and deliver a message or drop something off.

Q. All right, let me ask you this, Officer Brown. To your personal knowledge, based on your more than 20 years of working at the Police Administration Building and the preceding 9 years working on the street and bringing witnesses in, has there ever been any facility at the Homicide Unit or adjacent to the Homicide Unit created for the conducting of lineups?

A. No, ma'am, not to my knowledge.

Q. Has there ever been in the Homicide Unit or at a facility adjacent to the Homicide Unit a room which has a stage and a huge piece of glass in front of it?

A. No, ma'am, not to my knowledge.

Q. Is there a stage in the Police Administration Building?

A. There is a stage in the Police Administration Building.

Q. And where is that, sir?

A. That's in the lobby.

Q. And is that as part of an auditorium?

A. That is an auditorium.

Q. And is that the only stage in the Police Administration Building?

Page 86.

Officer Joseph Brown - Direct

A. That is the only stage in the Police Administration Building.

Q. Are you aware of any facility in the Homicide Unit or adjacent to the Homicide Unit which is, has been created or established for the conducting of lineup examinations?

A. No, ma'am.

Q. With the exception of four interrogation rooms in Homicide -- I'm sorry -- are you familiar with the four interrogation rooms in Homicide?

A. I never knew how many there were, I knew there was rooms in there.

Q. And have you ever seen the inside of one of those?

A. Yes.

Q. And what are the dimensions of the interrogation rooms, approximately?

A. I guess 6-by-8, something like that.

Q. Now, do those interrogation rooms have within them a small mirror which acts as a two-way glass?

A. No, ma'am, not to my knowledge.

Q. Incidentally, how many floors is the Police Administration Building?

A. Well, counting the basement you would say four floors, but actually it's only the three floors: The

Page 87.

Officer Joseph Brown - Cross

lobby, first floor, second floor -- you don't even count the lobby as a floor -- the first floor, second floor and third floor.

Q. Okay. But am I correct that the lobby is not called the first floor, the first floor is what?

A. The lobby is the lobby. The first floor you get on an elevator or you walk a flight of steps.

Q. To go up to?

A. Right, yes, ma'am.

Q. But it is a total of four stories above street level?

A. Four stories above street level.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

MR. WILLIAMS: May I have the logbook, C-18.

THE WITNESS: (Handing).

(Pause.)

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Good afternoon, Officer Brown -- is that right?

A. Good afternoon.

Page 88.

Officer Joseph Brown - Cross

Q. Now, do you know a man by the name -- if you could -- I appreciate it -- are those prescription glasses?

A. Yes, they are.

Q. I appreciate it. Thank you. Do you know of your own personal knowledge an individual by the name of Arnold Howard?

A. No, sir, I do not.

Q. If he were to walk into this Courtroom would you know what he looked like?

A. If I don't know him I wouldn't know what he looked like, sir, no.

Q. You have never been shown a photograph of Mr. Howard?

A. No, sir, I have not.

Q. So as you sit here today, of your own personal knowledge you don't know when Mr. Howard was brought into the Roundhouse?

A. I don't know whether it was -- oh, you're right, of my own personal knowledge, right.

Q. You are relying on recordings in this logbook C-18?

A. Not recordings. I am of the signing-ins, yes.

Q. Right. Now, does it indicate in C-l8 --

MR. WILLIAMS: And I will give it back

Page 89.

Officer Joseph Brown - Cross

to you so you can refer to it (handing).

THE WITNESS: I will be able to put my glasses back on to see?

MR. WILLIAMS: Yes, certainly for that.

BY MR. WILLIAMS:

Q. Is there a recording on that logbook for December 9th, 1981 at 5:35 a.m., the fact that a person by the name of Albert Magilton was brought into the Roundhouse?

A. 5:35 a.m. on the...

Q. On 12-9-81.

(Pause.)

A. 5:30 in the a.m?

Q. Yes.

MS. FISK: Your Honor, I would agree there is no such indication.

THE WITNESS: This, this, I can --

BY MR. WILLIAMS:

Q. The answer is --

A. The answer is the first a.m. was 10:30 a.m., it wasn't the gentleman that you just --

Q. The answer is that there is no one signed in for 5:35 a.m?

A. A.M.

Page 90.

Officer Joseph Brown - Cross

Q. And is there anywhere on that page that you are referring to, 108, where it indicates that an individual by the name of Albert Magilton was brought into the Roundhouse?

MS. FISK: Well, objection, Your Honor, to the form of the question. It would only relate to whether Albert Magilton came into the Roundhouse through the public door.

MR. WILLIAMS: Well, and if it is not listed here then that's what it would reflect.

MS. FISK: That is correct, but let the question be limited to through the public door, not through any other.

MR. WILLIAMS: I am only asking if it is recorded here.

THE COURT: Okay.

THE WITNESS: Not that I could see.

BY MR. WILLIAMS:

Q. You certainly couldn't answer that question from your own personal knowledge; isn't that true?

A. That's true.

Q. You would have to rely on page 108 of your logbook?

A. I would, yes.

Q. Okay. Do you know a law enforcement officer

Page 91.

Officer Joseph Brown - Cross

by the name of Culbreth: C-U-L-B-R-E-T-H?

A. How do you spell --

Q. Culbreth: C-U-L-B-R-E-T-H.

A. I believe I know him, yes. Know the detective, yes.

Q. Is there an indication that an individual by the name of Culbreth brought in a civilian to be interviewed at the Roundhouse?

A. On what date?

Q. On 12-9.

A. No, sir.

Q. Okay. Now, is there an indication -- again, for the sake of brevity I am going to direct your attention to 12-9-81 -- is there a notation for 12-9-81 as to whether an individual by the name of Michael Mark Scanlan was brought into the Roundhouse?

(Pause.)

A. No, sir.

Q. But you will notice down below on December 10th that an individual by the name of Mr. Scanlan was brought into the Roundhouse; isn't that true?

A. On December the l0th?

Q. On December 10th. Four lines up.

A. Four lines up from the bottom?

Q. From the bottom, yes.

Page 92.

Officer Joseph Brown - Cross

A. Well, if you say that last name is Scanlan.

Q. Scanlan?

A. I would have to take your word because I can not make out what the last name is. The first name is Michael but I can't make out what the last name is.

Q. Okay, it appears to be an S and then a C and then a --

A. It could be an S-E-A.

Q. Okay. Is there a notation there for 12-9 as to whether an individual by the name of Cynthia White was brought into the Roundhouse?

A. This is 12-9 now?

Q. 12-9.

A. No, sir.

Q. And what about an individual by the name of Robert Chobert?

(Pause.)

A. Not that I see in the book.

Q. And what about an individual by the name of Dessie Hightower?

A. No, sir.

(Discussion was held off the record at this time among Defense Counsel.)

BY MR. WILLIAMS:

Page 93.

Officer Joseph Brown - Cross

Q. What about an individual by the name of Robert Pigford?

A. No, sir.

Q. What about an individual by the name of William Singletary?

A. No, sir.

Q. What is the first, on December 9th, what time is the first sign in?

A. On December 9th, the time of the first sign in is 10:30 am.

Q. Were you open for business before that?

A. I don't quite get the question when you say open for business.

Q. Was the building open?

A. Yes, sir.

Q. And were there officers at the entrance door?

A. Yes, sir.

Q. And if people were brought into that front door they would be signed in here; is that your testimony?

A. If people were brought in through that entrance door to go anywhere other than to the arraignment Court or the bail clerk, and came in through the left, if they were escorted by police officers or detectives, they would be signed into

Page 94.

this book.

Q. So people who, if people were brought in earlier in the morning on December 9th, say between the times of 4:00 and 6:00 a.m., and they're not reflected in this logbook, how would they enter the building?

A. They could have entered the building if they came in in police -- if it was a multitude of people and they came in in a police van through the police Detention Unit. Which then they would walk through the police Detention Unit, walk through two metal doors after they are opened by the officer, go to an elevator and take the elevator or the stairs to whichever floor the unit that they were going to was on.

Q. And as you testified here today, you can't tell us if Mr. Howard, Arnold Howard was transported in a police van and taken in in the manner that you have just described?

A. Arnold Howard's name is in this book.

Q. I'm asking you: Can you sit here and testify today that sometime earlier on December 9th, 1981, perhaps between the hours of 4:00 and 6:00 a.m., whether Mr. Howard was brought in in the manner that you just described, can you tell us that?

Page 95.

A. Not if his name's in this book. In the manner that I just described, anyone coming in through the cell room in a multiple as witnesses of something are taken upstairs, their names are not entered into this book.

Q. I understand that. Can you tell us as you sit here today, whether among those multitude, or apart from that multitude, whether Mr. Howard was brought to the Roundhouse between the hours of 4:00 and 6:00 a.m. in the manner that you just described?

A. Not if his name is in this book, sir.

Q. Of your own personal knowledge, Officer Brown, that's what I am asking.

A. If his name is in this book he had to be either brought in through the lobby area by a uniformed officer or by a detective.

Q. Okay. Let's explore that. What you are saying is that at 12:30 or thereabouts, Mr. Howard was brought in through the front door. Right?

A. Excuse me? I'm sorry.

Q. On December 9th, 1981, you're saying that Mr. Howard was brought in through the front door at approximately 12:30 or thereabouts?

A. Yes, sir. According to this logbook.

Q. But you can't tell us as you sit here today

Page 96.

whether Mr. Howard was there beforehand, taken out of the Roundhouse and then brought back, can you?

A. Whether he was brought into the building in which manner?

Q. Well, in the manner that you described where they are not recorded, perhaps in the same manner that all of these other individuals were brought in (displaying)?

A. In other words, what you are trying to say is that Mr. Howard may have been brought in with all these other individuals?

Q. I'm asking you, I mean.

A. I can not give you that of my own personal knowledge, I was not there.

Q. That is precisely what I am asking. So you can't tell us if Mr. Howard was there earlier, taken out of the building, and then brought in through the front entrance door at 12:30, can you?

A. No, sir, I can not.

Q. Precisely. Now...

(Discussion was held off the record at this time among Defense Counsel.)

BY MR. WILLIAMS:

Q. Now, as you indicated earlier, the individual by the name of Mr. Scanlan was not recorded as

Page 97.

entering on 12-9-81, right?

A. If that's what I said, sir, that must have been what I meant.

Q. But it does indicate that sometime thereafter, on the following day there appears to be a signature by a man named M. Mark and then a last name beginning with an S, it could be an E or a C, and then an A and then a N? Four lines up?

A. I see it.

Q. Okay. Now, you testified that in addition to individuals who were brought in en mass, and they are not recorded in this logbook, that people who are handcuffed are also not recorded in this logbook; isn't that right?

A. It's true.

Q. So you can't testify of your own personal knowledge as to whether Mr. Howard was ever in handcuffs on December 9th, 1981 before 12:30?

A. Before he was signed into this logbook?

Q. Yes. Of your own personal knowledge?

A. Of my own personal knowledge I could tell you this: If he was in handcuffs he would not have been signed into this logbook. That, that is my personal knowledge.

Q. Can you tell us of your own personal knowledge

Page 98.

whether Mr. Howard was brought in in handcuffs at some time on December 9th, 1981, before 12:30?

MS. FISK: Objection.

THE COURT: I think he's already said that, Counselor. You are going over it a million times. He says only looking at this book can he tell whether he came in the front door.

MR. WILLIAMS: Right.

THE COURT: He couldn't come in the front door in handcuffs, period.

BY MR. WILLIAMS:

Q. Now, there is a logbook for those individuals who are brought into the -- I think you called it the Detention Unit?

A. If they're incarcerated.

Q. If they are in handcuffs, you mean?

A. No, if they are incarcerated.

Q. What about people who are in custody that is in handcuffs?

A. If they are to be incarcerated in the cell room.

Q. Yes?

A. Then their names will go in the logbook. But if they are going to a special unit in handcuffs,

Page 99.

just like I explained earlier, walking through, they go to the unit where they are going to go to and then that's where the processing starts.

Q. And processing starts. Tell me what, tell me about that processing?

A. Which, whatever they may have been arrested for, the investigation starts on that charge.

Q. Is there a logbook in the Homicide Unit?

A. I would imagine so, I don't know. I don't go snooping around in the Homicide Unit.

Q. So you can't tell us if people brought up to the Homicide Unit for questioning were signed in in some fashion?

A. In the Homicide Unit per se?

Q. In the Homicide Unit?

A. No, sir, I could not.

Q. Can you tell us... by the way, you said the people who were going to be incarcerated and brought in through the Detention Unit are recorded in a logbook?

A. No, sir, I -- you said people are brought into the cell room in handcuffs.

Q. Yes.

A. My statement was once they have been incarcerated already. Which means have been

Page 100.

Officer Joseph Brown - Cross

arrested, not being investigated. Which have been arrested and charged with a charge.

Q. Okay. Those individuals who are arrested and brought into the Detention Unit, is there a logbook to record their entry into the Roundhouse?

A. The ones that have been arrested and come down into the cell room there is a logbook from the time that they enter to the time that they leave.

Q. Do you have access to that logbook?

A. For 19 years I did.

Q. Okay. Has anyone asked you to produce that logbook?

A. No one asked me to produce a logbook.

Q. Has anyone asked you to look into whether there is a logbook for the Homicide Unit?

A. The Homicide Unit does not fall under my jurisdiction, sir. So no one would ask me -- it would be...

Q. So you were only asked to bring in C-18, the logbook for the front door that doesn't contain the names of numerous witnesses involved in this case? Is that your testimony?

A. I brought in the book that I was subpoenaed to bring in.

Q. Okay. Now, on the entry for Mr. Howard for

Page 101.

Officer Joseph Brown - Cross

December 9th, it indicates a time out as 2:30, right?

A. Yes, sir.

Q. Does it indicate the date at which he is released?

A. It would be the same date, I would imagine, being it's on the same line.

Q. You would imagine. What about whether it's a.m. or p.m?

A. It doesn't have that on here, sir.

Q. Look at the line above that for Jean Bradley. Does it indicate whether she was released in p.m. or a.m?

A. Released, that she was released at 1:00 p.m.

Q. And what about the person afterwards, after Mr. Howard: Does it indicate whether that person was signed out in the a.m. or p.m?

A. 1:15 p.m.

Q. And the individual after that, the individual by the name of Mr. Love or Miss Love, does it indicate when that person was signed out?

A. No, sir, it doesn't.

Q. No sign out time?

A. No, sir.

Q. And can you explain that?

A. Yes, sir. Well, maybe I can and maybe I

Page 102.

Officer Joseph Brown - Cross

can't. Maybe the reason --

Q. I don't want you to speculate, sir.

A. The reason that with Love it looks like she was taken to Narcotics, right. She may have been charged with a narcotics charge up at Narcotics. If she was charged with a narcotics charge up at Narcotics, she would not have signed out in the logbook, she would have been taken down to the cell room and put into the cell room's log. That's the only explanation I could give you on that.

Q. Okay. So of your own personal knowledge, you can not tell us whether Mr. Howard was released at 2:30 a.m. or 2:30 p.m. because, unlike the other individuals listed here, it doesn't specify a.m. or p.m?

A. No, sir, it doesn't specify a.m. or p.m. I am not going to speculate.

Q. Now, you said that some individuals are brought in en mass and therefore they are not signed in, right?

A. Yes, sir.

Q. Okay.

MS. FISK: Your Honor, he testified that people who come in through the Detention Unit --

Page 103.

Officer Joseph Brown - Cross

THE WITNESS: Detention unit.

MS. FISK: -- are not signed in, whether they are brought in individually or en mass. That's what he said.

THE COURT: He doesn't understand how the system works, so.

BY MR. WILLIAMS:

Q. Through the Detention Unit they are not signed in?

A. Right.

Q. Okay, terrific.

A. They are not signed in through the logbook.

Q. Right. So for individuals brought in through the Detention Unit, referring to this logbook is of absolutely no assistance to us as to when a person is brought into the Roundhouse; isn't that right?

A. If they are brought in en mass as you are saying in a wagon through the cell room that go up to a special unit, no.

Q. Or if they are just brought in through the Detention Unit, this doesn't help us to determine if they were brought in through the Detention Unit, does it?

A. No, it would not.

Q. Now, on December 15th, 1981, can you refer to

Page 104.

Officer Joseph Brown - Cross

your logbook for 9:45 p.m.

MS. FISK: Objection, Your Honor: It goes beyond the scope of direct examination.

MR. WILLIAMS: It goes to the reliability of what he is testifying to. They are relying on the logbook and I am entitled to impeach that.

THE COURT: Well, only impeach it as far --

MR. WILLIAMS: It goes to the weight of this evidence.

THE COURT: As far as this case is concerned.

MR. WILLIAMS: And I am asking about a particular witness in this case.

THE COURT: Well, who is on December 15th?

MR. WILLIAMS: Veronica Jones.

THE COURT: Oh, she signed in?

MR. WILLIAMS: Well, let's find out.

THE COURT: Well, he wants to know if on December 15th Veronica Jones signed in.

(Pause.)

THE WITNESS: Not that I can see in this book. I could have overlooked it.

Page 105.

BY MR. WILLIAMS:

Q. What about for 9:45 p.m?

MS. FISK: I'm sorry, I didn't hear the question.

MR. WILLIAMS: What about for 9:45 p.m.

THE WITNESS: The 15th?

THE COURT: He said the 15th.

MR. WILLIAMS: Yes, December 15th.

MS. FISK: Your Honor, if Counsel would look at an interview of Veronica Jones which was taken on December 15th, '81, it makes it very clear that the place of interview was 1056 Everett Street, which so far as I know is not the Police Administration Building.

THE COURT: Is that an answer for you?

MR. WILLIAMS: No, I am asking if it is recorded in that logbook.

THE WITNESS: I said I do not see it in this book.

MR. WILLIAMS: All right.

(Discussion was held off the record at this time among Defense Counsel.

BY MR. WILLIAMS:

Q. Now, in your extensive experience at the

Page 106.

Roundhouse, are there ever occasions where an individual is brought in through the Detention Unit either in handcuffs or not in handcuffs and then permitted to leave the Roundhouse?

A. From the Detention Unit?

Q. Yes.

A. No.

Q. Are they ever permitted to leave the Roundhouse through any doors?

A. Are you saying a person that is brought into the Detention Unit proper to stay in the Detention Unit?

Q. No, what I am asking you: Are there ever occasions where an individual is brought in through the Detention Unit -- okay?

A. Right.

Q. -- and therefore is in the Roundhouse, and then permitted to leave at some point?

A. An individual that comes into the Detention Unit?

Q. Yes?

A. And is going to another unit in the building?

Q. I am just saying that they are -- by virtue of being in the Detention Unit they are in the Roundhouse; am I right?

Page 107.

THE COURT: Counselor, please. What he is saying is they come in through the Detention Unit, they go to, say, Homicide, now they are going to be released, which way do they go out? Which way, that's what he wants to know.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: If you would ask me I would have told you that.

THE WITNESS: They go out through the way that the Homicide detective will escort them, down out through the front door. They will not come back through the Detention Unit.

BY MR. WILLIAMS:

Q. Nonetheless, there are occasions where someone is brought in through the Detention Unit and then permitted to leave the Roundhouse? That's all I'm asking.

MS. FISK: Just answer that.

THE WITNESS: I would imagine, I would imagine there are several occasions where a person is brought in through the Detention Unit and upstairs and then permitted to leave the Roundhouse.

BY MR. WILLIAMS:

Page 108.

Q. And a person who leaves the Roundhouse could very well be brought back into the Roundhouse; isn't that true?

A. Yes, sir.

Q. And that person brought back into the Roundhouse could be brought in through the entrance that's reflected in C-18?

MS. FISK: And that would be great if that's what this witness testified to three days ago. But his testimony was that he was brought in via police wagon in handcuffs, remained there for 24 hours, was taken out of the building via police wagon in handcuffs to another police station, taken to another police station, taken back to the Police Administration Building in handcuffs, taken upstairs and then released 72 hours later.

If, on the other hand, he had testified that he was brought into the Roundhouse in handcuffs, taken upstairs, taken downstairs, had his handcuffs taken off, was taken through the front door, taken upstairs and then held for 72 hours, that question would make some sense. Otherwise, it is irrelevant.

MR. WILLIAMS: What Ms. Fisk's

Page 109.

impassioned speech indicates is that this individual testified to an experience 13 years ago where he was rousted out of bed.

THE COURT: I understand that, but, Counselor. I understand --

MR. WILLIAMS: Your Honor permitted her to speak and then you are now cutting me off.

THE COURT: I just want to explain what he has been saying all along. If he comes in in handcuffs --

MR. WILLIAMS: Yes.

THE COURT: -- he does not come through the front door, period.

MR. WILLIAMS: Precisely.

THE COURT: He has to go through the back door through the Detention Unit.

MR. WILLIAMS: Right.

THE COURT: Now, if he is going to be released he could go out either the front door or he can go out the back door, either way.

MR. WILLIAMS: Right.

THE COURT: And that's all he could tell you because he wasn't there. He is not the officer that brought him in.

Page 110.

MR. WILLIAMS: That's precisely correct.

THE COURT: He's already said that so what are we --

MR. WILLIAMS: And the point of my question is if we have a witness who is testifying to an event some 14 years ago who testified to being brought in, hustled out, brought back in, and it's a very disorienting experience when you are rousted out of bed.

THE COURT: Okay, Counselor, that is fine for argument to the Court later on, but as far as this witness is concerned, he doesn't go out in handcuffs through the front. If he is still in handcuffs you are still going to go out the Detention Unit.

MR. WILLIAMS: That is precisely my point. So I am in a quandary as to the weight of this witness. Why would they bring in a witness who could not testify as to who is brought into the Detention Unit?

THE COURT: She just wants to show how that book works.

MR. WILLIAMS: Oh.

THE COURT: And evidently, somebody by

Page 111.

Officer Joseph Brown - Cross

the name of Arnold whatever his name is came in that morning not in handcuffs. Whether he left in handcuffs, whether he was ultimately charged, he didn't go out, he wouldn't have gone out that way if he's charged. Because then they would have taken him right downstairs. They would have signed him in that book, put him right in the cell room and that's where he would stay.

MR. WILLIAMS: Right.

THE COURT: That's all. You could have asked me, I could have told you that.

MR. WILLIAMS: I appreciate the education on Philadelphia Police procedure.

THE COURT: Well, ask somebody who knows something about Philadelphia Police procedure and you would know this.

MR. WILLIAMS: I am learning it right now.

THE COURT: We are not here for educational purposes, do that on your own time. It is 12:30 already.

MR. WILLIAMS: I didn't call this witness, Your Honor.

THE COURT: I know that. But go ahead.

Page 112.

Officer Joseph Brown - Cross

BY MR. WILLIAMS:

Q. Now, do you know a detective by the name of D'Amato?

A. No, sir, not offhand.

(Discussion was held off the record at this time between Defense Counsel.)

BY MR. WILLIAMS:

Q. And what about Detective Williams, do you know a Detective Williams?

A. Several Detective Williams. Where does he work at?

Q. I'm sorry?

A. There are several Detective Williams I would imagine in the Police Department. Do you know --

Q. What about a Detective Williams who was on duty December 9th, 1981?

A. You would still have to tell me what Williams you're talking about.

Q. Now, you indicated that there is a stage in the Roundhouse?

A. Sir, I indicated that there is a stage in the auditorium.

Q. Is that in the Roundhouse?

A. It is, yes, sir, in the lobby of the Roundhouse. In the auditorium.

Page 113.

Officer Joseph Brown - Cross

Q. Okay. And are there one-way glass mirrors? I think you might have testified to that on direct.

A. I did. There is none.

Q. That there is none. Okay. And is it your testimony that no lineups are conducted in the Roundhouse ever?

A. As far as my knowledge is there's no lineups conducted in the Roundhouse ever.

Q. Okay. Can you testify of your own personal knowledge as to whether any identification procedures are used up in the Homicide Unit?

MS. FISK: Objection, Your Honor. The officer was called to discuss the physical layout at Homicide, not the procedures.

MR. WILLIAMS: He was asked on direct about --

THE COURT: He was asked where they conduct the lineups. And it's not in the Roundhouse, Counselor.

BY MR. WILLIAMS:

Q. Do you know of your own personal knowledge whether any identification procedures are ever used up in the Homicide Unit?

MS. FISK: He is not a Homicide detective.

Page 114.

Officer Joseph Brown - Cross

THE WITNESS: Pertaining to lineups, no.

BY MR. WILLIAMS:

Q. Of your own personal --

A. As far as I know there's never been a lineup up in Homicide.

(Discussion was held off the record at this time between Defense Counsel.)

BY MR. WILLIAMS:

Q. Now, so let me understand this. Your understanding is that there are no lineup facilities in the Roundhouse, right?

A. Yes, sir.

Q. And it is your understanding that no lineups are conducted in the Roundhouse?

MS. FISK: I object to that question, Your Honor. The witness was offered to discuss the physical plant, that there is no physical facility.

THE COURT: I know that.

MS. FISK: The officer is a member of the Detention Unit and the Security Unit and a 16th District Officer --

THE COURT: Just a minute. Where do they conduct the lineups; do

Page 115.

Officer Joseph Brown - Cross

you know?

THE WITNESS: As far as I'm concerned -- as far as I know they conduct the lineups up at the prisons.

THE COURT: Up at the prisons?

THE WITNESS: That's as far as I know.

THE COURT: That's my knowledge too.

BY MR. WILLIAMS:

Q. Are there any station houses where lineups are conducted?

A. As far as my knowledge is they conduct the lineups up at the prison.

Q. So let me be clear, then. If somebody were to be placed in a lineup who was first taken to the Roundhouse, that person as far as you know would have to be taken out of the Roundhouse and transported to another location; isn't that true?

A. For, for a lineup?

Q. For a lineup.

A. I would imagine it would have to be true, if it was for a lineup before a charge was placed against them.

Q. Precisely.

MR. WILLIAMS: You have been very helpful, Officer Brown. Thank you.

Page 116.

THE COURT: Do you have any further questions?

MS. FISK: No, Your Honor.

THE COURT: All right, we will take a luncheon until --

MS. FISK: I had another officer present.

THE COURT: Oh. Will he be long?

MS. FISK: We could break, Judge. Could I just check with him and make sure that he is available this afternoon?

THE COURT: Okay. All right. Where is he?

MS. FISK: Well, he is he probably outside.

(Pause.)

MS. FISK: Your Honor, this is somebody taking time from his business. He would prefer getting on this morning.

THE COURT: All right, we will put him on.

MS. FISK: Thank you, Your Honor. The Commonwealth would call Edward D'Amato, please, Your Honor.

(Pause.)

Page 117.

Cap. Edward D'Amato, Ret. - Direct

THE COURT: All right, I'm here, let's go.

MS. FISK: Thank you, Your Honor.

Philadelphia Police Captain Edward D'Amato, Retired, having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Good afternoon, Captain D'Amato. How many years ago did you retire from the Philadelphia Police Department?

A. About three years and two months.

Q. And how many years of service had you had on the Philadelphia Police Department at the time of your retirement?

A. 23 years.

Q. Now, we know that you were a captain at your retirement. What was your assignment in the Philadelphia Police Department on December 9th, 1981?

A. I held the rank of Detective assigned to 3 squad, West Detective Division, 55th and Pine Street.

Q. Now, Captain D'Amato, did you have occasion on

Page 118.

Cap. Edward D'Amato, Ret. - Direct

December 9th of 1981 to be sent to the Homicide Division to assist in any investigation?

A. Yes, ma'am, I did.

Q. Could you tell us how that came about?

A. I was working the midnight-to-8:00 a.m. tour of duty at West Detectives. And we received a phone call that a police officer had been shot and killed in the 1200 block of Locust Street. And that Homicide was requesting one detective from each of the seven Detective divisions to come to Homicide and give them a hand.

Q. And you were the person from West Detectives assigned?

A. Supervisor, yeah, assigned me to go to Homicide.

Q. Now, do you recall what time it was that you arrived at the Homicide Division?

A. Mid-morning somewhere, maybe 4:00 or 5:00 a.m., I don't recall.

Q. And did you receive any, did you receive any assignment with regard to an individual named Arnold Howard?

A. Yes, ma'am.

Q. And what was the assignment which you received?

Page 119.

Cap. Edward D'Amato, Ret. - Direct

A. Myself and Detective Williams from Central Detectives, he was I believe detailed then from Central Detectives, we were assigned to go out to Richard Allen Homes to pick up a witness and bring him to Homicide and then interview him.

Q. Now, were you given instructions as to how to pick up that witness?

A. Yes, ma'am.

Q. And what were those instructions?

A. The best I could recall it we were told not to go to his apartment, that he didn't want the police to be seen at his apartment. And that we were to pick him up on the street, there was a designated spot out there somewhere, I can't recall the exact location, where we would park and he would get in the car.

Q. Had you made those prior arrangements with Mr. Howard or had, to the best of your knowledge, someone else made those arrangements?

A. Someone else made it and it was just forwarded to me and Williams.

Q. Now, having picked up Mr. Howard -- well, let me ask you this. On the day that you had contact with Mr. Howard, did you have occasion to make a writing regarding your contact with Mr. Howard?

Page 120.

Cap. Edward D'Amato, Ret. - Direct

A. If you're referring to the interview I took of him at 8th and Race, yes, ma'am.

Q. Was that interview with Mr. Howard recorded on the date that you came in contact with Mr. Howard?

A. Yes, ma'am.

Q. And on the date that you recorded the information regarding your contact with Mr. Howard, was that information accurate when you recorded it?

A. Yes, ma'am.

MS. FISK: May I ask, please, that the captain be shown what has previously been marked Commonwealth Exhibit 16 (handing).

BY MS. FISK:

Q. Recognizing that it has been some 14 years, Captain D'Amato, if you need to utilize that to answer my precise questions as to time please do so.

Utilizing what has been marked as Commonwealth Exhibit 16, first let me ask you: Is that the statement you took from Mr. Howard on December 9th, 1981?

A. Yes, ma'am, it appears to be a photostatic copy of the five-page statement I recorded.

Q. And you say you recorded it: Are you the person who typed it?

A. Yes, ma'am.

Page 121.

Cap. Edward D'Amato, Ret. - Direct

Q. Utilizing that statement, can you tell us, please, the time that you first came in contact with Mr. Howard when you and Detective Williams went to pick him up at this prearranged location near the Richard Allen Homes?

A. I don't believe this interview record reflects the time we met him on the street. But it does reflect the time that I brought him, me and Williams brought him to 8th and Race.

Q. And what time was it that you brought him to 8th and Race?

A. Ahh, according to my interview sheet it was 12:35 p.m., December the 9th, 1981.

Q. Would you look at the date, the time listed directly below that?

A. Yes, ma'am. Oh, I'm sorry. Brought in by. I stand corrected: It's 12:25 p.m., December the 9th, '81.

Q. To the best of your recollection, after picking up Mr. Howard near the Richard Allen Homes, did you go, did you and Detective Williams and Mr. Howard go directly to the Police Administration Building?

A. Yes, ma'am, it was a very short ride.

Q. About how long?

Page 122.

Cap. Edward D'Amato, Ret. - Direct

A. Ahh, 15 minutes, I would say, maybe 20, tops.

Q. So would it be fair to say that you picked up Mr. Howard at some moments after noon on December 9th, 1981?

A. I would guess that sometime after 12:00 noon we picked him up.

Q. Now, your statement reflects that he was brought into the Roundhouse by yourself and Detective Williams at 12:25 p.m?

A. Yes, ma'am.

MS. FISK: Can Captain D'Amato please be shown the logbook which was marked and has been retained here temporarily. And

specifically turn to page 108 for the Captain.

THE COURT OFFICER: (Handing).

BY MS. FISK:

Q. Captain, if you turn to page 108.

A. 108?

Q. Yes, sir.

A. Yes, ma'am.

Q. I call your attention to about halfway down on page 108 of this logbook which has previously been marked and identified.

A. Yes, ma'am.

Q. Do you see on 12-9, under the column name, the

Page 123.

name Arnold Howard written in?

A. Yes, ma'am, I do.

Q. And whose handwriting is that, sir?

A. That's my handwriting.

Q. And did you record Mr. Howard's name there when you and Detective Williams were bringing him into the Police Administration Building?

A. I'm sorry, ma'am, I didn't hear you.

Q. Did you record Mr. Howard's name on that line on page 108 of the logbook when you and Detective Williams were bringing Mr. Howard into the Police Administration Building on December 9th, 1981?

A. Yes, I did.

Q. And did you write next to his name the unit where you were taking him?

A. Yes, ma'am.

Q. And what did you write?

A. H-O-M: Abbreviation for Homicide.

Q. And did you record in the time in column the time that you were taking Mr. Howard into the Roundhouse?

A. Yes, ma'am.

Q. And what time did you record?

A. 12:30.

Q. And was that 12:30 p.m., as reflected when you

Page 124.

compare it to Commonwealth Exhibit 16, was that 12:30 p.m?

A. Which was the same, yes, ma'am.

Q. Okay. Now, the last column, which is the escort column, could you tell us what that says?

A. That's my signature, my last name.

Q. It says D'Amato?

A. Yes, ma'am.

Q. All right, now the out column, if you would look at that for a moment. What does that say?

A. 2:30.

Q. Do you know of your own personal knowledge whether or not that is a 2:30 p.m., 2:30 a.m., whether or not that's 2:30 on December 9th, 1981?

A. Best recollection I have of that entire incident was that that was 2:30 p.m., two hours later.

Q. How is it is that you recall that?

A. I've been trying to remember two days to recall everything I did that day. And that is my recollection. I do have a clearer recollection of picking him up and interviewing him. The only thing I could tell you is that if that would have been the next 2:30, which would have been 14 hours later, I would have noted it. And at 2:30 a.m. that day, I

Page 125.

was either home in bed sleeping or back at West Detectives.

Q. With the exception of that one date -- December 9th, 1981 -- that you were sent to the Homicide Division to assist in the investigation of Officer Faulkner's murder, did you return to the Homicide Division in the subsequent days: On the l0th, the llth, the 12th?

A. No.

Q. You only worked in Homicide that one day to assist the detectives?

A. I believe it was that one day, that's it. We usually go down just as help, basically, go-fors to do a lot of the leg work that might not or may be important while Homicide detectives are doing the actual field work. Or just assist them. And it's, especially since it is something that didn't happen in my division, I would have been back to West Detectives.

Q. When you say unusual, you are talking about whenever a police officer is shot and killed?

A. Or even a homicide from your division you'll go down and work with Homicide. But that's usually ones in your division. A major case like this with a police officer being killed, it just so happened that

Page 126.

they wanted seven detectives and got them from each division.

Q. Now, when you picked up Mr. Howard and brought him into the Police Administration Building and up to the Homicide Division, was he at any time placed in handcuffs?

A. Placed in handcuffs?

Q. Yes, sir.

A. No.

Q. Now, after you went up to the Homicide Division with Mr. Howard, do you recall how it came to be that you recorded a statement of Mr. Howard's?

A. The best I could recall was that we had told somebody in Homicide that we had Arnold Howard and we brought him in and somebody told us to interview him. Whether it was a supervisor, the assigned detective, I don't recall.

Q. Now, had you been provided any information regarding Mr. Howard so you knew what questions to ask?

A. Yes. Some.

Q. Now, did you conduct that interview of Mr. Howard, if you recall, in a separate interrogation room or out in the open area?

A. I can't recall that.

Page 127.

Q. Let me ask you this, Captain. As a matter of your practice, in the 23 years that you were a member of the Philadelphia Police Department, on how many occasions did you have occasion to record a statement of a person you were interviewing?

A. An estimate? I guess 500 to a thousand maybe.

Q. And is it your custom --

A. Or more -- I'm sorry -- probably more. Just four years in West Detectives I probably did more than that, yeah.

Q. And as a matter of your custom and practice as a police officer, Detective -- I assume you went through sergeant, lieutenant before you got to captain -- was it your practice to record verbatim the questions you are asking the person you were interviewing and to record verbatim the answers that individual gave you?

A. Yes, ma'am, I do the best I can. I always had a policy, I'm not the greatest typer in the world, but I would type my question, read it to whoever I was interviewing, and instructing him to go slow because I'm not the best typer and do my best to get it word-for-word.

Q. And did you do this to Mr. Howard on December the 9th, 1981?

A. Definitely.

Q. Could you then, beginning with the first -- I'm sorry. As a matter of your custom and practice, after you completed recording an interview with someone, did there sometimes come an occasion where you would -- strike that. After you completed recording an interview with a person that you were interviewing, what was your custom and practice with regard to giving that individual an opportunity to review it and asking that individual to fix their signature onto the pages of that interview?

A. Well, first off, I would always ask the person whether they could read and write the English language, how far they went in school. But it was my experience that some people were naturally embarrassed to tell you if they could not read and write the English language and would answer affirmatively to say yes. So I would tell them to read back the statement. I would tell them that if it's everything you said I would like you ta sign the bottom of each page. If there is any changes you want to make we'll make them. You make the change yourself in your handwriting and initial it. And then I would usually tell them -- not usually -- always tell them to read out loud at least the first

few lines of the interview so I knew myself that whoever was reading the statement could read and write the English language and could comprehend exactly what I had put on paper.

Q. And was that what you did with Mr. Howard?

A. Pardon me, ma'am?

Q. Is that what you did with Mr. Howard?

A. Yes.

Q. Now, was it your practice to ask the individual, after giving, after having him read a portion of it out loud and address it themselves, to ask the individual whom you had interviewed to place their signature on the bottom of each page of the interview that you took?

A. Yes. And I would always tell them -- not actually the bottom of the page -- I always wanted them to sign it at the last typed line, whether that be a question or an answer. So that there would never be a question whether anything was added between the last line of the typing and someone's signature.

Q. Now, in Commonwealth Exhibit C-16, the interview of Mr. Howard, is that Mr. Howard's signature on the bottom of page l?

A. Yes, ma'am, I remember him signing it, I could

tell you that.

Q. I'm sorry?

A. I remember him signing it.

Q. And did Mr. Howard place his signature on the bottom of all of these pages?

A. Ahh, yes, ma'am, he did. And twice on page 5.

Q. And can you explain to us why his signature appears twice on page 5?

A. The best I could recall, we had our interview reviewed by someone in Homicide, it's usually a supervisor. And a question had come up about him possibly being involved in, I think it was an auto accident. Yeah, it would be involved in an auto accident and it was kind of a loose end that we wanted covered. Brought him back and told him that we just wanted to cover one loose end and asked him a few questions about this auto accident. We were trying to get some kind of reasonable explanation why paperwork in his name was found in Danny's -- excuse me -- Officer Faulkner's clothing.

Q. Okay. Well, what I would like you to do, please, with respect to the first three pages, please, of this document, Captain, is to read to us the questions that you asked of Mr. Howard and the answers that he gave you.

A. Yes, ma'am.

Q. Starting with the first question, please.

A. Question: Arnold, last night a police officer was shot and killed at 1200 Locust Street. What can you tell me about the shooting.

Answer: Nothing.

Question: Arnold, I am going to show you a photostatic copy of an application for a duplicate driver's license. What can you tell me about this application. In parentheses, Howard was then shown by Detective D'Amato a copy of Bassett's application for duplicate operator's license made out in his name.

Answer: It's mine.

Question: When and where did you get it.

Answer: I got it from Bassett's at Broad and Poplar on the 27th of November.

Question: When was the last time you saw this Bassett's application.

Answer: The Monday before last. In parentheses: Howard was then shown a calendar by Detective Williams and stated the 30th of November.

Question --

Q. Before you go forward: Are these

parentheticals reflecting something that occurred other than what was said while you were taking the statement?

A. These are reflecting any actions that myself or Detective Williams or anybody else who might have been in the room would do or say or just as to explain what we were doing.

Q. And at the time, do you type those parentheticals in?

A. Yes, ma'am.

Q. Were they accurately reflecting what was being done in the course of this interview?

A. Yes, ma'am, they were.

Q. Please continue with the next question.

A. Question: Where were you when you saw this application on November the 30th.

Answer: At 18th and Chestnut at the Chuckwagon. I was eating inside there.

Question: What did you do with this Bassett's application at the Chuckwagon.

Answer: I had it in my pocket then. I didn't discover it missing until this past Saturday. The 5th of December. In parentheses: Howard referring to calendar.

Question: Do you know how you lost

it.

Answer: I believe I had lost it in the back of that Volkswagen.

Page 2. Question: What Volkswagen would that be.

Answer: William Cook's Volkswagen.

Question: When were you in William Cook's Volkswagen.

Answer: The Monday I was in the Volkswagen. William is a vendor in Center City. I ran, I ran into him when I left the Chuckwagon in front of the Duke and Duchess movie. He gave me a ride to 8th and Spring Garden.

Question: Who was in William Cook's auto besides you and him when he gave you the ride on that Monday.

Answer: Just him. He had a lot of stock in the car,

incense and gloves and umbrellas.

Question: Where did you sit in the Volkswagen when he gave you the ride.

Answer: I sat in the back, the front seat was full of stuff.

Question: When was the last time you saw William Cook.

Answer: That was the last time, that

Page 134.

Cap. Edward D'Amato, Ret. - Direct

Monday about five o'clock in the afternoon.

Question: Do you know Wesley Cook.

Answer: Yes, I knew them both.

Question: How do you know Wesley.

Answer: We all grew up together in the Spring Garden projects.

Question: When was the last time you saw Wesley Cook.

Answer: I ain't seen Wesley in almost a month.

Question: Did you know where your driver's application was before today.

Answer: No. I thought I had lost it on the street because I lost the phone book with it. I thought my wife had it because I had a lot of girls' phone numbers in it.

Question: Do you know where Wesley Cook lives.

Answer: He was living with his mother at 7th and Wallace, I think 704 Wallace.

Question: Do you know where William Cook lives.

Answer: In the same place with his mother.

Page 3. Question: When did you hear

Page 135.

Cap. Edward D'Amato, Ret. - Direct

about the officer being shot last night.

Answer: This morning on the radio.

Question: Did you know then that Wesley and William Cook had been arrested.

Answer: No. But I heard on Mary Mason that Mumia had been arrested and I know Mumia to be Wesley Cook. That's his Muslim name.

Question: When did you know that your driver's license application was found.

Answer: After I got your message to call the Roundhouse and I spoke to a Detective Thomas. He had asked me my phone number.

Question: Do you know where we found your Bassett's application.

Answer: No.

Question: When I first asked you if you knew how you lost your application you answered I believe I had lost it in the back of that Volkswagen. What made you say that.

Answer: Because of what the officer had said to me on the phone. He said you found a duplicate license with my name on it.

Question: Did he say where we found it.

Answer: No. All he said is that you

Page 136.

Cap. Edward D'Amato, Ret. - Direct

found it.

Question: How did you know about a Volkswagen.

Answer: I read it in the Daily News and I know the Volkswagen was William's.

Question: What can you tell me about Wesley Cook.

Answer: All we did was grow up together, gang warred together. We were in the Black Panther Party together around '69 or '70.

Question: Is there anything else you can think of that would help us in our investigation of the shooting of Police Officer Faulkner.

Answer: That's all I know. What I read in the paper.

Question: Do you know Officer Faulkner.

Answer: I may know him. I'm the secretary of the Town Watch in Spring Garden and I know Officer Redden at 11th and Winter.

Q. Now, Captain, these are the first three pages of the total five-page statement?

A. Yes, ma'am.

Q. And is what you have just read the as best you were able to type it verbatim account of the

Page 137.

Cap. Edward D'Amato, Ret. - Direct

questions that you asked Mr. Howard and the answers that he gave you?

A. Yes, ma'am, they are.

Q. And are these three pages among the five pages that were signed by Mr. Howard after your total interview with him was completed?

A. Yes, ma'am.

Q. Now, how long did your interview with Mr. Howard take place?

A. How long did it last, did you say, ma'am?

Q. Yes, if you know.

A. I don't know.

Q. Utilizing the time out sheet, or the time out column in the logbook which is Commonwealth Exhibit 19, which reflect, which reflects the numbers 2:30?

A. Yes, ma'am.

Q. Are you able to tell us based on the statement which you have now refreshed yourself with -- Arnold Howard -- whether that was 2:30 p.m. on December the 9th?

A. To the best of my recollection, that was 2:30 p.m., yes, ma'am.

Q. Incidentally, what kind of vehicle were you and Detective Williams using when you picked up Mr. Howard at the Richard Allen Homes?

Page 138.

Cap. Edward D'Amato, Ret. - Direct

A. An unmarked detective squad car.

Q. Was it a police wagon?

A. No.

Q. Did it look at all like a police wagon?

A. No. It is an unmarked four-door, I believe in those days we were driving Plymouths.

Q. After you completed the taking of the statement of Mr. Howard, Mr. Howard signed the statement, did you escort Mr. Howard out of the Police Administration Building?

A. At sometime what I believe happened, the best I could remember is we gave the interview to someone at detective -- ahh, Homicide. Most likely a supervisor, I believe. And waited for him to review the statement and then he would just get the word okay to come back. That's how it would work. And to the best I could recall, ma'am, that's what happened that afternoon.

Q. Well, after the completion of the interview Mr. Howard left the Police Administration Building, and that was at 2:30 p.m?

A. Yes.

Q. Do you recall whether Mr. Howard then took himself home or whether you provided him with a ride home?

Page 139.

Cap. Edward D'Amato, Ret. - Cross

A. I'm sorry, I can't recall.

MS. FISK: Thank you. I have no further questions of the captain, Your Honor.

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CROSS-EXAMINATION

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BY MR. WEINGLASS:

Q. Good afternoon, Detective D'Amato.

A. Good afternoon.

Q. Did Mr. Howard in the course of that interview 13 years ago indicate to you at any time that what was found with Officer Faulkner was actually a duplicate license and not an application for a license?

A. Can I refer to my notes if that's --

Q. Well, let me ask you this. Without referring to your notes you have no independent recollection, do you?

A. Yeah, the way I remember it, it was an application from a place called Bassett's Auto Tags Service that had his name on it. And, I believe, again to the best of my recollection, that it was checked application for duplicate driver's license.

Q. My question remains, did Mr. Howard indicate

Page 140.

to you at any time in that interview that what was found was an actual duplicate license and not an application?

A. No, I don't believe he did.

Q. Is it, then, you have a recollection and your recollection is he never said it, or is it that you can't recall today?

A. If you would let me look at these, if he said it it would be on here. If he didn't, if it's not on here he didn't say it.

Q. I will let you look at it in a minute. But my question to you at this point is without looking at it, you can't say one way or the other; isn't that true?

A. If he told me that what was found was an actual duplicate driver's license, I don't believe he said that. I don't recall him saying that.

Q. You don't recall because so much time has passed?

A. Yes, sir.

Q. And you have no recall without referring to the interview?

A. Oh, I have some recall without referring to the interview, but that particular case, I know I asked some question and phrased it using the word

Page 141.

duplicate something on there. And that's all I wanted to clear up. But I, if he would have said that he had given, that he had a duplicate driver's license, that would have been recorded on here, that's what I can tell you for sure.

Q. But you can't tell us today if he said that?

MS. FISK: Objection, Your Honor. Objection, Your Honor.

THE COURT: Yes, I have to sustain that. Now you are arguing with him. He already answered that question.

BY MR. WEINGLASS:

Q. You have no recall of whether or not he said that?

MS. FISK: Objection, Your Honor. He has answered that question. He has answered that he does not remember hearing him say that. He said that.

BY MR. WEINGLASS:

Q. Is that your testimony: You don't remember him saying that?

THE COURT: Counselor, the testimony is what is in the Court record.

MR. WEINGLASS: Well, Counsel just tried to clarify it.

Page 142.

THE COURT: I am not worrying about what Counsel is trying to do. As I recollect, he has already answered that question.

BY MR. WEINGLASS:

Q. My question to you, Detective, is to your present recollection, did Mr. Howard say to you, at any time, that there was a duplicate license involved?

A. Okay. I believe the word recall --

MS. FISK: Objection, Your Honor: Asked and answer.

THE COURT: Go ahead, one more time.

THE WITNESS: I believe the word recall and recollection come from the same root and I am going to tell you that I can not recall him saying that.

BY MR. WEINGLASS:

Q. Okay. And my last question on that point is, are you saying that he might have said it and you don't remember, or are you saying you have a recollection and he didn't say it?

A. I'm saying that to the best of my recollection he did not say it.

Q. Okay. Now will you turn to page 3 of the interview. And I direct your attention to a question

Page 143.

you asked which reads this way. Midway on the page. My first, when I first asked you if you knew how you lost your application you answered, quote, I believe I had lost it in the back of the Volkswagen. What made you say that.

Then the answer that you recorded that Mr. Howard gave you is because of what the officer had said to me on the phone. He said you found a duplicate license with my name on it. Does that refresh your recollection that Mr. Howard referred to a duplicate license?

A. Yeah, that refreshes my recollection. Mr. Howard's quoting what a detective told him on the phone. That's not Mr. Howard saying that it was. He's quoting that a detective told him that.

Q. Right. But he is referring there not to an application but to a duplicate license; isn't that right?

A. To a duplicate -- yes, that's right, sir.

Q. Having read that, do you now recall that Mr. Howard on more than one occasion said to you that what was involved here -- please don't read the statement -- if you have problems recalling just tell me and you can refer to the statement.

MS. FISK: Objection, Your Honor.

Page 144.

Objection.

BY MR. WEINGLASS:

Q. Do you now recall --

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: That is a rule: A witness can not refer to a statement unless a witness first acknowledges that he has no recollection, then he may refer to the statement.

THE COURT: All right. Repeat that question again.

BY MR. WEINGLASS:

Q. Right. My having read this to you and you now having seen it in print, does that bring to mind the fact that Mr. Howard on more than one occasion indicated to you that what was involved here was a duplicate license and not an application?

A. No.

Q. It doesn't help you with that recall?

A. I don't remember us going over that a multitude of times. And again, like I told you, Howard was then quoting what a detective told him on the phone. That wasn't, he wasn't saying I lost a duplicate license. He said something to the effect of you told me. And he might have thought he was

Page 145.

talking to me, which he wasn't, but he said something you told me they found a duplicate license. He is quoting someone else. He didn't say I lost a duplicate license. He is quoting what the detective told him on the phone.

Q. You don't know who the detective who spoke to him on the phone was, do you?

A. I don't know for sure, no, I don't.

Q. And you weren't even privy to that conversation, were you?

A. Ahh, no, I wasn't.

Q. So he might have had a conversation with a detective about the duplicate license that was found at the scene?

MS. FISK: Objection, Your Honor, as to what he might have.

THE COURT: I will sustain that. How is he going to know that?

BY MR. WEINGLASS:

Q. Now, as I understand it, you were working the midnight-to-8:00 shift?

A. Yes, sir.

Q. And your shift ended at 8:00 a.m?

A. Scheduled to end at 8:00 a.m.

Q. Pardon?

Page 146.

A. Scheduled to end at 8:00 a.m.

Q. In this instance you were asked to stay over?

A. Yes.

Q. The morning of December 9th?

A. Yes.

Q. And as I understand it, you were one detective from a division that was brought into Homicide to work this case?

A. Yes, sir, there were seven Detective division at that time and I believe Homicide called for one detective from each division.

Q. So to your understanding, there were seven detectives working this case that morning?

A. No, I have no idea how many detectives were working that case that morning.

Q. Well, did you see detectives from other divisions in Homicide that morning?

A. I probably wouldn't recognize everybody there and be able to tell you whether they were Northeast Division, East Division or Homicide. But I couldn't tell you today that I recall who I saw that night, I don't.

Q. No, but you were telling us that one detective from each division was called in, to your knowledge?

A. To my knowledge.

Page 147.

Q. And that's what brought you there?

A. Yes, sir.

Q. And so, presumably, there were seven other detectives, or six others?

A. Theoretically that would be about right.

Q. So your recall of that morning was that there were a number of detectives in Homicide working?

A. Yes, sir.

Q. And they were questioning witnesses about the shooting of Officer Faulkner?

MS. FISK: Objection, Your Honor. This goes beyond the scope of direct examination.

THE COURT: I will have to sustain that. He is here for one purpose only: What he did.

MR. WEINGLASS: Right.

THE COURT: Let's not try to inquire about what everybody else did, okay.

BY MR. WEINGLASS:

Q. Now, that day when you questioned Mr. Howard up in Homicide, do you know if there were three or four little interrogation rooms?

A. The way I remember Homicide, I think there was two interrogation rooms on one side of the room; and

Page 148.

there might have been one or two on the other side of the room, but I think they were mostly used for files and things. That's the best I remember how Homicide was laid out.

Q. But what you saw were a number of detectives questioning a number of people while you were there with Mr. Howard?

A. Counsel, I will tell you the truth: I can't remember exactly what I saw. I can only from my experience, especially with a dead police officer, tell you that I can be certain that there was a lot of activity in Homicide at that time. And I'm sure that people were being interviewed. To tell you today that I could remember people sitting here and there, I can't.

Q. Right. But you were there 12:30 or thereabouts?

A. Yes.

Q. Right. It's about seven hours after the shooting.

A. Okay.

Q. And detectives were up there and they were questioning an unspecified number of people about the shooting?

MS. FISK: Objection, Your Honor:

Page 149.

It's been asked and answered.

THE COURT: I will have sustain that, Counselor. He is not here as to what everybody else was doing. Just what he did in this instance, in this case. Let's stick to that. Otherwise, we could stay here for hours.

MR. WEINGLASS: Well, Your Honor, one of the things that we do when a witness comes in to testify who has interviewed over a thousand people over a period of more than 20 years is we test his recollection as to the event in question.

THE COURT: Well, test it as to this.

MR. WEINGLASS: To try to see what Detective D'Amato remembers of that time on December 9th, 1981. The detective's been retired for a number of years. And he's been very busy during the course of a quarter of a century of work. I want to see how he can remember December 9th, 1981.

MS. FISK: First of all, it is the captain who has been retired for a number of years. He was a detective in 1981. And second, Your Honor, he has testified that he knows there was a lot of activity in Homicide, beyond that

Page 150.

he does not have, as I understood his answer, specific recollection of who was doing what with whom.

MR. WEINGLASS: Well, he remembers a detective from seven different divisions, keeping one of them, and he remembers the room and he remembers activity --

THE COURT: I don't remember him saying that he remembers seven detectives.

MR. WEINGLASS: One from each of seven divisions.

THE COURT: He said they had that many divisions and they were calling for help and they asked somebody to send one detective from each division.

MR. WEINGLASS: Right.

THE COURT: Well, who they are, I don't know that he knows that. He knows that he was called from his division. That's all he knows.

MR. WEINGLASS: Right, and that there were six other detectives.

THE COURT: So what? He doesn't necessarily know who they are.

MR. WEINGLASS: Right.

Page 151.

THE COURT: And what difference does it make who they were? He is here to tell you what he did that day.

MR. WEINGLASS: It goes to his recollection.

THE COURT: His recollection as to what he did that day. Now let's stick to that. Not about everybody else.

BY MR. WEINGLASS:

Q. So you interviewed Mr. Howard, you said, on this day in question; is that right?

A. I interviewed Mr. Howard, yes, sir.

Q. Did you interview others?

A. Truthfully, I can't remember. I don't know if I did.

(Discussion was held off the record at this time among Defense Counsel.)

BY MR. WEINGLASS:

Q. Now, when were you first contacted to come here --

A. To come to this Courtroom?

Q. Yeah.

A. Today being Friday. Ahh, Wednesday in the a.m., Wednesday morning.

Q. And you are retired --

Page 152.

A. Yes.

Q. -- as I understand it. And you have been retired for how long?

A. Three years and two months. Not that I'm counting, but. Three years and two months.

Q. And before that you were with the Police Department for how long?

A. About 23 years.

Q. 23 years. And you were contacted, did you say in the late afternoon on Wednesday?

A. No, I'm going to guess it was around maybe eleven o'clock, twelve o'clock in the morning. 11:00 a.m., 12:00 noon.

Q. And who contacted you?

A. Actually, I got home and my daughter told me to call a friend of mine who's still in the Police Department, that it was important. I called him, he told me that they needed me on this case. He gave me Detective Williams and his beeper. I beeped Detective Williams. He called me at home. He gave me Miss Fisk's phone number at the District Attorney's Office. I called Miss Fisk's office. She wasn't available. I left a message and my home phone number and approximately 20 minutes later Ms. Fisk called me.

Page 153.

Q. And it happened just as you described?

A. To the best of my recollection.

Q. Right. So even as a retired captain the District Attorney's Office is able to make you available as a witness in just a matter of a few hours?

A. Well, I guess that depends on where you retire to, Counselor. My mistake was retiring close by.

Q. Right. So you were in or near the City of Philadelphia?

THE COURT: You should have gone to Key West.

THE WITNESS: I'm headed there, Counselor.

BY MR. WEINGLASS:

Q. So you're testifying about the extraordinary capability of the District Attorney's Office to reach out for a witness, even a retired one, and bring him to Court when they need him?

A. It's actually --

MS. FISK: Objection, Your Honor, to the form of that question.

THE WITNESS: I thought it was my extraordinary reputation.

BY MR. WEINGLASS:

Page 154.

Q. Right. Do you know, by the way, a police officer named, an ex-police officer named Gary Wakshul?

A. Wakshul?

Q. Yes.

MS. FISK: Objection, Your Honor: It goes beyond the scope of direct examination.

THE COURT: I will have to sustain that.

BY MR. WEINGLASS:

Q. Now, so when you were contacted did there come a point in time where you met with representatives of the District Attorney's Office?

A. Very shortly. Yes.

Q. Very shortly after that?

A. No, very shortly yesterday morning.

Q. I see. And you came here to the building or people went to you?

A. I'm sorry, sir. To meet --

Q. Was the meeting here in the building or outside?

A. Well, actually the meeting was in the lobby of the District Attorney's Office. Because I explained to Ms. Fisk that I'm claustrophobic and do not like to take elevators, so she was kind enough to meet me

Page 155.

in the lobby.

Q. And you, were you shown anything?

A. Ahh, a copy of my statement.

Q. When you say my statement, what are you referring to?

A. The statement I typed, the statement I took from Mr. Howard.

Q. You were shown that one statement?

A. And I believe she showed me a Court record of Mr. Howard's affidavit or something, whatever. I don't know exactly the legal term of it.

Q. And it was on the basis of your reading those that you testified today?

A. Yes, sir.

Q. It would be fair to say, would it not, Captain, that without reading that statement you would have no independent recollection of Mr. Howard?

A. I could tell you that I, I would have remembered. This was a murder of a police officer, so naturally it's not something that you would forget being a police officer. I would remember some of the things that I did that night. And I can honestly tell you that I do remember interviewing Mr. Howard.

Now, to tell you today that I could remember what we said or maybe even the subject, I

Page 156.

might not have remembered. But I do remember doing a few things that night and that's one of the things I do remember.

Q. Could you describe Mr. Howard for us?

A. No, other than the -- excuse me -- the fact that he was a black male, I have no recollection of him.

Q. None?

A. No, I wouldn't know him if he was here today.

Q. Would you know him if he was here in the Courtroom?

A. No, sir, no way.

Q. Now, so you remember interviewing, you're telling us, Mr. Howard?

A. Yeah, I remember, I remember going out with Williams, picking him up and interviewing him.

Q. But you don't remember interviewing anyone else?

A. No. I, I was a detective for about four years and I had been assigned to Homicide on occasion to homicides and sometimes those things kind of run together. Maybe I interviewed a peripheral police officer from somewhere but I really couldn't honestly tell you today whether I interviewed anybody else that night or not. I had been there a couple of

hours prior to interviewing Mr. Howard, so there is a good possibility I wasn't just standing around, there is a possibility I interviewed somebody else.

Q. Those are all possibilities?

A. Yes, sir.

Q. Your recollection is no better than possibilities?

A. On some points.

Q. And as a matter of fact, until you saw the statement which the Assistant District Attorney gave you your recollection of Mr. Howard was no better than possibilities? Isn't that true?

A. Well, if you are talking about his physical appearance or anything like that, yes, you are correct. But I do remember interviewing a person that night on the Officer Faulkner case. I can honestly tell you I remember that. And I remember going out and picking him up. But, I'm sorry, but if you called me up three days ago and said who did you interview when Danny Faulkner was killed I couldn't tell you.

Q. As a matter of fact, you couldn't even give us the name, could you?

A. No.

Q. The name Arnold Howard meant nothing to you

two days ago?

A. Until about before eleven o'clock it didn't, right.

Q. It didn't meaning anything to you. It was only after you were shown a statement with his name on it that you even knew the name?

A. That's right.

Q. And even today you can't even place the face?

A. No, sir, I can't.

Q. Or whether he is tall or short or heavy?

A. I don't think he was heavy. I think he was kind of a slim guy, if I remember. But I don't think he was heavy. But was that's about the best I could do for you today.

Q. But isn't it true that your whole testimony here today is nothing more than your reciting what you read on the document?

A. No, I wouldn't say that.

MS. FISK: Objection, Your Honor. His testimony speaks for itself. He has been asked extensively as to his recollections independent of what's recorded. It is unfair for Counsel to characterize it in that way.

BY MR. WEINGLASS:

Q. Did you ask Mr. Arnold Howard to take a

polygraph test that night?

A. Yes, sir, I did.

Q. Did he agree to take one?

A. I believe he did answer affirmatively.

Q. To your knowledge was one administered?

A. Ahh, I didn't administer one and to my knowledge --

Q. Pardon?

A. I did not administer a polygraph and to my knowledge it was not, but I couldn't tell you for sure.

Q. So you don't even know if they did a polygraph that night?

A. That's correct, that wasn't my decision.

Q. Do you know if there was any test done on his hand?

A. I did no test on his hands. And to the best of my knowledge, I have no knowledge of any test being done to his hands.

Q. So it might have been done, you have no recollection of that either?

A. I could tell you I didn't do it.

Q. That's all?

A. Yes, sir.

Q. Do you remember another gentleman being there

at the same time in the Homicide by the name of Kenneth Freeman?

MS. FISK: Objection, Your Honor.

THE COURT: Well, just one and let's cut it out, all right.

THE WITNESS: Kenneth Freeman, sir?

BY MR. WEINGLASS:

Q. Yeah.

A. That name doesn't ring a bell to me, I don't remember that.

Q. Doesn't ring a bell?

A. No, sir.

Q. But there were other gentlemen there, some of them were African American?

MS. FISK: Objection.

BY MR. WEINGLASS:

Q. Isn't that correct?

THE COURT: I will have to sustain that. He said there were a lot of people there. Now, come on, Counselor.

(Discussion was held off the record at this time among Defense Counsel.)

BY MR. WEINGLASS:

Q. Incidentally, do you have any recollection of whether or not you physically possessed the document

of Arnold Howard that was found at the crime scene that night? I'm sorry, that afternoon. Or morning.

A. I believe I was shown it. I believe I was shown it. That's the best -- again, Counselor, I am doing the best I can. To the best of my recollection somebody showed it to me.

Q. Well, did you then take whatever it was, a piece of paper, and put it in front of Mr. Howard and say Mr. Howard, this is what we are talking about?

A. I don't recall doing that and I believe if I did that I would have probably noted it on the interview.

Q. Well, why wouldn't you do that if you remember questioning him about a piece of paper, why would you show it to the gentleman?

A. Counselor, keep in mind that I wasn't a Homicide detective. I was a detective. What we did was on the instructions of a supervisor from Homicide. That was reviewed; and when they wanted you to do something else you did something else. We kind of stayed out of the way and did what we were told. We weren't running the investigation. If they had things to do, and their detectives were tied up doing something which was probably more important, we did it. I have no problem saying that we were more

like go-fors, I guess.

Q. You were just doing what you were told?

A. Doing what I was told, and having things reviewed. And if they wanted something re-covered I did it. I really didn't have that much knowledge of the entire case at that point other than what I was being told.

Q. So, for instance, you didn't know, Captain D'Amato, you didn't know how many suspects there were, you didn't know the circumstances of the shooting, you didn't know any of those things because you didn't have to know them for the work you were being asked to do?

A. At the time of that interview --

Q. Yeah.

A. -- I had a rundown. I knew that there was at least one suspect in custody, and I had known the location and some of the particulars of the murder of Officer Faulkner.

Q. Did you say you went to the location before?

A. I'm sorry?

Q. Did you say you went to the location?

A. No, I am aware of the location where Officer Faulkner was murdered and some of the details. But that's the best I could tell you. Naturally they are

Page 163.

Cap. Edward D'Amato, Ret. - Cross

going to run the job down to you when you got there, you are not going to walk in blind. But I am sure that I didn't know as much of the particulars as, let's say, the assigned from Homicide.

Q. Do you know if the driver's license belonging to Arnold Howard was found at the scene?

A. I have no knowledge of that, sir.

Q. You have no knowledge. Now, do you remember, Captain D'Amato, interviewing a patrolman by the name of Joseph Schuck?

A. Patrolman Shot?

Q. Schuck: S-C-H-U-C-K?

A. No.

Q. You don't remember interviewing him?

A. I may have interviewed some police officers that day, like I told you, but to say I could tell you yeah, I remember interviewing Officer Schuck, no, I don't.

Q. Do you remember interviewing Patrolman Robert Shoemaker that day?

A. Same answer, sir: Maybe I did, but to tell you today I have an independent recollection of that, I don't.

Q. Do you remember interviewing Patrolman William Maas that day, M-A-A-S?

Page 164.

Cap. Edward D'Amato, Ret. - Cross

A. Same answer, sir: No.

Q. So you don't remember Patrolman Schuck, Patrolman Shoemaker, Patrolman Maas, all of whom you interviewed that day, all of whose interviews you recorded, all of whose interviews you typed up and had signed, but you remember Arnold Howard; is that your testimony?

MS. FISK: Your Honor, I object to the form of that question.

THE COURT: I will have to sustain that. Save that for argument for the Court later on.

BY MR. WEINGLASS:

Q. Were you shown any other interviews that you conducted that day?

A. No, sir, I wasn't.

Q. The District Attorney didn't show those to you?

A. No, sir, she did not.

Q. Incidentally, you were on duty that morning at 6:00 a.m., were you not?

A. 6:00 a.m. on the 9th, sir?

Q. Yeah.

A. Yes.

Q. And you were already working on this case at

Page 165.

Cap. Edward D'Amato, Ret. - Cross

6:00 a.m., were you not?

A. I would guess. I really don't know what time I arrived at Homicide.

Q. Well, would it refresh your recollection if I told you that you had conducted an interview of Officer Shoemaker at 5:15 a.m?

A. If that's what it says then I was there by 5:15.

Q. And that you had conducted another interview... of another police officer named Schuck at 6:30 am; is that right?

A. Yes, sir, I testified that I think I may have interviewed some police officers but I just don't remember if I had some jobs running into each other there.

Q. But you were interviewing officers even before the sun came up?

A. Okay.

Q. Is that true?

A. What time does the sun come up on December 9th? I'm not exactly sure.

Q. It's probably still dark at five o'clock, isn't it?

A. Then I was interviewing them before the sun came up.

Page 166.

Cap. Edward D'Amato, Ret. - Cross

Q. So you were working on this case before dawn?

A. Yes, sir.

Q. Now, when you interviewed Mr. Howard, to your understanding the purpose of that interview is that Mr. Howard might have been a person who was at the scene of the crime because a document was found there with his name on it?

MS. FISK: Objection, Your Honor. I'm getting confused as to which of the two parties here is testifying. I object to that question.

MR. WEINGLASS: Cross-examination.

MS. FISK: There is no basis for that question.

MR. WEINGLASS: There were some leading questions on direct we allowed.

MS. FISK: Well, I was taking great instruction from Counsel who has been doing that for the last two-and-a-half weeks.

MR. WEINGLASS: Good, we're learning something.

BY MR. WEINGLASS:

Q. Now, Captain D'Amato, you were questioning this person because he might have been involved in the murder of a police officer since a document with his name on it was found at the scene?

Page 167.

Cap. Edward D'Amato, Ret. - Cross

MS. FISK: Objection, Your Honor.

THE COURT: No, I will let him answer it, because we'll be here forever. It is 1:30 and I would like to get my lunch. So let's go.

THE WITNESS: I was questioning this man because of the document with his name on it was found on Police Officer Faulkner. Now, that interview and his answers to my questions will take me whether he was at the scene or whether there was a reasonable explanation. That's what it was. I didn't -- if you go into an investigation thinking you know the answers already, you're going to screw it up. I was interviewing that fellow because something was found with his name on it, and where my questions and his answers took me, that's where we were going. Whether it made him a suspect, a witness, or some guy who just lost a piece of paper that Danny happened to pick up that night.

BY MR. WEINGLASS:

Q. That is the methodology, but what I am asking about is in your thinking as you are interviewing this person, your thinking was this person, since a document was found with his name on it at the scene, might have been at the scene of the murder?

Page 168.

Cap. Edward D'Amato, Ret. - Cross

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He already answered that question, Counselor.

BY MR. WEINGLASS:

Q. Incidentally, and I mean no disrespect --

A. None taken.

Q. -- on this question: You referred to the deceased officer as Danny. Did you know Officer Faulkner?

A. I didn't personally know Officer Faulkner but I've been a police officer long enough that I feel a relationship to everybody who wears a badge.

Q. Okay. And you feel that strongly?

A. Very strong.

Q. Right. And your testimony here today is also, it would be fair to say, is also an effort to assist the District Attorney's Office?

A. My testimony today is the truth, Counselor, as I remember it. That was my job and I was a professional police officer, I tell you the truth.

Q. Right. But you didn't remember these other four interviews that you conducted on the same day?

A. If you review my testimony, I didn't tell you I didn't remember. I said I may have interviewed some police officers that night. Did I have an

Page 169.

Cap. Edward D'Amato, Ret. - Cross

independent recollection? No. You threw four names at me. I didn't even know Arnold Howard's name until Miss Fisk told me what it was.

Q. Okay.

A. That's what I told you. I am not telling you I don't remember interviewing police. I said I may have interviewed some police officers at that time, I don't remember everything I did.

But I do remember interviewing Mr. Howard, I could tell you that.

Q. And before you were shown the document that you typed up that night, you didn't have any independent recollection?

A. I couldn't --

MS. FISK: Objection, Your Honor, to that question. That has been asked and answered more than once.

THE COURT: I know that. Time and time again.

BY MR. WEINGLASS:

Q. Let me just ask you a few last questions. Is there a tape recorder in the Homicide Unit at that time to your knowledge?

A. I have no idea.

Q. Did you in your work use tape recorders?

Page 170.

Cap. Edward D'Amato, Ret. - Redirect

A. Never used a tape recorder.

Q. Why is that?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He never used it.

BY MR. WEINGLASS:

Q. And did you ask at any time Mr. Howard to write out in his own hand what was involved with this duplicate license?

A. No, I don't believe I -- no, I never asked him that.

Q. As a matter of fact, you were the one who was typing, right?

A. Yes.

Q. You controlled what you typed; isn't that right?

A. Yes.

Q. And you controlled what you typed as his answers; isn't that right?

A. Yes.

MR. WEINGLASS: Right. I have nothing further.

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REDIRECT EXAMINATION

- - - - -

Page 171.

Cap. Edward D'Amato, Ret. - Redirect

BY MS. FISK:

Q. So I understand it: After you typed his answers, that's why you give the document to Mr. Howard for his review before he places his signature on the pages; is that right?

A. I let him review it and tell him if that's what he said to sign it, and if there is any changes, go ahead and make them.

MS. FISK: Thank you, sir.

THE COURT: Okay. We will recess for lunch until 2:45.

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(Luncheon recess was held until 3:00 p.m.)

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THE COURT: Good afternoon, everybody.

MS. FISK: Your Honor, if I could just raise one matter before calling the next witness, and it is with regard to the defense proffered witness William Singletary.

THE COURT OFFICER: Quiet in the Courtroom, please.

MS. FISK: Who was discussed this morning. As the Court is aware, throughout the course of these proceedings there were numerous

Page 172.

witnesses sought by the defense whom defense was unable to locate and obtain and the Commonwealth provided assistance in locating, serving and transporting witnesses to the Courtroom on behalf of defense. And that was done with a large number of the defense witnesses called in this proceeding. We, of course, were not given any notification with regard to the defense intent to call Mr. Singletary, but having been given that notification, we offer to the defense immediately, at this moment, police officers, detectives, cars, persons who could go to whatever address defense Counsel would like, any member of defense team can accompany those officers, so that Mr. Singletary can be brought into the Courtroom, placed on the witness stand and offer whatever testimony the defense chooses to have that witness offer today. I make that offer to the Court so that there can be no question about the ability of defense Counsel to produce the witness in this Courtroom.

THE COURT: Mr. Weinglass?

MR. WEINGLASS: No response is necessary to that.

THE COURT: Oh, you don't want them to

Page 173.

bring him in for you?

MR. WEINGLASS: There is no response that is necessary to that.

MS. FISK: Well, I disagree.

THE COURT: I will assume that they don't want him in, then.

MS. FISK: Very well, Your Honor.

MR. WEINGLASS: No, there is just no response to that offer. Counsel is making an offer on the record. My position is there is no need for it. There is no response necessary.

THE COURT: Well, then you won't be able to bring him in at any other time. It is either today or not at all. Now make up your mind. It is either today or not at all.

MR. WEINGLASS: As I understand it, there is another witness ready to testify.

THE COURT: I know, but in the meantime we have to have somebody go out there with one of your, I don't know whether he

wants your investigator to go or one of the attorneys to go along with them to bring him in.

MS. FISK: And I would note, Your Honor, that we don't know where to go since --

THE COURT: They would have to tell

Page 174.

us.

MS. FISK: That is correct.

THE COURT: Sure.

MR. WEINGLASS: I understand the Court's position: Either today or not at all.

THE COURT: Okay.

MR. BURNS: Your Honor, I think we should be clear as to why the defense is not calling the witness today. I think that mention was made of the notion that he was sick in some way. I would like the defense to represent on the record why this is preventing them from calling the witness. Is the witness incapacitated in some way? Is he in a wheelchair? Does he need assistance of some kind? Is he in an iron lung? Why can't he come in? We are waiting.

(Pause.)

THE COURT: I don't hear anything from defense Counsel. I assume that they are not interested. If they are not interested, I'm not interested. I can't beg them to go out there with you and bring them in.

MS. FISK: So long as it is clear that it is their choice, Your Honor, that the

Page 175.

witness --

THE COURT: I understand it is their choice. You made the offer, they don't want to accept it it is their choice.

MS. FISK: Very well, Your Honor.

THE COURT: Mr. Abu-Jamal, are you satisfied with the representation you are getting here from these attorneys?

MR. WEINGLASS: Your Honor, that question has no relevancy to these proceedings.

THE COURT: Yes, it does.

MR. WEINGLASS: I object to it.

THE COURT: Well, you can object but I asked the question.

MR. WEINGLASS: I am instructing Mr. Jamal not to answer the Court, respectfully. That has no relevance to the proceedings.

THE COURT: Oh, yes it does. I don't want another PCRA if I could help it.

MR. BURNS: Your Honor, the Defendant has an absolute right to compulsory process to the witness he wants to call. Mr. Weinglass is saying that he can make a statement on the record and we are not entitled to know whether or not he is making a knowing and intelligent

Page 176.

waiver for this witness. I think the Court is entitled to inquire on that point.

THE COURT: Mr. Abu-Jamal, do you want us to bring this witness in for you?

MR. WEINGLASS: Your Honor, I am conducting this proceeding.

THE COURT: I know you are, just like Anthony Jackson was conducting it. And then we get all these PCRAs. I want to prevent that. I don't want him to accuse you of being ineffective, Counselor. I want to hear from him that he is satisfied with you and he doesn't want this witness in.

MR. WEINGLASS: Your Honor, the representation was made to the Court this morning that I had a conversation with Mr. Singletary before Court, which I did.

THE COURT: I know that. I know all about that, Counselor. They made an offer to help you out. Either you accept it or you don't. If you don't want to bring him in, fine, then say you don't want to bring him in.

MR. WEINGLASS: As I indicated this morning, Mr. Singletary is a witness for the defense.

Page 177.

THE COURT: Yes.

MR. WEINGLASS: Will be a limited witness, limited solely to the method and manner that the police used in interrogating him on the night in question.

THE COURT: Okay. Well, then let's bring him in and let him tell us that.

MR. WEINGLASS: For that limited purpose we will call him.

THE COURT: Where is he? Well, now you are going to call him, he is going to come in?

MR. WEINGLASS: Yeah.

THE COURT: All right. Do you want to put on your witness first and we will take that matter up later?

MR. BURNS: Right after Counsel puts on the record why the witness has now miraculously recovered from the illness he had this morning when he couldn't be brought in.

THE COURT: I understand that, Counselor.

MS. FISK: Do I understand that the witness is here and they don't need assistance of an officer? I am not clear. Because if he

Page 178.

is not here, before we call the next witness we have to start the process so they can go out and get him.

THE COURT: Is he here?

MR. WEINGLASS: We are calling the witness now.

THE COURT: You will call him at home?

MR. WEINGLASS: No.

THE COURT: You are going to call him to the stand now?

MR. WEINGLASS: That's right.

THE COURT: Oh, okay. All right. You know, if you speak English, Counselor, even I'll understand you.

MR. WEINGLASS: Well, I thought calling the witness has a certain connotation.

THE COURT: No.

MR. WEINGLASS: Usually when an attorney --

THE COURT: I asked you.

MR. WEINGLASS: -- puts a witness on --

THE COURT: Then he is here. And that's what I was asking you: Is he here. And you are not saying a word. You are giving me

Page 179.

impression that he's home sick somewhere.

MR. WEINGLASS: He was this morning.

THE COURT: Oh, he was this morning. Okay.

The only thing I want to know: Do you want to hold up that doctor? Could we take -- I don't care but I hate to...

MR. WEINGLASS: Dr. Hood is here, I would be happy to call Dr. Hood first.

THE COURT: Well, I hate to have the doctor sit around here.

MR. WEINGLASS: Fine, Judge, no problem.

THE COURT: If he has something more important to do. Since you already listed him for --

MS. FISK: Yes, Your Honor, Dr. Hood is here.

THE COURT: All right, then let's put him on.

MS. FISK: Fine, Your Honor.

Ian Hood, M.D., Deputy Medical Examiner for the City and County of Philadelphia, having been duly sworn, was examined and testified as follows:

Page 180.

Ian Hood, M.D. - Direct on Voir Dire

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THE WITNESS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

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DIRECT EXAMINATION ON VOIR DIRE

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BY MS. FISK:

Q. Dr. Hood, you have identified yourself as a Deputy Medical Examiner. Is that in the City of Philadelphia?

A. That is correct.

Q. Would you please tell us what your training and qualifications are that enable you to hold that position?

A. I'm a forensic pathologist. I graduated from medical school in my homeland, where my accent comes from, New Zealand. In 1979, having left medical school after doing two years of internship there in New Zealand I came to Canada and did a five-year residency in the general field of pathology, at the end of which time I was Board certified in that specialty, both there in Canada and here in the United States.

Page 181.

And in 1984 I came to the United States. I trained in forensic pathology in the Detroit medical examiner's office, which is a very busy one. And became Board certified in the sub-specialty area of forensic pathology in 1986. And have practiced basically in that area ever since. And for the last five-and-a-half of those years, that's been here in Philadelphia.

Q. In your capacity as a medical examiner both in Philadelphia and Detroit, have you performed post-mortem examinations?

A. Many of them, yes.

Q. How many?

A. Well, probably in Philadelphia it would probably be close to 3,000 by now, I would think.

Q. Have you offered publications or articles in the field of forensic pathology?

A. A few, yes.

Q. On how many occasions have you been published in the field?

A. I think I have about 20 or thereabouts publications now.

Q. Dr. Hood, have you presented yourself as an expert in the field of forensic pathology in this jurisdiction: Philadelphia?

Page 182.

A. Yes.

Q. On how many occasions?

A. Several hundred.

Q. Has there ever been an occasion where you have not been accepted as an expert in the field of forensic pathology in the County of Philadelphia?

A. No.

Q. Have there been other counties in which you have been accepted, or other locations in which you have been accepted as an expert in the field of forensic pathology --

A. Yes.

Q. -- for purposes of testimony? What other locations is that?

A. Predominantly within Michigan and the area in and around Detroit where I was assistant medical examiner. A couple of occasions in Los Angeles, and most of the other times since then here.

MS. FISK: Your Honor, I offer Dr. Hood to the Court as an expert in the field of forensic pathology for the purposes of his testimony.

MR. WEINGLASS: Yes, may we have what we haven't been given up to now? Offer of proof.

Page 183.

MS. FISK: Certainly. I'm sorry, that was this morning. Dr. Hood is being called for the sole purpose of giving his opinion regarding the second mark on the neck of Officer Faulkner that has been made reference to by Dr. Hayes in the defense case.

MR. WEINGLASS: Is that his current opinion or an opinion back then?

MS. FISK: It is going to be his opinion based upon review of records and photographs.

MR. WEINGLASS: Currently.

MS. FISK: Well, I think that the only opinion he has is the opinion that he has as he sits here.

MR. WEINGLASS: That's what I wanted to know.

BY MR. WEINGLASS:

Q. Doctor --

THE COURT: Well, for qualifications do you have any questions?

MR. WEINGLASS: Yes, I wanted to know whether I am questioning him on his qualifications in '81 or whether I'm questioning

Page 184.

him on his qualifications in '95.

THE COURT: Well, I would assume in '95.

MR. WEINGLASS: That is an assumption I make. I want to be sure of that.

BY MR. WEINGLASS:

Q. Doctor --

THE COURT: That's what he is testifying today, right?

MR. WEINGLASS: Right.

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CROSS-EXAMINATION ON VOIR DIRE

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BY MR. WEINGLASS:

Q. Doctor, you had nothing to do with the autopsy of Officer Faulkner in December of 1981; is that correct?

A. Correct.

Q. Okay. So you are presently Board certified?

A. That is correct.

Q. In 1981 you were not?

A. Not in forensic pathology.

Q. Yes?

A. In fact, not even in anatomic pathology. At that time I would still have been doing my residency

Page 185.

in Canada.

Q. You were still doing what?

A. My residency in Canada.

Q. You were just a resident at that time?

A. That is correct.

Q. Okay. Now, have you, Doctor, ever been published with respect to gunshot wounds?

A. Yes, I've published I can recall a couple of articles concerning gunshot wounds, one in which you got multiple exits from single entrances, that kind of thing.

Q. I'm sorry, what was the title?

A. I can think of one from Detroit where I published a couple of cases who happened to have more than one exit wound for one entrance.

Q. Yes. And could you refresh me as to where that publication appears in your vitae? Is it number 13.

(Pause.)

A. Yes.

Q. And could you read into the record the title of that particular

publication?

A. Single Gunshots With Multiple Entrances.

Q. So that article dealt with multiple entrances?

A. Yes, you are correct.

Page 186.

Q. Have you ever published about multiple exits?

A. No, it is a common phenomenon so I don't know that one would even bother publishing that.

Q. Right. But my question to you is have you published about multiple exits?

A. I mentioned it in that paper, mostly just to say that it's a well-known phenomenon, it occurs, and occasionally the opposite happens.

Q. Did you bring that paper with you today?

A. No.

Q. You indicated in your expert opinion it's a well-known phenomenon: Exit wounds?

A. Well, having a missile split up and gives rise to more than one exit wound from a single entrance is quite common, yes.

Q. Quite common. Right. And by whom are you now employed?

A. The City of Philadelphia.

Q. I see. And how long have you been employed by the City of Philadelphia?

A. For five-and-a-half years, since the end of 1989.

Q. And you told us you've testified as an expert on a number of occasions?

A. Yes.

Page 187.

Q. Have those occasions always been for the prosecution?

A. I don't know who calls me. Most of the time I get called by the Assistant District Attorney. They don't actually subpoena me, they just tell me that the case is coming up, that they would like to call me. I would guess that most of the time I am called predominantly by the, called to the stand by the District Attorney's Office, yes.

Q. Right. To refine the answer most of the time a little more: Was there ever an occasion in your illustrious career where you were retained by a defense attorney?

A. I've never been retained as a, as an expert being paid a fee. On one or two occasions I've been called by the defense to the stand just in my employment as a deputy medical examiner. On one occasion I can think of I had been called by the District Attorney first and the defense attorney wanted some clarification and called me back. But I've also been called primarily by the defense attorney on one particular case I can think of.

Q. On one case?

A. Yes.

Q. But so I make myself clear: Has a defense

Page 188.

attorney ever retained you in advance of trial for assisting the defense in the field of forensic pathology?

MS. FISK: Objection, Your Honor: This doesn't go to his qualifications.

THE COURT: I know that. I was waiting for somebody to say something. The objection is sustained. We are only here for qualifications.

MR. WEINGLASS: I have no further questions.

THE COURT: All right. The Court accepts him as an expert in his field. Let's go. Come on.

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DIRECT EXAMINATION

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BY MS. FISK:

Q. Dr. Hood, have you had the opportunity to review the photographs taken of Police Officer Daniel Faulkner at the time of his autopsy?

A. Yes.

Q. Have you also had an opportunity to review the medical records, that is the hospital records from Jefferson Hospital reflecting the treatment that

Page 189.

Police Officer Faulkner received at the hospital prior to the transfer of his remains to the Office of the Medical Examiner?

A. Yes.

Q. Based upon those two items, Dr. Hood, are you able to give an opinion to a reasonable degree of medical certainty as to what it is you see in the photographs on Officer Faulkner's neck, specifically whether, how many or whether we are seeing any gunshot wounds, whether we are seeing anything else in any of the neck photographs or the photographs of Officer Faulkner?

MR. WEINGLASS: Objection. The witness has indicated he has seen photographs. We do not know what photographs. Photographs were marked for identification.

THE COURT: Save it for your cross-examination.

MR. WEINGLASS: Well, it's contained in the question. Ordinarily --

THE COURT: The objection is overruled. Save it for your cross.

MS. FISK: Your Honor, it was my understanding -- I'm sorry -- that the slides which Dr. Hayes had were returned to Counsel.

Page 190.

If Counsel still has them or they are here in the record I would be very happy to have those slides shown to Counsel. I understood they were no longer in the Court record and those slides were returned to Defense Counsel several days ago so that they could have them duplicated. It was for that reason that I was making reference to photographs. I believe that Dr. Hood has some copies he made. If Counsel would like to look at them to assure himself that they are indeed copies of slides which are no longer in the possession of the Court, because they have been returned to Defense Counsel, he can do that.

MR. WEINGLASS: Precisely. As a matter of courtesy to the Court and Counsel, when an expert is asked to give an opinion based on photographs, those photographs which he bases his opinion on in part are given to the Court and to Counsel.

THE COURT: All right, Counselor.

MS. FISK: As a matter --

THE COURT: Counselor, give it back to the Court. You have the photos. Give them back to the Court.

Page 191.

MR. WEINGLASS: These aren't the photos he saw.

THE COURT: How do you know what he saw? Give me back the photos.

MR. WEINGLASS: These are not the photos he saw.

THE COURT: Give me back the photos.

MR. WEINGLASS: Your Honor --

THE COURT: Will you please?

MR. WEINGLASS: I am asking for the photos he bases his testimony on.

THE COURT: Give me back the photos. They are not your photos.

MR. WEINGLASS: Let the record show that the Court is raising his voice.

THE COURT: And let the record show that Counsel is not doing what I tell him to do. Counselor... You are in contempt of Court. I am fining you a thousand dollars because you wouldn't do what I

wanted you to do.

MR. WEINGLASS: I was walking up to the bar.

THE COURT: No, you weren't walking up. You were standing over there arguing with

Page 192.

Ian Hood, M.D. - Direct

me. One thousand dollars, okay. Where is the Clerk? Make out an order for that and I will sign it.

MR. WEINGLASS: Let the record show that the Court was shouting and pointing its finger --

THE COURT: Yes.

MR. WEINGLASS: -- in a threatening manner to defense Counsel.

THE COURT: Not a threatening manner, a promising manner.

MR. WEINGLASS: Threatening.

THE COURT: Promising. One thousand dollars, Counselor.

MR. WEINGLASS: I heard the Court the first time.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, I think I am entitled to --

THE COURT: Just a minute, Counselor.

MR. WEINGLASS: I am entitled to counsel on the issue of contempt. I am entitled to counsel on the issue of a fine.

THE COURT: You have a lot of Counsel over there. There are two of them sitting right

Page 193.

Ian Hood, M.D. - Direct

there.

MR. WEINGLASS: I demand my right to an independent counsel.

THE COURT: Well, take it up with the Supreme Court.

MR. WEINGLASS: Well. Your Honor --

THE COURT: Or whatever appellate court you want to go to. I have already, I have already held you in contempt and fined you. If you want some other kind of hearing, fine. You did this in front of the Court. I don't have to give you any special hearing.

MR. WEINGLASS: I do ask for an independent hearing.

THE COURT: Well, fine, go to the appellate Court and get it.

MS. FISK: Your Honor, it is my understanding that during the testimony of Dr. Hayes, that there were a series of slides marked as a defense exhibit.

THE COURT OFFICER: 23.

MS. FISK: 23. It is my understanding that those slides which have now been handed back up to the Court personnel are indeed those slides. Although they have been in the custody

Page 194.

Ian Hood, M.D. - Direct

of defense, I would ask that Dr. Hood have an opportunity to review them.

THE COURT: Let him see them and see if they are the ones he looked at.

MR. WEINGLASS: Let the record show these are not the same slides that the witness has looked at.

THE COURT: Counselor, are you up here testifying?

MR. WEINGLASS: Because we had the slides. And he never saw those.

THE COURT: He said he had copies.

MR. WEINGLASS: Copies, yes.

THE COURT: Counselor, please. Let him look at it. He is testifying, not you. If you want to take the stand, you could take the stand too and have one of the other attorneys ask you questions.

(Pause.)

MS. FISK: It was apparent from the record, Your Honor, that the slides which were utilized by Dr. Hayes were duplicates of slides that were taken from the files of the Office of the Medical Examiner.

THE COURT: He is looking at them, he

Page 195.

Ian Hood, M.D. - Direct

will tell us what it is.

THE WITNESS: I have a series in that Defense Exhibit number, whatever it was, 23, of eight, nine Kodachromes. Two of which show the wound in the back; three of which are our standard picture of the whole bust, the body, bust shot, top half and bottom half of the area; and four which show the area of the face and neck.

BY MS. FISK:

Q. The question is -- maybe I missed the beginning of your answer: Are the slides which you looked at, Defense Exhibit 23, are those duplicates of the photographs or slides that you have personally looked at in order to testify today?

A. They do appear to be, yes.

Q. No, Dr. Hood --

THE COURT: Just a minute. He is looking at some photos.

THE WITNESS: I just wanted to make sure that the number of originals correspond to the numbers of these Kodachromes. And the originals consist of... nine slides also. So therefore I think you do have a complete list.

MS. FISK: Thank you.

Page 196.

Ian Hood, M.D. - Direct

BY MS. FISK:

Q. All right, Doctor, based upon your review of the slides which are duplicated in Defense Exhibit 23, and your review of Officer Faulkner's hospital records from Jefferson Hospital from December 9th, 1981, do you have an opinion as to what is shown on Officer Faulkner's neck?

A. Given that I'm looking at a photograph, the best I can say is that I am looking at a small mark which appears to be a small wound, which is the upper wound just to the left of the tracheostomy incision. Below that is a more obvious exit gunshot wound. And right below the center of the tracheostomy incision is another very tiny puncture wound (indicating).

Q. Now, the small wound that you referred to as being above the exit gunshot wound: Based upon your review of Officer Faulkner's hospital records, are you able to give us an opinion to a reasonable degree of medical certainty as to what caused that wound?

A. The hospital records in several places refer to him having larger bore intravenous lines, two peripheral lines, and variously he is described as having an internal jugular line, a left CVP line. He is also described as having a right, internal jugular on one place and a central venous line with outside

Page 197.

Ian Hood, M.D. - Cross

stated in another. As well as a right femoral line cut down and a right saphenous vein, which is I think really the same thing. And certainly one can see and it is described in the autopsy report the right groin lines, the antecubital fossa lines, which basically are the ones put in front of the elbows.

Around the neck area, that small wound would certainly be consistent with a large-bore intravenous line. And he is described as having, in several places in the hospital records as having central venous pressure lines. In which they actually ran a lot of lactated ringers. And therefore, since he doesn't have a similar mark on the right side of his neck, it seems logical that that wound, small wound is indeed an intravenous line puncture.

MS. FISK: Thank you, sir. I have no further questions, Your Honor.

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CROSS-EXAMINATION

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BY MR. WEINGLASS:

Q. Do you have the Medical Examiner's report before you?

Page 198.

Ian Hood, M.D. - Cross

A. Yes, or I have a copy of it.

Q. How many wounds are noted on the neck in the Medical Examiner's report?

A. Just the one gunshot wound of exit.

Q. Just one wound?

A. Well, the tracheostomy incision is described and so is the exit gunshot wound and those are the only wounds of the neck described.

Q. And so there is only one exit wound for a gunshot described in the Medical Examiner's report?

A. That is correct.

Q. And based upon your examination of the photographs, what in your expert opinion is the number of exit wounds on the neck of the officer?

A. The only definitive exit wound I can see is the larger, lower one. The smaller wound, I can not say what that is. It is a small wound and it is consistent with an intravenous line which he is described as having.

Q. So you can't say that there are two exit wounds?

A. Not from just looking at photographs. I did not see the body, as you have already pointed out. I could only look at this picture, just as you do.

Q. Might there be two exit wounds on that neck?

Page 199.

Ian Hood, M.D. - Cross

A. I can't a hundred percent exclude it.

Q. You can't exclude it. Now, in the Medical Examiner's report is there any indication of a wound caused by the tracheostomy?

A. He is described as having a tracheostomy. And that's. . .

Q. But does he describe that second wound that you see?

A. The smaller one that's just to the left of it, no. Nor does he describe what in fact is mentioned in the hospital records and is seen in the photographs, which is a needle puncture just below the tracheostomy excision.

Q. Right. Now, Dr. Hood, in your expert opinion as a medical examiner, was the report deficient in not describing all of the wounds that you see on the photograph?

A. Depends for what purposes one wants the report. One tries to describe all of the relevant wounds on a body. Sometimes small-bore needle punctures are easily missed at examination. You may in fact pick them up on photographs later. It's then up to the individual examiner whether he wishes to append that to the report. You don't know the significance of those until later.

Page 200.

Ian Hood, M.D. - Cross

Q. Having looked at the photographs, Dr. Hood: If you had written the Medical Examiner's report, you would have indicated that second wound, would you have not?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that: What he would have done.

MR. WEINGLASS: Pardon?

THE COURT: I said I would have to sustain what he would have done.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Based on your view of the photograph, would you have acknowledged that second wound in a Medical Examiner's report?

MS. FISK: Objection, Your Honor.

THE COURT: Yes, you just twisted that question around and I already sustained the objection.

BY MR. WEINGLASS:

Q. Having looked at the photographs, was there any way in which you as a doctor at that time could have determined what was the cause of the second wound?

MS. FISK: Objection, Your Honor.

Page 201.

Ian Hood, M.D. - Cross

THE COURT: Basis of the objection?

MS. FISK: Because he is asking him to speculate.

THE COURT: Has said he only has had the opportunity to look at the photos. He did not examine the body, he said.

MR. WEINGLASS: Correct.

THE COURT: Okay. So the objection --

BY MR. WEINGLASS:

Q. The question was: Based on your review of the photos, could you give us an opinion to a reasonable degree of medical certainty as to what that second wound is?

A. Not by just looking at photos, no. I've already given my explanation of that. It is a small wound. It's consistent with an intravenous line he is described as having, one in an internal jugular vein and a left central venous pressure line, both of which would be perfectly acceptable right in that area. If you are getting at the fact can I exclude this being another small exit wound there, just from a photograph, no. You can't tell the difference on a photograph between a small exiting particle and an intravenous line puncture.

Q. So in your expert opinion you can not include

Page 202.

Ian Hood, M.D. - Cross

it or you can not exclude it as a gunshot wound?

MS. FISK: Objection, Your Honor.

BY MR. WEINGLASS:

Q. Is that correct?

MS. FISK: Objection, Your Honor. His testimony was that he could not exclude or include based solely on the photograph. And then the doctor said he was, however, considering other documents as well.

THE COURT: Well taken.

BY MR. WEINGLASS:

Q. You can not include or exclude based on the photographs?

A. If all I had to do, had before me was the photograph I could not, no.

Q. And is that why that second wound should have been described in the Medical Examiner's report, so that someone looking at the report would have a basis for forming an opinion on the second wound?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that.

MR. WEINGLASS: That is sustained?

THE COURT: Yes, sir.

BY MR. WEINGLASS:

Page 203.

Ian Hood, M.D. - Cross

Q. In any event, Dr. Hood, that second wound is not identified in the Medical Examiner's report; is that correct?

A. That is correct.

MR. WEINGLASS: I have nothing further.

MS. FISK: I have nothing further, Your Honor.

THE COURT: All right, you are excused, Doctor.

THE WITNESS: Thank you, Your Honor.

MS. FISK: If I could have a moment, Your Honor.

(Pause.)

THE COURT: Are you finished?

MS. FISK: Oh, I'm sorry, Your Honor. I understood that I was to call Dr. Hood first.

THE COURT: Okay. I just want to know: Is Mr. Singletary here? Is he here?

MR. WEINGLASS: He's here.

THE COURT: Okay, put him on the stand.

(Pause.)

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William Singletary, having been duly sworn, was examined and testified as follows:

Page 204.

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DIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. Good afternoon, Mr. Singletary.

A. Good afternoon.

Q. Mr. Singletary, when did you and I first meet?

A. About the middle of June of this year.

Q. The middle of...?

A. June.

Q. Of June?

A. Yes, sir.

Q. 1995?

A. Yes, sir.

Q. And do you recall what occasioned our meeting? What brought about our meeting?

A. Umm, I was introduced to you through a friend, or a friend of mine.

Q. And since June of 1995, about two months ago, have we had occasion to talk since?

A. Yes, sir.

Q. And as a matter of fact, did we talk this morning on the telephone?

A. Yes, sir.

Page 205.

Q. And did I inquire as to how you felt?

A. You did.

MS. FISK: Objection, Your Honor.

THE COURT: Yes, sustained.

BY MR. WEINGLASS:

Q. Could you tell us if you suffer from any condition known as diabetes?

A. I do.

Q. Do you suffer from a condition known as hypertension?

A. I do.

Q. Do you suffer from a condition known as high blood pressure?

A. I do.

Q. Are you taking medications for those conditions?

A. Yes.

Q. Have you, do you have presently any injury that you are also suffering from?

A. Back, neck, left leg.

Q. Back, neck and...?

A. Left leg.

Q. Left leg. And are you taking medications for that injury?

A. I am.

Page 206.

Q. Are you taking painkillers?

A. I am.

Q. Was that injury occasioned by an auto or a truck accident?

A. Truck.

Q. Did you have a night's sleep last night?

MS. FISK: Judge, I'm sorry, but that's ridiculous. I object.

THE COURT: Yes, come on, let's get right to the issue here, why you brought him here.

MR. WEINGLASS: Talking about the condition of a witness.

THE COURT: I know that. But we don't need that to tell us why you brought him here.

MR. WEINGLASS: Well, I would assume the Court as fact-finder wants to know the condition of any witness that the Court is looking at.

MS. FISK: And I would assume, Your Honor, that if it was evident to the Court that a witness was in no physical condition to testify, the Court would make that clear and would stop the proceedings. Unless and until that happens, may I suggest we go to the heart

Page 207.

of the matter for what the witness has been called for.

THE COURT: Let's get to the heart of the matter, please.

BY MR. WEINGLASS:

Q. Mr. Singletary, what is your current age?

A. 45.

Q. And your marital status?

A. I'm married.

Q. And your family --

MS. FISK: Judge, I object. We are not here to help find friends for this man. We are here in the pursuit of justice. Could we please get right to the matter.

THE COURT: Let's get right to the heart of the question, please, Counselor. I can't be here settling all the social problems of the world. Let's get to the issue, come on.

BY MR. WEINGLASS:

Q. Now directing your attention back to 1981: What was your age at that time?

A. 31.

Q. And what was your height at that time?

A. Five-ten.

Q. And how would you describe your build at that

Page 208.

time?

A. Medium, stocky.

Q. Did you have occasion on the night of December, or the early morning hours of December 9th, 1981, to come upon a young woman on the corner of 13th and Locust whose name you later learned was Cynthia White?

MS. FISK: Objection, Your Honor. I understood that the offer of proof with regard to Mr. Singletary was the manner in which police took statements.

THE COURT: That's what I thought too.

MR. WEINGLASS: That is precisely what we are getting to.

THE COURT: Well, let's get to it.

MR. WEINGLASS: That's precisely --

THE COURT: Because if you are going to go into other areas you should have told the D.A.

MR. WEINGLASS: That is the only area, and I am glad the Court is limiting the area. Consistent with the Court's ruling, I will ask questions in the limited area of whether or not Mr. Singletary was

with the police.

THE COURT: Counselor.

Page 209.

William Singletary - Direct

MR. WEINGLASS: On the morning of December 9th, 1981.

THE COURT: Counselor. Counselor, before you proceed any further, if you want to expand it, tell the D.A. And if she has no objection to it, you could expand it.

MR. WEINGLASS: I am not expanding it.

THE COURT: Well, then stick to what you said you are going to do, then.

BY MR. WEINGLASS:

Q. On the morning hours, early morning hours of December 9th, 1981, did you have occasion to be in the Police Department, specifically the Roundhouse?

A. Yes, I did.

Q. And do you recall what time you went there?

A. Shortly after 4:00 a.m.

Q. And when you were there, did you meet with anyone?

A. Yes.

Q. And do you recall the name of the detective you met with?

A. Green.

Q. And would you describe Detective Green?

A. Five-seven, five-eight, 170 pounds.

Q. And his race?

Page 210.

William Singletary - Direct

A. Black.

Q. And while you were there, did you see anyone else who you had seen earlier in the morning?

A. Yes.

Q. Who did you see?

A. Cynthia White.

Q. And who did you know her to be? What did you know her to be?

A. Streetwalker.

Q. Streetwalker. And she was in the police station when you were there?

A. Yes.

Q. And did Detective White ask you any questions? I'm sorry. Detective Green ask you any questions?

A. Yes, he did.

Q. And do you recall what he asked you?

A. I don't remember all the questions, no.

Q. As a result of him asking you questions, did you write anything down?

A. I did.

Q. And did you write it in your own hand?

A. I did.

Q. And do you recall, after you wrote it what did you do with it?

A. What did he do with it?

Page 211.

William Singletary - Direct

Q. What did you do with what you wrote?

A. I gave it to Detective Green.

Q. Detective Green?

A. Hmm-hmm.

Q. And what did Detective Green do with it?

A. He read it.

Q. And then what did he do?

A. He ripped it up and threw it in the trash.

Q. He ripped it up?

A. That's right.

Q. And threw it in the trash?

A. Yes.

Q. Did you then have occasion to write a second time?

A. Yes, I did.

Q. And what happened to your second writing?

A. He glanced at it, balled it up and threw it in the trash.

Q. And just referring to the general subject matter: What did you write on both those occasions? Just generally.

A. About the incident at 13th and Locust.

Q. That happened a little earlier that morning?

A. Yes, sir.

Q. And after it was thrown away again, what did

Page 212.

William Singletary - Direct

you do? Did you have occasion to write again?

A. Yes, I did.

Q. And what happened to that writing?

A. Ahh, he told me to write what he wanted me to write, that's what I wrote.

Q. Did Detective Green threaten you in any way?

A. Yes, he did.

Q. What did he say to you?

A. He told me I wouldn't leave, that they would take me to the elevator and beat me up and that my business would be destroyed.

Q. At the time were you in business with your family?

A. Yes, I was.

Q. How long did you remain in the police station?

A. To around nine o'clock.

Q. And what time did you arrive?

A. Shortly after 4:00.

Q. You were there about five hours?

A. Yes, sir.

Q. And did there come a time where you were asked to sign a statement?

A. Yes, sir.

MR. WEINGLASS: May I have this marked?

Page 213.

William Singletary - Direct

THE COURT OFFICER: Yes. That's 29.

(Investigation interview record was marked Defense Exhibit D-29 for identification.)

THE COURT OFFICER: D-29 (handing).

(Pause.)

MS. FISK: Thank you (handing).

THE COURT OFFICER: D-29, Your Honor. D-29, sir (handing).

THE WITNESS: Thank you.

BY MR. WEINGLASS:

Q. I want to show you what's been marked D-29. Have you seen that document before?

A. Yes, I have.

Q. What is that document?

A. It's an investigation report. Police report.

Q. Does your signature appear on it?

A. Yes, it does.

Q. And is it typed on it? Is there typing on the page?

A. Yes, it is.

Q. Have I shown you that document before?

A. Yes, you did.

Q. Is that document an accurate account?

A. No, it's not.

(Pause.)

Page 214.

Q. After you signed that statement, do you recall whether or not you left the Roundhouse?

A. Yeah, I was escorted out.

Q. You were escorted by a police officer out?

A. Yes, sir.

Q. And, Mr. Singletary, how did you feel at that time?

A. I felt badly.

Q. What do you mean by that?

A. Because I had written something or I was forced to writing something I didn't want to write.

Q. After that event did you have occasion to talk to anyone who occupies an official position with respect to what happened to you that night in the Roundhouse?

A. Yes, I did.

Q. And who did you talk to?

A. State Representative Alphonse Deal.

Q. And what was your purpose in meeting with State Representative Deal?

A. For him to inquire why I was so badly treated.

Q. And did you hear from State Representative Deal again?

A. Yes, we talked back and forth.

Q. And did he indicate to you what would happen

Page 215.

to you with respect to the trial proceedings?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Did you ever hear from an attorney named Anthony Jackson?

A. No, I didn't.

MS. FISK: Objection, Your Honor. Move to strike. This witness, A, was not offered for purposes of testifying he should have been called at trial. Mr. Jackson was not questioned whether or not or why he did not call this witness at trial.

MR. WEINGLASS: For the simple reason --

THE COURT: That question and answer is stricken.

MR. WEINGLASS: Your Honor, our position is Mr. Jackson was misled because of the false statement that was given to him.

THE COURT: Well, you should have asked him.

MR. WEINGLASS: It is not the witness' statement.

THE COURT: You should have asked him.

Page 216.

When Jackson was on stand you didn't ask him about it.

MR. WEINGLASS: It is not necessary. The statement is now of record and the witness has identified the statement as being false.

MS. FISK: And they have had --

MR. WEINGLASS: So Mr. Jackson received a false statement. There was no need to ask Mr. Jackson any questions about it.

MS. FISK: And they have had a deposition of this witness since 1990 and were clearly on notice of this proffered testimony and had every right and opportunity to ask those questions of Mr. Jackson.

MR. WEINGLASS: It was unnecessary.

BY MR. WEINGLASS:

Q. Now, after that evening, did anyone from law enforcement contact you shortly thereafter?

A. Ahh, later on that day or the next day.

Q. And do you recall who they were and what they said?

A. I don't recall.

Q. Did they indicate where they were from?

A. Yes, they did.

Q. What did they say?

Page 217.

A. They said they were from the D.A.'s Office investigating a homicide.

Q. Did they refer to your being a witness?

A. Yes, they did.

Q. Were you after that visited by the police?

A. Yes, I was.

Q. And could you describe that visit?

A. That was a couple days later, four guys came and said it was a burglary detail and told us to get on the floor.

Q. Told you to get on the floor?

A. Myself and my employees and my customers.

Q. And where was this?

A. At a gas station.

Q. And what relationship did you have to the gas station?

A. I was the manager.

Q. You were the manager?

A. Yes, sir.

Q. And they asked you to get on the floor?

A. Yes, sir.

Q. Were there weapons shown?

A. Yes, sir.

Q. And were others who were there asked to get on the floor?

Page 218.

A. Yes.

MS. FISK: Objection, Your Honor. If four officers who said they were the burglary detail came and he wants to make a complaint about it, that's fine. But there has been no showing that that is related to this incident.

MR. WEINGLASS: It is the intimidation and harassment of this witness because --

MS. FISK: There is absolutely no evidence of that. Well, first of all, oddly enough, Counsel is not putting in the facts that this witness has told them in 1990 about what the truth is. That is awfully interesting. First. Second, the fact that burglary detail officers came to his gas station four days after he gave or didn't give a statement at Homicide has nothing to do with this case.

MR. WEINGLASS: Oh, it has everything to do with it. It has everything to do with it. And we will tie that up now. This witness, I might point out, is for a limited purpose as to what happened to him. And that's what we are proceeding on.

BY MR. WEINGLASS:

Q. Did officers who came to your gas station say

Page 219.

anything with respect to your having been in the Police Department several nights earlier?

A. They just said this will give you something to remember.

Q. This will give you something to remember?

A. Yes.

Q. The officer saying that have a gun?

A. Yes, he did.

Q. Did he have it out?

A. Yes, he did.

Q. Incidentally, was any damage sustained to your gas station?

A. Yes, it was.

Q. After that?

A. Yes.

Q. What happened?

A. Door was busted, plate glass was busted.

Q. Did anything happen on Christmas Eve 1982? '81, I'm sorry.

A. The glass was busted.

Q. Did your, did the gas station have insurance at that time?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

THE WITNESS: Not for glass.

Page 220.

BY MR. WEINGLASS:

Q. Did anything happen to your insurance?

MS. FISK: Objection, Your Honor.

THE COURT: I said sustained, Counselor.

BY MR. WEINGLASS:

Q. Now, did that gas station, did you continue to manage that gas station?

MS. FISK: Objection, Your Honor. My understanding was that the witness was being called with regard to the practices of the Philadelphia police in taking statements on December 9th, 1981.

MR. WEINGLASS: And the consequent harassment and intimidation of the witness because he didn't tell them what he says they wanted to hear.

MS. FISK: Which of course Counsel has not explored.

MR. WEINGLASS: This is the course of the intimidation that we are now going into.

THE COURT: I will let you go into anything you need on cross-examination, then.

MS. FISK: Fine.

MR. WEINGLASS: No, Your Honor, the

Page 221.

Court has indicated --

THE COURT: Don't, don't --

MR. WEINGLASS: A limited purpose.

THE COURT: Don't tell me, Counselor. You want to go into areas beyond what you said, I will give them a chance to cross-examine.

MR. WEINGLASS: I am only going into the intimidation and harassment.

THE COURT: Well, I will let her go into whatever I think is proper.

MR. WEINGLASS: Well, the Court restricted me on the direct.

THE COURT: I didn't restrict you.

MR. WEINGLASS: Because the proffer of the witness was for a limited purpose.

THE COURT: I said you could bring him in for anything you wanted, if you want to expand it just tell the D.A. so she knows in advance.

MR. WEINGLASS: I am not expanding it.

THE COURT: Well, okay.

MR. WEINGLASS: I said it is what happened to him that night.

THE COURT: Counselor, I am not going to tell you again. You already got one

Page 222.

thousand. Do you want to try for another one?

MR. WEINGLASS: If I am limited I have no --

THE COURT: I am not limiting you.

MR. WEINGLASS: If I am limited I have no further direct. Let the record show --

THE COURT: Let the record show I make rulings based on what I think is the proper ruling. I am not telling you where you could go. Go wherever you want. And if she doesn't object you could do anything you want. I am not going to make a ruling unless I have to make a ruling. When she objects I will make a ruling. If she doesn't object, it's all right with me.

MS. FISK: I will withdraw my objection.

THE COURT: Okay. She is withdrawing her objection. Go ahead.

BY MR. WEINGLASS:

Q. I am only talking about events that happened to you after, after you visited the police on the early morning hours of December 9th, 1981.

Now directing your attention to February of 1982: What became of your business in February of 1982?

Page 223.

A. I closed it.

Q. And why did you close it?

A. I couldn't afford the glass and stuff, kept getting broke.

Q. Pardon?

A. I couldn't afford the glass that kept getting broke.

Q. Were you present in Philadelphia in June of 1982?

A. I was.

Q. And do you recall if in 1982 you took a vacation at all?

A. June 26th.

Q. June 26th?

A. Yes, sir.

Q. Where did you go?

A. North Carolina.

Q. And how long did you remain?

A. To July 9th.

Q. Up to that time had you been contacted by anyone representing Mr. Jamal?

A. No, I hadn't.

Q. Did there come a time when you moved out of the City of Philadelphia?

A. Yes.

Page 224.

Q. When was that?

A. Late August of '82.

Q. And what caused you to move?

A. There was nothing here, I couldn't do no business.

Q. Why not?

A. Because my tow truck was being stopped, drivers being harassed.

Q. Who was stopping the tow trucks?

A. The police.

Q. And who was harassing your drivers?

A. The police.

Q. Prior to December 9th, 1981, did you have any problems with the police?

A. No.

Q. Did you work in conjunction with the police?

A. I did, yeah.

Q. Did you know an officer named Vernon Jones?

A. Yes, I did.

Q. Was he a friend?

A. I knew him.

Q. And he knew you?

A. Yes.

Q. He was a highway patrolman; is that right?

A. Yes.

Page 225.

William Singletary - Cross

MR. WEINGLASS: If I may have a moment.

(Discussion was held off the record at this time between Defense Counsel.)

MR. WEINGLASS: I have no further questions on direct.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Thank you, Sir.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Mr. Singletary, you told us that you were under the care of a number of doctors for your back, for your diabetes and for other physical conditions; is that right?

A. It's true.

Q. Are you also under the care of any other kinds of doctors?

A. Just for my back and my diabetes and blood pressure.

Q. How about psychiatrists or psychologists or therapists, sir?

A. No.

Page 226.

William Singletary - Cross

Q. You are not for any mental conditions?

A. No.

Q. Now, Mr. Singletary, you told us that on December 9th of 1981 you ended up at the Police Administration Building?

A. True.

Q. How is it that you got there?

A. I drove my car.

Q. You drove your car, sir?

A. Yes.

Q. You drove it from where?

A. 13th and Locust, 10th and Race.

Q. Had you been at 13th and Locust at around the time that Officer Faulkner was shot and killed?

MR. WEINGLASS: Objection: Outside the scope of the direct. This witness is a limited witness and the Court has indicated it was limiting the direct examination. I object to this line of cross-examination.

MS. FISK: Your Honor, the witness and Counsel, both on several occasions during the direct examination made reference to the fact that this witness was not telling the police what they wanted to hear. It is clearly permissible to find out what it is that the

Page 227.

William Singletary - Cross

police heard and why they didn't want it.

THE COURT: Okay, go ahead.

MR. WEINGLASS: I object to it. It is not the purpose for which the witness was called.

THE COURT: Objection is overruled. Go ahead.

BY MS. FISK:

Q. Were you, sir, in the vicinity of where Officer Faulkner was shot and killed?

A. Yes, I was.

Q. And as a result of your being there, did the police ask you if you would give a statement with regard to what you saw?

A. They did.

Q. But my understanding is the police did not then transport you from 13th and Locust to the Police Administration Building; is that right?

A. They did not.

Q. You chose to drive your own vehicle?

A. Yes.

Q. And that was what kind of vehicle, sir?

A. 1982 Cadillac.

Q. When you drove the vehicle from the area of 13th and Locust to the Police Administration

Page 228.

William Singletary - Cross

Building, did you park your vehicle in the parking lot of the Police Administration Building?

A. Yes, I did.

Q. And having done so -- had you driven, incidentally, alone or was the police officer with you in your vehicle?

A. He was behind me, one was behind me, one was in front.

Q. Oh. Did you park your car in the parking lot of the Police Administration Building?

A. Yes, I did.

Q. And having done that did you then enter the Police Administration Building by that door which is by the parking lot of the Police Administration Building?

A. Yes, I did.

Q. And this, sir, was in the moments, minutes, hours after the shooting of Officer Faulkner in the early morning hours of December 9th, 1981?

A. Minutes.

Q. Yes, sir?

A. Minutes, yes.

Q. Minutes, all right. At the time that you entered the Police Administration Building having parked your car in the parking lot, when you entered

Page 229.

William Singletary - Cross

through those doors into a general foyer, do you recall that there was a police officer behind sort of like bullet proof glass that had a logbook that stopped you until you entered in?

A. I don't recall.

Q. Do you recall being shown a logbook and being asked to sign it, sir, or the officer who was with you signing it to indicate you were entering the building?

A. I don't recall.

Q. Did you use any name other than William Singletary?

A. No.

Q. On that date?

A. No.

Q. But you are certain that you entered the Police Administration Building through that door?

A. Yes.

Q. That came off the parking lot of the Police Administration Building?

A. Yes.

Q. Incidentally, Mr. Singletary, you just told us that you met Mr. Weinglass sometime in June, I think he was introduced to you?

A. Yes.

Page 230.

William Singletary - Cross

Q. How was it that he came to be introduced to you, sir?

A. Some investigators were at my mother's and I wanted to know who was looking for me.

Q. Now, I understand, sir, that you had an opportunity to meet

Miss Wolkenstein five years ago; is that right?

A. Yes.

Q. Would you tell us how that came about, please?

A. Through a friend of a friend.

Q. Pardon?

A. Through a friend of a friend.

Q. Could you explain expand on that, please?

A. Well, I told one friend and then another friend introduced me to a reporter who introduced me to her.

Q. I'm sorry, you told one friend what?

A. That I was a witness. And I had seen an incident.

Q. So that friend told someone else?

A. Yes.

Q. And at some point, then, you found yourself in the company of Miss Wolkenstein in 1990?

A. Yes.

Q. And between 1990 and last month, did you

Page 231.

William Singletary - Cross

continue to have contact with Miss Wolkenstein or Mr. Weinglass or other persons working on behalf of Mr. Abu-Jamal?

A. No, I didn't.

Q. You had no contact with them at all in that intervening period?

A. No, I didn't.

Q. Now, sir, when you arrived in Homicide -- now let me understand -- after you entered through that door at the Police Administration Building, do you remember going into the large lobby and then having to go to the Homicide Division?

A. I just remember an elevator. I don't remember exactly how.

Q. Well, do you remember what floor it was on?

A. Fifth.

Q. And that, again, is based on what you recall from that morning December 9th, 1981; is that right?

A. Yes.

Q. All right. Now, after you went up to the fifth floor did you go into the Homicide Division?

A. Yes.

Q. And it is there that you met Detective Green, as I understand it?

A. Yes.

Page 232.

William Singletary - Cross

Q. And you have told us that Detective Green is a black man?

A. Yes.

Q. What else can you tell us about him by way of description?

A. Five-seven, five-eight, maybe 160 or 170 pounds.

Q. How about his age?

A. I couldn't tell his age.

Q. And was that the only detective that you spoke with while you were at Homicide that morning?

A. No.

Q. Who else did you speak with?

A. I met another detective had a button on that said Kiss Me I'm Irish on it.

Q. Was that a black man or white man?

A. No, that was a tall white guy.

Q. Well, incidentally, Detective Green, how is it that you know his name to be Detective Green?

A. He kept repeating it all night, all morning.

Q. What did he keep repeating?

A. My name is Detective Green and you will stay here until you say what I want you to say or you won't leave.

Q. Now, had you gone into a small room with

Page 233.

William Singletary - Cross

Detective Green or were you sitting out in an open area?

A. It was a cubicle. Wasn't a room, a small cube.

Q. So you had like these walls that went sort of halfway up and then it was open?

A. Yes.

Q. So you were not in a room that was fully enclosed with just the two of you?

A. No, I wasn't.

Q. And while you and Detective Green were in this cubicle, I take it there was a great deal of activity going on around you?

A. Yes.

Q. And it was in this open cubicle that you could hear sounds coming from throughout the Homicide Division; is that right?

A. Yes.

Q. Hear the sounds of other people speaking, the activity of other people?

A. Yes.

Q. All right. Now, as I understand your testimony, you and Detective Green sat down and you hand wrote an account?

A. Yes.

Page 234.

William Singletary - Cross

Q. What did you write it on?

A. Yellow legal paper.

Q. And had Detective Green given that to you?

A. Yes.

Q. And had he directed you to write an account of what had happened?

A. Yes.

Q. Tell us what you wrote?

A. I wrote down just what I said: When I was at 13th and Locust --

Q. Go ahead.

A. Word-for-word?

Q. Word-for-word tell us what you wrote?

A. Well, I brought my car, parked my car at the southwest corner of 13th and Locust. I got out to go over to the club Whispers. The doors were locked. I came back across the street. There was a Volkswagen that was going south on 13th Street. He made a left turn onto Locust. Pulled to the curb immediately. There was a police car behind it. The police car pulled behind the Volkswagen. The driver of the Volkswagen got out. The police officer got out and immediately started to walk to the wall. And immediately at that point the police officer was frisking the driver of the Volkswagen.

Page 235.

William Singletary - Cross

There was an occupant in the Volkswagen on the passenger side started yelling and screaming, saying a lot of things. He had a long Army, umm, overcoat on. He came from the car, stuck his hand in his right pocket, pulled a gun.

I immediately moved over to the highspeed line, the barrier there, and I ducked. I heard a pop. I ducked, I looked.

Q. I'm sorry, when you say the highspeed line, was that on the same --

A. It's like a subway.

Q. I understand, but was that on the same actual sidewalk that this event was that you were witnessing?

A. Yes.

Q. All right, go ahead?

A. And the, uhh, when I looked over I saw the guy again point the gun in the direction of the police officer, firing into his face.

Q. I'm sorry, where had the first shot gone?

A. I don't know where it went. I didn't see the first shot. I only saw the second shot.

Q. I see. All right. Go ahead?

A. And as I saw the second shot the police officer fell backwards. This tall guy with

Page 236.

dreadlocks looked at his right, looked to his left, placed the gun in the Volkswagen, started running. The guy who was driving the Volkswagen then started yelling a name or something and started chasing this guy.

I peeped over to see, I peeped over to see if there was anything I could do for the officer. And I started backing up. There was a, the guy there said he was a cab driver and asked me what was that sound he heard. And I said the police officer was just shot, we need to get him help right away. And as I was talking to him he went towards the police car to make a call. Just to tell them the police officer was down and we would need help right away.

And I went to back, started back towards to see the officer, then another gentleman came across the street. He wasn't as tall as the first guy. He had dreadlocks and he had said this is by brother's car, where is my brother. I said I don't know. I said there was two guys that took off running. I said the tall guy shot the police officer, took off running.

And he said oh, my God, we don't need this, and he started to went over to the cop, is there anything I could do, anything I could do to

Page 237.

help you. And he was laying forward, bending forward. And the police officer's gun, which was in his lap, discharged, striking him in the chest or someplace. And he screamed I'm shot, I'm shot. He staggered against the back of the Volkswagen.

And then there was sirens and everything was becoming chaotic then. It was just like, you know. That's what I wrote down in the report.

Q. Well, there was more, wasn't there? Didn't you also write down on the paper about the treatment that you witnessed of this man who ended up being shot?

A. Yes, I did.

Q. Well, please tell us what you wrote about that?

A. Okay, it was at that point there were some police officers came across the parking lot. They wanted to know if there was any eyewitnesses or this or whatever. And they took me as an eyewitness, took me around the corner. Got my name, address and telephone number. Where I could be reached. And wanted to know if I would be willing to give a statement.

At that point they, umm, told me to go

Page 238.

back and stand around and wait for this detective to come. I went back around the corner and at that point they had a lot of police officers around the person that was beating him, kicking him, stomping him, sticking sticks in his wound, and just cursing, cursing, saying a lot of bad things. They drugged him on the street to the back of a van, threw him in the van.

Q. Did they just throw him in the van?

A. No, they didn't just throw him in the van, they used his body and used him as a battering ram. And used him as a battering ram against the van.

Q. Which part of his body?

A. Top of his head.

Q. How many times?

A. Several times, I didn't count.

Q. With what kind of force?

A. With four men, a lot of force.

Q. Tremendous force? Looked like enough to fracture the skull, that kind of force?

A. Yes.

Q. Okay, go ahead? And then they put him in the van?

A. Then they opened the door and threw him in the van, yes.

Page 239.

Q. And was it at that point that you got into your car and drove to the Police Administration Building?

A. No, it wasn't.

Q. Okay. Go --

A. I recognized an officer known as Vernon Jones. And the detective came to me because the captain pointed him out. And asked me did I have transport or whatever. I told him I was driving a car. Then I went to 8th and Race.

Q. In addition to additional police arriving, did you report to Detective Green that there were other police vehicles at the scene before you left?

A. Yes, I did.

Q. And what other kinds of vehicles were there? And I am not limiting myself to vehicles that were on the ground.

A. There was all kinds of vehicles: Plain cars, vans. There was a helicopter. There was all kinds of stuff.

Q. What kind of helicopter? Was the helicopter using a search light in the area?

A. I didn't look, it was just a helicopter, all I know I saw the light.

Q. So it was shining a light down in the area?

Page 240.

A. Exactly, yes.

Q. And you wrote this all for Detective Green?

A. Yes.

Q. How long did it take you to make this writing?

A. I didn't count, I don't know.

Q. How long was this writing?

A. Two pages.

Q. Single space? Double space?

A. Single space.

Q. Both sides or just one side?

A. It was just one, single sided. One side, two pages.

Q. Okay. And it is that writing which you gave to Detective Green and which he balled up and threw away and told you he didn't want to see that, right?

A. Yes.

Q. Did he then give you the pad again and tell you to write it down again?

A. Yes.

Q. And did you write something a second time?

A. Something, yes.

Q. Was what you wrote the second time exactly like what you wrote the first time?

A. Close.

Q. What differences were there?

Page 241.

A. I believe it was the same.

Q. Oh, all right. So you wrote again what you have just described for us?

A. Yes.

Q. And Detective Green took that and balled it up and threw it down?

A. Yes.

Q. Incidentally, this man who was the passenger in the Volkswagen, when you heard the first shot, where was he in relation to the police officer?

A. He was, he was standing behind him. On his left side.

Q. And when you heard the second shot where was he in relationship to the police officer?

A. Facing him.

Q. And how far from him was he?

A. A couple feet.

Q. What's a couple?

A. 3, maybe 5.

Q. Okay. And this is all what you told Detective Green?

A. Yes.

Q. Now, after Detective Green bunched up that second statement and threw it away, did you write it a third time?

Page 242.

A. I did.

Q. And a fourth?

A. Yes, fourth -- no, the fourth time I wrote what he wanted me to write so I could leave.

Q. The fourth time you wrote what he wanted you to write?

A. Yes.

Q. Did he dictate it to you?

A. Yes.

Q. What was it that you wrote this fourth time that he dictated to you?

A. I don't remember words but it wasn't what I saw.

Q. And what happened to what it was that you wrote this fourth time, did you sign that or did he take it?

A. I took it, signed it and left.

Q. Now, you're indicating something --

A. Yes, I signed it.

Q. All right no, no, you are picking up a document in front of you. That's the Exhibit that the defense has marked.

A. Yes.

Q. Is that what you are referring to as the document --

Page 243.

A. Yes.

Q. -- you wrote?

A. Yes.

Q. Okay. Maybe I'm a little confused, Mr. Singletary, but the document which you have in front of you, would you agree with me that that is a type-written document?

A. Yes.

Q. Okay. Is that the document, the fourth document which you wrote on yellow paper?

A. I wrote on the yellow paper. He typed it.

Q. Oh. I see. After you wrote what he dictated to you to write, he then took what you had written and typewrote it onto a piece of paper?

A. Yes.

Q. I see. And after he typed it on the piece of paper he had you sign the bottom of that piece of paper?

A. Yes.

Q. But all the information on the document which he typed was information which he had dictated to you?

A. Yes.

Q. Just so the record is clear, Mr. Singletary, I just want to go through that document and read to you

Page 244.

what it says. And you can tell us whether any of those items are things which you told the detective as opposed to things that he told to you. All right?

A. Okay.

Q. Now, it does give your name on the top. And you see where it says interviewer?

A. Yes.

Q. You see the name it says there?

A. Yes.

Q. It says E. Quinn.

A. Yes.

Q. Is that the name of the person that he repeated to you, he said Quinn?

A. He said Green.

Q. He said Green. But the person who said to you he was Green was the person who typed this; is that right?

A. Yes.

Q. And who typed the words E. Quinn up there?

A. He was typing off the paper I gave him.

Q. That he had dictated to you?

A. Yes.

Q. Okay. Now, it has an address here. Is that your correct address, or was it your correct address back then?

Page 245.

A. Yes.

Q. And it has your phone number. Was that correct?

A. Yes.

Q. It shows you're the owner of a Sunoco Gas Station. Was that correct?

A. Yes.

Q. You were the manager, were you not?

A. Owner-manager, yes.

Q. And it has the address of your gas station and a phone number. That's also accurate?

A. Yes.

Q. Now I am going down to where the first Q is. Question: Can you tell me what you saw this morning at 13th and Locust. And it is a long narrative, I will stop occasionally and ask you if any this is what you told the detective.

The answer is recorded: I was coming from my parents' bar at 15th and Catherine Streets -- I am assuming it is a typo: It says in was driving -- I assume it means I was driving north on 13th Street. When I got to Locust Street the light had just turned red for 13th Street. I stopped my car.

Did you say that to the detective?

Page 246.

A. No, I didn't.

Q. I was sitting at the light for about 15, 20 seconds when I heard what I thought to be firecrackers. I heard about three or four pops. When I heard the second pop I knew it wasn't firecrackers because they were going too fast. Did you say that to the detective?

A. No, I didn't.

Q. After the pops stopped I leaned forward in the car and looked east on Locust. I saw a police car parked at the curb. I think the number on the car was 610. Did you say that to the detective?

A. No.

Q. At this time I backed the car up into a parking space on the corner of 13th and Locust. I got out of the car and went to the southwest corner of 13th and Locust. Did you say that to the detective?

A. No, I didn't.

Q. I looked east on Locust and saw two figures about 25 to 30 feet away from me. One was standing facing the wall. The other was standing with his back to the wall. The one with his back to the wall was bent over at the waist.

Page 247.

William Singletary - Cross

Did you say that to the detective?

A. No, I did not.

Q. You agree I am reading this accurately, though, right?

A. Yes, you are.

Q. One hand was down by his waist, the other was up by his head. I started to walk towards the two figures. As I was walking somebody yelled to me from my left. The male who yelled told me that a policeman was shot. I said where. I then looked around and saw -- and I have completed the first page.

Did you say that to the detective?

A. No, I didn't.

Q. The second page: -- a policeman sitting on the ground with his back against the wall. He had his right hand up to his face, he had blood on his hand.

Did you say that to the detective?

A. No, I didn't.

Q. The other person was sitting on the curb facing a dark blue Volkswagen. His left leg was stretched out in front of him. He was holding his leg.

Did you say that to the detective?

Page 248.

William Singletary - Cross

A. No, I did not.

Q. At this time a bunch of people showed up. The policemen who arrived picked up the policeman from the ground and put him into a police car and went up 13th Street.

Did you say that to the detective?

A. No, I did not.

Q. Now, the next question then is what did you do after the policeman left in the police car. And the answer recorded is while I was standing there I saw X-12, a police car. It was Officer Vernon Jones from the Highway unit. I knew Officer Jones.

Did you say that to the detective?

A. I said that.

Q. I told him what I saw.

Did you say that to the detective?

A. We didn't have a conversation, I just spoke to him. We didn't have a conversation.

Q. He told me to come downtown and tell what I saw.

Did you say that to the detective?

A. He didn't tell me that, no.

Q. I then went up to my gas station and gave the keys to one of the guys that works there. When I got

Page 249.

William Singletary - Cross

there nobody was there so I came back downtown to 8th and Race.

Did you say that to the detective?

A. No, I didn't.

Q. Question: Besides the policeman, can you describe the other person who was lying on the ground on Locust street.

Your answer: He was black with long hair, the hair style is called dreadlocks. He was wearing green pants, that's the only thing I could remember.

Did you say that to the detective?

A. No, I didn't.

Q. Next question: Did you see any weapons.

Your answer is no, I didn't see any.

Did you say that to the detective?

A. No, I didn't.

Q. Next question: Did you see anyone else on the street besides the policeman and the other guy with the dray locks.

Did you say that to the -- I'm sorry -- your answer was it was just the two of them.

Did you say that to the --

A. No.

Q. Do you see the next question? Did you see

Page 250.

William Singletary - Cross

anyone in the VW -- Volkswagen -- and the answer is no sir.

Did you say that to the detective?

A. No.

Q. Now, you would agree I read that correctly?

A. Yes.

Q. Now, am I also correct, Mr. Singletary, that that is your signature which appears on the bottom right-hand corner of the first page and below the last line of the second page?

A. It is.

Q. And my understanding from you is that you placed your signature there after the detective told you that you had to; is that right?

A. Yes.

Q. And you knew that none of that was truthful or accurate but he had thrown away your other handwritten statements and you figured you had no choice; is that right?

A. Yes.

Q. So when you left the police station did you immediately make any complaint to any persons regarding this treatment that you had received?

A. No, I didn't.

Q. You didn't. But you did contact, you told us,

Page 251.

William Singletary - Cross

State Representative Alphonso Deal to speak to him about this treatment?

A. Yes.

Q. And was that in the form of letters or telephone calls?

A. In person.

Q. In person. And when in relation to when this statement was recorded was it that you made that complaint to State Representative Alphonso Deal?

A. That Saturday.

Q. The Saturday after you gave the statement?

A. Yes.

Q. And did State Representative Deal cause any investigation to be done of the police practices that you are aware of as a result of your complaint to him?

A. No, he didn't, not that I am aware of.

Q. Not that you are aware of?

A. No.

Q. Now, you told us that there came a time thereafter that the windows in your gas station were broken and that you were being harassed, right?

A. Yes.

Q. Where is your gas station, where was your gas station located?

Page 252.

William Singletary - Cross

A. 1300 North Broad.

Q. Say it again?

A. 1300 North Broad.

Q. And that is Broad and where, please?

A. Broad and Thompson.

Q. And had the windows of your gas station ever been broken prior to December 9th, 1981?

A. Never.

Q. You had never had any difficulty with vandalism at that location, sir?

A. Never.

Q. And did you see persons break your windows after this event?

A. No, I didn't.

Q. Your windows just were broken?

A. Yes.

Q. Am I correct that you have no personal knowledge as to who broke your windows?

A. No.

Q. I am not correct?

A. I said I don't have any personal knowledge, nor I don't.

Q. I asked whether I was correct. I am correct you have no personal knowledge as to who was breaking your windows, right?

Page 253.

A. No, I don't, no.

Q. Now, other than making this complaint to State Representative Alphonse Deal, Mr. Singletary, I understand that you did not report any of this to any other person for many years; is that right?

A. I didn't.

Q. Pardon?

A. No, I didn't.

Q. And you told us that in February 1982, a few months after giving this statement, you closed your business?

A. Yes, sir.

Q. Because the glass kept getting broken by person or persons unknown; is that right?

A. True.

Q. All right. And that on June 26th -- I'm sorry -- but that you remained in Philadelphia, I take it; is that right?

A. Yeah, yeah, I closed the gas station in February.

Q. Yes. And you remained in Philadelphia?

A. Yes.

Q. You were at that time living with your parents; is that correct?

A. That is correct.

Page 254.

Q. And that there came a time in June when you left on vacation?

A. Yes.

Q. And where was it that you went, sir?

A. To North Carolina.

Q. On vacation?

A. Yes.

Q. And the precise dates of your vacation are June 26th through July 9th, 1982?

A. Yes.

Q. How is it, sir, that you are able to remember the precise dates of that vacation?

A. July 26th, I mean July 9th is my mother's birthday.

Q. Yes, sir.

A. June the 26th is my aunt's birthday.

Q. Yes, sir.

A. So that's how I remember.

Q. So you remember today when you are asked when you went on vacation in 1982 that you left on your aunt's birthday and came home on your mother's birthday?

A. Yes.

Q. All right. And after arriving home on July 9th, 1982 you remained in Philadelphia for about

Page 255.

another month-and-a-half and then you moved out of town in August 1982; is that right?

A. Yes.

Q. And do you know the precise date that you moved out of town?

A. No, I don't, not exact date.

Q. Okay. Now, how long did you stay out of Philadelphia after moving in August of 1982?

A. Until Mother's Day of the following year.

Q. And what was the date, if you know?

A. Mother's Day.

Q. Mother's Day of 1983?

A. I don't know the date.

Q. And that's when you returned to Philadelphia: mother's Day 1983?

A. Yes, ma'am.

Q. Okay. Now, as I understand it, sir, there then came a time on August the 31st of 1990 where you were in the company of Miss Wolkenstein and Marilyn Gelb and gave a statement; is that right?

A. Yes.

Q. Regarding these incidents about which you are testifying?

A. Yes.

Q. Now, I take it, sir, that the events about

Page 256.

which you are testifying today were so troubling to you that they are things that are very, very clear to you and you remember very well; is that right?

A. Yes.

Q. Certainly no one has suggested to you things which you have said before which might not be correct which has caused you to say anything different today, did they?

A. No, they have not.

Q. And that everything that you are saying here is what you have always said consistently, both to Detective Green in those first three statements and to Miss Wolkenstein in 1990, and is what you observed; is that right?

A. Yes.

Q. And when you made a statement in, on August 3lst, 1990, were you on that day in any physical distress?

A. Ahh, not real distress, no.

Q. Was there anything interfering with your ability on that day to fully and accurately convey your thoughts?

A. No.

Q. Now, have you had an opportunity, Mr. Singletary, to read the transcript from that

Page 257.

statement which you gave on August 3lst, 1990?

A. Yes.

Q. And when did you have the opportunity to read that?

A. About three weeks ago.

Q. And how was it that you were given that opportunity?

A. By one of the attorneys.

Q. Pardon?

A. By one of the attorneys.

Q. Well, did the attorney mail it to you? Did the attorney hand it to

you?

A. Handed it to me.

Q. And where did that take place?

A. Ahh, at a pal's.

Q. And you had an opportunity to read the entire transcript?

A. Yes.

Q. Were there any corrections that you needed to make to it?

A. Quite a few, yes.

Q. Ahh. And is that because your memory of the events between 1990 and today have changed?

A. Some of the things, yes.

Q. I see. Well, let's go through that, sir, and

Page 258.

William Singletary - Cross

you could make those corrections for us.

A. Okay.

Q. Do you have a copy of those notes?

A. No, I don't, not with me.

MS. FISK: Your Honor, I was given a copy this morning. I would hope that Counsel would have an extra copy so the witness could read along.

MS. WOLKENSTEIN: (Handing.)

MS. FISK: Thank you, Miss Wolkenstein.

THE COURT OFFICER: (Handing.)

BY MS. FISK:

Q. Now, Mr. Singletary, as I understand it, the first page of this document which you now have a copy of reads Statement under Oath; do you see that, sir?

A. Yes.

Q. So you were placed under oath by the stenographer?

A. Yes.

Q. And so I'm clear: Was there a person present like the gentleman who is sitting in front of you with one of these incredible machines who was creating some kind of tape with gibberish on it as you were speaking on August 3lst, 1990?

Page 259.

William Singletary - Cross

A. There was.

Q. And was it your understanding that that individual was taking a verbatim account of everything that you were saying?

A. Yes.

Q. And as you read this document which is now in your hand, is that the verbatim account of everything which you said on August 3lst, 1990?

A. Yes.

Q. All right. Now let me just start with page 47, Mr. Singletary.

Do you see the first question there?

A. 47?

Q. On page 47. Do you have page 47?

A. Yes.

Q. All right. Do you see the first question there where it says in 1982, in June of 1982 you were still living in Philadelphia?

And your answer was June of '82.

And the question was June of '82.

And your answer was no, I wasn't. Let's see, June of '82, I left here in, no, I left here February of '82.

Question: February of '82.

Answer: Hmm-hmm.

Page 260.

William Singletary - Cross

Question: So you were not residing in Philadelphia in June of '82.

Answer: No.

Did I correctly read that series of questions?

A. Yes, you did.

Q. And were those answers correct when you gave them under oath?

A. No, not for June of '82.

Q. Oh, were you lying under oath when you gave those answers, Mr. Singletary?

A. No, I couldn't remember all the, I couldn't remember the dates at that particular time. I couldn't, hadn't thought about what I said.

Q. Well, has your mother's birthday changed since 1990 and today?

A. No, it hasn't.

Q. Has your aunt's birthday changed since 1990 and today?

A. No, it hasn't.

Q. Yet today you were able to recall precisely that you took a vacation from June 26th, 1982 until July 9th, 1982 while you were still residing in Philadelphia; is that right?

A. Yes, it is.

Page 261.

William Singletary - Cross

Q. Yet in 1990 your recollection was that you had not been living in Philadelphia since February of 1982; isn't that right?

A. That's right.

Q. Which is correct?

A. June of eighty -- June 26th of '82, to July 9th, I was on vacation. I was still living here.

Q. How can you explain, sir, making the error back in 1990 that you moved from the City in February 1982?

A. I got confused. I moved my base and we didn't go back over the question.

Q. What confused you?

A. She asked me the question where I was residing at.

Q. Well, what in the question in 1982, in June of 1982 you were still living in Philadelphia, you answered June of '82, and the question was June of '82, what of that question confused you, Mr. Singletary?

A. Because I lived in Yeadon and I lived in Willingboro. I lived two other different places. But my main address was my mother's house.

Q. Correct. And if that was clear to you, and you knew that your main address was your mother's

Page 262.

William Singletary - Cross

house, why was your response that no, I wasn't, let's see, June of '82, I left here in, no, I left here February of '82? Why did you give that response?

A. Because I moved two or three places.

Q. You moved two or three places?

A. I moved two or three different places. Between February and June.

Q. Were they in Philadelphia?

A. One was in Willingboro, New Jersey, one was in Yeadon, Pennsylvania.

Q. I see. So you were not in Philadelphia but you were in the area?

A. Well, my mother lived there, so I keep that as my address.

Q. I see. Now, you have told us today, sir -- bear with me, please.

All right, you have told us today, sir, that there came a time when you were on the corner of 13th and Locust Street -- I'm sorry -- that you told Detective Green that there was a time when you were on the corner of 13th and Locust Street when you saw a Volkswagen pull up with two men in it; is that right?

A. Yes.

Q. And you saw a police officer get involved in

Page 263.

William Singletary - Cross

an argument with the driver of that Volkswagen; is that right?

A. Yes.

Q. And there came a time when another person from that Volkswagen, another person emerged from that Volkswagen?

A. Yes.

Q. The person who had been a passenger?

A. The passenger.

Q. And that you saw that passenger do something to the police officer?

A. Yes.

Q. Now, as I understand it, what you told us today is that you saw that passenger stand behind the police officer when you heard a pop?

A. Yes.

Q. And then you saw him in front of that passenger some two -- in front of that officer some 2 to 5 feet away and you saw him shoot the officer?

A. Yes.

Q. And what was he using to shoot the officer?

A. A small-caliber handgun.

Q. When you say small caliber what do you mean?

A. I don't know the exact caliber, but it was a small handgun.

Page 264.

William Singletary - Cross

Q. Well, did you in fact estimate it to be -- on page 9 -- a small .22, .22 or .25 small handgun?

A. Yes.

Q. And is that what it appeared to you to be?

A. I saw the barrel and that's what I thought it was.

Q. You saw the what?

A. The barrel of the gun.

Q. I'm sorry?

A. I saw the barrel.

Q. You saw the barrel of the gun?

A. Yes.

Q. Thank you, sir. And how close was this tall -- I'm sorry -- how close was this passenger when you heard that first pop?

A. How close was he to me or to the officer?

Q. To the officer.

A. He was near the Volkswagen and the officer was near the wall.

Q. Yes?

A. 10. 10, 12 feet.

Q. And that was the first pop?

A. Yes.

Q. But you then saw a second shot as well; is that right?

Page 265.

William Singletary - Cross

A. Yes.

Q. Now, am I correct, Mr. Singletary -- and you could correct me if I am wrong -- you had an opportunity to read this document some three weeks ago -- am I correct that when you gave this statement under oath on August 3lst, 1990, that you made reference to only a single shot fired by the passenger of the Volkswagen?

A. I only saw one shot. I heard two, I only saw one.

Q. Am I correct, sir, that you never made reference in this statement which you gave on August 3lst, 1990 to having heard any shot other than one?

A. I don't recall. I...

Q. Well, I welcome you, sir, to read through it and tell me whether you see any reference. Because I have read it and I see no reference to your hearing any shot other than one single shot, and that's my question?

A. I heard a pop. I ducked for cover. Then I saw the second shot.

Q. Yes, sir.

A. I didn't identify the first pop as being a shot.

Q. Well, let me ask you this, sir, let me ask you

Page 266.

William Singletary - Cross

if you remember saying this. I'll start, sir, just so we have some context, towards, well, about two-thirds of the way down on page 7, where the answer starts. The police officer made the driver get up against the wall, spread eagle, and they had a verbal confrontation between the two of them. Do you see that answer?

A. Yes.

Q. And you are talking about between the driver of the Volkswagen and the police officer there?

A. Yes.

Q. And then the next question was, could you hear what was being said.

And you said yeah -- I'm sorry -- you said most of it, yeah.

The question was can you tell us, and you said, your answer was a lot of obscenities being hollered back and forth between the two of them. The driver of the car, he didn't say a lot, but the police officer used a lot of obscenities. After about maybe two minutes the tall guy emerged from the Volkswagen and said Billy, we don't have to take this. He said we are tired of these FBI dot dot racists and so forth and so on. And he said they burned a newsstand last night and we just finished

Page 267.

William Singletary - Cross

fixing it and we turned it back over. He said we don't have to take this. So the police officer said get back in the car.

Is that what you said when you were interviewed on August 3lst, 1990?

A. Yes.

Q. Was that correct?

A. Yes.

Q. All right. Then the question is, you said that to who.

And your answer was the tall guy.

Question: Okay, what happened then.

Your answer was, the guy reached in his right pocket and pulled out a small handgun and shot the cop in the eye.

Do you see that?

A. Yes.

Q. Was that correct?

A. Yes.

Q. And is that how it happened?

A. Well, he shot him in the eye but I'm saying they didn't go into any details, I just told them that they came from that bullet. I didn't see him get shot in the back. I saw him shoot him in the eye.

Page 268.

William Singletary - Cross

Q. Well, is there any reference in what I have just read to the fact that before the tall -- what I just read is that the guy reached in his right pocket and pulled out a small handgun and shot the cop in the eye. Did you say anything about before he did that he was standing behind the officer and I heard a pop and then he came around and he pulled out a handgun and shot him in the eye?

A. No, I didn't.

Q. You didn't say that?

A. No.

Q. And there is no reference to that?

A. No.

Q. And in fact, after you gave this statement did someone tell you hey, this guy was shot twice, you're going to have to account for that?

A. I didn't see the shot entering the back, I saw the shot in the face.

Q. Now, the person who shot him in the face, or in the eye, as you said, was this tall guy who had been the passenger in the Volkswagen, right?

A. Yes.

Q. Now, after the officer was shot in the eye, did you hear him say anything?

A. I don't recall.

Page 269.

Q. Well, do you remember back on August 3lst, 1990 in this statement saying that after the officer was shot in the eye you heard him say some things? Do you remember that?

A. I remember some things that were said but I don't remember what he said.

Q. Well, let me see if I could find it for you, sir. And it becomes a little confusing and apparently you became confused, but let me try to work it out with you.

On page 18 towards the bottom there is a question: Did Mumia say anything to the officer.

And your answer was, before he shot him.

And the question was yes. Before who shot him.

And your answer was, before the officer shot Mumia, he asked him was there anything he could do for him, was there anything he could help you with, you know. The officer was saying something, telling me he wanted me to get Maureen or get the children or something like that. I couldn't make out what he was saying because I don't know Maureen and I don't know nothing about kids.

Does that refresh your recollection?

Page 270.

A. As to what was said, yes.

Q. Yes. So having read that to you, what was it that you remember hearing the officer say after he was shot in the eye?

A. He was sitting on the ground and he was saying, the guy was asking could I get you some help, could I do anything for you. And he said get Maureen and he mumbled something else and I couldn't make out what it was. I thought it was something about some children or something, I don't know.

Q. What you testified to on August 3lst, 1990 was he said get Maureen or get the children; is that right?

A. Yes.

Q. Now, you are certain that this is what he said after he was shot in the eye by this man who was the passenger in the Volkswagen?

A. Yes.

Q. And are you equally certain that this is what the officer said to Mr. Abu-Jamal before Mr. Abu-Jamal was shot?

A. Yes.

Q. So as I understand your testimony, when Mr. Abu-Jamal went up to the officer after the officer was shot by this man in the Volkswagen,

Page 271.

Mr. Abu-Jamal asked the officer if there was something he could do for him? Yes?

A. Yes.

Q. And the officer who was now shot in the eye, who was on the floor with his back up against the building, asked Mr. Jamal to get Maureen or get the children; is that right?

A. He mumbled something about Maureen and something, I thought like it sounded like kids or children something.

Q. Okay. What I am trying to determine, Mr. Singletary, is these are statements that you heard the officer say to Mr. Jamal; is that right?

A. Yes.

Q. Well, do you remember in that same interview... in fact, after that exact answer that I just read to you regarding what the officer said to Mr. Jamal after he was shot in the eye, being asked okay, did the officer say anything to Mumia.

And your answer was after he shot him no.

The question was yes.

No, he didn't. Your answer was no, he didn't, he kind of went back and kind of like dazed off.

Page 272.

Is that correct?

A. Yes, ma'am.

Q. And then further down, the question on line 18: So what you meant before was that after the tall man shot the officer, then the officer didn't say anything to Mumia.

Do you see that question there?

A. After the tall guy shot him?

Q. Yes. Line -- I just noticed these lines are numbered. On line 18, the question that begins there.

A. Okay.

Q. So what you meant before was that after the tall man shot the officer, then the officer didn't say anything to Mumia.

And your answer was, Mumia wasn't there then.

Do you see that?

A. Yes.

Q. And then the next question: Okay, but afterwards, here is, and I will ask a question, ask a different question because I was obviously confusing you. After the officer was shot did the officer say anything to Mumia.

And the answer is no, he didn't.

Page 273.

Do you see that?

A. Yes.

Q. Well, which is true, Mr. Singletary, did he say something to Mumia or didn't he say something to Mumia?

A. He did.

Q. He did?

A. Yes.

Q. Could you explain for us, then, why you said in this statement that he didn't?

A. Because I got confused and I told her I was confused asking the same question over and over.

Q. What about the question after the officer was shot did the officer say anything to Mumia confused you?

A. Because the person, Mumia wasn't there. When the officer was shot.

Q. What about the question after the officer was shot did the officer say anything to Mumia did you find confusing?

A. Because he wasn't there.

Q. But you have told us that after the officer was shot the officer did say something to Mumia?

A. This is seconds later.

Q. But you said that he didn't; is that right?

Page 274.

A. This was seconds later.

Q. Yes, sir. That's not what you said, though, when you were giving this statement under oath on August 3lst, 1990, is it, sir?

A. Well, I don't remember the question exactly. The way she was asking, I got confused during the process.

Q. You got confused about it?

A. As I explained, I couldn't -- I got confused.

(Pause.)

Q. Okay, so as I understand your testimony: You are as certain as you are of everything else that the officer, said these words to Mumia about getting Maureen or getting the children; is that right?

A. Yes.

Q. And you are not confused today when you are telling us that?

A. No, I am not.

Q. You are very clear and certain about what you are telling us, right?

A. Yes.

Q. Now, after the officer said get Maureen or get the children, I understand from your testimony today that the gun on the officer's lap then discharged; is that right?

Page 275.

William Singletary - Cross

A. It was at his lap, yes.

Q. Pardon?

A. Yes.

Q. Did the officer fire the gun?

A. I wasn't standing exactly. I saw the fire coming. I saw the gun leaning on his lap, I saw it had fired going into that direction.

Q. Well, when you say the gun was laying on his lap, was it laying flat on his lap?

A. It was laying like an erection.

Q. It was sort of laying and pointed up?

A. Sort of like.

Q. I see. And the officer, as I understand it, was sitting on the ground?

A. With his back against the wall.

Q. Back up against the wall and his feet, I take it, then were somewhere in front of him?

A. Yes.

Q. And Mr. Jamal was at that point standing in front of and over the officer?

A. He was coming towards him.

Q. Right. Now, on page 23, Mr. Singletary, line 18 again. And if you would just take a minute to look at the preceding questions. You're talking about Mumia -- and I assume you were talking about

Page 276.

William Singletary - Cross

Mr. Abu-Jamal when you refer to Mumia; is that right?

A. Yes.

Q. You are talking about Mumia approaching the police officer after the officer was shot; is that correct?

A. Yes.

Q. All right. And on line 18 you are giving an answer: He said can I help you, and the guy, he didn't say anything. He just laid back, grabbed his gun and fired.

Do you see that, sir?

A. Yes, I do.

Q. Is that what you said?

A. Yes, I did.

Q. Was that correct?

A. As I can remember.

Q. That is correct?

A. As I can remember.

Q. Well, Mr. Singletary, is there anything different about the memory you've got now as opposed to the memory that you had three-and-a-half minutes ago when you told us that when Mumia said to him can I do anything for you he said something about get Maureen or get the children?

A. Yeah.

Page 277.

William Singletary - Cross

Q. There is something?

A. Yes.

Q. Yes?

A. Yes, yes.

Q. What has happened in the last three-and-a-half minutes that has enabled you to remember?

A. The second question she asked me, I'm, when she said did he say anything to him. And he was directed the questioning, I didn't know if he was talking to me because I was peeping over the thing, I didn't know if he was talking to me or the other person.

Q. Which question did you think that she was asking you?

A. She said did he say anything. When she said did he say anything.

Q. What page are you on, sir, that you are referring to?

A. Number 23. 23?

Q. Yes, sir.

A. Yes.

Q. There is no question about him saying anything on that page; that is your answer, Mr. Singletary. There is a question before it: Palms open. And your answer is he said -- referring to Mumia -- can I help

Page 278.

William Singletary - Cross

you. And the guy, he didn't say anything.

Were those your words?

A. Yes.

Q. Was that true?

A. No, it's not true.

Q. Oh, so you were mistaken when you said that?

A. Yes. I told you I was confused when she asked me this question a second time.

Q. She didn't ask you the question, Mr. Singletary. She asked you whether his palms were open; do you see that, sir?

A. Yeah, I do.

Q. But you were confused anyway about whether or not he had said something, is that it?

A. There kind of.

Q. Because she asked you the question more than once? Is that -- beg your pardon. Is that what confused you?

A. The way she was asking it.

Q. Do you tend to get confused if the same question is asked of you more than once?

A. Sometime I do, yes.

Q. Is there anything confusing about the way I am posing questions to you this afternoon?

A. Not yet.

Page 279.

William Singletary - Cross

Q. If at any time you become confused, please let us know, all right?

A. Yes, ma'am.

Q. Now, Mumia -- who you described as approaching the officer after the officer was shot in the eye -- do you recall what he was wearing?

A. Yes, I do.

Q. And what was he wearing?

A. Safari outfit with canvas shoes.

Q. What do you mean by a safari outfit?

A. It's like the Arabs wear. It's like the Arab people wear.

Q. With the kind of harem pants that are sort of very elastic in the ankle?

A. Yes.

Q. And was it greenish in color, long and flowing?

A. Green and khaki.

Q. And that's what Mr. Jamal was wearing; is that right?

A. Yes.

Q. Incidentally, the shot that was fired -- I'm sorry -- the shot that was, the discharge of the gun that was on the officer's lap, do I understand you today to tell us that you did not see that?

Page 280.

A. I saw the flame from the barrel of the gun.

Q. But you didn't see the gun itself fired; is that correct?

A. I saw the flame from the gun.

Q. Okay. But you didn't see the gun itself fired; is that correct?

A. I saw the flame, I just saw the blue flame.

Q. Well, let me ask you this. On page 16, line 12, question: How many shots did the officer fire.

Answer: Only one. Because when he fired the one his hand went down because he didn't have no strength. The cop didn't have no strength left because he had lost blood. So when he fired the one shot, he dropped his hand.

Do you see that, sir?

A. I do, yes.

Q. Did I read that correctly?

A. Yes, you did.

Q. Is that what you said?

A. Yes.

Q. Was that correct?

A. Yes.

Q. Well, does that suggest to you that you saw the hand that fired the shot?

A. I didn't see the gun. I saw the fire from the

Page 281.

gun.

Q. Well, did you see the cop's hand fall after that shot was fired?

A. I looked, I saw his hand fall down, yes.

Q. And this was after he had gotten the gunshot wound to his eye?

A. Yes.

MR. WEINGLASS: The witness is indicating -- does the witness need a break to get up and walk?

THE WITNESS: No, I'm all right. That's all right.

(Pause.)

BY MS. FISK:

Q. Now, after the police officer used all his remaining strength to fire that shot, what happened to the police officer?

A. He was already slumped over, his hand fell, his hand just fell down.

Q. Where were you, sir -- strike that. And what happened to Mumia after that shot was fired?

A. He stumbled backwards, fell against the Volkswagen, against the right rear wheel of the Volkswagen.

Q. And during this period of time, sir, where

Page 282.

were you?

A. At that point I was standing about by the highspeed line, by the barrier there.

Q. When you say you were standing by the highspeed line, were you on the sidewalk or were you below the level of the sidewalk?

A. I was on the sidewalk; it's like catty-corner from where the officer was lying.

Q. Oh, you were not on the same street?

A. Yes, we were right, I was right there. But it was, I was catty-corner.

Q. Well, how many feet was the officer from you?

A. Uhh... I don't recall.

Q. No?

A. I don't recall.

Q. Well, was it closer than the distance you and I are?

A. Yes, it was.

Q. And was there anything blocking your view of the officer?

A. The barrier from the highspeed line.

Q. Which comes to about waist level?

A. Yes.

Q. So you could -- you were standing, I take it?

A. Yes.

Page 283.

Q. So you as you were standing could look out all around you in all directions, right?

A. Yes.

Q. And you could look out to the parking lot which was diagonally, or which was directly across the street from you?

A. Yes.

Q. And there was no one standing around it, was there?

A. In the parking lot?

Q. Yes.

A. One time there was two guys but they disappeared, I don't know where they went.

Q. Were either of those two guys Mr. Jamal?

A. No.

Q. And obviously if anyone was on any of those corners they would certainly have been able to see you standing where you were because nothing was blocking your body; is that right?

A. Yes.

Q. Now, Mr. Singletary, as I understand it, you were in the City of Philadelphia or in it's area up until June the 26th, 1982, right?

A. Yes.

Q. Were you aware at that time that the trial

Page 284.

against Mr. Abu-Jamal for the murder of Officer Faulkner was taking place?

A. I was.

Q. And I take it it was clear to you that this was a great injustice; isn't that right?

A. Yes.

Q. And you certainly did not want to have on your conscience the fact that a grave injustice was being done which you could prevent; is that correct?

A. Yes.

Q. Who was it, sir, during the trial that you contacted to notify that you could provide this information about this grave injustice?

A. There was no one to contact.

Q. There was no one to contact?

A. No one. I was waiting for a subpoena, they weren't contacting

me.

Q. Did you know that the trial was being conducted in City Hall?

A. I had read something.

Q. Did you make an effort to come to City Hall, to walk into the trial?

A. No, I didn't.

Q. And were you aware that Mr. Jamal had an attorney who was also working on his behalf?

Page 285.

William Singletary - Cross

A. No, not at that time.

Q. Did you make any phone calls to find out who the attorney was representing Mr. Jamal?

A. Yes, I talked to several people.

Q. Who did you speak to?

A. Ahh, several people in the political field, I don't recall exactly who it was.

Q. Well, who precisely?

A. Well, Alphonse Deal was one.

Q. I thought you spoke to Mr. Deal the day after you were at the police station?

A. Right, I called Mr. Alphonso after I came back in and I asked why I wasn't subpoenaed.

Q. Alphonso Deal?

A. Yes.

Q. Representative Deal?

A. Yes.

Q. And did you tell Representative Deal that you were an eyewitness and that you knew that Mr. Jamal was innocent?

A. Yes.

Q. And did you tell him that you needed to contact someone so you could let them know that you had this testimony to offer?

A. I did, yes, I did.

Page 286.

William Singletary - Cross

Q. And did he tell you who you could contact?

A. No, he said he would contact someone and get back with me.

Q. Oh. And how long before you left on vacation was it that you told Mr. Deal that?

A. About two weeks.

Q. And did you hear back from him?

A. No, I didn't.

Q. So did you call him again before you left for vacation?

A. Yes, I did.

Q. And did you again tell him I'm preparing to leave but I can provide helpful information in this case?

A. Yes, I did. And I also left a phone number in North Carolina where I could be reached.

Q. And you gave that to Mr. Deal?

A. Yes, I did.

Q. And you never heard back from him?

A. No, I didn't.

Q. Who else did you contact?

A. He was the only one.

Q. Oh, he was the only person?

A. Yes.

Q. All right, but you did not yourself come into

Page 287.

William Singletary - Cross

City Hall to see if you could find the trial yourself?

A. No, I didn't.

Q. You relied upon Mr. Deal to attempt to make those contacts for you?

A. Yes, ma'am.

Q. How was it you knew Mr. Deal?

A. I knew him as a police officer and I knew him as a State Representative. I knew him as the president of the North Philadelphia branch of the NAACP. And I've known him throughout the years.

Q. And through those organizations, did you try to contact those organizations?

A. I did not.

Q. And say who was representing Mr. Jamal, I must speak to those persons?

A. I relied on him.

Q. Pardon?

A. I relied strictly on him.

Q. You relied on Mr. Deal?

A. Yes, ma'am.

Q. So as I understand it, sir, you were willing to testify at this trial as to all of the things you have told us today?

A. Yes, I was.

Page 288.

William Singletary - Cross

Q. When you returned from vacation on July the 9th, did you learn that the trial was over?

A. I did.

Q. And I take it you were more than a little disturbed, were you not?

A. I was, yes.

Q. And, well, what did you do then?

A. I talked to some people that I know that was into the Court and different things.

Q. Who?

A. I don't know their names, I don't recall who it was. But a couple people like reporters from the small papers. And they said they would get back with me.

Q. Well, did you write a letter to anybody?

A. No, I didn't.

Q. Did you attempt at that time to contact Mr. Jamal or an attorney on behalf of Mr. Jamal to let them know that you should have been called to trial?

A. I didn't contact anyone. Mr. Deal, Alphonso Deal is the only person I talked to.

Q. Well, did you call Mr. Deal again when you came back from vacation?

A. I went to see him, yes, I did.

Q. And to tell him gee, I never heard from you?

Page 289.

William Singletary - Cross

A. Yes.

Q. And did he give you the impression that he had told Mr. Jamal's attorney about your availability?

A. He say he didn't have contact, he didn't have time to make contact with anyone.

Q. He didn't have the time?

A. He didn't have any time to make contact.

Q. Did you when you went to see him personally say well give me that attorney's name and number so I could call him and tell him about this horrible injustice that has happened, did you do that?

A. No, I didn't.

Q. Did you in any of your phone conversations with Mr. Deal ask him to give to you the name and the phone number of any attorney or some person who was representing Mr. Jamal?

A. No, I did not.

Q. How is it, sir, that you were located in 1990 for the purpose of giving this statement?

A. From the same people that I contacted in 1981.

Q. Which same people?

A. Reporter for the small paper. Jones, Dale Jones his name is.

Q. And you had continued telling these people?

A. Yes, I did.

Page 290.

William Singletary - Cross

Q. Regularly through the years from 1982?

A. Every chance I got to speak with them, yes.

Q. And how often was that?

A. Every two or three months. Every six months or so.

Q. And did you notify these people by way of any written letters?

A. No.

Q. Only by telephone?

A. Personally, by person.

Q. By person?

A. Yes.

Q. And who are these persons that you notified in person?

A. Ahh, Dale Jones.

Q. Yeah, who is Dale Jones?

A. He is a reporter for a small paper.

Q. Where?

A. In Philadelphia.

Q. Which small paper?

A. Ahh, Scoop Magazine, or Scoop. It is a paper that's circulates, it's bars and stuff.

Q. Okay, who else?

A. And Mr. Deal.

Q. So you continued to contact Mr. Deal?

Page 291.

William Singletary - Cross

A. Yes, I did.

Q. Every couple of months, whenever you saw him in person?

A. Yes.

Q. So for every couple of months following July 1982, through August 1990, you continued to tell Dale Jones and Mr. Deal that you were an eyewitness to this incident, yes?

A. Well, Mr. Deal passed away so I was still in contact with Mr. Jones.

Q. Oh, I see. When did Mr. Deal pass away?

A. Oh, I don't know. Around '84, '85, I guess.

Q. All right. So since '84 -'85 the only person that you were contacting was Mr. Jones; is that right?

A. Yes.

Q. And you didn't add anybody else to that list of people to contact?

A. No, he kept getting different people for me to talk to but no one would ever -- I never got to speak to anyone. And he would get someone else and then someone else and it kept going on and on.

Q. Did you speak to these persons?

A. No, the only one I spoke to was Miss Wolkenstein.

Page 292.

William Singletary - Cross

Q. And that was on August 3lst, 1990?

A. Exactly.

Q. And during that entire period you never communicated with any person by letter or any other means?

A. No, no.

Q. Now, after Mr. Jamal was shot by Officer Faulkner, my understanding is that's when police cars started arriving; is that right?

A. No.

Q. That's not right? How long did it take police cars to arrive?

A. The cars, it took a few seconds. But there were other officers on the scene.

Q. How did they get there?

A. They came from across the parking lot.

Q. On foot?

A. Yes, captains, lieutenants.

Q. The captains and lieutenants got there before the cars got there?

A. Yes.

Q. And how many captains and lieutenants arrived at the scene before the police cars arrived?

A. I don't recall their number but it was more than, it was more than three. I don't recall an

Page 293.

William Singletary - Cross

exact number.

Q. And from where across the parking lot had they come?

A. I don't know where they came from. They came from across the parking lot, I'm not sure where they came in from.

Q. And they appeared to you to be on foot?

A. Yes, they were on foot.

Q. And after the arrival of approximately three, at least, captains and lieutenants, that was when the first police car arrived; is that correct?

A. Yes.

Q. Oh. And after the first police car arrived there were many others that arrived?

A. Yes.

Q. My understanding from you is that there was also, shortly thereafter there was a helicopter; is that right?

A. Yes.

Q. How long after Mr. Jamal was shot was it that the helicopter arrived?

A. I don't recall.

Q. Well, was it within 10 minutes?

A. The whole thing didn't take 10 minutes. It wasn't even 10 minutes, the whole thing wasn't 10

Page 294.

William Singletary - Cross

minutes.

Q. So it was within 10 minutes; is that right? So it was certainly not more than 10 minutes after Mr. Jamal was shot; is that right?

A. Yes.

Q. Okay. Am I correct that the helicopter was hovering overhead directly above this scene where this occurred; is that right?

A. It was circling, it was circling, yes.

Q. Well, it was circling, it was staying right in the area of 13th and Locust?

A. Yes.

Q. And it was shining a floodlight down on that intersection?

A. It was moving, it was moving about.

Q. In the area of the intersection?

A. Yes.

Q. And you looked at the helicopter?

A. I heard the rotors, looked up.

Q. Was it a police helicopter that said Police on it?

A. I didn't look at it to notice.

Q. You didn't notice?

A. I just saw a helicopter.

Q. You saw it and you heard it, I see. Now, as I

Page 295.

William Singletary - Cross

understand it, you then saw police officers take Mr. Jamal and use his body, as you described it, like a battering room; is that right?

A. Yes.

Q. All right. Were these the lieutenants and captains who did this or were these uniformed police officers?

A. No, uniform, captains and lieutenants, I didn't see them. After they told me detectives was coming they disappeared, I didn't see them anymore.

Q. So they came across the parking lot before the uniformed officers arrived?

A. Yes.

Q. Once the uniformed officers arrived they disappeared?

A. There was a crowd by that time 25, 35 people, so I didn't see them.

Q. All right. While that crowd of 25, 35 people remained there is when Mr. Jamal was picked up and used like a battering room against the back of the police van; is that right?

A. Yes.

Q. And his body, as you understand it, was propelled into the door of the police van while the door was closed; is that right?

Page 296.

William Singletary - Cross

A. Yes.

Q. And this is a metal vehicle, yes?

A. Yes.

Q. And they were doing it with tremendous force on the body of Mr. Jamal?

A. Yes.

Q. Yes? And as you have already expressed, it was evident to you that it was with sufficient force to crack his skull; is that right?

A. Depending on how hard his head was.

Q. Pardon?

A. It depends on how hard his head was.

Q. Perhaps not crack his skull but certainly cause bruising in that area, would you agree?

A. It's possible, yes.

Q. Well, is it possible that it would not have caused bruising based on the force of the hit that you saw (indicating)?

A. Well, it would have to leave something.

Q. Okay. Now, am I correct, Mr. Singletary, that in addition to the officers using Mr. Jamal like a battering ram, they were also kicking him and beating him?

A. They were kicking him and beating him prior. That's when he was sitting on the ground next to the

Page 297.

William Singletary - Cross

Volkswagen.

Q. Oh, this is before they used him like a battering ram?

A. Yes.

Q. And how were they beating him, sir?

A. With their sticks.

Q. What part of his body were they kicking?

A. His testicles.

Q. How many times did you see him kicked in his testicles?

A. More than three.

Q. And what kind of force were those kicks done with?

A. I didn't measure the force but he was, he was kicked pretty hard.

Q. At least three times?

A. More than three.

Q. More than three.

(Pause.)

Q. And is it my understanding, Mr. Singletary, that after you observed this you went to the Roundhouse, went up to the fifth floor, and hand wrote this event on three occasions for Detective Green?

A. Yes.

Page 298.

William Singletary - Redirect

Q. And you are as sure of that as you are of everything else that you have told us today; is that right?

A. Yes, I am.

MS. FISK: Thank you, sir.

I have nothing further, Your Honor.

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REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Mr. Singletary, can you endure this for a little while longer?

A. How much longer?

Q. Pardon?

A. How much longer?

Q. Another 10, 15 minutes. Do you want to take a break at this point?

A. No, let's do it.

Q. As I understand your testimony on cross-examination, you told the police that night that you had witnessed two shootings: The shooting of Officer Faulkner and the shooting of Mr. Jamal. Is that correct?

A. Yes, sir.

Q. Did you see Mr. Jamal shoot Officer Faulkner?

Page 299.

William Singletary - Redirect

A. No, sir, I did not.

Q. Did you see Mr. Jamal with a gun that night?

A. No, sir, I did not.

Q. Did you see Officer Faulkner shoot Mr. Jamal?

A. I saw his gun discharge.

Q. Now, on August 3lst, 1990, when you gave the deposition or sworn statement in Marilyn Gelb's office, were you interviewed by Marilyn Gelb before you gave that statement?

A. No.

Q. Did anyone tell you what to say?

A. No.

Q. Before your testimony today did anyone tell you what to say?

A. No, sir.

Q. Going back to December 9th, 1981, when you arrived at the intersection of Locust and 13th, were you driving your Cadillac?

A. Yes, sir.

Q. Did you park at or near the intersection?

A. I parked on the southwest, southwest corner right by the fireplug.

Q. And when you parked your car, did you meet anyone at that time?

A. Young lady dressed with a white fur coat and

Page 300.

William Singletary - Redirect

green slacks.

Q. And did you later find out who that young lady was?

A. I did.

Q. What was her name?

A. Cynthia White.

Q. Did you have a conversation with Cynthia White?

A. I spoke to her.

Q. And how long was that conversation in duration?

A. A couple seconds.

Q. Did you then see, did you then leave that area and go across Locust Street?

A. I did.

Q. And is that when you went to Whispers?

A. Yes, sir.

Q. And after you left Whispers did you return to your car?

A. In front of my car, and came back across the street, yes.

Q. When you came back across the street was Cynthia White still there?

A. No, sir, she was down the street, four or five cars.

Page 301.

Q. Do you know which street?

A. South on 13th.

Q. And was she alone?

A. She was talking to a guy.

Q. And was it then that you crossed 13th Street to where the speed line is?

A. To, no, that's as the Volkswagen approached.

Q. I see. And as that happened did you see where Cynthia White was?

A. She was gone far down the street.

Q. Was she on that corner with you when you saw the shooting?

A. No, sir.

Q. Did you ever see Cynthia White again after that morning?

A. No, sir.

Q. Now, and you told us you saw Vernon Jones on that corner shortly after the shooting; is that correct?

A. Yes, sir.

Q. And he is a Highway patrolman; is that right?

A. Yes, sir.

Q. Did you see the person who shot Officer Faulkner?

A. Yes, I did.

Page 302.

Q. Could you describe his hair style, if you can remember?

A. He had long dreadlocks. Extremely long, mixed with black and brown.

Q. Long dreadlocks?

A. Yes, sir.

Q. Did you see what he did after he shot the officer?

A. Yes, I did.

Q. What did he do?

A. He tossed the gun on the right side of the Volkswagen.

Q. And what did he do?

A. He ran east on Locust.

Q. On which side of the street?

A. South side.

Q. And is it your recollection that Mr. Jamal was not present at the scene when the officer was shot?

A. Yes, it is.

Q. Now, was your recollection of the events you saw on the early morning hours on December 9th, 1981 better that morning when you wrote out, hand wrote out the statements than it is today?

A. Yes, it is.

Q. And those handwritten statements that you

Page 303.

wrote out were torn up?

A. At first it was torn, the rest of it was balled up and threw in the trash.

Q. Have you been able to look at these statements to refresh your recollection as to what you said that morning?

A. Not of what I wrote, no.

Q. So your memory of what you saw that morning, with the passage of 13 years, without being refreshed by what you wrote, is not as good now as it was that morning when you wrote out the statements; is that correct?

A. No, it's not.

Q. And it wasn't as good either on August 3lst, 1990 when you gave your sworn deposition?

A. No, it wasn't.

Q. When you spoke to an Alphonso Deal did he indicate that you should wait to be subpoenaed?

A. That's what he told me, I would be subpoenaed.

Q. And you were expecting to be subpoenaed?

A. I thought I would be, yes.

Q. And you were never subpoenaed?

A. No, I wasn't.

Q. You were subpoenaed you would have testified?

A. Yes, I would have.

Page 304.

Q. Incidentally, the aunt, where does your aunt live, the one you referred to in cross-examination?

A. Where does she live now?

Q. No, where did she live in June of 1982?

A. In Logan, in North Philly -- North Philly in Logan.

Q. Here in Philadelphia?

A. Yes.

Q. And where did your mother live in June of 1982?

MS. FISK: Objection.

BY MR. WEINGLASS:

Q. I'm sorry, July of 1982?

A. Philadelphia.

MS. FISK: Objection to relevance.

THE COURT: Well, if you don't object fast enough we are going to get these answers in. So I will sustain the objection. I will strike the question, strike the answer.

Now, let's not be rambling all over, Counsel.

BY MR. WEINGLASS:

Q. Was the reason why you could recall leaving the City on June 26th and returning on July 9th was because you had attended birthday parties both for

Page 305.

your aunt and for your mother?

MS. FISK: Objection, Your Honor.

THE COURT: Objection sustained. Counselor. You testify well but that is not the way to do it. You take the stand like anybody else. Stop leading these witnesses. Please.

BY MR. WEINGLASS:

Q. Now, on that statement that's before you, the typewritten statement, is there a time indicated as to when that statement was given?

A. I don't see, I don't see a time here.

Q. That box is blank, is it not?

A. Yes.

MR. WEINGLASS: If I may have just a moment.

(Discussion was held off the record at this time between Defense Counsel.)

(Pause.)

MS. FISK: Your Honor, may I inquire as to whether the Court Officer was able to make the phone call?

(Discussion was held off the record at this time.)

MS. FISK: Thank you.

BY MR. WEINGLASS:

Page 306.

William Singletary - Redirect

Q. Mr. Singletary, irrespective of what door you went into, were you in the Roundhouse on Race Street in the early morning hours of December 9th, 1981?

A. Yes.

Q. And were you in the Roundhouse when you signed the police report which is before you and has been marked as an Exhibit?

A. Yes.

Q. There is no doubt in your mind that you were in the Roundhouse that morning?

A. No.

Q. There is no doubt in your mind that the police questioned you that morning?

A. There's no doubt.

Q. And there is no doubt in your mind that you were there for five hours?

A. There's no doubt.

Q. And there is no doubt in your mind that the statements that you hand wrote were torn up and thrown away?

A. There is no doubt about that.

MR. WEINGLASS: I have nothing further.

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RECROSS-EXAMINATION

- - - - -

Page 307.

William Singletary - Recross

BY MS. FISK:

Q. And there is no doubt in your mind that that was the fifth floor that you were on; is that right?

A. I'm not sure which floor.

Q. Oh?

A. The detective pushed the elevator button, I didn't.

Q. Oh, I see. I take it, as I understand your answers to Counsel's questions, your memory about these events was better in 1990 than they are today; is that right?

A. Yes, ma'am.

Q. Because as time passes memories fade; is that right?

A. True.

Q. But would it be correct, then, sir, that on August the 3lst, 1990, your testimony with regard to the shooting of the officer on page 8 was, okay, what happened then, and your answer was the guy reached into his right pocket and pulled out a small handgun and shot the cop in the eye. And you then made reference to the fact that that shooter then fled. That was your best recollection of this incident?

A. That's the way she -- that was the way I

Page 308.

William Singletary - Recross

answered, yes.

MS. FISK: Your Honor, I neglected to have marked these notes of testimony and I would ask at this time that they be marked so that the Court record is complete.

BY MS. FISK:

Q. Because you would agree with me, Mr. Singletary, would you not, that you never under oath on August 3lst, 1990 make reference to any other shot being heard by you directed at the officer, did you, sir?

A. Not to my recollection.

(Copy of transcript was marked Commonwealth's Exhibit C-l9 for identification.)

THE COURT OFFICER: C-19, Your Honor.

MS. FISK: Thank you, sir.

I have nothing further, Your Honor.

THE COURT: All right, I guess they are finished with you.

THE WITNESS: I guess. I hope so. Thank you, sir.

THE COURT: While we are waiting to find out where you are going to go next: This morning we had a representative from the Court Administrator's Office that she said that she

Page 309.

left some notes of testimony here on Wednesday. But she looked around and couldn't find the Officer. I think we do have the Officer.

Would you come up here, please.

THE COURT OFFICER: Yes, Your Honor.

THE COURT: Yes. This representative from the Court Administrator's Office said she left some notes with you on Wednesday of this week.

THE COURT OFFICER: That is correct, Your Honor.

THE COURT: For the record, give us your name so that we will know.

THE COURT OFFICER: Officer Billups.

THE COURT: And what did you do with those notes of testimony?

THE COURT OFFICER: Those notes of testimony, Your Honor, I handed to these two attorneys here at the end of the table (indicating).

THE COURT: And that was on Wednesday?

THE COURT OFFICER: And that was on Wednesday.

THE COURT: Okay.

MR. WEINGLASS: What time of day?

Page 310.

THE COURT OFFICER: That was on Wednesday... about mid-afternoon. We had just gotten back, I believe we had just reconvened from lunch. And I passed them to both Counsel. And as a matter of fact, Counsel took the cover sheet off and opened it up and went through it and then handed it to the young lady there.

THE COURT: Okay. Thank you.

MR. WEINGLASS: The record should reflect that the witness is pointing to the end of the table where --

THE COURT OFFICER: To both Counsel, both Counsel right here.

MR. WEINGLASS: -- Valerie West is seated.

THE COURT: That includes Mr. Williams.

MR. WEINGLASS: Excuse me, Your Honor. On what was just marked, I don't believe that it has the certification page on it. It came right from my files.

THE COURT: Oh.

MS. WOLKENSTEIN: This, I will represent to you, is exactly the same of what you have in the original. Could we just switch

Page 311.

that, is that okay?

THE COURT: Yes.

THE COURT OFFICER: We are marking a new copy, Your

Honor, C-15.

THE COURT: All right. Anymore witnesses?

MS. FISK: Yes, Your Honor, I will need to contact Detective Quinn and I will present him to the Court. I am hopeful that he will be available for Monday. I understand that Detective E. Quinn who took Mr. Singletary's statement is currently detailed to the FBI. And detectives while we've been here this afternoon have been making efforts to contact him. They understand that he is working and are not able to hear from him. And we will continue making those efforts over the weekend so we could present him for the Court.

THE COURT: All right, then we will adjourn until Monday morning.

MS. FISK: Thank you, sir.

MR. WEINGLASS: I have Counsel present and I have been given a copy of --

THE COURT: Yes.

MR. WEINGLASS: -- something that's

Page 312.

called Contempt of Court.

THE COURT: Right.

MR. WEINGLASS: And the Court has underlined three times the word forthwith with a --

THE COURT: I didn't underline forthwith.

THE COURT CLERK: I did.

MR. WEINGLASS: Someone did.

THE COURT CLERK: I did.

THE COURT: Forthwith. Will you tell him where he goes to pay the fine?

MR. WEINGLASS: Pardon?

THE COURT: I am asking the Court Clerk to tell you where to go to pay the fine. All right, we will put off until Monday to pay that fine.

MR. WEINGLASS: Mr. Rudovsky is here.

THE COURT: Mr. Rudovsky is here. I held you in contempt, it was right in the presence of the Court and that's it. 685 on Monday, pay the fine. If you want to appeal it you appeal it, okay.

MR. WEINGLASS: If I don't pay the

Page 313.

fine?

