

# DECLARATION OF RACHEL H. WOLKENSTEIN

## IN SUPPORT OF MUMIA ABU-JAMAL'S PETITION FOR POST-CONVICTION RELIEF AND FOR WRIT OF HABEAS CORPUS

August 7, 2001

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
COMMONWEALTH OF PENNSYLVANIA,

Respondent,  
Criminal Division  
Nos. 1357-1358  
(January Sessions, 1982)

-vs-

MUMIA ABU-JAMAL  
Defendant.

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**DECLARATION OF RACHEL H.  
WOLKENSTEIN  
IN SUPPORT OF MUMIA ABU-JAMAL'S  
PETITION FOR POST-CONVICTION  
RELIEF AND FOR WRIT OF HABEAS  
CORPUS**

RACHEL H. WOLKENSTEIN, declares the following under penalty of perjury:

1. I am a lawyer licensed to practice in the State of New York. I am also admitted to practice in the United States Supreme Court, and various United States District Courts. From 1995 through June 1999 I was a member of the legal team headed by Leonard Weinglass which presented the initial Petition for Post-Conviction Relief of Mumia Abu-Jamal ("Jamal") and pursued its appeal in the Pennsylvania state courts.

2. In July 1999, I resigned from Mr. Jamal's defense team because lead counsel Leonard Weinglass precluded Mr. Jamal from presenting evidence of Mr. Jamal's innocence. The exculpatory evidence that Attorney Weinglass refused to present included the June 8, 1999sworn confession of witness Arnold Beverly that he, Beverly, had shot and killed police officer Daniel Faulkner, and that "Jamal had nothing to do with the shooting." Beverly confessed that he and another man were hired to kill Officer Faulkner, that organized crime figures and police officers

were involved in the plan to shoot Faulkner, and that police officers were present at the shooting. Co-counsel Daniel Williams agreed with and was complicit in the suppression of this evidence.

3. Beverly's confession not only established Jamal's innocence but also laid bare the extent and consciousness of police and prosecutorial misconduct in prosecuting and convicting Mumia Abu-Jamal and sentencing him to death for a crime he did not commit. Beverly's account of the shooting did not stand alone but was supported by a wealth of information in the record. Among other things, one detail of Beverly's account—that he was wearing a green army jacket when he shot Faulkner—was consistent with the reports of several witnesses that a black male wearing a green army jacket was involved in the shooting. Neither Jamal nor his brother William Cook wore such a jacket. Beverly's account of being hired to kill Officer Faulkner was consistent with the fact that there were at least three ongoing FBI investigations of police corruption in the Center City area where Faulkner worked at the time of his murder, and that at least one other informant in those investigations was murdered. Beverly's account of the shooting was also more consistent with the available physical evidence than the prosecution scenario of the shooting (which was physically impossible). Moreover, the claim that police hired Beverly (along with police political bias against Jamal) helped to explain the gross police and prosecutorial misconduct permeating the case. Additionally, Beverly was subjected to a polygraph test and the polygrapher's conclusions supported the truthfulness of Beverly's account that he and not Jamal shot the officer. Yet despite the mass of material supporting Beverly's account (which is discussed in more detail in the body of this affidavit) Attorney Weinglass and his co-counsel Daniel Williams were adamant in refusing to present Beverly's testimony.

4. In addition to his refusal to present the sworn confession of Arnold Beverly, Attorney Weinglass resisted and obstructed efforts to investigate, develop and present testimony of two other

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eyewitnesses, William Singletary and Mr. Jamal's brother William Cook, both of whom stated that Jamal did not shoot P.O. Faulkner. According to Singletary, a black male passenger wearing a green army coat got out of William Cook's Volkswagen, shot Faulkner, and fled the scene. Singletary also testified that police officers appeared on the scene immediately after the shooting. In a sworn statement dated May 15, 1999 William Cook confirmed that there was a passenger in his Volkswagen that night, identified this passenger as his business partner Kenneth Freeman, and stated that Freeman said he had participated in the shooting of Faulkner and that there was a plan to kill the officer. Attorney Weinglass undermined the presentation of Singletary's testimony and refused to present the sworn statement of Cook.

5. With regard to William Cook, Attorney Weinglass not only failed to present his exculpatory testimony, but perpetrated a fraud upon the federal district court by affirmatively misrepresenting in the federal habeas petition that Cook "disappeared" and thus was not available to testify in the habeas proceedings. The truth is that Weinglass had actual knowledge of Cook's whereabouts and that Cook wanted to fully testify about the events of December 9, 1981. In May 1999 Attorney Weinglass was at a meeting with William Cook which concluded with Cook signing a sworn statement exonerating Mr. Jamal and stating that he had knowledge that there was a plan to kill Officer Faulkner.

6. Attorney Weinglass also failed to present the testimony of Mumia Abu-Jamal during the PCRA proceedings or in the federal habeas corpus proceedings begun in October 1999. Mr. Jamal did not witness the shooting of Officer Faulkner and was himself shot and critically wounded as he approached the scene. Mr. Jamal's account of what he did witness and experience as set forth in his affidavit filed in this action on May 4, 2001 is consistent with key elements of the evidence provided by Arnold Beverly, William Singletary and William Cook. Mr. Jamal followed lead attorney Weinglass' advice against testifying in the Pennsylvania state court proceedings. Attorney Weinglass agreed that Mr. Jamal would testify in the federal habeas proceeding but did not present his testimony.

7. The obstruction of the presentation of the exculpatory testimony of Beverly, Singletary and Cook as well as Jamal's own account was part and parcel of Attorneys Weinglass and Williams' refusal to present a defense that Mr. Jamal is an innocent man who is the victim of monumental police and prosecutorial misconduct including the fabrication of evidence. Attorneys Weinglass and Williams' suppression of evidence of their client's innocence constituted disloyalty to and an effective abandonment of their client. Their disloyalty reached its culmination when Daniel Williams, with Attorney Weinglass' assistance, published a false, self-serving and unauthorized "inside account" of the Jamal case, *Executing Justice*, which amounted to a pre-emptive strike against the evidence of Mr. Jamal's innocence. Attorney Weinglass did not prevent the publication of the book nor fire Daniel Williams for publishing it, but has publicly and falsely stated that "[I] don't think that it's done any legal damage to the case." On the contrary, the Philadelphia District Attorney has quoted extensively from Williams' book in order to defeat Jamal's efforts to present this evidence of his innocence. As a result of their gross act of disloyalty. Mr. Jamal fired Attorneys Weinglass and Williams and his new legal team is presenting the critical evidence of Jamal's innocence which Weinglass and Williams had suppressed.

### Background

8. I began working for Mr. Jamal in 1987 as an attorney on matters primarily relating to his prison conditions. Throughout my years as an attorney for Mr. Jamal I worked on a pro bono basis and have never accepted legal fees for my work. In 1989, Mr. Jamal was represented in his criminal case by his state-appointed appellate counsel, Marilyn Gelb. After Mr. Jamal's direct appeal to the Pennsylvania Supreme Court was denied in March 1989, I assisted Mr. Jamal in finding new counsel to represent him in post-conviction proceedings. During the period before Mr. Jamal had counsel representing him in preparing a post-conviction petition, I came upon information and evidence relevant to Mr. Jamal's defense, most significantly the background information provided by Arnold Beverly and the exculpatory witness statement of William Singletary. I took efforts to

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preserve any evidence that came into my possession. However, my primary task was to assist in finding experienced counsel for Mr. Jamal who would bring this evidence forward.

9. Mumia Abu-Jamal always maintained his innocence of the shooting death of police officer Daniel Faulkner. Mr. Jamal confirmed his innocence to me in unequivocal and categorical terms. He made it very clear that his goal was to overturn his conviction in order to obtain his freedom, and not only to overturn the death sentence.

10. Death penalty experts I consulted, including Henry Schwartzchild of the ACLU Capital Punishment Project, Prof Bruce Ledewitz of Duquesne Law School and attorneys at the NAACP Legal Defense Fund, made the point that successful capital defense strategies emphasized one of two basic claims—the client’s innocence of the charged capital offense in the context of a constitutionally infirm trial, or mitigating factors that would overturn the death sentence.

11. Thus based on these consultations with death penalty experts and my own limited criminal law experience, I approached the task of finding a new lead lawyer for Mr. Jamal with the understanding that this lawyer would need to undertake the defense of an innocent man on death row beginning with a thorough investigation of the case. Given the political context of Mr. Jamal’s case—the fact of his early Black Panther Party membership and later support to the MOVE organization which permeated his case and led directly to his death sentence—a successful challenge to Mr. Jamal’s conviction required a thorough investigation of the case to establish that Mr. Jamal had not shot Officer Faulkner, that his prosecution was saturated with gross police and prosecutorial misconduct, while also exposing the many other due process violations which permeated the trial and sentencing.

