

# ***Briefing Paper***

***On the Case of***

***Mumia Abu-Jamal***

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## Executive Summary

The case of Mumia Abu-Jamal has become a showdown case on the death penalty in the United States. His threatened execution has been condemned by political and cultural figures throughout the world, and the international movement to overturn his conviction is raising questions about the arbitrariness of the death penalty in the minds of millions. Mumia Abu-Jamal is the only political prisoner in the United States facing execution.

As a radio journalist in Philadelphia, he became known as “the voice of the voiceless” during the years of the infamous Mayor Frank Rizzo. He had attended Goddard College, was the recipient of a Major Armstrong Award for radio journalism, and was named one of Philadelphia’s “people to watch” in 1981 by *Philadelphia* magazine. He was president of the Association of Black Journalists in Philadelphia, and he had no prior criminal record.

Jamal was shot by a police officer when he intervened in a street incident involving Jamal’s brother, another man, and the officer. He survived the shooting, and was charged with the murder of the officer who was killed in the incident. No one else was charged, and the trial at which Jamal was condemned has been termed a travesty of justice by every impartial observer.

The targeting of Jamal was overtly political. The FBI began amassing a 600-page file on him when he was a 15-year-old high school activist. He subsequently worked on the national staff of the *Black Panther* newspaper. Later as a radio journalist he regularly exposed incidents of police brutality. In the sentencing phase of his trial, the prosecutor used political quotes from an interview with Jamal from ten years earlier as an argument to the jury for his execution.

Now is the critical period for Jamal’s case. He has filed his application for a federal writ of *habeas corpus*. But under the onerous provisions of the Effective Death Penalty Act of 1996, federal courts are required to give a presumption of correctness to state court findings of fact. This throws Jamal’s appeal back into the era of “states rights” as if the Civil Rights Movement never happened. The public must demand a full federal evidentiary hearing on this case.

Jamal’s case is where we must draw the line on “no questions asked” executions used to suppress dissent. It is critical that organizations of conscience take up this case, as its outcome will effect the lives of thousands for years to come.

## Description of Jamal's Trial

Mumia was brought to trial in June of 1982, and was sentenced to death on July 3, 1982. The judge, Albert Sabo, had sentenced more people to death than any other sitting judge in the United States. In an unrelated case, six Philadelphia lawyers, some former prosecutors, offered to testify that no accused could receive a fair trial in his court.

The jury was empanelled only after eleven qualified African-Americans were removed by peremptory challenges from the prosecution, an illegal practice that was recently revealed as having been taught to Philadelphia prosecutors in a special training video tape.

The defense attorney testified that he didn't interview a single witness in preparation for the 1982 trial, and he informed the court in advance that he was not prepared. He held meetings with the judge and prosecutor without Jamal's knowledge or presence, and he failed to put on any mitigation witnesses during the sentencing phase. Jamal was also denied the right to act as his own attorney. When Jamal protested, he was removed from the courtroom for much of his trial, with no provisions to allow him to follow the proceedings.

The defense investigator quit before the trial began because the meager court-allocated funds were exhausted. Neither a ballistics expert nor a pathologist were hired because of insufficient funds.

The prosecutor used statements made years earlier by Jamal as a member of the Black Panther Party as an argument for imposing the death penalty, a practice later condemned as unconstitutional by the U.S. Supreme Court in another case.

Philadelphia has been so notorious for racial bias in the application of the death penalty, that it is the subject of a recent academic study on the issue.

## Outline of the "Evidence"

The prosecution claimed that Jamal loudly confessed at the hospital where he was taken after being shot by the slain officer and beaten by police. But the jury never heard from police officer Gary Wakshul who was guarding Jamal at the hospital and who wrote in his report "the Negro male made no comments."<sup>(1)</sup> When called as a defense witness, the prosecution contended that Wakshul was on vacation and unavailable. The judge refused a continuance so he could be brought in, when in fact he was home and available.

Today we know that none of the police officers or hospital guards who now claim to have heard this "confession" reported it to investigators until two months after it allegedly occurred, and after Jamal had filed police brutality charges.<sup>(2)</sup> The attending physician also denies that Jamal said anything.

The prosecution claimed that ballistics evidence proved that Jamal was the shooter. But the jury never saw the written findings of the Medical Examiner which contradicted other prosecution testimony by writing "shot w/ 44 cal" in his report (Jamal's gun was .38 caliber). Jamal's court appointed attorney said he didn't see that portion of the report, so he never raised it to the jury.