THE COURT: Then I'll put you in jail, okay.

MR. WEINGLASS: As long as that's understood.

THE COURT: Oh, that's understood.

MR. WEINGLASS: Your Honor, my Counsel can not appear here today on my behalf.

THE COURT: He could appear wherever he wants. He wasn't here when you committed the contempt. It was in front of this Court.

MR. WEINGLASS: I am not calling him as a witness, I am calling him as a lawyer.

THE COURT: What is your problem, Counselor? He committed --

MR. RUDOVSKY: I don't have a problem.

THE COURT: He committed a contempt in the Court.

MR. RUDOVSKY: I am here to represent Mr. Weinglass. And I don't have a problem and I would ask the Court not assume that because I came to represent Mr. Weinglass that I have some kind of problem. I don't have a problem.

THE COURT: Well, I don't know, but let me say this to you: I held him in contempt

Page 314.

for what he did in front of the Court. I fined him $1,000, payable forthwith. They are closed, they will open up on Monday. He has to go in there and pay the fine of a thousand dollars.

MR. RUDOVSKY: Could I ask you to reconsider that, Your Honor?

THE COURT: No, I am not reconsidering it, Counselor, that's it. All right.

MR. RUDOVSKY: You will not let me be heard as to --

THE COURT: What do you want to do? Go ahead.

MR. RUDOVSKY: I would like a hearing before --

THE COURT: You don't get a hearing when you have a contempt in front of the Court. You have a right to appeal, now take an appeal.

MR. RUDOVSKY: We will do that if necessary, Your Honor.

THE COURT: It is going to be necessary. Because I held him in contempt, a thousand dollars. That's it, all right. See you on Monday.

MR. RUDOVSKY: Your Honor, if I can be heard on that, I would ask that the matter of

Page 315.

contempt be referred to another judge.

THE COURT: No, I am not referring it to another judge because it was contempt in my presence, period.

MR. RUDOVSKY: It was done, as I understand, during an argument over Exhibits.

THE COURT: No, it was done because I told him what -- the notes will tell you what it was all about. If you want to order the notes, order the notes and you'll have it.

MR. WEINGLASS: It was done after I indicated that I wished the Court --

THE COURT: Counselor, the notes will tell you what happened.

MR. WEINGLASS: I was indicating to the Court not to point a finger at me.

THE COURT: If you want to take an appeal you take an appeal. That's all for now. It's 5:30. Good night, gentlemen. See you on Monday.

MR. WEINGLASS: The Court is leaving the bench.

THE COURT: What do you think I am going to do. It's 5:30, I don't get paid overtime.

Page 316.

THE COURT OFFICER: This Court stands adjourned until Monday morning, the Call of the Crier.)

- - - - -

(The hearing was adjourned for the day at 5:30 p.m.)

- - - - -

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

14. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Monday, August 14, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

- DAVID RUDOVSKY, ESQUIRE
  Councel for Leonard Weinglass

INDEX

COMMONWEALTH EVIDENCE

WITNESS	DE	CE	RDE	RCE
Officer Vernon Jones	15	22	45	46
Detective Edward Quinn	48	58	--	--

EXHIBITS

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
20	Interview record (Off. V. Jones)	17

Page 3.

- - - - -

(At 10:05 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

MR. RUDOVSKY: May I approach the bench, Your Honor?

THE COURT: Yes, sure.

MR. RUDOVSKY: David Rudovsky for Leonard Weinglass. Your Honor, I was here on Friday afternoon and asked the Court in the alternative to vacate the finding of contempt against Mr. Weinglass and to reconsider that matter, and or to refer the matter to another judge. In essence, we asked for a hearing on the contempt action. We have several witnesses who observed what happened. Mr. Weinglass has a right to have his side of that incident heard on the record. It was in front of Your Honor. And while under direct examination you could hear it, we think that you are embroiled in this affair and should not hear it. But be that as it may, we ask for a hearing on that matter. There are witnesses who will testify that the photographs were in hand, they were about to be

Page 4.

handed over to Court and the Court acted precipitously in holding Mr. Weinglass in contempt.

THE COURT: What I would suggest to You, Counselor, you were not here. I would suggest that you wait until all the notes have been transcribed. Then you will see what really happened, okay. This matter is not going to be over today. There is oral argument that has to go forward at a later time after the Court reporter has transcribed all the notes, everybody has had a chance to review them. And I think that's when you should bring it up: At that time.

I would refer to an article, an editorial in yesterday's Inquirer which reads as follows. And I have taken parts of it out. He, the Judge, has allowed himself to be drawn into petty fights with defense lawyer Leonard Weinglass, an attorney with a long career of baiting judges in trials he has orchestrated into causes celebres. Mr. Weinglass has fished far beyond the limits of what the law allows in such proceedings. He has had a heyday insulting the Judge in the press and sometimes to his

Page 5.

face.

And then the news article went on to blame me for this. They seem to blame the victim rather than the perpetrator.

MR. RUDOVSKY: Your Honor, let me state --

THE COURT: I'm speaking now, okay.

MR. RUDOVSKY: Yeah.

THE COURT: In the old days we lawyers had a saying: If you have the evidence on your side, argue the evidence. If you have the law on your side, argue the law. And if you have neither the evidence or the law, scream like hell.

Now the news media, specifically The Inquirer, has changed that to read as follows: If you don't have the evidence or the law, blame it on the Judge. Who else are you going to blame it on.

Now, I think -- and I am telling this to The Inquirer -- if you want to be fair to the people who read your newspaper, you should purchase the notes of testimony from the Court reporter, and in it's entirety, including sidebars, everything, purchase it and print it

Page 6.

for the people who could not be present in this Courtroom to hear this evidence. And you don't have to do it all at one time. You could run it as a series. You could probably make a lot of money selling it to the people, they may be interested in it. At any rate, it would be the only fair way to do it.

And I am not putting you off, Counselor, I am just saying I think you should wait. At the proper time, after all the notes are transcribed, I've had a chance to read it over, and everybody's had a chance to read it over, I would be glad to hear you at that time.

MR. RUDOVSKY: Your Honor, two problems. Number one,

regardless of what the notes say, we have witnesses to testify.

THE COURT: Okay, okay.

MR. RUDOVSKY: Secondly, under the threat of incarcerating Mr. Weinglass, we paid the fine this morning. We will be taking an appeal this afternoon in that matter.

THE COURT: If you will take an appeal, go ahead. Unfortunately, they will have to wait until the notes are transcribed, but take your appeal.

Page 7.

MR. RUDOVSKY: I am asking the Court for a hearing. Is the Court denying us a hearing on contempt?

THE COURT: I don't think you are entitled to a hearing. Unless you could give me a case that says that you are. When the contempt is in front of the judge, he could hold him summarily in contempt, he doesn't have to hold a hearing.

MR. RUDOVSKY: I don't disagree with that proposition.

THE COURT: Is that the law?

Is that the law?

MR. RUDOVSKY: That is the law. If I could finish. If there are witnesses and facts to be adduced from the other side, the defense has a right to be heard with those witnesses. You may have seen one thing, you may have heard one thing, you may have been mistaken.

THE COURT: Well, it is what I saw and heard that is important.

MR. RUDOVSKY: If the Court is saying we have no right to present a defense to the contempt.

THE COURT: Unless you could show me

Page 8.

a case that says that you are.

MR. RUDOVSKY: Taylor versus Hayes, United States Supreme Court.

THE COURT: Xerox the case, give it to me. At my leisure I will read it and let you know where I am going.

MR. RUDOVSKY: Let me just say one final thing since you mentioned it. Mr. Weinglass has been held in contempt once before 25 years ago, a contempt that was summarily reversed. He has never, never been held in contempt any other time. He has been threatened with contempt --

THE COURT: Counselor, I didn't write the editorial.

MR. RUDOVSKY: I don't think that you did, Your Honor.

THE COURT: Are you saying that Mr. Weinglass is saying the news media, specifically The Inquirer, is printing something that isn't true?

MR. RUDOVSKY: That's exactly right.

THE COURT: Is that what you are saying?

Well, Inquirer, there it is: You

Page 9.

don't print the truth. What you better start doing is buy the notes and print it in the paper. Okay.

MR. RUDOVSKY: Your Honor, we would join in that request because we think what would be printed would demonstrate and fortify exactly what the defense has been saying.

THE COURT: Okay, let's see. Let the public decide that.

MR. RUDOVSKY: Thank you, Your Honor.

THE COURT: I don't approve of the news media spoon feeding something to the people who read their paper. Let them print the entire proceedings, let the public decide. Particularly those people who are out in California, don't know anything about it. Those people over in Germany, those people in South American. Let them print the whole thing, everything that went on, all right.

Now let's proceed with your last witness. I hope.

MS. FISK: Good morning, Your Honor.

Your Honor, in light of the testimony which was presented, I have not provided prior notice to defense because these are witnesses in

Page 10.

direct rebuttal to the witness that was completed at 5:45 on Friday. There are two witnesses, Your Honor. The first will be Officer Vernon Jones, who was a police officer who had contact with Mr. Singletary on the morning of December 9th, 1991. The second witness will be a Detective Quinn, who is a detective who took the written statement from Mr. Singletary which Mr. Singletary was confronted with.

THE COURT: Well, do you have that to give to the defense Counsel now?

MS. FISK: Do I have which?

THE COURT: No, the --

MS. FISK: That's what I have just advised the Court I have not previously told --

THE COURT: Well, why don't you give it to them and I will take a short recess.

MS. FISK: The statements, Your Honor, are statements which were provided in discovery 14 years ago. Officer Jones gave a statement on December the 17th, 1981. Counsel has that. And obviously the statement of Mr. Singletary was marked and was fully discussed on Friday. So these are not new witnesses, recently

Page 11.

discovered. These are witnesses about whom the defense knew.

MR. WEINGLASS: With respect to witnesses, the Court has advised defense that the defense may not subpoena any further witnesses without the Court's first permission. And I'm applying at this time for permission to issue a subpoena to a witness who testified at the trial. His name is Robert Chobert. And our investigator, who is present in Court, Michael Newman, had a conversation recently with Mr. Chobert in which Mr. Chobert indicated for the first time that he received a promise of assistance from the District Attorney trying the case. His name is Joe McGill. And that promise was that Mr. McGill would help Mr. Chobert recover his chauffeur's license so he could go back to gainful employment as a school bus driver.

That promise was never turned over to the defense and so it constitutes another Brady ground. And in light of that we would like to bring Mr. Chobert in to testify to the fact that he received a promise of assistance from the District Attorney. And for that reason we would

Page 12.

like to subpoena him. If the Court will allow us to do so.

MS. FISK: Well, first, Your Honor, I assume that if Counsel has had an investigator speak to Mr. Chobert that they have an affidavit from Mr. Chobert asserting the representations that Counsel just presented to the Court.

THE COURT: Well, do you have an affidavit to give to her? Maybe she'll withdraw the objection she may have.

MR. WEINGLASS: We don't have an affidavit. I might say, Mr. Chobert has indicated quite clearly that he will only cooperate if he's subpoenaed. He will not cooperate with us. But he will respond to a subpoena and that's why I'm requesting one.

THE COURT: Well, sounds like a fishing expedition to me.

MS. FISK: Your Honor, without any statement or affidavit all we have is Counsel's bald assertion and, frankly, that is not sufficient.

MR. WEINGLASS: He is a prosecution witness, he will not cooperate with us. We can not get affidavits from prosecution witnesses.

Page 13.

He will respond to a subpoena. And that's why I'm requesting one. I represent to the Court -- and Mr. Newman is here (indicating), you can put him on the stand.

THE COURT: I know, you represented a lot of things to me and they didn't turn out to be exactly as you said.

MR. WEINGLASS: You could take it from Mr. Newman too. Put Mr. Newman on the stand and he will testify to a conversation with Mr. Chobert wherein Mr. Chobert revealed that he had the promise of assistance from the District Attorney. And he testified under that promise.

THE COURT: Well, all I could say to you at this time: Get

yourself some kind of an affidavit from him. Try. If not, dig up the law on the subject. Both sides. I will be glad to read it and make a decision at a later time.

MR. WEINGLASS: Well, I am indicating --

THE COURT: In the meantime, in the meantime let me go forward with the two witnesses that we have here.

MR. WEINGLASS: Your Honor, we cannot get that affidavit, I am representing that to

Page 14.

the Court.

THE COURT: Well, if you can't, look up the law, Counselor.

MR. WEINGLASS: Well, we would like permission to subpoena him.

THE COURT: Well, look up the law. I keep telling you the same thing over and over again. Look up the law.

MR. WEINGLASS: The law allows us to subpoena witnesses for this hearing. I'm asking for permission.

THE COURT: Well, the law also says that you should have an affidavit from that proposed witness to give to the other side.

MR. WEINGLASS: Well, number one, that rule of providing affidavits was a rule we suggested on day one. Which the Court refused to follow.

THE COURT: Well, you have been doing it, you have been doing it since day one and they have been doing it since day one and all of a sudden you are telling me you can't do it. Counselor, I don't want to argue about it all day here. You are taking up too much of the Court's time on this argument. Look up the law,

Page 15.

I will be glad to look it over, and if the law is on your side I will so rule.

Could we please proceed with your witnesses so we could finish.

MS. FISK: Certainly, Your Honor. Your Honor, I call Officer Vernon Jones.

- - - - -

Philadelphia Police Officer Vernon Jones, Badge 4758, Highway Patrol, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Good morning, Officer Jones.

A. Good morning.

Q. Officer Jones, how long have you been a Philadelphia Police Officer?

A. 18 years.

Q. And were you a police officer, then, back on December the 9th, 1981?

A. Yes, I was.

Q. On that date, Officer Jones, were you a uniformed officer on duty?

Page 16.

A. Yes, I was.

Q. And did you have occasion to respond to the area of 13th and Locust Street following the shooting of a police officer?

A. That's correct.

Q. How did you come to respond to that scene?

A. It was a radio call: Assist officer.

Q. Where were you, to the best of your recollection, when that radio call came out?

A. Broad and Vine.

Q. If you recall, how long did it take you to get to the vicinity of 13th and Locust Street after receiving the call?

A. Ahh, took me about two minutes.

Q. Do you, as you sit here today, have a complete recollection as to all the events that occurred when you arrived at 13th and Locust Street?

A. No, I don't.

Q. On December the 17th, 1981, did you have occasion to give a statement to a Homicide detective about the events that occurred the week before on December the 9th, 1981?

A. That's correct.

Q. And at the time you gave that statement to the Homicide detective, was your memory fresh with regard

Page 17.

to what had occurred the week before?

A. Yes, it was.

Q. And after you gave a statement to the Homicide detective, did you have an opportunity to review that statement and check it for accuracy?

A. Yes, I did.

Q. And was it accurate?

A. Yes, it was.

MS. FISK: Your Honor, I would ask, please, that this statement be marked as Commonwealth Exhibit...

THE COURT OFFICER: 20. 20.

MS. FISK: It needs to be stapled as well.

Thank you.

It is a three-page document to be shown to Counsel.

(Pause.)

(Investigation interview record was marked Commonwealth Exhibit C-20 for identification.)

THE COURT OFFICER: (Handing).

BY MS. FISK:

Q. Officer Jones, do you recognize what has been marked as Commonwealth Exhibit 20?

Page 18.

A. Yes, I do.

Q. And do you recognize that as a statement given by you to Detective C. Brown on December the 15th, 1981 regarding the events of December the 9th, 1981?

A. That's correct.

Q. Now based on your review of that statement, can you tell this Court whether or not the information contained in this three-page statement was accurate at the time you provided it to Detective Brown?

A. That's correct.

Q. And was it?

A. Yes, it was.

Q. Now utilizing this statement, then, Officer Jones: When you arrived at the vicinity of 13th and Locust Street, did you have occasion to see anyone there that you knew?

A. Yes.

Q. And who was that, sir?

A. Ahh, male by the name of Dales. I knew him by Dales.

Q. And do you know Dales to have another name?

A. Yes.

Q.Or did you know? Go ahead.

A. Singletary.

Page 19.

Q. And how did you know this gentleman Dales Singletary?

A. From a gas station that his parents owned.

Q. And where was that gas station?

A. At Broad and Thompson. And at 38th and Girard.

Q. And utilizing a description -- did you on December the 17th, 1981, describe this male you knew as Dales?

A. Yes, I did.

Q. And is it accurate that you said, I only know the male as Dales. I do know that he is a junior and that his father owns a Sunoco service station at Broad and Thompson Street. Dales is in his early thirties, five-eleven, medium build, around 180 pounds, dark brown skin, clean shaven with moustache. He wore dark clothing which possibly could have been his service station uniform. He drives a late-model 1980 or '81 light blue Cadillac.

Was that the description you provided on December 17th, 1981 of the male you had met that morning?

A. That is correct.

Q. And was that a correct description?

A. That's correct.

Page 20.

Officer Vernon Jones - Direct

Q. All right, where, as best you recall and utilizing the best recollection of you which is recorded, where is it that you first met Dales when you arrived at 13th and Locust Street?

A. I met him at a gas station.

Q. I'm sorry, on the morning of December the 9th, 1981 I am talking about.

A. At Broad and Locust.

Q. And do you recall where you were and where he was when you first met him that morning?

MR. WEINGLASS: Let the record reflect that the witness is reading the statement.

BY MS. FISK:

Q. Well, let me ask you this. Is what is reflected in your statement what occurred?

A. That is correct.

Q. Do you have an independent memory as to what occurred that morning?

A. No, I don't. Only what I look at here (displaying C-20). It happened 14 years ago.

Q. All right. Well, would it be fair to say that in your statement to Detective Brown on the top of page 2, talking about after stopping your vehicle at 13th and Locust Street, you reported to Detective Brown I got out of my vehicle and was hailed or

Page 21.

Officer Vernon Jones - Direct

summoned by a Negro male known to me as Dales. This male had called my name, saying Jones, what's happening. I responded telling the male to wait and that I'd be right back. That's when I rushed over to the crime scene. From where I observed what appeared to be blood on the sidewalk and a policeman who stated that a police officer had been shot. At that time the police inspector came up to the scene and began seeking information of what had occurred from other officers at the scene. Not knowing the details of exactly what happened, I walked away from the scene and en route back to my squad car. At this point the male Dales walked up to me and asked me what happened. And I answered stating that a policeman had been shot. Dales stated, quote, I heard some shots but I thought they were firecrackers. Then that's when I started seeing all those police cars, close quote.

Dales also stated that after seeing all the police cars that he just stood there. I asked Dales if he had seen the shooting and he answered no. Dales stated that he was there with someone and I assumed he meant that he was with a woman. Afterwards I left the scene and continued patrolling my area of assignment.

Page 22.

Officer Vernon Jones - Cross

Did I read that correctly, Officer Jones?

A. That is correct.

Q. And is that what you told Detective Brown on December the 17th, 1981 with regard to your contact with Dales on December the 9th, 1981?

A. That is correct.

Q. And was that correct when you gave that information to Detective Brown?

A. Yes, it was.

MS. FISK: Thank you, sir.

I have nothing further, Your Honor.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Officer Jones.

A. Good morning, sir.

Q. This statement that's been designated C-20, when did you first see that statement recently?

A. When I walked in here.

Q. This morning?

A. Yes.

Q. And did you sign that statement back in 1981?

(Pause.)

Page 23.

Officer Vernon Jones - Cross

A. No, I did not.

Q. So it's an unsigned statement; is that right?

A. Yes, it is.

Q. Was it the practice to your knowledge of Homicide not to have witnesses sign a statement?

MS. FISK: Objection, Your Honor.

THE COURT: What is the basis of your objection?

MS. FISK: Well, first of all, there is a difference between civilian witnesses and police witnesses.

THE COURT: Okay.

MS. FISK: And second of all, I don't know that there is a basis for whether or not this officer would know what the practice was in Homicide.

THE COURT: Rephrase your question.

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Q. Have you signed statements in the past that you give police?

A. Yes.

Q. And you didn't sign this statement?

A. No, I did not.

Q. Do you know why?

Page 24.

Officer Vernon Jones - Cross

A. No, I don't.

Q. And you weren't given a copy of it, either, were you?

A. Speaking about now? Earlier?

Q. No, back in 1981.

A. I don't recall.

Q. And the statement is not in your hand, is it? It's a typed statement?

A. This is a typed statement, that's correct.

Q. You didn't write out a statement?

A. No, I did not.

Q. Isn't it customary, Officer Jones, that when you're involved in a crime scene that you write out something in your own hand either

in your own diary or in a report to the police?

MS. FISK: Objection, Your Honor, to what is customary.

THE COURT: Unless you could rephrase your question somehow, Counselor.

BY MR. WEINGLASS:

Q. When you are a witness in a crime scene, do you usually make a writing of what you have experienced or observed?

A. Not all the time, sir.

Q. If you're a witness in a crime scene where a

Page 25.

police officer has been shot, do you make any kind of entry anywhere as to what you've just done?

A. If I was involved in the crime scene, yes. But I wasn't involved in the crime scene, sir.

Q. You got there within two minutes?

A. Two minutes of the assist officer.

Q. All right. And you saw, did you see the officer laying on the ground?

A. No, I did not.

Q. Did you see a suspect on the ground?

A. No, I did not.

Q. You didn't see either one?

A. No, I did not.

Q. Did you talk to potential witnesses?

A. The only witness, potential witness I talked to was Dales.

Q. And did you write anything up in your own hand about your talking to Dales?

A. I don't recall.

Q. Were you keeping any kind of a log or diary at that time of your activities?

A. I kept a log.

Q. Did you consult your log today?

A. No, I did not.

Q. Do you know where your log is?

Page 26.

A. So many years ago, it... it may be at my headquarters, I don't recall if they still have it after 14 years on that.

MR. WEINGLASS: We would request discovery of the log.

THE COURT: The discovery has been denied in the beginning, Counselor.

BY MR. WEINGLASS:

Q. Now, as I read C-20, you were interviewed by a detective named Brown?

A. That's correct.

Q. Could you describe Detective Brown for us?

A. No, I can not.

Q. You don't have any recollection of what he looks like?

A. No, I do not.

Q. Now, you told us a little something about Mr. Singletary. Do you know that he's five-eleven, medium build, dark skin, and in his thirties; is that right?

A. At that time, yes.

Q. And that his father owns two gas stations?

A. That is correct.

Q. And he works at the gas stations?

A. He did, that is correct.

Page 27.

Q. Do you know in what capacity? Was he manager?

A. He was a tow truck driver. He drove a tow truck with his name on it.

Q. But you don't know if he was the manager or not of the gas station?

A. At that time he was a manager. He was a manager, he was the son --

Q. Right?

A. -- of the owner.

Q. Son of the owner and manager?

A. That's correct.

Q. Okay. And he was driving at that time a 1980 or '81 Cadillac, light blue in color?

A. That is correct.

Q. Is that right?

A. That's correct.

Q. Did you see the Cadillac out there that night?

A. No, I did not.

Q. That's of your own memory?

A. That's correct.

Q. Okay. And you indicated you knew Mr. Singletary?

A. That's correct.

Q. Did you know him socially or in the course of your work or how did you know him in 1981?

Page 28.

A. In the course of my work.

Q. You were a highway patrolman and he would come frequently to the scene of accidents et cetera with a tow truck?

A. Vaguely, he would. Most of the time I would go up to the gas station at 38th and Girard, which he owned. Umm, that was right across from my assigned area.

Q. And you would go to that gas station to get gas or to have your car serviced, or were these in the nature of social visits?

A. Well, social visit or somebody breaks down I would push him up to that gas station for whatever services that he had at that gas station.

Q. So you got to know Mr. Singletary?

A. That's correct.

Q. And in knowing him at that time, 1981, did you know, did you note anything unusual about him?

A. Nothing unusual.

Q. He seemed to be what he held himself out to be: The manager of a gas station his father owned and a truck driver?

A. That is correct.

Q. Tow truck driver?

A. Right.

Page 29.

Q. He was not known to you as someone who didn't like the police?

A. No.

Q. Just the opposite?

A. That is correct.

Q. Now, you have told us you have no independent recollection of this statement or what -- no, let me withdraw that. You have no independent recollection of this statement, but having read it today you adopt it as your statement; is that correct?

A. That's correct.

Q. Right. And you have no independent recollection of what happened out on the corner of 13th and Locust while you were there?

A. Repeat that, please.

Q. Yes. Do you have an independent recollection -- putting the

statement aside -- of what happened on 13th and Locust when you were there in the early morning hours of December the 9th, 1981?

A. I do not have an independent recollection of what happened.

Q. Right. So things might have happened out there that you now just can't remember?

A. That's correct.

MS. FISK: Objection, Your Honor.

Page 30.

Officer Vernon Jones - Cross

That calls for speculation.

MR. WEINGLASS: No, I am not asking what, I am just saying the fact is he can't remember. I am not asking him to speculate about anything.

BY MR. WEINGLASS:

Q. Now, you've been an active patrolman since 1981, for the last almost 14 years?

A. Since 1980.

Q. Since 1980. And I assume you've seen many crime scenes in the last 14 years?

A. That's correct.

Q. And this one doesn't stand out particularly in your mind because you've been working regularly since that period of time with all these other crime scenes?

A. That's correct.

Q. Now, the event occurred on December 9th, as you point out, around 3:51 a.m. And you weren't interviewed until December 17th; is that correct?

A. That's correct.

Q. And you were interviewed at ten o'clock at night; is that correct?

(Pause.)

It is a notation on the right-hand

Page 31.

Officer Vernon Jones - Cross

side in a box.

A. That is correct.

Q. And if you can recall, did you receive some kind of a message to come to the Police Administration Building or the Roundhouse for this interview?

(Pause.)

A. That's correct.

Q. In other words, you're telling us you didn't go down there on your own, someone must have contacted you in an official capacity and asked you to come in?

A. Absolutely.

Q. And then you responded to that?

A. That's correct.

Q. This might be impossible for you, but do you remember who it was who contacted you?

A. No, I do not.

Q. And do you remember if you responded immediately to go down on December 17th or had you been contacted earlier and didn't go down until December 17th?

A. I don't recall.

Q. Now, was your shift a, were you on duty when you gave this statement?

Page 32.

Officer Vernon Jones - Cross

(Pause.)

A. I can't say because I might have been on a detail, I might not. I don't recall that day whether, what tour I was working at that time.

Q. But you can't reconstruct it, can you, by remembering that on December 9th you were working at 4:00 in the morning, and it appears that on December 17th you were giving a statement at l0:00? Does that help you recollect whether or not you were on duty at ten o'clock on December 17th?

A. Well, I was working 7:00 a.m. tour of duty on the 8th. So they might have called me in for this interview at a certain time. I don't know, they might have contacted me. I can't say because it's not documented here on what tour of duty I was working at the time of this statement (displaying).

Q. And I assume you remember, Officer Jones, like all interviews, there was some conversation between you and Detective Brown before Detective Brown started to type this statement; isn't that true?

A. What do you mean?

Q. When you came into the Homicide unit and you met with Detective Brown, I assume he didn't immediately start typing, I assume you and Detective Brown had an exchange of some sort and then at a

Page 33.

Officer Vernon Jones - Cross

certain point in time he started typing?

A. Well, we introduce ourselves. I introduced myself as Officer Jones, he introduced himself as Detective Brown. And I don't recall whether the statement was taken right away, five minutes, 10 minutes, I don't recall that.

Q. And when you went into Homicide that morning, you went in through the front door, if you can remember? I'm sorry, that evening.

A. I can only assume that I went in the front door of, of the PAB.

Q. And did you sign in in a logbook?

A. No.

Q. You did not?

A. No, I did not.

Q. I meant the logbook that's right near the front door?

A. No. Not if I was in uniform.

Q. Right. And did you sign in at any logbook at the Homicide unit?

A. Not that I can recall.

Q. Okay. Now, when you were called in that night, Officer Jones, and you met with Detective Brown, did he tell you that he wanted to question you about this witness named Singletary who came in and

Page 34.

Officer Vernon Jones - Cross

gave a statement on the night of the occurrence?

A. No.

Q. He didn't say that to you?

A. No.

Q. You have a clear recollection of that?

A. By what I'm reading here, the statement that I gave (displaying) is the first thing he asked me is what happened when I arrived at the scene.

Q. But did you, did you inquire as to how they knew you were at the scene?

A. Evidently I told them I was at the scene.

Q. But before you were called -- strike that. When you came in to see Detective Brown, did you say anything to him like why are you calling me in for a statement on this episode a week ago?

A. No.

Q. You didn't ask him?

A. No, I did not.

Q. But in reading your statement C-20, you see that most of your statement is taken up with a gentleman you describe as Dales?

A. That is correct.

Q. And that's Mr. Singletary?

A. That is correct.

Q. So you came in after a week had passed since

Page 35.

Officer Vernon Jones - Cross

the officer had been shot and you were questioned about a witness Dale Singletary who told you he didn't see the shooting?

MS. FISK: Objection, Your Honor.

THE COURT: The objection is sustained. Whatever is in the statement is in the statement.

MR. WEINGLASS: Well, the statement is subject to an attack on it's credibility, as is the witness' testimony. We can't just accept it at face value.

THE COURT: Well, he says that's all he remembers about it.

MR. WEINGLASS: Well, I'm trying to refresh the witness' memory and to also go into questions of impeachment of the statement.

THE COURT: Impeachment of the statement?

MR. WEINGLASS: Yes. The witness has said that he has no recollection, he is relying on what's in the statement which he didn't sign and he didn't type and he doesn't remember. And I'm trying to get to the fact that this statement might not be an accurate statement.

THE COURT: Well, he says it's an

Page 36.

Officer Vernon Jones - Cross

accurate statement.

MR. WEINGLASS: But I am entitled to challenge that.

THE COURT: I don't know how you are going to challenge it when he says --

MR. WEINGLASS: By asking questions.

THE COURT: Counselor, do you have any objection to where he is going?

MS. FISK: Well, Counsel clearly is permitted to question. I objected to the last question because it misrepresented the testimony of this witness. This witness has not said that he was called in and questioned about the witness. He said he was called in and asked to answer the question which is in your own words describe what occurred, and that he then answered that question. That was the basis for my objection, Your Honor.

THE COURT: On that basis it makes sense. Sustained.

BY MR. WEINGLASS:

Q. Now, there is no question in your mind now, Officer Jones, that you arrived within two minutes of receiving a call about an officer needing assistance and when you arrived you saw at the scene Mr.

Page 37.

Officer Vernon Jones - Cross

Singletary.

A. That's correct.

Q. And there is no question in your mind he was there?

A. There is no question, there is no doubt in any mind that he was.

Q. Of your own knowledge you don't know when he arrived at that scene; isn't that true?

A. That's correct.

Q. And are you the one, Officer Jones, who told Mr. Singletary that he should go down to the Roundhouse at 8th and Race and give a statement to the police? Do you recall doing that?

A. I read it in my statement, I said it.

Q. Well, I don't think it's in your statement. Do you have a recollection?, Well, take your time and read the statement, I'm sorry.

(Pause.)

I don't believe it is in your statement, Officer Jones. But Counsel could redirect you to it. If you don't see it immediately we could move on.

MS. FISK: I would agree that there is no reference to it in the statement, Your Honor.

MR. WEINGLASS: Okay, then we could

Page 38.

Officer Vernon Jones - Cross

move on.

THE WITNESS: I don't see it in my statement.

BY MR. WEINGLASS:

Q. Now, but then apart from the statement, do you have a recollection of whether or not you told Mr. Singletary he should go down to the Roundhouse?

A. No.

Q. You don't have a recollection?

A. No.

Q. Could be either way?

A. Yes.

Q. Now let's turn to page 2, which Counsel read at some length, of your statement which is C-20.

After you indicated what according to this statement you claim Mr. Singletary told you -- and in this statement you indicated that he didn't see the shooting -- Detective Brown then asked you a series of follow-up questions about Dale Singletary, did he not?

A. Yes.

Q. He asked you do you know Dale's full name, age and address. Or where he's employed. That was a follow-up question, right?

A. That's correct.

Page 39.

Officer Vernon Jones - Cross

Q. This is after you told Detective Brown that you remember seeing Singletary there, and you allegedly told him that Singletary didn't see the shooting?

MS. FISK: Objection, Your Honor. The statement refers to Dales, not Singletary. So the record is clear.

MR. WEINGLASS: Right, it does.

BY MR. WEINGLASS:

Q. Do you understand my question?

A. Yes.

Q. All right. So after you tell him well, I saw this fellow and he told me he didn't see the shooting, that's what the statement says, then they began to question you about this so-called non-witness Dales; isn't that right?

A. You got to repeat that one.

Q. Yeah. After you told him, according to this statement, that Dales told you that he didn't see the shooting, then they began to ask you more questions about this fellow Dales; isn't that right?

A. That is correct.

Q. And they asked you -- I'm reading on page 2 -- Officer Jones, do you know Dales' full name, age and address, or where he is employed.

Page 40.

Officer Vernon Jones - Cross

And you said no, I only know the male as Dales. I do know that he is a junior and that his father owns a Sunoco service station at Broad and Thompson Street. Dales is in his early thirties, five-eleven, medium build, around 180, I think, he's dark skin, clean shaven with a moustache. He wore dark clothing which possibly could have been his service station uniform. He drives a late model 1980 or 1981 light blue Cadillac. I met him roughly around seven months ago when I first, when I was first assigned to the Expressway. Dales was a tow truck driver.

Right?

A. That is correct.

Q. So this non-witness, supposedly, they're asking you more about him, they're asking you his age, his height, his weight, his occupation, how you know him, what was he wearing, what is his

car, they are asking you all these questions about him?

MS. FISK: Objection, Your Honor: Those are not the questions. The question stands for itself, as does the answer. That misrepresents the nature of the question which was asked.

THE COURT: Rephrase your question

Page 41.

Officer Vernon Jones - Cross

somehow.

BY MR. WEINGLASS:

Q. Yeah, you gave them all that information; is that correct?

A. What I knew of Dales, yes.

Q. Right. And that was in response to their question?

A. That is correct.

Q. Right. And in your experience, Officer Jones, detectives who are investigating a homicide of a police officer want to know important details; isn't that right?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. You didn't have the impression that they were wasting your time that night, did you?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Then they go on and ask you more questions about Dales. Officer Jones -- I'm now reading from page 3 -- at the time of your conversation with Dales, was he with anyone or did you happen to see if he had been engaged in a conversation with anyone as

Page 42.

Officer Vernon Jones - Cross

you arrived or as you left the area.

And you said no, at the time I arrived at the scene Dales came up to me. I didn't see him talking to anyone. I do recall him saying that he was with someone.

Do you remember that, that question and that answer?

A. Yes.

Q. So they went on with still more questions about this fellow Dales. They wanted to know if he was with anyone; is that right?

A. That's correct.

Q. This man who supposedly didn't see anything; is that right?

A. That's correct.

Q. Does it strike you as peculiar that all these questions are asked about someone who you supposedly reported didn't see anything?

A. No, it didn't.

Q. It didn't strike you as peculiar?

A. No.

Q. You saw Dales or Mr. Singletary after December 17th, 1981; isn't that correct?

A. That's correct.

Q. And did you ever have a conversation with him

Page 43.

Officer Vernon Jones - Cross

about that night?

A. I don't recall having a conversation about this (displaying), no.

Q. You saw Mr. Singletary after an officer is shot and you're there within two minutes and he's there, and you're brought down and questioned at Homicide about a week later, and you're telling us you never talked to him again about that?

A. I'm not saying that I never talked to him about it, I'm saying I don't recall talking to him about it, this case.

Q. Incidentally, that night that you were at Homicide, did the Detective Brown indicate to you that he had talked to Dale Singletary in the morning of the occurrence?

A. I don't recall that.

Q. He might have?

MS. FISK: Objection, Your Honor: He said he didn't recall.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Did he indicate to you that in the early morning hours of December 9th a statement was taken from Dale Singletary?

A. No, he did not indicate it to me.

Page 44.

Officer Vernon Jones - Cross

Q. Did they show you the statement?

A. At which time are you talking about?

Q. When you were there on December 17th at 10:00 p.m.

A. No, I don't recall that, no.

Q. They didn't show you anything?

A. I don't recall whether they showed me that or not.

Q. They might have?

A. I don't recall.

Q. Did they indicate to you that Mr. Singletary was a problem for them?

A. Not that I can recall.

Q. It might have happened?

A. Not that I can recall.

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain these might have beens.

MR. WEINGLASS: If I may.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. Now, to your observation, Officer Jones, the detectives typed up everything you told them about Dales; is that correct?

Page 45.

Officer Vernon Jones - Redirect

A. To my knowledge, yes (displaying).

Q. And no one said to you Detective Brown -- by the way, was he the only one you were talking to, if you can remember?

A. Yes. That I can recall, yes.

Q. He was the only one?

A. Yes.

Q. Did he ever say to you words to the effect of Officer Jones, this fellow who you are telling us about, Dales, is kind of irrelevant because you're telling us he said he saw nothing?

A. No.

Q. They typed everything up that you told them about Dales, right?

A. That's correct.

Q. And as you read your interview now, your memory 's refreshed about the only person you're talking about in your interview is this fellow Dales?

A. That's correct.

MR. WEINGLASS: Fine, thank you. I have nothing else.

MS. FISK: Just a couple questions.

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REDIRECT EXAMINATION

- - - - -

Page 46.

Officer Vernon Jones - Recross

BY MS. FISK:

Q. Am I correct, Officer Jones, that on page 3 of your statement you were asked whether upon your arrival at the scene you observed the injured police officer and you answered that

question?

A. Yes.

Q. And you were also asked whether at the scene, whether you performed any police duties, and you answered that question?

A. Yes.

Q. And you were asked whether while you were at the scene you obtained any information as to who shot the officer, and you answered that question; is that correct?

A. That is correct.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

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RECROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Well, Officer, there were a lot of people there when you got there, were there not?

MS. FISK: Objection, Your Honor: That goes beyond the scope of redirect

Page 47.

Officer Vernon Jones - Recross

examination.

THE COURT: I will have to sustain that. She just asked him about the statement. Questions that were asked of the statement.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. Well, in the statement, where does it indicate that you were questioned about any other people you saw there?

(Pause.)

A. In the statement it asked me about... the perpetrator. And who did I observe being there.

Q. But... but they didn't ask you in the statement, am I correct, if you saw any other witnesses there?

(Pause.)

A. If it's not on my statement here (displaying), they did not ask me that.

MR. WEINGLASS: Fine. Thank you.

MS. FISK: Nothing further, Your Honor.

THE COURT: All right, you are excused. Thank you.

MS. FISK: Thank you, Officer.

Page 48.

Detective Edward Quinn - Direct

THE WITNESS: Thank you.

MS. FISK: Your Honor, the Commonwealth next calls Detective Quinn.

Philadelphia Police Detective Edward Quinn, Badge number 896, Major Crimes Division, having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Good morning, Detective Quinn.

A. Good morning.

Q. Detective Quinn, how long have you been a member of the Philadelphia Police Department?

A. 24 years and eight months.

Q. And what is your current rank?

A. Detective.

Q. What is your current assignment?

A. The Major Crimes Division.

Q. Detective Quinn, back on December the 9th, 1981, what was your rank and your assignment?

A. I was a detective assigned to the North Central Detective Division.

Page 49.

Detective Edward Quinn - Direct

Q. Did there come a time in the early morning hours of December 9th, 1981, that you as a member of the North Central Detective Division were detailed to some other place?

A. Yes.

Q. And where was that that you were detailed?

A. To the Homicide Division.

Q. And was that for any long term or for one day or what?

A. One night.

Q. And how did that come about?

A. I was, my lieutenant at North Central at the time, around 4:00 a.m., told me that there had been a police shooting, that I should go down to the Homicide unit.

Q. Were you the only detective from North Central who went down to the Homicide Division?

A. Yes.

Q. Now, when you arrived at the Homicide Division, were you given an assignment or what did you do?

A. Not immediately. I, it was pretty chaotic. I found a desk and I sat down and just waited for something to do or be assigned something to do.

Q. And did there come a time where you were

Page 50.

Detective Edward Quinn - Direct

assigned something to do?

A. Yes.

Q. And what was that, sir?

A. I don't recall who it was but I was asked to do an interview.

Q. Do you recall now the person who you interviewed?

A. I recall now the name of the person.

Q. Was that because you were shown a statement earlier this morning?

A. Yes.

MS. FISK: Can the detective please be shown what has been marked Defense Exhibit -- what is the number, please?

THE COURT OFFICER: 29, Counsel (handing).

MS. FISK: Defense Exhibit 29.

BY MS. FISK:

Q. Detective Quinn, you have been shown Defense Exhibit 29. Do you recognize that?

A. Yes.

Q. And is that a statement recorded by you of a witness named William Singletary?

A. Ahh, yes, it is.

Q. And was that taken by you of Mr. Singletary?

Page 51.

Detective Edward Quinn - Direct

A. Ahh, yes, it was.

Q. Now, you just told us you remembered sitting down. Can you tell us where that statement was taken?

A. Umm, in the rear of the Homicide unit. At the time it was the Fugitive Squad used to use that area.

Q. Was that a closed area or an open area, physically?

A. No, it was a completely open. Actually, cluttered with desks on one side of the wall. Desks, a few desks on the right-hand side (indicating).

Q. All right, now, could you tell us based upon your review of that statement what you remember about the manner in which your interview with Mr. Singletary was done and the statement of Mr.

Singletary was recorded?

A. Umm, from my best recollection, I was asked to do the interview and I spoke to the gentleman briefly to find out what he was going to tell me or what he had to say.

And then I took out the form (displaying), placed it in the typewriter, did the heading. And then I started asking questions and recorded it directly onto the typewriter.

Q. Did you record in a verbatim fashion the

Page 52.

Detective Edward Quinn - Direct

questions you asked Mr. Singletary and the answers he gave you?

A. Ahh, yes, to the best that I could.

Q. Prior to taking this interview with Mr. Singletary did you ask him to hand write his account of what he had observed?

A. No.

Q. Have you ever in your 24 years and eight months on the police force ever asked any witness whom you were interviewing to hand write an account of what they had observed?

A. No.

Q. Did you at any time tell Mr. Singletary he had to say certain things on this statement?

A. No.

Q. And let me ask you this: Were you the only detective who questioned Mr. Singletary?

A. I believe so.

Q. And so the record is clear: Is it accurate that as you sit here now and as you sat there in 1981, you are a Caucasian, you are a white man?

A. Yes.

Q. Now, could you read for us, please, the statement which you recorded which reflects your interview of Mr. Singletary, starting with the first

Page 53.

Detective Edward Quinn - Direct

question on the first page and the answers which Mr. Singletary gave you?

A. Okay. Question: Can you tell me what you saw this morning at 13th and Locust.

Answer: I was coming from my parents' bar at 15th and Catherine Street. I was driving north on 13th Street. When I got to Locust Street the light had just turned red for 13th. I stopped my car. I was sitting at the light for about 15, 20 seconds when I heard what I thought to be firecrackers. I heard about three or four pops. When I heard the pops I knew it wasn't firecrackers.

Q. I'm sorry, you missed a word. Is it when I heard the second pop?

A. When I heard the second pop I knew it wasn't firecrackers because they were going too fast. After the pops stopped I leaned forward in the car and looked east on Locust. I saw a police car parked at the curb. I think the number on the car was 610. At this time I backed the car up into a parking space on the corner of 13th and Locust. I got out of the car and went to the southwest corner of 13th and Locust. I looked east on Locust and saw two figures about 25, 30 feet away from me. One was standing facing the wall, the other was standing with his back to the

Page 54.

Detective Edward Quinn - Direct

wall. The one with his back to the wall was bent over at the waist. One hand was down by his waist, the other was -- and I really can't make out that word. This copy is not that --

MS. FISK: May I approach the witness, Your Honor, with the original? Perhaps if he read that that would be easier.

THE COURT: Yes.

BY MS. FISK:

Q. Detective Quinn, I have an original. First, so the record is clear: Utilizing the original make sure that the copy you have accurately copies the original. And then if it's easier to read the original for the completion of your testimony, go ahead.

A. I will back up to the other. The other was standing with his back to the wall. The one with his back to the wall was bent over at the waist. One hand was down by his waist and the other was up by his head. I started to walk towards the two figures. As I was walking, somebody yelled to me from my left. The male who yelled told me that a policeman was shot. I said where. I then looked around and saw -- page 2 -- a policeman sitting on the ground with his back against the wall. He had his right-hand up to

Page 55.

Detective Edward Quinn - Direct

his face. He had blood on his hand. The other person was sitting on the curb facing a dark blue VW. His left leg was stretched out in front of him, he was holding his leg. At this time a bunch of people showed up. The policemen who arrived picked up the policeman from the ground and put him into a police car and went up 13th Street.

Question: What did you do after the policemen left in the police car.

Answer: While I was standing there I saw X-l2 a police car. It was Officer Vernon Jones from the Highway unit. I knew Officer Jones. I told him what I saw. He told me to come down and tell what I saw. I then went to my gas station and gave the keys to one of the guys who worked there.

MR. WEINGLASS: I'm sorry, I think that was downtown. He told me to come downtown. Downtown. If you could just read that sentence again.

BY MS. FISK:

Q. Could you start with he told me to come downtown, about two lines above where you are. You just said down and --

A. I came downtown to 8th and Race.

Question: Besides the policeman, can

Page 56.

Detective Edward Quinn - Direct

you describe the other person who was lying on the ground on Locust Street.

Answer: He was black with long hair. The hair style is called dray locks. He was wearing green pants. That's the only thing I could remember.

Question: Did you see any weapons.

Answer: No. I didn't see any.

Question: Did you see anyone else on the street besides the policeman and the other guy with the dray locks.

Answer: It was just the two of them.

Question: Did you see anyone in the VW.

Answer: No, sir.

Q. Is that the entirety of the statement you took from Mr. Singletary?

A. Yes, it is.

Q. After you completed typing that statement, Detective Quinn, did you give those two typewritten pages to Mr. Singletary for his review?

A. Yes, I did.

Q. And did he read that statement?

A. Yes, he did.

Q. Did he have any changes or corrections to make to that statement?

Page 57.

Detective Edward Quinn - Direct

A. Not that I believe. I don't see any corrections.

Q. And is it your custom and practice to give the person from whom you have taken a statement the opportunity to make any changes?

A. Yes.

Q. And there are no changes reflected?

A. No.

Q. Did you ask Mr. Singletary to sign both of those pages to indicate that it recorded what it was that he had told you?

A. Yes.

Q. And in your presence did he do so?

A. Yes, he did.

Q. Do you know what or where Mr. Singletary went after you completed taking that statement from him?

A. Ahh, no, I don't.

Q. What else did you do at Homicide that night, if you recall?

A. Umm, I believe this is the only interview I did. Just, I was answering phones. Just general things until I wasn't needed anymore.

Q. And was that the only morning that you worked at Homicide regarding this case?

A. Yes, it is.

MS. FISK: Thank you very much, Lieutenant.

THE WITNESS: You're welcome.

MS. FISK: Your Honor, may I recover the original back?

THE COURT: Yes.

THE WITNESS: (Handing).

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Officer Quinn.

A. Detective.

Q. Detective, I'm sorry.

A. Thank you.

Q. Could you state for the record what your height is?

A. Ahh, six-foot-four.

Q. Six-four. And back in December, '81, I assume you were a little lighter of weight?

A. Quite a bit.

Q. How much did you weigh at that time?

A. Approximately 195 pounds.

Q. Six-foot-four, 195 pounds?

A. Yes, sir.

Q. And could you just state for the record your family ancestry, of what national origin?

A. Irish.

Q. I see you're wearing a green tie today? Maybe it's my eyesight that's bad.

A. Ahh...

Q. Do you recall if you, back in 1981, if you would wear any kind of a pin or a button that indicated your ancestry?

A. No, sir.

Q. Specifically, do you remember if you wore a button that said Kiss Me I'm Irish?

A. No, sir.

Q. Now, is it your testimony that Mr. Singletary was definitely in the Roundhouse on Race Street in the early morning hours of December 9th, 1981?

A. Yes.

Q. No question about that?

A. The person I interviewed was there.

Q. And his name to your present knowledge is?

A. William Singletary.

Q. Right. And is it your testimony that while Mr. Singletary was there he underwent an interview by you?

A. Yes.

Q. And that was in the Homicide unit?

A. Yes, it was.

Q. And is it your testimony that he as a result of that interview was given a typewritten statement that you typed?

A. That's correct.

Q. And that he signed it?

A. Yes, he did.

Q. So there is no question about all that?

A. No question in my mind.

Q. Do you have an independent recollection of that morning or are you testifying on the basis of having recently read the statement that's before you and marked D-29?

A. All right, are you referring just to the statement or my recollection of that whole morning generally?

Q. First just to the statement.

A. Umm, I knew I took a statement from a witness. I didn't have an independent recollection until I was, you know, I read the statement over.

Q. Right. Before you were shown the statement you probably couldn't remember the name of who you interviewed that morning; is that correct?

A. That's correct.

Q. And before you were shown the statement you probably couldn't recall a description of that person; is that correct?

A. That's correct.

Q. And when were you shown the statement?

A. This morning.

Q. This morning?

A. Yes.

Q. And were you also shown the statement that was allegedly taken from a patrolman, Highway patrolman named Vernon Jones?

A. No, I was not.

Q. You were not?

A. No.

Q. Did you have occasion to meet with Officer Jones this morning?

A. No.

Q. Now, as I recall your testimony, you were not ordinarily assigned to the Homicide unit in Race Street; is that correct?

A. That's correct.

Q. You were ordinarily out in North Central; is that correct?

A. That's correct.

Q. And you were called into the Homicide unit

that morning; is that right?

A. That's correct.

Q. And that was because an officer had been shot?

A. That's correct.

Q. And your superiors told you to go down to Race Street?

A. That's correct.

Q. Do you remember what time you went down there?

A. No, I don't recall the exact time.

Q. What was your ordinary tour of duty, if you can remember, on December 9th?

A. Midnight to 8:00 a.m.

Q. Midnight to 8:00. And so your tour of duty was over at 8:00. Do you remember if your tour was extended because of this case, or whether you went down there within the framework of your tour of duty?

A. I went down within the framework.

Q. You went down there before 8:00?

A. Yes.

Q. Did you stay until after 8:00, if you can remember?

A. I don't recall if I did or not.

Q. You might have stayed until --

A. I might have.

Q. Right. Incidentally, your hours that you

Page 63.

worked that tour, as well as anything beyond your regular tour, would be recorded somewhere, would it not?

A. Yes, it would.

Q. Yeah.

MR. WEINGLASS: May we have discovery with respect to that?

THE COURT: No.

BY MR. WEINGLASS:

Q. Now, when you got down there at Homicide -- I wrote down your testimony on direct -- you said it was, quote, pretty chaotic. That is something that you remember?

A. Yes.

Q. And could you explain what you mean a little more in more detail than just that general description?

A. There was one picture that really just stuck out in my mind. It was an officer I knew that had blood all over his shirt. There was a lot of police down there. It was, it was not a happy place to be.

Q. The police had already received word that Officer Faulkner had died?

A. I believe so. I don't know.

Q. But when you say not a happy place I'm just

Page 64.

trying to, what do you mean by that?

A. Well, there was just a lot of police officers down there. Like I said, my recollection is seeing a couple that I knew who had blood on them, that sticks out in my mind.

Q. And did you know a detective by the name of Brown at that time? If you can recall.

A. I may have, I don't know.

Q. So you got down there and it is pretty chaotic. Part of being pretty chaotic is there are a lot of people in Homicide when you got down there?

A. I believe there was.

Q. And Homicide is not a big area, is it, it just has four little cubicles; do you recall that?

A. There was no cubicles in Homicide.

Q. There were no cubicles?

A. No.

Q. Interrogation rooms?

A. No.

Q. Nothing like that?

A. Well, they have interrogation rooms but they're rooms, they're not cubicles.

Q. Right. They are rooms with doors on them?

A. Yes.

Q. Right. And they have a small desk and a

Page 65.

couple chairs?

A. I don't think I've ever been in one of their interview rooms.

Q. Right, so you didn't go into the interview rooms that night?

A. No.

Q. Instead you went to another area within Homicide?

A. Yes.

Q. All right. And that area you said was cluttered with desks. Is that right?

A. Well, when I say cluttered: There is, along the one wall there is several desks on the left-hand side. The way I was facing. And there's two or three on the right-hand side.

Q. You have a pretty graphic memory of what it was like when you got in there. Would you say it was crowded in the Homicide area that night, or that morning?

A. Are you asking me a question?

Q. Yes.

A. Umm, when I say crowded, there was a lot of people. Which it's not unusual in Homicide, you know, during homicides. We have a lot of policemen there, a lot of witnesses.

Page 66.

Q. You saw there were other witnesses there, did you not? Civilian looking people?

A. I don't recall if I saw witnesses or not.

Q. Well, I thought you just said you saw witnesses?

A. Well, I'm just generally speaking that there are witnesses during a homicide. I told you specifically what I recalled were the policemen.

Q. Right. But you are saying now that you don't remember seeing witnesses there?

A. I'm not saying that.

Q. You did see witnesses?

A. Generally speaking, I'm assuming there was witnesses there.

Q. And you go to this area which you said was the rear of the Homicide unit, which was cluttered with desks. And you just remained in that area?

A. Yes.

Q. Now, and at a certain point Mr. Singletary came to you, you didn't go to him; isn't that right?

A. I don't recall the circumstances how we got together and did the interview.

Q. Well, wasn't it true that someone brought him to you?

A. May have, I don't know. I may have been told

Page 67.

to go get him, I don't know. I don't recall.

Q. Do you recall if it was an African-American detective who brought him to you?

MS. FISK: Objection, Your Honor: He testified he doesn't remember whether someone brought him to him or whether he was told to go get him.

MR. WEINGLASS: I am trying to help his recollection by asking him if he could recall. Perhaps the race of the individual would help him.

THE COURT: Do you know?

THE WITNESS: I don't know.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. And you don't know whether it was one or two people who

brought him to you?

A. I don't know if he was brought to me or I went and got him, I don't recall that.

Q. And did someone indicate to you that you were supposed to take a statement from him?

A. Yes.

Q. Do you know who told you that?

A. No, I don't.

Q. Do you know how long Mr. Singletary had been

Page 68.

Detective Edward Quinn - Cross

there?

A. No, I don't.

Q. He might have been there three, four hours before you got to him; isn't that right?

A. No, I don't believe -- no.

Q. What do you base that on?

A. I'm basing that, assuming that I got there around 4:30, five o'clock, I probably was only there about 15, 20 minutes before I did the interview.

Q. Is that a recollection that you have or an assumption?

A. I'm basing it on me reporting off at eight o'clock.

Q. But you told us you don't know if you reported off at eight o'clock. You really don't know that, do you?

A. Well, no, I'm not. But I am just trying to get a time frame of when I could have done the interview. I don't believe he would have sat there three or four hours without being interviewed.

Q. But you don't know that?

A. I don't know that for a fact.

Q. All right. And you can't tell us because you don't remember what he looked like in terms of whether he was upset or not upset?

Page 69.

Detective Edward Quinn - Cross

A. No, I don't recall his demeanor at all.

Q. Now let's go to the statement. Do you have a copy of it there?

A. Yes, I do.

Q. D-29. He told you, did he not -- and it's referred to on the top of page 2 -- that when he saw the fallen officer he described him as sitting on the ground with his back against the wall? Is that what you typed up?

A. Yes.

Q. And I assume that's something you're telling us you typed accurately, he did tell you that, to the best of your present recall?

A. To the best of my recollection, yes.

Q. And he told you, did he not, it is also on page 2, that the other individual was sitting on the curb was wearing dread locks, and had on green pants, and he was black? That's also on page 2, closer to the bottom. Is that right?

A. Yes, that's correct.

Q. Right. Now let's go back to page 1. About two-thirds of the way down. Did he tell you I looked east on Locust -- are you following where I am? About six lines, seven lines up from the bottom.

A. Okay.

Page 70.

Detective Edward Quinn - Cross

Q. I looked east on Locust and saw two figures about 25, 30 feet away from me. One was standing facing the wall, the other was standing with his back to the wall. The one with his back to the wall was bent over at the waist. One hand was down by his waist, the other was by his head. I started to walk towards the two figures.

Okay, let's just stop there. Is that in your statement?

A. Yes, it is.

Q. So he in effect -- and correct me if I am wrong -- he told you he saw the officer sitting with his back against the wall, he saw a gentleman who was black with dread locks on the curb in green pants, and he told you he also saw two other people there; isn't that right? One was up against the wall with his back to it, the other one was bent over at the waist, one had his hand down by his waist, and the other was up by his head. Right?

A. That's what it says, yes.

Q. So he saw four people out there that night; is that right?

MS. FISK: Objection, Your Honor: The statement speaks for itself.

THE COURT: I will have to sustain the

Page 71.

Detective Edward Quinn - Cross

objection. The statement does speak for itself.

BY MR. WEINGLASS:

Q. Well, let me ask you this. An officer is shot and is laying on the sidewalk. According to this document, which is D-29, Mr. Singletary tells you at just about this time he saw two people standing, one facing the wall, one with his back to the wall. Did you ask him for a description of those two people?

A. No.

Q. Is that conceivable, that with an officer laying bleeding on the sidewalk and a witness tells you he saw two people standing there within feet of the officer, you don't ask for a description of those two people?

A. I don't understand your question.

Q. At the time you took this statement --

A. Yes.

Q. -- you had been a detective for 10 years?

A. No.

Q. Pardon?

A. No, I was not.

Q. How long had you been a detective? You have told us 24 years, I subtract 14, that leaves me with 10, but correct me?

A. Well, this incident took place in 1981.

Page 72.

Detective Edward Quinn - Cross

Q. Right. 14 years ago, approximately.

A. Yes.

Q. 13.

A. Yes.

Q. And you have been a detective for 24?

A. No, I have been on the Police Department for 24.

Q. I see. At this time how long had you been a detective, if you can remember?

A. Ahh, eight months.

Q. Eight months. And you were assigned the responsibility of talking to a witness in the shooting of a policeman?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that. That's what he said. He was assigned. He doesn't make the assignments. He goes wherever they tell him to go.

BY MR. WEINGLASS:

Q. Now, as you read your statement -- I'm just going by your statement -- did you ask, according to your statement, Mr. Singletary to describe the two other people he saw standing by the wall, one facing the wall, the other facing outward?

MS. FISK: Your Honor, I object for

Page 73.

Detective Edward Quinn - Cross

two reasons. One, this is not the detective's statement, this is Mr. Singletary's statement as recorded by the detective. And second, if Counsel is going by the statement, the statement speaks for itself.

What is asked is recorded, what is not asked is not recorded. I have no objection to him asking if there were other questions which were asked which are not recorded, but if you are going by the statement, the statement speaks for itself.

MR. WEINGLASS: Of course it speaks for itself but I am entitled to question on this statement and whether or not this statement is a complete statement of what he had in his interview with Mr. Singletary.

THE COURT: If you want to ask him whether or not there is anything else that he didn't put down there, that is one thing. But don't dictate as to what the meaning of that statement is. The statement was given by Singletary. Whether he knows how to give a statement or don't give a statement, whether the statement is wrong, it's not for this officer, or this detective to make that decision. That's for the Court to make the decision.

Page 74.

BY MR. WEINGLASS:

Q. Just before we move off this: When you read D-29, in reading it and refreshing your recollection, did you ask Mr. Singletary to describe the two gentlemen who were standing there with the fallen officer on the sidewalk?

A. I believe he was talking about the same two people. When he refers to two figures, I'm assuming that he means the police officer and the male with the dray locks. That's what I'm assuming.

Q. You are assuming that now?

A. Well, that's what I get out of it reading the statement.

Q. Pardon?

A. That's what I get from reading the statement.

Q. So what you're saying now, in your assumption, then, Mr. Singletary saw Officer Faulkner standing, who he describes as just a man, not a police officer?

MS. FISK: Objection, Your Honor. The statement speaks for itself.

THE COURT: I will have to sustain that. It is not for this witness to interpret the statement of somebody.

BY MR. WEINGLASS:

Q. By the way, am I right, you said one of the

Page 75.

figures was bent over at the waist? Is that right?

MS. FISK: Objection, Your Honor. The detective read the statement which he recorded. And that has been read.

THE COURT: He didn't say he said that, he said this is what the witness told him. So if you are going to be correct, ask him if the witness said that and did he record it properly. This is not his statement, Counselor.

BY MR. WEINGLASS:

Q. If D-29 reflects your typing, that has one of the figures that he saw bent over at the waist, to your recollection did you type that accurately?

A. Yes.

Q. Incidentally, on the statement which is D-29, did you record the time of the interview?

A. It's not, it's not on there.

Q. It's not on there?

A. No, it's not.

Q. Detective Quinn, isn't that ordinarily done?

A. Yes.

Q. Do you have any explanation as to why you didn't do that?

A. No.

Q. To your knowledge, was there a logbook at

Page 76.

Homicide that morning that recorded when people entered or left, if you know?

A. I don't know.

Q. To your knowledge is there, to your knowledge, is there any written record anywhere that would reflect when Mr. Singletary entered that building and when he left?

A. I don't know.

Q. And to your knowledge, do you know how he entered the building?

A. No.

Q. Through what entrance?

A. I don't know.

Q. And you don't know whether he came unescorted or escorted either?

A. I don't know.

Q. Did you see his car -- strike that. Do you know what car he was driving that night?

A. No.

Q. Your testimony is you only saw him when he was in your immediate vicinity?

A. That's correct.

Q. In your, within your vision, did you see whether or not Mr. Singletary was talked to by any other detective who was there?

Page 77.

A. I don't recall if he was or not.

Q. Now, it's true, is it not, that you were given a briefing when you got down there with respect to the general parameters of the state of the investigation?

A. I don't recall if I was or not. I'm sure I was, what the extent of it was I don't recall.

Q. Right, I am not asking you the extent of it, but you do recall being given a briefing?

A. I don't recall, I'm just assuming that I was.

Q. Well, general parameters, you knew an officer had been shot and had died?

A. Yes.

Q. You knew that it had happened out on the street: Locust and 13th?

A. I believe I knew that, yes.

Q. You knew that a gentleman had been taken into custody who was also shot at the scene?

A. I don't recall specifically if I knew that or not.

Q. You were told, were you not, that there were witnesses to the shooting who were being interviewed?

A. I don't recall being told that.

Q. You weren't told that?

A. I don't recall being told that.

Page 78.

Q. In other words, I think the thing I'm trying to ask you is: The way it worked, to the best of your recollection today, was that either Mr. Singletary was brought to you or you went to the gentleman, and without having details about what happened you started to interview him?

A. Are you asking me if that's correct?

Q. Yeah.

A. I -- that's not correct.

Q. Well, correct me, then?

A. Your --

Q. What is your recall of how that happened?

A. Well, your question asked me if I just blindly asked, interviewed him and went and picked him out. That's not correct. Somebody either brought him to me or told me to interview him

regarding this.

Q. Yes. And I'm just asking you what was the state of your knowledge at the time you did that interview, did you know, did you have any information as to what other witnesses were saying?

A. I have no recollection of that.

Q. See, I'm trying to ask you: When you sat down and you say you had a conversation with Mr. Singletary, did you have any idea as to what the detectives had already discovered about what had

Page 79.

Detective Edward Quinn - Cross

happened out on that street?

A. I'm assuming I had a general knowledge of what had occurred, or what had happened, that a policeman was shot.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. We are talking about a homicide of a police officer. You will agree with me, would you not, that when you're talking to someone who might be a witness it would be important to know basic facts in order to get at what this person had seen or heard; is that right?

A. That's correct.

Q. Did you have those basic facts that night?

A. I mean I assume I did, yes.

Q. So your telling us that it's your assumption that you had a kind of a police theory of what happened that night when you started to interview Singletary?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that. You are assuming something, Counselor, he hasn't said it.

BY MR. WEINGLASS:

Page 80.

Detective Edward Quinn - Cross

Q. Did you have the police theory as to what happened when you started to interview Singletary?

MS. FISK: Objection, Your Honor.

THE COURT: What is the basis of your objection?

MS. FISK: There is a difference between basic facts and police theory. I would object to the use of the word.

MR. WEINGLASS: Okay? I will withdraw it and ask the other.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. Did you have basic facts when you sat down to interview Singletary?

A. I believe I did.

Q. And the basic facts were as we have indicated: An officer was shot, 13th and Locust, the officer had died. What else are basic facts, you tell me?

A. I don't recall what basic facts were told to me at that time.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. And those facts were facts that were given to you by other officers?

Page 81.

Detective Edward Quinn - Cross

A. Yes.

Q. Do you know Detective Thomas?

A. Yes.

Q. Did you see him there that night?

A. I don't recall if I seen him there that night.

Q. Did you know him to be supervising the gathering and the collection of information?

A. Umm, I have since learned that he was the assigned investigator.

Q. Right. Do you know if he was the one who gave you the briefing?

A. I don't recall.

Q. But you do remember that there was a briefing?

A. I don't independently remember. I am assuming I -- I mean I wouldn't do an interview if I didn't have the basic knowledge of what happened.

Q. All right. Now, it's true, is it not -- well, strike that. You didn't know Mr. Singletary from before at all?

A. No, I did not.

Q. He was a complete stranger to you when you started talking to him?

A. I believe he was. I don't recall ever meeting him before.

Q. And it's important, is it not, that in

Page 82.

Detective Edward Quinn - Cross

questioning a witness, you as a detective try to do some kind of evaluation of whether or not you're being given the truth?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that. In view of what limited experience he had at that time. And what his assignment was.

BY MR. WEINGLASS:

Q. Well, that night you were assigned to question a witness, were you not?

A. Yes.

Q. And you performed that questioning and you typed up a statement, did you not?

A. Yes.

Q. Did you in the course of that work do an evaluation of the witness you were talking to?

MS. FISK: Objection, Your Honor. Whether or not he did is not relevant.

THE COURT: I will have to sustain that. We haven't found out what he did with the statement. I don't know whether he gave it to somebody else who was in more authority than he was at the time to evaluate it.

MR. WEINGLASS: We are getting to that.

Page 83.

Detective Edward Quinn - Cross

THE COURT: Well, then let's get to it.

BY MR. WEINGLASS:

Q. Did you, Detective Quinn, write a report of what you did that night?

A. No.

Q. Do you maintain a diary or a logbook of your activities?

A. No.

Q. So there is no record written of what you did that night?

A. Yes.

Q. Where is that?

A. Right here (displaying).

Q. Indicating D-29?

A. Yes.

Q. But you didn't report to your supervisors or superiors that you had conducted an interview at Homicide that night in connection with Officer Faulkner's case?

A. To the Homicide supervisors or to my supervisor?

Q. To your supervisor?

A. I may have verbally told them. I probably did verbally tell him.

Page 84.

Detective Edward Quinn - Cross

Q. And who would that be?

A. You want their names?

Q. If you could recall one.

A. Ahh, Sergeant Penny Brace.

Q. But you're telling us that you at that time were not maintaining a logbook or a personal diary indicating what you had done?

A. No.

Q. After this interview what did you do with D-29?

A. Umm, I don't specifically recall who I gave it to.

Q. You gave it to someone in Homicide?

A. Yes.

Q. You don't remember who?

A. I don't remember who.

Q. Did you give it with a recommendation of any sort: There should be follow-up, there should be evaluation, this fellow was there pretty close, you know, to the time of the occurrence, anything like that? Or you just handed it in?

A. I don't recall.

Q. Do you know if you talked to Detective Thomas afterward about this interview?

A. I don't recall if I did or not.

Page 85.

Detective Edward Quinn - Cross

Q. As a matter of fact, is it your testimony that from the time you took this interview, and you don't know what time it is, to the time that you were asked to come to Court, you never talked to anyone about Mr. Singletary?

A. I don't understand your question.

Q. From the time that you finished taking the interview --

A. Yes.

Q. -- and handed it in --

A. Yes.

Q. -- until you were asked to come to Court today --

A. Yes.

Q. -- you hadn't talked to anyone about Singletary?

A. Not that I recall.

Q. You haven't talked to Joe McGill, the District Attorney prosecuting the case; is that right?

A. No, never spoke to him.

Q. Now, by the way, when were you contacted to come to Court?

A. Ahh, it was around 6:00 p.m. Friday evening when I was getting ready to leave for vacation.

Q. You were about to go on vacation?

Page 86.

Detective Edward Quinn - Cross

A. Yes, sir.

Q. And you were asked to make yourself available for today?

A. Yes.

Q. And you got that through a telephone call?

A. Yes.

Q. About 6:00 p.m. on Friday?

A. It was about 6:00 p.m.

Q. To be here on Monday?

A. Yes.

Q. And that's something that you're obliged to do as a detective in the City, irrespective of your vacation plans?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that.

BY MR. WEINGLASS:

Q. Now, in your work as a detective, You understand, do you not, that tearing up a handwritten statement of a witness is a violation of law?

A. Am I aware of that?

Q. Yes.

A. I guess it is.

Q. And that a police officer who engages in that kind of activity would be subjected to at least

Page 87.

Detective Edward Quinn - Cross

internal discipline?

A. Most certainly.

Q. And that if a police officer -- or a detective -- I'm sorry -- were to admit to that, that that person would be in effect putting his or her entire career in jeopardy?

A. From the witness stand?

Q. Yes.

A. Absolutely.

MR. WEINGLASS: If I may have just a moment.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. I'm sorry, just one last question. The North Central Detective Division is in what numbered district?

A. Umm, it's located at 17th and Montgomery, that would be the 22nd and the 23rd District.

Q. Right, and, umm, I said that would be the last, this will be the last. Are you a member of the Fraternal Order of the Police?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that. I can assume he is, Counselor.

Page 88.

MR. WEINGLASS: Pardon?

THE COURT: I could assume that he is. He is a police officer.

MR. WEINGLASS: I just wanted it on the record but I will take the Court's --

THE COURT: Well, I don't think you have to bother putting it on the record. We have enough on the record. Anything further?

MS. FISK: No, sir.

THE COURT: All right, you are excused. Thank you.

MS. FISK: Your Honor, the Commonwealth has no further witnesses to present. In light of Counsel's representations this morning. However, we would ask an opportunity for a recess to research whether or not Counsel is entitled to the subpoena that was requested this morning.

THE COURT: All right, how long of a recess do you want? It's a quarter to 12:00 now.

MR. WEINGLASS: Could we make it, what would ordinarily be the time we would return from a luncheon recess?

THE COURT: Well, what do you want?

Page 89.

MS. FISK: Make it 1:30.

THE COURT: 1:30 you want.

Is 1:30 okay?

MR. WEINGLASS: Yes.

THE COURT: Okay, 1:30.

THE COURT OFFICER: This Court stands recessed until 1:30.

- - - - -

(Luncheon recess was held until 1:50 p.m.)

- - - - -

MS. FISK: Your Honor, upon our return from luncheon recess I advised Mr. Weinglass of my intention to advise the Court -- which I am now so doing -- we have no objection to the Court permitting defense to issue a subpoena for this new alleged witness that Counsel intends to produce.

THE COURT: Well, there is nothing for me to decide.

MS. FISK: I was advised by Counsel that upon permission by the Court to issue that subpoena, that Counsel would be able to produce the witness tomorrow morning. I asked whether the witness could be produced this afternoon; I

Page 90.

was advised that he could not. I also inquired as to the address or location where the witness could be located and I was assured that at the end of today's proceedings Counsel would provide me with that information.

MR. WILLIAMS: Your Honor, now that that issue has been resolved, the only other issue is the matter of the Exhibits. Many Exhibits have been admitted as evidence. Other Exhibits have been marked for identification only. We request that to assist in whatever appellate review is necessary in this case, that all of the Exhibits be marked in evidence. That is the Exhibits that are now presently marked for identification only be converted to Exhibits admitted in evidence.

THE COURT: Which ones are you specifically talking about? Are you talking about the newspaper articles?

MR. WILLIAMS: If those have only been marked for identification, yes.

THE COURT: Well, that's all.

MR. WILLIAMS: I could work it out with the Clerk because I don't want to misspeak.

THE COURT: You can't work it out with

Page 91.

the Clerk, you have to work it out with the D.A. Because if she is objecting then I have to rule on it.

MR. WILLIAMS: Of course, of course. Do you want me to take a few minutes now to do that?

THE COURT: Yes, I will give you time to do that.

MR. WILLIAMS: Yes, okay, we appreciate that, Your Honor. But before I consult with the Commonwealth, the other thing is that I have approached Detective Walsh regarding Mr. Harkins. And the arrangement we have is that Detective Walsh will make an effort to contact Mr. Harkins and then somebody from the defense team will then contact Detective Walsh tomorrow morning regarding a meeting with Mr. Harkins. In light of that eventuality of having a meeting with Mr. Harkins, we want to make sure and let the Court know that if in the course of that meeting with Mr. Harkins we receive information that has a bearing on our claims, that we would retain the right to move to reopen the hearing if in fact the hearing is over at that juncture.

Page 92.

THE COURT: Well, can we set a date for this?

MS. FISK: A date for which, for the interview with Mr. Harkins?

THE COURT: No, whether or not the Court will have another hearing. You see, I just can't sit around and do nothing.

MS. FISK: I assume we would know by Thursday. I assume we would know by Wednesday.

MR. WILLIAMS: If Mr. Harkins is produced by tomorrow we will know by tomorrow.

THE COURT: What I am trying to say to you: They don't let me sit around. I have another case that I have to start as of tomorrow.

MR. WILLIAMS: You and me both.

THE COURT: Well, then you see it's pretty hard for me to decide these things for you. If you need time, and you want to say well, let's adjourn until next Monday, and we'll see if we could do anything at that time, that's perfectly all right with me.

MR. WILLIAMS: What I'm suggesting -- maybe it's better for the Court, it's only a suggestion -- it's unclear what will happen in

Page 93.

our interview with Mr. Harkins. It may be that --

THE COURT: I know that, I know that. But what I am trying to do is set down a definite date. In other words, if you are not going to call him you could tell me that next Monday, right.

MR. WILLIAMS: Right.

THE COURT: If you are going to call him you will have him here next Monday.

MR. WILLIAMS: Okay.

MS. FISK: Fine.

THE COURT: That's what I am trying to do. And you could do the same thing with the witness they want to subpoena. I don't care, we could do that.

MS. FISK: I would just as soon do that tomorrow, Judge, and get the bulk of this testimony behind us.

THE COURT: All right.

MR. WILLIAMS: If you will just give me a moment on the Exhibits.

THE COURT: All right, take a short recess.

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Page 94.

(Brief recess.)

- - - - -

THE COURT OFFICER: Quiet in the Courtroom, please. Quiet in the Courtroom. This Court is now reconvened.

MR. WILLIAMS: Your Honor, after consultation with the Commonwealth, here is where we're at. The first three Exhibits are newspaper articles. And they were proffered to the Court on the issue of the recusal. So it's our position -- and I understand the Commonwealth quarrels with our position -- that those newspaper articles ought to be admitted not simply for identification purposes but for evidential purposes because those newspaper articles reflect a community attitude that has a bearing on the recusal issue. So for that reason they ought to be admitted as evidence.

MS. FISK: As I advised Counsel, Your Honor, my position is that a document which is simply marked and placed in the record which is not a subject of testimony which is tested through a witness is not and cannot be admitted into evidence, as opposed to merely being marked for identification purposes. For that reason I

Page 95.

object to any articles which were simply proffered as being admitted for anything other than identification, which is the purpose for which they were marked.

THE COURT: Well, let me say this: I know of no Supreme Court case that says community interest or viewpoints of the community have anything to do with a recusal motion as to the judge himself. For that reason I'm denying entering that as evidence.

MR. WILLIAMS: Now, the item Defense Exhibit 4 is a letter from Miss Wolkenstein to Mr. Eisenberg of the Commonwealth. And that was cc'd to Your Honor. That we admit is properly not in the nature of evidence in the hearing but is correspondence that ought to just be part of the record. And I think it is part of the record in light of --

THE COURT: If she has no objection. Do you have any objection to that?

MS. FISK: Well, I am assuming since it is marked and identified as Defense Exhibit 4 that it was marked and it is going to stay in the record if it is there. But it is not coming in as evidence, it is marked for identification

Page 96.

for the purpose for which it is marked.

MR. WILLIAMS: It is not, we agree it is not in the nature of evidence. It is simply correspondence from Counsel to opposing Counsel.

THE COURT: If that's the purpose of it it's all right with me.

MR. WILLIAMS: Exhibits 4, 5 and 6 are excerpts from the voir dire back at trial. And this is already just a matter of record, given that the Commonwealth has already moved the entire trial record to make it part of this PCRA hearing.

THE COURT: Well, we have that anyway.

MR. WILLIAMS: Right, so that is --

THE COURT: The Supreme Court already had that and will

probably get it again.

MR. WILLIAMS: So it is a matter of record, so there is no need to spend time on it.

Then we go down to Defense Exhibit 14, which is, yes, Officer Wakshul's vacation schedule. Their position as I understand it is that that vacation schedule, the printout of that schedule is not authenticated. In any event, we request that it be put into evidence. I will note that in the witness list for

Page 97.

Commonwealth, that they included the custodian of records to authenticate that document. But I take it they have decided not to call that witness. But in any event, for purposes of efficacy, I ask that the Court allow that that printout been admitted as evidence.

MS. FISK: Your Honor, that was a document which was shown to the officer. My recollection is he did not recognize many portions of it, he could not attest to it's accuracy, and it has never been authenticated, and I object to it being admitted into evidence.

THE COURT: Well, isn't that an explanation of it, then?

MS. FISK: Pardon me?

THE COURT: Isn't that an explanation of it?

MS. FISK: Well, it was marked but never authenticated, Your Honor, and that is apparently on the record.

THE COURT: Well, there seems to be a lot of things that are marked here and not authenticated. And can it just go in as being an Exhibit?

MS. FISK: I am objecting to it being

Page 98.

an Exhibit. I defer to the Court's ruling. It was presented.

THE COURT: No, as I understand, people talked about it.

MS. FISK: Right.

THE COURT: So how do you think it should not come in?

MS. FISK: Well, he was asked questions about it. He was unable to give answers because it wasn't a document he prepared.

THE COURT: I understand that. But isn't it something, then, the Supreme Court should look at?

MS. FISK: Yes, Your Honor, it is.

MR. BURNS: Your Honor, it could be admitted as an Exhibit but it can't be considered evidence. Everything will come in as an Exhibit.

MS. FISK: Your Honor, I object. Anything in this case that has been handed up at this point and given a number, whether it has been identified, been the subject of questioning, been admitted as part of testimony, if it is marked and given a number it is going

Page 99.

to be a part of the Court record.

THE COURT: That is what he wants.

MS. FISK: Apparently, Counsel is making a distinction between items which are being marked for identification purposes and items which are being admitted into evidence, which I am interpreting as meaning agreeing to their accuracy, in effect. I will not.

THE COURT: I agree with you it is merely an Exhibit.

MS. FISK: I agree that this vacation schedule was marked, given the number, was the subject of testimony.

THE COURT: And it will be part of the record.

MS. FISK: That is exactly right.

THE COURT: Okay.

MR. WILLIAMS: The other item is Defense Exhibits 18 and 19, which are two police interview reports, one for Mr. Nelms, number 19 is for Officer Schu. They also were marked for identification purposes only. I believe those were introduced in connection with -- I can't recall who was on the stand. But in any event, the Commonwealth's position as I understand it

Page 100.

is that those ought not be marked in evidence because the relevant persons were not on the stand.

THE COURT: Just as an Exhibit.

MS. FISK: Yes.

MR. WILLIAMS: Just as an Exhibit.

THE COURT: Okay, all right.

MR. WILLIAMS: Then Defense Exhibit 24 is the FBI Department of Justice authentication letter. The reason why that one is important is because we have proffered the FBI files. They go to two issues. One is the police bias, the Kyles versus Whitley claim. And then the other is the mitigation evidence claim. The authentication letter essentially releases us all of the burden of having to bring someone in from Washington, D.C. from the FBI to come in and testify that in fact these documents that we proffered are the documents that were provided to us from Washington, D.C. pursuant to our Freedom of Information Act request.

THE COURT: All right, what is your position on that?

MS. FISK: Again, Your Honor, it is a letter which has been marked for identification

Page 101.

purposes, moved into the record. There has been no witness who has been offered to testify. Frankly, I am a little puzzled. I mean Counsel didn't want to bring someone from Washington. They flew people in from Idaho, New York and all over the globe to testify in this case. I agree it was marked, it is in evidence for what it's worth, and I object to it being given credibility by saying that it is accepted into, accepted as evidence. It is marked for identification, it is in the record for it's purpose.

THE COURT: It is admitted for the limited purpose, then.

MS. FISK: Yes.

MR. WILLIAMS: And lastly we have the affidavit from Charles Honts, Dr. Honts. Your Honor may recall that he was present in Court. He is the polygraph expert that the defense proffered to the Court for purposes of testifying in regards to Mr. Hightower's polygraph results.

MS. FISK: And again that was marked, it is an Exhibit in the record, and to the extent that it is in the record it is there for

Page 102.

whatever purpose. The witness was not permitted by the Court to be called and it is equivalent to the affidavits which are part of the initial Petition.

THE COURT: Well, as I said, polygraph results are not admissible.

MS. FISK: Yes, sir.

THE COURT: Wouldn't have been admissible in 1981, it is not admissible in 1995.

MS. FISK: And that was the basis on which the Court refused to permit the witness' testimony.

THE COURT: That's it. It is of no value as far as evidence is concerned, but it is in the record for whatever use it can be and that's it.

MS. FISK: Yes.

MR. WILLIAMS: Just give me one moment, Your Honor?

(Discussion was held off the record at this time among defense Counsel.)

MR. WILLIAMS: The only other thing -- and I wanted to take advice from the Commonwealth as well as from Your Honor on how

Page 103.

to deal with this -- in our letter we refer to several police reports based upon interviews with several police officers, as well as hospital personnel. Specifically Security Guard Charles Kenney and Nurse Carol Young. Those all go to the issue of the confession. And they are attached as exhibits to our letter, the relevant police reports.

What we're interested in: I know Your Honor has ruled that those police reports cannot be admitted as evidence, and Your Honor has not permitted us to call these individuals as witnesses. But -- and I am not here to quarrel with that ruling -- what I'm seeking to

do is if appellate review is necessary on this issue, I just want to make sure that the appellate Court knows what Counsel is talking about when we refer to these police reports. So I only ask that those relevant police reports be marked for identification purposes so that effective appellate review can be had here. I am not asking it to be admitted into evidence, Your Honor has ruled, just want it to be identified.

Now, I know that our letter to Your Honor with the exhibits is part of the record.

Page 104.

And maybe it's sufficient that we could just then refer to the letter and the exhibits.

THE COURT: Well, is it any part of the Clerk of Quarter Sessions file?

MR. WILLIAMS: You mean as part of the exhibit list (displaying)?

THE COURT: Whatever you filed with the Clerk of Court.

MR. WILLIAMS: No, it is not.

MS. FISK: The Judge's question is is that part of the Quarter Sessions file?

MR. WILLIAMS: Oh, there. Yes, yes, it is.

THE COURT: Then it's in the Quarter Sessions file and they'll have it.

MR. WILLIAMS: That's all we are looking for. We could make reference to it in any appellate briefs.

THE COURT: Okay. Do you have anything that you want to move into evidence?

MS. FISK: Well, Your Honor, the Commonwealth can't really be called upon to rest until the defense does, and defense hasn't. I will ultimately ask that all those documents which have been marked as Commonwealth Exhibits

Page 105.

be moved into evidence. I don't believe Counsel had any objections to any of those documents.

MR. WILLIAMS: That's correct. The ones that I have been apprised of that are on the Exhibit list.

MS. FISK: Yes.

MR. WILLIAMS: That we talked about a moment ago, I have no problem with.

MS. FISK: And I have no objection to the Court accepting those at this juncture.

THE COURT: Okay. If no one has any objections it's all right with me. The reason why I'm pushing you a little bit: I have over a hundred people in this next case that I have to hear. And they were here today and I had to tell them to come back tomorrow. Now you are giving me another witness for tomorrow morning. How long, how long will that witness be on the stand, do you have any idea?

(Pause.)

THE COURT: Is he here for a limited purpose only?

MR. WEINGLASS: Well, he will be called on direct for a limited purpose. I am not sure that the cross won't be extensive. He

Page 106.

will be called on direct, I can represent that to the Court, for a limited purpose.

THE COURT: Okay. Then could we start tomorrow morning at 9:30?

MS. FISK: Sure.

THE COURT: And I mean 9:30. Not ten o'clock, not 10:15. Could we do that?

MS. FISK: Sure, Judge.

THE COURT: Because I have to get word to these people to have them come in a little later. I hate to do that to them, it's not fair to a lot of people that are involved in this case. The next case. But I don't know how else I'm going to do it. We are getting all these last minute deals. You see, if you had followed my advice at the very beginning and given the Court all of these names together with their affidavits and everything, we wouldn't be running into that trouble now. We would have had this resolved already. But. Well, we will just take it tomorrow morning and see.

MR. WEINGLASS: Yes, we are prepared to go ahead then. I should indicate that Commonwealth Counsel handed me the name of another witness, I just got it. And that's

Page 107.

going to require that we investigate that witness. I just want to state for the record, again, it's someone new and we're going to do our fastest follow-up that's possible. But that's the situation we face. This is a witness that the defense has not generated.

THE COURT: Does anybody have a calendar here? Let's see if we could get the date here.

I have already instructed the Court reporter that I want him to start transcribing the entire record, including all our sidebars and everything. Not just what you ordered, you people ordered individually. But I want the whole record transcribed. So that's going to take a little time. And what I want from you also, I know you want oral arguments here. What I also want from you is a proposed findings of facts and conclusions of law from both sides. When do you think that you would be able to do that?

MR. BURNS: That depends largely on the rate at which the notes are transcribed.

THE COURT: Well, does anybody have any vacation time or something that is going to

Page 108.

interfere with this? You have a problem.

MR. WEINGLASS: I have a problem, yes.

THE COURT: What is your problem?

MR. WEINGLASS: Well, for the remainder of August and early September I have a vacation that I planned. But I don't assume the notes will be ready that quickly in any event.

THE COURT: All right, let me ask you this. How is this for oral arguments? Will September 6th be all right for you? That's two days after Labor Day. Labor Day is September 4th.

MR. BURNS: Fine with me, Your Honor.

MR. WEINGLASS: Right now we are scheduled on this case in a civil matter in Pittsburgh before a Federal Court. Mr. Jamal has to be there.

THE COURT: What day?

MR. WEINGLASS: The 6th.

MS. WOLKENSTEIN: 6th and 7th.

THE COURT: I don't know, 5th, 6th and 7th.

MR. WEINGLASS: We would prefer as late --

THE COURT: The 8th?

Page 109.

MR. WEINGLASS: -- in the month of September as possible.

THE COURT: How about September 8th, then?

MS. FISK: Your Honor, if he is in Pittsburgh on the 6th and 7th, the odds are Mr. Jamal would not be available here on the 8th. Just a wild guess.

THE COURT: September llth? I'm trying to get a date here.

MR. WEINGLASS: I'm not, we don't know when the notes -- is there any date?

THE COURT: Well, I am sure he is going to have the notes before September 11th. That's for sure.

MR. BURNS: Is Your Honor indicating that the argument will take place before the submission of the findings of fact and conclusions of law? Because if that were true it wouldn't matter when the argument was, we could have that just about any time.

THE COURT: I don't particularly care one way or the other if the notes are at the same time of the argument. Does anybody want a different schedule?

Page 110.

MR. WEINGLASS: We would prefer having the notes, submitting the findings of fact, and then having the argument. Because then

the argument will be pinned down to the record. As opposed to people arguing over what's in the record without being specific.

THE COURT: Well, I am not saying that I am going to accept anybody's findings of fact. I am going to make my own. But I just want to give you an opportunity to file them.

MR. WEINGLASS: But the process of both sides --

THE COURT: What about September 11th then, Monday, September the 11th?

MR. BURNS: That's acceptable to the Commonwealth, Your Honor.

MR. WEINGLASS: Could I have just a moment?

THE COURT: Sure.

(Discussion was held off the record at this time between defense Counsel.)

MR. WEINGLASS: We would prefer if possible September 18th. Because we will be active in litigation.

THE COURT: Yes, but, Counselor, I

Page 111.

have other schedules to meet too. I haven't had a vacation yet either. I am going to set September the llth, Monday, September the 11th. I think that's plenty of time. And it should be plenty of time for the notes to be transcribed. And anybody who wants to purchase them can purchase them.

MS. FISK: Your Honor, is that -- just so we understand -- is September the 11th the date on which the Court wishes to receive from both sides the proposed findings of fact and conclusions of law?

THE COURT: And the argument.

MS. FISK: Also entertain oral argument on that date?

THE COURT: Yes. I am figuring on allocating at least two hours to each side. Is that sufficient? Without any interruptions for objections or anything of that nature.

MR. BURNS: In other words, as an appellate argument would be, Your Honor?

THE COURT: Yes. That's more than you get I when you go up to the Supreme Court you won't get two hours.

MR. BURNS: No, only about a half

Page 112.

hour.

THE COURT: I don't know, you're lucky if you get a half hour. But two hours should be sufficient. Is that agreeable?

MS. FISK: Yes, sir.

THE COURT: Okay, then, we will adjourn until tomorrow morning for this one witness and we'll hold the other witness in abeyance until you've had a chance to decide whether you're going to call him. And what I would suggest you do: If you decide that you want to call him, let's get together informally and see when I could do that. Because I am going to start this other case tomorrow. I don't have any idea how long it is going to take but it involves a lot of people. I really don't know how long. I haven't even gotten into it as yet. So we'll leave it at that, then.

MS. FISK: Yes, work that out tomorrow.

THE COURT: Until tomorrow morning.

MS. FISK: Yes, sir.

THE COURT: 9:30 to start.

MS. FISK: Yes, sir. Yes, sir.

THE COURT: Okay.

Page 113.

THE COURT OFFICER: This Court now stands adjourned until 9:30 a.m. tomorrow morning at the call of the Crier.

- - - - -

(The hearing was adjourned for the day at 2:20 p.m.)

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Page 114.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

15. August 1995

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Tuesday, August 15, 1995
Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Robert Chobert	3	10	20	28

EXHIBITS

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
21	Interview record (R. Chobert)	12
22	Interview record (R. Chobert)	12

WITNESS

Detective Joseph Walsh
By Ms. Fisk - 34
By Mr. Weinglass - 36

Page 3.

- - - - -

(At 9:30 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

Robert Chobert, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Mr. Chobert.

A. Good morning.

Q. Mr. Chobert, I want to direct your attention back to the Sunday before last Sunday, which is August 6th. Did you have a conversation on that day with a gentleman by the name of Mr. Newman, Mike Newman?

A. Yes, I did.

Q. And he was calling you by telephone?

A. Yes, sir.

Q. And he was in San Diego and you were here in Philadelphia?

MS. FISK: Objection, Judge. How would he know that unless it's hearsay? He was on the telephone.

Page 4.

Robert Chobert - Direct

THE COURT: I will have to sustain the objection to that.

BY MR. WEINGLASS:

Q. Now I want to ask you a few questions about that conversation. In the course of that conversation did you speak to Mr. Newman about your driver's license and the status of your license back in 1981?

A. Yes, I did.

Q. And do you recall if back in 1981 or 1982 whether or not you had a conversation with the District Attorney who was prosecuting this case -- Joe McGill -- about your driver's license?

A. Yes, I did.

Q. Do you recall what he said to you at that time?

A. Well, he said he'll look into it.

Q. He'll look into it?

A. Yes, sir.

Q. And was that before the trial?

A. I don't know, probably during the trial, sometime during the trial. I don't know.

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

Page 5.

Robert Chobert - Direct

A. Yes, sir.

Q. And what had you told him?

A. I asked him if he could help me find out how I could get my license back.

Q. Help you to get your license back?

MS. FISK: Objection: That's not what he said.

(The Court Reporter read back the last answer.)

BY MR. WEINGLASS:

Q. And your license at that point had been expired?

A. Suspended.

Q. Suspended. And when you asked him if he could help you he said he would look into it?

A. Yes, sir.

Q. And you expected him to look into it, did you not?

A. Yes.

Q. And as it turned out -- well, strike that. Now, in December of 1981, was your license expired or suspended at that time?

A. Suspended.

Q. Suspended.

Page 6.

(Discussion was held off the record at this time between defense Counsel.)

BY MR. WEINGLASS:

Q. Now, do I understand that you had been a, you were a taxi driver in December of '81; is that correct?

A. Yes, sir.

Q. And you had been a school bus driver as well; is that right?

A. Yes, sir.

Q. Right. And with your license in a suspended state you could not drive a school bus?

A. No, sir.

Q. And that was important to you?

MS. FISK: Objection, Your Honor.

THE COURT: Well, why don't you let him testify for a change.

BY MR. WEINGLASS:

Q. Right. Was it important to you to be able to drive a school bus?

A. Yes.

Q. And that's why you needed your license?

A. Yes, sir.

Q. And it was important -- was it important to you because it's the way you earned your livelihood?

MS. FISK: Objection, Your Honor.

Page 7.

THE COURT: Sustained. It would be nice if you let him testify for a change, Counselor. Rephrase your question.

BY MR. WEINGLASS:

Q. Why was it important to you?

A. Because that's how I earned my living.

Q. That's how you earned your living?

A. Yes. But I didn't testify because I was trying to get my license back.

Q. I'm sorry. I didn't hear...

(The Court Reporter read back the last answer.)

BY MR. WEINGLASS:

Q. Now, before you testified were you housed in a hotel here in downtown Philadelphia?

MS. FISK: Objection, Your Honor. That is beyond the offer of proof which was made by Counsel at the bar of the Court yesterday afternoon. Which was, as I understood it, and apparently as the media understood it, to be whether or not any promises were made to this witness with regard to the status of his driver's license. Therefore, the housing of this witness is irrelevant and beyond the offer posed by Counsel at the bar of the Court

Page 8.

yesterday.

MR. WEINGLASS: Well, it was promises backed up by certain treatment.

THE COURT: You should have said so yesterday.

MR. WEINGLASS: We should be able to go into --

THE COURT: You should have said that yesterday. You limited yourself.

MR. WEINGLASS: Am I barred because I didn't mention how he was housed prior to trial?

THE COURT: You told us what you wanted to prove by this witness.

MR. WEINGLASS: May I have the Court's permission to expand the questioning into how the witness was housed prior to his testifying?

THE COURT: Does the Commonwealth have an objection to that?

MS. FISK: Your Honor...

(Discussion was held off the record at this time between Counsel for the Commonwealth.)

MS. FISK: Fine, Judge, no, I don't.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. Were you put up in a hotel?

Page 9.

A. Yes, sir.

Q. For how long prior to your testifying?

A. How long? To tell you the truth, I don't know.

Q. Was it more than a week?

A. Yes.

Q. More than a week?

A. Yeah.

Q. You were kept in a hotel?

(Witness nodded head affirmatively.)

Q. Were you alone in the hotel or were there others with you?

A. About two cops with me.

Q. Pardon?

A. Two cops.

Q. Two cops with you? Were they with you all the time?

A. This one that picked me up from work and take me to the hotel. That's the only time he was with me.

Q. They would pick you up from work and take you to the hotel?

A. Yeah.

Q. And then would they take you to work in the morning?

Page 10.

A. Yes, sir.

Q. So they would take you to work. And in the evening, did you know where the police were?

A. Yes.

Q. Where were they?

A. In the next room.

Q. Pardon?

A. In the next room.

Q. In the next room?

A. Yeah.

MR. WEINGLASS: If I may have a moment.

(Discussion was held off the record at this time among defense Counsel.)

BY MR. WEINGLASS:

Q. Now, when Mr. McGill told you that he would look into it, you believed him, didn't you?

A. Yes.

MR. WEINGLASS: I have nothing further.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

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CROSS-EXAMINATION

- - - - -

Page 11.

Robert Chobert - Cross

BY MS. FISK:

Q. Mr. Chobert, you told us on direct examination that what anyone told you about your driving status had nothing to do with your testimony at trial; is that correct?

A. That's right.

Q. Did you testify at trial under oath and truthfully about what you saw occur on the night Officer Faulkner was murdered?

A. Yes, I did.

Q. Now, and so I understand, Mr. Chobert, on the night of the murder -- December 9th, 1981 -- did you give a statement to Homicide detectives about what you saw?

A. Yes, I did.

Q. And three days later, did you give further details to another Homicide detective about what you saw?

A. I don't know, I guess I did.

MS. FISK: Let me show you this.

May I ask, Your Honor, that these two documents be marked, shown to Counsel, shown to the witness.

THE COURT OFFICER: C-21. I will

Page 12.

Robert Chobert - Cross

check for a second.

MS. FISK: Okay, thank you.

THE COURT OFFICER: That's it, C-21.

(Investigation interview records of Robert Chobert were marked Commonwealth Exhibits C-21 and C-22 for identification.)

MS. FISK: C-21 being a December 9th, 1981 statement of Mr. Robert Chobert. And C-22 being a December 12th, 1981 statement of Mr. Chobert.

MR. WEINGLASS: I object to this: It is beyond the scope. The witness was called to testify about a conversation with Joe McGill. He testified, now Counsel is going into his testimony, his police statements, his recollection of the events on the night in question.

MS. FISK: No, I am not.

MR. WEINGLASS: I object to it: It is beyond the scope of direct.

THE COURT: Counselor, I don't know where she is going yet.

MS. FISK: Your Honor, I do not intend to ask Mr. Chobert any questions regarding his recollection with regard to the night of the

Page 13.

Robert Chobert - Cross

incident. It is my understanding, however, that if we were in 1981, and if, as defense Counsel claims, there had been a promise which had been extended to a witness, which Counsel, defense Counsel could have argued to a Jury affected his testimony, it would be appropriate to respond to that argument by a prior constant statement, which was given prior to any alleged-promise, as evidence to the Jury that the testimony of the witness is based upon what he saw as reflected in his prior constant statement (displaying), and that his testimony was not being fabricated or created in exchange for a promise.

Furthermore, I am seeking to mark Mr. Chobert's statements, show them to him, simply have him identify them as that, and have that as part of the record so that argument could be reflected in the record.

THE COURT: Okay, you may do so.

MS. FISK: Thank you.

MR. WEINGLASS: Your Honor, the issue was whether or not there was any conversation between the District Attorney and the witness at the time that constituted a promise. And this is not the issue. I object to this.

Page 14.

Robert Chobert - Cross

THE COURT: Yes, but it is an issue as to whether or not it influenced his testimony in any way. The Court is entitled to know that. I said for the limited purpose for which it is being admitted, it is admissible.

Go ahead.

MS. FISK: Thank you, sir.

THE COURT OFFICER: (Handing) Mr. Chobert.

BY MS. FISK:

Q. Mr. Chobert, you have two documents: Commonwealth Exhibit 21 and Commonwealth Exhibit 22. I want you just to look at them and tell this Court and this record whether or not those are two statements that you gave to Homicide detectives regarding your observations of the murder of Officer Faulkner?

(Pause.)

MS. FISK: If I may, Your Honor, while the witness is reading, have a second? Thank you.

(Discussion was held off the record at this time.)

(Pause.)

Page 15.

Robert Chobert - Cross

BY MS. FISK:

Q. Mr. Chobert, it appears that you have completed looking at those two Exhibits. Are those two statements that you gave to Homicide detectives regarding your observations surrounding the murder of Officer Faulkner?

A. Yes.

Q. And does it refresh your recollection in looking at those statements that those statements were made by you on December 9th, 1981 and December 12th, 1981?

A. Yes.

Q. Now, as I understand it, Mr. Chobert, at the time of trial or sometime during the trial your testimony is that you were being housed during the evenings in a hotel?

A. Yes.

Q. Was that for your protection, Mr. Chobert?

A. Yes, it was.

Q. Were you afraid for your well-being because you were testifying in this case?

A. Yes, I was.

Q. And was it because of your fear that the police provided you with protection during the course of the testimony?

A. Yes.

Page 16.

Robert Chobert - Cross

Q. Did the fact that you were provided protection, did that have any affect or influence on the testimony which you presented at this trial?

A. No.

Q. Was that testimony based on your observations of what you saw on the morning of December 9th, 1981?

A. Yes, it was.

Q. And was that without influence from any source, your testimony?

A. No.

Q. It was without influence or it was influenced?

A. No, I told the truth that day.

Q. Now, as I understand it, Mr. Chobert, you have told us that at some point you told Mr. McGill that your license had been suspended; is that right?

A. Yes, yes.

Q. Now, is it my understanding that you do not remember when in the course of these proceedings, whether it was before, during or after, specifically when you spoke to Mr. McGill about that?

A. No, I don't remember.

Q. So it could have been after you testified; is that correct?

A. Yeah.

MR. WEINGLASS: Objection:

Page 17.

Robert Chobert - Cross

Speculation.

THE COURT: Yes, he said he doesn't know when.

MS. FISK: Well, and if he doesn't know and it could have been after that would mean that there was absolutely no discussion prior to trial.

THE COURT: That's what you could argue to the Court later on.

MS. FISK: Fine.

BY MS. FISK:

Q. Is it my understanding, Mr. Chobert, that you don't remember when in the course of these proceedings you spoke to Mr. McGill?

A. I don't remember, no.

Q. And it could have been after you testified; is that correct?

MR. WEINGLASS: Objection: Speculation. Could have been. It is a speculative question.

THE COURT: I will take that into consideration. No sense in arguing. Let's go.

BY MS. FISK:

Q. Is that correct?

A. Yes, sir.

Page 18.

Robert Chobert - Cross

Q. Now, is it my understanding, sir, that you told Mr. McGill that your license had been suspended and your testimony is he told you he would help find out how to get your license back; is that correct?

A. Yes. Yes, ma'am.

Q. Did you expect Mr. McGill to get your license back for you?

A. Not really, no.

Q. Was it your expectation that he was going to simply wade through the legal part of it and explain to you what you had to do?

A. Yes.

Q. You were, in effect, using him as sort of like a free lawyer?

A. Yeah, like a lawyer.

Q. To explain it to you?

A. Yes, ma'am.

Q. Because you knew that Mr. McGill couldn't get your license back for you?

A. No.

Q. Is that correct?

A. Yes, ma'am.

Q. And in fact, despite the fact that your license was suspended, you were working as a cab driver anyway; is that right?

Page 19.

Robert Chobert - Cross

A. Yes.

Q. So you were earning a living despite the absence of your license; is that right?

A. Yes, ma'am.

Q. Now, did Mr. McGill ever call you to tell you what to do to get your license back?

A. No, ma'am.

Q. Did you ever call him and say yo, hey, what's the story, you promised me you were going to do this?

A. No, ma'am.

Q. Did you ever get your license back?

A. No, ma'am.

Q. In fact, you still don't have a license; is that right?

A. No.

Q. That is right or it isn't right?

A. I don't have no license.

Q. You don't have a license. And so I'm clear -- I asked you that with regard to the hotel -- well, actually, since you don't know when you spoke to Mr. McGill about your license, you don't know whether you had spoken to him about it before you testified; is that right?

A. That's right, yeah.

Q. But you do know that your testimony was based

Page 20.

Robert Chobert - Redirect

only on what you saw and not on what anyone did for you or promised you; is that right?

MR. WEINGLASS: Objection: Asked and answered. Twice now.

THE COURT: All right.

MR. WEINGLASS: May I have a ruling?

THE COURT: I said okay. All right. I know it's twice.

MS. FISK: Thank you, Mr. Chobert. I have nothing further, Your Honor.

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REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Mr. Chobert, isn't it a fact that you never talked to Mr. McGill after the trial?

A. I don't know.

Q. You don't know that?

A. I don't know. Oh, after the trial?

Q. Yes.

A. No, I never talked to him after the trial.

Q. You never talked to him after the trial?

A. No.

Q. Right. Now, are you telling us that an Assistant District Attorney of this City knew that

Page 21.

Robert Chobert - Redirect

you didn't have a license when you were driving that night?

MS. FISK: Objection, Your Honor. How can he tell us what another person knows?

MR. WEINGLASS: Because he said he told him, he had a conversation with him about his license.

MS. FISK: Objection, Your Honor. He did not. He said he does not remember when he had a conversation.

MR. WEINGLASS: He said when he did have a conversation: That is not a when.

THE COURT: So is Mr. McGill on trial here?

MR. WEINGLASS: No, Your Honor.

THE COURT: What difference could it make?

MR. WEINGLASS: It makes a lot of difference, I want to assure the Court.

THE COURT: I don't see where.

BY MR. WEINGLASS:

Q. Without reference to when, are you telling us that you had a conversation with an Assistant District Attorney of this City about your driving a taxicab and not having a license? Is that what you

Page 22.

Robert Chobert - Redirect

are telling us: You had such a conversation? Right?

A. Yeah.

Q. And you were never arrested or charged or fined?

A. Well, I'm not the one on trial, either.

Q. Right.

A. So what's the difference?

Q. Okay. Were you ever arrested or charged or fined for driving without a license?

A. Yes, sir. I am not on trial, though, buddy.

Q. Were you arrested? Tell us when?

A. I don't have to answer that: I'm not on trial.

Q. Were you ever fined for that? Even up to today were you ever fined for that?

A. Yeah.

Q. When was that?

A. I don't know.

Q. You don't remember when?

A. No.

Q. It was since 1982; is that right? Tell us when, what year?

A. I don't know.

THE WITNESS: Your Honor...

MS. FISK: Your Honor, the witness is

speaking to you.

THE COURT: Oh.

THE WITNESS: Your Honor, do I have to answer this? I am not on trial here.

THE COURT: I know. You want me to get you a lawyer? I don't know what the situation is.

THE WITNESS: Yeah, I got fined for it, yeah.

BY MR. WEINGLASS:

Q. Pardon?

A. Yes, I got fined.

THE COURT: He said he got fined for it.

BY MR. WEINGLASS:

Q. When?

A. My last ticket is about four years ago.

Q. Four years ago?

A. Yeah.

Q. 10 years after the trial.

MS. FISK: He said his last ticket was four years ago.

BY MR. WEINGLASS:

Q. Were you in 1982, were you ever charged with driving without a license?

A. I don't know.

Q. 1983 were you ever charged with driving without a license?

A. I don't know.

Q. 1984 were you ever charged with driving without a license?

A. I don't know. If you want to know just check my record.

Q. Okay. Now, when you're caught driving without a license, what happens, are you fined?

A. Yes, sir.

Q. And that's something that no one likes to have happen to them?

A. No, sir.

Q. And you certainly didn't want that to happen to you?

A. No, sir.

Q. Incidentally, Mr. Chobert, how did you get down here this morning?

A. The D.A. The detectives.

Q. The detectives brought you here?

A. Yes.

Q. Did you ask for that?

A. Well, they called me up, I called them back.

Q. And did you talk to them about what was going

to happen this morning?

MS. FISK: Objection, Your Honor. I believe this goes beyond the scope of cross-examination.

THE COURT: Yes, it's way beyond.

BY MR. WEINGLASS:

Q. Mr. Chobert, you looked at these two statements that are in front of you and you told us those statements are true. Is that right?

A. To the best of my knowledge.

MS. FISK: Objection, Your Honor: He testified that those are statements that he made.

THE COURT: Yes.

BY MR. WEINGLASS:

Q. Are those statements that you made, Mr. Chobert?

A. Yes, yes.

Q. Right, those statements are not accurate, are they?

MS. FISK: Objection, Your Honor.

THE COURT: Yes, I will have to sustain that.

MR. WEINGLASS: They opened the statements, Your Honor.

THE COURT: No, I limited them only to identifying them so they could be made part of the record. We didn't go into them.

BY MR. WEINGLASS:

Q. Didn't you tell Mr. Newman on Sunday, August 6th, when he read you those statements, that those statements are not accurate?

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain that. He is admitted just for a limited purpose.

MR. WEINGLASS: Well, it is being limited on this side.

THE COURT: No, it was limited to her too, only to identify them. Only that he identified his signature and he made them.

MR. WEINGLASS: They brought in the statements, Your Honor, now I should be allowed to go into those statements.

THE COURT: No, because you didn't allow her to go into the statements. Now you are on redirect.

MR. WEINGLASS: I objected and you overruled me and allowed her to go into the statement.

Now I want to go into this

generally.

THE COURT: She didn't go into the statements, only to identify them, Counselor. Don't tell me what my rulings are. I know what I ruled. Only to identify his signature and those were the statements that he made. She did not go into the statements themselves. Because you had objected and I sustained your objection.

MR. WEINGLASS: All right.

THE COURT: I admitted it for a limited purpose only and that's all.

BY MR. WEINGLASS:

Q. You had time to read the statements, did you not?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: This morning.

THE COURT: He had time to read them so that he could identify them that they are the statements that he made, period, and that's

all it was.

MR. WEINGLASS: And I am precluded from going into it.

THE COURT: Right, because I precluded the D.A. from going into it.

Page 28.

Robert Chobert - Recross

(Discussion held off the record at this time between Commonwealth and defense Counsel.)

MR. WEINGLASS: Thank you, Mr. Chobert. I have nothing further.

THE COURT: Anything further?

MS. FISK: Yes, just one or two questions.

BY MS. FISK:

Q. Mr. Chobert, on the day that you completed your testimony in this case, and the Court session ended, you were in City Hall still, right?

A. Yes.

Q. And Mr. McGill was still in the Courtroom as well?

A. Yes.

Q. And did you have contact with Mr. McGill on that day when you were done testifying?

A. What do you mean?

Q. Did you see him again and speak to him, did he say, you know, thank you for testifying in this case?

A. He just came over and shook my hand and said thank you and left.

Page 29.

Robert Chobert - Recross

Q. And you had contact with him on that afternoon when he did that?

A. Yes.

MR. WEINGLASS: Objection: The witness described the contact, the question was asked and properly answered. I object to further inquiry in the same nature.

THE COURT: Okay.

MR. WEINGLASS: Objection, Your Honor.

THE COURT: Okay.

MR. WEINGLASS: What is okay?

THE COURT: Okay means I am agreeing with you. What is the big deal? If you don't understand what I am saying, Counselor. I can't help that.

Any other questions?

MS. FISK: No, Your Honor.

THE COURT: Okay. You are excused.

All right, as I told you before, we meet again on September the 11th, unless you contact me that --

MS. FISK: Your Honor, I would wish at this point: I assume, therefore, that defense is resting.

THE COURT: All except he wanted to

Page 30.

talk to this Robert Harkins, the gentleman that said he didn't want to talk to them because when he talks to them they turn the story around. And I said okay, if he wants to talk to you he can. If he wants to he can. If he doesn't want to he doesn't have to. He now wants to speak to them in the presence of Detective Walsh.

MS. FISK: That occurred eight o'clock this morning.

MR. WEINGLASS: Your Honor, as the witness was here and was leaving the room I asked the witness if he would be willing to talk to me. The witness indicated at that time that he would be willing to talk but only in the presence of --

THE COURT: No, he didn't say that first. No, no, no, no, no. I was here. He first said I don't want to talk to them because when I tell them something they turn it around. That's what he said.

MR. WEINGLASS: Thank you, Your Honor.

THE COURT: And then he said before he left, he said the only reason, the only time I will talk to them is if Detective Walsh is present at the time that I talk to them.

Page 31.

MR. WEINGLASS: Good.

THE COURT: Okay.

MR. WEINGLASS: Then an arrangement was made because he said that, that he would be willing to talk in the presence of Detective Walsh, for the defense to talk to him this morning at eight o'clock.

THE COURT: Okay.

MR. WEINGLASS: And I went to the Roundhouse this morning at eight o'clock. Mr. Williams and I went into a small interrogation room where we found Mr. Harkins sitting there appearing to be terrified. And before I could ask him a question, Detective Walsh said that he has something that the witness, that the witness has something to say to me. And at that point the witness in a somewhat frightened voice said to me that he's thought it over and he doesn't want to talk. I then asked him well, you've talked to the other side, haven't you. At that point Detective Walsh insisted that Mr. Williams and I leave the room. I got kind of an intimidating effect and I now understand what some of the witnesses here went through. Directed Mr. Williams and I to leave the room

Page 32.

immediately.

As soon as we did, he pulled the door closed very emphatically, slamming it shut. And with two or three other detectives in the near vicinity, we were told to leave. That's the way in which interrogations are conducted here. I saw it for myself. I would have to say it was very intimidating. Very oppressive. And I understand now more fully some of the testimony that's been offered in this case. About the methods and manner in which interrogations are conducted in the Homicide unit at the Police Administration Building.

But I wanted to report that incident. And I think the witness should be brought before the Court and the witness should be told that he may talk to Counsel without police being present if he wants to. Because --

THE COURT: No, Counselor, that was his wish, Counselor. And I'm not ordering anybody to take the stand for anyone. Whether it be for the Commonwealth or the defense.

MR. WEINGLASS: I think it was a coerced witness, though. I think he was informed and told not to talk to us.

Page 33.

THE COURT: Well, you may think whatever you want to think, Counselor.

MR. WEINGLASS: That's the way it appeared.

THE COURT: You have been doing a lot of that and you do it for the news media and that's fine. But I can't force somebody to talk to you if he doesn't want to talk to you.

MR. WEINGLASS: I am not asking him to be forced.

THE COURT: Well, I would like to hear from Detective Walsh. He was there.

Detective Walsh?

DETECTIVE WALSH: Take the stand, Your Honor?

THE COURT: Any way you want to, or here.

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Philadelphia Police Detective Joseph Walsh, Badge number 697, Homicide Division, having been duly sworn, was examined and testified as follows:

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THE WITNESS: Good morning, Your Honor.

Page 34.

Detective Joseph Walsh

THE COURT: Good morning.

MS. FISK: Does Your Honor ask questions or is the Court going

questions of the detective?

THE COURT: No, you could ask him. Anybody could ask him. Defense, you, whoever wants to, he's there.

MS. FISK: Well, I will just ask one.

BY MS. FISK:

Q. Detective Walsh, would you please explain to the Court what occurred in the Homicide Division this morning regarding Mr. Robert Harkins?

A. Your Honor, it actually started yesterday afternoon. Mr. Williams (indicating) had asked me if I could make arrangements to, for them to speak to Mr. Harkins. I made the arrangements and I contacted the defense and told them that Mr. Harkins would meet with them at the Police Administration Building at eight o'clock this morning.

I picked Mr. Harkins up at his house and brought him down 8th and Race, signed him in the logbook at 7:35, and brought him up to Homicide. It was at that point Mr. Harkins informed me that he had changed his mind and did not want to give a statement, he didn't trust the defense, that he gave

Page 35.

Detective Joseph Walsh

a statement years ago and he testified in Court and had nothing else to say.

I told Mr. Harkins that they would have to hear that from him because they wouldn't believe me. So at approximately 8:05, 8:06, the defense, Mr. Williams, Mr. Weinglass showed up. I signed them in the logbook and took them upstairs. And Mr. Harkins was in the room. They entered the room and Mr. Harkins three times in my presence, and in at least one, maybe two other detectives' presence, but three times he stated to them, he apologized to me and to them, that he had changed his mind, he did not want to give a statement. He thought about it, he talked it over with his wife, he told them, and that he did not want to give any further interviews or statements to them.

At that point Mr. Weinglass started to ask him questions about well, you spoke to them, why don't you want to speak to us. He again told them he didn't want to give a statement, and upon hearing it the third, possibly fourth time, I asked the two attorneys to step outside the room with me. I didn't slam the door, I closed the door. And I told them at that point they had to leave: He did not want to speak to them.

Page 36.

Detective Joseph Walsh

I escorted them out of the building, signed them out of the logbook and walked them to the door of the PAB.

MS. FISK: Thank you.

BY MR. WEINGLASS:

Q. Detective Walsh, you picked up Mr. Harkins this morning?

A. Yes, sir, I did. He didn't have any transportation, he asked for a ride.

Q. And on the ride down did you talk to him?

A. Absolutely.

Q. And did you talk to him about lawyers coming in to talk to him this morning?

A. I explained that to him on the phone last night.

Q. Right. And he was still willing to come?

A. That is correct, he wanted me present there.

Q. But when you spoke to him on the phone last night he said yes, I will go down and I'll talk to these lawyers, so you picked him up this morning; is that right?

A. He didn't say to talk to the attorneys, he said he needed a ride down.

Q. Okay. And then somehow between the time you picked him up and the time we came in to see him he

Page 37.

Detective Joseph Walsh

indicated he didn't want to talk to the lawyers?

A. That is correct. Yes, sir.

Q. Did it have anything to do with your conversation with him on the way down?

A. Nothing at all.

Q. You can't explain how he changed his mind from last night to this morning?

MS. FISK: Objection, Your Honor. The detective does not know what was on his mind last night.

THE COURT: I will have to sustain that.

BY MR. WEINGLASS:

Q. And you said you got him down there at 7:35?

A. Signed in the book.

Q. Did you bring the logbook with you?

A. No, I didn't bring the logbook. Officer Brown -- I believe you met him this morning -- Security, he's in charge of the logbook.

Q. Yes, it was a very pleasant greeting. And you and I were at the logbook also this morning, right?

A. Yes, and Mr. Williams also.

Q. And Mr. Williams. And you signed us in, did you not?

A. Oh, yes, sir.

Page 38.

Detective Joseph Walsh

Q. And the entry immediately before us was Mr. Harkins, which you signed in, right?

MS. FISK: Objection, Your Honor. Frankly, I don't care what the entry before was, it has nothing to do with this, Judge.

MR. WEINGLASS: Just be patient, it will have something to do with it.

MS. FISK: I have lost my patience so that clearly cannot be.

MR. WEINGLASS: You are being paid to be patient.

MS. FISK: No, unfortunately, I am being paid to be a lawyer; unfortunately, you are being paid to act like a lawyer, Counselor. I have to object.

THE COURT: Sustained.

MR. WEINGLASS: The courtesy in the Courtroom is astounding.

THE COURT: Counselor, he said he had signed in Harkins. He also signed you in. Now let's go forward, please.

MR. WEINGLASS: I accept that.

BY MR. WEINGLASS:

Q. Would it surprise you that the logbook reflects the fact that Mr. Harkins was signed in at

Page 39.

Detective Joseph Walsh

eight o'clock?

MS. FISK: Objection, Your Honor.

BY MR. WEINGLASS:

Q. Would it surprise you, Detective Walsh, that that's what the logbook reflected this morning?

THE WITNESS: There was an objection.

MR. WEINGLASS: No.

THE WITNESS: Wasn't there an objection?

THE COURT: I don't know.

BY MR. WEINGLASS:

Q. You may answer. Would you like to answer that question?

A. I would be totally shocked because it's signed in at 7:35. Now, Mr. Harkins, Bob Harkins, 7:35 a.m.

MR. WEINGLASS: Right. Your Honor, could the logbook be produced?

THE COURT: Well, you go down there and look at it yourself. I have another matter to take care of. If it's important. And I don't know the importance of it, but whether he signed in at 7:35 or

eight o'clock, what is the difference? He signed him in, he signed you in, that's it.

MR. WEINGLASS: 25-minute difference

Page 40.

by my calculations. I don't know what happened there to this witness in that interim.

THE COURT: Well, you're putting him closer to the time that you got there so it can't be that important.

MR. WEINGLASS: Okay.

THE COURT: All right.

MR. WEINGLASS: Fine. Nothing further.

THE WITNESS: Anything, Your Honor?

THE COURT: I don't know. Not from me.

MS. FISK: I have no questions.

THE COURT: All right, you are excused. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right, once again --

MS. FISK: One more thing, Your Honor: I understand that Counsel for -- the witness could come down -- I understand that at the request of Counsel that the photographs have been reproduced by the Police Department. Detective Walsh, as I understand it, has the bill for the cost of the reproduction. And once that bill is paid those photographs will be

Page 41.

Provided to defense Counsel.

THE COURT: Okay.

MS. FISK: I would ask, Your Honor, at this stage I am assuming, therefore, that the defense is resting.

THE COURT: Well, I assume so, too.

MS. FISK: Well, we need to hear that on the record. I would also wish a statement on the record by the defense that any of those witnesses who have not been presented by defense who are referred to in the initial Petition, the Amended Petition, the letter, all those other documents that were filed, all those persons who were not quashed or expressly prohibited from testifying by the Court, are nevertheless not being called by defense and that is for a reasonable, legitimate strategy purpose and for no other purpose.

MR. WEINGLASS: Well, Your Honor, there is one caveat to that, and it's this: Yesterday we received from the District Attorney another letter indicating that there was another witness who allegedly came to the District Attorney's Office. The District Attorney gave us that witness' name and address. I went to

Page 42.

that witness' home last night. The witness was not there, not available. In fact, the witness doesn't live at that address but comes there frequently to pick up his SSI checks. Probably at the beginning of each month. I was told that he will be back on or about September 1st. So we will have to talk to that witness as there are --

THE COURT: Well, September 1st may be a little late, Counselor, because you're going to be away and you're going to have your final arguments on September the 11th. That's already been scheduled by the Court. If you can't get him before then, too bad.

MR. WEINGLASS: And I want to make a record that there are other people now who not only are coming to the District Attorney's Office but are coming to our offices, our hotel and trying to locate us.

THE COURT: Counselor, I can't continue this until Christmas. You know, do whatever you think you have to do. I will rule according to what I think is the proper ruling. And that's it. But for the time being, you are resting, period?

Page 43.

MR. WEINGLASS: Well, subject to that observation I am making on the record.

THE COURT: Subject to the observation. Well, I hope it's before Christmas, because I intend to take a vacation too.

MS. WOLKENSTEIN: Your Honor, we were just given a copy of those photographs. We were also given a copy of the bill for $990 for copying 33 photographs.

THE COURT: Well, I have no idea what it costs.

MS. WOLKENSTEIN: Well, I just wanted to indicate for the record that this is absolutely outrageous and basically a form of extortion against the Defendant for getting a copy of what are Court Exhibits. There is no place in the world except for this Police Department that 33 photographs would cost $990.

THE COURT: Well, maybe it is because of the time that the officer, the salary that he gets, I don't know. Take that up with them, Counselor. I don't have the slightest idea.

MS. WOLKENSTEIN: Your Honor, okay. Your Honor, I have to submit also as

Page 44.

exhibits to be marked for identification a transcript of the deposition of David J. Horowitz. He is counsel in the Office of the General Counsel for the Department of Corrections of the Commonwealth of Pennsylvania: This deposition was taken as part of an action in the U.S. District Court, Western District of Pennsylvania. Let me complete, Your Honor?

THE COURT: I know, but I am not going to get involved. That is in Federal Court, take it up there.

MS. WOLKENSTEIN: On July 13th. What this indicates, Your Honor, is that a letter seized from the mail from, from Mr. Weinglass to Mr. Jamal --

THE COURT: Counselor, I hate to interrupt you but please, please, take it up with the Federal Court. I have nothing to do with that. He's not here, he hasn't testified here in this case. I'm not going to allow you to submit anything, all right.

MS. WOLKENSTEIN: Your Honor, this letter of Mr. Weinglass with defense strategy was turned over to the Office of the General Counsel for Governor Casey. We maintain that

Page 45.

this letter of private privilege --

THE COURT: Counselor. Counselor. Counselor. Counselor.

MR. WEINGLASS: Governor's files.

THE COURT: One more time and you are going to be in contempt of Court. Not only am I going to commit you this time but I am going to fine you a thousand dollars too. Okay, do you understand that? I am not going to allow you to do this. Take it up in Federal Court.

MS. WOLKENSTEIN: I hear you loud and clear, Your Honor.

THE COURT: Right, you are going to be there September 6th, 7th and 8th. Take it up with the Federal Court.

MS. WOLKENSTEIN: Can we submit these to be marked for identification?

THE COURT: No, absolutely not. Period. See you on September 11th.

MS. FISK: Thank you, Your Honor.

THE COURT OFFICER: This Court stands adjourned until September 11th.

(The hearing was concluded at this time.)

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Page 46.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

11. September 1995

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

September 11, 1995
Courtroom 307, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- HUGH BURNS, ESQUIRE
- CHARLES GRANT, ESQUIRE
- ARLENE FISK, ESQUIRE
- LINDA PERKINS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- JONATHAN PIPER, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- DANIEL-PAUL ALVA, ESQUIRE
  Councel for William Cook

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

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(At 10:13 a.m. the hearing was convened in the presence of the Court and the attorneys.)

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THE COURT: As I have indicated to you the last session, I'm allocating two hours to each side. During the presentation, I don't want any interruptions or objections or anything of that nature. I will caution you when you have 15 minutes left, 10 minutes left, five minutes left, and one minute left.

Are there any problems?

MR. WEINGLASS: No problems. I just wanted to indicate to the Court for its benefit the order of presentation of the defense. Mr. Williams will start for the defense. He will be followed by Miss Wolkenstein, who will be followed by Mr. Piper, and then myself. We would like to reserve approximately 30 minutes for rebuttal, so we will be using one and a half hours in our straight presentation, and 30 minutes for rebuttal.

THE COURT: Commonwealth, are you doing the same thing?

Page 3.

Defense Argument

MR. BURNS: Just me, Your Honor.

THE COURT: Whatever you want to do. Do you want rebuttal too?

MR. BURNS: No, I don't think that will be necessary, Your Honor.

THE COURT: You will use the whole two hours?

MR. BURNS: I don't think I'll take that long. I don't know how long I will take. If the Court wants to allow rebuttal or not, that is up to the Court, I really have no position on that.

THE COURT: All right. Just so it is two hours in total, okay. Who wants to go first?

MR. WEINGLASS: Mr. Williams.

THE COURT: According to my watch, it's 10:14.

MR. WILLIAMS: Good morning, Your Honor. And may it please the Court, let me begin first, well, first let me tell the Court that I will be addressing three issues that are expanded upon in a supplemental memorandum of law that has been filed with the Court this morning. And those three issues are the issues

Page 4.

Defense Argument

of the mitigation witnesses; the issues surrounding and pertaining to the testimony of officer, or Mr. Gary Wakshul; and finally, the testimony relating to Robert Chobert.

Now, first, on the mitigation witnesses, which we opened this hearing with, I want to put that issue in proper focus for the Court. And the way I think we put that issue in proper focus is this: That no human being in this country, for as long as this country has had the death penalty, has been sentenced to death without presenting any mitigation witnesses who has the reservoir of talents, the devotion to social justice, and the soulful humanity of this man that sits before you. I don't believe that human decency -- and legal advocacy should never breach human decency -- permits anyone to come into this Courtroom and argue that the failure to educate a jury in a sentencing phase of a capital case, who has a client with the kind of talents and soulful humanity as Mr. Jamal, is tolerable in a humane society. That argument just cannot be made in a humane society. And because human decency does not allow it, it's not surprising that the law

Page 5.

Defense Argument

does not countenance it.

I won't go through the litany of cases -- I think the supplemental memorandum does that -- on the clear Constitutional obligation of a trial attorney to educate a sentencing jury about the full scope and depth of the humanity of his client. That obligation is fundamental, and Your Honor knows that. But I issue this challenge -- and I think it's a fair challenge and it is an appropriate one -- to the Commonwealth, to find just one case -- we've talked a lot about finding cases during the PCRA hearing -- but I issue that challenge to find one case that even comes close to this one. Because it's our position that the prosecution, if it wants to defend the death penalty here in this case, given what we know about this man, and given what was not presented to that sentencing Jury back in 1982, it will have to advocate for a new low, a new low in our criminal justice system. And I don't think that my brothers at the bar here will do that.

Now, the reason why I don't think the Commonwealth will do that is because during the hearing, Mr. Grant, in all fairness, stated,

Page 6.

Defense Argument

incorporating the points in his question, that Mr. Jamal indeed has immense talents, that indeed Mr. Jamal is dedicated to the cause of

social justice. That in fact that dedication is woven into the very fiber of his being.

Mr. Grant admitted that in the hearing. And I think that is an important point, and probably the most important point surrounding all of this testimony. Because no one can dispute the power and the scope of those mitigation witnesses.

But what really is significant in that testimony and Mr. Grant's admission is what happened at the penalty phase in the trial back in 1982. The prosecutor there, unencumbered with this powerful evidence at the trial, was given free rein, was given free rein to characterize Mr. Jamal as he wished. And how did he characterize Mr. Jamal? I think the record is clear that he spewed forth really a caricature, a caricature of Mr. Jamal that had no relationship to the reality of who he is as a person.

So the Jury really didn't sentence Mr. Jamal, the human being with that soulful

Page 7.

Defense Argument

humanity, the dedication to justice, the talented journalist. What they sentenced was a fictional being, a caricature. And so the true significance of this issue, in my humble view, is what it revealed about the stridency of this prosecution. The zeal to win led the prosecutor back in 1982 to use his power in an ignoble way, and that is to distort the truth.

Mr. McGill knew about Mister, about the qualities of Mr. Jamal. He admitted that Mr. Jamal was the most intelligent Defendant he had ever had. He could not have been blinded to the fact that Mr. Jamal was dedicated to social justice. But he used the fact that Mr. Jackson in his ineffectiveness did not present a single mitigation witness to educate this Jury about who it was the Jury was asked to condemn with death. He used that gap in the evidence to advocate for the death of a fictional being. And that is intolerable.

The uncontroverted evidence is that on this record Mr. Jackson admitted that there was no tactical reason not to present mitigation witnesses. Nor could there be. There is just no rational reason that anyone can fathom why

Page 8.

Defense Argument

you would not educate a sentencing Jury about the qualities of this man. And I defy anyone to conjure up any rational reason for that. No attorney, I don't believe, in any capital case, had quite the arsenal that Mr. Jackson had on that issue. And to not present one mitigation witness really speaks volumes about Mr. Jackson's preparation to proceed to trial in this case.

Now, I talked about the scope and power of that testimony. I think our supplemental memorandum of law lays that out. The record bears that out. I won't encumber the record now with that. But I do want to underscore that that evidence was merely suggestive, not exhaustive. And I also want to underscore that when you read the record, the testimony of these mitigation witnesses, that these witnesses did not speak in generalities. They didn't just skim the surface, but I think that each one of these witnesses spoke from deep inside themselves. They laid bare their own souls in trying to educate this Court about the qualities of this man sitting before you. And I think the scope and power of that testimony is

Page 9.

Defense Argument

something that this Court must consider in evaluating this claim.

And so for this, for this case, Your Honor, to go awry on an issue that's so fundamental, so elementary, really tells us something about, about Mr. Jackson, about how he handled this case. And it tells us something about Mr. McGill, about his zealotry to win it at all costs, something that we don't countenance in prosecutors. That he was able to brazenly distort the facts in this case, to put forth a caricature in order to secure a sentence of death, that really does tell us something about the prosecution in this case. Therein lies the true Constitutional significance of that testimony. Because no one can dispute that a Jury should have heard these mitigation witnesses, they should have been educated about this man Mr. Jamal. That's a given.

But we've got to go one layer deeper and look at what it reveals about this prosecution. And I think that is a proper segue into the second issue, which is the issue surrounding officer, Mr. Gary Wakshul. The issue or the issues surrounding Mr. Wakshul

Page 10.

Defense Argument

tells us something about the quality of justice in this Court back in 1982, no less than the absence of any mitigation witnesses. I think it is not an exaggeration to say that the confession evidence was the most compelling evidence in the case. And even though it was the most compelling evidence, it was also the most impeachable. And it was the most impeachable because it was false, it was bogus, it was perjurious.

Now let's leave aside why Mr. Wakshul did not testify in 1982. The Constitutional obligations on the prosecution is clear. The prosecution has an obligation not to present such inflammatory evidence such as this confession when it knows that that evidence is as dubious as this confession was. It has an obligation not to deceive that Jury.

We've already seen that Mr. McGill was willing to deceive that Jury in the penalty phase; and that's why I emphasize that we have to look at that issue in terms of what does it say about Mr. McGill. Here again we see another instance of Mr. McGill willing to deceive this Jury by putting forth evidence of a confession

Page 11.

Defense Argument

that any rational person would know just smacks of bad faith. It has no place in a Courtroom like this.

And here the prosecution did more than just propagate and then argue from bogus evidence. It abided, it abided with the absence of that witness that would have shown that it was bogus, that it was perjurious. So we have a double-barreled sort of misconduct. The propagation of false evidence and then the abiding of the absence of evidence to show precisely that it was false evidence. I think that is unprecedented.

But let's go one layer deeper, Your Honor. Because I don't think anyone, any rational person could see that this confession is genuine, but let's go one level deeper. There are certain types of evidence, Your Honor -- and we all know this, even I as a young lawyer know this -- that there are certain types of evidence to blow the lid off of a case. And it's rare for a defense counsel to have that kind of evidence that literally blows the lid off a prosecutor's case, but Wakshul's testimony is that sort of evidence. And that's why the

Page 12.

Defense Argument

Jury should have heard that evidence. It goes beyond simply refuting the confession. It casts a pall over the entire prosecution case. Because it proves the lie to the confession and it proves how low the prosecution was willing to go in this case.

Now, I just had the opportunity this morning to briefly skim the Commonwealth's proposed findings of fact. And on page 17 the Commonwealth posits a very curious argument. The Commonwealth says that Officer Wakshul withheld evidence about this confession because a brother officer, Gary Bell, allegedly -- or not allegedly, actually he admits to this -- made a death threat to Mr. Jamal. And Mr. Bell said if he, that is Officer Faulkner, dies, that you die. And the Commonwealth suggests to this Court in defiance of the record in this case that because Mr. Bell made that unconscionable death threat to Mr. Jamal, that Officer Wakshul withheld evidence of the confession from investigators in order to protect his brother officer.

That's an interesting theory for two reasons. First of all, it's interesting because

Page 13.

Defense Argument

Mr. Wakshul never proffered that explanation himself. What was the explanation that Mr. Wakshul proffered? His explanation was that despite the fact of a confession of the sort that is attributed to Mr. Jamal -- it is a weighty, is a weighty confession, it's a stunning

confession -- that 64 days later that all of a sudden it occurred to him that that confession had some importance. That it only had importance on that 64th day. That was his explanation. He did not say that he was trying to protect a brother officer. And I'll tell you why he doesn't say that. Because it makes no sense. In fact, in fact I think he realizes what anyone would realize in this case -- and this is what I mean by it blows the lid off the prosecutor's case -- that you have an officer, Officer Bell making a death threat, a very grave matter. And how best to respond to that? The way you respond to that is well, let's concoct a confession. So that way Mr. Bell isn't punished for making this death threat. Let's put this death threat as a response to a very disturbing confession by a suspect.

So in fact, contrary to what the

Page 14.

Defense Argument

Commonwealth tries to do in these findings of fact, in defiance of the record, it actually gives the powerful context of how this confession was concocted. Because certainly no one, no one would blame an officer, after hearing a suspect confess in the fashion that they say Mr. Jamal confessed, would then in a fit of anger say this to Mr. Jamal. That's understandable. So if indeed it did happen, Mr. Bell would have gone to the highest mountain top and would have yelled out to all the world that Mr. Jamal made that confession. And the fact is Mr. Bell didn't do that; it was only after they came to realize that Mr. Jamal had the audacity to make an allegation of police brutality that they decided that they're going to fix him and fix him good: They're going to put a confession on him.

And I think Mr. McGill, because I have to believe that Mr. McGill is a rational man with a rational intellect, knew that this confession was dubious. Just as he knew that his caricature of Mr. Jamal was dubious. But nonetheless, pressed that issue with the Jury. And that is unconscionable.

Page 15.

Defense Argument

It exposes, really, the corruption in the prosecution's case. Based upon the four corners of this record. Because, as I said, to fabricate a confession is as low as you can go. The record is clear about Mr. Wakshul's availability -- and I say this, Your Honor, with no disrespect to the Court -- but this part of the testimony implicates the Court. It implicates the Court in this spectacle of injustice. Mr. Wakshul received instructions or was advised not to leave the jurisdiction. Notwithstanding that, he was given vacation time. Mr. Wakshul interpreted that advisement, that instruction that he should stick around. That's at page 118 of his testimony. And in fact at page 102 of his testimony he did stay around. He stayed around until the case was over. And in fact, at page 142 of his testimony, Your Honor, the Court acknowledged that he was around.

As to the true irony in all of this, the fact that makes this entire affair a spectacle of injustice, is that in the trial Mr. Jackson asked the Court, despite the fact that Mr. Wakshul is on vacation, Mr. Jackson said

Page 16.

Defense Argument

well, let's see if he's in town. And regrettably, this Court, instead of acceding to that very, very modest request, the Court says that we will not go looking for anybody now. When all of the evidence now indicates that had this Court acceded to that very modest request, Mr. Wakshul would have testified in front of that Jury with all the explosive impact that that testimony would have had.

And in fact, we saw during the month of July and August this year how quickly the prosecution can bring witnesses in. How expeditious they can be. Witnesses were brought in on late notice, witnesses were called at home, witnesses were picked up by law enforcement and driven to this Courtroom. This was, it is quite a contrast -- let me put it that way to the Court -- it is quite a contrast when the Commonwealth wants a witness in this Courtroom what kind of efforts can be made to bring those witnesses in. And then you have the one most explosive witness in this trial to really blow the lid off the prosecution's case, the Court doesn't grant a modest request and the Commonwealth makes no effort to bring that

Page 17.

Defense Argument

witness in, even though that witness was in the jurisdiction of Philadelphia.

Now let me go to the third argument, which again bespeaks about what kind of prosecution Mr. Jamal faced in this case. And I'm referring now to Mr. Robert Chobert.

Your Honor heard testimony about a certain understanding that Mr. Chobert had. Mr. Chobert, Your Honor will recall, was a cab driver. And he was a cab driver who drove without a license. And that of course violates the law. And in fact on the very morning in question he was driving a cab without a license.

So I think we should analyze what I will refer to as the Chobert issue with two frames of reference. The first frame of reference is we have to look at Mr. Chobert's state of mind back in late 1981 and 1982. And then we have to look at the second frame of reference of the Jury's evaluation of the credibility of this witness.

Now the state of mind. We have here a very vulnerable witness. A man who's livelihood hinges upon his driving a cab. And upon his desire to drive a school bus. Yet he was

Page 18.

Defense Argument

driving without a license, yet he was driving with a record of DWI convictions. Yet he was driving with probationary status over his head. And that livelihood was thus in jeopardy when he got enmeshed in this entire episode, and his freedom was at stake by virtue of his probationary status and he was vulnerable for that reason. So it's not surprising, Your Honor, that he raises the issue about his lack of a driver's license.

It was not the prosecution who went to this witness and offered this witness a possible deal to testify. And we know the case law is legion that when the prosecution extends an offer to a witness, that that triggers a certain obligation on the part of the prosecution. Here we have the converse: We have the witness reaching out to the prosecution. And I think that raises a more compelling circumstance because it speaks to the state of mind of the witness directly.

And I'll only cite one case in my argument. I cite this case, and it is at page 44 of the memo of law, the supplemental memo of law. It is an 8th Circuit case. Ruder versus

Page 19.

Defense Argument

Solomon. Because I anticipate that the Commonwealth will argue well, let's analyze this issue in terms of the quality and nature of what Mr. McGill said to Mr. Chobert. But I think when you analyze it in that fashion you're asking the wrong question. The question this Court has to ask itself is what was the state of mind of Mr. Chobert. And it was Mr. Chobert who reached out to the prosecution.

What it suggests is that Mr. Chobert believed that he had something of value, and that with something of value in his possession he can make a deal with the prosecution that he can maybe get something for himself. Something that he testified was important. And that's why he solicited from Mr. McGill help to get a driver's license. He was the one that tried to strike the bargain. And that's precisely what happened in Ruder versus Solomon, the 8th Circuit case (displaying). That witness reached out on his own initiative without any promise by the prosecution. He reached out and sought a sentence commutation. And the Court analyzed that issue just as I am suggesting the Court must analyze this issue. They analyzed it in

Page 20.

Defense Argument

terms of the witness' state of mind, that that witness reached out for a benefit. No less than wrong question here. We must keep the focus on Mr. Chobert.

So do not let the prosecution in this argument suggest to you that

you should ask the Mr. Chobert.

Now, what was Mr. McGill's obligation? The very asking by Mr. Chobert of the driver's license, the assistance in getting the driver's license, triggers the Brady obligation in and of itself. And a conscientious, fair prosecutor at that point should tell the witness this is not a forum to bargain, to negotiate, you are to tell the truth.

THE COURT: 25 minutes.

MR. WILLIAMS: Thank you, Your Honor. But Mr. McGill instead feeds in to Chobert's efforts to bargain for the value that he had, the power that he had over the prosecution of being a Commonwealth witness. He feeds into it by saying I'll give you that assistance. Which goes beyond the Ruder case. And it goes beyond any accepted obligation, accepted norms of behavior for a prosecutor.

Page 21.

Defense Argument

So the first frame of reference is the state of mind of Chobert; and now the second frame of reference is the Jury's evaluation of it. And we know that the Jury -- the case law is clear -- must be given a full picture of a witness' motivation to testify. That also is elementary. And had there been a robust cross-examination of Mr. Chobert, had his motivation and interest been revealed at this trial, then perhaps this added piece of evidence would be considered cumulative and perhaps on that ground we could affirm this judgment. But that's not the case here and Your Honor knows it. Mr. Chobert's DWI record was kept from the Jury. Mr. Chobert's probationary status was kept from the Jury. And now we know that this most potent piece of evidence regarding his state of mind, regarding his desire to enhance his livelihood, that also was kept from this Jury. So this Jury was never exposed to the true bias and interests of this witness.

And was this an important witness? You bet. All you have to do is look at the prosecution's closing argument, where he emphasized, he emphasized with this Jury that

Page 22.

Defense Argument

this witness had no interest to come in and share his testimony towards the prosecution. And here again, no less than in the mitigation phase, no less than in terms of the Wakshul issue, the confession issue, here again we have a sanitized characterization of an important prosecution witness. And it was a false portrait of that prosecution witness.

So in conclusion to these three issues that I have addressed: Each error implicates the conduct of the prosecution. And that's what's important here. Jackson's failure to present any mitigation evidence was exploited by the prosecution in the form of a caricature of this man on trial for his life. Jackson's inability to secure Mr. Wakshul's attendance permitted the prosecution to gain advantage with a false confession. The withholding of Mr. Chobert's understanding of his relationship with the prosecutor permitted the prosecution to present a false picture of this witness' involvement and interest in this case.

So I say this to Your Honor: One of the first lessons I ever learned as a lawyer from Mr. Weinglass, my mentor, was that every

Page 23.

Defense Argument

case is a test of the integrity of the system. And this case also is a test of that integrity. And you, Your Honor, sitting on that bench, you are a guardian of that integrity. And so I'm asking the Court to perform that function as the guardian of the integrity of this criminal justice system.

Thank you, Your Honor.

MS. WOLKENSTEIN: Your Honor, for almost 13 years the prosecution has promoted the false representation that the evidence in this case is overwhelming. In fact, it is more like a house of cards that has been propped up by prosecutorial and police fabrication, coercion, alternatively coercion and promises made to witnesses. And misrepresentation, destruction of evidence.

I do not need to speak to the first prong of the prosecution's case, the alleged confession by Mr. Jamal, because that has been gone through absolutely fully by Co-counsel. That confession has been so discredited, even, I know, in the prosecution's own minds, that in public statements to the public trying to justify and hold up this prosecution in the past

Page 24.

Defense Argument

period, the District Attorney has negated to even so mention the existence of said confession. It withstands absolutely no scrutiny at this point.

The other prong is the question of physical evidence, the allegation or the so-called proof that the Defendant's, Mr. Jamal's gun was found at the scene. The prosecution has long proffered the fact that the so-called testing of this weapon shows that this weapon is consistent -- that is the prosecution's own terms, that is what the record shows -- consistency with the bullet that was taken out of Officer Faulkner's head wound. In point of fact, that representation is totally meaningless. It applies to approximately millions of weapons, over half the weapons that are produced in this country. It demonstrates the type of, the type of, the type of showing, the type of what they call twists so that it has absolutely no bearing whatsoever in scientific terms.

In point of fact, the alleged number of grooves that are also supposed to show some consistency are not supported in any way in the

Page 25.

Defense Argument

record. There is some testimony, totally unbacked up by any bench notes, anything in the ballistics report. In other words, no evidence to support this hypothesis.

Furthermore, and more significantly, unknown to the defense until we began this actual hearing, a bullet fragment, sizable and significant enough to be measured by the medical examiner, was taken from the head wound of Officer Faulkner. That appears, it is mentioned in the Medical Examiner's report. It exists in statements or in physical reality at this point no place else. It is simply disappeared, presumably been destroyed by the prosecution.

Without that fragment, which represents a fundamental destruction of evidence, it is impossible to determine with any reliability the actual caliber of the weapon, the actual caliber of the bullet that shot and killed Officer Faulkner. And as this Court is well aware, the Medical Examiner initially determined, and was put on the report, the autopsy report, that he believed it was a .44 caliber bullet that shot, was used to shoot and kill the officer. There is no basis and ability

Page 26.

Defense Argument

at this point to determine absolutely what this weapon, what this bullet was because of the destruction of the evidence here. And substantial questions are raised as to the absence of clear scientific information as to the caliber, as to the testing of the bullets, as to the lands and grooves, as to the number of grooves. As to whether or not in fact a bullet from Mr. Jamal's gun was used to shoot, or was the bullet that shot and killed the officer.

The other question and the other, the other, ahh, prop, so to speak, of the prosecution's case is the question of witnesses. Co-counsel has dealt with the fact that one of the main prosecutorial witnesses, Mr. Chobert, was entreated and was given inducement to lie. It is clear from the record as stated that he initially said the night of the murder, and his first statement on the scene, that the shooter ran away. That statement was subsequently undermined first to 30 steps, then to a few steps, and then him stating that it was Mr. Jamal who shot the police officer, despite the fact that there is no evidence in the record that supports that he actually saw either

Page 27.

Defense Argument

Mr. Jamal being shot, or he actually saw Mr. Jamal shooting, shooting, shooting Officer Faulkner.

Cynthia White, the other main prosecutorial witness, as we all

know, was a young woman who faced some 38 arrests. She was currently imprisoned in Boston at the time of the trial. There is evidence, substantial evidence in the record and new evidence brought forth by the testimony of Robert Greer, that she was actually given police favors in order to testify. No other witness, no prosecutorial witness even saw Cynthia White on the scene that night in close proximity and in any position to be able to see what happened. Cynthia White is given, can be given no credence in terms of her testimony.

Scanlon, another prosecutorial witness, is somebody who clearly misidentified Mr. Jamal when he first saw Mr. Jamal in the police van. He said that Mr. Jamal was the driver of the Volkswagen. And he also admitted that he could not really tell which black male was which in terms of that night.

In other words, the three main

prosecutorial witnesses, Your Honor: clearly could not identify Mr. Jamal, or their testimony was suspect and is undermined by the fact that the prosecution offered favors and or coercion to these witnesses to change their testimony.

In fact, what happened that night, Your Honor, is that there were at least four, in fact five witnesses that came forward in one way or another and indicated that the shooter ran away. Chobert was one. Another was Veronica Jones, who admitted at the Court, at the time of trial that she had been held for some five or six hours by 6th District police officers and offered the same deal that Cynthia White was offered. That if she would in fact change her testimony as to the fact that the shooter ran away, she would be offered some favors. She in fact did change her testimony. And what is very significant in terms of the prosecutorial conduct in this case is that the information that she had been held for those six hours was withheld from the defense until the very moment that she testified, not allowing the defense to be able to pursue what it meant that this witness was held for some six hours by the 6th

District police when it was clear she was a prostitute that worked in that area.

It came out a few years later that in fact there was a massive investigation going on of the 6th District police officers and their relationship to the prostitutes and questions of police corruption. In fact, one of the arresting officers, Inspector Giordano, was one of the officers involved in that investigation and was jailed, he was convicted and jailed for those offenses. We were not allowed to pursue the question of Lieutenant Giordano and what evidence he would have and what relationship there was between him and misconduct going back to the time of Mr. Jamal's arrest. The Court quashed that subpoena and would not allow us to pursue this question.

The other people who indicated that night that the shooter ran away was a young college student, Dessie Hightower. And we heard testimony here in this hearing that in fact he believed he was asked to take a lie detector test. It was admitted and it is a clear part of the record undisputed that he was the only witness asked by the prosecution to submit

himself to a lie detector test, despite the fact that other witnesses had substantial criminal records, this young man didn't. His only crime, the only reason to subject him to a lie detector test is he had the audacity to say to the police that the shooter ran away and to stick to that story. He was told, he testified, that in fact he passed that lie detector test. The prosecution came here in this hearing and said that he had failed a lie detector test, and we were unable to pursue that question fully. The Court quashed and would not let us bring in an expert on the lie detector test, would not allow him to look at the actual test results and to examine them and to present evidence contrary to the prosecution's finding.

The point about Dessie Hightower and the lie detector test is simply this: An act of coercion of a young man who had exculpatory evidence. Evidence of Mr. Jamal's innocence. It was withheld from the defense and he was further subjected to harassment.

As already indicated, he himself was subpoenaed by the prosecution in this case. Another example, I would believe, of misconduct,

given the circumstances. And he was threatened with arrest even though he was under subpoena from the defense if he did not appear on the prosecution's timetable to be here in Court. Not our timetable but the prosecution's. Again harassment of an exculpatory witness.

The other, the other people who said that the shooter ran away was a young woman named Debbie Kordansky. I don't want to go into this at length. But she came in here and testified that in fact she had seen somebody run away. Run away down Locust Street going east on the south side of the street. And that she had provided that information to the police. And that information was, that information, the key information to get her into Court was withheld from the defense. Her name, her address, her phone number was withheld. And therefore another example of how the prosecution was trying to and did control and undermine the Defendant's ability to present, to present proof that he was not the shooter in this case.

The other witnesses who came forward here were also a witness who contacted the defense during the, during the hearing, a man

with a criminal record named William Harmon, who contacted defense Counsel. And we attempted to talk with him. We wanted to do further exploration and investigation as to the veracity of all of his representations as to that night. The Court would not provide us the time to do that. And the Court called him as its own witness. Nonetheless, despite those problems he got up and he testified without, without any hesitation and without being impeached that in fact he saw what happened that night and he saw that the shooter of the police officer, or the shooters of the police officer were individuals not Mr. Jamal. And he absolutely described Mr. Jamal appearing after the police officer was initially shot, trying to assist the police officer. And that, and then he ran away, and then the shooter ran away, Mr. Jamal was shot by the police officer, and that it was absolutely clear that Mr. Jamal was not the shooter.

The witness, the seriousness that initially the police took the question of the shooter running away was also seen in the witness Arnold Howard, who also came forward during this proceeding to the defense, and

indicated that he had been arrested that night. He had been taken from his home in the early morning hours and he had been put into a lineup, questioned for some 72 hours at various places in the City. And he stated that he was being investigated and questioned because his license had been found in Police Officer Faulkner's hand. And he indicated that he was, that the police thought that he, that he had been perhaps on the scene and that he was part of somebody who was running away. And it was only after a period of time and after being put in a lineup when he was able to produce a slip that showed that he was shopping at a Pathmark or some other store at the time of the shooting that he was released.

This indicates a level of intent in terms of pursuing initially the runner, the shooter running away. It also shows the type of harassment of a witness. It also shows the police capacity to do things like submit somebody to a lie detector test, which they do selectively. It also showed that they took, did testing of his hands to see whether or not in fact he had shot, shot the police officer. A

testing, by the way, which was not done of Mr. Jamal.

The other person who said that night that the shooter ran away was witness William Dale Singletary. Mr. Singletary came forward to the defense some years ago. He indicated then and he indicated on the stand in this hearing that he had been there that night, that he had witnessed what happened. That he saw the police officer shot, shot by a tall man with dread locks that came out of the Volkswagen that was stopped by the police officer in which Billy Cook was also inside. And he saw the police officer shot, he saw Mr. Jamal attempt to assist the police officer, and he saw the police officer shoot Mr. Jamal. He testified unequivocally, without hesitation, that he in fact saw what happened and that Mr. Jamal was not the shooter.

The prosecution's witnesses that they produced in attempt to rebut Mr. Singletary only served to confirm the fact that Mr. Singletary was there. Within minutes he was seen by Officer, Highway Patrolman Vernon Jones on the scene when Vernon Jones arrived within a minute

Page 35.

Defense Argument

or two of the shooting. It is confirmed that he was viewed as some sort of witness to the event because otherwise why was he one of literally only a handful of people taken to the Roundhouse that night. This in fact confirmed that he was interviewed at the Roundhouse.

Vernon Jones also testified that he was asked to provide a statement to the Homicide detectives in which the sole purpose of said statement was to explain the circumstances in which Mr. Singletary spoke to him and what he had to say. There is no purpose to that statement by Vernon Jones except to try to undermine the truth of the situation, which was that William Singletary was there that night, that he did witness what happened that night, and that the attempt by the prosecution at this point a week later was to deny that William Singletary was there and a witness to what happened.

Now, significantly what Mr. Singletary says is as follows. He said that when he got to the Roundhouse and he attempted to tell the police, the Homicide officers what happened that night, that Mr. Jamal was not the shooter, he

Page 36.

Defense Argument

was told that they didn't want to hear anything about that. And when he would write a statement up for them as they requested as to what he saw, including the beating, the grotesque and furious beating of Mr. Jamal by the police officers who arrived at the scene, his statements were ripped up. And when they were ripped up he was told to go and write again. And after they were ripped up again he was told that he was not going to leave unless, he was not going to be allowed to leave and he would be subjected to bodily harm unless he wrote what they told him to. And after some five hours he did sign a statement that he said was not truthful because he had fear of what would happen if he didn't.

And then subsequently he was further harassed, he was literally driven to close down his business and driven to leave, to leave, to leave the City for fear of what would happen to him. That is the treatment of another witness who said that Mr. Jamal was not the shooter. And in fact he was the only one of the witnesses who were described who also said they saw the shooter run away, who said that they were actually in a position to see what happened and

Page 37.

Defense Argument

that Mr. Jamal was not the shooter.

Now, the prosecution has said publicly, has feigned -- this is now District Attorney Lynne Abraham -- has feigned great indignation at the assertion that the defense would assert that Mr. Jamal's conviction was the result of police suppression of evidence, of manufacturing of evidence, of favors, favors and coercion. In short, in more popular terms, a frame-up. Nonetheless, it is very clear that, and it's almost ludicrous for this feigned indignation to take place, because while we were even having this hearing the headlines of the newspapers would be in one instance reporting what was happening in these hearings, and the other instance would show the latest discoveries in the Federal investigation into corruption charges, violation of civil rights in the 39th District, then extending to the Highway Patrol. Now extending to some hundred thousand files, police logs which are being subpoenaed by the Federal investigators. Some six police officers have been indicted, pled guilty. Other police officers, as understood, are going to be indicted. Some 40 or so convictions have been

Page 38.

Defense Argument

reversed, drug convictions; and it looks like there will be some murder convictions further that will be, that will be overturned. That, that there has been behavior, in fact a pattern of behavior in this Police Department which has been allowed to exist by the office of the prosecution, and has not been, and when instances such as the instances presented in Mr. Jamal's case are presented to the Court, have not been allowed to be pursued by the Court. What you can say is that at least through this period of time that covers Mr. Jamal's adulthood, his prosecution, his conviction, appeal, and through this hearing, there has been a pattern of behavior in this, in this, I'm sorry, of this Police Department of one of coercing witnesses who have favorable evidence, trying to suppress that favorable evidence. Very discriminatory action against anybody who indicates disagreement, upset, opposition to police brutality.

And so therefore it is very clear that this case takes place under a microscope. And a microscope that has been attempted to be blurred and blocked by a Court who has not let us pursue

Page 39.

Defense Argument

information that is necessary to uncover even more than we have been able to do so far in terms of the nature of the falsification, the manufacture of evidence against Mr. Jamal.

Significantly, one of the key things that we have not been able to pursue is the question of bias against Mr. Jamal. I will say just very briefly that in fact there are some 600 pages of FBI files that were done with the cooperation, initiation, of the staff of the Philadelphia Police Department of Mr. Jamal beginning in 1960 -- 1968, '69, that this Court refused to allow us to put into evidence. In fact the Court found this to be totally irrelevant to this proceeding. In fact, that showed a massive amount of bias against Mr. Jamal that needed to be pursued, including getting a hold of the police records on Mr. Jamal himself.

In short, what we have here is from top to bottom and each prong of the evidence against Mr. Jamal -- confession, witnesses, and physical evidence and information concerning the bias of this Police Department against Mr. Jamal, who is outspoken as a critic against

Page 40.

Defense Argument

the abuses of the police department, against the unfairness of the Courts here in many ways against minority organizations and individuals -- a system of prosecuting him, suppressing favorable evidence, manufacturing false evidence.

I would state that our position in fact is that not only is this case such as that Mr. Jamal is entitled to a new trial, but the level of misconduct in this case is so great that in fact the charges should be dismissed and Mr. Jamal should be freed.

I want to just conclude by saying that the investigation is ongoing, that people continue to express to us that they have information, and that also withdraw from time to time out of fear. And that I have submitted to the Court -- without going through this in detail -- the various people that we know of at this time who have indicated in some way, either by first notifying the prosecution or notifying defense, that they have information favorable to Mr. Jamal. We are trying to locate these individuals further and to make an evaluation as to their testimony.

Page 41.

Defense Argument

I also want to state at this time that the Petitioner's brother

William Cook appeared in Federal District Court in Pittsburgh last Tuesday unexpected, unanticipated by defense Counsel, and indicated that he was willing to assist in his brother's defense. And that he was willing to testify, except that he was very much afraid of that. He had been subjected to threats on his life from the very beginning of the time of his arrest. He said that at the appropriate time he would testify.

And what he said in conversations with Counsel: Made representations that he was at the scene on December 9th, 1981 when Police Officer Daniel Faulkner was shot and when his brother Mumia Abu-Jamal was shot. He further stated, and I believe he would testify, that another black male was an occupant in the car with him. However, Mr. Cook did not identify the individual who was in the car with him. He further stated that his brother Mumia Abu-Jamal did not shoot Police Officer Daniel Faulkner and that another individual, neither Mr. Cook nor Mr. Jamal, shot the police officer. He would not identify or did not identify the name of the

Page 42.

Defense Argument

individual who shot Officer Faulkner. He further stated that Police Officer Daniel Faulkner shot Mumia Abu-Jamal.

Lastly in terms of William Cook: At his request Counsel has contacted defense attorney Daniel Alva to represent Mr. Cook as a potential witness in this or further proceedings.

THE COURT: 25 minutes.

MS. WOLKENSTEIN: Okay.

(Discussion was held off the record at this time among defense Counsel.)

MS. WOLKENSTEIN: Mr. Alva was in Court this morning and I believe he has indicated that he is available to return to Court if needed.

So lastly, Judge, I wanted to indicate that in terms of the affirmations submitted this morning to Court, Judge, that we are requesting additional time to investigate and prepare for additional and unavailable evidence and to further amend our PCRA Petition.

THE COURT: Just a minute. Are you going to talk for a half hour too?

MR. PIPER: Your Honor, what time do

Page 43.

Defense Argument

you show?

THE COURT: Well, you have used up an hour already.

MR. PIPER: I will be brief and then Mr. Weinglass will complete.

THE COURT: Because he wants a half hour for rebuttal. Unless you want to cut down that rebuttal. I don't care.

MR. PIPER: What time do you have now, 10:15?

THE COURT: No, I have 1l:10.

MR. PIPER: Thank you, Your Honor. Your Honor, I would like to address the issues on which we have been precluded from presenting evidence, as well as the issues that are based on the original trial record. And the legal standards as to why we are able to raise these claims.

We have been precluded from presenting any evidence with respect to the racially-biased manner in which jury pools were selected in Philadelphia in 1982, the geographical disparity in and racial disparity in the death penalty in Pennsylvania, and the reasons for that having to do with the quest for death here in the City of

Page 44.

Defense Argument

Philadelphia and the District Attorney's Office.

We have also been precluded from inquiring into the nature of the Homicide Unit, its composition and the Constitutional defects under the Pennsylvania Constitution. We've been precluded from presenting evidence of the improper Jury deliberations during the trial by three Jurors. Or evidence relating to the Mills versus Maryland argument, the improper verdict form that Your Honor gave the Jury. As well as Simmons: The failure to instruct the Jury that life imprisonment means life without parole, and the incredible prejudicial effect that this would have.

And as Miss Wolkenstein has explained, we were precluded from presenting evidence in support of our Brady claims that the prosecution failed to disclose favorable evidence and that the police fabricated evidence and had, I believe, incredible hostility and bias against Mr. Jamal prior to when this incident began.

The Court's rulings obstructed every effort that we've made in this case to establish Mr. Jamal's innocence. And the Court has also precluded many claims going to the unfairness of

Page 45.

Defense Argument

Your Honor's rulings at the 1982 trial.

We were denied the ability to take discovery at a time when discovery is being taken in thousands of cases in this City because of corruption which is just a continuation of what was going on in the 6th District in 1981. The Court rushed us to a hearing and then quashed over 25 subpoenas. Attempted to intimidate Counsel with arrests, fines, intimidation. The very types of rulings which we predicted in our motion for recusal.

As I indicated, we have challenges going to the very Constitutionality of the death penalty in Pennsylvania. We tried to present two foundational witnesses to begin that claim. Your Honor quashed that subpoena without even hearing defense argument on it. And when Miss Wolkenstein rose to address the issue of the racial bias and the death penalty in Pennsylvania, Your Honor ordered her arrested.

If we could have presented this evidence we would have shown that blacks are three or four times more likely than whites to be given the death penalty in this state. That defendants in Philadelphia are 15 times more

Page 46.

Defense Argument

likely than anywhere else. And that this had to do with the passion for death in the District Attorney's Office which seeks the death penalty in something like 85 percent of all cases. Your Honor found this claim apparently so frivolous that Miss Wolkenstein was arrested for trying to even articulate it.

Another issue of fairness in these proceedings had to do with the fact that the Commonwealth has been, basically, reading Mr. Jamal's legal mail, as has come out in the hearing in Pittsburgh. The Commonwealth was intercepting letters to Mr. Jamal talking about strategy for this hearing, and making copies of them, sending them to the Governor's Office, et cetera.

The prosecution continues to mislead the Court and the public as to the legal standards that are applicable here, making arguments such as that death is not an irreparable injury or that all of Mr. Jamal's, or many of Mr. Jamal's claims are barred under the rules of waiver or because they were previously litigated. I would just like to point out, since it appears that the Court has

Page 47.

Defense Argument

accepted that argument in precluding us from presenting so many of our claims that that, that that rule has no application in death penalty cases. If you just look at any of the Supreme Court cases in PCRAs on death penalty cases, they almost always reach the waived issues.

For example, in the DeHart case they said although this issue is waived we will nonetheless address it because we have not been strict in applying our waiver rules in death penalty cases. And there they reversed the death sentence because of a typographical error in the jury instructions. Similarly, in the German case the Court addressed issues that had been previously litigated, and has in other cases when there are new pieces of information, either subsequent Federal Court decisions or new evidence which has a bearing on the claims. The real point is that the State Courts are given the opportunity to look at every nuance of a claim before Federal habeas review.

On the Batson issue and Dawson issue which were previously

litigated we said that there was prosecutorial misconduct in that

Page 48.

Defense Argument

prosecutor McGill misled the Supreme Court by stating that there were only eight black jurors we have struck when we have proved the number was at least 10 and we believe the 11th juror will also be found.

On the Dawson claim as Mr. Williams has shown the prosecutor misled the Jury as to Mr. Jamal's character and took advantage of the Court's rulings in allowing him to un-Constitutionally look into the fact that Mr. Jamal was as a teenager a member of the Black Panther Party. And having struck so many blacks from the Jury, he then argued to the predominantly white Jury that because Mr. Jamal was a former Black Panther he deserved to die. The Court also is asked to review its own rulings in refusing to allow Mr. Jamal to represent himself and banishing him from the Courtroom. So that after Mr. Jamal had for five weeks prepared the case to try it himself, and conducted the preliminary hearing, on the first day of trial the Court stripped him of his right to move forward and handed everything to Mr. Jackson who was not ready for it. And Mr. Weinglass will go into that further.

Page 49.

And Your Honor has expressed the biased view that Mr. Jamal was in control of the case. It's hard to see how Mr. Jamal could have been in control of the case when he wasn't even in the Courtroom.

Your Honor has also misapplied the standards under the PCRA. I would just point out to Your Honor that under Section 9543 A2, Roman numeral V, any violation which would require Federal habeas corpus relief is grounds for relief under the PCRA. There is no requirement of showing that the violation go so far as to undermine the truth-seeking process or dictate acquittal.

It is enough, for example, under Brady or Strickland, that it undermines confidence in the jury 's verdict, which is a much less standard, as the Court recently reiterated in the Kyles versus Whitley case.

In addition, Your Honor, we were precluded from presenting evidence on a number of other claims. I would just like to focus a little bit on the prosecutor's, Mr. McGill's unfair and improper closing arguments in the guilt phase. And particularly, not to dwell so

Page 50.

Defense Argument

much on the fact that everybody knows that you can't refer to the defendant's exercise of his Constitutional rights at the trial, and yet that was exactly what Mr. McGill began and ended with, was the fact that Mr. Jamal had exercised his Fifth Amendment rights and had tried to exercise his right to counsel of his choice and his lack of success in doing that. That was the focus of Mr. McGill's argument.

But then he went on to vouch for the witnesses. And what he said about Mr. Chobert was, quote, what motivation would Robert Chobert have to make up a story within 35 to 45 minutes after the incident. And he repeated that, arguing to the Jury that there is no evidence here that Mr. Chobert had any motivation to change his story. And yet prosecutor McGill knew full well that not only was Chobert driving without a license when he was picked up by police that night while on probation so he was in a very vulnerable position, but then Mr. Chobert had come forward and asked prosecutor McGill for favors, which prosecutor McGill had agreed to fulfill. So what you really have is prosecutor McGill just simply lying to the Jury,

Page 51.

Defense Argument

telling them that the evidence which he had hidden from the world did not exist when in fact he knew that the evidence to show Chobert's bias was there.

By the same token, he said well, the defense got all these witness statements, why didn't they present any of these witnesses. Hiding from the Jury the fact that he had refused to give the defense access to the two important witnesses, Kordansky and Wakshul. So McGill again simply lied to the Jury.

And in terms of that type of prosecutorial misconduct, I would just refer the Court's attention to the Commonwealth versus Hollawell case, in which Mr. McGill's boss, District Attorney Rendell, was found to have also misled a jury by making false testimony about whether, ahh... about whether leniency had been offered to a witness. And that is at 383 A. 2nd, 909, Supreme Court of Pennsylvania.

And I would also refer the Court to Commonwealth versus Smith, at 615, A. 2nd, 321, in which prosecutorial misconduct of this level was found to mandate dismissal of the charges because the defendant could not be placed in

Page 52.

Defense Argument

double jeopardy when the prosecution itself had so disrupted the possibility of a fair trial at the first trial.

With that, Your Honor, I will pass to Mr. Weinglass.

THE COURT: He used 13 minutes of your half hour. If you want to go beyond your half hour, all right, but it will be less on rebuttal.

MR. WEINGLASS: Yes, I might do that, Your Honor. Thank you.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, one of the hallmarks of our system of justice -- and it's particularly true in a case involving the death penalty -- is that the parties come before the court and the jury in a relatively equal position. Under ordinary circumstances that's difficult to achieve. Because as we all know, the district attorney's office has scores of lawyers, dozens of investigators, an entire police department at their disposal. Whereas the defense usually has a lawyer, an investigator, and what other, other resources the defense is able to muster. It is because of

Page 53.

Defense Argument

that disparity that the Supreme Court of the United States has spoken out so clearly and forcefully in 1973 in the case of Chambers versus Mississippi, to the effect that given this imbalance, and given the precarious position all criminal defendants are in, courts must be zealous in their efforts to assist the defense in equalizing what is essentially an unequal situation.

And in particular, if a court takes steps to deprive the defense of its effort to present a defense, that is an unacceptable pattern of behavior on the part of the court. With that in mind, let's look at what happened briefly here in this case.

To begin with you have the police on the night of the event gathering up the witnesses, bringing them down to the Roundhouse, interviewing the witnesses, culling them out, apparently determining who is favorable and who is not. This was, after all, a killing of a police officer. They had, after all, in their custody a man who was an open critic of the Police Department. And we now know that some statements were torn up. And we now know that

Page 54.

Defense Argument

favors were given to those who gave statements that were considered pro prosecution. And we now know that polygraphs were used on a biased and selective basis.

But what was happening with the defense? Mr. Jamal laid in a hospital, critically wounded himself. He had an attorney who was appointed on December 15th. But that attorney testified in this Court, and we now know from the Court records, that he didn't have an investigator appointed for five weeks, until January 20th, after the prosecution had secured full control over all the witnesses and had interviewed the witnesses, we know from the police reports, not once but twice, and in some cases three times if they didn't get what they wanted the first and second time. Five weeks later, for a crime that occurred on the street, as Tony Jackson recalled, they were trying to piece together what they could.

Well, under our system of discovery, they did get the police

reports. But the addresses were deleted. The phone numbers were deleted. Other personal information was deleted. And what happened? In the six months

Page 55.

Defense Argument

that it took for the case to come to trial, the investigator Mr. Greer testified that he was only able to interview not the 40 or 60 witnesses that the police had interviewed, but only two witnesses. And he testified about his attempts to interview the prosecution's chief witness, Cynthia White, but it couldn't be accomplished because she was under-police protection.

Oh, there's been some mention here, and I think it's rather scurrilous, that although the defense didn't have the funds for a full investigation -- Your Honor will recall the total amount of money that Mr. Greer received was $562 -- there is some mention here that there might have been -- speculation -- might have been other money available to Mr. Jamal. But there were witnesses on the stand who testified about those monies. And what did we find out? We found out that at most $1,000 was raised and that that money went to his family. And he has children. He was incarcerated, his family had to continue to live. And that at most $300 was given to a photographer named Peraneau. And that was not for photographs

Page 56.

Defense Argument

related to the case, but because a defense committee wanted copies of photographs so they could use it in their literature. So there was on this record zero money raised to assist the defense.

And this record is replete with pleas from Mr. Jackson, first to Judge Ribner, then to Your Honor, pleas saying I can not get my experts. I can not get a forensic pathologist. I can't get a firearms expert on the $150 you've given me. I just am here stripped bare of the ability to defend this case with experts.

But there was no response to that. The monies for Mr. Fassnacht, the firearms expert, was raised to $350. But Mr. Fassnacht came in here and testified that he wouldn't go near this case for $350 and in fact he never examined the evidence or did any testing of the ballistics material.

On April 29th, five weeks before the case was to go to trial, Mr. Jackson came in and said to Judge Ribner I can't do this, I'm not ready to go to trial, I am not prepared, appoint another lawyer because I can not proceed with what I have. The Court rejected it.

Page 57.

Defense Argument

And on June 3rd, just as the case was about to begin, Mr. Jackson represented to this Court Mr. Jamal is without an investigator, he's without a firearms expert, and he's without a pathologist. He is standing here virtually alone. And at that point, as Your Honor well knows, on May 13th, Mr. Jamal, aware of the situation, aware of the fact that his case was in dire straits, aware of the fact that he had no defense resources, asked to represent himself. And that was granted. But, Your Honor, in 1995, can we send a person to the gallows on this kind of a record?

But that wasn't all that was to happen. If Mr. Jamal came to Court without any ability to defend himself, in clear violation of Chambers, what happened once the trial began was even more devastating. Because as Mr. Williams has pointed out, a key defense witness, Wakshul, who was present we now know in the City and within easy reach of the Courthouse, was not allowed to come in because this Court refused to allow a continuance, said he couldn't be brought in. Refused a continuance after this Court -- and Your Honor will remember this -- continued

Page 58.

Defense Argument

the case for half a day because a Juror wanted to take a civil service exam on that very week. The sequestered Jury sat in a hotel waiting half a day for one Juror to take a civil service exam while there were alternate Jurors who could have replaced that Juror in an instant. But when Mr. Jackson asked for a few minutes to find Mr. Wakshul, he was denied that.

And the Court cut off the examination of Veronica Jones, a prostitute who was prepared to testify that she was interrogated, as Miss Wolkenstein pointed out, for five or six hours in the 6th precinct and offered the same police deal that was given to the key witness Cynthia White, that if she would finger Mr. Jamal she could work her corner unmolested by the police.

Well, the Court when it heard the opening to that deemed it irrelevant and ordered it stricken and prohibited Mr. Jackson going further into establishing the clear bias of the prosecution's key witness. That's a clear violation of Giglio -- G-I-G-L-I-O -- 405, U.S., 150, a 1972 decision where the Supreme Court ruled that you can not prevent testimony that undermines the credibility of a key prosecution

Page 59.

Defense Argument

witness. And yet that was done in this case.

And the Court also limited the cross-examination of Mr. Chobert. Your Honor held that this man who -- and this has been pointed out by Mr. Piper and Miss Wolkenstein -- here is a witness Chobert, a cab driver, he's driving his cab without a license. He's got two DWI convictions and he's on probation for a major felony. And what does he do? As soon as the police arrive that night, first thing he says to the police, the guy ran away. The guy ran away. Mr. Jamal is laying on the sidewalk, practically near his cab. But the guy ran away. He repeats it within an hour in a written statement in the Police Department saying the guy ran 35 steps down the street on the south side going east on Locust. The same that Debbie Kordansky says, the same that Veronica Jones says, the same that Dessie Hightower says. Four people. And then added to by Singletary as the fifth.

But when he takes the stand, Your Honor, he says unbelievably that I must have made a mistake. I don't think the guy ran at all. I think he just fell right down here,

Page 60.

Defense Argument

conveniently where Mr. Jamal was found.

Well, Mr. Jackson of course wants to question him on this change, why the change. And why the change can be seen in his condition -- which has already been elaborated on and I won't repeat it -- but the Court cut it off. Your Honor ruled that the fact that Mr. Chobert had been convicted of throwing a Molotov cocktail into a public school for pay was not something that went to his credibility and so the Jury never heard it. And they never heard all the things that came out in the hearing subsequent about his financial interest and his liberty interest and cooperating, and seeking the cooperation of the police, seeking the cooperation of the prosecution.

You also heard from Debbie Kordansky. Now, Your Honor, Miss Kordansky's testimony was that when she looked out the window and heard the shots, she heard the shots first, looked out the window, saw someone run, she went downstairs, and she wanted to help the police. And she wanted to help the police find the culprit. And the statement that we believed was her statement was not her statement at all. It

Page 61.

Defense Argument

was the statement by a police officer who recorded what she said. And what he recorded at the end of the statement is that she said she saw someone run.

Now, I submit that in telling the police something that she wanted to help them with, she obviously told the police that she saw someone run before the police arrived because it would make no sense to inform the police of something that happened after they were already on the scene and presumably would know about it.

Debbie Kordansky should have been here in Court testifying before that Jury. She wasn't. And Your Honor knew, because you allowed Counsel to use your chambers to telephone her, Your Honor knew you could have compelled her appearance. The defense was never given her address. They couldn't reach her. Prosecution knew where she was and this Court did nothing to

facilitate that.

So key witnesses were not brought in. Key witnesses were interfered with. The defense wasn't given the resources to defend the case. If this isn't a violation of everything that Chambers stand for, that nothing be done to

Page 62.

interfere with the defense, it would be hard to imagine a case that is.

And so I submit on the strength of Chambers, Giglio, and the other cases which are cited in our brief, and the matters which the Court heard -- you heard from Fassnacht, you heard from Hayes -- both experts said on the basis of what they have reviewed, on the basis of whatever they reviewed, Mr. Jamal needed expert witnesses. And you know that he needed Dr. Hayes in particular because this Jury heard from Dr. Colletta, who said he wasn't qualified, but the only way he could explain a downward path of a bullet by a shooter who shot upward was to say that there was a so-called ricochet or spinning of that bullet after it struck a rib. Dr. Hayes came in, he looked at the medical records: There was no striking of a rib in this case. So Dr. Colletta's testimony, to save the testimony of Cynthia White and explain the downward trajectory, was utterly false, and Dr. Hayes could have informed the Jury of that.

Also, Mr. Fassnacht could have informed the Jury that, as Miss Wolkenstein points out, that the tests that were done, that

Page 63.

were not done, was indicative of innocence.

If Your Honor please. I'm sorry.

The prosecution gained a great deal from the fact that Mr. Jamal while he worked as a cab driver late at night and who had been robbed on several occasions was armed with a gun for his own self protection. So they had a gun and they had a gun that had been licensed to him, and they used that to great advantage in this trial. But what they didn't have and what they couldn't have was any proof that that gun had been recently fired. And Mr. Fassnacht would have told that Jury that if that gun had been recently fired, the police and the police laboratory which had it within two hours would have certainly known that gun was recently fired because you could still smell the odor of burned gunpowder for up to four to five hours after the gun was used. And there was no testimony that that gun had such an odor.

Secondly, he would have said in the ordinary case of murder, no less a police shooting, when you have the suspect's hands available within five minutes, it's inconceivable that a test was not attempted

Page 64.

through neutron activation testing to see that this individual had recently fired a gun.

So there were, there was critical firearms expert testimony that could have been offered that would have rebuttaled the thesis of the prosecution's case. And it wasn't done. No firearms expert, no pathologist, no investigation, really, to speak of, and then the Court's cutting out the defense case, the heart of the defense case before the Jury.

The second point I want to make -- and I'll be brief -- is the point that is contained in point number 6 -- or 4, I'm sorry -- about the way in which the case was handled on the defense side. And the irreconcilable conflicts that occurred between Mr. Jamal and Mr. Jackson. And the fact that Mr. Jackson was ineffective during the guilt phase of the case. Mr. Williams has already covered the penalty phase.

Your Honor has heard from Mr. Jackson that he didn't have the resources and he frankly admitted I think at one point that he didn't really know how to get the resources that he needed to defend Mr. Jamal. He was asked to file additional papers. He was asked to file

Page 65.

memoranda of law. He was asked to file bills. He was asked to file estimates. He did none of that. He did none of it.

And the record is already clear that his preparation of the case was deficient. And I won't repeat that except he did point out that from May 13th on -- the trial began on June 7th -- he did virtually nothing. Because his understanding was that as backup Counsel he was to do nothing. So in that critical time when the case is prepared finally for trial, Mr. Jackson is, as he graphically demonstrated on the stand, sitting there with his hands across his chest doing nothing.

And when he was asked to begin this case after Jury selection had begun, he was utterly unprepared for trial, which this Court rushed through two consecutive Saturdays, one Saturday sitting until six o'clock in the evening. So he had virtually no time to prepare. He was rushing through reading statements, trying to get up to date on things, and he didn't prepare. And this is totally inexplicable.

He put on three witnesses for the

Page 66.

defense: Dessie Hightower, Veronica Jones and Dr. Colletta. And he testified that he had talked to none of them, he put them on the stand cold in a death penalty case without having interviewed them.

During the selection of the Jury he failed to exercise peremptory challenges against Jurors who had a clear bias. Mr. Durso sat as a Juror. Your Honor will remember Dominic Durso. His best friend was a police officer who had been shot and had been on disability and was still on disability from a bullet wound he suffered while on duty. He sat on the Jury.

So did Miss Kleiner. Miss Kleiner sat as an alternate Juror. And these Jurors were sequestered so they were all together. And Miss Kleiner, her husband was a Philadelphia police officer. She had two small children at home. She interacted and related to the other Jurors. Can you imagine the impact that would have on a Jury? And yet Mr. Jackson, knowing this, did not exercise a challenge against Miss Kleiner either.

He failed to call Officer Wakshul. That's already been covered. He failed to

Page 67.

cross-examine Mr. Chobert on his probationary status. He failed to object to the prosecutor's summation. He went into this trial, which lasted just a very quick I believe eight or nine days of taking testimony, in an unprepared and what appeared to be a somewhat unskilled state.

The prosecution's case never had to survive what the Pennsylvania Supreme Court said in the Sweeney case was the crucible of meaningful adversarial testing. Was there any adversarial testing here of this prosecution's case? And if you look at this record there was none.

And as we point out in our brief, there was none because resources were denied. There was none because Counsel was ineffective. And there was none because of a dispute that arose, an irreconcilable conflict between Mr. Jackson and Mr. Jamal. A conflict which this Court was aware of and a conflict which this Court did nothing to mollify. No colloquy, no discussion between Court and Counsel, although the Court was aware of Counsel's problems, to try to assist Counsel at a difficult time in getting through the process where the

Page 68.

communication between Counsel and Mr. Jamal was ruptured because of actions taken by this Court to prematurely deny Mr. Jamal his right of pro se and to then banish him from the Courtroom.

So aware of the conflict, this Court had an obligation under United States versus Lockhart, which is cited in our brief, an obligation to try to once again right the balance of a terrible imbalance that was being played out before this Court. And this Court did nothing to

attempt to salvage a defense case when it saw the defense case was collapsing. Was never really there to begin with, but was collapsing in front of a Jury. And it knew the problems that were occurring between Mr. Jamal and Mr. Jackson and it did nothing except to exacerbate the situation by banishing Mr. Jamal and by removing his pro se status.

