

BUTLER, HAGAN + JOHNSON

(X v. 0X + 3X + 15X)

TO - Mr. Albert  
FROM - CLERKS OFFICE

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**District Attorney's Office**  
**COUNTY OF NEW YORK**

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*Hagan's original affidavit*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 30

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: 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

SIRS:

PLEASE TAKE NOTICE, that, upon the annexed affidavits of MUJAHID ABDUL HALIM (THOMAS HAGAN), MUHAMMAD ABDUL AZIZ (NORMAN 3X BUTLER), KHALIL ISLAM (THOMAS 15X JOHNSON), NURIDDIN FAIZ and WILLIAM M. KUNSTLER, all duly verified as indicated thereon, and all the proceedings heretofore had herein, defendants, through their undersigned counsel, will move this Court, at a Part 30 hearing, to be held in and for the County of New York at the Criminal Courts Building, 100 Centre Street, New York, N.Y. 10013, on the 21<sup>st</sup> day of December, 1977, at 10:00 o'clock in the forenoon thereof or as soon thereafter as counsel can be heard, for orders pursuant to §440.10(g), Criminal Procedure Law, (1) vacating their judgments of conviction upon the ground that new evidence has been discovered since the entry thereof which could not have been produced by them at their trial even with the exercise of due diligence on their parts and which is of such a character as to create a probability that, had such evidence been received at said trial, the verdicts would have been more favorable to the said defendants, (2) dismissing the within indictment as to them, or, in the alternative, (3) granting them new trials, and (4) such other and further

relief as may be just and proper in the premises including, but not limited to, an evidentiary hearing to prove the allegations hereinbefore set forth.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be served upon the undersigned at least five (5) days before the return date hereof.

Yrs., etc.,

*William M. Kunstler*  
WILLIAM M. KUNSTLER  
853 Broadway  
New York, N.Y. 10003  
(212)674-3303

Attorneys for Defendants.

Dated: New York, N.Y.  
December 5 1977.

TO:

Criminal Motion Clerk  
Supreme Court, New York County  
100 Centre Street  
New York, N.Y. 10013

District Attorney  
New York County,  
155 Leonard Street  
New York, N.Y. 10013

924-50  
13 Gay St  
West of 6 Ave  
(Christopher & Waverly)

State of New York  
County of Ulster

I, Thomas Hogan, being duly sworn, depose and say:

1) I am one of the persons indicted for the murder of Malcolm X at the Audubon Ballroom, N. York, N.Y. Feb. 21, 1965.

2) That I have been sentenced to life in prison for my part in this crime.

3) That I am now incarcerated at Eastern Correctional Facility.

4) That I am writing this affidavit in the hope that it will clear my co-defendants of the charges brought against them in this case. My co-defendants are Thomas X Johnson and Norman X Butler.

That sometime in 1964 Malcolm X was said to have gone against the Leader of the Nation of Islam, The Hon. Elijah Muhammad.

That the following year Malcolm X was declared a hypocrite by the Nation of Islam.

That in the Summer of 1965 I was contacted by a Brother named Lee and another (Name omitted).  
Ben.

Her brother asked me what I thought about  
 the situation with "Mal" & I said I thought  
 it was very bad for anyone to go against the leadership  
 of the Hon. Aljph. Then known as the Sect. Minister of  
 the I.C. I was told that members should move on this  
 by sending to right - gave reports and I agreed  
 w/ that. There was no money raised to me for my  
 part in this. I thought I was fighting for truth &  
 right. There was a few meetings held concerning this.  
 Sometimes, these were held in a car driving around.  
 Bro Lee, was Pres, a Brother named Walker &  
 the other Brother's name was, with him or a name  
 like it. From these meetings it was decided  
 that that the only place that Mal's. was sure to  
 be was the Audubon Ballroom on Feb. 21, 1965.  
 Therefore, the plan was to kill the person there.  
 On Feb. 21, 1965, we met at a house  
 Sunday morning. On Feb 20th, 1965 we had  
 gone to the Ballroom to check it out.

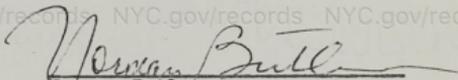
One Sunday morning we, the above named,  
 got in the car. with them, we went down to  
 N.Y.C. we parked the car a few blocks away  
 and then as a time, drifted into the ballroom early.  
 we & Bro Lee took seats down front in the front row.



State of New York  
Westchester County

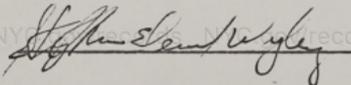
I, Norman Butler, being duly sworn, deposes and says:

1. I am one of the persons convicted of murdering Malcolm X at the Audubon Ballroom, New York, N. Y. on Sunday the 21st day of February, 1965.
2. I am completely innocent of this crime..
3. Until I met Thomas Hagen in the Tombs after the murder of Malcolm X, I had never met nor heard of him.

  
Norman Butler

Sworn to before me

this day of November 23, 1977



STEPHEN EDWARD MATLEY  
Notary Public, State of New York  
No. 4802405  
Qualified in Bronx County  
Commission Expires March 30, 1978

State of New York  
County of Ulster

I, Thomas Johnson, being duly sworn, deposes and says :

1. I am one of the persons convicted of murdering Malcolm X  
at the Audubon Ballroom, New York, N.Y. on Sunday the  
21st. day of February, 1965.

2. I am completely innocent of this crime.

3. Until I met Thomas Hagen in the Tombs after the murder of

Malcolm X, I had never met nor heard of him.

*Thomas Johnson*

~~Thomas~~ Thomas Johnson

Sworn to before me

this day of November 22, 1977,

*Lois A. Stamatides*

Notary Public

LOIS A. STAMATIDES  
Notary Public, State of New York  
Residing in Ulster County  
Commission Expires March 30, 1979

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 30

-----x

THE PEOPLE OF THE STATE OF NEW YORK :

-v- : Ind. No. 871/65

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

Defendants. :

-----x

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

NURIDDIN FAIZ, being duly sworn, deposes and says:

1. I am a Minister of the World Community of Islam and a New York State Area Chaplain, New York State Department of Correctional Services, having been issued Identification Card No. 039275 thereby.

2. Since approximately 1973, I have been visiting Mujahid Abdul Halim (Thomas Hagan) at the Eastern Correctional Facility, Napanoch, N.Y. as his minister. Over the years, he has been increasingly concerned with the fact that his co-defendants in the within indictment were innocent of the crime of which they were convicted with him.

