

# Mumia Is Still the Issue<sup>1</sup>

– On Philadelphia Court Judge Dembe’s May 27/June 17, 2005, Decision on Mumia Abu-Jamal –

In April 1999, a crowd of up to 20,000 people marched through downtown Philadelphia, celebrating the 45<sup>th</sup> birthday of one of the most famous prisoners in the world, the Black former radio journalist Mumia Abu-Jamal, demanding loudly not only that “the evidence must be heard,” but also, very conscious of what most everybody present believed the evidence would show, “Free Mumia!”

That Abu-Jamal would get a new trial that would finally get him off death row and home to his family seemed only a matter of time. During Abu-Jamal’s various, often very public efforts during the 1990s to win justice in court the actual workings of the American system of criminal justice had been laid bare in such a glaring manner that victory in this particular case seemed within immediate reach.

But then zoom forward a full six years.

Even though still more evidence about the irregularities in his 1982 murder trial has come to the fore and even though there is overwhelming evidence that he was consciously and deliberately framed for the 1981 murder of a Philadelphia police officer for which he was sentenced to die, Mumia Abu-Jamal continues to be in prison in Pennsylvania’s State Correctional Institute Greene.

But yet, very many of those who filled the streets and signed petitions for him do not seem to care anymore. It almost seems as if the extraordinary importance of this case that once electrified millions and exemplified a crucial aspect of injustice and racism in the U.S.A. has miraculously faded away in the years since 1999. But actually, nothing could be further from the truth. Far from being resolved, the case of Mumia Abu-Jamal is still one of the ugliest, and therefore most significant, examples of the multiple failures of U.S. criminal justice.

## **On Death Row for More Than 22 Years – and Once Again Doomed to Stay There**

While it is true that Abu-Jamal’s death sentence was lifted by a Federal Judge (Judge William Yohn Jr. of the 3<sup>rd</sup> Federal District Court in Philadelphia) on December 18, 2001, even that decision is not final and was immediately appealed by the state. Abu-Jamal is still on death row, a place he has not left since his death sentence was made formal on May 25, 1983 – and his death sentence could be reinstated on appeal.

Moreover, in his December 2001 decision Judge Yohn granted just one out of 29 claims of constitutional violations made by Abu-Jamal in his Habeas Corpus petition and denied or declared moot every single one of the 28 other claims. And of these 28 residual claims, only one was certified for appeal by the defendant, namely, the claim of racial bias during the selection of Abu-Jamal’s jury. This means that the U.S. Court of Appeals before which the case is now pending has the option of not even accepting appeals on 27 of these issues. Apart from this, a number of other petitions and appeals filed by Abu-Jamal since 1999 have been denied.

The last one of these was turned in a particularly scandalous way down only a couple of weeks ago, on June 17, 2005, by Judge Pamela Pryor Dembe in the Philadelphia Court of Common Pleas. This is the place where it all began, with the 1982 conviction of Mumia Abu-Jamal for

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<sup>1</sup> This article benefited from input from Robert R. Bryan (Mumia Abu-Jamal’s current lead counsel) and others. The conclusions expressed are my own.

murder and the ensuing death sentence. Already on May 27, the judge had announced her intention to dismiss Abu-Jamal's third petition under the Post-Conviction Relief Act (PCRA).<sup>2</sup>

The PCRA petition in question was filed on December 8, 2003, by San Francisco attorney Robert R. Bryan, a very renowned death penalty opponent and veteran anti-death penalty lawyer who took over Abu-Jamal's defense in October 2003. It consisted essentially of two claims, which would, if proven in court, tear the whole case against Abu-Jamal apart in the wink of an eye.

Claim one says that the main witness against Abu-Jamal, the prostitute Cynthia White, testified against him as a result of a whole range of police measures to get her to do so, ranging from supplying her with drugs to the promise of reduced sentences and reduced harassment in the streets to death threats. This claim is supported by an affidavit by one Yvette Williams, who claims that at the time before Abu-Jamal's trial she shared a prison cell with White.

Claim two says that prosecution witness Priscilla Durham, a hospital guard in Philadelphia's Jefferson Hospital where Abu-Jamal was treated for the gunshot wound he received at the crime scene, lied when she testified that Abu-Jamal immediately after having been brought in had boasted of killing the police officer. This claim is supported by the testimony of the hospital guard's stepbrother, who testified that Durham told him that her testimony at the trial was false, all that Abu-Jamal had said amounted to that he was innocent and feared for his life, and that she testified the way she did to curry favor with the police.

The importance of this testimony is evident.

It is very hard to believe that Abu-Jamal's jury would have taken Cynthia White's testimony – highly contradictory and questionable as it already was – against Abu-Jamal seriously had Yvette Williams testified at Abu-Jamal's trial, instead of twenty years later. Even more important is the fact that Williams' testimony not only further undermines White's credibility: it also is damning indictment of the corrupt methods Philadelphia police and prosecutors used to use to get convictions.

What Williams testifies to is an example of monstrous prosecutorial misconduct. If the police did this in the case of their most important witness, how can any of the other results of their "investigation" of the Faulkner murder be believed?

Turning to the second claim, Kenneth Pate could, for obvious reasons, not testify at Abu-Jamal's 1982 trial, since his claims about what his stepsister Priscilla Durham told him refer to events in 1983 or 1984. All the same, had the *substance* of what Kenneth Pate testifies to – that Durham told him that she actually she never heard Abu-Jamal confess – been available at Abu-Jamal's trial or for his direct appeal, it would have dealt a severe blow to the prosecution's claim that Abu-Jamal had confessed to the murder. Actually, it would have been the second such blow.

The first, namely the fact that the police officer who was with Abu-Jamal from the time of his arrest until his surgery at the hospital, Gary Wakshul, had noted in his log that during that time "the Negro male made no comments," was suppressed by trial Judge Albert F. Sabo who did not give the defense time to put Wakshul on the stand.<sup>3</sup>

Now, another challenge to the prosecution's highly dubious confession claim is being arbitrarily dismissed and not even given a hearing.

Judge Dembe's dismissal of Abu-Jamal's 3<sup>rd</sup> PCRA petition, her second denial of a PCRA petition by Abu-Jamal, is thus depressing news for all true friends of justice in the U.S.A. and elsewhere.

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<sup>2</sup> This is a law that, at least theoretically, provides for state relief in the case of wrongful convictions.

<sup>3</sup> *Trial Protocol (TP)*, July 1, 1982, p. 46-56.

Politically, it is worrying that Dembe's act hardly generated a peep of protest. Demonstrations were held on June 16, the date for which Judge Dembe had announced her final decision on the matter, but the dedicated activism of Philadelphia and New York Abu-Jamal supporters notwithstanding, the numbers rallied were in no way comparable to the 1999 or other pro-Abu-Jamal demonstrations.