12. I assisted Mr. Jamal in meeting attorneys who would potentially assist his defense, including new lead counsel. Ultimately in mid-1991, Mr. Jamal retained Leonard Weinglass as lead counsel. Attorney Weinglass had a reputation as a successful criminal trial lawyer who had capital case experience. Previously, I had brought Mr. Jamal’s case to the attention of Steven

Hawkins, then on the staff of the NAACP Legal Defense and Education Fund, and he initially provided assistance on Mr. Jamal’s petitions for rehearing to the United States Supreme Court.

I also enlisted Jonathan Piper, a litigator at the Chicago office of Sonnenschein Nath & Rosenthal to work pro bono on the case, reviewing the trial record, drafting legal papers and providing legal and factual research assistance. Attorney Weinglass brought Daniel Williams onto the team. As lead counsel, Attorney Weinglass was the ultimate arbiter and final decision-maker on all questions concerning Mr. Jamal’s legal case.

13. I did not join Mr. Jamal’s legal defense team as an active participant until 1995 prior to the filing of Mr. Jamal’s post-conviction petition, although before that I attended a number of defense team meetings and provided specific assistance to Attorney Weinglass when requested.

### Attorney Weinglass’ Failure to Pursue Arnold Beverly’s Exculpatory Information and Present Beverly’s Confession

14. Although Arnold Beverly first confessed to me in March 1999, I had met this witness years earlier and he had provided background information about the shooting of police officer Faulkner. In 1989 Beverly told me that the killing of P.O. Faulkner was a planned “hit” by other police officers and that Mumia Abu-Jamal did not shoot the officer. Beverly was adamant that he would not identify the person who did shoot the officer, and he was also adamant that he would never testify and would deny knowing anything if called as a witness. As explained in more detail below, Attorney Weinglass refused to pursue Beverly as a possible witness and resisted my efforts to develop the background information Beverly had supplied. It was only in 1999 that Beverly ultimately confessed to me that he had shot P.O. Faulkner, agreed that he would provide testimony, and signed a written confession. However, Attorney Weinglass refused to proceed with this evidence of Jamal’s innocence.

15. I first contacted Beverly in mid-1989 after I heard that he had information relevant to Mr. Jamal’s defense. I located and interviewed Mr.

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Beverly at Pennsylvania State Correctional Institute in Hunlock Creek where he was a prisoner. In that interview Arnold Beverly told me that he had been present at the scene of the shooting of P.O. Faulkner and that Mumia Abu-Jamal had not shot Officer Faulkner. Beverly further stated that there was a plan by Philadelphia police officers to kill Daniel Faulkner and that Officer Faulkner was interfering with the police corruption involving drugs, prostitution, etc. in the Center City. Among other bits of information, Beverly said that a black officer, “Boston” (which I thought was the police officer’s nickname), was involved in the arrangements, that some police officers were on the scene to ensure that the “hit” went off as planned. He also told me that Cynthia White, the main prosecution witness against Mr. Jamal, “turned tricks” for police. At that time Beverly denied that he had in fact shot Officer Faulkner, and he refused to identify the shooter. Arnold Beverly was emphatic that he would never identify the shooter and made it equally clear that he would not testify about anything he knew about the shooting of P.O. Faulkner even if under subpoena.

16. Shortly after Attorney Weinglass was retained, I advised him of what Arnold Beverly had told me. Attorney Weinglass bluntly told me he was not interested in pursuing this information—that it was too hot to handle—and did not want to discuss it further. Attorney Weinglass continued to refuse to discuss, let alone investigate, Beverly’s account through the 1995 post-conviction hearing, even though Jonathan Piper’s background investigation confirmed that the Federal Bureau of Investigation had been investigating widespread and high-reaching police involvement in drug and vice rackets, including prostitution, in Philadelphia’s Center City at the time of P.O. Faulkner’s shooting. This information not only supported Arnold Beverly’s account but also shed light on how police could easily coerce the prostitute Cynthia White, the main prosecution witness, to falsely identify Mr. Jamal as the shooter of P.O. Faulkner.

17. The only reference to the information provided by Beverly which Attorney Weinglass would agree to make in the 1995 post-conviction filing was to include the simple fact of this police corruption into footnotes to the Memorandum of

Law. Additionally, Attorney Weinglass acquiesced to including a demand for information as to whether police officer Faulkner was an informant or target of a criminal investigation in Mr. Jamal’s Motion for Discovery. As explained below, Beverly’s account was supported in this regard by eyewitness William Singletary, who testified that police officers including “white shirts” (i.e., police supervisors) were at the scene immediately after the shooting. However, Attorney Weinglass was opposed to calling Singletary, attempted to prevent him from testifying and when he did take the stand, Attorney Weinglass undermined his testimony, including as a Brady witness, by asserting that Singletary’s recollections of what happened were inaccurate.

18. Additionally, Attorney Weinglass was adamant that Inspector Alfonzo Giordano—already known as having been convicted on federal corruption charges in 1986—not be called as a witness at the PCRA proceedings. Giordano was the ranking officer at the scene after the shooting, the central prosecution witness against Mr. Jamal at his preliminary hearing and bail hearing claiming that Jamal had confessed at the scene while lying in the back of a police wagon (a confession no other officer heard). It was Giordano who also put forward the claim that Jamal’s gun, the putative murder weapon, was on the street and it was Giordano who arranged the supposed “identification” of Jamal at the scene by cab driver Robert Chobert. We also knew that Giordano had worked closely with Frank Rizzo when he was Philadelphia police chief, and was involved in the police political surveillance and attacks on leftists and the Black Panther Party.

19. At the close of the post-conviction hearing in September 1995, Attorney Weinglass requested I submit a statement to the PCRA court setting forth the investigation leads we were pursuing, including the testimony of William Cook and the need to test the ballistics evidence at an independent laboratory. It became clear that Attorney Weinglass was simply posturing. For instance, there is the question of William Cook’s non-appearance to testify, discussed more fully below. Also, Attorney Weinglass was furious that in the closing statements I made to the PCRA court I raised Inspector Giordano’s role in the

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false prosecution and conviction of Mr. Jamal. Moreover, when I tried to get authorization and assistance from Attorney Weinglass to continue our investigation and hire the necessary investigators after the conclusion of the 1995 PCRA hearing, Attorney Weinglass vetoed my concrete proposals.

20. Despite his veto against continuing investigation, in early October 1995 Attorney Weinglass announced at a large public meeting in San Francisco that there were rumors that Officer Faulkner was an FBI informant and had been set up to be killed by fellow officers. Since Attorney Weinglass presented this information publicly without the slightest intention of pursuing it through investigation or seriously presenting it in court, he and I had a sharp argument. At the conclusion, Attorney Weinglass finally agreed to undertake some of the investigation I proposed and provide the funds for the investigators. However, Attorney Weinglass still would not agree to investigate Beverly's account.

21. Notwithstanding Attorney Weinglass' refusal to directly pursue the information provided by Beverly, I was alert for information and leads which were consistent with Beverly's overall account and pressed forward with investigation. Over time, to the extent that Attorney Weinglass grudgingly acquiesced in conducting investigation, more and more information came to light which confirmed aspects of Beverly's account that the murder of police officer Faulkner was a "hit" planned by other police officers. As this corroborating information came to light, it was brought to Attorney Weinglass' attention.

22. For instance, the existence of a police officer named "Boston" was confirmed when reviewing the records of a 1979 federal law suit concerning police brutality in Philadelphia. In late 1996, an eyewitness named Marcus Cannon came forward with the information that he saw two white men who appeared to be undercover police officers present on the scene during P.O. 's Faulkner's shooting.

23. Significant corroboration of aspects of Beverly's background account also came in connection with a 1997 post-conviction remand hearing centering on Pamela Jenkins, a prostitute who had been an informant for the FBI in the

infamous 39th District police corruption scandal. Jenkins testified that in 1982, while a prostitute and lover of P.O. Thomas Ryan, she learned that a black police officer named Boston and other police officers, including "Sarge" and Det. Richard Ryan, were present during the shooting of Officer Faulkner. Consistent with Beverly's account, Jenkins also testified that Cynthia White was a police informant and performed sexual favors for police officers.

24. Lawrence Boston was called as a witness at the 1997 post-conviction remand hearing, and confirmed that he had been an officer in the 6th District where P.O. Faulkner worked and knew Faulkner very well. However, Boston would not provide a clear answer where he was at the time of Faulkner's shooting, but strangely responded that he "should have been asleep." Although Attorney Weinglass knew that Beverly had named Boston as involved in the plan to kill Officer Faulkner, Attorney Weinglass gave this opening a pass, failing to press Boston to answer the question of his whereabouts. Boston did confirm that on his beat he frequently interacted with prostitutes including Cynthia White, known to him as "Lucky," and that he had heard that at the time of Mr. Jamal's trial White was being given extensive favors, including being put up in a condominium in New Jersey, apparently by Philadelphia police.