3. During the past several months, he has indicated that he would like to relate the details of the planning and execution of that crime in order to exonerate his innocent co-defendants. He also expressed to me that he was now prepared and willing to testify on their behalf at any hearing granted in this matter and subject himself to direct and cross examination as to all the details of his involvement in said crime.

4. On November 29, 1977, he prepared his affidavit which accompanies this notice of motion in his own handwriting in my presence but was unable to obtain a notary public because of the late hour in which it was completed. At the request of William M. Kunstler, I asked Mr. Hagan to call him the next day and certify that he had indeed written and signed the affidavit in question. On November 30, 1977, I delivered the said affidavit to Mr. Kunstler at his office in New York City.

5. I firmly believe that Mr. Hagan is telling the truth and that he is now prepared to furnish every last detail of the crime of which defendants were convicted from the witness stand and that his purpose is to exonerate two innocent men.

Nuriddin Faiz  
NURIDDIN FAIZ

Sworn to before me this  
5<sup>th</sup> day of December, 1977.

William M. Kunstler  
NOTARY PUBLIC

TAM M. KUNSTLER  
Notary Public, State of New York  
No. 254-539727  
Qualified in New York County  
Commission Expires March 30, 1974

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 30

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

-v- :

Ind. No. 871/65

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

Defendants.  
-----x

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

WILLIAM M. KUNSTLER, being duly sworn, deposes and  
says:

1. I am the attorney for the above named defendants  
and I am making this affidavit in support of their motion, pursu-  
ant to §440.10(g), Criminal Procedure Law, for orders (1) vacating  
their judgments of conviction upon the ground that new evidence  
has been discovered since the entry thereof which could not have  
been produced by them at their trial even with due diligence on  
their parts and which is of such a character as to create a probabi-  
lity that, had such evidence been received at the said trial,  
the verdicts would have been more favorable to them, (2) dismissing  
the within indictment as to them, or, in the alternative, (3) grant-  
ing them new trials, and (4) such other and further relief as may  
be just and proper in the premises including, but not limited to,  
an evidentiary hearing to prove the allegations hereinbefore set  
forth.

2. At approximately 3:00 p.m. on Sunday, February 21,  
1965, Malcolm X, a/k/a Malcolm Shabazz, a/k/a Malcolm Little, here-  
inafter referred to as Malcolm X, a former minister of New York

City Mosque Number 7 of the then Nation of Islam, a Muslim religious organization with its headquarters in Chicago, Illinois, was shot to death just prior to addressing an audience in the main ballroom of the Audubon Ballroom, an auditorium located at West 166th Street and Broadway in the County and City of New York.

3. Subsequently, and on or about March 10, 1965, three Black men, namely Thomas Hagan, a/k/a Talmadge Hayer, Norman Butler, a/k/a Norman 3X Butler, and Thomas Johnson, a/k/a Thomas 15X Johnson, hereinafter referred to as Hagan, Butler and Johnson, respectively, were indicted by a New York County grand jury for the murder of the said Malcolm X, a copy of which indictment is attached hereto as Exhibit A.

4. After the said defendants had interposed their pleas of not guilty, their trial began in Part 37 of this Court on December 6, 1965, before Hon. Charles Marks, then a Justice thereof, and ended with their convictions by a jury on March 11, 1966. On April 14, 1966, all said defendants were sentenced by Justice Marks to state prison for the terms of their natural lives.

5. On May 22, 1968, the Appellate Division, First Department, affirmed their judgments of conviction, People v. Hagan, 29 A.D.2d 931 (1st Dept. 1968). The Court of Appeals likewise affirmed said judgments on April 16, 1969, People v. Hagan, 24 N.Y. 2d 395 (1969), and the United States Supreme Court subsequently denied certiorari, Hayer et al. v. New York, 396 U.S. 886 (1969).

6. Defendants are presently serving their sentences at Walkill Correctional Facility, Walkill, N.Y. (Johnson), Ossining Correctional Facility, Ossining, N.Y. (Butler) and Eastern Cor-

rectional Facility, Napanoch, N.Y. (Hagan).

7. On February 28 and March 1, 1966, Hagan, after having testified previously/in his own behalf and denied his guilt, TT. 2675-2755,<sup>\*</sup> was then recalled as a witness for Butler and thereupon testified that he had been approached early in the month of February, 1965, and offered money to assassinate Malcolm X, and that, with a number of confederates, had planned and executed the crime. TT. 3135-3179, 3211-3241. However, even though vigorously pressed to do so by counsel for these movants, TT. 3145, the prosecutor, TT. 3151-2 and the trial judge, TT. 3145, he refused to name his accomplices or give any but the sketchiest of details about the said planning and execution. But he constantly reiterated that neither Butler nor Johnson had been involved in the crime. See eg. TT. 3145-6, 3149 and 3170. As he explained it, "I got up here for one reason and that was to clear the two men of this charge that I know they are not guilty of." TT. 3218. He insisted that he and "four. . .other people," TT. 3155, had committed the crime, but that the movants were not involved "and didn't have anything to do with the crime that was committed at the Audubon Ballroom February 21st, that I did take part in it, and that I know for a fact that they wasn't there. . ." TT. 3145.

8. During his incarceration at Eastern Correctional

<sup>\*</sup>/ All references to the trial transcript will be indicated by the letters TT, followed by the appropriate pagination.

<sup>\*\*</sup>/It should be remembered that there was no physical evidence linking Butler or Johnson to the crime, they were not apprehended at the scene of the crime and that each had an alibi for the afternoon of February 21, 1965, alibis supported by other defense witnesses. TT. 177, 3019,3244, 3417 and 3516, all et seq.

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Facility, said Hagan has been regularly visited by Department of Correctional Services Chaplain Nuriddin Faiz, a Minister of the World Community of Islam, formerly known as the Nation of Islam, and, after many meetings with said chaplain, he decided to furnish the details of his involvement in the planning and execution of the assassination of Malcolm X on February 21, 1965, including the names of his confederates, which he disclosed to said chaplain on November 29, 1977, during a meeting at the said facility.

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9. Prior thereto, and on October 11 and November 5, 1977, the undersigned, accompanied by Chaplain Faiz, met with Hagan at the said facility and participated in lengthy discussions with him, at which time he furnished us with many facts about the crime, including that much of the planning had taken place in Paterson, N.J., the details of the diversionary tactics that preceded the assassination, the types of weapons employed and who used them, and the shooting itself. I was - - and am - - firmly convinced that he told us the truth and would do so on the witness stand should this Court order an evidentiary hearing herein.

