

THIRD DAY
IN THE COURT OF COMMON PLEAS
IN AND FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH : JANUARY SESSIONS, 1982
 :
 v. :
 :
 MUMIA ABU-JAMAL, a/k/a :
 WESLEY COOK : NOS. 1357-59

Thursday, June 3, 1982

253 City Hall, Philadelphia, Pennsylvania

BEFORE: ALBERT F. SABO, J.

APPEARANCES:

JOSEPH J. MC GILL, ESQ.,
Assistant District Attorney,
For the Commonwealth;

MUMIA ABU-JAMAL,
In Propria Persona;

ANTHONY E. JACKSON, ESQ.,
For the Defendant.

MR. MC GILL: Your Honor, pursuant to what I had mentioned yesterday, the two Officers that Mr. Jamal had requested are in court prepared to testify.

I have some word from Mr. Jackson--I am not sure that it is also from Mr. Jamal--in relation to another witness who I understand--and, perhaps I should let them say it, Your Honor, but--who I understand is not available today, but who may be available tomorrow, a doctor.

I state for the record, Your Honor, that I have no objection whatsoever, that the defense be permitted to have the delay so that the doctor can come in, or whatever other witness they wish for tomorrow, Your Honor.

I think that that's an appropriate request, and I understand that both parties are--have been interviewed, or at least Mr. Jackson has had contact with them, so they would be available one of the two days, unless Mr. Jamal has some other information that I do not.

MR. JAMAL: Mr. Jackson personally has not been in touch with those witnesses. A member of his office, a paralegal, has spoken to those witnesses.

They are not available today. To the best of my information, they will be available tomorrow.

THE COURT: Is that just the doctor, Dr. Cudemo? Is that what you are talking about?

MR. JAMAL: Yes, and an additional doctor by the name of Anthony Corletta.

THE COURT: Anthony?

MR. JAMAL: Corletta.

THE COURT: How do you spell that?

MR. JAMAL: C-o-r-l-e-t-t-a.

To the best of my knowledge, they should be available tomorrow.

THE COURT: All right. Well, can we proceed with the two Officers?

MR. MC GILL: They are here if Mr. Jamal wishes to call them. I also have no objection, as I said, if those two doctors come in.

In terms of, also, practically speaking, Your Honor, may we--may we see you at sidebar as to this, as to the scheduling of the trial?

(There was an unreported sidebar discussion among Mr. McGill, Mr. Jamal, Mr. Jackson, and the Court.)

MR. JAMAL: The defense calls Officer John McGurk, No. 3185.

POLICEMAN JOHN MC GURK, Badge #3185, 6th

Police District, sworn.

DIRECT EXAMINATION

BY MR. JAMAL:

Q Mr. McGurk, how long have you been a member of the Police Force?

A Twelve and a half years.

Q Did you respond to the scene of a police shooting in the 2100 block of Locust on December the 9th, 1981?

A Yes, sir.

Q When you responded, did you see me at the scene?

A Yes, sir.

Q Where was I at?

A You were lying on the ground.

Q Lying on the ground?

A Yes, sir.

Q Are you sure?

A Yes, sir.

Q What position, to the best of your memory, was I in?

A To the best of my knowledge, it was sort of in between lying and sitting.

Q In between lying and sitting?

A Yes.

Q In what direction was I facing?

A That I don't recall.

Q You don't recall that?

A No.

Q Do you recall anything about my condition when you first saw me?

A Say that again.

Q Do you recall anything about my condition when you first saw me?

A No.

Q Did you see any blood on my face?

A No.

Q Any blood on my chest?

A (There was no response.)

Q Any blood anywhere on my flesh, on my body?

A I saw some blood.

Q Where?

A I am not particularly sure. You were laying in a pool of blood.

Q I was laying in a pool of blood?

A Yes.

Q So, you saw the blood beneath me, but none on me? Is that what you are saying?

A That's correct.

Q Did you see any weapons near my body?

A No.

Q Did you see any policemen kick me?

named here.

THE COURT: All they have to do is report to the two that are designated, and they can come in at any time.

MR. JAMAL: Why are you setting up my organization?

THE COURT: I am not setting up your organization. I am telling you that this Court feels this is adequate and proper.

Now, if Mr. Jackson wants to make additional arrangements with the Superintendent--

MR. JAMAL: Why are you talking about Mr. Jackson? Mr. Jackson isn't on trial here.

THE COURT: I know.

MR. JAMAL: I am talking to you, Judge.

MR. MC GILL: Judge, first of all, I would like to say that I would encourage any measure that--

THE COURT: Well, then, why don't I suggest you get in touch--let your office get in touch with Superintendent Owens; work out whatever you want to work out.

MR. MC GILL: I would encourage any measure that we could in order to see that access is permitted for Mr. Jamal.

I would make this suggestion, Your Honor. I would agree with this Court that having access through two people, an individual through two people, may well be adequate, as long as those two people are--have the same desires consistent with Mr. Jamal's.

If he would like to have two to replace those two, that's fine. I have no objection. If you are just talking about the administration of the prison system--

THE COURT: That's right.

MR. MC GILL: --I would suggest that, and I would certainly agree with that. There is no problem.

Secondly, Your Honor, I would suggest that the fact that you set up an Order for Mr. Jackson as backup Counsel to function in some way to supervise, anyone at all that wishes to see Mr. Jamal in aiding his defense can through the runners that have been deemed appropriate by this Court.

And, I think that that would be in accordance with both objectives, both the administration of the prison system, as well as an opportunity for him to get his best defense.

Now, of course, Your Honor does know that an investigator has been appointed during the course of

the five- or six-month period where Mr. Jackson as appointed Counsel was representing the defendant. An investigator has been given certain money and has performed certain duties and interviews and such.

THE COURT: I understand that.

MR. MC GILL: Mr. Robert Greer, I think. There has also been money allocated for other individuals for other services, so there has been the normal amount of money. As a matter of fact, a little bit more than the normal amount of money has been given to Mr. Jackson's people in the preparation of the defense up to this point where he took over.