Moreover, this was so even though Judge Dembe's pre-announced decision is, if anything, even more outrageous than former denials of Abu-Jamal's petitions. What is urgently needed now is growing awareness of the significance of what is happening here, and a growing sense of action-inspiring outrage about it. In the following, I will try to set out a few factual and judicial aspects of Dembe's decision in order to help generate that awareness. And that outrage.

### **A Decision Getting Even the Most Elementary Facts Wrong**

After announcing her intention to dismiss, Judge Dembe's decision begins with a short description of what allegedly, i.e., according to her, happened on December 9, 1981, when Philadelphia police officer Daniel Faulkner was killed and Abu-Jamal, who also suffered a gunshot wound that day, was arrested:

On December 9, 1981, Philadelphia Police Officer Daniel Faulkner was shot in the back. The first shot did not kill him, and he was able to return fire, wounding his assailant. He then collapsed and, as he lay on the ground, the assailant pumped *several* more shots directly *into* his face, killing him.<sup>4</sup>

This is almost laughably false. Here, we have an instance of a judge who in a case on which she has sat for more than four years gets even the most elementary facts wrong. No one, neither the defense nor the prosecution has ever claimed, either before, at, or after the trial, that the officer was hit in the face by *several* shots. Judge Dembe is apparently unaware even of the prosecution's claims in this case.

Moreover, what we have here is not just an unhappy or ambiguous formulation, since just a few sentences later, Dembe says:

*Bullets* from Faulkner's gun were extracted from Petitioner's [i.e., Abu-Jamal's] body, and the *bullets* found in Faulkner's body, while too badly damaged to be identified with certainty as coming from Petitioner's gun, were exactly matched with the type of ammunition used in Petitioner's gun.<sup>5</sup>

This is a multiple falsehood in one single sentence.

Exactly *one* bullet, not *bullets*, from Faulkner's gun was extracted from Abu-Jamal's body, and exactly *one* bullet from the gun of an as of yet undetermined shooter was found in Faulkner's body. The latter bullet was *not* matched, let alone exactly, with the type of ammunition in Abu-Jamal's gun,<sup>6</sup> unless by "type of ammunition" Dembe means .38 caliber revolver ammunition, a characterization which is practically meaningless given the extremely wide distribution of .38 caliber guns.

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<sup>4</sup> Court of Common Pleas for the Commonwealth of Pennsylvania, First Judicial District, *Memorandum and Order*, May 27, 2005, in the following *MO* (for *Memorandum and Order*), p. 1-2, emphasis mine. See, among other websites, [www.againstthecrimeofsilence.de/mumia/legalarchive/20050527MOD.pdf](http://www.againstthecrimeofsilence.de/mumia/legalarchive/20050527MOD.pdf).

<sup>5</sup> *Ibid.*, p. 2, emphasis mine.

<sup>6</sup> According to the police report, one Smith & Wesson and four Federal cartridges were found in Abu-Jamal's gun. At the trial, the prosecution's firearms expert never tried to "match" or "exactly match" these with the bullet found in Faulkner's head. Moreover, it is hard to see how *both* the Federal cartridge type and the Smith & Wesson cartridge type could be "exactly matched" to the *single* bullet that killed Faulkner.

So, even from the first two pages of her most recent decision, it is clear that Judge Dembe of the Court of Common Pleas in Philadelphia knows all but nothing about the basic facts of the case which she has before her, a case where the life and freedom of a man is at stake.

But let's now leave for a moment these vague and thoroughly uninformed notions of this Philadelphia judge of a case where a thorough grasp of the facts could make a radical difference. Let's turn to something which the courts, especially the appeals courts, often treat as so much trivia: the facts.

And the fact is that at Abu-Jamal's trial, the prosecution's most important witnesses, prostitute Cynthia White, taxi driver Robert Chobert, and motorist Michael Scanlan, testified that Faulkner's assailant, whoever it was,<sup>7</sup> stood bent over the officer and fired several shots *at* him, not *into him* at point blank range.

### **The Eyewitness Accounts Incriminating Abu-Jamal Are Demonstrably False and Faked**

Consideration of this central *actual* claim of the prosecution in Abu-Jamal's case leads us to a very crucial point, made already in Abu-Jamal's 2<sup>nd</sup> (July 2001) PCRA petition.<sup>8</sup> The *real* claim of the prosecution, bolstered by three witnesses, was that the assailant stood over Faulkner, fired several shots *at* him and hit him *once*, with all the other shots missing. And here's the crunch: As Abu-Jamal's 2<sup>nd</sup> PCRA petition pointed out, succinctly and for the first time to the best of my knowledge, *this did not happen and cannot have happened*:



Of the four shots which are alleged to have been fired at Police Officer Faulkner at close range whilst he was supine on the sidewalk, three missed him [since no evidence of them was found in Faulkner's head or body]. If these three bullets were fired into the sidewalk near his prone body, the bullets would have fragmented. In addition, they would have inevitably left evidence of their impacts in the form of marks, damage to the pavement and possibly pavement fragments. Yet, no bullets or bullet fragments or impact sites were identified on the sidewalk in vicinity of Police Officer Faulkner's head or body. Nor were any bullet fragments or fragments from the sidewalk identified on Police Officer Faulkner's clothing, head or body.<sup>9</sup>

To this author, that elementary point seemed so important that I subjected it to some further research. In February 2005, I was granted the opportunity of a lengthy discussion with the retired senior ballisticsian of one quite renowned Institute for Forensic Medicine in Germany about the forensic aspects of Abu-Jamal's case. In that context, I asked him what he thought would happen if someone fired at point blank range at someone lying prone on a paved sidewalk, missing the person. The answer was: "There would be enormous divots in the pavement, like craters. And if near enough, you could see the reflection on the clothes of the victim since the powder of the divots reflects back with enormous energy, like with a sandblasting machine."<sup>10</sup>

<sup>7</sup> Michael Scanlan was unsure of the identity of the shooter and, when interrogated at the crime scene, confused Abu-Jamal with the latter's brother William Cook whose car had been stopped by P.O. Faulkner – the incident that triggered the events ultimately leading to the killing of Faulkner.

<sup>8</sup> And several others as well.

<sup>9</sup> Mumia Abu-Jamal, *Petition for Post Conviction Relief and/or Writ of Habeas Corpus*, July 3, 2001, in the following 2<sup>nd</sup> PCRA Petition, point 215 and similarly in point 232. See <http://www.chicagofreemumia.org/begin.html> under "PCRA."

<sup>10</sup> Personal communication, February 14, 2005.

Since the photograph from the crime scene reproduced here definitely shows the *absence* of any “divots,” let alone “enormous” ones reminiscent of “craters,” and nothing even remotely resembling powder blast reflecting from the pavement was ever noticed on the dead P.O. Faulkner’s clothes, the conclusion seems all too clear.

So here is something important we now know and didn’t know before Abu-Jamal’s 2<sup>nd</sup> PCRA petition: The prosecution’s image of a cold blooded Abu-Jamal, standing over the prone police officer and multiply firing at (the prosecution’s version at the trial) or into (Dembe’s version) the victim is a proven falsehood,<sup>11</sup> a falsehood with very far-reaching consequences, as we shall see immediately.