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10. I have been assured by Chaplain Faiz and Mr. Hagan himself that the latter is now prepared to testify fully as to all of said details, including the names and last known addresses of his confederates at any evidentiary hearing held by this Court, most of which information was unavailable to defendants' prior counsel at any time and which, the record clearly reveals, was specifically withheld from them, the prosecutor and the trial judge during all stages of the prior proceedings, TT. 3145, 3151-2,

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3169, 3173, 3176, 3177, 3179, 3216, 3219 and 3230-31, and, in fact, was not fully revealed by Mr. Hagan until November 29, 1977.

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11. There can be no doubt that such evidence is newly discovered within the meaning of §440.10(g), Criminal Procedure Law, and that it could not have been produced by these defendants at their trial, even with all due diligence on their parts. It is also undeniable that, had such evidence been received at the said trial, it would create a probability that the verdicts would have been more favorable to them. Moreover, there can be little question that evidence that persons other than these movants committed the crime in question furnished by one who is testifying against his penal interest is admissible in this state. People v. Brown, 26 N.Y. 2d 88(1970) See also Chambers v. Mississippi, 410 U.S. 284 (1973). Under the circumstances, movants are clearly entitled, as a matter of law, to an evidentiary hearing at which the said new evidence can be presented to this Court for its consideration thereof with reference to the granting or denying of the relief, or any of it, sought herein. 38 N.Y. 2d 407 (1975) #/

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12. Movants have been incarcerated for more than twelve years, a tragic deprivation of liberty if, as they have consistently maintained, they are indeed innocent of the crime in question. Now, their co-defendant, who is in the unique position of knowing the truth thereof, has, after considerable soul searching, come forth and revealed the details of the crime, including the names of his confederates, and is prepared to go to even greater lengths

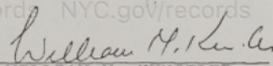
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\*/ People v. Crimmins.

on the witness stand in any evidentiary hearing scheduled herein. Movants are entitled to their day in court, so long delayed, to attempt to prove that they were wrongfully convicted and that they are entitled to their immediate freedom or, at the very least, to a new trial. Nothing short of such a hearing would comport with the standards of due process of law and the equal protection of the law mandated by the Fifth and Fourteenth Amendments to the Constitution of the United States and the decisional law of this state. People v. Crimmins, supra.

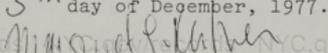
13. On November 30, 1977, after talking to Mr. Hagan on the telephone and recognizing his voice, and being assured by him that he had written his affidavit in his own hand and signed it and now swore to the contents thereof, I notarized same.

14. No previous application for the relief sought herein, other than as indicated above, has been made to this or any other Court.

WHEREFORE, it is respectfully prayed that (1) defendants' judgments of conviction be vacated and the within indictment dismissed as to them, or, in the alternative, (2) they be granted a new trial, or, in the further alternative, (3) this matter be set down for an immediate evidentiary hearing, and (4) defendants be granted such other and further relief as may be just and proper in the premises.

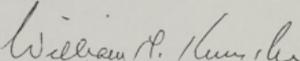
  
WILLIAM M. KUNSTLER

Sworn to before me this  
5<sup>th</sup> day of December, 1977.

  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

Upon the penalties and pains of perjury, the undersigned, an attorney duly licensed to practice as such in the State of New York, hereby certifies that, on the 6th day of December, 1977, he served a conformed copy of the attached Notice of Motion and supporting affidavits upon the District Attorney, New York County, by leaving said copies with a responsible person at the office of said District Attorney, 155 Leonard Street, New York, N.Y. 10013.

  
WILLIAM M. KUNSTLER

Dated: New York, N.Y.  
December 6, 1977

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 35

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MOTION

NORMAN BUTLER and THOMAS JOHNSON,

Defendants

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----- -x

Indictment #871-65  
February 15, 1978,  
100 Centre Street,  
New York, New York.

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BEFORE:

HON. HAROLD ROTHWAX,  
JUSTICE.

APPEARANCES:

FOR THE PEOPLE:

ALLEN ALPERT, ESQ.,  
ASSISTANT DISTRICT ATTORNEY.

FOR THE DEFENDANTS:

WILLIAM KUNSTLER, ESQ.,

LOUISE INFELD,  
COURT REPORTER.

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## Colloquy

THE COURT: I did receive the supplementary affidavit that you had delivered to my home.

I have read the papers. You had indicated to me that you wanted to argue orally and I will hear you.

MR. KUNSTLER: Thank you, Judge.

May it please the Court, my name is William Kunstler. Judge Rothwax, this case, as the papers indicated to you, began and concluded in 1966. The incident which brought it about was the murder of Malcolm X on February 19, 1965, in the main building -- main ballroom of Audobon Ballroom, which is across from the street from the Presbyterian Hospital in Manhattan.

At the time of the incident one man was captured outside of the ballroom, one of the co-defendants in this case, Thomas Hagen, also known as Talmadge Harry. A second man was apprehended that day by Patrolman Thomas Hoy and taken to the Wadsworth police station but nobody knows what happened to him and he disappeared from the afternoon papers and Patrolman Hoy would not discuss the matter with

## Colloquy

anyone.

In any event, they had another man. Later on a second man was arrested and that was Norman Butler, who was arrested four days later at his house. He was then a student and a member of the Nation of Islam, married with four children and he was arrested four days later. On the third of March, the third defendant was arrested, Johnson. He was, again, arrested at his house.

The trial took place with appointed counsel for Butler and for Johnson. Peter Sabitino, now deceased, was retained for Thomas Hagen. Just parenthetically, I had been asked to defend Hagen but because of my relationship to Malcolm X, I was retained. Our motion is based on two fundamental points.

① One is that Mr. Hagen, who testified in his own behalf at the trial and denied any involvement, then asked to return to the stand and testified for his co-defendants.

② During his testimony, he testified that he had been one of the ~~f~~ murderers and that four other people had been with him but refused to give the

## Colloquy

names of those four people or any details about the crime, other than what he said was known by the police and the public.

He was held in contempt by Judge

Marks for refusing to answer certain questions but he persisted in doing so and I indicated in the Papers we sent to your house that there were numerous occasions when he refused to answer any questions as to details. He contacted me in October and November of last year and said that because of religious convictions and feelings, that he was now prepared to name his confederates and would come down to any hearing called by this Court and name each person, give the last known address of that person and give every detail that he had about the crime.

He executed an affidavit where he gives the first names of each one but refused to give the second names until he was called down here, claiming it would put his life in jeopardy and they thought so in prison because he was immediately put in protective custody.

THE COURT: Won't it put his life

## Colloquy

in jeopardy if he does it at a later time?

MR. KUNSTLER: I felt -- I went up to him the first time he ~~gave~~ wouldn't give me the first names, the second time he gave me the first names and I spoke to his minister and he said he is fully prepared to give the names and details.

THE COURT: Let me interject. At first reading I was suprised to see the first names because it is not relevant without descriptions. He gives no descriptions, occupations, addresses, no last name and so on and it is not especially more helpful then what he said at the trial. At the trial he apparently said I will not give names and now he said, Ben, Will, Wilbert and that doesn't help us in the identification of the alleged perpetrators.

Now, in the supplementary papers delivered over the weekend, you indicate he is ready to do that at a hearing but before I can declare a hearing it seems to me that I would have to have more than is contained in the affadavit. It seems to me that if the reluctance to supply information grows out of fear

## Colloquy

for himself, that fear will be present whether he does it in an affidavit or at a hearing.

Either way, it will become known fairly quickly and it seem sto me that I would not be justified in declaring the necessity for a hearing such as the one I have before me.

It is clear that he has not done it yet and if he were to do it I would be in a position for which I would be better informed for the desirability and necessity of a hearing.

MR. KUNSTLER: I understand that, Judge. Speaking to him, I thought that the fears were somewhat allayed by the passage of time. He was in protective custody from the moment this was publicized. He is now removed from that and back in the population. My thoughts with him, knowing him a little now, was that if he were brought down here and away from the prison environment, then he would divulge everything .

I might indicate, although I am not prepared to give names, one of the men has been located and we will have more information on that, I don't want to divulge that person's

## Colloquy

name. The question is to get subpoena power and bring him before the Court. This is a person who is one of the four, who is presently available, I believe, but that is such a ticklish situation that we wanted to wait for a hearing.

THE COURT: I am going to tell you that in the present posture, this affidavit does not seem more helpful than Mr. Hagen was at the trial, it just gives four names. They are common first names and are applicable to a great multitude of people and it is hard to understand how the judgement would be different in a trial.

I have no problem in adjourning this to afford you more time to submit a further affidavit to substitute for the present one or deny the motion with leave to renew upon a more complete affidavit but this particular affidavit from Mr. Hagen has marked deficiencies. It does not assist anybody in locating these people and does not contain significant specific information about the details and planning, so in the present frame at least, I wanted to

## Colloquy

put you on notice that I do not feel that it is significantly different than Mr. Hagen's testimony was at the trial.

By the same token, if you are satisfied that he is, due to the passage of time since you originally got this or were originally advised about his new intentions, I will afford you the opportunity to submit it again. I would be derelict in my obligations if I were to declare the necessity for a hearing based on this affidavit with hope or the expectation that he would be more forthcoming than he has thus far.

You indicated that his reluctance was ~~occasioned~~ occasioned not to cause these people embarrassment. That is your word, presumably his accusing these persons of having killed somebody and I think he would be ready to cause them embarrassment.

MR. KUNSTLER: That is part of the problem. He has been ~~afflicted~~ afflicted by what he has considered the conviction of two innocent men.

THE COURT: He is going to have to resolve

## Colloquy

that conflict.

MR. KUNSTLER: He will say it, he says, if you bring him down. Without a hearing, if you just bring him down to the city. He is prepared to do it. You are dealing with such a touchy, tense case that has involved so many lives and so many aspects of our own community life that I would suggest bringing him down here and listening to him. If your Honor will not do that, I will procure another affadavit.

THE COURT: It seems to me that this affadavit is, on the fact, I hope you forgive the characterization, I do not mean it personally, it appears frivolous and I would be, in my own view, derilict in declaring a hearing based on this affadavit.

MR. KUNSTLER: I would say, hold this open. I will get another affadavit. We think there so much material here, that Hagen is only one part.

THE COURT: I will be happy to hold it open and put it off for a date when I think you will be ready to go forward.

G dloquy

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MR. KUNSTLER: I want to go into the other aspect. It stated out as your Honor can see, the sequence with the Hagen affidavit being central. Since that time some other things have come to light, there is a double barrel approach to this, that is the withholding of the identity of Gene Roberts and the withholding of Ruby Francis as a witness. These two men are key witnesses in this case.

THE COURT: Can I interject? I hope you don't mind this. I am ~~going~~ doing this to be helpful. Your papers make ample reference to Detective Roberts, I am not mindful that they refer to Mr. Francis in any detail.

MR. KUNSTLER: In the last affidavit you will see we spent some time on Francis. It's on page, I think, page five. Pages five and six of the ~~an~~ affidavit is the Francis situation.

THE COURT: Oh, I remember that.

MR. KUNSTLER: The Francis situation came to light only, we knew he did not testify but we just discovered that he was a prisoner of the F.B.I. during the trial. He was

## Colloquy

in the custody of the F.B.I. during the trial which was strange in itself and had turned himself in to the F.B.I. and these two men Roberts and Francis form a team in a sense.

THE COURT: Could I interject again? This affidavit was filed after the District Attorney responded was filed. I know that under the time pressure of this argument, it has not been served upon Mr. Alpert.

MR. ALPERT: I received it at ten o'clock this morning.

THE COURT: So you have not had time to respond. I assume that in the interval you will undertake to respond to the contentions of Mr. Francis and further to Detective Roberts?

MR. KUNSTLER: The way it ties in, Judge Rothwax, is as follows:

Roberts was then an undercover agent of the New York City Police Department, then a patrolman and now a detective and he had infiltrated the organization of Afro-American Security. He was a security guard. He was

## Colloquy

at the ballroom that day. He was relieved as Malcolm rose to speak. Benjamin Goodman rose and Malcolm rose to speak and Roberts went to the back of the stage when the shots rang out and Roberts ran forward and he eventually chased Hagen and Hagen shot him and he through a chair ~~was~~ at Hagen and knocked him down which explained how he was caught.

Ruby Francis also attacked Hagen by firing a .32 caliber revolver, hitting him in the leg and brought him down for good and the mob got him outside and two radio patrolmen, passing accidentally, rescued Hagen from the mob, and brought him to the Wadsworth avenue station house. Francis then went into the building, went up to the stage, according to testimony, retrieved the luger with which Malcolm had been shot, there were three weapons, a Luger, a sawed off shotgun and a .45 caliber automatic.

Francis took the Luger outside of the building and took it somewhere and it's never been found. Francis was charged with the assault on Hagen and was indicted for that

## Colloquy

crime. Ten thousand dollar bail was posted and he fled. He returned when the trial was in progress, February 2nd or 3rd of 1966 and turned him/into the Federal Bureau of Investigation.

None of the living trial counsel for any of these defendants, and there were two living, were ever told a thing about this man being available, being around to testify.

The same thing was true of Gene Roberts.

Gene Roberts, who had almost as active a part as Ruben Francis, these men are key witnesses, nobody else I could be more key, one throwing a chair and one shooting him. One taking the murder weapon away, then these two men.

Gene Roberts was never disclosed to the defense whatsoever. Even though everyone in the Police Department and the District Attorney's office knew of his identify. In fact his name appears with his wife, which was strange to us that his wife would be accompanying him on an undercover assignment. He and his wife were turned over to the defense very late in the game, they finally got a list

## Colloquy

q while in the middle of the trial, one hundred and nineteen names and they couldn't interview that many people.

Gene Roberts was there and saw everything, he might have exonerated both of these defendants.

You will notice in his affidavit, which Mr. Alpert submits, Gene Roberts carefully does not say I recognize those defendants. He says only in effect, I do not have any information or reason to believe that Norman 3X Butler did not murder Malcolm X and the same thing about Thomas 3X Johnson, but here is a trained officer, whose identity was withheld.

Francis is another one. They may claim they didn't have Francis, that the F.B.I. had him. But your Honor can see that the F.B.I. had alot more to do with this case than ordinarily would meet the eye. I brought in the church report and Senator Church is prepared to come in, which shows that the F.B.I. wanted to get groups to war against each other by assassinations.

The Panthers were decimated, particularly in the California area, but in any event you

## Colloquy

will notice that the F.B.I. picked up a .45 caliber automatic.

THE COURT: Here in your affidavit on pages five and six you don't indicate the source of your information that Francis was in fact in the custody of the F.B.I., since you don't have personal knowledge --

MR. KUNSTLER: Yes, I have personal knowledge.

THE COURT: You saw him in custody?

MR. KUNSTLER: We checked the court records of this Court and found that, in the court records, it indicated that Ruben Francis turned himself in.

THE COURT: In this particular case?

MR. KUNSTER: Not this case. The Ruben --

THE COURT: Indictment?

MR. KUNSTLER: Case. We decided to take a chance because we couldn't understand whatever happened to Ruben Francis and we investigated the court records and it states that eventually he turned himself in to the F.B.I. and gives the date, here it is. The number of the case is 873-65 and he defaulted as I indicated

## Colloquy

to you and the records indicate that the defendant voluntarily surrendered to the F.B.I.

THE COURT: What part of the record?

MR. KUNSTLER: Where is my colleague?

This is Nancy Tricker, of counsel. She's not admitted yet --

THE COURT: No problem.

MR. KUNSTLER: Judge, there are a whole lot of affidavits in the file, some of them --

THE COURT: It is clear that this matter is going to go over so we don't have to resolve that issue now. I would like to know by the time we meet again, what the basis of that conclusion is.

MR. KUNSTLER: We will subpoena that jacket.

THE COURT: While it is not dispositive, it is a fact that Gene Roberts testified in relation to his presence at the Malcolm X assassination back in 1969 or 1970, so this information is not newly discovered.

MR. KUNSTLER: Not by -- at that point in time these defendants were without counsel in state institutions and I'm not sure they knew

## Colloquy

a thing of what was going on in the Panther trial in New York City.

THE COURT: You are saying that they just discovered it. It is not clear to me when they discovered it.

MR. KUNSTLER: I think when I told them about it. I heard about it but I was not their attorney. I called Mr. Lefcourt up.

THE COURT: BUT it was a fairly well covered trial. It was not in secret and it received a great deal of publicity. The fact that Roberts testified back in 1969 and forms a part of this newly discovered testimony, concerns me simply in terms of Francis. Francis presumably surrendered February 2, 1966 the court records show and it is hard for me to fit that into newly discovered evidence. It may have been newly discovered by you or your client but that is relevant to me is when you became aware of the information, which is now twelve years old in the case of one and eight or nine years old in the case of the other.

MR. KUNSTLER: Miss Tricker tell me, in her notes, that all of this, the F.B.I. situa-

## Colloquy

tion came out in an argument to prevent forfeiture, this information came out.

THE COURT: Ywu appear to be relying quite heavily on this and your affidavit, I know, is prepared under pressure, is not that full on it and it will --

MR. KUNSTLER: I will requisition up that particular file. I might add, Judge, there is nothing in the situation that indicates that any of the counsel for these defendants knew a thing about the Francis situation.

THE COURT: Nor, in fairness, is there any indication that they didn't. It would seem that two of the counsel and two of the defendants are alive, it might be useful to have some expression from them to indicate what the information was or the lack of information was.

MR. KUNSTLER: I will get to that. We mentioned one thing about Lieutenant Hoy capturing somebody else. That is something which is filed in the papers, the New York Times and Tribune the next morning, that there was a second suspect. I indicated that person

## Colloquy

disappeared and at any hearing Lieutenant Hoy would be a likely person to testify as to what happened to the second suspect who never materialized again.

Judge, I have a few more points which I thought I'd bring to your Honor's attention. One of the main factors that Gene Roberts testified to in 1969 or '70, I think he testified in '70.

THE COURT: I think so too.

MR. KUNSTLER: Was the absence of police ~~proct~~ protection in this situation.

THE COURT: Can I interrupt again. It seems to me that you are proceeding on two contradictory theories. Apparently at the original trial Mr. Hagen testified that he recieved money for this and carried out his act as a result of a payment he received for it. He indicates he did it as a faithful follower of his religion.

On one theory you seem to be arguing that Hagen was acting as a faithful follower of his religious beliefs and on the other hand you seem to argue, with Roberts and Francis, that

## Colloquy

it was a plot to get Malcolm X. It seems they war with each other, both that the police arranged the killing and also that Mr. Hagen had nothing to do with the police but was doing it because of beliefs that were religious. They are contradictory.

MR. KUNSTLER: We don't think so for the following reasons: I'm not sure that if the F. B.I. was behind this, that they ~~found~~ announced to anybody that you are working for the F.B.I., go out and do it.

THE COURT: Well, Mr. Hagen might specify who did it.

MR. KUNSTLER: I think so but I think the person he names would be somebody who ~~did~~ did not --

THE COURT: We won't know until the affidavit is full.

MR. KUNSTLER: Even knew there was bad blood between the Islam and Afro-asian community. It wouldn't take much urging to get somebody with religious fever to do this job.

THE COURT: A lack of facts leaves us free to speculate. An abundance of facts limits our

## Colloquy

speculation.

MR. KUNSTLER: I might indicate that through the transcript of the first trial, or the trial, the lawyers and particularly William Chance, attempted and were permitted to get in everything about the lack of police protection. Up to that week there had been hundreds of police officers assigned to the ballroom. Everyone knew something was coming. In fact Malcolm's house had been bombed and completely destroyed and he saved himself and his four children by the skin of his teeth. That day there was nobody there.

THE COURT: But that was known at the time of trial, by each side and could have been remarked upon.

MR. KUNSTLER: It was.

THE COURT: Then it was before the jury and does not constitute new evidence.

MR. KUNSTLER: It's different evidence coming from a police officer, with his credibility, who was a guard at every meeting.

THE COURT: They could have been questioned

## Colloquy

about police protection at that point.

MR. KUNSTLER: That's not so because the only officers who testified were hidden in the Rose room.

THE COURT: They had no knowledge --

MR. KUNSTLER: They had no knowledge.

THE COURT: Are you saying the jury was under the impression at the time they brought in their verdict that there were uniformed officers there?

MR. KUNSTLER: And Chance was working on supposition of questioning the people who were in the audience who said they hadn't seen any police officers around.

THE COURT: Surely the person in charge of the detail could have been called to testify as to how many men he had stationed in the Audobon Ballroom. That is nothing that anybody was precluded from telling.

MR. KUNSTLER: Maybe not, if you knew who was responsible for sending the police there, etc., even assuming the case wasn't tried as thoroughly as it could have been --

THE COURT: If you are arguing inadequate

## Colloquy

representation, that could have been taken up in the Appellate Division. I am precluded in Article 4040 of the CPL, from reviewing those kinds of matters of record which were available for appellate review and were not reviewed.

MR. KUNSTLER: When I got the testimony from Lefcourt of Gene Roberts, when he says I wondered why there were no police there, I think that if the jury heard that, it might have given Change's argument more credibility than it obviously got. It got very little.

THE COURT: I have no problem with your elaborating and detailing yourself in full. It is clear that this matter will have to go over and I think we ought to reserve any prolonged oral argument on it.

MR. KUNSTLER: Could I leave it with one thought?

THE COURT: Yes.

MR. KUNSTLER: When they were trying this case in '65 they couldn't of the slightest conception of what the Church report discovered. That was ten years later. They wouldn't have

## Colloquy

dared to try it that way. Today you have a whole new tactic.

THE COURT: It is one thing to say it is a tactic but another to say it was applied in this particular case and it seems to me that it is a gap you have the burden of proving in terms of the motion you are making.

Should you do so I will be happy to mark the event but the mere fact that that was a tactic does not necessarily mean it was a tactic that was employed in this particular case.

MR. KUNSTLER: An evidentiary hearing is a way to bring that out. We're a little helpless in this way. We don't have subpoena power and investigative power. I wrote and asked for information on what the F.B.I. had and I got a call, which is the first time I ever got a call, from Special Agent David Breckly, on January 13th and he told me they had the information on file, unavailable to us without subpoena power. They had one hundred and fifty five cabinets containing 250 thousand pages about the Nation of Islam and four

## Colloquy

thousand on Elijah Mohammed. All they offer is twenty-five hundred pages on Malcolm X.

THE COURT: That is a place to begin.

MR. KUNSTLER: I'm sure what they'll show is is what doesn't harm. What is denied in the cabinets is what does the harm.

THE COURT: Why don't we look at it. Why don't you look at it.

MR. KUNSTLER: We're going to do that.

THE COURT: There is a lot of work to be done.

MR. KUNSTLER: This whole Church exposure is new. The material that came out in 1976 and I might add that Justice McManus, chief judge of the Southern Iowa, permitted us to call Kelly and Church to talk about tactics because our claim is that the Bureau had set up the confrontation and the jury convicted on that basis.

THE COURT: Mr. Alpert, I am going to ask you, ~~with~~ if you could, with good grace, defer any oral response until we have any supplementary response. How long do you feel you will need until you can prepare all of your

## Colloquy

papers? It seems to me there is alot of work that needs to be done. It seems to me that you will need approximately two months, you could always advance it. I don't want to prolong it. I could mark it off calendar to be reopened or we could fix a date and advance it.

MR. KUNSTLER: Will the case stay with you?

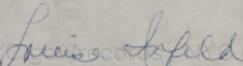
THE COURT: It should stay with me. You are simply asking to adjourn it and we will set no date yet.

MR. KUNSTER: Thank you.

\*\*\*\*\*

## C E R T I F I C A T I O N

THIS IS TO CERTIFY THAT the foregoing is true and accurate.

  
\_\_\_\_\_  
Louise Infeld,  
Court Reporter.

**District Attorney's Office**  
**COUNTY OF NEW YORK**

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*Supplemental Affidavit*

*(HAGAN)*

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DISTRICT ATTORNEY  
NEW YORK COUNTY

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

-----X  
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.:

*Alpert*  
Ind. No. 871/65

WILLIAM M. KUNSTLER, being duly sworn, deposes and says:

1. Following the hearing before this Court on February 15, 1978, I visited Thomas Hagan at the Eastern Correctional Facility, Napanoch, N.Y. on February 22, 1978, and informed him of the Court's statement that a more specific affidavit was required from him in connection with the motion for a new trial pending before it. He agreed to furnish one and said that he would give it to Emam Nuriddin Faiz, a World Community of Islam Minister and an official chaplain of the New York State Department of Correctional Services upon the latter's next visit which was scheduled for Saturday, February 25, 1978.

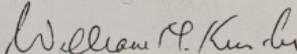
2. On Saturday, February 25, 1978, Mr. Hagan called me at my home in New York, N.Y. and informed me that he had just signed the affidavit in question and that Chaplain Faiz had witnessed it. In view of the shortage of notaries at Eastern Correctional Facility, I asked Chaplain Faiz to read the affidavit to me and then to put Mr. Hagan on the line, Mr. Hagan, whose voice I recognized from many prior conversations with him, acknowledged that it was his affi-

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davit and swore to the contents thereof. Accordingly, when the original document was brought to me by Chaplain Faiz on February 27, 1978, I notarized it as of the date that Mr. Hagan spoke to me and swore to the contents thereof.

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3. In view of the fact that names and other identifying data are included in the affidavit, Mr. Hagan insisted that its contents not be made public other than to the Court and, if necessary, the District Attorney. He felt that it might be very dangerous for the individuals named and described in the document if the information therein were publicized. Accordingly, I assured him that I would adhere to his wishes and so informed this Court in a telephone conversation on Monday, February 27, 1978.

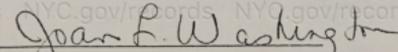
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4. In view of the above, I am furnishing the original affidavit to this Court and sending one copy by messenger to Allen Alpert, the Assistant District Attorney in charge of this matter for the People. It is my express understanding that the contents of the attached affidavit will be kept confidential by all concerned in view of the dangers inherent in public disclosure of its contents.

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5. I also informed the Court that I would move to clear the courtroom of both public and press in the event of an evidentiary hearing during Mr. Hagan's testimony as the same dangers would be present thereat.

  
WILLIAM M. KUNSTLER

Sworn to before me this

28th day of February, 1978

  
NOTARY PUBLIC

State of New York  
County of Ulster

I, Thomas Hagan, being duly sworn, deposes  
and says:

That this affidavit is an addition to my  
first affidavit. And that the statements made  
herein are more in detail and hopefully  
will clear up any doubt as to what took  
place in the killing of Malcolm X and  
the innocents of Norman Butler and  
Thomas Johnson.

It was some time in the summer of  
1964 that I was approached concerning the  
killing of Malcolm X. The time must of been  
a month or so before the Hon. Elijah Muhammad  
spoke in New York City in 1964.

I was walking in downtown Paterson when two  
brothers, both Muslims, was driving by in their car.  
I knew these men well. They asked me to get in  
the car. They wanted to talk to me. Both of these  
men knew that I had a great love, respect and admiration  
for the Hon. Elijah Muhammad.

They started talking about what was going on with

malcolm x and how this man was defaming the  
Mr. Elijah Muhammad. This was the feelings of  
most men in the N.O.I. at that time.

The full names of these men are:

- 1) Ben or Benjamin Thomas or Thompson. He lived  
on Hamilton Ave. in Paterson N.J. He was a  
member of Mosque # 25 Newark N.J.
- 2) Bro. Lee also known as Leon Davis. He also lived  
on Hamilton Ave. in Paterson N.J. across the  
street from Ben. He was also a member of  
Mosque # 25 Newark N.J.

I know that it was Ben who spoke to Leon first  
and then they spoke to me. I learned from them  
that word was out that malcolm x should be  
killed. I can't say for I don't know who passed  
that word on. But I thought that Ben knew.

He soon got together with two more men.  
Both lived in Newark N.J. ones name was  
William x. He was staying on central Ave. or  
So Orange Ave. Right across from the Mosque in Newark.  
I never knew his last name.

The other man was a Brit. named Wilbur  
or Kirby. I don't know his full name. But  
we used his car on Feb. 21, 1965

We met a few times to discuss how to carry out  
this killing. Some times we talked while driving  
around. Or at Bens or Tees house. Some times we  
drove around for hours.

We tried to get as much information on the  
movements of Mal X. as we could.

We, the people above stated, drove out to Mal X.  
house one night to see what security was there.

We found it heavily guarded. We soon decided  
that the only place that Mal X. would be was at  
the Ball Room where he was making speeches to  
the people there. In fact we attended one of these  
meetings to see what security was there. We learned  
that no one was searching at the door for ~~any~~ weapons.

This was in the winter of 1964-65.

We talked about this on the way back to Jersey. We drove  
back in Bens car. We knew that the only place that  
Mal X. was sure to be was at that Ball Room. And  
we decided that with a crowd there we had a good

Chance of getting in there and out after the move was made, the shooting that is.

We decided to visit the Ball Room the night before the killing to set this up. It was a dance that night and we came there like everyone else, got a ticket went in and looked the place over. This was Feb. 20, 65

This night we used Bens car and on the way home we discussed what everyone thought. Everyone agreed that we would do this the next day Feb. 21, 1965. The next morning we would meet at Leons house and Bens to go over our plans. We decided after looking at the place that we would get there early. Drift in and take sets: Leon and me up front and left side facing stage. Ben and William right behind us. I had the 45 auto. Leon the Duger. William had the shotgun. Wilbur or Kirby had the set in the back of the place. His job was to accuse someone of pecking his pocket and through the smoke and boom. This was timed to happen when Mal X. started to greet the people. Almost at the same time William would fire the shotgun and Leon and I would fire our guns at Mal X. and run for the door.

On Feb. 21, 1965 we drove to N.Y.C. in Wilbur or  
Kinley's car, a blue Cat., about a 1962 or so. we  
parked a few blocks from the Ball Room on a street  
heading for George Washington Bridge. we figured that  
with all the people there we could make it out in the  
crowd.

As for the weapons I got them from a  
man who had them for sale I bought them from  
him. This person had nothing to do with the  
crime. I made the smoke bomb that was used.

I, Thomas Hagan have written this affidavit  
in the hope that the information would exonerate  
Thomas Johnson and Norman Butler of the crime  
that they did not commit. This affidavit is factual  
to the best of my knowledge. and I am willing to  
state what took place in the matter before any Court  
of law.

Thomas Hagan

Sworn to before me  
this 25th day of February, 1978

Richard M. Kunster  
Notary Public  
City and State of New York

Commission Expires March 27, 1979

Witness by  
Murrudin Fuzi

State of New York  
County of Ulster

I, Thomas Hagan, being duly sworn, deposes  
and says:

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O. Thomas Hogan have written this affidavit in the hope that the information would exonerate Thomas Johnson and Norman Butler of the crime that they did not commit. This affidavit is factual to the best of my knowledge. and I am willing to state what took place in the matter before any Court of law.

Thomas Hogan

Sworn to before me  
this 25<sup>th</sup> day of February 1978  
at New York City  
P. Keastler  
Notary Public  
New York

Witness of  
Nuriddin Fuz

Commission Expires March 1, 1979

*Mr. Alpert*

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*Alpert*

DISTRICT ATTORNEY'S OFFICE  
NEW YORK COUNTY March 17, 1978

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

Re: People v. Butler & Johnson

Dear Justice Rothwax:

With the submission several weeks ago of the latest affidavit from Mr. Hagan, defendants would like very much to restore the above matter to the calendar for further argument or an evidentiary hearing therein.