My suggestion, Your Honor, is this--and, I just repeat it briefly--that Mr. Jackson, very easily, through telephone and through his own contacts and through his own ability can serve as a supervisor of any contacts to the two existing runners for Mr. Jamal, and I see no reason why that would hamper anything, Judge.

THE COURT: I am not quarreling with you.

MR. JAMAL: Judge, for the Commonwealth to make a suggestion about my defense, the Commonwealth is trying to execute me, and you are trying to help.

I'd like for Theresa Africa to speak about

legal runners so you can understand what I am trying to say to you.

THE COURT: I know what you are trying to say.

MR. JAMAL: No, you don't. No, you don't, because you are speaking to something that is not even on that motion. I didn't ask about a defense committee.

THE COURT: I am just telling you--

MR. JAMAL: You are trying to say to me--

THE COURT: I am just telling you what the Superintendent Owens had told me on the phone yesterday.

MR. JAMAL: And, I'm telling you--

THE COURT: Of all he is doing for you.

MR. JAMAL: I am telling you that if people are on a list, if their name is on a letter, and they cannot get access to me, then that nullifies the list. It means nothing. He can show you every letter in the world.

THE COURT: If you want to bring in evidence to prove that, bring in Superintendent Owens.

MR. JAMAL: Speak to that, will you, Tony?

MR. JACKSON: Judge, again, briefly, I remind

you that yesterday I addressed this very issue with respect to a number of people. There has been a problem since almost immediately since Mr. Jamal's incarceration at the Detention Center.

THE COURT: Which one are you talking about now?

MR. JACKSON: Your Honor, there are several lists. There is the Association of Black Journalists. There are legal runners. There is the Legal Defense Committee.

He doesn't want to talk about the Journalistic Group. He doesn't want to talk about the fund raising group. He is talking about runners. OK?

THE COURT: These runners that you and Superintendent Owens set up--Robbins and Ford--have they been denied access?

MR. JAMAL: Yes.

MR. JACKSON: Those I don't know, and I accept Mr. Jamal's word.

THE COURT: Superintendent Owens tells me "No." If you want to call him, take a recess. You can call him during the lunch hour, and if you want to bring the Superintendent down, ask him to come down.

I'm willing to do whatever I can, but what I

am trying to tell you: I don't run the prison, and I can't stay at the gate and see who is going to be admitted.

MR. JAMAL: Judge, no one is asking you to run the prison.

THE COURT: All right. We will recess for lunch until two o'clock, and in the meantime, you get in touch with Superintendent Owens, and maybe he can come down here, and we can work this out here.

MR. JAMAL: Judge Sabo, can you address me?

THE COURT: I am addressing you.

MR. JAMAL: Are you talking through Mr. Jackson?

THE COURT: I am talking to you. When I talk to him, I talk to him.

Mr. Jackson, during the lunch hour, get in touch with Superintendent Owens. See if he can come down here this afternoon, and maybe we can sit down and work something out for you.

MR. JACKSON: Thank you.

MR. JAMAL: Judge--

THE COURT: We will take a recess until two o'clock.

MR. JAMAL: Judge, Judge, you don't want to

hear what I have to say?

(A luncheon recess was taken until 2:00 p.m. this date.)

(After recess):

THE COURT: The Court had over the luncheon recess spoken to Superintendent Owens, and I asked him if he would come here to court this afternoon in regards to this problem we have with runners.

I call Superintendent Owens.

COURT'S EVIDENCE

DAVID S. OWENS, JR., Superintendent, Philadelphia Prisons, sworn.

BY THE COURT:

Q Superintendent Owens, did I call you yesterday afternoon?

A Yes, Your Honor, you did.

Q And, did I discuss with you the question as to Mr. Jamal's having runners on his behalf?

A Yes, sir.

Q And, you told me exactly what arrangements you had made with Mr. Jackson?

A That is correct, Your Honor.

Q For the record, would you tell us exactly what those arrangements were?

A Yes. There had been an ongoing dialogue with Mr. Jackson with regard to the visitations in the institution for Mr. Jamal.

After some discussion and some communications, we had arrived as to the following visiting at the institution: (1) the Mumia Jamal Defense Committee will be permitted to visit on Saturday morning; out of the list of individuals added, no more than four visitors would be permitted to visit at any time; (2) the Association of Black Journalists would be permitted to visit on Thursday morning; out of a list of names provided to me by Mr. Jackson, no more than four individuals would be permitted to visit at any time; (3) the Prisoners' Rights Council; out of being consistent with our normal procedure with the Prisoners' Rights Council, they would be extended visits, but they would have to conform to the agreed-upon process; (4) legal runners; Mr. Jackson provided me with two names of individuals whom he indicated would be of value entering the institution to work on Mr. Jamal's case, and those individuals were--the request was approved.

That's the extent of the list, Your Honor.

THE COURT: Do you have any questions?

MR. MC GILL: Who would you like to start, Your Honor?

THE COURT: Either one.

MR. MC GILL: Let me start, if I may, Your Honor.

THE COURT: Go ahead.

MR. MC GILL: Thank you.

BY MR. MC GILL:

Q You said you had some communication with Mr. Jackson, Mr. Jackson being backup Counsel for Mr. Jamal? Is that correct?

A That is correct.

Q What was the nature of that communication? Was it documented or verbal?

A It was in letter form.

Q Do you have that letter there?

A Yes.

Q May I take a look at it?

A (Indicating.)

MR. MC GILL: Your Honor, I would ask for purposes of this hearing this could be Xeroxed, and I ask that it be marked C-1. We can do this afterwards. It doesn't have to stop the hearing, but I would like Mr. Jamal at least to have an opportunity to look at

this before I question the Superintendent on this.

Don't mark that up, because it is the original copy. May I approach the witness, Your Honor?

THE COURT: You may.

MR. MC GILL: All right.

BY MR. MC GILL:

Q Superintendent, how long have you been associated with the prison system?

A Eighteen years.

Q Have those eighteen years been served in Philadelphia?

A That is correct.