Today we know that the police never tested Jamal's gun to see if it had been recently fired, never tested Jamal's hands to see if he had fired a gun, have no proof that Jamal's gun was the fatal

weapon, and have lost a bullet fragment removed by the medical examiner. Jamal was carrying a legally purchased gun on his job as a late night cab driver because he had been robbed several times.

The prosecution claimed that eye-witnesses identified Jamal as the shooter. But the jury never heard from a key eye-witness, William Singletary, who saw the whole incident and has testified that Jamal was not the shooter. Singletary, a local businessman, was intimidated by police when he reported this, and he subsequently fled the city.<sup>(3)</sup>

Today we know why the key witnesses Veronica Jones, Cynthia White, and Robert Chobert testified as they did in 1982. Jones, who now testifies in support of Jamal, was threatened with the loss of her children if she did not support the police story.<sup>(4)</sup> Chobert, a white cab driver, first told the arriving police that the shooter ran away.<sup>(5)</sup> White backed the whole police story, but none of the other witnesses can remember seeing her at the immediate scene.<sup>(6)</sup> Both Chobert and White received very special treatment, including exemptions from criminal prosecutions.<sup>(7)</sup> By contrast, when Veronica Jones testified in Jamal's support, she was arrested in the courtroom on an old out-of-state warrant.

#### *Footnotes:*

- 1) Hearing transcript, August 1, 1995, page 38.
- 2) Hearing transcript, August 1, 1995, pp.78-79
- 3) William Singletary's testimony began on August 11, 1995, at page 204 of the transcript. He describes how police tore up his written statement, and forced him to sign a different statement which they dictated.
- 4) Hearing transcript for October 1, 1996, page 20.
- 5) Trial transcript for June 1, 1982, page 70.
- 6) White was a prostitute with 38 arrests and had two pending cases.
- 7) For example, when Cynthia White was arrested in 1987 (five years after the trial) on armed robbery charges, Philadelphia homicide detective Douglas Culbreth appeared in court and asked that White be released without posting money because she was "a Commonwealth witness in a very high profile case." White subsequently failed to show up for her court date and has since disappeared. See hearing transcript for June 30, 1997, pp. 99-100.

## **Jamal's Political History**

Mumia Abu-Jamal was born on April 24, 1954. At the age of 14, Jamal was beaten and arrested for protesting at a rally for segregationist presidential candidate George Wallace. At the age of 15, he took part in the campaign to change the name of his high school to Malcolm X High School. That same year the Federal Bureau of Investigation began keeping a file on him. In 1969 he was a co-founder and Minister of Information of the Philadelphia chapter of the Black Panther Party, and later worked in Oakland, California, on the staff of the party's newspaper. In 1970 he was featured in a front page article in the *Philadelphia Inquirer*. The FBI added his name to the National Security Index and the ADEX index of those persons to be rounded up and interned in a national emergency.

After attending Goddard College he became an active critic of the Philadelphia police department as a radio news reporter. In addition to local FM stations, Jamal was broadcast on the National Black Network, the Mutual Black Network, National Public Radio, and the Radio Information Center for the Blind. He interviewed such public figures as Julius Erving, Bob Marley, Alex Haley, and Puerto Rican independence fighters.

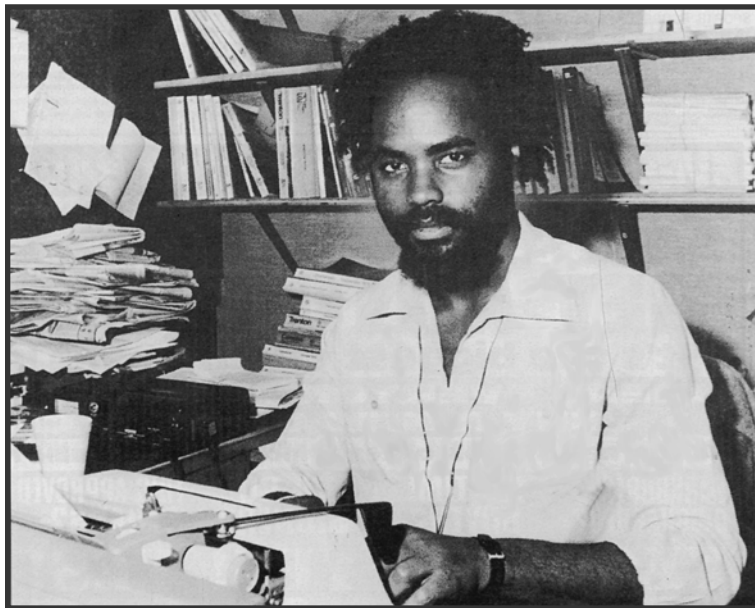
Jamal's style of journalism allowed the voices of ordinary people to be broadcast, included members of the MOVE organization, which angered public officials. In 1978, Jamal reported on the siege of the headquarters of MOVE, where scenes of police beating MOVE members were telecast. On August 8, Jamal attended an angry press conference in City Hall. In response to question asked by