One other thing that this Court did is Your Honor frequently referred to the fact that Mister -- and I think we are going to hear it from the prosecution momentarily -- that Mr. Jamal consulted from time to time with Mr. Jackson. And the answer is that's true. Does that mean that Mr. Jamal had control of the

Page 69.

Defense Argument

case? Mr. Jackson said no. When he testified he said I was in control, I was the speaking lawyer and I was in control. Did he from time to time talk to Mr. Jamal? The answer is yes. And the Court made note of it. But if Your Honor will recall, Rule 1.2 of the Pennsylvania Rules of Professional Conduct requires, requires a lawyer under our ethical standards to discuss with his client and talk to his client about the pursuit of the case and the methods and manner by which the case is being defended. And each time that Mr. Jackson would in the midst of this breakdown of communications attempt to have a conversation with Mr. Jamal, the Court would seize upon that and make note on the record that they were talking to each other, even though Mr. Jackson was only carrying out his ethical requirements under Rule 1.2 of the Pennsylvania Rules of Professional Conduct.

So in short, for all the reasons that have been stated here by my colleagues as well as myself, this is a case that had completely misfired and is well below the standards of acceptable due process rights that have evolved and have developed in this country. And adding

Page 70.

Commonwealth Argument

to that the fact that this is a capital case I think gives this Court no choice but to step in at this point and to recognize honestly the fact of what happened in 1982. And the fact that Mr. Jamal never had in any sense of the word a trial of his case. He didn't have the resources, he didn't have the Counsel skills, he didn't have a trial. And to give him at this point an opportunity now, by way of giving him a new trial, the opportunity for the first time to come into Court and to test, in the crucible of an adversarial process, the strength of the prosecution's case.

Thank you, Your Honor.

MR. BURNS: May I, Your Honor?

THE COURT: Yes, sure.

MR. BURNS: Thank you.

Your Honor, I think that what you have just heard from the defense was very creative, very imaginative. I suggest to you it has little to do with what was heard from the witness stand during this PCRA hearing, and little to do with what the Jury heard 13 years ago.

I would like to begin by going back to

Page 71.

Commonwealth Argument

that thing that the defense would evidently like to forget, and that is the evidence that was presented at the trial. Because the trial of course is integral to your decision.

Some people refer to this proceeding as an appeal. That's a shorthand description, it isn't quite accurate. This is a Post-Conviction Relief Act proceeding. The Defendant had the burden of proving at that hearing that there was something very wrong, something very illegal about the process by which he was convicted.

So since one of the things the Defendant purported to be able to prove was his actual innocence, we have to go back and look at the evidence at trial, the so-called house of cards, which has proven his actual guilt.

This, by the way, was an event that happened in the 6th District in 1982, not the 39th District in 1995.

The evidence at trial, though, was Robert Chobert saw this man, this Defendant, run across the street and shoot Officer Daniel Faulkner in the back. The officer fell. Mr. Chobert saw this man, this Defendant, standing

Page 72.

Commonwealth Argument

over the officer, shooting into his face. He then stated at trial the motion of the arm as the gun recoiled. He saw the Defendant go over to the curb and fall. He saw William Cook there too. Chobert identified this Defendant as the shooter at the scene. He was not picked up by the police, as someone said, he went to the police and identified this Defendant.

Cynthia White saw this man, this Defendant, run across the street, shoot Officer Daniel Faulkner in the back. The officer turned, grabbing at something at his side, she lost sight of him because the Defendant got in the line of vision, she then saw the officer fall, saw this man, this Defendant standing over the officer firing into his face repeatedly. Then this Defendant slouched, went over to the curb and sat down. She also saw William Cook standing by the wall. He was not the shooter, the Defendant was. So this mysterious fourth man was not present, was not the shooter; this Defendant was. Cynthia White was cross-examined for two days by Anthony Jackson.

Albert Magilton saw this man, this Defendant run out of a parking lot towards

Page 73.

Commonwealth Argument

Officer Faulkner, who was attempting to arrest William Cook. Magilton looked away, he heard shots, he looked, he saw the officer on the ground, saw William Cook, who he said had a shocked expression on his face, saw this Defendant on the curb. Albert Magilton identified this Defendant as the shooter at the scene.

Michael Scanlon was a man who was sitting in his car waiting for the light to change. He saw a man doing what the other witnesses described the Defendant did. There was no doppelganger, there was no double of the Defendant. He saw this man shoot the officer from behind, stand over him and shoot him in the face. He said, quote, I could see the one that hit the officer in the face. His body jerked, his whole body jerked.

Robert Chobert, Cynthia White, Robert Chobert, Albert Magilton did not know each other. They each identified this Defendant at the scene as the gunman who murdered the police officer.

Officer Daniel Shoemaker, the first officer who arrived at the scene, found this

Page 74.

Commonwealth Argument

Defendant sitting on the curb. Inches from his hand was a handgun. When the Defendant saw Officer Shoemaker he reached for the handgun. The officer had to kick it out of his reach.

Mr. William Cook told Officer Shoemaker's partner I have nothing to do with this. Mr. Cook was over by the wall, the Defendant was sitting on the curb.

The gun that Officer Shoemaker found inches from the Defendant's hand was the same handgun that the Defendant bought, that the Defendant owned, that he carried, that he bought high velocity Plus P ammunition for. There were two guns recovered at the scene: The Defendant's .38 caliber Charter Arms revolver, a five-shot weapon, which had been fired five times; and the officer's Smith & Wesson revolver, a .38 caliber gun which had been fired once, a six-shot weapon.

Now, it has been said that the most compelling evidence was what the Defendant said at the hospital. I don't know if it is the most compelling, but it is significant. At the hospital the Defendant was carried because he refused to walk to a point near the closed door

Page 75.

Commonwealth Argument

of the emergency room. And the Defendant said, quote, I shot the

motherfucker and I hope he dies. Officer Bell testified to this. The defense tried to impeach Officer Bell. They said you're making this up, because this wasn't in your first statement, you only said this in your second statement that the Defendant made this admission. But what made that argument fail was the fact that another person heard the statement too. And I am not referring to Officer Wakshul yet, I'm referring to Priscilla Durham. Priscilla Durham was a security guard working in the hospital. She said she heard the Defendant say the exact same thing and she reported it to her superiors the very next day. She didn't delay. She didn't leave it out. The following day she reported it to her superiors.

Now, I think I heard Mr. Weinglass say in the past there was a written statement by Miss Durham that had disappeared. Not true. In fact, if you look at the notes of testimony of June 24th, 1982, at page 52, Miss Durham was asked if she had a handwritten statement, and she said no. The statement she did give was produced at trial, and it proved that this

wasn't something that people made up later on. It proved that it was something she heard that she reported the following day. Defense would like to forget about Miss Durham in their quest to show that this was a so-called bogus confession.

I would like to mention, I would like to digress by mentioning that Officer Wakshul of course heard the statement too. If he would have been called to testify he would have testified to the statement as well, that the Defendant made the same admission.

Mr. Williams was I think a bit confused when he looked at our proposed findings of fact. Because we are not saying that Officer Wakshul withheld this information because he wanted to protect Officer Bell. We are saying that his later statement, like that of Officer Bell's, both officers in their later statements reported hearing the Defendant make the admission, both officers stated that they failed to report it immediately because of their tremendous emotional state of being distraught, having this death of their colleague occur and having the Defendant make this admission. And

our argument is that the fact that both Officer Bell and Officer Wakshul independently revealed that Bell made this emotional statement in reply to the Defendant's admission -- if he dies you die -- makes their testimony that much more credible because it was a statement against their interests.

Now, Miss Durham said the Defendant was bragging when the Defendant said this. She was not a police officer, she did not have an axe to grind. She did not report this to the police, she reported it to her superiors. And Priscilla Durham corroborates, if anything, the testimony of Officer Bell and the PCRA testimony of Officer Wakshul that this admission is not bogus, that it really existed, the Defendant really said that.

The ballistics evidence. The bullet taken from the Defendant's body of course matched the victim's revolver to the exclusion of all other firearms. The projectile taken from the victim's head was too deformed to be matched in a similar way to any particular gun to the exclusion of all other firearms. But there were enough markings on that projectile to

show that it was fired from a gun that had a barrel with eight lands and grooves. The police officer's gun, for example, had five lands and grooves with a right-hand twist. The gun that fired this projectile, the one that killed the victim, had eight lands and grooves and a right-hand twist. The Defendant's Charter Arms revolver had eight lands and grooves with a right-hand direction of twist.

There was a second characteristic of this bullet, moreover: It had a hollow base. And the testimony at trial was that this was a unique characteristic of ammunition manufactured by a company called Federal; and that four out of the five cartridges in the Defendant's gun were of Federal manufacture.

We are talking about evidence of guilt, so let's jump ahead to evidence at the PCRA hearing for a moment. I am referring to Robert Harkins. The defense offer was that Harkins would be a witness who would prove the Defendant's actual innocence. Harkins was supposed to come in and testify that he was shown a photo array and that he picked out the shooter and that it was not the Defendant. That

was the Defendant's offer of proof.

What did Mr. Harkins say when he took the stand at the PCRA hearing? He said three things. First, he said that he was very annoyed at the defense because when he told them something, they misrepresented what he said. Second, he said that he was never shown any photo array. And third, he said that the shooter, the man who murdered the police officer, went over to the curb and sat down. Just like all the other witnesses said, just like Officer Shoemaker found this Defendant sitting on the curb. Evidence not of actual innocence, evidence of actual guilt.

Now, before I get into the other evidence presented at the PCRA hearing I would like to address the claims made, the claim that the defense was rushed into Court for this PCRA hearing. I am going to refer your attention to an Exhibit that was introduced during these proceedings, a deposition of William Singletary that was conducted by Rachel Wolkenstein, Esquire, an attorney representing the Defendant in this PCRA, dated August 1990, over five years ago. That's the earliest time we can document

that these attorneys were working on this PCRA case, investigating this PCRA matter, as long ago as five years. When the death warrant was signed, as a matter of record about three days before the anxious, thick PCRA Petition was filed with a whole array of depositions, of affidavits of witnesses, and yet, again, testimony didn't start to occur until two months after that. The claim that these people were not ready to proceed is a sham, it is posturing, it is a fraud upon the Court, and this Court should so find.

Now Anthony Jackson. Well, if you don't have the evidence of actual innocence, the thing to do, the thing the defendants do in PCRA proceedings, is to say the trial counsel was ineffective. This Defendant is no different to that extent, but he is unique in one way. And that is that this Defendant is particularly ill qualified to be claiming that his trial Counsel was ineffective because he demonstrated, and the trial record shows on a daily basis, that he was not going to cooperate with Anthony Jackson, or with any attorney. He demonstrated on a daily basis that it was he who was making the

decisions, not Anthony Jackson. Not any other attorney. This Defendant by his actions wanted to make a political demonstration. He was following what he called the strategy of John Africa, which apparently consisted of attempting to portray himself as some kind of celebrated political figure being persecuted, being railroaded by an unfair system. But of course since letting the trial proceed would have refuted that claim that the trial was unfair, he could not have that. So the Defendant refused to cooperate with his attorney, refused to let his attorney do his job so he could turn around and say to the Court, see, my trial is not fair. Now, that is what happened. But one can not come to the PCRA Court and say gee, it was really misguided of me to stymie my attorney and I would like to have another crack at it please, I think I could do a better job if I had another crack at another trial, could I do it again. That is no basis for a new trial. He has to show that it was Mr. Jackson's fault.

So Mr. Jackson, whether it was to his credit or to his shame, attempted to help his client now, as he tried to do all along. What

Mr. Jackson did -- and there is a term we use around here when a

defense attorney is accused of being ineffective, knows he is not and yet pretends that he was -- it is called taking a dive. That is what Mr. Jackson attempted to do. He attempted to take a dive. But he found out there wasn't any water in the pool, because he kept on running into the trial record. In fact, he ran into his own record. He was handpicked by this Defendant. Small wonder. Before becoming a lawyer he was an evidence technician for the police. He was an investigator. After becoming a lawyer he became an Assistant D.A. He worked with a Federal Master. He invented new procedures for filing civilian complaints with the Police Department. He taught other lawyers how to sue the police.

He filed a police complaint in this case in order to generate additional discovery. He spent five months working hard preparing for this trial. Before representing this Defendant he worked in 20 capital cases, 20 capital trials that resulted in no death sentences.

In this case the Defendant pulled the rug out from under Anthony Jackson. The

Defendant announced that if he was going to be represented by anyone it had to be non-lawyer John Africa. And if not that, then he was not going to cooperate with any so-called -- quoting the Defendant -- legal-trained lawyer. Because a legal-trained lawyer was just an employee of the system who would hang him. And so the Defendant announced that he was not going to cooperate. And even after Mr. Jamal was removed as his own Counsel and after Mr. Jackson took over again after the Defendant wanted to represent himself, he still refused to cooperate with his attorney for the reasons that he himself stated.

And so every time Mr. Jackson tried at the PCRA hearing to portray himself as ineffective, he ran headlong into another part of the record that demonstrated the opposite.

The business, for instance, in his affidavit where he said he didn't know how to get funding for an investigator or for experts, the record showed that Mr. Jackson knew just what to do. He went to see Judge Ribner, who told him give me an itemized bill and you will get your money. He had to retract that

statement during the PCRA hearing claiming he didn't know how to get the money.

No investigator. Robert Greer testified that he worked four hours for every hour he billed.

No ballistician. But George Fassnacht was available for consultation right through the trial, right up until the last day of the trial.

The idea that, or the claim that Greer spent all of his budget looking for one witness: Mr. Jackson was forced to admit that he, quote, misspoke on that point. Just a slip, he said.

As for his claim that there was no money: Among other things, he was confronted with his own fee petition; his own statements on the record referring to an independent defense fund, funds from the Association of Black Journalists. Funds from the Mumia Abu-Jamal Defense Committee, an organization created to raise funds for the Defendant. Among other organization and individuals.

And there was this business about him, Mr. Jackson, not knowing how to be backup Counsel. And Mr. Jackson admitted that he had been backup Counsel for Robert Mozenter in a

homicide trial, and he knew how to be backup Counsel. Not that it mattered, since when he was Counsel again it was still the Defendant making the decisions.

Who was calling the shots, the Defendant or Mr. Jackson? Well, refer your attention to early in the trial, during voir dire. At a sidebar conference the Defendant orders Mr. Jackson to leave the sidebar conference, orders him not to participate. Mr. Jackson obeys. He is held in contempt. He got out of it because the Defendant changed his mind and decided to go ahead and let Mr. Jackson continue. Even after that the record shows that it was the Defendant who was personally controlling the use of peremptory challenges for the defense.

Mr. Jackson was confronted in his testimony with his own quotation to a journalist that the Defendant had his own plans for the conduct of the trial. During the trial the Defendant is conferring with, I believe it was a Theresa Africa. Mr. Jackson comes over, the Defendant tells him in so many words get lost, go away. Mr. Jackson was insulted and berated

by the Defendant throughout the trial.

In the penalty phase the Defendant decided he was going to make a speech. He did not consult with Mr. Jackson about that.

At one point in the trial this Defendant ordered Anthony Jackson to make a motion, a motion that was completely ludicrous. He ordered Mr. Jackson to move for the dismissal of the charges on the ground that the Courts had not defined the crime of murder to the Defendant's satisfaction. As if he didn't have notice that shooting someone in the back and then putting a bullet in their brain was murder. That was the motion that he wanted Mr. Jackson to make and he ordered Mr. Jackson to make, and Mr. Jackson went ahead and did it. There was nothing wrong with that. It was the Defendant's trial. Mr. Jackson was acting properly by doing what the Defendant ordered him to do. But the Defendant can't come along later and say well, Mr. Jackson was ineffective, not me.

During the trial, it was established that when the Defendant decided to call Gary Wakshul on the last possible day he had a conversation with Mr. Jackson. He said why are

you calling him so late, you knew, you knew you would be calling him. Mr. Jackson says no I didn't. Well, of course not. Because he testified it would have been reasonable not to call Officer Wakshul because Officer Wakshul would have corroborated Priscilla Durham and Officer Bell. It was not his decision to call Wakshul on the last day, it was the Defendant's.

Mr. Jackson did not even know who the character witnesses were going to be -- and this is very clear from the record -- because the Defendant wouldn't tell him who they were. The Defendant picked the character witnesses, had them come to Court, fed their names to Mr. Jackson as they were going to take the stand. As far as the character witnesses were concerned, Mr. Jackson was a hand puppet. That is what the trial record shows. Time and again Mr. Jackson was confronted with it.

And you will recall by the evidence of his first day of testimony, he finally blurted out well, the record's wrong, or if the record says that, well, it's wrong. And we had to end his testimony for that day so he could regain his composure. And the following day in his

testimony he admitted making false statements in his affidavit, false statements in his PCRA testimony. Because Mr. Jackson was frustrated because Mr. Jackson was trying to take that dive and the record would not let him do it.

Mr. Jackson's testimony admitting, purporting to admit his own supposed ineffectiveness is just not credible. What is credible is the Defendant pulled the rug out from under his attorney, that the Defendant was making his decisions. And now that he wants to blame his Counsel, it is not grounds for relief.

Which brings us to the issue of character witnesses in the penalty phase. If Mr. Jackson had no control over who was going to be a witness in the guilt phase, how is it that he was in control of who was going to be a witness in the penalty phase? The Defendant didn't suddenly decide to restore control of the events to Mr. Jackson. At least if he did there is nothing in the record to show that that happened. And it was the Defendant's burden to prove this.

Furthermore, it's not really totally clear what their testimony

would have proven.

Page 89.

Commonwealth Argument

The eloquence of the character witnesses, I suggest to you, was largely supplied to them by Mr. Williams who helped them a great deal. But the theory, I suppose what I heard, if I understood it, was that the penalty Jury was supposed to be asked to conclude that the Defendant was a man of great intelligence, intellect and talent, and that they were supposed to conclude from this that he was somehow less culpable. That if he had no creativity, low intelligence, no talent or no family life, then this act of murder would have been worse. That this man had opportunities others did not have -- that he had, I believe Williams, Mr. Williams said soulful humanity, gifts to which others could not aspire, talents that left others in awe, a family that loved him, colleagues, friends who admired him -- and that he threw it all in the trash so that he could execute a man in a blue uniform, the Jury was supposed to conclude that that was mitigation. Well, I would suggest that argument would fail in a Jury with a modicum of common sense.

It was also said that Mr. Grant

Page 90.

Commonwealth Argument

admitted that this was so, that this testimony should have swayed the Jury. I don't recall Mr. Grant saying that.

Mr. Grant, do you recall making that statement?

MR. GRANT: No, sir.

MR. BURNS: No, sir, he says. Well, I didn't think so.

This Jury watched this Defendant for a month, watched him during the trial. He was no fictional being to them. The Jury saw what the Defendant wanted them to see.

Oh, by the way, the argument that the prosecutor argued to the Jury that they should return a verdict of death because the Defendant was a Black Panther member is a lie, a boldfaced lie. No such argument was made. In fact it was the Defendant who unilaterally decided to tell the Jury on his own that he was a Black Panther member. For what that was worth I do not know, only he knows, but there was no argument to the Jury that his political beliefs should have something to do with him being executed.

Consider too that some of these character witnesses seemed somehow not to know

Page 91.

Commonwealth Argument

the Defendant all that well. The State Representative David Richardson was not aware the Defendant, whom he thought to be a radio journalist, was driving a cab.

E. Steven Collins, the Defendant's radio journalism colleague, who was the Defendant's mentor, seemed unaware of how it could come about that the Defendant was no longer a radio journalist but was driving a cab.

The Defendant's sister did not know how old he was when he dropped out of school or how the family felt about it. She attended the trial almost everyday and doesn't recall him saying he didn't want a legal-trained lawyer, he wanted Mr. Africa instead of Mr. Jackson.

His high school teacher said he was called on to make peace in the community, but another witness, Arnold Howard, said in his statement testimony that he and the Defendant had gang warred together.

Kenneth Hamilton and Ruth Ballard. From some of the other testimony of witnesses it is not clear from the evidence how Mr. Jackson was even supposed to know that these people existed absent the Defendant's cooperation. We

Page 92.

Commonwealth Argument

know he did not have that.

Some of the other evidence in the PCRA. Reference was made during argument that the defense wanted to put in evidence of an investigation of the 6th District. First time I've heard that ever. I don't recall hearing it during the proceedings. But if Inspector Giordano had been called during the PCRA proceeding -- and you can confirm this by looking at the notes of testimony at the suppression hearing -- Officer Giordano, or Inspector Giordano would have testified that he went to the Defendant at the scene when he was being held in the police wagon, saw he was wearing an empty shoulder holster, and said where's the gun -- because he was concerned that some civilian might pick it up -- now the Defendant said I threw it down after I shot him. Well, that's no surprise that the Defendant didn't want that information in this record, but Inspector Giordano was called and he did testify at the suppression hearing and that's what he said.

Robert Chobert, a lot was said about Robert Chobert. Robert Chobert was called at

Page 93.

Commonwealth Argument

the hearing. While he was testifying the defense never asked him about this business about his arson conviction and how that would have affected his testimony. So we draw a blank there. As for supposed dealings with the prosecutor about his driver's license, he testified that at some point -- and it was either before he testified or after -- he merely said to the prosecutor, you know my license is suspended, I would like you, if you could, find out what I have to do to get it back. And the prosecutor said I'll look into it. That was the supposed deal. Nothing ever came of it. Mr. Chobert testified that it had no effect on his testimony. Mr. Williams said so you should consider Chobert's state of mind, but he told you his state of mind from the witness stand: That had no effect on my testimony, I reported what I saw. And indeed Mr. Chobert identified the Defendant on the scene before he ever met the prosecutor.

And I think the idea that the prosecutor should have arrested Mr. Chobert for a traffic violation is just a little bit silly.

Now, Gary Wakshul was called as a

Page 94.

Commonwealth Argument

witness. I mentioned that Mr. Williams was confused about our position on Mr. Wakshul's testimony. The essence of it was that when he heard the Defendant make this admission -- I shot the motherfucker and I hope he dies -- he had an emotional reaction, he went away and he cried. Later he crashed his car. And it was therefore no surprise that he neglected, as did Officer Bell for a similar reason, to report this admission when he was first questioned about it. After he had time to collect himself, he was later able to think about the event clearly, and he, like Priscilla Durham, reported this admission.

Now, the defense called Mr. Wakshul for another reason. They claimed in their PCRA Petition that he was ordered to go on vacation. And they also claimed that he was ordered not to go on vacation. Well, I don't know which one they want, but Officer Wakshul testified at the PCRA hearing that he was not ordered either to go or not go on vacation.

And he did not, by the way, claim that he stayed around until the case was over. That was not his testimony. His testimony was that

Page 95.

Commonwealth Argument

he left town somewhere in the middle of his vacation. Where Mr. McGill said he was not available, the defense has not proven that that was not correct. But even if he was, he would have been a witness to inculpate the Defendant, to underline the proof of his guilt, not to exculpate him.

Now Robert Greer, Robert Greer's testimony about police favors to Cynthia White. Robert Greer testified that he saw two people sitting in the car near her, that was the extent of the favors from the police. How this amounts to police protection or police favors I don't know. Two people sitting in a car does not amount to anything.

Mr. Greer testified that he was, quote, retained by the Mumia Abu-Jamal Defense Committee. He testified that the word retained he understood to mean paid. He testified that he worked four hours for every hour he billed. He testified that he had no difficulty

finding those witnesses who Mr. Jackson selected for him to go and find. The idea the Defendant's case was crippled for lack of an investigator just isn't true.

Page 96.

Commonwealth Argument

George Fassnacht, ballistics expert, had nothing helpful to say for the defense. We asked him to look at the physical evidence, to make some sort of a ballistics determination, and he refused to do it. He did testify from looking at the available reports that it was apparent the victim was shot with a .38, not a .44 as the defense have claimed in the PCRA. That even Dr. Hoyer's eyeball measurement with a ruler of the projectile saying it was 10 millimeters across was consistent with a bullet being a .38 caliber bullet, not a .44. And his fee petition showed, or rather Mr. Jackson's fee petition showed that Mr. Fassnacht was in fact available for consultation to the defense throughout the trial. He was not called as a witness, and why would he be? He had nothing to say even at the PCRA hearing that would have suggested anything, any fact that would have been helpful to the Defendant, that would have rebuttaled any part of the prosecution's case.

Veronica Jones. I heard argument about what Veronica Jones would have said, except that she wasn't called at the PCRA hearing. She apparently had something to say

Page 97.

Commonwealth Argument

she wasn't allowed to say. If the defense has anything in their mind that she would have said we don't know what it is because they did not put her on the witness stand.

Debbie Kordansky. Debbie Kordansky, the idea that what she said in that statement taken by the police officer was not her statement, it was the officer's statement: She never testified to that. She testified that her statement, her initial statement was the most accurate account of what she had seen. And when she testified at the PCRA hearing, she said that after the police arrived, after all the police started arriving, 10 police cars or so, she finally looked out the window, she saw someone running. Not away, not necessarily away, just someone running. And it could even have been a police officer. That is what she testified to at the PCRA hearing. Useless information in terms of establishing an exculpatory theory for the Defendant.

Dr. Hayes, a forensic pathologist, was called by the defense. He testified to a couple of interesting points which I will refer to again later. He testified that the injury to

Page 98.

Commonwealth Argument

the victim's head, the shot in the face was instantaneously lethal. That he was immediately killed when that happened. And he also testified that it was a matter of scientific physical certainty that the victim did not shoot the Defendant from the ground, he had to have done it while he was still up. Couldn't have done it after he fell, must have done it before. Fine. Mr. Hayes, Dr. Hayes, rather, seemed to think that he was rebutting some part of the prosecution case. But there was never any evidence presented at the trial that the victim shot the Defendant from the ground. There was never any claim that the shot to the victim's head was not immediately lethal at trial. There was never any evidence of that.

The defense attorneys painted Dr. Hayes a picture and he accepted it. He didn't even look at the witnesses' testimony in order to prepare for giving his expert opinion. He didn't look at Dr. Hoyer's testimony until a week before he took the stand, even though he had given an affidavit the previous May. And, well, his conflict, or supposed conflict, with the evidence from the prosecution, with the

Page 99.

Commonwealth Argument

evidence of Dr. Hoyer, was that, well, Dr. Hoyer said that the gunshot wound to the back somehow contributed to the death. Dr. Hayes said no, that's not right because he was instantaneously killed.

Well, Dr. Hayes established something about forensic pathology in his testimony: He said that a forensic pathologist's role is not just to testify to the narrow medical cause of death, but to examine how in a broader sense the victim was killed. And so if we are going to compare Dr. Hayes and Dr. Hoyer, it is Dr. Hoyer who is the most accurate forensic pathologist, because it was the gunshot wound to the back that led the victim to fall to the ground where he was an easy target for the Defendant. So to that extent, in that way the gunshot wound to the back, yes, most certainly contributed to the victim's death.

But other than that minor, hair-splitting point, I think the evidence that we heard from Dr. Hoyer, both at trial and at the hearing, and the evidence of Dr. Hayes, were perfectly consistent.

Well, if you have difficulty proving

Page 100.

Commonwealth Argument

actual innocence, if you have difficulty proving that your trial Counsel was ineffective, you could also claim that your appellate Counsel was ineffective; and to that end the Defendant presented Mr. Jeremy Gelb, Esquire. Mr. Gelb had, however, if anything, very little that was useful toward proving that appellate Counsel was ineffective. He said that he worked with appellate Counsel, that he worked on particular issues that were designated. He did not know all of the issues that appellate Counsel was going to consider or was considering. If appellate Counsel considered an issue, decided to disregard it, discard it for strategic reasons, he did not know about that. And evidence that I do not know about something is not evidence.

What he did testify to, though, was a couple of points. He testified that appellate Counsel, contrary to the Defendant's claim in his PCRA, read the entire appellate record. And he also testified that appellate Counsel was an excellent lawyer, that appellate Counsel's work was uniformly excellent. And I can verify that, having contended against that attorney in the

Page 101.

Commonwealth Argument

appellate courts.

So that was the issue, that was the evidence of ineffectiveness of appellate Counsel.

Towards the end of the hearing the Defendant began to present witnesses that were supposed to prove his claim of actual innocence. The first of these was Arnold Howard. Arnold Howard's application for a duplicate driver's license was found on the victim on the day of the killing. He was questioned on the day of the murder, December 9th, 1981. He told the police that he lost the document in the back of William Cook's car nine days earlier, November 30th, and that he knew nothing else about the murder. That was the end of the story. Oh, he also mentioned that he knew the Defendant, that he and the Defendant had gang warred together.

14 years later Mr. Howard appears at the PCRA hearing, says he was kidnapped by the police, that he was held incommunicado for 72 hours, three days, in handcuffs the whole time. That he and someone named Kevin Freeman were put into a lineup box at the Police Administration Building, and that a black woman picked out Mr.

Page 102.

Commonwealth Argument

Freeman, I guess as the shooter. Kevin Freeman is conveniently dead.

We had the evidence of the Police Administration Building log, however, which showed that Mr. Howard signed in at 12:30 and signed out at 2:30 on December 9th, 1991. That was 12:30 p.m. and 2:30 p.m. because of course the murder happened at 4:00 a.m. 12:30 a.m. and 2:30 a.m. had already passed, there was no more 12:30, 2:30 a.m. that day, so 12:30 and 2:30 in the log after the murder they were interviewing Mr. Howard about had to be p.m.

There is no lineup facility, of course, in the PAB, we have evidence about that too. And of course, as you know, the lineup room is lit so that the people in the box can't see the people who are identifying them. How could Mr. Howard have determined

whether he was being identified by a black woman or not?

Well, the evidence showed that Mr. Howard has a record as a forger, a thief and a burglar. That he never complained to anyone about being locked up for no reason for three days. Never said anything about Freeman for 14 years, even though he knew the Defendant, knew

Page 103.

Commonwealth Argument

the Defendant's brother. Even though Freeman, supposedly the real killer, was still alive at the time the Defendant was being tried, Howard did nothing.

I suggest to you that the credible evidence came from Captain D'Amato, the man who took Mr. Howard's statement over a period of two hours, not 72 hours. A statement which was verbatim, in which Howard indicated that he knew nothing about the murder except that his application for a duplicate driver's license was in William Cook's car.

Dessie Hightower was called by the defense at the PCRA. Now, he testified at trial, as you will recall. And he testified at trial on cross-examination that yes, he saw someone running from the scene sometime after the shots were fired, but he wasn't sure whether it was a man or a woman. Then Detective Thomas testified that apparently Mr. Hightower was seeing Veronica Jones. Not an alternative shooter.

Well, 13 years later Mr. Hightower now remembers things very differently. He also claims to remember that he took a polygraph

Page 104.

Commonwealth Argument

examination and was told that he passed. We put on the officer who conducted that examination, who testified that no, Mr. Howard was told that he flunked the polygraph examination. That's what he was told. Mr. Hightower was wrong when he testified to that, and I suggest to you he was wrong about his testimony in the PCRA. His version of the event that he gave at trial six months after the event is more credible than the version he gave 14 years after the event.

Sharon Smith was a woman who testified she was on probation for simple assault. She came forward for the very first time after 14 years. She said she heard shots and immediately looked out her window instantly, within three seconds and so, and saw a whole group of police officers beating a black man, beating him so badly that they must have broken every bone in his body. Although the evidence is they could not have appeared instantaneously out of thin air.

And who, supposedly, were they beating? It couldn't have been the Defendant, because Dr. Colletta, his treating physician, testified at trial that the Defendant did not

Page 105.

Commonwealth Argument

have any injuries consistent with any beating, much less a beating like this. And that the Defendant didn't complain to him about being beaten. His treating doctor.

Well, she said she had an impression that it was a, if it was not the Defendant then she had an impression that it was a so-called -- the defense used the term -- street preacher, a man she said she had seen in the area handing out literature. Well, all right, if that's who was there then where was the Defendant? Where was William Cook?

This witness testified that she came forward to testify in this case because she did not want the Defendant to be executed; and that, I suggest, is the explanation for her testimony, not that she had seen anything.

William Harmon. William Harmon was the man from Mercer who needed to see the pictures. The defense talked to this man at the State prison at Mercer on August 3rd, interviewed him for a period of hours, had him brought to Court. A period of a week went by that it took them to do this. And there he was in Court, ready to take the witness stand, and

Page 106.

Commonwealth Argument

the defense attorneys say, umm, no, wait, we can't put him on the witness stand, we have to have him see pictures first. No other witness needed to see pictures. Oh, the defense knew that the pictures were not present in the file because they had already asked to have the pictures duplicated. The pictures had been sent out to the lab at their request. So someone goes to the lab, gets the pictures, brings them back. Takes three hours. Come back after lunch, the defense attorneys find that the pictures are present, pictures are here, he can see the pictures; and they say oh, well, no, we can't call him to the stand because he's sleepy. Yeah, he had to sleep on a bench, he didn't get much rest, he is sleep deprived, we can't call him.

They were required to put him on anyway, and it proved, his testimony demonstrated that Mr. Harmon was not sleep deprived, he was truth deprived. He had testified that he was a great fan of the Defendant, heard him on the radio, saw him at the scene, and that he was with the Defendant when the shooting happened. The story was that

Page 107.

Commonwealth Argument

some guy shot the police officer, the officer fell, then the Defendant came over to the officer. That the officer shot the Defendant while lying on the sidewalk at a distance of 10 feet. And then a car comes up, some guy gets out of the car, a guy with long hair, and he says you son of a bitch you and shoots the officer.

Oh, yeah. Mr. Harmon said that the victim, that the victim said you son of a bitch you too. Both of them said exactly the same thing. The police officer says you son of a bitch you and shoots the Defendant. And then some guy comes in a car and says you son of a bitch you and shoots the police officer. I guess Mr. Harmon couldn't think of any better dialogue.

Now, Dr. Hayes, the Defendant's expert forensic pathologist, demonstrated that it was physically impossible for the victim to have shot the Defendant from the ground. Yet that is what this witness testified to. He testified that the shot was from a distance of 10 feet, but the primer residue on the Defendant's clothing -- this was testified to at trial by

Page 108.

Commonwealth Argument

Dr. Tumosa -- demonstrated that the Defendant was actually shot from a distance of less than 12 inches.

Mr. Harmon, the testimony showed that he was a confidence man, a pimp, a mail frauder, a thief, a drug user, a burglar, sold drugs out of his mother's house, knew the Defendant well, knew the Defendant's brother. Why didn't he come forward? Well, he said he told his mother he wouldn't get involved and he had such regard for his mother that he didn't want to get involved in this case, even though it was apparently okay with her that he was a pimp, a thief, a drug user, he had such regard for her that he sold drugs out of her house.

Or maybe it was that he didn't want to get in trouble with the police. Well, that won't work because Mr. Harmon was an informant for the police. He was giving information to the police during the period that he was involved in all of these criminal activities. That's no good. The Defendant's argument was that Mr. Harmon was not impeached. We think he was. I suggest to you his testimony was not credible.

Page 109.

Commonwealth Argument

Finally, I guess the last witness who testified to the Defendant's supposed innocence was William Singletary. William Singletary, you know, William Singletary at the time of the killing encountered Officer Vernon Jones, who he said was his friend. Officer Jones took a statement from him, and Officer Vernon Jones testified about that statement at the PCRA, saying that Mr. Singletary told him, Officer Jones, he didn't see the shooting. Didn't see it. Later Mr. Singletary gave a statement to a Homicide detective, and I will get back to that.

What Mr. Singletary claimed at the PCRA hearing, however, was

that he was interviewed by a man called, or who called himself Detective Green. And that this Detective Green, who was a black man, kept taking statements from him that he would write out in long hand and then Detective Green would tear them up, throw them away. And finally Detective Green threatened him and Detective Green said well, you will write what I tell you to write, has him write this out in longhand; and then Detective Green types up a statement, has him sign it. Well, he later claims that he

Page 110.

Commonwealth Argument

was harassed by the police, the police broke his windows, that the police drove him out of business, and he told all of this to State Representative Alphonso Deal, who is deceased.

And his story was that the victim was shot in the face by an armed man. That's how the account of the shooting begins: The victim is shot in the face, falls to the ground. Mr. Singletary says the Defendant comes over to the victim Officer Faulkner. They speak to each other, Officer Faulkner is speaking to the Defendant, and then Officer Faulkner shoots the Defendant. According to Mr. Singletary, that is the sequence of events.

Mr. Singletary goes on to describe that the Defendant was wearing an Arabic outfit. He was the only witness who claims that the Defendant was dressed as Lawrence of Arabia. He then claimed that a bunch of captains and lieutenants came out of the parking lot and then disappeared, the police beat the Defendant, put their sticks in his wound, kicked him in the testicles, picked him up and used his head as a battering ram against the side of a police van.

Well, instead of dying the Defendant

Page 111.

Commonwealth Argument

shows up at the hospital and, as I mentioned, Dr. Colletta, his treating physician, testifies at trial he doesn't have any injuries from these events.

Mr. Singletary also saw -- and he is the only one who has seen this -- a helicopter, there was a helicopter flying around the scene, shining its light down on the participants.

He gave a deposition, as I said, in 1990. In his PCRA testimony he claimed that there were two shots. In his deposition in 1990 he claimed that there was one shot.

In his deposition in 1990 he claimed that the victim talked to the Defendant. He also claimed that the victim did not talk to the Defendant. Quote, he didn't say anything. He just laid back, grabbed his gun and fired, unquote. Fired, that is, after being instantaneously killed. You will recall the testimony of Dr. Hayes. The Defendant's expert pathologist testified that the victim Officer Faulkner was instantaneously killed when he was shot in the face. Yet according to Mr. Singletary, after the victim was shot in the face and was instantaneously killed he was

Page 112.

Commonwealth Argument

nevertheless able to talk and able to fire his weapon from the ground. Which of course couldn't be possible because according to Dr. Hayes, the Defendant's expert witness, it is physically impossible for Officer Faulkner to have shot the Defendant from the ground.

And on the more practical level, why would this Officer Green not want to know who had really killed the victim? This was a police shooting. It is not credible that a police officer would be trying to force a version of an event about which he knew nothing onto this Mr. Singletary instead of trying to find out what happened.

But you heard the testimony -- and this I think is the clinching factor -- you heard the testimony of Detective Edward Quinn. Detective Quinn testified that he was the one who took Mr. Singletary's statement at Homicide on December 9th. He and Mr. Singletary agreed that there was only one interview of Mr. Singletary. And it was Detective Quinn, not Green. Detective Quinn is white, not black. He took the statement, and in it Mr. Singletary said he did not see the shooting but he looked

Page 113.

Commonwealth Argument

at the aftermath and he saw three men. One is the victim; one I think we can infer is William Cook; and the other one, the one who had, quote, dray locks, was on the curb. If that sounds familiar it's because that was the testimony of Robert Chobert, Cynthia White, Albert Magilton, and Officer Shoemaker, and Robert Harkins at the PCRA hearing, that it was the Defendant who was sitting on the curb after shooting the officer to death. It is exactly what the officer found: This Defendant, this Defendant, who was reaching for his gun at the site of a dying police officer.

So much for actual innocence. Officer Faulkner was not killed by some mystery man or some doppelganger or some look alike of this Defendant who vanished. It was no coincidence that it was the Defendant's gun which had been fired five times; that the bullet that killed this officer had a hollow base like the ammunition that the Defendant used, four out of five shells; that it was marked with eight lands and grooves, like the Defendant's gun. It was not the result of some plot that eyewitnesses who did not know each other identified this

Page 114.

Commonwealth Argument

Defendant at the scene as the gunman sitting on the curb.

It was this Defendant, not some mystery man, who bragged at the hospital about being the one who shot the victim.

Officer Daniel Faulkner was murdered; this is the Defendant who did it. PCRA relief should be denied.

Thank you, Your Honor.

(Discussion was held off the record at this time.)

MR. WILLIAMS: Shall I proceed, Your Honor?

THE COURT: Just a minute. Wait awhile. There are only 20 minutes left for rebuttal.

MR. WEINGLASS: That's right.

THE COURT: I thought you were going to take it.

MR. WEINGLASS: No, we are dividing.

THE COURT: How are you going to divide it, five minute each?

MR. WILLIAMS: I will take approximately five to seven minutes.

THE COURT: Well, everybody else is

Page 115.

Defense Argument

going to have rebuttal?

MR. WEINGLASS: Yes, we will use up the entire 20 minutes divided among the four of us.

THE COURT: Five minutes each.

MR. WEINGLASS: It might be a little, might be six for one and four for another.

THE COURT: Well, let me know. How do I know what you are going to do. I said you have 20 minutes and that's all you get.

MR. WEINGLASS: That's what we will do, we will just use the 20. But we have until one o'clock, as I understand it.

THE COURT: Yes. Okay, go ahead.

MR. WILLIAMS: Let me be very quick. I think with respect to the Wakshul issue, we see how absurd the arguments can descend when the prosecution's case is challenged. They claim here -- and I am going to speak fast -- that it was the emotional state of Mr. Wakshul that explains the failure to mention anything about the confession.

First of all, Wakshul doesn't use that explanation. He said he didn't understand the significance of the confession. But even more

Page 116.

Defense Argument

importantly, Your Honor will remember I used the blackboard and I listed the abundant details on the night in question that he recalls from his own memory. And then a week later, December 16th, he had a full week to collect himself, he testified that he had collected himself, he was invited to provide details that were important. He was asked is there anything you wish to add and he made no

mention of the confession. It took him 64 days, apparently, to collect himself. And apparently it took the shock of finding out that Mr. Jamal had made an allegation of police brutality before he could collect himself to make this allegation of a confession. I would welcome that kind of argument in front of a jury because it precisely proves my point: The absurdities of the Commonwealth's case and what they will descend to to try to salvage this case.

The emotional state of Mr. Wakshul. Well, does that explain every single police officer witness in that hospital, all of whom said that, made no mention of any kind of confession of this sort? It's preposterous. And if Your Honor is inclined to deny this

Page 117.

Defense Argument

claim, then I invite you, Your Honor, to adopt that argument. Because I think any rational jurist will reject it out of hand, just as any rational human being would reject it out of hand. I invite Your Honor to accept that rationale. Any lawyer would have a field day with this. Just as I did, a young lawyer. Just as Mr. Jackson said he would.

Now as to Miss Durham's statement. As a matter of fact, Miss Durham on the stand refused to adopt this purported typewritten statement. That's in the record, 6-24-1982, pages 52 and 98. Why did that statement come in? According to the prosecution, because, quote, they took the handwritten statement and typed this. Well, now we hear that there was no handwritten statement at all. But that's why it was admitted. And it was admitted supposedly to refresh Miss Durham's recollection. Her recollection didn't need to be refreshed.

And was the author of this typewritten statement brought in to testify? The answer is no. The fact is Miss Durham first came up with this confession during the same time span as Mr. Bell and Mr. Wakshul, in February of 1982.

Page 118.

Defense Argument

Also, I might add that Mr. Wakshul didn't see Gary Bell and didn't see any hospital security personnel when Mr. Jamal supposedly made this statement. But he did see his partner. His partner was near Mr. Jamal. And did his partner, Officer Trombetta, say he heard a statement, any kind of confession? The answer is no. This is a litmus test of what kind of case the Commonwealth had.

On the mitigation they make this preposterous argument that persons with less qualities of Mr. Jamal are somehow more worthy of life, but I want to say this on behalf of the defense team.

THE COURT: One minute left.

MR. WILLIAMS: I may go just slightly over.

THE COURT: All right.

MR. WILLIAMS: I want to say on behalf of the defense team: We on the defense team believe that the death penalty is an abhorrent mode of punishment, it is a stain on this society and it violates the dignity of every human being. But under the law, the Commonwealth seeks the death penalty on people

Page 119.

Defense Argument

who are so lacking in human worth that somehow State-sanctioned death is appropriate. Well, under those conditions, and if the Commonwealth is going to invoke this sanction, then the defense is obligated to prove the opposite: That his or her client is not so lacking in human worth so as to not be executed. And that's precisely why the law recognizes that this form of mitigation ought to be presented. And it's shocking that the Commonwealth will invoke that kind of argument. And in fact, if Your Honor will look at pages 98 and -9, and page 191, Mr. Grant does make some astonishing -- well, not so astonishing -- powerful statements regarding the mitigation of the Commonwealth's case.

Finally, what is the prosecution suggesting is your role? Are they suggesting that Your Honor sit up there like a potted plant? If the defense presents no mitigation witnesses, and when Your Honor knows that there has been some difficulties experienced by Mr. Jackson and Mr. Jamal, Your Honor owes an obligation, which the law recognizes and demands, that Your Honor intervene and engage in

Page 120.

Defense Argument

a colloquy with the Defendant to insure that the case is proceeding as it ought.

And so if the Court is going to adopt any such argument by the Commonwealth, then Your Honor must look to yourself to see if you have fulfilled your own judicial obligations to insure that substantive justice was done.

Thank you, Your Honor.

MS. WOLKENSTEIN: Your Honor, five minutes. I want to say that in fact the prosecution has continued to misrepresent the record, as it full well knows.

In terms of the deposition taken of William Singletary in August of 1990, I was not the attorney in that. The attorney was Mr. Jamal's appellate attorney. And in fact, her failure, the appellate attorney's failure to follow up on Mr. Singletary was one of the reasons why a search was begun to establish new counsel for Mr. Jamal. And that period, that search took several years to do that. And it was only after that search was begun that we were able to try to put together again the information, evidence, investigation and everything that was necessary to pull together

Page 121.

Defense Argument

this PCRA Petition. Prosecution knows whose names are on that deposition and this misrepresentation is again another reflection, another piece of evidence of the type of process that they have engaged in.

I want to also direct the Court's attention to the fact that Mr. Singletary then disappeared. He was unavailable because of fear. And as he testified in Court, the first time he met with Mr. Weinglass was in June of this year. That should be clear for the record.

I further want to state on this matter that the prosecution makes much of the so-called impossibility based on Dr. Hayes' testimony, trying to undermine the testimony by Mr. Harmon and Mr. Singletary, as to what position, what position Officer Faulkner was in when the shot was taken against Mr. Jamal. I want to state that this is another misrepresentation of the testimony. Both Mr. Harmon on August 10th on page 63, and Mr. Singletary -- I don't have the cite right in front of me -- testified that when Mr. Jamal approached the police officer he was not prone on the ground, absolutely not prone, but he was lying against the wall.

Page 122.

Defense Argument

And Mr. Hayes, Dr. Hayes also testified that the other position of Mr. Jamal that would have had the type of shots and the direction of the shots would be as if he was bending over. Bending over as if to help, as he was doing that night, over Police Officer Faulkner. That would have gotten the same trajectory. The one thing that would not be established, that could not happen, would be a Police Officer Faulkner falling, which is the prosecution's theory, and shooting upward to Mr. Jamal. That is a medical impossibility.

If we could have proceeded with our lie detector expert, we also would have been able to introduce other evidence on how witnesses conflated their testimony which would have also dealt with the sequence question in terms of, in terms of Mr. Singletary. But the Court would not allow us to pursue any of this.

All right, I am going to...

MR. PIPER: Your Honor, I don't really have anything to add because of the 14 claims I addressed Mr. Burns did not respond to one of them. Reflecting again, I think, their eagerness is simply to get one more notch on the

Page 123.

Defense Argument

gallows and is not to explore the issues in this case. The Supreme Court cases and the Constitutional law surrounding these issues must be considered.

THE COURT: Mr. Weinglass.

MR. WEINGLASS: Just a few observations. There are three witnesses that Counsel addressed: Arnold Howard, William Harmon, and William Singletary. And I want to say just briefly about each of them.

There is no question and it's not in dispute that William Singletary was there. And he was there at the time of the shooting. Highway Patrolman Vernon Jones said he got there within two minutes of the shooting --

THE COURT: 45 seconds.

MR. WEINGLASS: 45 seconds. I thought we had until one o'clock.

THE COURT: No, no, I was commenting on the officer's testimony.

MR. WEINGLASS: Oh, I see. Thank you.

THE COURT: When he got there it was less than a minute.

MR. WEINGLASS: Yes, and when he got there Singletary was already there. Indicating

Page 124.

Defense Argument

that Singletary must have been there at the time of the shooting. And Singletary that night was brought down to the police station and he gave a statement. So there is no question about the fact that we're dealing with someone who was there.

Now, the problem is this. What he told the police that night and reduced to writing we don't have. And we will never have it because it was torn up. What we do have is a deposition that he gave eight years later when he was trying to remember after the passage of eight years, and after having read about the case in the newspaper, what he remembered seeing that night. But the fact of the matter is his best recollection -- and he said this on the stand -- we will never have because of the action of the police officers who interviewed him that night.

Incidentally, the prosecution was very careful to call Officer Quinn who took the statement, but they did not call Officer Green who tore up the statement. And I found that to be significant.

Secondly, with respect to William

Page 125.

Defense Argument

Harmon. We don't know William Harmon. As Your Honor knows, we found out about him in the middle of the hearing. We knew he was an inmate and one of us went to see him briefly: Miss Wolkenstein. But as we told the Court, we hadn't had an opportunity to investigate what Mr. Harmon said, nor to evaluate him as a witness. We did not call him as a witness. The Court called him as a witness. But I will say this much about Mr. Harmon.

THE COURT: I went to all the trouble of getting him here for you from prison so I wanted to hear what he had to say.

MR. WEINGLASS: The Court wanted to hear what he had to say.

THE COURT: Because I went to the trouble, because you told me he was your witness, I brought him in. I specially sent deputies to get him, to bring him in.

MR. WEINGLASS: We told the Court that we wanted him brought in and we wanted to re interview him.

THE COURT: You did re interview him that morning, at the Sheriff's office.

MR. WEINGLASS: Very briefly.

Page 126.

Defense Argument

THE COURT: I don't know how briefly. But you had a chance to reinterview him. You wanted to reinterview him after we had a sidebar conference that nobody has brought up as yet. Right?

MR. WEINGLASS: Right, but we wanted to interview him, Your Honor, because in a case involving the death penalty, we did not want to put on a witness, one who we did not locate but came forward, who we did not have a chance to investigate. Because he gave us the names of people who he said he told this story to. We wanted to check with those people. We didn't have the time to find them. One is in Massachusetts, another could not be located. We could not put a witness on in such condition. The Court forced the witness on us, over our objection.

THE COURT: Yes, because you said you wanted me to bring him in. Fine, I brought him in. You had a sworn statement from him. He couldn't deviate from that.

MR. WEINGLASS: Right. It was not a sworn statement but we had a statement.

THE COURT: Well, okay. I don't know

Page 127.

Defense Argument

if it was or wasn't.

MR. WEINGLASS: We have to be careful about that. But, Your Honor, the thing is this: I don't know what motivates Mr. Harmon. I honestly don't. I hadn't spent any time with the gentleman. But I do know this. He could receive absolutely no benefit from the defense by coming forward and saying that Mr. Jamal was not the shooter. He could only be seriously hurt. The man is serving a sentence which could be expanded up to 10 years and he came in here to testify and put his parole status in absolute peril. That was very convincing to me.

THE COURT: So you say he is telling the truth, then?

MR. WEINGLASS: Well. What I am saying is Mr. Harmon would have no reason to lie.

THE COURT: Well, I didn't say he had any reason to lie. I just wanted to hear what he had to say.

MR. WEINGLASS: Right, but I am just saying, Your Honor, that when you look at this individual who we didn't know and we didn't put on, you have to take into account that his

Page 128.

Defense Argument

coming forward was at his own peril.

THE COURT: Well, I think he said --

MR. WEINGLASS: And he had no benefit at all.

THE COURT: I think he said that his buddies in prison said if you could help him there, help him.

MR. WEINGLASS: And what the Parole Board is going to say is you will serve another seven or eight years.

THE COURT: I don't know what the Parole Board will do, that is not my problem.

MR. WEINGLASS: I don't think he will get a recommendation from the District Attorney's Office, I think it is fair to say that.

Now with respect to Arnold Howard. Arnold Howard was an individual who, there is no question about it, was taken into custody. There is no question in anybody's mind that a document of his was found at the scene. And so he wasn't someone who just showed up without there being a basis.

THE COURT: Well, don't you think that's good police work? If I was a police

Page 129.

Defense Argument

officer and I found his name there in the officer's hand, don't you think I would call him in? Of course I would.

MR. WEINGLASS: He was called in. That might have been good police work but the fact of the matter is he says, he says that he was held for 72 hours.

THE COURT: Yes, but he says he wasn't there. And he proved it by producing a slip from the marketplace where he was.

MR. WEINGLASS: That's right.

THE COURT: So he wasn't there. So what difference does it make?

MR. WEINGLASS: But the point of the matter is this. He was treated by the police that night as if he might have been the person who ran away.

THE COURT: Sure. And that's, and that's good police work.

MR. WEINGLASS: That supports Dessie Hightower, Debbie Kordansky, Veronica Jones, and Chobert, all of whom said the shooter ran away. And the police --

THE COURT: That doesn't support them. It doesn't support them because he proved that

Page 130.

Defense Argument

he wasn't there.

MR. WEINGLASS: Right. He might not have been the individual but the fact of the matter is --

THE COURT: Oh, you got another individual.

MR. WEINGLASS: He might not have been that individual but the fact --

THE COURT: Oh.

MR. WEINGLASS: But the fact of the matter is the police were operating on the theory at that point that the shooter ran away. And they thought it might have been Arnold Howard.

THE COURT: Well, sure, what's wrong with that? The police could operate on a lot of theories. That doesn't mean that they are all correct.

MR. WEINGLASS: Right.

THE COURT: Just as medical examiners can make mistakes too.

MR. WEINGLASS: Right.

THE COURT: You brought up that one about the young lady who was allegedly shot by a shotgun. Where the Medical Examiner on the

Page 131.

Defense Argument

scene saw all of these hundreds of...

MR. WEINGLASS: Puncture wound.

THE COURT: . . . punctures and assumed that it was a shotgun. But when he took the body back to the morgue --

MR. WEINGLASS: 12 years later.

THE COURT: No, not 12 years later. Took the body back to the morgue and he started looking for pellets and he couldn't find them, then he said it couldn't have been a shotgun, it was an ice pick.

MR. WEINGLASS: Right.

THE COURT: So what's wrong with that?

MR. WEINGLASS: Nothing is wrong except Mr. Connors served 12 years for a crime he didn't commit.

THE COURT: I gave him a new trial. Counselor.

MR. WEINGLASS: Pardon?

THE COURT: I gave him a new trial. That was my case.

MR. WEINGLASS: Yes, after he served 12 years.

THE COURT: Well. What do you want me to do?

Page 132.

MR. WEINGLASS: I could close with this: Here we are 13 years later and I am sure the Court will do the same in Mr. Jamal's case and it ought to.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, I just have one last thing. This is not argument.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, I'm completed with argument.

THE COURT: Okay.

MR. WEINGLASS: You know that Mr. Alva was here in Court. He was here twice this morning. He is, as I understand it, William Cook's attorney. Was his attorney then, did his trial, handled his case. When William Cook appeared last week I referred him to his lawyer and I contacted Mr. Alva. I understood Mr. Alva came here this morning as Mr. Cook's representative but he hasn't had an opportunity to address the Court. He left a note for me indicating that he had to return to his office but that I should advise him when we're finished. Does the Court want to hear from Mr. Alva with respect to William Cook and --

Page 133.

THE COURT: Well, I don't know. Let's see what the Commonwealth's position is on this.

MR. GRANT: Mr. Alva wasn't at 12th and Locust on December the 9th of 1981, and what he has to say is totally irrelevant. If Counsel wishes to call Mr. Cook we would be more than willing to entertain his testimony. Your Honor, with the Court's permission, assuming. And I note as yet -- and Miss Wolkenstein deems herself capable and fit to testify for Mr. Cook -- no part of his body is in this room. Mr. Alva's here to do the same. No sightings of him in Philadelphia. And now august Counsel here wants to make more representations on the record.

THE COURT: Well, I don't want to listen to Mr. Alva. I don't think that's part of these proceedings.

Do you have any surrebuttal?

MR. BURNS: No, thank you, Your Honor.

THE COURT: Okay, then we are finished.

MR. WEINGLASS: I am not offering Mr. Alva as a witness.

THE COURT: I don't care what you are

Page 134.

offering him for.

MR. WEINGLASS: He is here to represent Mr. Cook and wants to make representations about Mr. Cook to the Court which I am not in a position to do.

THE COURT: The District Attorney says if he wants to bring Mr. Cook in here they have no objection to Mr. Cook taking the stand and testifying. You relay that to him from me, will you please.

MR. WEINGLASS: I will. Could we bring him back?

THE COURT: What?

MR. WEINGLASS: Could we bring Mr. Alva back to inform the Court?

THE COURT: No, you could inform him.

MR. WEINGLASS: Yes. But Mr. Alva wants to come here to speak to the Court.

THE COURT: I don't want to listen to him. If he has a client that he wants to produce here to testify, the D.A. has no objection to it, I certainly don't have any objection to it. Let him bring his client in.

MR. WEINGLASS: Okay. Could we do that right after lunch?

Page 135.

THE COURT: I am not going to come back to this Courtroom again, Counselor. It has nothing to do with it. You tell him what I said and if he wants to do it let me know. Let him, let the D.A. know. Let him give us a written statement or something as to what Mr. Cook is going to say.

MR. WEINGLASS: And you want that this afternoon?

THE COURT: I don't care when you do it. I am not making a decision yet, I am taking it under advisement. I have to read all of this you have given me so far. So I am not making a decision today.

MR. WEINGLASS: As far as I know, Mr. Alva was meeting with William Cook this morning at nine o'clock.

THE COURT: Well, let him tell us what he wants. Let him inform the D.A. If the D.A. has no objection, I certainly don't.

MR. WEINGLASS: Well, could we come back at two o'clock?

THE COURT: Why do we have to come back? You let me know. You let me know what he wants to do, period.

Page 136.

MR. BURNS: Your Honor, I don't know what this game is supposed to be about, but if Counsel wants to call William Cook he can call William Cook.

THE COURT: That's what I said to him.

MR. BURNS: Mr. Alva is not a witness, he is not representing any

party in this case. For us to come back and to entertain Mr. Alva would be, really, pointless.

MR. WEINGLASS: Maybe I haven't made myself clear.

MR. BURNS: No, not at all.

MR. WEINGLASS: I want to call Mr. William Cook. His lawyer came to Court this morning, and I don't know what position his lawyer is going to take.

THE COURT: Well, you find out.

MR. WEINGLASS: I want to call William Cook, I want that clear.

THE COURT: Find out. You told me before you didn't want to call him. Now you changed your mind.

MR. WEINGLASS: I didn't have him, Your Honor. I saw him --

THE COURT: I asked you whether or not

Page 137.

the Defendant wished to testify, whether his brother was going to testify, whether you were going to call him, and you said no.

MR. WEINGLASS: Right.

THE COURT: Now you are saying now you want to bring him in. You talk to Mr. Alva. If he wants to bring him in, fine. That's it for today.

MR. WEINGLASS: I just wanted to be clear.

THE COURT: It's very clear. I can't be any clearer than that. You tell Mr. Alva what I said. And if he wants to bring him in we will make arrangements, okay.

MR. WEINGLASS: Your Honor, I saw William Cook for the first last week in three years.

THE COURT: Fine. I haven't seen him since '82.

MR. WEINGLASS: He showed up last week for the first time unannounced.

THE COURT: Counselor, please. You are going to stand here all day and argue about something. I told you what I want you to do. Speak to Mr. Alva. If he wants to bring him in

Page 138.

to testify, we will have him come in and testify.

MR. WEINGLASS: This afternoon?

THE COURT: Well, I don't know. If he could bring him here this afternoon, fine.

MR. GRANT: Your Honor, I don't think Mr. Alva, quite frankly, has anything to do with this. There is no more attorney-client privilege. There is no Fifth Amendment right. If he wants him he should subpoena him and if he is subpoenaed he will be here. And if he doesn't want him he won't be here.

THE COURT: Well, then, subpoena him.

MR. WEINGLASS: I will subpoena him through Mr. Alva. But Mr. Alva saw him at nine o'clock this morning and came to Court, he was going to, we wanted him to testify. I'm only asking that we come back at two o'clock so that we could put Mr. Cook on the stand.

THE COURT: Well, if he is here and they don't have any objection. We will be back here at two o'clock to have him take the stand.

MR. WEINGLASS: Thank you.

MR. GRANT: Let us know at 1:45, Mr. Weinglass, we will accommodate you.

Page 139.

THE COURT OFFICER: This Court stands in recess until the call of the Crier.

(Luncheon recess was held until 2:42 p.m.)

THE COURT: All right, what's your problem, gentlemen?

MR. GRANT: Well, Your Honor, apparently Counsel is desirous, Mr. Weinglass purports to be desirous of having Mr. William Cook come in to testify, since closing arguments are already done. However, they have not subpoenaed Mr. Cook. And he was in their company a week ago when there was plenty of opportunity to do so. And apparently Mr. Cook's Counsel, Mr. Alva, purports to be his Counsel. I suggest to you that he is not. This case terminated in 1983 on August the 10th when Mr. Cook was sentenced for his part in this affair after pleading guilty. Nevertheless, Mr. Weinglass, who I imagine has been repeatedly badgered by the press as to why the only person who could really tell what happened that night besides Mr. Jamal has never been called as a

Page 140.

witness, I suggest to Your Honor that what Mr. Weinglass is doing is posturing for the press, saying we want Mr. Cook but we have to defer to Mr. Alva. And if Mr. Alva says no, then, you know, we tried.

Well, I suggest that Counsel serve Mr. Cook so that Your Honor's order that he be present tomorrow can be obeyed. Otherwise, Your Honor has no jurisdiction over Mr. Cook, you can not compel his appearance here today. Which is what, I am sure, Mr. Weinglass wants.

In any event, Mr. Alva says he needs three or four days to speak to his client to determine if he should testify, if he has any Fifth Amendment exposure, if he is competent to testify, and that we will be holding this in abeyance until Friday.

We would object. If Mr. Cook's not brought in tomorrow, I would ask Your Honor to begin your review and to proceed with findings of fact and conclusions of law in accordance with the law.

MR. WEINGLASS: We are prepared to put Mr. Cook on. We've asked for his appearance. I saw Mr. Cook for the first time after three

Page 141.

years when he appeared in Pittsburgh. I was in Pittsburgh. I don't practice there, I was in the Courtroom. As soon as I saw him I was called as a witness. I was on the stand for a day-and-a-half. I never had an opportunity to subpoena him. But I did contact his lawyer, and I understand he met with his lawyer this morning.

And I understand he's here. I don't mean in this Courtroom but he's here now in Philadelphia. And we are prepared to call him as a witness. All of Counsel's comments, of course, are rhetorical, without a basis in fact. I don't want to even bother to go into it. There is no need to spend more time on this issue. We are ready, we want Mr. Cook on the stand. His lawyer was here and we are prepared to proceed.

MR. GRANT: Could the Court inquire of Mr. Alva as to whether in fact he is his lawyer? And if so could he enter an appearance in this proceeding. Otherwise, he would be nothing more or less than an officious intermeddler.

THE COURT: Oh, there you are, Mr. Alva.

Page 142.

MR. ALVA: I am beneath the officious intermeddler sign.

THE COURT: Okay. Do you have anything you wish to say?

MR. ALVA: Well, Mr. Grant had spoken on my behalf quite eloquently. If Your Honor please, as I do represent Mr. William Cook, I represented him from the morning of the tragedy up until the conclusion of his particular case, and after that on other, unrelated matters. If there is an appropriate form that I am unaware of after 23 years of practice for entering an appearance, I don't know on what number, it's not Commonwealth versus William Cook, I don't know what document it is that would satisfy Mr. Grant but I'll sign it.

I did meet with Mr. Cook this morning for the first time in, I would say, approximately eight or nine years. He came to my office at nine o'clock. I spoke to him for perhaps 15 minutes, tops. I was made aware by Mr. Weinglass yesterday that this Court was set to start at 9:30 this morning. Knowing how prompt Your Honor was, I left at 9:15, informed Mr. Cook that I did not know what his status

Page 143.

was, if he was a witness or whatever, that he and I had many, many things to discuss. I then came over here, and I won't go through all the rigmarole I had of trying to get into this Courtroom.

THE COURT: I had the same problem.

MR. ALVA: Right. But it's clear to me after 15 minutes that I am 13 years removed from the facts of this case. I do not even possess the statement he is purported to have given at the time of his arrest to see whether or not anything he says may or may not contradict that. I do not know, I have not been able to determine whether or not he is competent. And there is a question in my mind at this point, even after 15 minutes I'm not sure. I think he is but I would need additional time. I also have to prepare him for direct.

THE COURT: No, you don't have to prepare him. Just tell him to tell the truth.

MR. ALVA: Certainly, Your Honor.

THE COURT: That's all.

MR. ALVA: Also I have to prepare him for cross-examination.

THE COURT: Tell him to answer

Page 144.

truthfully whatever questions are asked, that's all.

MR. ALVA: Certainly, Your Honor.

THE COURT: There is nothing that you have to prepare anybody about. You are not here to coach anyone.

MR. ALVA: I did not indicate to you that I would coach him.

THE COURT: Well, that's when you talk about preparing, I don't know.

MR. ALVA: Well, Judge, I dare say that no one comes to a courtroom without prepping their witnesses, and it is not coaching.

THE COURT: Well, if it is not coaching then there shouldn't be any difficulty. Just tell me what happened, let him tell you.

MR. ALVA: Judge, I wish in a sane world it would be that simple.

THE COURT: Well, it should be that simple.

MR. ALVA: Well, it's not so.

THE COURT: If you are telling the truth it should be very simple, very easy.

MR. ALVA: Judge, if that were the

Page 145.

case we would have trials the day after arrest.

THE COURT: Eventually we may get to that, I don't know.

MR. GRANT: This witness is not Mr. Alva's witness, he is Mr. Weinberg's witness. And if anyone has to prepare him to testify it is certainly not Mr. Alva.

MR. ALVA: Well, the Court has used, unfortunately, the term prepare. Mr. Grant has picked right up on it. I have not asked to prepare the witness. I have asked to discuss with the witness to see whether or not he has a Fifth Amendment right. The last thing any competent counsel is going to do is walk in someone blind on the faith that the truth will set him free. I will talk to my client and determine whether or not --

THE COURT: All right.

MR. GRANT: -- whether or not he has a legitimate Fifth Amendment right.

THE COURT: Anybody acting up out there just evict them, please. I don't want any nonsense from the spectators out there.

MR. ALVA: All I ask, you know, I can't speak for the delays in this hearing, I

Page 146.

can't speak for the delays of 13 years. All I can speak of is from nine o'clock this morning. I ask for additional time to prepare my client. I don't believe it's unreasonable to request that he not be called by either side until at least the end of the week.

THE COURT: Oh, no, we can't wait that long. Sorry. Do it tomorrow morning.

MR. GRANT: Obviously, I will take whatever time the Court gives me in its wisdom.

THE COURT: Well, that's how much time you're going to have.

MR. ALVA: Then I will try to use it wisely.

THE COURT: Okay.

MR. GRANT: For the record: There has been an agreement reached between Mr. Alva and the Commonwealth in that regards, Your Honor. Apparently -- and I was unaware of this until I read it in the press -- but apparently Mr. Cook has some outstanding bench warrants in Philadelphia. And we, I have agreed on behalf of the Commonwealth as a representative, along with Mr. Alva, that were he to come in and wish to appear here in Court, that he would not be

Page 147.

arrested on the bench warrants at that time of his appearance, and that after he finished testifying, that Mr. Alva, Mr. Cook and the D.A.'s detectives would escort Mr. Cook up to the bench warrant status room at 875 and turn himself in. And at that point there are no guarantees other than that.

MR. ALVA: That is correct, Your Honor. And we appreciate Mr. Grant negotiating with an officious intermeddler.

THE COURT: Okay.

MR. GRANT: It was difficult.

THE COURT: Okay, then. So there is no problem. Have him here tomorrow morning.

MR. ALVA: What time, sir?

THE COURT: Well, I'd say 9:30. Provided we can get in, I don't know.

Sheriff? Are we able to do it by then?

Okay. 9:30.

MR. ALVA: Yes, sir.

THE COURT: Okay.

THE COURT OFFICER: Recess Court, Your Honor?

THE COURT: Yes, sure.

Page 148.

THE COURT OFFICER: Or adjourn, Your Honor?

This Court stands adjourned until tomorrow morning at 9:30 a.m.

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(The hearing was adjourned for the day at 2:52 p.m.)

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Page 149.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

12. September 1995

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

Discussion In Re William Cook

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September 12, 1995
Courtroom 307, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- HUGH BURNS, ESQUIRE
- CHARLES GRANT, ESQUIRE
- ARLENE FISK, ESQUIRE
- LINDA PERKINS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- JONATHAN PIPER, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
  Councel for the Defendant

- DANIEL-PAUL ALVA, ESQUIRE
  Councel for William Cook

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

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(At 10:00 a.m. the hearing was convened in the presence of the Court and the attorneys.)

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THE COURT: Good morning, everyone.

MR. WEINGLASS: Yes, good morning, Your Honor. The defense calls William Cook. And I am informed by his Counsel -- who is present -- that he did not appear yesterday or this morning. And we sent a process server over to have him served. He was in Counsel's office I believe five times yesterday.

THE COURT OFFICER: Can't hear you outside.

MR. WEINGLASS: I'm sorry, I should have...

The defense sent a process server over to Mr. Alva's office, was there for about five times to try to locate and serve William Cook, but was unable to do so. And I understand Mr. Alva's here in Court this morning without his client. But the Court could hear from Mr. Alva.

MR. ALVA: Good morning, Your Honor.

Page 3.

THE COURT: Good morning.

MR. ALVA: If Your Honor pleases:

Prior to my appearance before the Court yesterday at around two o'clock, my last contact with my client was at approximately 12:15 in the p.m., at which time he had called my office as per my instructions. And I informed him that I felt that we needed to continue our conversation and that he should be in my office at four o'clock. He indicated to me that would be no problem. When I then came over to the Courtroom and the Court then ordered me if I was going to produce my client to do so this morning, I had anticipated that he would be in my office at four o'clock and that we would take whatever time was necessary to discuss his rights, et cetera, and then have him here today.

I informed the defense that I anticipated his appearance at 4:00. And at approximately 4:05 a process server did appear in my office and thereafter came back every 20 minutes until approximately a quarter of 6:00 in the p.m. He was the only individual connected with this case who appeared in my office. My client did not come to my office. Did not call

Page 4.

my office.

I had given my client my card, which has my office number, obviously. I have a 24-hour service on my number. And I received no notice whatsoever that he called in any way. I have no reason that I can offer the Court as to why he is not here. I can only indicate to you that as of when I met with him yesterday in person between 9:00 and 9:15, he was anxious to testify and emotionally unstable, that's all I can recall.

THE COURT: Does the Commonwealth have anything to say?

MR. GRANT: Nothing to say. There is nothing to say, Your Honor. We suspected that Mr. Cook was not going to ever appear and he hasn't.

First of all, though, I think that the basis on which Mr. Cook was to appear here if he did show up was, A, he was a witness who was unavailable at the time of trial or with due diligence could not have been made available, and I suppose that is the assumption that they are making, or Mr. Cook will actually come in as a witness to establish actual innocence under

Page 5.

the PCRA.

Could the Court inquire of Counsel on which basis they had hoped that he would testify?

THE COURT: Well, he definitely was available during the trial.

MR. GRANT: Is that correct, Mr. Alva?

THE COURT: I don't care whether it is correct for him. I was the trial Judge: I know he was available during the trial.

MR. GRANT: Well, there have been some conversations to state that Mr. Cook wasn't available.

THE COURT: Well, he was incarcerated under my order.

MR. GRANT: I don't mean unavailable in the physical sense but I mean there was some conversation that he wouldn't want to testify because his counsel had invoked and he had invoked the Fifth Amendment not to be involved in the matter. If that is the case then I guess that Counsel's basis is recently-discovered evidence.

Would that be fair to say, Mr. Weinglass?

Page 6.

MR. WEINGLASS: I wasn't, I wasn't trial Counsel. It was my understanding that he was advised that he was in jeopardy of being charged with the murder himself. And therefore it's my impression that he was advised by Counsel that he had Fifth Amendment rights and that he wasn't available at the time of trial.

MR. GRANT: That's why I would ask Your Honor to inquire of

Mr. Alva, not attempting to broach any attorney-client privileges that may exist, the simple answer as to whether or not that, that privilege was interposed when defense requested, if defense ever requested, his presence.

MR. ALVA: Yes, sir?

THE COURT: He wants to know, he asked you a question. Would you like to answer it.

MR. ALVA: I believe he asked the Court --

THE COURT: No, he asked you.

MR. ALVA: -- for something.

MR. GRANT: I don't necessarily know that Mr. Alva would necessarily respond to any questions I might pose to him, that's why I inquired if Your Honor would be kind enough to

Page 7.

make the inquiry.

THE COURT: What is the position: Was your client available or not?

MR. ALVA: May it please the Court: When my client was initially arrested and charged with the homicide --

THE COURT: The homicide?

MR. ALVA: Well, Your Honor, when he was first arrested it was unclear to the authorities what his involvement might be.

THE COURT: But they never charged him with homicide.

MR. ALVA: Your Honor, initially that was a consideration. And when I first --

THE COURT: I said charged.

MR. ALVA: I am unclear whether or not he was actually charged, Your Honor. I think he might have been. However, when it became clear, at least to this attorney, that he was not part of the homicide, I then engaged in an effort to distance him from the prosecution of his brother as quickly as possible. I did so at a bail hearing, I did so at preliminary hearings, I did so in Municipal Court trials, et cetera. During those times, it is clear that my client had a

Page 8.

Fifth Amendment privilege and that he was willing and was able to at that time exercise that privilege on the advice of counsel.

As, however, it appeared that we were successful in distancing him from the prosecution, it then became an open question whether or not he would be willing to testify. He and I discussed it very peripherally, whether or not it was in his best interest to testify at his brother's trial. I indicated to him that before that decision was made by him -- and it could only be his decision: Not my decision, not his brother's decision, not his brother's attorney's decision -- that we had to discuss it in depth. I was never contacted by the defense in this matter as to whether or not my client would be a witness in the case. However, I was kept very, very briefly and very tangentially aware, kept informed of the facts of the trial as it proceeded by my client. Who ultimately indicated to me -- and I have made this of record so it is clearly not privileged -- that he said to me it had been decided that he would not testify. He never told me who had made the decision, whether it was him or whomever; but we

Page 9.

never then discussed what his rights were, what the strategies would be, what he would say, what he wouldn't say. So I can't give you anymore information than that.

Whether or not you rule he was available or not is up to you based on those facts. But those are the facts and I have related them to you.

MR. GRANT: My only question of Mr. Alva is: At the time when he was willing and able to testify, and related that a decision was made that he was no longer needed, was the Fifth Amendment privilege against self-incrimination still being interposed by you at that time?

MR. ALVA: It was not being interposed, it was being brought up by me as a consideration.

MR. GRANT: For his benefit?

MR. ALVA: For his benefit. But he did not tell me he didn't want to testify, he didn't tell me that he wanted to invoke that.

MR. GRANT: Did you ever indicate that to Mr. Jackson: That he would not be available because of his Fifth Amendment privilege?

MR. ALVA: No, I had no conversations

Page 10.

with Mr. Jackson whatsoever, either initiated by himself or by myself, or initiated by his request.

MR. GRANT: Thank you very much for your candor, Mr. Alva.

MR. ALVA: Does the Court have any other questions?

THE COURT: I don't know, it doesn't look like he is going to show up.

MR. WEINGLASS: Your Honor, to address that point: It was my understanding yesterday that an arrangement was agreed upon between the prosecution and Mr. Alva that if Mr. Cook showed up, that he would be permitted to enter the Court without being arrested and testify. But after that, he would be delivered to the warrant section and, presumably on the basis of the outstanding warrants, jailed. And I think that --

THE COURT: Not necessarily jailed. We don't know what would happen.

MR. GRANT: That wasn't what we agreed upon.

THE COURT: That wasn't what he said.

MR. WEINGLASS: He would be delivered

Page 11.

to the warrant section without outstanding warrants.

THE COURT: Right, but that doesn't necessarily follow that he would be jailed.

MR. GRANT: Mr. Weinglass, for your own edification, for your own edification --

THE COURT: Counselor, you can't say what was the agreement between the District Attorney and the --

MR. WEINGLASS: It is in the record, it was announced in open Court.

THE COURT: Okay, so if you are going to quote him, quote him exactly.

MR. WEINGLASS: It was announced that he would be delivered and surrendered to the warrant section.

THE COURT: Sure.

MR. WEINGLASS: Now, to Mr. Cook's impression, that might have meant to him that he was going to jail.

THE COURT: No, no. No, no.

MR. WEINGLASS: I would just ask the Court if the Court would remove that? Judge, if the Court would remove that requirement --

THE COURT: Counselor, no, no, you

Page 12.

have no standing in this matter. That is strictly between Mr. Alva as the attorney for Cook --

MR. WEINGLASS: No, I have standing for Mr. Jamal to attempt to bring in William Cook.

THE COURT: Well, serve him with a subpoena.

MR. WEINGLASS: We attempted yesterday on five occasions.

THE COURT: Okay.

MR. WEINGLASS: All I am saying is he might come in if the Court will lift the requirement that he surrender to the warrant section. I am only making that request for Mr. Jamal, so that we could have a witness here.

MR. GRANT: Your Honor, I think Mr. Weinglass is laboring under a misimpression. If Mr. William Cook were going to be arrested when he showed up, or after he testified, police officers would arrest him.

But by definition, here in Philadelphia, Mr. Weinglass, when we take someone who has outstanding bench warrants and we take him to the bench warrant hearing room,

Page 13.

usually what happens and customarily what happens is the person is told you didn't show up for your trial, we are going to give you a subpoena to go before another judge and explain why you didn't show up. And if the judge accepts that, then he will give you a trial date at which time you will go to trial, but you will be released on bail in the interim.

Now, the charges for which there are outstanding warrants, to my knowledge, the most egregious offense is an auto theft. Those cases are generally tried in what is called the waiver program, meaning judges try those cases without juries, they are not deemed as serious as other felonies and the sentences are appropriately less severe. So Mr. Alva, who practices here in Philadelphia, is aware of that, it's common knowledge here.

And secondly, Mr. Cook never knew that there was any agreement at all because apparently he never spoke to Mr. Alva. So there is no arrangement to arrest him. And if he is not here, it's not because we're threatening him.

MR. WEINGLASS: I again ask the Court

Page 14.

to lift the requirement that he surrender to the warrant section so that he could be brought in?

MR. GRANT: I don't think Your Honor's entitled to violate the law yourself.

THE COURT: I can't do that.

Well, he is not here. I don't intend to sit here all day and wait. I will return to my chambers. And if he should show up give me a call and I'll be back.

MR. GRANT: Your Honor, in lieu of, I mean I would like to accommodate Mr. Weinglass forever and a day but I do have other business concerns. I would like to know, in lieu of Mr. Cook showing up, do we have to reconvene for Your Honor to conclude the proceedings and give us an approximate date when you could reach a final decision?

THE COURT: No, as far as I am concerned, the proceedings are concluded. They are concluded. Now, whether or not he can get somebody in here, I don't know. But as far as I'm concerned, it's concluded.

And let me say this: It may be that the Supreme Court may send it back again if they ever get him. If the Supreme Court is

Page 15.

interested in that. But I'm not going to try to guess what they are going to do with it.

MR. BURNS: Your Honor, for the record: I am handing to Counsel two copies of our proposed conclusions of law (handing).

Thank you, Your Honor.

MR. GRANT: Your Honor, for my edification: If nothing transpires with respect to Mr. Cook's availability by the end of the day, may I presume, Your Honor, that the proceedings at this stage are then terminated, and they may be reopened at some later point, but for all intents and purposes, that at the end of the day this matter is concluded?

THE COURT: Absolutely.

MR. GRANT: Thank you, Your Honor.

MR. WEINGLASS: Your Honor, may I have an opportunity to meet with Mr. Jamal in the meeting room that's available on this floor?

THE COURT: Yes, as long as the Sheriff has no objections, I don't have any objections.

Anything else?

If not, see you another day.

THE COURT OFFICER: This Court stands

Page 16.

adjourned.

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(The PCRA hearings were concluded at 10:12 a.m.)

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Page 17.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

18. September 1996

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

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Status Listing

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Wednesday, September 18, 1996
Courtroom 707, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN B. PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

ALSO APPEARING:

- JENNIFER ST. HILL, ESQUIRE
  Councel for Veronica Jones

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

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(At 10:05 a.m. the hearing was convened in the presence of the Court and the attorneys.)

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THE COURT: Good morning, everyone.

MR. WEINGLASS: Good morning, Your Honor.

THE COURT: Good morning.

MR. WEINGLASS: Your Honor, just briefly: On May 22nd of this year, while his appeal was pending in the Pennsylvania Supreme Court, Mr. Jamal filed an application requesting a remand to a Court of Common Pleas in Philadelphia to take the additional testimony of the witness Veronica Jones and others in order to complete the factual record respecting claims which were asserted in his PCR Petition and amended Petition. Attached to Mr. Jamal's request was a five-page declaration of Miss Jones verifying that she had testified falsely at his trial and that the false testimony was the product of threats made to her by detectives while she was in custody. The District Attorney opposed the request for remand, in a lengthy

Page 3.

17-page answer arguing to the Supreme Court of Pennsylvania that a remand was not necessary on the basis of the record that was then before the Supreme Court, for various reasons which were alleged in their papers, and they asked the Supreme Court of Pennsylvania to proceed with the appeal without having the testimony of Miss Jones taken.

Mr. Jamal replied to the District Attorney's answer at some length, pointing out to the Supreme Court of Pennsylvania that Miss Jones' testimony was central and pivotal because it bore particularly on the issue of prosecutorial misconduct. Misconduct which Mr. Jamal alleged infected his entire case, not just Miss Jones' testimony but the testimony of other witnesses, such as the witness Chobert, who also denied that he had seen people run from the scene, and witness Singletary, as well as witness Wakshul, who was not produced.

In short, the defense position was that Miss Jones' testimony not only reflects new facts on the scene of the alleged crime, but her testimony also gives a clearer picture of the way in which the prosecution proceeded in the

Page 4.

original trial.

Then, in an extraordinary procedure, the District Attorney requested permission of the Supreme Court to file a 15-page answer to the defense reply, conceding in it's opening paragraph that it was unclear if the Rules even permitted such a process. But nonetheless, the District Attorney did answer the reply, urging now with increasing vigor that the Supreme Court not remand the case or hear the testimony of Veronica Jones.

Despite the District Attorney's objections, on September 4th of this year the Supreme Court of Pennsylvania ordered that the case be remanded for purposes of a -- to use their words -- a hearing -- which is a term of art -- not for purposes of briefs, nor for purposes of argument, but for purposes of a hearing.

Now, in order to comply with the remand order of the Supreme Court, Mr. Jamal is prepared today to put on the stand the witness who the Supreme Court has indicated it would like to hear from. Namely, Veronica Jones.

And I would like to introduce to the

Page 5.

Court at this time Miss Jones, who is seated here at Counsel's table, Veronica Jones, together with her attorney, Miss Jennifer St. Hill. Ms. Hill is here as well.

MS. St. HILL: Good morning, Your Honor.

MR. WEINGLASS: And we are prepared and ready to proceed with Miss Jones' testimony right now.

MS. FISK: Good morning, Your Honor.

My understanding of the application for relief filed by the defense last May was to present the testimony of Veronica Jones. It was alleged in that petition that Miss Jones -- and in very general language -- alleged that Miss Jones had not been called by the defense because, as the defense generally claims, they had not been able to locate her until after the briefing with the Supreme Court started.

My reading of the Supreme Court Order to Your Honor is for Your Honor to determine whether or not Counsel in fact have a right or have met their burden of even proving that Miss Jones is an after discovered witness. It remains the Commonwealth's position that there

Page 6.

has been no proof offered that Miss Jones was unavailable to them at the time of the Post-Conviction Relief Act hearing, that she could not be located as a result of diligent efforts, or that this testimony was unavailable.

Nevertheless, and without conceding our claim that there has been

no proof given, we would ask that Your Honor set a date for a hearing for the defense not only to offer Miss Jones, but to first at least arguably assert their allegation and provide proofs that they were diligently searching for Miss Jones and that Miss Jones was not found by them until the date when they allege that she was found.

I would note, for example, Your Honor, with regard to that, that during last summer's hearings, at the beginning of the hearings when defense Counsel noted that they were unable to locate a number of witnesses and Your Honor had given a fairly short hearing date, the Commonwealth offered to and did indeed find and provide to defense each and every witness, civilian as well as police, as well as retired police, that the defense noted they needed and wanted to call. At no time on any of those

Page 7.

lists was the Commonwealth asked to look for or provide Miss Jones as a witness.

It is, therefore, our position that before Miss Jones testifies -- and certainly not at today's proceeding, which is a status listing -- that the defense first be required to present some evidence and testimony with regard to their efforts to locate Miss Jones. We would ask, since we are here and Your Honor is clearly the proper Court to make determinations both with regard to whether or not she was available, and if she was not with regard to her credibility, we would agree that since we are here that Your Honor, in a single proceeding, rather than perhaps causing various remands, also at that time take the testimony of Miss Jones, so this matter can then be returned to the Supreme Court with a ruling by Your Honor as to whether or not Counsel is even entitled at this stage to have Miss Jones' testimony considered.

MR. WEINGLASS: Your Honor, you will recall that at the hearing the first application we made to the Court was a discovery application: We wanted Miss Jones' address, and

Page 8.

we wanted the address of all the witnesses. We did not want to be in a position, because we learned by experience, to have the District Attorney send the police or detectives out to pick up a witness.

Veronica Jones was an intimidated, coerced witness at the trial. We did not want to send the police out to bring her to Court. They did, as you recall, threaten to arrest one of our witnesses, Hightower, and they brought other witnesses, such as Harkens, to Court and they sequestered him in the Homicide division and we were compelled to go down there and we were not allowed to interview him because Mr. Harkens, to my observation, who was totally frightened, refused to talk to us in the presence of their detectives.

That's why we wanted her address. We clearly indicated right at the outset we wanted Veronica Jones' address and we wanted all the other witnesses' addresses so we could bring them to Court, not have the police or detectives bring them. Particularly true with the case of Veronica Jones, who had previously been threatened and coerced into giving false

Page 9.

testimony.

MS. FISK: What I find particularly notable about Counsel's comments, not to belabor the point, is that while on the one hand Counsel is claiming that they did not know of Miss Jones' allegations until May of this year, Mr. Weinglass is now claiming that they didn't want the Commonwealth to assist them in finding Miss Jones because he knew that Miss Jones had been an intimidated witness last summer. It is precisely for that reason the Commonwealth is asking for strict proof from the defense that Miss Jones was not known to them or available to them who would provide the testimony they are now claiming she would, and that testimony be presented prior to Miss Jones being offered as a witness.

THE COURT: Well, the Court will set October the lst, Tuesday, October the lst, 1996, as the date for further proceedings in this case. We will have to bring the Defendant down.

MS. FISK: Certainly, Your Honor.

THE COURT: Okay.

MS. FISK: I would note prior to that --

Page 10.

THE COURT: We don't have the Defendant here today so we can't proceed.

MR. WEINGLASS: No, Your Honor, we anticipated that problem. And we contacted Mr. Jamal personally, and we asked him if we could proceed today with the taking of the testimony of the witness Jones in his absence, and he specifically gave us permission to do so.

THE COURT: Well, unless he is here to tell me that I can't take your word for it.

MR. WEINGLASS: That's why, Your Honor, we asked the Court to bring him here.

THE COURT: No, he will be down here October the lst, and we will proceed at that time.

MR. WEINGLASS: Oh, I just want the record to show --

THE COURT: Well, the record will show that I said that he will be here October the lst, 1996.

MR. WEINGLASS: Right, and we specifically asked the Court to bring him here today so we could have a hearing.

THE COURT: This was all legal things. I had to find out where you were going. Because

Page 11.

if you read this Order of the Supreme Court, it says now, this 4th day of September, 1996, the matter is hereby remanded to the trial Court for a hearing within 30 days of the date of this Order to determine whether Appellant is entitled to a supplemental Post-Conviction Relief Act hearing, and that Court is to render its opinion within 30 days of said determination. Jurisdiction is retained.

Now, that's their Order. And I didn't receive this Order from the Supreme Court until I found out that you people had filed papers. I knew nothing about it. You didn't give me a copy of your papers. I didn't know where you were. But be that as it may, I finally got the Order from them.

And that Order is really mostly legal. I don't think he is entitled to a supplemental Post-Conviction Relief Act hearing. He may be entitled to a second Post-Conviction hearing. I read through the statute and nowhere does it say anything about filing supplemental Post-Convictions. Especially when it's up at the Supreme Court.

But you can file a second PCRA and go

Page 12.

back up to the Supreme Court and then they could rule on the whole thing at one time.

MR. WEINGLASS: Well, that is a very good point, Your Honor, because in their papers to the Supreme Court, on page 14 of their original answer, and on page 16 of their supplemental answer, the District Attorney argued to the Supreme Court precisely what Your Honor is suggesting. The Assistant District Attorney said to the Supreme Court don't remand this case for taking Veronica Jones' testimony, make Mr. Jamal file a second PCRA, and in that he could take her testimony. But the Supreme Court rejected that argument.

THE COURT: Oh, they did?

MR. WEINGLASS: They did.

THE COURT: Well, you see, they don't keep me informed what they are doing up there. So if you say they said that, then I will not give him a second PCRA.

MR. WEINGLASS: No, they want a hearing now. For Miss Jones' testimony.

THE COURT: They will have a hearing now. October the 1st. But you're saying that that's what the D.A. had asked for and the

Page 13.

Supreme Court denied it.

MR. WEINGLASS: Yes. They in their papers twice asked the Supreme Court to not have a hearing with Miss Jones now, not on

a remand, they said to the Supreme Court let Mr. Jamal file a second PCRA and then he could have his hearing. The Supreme Court then entered an Order saying we want the remand hearing now. And that's why we are here today, pursuant to that Order.

THE COURT: The Supreme Court also could have said rather than a supplemental we are going to give him a second PCRA.

MR. WEINGLASS: No, this is the problem.

THE COURT: Look, you know, you tell me what the Supreme Court says. This is what I have (displaying). I don't know what they are thinking or what they say. Nobody takes me in their confidence.

MR. WEINGLASS: But you also have about 60 pages of briefs.

THE COURT: I didn't see 60 pages of briefs. I don't have that. The --

MR. WEINGLASS: You have it now.

Page 14.

THE COURT: No, I don't have it now.

MR. WEINGLASS: No one has provided you with that?

THE COURT: Only as to the pleadings certain things from the D.A. I called the Supreme Court and the gentleman up there says well, you should have it, I don't know why you didn't get it. He was going to give it to me, and then all of a sudden I had it from the Assistant District Attorney, I said I don't need it now. But that was only the pleadings, no briefs.

MR. WEINGLASS: No, the pleadings are briefs. The pleadings are in the form of briefs, Your Honor, and you could see their arguments twice. They say to the Supreme Court don't send this case back, make Mr. Jamal file a second one. But the Supreme Court did --

THE COURT: I know they sent it back but they haven 't made a decision on that point. If they are asking me to make a decision, that's what I would do.

MS. FISK: Your Honor, it is our position that that is precisely what the Supreme Court has done, that the Supreme Court has asked

Page 15.

you to determine whether or not defense at this time has a right to a second hearing to have Miss Jones' testimony considered as evidence with regard to the PCRA. That is why it is our position that Counsel must first be put to their proofs with regard to whether or not she was unavailable, and then present her testimony. And at the completion of that, Counsel can ask you to accept that testimony as evidence that you can then supplement to the record.

THE COURT: What is the difference if it is a second PCRA or supplemental, they are going to have it all up there?

MS. FISK: Well, it is the Commonwealth's position that Counsel does not even have the right, certainly not based on the pleadings, to present Miss Jones' testimony as evidence which should go towards the PCRA because there has been no showing as to her unavailability at last summer's hearing. That is why we are asking pursuant to the Supreme Court Order that Your Honor hear all the testimony that is being offered now, including this young lady's testimony, as well as other testimony they intend to present to show why she

Page 16.

was unavailable; and at the completion Your Honor will be in a better position to determine whether or not based on that evidence which has been offered, Counsel has a right to have that evidence now taken to be considered and supplemented to the original testimony of the P --

THE COURT: Is there anything in the Act itself that says that? I read the Act over several times.

MS. FISK: No, the Supreme Court --

THE COURT: I said the Act.

MS. FISK: No, Your Honor. The Supreme Court has placed at your door the determination as to whether or not the hearing is to be reopened. It is how I read that opinion.

MR. WEINGLASS: You see, Your Honor, what the Supreme Court --

THE COURT: Well, they could have made that decision themselves.

MR. WEINGLASS: Exactly.

MS. FISK: And they did not. They had to ask Your Honor.

THE COURT: Well, that is the point.

Page 17.

Why didn't they? That is a legal issue.

MR. WEINGLASS: Because they want to hear from Veronica Jones.

MS. FISK: That is not what the opinion says either, Your Honor.

THE COURT: They didn't say that in this Order.

MR. WEINGLASS: They did, they called for a hearing.

THE COURT: A hearing to determine whether appellant is entitled to a supplemental Post-Conviction Relief Act hearing. I said to you I have read the Act over several times and nowhere does the legislature speak of a supplemental hearing. Now, if you want to consider it as a second PCRA, okay.

MR. WEINGLASS: No, Your Honor, this is the problem from the point of view of the Supreme Court -- if I may speak from their perspective.

THE COURT: No.

MR. WEINGLASS: They have a witness who testified at the trial who says to the Supreme Court in a declaration I testified falsely and I was coerced into testifying

Page 18.

falsely. Now, what does the Supreme Court do with that? The Supreme Court reads that declaration --

THE COURT: Go down --

MR. WEINGLASS: -- and they say we want to hear from her.

THE COURT: Yes.

MR. WEINGLASS: We want to hear from her.

THE COURT: Why do they ask me to determine that? That is a legal issue: They could have determined that.

MR. WEINGLASS: You see, what they are saying is they want first a hearing. That's in the Order.

THE COURT: That's what she is talking about. She is talking about a hearing.

MR. WEINGLASS: Now, if there is a hearing and Your Honor hears from Veronica Jones, then you determine whether or not you open the entire PCRA hearing to take the testimony of many other witnesses.

THE COURT: No, I would not. Because it's not in the statute. I believe in following the statute to the letter. When the legislature

Page 19.

has spoken about something, we all have to obey it. We can't interpret it the way we would like to interpret it.

MR. WEINGLASS: Your Honor, I don't think we are dealing in terms of the statute. The Supreme Court has --

THE COURT: That's what it is.

MR. WEINGLASS: The Supreme Court says this to this Court.

THE COURT: Why didn't the Supreme Court say to me give him a supplemental hearing, take the testimony of the witness?

MR. WEINGLASS: Because the Supreme Court correctly said to this Court we want you to hear from Veronica Jones.

THE COURT: Where do they say that in the Order?

MR. WEINGLASS: They say because --

THE COURT: Counselor, you want to go back up to the Supreme Court, go ahead. And get them to say specifically what they want me to do.

MR. WEINGLASS: The Supreme Court was given one exhibit on one witness: Veronica Jones. It read the exhibit and it said to this

Page 20.

Court we want to hear from this witness.

THE COURT: Well, why don't they say that? Why don't they say that --

MR. WEINGLASS: That was the only issue before them.

THE COURT: -- in plain English? Why didn't they say Judge, we want you to hear from the witness and give it to us as a supplemental? Why ask me for my opinion?

MR. WEINGLASS: Because the Supreme Court read the briefs from both sides.

THE COURT: I don't care if the Supreme Court read the briefs. It's under the statute that tells you how you are supposed to handle these PCR matters. Neither I, nor do I believe that the Supreme Court, has the authority to deviate from what the legislature has said.

MR. WEINGLASS: The Supreme Court's position as I read it is that we do not have a complete factual record yet on this case to decide it. And we want that complete factual record.

THE COURT: Wouldn't it be nice if they said that in plain language.

Page 21.

MR. WEINGLASS: It is clearly implicit if you read the pleadings.

THE COURT: It is not to me.

MR. WEINGLASS: If you read the pleadings.

THE COURT: Counselor, I will tell you what I will do. I will try to call the Supreme Court and find out what they want me to do. Between now and October the 1st. That's what I will try to do. Because I want to follow their Order. But this Order, this per curiam Order, doesn't mean anything to me. I don't know what they want me to do, if they want me to decide whether you could file a supplemental, or do they want me to decide whether this is a second PCRA.

MR. WEINGLASS: Clearly not the later, Your Honor.

THE COURT: Well, that's what you say: Clearly. They didn't say that in this order.

MR. WEINGLASS: The D.A. asked for it and they rejected it. Judge --

THE COURT: I will call the Supreme Court, I will say I don't know what you mean. And let them supplement this order so I know

Page 22.

exactly what they want me to do.

MS. FISK: Your Honor, it is our position --

THE COURT: Because if they want me to decide whether you are entitled to a supplemental, I say no because it's not in the statute.

MS. FISK: Your Honor, it is our position that the Supreme Court has remanded this matter to Your Honor because defense Counsel did not in their pleadings provide sufficient basis for proving that they had a right to reopen these proceedings and claim that the witness was in fact unavailable.

We would ask with regard to the October 1st hearing for a full list of witnesses that Counsel intends to put on in addition to Miss Jones, certainly at least a week prior to that listing so we are fully advised as to who those witnesses are going to be. I would ask second, Your Honor, the Court to address the following. That being that yesterday afternoon the Commonwealth was served with a subpoena filed upon us by the defense, we suspect to raise the ire of the Court more than

Page 23.

any legitimate basis, that is a subpoena seeking the entire Commonwealth file in the case of Commonwealth versus Mumia Abu-Jamal.

With regard to the limited breadth of the Supreme Court Order and the limited purpose for which the Supreme Court has remanded this Order, we would ask Your Honor at this time to quash that subpoena. It is clearly improper and invalid.

Their very own defense application to the Supreme Court was simply to ask that Veronica Jones be permitted to testify. To use that as a pretext to seek the entire Commonwealth file, which obviously includes work product as well as other undiscoverable documents, is clearly improper. So we would ask that that subpoena be quashed and we would ask for a full list of witnesses at least one week prior to the October 1st hearing.

MR. WEINGLASS: You see, this is a replay.

THE COURT: Yes, this is a replay. I am not going to replay the case entirely. I am going to try to find out exactly what they want me to do and that is all you are going to be

Page 24.

limited to.

MR. WEINGLASS: What is being replayed here is the District Attorney's attempt to prevent us from getting evidence that's in their file and then they say you didn't use due diligence, that's why you don't have it. We used due diligence, we subpoenaed their file.

And Your Honor about two months ago, in another case, entitled the Wrighter case, here in Philadelphia, after 22 years the D.A. finally turned over their file to a defendant and it had 142 statements which had never previously been turned over.

We are now in the 15th year of Mr. Jamal's incarceration. We now want to see, after we heard from Veronica Jones of what they did to her, what they did to the other witnesses --

THE COURT: They didn't tell me they wanted me to let you open the whole case again. I don't think that's what the Supreme Court wants.

MR. WEINGLASS: That is what the Supreme Court --

THE COURT: Where in the statute --

Page 25.

MR. WEINGLASS: That's what the Supreme Court said.

THE COURT: Well, where is it in the statute that you are entitled to that? All the statute says is you are entitled to a second PCRA hearing.

MR. WEINGLASS: Unlike Your Honor, I don't second guess the Supreme Court.

THE COURT: Neither do I. That's why I am going to ask them exactly what they want me to do.

MR: WEINGLASS: Right. Now, one other thing, Your Honor. We filed --

MS. FISK: May I ask Your Honor first for a response to my request, that is first for a list of witnesses at least one week prior, and second, that the subpoena for the Commonwealth file --

THE COURT: You should have a list of witnesses. I am not going to delve into this whole area. I want to find out exactly what the Supreme Court wants me to do. And we are going to be limited strictly to what they want. Your telling me what they want doesn't mean anything to me. I want to hear it from the Supreme Court

Page 26.

itself.

MR. WEINGLASS: Well, I suggest Your Honor read the pleadings.

THE COURT: I suggest that I contact the Supreme Court and find out exactly what they want me to do.

MR. WEINGLASS: Because in the pleadings we set forth what we want.

THE COURT: Counselor, I am not going to second guess the Supreme Court. If I was on the Supreme Court I would have already ruled on his first PCRA.

MR. WEINGLASS: I'm sure.

THE COURT: Now you would be on the second PCRA.

MR. WEINGLASS: I'm sure that's where we would be.

THE COURT: It's been up there over a year.

MR. WEINGLASS: Not quite, but.

THE COURT: Not quite?

MR. WEINGLASS: No, we filed our first briefs in February.

THE COURT: I don't care about your brief. When did it go up there?

Page 27.

MR. WEINGLASS: It was later, Your Honor.

MS. WOLKENSTEIN: October.

MS. FISK: September of last year.

THE COURT: September of last year. We are now in September of this year.

MR. WEINGLASS: Your ruling was September 15th of last year.

Your Honor, we have also filed with the Court a motion which I assume the Court has read.

THE COURT: Counselor --

MR. WEINGLASS: It is a 15-page motion.

THE COURT: Counselor, I am not going to consider any motions or anything else until I hear from the Supreme Court exactly what they want me to do. So you can do anything you want, but until I hear from the Supreme Court I am not going to hear your motions, whatever else you're filing.

MR. WEINGLASS: And I assume you are not going to hear the District Attorney's motions.

THE COURT: No, I am not going to hear

Page 28.

anything, until I hear from the Supreme Court to know exactly what they want me to do. And that's what I will do.

MR. WEINGLASS: When will the Court --

THE COURT: October the 1st.

MR. WEINGLASS: We will be here on October the lst?

THE COURT: Yes.

MS. FISK: Prior to October lst, perhaps in one week we should have an additional status listing then, after Your Honor has contacted the Supreme Court, so that would enable, once Your Honor has determined what the breadth of this hearing will be, what the scope of this hearing will be, that will enable Counsel to provide the Commonwealth prior to the October 1st hearing with any witnesses they intend to present.

THE COURT: I don't know how, they will just have to extend their 30 days. I don't see how I could tell you now. I don't know when the Supreme Court's going to answer me. When they answer me, I will know what they want me to do. And I'll do it. You will get copies, I suppose, of whatever they tell me.

Page 29.

MR. WEINGLASS: We will be notified.

THE COURT: Or you will be notified.

MR. WEINGLASS: By the Court.

THE COURT: Not by me. You could be notified by the Supreme Court.

MS. FISK: Is Your Honor retaining the October 1st date as a hearing date, is my question, or should we consider that as a status date?

THE COURT: I don't know. Depending on what the Supreme Court tells me, it will either be a status or we will go through with the hearing of evidence.

MS. FISK: And my request is, if based on what the Supreme Court advises you Your Honor determines that that should be a date on which evidence is presented, that if in fact that occurred there would be a prior listing, or at least a prior date by which defense Counsel is obligated --

THE COURT: How could I give you a prior date?

MS. FISK: Well, that is the difficulty.

THE COURT: Well, I have a matter on a

Page 30.

PCRA on September the 30th. And I can't change that. I am giving you the closest date I could give you: October 1st.

MS. FISK: And my request, Your Honor, is to have a status date perhaps seven days from today's date in the hopes that Your Honor has already communicated with the Supreme Court.

THE COURT: Yes, but I don't know when I am going to get an answer.

MS. FISK: I understand that.

THE COURT: I could communicate right now, send them a letter saying I don't understand your Order, would you please tell me exactly what you want me to do. And I will tell them what I think.

MS. FISK: My concern, Your Honor --

THE COURT: They may very well say you're wrong, consider it as a supplemental, okay. Then I will consider it.

MS. FISK: My concern, Your Honor, is that we would return on October 1st and there would be a hearing for which the Commonwealth has not received any notification as to the witnesses defense intends to call.

MR. WEINGLASS: And we received no

Page 31.

discovery. The Court has two applications and the Court indicated it is not going to rule on either.

THE COURT: Well.

MS. FISK: Your Honor, it is our position that this Court has previously ruled that there is no discovery in PCRA proceedings.

MR. WEINGLASS: This is a new proceeding on remand.

THE COURT: Yes.

MR. WEINGLASS: And, Your Honor, also, I think you ought to inform --

THE COURT: But why do you need discovery?

MR. WEINGLASS: For the reasons set out in our 15-page motion.

THE COURT: All that you want to do is present this witness.

MR. WEINGLASS: No, this witness, when you hear this witness, it will open the door to other relevant testimony.

THE COURT: But the Supreme Court, if they sent it down for one specific purpose, that's the only purpose I'm going to hear it.

MR. WEINGLASS: They didn't limit it

Page 32.

to one particular purpose.

THE COURT: I don't know what they are limiting it to. Until we get --

MR. WEINGLASS: That's why...

THE COURT: I am not on the Supreme Court.

MR. WEINGLASS: Your Honor, I think you ought to inform the Supreme Court that both Counsel, those in the District Attorney's Office and the defense, agree that Veronica Jones should be heard from.

MS: FISK: That is not our position, Your Honor.

MR. WEINGLASS: I heard them say they concede not only should --

THE COURT: If it is heard as a second PCRA, you would be entitled to it.

MR. WEINGLASS: They indicated five minutes ago that she should be heard in this remand hearing.

THE COURT: No, not as a supplemental Post-Conviction.

MR. WEINGLASS: Yes, I believe I heard it correctly, I wrote it down that the D.A.'s position is Veronica Jones should be heard from.

Page 33.

THE COURT: Counselor, until I get further instructions from the Supreme Court exactly what they want me to do, I am not going to do a thing. I will set it down for October the lst, because that's supposedly within their 30 days, and we will see. Maybe I'll have an order before then.

MS. FISK: Very well.

MR. WEINGLASS: But I think it would help the Supreme Court if Your Honor indicated that both parties agree that Veronica Jones should be heard from.

THE COURT: Why don't you go up and tell them you both agree?

MS. FISK: Because, Your Honor, Mr. Weinglass is once again

misstating the proceedings in this room.

THE COURT: I am not going to get involved in that nonsense, Counselor. I don't know what went on before the Supreme Court. I have already written my opinion. If they want to reverse it, fine, let them reverse it. If they want to affirm it, let them affirm it. That's all I have to say about it.

MR. WEINGLASS: They indicated they

Page 34.

need additional testimony.

THE COURT: Well, I want to find out what they want.

MR. WEINGLASS: Clearly they want Veronica Jones.

THE COURT: Well, we will find out, Counselor, when I ask them. Because that statement in there is a legal statement.

MS. FISK: Well, Your Honor, also --

MR. WEINGLASS: It seeks facts.

THE COURT: No, it says whether you are entitled to a supplemental Post-Conviction Relief Act hearing.

MR. WEINGLASS: That's only after they say there should be a hearing.

THE COURT: A hearing to determine whether or not you're entitled to. Well, now you got the hearing.

MR. WEINGLASS: This is not a hearing, this is argument. A hearing is --

THE COURT: That's why I say it is a legal question which they could very well have decided. They could have said to me he is entitled to a supplemental hearing, give him a hearing, take the testimony of Jones or whoever

Page 35.

else they want. They could tell me that.

MR. WEINGLASS: They said remanded to the trial Court for a hearing.

THE COURT: Yes.

MR. WEINGLASS: Now, that means testimony. And the testimony is Veronica Jones' testimony.

THE COURT: Okay, we will set it for October the 1st. But --

MS. FISK: Until Your Honor hears from the Supreme Court will Your Honor allow the subpoena that has been filed on the District Attorney's Office to simply be continued and the Office not to be held in contempt for failing to comply with it?

THE COURT: Of course not, because we don't know exactly what the Supreme Court wants.

MS. FISK: That is correct, Your Honor.

Thank you, Your Honor. We will see Your Honor.

MR. WEINGLASS: I would ask for one moment to confer with Counsel.

THE COURT: Okay.

Page 36.

(Discussion was held off the record at this time.)

MR. WEINGLASS: Yes, Your Honor. So it is clear, in the motion that we filed, we asked the Court to recuse itself.

THE COURT: Denied. The Supreme Court sent it to me: How am I going to recuse myself?

MR. WEINGLASS: Oh, you have that power.

THE COURT: Oh, of course, I know. But I am not going to recuse myself. If the Supreme Court didn't want me to hear it, they wouldn't send it to me. They sent it to me, that is their Order: I am going to hear it.

MR. WEINGLASS: You won't recuse yourself?

THE COURT: No. Why should I? That's what the statute says, it goes back to the trial judge. Who knows the case better than I do?

MR. WEINGLASS: Well, Your Honor --

THE COURT: What other judge? He would have to read through all of that testimony and it would be a year before he knows what happened in the prior trial.

MR. WEINGLASS: Your Honor is aware of the fact that in other instances, not in this

Page 37.

case, the appellate courts have sent back cases that Your Honor has heard with the specific direction it be heard by another judge.

THE COURT: Well, if they want that they should say that.

MR. WEINGLASS: Because of the way this Court conducted the original hearing.

THE COURT: That's happened before.

MR. WEINGLASS: It happened this year.

THE COURT: That was not the Supreme Court.

MR. WEINGLASS: It was the appellate court.

THE COURT: It was not the Supreme Court.

MR. WEINGLASS: It was an appellate court.

THE COURT: It was a panel of the Superior Court.

MR. WEINGLASS: Exactly.

THE COURT: And the Supreme Court has the ultimate control of the case in this jurisdiction.

MR. WEINGLASS: But that panel sent the case back to this Court.

Page 38.

MS. FISK: Your Honor --

THE COURT: I won't sit here arguing about what a panel does.

MR. WEINGLASS: The panel refused to let the Court hear the retrial because of the way you conducted the original case.

THE COURT: Well, why didn't you argue that in the Supreme Court?

MR. WEINGLASS: Well, the Supreme Court remanned and you have the power to recuse yourself right now.

THE COURT: I know I have the power but I am not recusing myself. Now, if you wanted the Supreme Court to order me, go back up and have them order me off. I think the only thing that that's going to do is delay further an ultimate decision in this case. And that's all you're doing here. You have been dragging your feet all along.

MR. WEINGLASS: Your Honor, we are prepared today to put Veronica Jones on the stand.

THE COURT: Well, I told you, Counselor, I am not going to do anything until I get specific instructions as to exactly what the

Page 39.

Supreme Court wants me to do.

MR. WEINGLASS: A hearing they said.

THE COURT: I know.

MR. WEINGLASS: We want you to hold a hearing. That's what we are here to do today.

THE COURT: Fine, you go back up to the Supreme Court and say will you please tell the Judge to have a hearing and take testimony from Jones. It's all right by me. You can go up there. You could go up there before. You could go up --

MR. WEINGLASS: Your Honor, we have been briefing that issue since May. And now we're in mid September and we are here.

THE COURT: Is it my fault? I made my decision within a week.

MR. WEINGLASS: And they made their decision on September 4th and we are ready on September 18th.

THE COURT: Exactly what do they want?

MR. WEINGLASS: They want a hearing.

THE COURT: They want to hear Veronica Jones, let them say that. You know, it's very easy to put it in plain, ordinary English so that no one could misinterpret what it means.

Page 40.

MR. WEINGLASS: Your Honor, there was one issue before the Supreme Court and that was --

THE COURT: Counselor, I am not there. You are there. You tell me one thing, she tells me another thing. I am not going to second

guess. I am going to ask the Supreme Court to be specific as to exactly what they want me to do.

MR. BURNS: Could I attempt to clarify, Your Honor, if I may?

THE COURT: All right.

MR. BURNS: I think we are agreed that there is certainly no problem with Your Honor asking the Supreme Court for more specificity. Whether or not they comply with that request I think that one thing is clear: What the defense was telling the Supreme Court in the appeal was that Veronica Jones was not available to them to be called as a witness. The Supreme Court recognized that along with that averment goes a certain burden of proof. The Defendant is being given in this remand Order an opportunity to show that in fact it was not possible for them, despite their diligent efforts, to find Veronica

Page 41.

Jones and call her as a witness at the PCRA hearing. I think we are all agreed that whatever else is true, the defense is entitled to present evidence on that question, to show that it's true that they were not able to find her.

Now, it's their burden to prove that, so one of the purposes, if nothing else, of this remand is for them to have an opportunity to prove what they claim is true: That she was not really available.

Now, as part of their proof on that issue they may choose to call Veronica Jones as a witness in order to help them to prove their assertion that she was not available for the PCRA hearing. We may also agree that as an offer of proof, her evidence may be put on the record without conceding that the substance of the testimony can be considered, because before that stage is reached they first have to prove that she really was unavailable. And they haven't done that yet.

So the one thing that the Supreme Court Order says is give them an opportunity to prove that she really was unavailable. We

Page 42.

certainly would have that much, and we certainly while we are all here should have her testimony put on the record. That much is clear from your own order setting October 1st as the hearing date.

The rest is, it seems to me, argument. And there is really nothing to argue about. We are going to be taking testimony from October 1st. If the defense chooses not to put on any evidence to establish that Veronica Jones really was unavailable, that is the risk they may choose to take. And if they choose not to put on any evidence on that point that will certainly be something that would be considered by the Supreme Court. They have retained jurisdiction and the issue will go back to them.

But one thing is clear: We are going to be presenting evidence on this issue. So regardless of whether or not the Supreme Court decides it is necessary to clarify their order, I think we should and we have agreed to take testimony on October 1st. Anything else I believe can wait for that proceeding.

And so I don't see anything else really that we should be arguing. This is,

Page 43.

after all, a status listing. We have determined that we are going to have testimony on October the lst, whatever that testimony may be. I think the rest can wait until that date, Your Honor.

MR. WILLIAMS: Your Honor, if I may, good morning. First of all, I think Mr. Burns has a misunderstanding of the concept of newly discovered evidence. Miss Jones --

THE COURT: Newly discovered? They knew all about her.

MR: WILLIAMS: Exactly.

THE COURT: But she wasn't available. That is not newly discovered evidence.

MR. WILLIAMS: Exactly.

THE COURT: So why don't you follow what he has suggested: To have a hearing to prove that she was unavailable to you.

MR. WILLIAMS: Well, the question is the prosecution knew of her as Your Honor recognizes. They have, obviously, had police reports with respect to Miss Jones. And the question is why didn't they turn over the police report to the defense.

THE COURT: I am not here to determine

Page 44.

that now. This is a PCRA matter.

MR. WILLIAMS: Well, to ask for a due diligence hearing and to inquire into what diligence the defense --

THE COURT: Well, put your witnesses on the stand. Whoever you have.

MR. WILLIAMS: Your Honor, what diligence requirement is there for the defense to ferret out information that should have been disclosed in the first place by the Commonwealth? The Commonwealth had an obligation to turn over --

THE COURT: Yes, but we are past that stage now. You're asking now to present this witness. You're going to have a hearing to determine why you weren't able to bring her in at the first PCRA matter.

MR. WILLIAMS: That was litigated in the Supreme Court in the papers. The question --

THE COURT: I didn't see any litigation by the Supreme Court on that issue.

MR. WILLIAMS: If you read the pleadings you would see that, Judge.

THE COURT: I don't see that. I don't

Page 45.

know what the Supreme Court said on that. All I know of what the Supreme Court has done is this Order (displaying). This decree, this Order, really, that they sent to me dated September the 4th, 1996. That's all I know. They don't take me into their confidence and tell me exactly what they are doing. Or what the schedules are. They don't send me briefs as to what the parties are filing. I know nothing as to what they are doing there. So for me to act now on what they want me to do, either it has to be more specific or you could adopt the procedure that he said (indicating).

MR. BURNS: Your Honor, I don't know what we are arguing about. If the defense chooses not to put on any evidence on this question, so be it. They have the burden. If they choose not to attempt to elicit it, that's their choice. But they are going to have the opportunity to meet their burden on October 1st. If they don't wish to put the evidence on, fine, this is their opportunity.

MR. WILLIAMS: And I will accept the invitation of Mr. Burns to this extent: What we will show is that two detectives advised --

Page 46.

THE COURT: Counselor --

MR. WILLIAMS: If I may.

THE COURT: -- you heard --

MR. WILLIAMS: Now you are interrupting me and I would like to answer.

THE COURT: I am going to interrupt you one more time. On October the 1st you bring whatever witnesses you want into the Courtroom and let them testify. You could tell me anything you want. That's you. You're not going to testify. Unless you are? Are you going to take the stand?

MR. WILLIAMS: I don't think so.

THE COURT: Okay. Then I don't want to hear about what you think the situation is. Bring your witnesses in on October the 1st and I will decide the issue then.

MR. WEINGLASS: Thank you.

MS. FISK: Thank you, Your Honor.

MS. WOLKENSTEIN: Your Honor, it is a very simple question of misconduct by the police and the prosecution.

THE COURT: October the 1st you will have an opportunity to do that. Counselor, you know, you could argue. You're not going to take

Page 47.

the stand either.

MS. WOLKENSTEIN: Your Honor, the very simple question --

THE COURT: You are not going to take the stand either.

MS. WOLKENSTEIN: The very simple question is whether the prosecution --

THE COURT: We are now in a PCRA matter. In a PCRA matter you have to bring in your witnesses here. I have to hear them and I will make a decision then.

MS. WOLKENSTEIN: They have the knowledge and control of the fact that detectives went into the prison and coerced this witness. It is their obligation under Brady to disclose --

THE COURT: You bring in the witnesses to prove that.

MS. WOLKENSTEIN: That was their obligation.

THE COURT: You bring in your witnesses to prove that.

MS. WOLKENSTEIN: We will bring in the witnesses for that, Judge.

THE COURT: You say a lot of this for

Page 48.

the news media and the people that read that think that that's the truth. The only way we get to the truth is you bring in a witness, they take the witness stand -- it is on this side here -- and swear to tell the truth, and I will listen to them.

MR. WILLIAMS: Your Honor, I think we are in agreement, Miss Wolkenstein said that we are going to present witnesses to show that police officers intimidated this witness. That is what we will show on October 1st. I think we are now in accord.

Are you in accord?

MS. FISK: No, Your Honor, our position is whether or not men from Mars came down and intimidated a witness, the failure of Counsel to present that allegation as part of last summer's hearing is in fact part of our claim. They must show that she was not available to make these allegations last summer and in fact that she hasn't figured this out and made this up between then and now. Our invitation is that they prove first the unavailability of the witness, and once that is proved, at least to any degree, that they will

Page 49.

then, because we are here at this proceeding, and so the record can be complete, the witness is also going to testify in part perhaps to make her own allegations with regard to her unavailability last summer. But our position is that it is the witness' unavailability last summer, not in 1981, not in 1982, but in the summer of 1995 during the pendency of this Post-Conviction Relief Act hearing that needs to be --

THE COURT: She testified in 1981, didn't she?

MS. FISK: In 1982 she testified at the trial, yes, Your Honor.

THE COURT: So she testified.

MS. WOLKENSTEIN: And she testified under coercion at that time.

THE COURT: I know that, that's what I have --

MS. WOLKENSTEIN: The point is for the past 15 years the prosecution has withheld the information that they went in and they coerced this witness. And that's the issue here: Prosecutorial misconduct. And they have suppressed in their files the information about

Page 50.

who those detectives were, that they went in there and they made those representations and threats to this witness, and that's what this is about. That's what our subpoena is about, is to finally get some truth, some light in what's going on in this case. And that requires them to open their files.

MS. FISK: And, Your Honor, it will ultimately be our position that a witness who has come forward after 15 years to recant testimony which was given under oath and has not come forward at a hearing one year prior to, which was covered locally, internationally, and probably every point on this earth, it will be our allegation that it is that witness' testimony which is far more suspect than any actions of police officers. Nevertheless, we welcome the defense opportunity to prove that this witness was unavailable last summer.

MR . WILLIAMS: You know, this is not about a recantation 15 years later. This is about 15 years of suppression of evidence.

THE COURT: Oh, wait a while. That's not what you filed in the Supreme Court.

MR. WILLIAMS: If you read the

Page 51.

verified statement, that is precisely what Miss Jones has asserted.

THE COURT: Let the Supreme Court say I want you to open the whole case again.

MR. WILLIAMS: They want to hear from Miss Jones on that precise issue.

THE COURT: Well, they want to hear why she wasn't available when we had all of these hearings.

MR. WILLIAMS: She wasn't available because we didn't get information from the Commonwealth.

THE COURT: You knew that she testified in the first trial.

MR. WILLIAMS: That's all we knew but we didn't have the files. We didn't know that she was coerced. She has things in the Commonwealth file. We have subpoenaed them, you have quashed those subpoenas. We have made discovery motions, you have denied them. What other diligence is required by the defense?

THE COURT: You want, the defense wants to try this case in the news media.

MS. WOLKENSTEIN: No, we want to try it here.

Page 52.

THE COURT: Well, let's try it here October the 1st.

MS. FISK: Thank you, Your Honor.

THE COURT: October the lst, 1996. Bring your witnesses in.

MS. FISK: Thank you, Your Honor.

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(At 10:50 a.m. the hearing was concluded.)

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Page 53.

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

Date

1. Oktober 1996

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

Hearing Re Veronica Jones

- - - - -

Tuesday, October 1, 1996
Courtroom 306, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN B. PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Veronica Jones	20	33	141	--
David Rosen, Esq.	155	163	167	--
Det. Timothy Sheenan	185	208	210, 212	210
Christopher Milton	220	237	260	--
Floyd Jackson	268	271	277	279

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
1	Statement of Veronica Jones	29
2	Quarter Sessions file	156

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
1	Interview of Veronica Jones 12-9-81	77
2	Photograph of Veronica Jones	138

Page 3.

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(At 10:08 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

THE COURT: Good morning, everyone.

I assume you all received this amended Order from the Supreme Court?

MS. FISK: Yes, Your Honor.

MS. WOLKENSTEIN: Your Honor, there is a preliminary matter before we begin calling witnesses. And that has to do with the outstanding subpoena that we served on the District Attorney's Office for their entire file related to this case. The point about the subpoena is that we believe we are entitled to full disclosure of the District Attorney's files on this case because we have made substantial due process claims in this case on several different grounds and in several respects.

One is that the police had successfully pressured a central defense witness Veronica Jones to change her testimony to Jamal's detriment in the course of the trial. That is a clear due process violation.

Page 4.

Additionally, the fact that the police asked Jones to testify falsely that Jamal was the shooter in and of itself is favorable material evidence which the D.A. was obligated to disclose to the defense and was not done. That is under Kyles V Whitley and Brady versus Maryland.

Additionally, the information contained about Veronica Jones supports the claim that the Court improperly precluded Jones from testifying fully as to potential deals and pressure at the original trial. And that raises our claims under Chambers versus Mississippi.

In support factually of our subpoena for the entire file on the Jamal case there is a record that's already been made in this case. First of all, Veronica Jones' statement itself shows that misconduct has not been previously disclosed to the defense, prosecutorial misconduct has not been disclosed to the defense. And indeed it has been hidden and hidden with Court assistance with respect to the restriction of her testimony which was done during the trial.

Additionally, at the hearing last

Page 5.

summer, the PCRA hearing, it became for the first time known to the defense that a license or a duplicate license or application for a license of another person, Arnold Howard, was found on the body of the deceased Daniel Faulkner. That point which shows that a third person was somewhere around at the time or in close proximity to Faulkner's death was never before disclosed to the defense and that evidence came out in the course of the prosecution witness, Detective Edward D'Amato testifying. That was evidence on the part of the defense theory that a third person was the actual shooter and fled the scene.

Additionally, at our PCRA hearing another piece of undisclosed evidence was the fact that prosecution witness Robert Chobert had been promised by the District Attorney assistance in reinstating his driver's license which he needed to maintain his livelihood. For the first time at that PCRA hearing it became known to the defense that such a promise was made by the District Attorney. That also was favorable material evidence which should have been disclosed to the defense some 15 years ago.

Page 6.

Additionally, it became clear in the course of our testimony at the PCRA hearing that William Singletary had been coerced and

threatened into changing his truthful story that he saw a third man, the actual shooter, shoot Faulkner and run away. That was never disclosed to the defense.

Additionally, the prosecution was bemused and ridiculed the idea that there was a Detective Green, a black detective for the Police Department, who interviewed Singletary that night, and was the officer who threatened him into changing his testimony. Yet, after the hearing, in the course of defense investigation, we have learned that there are at least three black police officers of detective rank or above with the last name of Green, at least three. That information was never disclosed to the defense and we believe that the fact that this was ridiculed is further evidence of the type of prosecutorial suppression of evidence that is going on.

Furthermore, just last night I spoke to the Detective Sergeant who supervised the investigation for the Homicide division, one

Page 7.

Herbert Gibbons. And when I inquired of him of the Jamal investigation, and specifically Veronica Jones, what was done vis-a-vis her in terms of sending detectives in there to coerce her into changing her testimony, he told me to read his reports of the investigation; but there have been no reports by Sergeant Gibbons that have ever been turned over to the defense.

Furthermore, the record of this Office, the District Attorney of Philadelphia County, has been well-known and established in the question of suppressing comparable types of evidence. Just this past February, Judge Savitt held that the prosecution in the Rider case had suppressed some hundred and forty-two statements for 22 years that were taken after a murder took place. 22 years, 142 statements. Upon review, it turned out that he found that eight of these were totally exculpatory reports.

So based on this record of what our claims are, of some of the examples of suppression of evidence and potential misconduct by the District Attorney's Office and the Police Department, we are demanding that our subpoena be honored and we get full disclosure of the

Page 8.

prosecution's file.

MS. FISK: May I respond, Your Honor?

THE COURT: Sure.

MS. FISK: Thank you. Your Honor, I would first note to the Court and to Counsel that the Order of the Supreme Court issued yesterday in accordance I presume with the request by Your Honor to the Supreme Court to clarify --

THE COURT: No, they didn't talk to me at all.

MS. FISK: Oh, all right.

THE COURT: For the record, I couldn't even talk to a law clerk. I talked to a telephone operator who said she'll try to reach a law clerk. She reached a law clerk, she came back to me on the phone and said the Supreme Court does not amend its Order, whatever it said it said.

And that's the way I took it: I am just going to go according to that. But I then received this supplemental. I assumed Counsel must have filed something with the Supreme Court.

MS. FISK: Well, I am aware, Your

Page 9.

Honor, that Counsel had filed with the Supreme Court an emergency application seeking reassignment of this matter from Your Honor.

THE COURT: Oh, I know that.

MS. FISK: And the Supreme Court yesterday specifically denied that emergency application. In addition, the Supreme Court yesterday did amend its initial Order remanding this matter to Your Honor and specified and clarified that the matter is remanded to the trial Court to conduct a supplemental evidentiary hearing commencing on today's date to develop a full factual record concerning the claims regarding Veronica Jones that Appellant raised in his Post-Conviction Relief Act Petition. The trial Court is further directed to enter an opinion within 30 days of said hearing and the Court continues to retain jurisdiction.

It is apparent from that Order that, as we noted at the last status listing, that the purpose of this hearing is to give Counsel an opportunity to present for the record evidence that Veronica Jones could not legitimately be located by them at the last Post-Conviction

Page 10.

Relief Act hearing last summer and to preserve her testimony for the record as well with regard to what she would have said since we are here on this matter if she had been called at such a hearing.

And that is the limit of the purpose of this remand. To suggest as Counsel now does that the entire allegations raised in the Post-Conviction Relief Act Petition filed last year can be revisited is ludicrous and is clearly denied by the specific language of the Supreme Court, which now specifically notes as we claim that the matter is remanded specifically with regard to Counsel's claims of Veronica Jones.

Miss Wolkenstein stands before this Court, stands before Your Honor and notes that the defense proved last summer allegations regarding a particular witness. I would note, Your Honor, that after that witness was subjected to cross-examination, Your Honor made a factual determination that his testimony from the witness stand last summer was not credible, so in fact it has not been proven. Certainly it has been alleged, but it has not been proven.

Page 11.

Counsel also has argued today that the proofs of Miss Jones' testimony prove that there are due process violations. I would suggest that such a request is untimely and first it has to be proven not from Miss Wolkenstein's mouth, not from a typed affidavit, but from a witness on the witness stand subject to cross-examination, then subject to a determination of credibility by this Court.

I suggest, Your Honor, that the subpoenas issued both to the Office of the District Attorney as well as I understand to the Police Department are inappropriately served at this time and I would ask Your Honor to quash all those subpoenas and limit this hearing to the purposes for which the Supreme Court has suggested it be limited, and that is with regard to developing a full factual record concerning the claims regarding Veronica Jones and we proceed on that matter alone.

MS. WOLKENSTEIN: Your Honor, this is a hearing in order to deal with the substantial question of the due process violations, the prosecutorial misconduct towards Veronica Jones. We believe that additional information for this

Page 12.

hearing is in the prosecution files. We have requested that they be disclosed in our status hearing motion to the Court, and we have subpoenaed those records. And we ask for a ruling of this Court that we be able to pursue, as the Supreme Court has ordered, a full evidentiary hearing on the claims by Veronica Jones which we believe necessitate for the first time some openness and release of information from the prosecution's files.

It is undisputed, contrary to what Miss Fisk says, that D'Amato, Detective D'Amato, who was a prosecution witness, stated for the first time that somebody else's license was found on the deceased Officer's body. That was material evidence for defense. It was never disclosed before. It came from the mouth of a prosecution witness. That is undisputed.

This Court did not find Detective D'Amato a liar in any way, nor did the prosecution get up and disown their witness. But from that witness' mouth came evidence, concrete, undisputable, uncontroversial, that in fact there was material, favorable evidence that was for 15 years suppressed.

Page 13.

MS. FISK: I would note, Your Honor, just in light of the fact that Mr. Howard is not a party to this remand, that a statement of Mr. Howard was taken by Homicide detectives and presented to defense Counsel as part of discovery back in 1981, 1982. And there were property receipts with regard to physical evidence that were also available for examination by defense Counsel at the time of trial.

THE COURT: All right, all right, please. I've heard enough.

MS. FISK: Yes, sir.

THE COURT: I am going according to what the Supreme Court has said in this Order, that's all.

MS. WOLKENSTEIN: Your Honor, could you --

THE COURT: I said that's all.

MS. WOLKENSTEIN: Could you rule on my motion, please?

THE COURT: Your motion is denied. Take it up with the Supreme Court. If they want me to have a full-blown hearing again, fine, let them send it back down for that purpose. But

Page 14.

they said they sent it down for a specific purpose and that's all I am going to hear now.

MS. WOLKENSTEIN: For Veronica Jones, alternatively, could we have release of all the information that deals with Veronica Jones from the prosecution files?

THE COURT: I don't know what you need but proceed with whatever evidence you have at this time. If you need something more later on, bring it up.

MS. WOLKENSTEIN: We say we need something more: We need the information on Veronica Jones.

THE COURT: You have your witness here, put her on.

MS. WOLKENSTEIN: Could we have a ruling on this?

THE COURT: I told you I am only going according to this Order. I am not deviating one little bit from what they said.

MS. WOLKENSTEIN: You are denying that in terms of Veronica Jones?

THE COURT: You could interpret it any way that you want but I am going according to what the supreme Court has ordered me to do,

Page 15.

period.

MS. WOLKENSTEIN: As a third alternative --

THE COURT: Listen, Counselor, I made a ruling, now sit down.

MS. WOLKENSTEIN: If you would just look at them in camera.

THE COURT: Counselor, would you please sit down.

MS. WOLKENSTEIN: Is that a denial?

THE COURT: I don't care what you consider it. Abide by this Order of the Supreme Court.

MS. WOLKENSTEIN: I take it you deny the in camera review.

THE COURT: You can take it any way you want, Counselor, just sit down. Now, if you are going to present evidence, present it.

MR. WEINGLASS: If we may have just a second.

(Discussion held off the record at this time.)

MR. WEINGLASS: Your Honor, at this point Mr. Jamal calls to the stand Veronica Jones.

Page 16.

MS. FISK: Your Honor, I would ask sequestration of all other defense witnesses; and I would ask all Commonwealth witnesses who have been brought here as well to remove themselves from the Courtroom.

THE COURT: Okay.

MR. WEINGLASS: Your Honor, I see five people have left after the Commonwealth requested sequestration of their witnesses. May we have the names of the witnesses that the Commonwealth intends to call?

MS. FISK: Your Honor, I will not know who I am calling unless and until Miss Jones testifies. These are all potential rebuttal witnesses. Therefore, I can not at this time assert who will testify.

MR. WEINGLASS: Well, could we have the names of the five witnesses?

THE COURT: You will get it at the proper time when she calls them and she'll tell you why she's calling them.

MR. YEAGER: Your Honor, my name is Jordan Yeager. I am an attorney for the individual witness Veronica Jones.

THE COURT: Did you enter an

Page 17.

appearance?

MR. YEAGER: Yes, I did, Your Honor. Your Honor, I have discussed with Miss Jones any potential Fifth Amendment rights she may have that may be at issue by her testimony today. And she is knowingly and fully aware of those rights. And pursuant to our discussions, she is testifying here today waiving any Fifth Amendment rights that may be specifically at issue concerning her testimony in the 1982 trial. And I am confident and I can represent to the Court that that waiver has been done knowingly and with full advice of Counsel.

MR. WEINGLASS: We are prepared to proceed.

- - - - -

Veronica Jones, Camden, New Jersey, having been duly sworn, was examined and testified as follows:

- - - - -

THE COURT: I have a few questions I have to ask this witness, although I concede you have been telling her everything about her rights.

Have they, has your attorney advised

Page 18.

you that if you say something now which is different from what you said at the trial, you could be charged with perjury?

THE WITNESS: I understand.

THE COURT: Okay. Are you under the influence of drugs or alcohol?

THE WITNESS: No, sir.

THE COURT: So you understand that they don't have to prove which time you lied, but that you gave testimony differently on two occasions?

THE WITNESS: I understand.

THE COURT: Did he tell you how much time you could serve if you are convicted?

THE WITNESS: No, I didn't ask.

THE COURT: Why didn't you tell her that?

MR. YEAGER: Your Honor, we did discuss the possibility of incarceration.

THE COURT: Did you tell her what the maximum is under the law?

MR. YEAGER: Yes, I did, Your Honor.

THE COURT: What did you tell her?

MR. YEAGER: Your Honor, my understanding is that it is seven years for

Page 19.

perjury.

THE COURT: Seven to 14?

MR. YEAGER: My understanding under the statute, the maximum is seven.

THE COURT: So you are saying three-and-a-half to seven?

MR. YEAGER: Yes, Your Honor.

MS. FISK: For each incident of perjury, Your Honor.

THE COURT: For each incident?

MS. FISK: That is our position.

THE COURT: You understand that?

THE WITNESS: I understand.

MR. YEAGER: Your Honor, I have had extensive discussions with --

THE COURT: Well, I know, but I have to create a record here so that later on she doesn't say you didn't tell her something.

MR. YEAGER: Well, I appreciate that, Your Honor. But I, I say this, Judge --

THE COURT: You may appreciate it but I have to make sure that she understands it. That's why I asked her if she is under the

influence of alcohol or drugs.

MR. YEAGER: And I believe she has

Page 20.

answered that for Your Honor.

THE COURT: Okay.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Miss Jones.

A. Good morning.

Q. Feel a little nervous today?

A. Very.

Q. That's understandable. Just take your time and relax.

A. Thank you.

Q. Are you the Veronica Jones who testified back in June of 1982 in the case of Commonwealth versus Mumia Abu-Jamal?

A. Yes, I am.

Q. Do you recall testifying in that case?

A. Yes.

Q. And with respect to your testimony, was any part of your testimony that you gave in that case untruthful?

A. Yes.

Q. And do you recall in what respect the testimony that you gave was untruthful?

Page 21.

Veronica Jones - Direct

A. I told them that I didn't see two men leave the, umm, run away, leave the scene.

Q. And, Miss Jones, in fact did you see two people run from the scene?

A. Yes, I did.

Q. And had you told the police earlier, on December 15th, 1981, that you saw two people run from the scene?

A. Yes.

Q. Now could you describe for us why it was that when you took the stand and testified in the trial you denied seeing two people run from the scene?

A. I thought I was being, I was being, I would be brought into the Courtroom for my charges, which was weapons charges. And I had, I was facing five to 10, maybe 15 years in jail for possession of weapons. This is what I thought I was there for, but when I came into the Courtroom, this is not what I was there for. This is Mr. Jamal's trial, not mine. And I was scared and I didn't know what was going on. I wasn't ready.

Q. Did anyone talk to you from either side prior to your testifying?

A. Just, umm, the policeman I met in the jail.

Q. The policeman talked to you when you were in

Page 22.

Veronica Jones - Direct

the jail?

A. Hmm-hmm, two detectives.

Q. Two detectives?

A. Hmm-hmm.

Q. And this was before you testified?

A. Yes, I had met them before then. I thought they were my lawyers coming to see me. This is what I was told. When I was brought to the room it was two detectives.

Q. Did you have a conversation with them?

A. I did a little talking but I did a lot of listening.

Q. What did they tell you?

A. More so they was letting me know what I was facing as far as my weapons charges. And, umm -- excuse me. That I could, you know, they could help me off those charges if I helped them. And it was a big decision to make but this is five or ten years away from my kids. And right then and there my kids was all I was thinking about.

Q. And it was because of that meeting that you changed your testimony?

A. Yes, it is. Excuse me.

Q. Yes.

MR. WEINGLASS: May Miss Jones be

Page 23.

Veronica Jones - Direct

given some water?

(Pause.)

MR. WEINGLASS: Do you feel a little better now?

THE WITNESS: I'm fine, yes.

BY MR. WEINGLASS:

Q. Okay. Miss Jones, could you describe the detectives?

A. I hate to sound so stereotyped but it was just two white men, late thirties, early forties. One had gray hair, and I couldn't, I don't recall what the other one, color the other hair was. That's the first time I seen them. And then I seen them again later on.

Q. When did you see them again?

A. When they brought me into the Courtroom when I thought I was going for my charges, my gun charges. They were in the back.

Q. And you saw them when you went into the room?

A. I saw them clearly because I looked in the whole room because I didn't know -- I wasn't supposed to be there.

Q. So it was a surprise to you that you were brought in to testify in the Jamal case?

A. It was a big surprise.

Page 24.

Veronica Jones - Direct

Q. Now getting back to your meeting with the detectives prior to your testifying, do you recall what it was that they said to you about your testimony?

A. Well, when they came to see me at the jail?

Q. Yes.

A. It was just more so that, umm, I was to name Mr. Jamal (indicating) as the shooter, you know. And if I was to do that, I was supposed to do something like this girl named Lucky White. They said we made a deal with her and it was going to work out for her so they could make it work out for me. All they kept expressing was don't forget five to ten years, that's a long time. They kept expressing that point. So flashback my kids, that's all I think about is my kids.

Q. And they told you what would happen to you if you did what they wanted you to do?

A. I don't recall, sir, I don't remember.

Q. Did they say anything about the charges against you?

A. The gun charges were supposed to be removed if I went with them.

Q. By the way, Miss Jones, back in 1982 how old were you?

Page 25.

Veronica Jones - Direct

A. About 20, I think I was 20, almost 21 years old.

Q. And did you have children at that time?

A. Hmm-hmm, I had three small girls.

Q. And at that time were you concerned about being separated from them?

A. I was very concerned. It was bad enough the fact that my mother had to watch over them while I was in the street. It was bad enough of that. But to let alone being taken away from them

for all those years. They didn't deserve both. They had my mother, not me full time. But I never missed a birthday, a holiday or nothing.

But I did work the street and I don't regret that. Because I took care of them, good care of them. So I don't regret that. And if I had to do it again, not to be away from my kids for ten years, I don't know what I might do, I might do the same thing again because I loved them, I loved them a lot.

Q. You're still with them, are you not?

A. Yes, I am, they are here with me.

Q. They are here with you?

A. Yes, they are. They love me.

Q. Are any of your children in college now?

A. I have two children, one is in the second-year

Page 26.

of college, one's going for medicine, pre-medicine, and the other's going to be a criminal lawyer. My youngest one hasn't made up her mind what she wants to do.

Q. And do you still live in the City of Philadelphia?

A. No, I don't live in Philadelphia.

Q. Do you live in the Commonwealth of Pennsylvania?

A. I live in New Jersey.

Q. And would it be fair to say that your life has changed considerably?

A. My life is splendid. I have no complaints. It was only this one thing bothering me and I had to get it off my chest while I could. I'm getting ready to be a grandmom for the first time and I want to go into that, raising a grandchild like that, you know, if they know something about me I want it to be pleasant things, not that I am just living a lie, no. I want to be a good grandmom.

Q. Now, do you recall some time meeting with a representative of the defense in this case?

A. The first time I met with the defense was April, the beginning of April of this year.

Q. In April of 1996?

Page 27.

A. Yes. Around the beginning.

(Pause.)

THE COURT OFFICER: (Handing.)

THE WITNESS: Thank you.

BY MR. WEINGLASS:

Q. Do you recall who it was you met with first?

A. First I met with, it's, I will go with the stereotype again, but it was a white defense lawyer, tall thin guy. I can't recall, I know it was Mike something. And a black investigator.

Q. And after that did you meet with any other lawyers?

A. Yes, I met with, umm, Rachel, well, maybe a couple weeks later. It wasn't that same day. I met with Rachel. You. And the other investigator Chris.

Q. And did you freely talk to the people you met with?

A. Yes.

Q. About the matters you have just testified to today?

A. Yes. And I know I did that because my children were in the living room when they first came. And it just all came back up to the surface again. So it was about time we do something about it. Excuse me.

Page 28.

Q. After you met with the lawyers was a statement prepared for you to sign?

A. Yes, yes. We, umm, we met in a Xerox company and when we first made the statement we first went there, the, I didn't have my ID in order to get it notarized. The second time the guy that notarizes it, he wasn't there, so we just sat at the computer whatever. And mistakes were made, I mean, you know, fix commas. And I initialed every page.

MR. WEINGLASS: Your Honor, may the witness be shown this five-page, typed statement entitled Verified Statement of Veronica Jones? I am showing it to Counsel (handing).

(Pause.)

MR. WEINGLASS: Let the record show the statement has been handed to the witness after Counsel has examined it.

MS. FISK: It's been marked.

MR. WEINGLASS: She is now examining it. May it be marked, Your Honor?

THE COURT: What do you want to mark it?

MS. FISK: As Defense Exhibit 1 for this hearing?

THE COURT: Is that what you want?

Page 29.

MR. WEINGLASS: Defense Exhibit 1.

THE COURT: Well, ask for it. D-l.

(Statement of Veronica Jones was marked Defense Exhibit D-l for identification.)

MR. WEINGLASS: This is the same document that was provided to the Supreme Court.

BY MR. WEINGLASS:

Q. Miss Jones, have you looked over the five pages?

A. Yes.

Q. Of what's been marked Defense Exhibit l?

A. Yes.

Q. Does your signature appear?

A. Yes, sir.

Q. And your initials on each page?

A. Yes, sir.

Q. Is that the statement that you signed?

A. Yes, this is the statement I gave you all.

Q. And is it true?

A. Yes.

Q. I want to just ask you one other question about the month going back to January of 1982. Were you questioned at all by police in the 6th District?

A. Yes, I was picked up on the street. And, umm, I thought I was going, I was going in for the night,

Page 30.

you know. That's what we called going in for the night. And when I got there I was put in this room. I was never processed. They usually just sit us to the side for a few minutes, then take us out and fingerprint. I never got none of that. But they started, two guys came and just started questioning me. These weren't the same two detectives that questioned me before. And, umm... they were just questioning me.

Q. Did they say anything to you about what you should testify to?

A. Asked me if my mind had been made up what I was going to do. And these were two policemen that were usually in that area. These were suits that I met. I'm sorry. They wear suits.

Q. By the way, who is, you mentioned a person named Lucky. Who is Lucky?

A. Cynthia White. She was, she was supposed to have been a friend of mine on the street but we, we just friends out there like that. But her name was Cynthia White, we just called her Lucky.

Q. Did her name come up with that conversation?

A. Yes; they said you don't see Lucky around here, do you. In other words, they didn't pick her up. See, a number of us got picked up but I didn't

get processed, okay. And when we got picked up Cynthia was not in the bunch.

Q. To your knowledge, was she arrested at that time?

A. Not to my knowledge.

Q. Was there discussion among the other women about that?

A. I really couldn't say because I was in a different room. I was in a room by myself.

Q. I see. And when the police mentioned Lucky to you did they say anything about your testimony as compared to what Lucky would do?

A. Just told me I would be able to work, I wouldn't have to worry about my charges, I could work. Basically, that was it.

Q. And did they say what you would have to do in order for you to be able to work?

A. Just name Mr. Jamal as the shooter.

Q. They made that clear to you?

A. Hmm-hmm.

Q. That was in January?

A. This was around, I would say around the 9th or the 15th, somewhere in between there. Because it was really cold. Somewhere in there.

Q. So just so to summarize --

A. Okay.

Q. -- you were visited at your home about a week after the incident on December 15th by two detectives?

A. Yes, yes.

Q. And you were questioned?

A. Yes.

Q. Then in January of 1982 you were taken to the 6th precinct?

A. Yes.

Q. And questioned again?

A. Yes.

Q. And then just prior to your testimony you were visited by two detectives when you were in lockup?

A. Yes.

Q. And questioned a third time?

A. Yes, but they weren't the same people.

Q. Each time they were different detectives?

A. Yes, yes.

MR. WEINGLASS: If I may have just a moment.

(Discussion was held off the record at this time.)

BY MR. WEINGLASS:

Q. My last question to you, Miss Jones: It's

clear that on the night of the occurrence shortly after you heard the shooting you saw two men run away from the scene?

A. Yes, sir.

Q. You're clear on that?

A. Very clear.

MR. WEINGLASS: Thank you. Nothing further.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

MS. FISK: Thank you.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Good morning, Miss Jones.

A. Good morning.

Q. Miss Jones, many of the questions I ask you will obviously deal with events many years ago. If there is anything you do not recall, don't guess, just tell me you don't remember, all right?

A. Yes, ma'am.

Q. It is not a test and I don't want to subject you to trying to assume or guess things.

A. Thank you.

Q. Now, I also don't mean to make you uncomfortable or in any way question the means by which you supported yourself and your daughters but I do need to inquire to a certain degree. Miss Jones, until when did you work, ma'am, as a prostitute in Philadelphia?

A. It's nothing you keep a calendar on. But I started when I was like maybe 17, being naive and weak for a man. That's when I started. The physical scars led me to do this for myself. I am going to do it, I might as well do it for myself.

Q. I mean the question is when?

A. I am telling you, ma'am, from 17.

Q. Yes.

A. I can't really say when I stopped. You know, maybe when I was about 23, 24.

Q. All right. So would it be safe to say that for approximately two or three years after you were called by the defense as a witness in the trial of Commonwealth versus Mumia Abu-Jamal you continued to work as a prostitute in the City of Philadelphia?

A. No, ma'am, it would not be safe to say that, because I didn't live in Philadelphia.

Q. I'm sorry, my question was until when did you work as a prostitute in Philadelphia? That was my

original question.

A. Well, I will straighten this out for you. As far as Philadelphia, when this happened I stopped.

Q. Oh, all right.

A. But as far as you mean when I said up to 23 and 24, I had moved for my children and whenever I saw a man it had to be on the money tip. So I still call that prostitution but I did not work the street.

Q. Okay.

A. Okay.

Q. You say when this happened you stopped?

A. Yes.

Q. When which this, when the shooting occurred?

A. Yes.

Q. So following December 9th, 1981, would it be fair to say you no longer worked the streets?

A. I can't say no longer worked the street, I was trying to get out of that. But I might have occasionally still did it.

Q. Okay. When you say you occasionally still did it, were you occasionally still doing it up until the time of the trial?

MR. WEINGLASS: Your Honor, I am going to object at this point. I think Counsel has a misunderstanding that is confusing the witness.

Miss Jones was in custody at the time of the trial.

THE COURT: Okay. Okay. Let her ask her questions, if she doesn't understand it she'll say so.

MR. WEINGLASS: In fairness to the witness the question should

be accurate.

THE COURT: The question is to the witness. She could tell us. We don't need you to testify, unless you want to take the stand.

MR. WEINGLASS: No, Your Honor.

THE COURT: Okay, then, your objection is overruled. This is cross-examination, we are trying to find out what she did.

Okay. Go ahead.

BY MS. FISK:

Q. Are you able to answer my question, Miss Jones?

A. I can answer it.

Q. Okay.

A. You want to ask it again?

Q. Sure. Up until the night of the shooting, until you were taken into custody, which was --

A. Okay.

Q. -- a week or two before this, whenever you

Page 37.

Veronica Jones - Cross

were taken into custody in June 1982, were you from December 9th, 1982 up until you were taken into custody, were you still occasionally working the streets?

A. I don't recall.

Q. You don't recall?

A. I don't recall working the streets.

Q. You would agree with me, ma'am, that from December 9th, 1981, up until today, you were never again arrested and charged with prostitution in the City of Philadelphia; is that right?

A. Not to my knowledge, I'm not sure. But, no, not prostitution, no.

Q. If I were to suggest to you --

A. Okay.

Q. -- that your criminal extract shows that from December 9th, 1981 to date there is no record of your ever having been arrested and charged with prostitution in the City of Philadelphia, you would agree with me that that was accurate?

A. Okay, it's accurate.

Q. All right. Now, when these police officers in January 1982 -- I'm sorry, you said these detectives --

A. Yes.

Page 38.

Veronica Jones - Cross

Q. -- in January 1982 questioned you inside the -- you said the 6th Police District?

A. Yes.

Q. -- and they told you that you could work however you want if you named Mr. Jamal the shooter, what did you tell them?

A. They told me that, asked me did I make up my mind yet. That's exactly what they said.

Q. And what did you say to them?

A. And I, I can't remember what I said to them. Because I was already mad by being picked up. So I really can't recall the exact conversation that went on. But I know as far as the deal, as far as them telling me about Lucky and what I should do is things that Lucky do, do what Lucky do, in order to work --

Q. Did you tell --

MR. WEINGLASS: Your Honor, I object: Counsel is interrupting the witness. She was in the midst of giving an answer.

THE COURT: All right.

THE WITNESS: I can't recall exactly what I told him.

BY MS. FISK:

Q. Well, I understand you can't recall the exact words, but did you tell him you would go along with

Page 39.

Veronica Jones - Cross

that deal or you would not go along with that deal?

A. I can't recall exactly how I put it or what I said.

Q. But you don't remember whether you told him that you would or would not go along with the deal?

A. No, I don't remember.

Q. You have no memory of that?

A. No, I do not.

Q. Did you have further contact with those police officers? I'm sorry, those detectives?

A. No, not those two.

Q. You testified on your direct examination that those detectives were suits. That's people who worked what, the area of 13th and Locust generally?

A. They were suits, they were undercover. They were suits, that's what I call them.

Q. You call them that because they were people that you knew?

A. No, they are just people that don't wear blue shirts, that's what we call suits.

Q. Do you know their names?

A. No, I do not, I did not ask.

Q. I take it they had no badges on because they weren't --

A. I would see their badge but I can't remember

Page 40.

Veronica Jones - Cross

what no numbers were.

Q. Did you ever see these suits again?

A. No, ma'am, I didn't.

Q. Had you ever seen them before?

A. In the area. On and off.

Q. Now, ma'am, you told us today that from -- I'm sorry from that time until June -- I'm sorry -- in June you told us that you were arrested and placed in custody?

A. In June I was arrested, yes.

Q. Do you remember the precise date that you were arrested?

A. I don't remember the precise date but I know it was in June.

Q. Now, you have a document that you just picked up?

A. Yes, I do have a document.

Q. What is that, ma'am?

A. It says June 12th.

Q. What is that document that you have placed before yourself?

A. It says I was arrested on a robbery and gun charges.

Q. My question is the document, is that Defense Exhibit 1, the statement which you gave this past

Page 41.

Veronica Jones - Cross

May?

A. Yes.

Q. Okay. And it says that you were arrested on what, ma'am, on robbery and gun charges?

A. Robbery, assault, gun, and multiple other charges.

Q. And it gives the date as June 12th, 1982?

A. Yes, it does.

Q. I take it that you did not have an independent recollection of that date, someone provided that date to you from, perhaps, Court records?

A. I know it was June.

Q. Okay, do you know where the date June 12th came from?

A. Not precisely, no, I don't.

Q. Nevertheless, when this statement was typed up and that precise date June 12th, 1982 was placed there --

A. Hmm-hmm.

Q. -- you initialed that page?

A. Yes, I did. I knew it had to be around that time because of the first of the month.

Q. All right. But someone else told you that the precise date was June 12th; am I correct about that?

A. I believe so.

Page 42.

Veronica Jones - Cross

Q. And who told you that the precise --

A. I'm not sure who told me.

Q. Was it one of the persons taking your statement or preparing this statement?

A. I'm not, I am not sure where June 12th came from, I just know it was in June.

Q. But you remember being arrested, you remember being arrested and charged; is that right?

A. I remember very well being arrested on these charges.

Q. So you were arrested for far more than weapons charges; isn't that right?

A. Yes, I was.

Q. You were charged with robbery as well?

A. Yes, I was.

Q. And in fact, at the time of your arrest you had two guns in your possession; isn't that correct, ma'am?

A. Yes, I did.

Q. They were stuffed down in front of your pants?

A. No, ma'am, they weren't.

Q. No they weren't?

A. No, they weren't.

Q. Where were they?

A. They were under the cushion that I was sitting

Page 43.

Veronica Jones - Cross

on.

Q. You don't recall having them stuffed down your pants underneath your shirt?

A. No, ma'am, I don't.

Q. Now, at the time of your arrest there were other persons arrested as well, weren't there?

A. Yes.

Q. At the time of your arrest for robbery?

A. Yes.

Q. Do you recall those persons' names?

A. Yes, I recall those persons. It's been a while. I remember my girlfriend's name.

Q. What was her name?

A. Her name was Jan.

Q. Her last name was Stelly?

A. Yes.

Q. And do you remember the name of the man who was arrested when you were arrested?

A. The one I was dealing with, that was Bernard.

Q. Was there someone named Zachery Leach arrested?

A. Okay, that was his name.

Q. Is that Bernard, Bernard is a nickname?

A. No, Bernard is Bernard and Zachery is Zachery.

Q. Okay, I got it. Now, following your arrest

Page 44.

Veronica Jones - Cross

did you have a preliminary hearing on those charges? I'm sorry, before I ask you that: would I be correct that at the time of your arrest on June 12th, 1982 that bail was set?

A. I don't recall.

Q. Do you remember being brought in front of a magistrate?

A. I remember being brought down, yes.

Q. If the Quarter Sessions file reflects that at the time of your arrest bail was initially set I believe at the amount of a thousand dollars, would that refresh your recollection that that was the bail initially set?

A. It was a thousand twenty, that I remember, yes.

Q. A thousand twenty, okay. Now, did you thereafter have a preliminary hearing?

A. This was -- yes, I believe so.

Q. That was six days following your arrest? Would that be about right?

A. That was after the first bail set?

Q. That's correct.

A. Yes.

Q. About six days following your arrest?

A. Hmm-hmm.

Page 45.

Veronica Jones - Cross

Q. You appeared in front of a Municipal Court Judge?

A. Okay.

Q. And there may or may not have been witnesses who testified and you were ordered held for Court, again the Quarter Sessions file regarding your matter reflects that that was on June the 18th, 1982; do you recall that? Or having --

A. I don't recall the date but I recall being there, yes.

Q. And again according to the Quarter Sessions file, it reflects that your bail at that time on June the 18th, 1982 was reduced to $300. Do you recall that happening?

A. Yes.

Q. Okay. And that was, according to your statement, Defense Exhibit 1, and the Court record, ten days prior to your being called by the defense as a witness in the case of Commonwealth versus Jamal; is that right?

A. I don't remember.

Q. All right. Well, was your preliminary hearing before or after the detectives, the two white men 30 and 40 years old, one with long white hair, visited you in the prison?

Page 46.

Veronica Jones - Cross

A. The preliminary hearing was after.

Q. Was after?

A. Yes, I believe. I'm not quite sure but I believe it was after.

Q. How long before you were brought in to testify did these men come to see you in prison?

A. I don't remember.

Q. Oh, all right. Did you say anything to these detectives when they visited you in the prison?

A. I never said too much, I just listened.

Q. Well, did you tell them you would do it or did you tell them you wouldn't?

A. I just wanted to, I had them reassure me about my charges being dropped. And they kept reassuring me, reassuring me. Then they started saying how my kids could be taken from my mom being I was being sent up for all this time. Yeah, so I remember talking to them but I don't recall what I told them.

Q. Okay. After they said that to you and you went to the preliminary hearing, did you expect that the charges then would be dropped?

A. I was 20 years old: I didn't expect anything. I just wanted to get out and go home.

Q. And --

THE WITNESS: Are you done with me?

Page 47.

Veronica Jones - Cross

MS. FISK: And leave -- no, ma'am.

THE COURT: We will take a recess if you need it.

THE WITNESS: Excuse me, sir.

MS. FISK: Let me know, Miss Jones, when you're ready to go on.

THE WITNESS: I'm ready, I'm okay.

BY MS. FISK:

Q. Those detectives who visited you at the prison, did they tell you as the suits had done that you should say that Jamal was the shooter?

A. Yes, they did.

Q. And then you went to your preliminary hearing and you were held for Court and your bail was reduced; is that right, ma'am?

A. Yes.

Q. Am I correct that despite the fact that your bail was reduced on the 18th of June, 1982, according to the Quarter Sessions file in your case, that you did not have the funds to make bail; is that correct?

A. My mother had enough trouble taking care of my kids while I was acting a fool, no, I didn't have the funds.

Q. Okay, so it is for that reason that you remained in custody and were still in custody when

Page 48.

Veronica Jones - Cross

you were called to testify; is that right?

A. I believe so.

Q. There was, however, a time the following July that you did come up with the funds, whether it was $300 or 10 percent of that, $300 to make bail; is that right?

A. I don't recall when they came up with it but they came up with it.

Q. When you say they, they are referring to your mother?

A. My stepfather.

Q. Okay. And again if the Quarter Sessions file shows that in July 1981 you made bail, would that refresh your recollection? I'm sorry.

MR. WEINGLASS: I think Counsel misspoke.

BY MS. FISK:

Q. 1982 -- I apologize -- you made bail, would that refresh your recollection as to when you made bail? Specifically, July 23rd, 1982, a bail piece appears in the Quarter Sessions file signed by you using the name Louise Tatum; would that be correct?

A. I remember using the name Louise Tatum but I don't remember anything else.

Q. Right, and when you made bail in July 1982, I

Page 49.

Veronica Jones - Cross

take it you were given a subpoena and told when to appear back in Philadelphia City Hall to face trial on the charges of robbery and the various weapons offenses; would that be correct?

A. Yes.

Q. All right. Now, did you remain in contact with Mr. Leach or your friend Jan after that time?

A. The same people got me in trouble? No.

Q. Okay, so I take it, then, that you were unaware that later in the year 1982 and into 1983, when their cases came up for trial regarding this matter, that all the charges against them were discharged because the witnesses failed to appear?

A. No, I didn't know.

Q. Nevertheless, you were subpoenaed to appear in November 1982 to face trial on these same charges; isn't that correct, ma'am?

A. November 19th, yes, it is.

Q. Nevertheless, you failed to appear; is that correct?

A. Yes, I did.

Q. And that is because you wanted to be with your children, ma'am?

A. I was scared, I wanted my kids away from all this crap that I started. So I took them and we

Page 50.

Veronica Jones - Cross

left. And we left for seven years and I loved it. I loved every minute of it.

Q. And when you say you left, you left from where?

A. I left the state.

Q. You left which state, ma'am?

A. I left the state of New Jersey, I left the state of Philadelphia, I just left.

Q. You left the state of New Jersey or you left the state of Pennsylvania, I'm sorry?

A. I was, I was living in Philadelphia, my children were living in Jersey.

Q. Yes, ma'am.

A. When they let me go I went and got my children, I said a prayer and I got on a bus and I left.

Q. And you went where, ma'am?

A. I just left.

Q. And you went where, ma'am?

MR. WEINGLASS: Objection to the relevancy of this inquiry. It doesn't go anywhere.

THE COURT: How do you know?

MR. WEINGLASS: Well.

THE COURT: What are you, a mind

Page 51.

Veronica Jones - Cross

reader? It is a question she is asking her. It may be relevant later on. I will let her answer it.

MR. WEINGLASS: Could Counsel represent what relevance it has? It doesn't appear relevant.

THE COURT: Your objection is overruled. That's enough.

Answer the question where did you go.

THE WITNESS: I went to West Virginia.

THE COURT: Okay.

BY MS. FISK:

Q. When did you return from West Virginia, Miss Jones?

A. I'm not sure, I'm not sure when it was. It was seven years later, six or seven years later.

Q. And let me go back for a moment, please. The notes of testimony from this case, the case of Commonwealth versus Jamal, reflect that prior to your being called as a defense witness by Mr. Jackson, that an attorney representing you was brought in to speak to the Judge. Now, that attorney represented to the Court and in fact during your own testimony at the trial you referred to having spoken to your public defender. Do you recall having an attorney

Page 52.

Veronica Jones - Cross

who represented you?

A. No, I do not. No.

Q. Do you recall speaking to an attorney prior to your testifying in the case of Commonwealth versus Jamal?

A. I spoke to an attorney as far as my charges were. Mine.

Q. Yes, ma'am. Yes, ma'am.

A. But I didn't have one representing me there.

Q. There was reference in -- let me see if I could call your

attention to it.

MS. FISK: Just bear with me for a moment, please.

(Pause.)

MS. FISK: I will return to that because I know it is here somewhere, I'm not certain.

BY MS. FISK:

Q. My question to you, then, is, or your answer is you have no recollection of speaking to an attorney prior to your testifying in this case or you do?

A. No, I spoke to an attorney about me.

Q. Your own case?

A. About me, yes.

Page 53.

Veronica Jones - Cross

Q. You don't remember speaking to an attorney about this case?

A. Not that I recall, no.

Q. Your attorney that you spoke to at your preliminary hearing, that is after the visit of the police officers -- I'm sorry -- the detectives to the prison, did you report that visit to your attorney?

A. I don't remember. I don't remember.

MR. WEINGLASS: Your Honor, I think the record's unclear as to whether or not that visit occurred before or after the prelim.

MS. FISK: I disagree. I believe Miss Jones has clearly testified that that visit was prior to her preliminary hearing and she has already answered that question.

MR. WEINGLASS: I think she has already testified that it was after the preliminary hearing.

MS. FISK: Not once.

MR. WEINGLASS: She has testified both.

MS. FISK: Not once did she say that, Your Honor. And I think the record is clear.

THE COURT: The record will show, he has it down there. Whatever it shows it shows.

Page 54.

Veronica Jones - Cross

BY MS. FISK:

Q. Well, let me ask you this, Miss Jones.

A. What?

Q. You told us that after you made bail in this matter, and prior to the date you were supposed to appear, you left town and you came back some six or seven years later. Now, am I correct that some six or seven years later you were indeed arrested on that open bench warrant?

A. No, it wasn't that open bench warrant. I was arrested in New Jersey for something else and I was extradited over here on my bench warrant, yes, thank you.

Q. Okay. And when you were extradited over here -- and again the Quarter Sessions file reflects that you were arrested again, whether it was through New Jersey or not, on June the llth, 19 -- I'm sorry, I was -- yes, on June the l0th, 1988, and bail was reset in the amount of a thousand dollars, in fact that is the thousand twenty dollars that had to be paid for your bail, that was in June '88, is that what you were thinking of before?

A. Okay, my apologies, I'm sorry.

Q. The Quarter Sessions file reflects that on June llth, 1988 you were again given bail, this time

Page 55.

Veronica Jones - Cross

in the amount of a thousand twenty dollars, that was in fact furnished by someone named Daurish Rakeem?

A. That was when I was extradited back over here for the gun charges I was still at bail for a thousand dollars, a thousand twenty dollars.

Q. Put up by Daurish Rakeem?

A. Yes.

Q. Who is he?

A. Ex.

Q. Ex?

A. Just an ex.

Q. Friend? Husband?

A. Friend.

Q. Okay. At that time you were reunited, were you not, with the same attorney who had represented you at the preliminary hearing some six or seven years earlier?

A. Yes, ma'am.

Q. Did you at that time in 1988 report to your attorney that you had been threatened or intimidated by detectives' and as a result had perjured yourself under oath?

MR. WEINGLASS: Your Honor, I have to object.

THE WITNESS: I was 20 years old.

Page 56.

Veronica Jones - Cross

THE COURT: Your objection is overruled.

MR. WEINGLASS: Your Honor --

THE COURT: Objection is overruled. This is cross-examination.

THE WITNESS: How was I supposed to know I was supposed to tell him everything?

MR. YEAGER: Objection: It goes to attorney-client privilege.

THE COURT: Overruled. Overruled.

THE WITNESS: Like I said, I was 20 years old: How am I supposed to know I am supposed to tell this attorney about this or this attorney about that? I didn't know nothing about that.

BY MS. FISK:

Q. You will agree with me that in 1988 you were six years older and therefore you were 26 years old?

A. Well, I was 26. Still I was a very naive person not knowing the Court system as I do a little now.

Q. Now, is your answer that you did not report it to your attorney or you do not remember whether --

A. I don't remember reporting it to him.

Q. You don't remember reporting it to him?

Page 57.

Veronica Jones - Cross

A. I don't remember reporting, saying anything to him about this.

Q. Okay. Now, as I understand it, the visit to You -- I'm sorry -- in 1988 when you were arrested on the bench warrant and bail was again made, you did in fact in July 1988 enter a plea of nolo contendere to the weapons charges that had been placed against you back in 1982; is that correct?

(Pause.)

A. Nolo -- no contest, right?

Q. I'm sorry, yes.

A. Yeah.

Q. No contest; is that correct?

A. Yes.

Q. And that was a guilty plea that you made in July 1988 which caused you to be placed under probation for a period of years; is that right?

A. I didn't enter a guilty plea.

Q. I'm sorry, the no contest plea?

A. Yes.

Q. As a result of that no contest plea you were found guilty and placed on probation?

A. I don't know about the guilty part but I know I was placed on five years probation, yes.

Q. Well, you were found guilty after you pled no

contest; isn't that correct?

A. Okay, well, I'm sorry.

Q. Okay. Now, you said that being located on the bench warrant was because you had been arrested in New Jersey for something else?

A. You mean how did they find me?

Q. Yes, ma'am.

A. Because I was, I was working and receiving welfare in New Jersey.

Q. And how long had you been back in New Jersey at that time?

A. I can't remember how long I was back.

Q. Well, was it days, weeks or months?

A. I don't remember. I really don't remember.

Q. Well, do you remember how much welfare you received illegally at that time?

A. It was,about $2,000.

Q. And your testimony today is that you were arrested in New Jersey before this bench warrant was lifted in Philadelphia?

(Pause.)

MR. WEINGLASS: Your Honor, how would the witness know that?

THE WITNESS: I don't know.

MR. WEINGLASS: The question --

THE COURT: Lifted?

MR. WEINGLASS: Yes.

BY MS. FISK:

Q. You were taken back, you said you were extradited to Philadelphia, right?

A. Yes, I did.

Q. And again the Quarter Sessions file, if the Quarter Sessions file reflects that you were given bail again in Philadelphia on June llth, 1988, is it your testimony that the day that you were arrested in New Jersey was before June llth, 1988, before you were given bail here in Philadelphia?

A. I don't recall. You have that paper, I don't recall. I don't know -- I don't remember.

Q. I am asking you in terms of being arrested in New Jersey?

A. I was brought over here, that's all I know.

Q. Well, I thought you told us --

A. I had another bail set, yes, I did.

Q. I thought you told us that you were brought over here after you had been arrested in New Jersey on other charges?

A. I said I was -- I will say it again -- I was extradited from New Jersey. I was... I didn't appear in Court I believe for welfare fraud in New Jersey.

I had a warrant over here. They picked me up there, I sat in the County for three days over there and they ran the computer. I came up on the computer for not showing up in Court. They extradited me here. I was here for about seven days and my bail was raised for me.

Q. Okay. Now, I take it that the welfare fraud that you committed was done for the betterment of your children, so you could better support them with money?

A. Couldn't nobody else take care of them but me.

Q. And it was necessary for you to steal from the state of New Jersey?

A. I don't call it stealing, I call it borrowing. Because through these years I have worked, so I call it borrowing.

Q. You call it what?

A. I call it borrowing.

THE COURT: Borrowing.

THE WITNESS: It has been recouped, okay.

MS. FISK: Borrowing, I see.

BY MS. FISK:

Q. Nevertheless, the State of New Jersey called it theft by deception; is that right?

A. Well, that's what they call it. I don't call it that.

Q. Would you agree with me that on October the 14th, 1988 you were found guilty in Camden, New Jersey for theft by deception and placed on probation for a period of four years?

A. For a period of four years?

Q. Yes, ma'am.

A. That probation and Philadelphia probation was combined. I did five years and $200 -- 200 hours community service. So I don't remember them saying four years over there for no welfare fraud, no.

Q. And the 200 hours of community service, what was the community service that you performed, ma'am?

A. I had a nice leader so almost whatever I wanted to do. It was maybe cleaning, maybe working in the office, just about everything. But it was free.

Q. Working what office, ma'am?

A. Whatever office they place me in.

Q. Would you tell us where it was that you worked?

A. City Hall.

Q. Okay. And your community service then was --

A. Cleaning.

Q. -- working for the city for 200 hours?

A. Yes, ma'am.

Q. And you were also ordered to pay restitution in the amount of $2,424?

A. Yes.

Q. And that was the amount that you had illegally borrowed?

A. Yes, ma'am.

Q. From the State of New Jersey?

A. Yes, ma'am.

Q. Now, how much welfare were you obtaining on a weekly basis prior to that arrest in 1988?

A. Is all this dealing with what you got me here for?

Q. Indeed it is, ma'am.

A. Back then?

Q. Yes, ma'am.

A. I really can't recall how much they gave you per month, you don't get nothing per week.

Q. Per month?

A. I can't really recall but I think it was 300 some odd dollars, maybe 404, I'm not sure.

Q. Was that coming to you on behalf of your children?

A. Yes, it was.

Q. Hadn't there in fact been a period back in 1985 when the money had to go to your mother?

A. Yes, it did.

Q. So your children were living in New Jersey in 1985, not in West Virginia; is that correct?

A. Like I said, I don't remember when I brought them back. And they were with me when I left here.

Q. When you returned after the six or seven years?

A. Yeah.

Q. Were your children with you during that entire period of time?

A. With me.

Q. If records in New Jersey reflect that in 1985, only three years following this case, your mother had to obtain welfare benefits for your children in New Jersey, would that refresh your recollection that your children were living in New Jersey?

A. No, it doesn't refresh my recollection because they have been with me. They were with me. Now, I hope you get your paperwork right but my kids were with me.

Q. I would be happy to, ma'am --

A. And they are here with me. They are with me. I don't leave my kids nowhere.

Page 64.

Veronica Jones - Cross

Q. Because you want to demonstrate to your children what it is to live life lawfully; is that right, Miss Jones?

A. It has nothing to do about that. We are not even going to go there. It has nothing to do with that.

Q. I thought, Miss Jones, that you told us the reason for your coming forward now, and in fact in your affidavit you note that --

A. Yeah.

Q. -- was to -- I'm sorry -- in the press conference you gave last week --

A. Uh-huh.

Q. -- is when you said that this was to show your children what lawful living was like; is that correct?

A. No, ma'am, I did not.

Q. That is not what you said?

A. No, ma'am, I did not. Just because I wanted to act the fool and do whatever I wanted to with my life doesn't mean that I was trying to raise my children like that. Yes, you could call me contradicted or whatever. Whatever I do, I didn't raise my kids like that. They learned from my mistakes from seeing me do certain things. That's

Page 65.

Veronica Jones - Cross

why they are strong black women now. Because I -- you think I like what I did? No, I didn't. But it paid the bills and they never went hungry. And I'm okay with that. And as long as they have no complaints with that, I'm fine.

Q. Miss Jones, is your mother's name Shirley Wilson?

A. What does my mother have to do with this?

Q. I am asking.

A. Yes, her name is Shirley Mae Wilson.

Q. And did Miss Wilson on November lst, 1985 file a civil custody action in the State of New Jersey for custody of your children?

MR. YEAGER: Your Honor, objection.

MR. WEINGLASS: I object to this also.

MR. YEAGER: The witness has certain Constitutional rights and the questions can't go into the private matters of this witness that have nothing to do with this case or her testimony here today and nothing to do with her testimony in the underlying criminal trial.

MS. FISK: Your Honor, this is to --

MR. YEAGER: The Commonwealth is trying to harass the witness.

MS. FISK: This goes to Miss Jones'

Page 66.

Veronica Jones - Cross

credibility, Your Honor. She has testified today that for six or seven years following 1982 she and her children resided in West Virginia.

THE COURT: Okay.

MS. FISK: The fact that her mother in New Jersey is seeking custody of her children in 1985 certainly impeaches that statement.

MR. WEINGLASS: It has nothing to do with impeaching that statement. They can't question Miss Jones about anything that her mother did. Number one, they don't know exactly what her mother did because it is all hearsay.

THE COURT: Counselor, if you want to take the stand and testify we will be glad to listen to you.

MR. WEINGLASS: Your Honor, I only ask that the testimony proceed according to law.

THE COURT: Well, it is proceeding according to --

MR. WEINGLASS: The questions are based on hearsay documents.

THE COURT: No, they are not. She knows very well where her girls were at that time.

MR. WEINGLASS: And she has testified

Page 67.

Veronica Jones - Cross

to that.

THE COURT: All right.

MR. WEINGLASS: But questioning her on what her mother did has no bearing on the witness' testimony.

THE COURT: It could refresh her memory that the children were not with her at that time.

MR. WEINGLASS: She has not indicated she has any trouble with her memory.

THE COURT: Okay.

MR. WEINGLASS: She's very clear that the --

THE COURT: The objection is overruled. Okay. Let's go.

BY MS. FISK:

Q. Miss Jones, does that refresh your recollection that your mother on November lst, 1985 filed a civil action custody complaint because welfare told your mother to sign because of negligence by you and you are just coming and going any time you felt?

MR. WEINGLASS: Now, Your Honor, we are getting hearsay on hearsay. What the welfare agency told her mother is additional

Page 68.

Veronica Jones - Cross

hearsay to the hearsay of what her mother put in the document. This is highly improper.

MS. FISK: Your Honor, I am permitted to use anything to refresh the recollection of a witness.

MR. WEINGLASS: The witness has not indicated she needs her recollection refreshed.

THE COURT: Maybe she does.

THE WITNESS: I don't.

MR. WEINGLASS: The witness has indicated she doesn't.

THE WITNESS: My children were with me. Whatever my mother did while we were gone, that's my mother. My kids were with me.

BY MS. FISK:

Q. Was your mother receiving welfare for your children?

A. I don't know what she was doing. You would have to ask my mother.

Q. Was your mother receiving welfare for your children in West Virginia?

A. No, when I got there, but I will tell you if there was any wrongdoings, if the welfare system didn't pick it up then it is not my fault. I have nothing to do with that part.

Page 69.

Veronica Jones - Cross

Q. Now, you have told us when you were brought in to the trial to testify, that is the Jamal trial to testify, you did not realize you were going to be brought in; is that right, ma'am?

Miss Jones, let me know when you're ready.

A. I will.

Q. Okay.

A. I don't mean to sound so obnoxious but, you know, I didn't know I was being brought there for that reason, no.

Q. Okay.

A. I thought I was finally coming up for my, coming up to have something done with my charges.

Q. Yes, ma'am. And when you were brought into the Courtroom, as I understand it you had not met with any attorney on that day or had you. Representing you.

A. I don't, I don't remember. I don't remember.

Q. Okay. When you came into the Courtroom you have told us that you looked out, you saw somewhere in the Courtroom the two white detectives who had visited you in the prison some -- how long before had it been?

A. I don't recall how long before I saw them but

the two white men that were there were the same two white men standing on the same side of the room with all the blue shirts in the corner. I don't remember saying that --

Q. Okay. And as I understand it, as a result of your fear because you were only 21 years old, your testimony is that you decided to go along with what they had told you; is that correct?

A. I told them I didn't see two men running away. That's what I told them when they brought me into that Courtroom that day. And I didn't know what I was coming in for. I denied seeing anything.

Q. All right, let me ask you this. Other than at the trial when you said you did not see two men running away, was everything else you said at the trial the truth?

A. Basically.

Q. When you say basically, I assume that --

A. Some parts of it is true and some parts wasn't.

Q. Well, I assume, Miss Jones, that between 1982 and today you have been given an opportunity on behalf of those who have called you to testify to review your trial testimony; is that right?

A. Between 1982 and today, I just met these guys

this year.

Q. Yes.

A. So therefore it was not on my mind at all until I ran into them.

Q. Between April 1996 and today have you been given an opportunity to review your testimony from the trial?

A. Yes, I have, several times.

Q. Okay.

A. Good.

Q. Then other than saying basically, can you tell us specifically what other areas of your testimony -- and I recognize that when you said you didn't see two men running away that that was an untruth?

A. That was untrue.

Q. What else was it that you said at the trial which was an untruth?

A. I said I was intoxicated, I remember that.

Q. And were you intoxicated?

A. But I can't recall exactly what I said per se, I can't recall all that.

Q. Well, let me go back first, then, to December 1981 when detectives took a statement from you. And again that statement was part of the attachment that defense Counsel filed, the statement which you gave

in December 1981. You've had an opportunity to see that, haven't you, ma'am?

A. Yes, I did.

Q. All right. Now, was that a truthful statement?

A. Not all of it, no.

Q. Not all of it?

A. No.

Q. Now, was that, did you tell the police the truth when they interviewed you in December 1981?

A. I told them I saw two men run away.

Q. And does that appear in the written statement?

A. I can't recall, I don't have that paper with me.

Q. Well, let me ask you this. When the police interviewed you in 1981, it was in your mother's home; is that correct?

A. Yeah.

Q. And that interview was done in New Jersey?

A. Yes.

Q. Your mother was present when the interview was taken from you?

A. She sat there for a minute, yeah, and then she left. But she left the room because I insisted on it.

Q. Okay. And the two detectives then spoke to you, one of them recorded the questions that he was asking you and the answers that you were giving; is that correct?

A. I don't remember no recorder, I remember one doing all the writing.

Q. Okay.

A. One was writing in the small book, one was writing on some paper.

Q. I'm sorry, when I said recording I was referring to writing, I apologize.

A. All right.

Q. One of them was writing and one of them was drawing a picture?

A. He was just tapping a book, I never saw what he was writing.

Q. Well, do you remember what the detectives looked like?

A. No.

Q. White? Black? Male? Female?

A. Two were white and I can't remember if the other one was black or Hispanic, I can't remember.

Q. Okay, one of them -- and again this is from your trial testimony -- I believe one of them was a Camden police officer and the other two were from

Philadelphia; is that right?

A. There was three from Philadelphia, the Camden police officer didn't even sit in there.

Q. Three from Philadelphia?

A. Yeah, Camden police officer didn't sit in the kitchen with us.

Q. If you testified at the trial there were three of them, one from Camden and two from Philadelphia, is that a lie?

A. Well, I don't remember. I must have been mistaken, I don't know. I know it was three police officers. The one from Camden police was reassuring my mother or something so that's why I know he wasn't in the kitchen with us.

Q. Does that make it four police officers? I am not trying to

confuse you, I am trying to understand. Are you saying there were four who came, one from Camden and three from Philadelphia?

A. The one from Camden was more so somebody that knew us in Camden. And he came there with the three police officers.

Q. That's what I am trying to say. So there were four who came, one from Camden and three from --

A. Three from over here, yes.

Q. Okay. After you insisted that your mother

Page 75.

Veronica Jones - Cross

leave you remained in the room with three Philadelphia police officers; is that it?

A. Yes, ma'am.

Q. Okay. And one of them wrote down things that he was saying to you and things that you were saying to him?

A. Mostly things he was saying to me and I was just answering what he wanted me to answer. He asked me was I there. I told him I was there.

Q. Well, when you say you were --

A. He asked me was I in the area.

Q. Okay. So he asked you questions and you gave answers?

A. Yes.

Q. And you gave truthful, the most truthful answers you were able to give?

A. The most I could remember.

Q. Okay. Now, as you were speaking to him, was he, that person who was writing, writing down your answers?

A. I can't recall who was writing down nothing.

Q. After the interview was complete between you and this detective, were you given an opportunity to review the handwritten pages that the detective had filled out?

Page 76.

Veronica Jones - Cross

A. I don't recall, maybe I did, maybe I didn't. I don't recall. I really don't.

Q. Were you asked to sign that statement?

A. I was asked to sign something but I don't recall doing all this reading and writing and everything I said. This is a hundred years later, I don't recall all this stuff. All I know is that I lied.

Q. Yes, ma'am.

A. That's the biggest thing in a nut shell: I lied and it wasn't right.

Q. And my question is when you lied, Miss Jones, and that's what we are trying to find out, ma'am?

A. Well, evidently when I was at trial, I don't know.

MS. FISK: May I ask, Your Honor, that this document please be marked as Commonwealth Exhibit 1. This is Miss Jones' December 1981 statement.