### **The Most Important Prosecution Witnesses Were either Manipulated or Willing Perjurers**

Dembe’s decision then proceeds to confidently refer to “at least four eyewitnesses” who “saw all or part of the event and testified at trial.”<sup>12</sup> As mentioned above, the three most important of these, Cynthia White, Robert Chobert, and Michael Scanlan all claimed to have observed how the killer, standing over Faulkner, fired *several* shots at him with all but one missing him, which means that these shots would have had to have hit the sidewalk – which we now definitely know they didn’t.

What the various prosecutors and now Dembe have always almost triumphantly claimed as the strength of its version of the events is therefore actually extremely damaging for the prosecution. The natural question to ask is why three witnesses tell the same crucially false story,<sup>13</sup> and the natural answer is that they were manipulated in one or another form by the prosecution, in this case the police.

This is exactly the point where Abu-Jamal’s 3<sup>rd</sup> PCRA petition, now rejected by Judge Dembe, fits in. According to Yvette Williams’ testimony, the main witness against Abu-Jamal – Cynthia White – was not simply more or less subtly manipulated or coached and coaxed into testifying what the police wanted to hear, but given the brutal and outright order to lie, an order that was backed up with all too credible death threats.

In that connection, note that it has been known for a long time that the prosecution’s second most important witness, Robert Chobert, was also in a very vulnerable position vis-à-vis the police since at the night of the shooting, he was driving his taxi without a license. Moreover, he was on *probation*, having been convicted of firebombing a school. In *not* telling the police what they wanted to hear, he would have run a grave risk indeed.<sup>14</sup>

What exactly might have motivated motorist Michael Scanlan, the third of the three witnesses who claimed to have seen the actual killing of P.O. Faulkner, we still cannot know for sure. Maybe it was that, as he admitted at the trial, he had had “a few cocktails”<sup>15</sup> when the police interviewed him and was thus subject to the suspicion of driving while intoxicated (DWI), maybe something else – the fact remains that in close sync. with White

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<sup>11</sup> Evidently, this is a temptingly compelling image if you want to stir up law-abiding and gun-toting citizens for whom cops are always right into a frenzy about how the death penalty for “cop killers” would make the streets more safe. But the facts that demolish it beyond repair are incontrovertible and publicly available, like the trial protocols and, most strikingly, the photographs of the sidewalk where Faulkner had died on this fateful December morning in 1981.

<sup>12</sup> *MO*, p. 2.

<sup>13</sup> As an inspection of their pre-trial and trial testimony shows, their respective versions of the rest of the events differ from each other markedly, and sometimes radically so.

<sup>14</sup> For Robert Chobert, see, among many other sources, the relevant passages in Dave Lindorff, *Killing Time. An Investigation of the Death Row Case of Mumia Abu-Jamal*, Monroe (Maine), Common Courage Press 2003.

<sup>15</sup> *TP*, June 25, 1982, p. 13.

and Chobert he testified to events that never happened and which he was probably also unable to even see.<sup>16</sup>

And what remains is that if three people testified to something that's at the same time very specific and obviously false, someone had had to tell them what to say – and to actually get them to do it, by any means necessary. In other words, this is quite conclusive evidence of a conscious frame-up on the part of the police.

The same is true of the other instance in Abu-Jamal's case where several witnesses testified to the very same thing, namely, Abu-Jamal's alleged confession in the hospital ward. In this case, the police did not need any death threats to pressure the witnesses into testifying: The witnesses, so to speak, *were* the police: Faulkner's long-time partner, P.O. Gary Bell, P.O. Gary Wakshul, and hospital guards Priscilla Durham and James LeGrand. But none of these witnesses reported that alleged confession to the police earlier than a full two months after the shooting. Durham and LeGrand made their reports on February 9, 1982, Wakshul his on February 11, 1982, and Bell his on February 25, 1982, i.e., more two and a half months after the December 9, 1981 shooting.<sup>17</sup>

That two trained police officers, the killed officer's best friend among them, and two hospital guards who, at least in the case of Durham, entertained friendly relations with the police (and even the deceased P.O. Faulkner himself) would not report any confession by a suspect to the police immediately is a story that is absolutely preposterous on the face of it. As mentioned above, Wakshul's story is expressly contradicted by his own police log, and now the affidavit of Durham's step brother, Kenneth Pate, offers still more evidence of two things, namely 1) that an important trial witness lied on the stand, and 2) that this was part of another deliberate frame-up concocted by the police.

### **The Facts Must Be Buried**

Even the much too superficial overview of some of the basic facts just given above shows that Abu-Jamal was consciously fingered by the police as the perpetrator of the Faulkner murder.

As always admitted by all parties, the case against Abu-Jamal rested on three legs: eyewitness testimony of the murder, the alleged confession, and Abu-Jamal's gun that was recovered from the scene.

Contra Judge Dembe, the three witnesses who claimed to have seen the murder gave a radically false version of it. They were coached and threatened by the police.

Contra Judge Dembe, the four<sup>18</sup> witnesses who claimed to have heard Abu-Jamal confess did not do so. Rather, the circumstances of their testimony clearly show that they con-

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<sup>16</sup> Scanlan claims to have observed the killing from across an intersection where he waited at a traffic light. My personal observations on the scene some twenty years later (2001, 2002, and 2004) strongly suggest that from there, he could have seen nothing of the sort he claimed to have seen.

<sup>17</sup> *TP*, June 24, p. 141 (Bell); *PCRA Hearings*, July 31, 1995, p. 86 (Wakshul); *TP*, June 24, 1982, p. 124, and *TP*, July 1, p. 173-74 (Durham and LeGrand). Durham allegedly reported the confession to her hospital superior, a claim she was unable to prove at the trial. Abu-Jamal's incompetent attorney failed to demolish Durham's claim by calling that superior to the stand. It is impossible here to go into the convoluted details of that particular story, but no one has ever explained why neither Durham nor her superior had felt the immediate need to inform the police and the public about the alleged confession.

<sup>18</sup> Just as with the bullets in the bodies of Faulkner and Abu-Jamal, Dembe can't get the actual number straight. While she is correct in stating that "two witnesses testified to this effect *at trial*" (*MO*, p.2, note 3, emphasis mine), a while later she says that allegedly "three different people heard Petitioner brag that he shot Officer Faulkner and hoped that he would die" (*MO*, p. 8). The actual number of alleged "ear-witnesses" is four.

Actually, there even was a *fifth* witness with different though quite similar testimony, namely P.O. Thomas M. Bray, who testified at the suppression hearing before Abu-Jamal's trial. According to Bray, at the hospital Abu-

spired, with or without the knowledge of their superiors, to testify that Abu-Jamal incriminated himself.