Q And, how long have you been Superintendent of these facilities?

A Approximately two years.

Q And, what were your positions before then?

A Warden, Deputy Warden, Director of the Pre-release Program, Captain, Lieutenant, Sergeant, Correctional Officer.

Q Superintendent, would it be fair to say, then, that you are very familiar with the procedures, the administration, of the prison facilities that exist in Philadelphia?

A I believe it would be, yes.

Q And, approximately, over that period of time, how many prisoners, prisoners' files, or prisoners' procedures in

relation to this sort of manner--that is, procedures for allowing privileges in reference to committees, runners, et cetera--have you been involved with over this period of time?

A Numerous. I could not count them.

MR. JAMAL: I didn't hear your answer.

THE WITNESS: Numerous. I could not count them.

MR. JAMAL: Numerous? You could not count them?

THE WITNESS: Yes.

BY MR. MC GILL:

Q Would it be fair to say over thousands?

A Prisoners?

Q Yes.

A Yes.

Q Looking at these particular groups that are indicated in this letter, you referred to runners. Could you indicate, first of all, for the record, what a runner is?

A My definition of a runner is an individual who is a paralegal who is able to take the information to a prisoner and carry it back to the Community to effect and do those things that the prisoner, by nature of being incarcerated, could not do.

Q And, has that system and that privilege been in operation for a while?

A It has only come into use over the last several years.

Q Of the total amount of privileges, including these that have been allowed Mr. Jamal, in your experience how would that rate in relation numerically to other prisoners in your experience?

A I'm not aware of any in our system now or that has been in our system in the past that would have that amount of groups of individuals coming in to visit him.

Q Now, you've indicated under No. 2 here, "Association of Black Journalists." You extend visiting privileges to this group on Thursday morning.

Does that mean every Thursday morning that four members of that group have the privilege of being with Mr. Jamal and discussing his case?

A They have the privilege, yes.

Q Now, the Defense Committee--does that also mean that on Saturday morning, four people from the Jamal Defense Committee, the Mumia Abu-Jamal Defense Committee, have the privilege of being with and discussing matters with Mr. Jamal?

A That is correct.

Q Is there any time limit to the amount of conversation

they may have?

A Not a specific time limit. It is within reason.

Q Also, you mentioned Prisoners' Rights Council. Would you explain a little bit about that and what that privilege constitutes?

A The Prisoners' Rights Council is a group of individuals who have over the years come into the institution to work in various ways with the inmate population.

We have, over the years, extended this group the courtesy of coming in, meeting with a specific resident for a period of time.

Q And, this in no way has been limited in reference to Mr. Jamal?

A Not to my knowledge.

Q Now, in reference to the Legal Administrators or Runners as is mentioned, do these two individuals who are approved by the institution also have an opportunity to be with Mr. Jamal for some time to discuss matters?

A That is correct.

Q Is there any time limit on that?

A Again, within reason. There is no specific time, I believe.

Q What is the reason that only two runners are permitted in the institution?

A As you are aware, the official visiting area is extremely small. We have approximately 3000--1300 prisoners at that facility. During the day, private Counsel come up. The Public Defenders' Office come up. Any number of officials come in.

We have to use the space to serve our population. It is, therefore, necessary to restrict numbers.

Q If, for example--well, then, it is really impossible to give a number of runners at one time the opportunity to be with a particular defendant on the basis primarily because in starting a precedent you may have a number of prisoners that would ask for the same thing, and there would be inadequate facilities?

A Exactly. We could--if every prisoner in Holmesburg Prison would ask to have four official visitors in the area at any given time, we simply could not accommodate them.

Q Is it fair to say that Mr. Jamal has had no less privileges, and, in fact, more privileges, than, really, any other inmate in your experience?

A I believe so.

Q Would a Public Defender, as you mentioned, or an attorney--would that count as a runner?

A No.

Q So, a legal representative plus two runners could see

the inmate? Is that correct?

A An attorney or a member of the Bar is what I assume you are talking about?

Q Yes, an attorney; an attorney is what I mean.

A Yes, sure.

Q A member of the Bar could?

A Yes, that is correct.

Q All right. Would you have any objection or can you see any objection if Mr. Jamal's backup Counsel, Mr. Jackson, supervised either by telephone or through word through various--through the two runners the appointments, the volume, the information that Mr. Jamal would receive?

A As long as those requests are consistent with what we have already agreed upon, but here, too, I would have no problems with it.

Q For example, legal periodicals, cases, information about witnesses, or whatever it would be, if Mr. Jackson had supervised that and found out the information either himself or through the two runners that would be designated, that they would then communicate it to Mr. Jamal, you do not see any problem there?

A No, no.

MR. MC GILL: Thank you, sir.

BY MR. JAMAL:

Q Mr. Owens, how many prisoners are incarcerated at Holmesburg?

A Approximately 1300.

Q How many total in the whole system that you supervise?

A 3315 today.

Q How many of those prisoners are their own Counsel and represent themselves in trials?

A I do not know specifically.

Q Approximately.

A If you would like a guess, seven.

Q In your whole system?

A Six or seven; that is correct.

Q You mentioned legal administrators and legal runners, right? Are these legal administrators or legal runners Court appointed?

A Mr. Jamal, I am not aware now of anyone in our system that have Court appointed legal runners.

Q So that they are legal runners by agreement with you? Is that correct?

A That is correct.

Q And, so, should you choose to cancel that agreement, that relationship is severed? Is that correct?

A I have that discretion; that is correct.

Q So, of approximately 3315 prisoners, only seven of

them are representing themselves in the whole system?

A Six or seven.

Q Six or seven?

A (The witness nods his head in the affirmative.)

Q Would you have any objection to Court appointed legal runners?

A As long as it is consistent with the rules of the institution, no, I would have no objection.

Q Have you had Court appointed legal runners or legal administrators in the past?

A That is correct.

Q According to the best of your recollection and knowledge, do you recall Tommie St. Hill or Harold Jamison from the Association of Black Journalists?

A Yes, I do.