I would note that a copy of the statement was amended to the defense application to the Supreme Court. And quite obviously they have had it prior to this date.

(Investigation Interview Record was marked Commonwealth Exhibit C-l for identification.)

Page 77.

Veronica Jones - Cross

THE COURT OFFICER: So marked C-l, Your Honor. (Handing to the witness.)

BY MS. FISK:

Q. Miss Jones, Commonwealth Exhibit 1 is a copy of the statement. Do you recognize first the signature on the bottom of each of the first five pages, and then the signature I guess at the top, upside down with the final page?

A. Yes, ma'am.

Q. Are those your signatures?

A. They are my signatures.

Q. And did you place your signature on each of those pages after these words were written there?

A. Evidently: They 're here.

Q. My question is did you place your signature --

A. Yes, ma'am, I did.

Q. Prior to placing your signature on those pages, Miss Jones, did you review these pages, did you read them to make sure they were accurate?

A. I don't recall if I reviewed them or not, I don't recall.

Q. So you didn't know whether you were signing as a witness to the Kennedy killing --

A. These were police officers, why should I have

Page 78.

Veronica Jones - Cross

to second guess them? Why should I have to check after them?

Q. Police officers --

A. A cop is a cop to me.

Q. Police officers regularly --

A. Why should I have to, they -- I am trusting them, why should I have to check behind them? I don't know about the law. I didn't know about it then, ma'am, I didn't.

Q. Police officers regularly arrested you up until that time, is that correct, for illegal conduct?

A. Illegal prostitution, yes, ma'am.

Q. And yet you trusted the police officers and didn't feel it was necessary to review anything they asked you to sign?

A. What does that have to do with them picking me up for prostitution?

Q. You are telling us that you trusted police officers; is that correct?

A. Just because it was prostitution, I never, it was not their doing, they were doing their job.

Q. I would like you to look at the last page of this Exhibit. And do you recognize that as a diagram of Locust Street, 12th Street, 13th Street?

Page 79.

Veronica Jones - Cross

A. This is so called Locust Street, but this isn't the way things were.

Q. Do you see the words right near your signature Veronica Jones, do you see the words heard shots?

A. Yeah, at the bottom.

Q. Isn't that in your handwriting, Miss Jones?

A. No, I don't recall writing no heard shots. That is my signature like I told you. I don't recall writing anything else. I didn't draw no diagram.

Q. Did you place your signature on that --

A. I wrote my signature on that paper, yes.

Q. I haven't finished my question yet. Did you write your signature on that diagram after all these other marks which are on it were there?

A. Ma'am, I don't recall. I don't remember.

Q. All right, Miss Jones, with the exception of at the trial saying that you did not see two people run away, and the -- I'm sorry -- the one other matter which you just told us previously was untrue, am I correct that in the rest of your testimony at trial you attempted to tell the truth about where you were and what you saw, with the exception of people running away; is that right?

A. Ma'am, like I said, I don't recall. This has been a long time. I see what you have given me. I

Page 80.

Veronica Jones - Cross

have glanced through it.

Q. Yes, ma'am. Well, take your time to read it, please, Miss Jones.

If you wish to read over each and every word take your time.

A. These were all the places that were there. But 1ike I said, I don't remember exactly what I told these men, I really don't. But I do remember saying that I did not see two men walk away, I mean run away. I do remember saying that.

Q. At trial?

A. Yes.

Q. Yes, ma'am. If I would suggest to you that nowhere in this statement does it ever say that you saw two men run away, would that refresh your recollection that you never told the police that either?

MR. WEINGLASS: This is an improper question. The witness' attention --

THE COURT: If you are objecting, the objection is overruled.

MR . WEINGLASS: Would the Court please hear me out on the objection?

THE COURT: I don't need to hear you out.

MR. WEINGLASS: The witness has a

Page 81.

Veronica Jones - Cross

five-page statement in front of her.

THE COURT: Well, let her read it.

MR. WEINGLASS: Well, Counsel --

THE COURT: Let her read it.

MR. WEINGLASS: The correct questioning should direct her attention to particular parts of the five-page statement.

THE COURT: Let her read it.

MR. WEINGLASS: This isn't a test of someone's memory or reading.

THE COURT: Counselor, it is, some of it is.

MR. WEINGLASS: If it is an accurate test she should be shown what Counsel is referring to.

THE COURT: You try your case your way, let her try her case her way. She doesn't tell you how to proceed.

Read over your whole statement.

(Pause.)

THE WITNESS: This isn't -- what I told them when I was in court, I told them that I did not see two men run away. But this one I agreed -- they told -- look, I was doing what I was told.

Page 82.

Veronica Jones - Cross

MS. FISK: There is no question pending.

MR. WEINGLASS: She is being interrupted again.

THE COURT: Let her wait until she gets a question. I don't want her ad-libbing.

MR. YEAGER: Your Honor, I believe the witness is out of tissues. May I, Your Honor, may I pass the witness some tissues?

THE COURT: Get tissues from there...

BY MS. FISK:

Q. Miss Jones, there has been no claim that the document Commonwealth Exhibit 1 is what you said at trial. The document Commonwealth Exhibit 1, I have asked you if you recognize that as the statement that you gave the detectives on December 15th, 1981. And I do not wish to mislead you or misrepresent. That is what it is reflected as: A statement given by you to detectives on December 15th, 1981 when you were interviewed in your mother's home in New Jersey. Just so you understand that. Do you understand that now?

A. I understand what you're saying.

Q. Okay. Now, would I be correct that at no place in that statement does it say that you saw two

Page 83.

Veronica Jones - Cross

people running -- I'm sorry -- two men running away from the scene of the shooting?

MR. WEINGLASS: Objection, Your Honor: The statement speaks for itself.

THE COURT: Objection is overruled.

MR. WEINGLASS: It is in the statement.

MS. FISK: It is not in there, Your Honor, that is exactly --

MR. WEINGLASS: It is in the statement.

THE COURT: Well, do you want to get up on the stand and we will ask you the questions?

MR. WEINGLASS: No, the statement is in evidence. And the statement speaks for itself.

THE COURT: She is asking her a question.

MR. WEINGLASS: Whether it is on the statement. And it is on.

THE COURT: Counselor, if you keep interrupting the Court I am going to move you out of this case.

BY MS. FISK:

Page 84.

Veronica Jones - Cross

Q. Miss Jones --

A. I told them, like it says on here, I did see two men running away. Now, as far as the Rocky's and all that --

Q. I'm sorry, Miss Jones, where? Direct me, please, to a page where it says you saw two men running away?

A. On page 2, first paragraph.

Q. Yes, ma'am. Do you see -- I'm sorry.

A. Well, running and jogging to me is the same thing, ma'am, I'm sorry.

Q. I'm sorry, Miss Jones, directing your attention, I believe it is what you are looking at, starting at the bottom of the first page -- and if I am reading it incorrectly please correct me if I am wrong -- it reads, after I saw the policeman fall I saw two black guys walk across Locust Street and then they started -- I'm sorry -- they started sort of jogging. The next thing I saw was a wagon coming. Did I read that correctly, ma'am?

A. Yes, you did.

Q. Do you see the word away there?

A. If I knew you was going word-by-word way back then I would have gave you word-by-word. I am just telling you what I told them.

Page 85.

Veronica Jones - Cross

Q. Do you see, ma'am, on the fifth page of that statement there is a question to you, question, how close did the two black males who jogged across Locust Street get to the fallen officer. And your answer as reported was not close enough, maybe two or three steps away? Do you see that answer to that question, Miss Jones?

(Pause.)

A. This is when I seen them running away from him.

Q. Well, does the fact that they got not close enough suggest to you that they were running towards the officer?

A. No, it does not suggest they was running towards him, they was running away.

Q. I see. Now, at the trial, Miss Jones, you testified that you were on the north side of Locust Street, sort of on the corner of 12th and Locust but on the north side of Locust Street when you heard these shots; am I correct about that?

A. If I said that, ma'am, if you check my high school records, my north and south and my math and all that is not all that hot. So I don't know north and south, which way, I don't know all that.

Q. But you knew, for example, where Chancellor

Page 86.

Veronica Jones - Cross

Street was, and you knew which side of the street the police officer was on?

A. That was up the street.

Q. Well, were you on the same side of Locust Street or the opposite side of Locust Street?

A. I was on the right-hand side of the street, opposite of where the policeman fell.

Q. That is my question.

A. Okay.

Q. You were across Locust Street from where the policeman was?

A. Across the street. He fell on this side, I was on this side (indicating). At the corner.

Q. And when you are saying this side you are talking about the opposite side of Locust Street, right, that is the street the officer was on, he was closer to 13th, you were at 12th?

A. I was closer to 12th, I was on 12th.

Q. Can you explain for me, ma'am, why Commonwealth Exhibit 1, this statement which you gave truthfully and honestly on December 15th, 1981 to the detectives, reflects that you were on the same side of Locust Street as where the police officer was shot?

A. I don't know, that's not where I was standing.

Page 87.

Veronica Jones - Cross

Q. Well, why did you say that to the detectives in December 1981?

A. If they said north, west or south, I didn't know. Like I said, I am not good with those type of things. But I was standing across the street at the corner.

Q. You knew where Chancellor Street was; isn't that correct, ma'am?

A. Who don't know where Chancellor Street is?

Q. Pardon?

A. Back then who didn't know where Chancellor Street was?

Q. So you did know where Chancellor is?

A. It is a street.

Q. So that we can be clear, Chancellor Street is just north of,Locust Street, closer to Chestnut Street from Locust, right?

A. Chancellor Street is where Chancellor Street is. I am not going to tell you again: I don't know about north, south, I don't know about that.

Q. I am not asking you about that. You know where Chestnut Street is, right?

A. Yes.

Q. You know where Locust Street is, right?

A. Oh, yeah, I know where Locust Street is at.

Page 88.

Veronica Jones - Cross

Q. And if you went from Locust towards Chestnut you would get to Chancellor Street first, right? Okay? I am trying to do it without north or south so you understand.

A. I didn't go that way, ma'am. I didn't go that way.

Q. I am not saying you went that way, I am just trying to establish directions. Would you agree with me that Chancellor Street is that side of Locust between Locust and Chestnut? I am not suggesting that you went that way, I am just placing it there.

A. I believe so.

Q. That is the direction Chancellor Street is on, right?

A. You know better than me, ma'am.

Q. No, I don't. You said everybody knows where Chancellor Street is.

A. Because Chancellor Street is up the street, sometimes that's where we went.

Q. I understand but --

A. I can't recall where Chancellor Street is. I know it is in that area. You've got Camac, you got Chancellor, it's in that area, okay.

Q. No, it is not okay, Miss Jones.

A. Well, I can't help you because I don't know.

Page 89.

Veronica Jones - Cross

Q. Do you know that Chancellor Street is in between Locust and Chestnut?

A. Well, then that's where it is.

Q. And you knew that then, right?

A. Evidently, if I had -- oh.

MR. WEINGLASS: Your Honor, I am from out of town but Counselor is wrong: It is in between Locust and Walnut.

MS. FISK: Yes, but it is north of Locust and that is the direction I am attempting to establish because Chestnut is also north of Locust. I am not suggesting there are no other streets, I'm just trying to establish a direction.

MR. WEINGLASS: But there are many streets further north than Locust but Chancellor is between Locust and Walnut.

THE COURT: Counselor, if you want to ask her questions later on save it for later on.

MR. WEINGLASS: I don't think the witness should be misled.

MS. FISK: Fine.

THE COURT: She is not being misled. If she is operating in these streets she should know them.

Page 90.

Veronica Jones - Cross

BY MS. FISK:

Q. Chancellor Street is between Locust and Walnut; is that right?

A. Yes, ma'am.

Q. Yes?

A. Yes, ma'am.

Q. Now, your statement of December 15th, 1981 reads as follows, ma'am. That I was in a little restaurant called Rocky's, it is on Chancellor Street. We were drinking. We came out of the restaurant, went down the alley towards 12th Street. We went down 12th Street and crossed Locust Street.

Did I read that correctly, ma'am?

A. You read it correctly but that's what we was doing all night. That's what we were doing. Joking and drinking beer.

Q. Was what I just read to you what you told detectives on December 15th, 1981?

A. He asked us what we did that night. I told him that's what we usually did, we hung out at Rocky's. It was a little pizza place where you could drink beer at and that's where I was earlier that night.

Q. And did you tell them that when you came out of the restaurant we went down the alley towards 12th

Page 91.

Veronica Jones - Cross

Street, we went down 12th Street and crossed Locust Street?

A. Yeah, I lived on 12th Street.

Q. Pardon?

A. You come down the street, you come down Chancellor and make a right and you end up on 12th and Locust. That was my spot right there.

Q. And you note on the statement -- that's what I am asking you about -- then you crossed Locust Street. That would take you to the other side of Locust Street still on 12th; is that right?

A. No, I didn't cross Locust.

Q. Do you see where it says --

A. I see where. I'm sorry, I'm sorry for jumping. My fault. But I didn't cross Locust Street.

Q. Did you tell that to the detective is my question?

A. No, ma'am, I don't recall telling him that.

Q. But you see it written on the statement?

A. Yes, I see it.

Q. That was a page that was signed by you?

A. Well, that was my fault. I didn't cross Locust Street.

Q. Do you see, ma'am, on the diagram which was

Page 92.

Veronica Jones - Cross

also signed by you on the last page the little dots that have two Xs, and by one is the words heard shots, and then there is another one up by what would be another, I would presume would be Polly's in front of Camac Street, are all on that other side of Locust Street?

A. I didn't see it. I see it.

Q. Which is the side of Locust Street one would be on after one crossed Locust Street having left the Chancellor Street area? Do you see that, ma'am?

A. Yes, ma'am. But I wasn't on that side of the street.

Q. You never said that to detectives?

A. No, ma'am, I wasn't on that side.

Q. You can't explain why those words are on this statement?

A. No, because I didn't cross the street.

Q. Now, what you testified to at the trial, ma'am, is that from the side of Locust Street you now say you were on, which is the same side closer to Chancellor Street --

A. Yes, ma'am.

Q. -- which is the north side of Locust Street?

A. Thank you.

Q. That after you saw, after you heard several

Page 93.

Veronica Jones - Cross

shots -- now, you testified at trial that you heard several shots while you were still on the 12th Street side; is that correct?

A. Yes.

Q. You were on 12th Street?

A. Yes, but I wasn't right around the corner. I was around the corner on 12th Street leaning on the Speed Line.

Q. Which is what, 10, 15 feet off the corner?

A. No, I am five or six steps.

MS. FISK: I would ask, Your Honor, Miss Wolkenstein not testify and we leave it to the witness to answer my questions.

THE COURT: Would you please not testify.

MS. WOLKENSTEIN: Okay.

THE COURT: If you want to testify let me know, I will put you up on the stand and you could testify to anything you want.

MS. WOLKENSTEIN: The witness shouldn't be misled, Your Honor. It is quite clear where it is.

THE COURT: You keep your mouth shut or I will move you out again.

BY MS. FISK:

Page 94.

Veronica Jones - Cross

Q. Miss Jones, you were leaning on the High Speed entrance?

A. (Witness nodded head affirmatively.)

Q. Yes?

A. Yes.

Q. And after you heard the shots is when you moved to the corner to look up the street; is that right?

A. Not right away.

Q. Not right away?

A. No. Common sense I am not going to stick my head around the corner right away. But I did a few minutes later.

Q. Okay. How many minutes later?

A. I don't know.

Q. Well, you heard, well, am I correct first that all shooting had stopped before you made any effort to even go to the corner to look around the corner?

A. You really couldn't, you really didn't know it was a shot, you would think it was like a backfire.

Q. Okay.

A. First" But then you also remember the area you're in.

Q. Right.

A. And we heard -- I heard it. I paused for a

Page 95.

Veronica Jones - Cross

minute. Then I just looked around the corner. I came out the corner and I looked up the street. It is like an angle. I looked up the street.

Q. Now, you testified at trial that at that point you also saw someone at a soda machine?

A. Someone standing up around the other Speed Line. I didn't see the soda machine. I said there was a soda machine in that area. There was two of them.

Q. Do you remember testifying at the trial that you saw a man across Locust Street, or that is across from where the officer was shot, at the soda machine, and that that person from the soda machine eventually moved towards the corner? Do you remember saying that at the trial?

MR. WEINGLASS: Objection unless the witness is shown the testimony. Common courtesy. This is a test of the witness' recall of testimony 14 years ago. She should be shown the testimony.

THE COURT: That is your problem waiting to file a PCRA until 14 years later.

MR. WEINGLASS: Objection.

THE COURT: Your objection is overruled.

Page 96.

Veronica Jones - Cross

MR. WEINGLASS: Your Honor, when you question a witness about any testimony the witness should be shown the testimony and asked if that was her testimony.

THE COURT: She could ask it first and then she could give her the statement to read if she has it there.

MS. FISK: I had the notes, but.

MR. WEINGLASS: The witness has indicated over and over she has no precise recall of the testimony.

THE COURT: Oh, I don't know, she testified that she had a lot of recall on direct.

MR. WEINGLASS: Well, she recalls testifying falsely.

THE COURT: Yes.

MR. WEINGLASS: This is on a minor detail.

THE COURT: No, it is not minor.

MR. WEINGLASS: Well, the witness should be shown the testimony.

THE COURT: All right, if we have the notes here we will show it to her. Do you have the notes?

Page 97.

Veronica Jones - Cross

MS. FISK: I do, Your Honor.

BY MS. FISK:

Q. But do you recall, Miss Jones, testifying that there was a man by the soda machine on 13th Street near the Speed Line entrance on the opposite corner from Johnny Dees? Do you remember testifying to that?

A. I remember saying there was somebody on the corner by the Speed Line but it wasn't on that corner, it was across the street by that big apartment building. It is another, umm, Speed Line entrance over there.

Q. I'm sorry, having looked at my notes, do you recall -- and I apologize for changing the subject matter -- but you have told us already today that you never spoke to your attorney or any

attorney regarding --

A. I said I don't recall.

Q. Okay. Well, let me ask you this. Do you recall at trial being asked by Mr. Jackson -- -- this is on page 111 of Miss Jones' testimony --

-- Mr. Jackson is asking, but the men that you saw out there, question, did they have dread locks. And your answer was I can't say. Like I told

Page 98.

Veronica Jones - Cross

my public defender, I was too far to say they had dread locks.

A. No, no.

Q. Do you recall giving that answer to that question?

A. No.

Q. You don't recall that?

A. No, ma'am.

Q. So then I take it you have no clue as to who that public defender is you are referring to?

A. No, I -- no.

Q. Does that refresh your recollection --

A. It doesn't refresh it one bit.

Q. Yes, I understand you know the answer but let me just finish the question. Does that refresh your recollection with regard to whether or not you spoke to any attorney representing you about your testimony in this matter?

A. I still say I didn't speak to no one about this.

Q. Okay. Now, am I correct, Miss Jones, that at the trial in 1982, you did while on the witness stand... Make reference to police officers asking you to give favorable testimony -- I'm sorry.

MR. WEINGLASS: Could we have the

Page 99.

Veronica Jones - Cross

pages?

MS. FISK: Certainly.

BY MS. FISK:

Q. Do you recall testifying at trial about having been picked up at 11th and Winter, as you testified to today, do you remember testifying to that generally at the trial?

A. No, I don't remember.

MS. WOLKENSTEIN: Page, could we have a page reference, please?

MS. FISK: Certainly. It covers many pages, but starting at page 129.

BY MS. FISK:

Q. At the trial in this matter, which took place after you told us you were threatened by two police officers and as a result because of that you were lying, do you remember at that trial answering -- on page 129 -- I had got locked up, I think it was in January, I'm not sure, not January, I think sometime after that incident. They were getting on me, telling me I was in the area and I seen Mumia, you know, do it, you know, intentionally. They were trying to get me to say something that the other girl said. I couldn't do that.

Do you remember saying that at the

Page 100.

Veronica Jones - Cross

trial in 1982?

A. It's vague, ma'am, I don't remember. I might have said it, I don't know. I don't remember, I don't.

Q. Well, that doesn't sound like the words of a person who has been intimidated or threatened to say that Mr. Jamal did it, does it, ma'am?

A. What do you mean? It was said to me and the only person that knows is me and God and those two detectives. You could believe it or you don't have to.

Q. And you were so afraid of those two detectives that you were going to do exactly what they told you to do at the trial; is that right?

A. But did I?

Q. That is my question, Miss Jones.

A. I lied and said I didn't see two men running away. Because I never pointed this man as the shooter because I was not there, I did not see him.

Q. But you also testified at the trial in 1982 that the police before you testified had tried to get you to change your testimony about him, you said that, right?

A. They put me in jail and they took me down to the 6th District. These are two times I saw these

Page 101.

Veronica Jones - Cross

two police 0fficers. You could get me to screw up all these dates, you could do that because it has been a long time. You have every record in front of you to reimburse your mind, not me. I am telling you what I know and that's it. You can not get blood from a turnip. This is all I remember. I do not have no photographic mind, this is all I remember.

Q. That is correct. Do you remember testifying at trial what I just read to you, and that is sometime prior to your testimony police locked you up and asked you to say that Mumia did it, and that they were trying to get you to say something that the other girl said?

A. They didn't lock me up, they brought me in for questioning. They brought me in, they did not lock me up like they do everybody else.

Q. Miss Jones, I am truly not trying to trick you.

A. I am just going by what you're saying, ma'am.

Q. My question is, do you remember testifying to this at the trial in 1982, do you remember saying --

A. I remember saying that they wanted me to do the same thing Lucky did.

Q. Okay. So you said that at the trial in 1982; is that right?

Page 102.

Veronica Jones - Cross

A. Yes, I did.

Q. Now, I take it that it was pretty clear to you that they wouldn't want you to advertise that at trial, right: These officers who were trying to threaten you and intimidate you?

A. Who are they talking to? A nervous 20-year-old. That's who they are talking to.

Q. So despite the fact that you had been threatened and intimidated and were lying because they asked you to, you nevertheless at trial in 1982 did say that other police officers had improperly asked you to lie, is that right, and that you wouldn't do it? Am I correct about that?

A. I don't recall, ma'am, I don't recall. I don't. I know back then there was a lot of objections and every time I start trying to say a few things I was cut off. I do remember that. So maybe that's why they didn't get it all.

Q. Well, that's why I am trying to read to you --

A. Well, ma'am, slowly things are starting to come back to me.

Q. All right, Miss Jones, because that's why I am trying to read to you, ma'am, the questions and the answers which appear on the transcript. Defense Counsel has this transcript as well: If I misread it

Page 103.

Veronica Jones - Cross

I am certain that they will correct me. I am not trying to trick you.

A. Okay.

Q. Nor am I trying to misrepresent. I am simply trying to ask you if you remember these questions and answers.

A. Okay. Ma'am, I could answer you the best that I can.

Q. Fine. That's all I am asking. And there is really no reason to fly off the handle in your answers.

A. That's just me, ma'am, I apologize.

Q. Now, am I correct that at the trial you also in front of the Jury... On page 135, question by Mr. Jackson, in January -- again referring to this time when you were taken to the 6th District and not processed but what you have told us about -- in January did they question you about December the 9th.

And your answer was it more so came about when we had brought up Cynthia's name and they told us we can work the area if we tell them. Do you remember saying that?

A. Yes, ma'am.

Q. So you testified to that under oath at the trial in 1982; is that correct, ma'am?

Page 104.

Veronica Jones - Cross

A. Yes, ma'am.

Q. So you remember testifying -- just so I understand now, perhaps your memory has been refreshed -- you remember testifying in 1982 that the police in January had -- excuse me -- had taken you in and had tried to get you to say things that you refused to say; is that correct?

A. Yes, ma'am.

Q. And you told the Jury that, and you testified to that under oath, is that correct, that in January or thereabouts following the shooting, before your testimony, that the police had tried to pressure you into saying things; is that right?

A. Yes, ma'am.

Q. All right. And your testimony today is that you were doing that even after, as you say, these two white officers had visited you in the prison two weeks or thereabouts before, and threatened you about or told you that you had to help them get Jamal; is that correct?

A. They didn't say I had to do anything, they used my charges.

Q. Okay. So they told you that if you helped them they would help you?

A. They would get me off those gun charges.

Page 105.

Veronica Jones - Cross

Q. And did they make clear to you what the helping was?

A. Just to say that I seen Mr. Jamal shoot Officer Faulkner.

Q. Okay. Now, ma'am, after you returned to New Jersey from West Virginia -- I'm sorry -- you were obviously back in 1988, because that's when you were arrested in Camden; correct?

A. Yes.

Q. Am I correct that from 1988 to and through now, you remain in, you have remained in Camden, New Jersey?

A. I remained in New Jersey.

Q. Have you remained in Southern New Jersey?

A. Yes.

Q. Have you remained in the Camden area?

A. Ma'am, I'm in New Jersey.

Q. The question is have you remained in the Camden area?

A. I'm still there.

Q. From 1988 to present; is that correct?

A. Yes, ma'am.

Q. And you were in Camden last summer?

A. I was in Camden last summer, yes, ma'am.

Q. And for how many years before last summer were

Page 106.

Veronica Jones - Cross

you in Camden, was it since 1988?

A. Excuse me, would you say it again.

Q. I'm sorry, it is confusing, I will restate it. Were you living in Camden in 1989?

A. Yes.

Q. 1990?

A. Yes.

Q. '91?

A. I started having problems in 1991.

Q. Did you leave Camden?

A. No, I was just having problems.

Q. '92?

A. No, like I said, I started running into problems.

Q. '93?

A. I was here and there but I was in Camden.

Q. And throughout that period of time when was it that you were first approached by anyone on behalf of Mr. Jamal to give this testimony?

A. I was first approached in April.

Q. And where was it that you were first approached?

A. It was around Easter time, at my mother's house.

Q. Did you ask those persons who first approached

Page 107.

Veronica Jones - Cross

you how they had located you in April?

A. I don't believe so. I'm not sure if I did or not.

Q. As you sit here today do you know how they came to locate you in April of 1996?

A. I don't recall, I don't recall even asking them that.

Q. Okay. So I am clear, the first time that anyone ever asked you about the truth of your statement from the trial was in April 1996?

A. Yes, ma'am.

Q. Did you ever contact, between 1982 when you testified, and around Easter or April 1996 when you were contacted, did you ever contact any person to tell them that your testimony had been untruthful?

A. Ma'am, that is a part of my life I tried to erase.

Q. I recognize that but that really does call for a yes or no response.

A. No, I didn't.

Q. Okay. Throughout the pendency of these hearings last summer you were in Camden, ma'am?

A. Yes; but I wasn't a media person, I didn't read it -- I just didn't -- I was an alcoholic, put it this way. So therefore me paying attention to

Page 108.

Veronica Jones - Cross

what is going on, it was irrelevant, I could care less. All I wanted was something to drink, okay. You got that now? Is it out? But I lied. But I am not lying and I am sober and I'm cool with that.

THE COURT: Take a short recess.

THE COURT OFFICER: This court will take a brief recess to the call of the Crier.

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(Brief recess.

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THE COURT OFFICER: This court is now recovened. Everyone will please cease all conversation.

MS. FISK: May I continue? Thank you.

BY MS. FISK:

Q. All right, Miss jones, before the recess we were discussing the fact that in April of this year I believe was the first time you told anyone regarding, you told anyone that the testimony you had given in 1982 was untrue. Is that right?

A. Yes, ma'am.

MR. WEINGLASS: She didn't say that.

MS. FISK: Your Honor, again may I ask --

THE COURT: Councelor, please. I am

Page 109.

Veronica Jones - Cross

going to have to remove you if you keep trying to tell this witness what to say. Please.

THE WITNESS: Could you say that to me again.

MS. FISK: Certainly.

THE WITNESS: Thank you.

BY MS. FISK:

Q. Am I correct that between the time that you testified in 1982 and April of 1996, you did not tell anyone that your testimony had been untruthful?

A. No, like I said, I just met with the defense in April.

Q. Yes, and my question is, before you met them, from the time you testified in 1982 --

A. I never spoke about it.

Q. You never told anyone that your testimony had been untruthful; is that correct?

A. I don't recall, no.

Q. You don't remember?

A. I don't remember.

Q. You don't remember telling anyone?

A. No.

Q. Would it be fair to assume that you did not tell anyone?

A. You can assume that but I don't remember

Page 110.

Veronica Jones - Cross

telling anyone.

Q. All right, last summer you told us that you were having personal problems, but were you aware that this hearing was going on in Philadelphia, that is this Post-Conviction Relief Act hearing was taking place?

A. No, I wasn't.

Q. All right. You were unaware that for a period three-and-a-half weeks in August there was testimony --

A. I didn't, like I said, I blocked that part of my life out and I was based on one thing. I was thinking about one thing, so. No, I was not aware of it.

Q. And again, am I correct that what you were thinking about was drinking because you were having problems?

A. I have an alcohol problem, ma'am.

Q. Okay. Did you have access during August of last year to newspapers, to television, to radio?

A. Like I said, I wasn't a media person. I don't like to read news because it's always bad news so I don't read news at all.

Q. When was it, then, that you were first aware that Mr. Jamal was challenging his conviction through

Page 111.

Veronica Jones - Cross

a Post-Conviction Relief Act proceeding?

A. I really wasn't, I might have heard about it.

(At this time there was a disturbance
in the spectators' section of the Courtroom.)

THE COURT: If you have any control over these people you better tell them to pay attention and be seated. Otherwise I am going to clear the Courtroom.

THE COURT OFFICER: All of you that are out there now you must take your seats or this Courtroom will be cleared. That is by order of the Judge. If you do not take your seats now you will be asked to leave. Thank you very much.

Sorry, Your Honor.

THE COURT: That's all right. I don't know what caused that rumpus out there but, boy... That's a disgrace.

THE COURT OFFICER: Good thing we have the Sheriff.

BY MS. FISK:

Q. Miss Jones, you said that you were aware that there was a Post-Conviction Relief Act proceeding of some sort, not under that name but that there was some kind of proceeding going on regarding Mr. Jamal?

Page 112.

Veronica Jones - Cross

A. I was, I heard something about it, yeah.

Q. And that was before you were approached by persons in April of this year?

A. Yes.

Q. Okay. When you heard something about it, how long before April of this year was it, if you recall?

A. I don't recall.

Q. When you heard something about it, did it occur to you that you should speak to someone about what you had done?

A. No.

Q. It did not?

A. No.

Q. Yet when you were approached in April of this year, did you immediately tell those persons who approached you what it was that you had done?

A. I choked for a few minutes but the truth was right in front of me, which was the defense team. So I did what I was supposed to do.

Q. And that is to tell them that the testimony which you had given was in part perjured because of this visit that you had had in the prison by these two detectives; is that right?

A. Part, part was my fault and part was the policeman's fault, yes.

Page 113.

Veronica Jones - Cross

Q. Now, since that time in April, in April of '96, Miss Jones, have you remained in that same place where you had been living in April '96 when the defense team came and spoke to you?

A. I haven't moved a stitch, I've been right there.

Q. All right. Can you tell me, ma'am, who Ronald Simmons is?

A. Excuse me?

Q. Yes, ma'am.

A. That's my fiance.

Q. All right. And is that the person with whom you currently live?

A. You dug that far into my business? Yes, that is who I am living with.

Q. How long have you been living with Mr. Simmons?

MR. YEAGER: I have to object to delving into the witness' personal life. It has no relevancy to, absolutely no relevance to this proceeding. And if it does Counsel should make a proffer on where Counsel is going.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes.

MS. FISK: Thank you.

Page 114.

Veronica Jones - Cross

BY MS. FISK:

Q. Can you tell us how long you have been living with Mr. Simmons?

A. On and off, about five years.

Q. All right. Since this year, January of '96, up until now, have you and Mr. Simmons been living together?

MR. YEAGER: Your Honor, please, there is really, there has been no proffer made on what relevance this could possibly have.

THE COURT: Well, we don't know until we hear answers.

MR. YEAGER: Or unless Counsel makes a proffer on why she is --

MS. FISK: With all due respect, Your Honor, I believe Counsel for Miss Jones would have standing only to object to questions which are perhaps questions that go to her Fifth Amendment right, and certainly has no right to object to questions having to do with relevancy in this proceeding: He does not have standing.

MR. YEAGER: Your Honor, I have standing to protect my client's Constitutional rights. Among those are her rights to privacy and this is exactly where this is going.

Page 115.

THE COURT: Well, when you take the stand it is like running for President, you don't have any private life.

MS. WOLKENSTEIN: It is extremely limited to crimen falsi. And other private matters, it is not relevant.

THE COURT: It is not crimen falsi, okay. Counsel, you made your objection.

Okay, let's go.

BY MS. FISK:

Q. Have you and Mr. Simmons been living together all this calendar year 1996?

A. I live with Mr. Simmons when I am in a good mood. And when he puts me in a bad one I live with my mother.

Q. Since March of this year have you been in a good mood?

A. Particularly, no.

Q. Have you been living with Mr. Simmons since March of this year?

A. I live with Mr. Simmons, when it's convenient for me I live with Mr. Simmons.

Q. Am I correct that you and Mr. Simmons cohabit -- and I will not give the precise number -- but cohabit in an address on Mt. Vernon Street in the

Page 116.

City of Camden?

A. You might as well give the number, you done gave the street. I don't want everybody at my house.

MR. WEINGLASS: Your Honor, we object to any reference to an address. This wasn't done with prosecution witnesses, particularly when the police testified.

THE COURT: She now said she lived in Philadelphia. All right, let's get into that.

BY MS. FISK:

Q. Am I correct that is the street that you and Mr. Simmons live on, ma'am?

MR. WEINGLASS: I object to the street. She has given all the information she need give. And that is Camden, New Jersey.

THE COURT: No, now it is Philadelphia.

MS. FISK: No, Your Honor, her mother lives in New Jersey as well.

THE COURT: I know that but you are talking about --

MS. FISK: No, it is a New Jersey address, Your Honor.

THE COURT: It is?

MS. FISK: Yes.

Page 117.

THE COURT: Mt. Vernon?

MS. FISK: Yes.

THE COURT: Okay.

MR. WEINGLASS: I object to it. The witness has indicated Camden County, New Jersey. That's all she need testify to, the same as the police officers who testified here earlier.

BY MS. FISK:

Q. And you and Mr. Simmons live in an address rented to him at the sum of $400 a month?

A. Excuse me?

Q. Do you live in an address --

A. Ma'am, that is not your business.

Q. Well, it is my business, ma'am, if prior to February of this year you were $4,400 in arrears in that rent and since March of this year --

A. That is not your business. That is his business. He is not my husband.

Q. Well, let me ask you this --

MR. YEAGER: This is not proper impeachment.

THE WITNESS: Who do you think you are?

THE COURT: Just a minute.

Where are you going, Counselor?

Page 118.

MS. FISK: Your Honor, I am about to suggest that prior to February 1996 the address at which Miss Jones lived was $4,400 in arrears on the rent. That in March of this year $200 was paid, in May of this year $800 was paid --

THE WITNESS: You didn't pay it.

THE COURT: Wait a while.

MS. FISK: In June of this year $1,600 was paid, in August of this year $800 was paid, and in September of this year $400 was paid. That those payments, Your Honor, coincide with the time when this witness has all of a sudden started giving testimony in favor of Mr. Jamal.

THE WITNESS: Can I answer that, Your Honor?

THE COURT: Yes.

THE WITNESS: Well, now since you all want to be in my business, when we was in debt for that $400 we have a very understanding landlord, okay, so he went along with us. And when his mother gave him money he covered the rent, okay. In April, okay, his sister died, he came into insurance money and cleared up all our bills. Nobody gave us a damn thing.

BY MS. FISK:

Page 119.

Q. Nevertheless, the payments were being made month by month, am I correct that the payments were being made in the amounts and the months I just stated, ma'am?

A. That is his business, ma'am. I don't go through these books, he handles the bills.

Q. You know that he came into some money?

A. I know for a fact he did.

Q. Am I correct that despite the arrearage which existed up until February of this year, that in March $200 was paid, in May $800 was paid, in June $1,600 was paid, in August $800 was paid, and in September $400 was paid towards the rent at that address; am I correct about that?

A. Yeah, you are correct. You are very correct. But I resent you digging into my man's business.

Q. But I take it, ma'am, that you have not been paid anything by the Jamal defense team for this testimony?

A. No, I have not.

Q. All right. Now, when the attorneys came and spoke to you in April of this year, Miss Jones --

A. Yes.

Q. -- did they bring with them an attorney to represent you?

Page 120.

A. No, I spoke on my own free will, if I remember right, I just, I

spoke on my own free will.

Q. How is it, ma'am, that you came to be represented by Counsel two weeks ago when we came to these proceedings?

A. Because we knew somebody like you would be sitting there.

MR. YEAGER: It is attorney-client privilege.

THE COURT: This is not a privilege. She is not saying anything that she said to him.

MR. YEAGER: She is asking for the witness to discuss communications between herself and Counsel.

THE COURT: I know. If she had any lawyer other than you at the previous hearing.

MR. YEAGER: That is correct, Your Honor. But the communications that she had between her Counsel and herself is --

THE COURT: We are not going into any communications as yet.

MR. YEAGER: That's what she is asking, Your Honor.

THE COURT: No, she is not.

MR. YEAGER: You will instruct her not

Page 121.

Veronica Jones - Cross

to ask such questions and not to delve into such communications?

THE COURT: I am not going to tell her to do anything. You make your objection and I will rule on it. I am not the prosecutor here, she is.

BY MS. FISK:

Q. My question, Miss Jones, is how did you come to be represented by Miss St. Hill who was here with you at the last proceeding?

MR. YEAGER: Your Honor, I renew my objection. Your Honor, the only --

THE COURT: She didn't ask her any communications, she just asked her how she came about it. Either she got her on her own or somebody supplied her. So what?

MR. YEAGER: That's right, Your Honor, it is of no relevance.

THE COURT: So what?

MR. YEAGER: Then it shouldn't be asked and it is of no relevance here.

THE COURT: No, she has her own reason for asking it, I am not going to presuppose that.

MR. YEAGER: Well, let her ask that

Page 122.

Veronica Jones - Cross

question.

THE COURT: Well, she is asking her that.

THE WITNESS: Could you repeat the question, please?

BY MS. FISK:

Q. How did you come to be represented by Miss St. Hill, who was representing you here at the last proceeding?

A. From my knowledge, Miss St. Hill was interested in this case, from what I do believe. But she couldn't represent me further because she had further commitments.

Q. When you say from her knowledge, was her name provided to you from those persons who interviewed you in April of 1996?

A. I met Miss St. Hill at the last hearing.

Q. Okay. So you did not, so I understand, was she provided for you by the defense attorneys in this case?

A. I don't know. All I know is I met Miss St. Hill at the last hearing.

Q. At the last hearing. You did not make a request for her to be present; is that correct?

A. I didn't ask her but when I met her it was

Page 123.

Veronica Jones - Cross

fine with me, I was happy.

Q. Okay. So do I take it, ma'am, that you did not pay her anything; would that be fair to say?

A. She did it from the heart. No, I didn't pay her anything.

Q. Okay. And Counsel who is here today, Mr. Yeager, is the same true: That you met Mr. Yeager here this morning?

A. I met Mr. Yeager, yeah, I met him.

Q. Was today for the first time?

A. I met Mr. Yeager for the first time yesterday.

Q. Yesterday. Okay. And that was because Miss St. Hill was unavailable?

A. She had further commitments.

Q. Yes, okay. And again, do I trust that I am correct that you are not paying Mr. Yeager for his representation?

A. No, he hasn't asked me for a dime.

Q. Now, am I correct, ma'am, that since your return to Camden from West Virginia, that your children have attended schools in Camden?

A. My children are straight A and B students.

Q. Yes, ma'am.

A. Have never been left back, always went to school in Camden. They are perfect.

Page 124.

Veronica Jones - Cross

Q. Yes, all their last names are Jones, ma'am; is that correct?

A. Jones (indicating).

Q. Yes. Am I correct as well that for periods of time since you have returned to Camden, you have received public assistance?

MR. YEAGER: Your Honor --

MS. FISK: This goes to the defense ability to locate the witness during the period of time.

THE COURT: All right.

MS. FISK: From trial to April of 1996, Your Honor.

THE COURT: Okay.

THE WITNESS: I might have received assistance for a little while, I can't say how long, but I had to turn custody over of my children to my mother for the better of them.

BY MS. FISK:

Q. Yes, ma'am?

A. Because like I said, I was going through a lot of things and they were safer being in my mother's custody as far as financial wise (indicating).

Q. Yes, ma'am. We know as well that you were arrested in Camden in 1988?

Page 125.

Veronica Jones - Cross

A. Yes, ma'am.

Q. And charged with theft by deception; is that correct?

A. Yes, ma'am.

Q. And weren't you also arrested one additional time in Woodbury, New Jersey, ma'am?

MR. YEAGER: Your Honor, arrests are again of no significance for impeachment of this witness.

THE COURT: I don't know what she is offering them for at this time.

MR. YEAGER: Well, let's hear it, Your Honor, please.

THE COURT: Let her ask.

MS. FISK: As I just noted, Your Honor, the fact that an individual is arrested would leave a paper trail which would enable people looking for her to find her.

THE COURT: You see, Counselor, we don't have a jury here. I look at the facts. If I think it is improper, I just disregard it.

MR. YEAGER: Well, Your Honor, I have an obligation to protect the rights of my client, and I think the prosecution has an

obligation to limit the questions to also

Page 126.

respect the witness' Constitutional rights, and that's not being abided by.

THE COURT: Her Constitutional rights are not being violated in any way.

All right, go ahead.

BY MS. FISK:

Q. Do you remember my question, Miss Jones?

A. I was not arrested in Woodbury.

Q. You were not?

A. No, I wasn't arrested.

Q. Let me call your attention specifically to July the 14th, 1992. Do you remember being arrested and charged with attempting to pass a bad check?

A. I remember being picked up for a bad check but I did not, I was not arrested for that because they found out exactly how that happened, okay. So I wasn't arrested for that.

Q. You were not?

A. No, I wasn't.

Q. Were you arrested for anything at all in 1992 with regard to that check?

A. Ma'am, as far as I know, I don't know. You got the records, read 'em. I don't know.

Q. Well, do I take it, ma'am, that you're unaware that there is currently a bench warrant for your

Page 127.

arrest in effect in Woodbury, New Jersey?

A. I don't see how: I never got a Court date, they never told me that.

MS. FISK: All right. Perhaps, Your Honor, Detective Sergeant Sheenan could be asked to enter the Courtroom. I believe he is out in the hallway. And just step up to the glass.

MR. WEINGLASS: Your Honor, I object to this procedure. There is no reason for this. What is Counsel attempting to demonstrate here?

MS. FISK: That there is an active, open bench warrant for this witness and that she has to be taken into custody with regard to this.

MR. WEINGLASS: Well, this is the usual form of intimidation. It is a continuation --

THE WITNESS: This is not going to change my testimony.

MS. FISK: I didn't ask you to change your testimony.

MR. WEINGLASS: Back in 1992. There is no reason to take the witness into custody except to satisfy the desire to further

Page 128.

intimidate and coerce the witness.

MS. FISK: When a law officer becomes aware of an outstanding bench warrant for a witness who is appearing it is their obligation to exercise that bench warrant and take that witness into custody.

THE WITNESS: I was not arrested. I was not arrested, I wasn't. I was not arrested. They picked me up because this one guy -- I was not arrested.

MS. FISK: Then I am sure, Miss Jones, that you will be happy to return to New Jersey and explain that to the judge there.

MR. WEINGLASS: Your Honor, they have had her declaration now since May and there was no attempt to arrest Miss Jones. They only attempt to arrest Miss Jones when she comes in here in Court to tell the truth. This is only an attempt to coerce and intimidate. They had her declaration, they knew where she was since May.

THE COURT: Well, if they had arrested her before then you would be arguing that they arrested her so she couldn't be here, to intimidate her.

Page 129.

MR. WEINGLASS: But there is no --

THE COURT: Counselor, I don't have any control over any warrants from New Jersey. If they want to arrest her --

MR. WEINGLASS: You have control over the Courtroom.

THE COURT: Yes.

MR. WEINGLASS: I ask the Court not to now effect the ultimate coercion and intimidation of a witness, namely, denying their freedom and taking them into custody. You could control that and I ask you not to do this.

THE COURT: I don't have any control over them.

MR. WEINGLASS: This is exactly what happened to Billy Cook and that's why we don't have him here. Now we will lose another witness.

MS. FISK: I would note it is for that reason that the testimony of this witness has been already given and offered on behalf of Mr. Jamal.

May I ask Sergeant Sheenan to walk up to the glass.

THE COURT: I don't know where he is.

Page 130.

MR. WEINGLASS: I am going to object to any detective coming in here.

THE COURT: He is not coming in, he is just walking up to that plastic glass there.

MR. YEAGER: Your Honor, may I approach the witness? I must confer. Your Honor, I must confer with my client and advise her on these matters. This is highly unusual for the prosecution to attempt to call a witness while someone is on the stand.

THE COURT: She is not calling the witness.

MS. FISK: I am not calling the witness.

THE COURT: She is just letting --

MR. YEAGER: She is trying to have my client arrested.

THE WITNESS: You are threatening to lock me up because I am here.

MS. FISK: No, I am promising to lock you up Miss Jones, it is not a threat.

THE WITNESS: You better come stronger than that, I am telling you that.

THE COURT: Wait a while. Is that the man?

Page 131.

MS. FISK: That is Detective Sergeant Sheenan.

Would you just raise your hands, please.

BY MS. FISK:

Q. Do you recognize this man?

A. I don't recognize either one of them.

THE COURT: She said she doesn't recognize them.

MS. FISK: I would ask the Detective Sergeant be asked to leave the Courtroom.

THE WITNESS: I don't know who they are, Judge, and I am not going to leave with people I don't know.

MR. YEAGER: Your Honor, may I please have a moment to confer with my client about these matters that have just come up?

THE COURT: If you want her to take the Fifth just tell her.

MR. YEAGER: I need to speak with her, I need to confer with her, and I believe I have a right to do that.

THE COURT: Well, do you have any cases that say you have a right to do that?

MR. YEAGER: Your Honor, I don't have

a case that says that with me.

THE COURT: Well, if you don't have a case with you --

MS. FISK: Your Honor, I do not intend to ask this witness any substantive questions with regard to that arrest. I recognize that she has a Fifth Amendment right to remain silent with regard to that arrest. My questions are only that the arrest occurred and a bench warrant for her arrest when she failed to appear at a subsequent listing was issued. Those are the only questions I intend to ask.

MR. YEAGER: Those questions have already been asked.

THE COURT: Well, that's it, then.

MR. YEAGER: Would you please instruct the prosecution to move to a different subject? The prosecution has already asked any potentially relevant question on this area, of which there are none, but the prosecution has already asked the questions she has just proffered.

THE COURT: All right, so they asked them and that's it. Okay, take a seat.

MR. YEAGER: Thank you, Your Honor.

MR. WEINGLASS: Your Honor, I want the record to reflect that the witness was openly weeping and holding her head in her hands during this exchange.

THE COURT: She has maybe a good reason to weep and hold her head.

MR. WEINGLASS: Because she is being again threatened and intimidated.

THE WITNESS: I am being railroaded, that's what I am being.

THE COURT: Not my actions. I didn't commit any crime over in New Jersey or Woodbury.

THE WITNESS: Well, I never got a Court date.

THE COURT: She said she never went to Court. Okay.

BY MS. FISK:

Q. Miss Jones, am I correct that on July 14th, 1992, inside Scoops Liquor Store at 325 South Broad Street, you were arrested as a result of attempting to pass a bad or stolen check?

MR. YEAGER: This has already been asked and answered and also calls for a legal conclusion of the witness of what an arrest is.

MR. WEINGLASS: This is now a

prosecution of a check case. Asking that question clearly violates her Fifth Amendment rights. She couldn't be asked that question in any Court.

MS. FISK: Asking whether she was arrested does not violate her rights. I am not asking her whether or not she did it, I am asking her whether or not she was charged with it.

MR. YEAGER: That question was already asked and already answered. I am instructing my client not to answer these questions.

THE COURT: Okay. I don't know what the answer was.

MS. FISK: I ask all her testimony be stricken from the record if she will start exercising that right.

BY MS. FISK:

Q. Can you answer that question, Miss Jones?

A. No, I can't.

Q. Were you on that date charged with resisting arrest after you attempted to avoid arrest by attempting to break a plate glass window and running away?

A. What?

THE WITNESS: Do I have to answer?

MR. YEAGER: Your Honor --

THE WITNESS: Because what she is saying is not the way it went.

BY MS. FISK:

Q. I am not asking you how it went, ma'am, I am simply asking whether you were charged?

A. I was not charged, that's what I am saying. That's why I am saying I know I wasn't supposed to appear in no Court. And you bring these two cops to come get me because that's all you got.

Q. Ma'am, were you charged and had bail in the amount of $750?

A. No, ma'am.

MR. YEAGER: Your Honor, the government's proffer here was there was a paper trail because there was an alleged arrest. If that is the proffer the government has already established that or can establish that by other means. This is of no relevance at all.

MS. FISK: Your Honor, the fact that a witness has an open bench warrant goes to bias along with other relevant areas.

THE COURT: Well, maybe. Ask her. Maybe she didn't know, I don't know.

MR. YEAGER: If there is any bias, Your Honor, it would be bias the other way.

THE COURT: Well, maybe.

THE WITNESS: No, Your Honor, I didn't have no bench warrant, I didn't.

BY MS. FISK:

Q. Well, is it my understanding you were saying that you were not arrested, ma'am?

MR. YEAGER: Your Honor, that calls for a legal conclusion. It has already been asked and answered.

THE COURT: I think everybody knows what it means to be arrested.

MS. FISK: I would like to have this - document marked Commonwealth Exhibit 2, shown to Counsel and shown to the witness (handing).

MR. WEINGLASS: Your Honor, we have been shown what purports to be a mug shot which has no relevance whatsoever to this proceeding except to further humiliate and intimidate the witness. If the prosecution has a record of a prior arrest and they want to use that to demonstrate that the witness could have been found earlier they could put the arrest record into evidence and that would establish that

fact. They needn't question the witness about something which the witness, number one, denies and says she has no specific recollection.

THE COURT: Let her deny it, then, okay. Give them back the photo.

MR. WEINGLASS: But forcing the witness to defend a case in New Jersey in this proceeding is nothing more than an attempt to intimidate her.

THE COURT: No.

MR. WEINGLASS: And to coerce her.

THE COURT: No.

MS. FISK: Your Honor, it is certainly not my intention to either intimidate, coerce or harass this witness. This witness has testified under oath that she was not arrested on July the 14th, 1992. I am asking that she look at a police photograph taken of her on that date, and that date is reflected on the photograph, which commemorates that arrest, and perhaps that will refresh her recollection with regard to that arrest. And it goes to the credibility of the witness.

MR. WEINGLASS: We are talking about legal terms of art. The

witness said there were

Page 138.

Veronica Jones - Cross

no charges.

MS. FISK: And the witness said there was no bail, and the witness has said there was no bench warrant, and all of those things exist. And at the appropriate time I would be more than happy to present the correct documents. I can't do it through this witness.

THE COURT: All right.

(Photograph was marked Commonwealth Exhibit C-2 for identification.)

THE COURT OFFICER: So marked C-2.

BY MS. FISK:

Q. Am I correct, ma'am --

A. They took my picture in order to have it in the station. They did not charge me with anything. The thing is they had the check, they had this book and anything he used, and they didn't charge me with nothing. Nothing. And I am telling you they didn't.

Q. So then if the city or the municipality of Woodbury has a bench warrant --

A. That's all they did.

Q. If they have a bench warrant in existence for year arrest, it is your testimony that --

A. They have a bench warrant, they didn't make me aware of it. They told me this is one, make sure

Page 139.

Veronica Jones - Cross

they put this up on the board with all the other pictures they have. That is what he did. The guy brought back the machine, he told me go ahead and catch the bus. That's all he said. I never got a Court date. I didn't need no paper, I didn't need no paper. Why would I be lying to you for? You done drug me through the mud.

Q. Miss Jones, the City of Woodbury issued a warrant for your arrest on December the 8th, 1994, it is a warrant which currently exists and for which New Jersey is ready to return you?

A. So that's all you had. You think that is going to make me change my story, it is not.

Q. Not at all.

A. It is not.

Q. I am not asking you to change your story as a result, I was asking you whether you were aware of it. You have advised us you were not?

A. I am advising you I was not incarcerated so it was not embedded in my mind. I am not trying to lie to you.

Q. I am not asking you to change your story or to intimidate or coerce you, ma'am. You have told us that you came forward in these proceedings because of your children, and the fact that you had other open

Page 140.

Veronica Jones - Cross

matters and bench warrants seems to contradict that. Your statement --

MR. YEAGER: Your Honor, it is a lecture of the witness.

MR. WEINGLASS: This is not a question, this is a summation.

THE COURT: All right.

MS. FISK: I got a speech from the witness, I figured it was my turn to give a speech.

MR. WEINGLASS: No, Counselor, you are not entitled to make a speech.

MS. FISK: Only defense witnesses are.

MR. WEINGLASS: You're entitled to move to strike the answer, not to remedy it with another speech.

Counsel is proceeding here in a very improper way.

THE COURT: Just go ahead, next question, please.

MS. FISK: I have no further questions of this witness, Your Honor.

THE COURT: Okay. Do you have any?

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REDIRECT EXAMINATION

- - - - -

Page 141.

Veronica Jones - Redirect

BY MR. WEINGLASS:

Q. Miss Jones, did you come here today to tell the truth?

A. All. I thought I did.

Q. Have you been trying to tell the truth?

A. Yeah, but see, it's like I am the one on trial now it seems.

Q. You feel that way?

A. That's the way I feel. And I hate this Courtroom every minute, every time, as long as I sit hear I am starting to hate this Courtroom. Because it's not for justice, it's for bringing us in here and badgering the hell out of us.

THE WITNESS: Sherry and Tiffy, I'm sorry.

(Discussion was held off the record at this time.)

MR. WEINGLASS: Given the interrogation that Miss Jones has had to go through in cross-examination, I want to save her the trouble of any further questions. And although I have a lot of questions that I would like to ask, which I think would correct the misimpressions given here --

Page 142.

MS. FISK: Your Honor, may I now object to Counsel's speech. I thought he had said we are not allowed to make speeches, just move to strike. I move to strike Counsel's remarks from the record.

THE COURT: Okay, that part will be stricken. But he has no more questions.

MS. FISK: Your Honor, I would also like the record to reflect in light of Counsel's references to my cross-examination as interrogation that at no time throughout my cross-examination of this witness did I move from Counsels' table, at no time during my cross-examination did I raise my voice to --

MR. WEINGLASS: That is incorrect. Counsel not only cut off the witness frequently but did raise her voice and questioned her in a very threatening manner.

MS. FISK: At no time, Your Honor, did I raise my voice in the manner I am about to raise my voice to Counsel for making blatant misrepresentations on the record.

THE COURT: I realize that you didn't do those things, but.

MS. FISK: Your Honor, I would ask no

Page 143.

more questions. Now, Your Honor, in light of the bench warrant in effect for this witness, I would ask that the Sheriffs take her into custody. There are detectives here from New Jersey with regard to that warrant. If this witness waives her right to an extradition hearing they can certainly return her immediately to New Jersey. If she does not she'll be processed as a fugitive from justice.

MR. WEINGLASS: Your Honor, this is outrageous. They are moving now to arrest this witness.

MS. FISK: There is an open bench warrant from Woodbury, New Jersey. It is not our plan, Your Honor, we didn't call this witness, they did.

THE WITNESS: But you went digging, that's what you did.

MR. WEINGLASS: They knew of her whereabouts. Now Your Honor has the power to allow this witness to return, her Counsel is here, to resolve the matter in Woodbury, New Jersey.

THE COURT: Well he could go with them, too.

Page 144.

MR. WEINGLASS: Which is a check issue.

THE COURT: He can go with them, too.

MR. WEINGLASS: No, Your Honor, she doesn't have to be taken into custody at all. The Court could arrange for her, the Court could give her one day, one day to appear in Woodbury with her Counsel to resolve this matter. She needn't be physically taken into custody.

THE COURT: Well, that is not up to me, that is up to those detectives.

MR. WEINGLASS: No, Your Honor could order that.

THE COURT: Counselor, I am not going to order anything. If they arrested her outside, I don't care. That's their problem.

MS. FISK: Your Honor, I am asking, frankly, the detectives, Your Honor, do not have the jurisdiction to arrest her outside. They are from New Jersey. I am asking that the Sheriffs take Miss Jones into custody as a fugitive from justice. As an Officer of the Court, I am advising Your Honor that there is an outstanding warrant, it has been entered into the National Crime Information Computer, and

Page 145.

that the State of New Jersey has advised that they are prepared to extradite her with regard to that warrant. If Miss Jones upon being taken into custody waives her right of extradition she can immediately be taken back to New Jersey by those detectives. If she chooses to exercise her rights under the uniform act having to do with fugitives, she would have the right to be processed as a fugitive and will have the right to have New Jersey enter Governors Warrants against her here in Pennsylvania.

MR. WEINGLASS: And Your Honor has the right to inform the Sheriffs here that you are giving her one day to surrender.

THE COURT: I am not giving her anything. That warrant has been out since 1994.

MS. FISK: December of 1994.

MR. WEINGLASS: They are now executing it.

THE COURT: Because they have --

MR. WEINGLASS: After they heard her testimony.

THE COURT: Ask the detectives from New Jersey.

MR. WEINGLASS: Well, it is a question

Page 146.

that I think Counsel has to answer because she has the records and she has had these records since May.

MS. FISK: No, Your Honor, I became aware of this bench warrant only within the last several days.

MR. WEINGLASS: But they have not, she should not be allowed to take the witness from this stand who testified against the Commonwealth into custody as a matter of vindictiveness, punishment, coercion and intimidation.

MS. FISK: It is none of those things, Your Honor, it is as a matter of law. There is a bench warrant in effect for this witness.

MR. WEINGLASS: We are talking about a check case.

THE COURT: I don't care if it is a shoplifting case. New Jersey has a warrant for her because she didn't evidently show up for trial.

MR. WEINGLASS: Your Honor is going to order the witness into custody on a check case because she testified in a Post-Conviction hearing.

Page 147.

THE COURT: Whether it is a check case, shoplifting case, what is the difference, or anything else?

MR. WEINGLASS: Given the minor nature of the offense, this Court can exercise it's discretion and give the witness one day to go to Woodbury, New Jersey with her Counsel, and to rectify this in a matter of 20 minutes.

THE COURT: Sure they can, and he could go with her, with the detectives if she waives extradition to New Jersey and they could clear it up immediately.

MR. WEINGLASS: There is no need to take her in into custody.

MR. YEAGER: There is no need at all, Your Honor. We could deal with it completely on our own and you have the authority to release her under those terms.

THE COURT: I don't want to exercise that type of authority. They have a warrant from New Jersey. It is a legitimate warrant, I am not going to say they can't do it. They need local police to help them take her into custody.

MR. YEAGER: I don't see how you could pass judgment at this point that --

Page 148.

THE COURT: Even if it is illegitimate.

MR. YEAGER: I am just responding to your assertion that it was a legitimate warrant.

THE COURT: If they have to go before another judge, I don't want to rule on that. If they go before another judge he could rule on it, whether it is legitimate or not.

MS. WOLKENSTEIN: We haven't seen the document.

MR. WEINGLASS: The Court hasn't seen the documents.

THE COURT: Do you want the detectives to come in with the warrant?

MR. WEINGLASS: They have no authority to arrest her here in Philadelphia.

THE COURT: They are asking the Sheriff to assist in arresting her. They have a right to do that.

MR. WEINGLASS: The Sheriff hasn't been shown the warrant.

MS. FISK: He has it in his hand.

MR. WEINGLASS: I haven't been shown the warrant.

MS. FISK: You are not her attorney.

Page 149.

MR. YEAGER: Could I see the warrant?

THE COURT: Go over to him. Let the record show that Counselor is going over the papers with the warrant. Don't take anything out of there.

MR. YEAGER: I am just trying to read between the staples, Your Honor.

THE COURT: All right.

(Pause.)

THE COURT: You see, they could take her right before a Municipal Court Judge now and they will rule on it.

MR. WEINGLASS: Or she could go on her own as a free person.

THE COURT: Not with this warrant.

MR. WEINGLASS: And have the same result.

MS. FISK: I would note that Counsel for Miss Jones, as well as Counsel for Mr. Jamal, certainly could have remedied this warrant at any time between April of '96 when they became aware of Miss Jones and today's date. Certainly Miss Jones must have known about it because bench warrants do not grow out of the ground.

Page 150.

THE WITNESS: I did not know about it.

MR. WEINGLASS: She didn't think there were any charges. She had no knowledge of this.

THE COURT: So she knows now that there are.

(Pause.)

THE COURT: Look, Counselor, I am going to turn her over to the Sheriff.

MR. YEAGER: I think that would be highly inappropriate considering the fact, Your Honor --

THE COURT: Let me tell you what I am going to do. I am going to turn her over to the Sheriff to take her before a Municipal Court Judge who will rule on this. I am not going to rule on it.

MR. YEAGER: I would like to note for the record that this warrant is not in the name of Veronica Jones, it does not reflect her Social Security number, and it does not reflect her address.

THE COURT: Well, she had about a million Social Security numbers so I can't help that.

MS. FISK: Well, Your Honor, I would

Page 151.

note that the warrant is in the name of Veronica Wilson. I would note further that the photograph Commonwealth Exhibit 2, which is that of Veronica Wilson, taken on the date of July 14th, 1992, has been identified by this witness as a photograph of herself.

MR. WEINGLASS: Your Honor, that question was asked to effect an arrest, having no relevance to this proceeding. What Counsel was doing in Court today was setting up the witness for a New Jersey prosecution.

MS. FISK: No, Your Honor, that question was asked to impeach the witness who denied ever having been arrested.

MR. WEINGLASS: She denied charges.

MS. FISK: She denied being arrested, Your Honor.

THE WITNESS: I forgot.

MS. FISK: Oh, you forgot?

THE WITNESS: I forgot because I was not arrested.

THE COURT: You can go back.

MR. YEAGER: Keep your mouth shut.

MR. WEINGLASS: Your Honor, we want the New Jersey Detectives to remain. The

Page 152.

defense wants to call them on the issue of due diligence.

THE WITNESS: Don't you cry. Stop.

(Veronica Jones was taken into custody
by Philadelphia Sheriffs at this time.)

MR. WEINGLASS: We would like them to remain here in Court.

THE COURT: They may have to take her back to New Jersey first. And tell them to come back.

MR. WEINGLASS: We want them here in this record.

THE COURT: Tell them to come back tomorrow, I don't care.

MR. WEINGLASS: We want the prosecution to produce them tomorrow.

THE COURT: Recess for lunch until 2:00, two o'clock.

MS. FISK: Fine, Judge.

THE COURT: Okay, recess for lunch until two o'clock.

THE COURT OFFICER: What time, Your Honor?

THE COURT: Two o'clock.

THE COURT OFFICER: This Court now

Page 153.

stands in luncheon recess until 2:00 p.m, at the call of the Crier.

(Luncheon recess was held until 2:20 p.m.)

THE COURT: Good afternoon, everyone.

MS. WOLKENSTEIN: Your Honor, before we begin with another witness, I have a matter that I would ask for the District Attorney to stipulate to. In the Quarter Session files dealing with Veronica Jones, cases 82-06, 0770, 0771, 0772, 0773, and MC 82-06 dash 3059, as of June 18th, 1982 Miss Jones' bail under the name Louise Tatum was reduced to $300 for each of four charges.

I want to have a stipulation that that's accurate from the Quarter Sessions record: That there were four cases still pending at the end of that June 18th hearing, and for each of those four cases the bail was set as $300 for a total of $1,200.

MS. FISK: Frankly, Your Honor, rather than making that stipulation and attempting to interpret the Quarter Sessions file, I would

Page 154.

have no objection to the entirety of that Quarter Sessions file being marked and entered into evidence as part of this proceeding. In fact, if Counsel doesn't want to do that I will do that at the appropriate time.

MS. WOLKENSTEIN: We have no problem with that.

MS. FISK: I think therefore a stipulation would be unnecessary because the Quarter Sessions record would speak for itself. And I have no objection to having that Quarter Sessions file marked as a defense exhibit or as a Commonwealth exhibit if defense does not choose to mark it.

MS. WOLKENSTEIN: We will mark it as a defense exhibit.

MS. FISK: Very well. I have no objection to the Quarter Sessions file in the case of Commonwealth versus Louise Tatum, which was indeed Miss Jones, being marked. I would agree that the Clerk of Quarter Sessions would agree that that is the certified record.

MS. WOLKENSTEIN: And that would be Defense Exhibit D-2.

(Quarter Sessions file was marked
Defense Exhibit D-2 for identification.)

Page 155.

THE COURT OFFICER: So marked D-2, Your Honor.

MR. WILLIAMS: Your Honor, the next witness that Mr. Jamal would call is David Rosen.

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David Rosen, Esquire, Assistant Defender, the Defender's Association of Philadelphia, having been duly sworn, was examined and testified as follows:

- - - - -

MR. WILLIAMS: May I inquire, Your Honor?

THE COURT: Yes.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Good afternoon, Mr. Rosen.

A. Good afternoon.

Q. Thanks for coming in. You just indicated your occupation?

A. I am an attorney at the Defender's Association of Philadelphia.

Page 156.

Q. And back in 1981 going into 1982, what was your occupation back then?

A. I was a staff attorney at the time.

Q. The same office?

A. Yes.

Q. And during that period of time from 1981 to the present, have you always worked at that same office?

A. Yes, I have.

Q. Now, Mr. Rosen, do you know a woman by the name of Veronica Jones?

A. Ahh, no, I don't.

Q. Back on June 29th, 1982, would it be safe to say that you were working as an attorney in the Public Defenders Office here in Philadelphia?

A. Yes.

Q. And did you have occasion as a Public Defender to represent individuals?

A. Yes, I did.

Q. Many individuals, I imagine?

A. Many.

Q. Okay. Now I'm going to ask that you look at some minutes from a proceeding in front of the Honorable Judge Sabo dated Tuesday, June 29th, 1982.

MR. WILLIAMS: Counsel, page 92.

Page 157.

MS. FISK: Yes, thank you.

MR. WILLIAMS: If I could have the witness --

BY MR. WILLIAMS:

Q. Do you have a copy of that, sir?

A. Yes, I do.

Q. Your copy, is that page 92 going into 93?

A. Correct.

Q. And does it go on to page 94 as well?

A. Yes, it does.

Q. Okay. Now, have you had occasion to read those pages from the minutes?

A. Yes, I have.

Q. You will see on page 92 a reference to a David Rosen of the Public Defenders Office, do you see that?

A. Yes, I do.

Q. Who do you believe that to be?

A. I believe that to be myself. During the 23 years I have been in The Defender's Association I am the only attorney by that name that I am aware of.

Q. So you have no belief that it is someone other than yourself?

A. No, I don't.

Q And does it indicate in these minutes that you

Page 158.

David Rosen, Esq. - Direct

were representing a person by the name of Veronica Jones, a/k/a Louise Tatum?

A. Yes, it does.

Q. And in looking at the transcript, what was the purpose of your representation?

A. Apparently I was called over by the Court to advise Miss Jones as to her Fifth Amendment rights before she testified in this matter.

Q. Now, as an attorney with the Public Defender's Office, have you ever had to advise a witness about certain Fifth Amendment ramifications of testifying?

A. Yes, I have.

Q. Or several occasions? Many occasions?

A. Many occasions.

Q. And do you have a certain practice or procedure that you follow as an attorney advising the witness of the Fifth Amendment ramifications?

A. Yes, I do.

Q. In testifying?

A. Yes, I do.

Q. Can you tell the Court what is your practice as an attorney in advising witnesses of the Fifth Amendment ramifications of testifying?

A. Well, first I would have counsel give me any documents, any written statements of the witness so

Page 159.

David Rosen, Esq. - Direct

that I could review them. Then I would --

Q. Okay, I'm sorry to interrupt, but what counsel are you referring to when you refer to counsel?

A. Well, it could be the defense attorney and/or the District Attorney, depending on who had the documents.

Q. So you retrieve the documents and then what do you do?

A. I would review the statements, then I would talk to the witness and go over the previous statement with them.

Q. And in looking at the minutes from this proceeding, did you in fact discuss or talk with Miss Veronica Jones?

A. It appears that I did, yes.

Q. And does it appear that you received a police report of some kind?

A. Yes.

Q. That purported to be a statement by Miss Jones?

A. Yes.

Q. Okay. And does it appear that you followed your normal practice in talking with Miss Jones and going over any statements by Miss Jones that were given to the police?

Page 160.

David Rosen, Esq. - Direct

A. Yes, it does.

Q. Now, can you tell the Court what is the purpose of talking with your client and going over a particular statement made to law enforcement?

A. To see whether my client has, would have any right under the Fifth Amendment to the U.S. Constitution or under the Pennsylvania Constitution to decline to testify in the matter.

Q. And how does going over a statement given to the police bear on that responsibility that you undertake?

A. Well, if what my client told me was substantially -- differed in material concern from the statement, then the client might be open to a charge of false police report. So that would be an area in which a Fifth Amendment right may be asserted.

Q. So if I understand you correctly, Mr. Rosen, when you go over the statement with the witness -- I'm sorry -- with your client, and if what she tells you deviates in material respect from the statement, that this is something that you would have to talk to your client about?

A. Correct.

Q. And that is that there is some possible Fifth

Page 161.

David Rosen, Esq. - Direct

Amendment problems here?

A. That would be correct.

Q. All right. And would you also advise the Court that there might be some Fifth Amendment problems in having this witness get on the stand and testify if there is a deviation from the prior statement?

A. Yes, I would advise the Court that I have discussed the matter with my client and advised her to assert her Fifth Amendment privilege not to testify.

Q. And what did you advise the Court in this instance, if anything?

A. I advised the Court that after speaking to my client and reviewing her statement I saw no Fifth Amendment problem in having her testify to what she saw.

Q. So I guess judging from your testimony, sir, that we can draw the conclusion that Miss Jones didn't apprise you that she was going to deviate from that statement?

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Q. What conclusion, Mr. Rosen, did you draw -- what conclusion can we draw from the fact that you

Page 162.

David Rosen, Esq. - Direct

told the Court that there was no Fifth Amendment problem in having Miss Jones testify at the trial of the Commonwealth versus Mumia Abu-Jamal?

A. The only reasonable conclusion was that I saw no problem with her testifying, that it was unlike -- strike that -- that it would not result in her implicating herself in any crime.

Q. And that would include any crime that might be associated with deviating from a prior statement?

A. That's correct.

Q. And what crimes would a witness be open to if they get on the stand and deviated in a material respect from a prior police statement?

A. They might be liable for the crime of filing a false police report.

Q. And would perjury also be a possibility as well?

A. I don't think the Fifth Amendment protects one from a perjury

charge.

Q. Okay. But in any event, would you alert your client as to a possible perjury charge if that client apprised you that he or she was going to deviate from a prior statement?

A. Well, if I had any reason to believe that based on what she told me and what I had before me

Page 163.

David Rosen, Esq. - Cross

that she would have implicated herself in a crime, I would advise her to assert the Fifth Amendment privilege, yes.

MR. WILLIAMS: All right, I have no further questions.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. May I assume, Mr. Rosen, from your very first answer, that is that you didn't know Veronica Jones, that you have no independent memory of this incident?

A. That is correct.

Q. And in fact, reading these notes kind of amazed you to find that you were present in Judge Sabo's Courtroom during this case?

A. It did not refresh my recollection, no.

Q. Okay, fair enough. Now, you have been, as you said, a public defender -- I'm sorry -- a member of the Defender's Association for some 23 years?

A. That is correct.

Q. And during that period you have charged yourself with the responsibility of protecting our

Page 164.

David Rosen, Esq. - Cross

Constitutional rights in all of those persons who are charged with crimes and defending them to the utmost of your ability; is that right, sir?

A. That is correct.

Q. And have you further prided yourself on your right to defend those persons who are indigent and incapable of defending themselves in the Courtroom?

A. Yes.

Q. Would it further be your responsibility in your charge to question any improper or illegal police conduct that you have become aware of and to demand investigations into some improper police conduct?

A. Yes.

Q. Now with regard to this matter -- and granted that you have no recollection of this -- have you as part of your being called to testify for the defense had occasion to review whether after speaking to Miss Jones on June 29th, 1982, whether you made any complaint to the Philadelphia Police Department, the District Attorney's Office, the prison, or any other law enforcement entity with regard to attempts made by Philadelphia Police Detectives to intimidate Miss Jones as a witness in the case of Commonwealth versus Jamal?

Page 165.

David Rosen, Esq. - Cross

A. I have no record or recollection of such a complaint.

Q. And if in fact Miss Jones had advised you that two persons had visited her in the prison and made various statements to her about what would happen to her if she said one thing as opposed to what would happen to her if she said something else, would you have expected to find some record with regard to that kind of complaint?

A. I would have expected that I did some kind of follow-up or I wouldn't have just let the matter go without any follow-up.

Q. So may we similarly assume, as Counsel has just assumed, that the absence of any record and the absence of any recollection on your part cause you to reach the conclusion that when you spoke with Miss Jones on June 29th, 1982, she made no statement to you regarding police officers visiting her in the prison, would that be fair to assume?

A. Ahh, I have no recollection of her making any statement like that to me.

Q. My question is would it be fair to assume as we did a moment ago in terms of your regular practice, that the absence of those records would cause you to conclude that no such complaint was made

Page 166.

David Rosen, Esq. - Cross

to you by Miss Jones regarding that?

A. Well, I can't say. I mean I can't say for certain there wasn't a record, you know, 14 years ago. I just, there are no records and I have no recollection of any such complaint.

Q. Fine. Now, when you spoke to Miss Jones did you identify yourself to her as an attorney?

A. I'm sure I did, that's my standard practice.

Q. Okay, so there would have been no question in her mind that an attorney was seeing her prior to her testifying on that day?

MR. WILLIAMS: I am going to object as to what is in Miss Veronica Jones' mind. He represented himself as the attorney, I think that is about as much as he could say on that score.

MS. FISK: I will rephrase it.

BY MS. FISK:

Q. Did she, do you have any memory as to whether she had any difficulty understanding you? Or, well, you simply don't remember this, do you?

A. No.

Q. So you can't tell me whether or not she was lucid or understanding what she was saying to you?

A. Obviously not.

Page 167.

David Rosen, Esq. - Cross

MS. FISK: Obviously not. Thank you, sir.

I have no further questions, Your Honor.

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REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Rosen, let me pick up where Ms. Fisk left off. As a public defender, I take it that the police practices in Philadelphia are of interest to you?

A. Of course.

Q. And you follow instances of police misconduct in Philadelphia, do you not?

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: I am just inquiring from what Ms. Fisk went into.

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: She went into whether he discussed police misconduct with Miss Jones.

MS. FISK: No.

THE COURT: He said if he had anything like this to his knowledge he would have done something about it. He didn't do anything about it so he assumes he didn't have any such

Page 168.

David Rosen, Esq. - Redirect

knowledge.

MR. WILLIAMS: Very well.

BY MR. WILLIAMS:

Q. And the reason why you would follow up on a revelation of police misconduct is because police misconduct does occur here in the City of Philadelphia, does it not?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. We are talking about 19, what is it, 1982.

MS. FISK: Specifically, Your Honor, the claim --

MR. WILLIAMS: That occurred here in Philadelphia.

MS. FISK: Specifically, Your Honor, the question had to do with an allegation that the witness was visited in the prison and whether or not this attorney was notified by the witness about that visit in the prison. That was the extent of the questioning.

BY MR. WILLIAMS:

Q. Let me just ask you, Mr. Rosen: Why would you ever inquire or be concerned with whether a witness had possibly been subject to police misconduct?

MS. FISK: Objection, Your Honor.

Page 169.

MR. WILLIAMS: If it never occurs.

MS. FISK: Objection, Your Honor, that was not the question.

THE COURT: I will sustain the objection. I don't know where you are going but it is far afield.

MR. WILLIAMS: You didn't know where the D.A. was going earlier this morning and you permitted them to launch into extended inquiry without any offer of proof. Now I am picking up where Ms. Fisk left off regarding police misconduct.

THE COURT: We are talking about generalities. If you want to ask him if he knew of any misconduct in this case all right. But we are not going to go fishing through every other case that came up in Philadelphia.

BY MR. WILLIAMS:

Q. Mr. Rosen, if the record reveals in this trial back in 1982 that Miss Jones revealed in open Court in front of a Jury that police officers appeared to her in front of her and told her that if she implicated Mr. Jamal she would be able to work her corner as a prostitute, would that surprise you given that she didn't reveal that to you?

Page 170.

MS. FISK: Objection, Your Honor, on several bases. One, it misstates the fact: There was no Jury in the Courtroom this morning when Miss Jones for the first time --

MR. WILLIAMS: I wasn't referring to this morning, I was referring back to 1982.

MS. FISK: Second of all, whether or not it would surprise Mr. Rosen is not the issue. The issue is whether or not it was reported to Mr. Rosen. I was not permitted to ask directly whether it was because, quite frankly, that is still attorney-client privilege and the questions were asked with regard to his general practice in the same manner that Counsel asked general practice questions on his direct. Whether or not it would surprise this witness, however, is completely without relevance. The fact-finder in this case is Your Honor.

BY MR. WILLIAMS:

Q. In your general practice in talking with many defendants and witnesses as well, have you ever encountered a situation where a defendant or a witness withheld information about police misconduct to you --

MS. FISK: Objection, Your Honor.

Page 171.

BY MR. WILLIAMS:

Q. -- that you later learned --

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. If you want to limit it strictly to this case, all right. I am not going to go fishing into other cases. It is not the concern of this case, it is not the concern of this Court.

BY MR. WILLIAMS:

Q. Do you recall if you ever asked Miss Jones directly if she had been tampered with by any law enforcement personnel?

MS. FISK: Objection, Your Honor. The witness has testified that he has no recollection of meeting Miss Jones.

MR. WILLIAMS: He was never confronted with this precise question. If he has no recollection, fine. But I'm asking does he recall ever asking Miss Jones that direct question.

THE COURT: All right.

THE WITNESS: Could you repeat the question, Counsel.

BY MR. WILLIAMS:

Q. Did you ever ask Miss Jones directly whether

Page 172.

she had been tampered with or coerced or intimidated by law enforcement officers?

A. Umm... yeah, I was -- I have no recollection.

Q. Is it your general practice in connection with advising witnesses of their Fifth Amendment rights to ask them directly whether they had been manipulated or coerced or intimidated by law enforcement?

A. No.

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: It goes to general practice which is what we have been inquiring into given his lack of memory.

THE COURT: Ask him if he did it in this case.

MR. WILLIAMS: I have already asked him that.

THE COURT: No, you haven't.

MS. FISK: His memory is he has no memory or recollection in this case.

THE COURT: If he has no memory he has no memory.

MR. WILLIAMS: I am asking if it is his general practice.

THE COURT: I don't care what his practice generally is. What did he do in this

Page 173.

case.

BY MR. WILLIAMS:

Q. In this case is there any reason to believe that you deviated from your practices in advising witnesses of their Fifth Amendment rights? Do you understand what I am asking you?

A. Yes.

Q. Is there any reason to believe that you deviated from your general practice?

A. Where I'm called upon and advising a client of their Fifth Amendment rights, I would not normally go into the area of inquiry that you're asking me on police misconduct.

MR. WILLIAMS: Very well. If I may have just one moment. Excuse me, Mr. Rosen.

(Discussion was-held off the record at this time.)

BY MR. WILLIAMS:

Q. Now, Mr. Rosen, you didn't represent Miss Jones outside of this particular proceeding that is reflected in this transcript, that is you didn't represent her other than just to advise her of potential Fifth Amendment problems?

A. To the best of my knowledge that was my only contact with Miss Jones.

Page 174.

Q. You didn't represent her on independent criminal charges?

A. I do not believe I did, no.

Q. And do you recall if you ever met with Miss Jones outside of the proceedings that are relevant here back in 1982?

A. I believe when I met her in the Courtroom on that day, that was the only occasion I met, I ever met her.

MR. WILLIAMS: Thank you. No further questions.

MS. FISK: I have no further questions, Your Honor.

THE COURT: All right. You are excused.

(Witness excused.)

MS. FISK: Your Honor, I would advise Counsel when we returned from the luncheon recess that at their request the two officers from New Jersey who had the warrant remained and they are available to be called by defense as I was led to believe they would be. I would simply note they are available in the hallway.

MR. PIPER: Your Honor, the District Attorney has in some of their papers alluded to

Page 175.

an issue about the defense investigation to find Veronica Jones. We would reserve rebuttal if they intend to proffer any evidence to sustain their burden under 9543B, based on prejudice. We would offer to address that issue on rebuttal. And on that basis we are prepared to rest.

MS. FISK: Your Honor, I would note the Commonwealth does not recognize that we have any burden to prove anything at this PCRA proceeding. It is the burden of the defense, we believe, and under the law, to prove that the testimony which was offered this morning could not and was not available to the defense despite reasonable and diligent efforts by them to obtain that testimony. And our position is that they have not at this point proven any efforts to obtain that testimony prior to April 1996. And it will be our position, so Counsel is aware, that they have not met that burden and therefore the substantive testimony offered would be improper to come into the record at this point. We recognize no burden on our part to make that proof, Your Honer.

MR. PIPER: Your Honor, it is clear

Page 176.

that what the District Attorney intends to do, much as they did this morning, is to embark on a fishing expedition into the defense investigation. There was no, they were allowed to intrude into the attorney-client privilege.

THE COURT: No, they didn't go into attorney-client privilege.

MR. PIPER: They were intruded over Mister --

THE COURT: They were not intruded over.

MR. PIPER: Yes, over objection by Miss Jones' attorney.

THE COURT: They were not gone into.

MR. PIPER: The law in Pennsylvania as stated in Commonwealth versus Knoll, 443 PA Superior Court, 602, a 1995 case, is that the attorney work product doctrine provides even broader protections than the attorney-client privilege. As attorneys must often rely on the assistance of investigators and other agents in the compilation of materials necessary for trial, the doctrine protects materials prepared by such investigators as well as those prepared by the attorney himself.

Page 177.

THE COURT: Well, you realize this isn't a trial. She is not on trial.

MR. PIPER: Well, it extends also to any legal proceeding. In fact, there are further legal proceedings --

THE COURT: This is a collateral attack on a trial --

MR. PIPER: But the work product doctrine is iron tight in Pennsylvania as the Knoll case set forth. It is for that very reason that the statute which Your Honor often refers to says that it is the prosecution's burden to show some prejudice under 9543B before there is any inquiry into the diligence of the defense. They have never even offered or alleged that they have been prejudiced in any way with respect to responding to Miss Jones' testimony. And if they wish to proceed on that basis it is their burden to sustain before the Court can require some sort of intrusion into our investigation.

MS. FISK: I would again note to Counsel, Your Honor, that the law having to do with after-discovered evidence clearly places the burden upon the party who is raising that

Page 178.

after-discovered evidence to prove that it is indeed after-discovered evidence. And one of the bases of proving something is after discovered is proving that it was unavailable to that side which is now offering that evidence at any time prior to the time it was being offered despite reasonable, diligent efforts to obtain that testimony. It is on that basis that the Commonwealth asserts that the burden is on the defense to make that proof, not through attorney-client privilege, but through whatever means was conducted prior to the hearing last summer and since to obtain the testimony of the witness who was brought and is now being offered as an after-discovered witness for purposes of this Post-Conviction Relief Act hearing.

MR. PIPER: That was absolutely not the basis of our claim on Veronica Jones, Your Honor. The Orders from the Supreme Court says the claims raised in our Petition. We never raised a new-evidence claim with Veronica Jones. She is a Brady issue. She is one of many instances of the prosecution's misconduct and suppression of evidence.

And as the Judge Savitt wrote in the

Page 179.

Rider case, where the prosecution --

THE COURT: Judge Savitt?

MS. FISK: Your Honor, this is Commonwealth versus Jamal, this is not Commonwealth versus Rider. But if Counsel would like to I will start reciting the names of the defendants whose convictions have been affirmed who are sitting in the State prisons around Pennsylvania, as there are a lot more of them than those that have been reversed.

MR. PIPER: As the Court noted in Rider, where similar misconduct was shown, there is no waiver issue.

THE COURT: Who did that?

MR. PIPER: Judge Savitt.

THE COURT: He is a Common Pleas Judge just like me.

MR. PIPER: But he was applying Pennsylvania Court --

THE COURT: Was it okayed by any appellate court? Supreme Court?

MR. PIPER: It has not been reviewed.

THE COURT: Has it been approved?

MR. PIPER: Given that the Commonwealth concealed exculpatory statements I

Page 180.

don't see how it could be reversed, there is clear prosecution misconduct.

THE COURT: You proceeded in this case on after-discovered evidence.

MR. PIPER: That is not true, Your Honor. If you look at our amended PCRA Petition.

THE COURT: First Order, did you see the first Order the Supreme Court sent down?

MR. PIPER: Pardon me?

THE COURT: The first Order that the Supreme Court sent down, did you read it?

MR. PIPER: Yes.

THE COURT: It says after-discovered evidence.

MR. PIPER: No, it doesn't. And as a matter of fact, Your Honor interpreted that to be due diligence. That's why they amended their Order to make clear that Your Honor was overruled on that issue.

THE COURT: I don't consider that to be overruled on anything.

MR. PIPER: You said you wouldn't let Veronica Jones be put on the stand but the Supreme Court amended it's Order.

Page 181.

THE COURT: It is after-discovered evidence, you have to do

certain things. As she says, there are four elements that you have to show.

MR. PIPER: Your Honor, I have the Order here. There is nothing in it about after-discovered evidence.

THE COURT: The first Order?

MR. PIPER: Yes. Would you like me to read it?

THE COURT: Read it.

MR. PIPER: And now this 4th day of September, 1996, the matter is hereby remanded to the trial Court for a hearing within 30 days of this date, of the date of this Order, to determine whether Appellant is entitled to a supplemental Post-Conviction Relief Act hearing, and that Court is to render its opinion within 30 days of said determination. Jurisdiction is retained.

Maybe you heard something I didn't, but I didn't hear anything about after-discovered evidence.

THE COURT: Well, in your Petitions you did.

Page 182.

MR. PIPER: No, Your Honor, we didn't. Look at our Petition, claim 22 --

THE COURT: I don't have your Petitions in front of me.

MR. PIPER: Claim 22 dealt with newly-discovered evidence and Veronica Jones was not presented in claim 22. She was presented among our many Brady claims of suppressed evidence along with Singletary, Chobert --

THE COURT: What was suppressed? There was nothing suppressed.

MS. FISK: I would note that the Appellant's application for relief in this matter reads in the first paragraph that they applied for relief for the purpose of taking -- and I am, quoting -- the additional testimony of Veronica Jones, a newly-available witness. Now, I don't have a thesaurus in front of me but I would wager a bet that newly available is considered similar to after discovered. That was the defense application.

However, Judge, rather than quibble and argue about it now, if Counsel avers that it is not his burden to prove reasonable diligence, then they can rest on that and I am ready to

Page 183.

proceed. If they in fact are resting. We obviously disagree about who has what burden, and Your Honor first, and the appellate court next, will make that determination. We obviously disagree.

THE COURT: It is logical that they have the responsibility: You can't tell them what they did.

MS. FISK: Apparently the defense believes that they do not. We will, after this hearing is completed we are obviously going to make closing arguments to Your Honor, Your Honor is going to rule, and whatever Your Honor rules will inevitably make it up to the appellate court for them to review further, and then they will tell me that I am wrong or they will tell the defense that they are wrong. But to sit here and argue, that really serves no purpose right now, because obviously everybody is dug in.

MR. PIPER: We are prepared to meet that burden if the time comes. The time will come if they ever meet their burden of showing prejudice.

THE COURT: They don't have to show

Page 184.

anything. It is your burden now. You can't say I want to reserve it now for rebuttal later on.

MR. PIPER: Under protest, then, we will proceed on that issue.

THE COURT: Okay.

MS. FISK: Your Honor, before the next witness is called may I ask whether Counsel is going to be calling those witnesses from New Jersey?

MR. WILLIAMS: They are the next witness. If you would give me the name so I could call them.

MS. FISK: Detective Sergeant Sheenan is one of them. He is in charge of the detective bureau.

MR. WILLIAMS: Defense calls Detective Sergeant Sheenan.

(Discussion was held off the record at this time.)

MS. FISK: I would ask for an offer of proof with regard to the Detective Sergeant, Your Honor.

MR. WILLIAMS: He is going to be a critical witness to establish due diligence.

MS. FISK: Of what?

Page 185.

THE COURT: Their due diligence.

MS. FISK: Their?

THE COURT: Yes.

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Detective Timothy J. Sheenan, Badge number 334, Woodbury City Police Department, having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Detective Sheenan?

A. Yes.

Q. Yes, good afternoon. Can you state for the record what is your occupation?

A. I am a Detective Sergeant with the Woodbury City Police Department in New Jersey.

Q. Do you work for a particular unit with the police department?

A. The detective bureau.

Q. And for how long have you been a detective?

A. Approximately five years.

Q. How long have you been a police officer?

A. Nine years.

Page 186.

Q. Do your duties encompass enforcing bench warrants?

A. Yes, sir.

Q. Is there a bench warrant unit, by the way, in your police force?

A. No, sir, we don't have any individual warrant unit.

Q. So all of the police officers as part of their duties enforce bench warrants?

A. That's correct.

Q. Would that include misdemeanor and felony bench warrants?

A. Yes, sir.

Q. And you're here to enforce a bench warrant for a Veronica Jones is it?

A. Veronica Wilson.

Q. Veronica Wilson. You are looking at a document?

A. Yes, sir.

Q. Could I see that document you're looking at?

A. Yes, sir (handing).

MS. FISK: For the record, Your Honor, the document being given to Counsel is the copy of the warrant which was shown to Counsel prior to the luncheon recess.

Page 187.

BY MR. WILLIAMS:

Q. Now let me ask you this. As a detective who also enforces bench warrants, what is the procedure for enforcing a bench warrant in your jurisdiction?

A. Specifically?

Q. Yes.

MS. FISK: Well, enforcing this bench warrant or any bench

warrant?

BY MR. WILLIAMS:

Q. Any bench warrant, how do you go about enforcing a bench warrant?

MS. FISK: My objection is based on the fact there are different procedures for persons who live within the jurisdiction and without the jurisdiction.

MR. WILLIAMS: If Ms. Fisk wants to take the oath I will be glad to question her as well.

THE COURT: Rephrase your question. And now we are down to this case, what they did.

MR. WILLIAMS: I think the detective is fully equipped to answer my question.

THE COURT: I know he is fully equipped to but rephrase your question.

BY MR. WILLIAMS:

Page 188.

Q. Is there a procedure that you follow in enforcing bench warrants?

A. Yes, sir.

Q. Okay. Can you tell me what that procedure is?

A. If we are aware of a bench warrant and we are aware of the individual's whereabouts then we place that subject under arrest.

Q. Okay. And how do you become aware of a bench warrant?

A. Through, we have copies in our Police Department.

Q. Okay. And how do you become aware of a person's whereabouts to enforce a bench warrant?

A. Numerous ways.

Q. Can you tell us those numerous ways?

A. It could be any type of a way. I mean anybody could call us and tell us they know the whereabouts of someone and if they do we will proceed there and lock that person up.

Q. Do you employ police investigative techniques to find somebody who has a bench warrant?

A. Sometimes, yes.

Q. And do you have computers there that assist you?

A. In seeing if we do have an active warrant for

Page 189.

subjects, yes, we do.

Q. And in this particular case, what was the date of the bench warrant?

A. The date the bench warrant was issued?

Q. Yes.

A. I believe it was in 1994, but you have the actual document in front of you.

Q. Okay. I am going to show you the document, then, which was provided to me (handing).

A. The date the bench warrant was issued was 12-8 of '94.

Q. Okay. Now, Detective, you have a bench warrant that's issued on December 8th, 1994, and it is your office's responsibility to enforce bench warrants, right?

A. That is correct.

Q. What acts were taken to enforce that particular bench warrant in the month of December of 1994?

A. When it was issued the actual bench warrant was sent to the City of Camden where the subject lived. And their -- it's normal practice to send the original copy of the warrant to the city, if it's out of our jurisdiction, for them to attempt to serve on the subject who lives in their jurisdiction.

Page 190.

Q. So this Veronica Wilson you knew or your office knew lived in Camden, New Jersey?

A. That is correct.

Q. And information was then sent to a Camden office?

A. That's correct.

Q. And what steps were taken from the Camden officer if you know?

A. I do not know.

Q. Do you know whether an address was available to you in Camden?

A. Yes, it was.

Q. So from December 8th, 1994 until today, police officers, or police departments in the State of New Jersey had an address for Miss Jones?

A. That is correct.

Q. I see. And if you have an address, Detective, of somebody that has a warrant for their arrest, it is quite easy to make that arrest, isn't it?

A. Yes --

MS. FISK: Objection, Your Honor.

THE COURT: I don't know if it is quite easy. You mean they are sitting around waiting for him, saying here I am, come and get me?

Page 191.

MS. FISK: It is also irrelevant, Your Honor.

MR. WILLIAMS: It goes to due diligence. They are the ones who are supposed to be diligent, Judge. You know, what is interesting, Your Honor -- well, let me just ask the witness. Let me ask the witness.

THE COURT: Ask him what?

BY MR. WILLIAMS:

Q. You had the address of Veronica Wilson. Do you know if any steps were taken before today to go to Miss Wilson's house, arrest Miss Wilson on that bench warrant that you have in your hand?

A. That would be the responsibility of the City of Camden.

Q. And judging from the fact that nobody went to her house to make the arrest on the bench warrant that you have --

THE COURT: Just a minute, Counselor. Just a minute. That's not a fair question. We don't know what Camden did with it. If you want to find out what they did with it, subpoena the Camden detectives to come in here. All he did was, or I don't know if he did, but the department did, they sent it to Camden.

Page 192.

Did they ever send it back?

THE WITNESS: Not that I am aware of.

BY MR. WILLIAMS:

Q. If it was Camden's jurisdiction to handle this bench warrant, why is it that your office is now enforcing that warrant?

A. The bench warrant was issued by Judge Morgan out of the Woodbury Municipal Court.

Q. So if it was issued out of that jurisdiction, didn't you feel obligated to enforce a bench warrant from a judge in your jurisdiction?

A. Well, if Camden City located her, us as detectives in the Woodbury Police Department would have responded there to take custody there.

Q. But you knew of her address, didn't you, Detective?

A. That is correct.

Q. And did your office do anything between December 8th, 1994 to today to enforce a bench warrant issued by a judge in your jurisdiction?

A. We sent the warrant to Camden to have Camden officers attempt to serve the warrant.

Q. And you washed your hands of it from that point on?

MS. FISK: Objection to that question,

Page 193.

Det. Timothy Sheenan - Direct

Your Honor.

THE COURT: Yes, strike that wiped his hands. You mean they are supposed to go all over the United States?

MR. WILLIAMS: They had her address.

THE COURT: I don't care if they had the address. They gave it to Camden. If you want to find out what Camden did about it, get the detectives from Camden. They may have gone there a hundred times and she wasn't there. We don't know that.

MR. WILLIAMS: Let's find out.

THE COURT: How does he know?

BY MR. WILLIAMS:

Q. Did you ever pick up a phone and call a colleague in Camden and say hey, what about this Veronica Wilson?

A. No, sir, I did not.

Q. Do you know if anybody in your office ever picked up a phone to call up a colleague in Camden to say hey, what about this Veronica Wilson, there is this very important bench warrant we have? Did you ever do that?

MS. FISK: Objection, Your Honor, to the form of that question.

Page 194.

Det. Timothy Sheenan - Direct

THE COURT: Please.

BY MR. WILLIAMS:

Q. Did anybody in your office ever pick up a phone to call anybody in Camden and say we have a bench warrant for Veronica Wilson?

MS. FISK: Objection, Your Honor: It is irrelevant. It has nothing to do --

MR. WILLIAMS: Oh, it has everything to do --

MS. FISK: If I may state my objection before Counsel wants to start arguing about it. It is not my fault that Counsel has called a witness today who has an open bench warrant. Whether the jurisdiction that issued that bench warrant effected it or not prior to today, the issue is that there was a legal bench warrant in existence for that witness. If Miss Jones when she goes back to New Jersey to defend herself on the warrant wants to attempt to say she should not be fully prosecuted on it because police officers in New Jersey sat on their heels and didn't try to lock her up before now, that is certainly a defense which she can raise. But with regard to the legitimacy of the warrant, and the fact that it belonged to the witness who

Page 195.

Det. Timothy Sheenan - Direct

was called this morning, those are the only relevant issues. Plus the fact that Counsel could certainly have found their witness and discovered the existence of the warrant had they looked. But whether or not there was an effective effort made to serve that warrant is irrelevant to the issues in this Post-Conviction hearing.

BY MR. WILLIAMS:

Q. Detective, did you ever consult with the arresting police officers in connection with Miss Wilson's arrest?

A. No, I did not.

Q. Do you know if anybody in your office consulted with the arresting police officers?

A. There is numerous people in my office, I couldn't testify to that.

Q. Okay. Did you discuss Miss Wilson's bench warrant with any prosecutors from your jurisdiction?

A. Prior to today?

Q. Yes.

A. Not the actual bench warrant, no, sir.

Q. Okay. Did you discuss the bench warrant of Miss Wilson with any prosecutor in the State of New Jersey?

Page 196.

Det. Timothy Sheenan - Direct

A. No, sir, I did not.

Q. Did you have any discussions with the prosecutors in the State of Pennsylvania about the bench warrant?

A. Yes.

Q. Of a subject who lives in New Jersey?

A. Yes, sir.

Q. When did you have that discussion?

A. Yesterday. And also last week.

Q. Okay. Let's go with last week. Was that over the phone or in person?

A. That was over the telephone.

Q. Did you make the call or did somebody else call you?

A. Ahh, we were, we made numerous calls back and forth, I'm not sure. But D.A. Fisk made the initial call.

Q. Miss Fisk, a prosecutor from the State of Pennsylvania, called you about a bench warrant from your jurisdiction?

A. That is correct.

Q. Okay. And did you ask her why are you from Pennsylvania calling me about New Jersey, a New Jersey subject?

A. I spoke to an investigator from the Camden

Page 197.

Det. Timothy Sheenan - Direct

County Prosecutors' Office prior to speaking with Ms. Fisk about the bench warrant. And about the initial incident.

Q. Okay, and what did that prosecutor tell you -- I'm sorry -- the investigator, what did that investigator tell you?

MS. FISK: Objection, Your Honor. What does it have to do -- first of all, it is hearsay, and second, what does it have to do with anything. It is irrelevant.

THE COURT: I don't know that this has to do anything with this case. I don't care if they were negligent over in New Jersey in expediting this warrant or not. What did you do to find the witness is what I'm interested in.

MR. WILLIAMS: What Your Honor is telling me --

THE COURT: Yes, what I am telling you: You can't depend on somebody else. I want to know what you did to find this witness. That's what I want to know.

MR. WILLIAMS: What I am establishing right now, quite clearly --

THE COURT: No, what you are establishing --

Page 198.

Det. Timothy Sheenan - Direct

MR. WILLIAMS: The prosecution here, that we have a prosecutor's office in Pennsylvania who all of a sudden, at this juncture in these proceedings, all of a sudden takes an interest in the bench warrant status of a New Jersey resident. Now, that I think smacks of bad faith.

THE COURT: This has nothing to do with wanting to enforce a bench warrant. What does it have to do with this PCRA? Nothing. Nothing.

MR. WILLIAMS: Intimidating a witness.

THE COURT: It has nothing to do with this PCRA.

MR. WILLIAMS: Ms. Fisk calls the State of New Jersey and says we want to enforce a bench warrant in your jurisdiction.

THE COURT: Well, you already know what she said?

MR. WILLIAMS: That's what she said, that is what the witness has now indicated.

THE COURT: He didn't say that.

MR. WILLIAMS: Well, let me delve a little more deeply into it, then.

THE COURT: But I say I don't see the

Page 199.

Det. Timothy Sheenan - Direct

relevancy of what they did about this warrant with what you should have done to get this witness when we had the hearing last year. What did you do.

MR. WILLIAMS: I am concerned about the bad faith of this prosecutor's office to intimidate a witness who testified in favor of the defense.

THE COURT: Counselor, this Court reporter can't take what you're saying and what I'm saying at the same time. So when I'm speaking, please shut up so that he could take it, and then you could speak and then he could take that.

MR. WILLIAMS: Very well.

THE COURT: Okay. But I'm telling you you have to tell this Court what you did to bring this witness in, why you didn't have her last summer. You were bringing in everybody in the world last summer.

MR. WILLIAMS: Well, all right, let me make my offer of proof, Your Honor, to make it very clear to you. Either they have been looking for the past 20 months for Miss Jones and they couldn't find her --

Page 200.

Det. Timothy Sheenan - Direct

THE COURT: Who was looking for her?

MR. WILLIAMS: New Jersey.

THE COURT: He wasn't looking for her.

MR. WILLIAMS: If they could not locate her after diligent efforts for 20 months I think that that bears a relevance to our ability to find her in the past 20 months.

THE COURT: Wait a while. When you couldn't find her what did you do? Did you list her on the NCIC or whatever you have over there?

THE WITNESS: The warrant was sent to Camden City because we could not locate her in Woodbury. The warrant was sent to Camden City. If they attempted to serve that I have no knowledge of that.

BY MR. WILLIAMS:

Q. Nor did you care, did you, Detective?

THE COURT: I know you didn't, but do you have what we have here, put it on the NCIC?

THE WITNESS: No, she wasn't entered in NCIC at that time, but she was entered in NCIC after that time. She is in NCIC right now, the warrant is in NCIC right at this moment.

BY MR. WILLIAMS:

Page 201.

Det. Timothy Sheenan - Direct

Q. Detective, when you sent it over to Camden, at that point you no longer cared whether that bench warrant was going to be enforced?

MS. FISK: Objection, Your Honor, as to whether he cared.

THE COURT: Do you want to testify for him. Ask him a question, don't testify for him.

BY MR. WILLIAMS:

Q. You can't testify as to whether any efforts were made to locate Miss Jones over the 20-month period since her bench warrant was issued, can you?

A. No, I can't.

Q. Can you tell us why it is that it's being enforced at this particular time?

MS. FISK: Because it is a legal bench warrant, Your Honor: I object to the question.

MR. WILLIAMS: But it's highly relevant as to the fact --

THE COURT: Because he knows where she is now.

MR. WILLIAMS: He says that they knew it when the bench warrant was issued. But all of a sudden, 20 months later --

THE COURT: They sent it to Camden because that's out of their jurisdiction.

Page 202.

Det. Timothy Sheenan - Direct

MR. WILLIAMS: So then why is it, sir, if Your Honor said that Camden --

THE COURT: What do you think Philadelphia does when they have bench warrants for somebody that's way out in Pittsburgh? They send it to the authorities in Pittsburgh.

MS. FISK: Frankly, Your Honor, when they have a bench warrant for somebody at Broad and Snyder it usually sits with 40,000 other bench warrants unfortunately that are unserved in the City of Philadelphia.

THE COURT: Well, I know that. We have so much crime here that you can't get around to them.

(Discussion was held off the record at this time.)

MS. FISK: And I would note further, Your Honor, so the record is clear, that what Counsel claims is bad faith on the part of the prosecution is merely an attempt to prepare to cross-examine a witness on the part of the prosecution.

BY MR. WILLIAMS:

Q. Detective, let's go back to your sending the bench warrant to Camden, okay.

Page 203.

Det. Timothy Sheenan - Direct

A. Yes, sir.

Q. When the Camden authorities have a witness' address -- I'm sorry -- a suspect's address, when do they, as a usual practice, go to the address to effect the arrest?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He can't answer for Camden. He doesn't know what they do. If you want to find out call the detective from Camden and ask him what they did with it. He can't tell you what they do.

BY MR. WILLIAMS:

Q. Detective, have you had experience with the enforcement of arrest warrants in Camden?

A. Not this type of arrest warrant, no, sir.

Q. Is there something peculiar about this particular arrest warrant?

A. No; if I signed an actual warrant that was an indictable offense and we felt that somebody was dangerous I would go to Camden and assist them in finding the person. But I didn't have any contact with this warrant or that individual at that time.

Q. Okay. Do you know why it is that Camden authorities are not here to enforce the warrant but you are?

Page 204.

Det. Timothy Sheenan - Direct

A. Because it is a warrant issued out of Municipal Court of Woodbury and I am an Officer for the City of Woodbury.

Q. So if the jurisdiction is Woodbury because the warrant issued from Woodbury, then why was it sent to Camden?

A. Because her address is in Camden. We don't have jurisdiction in Camden, we send it to them to attempt to serve that warrant.

Q. At your behest, at your jurisdiction's behest?

A. Our Municipal Court clerks send that warrant to Camden to attempt to serve them, for their officers to attempt to serve that.

Q. So your jurisdiction retains an interest in the warrant but Camden is out to effect the arrest?

A. The reason why it's sent to Camden is because if she is stopped or identified and somebody checks warrants on her they are going to call the City where she lives. So the warrant is sent to Camden for their officers to attempt to serve it and if anybody calls their jurisdiction they will have access to that warrant on their file.

Q. Right, so Camden makes the arrest, it's for your jurisdiction's benefit?

A. Right, and we will go take custody of that

Page 205.

Det. Timothy Sheenan - Direct

person at that time.

Q. And you can't tell us if any actions were taken in your jurisdiction to prompt or prod the Camden jurisdiction to effect an arrest coming from your jurisdiction, can you?

A. No, I can not.

Q. Can you tell us why at this particular time, given your discussions with investigators and Ms. Fisk, it is being enforced on this particular day?

A. Because this is the first time I have personal knowledge of her actual whereabouts.

Q. This is the first time you had personal knowledge?

A. That's right. I knew of a warrant, I knew of her whereabouts, this is where we came to get her.

Q. Okay. But it is not the first that your office knew; is that right?

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Q. It is on the file, is it not?

MS. FISK: Objection, Judge.

THE COURT: What is on the file?

BY MR. WILLIAMS:

Q. Miss Wilson's whereabouts is on the file, is it not?

Page 206.

Det. Timothy Sheenan - Direct

A. It is not.

THE COURT: He has told you what happened to that.

BY MR. WILLIAMS:

Q. Didn't you just testify that --

THE COURT: He sent it to Camden.

BY MR. WILLIAMS:

Q. Because Miss Wilson resided in Camden?

A. But I am not sure she's there.

Q. That was her last known information: That she was in Camden?

A. That is correct, and it was sent to Camden.

Q. Okay. So back when you sent the warrant over to Camden you knew of her whereabouts, at least as of that time, didn't you?

A. No , I did not.

Q. But what about your office?

A. I knew of her address but I didn't know if she was going to be there.

Q. Did you make any attempts to find out?

A. No, we sent the warrant to Camden to have them attempt to serve it.

Q. And you don't know if they made any efforts to find out?

A. No, I do not.

Page 207.

Det. Timothy Sheenan - Direct

Q. In all honesty, Detective, it is no coincidence that this warrant is being enforced on a day where she testified for Mr. Jamal, is it?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He told you this is the first time he heard where she is.

That's why he's here, to pick her up.

BY MR. WILLIAMS:

Q. Because you received a call from Ms. Fisk, right?

A. Actually, I seem to recall an investigator from, I received a call from an investigator from the prosecutor 's office first and then a call from Miss Fisk, that's correct.

Q. So your interest in this case is a direct result of conduct and activity by a prosecutor here in Philadelphia?

A. My interest in this case is that I knew about a warrant that was issued for Veronica Wilson and her whereabouts were brought to my attention last week, where she was going to be today.

Q. By a prosecutor here in Pennsylvania?

A. By a prosecutor and by an investigator for the Camden County Prosecutor's Office.

(Discussion was held off the record at this time.)

Page 208.

Det. Timothy Sheenan - Direct

BY MR. WILLIAMS:

Q. Let me get this straight, Detective. As soon as you learned of her whereabouts, you personally, you went to effectuate her arrest, right?

A. Yes, that is correct.

Q. So for the past 20 months or so since this warrant has been issued, you didn't know of her whereabouts, did you?

A. No, I did not.

MS. FISK: Objection, Your Honor: I believe this has been asked and answered.

THE COURT: He said he didn't know where she was.

MR. WILLIAMS: Very well. No further questions.

MS. FISK: I just have I think one.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Detective, is it Detective or Sergeant or both?

A. Detective Sergeant.

Q. Detective Sergeant? Sheeran?

Page 209.

Det. Timothy Sheenan - Cross

A. Sheenan, S-H-E-E-N-A-N.

Q. Detective Sergeant Sheenan, is this bench warrant a matter of public record?

A. Yes, it is.

Q. It is available for anyone to look at or see from the Woodbury Municipal Court records?

A. That is correct.

Q. Do you have any record as to whether or not any person made an effort to look at or confirm the existence of this warrant prior to your obtaining this telephone call from the Camden County investigator last week?

A. I'm not sure I understand your question; could you repeat that, please.

Q. Would you know whether or not anybody looked at the records and became aware of the existence of the bench warrant: You have to make a mark in the file if somebody opens it?

A. No, ma'am.

Q. All right, but since its issuance in December 1994, the existence of this warrant has been a matter of public record?

A. Through the Municipal Court, that is correct.

MS. FISK: Thank you, sir.

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Page 210.

Det. Timothy Sheenan - Redirect

REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. And this is only in Woodbury; is that right?

A. Woodbury Municipal Court.

Q. That's where it is a public record, in Woodbury?

A. I believe so.

Q. It is not, it wouldn't be in the Camden Courts, would it?

A. I'm not sure if --

Q. It wouldn't be on file in Camden other than the police department?

A. I believe you are correct, I'm not sure of their procedures.

Q. Okay. And when you say that you don't know if any person looked at this public record in your jurisdiction of Woodbury, that would include authorities in your jurisdiction; isn't that right?

A. Yes.

MR. WILLIAMS: I have no further questions.

MS. FISK: I just have one, I'm sorry.

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RECROSS-EXAMINATION

Page 211.

Det. Timothy Sheenan - Recross

- - - - -

BY MS. FISK:

Q. Though the warrant is in the name of Veronica Wilson, does the paperwork with regard to this offense also reflect that Miss Wilson was also known as Veronica Jones?

A. Yes, it does on the arrest report.

Q. And just so the record is clear, is the one who was in the Courtroom earlier this morning when you were brought up to the -- oh, I'm sorry -- when you were brought up to the glass, is that the woman who was the subject of that warrant?

A. That's the woman who was arrested on that date.

Q. And are you able to make that determination by looking at the photograph of the person who was arrested under this file number?

A. That is correct.

Q. Incidentally, when Miss Wilson, Miss Jones was arrested on July the 14th, 1992, was she also processed, that is fingerprinted, photographed and the like?

A. I believe she was photographed but she wasn't fingerprinted due to the fact that her fingers were bleeding.

Page 212.

Det. Timothy Sheenan - Redirect

Q. Okay. Was she made aware of the fact that she was being placed under arrest?

A. Yes, ma'am.

MS. FISK: Thank you.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Do you have an independent memory that she had been told that she was under arrest?

A. On her arrest report she has to be served with her green sheets, which means she is under arrest.

Q. My question is do you have firsthand knowledge as to whether she was informed that she was arrested?

A. No, I do not.

Q. In terms of Miss Jones having this different name of Miss Wilson, is it your experience as a detective that people use aliases to make it more difficult to find them?

A. Sometimes, yes, sir.

MR. WILLIAMS: No further questions. I'm sorry, one moment.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Page 213.

Det. Timothy Sheenan - Redirect

Q. Did you check to see if Miss Jones also went by the name of Louise Tatum?

A. No, I did not.

Q. Did you check to see if she also went by the name of Rhonda Harris?

A. No, I did not.

Q. So you didn't check to see if she had a whole string of aliases?

A. No, I did not.

MR. WILLIAMS: No further questions.

MS. FISK: I have nothing further, Your Honor.

THE COURT: All right, you are excused. Thank you very much.

THE WITNESS: Thank you.

MS. FISK: Your Honor, may I ask defense Counsel whether they will need Detective Sergeant Sheenan or whether he and his partner could return to New Jersey?

MR. WILLIAMS: I would like to call the other detective to the stand but before that I would like to call Ms. Fisk to the stand in light of Detective Sheenan's --

THE COURT: No, you can't do that.

MR. WILLIAMS: She makes a call to

Page 214.

enforce a bench warrant in a very significant period of time, that is a few days before Miss Jones testified. I think the Supreme Court and certainly any Federal Court would be highly interested.

THE COURT: Argue that before the Supreme Court.

MR. WILLIAMS: Your Honor promised that you wouldn't interrupt. I will finish and then I will do you the courtesy of listening to you.

THE COURT: No, I don't want to listen to you. Argue that before the Supreme Court, okay.

(Discussion held off the record at this time.)

MR. WILLIAMS: Your Honor, we are under an order to create a full factual record.

THE COURT: Yes, I know, a full record.

MR. WILLIAMS: Of police intimidation.

THE COURT: No, no, no, no.

MR. WILLIAMS: That's what Veronica Jones testified, that is the crucial claim.

THE COURT: No. What am I supposed to

Page 215.

do, investigate the whole police department?

MR. WILLIAMS: No, what I am asking Your Honor to do is to examine whether what we saw here this morning is an illustration of the very thing we have been alleging in our papers, that is police intimidation, prosecutorial intimidation of defense witnesses. I think what we saw here was evidence of that. And what I want to establish --

THE COURT: I didn't hear --

MR. WILLIAMS: What I want to establish from the testimony of Miss Fisk was in fact that was the intention.

THE COURT: What does that have to do with this case at all?

MR. WILLIAMS: Because every witness that has testified favorably to Mr. Jamal has been intimidated and we saw it now. With an audacity that is shocking.

THE COURT: You had an opportunity to bring them last time. I didn't hear anybody say anybody was intimidated. As a matter of fact, they told me they were intimidated by you.

MR. WILLIAMS: And now what we have is evidence of Miss Fisk's enforcing a bench

Page 216.

warrant of a defense witness at this particular time. And I want to establish that it was intentional, intentional to intimidate this witness.

THE COURT: Maybe it was. Maybe it was. So what?

MR. WILLIAMS: Your Honor isn't concerned about that issue?

THE COURT: No, I don't see what it has to do with this PCRA matter. I don't.

MR. WILLIAMS: Well, it makes it very difficult to advocate for

Mr. Jamal when Your Honor has such a limited knowledge about our case.

THE COURT: Take it up with the Supreme Court and if they think it is important they will send it back down again, okay. I don't think it's important. I don't think it has anything to do with the PCR. That is a collateral issue. And I don't want to go into a second collateral issue.

MR. WILLIAMS: Well, I don't want to be in the position of having to send this case back.

THE COURT: I am. Let them send it

Page 217.

back down if they want more information. I will be glad to give them all the information that they want.

(Discussion was held off the record at this time.)

THE COURT: Come on, Counselor, do you want that other detective or can he go?

MR. WILLIAMS: That's what I am conferring with Co-counsel on.

THE COURT: Well.

MR. WILLIAMS: Your Honor, we don't want the other witness. In light of -- let me just make this record. I mean I would just ask you to do me that courtesy. In light of the testimony that we just heard, we want Miss Fisk to testify on her intent to intimidate the defense witness. I think we are obligated to do it under the Order.

THE COURT: Okay.

MR. WILLIAMS: Number one. And number two, I think that is what occurred here and the record cries out for it.

THE COURT: Yes, okay.

MR. WILLIAMS: So that is our application.

Page 218.

THE COURT: Okay.

MR. WILLIAMS: And the application is...?

THE COURT: I told you take it up with the Supreme Court.

MR. WILLIAMS: It's denied.

THE COURT: If you say so.

MR. WILLIAMS: I don't want to quibble with words.

THE COURT: Well, Counselor, if you want to raise it in the Supreme Court, raise it there. If they want me to hear from Ms. Fisk they will send it back down.

MR. WILLIAMS: Very well.

THE COURT: Okay.

All right, let the officers go.

MR. WILLIAMS: With the thanks of the defense.

THE COURT: Let the officers go.

THE COURT OFFICER: They are being instructed now, Your Honor.

THE COURT: Okay.

MR. WILLIAMS: Your Honor, the defense now calls Christopher Milton.

MS. FISK: I would ask for an offer of

Page 219.

proof with regard to this witness, Your Honor.

MR. WILLIAMS: Mr. Milton will testify in support of our due diligence claim which we are submitting under protest.

MS. FISK: That is not an offer of proof, Your Honor. I am asking for specifics.

THE COURT: Why don't you tell her what he is going to say, will you.

MR. WILLIAMS: Well, Mr. Milton --

MS. FISK: I would have no objection to Counsel telling me privately, it doesn't have to be in open Court.

THE COURT: Okay, speak to her privately.

MR. WILLIAMS: I have no problem with stating it in open Court that Mr. Milton is going to testify about his activities as an investigator in connection with locating Miss Jones.

THE COURT: Okay.

THE COURT OFFICER: What was the name again?

MR. WILLIAMS: Christopher Milton.

Page 220.

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Christopher Milton - Direct

Christopher L. Milton, having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Good afternoon, Mr. Milton. Thanks for coming in. Can you tell the Court how you are employed?

A. I am a licensed private investigator.

Q. And how long have you been a private investigator?

A. Since 1988.

Q. Since 1988?

A. (Witness nodded head affirmatively.)

Q. Have you ever done work for what I will call loosely the defense team for Mr. Mumia Abu-Jamal?

A. Yes, I have.

Q. In your capacity as an investigator?

A. Yes.

Q. When were you retained by the defense team?

A. Hmm. Mid, mid July.

Q. Of what year?

A. '95.

Q. 1995? How long have you worked for the defense team in your capacity as an investigator?

Page 221.

Christopher Milton - Direct

A. Since then.

Q. To the present?

A. Yes.

Q. Has it occupied all of your time as an investigator?

A. Ahh, no.

Q. So you've had other clients?

A. Yes.

Q. We are one among other clients?

A. Yes.

Q. Now, there was a woman who testified here this morning by the name of Veronica Jones. Do you know Veronica Jones?

A. Yes, I do.

Q. How do you know her?

A. I have been searching for her since, since I pretty much been almost on the case and...

Q. From the very moment you were retained?

A. No, not from the very moment, no, sir.

Q. Okay. From the very -- I will rephrase it. From the very moment that you began working on behalf of the defense team, when you began working as an investigator?

A. Well, I knew of her. I hadn't met her at that point but I knew of her.

Page 222.

Christopher Milton - Direct

Q. All right, let me back up. Were you ever told to locate a Veronica Jones?

A. Yes.

Q. When were you told that?

A. Probably a month after, after I was retained.

Q. Back in 1995?

A. Yes.

Q. And when did you begin looking for Veronica Jones?

A. Around August.

Q. Right after you were directed to start looking for her?

A. Yes.

Q. And when you began looking for Veronica Jones, did you have information in your possession that assisted you in your investigation?

A. I was given her name and her birth date.

Q. A name and a birth date?

A. Yes.

Q. The name you were given was Veronica Jones?

A. Ahh, yes.

Q. And with that information at your disposal, what steps did you take?

A. Well, I did, you know, the basics: Ran it through criminal records, employment history, voter's

Page 223.

Christopher Milton - Direct

registration, for possible welfare checks, things like that. Just the standard stuff.

Q. Driver's license?

A. Yes.

Q. Did you ever look for a death certificate in the event that this person might be dead?

A. Yes, sir.

Q. Did you investigate as to whether she had been incarcerated during any of this period of time?

A. Yes, sir.

Q. Okay. What jurisdictions did you look in?

A. Ahh, Philadelphia, in New Jersey.

Q. Philadelphia and New Jersey?

A. Yes, sir.

Q. By the way, with respect to your investigation in New Jersey, did you have any reason to believe that there was any information in the county of Woodbury?

A. In Woodbury, I don't think so, I don't remember.

Q. Okay. That doesn't stick out in your mind as a significant place?

A. No, sir.

Q. Now, as a result of your investigations, did you find potential addresses for Veronica Jones?

Page 224.

Christopher Milton - Direct

A. Yes, sir.

Q. Can you tell us more about that. A few? Lots?

A. Well, in some of the areas, some of the possible addresses that I went to, I was given areas that she may have worked at or she may have lived at. One of them was being in New Jersey, others were in different parts of the City. Pretty much mostly South Philadelphia, or Southwest Philadelphia.

Q. So you had potential employment addresses?

A. Hmm-hmm.

Q. And home addresses?

A. Hmm-hmm.

Q. Can you characterize the number of addresses that you had, was it plenty or just a few?

A. It was a few, a few addresses were given. Most of them, or actually all of them at one point turned up to be blanks in the beginning.

Q. When you have addresses, either employment or residence, what steps do you take, investigative steps?

A. Well, we will go to them, myself or someone out of the office will go to them, canvas the area and definitely knock on the door, ask for her. In most cases people will say she didn't live there.

Page 225.

Christoper Milton - Direct

Q. All right, so you go to the address that you have, right?

A. Yes, sir.

Q. And you used the phrase canvas the area. What do you mean by that?

A. Well, walk up and down the street, especially if no one was home, asking people if they knew of her, of the young lady.

Q. And did you do that with respect to these addresses for Miss Jones?

A. Yes, sir.

Q. And in your investigation did you come upon possible aliases for a Veronica Jones?

A. Yes, sir.

Q. Okay. Can you kind of characterize that for us: Were there lots of aliases or a few?

A. Well, it was quite a few.

Q. Quite a few?

A. Yes, sir.

Q. Okay.

A. The birth dates were different. You know, her age. People would estimate her age. Information that was given to me changed every now and then.

Q. Let me go back to the aliases. You said there were plenty of aliases and there were different birth

Page 226.

Christopher Milton - Direct

dates for those aliases?

A. Hmm-hmm.

MS. FISK: I would simply ask Mr. Milton to say yes or no, because there is no uh-huh button on the machine.

THE COURT: Yes, he can't record it.

THE WITNESS: Okay, I'm sorry.

BY MR. WILLIAMS:

Q. As a private investigator, does it make your job more difficult if there are aliases for a person?

A. Yes, it does.

Q. And maybe it's obvious but can you tell the Court why it is more difficult?

A. Well, with a common name like Jones, for one, you have over thousands of Joneses. The name itself was a very common name. The biggest problem was nailing down the birth date, place of birth, things like that, even her mother's name which wasn't given to, it just makes it real hard. If I'm given an accurate birth date and accurate name it makes it a lot easier.

Q. It's kind of like shooting at a moving target?

A. Yes, sir.

Q. Now, I asked earlier about information that you had at your disposal and you said you got her

Page 227.

Christopher Milton - Direct

name and her birth date?

A. Hmm-hmm.

Q. During the course of your investigation were you supplied more information from other investigators for the defense team as time went on?

A. Yes.

Q. What kinds of information did you get as time went on?

A. Ahh, hmm... well, definitely I got different names.

Q. The aliases were supplied to you?

A. The aliases were given to me. Ahh... possible places of employment. Possible relatives.

Q. And did you follow up on every single lead that you got?

A. Yes.

Q. Did you ever leave -- withdrawn. Did you ever ignore any of those leads?

A. No.

Q. You followed every single lead that you were given?

A. Yes.

Q. And did you yourself do any of the computer searches?

A. No, sir.

Page 228.

Christopher Milton - Direct

Q. From your knowledge do you know if anybody on the defense team or anybody retained by the defense team did any computer searches?

A. Yes, sir.

Q. Okay, who would that be?

A. Mr. Newman.

Q. Mr. Newman?

A. Yes.

Q. And where is he, where does he work out of?

A. To my knowledge, San Diego.

Q. And were you ever in contact with this Mr. Newman from San Diego?

A. Yes.

Q. And for what purpose?

A. He would give me, when he came here he would give me information. We would sit down and put our heads together and compare notes, compare my findings, my physical findings to his computer findings.

Q. Okay. Tell me if I am wrong about this but let me see if I understand you right. We have this man Mr. Newman out in San Diego doing computer searches, you are out on the street following up on leads; is that right?

A. Hmm-hmm, yes, sir.

Page 229.

Christopher Milton - Direct

Q. And there were occasions where the two of you would meet out here on the East Coast?

A. Yes, sir.

Q. And you would confer to see how the progress of the investigation was going?

A. Yes.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Q. And you understand, Mr. Milton, that what I am only asking you about is Veronica Jones?

A. Yes.

Q. Okay. Not about any other investigations that you have done or anything like that, just Veronica Jones?

A. Yes.

Q. And whatever you have testified to thus far is about Veronica Jones?

A. Yes.

Q. That this investigator in San Diego was doing computer searches for Veronica Jones, or these aliases?

A. Yes.

Q. Do you know if -- by the way, are there other investigators working in your office?

Page 230.

Christopher Milton - Direct

A. Yes, sir.

Q. And did any of these other investigators in your office play a role in searching for Veronica Jones?

A. Yes.

Q. And what about other investigators outside of your office and other than Mr. Newman?

A. Not to my knowledge, I don't know.

Q. You don't know?

A. I don't ask questions like that.

Q. Okay. You follow your leads and you do what you're told?

A. Yes, sir.

Q. Now, you said something about canvassing areas in South Philly earlier; do you recall that?

A. Yes.

Q. Were there other areas that you canvassed besides South Philly?

A. Yes.

Q. What other areas?

A. Southwest Philadelphia.

Q. Southwest Philly?

A. Yes.

Q. Where else?

A. West Philly itself. These were the two main

Page 231.

Christopher Milton - Direct

areas.

Q. Okay. And you said earlier something about New Jersey as well?

A. Yes.

Q. Okay. Can you be more precise?

A. Well, the addresses that we were given, we would only knock on the doors. We would, if nobody answered we would knock on the doors next to it, across the street from it. Like if somebody lives someplace, usually a person lives across the street sees them quite often.

Q. Okay.

A. We would talk to them, ask them if they knew the young lady.

Q. All right, what I am asking is, did you look in any areas of New Jersey for a Veronica Jones or any of her aliases?

A. Yes.

Q. What parts of New Jersey did you look?

A. Camden.

Q. Camden, New Jersey?

A. Yes.

Q. And why Camden in particular?

A. That was the address or the areas that were given to me.

Page 232.

Christopher Milton - Direct

Q. Now, by the way, do you know a Floyd Jackson?

A. Yes, sir.

Q. Who is Floyd Jackson?

A. He works for me.

Q. Was he at all involved in the search for Veronica Jones?

A. At some point, yes.

Q. Now, there came a point where Veronica Jones was actually found; is that right?

A. Yes, sir.

Q. Now, before the real Veronica Jones was found, did there come a point where you believed you found the real Veronica Jones?

A. Yes, sir.

Q. Can you tell us about that?

A. There was a street address that was given to me where the relatives of this young lady, or we thought was the relatives of this young lady had said that she moved to Baltimore. They provided a picture of her and gave me good information: Life style, kids, new husband, everything. And I was pretty sure it was her at that point.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Page 233.

Christopher Milton - Direct

Q. When you say lifestyle of this particular Veronica Jones in Baltimore --

A. Hmm-hmm.

Q. -- what do you mean by that?

A. Well, you know, she was working, she was a family woman, had one child by a gentleman she met from the military, two other children by her present husband.

Q. And by the way, did you ever locate this Veronica Jones in Baltimore?

A. Yes, I did.

Q. And what was the result when you located her?

A. She said it wasn't her.

Q. That it wasn't her?

A. No.

Q. And did you apprise the defense of this fact?

A. Yes, sir.

Q. Okay. And did you make it a practice to apprise the defense of your progress in investigating the whereabouts of Miss Veronica Jones?

A. Yes, sir, I did.

Q. And did this... now, the woman in Baltimore, her name was Rhonda Harris, wasn't it?

A. Yes, sir.

Q. And is that one of the aliases or a/k/a's of

Page 234.

Christopher Milton - Direct

Veronica Jones?

A. Yes, sir, it was.

Q. And do you recall whether this Rhonda Harris in Baltimore had a prostitution background also?

A. Yes, she did.

Q. In Philadelphia?

A. Yes, sir.

Q. And it would be safe to say that when you found that out you thought you had a direct hit?

A. Yes, sir.

Q. Pretty excited?

A. Yes, sir.

Q. You were excited because you really wanted to find this Veronica Jones; is that right?

MS. FISK: I object to that, Your Honor. Frankly, that doesn't matter.

MR. WILLIAMS: Well, it does matter in terms of the diligence.

MS. FISK: You are right.

I will withdraw the objection.

BY MR. WILLIAMS:

Q. You really wanted to find this Veronica Jones; is that right?

A. Yes, sir, I did.

Q. Was it your state of mind or your impression

Page 235.

Christopher Milton - Direct

that finding Veronica Jones was important to the defense team?

A. Yes, sir, it was.

Q. Okay. Tempers ever flare because we were having problems finding Veronica Jones?

MS. FISK: Well, to that I object, Your Honor.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. Now, did you attempt to review files for any criminal cases involving a Veronica Jones or a Rhonda Harris or Louise Tatum or any of the numerous a/k/a's?

A. Have I reviewed the files?

Q. No, did you ever attempt to review files in connection with criminal cases for a Veronica Jones or any of the aliases associated with Veronica Jones?

A. Yes, sir, I did attempt.

Q. Okay. Here in Philadelphia?

A. Yes, sir.

Q. Tell me what happened as a result of your attempts to review those files?

A. Well, when I went to the Quarter Sessions to see if I could order the files, I was given instructions that they would probably not be

Page 236.

Christopher Milton - Direct

obtainable right now due to, you know, the transition that was going to be made.

Q. What transition are you talking about?

A. The move from City Hall to over here, to the Criminal Justice Center. So I figured well, if I wouldn't get them right away they wouldn't be of any use because I think they had a sentencing or something coming up I think like within two days or three days or something like that.

Q. You felt that you could spend your time better doing other things?

A. Yes.

Q. Rather than wait for the boxed-up materials?

A. Yes.

Q. Now, did there come a point, Mr. Milton, when you learned that your office had located the real Veronica Jones?

A. Yes, sir.

Q. When did that occur?

A. Sometime in April.

Q. Of what year?

A. This year.

Q. 1996?

A. Yes, sir.

Q. And was that the first time as far as you know

Page 237.

Christopher Milton - Direct

that anybody connected with the defense team was able to locate the real Veronica Jones?

A. Yes, sir.

Q. And where was she located; do you know?

A. In New Jersey.

MR. WILLIAMS: If I may have one moment.

Excuse me, Mr. Milton.

(Discussion was held off the record at this time.)

MR. WILLIAMS: Thank you, Mr. Milton.

No further questions.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

MS. FISK: Thank you.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Good afternoon, Mr. Milton.

A. How are you doing?

Q. Fine, thank you. Mr. Milton, what is the name of your private investigation agency?

A. Philadelphia Protection Service.

Q. Philadelphia Protection Services?

Page 238.

Christopher Milton - Cross

A. Yes, ma'am.

Q. And does that operate under your license, sir, as a private investigator?

A. Yes, ma'am.

Q. And how long has the Philadelphia Protection Services been in existence?

A. About three years, since February 19th, I incorporated February 19th of '93.

Q. And when you are retained as an investigator, do you charge an hourly rate?

A. Yes, sir.

Q. And what is your standard hourly fee, Mr. Milton?

A. Well, from then to now it is changing.

Q. With regard to this matter when you were retained in July of 1995, what was your standard hourly fee?

MR. WILLIAMS: I am going to object to that. There is no relevancy to what his fee was in this case. It has nothing to do with whether or not he exercised reasonable diligence.

MS. FISK: Frankly, Your Honor, if a person is being paid ten cents an hour as opposed to being paid $100 an hour, the diligence of their efforts will be affected.

Page 239.

Christopher Milton - Cross

MR. WILLIAMS: You could ask that: If his diligence was affected by the rate that was paid.

THE COURT: We don't know what the rate is.

MR. WILLIAMS: Then it is irrelevant.

THE COURT: I think it is relevant. Go ahead.

BY MS. FISK:

Q. Mr. Milton, what was your statement --

MR. WILLIAMS: Your Honor --

Pardon me, Ms. Fisk.

I think the proper question to ask is was he paid the rate that he requested.

THE COURT: Counselor, you will have a chance to redirect, you can ask him any questions that you want. Don't tell the Commonwealth how to ask their questions.

MR. WILLIAMS: I am not telling them, I am just asking that the Court keep the questions bound within the law.

THE COURT: Well, it's within the law. She has a right to know what he charged.

BY MS. FISK:

Q. Mr. Milton, do you remember my question?

Page 240.

Christopher Milton - Cross

A. Yes, ma'am.

Q. Okay.

A. My standard fee is $57 an hour.

Q. And is that the fee that you quoted to those persons who hired you with regard to this case last July?

A. No, ma'am.

Q. And what was the fee that you quoted to Counsel in this case, sir?

A. $47 an hour.

Q. So you discounted them?

A. Yes, ma'am.

Q. And since July 1995 has that fee remained, that is your $47 an hour?

A. Yes, ma'am.

Q. And how many hours have you billed on this matter?

MR. WILLIAMS: Objection, Your Honor: There's no relevance to that.

THE COURT: We want to know how much effort he put into it.

MR. WILLIAMS: The issue is how much time did he spend in searching for Veronica Jones.

THE COURT: That's what we're asking

Page 241.

Christopher Milton - Cross

here.

MR. WILLIAMS: I have no problem with that, Your Honor.

THE COURT: That's what she is asking.

BY MS. FISK:

Q. My first question --

MR. WILLIAMS: With respect to Veronica Jones.

MS. FISK: Oh, absolutely with respect to Veronica Jones.

BY MS. FISK:

Q. I apologize and I hope you didn't misunderstand my question. With regard to your efforts to locate Miss Jones in this matter, how many hours have you billed?

A. For Miss Jones?

Q. Yes.

A. I have no idea.

Q. You don't break --

A. Not specifically.

Q. You don't break it down in your bills, sir?

A. What I do is the amount of hours I spent working for them period I bill them for, I don't break down what the hours were doing.

Q. Are you able to tell us how many hours you

Page 242.

Christopher Milton - Cross

have devoted to the attempt to locate Miss Jones?

A. I can give you an estimate.

Q. And have you billed the defense for each of those hours to which you are about to give us an estimate?

A. Yes, ma'am.

Q. And in your estimation, then, how many hours have you billed for attempting to locate Miss Jones?

(Pause.)

A. Probably about 200 hours.

Q. And you have been paid for those 200 hours?

A. Yes, ma'am.

Q. Now, sir, when you were hired, and I understand it you told us that you were retained in mid-July 1995?

A. Yes, ma'am.

Q. I trust that between mid-July of 1995 and about a month later, which is when you told us you were asked to locate Miss Jones, that you were doing other things regarding this matter?

A. Yes.

Q. So it was sometime in mid-August 1995 that you were directed to attempt to locate Miss Jones; is that correct?

A. Yes, ma'am.

Page 243.

Christopher Milton - Cross

Q. Now, sir, I trust that you were told that Miss Jones had been a witness in this matter back in 1982; would that be fair to say?

A. Yes, ma'am.

Q. Did you request to be provided with a copy of her notes of testimony in an attempt to glean from that any information that you could have where she lived or her whereabouts or anything about her history?

A. Did I request it?

Q. Yes, sir.

A. No, ma'am.

Q. Were you ever provided with a copy of those notes of testimony?

A. Yes, ma'am.

Q. Was that in the middle of August of 1995?

A. Ahh, it was given to me about that time, yes, ma'am.

Q. Now, all those other persons that you testified about during direct examination -- that is Floyd Jackson, Mr. Newman -- to the best of their knowledge, did their efforts to locate Miss Jones begin at or about the same time that you began looking for Miss Jones?

MR. WILLIAMS: Objection to the best

Page 244.

Christopher Milton - Cross

of their knowledge.

MS. FISK: To the best of his knowledge.

THE COURT: No, his knowledge. They work for him.

MR. WILLIAMS: I think she just misstated the question.

MS. FISK: I apologize for misstating it, I will restate it.

BY MS. FISK:

Q. The persons that you mentioned -- Mr. Newman is in San Diego, Floyd Jackson, a member of your Philadelphia Protection Services -- to the best of your knowledge, did those persons begin to look for Miss Jones at or about the same time that you began to look for Miss Jones, that is around or about mid-August of 1985?

A. Mr. Newman did, yes, ma'am.

Q. How about Floyd Jackson?

A. No, ma'am.

Q. Later?

A. Later, yes, ma'am.

Q. Okay. Now, you have told us that as part of your by standard initial efforts to locate Miss Jones, you checked, among other things, criminal records or

Page 245.

Christopher Milton - Cross

her criminal extract in Philadelphia; would that be fair? That's what it's called.

A. Yes.

Q. And in checking Miss Jones' criminal extract in Philadelphia, did you note that in 1988 she had been found guilty of a weapons offense and had been placed on probation?

A. I really don't remember that, I didn't look at it.

Q. You didn't look at what?

A. I didn't have that reason.

Q. Oh. Well, if I were to suggest to you that Miss Jones was indeed convicted in 1988 of a weapons offense, is that something that you would have seen on her criminal history?

A. If it was on there, yes, ma'am.

Q. All right. And having checked that criminal history, did you then contact the Philadelphia Department of Probation And Parole to find out what if any information they had on her whereabouts during the pendency of her probation?

A. Did I do that?

Q. Yes, sir.

A. No, ma'am.

Q. Did you suggest to any of the attorneys who

Page 246.

Christopher Milton - Cross

had hired you that a subpoena duces tecum to the Probation Department might give you a more-recent address or biographical background or data regarding the person you were seeking?

A. No, ma'am.

Q. It never occurred to you to check with Probation, sir, in Philadelphia?

A. No, ma'am.

Q. Now, when you checked the criminal records regarding Miss Jones, do you also recall that you learned that she had been incarcerated during the pendency of this trial or at any time thereafter?

A. Yes, ma'am.

Q. And specifically in Philadelphia, did you learn that?

A. Yes.

Q. Did you therefore as a result make an effort last summer, 1995, to subpoena the records from the Philadelphia prison in an attempt to get any biographical data they had regarding the woman you were seeking?

A. Did I do that last year?

Q. Yes, sir.

A. No, ma'am, I don't remember doing that.

Q. Did you suggest to any of the attorneys who

Page 247.

Christopher Milton - Cross

had hired you that because she had been incarcerated that there would be records there that they might wish to subpoena and obtain?

A. No, ma'am.

Q. So to this day you still don't know what information, addresses or materials exist in those documents; is that correct?

A. No, ma'am.

Q. It is not correct or it is correct?

A. No, I don't know.

Q. Oh, okay. Now, in the check of criminal records, did you discover that Miss Jones had been found guilty of welfare fraud in Camden back in 19 -- I'm sorry -- yes, back in 1992? I'm sorry, I don't want to misstate it.

MS. WOLKENSTEIN: '88.

BY MS. FISK:

Q. I'm sorry, back in 1988?

A. No, ma'am.

Q. Did you do a criminal record check in Camden?

A. We went over to see if she had ever been arrested in Camden.

Q. And did you discover that she indeed had been arrested in Camden?

A. No, ma'am.

Page 248.

Christopher Milton - Cross

Q. In what manner did you go over to New Jersey, then, and discover whether she had been arrested, please?

A. The department that's right over the bridge, we stopped in there and we weren't given a whole lot of cooperation at that.

Q. Did you suggest to the attorneys who had hired you or any of the persons who had hired you that a subpoena duces tecum to the Camden Courthouse to determine her full criminal history might give you additional information regarding her whereabouts?

A. Did I suggest that, was that your question?

Q. Yes, sir.

A. No, ma'am, I did not.

Q. And that was despite the fact that you were unable to obtain cooperation with those persons through an informal check of her records?

A. We did a lot of civil work. When we couldn't get the criminal we said well maybe there is some civil information and we did come up with quite a few names.

Q. But those were of various persons named Veronica Jones?

A. Yes, ma'am.

Q. As opposed to the person who you knew you were

Page 249.

Christopher Milton - Cross

looking for who had been fingerprinted and who had an identifiable Philadelphia Police Identification Number?

A. Well, at that point we still wasn't sure her complete name was Veronica Jones.

Q. Well, you knew what her criminal extract said in Philadelphia, right?

A. Hmm-hmm.

Q. And that said Rhonda Harris; correct?

A. Hmm-hmm.

Q. Is that a yes?

A. Yes, ma'am. I'm sorry.

Q. Did you subpoena FBI records to determine, with the date of birth and the Philadelphia photo number that you obtained in Philadelphia, whether that person based on those fingerprints had any arrests in any other jurisdictions in the country?

A. No, ma'am.

Q. Did you suggest of any of the attorneys who had retained you to attempt to locate this woman that those records from the FBI be subpoenaed so you would know that you were looking precisely for the same person?

A. No, ma'am.

Q. You knew that those were records that existed,

Page 250.

Christopher Milton - Cross

did you not, sir?

A. Yes, ma'am.

Q. Now, you told us that at some point, and that point was you told us two days before this matter was coming back to Court -- that is the matter of the Commonwealth versus Jamal -- is when you inquired as to the availability of the Quarter Sessions record; is that correct?

A. Repeat that.

Q. You said that you checked for her Quarter Sessions file, that is in the case in which she had initially been incarcerated in '82 and then a bench warrant was issued upon her in 1988, is that what you said, and they told you you couldn't get to it because the building was moving?

A. I wasn't specific on what files but I did inquire about files concerning that young lady, yes.

Q. Okay. And specifically did you attempt to locate the Quarter Sessions file, that is the Court document regarding her arrest in 1982 which resulted in the 1988 conviction?

A. No, I didn't.

Q. You did not?

A. I asked for files on her, period.

Q. And in what fashion did you ask for files on

Page 251.

Christopher Milton - Cross

her, please? Did you make a formal, verbal request or did you issue a subpoena duces tecum?

A. I asked that, I asked could files be obtained. And when I said that it was told to me that chances of getting them any time soon would not happen.

Q. And that was because the Criminal Justice Center was opening and the Clerk of Quarter Sessions was moving documents from City Hall to this building?

A. Right, that's what I was told.

Q. Now, did I understand you to say on direct examination that since they were coming back for sentencing in two days you figured it wasn't worth it; is that what you said?

A. I said the chances of me getting it might not be.

Q. Okay. And when you said sentencing, am I correct that what you were referring to was the final closing arguments in this matter which took place in this building on September 11th of 1995; is that what you were referring to?

A. No, ma'am, I am not.

Q. What sentencing were you referring to?

A. I haven't been in the Courtroom so I just knew that you were coming back here, or they were coming back here at a point that I needed to get what I was

Page 252.

Christopher Milton - Cross

asked to get as soon as possible.

Q. Now, was that request for those records made in August or September or October of 1995? If you know.

A. You are saying September October?

Q. I am asking you.

A. I'm trying to remember. It was either late August or early September.

Q. Now, I take it that you at some point became aware that in fact criminal court moved into this building; is that right?

A. Yes, ma'am.

Q. Did you thereafter return and make another effort to obtain all files having to do with this young lady?

A. No, ma'am.

Q. You never did?

A. No, ma'am.

Q. You then said you looked for people down in Baltimore?

A. No, I didn't look for anybody.

Q. You made alternative efforts to locate the person you were searching for; is that right?

A. Yes.

Page 253.

Christopher Milton - Cross

Q. Now, did you ever become aware during the course of your attempts to locate Miss Jones that she had children?

A. That was talked about but there was nothing definite.

Q. Because you know, sir, that had you subpoenaed her Philadelphia Probation records, it would have given you the name and age of each of her three children?

MR. WILLIAMS: I am going to object as to what is in the Probation records. That is not in evidence and Miss Fisk is not under oath testifying.

MS. FISK: When it comes to diligent efforts and things he could have done I believe it is legitimate.

MR. WILLIAMS: She is making representations as to what is in the document.

THE COURT: No, she is asking him if he had checked into it.

MR. WILLIAMS: Right, and he said no. So whether he knows what is in those documents or not is irrelevant: He didn't check into it. But I don't want any representations as to what is in those documents.

Page 254.

Christopher Milton - Cross

BY MS. FISK:

Q. Did you ever become aware of the names and ages of Miss

Jones' children?

A. No.

Q. Did you ever contact the Department of Public Welfare in the City of Philadelphia to find out whether or not Miss Jones was a recipient in Philadelphia of public assistance?

A. Yes, I did.

Q. Did you ever contact the Department of Public Welfare in Camden, New Jersey?

A. No, I did not.

Q. Now, am I correct that you were aware that Miss Jones, that Miss Jones -- let me step back a moment. Were you provided with a copy of Miss Jones' statement to the police in December of 1981?

A. Was I provided a copy of the statement to the police?

Q. Yes, sir.

A. Actually, I don't recall.

Q. You have told us, however, that you were provided with a copy of her testimony from the trial?

A. Yes.

Q. You recall, then, Mr. Milton, that in the trial Miss Jones testified that at the time that she

Page 255.

Christopher Milton - Cross

spoke to the police in December 1981, that she spoke to them in her mother's home in Camden, New Jersey? Do you recall that, sir?

A. No.

Q. You do not recall that?

A. No.

Q. Were you aware Miss Jones had contact, had contacts, that is her mother lived in Camden, New Jersey?

A. No.

Q. Did you read those notes of testimony, Mr. Milton?

A. Yes.

Q. Might it be that you knew that at one time when you were looking for her and you have since forgotten?

A. No.

Q. So you think you just missed that part of her testimony from the trial?

A. Hmm, probably.

Q. So you checked with the Department of Public Welfare in Philadelphia but you never checked with the Department of Public Welfare from Camden?

A. Correct.

Q. Am I correct that in the course of your

Page 256.

Christopher Milton - Cross

looking for Miss Jones, however, you did develop leads in Camden? In fact, isn't this where you found the other address for the lady who moved to Baltimore? Or am I incorrect about that?

A. You are incorrect about that.

Q. That was an address in Philadelphia?

A. Hmm-hmm.

Q. Is that a yes?

A. Yes.

Q. Prior to locating Miss Jones in Camden in April 1996, had you received prior information that she had contacts with Camden?

A. No.

Q. I see. When was this lady in Baltimore located?

A. When?

Q. Yes, sir.

A. Had to be around the early part of September.

Q. Of...?

A. '95.

Q. So within a few weeks, or actually within a month of your attempts, of your being retained to attempt to locate this person you found the lady in Baltimore?

A. Yes.

Page 257.

Christopher Milton - Cross

Q. And then from September of 1995 to April of 1996 you were without success until you located her in April of '96?

A. Yes.

Q. Do you keep internal records regarding your time and how you are spending it when you are hired by a client?

A. Yes.

Q. Do you have those records with regard to these efforts to locate Miss Jones with you today?

A. No, ma'am.

Q. Were you asked to bring them?

A. No, ma'am.

Q. Did it occur to you that perhaps you might want to refer to them in order to answer questions today?

MR. WILLIAMS: I would object to that: Did it occur to him. He is here testifying from his memory.

MS. FISK: And unable to give me some precise information.

THE COURT: If he had those papers he would be in a better position to answer questions.

MR. WILLIAMS: We've had numerous

Page 258.

Christopher Milton - Cross

police witnesses here who didn't occur to them to bring their police reports in.

THE COURT: He is your witness. Did you ask him to bring his records?

MR. WILLIAMS: What for? He is here to testify from his knowledge.

THE COURT: But he --

MR. WILLIAMS: He hasn't said --

THE COURT: No, there are a lot of things he doesn't know. He is not sure of dates, et cetera. If he had the notes he would be in a better position to tell us when he did certain things. After all, I don't expect him to have a computer mind.

BY MS. FISK:

Q. I'm sorry, I apologize if I asked you this. I know I asked you about the Department of Probation from Philadelphia. Did you ever contact the Department of Probation from Camden County with regard to whether or not this lady was on probation from Camden?

A. No, ma'am.

Q. And again, you never contacted the prison with regard to records regarding her arrest in 1982 or in 1988?

Page 259.

Christopher Milton - Cross

A. No, ma'am.

Q. You never contacted welfare in Camden?

A. No, ma'am.

Q. Did you ever contact Camden police officers to determine whether or not this lady was known to them, either as a complainant or a defendant?

A. Yes, ma'am.

Q. And how many police officers did you speak to in Camden?

A. Just the one gentleman that was at the window when we went over to Camden.

Q. How long have you been a private investigator, for three years, sir?

A. I have been licensed for three years.

Q. And you worked under someone else's license for how many years before?

A. Since 1988.

Q. During that period of time you have undoubtedly developed resources in government agencies and cities and police departments all throughout this area; would that be fair to say?

A. Ask that question again.

Q. Certainly. Throughout the period of time that you have worked as a private investigator, either under your license or under other licenses, you have

Page 260.

Christopher Milton - Cross

developed resources and sources of information throughout the area; would that be fair to say?

A. Ahh, I guess so, yes, ma'am.

Q. And do those resources include police officers and law enforcement officers in the Camden, New Jersey area?

A. No, ma'am.

Q. Did you attempt to develop any persons or ask any police officers other than the person at the window who you said wasn't very cooperative regarding Miss Jones?

A. No, ma'am.

Q. And again so I am clear: Did you make any efforts to have any records from Camden subpoenaed or ever ask the attorneys to assist you in your inquiry by subpoenaing any records in Camden?

A. No, ma'am.

Q. And did you ever ask the attorneys to subpoena any records anywhere to assist you in this search?

A. No, ma'am.

MS. FISK: I have no further questions of Mr. Milton, Your Honor.

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REDIRECT EXAMINATION

- - - - -

Page 261.

Christopher Milton - Redirect

BY MR. WILLIAMS:

Q. Mr. Milton, once your office got the real Veronica Jones address in Camden, New Jersey, you went there and you were able to locate her; isn't that right?

A. Yes.

Q. Now, if you, with your modest company, if you had a bench warrant or a copy of a bench warrant that had her address in Camden back in 1994 -- strike that -- back in 1985, you could have found her immediately, couldn't you?

A. Yes.

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Q. Well, if that bench warrant had that address, that Camden address, somebody from your modest private investigating office could have found her pretty quickly; isn't that right?

MS. FISK: Objection, Your Honor.

THE COURT: What is the basis of your objection?

MS. FISK: Because that's supposition. We don't know.

MR. WILLIAMS: He just testified that once he got the address he was able to locate

Page 262.

Christopher Milton - Redirect

her.

THE COURT: I don't know, how did you get that address?

THE WITNESS: How did I get what address?

THE COURT: Where you made the arrest.

MS. FISK: No.

THE COURT: Or where you located her.

THE WITNESS: It was faxed to me from Mr. Newman.

THE COURT: Mr. Newman, who is he?

MS. FISK: The man in San Diego doing computer searches, Your Honor.

THE COURT: Oh, he is the guy that found the address.

THE WITNESS: He gave me quite a few of them, Your Honor, I just ran to them.

THE COURT: Once you got that address from Mr. Newman on a piece of paper, you marched right over into Camden and you found her?

THE WITNESS: Yes, sir.

BY MR. WILLIAMS:

Q. So presumably, if law enforcement from Camden or some other jurisdiction had that address on a piece of paper they could have done the same thing

Page 263.

Christopher Milton - Redirect

you did?

MS. FISK: Objection. Objection, Your Honor.

THE COURT: I will sustain the objection. What they could have done and what they did do are two different things.

MR. WILLIAMS: What they did do was they went in there after she testified to arrest her. That's what they did.

THE COURT: Counselor, all I am saying to you is bring them in from Camden, find out what they did. I don't know that they did anything.

MR. WILLIAMS: They did nothing is what they did. All you --

THE COURT: I don't know that.

MR. WILLIAMS: All you have to do is go to the house, which is what Mr. Milton did. Very simple. But it took a call from the D.A. here in Philadelphia to go to her house to arrest her after she testified.

THE COURT: They didn't go to her house to arrest her, they came here.

MR. WILLIAMS: Exactly right, they could have went to her house but they waited

Page 264.

Christopher Milton - Redirect

to --

MS. FISK: Is Counsel now claiming that they purposely waited? This is getting even better.

MR. WILLIAMS: They came here because Ms. Fisk wanted her arrested on this particular day, that's why.

THE COURT: You keep talking about what Camden County Police Department does. I don't know if they did anything. But besides that, they have the State Police in there helping them out. They have so much crime there I don't think they could find anybody. You know that. They have State Police helping them out. They are overloaded there in Camden County. They have more crime there than any place I think in the world.

MR. WILLIAMS: So with all that crime it was important for them to be able to come and arrest Miss Jones here.

MS. FISK: Is this important to the examination of Mr. Milton?

THE COURT: I thought it was.

MR. WILLIAMS: But with all that crime it was important enough for them to come to this

Page 265.

Christopher Milton - Redirect

Courtroom.

THE COURT: Do you have any questions you want to ask this man?

MR. WILLIAMS: Yes, I do.

THE COURT: All right, ask him and let's get moving, we will be

here forever.

BY MR. WILLIAMS:

Q. Now, this Mr. Newman that you mentioned: Do you actually know when he was retained by the defense team?

MS. FISK: Objection.

THE WITNESS: No, I don't.

MS. FISK: Withdraw that objection.

MR. WILLIAMS: Thank you, Miss Fisk.

BY MR. WILLIAMS:

Q. And if the District Attorney's Office offered you the address of Miss Jones, would you have found Miss Jones immediately?

A. Yes, sir.

Q. And were you ever told by anybody to withhold the fact that you knew where Miss Jones was located?

A. No.

MS. FISK: Objection, Judge: I frankly don't understand the question, don't understand it's relevance. The testimony of the

Page 266.

witness is that when he located her in April he located her and told everybody, that is those who hired him, that he found her, and there has been no claim otherwise.

MR. WILLIAMS: I am just rebutting any suggestion that there was bad faith here by the defense that we sat on this witness and withheld her from this Court prior to April of 1996.

BY MR. WILLIAMS:

Q. Sir, did you use your best efforts in locating Miss Jones?

A. Yes, sir.

Q. And were you ever told not to use your best efforts?

A. No, sir.

MR. WILLIAMS: No further questions.

MS. FISK: I have no recross-examination, Your Honor.

Thank you, Mr. Milton.

THE COURT: I guess they don't want to ask you anymore questions. You can go.

(Witness excused.)

THE COURT: All right, I think, do you have anymore witnesses today or do you want to bring them in tomorrow?

Page 267.

MR. WILLIAMS: I got the sense that Your Honor is tired. We are tired. I think we could adjourn for tomorrow.

MS. FISK: Your Honor, before we break, I have had a number of retired Philadelphia police officers who may still need to testify. May I just check to make sure that they are available tomorrow?

THE COURT: Oh. All right, go ahead.

MS. FISK: Thank you, sir.

MR. WILLIAMS: Your Honor, we do have one very quick witness, Floyd Jackson, and I think we can --

THE COURT: How long?

MR. WILLIAMS: He is much shorter than Mr. Milton.

THE COURT: Well, how long? Here is a clock. It's almost ten after 4:00.

MR. WILLIAMS: I would say ten minutes.

THE COURT: 10 minutes. Okay. Call him. Who is he?

Counselor, who is he?

MR. WILLIAMS: Oh. Floyd Jackson.

MS. FISK: He was identified by

Page 268.

Mr. Milton as the other person who assisted in locating Miss Jones, Your Honor.

THE COURT OFFICER: Floyd Jackson.

- - - - -

Floyd James Jackson, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Good afternoon, Mr. Jackson.

A. Good afternoon.

Q. Can you tell the Court where are you employed?

A. Philadelphia Protection Service.

Q. Are you associated with Mr. Milton, who just testified here?

A. Yes, I am.

Q. And in what way are you associated with him?

A. I'm an affiliated agent of his.

Q. You are an agent of his?

A. Yes.

Q. Did you have occasion to embark on an assignment to locate a woman by the name of Veronica Jones?

A. Yes, I did.

Page 269.

Q. Was it your understanding that Miss Jones had aliases as well?

A. Yes.

Q. And did there come a point where you did find Miss Veronica Jones?

A. Yes.

Q. When did that occur?

A. April 15th, 1996.

Q. This past April?

A. Yes.

Q. And tell me how did that come about that you located this Miss Jones?

A. Umm, basically we had a, me and Mr. Newman had a printout, we went through various residences in Pennsylvania, which we discarded, and ended up checking a couple residences in Camden, and eventually found I believe a relative's residence. Upon which finding the relative's residence we were able to contact Veronica.

Q. Can you be more specific about this relative?

A. I believe it was her mother's residence.

Q. So you found the home of Miss Jones' mother?

A. Correct.

Q. And upon finding the home of Miss Jones' mother, you were able to locate Veronica Jones

Page 270.

herself?

A. Through her mother.

Q. Through her mother?

A. Correct.

Q. And all of this took place, by the way -- could you speak up a little bit -- by the way, this took place --

A. April.

Q. -- all in April of '96?

A. Correct.

Q. And once you had that address of Veronica Jones in Camden, New Jersey, did you have any difficulty in locating her at that point?

A. No, we did not.

Q. You just went to her home and she was there?

A. I believe.

Q. I'm sorry, her mother's home, you went to her mother's home and you were able to locate her then?

A. I believe the first time was encountering, she wasn't actually physically there. I believe the first day that we went there we actually left a message with her mother and then the proceeding day we was able to actually contact her at the residence.

Q. At her mother's home?

A. Correct.

Page 271.

Q. Okay. Once you located her was the defense team notified?

A. Yes, they were.

Q. Okay. And that was quickly after, immediately after?

A. Certainly, yes.

MR. WILLIAMS: No further questions.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. I am interested to know, Mr. Jackson, about this printout that you and Mr. Newman had. What is it, sir?

A. Basically, that would be some information that Mr. Newman had. So I'm not actually sure exactly where he actually got the information from.

Q. You don't know the source of that information?

A. No, I don't.

Q. You don't know when it was developed?

A. No.

Q. You don't know how long Mr. Newman had that printout?

A. No.

Q. It was a printout of addresses?

Page 272.

A. Yes.

Q. Was it from credit card records? Criminal records? Welfare records?

A. I don't know.

Q. You have no idea?

A. No.

Q. And then you don't know how long he had it?

A. No.

Q. Or how he had obtained it?

A. No.

Q. When did you begin working, sir, on this matter, that is to locate Miss Jones?

A. April the 13th.

Q. And you told us that she was located on April 15th?

A. Correct.

Q. So you spent two days?

A. Correct.

Q. And specifically, then, on April 13th, as a result of this list that Mr. Newman gave you you went to the address of Miss Jones' mother? Would that be fair to say?

A. Eventually.

Q. Was that on the 13th, the day that you started your efforts?

Page 273.

A. No.

Q. It was on April 14th?

A. Yes.

Q. So on April 13th you went someplace else?

A. Yes.

Q. And on April 14th you went to this address and discovered that you had located the person you were looking for?

A. Yes.

Q. And on the following day you found her; is that correct?

A. Yes.

Q. So your efforts involved going to two addresses, one which was not hers and one which was and locating her?

A. No.

Q. What else did you do?

A. It was more than two addresses.

Q. Oh. You went to other addresses on the 13th?

A. Yes.

Q. How many?

A. I would say approximately five.

Q. And were those all in the Camden area?

A. No.

Q. Other than the one -- well, were any of those

Page 274.

on the 13th in the Camden area?

A. Pardon.

Q. Were any of those addresses that you went to on April 13 --

A. No.

Q. -- in Camden, New Jersey?

A. No.

Q. On April 14th when you discovered her mother's address, was that the first address you went to on April 14th?

A. I believe not.

Q. Were there any other addresses you went to on that day in the Camden, New Jersey area?

A. Yes.

Q. Prior to that day, do you know whether there had been any information obtained regarding Miss Jones living in Camden?

A. No.

Q. Were you ever provided on April 113th when you were retained or brought in to work -- let me back up. Were you brought in by Mr. Milton to assist him?

A. Yes.

Q. And that was because he was engaged in other matters when Mr. Newman presented this list; would that be fair to say?

Page 275.

A. That would be an assumption.

Q. Well, I am assuming but I am asking you if that would be correct?

A. Yes.

Q. Okay. So you were never given, am I correct, any other background, you were simply told or assigned to work with Mr. Newman and review these addresses?

A. Correct.

Q. Would that be correct? And you did that for two days until you found the person you were looking for?

A. Yes.

Q. How many hours did you spend on this, sir?

A. Total?

Q. With regard to locating Miss Jones?

A. I will say roughly... anywhere from 19 to 23 hours.

Q. Now, was your time billed directly to the defense or did Mr. Milton bill for your time, if you know?

A. I don't know.

Q. Are you paid by Mr. Milton or do you work as an independent contractor?

A. Mr. Milton.

Page 276.

Floyd Jackson - Cross

Q. And at what rate are you paid by Mr. Milton, sir?

A. It varies.

MR. WILLIAMS: I am going to object to what kind of income or salary he makes.

THE COURT: She didn't ask him about his salary.

MR. WILLIAMS: She just asked him what --

THE COURT: What does he pay him.

MR. WILLIAMS: That is about his income.

THE COURT: It is not about his income.

MR. WILLIAMS: I object to that question: It's irrelevant.

THE COURT: Okay. If it is irrelevant what are you objecting for?

MR. WILLIAMS: Because it's irrelevant, that's why I am objecting.

MS. FISK: I will make life easy for Counsel, I will withdraw that question.

MR. WILLIAMS: Thank you, Ms. Fisk.

MS. FISK: You're very welcome, Counsel.

Page 277.

Floyd Jackson - Cross

I have no further questions of Mr. Jackson, your Honor.

MR. WILLIAMS: Just very briefly, Your Honor.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Once you got the addresses, Mr. Jackson, I take it that you acted on that information very quickly?

A. Yes.

Q. Immediately, in fact?

A. Yes.

Q. And you were directed to go to these addresses with Mr. Newman?

A. Correct.

Q. And that was because Mr. Milton was not available in your office, right?

A. Correct.

MR. WILLIAMS: No further questions.

THE COURT: You said that you had what, five addresses you went to on the 14th of April?

THE WITNESS: I believe so. I believe

Page 278.

there was five. I'm not --

THE COURT: All right, did you go to those other four before you went to the one where her mother lives?

THE WITNESS: The five addresses were in Pennsylvania.

THE COURT: Oh. Did you go there first before you went over --

THE WITNESS: Yes.

THE COURT: You want there first?

THE WITNESS: Yes.

THE COURT: And then you went over to Jersey to the one address that you had in Camden?

THE WITNESS: There was more than one address in Camden.

THE COURT: Well, how many addresses did you go to in Camden?

THE WITNESS: I believe it was three.

THE COURT: All right. Did that include the one with her mother?

THE WITNESS: Correct.

THE COURT: Or in addition?

THE WITNESS: It included it.

THE COURT: It included that. So you

Page 279.

Floyd Jackson - Recross

went to two other addresses before you went to her mother's place?

THE WITNESS: Actually, one turned out not to be a residence.

THE COURT: Okay, then you went to the other one before you went to the mother's house?

THE WITNESS: Correct.

THE COURT: Why didn't you go to the mother's house first?

THE WITNESS: We had no idea it was the mother's house.

THE COURT: Well, what was on that paper that lead you to that address, what did it say?

THE WITNESS: If I could recollect in my memory, it had just various addresses or locations that were probable as a residence for the subject in question.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. And you have no idea --

THE COURT: Go ahead, go ahead.

BY MS. FISK:

Page 280.

Floyd Jackson - Recross

Q. You have no idea how those were developed by Mr. Newman or when they were obtained by Mr. Newman; is that correct?

A. Correct.

Q. Is Mr. Newman here today?

A. No, he's not.

THE COURT: Is that it?

MS. FISK: Yes, sir.

THE COURT: All right.

MR. WEINGLASS: Your Honor, just as we close: Tomorrow ---

THE COURT: Wait a minute.

You are excused.

(Witness excused.)

MR. WEINGLASS: For tomorrow, we would ask the District Attorney to provide us with the address of Cynthia White, who we would like to call tomorrow. She is a key witness.

THE COURT: Counselor, I don't have anything on the Order about Cynthia White.

MR. WEINGLASS: No, it is a full factual record on Veronica Jones.

THE COURT: I don't have anything about Cynthia White. Now, if you wanted to call Cynthia White you go back to the Supreme Court.

Page 281.

MS. FISK: And, Your Honor, I could make it easy: I don't have an address for Cynthia White.

THE COURT: You don't have it?

MS. FISK: No, sir.

THE COURT: Well.

MR. WEINGLASS: So much for the District Attorney's cooperation in producing witnesses.

THE COURT: If vou want to do what you want to do, Counselor, go up to the Supreme Court, let them tell me what they want you to present.

MR. WEINGLASS: I do want to state that we are still and we have been looking for Cynthia White.

THE COURT: Okay.

MR. WEINGLASS: Over many months.

THE COURT: All right.

MR. WEINGLASS: And we are not getting any cooperation from the District Attorney. And when we find her we will produce her. We were hoping to produce her tomorrow.

THE COURT: You will first take it up with the Supreme Court. If they want me to hear

Page 282.

from Cynthia White, okay. Was she here last time?

MR. WEINGLASS: We could not locate her.

THE COURT: Oh.

MR. WEINGLASS: We were trying to locate her throughout. She was virtually unfindable.

THE COURT: Okay. All right.

MS. FISK: Your Honor, may I inquire just for the convenience of the officers who I may bring back tomorrow whether the defense anticipates putting up any additional witnesses tomorrow so I can determine in terms of --

MR. WEINGLASS: Yes.

THE COURT: How many?

(Discussion held off the record at this time.)

MR. WEINGLASS: Three or four witnesses.

THE COURT: Who are they?

MR. WEINGLASS: I would assume it would be a half a day's testimony.

THE COURT: Well, who are they?

MR. WEINGLASS: They are Mr. Michael

Page 283.

Bell from San Diego, Mr. Newman's associate, who did the computer search and developed and provided the final information indicating Veronica Jones' residence.

THE COURT: Okay, who else?

MR. WEINGLASS: There will be a gentleman named George Edwards who provided information on Veronica Jones' whereabouts in New Haven, Connecticut, which was followed up on because we had a photo of that Veronica Jones and a history and it indicated to us before the PCRA hearing that we had located Veronica Jones. It turned out to be a false lead.

We have subpoenaed witnesses named Joseph Brignola and a witness named Lamont Anderson.

THE COURT: Joseph...?

MR. WEINGLASS: Joseph Brignola is a licensed investigator and Lamont Anderson is a licensed investigator.

THE COURT: Joseph what?

MR. WEINGLASS: Brignola.

MS. FISK: B-R-I-G-N-O-L-A.

THE COURT: I thought V, I thought you said Vig.

Page 284.

MR. WEINGLASS: No, Brignola. And Lamont Anderson.

(Discussion held off the record at this time.)

MR. WEINGLASS: Yes. And another gentleman named Mr. Childs, who is another licensed investigator. In other words, we have three licensed investigators in this area, plus the computer specialist from San Diego. Plus we have a long declaration for the Court from Michael Newman who is testifying now under subpoena in a proceeding in California and could not be here, but has provided us with a declaration with an exhibit appended concerning his work which preceded the work of the witness who you heard from today.

MS. FISK: I can advise Counsel now that the Commonwealth will not agree or stipulate to a declaration that the Commonwealth has not had an opportunity to cross-examine and would object to any declaration being offered.

THE COURT: Well, you will have the other, his assistant, won't you?

MR. WEINGLASS: We will have his assistant.

Page 285.

THE COURT: Well, then.

MR. WEINGLASS: If the assistant is permitted to testify on the basis of hearsay.

THE COURT: What he did, sure.

MR. WEINGLASS: Well, the assistant will have the declaration with him, the original, and we will be offering it into evidence.

THE COURT: They can't cross-examine a piece of paper.

MR. WEINGLASS: Your Honor, the witness is under subpoena testifying in another matter. He can not be available. He is from California. But we do have his assistant, and we have his assistant bringing a declaration.

THE COURT: I know, but a declaration, she can't cross-examine that.

MR. WEINGLASS: We offer the declaration as the only available evidence we have from a witness who is in California.

THE COURT: Well, sorry about that.

MS. FISK: It is absolutely remarkable that last summer when Counsel's witnesses were unavailable they were here each and every day requesting continuances of proceedings because

Page 286.

the witnesses were unavailable. Quite to the contrary, now we learn half way through this proceeding that they have a witness who was unavailable yet they have never sought to continue the matter, they are simply seeking to admit what they want to admit in writing.

I am simply advising Counsel that we would object to any hearsay and we will object to any testimony we can't cross-examine.

THE COURT: You can't cross-examine a piece of paper.

MR. WEINGLASS: We hereby request a continuance that Michael Newman could be brought to Court.

THE COURT: You better get him down here fast.

MR. WEINGLASS: Well, he is in Court today and tomorrow.

THE COURT: What am I supposed to do? You are in Court today.

MR. WEINGLASS: You could grant us a continuance so he could be here.

THE COURT: Continuance to when?

MR. WEINGLASS: I think he could probably be here early next week.

Page 287.

THE COURT: Oh, come on. Hey, they said I am supposed to have this hearing within 30 days and I am supposed to make my decision within 30 days. I can't do it for his convenience.

MR. WEINGLASS: It is not a question of his convenience.

THE COURT: Yes, it is.

MR. WEINGLASS: He was subpoenaed in other cases and he can not be here.

THE COURT: Counselor, it is something that I can't correct for you, I'm sorry.

MR. WEINGLASS: Then would the Court be willing to hear from Michael Newman?

THE COURT: Now.

MR. WEINGLASS: He can't come in tomorrow, he is in Court. We ask for a continuance, a reasonable continuance so he can be here.

MS. FISK: And my position, Your Honor, is that is untimely when Your Honor scheduled this hearing two weeks ago. It certainly would have been appropriate at that time for Counsel to notify the Court that day or perhaps the day after when they learned of the

Page 288.

witness' unavailability that several days were needed. But at the time now other witnesses have come, including Mrs. Faulkner, who has flown here from California. It is unreasonable to delay

this case further.

THE COURT: I don't think what he is going to say is important: He will have his assistant here to tell us what he did, that will be sufficient. Okay.

MR. WEINGLASS: No, Your Honor, there is more to what was done than what the assistant did. The assistant is the commuter specialist in San Diego. Mr. Newman came here --

THE COURT: He is the expert who found the address, right?

MR. WEINGLASS: But Mr. Newman is the one who came here and attempted to locate Veronica Jones. He did that before the PCRA hearing.

THE COURT: I understand that. But the computer guy is the one who found the address.

MR. WEINGLASS: That is correct, but we are --

THE COURT: But Newman didn't have to

Page 289.

come down here, he could have mailed them this information and they could have gone out and checked it. Okay, tomorrow. Let's go with whatever you have.

MR. WEINGLASS: I would like a date if I could get one for Mr. Newman to testify.

THE COURT: You do what you want, but the Supreme Court has given me a limit and I am going to go by that limit. If you want to go back up to the Supreme Court and ask them to please give you another extension --

MR. WEINGLASS: It would be necessary to get Mr. Newman's testimony to reapply to the Supreme Court for an additional remand.

THE COURT: Counselor, you have gone up there without asking me, you could go up there again without asking me. I don't care what you do.

MR. WEINGLASS: We are asking you for a continuance so we could bring him in.

THE COURT: I am telling you I am not going to give you a continuance because I'm obligated to start this case today and finish it as soon as I can, and within 30 days I have to give a decision. He has to get the records

Page 290.

transcribed. And they have to have all of this within 30 days. What do you think I am, I could do that in five minutes?

MR. WEINGLASS: Well, we could bring him in here next Monday.

THE COURT: You bring him in here before next Monday.

MR. WEINGLASS: What date would the Court suggest?

THE COURT: Tomorrow.

MR. WEINGLASS: He could not be available tomorrow.

THE COURT: That is your problem.

MR. WEINGLASS: What about Friday?

THE COURT: That is your problem. If you want to go to the Supreme Court and say we need this guy and we can't get him until next week, and they want to continue it to next week, it doesn't bother me.

MR. WEINGLASS: We have to make a continuance.

MS. FISK: Would the record reflect that it is only for the first time at 4:30 p.m. on this first day of the hearing that Counsel has ever made an application to the Court for a

Page 291.

continuance because of the unavailability --

MR. WEINGLASS: We thought his declaration would suffice.

THE COURT: You know that's not.

MS. FISK: I believe they are well aware of the law, Your Honor, and know very well that Counsel is permitted to cross-exam --

THE COURT: They can't cross-examine a written statement. All right, see you tomorrow, then.

MS. FISK: Thank you.

THE COURT OFFICER: This Court now stands adjourned until 10:00 a.m. tomorrow morning at the call of the Crier.

- - - - -

(The hearing was adjourned at 4:30 p.m.)

- - - - -

Page 292.

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

Date

2. Oktober 1996

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

Hearing Re Veronica Jones

- - - - -

Wednesday, October 2, 1996
Courtroom 306, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN B. PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Michael Bell	3	42	90	105
Lamont Anderson	113	116	124	--
George Edwards	126	136	141	--
Richard Childs	142	145	--	--

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
3	Copy of newspaper article	130

COMMONWEALTH EVIDENCE

WITNESS	DE	CE	RDE	RCE
Roseann Reffner	167	173	184	188
William Thomas	195	196	214	216
Daniel Bennett	225	231	288	289

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
3	Probation file of Veronica Jones	171

Page 3.

- - - - -

(At 10:18 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

THE COURT: Good morning, everyone.

MR. WILLIAMS: Good morning, Your Honor.

THE COURT: Good morning.

MR. WILLIAMS: The defense calls Michael Bell.

Michael Alan Bell, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

MR. WILLIAMS: May I inquire, Your honor?

THE COURT: Yes, sure.

MR. WILLIAMS: Thank you.

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DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Page 4.

Q. Good morning, Mr. Bell.

A. Good morning.

Q. You live in San Diego?

A. Yes, I do.

Q. And did you fly in just to testify in this matter?

A. Yes, I did.

Q. What do you do for a living?

A. I'm a private investigator.

Q. Since when?

A. October of 1993.

Q. Where are you presently working?

A. Tactical Investigative Services.

Q. And where is Tactical Investigative Services? Could you speak into the microphone also.

A. Sure. Located in San Diego.

Q. A little closer to the mike.

A. We are located in San Diego.

Q. San Diego?

A. Yes.

Q. And who owns and operates Tactical Investigative Services?

A. George Michael Newman.

Q. Is he your boss as well?

A. Yes.

Page 5.

Q. Now let me ask you this. When did you begin work on the Jamal case? When I say you I mean your office, Tactical Investigative Services.

MS. FISK: Your Honor, I object to your office on the basis of hearsay and would ask that it be limited to him.

THE COURT: Well, if he knows.

BY MR. WILLIAMS:

Q. When did the office begin work?

A. Roughly late June, first part of July of 1995.

Q. Now I am going to focus your attention exclusively to the work performed by Tactical Investigative Services with respect to Veronica Jones.

A. Okay.

Q. Do you understand?

A. Yes, I do.

Q. It is exclusively related to Veronica Jones. When did the search begin within your office in San Diego for an individual who may have the name Veronica Jones?

A. The first search I believe was conducted July 5th, 1995.

Q. On July 5th, 1995 --

MS. FISK: Again, Your Honor, I would

Page 6.

object. If the witness is testifying on the basis of records he has reviewed I would object, unless the search was conducted by this witness.

MR. WILLIAMS: I think I can satisfy Miss Fisk with the very next question.

MS. FISK: Thank you.

BY MR. WILLIAMS:

Q. And when you say the office began it's search for a person who may be known as Veronica Jones, what was done?

A. We received from Mr. Weinglass the name of an individual, Veronica Jones, a date of birth, and a possible Social Security number. The Social Security number was utilized to obtain any further addresses. One address was located in New Haven, Connecticut.

Q. And did you play any role in that search, using that information provided by Mr. Weinglass?

A. Yes, I did. I personally did the search to develop the New Haven address.

Q. And when you say you personally did the search, why don't you give us an idea of what did you personally do?

A. I just utilized, I just used the Social Security number developed or that was given to us, ran it through what is called a credit header. In

Page 7.

that you obtain addresses from the three major credit bureaus without getting into the credit history. That has remained confidential but the addresses are available.

Q. Okay. And when you ran that -- and that is basically a computer search; is that right?

A. Yes, yes.

Q. Now, by the way, in receiving this assignment to find a Veronica Jones, or a person who may have that name Veronica Jones, were there any particular difficulties that you and your office were facing --

A. Yes.

Q. -- as investigators? Can you tell the Court what difficulties you were confronted with at the outset?

A. Okay, in general women are more difficult to locate than men.

Q. Can you explain that for us?

A. Due to the fact that they get married, their names change. With respect to this particular subject, there was a time span of 13, 14 years that had passed. In that time the subject may have been married once, twice, any number of times. And in doing so, we did not know if the name Veronica Jones that we initiated with was in fact her real name or,

Page 8.

we had known that she was a prostitute, which we didn't know if that was a street name. So the subject in essence was, from the very onset was very difficult. And due to the amount of time pertaining to the subject here, it just enhanced the difficulty in general.

Q. So there is a generic difficulty with women and then --

A. Yes.

Q. -- coupled with that a person who may have a variety of names?

A. Yes.

Q. Now, when you did that first computer search with the Social Security number --

A. Hmm-hmm.

Q. -- the credit header search, what were your results?

A. We found an individual named Veronica Jones in New Haven, Connecticut.

Q. And what did you do with that information?

A. That information was forwarded back to members of the defense team and a follow-up interview was conducted. Initially we started to locate phone numbers. We did not want, one did not really come up.

Page 9.

Q. Okay, just to make it clear: You have an address for a Veronica Jones in New Haven?

A. Hmm-hmm.

Q. And then you try to get a phone number attached to that address?

A. Correct.

Q. And what was the result of that?

A. And we were unable to determine a phone number without... it was just very difficult to do that. And in turn, in doing that we obtained phone numbers for immediate neighbors. Contact was made with those neighbors in an effort to contact the subject.

Q. Okay, so you basically did searches of the surrounding area of the target location?

A. Yes.

Q. And what was the results from that pursuit?

A. We did not get any information back related to the subject. It had to be taken a step further and a trip was made to Connecticut.

Q. Did somebody from your office go to New Haven, Connecticut in connection with this search?

A. Yes; my boss, Michael Newman.

Q. Michael Newman did?

A. Yes.

Q. And ultimately did this turn out to be a false

Page 10.

lead?

A. Yes.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Q. Mr. Bell, do you recall approximately when that trip was made by Mr. Newman?

A. Late July of 1995.

Q. Now, did you then receive an additional lead or further information to continue your investigation?

A. Yeah. After realizing that that was a false lead, information came in shortly thereafter of a new name, of a Rhonda Harris, and two new dates of birth. In an effort to locate her at that point in time, now we don't know which name is a real name, if either, or

if they are both street names.

Q. Let me stop you there and ask you some questions about what you just said. You had earlier Veronica Jones with a Social Security number and a birth date?

A. Correct.

Q. That was the New Haven pursuit?

A. Correct.

Q. That was a false lead?

Page 11.

Michael Bell - Direct

A. Correct.

Q. Now you're getting another name, a Rhonda Harris?

A. Hmm-hmm.

Q. Was it your understanding that this Rhonda Harris was not a different person but --

A. No.

Q. -- the same person using different names?

A. No, our knowledge was the same person using different names.

Q. Now you had two different dates of birth?

A. Correct. For a total of three.

Q. Three dates of birth now and two names?

A. And two names.

Q. And so you would have a variety of permutations from that?

A. Hmm-hmm.

Q. Because you don't know what date of birth is going where?

A. Yes.

Q. And when you received that additional information, what did your office do next?

A. We have a search available to us that we can run the surname and attach it to just a date of birth. A Veronica and date of birth number one, and

Page 12.

Michael Bell - Direct

search that way for all Veronicas across the country with that date of birth, regardless of their last name. In essence we did six searches total: The three searches for Veronica and three searches for Rhonda using the dates of birth.

Q. Okay. So you have Veronica and the three dates of birth so that is three searches, then you have Rhonda Harris, you do Rhonda with those same three dates of birth?

A. Correct.

Q. So you have six searches with the generic names Rhonda and Veronica?

A. Correct.

Q. By the way, could you explain to the Court why it is that you are just using the first names?

A. Again due to the possibility of marriage was the main reason. And that is, you know, we didn't know which last name she was going by. And we were going to make an effort to locate any viable subjects in any immediate areas of Philadelphia or Camden.

Q. All right, did you do a nationwide search first?

A. Yes.

Q. And I take it then you wanted to be, you wanted to encompass as much as you could nationwide?

Page 13.