Contra Judge Dembe, the bullet that killed P.O. Faulkner was *not* matched in any way with the cartridges in Abu-Jamal's gun. Nor was it ever proven that the gun was even fired or that Abu-Jamal ever fired any gun during the night of the shooting.<sup>19</sup>

In matter of fact, *there is no case against Mumia Abu-Jamal*. At his trial, the prosecution did everything to hide this elementary fact from the jury, and succeeded admirably. But the fact that there is no case against Abu-Jamal remains and needs to be addressed. This fact alone should suffice to dismiss the case immediately and to order Abu-Jamal's release: A citizen was arrested on no credible evidence at all, on the assumption of his guilt instead of the constitutional provision of his innocence.

During his original trial in 1982 and his appeal filed in March 1989 and finally turned down in 1990 by the Supreme Court of the United States, Abu-Jamal's lawyers (Anthony Jackson at first and then Jackson's mentor Marilyn Gelb during Abu-Jamal's appeal) didn't do much to demonstrate this, but since then, the accumulating evidence for Abu-Jamal's innocence has been hammered home in one legal filing after another.

Thanks to these filings and the work of many independent observers and researchers, it is now clear that there is *no* evidence against Abu-Jamal and that he should be released immediately. So far, however, all the courts involved in the matter, from the Court of Common Pleas in Philadelphia to the Supreme Court of the United States, have refused to honestly deal with this fact, either, as the Supreme Court, by not looking into the matter at all<sup>20</sup> or, as Judge Dembe has done now, by radically falsifying the facts.

## The Legal Catch

With these falsifications, Judge Dembe has set the stage to reject Abu-Jamal's petition on legal grounds.

As is well known, the Antiterrorism and Effective Death Penalty Act (AEPDA) signed into law by President Clinton in 1996 after the terror bombing in Oklahoma the year before sharply increased the barriers faced by prisoners who want to appeal their conviction. Since then, various state laws, not least in Pennsylvania, have served the same end. The basic thrust of these laws is that a defendant can introduce new evidence only if this evidence meets quite stringent criteria. In

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Jamal had shouted: "I'm glad. If you let me go, I will kill all of you cops." *Protocols of the Suppression Hearings (PSH)*, p. 127, 128, 133. In terms of its belatedness, Bray's testimony broke new records since Bray did not report any of this to anyone until March 1, 1982, i.e., close to three month after the event. (*PSH*, p. 132, 143, 138)

<sup>19</sup> At the trial, there was the following dialogue between Abu Jamal's attorney Anthony Jackson and the prosecution's firearms expert Anthony Paul:

Q. Tell us how many, approximately, how many millions of guns have eight lands and grooves and *how many would provide this bullet?*

A. *Multiples of millions.*

Q. Multiples of millions?

A. Yes.

MR. JACKSON: I have no further questions. Thank you.

*TP*, June 23, 1982, emphasis mine. Compare this to Dembe's "exact matching" claim. On the question whether Abu-Jamal fired his or any gun, see Amnesty International, *The Case of Mumia Abu-Jamal. A Life in the Balance*, New York, Seven Stories Press 2000, p. 36.

<sup>20</sup> The three *Petitions for Writ of Certiorari* filed by Abu-Jamal were all turned down by the U.S. Supreme Court (in 1990, 1999, and 2004, respectively). With a certiorari petition, a prisoner asks the Supreme Court to look into his or her case after his/her claims were rejected by the lower courts.

the case of a PCRA petition, in Pennsylvania this means that newly obtained evidence must be filed within 60 days or is lost forever since it is then “not timely filed.”

Any filing of evidence within that period must be predicated on (1) the proof that the failure to raise the respective claim previously was the result of interference by government officials, or (2) the fact that the evidence brought forward was unknown to the petitioner and “could not have been ascertained by the exercise of due diligence,” or (3) a new right granted retroactively to defendants by the U.S.- or Pennsylvania Supreme Court, irrelevant here.<sup>21</sup>

As for the second clause, the following additional four conditions hold:

- the evidence could not have been obtained before the conclusion of the trial by reasonable diligence
- the evidence is not merely corroborative or cumulative
- the evidence will not be used solely for the purpose of impeachment
- the evidence is of such a nature and character that a different outcome is likely.<sup>22</sup>

Now it is not even a question whether Abu-Jamal could have filed the Yvette Williams/Kenneth Pate affidavits “before the conclusion of the trial.” They were executed on January 28, 2002 and April 18, 2003, respectively, long after the trial, and the defense did not only not wait for 60 days but in fact filed them within less than two weeks. But in the case of Kenneth Pate, even this is not conceded by Dembe who, without a shred of evidence, insinuates that Abu-Jamal could have known as early as 1984 about the content of Pate’s testimony.<sup>23</sup>

But these are just preliminary maneuvers. The *core* of Dembe’s analysis of the defense’s 3<sup>rd</sup> PCRA filing holds that the evidence offered there is only “corroborative and cumulative,” is used “solely for the purpose of impeachment,” and is “of such a nature and character that a different outcome” is *not* likely. After a preliminary note, I will now investigate these three core claims in Dembe’s decision in turn (but not in that order).

Let’s begin with an important fact: It is quite true that the new federal and state legislation signed into law since the Oklahoma terror bombings radically curtailed the rights of defendants, especially in capital cases. The arguments put forward by many defense lawyers and legal analysts that the AEPDA and its extensions in the various, very similar state laws are inhuman and unconstitutional are built on fairly solid ground. It is certainly one of the most immediate big tasks of human rights organizations in the U.S. to try to strike down these unjust and undemocratic laws.

To this eminent task, the case of Mumia Abu-Jamal adds an additional twist. As I will show, particularly in the next section, *that even if one were to accept* the draconian laws that are now valid in the United States, Abu-Jamal’s treatment by the courts in recent years would have to be regarded as thoroughly unfair, culminating with Judge Dembe’s June 17, 2005 decision to reject testimony which can be shown to be evidence that can’t be circumvented even under the new restrictive legislation.

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<sup>21</sup> Summary of Section 9545(b)(1) of the Pennsylvania PCRA as quoted in the Dec. 20, 2004 Pennsylvania SC decision *Commonwealth v. Johnson*, <http://www.courts.state.pa.us/OpPosting/Supreme/out/J-148-2004mo.pdf>.

<sup>22</sup> Verbatim quote from *MO*, p. 14-15.

<sup>23</sup> According to Pate, he had already tried to reach out to Abu-Jamal in 1984, but it is crystal clear from the context that this attempt was unsuccessful. It is interesting to compare the actual wording of Pate’s statement, “I wrote a note to him about Priscilla and gave it *to another inmate* who was a “tier worker” to pass it on to him” (see Appendix, “Declaration of Kenneth Pate,” point 12, emphasis mine.) to Dembe’s rendition of it: “By Petitioner’s *own admission* [Affidavit of Kenneth Pate], *he has long known about this evidence*, perhaps as early as 1984” (*MO*, p. 17, *emphasis mine*). As a comparison between actual wordings makes clear, Dembe’s rendition is sheer fantasy.