25. Significantly, in 1998 I interviewed Donald Hersing, the FBI's confidential source during its 1981-82 investigation of Center City police corruption. Mr. Hersing confirmed that corrupt police were very concerned about possible police informants in the winter of 1981-82, and that the corruption included James Carlini, head of Homicide; John DeBenedetto, head of the Central Division in which P.O. Faulkner worked; as well as Inspector Alfonzo Giordano, the senior officer at the scene after the shooting. DeBenedetto and other Central Division police officers were convicted in 1983; James Carlini was named in the federal indictment as an unindicted co-conspirator. Hersing states that he reported all his conversations and associations, including his information on Alfonzo Giordano, to the FBI agents who debriefed him regularly and frequently. In May 1999 Donald Hersing provided me with a sworn statement setting forth this information.

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26. Continued investigation of Alfonzo Giordano disclosed that he had been in charge of the Stake Out Unit of the Philadelphia police from 1968-1970 when they were the tactical force used against the Philadelphia Black Panther Party. He also had a supervisory role in the year-long police barricade of the MOVE organization's Powelton Village house in 1977-78 which ended with a police raid and the shooting death of Stake Out officer James Ramp for which nine MOVE members were convicted. Mumia Abu-Jamal was prominent as a journalist sympathetic to MOVE from the time of the police assault through the trial of the MOVE members and was personally known to then Mayor Frank Rizzo, Civil Defense Unit head George Fend and presumptively to Giordano himself. In any event, there can be no serious question that once Giordano learned the identity of Jamal at the scene, he instantly would have been aware of who Jamal was, including his political background and very public position in defense of the MOVE organization.

27. Personnel records on Alfonzo Giordano were subsequently located, and they disclosed information supporting Donald Hersing's report that Giordano's involvement in police corruption was known to the FBI and Philadelphia police officials in early 1982. The personnel records show that Giordano was transferred from the Command Inspectors Bureau (CIB) into the personnel division in May 1982 and resigned from the police force the first working day after Mumia Abu-Jamal's 1982 trial ended. The fact that the prosecution did not put Giordano on the witness stand during the trial to retail his false claim that Jamal confessed at the scene, despite Judge Sabo's ruling that this testimony was admissible, is also powerful indication that the prosecution knew of Giordano's involvement in corruption and thought it would be too risky to present him at Mr. Jamal's trial. It is notable that Giordano was not indicted until 1986 on charges based on his receipt of tens of thousands of dollars in illegal payoffs during the 1979-80 time period.

28. My efforts in reviewing the record surrounding the physical and ballistics evidence, including consultation with experts, revealed that the prosecution scenario of the shooting was physically impossible and not supported even by the prosecution's own evidence. The prosecution's

scenario, adopted by the post-conviction court and the Pennsylvania Supreme Court, is that Jamal supposedly ran from the parking lot, shot Faulkner at close range in the back and then stood directly over Faulkner who had fallen on his back. Jamal then purportedly shot at Faulkner three or four times, with a bullet hitting Faulkner in the head under the eye. According to the prosecution, Jamal was shot by Faulkner as the officer fell. Aside from Jamal and Faulkner, the only other person on the scene according to the prosecution was William Cook, Jamal's brother. However, as set forth below, this scenario is contrary to the available physical and ballistics evidence. For example, the location of bullets and fragments recovered at the scene, the absence of divots in the sidewalk, as well as the location of sidewalk blood stain, refute the overall prosecution scenario, including the claim that P.O., Faulkner was shot several times while he lay on the sidewalk with his head pointing east while the shooter faced east. The presence of the copper bullet jacket at the scene is inconsistent with the bullets supposedly in Jamal's and Faulkner's guns, pointing to a different gun from theirs' being fired. Moreover, the officer who purportedly found Jamal's gun and turned it in to the ballistics department, Stake Out officer James Forbes, testified at trial that the bullet cartridges in Jamal's gun were of a different make than that recorded in the ballistics report. Similarly, the location of the bullet in the door frame of 1234 Locust Street as well as the description of this bullet in the ballistics report suggests that a second police weapon was fired.

29. Moreover, information contained in the Medical Examiner's report which I discovered just prior to the filing of the post-conviction petition raises substantial questions. For instance, there is no reasonable explanation as to why the Medical Examiner recorded that Faulkner was shot with a .44 caliber while the police maintained it was a .38 caliber bullet.

Additionally a sizable bullet fragment was found in Faulkner's head wound by the Medical examiner but was not turned over to ballistics for examination and is missing. Moreover, although the Medical Examiner's normal procedures are to x-ray bodies to locate all bullets or fragments, no x-rays of Faulkner's body have yet been located or produced, raising questions concerning the caliber

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and number of bullets in Officer Faulkner's body and raising issues of suppression of evidence.

30. There was also ample evidence that Jamal's gun had not been fired that night and that police knew this. To begin with, no lead or gunshot residue testing was reportedly performed on Jamal's hand, or if such testing was done, the results were suppressed. Nor is there any police report as to whether Jamal's gun was warm or smelled of burnt gunpowder from being recently fired. Moreover, the police ballistics report states that the bullet taken from Faulkner's head wound is extremely mutilated and distorted. ..destroying the major portion of the rifling markings" such that even its general characteristics are "indeterminable." The ballistics report, which was unsigned, concluded that a comparative examination of the evidence bullet against test-fired bullets "has shown insufficient characteristic markings to permit a positive comparison." However, a photograph taken of this bullet discloses a largely intact lead bullet with pronounced filing impressions indicating that a comparative analysis with original exemplar bullets fired from it could have resulted in a determination as to whether the bullet was fired from Jamal's Charter Arms revolver. Additionally the relative width of the lands to the grooves on the bullet reportedly taken from Faulkner's head wound is the opposite of all but a few percent of the Charter Arms revolvers produced. Thus the prosecution's ballistics evidence (or lack thereof) itself raises a strong likelihood that the bullet in evidence from Faulkner's head wound was not fired from Jamal's Charter Arms revolver, and that police ballistics tests were "inconclusive" because properly and competently performed ballistics would exclude Jamal's gun as the murder weapon.

31. The physical evidence is also contrary to the prosecution's theory that Mumia Abu Jamal was shot by P.O. Faulkner as the officer fell to the ground. The trajectory of the wounds Jamal suffered—traveling down through his chest from his lung and, to his liver—could not have been inflicted if Jamal was shot from below as the prosecution claimed. P.O. Faulkner's alleged weapon, purportedly used to shoot Jamal, was not in the condition one would expect from a hunting enthusiast and ambitious officer about to take the

detective's examination. According to the police ballistics report, this gun contained powder fouling, dirt and lint in the chambers and it would not cock as designed in single action because of oversized rubber grips. The gun also had a bent hammer spur. All of these irregularities posed the question as to whether this was in fact the weapon Officer Faulkner was carrying as a service revolver on December 9.

32. Thus, by early 1999, there was a substantial body of accumulated evidence which not only further confirmed Mumia Abu-Janial's innocence but was consistent with Beverly's overall background account—and which could not be otherwise explained. Despite Attorney Weinglass longstanding opposition, I located an address for Arnold Beverly and in March 1999 met with him. Beverly confirmed his prior account that Mr. Jamal had not shot Faulkner. However, for the first time Beverly stated he was also shot and wounded, and he bled at the scene. He also told me that he wore a green army jacket that night.

33. In a second interview I conducted a few days later in March 1999 Arnold Beverly confessed that he himself shot P.O. Faulkner. He told me that someone else fired the first shot that hit P.O. Faulkner, and then Beverly ran across the Street and shot the officer in the face. He stated that Jamal arrived later and did not shoot anyone. According to Beverly, Mr. Jamal was shot by a police officer other than Faulkner.

34. Within hours of hearing Beverly's confession I apprised Attorney Weinglass that Arnold Beverly had confessed to shooting and killing police Officer Faulkner. Attorney Weinglass' response to me was to dismiss this evidence out of hand and offered the excuse that presenting this confession would risk "losing credibility" with a federal court judge. A new level of battle began as Jonathan Piper and I attempted to convince Attorney Weinglass to submit this critical new evidence of Mumia Abu-Jamal 's innocence to court.

35. Upon hearing of Beverly's confession, Attorney Weinglass insisted that Beverly be immediately subjected to a polygraph examination, but he chose an examiner, Earl Rawlings, who was not qualified and who performed an incompetent examination. Even that

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examiner concluded that Beverly was being truthful when he said that he was present at the scene of the shooting and that Mr. Jamal was not the shooter. Subsequently I had Beverly examined by expert polygrapher Charles Honts, whom Attorney Weinglass had flown in during the 1995 post-conviction hearing. Honts reported to me that Beverly confessed to him during the polygraph examination and that the polygraph test results supported the truthfulness of Arnold Beverly's confession that he—and not Mumia Abu-Jamal—shot police officer Faulkner. I obtained a sworn statement from Dr. Honts.