Michael Bell - Direct

A. Correct.

Q. And what was the result of that particular computer -- by the way, who did the computer search there?

A. Myself.

Q. And what was your result?

A. The printer kept spitting out paper forever, there was over 80,000 names that were developed.

Q. And throughout the United States?

A. Yes.

Q. And when you, was it realistic with this in excess of 80,000 names to do a search of each one?

A. No, we did not. We identified, extracted roughly a hundred names of people along the Eastern seaboard and then any other kind of states, I think there was a total of 14 states that we've kind of extracted out with major metropolitan cities that would be a lure to prostitution.

Q. So you have 80,000 that encompasses the entire United States?

A. Correct.

Q. And then you winnowed it down to a hundred or so names?

A. Hmm-hmm.

Q. Is that a yes?

Page 14.

Michael Bell - Direct

A. Yes.

Q. And those hundred or so names encompass 14 target states?

A. Yes. We did take it a step further. That information was forwarded to the Jamal defense team. We were then asked to just say well can you just look at these areas: Philadelphia and Pennsylvania, Camden and it's surrounding areas within New Jersey. And then two other states, because if they lead into, Connecticut, initially we searched there, and in Maryland.

Q. So you gave the defense team the 14 states and the hundred or so possible addresses?

A. Yes.

Q. And then you were told focus on these four states?

A. Correct.

Q. Pennsylvania, New Jersey, Connecticut and Maryland?

A. Correct.

Q. Now, after making that effort and isolating those four states, what did you do next?

A. Because of the date of birth information that we received, we thought well, let's try and locate the subject's parents. At that time we didn't know

Page 15.

Michael Bell - Direct

names of either her mother or her father. We made a request to both the State Department of Health, Vital Statistics unit in both states of Pennsylvania and New Jersey. We did receive information that she was born in one of the two states. Our request for Pennsylvania came back negative, saying that the information was restricted to individuals other than immediate relatives or the subject itself. And we did not get any information from them.

Q. I'm sorry, from which states?

A. Pennsylvania.

Q. Okay.

A. We did get the request back from New Jersey who told us that there was no one named Veronica Jones with the date of birth that we supplied born within the state. And they continued in that respect in further stating that nobody by the name of Veronica Jones was born in the state of New Jersey during the year of 1961.

Q. Okay. Now, did you abandon your search for a person named Rhonda Harris?

A. No.

Q. What did you next do?

THE WITNESS: Jotted a couple notes for sequence purposes.

Page 16.

Michael Bell - Direct

MR. WILLIAMS: If it helps you refresh your recollection. First, if you could for a courtesy show it to the prosecution as to what you're using to refresh your recollection.

THE WITNESS: (Handing to Court Officer).

MS. FISK: Thank you.

(Pause.)

MS. FISK: Thank you. Counsel, do you want to see this?

MR. WILLIAMS: No.

MS. FISK: (Handing).

THE WITNESS: Thank you.

BY MR. WILLIAMS:

Q. Mr. Newman, before I ask you --

A. Bell.

Q. I'm sorry, Mr. Bell. Before I ask you what you next did, are you speaking with a fresh recollection of what you did?

A. Well, prior to my trip out here I did review documents relating to the searches so I could speak in a cogent and chronological order of the search and what led up to her contact. Umm, that information was forwarded to yourself and other members of the team. And I haven't seen that information since that

time.

Q. Okay. Now let's get back to what you and your office next did in this search for the subject. And let me be clear: We are using the term subject because we really didn't know what the name was of this person?

A. Correct.

Q. So you didn't make the assumption that the person's name was in fact Veronica Jones who just may happen to use other names?

A. Correct. I've -- because of the fact that she was a prostitute, the possibility existed that that was a street name. And she may go by any other name out there. You know, Jane Doe, in essence is what we were looking for.

Q. And looking for a Jane Doe I imagine is extraordinarily difficult?

A. Yes.

Q. Now, what's the next thing your office did?

A. Information was received back into our office of a Rhonda Harris that lived in, on Hatfield Street, I'm not exactly sure where Hatfield Street is. We researched the property there at that residence and found out an Alberta Welsh owned the property and was believed to be the one that was residing at that

property. Contact was made by an individual here in Philadelphia, I believe one of the defense team members, who informed our office that that was not the subject of our investigation.

Q. That Alberta Welsh was not the subject --

THE COURT: What state was that?

THE WITNESS: That I believe is Philadelphia, I'm not exactly sure where Hatfield Street is. Contact was made with the individual at the residence believed to be Alberta Welsh. I did not make the contact.

MS. FISK: For that reason, Your Honor, I object. This is clearly hearsay: Information that other people did and thereafter reported back to Mr. Bell. The fact that it was not the person that they were looking for I believe can be testified to but no specifics.

MR. WILLIAMS: But what I am establishing is a course of conduct. And obviously Mr. Bell needs to know the results of particular searches in order to show what he does next.

MS. FISK: My point, Your Honor, is the fact that the individual they were seeking was not at that address makes that point, but

not any details with regard to that contact unless this person made that contact or was present when that contact was made.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. Now, Mr. Bell, when you learned that this Hatfield address was another false lead for a Rhonda Harris, did you exhaust your search -- did you stop your search --

A. No.

Q. -- for Rhonda Harris there?

A. No, that just kind of enhanced it at that point. We knew that Rhonda Harris did exist in the area. And we completed another computer search just on the name Rhonda Harris and found two names of Rhonda Harris with addresses in Philadelphia. Those addresses and information was again turned over to Counsel for Mr. Jamal and again word was relayed back to myself that those were not the subjects of the investigation.

Q. Now, after learning that the searches for a Rhonda Harris in Philadelphia produced no positive results, what did you and your office do next?

A. We then received two Social Security numbers, one under the name of Veronica Jones, one under the

name of Rhonda Harris. Those Social Security numbers were utilized to develop address information, three addresses under each name. Three addresses for Veronica Jones, three addresses for Rhonda Harris were developed.

Q. Okay, so you were getting Social Security numbers and dates of birth from the very outset and you're still getting --

A. Yes.

Q. -- new numbers to crunch?

A. Yes; these were completely different numbers than what was originally given to us.

Q. Now, because you are getting new numbers to crunch through the computer to find this person, were you abandoning the old numbers or did you just keep those in mind?

A. We held onto them but every time something new came up, that was what we focused on. But no, we did not abandon it, we kept it aside for any later perusal if necessary.

Q. Okay. And you said you got three addresses for each, each person, each Veronica Jones and each Rhonda Harris?

A. Correct. Well, three addresses associated with that Social Security number.

Q. Okay. And do you recall what states those addresses were in?

A. I believe Veronica Jones was Camden and Rhonda Harris was... either Philadelphia and I think one in Maryland.

Q. Okay. And with that, what did you do with that information?

A. That was again turned over to members of the defense team. And again we were told that the Veronica Jones addresses were invalid, that the individual contacted there denied being the subject.

MS. FISK: Again, Your Honor, I object to the hearsay. Whether or not they were the accurate addresses --

THE COURT: Well, there is no jury here: I will --

MS. FISK: Fine, Judge.

THE COURT: I will disregard it.

BY MR. WILLIAMS:

Q. Now let me ask you at this point: You have mentioned that you got word back at each step in your investigation that the leads developed from the computer searches resulted in negative findings?

A. Hmm-hmm.

Q. And I take it, is it your understanding that

you provided addresses and that somebody would visit those addresses?

A. Yes, yes.

Q. All right. As an investigator, when somebody goes to visit an address and they're told, a person, an investigator is told that particular subject doesn't live there or can't be found there, does that necessarily satisfy an investigator that indeed that person can't be located there?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. Would that satisfy you in your capacity as an investigator doing these computer searches of --

MS. FISK: Objection, Your Honor. He was doing computer searches, not knocking on doors.

BY MR. WILLIAMS:

Q. Let me ask you this way. You said you retained the files or the information of these computer searches, right?

A. Yes.

Q. Okay. And you set those aside because the searches were fruitless?

A. Correct.

Page 23.

Michael Bell - Direct

Q. In your capacity in investigating Veronica Jones or Rhonda Harris, the subject, were you personally convinced that indeed the subject would not be at any of those addresses?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MR. WILLIAMS: It goes to his state of mind as an investigator.

THE COURT: It is not important. This guy is, he operates with a computer. He puts in whatever information he has and it comes back. He gives it to someone else to investigate it. What they do with it, he doesn't know.

MR. WILLIAMS: I agree. What I am asking --

THE COURT: And I don't want him to guess as to what the answer is.

MR. WILLIAMS: Your Honor, I am not asking him to speculate as to what other people do.

THE COURT: Well, that's what you're asking.

MR. WILLIAMS: Then I apologize. Let me make it very clear.

BY MR. WILLIAMS:

Page 24.

Michael Bell - Direct

Q. I want to focus on what you do and judgments that you make, okay. Do you understand that, Mr. Bell?

A. Yes.

Q. First of all, in working at the computer and doing these searches, is a certain amount of judgment required on your part?

A. Yeah.

Q. And in evaluating the information that you have, did you satisfy yourself or were you absolutely convinced that all of the addresses that were visited in the past that produced negative results, as far as you understood, wouldn't have to be revisited?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He gives whatever he has to somebody else and whatever they do with it, that's it.

MR. WILLIAMS: Well, I think the Court has a grievous misunderstanding of what I am driving at.

THE COURT: He is only a computer man.

MR. WILLIAMS: No, it requires a considerable amount of judgment as to what to enter.

THE COURT: He puts it into the

Page 25.

Michael Bell - Direct

computer and whatever comes out comes out.

MR. WILLIAMS: Well, it takes judgment as to what to enter into the computer.

THE COURT: Well, what you people give him. Whatever information you give him, he puts it in.

(Discussion was held off the record at this time.)

THE COURT: Are you going to tell me the computer lies now.

BY MR. WILLIAMS:

Q. Now, Mr. Bell, after those six addresses were checked based upon the two new Social Security numbers and found that searches there were fruitless, did you take any other steps?

A. Well, at least Veronica Jones, the addresses that were, or where the information came back to us it was fruitless, with respect to the three addresses for Rhonda Harris, information was related back to us that those were relatives at those addresses. And that the relatives had made mention of, that they, that the Rhonda Harris that they had known has an extensive criminal history. With that in mind we requested criminal and civil records to be researched in both Camden and Philadelphia.

Page 26.

Michael Bell - Direct

Q. Go ahead.

A. The criminal records did not come back immediately. The civil records did. And an address -- an individual named Rhonda Harris bearing an address in Camden was located. Again that information was turned over to Counsel.

Q. Now, we are not talking about a duplicative addresses that we received earlier?

A. No.

Q. So we are compiling a file of numerous addresses here?

A. Correct.

Q. And with this file of numerous addresses, as you are getting word from people that you are getting negative results at these addresses, are you just discarding those old addresses?

A. No.

Q. Why, why are you retaining them?

A. Again for perusal later. If need be. Anything that was related to the subject was retained.

Q. Now, after getting this new Camden, New Jersey address for a Rhonda Harris, what results were produced from that?

A. Again that it was negative.

Page 27.

Michael Bell - Direct

Q. And did you complete your investigation at that point?

A. At that point in time the name of Louise Tatum was developed and forwarded to us.

Q. So now you're getting a third name?

A. Correct.

Q. Okay.

A. As far as abandonment, no, we did not abandon the names of either Veronica Jones or Rhonda Harris, but set them aside to focus now on the third name.

Q. Am I correct, it seems as if as you're moving along you're increasing the complexity of your search?

A. Yes, very much so. Because at that time then we had three names. And again we don't know if those are the subject's real name or not. Or a name, again, that was possible, you know, six, seven to 14 years later.

Q. And with this new name of Louise Tatum what did your office do?

A. Because of the knowledge that the subject that we had was a prostitute and the possibility existed that this may be a street name, we looked up any Tatum that began, whose first name began with the letter L. In that search, you know, we came up with

Page 28.

Michael Bell - Direct

Larry Tatums and Lawrence Tatums and things along those lines, but we also came up with female names in the area. I think there was a Lois, a Lucene -- I hope I pronounce that one correct -- and Lolita. And those were all either in the Philadelphia or Camden. Or in the surrounding areas. And those were, once we realized that those names in that area were developed, we took those names a step further in an attempt to get a date of birth, their address and phone numbers. And once that was done, again the information was forwarded back to Counsel.

Q. And here again is another instance of increased complexity as you're going along?

A. Correct.

Q. Did you then receive additional information from the defense team that provided you with further leads?

A. Yeah, shortly thereafter we had a, our initial request for criminal searches had come back. We had handwritten notes from someone from the defense team that had checked criminal and civil records in Philadelphia and Camden. And they took it a step further from our initial request of just Rhonda and Veronica to include Louise Tatum. And once that information was taken, we extracted pertinent

information out of that handwritten notes. New dates of birth were developed. New names were developed, new Social Security numbers were developed out of there. Addresses, both residence and work. We in turn took the Social Security numbers and tried to develop addresses from this. I believe two new Social Security numbers were developed, plus there was one Social Security in the files that we had had previously.

We ran all three of those Social Security numbers to obtain addresses. One of them came back to a Dorothy Oliver with no hint of a Veronica. Even though it came back to a name that we had never seen before, we didn't discard it, it was still a viable lead and somebody that had to be contacted.

Q. Because at this point you still don't know who the subject is?

A. Correct.

Q. So now that is increasing the complexity once again?

A. Correct. The second Social Security number came back to a Ulanda Bermudes, I think she was down in Florida. And then the third one again was a Veronica Jones. And that was one that we had

previously but because of the time that had passed since the initial run, we thought this, the new address might have come up in there. And all of that information was forwarded back to Counsel, who again said no. At that point in time I had a stack of papers --

Q. Mr. Bell, let me ask you this before I ask you the next question.

A. Sure.

Q. Pardon me for interrupting you.

A. Sure.

Q. But can you tell us when you really got down to it, to the serious searches, serious computer searches that you were doing towards the end of the investigation, about how many names were you dealing with that you would focus on?

A. Roughly a dozen, I would say twelve or so names.

Q. And how many dates of birth?

A. About nine.

Q. And then how many Social Security numbers?

A. I think there were six total.

Q. And am I right about this, that you have twelve, nine and six?

A. Yes.

Q. And then you have all kinds of permutations of those?

A. Yes.

Q. We don't know what date of birth and what Social Security numbers go together?

A. No.

Q. So it's some whatever figure it is, if you do the math?

A. Yeah.

Q. It's huge?

A. I didn't do it but yeah.

Q. It's huge?

A. Yes.

Q. Now, you've got all this information and you said something about you had a stack of papers?

A. Yeah. Umm, because the last Social Security number was becoming like maybe that we were kind of chasing our tail and going in a circle here -- some of the latest information that we developed was duplications of searches that we had done previously -- I took the stack of papers and I just basically told myself the subject, no matter what her name, date of birth, et cetera, is, it's got to be in this stack somewhere.

Q. This is a gut instinct on your part?

A. Yeah, it was because of the fact that we had gone through the full circle. I took them home and laid them out from end to end in the living room, some on chairs, some on tables, some on the floor, just spread everything out. I was literally walking up and down the room saying, pulling out here is a name, here is an address, and basically setting a category for everything. Cross referencing back and forth. This name is connected. Well, here she uses this name and this address, but here it's the same address but a different name. And I started linking things together.

Q. It's like a big jigsaw puzzle?

A. Yes. Yes, it is. Umm, in doing so I just sat down on the computer, I would make a connection, go to my computer, type it in so I could look at it in a cogent order on paper. Finally, when all that was done, I forwarded a list of addresses, a list of Social Security numbers, things that I thought, you know what, this has, this has to be the most viable leads. I think they winnowed out six Social Security numbers down to four possibilities.

The same thing with the names and the dates of birth. These are the ones that keep coming

up the most often in all the papers that were laid out. That again was forwarded back to Counsel and searches were made back here and she was found in that stack of paper.

Q. So you were right after all?

A. Yes.

Q. I imagine it was a gratifying feeling on your part?

A. Very much so.

Q. By the way, we're talking about communications from your office in San Diego to the defense team and back and forth. What kind of turnover time are we talking about? I mean were people sitting on things for weeks on end?

A. No, at least I don't perceive them to have been sitting on things. There was about a three to four week, some period between the searches, sometimes longer, depending on what was happening back here. The information we would send them, it would take them time to go out and do them and then develop the new leads. And that was I think the cause for the distance and time between the searches.

Q. So you do the searches, they go out and do the leg work and you have to wait a while?

A. Yes.

Q. And when you got the information how long did you sit on the information before you started to plug it into the computer?

A. At the most a day. Generally it was immediately. But --

Q. So on your end you're doing this stuff immediately?

A. Yeah, if I had another case and I was out of the office, I couldn't do it, and I just put it off until the next morning. But generally a day.

Q. Okay. You weren't putting things in file cabinets?

A. No.

Q. And waiting around?

A. No.

Q. By the way, did you work with your boss on this particular assignment?

A. Yes.

Q. Mr. Newman played an active role with you?

A. Yes.

Q. Okay. And was there a, was there something about the search for Veronica Jones that had importance to your office?

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Page 35.

Q. That bore on the vigor in which you investigated this case?

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: It goes directly to the issue.

THE COURT: No, he could tell us how fast he worked on it. He has already told you that: At the most a day.

MR. WILLIAMS: The most a day.

THE COURT: Yes, that he waits before he puts it in the computer.

BY MR. WILLIAMS:

Q. Was it important --

THE COURT: The computer does all the work, you know.

BY MR. WILLIAMS:

Q. Mr. Bell, was it important for your office to locate this woman?

MS. FISK: Objection, Your Honor. I assume that they were hired and this was a job.

MR. WILLIAMS: No, there is more to it. There is more to it.

MS. FISK: Whether or not there is more to it is not relevant. It is for the Court to determine based on the description of the

Page 36.

work done by the witness the degree of diligence.

THE COURT: That's right, he already told you he never wasted more than a day.

(Discussion held off the record at this time.)

BY MR. WILLIAMS:

Q. Was it true, Mr. Bell, that this was just some assignment?

MS. FISK: Objection Your Honor.

THE COURT: Sustained.

MR. WILLIAMS: She makes the representation, Your Honor, that this is --

MS. FISK: No, I don't --

MR. WILLIAMS: This is just an assignment.

THE COURT: It is just an assignment to him.

MR. WILLIAMS: That is not true.

THE COURT: He has a personal interest in this case?

MR. WILLIAMS: Yes.

THE COURT: Do you have a particular personal interest on this case?

BY MR. WILLIAMS:

Page 37.

On this particular assignment? With this assignment, yes.

THE COURT: What is your personal interest?

MR. WILLIAMS: Mr. Newman constantly writes articles and has them published.

MS. FISK: You see, this is not his personal interest.

MR. WILLIAMS: It is his personal interest because it has to do with his boss, his office.

THE COURT: Well, his boss.

MR. WILLIAMS: I would like him to complete his answer. Ms. Fisk may not like it.

THE COURT: I don't care whether she likes it or not, I am interested only in what he did.

MR. WILLIAMS: His interest --

THE COURT: No, he has no interest here. Come on.

MR. WILLIAMS: Your Honor, you asked the question, he is entitled to answer it.

THE COURT: He did answer it. He is telling me somebody else has an interest.

MR. WILLIAMS: He was interrupted.

Page 38.

THE COURT: What he did.

You put it in the computer, did you, and you put it in there as soon as you could, and the computer spits back whatever it has, that's all you do?

THE WITNESS: In a very simplistic manner, yes, but it does go beyond that, though.

THE COURT: You could have had an operator here in Philadelphia do the very same thing.

MR. WILLIAMS: It goes beyond that, sir.

THE COURT: It goes beyond that?

THE WITNESS: Yes.

MR. WILLIAMS: That's what he just said.

THE COURT: Counselor, I am sustaining the objection. Come on, now.

MR. WILLIAMS: To your own question.

THE COURT: To my own question because he can't, he has no personal interest.

MR. WILLIAMS: You asked him, he was going to explain.

THE COURT: No, he is going to explain his boss's personal interest. I don't care

Page 39.

whether his boss has a personal interest.

MR. WILLIAMS: Let me ask the question, if it is not responsive then strike it.

THE COURT: Counselor, I don't make a finding of fact based on what he believes in the case. It is what he did.

MR. WILLIAMS: You asked the question, Your Honor.

THE COURT: I asked the question, I wanted to see if he would tell me the truth. He really personally has no interest in it.

MR. WILLIAMS: You didn't allow him to answer. I suspect the Court is afraid of the answer.

THE COURT: No, I am not afraid of any answer.

MR. WILLIAMS: Let's hear it.

THE COURT: Counselor.

MR. WILLIAMS: Are you afraid of the answer?

THE COURT: For what purpose?

MR. WILLIAMS: Well, how do you know the purpose unless you hear the answer. You ask the question.

Page 40.

THE COURT: Counselor, all I am interested in is what work he did on the subject. I am not going to go into any philosophical viewpoint of anybody, a witness such as him.

MR. WILLIAMS: I am asking the witness to answer Your Honor's question and I ask the Court not to be afraid of the answer.

THE COURT: Counselor, we don't have a jury here.

MR. WILLIAMS: Exactly, so why not hear the answer: There is no jury to taint?

THE COURT: Counselor, I made a ruling, you can take it up on appeal, okay.

MR. WILLIAMS: I just regret that the Court --

THE COURT: I am not afraid of any answer.

MR. WILLIAMS: Let's hear it.

THE COURT: Counselor, if you keep arguing with me you're going to go out of the case. I am not going to stand here and argue with you all day. I made a ruling, that's it. You have an automatic exception to any ruling that I make. I don't have to explain it to you

Page 41.

MR. WILLIAMS: Well, with that threat and the threatening gesture I have concluded my questioning.

MR. BURNS: Let the record show there was no threatening gesture. Let the record show that Counsel has been shouting at the Court for the past 10 minutes.

THE COURT: You were shouting.

MR. WILLIAMS: I had to make myself heard because Your Honor --

THE COURT: All right, you had to make yourself heard. I heard you and I have ruled on it.

Okay, let's cross-examine. Let's get finished here. We will be here for a year trying this case.

MR. WILLIAMS: Maybe Miss Fisk will ask what interest he has, or perhaps she is afraid also.

MS. FISK: I promise Counsel that I will ask relevant questions, as opposed to questions that deal with nothing about the truth of the matter involving this case, which is all that Counsel has been interested in propagated

Page 42.

throughout these proceedings.

MR. WILLIAMS: Well, if history is any guide, I don't think the questions will be all that relevant.

MS. FISK: Just watch.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Mr. Bell, are you from Philadelphia, sir?

A. No, I am not.

Q. You are from San Diego?

A. Correct.

Q. And you have been a private investigator you have told us in San Diego since 1993?

A. Correct.

Q. What is your training as a private investigator, Mr. Bell?

A. I did have some schooling in criminal justice.

Q. And when you say some schooling, you mean what, please?

A. Basically, it is just up to a level of an Associates degree.

Q. So you went to an Associates, a junior college?

Page 43.

A. Correct.

Q. Received an Associates degree in criminal justice?

A. No, I did not receive, I am like six units shy and haven't gone back to school.

Q. So you had about 18 months or so?

A. Yes.

Q. Of college?

A. Yes.

Q. About a year and a half worth of credits in criminal justice?

A. Yes.

Q. That was obtained or received, or concluded when?

A. '92.

Q. All right. In June '92? In September '92?

A. We're probably June of '92. As far as the college. I have gone on to professional training with the California Institute of Professional Investigators. And I have certified training with them.

Q. Is that training you gained after beginning work in October of 1993?

A. Yes, it is.

Q. From the time you completed your college

Page 44.

credits in '92 until you began about a year and a half later, what employment did you have, sir?

A. I worked while going to school, I was employed in a grocery store in a management position. I left that to pursue a career as an investigator and worked for a separate company prior to working for Tactical Investigative Services.

Q. And what kind of work did you do for that company?

A. The same: Criminal and civil litigation.

Q. And when did you start working for that company, sir?

A. In 1993. I was only there for a short period of time. The owner shortly was involved in four or five very large cases and needed some back-up. Once those cases were concluded, she scaled down her business in order to go to law school.

Q. And did you start working for that person in October 1993?

A. Yes.

Q. From the time you finished college in, or stopped attending college in June 1992, until the time you started working for this woman in October '93, during that period what did you do, sir?

A. From -- wait. Repeat that one.

Page 45.

Q. You said that while you were in college you worked in a grocery store in a management position?

A. Correct. I continued that after.

Q. All right. So after you finished attending --

A. Yes, I went straight from the grocery business into investigations.

Q. Thank you. Okay. Then after that you worked for this woman for some months?

A. Yes, it's approximately three-and-a-half, four months.

Q. You began then to work for Tactical Investigative Services?

A. There was a period roughly two months where I was employed by both. The first employer was my primary employer but when she did not have work I would pick up work with Tactical.

Q. Now, during this period of time you said you also received investigative training?

A. Correct.

Q. What kind of computer training did you receive, sir?

A. From a computer aspect, training from the computer companies themselves. When we would contract with the service they would have somebody come down and train us on how to use the

equipment.

Page 46.

Michael Bell - Cross

What would facilitate a search and what would be unnecessary searches for any given search required.

Q. Now, what particular knowledge or expertise did you have with regard to the Philadelphia area?

A. Excuse me, I...

Q. What particular knowledge or expertise did you have regarding the Philadelphia area?

MR. WILLIAMS: I am going to object to that as vague and ambiguous. When you say what particular knowledge about the Philadelphia area, do you mean about the Philadelphia Eagles? I don't know. Could we be a little more precise?

THE COURT: Could you rephrase your question.

MS. FISK: Certainly.

BY MS. FISK:

Q. What knowledge did you have regarding the criminal justice system in Philadelphia?

MR. WILLIAMS: Again vague and ambiguous.

THE COURT: That is not ambiguous.

MR. WILLIAMS: How calender calls are made here?

THE COURT: Whether he has any

Page 47.

Michael Bell - Cross

knowledge or not. He could answer that question. It is a simple question. If he has none he has none.

THE WITNESS: As far as particulars to the criminal justice system in Philadelphia and Pennsylvania, none.

BY MS. FISK:

Q. Now, you have advised us that your office began to work on this account you said late in June or July 1995; is that right?

A. Yes.

Q. Other than yourself and Mr, Newman, who else was employed at Tactical Investigative Services? And I don't mean their names, I mean what other persons?

A. We have a staff of approximately six, it varies at times.

Q. Are those persons other support staff, clerical in nature?

A. Six, you know, we have probably about five investigators and one office manager.

Q. All right. Now, from June or July 1995 until the time that the subject you were looking for was located, was your time being billed on an hourly basis?

A. I don't know, I don't get into billing.

Page 48.

Michael Bell - Cross

Q. So you keep track of your time so that your boss can then appropriately charge the person who has hired him or assigned him to do a job?

A. In general, with other cases, yes.

Q. In this case you did not?

A. Yes, we did.

Q. Yes you did what?

A. In this case I've, I got paid on the time that -- thank you -- that I spend working on a case.

Q. All right.

A. If I spend 30 minutes working on a case I only get paid 30 minutes worth of time for that day.

Q. I see. You are not a salaried employed, then?

A. No.

Q. You are contracted out?

A. Well, I am an employee.

Q. But you're paid only for the specific investigations you do work on, you are not given a flat salary every week?

A. No.

Q. All right, in this case was that in fact the case: Were you paid for the work you did on this case?

A. Yes.

Q. In order to be properly compensated, did you

Page 49.

Michael Bell - Cross

have to keep track of the time and hours you put in on this case?

A. Yes.

Q. All right. From the period of time -- and I thought -- I apologize if you misunderstood -- I thought that was my question -- from the period of time July '95 until the subject was located, did you in fact record the time that you spent in this case?

A. Yes.

Q. And what was that time, please?

A. I have no idea. As far as you mean a total time from June until today? I have no idea how much time I spent on it.

Q. Well, did you submit a bill for that time?

MR. WILLIAMS: I am going to object: It is beyond the scope of this case. Because the focus is exclusively on Veronica --

THE COURT: She is asking about this case.

MR. WILLIAMS: On Veronica Jones.

THE COURT: Yes, this case.

BY MS. FISK:

Q. I apologize if my question was misunderstood. I am talking about the time that you have just testified about, the efforts that you have told us

Page 50.

Michael Bell - Cross

about. Did you understand me to mean that?

A. No.

Q. All right, well, let me restate. With regard to the efforts that you have just testified about on direct examination, did you present a bill for that time?

A. I wouldn't call it a bill, I got a time sheet.

Q. Okay. Did you present a time sheet for that time?

A. Yes.

Q. And how many hours did that time sheet reflect?

A. I have no idea. I turn in my time sheet every two weeks. So from June of '95 until today I couldn't even tell you how many two-week periods there are.

Q. You did tell us that before you came here today you had an opportunity to review your file?

A. Hmm-hmm.

Q. So that you could testify in a cogent manner; is that correct?

A. Correct.

Q. Does your file contain copies of those time sheets?

A. No.

Page 51.

Michael Bell - Cross

Q. You send your only copy to your office, to your boss or your client, you retain no copy for yourself to make sure that you are reimbursed properly?

A. I do but I keep -- the time sheet has, besides it could have anywhere up to 15 different cases that I worked on in any given day.

Q. And what hourly rate were you paid for these services?

A. That I get paid?

Q. You said that you're compensated for the time you put in for each case, right?

A. Correct.

Q. And you tell --

A. I get paid --

Q. So you tell somebody how much time you spend and then you're paid for that time?

A. Correct.

Q. Are you paid on an hourly basis?

A. Yes.

Q. At what hourly rate?

A. At $8 an hour.

Q. Is that the rate that you were paid for this investigation?

A. Yes.

Page 52.

Michael Bell - Cross

Q. Now, is that in addition to any hourly rate that Mr. Newman billed, if you know?

A. I have no idea what Mr. Newman bills.

Q. Okay. Now, what you told us is that your search began on July 5th for Veronica Jones and that what you received was a name Veronica Jones, a date of birth, and a possible Social Security number?

A. Correct.

Q. From whom did you receive that information?

A. The information was forwarded to their office into Tactical from Mr. Weinglass or Counsel.

Q. Now, did you ever have an opportunity to determine the source of that information from Mr. Weinglass?

A. No.

Q. Did you ever have an opportunity to find out whether or not there was a person -- well, let me get back. Did you ever have an opportunity to determine whether or not this was a person who had been a witness to a particular event?

A. We were told verbally that she was a witness in a capital case.

Q. Did you request a copy of the notes of testimony of that witness who you were being asked to locate?

Page 53.

Michael Bell - Cross

A. Initially, no.

Q. Would that have been a logical request in an effort to identify or see whether that person in their testimony gave any information as to their whereabouts?

A. Eventually we did request a copy and got that. Initially we did not, we relied on the fact that Counsel had an investigator here and, who does the local work and would exhaust the local aspect of the case. Our involvement in the case was just in a technical sense, computer searches.

Q. Were you ever advised that the person -- I'm sorry -- when you were first retained on July 5th, 1995, were you advised that the person that you were seeking had been in custody in the Philadelphia prison system during the time of her testimony in 1982?

A. No.

Q. Were you ever told that?

A. Not that I know, I'm not sure.

Q. Were you ever advised or -- I'm sorry -- were you advised when you were first retained on July 5th, or when you first began the search on July 5th, 1995, that the witness who you were looking for had an identifiable Philadelphia Police identification

Page 54.

Michael Bell - Cross

number?

A. No, initially, no.

Q. I take it, then, you became aware of that at some point?

A. When in the search or in the time span that we spent searching for the subject in this case, Veronica Jones, it was identified and at that point I think that was when we requested the criminal records.

Q. We will get to that in a moment. You told us that the first thing that you did was to use the Social Security number to check the credit headers?

A. Right.

Q. To get the addresses of any persons claiming or using that Social Security number?

A. Correct.

Q. Now, do you also use the name? You just put a Social Security number in?

A. It depends on the type of search that you're doing. If it's just the Social Security number we can use that. Sometimes you have to develop the Social Security number and it goes through this, it's also called a credit header, where I can use the name and the subject's address, in simplistic terms, turn it around, get the Social, feed it back in and let it go.

Page 55.

Michael Bell - Cross

Q. Incidentally, Mr. Bell, did you inquire of Mr. Weinglass or whoever provided the information of the name, date of birth and possible Social Security number as to the manner in which that Social Security number and birth date had been developed?

A. No.

Q. Would it make sense to you that the search that you were conducting would start off from accurate information as opposed to inaccurate information?

A. You always like to hope so.

Q. In addition to hope, as an investigator, were you trained at any time to investigate the source of the information you were being provided to check to see whether, if you could, that was accurate?

A. Are you saying did we go back and check where the information came from?

Q. I'm asking if you even asked where the information came from?

A. No.

Q. So you simply received the name, a date of birth and Social Security number without questioning its source?

A. Correct.

Page 56.

Michael Bell - Cross

Q. And as I understand it, utilizing that Social Security number in a credit header database --

A. Hmm-hmm.

Q. -- which is apparently a public database?

A. Hmm-hmm.

Q. Is that a yes?

A. Yes.

Q. Through what database service?

A. There is a multitude of services that all use the same thing.

Q. And which one did you use?

A. I think they're called Tracers. That's all I know about them. I think it's Tracers Business Bureau or --

Q. And do I understand that utilizing that Social Security number and that name and that date of birth you found one person named Veronica Jones in New Haven, Connecticut?

A. Hmm-hmm.

Q. Is that a yes? I'm sorry, you have to say yes or no.

A. Yes, I'm sorry.

Q. That's all right. Does that mean that there was no other person named Veronica Jones in the United States?

Page 57.

Michael Bell - Cross

A. No.

Q. Who appeared in that computer database?

A. No, it does not mean that. It means that this particular Veronica Jones that was located in New Haven utilized the Social Security number given to us initially.

Q. All right. Now, you told us a moment ago that there was a local investigator, so far as you knew, located in Philadelphia doing local things?

A. Yes.

Q. Nevertheless, when the name Veronica Jones in New Haven came up it was Mr. Newman who flew across the country to see whether that was the person you were seeking; is that accurate?

A. He was coming to the East Coast for personal business anyway. And in doing so he stopped, yes.

Q. And when was it, sir, precisely when the name Veronica Jones in New Haven, Connecticut was developed by you?

A. At roughly the same time frame of July 5th.

Q. Okay. So that was almost immediate?

A. Yes. I mean the search does come back, usually there's, it could take up to an hour to develop the information.

Q. All right. And you told us that that name was

developed on July 5th and Mr. Newman flew to New Haven in late July to determine whether or not that was the person you were seeking; is that correct?

A. Correct.

Q. Now, you then told us -- and if I am chronologically incorrect please correct me -- that thereafter further information came in of a new name and two new dates of birth; is that accurate?

A. Hmm-hmm.

Q. Plain --

A. Yes.

Q. Okay. Would I be correct, then, that that would be August of '95, is that your thereafter?

A. I'm not, I don't know -- excuse me -- I don't know when they came in.

Q. Well, how did it come in, the FAX, mail, carrier pigeon, how?

A. I was told verbally.

Q. All right.

A. Here's another name and a couple dates of birth.

Q. And that information is given to you by Mr. Newman?

A. Yes.

Q. And do you know from whom Mr. Newman received

that information?

A. No.

Q. You have no clue as to where it came from?

A. No.

Q. Do you have any information as to the source of that new information?

A. No.

Q. And did you make any inquiries into the source of it?

A. No.

Q. Did you ask Mr. Newman?

A. No.

Q. And you said that with that new information, do I take it that you were assigned by Mr. Newman to now go to the computer and use whatever databases were available to you to see what information you could generate with these names and these dates of birth?

A. Hmm-hmm.

Q. Is that a yes?

A. Yes.

Q. And you told us that you then ran the surname and date of birth; correct?

A. Yes.

Q. Correct?

A. Yes.

Q. What database did you use to do that, sir?

A. Various, there's three or four.

Q. Well, did you run them on all four databases or did you run it on one?

A. This particular I think we ran on one; the name of it I'm not aware of.

Q. You are not aware of?

A. It's... I could tell you the abbreviation is DNIS, I don't know what that stands for.

Q. Well, are these the databases that you had received particular technical training in, the training that you were talking about earlier?

A. Yes.

Q. Okay. And it's called DNIS?

A. That's what I have it listed as, yes.

Q. And is this something that is purchased by the investigative agency?

A. Yes.

Q. And in what manner is this database purchased?

A. I don't, I don't understand in what manner. You mean financially? Yes, a check is --

Q. Well --

A. There is a monthly service to use it.

Q. My question is is it on a CD, do you keep it

in your hard drive, are you using a telephone modem to access this database?

A. Oh, okay. Well, with all of the searches utilized there was some that was on a CD-ROM, some that was searched via a modem and the computer.

Q. Now, sir, this search in which you ran the surnames, when did that take place?

A. I don't know the date.

Q. Well, again, was that in the file that you reviewed yesterday so you could chronologically give us an accurate view of what it was that you did?

A. The results of the search were on the, on the results the date was unlisted.

Q. And you have no memory of when you ran this, you don't know if it was August, September, October, November of 1995?

A. No.

Q. No clue at all?

A. No.

Q. Do you have any information or any recollection as to when that information even came in, after the New Haven lead was developed?

A. There was a span of two or three weeks, I think.

Q. Now, you told us that as a result of running

the name Veronica with dates of birth and coming up with 80,000 people across the United States, you then, or someone then picked the Eastern seaboard and identified 14 states?

A. Yes.

Q. Did you do that?

A. Umm, myself and Mr. Newman sat down together and said, you know, based on prostitution and what we know of it, this is areas that we could immediately eliminate, you know, Montana or Wyoming, as somewhere that at least in our minds we don't consider to be hotbeds of prostitution.

Q. They don't have prostitutes in California?

A. Yes.

Q. They have prostitutes in Detroit?

A. Yes.

Q. How about Chicago?

A. Yes.

Q. Were those considered in your search?

A. Yes.

Q. I thought you said that you picked the Eastern seaboard and limited it to 14 states? Last I looked, sir, California is not near the Eastern seaboard; correct?

MR. WILLIAMS: That is not his

Page 63.

Michael Bell - Cross

testimony, and she is misstating it.

MS. FISK: It certainly was his testimony, Your Honor.

MR. WILLIAMS: No, it was not.

BY MS. FISK:

Q. Did you tell us that you picked the Eastern seaboard?

A. I think I stated Eastern seaboard plus other states that lured prostitution.

Q. And you had been told that the person you were looking for had been a prostitute?

A. Yes.

Q. What else were you told?

A. In essence that was it, a prostitute by the name of Veronica Jones and this is a possibility of a date of birth.

Q. Were you ever told that in 1982, that this woman named Veronica Jones testified in a trial that her mother lived in Camden, New Jersey, were you told that in July 1995 when you were hired?

A. No.

Q. Do you think that if you were given that information which came directly from the trial transcript that it would have enabled you to narrow your search considerably, at least initially?

Page 64.

Michael Bell - Cross

A. Our involvement was just on the computers. Again, they had an investigator local that would do the local, and I would consider Camden to be in the local area.

Q. I'm sorry, Mister --

MR. WEINGLASS: Objection, Your Honor: The witness is not being allowed to complete his answer. Counsel doesn't like the answer so she cuts him off. He should be given the common courtesy.

MS. FISK: It has nothing to do with liking the answer. The answer is not responsive.

THE COURT: If he is not answering your question move to strike it, I will strike it. Ask the question again --

-- and please answer the question.

MS. FISK: I apologize, Mr. Bell, please finish your answer.

THE WITNESS: I thought I did.

MS. FISK: I believe you did too.

MR. WEINGLASS: He was cut off again in explaining why he didn't finish the answer. He was cut off now.

THE COURT: You are not a witness. He

Page 65.

Michael Bell - Cross

is the witness here. And you're not the attorney involved, he is the attorney behind you. He hasn't objected.

So now come on. Ask the question again.

Please answer the question she asks you.

Ask the question.

BY MS. FISK:

Q. Mr. Bell, my question of you was whether or not you had been told that the witness had said that her mother was in Camden. You said no because you were only involved with the computer and there were local investigators as far as you knew doing local work, right?

A. Yes, and --

Q. Yes?

A. In that we would go on the assumption that they would have checked the immediate areas to include Camden. And that our involvement again was just on the computers to proceed any further.

Q. Yet your involvement, sir, and as Counsel pointed out in direct examination, also requires you to exercise judgment, that is to determine, for example, when you ran the surname and dates of birth

Page 66.

Michael Bell - Cross

and came up with 80,000 names, to utilize the information that you and Mr. Newman had as investigators to identify the states where you should focus your inquiry; is that correct?

A. Correct.

Q. And that was outside the computer, wasn't it? It was using investigatively gathered information to narrow an otherwise enormous computer search; am I correct, sir?

A. Correct.

Q. So you were using information --

MR. WEINGLASS: Objection, Your Honor: He was cut off again.

THE COURT: He answered: He said correct.

MR. WEINGLASS: He was about to say something else.

THE COURT: How do you know what he was about to say?

MR. WEINGLASS: Because I am here and I have ears.

THE COURT: I have ears too. He says correct and that means correct.

MR. WEINGLASS: No, he started to say something else.

Page 67.

Michael Bell - Cross

THE COURT: You started to say something else?

THE WITNESS: Yes.

THE COURT: What are you going to say?

THE WITNESS: Once the 14 other states were developed, that information was just forwarded back and --

THE COURT: Then you didn't do anything?

THE WITNESS: No.

THE COURT: Well, say it. If you didn't do anything, say you didn't do anything.

BY MS. FISK:

Q. When you say the 14 states were developed, did you and Mr. Newman then send to the persons who had hired you the 14 states that the two of you decided should be looked at?

A. Correct. Yes.

Q. Are you done?

A. Yeah.

Q. And the 14 states that you and Mr. Newman picked were based on yours and Mr. Newman's knowledge as to the primary states where prostitutes worked; is that correct?

A. To our knowledge, you know, yes.

Page 68.

Michael Bell - Cross

Q. Do you have any particular training in prostitution that you and Mr. Newman in San Diego needed to identify those 14 states for the defense?

A. Myself, no. I cannot attest to Mr. Newman's training.

Q. Surely you can not. So you then suggested to defense, or to those who had hired you, that 80,000 people were across the United States with the first name of Veronica and the date of birth that you had. And it was your recommendation to them, I presume --

A. Hmm-hmm.

Q. --- that they focus on, of those 80,000, the thousands that were in these 14 states?

A. Correct.

Q. And you made Counsel aware, those that had hired you aware that those recommendations were based on the fact that those are the states where you are most likely to find a woman who used to be a prostitute?

A. Yes.

Q. That is correct?

A. Yes.

Q. Did you at that point ask for any additional background information regarding the person you were seeking? And I am not talking about new names, new

dates of birth, but information that was known to those who were asking you to find her about the person?

A. It's my understanding that the information that was forwarded to us was all the information known.

Q. And the information forwarded to you was a name, date of birth and a Social Security number?

A. Yes.

Q. You were never told by Counsel the trial transcript showed she had a mother living in Camden?

A. No.

Q. You were never told that because --

A. Not --

Q. I'm sorry, sir, I thought I started my next question. Go ahead.

A. Not initially.

Q. Not initially. When were you told that?

A. I don't know, it was further on, once we already started the search.

Q. When? Your search started July '95 and ended in April '96?

A. Yeah.

Q. According to the testimony we heard yesterday. Can you pinpoint when within there that you were told

that she had a mother who lived in Camden?

A. No, I cannot.

Q. Was it towards the beginning, towards the end, or have you no idea at all?

A. I have no idea when we learned of that information.

Q. And you were simply at the mercy of those persons providing you and Mr. Newman that information as to when they chose to give it to you?

MR. WILLIAMS: Objection to the form of the question.

THE COURT: What's wrong with the question?

MR. WILLIAMS: He is not at the mercy of anyone.

THE COURT: Well. Yes, he is to a certain extent. He can only put into the computer whatever information he receives. If you don't give him the proper information, he's never going to get the proper answer.

MR. WILLIAMS: Well, then, I take it the District Attorney is also at the mercy of the law enforcement personnel that provide them information. Would that be fair to say?

THE COURT: I am talking about this

issue now. I am not talking about law enforcement or anything else.

MR. WILLIAMS: I object to the phrase at your mercy. But with that objection --

THE COURT: Well, cut out the at your mercy.

BY MS. FISK:

MR. WILLIAMS: Thank you.

MS. FISK: I will restate the question.

Q. You were not asking for any additional information, you were assuming that the information being provided to you was all the information that those who were searching for her had; is that correct?

A. I personally did not request any further information as far as any --

Q. As an investigator, is it your training not to ask questions when you are searching for someone?

A. No.

Q. Your training in fact is to ask questions?

A. Correct.

Q. Would that be accurate? But you did not do that in this case?

A. No.

Q. Now, you told us that at some point, and this is after you were provided the 80,000 names in the United States, you received information regarding a Rhonda Harris, or that another name was Rhonda Harris?

A. Correct.

Q. Is that accurate?

A. I think the Rhonda Harris was, Rhonda was involved in the 80,000 also.

Q. I'm sorry.

A. I think the name Rhonda was involved in the 80,000 search as well.

Q. Oh.

A. It was just that a Rhonda, known to have an address was located or was forwarded to us.

Q. So a name you received from again those persons that had hired you to locate the subject, a person named Rhonda Harris and an address?

A. Hmm-hmm.

Q. Is that a yes?

A. Yes.

Q. Do you know, first of all, who sent that information to you and to Mr. Newman?

A. I don't know.

Q. Was it those persons who had hired you to

locate this subject?

A. I would assume so, I do not know.

Q. And who was it who hired you to locate the subject?

A. I wasn't privileged to the initial conversations between anyone involved in this case.

Q. Well, to whom did you submit your time sheets for payment?

A. Mr. Newman.

Q. I thought you told us you were paid directly by the person for whom you were doing the work?

A. No.

MR. WILLIAMS: Objection.

BY MS. FISK:

Q. When the name Rhonda Harris and an address came in to your agency, and you were asked to make further checks based on that, did you ask where that information came from?

A. No.

Q. Did you ask who had developed that information?

A. No.

Q. Did you ask whether the persons providing that information had any other information that they could provide to you now rather than later?

Page 74.

A. No.

Q. Did you ask whether there were records within the jurisdictions that were being searched that could be subpoenaed in an attempt to obtain additional information?

A. No.

Q. Was it your belief, since you were able to figure out where prostitutes worked in various cities in the United States, that persons who worked as prostitutes also receive public assistance so that public assistance records could be checked?

A. I fail to follow you here. Are you asking did we request to have public records researched, or public assistance records researched?

Q. Okay, did you?

A. No.

Q. When was it that you received the information regarding Rhonda Harris on Hatfield Street?

A. I don't know.

Q. You have no idea at all? And what database did you then use to check that name?

A. As far as initially we tried to develop a Social Security number using the name Rhonda Harris and that Hatfield address, which was fruitless. Once we got that information then we tried a separate

Page 75.

surname search and a separate database for Rhonda Harris.

Q. Through what database do you put in someone's name and then obtain their Social Security number?

A. That's also through the credit header.

Q. Through the...?

A. Credit header search.

Q. And that is something anybody can do?

A. Yes, as far as my knowledge is, yes.

Q. Is that by subscription or can anyone go to the public library and put in my name and come up with my Social Security number?

A. Subscription.

Q. Now, you said at some later time you received two more Social Security numbers and ran those and came up with three addresses under each Social Security number?

A. Correct.

Q. When did you receive that information?

A. Again, as far as dates are concerned, I can't attest to any dates that we did any of the searches other than the first one.

Q. Were you asked to bring with you from San Diego any of these records so that you could cogently answer questions regarding the searches you made?

Page 76.

MR. WILLIAMS: Your Honor, I am going to object to that. He has been cogently answering me.

MS. FISK: He hasn't been able to provide me with a single date.

MR. WILLIAMS: That doesn't mean it is not cogent.

MS. FISK: It is just vague.

THE COURT: It is vague. It is not precise, that's for sure.

Go ahead.

BY MS. FISK:

Q. Were you, sir?

A. What?

Q. Asked to bring with you records so that you would be able to precisely testify to what you did and when you did it?

A. No.

Q. You did in fact make yourself a little script sheet writing the order in which searches were made; is that correct?

A. Correct.

Q. But you did not put on that script sheet the dates on which those searches were made?

A. A great deal of the searches and the

Page 77.

information brought back to us did not have dates on them.

Q. A great deal of the searches?

A. The results of the searches didn't have a date attached as far as when the search was made.

Q. Ahh. You did the searches, right?

A. Yes.

Q. And you kept a time sheet of the work you were doing, sir?

A. Yes.

Q. And the computer programs you were using, I presume, are programs being used by people who want accurate, timely information for whatever it is they are searching; is that correct?

A. Yes.

Q. Would I be correct sir, that nine-and-a-half -- out of ten of these computer companies that you're subscribing with will print on the sheet of paper that you're obtaining the information the date on which this information is being provided so that if you look back at it a year or two later, the subscriber will know as of when that information was accurate?

A. It depends on when you turn the printer on.

Q. You mean you would do the search but not print

Page 78.

up the information?

A. No, the information would be printed. Generally, when I would log on to a particular service, it would come up today's date and time. And then it would go through, okay, here is all the new information that we have available to you and stuff that isn't relevant to the search. I don't turn the printer on at that point in time to print out because I'd have a stack of papers that were meaningless to me.

Q. When you would receive the information -- new information, new Social Security numbers, new names, new addresses that came from those persons that had hired you to locate this woman -- were they coming via mail, via FAX, via carrier pigeon, in what fashion were you receiving the information?

A. Back through the computer, through modem.

Q. You were receiving E-mail messages?

A. No.

Q. I'm sorry, maybe you misunderstand me, sir. When you received information from those persons who hired you to find this subject, you would --

A. Oh, okay.

Q. Every time you would receive information from them --

Page 79.

A. Yes.

Q. -- in what manner were you receiving that information?

A. I was always told verbally of information.

Q. Did you ever ask to see in writing the information to make sure that Mr. Newman wasn't dropping a digit when he was giving you a new Social Security number, for example?

A. No.

Q. Did you ever hear of the game -- what is it -- Whisper Down The Lane?

A. In kindergarten.

Q. And you are familiar with how when people continue to repeat a piece of information from one to the next it often times gets changed?

A. Yeah.

Q. And as an investigator was it important to you to make sure that you were receiving the most -- accurate information so that you could properly find a needle in a haystack?

A. When I referred to verbal, there was always handwritten notes: Mike, here is a name, a new date of birth for Veronica. And he would place it into my box.

Q. And these were notes that were in Mr. Newman's

hand?

A. Yes.

Q. Based on information that he had received from someone else?

A. Correct.

Q. Apparently via verbal --

A. No.

Q. You don't know?

A. I had no idea how he got the information.

Q. And you have no way of knowing if the information in his note was accurate from the person he received it from?

A. No.

Q. Is that how you generally do business, sir?

A. What do you mean?

Q. In business, don't people write letters to each other, this is what I'm hiring you to do, this is the information that I am giving you, and then you write them back or in some way record the nature of the work you've done for them? Is that generally the practice?

MR. WILLIAMS: I am going to object to generally. Why doesn't she ask who was doing the communicating with the defense team, himself or Mr. Newman. If Miss Fisk wants to know the

truth.

MS. FISK: Oh, Judge, I want to know the truth, and that's why I stopped listening to the defense a long time ago.

BY MS. FISK:

Q. Can you answer my question?

MR. WILLIAMS: She could always ask him about this case.

THE COURT: She is asking him about this case. If he doesn't know anything, then say I don't know anything.

MR. WILLIAMS: That's what I am asking her to ask.

THE COURT: Well, don't con the Court. If you don't understand the question, don't answer it. And if you don't know an answer say I don't know the answer.

Let's go, we will be here forever.

BY MS. FISK:

Q. Do you generally communicate with your clients in writing so that there is a written log of what you've been hired to do and what it is that you have done for them?

MR. WILLIAMS: There she goes again with the generally.

THE COURT: All right, we have FAX machines too. Did they FAX anything to them?

MR. WILLIAMS: In this particular instance?

THE COURT: Yes, did they.

MR. WILLIAMS: Not generally.

MS. FISK: Your Honor, Counsel on direct examination spent a great deal of time attempting to establish diligence. If in fact this search was conducted differently than in the manner of work that agency generally does, that is relevant to that issue. And for that reason my question about generally as opposed to this case is a proper question.

MR. WILLIAMS: Your Honor sustained an objection where I tried to get this witness to explain why they exercised even more diligence with this particular assignment than others.

THE COURT: That is hypothetical. Ask the question what did he do. All he did was put some information into the computer and wait for it to spit out an answer.

MR. WILLIAMS: That is not true.

MS. FISK: Judge, I will withdraw that question, I will be happy to move on.

BY MS. FISK:

Q. Do I understand, sir, that at some point after you received the name Veronica Jones, after you received several Social Security numbers, after you received the name Rhonda Harris, that at some point you received yet a third name: Louise Tatum?

A. Yes.

Q. When?

A. I think January.

Q. Of 1995?

A. '6.

Q. I'm sorry, January 1996. Would it be fair to say that everything you have talked about up to now has occurred before January of 1996?

A. As far as questions that you have asked of me?

Q. Yes, sir.

A. Yes.

Q. How is it that you are able to recall that you received Louise Tatum's name in January of 1996?

A. I think that is one of the documents that did have a date on it. In fact, this was part of my search. At that point Mr. Newman had just forwarded a FAX to me that he had received from Miss Wolkenstein. And I think, I believe the date was mid-January for the FAX. And on that is information

pertaining to hey, here is a new name, can we focus on that.

Q. Other than the name Louise Tatum, were you told how that name was obtained, from what source?

A. No.

Q. Did you inquire?

A. Actually, I believe there was, in the same memo that was faxed there was a note of at that point in time I think it was developed in testimony. I do not know which testimony it was but an attorney referred to her as Louise Tatum.

Q. Was this the first time that you learned that the person that you were seeking had in fact given testimony in the past?

A. No.

Q. You had known previously that the subject you were searching for had given testimony in the past?

A. Yes.

Q. Had you ever asked to see that testimony?

A. No.

Q. Now, you also said that at some point -- and I'm following the order in which you testified -- you received additional information by way of handwritten notes?

A. Correct.

Page 85.

Q. From whom?

A. I do not know. Or -- excuse me -- as far as who wrote the notes or who did we receive the notes from?

Q. Well, let me start with where did you get the handwritten notes?

A. They were forwarded to us, to Tactical, by Counsel for Mr. Jamal.

Q. Okay. And these handwritten notes were what, scraps of paper with names and date of birth?

A. In essence, yes, there was just, you know, several 8-by-10 sheets with notes pertaining to each particular case that this individual had viewed.

Q. That what individual had viewed?

A. Whoever was writing the handwritten notes.

Q. And what was your impression as to what it was they had viewed which enabled them to make these handwritten notes?

A. It appeared to be criminal records: It had case numbers and then some notes and then a line and then another case number.

Q. And what kind of criminal records, do you know, had that person viewed?

A. I do not know.

Q. In addition to the various databases that you

Page 86.

have testified using, were you familiar with the National Crime Information Computer?

A. I think every investigator knows of NCIC.

Q. Do you have access to that?

A. No.

Q. Are you familiar with the FBI's database listing persons, I don't know what it's called but the fact that the FBI has one?

A. Yes.

Q. Do you have access to that?

A. No; I'm not government related.

Q. Can that be accessed by way of subpoena or Court order?

A. I have no knowledge of that, I don't know.

Q. Were you familiar with the fact that the Philadelphia Court of Common Pleas has a database which is available to criminal defense attorneys to search?

A. No.

Q. When you were made aware of the fact that there were criminal histories, do you know whether or not any person had checked the Philadelphia Court of Common Pleas database to identify names and addresses for the person who was being searched?

A. It was requested and I believe that's how we

Page 87.

got the handwritten notes.

Q. Did those handwritten notes contain the outcomes of criminal cases of the persons whose files were checked?

A. I believe so.

Q. Did those outcomes -- I apologize -- did you have something more to say?

A. No.

Q. Did those outcomes include, for example, sentences of incarceration?

A. I believe they did.

Q. Did those outcomes include probationary sentences?

A. I believe so.

Q. Did you make an effort to check the records of those facilities, that is the prisons or the Department of Probation, regarding those persons' sentences to obtain additional information?

A. No.

Q. Did you make that request that that be done?

A. No.

Q. Did you have any reason to believe that it was being done?

A. No. If I could further on that?

Q. Go right ahead.

Page 88.

A. The reason that it was not requested is the cases that were forwarded back to us were dated back to '88, '82, '85, generally the mid eighties. And I believe all of the impositions of sentences, whether incarceration or probation, was for a short period which would have expired by the time we would have had to make the request.

Q. Oh, I understand that, but if, for example, a person in 1988 is placed on probation for two years, would you agree with me that that probation department would have an accurate address up to 1990, because that's when the person was still on probation?

A. I would assume so.

Q. And would that provide some value to you as a person attempting to locate that subject?

A. Yes.

Q. Might that probation record, for example, contain the name of the subject's mother or the subject's children or the subject's means of employment while they are on probation?

A. It's my understanding that probation records are not public information. And I have only available to me public information.

Q. Did you ever request of those persons who had

Page 89.

hired you to obtain the assistance of an attorney who could by proper Court subpoena obtain that information?

A. No.

Q. Did you as an investigator suggest to any person that that information could be available and it could be sought by them?

A. Myself, no.

Q. When was it that you took that stack of paper home and laid it across your living room?

A. I think March of this year.

Q. And do I understand that despite all the enormous computer-generated searches that you had conducted, it required you to physically move pieces of paper around your living room for you to develop the stacks that you developed and then send the lists out; would that be correct?

A. No.

Q. Didn't you tell us that you had to start picking up pieces of paper from all across your living room?

A. No.

Q. You didn't tell us that?

A. No, I did not.

Q. Did you take a stack and start linking things

Page 90.

together by picking up a name here and an address here?

A. I believe my testimony is that I would get an address from this piece of paper, cross reference it with an address over here. But as far as taking the papers from each end of the room and putting

them together, no.

Q. Now, are you able to tell us, Mr. Bell, what number of hours you billed for this work?

A. No.

Q. Were you paid for it?

A. Yes.

Q. You were paid by Mr. Newman for the work?

A. Yes.

Q. Do you still work for Mr. Newman, sir?

A. Yes, I do.

MS. RISK: Thank you, Mr. Bell.

I have no further questions, Your Honor.

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REDIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Newman --

A. Bell.

Page 91.

Q. I'm sorry, Mr. Bell. By the way, we don't know each other, do we, other than just meeting last night?

A. Just met yesterday, yes.

Q. Mr. Bell, is it correct that your office and you in particular was doing, was basically doing a nationwide search?

A. Yes.

Q. And that's called I think in your parlance broad searches?

A. Yes.

Q. And that's because you wanted to be thorough; is that right?

A. Correct.

Q. Is it because your understanding is that we live in a very mobile society, that people move around?

MS. FISK: Judge, I object to the leading nature of that question.

THE COURT: You know, you testify very nicely. But let's let him testify. He is on the witness stand.

MR. WILLIAMS: I will take your suggestion.

BY MR. WILLIAMS:

Page 92.

Q. Why is it that you decided to do a nationwide search?

A. Because of the history that we knew of Miss Jones here in Philadelphia and Camden as a prostitute. There is a circuit for prostitutes in some circles. You know, where they go up and down the Eastern seaboard or out to California looking for, you know, Hollywood and the bright lights and big sunshine so they don 't have to stand in the snow in January.

Q. Let me ask you this. As far as you understand it, who was making the judgments about when you would focus on a particular locale?

A. My understanding is that Counsel for Mr. Jamal made those decisions. I think we just forwarded the broad-based information that was requested to narrow down to the particular areas.

Q. Did anyone delegate to you that kind of authority?

A. No.

Q. And by the way, during the course of this investigation when you were doing these computer searches, did you personally interact with members of the defense team?

A. No.

Page 93.

Q. And to your understanding, who was doing the personal interaction with the defense team from your office?

A. Mr. Newman.

Q. Okay. And by the way, did you discuss this assignment with Mr. Newman throughout the course of your investigation?

A. Yes.

Q. And did Mr. Newman ever convey information to you about what he was learning from the defense team?

A. Yes; that's the basis of where I got all of my information.

Q. And by the way, you're not the lead investigator in this case by any means?

A. No, no.

Q. You were doing the technical support?

A. Correct.

Q. And so you can't, when you say that you didn't make suggestions to the defense team, nobody delegated for you to make those suggestions, right?

A. No.

Q. If anybody was to make suggestions from your office, is it your understanding it would be Mr. Newman?

A. Correct.

Page 94.

Q. Mr. Newman is far more experienced than you are, I take it?

A. Very much so.

Q. Do you, know the background of Mr. Newman?

MS. FISK: I object, Judge.

MR. WILLIAMS: That was inquired into on direct. She asked that, I think that question about Mr. Newman's expertise.

THE COURT: I don't remember her asking anything about Mr. Newman.

MR. WILLIAMS: She does.

BY MR. WILLIAMS:

Q. But do you know Mr. Newman's expertise?

A. In great detail, no. I know he's been in the business for 15 years at least, handled numerous cases. In fact, in the three years that we have worked together we've handled several cases of this magnitude.

Q. And in your office who would you say would be making most of the judgments about what kind of searches should be done and what kind of suggestions should be made to defense Counsel?

A. All suggestions back to Counsel were through Mr. Newman.

(Discussion was held off the record at this time.)

Page 95.

MR. WILLIAMS: Pardon me for one moment.

BY MR. WILLIAMS:

Q. Is there an investigative association in California?

A. Yes, there is. There are several.

Q. And does Mr. Newman hold an office in --

A. I think I referred to one.

MS. FISK: Objection, Judge. I object.

THE COURT: Okay, now we've had enough about Mr. Newman.

BY MR. WILLIAMS:

Q. Now, you do know from your own personal knowledge that Mr. Newman had contact periodically with the defense team?

MS. FISK: Objection, Your Honor, he is testifying to that.

THE COURT: How many times are we going to go over this?

BY MR. WILLIAMS:

Q. Mr. Newman, was your office doing any of the leg work?

THE COURT: He is Mr. Newman. Even I

Page 96.

know that and I'm 76.

MR. WILLIAMS: Defense team has been working with Mr. Newman, not Mr. Bell.

THE COURT: You should know that is Mr. Bell: He doesn't look like Newman to you.

BY MR. WILLIAMS:

Q. You have been dealing with Mr. Newman for quite some time; is that right?

A. Yes, yes.

Q. And yesterday was the first time we have ever met?

A. Correct.

Q. I apologize. You both have the same first name?

A. Yes.

Q. And I have been referring to you as Mike?

A. It's, we have three Mikes in the office of six so it happens quite regularly.

Q. And we have been talking in terms of, I call you Mike, you call me Dan?

A. Yes.

Q. I apologize. Mr. Bell, the leg work was done in this case by other investigators, not by yourself; is that right?

A. Correct.

Page 97.

Michael Bell - Redirect

Q. But your understanding is that Mr. Newman at certain points did come out to the East coast?

A. Correct.

Q. In part at least for this particular assignment?

THE COURT: For personal reasons.

BY MR. WILLIAMS:

Q. In part for this assignment, right?

THE COURT: Personal reasons.

MR. WILLIAMS: Your Honor taking an oath? I could question you.

THE COURT: He said that. The witness here said he came here for personal reasons.

MR. WILLIAMS: Your Honor, that was the first time.

BY MR. WILLIAMS:

Q. Were there other occasions where Mr. Newman came out to the East Coast?

MS. FISK: And to that, Judge, I object. The witness was able to testify about things he knew.

THE COURT: Yes, this is redirect. If you wanted to go into that baloney you should have done that the first time. You could only go into what she brought up that you didn't have

Page 98.

Michael Bell - Redirect

a chance to go into.

MR. WILLIAMS: Well, I take it Your Honor will then start slicing the baloney rather thin.

THE COURT: Well, if you think it is baloney.

MR. WILLIAMS: No, Your Honor is the one that, said it is baloney at this point.

THE COURT: All right, Counselor.

MR. WILLIAMS: It's very distressing to hear a Court --

THE COURT: It's very distressing when I hear you.

MR. WILLIAMS: -- say it is baloney in the midst of a hearing. I think that's very distressing.

THE COURT: All right, I'm sorry I said baloney, okay. I didn't mean to imply anything to you.

BY MR. WILLIAMS:

Q. Now, you said --

THE COURT: Besides, baloney is a good meat. It's not junk, you know. Everybody eats baloney now and then. Baloney and eggs. You know, it's good.

Page 99.

Michael Bell - Redirect

All right, let's go.

MR. WILLIAMS: I was just waiting for Your Honor to complete your discourse on baloney.

THE COURT: Yes, I know. Let's go.

BY MR. WILLIAMS:

Q. When you were asked questions about, well, you recall being asked questions about when certain searches were done, and you didn't recall?

A. Yes.

Q. I want to show you a document and ask if it refreshes your recollection to some degree about when certain investigations were done, or certain searches on your part. I am going to show you a document and then I will refer you to a particular page just to expedite matters. I am going to ask you to look at page 6, paragraph 14, or thereabouts.

MR. WILLIAMS: (Handing to Ms. Fisk).

(Pause.)

MS. FISK: (Handing.)

MR. WILLIAMS: Just for the record: The Commonwealth have spent in excess of ten minutes reviewing this document that was the subject of discussion yesterday.

MS. FISK: Oh, Judge, I object to

Page 100.

Michael Bell - Redirect

identifying what the document is. I agree that the witness can use anything Counsel wants to give him to refresh his recollection. But it's not being marked or entered into evidence or certified as accurate beyond being used to refresh the recollection of this witness.

THE COURT: All right, he's got it, let's go.

BY MR. WILLIAMS:

Q. Mr. Bell, in looking at this affidavit of Mr. Newman --

MS. FISK: Judge, I object. My objection is that it would be proper only to ask this witness if upon reviewing the document which is given to him it refreshes his recollection.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. And in looking at this affidavit, page 6, paragraph 14, the sentence beginning by mid August, 1995 -- do you see that?

A. Yes.

Q. Does that help to refresh your recollection about when much of these searches on the computer were done?

Page 101.

Michael Bell - Redirect

A. I think that relates to the initial search that we had done plus the surname searches pertaining to both Veronica and Rhonda.

Q. Where you got the 80,000?

A. Yeah.

Q. You mentioned on your, on cross-examination that the Louise Tatum aspect of your search was in January of 1996?

A. Yes.

Q. So these computer searches that you were talking about prior to the Louise Tatum aspect occurred in time prior to January of '96?

A. Yes.

Q. And you were asked about your pay and things of that sort. Sir, were you motivated to find Miss Jones --

MS. FISK: Objection, Judge.

THE COURT: Well, I'm sure if he gets paid, for it he is going to be motivated.

MR. WILLIAMS: But there was more motivation than just being

paid.

THE COURT: Well, I am not interested in his motivations.

MR. WILLIAMS: We objected yesterday to Miss Fisk --

Page 102.

Michael Bell - Redirect

THE COURT: I know you did.

MR. WILLIAMS: -- asking questions about pay and the offer of proof was that it's relevant -- Your Honor, I just ask you to hear me out. That it was relevant because it goes to the motivation of the witness. I'm simply just inquiring into the motivation of this office.

MS. FISK: I would note, Your Honor, that in cross-examination one gets far greater latitude than in direct examination. This is Counsel's witness.

MR. WILLIAMS: I am just following up on questions about motivation.

THE COURT: Don't follow up on her.

MR. WILLIAMS: That is exactly what redirect is.

THE COURT: No, it isn't.

MR. WILLIAMS: It is follow up on cross-examination. If she inquires into a topic on cross-examination, I am then entitled to then probe into that particular topic. I can't probe into other topics.

THE COURT: I am sure all of us are motivated by pay.

MR. WILLIAMS: Besides more than just

Page 103.

Michael Bell - Redirect

pay.

THE COURT: They don't pay me, I won't be motivated to come in here.

MR. WILLIAMS: I would hope that you would be motivated by a sense of justice, but.

THE COURT: I am motivated but they don't pay me a hundred percent.

MR. WILLIAMS: I understand that.

THE COURT: You do. Then you're sympathetic towards my cause?

BY MR. WILLIAMS:

Q. Mr. Bell, were you motivated in your office, motivated to find Veronica Jones in this particular assignment for reasons other than money?

A. Yes.

Q. What was the additional motivation?

A. Recognition in an article that was to be published with respect to hard-to-find witnesses or individuals.

Q. And Veronica Jones was going to be a case study in how to find hard-to-locate witnesses?

A. Very much so.

MR. WILLIAMS: No further questions.

Oh, one moment.

(Discussion was held off the record at this time.)

Page 104.

Michael Bell - Redirect

BY MR. WILLIAMS:

Q. Now let me direct your attention to the area of inquiry regarding Mr. Bell -- Mr. Newman traveling to the East Coast on that first search. Page 3, paragraph 6 of Mr. Newman's affidavit.

Does that refresh your recollection about the time frame when Mr. Newman came out to the East Coast?

MS. FISK: Your Honor, I object to that. That would not refresh his recollection. If this witness has been capable of testifying with regard to the date of that visit, he does not need his recollection refreshed. He testified when that occurred.

THE COURT: The important thing is somebody else wrote this.

MR. WILLIAMS: If it refreshes his recollection.

THE COURT: Yes, if he wrote it I would agree with you. He didn't write it.

MS. FISK: And the difficulty, Judge, is he had no difficulty remembering. He testified to when Mr. Newman came east. He does not have any recollection that needs to be

Page 105.

Michael Bell - Redirect

refreshed. He remembered.

MR. WILLIAMS: Your Honor, he prefaced it with maybe.

MS. FISK: Oh.

THE COURT: Oh, well, maybe. That was his testimony, not mine.

BY MR. WILLIAMS:

Q. Does it refresh your recollection --

THE COURT: I sustained the objection, Counselor.

MR. WILLIAMS: I am asking a new question.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. Does it refresh your recollection that Mr. Newman came out to the East Coast in early July of 1995?

A. I knew he came out in July, shortly after I did the search.

Q. And your search was done on July 5th?

A. Correct.

MR. WILLIAMS: No further questions.

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RECROSS-EXAMINATION

- - - - -

Page 106.

Michael Bell - Recross

BY MS. FISK:

Q. Was your ability to recollect, apparently inaccurately, Mr. Newman's visit out east about as accurate as everything else you have told us about today?

A. I don't understand your question.

Q. Well, you apparently were inaccurate in giving us information about Mr. Newman's trip east?

A. I feel I was accurate with that. I said previously and this time it was both in July of 1995.

Q. Okay. Mr. Bell, would you agree with me that in order to successfully locate a person, the one thing you would like is the most information available regarding that person, that person's whereabouts, identity, whatever is known about that person before you start the search?

A. Generally, yes.

Q. Would you agree with me that it becomes difficult to find a person only if you refuse to consider that other available information which exists, and limit yourself only to that person's name and date of birth and Social Security number; is that when it's difficult to find someone?

A. If you, if you distinctly and directly refuse to look at other information, you are making it more

Page 107.

difficult on yourself.

Q. If you do not look at that information?

A. I looked at all information made available to me.

MS. FISK: Thank you, sir.

I have nothing further, Your Honor.

THE COURT: Did I understand you that when you started this investigation you were going nationwide?

THE WITNESS: Yes.

THE COURT: Well, I am not an investigator, but I would think you would concentrate on the areas that you know she was in, like Pennsylvania and New Jersey.

THE WITNESS: Well, those were initially.

THE COURT: Yes. You mean you got nothing?

THE WITNESS: No, we searched in those areas. Information that -- excuse me -- that was developed was fruitless and then --

THE COURT: Why was it fruitless? She lived here. She was in prison here. Her mother lived in New Jersey. Why didn't you concentrate on that?

Page 108.

MS. FISK: Well, he wasn't told any of those things, Judge.

THE COURT: Oh, he wasn't told any --

MR. WEINGLASS: Objection. Now we are having testimony from both the Court and the D.A.

THE COURT: No, I am not testifying, I just want to know how he operates, why he was going nationwide when he should go right where the person lives first. And when that's fruitless, then you expand out. And you don't necessarily go nationwide immediately, you go to the surrounding states.

MR. WEINGLASS: Your Honor, I believe you inadvertently cut the witness off when he said at that point, and he was about to say something --

THE COURT: Okay, shut up. Do you want to say something? Say it.

MR. WEINGLASS: The initial searches were in the immediate area.

THE COURT: I know that, and what did they prove?

THE WITNESS: Information reverted back to our office was that they were fruitless.

Page 109.

At least the information that we had developed.

THE COURT: Well, did you say to them well give me more information about her there locally?

THE WITNESS: I had no contact with Counsel.

THE COURT: Well --

THE WITNESS: What was requested I can't attest to.

THE COURT: Well, you are an investigator, did you tell your boss, hey, get after them, get me information about right there in Pennsylvania and New Jersey?

THE WITNESS: I probably did, I can't recall it yes or no.

THE COURT: You probably did. And he didn't get it for you? Oh, he was more interested in this book he was going to write.

Okay.

MR. WEINGLASS: Well, Your Honor.

THE COURT: That's what he said, he said he wanted to write, that was the motive, they were going to write a book.

MR. WILLIAMS: He was going to write an article about how to find --

Page 110.

THE COURT: I know.

MR. WILLIAMS: How to find difficult-to-locate witnesses.

THE COURT: This wasn't very difficult. No.

MR. WILLIAMS: It was a paradigm instance of that.

THE COURT: Concentrate right where these people live. When somebody disappears, where do the police go first?

MR. WILLIAMS: Your Honor, he testified about numerous searches in the Pennsylvania and New Jersey area. That's what he testified to.

THE COURT: Based on what information you gave him, he put it in the computer, got something out, gave it to you, and you told him it's negative.

MR. WILLIAMS: Right.

THE COURT: Okay.

MR. WILLIAMS: And ultimately it was a positive finding.

THE COURT: Ultimately how did he get it?

MR. WILLIAMS: He testified --

Page 111.

THE COURT: Well, I know. They found her in New Jersey.

MR. WILLIAMS: Right.

THE COURT: Well, why couldn't you find her in New Jersey in the first place?

MR. WILLIAMS: For the same reason that New Jersey authorities couldn't find her.

THE COURT: I didn't hear --

MR. WILLIAMS: For the same reason that the New Jersey authorities couldn't find her to enforce a bench warrant. Presumably they couldn't find her.

THE COURT: Hey, let me tell you: New Jersey has their own problems. Do you think they were going to worry about --

MR. WILLIAMS: New Jersey has more officers than we have investigators, that's for sure.

MS. FISK: I suspect their budget is lower, though, Judge.

MR. WILLIAMS: Their budget is far greater than anything we would have, first of all.

THE COURT: You had a good budget, you had an investigator right here. Right here.

Page 112.

MR. WILLIAMS: And we used them.

MS. FISK: Your Honor, I have no further questions of this witness. I don't know if he is still being questioned or --

THE COURT: Well, I just wanted to know why they go nationwide first instead of concentrating on --

MS. WOLKENSTEIN: That is inaccurate, Your Honor. That does not reflect the testimony, not at all.

THE COURT: Okay.

MS. WOLKENSTEIN: Another inaccuracy.

THE COURT: Okay, everything I say is inaccurate. Go ahead.

Okay, you can go.

MR. WILLIAMS: Thank you, Mr. Newman -- Bell.

THE COURT: Again, again he doesn't even know his witness' name. Well, okay. What do you want to do, gentlemen?

MR. WEINGLASS: We have a short witness.

THE COURT: Short witness, okay.

MR. WEINGLASS: Lamont Anderson.

MS. FISK: May I just have a moment,

Page 113.

Your Honor?

(Pause.)

THE COURT: Is he here?

MR. WEINGLASS: He's here.

- - - - -

Lamont Anderson, having been duly sworn,
was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Mr. Anderson.

A. Good afternoon.

Q. Mr. Anderson, would you state to the Court what your present occupation is?

A. Transportation manager with the Southeastern Pennsylvania Transportation Authority.

Q. And back in 1993, the early part of that year, what was your occupation and employment?

A. Private detective.

Q. And how long had you been a private detective prior to '93?

A. About five years.

Q. And before that what was your occupation and employment?

Page 114.

Lamont Anderson - Direct

A. Police officer in Philadelphia.

Q. And how long had you been a police officer in Philadelphia?

A. 23 years.

Q. Were you retired prior to becoming a private investigator?

A. Yes, sir.

Q. Now directing your attention to early 1993, did you have occasion at that time as a private investigator to become involved in the investigation of the case that's presently in Court?

A. Yes, sir.

Q. And did you have occasion at that time to be retained as an investigator?

A. Yes.

Q. And were you at that time an investigator in the City of Philadelphia?

A. Yes, sir.

Q. With all the experience in investigation you have already indicated?

A. Yes, sir.

Q. And at that time in early 1993, did you know the name Kareem Shabazz?

A. Yes.

Q. And who was Mr. Shabazz?

Page 115.

Lamont Anderson - Direct

A. He is a private investigator.

Q. And were you told that you were replacing Mr. Shabazz as the investigator in this case?

A. Well, I don't know if that was the exact terminology but it was something to that effect, yes.

Q. That he had worked previously as an investigator on the case?

A. Yes.

Q. And he also to your knowledge is an investigator here in Philadelphia?

A. Yes.

Q. Now with respect to your working on this case, did there come a time where you were asked to do anything with respect to an individual named Veronica Jones?

A. Yes.

Q. And what were you asked to do?

A. To try to locate her, her present address, location.

Q. Right. And when was this? Approximately.

A. Early 1993, I don't remember the exact month but I know it was still cold.

Q. Were you able to locate Veronica Jones?

A. No, sir.

Q. Did you use your expertise that you had

Page 116.

Lamont Anderson - Direct

acquired in all the years that you had in investigation?

A. Yes, sir.

MR. WEINGLASS: Thank you. I have nothing further.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Thank you.

- - - - -

CROSS-EXAMINATION

- - - - -

Q. Hello, Mr. Anderson.

A. Good afternoon.

Q. Oh, God, you're right, it is. In fact, when you retired from the Police Department after 23 years you retired as a detective from the Homicide Division, didn't you, sir?

A. That is correct.

Q. And in fact you and I had the opportunity to work together on homicide cases prior to your retirement?

A. Yes.

Q. And as a result of your years in the Police Department, you had become aware, I assume, about the

Page 117.

Lamont Anderson - Cross

existence of numerous kinds of documents and databases maintained in the Philadelphia Court system, the Philadelphia Prison system, and Philadelphia Police Department; am I correct?

A. Yes.

Q. And when was it, sir, that you were retained in this matter?

A. It was the early part of '93, it was right around the change of the seasons from winter to spring.

Q. All right, now, when you were retained in 1993, were you working at that time full time as a private investigator?

A. Part-time.

Q. You also were working as a security person at Jefferson University Hospital, weren't you, sir?

A. Yes.

Q. At the time that you were retained in 1993, specifically what was it that you were told and what was it that you were asked?

MR. WEINGLASS: With respect to Veronica Jones, I assume.

MS. FISK: Absolutely, Judge.

THE COURT: I thought that's all we are talking about here. I hope that's all we

Page 118.

Lamont Anderson - Cross

are talking about here.

MR. WEINGLASS: Yes, but in fairness to the witness it ought to be limited.

THE COURT: He knows that is the purpose for which he is here.

THE WITNESS: I was given her name.

BY MS. FISK:

Q. Which name?

A. To the best I recall is Veronica Jones.

Q. By whom?

A. (Indicating) Mr. Weinglass.

Q. What else were you given, sir?

A. I believe an address. And I was told to try to locate her, that address was no longer valid as far as they knew.

Q. Were you told what the source of that address was?

A. I don't recall.

Q. Were you told who this person was in relation to the case of Commonwealth versus Jamal?

A. Yes.

Q. And what were you told?

A. I don't recall the exact scenario. But I know it was that she had been a witness.

Q. All right. You as an experienced Philadelphia

Page 119.

Lamont Anderson - Cross

police officer knew that when a person was a witness, the words they spoke in Court were written down?

A. Yes.

Q. Did you ask to read those words?

A. No.

Q. Were you ever advised that this witness when she had testified

had been a guest of the Commonwealth and in fact was incarcerated at the time her testimony was offered?

A. I don't recall now if I was told that.

Q. Do you recall whether you ever inquired of Counsel who hired you whether or not an attempt had been made to determine whether or not this witness had a Philadelphia Police identification number?

A. I don't recall now if I asked.

Q. Because you as an experienced homicide detective knew that if you could identify a person through a Police identification number, you could then utilize an FBI nationwide search no matter what name or address that person gave because it used fingerprints to identify that person; is that correct, sir?

A. It could be done, yes.

Q. And did you advise Mr. Weinglass of the existence of that sort of database and the importance

Page 120.

of determining a Police identifying number so you could then search for that person?

A. I don't recall now exactly what, how our conversation took at that time.

Q. Well, what did you do after you were given a name and an address that you were told was no longer good?

A. I researched various databases, such as voters registration, postal change of addresses. Court dockets. Some Social Security data, motor-vehicle-registration-type data. Some confidential sources.

Q. What kind of confidential sources?

A. Confidential.

Q. What kind of confidential? I am not asking you to name a person, I am asking you to name a bureau or an agency which --

A. Information services that would have access to addresses.

Q. For example, Department of Public Welfare?

A. Maybe.

Q. School districts?

A. Utility companies.

Q. And these were databases not generally available to the public but because of persons that you had met in your 23 years as a police officer and

Page 121.

a homicide detective, sources that you had developed; is that correct?

A. Yes, ma'am.

Q. And I would assume that these, that you developed similar sources in your years as an investigator in the areas surrounding Philadelphia which would include Camden; would that be correct?

A. Yes.

Q. And had you been given any inkling of information at all that this woman that you were being asked to locate had any ties whatsoever to Camden you would have utilized those same sources that you had to make those same inquiries in Camden, wouldn't you sir?

A. Yes, ma'am.

Q. But you in fact were not given any information that this witness had any contacts whatsoever with Camden at anytime; am I correct about that?

A. To the best that I recall.

Q. Now, as a result of this work that you did, these official and unofficial databases, I take it that you were unsuccessful in providing any additional information about Miss Jones; is that correct?

A. That's correct.

Page 122.

Q. Over what period of time did those searches take place?

A. I don't know exactly.

Q. Well, did you submit a bill for your services?

A. Yes, ma'am.

Q. Have you had an opportunity to review that bill?

A. Yes, ma'am.

Q. And for how many hours did you bill?

A. I didn't even note that.

Q. Were you being compensated?

A. Yes.

Q. At what rate, please?

A. $35 an hour.

Q. And what was your total compensation or what was your total number of hours?

A. Well, the bill included other information, so.

Q. Other investigative work you were doing?

A. Yes.

Q. Would it be fair to say that your entire investigative work in this matter covered a period of about two months?

A. I would say at least that.

Q. How much more than that?

A. Well, it could have gone over two months but

Page 123.

I'm, we're not talking, say, like a year, no.

Q. Well, are we talking three months? I am simply trying to identify a period of time in which you did this work.

A. I'm trying to recall back just how long I was involved and... I really don't know exactly but I would estimate anywhere from three months to six months.

Q. Now, when you were advised that you were replacing Mr. Al Shabazz, did you communicate with him?

A. No, ma'am.

Q. Were you provided any written reports or documents that had been generated by him from which you were asked to follow up?

A. No, ma'am.

Q. You were simply, then, provided with a name and an address?

A. Yes.

Q. And the address being in Philadelphia?

A. Yes.

MS. FISK: Thank you, sir.

I have nothing further of Mr. Anderson, Your Honor.

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Page 124.

REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Just one, Mr. Anderson. As you sit there today, do you know if you limited your investigation to the City of Philadelphia or you looked in the environs of Philadelphia as well?

A. To be honest, from memory I don't recall. But --

Q. You might have?

MS. FISK: Apparently Mr. Weinglass just cut off his witness, Your Honor.

MR. WEINGLASS: I'm sorry.

MS. FISK: He had something else to say.

BY: MR. WEINGLASS:

Q. Yes, please?

A. -- But to be honest, if I had actually, if I had went to Camden or

Jersey or anywhere, it seems to me that I would have remembered that.

MR. WEINGLASS: Okay. Fair enough. Thank you.

THE COURT: All right?

Looks like that's all. Thank you.

(Witness excused.)

Page 125.

THE COURT: Could we break for lunch until 1:30?

MR. WEINGLASS: Just before lunch -- we are about to conclude on our side -- I would like to have the same privilege that we gave the District Attorney to have the names of their witnesses.

THE COURT: Well, talk to her, I don't know who they are.

MR. WEINGLASS: Well, we recited it yesterday on the record so that it was clear. I wish to be given the same privilege.

THE COURT: Well, she put the witnesses outside.

MR. WEINGLASS: We don't know who she is going to be calling.

THE COURT: Ask her.

MR. WEINGLASS: I was asked on the record yesterday and I responded on the record.

THE COURT: I said ask her.

MR. WEINGLASS: I ask for the same privilege.

THE COURT: Counselor, I am hungry, I am going to lunch. Between now and the time I come back, if she doesn't give it to you, then

Page 126.

ask me again, okay. I will see you at 1:30.

THE COURT OFFICER: This Court now stands in luncheon recess until 1:30 p.m. at the call of the Crier.

(Luncheon recess was held until 1:45 p.m.)

THE COURT: Good afternoon, everybody.

MR. PIPER: Your Honor, the defense would call Mr. George Edwards as the next witness.

MS. FISK: I'm sorry, Your Honor, I had misunderstood. I thought Counsel had said they were resting prior to lunch. There is a Commonwealth witness in the Courtroom and she will have to have her records back from Miss Wolkenstein so she can sequester herself.

MS. WOLKENSTEIN: All right, then we will take a few minutes later (handing).

- - - - -

George Edwards, having been duly sworn,
was examined and testified as follows:

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BY MR. PIPER:

Page 127.

George Edwards - Direct

Q. Good afternoon, Mr. Edwards.

A. Good afternoon.

Q. Mr. Edwards, in what city do you reside?

A. I reside in the city of New Haven, state of Connecticut.

Q. And did you travel voluntarily to Philadelphia to give testimony today?

A. I did indeed.

Q. How do you presently support yourself?

A. I'm presently unemployed due to disability.

Q. And what is your age, sir?

A. 59.

Q. Before you went on disability, what was your last paid job?

MS. FISK: Objection, Your Honor. In terms of relevance, I don't understand it yet.

MR. PIPER: It is just background.

THE COURT: Well, we could leave the background. What did he do in this case. Let's get right to it, it is getting late.

BY MR. PIPER:

Q. Do you know someone in New Haven named Veronica Jones?

A. Yes, I do.

Q. And how did you come to know her?

Page 128.

George Edwards - Direct

A. I knew her through the capacity of my job and what I do, what I formerly did professionally.

Q. And what was that job?

A. Educational outreach worker with the AIDS division of the City of New Haven's Health Department.

Q. When did you complete, when did you last work at that job?

A. June of 1992.

Q. And when to the best of your recollection did you first meet Veronica Jones that lived in New Haven?

A. In the spring of 1991.

Q. Do you know her approximate age at that time?

A. Somewhere approximately in the range of the middle thirties.

Q. Did you know how she supported herself in New Haven when you met her?

A. Yes; she was a sex professional.

Q. It is called a prostitute?

A. Yes.

Q. Did you know whether she was involved in any drug use?

A. Yes, she was a client of heroin in my drug treatment advocacy program.

Page 129.

George Edwards - Direct

Q. And did you know where she had lived prior to New Haven?

A. She stated to me when I met her that she had prior experiences in prostitution in the state of North Carolina and in the state of Pennsylvania.

Q. You said that you are currently unemployed. Do you engage in any voluntary work?

A. Yes.

Q. And what voluntary work have you engaged in in the past two years?

A. I'm on the board of directors of a public access television station and I'm an independent producer of a show called Truth Incorporated.

Q. In connection with that work, is it your practice to review newspaper articles relating to matters of interest to the black community?

A. Yes.

Q. And is it your practice to clip articles of interest?

A. Yes.

MR. PIPER: I would like to mark the next Exhibit (handing).

MS. FISK: Okay, thank you.

MR. PIPER: For the record, the next Exhibit is D-3.

Page 130.

George Edwards - Direct

(Copy of newspaper article was marked
Defense Exhibit D-3 for identification.)

THE COURT OFFICER: So marked D-3, Your Honor.

THE COURT: Okay.

MR. PIPER: Which appears to be a newspaper clipping with a handwritten date, New Haven Register, March 30th, 1995. And a photograph.

BY MR. PIPER:

Q. Can you identify that document, Mr. Edwards?

A. Yes, I can.

Q. What is it?

A. It's a copy of a newspaper article with a photo and an article describing the event that's taking place in the photo.

Q. Can you identify the woman who is prominently featured in the photograph?

A. Yes.

Q. Who is she?

A. She is the Veronica Jones that I've been questioned about that I've made reference to.

Q. Did you clip this article at about the date that it bears?

A. Yes.

Page 131.

Q. Why did you clip it at that time?

A. I clipped it because of the event of the rally against, for, you know, for the homelessness.

Q. And again for the record, what is the date that it bears?

A. March 30th, 1995.

Q. At sometime after you clipped it, at the end of March or early April of 1995 -- let me strike that. In the course of your readings were you familiar with this case that is Commonwealth versus Jamal in Philadelphia?

A. In some aspects, yes.

Q. And did you come to be aware that there was a witness in the case named Veronica Jones?

A. Yes.

Q. At some point in time after clipping this photograph, did it occur to you that there might be a connection between the Veronica Jones that you knew in New Haven and this case?

A. Yes.

Q. About how long after you clipped this did that occur to you?

A. Approximately, umm, approximately a month or so later.

Q. At that time how long had it been since you

Page 132.

had actually physically seen the Veronica Jones you knew in New Haven?

A. Approximately... six months.

Q. When you made that realization that she might have some connection to this case -- well, let me ask you: What did you know about her connection to this case?

A. I didn't know anything about her connection with this case.

Q. I'm sorry, what did you know about the witness Veronica Jones in this case, if anything?

A. I've read accounts that there was a missing witness to this case by the name of Veronica Jones, that she had prior background in prostitution and drug addiction.

Q. When it occurred to you that this Veronica Jones that you knew in New Haven might have a connection to this case, did you do anything about that?

A. Yes.

Q. What did you do?

A. I placed a call to attorney Leonard Weinglass.

Q. And did you make contact with him?

A. Yes; by telephone.

Q. And what did you tell him in that telephone

Page 133.

call?

A. I described the photo article that I had. I described to him the activities that she made me aware of, and that I knew that she was a prostitute, a drug addict, and that she expressed to me that she had prior been in the state of Pennsylvania.

Q. Did you tell Mr. Weinglass her approximate age?

A. Yes.

Q. As a result of that conversation with Mr. Weinglass, did you do anything further regarding the Veronica Jones in New Haven?

A. Yes.

Q. Let me step back. About when did that phone call occur?

A. Approximately, umm... Early June, I believe. Last of May, early June.

Q. And as a result of that phone call what activities did you then undertake?

A. Umm... I proceeded to try to locate her.

Q. Did you send any further materials to Mr. Weinglass?

A. Yes.

Q. What did you send him?

A. Well, I sent him a copy of this in the mail.

Page 134.

Q. What information did you try to obtain about her?

A. I tried to locate her by address and telephone number.

Q. Was there any other specific information that you tried to find out about her?

A. I think when Mr. Weinglass got the article, I think I heard from him again, he said I would need a Social Security number for this woman.

Q. Did you talk to people to try to locate her?

A. Yes.

Q. About how many people did you talk to?

A. Approximately 75 people.

Q. Were you ultimately able to obtain her Social Security number?

A. Yes.

Q. When was that?

A. That was approximately the first week of July 1995.

Q. And what did you do with that information?

A. I immediately made a telephone call to Mr. Weinglass and gave him the information.

Q. Do you know an investigator named Michael Newman?

A. I've met one and -- yes.

Page 135.

Q. And where did you meet him?

A. I met him in the city of New Haven.

Q. And could you tell us the date that you met him?

A. I met him on July the 14th, 1995.

Q. And did you and Mr. Newman do anything in New Haven regarding the Veronica Jones that's shown in this picture?

A. Yes.

Q. What did you do?

A. We went to the address that I had been given for her. And I didn't get a response at the apartment. We then drove all over the city in areas where there was high drug activity looking for her visually. And I left word with numerous persons on the street that I was seeking her rather urgently.

Q. Did you succeed in finding her that day?

A. No.

Q. After Mr. Newman's visit did you continue trying to locate Miss Jones?

A. Yes.

Q. After his visit what was the next communication that you had with the defense team?

A. I got a call from Mr. Weinglass about the end of July in which he said to me that the Social

Page 136.

George Edwards - Direct

Security numbers didn't match and that she wasn't the Veronica Jones that he was looking for.

Q. Subsequent to that did you ever ultimately contact the Veronica Jones in New Haven?

A. I finally located her, yes.

Q. And at that time did you confirm that she was not the Veronica Jones who is connected to this case?

A. Yes.

Q. Did you inquire if she had any further information about another Veronica Jones who had engaged in prostitution in Pennsylvania?

A. Yes.

Q. And did she have any such information that she gave to you?

A. She said she was totally unfamiliar with the other Veronica Jones.

MR. PIPER: I have no further questions at this time, Your Honor.

MS. FISK: May I inquire?

THE COURT: Sure.

MS. FISK: Thank you.

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CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Page 137.

George Edwards - Cross

Q. Good afternoon, Mr. Edwards.

A. Good afternoon.

Q. Mr. Edwards, as a community activist you obviously keep very careful records and clippings of any articles of interest to the black community; is that right?

A. Some, not all.

Q. Would you consider it an extensive collection of articles?

A. I sort through newspapers and sometimes I keep things for a while and sometimes I throw them out. And they pile up and I box them and I get rid of them for recycling.

Q. I trust in this case that you in fact had clippings from the case Commonwealth versus Jamal, would that be accurate?

A. Clippings from?

Q. Relating to Mr. Jamal.

A. Yes.

Q. In fact, that is how you knew to contact Mr. Weinglass when in early June 1995 you had some information; would that be accurate to say?

A. No.

Q. How did you know to contact Mr. Weinglass, sir?

Page 138.

George Edwards - Cross

A. Well, there was a tremendous amount of public information out about the defense, the names of the attorneys, the names of the prosecution, the name of the Judge. Various organizations and individuals, and information out on the Internet, Faxes, newspapers, books, articles, things like that about --

Q. And from which of those sources, sir, was it that you read accounts that there was a missing witness being sought named Veronica Jones?

A. I don't recall which particular piece of paper or point of information but I was aware that I had run across it in numerous, you know, pieces of information.

Q. And did you retain any of those clippings that discussed the fact that a Veronica Jones was being sought as a missing witness?

A. Yes, I believe I did.

Q. Did you bring those with you today, sir?

A. No.

Q. Do you know from what publications those clippings existed?

A. Like I said, I'm not certain if they were just clippings but, umm, I do know that there was, there was a, umm, search or some interest in finding

Page 139.

George Edwards - Cross

Veronica Jones.

Q. I apologize, sir.

A. Go ahead.

Q. What other witnesses were being sought as missing witnesses, sir?

A. I can't recall if there were any others.

Q. That is the only name that you remember being sought?

A. Yeah.

Q. And what was the date that you recall becoming aware through publications of some sort that a Veronica Jones was being sought as a missing witness?

A. Umm, somewhere around... somewhere around this time frame of this, spring of '95, somewhere around that time.

Q. How is it that you are able to relate learning that piece of information to that period of time, sir?

A. Well, I was thinking when I pulled this article out, I'm thinking I wonder if this is the Veronica Jones that is being sought. But I didn't immediately call Mr. Weinglass because I didn't want to be guilty of giving false information or sending people on a wild goose chase. So I kind of just waited and said maybe I'll find her. And I thought

Page 140.

George Edwards - Cross

well maybe I shouldn't wait forever too long if I can't find her, so I called him.

Q. And that was in early June 1995; is that right?

A. Either late May or early June.

Q. Okay. Now, how is it, sir, that you obtained her Social Security number?

A. In the photo, in the background is the City Hall of the city of New Haven. And in the windows there's an organization called Fight Back. And I have a relationship with the drug treatment advocacy persons in that organization. And in the course of inquiring about her, I asked one of the workers if he knew where I could find her. And he is the one who gave me her address and a phone number. And I went back to him and asked him had he seen her. And he said yes and in fact he was trying to implore her. And I said do you have her Social Security number. He said yes so I said give it to me.

Q. That easy?

A. Yes.

Q. And after you received a call from Mr. Weinglass that the Social Security number was the wrong one and that it wasn't the person, that was the end of July?

Page 141.

George Edwards - Cross

A. That was -- yeah, around the end of July.

Q. And that was despite the fact that she had never been physically located by you or Mr. Newman up to that point, so far as you knew?

A. Right.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. PIPER:

Q. Other than the time that Mr. Newman visited on July 14th, did you try to visit her address on other occasions?

A. Numerous occasions.

Q. And did you try to call her phone number on numerous occasions?

A. I left numerous messages.

Q. And did you leave messages through other means.

A. Yes; I spoke to persons who lived in her building. And on the streets again.

MR. PIPER: I have nothing further, Your Honor.

THE COURT: All right, you are

Page 142.

excused.

MR. PIPER: Thank you.

(Witness excused.)

MR. WEINGLASS: Defense calls Richard Childs.

Richard Childs, having been duly sworn,
was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Mr. Childs.

A. Good afternoon.

Q. Mr. Childs, where do you reside, in what state?

A. Westfield, New Jersey.

Q. And what is your occupation and employment?

A. I'm a licensed private detective in the state of New Jersey.

Q. And how long have you been so licensed?

A. 10 years.

Q. Directing your attention back to October of 1994, were you then a licensed private investigator?

A. I was.

Page 143.

Q. And were you engaged in your own business?

A. Yes.

Q. Did there come a time in October of 1994 when you were contacted by anyone associated with this case?

A. Yes.

Q. And by whom were you contacted?

A. You, sir.

Q. And were you contacted by telephone?

A. Yes.

Q. Did we have a conversation?

A. We did.

Q. Do you recall what you were asked to do if anything with respect to this case?

A. Yes. You asked me if I could help you locate a witness by the name of Veronica Jones. You had some information that a Social Security number was coming to a Dorothy Oliver in Passaic, New Jersey. And you had some indication that a Dorothy Oliver did live in Passaic, New Jersey, and you asked me to see if I could locate this witness for you.

Q. And did you proceed to attempt to locate this witness?

A. Yes, I did. I made some inquiries with the Social Security number and found it did indeed come

Page 144.

to a Dorothy Oliver and also it had it been used by a Karen Oliver with an employment at MPA Industries in New Jersey. I attempted to find such an employment. I was unable to. I checked with New Jersey driver's license, there was none in her name. And then I went to the address 93 Burgess Place five or six times, left a card each time and nobody ever responded. And one other time I went back and a young man answered the door and told me that he would give my card to Miss Oliver. But nobody ever responded. I told you about it and closed the case.

Q. Was it ever indicated to you that others had attempted to locate her prior to your entry into the case?

MS. FISK: Objection, Your Honor.

THE COURT: Where are you going?

MR. WEINGLASS: Just that question.

MS. FISK: Seeking hearsay, Your Honor, and I object.

MR. WEINGLASS: No. It explains the course of conduct that he followed. He was given some information and he acted on it. Part of the information he was given is that there were other attempts made to locate Miss Oliver at that address. I am just asking him that

Page 145.

question.

MS. FISK: I will withdraw my objection, Your Honor.

THE COURT: I don't know how he knows but go ahead, ask him.

THE WITNESS: Mr. Weinglass told me that he had been to the location himself.

MS. FISK: Ahh.

THE WITNESS: And verified a Dorothy Oliver on the mail box but nothing else.

MS. FISK: Ahh.

BY MR. WEINGLASS:

Q. So that this is clarification in your testimony, the Dorothy Oliver that you were looking for in Passaic, New Jersey was, you were told, believed to be the Veronica Jones that was being looked for in this case?

A. Yes, the witness you wanted me to find was a Veronica Jones, using the name Dorothy Oliver.

MR. WEINGLASS: Nothing further.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. So I understand, Mr. Childs -- good afternoon.

Page 146.

A. Good afternoon.

Q. Mr. Childs, you were contacted by Mr. Weinglass?

A. Yes.

Q. And you were told he was trying to locate someone known as Veronica Jones?

A. Correct.

Q. You were told that she had a Social Security number that Mr. Weinglass had obtained in some fashion?

A. Yes.

Q. You were told that he had already checked that Social Security number and found that it came back to someone named Dorothy Oliver who resided at a known address in Passaic, New Jersey, according to Mr. Weinglass' own checks?

A. Yes.

Q. You again checked the Social Security number, confirmed that it in fact came back to Miss Oliver, confirmed that Miss Oliver indeed did live at that same address that Mr. Weinglass had already told you that Miss Oliver resided at, and that was the end of your participation in this case?

A. That is correct.

Q. You were asked to do nothing else with regard

to the location of Miss Jones?

A. I went back about five or six times to that location.

Q. That location?

A. Looking for Miss Jones, yes.

Q. And your participation was focused expressly on, and you were hired expressly to locate the person known as Dorothy Oliver at the address that Mr. Weinglass had confirmed she lived at, or attempted to confirm she lived at in Passaic, New Jersey?

A. I believe the scope was to locate Veronica Jones using the name of Dorothy Oliver at that address.

Q. Who was believed to live at that address with that Social Security number?

A. Yes.

Q. And that was the extent of your participation?

A. Yes.

Q. How long did that effort take, sir?

A. I guess five or six trips, probably about eight to ten hours investigative time total.

Q. Over the course of what period, then?

A. Six weeks, five or six weeks.

MS. FISK: Thank you, sir.

I have nothing further, Your Honor.

MR. WEINGLASS: Nothing further.

THE COURT: You are excused.

MR. WEINGLASS: Thank you, Mr. Childs.

(Discussion was held off the record at this time.)

MS. WOLKENSTEIN: Your Honor, I wanted to address the Court and make an offer of proof.

Defense Counsel contacted Joseph A. Brignola of Joseph A. Brignola, Inc. on 9-12-96, spoke with him, and indicated, confirmed with him that he was in fact an investigator who had been employed by Mr. Weinglass in August of '93 and worked for the defense team for a period of time through December of '93. And in that period of time did a profile check on Veronica Jones --

MS. FISK: I'm sorry, Your Honor, before Counsel continues: Is this being offered in lieu of the witness being called? I am not quite clear.

THE COURT: I don't know. I don't know what she's doing.

MS. FISK: Well, is Mr. Brignola going to be testifying?

MS. WOLKENSTEIN: I want to get to

that, Your Honor.

MS. FISK: Well, I would ask that we get to that before any proffered substance of testimony be made of record, because it is improperly made of record.

THE COURT: Well, if it is improper I will just strike it.

MS. FISK: Fine.

THE COURT: Don't worry about it.

MS. WOLKENSTEIN: Mr. Brignola checked voter registration in the City of Philadelphia, he did a criminal record inquiry using the names Rhonda Harris and Louise Tatum. And he understood that she was arrested in 1982 under the Louise Tatum name and he did a Social Security check under a particular Social Security number.

He further did an entire search under Veronica Jones' PPP number -- that's the Philadelphia Police photo number -- 560335, and went through the criminal records in the records rooms listing the various different charges of prostitution through '79 and '82. And as I indicated, had already checked the underlying charges involved in the '82 to '88 gun and

robbery charges records.

Mr. Brignola completed that work for the defense team and did not in that course of time locate Veronica Jones under any of the aliases that he looked for, and provided a summary to the defense team, specifically to Mr. Weinglass, two communications summarizing this on August 25th, 1993 and December 30th, 1993.

Mr. Brignola when I spoke to him on the 12th of September, when we learned that a hearing was going to take place before this Court, contacted him, confirmed that he was in fact the Joseph A. Brignola so employed by the defense, and he said that he was more than willing to come in and testify as to his work as an investigator on behalf of the defense in the case of Commonwealth versus Mumia Abu-Jamal. He further indicated that he was going to be out of town from September 16th through September 27th, specifically in London, and that his further schedule involved him being further out of town from Philadelphia from October 9th to October 16th. The reason for these dates were precisely because of that early date we did not know that

he was, what date this Court would set for a hearing.

Mr. Brignola I believe is well known to the District Attorney's Office: He is a retired police detective and a licensed investigator in the City of Philadelphia.

I further spoke to Mr. Brignola, he confirmed that he checked his records. I inquired if he had further records of his work for the defense and he indicated that he didn't have any records that were more than two years old, everything else was destroyed. He suggested that I send him a subpoena, he would accept service and he would appear in Court. I so mailed him a subpoena by overnight mail on the 12th of September, and confirmed with him at his voice mail when we learned of our September 18th date, and again after our September 18th date, when I learned of the date that we had set for October 1st.

On September 28th, after the scheduled date of his return, I further contacted or left a message with Mr. Brignola's answering machine or service, and further informed him that he would be needed in Court on October 1st.

However, he did not return that and several other calls left on his machine.

Last night our investigator Chris Milton, who appeared in Court and testified yesterday, went out to try and locate Mr. Brignola, since we had not had any response to our subpoena and to the repeated phone calls, despite his promise that he would appear here. Mr. Milton went to 2319 Carlisle Street, which is the working address for Mr. Brignola, spoke to a gentleman there who was described as approximately in his forties at that address, a white male who refused to give his name but told Mr. Milton that Mr. Brignola had a back injury and was at his sister's and would not return for a week.

We have not been able to confirm that since we have no other way at this particular late date and within the time period to confirm whether or not the gentleman who Mr. Milton spoke to was Joseph A. Brignola or not or a relative or whatever or where Mr. Brignola's sister is.

I would request this Court to enforce our subpoena and send the Sheriff to go and find

and locate Mr. Brignola and bring him in as a witness in this case.

And alternatively, I submit to be marked for identification as Defense Exhibit 4 this correspondence from Mr. Brignola to Mr. Leonard A. Weinglass, two letters dated October 25th, 1993 and December 30th, 1993.

MS. FISK: Your Honor, I will not accept the offer of proof, nor would I agree that the letters from Mr. Brignola to Counsel would be admissible as a factual basis of anything.

THE COURT: I am not accepting anything as substantive evidence.

MS. FISK: With regard to Counsel's request that a warrant be issued for their own witness, I would leave that for the Court: I am obviously not a party to that.

THE COURT: I am not satisfied that he was served initially. You said you sent it to him by mail?

MS. WOLKENSTEIN: I sent it to him by mail based on his representation that he would accept service.

THE COURT: That is not good service.

Page 154.

If we would make all services by mail, why do we need certified deputies or -- what do we have -- Court process servers now? What do they call them?

THE COURT OFFICER: ROR Officers, Judge.

THE COURT: ROR.

MS. WOLKENSTEIN: If you would endorse a subpoena today I would be glad to --

THE COURT: Counsel --

MS. WOLKENSTEIN: -- request that the Sheriff's Department go out there.

THE COURT: Do you think the Sheriffs Department has enough time to go look for your witness?

MS. WOLKENSTEIN: I believe if the Court so ordered it as a way of completing a full record here in this case it would be done.

THE COURT: Completing it. I am not going to wait until 1997 to complete this hearing. I am on a schedule too. If this witness doesn't want to show up for you, that's your problem.

MS. WOLKENSTEIN: Your Honor, as we explained to you this is a very important

Page 155.

witness, and I had every reason to believe --

THE COURT: All of the witnesses are important. Everything you say there is important.

MS. WOLKENSTEIN: I had every reason to believe based on my several-times communications with Mr. Brignola that he would show up in Court today.

THE COURT: Now you know you can't take his word for it.

MS. WOLKENSTEIN: I also made it clear on the record that Mr. Brignola answers a whole number of questions and accusations being made by the prosecution, specifically whether or not the various criminal records belonging to Veronica Jones, Rhonda Harris, Louise Tatum have ever been searched and looked for by the defense.

THE COURT: Well.

MS. WOLKENSTEIN: In fact, his testimony and the documents that I am trying to get submitted here indicate and establish that that was done from October 25th, 1993 through the period of time of December 30th.

THE COURT: Well, you go out and look

Page 156.

for him. You have a lot of people here that are outside parading and tell them to go out and look for him.

MS. WOLKENSTEIN: Your Honor, I would ask for these to be marked for identification.

THE COURT: I am not accepting anything you are giving me as substantive evidence.

MS. WOLKENSTEIN: Well, it could be marked for identification, Your Honor.

THE COURT: No. For what purpose? We don't have a witness here to substantiate it.

MS. WOLKENSTEIN: I would make an offer of proof on the record and explain to the Court the difficulties in serving the subpoena.

THE COURT: Take it up with the Supreme Court. If they want to give you more time they will send it back down to me to give you more time.

MS. WOLKENSTEIN: I believe it would provide sufficient background for what undoubtedly would be our request --

THE COURT: Take it up with the Supreme Court.

MS. WOLKENSTEIN: The Court has

Page 157.

refused to support us?

THE COURT: Counselor, I have already answered your question. I am not going to answer it one more time. Take it up with the Supreme Court. I am not considering it here, period.

MS. WOLKENSTEIN: Alternatively, I would ask at any time that we have the opportunity to further seek Mr. Brignola --

THE COURT: You can go --

MS. WOLKENSTEIN: -- and bring him in before the close of this hearing.

THE COURT: You are right, and I am going to close this hearing as quickly as possible. I only have 30 days. He has to type up the record. And I have to make a report back to them. You go up there and ask them for more time. I didn't set the time limits. The Supreme Court set the time limits.

MS. WOLKENSTEIN: Just so I am clear about the time limit here, Your Honor: We then can try and bring him in any time between the time of now and the close of this hearing whether or not we have otherwise rested or whatever? I mean in other words, we are not

Page 158.

going to rest until we try and find him.

THE COURT: Oh, you are going to rest. I am not going to continue anything. Take it up with the Supreme Court. If they think it's important enough they will send it back down to me for further hearing. Okay.

MS. WOLKENSTEIN: Okay.

THE COURT: All right. Do you have any other witnesses?

MS. WOLKENSTEIN: Yes, Your Honor. Well, at this time I am moving into evidence Quarter Session files that were subpoenaed by the defense on the criminal cases of Veronica Jones, a/k/a Rhonda Harris. They have been here in Court for the past period of time. The numbers on them, for the record, are MC 7905-700. MC 8006-2923. MC 8107-0874. MC 8108-0110. MC 8110-1354. MC 8102-3187. MC 8105-1352. All right --

MS. FISK: I'm sorry, before you continue, I had just to clarify, Miss Wolkenstein. You had an 8108-0110 and then immediately following was 8110, was that accurate?

MS. WOLKENSTEIN: I'm sorry, 0110,

Page 159.

then 1354. I mean they all start 81.

810-8-0110. Next is 8110-1354.

MS. FISK: Yes, thank you.

MS. WOLKENSTEIN: So I ask these to be admitted into evidence. I presume there is no objection to that.

MS. FISK: I assume Counsel is asking the Commonwealth to stipulate that if the Clerk of Quarter Sessions were to testify the Clerk would identify these files as accurately having been kept by the Clerk and that these are in fact the files of the Clerk of Quarter Sessions. And with that stipulation I have no problem.

MS. WOLKENSTEIN: Okay. That's wonderful. I also want to further state for the record, in these files, looking through them all, these names and addresses and dates and everything in there, nowhere in these records is the current correct address of either Miss Veronica Jones or her mother in Camden, New Jersey. Nowhere in these files.

MS. FISK: I will also stipulate I assume the records could speak for themselves.

THE COURT: The Supreme Court could look through them.

Page 160.

MS. WOLKENSTEIN: Furthermore, there are three other files, two other files here and I have to probably locate one other thing that was missing. These are files of Cynthia White.

THE COURT: Well, she is not involved in this matter right now.

MS. WOLKENSTEIN: What is an issue here, Your Honor --

THE COURT: She is not involved in the issue.

MS. WOLKENSTEIN: Let me make an offer of proof.

THE COURT: I don't want an offer of proof. I am not interested in Cynthia White. It was sent down here for one purpose only and that's the only purpose I am hearing it.

MS. WOLKENSTEIN: The prosecution has tried to impugn the testimony of Veronica Jones in the following way, of saying that Cynthia White --

THE COURT: No, she has herself.

MS. WOLKENSTEIN: That Cynthia White is not Lucky. They say in their answering papers to the Supreme Court, they dispute --

THE COURT: Take it up with the

Page 161.

Supreme Court.

MS. WOLKENSTEIN: In these files, Your Honor, is a clear record that one of the names of Cynthia White is Lucky. And for that reason, for that reason --

THE COURT: Let me say this: If the Supreme Court wants those records it can send for them.

MS. WOLKENSTEIN: So you are denying that being accepted into the record?

THE COURT: Right.

MS. WOLKENSTEIN: Despite the fact they have proof in there that Cynthia White is Lucky?

THE COURT: If the Supreme Court wants to look for them, they could send for them. They could get anything they want down here. I am not sending it up to them. They sent it to me for one purpose and that's all.

But next, are you resting?

MS. WOLKENSTEIN: Provisional to the attempt to locate Joseph Brignola.

THE COURT: You are resting, then, as far as I am concerned.

MS. WOLKENSTEIN: You are not allowing

Page 162.

us to even try to find him?

THE COURT: I don't care what you do but you're resting now, are you?

MS. WOLKENSTEIN: Under those, you have just told us we are resting. We would like to at least be able to --

THE COURT: I know you would like to do a lot of things but I am under orders from the Supreme Court to have a hearing now and to get rid of it. I don't know why this witness that you're talking about is so important.

MS. WOLKENSTEIN: I just indicated for the record.

THE COURT: Well, if the Supreme Court thinks it's important --

MS. WOLKENSTEIN: I presume it is not an issue, Your Honor, whether or not the defense has ever tried to find the Quarter Sessions file, the criminal records of Veronica Jones, a/k/a Rhonda Harris, a/k/a Louise Tatum, and the Court is saying this is not relevant.

THE COURT: I let you put in the records for --

MS. WOLKENSTEIN: I would accept that Court's finding gladly. Is that your finding?

Page 163.

THE COURT: I am not telling you what my finding is. I didn't hear the whole case yet. Don't presuppose what I'm going to do. You could argue all you want and when you get up to the Supreme Court say I wouldn't give you more time and you need this witness. If they think he's important they'll send it back down to me and take his testimony, okay.

MR. WEINGLASS: We are merely trying to comply with the Supreme Court Order that we develop --

THE COURT: That's what I am trying to do.

MR. WEINGLASS: -- a full factual record.

THE COURT: I am trying to do the same thing.

MR. WEINGLASS: The Supreme Court put that in particularly.

THE COURT: The Supreme Court didn't say you could have six months.

MR. WEINGLASS: No.

THE COURT: They gave me only 30 days to hear this, and 30 days to do my opinion, and he has to type the record up first before I

Page 164.

could even do that.

MR. WEINGLASS: Yes.

THE COURT: I don't know how long it is going to take him to transcribe the notes.

MR. WEINGLASS: The Supreme Court addressed this hearing and they said it should commence on October 1st.

THE COURT: Right.

MR. WEINGLASS: And it did, but they didn't put any time limit on it.

THE COURT: Oh, yes, they did.

MR. WEINGLASS: No.

THE COURT: Oh, yes. I am supposed to make my opinion within 30 days from that time.

MR. WEINGLASS: That's right, from the time, but, Your Honor, certainly giving us a few extra days to locate a critical witness --

THE COURT: No.

MR. WEINGLASS: -- and to bring them in here --

THE COURT: If he is that critical the Supreme Court will send it back down. Take it up with them.

MR. WEINGLASS: There is no need to impose on their time.

Page 165.

THE COURT: I am not imposing on their time. They imposed on my time, they said do this within a certain time, and I am trying to do that.

MR. WEINGLASS: You could easily accomplish this within 30 days.

THE COURT: No, I can't.

MR. WEINGLASS: We only ask for a few days for Mr. Newman, for Mr. Brignola.

THE COURT: You had all those days, you should have been looking for him, he should have been here. If he doesn't come here that is your problem, not mine.

MR. WEINGLASS: As Miss Wolkenstein stated on the record, our attempts to locate Mr. Brignola --

THE COURT: Why didn't you locate him?

MR. WEINGLASS: We stated why we can't have Mr. Newman and we have only asked for a very brief period to bring in the two witnesses.

THE COURT: Like I am saying to you, if the Supreme Court thinks they are important enough they will send it back down to me to hear it. Then I will hear it then. I am not going to be delaying this matter any longer.

Page 166.

So you are resting or do I have to rest for you?

MR. WEINGLASS: It is up to the Court. We have made our position clear.

THE COURT: I know you have made your position clear. You don't have anymore witnesses to present now?

MR. WEINGLASS: At the moment, no.

THE COURT: Okay, so they are resting now.

MR. WEINGLASS: We ask for time to present witnesses.

THE COURT: Is the Commonwealth presenting any witnesses?

MS. FISK: Yes. Several. First and very brief will be Miss Roseann Reffner. She is outside somewhere.

THE COURT: All right.

MS. FISK: Miss Reffner is bringing some original copies. I would be happy to hand a copy, that is the only copy I have, just so

Counsel can review what Miss Reffner will be testifying about. Miss Wolkenstein started looking at them earlier (handing).

(Pause.)

Page 167.

MR. WEINGLASS: Just one point, Your Honor. I just wanted to clarify one thing for the Court. The remand Order of the Supreme Court gave this Court 30 days at the end of the hearing, they didn't say 30 days from October 1st.

THE COURT: But they didn't say to take six months to have the hearing over.

MR. WEINGLASS: No, we are only asking for a few days.

THE COURT: I am not giving you a few days. You had plenty of days to get him. You should have sought his arrest before this if he wasn't going to come in.

Roseann Reffner, having been duly sworn,
was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Miss Reffner, how are you employed?

A. I'm records manager for the Philadelphia County Adult Probation-Parole Department.

Q. I think you have to pull that microphone down.

Page 168.

Roseann Reffner - Direct

A. I am the records manager for the Philadelphia County Adult Probation-Parole Department.

Q. And in that capacity are you the custodian of records for Philadelphia County Probation And Parole?

A. Yes, I am.

Q. Miss Reffner, if an individual has the name and a Police photo identification number of a person who has been placed in the City of Philadelphia, is there a file existing under your custody regarding that individual?

A. Yes.

Q. Can a member of the public with a properly issued subpoena duces tecum which includes the name of that individual and a Police photo number of that individual obtain a copy of the Probation Department's record regarding that individual?

A. Yes.

MR. WEINGLASS: Objection to the form of the question. It is a hypothetical question which does not include all the necessary facts in the question.

MS. FISK: I am sure Counsel can clarify on cross-examination.

THE COURT: Well, you have cross-examination, you could bring in whatever

Page 169.

Roseann Reffner - Direct

you want. You could quote it your way, what you think should be asked.

Go ahead.

BY MS. FISK:

Q. Miss Reffner, utilizing the name of an individual and a Police photo number, when an individual contacts the Adult County Probation Department, which you are the custodian of records, can that individual who is attempting to obtain a file obtain a case number and thereafter a copy of an individual's probation file?

A. Normally what we do is check to see if there is a probation officer active on that case. If there is that call is referred to that probation officer and he, he or she makes the determination whether the case will be disseminated to that individual.

Q. And of course when you are confronted with a subpoena duces tecum there is no question you must comply; is that correct?

A. Correct.

Q. And as a result of the subpoena duces tecum issued to the Department of Probation by me within the last week or two, was the file in, the probation file in the case of Rhonda Harris, also known as Veronica Jones, provided to me?

Page 170.

Roseann Reffner - Direct

A. Yes.

MS. FISK: Your Honor, I have provided my copy to Counsel. As soon as he is done I will ask that it be marked and shown to the witness.

(Pause.)

(Discussion was held off the record at this time.)

THE COURT: Could we have that thing marked.

MS. FISK: I'm sorry, Your Honor?

THE COURT: I am asking why are they going through all this now.

MS. WOLKENSTEIN: Because we weren't --

THE COURT: That's all right, before you cross-examine I will let you look at it. You are holding it up, you are holding up this Court.

MS. WOLKENSTEIN: The District Attorney spent 10 minutes reading another document.

THE COURT: You spent 10 minutes. He has looked at it, the other guy's looked at, you are looking at it now.

Page 171.

Roseann Reffner - Direct

MS. WOLKENSTEIN: No, just Mr. Weinglass and myself.

MR. WEINGLASS: Object, we object to the document being admitted into evidence.

THE COURT: All right, object.

MR. WEINGLASS: We object.

THE COURT: She is asking it to be identified, okay. Take it, mark it for identification, let's see where we go.

(Probation file of Veronica Jones was marked
Commonwealth Exhibit C-3 for identification.)

THE COURT OFFICER: So marked C-3, Your Honor.

BY MS. FISK:

Q. Miss Reffner, would you kindly review Commonwealth Exhibit -- I'm sorry -- did you, pursuant to the subpoena issued, subpoena duces tecum issued to you as custodian of records, bring with you the original file, that is the Probation Department file regarding Rhonda Harris, also known as Veronica Jones, who has a Police photo identification number of 560335?

A. Yes.

Q. Would you be so kind, please, to compare the

Page 172.

Roseann Reffner - Direct

photocopy which has been marked the Commonwealth Exhibit to the original which you have in your possession just to confirm that it is indeed an accurate photocopy? And if there is anything missing or additional, kindly let us know and we will make sure that the photocopy is conformed.

(Pause.)

A. It is the same with the exception of a printout that indicates termination of her probation on your copy, not in the master file.

Q. The termination does not appear in the master file?

A. No, it's a computer printout.

Q. Oh, I see. Okay. Was that created by the office of probation as well?

A. Yes.

Q. So it is not in the master file but it was provided to me from your office?

A. Correct.

Q. I see. This Commonwealth Exhibit, Commonwealth Exhibit 3,

is this a document which has existed at the County Office of Probation since it's last entry, which appears on the face of the record to have been in approximately 1990?

A. Correct.

Page 173.

Q. And that document has been available and part of the records and files of the Adult County Probation Office since 1990?

A. Correct.

MS. FISK: Thank you, ma'am.

I have nothing further, Your Honor.

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CROSS-EXAMINATION

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BY MR. WEINGLASS:

Q. Miss Reffner, when you say the document which is C-3 has been available, do you mean it's available to members of the public?

A. Not generally.

Q. It's only available to people in your office; isn't that correct?

A. No, it isn't, it is available if we get a subpoena.

Q. Okay. A properly issued subpoena?

A. Correct.

Q. Do you know what a properly issued subpoena is?

A. I know what a subpoena looks like. And I know that this indicates that it's a subpoena duces tecum.

Q. That brought you here today?

Page 174.

A. I did not get one for today.

Q. Who was it served on?

A. Excuse me?

Q. Who was it served on?

A. I do not know.

Q. I see. But do you know how a properly issued subpoena is obtained in the Commonwealth of Pennsylvania?

A. I'm not sure.

Q. So you have no idea how someone on the outside can get this document in the only way that you know the document could be obtained, that is through a properly issued subpoena?

A. Correct.

Q. You don't know that no one can obtain these documents through subpoena unless there is a case in existence that could entitle the subpoena, do you?

A. No, I do not.

Q. So if the case is not in Court, no one can get a properly issued subpoena; isn't that true?

A. I don't know how they are issued so I don't know.

Q. And you don't know that this case was not in Court on the PCRA proceeding until July 12th of 1995?

A. I don't know.

Page 175.

Q. So that if no one could get a properly issued subpoena before the case is in Court, which is July of 1995, they could not obtain this document?

MS. FISK: Judge, I am getting a little confused now as to who it is that's testifying.

MR. WEINGLASS: I am cross-examining: I am allowed to lead.

MS. FISK: Counsel is asking questions that have no foundation based on the answers the witness has given.

BY MR. WEINGLASS:

Q. You can not tell this Court if someone could obtain a properly issued subpoena before July 12th, 1995?

A. No, I can't.

MR. WEINGLASS: Right. Now let me -- may I look at a copy of the document?

THE COURT OFFICER: Mr. Weinglass.

THE COURT: Yes, just sit down, he will get it for you. He doesn't want to lose his job, you know.

MR. WEINGLASS: I always look forward to the assistance I get from the Court.

THE COURT OFFICER: (Handing.)

Page 176.

BY MR. WEINGLASS:

Q. You have either an original or a copy of C-3?

A. Of C-3.

Q. Now, on the first page, the name of the individual listed on the first page for this file is not Veronica Jones; isn't that right?

A. I don't know what you're looking at. The first page made be different than the first page in here.

Q. I'm sorry.

THE COURT: Read something off the page so she could --

BY MR. WEINGLASS:

Q. The letter of August 8th --

MS. FISK: Your Honor, I will agree that the record will speak for itself. The entirety of the file will become part of the record in this case and certainly Counsel will be free to argue any portions of it at the appropriate time.

MR. WEINGLASS: No, no, we have a witness here who introduces herself as a representative of the Philadelphia County Probation And Parole Department, who is knowledgeable about these documents. And now

Page 177.

that we have the document, I feel free to question the witness about the contents of the document. She is not merely a file clerk, she is --

THE COURT: You are the custodian of records?

THE WITNESS: Yes.

THE COURT: She is the custodian of records. She keeps the records that are given to her on the case. She didn't handle this case personally.

BY MR. WEINGLASS:

Q. How long have you been the custodian of records?

A. For eight years.

Q. And you are familiar with these files, are you not?

A. I'm familiar with the files, correct.

Q. Fine. Now referring to August 8th, 1988, the name of the individual is listed as Louise Tatum, is it not?

A. Correct.

Q. And when we go to the extract of criminal record, which is part of these files that you brought today, we have the extract of criminal record listed

Page 178.

under the name of Rhonda Harris?

A. Correct.

Q. And the aliases for Rhonda Harris are Veronica Jones, Louise Tatum, and Laura Smith, three aliases there, right?

A. Correct.

Q. So the extract of criminal record has four different names; isn't that correct?

A. Correct.

Q. And the address that's given is, there are two addresses given, are there not, Everett Street and Chester Avenue in Camden; is that right?

A. I see three addresses.

Q. Three addresses, not two?

A. Correct.

Q. So on this one document there are four names and three different addresses?

A. Correct.

Q. You don't know which one is correct, do you?

A. No, I do not.

THE COURT: She is merely the custodian of records. She doesn't make up the record.

BY MR. WEINGLASS:

Q. You don't know if any of these are correct?

Page 179.

A. No , I do not.

Q. Now, then let's turn to the Certification of Probation. Is that listed to Veronica Jones?

A. This is an a/k/a of Veronica Jones.

Q. But what is the first name?

A. Louise Tatum.

Q. Louise Tatum?

A. Correct.

Q. A/k/a Veronica Jones?

A. Correct.

Q. And when we look at the Administrative Supervision document, is that listed under Veronica Jones?

A. Louise Tatum.

Q. Louise Tatum. In the Court of Common Pleas letter of August 8th -- I think we have already gone through -- no, it's another Court of Common Pleas letter, of August 8th, 1988. Is that listed as Re Veronica Jones?

A. There are two of them.

Q. Yes.

A. Louise Tatum.

Q. Louise Tatum. The Out-Of-Town Services Document, is that listed in the typed form to Louise Tatum or Veronica Jones?

Page 180.

A. Louise Tatum.

Q. And it's signed by whom?

A. It is signed by Veronica Jones, a/k/a Louise Tatum.

Q. Yes. The Social And Legal History Concerning The Probationer, under whose name is that?

A. Louise Tatum.

Q. No reference there to Veronica Jones, is there?

A. Not on that page.

Q. The Probation Department Face Sheet, is that listed to Louise Tatum, a/k/a Veronica Jones?

A. Yes.

Q. Now, on this one, what is the place of birth?

A. On what? I don't know what you're looking at.

Q. I'm sorry, the Probation Department Face Sheet.

A. Place of birth is Richland, Virginia. Could be a typo for Richmond, I'm not...

Q. Yes, it reads Richland?

A. Correct.

Q. Could be Richmond?

A. Correct.

Q. Now, is there Louise Tatum's, a/k/a Veronica Jones' father listed?

Page 181.

A. Yes.

Q. Under what name?

A. Clark Gray.

Q. And is the mother listed?

A. Correct.

Q. Under what name?

A. Shirley Wilson.

Q. Shirley Wilson?

A. Correct.

Q. And, Miss, to your knowledge, in all these records, Veronica Jones never uses the same last name as her mother?

A. I don't know. I did not go completely through this file, I don't know what's in all of the documents.

Q. Right. Just dealing with the parts you looked at.

A. Right.

Q. You never saw her anywhere listed under the same name as her mother, which is Wilson?

A. No.

Q. And is her mother's address listed?

A. Yes.

Q. And where is it listed as?

A. 812 Kingshow, Lindenwold, New Jersey.

Page 182.

Q. So her mother's address is not listed as Camden, is it?

A. No.

Q. Now, there is something called an Initial Interview?

A. Yes.

Q. Is that an initial interview by the Probation people, so far as you know?

A. By the probation officer.

Q. And is that dated?

A. 7-18-88.

Q. And here again the mother's name is listed as Wilson, is it not?

A. Yes.

Q. And Lindenwold, New Jersey?

A. Correct.

Q. Now just going back to where we began so that we're clear. Hypothetically, if a private investigator showed up at the Parole Department or the Probation Department office where these files are maintained, and showed his or her identification, would these files be turned over to that individual?

A. No.

Q. And the only way would be through a properly issued subpoena, but you don't know how to your

Page 183.

knowledge one is properly issued?

A. Either a subpoena or an authorization to release records from the individual, or the individual can ask for them himself with the right identification.

Q. Right, it would have to be the individual?

A. Correct, or an authorization to release the records from that individual.

Q. From that individual?

A. Correct.

Q. But if someone didn't have Veronica Jones, the only way he would get it was through a properly issued subpoena?

A. Correct.

Q. Right. And if someone got these records, now, to your reading of them -- and I think we've gone through most of the pages -- they would see three or four names of a Veronica Jones, three or four addresses, the fact that her mother is under a different name than she uses, and that her mother lived in Lindenwold; is that correct?

A. Correct.

MR. WEINGLASS: Thank you. Okay, fine. Thank you, Miss.

I have nothing further.

Page 184.

MS. FISK: Could I have the Exhibit back.

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REDIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Since we are so thoroughly going through this document, ma'am, just in a second, am I correct that when the Probation Department creates its record, they place it under the official caption of the case?

A. Yes.

Q. That is the probation file?

A. That is correct.

Q. In this case the case in which Miss Jones had been found guilty was entitled or captioned Commonwealth versus Louise Tatum?

A. Correct.

Q. And for that reason all of the documents bear that official Court name, that case and term number of that conviction; is that correct?

A. That's correct.

Q. Is it otherwise clear to you, however, that the probationer utilized in daily events the name of Veronica Jones?

A. Yes.

Page 185.

Q. And that on every occasion that she signed any document or was asked to give her name to a probation officer, that the name that she provided was Veronica Jones?

A. Right.

Q. And that the name Louise Tatum is being used because the official conviction, the conviction for which she was on probation, was under that name Louise Tatum?

A. That is correct.

Q. Is it also clear to you, ma'am, based on an Out-Of-Town Services Room 509 Agreement To Return, that Miss Jones, on July 18th, 1988, signed a document agreeing that as of that date, July 1988, that she was going to be residing at an address which is specifically typed in in Camden, New Jersey during the term of her two-year probation which was beginning on that date in 1988?

A. That's correct.

Q. And that address given by her in Camden, New Jersey and signed by her as Veronica Jones, also known as Louise Tatum appears in this document?

A. Correct.

Q. And is there in fact within this file requests from the Department, the Philadelphia Adult Probation

Page 186.

Department to transfer this probation to Camden, New Jersey, specifically because that is where the probationer has expressed her intent to live during the terms of her probation as reflected in these files?

A. Yes.

Q. Do we also have in this file on her Initial Interview record an indication of the names and ages of Miss Jones' children?

A. Yes.

Q. Specifically as of the date of the document, that being July 18th, 1988, the names and the then current ages of her three daughters are given on that document?

A. Correct.

Q. And does that same document, the initial interview, show that Miss Jones resides at a specific address in Camden, New Jersey?

A. Yes.

Q. Now with a telephone number?

A. Yes.

Q. With a previous address in Camden, New Jersey?

A. Yes.

Q. And with her mother's address, who is also named, in Lindenwold, New Jersey?

Page 187.

A. Yes.

Q. Does the second page of that document, ma'am, provide us with the name of the high school where Miss Jones attended?

A. Yes.

Q. Does it provide an employment history for Miss Jones, that is where she works, the phone number of that employer, the position she held, the amount of money she was paid, and her previous employer and the period she worked for that previous employer?

A. Yes.

Q. Does the same document -- and I am now in the middle of page 2 of that initial interview which occurred in 1988 -- reflect that Miss Jones while a resident of Camden was then currently receiving public assistance and in fact the amount that she was receiving is listed?

A. Yes.

Q. And is the case number under which she received public assistance in Camden, New Jersey reflected on that form?

A. Yes.

MS. FISK: Thank you, ma'am.

I have nothing further, Your Honor.

Page 188.

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RECROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. With respect to the question just asked of you --

MR. WEINGLASS: If I may have a copy of C-3.

MS. FISK: May I pass it back, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Thank you, sir (handing).

BY MR. WEINGLASS:

Q. With respect to the information contained in C-3, a lot of it is provided by the probationer; is that correct?

A. Correct.

Q. You don't know if it's true or not?

A. No.

Q. So in response to all the questions about high school and previous employment, you don't know if that's true information?

A. I don't know.

Q. As a matter of fact, in your experience, Miss Reffner, someone with a criminal history of Veronica Jones might not provide true information?

Page 189.

MS. FISK: Oh, my goodness, is Mr. Weinglass suggesting that perhaps we shouldn't believe Miss Jones' testimony given in this hearing?

BY MR. WEINGLASS:

Q. Would you answer the question?

MS. FISK: I object.

MR. WEINGLASS: What is the form of that objection?

THE COURT: I don't know, what are you asking me for?

MR. WEINGLASS: Is the Court going to rule on that?

THE COURT: If she tells me what her objection is and why you think you can.

MR. WEINGLASS: She hasn't told any of us the basis for the objection.

MS. FISK: Your Honor, Counsel has asked the witness whether in her opinion persons with criminal records might give false information. To that I object.

THE COURT: Well, evidently the defense witness did exactly that.

MR. WEINGLASS: When she testified in '82.

Page 190.

THE COURT: Well, when she testified here.

MS. FISK: At some point she admitted that she did.

THE COURT: She gave this information to the Probation Department. And if that's wrong, that's your witness.

MS. FISK: My objection, Your Honor, is to asking this witness as the custodian of records to give an opinion as to whether persons would give false information.

THE COURT: I keep telling you she is the custodian of records. She didn't make this record, she didn't talk to you about this, she just keeps these records. And when they are subpoenaed she comes in and says here's the records.

MR. WEINGLASS: Right. But she also indicated because she was questioned extensively that she's familiar with how this information is generated.

THE COURT: Well, it should be generated through the probation officer who is handling the case.

MR. WEINGLASS: Right, and frequently

Page 191.

she's found out in her experience that the information provided by the probationers is not true.

THE COURT: Well.

MS. FISK: And it is to that question that I object, Your Honor. The fact that Counsel never even looked at this information is the point that I am trying to make.

MR. WEINGLASS: Counsel couldn't get it. The witness said --

THE COURT: You could get it.

MS. FISK: They subpoenaed every other document under the sun, Your Honor.

THE COURT: You could get it very easily. And if nobody gives it to you you go to the President Judge, you can to the Administrative Judge, or you go to the Judge who put her on probation. Any one of those can authorize you getting the records. Very easy.

BY MR. WEINGLASS:

Q. Could you answer the question that was pending?

THE COURT: Well, she objected. I will sustain the objection. You are asking for her opinion. She is not here as an expert

Page 192.

witness. She is here as the custodian of records. That's all. And the records speak for themselves.

BY MR. WEINGLASS:

Q. Would law enforcement agencies have access to this information that's in this record?

A. Yes.

Q. They could get it at any time?

A. Yes.

Q. So the Camden police could get it at any time?

A. Yes.

Q. To your knowledge did they ever request this information in the last two years?

A. Not that I know of. If there would be something in the file.

THE COURT: They sent the case over there.

MR. WEINGLASS: I have no further questions.

MS. FISK: I have no further questions.

THE COURT: They sent the case over there.

MR. WEINGLASS: Pardon?

THE COURT: They sent the case over to

Page 193.

Camden so they would have this information.

MS. FISK: Woodbury sent the bench warrant.

THE COURT: I am not talking about the bench warrant. He is talking about these records.

MS. FISK: Or the probation.

THE COURT: He is talking about these records, whether they would be able to get them. They got them.

MS. FISK: Your Honor, would the Court permit the witness to retain the original and allow the photocopy --

THE COURT: Oh, sure. She has to keep the original.

MS. FISK: Thank you, ma'am.

Your Honor, the Commonwealth next calls Mr. William Thomas.

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William Thomas, having been duly sworn,
was examined and testified as follows:

- - - - -

MR. WEINGLASS: Your Honor, the defense objects to Mr. Thomas as a witness. He violated the sequestration order of this Court,

Page 194.

which was invoked pursuant to the request of the Assistant District Attorney, by being present in Court during the testimony of other witnesses.

MS. FISK: Which other witnesses?

MR. WEINGLASS: I believe he was present this morning.

MS. FISK: He was not. He was on call and he came this afternoon at 1:30. And if you would like to ask Mr. Thomas that prior to his testifying, you can. I reached him at work during the luncheon recess.

THE COURT: Well.

MR. WEINGLASS: If the witness could be asked.

THE COURT: Well, ask him.

BY MS. FISK:

Q. Mr. Thomas, were you here this morning?

A. No, sir, I was not.

Q. Have you been inside this Courtroom during any testimony whatsoever during the pendency of this hearing, sir?

A. No, sir, I have not.

MS. FISK: May I proceed, Your Honor?

THE COURT: Are you satisfied? Are you withdrawing your request?

Page 195.

BY MR. WEINGLASS:

Q. You were present, though, in Court this morning?

THE COURT: He told you no.

BY MR. WEINGLASS:

Q. No, were you present inside the well of the Court this morning?

A. No, sir, I was at my job and I performed my duties until I was called at 1:30. I was eating my lunch and I came down here, I changed clothes and came down here.

Q. And the first time you arrived at the building?

A. The first time I arrived at the building was about 20 minutes ago, sir.

THE COURT: Well, that's another one down the drain.

Go ahead.

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DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Mr. Thomas, you were formerly a Homicide detective assigned to the investigation of the murder of Police Officer Daniel Faulkner?

Page 196.

William Thomas - Direct

A. Yes, sir, at that time I was Detective and my Badge number then was 744.

Q. Mr. Thomas, the defense in this case, or the Petitioner, that is Mr. Jamal, in the Petitioner's status report and renewed motions for recusal and for discovery and Brady disclosures, reveal on page 8, footnote 2, that although you, Detective Thomas, apparently was not one of the two detectives who threatened Jones, that is Veronica Jones, at the jail given his central role in the prosecution, he would almost certainly have been aware of their activity.

May I ask you, therefore, sir, since apparently based on the defense representation you have been aware of something had it occurred, did any police officers go to the prison in an attempt to threaten Jones at the jail?

A. Not with my knowledge.

Q. Thank you.

A. And not with my direction.

MS. FISK: Thank you, sir.

I have nothing further of Mr. Thomas.

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CROSS-EXAMINATION

- - - - -

Page 197.

William Thomas - Cross

BY MR. WILLIAMS:

Q. Well, Detective, first of all, good afternoon, Detective Thomas.

A. Hmm-hmm.

Q. So I take it that this could have occurred but you would be unaware of it?

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Q. Well, you just testified that you're unaware of any such intimidation of Veronica Jones; isn't that right?

A. She asked me a question and I answered it.

Q. Exactly, that you are unaware of any intimidation of Veronica Jones?

A. That is correct.

Q. So if it occurred you wouldn't be aware of it?

MS. FISK: Objection, Your Honor.

THE COURT: Counselor, that's not the proper way to ask questions. It is the kind of question that nobody can answer. He says he is not aware of any.

MR. WILLIAMS: Right.

THE COURT: Now, if you have some witnesses that could prove that he was aware of it, fine, produce them.

Page 198.

William Thomas - Cross

BY MR. WILLIAMS:

Q. When you were working on this case you were supervised by a Sergeant Herbert Gibbons and a Lieutenant McGowan; isn't that true?

MS. FISK: Objection, Your Honor. That is beyond the scope of direct examination which was limited very expressly to the sentence placed by defense Counsel in their Petition. That is beyond the scope.

MR. WILLIAMS: I am going to establish who would have intimidated Miss Veronica Jones.

MS. FISK: Ahh. Your Honor --

THE COURT: Does he know?

MS. FISK: May I note that it was Counsel who placed in their footnote that it would be this individual, Detective Thomas, Mr. Thomas, who would almost certainly have been aware of the activity which Miss Jones alleged occurred. He has been called for one reason and one reason only: To refute the statement that defense themselves made regarding his awareness. He has testified he is unaware of any such activity. That was the entirety of direct examination and asking about his supervisors is beyond the scope of that.

Page 199.

William Thomas - Cross

MR. WILLIAMS: Well, I will adopt him as our witness, Your Honor.

THE COURT: No, you can't, not now. She put him on as her witness.

MR. WILLIAMS: Well, I can adopt him as my witness.

THE COURT: You would like to adopt him.

Do you want to be adopted by him?

THE WITNESS: How much money does he have?

THE COURT: You want to be adopted by this attorney?

He doesn't want to be adopted by you.

MR. WILLIAMS: Well, Your Honor.

THE COURT: Leave that. If you have evidence of this bring it in through whatever evidence you have.

MR. WILLIAMS: I will do it through this witness.

THE COURT: No, you can't: He doesn't know anything about it, period. He said it.

MR. WILLIAMS: You haven't permitted me to cross-examine him.

THE COURT: But he already said not

Page 200.

William Thomas - Cross

that he knows. He doesn't know --

MR. WILLIAMS: We just accept the direct testimony, we don't need cross-examination.

THE COURT: Look, you accused him in your Petition of something. She brought him in to disprove that and he comes in and he says I don't know anything about that.

MR. WILLIAMS: It is on --

THE COURT: Now, where did you get the information that he would know something about that?

MR. WILLIAMS: I am not entitled to cross-examine him?

THE COURT: I said where did you get the information that he would know something about it?

MR. WILLIAMS: Based upon his status in the investigation.

THE COURT: Well, he told you his status and he doesn't know anything about it, period.

MS. FISK: That's why I want to cross-examine him.

THE COURT: Well, do you want to bring

Page 201.

William Thomas - Cross

these other witnesses in? Bring them in. Why don't you bring them in?

MR. WILLIAMS: I just want to cross-examine a witness that the Commonwealth brought in.

THE COURT: It is a fishing expedition with you.

MR. WILLIAMS: Not at all.

THE COURT: Oh, yes it is. If it is not a fishing expedition what is the value of it?

MR. WILLIAMS: How do you know if it is a fishing expedition?

THE COURT: Because that's what you are asking. You are asking him to say who were the other investigators.

MR. WILLIAMS: Is Your Honor denying me my right to cross-examine?

THE COURT: I am not denying your right to cross examine but only what he knows.

MR. WILLIAMS: I am inquiring.

BY MR. WILLIAMS:

Q. Do you know whether you were supervised by a Sergeant Herbert Gibbons and a Lieutenant McGowan?

A. Do I know if I was supervised by Herbert

Page 202.

William Thomas - Cross

Gibbons and Lieutenant McGowan?

Q. On this particular case.

A. They were my supervisors for my particular squad but, you know, in any case you have supervisors all the way up to the Commissioner.

Q. I understand that. Were they your supervisors on this particular case?

A. They were my immediate supervisors at that time, I believe.

Q. And these supervisors had a better grasp of the overview of this investigation than you did; isn't that right?

THE COURT: Why didn't you subpoena them?

MR. WILLIAMS: I am just asking him.

THE COURT: What do you expect him to say? They are his supervisors.

MR. WILLIAMS: Did they have a better grasp of the overview of his investigation.

THE COURT: He can't answer for them.

MR. WILLIAMS: Well, he did at the hearing last summer. I have it here.

THE COURT: Well, that was last summer. This is now.

MR. WILLIAMS: Right, so I am just

Page 203.

William Thomas - Cross

getting --

THE COURT: You should have asked him those questions last summer, not now. He said they are his supervisors. And if you want to bring those supervisors in, bring them in. He can't answer for them. He can only answer for himself.

BY MR. WILLIAMS:

Q. Did you examine the police report from supervisor Gibbons in connection with this case?

A. Did I examine what?

Q. Any reports from supervisor Gibbons.

THE COURT: You mean that was his job?

MR. WILLIAMS: I am asking. Well --

THE COURT: But he works under these people. You mean if someone works under me, he could supervise me or tell you what I'm doing?

MR. WILLIAMS: He could answer the question. If he didn't he didn't. I'm asking him.

THE WITNESS: I don't understand the question, Counselor. You know, maybe if you repeat it or you change the words around.

BY MR. WILLIAMS:

Q. Did you examine any reports authored or

Page 204.

William Thomas - Cross

prepared by your supervisor Sergeant Gibbons?

A. Usually it's my supervisor that looks over my reports, not me looking over my supervisor's reports.

Q. So the answer is no?

THE COURT: Sure. He told you.

MR. WILLIAMS: Your Honor, I would just like to get a yes or no. If he didn't he didn't. If he did he did.

THE WITNESS: If you have a particular report that you want to show me and ask me.

BY MR. WILLIAMS:

Q. Did you examine a report by Sergeant Gibbons? If the answer is no that's fine.

A. No, not that I recall, no.

Q. Now, isn't it a fact that some individuals who were witnesses to this incident were interviewed on more than one occasion?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. Now you're going way, way afar. He wasn't brought in here for that purpose.

BY MR. WILLIAMS:

Q. Was it your job to determine whether a witness was to be re interviewed in connection with this case?

MS. FISK: Objection, Your Honor.

Page 205.

William Thomas - Cross

THE COURT: Sustained. He is not the supervisor here, he had his own supervisors.

MS. FISK: It is also beyond the scope of the direct examination.

MR. WILLIAMS: So I take it his supervisors would be authorized --

THE COURT: I don't know what they did. If you think it's important subpoena them.

BY MR. WILLIAMS:

Q. So let me put it this way, then. You don't know whether your supervisors authorized an interview and interrogation of Veronica Jones within weeks of her testifying at the trial of this matter?

MS. FISK: He also doesn't know whether Martians have landed from Mars yet, Your Honor. That is also beyond the scope of direct examination.

THE COURT: Sustained, sustained.

BY MR. WILLIAMS:

Q. So you can't come in to categorically deny that the interrogation that Miss Jones testified to in this proceeding occurred or did not occur, you can't testify about that, can you?

MS. FISK: Because it is impossible to prove that something that didn't happen didn't

Page 206.

William Thomas - Cross

happen. He is responding to the charges that the defense have made in their Petition, Your Honor.

THE COURT: Yes, he is trying to prove a negative.

MS. FISK: Precisely.

THE COURT: You could never do that.

MR. WILLIAMS: Yes.

THE COURT: Counselor, he is only here for one thing, what he did. If you have somebody else in mind you subpoena them.

(Discussion held off the record at this time.)

BY MR. WILLIAMS:

Q. Now when witnesses were brought to Court for Mr. Jamal's trial they were brought in by the D.A.'s Office through D.A. detectives; is that right?

MS. FISK: Objection, Your Honor: Beyond the scope of direct examination.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. You can't tell us here under oath whether detectives from the District Attorney's Office visited Miss Jones, can you?

MS. FISK: I object to that question,

Page 207.

William Thomas - Cross

Your Honor, in its form. It is beyond the scope of direct examination.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. You can't testify under oath whether detectives from the District Attorney's Office visited Miss Jones before she testified in 1982, can you?

MS. FISK: Your Honor, he is limited by his knowledge of the case as the assigned detective.

MR. WILLIAMS: If he doesn't know he doesn't know.

MS. FISK: I object to the form of the question.

MR. WILLIAMS: Sure, she is afraid of the answer.

THE COURT: No --

MS. FISK: I know the answer. He could only say what he knows. He has testified to that.

THE COURT: Now, if you want to bring in the D.A.'s detectives, fine.

MR. WILLIAMS: Well, if they want to provide the names of the D.A. detectives who

Page 208.

William Thomas - Cross

visited Miss Jones --

MS. FISK: There were none. Listen, it is easy to understand: No one visited the woman in prison. No one threatened the woman in prison. Nobody cared what the woman was saying. There were none.

MR. WILLIAMS: Let's put Miss Fisk under oath now and I will cross-examine her.

MR. BURNS: Your Honor, if defense Counsel can't think of any questions to ask the witness that are not far beyond the scope of direct examination that is unfortunate, but that does not give them license to ask questions that are beyond the scope of direct examination.

THE COURT: Counselor, you know, you go to the prison, find out who visited.

MR. WEINGLASS: I think the record should reveal that Ms. Fisk was screaming here in her last comment without response from the Court.

THE COURT: You were screaming too.

MR. WEINGLASS: No, I haven't raised my voice.

THE COURT: He was screaming too.

MR. WEINGLASS: I haven't raised my

Page 209.

William Thomas - Cross

voice.

THE COURT: Oh, no, you never raise your voice.

MR. WEINGLASS: Only in an attempt to be heard.

THE COURT: Of course not. I wouldn't even think of accusing you of raising your voice. Why that's facetious. Oh, my God, you wouldn't do that.

But unless you have some relevant questions he is limited to what he just said, that's it.

BY MR. WILLIAMS:

Q. Miss Jones was brought in to testify at the trial of this matter through the District Attorney's Office; isn't that right?

A. I have no idea, Counselor. I have no idea.

Q. Do you recall testifying back on June 29th, 1982?

Counsel, page 86 going onto page 87.

Question, question of you: Did you not arrange at my request that Miss Jones be present today if Counsel wished to talk to her or whatever he wishes to do.

Your answer: Yes, before coming to

Page 210.

William Thomas - Cross

Court I did arrange that.

Do you recall that?

A. It's the first time I heard that and I have never read the transcript of the trial. So if that's what I said at that time, you know, this is 16 years later, I have no recollection of it.

Q. So you don't recall whether you in fact had any involvement in bringing Miss Jones into Court?

A. I believe if you read the statement I believe it said I took care of that matter. It does not mean that I had to do it personally.

Q. But you don't recall having done that?

A. Having done what?

Q Having brought Miss Jones in to testify. Or even arranging to have Miss Jones brought in to testify?

A. I don't, I don't recall arranging or bringing her in, I don't recall that. Wait a minute. I know that, I don't believe that I brought her in, if that was Miss Jones that was here yesterday and all, then I don't recall bringing her in. I don't remember that face, anyway, and all. And I would have to just yield to what I testified at that time as being the facts of the case.

Q. So if she was brought in by law enforcement

Page 211.

William Thomas - Cross

authorities it would have been other authorities, other personnel?

A. I don't recall at this juncture myself bringing her in. But I may have. I can't say. I don't think I did.

(Discussion held off the record at this time.)

BY MR. WILLIAMS:

Q. So let me see if I understand you correctly, sir. You said you didn't recognize Veronica Jones yesterday?

A. Correct.

Q. So you were here in Court yesterday?

A. No, sir.

Q. Where did you see her?

A. If, there was a lady that came in and sat beside you in that second row back there, before we were -- if you remember, I was sitting right here (indicating).

MS. FISK: Indicating the jury box, Your Honor.

THE WITNESS: I was sitting in the jury box.and they asked for sequestration. There was one lady, a black female, that did come in and sat in that back row behind

Page 212.

William Thomas - Cross

Mr. Jamal, and I believe it was next to you and all now. If that was Mrs. Jones. I didn't read the newspaper accounts today or anything. I had a paper but I didn't read it for this particular reason.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Q. Are you saying that you don't recall ever seeing Miss Jones?

A. Counselor, 16 years ago and the number of cases that I've

handled over the years, not just this case but the cases and all, witnesses, you know, I don't remember all the witnesses that I may have interviewed or all of the witnesses, even the statements that I have taken and all, I can't remember. Like I say, what I testified at that time is what I knew to be the truth. And that's what I testified then, that's what I am trying to do now.

Q. So I take it that you can't recall whether you may have authorized someone to visit Miss Jones before she testified?

THE COURT: Counselor, he said whatever he said then is what he said, period.

MR. WILLIAMS: But I am asking him now

whether as he sits here can he recall whether he authorized or ordered anyone to visit Miss Jones weeks before she testified.

THE COURT: I thought he said that in 16 years he can't remember anything.

MR. WILLIAMS: Precisely.

THE COURT: Counselor, which is true.

MR. WILLIAMS: No further questions. He can't recall.

THE COURT: How many cases have I had. I can't remember them all.

MR. WILLIAMS: Your Honor, I am satisfied. He can't recall.

THE COURT: But he could recall whatever he said today.

MR. WILLIAMS: He just said he can't recall and Your Honor recollects that also. He just said he can't recall 16 years ago.

THE COURT: Specific things that you're asking about that he said.

MR. WILLIAMS: No.

THE COURT: He said whatever he said then he said.

MS. FISK: What Counsel is asking I would have no objection to the witness being

permitted to answer the question. Counsel is asking him now whether he recalls sending people out to intimidate Miss Jones then.

THE COURT: Okay.

BY MR. WILLIAMS:

Q. Can you recall as you sit here today whether you directed anyone to visit Miss Jones before she testified?

A. Counselor, I am a detective. I don't send anyone anywhere or order anyone to do anything and all that. I only do my job.

Q. But you can't even recall whether you assisted in bringing Miss Jones into Court 16 years ago, can you?

A. No, I don't. But I --

Q. If you were assisting to arrange Miss Jones be brought into Court and if you didn't do it personally that would involve asking somebody to go out and get Miss Jones; isn't that right?

A. It could, yes.

MR. WILLIAMS: No further questions.

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REDIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Mr. Thomas, when an individual, after 30 years of being a detective in Philadelphia, when an individual was in custody in the Philadelphia County Prison System and was needed to appear as a witness in a Court, would it be standard practice for the detective assigned, or anyone involved but in particular for the detective assigned, to request that the witness be brought down to the courtroom?

A. That is correct, a bringdown form is made up. But it's not done by usually the Philadelphia Police detectives, we don't handle that.

Q. Can a detective simply ask a clerk in the courtroom to prepare a bringdown?

A. I don't recall myself ever doing it at all.

Q. I understand that. When a bringdown of a witness is requested, who brings down the witness to the Courtroom?

A. The Sheriffs Department.

Q. And is that the Sheriffs van, does that go from the prison to the cell room which was then in City Hall?

A. That's correct.

Q. Mr. Thomas, do you ever, did you ever -- let me restate that. You told us that you do not have specific recollection of many things in many of your

cases. Would you expect that if you had sent two police officers, or had been told two police officers went to a prison to threaten a witness prior to trial, that that would be an incident about which you would retain a memory?

A. I would retain memory, but I would never do anything like that.

Q. And in addition to not doing it in this case, were you ever aware that it was ever done in this case?

A. No.

MS. FISK: Thank you, sir.

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RECROSS-EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Now let me follow up on the practice that you just talked about. Isn't it a fact that when witnesses are brought in through the District Attorney's Office they are brought in through District Attorney detectives?

MS. FISK: Well, Judge, my objection to the question is that it is a question without a foundation. There is no indication that the witness was brought in through the District

Attorney's Office. There is an indication in the record that the witness was brought to the Courtroom and there is no indication that it was done by any way other than the standard way, that is via a bringdown.

THE COURT: If she was in custody the Sheriff would have brought her down. That is the normal procedure in this Courtroom. In any courtroom in Philadelphia.

BY MR. WILLIAMS:

Q. Did you know whether Miss Jones was in custody at the time of the trial?

A. I don't recall at this juncture where Miss Jones was, no.

Q. And you don't recall whether D.A. detectives were used to bring her into the Courtroom, into the Court building, do you?

A. No, sir, I wouldn't, I wouldn't know how she got in, no, sir. I have no personal knowledge of it.

Q. And if detectives, either from the D.A.'s Office or within the Police Department, engaged in illegal activity, would you expect them to report that to you?

MS. FISK: Judge, it is the defense who expected him to report it to them,

apparently. I am the one who is quoting from their document filed with this Court. That is a ridiculous question, I object.

THE COURT: I will sustain the objection.

MR. WILLIAMS: Well, the suggestion that the law enforcement would publicize their illegal activities is what is ridiculous.

THE COURT: You are presupposing facts that you haven't proven. You are saying that they are doing something illegal. Where is the evidence that they did? Why don't you check and find out if the Sheriff brought her in?

MR. WILLIAMS: Your Honor is presupposing.

BY MR. WILLIAMS:

Q. Let me just make sure I understand you correctly.

THE COURT: No, I am not presupposing. What I am telling you is what I know of my own personal knowledge sitting in this Courtroom and trying cases. When a witness is in custody they are usually brought down by the Sheriff because the Sheriff is the one that goes there, picks up the witness, bring them to City Hall.

MR. WILLIAMS: Well, but, Your Honor, if I may, Mr. Thomas testified last summer that, and I quote, but as far as availability, I give the witness to the D.A.'s Office. The D.A. has D.A. detectives to serve the subpoenas and get their witnesses in.

THE COURT: That's when witnesses are not in custody. That's when they are out on the street. The D.A. detectives serve the subpoena and sees that they come in.

MR. WILLIAMS: The point is there are D.A. detectives who have --

THE COURT: Not when they are in custody. Counselor --

MR. WILLIAMS: Are you suggesting that D.A. detectives are not authorized to enter into a prison facility?

THE COURT: Not without a Judge's permission. And I could tell you I never gave any permission to bring anybody in. The Sheriff always brings them in.

MR. WILLIAMS: Well, I think we really ought to have testimony from the witness stand regarding your remark.

THE COURT: Counselor, you should have

researched this first. Don't ask him, he is out of the business for quite a while now. Why don't you ask somebody that is still in the business that knows how they operate. Call the Sheriffs.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Q. Is there a mechanism to determine whether a potential witness is in fact in custody?

A. Is there a mechanism?

Q. Yes.

THE COURT: Sure.

THE WITNESS: From my general knowledge and everything, you can call up any State institution, they can put a name in the computer and they can tell you if they are in any State institution around the State of Pennsylvania. You can call the State in Pittsburgh and ask them for somebody that's in Philadelphia. But, you know, I don't know whether that was in effect when this trial went on or not. But I know what it is today.

BY MR. WILLIAMS:

Q. But you don 't know whether Miss Jones was in

fact in custody back in 1982, you don't know that?

A. I don't recall it, no.

Q. And if a defense, an individual who the defense wants to call as a witness is in custody in Pennsylvania, do you know the procedure by which that defense attorney can have that witness in custody produced for the trial?

A. You mean then or now?

Q. In 1982, the relevant period that we are discussing.

A. I have no idea exactly how the defense operates. I've always been on the prosecution side so I really couldn't tell you.

THE COURT: Counselor, why don't you ask me that question, I will tell you. I was the Undersheriff.

MR. WILLIAMS: I have a witness on the stand, that's --

THE COURT: He doesn't know how that's done. I could tell you how it's done. You get a writ of habeas corpus and you give it to the Sheriff and they bring them in.

BY MR. WILLIAMS:

Q. If the defense counsel asked the prosecution to assist in bringing a witness in who is

incarcerated, do you know what procedure is used by the District Attorney's Office to bring that individual in for the trial?

A. No, sir, I am a Philadelphia Police detective at that time, I wouldn't know exactly how the D.A.'s Office, I wouldn't want to sit in and testify as to how the D.A.'s Office runs.

Q. Have you ever brought in a witness at the defense request?

MS. FISK: Objection, Your Honor.

THE COURT: What do you mean did he ever bring in?

MR. WILLIAMS: Let me be a little more precise.

BY MR. WILLIAMS:

Q. Have you ever brought in a witness who is incarcerated at the defense request so that witness could testify at a trial?

MS. FISK: Objection, Your Honor.

THE COURT: No, I will let him answer.

THE WITNESS: No, sir.

BY MR. WILLIAMS:

Q. Have you ever arranged for such an individual to be brought in for the trial?

A. When you say arranged and all, in other words,

I go directly to the prison and contact them, no. I couldn't do that.

Q. Well, when you testified in 1982 and you said that you did arrange that, that is --

A. Right.

Q. -- that is the production of Veronica Jones for the trial --

A. Right.

Q. -- what did you mean?

A. In other words, I would contact the pertinent people whose responsibility with the D.A.'s Office it would be to see that the bringdowns are done and all and it's up to them to get it done. If they got it done and say okay it's been done, the bringdown's been made, whatever, you know, let Mr. McGill know that the bringdowns been made or whatever. So that would be someone from the D.A. 's Office that actually does most of the work on that.

(Discussion was held off the record at this time.)

BY MR. WILLIAMS:

Q. Now, is it my understanding, sir, that if in fact you were aware of police intimidation of Veronica Jones in the nature of which she testified yesterday, that you would now under oath tell this

Court that such activity occurred?

A. Counselor, I think I earlier told you I didn't read the newspapers today on this matter. I have a newspaper back there but I didn't read it so I have no idea what she testified to.

Q. All right, let me just ask it this way, then. Are you telling this Court that if you had knowledge of illegal police activity concerning a defense witness in regards to this case, that you would inform this Court about that illegal police activity?

A. Sir, if I knew anything that was illegal, whether it was this case or another incident that happened down the corner, or someone

getting robbed over there, the pertinent people, police or whatever it would be, would have been notified by me.

Q. You would have notified somebody?

A. That is correct.

Q. Have you ever heard of the term the blue wall of silence or the code of silence?

THE COURT: Come on.

MS. FISK: Judge.

THE COURT: Come on. Now you are really digging into the lowest depths of possibility. Let's not besmirch the entire Police Department. A few men maybe went sour,

Page 225.

William Thomas - Recross

but that doesn't mean everybody in the Police Department went sour.

MR. WILLIAMS: I am not suggesting that. I am just suggesting that a few men went sour in this case.

THE COURT: It is just the same thing when some lawyers do something wrong. Do we condemn the entire Police Department?

MR. WILLIAMS: I am not suggesting we condemn the entire Police Department.

THE COURT: The terminology you use is doing exactly that. And I object to you using that kind of a phrase. He told you if he knew of it he would report it.

MR. WILLIAMS: I have no further questions.

MS. FISK: I have nothing further. The Commonwealth calls Mister --

THE COURT: Thank you.

THE WITNESS: Thank you, Your Honor.

MS. FISK: Mr. Bennett, please.

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Daniel Bennett, having been duly
sworn, was examined and testified as follows:

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Page 226.

Daniel Bennett - Direct

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Mr. Bennett, you are a former homicide detective, sir?

A. Yes, I am.

Q. When did you retire from the Philadelphia Police Department?

A. December 20th, 1993.

Q. After how many years of service?

A. Over 31.

Q. Were you a homicide detective in December 1981?

A. Yes, I was.

Q. And in that capacity did you conduct an interview with Veronica Jones?

A. Yes, I did.

Q. By whom were you accompanied when you conducted an interview with Veronica Jones?

A. Detective Roger Harmon.

Q. Was there any other police personnel with you when you and Detective Harmon interviewed Miss Jones?

A. There was a police officer from Camden with us too.

Q. Any other police personnel?

Page 227.

Daniel Bennett - Direct

A. No, that's all I remember.

Q. Other than yourself, Detective Harmon, the Camden police officer and Miss Jones, were there any other persons present when you interviewed Miss Jones?

A. That's all I remember being there.

Q. Was Miss Jones' mother there, if you recall?

A. It was her mother's house but I am not sure. She wasn't there at the time of the interview; she may have been in another room or something.

Q. Where was her mother's house that the interview took place in?

A. That was in Camden, New Jersey.

MS. FISK: I'm sorry, Your Honor, I believe that Miss Jones' December 1981 statement has previously been marked. Do you have a copy of that? Has it been previously marked?

THE COURT OFFICER: There was a statement marked D-l.

THE COURT: It was attached to his Petition, or his motion.

MS. FISK: I know it is, Your Honor.

THE COURT: I don't know if it was marked in this particular case.

THE COURT OFFICER: C-l.

Page 228.

Daniel Bennett - Direct

MS. FISK: Can I have that?

THE COURT OFFICER: Yes, you can.

MS. FISK: I knew my copy was missing for a good reason.

THE COURT: You should keep checking.

MS. FISK: I should, yes, thank you, Judge. Could this be shown to the witness, please (handing).

THE COURT OFFICER: Okay (handing).

BY MS. FISK:

Q. Mr. Bennett, you are being shown Commonwealth Exhibit 1. Is this a copy of a statement that you took from Miss Jones in the presence of Detective Harmon and the Camden County police officer on December the 15th, 1981?

A. Yes, it is.

Q. Would you explain to us the manner in which this statement was taken, please?

A. I wrote the statement out myself, I actually printed it. It was in a question-and-answer form where I would formulate a question, ask the question, and Veronica Jones would give me an answer which I wrote down.

Q. Did you write down a summary of her answer?

A. No, it's the whole answer.

Page 229.

Daniel Bennett - Direct

Q. A verbatim account of her answer?

A. Yes, it is.

Q. And did that continue for all the various printed pages, that is pages 1 through 5 of this document?

A. That is correct.

Q. And did you have an opportunity yesterday before the morning session began to thoroughly review these first five pages of Commonwealth Exhibit 1?

A. I read the statement, yes.

Q. And having reviewed it, do these pages accurately reflect word-for-word the questions you asked of Miss Jones and the answers she gave you in the presence of Detective Harmon on December 15th, 1981?

A. Yes, it does.

Q. Now, the sixth page attached to Commonwealth Exhibit 1 appears to be a diagram with Locust Street running in the middle, 13th Street at one end and 12th Street at the other end. Do you see that, sir?

A. Yes, I do.

Q. Was that diagram prepared by you or Detective Harmon?

A. Detective Harmon prepared the diagram of the streets.

Page 230.

Daniel Bennett - Direct

Q. Now, the words on, I don't know if I should call it the bottom or top of that diagram, where you see words that say heard shots, is that your handwriting?

A. No, it is not.

Q. Do you recognize that as Detective Harmon's handwriting?

A. No, I do not.

Q. Do you know who wrote those words there?

A. I believe and from what I remember that Veronica Jones wrote those.

Q. How about the word policeman?

A. Also her, also her printing.

Q. How about the rectangle with the four circles with the letters PC inside it, who put that there?

A. That was drawn by Veronica Jones, yes.

Q. And how about the word man --

A. Also.

Q. -- above?

A. Also by Veronica Jones.

Q. Those were all marks placed by Veronica Jones?

A. That is correct.

Q. Did you place onto, did you place any marks onto this document, this map?

A. No, I did not.

Page 231.

Daniel Bennett - Direct

Q. Now with regard to the first five pages of this document: After you asked the questions of Miss Jones and recorded her answers, did you ask Miss Jones to review the document for accuracy?

A. Yes, I did.

Q. And did she do so?

A. She took time and looked at each and every page and at the end of the page she signed it.

Q. And on how many places did she sign it?

A. She signed all five pages of this statement and she signed the sixth page which is the diagram.

Q. Was that the only contact you ever had with Miss Jones?

A. To my knowledge, yes.

Q. Did you ever visit her in the prison and threaten her?

A. No, I did not.

MS. FISK: Thank you, sir.

I have no further questions, Your Honor.

(Discussion held off the record at this time.)

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CROSS-EXAMINATION

- - - - -

Page 232.

Daniel Bennett - Cross

BY MR. WEINGLASS:

Q. Good afternoon, Officer Bennett.

A. Good afternoon.

Q. Retired Detective Bennett. When did you retire?

A. December of 1993.

Q. So given the fact that this interview was in 1981, you did 12 more years of service before you retired?

A. That's correct.

Q. And it would be fair to say that you interviewed a fair number of people in those last 12 years of your service?

A. That is correct.

Q. Could you give us a round figure estimate? I won't hold you to it. Would it be more than a hundred?

A. Yes, it would.

Q. And you're testifying here today from your recollection of an interview back in December of 1981?

A. That is correct.

Q. It would be fair to say that your recollection given the passage of time and the number of interviews you conducted in the meantime might not be

Page 233.

Daniel Bennett - Cross

totally accurate?

A. That could be, yes.

Q. Right. You would have difficulty in totally swearing to the accuracy of everything that you did on December 15th, 1981?

A. Everything I did on that day, I couldn't swear to everything I did that day, no.

Q. Everything you did with respect to this interview?

A. I don't know, because I do remember this interview. I do remember it because of the circumstances in the case. And over those years there were not that many police officers killed that I worked on.

Q. The circumstances that you are referring to is the death of a police officer?

A. That is correct.

Q. And that, I am sure you work hard on every case but the death of a police officer personally motivates all police officers a little more in conducting their work?

A. Only to a certain point.

Q. Yes. And this was one of those cases?

A. Well, I can't say this motivated me really more than any other cases. I mean I worked on a lot

Page 234.

Daniel Bennett - Cross

of homicides over the years and each one is different.

Q. Right. I don't mean to say you don't work hard on every homicide. When it involves a fellow officer there is a little something about that that kind of keys you up?

A. I guess you could say that to a certain point, yes.

Q. So that on this particular evening, December 15th, 1981, when you went to interview Veronica Jones, you wanted to get a statement from her?

A. When I went there I don't even know if I knew Veronica was going to be there: We had several addresses on her.

Q. Right.

A. And if she was there, and wanted to talk to us, yes, we were going to talk to her.

Q. And you wanted to get a statement that was as accurate as possible?

A. If possible, yes.

Q. And that was as comprehensive and inclusive as possible?

A. If possible, yes.

Q. And in your experience in doing that, when you interview a person who might have been a witness in a

Page 235.

Daniel Bennett - Cross

homicide, you want to be sure that that person at the time of the interview is capable of giving you the information that she or he is conveying?

A. That's correct, yes.

Q. And that involves a value judgment on your part?

A. That's right.

Q. And in your view Veronica Jones was able to give you information, in other words, you didn't perceive any disability?

A. No, I did not.

Q. In connection with her ability to talk to you and to recall events?

A. That's correct.

Q. You didn't perceive that she was drunk?

A. No.

Q. On that occasion? And you didn't perceive that she was high on any drugs?

A. No.

Q. So if she testified at the trial that at the time you spoke to her that she was high on marijuana, to your view that is probably unlikely?

A. That is correct.

Q. Because if you saw that she was, you probably at that moment would not have taken the statement?

Page 236.

Daniel Bennett - Cross

A. That's correct.

Q. So her testimony in 1982, limited to that particular aspect, if she said she was high on marijuana, that would be false, to your knowledge?

A. To my knowledge, yes.

Q. And how long do you recall you spent with Veronica Jones?

A. We were probably there an hour, maybe a little over an hour.

Q. And the we is you and another Homicide detective, Detective Harmon, and a police officer from Camden?

A. Camden, that's correct.

Q. And were the three of you there together at one time with Veronica?

A. The Camden officer is only there initially with us. He stayed in the background when the interview was conducted, he didn't take part in the interview.

Q. Do you recall if the interview occurred in a dining alcove or a kitchen or a living room?

A. I don't remember for sure what room it was in.

Q. But you were all three together in one area?

A. Yes, sir, that's correct.

Q. And you, I believe you said, were the one who

Page 237.

Daniel Bennett - Cross

was writing what became Commonwealth Exhibit 1, the six pages?

A. That's correct.

Q. And your fellow Officer Harmon, was he writing at all in any other document?

A. At some point during the interview Detective Harmon was drawing the diagrams on page 6.

Q. Right. Did he have a black book, I forget the terminology you use in Philadelphia, where he was making entries during the time of the interview?

A. Not to my knowledge, no.

Q. Did you write yourself a report independent of this statement as to your work on the interview of Veronica Jones?

A. No, I don't believe so.

Q. You don't follow any practice going back to December of '81 where you yourself write a report of an interview of a witness in a homicide case?

A. No, that wouldn't have been done, no.

Q. Pardon?

A. That would not have been done. It should have been filed with the other interviews on the case.

Q. I see. So it's your testimony that you didn't write anything pertaining to the December 15th, '81 interview other than the six pages that are marked as

Page 238.

Daniel Bennett - Cross

Commonwealth 1?

A. Not that I remember, no.

Q. Were you interviewed by any superior or any person in connection with this investigation after you returned with the statement?

A. No, I was not.

Q. What did you do with the statement?

A. It was filed with the other interviews and other paperwork on the case.

Q. When you say filed, you mean you hand carried it back and you inserted it into a file?

A. It would have either been done that way or it would have been given to someone else who had the paperwork at that time and they would have filed it.

Q. The someone who had the paperwork at that time, would that be the investigator in charge of the investigation?

A. It could have been any one of a number of people.

Q. And to your knowledge, you didn't report either in writing or orally to anyone that it was your impression that Veronica Jones was not answering these questions that you put to her truthfully?

A. I didn't record anything like that, no.

Q. And let me ask you: Was it your impression

Page 239.

Daniel Bennett - Cross

that she was answering your questions truthfully?

MS. FISK: Objection, Your Honor.

THE COURT: What is the basis of the objection?

MS. FISK: Is the witness being called for an expert opinion of whether or not some witness was telling the truth? That is the purpose of the fact-finder, Your Honor.

THE COURT: Okay.

MR. WEINGLASS: No, the witness makes an evaluative judgment of whether or not --

THE COURT: He writes down exactly what the witness says. Whether it is truthful or a lie, he doesn't know. He is not God. Only God knows when we're lying.

BY MR. WEINGLASS:

Q. Do you make a judgment of whether or not you are being given accurate and truthful information?

MS. FISK: Objection, Your Honor. Whether or not he does is not the issue.

THE COURT: Did he write down exactly what the person said, that is all I am interested in.

MR. WEINGLASS: I prefer to get that from the witness, with all due respect to the

Page 240.

Daniel Bennett - Cross

Court.

THE COURT: With all due respect, that is not a question you could ask him. Rephrase your question.

BY MR. WEINGLASS:

Q. Detective Bennett, you didn't write down the entire conversations that took place between you and Veronica Jones on December 15th, 1981, isn't that true?

A. That's true, yes.

Q. And so that when you were there with her for an entire hour, how much time was spent in writing down the five pages of handwritten materials that is on C-l?

A. I would just have to guess maybe a half hour, maybe a little longer, depending on how long it took her to answer the questions and for me to write down the answers. It could have been a little longer than a half hour.

Q. Well, in the other half hour, conversation occurred between

you and Veronica Jones; isn't that correct?

A. That is correct.

Q. And I presume a good part of that conversation deals with the events of December 9th?

Page 241.

Daniel Bennett - Cross

A. No, that's incorrect.

Q. What did that conversation deal with?

A. Basically it was just here is who we are, are you Veronica Jones. Hello, introductions, things like that. And then after the statement was over we just spent a little time sitting there talking and we left. The only thing that had to do with the events, the events of December 9th, were recorded.

Q. So as you started to write, is it your testimony as you started to write this document you had no idea what her answers would be with respect to what she saw on December 9th until after you started writing and she verbally gave you the answers?

A. That's correct. I had no way of knowing what she was going to say.

Q. Right. You didn't ask her Veronica, were you out there that night even before you started writing?

A. No, I don't think I did. I think she knew that we were, what we were there for, is the indication I remember getting from her.

Q. Okay. Now, as a Homicide detective that night, you were asked, of course, to go out and get the statement?

A. That's correct.

Q. Do you recall who asked you?

Page 242.

Daniel Bennett - Cross

A. No, I don't. Again that could have been any one of a number of people. I don't know who was working that night.

Q. Well, the occurrence was December 9th. And your appearance at Veronica's mother's house was December 15th?

A. That is correct.

Q. So it wasn't the night of the occurrence, it wasn't during the frenetic activity of that night, it was almost a week later?

A. That is correct.

Q. And you were doing this on your regularly assigned hours?

A. I don't know if it was regularly assigned hours or whether I was working overtime that day. I don't know what hours I was working that day.

Q. And who is ordinarily your supervisor at that time?

A. At that time there would have been two, a sergeant and a lieutenant directly. But if there was other, if there were other people involved it could have been numerous other lieutenants.

Q. Right, is it sergeant --

A. Sergeant Gibbons would have been the sergeant and I think it was a Lieutenant McGowan.

Page 243.

Daniel Bennett - Cross

Q. And this was the only work that you did on this case?

A. No, I did other things.

Q. Before?

A. That's correct.

Q. And you talked to other witnesses?

A. I don't know how many other witnesses I talked to. But I do know that I did other things on this case.

Q. Did you talk to a Dessie Hightower?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Now, this handwriting is your handwriting, is it not?

A. That's correct, it's my printing, yes.

Q. Your printing.

MS. FISK: Is Counsel referring to the first five pages of the document?

MR. WEINGLASS: Yes, I'm sorry.

BY MR. WEINGLASS:

Q. That's clear. The first five pages of handwriting?

A. That's correct.

Q. All right. And you record the age of Veronica

Page 244.

Daniel Bennett - Cross

Jones at 20 years?

A. 20 years, yes.

Q. And you recorded her date of birth?

A. That is correct.

Q. And you indicated this interview occurred at 9:45 at night?

A. That's correct.

Q. You hadn't called in advance, you just appeared at the residence; isn't that correct?

A. Yes.

Q. So you appeared unannounced with two other officers, one being a fellow detective and the other being a police officer of Camden?

A. That's correct.

Q. Now, you asked an open-ended question to begin with: Would you go on in your own words and tell me what you know about the shooting death of Officer Daniel Faulkner.

A. That is correct.

Q. And that's an open-ended question?

A. Yes.

Q. And you then recorded for the better part of a full one page and about a third of another page what she answered?

A. That is correct.

Page 245.

Daniel Bennett - Cross

Q. And is it your testimony now, today, 15 years later, that you put every word down that she gave you?

A. Yes.

Q. Did you interrupt her or stop her at any point?

A. The only time I would stop her was while I was formulating the next question and waiting for her to answer.

Q. Do you have any training in speed writing?

A. No, I did not. I have done an awful lot of it, though.

Q. Right, but you're saying that as she was talking you were writing?

A. That's correct.

Q. And you caught every word?

A. Every word that she said, yes. I mean I may have missed a small and or it or something like that in here, but.

Q. A few words?

A. But all the main words, all the highlights of what she said are in here.

Q. But it's true, is it not, Detective, that you can't say under oath today that you recorded every word that she gave you, you might have missed a few

Page 246.

Daniel Bennett - Cross

words here and there?

A. That's what I said, some of the small, insignificant-type words I may have missed.

Q. Okay. Now, she told you where she was standing when she observed the events that night?

A. That's correct.

Q. But did you ask her what side of the street she was standing on at the intersection of Locust and 12th in your handwritten portion?

A. I don't think I asked her that question directly because in her answer I think I knew where she was standing.

Q. How did you know where she was standing?

MS. FISK: Your Honor, the statement speaks for itself.

THE COURT: Well, he can't find it so he's asking him to find it.

THE WITNESS: She says here in the, on page 1 that she was walking away from the High Speed Line entrance. And I know where that High Speed Line entrance is.

BY MR. WEINGLASS:

Q. Which corner is it on?

A. The southwest. But it's on the 12th Street side. And this is the area she said she was at.

Page 247.

Daniel Bennett - Cross

Q. You have been to that scene, have you not?

A. I've been to that corner down there a thousand times over the years.

Q. And you are telling this Court that there is no entrance on the northwest side of the street?

A. No, I didn't say that.

Q. Is there an entrance on the northwest side?

A. I believe there is one on the northeast corner, I'm not -- the one that I'm familiar with where she said that she was was the corner and an area where prostitutes hung at that time. And maybe when she said that to me, that's what came to my mind.

Q. And you never --

A. There are several High Speed entrances around there at different corners.

Q. Right, and there is one on the northwest corner?

A. Northwest or northeast, I'm not sure of that.

Q. You don't know?

A. I am familiar with one where the girls used to hang. And again --

Q. I'm sorry.

A. By her own diagram.

Q. Right. We will get to that in a moment.

Page 248.

Daniel Bennett - Cross

Given the fact that you are placing a witness at a scene at or almost immediately after the shooting of a police officer, didn't you think it was important that night to put the precise corner that she was on at an intersection that has four corners?

A. I don't think by reading this interview that we were actually placing her on the scene. We were placing her a block away and around the corner.

Q. Right. But it was important to know which corner. There were four corners on that intersection. Some --

A. Well, I --

Q. Some corners you can see the scene of the shooting, other corners you can not?

A. Again, by her own drawing (displaying) we know where she was.

Q. I am forgetting her drawing for a moment.

A. I couldn't forget it that night. I am --

Q. The order in which you proceed is you first took her statement in handwriting?

A. That is correct.

Q. And after you had it in handwriting then you went to the diagram; isn't that correct?

A. That is correct.

Q. Okay. So now you asked her the first

Page 249.