This judicial bias against Abu-Jamal is not a new phenomenon. As I discuss at length elsewhere,<sup>24</sup> the judicial authorities have demonstrated their particular hostility against Abu-Jamal at almost every turn for more than 23 years. But for now, I will constrict myself to the decision at hand.<sup>25</sup>

Let's now look into the legal arguments with which Judge Dembe dismissed the new William/Pate evidence, evidence that, once again, shows how corrupt the proceedings against Abu-Jamal actually were.

As for Yvette Williams' testimony concerning main prosecution witness Cynthia White she says that

The "newly discovered evidence" regarding eyewitness Cynthia White, now deceased, is that Yvette Williams would testify that Ms. White, a long-time drug addict and prostitute, confessed to Ms. Williams that she, White, had been pressured by police to testify on behalf of the Commonwealth. This is mere *impeachment* evidence.<sup>26</sup>

So an admission before trial by the main prosecution witness that she was going to falsely accuse a defendant whose life was in the balance merely points to the lacking credibility of that witness and must be dismissed. This is indeed a nice commentary on the present state of criminal justice in the United States. Having thus covered the condition that "the evidence will not be used solely for the purpose of impeachment" Judge Dembe goes on to explain that

in addition to being inadmissible *hearsay*, [...] Petitioner's proffer is not of new facts, but of "newly discovered or newly willing sources" for a previously raised claim.<sup>27</sup>

The first clause of the argument just quoted constitutes another remarkable comment worthy of reflection. As has happened thousands, if not millions of times, but certainly also hundreds of times in capital cases, testimony by jailhouse snitches about "confessions" of their fellow inmates is a cherished and valued means of District Attorneys all across the U.S. to get convictions, quite irrespective of the fact that such testimony is most of the time severely tainted by self-interest. But if, as here in the case of Mumia Abu-Jamal, a person with nothing to win and much to lose by such testimony comes forward with testimony that destroys the credibility of a prosecution witness, it is cavalierly dismissed – as hearsay!

The second part of the quote clearly refers to two other witnesses, White's former fellow prostitutes Veronica Jones and Pamela Jenkins, who testified during former PCRA proceedings to the ways White was manipulated by the police. (This was during two evidentiary hearings in 1996 and 1997, respectively, granted within the framework of Abu-Jamal's first PCRA petition in addition to a first evidentiary hearing in 1995.)

The idea behind Dembe's reasoning is clearly<sup>28</sup> that if a new witness comes forward telling the same things that Jones and Jenkins testified to, namely that indeed White testified against

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<sup>24</sup> In a forthcoming afterword to my dissertation *Race Against Death. The Struggle for the Life and Freedom of Mumia Abu-Jamal* (for the latter, see <http://www.againstthecrimeofsilence.de/mumia/RaceAgainstDeath.pdf>). For a currently available short analysis of the topic by a very competent observer, see Linn Washington Jr., "8,000 Days and Counting – Justice Denied in Abu-Jamal Case," <http://www.refuseandresist.org/mumia/art.php?aid=1202>.

<sup>25</sup> For more on the judicial bias against Abu-Jamal, see Amnesty International, *The Case of Mumia Abu-Jamal*, particularly p. 42; Leonard Weinglass, "Afterword," in Mumia Abu-Jamal, *Live from Death Row*, New York, Avon Books 1996, p. 169-185.

<sup>26</sup> *MO*, p. 14, my emphasis.

<sup>27</sup> *MO*, p. 15, my emphasis. The quote is, slightly altered by Dembe, from the December 20, 2004, PSC decision referred to in footnote 20.

<sup>28</sup> Just two sentences before the quote given above, Dembe says: "Even if this court were to find that Ms. Williams did not contact Petitioner until December 18 or 19 of 2001, Ms. Williams' testimony fails the other three

Abu-Jamal because she was bribed, blackmailed and threatened by the police, this is all “merely corroborative or cumulative” evidence and therefore inadmissible. Once again this is an idea that is preposterous and appalling: Even if dozens, hundreds, or thousands of people, including the Pope or the President or whoever, testified to that very same thing, this would be inadmissible and “merely corroborative or cumulative evidence”!

In this, she appeals to the recent (December 20, 2004) Pennsylvania Supreme Court decision *Commonwealth v. Roderick Johnson*, according to which the “after-discovered evidence exception [...] focuses on newly discovered *facts*, not a newly discovered or newly willing source for previously known facts.”<sup>29</sup>

But this is a radical falsification of that decision. Whatever the validity of Roderick Johnson’s own claims may actually be, they were *not*, as implied by Dembe, rejected by the Pennsylvania SC because they were “corroborative or cumulative evidence,” but because the PSC claimed Roderick could have obtained it “before the conclusion of the trial by reasonable diligence”! The whole 8-page PSC decision on this case unmistakably shows this even to a judicial layman. To give it an interpretation according to which no additional testimony by whoever could ever destroy any particular prosecution claim once it was deemed credible by the courts is a moral and legal absurdity. It only serves to show how far quite a few judges are ready to go in order to stop a case against a defendant from unraveling and to block the defendants’ right to appeal.

And finally, Dembe speculates that even if allowed to be called into question by Williams’ affidavit, White’s testimony against Abu-Jamal at the latter’s trial was supplemented by the testimony (the character of which we have already seen) of others and thus “remains merely cumulative of other eyewitness testimony.”<sup>30</sup>

After this, she also gives short shrift to Kenneth Pate’s affidavit on the lies of his stepsister Priscilla Durham. According to her, it is also “inadmissible hearsay,” would only serve “to impeach,” and “would be of scant value to Petitioner” because P.O. Faulkner’s partner Gary Bell had also testified that Abu-Jamal had bragged about shooting “the motherfucker.” So she comes to the conclusion that

In summary, the instant petition proffers inadmissible hearsay, which, were it admissible, would at best be cumulative or impeachment evidence. The proffered evidence consists of newly willing sources for previously asserted facts.<sup>31</sup>

“Hearsay,” “merely corroborative or cumulative,” “solely ... impeachment” – apart from her distorted representation of the facts, these are the recurrent motives out of which Dembe constructs her conclusion that “the instant petition” is “not timely filed,” and that therefore, according to Pennsylvania’s PCRA her court has no jurisdiction to decide on Abu-Jamal’s PCRA petition and must dismiss it.

Such are the ways how Clinton’s 1996 AEPDA<sup>32</sup> and the ensuing massive sweep of repressive state legislation have served to put more prisoners behind bars and more of those behind bars on death row than ever before.

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prongs of this test.” (*MO*, p. 15) From there, there can be no doubt that the “newly discovered or newly willing source” quote is meant to refer to the “merely corroborative or cumulative evidence” restriction of the PCRA.

<sup>29</sup> *Commonwealth v. Johnson*, December 20, 2004, p. 6, emphasis in the original.