Q Have they ever called you in connection with visiting me?

A That is correct; they have.

Q For any reason has that permission been denied?

A It was denied for Mr. St. Hill on occasion, yes.

Q Could you tell the Court the reason?

A Because, Mr. St. Hill's name did not appear on the list of individuals that have been approved to enter the institution.

Q Is his name on this list?

MR. MC GILL: May I see it, Judge?

Thank you.

BY MR. JAMAL:

Q Is Tommie St. Hill's name on that list, Superintendent Owens?

A Yes, it is.

Q Harold Jamison, as well?

A That is correct.

Q You recall Harold Jamison also not being allowed a visit?

A You may be right. I don't recall Mr. Jamison not being allowed. As I recall the incident, Mr. Jamison was with Mr. St. Hill, and Mr. St. Hill was not admitted. Both of them may have been denied admission, but as I recollect the incident, it was Mr. St. Hill who was not admitted.

Q In fact I do know and your records will reflect that both Harold Jamison and Tommie St. Hill did not gain entrance.

A Perhaps you are correct.

MR. MC GILL: I would object.

BY MR. JAMAL:

Q Would you agree with that statement? Would you agree with the statement I just made to you?

A To the best of my recollection, Mr. St. Hill was the person who was denied entrance, not Mr. Jamison.

Q Do you have the name Gerald Ford, Legal Administrator?

A That is correct.

Q Has he ever visited me according to your records?

A I don't know. I did not review my records.

Q So, you don't know?

A I don't know.

Q Moe Africa?

A I do not know.

Q Have you ever said to me that you are sensitive to my right and need to defend myself?

A That is correct. I have said that.

Q So, as Superintendent of the prison, you would have no objection to Court appointed Legal Administrators to have access to me?

A No.

Q Have you had any abuse of the official visiting privileges?

A On your part?

Q Yes.

A You mean individuals coming in to visit with you?

Q Yes.

A My memory is fuzzy, Mr. Jamal, but by and large, no.

Q Of the six names that I am about to--

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q Of the seven people or the six people that you recall in your whole system who are representing themselves, are they known as MOVE people?

A Not all of them. I believe we have one or two individuals in our system who are not known as MOVE people.

Q But, the majority of the people that you remember are MOVE people? Is that correct?

A That is correct.

Q Would you have any objection to Ramona or Theresa Africa having access to me at the prison and functioning as investigators?

A Ramona--I would have objection to anyone who have violated the Rules and Regulations of the Institution, or who has recently been discharged from the Institution within sixty days entering the Institution for any purpose.

Q Ramona or Theresa Africa?

A I would have objection to Miss Ramona Africa entering the House of Correction. I wouldn't have any objection to her entering the Holmesburg Prison.

Q Or, Theresa Africa?

A How long has Theresa Africa been out of the House of Correction?

Q I have no idea. I have been incarcerated myself for the past six months, as you well know.

A If it has been less than the ninety-day period, I would have objections, yes.

Q Didn't you just say sixty days?

A I did say sixty days. I was in error. It is ninety days.

Q Those others, the Defense Committee, the Association of Black Journalists, and the Prisoners' Rights Council-- you are familiar with these organizations, right?

A Yes, sir.

Q You have dealt with them?

A Yes, sir.

Q And, they have dealt with you in terms of visiting you on an official basis? Is that correct?

A That's correct.

Q Are they directly involved in my defense, to the best of your knowledge?

A Mr. Africa, I don't know how directly related they are.

MR. MC GILL: Mr. Jamal. Mr. Jamal. You mentioned another name.

THE WITNESS: Oh, I am sorry, Mr. Jamal. I would not know how directly they are involved. I believe that they are involved, yes.

BY MR. JAMAL:

Q But, you don't know, do you?

A No, I do not.

Q So, that's an assumption on your part, isn't it?

A That's correct.

Q Do you know Theresa Africa?

A I believe so.

Q Do you know her by face, or do you know her by name?

A I know her by name.

Q Do you know whether she has been inside the House of Correction in the past two weeks visiting other MOVE members after being discharged, on a legal visit?

A I am not aware of that.

Q You are not aware of that?

A No.

Q Wouldn't you have to OK official visits?

A No, I would not.

Q It could be done without your being aware of it, right?

A It could be done without my being aware of it; that is correct.

Q Is your responsibility as Superintendent of the Prisons to insure secure environment for the prisoners?

A Yes, that is one of my responsibilities.

Q So, again, you would have no objection to someone that I identify in this court at this time to help me with my self defense in my case?

MR. MC GILL: I would object, Your Honor, because I don't know whether Superintendent Owens is able to make a judgment without--

THE WITNESS: It would depend.

THE COURT: He just started to answer.

BY MR. JAMAL:

Q Can you answer that?

A It would depend on me being fully aware of what you are talking about and who the individuals are.

Q What do you mean what I am talking about?

A How many would come in, when they would come in, who they are, you know, that sort of thing.

Q If it were agreed that of the list of six people that all of those six have access to me, but two at a time, would you have any objection to that?

A I would add one more proviso, and that is that a stipulation of when they--when would they have access to you and for how long.

Q Do you understand I am on trial for my life?

A I appreciate that.

Q Do you understand that?

A Well, I couldn't--I couldn't understand--

MR. MC GILL: Objection, Your Honor.

THE WITNESS: I couldn't appreciate it if I did not understand it.

MR. JAMAL: OK.

MR. MC GILL: Your Honor, there is an objection noted. Would you instruct the witness not to answer.

THE COURT: Well, he answered it.

MR. MC GILL: Yes, sir.

BY MR. JAMAL:

Q Do you appreciate--do you appreciate the truth?

Do you know me?

A Yes.

Q Do you know me?

A Yes.

Q Have you known me before this case?

A Yes.

Q In what connection have you known me?

MR. MC GILL: Objection, Your Honor; beyond the scope of this witness.

MR. JAMAL: It is not beyond the scope of this witness.

MR. MC GILL: Your Honor, I am addressing you, not Mr. Jamal.