Daniel Bennett - Cross

question, we are right at the start, right at the top, and you ask Veronica, tell us in your own words what you know, and she begins to tell you and she tells you she was at an intersection. I'm asking you at that point is it your testimony you never asked her which corner of that intersection she was on?

A. At that point I never asked her, no.

Q. Now, she tells you then that she looks down Locust Street -- I am near the bottom of page 1 -- and she's looking towards Johnny Dees. Do you know where Johnny Dees was?

A. Yes, I do.

Q. Where is Johnny Dees at that time?

A. That was on the southeast corner of 13th and Locust on Locust Street.

Q. On the southeast corner?

A. That's correct.

Q. So she's looking down towards that southeast corner and she said I saw a policeman fall down. Right?

A. That's correct.

Q. This is after she heard three shots?

A. That's correct.

Q. After I saw the policeman fall -- reading from what you wrote -- I saw two black guys walk across

Page 250.

Daniel Bennett - Cross

Locust Street and then they started sort of jogging.

Are those the words she used?

A. Yes, they are.

Q. You can't say those are the exact words, though?

A. Well, like I said, I wrote down what she said. These are the words I remember her saying to me at that time.

Q. Did you ask her where they were jogging to?

A. No, I did not.

Q. Did you ask her in what direction they were jogging?

A. No, I did not.

Q. Were you interested in that?

A. At the time that this was taken maybe I don't know, I didn't know what else she was going to say during the interview. And if I overlooked that question I overlooked it.

Q. But is it your testimony that, Officer Bennett, that in the shooting of a policeman, someone hears shots, sees a policeman fall, some one or two men walk away and start jogging, you did not follow that up with a question to describe those people?

A. In an --

Q. To ask her in what direction they were

Page 251.

Daniel Bennett - Cross

jogging?

A. One thing you have to realize: At that time of night, shooting in that area, there was probably people running and jogging all over the place. Now, she only seen two. I am sure there was other people running.

Q. But she only talked about two, she didn't say everybody was running, she didn't say a lot of people were running?

A. She said she saw two.

Q. She said see heard shots, I looked and I saw two black men running. Did that in any way trigger in your mind the thought that you should ask her who it was by description of who she saw running?

A. Later on in the questioning, on page 5 I ask the question how close did the two black males who jogged and crossed Locust Street get to the fallen officer. And her answer was not close enough, maybe two or three steps away.

Maybe after I heard that I was satisfied that they weren't close enough to have done anything, I don't know. But for some reason I did not ask her what direction they jogged in.

Q. But it was important enough for you to follow it up with a second question on page 5 about those

Page 252.

Daniel Bennett - Cross

two men jogging?

A. Well, the second question was important enough because maybe they were a block away when she seen them jogging. And I asked her how close it was, and when she said not close enough, whatever she means by not close enough.

Q. -- You have an impression they were jogging away from the shooting?

A. That's correct.

Q. Now let's go to the diagram which is page 6. Which I know you didn't draw, your partner Mr. Harmon drew; right?

A. That is correct.

Q. And this diagram is done after you take the written statement?

A. Yes, it was.

Q. And what you try to do in this diagram -- correct me if I am wrong -- is to record in a drawing form what the witness has told you she saw?

A. That's correct.

Q. Did you on the diagram ask her to put where she saw the two black men jogging after she heard the shots and the policeman fell down?

A. It's not in the diagram. The only, she does make an indication going back towards 13th Street, on

Page 253.

Daniel Bennett - Cross

the corner of 13th and Locust, southeast corner, again where she seen a man standing. That's the only man she indicates in the diagram.

Q. Detective Bennett, is it your testimony that you never asked her to put on this diagram where she saw the two men jogging?

A. I would have to say yes because it's not on here.

Q. Incidentally, on this diagram, we will leave it, page 6, there is a direction for north, south east and west. Right?

A. Right.

Q. That's ordinarily done?

A. Yes.

Q. Who wrote that?

A. I believe that was done by Detective Harmon.

Q. So it was the detective who put the directions on the diagram?

A. That's my belief, yes, what I remember.

Q. In other words, you don't ask Miss Jones to orient the directions, the detectives do it?

A. Yes. That's correct.

Q. And do you recall that Miss Jones had difficulty in orienting directions with respect to where she was on this diagram?

Page 254.

Daniel Bennett - Cross

A. No, I don't recall that at all. She even made little dots, little marks which, I mean they could be her footprints from what she tells us.

Q. Right, where she goes around the corner?

A. Around the corner from 13th Street by the High Speed Line entrance and then onto Locust Street.

Q. But do you know in her testimony under oath --

MR. WEINGLASS: Page 112, Counsel.

MS. FISK: I object to the detective being questioned with her testimony under oath, Your Honor.

THE COURT: Yes, I will sustain that. He can't answer for your witness. That is a question --

BY MR. WEINGLASS:

Q. You are sure she didn't indicate to you that she was on the northwest corner of that intersection?

A. No. And again, I think if we go back to page 1 of the interview, they were in a restaurant called Rocky's. I know where Rocky's is, I was familiar with where Rocky's was. They left Rocky's, they went down an alley towards 12th Street, they went down 12th Street, crossed Locust Street, and they joked around on the corner for a while. In order to go across Locust Street at that point there you are

Page 255.

Daniel Bennett - Cross

going down 12th, you would be on the southwest corner.

Q. Right, but then she says we hung out on the corner for a while, which indicates she might have crossed the street to the northwest side?

MS. FISK: Well, I object to that question and what it might or might not indicate, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. In other words, you made an assumption and on the basis of that assumption from what you know of the neighborhood you placed her on the southwest corner, and when she testified under oath she said she was on the northwest corner?

MS. FISK: Objection, Your Honor. When she testified under oath she denied ever saying these words. Which version would Mr. Weinglass like, the first, the second, the third or the fourth?

MR. WEINGLASS: We have the transcripts again.

MS. FISK: Which transcript? I object to this witness being questioned with the witness --

Page 256.

Daniel Bennett - Cross

MR. WEINGLASS: Of June 29th, 1982 of her testimony under oath where she puts herself on the north --

MS. FISK: She put herself on that corner in her version yesterday as well. My point is she has now given four different versions.

THE COURT: The witnesses were sequestered at the time of trial: He doesn't know what she testified to. You should ask your own witness that.

BY MR. WEINGLASS:

Q. Now, if Miss Jones said at the trial --

MS. FISK: Your Honor, I objected to that question already.

MR. WEINGLASS: May I finish? I have that privilege. You may object of course.

MS. FISK: Well, thank you.

MR. WEINGLASS: And the Court will rule.

BY MR. WEINGLASS:

Q. If Miss Jones said at the time at the trial on June 29th, 1982, under oath, that she never told you that she saw two men jogging, that would be false?

MS. FISK: Objection, Your Honor, to

Page 257.

Daniel Bennett - Cross

that question.

THE COURT: Sustained. That is for me to decide whether it's false or whether it's not false.

MR. WEINGLASS: Right.

THE COURT: It is not for the witness to tell me.

BY MR. WEINGLASS:

Q. As you sit here today, Officer, you are certain that she said to you on December 9th, 1981 --

MS. WOLKENSTEIN: 15th.

BY MR. WEINGLASS:

Q. -- 15th that she saw two black men jogging away from the scene?

A. I'm positive that's what she told me.

MS. FISK: Did she say jogging or jogging away from the scene? I object to the form of that question. Mr. Weinglass misrepresented to the witness.

MR. WEINGLASS: Jogging away.

MS. FISK: What was recorded as an answer? Would Counsel like to edit the rest of the transcript in this case as well?

MR. WEINGLASS: Following the witness' answer. I am not editing anything.

Page 258.

Daniel Bennett - Cross

MS. FISK: I'm sorry, Judge, maybe I missed something. My understanding and my reading is that it reads and then they started sort of jogging and that there is then a period there. And if the detective had an impression as to what she meant or what she didn't mean that is certainly his impression, but the words which she spoke and which he recorded do not include the word away on that page.

THE COURT: I agree with that: What is written is written.

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Q. Counsel, when Mr. Burns wrote his brief to the Supreme Court of Pennsylvania, on page 83 he informed the Supreme Court that Miss Jones had retracted her earlier statement --

MS. FISK: Objection to this question.

BY MR. WEINGLASS:

Q. -- that she said seen someone running from the scene --

MR. WEINGLASS: That's Mr. Burns. That's their official document to the Supreme Court.

MS. FISK: He is not on the witness

Page 259.

Daniel Bennett - Cross

stand either right now. And frankly, I don't think Mr. Burns was out there and would be likely a witness in this case ever.

MR. WEINGLASS: I assume the District Attorney tries to accurately --

MS. FISK: That's why we use information from witnesses that have information about the offense.

MR. BURNS: I am gratified that Mr. Weinglass read my brief so carefully but I don't think he is entitled to impeach this --

MR. WEINGLASS: I am not. I am answering Counsel's objection that they don't take the position that the men were jogging away. They took that position before the Supreme Court.

THE COURT: I don't care what position they give. The Supreme Court reads the notes of testimony and they know what each witness says.

MS. FISK: And I would note, Your Honor, that Mr. Burns did in his initial response to Counsel's Petition state that Miss Jones never even said she saw people running away and argued quite strenuously in that document that that was an interpretation that

Page 260.

Daniel Bennett - Cross

Counsel, defense Counsel were placing on the document.

MR. WEINGLASS: Page 83, direct quote: Someone running from the scene.

THE COURT: Counsel, I don't care what he put in his brief. The witness can't answer for that. He didn't write that brief. Now, why are you wasting my time. It's getting late.

BY MR. WEINGLASS:

Q. Detective Bennett, when you went out to the house on December 15th, you were given her address?

A. We secured her address. I don't know whether it was off of a prior contact, report, or what it was from, but we were given her address.

Q. Do you know how it was that almost a week later you had received information that there was this witness who was out there that night?

A. I think that information was probably secured long before a week later. From the, from my memory, I believe it came from another prostitute that was out there that night.

Q. From Cynthia White?

A. And that we had to do some research and everything to find out who she was and where she lived.

Page 261.

Daniel Bennett - Cross

Q. Right, it was from Cynthia White?

A. I don't remember the name, it could have been.

Q. Right. You remember the name Cynthia White, though?

A. Yes, I do.

Q. And it could have been Cynthia White that provided this information?

A. It could have been her or any of the other people that were out there, yes.

Q. Do you know Cynthia White as Lucky also, that was her name?

A. No, I don't know that, no.

Q. You didn't know it?

A. No.

Q. Okay. So Cynthia White indicated at least to your impression that she knew Veronica Jones?

MS. FISK: Objection, Judge. Maybe I am not hearing but that wasn't the response of the witness.

THE COURT: I know.

MS. FISK: I object to Counsel misrepresenting.

THE COURT: I sustain the objection. Please, Counselor, don't misquote what somebody says. It's bad enough to keep a record of what

Page 262.

Daniel Bennett - Cross

they say.

BY MR: WEINGLASS:

Q. Just correct me, then, apparently I'm wrong. I think you testified that it's your impression that it was gotten from another prostitute, possibly Cynthia White, who would have to know who Veronica Jones is?

MS. FISK: Judge, how does he know who knows who? Objection.

THE COURT: Sustained.

MR. WEINGLASS: I am asking the witness.

THE COURT: He said he didn't know. Whoever gave him the information, that's what he had. Here is a name, an address, go out there and interview this witness.

BY MR. WEINGLASS:

Q. Referring you to page 2 of Commonwealth 1: Did you also hear Miss Jones tell you that she saw one other black guy standing by the entrance of the Speed Line by Johnny Dees?

A. That's what she said, yes.

Q. And you recorded that?

A. That is correct.

Q. And then when she did the diagram was she

Page 263.

Daniel Bennett - Cross

asked to place that person?

A. She does place that person in the diagram, yes.

Q. And she places him right there at that southeast corner?

A. That is correct.

Q. Of 13th and Locust and she writes the word man?

A. That's correct.

Q. That is in her handwriting?

A. Yes, it is.

Q. Did you ask her to describe that man?

A. No, I don't think we did, no.

Q. Detective Bennett, prior to your seeing Miss Jones on December 15th and in connection with your investigation of this case, did you talk to a William Singletary?

MS. FISK: Objection.

BY MR. WEINGLASS:

Q. Who claimed to be on the southeast corner right where Miss Jones said she saw a black man?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Did you talk to William Singletary?

Page 264.

Daniel Bennett - Cross

MS. FISK: That was my objection.

THE COURT: Yes, it is sustained.

MR. WEINGLASS: Your Honor, it goes to this diagram.

THE COURT: It doesn't go to the diagram. Where she put a man she put a man, that's all. She didn't write Singleton down there.

BY MR. WEINGLASS:

Q. No, she didn't know his name but did you attempt to ascertain from her who that man was?

A. I don't think I ever asked the question if she knew who that man was.

Q. He would be pretty close to the murder scene, wouldn't he?

MS. FISK: Objection, Your Honor.

THE COURT: Yes.

BY MR. WEINGLASS:

Q. He would be within feet of Officer Faulkner; isn't that correct?

MS. FISK: Objection, Your Honor, to where he would be. The statement which she made speaks for itself.

THE COURT: It is her statement, it speaks for itself.

Page 265.

Daniel Bennett - Cross

BY MR. WEINGLASS:

Q. In the course of your work of investigating a homicide of a police officer, if you interview a witness such as Veronica Jones and she indicates that she saw someone else right at the scene at or about the time of the shooting, would you attempt to ascertain the identity of that person for purposes of follow-up investigation?

A. I'm not fully aware -- sure, but we may have already known the identity of that person. Maybe that's why I didn't ask that question: I didn't think too much of it at the time. Then again, there is always a possibility once we review this or somebody else reviews it we go back and talk to Veronica again if we think it is important.

Q. Did you ever go back to talk to Veronica Jones?

A. To her? No, I didn't.

Q. Do you know if anyone ever went back to talk to her?

A. No, I don't think anyone ever did.

Q. Did you ever engage in a conversation with any other investigators in which you pointed to this diagram or explained to them that, A, there might have been another man out there at the scene?

Page 266.

Daniel Bennett - Cross

A. I don't remember doing that, no.

Q. So this diagram does not have, or -- I'm sorry -- the investigation does not have any description of that man and this diagram does not have any indication of the two black men who were jogging?

MS. FISK: I object to the form of that question, particularly the first half in reference to the investigation. I thought that the testimony was confined to this statement.

THE COURT: Okay.

MR. WEINGLASS: It goes to what he did the night of December 15th.

THE COURT: Counselor, do you want me to tell you who the man was who was standing there?

MR. WEINGLASS: Well, Your Honor, I object to this Court engaging in this kind of an exercise. It really is, Your Honor, quite futile.

THE COURT: Did you read the notes of testimony?

MR. WEINGLASS: Pardon?

THE COURT: Did you read the notes of testimony?

Page 267.

Daniel Bennett - Cross

MR. WEINGLASS: I have read the notes very carefully.

THE COURT: Well, if you know the notes of testimony you know who was standing there.

MR. WEINGLASS: I read the notes of testimony and it is my belief it was William Singletary. Precisely where this person is located.

THE COURT: It wasn't William Singletary.

MR. WEINGLASS: It is exactly where William Singletary placed himself.

THE COURT: No, the officer came on that scene in 45 seconds. 45 seconds.

MR. WEINGLASS: You think it was a policeman?

THE COURT: No, I know who it was. It was his brother.

MR. WEINGLASS: No, his brother was nowhere near where this location is indicated. Nowhere near it, Your Honor. You are way off base, I must say that respectfully. He was up against the wall. This officer who you referred to testified. Up against the wall with his back

Page 268.

Daniel Bennett - Cross

against the building, raising his hands saying I have nothing to do with this. He was not out by the Speed Line on the southeast corner of 12th end Locust. You're just wrong on this. I say that most respectfully.

THE COURT: Okay.

MR. WEINGLASS: There was only one person on that corner who has testified in this case and that is William Singletary.

THE COURT: I know that. His brother.

MS. FISK: That was a witness who Your Honor found to be incredible based on the fact that he saw police helicopters hovering overhead immediately afterwards in part.

Your Honor, may I ask if there is anymore cross-examination of this detective?

MR. WEINGLASS: There sure is.

BY MR. WEINGLASS:

Q. Now drawing your attention to page 3. In the middle of this page, according to your writing, Veronica Jones identified a woman named Candy who was there with her, or nearby her. Did you attempt afterwards to find out who Candy was?

A. Well, from what she said Candy wasn't a woman, but I never personally tried to find Candy, no.

Page 269.

Daniel Bennett - Cross

Q. Right. It's because she refers to Candy or Sabrina and she says I don't know his real name?

A. That is correct.

Q. Yes. Was it your recollection that she said his and not her?

A. I know she said his. That's what I recorded and I know she said his.

Q. In any event, Candy or Sabrina is someone you never did a follow-up investigation on?

A. I never did, no.

Q. And she said someone else was there, Charley Smith was there. She said he was either there or he heard about it?

A. She said she thinks this was one of the guys that picks up trash for Charley Smith.

Q. I'm sorry, for Charley Smith.

(Discussion was held off the record at this time.)

BY MR. WEINGLASS:

Q. Okay, I'm sorry. One of the guys that picks up trash for Charley Smith. Charley Smith is a trash hauler?

A. Apparently a trash hauler, yes.

Q. Did you ever go to Charley Smith to find out who that particular individual might have been?

Page 270.

Daniel Bennett - Cross

A. I never did, no.

Q. Just going back to the earlier series of questions, I am finished with Charley Smith. Did you notice the answer that she gave to you if you wrote it verbatim, do you know Candy's full name you ask. And she says she uses Candy and Sabrina, Sabrina, I don't know his real name. So in the same sentence she uses she and then his?

A. That's correct.

Q. And from that you draw what conclusion?

A. Well, my impression from knowing that area for a lot of years, and the name Candy and Sabrina, it's someone that's trying to look like a she who was really a he.

Q. Right.

A. That's the impression she left with me. And that's the way she answered and that's the way I recorded it.

Q. Right, you didn't ask her a follow-up: Veronica, are we talking about a transvestite or are we talking about a male or female?

A. No, I think I just got that impression from her and that's the way it was left.

Q. And again no follow-up investigation there either that you did?

Page 271.

Daniel Bennett - Cross

A. I don't know. I didn't do anything.

Q. Right, and you didn't do anything about Charley Smith's employee?

A. I did not myself, no.

Q. Right. Now, you asked her how close she got to where the policeman was shot and she said I was near Polly's Coffee Shop. Where is Polly's Coffee Shop?

A. Polly's from my recollection would have been down about half a block away, I think it's Camac Street that cuts through there. And if I am not mistaken, Polly's was on the corner of Camac Street, I am just not that sure which corner. Polly's wasn't open that time of night. And when I was out there, 99 percent of the time it was that time of night.

Q. Right. You knew where Polly's was?

A. No, I know roughly where it was, I don't know for sure.

Q. Wasn't Polly's on the north side of Locust Street?

MS. FISK: No, not then, not ever.

MR. WEINGLASS: I'm sorry, I thought --

MS. FISK: I thought when a witness said he doesn't know that you don't then suggest

Page 272.

Daniel Bennett - Cross

things, particularly when you're wrong.

MR. WEINGLASS: Your Honor, I don't think it is proper for Counsel to answer a question directly.

THE COURT: Please. You know, it is getting late: 4:30. Let's get finished with this witness. He was brought here for one purpose only, but we are going through the whole world on this. You'd think he was the only investigator.

BY MR. WEINGLASS:

Q. Was it your impression as a seasoned investigator, by this time my calculation is you had over 15 years experience, that she was trying to answer your questions candidly, honestly?

A. I don't believe that to be the case, no.

Q. Did you ever inform anyone of that?

A. I don't think I had to. I don't think I did, no.

Q. In other words, you filed this information which is C-l into a homicide file believing that not all the information was correct and you never told anyone that this information was not correct?

A. It is not that it was filed believing that it was incorrect, no. I just, based on a lot of years

Page 273.

Daniel Bennett - Cross

experience, have found out that people most times, first interview, do not tell you everything that they know. And that's what my feelings were: I think she knew a lot more than what she told us.

Q. Right. And it would be wise for someone to go back and see Veronica?

A. Well, I ,think if anybody would have reviewed this interview anywhere down the line at that time we probably would have, I would have been questioned on it, that's for sure, and we would have had the same opinion probably.

Q. You don't know that she was picked up in January and questioned for over five hours?

A. No, I don't know that.

Q. You don't know that she was questioned again when she was in lockup in June just before she testified?

MS. FISK: That was a statement of fact or a question? I got confused.

BY MR. WEINGLASS:

Q. No, I am asking you if you know?

A. No, I don't know.

Q. You would have recommended that?

A. Would I have recommended it?

Q. Yes.

Page 274.

Daniel Bennett - Cross

MS. FISK: What? Recommended what?

BY MR. WEINGLASS:

Q. You would have recommended that she be interviewed again?

A. To get her to tell the truth, yes. But then again, I mean we could still be sitting here asking her questions.

Q. Right. Well, you thought that she did see someone jog away?

MS. FISK: Objection, Your Honor, to what he thought.

THE COURT: Yes.

BY MR. WEINGLASS:

Q. Well, we already had your impression that you weren't getting the whole story. But not getting the whole story, you also thought that she saw someone jog away?

MS. FISK: Objection, Your Honor, to what he thought.

THE COURT: Yes, he was only taking down her statement, not his statement.

MR. WEINGLASS: But he has already testified, Your Honor, that he has an impression based on his years of experience and he evaluated the information he was being given.

Page 275.

Daniel Bennett - Cross

And I am asking him did he evaluate the part of someone jogging away.

THE COURT: But, Counselor, what you don't understand: He doesn't have the ultimate say.

MR. WEINGLASS: Of course not.

THE COURT: That is someone up above.

MR. WEINGLASS: Right.

THE COURT: Well, you should ask the somebody else who would be able to answer those questions.

BY MR. WEINGLASS:

Q. Okay. Did someone up above who was involved in the investigation come back to you and say Detective Bennett, that information that you recorded in your interview of December 15th, is it your impression that that, that she was telling you the truth?

A. I don't remember anybody up above ever saying that to me, no.

Q. But you do, you did have the impression that she was out there that night and she saw a lot, and maybe she saw more than she told you in the initial interview; isn't that your impression?

MS. FISK: Objection, Your Honor.

Page 276.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. By the way, you knew that Veronica at that time was a prostitute?

A. Yes, I did.

Q. And I don't want to get into any character questions, but you also knew that prostitutes had to be careful in their relationship with the police?

MS. FISK: What? Objection.

THE COURT: Sustained. What do you mean careful?

BY MR. WEINGLASS:

Q. You also knew that prostitutes would have a self-interest in not doing anything to offend the police?

MS. FISK: Objection.

BY MR. WEINGLASS:

Q. Particularly where there is a case where a police officer is killed?

THE COURT: The objection is sustained.

BY MR. WEINGLASS:

Q. Did you take into account when you wrote this and you interviewed her her then occupation as a prostitute?

Page 277.

MS. FISK: Objection, Your Honor.

THE COURT: He said he knew she was a prostitute.

BY MR. WEINGLASS:

Q. Did you take it into account?

THE COURT: So what? All he could take into consideration is what she tells him. He doesn't have a right to put anything in there of what he thinks she should tell him.

BY MR. WEINGLASS:

Q. You wrote down in the interview that she was 20 years old?

A. That is correct.

Q. You knew that she had children?

A. I don't know that I knew that, no.

Q. Did you see children at the house?

A. I don't remember seeing children, no.

Q. They might have been there?

A. They could have been. They could have been upstairs in bed, I just don't know.

Q. Did you see any male members of the household when you were there?

A. No, I don't remember any males being there.

Q. A mother that you indicated at the beginning?

A. I sort of have a vague memory of her mother

Page 278.

being there. And it was her mother's house, I know that. But if she was there, and I sort of had a vague memory of it, she did leave us alone and we did the interview.

Q. Right, did you know Veronica lived in that house?

A. Did I know that she lived there? I didn't know where she lived. We had numerous addresses on her.

Q. Right. Did you have aliases also?

A. There were other names, yes, I don't recall what they are, though.

Q. Various addresses, various names?

A. That is correct.

Q. Various Social Security numbers?

A. Well, she gave one Social Security number and she gave me two addresses on the interview.

Q. You wrote them down?

A. Yes, I did.

Q. They were never provided to the defense, though; is that correct?

A. I have no way of knowing.

Q. All right. Is it ordinarily done in a homicide case that the address of a witness is deleted, in your -- no, you can look at me, you

Page 279.

don't --

A. There is nothing deleted on here. The addresses that I had at the time she gave us are written on here.

MR. WEINGLASS: May I take a look at the --

BY MR. WEINGLASS:

Q. Well, why don't you just read the addresses in?

A. She gave 1056 Everett Street, Camden, New Jersey, and that is where we did the interview. And she gave 5101 Chester Avenue, top floor, that's Philadelphia.

Q. So you had the impression she might be living in two places?

A. From what I remember, there was more addresses than two.

Q. More than two. Right. So as I understand now your testimony, your interview began at 9:45, that is the date and time you entered?

A. That's correct.

Q. And it concluded at what time?

MS. FISK: Your Honor, objection. I believe it's been asked and answered as to the length of the interview.

Page 280.

THE COURT: I think it has, too. But if it's on there read it off. If not --

BY MR. WEINGLASS:

Q. Did you write the date and time it concluded?

A. No, I did not.

Q. Is there a box for that?

A. No, there isn't.

Q. Now, as I see your document, which is C-l, Veronica's signature appears on every page at the bottom?

A. That is correct.

Q. You do that as a matter of practice?

A. Well, I didn't do that, Veronica did that. It is her signature. I asked her to read and sign it if she agreed with it. She took her time with each page, looked each page over and signed each page individually.

Q. In your presence?

A. Yes.

Q. You can testify of your own knowledge that she signed every page?

A. Yes, I can.

Q. And if she testified in 1982 at the trial under oath that she didn't sign every page, that would be false?

Page 281 is missing. We will attempt to locate it.

Page 282.

Daniel Bennett - Cross

Q. And that wasn't recorded; is that correct?

A. That's not on the interview, no.

Q. So there was more conversation that was never recorded?

A. I testified to that, yes.

Q. All right. And so how much more conversation was there that you never recorded?

MS. FISK: Objection, Your Honor.

This has been gone over.

THE COURT: Yes, it's getting kind of late, Counsel.

MR. WEINGLASS: Yes, I understand.

MS. FISK: Without regard to the hour, it's already been asked and answered.

MR. WEINGLASS: I understand.

BY MR. WEINGLASS:

Q. Did you ever ask Veronica in this form the question of... no, strike that. Just in summary form: You did not ask her to describe the person who worked for Charley Smith who was out there she said. You did not ask her to describe Candy or Sabrina. You did not ask her to describe the man who was at the southeast corner of Locust and 13th; is that correct?

A. Yes.

Page 283.

Daniel Bennett - Cross

MS. FISK: Your Honor, I object: It has already been answered.

THE WITNESS: It is not what I said. I started to say and that is all I had.

MS. FISK: And I object to the question: It has been asked and answered.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Now, did Officer Harmon do any of the questioning?

A. No, I asked all the questions and recorded everything that was said.

Q. And he, as you said, drew the diagram?

A. That is correct.

MS. FISK: Your Honor, that has been asked and answered.

THE COURT: That was a thousand times now. Geez, if you didn't get that.

BY MR. WEINGLASS:

Q. Who drew the police car on the diagram?

MS. FISK: Objection, Your Honor: Asked and answer.

MR. WEINGLASS: No, that was never answered.

THE COURT: He said Harmon did

Page 284.

Daniel Bennett - Cross

everything as far as drawing on that thing is concerned.

MR. WEINGLASS: No, as I understand it, he drew the geographic lines of the streets. Who drew the car --

MS. FISK: That's been asked and answered that Miss Jones drew that, Your Honor, it is on the record.

MR. WEINGLASS: Oh, is it? Then I'm sorry, I didn't hear it.

BY MR. WEINGLASS:

Q. Miss Jones drew it?

MS. FISK: Apparently Mr. Weinglass chooses that not to hear a great deal, and that which he hears he chooses to change a great deal. That has been asked and answered.

MR. WEINGLASS: Thank you.

BY MR. WEINGLASS:

Q. Now, on page 2 you ask Miss Jones precisely did you see a Volkswagen parked on Locust Street that night. Now, you raised the Volkswagen, you knew there was a Volkswagen there; isn't that correct?

A. Yes, I did.

Q. And so you had information going into this interview, of course?

Page 285.

Daniel Bennett - Cross

A. Yes, I did.

Q. And you had read various police reports?

A. No, I don't think I read any reports at that time. I had information just from working on the incident.

Q. Right, but part of your working at that point was not reading reports?

A. That's correct.

Q. You looked at photographs or diagrams?

A. Well, as far as the Volkswagen goes, I was there when the Volkswagen was searched at the Police Garage so I knew it was a Volkswagen.

Q. Right. Do you know what was taken out of the Volkswagen?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MR. WEINGLASS: Right, okay.

BY MR. WEINGLASS:

Q. Now, in response to the question about the Volkswagen, what response did Veronica give you that you wrote down?

MS. FISK: Your Honor, objection: The statement speaks for itself.

MR. WEINGLASS: No, we are going --

MS. FISK: It has been marked and

Page 286.

Daniel Bennett - Cross

entered into evidence.

THE COURT: He can't read it so would you read what the answer is.

THE WITNESS: She answered, I saw a green Volkswagen go away, then she changed that to around the block a couple of times that night before the shooting. It was driven by a black guy.

BY MR. WEINGLASS:

Q. Did she strike the words away or did you?

A. When she was given the statement to read it is one of the corrections that she made.

Q. Did she initial that?

A. I think that's the only correction. No, it is not.

Q. Isn't it customary to have them initial corrections?

A. I think it is, yes.

Q. You didn't ask her to?

A. I asked her to but I am not going to grab her by the hand and make her do it. She was asked to do it, she just didn't do it.

Q. She said she saw a black guy driving the Volkswagen, the Volkswagen that was parked at the scene. Did you ask her to describe that guy?

Page 287.

A. No, I did not.

Q. Any reason for that?

A. I think at that time I already knew who the guy who was driving the Volkswagen was.

Q. You were sure of that?

A. From what I knew --

MS. FISK: Objection, Your Honor, as to whether the detective was sure or not.

BY MR. WEINGLASS:

Q. Did you ask her if there were others in that car?

A. No, I did not.

MR. WEINGLASS: Hmm-hmm. I have nothing further.

MS. FISK: May I just, may I approach the witness, Your Honor? I have just, actually I will show the photograph to Counsel first (handing).

May I approach the witness, Your Honor?

THE COURT: Go ahead, if you have to.

MS. FISK: I just want to point out one part of the photograph and ask a question about it.

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Page 288.

REDIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Mr. Bennett, do you recognize this photograph as the south side of Locust Street?

A. Yes, I do.

Q. Do you see -- and I am pointing in the left-hand side of the south side of Locust Street down towards, actually you can see clearly a sign Camac as we are going away from 13th Street, a little tea-shaped, tea cup shaped sign?

A. That is correct.

Q. And do you recognize what that sign was for?

A. That was the place I thought was Polly's Coffee Shop.

Q. Is that it?

A. To my knowledge it was.

Q. Is that the south side of Locust Street?

A. Yes.

MR. WEINGLASS: May I see that?

MS. FISK: Certainly (handing).

MR. WEINGLASS: Are you sure that is not Chancellor?

MS . FISK: I am certain that is on Locust Street on the corner, southeast corner of

Page 289.

Locust and Camac.

THE COURT: You could take a walk down there.

MS. FISK: It is not there anymore, Judge.

THE COURT: Well, at least you could see the locality.

MS. FISK: It is Uncle's now.

MR. WEINGLASS: I'm sorry, may I see Counsel for a minute.

I didn't see where you pointed.

MS. FISK: Certainly. Locust Street, on the south side (indicating). And there's Camac. 12th Street is down here. This tea-cup shaped sign, this is Polly's. It is on the other side of Camac Street on the south side of Locust. That is Polly's. It is now a store called Uncle's. If you go down there now you will see a store called Uncle's where Polly's used to be.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. You have seen this photograph before?

Page 290.

A. Not to my knowledge, no.

Q. First time you have seen it?

A. From what I remember, yes.

Q. To your knowledge, is this a photo of the crime scene?

MS. FISK: Objection, Your Honor. It was used to refresh his recollection with regard to the geography of Locust Street and the south side of Locust Street and the location of a restaurant called Polly's.

MR. WEINGLASS: I can't make out there what the witness identified. Is that east or west of Camac?

MS. FISK: I know it to be... east of Camac Street. Which is, frankly, precisely as the diagram of Miss Jones demonstrates.

MR. WEINGLASS: I'm sorry, I should ask the witness.

BY MR. WEINGLASS:

Q. Is it east or west of Camac? Do you need the photograph, would it help you?

A. What I testified to earlier was it was on the corner of Camac and Locust. And I couldn't remember which corner exactly it was on because it was always closed at nighttime and that's when I was out there.

Page 291.

Q. Could I show you this picture, would it help you?

A. I don't know if it would or not from that angle from what I have seen here.

Q. You can't say whether it is east or west?

A. From what I have seen here I couldn't tell.

Q. There is a sign here which says Camac?

A. Which corner is the sign on? I mean I don't know.

THE COURT: Counselor, why don't you take a walk down there after we leave here, take a look at it.

BY MR. WEINGLASS:

Q. Polly's isn't there anymore, is it?

A. Not that I know of.

MR. WEINGLASS: Not everything stays the same.

THE COURT: Well, when you wait 14, 15 years, no, it is not going to remain the same.

BY MR. WEINGLASS:

Q. There is also the Mission Hotel there?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: I am just going to ask some questions directed to the photograph.

MS. FISK: Then I suggest you read it

Page 292.

MS. FISK: I have nothing further, Your Honor.

THE COURT: Okay, you are excused. I will see you tomorrow morning. Same time, same place.

THE COURT OFFICER: This Court now stands adjourned until tomorrow morning at 10:00 a.m. at the call of the Crier.

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(The hearing was adjourned for the day at 4:43 p.m.)

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Page 293.

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
Date

3. Oktober 1996

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

Hearing Re Veronica Jones

- - - - -

Thursday, October 3, 1996
Courtroom 306, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN B. PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

COMMONWEALTH EVIDENCE

WITNESS	DE	CE	RDE	RCE
Officer Theresa Jesberger	6	12	40	43

EXHIBITS

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
4	Property Receipt	9
5	NJ criminal records re V. Jones	48

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
5	Subpoena (records room)	63
6	Subpoena (Custodian of records)	69
7	Subpoena (Commanding Officer)	69
8	Subpoena (Commanding Officer)	72
9	Quarter Sessions file	78

Page 3.

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(At 10:05 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

THE COURT: Good morning.

MS. FISK: Your Honor, may I call my next witness?

THE COURT: Sure.

MS. FISK: I would first renew my request for sequestration of all past and future witnesses and would call Police Officer Jesberger.

MR. WEINGLASS: Your Honor, there is no need to sequester past witnesses.

THE COURT: You are not going to call them again?

MR. WEINGLASS: We have no intention of calling them again.

THE COURT: They don't intend to call them anymore. If they testified and they are not going to be called back, who cares.

MR. WILLIAMS: Your Honor, I would request an offer of proof as to the next witness.

Page 4.

MS. FISK: Certainly, Your Honor. Your Honor, when Veronica Jones testified she was questioned regarding her arrest in 1982 and the location of the guns which she was ultimately charged with and pled nolo contendere to a weapons offense. Her testimony under oath was that those guns were under the cushion in which she sat at the time of her arrest. Officer Jesberger was the arresting officer back in 1982, and will testify that indeed both of those guns were on Miss Jones directly, that is they were both down her pants. It is therefore further evidence that Miss Jones was not truthful in her testimony before this Court and goes directly to impeachment of her credibility.

THE COURT: All right.

MR. WILLIAMS: Your Honor, I'm going to object to that witness on the following ground. Your Honor's made much of the principle of collateralness, collateralness of evidence. And I think this certainly falls within the --

THE COURT: No, this goes to the very heart of the thing.

MR. WILLIAMS: This is a paradigm instance of --

Page 5.

THE COURT: If she is lying now I have to --- make that decision.

MR. WILLIAMS: Your Honor --

THE COURT: All right, you have an exception to my ruling. I have ruled that he is available, we will put him on. You have an exception to my ruling, argue it up to the Supreme Court.

MR. WILLIAMS: Well, now we are going to have a mini-trial on Miss Jones' gun offense.

THE COURT: We are going to have whatever we are going to have. Counselor, you had a right to bring in all the witnesses you wanted. I am not going to tell her she doesn't have a right to do this. She has given me a legitimate reason for calling this witness.

MR. WILLIAMS: We would ask for time to be able to respond to --

THE COURT: No more time.

MR. WILLIAMS: To be able to respond to the accusations by this Police Officer.

THE COURT: You want to have some time, plenty of time, take it up to the Supreme Court.

MR. WILLIAMS: What we are having is a

Page 6.

trial on Miss Jones' --

THE COURT: What we are having, if you will sit down, we will hear the next witness. I want this case to be concluded today.

MR. WILLIAMS: Well, I would like to see it concluded as well but I don't want to see extrinsic impeachment evidence offered on a collateral matter.

THE COURT: That is not your problem. This is my Courtroom, I make the rulings. If I'm wrong the Supreme Court will overrule me. You have an exception. Now sit down, please. Call your witness.

MS. FISK: I believe Officer Jesberger is sitting in Courtroom 305, if she is not already out in the hallway.

- - - - -

Philadelphia Police Officer Theresa Jesberger, Badge No. 3191, Highway Patrol, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Page 7.

Q. Good morning, Officer Jesberger.

A. Good morning.

Q. How long have you been a Philadelphia Police Officer?

A. Going on 17 years.

Q. And therefore were you a Philadelphia Police Officer back on June the 11th of 1982?

A. Yes, I was.

Q. And what was your assignment and position within the Police Department back then?

A. I worked the Philadelphia Highway Patrol in an unmarked unit in the 39th District that night.

Q. Did you on June the llth, 1982 have occasion to effect the arrest of a Veronica Jones?

A. Yes; but it was a different name at that time.

Q. Who was it that you arrested based on your Court records?

A. The name this lady gave us was Louise Tatum.

Q. Is that a person who you currently see in the Courtroom?

A. She stepped out of the Courtroom.

Q. Did you see her here this morning?

A. Yes, I did.

Q. Did you later discover that Louise Tatum was also known as Veronica Jones?

Page 8.

A. Yes, I did.

Q. Where did that arrest of Miss Jones take place?

A. That took place in the 2600 block of Deacon Street.

Q. Rather than go into the entire factual situation regarding why you went to that house and other reports, let's keep all of that out, did you have occasion to charge Miss Jones, or to -- I'm sorry -- did you have occasion to take action which caused Miss Jones to be charged with weapons offenses?

A. Yes, I did.

Q. Would you please explain to His Honor the facts surrounding how that occurred?

A. I went into a house at 2646 Deacon Street and at that time four people that I observed in that place matched the description of a robbery that took place at 29th and Chalmers. The complainant came around and she identified Miss Tatum and three other individuals.

At that point I went to arrest Miss Tatum, who repeatedly wanted to go to the ladies room and I wouldn't let her move. I told her after, after everything was done and she was secured that we would

Page 9.

let her go. That's when she stood up from a chair and on her person inside a pair of tight jeans she had two revolvers on her.

Q. Precisely where?

A. She had them in her waistband on the front.

Q. How is it that you remember that?

A. Because the pants were so tight I couldn't get the guns off of her, they were almost like painted onto her. And I had to struggle to get the guns from her waistband.

Q. Having taken those guns from her person, what did you do with those weapons?

A. I then placed them on a property receipt, which is property receipt number 878406.

MS. FISK: Your Honor, may I ask that a copy of the property receipt which the Officer has be marked. I certainly have a copy for Counsel (handing).

It is C-4. You have been counting, I haven't.

(Pause.)

(Property receipt was marked
Commonwealth Exhibit C-4 for identification.)

THE COURT OFFICER: So marked C-4, Your Honor.

Page 10.

BY MS. FISK:

Q. Officer Jesberger, you have already read us, told us the property receipt number, as well as the identity of the person from whom you took these guns, that being the person who at the time identified herself as Louise Tatum and who later identified herself to be Veronica Jones. In the section of this property receipt where there is space to enter the items of property and circumstances under which it was received, including the exact location taken from, would you read to us what is then typed there?

MR. WILLIAMS: I am going to object to reading in a document, that is just not proper. She could testify as to her recollection.

MS. FISK: All right, I will be happy to restate that question.

BY MS. FISK:

Q. Is this a document that is prepared by you, Officer?

A. Yes, it is.

Q. And did you prepare this document -- when in relation to when you seized these guns from Miss Jones did you prepare this property receipt?

A. Approximately about an hour, an hour and a half later at West Detectives at Broad and Champlost.

Page 11.

Q. And consistent with the testimony that you have given, does this property receipt reflect the specifics regarding the two guns that were taken from Miss Jones?

A. Yes, it does.

Q. Does this property receipt also expressly note that these guns were taken from the waistband of Miss Jones?

A. Ahh, yes, it does.

MR. WILLIAMS: Your Honor, I am going to object: She is reading from a document.

THE COURT: It is her document, she wrote it.

MR. WILLIAMS: Well, no, she has to testify from her own recollection.

THE COURT: She does? It is her document.

MR. WILLIAMS: Well, is it refreshing her recollection, then she can testify from that. But she can't just read a document into evidence.

THE COURT: Are you making the rulings for me?

MR. WILLIAMS: No, I am making an objection.

Page 12.

THE COURT: Oh. The objection is overruled.

MS. FISK: I have no further questions, Your Honor. Oh, I'm sorry, I do have one question.

BY MS. FISK:

Q. At the time you recovered these guns, Officer, can you tell us whether or not they were loaded?

A. I'm sorry, I didn't hear you.

Q. Can you tell us whether or not these weapons were loaded?

A. Yes; they were fully loaded with one spent round in one of the guns.

MS. FISK: Thank you, ma'am.

Nothing further, Your Honor.

(Discussion was held off the record at this time.)

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CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Officer Jesberger.

A. Good morning.

Q. I noticed that in this document which has been marked C-4 the district is indicated in the upper,

Page 13.

right-hand corner?

A. That's correct.

Q. What is the district?

A. That's the district of the 39th District at 22nd and Hunting Park.

Q. Were you an Officer at that time in the 39th District?

A. No, sir, I was in Highway Patrol.

Q. And how come 39th District is noted, is that the place of the arrest?

A. Yes, that's correct.

Q. Now, as I understand your testimony, and you're testifying about an event that happened 15 years ago -- 14 years ago, actually -- do you have a recollection of what happened independent of this writing which is C-4?

A. Ahh, yes, I do.

Q. And so you can tell us about matters from your recollection that don't appear on the document C-4 because you remember the event?

A. Ahh, yes, I do.

Q. Were you alone or with other officers?

A. I had a partner at that time, Officer Toomer.

Q. Now, you told us that this began, and I know you didn't get into other matters, when you came to a

Page 14.

location known as 2646 Deacon?

A. That is correct.

Q. And is that a residential building or a commercial building?

A. That is a residential building.

Q. And you and your partner entered that building?

A. I chased another female into that house.

Q. You chased another female?

A. That's correct.

Q. And do you know who that female was?

A. She answered to the name of Jan Stelly.

Q. And was there an episode that occurred that gave rise to your chasing her?

A. Ahh, yes, there was.

Q. And what was that, if you can recall?

A. While investigating a vehicle at King and Deacon, I observed a black female that matched the description. And when I went to stop her she took off running into a house and I chased her right through the door into the house at 2646 Deacon.

Q. Right. Deacon Street you refer to, is that a house, it is an apartment building, or is that --

A. No, it is a house.

Q. It is a private house?

Page 15.

A. That is correct.

Q. So you chased her right into the house?

A. That is correct.

Q. And what was your belief that she had done that gave rise to your chasing her?

A. We were investigating a robbery from 29th and Chalmers which is called Liz's Den at that location.

Q. And did you have reason to believe that she was connected to that robbery?

A. Yes, she matched the description given to us.

Q. Which is a black female?

A. Correct.

Q. That was the description that you had?

A. No, she had a red and white top on, striped top on.

Q. I see. And so you chase her into the residence, which is a single-family home?

A. That is correct.

Q. And when you entered where did you go?

A. I went right into the living room.

Q. And there were other people in the living room; correct?

A. That is correct.

Q. Four, four people?

A. There were five people in the living room.

Page 16.

Q. Including the woman you chased?

A. It was the four people that matched the description and an elderly lady, who I don't recall her name or anything.

Q. I see. And when you entered the living room, did you see Veronica Jones at that point?

A. Ahh, yes, I did.

Q. And she was sitting down, was she not?

A. She was sitting on a chair facing me.

Q. Right. And was that an upholstered chair?

A. By upholstered meaning just a cover?

Q. Yes, it had cloth on it, it wasn't just a hardwood chair?

A. Ahh, that is correct.

Q. All right. And there was a cushion on that chair, was there not?

A. I really don't recall.

Q. Okay. So she is sitting on a chair that is upholstered, you don't remember whether there was a cushion or not?

A. It was a living room chair.

Q. Okay. And this older woman that was there was sitting next to her, was she not?

A. No, she was not. This was a single chair.

Q. It was a single chair, hmm-hmm. Do you

Page 17.

remember if there were couches in that room?

A. To the left of me there was a couch.

Q. And were there people sitting on the couch?

A. The elderly lady and one of the other gentlemen by the name of Bernard Johnson was sitting on the couch.

Q. Right. Now, you wrote a report about this episode other than what's been marked C-4, which is a property receipt; is that correct?

A. Did I? I just did the property receipt on this.

Q. Did your partner write a report?

A. I don't really know if he wrote a report, the detectives would have wrote a report.

Q. I see. The detectives that came on the scene later?

A. That is correct.

Q. In other words, you never wrote anything about where Veronica was sitting, the type of chair she was sitting on?

A. No.

Q. You did not?

A. No.

Q. And so you can't rely on refreshing your recollection from anything that was done that was

Page 18.

Officer Theresa Jesberger - Cross

written, you're just testifying about that from your recollection 14 years ago?

A. Yeah, she was sitting to the, she was sitting down to the right of me as I entered the living room, facing me.

Q. I see. And you recall that it was an upholstered chair?

A. It was a cloth-type chair.

Q. Right. And did she stand up when you entered the room?

A. She wanted to go to the ladies room at that time and told me she was pregnant.

Q. Right. But did she stand up?

A. She tried to stand up and I had them sit back down.

Q. She tried to stand up?

A. That is correct.

Q. And you told her to sit down and she reseated herself?

A. Yes, she did.

Q. Now, do you recall what she was wearing besides jeans?

A. She had a pair of tight like black, charcoal-type jeans on and a light-colored top.

Q. Now, incidentally, according to C-4 there was

Page 19.

Officer Theresa Jesberger - Cross

a disposition of guilty on the gun charge, is that correct, did you see that on the back?

A. Yes, that is correct.

Q. Does that require a mandatory sentence to your knowledge back then?

A. Ahh, I do not know. I don't believe so, though.

Q. Did you find out that she was given probation on this charge?

A. Ahh, no, I did not.

Q. Hmm-hmm. Would it surprise you to find out that she was given a probation?

MS. FISK: Objection, Your Honor.

THE COURT: What is the difference whether she was surprised or not? She got probation.

MR. WEINGLASS: Okay.

THE COURT: She went before one of our lenient judges, he gave her probation. What do you want?

MR. WEINGLASS: She might have had a lenient District Attorney also.

THE COURT: Well, she might have at that.

MR. WEINGLASS: As a result of her

Page 20.

Officer Theresa Jesberger - Cross

having testified against Mr. Jamal.

MS. FISK: Your Honor, I would suggest that Mr. Weinglass read the sentencing code which notes that a conviction for a robbery or an agg assault or a particular crime in which an operable weapon is used requires the imposition of a mandatory sentence, but that a conviction for a weapons offense alone does not require a mandatory sentence under the sentencing code in effect currently, a sentencing code which was not in effect in 1981 when this crime occurred.

(Discussion was held off the record at this time.)

BY MR. WEINGLASS:

Q. Are you aware of the fact that Miss Jones was served with a letter from the District Attorney's Office indicating to her that she faced mandatory sentencing on this particular charge and that letter exists in a document that was entered into evidence here two days ago?

MS. FISK: I object to that question, Your Honor. And that is certainly a letter that was filed no doubt under the Quarter Sessions file at the time she was still facing charges of robbery.

Page 21.

Officer Theresa Jesberger - Cross

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Q. And that when Miss Jones testified in this case in July of -- June 29th, 1982, she had been served with a mandatory sentencing letter by the District Attorney's Office indicating this she must go to prison if she's convicted of this charge?

MS. FISK: Of which charge, Your Honor? I object. That's the nature of my objection. I also object because it is an improper question to this witness.

THE COURT: It is. The gun charge or what --

MR. WEINGLASS: Let's clarify it. We have the document, it is in evidence.

THE COURT: But I don't think this witness is in a position to answer that question for you.

MR. WEINGLASS: All right.

THE COURT: She is only the arresting officer: She doesn't make those sorts of decisions. They are made by the District Attorney's Office.

BY MR. WEINGLASS:

Q. This is the first time you have testified

Page 22.

Officer Theresa Jesberger - Cross

about this 1982 arrest, isn't it?

A. No.

Q. Did you testify at the prelim on June llth?

A. No, I testified --

Q. June 10th, I'm sorry.

A. No, I testified in '88.

Q. At the disposition hearing?

A. Yes.

Q. I see.

A. And brought the guns down at that time.

Q. Pardon me?

A. And brought the guns down at that time for confiscation.

Q. I see, okay. And were you questioned at the disposition hearing, much as you are this morning?

A. No.

Q. And you just gave direct testimony and there was no questioning? Or could you explain to me what the nature of your appearance was in 1988?

A. In reference to the guns that were confiscated from Miss

Tatum.

Q. Yes. And you just identified the guns?

A. I brought the guns down from the Evidence Room to the courtroom and just testified about the guns and they were confiscated at that time.

Page 23.

Officer Theresa Jesberger - Cross

Q. Did you testify about where the guns were found?

A. Ahh, yes.

Q. Okay. And there was a record made, I assume somebody was taking down your testimony?

A. I presume so.

Q. Hmm. Now, it is a fact, is it not, Officer, that it is easier to prove a claim of possession of a weapon if the arresting officer testifies that they were found on the person of the individual as opposed to being under a cushion of a chair on which that individual was sitting?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Could you have been able to make out the charge of possession of weapons if the guns were under a cushion on the chair on which an individual is sitting?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. When you appeared and testified in 1988, were the other defendants in court or was it just Miss Jones?

Page 24.

Officer Theresa Jesberger - Cross

A. I believe it was just Miss Jones.

Q. The other cases were disposed of as well, to your knowledge, if you have that knowledge?

A. No, I do not have.

Q. You didn't testify in any of the other trials?

A. No.

Q. When you make an arrest such as this, are you the officer who runs any kind of a computer check to see if there are outstanding warrants on the individual you have arrested or is that done by someone else?

A. I do not do that, no.

Q. So you had no knowledge of Miss Jones' background?

A. No, I did not.

Q. You had no knowledge, I assume, of the fact that on the day that you had arrested her she was listed as a defense witness in the case of Commonwealth versus Jamal?

A. No, I did not.

Q. You didn't know that?

A. No, sir.

Q. Did you learn that shortly after this?

A. Not until this year.

Q. When you made the arrest, you filed this

Page 25.

Officer Theresa Jesberger - Cross

paperwork which is C-4 immediately? You said within an hour?

A. It's approximately within a hour, an hour and a half that I typed this up.

Q. All right. And this goes from your possession to whom?

A. I then take the property receipt along with the guns and we take them to 8th and Race, down to our Firearms Unit.

Q. On 8th and Race?

A. That is correct, the same night.

Q. Right. Is the Homicide unit also located at 8th and Race, if you know?

A. Ahh, yes, it is.

Q. So that people in Homicide would have access to this document about Veronica Jones being arrested on a gun charge?

A. Not that they would know of, sir.

Q. Pardon?

A. Not that they would have known of.

Q. But. if they went to the room they would have access to this document, they had access?

A. What room are you talking about, sir?

Q. Wherever this document -- tell us where you put this document at 8th and Race?

Page 26.

Officer Theresa Jesberger - Cross

A. This document goes to a Firearms Unit and they then test the revolvers and they take part of the property receipt, I take my copy, and they then assign that with the guns and have them test fired.

Q. Now, does this document ultimately, which is C-4, go into the hands of somebody in the District Attorney's Office?

A. There is also a copy for the District Attorney. After they are done their investigation, it gets sent there by the detective.

Q. To the District Attorney's Office?

A. That is correct.

Q. So then at some point in time the District Attorney's Office is advised that Veronica Jones has been taken into custody on a gun charge?

A. They would have known her as Louise Tatum, not Veronica Jones at that time.

Q. Right, but if they entered Louise Tatum into any kind of a search computer, they would have also got the a/k/a Veronica Jones; is that correct?

A. I'm not sure of that, sir.

Q. And how long after you turned this in would the District Attorney's Office have a copy of this?

A. Within a matter of a couple days.

Q. I see. So by, by your calculations, June 13th

Page 27.

Officer Theresa Jesberger - Cross

or June 14th the District Attorney's Office would know that Veronica Jones was arrested, or Louise Tatum, I'm sorry, was arrested and charged, right?

A. I would imagine so, sir.

Q. Right. And did you have anything to do with the bail being set on this case?

A. No.

Q. All right. Do you know if bail was set?

A. I do not know, sir.

Q. She was taken into custody, was she not?

A. That is correct.

Q. She was handcuffed?

A. That is correct.

Q. And she was taken down to where?

A. She was taken to Broad and Champlost, at that time it was called Northwest Detectives.

Q. Right. And you don't know how long she remained there?

A. No, I do not.

Q. All right. And you don't know if anyone from the District Attorney's Office had visited her there?

A. I do not know, sir.

Q. I assume anyone from the D.A.'s Office could visit someone in custody in the location that you describe?

Page 28.

Officer Theresa Jesberger - Cross

MS. FISK: Objection, Your Honor.

THE COURT: I will have to sustain it. If you want to find out bring in some competent witnesses. How does she know what the D.A. could do?

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Well, do you know --

MR. WEINGLASS: Well, I will ask her and I will accept her answer.

BY MR. WEINGLASS:

Q. Do you know if the D.A.'s personnel have access to people who are in custody in the location where you put Veronica Jones?

A. I have never seen them up there when I was there, sir.

Q. Do you know if they have access, that is my question?

THE COURT: She said she never saw them, so what are you talking about?

MR. WEINGLASS: My question is can they go in if they want to.

THE COURT: How could she answer that?

MR. WEINGLASS: I am asking her if she knows.

Page 29.

Officer Theresa Jesberger - Cross

THE COURT: She told you she doesn't know, she never saw a D.A. up there.

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Q. When were you contacted to testify here today?

A. Approximately about three weeks ago.

Q. Three weeks ago?

A. Yes.

Q. Right. Before Veronica Jones testified two days ago?

A. I was given a Court notice. I have been on vacation and I haven't been available. And at that time they sent me a Court notice and I came in here yesterday and today.

Q. Okay. And when you were notified three weeks ago, were you told what you would be testifying about?

A. Ahh, no, sir. Just about Veronica Jones at that time, did I know her.

Q. Right. And then you retrieved this document, which is C-4?

A. Yes, we have a copy of it.

Q. Right. So you knew you would be coming here three weeks ago to testify against Veronica Jones?

MS. FISK: Objection, Your Honor.

Page 30.

Officer Theresa Jesberger - Cross

That misstates her testimony.

BY MR. WEINGLASS:

Q. Right. You were told to be available to testify three weeks ago?

A. There was no date at that time.

Q. Right, but it was three weeks ago from today that you were told to be available as a witness?

A. Approximately three weeks ago, sir.

Q. Yes. And did you review your testimony with anyone in the D.A.'s Office before you testified here today?

A. I talked to the D.A.

Q. When did you talk to the D.A. first?

A. Ahh, yesterday.

Q. Right. And that was the first time you talked with the D.A.?

A. Yes; I have been away on vacation.

Q. Is yesterday the first day you were back?

A. I'm still really on vacation.

Q. But have you talked to any representatives of the D.A.'s Office, detectives or otherwise, prior to yesterday?

A. No.

(Discussion was held off the record at this time.)

Page 31.

Officer Theresa Jesberger - Cross

BY MR. WEINGLASS:

Q. I am not sure I understood one point correctly. You have been on vacation for a period of time?

A. That is correct.

Q. And how are you able to get from being on vacation to come to Court yesterday?

A. Ahh, I had an approved vacation for two weeks when I was notified about this Court hearing at that time. I came in yesterday.

Q. Did someone contact you while you were on vacation and ask you to come in?

A. Yes.

Q. Right. And that's easily done, I mean through the process of the District Attorney's Office and the Police Department?

MS. FISK: Objection, Your Honor, as to whether or not it is easily done.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. In other words, what I am asking is when you go on vacation, and you might be a witness in the case, you, I assume, leave with your superiors or someone in the D.A.'s Office or the Police Department how you can be located if you're needed?

Page 32.

Officer Theresa Jesberger - Cross

A. Sometimes yes, sometimes no, it all depends. They know how to get a hold of me.

Q. Right. Were you -- I don't want to get into anything of a private nature -- were you outside the City of Philadelphia on vacation and came back or were you in the City of Philadelphia?

A. I was outside the City of Philadelphia and then I came back.

Q. When you were notified that you would be needed as a witness?

A. I came back just a day before that. I had some work I was going to do in my house.

Q. And so when you were notified you were notified at your house to come here to Court?

A. My headquarters notified me.

Q. At your house?

A. That there was -- yes, that there was a Court notice for yesterday.

Q. I see. And that's what brought you in?

A. That is correct.

Q. They notified you -- again I don't want to get into any private matters -- by telephone?

A. They either notified me by telephone or --

Q. No, this time.

A. This time it was by telephone.

Page 33.

Officer Theresa Jesberger - Cross

Q. By telephone. At your home?

A. That is how they notified me, yes.

Q. And if you hadn't come back to do something at your home, how would they have been able to find you?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Had you left with them when you went on vacation where you

would be in case they would have to notify you?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

(Discussion was held off the record at this time.)

BY MR. WEINGLASS:

Q. I just want to be clear on one thing. It's your testimony that when you saw Veronica Jones she was seated on an upholstered chair and you don't remember if there was a cushion on it?

MS. FISK: Objection, Your Honor: Asked and answered.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Is that fair to say?

MS. FISK: Objection, Your Honor.

Page 34.

THE COURT: Sustained. She answered that question before.

MR. WEINGLASS: On cross-examination you are entitled to repeat.

THE COURT: But she answered it for you before under cross-examination.

MR. WEINGLASS: Right.

THE COURT: How many times are you going to ask her the same question.

BY MR. WEINGLASS:

Q. Incidentally, did your fellow officer observe and witness your alleged removal of these guns?

A. Yes, my partner put Miss Jones' arms behind her because I was struggling to try to take these guns out, out of the waistband. They were like caught on the waistband. He brought her arms back because she was, she was leaning over.

Q. You didn't have your gun drawn?

A. Yes, I did.

Q. You did. So with a gun in one hand you were struggling with the other hand?

A. At that time I had more backup and the complainant had ID'd them at that time. I had put my gun away and went to handcuff Miss Jones.

Q. Now I am a little confused, you will have to

Page 35.

help me out. You walk into the room, you have your gun drawn already?

A. That is correct.

Q. You see Miss Jones sitting there?

A. That is correct.

Q. There are five people in that room?

A. Correct.

Q. You walk over to Miss Jones?

A. No, I do not.

Q. What do you do?

A. At that point I was waiting for more backup to come into the home behind me.

Q. So you hold your gun on these five people?

A. I had my gun out, sir.

Q. Yeah. And how long did you wait?

A. It was a matter of seconds.

Q. That backup got there?

A. Yes.

Q. And then what did you do when backup arrived?

A. At that time the complainant, the complainant had come in and ID'd, it was three out of the four people in the house. I then put my gun away and went to handcuff Miss Jones. And when she stood up, that's when I observed she had guns on her.

Q. You didn't observe that before?

Page 36.

A. She was sitting down in a hunched-over manner.

Q. In other words, when you walked in you saw her seated, you didn't see any guns?

A. She was hunched over saying she had to go to the bathroom.

Q. I see. And when you walked over she stood up?

A. After she was placed under arrest, yes. I had her stand up to be handcuffed.

Q. I see. And did you have your gun out at that time?

A. No, I had put my gun away.

Q. I see. And all the backup was there when you found these guns; right?

A. There were people in behind me, I was right by the front door.

Q. Do you know who else was there?

A. It was my partner and numerous other 39th District officers had arrived.

Q. And you don't know any of their names?

A. No.

Q. How many were there?

A. It was about, about five. Somewhere in that vicinity, five, six.

Q. Hmm-hmm. Did anyone have a camera to photograph this particular arrest?

Page 37.

A. No, not that I know of.

Q. Okay. And to your knowledge, did you request fingerprint examination of the guns?

A. No, I did not. I don't do that.

Q. It's left up to who?

A. Once they are confiscated and placed on a property receipt, they go downtown directly after I'm done my paper work.

Q. And who in the ordinary course would seek fingerprints if fingerprints would be sought, if you know?

A. It would be the detective.

Q. From the District Attorney's Office?

A. No. Detective would be like Northwest Detectives would orders fingerprints.

Q. Oh, okay. By the way, if you remember, these were black jeans?

A. They were like a, a grayish color to black, like a stretch jean.

Q. Okay. And you noted on the report that these guns were used in a holdup of a bar?

A. That is correct.

Q. How did you know that one hour after?

A. We had met with the complainant at the bar at 29 and Chalmers. And in her ceiling was a bullet

Page 38.

from the guns from the robbery.

Q. The gun, at least one bullet was discharged?

A. That is correct.

Q. Right. And did the complainant identify the guns?

A. Yes, she did.

Q. These are the guns, she could identify the guns that were used in the robbery?

A. That is correct.

Q. Did Miss Jones say anything to you at the time of the arrest?

A. At the time I arrested her?

Q. Yeah.

A. That she had to go to the bathroom. She was still young but she had to go to the bathroom and she was pregnant.

Q. Other than that did she say anything?

A. No.

Q. Well, when you found the gun did you say anything?

A. I told her not to move.

Q. That's it?

A. We11, I was struggling to try to get the guns from her waistband, and while I was pulling them I was trying to make sure they didn't discharge.

Page 39.

Officer Theresa Jesberger - Cross

Q. Right. Were you being assisted by anyone?

A. I took the guns from her waistband and my partner put her hands behind her back to handcuff her.

Q. That was happening at the same time?

A. That is correct, because she kept leaning forward.

Q. Were all the people removed from the premises and put under arrest?

A. Three of them were removed from the premises.

Q. And put under arrest?

A. That is correct.

Q. Was there a search then made of that room for weapons or anything else?

A. I did not make it, sir.

Q. Do you know if others did?

A. I do not know.

Q. There were cushions in that room, were there not?

A. Cushions like a removable cushion?

Q. Yeah, like on a sofa?

A. The sofa was cloth, I don't know if they were removable or not.

Q. Well, there was something that appeared to look like to the eye a cushion on the sofa, was there

Page 40.

Officer Theresa Jesberger - Cross

not?

MS. FISK: Objection, Your Honor: The witness just answered that question.

THE COURT: Yes.

BY MR. WEINGLASS:

Q. You don't know if they were removable but there were cushions?

MS. FISK: Objection, Your Honor: It has been asked and answered.

THE COURT: Yes, come on, let's get beyond the cushions.

MR. WEINGLASS: Okay? I have nothing further.

MS. FISK: Oh, but I do, Judge.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Officer Jesberger, you have been questioned in great detail in cross-examination regarding your recollection of this event. In light of that, would you please tell us from the beginning what it was that led up to this seizure and why it is that you recall it so clearly?

A. We responded to a radio call that took us to

Page 41.

Officer Theresa Jesberger

29th and Chalmers, it was a bar called Liz's Den. There was numerous patrons inside the bar. And at that point the barmaid, which was one of the complainants, came out along with her boyfriend and said that the people shot up into her ceiling. A man came into the bar and said that he had followed their car, it was a '73 Chevy, blue and white, over to King and Deacon and that he would take us to that location.

At that time myself and my partner, we were in an unmarked car, we went to that location. We notified the Radio that we were going to that location and numerous other officers came there. As we were investigating the vehicle that was sitting on the corner, I looked up and I observed a black female with a, it was like a red and white Y-band shirt who matched the description that was given to us.

When I called for her to stop she took off running and I took off running after her. At that point she ran right into a house at 2646 Deacon Street, and when she hit open the door the door swung back inside where there were other people that matched the description also. A few seconds later my partner realized that I had ran down the street and they came looking for me.

Page 42.

Officer Theresa Jesberger

Q. Why is it after, from 1982 to today, how is it that you recall this particular case?

A. It was a robbery, point of gun, and there was numerous people to it. But the struggle of pulling the guns from her person when she stood up, she kept saying she was pregnant, Miss Tatum, and bent over like she had to go to the bathroom. And she kept yelling she had to go to the bathroom, she didn't want to stay there at that location. She was sitting to like the far right of me. Where a couch was to the far left of me where the rest of the people were. She wasn't near anyone else. And when she stood up, that's when I observed she had the guns on her.

Q. Now, are you aware whether or not the Police Department or the Office of the District Attorney were ever able to prosecute or -- I'm sorry -- ever able to obtain the presence of any of the witnesses or victims of this event at trial so either Miss Tatum or any of the other persons who were arrested could be tried for the robbery?

A. I'm sorry, could you repeat the beginning of that.

Q. Sure. It was a long question, I will try to make it easier. Do you know whether any of the eyewitnesses to this event or victims to this event,

Page 43.

Officer Theresa Jesberger - Recross

that is the robbery in the bar, were able to be brought into Court for trial against any of the persons that you arrested inside that house?

A. No, they were not.

MS. FISK: Thank you, ma'am.

MR. WEINGLASS: Just one follow-up on that.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. This was, as you described, a robbery, point of a gun, and the gun was discharged; is that correct?

A. It was a robbery, point of two guns.

Q. And the gun was discharged?

A. Discharged into the ceiling.

Q. Do you have any knowledge of why someone who was found guilty would be given probation on that kind of a charge?

A. No, sir, I do not.

MR. WEINGLASS: Thank you. I have nothing further.

MS. FISK: Your Honor, I have nothing further of this Officer.

Page 44.

THE COURT: Thank you very much. You are excused.

(Witness excused.)

THE WITNESS: Thank you, Your Honor.

MS. FISK: Your Honor, at this time, pursuant to Title 42, which permits sealed documents to be accepted by a Court as self-authenticating, I offer to the Court the following Commonwealth Exhibit 5, which is a self-authenticating document from the State of New Jersey indicating that Veronica Jones was indicted with the charge that she did unlawfully and purposely obtain by deception from the Camden County Board of Services, welfare, Medicaid or food stamps having a value in excess of $500, along with the judgment of conviction from the State of New Jersey in the case of State of New Jersey versus Veronica Jones, showing that Miss Jones was indicted for the charge of theft by deception on October 14th, 1988, and being found guilty of those charges was placed on probation, ordered to perform community service, to pay restitution in the amount of $2,424, and ordered to pay a $30 VCP -- which I presume is some sort of

Page 45.

penalty -- along with the statement of reasons for sentencing, signed by David G. Eynon. E-Y-N-O-N. As well as a copy of the State of New Jersey versus Veronica Jones Criminal Division plea agreement with regard to that same offense.

And as self-authenticating documents I offer them to the Court and an opportunity to Counsel to review them as Exhibit 5 (handing).

(Pause.)

MR. WILLIAMS: Your Honor, I am not going to quibble over whether it is self-authenticating or not, but the fact that the document is an authentic document doesn't make it admissible. On what basis does the Commonwealth seek to admit these documents?

MS. FISK: Your Honor, evidence of conviction for theft by deception is an admissible crimen falsi which again the Court can use in determining the credibility of the witness who has testified.

MR. WILLIAMS: The proposition is correct, and Miss Jones testified when she was on the stand that she did indeed receive a conviction for this precise offense. So this is

Page 46.

cumulative.

MS. FISK: Furthermore, Your Honor, the existence of these records, which apparently were never sought or discovered by defense in their efforts to locate Miss Jones, can be utilized by the Commonwealth as argument that a logical, diligent effort to locate an individual whom they knew or should have known had relations in Camden, New Jersey would further permit the use of the existence of these records beyond the facts that they state to be relied upon.

MR. BURNS: And the cumulative argument goes to weight, not admissibility.

MR. WILLIAMS: Your Honor, on the issue of diligence, we've been informed that this document has come to Court in a sealed envelope, number one.

MS. FISK: No, no, no, that they bear the seal: You can feel it, it's raised. That is the reference to the seal, Your Honor. I never said envelope. It is a sealed document, that is if you feel it --

MR. BURNS: Under seal.

MS. FISK: Document under seal, thank

Page 47.

you.

MR. WILLIAMS: Fine. But the fact that this document is here in Court doesn't tell us whether this document is accessible by private citizens.

THE COURT: Well, go over to New Jersey and ask them.

MR. WILLIAMS: Well, if they want to introduce it --

THE COURT: No.

MR. WILLIAMS: -- to establish that we could have had access to it they bear the burden of proving that. They just can't simply ask that this document be admitted into evidence --

THE COURT: Go over to New Jersey.

MR. WILLIAMS: -- and then assume that the defense could have gotten it. We need a witness to testify to that.

THE COURT: You could have gotten it by an order of some judge over there.

MR. BURNS: Your Honor, Mr. Williams is incorrect. This is being offered as a crimen falsi conviction that goes to the credibility of the witness.

MR. WILLIAMS: Miss Jones has already

Page 48.

testified that she was convicted. This document doesn't add anything.

THE COURT: Well, if it doesn't add anything what are you arguing about? I will admit it into evidence. Let's go.

MS. FISK: Thank you.

MR. WILLIAMS: All right, for the limited purpose that Mr. Burns had so eloquently stated.

(New Jersey criminal records for Veronica Jones were marked Commonwealth Exhibit C-5 for identification.)

THE COURT OFFICER: So marked C-5, Your Honor.

MS. FISK: Your Honor, I next seek to introduce a document by stipulation. I believe the defense is still in possession of it, unless it has been returned to the Court Crier. And those are prison records which were subpoenaed by the defense, as I understand it.

MS. WOLKENSTEIN: They were already moved yesterday into evidence.

MS. FISK: The prison records were never moved into evidence.

MS. WOLKENSTEIN: The prison

Page 49.

records -- I'm sorry. What was subpoenaed, Your Honor, what was subpoenaed yesterday, what was subpoenaed for this proceeding were the logs, the official log, visitors logs of official visitors, police and prosecution visitors at the House of Detention during the period of time when Veronica Jones was held there. That was what the subpoena was for. What came in that pile were things having to do with Mr. Jamal, his visitation, all that. That was not what the subpoena was for. Nothing that was requested in that subpoena came with that.

I have the subpoena here. It says quite specifically in this subpoena that what was subpoenaed was all logs and visitor records for the period June 1 through July 3, 1982, which would show visits or interviews by police officers or prosecution agents with inmates of the Detention Center. That is not the content of that, of that envelope. And therefore I am not moving that into evidence.

MS. FISK: No, may I please see the documents that came in response to the subpoena? I understood that they were delivered to the defense.

Page 50.

MS. WOLKENSTEIN: (Handing.)

MS. FISK: Thank you.

MS. WOLKENSTEIN: Those are visiting records of Mr. Jamal. That is not what is requested per the subpoena.

MS. FISK: Fine.

THE COURT: Let her look through it, will you. Don't get excited. Save your blood pressure.

MS. FISK: And I apologize to the Court and to Counsel. I misunderstood. It was my understanding that the records regarding Miss Jones were subpoenaed. I have provided to Counsel the photocopy of those records, and I would move that photocopy into evidence.

MS. WOLKENSTEIN: I have never seen them. Could you --

MS. FISK: Certainly (handing). As I advised Counsel, Your Honor, upon subpoenaing the prison for all visitors records regarding Miss Jones, I was advised that prison records from 1982 are no longer available. That the records which were provided in response to subpoena were from her incarceration in 1988 only.

Page 51.

MS. WOLKENSTEIN: Okay, well, I am a little confused.

MS. FISK: Yes.

MS. WOLKENSTEIN: I issued a subpoena that I was told by Miss Fisk when I inquired from the Court and various other places what happened to them that, first from Miss Fisk, that she had had them and told the officer who delivered some documents to turn them over to the defense.

MS. FISK: Yes.

MS. WOLKENSTEIN: Then I learned that an envelope which purportedly contained that was given to other defense Counsel and I secured that envelope.

MS. FISK: Yes, that's right.

MS. WOLKENSTEIN: That is the envelope that I have now just showed to Miss Fisk.

MS. FISK: Yes.

MS. WOLKENSTEIN: It does not contain these documents.

MS. FISK: That is correct, the documents that I have were photocopied by me about a month and a half ago in response to my subpoena about a month and a half ago to the

Page 52.

prison for Miss Jones' prison records and were then returned to the prison. It was my misunderstanding -- and I apologize to Counsel -- I assumed that the records which were brought into Court two days ago were again the original records that I had photocopied in response to my subpoena a month and a half ago, and it is my mistake and I apologize to Counsel for my misunderstanding. I do not know why Counsel did not receive --

THE COURT: Just a minute. These are records from what day to what day?

MS. WOLKENSTEIN: From the House of Detention, I assume.

THE COURT: Wait a while, please. I could only listen to one.

MS. FISK: I issued a subpoena --

THE COURT: Yes.

MS. FISK: -- to the prison for all prison records and logs regarding Veronica Jones with Veronica Jones' photo number.

THE COURT: All right.

MS. FISK: Regarding her 1982 incarceration.

THE COURT: Okay.

Page 53.

MS. FISK: I was advised in response there are no records from 1982 available and the records that were provided were, all that they have were the 1988 records.

THE COURT: Oh. So these are 1988?

MS. FISK: Yes, Your Honor.

THE COURT: Well, what would they show me?

MS. FISK: Again, Your Honor, these are with regard to the efforts Counsel made or could have made ,with regard to --

THE COURT: Oh.

MS. FISK: -- with regard to locating Miss Jones. These are records that show that when Miss Jones was incarcerated on her bench warrant in 1988, the address which she gave is in Camden, New Jersey. There is an address of her mother contained in those records.

THE COURT: Okay.

MS. FISK: And it is for that reason that I seek to mark those documents and move them into evidence.

THE COURT: Okay.

MS. FISK: And that will be Commonwealth Exhibit 6.

Page 54.

(Pause.)

(Discussion was held off the record at this time.)

MS. WOLKENSTEIN: What I find very interesting here is I subpoenaed records from the House of Detention for Veronica Jones and what I got in response are records about Mr. Jamal. The District Attorney gets records, gets records about Veronica Jones without any problem. I don't get them.

Now I want to make further, I was told, my investigator was told when he served the subpoena at the House of Detention, and it was, that subpoena was signed by Sergeant James, who informed Mr. Milton that he was in charge of the records at the Curran Fromhold Facility, the clerk of the records room there which oversaw any records there would be concerning logbooks of visitors there, that it would be possible for me to take a look at those records prior to the subpoena being honored and being brought down to Court. When I went on Friday preceding this hearing date to take a look at those records pursuant to that cooperative attitude from Sergeant James, I was informed by another

Page 55.

sergeant there, I think a Mr. Donohue -- but I have to check my records, something like that -- that in fact Sergeant James was the new officer in charge of the records room and he didn't really know the rules. The rules were really contrary to what Sergeant James said, who is the clerk of the records room, that in fact it was not permissible for me to see these records, despite the fact that a copy was going to be brought to Court, a copy was going to be turned over to defense. I mean I was not going to be able to see it.

Then upon receiving this envelope there is nothing in it that is responsive to my subpoena. Yet apparently when the District Attorney requests documents they are in there.

THE COURT: Where are the subpoenas?

MS. WOLKENSTEIN: I will be glad to read it again. All logs and visitor records for the period June 1 through July 3, 1982 which would show visits or interviews by police officers or prosecution agents with inmates of the Detention Center. We were looking precisely --

THE COURT: Yes, but I don't see any

Page 56.

name on that so far. I see you reading, you want something. What does it say?

MS. WOLKENSTEIN: We want the entire logbook.

THE COURT: Did you give them the name?

MS. WOLKENSTEIN: What name?

THE COURT: The witness Jones.

MS. WOLKENSTEIN: We wanted the entire logs. The logs for all visitors, official Visitors to the Detention Center. That's what we wanted. We wanted to be able to examine that to be able to determine --

THE COURT: You should have subpoenaed them to come down today with those logs, if they have them.

MS. WOLKENSTEIN: We did subpoena them to come down today. The subpoena was for October 1st and for the duration of the hearing.

THE COURT: Yes.

MS. WOLKENSTEIN: And what I got was an envelope which contained nothing of the kind. No logs.

MS. FISK: Apparently, Your Honor, Counsel did not limit her subpoena to a

Page 57.

particular inmate but instead asked for all visitors records. And since it was under the caption presumably of Commonwealth versus Jamal, those were the visitors logs that were provided.

I would simply note, and Counsel is welcome to look at the subpoena which I issued, which was dated June 14th, which asked for any and all records, including visitors logs relating to the incarceration of Veronica Jones, also known as Rhonda Harris, Police photo number 560335, from July 1981 to present, which produced the records which I photocopied and which Counsel now has. Either that subpoena was clearer to the prison or I guess we can add the prison to the list of every police officer and every prosecutor in the City of Philadelphia who has apparently, according to the defense theory, joined this conspiracy to sit around and think of ways everyday to further try to frame a man who is innocent. I mean it is one or the other, Judge.

MS. WOLKENSTEIN: My point is when the clerk of the record room from Curran Fromhold Facility learned that this was about Mumia Abu-Jamal we did not get the agreement and

Page 58.

cooperation that was originally promised. We want the logbooks there, just like the logbooks from the Roundhouse were brought in, to be able to look through the entirety of the logs so we could make a determination over what officers and what detectives and what --

THE COURT: You should have told them to bring them here.

MS. WOLKENSTEIN: We want to know what representatives went to visit what inmate under what name.

MS. FISK: Apparently, Your Honor, according to the defense, the prosecutors, the police, the prison officials, and anybody else who is testifying on behalf of the Commonwealth in this case, spends their hours sitting around and trying to think up ways to frame somebody who they don't want to be found guilty who has been found guilty of a crime. In fact, a subpoena was issued, the records were returned. Counsel now has the opportunity to see them. If in fact her subpoena was overly broad and therefore not complied with, she now has those documents, they are in her hands.

I apologize to Counsel for believing

Page 59.

that in fact the documents which I subpoenaed were in fact the documents she subpoenaed. There they are and I move them into evidence.

(Discussion was held off the record at this time.)

MS. WOLKENSTEIN: Yes, the documents subpoenaed by the District Attorney are not the documents I subpoenaed. I wanted the visitor record logs of the institution.

MS. FISK: The visitors logs for Miss Jones are contained in the documents which Counsel has. However, the visitors logs are only for visits for her 1988 incarceration, in which there were none. The records from 1982 no longer exist.

MS. WOLKENSTEIN: But I believe, Your Honor, that the logbooks, I believe that the institution must maintain logs of who came to visit that institution. That is a different type of record keeping. That's what the subpoena was for.

THE COURT: They are supposed to keep them for a hundred years?

MS. WOLKENSTEIN: I don't know, the point is that --

Page 60.

THE COURT: You don't know, that is your problem.

MS. WOLKENSTEIN: The point is, the point is that there is no, no response to this subpoena, which -- this is no reflection --

THE COURT: Because you don't know how to make out a subpoena, that is your problem.

MS. WOLKENSTEIN: Your Honor, I asked for logbooks and log records of the institution for a period of time. That is immensely clear.

MS. FISK: Your Honor, the prison, as I understand it, then, as it does now, maintains Visitors logs as individuals come in based on the person they are coming to visit under each inmate's file. When a --

THE COURT: Separate logbook.

MS. FISK: There is a card on which that visitor signs their name. Thus, if an individual seeks to know the name of the person who has visited an inmate you ask for the visitors' logs of that inmate.

MS. WOLKENSTEIN: There is also a book, just as when I go into any institution I sign a book, police officers sign a log book. It is a logbook that refers to each day, all the

Page 61.

visitors to an institution, and it contains -- there is a separate logbook for official visitors which is police officers, D.A.'s, Assistant D.A.'s, and sometimes they put attorneys on that list as well, depending upon the institution. It is a daily log. It is a log of visitors into that institution on a daily basis. And part of that log, yes, includes a space to indicate who you are going to visit. We wanted to examine that log ourselves. The subpoena was not responded to. I would ask the Court to assist us in contacting the institution. I have tried getting through. I can not get through on the phone lines there. I have not been able to go there during working hours since this subpoena was supposedly responded to and to get assistance from them and to get those logs down here.

MS. FISK: Your Honor, I would amend my request to also ask that either included as Commonwealth Exhibit 5 or as Commonwealth Exhibit 6 a copy of the subpoena which I served which caused these records to be delivered. A subpoena requesting all visitors logs from 1981 to present. And records which were returned to

Page 62.

me included only records from 1988. I would ask that both of those documents be accepted as either --

Are you going to include that as Commonwealth Exhibit 5?

THE COURT OFFICER: Whatever is your pleasure, Counsel.

MS. FISK: Fine. The subpoena along with the documents be marked as Commonwealth Exhibit 5 and moved into evidence.

THE COURT: Okay.

MS. FISK: The Commonwealth rests, Your Honor.

MS. WOLKENSTEIN: Your Honor, I would ask for a response to my request for assistance on this subpoena. I think we could, with assistance from yourself, from your Court Clerk, I believe --

THE COURT: Wait a while. Wait a while, Counselor. Don't ask for my assistance. I am not involved in this case. You should go about it the right way. If you don't do it that is your problem.

MS. WOLKENSTEIN: The subpoena was served properly.

Page 63.

THE COURT: No, it doesn't say what you want.

MS. WOLKENSTEIN: It says exactly what I want. The Court doesn't want me to get what we want.

THE COURT: The Court doesn't care what you get.

MS. WOLKENSTEIN: Well, there is no response to this subpoena, not a statement those records are not available.

THE COURT: Let me see your subpoena.

MS. WOLKENSTEIN: It is for official visitor logs for the institution. That's what we want to look at.

I would ask also, Your Honor, that be marked as Defense Exhibit 5. This is the subpoena to the Curran Fromhold Center and the clerk of the records room.

THE COURT OFFICER: (Handing).

MS. FISK: Would you give this to the Judge, please (handing).

(Subpoena was marked Defense Exhibit D-5 for identification.)

THE COURT OFFICER: So marked D-5, Your Honor.

Page 64.

This Court will take a ten-minute recess to the call of the Crier.

(Brief recess.)

THE COURT: What name was she under at that time?

MS. FISK: Your Honor, the caption of the case for which she was arrested was Commonwealth versus Louise Tatum. And she was there under --

THE COURT: Wait a while. You better give them both.

MS. FISK: The subpoena which I issued, Your Honor, it does it I thought by the photo number, Police photo number. And that --

THE COURT: All right.

MS. FISK: And that Police photo number was on the document I just moved in, my subpoena.

THE COURT: All right, what is the number?

THE COURT OFFICER: The Police photo number, Your Honor, would be 560335.

MS. WOLKENSTEIN: But, Your Honor, I want their official logs.

THE COURT: Shut up, will you please.

Page 65.

I am trying to get --

MS. WOLKENSTEIN: Don't be telling me to shut up.

THE COURT: Look, throw her out of here. I don't want to be disturbed. The man's on the phone. I am trying to help you. Now keep your mouth shut.

560 what?

THE COURT OFFICER: 335, Your Honor.

THE COURT: Okay. I have to do your work for you.

(Brief recess.)

THE COURT OFFICER: Court is reconvened, please cease all conversations.

THE COURT: Oh, I was just looking at your subpoena. No wonder they didn't know what you were talking about. You asked for records and you say they should be brought to Courtroom 707, that's crossed out. You say 200, for the City aforesaid, on Wednesday morning, October 1st. I thought that was Tuesday morning, October 1st. Homicide Post-Conviction Relief Petition, and to produce documents, it looks like listed in the attached codicil...

All logs and visitor records for the

Page 66.

period June the 1st - July the 3rd, 1982, which would show visits or interviews by police officers or prosecution agents with inmates of the Detention Center. Detention Center, that would be the wrong thing.

MS. WOLKENSTEIN: I don't know what facility she was being held.

THE COURT: She was over with the women, that's called the House of Corrections, really. And what you want is the logs. They don't keep the logs more than five years: They are destroyed. So they don't have the logs to give you.

And it's confusing. That's why they sent you things on Mumia Abu-Jamal: That's the only name they see on there.

If you don't know how to fill out the subpoena you are supposed to have local Counsel assist you. Why didn't you go to local Counsel and say hey, how do I fill out the subpoena to get the records. But they don't have that log.

MS. WOLKENSTEIN: First of all, I want to thank the Court for making the phone call. I appreciate it. So the record is complete.

THE COURT: Let me say: The man I

Page 67.

spoke to was a Robert Dorset, he is the director of records. He is at 685-8487. Anybody that wants to call him, it's all right with me. But that's what he told me. They don't keep those books more than five years and they are destroyed.

MS. WOLKENSTEIN: Okay. Just briefly as to the subpoena so the Court understands: It was done initially for the September 18th Court date. And unfortunately Wednesday was not changed to Tuesday when the subpoena was changed to October 1st. The Courtrooms are because this Courtroom or the Courtroom we were in was not assigned until the very last moment. And the 707 was the Courtroom that we were initially assigned to for September 18th, and Room 200 was what I was told to put in when I made inquiries because we had no correct Courtroom.

THE COURT: Where did you make inquiries?

MS. WOLKENSTEIN: I made inquiries to the Clerks of the Court and the PCRA unit who was setting the Courtroom. And they suggested since I had a problem with where to have the subpoena returnable since we had no Courtroom

Page 68.

listed to make it Room 200.

THE COURT: All right.

MS. WOLKENSTEIN: Where anyone could make an inquiry. And in fact records did get to this room without any problem. The problem was they were the inaccurate records.

MS. FISK: Nevertheless --

THE COURT: They are inaccurate because you didn't tell them what you wanted.

MS. WOLKENSTEIN: Okay.

MS. FISK: Nevertheless, Your Honor --

THE COURT: Nowhere in that codicil do you mention what is her name.

MS. WOLKENSTEIN: I did not want the records of Veronica Jones; I wanted the records of the institution, the official logbooks.

THE COURT: Well, they keep separate cards for each.

MS. WOLKENSTEIN: As I explained before --

THE COURT: I know what you wanted but they don't keep them beyond five years.

MS. WOLKENSTEIN: Fine, if that is the response that is the response.

MS. FISK: Having resolved that

Page 69.

matter, Your Honor, the Commonwealth has rested.

MS. WOLKENSTEIN: Okay, Your Honor.

THE COURT: Do you want to mark this thing for the record, your subpoena?

MS. WOLKENSTEIN: Yes.

THE COURT: It's all right by me.

MS. WOLKENSTEIN: That's fine.

MS. FISK: D-5.

MS. WOLKENSTEIN: D-5.

Also, to complete the record, I would like to have marked as Exhibits D-6 and D-7 the subpoenas to the custodian of records office of the District Attorney and the commanding office. D-7 would be the commanding officer or his designee of the Homicide Division. These were two subpoenas that Your Honor quashed.

(Subpoenas were marked Defense Exhibits D-6 and D-7 for identification.)

MS. WOLKENSTEIN: And as D-8 the subpoena that was served on the custodian of records, Office of the District Attorney.

MS. FISK: Your Honor, I would note that if a subpoena is quashed by this Court it would been improper to make it a part of the record: It has been quashed.

Page 70.

MS. WOLKENSTEIN: Then the appellate court would have a chance to be able to review the substance of the subpoena, it would be there to complete the file.

(Discussion was held off the record at this time.)

MS. FISK: I'm sorry, I would note that one of the three documents I have, Your Honor, is a subpoena referring to an attached codicil and there is nothing attached.

MS. WOLKENSTEIN: Okay, I'm sorry. Which one is that? I'm sorry.

MS. FISK: I have --

MS. WOLKENSTEIN: Which one doesn't have the attached codicil?

MS. FISK: This one says the Office of the District Attorney, D-8, although D-6 is also a subpoena to the Office of the District Attorney with an attached codicil.

MS. WOLKENSTEIN: I'm sorry, I just pulled the wrong thing out. So the one with the codicil to it for the District Attorney, that is one of them. That is fine.

Okay, here it is with a codicil on it. The other one, that has the codicil.

Page 71.

MS. FISK: Yes.

MS. WOLKENSTEIN: Okay, that's fine.

MS. FISK: And I would note, Miss Wolkenstein, that Defense Exhibit 6 and Defense Exhibit 8 appear to be identical. I would ask you to review both of those, perhaps you only want to mark one.

MS. WOLKENSTEIN: All right, so you had the one with the codicil on it. That's fine. That's D-6.

THE COURT: D-6. So we don't have a D-8?

MS. WOLKENSTEIN: No, D-6 is the District Attorney.

MS. FISK: D-7 is to the Police Department.

MS. WOLKENSTEIN: Okay, fine. And then D-8, then, will be the Homicide Division.

MS. FISK: I thought that was D-7.

MS. WOLKENSTEIN: Well, they have just been changed. One is the Homicide, okay, and then the other is... okay, D-8, then, will be, okay, D-8 is commanding officers or his designees, reports, control and review, Philadelphia Police Department (handing).

Page 72.

(Subpoena was marked Defense Exhibit D-8 for identification.)

MS. FISK: Are you getting enough exercise?

May I see the other two as well?

THE COURT OFFICER: (Handing.)

MS. FISK: Thank you.

THE COURT OFFICER: So marked accordingly, Your Honor.

MS. WOLKENSTEIN: Okay, sorry about that. Then as D-9 --

THE COURT: Wait a while. Wait a while.

Are you answering these things?

MS. FISK: They are simply being marked as part of the record, Your Honor.

THE COURT: But she is saying you are not honoring them.

MS. FISK: Your Honor has quashed them. Counsel has indicated she is making it a part of the record so an appellate court could review them.

THE COURT: Let me see them. You say I quashed them. Let me see what I am quashing.

MS. FISK: Very well, Your Honor.

Page 73.

These were subpoenas seeking the District Attorney's Office file in the case of Commonwealth versus Mumia Abu-Jamal, as well as the Police Department's file in that same prosecution.

THE COURT: They want all records, files, memoranda, reports, notes, rough notes, whether typed, handwritten or taped. Boy. That's a real broad subpoena. No wonder.

MS. WOLKENSTEIN: Your Honor, I indicated I would be happy to modify that so that it dealt with only the records concerning Veronica Jones.

THE COURT: Well, that was the way it was.

MS. WOLKENSTEIN: No, we had a discussion about that. Alternatively, if Your Honor, if the Court would honor that, given the evidence that we have produced from Veronica Jones, and the fact, and the fact that --

THE COURT: You have to be specific. I don't know what you want. And neither do these people.

MS. WOLKENSTEIN: No, we wanted the entire --

Page 74.

THE COURT: The whole file.

MS. WOLKENSTEIN: The whole file, yes.

MS. FISK: Our objection was based in part upon Your Honor's prior ruling that there were no discovery provisions for Post-Conviction Relief Act proceedings. Nevertheless, I note that Counsel is marking those, those are being moved into the record. I again note the Commonwealth has rested and asks whether this proceeding has ended.

THE COURT: Now they are talking about Detective William Thomas in D-7.

MS. WOLKENSTEIN: Right, Detective William Thomas is, as our understanding was, the officer, the detective in charge of this investigation from the Homicide Division. At least that's what the record reflects.

THE COURT: Is that the gentleman who testified here?

MS. WOLKENSTEIN: Yes.

THE COURT: He told you that he had superiors over him.

MS. WOLKENSTEIN: Yes, he did. But all the trial record indicated was he was the person who was responsible for the investigation

Page 75.

and he oversaw it.

THE COURT: I know but you had him here and he testified.

MS. WOLKENSTEIN: You wouldn't let us ask the questions.

THE COURT: What questions?

MS. WOLKENSTEIN: Other questions beyond.

THE COURT: What other questions?

MS. WOLKENSTEIN: The one question that the District Attorney asked him.

THE COURT: But you got a chance to ask a lot of questions.

MS. FISK: I would note that Detective Thomas was subject to cross-examination for some extensive period yesterday. I would also note that Your Honor has previously ruled with regard to these subpoenas. Counsel is at this time simply marking them to be moved into the record. And I would ask whether Counsel can move from that and we can determine where we are now going with this proceeding.

MS. WOLKENSTEIN: I have a couple other --

THE COURT: Well, she wanted to, under

Page 76.

D-8, she wanted the logs on William Cook, Kenneth Freeman. Well, you know, William Cook wouldn't come in here to testify.

MS. WOLKENSTEIN: Your Honor, he was scared away from testifying.

THE COURT: He was scared away?

MS. WOLKENSTEIN: He was told that what happened to Veronica Jones would happen to him. That was made very clear by the District Attorney's Office and this man is scared to death.

THE COURT: Counselor, let me tell you, if this was my brother I don't care if they had a hundred subpoenas for me, I'd have been in here. Don't give me that story.

MS. WOLKENSTEIN: The point is we requested that this Court allow him to come in without having a threat of arrest. The Court did not grant that, he was scared away.

THE COURT: I did? They have a warrant for him?

MS. WOLKENSTEIN: And the treatment of Veronica Jones just confirms these fears were well-founded.

THE COURT: A judge would decide what

Page 77.

do with him.

MS. WOLKENSTEIN: Veronica Jones did not get out of incarceration yesterday morning.

THE COURT: I thought she was here today.

MS. WOLKENSTEIN: She spent, she spent the night in jail. She did not get out until six o'clock in the morning, and she only got out at six o'clock in the morning because people were outraged by this Court and the District Attorney's Office and raised bail money for her.

THE COURT: What did the judge say, did he put her out on bail?

MS. WOLKENSTEIN: She got out on bail.

THE COURT: Well.

MS. WOLKENSTEIN: The fact that there was bail money for her and people there in Court was a response to the outrage that people had against what the prosecution --

MS. FISK: Your Honor, I certainly hope that the next time I prosecute a homicide case in the neighborhood of every one of those people they will be as outraged and willing to come in and testify with regard to what they know so that they can assist in keeping the

Page 78.

streets safe for all of us.

I would ask once again if we could please move on from these subpoenas and get to the next matter.

THE COURT: Okay.

MS. WOLKENSTEIN: This morning, Your Honor, we subpoenaed, and the record is here in Court, this is file MC 96 dash 09 dash 0936 dash 19. This is the file concerning Veronica Jones on the fugitive from justice warrant, what is the underlying basis for her arrest from testifying here on the 1st. I would ask that this record which is an official record be marked for evidence, and I would move it later, mark it as an exhibit and moved into evidence later (handing).

That would be D-9.

(Pause.)

MS. FISK: (Handing).

(Quarter Sessions file was marked
Defense Exhibit D-9 for identification.)

THE COURT OFFICER: So marked D-9, Your Honor.

MS. WOLKENSTEIN: Okay, Your Honor, just a couple more matters. Your Honor

Page 79.

indicated in Court yesterday that Joseph Brignola did not honor our subpoena. We sent an investigator back there this morning to his home, he was not there in the early morning hours before eight o'clock. I note from reports in the newspaper this morning that someone from the press contacted Mr. Brignola at his office yesterday.

THE COURT: You ought to have the press serve your subpoenas.

MS. WOLKENSTEIN: I should.

THE COURT: They could do a better job than you and your so-called investigator.

MS. WOLKENSTEIN: If they would have done that I would have been eternally grateful.

THE COURT: They could have had Jones in here for you if you asked them to publicize it in the paper.

MS. WOLKENSTEIN: The substantive point about that is Mr. Brignola was in his office, contrary to the information given to our investigator when we went to serve him a subpoena to make sure he came in because he had not responded in his previously cooperative attitude. I am very distressed about the fact

Page 80.

that a police officer, former police officer would have so blatantly lied in terms of cooperation.

THE COURT: Let me tell you this, Counsel: I will never issue a warrant for anybody who is not properly served. Sending it to him in the mail, that is not proper service. And I would never issue a warrant for that man's arrest.

MS. WOLKENSTEIN: I wanted to indicate to the Court --

THE COURT: I know you wanted to indicate.

MS. WOLKENSTEIN: -- that we had tried again.

THE COURT: Well.

MS. WOLKENSTEIN: That there was information that he was in fact at home, or working, contrary to the report that we got, I presume now from him, that he was ill with a back problem and he was at his sister's. And I also wanted to indicate to the Court that I had spoken to him several times and he had assured me, as someone who had been formerly employed and paid good money by the defense here, that he

Page 81.

would come into Court and testify as to his investigative efforts on behalf of Mr. Jamal.

I would renew my request, Your Honor, that we introduce, I have marked as an exhibit the correspondence, two letters from Mr. Brignola to Mr. Weinglass, again they were dated, dated August, August and December of 1993. Could I have those, would the Court agree to have those marked?

MS. FISK: No, Your Honor, I would object: That is hearsay.

MS. WOLKENSTEIN: Okay. One other matter, Your Honor. Well, would the District Attorney agree to bring Mr. Brignola in? I am sure you would have more persuasive powers.

MS. FISK: Trust me, I would not.

MS. WOLKENSTEIN: I know since the District Attorney's Office has been very concerned with the question of whether or not the defense is engaged in due diligence here, Mr. Brignola is a very key witness and I think that it would provide edification for all of us.

THE COURT: You should have properly served him in the first place, then I would be able to issue a warrant.

Page 82.

MS. WOLKENSTEIN: I think a simple phone call from the District Attorney.

MS. FISK: I can assure Counsel that a request from me to Mr. Brignola to come into this Court would send him in the opposite direction as soon as he received it.

MS. WOLKENSTEIN: That is a no then, I guess.

MS. FISK: I cannot, cannot and have no ability to control Mr. Brignola. Nor do I have a relationship with him that would enable me upon request to produce him. I can assure you of that.

MS. WOLKENSTEIN: Okay. Our next matter, we are renewing our request to have the affidavit of George Michael Newman marked as an exhibit here. George Michael Newman, as was indicated in Court testimony yesterday, was, is the head of Tactical Investigations.

MS. FISK: And I would make the same objection I made two days ago. And I would object to it being reread into the record, redescribed into the record, or any further details with regard to it. Mr. Bell testified and great portions of his affidavit have already

Page 83.

been read. Mr. Newman was not available Tuesday, apparently was not available yesterday, is still not available. And I would object to any further reference with regard to him beyond that which has been testified to.

THE COURT: You know, it would have been much smarter for defense Counsel to hire somebody that's local who knows how to use a computer, who would be here with your investigators and be able to work together. You go all the way out to California, you are sending information to him, he is sending information here. You can't run it like that.

MS. WOLKENSTEIN: Well, Your Honor, we would be happy -- let me just indicate --

THE COURT: It is too late now.

MS. WOLKENSTEIN: Let me just indicate to the Court that the defense team has hired or attempted to hire numerous investigators from the City of Philadelphia and who -- provide me with the opportunity of making a record -- that this case is so high profile that the --

THE COURT: Counsel.

MS. WOLKENSTEIN: -- that the atmosphere against Mr. Jamal is so charged, as

Page 84.

was seen by what happened in Court --

THE COURT: That is a statement you make. They are charged outside. Let them go. Let them go.

MS. WOLKENSTEIN: The investigators in Philadelphia tell us that they could not work on this case because if they did they would never get any other employment in this city. And that was the reason why --

THE COURT: Well, go over to New Jersey.

MS. WOLKENSTEIN: -- why you have to go as far as San Diego to get assistance to work on this case.

THE COURT: You don't have to go all the way to California. Don't give me that baloney. You could have gone right over to New Jersey.

MS. WOLKENSTEIN: Right. We started with Mr. Kareem Shabazz. There was Lamont Anderson.

MS. FISK: Mr. Shabazz, incidentally, stopped working on this case because members of MOVE were dictating to him the conditions under which he had to work.

Page 85.

MS. WOLKENSTEIN: Is this being said --

MS. FISK: That was the conversation that Mr. Shabazz had with us this morning.

THE COURT: I don't want all this malarkey. You have enough malarkey in here, I don't know how the Supreme Court is going to handle all this stuff.

MS. WOLKENSTEIN: Yes, I talked to Mr. Shabazz myself in the month before this hearing began, in which he agreed to do work, and then you know what, he simply disappeared. And I assume it came from pressure from the police and prosecution community.

THE COURT: Oh, you assume that?

MS. FISK: Yes, Your Honor, because every single person who walks the streets and sidewalks of the City of Philadelphia are sitting down with the prosecutors and the police and the prison officials each and everyday so they can plan evil things to do to Mr. Jamal. It is all part of the conspiracy.

MS. WOLKENSTEIN: What happened to Mr. Shabazz verifies what we are saying.

THE COURT: Yes. I know.

Page 86.

MS. WOLKENSTEIN: Another thing, I was attempting to make sure the record here on this particular hearing and case is complete. We have subpoenaed and have marked as evidence various files of Miss Jones' past record, her criminal record, I don't know, some ten or, ten or so files. I was attempting to make copies of them in order for them to be able to put, the copies to be put with the record here directly with this so that the record would be complete.

Mr. Conaway, who is one of the supervisors across the hall from the Court, in the Quarter Sessions, has said that he did not want, I have just been notified, did not want the entire subpoenaed files copied. I presume and the information is that if the Court agrees that they could be copied and made part of the record then he would see to that. I think that would make it much more complete so that if anyone wanted to review this matter they wouldn't have to then re-subpoena --

THE COURT: Okay.

MS. FISK: I have no objection, Your Honor.

THE COURT: She has no objection, all

Page 87.

right.

MS. FISK: So long as I am advised that the Clerk from the Court of Common Pleas Quarter Sessions will be photocopying the entirety of those files which were placed into the record, I have no objection as to whether they are copies or the original.

MS. WOLKENSTEIN: Okay, one of our staff people was doing them. I would be happy for somebody else to check them.

MS. FISK: I have been advised by the Clerk in the Courtroom that those files are in fact being photocopied and photocopies of the files will be in the record rather than the originals. And the Clerk of Quarter Sessions is in the Courtroom now certifying they will be full and complete copies. I have no objection to that.

MS. WOLKENSTEIN: Mr. Conaway wanted to remove some things from the file. The point is we wanted everything in the file, we wanted everything in the file.

THE COURT: They have the file, the Clerk has the files, they will do the whole thing.

Page 88.

MS. WOLKENSTEIN: Thank you very much. I'm sorry. Okay, great, thank you very much.

The last matter, Your Honor, is I wanted to place on the record the fact that defense has been speaking with other potential witnesses in this case. And I wanted to inform you of that. We are as expeditiously as possible investigating all leads in this case and will bring them to the attention of this Court and the Supreme Court as we find them.

THE COURT: Well, take it up with the Supreme Court. Because they gave me a definite Order: I am only to hear about Veronica Jones.

MS. WOLKENSTEIN: I am informing the Court of that and I also want to indicate again, I think it's clear, that the treatment of Veronica Jones has made it very, very difficult in these last --

THE COURT: Come on now.

MS. WOLKENSTEIN: -- in these last days of trying to talk to people and investigate these claims.

THE COURT: I didn't commit those crimes, she did.

MS. WOLKENSTEIN: People are not

Page 89.

willing to come forward and risk the type of treatment that was meted out to Miss Jones, if they come forward in any way favorable to Mr. Jamal.

THE COURT: See, they have to go before the Municipal Court Judge and ask for extradition. Now, if she wanted it resolved, all she had to do was waive extradition, she could have gone over to -- what was that, Woodbury?

MS. WOLKENSTEIN: She wasn't fighting extradition.

MS. FISK: I believe she did, Your Honor, once she was brought in front of a judge she did indeed, extradition was waived.

MS. WOLKENSTEIN: Until six o'clock.

THE COURT: I can't help that, I am not the judge that handles that thing.

MS. WOLKENSTEIN: From noon of the prior day to six o'clock in the morning.

MS. FISK: Your Honor, do I understand that defense is resting?

THE COURT: Well, they rested long ago.

MS. FISK: I mean resting on rebuttal.

Page 90.

THE COURT: Oh.

MS. FISK: If that is the case will Your Honor entertain argument today?

THE COURT: Yes, I will, but at two o'clock. I have a meeting at 12:30.

MS. FISK: May I ask Your Honor, will we be arguing today and then returning in perhaps 10 days after we return the notes of testimony to offer proposed findings of fact and conclusions of law? Or --

THE COURT: Well, you could do whatever you want. But I may be in the process of writing up my opinion.

MS. FISK: Your Honor, we have no objection to making argument today and we are certainly prepared to do so. We would ask, however, we are advised that the notes from this proceeding will take approximately one week to be completed.

Is that correct, Mr. Gorgol?

About a week. We would ask that after argument at two o'clock this afternoon, that we, the matter be completed and Your Honor can simply after perhaps three weeks, after both sides have been given an opportunity in about

Page 91.

three weeks to submit proposed findings of fact and conclusions of law.

THE COURT: Three weeks. You know I have to write my opinion in 30 days. Why are you giving me three weeks?

MS. FISK: 30 days from today's date.

THE COURT: Yes.

MS. FISK: Yes, sir, we are advised that the notes of testimony will take about a week. We would ask for, Your Honor, about a week after that in order to submit proposed findings of fact and conclusions of law.

THE COURT: Well, I don't care because I may not have my opinion ready yet.

MS. FISK: We would simply ask Your Honor, as I say, we have no objection to making the arguments today and Your Honor holding it under advisement and simply releasing that opinion without further Court proceedings after receiving briefs from both sides.

THE COURT: Okay.

MS. FISK: Thank you, sir. So two o'clock Your Honor will have closing arguments?

THE COURT: Yes.

MR. WILLIAMS: Your Honor, in view of

Page 92.

the fact that there will be argument, apparently, at two o'clock, and that we now have to evaluate the records so we can marshal the evidence in our arguments, I would like to say this. That there is an elementary rule of law and decency that we --

THE COURT: I don't know about decency, okay, but go ahead, what is the rule of law?

MR. WILLIAMS: That when an attorney questions a witness, there must be a good faith basis for any underlying suggestion that --

THE COURT: Counselor, couldn't that wait until two o'clock?

MR. WILLIAMS: No, I really would like, so that when we consider the evidence that we have to marshal to Your Honor at two o'clock, we have a certain understanding as to what that evidence is. That there must be a good faith basis to propound the question to a witness. What I want to address briefly is the rather scandalous suggestion that the defense has suborned perjury through the payment of Veronica Jones that came in through questions. Questions themselves --

Page 93.

THE COURT: All right.

MR. WILLIAMS: -- without the answer is not evidence. But more distressing is that it appears now, because the prosecution has rested, that those questions concerning payments to Veronica Jones, or the suggestions, were made without any good faith basis. They have essentially implicated the defense in committing a crime, which is libelous if the suggestion was made outside of a Courtroom, and they did it without any good faith basis. So not only is there no evidence of that, but I ask that that entire inquiry be stricken from the record because it poisons the atmosphere in this proceeding far beyond what can be tolerated, to implicate the defense in a criminal act, for which I'm sure if the Commonwealth had evidence, they would convene a grand jury rather quickly. But to suggest it in questions, knowing that there was no good faith basis, really ought not be tolerated in any Courtroom in this country.

MS. FISK: Your Honor, the Commonwealth had information that as of February of this year, the address where Miss Jones resided was more than $4,400 in arrears on rent.

Page 94.

That in March, May, June -- and I might be missing -- July, August and September, huge portions of that arrears were repaid. She was asked in fact whether those huge amounts were repaid at those times in accordance with the schedule which we had been advised existed and she admitted that that was so. You may use that as circumstantial evidence if you wish. You need not do. The Commonwealth asked her whether that was payment, she said it was not.

Nevertheless, the fact that thousands of dollars in arrearage has been paid since March of this year was information which the Commonwealth had and which Miss Jones agreed occurred.

MR. WILLIAMS: Your Honor, if the defense ever suggested that we were entitled to look at the bank records of all of the witnesses, I am sure that we would be met without outrage by Ms. Fisk, and probably rightly so.

MS. FISK: Your Honor, the Commonwealth found the landlord and asked him.

MR. WILLIAMS: There is no evidence that any of those arrearages were paid by the

Page 95.

defense. And to suggest that --

THE COURT: Counselor.

MR. WILLIAMS: To suggest they were paid by the defense is entirely false.

THE COURT: You had a right to call anybody you wanted. You could call the landlord or anybody you want but you didn't do it.

All right, I will see you back here at two o'clock.

MS. FISK: Yes, Your Honor.

THE COURT OFFICER: Yes, Your Honor. This Court now stands adjourned until 2:00 p.m. at the call of the Crier.

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(Luncheon recess was held until 2:05 p.m.)

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THE COURT: Good afternoon, everyone.

MS. FISK: Your Honor, may I inquire whether the Court is imposing a time restriction on arguments?

THE COURT: Well.

MR. WEINGLASS: This week?

MS. FISK: I was going to suggest no more than 30 minutes a side.

Page 96.

THE COURT: All right. I don't care.

MS. WOLKENSTEIN: Your Honor, before we begin, I just want to clarify one problem with those Quarter Session files that is still going on. There is a question of whether or not the copies, which are to be placed, since these are exhibits and part of the evidence here, into the files on this proceeding, whether the copies are only, are the full set, everything that's in The Quarter Sessions files, or this is somehow only what is publicly available. Apparently Mr. Conaway is still maintaining that only the portion that is publicly available can be made part of the record in this proceeding in terms of the copies. And I have a problem with that. Because what's publicly available is not in fact the information that contains the particular personal information that is there about the person who is the Defendant in those cases.

So either the full set has to be there so it establishes all the information about the individual, and I presume if we had subpoenaed those to Court we would have the full file to look at, as we were able to do here. And that's what I was intending to move into evidence.

Page 97.

If we're going to have a restricted file, then I believe it has to be clear in the record that this is a restricted file, and if somebody without Court subpoena simply went and looked at the file they would get only those documents which are now going to be appearing in the record.

MS. FISK: Your Honor, for the first time in several days I agree completely with Miss Wolkenstein. It was my understanding that when you subpoena a Quarter Sessions file the entirety of the file is what you get to see. I was never made aware that there are parts of it that remain hidden. And I again state that I have no objection to the entirety of those files, from the front of the manila folder to the back of the manila folder, being photocopied and placed into the file.

THE COURT: If everybody is agreeable it's all right by me.

MS. WOLKENSTEIN: So Mr. Conaway just has to be informed of it.

THE COURT: He has to be informed of it, he will take care of it.

MS. WOLKENSTEIN: He was out for

Page 98.

lunch. I asked if he could please come to the Courtroom.

THE COURT: He will be told by the Court Officer.

THE COURT OFFICER: I believe he is outside now. The Clerk is coming now. So he will be informed, she'll be informed.

THE COURT: All right.

MS. WOLKENSTEIN: It could just be clarified with the Clerk here that the entirety, the full Xerox, everything that was in the Quarter Sessions files will be put into the files here on this case as part of the record. No --

THE COURT CLERK: I still can't do that.

MS. WOLKENSTEIN: This is the problem.

THE COURT: Who said that?

MS. WOLKENSTEIN: We wanted it in Mr. Jamal's file.

MS. FISK: No, I thought the files we were discussing were Veronica Jones' prior files.

MS. WOLKENSTEIN: Veronica Jones' prior files, copies of everything in there, the

Page 99.

entirety of the file, even those portions that are not publicly available, have been introduced into evidence as part of this proceeding. And copies of that full file have to be made part of the file that's involved in this case. All the exhibits. So, yes, it goes into Mr. Jamal's file as part of this case, the file of this case.

MS. FISK: As exhibits.

MS. WOLKENSTEIN: As exhibits. There is a dispute with Mr. Conaway still on it so we need --

THE COURT CLERK: You have to speak with Mr. Conaway.

MS. WOLKENSTEIN: Well, the Judge I believe --

THE COURT: Okay, if you have any trouble call me.

MS. WOLKENSTEIN: Well, we have trouble.

THE COURT: I said if you have anymore trouble call me.

MS. WOLKENSTEIN: Okay.

THE COURT: Let's get going, it's after 2:00.

Page 100.

MS. WOLKENSTEIN: So it is clear, that you - -

THE COURT: Come on. Move. Whoever is going to argue for the defense, let's go.

MR. WEINGLASS: If the Court please, at the outset, and I don't want to take any greater time than is necessary for this, I just do want to indicate that there has been an ongoing problem here in the Courtroom with respect to people who have come here to witness the trial -- the hearing. And there are people, so to speak, who are on both sides of the fence who are here. And the people who came here wearing buttons on Mr. Jamal's side --

THE COURT: I don't want to hear that now. Please, I don't want to go into that now. You're taking up my time and you're taking up your time. So take it up with me after a while if it's that important.

MR. WEINGLASS: Well, this is our last session.

THE COURT: Well, it is our last session.

MR. WEINGLASS: And I did want to indicate that people have been asked to remove

Page 101.

any buttons or anything that they have been wearing that supports Mr. Jamal, whereas people on the other side who are wearing FOP buttons have not been similarly asked, I'm told.

THE COURT: What kind of FOP buttons?

MR. WEINGLASS: Pardon? Fraternal Order of the Police buttons.

THE COURT: What kind? I know but what kind of buttons are you talking about?

MR. WEINGLASS: They are buttons that you wear out of your clothing which indicates that you are a member of a political union. And I have no quarrel with that.

THE COURT: I don't see anybody with buttons.

MR. WEINGLASS: The people who had buttons were not allowed in the Courtroom if they wore Mr. Jamal --

THE COURT: I don't see anybody with FOP buttons, that's what I am saying. I am looking out there, I don't see any.

MR. WEINGLASS: Yes, there are.

THE COURT: Where?

MR. WEINGLASS: With FOP buttons, if they could stand.

Page 102.

THE COURT: Well, I see the president there, he doesn't have any on.

MR. WEINGLASS: Well. There are others who are wearing --

THE COURT: Well, who are the others? I don't know what you're talking about.

MR. WEINGLASS: Yes, Your Honor, there are. There is a gentleman fingering his button right now. I don't know what it is, I can't see from here, but he has a button.

THE COURT: Sheriff. Sergeant, what kind of button is that?

MR. WEINGLASS: My point is everyone should wear buttons. I am not against anyone wearing buttons. It's just that people on our side --

THE COURT: I don't care what you're for or against. The Sheriff runs the Courtroom here.

THE SHERIFF: One button is just for a deceased police officer in the line of duty, it is from Washington D.C. It is just a badge and insignia.

MR. WEINGLASS: And he has a right to wear that, he has an absolute right to wear

Page 103.

that. And people who were ordered to remove their buttons on the Jamal side are sitting without buttons because they wouldn't be allowed in with their buttons.

THE COURT: What is the difference? What is the big deal about a button?

MR. WEINGLASS: It is a First Amendment right. The United States Supreme Court has made a big deal about it.

THE COURT: Well, then take it up with the United States Supreme Court. Let's get going. I want to finish this before I go. I am going to leave after a while.

THE SHERIFF: He took the button off, Your Honor.

MR. WEINGLASS: I am not asking him to take the button off.

MS. FISK: I would note that Counsel has been doing this now for several minutes.

THE COURT: Let me say this to you: I didn't issue any kind of order, but I don't care whether they wear it or they don't wear it. If the Sheriff is enforcing some rule here, take it up with the Sheriff.

MR. WEINGLASS: There is no rule

Page 104.

respecting that.

THE COURT: I don't know.

MR. WEINGLASS: But the Sheriff's been enforcing it against one side and not the other.

THE COURT OFFICER: Your Honor, if I may: The Sheriffs did not enforce it. Your Honor, the day before yesterday I made the announcement as from before when we were in 650 and we had the problem with both sides wearing buttons and shirts, and it became a confrontation. So to head off the confrontation, Your Honor, on Tuesday evening before anybody in the audience left, I made the announcement to please not wear any paraphernalia that would cause or incite a fight or a riot. And I asked both sides, not one side, Your Honor, both sides. And then this morning, yesterday, Your Honor, everything was fine. Nobody came in, nobody had any complaints about it. And now today, Your Honor, they come in and they want to escalate something. So this is what they did. And all I did was ask the young lady not to wear it because I didn't want anything to be incited in the Courtroom. And that was all, Your Honor.

Page 105.

THE COURT: Okay.

THE COURT OFFICER: That's what happened.

THE COURT: Wearing a button is not freedom of speech.

MR. WEINGLASS: It absolutely is.

MS. FISK: That is not the issue in this proceeding.

MR. WEINGLASS: California versus Cone.

MS. FISK: May I ask if Counsel would like to file a suit on behalf of the American Civil Liberties Union or anyone in the Courtroom who has been injured, that could be done at a different time. We are here at this time on this Post-Conviction Relief Act.

THE COURT: All I want to do is hear your argument. If you don't want to give one that's all right.

MR. WEINGLASS: I do. I don't want to function in a Courtroom where First Amendment rights are openly being --

THE COURT: Don't then, I don't care.

MR. WEINGLASS: It also impacts Mr. Jamal's right to an open trial.

Page 106.

Defense Argument

THE COURT: There are people out there.

MR. BURNS: I assume this time will count against Counsel's half hour.

THE COURT: It will in a second if he doesn't get moving.

MR. WEINGLASS: With respect to the matters raised in this hearing, I think, as in all arguments, an argument should proceed from those matters which are not in dispute as a framework for examining those matters which are in dispute. When we look at the evidence that's before this Court on this issue of Veronica Jones, we are immediately confronted with two issues that are not in dispute. Issue number one: Was her December 15th, 1981 statement as recorded by Officer Bennett, and marked as an Exhibit in this case, a truthful statement by Veronica Jones within one week of the shooting, that she saw two black men jogging away, as Officer Bennett testified, from the scene of the shooting.

I think the record is abundantly clear on that. Veronica Jones said she told that to the officers and Officer Bennett said I heard

Page 107.

Defense Argument

her tell us that and I wrote it down. There is no dispute that that's what occurred on December 15th, all sides agree.

Furthermore, there is no dispute, as there can not be a dispute, that on June 29th, when Veronica Jones testified under oath, she denied that she ever told anyone that she saw people jogging from the scene.

So with those two facts which are not in dispute the issue is framed. And the issue is framed in this fashion. Did Veronica Jones testify untruthfully when she said in the trial that she did not see two people run from the scene. And I think on the basis of this record there can be no dispute over the fact that she testified untruthfully and that Mr. Jamal was convicted in part on the basis of falsified testimony.

So we have that as a given. Now the question is why did she change her testimony. Why did she testify untruthfully on June 29th, and what does this record indicate about that?

What the record indicates is we have Veronica Jones' testimony yesterday, or the day before, that she changed her testimony because

Page 108.

Defense Argument

she was visited several days or up to a week before she testified by two detectives who pointed out to her that they could help her if she would help them and that the very serious charges she then faced would go away providing she did nothing to help Mr. Jamal.

Is there any other evidence in this record that would give a reason for Veronica Jones to change her testimony from her December 15th statement? Mind you, that testimony was given against Mr. Jamal, and indeed it hurt his defense substantially. So no one on Mr. Jamal's side would be interested in having her change that testimony. Indeed, Mr. Jamal's attorney called Miss Jones for that very reason, to confirm the fact that two people jogged away from the scene, and to offer confirmation of the testimony that was offered by witness Dessie Hightower who said he saw one person run.

And Your Honor will recall that witness Chobert told the police as they arrived that the guy ran away, and he then gave the police a statement 30 minutes later which he signed that he saw someone run. But when he got to the stand he also retracted those earlier

Page 109.

Defense Argument

statements and said he was mistaken. We now know from the record that was made last July, or August, which is part of this record, that witness Chobert was then on parole for a serious felony violation and he was driving that night without a license. And that he had had some kind of a conversation with District Attorney McGill relative to his status as an unlicensed cab driver.

So this record as it stands gives witness Chobert a motive to lie about seeing someone run; it gives witness Veronica Jones a motive to lie about seeing someone run. And as Your Honor knows, Debbie Kordansky was never produced in the trial, although she did testify last summer, and she recalls that she told the police that someone did run. And there is a dispute in what direction, but I think the evidence is pretty clear that she has that individual running away as well.

So the product of the investigation is that four people saw someone run: Hightower, Chobert, Jones, Kordansky. But when the case was tried, only one would come in here and so testify. And that testimony was not supported

Page 110.

Defense Argument

by any of the other three, because Chobert had a motive to lie in favor of the prosecution, and Veronica Jones we now know also had a motive to lie, and indeed she confesses that she lied.

Now, given that set of circumstances I think there is no other conclusion that could be reached on the basis of this record but that Mr. Jamal, who stands convicted of a capital case, was convicted as a result of false testimony at his trial, as a result of prosecutorial misconduct, and as a result of witnesses who were threatened, coerced, intimidated, and found their own self interest in testifying against him.

I have not mentioned at all the fact that witness Singletary came in last summer and he also explained why he did not appear to testify. And he did not appear to testify because he also saw someone run and was threatened and coerced, as he testified, and failed to appear in the trial at all.

Now, what do we know about Veronica Jones and why she's coming forward now? We know she was in custody. We know she faced serious charges at the time of the trial: Armed

Page 111.

Defense Argument

robbery, possession of a weapon with a weapon being discharged. What do we also know? She got probation after she testified. Does that lend support to her claim that she was compliant with the threat that was made to her that she would not see her children for five to ten years if she said anything to help Mr. Jamal?

Not only did she face serious charges, but she fled this jurisdiction and avoided prosecution for six years. You would think that a sentencing Court, having someone who was convicted in this set of circumstances, and even pled guilty, and who fled the jurisdiction to avoid prosecution, and who had a long criminal record of many prior arrests, something remarkable had to happen here for Veronica Jones to get probation. Completely unexplained on this record.

And let's look at Veronica Jones today, this week as she testified. Oh, the prosecution says, and they brought in an extraneous witness on a collateral attack on her credibility, which I think Mr. Williams is absolutely right to point out to this Court was collateral impeachment, not allowed in the

Page 112.

Defense Argument

Commonwealth of Pennsylvania, but permitted in this Court today, collateral impeachment on a non-material matter was

permitted here. But what did that collateral impeachment show? It showed this. That Veronica Jones already pled guilty to these charges of having a gun. She admitted it in '88. Why would she now come to Court and say that the gun was under a cushion, I was sitting on it, as opposed to in my waistband? She's already been faced with that charge. There is no reason whatsoever for her to lie about that issue. It's not like she still faces the charges.

These charges were done away with eight years ago. There is utterly no reason for her to deny having those guns in her possession: The case is gone.

Now, was it important for the prosecution to defeat the claim that someone ran from this scene, the claim made by Chobert, Singletary, Hightower, Kordansky and Jones? Of course it was critical. Because if the shooter ran, the shooter could not have been Mr. Jamal, who was lying on the sidewalk in a pool of blood and found within minutes of the shooting. So

Page 113.

Defense Argument

the prosecution set about to defeat the evidence of his innocence, and they did it by turning Veronica, turning Chobert, disappearing Kordansky, and coercing and intimidating Singletary, leaving Dessie Hightower, who also was coerced.

You remember Dessie Hightower last summer, and five hours of police interrogation, followed by a polygraph? And remember that polygraph, Your Honor? They didn't ask him did you see anyone run from the scene because they knew he would pass on that one. They asked him every other kind of question you could imagine but they kept away from that one.

Yesterday, Officer Bennett testified that after Veronica gave a statement, or contemporaneous with it, Officer Harmon drew a diagram of the critical events that she saw that night. A policeman on the ground. The police car in the street. A man standing by the Speed Line. But what was absent from that diagram? The two black men jogging away. It was absent from that diagram the same way it was absent from Chobert's testimony. The same way it was kept from the defense by disappearing Kordansky.

Page 114.

Defense Argument

And the same way it was kept out on the Singletary issue by threatening Mr. Singletary and ultimately driving him out of the City.

There is no other explanation as to why the two black men jogging away from where a dead police officer was laying on the sidewalk was omitted from that diagram except that it was inconvenient to the case. And when you see that diagram, and it's undeniable, it gives you what? It gives you insight into the way they were dealing with this investigation. They had Mr. Jamal, he was on the sidewalk in a pool of blood. They were not interested in anyone who ran from that scene who might have been the shooter.

I know this Court has been involved in some aspect of law enforcement, not in homicide investigation, in the Sheriffs Department. One week after a police officer is shot an eyewitness is interviewed and says I saw two black men jog from the scene, and the officer taking that interview does not ask her to describe those men. Why? No interest in that. That would harm the case, the theory that it had to be Mr. Jamal.

Page 115.

Defense Argument

Now I want to just shift over and in a few minutes deal with the issue which is really a non-issue here, the issue of whether or not there has been so called due diligence to locate Veronica Jones prior to May of 1996. Veronica Jones is not a newly-discovered witness. She was known in '81, she was produced in '82. What is new is that she is an intimidated and a violated and a manipulated witness by members of the prosecution. That was not known until she was found. She goes in the legal pigeonhole of not newly-discovered witness, but as Mr. Williams said, suppressed evidence. So what is the standard to be applied?

As I understand the rules, any time there is a suppression of evidence by the prosecution, that information, whenever it surfaces, because of the nature of it, the fact that it undermines the very basic tenets of the judicial process, that the state exercises its power to alter evidence wrongfully, is something that any Court will hear at any time.

But the Court apparently, over our protest, has ordered us to go ahead to show due diligence. Briefly, what have we shown? As I

Page 116.

Defense Argument

read the record we have shown this.

Former Philadelphia police detectives, working as private investigators, Kareem Shabazz, Lamont Anderson, Joseph Brignola, were brought into this case early on by the defense to find Veronica Jones. They failed. And they reported they could not find her. The defense then sought outside investigators. Childs from New Jersey, he testified. And in a computer search nationwide, because local investigators could not locate her, a San Diego detective firm was brought into the case to try to locate her through computer.

In addition, the defense employed the services of a fourth Philadelphia outfit, you have heard from him, Chris Milton. And he attempted to locate her in the 11th hour. And after all the other efforts failed, he, together with Mr. Newman, a consulting investigator who assisted us from July 1995 until the time she was found.

Is this due diligence? What are the standards for due diligence? Clearly by any stretch, by any standard that could be employed against the defense in a capital case, having

Page 117.

Defense Argument

four Philadelphia investigators, a New Jersey investigator, and a San Diego consultant, seeking one witness, amongst many others, among many others, is not only due diligence, that's excessive diligence. I don't think anyone could be required to comply with anymore diligence than what that represents.

I know this Court has heard many PCRAs. Your experience in this regard is much more than my own. I venture to say this Court and no other Court in Philadelphia has ever heard a PCRA where the Defendant has employed no less than six separate investigators in the search for one person: That's why I say in this case there has been excessive diligence.

Now, the prosecution postulates ways in which information could be obtained by subpoena. We have to be clear about this. None of that information could be obtained by anyone going to the police or the probation or any other public official and asking for it. You must get what the prosecution referred to as a properly, a legally proper subpoena. But that legally proper subpoena, as I understand it, would not be available unless there is a case in

Page 118.

Defense Argument

Court. And they have produced no one to testify about how you would go about doing that. And whether or not a subpoena could issue without there being Mr. Jamal in Court on a case.

Mr. Jamal was not in Court on any case until July of 1995. And he was in Court on July 12th. And on July 14th this Court ordered no discovery because this is a PCRA. What would have happened to a subpoena? And this Court quashed all of our subpoenas, including subpoenas against the Police Department. And this Court refused to order the prosecution to give us the address of Veronica Jones which is in all these files that we couldn't get because we're not law enforcement.

So this notion of a failure on the part of the defense to pursue an avenue of retrieval of information is just nonsense.

Also, we should point out that in all these files that are before the Court, that they say we could have gotten, in not one file, not one piece of paper, is the correct address of Veronica Jones. And as this Court pointed out, and I couldn't agree more, she used, Your Honor said, a million aliases. Well, it might have

Page 119.

Defense Argument

been an overstatement, I think the record indicates at least four or

five, maybe up to nine. She used over a dozen Social Security numbers. She used over a dozen addresses. Was Veronica Jones being untruthful back then when she was a working prostitute? Of course. Was Veronica Jones untruthful in 1982 when she testified under pressure from District Attorney investigators? Of course. Is Veronica Jones' life now different? Yes. Two children in college, a stable life, a stable job, outside the City of Philadelphia, outside the Commonwealth of Pennsylvania. She comes forward now to tell the truth. No motive shown as to why she would not tell the truth when she comes into this Courtroom. And she understood, apparently,that there were open charges against her in New Jersey and she took the risk. What did she have to gain by coming here? Only a risk to her and her children, that's all. Self interest would have dictated that she not appear. But she appeared here and testified against her own interest to tell the truth.

So I think on balance this record is very clear that Veronica Jones told the police

Page 120.

Defense Argument

the truth on December 15th in part, testified falsely on June 29th in '82. My client was convicted in part because of that false testimony, as well as the other prosecutorial misconduct, and what they did to Chobert, Kordansky, Singletary, Hightower, or anyone else who came close to this case. And what they still propose to do, I suppose, with any other witnesses who will come forward, like Billy Cook.

THE COURT: Five minutes.

MR. WEINGLASS: So I think on the whole, this Court's findings have to particularize those aspects that are not disputed. False testimony in the trial. An honest statement to the police on December 15th about people jogging away, two black men jogging away. And an unrebutted accusation that she was advised by the detectives who offered her apparently the deal that ultimately was put into effect when she was sentenced in 1988. And given the whole, I think this Court has the power now in complying with the remand Order to inform the Supreme Court that on balance and after hearing this testimony, the Court would

Page 121.

Commonwealth Argument

recommend to the Supreme Court, now that the Court has this new evidence, that the matter be reversed, and that the case be set down for a new trial.

THE COURT: Commonwealth.

MS. FISK: May I have just a moment, Your Honor, before I begin? Less than a moment.

Thank you. Your Honor, if I may proceed.

Your Honor, Counsel's argument to the Court began with his statement to the Court that it was uncontested that Veronica Jones' statement of December 1981 was true, and that her trial testimony of June 29th, 1982 was false. I would note that once again the manipulative use of evidence and the bending and breaking of the truth continues even throughout the argument.

Veronica Jones in her very own testimony from this witness stand two days ago testified that portions, significant portions of her December 1981 statement were not true. She testified, for example, that the truth was that she was on the north side of Locust Street, whereas in her statement she very clearly places

Page 122.

Commonwealth Argument

herself on the south.

She testified from the witness stand two days ago that she had no part in the preparation of the sketch which is the sixth page of that document, when according to Detective Bennett she is the person who placed onto that sketch numerous marks including numerous dots and dashes about the direction which she ran after she heard gunshots. So she herself says that that statement is not true.

With regard to her testimony from June 1982, which Counsel says is false and clearly perjured based upon her testimony, Miss Jones from this witness stand two days ago gave testimony that large portions of that testimony from trial were true. She testified two days ago, as she did under oath in 1982, that at some time after giving a statement to police in 1981, and prior to her arrest for a gun-point robbery, that she was taken by police officers and questioned for many hours and told that if she changed her testimony she could have the same deal as Cynthia White. That is all testimony which she gave under oath in 1982 and which she continues to say today is truthful.

Page 123.

Commonwealth Argument

So when Counsel suggests that her testimony from trial was false, his very own witness rebutted and disproved that statement of him.

I feel as though we are being asked to enter a Chinese restaurant and take a little bit from column A, a little bit from column B, and a little bit from column C. Counsel would like us to accept some but not all of Miss Jones' statement from 1981, some but not all of her testimony from trial in 1982, and some but not all of Miss Jones' testimony in this proceeding this week.

It is for that reason in and of itself that the testimony of Veronica Jones is simply not credible. She has given at least three different versions of the events with regard to her placement, what she saw, where she was when she saw it, and what happened. And this Court can quite properly find on the record that as a result of that alone, without anything else, that Miss Jones is lying.

Add to that, Your Honor, the fact that Miss Jones does have, and it is incontroverted, a subsequent conviction for a crime crimen

Page 124.

Commonwealth Argument

falsi, that being a theft by deception.

Add to that the fact that Miss Jones tells us in these proceedings that she never came forward for 15 years because it didn't occur to her until she was asked, and that recanting witnesses generally are considered the least reliable. We have a situation where a witness comes forward and recants trial testimony after a passage of an extensive period of time, a period of time that has passed which renders it impossible for the Commonwealth to disprove a negative in light of the fact that visitation records from 1982 are no longer available.

It was the defense themselves that claimed in their documents filed with the Court that it would be Detective Thomas who would know that in fact efforts were made to intimidate Miss Jones. Detective Thomas as the assigned detective came in and said no, that did not occur, it has never happened, and it is not anything that he would ever permit to occur or a matter about which he would be involved or even be aware.

I would further note, Your Honor, that

Page 125.

Commonwealth Argument

the police in 1981 and 1982 and now have absolutely no motivation to threaten Miss Jones. Counsel spent a great deal of time last summer presenting Mr. Singletary, a man who testified that when he gave a statement immediately following this incident the police ripped it up and threw it away because it included information that tended to suggest that Mr. Jamal was not involved in the shooting. And Mr. Singletary spent some great deal of time telling us how he hand wrote statements and the police ripped them up and threw them away. Well, if in fact the police were doing that the night of the incident it stands to reason that when Veronica Jones told the police that she saw two men running from the scene, that they would have ripped up that statement as well. The fact that they did not, and the fact that Veronica Jones gave a statement which was reviewed by her, signed by her, which makes reference to two people running at the time of the incident, is proof, frankly, that Mr. Singletary's statement last summer was untrue and is proof that there was no conspiracy on the part of the police or prosecutors to fabricate statements and to

Page 126.

Commonwealth Argument

create evidence which was not truthful.

Further, the testimony which Miss Jones would have given, if Counsel suggests it would have been consistent with her statement and that which she testified to in this proceeding, is not testimony that was significant in this case. Miss Jones tells us two days ago that after hearing several gun shots while on 12th street she waited several minutes -- being her words -- before she looked around the corner and saw two men up near the vicinity of 13th and Locust running from the scene. That was her testimony two days ago. That in and of itself is not remarkable, is not contradictory of any other testimony given in this matter. One can only assume and expect that several minutes after a shooting people running from an area where there has been a shooting is ordinary and to be expected. And that that testimony, even if given at time of trial in 1982, would in no way have caused a different verdict to have been rendered by a jury.

A Jury convicted Mr. Jamal in this case not because of anything that Veronica Jones

Page 127.

Commonwealth Argument

said or did not say. A Jury convicted Mr. Jamal because three eyewitnesses testified under oath and subject to cross-examination that they witnessed the shooting, and the combined effect of those witnesses made it overwhelmingly clear beyond a reasonable doubt that the identity of that shooter was Mr. Jamal. And that was the basis of the conviction.

If in fact the police had participated in this campaign to cause Miss Jones to change her testimony, one would think that Miss Jones would then have been called by the prosecution as a witness because the prosecution expected her to now say Mr. Jamal was the shooter. That did not occur. This was, apparently, if you will believe the defense, police who went up there and threatened her and did it privately, ad hoc, and without telling anyone. So that even if you were going to threaten the witness, nobody was going to gain or lose anything because she was still not being called by the Commonwealth. That simply lacks logic, lacks common sense, makes no sense, and further shows the ridiculous nature of the claims being made. Based on the large amount of

Page 128.

Commonwealth Argument

contradictory statements given by Veronica Jones, there is no reason to believe that anything she has ever said regarding this matter was true; and she is clearly not a credible witness with regard to this matter and we ask this Court to so find.

I would note that even if she were not lying now, and what she says now is evidence that would have been presented, that that would make absolutely no difference in the result in this case.

I would note as well with regard to that, Counsel has looked to the subsequent treatment of Miss Jones with regard to her arrest and sentence as evidence of a deal or agreement or payback for Miss Jones' testimony at trial. I would note that neither Jan Stelly nor Zachery Leach testified in the case of Commonwealth versus Jamal, yet their arrests, which occurred at the same time as Miss Jones for that June 1982 robbery, resulted in their cases being discharged altogether because the witnesses in that case simply never appeared.

Veronica Jones, after having been held for Court, was made bail, failed to appear.

Page 129.

Commonwealth Argument

Again, if in fact the woman had been intimidated and had changed testimony because she believed that the police were now going to help her, she would not have failed to appear. She would have stayed around and gotten the results of her bargain. She failed to appear for unrelated reasons, apparently left town as she tells you, and six years later when apprehended the witnesses from the robbery are still unavailable, as they were when Mr. Leach and MS. Stelly were discharged. But because guns had been found on her person, as a property receipt prepared at the time of her arrest shows, she pled, not guilty, as Counsel continued to note, but she pled no contest, nolo contendere, did not offer a defense, accepted the recitation of facts regarding the fact that guns were found on her person, and was found alone, and received a sentence, I suggest, consistent with the guidelines.

Perhaps Counsel would like to be able to consider arrests in determining the sentence a person should get, but in the Commonwealth of Pennsylvania you consider only convictions. And guilty of a possession of an instrument of crime

Page 130.

Commonwealth Argument

Ms. Jones' sentence of probation in accordance with her past record of convictions, and the fact that she had pled nolo contendere to a misdemeanor weapons offense, appropriately called for her to receive the sentence which Judge Carolyn Temin imposed based upon the Quarter Sessions file.

I would note, Your Honor, that with regard to the efforts made by defense to locate Miss Jones, we continue to disagree with Counsel regarding the burden that they have in this proceeding. We know because the deposition of Dessie Hightower was given to us last summer when he was called as a defense witness that defense Counsel in this case have been involved in this case since, I believe it was August of 1990 when Miss Wolkenstein, along with Marilyn Gelb represented Mr. Jamal at a deposition taken of Mr. Hightower in Philadelphia. From 1990 until May or June of 1995, one can only assume Counsel worked actively, because when a Post-Conviction Relief Act Petition was filed in May or June of 1995, it was a volume of some 300 pages, had numerous affidavits attached, and was evidence of a great deal of work and

Page 131.

Commonwealth Argument

investigation accomplished. Nowhere in that application or affidavit was there any averment that Miss Jones was sought or wanted or needed as part of the Post-Conviction Relief.

With very small exception -- and I will address that in a moment -- with very small exception, the majority of the evidence which we received today regarding the defense efforts to locate Miss Jones started after the filing of that Petition. We hear Mr. Milton was hired in mid July 1995 and started looking for her in August. That Mr. Bell started his numbers crunching in June 1995. To suggest that the efforts done by these persons was a diligent effort is equivalent to telling someone that they need to find a needle in a hay stack and go look inside the Taj Mahal for it. None of these people were being given adequate information or proper information, and it certainly makes one wonder whether indeed the persons who were asking Mr. Milton, Mr. Bell to find this woman even wanted them to be successful.

That becomes the most evident, Your Honor, when you look at the testimony of Lamont Anderson. Mr. Anderson indeed was a trained

Page 132.

Commonwealth Argument

homicide investigator. He is a person who, he told us, had access not only to legitimate records, phone records, voters registration records, Post Office records, he told us from this witness stand he had then, as he does now, have access to what he referred to as confidential sources, sources that he should not be able to receive information from but because of his experience as a trained investigator is capable of receiving information from, sources like welfare records and the like. And in fact when he was hired to find a Veronica Jones and given an old Philadelphia address, he used, utilizing that information, those confidential sources in the Philadelphia region to attempt to locate her and was unsuccessful.

Mr. Anderson was never told what was obviously plainly obvious to Counsel, and that is that this woman had significant ties in Camden, New Jersey. She so testified in 1982. Her statement was obviously taken at the home of her mother in New Jersey. And she said that time and again during her testimony. Had Mr. Anderson been told that the person we're looking for has ties in Camden, he could have used those

Page 133.

Commonwealth Argument

same confidential sources, without those problematic subpoenas

that Counsel somehow cannot manage to get; to obtain the information which we know exists, that being that Veronica Jones lived there and received welfare there, was on probation there, and had an active criminal conviction and probation over an extended period of time.

Beyond that, of course, Your Honor, is the fact that her criminal record did show that she had an active probation in Philadelphia. Probation records do give you the names, the ages of her children, the full name of her mother, the place of her birth and address of her mother, significant information which Counsel apparently chose to ignore.

The same is true with regard to the testimony of Mr. Bell and the testimony he gives regarding his employer.

It reminds me, Your Honor, of a joke -- and I am not good at jokes but it is so analogous. You know, a woman walks into a room and she sees her co-worker kneeling on the floor. And she says to her co-worker what are you looking for. And her co-worker says I lost

Page 134.

Commonwealth Argument

my contact lens, I am looking for it. So she gets down on her knees with her co-worker and they start looking for this contact lens. And after 15 or 20 minutes they have no success and the first woman says where is it that you lost it, let's concentrate our search. So her co-worker says I lost it down the hall in the Xerox room. She says well how come we're looking for it here. She says well it is much easier for us to see here.

Well, it is much easier for Mr. Newman to make surname searches and create 80,000 names of women in Spokane, Washington, in New Haven, Connecticut, in Baltimore and in California. To not even provide the information that the woman is on probation in Camden, her mother lives in Camden, she lives in Camden, when her bench warrant was lifted in 1988 she was living in Camden, look in Camden -- the name she signed her bench warrant on was Veronica Jones -- the fact that that information was not provided, the fact that this nationwide search was conducted when the evidence was overwhelming and available and I suspect known to Counsel that her ties were in Camden, certainly suggests that a

Page 135.

Commonwealth Argument

legitimate effort to find Veronica Jones was never made and was not made until well into the Post-Conviction Relief Act proceeding, and when it became clear to Counsel that none of the other witnesses that they were attempting to produce were giving them any luck with regard to winning a new trial in this matter.

We would argue, Your Honor, that there has not been a sufficient record made that this witness was sought appropriately, adequately, diligently, she is not after discovered, and that her testimony should not be made part of the record.

We would note, however, with regard to my original arguments, that even if her testimony were allowed onto the record, even if there is a finding that she was, she is an after-discovered witness, that she is simply an incredible witness, that she should be found by this Court to be lying and therefore not subject or worthy of belief at this proceeding.

And even if this Court were to find that the testimony of Miss Jones at this proceeding was credible, that that testimony would not in any way have changed or affected

Page 136.

Commonwealth Argument

the verdict in this case. The testimony she gives in this proceeding is not markedly different from the testimony that she gave at trial. She testified at trial that after looking around the corner she saw two men on the corner and she left. It is very evident from a reading of that record, and I suspect as evident to the Jury at that time, that neither of those two men that she saw standing on the corner a significant period of time after the shooting could have been Mr. Jamal. The Jury was well aware of the fact that Mr. Jamal had been shot and he too was down on the curb. Her testimony that she saw two men and then she left is no different than her testimony then that she saw two men and that they left and then she left.

And for all those reasons, Your Honor, we ask that the testimony in this case, whether or not made part of the record, be found by this Court not to in any way affect the prior ruling of this Court that defense has failed to meet their burden, that there has been no showing of an after-discovered witness, a recanting witness, and the relief sought continue to be denied.

Page 137.

MR. WEINGLASS: I just have one comment, which will take less than one minute. With respect to Miss Jones' co-defendants in 1988, it's my understanding that only Miss Jones faced the gun charges which were serious.

THE COURT: Yes, that's right.

MR. WEINGLASS: Alone. And the others had their cases dismissed, had their cases dismissed on related charges but not gun charges.

THE COURT: Well, they didn't find any guns on the other people. There was a robbery and the people who could prove the robbery just didn't show up.

MR. WEINGLASS: Yes.

THE COURT: The judge had no --

MR. WEINGLASS: I have no quarrel with that.

THE COURT: Well, that's what she said.

MR. WEINGLASS: But to say that the fact that her co-defendants were also released --

THE COURT: Well, that's because she also was charged with that robbery.

Page 138.

MR. WEINGLASS: Yes.

THE COURT: But they didn't show up in her case as well as in the other co-defendants.

MR. WEINGLASS: My only point is only she faced serious charges.

THE COURT: No, she faced the gun charge.

MR. WEINGLASS: Yes.

THE COURT: Because when those complainants didn't show up the judge couldn't do anything else but throw it out.

MR. WEINGLASS: Exactly. But she was the only one with gun charges.

THE COURT: I understand that.

MS. FISK: May I note, however, Your Honor -- and I also did not reserve a minute but neither did Counsel so I am assuming I get a chance to respond to that -- that again under the sentencing code, the gun charge in this case was a misdemeanor. The serious charge in this case was robbery.

THE COURT: Sure.

MS. FISK: Under the sentencing act, if you commit a robbery with an operable firearm, or are an accomplice of a person who

Page 139.

commits a robbery with an operable firearm, it is under those circumstances that mandatory sentences are imposed. Thus, everyone of the persons charged with the robbery in this case faced the same serious charge. It apparently was because she was found as the person in possession of the gun that that was the charge that she had to plead nolo contendere to because even without witnesses from the bar that was a charge that could be proven because Officer Jesberger was still available.

THE COURT: I understand.

MS. FISK: With that I rest. And we could do this all day and in fact we have.

MR. WEINGLASS: The only question is from June of 1982 when she testified in this case, she faced at that time the serious gun charges. And that it later turned out that witnesses did not come forward.

THE COURT: Well, are you blaming the police for that too?

MR. WEINGLASS: I am not blaming anyone.

THE COURT: Well, I don't know.

MR. WEINGLASS: I am just saying that

Page 140.

her state of mind in June of 1982 --

THE COURT: Well, sure, she was facing --

MR. WEINGLASS: When she faced mandatory --

THE COURT: She faced very serious charges, I understand that.

MR. WEINGLASS: Yes. It just goes to her motive at the time she testified.

MS. FISK: Your Honor, may I ask what the schedule should be for providing the Court with --

THE COURT: Well, he says he will have this printed within a week.

Within a week you say?

So within a week after that you could file proposed findings of fact.

MS. FISK: And conclusions of law.

THE COURT: Yes.

MR. BURNS: Will do, Your Honor.

MS. FISK: And Your Honor will simply issue your opinion with regard to this case.

THE COURT: Yes.

MS. FISK: Thank you, sir.

THE COURT: All right.

Page 141.

THE COURT OFFICER: This Court now stands adjourned until the call of the Crier.

- - - - -

(The hearing was concluded at 3:04 p.m.)

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Page 142.

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

Date

26. Juni 1997

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	

- - - - -

PCRA Hearing

- - - - -

Thursday, June 26, 1997
Courtroom 306, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- DANIEL R. WILLIAMS, ESQUIRE
- JONATHAN B. PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

ALSO PRESENT:

HENRY W. SCHOBER, ESQUIRE
Councel for Pamela Jenkins

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Pamela Jenkins	38	70	125	--
Thomas Ryan	229	--	--	--

EXHIBITS

DEFENSE EXHIBITS

NO.	DESCRIPTION	PAGE
1	Photograph	45
2	Affirmation Statement	49
3	Handwritten Statement	54
4	Photographs	162

Page 3.

COMMONWEALTH EVIDENCE

WITNESS	DE	CE	RDE	RCE
Detective Raleigh Witcher	136	146	--	--
Sherrie Brewer	181	184	--	--
Peggy Tolan	187	190	197	197
Lt. Thomas Clarkson	199	204	--	--
Corporal George Tobin	214	220	--	--
Detective Joseph Walsh	224	225	--	--

EVIDENCE

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
1	Photograph	137
2	Master Name Index	138
3	Court History	139
4	Report of Death	144
5	Board of Education Record	183
6	Employee History Record	190
7	75-48 Police Incident Report	203

Page 4.

- - - - -

(At 10:05 a.m. the hearing was convened in the presence of the Court and attorneys.)

- - - - -

THE COURT: Good morning, everyone.

THE COURT OFFICER: Mr. Weinglass stepped out for a moment.

(Pause)

MS. WOLKENSTEIN: Excuse me, Your Honor. We wanted to see Mr. Jamal before we began proceedings this morning as well up here.

THE COURT: What do you need to see him about?

MS. WOLKENSTEIN: He is our client.

THE COURT: I know he is your client.

MS. WOLKENSTEIN: We need to consult with him.

THE COURT: Why didn't you see him yesterday?

MS. WOLKENSTEIN: Mr. Weinglass...

THE COURT: Well, he will be brought out to you and you will have a chance to talk to him.

MS. WOLKENSTEIN: Judge Sabo asked why

Page 5.

we didn't see Mr. Jamal yesterday and I just wanted to make a record on that.

(Discussion held off the record.)

THE COURT: I didn't okay anything. Nobody asked me anything.

MR. WEINGLASS: The clerk --

THE COURT OFFICER: It was just brought to my attention, Your Honor, that that's what he wanted to do. If it's all right.

THE COURT: He said whether I okayed it. I didn't okay anything.

MR. WEINGLASS: It was a Court clerk, I never said the Judge okayed it.

THE COURT: Okay. All right.

THE SHERIFF: Bring him in?

THE COURT: Sure.

MS. WOLKENSTEIN: Your Honor, as I requested, we would like to see Mr. Jamal before we begin.

THE COURT: You will see him when he comes in the Courtroom. You should have seen him before now. I can't run my Courtroom for your convenience. We are here for one limited purpose, that is to take the testimony of Pamela Jenkins.

Page 6.

MS. WOLKENSTEIN: Your Honor, before we get into that, you asked why we didn't see Mr. Jamal yesterday. And I wanted to indicate to you that Mr. Jamal was brought to Frackville, which is some three hours from here, yesterday. We certainly intended to see Mr. Jamal yesterday but he wasn't even in Frackville until late in the evening. Which is three hours away, which meant it was impossible for us to consult with Mr. Jamal prior to this hearing in any sort of deliberate, regular way.

THE COURT: Why do you have to consult with him? He is not going to testify today. Only one witness: Pamela Jenkins. That's all, nobody else.

MS. WOLKENSTEIN: We firmly believe that our client has the right to Counsel and that he has a right to consult with Counsel.

THE COURT: You will be able to consult with him while the witness testifies. I mean he knows what the witness is going to say?

MS. WOLKENSTEIN: Your Honor, I request that we make sure that Mr. Jamal is housed in the Philadelphia --

THE COURT: He will be brought in here

Page 7.

for you, he will sit right there, you will be able to talk to him all you want.

MS. WOLKENSTEIN: In the Philadelphia area this evening so that we will be able to consult with him prior to any proceedings, further proceedings in this matter.

THE COURT: What further proceedings? We are here for a limited purpose: To take the testimony of Pamela Jenkins. That's all. I am not hearing anything else, do you understand?

MR. WEINGLASS: Well, Judge, we subpoenaed --

THE COURT: I don't care who you subpoenaed. They are quashed. I am here only for Pamela Jenkins. That's what the Supreme Court sent it down for and that's all I am hearing.

MS. WOLKENSTEIN: Your Honor, before we discuss that could we have Mr. Jamal produced in Court before we begin?

THE COURT: Well, he will be brought in here.

THE COURT OFFICER: Bring him out, gentlemen. Thank you.

(Pause)

Page 8.

(The Defendant entered the Courtroom at this time.)

MR. WEINGLASS. If Your Honor please: Just to address the, just to address the last issue which the Court has raised: We have received a May 30th Order of the Supreme Court of Pennsylvania which requires this remand hearing -- quoting from the Order -- to take additional testimony with respect to Pamela Jenkins. Now, of course the Supreme Court could have ordered testimony of Pamela Jenkins, and then the Court hearing would have been limited to just her testimony. However, the Supreme Court of Pennsylvania wrote in their opinion that they wanted testimony with respect to Pamela Jenkins. Which is a much broader grant of authority.

THE COURT: You will have to go back up to the Supreme Court and tell them to revise their order. Because I take this to mean only her testimony. Now, if it means something else, let the Supreme Court tell me.

MR. WEINGLASS: Well, it is the position of this Court -- so that I am clear --

THE COURT: Yes, yes --

Page 9.

MR. WEINGLASS: -- that you will --

THE COURT: Only hear Pamela Jenkins, that's all.

MR. WEINGLASS: We contend that --

THE COURT: Well, if you contend that you go back up to the Supreme Court. They have sent it back before and they will send it back again. And let them spell out who is going to testify.

MR. WEINGLASS: Yes, by --

THE COURT: As far as I am concerned, only Pamela Jenkins. Now, if it is going to be anything else, you better go back up there and get it clarified.

MR. WEINGLASS: Your Honor is going to have to evaluate her credibility in making findings of fact.

THE COURT: Well, I know that.

MR. WEINGLASS: In order to do that you will need testimony of others who support her testimony.

THE COURT: Counselor, you take that up with the Supreme Court. Please. I don't interpret it that way.

MS. FISK: Your Honor, I may note that

Page 10.

after Miss Jenkins' testimony, if Counsel at that time wishes to offer additional witnesses and state an offer of proof, the Commonwealth may not have objection to various additional witnesses.

THE COURT: I don't care what the Commonwealth feels. I am telling you I am going by the Supreme Court's Order. If you have to go up and get it clarified, fine.

MS. FISK: Yes, sir.

THE COURT: So you better be prepared to make whatever objections you are going to make and I will rule on them.

MR. WEINGLASS: So that we are clear at the beginning: We are only to call Pamela Jenkins?

THE COURT: That's all.

MR. WEINGLASS: And we are precluded from all the others?

THE COURT: Right.

MR. WEINGLASS: All the subpoenas are quashed?

THE COURT: They are quashed. I don't even know what subpoenas you issued.

MR. WEINGLASS: Well, Your Honor,

Page 11.

could we make a record on our subpoenas?

THE COURT: Go ahead.

MS. FISK: Your Honor, I am assuming that Your Honor is going to permit the Commonwealth to call witnesses to contest --

THE COURT: I am not going to let the Commonwealth do anything. This Order says Pamela Jenkins. Now, if you had a problem with it, while you were up at the Supreme Court, why didn't you argue that?

MS. FISK: We don't have a problem with it, Your Honor. Our position, however, is that whenever the Defendant presents a witness, the Commonwealth, in addition to cross-examining that witness, has a right to present testimony to challenge the witness' credibility.

THE COURT: Did it say that in this Order?

MS. FISK: Certainly. And it is my position that, with respect to her, we have a right to show the witness is not telling the truth.

THE COURT: Have you ever heard of a PCRA that has come back for a remand two times? Two times?

Page 12.

MS. FISK: It is, however --

THE COURT: I want a clarification of exactly what they want.

MS. FISK: Yes, sir.

THE COURT: I don't know why they need this.

MS. FISK: Beyond that, however, it is the Commonwealth's position that the Commonwealth should be allowed to present

testimony that contradicts the witness.

THE COURT: You should have argued that when you were up at the Supreme Court and asked them to rewrite this Order. You had this Order for a long time.

MS. FISK: Yes, sir.

THE COURT: I didn't. They didn't send me the Order.

MR. WEINGLASS: Your Honor, when we applied to the Supreme Court for this remand hearing, we filed a 15-page document setting out all the reasons why all the other support testimony is required for Pamela Jenkins. It was only after receiving our document that the Supreme Court ordered this hearing, presumably so that all the contextual issues that we raised

Page 13.

could be brought out in this hearing.

THE COURT: Counselor --

MR. WEINGLASS: You can not just hear Pamela Jenkins alone: It will not make any sense to the Supreme Court.

THE COURT: If it doesn't, let them put a new Order in, we will bring them back again.

MR. WEINGLASS: But their Order is clear.

THE COURT: It is not clear to me.

MR. WEINGLASS: It doesn't say for the testimony of Pamela Jenkins, it says with respect to Pamela Jenkins. Which the Supreme Court wrote that order after receiving our lengthy document explaining why all the additional testimony in addition to Pamela Jenkins is required.

THE COURT: What are they doing, giving us a whole new hearing here?

MS. FISK: No, Your Honor.

MR. WEINGLASS: Yes.

MS. FISK: With regard to this witness, clearly the Supreme Court has permitted testimony to be taken.

Page 14.

THE COURT: I am saying today we will take the testimony only of Pamela Jenkins. You go back up to the Supreme Court and say will you please clearly outline what you want the Court to do. I wasn't there at the Supreme Court. You were and he was. I don't know what goes on up there.

MR. WEINGLASS: But, Your Honor, we filed this week a new document --

THE COURT: I know you did. And in some of it you wanted to get a new Judge, they denied that. You wanted to make a Batson claim and they knocked that out. You wanted discovery and they knocked that out.

MR. WEINGLASS: But they did grant us a full hearing on Pamela Jenkins with respect to Pamela Jenkins.

THE COURT: Counselor, right, today I am only taking her testimony. After her testimony is finished, you could go back up to the Supreme Court and say the Judge only allowed that, would you please tell him what else he can do. I am not going to try to interpret their minds: I don't know what they want.

MR. WEINGLASS: Well, we gave you a

Page 15.

memorandum on Tuesday.

THE COURT: Counselor, I don't know what they want. Let them put it in plain English. And whatever they say, I will do. But as far as I'm concerned, it is limited today to Pamela Jenkins. Go back up to the Supreme Court.

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: We are prepared to proceed with Pamela Jenkins.

THE COURT: Okay.

MR. WEINGLASS: The defense calls Pamela Jenkins.

MS. WOLKENSTEIN: Judge Sabo's Court clerk knows she is in custody because he assisted in getting the order to have her produced.

THE COURT OFFICER: Nobody told us, we had to tell the Sheriff.

MS. WOLKENSTEIN: She's downstairs.

THE COURT OFFICER: She is downstairs?

MS. WOLKENSTEIN: She is produced. We made sure she is produced. She is produced.

THE COURT OFFICER: Captain Kennedy.

Page 16.

Ask the Captain to come in, please.

MR. WEINGLASS: Your Honor, while we are waiting do you want us to make the record on the subpoenas?

THE COURT: Yes.

MR. WEINGLASS: Could we do that?

THE COURT: Go ahead.

MS. WOLKENSTEIN: As indicated in the pre-hearing memorandum that was filed by the defense on Tuesday, the defense, in line with the Order from the Supreme Court indicating that this hearing is in reference to the testimony of Pamela Jenkins, has subpoenaed a number of individuals as well as documents for this hearing. One of the other individuals, or two of the individuals who have been subpoenaed are Richard Ryan, Detective Richard Ryan of Central Detectives. He is centrally named by Pamela Jenkins as the individual from Central Detectives that she was brought to by Tom Ryan, who was also subpoenaed.

THE COURT: That's all right, just give me their names.

MS. WOLKENSTEIN: I think I need to make clear for the record and for the Court so

Page 17.

in making you're ruling as to what are the reasons and the rationale for --

THE COURT: Please, I told you go back to the Supreme Court. Let them -- you give them those names and if they say take the testimony of those individuals, I will hear that testimony.

MS. WOLKENSTEIN: These individuals were specifically named by Pamela Jenkins as being the officers who pressured her into trying to make her falsely state that Mr. Jamal was the shooter of Officer Faulkner. And they further indicated to her that they wanted to try and find Cynthia White, they paid her money to find Cynthia White, who was the primary prosecution witness in this hearing. And --

THE COURT: I don't think she was the primary.

MS. WOLKENSTEIN: And extremely germane to the hearing that we are --

THE COURT: She wasn't the primary witness.

MS. FISK: Your Honor, I would note that we have no objection to the defense calling these two additional witnesses in pursuant to

Page 18.

the remand.

THE COURT: What witnesses?

MS. FISK: Officer Tom Ryan and Officer Richard Ryan are both mentioned in Pamela Jenkins' affidavit that was submitted to the Supreme Court, and we have no objection to the defense also calling those witnesses in order to support the allegations that Ms. Jenkins is making. And we have no objection to their calling those witnesses.

THE COURT: Okay.

MS. WOLKENSTEIN: The other individual who is also specifically named by Pamela Jenkins who we have subpoenaed is former patrolman or Officer Lawrence Boston. He has been subpoenaed. He has been subpoenaed, he is named by Pamela Jenkins as being a police officer who was present on the scene at the time of the Faulkner shooting. This is information, furthermore, that should have been Brady material, should have been turned over to the defense.

THE COURT: Well, they denied your Brady material now.

MS. WOLKENSTEIN: Brady material is

Page 19.

not deniable; Brady material is an obligation by the prosecution --

MS. FISK: Right.

MS. WOLKENSTEIN: -- to turn over. It is not required that we even ask for such a thing.

MS. FISK: Your Honor --

MS. WOLKENSTEIN: It is the obligation of the State to provide any Boston evidence to the defense. Officer Boston and Detective Richard Ryan and another man by the name of Sarge, who we believe is the prosecuted, convicted 39th District officer named Louis Maier who is currently incarcerated, were all three individuals who were present on the scene when Officer Faulkner was shot. These individuals and any statements of what they saw have never been turned over to the defense. This should have been Brady material. The fact that we have officers who may have been there when the shooting took place that we do not have one report from them in the 150 reports that were turned over to the defense makes this very, very similar to the Ryder case, where after 13 years and many, and several different hearings,

Page 20.

it took, it took 13 years for finally one judge to issue an order so that there was discovery of the prosecution's files, in which there were several, another hundred investigative reports in there, including eight which were exculpatory of the defendant.

We believe that is the posture of this case. That there is Brady material, information establishing not only the innocence of our client, but also any other information important for impeachment of prosecution witnesses that should have been turned over.

For this prosecution to depend on Cynthia White, a prostitute convicted some 38 times, when there were police officers on the scene who witnessed this shooting --

THE COURT: As I told you before, I was the Judge at the time and I don't think Cynthia White was a big witness in this case. But.

MS. FISK: She certainly was not the sole eyewitness, Your Honor.

MS. WOLKENSTEIN: But beyond that, Your Honor, with regard --

THE COURT: Wait a while.

Page 21.

MS. FISK: With regard to Miss Wolkenstein's application: Pamela Jenkins in her affidavit notes in the last paragraph that Tom Ryan told her that police personnel, including a police officer named Boston, was present. For that reason I have no objection to Counsel calling former Police Officer Larry Boston to testify in order to buttress Miss Jenkins' testimony. There was a nickname Sarge in the affidavit. The Commonwealth cannot agree and does not agree that that refers to any particular officer. And in fact I don't believe that Officer Maier, or former Officer Maier, of who they are claiming is Sarge, is available. And the Commonwealth does not agree, nevertheless, that he was Sarge and I don't believe he was.

But we have no objection to Officer Boston or Detective Ryan or former officer Ryan because they are expressly named and mentioned in Miss Jenkins' affidavit.

THE COURT OFFICER: Ms. Jenkins is up, Your Honor.

MS. WOLKENSTEIN: Should I continue, Your Honor?

Page 22.

THE COURT: Sure. Who else do you want?

MS. WOLKENSTEIN: I will continue. The other point I wanted to make about Richard Ryan is that he was also involved in the arrest of Ken Freeman in February of 1982, two months after the Faulkner shooting. The name of Detective Ryan, Richard M. Ryan, Badge number 9071, appears as the officer in charge of the arrest in which in Ken Freeman's house was found a .22 caliber pistol, explosives and various ammunition. We believe that this is extremely germane to this case.

And Detective Ryan's name, who previously does not appear in any of the reports concerning this investigation and the prosecution of our client, nonetheless is clearly somebody, based on Pamela Jenkins' testimony, that is a link between not only trying to pressure witnesses to falsely identify Mr. Jamal as the shooter, but also involved in an investigation and arrest of a man who has died suspiciously.

Ken Freeman, we heard at the PCRA hearing by witness Arnold Howard, was the source

Page 23.

of giving, Arnold Howard was the person who gave to Ken Freeman his license. It was Howard's license that was found on the body of Officer Faulkner when he was found shot that night. The fact that a license belonging to some other person, not Mr. Jamal, not his brother Billy Cook, was found on the person of Officer Faulkner, was also Brady material and that material was never turned over to the defense. The first time we heard of this was from Arnold Howard, and then it was confirmed in this Court before this Court in the PCRA hearing in August of '95 by a prosecution witness, Detective, former Detective Edward D'Amato. He confirmed that the reason that he was questioning Arnold Howard that night was because of the fact that Arnold Howard's license or temporary license or application for a license was found on Officer Faulkner's body. Howard testified that Freeman was the source of that.

Freeman is unavailable to us, Your Honor, because he died under very strange circumstances. We understand that he died, he was brought to a hospital in a police vehicle, gagged, bound, naked, to a hospital. And the

Page 24.

death certificate indicates he died at the age of 31 of natural causes of a heart attack.

The interesting date of this, Your Honor, as well, is that the date of his death was May 14th, 1985: The night of the bombing of Osage Avenue.

These particular points linked to Detective Richard Ryan, who previously was unknown to the defense, despite the fact that he obviously engaged in this investigation, was likely there that night, is all Brady material, all information that we should have had at the time of the trial. Information that we should have had in 1995 when we had the PCRA hearing. It is information that should have been disclosed in the past two years in which we have been on appellate review. All of this material, by the Brady versus Maryland and Kyles versus Whitley, is material that is the obligation of the prosecution to turn over to the defense.

MS. FISK: Your Honor, with regard to the second half of Ms. Wolkenstein's presentation... let me start --

THE COURT: The second half.

MS. FISK: The statement taken from

Page 25.

Mr. Howard by the police in 1981, the day after Officer Faulkner was murdered, makes clear that he is being questioned because his license was found at the time of the shooting.

THE COURT: Wait.

MS. FISK: That is a statement which was part of discovery, disclosed to defense counsel, and following Mr. Jamal's arrest when discovery was provided. This is not something that was secret or unknown.

Mr. Howard was interviewed by police and his interview was disclosed to the defense. He was not called to trial because, frankly, there is nothing that he said in that statement which was at all relevant.

Mr. Howard testified at proceedings before Your Honor in 1995 and was found, Your Honor, to be an incredible witness with regard to many things, including, I suspect, and I believe the Order makes clear, his describing Mr. Freeman having been at the homicide the night of the shooting because his description of Mr. Freeman is buttressed by his allegation under oath before Your Honor that in 1981 he and Mr. Freeman participated in a line-up in a

Page 26.

line-up facility at the PAB, which he described, and which has not now or ever existed. He described in fact the line-up facility which exists up at the Detention Center. But his testimony very clearly described a line-up facility at the PAB in the first of the 72 hours in which he said he was held in custody by the police and taken from district to district to district and released after three days.

He described a line-up being conducted at the Police Administration Building, a physical impossibility because the facility he described does not exist; and testimony was presented to Your Honor that it does not exist.

In addition, the Commonwealth presented evidence at that proceeding in 1995 before Your Honor that Mr. Howard was signed in at a particular date and time when he came into the Police Administration Building, and was signed out two hours later, which also clearly showed that his testimony that he was held in custody and transferred as a prisoner in custody from place to place to place for three days was untrue.

For Counsel to now get up here and say

Page 27.

well, other things became relevant because the witness who testified who has been found completely incredible by this Court makes it relevant is simply bootstrapping one lie on top of another.

Nevertheless, because Ms. Jenkins mentions Officer Ryan in her affidavit with regard to efforts that he made with regard to her, and her referring to him as someone present at the scene when Officer Faulkner was murdered, we have no objection to Officer Ryan being called. I reserve the right to object when he is called to, to object to questions which in the Commonwealth's position is beyond the scope of this hearing.

But the Commonwealth agrees with Ms. Wolkenstein that with regard to Ms. Jenkins' claims regarding Detective Ryan, we have no objection to him being called.

MS. WOLKENSTEIN: There is only one problem with what Ms. Fisk had to say, which is that the essential point about Howard's testimony and Howard's report is that the report that was submitted to the defense was false. That's point number one. It indicated in there

Page 28.

that this license was found in Billy Cook's car. It was from the prosecution's own witness, from one of their own investigating detectives, Edward D'Amato, that we heard that in fact this license was found on the body of Officer Faulkner. That was said by Mr. Howard that is true, but it is the prosecution's own witness who said because this license was found on the body of Officer Faulkner, that he was questioning Arnold Howard.

THE COURT: Well, you see why I need further clarification from the Supreme Court. If you people can't agree with what the Supreme Court means by that, what you say is ambiguous, it's ambiguous to me, too.

MS. WOLKENSTEIN: I am disputing the factual rendition, not whether or not --

THE COURT: I know what you are disputing. That's why I say, after we have the hearing today and you have Pamela Jenkins off, you people go back up to the Supreme Court and get a clarification of just who could be testifying here. Okay.

MS. WOLKENSTEIN: Those three witnesses that I just went through and some

Page 29.

related matters to them deal with some of the specifics, one of the sets of specific allegations that Pamela Jenkins' made which is in her signed statement, her signed statement.

MS. FISK: We have no objection to that testimony being taken today, Your Honor.

MS. WOLKENSTEIN: We issued a subpoena on the District Attorney's Office for them to release the entire file on Mr. Jamal's case on the investigation into the death of Officer Faulkner and on the prosecution of Mr. Jamal. We make this application because we believe as I have already stated that there is substantial Brady material there, information concerning witness coercion, witness manipulation, falsifying statements, and missing witnesses. And witnesses who provided initially true statements, such as Mr. Singletary, as to having seen the actual shooter that day, not Mr. Jamal, not his brother, and then the shooter run away.

We also have asked the prosecution to produce Cynthia White. We believe that Cynthia White is in the protection and custody of the Police Department and we believe that the last time she was seen was actually in the presence

Page 30.

of Police Officer Ryan and former police officer Tom Ryan. And we request again that the prosecution produce her, or at least give us the information on where to locate her. We have been looking for her for several years and we have not been able to find her. We believe at this point that she is being protected by the police.

MS. FISK: Your Honor, I note that in the brief filed by the defense this week, there is an averment that they have received information or have evidence that Ms. White was seen this year, 1997 is what is said in the brief, in the presence of police personnel. I would ask Counsel to please present that testimony and provide it to give us assistance in attempting to locate Miss White on behalf of defense. And I would have no objection to their presenting evidence with regard to her last known whereabouts so we could assist them. We do not have access or ability to provide or present Ms. White in this Courtroom.

THE COURT: Okay. Now do you see why I have to go back to the Supreme Court? I don't know all of these factors that you are talking

Page 31.

about. Go back up and let the Supreme Court lay it out clearly which witnesses you can present.

MS. WOLKENSTEIN: Pamela Jenkins, again, Your Honor, why we think that dealing with the question of Cynthia White is entirely relevant to and actually been ordered by the Supreme Court, is because Pamela Jenkins' statement indicates quite clearly that she learned from Cynthia White that Cynthia White feared for her life from police officers. Having to do with testifying, you know, for, for the prosecution, for the police against Mr. Jamal. And that she feared for her life in connection with that testimony. The whole question of Cynthia White, who as I said was a primary or main witness, and who we also --

THE COURT: You keep referring to her as the main witness. As far as I am concerned, she was not the main --

MS. WOLKENSTEIN: I won't quibble, Your Honor, over whether she was primary or main, but she certainly was a witness. She certainly was a central witness. There were three witnesses from the prosecution here. She was the only witness, Your Honor, who testified

Page 32.

that she saw Mr. Jamal with a gun. No other witness ever said they saw a gun in Mr. Jamal's hands. For that reason alone, I believe the fact is that she is somewhat different and unique and was relied on by the prosecution as accurate.

We also believe that Cynthia White was a police informant. And that is also something that will come out in the course of this hearing. And we believe that is totally germane. And certainly if she was a police informant, that is Brady material and should have been disclosed to us. And the fact that it is Brady material and is absolutely critical to the question of whether or not Mr. Jamal had a fair trial has been shown by the Carter case, the recent reversal on the charges against Mr. Carter, who was incarcerated for some 13 years on a life sentence on murder charges. And it was clear that the fact that it was not known to the prosecution, not known to the defense, that the main witness, who I will say right here was Pamela Jenkins, was paid for, was not heard, she was not paid as an informant in that but she was actually paid to find Mr. Carter, was the

Page 33.

basis on which that case was reversed.

I also want to make the point that the question of not disclosing informants and the fact that a witness is an informant for the prosecution or for the police is grounds for a new trial, which is central and the main reason why after 27 years Geronimo Pratt, a

former Black Panther party member, like Mr. Jamal, who was convicted unjustly for murder, like Mr. Jamal, for a crime he did not commit, like Mr. Jamal, was finally released on an order granting a new trial based upon the fact that for 27 years, despite numerous, I believe a half a dozen habeas corpus, comparable PCRA petitions, Federal habeas corpus proceedings, the District Attorney's Office kept a secret from the defense of the fact that their witness, one of their main witnesses against Mr. Pratt, was a police informant.

So this question of police informant and the relationship of Cynthia White to the police is extremely relevant to this case and relevant to and absolutely on point with what it means by saying that testimony should be taken with reference to Pamela Jenkins.

Page 34.

MS. FISK: Your Honor, I would note that there is no allegation in the affidavit signed by Ms. Jenkins that Cynthia White is a police informant. Nor is there any proof.

MS. WOLKENSTEIN: That is not accurate.

MR. BURNS: Your Honor, Geronimo Pratt? Let's try to return to reality. And I could understand Your Honor's wanting to have some clarification from the Supreme Court, but I think, and I want to suggest, Your Honor, that in order to save you time it might be more beneficial to hear all the witnesses who were actually mentioned in the Pamela Jenkins affidavit now. Not to the extent they talk about things like Howard or Freeman or Singletary, things that are not mentioned in the affidavit, but we can at least hear from the people who were actually mentioned in the affidavit -- or the so-called affirmation: They call it an affirmation -- that was actually presented to the Supreme Court, which is actually referred to anywhere in their Order.

Beyond that, certainly we should exclude all the other, irrelevant material that

Page 35.

is being brought in from the four corners of the earth.

MS. WOLKENSTEIN: In the affirmation of Pamela Jenkins, paragraph 4 -- this is from Pamela -- I know that Cynthia White worked as a prostitute in the Center City area, specifically at Locust and 13th Street, during 1980 and 1981, and that she was a prostitute, police informant, and turned tricks for the police officers in the district.

We certainly did, Pamela certainly made the statement already that Cynthia White, also known as Lucky, was a police informant.

Okay? So we are requesting that the subpoena that was served on the District Attorney's Office for release of the entirety of their files be --

THE COURT: Well, you go back up to the Supreme Court and see if that's what they meant.

MS. FISK: Your Honor, I would note that the Supreme Court denied the defense request for additional discovery in this matter.

THE COURT: That's why I am confused about the whole thing. Go back up to the

Page 36.

Supreme Court.

MS. WOLKENSTEIN: That is absolutely inaccurate.

THE COURT: You have plenty of time today to do it.

MS. WOLKENSTEIN: The Order from the Supreme Court where it relates to discovery is very specific. And it relates to discovery concerning the Batson issue.

THE COURT: Well, I don't --

MS. WOLKENSTEIN: That is very clear, Your Honor.

THE COURT: Yes.

MS. WOLKENSTEIN: In their Order -- I will read it to the Court --

THE COURT: I could read it myself, Counselor. Counselor, please, don't waste my time.

MS. WOLKENSTEIN: It makes it clear.

THE COURT: Counselor, we both can't talk at the same time. This Court reporter can't take us both down at the same time. Now, I am telling you right now I am only going to hear your first witness Pamela Jenkins now. You go back up to the Supreme

Page 37.

Court today. We will keep him here locally, we will keep whatever witnesses you need, we will have them ready for you. If the Supreme Court says well, I want you to hear this witness, this witness -- or name them down, I don't care.

(Discussion was held off the record at this time.)

THE COURT: So don't waste my time. You are wasting my time.

MS. WOLKENSTEIN: We will right now just stop. There are certainly many more subpoenas and many more issues, but we would like to call Pamela Jenkins.

THE COURT: Oh, I know. You take it up with the Supreme Court, how many subpoenas they are going to allow you to issue.

Come on. Where is she? Bring Pamela Jenkins in.

MR. SCHOBER: Your Honor, one moment, please. My name is Henry Schober. I am representing Pamela Jenkins in this hearing. I am from the Law Offices of Michael Farrell. We represent her in her Pennsylvania charges. I would like an opportunity to speak with her before she testifies.

Page 38.

THE COURT: She is in there, go ahead.

(Pause.)

MR. SCHOBER: Thank you.

(Pause)

- - - - -

Pamela Jenkins, having been duly sworn,
was examined and testified as follows:

- - - - -

MR. WEINGLASS: May I proceed?

THE COURT: Sure.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Miss Jenkins.

A. Good morning.

Q. You are going to have to speak loudly into the microphone.

A. Good morning.

Q. Thank you. Miss Jenkins, where do you presently reside?

A. I am in P.I.C.C. correctional facility.

Q. Is that here in the City of Philadelphia?

A. Yes.

Q. And how long have you been at P.I.C.C.?

Page 39.

A. About two-and-a-half months.

Q. Since sometime in April?

A. Right, yes.

Q. And directing your attention to the year 1981, where did you reside at that time?

A. 3410 North Sydenham Street.

Q. In the City of Philadelphia?

A. Yes.

Q. And how old were you in 1981?

A. About 15, between 14 -- between 15 and 16.

Q. And were you in school at that time or --

A. Yes.

Q. Or were you employed?

A. I was in school.

Q. Do you recall what school you attended in 1981?

A. Simon Gratz.

Q. And directing your attention to the early morning hours of December 9th, 1981, were you at or near the intersection of 13th and Locust Street here in the City of Philadelphia?

A. No, I was not.

Q. Did you at that time and place witness a shooting?

A. No, I did not.

Page 40.

Pamela Jenkins - Direct

Q. Did you in December of 1981 know a Philadelphia police officer by the name of Tom Ryan?

A. Yes, I did.

Q. And who was Tom Ryan in 1981?

A. He was a truancy officer that had picked me up from truancy from Simon Gratz and a Philadelphia cop.

Q. He had arrested you?

MS. FISK: I'm sorry. And a Philadelphia cop? Is that what you said?

THE WITNESS: Yeah.

Yeah, he arrested me.

BY MR. WEINGLASS:

Q. Did he arrest you as a truant officer?

A. Yes, he did.

Q. And by December 9th of 1981, could you describe for the Court what your relationship was with Tom Ryan?

A. I was sleeping with Tom Ryan; I was his informant.

Q. Yes. Did you say you were sleeping with Officer Ryan?

A. Yes, I was.

Q. And you were also an informant?

A. Yes.

Q. Were you being paid by him for information?

Page 41.

Pamela Jenkins - Direct

A. Yes, I was.

Q. And during the time that you were sleeping with him and he was a Philadelphia police officer, in 1981, how old were you?

A. About 15. About 15. Between 15 and 16, I ain't sure.

Q. Now, sometime shortly after December 9th of 1981, the time of the shooting of Officer Faulkner, did you have occasion to meet with Officer Tom Ryan?

A. Yes, I did.

Q. And approximately when and where did that occur?

A. Germantown -- Germantown and, uhh, let me see... Germantown... it was in front of the Sunshine Inn, I think that's Germantown and Westmoreland, if I am not mistaken.

Q. Right. And, I'm sorry, you are going to have to speak a little louder.

A. Between Germantown and Westmoreland, in front of the Sunshine Inn.

Q. And do you recall what time of day it was that you met with him there?

A. It was at night, evening time, just turning dark.

Q. And do you recall what day of the week it was?

Page 42.

Pamela Jenkins - Direct

A. It was a Saturday.

Q. Was this the Saturday following the shooting on December 9th, 1981?

A. Yes, it was.

Q. So it would be about three days later?

A. Yes.

Q. Was officer Ryan in uniform when you met with him?

A. No, he was in plainclothes.

Q. And did you and he remain at that location where you met or did you go somewhere else?

A. We went down to the central district.

Q. And where is the central district?

A. That's at, uhh, 8th Street, I can't tell you the exact address.

Q. 8th Street here in Philadelphia?

A. Right.

Q. And it is a police --

A. Police station.

Q. It is at the police headquarters?

A. Yes.

Q. And Tom Ryan went with you to the police headquarters?

A. Yes, he did.

Q. How long did you remain there at the police

Page 43.

Pamela Jenkins - Direct

headquarters?

A. We got there about 7:00, we left out about 10:00.

Q. For about three hours?

A. Right.

Q. And during the time that you were there with Officer Ryan, did you have any conversation with any police officers?

A. Richard Ryan.

Q. With Richard Ryan?

A. Yes.

Q. And did that conversation take place in an office or in a cell or where?

A. In, umm, like a -- interrogation room.

Q. And who was present in the interrogation room?

A. Tom Ryan and Richard Ryan.

Q. And did they talk to you about this case?

A. Yes, they did.

Q. And did the name Mumia come up?

A. Yes.

Q. Who mentioned that?

A. Tom Ryan and Richard Ryan.

Q. And what did they say in connection with Mumia?

A. They just told me -- well, in other words,

Page 44.