Jamal, Mayor Frank Rizzo responded: “They believe what you write, what you say. And it’s got to stop. And one day, and I hope it’s in my career, that you’re going to have to be held responsible and accountable for what you do.”

During the summer of 1981, Jamal covered the federal trial of John Africa, founder of the MOVE organization. John Africa was charged with a number of conspiracy and weapons charges, typical of those brought against Black dissidents during this period. He successfully defended himself and was acquitted on all charges. Jamal was deeply impressed by John Africa during this trial and drew closer to the MOVE organization.

After Jamal’s shooting and arrest in December of 1981, the *Philadelphia Inquirer* headlined: “The Suspect—Jamal: An Eloquent activist not afraid to raise his voice.” The story described him as a “gadfly among journalists and easily recognizable because of his deadlock hairstyle, revolutionary politics and deep baritone voice.”

Since his conviction and death sentence in 1982, Jamal has been held 22 hours a day in a solitary cell. He is denied contact visits with his family, and he has grandchildren he has never been allowed to touch. Journalists are no longer allowed to record or photograph him. The last entry in the sections of his FBI file that have been released, shows the federal government monitoring his prison visitors as late as 1991.



## Censorship of Jamal’s Writings

In 1994, National Public Radio hired Jamal to do a series of commentaries on prison life. NPR was immediately warned by the Fraternal Order of Police, the *New York Times*, and Senate Majority Leader Robert Dole about allowing “a convicted cop killer” on the air. NPR cancelled the series on the day it was to begin.

In 1995, Jamal's book *Live From Death Row* was published by Addison-Wesley. The Fraternal Order of Police attempted to have the book banned, and members of the state legislature called for seizing any proceeds from the book. (When Sgt. Stacy Koons, in prison for beating Rodney King, published his book, the FOP did not complain.) Jamal was denied visitors and phone calls as punishment for writing *Live From Death Row*. This sort of practice by other countries is usually condemned by the United States as a human rights violation.

The federal district court in Pittsburgh ruled that Pennsylvania had illegally singled out Jamal, when they barred the press from interviewing him in retaliation for his book. Shortly after this 1996 ruling, the prison system instituted a new rule banning the media from recording or photographing *any* prisoner in the state system.

In 1997 Pacifica Radio's program "Democracy Now" program broadcast a series of Jamal's recordings. These were to be carried in Philadelphia on WRTI, the radio station of Temple University. The FOP again protested. WRTI cancelled the show the day it was to air.

In January, 1999, *Rage Against the Machine* and three other bands rented the Continental Arena in East Rutherford, NJ, to hold a benefit concert for Jamal. Governor Christy Whitman expressed public regrets that the program could not be legally banned, and called on people to boycott the performance. (The concert was a sell-out success anyway.) Since then the FOP has called for a boycott of any performers or businesses that express support for a new trial for Jamal.

As Jamal has commented, "They don't just want my death, they want my silence."

## Appellate History

Jamal was sentenced to death on July 3, 1982. On March 6, 1989, his conviction and sentence was upheld by the Pennsylvania Supreme Court. Oddly, only four of the seven justices participated in the decision. The chief justice, who was the only Black justice on the court, recused himself without giving an explanation.

On October 1, 1990, Jamal's petition for a writ of *certiorari* was denied by the U.S. Supreme Court. In petitioning for a rehearing, Jamal cited the fact that the Supreme Court had accepted a similar case from Delaware, where political association had been used as an argument for imposing the death penalty (*Dawson v. Delaware*, 1992). In the Dawson case, prosecutors used Dawson's membership in a white-supremacist prison gang as an argument for imposing the death sentence, and had even cited the Jamal case in Pennsylvania as precedent. Inexplicably, the Supreme refused to hear Jamal's claim while reversing the death sentence of Dawson.