MR. JAMAL: Judge, this is the Superintendent of Prisons. I have dealt with him on an official basis. He knows me, and that's the point I am trying to make.

MR. MC GILL: I objection, Your Honor, to anything beyond the scope of the Motion.

MR. JAMAL: It is not beyond the scope of the Motion.

MR. MC GILL: If I can finish, Mr. Jamal. We are concerned about whether or not the status of legal runners will in any way be changed, limited, or otherwise in reference to Mr. Jamal. That is the reason for this Motion.

Now, I object to any kind of communication beyond that particular area.

THE COURT: The objection is sustained. Stick with what we are here for.

BY MR. JAMAL:

Q Could you repeat that proviso you just gave?

A Who they are, when they would come in, and for how

long would they be there.

Q What do you mean when they would come?

A Are we talking about every day? Vs. one day, two days? are we talking about one hour or two hours v. five, six, seven hours?

Are we talking about individuals whom I feel present some threat to the security of the institution v. some individuals whom I feel present no threat to the institution?

Q Does Theresa Africa represent a threat to your institution?

A Miss Africa has recently been discharged from the institution. Our policy is that no individual who has been recently discharged from the institution should enter the institution within a certain time period, so there is a policy problem there.

Q Would Jeannette Africa be considered a threat to the institution?

A I believe Miss Africa is presently incarcerated. Am I correct?

Q That's correct.

A How could she serve as a runner while she is incarcerated?

Q Couldn't she meet with me while she is incarcerated?

A You mean bring her from one institution to another institution?

Q Yes.

A Yes, I would have objections to that.

Q Has that not been done?

A It has been done.

Q But, you wouldn't want to do it in my case? Is that correct?

A We did it under Court Order the last time it was done, and we raised objection as I am raising objections to it now.

Q On the basis of what, Mr. Owens?

A It presents a security problem for us to bring a group of prisoners from one institution--

Q I did not say a group. I said one.

A Oh, pardon me. An individual from one institution to another institution, we would have to marshal resources. We will have to provide security association. It would present some security problems for us.

Q Aren't inmates transferred from one institution to the other every day?

A For transfers, as transfers?

Q Yes.

A Yes.

Q So, it would create a problem for you to transfer an inmate for one day for a meeting?

A Yes, it would.

Q Would Ramona Africa cause a security problem in your institution? Is she a threat to your institutional security?

A As long as Miss Africa conformed to the Rules and Regulations of the Institution, she presents no threat.

Q So, you would have no objection to her visiting?

A Holmesburg Prison?

Q Holmesburg. I am talking about Holmesburg. As an official legal runner.

A As long as Miss Africa conformed to the Rules and Regulations of the Institution, I would have no objection to it.

Q Would Moe Africa present a problem?

A I am not familiar with Mr. Africa.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q Mr. Owens, I asked you a minute ago about Theresa Africa entering the House of Correction about two weeks ago.

A Yes, sir.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q Didn't you personally speak to Theresa Africa on the day she went in twice?

A Could you tell me a little bit more about the telephone call to refresh my memory?

Q Oh, about--do you know / / Africa and Consuela Africa?
Rhonda

A Yes.

Q OK. Do you know Theresa Africa was involved with a case with those two MOVE sisters?

A (There was no response.)

Q OK. Do you know that also involved the Deputy Warden Currione at the House of Correction?

A I am familiar with the Deputy Warden, yes. I am familiar with it.

Q Theresa Africa was working with the case of Consuela and Rhonda Africa and assisted in their defense, didn't she, in an institutional hearing? Is that correct?

A I still don't recall the telephone call, the telephone conversation.

Q You don't recall her speaking to you twice on the day she entered the institution?

A It's possible. Entered the institution as a prisoner

or as a visitor?

Q No. As an official visitor to function in the defense of Consuela and Rhonda and herself?

A I don't recall the telephone conversation.

Q You don't recall talking to her at all, or the contents of the conversation?

A I don't recall talking to her at all.

Q You don't recall talking to her at all?

A Talking to her at all.

Q You said that there was a policy about not letting someone in who had been released in the last ninety days or so.

A That is correct.

Q Is that a policy that comes from your office?

A No. It comes from the Board of Trustees of the Philadelphia Prisons.

Q Would you have any objection to that policy being waived?

A Yes, I would. I would only waive it in special circumstances, and I would have to know what they are, and, you know, be satisfied that it was a--I would have to know the circumstances to even recommend that it be waived.

Q Would you consider a capital case such a circumstance, the defense in a capital case?

A I would have to--it would have to be some circumstances in that capital case--I would have to be made aware of it. There would be no other way of addressing that particular problem before I would waive something like that.

Q You would have to know the circumstances in the capital case, you say?

A I would have to be aware of the circumstances in that particular case and be satisfied that there was no other way of accomplishing the desired results without waiving the policy.

Q You do know the circumstances of the capital case that I am being tried for, don't you?

A Not all of them, no.

Q But, you have read about it, haven't you?

A I have read about it, yes.

Q So, you know generally, don't you?

A I know what I read in the paper.

Q OK. So, knowing those circumstances that you have read about, the seriousness of this trial, the fact that I am fighting for my life, you would not waive a policy about a ninety-day with an inmate that you do know personally?

A I would have to be made aware of why this particular individual--why cannot someone else other than this individual fulfill that function.

Q Because--what if that individual is the only individual available to meet with me?

A Well, we are giving hypotheticals here. It is very difficult for me to give you a concrete decision given these hypotheticals:

You say if there is no one else available to meet with you but that particular individual, would I waive the decision?

Q Yes.

A I would entertain it. I'm not certain that I would waive it. I would entertain it, though.

Q Well, could you explain that now and give me some idea about what your reaction would be to that?

A I would not want to entertain it now. I would not want to make a decision like that under circumstances like this. I would have to think about it.

Q Again, on the issue of legal runners, would you have any objection to two legal runners being able to assist me in my defense and my investigation if they were pre-identified to you?

A I believe we are doing that now. Am I correct? I believe we are doing that now, so I would have no objection to that.

