

# Court appeal scheduled for US political prisoner Mumia Abu-Jamal

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Lawyers for US political prisoner Mumia Abu-Jamal are scheduled to make oral arguments May 17 before the US Court of Appeals for the Third Circuit in an effort to win a new trial for the former Black Panther and radio journalist who was framed up for the 1981 killing of a Philadelphia policeman.

Abu-Jamal, who will turn 53-years-old on April 24, has spent nearly half of his life on Pennsylvania's death row. In December 2001, after years of US and international protests opposing his execution, a federal judge overturned Abu-Jamal's death sentence but upheld his 25-year-old murder conviction. While Abu-Jamal's attorneys are asking the three-judge panel on the appellate court to throw out the conviction and grant him a new trial, the State of Pennsylvania is appealing to the same court to reinstate the death penalty. If prosecutors are successful a new execution date could be set for Mumia. If they fail, the Philadelphia District Attorney's office could impanel a new jury to rehear the penalty phase of the case, which could result in a new death sentence.

Because the District Attorney's office appealed Judge Yohn's death penalty decision, Mumia has never left death row, and is still unable to have such "privileges" as full-contact visits with his family.

In a publicly released letter Robert R. Bryan, the lead counsel for Abu-Jamal, said the case concerns the right to a fair trial, the struggle against the death penalty, and the political repression of an outspoken journalist. "Racism and politics are threads that run through this case since his 1981 arrest," he wrote. Pam Africa, the coordinator of Abu-Jamal's international support network, emphasized that "Mumia can still be executed. Further, since the Supreme Court is unlikely to hear Mumia's case, this is realistically his last chance to get a new trial. As the history of his case shows, we need public pressure to ensure the court's fairness."

Abu-Jamal was arrested for the murder of officer Daniel Faulkner, who stopped Mumia's brother's car in the early morning of December 9, 1981. Abu-Jamal, working as a taxi driver, happened on the scene and saw that his brother had been beaten. In the moments that followed, both the police officer and Abu-Jamal were shot. The officer died, and Abu-Jamal was hospitalized in critical condition. He was charged with murder and quickly tried and convicted in a racially charged trial. Abu-Jamal has steadfastly maintained his innocence.

Several lengthy court hearings that were held in 1995 and 1996, as part of Abu-Jamal's efforts to secure a new trial, brought out facts which demolished the prosecution case and pointed more and more to a frame-up of the radical black nationalist defendant. Defense attorneys revealed that police and prosecutors coerced several witnesses to provide false testimony against Mumia while deliberately suppressing evidence that would have exonerated him. The medical examiner's report, which had not been entered into the record at the original trial, noted that the bullet removed from the officer's brain was a .44 caliber. Mumia's gun, a .38, could not have fired such a bullet. Moreover, the police allegedly failed to conduct a test to determine if Mumia's gun had even been fired recently, or a routine test to see if he had recently fired any weapon.

Finally the alleged confession by Abu-Jamal at the hospital where he was brought was based on the testimony of another cop who did not appear at the original trial because he was allegedly on vacation. This officer, subpoenaed by the defense to testify at a court hearing in 1995, admitted that he reported that "the negro male made no comments" on the night of the shooting. Several months later, however, after attending a meeting with the prosecutor, he suddenly remembered that Mumia had confessed!

Well before the 1981 shooting, Mumia had been targeted for persecution by the FBI, former mayor Frank Rizzo and the Philadelphia police department because of his outspoken opposition to police brutality and racism. The department was among the most notorious in the United States for use of force against minorities. During the period between 1970 and 1978, according to official reports, 452 people were shot and not a single officer was held accountable. More than 160 people were killed by police—two-thirds of whom were black or Hispanic. In August 1970, the Philadelphia police along with the FBI raided the offices of the Black Panthers in West Philadelphia, North Philadelphia and Germantown.

Once outside and on the sidewalk, the police forced the Panther members at gunpoint to strip naked and stand with their hands held up against a wall. The attempted humiliation created outrage at the time after the Philadelphia Daily News and papers across the country published the photo on their front pages. During the last few years, the authorities have been forced to release dozens of defendants because of fabricated evidence and other misconduct uncovered in a broad federal investigation of the Philadelphia Police Department.

In December, 2005, the 3rd Circuit court of appeals began deliberations on the case and agreed to consider two claims not "certified for appeal" by federal District Court Judge William Yohn in his 2001 ruling upholding the conviction. These included defense charges that Mumia was the victim of racial bias during the trial and that the judge gave improper instructions to the jury that violated his constitutional rights to due process and equal protection under the law. Abu-Jamal's appeal also includes a challenge to the exclusion of 11 of 14 black jurors.

In an *amicus curiae* (friend of the court) brief supporting the appeal, the NAACP Legal Defense and Educational Fund cites an official 1986 Philadelphia District Attorney training video for new prosecutors (which publicly surfaced in 1997), in which veteran DA prosecutor Jack McMahon urged prosecutors to remove blacks from jury panels. "The blacks from the low income areas are less likely to convict. There's a resentment for law enforcement and a resentment for authority ... you don't want those people on your jury, let's face it," McMahon declares.

If any of the new prosecutors refused to act as such, McMahon warned them that they'd lose their job: "If you're going to be some noble civil libertarian ... You'll lose and you'll be out of office; you'll be doing corporate law .. You're there to win .. and the only way to do your best is to get jurors that are as unfair and more likely to convict than anybody else in that room."

That same year, 1986, the US Supreme Court ruled in *Batson Kentucky* that a defendant deserves a new trial if it can be proved that jurors were excluded on the grounds of race. Most importantly, the *Batson* ruling significantly lowered the defendant's burden of proof. Because of the illegality of the deliberate exclusion of minority jurors, McMahon recommended practical ways to conceal race-conscious jury selection. Describing one technique, he said, "when you do have a black juror, you question them at length. And on this little sheet of paper that you have, mark something down so that you can articulate later if something happens .. And then you can say, 'Well the woman had a kid about the same age as the defendant and I thought she'd be sympathetic to him' or 'She's unemployed and I just don't like unemployed people ...' So sometimes under that line you may want to ask more questions of those people so it gives you more ammunition to make an articulable reason as to why you are striking them, not for race."

During Abu-Jamal's trial prosecutor Joseph McGill used 11 of his 15 peremptory challenges to remove black jurors that were otherwise acceptable. While Philadelphia is 44% black, the jury was composed of ten whites and only two blacks. The NAACP cites a survey of homicide cases tried by McGill from Sept., 1981 to Oct., 1983, showing that "the odds that Mr. McGill would peremptorily challenge an African-American potential juror were 8.47 times greater than for non-black jurors." From 1977-1986 (when current Pennsylvania governor Ed Rendell was DA), Philadelphia DA prosecutors struck 58% of black jurors, but only 22% of white jurors. In its brief the NAACP argues that "when viewing the facts of Mr. Abu-Jamal's case through the lens of *Batson's* true history and purpose, it becomes abundantly clear that he has set forth a prima facie case of discrimination."

In addition in 2001 another witness—Terri Mauer-Carter—challenged the 1982 trial's fairness, but the State Supreme Court ruled against the defense's right to include her affidavit in their current federal appeal. Mauer-Carter was working as a stenographer in the Philadelphia Court system on the eve of Mumia's 1982 trial when she states that she overheard presiding Judge Albert Sabo say in reference to Mumia's case that he was going to help the prosecution "fry the n——." Sabo, a lifetime member of the Fraternal Order of Police, sentenced 32 defendants to death, more than any other judge in the country. Now retired, Sabo also presided at the 1995 and 1996 hearings, years after the original railroading of Abu-Jamal, and upheld his earlier conduct by dismissing all of the new evidence and arguments for a new trial.

The NAACP reported that journalist Dave Lindorff recently interviewed Mauer-Carter's former boss, Richard Klein, who was with Mauer-Carter when she states she overheard Sabo. A Philadelphia Common Pleas Court judge at the time, who now sits on Pennsylvania's Superior Court, Klein told Lindorff, "I won't say it did happen, and I won't say it didn't. That was a long time ago." Lindorff considers Klein's refusal to firmly reject Mauer-Carter's claim to be an affirmation of her statement. The State Supreme Court ruling was an affirmation of lower-level Judge Patricia Dembe's argument that even if Maurer-Carter is correct about Sabo's stated intent to use his position as Judge to throw the trial and help the prosecution "fry the n——," it doesn't matter. According to Dembe, since it "was a jury trial, as long as the presiding Judge's rulings were legally correct, claims as to what might have motivated or animated those rulings are not relevant."

In an unusual move the Philadelphia District Attorney's Office is now demanding the Third Circuit to recuse itself because Governor Edward Rendell, whose wife serves on the court, was district attorney during Jamal's 1982 trial. Prosecutors who deny charges that racial discrimination was used in selecting a jury said, "Since Mr. Rendell was the elected district attorney at the time in question, and so would have been responsible for the supposed 'routine' racially discriminatory practices of Philadelphia prosecutors, Abu-Jamal's accusations

necessarily implicate Mr. Rendell personally" Hugh Burns, an assistant district attorney, wrote in a motion.

The move serves two purposes. First it is aimed at preventing Mumia's attorneys from appealing any unfavorable ruling from the appellate court, thereby accelerating the process towards executing Abu-Jamal. Secondly it may be aimed at removing the judges who granted Mumia's lawyers additional claims for their appeal.

Since his imprisonment Mumia has been a courageous opponent of capital punishment and the inhuman treatment of prisoners, winning widespread support both in the US and throughout the world for his freedom. For this reason a coalition of reactionary and influential political forces—national police organizations, prosecutors associations and various Republican and Democratic politicians—have pressed for his execution. They hope to carry out the first state killing of a political prisoner since the Rosenbergs in 1953 to make an abject example of Mumia and intimidate and silence political dissent.

Last December US House of Representatives joined the right-wing gang-up against Mumia by passing a resolution condemning him and the international support that he has won. The resolution, which passed by a 368-31 majority, was written by Representative Mike Fitzpatrick to—in the words of the Pennsylvania Republican—"stand together as one and send a strong message to the world that cop-killers deserve to be punished, not to be celebrated."

The resolution specifically denounces the municipal government of St. Denis—a suburb of Paris—for dedicating a street in honor of the US political prisoner and demands it immediately change the name of Rue Mumia Abu-Jamal. If local officials fail to do so, the resolution calls on the government of France to intervene. The resolution specifically denounced Mumia for the murder of Danny Faulkner and "commends all police officers in the United States and throughout the world for their commitment to public service and public safety."

This reactionary resolution—written on the eve of what may very well be his last chance to avoid the death chamber—was supported by 151 Democrats, including current congressional majority leaders Nancy Pelosi and Steny Hoyer and so-called "left" Democrats, such as Henry Waxman and Dennis Kucinich. Independent congressman and self-described socialist Bernie Sanders also joined in the denunciation of Mumia.



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