<sup>30</sup> *MO*, p. 16. Not that in this case, evidence is deemed fine, even if merely “cumulative.” Dembe’s footnote 15, added at this point, contains further falsehoods, e.g., not only the half-correct claim that “eyewitness Robert Chobert testified he saw Petitioner standing over Officer Faulkner and firing bullets into [sic, see above] him,” but also that “eyewitness Michael Scanlan testified that he saw the same thing.” Scanlan never identified Abu-Jamal as the shooter, a fact that makes the destruction of White’s credibility all the more important.

<sup>31</sup> *MO*, p. 17.

<sup>32</sup> Signed into law, ironically, on Abu-Jamal’s 42<sup>nd</sup> birthday on April 24, 1996.

The timeliness requirements introduced by this legislation of which the preceding section may have given a flavor have been instrumental of forcing more and more people to “do time,” or even worse, to have their time on earth ended violently, because the time allotted to them to bring mitigating evidence or evidence for their innocence has been determined by legal fiat to be over. A veritable legal “time machine” has been constructed by which an increasingly harsh judicial system bent on severe punishment and “finality” is able to exorcise the right of defendants to appeal their convictions on almost every front – always invoking “timeliness.” The system is increasingly designed to send them to the dungeons and the gallows as quickly as possible, and suppress any reasonable doubt along the way.

### **Undoing the Legal Catch**

I have already pointed to areas where Judge Dembe’s decision is highly questionable on strictly legal grounds, but actually, there is much more to the story.

In her the whole 20-page decision by Dembe systematically avoids the material core of the matter, namely the fact that both Williams’ and Pate’s affidavits are testimony to monstrous prosecutorial conduct. These two affidavits bolster the claim that the prosecution fabricated testimony they deemed necessary for a conviction – a claim that should be shocking but doesn’t seem to trouble the judge too much. In the case of White, the police would have done that by bribery, blackmail and death threats. In the case of Durham, they would have done it by means of peer pressure. After the fact, those responsible of course would have proceeded to conceal that crucial fact from the defendant.

And this of course would mean that the failure on the part of Abu-Jamal’s defense to raise the respective claim previously was “the result of interference by government officials.” As pointed out above, even the thoroughly restrictive AEPDA and its “daughter laws” in the various states allow for this exception.<sup>33</sup> The June 16, 2005, *Response to Dembe’s MO* filed by Abu-Jamal’s defense<sup>34</sup> therefore importantly points out that the latter’s 3<sup>rd</sup> PCRA petition thus serves *not* only to impeach witnesses who claimed that Abu-Jamal killed or confessed, and it is certainly *not* only “cumulative or corroborative” of evidence that these witnesses’ testimony was false and worthless – it purports to show *that the investigation of the Faulkner murder as a whole was so corrupt that no single part of it can be believed.*

In the short but succinct legal filing just mentioned which is recommended reading for anyone interested in the present state of Abu-Jamal’s case and of American criminal justice, Abu-Jamal’s lead attorney, Robert R. Bryan, argues these points forcefully and convincingly. Moreover, from there it goes on logically to point out that the new “evidence is of such a nature and character that a different outcome is likely.”

Indeed, is it really imaginable that Abu-Jamal’s jury would have convicted him had its members heard in court about the death threats against the main prosecution witness and the severe social pressure against a very important secondary witness?

The legal hurdles imposed by the post-AEPDA legislation and now referred to by Judge Dembe are therefore clearly high, but all the same, they do not apply to the Abu-Jamal case. The single argument of Dembe’s decision yet to be discussed is the so-called *hearsay rule*, barring second-hand testimony of persons testifying to the court things like “x told me that...” As everybody agrees, the hearsay rule is an important means to suppress the introduction of irrelevant gossip into trials where the property, freedom or even life of a defendant may be at stake.

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<sup>33</sup> See the paragraph above footnote 20.

<sup>34</sup> *Petitioner’s Response to Memorandum and Order*, June 16, 2005 (in the following *PRMO*). To be found on various websites and also under <http://www.againstthecrimeofsilence.de/mumia/legalarchive/20050616ResponsetoMO.pdf>.

But once again, Dembe neglects to even discuss that there is an important exception to that rule, a rule that squarely applies to Mumia Abu-Jamal. In his brief, R. Bryan cites the important judicial opinion *Chambers v. Mississippi*<sup>35</sup> to the effect that “among the most prevalent of these exceptions is the one applicable to declaration against interest – an exception founded on the assumption that a person is unlikely to fabricate a statement against his own interest at the time it is made.”<sup>36</sup>

In plain words: If I tell the court that my neighbor told me he saw someone commit a crime, this is hearsay. If my neighbor tells me – obviously against his own self-interest, since this is a self-incriminatory statement – that *he* committed a crime, i.e., confesses to it, it is *not* hearsay.

One may note the monumental irony here. In the guise of Judge Dembe, the American criminal justice system now holds that the fact that police officers and security guards belatedly reported an alleged confession by Abu-Jamal counts as iron proof of his guilt. But as soon as Abu-Jamal strikes back with witnesses *in his defense* who testify that *they* committed a crime that is potentially deadly in a capital trial, namely the crime of perjury, all of a sudden this confession of theirs isn't proof of anything any longer. It reduces to mere “hearsay.”

This twisted interpretation of the hearsay rule once more puts the anti-Abu-Jamal bias so far displayed by the American courts into stark relief. A manifestly concocted confession claim *detrimental* to the defendant is deemed indubitably credible while reports about confessions *favorable* to the accused are dismissed and not even allowed to be heard.

### **High Time to Resume the Race for Justice**

Cries that “Mumia must be saved” have been raised very often by now. And undoubtedly they have been instrumental in keeping Abu-Jamal alive – the present writer sincerely believes that Abu-Jamal would have been executed long ago had it not been for the international mass movement to save him.<sup>37</sup>

He is still in grave danger of being executed, either by the injection needle if the prosecution has its way, or slowly, by continuing to be buried alive if the December 2001 decision of Federal Judge William Yohn Jr. referred to at the beginning of this article is allowed to stand.

I started above by mentioning the broad mass movement to block Abu-Jamal's execution, to get him a new trial, and to eventually free him that existed six – and I should add here, even five or four – years ago. I also mentioned a fact that is clear even on superficial inspection: The once vigorous and enthusiastic movement to fight for justice in this case, based as it was on the insight that a model struggle for justice for one was a struggle for justice for all, this struggle has largely collapsed, and this at a time where it is entering its final phase.

In part this has been due to the furiously aggressive and reactionary policies of the Bush-Cheney administration. These policies have triggered activism and resistance as never before, but even a swelling number of activists can do only so much at any one time. Abu-Jamal himself has always been the first to stress the necessity to fight not just for justice for him but for justice in general. And the tasks in this struggle have now multiplied.