In 1992, Leonard Weinglass became Jamal's lead attorney, and began preparing a motion for a new trial under Pennsylvania's Post Conviction Relief Act. This petition was filed on June 5, 1995. Weinglass notified the governor's office of the impending filing. The governor then rushed to sign a death warrant at the end of the last working day before the filing. (Only after these events did the defense learn that prison officials had opened and illegally copied Jamal's privileged legal mail, and sent copies to the governor's office.) The trial judge then refused to grant a stay of execution, claiming that Jamal's attorneys had "waited years" until a warrant was signed before filing. While the hearing on the petition was taking place in July and August of 1995, Jamal came within ten days of execution. A stay was finally granted only as the result of an unprecedented international outcry.

Under Pennsylvania law, the trial judge hears all post-conviction motions. Thus it fell to Judge Albert Sabo, the same judge who had conducted the original trial, to rule on whether the original trial was fair. Sabo was able to preside, even though he was well past the constitutionally mandated retirement age. He was permitted to remain on the bench to rule on the Jamal appeal because the Chief Justice of the state Supreme Court allowed him to stay on under emergency provisions of the state constitution.

Not surprisingly, in the course of the hearings Sabo quashed defense subpoenas, denied discovery motions, threatened witnesses, and even had one of Jamal's attorneys taken out in handcuffs. After the 1995 hearing, followed by two remand hearings in 1996 and 1997, Sabo ruled that the original trial had been flawless and denied the petition for a new trial.

This denial was appealed to the Pennsylvania Supreme Court, and on October 29, 1998, that court unanimously upheld Sabo's ruling. In fact, the Pennsylvania Supreme Court was unable to find any errors in the 17 years of trial, direct appeal, and collateral appeals. A motion for a rehearing was denied on November 25, 1998.

Then Jamal's attorneys petitioned the U.S. Supreme Court for a writ of *certiorari* on the denial of Mumia's Sixth Amendment rights (denial of *pro se* status, denial of attorney of choice, and removal from the courtroom with no provision for being informed of developments while on trial for his life). On October 4, 1999, the Supreme Court denied cert and on October 13 Gov. Tom Ridge signed a new death warrant for Jamal. The warrant set an execution date of December 2, 1999, the 140th anniversary of the execution of John Brown.

On October 15, Jamal's lawyers filed for a writ of *habeas corpus* in the Federal District Court for Eastern Pennsylvania. The case was assigned to Judge William H. Yohn, who stayed the December 2 execution. In the spring of 2000, a number of major organizations attempted to file amicus briefs in the case, but these were refused by Judge Yohn. Yohn also refused Jamal's petition to add as a separate issue to his habeas petition the trial court's refusal to allow him to have the lay advisor of his choice at the defense table.

A major issue before Yohn is whether to grant an evidentiary hearing to allow presentation of the evidence that was denied by the Pennsylvania courts, or whether the whole federal process will be based on the court record developed by Judge Sabo. In March of 2001, Jamal petitioned Judge Yohn to dismiss his legal team and he subsequently retained new counsel. Since then, Jamal's new counsel have produced a signed confession of another individual who states that he shot Officer Faulkner and they are seeking to amend his habeas petition.

## Issues Concentrated in the Case

Mumia Abu-Jamal is both the exception and the rule. As "the exception," he was singled out by authorities because of his political journalism. His brother was not charged with the shooting and was released with a suspended sentence for a misdemeanor. It is unheard of for two Black men to be involved in an altercation that results in the death of a white police officer, and then one of them just be released. But it was Jamal that the police wanted, and his political statements were used as an argument for imposing the death sentence.

Since his conviction, the government has tried in every way to censor his voice. The Fraternal Order of Police has managed a national campaign calling for his execution, using right-wing talk shows and a full-page ad in the *New York Times*. The widow of the slain police officer has been showcased in Washington, on stage with President Bill Clinton and Attorney-General Janet Reno.

As an example of “the rule,” Jamal has faced what most young men of color face in the criminal justice system every day. If the new Effective Death Penalty Act had been in force at the time of his arrest, Jamal would be dead today. Nobody without financial means can assemble the case needed to overturn a murder conviction in the 12 months allotted by the new law for all federal *habeas* appeals.

The manner in which Black jurors were purged from his jury pool is in violation of international law as established by the International Convention on the Elimination of All Forms of Racial Discrimination, to which the United States is a signatory. During the period 1983-1993, one study found that Blacks were 5.2 times more likely to be challenged than whites in the jury selection process in Philadelphia. In Jamal’s jury selection process, Blacks were 16.2 times more likely to be challenged. The result of such disparities is that over 60% of all prisoners on death row in Pennsylvania are African-Americans, in a state that is only 10% Black.

Jamal’s case has come to symbolize the society-wide criminalization of Black males and the bipartisan program for quicker executions with fewer appeals. If he is executed, he will be the first Black revolutionary to be legally executed in the United States since the days of slavery.

## Who Is Calling for Justice for Jamal

Numerous statements and full-page adds have appeared on the case of Mumia Abu-Jamal. Among those who have questioned his conviction or publicly opposed his execution are:

African National Congress	Henry Louis Gates	National Coalition to Abolish
Amnesty International	Stephen Jay Gould	the Death Penalty
Maya Angelou	Bishop Thomas Gumbleton	National Lawyers Guild
Ed Asner	State Rep. Vincent Hughes	Helen Prejean, C.S.J.
Julian Bond	Int’l. Parliament of Writers	Rep. Charles Rangel
Reverend Dr. Joan Campbell	Rev. Jesse Jackson	Salman Rushdie
Rep. John Conyers, Jr.	Coretta Scott King	Susan Sarandon
Angela Davis	Barbara Kingsolver	Rev. Al Sharpton
Ossie Davis	Jonathan Kozol	Gloria Steinem
Rep. Ron Dellums	Rep. Cynthia McKinney	Wole Soyinka
Jacques Derrida	Danielle Mitterrand	Archbishop Desmond Tutu
E.L. Doctorow	Toni Morrison	Alice Walker
The European Parliament	National Black Police	John Edgar Wideman
Rep. Chaka Fatah	Association	Elie Wiesel
Mike Farrell		Howard Zinn

## Sources of More Information

*On a Move: The Story of Mumia Abu-Jamal* by Terry Bisson (Litmus Books, 2001). The story of Mumia’s life vividly told.

*The Case of Mumia Abu-Jamal: A Life in the Balance* by Amnesty International (Seven Stories Press, 2000)

*Race for Justice* by Leonard Weinglass (Common Courage Press, 1995). Complete text of Jamal's motion for a new trial together with exhibits and supporting documents.

*Resource Book on the case of Mumia Abu-Jamal* (Refuse & Resist!, 1998). Collection of articles on the case, including an analysis of Pennsylvania Supreme Court decision denying Jamal a new trial.

*Live from Death Row* by Mumia Abu-Jamal (Addison-Wesley, 1995)

*Death Blossoms* by Mumia Abu-Jamal (Plough Publishing, 1997)

*All Things Censored* by Mumia Abu-Jamal (Seven Stories Press, 2000) (contains CD of Jamal reading his columns made before Pennsylvania banned all recording of Jamal.

*Mumia Abu-Jamal: A Case for Reasonable Doubt?* (documentary video by HBO)

*25 YEARS ON THE MOVE* (MOVE, 1996). History with photographs of MOVE organization and the government's war on them. Includes section on Jamal.

*Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia* by David C. Baldus *et al.* (Cornell Law Review, Vol. 83:1638)

*Legal Lynching* by Rev. Jesse Jackson (Marlowe & Company, 1996). This book against the death penalty uses Jamal's case as one example.

Jamal's weekly columns are available on [www.mumia.org](http://www.mumia.org), and information about his case and the international movement in his support are available on [www.refuseandresist.org](http://www.refuseandresist.org) and numerous other web sites.

***"Neutral" or anti-Jamal sources:***

"Guilty *And* Framed" by Stuart Taylor, Jr. (*The American Lawyer*, December 1995). Concludes that Jamal probably fired one shot, but he was framed in a totally unfair trial.

Web site organized with the help of the Fraternal Order of Police: [www.justice4faulkner.org](http://www.justice4faulkner.org). Presents prosecution case with highly selective quotes from trial and hearing transcripts.

ABC's 20/20 on December 9, 1998, presents the position of the Fraternal Order of Police and the prosecution.

Full-page ad in the *New York Times*, June 14, 1998, funded by the Fraternal Order of Police.

(compiled by C. Clark Kissinger, April 1999; revised Sept. 2001)