36. As set forth in more detail below, during the spring of 1999, Jonathan Piper and I intensified the ongoing investigation, with the assistance of the case investigators as well as bringing former FBI agents in to assist in exploring and developing the evidence. Our work included reviewing the trial and post-conviction record for anomalies that were consistent with Beverly's account. This generated further substantial corroboration of Beverly's confession, and all this information was systematically brought to the attention of Attorney Weinglass.

37. For instance, Beverly's statement that he was wearing a green camouflage army jacket that night was extremely significant because the record clearly established that at least four witnesses—Stake Out officer Forbes who was reportedly the first officer on the scene, officer Stephen Trombetta, prosecution civilian witness Michael Scanlan, as well as William Singletary—describe someone at the scene in a green army jacket. Additionally trial witness Magilton told one of our investigators that the person he saw run from the parking lot was wearing a green army jacket. However, the evidence is clear that neither Mr. Jamal nor Mr. Cook wore a green army jacket: Jamal had a red quilted ski jacket with a wide vertical blue strip on either side of the front, Cook wore a blue Nehru-style jacket with a brass buttons. The description of someone on the scene wearing a green army jacket, generally identified as the shooter, comes from so many different people, that there can be no question that there was at least one person on the scene wearing a green army jacket. Beverly's description of what he was wearing—a green jacket—was thus corroborated by information already in the record

from several independent sources.

38. Beverly's testimony that Jamal was shot by a police officer other than Officer Faulkner was supported by a Medical Examiner's record from 9:00 am on December 9, 1981 (some five hours after the shooting) stating that Sgt. Westermann of Homicide told a Medical Examiner's investigator that Jamal was shot by "arriving police reinforcements." In fact, that report in the Medical Examiner's log is the only explanation given in any of the police files as to how Jamal was shot, and thus presumptively reflects what police officers at the time actually were saying had happened. The circumstances of this report were the subject of an in camera hearing during the 1982 trial from which Jamal was excluded.

39. We found corroboration for Beverly's claim that Faulkner fell to his knee in the autopsy report which stated that the skin on Faulkner's knee was denuded; moreover, his pants were torn at the knee. Beverly said he was carrying a .22 caliber handgun and William Singletary had testified that a small caliber gun, a .22 or .25 was used in the shooting of Faulkner. Contradictions in the statements and testimony of P.O. Carolyn Chinn demonstrated that it was her impression that a black suspect had been taken from the scene before she arrived and participated in handcuffing Jamal. This was consistent with Beverly's claim that he left the scene with help from police officers.

40. Additionally, we investigated the possibility that Faulkner was an FBI informant or that his shooting was in some fashion connected with the federal investigations of Philadelphia police corruption. Officer Faulkner's 612 beat covered a Center City area where there was widespread prostitution as well as after-hours clubs and gay bars from which payoff money was extorted by the Central Division police. In addition to the information from Donald Hersing that corrupt police were very aware of the federal investigations and worried about informants, Jonathan Piper spoke with the lead federal prosecutor who prosecuted DeBenedetto for corruption, and he confirmed that Philadelphia police officers were sources in the investigation, including one source who had a brother who was also a police officer. This was a description fitting Officer Faulkner, but the former prosecutor said

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he could not say whether or not Faulkner was an informant.

41. During this period we also learned that George Sherwood, an FBI agent who oversaw the FBI's organized crime squad in Philadelphia and was involved in the investigation Hersing was an informant for, had subpoenaed Faulkner's army records in 1982. Former FBI agents, then working as investigators on the case, advised me that the most plausible explanation for this was that Faulkner was an informant, confidential source or an investigation target. Sherwood advised our investigator that unless the FBI had an investigative interest in a matter the FBI would not have assisted another agency (including the District Attorney or the U.S. Attorney) with the retrieval of Officer Faulkner's military records. FBI confidential source, Donald Hersing, reported that George Sherwood was one of the FBI agents working on the Center City police corruption investigation in 1981-82. FBI records on Daniel Faulkner disclosed an FBI-PH airtel to the Director dated 12/30/81 that no written summary of the case was being prepared because of the ongoing criminal investigation and pending legal litigation, which former FBI agents advised me was highly unusual. The case record also disclosed that P.O. Faulkner owned a "Topcon" camera and used it the night he was killed to photograph at least officer Gary Wakshul in the precinct "lock-key area." Homicide Detective William Thomas had this camera in his possession when he questioned Wakshul and others about the camera. I later learned it was a very expensive camera model which was often used by the FBI during that period. Inexplicably, there is no information as to where the camera was found since there are no property receipts or records of the camera or any film contained in the camera.

42. Our investigation also revealed that it was far from unheard of that police officers or witnesses against police would be the subject of "hits" in Philadelphia in the 1980s. Bertram Schlein, a witness who testified against Central Division chief John DeBenedetto, was murdered in 1983. A former police officer and reported associate of Giordano, Kenneth Schwartz, was reportedly a suspect in Schlein's death. During the prosecution of "Five Squad" narcotics officers for corruption in the 1980-84 time period, a federal prosecutor

alleged that Philadelphia police officers had plotted to kill a witness in a federal tax-evasion case against an officer. In that same prosecution, a witness testified that he feared for his life after he was told that a "Five Squad" officer who was cooperating with the FBI had been killed in his home. Other police officers were killed in the early 1980s under circumstances suggesting assassination. The last Philadelphia officer to have been killed before P.O. Faulkner was James Mason, who was shot by a sniper in May 1981. The next officer to be murdered after Daniel Faulkner was Thomas Trench, who was shot at close range in his police car with the window open in May 1985, likely by someone he knew. Recently, former police officer turned mob hit man, Ronald Previte, has been testifying as a government informant in a case dealing with gangland killings. Previte boasted that he learned more about being a "crook" during the ten years he spent with the Philadelphia Police Department than any other time in his life.

43. Jonathan Piper carried out a detailed review of the police radio tapes, which showed that police at the scene had ample opportunity to tamper with, or plant, physical and ballistic evidence. The police tapes also were contrary to the prosecution claim, adopted by the Pennsylvania courts, that police reinforcements found Jamal, Faulkner, and their guns on the sidewalk within less than a minute of the shooting. It was fully fourteen minutes before the officers at the scene reported having found a suspect with a weapon. The contemporaneous police radio "flashes" reported without contradiction that the suspect(s) had fled the scene with Officer Faulkner's gun. In his police report, Stake Out officer Forbes claimed to have retrieved two guns from the sidewalk just after he arrived at the scene, but no other witness—police or civilian—saw him do so. Even Forbes' partner, Shoemaker, reported that he did not see Forbes pick up any guns (and Shoemaker claimed he saw only one gun on the sidewalk). Witness Arnold Magilton stated in a police interview report that police at the scene were searching for a gun. Another eyewitness, Dessie Hightower, reported that Officer Faulkner's gun was in his holster as police removed him from the scene. Moreover, contrary to police procedure, Forbes did not turn the guns over to the mobile

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crime unit officers at the scene but instead apparently took them with him to the police headquarters and did not deliver them to the police lab until some two hours later.

44. The accounts given by Forbes and Shoemaker about their arrival at the scene were dubious in other respects as well. Although Forbes claimed to have been one of the first two officers on the scene and to have played a prominent role in arresting William Cook and retrieving the guns, several arriving police officers reported that they did not even see Forbes at the scene when they arrived. Shoemaker's own actions at the scene are also questionable. While Shoemaker claimed he was assisting Officer Faulkner, P.O. John Hefter pointedly denied that Shoemaker was helping Faulkner and instead reported that Shoemaker was merely "standing over" the fallen officer. Moreover, Forbes and Shoemaker were Stake Out officers, part of the elite police tactical unit and presumptively knowledgeable of and hostile toward Jamal, the reporter known for his sympathetic coverage of MOVE, particularly in the aftermath of the trial of MOVE members for the murder of fellow Stake Out officer James Ramp who had been shot in police crossfire during the 1978 police siege of MOVE's home in Powelton Village.

45. Additionally, the police officer responsible for "securing" the crime scene, Gerald Lynch, was driving squad car 93 which was implicated in the police corruption racket. In a 1985 federal police corruption trial, a Central City police officer testified that in 1981 the 93 squad car was responsible for collecting pay-off money at a Center City bar. Recently Mr. Jamal's new legal team obtained an affidavit from Linn Washington indicating that in reality the crime scene was not secured at all when he visited it just a few hours after the shooting. The corruption prosecutions also revealed that uniformed officers involved in graft performed routine "club checks" of Center City bars and after-hours clubs to determine the number of patrons present in order to gauge the amount of pay-off money that should be demanded from each club. Several of the officers who were at the scene on December 9 reported that they were involved in making these club checks that night.