In addition, the decline in supportive activities for Abu-Jamal was also due to harsh disagreements among observers of the case and Abu-Jamal supporters over issues which, though

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<sup>35</sup> Which quotes important precedents in turn.

<sup>36</sup> *PRMO*, p. 5.

<sup>37</sup> One of many legal specialists who share this opinion is Speedy Rice of the Gonzaga University of Law with whom I was able to talk at a Heidelberg (Germany) colloquium on the death penalty shortly before the U.S. presidential elections in 2000.

significant, are now irrelevant, at least for the time being.<sup>38</sup> Much more important, however, than any disagreements on strategy or any particular interpretation of what happened on December 9, 1981, should be the plain facts that are there for everyone to see:

- Mumia Abu-Jamal has been in prison for 23 ½ years
- He has been on death row since May 1983, a date when many of the finest activists of our era were not even born
- There isn't a shred of credible and unimpeachable evidence that he committed the crime for which he was jailed and sentenced
- There is monumental evidence that he was consciously framed by the police, who manipulated and coerced witnesses and suppressed critical forensic and other evidence

Regardless of the disagreements among Abu-Jamal's supporters and observers from the outside, as the years went passing by these basic facts have continued to become ever more pertinent. But all the same, we still tolerate Abu-Jamal being incarcerated. All the same, many of us have retreated from and are no longer interested in a case we once found mobilizing and galvanizing.

There has been a positive change after, with the final rejection of Abu-Jamal's 2<sup>nd</sup> PCRA petition by the PSC, Robert R. Bryan took over the case as lead counsel in 2003. Consistent with the federal, i.e., primarily constitutional level the case has now reached, this veteran defense attorney now radically focuses on all-important core issues such as why Abu-Jamal was wrongfully convicted, and the racism, politics and police fraud that permeated the prosecution. It is to be hoped that this will achieve a reversal of the conviction of his client and then an acquittal.

The tide of public opinion, awareness, and activity has already begun, albeit slowly, to swing in this direction. But this is still very far from what would be appropriate, and from what's necessary to keep Abu-Jamal from being killed by the injection needle or buried alive in the State of Pennsylvania's Supermax prisons.

Be this as it may, the facts about this case that in the past had come to symbolize almost everything that was wrong with the death penalty and the criminal justice system in the U.S. – these facts won't go away. They point to a monstrous injustice being committed. In 1995, in preparation for Mumia Abu-Jamal's first post-conviction hearings, Abu-Jamal's then defense team put out the book *Race for Justice. Mumia Abu-Jamal's Fight Against the Death Penalty*,<sup>39</sup> a title that captured the issues involved beautifully.

As of now, almost a decade later, these are indeed still the issues.

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<sup>38</sup> Among these was the fact that in March 2001, Abu-Jamal fired his former lawyers Leonard Weinglass and Daniel Williams. His new defense team, active from May 2001 to October 2003, then started to center its defense strategy around the confession of a career criminal named Arnold Beverly that he, not Abu-Jamal, had shot Faulkner. This generated a fair amount of controversy. Many people did not and do not find this confession credible, coupled as it was with the claim that Beverly was hired by the mob and corrupt police officers the latter of whom would have conspired to kill one of their own.

This confession by witness Beverly was rejected without hearing by the courts, including Judge Pamela Dembe's in her rejection of Abu-Jamal's 2<sup>nd</sup> PCRA petition. Here, too, a confession, *and a confession to murder at that*, was suppressed and never put to test, the reason apparently being that it was favorable to defendant Abu-Jamal and would have exonerated him if true.

The current filings of Abu-Jamal's defense in the Federal and State Courts, and especially the filing that was just rejected and is the subject of the present essay, do not deal with these matters, and therefore I shall discuss them elsewhere.

<sup>39</sup> Leonard Weinglass, *Race for Justice. Mumia Abu-Jamal's Fight Against the Death Penalty*, Monroe (ME, Common Courage 1995). This book consists of Abu-Jamal's first PCRA petition (p. 139-247), other 1995 legal filings, and additional material on the case.

The struggle for impartial justice and the day when “the color of a man’s skin is of no more significance than the color of his eyes”<sup>40</sup> is still the issue.

The fight against the racist, class discriminating, and politically biased death penalty and criminal justice generally is still the issue



Mumia Abu-Jamal is still the issue. Those interested in bringing the badly derailed criminal justice system of the United States<sup>41</sup> back under control and, yes, maybe eventually dissolve it should fight tooth and nail to prevent Abu-Jamal’s execution, to get him a new trial, and to set this man for whose guilt no proof exists and whose innocence is all but certain free.

*Michael Schiffmann, August 16, 2005*

Questions or contributions? Contact the author under [mikschiff@t-online.de](mailto:mikschiff@t-online.de).

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<sup>40</sup> These lines are taken from Bob Marley’s song “War/No more trouble.” Abu-Jamal interviewed Marley for the radio when the latter visited Philadelphia in 1979; see [http://www.iration.com/wailers/mumia\\_bob.html](http://www.iration.com/wailers/mumia_bob.html).

<sup>41</sup> On the broken criminal justice system in the U.S., see Angela Davis, *Are Prisons Obsolete?*, New York, Seven Stories Press 2003; Christian Parenti, *Lockdown America. Police and Prisons in a Time of Crisis*, London, Verso 1999, and most recently, with a particular focus on political prisoners, Ward Churchill und Jim Vander Wall, *Cages of Steel. The Politics of Imprisonment in the United States*, Oakland, California, AK Press 2005.

## Appendix

### I. Declaration of Yvette Williams

I, Yvette Williams, declare:

1. If called as a witness in this case I would truthfully and accurately testify to the following from my own personal knowledge.
2. I was in jail with Cynthia White in December of 1981 after Police Officer Daniel Faulkner was shot and killed. Cynthia White told me the police were making her lie and say she saw Mr. Jamal shoot Officer Faulkner when she really did not see who did it. She said she knew Mumia from seeing him drive a cab.
3. I was in jail with Cynthia White and knew she was a prostitute in center city Philadelphia around 13th Street. She used a lot of different names besides "Cynthia White" one of them was "Lucky" which is what I called her. She liked to wear a lot of different wigs. The word on the street was that she was a snitch for the police. Cynthia and I met due to being in jail for not wanting to testify in homicides.
4. In December of 1981, Lucky (Cynthia White) was locked up in "PC" (protective custody) in the "hole" for women, "G" Rear. I was in jail because the cops thought that I knew something about a homicide – I didn't – but they wanted to get information out of me.
5. Our cells were directly across from each other. Sometimes the inmates would use me as a "runner" passing contraband between inmates in the hole and inmates in population, and I would stop and talk with Lucky when I went to her cell. I had been involved in violent crime and was interested in what prostitution was all about so I was asking Lucky about it, considering it as an occupation. She was nervous and frightened and glad to have someone to talk to. She was always crying and sad. She told me she was scared for her life. I asked her, "Scared of who?" she stated, "The guards and vice."
6. When Lucky told me she didn't even see who shot Officer Faulkner, I asked her why she was "lying on that man" (Mumia Abu-Jamal). She told me it was because for the police and vice threatened her life. Additionally, the police were giving her money for tricks. "The way she talked, we were talking "G's" (\$1,000.00). She also said she was terrified of what the police would do to her if she didn't say that Mumia shot Officer Faulkner. According to Lucky, the police told her they would consolidate all her cases and send her "up" (Muncy), a women's prison, for a long time if she didn't testify to what they told her to say. Lucky told me she had a lot of open cases and out-of-state warrants and was scared of going to Muncy. She was scared that her pimp "would get pissed off" at all the money he was losing when she was locked up, and off the street. She was afraid that when she got out he would beat her up or kill her.
7. Lucky was worried the police would kill her if she didn't say what they wanted. She was scared of what the MOVE people would do to her after she testified against Mumia, but MOVE never threatened Lucky while incarcerated. She was scared when she told me all of this plus she was crying and shaking. Whenever she talked about testifying against Mumia Abu-Jamal, and how the police were making her lie, she was nervous and very excited and I could tell how scared she was from the way she was talking and crying.
8. Lucky told me that what really happened that night was that she was "on the stroll" (looking for and serving customers) in the area of 13th and Locust when Officer Faulkner got shot, but she definitely did not see who did it. She also told me that she had a drug habit and was high on drugs when it happened. She tried to run away after the shooting, but the cops grabbed her and wouldn't let her go. They took her in the car first and told her that she saw Mumia shoot Officer Faulkner.
9. While Lucky and I were locked up in the "hole", the detectives would come to the jail a lot and get her out to talk to her. When she came back she always had things they wouldn't let us

have in there, like cigarettes and candy and even hoagies, syringes and white powders. They would let her out for two (2) hours recreation time during times the women's jail was on lock down for count.

10. I feel like I've almost had a nervous breakdown over keeping quiet about this all these years. I didn't say anything because I was afraid. I was afraid of the police. They're dangerous. They can hurt you and get away with it. I know, I've been trouble with the law and they know me. I'm still afraid of what they could do, but when Mr. Jamal's case was on TV and in "The Daily News," in the middle of December of last year, I couldn't get it out of my mind, I kept thinking that man could die because of all the lies that Lucky told on that witness stand and Mrs. Faulkner would never know the truth.

11. I read in the papers that Mr. Jamal's lawyer was in California, but I didn't have long distance service. When I saw that Mr. Jamal had a lawyer in Philadelphia named J. Michael Farrell, I looked him up in the phone book yellow pages and called his office on December 18 or 19, 2001. I talked to one of Mr. Farrell's assistants and told him I had information about how Cynthia white lied at Mumia's trial. He took my number and told me someone would call me back.

12. Two or three days later, I got a call from Mr. Mike Newman, who told me he was a private investigator for Mumia Abu-Jamal's attorneys. I gave him the same basic information that is in this declaration. He called me back a couple of times with more questions, asking for more details.

13. Before calling attorney Farrell's office on December 18 or 19, 2001, I never had any contact of any kind with any of Mumia Abu-Jamal's attorneys, past or present. Before talking to Mr. Newman, as explained above, I never had any contact with any of the investigators, assistants or other agents of Mumia Abu-Jamal's attorneys. I do not know Mr. Mumia Abu-Jamal. I never met him, spoke to him, or had any contact with him.

14. I have carefully read this declaration before signing it to be sure that it is truthful and accurate. This declaration is made subject to the penalties provided for in Pa. Cons. Stats. Sec. C.S.A. 4904 for unsworn false statements to the authorities.

I declare under penalty of perjury under the law of the United states of America that the foregoing declaration is true and correct and was executed by me on 01-28-02, 2002, at Philadelphia, Pennsylvania.

YVETTE WILLIAMS

(signed)

## **II. Declaration of Kenneth Pate**

I, Kenneth Pate, declare

1. I am related to Priscilla Durham, now known as Priscilla Ahmed, through marriage: My father, Perry Abner, married Priscilla's mother, Dolores Durham, about 20-25 years ago.

2. Sometime around the end of 1983 or the beginning of 1984 I had a telephone conversation with Priscilla Durham in which the subject of Mumia Abu-Jamal came up.

3. I asked Priscilla how she was and she asked me how I was. I was kind of teasing her about her job as a security guard at the hospital, saying "why would a woman need to carry a big old gun like that?"

4. Priscilla began to complain about the way she was treated on the job, about her back hurting, and them "treating her like that" after all she did for them they laid her off.

5. Then Priscilla started talking about Mumia Abu-Jamal. She said that when the police brought him in that night she was working at the hospital. Mumia was all bloody and the police were interfering with his treatment, saying "let him die."

6. Priscilla said that the police told her that she was part of the “brotherhood” of police since she was a security guard and that she had to stick with them and say that she heard Mumia say that he killed the police officer, when they brought Mumia in on a stretcher.
7. I asked Priscilla: “Did you hear him say that?” Priscilla said: “All I heard him say was: ‘Get off me, get off me, they’re trying to kill me.’”
8. Priscilla also said there was a lot of chaos and confusion going on when the police brought Mumia in and when they were talking to her.
9. I am presently imprisoned at SCI Greene where I have been for about 3 years. At the time of my telephone conversation with Priscilla Durham, described above, I was imprisoned at SCI Graterford.
10. Back in 1982-1984 Priscilla and I had many telephone conversations when I was at SCI Graterford. I would call her house to talk to her or her daughter Sharon. Since then Priscilla and I have written each other many times.
11. Sometime in 1984, after I was transferred to SCI Huntington, I read a newspaper article about the Mumia Abu-Jamal case. It said Priscilla Durham had testified at Mumia's trial that when she was working as a security guard at the hospital she heard Mumia say that he had killed the police officer. When I read this I realized it was a different story from what she had told me.
12. Mumia was also imprisoned at SCI Huntington at that time. I wrote a note to him about Priscilla and gave it to another inmate who was a “tier worker” to pass it on to him.
13. Sometime between December of last year (2002) and February of this year (2003) I was out in the prison yard at the same time Mumia was. I remember that the weather was still cold. We were a couple of cages away from each other. I mentioned to him about the telephone conversation I had with Priscilla back in 1983 or 1984 and that she said she did NOT hear Mumia say anything about killing the police officer. I told him that I thought she was still scared about telling the truth about what happened but maybe she would.
14. My nickname or street name is “Kenny Stax.” That is how I am known by Mumia and other inmates.
15. I am willing to take a lie detector test to prove I am telling the truth about my conversation with Priscilla Durham.

This declaration is made subject to the penalties provided for in 18 Pa. Cons. Stats. Sec. 4904 for unsworn false statements to authorities. I declare under penalty of perjury under the laws of the United States of America that this declaration is true and correct and was signed by me on April 18, 2003, at Waynesburg, PA.

KENNETH PATE

(signed)