Pamela Jenkins - Direct

they were saying that it was a shootin' and that Mumia had did it. And they was making slurs across me, trying to make, you know, trying to pressure me into saying I was somewhere that I wasn't.

Q. Did they want to pressure you to say that you saw Mumia shoot the officer?

A. Yes, they did.

Q. Did you think they were trying to get you to lie?

A. Yes, I do.

Q. And what was there about that evident interrogation that gave you that impression?

A. Because they kept asking me, you know, was I there. They kept being persistent, pushing it. And Ryan know I wasn't there, and they knew I wasn't there. So that's what I assume, it was pressure, if they are going to keep asking me the same question over and over again and I am telling them no I wasn't there.

Q. And you were there for three hours?

A. About three hours.

Q. Could you describe for the Court what Detective Richard Ryan looks like?

A. Umm, he's like heavyset -- well, back then or now?

Pamela Jenkins - Direct

Q. Then.

A. Okay, he was like, he wasn't as heavy as he is now. He was like about medium build, brownish hair.

Q. Were you shown a photograph of him?

A. Yes, I was.

Q. Did you identify him?

A. Yes, I did.

Q. Have you seen --

MS. FISK: I would ask access to that photograph that was shown to her, please.

MR. WEINGLASS: Yes.

(Pause)

(Discussion was held off the record at this time among defense Counsel.)

MR. WEINGLASS: I have one for Counsel. One may be marked and shown to the witness (handing).

Would you mark this as the original and show it to Counsel? That is the original.

(Photograph was marked Defendant's Exhibit D-l for identification.)

MS. FISK: Oh, yes, I see it. Thank you.

THE COURT OFFICER: Your Honor?

THE COURT: No.

Pamela Jenkins - Direct

BY MR. WEINGLASS:

Q. Showing you what has been marked D-l for identification: Is that a copy of the photograph that you were shown?

A. Yes, it is.

Q. And who is that a photograph of?

A. Richard Ryan.

Q. In the period of time prior to that meeting with Detective Ryan and Officer Tom Ryan, had Tom Ryan paid you for information?

A. Yes, he did.

Q. Did you think you were being asked to lie for money?

A. Yes.

Q. Did you agree to lie?

A. No, I did not.

Q. Did Officer Tom Ryan indicate to you the names of other officers who were present at the scene of the shooting?

A. Yes, he did.

Q. Do you recall who he mentioned?

A. Boston, O'Neil, Sarge.

Q. I'm sorry, could you say that again?

A. Boston, Sarge, O'Neil.

Q. Boston? Sarge?

Pamela Jenkins - Direct

A. Sarge, O'Neil.

Q. O'Neil. Now also directing your attention back to 1981, did you know then an individual by the name of Cynthia White?

A. Yes, I did.

Q. Did you know her by any other name?

A. Lucky.

Q. And how long prior to December of 1981 had you known Cynthia White or Lucky?

A. I knew her way -- about a year, a couple years before that.

Q. Did you know what Cynthia White or Lucky did for a living?

A. Prostitution.

Q. To your knowledge, did she have any relationship to the police?

A. Yes.

Q. What was that?

A. Prostitution.

Q. Was she providing information to the police?

A. Sometimes.

MS. FISK: Objection, Your Honor.

THE COURT: Don't lead your witness, please. It is your witness.

MR. WEINGLASS: Okay.

Pamela Jenkins - Direct

BY MR. WEINGLASS:

Q. Now, to your knowledge back then in 1981, in what part of the City did she work?

A. Central. Center City, central.

Q. Would that include the area of Locust Street and 13th?

A. Yes, it does.

Q. Now, sometime shortly after December 9th of 1981, did you have occasion to have a conversation with Cynthia White about her role in this case?

A. Yes, I did.

Q. Could you relate to the Court what that conversation was?

A. First time I ran into her she was scared. The second time she was in fear for her life from the police.

Q. Had she told you that?

A. Yes, she did.

Q. She was in fear for her life from the police?

A. Yes.

Q. And what became of Cynthia White?

A. She disappeared.

Q. Do you know where she went?

A. No, I don't.

Q. Now, after Cynthia White disappeared, did you

Pamela Jenkins - Direct

ever have occasion to talk to Officer Tom Ryan again about Cynthia White and her disappearance?

A. About her disappearance? No. I talked to him because he wanted me to find her for him.

Q. He wanted you to find Cynthia White?

A. For him.

Q. Did he pay you to do that?

A. Yeah; he gave me $150.

MR. WEINGLASS: May I have this document marked D-2?

THE COURT OFFICER: (Handing.)

MS. FISK: Thank you.

(Affirmation of Pamela Jenkins was marked Defendant's Exhibit D-2 for identification.)

THE COURT OFFICER: So marked.

BY MR. WEINGLASS:

Q. Ms. Jenkins, showing you a document, a three-page document that has been marked D-2 for identification, would you look on page 2 of that document, at the bottom of the document.

A. (Witness complies with request.)

Q. Does your signature appear there?

A. Yes, it does.

Q. And did you sign this document on January 9th,

Pamela Jenkins - Direct

1997?

A. Yes, I did.

Q. And looking at the bottom of page 1: Do your initials appear there?

A. Yes.

Q. And did you review this document before you signed it?

A. Yes, I did.

Q. And have you reviewed it again before today's hearing?

A. Yes, I did.

Q. Is this document true?

A. Yes, it is.

Q. When did you last see Cynthia White, or Lucky?

A. Umm, around the beginning of this year.

Q. And do you recall where you saw her?

A. Umm, 1326 13th Street, at Yates house.

MS. FISK: I'm sorry, say it again, please?

THE WITNESS: 1326 13th Street.

MS. FISK: You said something after that.

THE WITNESS: Yates house. Yates house.

MS. FISK: Yates?

Page 51.

THE WITNESS: Y-A-T-E-S.

MS. FISK: Thank you.

BY MR. WEINGLASS:

Q. And when you saw Cynthia White there, did you talk to her?

A. I talked -- no, she act like she seen a ghost and, umm, she ran out the door and got into Ryan's truck.

Q. Now let me make sure I understand this correctly. You were inside the house?

A. Yes, I was.

Q. Did she then enter the house?

A. She was already in the house.

Q. And what happened when you saw her?

A. When I walked in there she act like she saw a ghost, and next thing I know she was running out the door. When I got to the door she was getting in Ryan truck, Tom Ryan.

Q. Tom Ryan's truck?

A. (The witness shook her head affirmatively.)

Q. Officer Tom Ryan?

A. Officer Tom Ryan.

Q. And that was in or about March of this year?

A. Yes, it was.

MS. FISK: I'm sorry, March of this

Page 52.

year? I apologize. March of this year, ma'am?

THE WITNESS: Yes.

MS. FISK: Thank you.

BY MR. WEINGLASS:

Q. And could you describe Tom Ryan's truck?

A. It's red, it is a red truck with, umm, now he got the frame over it in the back (indicating).

Q. It is like a pickup truck with a frame over the bed of the pickup?

A. Yeah.

Q. And it's red?

A. Right.

Q. What time of day or night was this?

A. Umm... about 9:30, ten o'clock.

Q. In the evening?

A. Right. In the evening.

Q. Was Tom Ryan alone in that truck?

A. No, he wasn't, he was with Richard Ryan.

Q. He was with Detective Richard Ryan?

A. Yes, he was.

Q. And in March of 1997 you saw Detective Richard Ryan and officer Ryan drive away with Cynthia White?

A. Yes, I did.

Q. What were you doing in the Yates house that night?

Page 53.

A. I was helping look for her.

Q. Helping to look for Cynthia?

A. Yeah.

Q. Who were you helping?

A. Umm, Don.

Q. And who is Don?

A. He is an investigator for your office.

Q. For the defense?

A. Yeah.

Q. So in March of 1997 you were working with Don, the investigator for the defense?

A. Yes.

Q. In trying to find Cynthia?

A. Right.

Q. And you found her in the company of police officers?

A. Yes.

Q. Did you write out a handwritten statement to that effect?

A. Yes, I did.

MR. WEINGLASS: May I have this marked D-3 (handing)?

MS. FISK: Do you have another copy of this?

MR. WEINGLASS: Yes, I do, I have

Page 54.

several copies (handing).

MS. FISK: Thank you.

(Handwritten statement was marked Defendant's Exhibit D-3 for identification.)

BY MR. WEINGLASS:

Q. Yes, showing you D-3, which is a one-page document (handing), handwritten, do you recognize this document?

A. Huh?

Q. Do you recognize this document?

A. Yes, I do.

Q. And in whose handwriting is this document?

A. Mine.

Q. And who signed this document?

A. I did.

Q. Did you date it?

A. Yes, I did.

Q. What's the date?

A. 3-9-97.

Q. Is the statement on this document -- have you read it since?

A. No.

Q. Do you want to take a minute to look at it.

(Pause)

THE WITNESS: Yeah, it's right.

Page 55.

BY MR. WEINGLASS:

Q. Is it accurate?

A. Yes, it is.

Q. Okay. Now, before we move off of Cynthia White: Back in 1981, other than prostitution, did Cynthia White have any relationship with the police that you know of?

A. You mean other than tricking?

Q. Yes.

A. I mean she gave them information, if that's what you are talking about.

Q. She was an informant?

A. Yes, she was.

Q. In 1981?

A. Yes.

Q. Now, you said other than tricking. What do you mean by tricking?

A. What do I mean by what?

Q. Tricking.

A. Prostitution, same thing.

Q. And she was performing acts of prostitution with the police?

A. Yes, she was.

Q. Was she, incidentally, being paid as an informant, to your knowledge?

Page 56.

A. Like I told you before, I can't say that because I never seen her get paid for the information.

Q. I see. But you knew she was providing information?

A. Yes, I did.

Q. Now, incidentally, in 1981 and '82, did you know someone named Veronica Jones?

A. Not I did not.

Q. Now, Miss Jenkins, are you now facing charges?

A. Yes, I am.

Q. In the Commonwealth of Pennsylvania?

A. Yes, I am.

Q. And do those charges include felonies?

A. Yes, they do.

Q. And when were you charged with felonies?

A. I was charged with felony on June the 5th of --

Q. Of 1997?

A. Of 1997.

Q. About 21 days ago?

A. Yes.

Q. Prior to that time you weren't charged with felonies?

A. No, I was not.

Page 57.

Q. And the felonies that you were charged with on June 5th, did they involve events that occurred in an earlier time?

A. Yes, they did.

Q. When did those events allegedly occur?

A. They occurred on the, on the beginning of March. That's when the picture -- on the beginning of March I called because the picture was hot. Downtown. I called the cop -- I called the Feds, and, umm, they came to my house and, umm, they told me if I took them to get the picture back, I would not be -- they was -- I would not be arrested. I got I get locked up for retail, they throw the retail, they throw the retail out, okay. I was in jail for extradition to Jersey. On June the 5th they came to P.I.C.C. and recharged me for that picture.

Q. I see. Let me just try to clarify that somewhat. Are you saying that in March of 1997 you went to the Federal authorities?

A. Yes, I did.

Q. About a stolen painting?

A. They came to me, I didn't go to them. They came to my house.

Q. Had you called them earlier?

A. Yes, I did.

Page 58.

Q. So you contacted the Federal authorities?

A. Yes, I did.

Q. And then they came to your house?

A. Yes, I did.

Q. And you cooperated with them?

A. Yes.

Q. And they regained the painting?

A. Yes.

Q. And from March 5th or 6th when you did that, until June 5th or 6th, you were not arrested?

A. No, I was not.

Q. You were not charged?

A. No, I was not.

Q. You were living here in the City of Philadelphia?

A. Yes, I was.

Q. You weren't hiding?

A. No, I wasn't.

Q. And they told you that they weren't going to charge you with this?

A. Yes.

Q. And then on June 5th or 6th they charged you?

A. Yes, they did.

Q. Do you know why they did that?

A. My feelings is due to this case they did it.

Page 59.

You know, that's the way I feel about the situation. Because they can -- it is not like I was hiding. I was still living at the same address. And my -- I think it's due to this case.

MR. WEINGLASS: Your Honor, I would like to point out as the Court has noted there, that on May 30th the Supreme Court of Pennsylvania ordered the testimony of Pamela Jenkins and within one week she was charged with felonies where she wasn't charged before and even cooperated with the police in recovering stolen property. I just think that ought to be in the record. Given the fact of what happened with Veronica Jones, it is just another instance of retaliation against a witness who comes forward for Mr. Jamal.

BY MR. WEINGLASS:

Q. Since you have been in custody at P.I.C.C., have you seen Detective Ryan?

A. No.

Q. Did you see Detective Ryan shortly after these charges were leveled against you?

A. No. I seen Ryan before. I was downtown, I seen him before I even got to P.I.C.C. But after the, after these charges came I haven't seen him.

Page 60.

Q. Did he say anything to you when you saw him downtown?

A. Richard Ryan?

Q. Yes.

A. Oh, he said yeah, I finally, finally, you finally graduated, we gonna sit their ass down.

Q. Richard Ryan said that to you?

A. Yes, he did.

Q. When did he say that to you?

A. When I, umm, when they was arresting me.

Q. And where did this take place?

A. First I was at, I was at 22nd and Pennsylvania. And then they took me upstairs to the detective bureau, and that's where he was at. And we had some words. But his words when I first came in there, you finally graduated to the big league, we gonna sits that ass down. So we had some words and I just told him fuck him and I just went on in the cell.

Q. Did Detective Ryan on that occasion say anything to you about your having mentioned his name?

A. Oh, yeah, I keep my name out of his mouth.

Q. He said that to you?

A. Yeah, keep my name out of his mouth, off the news or --

Page 61.

Q. This was after you had signed the affirmation to the Supreme Court?

A. Right.

Q. In January of '97?

A. Yes.

Q. Did you take that as a threat?

A. Did I take that as a threat?

Q. Yes.

A. No, because they know they can't move me.

Q. Incidentally, did you know a person who was known by the nickname of Peanuts?

A. Yes, I do.

Q. And who is Peanuts?

A. She is one of Tom Ryan's prostitutes.

Q. Do you know her name to be Joan Downs?

A. I don't know of her name to be Joan Downs, I just know the last name Downs, not Joan.

Q. Right, you know her as Downs?

A. Right.

Q. And that is Peanuts?

A. That's Peanut, that is her nickname on the streets.

Q. And she was a prostitute for Officer Tom Ryan?

A. Yes.

Q. Now, you have seen Detective Richard Ryan

Page 62.

since April of this year when you were in custody and you related the conversation that you had with him.

A. (The witness shook her head affirmatively.)

Q. Have you seen officer Tom Ryan?

A. No, I haven't.

Q. Now, in 1994, did you have occasion to testify at several arbitration hearings for Police Officer John Baird?

A. Yes, I did.

Q. And was there more than one hearing in his arbitration?

A. Yes, there was. But they postponed a lot of them.

Q. Did you testify at one of the first hearings that actually went forward?

A. Yes, I did.

Q. Did you testify for Officer Baird?

A. Yes, I did.

Q. Was that testimony that you gave for Officer Baird truthful?

A. No, it was not.

Q. At that time were you being paid by Officer Baird?

A. Yes, I was.

Q. Did you later after giving that testimony meet

Page 63.

with agents of the Federal Bureau of Investigation?

A. Yes, I did.

Q. And did you agree to return to that hearing or arbitration at a later date and testify truthfully?

A. Yes, I did.

Q. And did you later appear and testify truthfully?

A. Yes, I did.

Q. What became of Officer Baird?

A. He now serving 13 years.

Q. Did the United States Department of Justice then present you as a witness to a Federal grand jury?

A. Yes, they did.

Q. And did that involve allegations of corruption of the Philadelphia Police Department in the 39th District?

A. Yes, it did.

Q. And as a result of your appearance before a Federal grand jury, did the grand jury vote indictments?

MS. FISK: I object to that question, Your Honor. There were probably hundreds of witnesses and I doubt the indictments were based solely on this witness' testimony.

Page 64.

MR. WEINGLASS: Okay, I will withdraw the question and reframe it.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. Did that grand jury, after you had testified, and others, vote indictments against Philadelphia police officers?

A. Yes, they did.

Q. And was one of those indictments against officer Tom Ryan?

A. Yes, it was.

Q. And do you know how his case was disposed of?

A. He turned state's evidence.

Q. Did he enter a plea of guilty?

A. Guilty to, guilty to the, umm, the charge with, umm, what's his name... Akeem.

MS. FISK: Akeem?

THE WITNESS: Yeah, guilty to the charge of Akeem but not with the corruption. He got 10 months.

BY MR. WEINGLASS:

Q. Now with respect to Akeem, that's a nickname for a gentleman named Colbert -- I'm sorry.

(Discussion was held off the record among defense Counsel.)

Page 65.

MR. WEINGLASS: I will withdraw that.

BY MR. WEINGLASS:

Q. Incidentally, did the FBI put a wire on your person in order to record a conversation between you and Officer Baird?

A. Yes, they did.

Q. And did you do that?

A. Yes.

Q. Was there ever a time when the Federal authorities were looking for you and Officer Baird hid you in a motel?

A. Yes.

MS. FISK: Your Honor, I object only because the relevancy with regard to Officer Baird's acts --

MR. WEINGLASS: Yes.

MS. FISK: -- does not exist with regard to this witness' testimony of Officer Ryan's contact with the witness in the context of this case.

MR. WEINGLASS: Yes.

THE COURT: Not only that, he is leading. It is his witness, he shouldn't have to lead.

MS. FISK: Well, yes, beyond that.

Page 66.

MR. WEINGLASS: Your Honor, with respect to Officer Baird and the objection that was made, the fact that the police, that police in the City of Philadelphia hid Ms. Jenkins when the FBI was looking to serve her with a subpoena is relevant to the fact that we believe -- and she has testified to this -- that officers of the City of Philadelphia are hiding Cynthia White when they know that we are looking for her.

THE COURT: Well, that is a supposition you're making. Prove it. That is a supposition.

MR. WEINGLASS: Well, Your Honor, that the police hid a witness from the FBI.

THE COURT: Not necessarily the police. Baird may have hid her.

MR. WEINGLASS: Yes.

THE COURT: Well, Baird did it. Does that mean the entire Police Department is corrupt, they hide witnesses?

MR. WEINGLASS: No, but Baird was a partner of Ryan and Ryan was working with Richard Ryan.

THE COURT: I understand that, I

Page 67.

understand all of that. But it was Baird who did that. This, you say the Police Department. It's like the time when they investigated the judges and they took action against them. Does that mean every judge in the City of Philadelphia is corrupt?

MR. WEINGLASS: Well, I don't want to --

THE COURT: Well, for what you are trying to do, I sustain the objection. Because it has no relevancy to the matter that's before me now.

MR. WEINGLASS: What we have at this point is sworn testimony that Officer Tom Ryan, who has pled guilty --

MS. FISK: What we have is clear, it is on the record and it doesn't need to be repeated.

MR. WEINGLASS: I am not making an allegation against all the police. The officer who brought her down to the Police Department pled guilty. And he brought her down in this case. He was involved in this case. Richard Ryan is involved in this case.

THE COURT: Well, stick with Ryan,

Page 68.

then. Stick with Ryan, what Ryan did. Stick with Ryan and what he did.

MR. WEINGLASS: Okay, I will.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. Who was Officer Tom Ryan's partner at the time of these events?

MS. FISK: Which events? In 1994 when she testified?

MR. WEINGLASS: No, in --

MS. FISK: Which events?

MR. WEINGLASS: In the events that were the subject of the Federal investigation.

THE COURT: Wait a while.

THE WITNESS: Sergeant Jack Baird was his partner.

MS. FISK: Jack.

BY MR. WEINGLASS:

Q. Did Tom Ryan have any relationship with Baird?

MS. FISK: Well, objection.

THE COURT: Do you want to testify?

MR. WEINGLASS: No, it is a question.

THE COURT: It is a question. You are telling her the answer. If you want to testify take the stand and be sworn and testify as to

Page 69.

what you know.

Stop leading you're own witness, please.

BY MR. WEINGLASS:

Q. Miss Jenkins, as you sit here today are you afraid?

A. No, only for my daughter. Only for my daughters, that's all.

Q. Pardon?

A. Only for my kids, that's all.

Q. Why are you afraid for your kids?

A. Because look what they are doing to me. You know, you know, I get arrested for one thing and then barn, they charge me with another. And I know they retaliate, you know. And I know this in my heart because I done dealt with them before. They retaliated with me in Jersey, me sitting and sitting and waiting. Now they want to retaliate with this art picture. And this art picture had no bearings on this, but I am still sitting behind bars for it and I know they are retaliate.

Q. And it is your belief that they are retaliating against you because you are testifying in this case?

A. Yes, it is.

Page 70.

MS. FISK: Asked and answered, Your Honor.

THE COURT: Yes.

THE WITNESS: Yes, it is.

MR. WEINGLASS: I have nothing further. Thank you, Miss Jenkins.

THE WITNESS: You're welcome.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Thank you.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Ms. Jenkins, what is your middle name, please?

A. Why?

Q. Because I get to ask the questions.

A. And I --

THE COURT: You have to answer. Please, if she asks you a question, answer it.

THE WITNESS: Don't holler at me. Don't start hollering at me.

THE COURT: Well, I am going to holler.

THE WITNESS: No, you are not going to

Page 71.

holler at me.

THE COURT: Oh, do you want me to wipe out all the testimony? I will do that if you don't answer the questions that are given to you.

THE WITNESS: My middle name is Denease.

BY MS. FISK:

Q. D-E-N-E-A-S-E?

A. Yes.

Q. And your date of birth is what?

A. 9-1-65.

Q. And your mother, ma'am, is Margaret Baker, is that your mother's name?

THE WITNESS: Can I speak to my attorney, please?

MS. FISK: Be my guest.

MR. WEINGLASS: Your Honor, may we have a recess so that the witness could consult with her Counsel?

THE COURT: He could go right up there and consult with her.

(Discussion was held off the record at this time.)

MR. SCHOBER: Your Honor, with respect

Page 72.

Pamela Jenkins - Cross

to questions of my client about her mother, I would offer an objection. I don't know what the relevance would be with regard to this proceeding.

THE COURT: Well.

MR. SCHOBER: My client has some hesitancy to speak about her mother in these circumstances.

THE COURT: Why should she have?

MS. FISK: Your Honor, I am not asking any questions regarding the circumstances of this witness' mother, I am simply asking for an affirmation from this witness that her mother is indeed one Margaret Baker. That is the only question I am asking.

THE COURT: Okay. The objection to that question is overruled.

THE WITNESS: My mother name is Margaret Jenkins.

BY MS. FISK:

Q. Was she formerly Margaret Baker?

A. I don't know what she under right now.

Q. Were you born in Champaign, Illinois?

A. Urbana, Illinois.

Q. All right, now, ma'am, you told us that you

Page 73.

Pamela Jenkins - Cross

attended Simon Gratz High School?

A. Yes.

Q. And for how long, ma'am, did you attend Simon Gratz High School?

A. About, about two years. Off and on.

Q. What school did you attend prior to Simon Gratz? If you recall.

A. Umm, Gillespie.

Q. Now, am I correct that when you attended Simon Gratz High School you certainly were registered and attended under your name, that being Pamela Jenkins?

A. Yes.

Q. Pam Denease Jenkins?

A. Yes.

Q. And with your date of birth September lst, 1965?

A. Right.

Q. And when you say you attended about two years off and on, you started, you went to the end of the year, you started the following year, and then you went for a period of time before you left; would that be fair to say?

A. Yeah.

Q. Okay. So over, you attended parts of two different school terms? And by school terms I refer

Page 74.

Pamela Jenkins - Cross

to the September through June term.

A. Yes.

Q. And that sounds right to you, that you attended parts of two different school terms?

A. Yes.

Q. Now, you told us, ma'am, that you met Officer Thomas Ryan when you were at Simon Gratz High School?

A. Yes.

Q. Now, at the time you met him he was a police officer, ma'am?

A. Yes, he was.

Q. And at the time you met him he was not yet in plainclothes, would I be correct, he was a police officer in uniform?

A. Yes.

Q. Now, what you told us today is that you met Tom Ryan, you said he was a truancy officer and a Philly cop, he was in fact a Philadelphia uniformed police officer who was making truancy stops; is that correct?

A. Yes.

Q. All right. I mean he wasn't separately working as a truancy officer, he was a police officer, right?

A. Yes.

Page 75.

Pamela Jenkins - Cross

Q. And he was a uniformed police officer?

A. Yes.

Q. And the first time you met him, so I am clear, was when he, as a uniformed Philadelphia police officer, picked you up for truancy?

A. Right.

Q. And was that during the period of time that you were registered as a student at Simon Gratz High School?

A. Yes.

MR. WEINGLASS: Your Honor, I am going to object to this line of questions. Officer Ryan was wearing a uniform as a truant officer and they are asking the witness whether or not she knew what his status is as a police officer or a truancy officer.

MS. FISK: The witness just said he was a police officer.

MR. WEINGLASS: But she saw him in uniform as a truancy officer.

MS. FISK: Do I get to cross-examine Mr. Weinglass as well? Because that is not what Miss Jenkins' said. And if I am permitted cross-examination --

THE COURT: The objection is

Page 76.

Pamela Jenkins - Cross

overruled. This is cross-examination. She has a right to ask any questions that she wants.

MR. WEINGLASS: She doesn't have a right to confuse the witness.

THE COURT: That is for me to decide. You make your objection and I will rule on it.

MR. WEINGLASS: My objection is she is confusing the witness.

THE COURT: She is not, it is overruled. She is not confusing anybody. Except you.

BY MS. FISK:

Q. So I am clear: When Officer Ryan arrested you it was when he was a Philadelphia police officer?

MR. WEINGLASS: Objection to the form of the question. He was a --

THE COURT: Objection is overruled.

BY MS. FISK:

Q. Ma'am?

THE COURT: You could answer.

BY MS. FISK:

Q. You understood that question of you when I asked it a minute ago?

A. He was a truancy police officer.

Q. So he was a police officer?

Page 77.

Pamela Jenkins - Cross

MR. WEINGLASS: Objection. Truancy officer. Asked and answered.

THE COURT: Do you want to testify in this case?

MR. WEINGLASS: No, the witness said it.

THE COURT: All right, your objection is overruled.

Go ahead.

BY MS. FISK:

Q. Was he in a Philadelphia police officer's car?

A. He was in a paddy wagon.

Q. In a what?

A. A paddy wagon.

Q. A police paddy wagon?

A. Right.

Q. A police wagon, Philadelphia Police Department paddy wagon?

A. Right, yeah.

Q. Okay. And he was a Philadelphia police officer working truancy, so far as you could tell, right?

MR. WEINGLASS: Objection, Your Honor.

THE COURT: Overruled, overruled.

MS. FISK: Thank you.

Page 78.

Pamela Jenkins - Cross

BY MS. FISK:

Q. I just want to make sure, Miss Jenkins, that I am not confused, and I am not trying to confuse you. He was in a police paddy wagon, he was in a uniform. Did he have a gun, because he was a cop?

A. Yeah, he had a gun.

Q. And he picked you up for truancy?

A. Right.

Q. And he picked you up for truancy, was this outside Simon Gratz High School?

A. Yes.

Q. And would it be fair to say that that is in the area of Pulaski and Hunting Park?

A. Right.

Q. And on this first occasion when you met him and he picked you up and he was in the paddy wagon, was he with another uniformed officer?

A. Yes, he was.

Q. Do you remember who that officer was?

A. I remember Sarge.

Q. Sarge?

A. Yeah.

Q. And what is his -- Sarge is all you know him by, right? Is it that you know the person just by Sarge?

Page 79.

Pamela Jenkins - Cross

A. Just by Sarge.

Q. Do you know any other name?

A. (The witness shook her head negatively.)

Q. You are shaking your head no?

A. No.

Q. Okay.

THE COURT: You can't shake your head because he has to take it down (indicating). He can't take that down.

BY MS. FISK:

Q. Was this, Miss Jenkins, was that the only time that Officer Ryan picked you up for truancy?

A. Yes.

Q. And that was, as I understand it, the very first time you met Officer Ryan?

A. Yes.

Q. All right. Now, following his picking you up for truancy outside Simon Gratz High School, when following that did you start becoming his informant, how many minutes, days, weeks, months?

A. I can't recall that.

Q. Well, did it happen the next day?

A. No.

Q. The next week?

A. No.

Page 80.

Pamela Jenkins - Cross

Q. Did it take a period of months after you first met him before you became his informant?

A. It took a while. I mean we was more intimate before I became his informant, if that's what you want to know.

Q. So you became intimate with him before you became his informant?

A. Yeah.

Q. When, then, in relation to when he arrested you on this first occasion for truancy, was it that you became intimate with him?

A. I don't know exact period of time. I mean you are asking me something a long time ago.

Q. Yes, ma'am. Did it happen that day or did it happen --

A. No.

Q. -- weeks or months later?

A. Months later, I don't know. Months, yeah. I don't know, I don't recall on that.

Q. So it's at some months after the one time that he arrested you for truancy is when you became intimate with him?

MR. WEINGLASS: Objection: The witness said a month later and she couldn't recall. Now Counsel is saying some months.

Page 81.

Pamela Jenkins - Cross

THE COURT: Counselor, please, this is cross-examination.

MR. WEINGLASS: Yes, but you can't distort the witness' answer.

THE COURT: If you are going to testify and interrupt, I am just going to disqualify her entire testimony on direct. So don't interfere. She has a right to cross-examine. You had a right to present whatever you wanted to present.

MR. WEINGLASS: But when the witness says one month --

THE COURT: No, when the witness said -- and I said shut up, please. Before I have to hold you in contempt. Don't try me again, please.

Go ahead.

BY MS. FISK:

Q. Miss Jenkins, as best you are able to recall, what period of time after you became intimate with Officer Ryan was it that you then became his informant?

A. Probably a year or so later, I guess.

Q. Okay. Now, in terms of the murder of Officer Faulkner, as I understand your testimony, the

Page 82.

Pamela Jenkins - Cross

Saturday after Officer Faulkner was murdered you met with Officer Ryan; is that correct?

A. Yes.

Q. All right, at that point in time, then, am I correct that you were already intimidate with Officer Ryan?

A. Yes.

Q. And you were already acting as an informant for Officer Ryan?

A. Yes.

Q. And for what period of time had you been, as best you can recall, intimate with him, or acting as an informant for him, on this Saturday following Officer Faulkner's murder?

A. About a year, about a year.

Q. All right. And for that period of a year prior to then Officer Faulkner's murder, you had been an informant for Police Officer Thomas Ryan; is that right?

A. Yeah. Around that, a year or so.

Q. Approximately, I am not pinning you down. But that Saturday after Officer Faulkner's murder was, you were at that point already an informant of Police Officer Thomas Ryan and had been for approximately, as you say, one year?

Page 83.

Pamela Jenkins - Cross

A. Yeah, year or more.

Q. All right, and you are certain of that? Yes, ma'am?

A. Maybe longer, I don't know.

Q. Maybe longer?

A. Maybe longer, I can't give you an estimate, you know. I am just giving you around how much time it was.

Q. Yes, ma'am. And it was that Saturday after Officer Faulkner was murdered that you and Officer Ryan went to the central district on, at night, and that's when you met with this other officer, right?

A. Yes.

Q. Now, I'm sorry, where did you say the central district was?

A. It's in Center City..

Q. Yes. I thought --

A. I didn't say where it was.

Q. Okay. When you said you went down to central district, where is it that you went?

A. When, it used to be in 8th and Race.

Q. Yes, ma'am.

A. Okay, so that's, that's the circle, you know.

Q. You mean the Roundhouse building?

A. Yeah.

Page 84.

Pamela Jenkins - Cross

Q. And is that the building that you went down to with Officer Ryan on this Saturday after Officer Faulkner was murdered?

A. Yes.

Q. Okay, 8th and Race. And do you recall where in that building you went where you and Officer Ryan then met with this additional police officer?

A. We caught the el -- I know we got on the elevator.

Q. Yes?

A. So they got a bunch of offices up there.

Q. Yes. You don't know which one you went to?

A. I think on the left-hand side, about the second one from the left-hand side.

Q. Left-hand side after you got off an elevator?

A. Yeah.

Q. Do you know if the office had a name on it?

A. No.

Q. Okay. Now, it is at that location that you and Officer Ryan met with an additional officer?

A. Right.

Q. Met an additional officer?

A. Yes.

Q. And that was the person whom you have identified as Detective Richard Ryan?

Page 85.

Pamela Jenkins - Cross

A. Right.

Q. And how is it that you know the name of the person in the photograph that you identified to be Detective Richard Ryan?

A. Because of the questions they asked me when I was down there. But he was younger -- he was not, you know, like that big then.

Q. Right. But how did you learn his name was Detective Richard Ryan?

A. I knew his name.

Q. How, before you met him on this Saturday?

A. No, when I was -- this is how I was able to identify him.

Q. Yes?

A. Because they, they asked me about the picture, about -- Richard Ryan asked me the officers that was in the case. And I told him it was Tom Ryan and Richard Ryan.

Q. I'm sorry, you said Richard Ryan asked you which officers were in the case?

A. No, listen, listen, listen. Tom Ryan and Richard Ryan.

Q. Yes, ma'am.

A. Was the two officers --

Q. Yes?

Page 86.

Pamela Jenkins - Cross

A. -- that I was in central detective with.

Q. Right. And my question is how is it that you know that this man who is pictured in Defense Exhibit 1 (displaying) is named Richard Ryan?

A. Oh, I remember his face, you know. Like I said, he wasn't as fat then.

Q. Did he tell you his name, did someone tell you his name back then?

A. I mean he told me his name when they introduced, okay.

Q. Okay. And he told you his name was what?

A. Richard Ryan.

Q. Okay. That was my question.

A. Oh, okay.

Q. So back in 1981, on this Saturday after Officer Faulkner was killed; you and Officer Tom Ryan went to the PAB and you were then introduced to a man who identified himself to you as Richard Ryan?

A. Yes.

Q. Got you. Okay. Now, you told us that at some later time you met Cynthia White and talked to her about her fears?

A. At some later time?

Q. Yes, ma'am.

A. What you mean? Explain what you're saying.

Page 87.

Pamela Jenkins - Cross

Q. I will be happy to. As I understand it, you have told us how the Saturday after Officer Faulkner was murdered --

A. Hmm-hmm.

Q. -- you had this meeting with Officer Tom Ryan and with Detective Richard Ryan?

A. Right.

Q. Okay. You also told us on direct examination --

A. Right.

Q. -- that you knew Cynthia White?

A. Right.

Q. And that you had a conversation with Cynthia White?

A. Right.

Q. About her being scared and in fear of her life from the police?

A. Right.

Q. Was that conversation with Cynthia White after this meeting that you had with Officer Tom Ryan and Detective Richard Ryan?

A. Yes, it was.

Q. How long after?

A. Umm... about a week or so, I guess.

Q. So that would -- and I don't want to confuse

Page 88.

Pamela Jenkins - Cross

you. Officer Faulkner was murdered on December the 9th, 1981. I don't have a calendar in front of me but the Saturday following that would be less than seven days thereafter?

A. Okay.

Q. So would it be fair to say that your conversation with Cynthia White took place, then, in December 1981?

A. Yes.

Q. Okay, still within the month of December?

A. Hmm-hmm.

Q. And still at that time -- and, I'm sorry, you can't say hmm-hmm.

A. Yes.

Q. Okay. And still at that time when you had been an informant or an intimate with Police Officer Ryan for a period, you can't be certain but approximately a year, maybe more?

A. Right.

Q. Okay. Now, did you report her comments to Officer Ryan?

A. No, I did not.

Q. Now, how long after that was it that Officer Ryan paid you $150 to locate Cynthia White?

A. About... about three days later. About three

Page 89.

Pamela Jenkins - Cross

to four days later. I am not really sure how many days it was.

Q. Again would it be fair to say that was still in December 1981?

A. Yes, it would.

Q. Or maybe just going into January '82? Or was it definitely December of '81?

A. You know, I can't really tell you about that.

Q. Okay, but your best recollection is it was about three or four days after you spoke to Cynthia White?

A. Yeah, that is my best recollection.

Q. And you spoke to Cynthia White, approximately again, approximately one week after you met with Officer Thomas Ryan and Officer Richard Ryan? Is that right?

A. Right.

Q. Okay. Where were you in June and July 1982?

(Pause)

A. Hmm... June and July 1982...

Q. Maybe I could relate that for you so you could put it into context. Do you recall when the trial against this Defendant for the murder of Officer Faulkner was held?

A. No, I don't remember that.

Page 90.

Pamela Jenkins - Cross

Q. You don't remember that trial being held?

A. I remember the trial being held but I wasn't, you know.

Q. You weren't what?

A. I wasn't, you know, following it.

Q. You weren't, all right, but you remember reading in the paper that it was occurring or that there was a trial? Do you understand my question?

A. No.

Q. The trial of this matter was conducted --

A. Right.

Q. -- at some point, you know that?

A. Right.

Q. And you remember being aware of that, that it was on trial?

A. Yes.

Q. Okay. And do you know where you were living or whether or not you were in school at that time? Do you recall?

A. No. Not right offhand.

Q. Okay. Now, as I understand your testimony, you have told us that you last saw Cynthia White, that same person you spoke to in December 1981, the last time you saw her was you know at the beginning of this year and you signed a statement dated March

Page 91.

Pamela Jenkins - Cross

the 9th of this year saying that you saw her that day; is that right?

A. Yes.

Q. Was it that day or the day before?

MR. WEINGLASS: I think Counsel is misreading the document. March 7th is in the upper, left-hand side.

MS. FISK: Oh, I'm sorry. I apologize.

BY MS. FISK:

Q. All right, you signed a document on March the 9th but it notes that on March the 7th of this year you saw Cynthia White?

A. Right.

Q. Yes, ma'am?

A. Yes.

Q. Okay. And there is no doubt in your mind that that was Cynthia, the same Cynthia White that you spoke to in December 1981?

A. No. There is no doubt.

Q. No doubt. Okay. Now, do you know -- strike that.

Now, at that time on March the 7th, 1997, you have told us that the circumstances of your seeing Cynthia White was that you were helping the

Page 92.

Pamela Jenkins - Cross

investigator on behalf of the defense look for Ms. White. Yes?

A. Yes.

Q. Were you hired for that purpose?

A. No, I was not.

Q. Were you being paid at all for that?

A. No, I was not.

Q. You were doing it for free?

A. Yes.

Q. And at that time you were out on a bench warrant; isn't that right?

A. Out on what?

Q. On a bench warrant: You had failed to appear for a proceeding on which you had been arrested and charged with retail theft in the City of Philadelphia?

A. Probably.

Q. Oh. Did the investigator you were working with know that?

A. No.

Q. Did you tell him that you had failed to appear at a proceeding?

A. No.

Q. Now, in addition... you have told us today that you believe the arrest upon you this month was

Page 93.

Pamela Jenkins - Cross

retaliation, and I believe you then said in the course of your description that they retaliated in New Jersey as well?

A. (The witness nodded her head affirmatively.)

Q. Again you're shaking your head?

A. Yeah, yeah.

Q. Would you please tell us the nature of the retaliation and who retaliated upon you in New Jersey?

A. They had, they had to be the defense because I stayed over here in P.I.C.C. and when I got, when I stayed over there in P.I.C.C. and then they had me sitting there and waiting and waiting for a court date. Then I got to get an attorney and as soon as I got the attorney I was out like the next day, you know. So what you mean when you say retaliate?

Q. Well, that's what I am trying to find out.

A. When I say retaliate, I was charged with fugitive from justice.

Q. Yes, ma'am, you were in jail in New Jersey at some point some months back, right?

A. But that didn't have nothing to do with this case.

Q. In the course of your direct examination you said they retaliated on you in New Jersey?

Page 94.

A. That was for the art picture there.

Q. Oh, all right. That was for the arbitration?

A. When I started working for, when I started helping the Feds, that was their way of keeping me in jail then.

Q. When, back in 1994?

A. Yeah.

Q. All right. Ma'am, am I correct, Ms. Jenkins, that in August 1995 you were arrested in New Jersey for having a knife?

A. Right.

Q. Okay. And then in April '96 you were sentenced on that weapons possession to one year probation?

A. Right.

Q. Is this the retaliation you're talking about?

A. No.

Q. Or was it before August of '95 that you are talking about?

A. No, I testified after that case.

Q. You testified after that August of '95?

A. I testified after that case for the arbitration. I don't know all the dates.

Q. I am just trying to put things in context. You were arrested in New Jersey, would you agree with

Page 95.

me that you were arrested in New Jersey for possessing a knife on August the 17th, 1995?

A. Yes.

Q. That date is correct?

A. Right.

Q. Okay, and your testimony today is that the testimony which you gave at the Jack Baird arbitration was after that date?

A. I think so, yeah.

Q. Because what you're claiming is that after that arrest you testified against Jack Baird?

A. Right.

Q. Admitted that you had lied at his first proceeding?

A. That's right.

Q. And then Jack Baird in some way retaliated against you; is that your testimony?

A. Yes.

Q. Ms. Jenkins, if the notes of testimony from the arbitration proceedings show that your testimony in the Jack Baird arbitration is, the first one was March 1994, and the second was November 1994, and your arrest for the knife was after the second arbitration, could you then explain how that arrest in August 1995 constituted a retaliation? You had

Page 96.

already testified the second time, ma'am, not --

A. I didn't testify -- where you got the dates for the testimony? For the arbitration?

Q. It was all done by the end of 1994, ma'am?

A. Yeah. All right, then I was arrested again for a fugitive warrant.

Q. Okay. Now, after your arrest in August 1995, you were in April '96 placed on probation; is that right, ma'am?

A. Right.

Q. Okay. Now, am I correct that because it was claimed by your probation officer that you never reported, in November 1996 you were arrested in New Jersey and charged?

A. No.

Q. And charged with violating your probation?

A. Wrong. I was not arrested in New Jersey. I was arrested in Philadelphia for violation of probation. I sent --

Q. In April of this year?

A. No. The first time I violated I was arrested here in Philadelphia.

Q. Was that in November of 1996?

A. I don't know when it was, I don't know all them dates. It might have been.

Page 97.

Q. Were you transferred back to New Jersey?

A. Yes, I was extradited back.

Q. Okay. And that is not this arrest, that was an earlier arrest, right?

A. Right.

Q. And you were extradited back?

A. Right.

Q. And you stayed in prison in New Jersey for a period of time until you had a violation of probation hearing; is that right?

A. Right.

Q. Okay. And is it your testimony today -- so I am clear -- that that arrest and extradition back to New Jersey was in retaliation for your testifying or providing an affidavit in this matter?

A. No.

Q. Oh, it's not?

A. No. I told you this retaliation is for the art picture, that's what I said.

Q. This retaliation is for what?

A. You all are retaliated because I am testifying in this case for that art picture. I never say nothing about no art -- whatever you said.

Q. I misunderstood, I thought you used the word arbitration and I apologize for misunderstanding.

Page 98.

How is it, Miss Jenkins, that you came to give the affidavit which is before you as a defense exhibit?

MR. WEINGLASS: Affirmation. Objection.

MS. FISK: I'm sorry, affirmation.

BY MS. FISK:

Q. Defense Exhibit 2 which is before you.

A. Rachel came out to P.I.C.C. -- I mean in Jersey.

Q. Yes?

A. And she asked me do I know anything about it. And I --

Q. Yes?

A. And I told her yeah.

Q. All right.

A. And that's how she got the affidavit.

Q. Now, again you are referring to it as an affidavit as well as did I?

A. Whatever it said in there.

Q. But Counsel has made it clear to us that it is an affirmation, so we should use the right word, Miss Jenkins.

A. What?

Q. We have been told by Counsel it is an affirmation.

Page 99.

Pamela Jenkins - Cross

A. I don't know what it is.

Q. I don't know what it is either, actually. Miss Jenkins, I understand Miss Wolkenstein came out to see you, yes?

A. Yes.

Q. In New Jersey?

A. Yes.

Q. And she met with you?

A. Yes.

Q. And did you, following that meeting, sign this document?

A. No, I did not.

Q. Having met with Ms. Wolkenstein how did you then sign this document?

A. She came back and then I signed it.

Q. She came back?

A. I don't know if it was the same day but I think it was afterwards and I signed it. After she went and typed it all up.

Q. Hmm-hmm?

A. That's when I signed it.

Q. Now, on both of those occasions when Ms. Wolkenstein came to see you --

A. Yes.

Q. -- where were you, please?

Page 100.

Pamela Jenkins - Cross

A. I was in jail.

Q. All right. In New Jersey?

A. Right.

Q. And Ms. Wolkenstein came to the prison on an earlier occasion and interviewed you and then came back and you signed this document?

A. After I gave her the statement. Then she came back, I signed it. I think I signed it.

Q. Is that right?

A. Yeah, I guess.

Q. Well, when you say yeah you guess, this is back in January?

A. Yeah, you know, I was using this stuff then. I think that's how it happened. Yeah, I will say yes.

Q. You were using what stuff then, ma'am?

A. I mean you asking me all these questions back and forth. And I don't remember all that stuff.

Q. And why is that, ma'am?

A. I mean, I mean, I mean we ain't got to beat around the bush. You all know I was using. Come on, we ain't got to beat around the bush.

Q. Using what, ma'am?

A. You all know what it was: Crack. You all know I was using this for a period of time, before

Page 101.

Pamela Jenkins - Cross

you get to it. I am just saying you ain't got to beat around the bush, you know what it was.

Q. Were you using crack on the day you were interviewed?

A. No, because I was in jail.

Q. Were you using crack on the day that you signed the affirmation?

A. No, I was in jail.

Q. Over what period of years have you been using crack?

A. I can't give you all that exact dates. Over -- my daughter 10 years old, so over that period.

Q. So you have been using crack over the last 10 years?

A. Off and on, off and on.

Q. Would it be fair to say that you were even using crack back in 1981 during the period of time when you say you were Officer Ryan's informant and were intimate?

A. No, not in 1981, I wasn't using crack then.

Q. Oh?

A. No. No.

Q. All right, well, when did you start using crack?

Page 102.

Pamela Jenkins - Cross

A. When... about '87.

Q. And as a result of having used crack, then, for approximately ten years off and on, do you have difficulty with your memory?

A. No, I do not.

Q. Well, then let me go back to the question that led to you saying that. As I understand it, Ms. Wolkenstein came to the prison and interviewed you?

A. Right.

Q. And then am I correct that Ms. Wolkenstein returned?

A. Right.

Q. Some period of time later?

A. Right.

Q. You can't exactly tell us when?

A. Right.

Q. And presented you with this written document which you signed?

A. Right.

Q. And the date which it was signed --

A. Right. But I gave her the statement.

Q. You had been interviewed by her earlier?

A. Right.

Q. And this written document reflected what you had told her?

Page 103.

Pamela Jenkins - Cross

A. Right.

Q. I am not questioning you, I am simply asking you. She came back at a later date and presented you with this document, which you read?

A. Hmm-hmm.

Q. Is that right?

A. Right.

Q. And which correctly reflected what you told her?

A. Yes.

Q. So you signed it?

A. Yes.

Q. And you dated it?

A. Yes.

Q. And the date is January the 9th of this year?

A. Right.

Q. Was anyone with Miss Wolkenstein on this second occasion

when she presented this to you and you signed it?

A. I don't think nobody was present.

Q. How about the first time when she came and interviewed you: Was anyone with her?

A. No.

Q. Now, ma'am, when was the last time -- no, let me rephrase that. This past March the 7th when you

Page 104.

Pamela Jenkins - Cross

saw Ms. White, as I understand it you were looking for her so you were going up to Yates' house on 13th Street, right?

A. Hmm-hmm.

Q. Again, you must say yes or no, ma'am.

A. Yes.

Q. You gave the address 1326 13th Street?

A. Right.

Q. Was that in the City of Philadelphia?

A. Yes, it is.

Q. Was that North or South 13th Street?

A. North Philly.

Q. Oh, okay. So it's 1326 North 13th Street?

A. Yes.

Q. All right. And does Yates have another name?

A. No, I don't know his real name.

Q. I'm sorry?

A. I don't know his real name.

Q. And what was his relationship to Ms. White?

A. I mean he ran a head house.

Q. And prior to March 7th of this year, when had you last been to Yates' hit house?

A. What you mean, myself?

Q. Yes, ma'am.

A. I ain't been there. Only when I went, when I

Page 105.

Pamela Jenkins - Cross

went over there when I was helping Don look for her.

Q. Why was it --

A. Because she smoked and I smoked so I went to the head houses to look for her.

Q. Okay. So you knew that Ms. White smoked?

A. Right.

Q. So you were going to head houses, would it be fair to say, throughout the City to see if you could find her?

A. Not throughout the City, just North Philly, that area.

Q. Why were you looking in that area?

A. Because I knew that's where she hung at.

Q. Okay. Prior to March 7th of this year, when had you last season Cynthia White?

A. The last time I had seen her was when I seen her get in the truck.

Q. Well, that was on March 7 of this year?

A. Right.

Q. Before that when had you seen her, before --

A. I seen her a couple times. I can't give you the exact dates.

Q. Well, then approximate it if you can.

A. Umm... I seen her like about the middle of February.

Page 106.

Pamela Jenkins - Cross

Q. Of this year?

A. Yeah. Umm. I found her a couple of times, put it like that.

Q. Right. Well, let's, I would like, please, to identify as best you can separately each of those instances when you found her or when you saw her, okay. So let's go backwards in time from, you saw her March 7th. The time before that you saw her is approximately February of this year?

A. Yeah.

Q. And where did you see her?

A. She was -- where was she. On Germantown and Allegheny. And I seen her again... where else I see her... umm, Germantown, Allegheny. You know, I can't be specific on all the streets, but, you know, the North Philly area, it's all in the same area.

Q. Okay.

A. Sunshine Inn, all, you know, it's all in the same area.

Q. Now, did you ever speak to her on any of these occasions?

A. I -- yeah.

Q. Did you ever speak about this matter?

A. No, I did not.

Q. Okay. You told us when you saw her on March

Page 107.

Pamela Jenkins - Cross

7th she looked like she saw a ghost and ran out of the house?

A. Right.

Q. Now, were you in the house at that point?

A. Was I in there?

Q. Yes.

A. No, I had walked in there.

Q. You had just walked into the house?

A. Yes.

Q. So you had walked in from the outside?

A. Yes, the house.

Q. When you walked in from the outside then, did you notice any cars or trucks or vehicles outside?

A. I wasn't even paying attention to that, I just went in there.

Q. It wasn't until after she ran out that you saw her get into this pickup truck that you have described for us?

A. Right.

Q. And you told us that Officer Tom Ryan was in the passenger seat of that pickup truck?

A. That's right.

Q. And Detective Richard Ryan was the driver of the pickup truck?

A. No, I did not tell you that.

Page 108.

Pamela Jenkins - Cross

Q. I'm sorry.

A. No, I didn't.

Q. Who was the driver or the truck?

A. Tom Ryan was driving.

Q. I apologize for misrepresenting. Tom Ryan was driving. And Richard Ryan was the passenger?

A. Yeah, Tom Ryan was driving, Richard Ryan was passenger. Cynthia -- Richard Ryan got out of the truck, Cynthia ran, got in the middle, and Richard Ryan was the passenger. Both of them was passengers.

Q. Now, on the earlier occasions when you had seen Cynthia White on Germantown Avenue in North Philly near the Sunshine Inn, had she ever after looking in your direction acted like she saw a ghost and run away?

A. No.

Q. It was just this March?

A. No, I asked, you know, I had seen her before but she would always tell me she was coming back, you know what I mean, and she would never come back.

Q. So she would say to you oh, I'll be right back, or we'll talk, or something like that?

A. Yeah; and it just so happened I caught her

Q. Caught her what?

Page 109.

Pamela Jenkins - Cross

A. I caught her in the house that day. And when she saw me it looked like she saw a ghost and she ran out and got in the truck. Like I said, you know, I can't put it no plainer than that.

Q. Okay. Now, ma'am, am I correct that you were released from prison in Camden on January 17th of this year?

A. I don't know the exact date. Probably.

Q. Okay. Would you accept that you had a second violation of probation hearing -- or -- I'm sorry -- you had a violation of probation hearing?

A. Yes.

Q. In front of a judge?

A. Hmm-hmm.

Q. That you were given a new one-year period of probation until next January -'98?

A. Yes.

Q. And you were then released?

A. Yes.

Q. And would it be fair to say that you were, despite the fact that you were placed on reporting probation, that you did not report again to your probation officer?

A. I reported about four times. Then I stopped reporting.

Page 110.

Pamela Jenkins - Cross

Q. Pardon?

A. I reported four times, then I stopped.

Q. Then you stopped? Am I correct that it was then in April of this year that you were arrested and charged in Philadelphia because there was a warrant for you in Camden for violating your probation?

A. Right.

Q. Okay. Now, before that time, after you were released from the Camden jail and before you were arrested again, am I correct that you contacted the FBI about the theft of a picture?

A. Right.

Q. Okay. And that was because, ma'am -- well, let me put it this way: Am I correct that you have since that time confessed to having participated in the theft of the picture?

MR. SCHOBER: Your Honor, I object to any questions about the specifics of the offense, and any questions about other than the fact that she gave a statement. The use of the word confess, Your Honor, implies more than the statement might contain, and for that reason I would object.

THE COURT: The objection is overruled.

Page 111.

Pamela Jenkins - Cross

(Discussion was held off the record at this time between Counsel for the Commonwealth.)

THE COURT: I overruled the objection.

BY MS. FISK:

Q. You can answer the question, Miss Jenkins.

THE WITNESS: Can I ask you a question?

THE COURT: No, you can't ask me.

THE WITNESS: What does this have to do with this case? Can I ask you that?

MS. FISK: Certainly, Miss Jenkins, I would be happy to answer it.

If I may, Your Honor.

A. person can't claim retaliation if they have been arrested for a legitimate offense.

THE WITNESS: Okay, I confessed to it, but what about the time period?

BY MS. FISK:

Q. That is fine, Miss Jenkins, I understand that you have a complaint about that, but am I correct that you confessed to having stolen that picture?

A. Yeah.

Q. Okay. And the theft of that picture took place in February, right?

Page 112.

Pamela Jenkins - Cross

A. Yeah.

Q. And you contacted the FBI in March, right?

A. Right.

Q. And when you contacted the FBI, you assisted an FBI agent and a Philadelphia police detective by showing them the store where you had fenced the picture, right?

A. Right.

Q. And then they gave you three bucks and you went home?

A. Gave me what? Didn't give me nothing. I had money in my pocket.

Q. But then you went home, right?

A. Right.

Q. Because you didn't want to be there when they went into the store to get the picture back?

A. No, he told me to stand outside the store. It ain't that I didn't want to be in the store, I had took them already to the store.

Q. But you were not there when they recovered the picture back?

A. No; but he called me and told me they recovered it back.

Q. Who called you?

A. The detective. I can't tell you which one but

Page 113.

Pamela Jenkins - Cross

they told me they got the picture back.

Q. So you took them to the store where you fenced the picture, sold it?

A. Right.

Q. And you left so they could go in and get the picture?

A. Right.

Q. And sometime later they called you and told you they recovered the picture?

A. Right. No, the same night.

Q. The same night they called you?

A. Right.

Q. And this was the picture you had told the police and the FBI on that date that you contacted the FBI that you along with another man had stolen, right?

A. Right.

Q. Okay. Now, am I correct that when you gave the police the information that day you were able to tell them that the other man who you assisted or -- I'm sorry -- the other man who stole the picture with you is a guy named Tone?

A. Right.

Q. But that is all you were able to tell them about Tone?

Page 114.

Pamela Jenkins - Cross

A. Right.

Q. You were able to give them some background of what he looked like and when he had last been arrested, right?

A. Yeah.

Q. But you didn't know a last name?

A. No.

Q. So when the detective contacted you that night and told you they got the picture back, did he tell you that he needed to be able to find out who Tone was?

A. I don't recall that, no. He just told me he found the picture. The conversation that I had with the detective, when he got the picture, it was to take him to get the picture.

Q. Yes, ma'am?

A. And he wanted Tone.

Q. Right.

A. And it was over with me.

Q. Right. Because you took him back and then you went home?

A. Yeah. No, it was over, period. I wasn't going to be arrested or nothing. Because if I was going to be arrested, I ain't that dumb.

Q. No?

Page 115.

A. No. I wouldn't of gave them nothing.

Q. All right, well, when you called the FBI that day to tell them that you knew about a picture --

A. Yeah.

Q. -- nobody had told you when you picked up the phone that you weren't going to be arrested, right?

A. He didn't have to tell me, he just told me he was going to come out to the house. But he came out to the house and told me that.

Q. Who did?

A. One of the, I think it was the, umm -- anyway, they are not the same two cops that came out to the house, but if you all say Corbin, I guess it was Corbin.

Q. I didn't say who came to the house.

A. Well, Corbin and the FBI agent came in the house.

Q. Right.

A. And FBI agent all of a sudden, though, retired now. So you tell me. You tell me, I don't know. You tell me. You tell me.

Q. Do you think he retired as part of a cover up in retaliation?

A. Yeah.

MR. WEINGLASS: Objection to the form

Page 116.

of the question.

MS. FISK: I am simply responding to the comment of the witness, Your Honor.

BY MS. FISK:

Q. All right, now, the FBI agent and, the detective and FBI agent came to your house in response to your calling the FBI?

A. Right.

Q. You had already told the FBI agent on the phone that you had participated in the theft of a photo and you wanted to help him get it back?

A. Right.

Q. Right?

A. Hmm-hmm.

Q. Is that right?

A. Right.

Q. And on the phone the FBI agent did not say before you say any of this, Miss Jenkins, I am promising you we are not arresting you, he didn't say that on the phone?

A. He didn't say nothing on the phone, he just, just stay at the house, he was coming to 526 Thompson. We didn't have no conversation like that on the phone.

Q. Well, you called him to help him get the

Page 117.

picture back?

A. That was the conversation, to help him get the picture back. That was it. The conversation took place in the house, not on the phone.

Q. So what you are telling us is when the FBI agent and the detective came to your house that day, they told you you would not be arrested?

A. That's right.

Q. Okay. All right, got you. Now, after they recovered the picture, am I correct that the detective, when he arrested you -- which was in June of this year, and which you claim is retaliation --

A. He did not, he didn't arrest me when he went to get the picture.

Q. I didn't say that.

A. Oh.

MR. WEINGLASS: There was no arrest in June of this year. Counsel is confused and confusing the witness.

BY MS. FISK:

Q. When were you arrested for stealing the picture?

A. June the 5th.

MS. FISK: That's what I thought. Someone confused Counsel; it wasn't me.

Page 118.

THE COURT: Counselor --

THE WITNESS: I was charged with the picture on June the 5th.

BY MS. FISK:

Q. You were arrested for stealing the picture on June the 5th?

A. (The witness nodded her head affirmatively.)

Q. I didn't think arrest and charged were different in this circumstance. You were already in custody, right?

A. I was already in custody for a fugitive from Jersey, that's all.

Q. You had been in violation for failure to report four times in Jersey?

A. Right.

Q. After you were in custody you were taken from the prison to the detective division to be arrested for the picture theft?

A. Yeah, two months later, yeah.

Q. You were arrested for the probation violation at some point in April, right?

A. I was picked up for, it was for retail theft at first. The lady threw it out. Then they ran my name and came up fugitive for Jersey. Never for that picture. They came to P.I.C.C. and arrested me.

Page 119.

Q. All right, when were you arrested for the fugitive, that should be on --

A. I was arrested from the fugitive, April the 14th is when they ran my name.

Q. Is that the date that is on your bracelet?

A. Ain't no date on my bracelet. No, it is not.

Q. I thought they were.

A. I told you I know when it was.

Q. I don't doubt you. Now, when you were arrested in June of this year for the theft of the picture, am I correct that the detective presented to you an array of photos so you could identify who Tone was, the other person involved in this theft?

A. Yeah.

Q. Now, do you know whether or not after the detective spoke to you when the picture was recovered, in June of this year the detective was trying to get in touch with you for you to identify that photo array?

A. He be getting -- I live at 526 Thompson, you know what I mean.

Q. With whom did you live?

A. My grandmother.

Q. What is her name?

A. Jean Bronson. I got the statement what it

Page 120.

Pamela Jenkins - Cross

says she said.

Q. What did it say?

A. It say, she thought I was on crack again or something.

Q. Right.

A. Because I hadn't been home. And when I called her and asked her about it, she didn't tell nobody that.

Q. I see. In fact, though, what the statement which appears in the police discovery relating to your theft -- just so the record is clear what you told me -- reflects that the detective made efforts to find you in April and went to your house, and your grandmother told the detectives that you were no longer living there and she didn't know where you were; is that right?

A. Yeah.

Q. Right?

A. Right.

Q. And in fact that statement also says that she had given you money to deliver to an attorney for someone else and they left with that money?

A. I don't know anything about that.

Q. You don't know anything about that?

A. No.

Page 121.

Pamela Jenkins - Cross

Q. Okay. Now, again just so I am clear: That charge of theft, which occurred in June of this year, you had a preliminary hearing, yes?

A. Yes, I did.

Q. And you have been held for Court on that charge; correct?

A. Yeah.

Q. And you are awaiting trial now?

A. Right.

Q. Now, this morning, before you were brought out, and actually since you testified, you have made reference to your counsel.

A. Right.

Q. Your attorney. He is not court-appointed, ma'am, is he?

MR. SCHOBER Your Honor, I have an objection to any question concerning the relationship between myself and my client and Mr. Farrell. That has no relevance to this case. Certainly any communications or discussions --

THE COURT: Well, she hasn't gone into communications.

MR. SCHOBER: She did.

THE COURT: No, she hasn't. She just

Page 122.

Pamela Jenkins - Cross

wanted to know if you are privately retained.

MR. SCHOBER: I think that is confidential. I don't think that is relevant to this proceeding as well. Whether I am retained, appointed, or whether I am volunteering my services.

THE COURT: Maybe you are.

MR. SCHOBER: Any of those issues all irrelevant to this procedure and are contrary to the attorney-client privilege.

MS. FISK: Not unless it goes to bias of the witness.

MR. SCHOBER: How could the relationship between the client and myself go to any bias she has to testify in this Court?

MS. FISK: Because if counsel's client is being given counsel free of charge on behalf of defense counsel in this case --

MR. SCHOBER: I make a representation as an Officer of this Court I have absolutely no relationship to Counsel in this case and my relationship with this client goes back further than any affirmation or --

MS. FISK: I would ask Counsel if he is Court-appointed or retained?

Page 123.

Pamela Jenkins - Cross

MR. SCHOBER: I am refusing to answer that.

MS. FISK: Well, then I am asking the witness who is under oath.

THE COURT: The objection is overruled as to that.

BY MS. FISK:

Q. The attorney who represents you currently, is he retained or court-appointed?

A. He is retained.

Q. When did you, I am not asking what you said --

MR. SCHOBER: Your Honor, again she is now going further.

BY MS. FISK:

Q. Now, the date on which you retained this counsel --

MR. SCHOBER: Your Honor, I would indicate as an Officer of the Court that Mr. Farrell's relationship with this client goes back to before January of this year when he represented her in New Jersey.

MS. FISK: I would indicate as an Officer of the Court that the Public Defenders Association represented this witness at her preliminary hearing on June the 6th of this

Page 124.

Pamela Jenkins - Cross

year. According to the Court extract which has been produced.

THE COURT: All right.

MS. FISK: So I have a right, Your Honor, to know when this counsel entered his appearance on this matter in this Courtroom in this Court, that's all.

THE COURT: Okay. Go ahead.

THE WITNESS: He was obtained when the Public Defenders refused to represent me anymore because of they was conflict of interest for the 39th District, that's when he was retained.

BY MS. FISK:

Q. I see. That took place after your preliminary hearing, ma'am?

A. Yes, it did.

MR. SCHOBER: Again, Your Honor, I object. Perhaps these questions are better directed to the Public Defenders who refused to represent this woman, as opposed to this client herself.

THE COURT: Well. All right, Counsel. Go ahead. Please.

MS. FISK: Thank you, Your Honor.

BY MS. FISK:

Page 125.

Pamela Jenkins - Cross

Q. Is that what the Public Defenders --

MS. FISK: I'm sorry, I don't want to inquire into conversations with counsel. I won't ask that. I withdraw that question.

I have no further questions, Your Honor. Well, if I may have a moment.

(Discussion was held off the record at this time between Counsel for the Commonwealth.)

MS. FISK: I have nothing further, Your Honor.

MR. WEINGLASS: Just a few questions, Ms. Jenkins.

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REDIRECT EXAMINATION

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BY MR. WEINGLASS:

Q. You were asked a few questions just now about any bias that you might have in this proceeding for the defense. Let me ask you this question. Do you face time in prison now in Pennsylvania?

A. Yes, I do.

Q. Do you believe you're going to go to prison?

A. Yes, I do.

Q. Do you think your testifying for Mr. Jamal is going to make your life in prison easier?

Page 126.

A. No, I don't.

Q. Do you think it is going to make it more difficult?

A. Yes, I do.

Q. And you're still willing to testify?

A. Yes, I am.

Q. Can you imagine any benefit to yourself from testifying for Mr. Jamal?

A. No, because I mean they done all they can do and I am not going to sit back and let this man go, you know, an innocent man go to jail for something he didn't do and right some of the wrong that I already done. So that's where I'm at with this.

Q. Can you imagine some harm coming to you and your family because of your testifying here?

MS. FISK: Objection, Your Honor.

THE WITNESS: Umm.

MS. FISK: Objection.

Ms. Jenkins, I made an objection.

MR. WEINGLASS: It goes to bias.

MS. FISK: Whether she can imagine?
THE COURT: She said that already on direct. She had already answered that question.

BY MR. WEINGLASS:

Q. Now, do you know for a fact when you first

Page 127.

started having an intimate relationship with Tom Ryan whether he was a truant officer or a police officer of the City of Philadelphia?

A. He was a truant police officer. He was a truant, he was picking up people that was truancy and he was a police officer, the same thing.

Q. That's your belief?

MS. FISK: Objection, Your Honor.

BY MR. WEINGLASS:

Q. Did you ever ask him if he was an official police officer of the City?

A. No.

Q. Okay. With respect to the times that you started with Tom Ryan and the time that you began working with him as an informant, can you be precise as to what weeks or months that you started with him and when you started working with him?

A. No, I can't. And I am pre -- not precise.

Q. Right, it was 16 years ago?

MS. FISK: Well, if she can't be precise, I suggest to Counsel suggesting a time frame --

THE WITNESS: I mean I have been this informant for years, I can't say when.

THE COURT: Okay. There is no

Page 128.

question yet.

BY MR. WEINGLASS:

Q. You indicated in response to a question that was asked of you by Counsel that after your conversation with Cynthia White when she indicated to you that she was afraid for her life, you never related that conversation to Tom Ryan?

A. No, I did not.

Q. Why didn't you?

A. Because at the time, umm, when he paid me I was using the money and I was getting high, so it didn't matter, and I wasn't looking for it.

Q. Now just going into the time period when you were looking for Cynthia this year in 1997, you were questioned about that; is that correct?

A. Yes, I was.

Q. And you were trying to find her for the defense in this case?

A. For Don, yes.

Q. For Don, the investigator for the defense?

A. Yes.

Q. And did you make a number of efforts in trying to locate her?

A. Yes, I did.

Q. Not just this one night at the Yates house?

Page 129.

A. No.

Q. And you were, were you attempting to get her, Don to meet with her?

A. Yes, I was.

Q. And in fact were there some arrangements that you made with Cynthia where you would meet her where you intended to bring Don to those meetings?

A. Only one time, I had him with me for like -- I had him with me and I called and she was sitting there but Don never showed.

Q. She never showed?

MS. FISK: Don never showed.

THE WITNESS: Don never showed. And other times I was trying to get them to meet but she wouldn't do it.

BY MR. WEINGLASS:

Q. She wouldn't do it?

A. She wouldn't do it.

Q. Did you tell Cynthia that you were trying to get her to meet with an investigator for the defense in this case?

A. No, I just told her I was trying to get her to meet with Don.

Q. I see.

A. Private investigator. That's all I told her.

Page 130.

Q. Okay. You mentioned Tom Ryan had told you about officers who were on the street on the night of the shooting. Was the name Richard Ryan also mentioned as being on the street?

A. Richard -- no, it was Richard Ryan, O'Neil1, Boston. That's all I remember right now.

Q. The date that you called the FBI about the art theft, was that March 5th?

A. I think so. You know, I don't remember the exact date it was. You know, I can't say when I picked up the phone to call them because I don't remember the exact date. I know it was the beginning of March. They got March the 5th so I guess it was March the 5th, I don't know.

Q. Okay. And do you know that your name was first publicly associated with this case on March 10th when your affirmation was filed with the Pennsylvania Supreme Court?

A. Yes.

MS. FISK: Does that ignore the press conference that Counsel had prior to the filing of the affirmation announcing Miss Jenkins was the new witness?

MR. WEINGLASS: It was on the same day.

Page 131.

MS. FISK: Ahh.

MR. WEINGLASS: May I have just a moment.

(Discussion was held off the record among defense Counsel.)

MR. WEINGLASS: Nothing further. Thank you, Ms. Jenkins.

MS. FISK: Oh, I have nothing more, Your Honor.

THE COURT: Okay.

MR. WEINGLASS: Your Honor --

MR. SCHOBER: Your Honor, if you are done with this witness, may I be excused?

THE COURT: Yes, sure.

All right, will you get back to the Supreme Court as quickly as possible.

MS. FISK: Well, Your Honor, I would ask and again would join in Counsels' motion that they be permitted to call additional witnesses.

THE COURT: Well, why don't you take it up with the Supreme Court.

MS. FISK: Well, Your Honor, I would note --

THE COURT: Please, Counsel, I am not

Page 132.

a member of the Supreme Court.

MS. FISK: I understand, Your Honor.

THE COURT: I don't know what they want. And I don't want to go beyond what they want. So if you go up there and tell me what you could agree to and they say okay, and they sign whatever agreement you signed, we will be back tomorrow or the next day or whenever.

MS. FISK: If I may, Your Honor, before that is done, insofar as it is clear that the Supreme Court has asked for notes of testimony of this witness so that a determination as to her credibility and therefore the value of her testimony to the overall proceeding could be made, the Commonwealth always in any proceeding has a right to rebut that testimony. The Commonwealth cannot be put in a position, Your Honor, of guessing what the testimony will be and then having the Supreme Court --

THE COURT: That's what he says. I am not going to make the decision for them. Go back up there and just ask them. Tell them what you agree to, he will tell them what he agrees to, they will sign an order.

Page 133.

MS. FISK: Your Honor, the Commonwealth is in possession of information, witnesses and documents which clearly show without question that testimony that this witness has provided today and which we have heard for the first time is false. And we absolutely in any proceeding have an absolute right to present that. And I would ask that Your Honor permit that to be presented. And in particular, it is in response to testimony offered by this witness.

THE COURT: How long, how long will your witnesses be?

MS. FISK: Well, the first witness actually, Your Honor, is by way of documentation. It will take about 30 seconds. The second witness, Your Honor, is a combination of records and witnesses, and will take not long. One witness is on call and has to come down. Another witness is present in the hallway. But these are witnesses who will absolutely and without question show the false --

THE COURT: Can you come back here at two o'clock?

Page 134.

MS. FISK: Yes, sir.

MR. WEINGLASS: Your Honor, we object to being precluded and the prosecution is being allowed to go ahead.

MS. FISK: I have no objection to Counsel continuing in that situation.

MR. WEINGLASS: We are being precluded.

THE COURT: That's why I am telling you go back to the Supreme Court.

MS. FISK: Well, Your Honor, we have an absolute right to show the falsity of what this witness has testified to.

THE COURT: Okay. Then just do that.

MS. FISK: Okay.

THE COURT: All right, two o'clock.

MS. FISK: Two o'clock, Your Honor.

THE COURT OFFICER: This Court now stands in luncheon recess until 2:00 p.m. this afternoon.

(After a luncheon recess, the hearing was reconvened in the presence of the Court and the attorneys at 2:10 p.m.)

Page 135.

THE COURT: Good afternoon, everyone.

MS. FISK: Your Honor, I have a series of very brief, I anticipate very brief witnesses.

The first witness is Detective Raleigh Witcher.

- - - - -

Philadelphia Police Detective Raleigh Witcher, Badge number 17, Homicide Division, having been duly sworn, was examined and testified as follows:

- - - - -

MR. WEINGLASS: May we have the name again?

MS. FISK: Raleigh -- R-A-L-E-I-G-H -- Witcher -- W-I-T-C-H-E-R.

May I proceed, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Thank you.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Detective Witcher, how long have you been a Philadelphia Police Officer?

Page 136.

A. Since 1965, that's 32 years.

Q. How long have you held the rank of detective?

A. Since 1970.

Q. And to what unit are you currently assigned?

A. Philadelphia Police Homicide Division.

Q. How long have you been assigned to the Philadelphia Police Homicide Division in the capacity as a Philadelphia detective?

A. 17 years.

Q. Were you a Philadelphia Homicide detective back in June 1982 at the time this Defendant Mr. Jamal was tried for the murder of Officer Daniel Faulkner?

A. Yes, ma'am, I was.

MS. FISK: May I ask, Your Honor, that this photograph be marked as Commonwealth Exhibit 1 for the purposes of this hearing (handing).

MR. WEINGLASS: May we see it?

MS. FISK: Absolutely.

THE COURT OFFICER: (Handing).

(Pause)

(Photograph was marked Commonwealth's Exhibit C-l for identification.)

THE COURT OFFICER: So marked

Page 137.

(handing).

MS. FISK: May I sit, Your Honor?

THE COURT: Oh, sure.

MS. FISK: Thank you.

BY MS. FISK:

Q. Detective Witcher, can you identify what has been marked as Commonwealth Exhibit l?

A. Yes. This is a police photograph of a black female using the name Cynthia White, Philadelphia Police photo number 573095. It was taken on 12-17-1981. At the time she was 23 years of age and gave an address of 2120 South 6th Street.

Q. Now, do you recognize the woman who is portrayed in that photograph?

A. Yes, ma'am, I do.

Q. And as whom, or how do you recognize her?

A. She is the Cynthia White that testified in this case.

Q. And that being in the trial against Mr. Jamal?

A. Yes.

Q. And when she testified she testified under the name of Cynthia White?

A. Yes, she did.

Q. Now, you have told us that this Commonwealth Exhibit also gives to Ms. White, you referred to a

Philadelphia photo number?

A. Yes, ma'am.

Q. Could you tell us what that is?

A. The number is 573095.

Q. And, I'm sorry, what does it mean to have a Philadelphia photo number assigned to an individual whose picture appears as you are looking at it?

A. Anyone arrested inside the County of Philadelphia is given a number that stays with them for the length of their life.

Q. Now, do any two people -- well, strike that.

MS. FISK: May I ask, Your Honor, that this document next be marked as Commonwealth Exhibit 2, and shown to Counsel (handing).

(Pause)

(Discussion was held off the record among defense Counsel.)

(Master Name Index was marked Commonwealth's Exhibit C-2 for identification.)

MS. FISK: And we could mark this as Commonwealth Exhibit 3. I believe Miss Wolkenstein was looking for something in particular, I believe it is on this document (handing).

(Court history was marked Commonwealth's Exhibit C-3 for identification.)

(Pause)

THE COURT OFFICER: So marked C-2 and C-3 (handing).

BY MS. FISK:

Q. Detective Witcher, let's start with Commonwealth Exhibit 3. Tell us what Commonwealth Exhibit 3 is first?

A. Commonwealth Exhibit 3 is the Court history of one Cynthia White.

Q. Is that the same Cynthia White who was the Cynthia White who testified in this case, Commonwealth versus Mr. Jamal, I believe the official title was Commonwealth versus Wesley Cook, but testified against this Defendant regarding the murder of Mr. Faulkner?

A. Yes, ma'am.

Q. And how are you able to make that determination that this is the record for the same person?

A. Because the Philadelphia photo number is the same. And that number is on the Court history records 573095, which is the same as that on the photograph of Cynthia White.

Q. Now turn to Commonwealth Exhibit number 3.

Tell us what that is, please?

A. This is a --

Q. I'm sorry, Commonwealth Exhibit number 2. Thank you.

A. This is a computer printout of the Philadelphia Police Department automatic master name index, which is controlled by the Federal Bureau of Investigation.

Q. Now, on the first portion of that printout, does it reflect that it is a printout for the person who has the photo number assigned to Ms. White, that being 573095?

A. Yes, it does. In the name of Cynthia White.

Q. And does it, in that portion where the Philadelphia photo number is noted, also assign to Ms. White an FBI number?

A. Yes, ma'am. And that number is 0934288R, Robert, 7.

Q. What is an FBI number?

A. That is an identification number that is given a person at the time of arrest wherever in the country, and that number stays with that person forever. He or she never gets a different number, it is the same number.

Q. So similar to a Philadelphia photo number but

for FBI record keeping purposes?

A. That's correct, ma'am.

Q. Now, in your experience as a detective for the 30 something years that you have been a police officer, does the FBI maintain records of persons, criminal contacts from all the various states around the country?

A. They do.

Q. Continue, then, on Commonwealth Exhibit 2, can you tell us what the next portion of Commonwealth Exhibit that printout reflects?

A. Well, in the first portion, it also reflects a Social Security number, which is 127-50-6809. The next portion is the identification index response, which is interstate from the FBI. And that reflects an FBI number of 934288R, Robert, 7.

Q. Is that in fact the FBI number that you have previously told us matches or belongs to Cynthia White, the same person who has the photo number 573095?

A. It is, ma'am. And this sheet she uses the name Mildred Saunders here.

Q. I'm sorry, go ahead?

A. This printout also contains approximately 19 to 20 aliases for this same person bearing the

numbers that we spoke of before.

Q. Within those aliases is Cynthia White included?

A. Cynthia White is included, and also the name Mildred Saunders.

Q. Is the name Cynthia Williams included?

A. Cynthia Williams is also included.

Q. And the Social Security number which you have provided to us -- 127-50-6809 -- is that included as a Social Security number used by or identified with this same individual?

A. Yes, ma'am, that number and other numbers used by her.

Q. Now, does this FBI information also include identifying numbers assigned to this person by states, or by entities other than the FBI and Philadelphia?

A. Yes, by states, other states as she was arrested in. And it would show, that would be the State of New York, and also the State of New Jersey.

Q. And besides the identifying number assigned to this person in the State of New Jersey, is there any information noted on this printout?

A. Yes.

Q. And what --

Page 143.

Detective Raleigh Witcher - Direct

A. The information is deceased: D-E-C-E-A-S-E-D.

Q. But it doesn't say when?

A. No, it does not say when.

MS. FISK: May I ask that this document be marked as Commonwealth Exhibit 4, please (handing).

MR. WEINGLASS: Object to the document. The document is hearsay. The declarant of the document is a representative of the Federal Bureau of Investigation who is not here to authenticate the document. And particularly the notation in the document of deceased is not authenticated.

MS. FISK: The death certificate of the witness which is being marked as Commonwealth Exhibit 4, which reflects that she died, Your Honor, in 1992, bears the seal from the State of New Jersey and is self-authenticating.

MR. WEINGLASS: Whatever the following document is -- and we will deal with that document when it comes up -- it doesn't make this document any more available as evidence than it is in its current state.

THE COURT: I know. You could argue

Page 144.

Detective Raleigh Witcher - Direct

that before the Supreme Court. I am letting it in.

THE COURT OFFICER: (Handing.)

MR. WEINGLASS: May I just cross-examine on that document as of voir dire?

THE COURT: You will get your turn.

MR. WEINGLASS: May I voir dire on the document?

THE COURT: Wait until she finishes with this document. You will get your turn and you could cross-examine on anything.

MR. WEINGLASS: Yes, but ordinarily you are allowed to cross-examine on a document.

THE COURT: Counselor, I have made a ruling already. You will get a chance after she finishes.

Come on.

(Pause)

(Report of Death was marked
Commonwealth's Exhibit C-4 or identification.)

THE COURT OFFICER: So marked C-4 (handing).

BY MS. FISK:

Q. All right, Detective Witcher, can you tell us, though it is self-authenticating, can you tell us

Page 145.

Detective Raleigh Witcher - Direct

nevertheless what Commonwealth Exhibit 4 is?

A. It is a Certificate of Death issued in the State of New Jersey, State Department of Health. And attached is a Report of Death, Camden County Office of the Medical Examiner.

Q. Starting with the Certificate of Death, does that bear a seal, a raised seal from the State of New Jersey?

A. Yes, it does.

Q. Can you tell us for whom this is a Certificate of Death?

A. It is for Cynthia Williams, a\k\a Mildred Saunders.

Q. Is there a Social Security number for that individual reflected on that Certificate of Death?

A. Yes, there is.

Q. And what is that, please?

A. The number is 127-50-6809.

Q. And is that the same Social Security number that the Philadelphia records showed was assigned to Cynthia White?

A. And the Federal records.

Q. Both?

A. Both.

Q. Can you please tell us the date that that

Page 146.

Detective Raleigh Witcher - Direct

death certificate reflects Cynthia White, also known as Cynthia Williams, also known as Mildred Saunders, was certified dead in the State of New Jersey?

A. On 9-2-92.

Q. '92?

A. '92.

Q. Can you tell us, please, what the cause of her death was as declared by the coroner on behalf of the State of New Jersey?

A. It was undetermined.

MS. FISK: Thank you.

I have no further questions of this witness, Your Honor.

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CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Detective Wichert.

MS. FISK: Witcher.

BY MR. WEINGLASS:

Q. Witcher, I'm sorry.

A. All right.

Q. Detective Witcher, when did you first see Commonwealth 4?

A. I think the first time I actually saw it was

Page 147.

Detective Raleigh Witcher - Cross

maybe this past, within the past two weeks.

Q. Within the past two weeks?

A. Yes, sir.

Q. Certainly since May 30th, 1997, when the Supreme Court ordered this hearing?

A. I'm not sure that I saw it prior to that time. I knew there was one, I did not see it.

Q. You knew there was one without seeing it?

A. I understood that there was one.

Q. When were you first told that there was one?

A. I don't remember.

MS. FISK: Objection, Your Honor. Frankly, it is irrelevant.

THE COURT: If he remembers, I don't care.

THE WITNESS: I don't remember.

BY MR. WEINGLASS:

Q. Who told you?

A. Oh, I don't know. It was someone that's involved in this investigation.

Q. What investigation is that?

A. The investigation of your client.

Q. Someone called you to tell you?

A. No; I'm an active part of the investigation.

Q. You are still part of the investigation?

Page 148.

Detective Raleigh Witcher - Cross

A. That is correct.

Q. Okay. When did you, have you looked for Cynthia White in the past two years?

A. Physically, no.

Q. How have you looked for her?

A. Checking records.

Q. And did you ever find a death record for her?

A. I did not.

Q. What records did you check?

A. Several records. The local records, State records.

Q. Did you check New Jersey?

A. I did not.

Q. Did anyone to your knowledge check New Jersey?

A. Yes. That's how we obtained this document.

Q. But the document was obtained when, to your knowledge?

A. I can't tell you that, sir.

Q. Within the last two, three weeks?

A. I think so.

Q. So it was only within the last two or three weeks that you checked in New Jersey?

A. No, I did not say that.

Q. Did someone check in New Jersey?

A. Someone came up with this (displaying),

Page 149.

Detective Raleigh Witcher - Cross

someone involved in our investigation. I don't know exactly who that person is.

Q. Right. Did you order it?

A. No, I did not order it.

Q. Right. So let me just get this clarified in my own mind. Is it your testimony that as of May 30th, 1997, you had no knowledge or information respecting the whereabouts of Cynthia White as of that time?

A. I did not.

Q. As of that time, prior to May 30th, 1997, had you inquired as to the whereabouts of Cynthia White in the previous two years?

A. Probably so.

Q. And what do you mean by that?

A. During the course of this investigation, we did actively try to locate Cynthia White.

Q. When was that, if you can give us years? '95? '96?

A. Well, I don't know the years but since these hearings have been coming up.

Q. Would that be since '95?

A. Probably, yes.

Q. And when you say we have actively, could you describe to the Court what you have done?

Page 150.

Detective Raleigh Witcher - Cross

A. I am a part of the investigation. I am an active part of the investigation. There are a lot of things that I have done. I have not always been designated to do any one particular thing in the investigation. This is a team effort here.

Q. Right. I want to limit it to Cynthia White. What have you done since 1995 with respect to Cynthia White?

A. I have checked local records --

MS. FISK: Your Honor, I object. That is not relevant to the document which is self-authenticating and which shows the date of her death in 1992.

MR. WEINGLASS: If it is the same person.

MS. FISK: But that has nothing to do with this detective's efforts to locate --

THE COURT: He said he never went to New Jersey, somebody else in the squad evidently had New Jersey.

BY MR. WEINGLASS:

Q. Let me just ask it this way relative to this objection and the Court's comment. Did you receive in 1995 and in 1996 and in 1997, up to May 30th, 1997, information that Cynthia White was alive and in

Page 151.

Detective Raleigh Witcher - Cross

the environs of the City of Philadelphia?

A. The only information that we received that she was alive was a document sent to the District Attorney's office by your team, sir.

Q. Other than that you had no other information?

A. No, sir.

Q. Now, my second question, then, is could you tell the Court what efforts you made yourself, in 1995, 1996, '97, to locate Cynthia White?

A. As I stated before, I checked records, I made telephone calls. I checked records both local and out of the locale. We did not locate her.

Q. Could not locate her?

A. Could not locate her. Until this document was produced (displaying).

Q. And that document wasn't found until after May 30th, 1997?

MS. FISK: That's not what he said, Your Honor. He said that's when he saw it.

BY MR. WEINGLASS:

Q. To your knowledge, when was that document found?

A. I don't know.

Q. You have no knowledge?

A. That was my testimony, I can not tell you when

Page 152.

Detective Raleigh Witcher - Cross

this document was found. I said I found out or saw this document for the first time approximately two weeks ago.

Q. And could you indicate to the Court just an approximation of how many hours you spent in '95, '96 and '97, up to April 3rd, May 30th, looking for Cynthia White?

A. I can't honestly estimate that.

Q. Would be it more than 100 hours?

A. I can't honestly estimate that.

Q. But you were actively looking for her?

A. From time to time. And I also testified that that was not physically. In other words, I wasn't out in the street looking for her.

Q. Were others, to your knowledge?

A. I imagine so.

Q. So it's your testimony that officers of the Philadelphia Police Department were actively looking for someone who you are telling the Court today has been dead since 1992, and dead in the State of New Jersey, just across the river in Camden, and your office had no knowledge of this?

A. I did not testify to that, sir.

Q. If your office had knowledge that Cynthia White died in 1992, would you have been assigned the

Page 153.

Detective Raleigh Witcher - Cross

task of locating her in '95, '96 and '97?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: It goes to the credibility of this report. We don't know if she died or not.

THE COURT: Well, he is just telling you what the records say. If you think the records are wrong, you go out and investigate them.

MR. WEINGLASS: We have investigators.

THE COURT: You nave investigators, good. Go out, do what you have to do.

MR. WEINGLASS: And I can assure the Court you will hear from that. But I want to get the information this witness has about his efforts to find someone.

THE COURT: He told you he didn't go out in the street, he made telephone calls, that kind of investigation.

MR. WEINGLASS: But he was part of the team and others went

out into the street.

THE COURT: Yes, he is part of the team, but he doesn't know what each individual is doing.

MR. WEINGLASS: And they are looking

Page 154.

for someone who according to their information was dead since '92, and the information was lodged in Camden, New Jersey.

THE COURT: That's what they are telling you that they found out ultimately.

MR. WEINGLASS: All right.

BY MR. WEINGLASS:

Q. After you got this information which is in Commonwealth 4, did you do anything to try to obtain the fingerprints of the deceased person who is identified in that document?

A. That information, sir, I did not, but that information is contained in Commonwealth Exhibit 2.

Q. And could you refer me to the fingerprint identification information?

A. Yes, if you will look on --

MS. FISK: Counsel Doesn't have a copy. There is only one copy.

THE WITNESS: There is a fingerprint class number on about the third page and that's from the FBI.

BY MR. WEINGLASS:

Q. And what does that fingerprint class number say?

A. There are ten numbers.

Page 155.

Q. Yes?

A. And you would have to get a person that reads fingerprints to tell you exactly, or to read it. But it reads thusly: PM, 11, 12, CO, 16, DO, 08, 13, PI, 18.

Q. In your experience what do those numbers reflect?

A. It identifies your fingerprints. There are ten numbers there, one number for each finger.

Q. And did you check with the FBI after you got this document, Commonwealth 2, to see if in fact the deceased who is on Commonwealth 4 bore the fingerprints of Cynthia White?

A. No, sir, but the Philadelphia identification system has the same records and the same numbers.

Q. Did you check the Philadelphia numbers?

A. Yes, sir.

Q. Did you bring them with you?

A. We have them here in this document on this Court -- on C-3, the Court history. Well, we don't have those numbers. Well, we have the fingerprints, the photo identification number.

Q. Right?

A. Which is --

Q. Yes?

Page 156.

A. -- the identifying number for Cynthia White. And if you check deeper in her records, you will find her fingerprint class.

Q. All right, and I am asking you, Detective, did you check deeply into those records before testifying today?

A. No, sir, I did not.

Q. Where are those records?

A. They are in the fingerprint identification system or section of the Philadelphia Police Department.

Q. Where is that?

A. Located at 8th and Race.

Q. About how many blocks from here?

A. I don't know. We're at Juniper and Filbert.

Q. It is a short walk?

A. Well, it's pretty hot out there today, sir.

Q. You didn't want to walk it today, did you?

A. I do what I am told and I do what I am paid for.

MS. FISK: Objection. He didn't have a burden to do that. A self-authenticating document is sufficient, whether Counsel likes it or not.

THE COURT: If he wants to investigate

Page 157.

it further, go ahead.

BY MR. WEINGLASS:

Q. I want to get this clear. You don't know of your own knowledge if Cynthia White is alive today or dead?

A. I have every reason in the world to believe that the FBI would not deem her dead if she was not dead.

Q. My question to you, Detective: Of your own knowledge, do you know if she is alive or dead?

MS. FISK: Your Honor, these are offered as business records.

THE COURT: Yes; objection is sustained.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Would you have looked for Cynthia White for the last two-and-a-half years as part of a team with others who were also looking for her if in fact you had knowledge that she had died in '92?

MS. FISK: Objection, Your Honor.

THE COURT: He said he looked, whatever he did. Now, would he have? It would have been futile.

MR. WEINGLASS: Exactly.

Page 158.

THE COURT: Well, he knows that, you know that. So what are you asking him for?

BY MR. WEINGLASS:

Q. Incidentally, as a detective in Homicide with 33 years experience overall, 17 years in Homicide in the City of Philadelphia, you do work frequently, do you not, with comparable law enforcement services in Camden County, New Jersey?

A. Not necessarily, sir.

Q. Do you work frequently with them?

A. No.

Q. They are right over the river; is that right?

A. It doesn't matter. Darby is to the right and I don't work with Darby, Pennsylvania authorities regularly either.

Q. Right. You have worked with Camden authorities in the last three years?

A. Yes, I have.

Q. Did you ever ask them about Cynthia White?

MS. FISK: Objection, Your Honor: It is irrelevant. The efforts made produced evidence that the woman is dead and that she wasn't the one who saw a ghost last March.

THE COURT: Save them for some other time if the Supreme Court wants to hear further.

Page 159.

I don't.

MR. WEINGLASS: Your Honor, the evidence of her death, not surprisingly, allegedly surfaces only after the Supreme Court of Pennsylvania orders this hearing, even though this witness and others have been looking for her.

THE COURT: Are you saying that that is a phony? Are you saying that that death certificate is phony?

MR. WEINGLASS: I am saying that we will have testimony to rebut it.

THE COURT: All right. Are you saying that it's phony?

MR. WEINGLASS: We will have testimony to rebut it.

THE COURT: Are you saying that it is phony? I asked you a simple question.

MR. WEINGLASS: I am saying we will rebut it.

THE COURT: You are not answering my question. All right, go ahead.

BY MR. WEINGLASS:

Q. Did you look at a photograph of the alleged deceased who is in Commonwealth 4?

Page 160.

A. I am looking at it now.

Q. The photograph of her as a deceased person?

A. No, I did not see her body.

Q. You didn't see her?

A. Not photographed or otherwise.

Q. And you didn't see a photograph?

A. No.

THE COURT: The body is already gone, how is he going to see it? It will come out of the grave and look at you? You know the body is dead, it is down in the ground. Sure, he didn't see the body.

MR. WEINGLASS: Your Honor, I am not asking him to do subterranean investigation.

THE COURT: Well, for a minute I thought you were.

MR. WEINGLASS: I do think, though, that given the fact that there is a police report or a report appended to Commonwealth 4 --

THE COURT: Take it up with the Supreme Court when you get up there, okay. If they want you to do something further they will send it back.

(Discussion was held off the record among defense Counsel.)

Page 161.

MR. WEINGLASS: May I have the Exhibits that are before the witness? We don't have copies.

THE COURT: Well, how in the world is he going to answer your questions?

MR. WEINGLASS: I will give the witness the courtesy before I ask the witness a question about the documents. May I?

THE COURT: All right. Which ones?

MR. WEINGLASS: May I see all of the documents? As I question I will return the documents to the witness.

(Pause)

BY MR. WEINGLASS:

Q. Did you in the course of your investigation, '95, '96 and '97, have any information that the Cynthia White you were looking for had any next of kin?

A. I think I recall seeing the name of a parent or someone at some time. I, I can't say yes or no.

Q. My question to you is, did you attempt to locate Cynthia White's, who you were looking for, next of kin?

A. No, sir, I did not.

Q. Did you ever look for a woman named Ruth Ray,

Page 162.

R-A-Y?

A. No, sir.

Q. She is the mother of Cynthia White?

A. I never looked for her.

MR. WEINGLASS: Now I want to return to you Commonwealth 1 together with another document which has six photographs in it, which I would like to have marked Defendant's 4 for identification.

(Photographs were marked Defendant's Exhibit D-4 for identification.)

BY MR. WEINGLASS:

Q. Now, before I get into these documents which are being handed to you, let me ask you this question. Back in 1982 --

THE COURT: Wait a while. Wait a while. She is looking at some documents.

Okay.

THE COURT OFFICER: So marked D-4, Your Honor.

THE COURT: Okay.

BY MR. WEINGLASS:

Q. Back in June and July of 1984, when you were

A. working on this case --

MS. FISK: '84?

Page 163.

BY MR. WEINGLASS:

Q. -- I'm sorry -- '82, you were aware of the fact that Cynthia White was brought down to testify here in Philadelphia from the City of Boston where she was then incarcerated?

A. I don't recall that. I know she testified, she was present in Philadelphia and she did testify in this case. I don't know if she was brought down from Boston or not, I don't recall that.

Q. You don't remember that?

A. I said I don't recall it.

Q. Now I will ask you to look at Defense Exhibit 4 for identification. Look at the top two photographs on that document. Do you recognize that person? The top two, left and right.

A. Are you referring to these two here, this same photograph, one profile and one straight face (displaying) (indicating)?

Q. That's correct.

A. Yes.

Q. Who is that person?

A. Cynthia White.

Q. Now, could you do as you did before: Read into the record what is marked on those photographs?

A. Police Department, Boston, Massachusetts.

Page 164.

There is a number 213533. And it's dated 5-4-79.

Q. Does that refresh your recollection that Cynthia White was in custody in Boston, Massachusetts in '81 and '2?

A. No, sir.

Q. Okay. Now, the numbers that are marked there, are those State, or Commonwealth of Massachusetts numbers?

A. I have no idea what those numbers are.

Q. Have you ever seen those photographs before?

A. No, I have not.

Q. Not in your investigation?

A. Sir, I have not seen these photographs before.

Q. By the way, I have limited my questions to you up to this point of any activity you did with respect to Cynthia White in '95, '96 and '97. Would it be fair to say that your activity with respect to Cynthia White goes back 15 years?

A. What activity are you referring to?

Q. Attempts to locate her.

A. No, sir. You would be wrong.

Q. When did you start to locate her?

A. Probably around the dates that you just mentioned, '95 on.

Q. Not before?

Page 165.

Detective Raleigh Witcher - Cross

A. Not that I can recall.

Q. Okay. Looking at the second series of photographs that are in the middle left and right on Defense Exhibit 4, do you recognize those photographs?

A. That is a photograph of Cynthia White.

Q. And is there a date on those photographs?

A. 7-22-81.

Q. And where are those photographs taken?

A. Police Department, Boston, Massachusetts.

Q. So that would indicate to you that in July of '81 she was in Boston?

A. No, sir. It would indicate to me that there is a date on this photo of 7-22-81 and it's marked Police Department, Boston, Massachusetts.

Q. Would that indicate that she was in Boston on that date?

A. No, sir, not to me.

Q. Why is that?

A. Because it indicates only what I read here.

Q. I see.

A. Nothing further.

Q. I see. Okay. You wouldn't want to on the basis of just data that is on a document even venture an opinion beyond what the data is?

Page 166.

Detective Raleigh Witcher - Cross

A. No, that is not true. I don't know where these pictures were obtained from and I don't know whether they are authentic or not. I know I got the documents that I obtained from authentic sources.

Q. I see. Now look at the last two photographs on that document. And who is that?

A. Cynthia White.

Q. And what is the date of that?

A. 4-27-83.

Q. Where is that taken?

A. Boston.

Q. So with respect to these six photographs that appear on Defense Exhibit 4, it is your testimony that all six are Cynthia White?

A. Yes.

Q. Now, who is -- I'm sorry -- do you have Commonwealth 4 before you?

A. I don't have any.

MR. WEINGLASS: If we could return that document.

THE WITNESS: No.

MR. WILLIAMS: (Handing).

BY MR. WEINGLASS:

Q. Commonwealth 4: Who is the medical examiner who certified that this individual has the name

Page 167.

Detective Raleigh Witcher - Cross

Cynthia Williams, also known as Saunders?

A. He is Dr. R. L. Catherman, 43rd and Madison Avenue, Pennsauken, New Jersey.

Q. Is he the same, to your knowledge, Dr. Catherman who was a medical examiner in Philadelphia for 20 years?

A. I believe he is.

Q. And he was the medical examiner here until the late 1980s?

A. I don't recall when he left.

Q. Had you worked with him in any way?

A. Yes, I have.

MR. WEINGLASS: If I may have just a moment.

(Discussion held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. In your checks in looking for Cynthia White, '95, '96 and '97, you did, did you not, come across the fact that she was a wanted felon here in the City of Philadelphia during that time for having skipped bail on a felony charge in 1987?

A. No, I don't recall that. It very well might be, I don't recall it.

Q. Is that noted in the computer printout which

Page 168.

Detective Raleigh Witcher - Cross

is Commonwealth 2, or in the Court history which is Commonwealth 3? And I don't think you have Commonwealth 3 before you. Which we will give you.

A. I don't have 2, either.

MR. WEINGLASS: I'm sorry, if we could have 2 and 3.

MR. WILLIAMS: (Handing).

MS. FISK: Does he have Commonwealth Exhibit 3? Thank you.

MR. WILLIAMS: (Handing).

MS. WOLKENSTEIN: Could we get copies of these documents?

THE COURT: You could get copies later on.

(Pause)

THE WITNESS: I don't see any indications that she is a fugitive, sir.

MS. FISK: May I call the detective's attention to Commonwealth Exhibit 3.

MR. WEINGLASS: Yes, thank you. That is Commonwealth 3.

BY MR. WEINGLASS:

Q. Is that an FBI document or is that a Commonwealth of Pennsylvania document?

A. Which documents?

Page 169.

Detective Raleigh Witcher - Cross

Q. 3.

A. 3 is a Court of Common Pleas Court history.

Q. And that is one where you don't see any reference to a 1987 warrant?

A. No, I was reading from the Federal document.

Q. I'm sorry, so you were reading from --

A. Yes.

Q. -- Commonwealth 2?

A. That's correct.

Q. And the Federal document doesn't indicate any outstanding warrants from '87?

A. I did not notice it on my perusal of it.

MS. FISK: Look at the first page, Detective.

THE WITNESS: Yes, this document does. The first page of 3 indicates that she is, that the defendant is at large on a robbery charge.

BY MR. WEINGLASS:

Q. Since 1987?

A. Scheduled trial date was 3-30-88.

Q. Right. But she made bail in '87 thanks to the intercession of the District Attorney's Office?

MS. FISK: Objection, Your Honor.

THE COURT: No comment, will you please. Strike that question from the record.

Page 170.

Detective Raleigh Witcher - Cross

Start over again. Be a gentleman for a change.

MS. FISK: Your Honor, I would agree that Commonwealth Exhibit 3 had a bench warrant issued for her from March 1988

when she failed to appear at trial.

THE COURT: Okay.

MR. WEINGLASS: Okay.

BY MR. WEINGLASS:

Q. Now, that bench warrant does not appear in Commonwealth 3 to your reading of it today? I'm sorry, in Commonwealth 2.

A. It does not.

Q. And that is the FBI document?

A. That's correct.

Q. And that is the document that you rely on for the fact that she is deceased in part?

A. That is correct.

Q. Is there any reason why the FBI document is missing the fact that there is a warrant outstanding for her?

A. Because there is another system that you can go into and get whether she's wanted or not.

Q. Did you try that system in the FBI?

A. That would come up the same as this (displaying).

Page 171.

Q. Did you try it?

A. No, I did not personally.

Q. So you don't know?

A. I am telling you.

Q. But you don't know?

MS. FISK: Objection, Your Honor.

BY MR. WEINGLASS:

Q. You don't know, Detective, because you didn't try?

MS. FISK: Objection, Your Honor. Dead is dead. They can't arrest her on a warrant if she's dead.

MR. WEINGLASS: Right, but if they are going to say someone is deceased on a long printout, if that person is the one we are looking for there would be notations that there was a warrant outstanding for her. That notation does not exist on the FBI document.

THE COURT: Counselor, the FBI is not going to put anything on their docket unless they get it from somebody. If they didn't tell the FBI we are looking for this person, therefore it's not on their docket.

MR. WEINGLASS: Fair enough. I will ask the witness that question.

Page 172.

THE COURT: What do you have to ask the witness for? Ask me, I will tell you that is why it is not on the docket.

MR. WEINGLASS: I want to ask this witness in the ordinary course if there is a warrant outstanding for somebody for robbery --

THE COURT: Do you know how many warrants outstanding we have in Philadelphia?

MR. WEINGLASS: For robbery?

THE COURT: For robbery, anything else. Do you know how many?

MR. WEINGLASS: Are they given to the FBI?

THE COURT: No, they are not automatically given to the FBI.

MR. WEINGLASS.: May I ask the witness that question?

THE COURT: I don't know, if he could answer it. Ask him whatever he could answer, I don't know.

BY MR. WEINGLASS:

Q. If there is an outstanding warrant for someone who is in flight on a robbery charge in 1988, is that information given to the FBI?

A. Not necessarily. In some cases it is, some

Page 173.

cases it's not. For whatever reason.

Q. What determines it?

A. Mainly it would be the investigator, the charge. And if that person is wanted on a robbery I would suspect that it would go into NCIC, which is a national system.

Q. Is that picked up by the FBI?

A. Yes, it is; it is controlled by the FBI.

Q. So you would have expected that this information would be with the FBI if it is the Cynthia White we are looking for?

MS. FISK: Your Honor, he has already testified that it would be in a different portion, a different record that would give him this record through the FBI, that this particular document, Commonwealth Exhibit 2, is not a document which gives you open charges. Those are different documents. Perhaps Counsel does not realize we have not marked or entered into evidence a Federal printout of open charges. That's simply different. We are talking apples and oranges.

THE COURT: Do you understand her now?

MR. WEINGLASS: What I do realize is that this witness never bothered to get the

Page 174.

other documents.

THE COURT: You call the FBI and find out why it is not on their docket.

MS. WOLKENSTEIN: They won't give it to us.

THE COURT: Ask them to give it to you, sure.

MR. WEINGLASS: Somehow we don't get the same cooperation from the FBI as the District Attorney's Office.

THE COURT: Try, try being nice to them: You might get it. If you are going to be like you are here in the Courtroom you won't get anything. I am telling you be nice. They will give it to you.

MS. WOLKENSTEIN: Sure.

BY MR. WEINGLASS:

Q. I, just in light of the last series of questions, wanted to go into one more area. In your work in '95, '96 and '97, did you inquire of the FBI if they had any documentation or information pertaining to Cynthia White?

A. I did not.

Q. Did you check the NCIC records?

A. I did not.

Page 175.

Q. Would you look at Commonwealth 4. In Commonwealth 4 is there an indication --

A. Hold on, sir, please.

MS. FISK: That is the death certificate, Detective.

THE WITNESS: Yes, sir.

BY MR. WEINGLASS:

Q. Is there an indication on the face of that document on page 1 as to any next of kin for this person who is Cynthia Williams or Cynthia Saunders or Mildred Saunders?

(Pause)

A. Yes.

Q. And what is indicated?

A. The name Ruth Ray, R-A-Y. Relationship is mother.

Q. Is there any other information about Ruth Ray on that document?

A. No, sir.

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. You never called this individual or tried to find this individual who is listed as this person's next of kin?

Page 176.

Detective Raleigh Witcher - Cross

A. I did not.

Q. Incidentally, in reading the report on how this individual was found in Camden, do you have any idea as to how the Medical Examiner's Office would know who her next of kin was?

A. No, sir, you would have to ask them. That was not an investigation conducted by Philadelphia.

Q. Is it indicated in that report that at the time they found this individual this individual was not in a position to communicate to the persons who found her?

A. Yes, it does.

Q. Was she already dead?

A. No, it says she was unconscious and unresponsible... I'm sorry, yes, responsible --

MS. FISK: Responsive.

THE WITNESS: I'm sorry, responsive.

BY MR. WEINGLASS:

Q. All right. Had rigor mortis already set in?

A. Sir, I do not know.

Q. Is that indicated?

A. She was unconscious and unresponsive.

MS. FISK: It speaks for itself, it is self-authenticating.

THE COURT: You will have a copy of

Page 177.

Detective Raleigh Witcher - Cross

this and you could investigate it all you want.

MR. WEINGLASS: Yes, thank you.

BY MR. WEINGLASS:

Q. Now, could you just indicate lastly for the Court how Exhibits 2 and 3 -- one is the FBI document which is 2, and the other is the Court history which is 3 -- how are those documents generated?

A. They are generated by computer. You put in codes and it responds.

Q. When you say you put in codes, do you put in the name of the individual or do you put in a code number?

A. You can do it various ways.

Q. Could you put in a Social Security number?

A. Yes.

Q. And could you put in the name?

A. Yes.

Q. Could you put in the fingerprint?

A. I couldn't. But there are people that can.

Q. When you say there are people, who are you referring to?

A. People in our identification unit.

Q. And do you know if these documents which have been presented to the Court as Exhibits 2 or 3 were produced by putting in the fingerprints?

Page 178.

Detective Raleigh Witcher - Cross

A. These documents were not produced that way.

Q. Okay. Do you have the fingerprint card for Cynthia White?

A. I gave you the numbers, I do not have the card.

Q. Do you know if the card exists today?

A. I couldn't answer that.

Q. You didn't look for it before you came to Court today?

A. No, I would have no reason to look for the card.

Q. That's because you are relying on the documents?

A. That's because I have no reason to look for the card. I know that these documents are authentic and any information that I need that I could handle and that I can read are in these documents and I can obtain them without putting in the fingerprint numbers.

Q. Last question to you, Detective: The bottom line is that there is no match that you are aware of personally between the fingerprints of the Cynthia White who you knew in 1982 and the person who was found dead in Camden in 1992?

A. There is a match and it's authenticated in the

Page 179.

FBI report here.

Q. But you don't know if that is the case?

MS. FISK: Objection, Your Honor.

THE COURT: Now you are arguing with him. He is telling you that it's in the FBI report. Call the FBI.

BY MR. WEINGLASS:

Q. You indicated to us that when you looked at Peoples' -- Commonwealth's Exhibit 3, there was some information on fingerprint -- 2 -- I'm sorry -- there was some information on the fingerprint there?

A. That's correct.

Q. But you don't know if that fingerprint is the fingerprint of the Cynthia White you knew in 1982?

MS. FISK: Objection, Your Honor: Asked and answered.

THE COURT: He has already told you about that. If you want to investigate further, go right ahead.

(Discussion was held off the record among defense Counsel.)

MR. WEINGLASS: Your Honor, I have no questions of the witness right now. But I ask the witness be held until after Ruth Ray, who is the named next of kin of a person who was found

Page 180.

in '92, comes to this Court and testifies as to who that individual was.

THE COURT: Well, I am sure he could be available to you in some way.

MR. WEINGLASS: Thank you. I have nothing further.

MS. FISK: May I call my next witness, Your Honor?

THE COURT: Yes, sure.

MS. FISK: Commonwealth calls Sherrie Brewer, Your Honor.

MS. WOLKENSTEIN: Could we see those documents again, Miss Fisk?

THE COURT: You will get a copy later on. We will make copies for you. Don't get excited.

MS. WOLKENSTEIN: C-l is here.

THE COURT: Do we have a Xerox machine?

MS. FISK: You may want to wait until the next document.

THE COURT: Do you need that?

MS. FISK: There is an additional document referred to. Counsel may want that.

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Page 181.

Sherrie Brewer - Direct

Sherrie Brewer, having been duly sworn,
was examined and testified as follows:

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DIRECT EXAMINATION

- - - - - -

BY MS. FISK:

Q. Ms. Brewer, would you please tell us how you are employed?

A. By the Philadelphia School District, Department of Records Management. We keep the school records of all the students in Philadelphia who attend Philadelphia public schools.

Q. And are you here in the capacity of custodian of records for the Philadelphia Board of Education?

A. Yes, I am the custodian of records.

Q. And how long have you held that position, Ms. Brewer?

A. Well, I have been with the School Board for about 12 years,

records management about five years.

Q. Ms. Brewer, prior to your appearing today, were you asked to obtain from the Philadelphia Board of Education records the school records of one Pamela Denease Jenkins?

A. Yes, I was.

Q. And have you obtained the records of Pamela

Page 182.

Sherrie Brewer - Direct

Denease Jenkins?

A. Yes, I have.

Q. And is that the package before you?

A. Yes, it is.

Q. Now, ma'am, do those records -- so the Court record is clear -- are those the records of a Pamela Denease Jenkins who was a female whose date of birth is September the lst, 1965?

A. Yes, that is correct.

Q. And as part of those records, Ms. Brewer, do they contain a card or a single document which reflects the schools that Ms. Jenkins attended as a Philadelphia student?

A. Yes.

Q. And is that on a single document or photocopy of a portion of the file?

A. Yes, it is.

MS. FISK: May I ask, Your Honor, that this document be marked as Commonwealth Exhibit 5.

MR. WEINGLASS: Could we see it?

MS. FISK: Absolutely.

THE COURT OFFICER: (Handing).

(Pause)

(Board of Education record was marked Commonwealth's Exhibit C-5 for identification.)

Page 183.

Sherrie Brewer - Direct

THE COURT OFFICER: So marked (handing).

BY MS. FISK:

Q. Ms. Brewer, is Commonwealth Exhibit 5 an accurate photocopy of a card out of the Education files, Board of Education files kept on file for Pamela Denease Jenkins, whose birth date is 9-1-65?

A. Yes, it is.

Q. And is that a document maintained for record keeping purposes within the Board of Education which shows the schools that Ms. Jenkins attended in the City of Philadelphia?

A. Yes, yes, it is.

Q. Does that document reflect whether or not Ms. Jenkins ever attended Simon Gratz High School?

A. Yes, it does.

Q. And would you please tell us the date that Ms. Jenkins began attending Simon Gratz High School?

A. As the record shows, it would be January 19th, 1982.

Q. And does that same document reflect the date on which Ms. Jenkins stopped attending Simon Gratz High School?

A. Yes, it does.

Page 184.

Sherrie Brewer - Direct

Q. And what is that date?

A. That date would be December 6th, 1982.

Q. And based on your review or your position here as the custodian of records, is there any other period of time in which Pamela Denease Jenkins attended or was registered to attend Simon Gratz High School?

A. No, that's it.

MS. FISK: Thank you, ma'am. I have nothing further of this witness, Your Honor.

(Discussion was held off the record among defense Counsel.)

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CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Ms. Brewer.

A. Yes, good afternoon, sir.

Q. I just have a few questions for you. On the document that is before you C-5, you told us about where Pamela Jenkins according to that document went to school?

A. Yes.

Q. In 1982? And you told us that she went to

Page 185.

Sherrie Brewer - Cross

Simon Gratz High School?

A. Yes.

Q. Does it indicate where she went to school in 1981, the year before?

A. Umm, actually it is a, it is recorded that she was in Beeber, B-E-E-B-E-R, she began there 4-2-81. And then 5-6-81 she was listed as a runaway.

Q. Now, from May 6th, 1981, according to that record, she is a runaway?

A. Yes.

Q. And to your knowledge, when someone is a runaway, do the truant officers try to locate that person?

MS. FISK: Objection, Your Honor.

THE COURT: I don't know if this witness is qualified to answer that question.

BY MR. WEINGLASS:

Q. Just as a general practice, does Philadelphia try to find and locate runaways?

A. Not that I'm aware of. I really couldn't say because I --

Q. You can't say one way or the other?

A. No, I can't, because I am not a truant officer and I don't know what their duties are.

Q. Right. But from May 6th of '81 she is listed

Page 186.

Sherrie Brewer - Cross

as a runaway?

A. Yes.

Q. That means that she is someone who is not going to school?

A. That's correct.

Q. And there is no indication that she returned to school in the year '81?

A. That's correct.

Q. So according to that record, she is a runaway from May 6th of '81 until January of '82?

A. Yes.

Q. And that's when the truant officers might have been looking for her?

MS. FISK: Objection, Your Honor.

THE COURT: She told you she doesn't know what the duties are of the truant officers.

MR. WEINGLASS: Okay, I have nothing further. Thanks.

MS. FISK: Thank you.

THE WITNESS: You're welcome.

MS. FISK: Thank you, Ms. Brewer.

I would ask, Your Honor, that Ms. Brewer only leave behind Commonwealth Exhibit 5 and be permitted to return the remainder of the record back to the files of the

Page 187.

Board of Education.

THE COURT: Yes.

MS. FISK: Thank you, Ms. Brewer.

THE WITNESS: You're welcome.

MS. FISK: Commonwealth next calls Ms. Peggy Tolan, Your Honor.

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Peggy Tolan, having been duly sworn,
was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Ms. Tolan, how are you employed, please?

A. With the City of Philadelphia, Police Department.

Q. In what capacity?

A. I am an administrative services supervisors in the personnel office.

Q. And you are a civilian employee of the Police Department?

A. Yes, I am.

Q. And how long have you held the position that you hold?

A. I've been with Police personnel for about 11

Page 188.

years, a little over 11 years.

Q. And in that capacity are you the custodian of records for Philadelphia Police personnel documents?

A. Yes, I am.

Q. And in that capacity, Ms. Tolan, have you identified for us the date on which former police officer Thomas Ryan began, that is was hired by the Philadelphia Police Department and began his training at the Police Academy?

A. Yes, I have.

Q. And can you tell us, please, according to the Philadelphia Police Department records, the date on which Officer Ryan -- or, I'm sorry -- before he became Officer Ryan, the date on which Thomas Ryan was hired and began his training at the Police Academy?

A. Yes; that date was August 17th, 1981.

Q. And can you identify for us, please, the date on which he graduated the Police Academy and was made a police officer?

A. Yes, Officer Ryan graduated the Police Academy December 2lst, 1981.

Q. And following his graduation from the Police Academy on December 2lst, 1981, did he become a uniformed officer?

Page 189.

A. Yes, ma'am.

Q. And are you able to tell us the district to which he was then assigned on December the 2lst, 1981?

A. Yes, he was assigned to the 39th District.

Q. And that is what the records in the custody of the Philadelphia Police Department reflect?

A. Yes, ma'am.

MS. FISK: Thank you, ma'am.

I have nothing further of Ms. Tolan, Your Honor.

MR. WEINGLASS: May I see the records that are before the --

THE WITNESS: Sure.

MR. WEINGLASS: Have these been marked?

MS. FISK: It hasn't been. I will be happy to have it marked as Commonwealth Exhibit 6.

THE COURT: We will have to make copies of it.

MS. FISK: Yes, sir. I was just saving Roosevelt the walk. I didn't want him to start copying something: I suspected that there were additional ones coming.

Page 190.

(Employee history record was marked
Commonwealth's Exhibit C-6 for identification.)

THE COURT OFFICER: So marked C-6, Your Honor (handing).

(Pause)

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CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good afternoon, Ms. Tolan.

A. Yes.

Q. I have the document which has been marked Commonwealth 6 in front of me. Do you have a copy in front of you?

A. Yes, I do.

Q. Oh, good.

THE COURT: Is that a copy you gave him?

THE WITNESS: Yes, he can have that.

THE COURT: Oh.

MS. FISK: Which one's been marked?

MR. WEINGLASS: This one's been marked.

THE COURT: I guess that is a copy.

BY MR. WEINGLASS:

Page 191.

Q. Well, going down the columns now that appear on Commonwealth 6 --

A. Yes.

Q. -- it is indicated as you told us that Officer Ryan was appointed a correctional officer in June of '81. Is that correct?

A. Yes, it is.

Q. And then in July of '81 there is a notation for him, is there not?

A. Yes, there is.

Q. What is that notation?

A. That specifies that he received a 10 percent pay increase.

Q. Was that as a --

A. A 10 percent pay increase on 7-1-81.

Q. Was that as a correction officer?

A. Yes.

Q. So he is still a correction officer?

A. Yes, he is.

Q. Are correction officers uniformed, by the way, to your knowledge?

A. Not the same uniform that the police wear.

Q. Are they uniformed?

A. Yes.

Q. All right, thank you. Now, on August 16th,

Page 192.

'81 he is promoted to the Police Department. You have told us that?

A. Yes.

Q. And he is appointed the next day?

A. Yes.

Q. August 17th. Is that correct?

A. Yes.

Q. Now, between August 17th, '81 and December 2lst, '81, is there any indication as to what he's doing?

A. The officer is in the Police Academy. They spend approximately 5 months, 5-and-a-half months in training. They are assigned to the Police Academy, they are not full-fledged police officers at that time.

Q. Right. And is there another document that reflects that? Because it is not reflected on C-6.

A. No, sir, that's the way it's handled. Every police officer that if they have not been a police officer prior would spend that amount of time in the Police Academy.

Q. I see. If they had been a correction officer prior, they would still spend that amount of time?

A. Yes, yes.

Q. And if they had been a truant officer prior to

Page 193.

that, they would still spend --

A. It would have no bearing on it at all.

Q. Right. Do you know if Officer Ryan was a truant officer?

A. No, sir.

Q. Prior? Do you know if truant officers wore uniforms?

A. No, sir, I have no knowledge of that.

Q. Okay. Now, in the five months that he is in the Academy, could you just briefly describe what he does? Does he go to the Academy everyday?

A. Yes, Monday through Friday.

MS. FISK: Your Honor, this witness is called as a custodian of records with regard to the date Officer Ryan started in the Academy, the date he graduated the Academy and became a police officer.

MR. WEINGLASS: No, Your Honor, this record says nothing about a Police Academy. We are relying -- and I accept that -- on the witness' testimony of what she knows.

THE WITNESS: Sir, it does say the Police Academy. If you go across the page there is a P, period, A. That is Police Academy.

BY MR. WEINGLASS:

Page 194.

Q. P.A.?

A. P.A.

Q. Okay. And you are assuming that he was there until December 21st because of your knowledge?

A. Yes, sir.

Q. Yeah. Even though it is not on this document, you know that?

A. No, sir, it is on the document.

MS. FISK: It is on the document, Your Honor, and I object.

THE WITNESS: When a person is changed, his assignment is changed, it is reflected on the next line down. As you see when he goes to the 39th.

BY MR. WEINGLASS:

Q. When he goes to the Police Academy does he wear a uniform?

A. Partial uniform.

Q. When you say partial, does he wear a uniform shirt?

A. Yes, sir.

Q. Uniform pants?

A. Yes, sir.

Q. And are these the same color, if you know, back then as a police uniform?

Page 195.

A. Yes, they were.

Q. They are?

A. Hmm-hmm.

Q. So if I saw an Academy candidate walking down the street, as a civilian, wearing a uniform, he would look much like a police officer but he wouldn't have a gun?

A. He also wouldn't have a badge.

Q. And he wouldn't have a badge?

A. No, sir.

Q. But he would have a hat, the shirt and the pants?

A. Not necessarily the shirt; I believe they wear baseball caps in the Academy.

Q. Right. But in the Academy?

A. Hmm-hmm.

Q. But would he have a hat?

MS. FISK: She just said he had a baseball cap.

THE COURT: They wear a baseball cap when they are in the Academy.

MR. WEINGLASS: Thank you.

BY MR. WEINGLASS:

Q. Now, these records that you have for Officer Ryan include, do they not, records of what happened

Page 196.

prior to his resignation in 1991?

A. His history of assignments.

Q. Yes?

A. Yes.

Q. Do they also include his history of being brought up on departmental charges?

A. No, sir.

Q. Where are those records?

A. They would probably be with the personnel file.

Q. I see. You don't have those records?

A. No, sir.

Q. That's in a separate office?

A. No, sir. I was instructed to bring this.

Q. I see. Those files are in your office, though, are they not?

A. Yes, sir.

Q. You were instructed only to bring these files?

A. Yes, sir.

MR. WEINGLASS: Okay. I have nothing further.

MS. FISK: I just have one question.

- - - - -

REDIRECT EXAMINATION

- - - - -

Page 197.

BY MS. FISK:

Q. Do corrections officers -- I'm sorry -- the document which has been marked reflects that Mr. Ryan before he entered the Academy was a corrections officer assigned to Welfare; is that correct?

A. Yes, ma'am.

Q. Do persons in that capacity have the authority to drive Police Department vehicles?

A. No, ma'am.

Q. Do persons in the Police Academy have the authority to, outside of the Police Academy, other than learning to perhaps shift the car, have the authority to drive Police Department vehicles?

A. No, no, they are not a sworn officer until graduation.

MS. FISK: Thank you.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. One last: This is the employment, the employee history record which is C-6; is that right?

A. Yes.

Q. What is the entitlement of the record that you refer to that would indicate disciplinary charges?

Page 198.

Peggy Tolan - Recross

A. It would be the personnel folder.

Q. The personnel folder?

A. Hmm-hmm.

Q. And it is in your office?

A. Not the original.

Q. A copy is?

A. A copy is.

Q. And your office is the administrative office?

A. Yes.

Q. Located where?

A. In the Police Administration Building, 8th and Race.

MR. WEINGLASS: Right. Thank you, Ms. Tolan.

THE WITNESS: Hmm-hmm.

MS. FISK: Thank you.

The Commonwealth next calls Detective Clarkson, Your Honor.

I think they have the marked document of that last witness.

THE COURT: Yes, put that with the rest of the documents.

MS. FISK: Rosy, is this the one that was marked?

THE COURT OFFICER: Yes, that is the

Page 199.

Lieutenant Thomas Clarkson - Direct

one that was marked. It is marked on the front.

THE COURT: Keep it with the other papers.

THE COURT OFFICER: Well, right now he is making copies, my partner is making copies of the other one. He had already took the last.

MS. FISK: Thank you.

THE COURT OFFICER: Yes, sure.

- - - - -

Philadelphia Police Lieutenant Thomas Clarkson,
Instructor of the Advanced Training Unit,
having been duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Lieutenant Clarkson, how long have you been a Philadelphia police officer?

A. Since November 16th, 1981.

Q. And what happened on November 16th, 1981, sir?

A. I was sworn in at the Philadelphia Police Academy.

Q. Oh. When did you graduate, though, the Police Academy, incidentally?

Page 200.

Lieutenant Thomas Clarkson - Direct

A. I believe it was in March of '82.

Q. During that period of time from November 16th, 1981 to March of '82, as a member of the Police Academy, did you, were you issued a uniform?

A. No; we were told we had to wear white shirts and black pants.

Q. And was that the standard --

A. With a black tie.

Q. I'm sorry. When you entered the Academy on November 16th, 1981, was that what you were told to wear?

A. Yes, that's correct.

Q. And all persons who preceded you, at least when you arrived on November 16th, 1981, who were going through the Academy --

A. Yes.

Q. -- wore similar outfits?

A. Yes, to my knowledge.

Q. I'm sorry. Were those provided to you or you simply had to buy your own?

A. No, you had to find them. Back then it was kind of hard to find black pants and white shirts.

Q. Upon graduating the Police Academy in March 1982 --

A. Yes, that's correct.

Page 201.

Lieutenant Thomas Clarkson - Direct

Q. -- and becoming a uniformed police officer, were you placed in a police district?

A. Yes; I was assigned to the 39th District from the Police Academy.

Q. Now, you are currently a lieutenant?

A. Yes.

Q. So if you will just take us generally through your career: At what point did you stop becoming a uniformed police officer and go up in rank?

A. I believe it was in 1988 I was promoted to corporal. And in 1991 I guess it was to sergeant; and I guess it was 1994 as lieutenant.

Q. And what is your current assignment as a lieutenant, sir?

A. I am at the Advanced Training Unit of the Philadelphia Police Department. We do all State-mandated training that is required.

Q. Now, Lieutenant, you have told us that when you first became a uniformed officer in March 1982, you were assigned to the 39th Police District?

A. That's correct.

Q. Did you have occasion at any time after being assigned to the 39th Police District in March 1982 to ever work a police wagon with Police Officer Thomas Ryan?

Page 202.

Lieutenant Thomas Clarkson - Direct

A. Yes.

Q. Now, in that capacity, were you and Officer Ryan at that point both uniformed police officers?

A. Yes, we were both uniformed police officers.

Q. And what squad were you working?

A. We were working 3 Squad.

Q. And what does that mean when you say you were working 3 Squad, what does that define?

A. Well, at that time the Police Department was divided into four squads. And that was the squad we worked. We worked six days on, two days off.

Q. And were there printed calendars to show --

A. Yes, there was.

Q. To show when your squad was working?

A. Yes; we had a calendar for the year.

MS. FISK: May I ask, Your Honor, well, may I ask, Your Honor, that this document be marked as Commonwealth Exhibit...

THE COURT OFFICER: 7.

MS. FISK: 7.

(75-48 Police Incident Report was marked
Commonwealth's Exhibit C-7 for identification.)

(Discussion was held off the record among defense Counsel.)

Page 203.

Lieutenant Thomas Clarkson - Direct

THE COURT OFFICER: So marked C-7, Your Honor.

BY MS. FISK:

Q. Lieutenant Clarkson, would you please identify what has been marked as Commonwealth Exhibit 7?

A. This is a 75-48 Complaint or Incident Report we used in the Philadelphia Police Department. And it has a place of occurrence, Pulaski and Hunting Park. And it says under Details, it says sight, truancy. And the name was Pamela Jenkins, a Negro female. And I have date of birth, 9-1-65; 1712 West Tioga Street, Philadelphia, PA; and phone number; and notified mother that she was a truant. The date on the 48 is June l0th, 1982. And the time of this truancy was 10:15 a.m.

I was working that day with Police Officer Thomas Ryan and we were working an emergency patrol wagon, 3900 wagon.

Q. Was this document prepared by you?

A. Yes, this is my handwriting, ma'am.

Q. And was this prepared by you on the date that this truancy stop of Pamela Jenkins took place?

A. That's correct.

Q. And again what is the date that that truancy stop of Pamela Jenkins took place?

Page 204.

Lieutenant Thomas Clarkson - Direct

A. June l0th, 1982.

Q. And the location, please?

A. Pulaski and Hunting Park.

Q. Where is that in relation to Gratz High School?

A. Oh, it's about a block away.

MS. FISK: I have nothing further of this witness, Your Honor.

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CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Lieutenant Clarkson, good afternoon.

A. Good afternoon.

Q. So it is your testimony that Tom Ryan arrested Pamela Jenkins for truancy; is that right?

A. Well, she was taken into the 39th District for truancy.

Q. By Tom Ryan?

A. And myself. Was transported to the 39th District. I don't know if she was arrested or not.

Q. Right.

A. We just notified her mother.

Q. She was taken, she was physically put in the van and transported?

Page 205.

Lieutenant Thomas Clarkson - Cross

A. That's correct.

Q. And Tom Ryan did that?

A. It was me and Tom Ryan, we were both working the wagon, in a wagon in the Philadelphia Police Department, that is operated by two individuals or two police officers, sir.

Q. This might not be fair to ask but do you remember who was driving?

A. Probably because I made the paperwork up, probably Officer Ryan was driving. And since he had a little bit more time on than me I was probably the recorder.

Q. Right. Do you, by the way, have an independent recollection of Pamela Jenkins?

A. No, I do not.

Q. You don't remember her at all?

A. No, sir.

Q. Do you know how old she was when she was arrested -- or, I'm sorry -- picked up?

A. I just have her date of birth of 9-1-65, so however old she would be as of June 10th. She was a student at Gratz High School.

Q. Yes. Yes, she was about 16; is that correct?

A. I don't know, whatever.

Q. You can't do the math?

Page 206.

Lieutenant Thomas Clarkson - Cross

MS. FISK: Whatever 9-1-65 to June l0th, 1982 comes out to, we will agree that that was her age.

THE COURT: Well, June is not her birthday so you will have to go a year back.

BY MR. WEINGLASS:

Q. So that makes her 16, right?

THE COURT: It makes her what?

MR. WEINGLASS: 16.

MS. FISK: 15. I can't add, Judge.

(Pause)

MS. FISK: I am advised, Your Honor, by someone who can add that she would be turning 16 the following September. She's 15 and 10 months.

MR. WEINGLASS.: Okay.

MR. BURNS: Eight months. Nine months.

MR. WEINGLASS: Okay.

BY MR. WEINGLASS:

Q. So she is 15. And Tom Ryan picks her up for truancy in your presence, you and Tom Ryan?

A. Yes, we were working the wagon together.

Q. Do you know what developed in the relationship between Pamela Jenkins and Tom Ryan thereafter?

Page 207.

Lieutenant Thomas Clarkson - Cross

A. No, I am not aware of that.

Q. You are not aware of it? Did you continue to work with Tom Ryan?

A. For several years thereafter, then he went to a different squad and I was promoted.

Q. How long were you his partner?

A. I was never his partner. We were just assigned for that day. It was very unusual that Tom Ryan and I worked together. And especially a wagon.

Q. I see. Do you know if Tom Ryan knew Pamela Jenkins before you all picked her up for truancy?

A. I don't recall that he knew her then. He never said anything to me, sir, that I could recall.

Q. So you can't say that he didn't know her before, you just don't know?

MS. FISK: Objection, Your Honor.

THE COURT: He just answered that question. He said what he said. It is not fair for you to interpret it. The Supreme Court will interpret it.

BY MR. WEINGLASS:

Q. To your recollection, what was Pamela Jenkins doing when she was picked up?

A. She was outside a block or so away from Gratz High School and she should have been in school. So

Page 208.

Lieutenant Thomas Clarkson - Cross

knowing the location of Pulaski and Hunting Park, there is a steak shop or, walk-up steak shop and pretzel store.

Q. Do you know if she was working as a prostitute?

A. I have no knowledge of that, sir.

Q. Did you have knowledge -- how long were you in the 39th at that time?

A. Oh, just several months. I got out of the Academy, I guess it was March of '82. So March, April, May, June -- three months, sir. A little less.

Q. That's all you were there for, just that time?

MS. FISK: At that time.

THE WITNESS: At this instance, yes.

BY MR. WEINGLASS:

Q. But after that did you stay at the 39th?

A. Yes, I stayed with the 39th.

Q. For how long?

A. 1988, I believe, or something around there. I'm not sure of the date.

Q. So you stayed there for five, six years?

A. That's correct.

Q. Were you aware of the fact that police officers were using prostitutes as informants at that

Page 209.

time?

A. No.

MS. FISK: Objection, Your Honor: It is beyond the scope of this witness.

THE COURT: Well, he said no.

BY MR. WEINGLASS:

Q. Did you say no?

A. No, I didn't know that.

Q. You didn't know that?

A. No, sir.

Q. You later found out they were?

A. I still don't know that, sir.

Q. Did you hear that they were?

A. No, sir.

Q. Did you read that they were?

A. Read that they were using prostitutes?

Q. Yes.

A. No.

Q. Were you aware of Tom Ryan's case?

A. What case, sir?

Q. Where he pled guilty.

A. Yes, I'm aware of that.

Q. Is this the only time to your knowledge that Pamela was stopped for truancy?

A. I have no knowledge other than this day.

Page 210.

Q. Were you ever told by anyone that Pamela Jenkins was working as an informant for Tom Ryan?

A. No, I was not.

Q. Incidentally, back in 1982, when you were on this assignment on this day, June l0th, was it your practice that if you saw a person who was a teenager who should have been in school, you would stop them and pick them up and do what you did on this day?

A. That's correct.

Q. Right. And if someone were a runaway they would also be stopped if you could find them?

A. Yeah, they would be stopped and taken back home, notified, her parents would have been notified.

(Discussion was held off the record among defense Counsel.

MR. WEINGLASS: Yes, may we have Commonwealth 7 for a moment.

BY MR. WEINGLASS:

Q. When you do this kind of a pickup of a truant, is it an arrest or is it just something less than an arrest?

A. I believe that the Juvenile Aid Division would decide that, I don't make that decision.

Q. Did you as a police officer refer to it as an arrest?

Page 211.

A. I don't recall if we referred to it as an arrest or not.

Q. So if Tom Ryan under oath testified that he had never arrested Pamela Jenkins, would that in your opinion, having done this with him on June l0th, '82, be true?

A. That she might not have been arrested. It depends what the Juvenile Aid Division does. I don't know what happened after this case, after we brought her in.

Q. When you -- I am not familiar with this practice. When you see a truant like in this particular instance, you get out of your vehicle, you call the truant over to your vehicle?

A. No, we would get out of our vehicle.

Q. You get out. And you go and you approach the truant and talk to the truant. Is that correct?

A. Yes.

Q. Then how do you get the truant into your vehicle?

A. We put handcuffs on them and put them in the back of the wagon for custody.

Q. They are handcuffed?

A. You know, I don't -- I believe they would be, yeah.

Page 212.

Q. Yeah. Because of going into the back of your vehicle?

A. That's right.

Q. For no other reason than your safety?

A. Right.

Q. So they are handcuffed, and they are put in the vehicle, is that right, then they are transported to the station?

A. That's correct.

Q. Are they free to leave from the vehicle, can they say wait a minute, I don't want to go to the station?

A. No, they are not free to leave, they are in custody.

Q. Right. Okay. And to your current recollection, this is the only time you saw Pamela Jenkins?

A. To my knowledge, yes.

Q. In all the time that you were at the 39th District?

A. I don't recall ever running into her again, sir.

Q. But you did run into Tom Ryan again. I am not saying you worked with him but you saw him?

A. We worked in the same squad, yes.

Page 213.

Q. You worked in the same squad? And you didn't know what his relationship was with Pamela Jenkins after this truancy arrest?

A. No.

Q. Have you talked to him since he's been put out of the Police Department?

A. This is the first --

MS. FISK: Objection, Your Honor.

THE COURT: I think you are going a little bit too far, you are going on a fishing expedition.

BY MR. WEINGLASS:

Q. Did he ever indicate to you what his relationship with Pamela Jenkins became at any time?

A. No, sir.

MR. WEINGLASS: Nothing further.

MS. FISK: I have nothing further, Your Honor.

THE COURT: Okay. You are excused.

THE WITNESS: Thank you, Your Honor.

MS. FISK: Corporal Tobin, please.

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Philadelphia Police Corporal George Tobin, Badge number 8062, Reports Control Unit, having been duly sworn, was examined and testified as follows:

Page 214.

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DIRECT EXAMINATION

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BY MS. FISK:

Q. Corporal Tobin, good afternoon, sir.

A. Good afternoon.

Q. Corporal Tobin, what is your position in the Philadelphia Police Department?

A. I'm a corporal, I'm working in the documents processing unit at 8th and Race in Room 205, the 75-48 section.

Q. Now let me start with how long have you been a Philadelphia police officer?

A. 15 years.

Q. Now, your position as a corporal in the documents processing section, 75-48 section, can you tell us what that means?

A. 48s are written through the City, it's the initial police report.

Q. Yes, sir.

A. Police incident report. They come to me, they are put in order. They are stored. When they are requested by attorneys, private citizens, investigators, they are copied, mailed out. After

Page 215.

approximately two years from the date of an incident, they are placed on microfilm and stored in my unit.

Q. And are you here as the custodian of records, then, for all of those 75-48s, both current and more than two years old, which exist on microfilm in the City of Philadelphia Police Department?

A. Yes, I am.

Q. Now, in that capacity, Corporal, did you have occasion this week to search for 75-48s in the period of 1982?

A. Yes, I did.

Q. And specifically, were you asked to search starting with -- I'm sorry --

MS. FISK: May I please have Commonwealth Exhibit 5: The school records?

BY MS. FISK:

Q. Were you asked to search for 75-48s produced from the 39th District beginning on January the 19th, 1982, in which an Officer Tom Ryan was involved?

A. Yes, I was.

Q. And specifically were you asked to search for any 75-48 involving Officer Tom Ryan which involved a truancy stop of a Pamela Jenkins?

A. Yes, I was.

Q. Now, for the period of -- I'm sorry -- were

Page 216.

you told to go through the end of June 1982?

A. Ahh, yes, I have a copy of the request. If I could look at it I could give you the date.

Q. Sure.

A. I checked up until...

Q. Yes.

(Pause.)

A. The date was actually January 18th, 1982. And the ending date was June 14th, 1982. It's not all dates, it was certain dates.

Q. Then I am going to clarify. Are you familiar with the squad calendar?

A. Yes, I am.

Q. What is a squad calendar?

A. A squad calendar, if it is from 1982, or from a four-platoon system, each platoon had their own calendar to tell them which days they were working, which days they were off.

MS. FISK: May I approach the witness, Your Honor?

THE COURT: (Indicating).

MS. FISK: Thank you.

BY MS. FISK:

Q. I am handing to you, sir, a document. Is that a squad calendar for 3 Squad for uniformed officers

Page 217.

for the calendar year 1982?

A. That's what it appears to be, yes.

Q. And do you recognize that as the type of calendar that a 3 Squad officer would have back in 1982?

A. Yes, I do.

Q. Now utilizing that calendar, can you tell the days that a 3 Squad officer, a person in 3 Squad was assigned to work day work, as opposed to 4:00-to-midnight shift, as opposed to a midnight-to-8:00-in-the-morning shift?

A. Yes, I can.

Q. All right. Were you, utilizing that squad calendar, asked, when you were being asked to search for 75-48s that are recorded on microfilm because they are more than two years old, asked to restrict yourself to those days that a 3 Squad officer, between January 18th, 1982 and the June date that you gave us, had day work?

A. Okay, actually, I didn't work off of this schedule.

Q. Yes, sir.

A. I worked off -- a detective from Homicide --

Q. Yes?

A. -- supplied me with a sheet of paper with

Page 218.

dates.

Q. And I want you to look just briefly if you can, please, at the schedule you have?

A. Sure.

Q. And tell me whether those are the dates that you checked?

(Pause)

Q. Oh, and restricting yourself to the weekdays Monday through Friday when school is in session.

A. Okay, what makes this a little bit different on the squad schedules is --

Q. Yes, sir?

A. -- you don't have a real date.

Q. You have to have another calendar?

A. Right. To give you the date. I can tell you that 3 Squad in January worked day work Monday through Thursday just one time, and those dates that I have listed are 1-18, 19, 20 and 21.

Q. So you were given day work dates from January 18th through June 1982?

A. Yes.

Q. Okay. Did you, beginning then with January 18th, 1982, read on microfiche every single 75-48 generated from the 39th District to check for a 75-48 that involved Officer Ryan and a truancy stop of

Page 219.

Corporal George Tobin - Direct

Pamela Jenkins?

A. Okay, what I did, because it was a truancy stop, I limited the search between 7:00 a.m. and 4:00 p.m.

Q. Because that's the only time people can be declared truant?

A. And it was actually giving an hour before school and maybe an hour after school had closed. And they are the 48s that I reviewed for truancies.

Q. All right. January 18th through June the 9th of 1982, did you find any?

A. No, I did not.

Q. Can the witness please be shown Commonwealth Exhibit 7.

THE COURT OFFICER: Yes (handing).

MS. FISK: Thank you.

BY MS. FISK:

Q. Is Commonwealth Exhibit 7 a copy of a 75-48 which you found?

A. Yes, it is.

Q. And is Commonwealth Exhibit 7 an accurate photocopy of the 75-48 which appears and exists in the microfiche records of the Philadelphia Police Department?

A. Yes, it is.

Page 220.

Corporal George Tobin - Direct

Q. Now, did you also check, then, to the final date in June?

A. There was two days left. I checked them because I had already checked a lot, a lot of days. And there were no more.

Q. So this was the only one that you found involving Pamela Jenkins and Officer Ryan?

A. Yes.

Q. And the date of that is reflected as what, please?

A. The date is 6-10-82.

MS. FISK: Thank you, sir.

I have nothing further of the corporal, Your Honor.

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CROSS-EXAMINATION

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BY MR. WEINGLASS:

Q. Corporal Tobin, good afternoon.

A. Good afternoon, sir.

Q. Were you asked to check the records for the year 1981?

A. '81?

Q. Yes.

A. No, I was not.

Page 221.

Corporal George Tobin - Cross

Q. Your 75-48s include truancy arrests?

A. 75-48s at that time included just about everything. It is an initial police incident report. You would write that out on pedestrian investigations, on up to a major crime. I mean it was the initial contact report.

Q. I see. Were there truancy officers back then?

A. I don't know.

Q. If you know.

A. I can go back to when I was a kid and tell you they were. And they weren't wearing a uniform. And they rode a motor scooter, you know. But since I have been on this job, I couldn't tell you.

Q. They were in uniform?

A. When I was a child?

Q. Yes.

A. No, they were not in uniform. They drove around on a motor scooter.

Q. Later on did they become?

A. I don't know.

Q. When you do the search that you have described, you search it, do I have it correctly, by squad?

A. For the 48?

Q. Yes.

Page 222.

Corporal George Tobin - Cross

A. The way I had to search it was 1982, the search was for 3 Squad during the day work tour. So we had to figure out what days 3 Squad would be working day work, take those dates and look at the 48s that were written by the entire 39th District between 7:00 a.m. and 4:00 p.m. for a truancy incident.

Q. I see. And you were told to focus on 3 Squad? That was part of your instructions?

A. Actually, I wasn't really told the squad. What I was told was an incident report with Officer Ryan and Pamela Jenkins involving a truancy.

Q. So you looked through all the squads?

A. No, no, I was supplied, from a Homicide detective I was supplied dates and to only look on those dates.

Q. Only on those dates?

A. Yeah. And looking at this schedule now, it looks like 3 Squad, just a rough review of it, was working day work on the dates that I was supplied. Weekdays.

Q. How many dates were you supplied? Just approximate.

Q. (Pause)

A. Looks like approximately 32.

Page 223.

Corporal George Tobin - Cross

Q. 32 dates?

A. 32 days.

Q. You have in that 6-month period?

A. That's correct.

Q. Do you know why those 32 dates?

A. Well, because they were looking for a truancy, I assumed that the officer worked in a particular squad which I now know is 3 Squad. They would be the only days he would work Monday through Friday.

Q. Right?

A. You know, on those particular dates. That's why in one month we have eight or nine days and in another month you only have 4.

Q. Right. If an officer worked on a different squad?

A. The dates would be different.

Q. Would be different. You wouldn't have found those dates?

A. If I was supplied with the dates for 3 Squad, I would not have found an officer working 2 Squad during the time frame that I searched.

Q. Right. Or 4 squad?

A. Exactly.

MR. WEINGLASS: Right. Okay. I have nothing further. Thank you.

Page 224.

Detective Joseph Walsh - Direct

MS. FISK: I have nothing further of the corporal.

And, finally, Your Honor, Detective Walsh, very briefly.

- - - - -

Philadelphia Police Detective Joseph Walsh, Badge number 697, Homicide Division, having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Detective Walsh, you are currently a Homicide detective?

A. Yes, ma'am.

Q. Are you the detective who provided the dates to Corporal Tobin to search for a 75-48 that has been marked and identified?

A. Yes, ma'am.

Q. Would you please tell us how you arrived at the dates which Corporal Tobin was given?

A. The officer, Officer Ryan, from the time he was assigned out of the Police Academy in December of '81, until years later when he became a burglary

Page 225.

Detective Joseph Walsh - Direct

detail officer sometime I believe in 1984, '85, worked exclusively in 3 Squad. And I obtained a 3 Squad calendar and I wrote down a list of all the days that 3 Squad, Monday to Friday, would have been working day work where he would have had an opportunity to come in contact with Pamela Jenkins on a truancy.

Q. So were the dates which you gave Corporal Tobin all dates after Pamela Jenkins became a student at Simon Gratz High School in which Officer Thomas Ryan was working day work on a weekday?

A. That's correct.

Q. And each and every one of those days were the dates that were supplied to Corporal Tobin for searching?

A. That's correct, ma'am.

MS. FISK: Thank you, sir.

Nothing further, Your Honor.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. These are dates that you ascertained by looking at records; is that correct? Is that right?

A. The squad calendar (displaying)?

Page 226.

Detective Joseph Walsh - Cross

Q. Right.

A. Right.

Q. Did you see Officer Ryan in Court today?

MS. FISK: Objection, Your Honor. I believe it's beyond the scope of this witness, Your Honor.

MR. WEINGLASS: He is telling us that he figured out the days by looking at records that Officer Ryan worked. Officer Ryan was here today, why didn't he ask him.

THE COURT: Well, why don't you ask him if he asked him.

BY MR. WEINGLASS:

Q. Did you ask Officer Ryan today what days he worked?

A. From 1982?

Q. Yes.

A. No, sir.

Q. You didn't ask. You did see him in Court today, didn't you?

A. That's correct.

Q. Did you have any conversation with him?

MS. FISK: Objection, Your Honor: This is beyond the scope. And I would note that Officer Ryan was subpoenaed by the defense to be

Page 227.

Detective Joseph Walsh - Cross

here today. Nevertheless, that is not the point.

MR. WEINGLASS: He was, exactly.

MS. FISK: The point is that the squad calendar reflects the dates that a 3 Squad officer worked, and that is the sole purpose for which this witness has been called.

THE COURT: Okay. Limit yourself to that.

BY MR. WEINGLASS:

Q. Detective Walsh, did you tell Tom Ryan he could go home?

A. No, sir.

Q. Did you talk to him?

A. Today?

Q. Yes.

A. Yes, sir.

Q. What did you talk about?

MS. FISK: Objection, Your Honor.

THE COURT: Where are you going? Is this an inquisition or something?

MR. WEINGLASS: We are putting in all these documents about Tom Ryan. He was here and he was available as a witness.

THE COURT: Well, why don't you call

Page 228.

him.

MR. WEINGLASS: Exactly. We will call him.

THE COURT: When?

MR. WEINGLASS: I accept the invitation. As soon as this witness is completed.

THE COURT: Okay. Then ask him.

MR. WEINGLASS: Okay, fine. With Tom Ryan on the stand, I have no further questions of Detective Walsh.

THE COURT: Okay.

MS. FISK: I have nothing further, Your Honor.

Detective, the 48's been marked. Thank you, sir.

Your Honor, I have no further witnesses. Your Honor, I would move into evidence all of these documents, Commonwealth Exhibits 1 through 7, and ask that they become part of the record in this matter.

THE COURT: So admitted.

MR. WEINGLASS: We would make the same request with respect to Defendant's 1 through 4.

THE COURT: All right.

Page 229.

(Discussion was held off the record among defense Counsel.)

MR. WEINGLASS: If we may have just a moment.

Defense calls Tom Ryan.

Thomas F. Ryan, having been duly sworn, was examined and testified as follows:

MR. WILLIAMS: Judge, I am going to inquire of this witness.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WILLIAMS:

Q. Mr. Ryan, good afternoon.

A. Good afternoon.

Q. Are you the Officer Ryan with the badge number when you were a police officer 4580?

A. That's correct.

Q. The same Officer Ryan with the 39th District?

A. That's correct.

Q. Are you the same Officer Ryan that owns a red pickup truck?

A. At one time.

Page 230.

Q. Did you own a red pickup truck back in 19, in the early 1980's?

A. No.

Q. When did you first own a red pickup truck?

A. 1987.

Q. Has Pamela Jenkins ever been in your red pickup truck?

A. I don't know if she's been in it. She's been in the presence of it.

Q. Has a woman by the name of Cynthia White ever been inside your red pickup truck?

A. I don't know a Cynthia White.

Q. How about a prostitute that goes by the name of Lucky: Has a Lucky been inside your red pickup truck?

A. Not to my knowledge.

Q. How about a woman named Joan Downs -- D-O-W-N-S -- has Ms. Downs been in your red pickup truck?

A. No.

Q. Or Ms. Downs has certainly been in the presence of your red pickup truck; isn't that true?

A. Yes.

Q. By the way, Ms. Downs also goes by the nickname Peanut?

Page 231.

A. Not to my knowledge.

Q. In any event, you know a Ms. Downs?

A. Yes, sir.

Q. Now, I take it because Ms. Jenkins has been in the presence of your red pickup truck that you know her?

A. That's correct.

Q. Why don't you explain to us how it is that you came to know Pamela Jenkins?

A. As was stated in earlier testimony, I came in contact with her on June l0th, 1982.

Q. Okay. Now, today is not the first time you've had to testify under oath in connection with your relationship with Pamela Jenkins; isn't that true?

A. That's correct.

Q. You've had to testify about your relationship with Pamela Jenkins in connection with a murder trial, Commonwealth versus Raymond Carter, true?

A. That's correct.

Q. Now, and you were asked questions about Pamela Jenkins, do you recall that?

A. I recall being asked questions.

Q. At this murder trial?

A. Yes.

Q. And you recall being asked this question and

Page 232.

giving this answer?

Question: How long had you known Pamela Jenkins as of September 1986.

Your answer: Five years.

Do you recall that?

A. No, I don't recall that.

Q. Okay. Do you want to see your testimony (displaying) where you said that you had known her for five years as of September of 1986?

A. I could review it, I don't recall it.

MR. WILLIAMS: I will be glad to show it to you.

THE COURT OFFICER: Counsel, I will take care of that.

MR. WILLIAMS: Thanks. Great, thanks.

BY MR. WILLIAMS:

Q. Now, before you look at that: Just five years prior to 1986 would send us, of September of 1986, would send us back to September of 1981; isn't that true?

A. You are asking me before I review this?

Q. Yes, if you have September of 1986 as a date, and you go five years back, you go back to September of 1981; isn't that true?

A. Chronologically, that's correct.

Page 233.

Q. Okay, now look at your testimony.

A. Which part, sir?

Q. It's bracketed there. The question is how long had you known Ms. Jenkins since September of 1986. And you said five years?

A. Yes, I see that.

Q. You were under oath, weren't you?

A. Yes, sir.

Q. In a murder trial, right?

A. That's correct.

Q. Rather serious charges, right?

MS. FISK: This is direct examination and I ask Counsel to restrict himself to questions appropriate for direct examination.

MR. WILLIAMS: Okay, I will do that.

MS. FISK: Thank you.

BY MR. WILLIAMS:

Q. Were you telling the truth in the murder trial of this case: Commonwealth versus Raymond Carter?

A. Yes, I was telling the truth.

Q. Good. I will take the transcripts back.

MS. FISK: May I have an opportunity to review it, please?

MR. WILLIAMS: Great.

MS. FISK: Thank you.

Page 234.

(Pause)

MS. FISK: Counsel (handing).

MR. WILLIAMS: Thanks.

BY MR. WILLIAMS:

Q. It is your testimony that the circumstances under which you met Ms. Jenkins for the first time is in connection with a truancy?

A. Yes, sir.

Q. Why don't you describe to us exactly what happened in connection with this truancy, when you first met Ms. Jenkins?

A. Well, as I can best recall at this time, I was working a patrol wagon assigned to 39th District, 3 Squad, working the day shift tour of duty. And I was patrolling in the vicinity of Simon Gratz High School. And sometime during the school hours that day, observed Ms. Jenkins and others outside of the school building on a public street.

Q. And what did you do when you saw that?

A. Well, they were supposed to be in school so therefore that made them truants from school. And they were taken into the 39th District for that violation.

Q. All right, when you say taken into the 39th District, what do you mean?

Page 235.

A. Specifically, they were placed in the patrol wagon and driven to the 39th District headquarters at 22nd and Hunting Park Avenue.

Q. Was she placed in the wagon against her will?

A. No, she was placed in custody.

Q. When you say in custody, is that another way of saying that she was arrested?

MS. FISK: Objection, Your Honor: That is a legal term of art.

MR. WILLIAMS: Well, he was a police officer.

MS. FISK: And Counsel has MS. Jenkins' record and knows that she was not arrested in 1981 or 1982 at any time and ever charged with truancy. And I know Counsel has obtained her criminal records. And she clearly was not arrested, that is fingerprinted and processed and arrested and charged.

MS. WOLKENSTEIN: We tried to, we have been precluded. Could we get them? We would love them.

THE COURT: Okay, Counsel, stay away from that, please.

BY MR. WILLIAMS:

Q. Was she handcuffed?

Page 236.

Thomas Ryan - Direct

A. I don't recall.

Q. She was placed in the vehicle and not free to leave: Fair to say?

A. That's correct, she was being transported.

Q. Is it your testimony -- I just want to get your state of mind -- when you had her in your vehicle and she wasn't free to leave, would you consider that to be an arrest of an individual?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained, sustained. Even the Courts can't agree on that, so what are you asking him for.

BY MR. WILLIAMS:

Q. Can you say under oath today that at the time you took her into custody in 1982 that it was not an arrest?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MR. WILLIAMS: Well.

MS. FISK: Your Honor --

THE COURT: You argue that up with the Supreme Court when you get there. You could argue whether it is an arrest or what it was.

BY MR. WILLIAMS:

Q. In the same trial, sir, with the Commonwealth

Page 237.

Thomas Ryan - Direct

as the prosecutor, do you recall being asked this question and giving this answer?

Question regarding your relationship with Ms. Jenkins, was that, was that -- referring to your relationship -- as a result of you arresting her on various occasions.

Your answer: I have never arrested her.

Do you recall that?

MS. FISK: Objection, Your Honor, and move to strike.

MR. WILLIAMS: Judge, I am only confronting him with prior testimony.

THE COURT: Objection is sustained.

Strike it from the record.

You can argue that upstairs when you go back there.

MR. WILLIAMS: Why, she was asked by the district --

THE COURT: I said you could argue it back there. They will make a decision whether it was an arrest or whether it wasn't.

MR. WILLIAMS: Judge, I am only asking him about his prior testimony.

THE COURT: I said you will argue that

Page 238.

Thomas Ryan - Direct

up in the Supreme Court when you go back there.

MR. WILLIAMS: All right, let me refer to the page so that that Supreme Court will know where I'm referring to. Referring to the trial testimony of Commonwealth versus Carter at page 112, line 16 through 18. And then in fact on page 1 -- I'm sorry -- 112, line 16 through 18, and then page 114, line 16 through 20, where the Commonwealth uses the term arrest in asking him the very same question.

MS. FISK: And again I object and move to strike.

MR. WILLIAMS: Of course she does.

MS. FISK: I know those pages have been noted on the record.

THE COURT: I know the Commonwealth asked her. What did the Supreme Court say? If they made an issue of it, did the Supreme Court rule on it? I don't know: The case wasn't in front of me, I can't answer that.

BY MR. WILLIAMS:

Q. Well, let me see. You were in the Police Academy in 1981; is that right?

A. That's correct.

Q. Now, did you consider yourself to be a police

Page 239.

Thomas Ryan - Direct

officer as of 1981?

MS. FISK: Objection, Your Honor.

THE COURT: Sure, when he went and graduated he considered himself as a police officer. Why not?

BY MR. WILLIAMS:

Q. When did you graduate?

A. December, I believe, 19th, of 1981.

Q. Now, do you have an understanding as to whether law enforcement during your tenure as a police officer ever used prostitutes as sources of information?

MS. FISK: Objection, Your Honor.

THE COURT: What is the purpose of it?

MR. WILLIAMS: Well, Judge, you just heard from Pamela Jenkins --

THE COURT: Why don't you ask him a definite question on Pamela Jenkins.

MR. WILLIAMS: I am going to get to that.

THE COURT: Well, get to it right now, don't waste my time. It is a quarter after 4:00.

BY MR. WILLIAMS:

Q. Well, officer, have you ever used prostitutes

Page 240.

Thomas Ryan - Direct

as sources of information?

MS. FISK: I object to that question, Your Honor. I thought we were restricted to the witnesses involved in this proceeding.

THE COURT: Yes. Why aren't you?

MR. WILLIAMS: I am asking him about his practice, Your Honor.

THE COURT: Don't ask him about his practice. Nobody asked you about your practice. Just ask him if he hired Pamela Jones. That's what we are interested in, isn't it?

MS. FISK: Jenkins.

THE COURT: Or Jenkins. Even after all that I am getting confused.

MR. WILLIAMS: All right, well, let's do that.

THE COURT: Yes, I wish you would.

BY MR. WILLIAMS:

Q. We have this woman Pamela Jenkins who you say you arrested, right?

MS. FISK: Objection, Your Honor. That is not what he said.

BY MR. WILLIAMS:

Q. That you took into custody; correct?

A. I transported.

Page 241.

Thomas Ryan - Direct

Q. Okay. Now, that is not the last time you've had any dealings with Pamela Jenkins, true?

A. Could you be more specific?

Q. Well, let me ask you: Have you ever had any dealings with Pamela Jenkins after this whatever you want to call it, taking Ms. Jenkins into custody for truancy, have you had dealings with her after that?

A. In what respect, sir?

Q. In any respect, sir. Have you had any dealings whatsoever with Pamela Jenkins after taking her into custody in 1982?

A. Yes.

Q. Why don't you describe to the Court what kinds of dealings you've had with her since that date?

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: Judge, it is an open-ended question.

THE COURT: Wait a while.

MS. FISK: I understand it is an open-ended question. Ms. Jenkins' testimony which was offered by the defense was that it was several months after she first met Officer Ryan that she became his informant and several demands were placed upon her and that she had further conversations. The clear, unequivocal

Page 242.

Thomas Ryan - Direct

evidence based on documents and records that have been presented this afternoon shows that that contact with Ms. Jenkins occurred, first contact on June the l0th, 1982. And I would note that the Court records reflect that the trial against Mr. Jamal began on June the lst, 1982, and was completed in the early part of July 1982.

Based upon that, any contact that former officer Ryan had with Ms. Jenkins thereafter is absolutely irrelevant and has no bearing on the testimony which she presented, which she claimed -- though clearly incorrectly -- all took place prior to the trial.

THE COURT: So she didn't present any testimony at the trial?

MS. FISK: No, no, at today's proceeding.

THE COURT: Oh, okay.

MR. WILLIAMS: Judge, that is all very nice, but we have testimony under oath from this officer who says that he has known Ms. Jenkins five years prior to September of 1986. My calculation is --

Page 243.

Thomas Ryan - Direct

THE COURT: I am not interested in what happened after that, I am only interested in what she said today.

MR. WILLIAMS: That's what I am exploring.

THE COURT: Well, explore that. Ask him a definite question on that.

BY MR. WILLIAMS:

Q. Has Ms. Jenkins ever been an informant for you?

A. Yes.

Q. Has she ever been a paid informant for you?

A. Yes.

Q. And you were asked questions about this so-called professional relationship you had with Ms. Jenkins back in 1988, the Carter case; isn't that true?

A. Could you refresh my memory?

Q. Well, do you recall being asked this question and giving this answer in his 1988 trial? Did you have a professional relationship -- referring to Ms. Jenkins -- has she provided you with information in other cases.

Answer: Yes.

Does that refresh your recollection?

Page 244.

Thomas Ryan - Direct

A. I don't recall that from, from my mind right now.

Q. You recall that she has given you information on a variety of cases: True?

A. Yes, sir.

Q. Is she the only prostitute that you used for information?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. How long has she been an informant for you?

MS. FISK: Objection.

THE COURT: It looks to me like you are on a fishing expedition.

MR. WILLIAMS: No, I am not.

THE COURT: Now, wait a while. He is your witness, now ask direct questions.

MR. WILLIAMS: That is about as direct as you can get.

THE COURT: I know but there is no end --

MR. WILLIAMS: Do you want me to lead the witness? I will be glad to do that.

THE COURT: If that's the only way you can get your witness to testify I guess you will

Page 245.

Thomas Ryan - Direct

have to.

MS. FISK: I would object to Counsel leading the witness, Your Honor.

BY MR. WILLIAMS:

Q. How long was she your informant?

THE COURT: I sustained an objection to that, didn't I?

MR. WILLIAMS: That is a direct question, Judge. You asked me to give a direct question.

MS. FISK: And my objection is based on relevance, Your Honor.

MR. WILLIAMS: Judge, it is relevant as to Ms. Jenkins' credibility. Ms. Jenkins came in and told you she was an informant for this man. Now I will bolster this testimony through the testimony of Mr. Ryan.

THE COURT: Why don't you limit it to a specific time so he could answer you.

MR. WILLIAMS: I will get to it.

THE COURT: Well, get to it right now. It is almost 4:30. I will cut you off if you don't.

BY MR. WILLIAMS:

Q. During what period of time was she an

Page 246.

Thomas Ryan - Direct

informant for you?

A. The 1980's.

Q. Now, was this pursuant to a policy or a practice within the 39th District?

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Q. Or was this an independent judgment on your part to use her as an informant?

MS. FISK: Objection, Your Honor.

THE COURT: I will sustain that objection. We all know what informants are.

MR. WILLIAMS: Well, I want to know if it was through some kind of policy with the Police Department.

THE COURT: Well, why don't you ask the Police Department.

MR. WILLIAMS: I have got a representative from the Police

Department here.

MS. FISK: No, you don't.

THE COURT: No.

MR. WILLIAMS: He may be discredited but he would know.

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: Why, he would know, he is in a position to know.

Page 247.

MS. FISK: He is in a position to know what he did with regard to Ms. Jenkins and that is the relevancy for this proceeding.

BY MR. WILLIAMS:

Q. Okay, and did you do what you did with respect to Ms. Jenkins as a result of a directive or your own volition?

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: Let's hear the basis for that one.

MS. FISK: The testimony has to be about Ms. Jenkins and her assertions that this person as an officer made allegations or tried to force her to do things, and that is the purpose for which he is being presented by the defense. Not his policy, not his practice, not his contact with other persons, but his contact with Ms. Jenkins in regard to her testimony regarding asking her to testify or trying to get her to testify or identify Mr. Jamal as the person who shot Officer Faulkner.

MR. BURNS: In short, there is no foundation.

THE COURT: Why don't you limit yourself to that, Counselor. That's what Ms.

Page 248.

Jenkins said, so. If you want him to substantiate her, why don't you ask it.

BY MR. WILLIAMS:

Q. First of all, when you were using her as an informant through the '80s as you testified, you also knew that she was a prostitute, true?

A. At one point, yes.

Q. Well, you say at one point. What do you mean by that?

A. Well, at another point in time I didn't know she was a prostitute.

Q. You came to learn that she was a prostitute?

A. From time to time, that's correct. When her addiction got severe.

Q. Did any superior officers know that you were using her as an informant?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MR. WILLIAMS: Of course there is an objection. Anytime we seem to be probing into areas that might be of danger to the Commonwealth we hear an objection.

THE COURT: Probe somewhere else. You are here for a specific purpose. Stick to that purpose.

Page 249.

BY MR. WILLIAMS:

Q. How did you, when you began using Ms. Jenkins as an informant, how did you get her to agree to be an informant for you?

A. She would come forward and supply information regarding criminal activity.

Q. And what would you do with that information?

A. Try to corroborate it.

Q. Okay. And would you pass it on to other officers?

A. If it was warranted.

Q. And in a serious case like a murder case, if she says that she has information you would pass it on to a detective, wouldn't you?

A. That's correct .--

Q. And you did that in the Carter case, for example?

A. That's correct.

Q. You passed on Ms. Jenkins and you introduced her to a Detective Settle, I believe it is?

A. That's correct, sir.

Q. Now, since we are on that subject in connection with the investigation in the Carter case, where you brought Ms. Jenkins to see another detective, were there ever occasions where Ms.

Page 250.

Jenkins would call you for assistance?

A. What do you mean by assistance, sir?

Q. Well, did she ever call you to say she needed help from you?

A. Yes, she did.

Q. And did you, did you have the understanding that she trusted you?

A. To some degree.

Q. And did you make efforts to cultivate that trust in her?

A. Not necessarily.

Q. Well, were you nice to her?

A. I tried to be nice to everybody, sir.

Q. Did you give her money on occasion?

A. Yes, sir.

Q. Did you ever buy her clothes?

A. No, sir.

Q. Did you ever attempt to get her lodging, such as an apartment?

MS. FISK: May I ask what period of time we are referring to, Your Honor?

BY MR. WILLIAMS:

Q. During the time that she was an informant for you?

A. No, sir.

Page 251.

Q. Did you trust Pamela Jenkins?

A. As I stated, to a certain degree.

Q. Did you find that she was reliable?

A. On occasion.

Q. Were there occasions where you found that she was unreliable?

A. Yes.

Q. When did you determine that she was unreliable?

A. When her addiction became severe.

Q. And when was that?

A. The late '80s.

Q. Now, let me see. You understand that Pamela Jenkins provided information to Federal authorities against you and your partner Jack Baird, right?

A. I don't know exactly what she supplied, sir.

Q. You never came to learn that she had supplied information to Federal authorities against you and your partner Jack Baird?

A. Yes, but I don't know what it was.

Q. But you know that she did?

A. I just stated yes.

Q. Okay. And you understood that your partner Jack Baird had paid Pamela Jenkins to lie under oath: True?

Page 252.

MS. FISK: Objection, Your Honor.

MR. WILLIAMS: That was encompassed by Ms. Jenkins' testimony this morning, Your Honor.

MS. FISK: I believe Your Honor barred the testimony regarding actions by Jack Baird which caused Ms. Jenkins to do the things, properly limiting Ms. Jenkins to her contacts with Mr. Ryan.

MR. WILLIAMS: Let me establish the foundation.

BY MR. WILLIAMS:

Q. Mr. Ryan, did you ever introduce Pamela Jenkins to your partner Jack Baird?

A. No.

Q. How did Jack Baird come to know Pamela Jenkins?

A. From the street in the 39th District.

Q. Was Pamela Jenkins also an informant for your partner Jack Baird?

A. I don't have independent knowledge of that.

Q. Did you know that your partner was giving money to Pamela Jenkins?

MS. FISK: Objection, Your Honor.

THE COURT: He said he didn't know what the relationship was between Baird and

Page 253.

that.

MS. FISK: And it is also irrelevant, Your Honor, and has nothing to do with Ms. Jenkins' testimony of this morning having to do with contacts which she claims she had with Mr. Ryan prior in fact to his becoming a police officer or her ever entering Gratz High School.

BY MR. WILLIAMS:

Q. Mr. Ryan, wouldn't it be fair to say that you would not give money to, to an individual to lie under oath if you didn't trust that person?

MS. FISK: Objection, Your Honor.

THE COURT: I will sustain that objection.

BY MR. WILLIAMS:

Q. Well, when you have informants, you have to trust those informants; isn't that true?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. You are getting -- where are we going?

MR. WILLIAMS: Well, I am establishing Ms. Jenkins' credibility here.

THE COURT: How?

MR. WILLIAMS: Well, you will see how in a minute.

Page 254.

THE COURT: Right. Well, get into it, then. Why are you going into all of this about trusting somebody? How could you ever trust anybody? Especially a prostitute.

BY MR. WILLIAMS:

Q. Well, you trusted --

THE COURT: And somebody taking dope.

BY MR. WILLIAMS:

Q. You trusted her enough to give her money: True?

MS. FISK: Objection, Your Honor.

THE COURT: How do you get information without giving them money?

BY MR. WILLIAMS:

Q. Isn't it true you gave her money because you trusted her?

MS. FISK: Objection.

THE COURT: All right.

MR. WILLIAMS: Could we get an answer from the witness?

THE COURT: She is objecting to the question. I will sustain the objection. I was just trying to tell you what the situation was, but okay. But you don't want it. Okay.

BY MR. WILLIAMS:

Page 255.

Q. The information she gave you, for example in the Carter case, turned out to be reliable; isn't that true?

MS. FISK: Objection, Your Honor.

THE COURT: Counselor, what are we doing with the Carter case? I am not concerned one bit about the Carter case. I have got this case here. And that's enough of a headache for me. I am not going to worry about what they did in Carter. I didn't sit on that case, I don't have the slightest idea what went on there. And I don't care what went on there. I am only interested in this case. Limit yourself to what he did in this case. If you can.

BY MR. WILLIAMS:

Q. You had used Pamela Jenkins as a source of information prior to the Carter case; isn't that true.

A. That's correct.

Q. Now, do you know a detective by the name of Richard Ryan?

A. Yes.

Q. And he is a detective with the Central district, Central Division, pardon me?

A. I don't know.

Page 256.

Q. Well, how do you know Detective Ryan?

A. I met him sometime in 1988 and he processed a burglary arrest that I made.

Q. And that's the extent of your knowledge of Mr. Ryan, of Detective Ryan?

A. That's it, sir.

Q. So I take it that Detective Ryan has never come up in conversations between you and Pamela Jenkins; is that your testimony?

A. As I just stated, my only contact was him processing a burglary arrest sometime around 1988.

Q. All right, so I could take from that that you have never discussed a Detective Richard Ryan with Pamela Jenkins?

A. That's correct.

Q. So I take it that you have never heard Pamela Jenkins say anything negative about a Detective Richard Ryan; isn't that true?

A. I've never heard Pamela Jenkins say anything positive or negative about the detective.

Q. So you can't say that Pamela Jenkins harbors any animosity towards this Detective Ryan, right?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MS. FISK: I believe the question has

Page 257.

been answered.

BY MR. WILLIAMS:

Q. Now, isn't it also true that in addition to receiving information from Pamela Jenkins, that you also had a sexual relationship with her?

A. A brief one.

Q. And when did that occur?

A. In 1984.

Q. That was the subject, your sexual relationship with Pamela Jenkins, in your dealings with the Federal authorities in connection with your arrest?

A. Was it?

Q. Yes.

A. I don't know.

Q. Isn't it a fact that when you were arrested you were debriefed by an FBI agent?

A. Regarding?

Q. Regarding your activities as a police officer.

A. That's correct.

Q. And that FBI agent is James Williamson, right?

A. That's correct.

Q. And there was a police investigator named James Dambach: D-A-M-B-A-C-H?

A. That's correct.

Q. And you recall being debriefed by them?

Page 258.

A. Yes.

Q. And as part of the debriefing was your sexual relationship with Pamela Jenkins: True?

A. That's correct.

Q. And part of your debriefing by this FBI agent was her use as an informant: True?

A. That's correct.

Q. And in fact, part of your debriefing also involved the use of prostitutes as informants in general?

MS. FISK: Objection, Your Honor.

BY MR. WILLIAMS:

Q. Isn't that true?

MS. FISK: That is irrelevant to this proceeding.

THE COURT: Objection is sustained.

BY MR. WILLIAMS:

Q. Well, let's put it this way. Your use of Pamela Jenkins as an informant was not something unique within the Police Department: That's fair to say?

MS. FISK: Objection, Your Honor. Whether it is fair or not it is not relevant.

THE COURT: You better get another question someplace, forget that one.

Page 259.

MR. WILLIAMS: Sustained, Your Honor?

THE COURT: Yes.

BY MR. WILLIAMS:

Q. Now, isn't it also a fact that you told the Federal authorities -- specifically FBI Agent James Williamson and police investigator James Dambach -- that you had been having sex with and paying for information since she was 15 years old? Isn't that true?

A. I don't recall.

Q. You don't recall that, okay. You don't recall the details of what you told FBI Agent Williamson?

A. That's correct.

Q. But you might have told him, you just don't recall, that you had been having sex with Pamela Jenkins and paying for information since she was 15?

MS. FISK: Objection, Your Honor.

THE COURT: I will sustain the objection. He said he doesn't recall it. That's enough.

(Discussion was held off the record among defense Counsel.)

BY MR. WILLIAMS:

Q. Now, isn't it a fact that Pamela Jenkins was 15 years old in 1981?

Page 260.

MS. FISK: Objection, Your Boner.

BY MR. WILLIAMS:

Q. To your knowledge.

MS. FISK: Your Honor, I believe that everyone is capable of counting from September lst, 1965 and figuring out exactly each and every day since then how old Ms. Jenkins has been.

MR. WILLIAMS: Okay. I think we can all agree.

THE COURT: Rephrase your question. Get more specific if you want to bring something out.

MR. WILLIAMS: I think we could all agree she was 15 in 1981.

BY MR. WILLIAMS:

Q. So is it a coincidence, officer, that under sworn testimony you indicate that you have known Ms. Jenkins since September of 1981, and then in a debriefing with FBI Agent Williamson you told him that you had began having sex with her and using her as an informant since she was 15? Is that a coincidence?

MS. FISK: Objection, Your Honor: There is no foundation for that question.

Page 261.

THE COURT: Sustained.

BY MR. WILLIAMS:

Q. Well, does it help your recollection as to what you told FBI Agent Williamson regarding use of her as an informant and having sex with her since she was 15, that you testified under oath that you had known her since 1981 when she was 15 (displaying)? Does that help your recollection?

A. As my recollection is refreshed, I first met Pamela Jenkins on that truancy stop on June the l0th, 1982.

Q. So you're saying that when you said you knew Pamela Jenkins essentially since September of 1981 under oath in Raymond Carter's trial, that you testified falsely? Is that what you are saying now?

A. I don't recall that, sir.

Q. Well, if that's what it says here in black and white, you would say that that testimony under oath is false (displaying)?

MS. FISK: It could also be a mistake, Your Honor. I object to the form of that question.

THE COURT: Sustained. Anybody could make a mistake, Counselor. You make mistakes too.

Page 262.

(Discussion was held off the record among defense Counsel.)

BY MR. WILLIAMS:

Q. Now, leaving aside whether you were mistaken as to your testimony under oath in the Carter case about your relationship with Pamela Jenkins, is it possible that you were also mistaken when you told the FBI that you had been having a relationship with her since she was 15?

THE COURT: I think we went through that.

MS. FISK: Objection, Your Honor.

THE COURT: I am getting tired of that. How many times are you going to bring that story up?

MR. WILLIAMS: As many times as it takes to get an answer.

MS. FISK: I believe it has been answered appropriately.

THE COURT: Hey, look, it's almost five o'clock. If you think I am going to stay here until midnight you're crazy. I am not going to stay here until midnight. Now let's get moving.

MR. WILLIAMS: Well, tomorrow is

Page 263.

another day.

THE COURT: Yes, so is Monday.

BY MR. WILLIAMS:

Q. Now, is it your testimony that you have never heard of a prostitute named Lucky?

MS. FISK: Your Honor, that's been asked and answered. I object to it being asked again.

MR. WILLIAMS: I am just reorienting the witness.

THE COURT: Don't reorient him. He knows. What question do you want to ask him? Let's be specific. What do you want to ask him?

MR. WILLIAMS: Well, I want to ask him that question, Judge.

THE COURT: Well, that question has already been answered. Ask whatever you want but let's get to it.

BY MR. WILLIAMS:

Q. Did you know of any other prostitutes who were friendly with Pamela Jenkins during the course of your relationship with her?

A. No, not off the top of my mind.

Q. There could be, you just don't recall?

THE COURT: He said not off the top of

Page 264.

his mind. Isn't that enough for you? Come on.

BY MR. WILLIAMS:

Q. Now, back in December of 1981, early 1981, did you come to learn of the shooting death of Officer Faulkner?

A. Yes.

Q. How did you come to learn of that?

A. The news media.

Q. And did you then attempt to gather information on your own to assist in the investigation?

A. Counselor, at the time of Officer Faulkner's murder, I was in the Police Academy.

Q. No, I understand that, but the question is did you attempt to gather information in connection with that murder?

A. No, sir.

Q. Well, it certainly wouldn't hurt your career if you turned up information concerning that crime, right?

MS. FISK: And, Your Honor, if he found the aliens that landed in Arizona 50 years ago that would probably make him a media star too, but he has answered the question.

THE COURT: Yes. Come on, Counselor, stop playing around with this.

Page 265.

MR. WILLIAMS: I am going into questions that are directly relevant here.

THE COURT: He told you he was in the Academy then. What authority did he have to do anything? He wasn't an officer then yet.

MS. FISK: He also answered that he did not. Whether he should have or could have is not the issue. He did not, and that was answered by the witness.

BY MR. WILLIAMS:

Q. Are you denying, sir, that you introduced Pamela Jenkins to Detective Richard Ryan?

MS. FISK: I would note again, Your Honor, my objection. This is direct examination. That is an improper question on direct examination.

THE COURT: He is supposed to be your witness. You called him as a witness. What, has he suddenly become somebody else's witness?

MR. WILLIAMS: No, it is just that I seem to be blocked at every juncture by the Court asking questions of my witness.

THE COURT: Counselor, take it up with the Supreme Court. Now, come on, I am asking you for the last time. Or we will continue this

Page 266.

until Monday, I don't care. Do you want to come back in Monday?

MR. WILLIAMS: I will take whatever time I need to get at the truth, Your Honor.

THE COURT: All right, why don't we come back Monday, then. All right. You want to come back Monday? It is almost a quarter of 5:00.

MR. WILLIAMS: We will do whatever it takes to get at the truth, Your Honor.

THE COURT: Fine. Let's come back Monday. Monday morning back at this Court.

MR. WEINGLASS: What about tomorrow?

MS. WOLKENSTEIN: What about tomorrow?

THE COURT: Tomorrow I have the day off, okay. I am taking a day off. I need it after this.

THE COURT OFFICER: This Court now stands adjourned until Monday morning.

THE COURT: Monday.

MS. WOLKENSTEIN: Mr. Jamal needs to be housed in this area.

THE COURT: Take it up with the Sheriff, he knows where to take him.

MS. FISK: Thank you, Your Honor.

Page 267.

THE COURT OFFICER: This Court now stands adjourned until Monday morning, 10:00 a.m. at the call of the Crier.

- - - - -

(The hearing was adjourned at 4:45 p.m.)

- - - - -

Page 268.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

30. Juni 1997

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Monday, June 30, 1997
Courtroom 306, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- JONATHAN PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

DEFENSE EVIDENCE

WITNESS	DE	CE	RDE	RCE
Thomas Ryan	5	48	59	--
Lawrence Boston	69	82	90, 95	94
Douglas Culbreth	96	104	--	--

EXHIBITS

DEFENDANT'S EXHIBITS

NO.	DESCRIPTION	PAGE
5	Philadelphia Prisons Records	32
6	Court Transcript	100

Page 3.

- - - - -

(At 10:15 a.m. the hearing was convened in the presence of the Court and the attorneys.)

- - - - -

MR. PIPER: Your Honor, on Friday morning, on Friday morning I spoke to U.S. Attorney Joel Goldstein who prosecuted the 39th District cases requesting authentic copies of the interview statements of Tom Ryan, the witness, and Pamela Jenkins. He said that under the Federal Secrecy Act he could not provide me -- this is the U.S. Attorney Goldstein said he could not provide me these statements. However, he told me that at a non-public proceeding he had been ordered to give them to Arlene Fisk and had in fact given these statements to her on Thursday morning. He said he thought we would be able to get the documents from Ms. Fisk, and from the conversation it was my understanding that he meant that he expected that we were entitled to get them from Ms. Fisk. But we also have subpoenaed those documents from the Assistant District Attorney because we have not in the past been able to rely on their

Page 4.

fulfilling those obligations.

Under our subpoena, the Brady doctrine, and Commonwealth versus Ulen, we are entitled to receive these statements of Mr. Ryan and Ms. Jenkins, and we request that they be produced pursuant to our subpoena.

MS. FISK: Your Honor has previously ruled that Rule 305 discovery does not apply in PCRA proceedings. And Counsel cannot do by way of subpoena what they are not due by way of discovery. This was not documents that related to Brady, there was no exculpatory material in them, they were not even mainly the statements of a witness, they are merely summaries of reports of FBI agents based on matters completely unrelated to this one.

For that reason I ask that the discovery request be denied and the subpoena served upon us for discovery of these documents be quashed.

THE COURT: All right.

MR. PIPER: Your Honor, as we have noted, even the recent Bracey case indicates the --

THE COURT: Counselor, I am not going

Page 5.

to waste time. I will make a decision, you take it back up to the Supreme Court. If they want to give you the information, fine. But I am not going to get involved in all of that. Okay. It is denied. The subpoena is quashed.