MR. JAMAL: No further questions.

THE WITNESS: Thank you.

BY MR. MC GILL:

Q Superintendent, what reasons would you use your discretion to cancel individuals' names on approved lists?

A If the individual presented a threat to the security and the group order of the institution. If the individual had acted out while visiting at the institution.

Q Would you have to check your files records and review the matter closely before you could come to a decision in approving anyone on a list?

A That is correct.

Q So, would it be fair to say that it is difficult because of incomplete information and substantially unfair for you at this point to make any kind of a commitment allowing any individual in? Would that be correct?

A I would not choose to do so. That is correct.

Q There was a list that you were shown with a list of names on it. Do you still have that?

A Yes, I do.

Q That would be a list of names on the Defense Committee, six names, Association of Black Journalists, six names, Prisoners' Rights Council, five names, and Legal Administrators, two. Is that what that number is?

A That is correct.

Q If Mr. Tommie St. Hill had been--as far as your knowledge is concerned--on an approved list, would he have been permitted to see Mr. Jamal?

A As far as I am concerned, yes.

Q I am assuming the condition is if he had been on an approved list.

A As far as I am concerned, anyone on the approved list should be permitted to visit him, yes.

Q All right. And, would you, both for Mr. Jamal and the Court and the Commonwealth, see to it that anybody on an approved list to see Mr. Jamal is, in fact, given that privilege?

A I would do all within my power to execute that order, yes.

MR. MC GILL: Thank you.

BY MR. JAMAL:

Q Mr. Owens, you said, for instance, Tommie St. Hill. At the time that he came to the prison, was he on the approved list?

A He was on the approved list in my office. He was not on the approved list at the institution.

Q You mean he was on the approved list at your office?

A That is correct.

Q At the Detention Center?

A That's correct.

Q But, not on the approved list at Holmesburg Prison?

A Not at Holmesburg Prison.

Q Which means that even though he was on the approved list with you, he couldn't get in to see me, correct?

A Not without being on the approved list at Holmesburg.

Q Am I correct in what I just said?

A You are correct in what you just said.

Q Was Reggie Shell on an approved list of the Prisoners' Rights Council? Do you have that list?

A I have the list.

Q Do you have that list?

A His name shows on the list, yes.

Q Are you aware of him not being allowed even though his name is on the approved list?

A No, I am not. That is handled--the Prisoners' Rights situation is handled quite differently from the other situations.

Q I understand.

A That is a communication from the Warden of that specific institution, Mr. Lawson.

Q Can the Warden at that institution intercede your decision, overrule your decision?

A He cannot overrule me. He can change one of my

Orders, yes.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

BY MR. JAMAL:

Q Now, did you say you knew about Reggie Shell not being able to get in?

A No. I say I cannot recall this incident. I cannot recall a problem with Mr. Shell.

Q Did I bring that to your attention?

A It's possible. I don't recall it.

Q Of the seven people that you said are predominantly MOVE people, do they have legal runners?

A Usually they do, and the reason I say "usually" that they do is because I am not aware of the specifics in these individuals' cases, but usually, yes, they do.

Q How long has this been going on to the best of your knowledge; that is, how long the past few years has legal runners been used with MOVE people?

A (There was no response.)

Q Who have been representing themselves.

A Over the past several years.

Q Approximately five years, six years, seven years, ten years?

A I would say approximately three or four years.

MR. JAMAL: Judge, I'd like to take a brief five-minute recess.

THE COURT: Well, are we able to excuse Superintendent Owens? Do you have any more questions?

MR. JAMAL: Pardon?

THE COURT: Do you have any more questions of Inspector Owens?

MR. JAMAL: No, I do not.

THE COURT: Do you?

MR. MC GILL: I just have one.

BY MR. MC GILL:

Q Is Reggie Shell on the approved list?

A He shows on this list.

Q He shows on this list only?

A No. The Prisoners' Rights list we do not handle in the normal process that we do everyone else, and the reason for it is that we have an understanding with the Prisoners' Rights that they work through the Warden of the institution and not the Superintendent's Office.

Do you follow me?

MR. MC GILL: I understand. Thank you.

THE COURT: All right, Superintendent Owens. I want to extend my sincere thanks for your taking time from your busy schedule to come here at my

request to enlighten us on the operation of the Philadelphia Prisons.

Thank you very much.

THE WITNESS: You are welcome, Your Honor.

THE COURT: We will take a five-minute recess.

(A five-minute recess was taken.)

(After recess):

THE COURT: Do you have anything else?

MR. MC GILL: I understand the two witnesses will be available tomorrow as Mr. Jamal has indicated.

I have no objection to a recess.

THE COURT: Mr. Jackson, I just wanted to check as to the time tomorrow. What time are those doctors going to be here?

MR. JACKSON: Ten o'clock.

THE COURT: Ten o'clock?

MR. JACKSON: Yes.

THE COURT: OK.

MR. MC GILL: Fine.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

MR. JAMAL: Mr. Jackson would like to address the Court.

THE COURT: Surely.

MR. JACKSON: Your Honor, I would just like to, if I could, briefly summarize Mr. Jamal's Motion, and, in fact, the critical nature and the critical need that he has of the legal runners to make sure the Court is fully aware what it is Mr. Jamal is requesting.

He has suggested six names, and we appreciate what the Superintendent Owens has said, and we are saying that at no time would he request more than two people at a time to see him.

The problem is that he suspects that the runners will be doing a number of tasks in the development of his defense. There may be occasions where two of the people who are on the list would not be available, let's say, tomorrow, and he would simply want the opportunity to substitute one or two people.

If Superintendent Owens would want, perhaps, some notice to the effect that two of the people who had been in last week will not be there this week, then we would give him that kind of notice.

And, I think, somehow, it has been misunderstood what is being asked. We are not asking, "Well, these six people can come up any time they want."

Mr. Jamal is not being unreasonable. He is simply saying he is on trial for his life. He is defending himself, which makes it a fairly unique situation.

He is trying to accomplish that task within the confines and the policies of the rulings. I think the policy of the Prison Board as Mr. Owens says can be modified by him.

I don't think that he is asking anything unreasonable. He is simply saying provide him an opportunity to use the runners that he has faith in, that he has comfort in, and who can pursue the task that he assigns.

I don't think that anyone--and, Superintendent Owens has also indicated that--certainly the visitors that Mr. Jamal has had, no one has violated any of the prison rules and regulations, and there certainly isn't any intent to do that in the future, and I think that that request is reasonable.

Superintendent Owens has also said that notwithstanding the fact that there is a Prison Board policy that no one is permitted in the prison to visit if they have been released within the last ninety days unless there is a Court Order to that effect, there has been some indication at least one of the individ-

unless Mr. Jamal has requested has been recently released.

Apparently Superintendent Owens does not have any problems with that individual visiting, but the only problem is because the person has been released within ninety days.

Mr. Jamal is asking Your Honor to issue an Order that would, in fact, permit that person to come in, and, again, once that person is on the list with the other members, Mr. Owens and Mr. Jamal could work out when, in fact, those individuals come in.

I don't think that it creates any problems to the Commonwealth. I don't think it creates any problems for this Court. To deny that would certainly deny and limit substantially Mr. Jamal's opportunity and ability to effectively represent himself.

It's not a situation where Mr. Jamal is relying in a traditional way upon me to represent him and to have access to the investigators.

Mr. McGill, Counsel for the Commonwealth, has indicated to this Court earlier that Mr. Jamal has made several requests for expert resources, investigators, photographers, and things of that sort.

Well, there have been a number of requests, but, in fact, the actual Orders have not been forth-

coming.

There have been an investigator--there has 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 were allowed. The Court has not seen fit to increase that amount, and requested that I submit an itemized Bill.

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 is without any investigator, Your Honor.

The persons that he is requesting are willing to serve Mr. Jamal without fee, and I think under those circumstances, I think it would be in the interests of justice to have those persons serve in Mr. Jamal's defense.

Thank you very much.

THE COURT: Do you have anything to say?

MR. MC GILL: I want to make sure that I have all the facts correct, also. There was some money allotted for a ballistician.

MR. JACKSON: Yes, \$350 for the ballistician.

THE COURT: Yes. I am not here to decide

that. We have one question here. He has a Motion. Let's stick to that Motion.

MR. MC GILL: Yes, sir; yes, sir.

THE COURT: We don't want to try the whole thing again.

MR. MC GILL: I apologize, Your Honor.

Your Honor, the Commonwealth's position is that as long as individuals are approved by the Superintendent and as long as those individuals, no matter who they are, follow the regulations set down by the prison officials, we have no objection that the representatives be permitted to be placed on the list and to see Mr. Jamal as runners, but it would have to be, of course, consistent with the policies as set down by the prison.

I will point out as Superintendent Owens pointed out, at the present time Mr. Jamal is receiving more privileges than any other inmate. I see no reason why this additional privilege should be allowed in this case--should not be allowed.

I am saying that I have no objection to it being allowed.

THE COURT: Well, all I have to say, gentlemen, I've listened to Superintendent Owens outline

exactly what the prison does and what their functions are and what they have been allowed to do.

You see, I do not believe that the Courts have any right to usurp the authorities of the prison. As long as the prison is seeing that your Constitutional rights are protected in every way, there is no reason why I should interject myself there.

I am not going to be concerned with the day-to-day operation of the prison. I would suggest that you go back to Superintendent Owens and tell him exactly what you want. Maybe you can bargain with him.

Maybe you can reduce some of the people that come to see him in some other committees, and maybe he will be willing to allow more runners. That is up to him. He runs the prison.

I don't think you should come to me expecting me to issue an Order directing what he has to do. As far as I am concerned, he is doing something. He is allowing these runners to be there, and, perhaps, you can bargain with him further. That's up to you to do.

MR. JAMAL: Judge--

THE COURT: But, the Motion for me to order

these people on there as runners is denied.

I think you should go back to Superintendent Owens and work out whatever arrangements you can with him. He seems to me to be a very reasonable man.

MR. JAMAL: Judge--

THE COURT: And, he is doing all within his power to help Mr. Jamal. You know, you have to realize that this is one of your problems, I told you, when you are your own Counsel. You run into these problems when you tend to be your own Counsel, and your standby Counsel--he has a right to visit you at the prison.

He could be there as a runner, whatever you want to call him. I don't care what you call him, but he can visit there and let you know what the investigation has done so far.

MR. JAMAL: Judge--

THE COURT: And, I think that I am not going to order the Superintendent to do anything. He has indicated to me that he is doing these things, and if you want him to do more, I suggest you go back to him and you talk to him, and maybe you can compromise, somehow.

MR. JAMAL: Judge, that is precisely the

reason why we raised this issue to you.

THE COURT: Yes. But, I am only here if your Constitutional rights are being denied somehow. They are not. The Superintendent is not denying them.

It is not for me to say that he can't allow you two. He has to allow you three or four. He has got to allow somebody that the regulations says is not permissible to be there.

He is a reasonable man. You heard him on the stand.

MR. JAMAL: And, you heard him, Judge. You heard him say he had no objection to two people coming at a time.

THE COURT: Well, then, make your arrangements with him. You don't need an Order from me. You don't need an Order from me.

MR. MC GILL: That's exactly what he said.

THE COURT: That's right.

MR. MC GILL: He said what you want--what Mr. Jamal wants, he can get by going through the system, as I understand Mr. Owens.

THE COURT: Sure. He doesn't need an Order from me. The man will do all he can for you. All you have to do is to go to him and tell him what your

problem is.

MR. JAMAL: Judge, the issue--the reason why this was raised, obviously, is access, and the point that is being made is that the Legal Runners who were named on this sheet have not had the access that they need.

You've talked about the Defense Committee and the Association of Black Journalists, the Prisoners' Rights Council. They are not working in my defense on this case, Judge.

THE COURT: Then why don't you go to the Superintendent Owens and tell him, "Look! These people are not working on my defense. I would like to eliminate them, and in their place I would like to have so many more runners."

Sure he will do it for you. Go to him and ask him.

MR. JAMAL: Why are you suggesting that I eliminate anyone?

THE COURT: Well, hey! I don't run the prisons, nor am I going to run the prisons and the day-to-day operations of the prisons.

If your Constitutional rights are being deprived, that is a different story. Then and only

then will the Courts get involved.

But, as long as they are not being deprived, I am not going to go in there and run the prisons for them. They are doing a perfectly good job. It's not my--I have enough trouble running this courtroom, let alone run the prisons, and I am not going to tell him what to do, unless somehow your Constitutional rights are being deprived, and they are not being deprived.

MR. MC GILL: As I understand it, Your Honor--

THE COURT: I would suggest you go back to Superintendent Owens. You tell him what your problem is, and I am sure you could work out something with him.

MR. JAMAL: Judge, I am not finished. I would like one of the legal runners that was named to be allowed to sit at the defense table with me, for advice and counsel.

THE COURT: I don't know. I have to take that under advisement at this time.

MR. JAMAL: Well, let me give you some case law so you can take that under advisement.

THE COURT: I know what you are talking about, but I will just have to take it under consideration.

MR. JAMAL: You know what I am talking about? But, can I express myself in this court, Judge?

THE COURT: Go ahead.

MR. JAMAL: Thank you. In the case Garland v. Commonwealth, C. P., 3105, 1601, Book 426, on September the 1st, 1981, there were legal runners sitting at the defense table.

THE COURT: You mean in another courtroom?

MR. JAMAL: Yes.

THE COURT: Well, I can't help what that Judge did.

MR. JAMAL: I am not asking you to help me in another courtroom, Judge.

THE COURT: I am saying I don't care what any other Judge did in his courtroom. I know what you are asking. I will take it under advisement. OK?

MR. JAMAL: Judge, you say you don't care what any other Judge does?

THE COURT: No, just as any other Judge doesn't care what ruling I make in how I conduct my courtroom. That is my responsibility.

MR. JAMAL: But, the point I am making to you: Whether you care about any other courtroom or not, I care about my defense.

THE COURT: Fine. And, I care about the operation of this courtroom. That is my responsibility. I said I would take it under advisement.

MR. JAMAL: Well, some other cases were Theresa Africa v. the Commonwealth, 8112, 1152-58. That was in Room 116 in front of Judge Jackson on March 15th, 1982.

Gerald Africa v. the Commonwealth on March 23th, 1976. The case is C. P. 7502, 1501.

THE COURT: You see, those are not precedents to me.

MR. JAMAL: Judge, they may not be precedents to you--

THE COURT: Well, the only precedents to me is if the Appellate Court in a case said that you have an absolute right to that, that is a precedent.

What some other Judge does in another courtroom is not precedent for me. That you have to understand.

MR. JAMAL: Judge--

THE COURT: I suggest--

MR. MC GILL: You said you would take it under advisement, didn't you?

THE COURT: I did.

MR. MC GILL: You didn't say, "No." You said you would take it under advisement.

MR. JAMAL: I heard what he said, Mr. McGill.

MR. MC GILL: Let's go on to another point.

MR. JAMAL: Let me finish talking.

MR. MC GILL: The same point?

MR. JAMAL: Can I finish speaking?

MR. MC GILL: Judge, another thing I might add that appears to be very obvious that if Mr. Jamal wants other individuals present in the courtroom as possible advisors to him, that's fine, much like what has been going on, in which there is nothing wrong with it at all.

As a matter of fact, it's complying with the Court's Order when Mr. Jackson several times is going back and speaking to individuals who are supporters of Mr. Jamal, and in going back and then conferring with Mr. Jamal. Absolutely proper. There is no reason why he can't fill that portion of his courtroom with supporters that can advise him through his attorney. No reason at all.

And, I would also mention for the record not only the times that Mr. Jackson has spoken up for Mr. Jamal, but throughout the last two days--in fact,

from the very beginning--and, again, in compliance with the Court's Order, there has been constant communication between Mr. Jackson and Mr. Jamal during the course of each and every part of these proceedings.

I just wanted to make that of record. Thank you.

MR. JAMAL: Let me make it of record, as well, Judge, that Mr. Jackson continues to function under protest.

THE COURT: I know that. But, you have been-- I have watched you. You have been conferring with him, and that's exactly what I want you to do.

Don't misunderstand. I am not trying to say you should not do that. I am happy to see that you have been conferring with him. I think you should.

Is there any other business that we have to take up before tomorrow morning?

MR. MC GILL: Your Honor, perhaps you would want to know the name of the individual so that you can answer Mr. Jamal's request.

Unknowledgeably, the one you are taking under advisement as to whether or not an advisor could sit at Counsel table with him, it is difficult to take under advisement unless you are made aware of who

it is.

THE COURT: Who did you have in mind?

MR. JAMAL: Theresa Africa, Judge.

THE COURT: Who did you have in mind?

MR. JAMAL: Ramona Africa. I am sorry.

(There was an off-record discussion between Mr. Jamal and Mr. Jackson.)

MR. JAMAL: Judge, just an additional point for you. Mr. McGill was very correct when he said-- and, as the Court has seen in the past--Mr. Jackson has been giving information to me.

You have seen that and I have seen that and everyone in this courtroom has seen that.

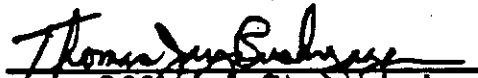
But, the reason why there has been the question that Theresa or Ramona be allowed to assist me at the defense table is to preclude that, so we wouldn't have to be running around the court picking up notes, and the very reason why it is necessary is to save time so they can be of advice and counsel to me as I would wish in planning my defense, not in doing what you would like, Judge, perhaps, but in planning my defense for my life.

THE COURT: All right. I will take it under advisement.

MR. MC GILL: Thank you, Your Honor.

THE COURT: The court is adjourned until
10:00 a.m. tomorrow morning.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.


Official Stenographer

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

Judge