46. The new piece of information that Beverly bled at the scene thus posed new opportunities for DNA testing of the physical evidence, which if confirmed, would conclusively demonstrate the falsity of the prosecution's scenario. For example, the bullet removed from the doorway of 1234 Locust Street should be tested for blood and DNA because, given the trajectory, this could well be the bullet that wounded Arnold Beverly. One puzzle in the case has been the presence of type O blood at the scene according to the criminalist's report. This pointed to the presence of another person at the scene because Mr. Jamal and Mr. Cook, as well as P.O. Faulkner (based on the Faulkner autopsy report and criminalistics report) all had type A blood.

47. In sum, there was substantial information corroborating Beverly's confession throughout the record of this case, ranging from the testimony of other witnesses to the physical evidence. At the same time there was no credible evidence in the case refuting or disproving his claims of what took place. Yet despite the sworn statements and other additional information we had developed supporting Beverly's account, all of which was explained in detail to Attorney Weinglass as well as co-counsel Daniel Williams, they refused to present a supplemental post-conviction petition containing the confession by Beverly, to say nothing of renewed motions for discovery, ballistic and DNA testing of the physical evidence. The more information that was developed which was consistent with Arnold Beverly's statement, the more adamant Attorney Weinglass became that he would not present a supplemental post-conviction petition based on this witness.

48. In arguing against the presentation of Beverly's confession, Attorney Weinglass insisted that Beverly's account was incredible and implausible. Attorney Weinglass was adamant and would not engage in rational discussion of how Beverly's account squared with any of the supporting evidence. Co-counsel Williams argued that if accepted, Beverly's account would mean that police had knowingly framed an innocent man, and Williams asserted that it was "unbelievable" that police or the prosecution would do that. These statements flew in the face of reality, borne out in testimony by police

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officers and prosecutors in such notorious cases as the hundreds of Philadelphia 39th District cases and the Illinois murder conviction of Rolando Cruz. In the course of the investigation in Mumia Abu-Jamal's case, I had myself conducted a lengthy interview with former police officer John Baird, imprisoned for massive falsification of cases in the 39th District. I shared with my then co-counsel many graphic examples, courtesy of John Baird, of the fabrication of evidence and falsification of police reports, search warrants and court testimony convicting innocent people. Moreover, Mr. Jamal's prosecution fit the pattern of numerous examples of the government knowingly prosecuting the innocent. In the guise of law enforcement, the FBI's COINTELPRO program against the Black Panther Party was an extermination program leading to the death or prosecution of numerous radical black leaders based on their political views and activities. Documents obtained under Freedom of Information prove that Jamal was targeted by COINTELPRO from the time he was 15 years old based solely on his First Amendment protected activities as a Black Panther Party spokesman and writer. The Philadelphia police and mayor's hostility to MOVE culminated in a massive police military action killing defenseless men, women and children. The California court system finally released former Black Panther Geronimo Pratt in 1997 after 27 years of wrongful imprisonment for a crime which FBI wiretap logs proved he did not commit. The list could be continued.

49. Attorney Weinglass deceived Mumia Abu-Jamal, manipulating, cajoling and misleading his death row client about the legal significance of Beverly's confession. Attorney Weinglass not only failed to assist in the process of evaluating Beverly's account, but rather obstructed Jonathan Piper's and my efforts to do so. An unauthorized book by Daniel Williams, former counsel for Mumia Abu-Jamal, confirms that Attorney Weinglass intentionally undermined this witness in order to prevent Mr. Jamal from presenting his testimony: "Concerned that Mumia would insist upon our presenting this evidence, Len sought out ways to push this witness onto the trash heap without further rupturing the defense team." (Executing Justice: An inside Account of the Case of Mumia Abu-Jamal, p. 329 (emphasis added).)

Attorney Weinglass threatened that he would end his legal representation of Mr. Jamal altogether rather than allow the evidence provided by Arnold Beverly to be presented in court.

50. While Attorney Weinglass refused to present the testimony of Arnold Beverly in a supplemental post-conviction petition or in the federal habeas corpus petition, he and attorney Daniel Williams "leaked" aspects of Beverly's account publicly. All discussions of the Beverly confession that Jonathan Piper and I participated in were limited to the defense team and consulting attorneys or legal assistants and investigators working directly under my supervision. In the spring of 1999, Daniel Williams argued that rather than present Arnold Beverly's testimony through a second post-conviction petition, his account should be "leaked" to the press. Shortly thereafter, a reporter hostile to Jamal's defense wrote in Vanity Fair magazine (August 1999) that the legal team "continues to suggest new possibilities of how Faulkner was killed, including one recently made by Weinglass that the officer may have been set up for execution by members of his own department because of suspicion that he was an FBI informant in an investigation of police corruption. He offers no concrete proof for this theory—just one more loop-the-loop of conspiracy after another." Attorney Williams' sworn statement in an April 10, 2001 affidavit filed in Mumia Abu-Jamal vs. St. Martin's Press and Attorney Daniel R. Williams that "nothing in Executing Justice discusses matters that are confidential..., even the disagreements among the lawyers were known to many pro-Mumia supporters, including left-wing journalists" is Williams' admission that he and/or Attorney Weinglass took confidential attorney-client matters outside the legal team. To disclose this sensitive information publicly without seriously pursuing its investigation could only discredit this powerful exculpatory evidence and prejudice its ultimate review by a court of law. These leaks also apprised the prosecution and police of inside defense camp information, thereby jeopardizing the safety of potential witnesses and risking the destruction of evidence relevant to the leaked claims.

51. Yet the main damage caused by Attorney Williams' book is to openly discredit,

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misrepresent and sabotage the evidence of Mr. Jamal's innocence, in flagrant disregard of the truth, the record, and Mr. Jamal's interests. Williams openly discredits Beverly's account as "absurd" and goes on to falsely assert that to advance Beverly's account would constitute the "propagation of a lie." Yet it is Attorney Williams himself, along with Attorney Weinglass, who have propagated a falsehood by first suppressing Beverly's confession and other evidence of Jamal's innocence, then misrepresenting the substance of Beverly's testimony, the record support for it, and falsely claiming that William Cook had "disappeared." Attorney Williams' book has borne its intended fruit as it has become the prosecution's "Exhibit No. 1" in its efforts to defeat Jamal's claims of innocence.

### Attorney Weinglass' Failure to Present the Sworn Statement of William Cook

52. In May 1999, I obtained William Cook's sworn statement that Mumia Abu-Jamal did not shoot Officer Faulkner, and that Kenneth Freeman, Cook's business partner, was in the vehicle with him that night, was armed and participated in a plan to kill Faulkner. When Attorney Weinglass refused to present in court Arnold Beverly's confession in 1999, he also refused to present the sworn statement of William Cook exonerating Mumia Abu-Jamal and confirming that there was a plan to kill Police Officer Faulkner.

53. For obvious reasons it was critical to obtain the testimony of Mumia Abu-Jamal's brother, William Cook, as to what he witnessed on the night of December 9, 1981. According to the prosecution, Cook was the only other person besides Jamal and Faulkner who was on the scene. Although it was Attorney Weinglass' stated position in 1995 that William Cook would be an important witness in the 1995 PCRA proceedings, I have no knowledge of what, if any, attempts Attorney Weinglass made to find William Cook to have him available to testify at that hearing.

54. Cook's importance was underscored in 1995 with the PCRA testimony of Arnold Howard. In an affidavit submitted to court, Howard stated that Freeman told him that he was a passenger in

William Cook's car and had been on the scene the night of the shooting. Additionally Howard testified that he had given his driver's license application to Freeman, and prosecution witness Det. Edward D'Amato disclosed for the first time that Howard's license was found on Faulkner after he was killed. According to Howard, he and Freeman were brought into police headquarters that night and his and Howard's hands were tested for gun powder residue. Freeman was reportedly put into a line-up and identified by a woman. We also learned that in February 1982 Freeman was arrested in his home by Stake Out officer Forbes and Detective Richard Ryan who recovered a .22 caliber handgun and explosives. In May 1985, the night after the police bombing of the MOVE Osage Avenue house, Kenneth Freeman, 32 years old, died of a heart attack under suspicious circumstances.

55. In September 1995, after the close of the evidentiary PCRA hearing but prior to the closing arguments, I interviewed Mr. Jamal's brother, William Cook, when he unexpectedly showed up in Pittsburgh at a federal court hearing on Mr. Jamal's civil suit against the Department of Corrections. While Mr. Cook stated that he was fearful of the consequences, he indicated his willingness to testify and wanted to meet again with Attorney Weinglass and me. In an attempt to reopen the post-conviction hearing so that Mr. Cook could testify, at Attorney Weinglass' request, I submitted a statement as to what I believed Mr. Cook would say if he testified—that Mr. Jamal did not shoot police officer Faulkner, that there was another black male occupant in the car with him and that another individual, not Mr. Jamal and not Mr. Cook, shot the officer. There was agreement of defense counsel that Mr. Cook would be presented to testify before the conclusion of the post-conviction proceedings. However Attorney Weinglass precluded me from attending his subsequent meeting with William Cook. In the end, William Cook did not appear in court to testify. Attorney Weinglass advised me and represented to the court that Mr. Cook was unavailable because he was fearful of being arrested on outstanding bench warrants if he appeared to testify. This was inconsistent with my own impressions of Cook and his willingness to be a witness. Based on my prior conversation with

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William Cook, statements by Cook's attorney Daniel Alva and Attorney Weinglass' behavior, it was my impression that Attorney Weinglass did not want to call William Cook as a witness.