- - - - -

Thomas F. Ryan, having been duly sworn,
was examined and testified as follows:

- - - - -

DIRECT EXAMINATION (Continued)

BY MR. WEINGLASS:

Q. Mr. Ryan, good morning.

A. Good morning.

Q. Are you still a police officer of the City of Philadelphia?

A. No, sir.

Q. When did you cease being a police officer?

A. 1991.

Q. And was that as a result of a resignation on your part?

A. That's correct.

Q. Now, when you appeared here last Thursday, you knew you were going to be testifying in this case about matters that have occurred some 15 or 16 years

Page 6.

ago: isn't that true?

A. I wasn't sure what I was going to be testifying to, sir.

Q. Did you review any records or statements or documents prior to

your appearance here last Thursday?

A. No, sir.

Q. Did you have any conversations prior to your taking the stand last Thursday with representatives of the District Attorney's Office?

A. No, sir.

Q. Did you have any conversations prior to taking the stand with members of the Philadelphia Police Department?

A. Yes, sir.

Q. And who did you have a conversation with?

A. Detective Walsh.

Q. And is he seated here in Court today?

A. Yes, he is.

Q. As a matter of fact, did you have a conversation with Detective Walsh this morning?

A. Yes, I did.

Q. And aside from your conversation with Detective Walsh -- was that last Thursday? Or was that prior to last Thursday? Your first conversation

Page 7.

Thomas Ryan - Direct

with Detective Walsh.

A. Prior.

Q. What day was that?

A. I don't recall.

Q. It was just last Thursday, you don't remember what day before last Thursday?

MS. FISK: Objection, Judge.

THE COURT: He said he didn't so let's proceed. Come on.

BY MR. WEINGLASS:

Q. You can't recall a conversation last week but you do recall events that happened in 1982?

MS. FISK: Objection, Judge: That is not what he said.

THE COURT: Well, your witness had the same thing, Pamela Jenkins. Her memory wasn't too good either.

MS. FISK: And I would note, Your Honor, that this is also their witness.

BY MR. WEINGLASS:

Q. Now, when you spoke with Detective Walsh the first time, what did you talk about?

A. Coming to Court.

Q. And did you talk about what you were coming to Court for?

Page 8.

Thomas Ryan - Direct

A. Yes; your private investigator served me a subpoena.

Q. And did you talk to Detective Walsh about anything to do with Pamela Jenkins?

A. Just that she would be testifying in Court.

Q. And did Detective Walsh and you talk about your relationship with Pamela Jenkins?

A. No.

Q. Did not? Did Detective Walsh and you review any documents or testimony?

A. Yes.

Q. What documents or testimony did you review?

A. The statement of Pamela Jenkins from January the 9th, 1997.

Q. Did you and Detective Walsh review any statement or statements that you might have made?

A. No, sir.

Q. Now, how long did you talk to Detective Walsh?

A. Approximately an hour.

Q. And in that hour, recall for us as best you can what was discussed?

A. Within that hour we discussed what I have been doing since 1991. What he has been doing. We discussed his house. Umm... and I read the statement.

Page 9.

Thomas Ryan - Direct

Q. And did you discuss the statement?

A. No, I just read it.

Q. And after you read it you and Detective Walsh had no discussion about the statement; is that correct?

A. No, he just offered it to me to read.

Q. And after you read it, you and he had no discussion about that statement; is that correct?

A. That's correct.

Q. Did you indicate to him that it was true or untrue?

A. Sir, we didn't discuss it. He handed it to me, he said this is the statement of Pamela Jenkins, and he asked me to review it and I read the statement.

Q. And you had no reaction that you gave to him verbally?

A. No, I just read it.

Q. Okay. And aside from Detective Walsh, did you meet with any other police officers prior to testifying last Thursday?

A. No.

Q. You just came to Court and you took the stand when called and testified without meeting any other police officers?

Page 10.

Thomas Ryan - Direct

A. Sir, when you say meeting, could you define that for me?

Q. I mean face to face.

THE COURT: Well, he is asking you, do you mean discussing this case or what? He may have said hello to somebody. Be more specific.

THE WITNESS: Yes, Your Honor.

BY MR. WEINGLASS:

Q. On this floor did you have occasion to be in a room with other police officers?

A. Yes. In this room.

Q. Pardon me?

A. In this room.

Q. Right, and any other room?

A. In the building generally.

Q. Right.

A. The building's full of police officers, sir.

Q. Right. But you didn't have any meeting with other police officers relative to this case?

A. No.

Q. All right. And when you took the stand last Thursday you were wearing a button, were you not?

A. Yes.

MS. FISK: Objection, Your Honor.

BY MR. WEINGLASS:

Page 11.

Thomas Ryan - Direct

And what did that button say?

THE COURT: Sustained.

MS. FISK: Objection.

THE COURT: Sustained. I am not interested in a button.

MR. WEINGLASS: It goes to the bias of the witness.

THE COURT: No, it doesn't.

MR. WEINGLASS: The witness was wearing a button for Officer Faulkner. Now, when a witness comes into this Courtroom and testifies and has a button for one side, that should go on the

record.

THE COURT: Why didn't you tell him to take it off?

MR. WEINGLASS: I have no authority to do that.

THE COURT: It is your witness.

MR. WEINGLASS: I have no authority.

THE COURT: It is your witness.

MR. WEINGLASS: The witness was wearing a button for Officer Faulkner.

THE COURT: All right, he was wearing a button. But let's -- I'm not here to hear all about his life. I am not concerned about his

Page 12.

life.

MR. WEINGLASS: You are the Judge that is going to --

THE COURT: I am only here to hear what he had to do with the Mumia case. If he had nothing to do with the Mumia case, I don't want to hear about his case. Somebody else heard that case.

MR. WEINGLASS: You have to judge his credibility.

THE COURT: I could judge his credibility without that.

MR. WEINGLASS: Without knowing a bias?

THE COURT: Without that, Counselor.

MR. WEINGLASS: I think we can all agree he was wearing the button to Court.

MS. FISK: Objection, Your Honor. Unless Mr. Weinglass would like to testify, Your Honor, and subject himself to cross-examination, we can't agree with anything Counsel says.

MR. WEINGLASS: I am being blocked from questioning a witness and I have to put it on the record.

THE COURT: No, you could get on this

Page 13.

stand, swear to tell the truth and tell under oath that you saw a button on him and what he was wearing.

MR. WEINGLASS: And I am not allowed to ask him that?

THE COURT: No.

MR. WEINGLASS: Okay.

THE COURT: That's what she is saying: She says you are making statements that can't be challenged.

BY MR. WEINGLASS:

Q. Now, prior to today's hearing you met with Detective Walsh again, did you not?

A. Yes, sir.

Q. Did you discuss anything about your testimony?

A. No, not about my testimony.

Q. How long did you meet with him?

A. We spoke for about ten minutes.

Q. Now, if I understand your testimony correctly, prior to today you talked to Detective Walsh for about an hour and 10 minutes total. Have you talked to anybody from the District Attorney's Office prior to today?

A. Prior to today, no.

Q. Prior to Thursday?

Page 14.

A. No.

Q. Have you talked to any representatives of the defense?

A. When?

Q. Prior to today.

A. Only your private investigator.

Q. And when was that?

A. When he served me the subpoena.

Q. And how long did you talk to him?

A. About ten minutes.

Q. And did he ask you any questions relative to your testimony?

A. Not at that time. When he came to my door the second time he did.

Q. And what was your response to that?

A. Tell the attorneys to ask me on the witness stand.

Q. In other words, you refused to talk to him about your testimony?

MS. FISK: Objection.

THE COURT: Counselor.

MS. FISK: Asked --

THE COURT: The objection is sustained. He told you what he said. It is not for you to interpret it.

Page 15.

BY MR. WEINGLASS:

Q. Now, Mr. Ryan, would it be fair to say that you favor the District Attorney's Office in this hearing over the defense?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Now, would it also be fair to say that your recollection of the events about which you have been questioned on Thursday was better nine years ago than it was last Thursday?

MS. FISK: Your Honor, I object to the form of the question, only because it is overly broad: The events of nine years ago. There have been no events that have been admitted to by this witness. I object to the form.

MR. WEINGLASS: Counsel misheard my question, unfortunately.

THE COURT: I would suggest that you rephrase your question. Lay the groundwork if you have any.

BY MR. WEINGLASS:

Q. Now, you testified Thursday about events that happened in 1982; isn't that correct?

A. Yes, there was testimony about 1982.

Page 16.

Q. And you gave that testimony?

A. I responded to questions regarding 1990 -- 1982.

Q. Okay. Nine years ago in 1988 was your recollection better about events in 1982 than it is today?

A. I don't know.

Q. You don't know if you recalled events of 1982 better in 1988 than you do in 1997?

A. Sir, if you could tell me specific events maybe that would help me recall.

Q. Right, I am just asking you in general?

A. You're asking me about a chronological year, do I recall events from nine years ago?

Q. No. Again, I am asking you about your recall of events in 1982, was it better in 1988 than it is today?

A. Again I say I don't know.

Q. In other words, you think your recollection has improved in the last nine years?

MS. FISK: Objection, Judge. Perhaps Counsel doesn't understand the meaning of I don't know but it is fairly clear and I object. He has answered the question.

THE COURT: Objection is sustained.

Page 17.

BY MR. WEINGLASS:

Q. Is your recollection better today than it was in 1988?

MS. FISK: Objection, Judge: Asked and answered.

THE COURT: Sustained. Please, this is not a guessing game. If you have something specific to ask give it to him. Don't expect him to answer general questions like that.

BY MR. WEINGLASS:

Q. Now, in 1988 you did testify under oath; isn't that correct?

THE COURT: In which case? What are you talking about?

THE WITNESS: I was a police officer, I went to Court a lot in 1988.

BY MR. WEINGLASS:

Q. In the Carter case you testified --

THE COURT: Counselor, I am not interested in the Carter case. I don't care what he did in the Carter case. I want to know what he did in this case, the Mumia case. That's all I am interested in.

BY MR. WEINGLASS:

Q. In 1988, in the case of Commonwealth V Carter,

Page 18.

did you testify?

THE COURT: I just said I am not interested in the Carter case.

MS. FISK: And, Your Honor, I would note for the record that questions with regard to Officer Thomas Ryan's testimony in 1988 were asked and answered on direct examination on Friday before we broke. Notes of testimony were read from, referred to, they are on the record. And just because Counsel wants to ask them again doesn't mean he has a right to. These questions are asked and answered, that area has been covered.

THE COURT: I am not going to go over it a second time. I am not here, you are not here to delay this Court or the Supreme Court. They want a reply immediately and I am going to give it to them.

BY MR. WEINGLASS:

Q. Now, have you given sworn testimony previous to today about your relationship with Pamela Jenkins who testified in this hearing?

(Pause)

A. I'm not sure if I have or not.

Q. Right. I want to show you, then, you're

Page 19.

testimony about Pamela Jenkins in which you were asked this question.

How long had you known Pamela Jenkins as of September --

MS. FISK: I have another objection: This is asked and answered.

THE COURT: It's already been asked and answered.

MS. FISK: On Thursday.

THE COURT: Objection is sustained. Strike it from the record.

Now, come on, Counselor, you are wasting my time.

BY MR. WEINGLASS:

Q. Now, you were also questioned, were you not, about Pamela Jenkins who testified in this hearing in another proceeding in 1996, that was last year, in a deposition that you gave in a civil suit?

A. What is your question, Counselor?

Q. Were you questioned about Pamela Jenkins in 1996 in a deposition that you gave in a civil suit?

A. Specifically, I don't recall.

Q. You don't recall that deposition either?

A. If you have the information I would be glad to review it.

Page 20.

Q. Do you recall giving a deposition?

A. Sir, I have given many depositions.

Q. Do you recall giving a deposition in 1996 about Pamela Jenkins?

THE COURT: Is it in reference to Mumia?

MR. WEINGLASS: It is about Pamela Jenkins.

THE COURT: I don't care about Pamela Jenkins. Was it about Mumia?

MR. WEINGLASS: It was about his relationship with Pamela Jenkins.

THE COURT: I am not interested in his relationship. I already know what his relationship was: He was sleeping with her. So what..

MR. WEINGLASS: It was about when it began, Your Honor.

THE COURT: I don't care when it began or when it ended.

MR. WEINGLASS: That issue is very much a factor.

THE COURT: No, it is not a factor. If he didn't talk to her about Mumia, I am not interested in it.

Page 21.

MS. WOLKENSTEIN: Your Honor, in this Courtroom Mr. Jamal is Mr. Jamal. I think it is extremely disrespectful for the Court to refer to the Defendant by his first name.

THE COURT: Well, it's the only name I could remember offhand.

MS. WOLKENSTEIN: It is Mr. Jamal. Mumia --

THE COURT: Mumia Abu-Jamal, okay. If it is not about that I am not interested.

BY MR. WEINGLASS:

Q. Do you remember saying under oath in 1996 that you first met Pamela Jenkins in 1983?

A. No, I don't remember that, sir.

Q. I want to show you this testimony.

MR. WEINGLASS: The witness --

THE COURT: Is this important when he met her?

MR. WEINGLASS: Yes, it is, Your Honor.

THE COURT: Well, was Mumia's case over with?

MR. WEINGLASS: It is important because Pamela Jenkins said she met him in '81.

THE COURT: I don't care what she

Page 22.

said.

MR. WEINGLASS: That's why he brought her down to Richard Ryan three days after it occurred for an interview. When he testified he said that he met her in '82, which we contend is false. Previously he had said under oath that he met her in '81 and now a second time under oath he says he met her in '83.

THE COURT: So what, people have lapses of memory. You're own witness Pamela Jones, she couldn't -- I mean Pamela Jenkins -- she couldn't remember everything either when it came to dates.

MR. WEINGLASS: She remembered the date that they met.

MS. FISK: She also remembered seeing a dead woman three months ago, Your Honor.

THE COURT: You see. You see what you are up against. People have lapses of memory as far as dates. And that's not going to help me in deciding this case. If you want to argue that to the Supreme Court, fine, be my guest. But I don't want to get involved in unnecessary discussions in this matter.

MR. WEINGLASS: Well, peoples' lapse

Page 23.

of memory is a factor the Court should consider in determining whether or not they are credible.

THE COURT: I know that, I realize that people have lapse of memory, but when they come up with specific evidence like a death certificate, well, you know, I don't have any trouble with her

testimony.

MR. WEINGLASS: Well, you might after you hear the rebuttal to it. But --

THE COURT: Let me tell you this: I am not going to get too far into rebuttal. Because if you wanted further, to present further testimony, you go back to the Supreme Court and get permission. I am here specifically for what they said here in their Order and I am not going to go beyond that. If you need to go beyond that, go back up to the Supreme Court.

BY MR. WEINGLASS:

Q. Following up on the Court's observations: Would it be fair to say, Mr. Ryan, that your recollection of when you met Pamela Jenkins today is not very clear?

A. No, my recollection today is very clear.

Q. And when is that date?

Page 24.

A. That date is June the l0th, 1982.

Q. Do you remember saying under oath that it was '83?

A. No, I don't, sir.

Q. Do you remember saying under oath that it was '81?

A. No, I don't, sir.

Q. Okay, let me show you your sworn testimony.

MR. WEINGLASS: May the witness be handed this document. Which is the sworn testimony of Thomas F. Ryan, June 3rd, 1996, in the matter of the 39th Police District.

BY MR. WEINGLASS:

Q. I refer you to page 347, the testimony that's highlighted, where you indicated that you met her in '83 (handing).

THE COURT OFFICER: (Handing).

(Pause)

MS. FISK: Thank you (handing).

Thank you, Your Honor.

THE COURT OFFICER: (Handing).

THE WITNESS: Thank you.

BY MR. WEINGLASS:

Q. Okay, do you remember, reading the highlighted portions, being asked this question under oath?

Page 25.

How did Pamela Jenkins become an informant for you.

Answer: Way back in around 1983, early '83, I was still in 3 squad in uniform working the patrol wagon, and she was one of a number of juveniles arrested at Gratz -- G-R-A-T-Z -- High School for truancy. And she lived in the neighborhood in Tioga. And after that would contact me and/or my partner regarding criminal activity in the street.

Do you remember being asked that question and giving that answer?

A. I don't remember it but this refreshes my, ahh, my recollection.

Q. Did you indicate then in '83?

A. Yes; specifically I said in around 1983.

Q. Right.

A. Which was an approximation.

Q. Right, and then you qualified it to say early 1983?

A. That's another approximation.

Q. Right.

A. Yes.

Q. And was it also an approximation when you told the Carter jury in 1988 that it was 1981 that you had

Page 26.

met her, was that an approximation?

A. I don't believe I testified 1981.

Q. You said you have known her for five years as of September 1986. Doesn't that bring it back to September of 1981?

A. You said that I testified that I met her in 1981. That was not my testimony.

Q. The question was how long had you known Pamela Jenkins as of September of 1986. Having heard that question, your answer was five years. Do you remember that question and answer?

A. Yes; that's an error.

Q. That was an error?

A. That's an error: 1981.

Q. Right. And this one that you gave in 1996 when you said around '83, that was also an error?

A. No, this was an approximation.

Q. That is an approximation?

A. Around. I was asked this question in '96.

Q. Right.

A. And I answered around 1983.

Q. Right. So, Mr. Ryan, we have one approximation and one error with respect to when you met Pamela Jenkins; is that correct?

A. Along with one fact. When my memory -- my

Page 27.

recollection was brought back clearly through the 75-48 that was provided on Thursday, and also the testimony of Lieutenant Clarkson who was my partner at the time when I met Pamela Jenkins. That refreshed my memory on Thursday.

Q. Right. But Officer Clarkson didn't say that's when you met her. He said that's when you and he arrested her?

A. Yes, sir, that is the information that refreshed my memory.

Q. Is it your testimony you never arrested her prior to that time?

MS. FISK: Objection, Your Honor. I would ask that the word arrest not be used. There was an argument with regard to that.

MR. WEINGLASS: The witness just used it. The witness used it.

THE COURT: Well, he used it because you have been using it.

MR. WEINGLASS: No, Your Honor.

MS. FISK: Your Honor, I will withdraw my objection.

BY MR. WEINGLASS:

Q. In 1996, when you were questioned in that document that's right before you --

Page 28.

A. Yes, sir.

Q. -- didn't you say there that you arrested Pamela Jenkins?

A. Yes, I used that term.

Q. Right. Okay. And you did arrest her, didn't you?

A. I transported her to the 39th District. Now, it was an arrest, to what definition of arrest are you referring?

Q. You are the police officer, you used the word arrest?

A. Okay, Counselor --

MS. FISK: Your Honor, may I note that this is direct examination. And I have not yet heard a question that did not have an answer suggested, and I would object.

THE COURT: He is your witness, you know. You called him. I will sustain the objection.

BY MR. WEINGLASS:

Q. Now, it's true, is it not, Mr. Ryan, that we have your testimony last Thursday that you met, you arrest her in '82, we have your testimony in '96 that it was '83, we have your testimony in '88 that it was '81?

Page 29.

MS. FISK: Your Honor, may I impose an objection to this form of question. This is direct examination, Counsel is providing testimony.

THE COURT: I will sustain the objection.

BY MR. WEINGLASS:

Q. Let me just ask you this question. Did you take -- did you transport Pamela Jenkins prior to June 10th of 1982 in a vehicle?

A. No, sir.

Q. And what have you examined by way of other documents that makes your recollection certain of that fact?

A. I just testified to what refreshed my memory on Thursday. The 75-48 from that incident on June l0th, 1982, and the testimony of Lieutenant Clarkson, who was my partner on that date.

Q. Incidentally, on that date, according to your testimony in 1996, she was one of a number of juveniles who were taken into the vehicle at that time; is that correct?

A. That's correct, sir.

Q. Was there ever a time when you had picked up Pamela Jenkins and she was alone, prior to June 1982?

Page 30.

A. No, sir, that was the date that I met her.

Q. How many other juveniles were there, if you can recall, that were picked up?

A. Sir, that would only be a guess at this point.

Q.You can't recall?

A. Not matter of factly, no.

Q. Would it be more than five or fewer than five?

THE COURT: He said he can't guess.

MR. WEINGLASS: I am trying to assist the witness.

THE COURT: Don't try to assist him. He is your witness. And you called him, you're bound by his answers.

MR. WEINGLASS: Yes, that's why I am trying to assist him.

THE COURT: Well, you don't have to assist him, he is your witness. Just ask him questions. But don't ask him to guess. Would you remember how many people you defended back in 1982? Of course you wouldn't.

MR. WEINGLASS: The witness indicated his recollection was refreshed on Thursday.

THE COURT: Well, it was refreshed because they had the 94 -- what do they call it?

MS. FISK: 75-48, Your Honor.

Page 31.

THE COURT: 48.

MS. FISK: It is Commonwealth Exhibit 7.

THE COURT: Sure that's what refreshed his memory. Because that was taken down right at the time of the incident.

BY MR. WEINGLASS:

Q. Before becoming a police officer you were a correction officer: is that true?

A. Yes, sir.

Q. And when did you start becoming a correction officer?

A. I was only a correction officer for six months. I had gone into there and finished their training and then resigned from there and went to the Police Department.

Q. And what six months, do you recall?

A. Six months prior to my starting the Police Academy.

Q. And that would be six months prior to August of 1981?

A. That's correct.

Q. And at that time when you were a correction officer you were issued a badge; is that correct?

A. Yes.

Page 32.

Q. And you had that badge since June 22nd, 1981; isn't that correct?

A. Somewhere around there, sir, I don't remember matter of factly.

MR. WEINGLASS: Let me assist you with this document if I may. It is defense 5. It may be shown to Counsel.

THE COURT OFFICER: (Handing).

(Pause)

MS. FISK: Thank you.

(Philadelphia Prisons record was marked Defendant's Exhibit D-5 for identification.)

THE COURT OFFICER: Judge, would you like this?

THE COURT: No.

THE COURT OFFICER: (Handing.)

THE WITNESS: Thank you.

BY MR. WEINGLASS:

Q. Looking at the one-page document that is defense 5, does that refresh your recollection that on June 22nd, 1981 you were issued a badge?

A. Yes, sir.

Q. And you signed for it. Did you ever sign that you returned that badge, by the way?

Page 33.

A. I don't know. I returned it when I resigned from the prison system.

Q. Does the document indicate that you returned the badge?

A. No, this says issues receipt.

Q. Does it have a column for returned?

A. Sir, it says issued receipt and that's all it refers to is issues.

Q. There is no column there for -- isn't there a column, Mr. Ryan, that says date returned?

A. Okay, I'm sorry. Yes, -- 8-14-81.

Q. Mr. Ryan, on that document D-5 you never returned that badge, isn't that true, according to the document?

A. Well, according to the document I signed for it and it is initialed by the person that received it from me.

Q. Okay. But the box for date returned is blank?

A. Yes, it is.

Q. Now, in 1981 you were what age?

A. 25.

Q. And prior to working as a correction officer what was your employment?

A. I was district manager for the Philadelphia Inquirer newspaper.

Page 34.

Q. Okay. And prior to that?

A. I was at that occupation since 1977.

Q. How long were you district manager -- what do you mean by district manager?

A. I was district manager in the circulation department.

Q. Is that for delivery of newspapers?

A. Yes, circulation department, sir.

Q. I see. So you were a manager of delivery system for the newspaper?

A. Part of it, yes.

Q. Right. And you had left college?

A. Yes.

Q. In 1977?

A. Yes.

Q. After one year at Penn State?

A. That's correct.

Q. Do you recall if you applied to become a police officer prior to being a correction officer?

A. Yes, I did.

Q. And could you explain to the Court how that happened, you applied to be a police officer and then you became a correction officer while your application was being considered?

A. No, sir, I --

Page 35.

Thomas Ryan - Direct

MS. FISK: Your Honor, may I impose an objection. This is simply irrelevant.

THE COURT: Yes. I suppose he maybe filed a lot of applications for a police officer, different departments, different counties. So what. We are only interested in Philadelphia here since that's where he became a police officer.

BY MR. WEINGLASS:

Q. When you said you applied, you applied in Philadelphia; is that correct?

A. Yes, that was an application I submitted.

Q. And that was your only, you only applied here in Philadelphia?

MS. FISK: Objection, Your Honor: It is irrelevant.

THE COURT: The objection is sustained. I don't know where this is going, but...

BY MR. WEINGLASS:

Q. Were you rejected by any other police department?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Page 36.

Thomas Ryan - Direct

Q. Now, the testimony that's in front of you, which is your, your testimony in 1996 about Pamela Jenkins, you indicated that she contacted you and/or your partner with information. Who is your partner that you were referring to there?

A. In 1983, sir?

Q. When you testified here you referred to a partner. I am just asking who was it that you were referring to?

A. That would be an officer by the name of Ted Ryan.

Q. Ted Ryan?

A. Yes.

Q. No relationship?

A. No, sir.

Q. And you are not related to Richard Ryan, are you?

A. No, sir.

Q. And when did you and Ted Ryan become partners?

A. 1983.

Q. And you and Ted Ryan were brought into squad 5 together?

MS. FISK: Objection, Your Honor: It's irrelevant. We are at a date well beyond

Page 37.

Thomas Ryan - Direct

the date that Ms. Jenkins alleged she met this witness, beyond the date of the trial, beyond the date of the alleged improper acts committed.

It is irrelevant.

THE COURT: Objection is sustained.

BY MR. WEINGLASS:

Q. Now, when you picked up Pamela Jenkins -- let's deal with the June l0th, 1982 incident that's recorded in the document -- where to your recollection was she taken?

MS. FISK: Your Honor, objection: This was asked and answered on Thursday.

THE COURT: All right.

BY MR. WEINGLASS:

Q. Did you take her home?

MS. FISK: Objection, Your Honor. This was asked and answered on Thursday. Questions were made --

THE COURT: The objection is sustained. Okay.

MS. FISK: Questions were asked with regard to that stop.

BY MR. WEINGLASS:

Q. The romantic portion of your relationship with Pamela Jenkins, over what period of time did that

Page 38.

Thomas Ryan - Direct

relationship last?

A. That was sometime in '83 or '84, I don't remember exactly when it was.

Q. And it was over a period of those months?

A. No, it occurred during that time frame.

Q. The relationship occurred?

A. Yes.

Q. And how long did the relationship of a personal nature last?

A. I wouldn't even qualify it as a relationship, sir.

Q. Well, how would you describe it?

A. An encounter.

Q. I see. And how long did that last?

A. One time.

Q. And you don't know whether that was '83 or '84?

A. No, sir, it was sometime in that time frame.

Q. And at that time she was providing you information as well?

A. I'm sure at some point during that time frame she gave me some sort of information.

Q. And you were paying her for that information?

A. Sometimes.

Q. Incidentally, the money that you were paying

Page 39.

Thomas Ryan - Direct

to her, was that from your own pocket? Where did you get that money?

A. From my own pocket.

Q. And was that money you had taken from others?

A. Excuse me?

Q. Was that money that you had taken from other people?

A. Yes; from the City of Philadelphia in my paycheck.

Q. I see, okay. Did you plead guilty to a felony?

A. Yes.

Q. What felony did you plead guilty to?

A. One count of conspiracy to violate civil rights.

Q. And for the record, what was that, what civil rights, whose civil rights?

A. Whose civil rights?

Q. Yes.

A. A male by the name of Arthur Colbert.

Q. Arthur Colbert? Prior to your plea of guilty, did you provide any law enforcement agency with false information about your involvement with him?

A. No, sir.

Q. You never did?

Page 40.

A. No, sir.

Q. You had always acknowledged what you had done to him?

A. Yes, sir.

Q. Okay. Incidentally, what had you done to him?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. That's been resolved by another tribunal.

BY MR. WEINGLASS:

Q. The count that you pled guilty to, did you acknowledge that you had injured, oppressed, threatened and intimidated an individual in the free exercise and enjoyment of his Constitutional rights?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Have you ever been charged with an offense by the Assistant District Attorney of Philadelphia against Mr. Arthur Colbert for what action you took against him?

MS. FISK: Objection, Your Honor. He was prosecuted and pled guilty Federally.

MR. WEINGLASS: Only by Federal authorities but never by the District Attorney's Office of Philadelphia.

Page 41.

MS. FISK: Objection, Your Honor.

THE COURT: All right, sustained.

BY MR. WEINGLASS:

Q. Are you a defendant now in a civil suit relating to your activities as a Philadelphia police officer?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MR. WEINGLASS: It goes to motive for testifying, Your Honor. And bias. The witness has a financial interest in giving the testimony he is giving here today.

THE COURT: Yes, how?

MR. WEINGLASS: Because he is being sued personally.

THE COURT: So?

MR. WEINGLASS: In another case. So he has to conform his testimony in such a way that it will not injure him in the civil suit that's pending against him.

THE COURT: That's not for me to resolve. That is another tribunal.

MR. WEINGLASS: It certainly is a factor the Court should take into consideration in assessing his credibility.

Page 42.

THE COURT: I know how to assess credibility.

MR. WEINGLASS: Well, you should have the information to do it properly.

THE COURT: You have already told me the information.

MR. WEINGLASS: It would be helpful to get it from the witness.

THE COURT: It's just as well getting it from you. He is your witness.

MR. WEINGLASS: Well; if the Court will accept it as established fact I will move on.

BY MR. WEINGLASS:

Q. Are you a defendant again in a lawsuit by Raymond Carter?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: A different lawsuit.

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. You were present at your sentencing hearing in the Federal Court, were you not?

A. Yes, I was.

Q. And you were present when Joan Downs testified

Page 43.

as a character witness for you?

A. Yes, I was.

Q. And it's true that she was a crack addict?

A. That's a fact.

Q. Was she a prostitute?

MS. FISK: Your Honor, may I object on the basis of relevancy. This was not a person who has offered testimony or from whom there has been any offer of proof with regard to her relationship to this prosecution of Mr. Jamal or testimony with regard to Mr. Jamal.

MR. WEINGLASS: Your Honor, faced with a Federal sentence, this witness presented a character witness who was a crack addict and prostitute who he had worked with and had involvement with and I think the Court should know this.

THE COURT: You mean he can't have that kind of a character witness?

MR. WEINGLASS: I think it is something the Court should know in assessing his credibility.

THE COURT: You told me about it, so what. I am not going to decide that Federal case. Whatever happened there happened there

Page 44.

and he was sentenced by the Federal judge. As far as I am concerned, that is the end of it.

MR. WEINGLASS: But the Court's --

THE COURT: I am not here to rehash it.

MR. WEINGLASS: Right.

BY MR. WEINGLASS:

Q. Was Joan Downs another prostitute who provided you with information?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Was Joan Downs another prostitute who you had sex with?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. I am not here to go through his whole life. Besides, he is your witness. If you don't want me to believe anything he says that's all right with me. You have the burden of proof.

BY MR. WEINGLASS:

Q. Did you begin cooperating with Federal authorities in an investigation in August of 1994?

MS. FISK: Your Honor, objection. That is irrelevant to this proceeding. When --

Page 45.

THE COURT: Sustained.

MR. WEINGLASS: I think the record should reflect that the witness keeps stopping before he answers to look to the Assistant District Attorney for an objection and she complies.

THE COURT: Well, he is a smart witness, see. And you called him so don't be surprised about that.

MR. WEINGLASS: Well, obviously working in conjunction with the Assistant District Attorney.

THE COURT: You should have instructed him to do otherwise. He is your witness, you know. If you want to criticize your own witness, go ahead.

BY MR. WEINGLASS:

Q. Did you report to the Federal judge at the time of your Federal sentencing that you felt that your life was threatened by people in the Philadelphia Police Department because you were helping the Federal Bureau of Investigation in an investigation of the police?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. He is still

Page 46.

alive today, the police didn't do anything to him.

BY MR. WEINGLASS:

Q. Did you agree to and in fact wear a wire to record a conversation that you had with a fellow Philadelphia police officer named Jack Baird?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. I am not going to rehash that. That's been done down in Federal Court, it's over with and that's it.

BY MR. WEINGLASS:

Q. How much money had you paid Pamela Jenkins in the time that she provided you with information?

A. I would be guessing at that.

Q. Over how long a period of time did you pay her, let me start with that?

A. Well, it was off and on, sir, it wasn't a continuous length of time.

Q. Right, give us a beginning when it began and a date when it probably ended?

A. It was around '83 or '84, and then she had disappeared for a number of years. And then she reappeared in the late '80s. So it was on again, off again.

Q. Over a period of a number of years?

Page 47.

A. Off and on, yes.

Q. Right. And although you were charged and pled guilty in Federal Court, to your knowledge Pamela Jenkins has never been charged nor has she pled guilty to any Federal offenses?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

MR. WEINGLASS: Well, Your Honor --

THE COURT: We are not here to try Jenkins.

MS. FISK: And this is direct examination.

MR. WEINGLASS: The testimony of two people, one is a convicted felon.

MS. FISK: This is direct examination.

THE COURT: Counselor, I don't care what happens to Jenkins in Federal Court. If they didn't do anything that's their problem, not mine.

MR. WEINGLASS: Right, but in weighing the testimony of two people, one is a convicted felon, the other is not convicted.

THE COURT: Well.

MR. WEINGLASS: I think the Court ought to take that into account.

Page 48.

THE COURT: Yes, I will take it into account, okay.

MR. WEINGLASS: If I may have just a moment.

(Pause).

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. Just one last question. Am I correct in assuming that prior to last Thursday when you sat here in Court and heard the other testimony and saw the document, you had no recollection as to when you had met Pamela Jenkins?

A. Not an accurate matter-of-fact recollection, no.

MR. WEINGLASS: Fine. I have nothing further.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

MS. FISK: Thank you.

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CROSS-EXAMINATION

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BY MS. FISK:

Q. Mr. Ryan, prior to last week, am I correct

Page 49.

that you had on previous occasions testified that you met Pamela Jenkins when you stopped her on a truancy stop at Gratz High School?

A. That's correct.

Q. And in fact, the document which the defense put in front of you today, that deposition from 1996, under oath at that proceeding you testified that you met her when you stopped her as a truant when she was a student at Gratz High School; is that correct?

A. That's correct.

Q. And in fact, last Thursday were you present in the Courtroom when Pamela Jenkins testified?

A. Yes, I was.

Q. And did you hear Pamela Jenkins testify in great detail, both on direct and cross-examination, that the first occasion when she met you was when she was a student at Gratz High School and you were a police officer in a police wagon; did you hear that, Mr. Ryan?

A. Yes, I did.

Q. And did you hear her testify that when you and another uniformed police officer in a police wagon stopped her for being a truant while she was at Gratz High School, that that was the first occasion when she met you?

Page 50.

A. Yes.

Q. And did that confirm your recollection as to the first occasion, that is opportunity, you had to meet Pamela Jenkins, and that was an accurate recollection?

A. Yes, that refreshed my memory regarding that event.

Q. Now with regard to that, you have always recalled that you met Ms. Jenkins when you stopped her when you were a uniformed police officer for being truant, but the precise date of that stop was something which was just sometime in the past; would that be fair to say?

A. Yes, the date and time were vague.

Q. And was the production last week of Commonwealth Exhibit 7, a 75-48 that was prepared by the uniformed officer that you were a partner with on that date, was that the document which refreshed your recollection with regard to the precise date on which you met Pamela Jenkins?

A. Yes, it was.

Q. Would it be fair to say that without that document you would still be guessing as to whether it was '81, '82, or '83, when you made that truancy stop of Ms. Jenkins?

Page 51.

A. That's very much correct.

Q. But that document Commonwealth Exhibit 7, which was marked last week, was a document, is it fair to say, that was prepared by the officer who was your partner, then Officer Clarkson, on the day that you first came into contact ever with Pamela Jenkins?

A. Yes, that's correct.

Q. And it's because that document clearly bears the date of June the l0th, 1982 that you now know absolutely that that indeed was the actual day on which you met Ms. Jenkins?

A. Yes.

Q. Now, in fact we have also learned through other documents marked last week that you graduated the Police Academy on December the 2lst, 1981. Prior to that time did you ever impersonate a police officer?

A. No.

Q. Prior to that time were you ever in possession of marked police vehicles off the lot of the Police Academy in order to pretend that you were a police officer?

A. No.

Q. Prior to that time did you ever use any extra badges to make other people think you were a police

Page 52.

officer?

A. No.

Q. And just so the record is clear -- and I note that defense Counsel did not ask any questions about it -- did you ever speak to Pamela Jenkins regarding the murder of Police Officer Daniel Faulkner?

A. No, I have not.

Q. Did you ever investigate the murder of Officer Faulkner in any way at all?

A. No, I did not.

Q. Or participate in the investigation of the murder of Officer Faulkner in any way at all?

A. No; this is my first contact with that incident.

Q. Now, you were questioned last week with regard to your ownership of a red pickup truck. Do you recall that, sir?

A. Yes, ma'am.

Q. Did there come a time where you divested yourself that have red pickup truck?

A. Yes.

Q. When was that, please?

A. Sometime in 1994.

Q. And how is it that you divested yourself of that pickup truck?

Page 53.

A. I purchased another vehicle.

Q. And did you sell the red pickup truck?

A. Yes, I did.

Q. Now, you were also present when Ms. Jenkins testified to an observation she made of Cynthia White running into a red pickup truck being driven by you at 9:45 p.m. on March -- I don't want to misstate the date -- on March the 7th of this year. Did you hear that testimony, Mr. Ryan?

A. Yes, I did.

Q. Can you tell us, please, sir where you were living on March the 7th of this year, please?

A. On March the 7th of this year I was living in a halfway house as part of my Federal sentence.

Q. When had you arrived at that halfway house?

A. January the 10th, 1997.

Q. And until when did you remain at that halfway house?

A. March the l0th, 1997.

Q. As a resident of that halfway house, were you permitted to leave?

A. On occasion we were given a pass.

Q. Were there periods of time during the day that you were required to be back in the halfway house?

A. Yes. Everyday the curfew was at nine o'clock,

Page 54.

9:00 p.m.

Q. And during the period of time that you were a resident of that halfway house did you ever violate that curfew?

A. No, I did not.

Q. Can you tell us, then, whether or not you were outdoors at 9:35 p.m. on March 7th of this year?

A. No; I would have been in violation of the curfew.

Q. And you never were in violation during the period of time that you were there?

A. No, ma'am.

Q. You told us on direct examination last week that you had one contact with a Detective Richard Ryan; is that correct?

A. That's correct.

Q. And you estimate that that was from an incident or arrest that you had made, you estimate approximately in 1986 or 1987?

A. Yes. Somewhere in that time frame was a burglary arrest at 11th and Ridge Avenue.

Q. What were you doing at 11th and Ridge Avenue if you were assigned to the 39th District?

A. I was en route from the 39th District to police headquarters at 8th and Race and that was my

Page 55.

travel route: Ridge Avenue, southbound.

Q. So you just happened to see something happening and stopped and made an arrest?

A. Yes, it was a sight arrest.

Q. And as a result of that sight arrest, was the person who was arrested then taken to a particular detective headquarters?

A. Yes; he was transported to the Central Detectives.

Q. Oh, and incidentally, where is Central Detectives, or where was it back then?

A. At 20th and Pennsylvania Avenue.

Q. Is that at the Roundhouse?

A. No, Roundhouse is at 8th and Race.

Q. Well, when you took the person that you arrested in '86 or '87 to Central Detectives, was that case assigned to a line squad detective who handled the arrest?

A. Yes, it was.

Q. And who was that detective to whom it was assigned?

A. Detective Ryan.

Q. And was that the first opportunity you had to meet Detective Ryan?

A. Yes, it was.

Page 56.

Q. And in fact did that remain notable to you because your partner was named Ryan and you were named Ryan and the detective was named Ryan?

A. Yes; all the law enforcement in that case were named Ryan.

Q. And there were three of them?

A. Yes, ma'am.

Q. Did you and Detective Ryan ever work together in the investigation of the murder of Daniel Faulkner?

A. No, ma'am.

Q. Was this meeting with him in 1986 or 1987 the first meeting and working you had with him?

A. Yes; that was the first time I ever met him in my life.

Q. And since the prosecution of that case, that sight arrest that you made, have you ever had any further contact with him?

A. The next time I saw him was Thursday here.

Q. This past Thursday when you were subpoenaed to the Courtroom?

A. Yes, ma'am.

Q. Now, Mr. Ryan, you told us that you had two contacts with the investigator who served you with a subpoena for last Thursday's proceeding?

Page 57.

Thomas Ryan - Cross

A. Yes, ma'am.

Q. And you told us that you had some brief contact with him on those two occasions?

A. Yes.

Q. Can you tell us what the nature of that contact was?

A. The first contact was when he served me a subpoena and identified who he was. There was some general conversation about police work and he gave me his card and told me to call him in reference to a job.

Q. I'm sorry, you said there was general conversation with regard to police work?

A. Police work.

Q. Could you tell us as best you can recall what the nature of the conversation was that you had with that investigator?

A. He had told me that he was a former law enforcement and correction officer.

Q. Yes?

A. In his past, and that he had gotten into private investigations.

Q. Yes, sir?

A. And that he asked me did I know Philadelphia well. And I said yeah, I know Philadelphia very

Page 58.

Thomas Ryan - Cross

well. And he says well, here is my card and give me a call and I will give you a job in Philadelphia to serve subpoenas.

Q. When he suggested giving you a job to serve subpoenas, were you advised whether or not you would be paid for such work?

A. Yes, he said the pay rate would be $25 per hour.

Q. Incidentally, that person who offered you this job when you were served with a subpoena, is he present in the Courtroom?

A. Yes, ma'am.

Q. Would you please point to him so the record could be clear as to who that was?

A. The gentleman with the mustache and gray hair seated to the rear of the Courtroom (indicating).

MS. FISK: May I ask, Your Honor, that that individual stand up and identify himself for the record.

MR. BURTON: Donald Burton. Private investigator from New Jersey.

MS. FISK: Could you spell your last name?

MR. BURTON: B-U-R-T-O-N.

MS. FISK: Thank you.

Page 59.

Thomas Ryan - Cross

(Pause)

BY MS. FISK:

Q. So in addition to giving you a subpoena, Mr. Burton offered you a job and gave you his card so you could call him when you decided whether or not to take him up on that offer?

A. Yes, ma'am.

(Discussion was held off the record
between Counsel for the Commonwealth.)

MS. FISK: I have nothing further, Your Honor.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Prior to December 2lst, 1981, you were in possession of a badge, were you not?

A. Yes.

Q. And incidentally, do you know to your knowledge if Pamela Jenkins ever met with Richard Ryan?

A. I have no knowledge of that at all.

Q. Did you ever have a conversation with Pamela Jenkins about Richard Ryan?

A. No.

Page 60.

Thomas Ryan - Redirect

Q. Do you know why of all the police officers in the City of Philadelphia she would say she met with Richard Ryan?

A. You would have to ask her, Counselor.

Q. Okay. When you said your red truck was divested in 1994, had you told that to anyone prior to testifying today?

A. Such as who, Counsel? I am not sure --

Q. Any representative of the District Attorney's Office or the Police Department?

A. Prior to today?

Q. Prior to just now.

A. Yes.

Q. Who did you tell?

A. Detective Walsh.

Q. Yes, when I asked you before about your conversations with Detective Walsh you couldn't remember that, could you?

A. No, I --

MS. FISK: Objection, Your Honor.

THE COURT: Well, he couldn't remember. He remembers now and he is telling you that's what he told him.

MS. FISK: My objection is that was not what he was asked by Counsel.

Page 61.

Thomas Ryan - Redirect

MR. WEINGLASS: I asked what did you talk to Detective Walsh about. His house.

MS. FISK: Right.

BY MR. WEINGLASS:

Q. You didn't say your house, you didn't say the red truck?

A. I didn't remember, Counselor, that refreshed my memory.

Q. Okay.

A. You just asked me a specific question did I tell anybody about divesting my red truck. Yes, I did.

Q. Now you remember you told Detective Walsh?

A. Well, you asked me a specific question.

Q. Did you tell anyone about the conversation that you had with Mr. Burton about subpoenas?

A. Yes.

Q. Who did you tell?

A. Detective Walsh. And I said it to somebody else but I'm not sure.

Q. Right, and you forgot that when I asked you but your recollection was refreshed by the Assistant District Attorney; isn't that correct?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. Remember, he

Page 62.

is your witness.

BY MR. WEINGLASS:

Q. Why didn't you tell me that when I asked you what you talked about?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEINGLASS:

Q. Did you have any conversation with anyone prior to your being questioned by Counsel about where you were on March 7th, 1997?

A. Yes.

Q. Who did you have that conversation with?

A. Assistant District Attorney.

Q. Did I ask you if you had talked to the Assistant District Attorney before today?

A. Yes.

Q. And what did you tell me?

A. I don't recall, could you read it back? I just don't remember, Counselor. If you ask me specific --

MS. FISK: I would note for the record, Counsel, the question was did you speak with the Assistant District Attorney prior to today. The answer was no. In fact he had not. And the first time that Mr. Ryan and I had any

Page 63.

substantive contact with regard to this matter was today, which was not prior to today.

MR. WEINGLASS: Your Honor, could the Assistant District Attorney be sworn and give that and testify to that?

THE COURT: No, I am giving her the same leeway I am giving to you. You could speak for yourself, she could speak for herself. If the Supreme Court thinks it's material, fine.

BY MR. WEINGLASS:

Q. When did you talk to the Assistant District Attorney today?

A. Prior to the beginning of this session.

Q. And how long did you talk to her?

A. Oh, approximately two minutes.

Q. Right. And do you recall my asking you if you had any conversation with her prior to today?

THE COURT: Well, prior to today he didn't have any.

BY MR. WEINGLASS:

Q. Right, and isn't that right?

A. That's correct.

Q. Okay. Just so that we are all very accurate.

THE COURT: We are accurate on that one.

Page 64.

THE WITNESS: Yes, sir.

MR. WEINGLASS: May I have just a moment.

(Discussion was held off the record among defense Counsel.)

MR. WEINGLASS: Okay, I have no further questions.

MS. FISK: I have nothing further, Your Honor.

THE COURT: All right, you are excused.

THE WITNESS: Thank you, Your Honor.

(Discussion was held off the record at this time.)

MR. WEINGLASS: Lawrence Boston.

- - - - -

Lawrence Boston, having been duly sworn, was examined and testified as follows:

- - - - -

MS. WOLKENSTEIN: Your Honor, before we begin: We subpoenaed the employment record of Mr. Boston. And there was a motion from the City to quash that subpoena on the really false grounds that what we were looking for was a full personnel file. All we were requesting was the

Page 65.

same type of employment record that was submitted by the prosecution concerning Thomas Ryan. So we would request that this employment record, which I presume at this point Ms. Fisk has in her possession, be given to us prior to the questioning of Mr. Boston.

MS. FISK: I do not, Your Honor. And I would note that Ms. Smyler, who was here on behalf of the City Solicitor, was here on Thursday, was advised that the subpoenas were quashed, and I do not see her here today. I don't have any records with relation to former Officer Boston.

THE COURT: Why are we interested in Boston?

MS. FISK: He was mentioned in Ms. Jenkins' testimony. That's why I am not objecting to this witness. Ms. Jenkins testified that Officer Ryan told her that a police officer named Boston was one of the officers on the scene. I assume that Counsel is alleging that that is this officer. That is why I am not objecting.

THE COURT: What does that have to do with this case?

Page 66.

MS. FISK: I presume it goes to the credibility of Ms. Jenkins, Your Honor.

MS. WOLKENSTEIN: It goes to the fact that Ms. Jenkins testified that he was one of the individuals on the scene that night during the shooting of Mr. Faulkner, Officer Faulkner. And we want to examine former police officer Boston as to that matter.

THE COURT: Well.

MS. FISK: And I have no objection with regard to those questions. I have no records with regard to his employment with the police and I am sure that he would be happy to answer the questions that Counsel asks him.

THE COURT: The Supreme Court said no discovery.

MS. WOLKENSTEIN: This is in reference to the testimony of Pamela Jenkins. She testified on this on direct examination, and we are further pursuing the question of Pamela Jenkins' testimony.

THE COURT: Did you object to her? Just a minute. Did you object to her testifying on this point?

MS. WOLKENSTEIN: No, they did not.

Page 67.

MS. FISK: No, I have no objection on the part of the Commonwealth to Officer Boston testifying. And I am sure if Counsel wants to ask Officer Boston when he became a police officer and when he stopped being a police officer, he could provide that information.

THE COURT: Oh, okay.

MS. FISK: I have no records or documents. That subpoena was quashed last week and the representative from the City Solicitor's is not again here. And I assume it is that person who is in possession of those records. I have never had them.

MS. WOLKENSTEIN: I want to make the point again to the Court that that subpoena was quashed before the Court heard any argument about it. And the arguments being made in the papers by the corporation counsel was that in fact we were asking for personnel records, which we never were asking. Our subpoena was very explicit. It said employment history of Officer Boston. It had the same title on the subpoena per talking to Counsel at the Police Department before we drew up the subpoenas as the very document that was submitted to this Court with

Page 68.

the employment record of Police Officer Ryan.

THE COURT: Well, who is he, this gentleman?

MS. WOLKENSTEIN: This is, I presume, former Police Officer Lawrence Boston.

THE COURT: Well, he is the guy that could tell you.

MS. FISK: Right.

MS. WOLKENSTEIN: We would like to be able to have the document to confirm what he is saying. Which we have a right to have.

THE COURT: Well, you can get that after awhile. Maybe he knows. Or maybe he has copies.

MS. WOLKENSTEIN: Your Honor is saying that we have the right, that our subpoena will be honored?

THE COURT: I didn't say you have a right to anything. Because the City Solicitor isn't here.

MS. WOLKENSTEIN: Well, Your Honor, the City Solicitor doesn't need to be.

THE COURT: You called him. Ask him questions.

MS. WOLKENSTEIN: Fine. So we just

Page 69.

want to make the record that we had a subpoena outstanding that this Court quashed.

THE COURT: All right. I didn't quash anything.

MS. WOLKENSTEIN: I believe almost the first words out of your mouth on Thursday --

THE COURT: I said discovery.

MS. WOLKENSTEIN: All subpoenas are quashed.

THE COURT: All right. Then I quash it. Ask him questions. If he can answer them, fine.

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Mr. Boston, were you ever employed as a police officer in the City of Philadelphia?

A. I was.

Q. Yes. Do you recall the date of your employment beginning and ending? Just give us a year.

A. I was appointed June the 27th, 1967. I think it was May two years ago I retired.

Q. 1995?

Page 70.

A. Yes, around that time, yeah.

Q. So you were, were you an active-duty police officer in December of 1981?

A. That's correct.

Q. And do you recall what your assignment was in December of '81?

A. I was assigned to the 6th District, I believe.

Q. Yes. And in what capacity did you serve in the 6th District?

A. Policeman.

Q. Would that be a patrolman?

A. Yeah, policeman.

Q. I see. And were you assigned in December of '81 to any particular part of the 6th District?

A. Ahh, I walked the 6th foot beat 3A and 3B.

Q. And what are 3A and 3B?

A. The walking beats on 13th Street.

Q. And 13th between any particular cross streets?

A. Actually, it went I think from -- I may be mistaken -- from Chestnut to the bus terminal.

Q. Okay. Do you recall the hours of your assignment in December of 1981?

A. I couldn't tell you without a squad card.

Q. I see. Is there a record of your assignment in December of 1981 anywhere to your knowledge?

Page 71.

A. Not to my knowledge, no.

Q. Would there be a record anywhere of the hours that you served in December of 1981?

A. There may be.

Q. To your knowledge where would that be?

A. I have no idea. Police records.

Q. Would that be your employment records or your personnel records?

MS. FISK: Objection, Your Honor. He said he did not know, and frank -- well, objection, Your Honor.

THE COURT: Where are you trying to go?

MR. WEINGLASS: Well, we don't have the records, Your Honor. So I am trying to see, I am following the Court's suggestion that the witness himself might know without his records when and where he was employed at the time of this incident.

MS. FISK: Your Honor, this officer's testimony is only relevant if indeed he was present on the scene when Officer Faulkner was killed.

THE COURT: Yes, why don't you --

MS. FISK: If in fact he was, perhaps

Page 72.

we could pursue it. And if he wasn't his testimony is unnecessary.

THE COURT: Why don't you ask him that.

MR. WEINGLASS: We will get to that in a moment.

BY MR. WEINGLASS:

Q. Were you subpoenaed to testify here today?

A. I was.

Q. Right. On June 24th, 1997? Is that when you were subpoenaed?

A. No, that was sometime last week, I remember that.

Q. Tuesday of last week?

A. Sometime last week.

Q. Right. And do you recall the individual who subpoenaed you?

A. The gentleman right there (indicating).

Q. Mister -- do you recall who it was?

A. I don't recall his name but he is sitting right in the back of the Courtroom there (indicating).

THE COURT: Same person who served Ryan.

MR. WEINGLASS: Thank you.

Page 73.

BY MR. WEINGLASS:

Q. Now, at the time that you were served with the subpoena, did you have a conversation with the individual who served you?

A. Yes.

Q. Did you indicate to that individual that you knew the whereabouts of the woman who the defense was seeking who had testified and changed her story?

A. No.

Q. Did you indicate that you knew that she was in New Jersey living in a condominium near a golf course?

A. I knew that she was living there prior to that.

Q. When?

A. This was years ago.

Q. How many years ago?

A. Oh, it must be back in the '60s. I mean -- not '60s, excuse me -- '80s.

Q. You didn't indicate that she was there for the last two years?

A. No. No. I haven't seen her in years.

Q. And who are we talking about?

A. Who are you talking about, sir?

Q. Are we talking about Cynthia White?

Page 74.

Lawrence Boston - Direct

A. Correct.

Q. Right. And is it your testimony that you didn't tell the investigator that she's been there for the last two years?

A. No.

Q. And that she's changed her story?

A. No, no, no, no, no, no, no, no, sir. No, sir.

Q. And that she wants to make money on the deal?

A. No, sir.

Q. Is Cynthia White's whereabouts known to you?

A. I guess she's in the graveyard, from what I heard the other day.

Q. Where did you hear that?

A. Here.

Q. You were sitting in Court?

A. Correct.

Q. Is that why you're now changing your testimony?

MS. FISK: Objection, Your Honor.

THE COURT: Sustained. There is no foundation for that. Except your own imagination.

MR. WEINGLASS: And the report of our investigator who had a conversation with this witness.

Page 75.

Lawrence Boston - Direct

THE COURT: And, well, he has denied that conversation.

MR. WEINGLASS: Of course.

THE COURT: Okay.

BY: MR. WEINGLASS:

Q. Did you know Richard Ryan?

A. Personally, no. I've seen him around.

Q. Did you know Richard Herron?

A. Excuse me, sir?

Q. Richard Herron, H-E-R-R-O-N.

MS. FISK: Objection, Your Honor.

THE COURT: I will sustain it. I don't know where you are going with all of these names.

BY: MR. WEINGLASS:

Q. Did you know a Joseph Geoffrey?

MS. FISK: Objection, Your Honor.

MR. WEINGLASS: G --

THE COURT: Sustained.

BY: MR. WEINGLASS:

Q. Did you know Daniel Faulkner?

A. Very well.

Q. Okay. Did you know Gary Bell?

A. Very well.

Q. Do you recall where you were on December 9th,

Page 76.

Lawrence Boston - Direct

1981?

A. I was in the City of Philadelphia.

Q. Do you recall where you were at approximately 4:00 in the morning, December 9th of 1981?

A. I should have been asleep.

Q. Okay. You weren't near, at or near the intersection of 13th and Locust?

A. No, sir.

Q. At 4:00 in the morning?

A. No, sir.

Q. Either in uniform or out of uniform?

A. No, sir.

Q. Have you checked your employment records to verify where you were?

A. I remember that date very well.

Q. Where were you?

A. I should have been home in bed.

Q. I don't know if I have this correct, did you know Cynthia White?

A. Yes.

Q. And how did you know her?

A. From the streets.

Q. And was she a working prostitute at that time?

A. I never caught her, no. I couldn't say. I couldn't say, no, I don't know.

Page 77.

Lawrence Boston - Direct

Q. You don't know?

A. I never caught her.

Q. Right. Did you see Cynthia White after December 9th, 1981 and before January lst, 1982?

(Pause)

A. I think it was around Christmas time of that year.

Q. And where did you see her?

A. Around 13th Street.

Q. She was working?

A. Counselor, I don't know what you mean by working.

Q. Okay, what was she doing when you saw her?

A. Walking.

Q. Was it daytime or nighttime?

A. I think the time I saw her was at night.

Q. So you were working nights in December of 1981?

A. I could have been. It could have been at daytime too because I covered that beat.

Q. Is there any reason why you said nighttime a moment ago?

A. Because most of the time I did see her was at night.

Q. So that refreshes your recollection that you

Page 78.

were working nights in December of 1981?

Lawrence Boston - Direct

A. Counselor, no, it does not. It could have been in the daytime. I could be mistaken, I could have seen her in daytime. I could have seen her on 4:00-to-12:00 shift. I could have saw her any time. I don't know which time during that time.

Q. What were the different shifts that you were working in 19 --

A. 8:00 to 4:00, 4:00 to 12:00, and 12:00 to 8:00.

Q. So 12:00 midnight to 8:00 in the morning was one of the shifts you worked?

A. Correct.

Q. And you don't know if you were working that shift in December of '81?

A. I tell you I would have to look at my squad card.

Q. I'm sorry, when you say -- squad card?

A. Correct.

Q. Right. And where would that card be lodged?

A. I have no idea.

Q. Have you talked to the Assistant District Attorney prior to taking the stand?

A. I did.

Q. Who did you talk to?

Page 79.

A. I don't know.

Q. Was it the Assistant District Attorney who is here?

A. I don't know. I didn't see her.

Q. It was on the telephone?

A. Correct.

Q. It was a woman?

A. Correct.

Q. When was that conversation?

A. I think around the 24th or the 25th, I'm not sure.

Q. Either the day you were served or the day after?

A. Yeah, it was around that time, yeah.

Q. And did you review the substance, the kinds of questions that I'm asking you?

A. To who?

Q. With the Assistant District Attorney.

A. I talked to a person on the phone.

Q. The person on the phone, did you review the kinds of questions that I'm asking you?

A. Yes. Similar.

Q. Did you ask about your squad card?

A. No.

Q. Were you asked if you recalled if you worked

Page 80.

that night on December 9th, 1981 into the early morning hours?

A. I believe I did.

Q. And what was your answer to that: You couldn't remember?

A. Are you asking me or telling me to say something?

Q. Could you remember?

A. Could I remember? I told them I wasn't working.

Q. Right. Okay. Have you since that time had occasion to seek your squad card to verify your recollection?

A. I have no reason to.

Q. When was the last time you saw Cynthia White?

A. As I stated, it could have been Christmas time, I think, the year '81.

Q. That was 15 years ago?

A. It's been awhile.

Q. Right. And how did you know that -- how did you have any information about her living in a condo in New Jersey?

A. Well, the word was out in the street that she was living in Jersey.

Q. Near a golf course?

Page 81.

A. That's what they told me.

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. The golf course near Pine Hill?

A. Yeah, that's what I heard.

Q. And do you remember when you were told that?

A. No, I don't. It was, it was a long time ago.

Q. Not in the last two years?

A. No, no, no.

Q. It was sometime after the trial of this case, though; isn't that correct?

A. No, no, this is prior to the incident with Mr. Faulkner.

Q. It was prior to the incident with Mr. Faulkner that you heard that she was living in New Jersey?

A. Well, during that time. After that time, after.

Q. After that time?

A. After that time.

Q. Right. You also said that she was being taken care of?

A. No.

Q. The information you got was she, were you given information that she was being taken care of in

Page 82.

this condo?

A. No.

MR. WEINGLASS: I have no further questions.

MS. FISK: May I inquire, Your Honor?

THE COURT: Yes.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. Good morning, Officer Boston.

A. Good morning, ma'am.

Q. This information about Cynthia White, did this come from other ladies who --

A. Yes. Street people, yes, correct.

Q. This was just what other ladies or street people told you about her?

A. Con -- average conversation between me and the women on the street.

Q. Now, Officer Boston, you told us that you were appointed to the Police Department in June 1967?

A. That's correct.

Q. Was there a period of time when you were a Transit police officer as opposed to a Philadelphia police officer?

Page 83.

A. Oh, that is part of the Philadelphia Police Department, when I was assigned to the Transit unit.

Q. Until when?

A. I can not give you the dates, ma'am. But it was before I got transferred to the 6th District.

Q. Which was approximately when?

A. Around 1980, 1979, 1981, in, it was in that area.

Q. All right, when you were in the Transit unit, did you work specifically in the area of 13th and Locust?

A. I did, I had that beat. That was the Patco Line. That covered from 15th and Locust to approximately 12th and Locust or 13th and Locust, underground.

Q. I apologize, I didn't mean to cut you off. When you were transferred to the 6th District, is that when your assignment moved north, that is on 13th Street from you said Chestnut to the bus terminal? So the record is clear, the bus terminal is on Filbert between Market and Arch; is that correct?

A. That's correct.

Q. And was that when you were transferred to the 6th District, in '79 or '80?

Page 84.

A. Hmm-hmm.

Q. Is that when your beat moved north on 13th Street?

A. That's correct.

Q. Between Chestnut and Arch?

A. That's correct.

Q. So that your opportunities to have met Cynthia White occurred prior to that time when you worked the Patco Line; would that be fair to say?

A. That's correct.

Q. And for how long a period of time during the time that you were a Transit, assigned to the Transit unit was it that you knew Cynthia White?

A. I was sent to Transit because I lost my driver's license, I wasn't allowed to drive a police car. And during that time is why I was put on that beat. And I would come upstairs because the smell of the subway, I would come upstairs a lot and so I met a lot of these people.

Q. Right. Did you also meet other people who knew Cynthia White during that period of time?

A. Yes, a lot of people.

Q. Let me ask you this. Was she ever referred to by herself or by others in the course of speaking to her in your presence or about her, was she ever

Page 85.

referred to by the nickname of Lucky?

A. Yes.

Q. Cynthia White was referred to by that name?

A. Was Lucky, right.

Q. Who was Lucky?

MR. WEINGLASS: Objection: Question was asked and answered. Cynthia White.

MS. FISK: No, I am asking who was Lucky.

MR. WEINGLASS: The witness just answered. Cynthia White was Lucky.

MS. FISK: May I ask the question, Your Honor?

MR. WEINGLASS: No, I object to it, it was asked and answered. Counsel doesn't like the answer, that's no reason to repeat it.

THE COURT: What's the answer?

MR. WEINGLASS: The answer is Cynthia White was Lucky.

MS. FISK: That's what I am asking.

THE COURT: Was that who Cynthia White was?

THE WITNESS: To me she was called Lucky, Your Honor.

THE COURT: Okay.

Page 86.

BY MS. FISK:

Q. Did you know any other persons in that area known as Lucky?

MR. WEINGLASS: Objection.

THE WITNESS: No, no, no, I didn't, no.

BY MS. FISK:

Q. Did you speak to a detective here last week before taking the witness stand, Officer Boston?

A. Yeah; Mr. Welsh.

Q. And did you tell Mr. Walsh that you knew Lucky to be a male, a transvestite who was in the area of 13th and Locust Street?

A. Yeah, he point both ways.

Q. And that is my question.

A. Yes, he went both ways.

Q. So that was another person who you knew as Lucky?

A. Right.

Q. And that was a male?

A. It was a male, right.

Q. Who sometimes dressed as a woman and sometimes dressed as a male?

A. Yes.

Q. Did Detective Walsh ask you whether Cynthia

Page 87.

White was ever known as Lucky?

MR. WEINGLASS: Objection: Question has been asked and answered, Judge.

MS. FISK: Not that question.

THE COURT: Not that question, not that specific question.

Go ahead.

BY MS. FISK:

Q. Did Detective Walsh --

A. Yes, he did.

Q. -- ask you whether or not Cynthia White was --

A. Was known as Lucky, right.

Q. And did you tell him that Cynthia White was never known as Lucky?

A. Not to me, no. Not to me.

Q. She was not?

A. Not to me.

Q. I am getting confused now. That was my question: Was Cynthia White ever known to you as Lucky?

A. No.

Q. Did any other persons ever refer to Cynthia White as Lucky?

A. No, not to me.

Q. So the person you knew as Lucky, you knew

Page 88.

someone in that area?

A. Yes, as Lucky, right.

Q. And Lucky was this transvestite who went both ways?

A. Both ways.

MR. WEINGLASS: Objection, Your Honor. Counsel didn't like the answer that she got from the witness.

THE COURT: We are trying to get it clarified. Don't get excited, please.

MR. WEINGLASS: It is not clarified, Your Honor.

THE COURT: Let the witness --

MS. FISK: I will do it again.

MR. WEINGLASS: They are inducing the testimony of a former police officer.

MS. FISK: If Counsel wants to talk about inducing testimony, Your Honor, we could review Ms. Jenkins' testimony.

THE COURT: Okay. Fight nice.

MS. FISK: May I continue, Your Honor?

THE COURT: Go ahead.

MS. FISK: Thank you.

BY MS. FISK:

Q. Just so I am clear, Officer Boston: Did

Page 89.

Cynthia White have any nicknames on the street in the period of time that you knew her?

A. Not that I know of, no.

Q. You just knew her as Cynthia White?

A. Cynthia White.

Q. And the person who you knew as Lucky was a transvestite?

A. Transvestite, right.

Q. You were served with a subpoena by the gentleman who was in the Courtroom last week. Did you make any written statement to that person?

A. No, I did not.

Q. So you had some brief contact with him?

A. Conversation.

Q. And received a subpoena?

A. That's correct.

Q. Incidentally, did he offer you a job?

A. No. We talked about his past employment, what he did.

Q. Yes, sir.

A. And talked about me going fishing all the time. And that's just about it. Just a few things about the case.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

Page 90.

Lawrence Boston - Redirect

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Now, could you describe for us Cynthia White?

A. Describe her?

Q. Yes.

A. She was a black female.

Q. How tall?

A. I have no idea now.

Q. Was she heavy?

A. I have no idea now.

Q. Complexion?

A. I have no idea now.

Q. You knew a lot of women who were working on the street, I mean acquaintances, you will meet them?

A. I knew tons of them.

Q. Right. Do you know the name Mildred Saunders?

(Pause)

A. That name rings a bell in my head.

Q. Could that have been Cynthia White?

A. Could have been.

Q. Not unusual for the people who you met to have several different names?

A. No, it wasn't, no. It wasn't unusual at all.

Page 91.

Lawrence Boston - Redirect

Q. Right. Did you know Veronica Jones?

A. I cannot remember that name, not now.

Q. Did you know Pamela Jenkins?

A. No.

Q. You say that with some emphasis.

A. Right, because I looked at her in the face the other day when she's testifying. I have never seen or heard of that woman before.

Q. Okay. Now, you at one point served under an officer named DeBenedetto?

MS. FISK: Objection, Your Honor.

THE COURT: Where are you going, Counselor?

MR. WEINGLASS: I will ask, the follow-up question will indicate.

BY MR. WEINGLASS:

Q. Were you present when Officer DeBenedetto had a meeting of policemen in the 6th District and spoke about organizing vice payoff money in the 6th District?

MS. FISK: Objection, Your Honor.

THE COURT: All right. I will sustain that.

BY MR. WEINGLASS:

Q. You do recall that there was a Federal

Page 92.

Lawrence Boston - Redirect

investigation into the payoff to police officers?

MS. FISK: Your Honor, why don't we just empty the prison and take everybody out, because as far as defense is concerned, if you have a uniform you are corrupt. That's not the way it works. This is a man who served 20 years in the Police Department, retired, works security now at the Art Museum. And I object to questions regarding other officers' misdeeds and other improper actions. It is irrelevant, it is improper, and it is insulting.

MR. WEINGLASS: Let the record reflect Counsel is shouting.

MS. FISK: Because Counsel is pissed off -- excuse the expression -- for the disgusting attitude that defense has towards law enforcement people, that's right, that's why I am shouting.

THE COURT: Well, I mean not here.

MS. FISK: I apologize, Your Honor, for raising my voice.

THE COURT: For investigating the Police Department, the objection is sustained.

MR. WEINGLASS: May we have comment from the Court about Counsel reverting to

Page 93.

Lawrence Boston - Redirect

language of the street?

MS. FISK: And I apologize, Your Honor, for that.

MR. WEINGLASS: Without comment from the Court.

MS. FISK: I don't need comment from the Court in order to apologize. I apologize for my improper language, Your Honor.

THE COURT: Well, you let him get you all excited. Don't get excited.

BY MR. WEINGLASS:

Q. Now, in the time that you were walking the beat in that area in the 6th District, you were in uniform, were you not?

A. Yes, I was.

Q. Were there also plainclothes officers who were working this area in 1981, in December?

A. There were some.

Q. And they were on the street as well?

A. They were.

Q. And they would be on the street in the early morning hours as well when there was a...

A. I do not know.

Q. Right. Okay.

MR. WEINGLASS: I have no further

Page 94.

Lawrence Boston - Recross

questions.

MS. FISK: I have some, Your Honor.

- - - - -

RECROSS-EXAMINATION

- - - - -

BY MS. FISK:

Q. How did you learn about Officer Faulkner's murder, Officer Boston?

MR. WEINGLASS: Objection: Outside the scope of the Redirect.

THE COURT: Oh, I don't know, you talked about it.

MS. FISK: I will rephrase it.

THE COURT: All right.

BY MS. FISK:

Q. Officer Boston, back at the time Officer Daniel Faulkner was murdered, do you remember what squad you were assigned to?

A. I can't remember a squad. I knew me and Danny were in the

squad together prior to him being transferred to another squad. That's why we --

Q. So at the time he was murdered you were in separate squads?

A. That's correct.

Q. And does that by definition mean you're

Page 95.

working different times?

A. That's correct.

Q. So therefore, if he was working at the time he was murdered, you were not working?

A. That's correct.

Q. And how is it that you learned then that he was murdered?

A. KYW.

Q. And that was the morning following the murder?

A. That's correct.

MS. FISK: Thank you, sir.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. What squad were you in at that time?

A. 1 or 3 squads, I can't remember, it's been so long.

Q. You can't remember?

A. No.

MR. WEINGLASS: Okay, I have no further questions.

THE COURT: You are excused.

THE WITNESS: Thank you, Your Honor.

MR. PIPER: We would now call Douglas

Page 96.

Culbreth.

- - - - -

Douglas Culbreth, having been duly
sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. PIPER:

Q. Good morning, Mr. Culbreth.

A. Good morning, sir.

Q. How are you presently employed?

A. I am an investigator.

Q. And were you formerly a member of the Philadelphia Police Department?

A. Yes, I was.

Q. When did you join the Philadelphia Police Department?

A. April '66.

Q. And when did you leave the Philadelphia Police Department?

A. February '96.

Q. What was your rank in December 1981?

A. I was a detective.

Q. And which division were you assigned to?

A. The Homicide unit.

Page 97.

Q. When did you become a detective in the Homicide unit?

A. As I recall, somewhere like 1979 or '80, is my recollection.

Q. And how long did you remain a detective in the Homicide division?

A. Until I retired.

Q. As a Homicide detective, did you come to know someone named Cynthia White?

A. Yes, sir, I did.

Q. And when did you first come to know Cynthia White?

A. On the 9th of whenever, whenever this incident occurred.

Q. The night that Officer Faulkner was shot?

A. That's correct.

Q. When was the last time that you saw Cynthia White?

A. About, oh, I don't know, it's been a few years.

Q. Where was that?

A. As I recall, it was at 11th and Winter, a police station.

Q. And what caused you to be at 11th and Winter at the police station?

Page 98.

A. I went there as a result of either a phone call from her or information of a phone call from her.

Q. She called the Homicide unit; is that correct?

A. That's correct.

Q. She spoke to you or someone else in the Homicide unit?

A. I've been thinking about this. It's my recollection that she called me. But I don't want to say that because the possibility is I could have got it from somebody else. But it is my recollection that she called me.

Q. What did she say to you in that conversation?

A. Well, the information that I received from her or from the message was that she was in jail and she was sort of threatened there.

Q. And she was looking for help from you; is that correct?

A. That's correct.

Q. And you gave her help, didn't you?

A. Yes, I did.

Q. You went down to 11th and Winter to help her get out of jail; is that correct?

A. No, that's not correct.

Q. What did you do to help her?

Page 99.

A. Well, you have a, I understand you have a transcript of the, when I went there. Can I see it?

Q. Why don't you tell us what you recall doing to help Ms. White?

A. I went there to report what she told me to the Court.

Q. And did you tell the Court anything else about Ms. White?

A. I didn't tell the Court anything other than what she told me.

Q. Did you tell the Court that she was a very important witness for the Commonwealth in a high-profile case?

A. Yes, I did.

Q. And the very high-profile case you were talking about is this case; is that correct?

A. That's correct, that:s correct, sir.

Q. Was this in 1987?

A. I don't recall, sir. If you show me, whatever date it says there, it would be the date.

MR. PIPER: If I could mark the next defense witness.

THE COURT OFFICER: Next defense exhibit would be D...

MS. FISK: D-6.

Page 100.

THE COURT OFFICER: D-6.

(Court transcript was marked
Defendant's Exhibit D-6 for identification.)

THE COURT OFFICER: (Handing.)

(Pause)

MS. FISK: The only portion of these notes which Counsel had provided to us in their Petition to the Supreme Court was the last four pages of a 30-page document. They are seeking to mark the entirety of the notes of testimony, so if I can just have a moment to review them. I have only reviewed the last five pages.

MR. PIPER: We would also be happy to submit just the last four pages, where Douglas Culbreth appears.

MS. FISK: Fine. I have no objection to that, Your Honor, and I don't challenge the authenticity of the cover sheet or the pages 29 through 33, which is what was attached in the defense request to the Supreme Court.

THE COURT: Okay.

MS. FISK: 29 through 33 and the cover sheet.

THE COURT OFFICER: (Handing).

(Pause)

Page 101.

Douglas Culbreth - Direct

BY MR. PIPER:

Q. Detective Culbreth, is this the transcript of the Court appearance that you made on behalf of Cynthia White?

A. Yes, that's what it appears to be, sir.

Q. And what's the date on the cover of this transcript? And for the record, this is a transcript in Commonwealth V Cynthia White, 11th and Winter Streets, MC number 8706-2351.

A. The date is June 29th, 1987.

Q. And does that refresh your recollection that it was in 1987?

A. That's about, that's about when it happened.

Q. Did you make the decision on your own that you would go down to Court for Ms. White?

A. I most certainly did.

Q. Did you discuss that decision with anyone else before you went down?

A. No, I did not.

Q. Now, 1987 was not your first...

(Discussion was held off the record among defense Counsel.)

BY MR. PIPER:

Q. Do you recall that Ms. White was let out on bail on her own signature after you appeared in

Page 102.

Douglas Culbreth - Direct

Court?

A. I learned -- I've learned, yes, I've learned later, yes.

Q. And that was based on your representations to the Court?

A. I don't know why she was let out.

Q. Could you turn to the last page of the transcript in front of you?

A. (Witness complies with request.)

Q. And what are the last words of the Court?

A. From Mr. Gilson?

Q. Following that the Court says SOB?

A. The Court says SOB.

Q. What does that mean?

A. I would imagine sign own bail.

Q. And you were in Court when that happened, weren't you?

A. No, I don't recall being there then.

Q. But you do recall giving, making the statements that are ascribed to you on pages 31 and 32?

A. Yes; and I don't see any place there where I'm asking for bail.

Q. Not but do you see that immediately after you spoke she was allowed to sign her own bail?

Page 103.

Douglas Culbreth - Direct

MS. FISK: Well, Your Honor I would note that the notes speak for themselves, that Mr. Culbreth has testified with regard to his recollection.

THE COURT: He doesn't make that decision, the Court does. Why don't you subpoena the Court officer or whoever was down there.

BY MR. PIPER:

Q. And you were in Court during this proceeding that is transcribed here, weren't you?

A. As I testified, I don't recall being there then. My recollect --

Q. I'm sorry.

A. It is my recollection I left after I said whatever I had to say.

Q. You did learn that she had signed out on her own bail; is that correct?

A. It's... I don't remember anything -- when I learned of that was this. I don't know anything about her signing out her bail. I haven't heard from her since this. This is the last I heard from Cynthia.

Q. In fact, that is the last the Philadelphia Courts heard from her, isn't it?

Page 104.

Douglas Culbreth - Direct

A. I have no idea.

Q. You don't know that she was issued a bench warrant in 1988 for her failure to appear after signing her own bail?

A. I haven't heard from her.

Q. And can you think of any reason why that bench warrant would not have been reported to the NCIC tracking system?

A. I don't work -- sir, I don't work with NCIC and don't know too much about computers. But, not to answer you, no, I have no idea. No, sir.

(Discussion was held off the record among defense Counsel.)

MR. PIPER: No further questions at this time.

MS. FISK: May I inquire, Your Honor?

THE COURT: Sure.

CROSS-EXAMINATION

BY MS. FISK:

Q. Detective Culbreth, since your retirement from the Philadelphia Police Department you have been working as an investigator with the Defender's Association of Philadelphia; is that correct, sir?

Page 105.

Douglas Culbreth - Cross

A. That's correct, ma'am.

Q. And it was in that capacity that you received a subpoena about a week or a week and a half ago from the defense to appear at today's proceeding?

A. No, not in that capacity.

Q. I'm sorry, it was within the last week, week and a half that you received a subpoena to come to this proceeding?

A. Yes, ma'am.

Q. And at the time you were served, sir, the gentleman who is sitting here in the Courtroom (indicating) is the gentleman who served you?

A. Yes, ma'am.

Q. And did you discuss with him or did he discuss with you the fact that as a retired or former Philadelphia police officer there was a great deal of work that he could have for you in terms of serving subpoenas in the Philadelphia area?

A. He mentioned something about being a subpoena server but he didn't offer me any job.

Q. Did he discuss with you the fact that as a retired Philadelphia police officer he has lots of work in the Philadelphia area?

A. I don't remember him saying he was a Philadelphia police officer.

Page 106.

Douglas Culbreth - Cross

Q. I'm sorry, I apologize. What do you remember him saying with regard to the availability of work?

A. He had some small, small talk about whatever. I am not going to say where he worked, that's his business.

Q. Yes.

A. But it wasn't Philadelphia. But he just mentioned small talk, a police retiree talk. You know, there's work here in Philadelphia.

Q. But since you are currently employed you didn't follow up on that?

A. No, ma'am.

Q. Now, you met Cynthia White on the night, or actually the morning that Officer Faulkner was murdered, and you in fact are the detective who took her statement down at the Police Administration Building?

A. Yes, as I recall, I believe I was the first. I'm not sure about that.

Q. Okay.

A. But I believe I was the first detective she spoke to.

Q. Now, at the time that she testified at trial in June 1982, were you present when Ms. White was brought into the Courtroom and testified?

Page 107.

Douglas Culbreth - Cross

A. Yes.

Q. Now, can you please tell us whether or not there was any fear on the part of Ms. White -- I'm sorry, not fear -- whether you detected any kind of attitude on the part of persons in the Courtroom when Ms. White testified?

MR. PIPER: Objection to that question. How can you have a witness detecting attitudes in a Courtroom.

MS. FISK: I will rephrase it.

BY MS. FISK:

Q. Did you note any hostility directed towards Ms. White when she testified at this trial?

MR. PIPER: Objection to the form. How can someone sit in the Courtroom and notice hostility being directed. I mean it's just --

THE COURT: Oh, it happens everyday with me. Especially in this case. So I will let him answer it if he can.

THE WITNESS: I wasn't in the Courtroom but I waited outside the Courtroom for Ms. White and I escorted her away. And there was some level of hostility directed towards her.

MR. WEINGLASS: Objection. I ask the

Page 108.

Douglas Culbreth - Cross

answer be stricken. The question was in the Courtroom. The witness indicated, I think, honestly that he wasn't in the Courtroom.

MS. FISK: Right, and then he said that out of the Courtroom there was, and that is an appropriate response. May I continue my cross-examination, Your Honor?

THE COURT: Yes.

MR. WEINGLASS: Your Honor, the question was in the Courtroom.

THE COURT: I know what the question is. And I know what he answered. So let's go. We will be here forever.

BY MS. FISK:

Q. What kind of hostility was directed towards Ms. White out of the Courtroom, Detective?

A. I don't remember the exact but there were remarks made. I don't remember exactly what they were, but they were negative remarks made.

Q. Now, were those negative remarks made by Philadelphia police officers or law enforcement officers?

A. No. I didn't hear any.

Q. Were those remarks made by persons who were in the Courtroom on behalf of Mr. Jamal?

Page 109.

Douglas Culbreth - Cross

MR. WEINGLASS: Objection. The witness has no way of knowing who was in the Courtroom on behalf of Mr. Jamal, because unlike the police officers, they didn't wear buttons.

THE COURT: They didn't? They didn't?

MR. WEINGLASS: The Court --

THE COURT: They didn't?

MR. WEINGLASS: They didn't.

THE COURT: You weren't there.

MR. WEINGLASS: Right. Your Honor recalls buttons?

THE COURT: Oh, yes: Free Mumia. Come on.

MR. WEINGLASS: Right. Well, they may ask questions about the buttons but not questions other than that.

MS. FISK: Your Honor, I am not asking any questions about buttons. My question is whether the hostility directed towards Ms. White was by persons who were in the Courtroom on behalf of Mr. Jamal. And I would ask that the former detective be permitted to answer that question.

THE COURT: Okay. Go ahead.

THE WITNESS: I don't know who the

Page 110.

Douglas Culbreth - Cross

people were but they were people in the crowd with -- outside in the hallway there were people, spectators. I don't know who they were, but they were making, there were negative remarks made.

BY MS. FISK:

Q. Now, as a result of that, were you afraid for Ms. White's safety?

A. I was afraid for hers and mine.

Q. Now, you have told us that sometime in 1987 you received information, either a call from Ms. White or someone told you about a call that Ms. White placed, indicating that Ms. White was in custody and again was afraid?

A. Yes, that's correct.

Q. Would you explain to us why once receiving that information you went to a preliminary hearing listing to tell the judge about that?

A. I did it because that was Ms. White's right to have that reported to someone who could handle it.

Q. And based on what you had observed at the trial in 1981, did you believe that her fear for being in danger was legitimate?

MR. PIPER: Objection, Your Honor: That is beyond the scope and relating to a

Page 111.

Douglas Culbreth - Cross

different event.

MS. FISK: No, Your Honor, it explains the action taken by the detective.

THE COURT: The objection is overruled.

Go ahead.

THE WITNESS: Yes, I believe it was possible that her fears were -- I believe it was possible for her to be upset.

BY MS. FISK:

Q. And that her fears while being in jail -- I'm sorry -- that her reporting that she had received threats while in custody was legitimate?

A. Yes, ma'am.

Q. And that --

MR. PIPER: Objection. The objection is to his state of mind, that

has no bearing.

MS. FISK: Your Honor, my -- well. Your Honor, this witness was called by the defense in an attempt to show improper --

THE COURT: I know that.

MS. FISK: Something he did was improper. I have a right to show --

THE COURT: This is cross-examination. So the objection is overruled.

Page 112.

Douglas Culbreth - Cross

Go ahead, proceed.

MR. PIPER: This was six years --

THE COURT: You are bringing in six years. You are bringing all the way back to 18 years ago, so what.

Come on.

MS. FISK: Thank you.

BY MS. FISK:

Q. Detective, as a Homicide detective from 1979 until 1996, were there other occasions where you received contacts from witnesses who had provided information or testified after they completed testimony in a particular case?

MR. PIPER: Objection. Is she talking about this case? Other cases? This has no relevance.

MS. FISK: Again, Your Honor, it explains the actions of this detective and proves that what this detective did was not improper, was not in violation of discovery, was not part of a pre-agreed arrangement which defense Counsel may want to claim at some later time was not disclosed.

THE COURT: Okay.

MR. PIPER: They could ask what

Page 113.

Douglas Culbreth - Cross

arrangements there were in this case. If they want to go into the pattern of dealing with prostitution witnesses, we have been shut down on going into that issue.

THE COURT: They didn't do that. The Supreme Court did.

MS. WOLKENSTEIN: No, you did.

THE COURT: I did.

MR. PIPER: You did.

THE COURT: I did. Well, there was a good reason for it.

MR. PIPER: It was in our Petition which was granted, Judge.

THE COURT: Oh, all right, that's what it says in there.

MS. FISK: I will restate the question, Your Honor.

BY MS. FISK:

Q. In 1982 did you agree with Ms. White that you would help get her out of jail five years later?

A. No, ma'am.

Q. Her call to you in 1987 was, so far as you know, placed by her or someone on her behalf to you or someone in Homicide?

A. That's correct.

Page 114.

Q. And as a result of the information which you received, that being that she had been threatened while in custody, you went to a preliminary hearing listing and advised the judge that she had been threatened or that she reported to you that she had received threats while in custody?

A. That's correct.

Q. Was that pursuant to a deal or an agreement with Ms. White?

A. No, I think it was pursuant because she knew I would do it.

Q. I'm sorry, I didn't hear you.

A. I think she called me because she knew I would do it.

MS. FISK: Thank you, sir. I have nothing further, Your Honor.

MR. PIPER: I have some questions.

(Discussion was held off the record among defense Counsel.)

MR. PIPER: The witness may be excused, Your Honor.

THE WITNESS: Thank you.

THE COURT: All right, you are excused. Thank you.

(Witness excused)

Page 115.

(Discussion was held off the record among defense Counsel.)

MR. WEINGLASS: Your Honor, may we break early and come back early from lunch?

THE COURT: What do you mean break? How many witnesses do you have?

MR. WEINGLASS: Three very short. And one longer.

MS. FISK: May I inquire as to who they are, please?

THE COURT: Yes, who are they?

MR. WEINGLASS: We will provide the District Attorney's Office the same courtesy accorded to us last Thursday.

THE COURT: Well, I am asking you now who do you have. Give me the names so she could hear them. If she has any objections I will have plenty of time to think about it while I eat my lunch. Come on, who are they? Who are the short ones and who is the long one?

MR. WEINGLASS: Mr. Corbett.

THE COURT: He was just here, wasn't he?

MS. FISK: No, this was Culbreth.

THE COURT: Oh, another one. Okay.

Page 116.

MR. WEINGLASS: Mr. Cannon. Mr. Grant. Larry Johnson. These are the short witnesses. Don Hudson, longer witness. Don Burton, longer witness.

MS. FISK: Your Honor, may I address each of those? Because I would object actually to each and every one of them.

Mr. Corbett, Detective Corbett is the assigned detective on the matter which Ms. Jenkins has recently been held for Court on. And it is simply collateral. She has in fact been arrested and held for Court on a theft from February. I know defense claims it is retaliatory, nevertheless she has been held for Court on it. And she could certainly claim that, but beyond that, that is irrelevant to her testimony and the substance of her testimony which has to do with what she claims are improper contacts in 1981.

Frankly, I have no idea, there has never been any offer made with regard to Mr. Cannon. I would ask that offer be made.

Mr. Grant, I am assuming, is Charles Joseph Grant, former Assistant District Attorney. And I would object to any testimony

Page 117.

he would give. He hasn't been involved in this matter since 1995 and had no contact with this case when it was tried in 1982.

Larry Johnson and Don Burton are both defense investigators. And again, as I understand it, defense investigators involved with this matter now, in the past two years. And with regard to the substance of the defense claims alleging improper police conduct in 1981 and 1982, their testimony is irrelevant.

MS. WOLKENSTEIN: Your Honor, as to Detective James Corbett, his testimony is relevant because we have raised the substantial allegation that Miss, Ms. Jenkins' arrest was retaliatory. She was here on the stand, she indicated her involvement or the extent of her involvement in an art theft which took place in February of 1997.

It also was her testimony, and we want James Corbett in here to testify that it was in March, early March of 1997 that she contacted voluntarily the FBI to provide information to the FBI concerning that art theft and retrieval of the painting. That conversation was then related to Detective James Corbett in the

Page 118.

Central Detectives Division of the Philadelphia Police Department. Ms. Jenkins was in the company of Detective Corbett and the FBI agent and I believe the date was March 6th or March

7th, 1997. At that time after assisting the authorities in the retrieval of that stolen art painting, she was told that she would be, there would be no further prosecution, no further involvement of her for any alleged participation by her in this art theft.

It was only after the defense filed its papers for a supplemental remand hearing to the Pennsylvania Supreme Court on March l0th, some four or five days later, with the accompanying publicity, including Ms. Jenkins appearing at a press conference when we filed those papers, that the prosecution pursued some sort of arrest of her and prosecuted her for these charges. And in fact, it took them another two-and-a-half months before they ever effectuated any arrest on her, despite the fact that she was in P.I.C.C., she was in the, she was in the institutions of the City of Philadelphia, arrested on a detainer, available from April 14th on.

Page 119.

Prior to that she was available and had been in the custody, or at least in the company, of a detective from the Central division -- that's Detective James Corbett -- and an FBI agent in early March. It is not until May 17th, after the Assistant District Attorney has filed it's Answer to the Supreme Court on our remand papers saying they have done an investigation on this case and they would be oh so welcome to have a remand hearing that a warrant of arrest on May llth, 1997 was sworn out for Ms. Jenkins. And it was not until after the Supreme Court actually set the remand hearing in an Order dated May 30th, 1997 and filed in the Court on June 2nd, 1997 that there was any attempt to arrest Ms. Jenkins on these charges.

It is our position that this was retaliation. It was an attempt to threaten her against testifying on Mr. Jamal's behalf and providing the information that she has given to the Court and was contained in her verified statement. We believe this is absolutely relevant to these proceedings, it is absolutely part of the behavior of the prosecution and the

Page 120.

police towards any witness who comes forward on Mr. Jamal's behalf with any sort of information which would be possibly helpful to the defense. It is the same type of thing that was done to Veronica Jones, only a little bit of a reverse. This time the prosecution effectuated arrest prior to the witness appearing on the stand instead of while she was on the stand. I think they figured out that that created such an uproar that they had to try something with different means. The means was different but the intent was the same and that was to intimidate, harass, punish, retaliate against a defense witness.

MS. FISK: May I note, Your Honor, that Ms. Jenkins' testimony, which was, frankly, shown to be, I submit, perjured on the basis of documents which were produced last Thursday, included her statement that no one at any time when she was prosecuted and charged with art theft ever asked her about her testimony in this matter, ever sought to have her change her testimony in this matter. And that her arrest on the art theft was unrelated to her testimony in this matter.

Page 121.

I would note as well that Ms. Jenkins was in custody prior to her arrest and I don't know if Counsel is claiming we also had her locked up on a violation of probation for New Jersey as well, maybe that's our fault too.

In any event, the testimony of Ms. Jenkins, which was proffered to the Supreme Court, and the reason for which this matter was remanded to this Court, was to allow Ms. Jenkins to give testimony regarding allegedly improper efforts by Philadelphia police officers to have Ms. Jenkins provide false testimony against Mr. Jamal at his trial. Whether or not something is done 15 years later is not relevant to the claims made by defense in their affirmation and their Petition to the Supreme Court for activities then. Their allegation was conduct was improper then.

The woman has been held for Court and charged with a theft. Whether or not the defense considers that retaliatory has nothing to do with anything. Ms. Jenkins' testimony was I am providing this testimony without regard to what anybody has said to me or done to me, and anything anyone has said to me or done to me

Page 122.

with regard to this most-recent arrest has not changed my testimony.

It is, therefore, irrelevant and I ask that it be barred.

MS. WOLKENSTEIN: There is one correction I want to make here. Very clearly, Ms. Jenkins testified that when she was brought into the Central Detectives division for booking on this charge, that she encountered Detective Richard Ryan and he said to her to the effect keep my name out of what you have to say about this case.

MS. FISK: Well, I note that --

MS. WOLKENSTEIN: I want to make that very clear and I want to indicate that it has everything to do with this case to show the type of intimidation and harassment that witnesses are subjected to.

MS. FISK: And I note that Detective Richard Ryan's name is not one of the names Counsel has listed on their five remaining, though he too has been subpoenaed by the defense and as I understand it is present in the Courtroom. He is a witness to whom I have no objection: He is mentioned in the affidavit, he

Page 123.

has been referred to by the witness. And I would agree that his testimony pursuant to Ms. Jenkins' affidavit would be proper. And I understand that he is available.

But whether or not a subsequent arrest is retaliatory is not relevant.

And I would ask Counsel if they are calling Detective Richard Ryan?

MS. WOLKENSTEIN: Could we have a ruling on Detective --

THE COURT: Are you going to call Richard Ryan?

MS. WOLKENSTEIN: Well, Detective Colbert is before the Court right now. That's --

THE COURT: I am denying your request on Colbert. Take it up with the Supreme Court if you think I'm wrong.

MS. WOLKENSTEIN: Oh, Cannon, okay. I will proceed since the Assistant District Attorney wants us to give proffers for each of the witnesses.

One of the witnesses that we intend to call, subject to any contrary order from the Court, is Marcus Cannon. He is a life-long

Page 124.

resident of the City of Philadelphia, gainfully employed for many years, a father, no criminal record. And he has very critical testimony in connection with reference to the testimony given here in Court by Pamela Jenkins.

He has testimony that he was in Whispers on December 9th, 1981 -- that is a club at the corner of 13th and Locust -- and upon leaving that club and walking north on 13th Street from the corner of Locust and, Locust and 13th, he passed two men, white men, one who appeared to be like a bum, sitting near Whispers on the side, on the store side, another one a little bit further down, also white, just leaning along the side. And as Mr. Cannon proceeded north on 13th Street he heard shots, he saw a flash of light, he turned and looked back towards 13th and Locust Street. And as he turned back he saw a black male fleeing very fast east on Locust Street, away from 13th and Locust Street.

And as he continued turning he saw these two men, white men appear, suddenly stand up, look erect and pull out weapons and proceed very quickly to the corner of 13th and Locust

Page 125.

Street.

He was frightened, he was scared, having seen this, having seen virtually a transformation of a man who appears to be a, who appeared to be a bum, suddenly turn around there, taking an aggressive stance with weapons out. And he immediately turned and continued up, up 13th Street towards Walnut.

As we know, former Police Officer Boston just confirmed that there were plainclothes officers certainly working in the 6th District. We have asked for discovery many times. We believe that

the two men that Marcus Cannon saw that night were plainclothes policemen. They are either on duty or off duty. And we believe we are entitled to know their identities, and we believe we are entitled to get the reports of what they saw. Because we find it extremely strange that two white men with weapons at approximately four o'clock in the morning, at the time of the shooting, were there on the scene and we have heard nothing about them.

And we find it further strange that this case is based largely -- I am not going to

Page 126.

argue about primarily or predominantly -- but with the, with the testimony of a very known prostitute, now a police informant, Cynthia White, who was allegedly on the scene. This is a case being made against Mr. Jamal, who is facing execution, when there are obviously other men, quite likely police officers on the scene, who were in a position to see what happened. We find it extremely strange that we have not had any disclosure of any information of any, of any policemen on foot.

And I will just further say and we will conclude and we could see what Ms. Fisk has to say to this, that of all the reports that we have gotten, there is not one report from any police officer who arrived on the scene or near the scene at that time who was on foot.

I maintain that there were some police officers on foot that night, on duty or off duty. And we need to hear from Mr. Cannon to get this into the record.

MS. FISK: Your Honor, the allegations which have been continuously raised by the defense throughout these proceedings are far more than strange, but I have already exhausted

Page 127.

my use of foul language for the morning and will not make comments with regard to it. I will note only that the proffer on Mr. Cannon as noted by Ms. Wolkenstein is to suggest, far beyond the Petition for remand with the Supreme Court, doesn't even begin to, has nothing to do with the Petition for remand, it is a little bit closer.

And I would note as well that since these proceedings began in 1995, there was absolutely no averment made by Ms. Wolkenstein in that very full and detailed and complete proffer which explained why Mr. Cannon was unavailable to the defense in the 1995 proceeding, or the 1996 remand, or at the time in March of this year when the defense sought further remand.

In so far as Mr. Cannon has not even been alleged to have been unavailable previously, and was clearly not the subject of the remand by the Supreme Court, I would ask that his testimony be barred.

THE COURT: All right, his testimony is barred too. What about the rest of them?

MR. WEINGLASS: Mr. Grant, Mr. Grant

Page 128.

has been subpoenaed by the defense. We are not going to question him about 1997 or 1982, because he was not involved in the case. We are going to question him about 1995, when he was involved in the case and conducted on behalf of the District Attorney's Office the post-conviction hearing heard by this Court.

And at that time -- and I represent to the Court we have information on this -- Mr. Grant was involved personally in an active search for a Cynthia White, contacting authorities as far away as Boston, Massachusetts to locate Cynthia White.

Now, his testimony is relevant because if in fact Cynthia White was a deceased person as of 1992, and that information was contained in official documents readily available to the District Attorney's Office that were valid, the Assistant District Attorney conducting this hearing in 1995 would not have been involved in a frantic search to locate Cynthia White. So his testimony about his own personal involvement in a search for Cynthia White in 1995 going so far as Boston, Massachusetts in the search for that individual belies the fact that in 1992 she

Page 129.

was deceased and that documents that were valid supported that conclusion.

In fact, everything that Mr. Grant has to say indicates what we feel the rest of our case will show, and that is that Cynthia White was not a deceased person in 1992 -- the District Attorney's Office knew it, we know it -- and Mr. Grant is the best witness to be called from the District Attorney's Office to reflect the fact that they knew that although there was an individual who was apparently deceased in Camden, that individual was not the Cynthia White who was involved in this case.

And so we wanted to call Mr. Grant to establish the fact that that office was proceeding in 1995 on the assumption that Cynthia White was alive, even though they now produced records going back to 1992 that allege that she is deceased.

MS. FISK: Your Honor, it is simply ludicrous. The fact that someone is being looked for does not, is not proof that that person is not alive. You have to discover that that person is dead before you stop looking for that person.

Page 130.

Mr. Grant as the prosecutor handling this proceeding in 1995 frankly provided to defense each and every one of the witnesses they sought in the course of those proceedings. My recollection is that they were unable to proceed at one point because they did not have witnesses served. Mr. Grant was able to get those defense witnesses served so the proceedings could go on.

In that capacity, Mr. Grant, along with persons working with him, were looking for each and every one of the parties sought by defense. The fact that he did not discover a death certificate which has been marked and entered into this record does not prove that that death certificate is irrelevant, or improper, or forged, or unauthentic, or does not relate to a particular individual. It is simply not relevant to the testimony and the documents which have been offered in this matter.

MR. WEINGLASS: Your Honor, it is not just the death certificate. There is a document which has been marked as Commonwealth 2.

There is an NCIC printout. The printout that was given to this Court is not a complete document. Because if the Court has the

Page 131.

complete document, the Court will see that in the complete document the fact of Cynthia White being deceased was not, I emphasize not, confirmed by fingerprints. That's why they were still looking for her in '95.

Now in 1997 when we make the claim that Cynthia White is alive and produce a witness to support it, now they come to Court with a part of an official document, leaving off the remainder of the document, to convince this Court that there was FBI national data indicating that the witness was deceased.

But I believe the full record will show that this Court has been misled -- I won't say deceived -- but the Court has been misled. And that's what we want to rebut. We are going to call not just Mr. Grant for that fact, we are also going to call Mr. Burton and we are going to call another investigator named Larry Johnson. And those three will provide the rebuttal to the documents that have been provided to this Court, which are not valid documents in the sense of what they convey. That is that Cynthia White is deceased. This record, by the time the Court hears our last

Page 132.

three witnesses, will reflect the fact that there is no verifiable proof that Cynthia White was deceased in 1992.

As a matter of fact, our investigator Mr. Burton will testify that in 1997 he took photographs of Cynthia White into the City of Philadelphia where she was last known to be, and that various persons -- two, three, four people -- identified those photographs as someone who they had recently seen. And seen alive in the City of Philadelphia. This testimony is very crucial rebuttal testimony to the death certificate.

Beyond that, Your Honor, the death Certificate that you have been shown is not properly authenticated. Because there is attached page 2, which has nothing to do with the death certificate, and attached page 3, which has nothing to do with the death certificate. You have not been shown the information by the Assistant District Attorney, either as a result of negligence or as a result of willful

intent, to establish the fact that documentation shows that that Cynthia White died in 1992.

Page 133.

Beyond that, the death certificate itself is not complete. And we have an affidavit from the next of kin who was contacted in 1992 and asked if she would identify the body as that of her stepdaughter. And she never identified the body. So there is no identification that that body is Cynthia White. This is no fingerprint verification that that body was Cynthia White. The death certificate is a document pertaining to another individual. And evidence shows that Cynthia White was alive and well in Philadelphia in 1997.

That's what we are going to show with our last three witnesses: Joey Grant, Mr. Burton and Mr. Johnson.

MS. FISK: Your Honor, unless Counsel is offering to produce-members of the New Jersey State Troopers and the AFIS unit which does fingerprint identifications, or members of the Camden County Prosecutor's Office which has custody of the file regarding Cynthia White, I would suggest that any testimony they are offering with regard to Ms. White's death, the death certificate, the manner of her identification, is hearsay. Because those are

Page 134.

the agencies involved in the identification of the decedent.

Ms. White's fingerprints were taken at the Office of the Medical Examiner in Camden, her fingerprints are sent to the New Jersey State Troopers, where they are matched against master fingerprints. Her death is verified as a result of fingerprint identifications at the New Jersey State Troopers and AFIS, the computerized fingerprint office. And thereafter the county in which she was found dead is verified or is told that their death has been verified, and because she is dead her records are purged.

Unless Counsel wishes to call persons from those offices, any private investigator, any prosecutor from outside that county is testifying on the basis of hearsay and it is inadmissible.

If Counsel would like to have produced the people from the New Jersey State Troopers office who can verify the manner in which a death verification is made, I would be happy to present those witnesses to Your Honor.

THE COURT: All right. Those subpoenas are denied also.

Page 135.

MR. WEINGLASS: Well, Your Honor --

THE COURT: She is giving you an opportunity. Go to New Jersey, get the proper people in here and I will listen to you.

MR. WEINGLASS: Will the Court sign an order for us to bring --

THE COURT: How can I sign an order for New Jersey?

MS. FISK: Your Honor, as Mr. Grant did in 1995, I would be happy to produce persons from the New Jersey State Troopers office who can verify the manner in which a death is verified in the State of New Jersey.

THE COURT: Okay, she is going to get them for you.

MR. WEINGLASS: Will they be produced here in Court?

THE COURT: She is saying she'll produce them if you want them.

MS. WOLKENSTEIN: We also want the Medical Examiner's full file. We attempted to get that.

MS. FISK: Well, I don't have that, Your Honor.

MR. WEINGLASS: And we were told it

Page 136.

was turned over to the Assistant District Attorney here, Arlene Fisk.

MS. FISK: I do not have it.

MS. WOLKENSTEIN: We would appreciate getting it.

THE COURT: Wait a while. She says she doesn't have it. That is enough for me.

MS. FISK: I would note that the Medical Examiner, Your Honor, is currently on vacation, and I am advised that she is due back next Monday.

MR. WEINGLASS: But his report is available and they have it.

THE COURT: No, she said she doesn't have it.

MS. FISK: That's why I am objecting to Mr. Grant's testimony. He is not a Camden County prosecutor.

THE COURT: Okay, well, then there is nothing else we could do today.

MS. FISK: Is the defense calling Detective Ryan?

MS. WOLKENSTEIN: Your Honor, you are saying we cannot call our investigators to explain the types of things that Mr. Weinglass

Page 137.

has laid out, that we had evidence that Cynthia White was alive?

MS. FISK: That is all hearsay, Your Honor.

MR. WEINGLASS: It is not hearsay. It's his personal work here in the City of Philadelphia, walking to various areas where she was last seen.

THE COURT: Well, let me tell you this: If she's dead then he is looking at the wrong person. Now, if you want to prove that she's not dead, call the proper authorities in New Jersey and we will conduct a further hearing.

MR. WEINGLASS: I'm sorry. Your Honor, I didn't hear.

THE COURT: What do you mean, how many times do I have to repeat that?

MR. WEINGLASS: Just once.

THE COURT: You have to call the people from New Jersey. That's what I told you.

MR. WEINGLASS: But we also wanted Mr. Burton as a rebuttal witness to the things testified to by Mr. Ryan.

THE COURT: Well, I want to find out

Page 138.

if she's dead, if she's really, legally dead. Forget about it.

MR. WEINGLASS: Well, Your Honor, in order to find that out you have to hear from Mr. Burton.

THE COURT: No, I don't have to hear from him. I have to hear from the people in New Jersey who say she is dead.

MS. WOLKENSTEIN: We need the full NCIC report.

MR. WEINGLASS: Your Honor needs to see a part of a document that is NCIC, you need the whole document.

THE COURT: I don't need the whole document, she'll bring in the people from New Jersey.

MR. WEINGLASS: Bring in the NCIC document which says fingerprints were not established to confirm the death.

MS. FISK: Frankly, I don't know what Counsel is talking about, but.

MR. WEINGLASS: There is an NCIC document.

MS. FISK: Well, apparently Counsel has it, then. Maybe he would like to have it

Page 139.

marked.

MR. WEINGLASS: We are not permitted because we are not law enforcement. They have the document. Could they bring the whole document in? The Court was only given a part of it.

THE COURT: Counselor, you talk to the D.A. If she could do it, she will do it for you.

MS. FISK: Your Honor, is Counsel calling Detective Ryan? Who was here, as I understand it, pursuant to a defense subpoena.

THE COURT: Are you calling --

MR. PIPER: Your Honor, at this time we would like to move into evidence the Court files.

THE COURT: Wait a while. There is a question. Are you going to call that --

Who is he?

MS. FISK: Detective Richard Ryan.

THE COURT: Are you going to call Richard Ryan?

MR. WEINGLASS: We are not.

THE COURT: He is not. So you could tell him he could go home.

Page 140.

MS. WOLKENSTEIN: Joey Grant is right here.

MR. WEINGLASS: Mr. Grant is here.

THE COURT: I know Mr. Grant is here.

MR. WEINGLASS: May we call him after the lunch break?

MS. FISK: Your Honor, our position is that is hearsay, it is irrelevant, it is unnecessary, and it is not the manner in which to prove that which Counsel is seeking to prove.

THE COURT: Okay.

MR. WEINGLASS: We are establishing --

MS. FISK: Does Your Honor --

MR. WEINGLASS: -- that the District Attorney's Office in 1995 was seeking Cynthia White.

THE COURT: Well, so what?

MS. FISK: And other witnesses in this case.

THE COURT: So what? She was seeking a lot of persons. But the person is dead. You prove to me that that person is not now dead, then we will hear some more. All right.

MR. PIPER: We would also like to move into evidence the Court files of Cynthia White

Page 141.

which shows that her alias was Lucky, which was offered at the Veronica Jones hearing. And it would show that she was repeatedly arrested by Officers Geoffrey and Herron of the 6th District. As well as their indictments and conviction.

THE COURT: Counselor, I am not hearing anything right now. I am trying to get to lunch. But I will give you an opportunity to work it out.

MS. FISK: When shall we reconvene, Your Honor, this afternoon or tomorrow, with regard to those persons from New Jersey? If Counsel in fact wants them.

THE COURT: Well, you talk that over.

MS. FISK: Is Your Honor available both this afternoon and tomorrow morning?

THE COURT: Yes, I am available.

MR. GRANT: May I address the Court, Your Honor?

THE COURT: Yes, come on.

MR. GRANT: Because I don't know that I will be available tomorrow. But I received a subpoena this morning at 9:30 to be here at nine o'clock. There was no phone number by which I

Page 142.

could contact Counsel or to ask to be placed on call, or any comment or even professional courtesy.

If Counsel who have subpoenaed me wishes me to testify, I would appreciate it -- because I have clients just like they do -- that they give me some kind of notice and allow me to tell them what my schedule is like.

This afternoon I have to be at the airport. I am not going to be here tomorrow. And this morning I was in the middle of a serious conference on the orders of Judge Bonavitacola. So I would like to know who subpoenaed me and what their intentions are.

THE COURT: He subpoenaed you (indicating).

MR. GRANT: Well, I assumed as much based on the lack of courtesy.

Mr. Weinglass, what could I do for you?

MR. WEINGLASS: Be here two o'clock.

THE COURT: No, he says he has someplace to go this afternoon.

MS. FISK: It is my understanding that Your Honor has denied the defense the

Page 143.

opportunity to call Mr. Grant from the fact of what they want is hearsay and irrelevant.

THE COURT: Yes, if they wanted the people from New Jersey who could clear up this matter for us.

MS. FISK: Does the defense want representatives from the New Jersey State Troopers and AFIS?

MR. WEINGLASS: No, we want the full documents.

THE COURT: I know you want everything. Let me tell you this --

MS. WOLKENSTEIN: We want the fingerprint cards.

MS. FISK: I would like the defense to call a witness to tell the truth but I am not getting that even.

MS. WOLKENSTEIN: If there was one. And when we have all those things we would be able to determine.

THE COURT: You will never be satisfied in this case.

MS. WOLKENSTEIN: No, we want the entire prosecution file.

THE COURT: Well, you go back up to

Page 144.

the Supreme Court. I am making a ruling they are out. Except she'll get the New Jersey authorities for you. If you want them to come over here to prove that she is the one that's dead. All right.

MS. FISK: My understanding, Your Honor, is that Counsel does not want that witness produced.

MS. WOLKENSTEIN: No, we want the documents first. When we get the documents first we will make an evaluation of what witnesses.

MS. FISK: I don't have documents.

THE COURT: She doesn't have --

MS. WOLKENSTEIN: The documents that are produced are incomplete.

THE COURT: Whoa, whoa. He can't take you down and me at the same time. When I begin to speak, you shut up, okay. Do you understand that? When I start to speak, you shut up.

Okay, we are recessing. You call me whenever you're ready.

MS. FISK: Your Honor, it is my understanding that Counsel does not want that witness produced. In light of the fact that

Page 145.

Counsel does not have any additional witnesses to call --

THE COURT: Well, I am not hearing any additional witnesses now. But if they want those people from New Jersey and you could get them over here, I will be glad to hear them tomorrow.

MS. FISK: Fine, Judge.

THE COURT: Shall we reconvene tomorrow at 10:00 a.m.?

MS. WOLKENSTEIN: No, we want the files. On the records --

THE COURT: I have made a ruling. Go back up to the Supreme Court. I made a ruling, that's it. If you want those people from New Jersey, they will come.

MR. WEINGLASS: Without the documents, without the documents we don't want the witnesses.

MS. FISK: Thank you, Your Honor.

MR. BURNS: Thank you, Your Honor.

THE COURT: Without the documents you don't want the witnesses. It's all right with me. Counselor, take it up to the Supreme Court. I am ruling if you don't want the witnesses, you

Page 146.

want the documents first, and I can't force them to give you the documents first, you have to have those witnesses in here.

MS. WOLKENSTEIN: D.A. has documents.

MS. FISK: I have no documents from New Jersey. Perhaps Counsel doesn't listen.

THE COURT: I know, I heard you say that.

MR. WEINGLASS: Are we reconvening at two o'clock?

THE COURT: No. What for: We will reconvene whenever you people decide who is going to come in here. I am not going to come over here at two o'clock for nothing.

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(The hearing was adjourned at this time.)

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Page 147.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

1. Juli 1997

THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	
VS.	:	January Term, 1982
MUMIA ABU-JAMAL	:	
aka	:	
WESLEY COOK	:	No. 1357-1358
	:	
	:	

- - - - -

PCRA Hearing

- - - - -

Tuesday, July 1, 1997
Courtroom 306, Criminal Justice Center
Philadelphia, Pennsylvania

- - - - -

BEFORE: THE HONORABLE ALBERT F. SABO, J.

- - - - -

APPEARANCES:

- ARLENE FISK, ESQUIRE
- HUGH BURNS, ESQUIRE
  Assistant District Attorneys
  For the Commonwealth

- LEONARD I. WEINGLASS, ESQUIRE
- RACHEL WOLKENSTEIN, ESQUIRE
- JONATHAN PIPER, ESQUIRE
  Councel for the Defendant

- - - - -

TRANSCRIBED BY: CHARLES M. GORGOL
Official Court Reporter of the Court of Common Pleas

Page 2.

INDEX

COMMONWEALTH'S EVIDENCE

WITNESS	DE	CE	RDE	RCE
Sgt. Ronald Morgan	17	30	57	--
Sgt. Elizabeth Welch	59	69	77, 81, 84	78, 82

EXHIBITS

COMMONWEALTH EXHIBITS

NO.	DESCRIPTION	PAGE
8	Camden County Presecutor's File	20
9	Verified Dead Listings	64

Page 3.

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(At 10:05 a.m. the hearing was convened in the presence of the Court and the attorneys.)

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THE COURT: Good morning.

MR. PIPER: To begin with, Your Honor, we would like to protest the way this proceeding is being conducted. This has ceased to be an adversarial proceeding and has simply become a dialogue between the prosecution and the Court in which we have been relegated to the role of bystanders. Thursday they claimed to have provided conclusive documentary proof of the death of Cynthia White. We offered to rebut that with evidence that the documents they had presented were not proof, that they were an amalgam of pieces of documents taken from various sources. And we protested that we had not been provided the Medical Examiner's file or any of the other documents relevant to this issue. Now they come in saying they want a second chance to again verify the death of Cynthia White, which they previously claimed had already been shown conclusively.

Page 4.

We are denied the documents to independently test their claims. And we are denied the ability to present our witnesses on this issue. They are so eager to put on these witnesses before we have the documents that we would need to cross-examine them and they won't even tell us who the witnesses are that they are calling. If this were truly an adversarial proceeding, we would have the documents we need to cross-examine these witnesses and to explore this issue. We don't even get copies of their exhibits while they have the witnesses on the stand and while they are examining the witnesses so that we can follow to test their claims.

Detective Witcher put on documents which are not genuine, were claimed to be certified, but attached one certified page which is incomplete to other documents which are not certified. They spoon feed the pages they want and hold back the pages that we need.

We went to Camden in February with information that a Mildred Saunders had died and were told that there was no file at the Medical Examiner's office. We went to the State and were told there was no file that Mildred

Page 5.

Saunders or Cynthia White had died, and yet this information supposedly miraculously appears.

Since January we have attempted to get the Medical Examiner's file from Camden, any Medical Examiner's file, and were told there was not one. Then when they produced the death certificate we attempted to get it and were told that we would have to present a letter from a lawyer. We did that and we are told no, a letter from a lawyer is not sufficient, you need to file a civil action, and if you need discovery in the civil action then you can file a separate action to get this file.

We have repeatedly requested the Assistant District Attorney to present their entire file on this. We sent a letter yesterday indicating that we could not proceed without the documents. The Assistant District Attorney can whip up these witnesses from New Jersey but denies having the ability to present the documents which we have requested and which we need to cross-examine these witnesses.

In the same way we have tried to get information from the U.S. Attorney on the 39th District and the connections to this case since

Page 6.

1995. We were stonewalled there and we were denied the discovery in this Court.

Ms. Fisk has the statements of Officers Ryan and Jenkins which bear on the date and timing of their relationship and were discussed in the testimony here but she refuses to provide them.

The course of the proceedings is that we came in here with a long list of witnesses and we told the Court the hearing would take several days. The Court said the only witness that would testify in this proceeding is Pamela Jenkins. We put her on and then we were shut down. We wanted to present the other witnesses and the Court said that they were, quote, precluded, close quote. However, at the behest of the Commonwealth, the Court then opened the floor to a parade of Commonwealth witnesses and then the

prosecution on Thursday, quote, rested its case. We were then allowed to call further witnesses but only witnesses of the prosecution's choosing. Unless the prosecution invited or agreed to our witnesses, we could not call them. These were hostile police witnesses whom the prosecution had clearly within their

Page 7.

control and ability to and had interviewed all of them beforehand.

For example, Officer Boston testified that Lucky was Cynthia White, and then under prompting from Ms. Fisk recanted that testimony; and we were refused the ability to submit the Court records which prove that according to the police and Court files, Lucky is the a/k/a of Cynthia White.

In sum, the course of this proceeding demonstrates once again the inability of the defense to get a fair adversarial proceeding in this Court and we renew our request for disqualification.

MS. FISK: May I respond, Your Honor?

THE COURT: Sure.

MS. FISK: Thank you. First, Your Honor, I am unwilling to accept and ask this Court to be unwilling to accept any factual references made by Counsel in this Court, in part because I now know personally that factual references they have made in this Court are untrue.

For example, Ms. Wolkenstein stated in this Courtroom yesterday that I had documents

Page 8.

from Camden and that she had been advised when she contacted the Camden County Medical Examiner's Office that the documents had been given to me. In fact, that was untrue. What I later learned was that apparently defense Counsel had indeed been advised that the Medical Examiner's file in this matter in Camden had been provided to the Assistant District Attorney. I'm sure they were told that. What Counsel did not next inquire was which Assistant District Attorney. They were provided to the Camden County District Attorney's Office. And as a result of Counsel's reference yesterday, I inquired and indeed the Camden County District Attorney's office had that file, and at my request have brought it today. And at the time that the investigator from Camden County testifies I will certainly make a copy of the documents that he is referring to available to Counsel because they were provided to me today at five minutes of 9:00 when the investigator from the Camden Prosecutor's Office arrived in my office.

And for that reason, Your Honor, it is clear to me that the factual claims made by

Page 9.

defense are simply not based credibly on the truth and on the facts and I ask the Court to discount and not accept factual references made by Counsel.

After the Commonwealth presented last week clear evidence that Cynthia White is dead, Mr. Weinglass appeared on the radio, and he was quoted on the radio --

MR. WEINGLASS: I am objecting, Your Honor, to any reference to statements made. What they do, Your Honor, is they address this to the record. And then when Counsel writes --

THE COURT: So do you. You do it too.

MR. WEINGLASS: No, Your Honor, in this Courtroom.

THE COURT: In this Courtroom.

MR. WEINGLASS: I do not refer to newspapers.

THE COURT: Your objection is overruled. Now sit down. You will take it up with the Supreme Court later on.

MR. WEINGLASS: But they want to put this in the record to use on their appellate brief.

MS. FISK: No, Your Honor, I am

Page 10.

raising this --

MR. WEINGLASS: It is improper.

MS. FISK: -- to explain the actions of the Assistant District Attorney which Counsel in his statement this morning is questioning.

THE COURT: Yes. Go ahead. Go right ahead and say whatever you want.

MR. WEINGLASS: Of course. Of course.

THE COURT: This will go up to the Supreme Court and they will decide what they are going to do with it.

MR. WEINGLASS: But there are times when we are precluded from saying what we want to say.

THE COURT: Okay, you are precluded. I overruled your objection. You are precluded right now.

Now go ahead.

MS. FISK: Your Honor, Mr. Weinglass noted in interviews following this proceeding --

MR. WEINGLASS: What radio station? What interview? What time? They have misquoted me before. They are going to do it again.

THE COURT: So what, you misquote them.

Page 11.

MS. FISK: If Counsel would like we could bring the tape recorder in and we could play the interview. If Counsel would like I would be happy to play it.

THE COURT: All right.

MS. FISK: I am not presenting it as a factual assertion, I am presenting this to explain the actions because Mr. Weinglass was quoted in numerous interviews following last Thursday's proceeding that the documentation was not truthful and that there were never any fingerprints taken of the deceased to support the identification.

In light of his complaints and assertions both in this Courtroom and since Thursday as well in the media, the Commonwealth did indeed contact representatives from New Jersey; and I am prepared to present two witnesses from New Jersey today who will prove and who will testify that when Ms. White's body was found her fingerprints were taken and indeed the identification and verification of her death was made by way of fingerprints.

This is not a second chance because the Commonwealth has already shown her dead and

Page 12.

this simply supports that, contrary to the assertions of defense that Ms. White was seen alive in March of this year, and contrary to the proffer that the defense made yesterday that their investigator has shown Ms. White's picture around North Philadelphia and numerous people have been seeing her. I would also --

MS. WOLKENSTEIN: We were precluded from putting that witness on.

THE COURT: Wait a while, she is speaking.

MS. WOLKENSTEIN: There was an objection from the Assistant District Attorney to putting those witnesses on as well.

MS. FISK: That's correct.

MS. WOLKENSTEIN: That's right, they object to us putting on the witnesses.

MS. FISK: Because the disciplinary rules prohibit Counsel from putting on knowingly perjured testimony, Your Honor, and that is exactly what they are doing. They just spent 15 minutes telling you they knew Cynthia White was dead yet they insist on calling witnesses that are --

MS. WOLKENSTEIN: No, we have not been

Page 13.

given the opportunity to put up our witnesses that show the course of the investigation.

THE COURT: Well, I am only interested in whether or not Cynthia White is dead.

MS. WOLKENSTEIN: Right.

THE COURT: And these witnesses could testify to that.

MS. WOLKENSTEIN: Right, and as of Thursday, as of Thursday this Court ruled over and over and over again that Cynthia White

is dead. You precluded witness after witness, question after question, based upon the statement Cynthia White is dead.

THE COURT: What more do I need? I have seen the death certificate.

MS. WOLKENSTEIN: It has been the Court's ruling over and over again since Thursday afternoon that Cynthia White is dead. That has been the ruling of the Court. The prosecution rested their case. They rested on Thursday afternoon, and this Court, over our objection --

THE COURT: Will you please --

MS. WOLKENSTEIN: -- has reopened this case without giving us any notice, without any

Page 14.

courtesy, without any documentation.

THE COURT: Take it up with the Supreme Court.

MS. WOLKENSTEIN: We will.

THE COURT: Okay.

All right, what do you want to say?

MS. FISK: Your Honor, I have two witnesses. The first is --

THE COURT: All right.

MS. FISK: -- Sergeant Ronald Morgan from the Camden County Prosecutor's Office.

THE COURT: Okay.

MS. FISK: I will hand to Counsel a packet of documents which the detective is bringing to the witness stand.

MS. WOLKENSTEIN: We want time, we request a continuance for a few minutes from the proceeding.

THE COURT: Well, a few minutes is all you are going to get.

MS. WOLKENSTEIN: Right. We would like a copy we could have to work with while we are doing this.

MS. FISK: That's what I just --

MS. WOLKENSTEIN: A copy that could be

Page 15.

made first that could stay at defense Counsels' table.

That is our copy? Is that our copy?

MS. FISK: Yes.

THE COURT: If you would keep yourself awake and into what is going on we will move along much faster.

Well, you have a copy, you have a few minutes. Go ahead, look it over.

MS. WOLKENSTEIN: Thank you.

MR. WEINGLASS: It is about 30 pages.

THE COURT: Well, 30 pages, you are a fast reader.

Let the witness take the witness stand.

MR. WEINGLASS: Your Honor, I thought we were given time here.

THE COURT: Well, you have a few minutes, what do you want. Read it.

MR. WEINGLASS: It is over 30 pages.

THE COURT: You went to law school, you ought to be able to read it real fast.

(Pause)

THE COURT: All right, let the record show that Counsel had 17 minutes to review this

Page 16.

information.

MS. FISK: May I also note, Your Honor, that in addition, though I don't have photocopies, the Sergeant has a whole stack of photographs that are those of Camden County. He made copies of five of them and I would be happy to show those to Counsel as well. I do not have photocopies of these but if they want to look at these, and the Sergeant is going to testify regarding them and he will identify them, but this is just to allow them to look at them beforehand (handing).

THE COURT OFFICER: (Handing).

(Pause)

THE COURT: Well, he wouldn't know even if he saw them.

MS. FISK: Your Honor, it is nevertheless an exhibit and Counsel certainly has the right to review it.

THE COURT: I know, he is reviewing them.

MS. FISK: That is fine.

THE COURT: I don't think he ever saw Cynthia White.

MS. FISK: Maybe this past March with

Page 17.

Ms. Jenkins.

THE COURT: All right, could we have the witness take the stand, please.

MS. FISK: Certainly.

THE WITNESS: Certainly.

Sergeant Ronald Morgan, Camden County Prosecutor's Office, having been duly sworn, was examined and testified as follows:

- - - - -

MS. FISK: Counsel, when Counsel is done with these photographs I need them back so I could incorporate them into this document which I intend to have marked. May I have those?

THE COURT OFFICER: What do you need marked?

MS. FISK: Could I have those photographs marked.

No, back to me. Back to me, please.

THE COURT OFFICER: I just want to get a pen (handing).

MS. FISK: Thank you.

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DIRECT EXAMINATION

- - - - -

Page 18.

Sgt. Ronald Morgan - Direct

BY MS. FISK:

Q. Sergeant Morgan, by whom are you employed, sir?

A. The Camden County Prosecutor's Office.

Q. In what capacity, please?

A. I am a sergeant and the assistant unit commander of the homicide unit.

Q. And how long have you been an investigator or Sergeant with the Camden County Prosecutor's office?

A. I have been with the Prosecutor's Office since 1984.

Q. And prior to that time what was your employment, sir?

A. I was a patrolman in North Collingswood, which is also located in Camden County.

Q. For what period were you a patrolman?

A. Almost ten years.

Q. Now, Sergeant, in your capacity as the assist -- and, I'm sorry, what is your position now with the homicide unit?

A. I am a sergeant, the assistant unit commander.

Q. And that is the Camden County Prosecutor's Office?

A. That is correct.

Page 19.

Sgt. Ronald Morgan - Direct

Q. Okay. Now, in that capacity, Sergeant, were you requested to bring any documents to the Courthouse today?

A. Yes, ma'am, I was.

Q. And what documents were you asked to bring, please?

A. A case folder in regards to an investigation of a sudden death which occurred in Camden County.

Q. Now, what does that mean: A sudden death and an investigation regarding a sudden death?

A. Our unit is assigned to investigate all sudden or suspicious

deaths within the County: Homicides, suicides, accidental deaths, overdoses. We are required to prepare investigative reports. Those reports are taken into the office and a package is prepared.

Q. Now, pursuant to my request, did you recover from your stored or closed files a file regarding the investigation into the sudden death of a Cynthia Williams?

A. Yes, ma'am, I did.

Q. I'm sorry. Which occurred on September the 2nd, 1992?

A. Yes, ma'am, I did.

Q. And did you have an opportunity to provide me

Page 20.

Sgt. Ronald Morgan - Direct

with a copy of that file?

A. Yes, ma'am, I did.

Q. And precisely when did you provide me with a copy of that file, please?

A. Today, July lst, at approximately five minutes to 9:00 when I entered your office and met you for the first time.

Q. Now, do you have the original file, that is the actual file which you took from your records in front of you?

A. Yes, ma'am, I do.

Q. And did you prepare a duplicate of that file?

A. Yes.

Q. For the Court records?

A. Yes, ma'am, I did.

MS. FISK: Your Honor, may I ask that this file be marked as Commonwealth Exhibit, I think it's 8.

THE COURT OFFICER: C-8.

(Camden County Prosecutor's file was marked Commonwealth Exhibit C-8 for identification.)

MS. FISK: And I would be happy to let defense look at it. I would note for the record that with the exception of the photographs, the

Page 21.

Sgt. Ronald Morgan - Direct

documents which have been provided to Counsel are duplicates of all the documents in this, and if Counsel would like to review and compare I certainly would have no objection.

MR. WEINGLASS: Yes, we would.

MS. FISK: I am marking this as one document, Your Honor: It is the file from the Camden County Prosecutor's Office.

MR. WEINGLASS: We would ask that they be separated because that file contains a number of different documents.

THE COURT: Well, whatever it contains it contains, okay.

MR. WEINGLASS: Is that an answer?

THE COURT: It will become a part of the record here.

MR. WEINGLASS: For purposes of facilitating cross-examination, it would be better --

THE COURT: I don't care, I don't care what is facilitating anything.

MR. WEINGLASS: Of course.

THE COURT: It is a record, it is C-R or whatever it is. Let's go. Let them look at it.

Page 22.

Sgt. Ronald Morgan - Direct

(Pause)

(Discussion was held off the record at this time.)

(Pause)

MS. WOLKENSTEIN: Okay, we have examined the file and everything that we have, everything that is in this file is contained in our copies. Except for the photographs. Which we did not have a copy of.

MS. FISK: That's correct. I have these copies, and since it is the Sergeant's original file which I do not intend to mark because it is the property of Camden County. It has those photographs as well as additional ones: He only copied some. If Counsel would like to review them following his testimony I am sure he will have no objection to that.

BY MS. FISK:

Q. Sergeant, is Commonwealth Exhibit 8 an accurate photocopy of the documents from the file of the Camden County Prosecutor' s Office regarding the investigation into the death of Cynthia Williams?

A. Yes, ma'am, they are.

Q. And you made that copy, sir?

A. Yes, ma'am, I did.

Page 23.

Sgt. Ronald Morgan - Direct

Q. In addition, within Commonwealth Exhibit 8 there is a packet containing some photographs?

A. Yes, ma'am.

Q. And are these photographs of the deceased Cynthia Williams taken both at the autopsy and the morgue as well as the condition in which she was found on the scene?

A. They are copies of the original photographs of what you described, yes, ma'am.

Q. And the original photographs, again, are in your actual file which is also beside you?

A. That is correct.

Q. Now, can you tell me, sir, based upon that file, is it correct that the Cynthia Williams, the person known -- well, is it correct that a woman's body was found in an abandoned building in Camden on September 2nd, 1992?

A. That is correct.

Q. Can you tell us, please, what if any efforts were made based upon your review of that file to identify that woman?

MR. WEINGLASS: Objection: Hearsay. The file speaks for itself.

THE COURT: Objection is overruled.

Come on. Go ahead.

Page 24.

Sgt. Ronald Morgan - Direct

BY MS. FISK:

Q. You may answer the question.

MR. WEINGLASS: You are asking the witness to just read the file.

THE COURT: I don't care what she is asking. It is her witness.

MR. WEINGLASS: Yes, but it is an objectionable question.

THE COURT: Well, the objection is overruled. You take it up with the Supreme Court when you get there later on.

MS. FISK: Judge, I will restate the --

MR. WEINGLASS: We would hope to get correct rulings from this Court while here.

THE COURT: They are correct as far as I'm concerned, okay.

BY MS. FISK:

Q. Does the file which is marked Commonwealth Exhibit 8 include within it as part of the investigation the report from the Medical Examiner, that is the autopsy of this woman who was found in the abandoned building?

A. Yes, ma'am, it does.

Q. And does that report reflect whether or not

Page 25.

Sgt. Ronald Morgan - Direct

fingerprints were taken of that individual during the course of the autopsy?

A. Yes, ma'am, it does.

Q. Now, in your practice as a sergeant and assistant unit commander in the Camden County Prosecutor's Office, for what purpose are fingerprints taken during the post-mortem

examination?

A. The most obvious: For identification of that person.

Q. And what happens with those fingerprints, please?

A. Once fingerprints are taken they are sent to the State Police for comparison. And what I mean by comparison is comparison of prints taken from the person to any prints that they have in their files.

Q. Now, in this case was that done?

A. Yes, ma'am, it was.

Q. And how do you know that?

A. We have a letter which is I guess one of the State Police reports that is sent to us identifying those fingerprints to a name.

MR. WEINGLASS: I'm sorry, is that letter in this file?

THE WITNESS: Yes, sir, it is.

Page 26.

MR. WEINGLASS: It is? Okay.

THE COURT: Wait a while. You will have your chance. At's not your chance at the present time, okay. Wait until your time comes.

Go ahead.

BY MS. FISK:

Q. After these fingerprints which were taken during the post-mortem examination were sent to the State for identification purposes -- well, let me ask you this. Let's put fingerprints aside. At the time the body of the woman was found, were there identifying documents accompanying that body?

A. Yes, ma'am, there was.

Q. And in whose name are those documents?

A. Cynthia Williams.

Q. Now, did any of those documents identifying, identifying documents have a photograph on them, that is an ID card with a picture?

A. Yes, ma'am.

Q. And was the person in that ID card the same person, from your observation, who was pictured at the scene as well as in the autopsy photographs?

A. That is correct.

Q. Now, did Camden County through use of the name Cynthia Williams identify a state identifying number

Page 27.

of that person, or a person who was previously known to the Camden County Prosecutor's Office as Cynthia Williams?

A. That is correct.

Q. And what state identifying number was Cynthia Williams determined to be based on that name and the photographs and having seen her at the autopsy?

A. I would have to check the reports. May I?

Q. Please.

MS. WOLKENSTEIN: We need to know which document he is referring to.

THE COURT: Wait a while. You will have your turn when cross-examination comes.

Go ahead. Look for it.

THE WITNESS: The state identification number is 159986B.

BY MS. FISK:

Q. And how is that determination made within the Camden County Prosecutor's Office?

A. The investigator assigned to the case is required to fill out a rap sheet request, that is a criminal history request. That is sent to the Sheriff's Department. The Sheriff's Department checks that through their means, the computer -- again I am not sure exactly how -- but they put the

Page 28.

ID number, the FBI ID number, and they send that back to us.

Q. And that is without fingerprints; is that correct?

A. Yes, ma'am.

Q. At the same time, however, fingerprints with that believed identification number is sent to New Jersey; is that how it's done?

A. Yes, ma'am.

Q. Now, at some point after the fingerprints were sent to the New Jersey State Police, you told us that you received some verification back?

A. Yes, ma'am, that is correct.

Q. Would you please turn to the document within the file which reflects the verification you received back?

A. I have it right here,

Q. And so the record is clear, in Commonwealth Exhibit 8 it appears to be the first document on, as you are facing the document on the left side of the file?

A. That is correct, ma'am.

Q. And could you tell us, please, the date of that letter?

A. 11-18-92.

Page 29.

Q. And what does that letter reflect, please?

A. This is a letter indicating the comparison of fingerprints that are submitted on a Cynthia White with the same number that I read off: 159986B. There is some other information in regard to them purging their files. And down the bottom in the remarks column it has a/k/a Williams, Cynthia.

Q. Now, what do you mean about purging their files? What if anything are you familiar with -- well, you are not a member of the New Jersey State Troopers, are you, sir?

A. No, ma'am, I am not.

Q. And you have never been?

A. No, ma'am.

Q. What does purging files mean, so far as you understand it?

A. The files are erased or discarded.

Q. Does any such action like that take place within Camden County with regard to records of persons who are verified as deceased?

A. Yes, ma'am.

Q. And how does that occur?

A. We keep sudden death investigations for a minimum of five years. After that we are allowed to go through them through proceedings, you know,

Page 30.

documenting, which is the Prosecutor of Camden County.

Q. Thank you, sir. Following the verification from the State Police that in fact Ms. Williams had been verified as Cynthia White and her prints had been matched, were there other means of identifying Ms. Williams, also known as Ms. White, done within Camden County?

A. There was a detailed criminal history, a rap sheet ran. In that rap sheet it lists aliases and names. And that is viewed and reviewed and placed in a file.

Q. Does the file also reflect whether or not investigators spoke to persons who knew the person who you knew as Ms. Williams to have her identified?

A. In regards to the investigation, yes, ma'am, it does.

Q. And was she indeed identified by others who knew her as Ms. Williams?

A. That's correct.

MS. FISK: Thank you, sir.

I have no further questions, Your Honor.

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CROSS-EXAMINATION

- - - - -

Page 31.

Sgt. Ronald Morgan - Cross

BY MR. WEINGLASS:

Q. Good morning, Sergeant Morgan.

A. Good, morning, sir.

Q. When were you asked to appear here today?

A. Yesterday afternoon.

Q. At what time?

A. I know I came back from lunch, I believe it was somewhere around two o'clock.

Q. And who requested that? Did you talk personally on the phone with someone?

A. Yes, I did.

Q. And what did they identify themselves as being, whom?

A. Ms. Fisk, Arlene Fisk, the Assistant District Attorney for Philadelphia.

Q. And that was her first communication to you, that you're aware of?

A. That is correct, sir.

Q. Now, with the Commonwealth 8 in front of you, will you open to the document which I will show you by holding it up (displaying), which is a document entitled Request For Criminal History Record Information (displaying).

A. I have it here, sir.

Page 32.

Sgt. Ronald Morgan - Cross

Q. All right. And so this document does exist in your file; is that correct?

A. Yes, sir.

Q. And this document is a request for criminal history made by whom, if you can ascertain that?

A. It would have been made by the lead investigator from our office.

Q. I see. And do you know when this request was made, is it indicated on the document?

(Pause)

A. No, sir, it is not.

Q. Now, attached to the request is the response; is that correct?

A. You are referring to the rap sheet itself?

Q. Yes.

A. Yes, sir.

Q. And that response is a computerized response, is it not?

A. That is correct.

Q. And could you read into the record the very first line on the response?

A. This response not supported by fingerprint comparison.

Q. Okay. Now, this computerized printout that says this response not supported by fingerprint

Page 33.

Sgt. Ronald Morgan - Cross

comparison, do you have a date for this response by looking at the document?

A. Third line down, date of record, 9-92. Are you referring to that date?

Q. No, the date that the response actually was sent back to the person in your office who requested this history.

(Pause)

A. On the last page before it gets into the one with a bunch of blocks, you will see a date of 9-9-92, 1425.

Q. I'm sorry, could you help me with that a little more. The last page before the blocks. 9-9-92?

A. Yes, sir. It's after arrest number 21.

Q. So that if someone like the person in your office requested this record information, they would have received a response that said not supported by fingerprint comparison?

A. I, I would have to say yes, sir. I guess that is a standard computerized program that prints that out.

Q. Right. By the way, this computerized response, who provides this computerized response, what agency?

Page 34.

Sgt. Ronald Morgan - Cross

A. We submit the request to the Camden County Sheriff's Department, which is part of Camden County. They have some investigative units and they control the identification of inmates who have been arrested in Camden County.

Q. And so is it your testimony that the data that's on this document was the data that is in the computer in the Sheriff's Office in Camden County, or did they get it from some other agency?

A. I believe they are just like a terminal agency that would go up to the State. And it also goes to the FBI because there is a State rap sheet and a Federal rap sheet here.

Q. I see. And I gather from your answer that you can't tell by looking at this document whether or not this is FBI-generated information or State-of-New-Jersey-generated information?

A. At the second line under the first sentence it says multi-state record. I assume that to be FBI.

Q. FBI?

A. Yes, sir.

Q. Right. Now look at the middle of that page also.

A. Are you referring to one particular line, sir?

Q. Yes; the line that says State of New Jersey,

Page 35.

Sgt. Ronald Morgan - Cross

conviction of, State Police record of convictions?

A. Yes, sir.

Q. That is now State information?

A. Again I don't know whether the FBI information comes through the State, because underneath that it says multi-state record. So I am not sure how the computer kicks back the information.

Q. Right. And again we find the same refrain right there: This response not supported by fingerprint comparison?

A. That is correct.

Q. And it is repeated a third time on the same page towards the bottom?

A. That's probably repeated on a lot more of them, sir, yes.

Q. Yes. Now, the document which is Commonwealth 8, as I understand your testimony, resides now in the District Attorney's Office where you work in Camden County?

A. No, sir, it does not.

Q. Oh. You brought it with you today, but prior to your bringing it with you where was it, was it in your office?

A. I physically duplicated the package that I brought to the office today and gave to Ms. Fisk.

Page 36.

Sgt. Ronald Morgan - Cross

Q. All right, my question, then, is where is the original file, prior to your copying it, where did you find it?

A. All files are maintained in file cabinets designated by the year. These files are maintained -- well, they were, in alphabetical order, until we got a new computer, and now they are maintained by a number system. So that room where the file cabinets are is connected to the homicide unit.

Q. I see. In the County Prosecutor's Office?

A. That is correct, in our building, again connected to our homicide unit.

Q. So that I guess the answer to my question would be if someone wanted the file, they would have to go to your office to obtain the file that you brought here today?

A. That is correct.

Q. Do you know if a --

A. Excuse me.

Q. -- if a copy of that file is also maintained in the coroner's office of the Medical Examiner's Office in Camden County?

A. Yes, sir, I do.

Q. Is it?

Page 37.

Sgt. Ronald Morgan - Cross

A. Not in regards to our investigative or the police reports.

Q. I see. But a portion of the file would be in the Medical Examiner's Office?

A. That is correct.

Q. Right. And have you inquired of the Medical Examiner's Office as to the status of that file today?

A. No, sir, I did not.

Q. Right. And the portion that would be in the Medical Examiner's Office I assume would be that portion dealing with the Medical Examiner's work in this case?

A. That is correct.

Q. And your office, being the County Prosecutor's Office, goes beyond what the Medical Examiner does in that you investigate the deceased and the deceased's background?

A. That is correct.

Q. Prior to your receiving the call yesterday afternoon from Ms. Fisk, had anyone previously asked you to attempt to locate the file that's under the name of Cynthia Williams?

A. No, sir.

Q. No one from the D.A.'s Office to your

Page 38.

Sgt. Ronald Morgan - Cross

knowledge has previously asked for that?

A. No, sir.

Q. And when your file is compiled, is there a distribution list of who you send the information to?

A. No, sir.

Q. Do you in the regular course provide the information that your office has generated to the FBI about a deceased such as in this case?

A. No, sir.

Q. Do you provide it to any State agency of New Jersey?

A. No, sir. Again, if it is requested there is procedures to be followed, the same as it would be for yourself, again for the Philadelphia District Attorney's Office. We do not normally just disperse these folders, no.

Q. No, of course. But if the District Attorney's Office of Philadelphia had asked you information about this individual let's say back in 1995, assuming your file was intact at that point, your office would have provided that information?

MS. FISK: Objection. Well, I will withdraw that.

THE COURT: Go ahead. You could answer it.

Page 39.

Sgt. Ronald Morgan - Cross

THE WITNESS: After they followed the procedures and guidelines set up by our office.

BY MR. WEINGLASS:

Q. And what procedures, could you just briefly describe what that is?

MS. FISK: Objection, Your Honor.

THE COURT: No, I will let him tell us about it.

THE WITNESS: They have to send us a letter identifying who they are, what they are looking for. That letter goes to a special Assistant Prosecutor within the Camden County Prosecutor's Office. We then provide her with the package. She reviews the package, and if there is stuff that is not supposed to go out, that stuff is reviewed, it is duplicated and then sent out. The letter of request is then placed in a package.

BY MR. WEINGLASS:

Q. Was that done yesterday?

A. Was that done on -- no, sir.

Q. It was not?

A. No.

Q. You appeared here voluntarily without that procedure being followed?

Page 40.

Sgt. Ronald Morgan - Cross

A. Well, I have a boss that said to appear here, so I guess you could say voluntarily, yes.

Q. Right. And when you received the phone call from Ms. Fisk, you then questioned, asked your boss if you should come?

A. He more or less instructed me to be here.

Q. He instructed you. I see.

A. Yes, sir.

Q. Okay. And so in less than 24 hours the Assistant District Attorney of Philadelphia could produce the file on Cynthia Williams; is that right?

A. That is correct.

Q. And they could have done that in '95 also; isn't that true?

A. No, sir.

Q. Why is that?

A. Because I was instructed that this was a Court proceeding and the importance of the document. The Assistant Prosecutor of my unit is the one that made the decision for me to copy and bring it here. In 1995, if there would have been a Court proceeding, it would have been provided. But in 1995 they would have had to provide a letter.

Q. A letter?

A. If it was not a Court proceeding.

Page 41.

Sgt. Ronald Morgan - Cross

Q. How long would it have taken them to follow your procedure?

A. As soon as the girls can copy it and it would be hand delivered or mailed to them. I don't have a set time. Within a matter of a couple days, I'm sure.

Q. Okay. Do you get requests from the Philadelphia District Attorney's Office of that nature in the ordinary course?

A. Yes, sir, we have.

Q. And so far as you could tell by looking at the file, the Philadelphia District Attorney's Office made no such request in 1995?

A. That is correct.

Q. Now I want to show you another document, which has been marked into the record in this case as Commonwealth 2 (handing).

(Discussion was held off the record at this time.)

THE COURT OFFICER: (Handing).

(Pause)

THE WITNESS: Yes, sir.

BY MR. WEINGLASS:

Q. Sergeant, if you had to give a label to this document, what would you call this document, in your

Page 42.

experience?

A. Rap sheet.

Q. Is it a rap sheet?

A. Criminal history.

Q. Criminal. Is it different than the rap sheet that appears in Commonwealth 8, in terms of its source?

A. Yes, sir.

Q. And how is it different?

A. Philadelphia, this says at the top, Philadelphia Police Department, Automated Master Name Index Query By Photo Number.

Q. So this, what does that mean to you?

A. I'm not a big computer person but a query means a check, and you're going into a computer system to try and find information about something. And what it is saying, Philadelphia Police Department, Automated Master Name Index, I believe that is your computer system that would be checking the name -- well, in that case checking by photo number.

Q. I see. This is a photo number inquiry?

A. That's what it says (displaying).

Q. Yes. And so this inquiry which is Commonwealth 2 is not the multi-state record inquiry

that is in Commonwealth 8?

(Pause)

A. I don't know.

Q. Okay. To your knowledge, is the multi-state inquiry system available to the Philadelphia District Attorney's Office, the same as it is to yours?

A. It says it right on the thing (displaying) yes, sir.

Q. It is available?

A. That's what it says, yes, sir.

Q. By the way, if you could tell us, Sergeant, how does your office retrieve this information? I know you told us it is from the Sheriff's Department, but how does the Sheriff's Department retrieve it? What I am asking you: Is it a simple matter of keying into a terminal and the printer connected to the terminal just gives you the responses?

A. Yes, sir.

Q. So the information that's in Commonwealth 8 was available to the Sheriff's Department and, presumably, the Philadelphia Police Department just by typing in the name and getting a response?

A. Through -- you're asking me is it available through the Camden County Sheriff's Department or through the Philadelphia system, sir?

Q. What was available to the Sheriffs in Camden County was equally available to the Philadelphia Police Department, I assume, through the multi-state system?

A. In regards to them getting information and coming to the Camden County Sheriff's Department, yes, sir. In regards to their system, I don't know.

Q. You don't know?

A. Yes, sir.

Q. So I guess my question is is the multi-state system available to law enforcement agencies throughout the United States, to your knowledge?

A. Yes, sir, it is.

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. Now referring to Commonwealth 2 once again, the document I handed you -- which I assume you haven't seen before?

A. That is correct.

Q. Could you turn to the third page. And there is a designation in the first printed line that says from NCCH. Do you see that?

A. Yes, sir. May I ask you, are we looking at the same page here, sir (displaying)? I just want to

make sure.

Q. I believe we are.

A. Okay.

Q. The first line, NCCH?

A. Yes, sir.

Q. Yes. What does that mean to you?

A. I have no idea.

Q. Oh, okay. Looking at the next-to-last line, could you read that into the record?

A. Inquiry on name --

Q. No, the next-to-last line. I'm sorry.

A. Oh, okay. This interstate identification index response is the result of your...

Q. Yes, inquiry? Next line.

A. Inquiry on.

Q. Now my question is what is the interstate identification index?

A. What is it?

Q. Yes.

A. I guess it's a big computer bank that has information in regards to people that have been fingerprinted, arrested, or details like that.

Q. Yes. Is that different than the multi-state index that's in Commonwealth 8?

A. I don't know.

Q. By the way, it would be fair to say, would it not, that Commonwealth 8, the one you have today brought to us, is a much more complete document with respect to Cynthia Williams than Commonwealth 2 appears to be?

MS. FISK: Objection, Your Honor, it is different.

MR. WEINGLASS: Well, Your Honor, one is five pages and the other is about 15.

MS. FISK: Well, Mr. Weinglass speaks a lot more than I do but that doesn't mean he's better.

THE COURT: Well, if he knows he'll tell us, if he doesn't know he'll tell us that too.

THE WITNESS: The only thing I could refer to, sir, is on, on the fourth page there is a list of names, and the name Cynthia Williams does appear there. There is some Social Securities below that. The investigation package I have here is for Cynthia Williams and I did notice that the one Social Security number is the same.

BY MR. WEINGLASS:

Q. One is?

A. Yes, sir.

Q. Yes, but one is different, right?

A. I think there is a couple of them different.

Q. Yes.

A. A lot of dates of birth, too.

Q. Yes. Okay. Did you before coming here today ask the Sheriff's Office in Camden County to make a new multi-state record printout for Cynthia White?

A. No, sir, I did not.

Q. Now, about the fingerprint information...

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. Looking at the document --

MS. FISK: I believe the witness was asking for some water.

THE COURT: Oh, just a minute.

THE WITNESS: Sorry, Your Honor.

THE COURT: That's all right.

(Pause)

BY MR. WEINGLASS:

Q. Looking...

A. Go ahead, sir.

Q. Is it okay without the water?

A. Yes, sir, fine. Thank you.

Page 48.

Sgt. Ronald Morgan - Cross

Q. Looking at the document we have been examining -- request for criminal history -- on the first page of the response... after the name and the height and the weight and the physical description, there is something referred to as SOC. Do you see that going down? It's about the fourth line down.

A. Yes, sir, I do.

Q. And the SOC number is Social Security number, right?

A. Yes, sir.

Q. And that number is 127-50-6809 in this document?

A. That is correct.

Q. Right. Did you have that number checked at all?

A. Yes, sir.

Q. And what did you come up with?

A. The criminal history check that you have in front of you.

Q. I see. You punched in this number and --

A. Well, first of all, I did not do it.

Q. Someone else did, yes?

A. Would you like to know how?

Q. Yes.

A. On, and I believe you have this, the request,

Page 49.

Sgt. Ronald Morgan - Cross

request for criminal history information, it gives the name, address, date of birth, description of the person, Social Security number.

Q. And that's the same 6809 number in the request?

A. Yes, sir.

Q. Okay. Now, on the same line after that number there is something that says HFP?

A. Yes, sir.

Q. Does that refer to fingerprints?

A. I believe it does, yes, sir.

Q. And then there is a series of numbers?

A. Yes, sir.

Q. Which refer to fingerprints?

A. That is correct.

Q. Now look at Commonwealth 2. And look at the fourth page, the upper, left-hand side. Is there a fingerprint series of numbers?

A. You are looking at the words fingerprint class?

Q. Yes.

A. Yes, sir.

Q. Now, do those numbers correspond with the numbers that you brought us today in Commonwealth 8?

A. No, sir, they are different.

Page 50.

Sgt. Ronald Morgan - Cross

Q. Look at another document, which is a Bureau of Criminal Identification document -- I will hold it up for you to see the format (displaying) -- which is in Commonwealth 8.

A. Yes, sir.

Q. And look at the third page of that document.

A. Yes, sir.

Q. The bottom line that's in the box on the top, does that have fingerprint identification numbers?

A. Yes, sir, it does.

Q. Do those numbers correspond to the numbers that are in Commonwealth 2?

A. Yes, sir, they do.

Q. They are the same?

A. Umm, the letters and the numbers are, yes, sir.

Q. Well, let me start with the PM numbers on that line. Is that right?

A. Yes, sir.

Q. First is PM 13. Commonwealth 2 is PM 11; is that right?

A. Yes, sir, okay, I'm sorry, you're right. I was looking at a different line here.

Q. Right.

A. On that. Yes, sir.

Page 51.

Sgt. Ronald Morgan - Cross

Q. So they don't correspond either?

A. That is correct.

Q. I also take it, Sergeant Morgan, that you did no investigation personally in connection with this matter, the death of the woman who was found on September 2nd of 1992?

A. That is correct, sir.

Q. You're here today as a person bringing a file, reading to us from the file documents; is that right?

A. That is correct, sir.

Q. From looking at the file documents, could you tell us who did the investigation first for the Medical Examiner's Office? Is it Sergeant Juan Acevedo, Junior?

A. No, sir.

Q. Detective Boyd?

A. No, sir.

Q. Who did it?

A. If I can assist you, sir, I will refer to a document that you also have a copy of (displaying). Where you will see about halfway down the page it says Medical Examiner investigator.

Q. And what name?

A. That's investigator J. Alloway.

Q. Alloway?

Page 52.

Sgt. Ronald Morgan - Cross

A. Yes, sir.

Q. He is an investigator with the Medical Examiner's Office?

A. That is correct.

Q. Is he still with the Medical Examiner's Office, to your knowledge, if you know?

A. Yes, sir, he is.

Q. Yes. He is available today?

A. I don't know about that.

Q. Is he here in Court today, to your knowledge?

A. No, sir.

Q. All right, okay. Then there was also, was there not, a County

detective named Juan Acevedo, Sergeant Acevedo?

A. Yes, sir, that is correct.

Q. He worked on the investigation?

A. Yes, sir.

Q. Is he still with the office?

A. Yes, sir, he is.

Q. Is he here today?

A. No, sir.

Q. And lastly Detective Boyd. Do you know who he is?

A. Yes, sir, I do.

Q. And who is he?

Page 53.

Sgt. Ronald Morgan - Cross

A. He is a detective with the Camden City Police Department.

Q. Did he work on this investigation?

A. Yes, sir.

Q. Is he here today?

A. No, sir.

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. In looking through all these records, can you see if any next -- no, strike that. Strike that. By the way, is the name of the funeral home that handled the body listed in any of the documents? I refer you to the death certificate if you have that.

A. Not with the death certificate that I have. And I only have the one that is completed by the Medical Examiner's Office.

Q. It is not listed?

A. No, sir.

Q. No.

MR. WEINGLASS: Could we show the witness Commonwealth 4 (handing).

THE COURT OFFICER: (Handing).

BY MR. WEINGLASS:

Q. Showing you Commonwealth 4, Certificate of

Page 54.

Sgt. Ronald Morgan - Cross

Death, does that indicate the name of the funeral home in item 23A?

A. I'm sorry, I don't...

Q. 23A.

A. Ahh, yes, sir, I am holding the death certificate.

Q. And what is the name of the funeral home?

A. Boyd Funeral Home.

Q. B-O-Y-D?

A. Yes, sir.

Q. Incidentally, I probably didn't notice it but you indicated that the letter that was sent to the State for identification of the fingerprint is in this file, Commonwealth 8, and I couldn't locate it. Could you tell me which document that is?

A. (Displaying) This one here, sir.

Q. That is the request?

A. Yes, sir.

Q. For criminal history?

A. Right. It is a standard request that we complete and we send it over to the Sheriff's Department.

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Page 55.

Sgt. Ronald Morgan - Cross

Q. And could you tell us, were you present when the fingerprint comparison was accomplished?

A. No, sir, I was not.

Q. Do you know how that is done in the ordinary course in 1992?

A. The comparison is sent to the State Police and how they compare it I do not know.

Q. And when you say sent to the State Police, that's not in Camden County, that is the State Police located in Trenton?

A. Yes, sir, that is correct.

Q. And then your office relies on their report?

A. Yes, sir.

Q. Right, okay. And to your knowledge, your office then doesn't send the information that's been, developed to Federal authorities for purposes of entering it into the, into an interstate system or a multi-state system?

A. In regards to the death?

Q. Yes.

A. No, sir, we do not.

Q. Once again going back to the criminal history, the request for criminal history and the computer response, with respect to the criminal history, item 21. The criminal history.

Page 56.

Sgt. Ronald Morgan - Cross

A. Yours or mine?

Q. Yours.

A. Okay.

Q. Commonwealth 8.

A. Okay. Yes, sir.

Q. Is there an indication here that this individual had a charge for robbery, theft, simple assault, aggressive assault -- aggravated assault, I'm sorry?

A. Could you tell me what page you refer to?

Q. Item 21 under the recitation of history. It is about the fourth or fifth page back. Sixth page.

A. Oh, okay. I was a little confused, I found it now. You are referring also to the date of 6-21-87?

Q. Yes.

A. Yes.

Q. Does it indicate that there was a warrant issued for this individual?

(Pause)

A. No, I don't see -- if you're referring to a particular line maybe you could help me, sir.

Q. Yes, you don't see it there?

A. I hope we are on the same page (displaying).

Q. Yes.

A. I'm not sure.

Page 57.

Sgt. Ronald Morgan - Cross

Q. We are item 21, 6-21-87?

A. Right.

Q. There is no indication of a warrant being issued?

A. No, sir.

Q. Okay.

(Pause)

(Discussion was held off the record among Defense Counsel.)

BY MR. WEINGLASS:

Q. Just a cursory look at this criminal history record for this person, without asking you specifically, does this record reflect that this individual was arrested multiple times in Florida, Washington D.C., Philadelphia, Camden, New York and Boston?

A. Yes, sir, it does.

(Discussion was held off the record among defense Counsel.)

MR. WEINGLASS: All right, I have no further questions. Thank

you, Sergeant.

MS. FISK: I have I think just one.

- - - - -

REDIRECT EXAMINATION

- - - - -

Page 58.

Sgt. Ronald Morgan - Redirect

BY MS. FISK:

Q. Sergeant, after the fingerprints of this woman Cynthia Williams, known to you as Cynthia Williams, were sent to the New Jersey State Police, you made reference to the fact that you received verification of identification back and that is contained within Commonwealth Exhibit 8?

A. That is correct.

Q. Would you please just point out or show us which document that is which you received back?

A. In this folder it is on the left-hand side and it is the first document under a brown envelope that contains some photographs. The heading is State of New Jersey Department of Law And Public Safety, Division of State Police.

Q. All right. And that is what you received back after the fingerprints were sent to the State?

A. Yes, ma'am, we did.

MS. FISK: Thank you, sir.

I have nothing further of this witness.

THE COURT: All right, you are excused. Thank you very much.

(Witness excused)

MS. FISK: Sergeant Elizabeth Welch,

Page 59.

Sgt. Elizabeth Welch - Direct

please.

- - - - -

Sergeant Elizabeth Welch, New Jersey State Police,
having been duly sworn, was examined and testified as follows:

- - - - -

DIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. Good morning, Sergeant Welch.

A. Good morning.

Q. Sergeant Welch, how are you employed?

A. I'm employed as a trooper with the New Jersey State Police in West Trenton.

Q. How long have you held the position as a trooper with the New Jersey State Police?

A. 17 years.

Q. What is your current assignment within the New Jersey State Police Department?

A. I'm in the records and identification section, the State Bureau of Identification.

Q. How long have you held that assignment?

A. I've been with R & I for the past 10 years.

Q. R and...?

A. Records & Identification.

Page 60.

Sgt. Elizabeth Welch - Direct

Q. And what is your responsibility as a member of that unit, R & I?

A. We are the central repository for all fingerprints of individuals arrested in the State of New Jersey. We create, maintain criminal rap sheets, and we deal with all applicants' fingerprints.

Q. Now, can you tell us generally what the process is when you receive from one of the counties within the State of New Jersey a request to identify fingerprints of a person who has been found dead in one of those counties?

A. When fingerprints come in on a fingerprint card that states the individual is dead, we take the fingerprints downstairs to the Automated Fingerprint Identification System, our AFIS unit. The SBI number, State Bureau of Identification number is on the card as well as the individual's name and other identifiers.

The card is brought up on a terminal screen, computer screen, the card that's sent in with the fingerprints on it, and it is a side-by-side comparison to the individual's criminal rap sheet fingerprints.

Q. What if the card comes into you with a name other than the name which is maintained by your main

Page 61.

Sgt. Elizabeth Welch - Direct

records room?

A. If the name is different it makes no difference to us because it is strictly at this point a side-by-side fingerprint comparison.

Q. So if Social Security numbers are different that doesn't matter?

A. Nothing matters but the fingerprints.

Q. Now, if in fact you receive a fingerprint card from a county and you are able to find a matching fingerprint in your database, what then occurs?

A. The fingerprint technician compares them side by side, ascertains that it is the exact same person. We then take the verified dead card upstairs and the entire record will be purged in a matter of 30 days. We send out a record to the contributor, a form saying we have identified your person, we have the fingerprints on file, that the individual has been verified dead. And within 30 days we will purge the record.

Q. And what do you mean by purge the record?

A. Completely destroy. It's removed in all paper and electronic form.

Q. Once the New Jersey State Police verifies the identification of a person as being dead, do you notify any other law enforcement agencies, other than

Page 62.

Sgt. Elizabeth Welch - Direct

the contributing county?

A. No, just the contributor of the verified dead fingerprint card.

Q. Do you notify the FBI?

A. No, we do not. The FBI's really not interested in purging records.

Q. Do you send a copy of the fingerprints which you have utilized to identify someone as dead to the FBI?

A. No, we do not.

Q. Why is that?

A. We operate on a two-fingerprint-card system in the State of New Jersey: A State and a Federal. We rarely if ever get more than one card in on a verified dead. So we keep that for our own records.

Q. And once you are prepared to purge, do you share that at that point with the Federal authorities?

A. Yes; when we are purging the records we send a message through the terminal to the FBI that we have verified dead fingerprints and we are purging our records and we notify them.

Q. Now, you have Commonwealth Exhibit 8 in front of you, I believe. Oh, I'm sorry. If you would please open Commonwealth Exhibit 8. And on the

Page 63.

Sgt. Elizabeth Welch - Direct

document directly underneath the brown manila folder --

A. Hmm-hmm.

Q. -- is a letter. Do you recognize that letter and that form of letter?

A. Yes; that is a typical death notification response back to the

originating agency that has sent us the verified dead fingerprints.

Q. And is that a response verifying that Cynthia Williams, who was determined also to be identified based on State master files as Cynthia White, was indeed the person whose fingerprints were sent to your office and that she was verified dead?

A. Without a doubt.

Q. And that was done on the basis of fingerprints that were sent to the New Jersey State Police?

A. That's correct.

Q. Back in 1992?

A. That is correct.

Q. And what is the date of that letter, incidentally?

A. It is dated 11-18-92.

Q. Can a death be verified by your unit by any means other than fingerprints?

A. No; fingerprints are the one true identifier.

Page 64.

Sgt. Elizabeth Welch - Direct

Q. And what if, what if I were to die in front of you and there are 19 people, members of my family, who are swearing on a Bible that it is me, would you verify me dead?

A. Not unless they sent us your prints.

Q. In addition to sending that letter to Camden County as the contributor of the fingerprints, are any logs or notations made within your State office that reflects that an individual person has been verified as dead?

A. Yes, we keep a paper log.

MS. FISK: May I ask, Your Honor, that this document be marked as Commonwealth Exhibit 9, and a copy for Counsel (handing).

(Verified dead listings was marked
Commonwealth Exhibit C-9 for identification.)

(Pause)

THE COURT OFFICER: So marked C-9, Your Honor.

BY MS. FISK:

Q. Sergeant, Commonwealth Exhibit 9 is a black-and-white photocopy of a document which you have a color photocopy of I believe with you; is that correct?

A. That's correct.

Page 65.

Sgt. Elizabeth Welch - Direct

Q. And can you identify what has been marked Commonwealth Exhibit 9?

A. Yes.

Q. What is it, please?

A. This is a list of, we call them verified deads. When we receive fingerprints in to verify that an individual is deceased, we make up a list of all the fingerprints, we make up a list of their names. The numbers next to them are the FBI number.

Q. I'm sorry, the what number?

A. FBI, Federal Bureau of Identification.

Q. All right.
A. Next to that is a column to check to see whether any of the records were expunged. Next is a column for State Bureau of Identification numbers, also known as SBI number. And then what information was deleted from that record.

Q. And by deletion, is that the purging that you were referring to?

A. Purging, correct.

Q. Now, these documents are kept in a loose-leaf in Trenton?

A. Yes, it is just more or less a paper file.

Q. And there is one particular page out of that file from, there is a date up on top, November 19th,

Page 66.

Sgt. Elizabeth Welch - Direct

1992?

A. That is correct.

Q. Utilizing this document, please, the name second from the bottom, can you read the name which appears on this log of verified deads?

A. Last name is White, first name is Cynthia.

Q. Next to that is there handwritten an FBI number?

A. Yes; it's 934288 Romeo 7.

Q. And how was that FBI number determined?

A. That FBI number is contained right on the individual's rap sheet or criminal history.

Q. Which is maintained in your master files?

A. That is correct.

Q. All right. Then the next file check expungement, there is an X in the no column?

A. That is correct.

Q. What does that mean?

A. That indicates that there were no files for Cynthia White that had been previously expunged.

Q. Next is the SBI number. Can you please read to us the SBI number which appears on this verified dead log?

A. 159986 Bravo.

Q. Now, again, is that an SBI number which as a

Page 67.

Sgt. Elizabeth Welch - Direct

result of the State Bureau of Identification -- I know I have the right letters -- your unit's identification determined based on the master list?

A. That is correct. Once an individual is originally arrested in the State of New Jersey they are assigned an SBI number. That number stays with them their entire criminal career regardless of any other identifying information that they might give.

Q. Based on this notation in the verified dead log, are you telling us, then, that the fingerprints which were sent to you matched those of this person who was already contained in the master files in Trenton?

A. That is correct.

MR. WEINGLASS: Objection: Leading.

May we have a ruling?

THE COURT: She may be but it's not harmful.

Go ahead. Let's go.

BY MS. FISK:

Q. Can you tell us what the next handwritten notations are in that SBI number column?

A. It says by and then it has what we call an ORI number, which is the originating number of the department that sent us the fingerprint card: NJ

Page 68.

Sgt. Elizabeth Welch - Direct

004013A as in Alpha, which is the originating agency number for Camden County Prosecutor's Office. And the date below it, 9-2-92, would have been the date on the fingerprint card as the date of death.

Q. Now, your next three, your next four columns under Delete: Are these notations made at the time of verification, or are these notations made 30 days thereafter at the time you are preparing to purge the documents?

A. At the time of purge these are made.

Q. All right. What is that first column: MNI?

A. MNI is master name index. That's the mechanism by which you go in to look up an individual by name and date of birth or Social Security number. That was deleted.

Q. All right. Next?

A. Next is the actual CCH record, the computerized criminal

history record, or otherwise known as a rap sheet, that was deleted.

Q. All right, next?

A. Next is an CDR database. This no longer exists, but at the time if there was an open, an open or pending charge that we did not have a disposition for, that would have been deleted. This indicates that there was no open or pending charge in New

Page 69.

Sgt. Elizabeth Welch - Direct

Jersey.

Q. All right. And last?

A. And the last is triple I. Triple I is the interstate identification index. These are arrests from any state outside the State of New Jersey. They were all deleted as far as New Jersey was concerned.

Q. Based on the presence of Cynthia White's name on this verified dead log, Sergeant, are you able to tell us whether or not Cynthia White, whose SBI number and FBI number appeared on this log, was identified via fingerprints as having died in Camden County on September 2nd, 1992?

A. Yes, it is the same individual without a doubt.

MS. FISK: Thank you.

I have nothing further, Your Honor.

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CROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Good morning, Sergeant Welch.

A. Good morning.

Q. I understand that you are here testifying because this document C-9 is within the ambit of your custody?

Page 70.

Sgt. Elizabeth Welch - Cross

A. That is correct.

Q. You did not have anything to do yourself personally with the investigation back in '92?

A. No, sir.

Q. So you only know what's on the documents that you brought to Court today?

A. That's correct.

Q. Is there a bureau of vital statistics in New Jersey?

A. I couldn't testify to that, sir.

Q. You don't know if there is such a bureau?

A. I cannot say.

Q. When your office does these checks and makes an identification, is that information distributed to other agencies of the government of New Jersey besides the requesting agency?

A. Not by us, sir, no.

Q. Is it distributed by anyone who you know of?

A. No, sir. We require the fingerprints and it is strictly for in-house purge of our own records.

Q. Your own records. And your own, you are referring to the State Police of New Jersey?

A. Ahh, well, as the central repository for all the fingerprints in the entire State regardless if it was an arrest by State Police or a municipal

Page 71.

Sgt. Elizabeth Welch - Cross

department or a county department.

Q. I don't know if you could answer this but if someone is seeking a person who might be dead and they don't know, and they go to the New Jersey bureau of vital statistics, would they have the information in that bureau that your office has generated?

A. Not directly from us. From some other means, I don't know if they use other data banks, but I know they do not have access to CCH.

Q. I see. Now, I am trying to also understand the process of deletion.

A. All right.

Q. One of the things that's marked on C-9 is a deletion of CCH?

A. Correct.

Q. Is that right?

A. Hmm-hmm.

Q. And you told us, what is CCH?

A. CCH stands for computerized criminal history, within the State of New Jersey.

Q. That's within the State?

A. Correct.

Q. Is there a national CCH?

A. Yes, that's triple I. Interstate identification index, that is the FBI's program for

Page 72.

Sgt. Elizabeth Welch - Cross

all the states to become involved in.

Q. So you in New Jersey, when you delete, do you delete it from the Federal records, the national records as well?

A. We delete all the New Jersey arrests from the Federal system.

Q. But the other arrests would stay?

A. We have nothing to do with any other state's arrests so we wouldn't touch theirs.

Q. I see. So if you could look back on Commonwealth 8 for this document which is a request for criminal history (displaying). And it has attached to it a computerized response.

A. Which side is that on?

MS. FISK: The other.

THE WITNESS: The other. Okay, request for criminal history record information?

BY MR. WEINGLASS:

Q. Yes, and I am interested mainly in the response.

A. All right.

Q. Which is computerized.

A. All right.

Q. When you delete from CCH and triple I --

A. Hmm-hmm.

Page 73.

Sgt. Elizabeth Welch - Cross

Q. -- does this document continue to exist?

A. No. This does not exist anymore (displaying). This is the first I've seen it.

Q. I see. This being the response to the request?

A. Right. This is an actual criminal history response on Cynthia White (displaying), which no longer exists in our files.

Q. In your files?

A. Correct.

Q. Right. But it would still exist in the multi-state file, minus the New Jersey information?

A. No New Jersey information would be in the multi-state file at all.

Q. Right. Because you have deleted it?

A. Correct.

Q. But information from other states would still be in --

A. Triple I, correct.

Q. Triple I?

A. That's correct.

Q. And the document would still exist even today?

A. Which document are you speaking of?

Q. The computerized response.

A. This computerized response? Or a computerized

Page 74.

Sgt. Elizabeth Welch - Cross

response?

Q. A computerized response.

A. You can get Cynthia White's information from other states.

Q. Yes?

A. But you won't get anything from New Jersey because we expunged it.

Q. Exactly.

A. Right.

Q. So that --

A. Purged it.

Q. Purged. In 1995, the information in a computerized response on Cynthia White would have existed, minus the New Jersey --

A. Information.

Q. -- information?

A. Correct.

Q. You can't tell us what Cynthia White's real name is, can you?

A. No. When we receive fingerprints in, it makes no difference what information they put down on the card. The name that they put down becomes their master name. And their date of birth and Social Security number. Anything that they supply us afterwards is listed as an alias.

Page 75.

Sgt. Elizabeth Welch - Cross

Q. Okay. So in Commonwealth 8 we have an individual named Cynthia Williams, an individual named Cynthia Drake, an individual named Mildred Saunders, and other names?

A. Right.

Q. Yes?

A. The record was constructed from the fingerprint cards and the fingerprint comparison.

Q. Now, I think you mentioned also that when you do have purging, your office sends a message to the FBI?

A. That's correct.

Q. And could you tell us what that message is and what happens?

A. It's a message right through the computer terminal after our data input operator's purge. They send the message to the FBI indicating that we received fingerprints verifying this individual is dead and that we are purging our records.

Q. And what does the FBI do with that information, if you know?

A. They just list it as an identifier -- not identifier, but like a notice on their rap sheets, their own rap sheets, that this person has been confirmed dead by New Jersey.

Page 76.

Sgt. Elizabeth Welch - Cross

Q. Do they say confirmed dead by fingerprints?

A. They put, I would have to refer to something in here to find it for you, if you wanted me to read it specifically. I know they use the word deceased.

Q. I see. But you don't know if they use confirmed dead by fingerprints, for instance?

A. Do you want me to look?

Q. If you can find it, yes.

A. Okay.

The copy states the FBI has been notified of the subject's death. However, this information has not been confirmed by fingerprint comparison. Date of death is listed. And notified by, and that would be State Police.

Q. And that's what's sent?

A. That's right. What that means is they don't have any fingerprints, we have the fingerprints.

Q. Right, but it says -- can you read that again -- fingerprint not confirmed?

A. The FBI has been notified of the subject's death, however this information has not been confirmed by fingerprint comparison.

MR. WEINGLASS: Fine. I have nothing further.

MS. FISK: May I?

Page 77.

Sgt. Elizabeth Welch - Redirect

THE COURT: Sure.

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REDIRECT EXAMINATION

- - - - -

BY MS. FISK:

Q. The document which you just read to us, that comes from the FBI?

A. That's correct, that's a response back from our response.

Q. Right, so you notify the FBI that you have verified a dead based on fingerprint comparison?

A. That's correct.

Q. The FBI is then allowing every other state who might use their multi-state to know that in New Jersey this person has been verified dead?

A. That's correct.

Q. Though the FBI has not had an opportunity to review fingerprints on their own?

A. That's correct.

Q. And that's because you never sent a separate copy of those fingerprints to the FBI?

A. Right.

Q. That is not within the practice or procedure of New Jersey?

A. That's correct.

Page 78.

Sgt. Elizabeth Welch - Recross

MS. FISK: Thank you.

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RECROSS-EXAMINATION

- - - - -

BY MR. WEINGLASS:

Q. Just one last question to follow up on that. So if someone were to inquire of the FBI, the information they would get is not confirmed by fingerprints?

A. They would get the individual's entire criminal rap sheet from other states.

Q. Right.

A. And this caveat would be included in there, that New Jersey has confirmed them dead, but they, the FBI is not holding fingerprints on this individual confirming them dead.

Q. Well, look at Commonwealth 8, the printout. It just says, does it not, this response not supported by fingerprint comparison?

A. Yes; what that means is --

Q. That's all it says. It doesn't --

THE COURT: Well, let her answer you.

MR. WEINGLASS: I'm sorry, I'm sorry.

THE WITNESS: What that means if you were a police officer --

Page 79.

Sgt. Elizabeth Welch - Recross

BY MR. WEINGLASS:

Q. Right?

A. -- and you have a suspect, so you go to the terminal and you're doing a CCH look-up, a rap sheet look-up, you are putting in a name, a date of birth, maybe a Social Security number. You're not

sending us fingerprints saying this is the person I have, who is it, so we can respond back to you. You're just putting in a name and date of birth. So that's to protect us from being sued.

What we are saying is, the division of State Police is saying based on the name and date of birth and whatever identifiers you have put in, this is the record for that person.

Q. Not confirmed by fingerprint comparison?

A. Right. If you send us a set of fingerprints, that would be a different story.

Q. Right.

A. But just on a name or date of birth check, or Social Security number, that is the response we would send because you are not sending us fingerprints right now.

Q. And if someone were to inquire of the FBI by computer, the printout that they would get would say this response not supported by fingerprint

Page 80.

comparison?

A. I can't testify as to the FBI response.

Q. I see.

A. I don't know how they create their records.

Q. I see.

(Discussion was held off the record among defense Counsel.)

BY MR. WEINGLASS:

Q. Lastly, so that I understand: If you make a match between someone who is found deceased in New Jersey with the records that you have of that individual's fingerprints based on the prior criminal history, New Jersey will purge that information from New Jersey files, but if someone inquires through the Federal authorities or through other states, there might not be any indication in those files that such a match has been made?

A. It is indicated on their record, their out-of-state record. It will say New Jersey, it will have the SBI number listed, and next to it will have the word deceased. That's the only information you'll see on there in reference to that.

Q. But nothing about fingerprint confirmation?

A. No, they know that we only would mark someone deceased verified with prints.

Page 81.

Q. Right, right. And with respect to Commonwealth 8, which says no confirmation -- I'm sorry -- not supported by fingerprint comparison, that also will continue to exist in the national records?

A. Yes, because you're not sending them fingerprints, you're just asking through a terminal based on name and date of birth.

MR. WEINGLASS: I have nothing further.

MS. FISK: Could the witness be shown Commonwealth Exhibit 2, please, just for clarification purposes.

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REDIRECT EXAMINATION

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BY MS. FISK:

Q. Sergeant, do you recognize this document which is marked Commonwealth Exhibit 2? I believe actually that is a photocopy. Well, that's all right. Nevertheless, it is a photocopy of Commonwealth Exhibit 2. Do you recognize this document, or this type of document?

(Pause)

A. Yes; this is a triple I record response.

Page 82.

Q. And is that for Cynthia White, whose FBI number is 934288R7, and whose SBI number is 159986B?

A. 9986B, that's correct.

Q. Also, just so it is clear, also on the first page is Cynthia White's Philadelphia Police photo number indicated?

A. That's correct.

Q. What Philadelphia Police number is indicated on this triple I response? If you are able to read that.

A. That is that PPN number?

Q. Yes.

A. 573095.

Q. On the last page of this document, is there the notations which you just referred to regarding the verification of death made on the basis of fingerprints by the New Jersey State Police?

A. That's correct, it says New Jersey, it lists our State ID number, and the word deceased.

MS. FISK: Thank you, ma'am.

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RECROSS-EXAMINATION

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BY MR. WEINGLASS:

Q. Right, but it doesn't say verified by

Page 83.

fingerprints?

A. That's the only way we would mark someone deceased.

Q. Does it say verified by fingerprints?

A. No, that is known.

Q. That is known to you in New Jersey?

A. Right.

Q. But if someone looks at the same record they will know that for the FBI numbers, there is no indication of deceased?

A. No, because the FBI would hold her active record and other states as well that have not marked her as deceased.

Q. Right, and for New York there is no indication of deceased?

A. That's correct.

Q. And nowhere does it say fingerprints?

A. That's the only way we do it, sir.

Q. Yes, I know that is the way you do it, but from the point of view of a reader, you don't see fingerprints on this document?

A. These documents can be very difficult to read, especially when you are dealing with different states, every state is different.

Q. Right. By the way, this document which is the

Page 84.

triple I, is that available information only to law enforcement, to your knowledge?

A. That's correct.

Q. Only to law enforcement?

A. That's correct.

Q. And it's, would you say it's readily available to law enforcement?

A. It depends if you have a computer terminal.

Q. If Philadelphia has a computer terminal they could get this in a matter of a minute?

A. If they have a computer terminal with a hookup to CCH, yes.

Q. They could have gotten it in '95, '96, '97?

A. If there were arrests there for that period, yes.

MR. WEINGLASS: All right, I have nothing further.

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REDIRECT EXAMINATION

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BY MS. FISK:

Q. Is there any chance, Sergeant, that Cynthia White, that because she is not listed as deceased by the FBI, is alive in any other state outside the State of New Jersey?

Page 85.

She is definitely dead in New Jersey.

MS. FISK: Thank you.

THE COURT: Are you finished?

MS. FISK: Yes, Your Honor.

THE COURT: Thank you very much. You are excused.

THE WITNESS: Thank you, sir.

MS. FISK: I have nothing further, Your Honor.

Oh, I'm sorry, Your Honor. Actually, in light of the testimony presented by the defense on Thursday and again yesterday, since the defense has chosen not to call Detective Richard Ryan, I would request permission to do so. I would request permission to call Detective Richard Ryan, who is the detective referred to by Ms. Jenkins in her testimony, as well as former officer Ryan.

THE COURT: Do you object to her calling him?

MR. WEINGLASS: No, Your Honor, the defense, the Assistant District Attorney had an opportunity to call him during their presentation of their case. We were told we were coming here today to hear from several

Page 86.

State Police from New Jersey, the reason why we came back, because they are out-of-state witnesses and they weren't available to the defense. I object to now the hearing being expanded back into areas that have nothing to do with the death of Cynthia White, absolutely nothing to do with her death, and are not New Jersey state troopers and have nothing to do with the purpose for which this Court especially convened Court today.

MS. FISK: Judge, I would note for the record that Ms. Jenkins testified that she saw Detective Ryan in the presence of Ms. White in March of this year. Nevertheless, so long as the record reflects that Detective Ryan was present as a result of a defense subpoena, has been in the Courtroom, has been available to the defense -- and the defense has the burden in these proceedings -- and has opted not to call him, I would respect that request by Counsel for the limited purpose of today's remand and I will not call him.

THE COURT: Okay.

MS. FISK: Does that complete these proceedings?

Page 87.

THE COURT: Sure, as far as I am concerned.

MR. WEINGLASS: Your Honor, the defense --

THE COURT: I already ruled on the subpoenas of these people.

MR. WEINGLASS: -- would request our investigator Don Burton to testify about the death of Cynthia White.

THE COURT: What does he know about the death?

MR. WEINGLASS: He has examined the record and he has done an investigation into her death. He has directly relevant information.

THE COURT: So she is still alive?

MR. WEINGLASS: He has done an investigation, Judge.

THE COURT: Is she alive?

MR. WEINGLASS: I know no better than this Court knows whether she is alive or not.

THE COURT: Well, as far as I'm concerned she's dead. Now, if you say she is alive go out and get her, bring her in. We will be glad to hear --

MR. WEINGLASS: We will put on a

Page 88.

witness who will testify about efforts in that regard.

THE COURT: I am not concerned about all the efforts in the world. I have heard evidence that she is definitely dead. As far as I'm concerned she's dead.

MR. WEINGLASS: He has examined the documentary evidence which the Court has on her death for the defense. And he has testimony to offer on this documentary evidence.

THE COURT: I don't need his help. I am making a ruling we are finished. You go back to the Supreme Court. If they want to send it back for anymore testimony from anybody in the world, fine, let them send it down and I will hear it. As far as I'm concerned, it's completed.

MR. BURNS: Judge, if the Court please: Counsel will be submitting proposed findings of fact and conclusions of law?

THE COURT: Yes, when would you like?

MR. BURNS: As soon as I get the notes, Your Honor.

THE COURT: All right.

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Page 89.

(The hearing was concluded at 12:15 p.m.)

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Page 90.

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

Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge