

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : PART 35

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

: Indictment Number
871/65

-against-

MUHAMMAD ABDUL AZIZ (Norman 3X Butler) :

AFFIDAVIT

and :

KHALIL ISLAM (Thomas 15X Johnson), :

Defendants-Movants :

STATE OF NEW JERSEY)

) ss.:

COUNTY OF ESSEX)

HERBERT STERN, being duly sworn, hereby deposes

and says:

1. I am presently a Judge of the United States District Court for the District of New Jersey.

2. From February 20, 1962 through September 24, 1965, I was an Assistant District Attorney in the New York County District Attorney's Office.

3. On April 6, 1964, I was appointed to the Homicide Bureau of the New York County District Attorney's Office.

4. From February 21, 1965, when Malcolm X was murdered, until September 24, 1965, when I resigned from the District Attorney's Office, I was in charge of the New York County

District Attorney's investigation of the murder of Malcolm X and of the presentation of the evidence to the Grand Jury.

5. This affidavit is submitted in response to the affidavit of Benjamin Goodman, dated May 14, 1978.

6. On March 30, 1965, I interviewed Benjamin Goodman in my office. As Mr. Goodman spoke to me, I took notes of what he said. Before preparing this affidavit I reviewed a copy of my notes of my March 30, 1965 interview of Benjamin Goodman. A copy of these notes is attached hereto as Appendix "A" and made a part hereof.

7. During our March 30, 1965 conversation, Mr. Goodman told me that he knew Butler and Johnson from the Nation of Islam's Mosque #7 in Manhattan.

8. Mr. Goodman also told me that he did not witness the actual shooting of Malcolm X in the Audubon Ballroom since he, Goodman, had left the Audubon Ballroom and had entered another room by the time the shooting began.

9. I did not tell Mr. Goodman that I knew he had previously said that he had witnessed the shooting. I had, and to the present still have, no knowledge that Mr. Goodman had ever said that he had witnessed the shooting. In fact, as the New York City Police Department Supplementary Complaint Reports dated February 27, 1965 and March 26, 1965 indicate, Mr. Goodman had previously told the police that he had not witnessed the shooting of Malcolm X. These Supplementary Complaint Reports are

attached hereto as Appendix "B" and made a part hereof.

10. Mr. Goodman did not tell me that he knew that Butler and Johnson were not present in the Audubon Ballroom when Malcolm X was murdered. Nor did Mr. Goodman tell me that he did not notice Butler and Johnson in the ballroom, and that he would have noticed them had they been there.

11. Rather, Mr. Goodman told me that ~ during his introductory speech to the audience, he "look[ed] over [the] heads of [the] crowd." See Appendix "A".

12. The import of Mr. Goodman's statement to me was that he did not know, one way or the other, whether or not Butler or Johnson were present in the ballroom.

13. Mr. Goodman's statement to me was in accord with information I had previously received from Detective Ferdinand Cavallaro of the New York City Police Department. This information was that Goodman had told the police that "when he speaks he doesn't look at audience, but looks over their heads. So he doesn't know who was in the audience." See my memorandum to Files, a copy of which is attached hereto as Appendix "C" and made a part hereof.

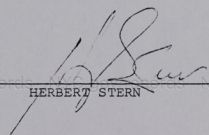
14. Mr. Goodman's March 30, 1965 statements to me indicating that he knew Butler and Johnson, but did not know whether or not they were in the ballroom, and that he did

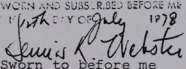
not witness the shooting, were also in accord with his testimony to the Grand Jury on April 5, 1965.

15. Mr. Goodman's statement to me was neither exculpatory nor inculpatory of Butler or Johnson. Mr. Goodman simply provided no information as to whether or not Butler or Johnson were present in the ballroom or took part in the murder of Malcolm X.

16. There was no reason for me to, and I did not, become angry with Mr. Goodman, threaten him in any manner, or attempt to get him to alter his statement to me in any way.

DENNIS KING WEBSTER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/15/79


HERBERT STERN

SWORN AND SUBSCRIBED BEFORE ME
this 12th day of July 1978

Sworn to before me
this 12th day of July, 1978.

Appendix "A"

3/30/65

Benjamin Augustus Goodman

1022 Longfellow Ave, Bronx
DA 9-9418

Inter Church Center, 475 Riv. St.
also Council for Clinical Training
Age 32

used to live at 1008 University Ave.

Joined Mosque #7 in 1958.
Left in Early Summer of 1964.

Feb 21, 1965

Goodman asked by
Saeed Purchase to open the
speaking. Told after he got
to Boardroom. Arrived

Showing in moving to
front.

knew Bester & Juma
from Mosque - Ben Bgy.
look over heads of Crowd.

7C was established around
1963.

7B, L.I. Mosque set up first.

Benjamin became an Asst Minister
to Malcolm in Mosque # 7 in 1961

Appendix "B"

SUPPLEMENTARY COMPLAINT REPORT (DO NOT FOLD THIS REPORT)

Complainant's Surname First Name Telephone No.

PEOPLE

Complainant's Address Apt. No.

MALCOLM "X" HOMICIDE

6. Date and Time Reported on U.F. 61 A.M. 14* 15* 19. Pet. 22. U.F. 61 No.

February 21-1965 3:10PM
Sunday 2/21/65 3:10PM

36. P.D. Code 39. Amt. Code Larceny Only 40* 41* 42. Pet. of Arrest 43. Arrest No.

FOLLOWING QUESTIONS PERTAIN TO THIS COMPLAINT REPORT

Answer Yes No

Was this complaint previously cleared by an arrest?

If yes, is this an additional arrest?

Were identified persons wanted previously reported?

Was any stolen property previously reported?

Was this stolen property previously reported?

Was any property recovered previously reported?

Was this recovered property previously reported?

Was complainant advised of action taken?

NUMBER OF ARRESTS ARRESTS MADE BY:

Male Female Uniformed Force

Adults Detective Div.

Juveniles Other Peace Off.

Civilian

If an alarm is transmitted enter the following information:

Alarm Number Date and Time Transmitted

50. TYPE OF PROPERTY

1. Autos Stolen or Recovered Locally

2. Autos Recovered by Other Auth's

3. Autos Recovered F. O. A.

THIS REPORT

CONCERNS:

(CHECK ONE)

Lost

Property ☐

Stolen

Property ☐

4. Currency

5. Jewelry

6. Furs

7. Clothing

8. Firearms

9. Miscellaneous

Crime or Offense as Classified on U.F. 61

Crime or Offense Changed to

Copy of this report forwarded to

Corr. Bur. for Communication.

YES ☐ NO ☐

Signature of C.O. of Investigation

Rank Name Command

Date of This Report

51. Value of Property Stolen

57. Value of Stolen Property Recovered

Report of Investigating Officer:

(LIST ALL LOST OR STOLEN PROPERTY ON REVERSE SIDE)

Date of This Report

March 26, 1965

Subject:

REINTERVIEW OF BENJAMIN 2X DAVIS GOODMAN

1. Goodman At 11:15PM March 25th 1965 the undersigned reinterviewed one Benjamin 2X DAVIS at Manhattan North Detective Offices regarding the above case. Subject was born in Suffolk, Virginia on July 14, 1932 (32 years) He resides at 1022 Longfellow Avenue, with his wife whom he married earlier this month. He is employed as a file clerk at the Inter Church Center at 475 Riverside Ave., New York City and earns \$66 per week

2. Former member of Mosque #7, joined in 1958 and defected in favor of Malcolm X in late 1964. States he was arrested for Police, Narcotics and earlier this year was arrested in Boston for disturbing the Peace with 7 other brothers.

3. Was the first speaker on the rostrum at the Audubon Ballroom the day Malcolm was murdered. While Malcolm spoke he states he was in the dressing room to the right of the stage with Sister Sarah Mitchell and James 67X Shabazz Warden. States that during the shooting that the door to the dressing room was closed.

4. Investigation proceeding, Case active

CASE

ACTIVE

*Entries by S.R.B. only

Investigating Officer's Name (Typed)

Investigating Officer's Signature

Rank Patrick J. Twokey

DET Shield No. 2092

Command

3492D

BENJAMIN GOODMAN, called as a witness,
having first been affirmed, testified as
follows:

BY MR. STERN:

Q What is your name, sir?

A Benjamin Goodman.

Q And where do you live Mr. Goodman?

A 1022 Longfellow Avenue.

Q And what do you do for a living?

A I work for the Inner State Church Center as a file
clerk.

Q And will you try to keep your voice up and
your speech distinct so that everybody can hear you?

A Yes, sir.

Q MR. FOREMAN: Mr. Goodman, do you
want to take your coat off.

WITNESS: Thanks.

BY MR. STERN:

Q Now, Mr. Goodman, you were formerly a member
of Mosque #7; is that correct?

A Yes, sir.

Q Did you join there in about 1958; is that correct?

A Yes, sir.

Q And after you joined, did there come a time that you became an official in the Mosque?

A Yes, sir.

Q And what position did you hold?

A Assistant Minister.

Q And who was the minister at the time that you were assistant?

A Brother Malcolm.

(Continued on next page)

4/5/65-3rd Mar.'65-GF

Goodman-1

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BY MR. STERN:

Q What are the duties of a minister and an assistant minister?

A Well, I think it's mainly the duties of an assistant minister -- well, what my duty was, more or less to expound the religion of Islam, which is all that an assistant minister is supposed to do, because they have departments for everything else. And a minister's duty is actually, as far as I can see, is, you know, the welfare of the particular mosque that he is over.

Q In other words, he is in complete charge of the mosque?

A Yes, sir, he's supposed to be.

Q The mosque is under ~~his~~ this control?

A Jurisdiction.

Q Jurisdiction?

A Right.

Q But as the assistant minister you say you are only concerned with religious matters?

A Yes, sir.

Q And you would teach the religion to the

membership; is that right?

A Right.

Q Did you use certain literature to teach the religion?

A We used the Bible and the Koran.

Q Did you use certain lessons?

A Yes, sir.

Q And there are two lessons, is that right, Lesson Number 1 and Lesson Number 2?

A There are two lessons.

Q How many lessons are there?

A I think it's four.

Q Four lessons?

A I think it is. Five.

Q What are they called?

A We have student enrollment, Lesson Number 1, Lesson Number 2, Lesson C-1, and the problem book.

Q Now, was it required of the membership in their religious teaching that they memorize the lessons?

A Yes, sir.

Q Verbatim; is that right?

A Yes, sir.

Q And you were one of the people responsible for teaching those lessons; is that correct?

A No, sir. We had classes set up for the lessons and mostly what we taught from the rostrum was the religion from the Bible, from the Koran, the Prophets and what have you. There are special classes that they have to, you know, to recite the lessons.

Q Who conducts those special classes?

A Well, it rotates. You know, they have different people sometimes conducting them.

Q As an assistant minister you would sometimes conduct them; is that right?

A I have yes.

Q Now, did there also come a time when you yourself became a minister?

A No, sir, an assistant minister.

Q Did there come a time when branch mosques were opened up in Long Island and one in Brooklyn?

A Right.

Q Did you have any special duties in reference

to these branch mosques?

A Oh, yes. I was an assistant minister in Long Island and also in Brooklyn.

Q Who was your superior?

A Minister Malcolm.

Q He was your superior in -- he was a minister --

A He was a minister over all of it.

Q But you were in effect a minister of the mosque in Brooklyn and also the mosque in Long Island?

A Oh, no. No. I was an assistant in Brooklyn and ~~an~~ assistant in Long Island.

Q Who was your superior in Brooklyn or Long Island?

A Minister Malcolm.

If
Q /He wasn't in Long Island and you were, who would be the minister in charge of the mosque?

A Repeat that again?

Q If Brother Minister Malsolm were not present in Brooklyn and somebody had a spiritual problem, whom would they go to?

A Oh, well, you see, there were about, I guess maybe five or six assistant ministers that rotated from mosque to mosque. Number 7 in Long Island and also in Brooklyn. It wasn't just myself.

Q Isn't it a fact that while you were assigned to Brooklyn and Long Island, even though you were under the general authority of Malcolm, still you were responsible for the conduct of those mosques; isn't that correct?

A Spiritual conduct, yes.

Q Were you paid a salary during that time?

A Yes, sir.

Q How much were you paid?

A For about four months. When I was in Brooklyn. I received \$75 a week.

Q As a minister or assistant minister, but operating or practicing in Brooklyn, in addition to spiritual lessons, would you have any other duties?

A Well, I was supposed to more or less keep the Muslims in -- giving them an understanding of as far as selling the papers, as far as, you know, keeping the donations,

you know, up as much as possible.

Q In other words, you were responsible for the complete administration of the mosque?

A Oh, no, no, no. No. I was not responsible for the complete administration.

Q Well, the membership in Brooklyn, when you were there as assistant minister, would sell newspapers; is that right?

A Right.

Q They would also make weekly donations?

A Those that could afford it, yes.

Q How much would they be expected to give?

A I think it was something like thirteen or fifteen dollars.

Q A week?

A Yes, sir.

Q In addition, they were expected to sell 150 newspapers every two weeks?

A I am not sure if it was 150, as I told you about. Somewhere in that neighborhood. I thought it was a hundred.

Q And during Saviors Day they were expected to give \$125; is that right?

A \$100.

Q Excuse me?

A \$100.

Q During that time it was \$100?

A Yes, sir. See, I don't -- like I say, I been out since last year. Maybe some things has happened that I don't know about. But at that time it was \$100.

Q Well, while you were in Brooklyn and while you were in Long Island, acting in the capacity that you have described, whom would they give their donations to?

A To the secretarial department. In other words --

Q Didn't you just state that you were responsible for donations?

A I didn't say I was responsible for donations. I say I was supposed to more or less explain to them the importance of keeping up their donations or selling newspapers. But they had a special department, the secretarial department, that, you know, that take up

the donations, that they give it to.

Q In reference to a run meeting, for instance, after the meeting which you would conduct, you would call for donations; is that right?

A Well, see, this is public donations. This is like in a church where you take up a collection.

Q That is in addition to the dues, I understand that.

A Right.

Q If you would take a collection up in the church, or the temple, rather, and you collect all the money together, is that right, who would collect the money?

A It wasn't any particular people. As far as public donations, you know, is concerned; but as far as personal, you know, weekly donations, it was a special department for that.

Q Take the case of a typical brother. Let us say he gave public donation of one dollar. Let us take that dollar and follow it. Where does it go?

A It goes to the secretarial department.

Q How does it get there?

A Well, whenever the people take -- a public donation, whenever they take the money up it goes to the secretarial department, they count it.

Q Did you have a secretarial department in Brooklyn and Long Island?

A All mosques have secretarial departments.

Q Who was your secretary while you were in Brooklyn?

A Brother Masio (phonetic) was the secretary over that particular -- you know, over all the --

Q How would the money come to Brother Mason?

A Well, we would take it into -- for instance, if I go in the next day, I would take it over, you know, to Manhattan.

Q The same with the proceeds from newspaper sales, they would eventually go to Mason, too?

A Well, all of it goes together.

Q As the minister or the assistant minister in one of these mosques, you would take the money over to Masio, wouldn't you?

A Br leave it at the news office, or whatever.

Q In other words, you would transmit the money to --

A To Manhattan.

Q To Manhattan Mosque Number 7; is that right?

A Yes, sir.

Q Now, did there come a time when you were relieved of your duties as an assistant minister in charge of these mosques?

A No, sir, I quit.

Q You quit?

A Right.

Q When was that?

A Sometime -- I think somewhere around -- around April or May. Of last year.

Q Of 1964?

A Yes, sir. The early part of 1964.

Q That would be approximately four months after Malcolm X had been suspended; is that right?

A Something like that. Something like that.

Q Now, during this period of time were all

has more than just one meaning.

Q Now, the first portion of the answer says in reference to why you should murder the devil, because he is 100% wicked?

A Right.

Q And will not keep and obey the laws of Islam.

A Right.

Q Who does the "he" refer to there?

A I don't know. I mean, I'm telling you how we were taught the lessons. And plus if I am not mistaken, I think the ~~fixxxx~~ lessons was written somewhere back in the thirties.

Q These are the lessons that you learned verbatim, aren't they?

A They still were written sometime back in the thirties, if I am not mistaken, around 1934.

Q Then the answer continues, "His ways and actions are like a snake of the grafted type." Who does the "he" refer to there?

A You can refer to an evil as "he". This is the way --

the ministers and assistant ministers instructed to speak about Malsolm X at mosque meetings?

A I don't know if they all were. If they redeive any special instructions to speak about him. But many of them were doing it.

Q What were they saying?

A Well, I mean, you know, for instance, in the Koran there is chapters on the hypocrite, and more or less like, you know, defamation of character, you know, that Mohammed taught him what he knew and things of that nature.

Q It was taught in every mosque that Malcolm X was a ~~pk~~ hypocrite?

A I didn't go to every mosque.

Q It was taught in Mosque Number 7 that Maleolm X was a ~~pk~~ hypocrite; is that right?

A Yes, sir, it was taught. And also in the newspapers.

Q And were you asked to teach that, too?

A That he was a hypocrite? Not directly. You know. But by not doing it, evidently, I guess, you know, maybe they figured out I sympathized with him.

Q Why did you leave?

A Because I just -- I wasn't going, you know, stand up on the rostrum and ~~talk~~ talk about another brother, you know, anyone.

Q Did somebody suggest to you that you should?

A Not directly.

Q Well who did indirectly?

A Well, just the general atmosphere of everyone else. For instance, if three gentlemen begin to talk about Khrushchev is a communist and the fourth one said nothing, well, automatically they would say he sympathizes with Khrushchev. So I lost my spirit to, you know, to continue like that. I just quit.

Q In other words, everybody that you knew about was speaking against Malcolm X from the podium and because you didn't want to do so --

A Not everybody. Not everybody. But most of them that I heard did.

Q Whom did you hear?

A Well, sir, I prefer not to call ~~these~~ people's names. The ministers -- most of the ministers.

Q Just name their names.

A I don't particularly want to sit here and name, you know, ~~xxxxxx~~ people who said this or people who said that. But most of the ministers that -- Minister James.

Q James 3X?

A Yes, sir. You know --

Q Captain --

A Minister Louis.

Q Captain Joseph?

A Joseph would talk. I mean most of them.

Q What would they say?

A Well, you know, that the messenger taught him what he knew and that -- that he was wrong in talking against the messenger. You know, that Mr. Mohammed told him not to say anything, you know, and he continually talked. Or said his -- certain things put in the newspapers. Like his picture. Things like that that they talked about.

Q Did they say he was a ~~xx~~ hypocrite?

A Well, the way they were talking, you know, significance, you know, that he was a hypocrite. For instance, if you

go against Islam or Mr. Mohammed, then you are considered a hypocrite.

Q Were you also considered a ~~xxx~~ devil for that?

A Who, me?

Q If you go against the nation of Islam and Elijah Mohammed, are you considered to be a devil?

A I never heard of anyone being considered to be a devil for that.

Q Have you heard the expression?

A I heard the expression of devil.

Q Who is a devil?

A You mean who we are taught the devil is?

Q Yes.

A The white man.

Q And is there and specific -- withdrawn.

When you heard these men calling Malcolm X a hypocrite, did they also make reference to any part of the Koran?

A I don't exactly quote verses. I think most of the 9th chapter deals with it. I think it's called the immunity. Most of that deals with a hypocrite.

Q And they would refer to that chapter when they talked about it; is that correct?

A Well, sometimes I think they would refer to it. I think that has more in it concerning hypocrites than any other chapter. Except chapter 4 has something in it too.

Q Directing your attention to -- I withdraw that. There came a time after you left that you joined Malcolm X's Moslem Mosque, Incorporated; is that right?

A Yes, sir.

Q And your position there was also assistant minister; is that right?

A Well, I used to help him. I don't know if you would say assistant minister, but I used to teach for him. And along with others. Because he wanted to more or less expound Islam the way it's being taught in the other parts of the world.

Q Now, directing your attention to Sunday, February 21, 1965, did there come a time that day when you went to the Audubon Ballroom?

A Yes, sir.

Q What time did you go there?

A I think I got there about 2:30; somewhere in the neighborhood of 2:30. I think. I think so anyway. I wouldn't say right on the dot of 2:30, but somewhere in that neighborhood.

Q You could be off by about forty-five minutes?

A Oh, no, I couldn't; because I left home was after two o'clock and I caught a cab over.

Q When you got to the ballroom, did you know that you were going to speak?

A No, sir.

Q And when were you informed that you were to speak?

A Well, when I got in someone told me, I think they were from the OAU, one of the members, told me that Brother Minister wanted to see me. So I went directly in the back where he was.

Q He was backstage; is that right?

A Yes, sir. And he was very nervous. And I found out because it was Dr. Galamison was supposed to come and he didn't get there. So, the shiek, this man from Mecca, he came back and Brother Minister became more nervous

and ran all of us out. So we went out and sat down.

Then I think Sister Sarah came and got me.

Q You were designated to speak; is that right?

A Yes, sir. She told me that I was to open up.

Q That was because Dr. Milton Galamison, who was supposed to speak before Malcolm X, had cancelled; is that right?

A Yes, sir, he had learned that he had said he wasn't coming.

Q And then you got up and gave the opening remarks; is that right?

A Well, Sister Sarah, she was going to give me her notes and -- but I also carried notes, in case somebody else --

Q In case you had to make a public speech?

A In case I had to open up. As a matter of fact, as assistant ministers we always did that. I asked him, "How long do you want me to talk?" He said about a half hour, which is very unusual for someone, you know, to open up for a half an hour. And he said because he didn't have the charter for the OAU and the people were expecting it. So I told him I would open up in such a way where

when he come on the people would be ready to accept him, telling them that he didn't have time to get this charter together.

Q You did speak; is that right?

A Oh, yes, sir.

Q And there came a time while you were speaking that Malcolm X came on the stage; is that right?

A Yes, sir.

Q And after you saw him on the stage you concluded your remarks; is that right?

A Well, when I saw him sitting behind me and I heard him say, "Make it plain" -- that's what he say when he wanted to come on, "Make it plain." So then I introduced him.

Q What did you do after you introduced him?

A Well, I was going to sit down where he just got up from in the chair and he stopped me. He told me to go in the back and tell them to let him know the minute that Raff (phonetic) Cooper comes in. And so I went in, you know, in the room there, and --

Q You went backstage?

A Yes, sir.

Q Who was backstage when you were there?

A Brother James and Sister Sarah. If there was anybody else, I don't remember.

Q What happened after you were backstage?

A Well, I guess about fifteen seconds we heard this -- you know, some kind of disturbance, a lot of people were, you know, it sound like they were excited about something. And then -- a few seconds later we heard these noises go off. First it sounded like cap pistols or a string of firecrackers shooting off from a distance. And then I guess, I say five, six seconds later, a sound went off in front, which made me know then that they were, you know, was guns shooting. So at that moment I hit the floor. And I guess it was all over in about maybe thirty seconds. There was a lot of shots were fired.

Q You didn't see who was firing because you were backstage; is that right?

A Well, I was on the floor.

Q You were behind the stage; is that right?

You were in a room; is that right?

A Yes.

Q Which was separate from the ballroom?

A Separate from the exposed part of the stage. You know.

Q In other words, you were in an enclosed area from which you could not see out; is that right?

A Right.

Q So you did not see anybody firing; is that right?

A Right.

Q Now, you gave a speech for about half an hour; is that correct?

A I don't know if it was a half hour. Because I didn't time it.

Q It was about a half an hour? Well, you spoke for some time?

A Yes, sir.

Q When you speak, Mr. Goodman, when you speak do you look at the audience or do you look above the audience?

A Well, you know, you take in the whole audience.

Q Do you actually look at the people as they sit there or do you project out?

A Well, when I speak I mostly look, you know, look out, to try to weigh the audience, you know; if they are going to sleep you have to change whatever you are saying. If they, you know, if they in one mood you have to more or less say something else. You more or less weigh the whole audience.

Q Do you recall that on March 30th you came to my office and spoke to me?

A Yes, sir.

Q Does it refresh your recollection if I remind you that at that time you told me that when you speak you look over the heads of the crowd? Did you tell me that?

A I don't remember that.

Q You didn't tell me that?

A I don't know. I say I don't remember if I told you that.

Q When you speak do you look over the heads of the crowd?

A I don't understand what you mean by look over their heads.

Q You knew that Johnson and Butler from Mosque Number 7; is that right?

A Yes, when I was there I knew them.

Q Now, you stood up in front of the audience for a period time speaking; is that right?

A Yes, sir.

Q Do you know whether or not Butler and Johnson were in the audience as you spoke?

A No, sir.

Q You do not know if they were there or if they were not there?

A No, I don't.

Q You didn't see them there; is that correct?

A I didn't see them, no. It's difficult for me to --

I mean, I can't see them being there like that and know --

Q Just a minute.

A Yes.

Q Were you looking at the faces of the audience

as you spoke?

A Not any particular people, sir. I guess -- have you ever spoken to a large audience, you just don't pick out a person, you know, you take in the whole audience because you have a message for the audience, not just a particular person. So I wasn't looking for anyone.

I was more or less there to open up so Brother Minister could tell the people that he didn't have the charter. Not to see who was there.

Q So you do not know whether or not either man was there; is that correct?

A No, sir, I can't say that they weren't nor could I say that they were, because I didn't see them.

Q All right. Mr. Goodman, in reference to the lessons that you taught in Mosque Number 7, I specifically direct your attention to Lesson Number 1, Question and Answer Number 10. Do you know that lesson?

A Yes, sir.

Q Would you repeat it?

A I don't know if I can repeat all of it but I will do the best I can. It says, "Why does Mohammed and any

Muslim murder the devil? What is the duty of each Muslim in regard to four devils? What reward does a Muslim receive by bringing and presenting four devils at one time?" That's the question. And the answer is -- gosh. You see, I have been away from this stuff so long it's difficult to remember.

Q Just a minute.

(Mr. Stern steps out of grand jury room and returns.)

Q Okay, you can continue.

A Anyway, it's part of it is because they know -- they know, he is a snake and if he be allowed to live he will sting somebody else.

Q Would this refresh your recollection?

"Answer: Because he is 100% wicked?"

A Wicked, right. Right.

Q And?

A Go ahead, a little more.

Q And the --

A The rules of Islam.

Q The laws of Islam --

A The laws of Islam.

Q His ways and --

A Are like the -- the grass and --

Q What does that portion mean so far?

A In one way when we were taught this particular lesson

was that four devils represented four vices. For instance, like smoking, drinking, narcotics, and -- smoking, drinking, narcotics, some other vice. And which mean that these were vices that were -- they were evil vices. And if you stopped all of them, then you supposed to get a free trip to Mecca, which one of us ever really received. Because I stopped smoking, stopped drinking and stopped everything else I was doing that was wrong and I never received any, you know, any trip.

Q Didn't you just testify a few minutes ago that the devil was the white man?

A Oh, yes. But see, this thing -- see, you have, for instance, you have spiritual interpretations of lessons and then you have ~~the~~ other interpretations of lessons. In Lesson Number 2 it also says that a devil is any -- is any live germ grafted from original is devil. So it

this particular question was interpreted to us. It wasn't interpreted to us any other way except that.

If I am not mistaken, I think the other day when this man, this other police officer was telling me, that we had to get four white hairs to go to Mecca. Now, this is what I was told in your office, this is nothing but an outright lie. And --

Q Mr. Goodman, please.

A Yes, sir. Okay.

Q The sentence that is, "His ways and actions are like a snake of the grafted type." Directing your attention to the other lessons in reference to how the white man came into being, how were you taught or how was it taught in the nation of Islam that the white species of the human race came into being?

A Oh, that a scientist, a black scientist by the name of Yacoop (phonetic) gathered together a certain amount of people and that he caused so much disturbances in the east that he was exiled to an island in Baylon (phonetic) where he set up a system of birth control, and through this system of allowing only -- only allowing the lighter

one -- not allowing two coal black people to marry, but allowing a lighter one and darker one or lighter ones to marry, that through this system of birth control that this particular race of people called Caucasians came into being.

Q Aren't you taught or isn't it in the lesson that this method of birth was a graft?

A Yes.

Q Now, once again referring to Question Number 10, "Answer: His ways and actions are like a snake of the grafted type."

A Yes.

Q What does that refer to?

A Sir, I can only tell you what was taught to us. Now I don't know the true meanings of these lessons. As a matter of fact, I don't know anyone who really knows the true meanings of these lessons. Now they were taught that this particular lesson refers to four vices, which we all had to quit.

Q The next sentence, the answer, "So Mohammed learned that he could not reform the devils, so they had

to be murdered."

A Oh, you bring something else to my attention. In learning about this Mohammed we were taught that Mohammed Ben Abdullah 400 years ago when he was trying to convert the people to Islam, and that he was called back into -- he tried to convert whites to Islam, especially -- I think he sent letters to the Roman emperor and some Roman general, and he was told that he could not convert these people, that they would not obey Islam, and from that moment is when the Muslims decide to kill them. Now, this --

Q In other words, the devils referred to there are the ones to the -- refer to these Caucasians, the whites; is that right?

A The whites, yes.

Q So we are not talking any more about vices, we are talking about a group of people; is that right?

A Yes, sir.

Q So when it says here, "So Mohammed learned that he could not reform the devils, so they had to be murdered," you are talking about a group of people?

You are not talking about vices?

A In the Mohammed that existed 1400 years ago.

Q This is the third sentence in the answer.

It comes after, "Because he is 100% wicked and will not keep and obey the laws of Islam. His ways and actions are like a snake of the grated type. So Mohammed learned that he could not reform the devils, so they had to be murdered." In other words, all this refers to Caucasians?

A I wouldn't say that. Because as far as we were -- it was interpreted to us that the four devils in that lesson meant the four vices. And that particular lesson meant four vices that we all had to stop doing in order to become a Muslim.

(continued on next page)

BY MR. STERN:

Q Now, the next sentence, the fourth sentence in the answer says, "All Moslems will murder the devil because they know he is a snake and also if he be allowed to live, he would sting someone else."

Q What did the devils refer to there?

A I don't know.

Q Then the next sentence is, "Each Moslem is required to bring four devils, and by bringing and presenting four at one time his reward is a button to wear on the lapel of his coat, also a free transportation to the Holy City Mecca to see Brother Mohammed."

A Yes.

Q What do the deviles refer to there?

A The four devils, as I said before, we were taught referred to four vices that you would have to quit in order to be a Muslim.

Q Is it your testimony that within this one question and answer the devil sometimes seems to mean caucasion^s and sometimes --

A See, in teaching the life of Muhammad -- Mohammed,

this -- this particular phase of Mohammed's life was brought into -- into the teaching, but as far as getting it from the lesson, in saying that this refers to this and this refers to that, I -- I don't -- we -- it wasn't explained to us in that manner. The four devils to us meant the four vices in which we all happened to stop doing to be a Muslim, you can't smoke, you can't drink, you can't gamble, or you can't carry on any vices.

Q Now, are you familiar with question number 10 and its answer in lesson number one, beginning was the meaning of the -- the question begins: "What is the meaning of the P.O.I.?"

A Right, Fruit of Islam.

Q And what is the answer?

A The name given to the Military training of men who belong to Islam and North America. I don't know, there might be something else.

Q And are you familiar with the 13th question which is: "What is the meaning of lieutenant and captain?"

A What is the meaning of lieutenant and captain?

Q What does that mean?

A Lieutenant and captain.

Q What is the answer?

A God -- sir, you know since I have been in this computer system course, a lot of this stuff you talking about now has left my mind.

Q Is the answer --

A I have been away from it for quite sometime.

Q Is the answer: "Captain and Lieutenant.

The duty of the captain is to give orders to the lieutenant --"

A And the lieutenant to train private soldiers.

Q "-- teach the soldiers and also train them."

A Also train them.

Q In other words, as a member of the Nation of Islam it would be the duty of the members to follow the orders of the officers, is that correct?

A Oh, yes.

Q And they are formed into a military body for military training; is that correct?

A Well ---

Q Into squads.

A You say military training explains it a little bit because whenever trained with guns, we never trained with bayonets, we never trained --

Q Mr. Goodman, you are the assistant minister, the word military training appears in the word military while you were --

A Yes.

Q What does that mean?

A I'll explain to you what it was about, we took exercises, we were taught discipline, we were taught how to fast, three days a month.

Q Is that military training?

A Of course it's discipline. But as far as anything outside of that, when you say military, you know, right away I think about -- you know, guns and you know, knives and all that. We -- it was nothing like that ever took place.

Q What sort of exercises did you take?

A Regular exercises, just like --

Q Karate, judo?

A We practiced judo.

Q I see.

A As a matter of fact they have many schools for judo and karate.

Q Now, you say that the devils in question ten and its answer refers to the vices; is that right?

A The four -- we were taught about the four devils was four vices.

Q Except of course for the third sentence which refers to the caucasians; is that right?

A In the life of Mohammed we were taught that Mohammed was called back to Mecca and told that he could not reform these people.

Q Now, in lesson number two, which deals with how the devil came into being, that lesson is solely and exclusively -- when it mentions devil, concerned with the death, birth and formation of caucasians; is that right?

A Not solely and exclusively.

Q No? We're in that lesson is -- that the devil taught as being just a vice and not a man?

A Well, sir, I don't know how your -- broad your understanding is of those lessons, but if you notice

in the Bible men are spoken of as trees, and so that, you know, this particular version means a tree, it -- I mean it has a spiritual meaning and it has a physical, and you apply the physical to the spiritual. So, in -- if you read further in that lesson you will also see that a devil is any live germ traveling from original. Any time something becomes other than the nature, in which it was created in itself is called devil.

Q You are referring to question 33?

A I don't know exactly.

Q Lesson 2?

A I don't know which question.

Q "Answer, the devil a grafted man which is made weak or weakened or any grafted life germ from devil, is devil."

A That's right, any life germ anything that had life in it.

Q Well, does a life have vice in it?

A Vice itself has no life in it, but once -- once -- you are obtained -- that vice, then that vice becomes a part of you therefore it has life. You and the life and the vice is synonymous.

Q Well, lesson -- question number 33 and

lesson 2 defining devil comes after all the other questions; isn't that right?

A Sir, you know, like I said, I have been away from those lessons so long I don't know all those lessons. I haven't studied them in a long time.

Q Question 33 is the 33rd question; is that right?

A Yes.

Q Now, that comes after the question and answer which describes how the devil was made and by whom; isn't that correct? And describing how the caucasians was grafted from the original people; isn't that right?

A Number two?

Q Yes. Question 33 and answer -- answer comes after all that on explanation.

A What is 33?

Q That is what is the devil?

A Is that 33? Yes, yes, I think so, I think so.

Q So that by the time you reached question 33 and its answer there isn't much doubt as to what a devil is, is there?

A No.

Q No, right.

MR. STERN: Are there any questions
from the grand jury?

Thank you very much, Mr. Goodman.

(Witness excused.)

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Appendix "C"

To files ~~from~~
from # Green

I am informed that
Rev Martin Salamonson
was supposed to speak
in the Ballroom before
Malcolm X on Feb 21, 1965,
but cancelled at a late
moment. Benjamin Goodman
was a last minute replacement.

Police inform me (Det
Cavalieri) that Goodman was
interviewed at stationhouse
several days after occurrence,
and he stated that when he
speaks he doesn't look at
audience, but looks over their
heads. So he doesn't know
who was in the audience.

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK
PART 35

THE PEOPLE OF THE STATE
OF NEW YORK,
Respondent,

against

MUHAMMAD ABDUL AZIZ
(Norman 3X Butler),

and

KHALIL ISLAM
(Thomas 15X Johnson),
Defendants-Movants

Supplementary Affirmation,
Affidavit, and
Supplementary Memorandum
Ind. No. 871/65

DISTRICT ATTORNEY

155 Leonard Street
Borough of Manhattan
New York City

SUPPLEMENTARY COMPLAINT REPORT (DO NOT FOLD THIS REPORT)

U.F. 61
File No.

Complainant's Surname People	First Name	Telephone No.	6. Date and Time Reported on U.F. 61 Feb. 21, 1965 3:10PM	A.M. P.M.	14* 15*	19. Pct. 34th	22. U.F. 61 No. 995
Complainant's Address	Apt. No.	11. Day, Date and Time of Occurrence Sun. Feb. 21, 1965 3:10PM	A.M. P.M.	16* 17*	27. Pct. Post	30. C.C.D. No. 26015	
		36. P.D. Code	39. Amt. Code Larceny Only	40*	41*	42. Pct. of Arrest	45. Arrest Nos.

FOLLOWING QUESTIONS PERTAIN TO THIS COMPLAINT REPORT

Answer
Yes No

Was this complaint previously cleared by an arrest?

If yes, is this an additional arrest?

Were identified persons wanted previously reported?

Was any stolen property previously reported?

Was this stolen property previously reported?

Was any property recovered previously reported?

Was this recovered property previously reported?

Was complainant advised of action taken?

NUMBER OF ARRESTS

Male Female

Adults

Juveniles

ARRESTS MADE BY:

Uniformed Force
Detective Div.
Other Peace Off.
Civilian

If an alarm is transmitted enter the following information:

Alarm Number	Date and Time Transmitted

50. TYPE OF PROPERTY

1. Autos Stolen or Recovered Locally

2. Autos Recovered by Other Auth's.

3. Autos Recovered F.O.A.

THIS REPORT
CONCERNS:
(Check One)Lost
Property ☐Stolen
Property ☐

4. Currency

5. Jewelry

6. Furs

7. Clothing

8. Firearms

9. Miscellaneous

51. Value of Property
Stolen57. Value of Stolen
Property Recovered

Crime or Offense as Classified on U.F. 61

Homicide (GUN)

Crime or Offense Changed to

Det. Sqd. Ser.

1022

Status of Case

Copy of this report forwarded to
Corr. Bur. for Communication.

Signature of C.O. of Investigating Officer

Rank

Name

Command

YES ☐NO ☐

Report of Investigating Officer:

(LIST ALL LOST OR STOLEN PROPERTY ON REVERSE SIDE)

Date of This Report.

2-27-65

Subject: INTERVIEW OF BENJAMIN GOODMAN AT 34TH SQUAD

1. On Feb. 26, 1965, at 6:30 PM, one Benjamin Goodman (211M-N-32, of 1022 Longfellow Ave. 3x, NY. Cr. Pl. (D49-9418) was interviewed and stated that he was the first speaker at the Audubon Ballroom on 2-21-65. The opening speaker was scheduled to be Rev. Galamison, and when he did not appear, Malcolm became very upset. Malcolm entered the stage through the dressing room located on the right side of the stage and sat down behind Goodman, who had taken over the opening address due to Galamison's absence. When Goodman noticed Malcolm, he introduced him and left stage, leaving Malcolm alone on the stage. Goodman went to dressing room along side stage (Rt.) where James (67M) and Sister Sarah were. He was only in this room a few moments, when the shooting began. He came to the doorway, looking onto the stage after the shooting in time to see Malcolm falling to the floor. Further stated that he did not see who the perpetrators were or where shots came from.

Case Active....

*Entries by S.R.B. only

Investigating Officer's Name (Typed)

Thomas T. Cusmano

Rank

Ptl. Shield No. 16245

Command

34th

Investigating Officer's Signature

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 35

-----x
THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

SUPPLEMENTARY
AFFIRMATION IN
OPPOSITION TO
MOTION TO VACATE
JUDGMENTS

MUHAMMAD ABDUL AZIZ (Norman 3X Butler), :

Indictment Number
871/65

and :

KHALIL ISLAM (Thomas 15X Johnson), :

Defendants-Movants. :

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALLEN ALPERT, an attorney duly admitted to practice law before the courts of this State, hereby affirms under penalty of perjury that:

1. This affirmation, and the accompanying affidavit of Judge Herbert Stern and the memorandum of law which are attached hereto and made a part hereof, are submitted in opposition to defendants' motion to vacate their judgments of conviction pursuant to Criminal Procedure Law §440.10. These papers are submitted in conjunction with respondent's original response, filed on February 9, 1978, and with respondent's first supplemental response, filed in April, 1978.

2. I have personally examined the District Attorney's Office case file in the above-captioned matter.

3. I have obtained from the District Attorney's Office case file the testimony in the above-captioned matter given by Benjamin Goodman in the Grand Jury on April 5, 1965. A copy of Mr. Goodman's testimony in the Grand Jury is attached hereto as Appendix "1" and made a part hereof.

4. The District Attorney's Office case file contains nothing which supports any of the defendant's allegations or contentions. Specifically, there is no mention or indication of, or reference to, any of the persons identified by Hagan in his affidavits as having been his accomplices in the murder of Malcolm X. There is also nothing which indicates that Reuben Francis possessed any information exculpatory of Butler or Johnson, or that the People kept Francis' availability to testify hidden from the defense. Nor is there anything in the file which in any way corroborates the allegations made by Benjamin Goodman in his affidavit of May 14, 1978; indeed, as evidenced by the accompanying affidavit of Judge Herbert Stern and by Benjamin Goodman's Grand Jury testimony, the information in the file refutes Goodman's allegations. Likewise, nothing in the file gives any support to the contention that any law enforcement or governmental agency was involved in the murder of Malcolm X.

5. The District Attorney's Office case file contains no papers of any kind from the Federal Bureau of Investigation.

6. The only indication I found in the District Attorney's Office case file of any contact between the FBI and the New York City Police Department or New York County District Attorney's Office is contained in a New York City Police Department Supplementary Complaint Report dated March 15, 1965. This report refers to a list of Organization of Afro-American Unity members which the police received from the FBI and which the police showed to a potential witness in order to have the witness indicate which persons were present in the Audubon Ballroom when Malcolm X was murdered. Upon request, this report will be made available to the Court.

7. In order to obtain unredacted copies of the FBI documents submitted by Mr. Kunstler in support of the instant motion, I have spoken with FBI Agent Steven Edwards.

8. Mr. Edwards has provided me with unredacted copies of those FBI documents which, Mr. Edwards informs me, are on file in the New York office of the FBI. These documents correspond to the documents labeled by Mr. Kuntsler as pages 11-24, 34, 35, 40, 43-48, 50, 51 and to the documents dated August 25, 1965 and October 21, 1965, both of which are attached to Mr. Kunstler's affidavit of April 29, 1978.

9. There is nothing in any of these unredacted FBI documents which in any way supports any of the defendants' contentions or allegations. Specifically, there is no mention or indication of the name of, or reference to, any of the persons identified by Hagan in his affidavits as having been

his accomplices in the murder of Malcolm X. These unredacted FBI documents are attached as Appendix "2" to the affidavit being filed with the Court, and are being made available to the Court for its examination.

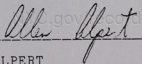
10. I am informed by Mr. Edwards that the FBI documents he has not provided me with in their unredacted form are not on file in the New York office of the FBI. Mr. Edwards informs me that these documents are on file at the FBI's headquarters in Washington, D.C., but that because of the volume of papers on file at FBI headquarters it would take a considerable period of time to obtain them.

11. There appears to be nothing in any of these redacted documents which corroborates the allegations in Hagan's affidavits, or which is otherwise supportive of the instant motion. Many of these redacted documents are, Mr. Edwards informs me, internal FBI memoranda which merely summarize and chronicle the New York City Police Department's investigation into the murder, and which contain no original information developed by the FBI. Others of these documents contain information developed by the FBI which paralleled information obtained by the New York City Police Department.

Still others refer to matters not material to the instant motion. However, if this Court should find unredacted copies of these documents necessary or useful to the determination of this motion, I will attempt to obtain them as soon as possible and make them available to the Court.

WHEREFORE, based on the foregoing responses submitted by the People, and on the accompanying affidavit of Judge Herbert Stern, and for the reasons set forth in the accompanying memorandum, it is respectfully requested that the motion be denied.

Dated: New York, New York
July 14, 1978



ALLEN ALPERT

SUPREME COURT OF THE

STATE OF NEW YORK

PART 30

THE PEOPLE OF THE STATE
OF NEW YORK,

Respondent,

against

MUHAMMAD ABDUL AZIZ
(Norman 3X Butler).

and

KHALIL ISLAM
(Thomas 15X Johnson),
Defendants-Movants

Indictment Number 271/65

AFFIRMATION,
AFFIDAVIT, and
MEMORANDUM OF LAW

Form 39-10M-703326(72) 346

District Attorney
County of New York
155 Leonard Street
New York, New York

212-732-7300

*1-9-78
not
to
JIC*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
THE PEOPLE OF THE STATE OF NEW YORK

----- v -----
MUHAMMAD ABDUL AZIZ (Norman 3X Butler
and KHALIL ISLAM (Thomas 15X Johnson),

Defendants.

----- x
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

AFFIDAVIT

Ind. No. 871/65

BENJAMIN KARIM, being duly sworn, deposes and says:

1. I have previously executed an affidavit in this matter on or about May 15, 1978, under the name of Benjamin Goodman. Since that time, I have adopted the last name of Karim in place of Goodman.

2. I have read the Supplementary Affirmation submitted in opposition to the within motion and the exhibits thereto and I wish to answer or explain some elements thereof and enlarge upon my earlier affidavit.

3. During my first interview with the police, I was shown some photographs of black men but could recognize no one. Later on, I was shown photographs again, which included those of Butler and Johnson, and I told the police that Butler and Johnson were not present in the ballroom on February 21, 1965. They attempted to force me to say that these men were present by stating, in one way or another, that they had participated in the murder and I must have seen them there. One officer in plainclothes, whom I now know was named Cilento, became very angry when I would not say that But-

ler and Johnson were present or that I had witnessed the shooting.

I never told any police officer that I had looked over the heads of the crowd that day; what I did say was that I had scanned the crowd.

4. Shortly after my second interview by the police, I was asked to sit down with an assistant district attorney by the name of Stern. He said that a police officer had told him that I had said that I saw the shooting through an open door and I told him that that was a lie. At that moment, he became visibly angry and asked me if I had ever been to jail, which I regarded as a distinct threat. I asked him whether he was going to put me in jail because I wouldn't let him put words into my mouth. He then stormed out of the room leaving with another man. I asked this man, who had a copy of Louis Lomax's book, When the word is Given, whether they were out to destroy the Nation of Islam because most of Mr. Stern's questions dealt with the activities within the Nation. He said, "Yes," and I replied that he would have a hard job.

5. After that interview, I was taken to the Grand Jury where Mr. Stern questioned me. During my questioning, Mr. Stern became angry at some of my answers about looking at the audience and intimated that I had told him in his office that I hadn't looked directly at the audience when I spoke. I did not tell him this and couldn't remember having done so. When he asked me if I knew whether Butler or Johnson were in the audience, I answered that I did not because, if they had been in the far rear or off to one or the other sides, I might not have seen them. When I tried to explain that it was difficult for me to believe that they were there or could have gotten in without being seen, he inter-

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rupted me and would not let me complete the answer.

6. I had told him in his office before I went to the grand jury that we had brothers who had been members of Mosque No. 7 who knew Butler and Johnson well and who would either have stopped them or reported their presence unless they had been wearing masks or had their heads under their overcoats, which would have prevented their entrance under any circumstances. Malcolm had given instructions that people from Mosque No.7 could be admitted but that he had to be informed and they had to be watched. This was absolutely necessary because we were not searching people for weapons. They were also instructed to inform me as well. I told all of this to Mr. Stern in his office.

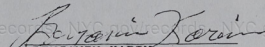
7. Before the trial, I was informed by Sharon Shabazz, who had been seated near the front when the shooting took place, that she had been informed by a Brother George that District Attorney Hogan wanted her to testify against Butler and Johnson but that she had seen the men who did the shooting and knew that the defendants, whom she had known for a long time, were not among them.

8. I was in total shock after Malcolm's death, playing tapes of his speeches over and over again, and I could not believe that he was gone. I would have testified if someone had called me but I would never have volunteered it on my own as I simply did not want to live that horrible day over again unless I was forced to do so. Even working with the lawyer on this affidavit is terribly painful for me, as it brings back memories of one of the most horrible days of my life.

9. I am prepared to testify in any court now because I real-

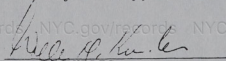
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that two innocent men have been in jail for many years. While I didn't think so then, I understand now that my testimony might have been of some help to them, and I want to do something about it.


BENJAMIN KARIM

Sworn to before me this

21st day of July, 1978


NOTARY PUBLIC

WILLIAM M. KUNSTLER
Notary Public, State of New York
Commission Expires March 31, 1980
Comm. No. 123456789

District Attorney's Office
COUNTY OF NEW YORK

Goodman's (Karim's)

+

Kunstler's

Reply Affidavits

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
: THE PEOPLE OF THE STATE OF NEW YORK
:

AFFIDAVIT

Ind. No. 871/65

-v-
MUHAMMAD ABDUL AZIZ (Norman 3X Butler
and KHALIL ISLAM (Thomas 15X Johnson),:

Defendants. :
----- x

STATE OF NEW YORK)

) ss.:
COUNTY OF NEW YORK)

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rupted me and would not let me complete the answer.

6. I had told him in his office before I went to the grand jury that we had brothers who had been members of Mosque No. 7 who knew Butler and Johnson well and who would either have stopped them or reported their presence unless they had been wearing masks or had their heads under their overcoats, which would have prevented their entrance under any circumstances. Malcolm had given instructions that people from Mosque No.7 could be admitted but that he had to be informed and they had to be watched. This was absolutely necessary because we were not searching people for weapons. They were also instructed to inform me as well. I told all of this to Mr. Stern in his office.

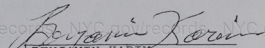
7. Before the trial, I was informed by Sharon Shabazz, who had been seated near the front when the shooting took place, that she had been informed by a Brother George that District Attorney Hogan wanted her to testify against Butler and Johnson but that she had seen the men who did the shooting and knew that the defendants, whom she had known for a long time, were not among them.

8. I was in total shock after Malcolm's death, playing tapes of his speeches over and over again, and I could not believe that he was gone. I would have testified if someone had called me but I would never have volunteered it on my own as I simply did not want to live that horrible day over again unless I was forced to do so. Even working with the lawyer on this affidavit is terribly painful for me, as it brings back memories of one of the most horrible days of my life.

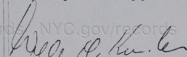
9. I am prepared to testify in any court now because I real-

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that two innocent men have been in jail for many years. While I didn't think so then, I understand now that my testimony might have been of some help to them, and I want to do something about it.


BENJAMIN KARIM

Sworn to before me this
21st day of July, 1978


NOTARY PUBLIC

WILLIAM M. KUNSTLER
Notary Public, State of New York
No. 67-734450
Commission Expires March 30, 1979

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 35

----- x
THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, : REPLY AFFIRMATION IN
: SUPPORT OF MOTION TO
-against- : VACATE JUDGMENTS

MUHAMMAD ABDUL AZIZ, (Norman 3X Butler), : Indictment Number
871/65

and :

KHALIL ISLAM (Thomas 15X Johnson), :

Defendants-Movants. :
----- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM M. KUNSTLER, an attorney duly admitted to practice law before the courts of this State, hereby affirms under penalty of perjury that:

1. I am submitting this reply affirmation to the People's Supplementary Affirmation in Opposition to Motion to Vacate Judgments, a copy of which was received by me at approximately 1:45 p.m. on July 18, 1978.

2. With reference to that portion of the material dealing with the affidavit of Benjamin Goodman submitted to this Court last May, I contacted Mr. Goodman today and he reiterates that, had either defendant been present in the audience at the Audubon Ballroom on February 21, 1965, he would have seen them. Not only did he know them well but they had served as Malcolm X's bodyguards before the latter's defection from the Nation of Islam.

3. Moreover there was only one entrance to the room in

which the meeting of the Organization of Afro-American Unity (OAAU) took place and the security guards thereat also would have recognized defendants and alerted everyone concerned.

4. It is obvious from reading Mr. Goodman's grand jury testimony, which covers some 39 pages, that only three pertain to his observations of the audience. Mr. Goodman was asked on page 20 whether he looked "at the audience or . . . above the audience" when he spoke. He replied that "you take in the whole audience." Id. He added that "[Y]ou more or less weigh the whole audience," Ibid at p. 21.

5. The last answer apparently did not satisfy Mr. Stern, who proceeded to cross-examine Mr. Goodman by reminding him that, on March 30, 1965, in the former's office, the witness had allegedly said that, when he spoke, he looked "over the head of the crowd." */ Id. But Mr. Goodman did not recall making that statement.

6. The tone of the interrogation then changed to an obvious attempt by Mr. Stern to put words in Mr. Goodman's mouth. Ibid. at pp. 22-23. Mr. Stern was intent on forcing the witness to state that he didn't know whether either defendant was present that day.

Q: So you do not know whether or not either man was there, is that correct?

A: No, sir, I can't say that they weren't nor could I say they were, because I didn't see them.

Ibid. at p. 23

7. Mr. Goodman assured me today that if the defendants had been in the audience, he would have recognized them as would the guards at the entrance to the room. He did not see the shoot-

* / Although Mr. Stern's notes, Appendix C, state that he was informed by the police that Goodman told them that he "doesn't look at an audience, but looks over their heads," no mention of this fact appears in the two police reports. Appendix B.

ing and could not know what the People's evidence would be. If the defendants had been hiding behind chairs or in a closet, he would not have seen them, which explains why he answered Mr. Stern's question, supra, as he did. Mr. Stern failed to question Mr. Goodman adequately on the points raised by the latter in his affidavit or to explore the fact that, if either defendant was seated in the audience, the witness would have recognized him.

8. It is inexplicable why Mr. Goodman wasn't called as an introductory witness to set the stage for the murder. One explanation, of course, is that he would have provided exculpatory evidence about defendants. The eagerness of the People to accept the concept that Goodman always looked over the heads of the crowd without specifically questioning him about this particular day is quite revealing.

9. Mr. Goodman is prepared to take the witness stand and recount under oath this experiences with Mr. Stern and state the threats made to him thereby. If anything Mr. Stern's affidavit, the grand jury minutes and Mr. Goodman's affidavit point up the need for an evidentiary hearing on this point.

10. The People in no way answer Mr Hagan's affidavit, other than indicating that there is nothing in their files indicating that "any of the persons identified by Hagan in his affidavits as having been his accomplices in the murder of Malcolm X." Mr. Alpert's affirmation at p. 2.

11. As for the unredacted copies furnished Mr. Alpert by Special Agent Steven Edwards. they do not include the key documents furnished with my affidavit of April 29, 1978. The following

omissions will make this point clear:

- a. Document 38, which states that an informant "described the person who handled the shotgun as a tall Negro whom he recognized as a member of the Newark Temple. . . . a lieutenant in the Newark Temple." (emphasis added)
- b. Document 39 (p. 2 of Document 38), states that "[T]he man who started the distraction by claiming that someone's hand was in his pocket was described as a short, dark skinned Negro with bushy hair and a mustache, who was believed to be a member of the Newark Temple." (emphasis added.)

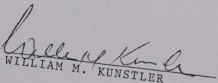
12. The fact that some of the unredacted FBI documents indicate other names than Mr. Hagan has included in his affidavits is of no significance whatsoever. In the first place, the agents' informants might have been mistaken about or not known the real or adopted names of the murderers. Secondly, we have seen only a handful of the more than a million pages of documentation on the Nation of Islam in the possession of the FBI. Lastly, there can be little doubt, whatever the identity of the killers, that the information in the FBI documents is exculpatory and, if known to the police or the prosecution, should have been turned over to the defense. In the last analysis, it is obvious that the FBI and its informants knew that the assassins had come from or been associated with the Newark Mosque, a temple with which neither Butler nor Johnson had any relationship.

13. Counsel was in error in stating that the trial lawyers for defendants did not know of the whereabouts of Reuben Francis or that he was kept from their knowledge by the prosecution. All of the transcript was not available at the time earlier affidavits were prepared and the exchange about Francis was not picked up and

an apology is in order. However, it must be pointed out that Francis' location only came out in cross-examination late in the trial and that the prosecutor refused to give the defense any copies of statements taken from him. TT. 2604. Moreover, it was obvious that, because the People had charged Francis with felonies after the assassination, that to call him with the assurance that he would plead the Fifth Amendment would make him truly unavailable, as a practical matter, as a witness. The entire Reuben Francis episode, including his surrender to the FBI in the middle of this trial and his disposition of one of the murder weapons, is puzzling, to say the least.

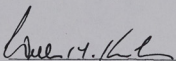
14. In conclusion, the People's opposing papers do not, in the slightest, meet the issues raised in Mr. Hagan's second affidavit or alter the effect of that of Mr. Goodman. If anything, they point up the necessity for an evidentiary hearing so that this Court can judge the credibility of Messrs. Hagan and Goodman as well as other witnesses. There is certainly more than enough raised in the moving papers to indicate that, only by virtue of an evidentiary hearing will there be any hope of a just and fair resolution of this motion.

Dated: New York, N.Y.
July 18, 1978


WILLIAM M. KUNSTLER

CERTIFICATE OF SERVICE

The undersigned, an attorney duly admitted to practice as such in the courts of the State of New York, hereby certified that copies of the within affidavits were forwarded this date by prepaid United States first class mail to the District Attorney, New York County.


WILLIAM M. KUNSTLER

Dated: New York, N.Y.
July 24, 1978

Rec'd
12/5/78
Jpg
114.11

william m. kunstler
attorney at law
853 broadway
new york, new york 10003

telephone 212-674-3304

September 13, 1978

Hon. Harold Rothwax
Justice, Supreme Court
State of New York
100 Centre Street
New York, New York 10013

Re: People v. Butler, et al.
Ind. No. 871/65

Dear Justice Rothwax,

I am enclosing the affidavit we discussed last week.
A copy has been sent this date to the District Attorney.

I feel that, like Hagan's second affidavit, this one should also be sealed.

Respectfully yours,

William M. Kunstler

William M. Kunstler
Attorney for Defendants

cc: District Attorney

Mr. Alpert
RECEIVED
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CLERK
DISTRICT ATTORNEY'S OFFICE
NEW YORK COUNTY
joan l. washington
legal assistant
Alpert

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 35

-----x
THE PEOPLE OF THE STATE OF NEW YORK :

-v- :

Ind. No. 871/65

MUHAMMAD ABDUL AZIZ (NORMAN 3X BUTLER) :
and KHALIL ISLAM (THOMAS 15X JOHNSON), :

Defendants. :

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM M. KUNSTLER, an attorney duly licensed to practice as
such in the State of New York, under the pain and penalties of per-
jury, hereby affirms as follows:

1. I am submitting this affidavit pursuant to the understanding
reached in open court of September 6, 1978.

2. Counsel has furnished to the Court and the People the names
of three of the four men who participated with Thomas Hagan in the
assassination of Malcolm X at the Audubon Ballroom on February 21,
1965. I have received what I consider to be accurate information
that two of these men, Benjamin or Ben Thomas or Thompson and Lee
a/k/a Leon Davis, reside in Paterson, N.J. and attend the World Com-
munity of Islam Mosque in that city. I have also been informed that,
following the publicity generated by the hearing of July 26, 1978,
these two men left the area but have now returned thereto. The third
man, identified as William X in Hagan's affidavit of February 25,
1978, is apparently one William Bradley, who is serving a long sen-
tence at the Caldwell State Prison in Bergen County, N.J. According
to my information, his sentence is 7 1/2 to 15 years.

3. From our experience with Mr. Bradley who first denied any

participation in the murder and then stated that he was not going to jeopardize himself for anyone when interviewed by an Islamic minister, it is highly unlikely that any importuning on defendants' part, through counsel or Islamic ministers, is going to have any significant effect. In this light, it is our suggestion that, under the supervision of the Court, the People be directed to interview all three men and to conduct the same type of investigation that would be customary when information by one accomplice is furnished which implicates others in his crime.

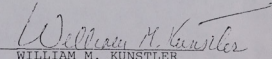
4. Mr. Hagan has given the names, as he knows them, of his accomplices and described in full all the particulars of the crime and its preparation. He is in a position to identify these men and they should be presented to him for such purpose, whether through a lineup or showup or photographs. It should not be difficult to locate the two who are on the street and Mr. Bradley is readily available for interrogation.

5. In other words, Mr. Hagan has given a great deal of information which can only be realistically followed up by the authorities. Defendants are in no position, either financially or logistically, to do much more than they have done to date. They both feel that there is enough before the Court at this point to grant them the new trial they seek, but they cannot afford to gamble on that premise when there is available the best proof of all of their innocence - - the three men who, along with Hagan and one other, murdered Malcolm X.

6. Under an order from this Court, the People, with their im-

mense resources and manpower, could easily follow up on the leads furnished by Hagan and be in a position to report to the Court as to the results thereof. From any point of view, it is simply too dangerous and unrealistic to expect defendants to do the police work required to ascertain the involvement of the three men referred to above.

7. Concededly, this is an unusual case with ramifications that go well beyond the New York City scene. But courts are not powerless simply because we are dealing with unique situations and it would seem, in the interest of justice, that this Court should consider seriously the suggestion put forth above. If the defendants have spent almost fourteen years of their lives in prison for a crime they did not commit, then we are confronted with a monstrous miscarriage of justice. It would seem that they have presented enough to raise a strong possibility, even probability, that they might be innocent men. Under those circumstances, this Court cannot afford to leave any stones unturned that might conclusively prove that innocence.


WILLIAM M. KUNSTLER

Dated: New York, N.Y.
September 12, 1978



ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
155 LEONARD STREET
NEW YORK, N. Y. 10013
(212) 426-5500

553-9000

October 6, 1978

NEIGHBORHOOD COMPLAINT OFFICES:

HARLEM BRANCH
55 WEST 125 STREET
NEW YORK, N.Y. 10027
(212) 831-8661

WEST SIDE BRANCH
2112 BROADWAY
NEW YORK, N.Y. 10023
(212) 595-0760

Honorable Harold Rothwax
Supreme Court of the
State of New York
County of New York
100 Centre Street
New York, New York 10013

Re: People v. Butler and Johnson
Ind. No. 871/65

Honorable Sir:

This letter is in response to the affidavit of
Mr. Kunstler dated September 12, 1978.

When the above-captioned case was last on the calendar
on September 6, 1978, Mr. Kunstler stated to your Honor that he
was making progress in his efforts to obtain a statement from one
of the men he contends murdered Malcolm X. He requested additional
time to continue talking to this person in order to obtain a state-
ment from him, as well as to contact and talk to two other individ-
uals who, he contends, also murdered Malcolm X. Over the People's
objection, your Honor granted Mr. Kunstler an adjournment to
October 12, 1978.

Mr. Kunstler's affidavit indicates, however, that he has
done nothing to attempt to obtain these statements. Indeed, in a
telephone conversation with me on September 18, 1978 Mr. Kunstler
told me that he has not spoken with any of these three men since
our last court appearance on September 6, 1978, and that he does
not intend to speak to them.

Mr. Kunstler admits in his affidavit that it is "highly
unlikely" that these men who, he says, are of the Islamic religion,
will talk to Islamic ministers. He therefore requests that the
People interrogate them since, as he said to me, we are better at
getting confessions than he is and he feels uncomfortable asking
someone to confess to a crime. The suggestion that any of these

DISTRICT ATTORNEY COUNTY OF NEW YORK

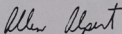
-2-

Honorable Harold Rothwax
Supreme Court of the
State of New York

men, after being apprised of their Miranda rights, will confess their "guilt" some thirteen years after the fact to the very persons who would then presumably prosecute them for murder is absurd. Moreover, it improperly shifts to the People the burden on the defendants to set forth sworn allegations of facts in support of their motion.

Mr. Kunstler's affidavit is, in effect, an admission that, despite this Court's repeatedly demonstrated willingness to provide him with whatever time he felt necessary, he cannot produce any independent evidence in support of Hagan's affidavit - an affidavit which this Court has termed "frivolous." The time has now come for this Court to call an end to the submission of additional papers on this motion. The time has finally come for this Court to deny the motion.

Respectfully submitted,



Allen Alpert
Assistant District Attorney

cc: Mr. William Kunstler
853 Broadway
New York, New York 10003

AA:mm

Mr. Alpert

RECEIVED

78 OCT 31 AM 9:54

William A. Kunstler
ATTORNEY AT LAW
853 BROADWAY
NEW YORK, NEW YORK 10003

DISTRICT ATTORNEY'S OFFICE
NEW YORK

DOROTHY THORNE-BUTLER
LEGAL ASSISTANT

212-674-3304

October 29, 1978

Hon. Harold Rothwax
Justice of the Supreme Court
100 Centre Street
New York, N.Y. 10013

Re: People v. Butler et ano.
Ind. No. 871/65

Dear Justice Rothwax:

I am in receipt of Mr. Alpert's letter of October 6, 1978, to you which, in effect, claims that the District Attorney has no obligation to do any investigation whatsoever of the information obtained by the defense and turned over to him some time ago, particularly that dealing with the full names and locations of at least two of the men named by Mr. Hagan as his accomplices in the assassination of Malcolm X.

My clients are relatively helpless to exploit the information which our investigation has turned up with respect to the names and addresses referred to above. But the District Attorney is in a position to do so. Naturally, I do not expect the suspects in question to confess to any police officers, or anyone else for that matter, but there are many other techniques that can be employed. For example, Mr. Hagan could be brought to a line-up or show-up involving them; interviews as to alibis could be conducted; persons present at the Audubon Ballroom on the day of the murder could view the suspects; their fingerprints could be compared to any that may have been obtained that day; the relationship between any of them and the Blue Cadillac could be explored, and so on.

Concededly, this is an unusual case. It is rare that one participant in a crime names and identifies others than his co-defendants as his sole accomplices and furnishes the wealth of information that appears in Mr. Hagan's second affidavit which, I am certain, the Court has never referred to as "frivolous." Mr. Hagan has maintained from the trial to this date that my clients did not participate in the crime with him and has, after much soul-searching, given every descriptive detail he can recall as to those who did. Surely, there is some responsibility on the part of the People, given the facts of this case, to take some affirmative action so as to rectify to a degree what may have been a horrendous miscarriage of justice which has cost two men the better part of thirteen years of their lives.

Defendants have done the detective work that has resulted

Ltr., Hon. Harold Rothwax

10/29/78 cont'd

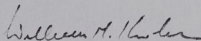
-2-

in a wealth of information concerning the crime. It would seem that, in the interest of justice if nothing else, this Court should direct that the People continue the matter and conduct the same type of investigation that would certainly have taken place if the facts provided the defense had been available thirteen years ago.

I feel most strongly that what has already been presented by defendants mandates, if not a new trial at this juncture, at least an evidentiary hearing so that testimony can be produced from Mr. Hagan, Mr. Goodman and others which would, I am sure, meet the statutory standard for the granting of a new trial under §440.10, Criminal Procedure Law. However, I am certain that, with what the Court has now, that standard has been fully met and that, had Mr. Hagan testified at the original trial as he has in his second affidavit, there might well have been different verdicts insofar as these defendants were concerned.

We are dealing here with a very complex case about which considerable doubt has remained over all the years. There is a deep and solemn responsibility on all concerned - the defense, the state and the Court - to work together toward the end that, only by virtue of joint effort will justice be truly done.

Respectfully yours,


William M. Kunstler

wmk.dtb

cc. Mr. Alpert

Copied 10/19/88

Mujahid A. Halin
aka Thomas Hagan 66A58
Box 338
Kapanoch, New York 12458
1/18/82

Hon. Hugh L. Cary
Governor of New York State
State Office Bld.
Albany, New York 12224

My Dear Sir:

It is with great remorse that I write this letter to you. I am writing in behalf of Herman Butler and Thomas Johnson. Both of these men have been convicted and sentenced to life in prison for a crime they did not commit.

In 1966, before an open court, I stated that these two men are innocent of the charges of killing Malcolm X, and since that time, I have tried many times to exonerate these men of the charges against them.

I have submitted affidavits to the courts naming those who are co-conspirators in the killing of Malcolm X. However, my efforts have been of no avail.

I am asking you to please use the powers of your office to right this great travesty of justice in the matter stated in this letter.

I pray that God continue to bless you in the leadership of the people of New York State.

Truly Yours

Thomas Hagan 66A 58
aka Mujahid A. Halin

cc: file

1

TR 1795-98

1

- List of D.J. witnesses
- ✓ list of witnesses people intended to call at trial
- list of all people interviewed by the police

2

- List of D.J. witnesses - trial judge showed his discretion in refusing to order this
- ✓ list of witnesses people intend to call

Claims: 1) should be given wherever D can show need to help him prepare for trial
2) only D can decide if something will help or hurt.

TR: 1795

ADA gives to D a list of all people interviewed & list of all the names & addresses of persons who were interviewed in connection with this case... People still had ~~12~~ 12 witnesses to go.
List given of 2/9/66; D's case began on 2/21/66 312 days

1795-1

Babbitt asks for all notes & statements of these people & their D.J. testimony. Not based on any rule of law just "sense of justice."

1798

Only Babbitt & Beavers objected - not Chance or Williams

16-17

②

Judge, in asking that list of jurors be kept secret, says that there have been phone calls to counsel by people who would seek to subvert justice, & jurors are no less suspect. Judge will not give out jurors names.

64-69

During Voir Dire, Bobb asks DA to give list of all witnesses he will call so he can ask jurors if they know them

BOA refuses for security reasons. ^{66 (During the investigation, several witnesses were threatened by BOA & told not to testify.)}
Bobb can't cite law to support his request

67

Obuse joins in motion

69

Judge says if, during exam, D needs time to further investigate any witness, it will give it serious consideration.

75-90

James Carter says press has his name & he is worried.

108-9

Bobb again asks for list of People's witnesses to see if juror knows them.

179

Bobb, after ADA's opening, asks for squittled series BOA in his opening didn't mention names of witnesses he would call.

180

Bobb asks for all witnesses People have.

180-1

Bobb asks for all witnesses people don't intend to call & their

③

statements

181 BOA says will turn over my statements at proper time.

182 it says, after mitreos testifies, statement will be supplied.

18 USC § 3500

2) No statement or report made by a govt. witness or a prosecutive govt. witness is subject to subpoena, discovery or inspection until the witness has testified at trial or direct exam.

A) After witness testifies on motion by D, govt shall turn over any witness's statement that relates to his testimony.

c) Ct. can excise those portions that don't pertain to testimony.

d) If govt doesn't comply w. b or c, it can strike testimony or declare mistrial.

4) Statement means:

1) A written statement made by witness

2) contemporaneously transcribed recitation of oral statement

3) D.S. testimony.

Corbett v. Petherick
272 F. Supp. 602

Not a constitutional mandate: *Ray v. Rice*, 371 F. Supp. 277 (D.C. Tenn., 1974); *Stisher v. King*, 258 F.2d 397 (1958); *U.S. v. King*, 371 F. Supp. 277 (D.C. Tenn., 1974).

*

Palermo v. U.S., 360 U.S. 343 (1959), rehearing denied 361 U.S. 855

U.S. v. Maguire, 381 F.2d 306 (1967), cert. denied 389 U.S. 1053

U.S. v. Gennaro, 281 F.2d 354 (N.Y. 1960)

U.S. v. Stanley, 218 F.2d 256 (1959), cert. denied 361 U.S. 863, cert. denied

* *U.S. v. Binall*, 276 F. Supp. 796 (D.C. N.Y. 1967)

U.S. v. Marabak 364 F. Supp. 1005 (SONY, 1973)

U.S. v. Hasiwan, 299 F. Supp. 1053 (SONY 1969)

U.S. v. Harrington, 41 F.R. 214 (SONY 1969)

^{1st} Paisco - tried 4 times. 5th time, govt called Joseph Velechi as an expert witness. News before called, as a witness told.
2nd Cir, citing 18 USC 3432, said "There is no obligation on the part of the government to inform the defense of its intention to call it witness when the indictment is for a non-capital offense" (1979)

~~515 F.2d 1111~~

~~451 F.2d 149~~

~~425 F.2d 1375~~

U.S. v. Brown, 482 F.2d 1325 (2nd Cir, 1973)

^{13th} U.S. v. Addington, 451 F.2d 149, 62 (3rd Cir, 1972) cert. denied 405 US 936, 1972

* U.S. v. Paisco 425 F.2d 1375 (2nd Cir, 1970) cert denied 400 US 869 (1970)

U.S. v. Kelly 420 F.2d 21 (2nd Cir, 1970)

Ky#
1629
Curran

* US v Wolff, 289 F. Supp. 903 (N.Y. 1968)

* US v Dioguardi, 428 F.2d 1033 (1970), cert. denied 400 US 825

* US v Catalano, 491 F.2d 216 (1974), cert. denied 419 US 825

? ** US v Loran, 457 F.2d 815 (N.Y. 1973)

** U.S. v. Engelhardt, 377 F.2d 586, and other grounds 393 US 248

Witness lists

U.S. v. Haggman, 368 F.2d 393, cert. denied 386 US 991

US v. Whitmireland, 41 FRD 419

US v. Bruce, 33 FRD 133

US v. Blase, 421 F.2d 932 (9th Cir. 1969) - not entitled to list of joint witnesses before trial

* Smith v. US, 416 F.2d 1295 (NY 1969)

US v. Johnson, 296 F. Supp. 58

* US v. Gottlieb, 493 F.2d 937 (1974, NY)

Brady v. Maryland, 373 US 83 (1963).

Pv. Hirsch, 334 NY 52d 534, 70 Misc.2d 654 (1972)