56. In February 1999, the defense was able to re-establish contact with Mr. Jamal's brother William Cook and Attorney Weinglass and I met with him to discuss obtaining a sworn statement from him and his agreement to testify in future court proceedings. I subsequently met with Mr. Cook and he identified the passenger in his Volkswagen as his business partner Kenneth Freeman. William Cook reconfirmed that neither his brother, Mumia Abu-Jamal, nor he shot P.O. Faulkner. According to Mr. Cook, Mr. Freeman told him afterwards that there was a plan to kill P.O. Faulkner, that Freeman was part of that plan, that Freeman was armed that night and participated in the shooting. Cook also disclosed to me that P.O. Robert Shoemaker, reportedly one of the first officers at the scene after the shooting, was known to Cook and frequently hung out, "smoking weed," at the vending stand which Freeman and Cook ran in downtown Philadelphia. Mr. Cook also agreed that he would come forward and provide his account of what had happened that night in a sworn statement and would testify in court.

57. In May 1999, Attorney Weinglass and I met with William Cook. At this meeting Attorney Weinglass hostilely questioned Mr. Cook and warned him that he could be arrested on outstanding criminal charges. In this same meeting, Attorney Weinglass indicated his intention to distance himself from this new evidence and announced that when this evidence was filed in court, he would not be present and would instead make a trip out of the country. Cook nonetheless confirmed his account of the shooting and signed a sworn statement that his brother, Mumia Abu-Jamal, did not shoot Officer Faulkner.

58. Attorney Weinglass told me that while he refused to present Beverly, he would present the testimony of William Cook in federal court. Yet he failed to do so. Moreover, in the federal habeas corpus petition filed in the federal district court in October 1999, Attorney Weinglass falsely asserts that since 1995 "Cook has again disappeared."

This is a false statement because in fact Attorney Weinglass met with William Cook between February and May 1999. I was in contact with William Cook until I left the case, and Attorney Weinglass had the information on how to locate him. Attorney Weinglass also had a copy of Mr. Cook's signed statement.

### Attorney Weinglass Undermined the Exculpatory Testimony of William Singletary

59. Attorney Weinglass' refusal to present critical evidence of Mr. Jamal's innocence from Arnold Beverly and William Cook was consistent with his strong resistance to presenting the exculpatory testimony of William Singletary. Weinglass called Singletary to the witness stand in the 1995 PCRA hearing, openly discrediting his testimony in advance of any questioning.

60. I first learned of Mr. Singletary's existence in the summer of 1990, after Mr. Jamal's direct appeal was denied by the Pennsylvania Supreme Court and at a time when there was no lawyer representing him for post-conviction relief. Hearing that this witness might have exculpatory information, I contacted Marilyn Gelb, Mr. Jamal's attorney during the state direct appeal, and arranged and attended a meeting between Ms. Gelb and Mr. Singletary, where Ms. Gelb took Singletary's deposition. He testified that he witnessed the shooting of P.O. Faulkner, that Mr. Jamal did not shoot the officer, that the shooter was a black male wearing a green army coat—not Mr. Jamal or Mr. Cook—and that the shooter fled the scene. He also testified that police officers appeared on the scene immediately after the shooting and that the prosecution's central witness, Cynthia White, was not physically present there on the corner at the time of the shooting, but had walked around the corner and down 13th Street.

61. I transmitted a copy of the Singletary deposition to Attorney Weinglass in May 1991, apprising him that this case involved substantial issues of actual innocence and prosecutorial/police misconduct, in addition to the many other procedural constitutional infirmities. The mere fact that William Singletary provided an exculpatory account of the shooting would make

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him a critical witness to present and develop. His testimony that police officers destroyed his accurate police statements and threatened him to make him change his account also pointed to the depth of police misconduct in the case and the need for a thorough investigation to unravel the evidence police had tampered with.

62. When I attended a meeting with Attorney Weinglass and members of his legal team in May 1994, at which I pressed to find out what was being done to pursue Mr. Singletary's eyewitness testimony, I discovered that Attorney Weinglass had not pursued this evidence, and had not even located or interviewed Mr. Singletary. In fact, the discussion revealed that he had not even disclosed the existence of Mr. Singletary's account to his associate Daniel Williams, who was preparing an initial draft of the post-conviction papers. That draft did not include any evidentiary claims concerning police or prosecutorial misconduct. At that meeting a decision was made that the Singletary account was important to pursue. Thereafter Attorney Weinglass made a minimal effort to locate Mr. Singletary, who had moved from his former address.

63. Mr. Singletary's crucial importance was underscored in April 1995 when the United States Supreme Court released its decision in *Kyles v. Whitley*, 115 S.Ct. 1555 (1995) which confirmed the prosecution's Brady duty to divulge any information undermining the reliability of the police investigation. Ultimately, with the agreement of all defense counsel, the falsification of Mr. Singletary's exculpatory witness statement became the first claim in Mr. Jamal's post-conviction petition filed in June 1995, followed by other instances of prosecutorial and police misconduct. At the time of filing Attorney Williams not only agreed that including claims based on Singletary's testimony was important but favored attaching Singletary's deposition to our post-conviction petition.

64. Nonetheless, during the post-conviction hearings in July and August 1995, there were repeated arguments within the defense team in which Attorney Weinglass and Daniel Williams argued against presenting Mr. Singletary as a witness. In his effort to keep Singletary off the stand, Attorney Weinglass raised a host of bizarre

excuses to argue against calling this exculpatory witness—who at that time was the only available witness who could testify that Mr. Jamal did not shoot the officer. For example, Attorney Weinglass argued that Mr. Singletary was incredible or suspicious because he had friends who were police officers—but this fact clearly made Mr. Singletary a more credible witness, because it eliminated any bias against police which could motivate him to slant his testimony in Jamal's favor. At the same time, even Attorneys Weinglass and Williams conceded that it was undeniable that Singletary was present at the shooting, and they also agreed that his account of police intimidation was bolstered by the peculiar police interview of highway patrolman Vernon Jones two days after the shooting. The Jones interview statement stood out because all Jones had to say in his interview was that Singletary purportedly had not seen the shooting, and it was clear to all of us that the only purpose for police to create such a record was to bolster the false police witness statement that Singletary witnessed nothing.

65. Ultimately Attorney Weinglass called Singletary but only after he had first openly discredited this key witness before he even took the stand by making the blanket statement in open court that Mr. Singletary's recollections of the shooting were "inaccurate." Attorney Weinglass called Mr. Singletary to the stand "only" as a Brady witness and questioned him only concerning the misconduct of police officers at police headquarters when they tore up and falsified Mr. Singletary's witness statements. This was a total surprise to me since Attorney Weinglass had not disclosed he was planning to question Singletary so as to undermine and discredit him as a witness. Attorney Weinglass refused to ask Singletary questions in direct examination concerning the substance of his eyewitness testimony in complete abrogation of his responsibility to act as an advocate for his client.

66. Attorney Weinglass' so-called "strategy" of calling Mr. Singletary as a "Brady" witness while discrediting his actual eyewitness account is completely contrary to the fundamentals of the Brady doctrine, because establishing a claim for police misconduct requires showing that the

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suppressed evidence could have affected the outcome of the trial. To show prejudice in the case of Mr. Singletary would require establishing that his true witness statement would have said that Mr. Jamal did not shoot the officer. By undermining the credibility of this witness, Attorney Weinglass sabotaged Mr. Jamal's interest. The prosecution took full advantage of Attorney Weinglass' gratuitous assertions that Mr. Singletary's account was "inaccurate," titling that section of their Pennsylvania Supreme Court brief: "The PCRA Testimony of William Singletary Was Incredible—Just as Defense Counsel Predicted Before Calling Him as a Witness.

67. In his April 10, 2001 sworn statement, Attorney Williams confirms that it was his and Attorney Weinglass' purpose "to prevent Singletary from testifying about what he claimed to have observed at the crime scene" and to discredit this witness (Williams' emphasis). He further confirms that the federal habeas corpus papers he and Attorney Weinglass filed "never argued ... that Singletary's account... should be credited." In his March 21, 2001 affidavit in *Jamal vs. St. Martin's Press*, Williams falsely states, "Never has the defense team even attempted to argue in any legal filings that Mr. Singletary's account of what he allegedly witnessed on the night of the murder is in any way defensible or supportable." This is contrary to arguments made in legal memoranda filed with the Pennsylvania Supreme Court while I was a member of the defense team during post-conviction proceedings where we asserted that Singletary's factual account was accurate in its fundamental substance—that Mr. Jamal is innocent and that a black male other than Jamal or Cook shot Officer Faulkner and fled the scene. Attorney Williams' sworn statement underscores how the federal habeas corpus papers he and Attorney Weinglass filed not only failed to move the case forward by taking account of the new evidence of Jamal's innocence but undermined and eviscerated evidence and arguments already presented in the post-conviction proceedings.

### Attorney Weinglass Undermined the Defense in Other Ways, Including His Failure to Mount An Aggressive Challenge to the Fabricated "Confession"

68. The initial draft of the post-conviction legal memorandum was prepared by Attorney Williams, working with Attorney Weinglass, in 1993-94. The initial set of claims Attorney Williams drafted focused solely on procedural due process issues and was devoid of claims of actual innocence or police and prosecutorial misconduct under Brady. The evidentiary issues raised by Attorney Williams dealt with the evidence Attorney Jackson had already attempted to present during the 1982 trial—Veronica Jones, Gary Wakshul, evidence of Robert Chobert's criminal record, and the failure to provide funds for defense investigators or experts—and Jackson's ineffectiveness in doing so. Jonathan Piper and I insisted that the post-conviction petition needed to present the available evidence of Mr. Jamal's innocence and of the police and prosecution misconduct in suppressing and fabricating evidence, including the concocted confession and the testimony of William Singletary. The gross violations of due process in the 1982 trial flowed from the fact that an innocent man was being prosecuted on the basis of falsified evidence.

69. As discussed above, in the couple of months prior to filing the PCRA petition, Jonathan Piper drafted the Brady claim which opened the post-conviction papers. He also drafted the summary introduction to the post-conviction petition which asserted that "Petitioner Jamal was convicted of a crime he did not commit and sentenced to death based on his political views and history." In this context, I prepared a Motion for Discovery with the intention of opening the prosecution and police files for evidence of Jamal's innocence and the police and prosecutorial misconduct which permeated the trial and sentencing. It was only when it appeared that Attorneys Weinglass and Williams agreed to pursue this approach that I formally joined the defense team. But as set forth above, their agreement turned out to be extremely short-lived.

70. When the post-conviction papers were filed

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on June 5, 1995 Governor Thomas Ridge had already issued a death warrant for Mr. Jamal's execution. The simple reality was that at this juncture Attorney Weinglass had made minimal preparations for an evidentiary hearing. ~ Jonathan Piper and I urged Attorneys Weinglass and Williams, who were to handle the presentation of witnesses at the hearing, to begin preparing for the hearing in the event that Judge Sabo, based on his manifestly pro-prosecution bias, would deny any discovery or reasonable preparation time and instead would use the pending execution date as an excuse to expedite the hearing. Ultimately Judge Sabo did precisely that. Attorney Weinglass's response to our urging was to say that "I can't deal with it," and that our proposals "give me a headache." He insisted that if there was an evidentiary hearing at all it would not come for six months. As a result of his complete failure to prepare for the hearing, the defense team was caught off guard when the post-conviction court improperly insisted that the defense begin presenting evidence in July 1995. Attorneys Weinglass and Williams did not have a witness list, an order of proof, or even an outline for conducting an evidentiary hearing at the time we filed the post-conviction papers. Because of their lack of preparation, the task of organizing the evidentiary hearing, lining up witnesses, issuing subpoenas, attempting to secure discovery, running an investigation to locate essential witnesses to subpoena and interview and prepare documentation for court and other essential information devolved on me.

71. During this period Pennsylvania capital litigation experts advised us that there was precedent for the state and federal courts to complete the entire round of initial post-conviction and federal habeas corpus proceedings within a period of weeks under the shadow of a death warrant, and that the United States Court of Appeals for the Third Circuit had permitted such a procedure in the 1993 case of a Delaware prisoner, Kenneth DeShields, resulting in the exhaustion of all habeas proceedings and his ultimate execution in the course of a few weeks. As a result, Pennsylvania capital litigation experts warned us in June 1995 that there was no legal "guarantee" that Mr. Jamal's August 1995 execution would be stayed.

72. When the post-conviction hearing began, the only issues on which Attorneys Weinglass and Williams had previously made any real preparation efforts were ineffective assistance of counsel and the testimony of Dessie Hightower. Although I was not involved in the preparation of Attorney Anthony Jackson to testify, it is obvious in hindsight that Attorneys Weinglass and Williams did not approach this witness with an eye to exposing new evidence which Jackson had failed to present, and Attorney Weinglass' questioning of Attorney Jackson at the post-conviction hearing was deficient in failing to establish a predicate for his failure to develop several avenues of defense, such as the failure to call William Cook as a witness or the failure to call P.O. Stephen Trombetta, who had repeatedly and affirmatively asserted that Jamal made no confessions. Moreover, Attorney Weinglass failed to call Attorney Marilyn Gelb to testify in support of Mr. Jamal's claim of ineffective assistance in the appellate process and agreed to sealing an in chambers discussion reportedly on her medical condition.

73. Attorney Weinglass and his associate Daniel Williams also failed to present a thorough challenge to the claim, fabricated two months after the shooting, that Jamal "confessed" at the hospital when he was taken for treatment of his gunshot wound. The only evidence they presented on this question at the post-conviction hearing was the testimony of police officer Gary Wakshul, who continued to falsely claim that Jamal did in fact confess despite a December 9, 1981 statement that Jamal "made no comments." However, Wakshul revealed at the post-conviction hearing that the purported hospital confession was first raised at a February 1982 roundtable meeting of all the police witnesses in the case under the direction of prosecutor Joseph McGill. Nonetheless, Weinglass and Williams refused to pursue this new information which indicated conscious prosecutorial participation in the fabrication of this evidence.

74. Indeed, two days after Wakshul testified, Attorney Weinglass inexplicably waived trial prosecutor Joseph McGill as a witness, after he had been subpoenaed, thereby failing to make a record about his misconduct with regard to the confession and a host of other evidentiary issues

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including promises made to prosecution witnesses White and Chobert as well as his misconduct injury selection and closing arguments. The failure to call McGill also undermined the defense's ability to show the development from the initial false claim of Inspector Giordano that Jamal "confessed" in the police wagon at the scene, to the later false claim inspired at McGill's roundtable meeting that Jamal "confessed" at the hospital. The evolution from Giordano's story—presented at the preliminary hearing before the roundtable meeting—to the subsequent hospital confession story presented at trial pointed to a decision by McGill that the Giordano version was too risky because McGill had information that Giordano was the subject of a federal corruption probe. In preparing for federal court proceedings, Attorney Williams asserted that he would not work on the confession issues if it required arguing that the prosecution knowingly presented false evidence.

75. P.O. Stephen Trombetta was an important witness to refute Giordano because Trombetta did not endorse Giordano's claim that Jamal said he shot the officer while he was in the rear of the police wagon after being arrested. Trombetta was a crucial witness because, as Wakshul's partner, he was with Jamal the entire time from Jamal's arrest to his medical treatment. In numerous reports Trombetta asserted that Jamal did not make any statements, including at the hospital. Trombetta never endorsed any of the false claims that Jamal confessed. Additionally, as indicated above, Trombetta reported that "the suspect" was wearing a "green army jacket." Yet, Attorney Weinglass did not want to call witness Stephen Trombetta at the post-conviction hearing, and failed to seek the necessary court order to obtain a subpoena to compel the testimony of this out-of-state witness.

76. More broadly, Attorneys Weinglass and Williams did not seriously attempt to present evidence to discredit the other trial witnesses who falsely claimed that Jamal confessed," P.O. Gary Bell and security guard Priscilla Durham. They also did not challenge the prosecution's fabrication and improper introduction into the 1982 trial record of a typed statement purporting to memorialize Priscilla Durham's account, but which Durham herself disavowed. This too, was

an issue to have been pursued with prosecutor McGill.

77. Subsequent to the post-conviction hearing, as part of preparation for the federal habeas corpus proceedings, Jonathan Piper and I reviewed the record concerning the confession, which we felt had been inadequately addressed by Attorneys Weinglass and Williams, and developed numerous new discrepancies further demonstrating that the claimed confession was a fabrication. Although we prepared this analysis specifically for Attorneys Weinglass and Williams, they did not incorporate it into their federal habeas filings. For example, we determined that the accounts of the "confession" provided by various police officers and security guards were completely inconsistent and contradictory as to when and where the confession supposedly took place, or even whether Jamal was "walking" or lying on the floor at the time he supposedly confessed. This issue was one that Attorney Weinglass also declined to bring out at the PCRA hearing by not calling to the witness stand Dr. Anthony Colletta, who had been subpoenaed and was available to testify that Mr. Jamal did not make any confession during the entire time he was in the emergency room. The medical evidence demonstrates that in reality Jamal had been shot through the lung and had lost substantial amounts of blood, and was not in a condition where he could have "hollered" out a confession as claimed.

78. There are many other instances of Attorney Weinglass' dereliction which amounted to an abandonment of his client, a number of which follow. During the post-conviction hearing Attorney Weinglass failed to bring out in direct examination of witness Robert Chobert (or in an offer of proof) the fact that Chobert had told a defense investigator in 1995 that his police interview reports from 1981 were materially inaccurate in their description of what he witnessed. Attorney Weinglass did not proffer Arnold Howard's testimony that Ken Freeman admitted that he was an occupant in William Cook's car and on the scene of the shooting. Attorney Weinglass' failure to call trial prosecutor Joseph McGill to the stand prejudiced the Batson claim because we were not able to create a record of McGill's claimed reasons for striking black and white jurors, in order to show that any claimed

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non-race-based reasons for striking black jurors were pretextual.

79. At the 1995 post-conviction hearing, Attorney Weinglass advised Mr. Jamal against testifying in his own defense, telling Mr. Jamal that he should wait and take the stand only at a retrial of his case. These instructions were contrary to Mr. Jamal's best interests, preventing him from testifying that he did not shoot Officer Faulkner and is innocent. Attorney Weinglass made repeated statements to the press that Mr. Jamal would provide an account of what "really happened" when he testified at a retrial. This was in flagrant disregard of the fact that Mr. Jamal could not and would not ever be able to provide such an account because he did not see the shooting of Officer Faulkner.

80. The ballistic and other physical evidence was another critical component of the case requiring thorough investigation, discovery and testing, but which Attorney Weinglass failed to pursue. Mr. Jamal has always maintained that he did not shoot P.O. Faulkner. The police ballistics and criminalistics reports assert that the police tests of this evidence were inconclusive in that they could not establish that any bullet recovered at the scene or from P.O. Faulkner's body came from Mr. Jamal's gun. Testing of the ballistics and physical evidence, including DNA testing, could be critical to establish, among other things, that Mr. Jamal's gun was not used to shoot the officer, that other guns were fired at the scene, that other persons were present at the scene, or that physical evidence was doctored or planted by police.

81. Despite the central importance of the ballistics and physical evidence, Attorney Weinglass did not seriously pursue this aspect of the case. Prior to the post-conviction hearing, the extent of his efforts in this regard was to retain two experts to state that it would have been useful for the defense to have obtained funds to pay for the assistance of medical and ballistics experts. However, there was no attempt to retain an expert to pursue actual testing of the evidence. Attorney Weinglass' ballistics expert, George Fassnacht, claimed that a conflict of interest prevented him from being the one to test the evidence.

82. When the court granted the defense permission on July 20, 1995 to inspect and test the

physical evidence, Attorney Weinglass did not go to inspect this evidence himself and told me that he would not do so but that I could. As a result, by default, I became responsible for reviewing the physical evidence and subsequently consulting with experts in that regard, although at that point in time I had limited familiarity with ballistics and criminalistics. This physical evidence included the weapons allegedly carried by Officer Faulkner and Mumia AbuJamal, and their respective clothing which showed signs of blood, holes and tears. Also available for inspection were the charts used by the prosecution to demonstrate the scene to witnesses as well as the hospital area where Jamal purportedly confessed. A tape of an interview of Cynthia White as well as a tape of the police radio transmissions were also available to be listened to. To my knowledge this was the only time that the physical evidence had been viewed in some thirteen years and even the condition of the wrapping of the evidence would be potentially relevant to future litigation. Yet Attorney Weinglass took no responsibility for this viewing of the evidence.

83. During the period after the post-conviction hearing, because Attorney Weinglass was not diligently pursuing the ballistics and physical evidence issues, I attempted to develop a plan for pursuing the relevant discovery and testing in federal court, including DNA testing. Throughout the disputes over whether to present Arnold Beverly as a witness, I repeatedly made the point that Beverly's account opened up avenues for scientific testing of the physical evidence. Presenting his testimony would increase the chances of obtaining court permission to carry out tests which could be critical in disproving the prosecution theory of the case and establishing Mr. Jamal's innocence. However, the court record of the habeas corpus proceedings indicates that of all the issues posed regarding the ballistics and other physical evidence, the only request made concerns the question of whether trace metal testing took place.

### My Resignation from the Defense Team in 1999

84. I resigned from the defense team in early July 1999, along with Jonathan Piper. The

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immediate reason for our resignation was that Attorney Weinglass as lead counsel deceived Jamal about the legal significance of the Beverly confession and was adamant in refusing to file a supplemental post-conviction petition based on the sworn statements of Arnold Beverly and William Cook, in conjunction with supporting affidavits and demands for discovery and testing of the physical evidence, including DNA testing. Attorney Weinglass' refusal to proceed with the Beverly and Cook statements was also my final realization that Attorney Weinglass would not carry out the defense demanded by our innocent client, that he would not pursue the necessary attack on the massive prosecutorial misconduct permeating this case, and that he would not pursue discovery, scientific testing of the physical evidence and an evidentiary hearing in federal court. With the final realization that, no matter what the evidence, lead counsel Weinglass would preclude the necessary steps from being taken to provide a defense for an innocent man and fight to overturn Jamal's unjust conviction, it was no longer possible for me to function ethically on his legal team.

85. I am aware of certain facts which may help explain why Attorney Weinglass would act in such gross disregard for the best interests of his client. Attorney Weinglass reported to me prior to submission of the post-conviction petition that he was physically threatened by Ronald Freeman, the brother of Kenneth Freeman, the man Cook has now sworn was involved in the shooting of P.O. Faulkner. Some time prior to the filing of the post-conviction petition in 1995, Attorney Weinglass received a threatening telephone call from Ronald Freeman, who was then reportedly in prison. According to Attorney Weinglass, Ronald Freeman called him from the warden's office at the prison and said that if Weinglass dared to name Kenneth Freeman as the shooter, he, Weinglass, would be in physical danger. Attorney Weinglass said that he was upset and frightened by this phone call, particularly because the call came from the warden's office, suggesting collusion between state actors to interfere with the investigation and intimidate the defense team. During and after the post-conviction hearing, a private investigator hired by Attorney Weinglass to interview current and former Philadelphia

police officers also reported hearing of threats that police would 'take care of' the defense team. In light of these threats, Attorney Weinglass may well have been in fear of the consequences that could result—including risk to his life and safety—if he conducted a thorough investigation of the real facts of P.O. Faulkner's death and presented that evidence in court.

86. It is consistent with the overall heated climate surrounding this case that threats would be made against Mumia Abu-Jamal's attorneys. The efforts of the Fraternal Order of Police nationally to intimidate Mumia Abu-Jamal's supporters and potential supporters are well known. The FOP has waged a well-publicized, well-funded, nationwide campaign demanding that Jamal be executed. Using the widow of Officer Faulker as a spearhead, the FOP has retailed lies and threats against Jamal supporters through the media and has sought to chill the exercise of free speech by defenders of Jamal, from musicians trying to organize benefit concerts to students who have voted to hear messages from Jamal at their graduation ceremonies.

87. Attorney Weinglass' obstruction of the investigation and refusal to present evidence exonerating Mr. Jamal constituted fundamental disloyalty to his client and were contrary to pursuing a legal fight for Mumia Abu-Jamal's freedom. Attorney Weinglass not only abandoned any advocacy on behalf of Mumia Abu-Jamal but effectively pled him guilty to a crime he did not commit.

88. The concrete documentation of this abdication of counsel is the federal habeas corpus petition which was filed by Attorneys Weinglass and Williams in October 1999. That document not only fails to present the confession of Arnold Beverly but does not include Mumia Abu-Jamal's own statement of his innocence nor the exculpatory witness evidence of William Cook. The habeas corpus petition and accompanying memorandum are devoid of the substantial body of exculpatory material concerning the fabricated confession and other police and prosecutorial misconduct which had been developed in the period following the post-conviction hearing. The evidence of Mumia Abu-Jamal's innocence and proof of gross violation of due process resulting

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from police, prosecutorial and judicial misconduct were deliberately suppressed by Attorney Weinglass.

89. This affidavit is submitted to refute the claims advanced by the prosecution based on the false and self-serving book written by Williams and supported by Attorney Weinglass that presenting Arnold Beverly's testimony constitutes "propagation of a lie." Rather, as set forth above, a review of the entire record of this case and the information discovered over years of investigation independently corroborate Arnold Beverly's confession that he, and not Mumia Abu-Jamal, shot and killed police officer Daniel Faulkner. This affidavit certainly does not exhaust the information I obtained during my years as Jamal's counsel which demonstrates his innocence and the massive police and prosecutorial misconduct which resulted in his conviction and death sentence. The failure to present this evidence in court in 1999 was solely the result of attorneys Weinglass and Williams' abandonment of their client by suppressing this critical evidence of Mumia Abu-Jamal's innocence.

90. I am competent to testify as to all matters set forth in this Affidavit and if called as a witness would so testify.

The foregoing is stated subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

RACHEL H. WOLKENSTETN

Dated: August 7,2001