I would appreciate hearing from you as soon as possible as I have a long trial beginning in the Eastern District of New York on April 10, 1978.

Thank you very much for your prompt consideration of this request.

Respectfully yours,

WILLIAM M. KUNSTLER

wmk/jw  
cc. Mr. Alpert

**District Attorney's Office**  
**COUNTY OF NEW YORK**

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*Supplemental Affidavit  
(Police Involvement in Murder)*



FROM

William M. Kunstler

ATTORNEY AT LAW

853 BROADWAY

NEW YORK, NEW YORK 10003

To:

ADA Allan Alpert  
District Attorney  
155 Leonard Street  
New York, N.Y. 10013

First Class

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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 BUT- : NYC.gov/records NYC.gov/records  
LER) and KHALIL ISLAM (THOMAS 15X)  
JOHNSON, :

Defendants.  
-----x

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

WILLIAM M. KUNSTLER, being duly sworn, deposes and says:

1. I am submitting this affidavit in support of defendants' application for an evidentiary hearing in connection with their assertion that the murder of Malcolm X was procured, instigated or arranged by the Federal Bureau of Investigation and/or the New York City Police Department.

2. During oral argument before this Court in January, defense counsel was requested to submit any information they may have gained from an examination of those documents which the Federal Bureau of Investigation would permit them to see. This affidavit is in partial response to that request.

3. Attached hereto, in its entirety, is a memorandum from the Special Agent in Charge of the Chicago Division to the Director, dated January 22, 1969, concerning the Nation of Islam. The Court's attention is called to the first page in which the addressor states that one technique employed against the Nation of Islam was the development of "factional disputes . . . the most notable being MALCOLM X LITTLE." P. 1.

4. The Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities, United States Senate, 94th Congress, 2d Session, popularly referred to as the Church Committee, Book III thereof, is replete with documentation of the concerted effort of the FBI to promote violence between what it classified as Black extremist groups, among which it included the Nation of Islam. See eg. pp. 189-198, Book III, supra. According to the Church Committee Report, "Approximately 28% of the Bureau's COINTELPRO efforts" were expended in this area. Ibid. at 40. In many instances, the Bureau took full credit for causing violence among such groups. Ibid. at pp. 42-3.

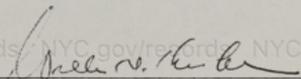
5. It does not take a great deal of imagination to come to the conclusion that the publicized rift between Elijah Muahammad and Malcolm X was ideal for the promotion of violence between members of the Nation of Islam and Malcolm's Organization of Afro-American Unity . The existence of COINTELPRO as an official program of the FBI and the circumstances of the feud between Malcolm X and Elijah Muhammad was ripe with possibilities for the encouragement of violence between their two organizations and what could have been more perfect for this purpose than the procuring of the murder of the most accessible target, namely Malcolm X.

6. This explains the total lack of police protection at the Audubon Ballroom on February 21, 1965, one week after the bombing of Malcolm's home in Queens, the stationing of a police officer in the emergency room of an adjoining hospital before the shooting with walkie talkie contact with two officers hidden from public view at the Ballroom, the contact of certain eyewitnesses with the FBI and

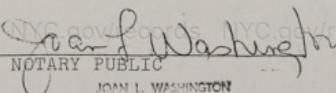
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their nonavailability as witnesses at the trial, the disappearance of one murder weapon and the turning over of another, after it had been broken down, to FBI agents.

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7. There is at least enough here to call for an evidentiary hearing. It is submitted that District Judge John Sirica had less at his disposal in the way of incriminating material <sup>\*/</sup> than does this Court. If the truth is ever to be determined, it remains for courageous judges, when confronted with strong possibilities to grant the hearings necessary to develop it. Otherwise the dark areas of our society, so graphically illustrated in the Church Committee Report, among others, will be hidden forever, with the resultant danger to our institutions and the lives and welfare of many of our citizens.

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WHEREFORE, defendants reiterate their request for an evidentiary hearing on all aspects of their motion, so that this Court will be able to make an intelligent disposition of this matter.

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WILLIAM M. KUNSTLER

Sworn to before me this 3rd  
day of April, 1978

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NOTARY PUBLIC

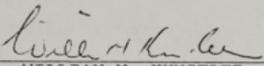
JOAN L. WASHINGTON  
New York

Qualified in New York County  
Commission Expires March 30, 1979

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\*/ See United States v. Liddy et als., D.D.C. (1972)

CERTIFICATE OF SERVICE

This is to certify that a copy of the within affidavit was forwarded to the District Attorney, New York County, 155 Leonard Street, New York, N.Y. 10013, this date by prepaid first class United States Mail.

  
\_\_\_\_\_  
WILLIAM M. KUNSTLER

Dated: New York, N.Y.  
April 3, 1978

UNITED STATES GOVERNMENT

# Memorandum

TO : DIRECTOR, FBI (100-448005)

FROM : SAC, CHICAGO (157-2209) (P)

SUBJECT: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(NATION OF ISLAM)

DATE: 1/22/69

Reurlet, 1/7/69; Chicago letters 12/24/68 and 1/14/69.

ReBulet has been thoroughly studied and discussed by the SAC, the Supervisor, and Agents familiar with facets of the NOI which might indicate trends and possible future direction of the organization. The Bureau's concern is most understandable and suggestions appreciated.

Over the years considerable thought has been given, and action taken with Bureau approval, relating to methods through which the NOI could be discredited in the eyes of the general black populace or through which factionalism among the leadership could be created. Serious consideration has also been given towards developing ways and means of changing NOI philosophy to one whereby the members could be developed into useful citizens and the organization developed into one emphasizing religion - the brotherhood of mankind - and self improvement. Factional disputes have been developed - the most notable being MALCOLM X LITTLE. Prominent black personages have publicly and nationally spoken out against the group - U.S. District Court Judge JAMES BENTON PARSONS being one example. The media of the press has played down the NOI. This appears to be a most effective tool as individuals such as MUHAMMAD assuredly seek: any and all publicity be it good or bad; however, if the press is utilized it would appear it should not concentrate on such aspects as the alleged strength of the NOI, immoral activities of the leadership, misuse of funds by these officials, etc. It is the opinion of this office that such exposure is ineffective, possibly creates interest and maybe envy among the lesser educated black man causing them out of curiosity to attend meetings and maybe join, and encourage the opportunist to seek personal gain - physical or monetary - through alignment with the group. At any rate it is felt such publicity in the case of the NOI is not overly effective.

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

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As the Bureau is aware the NOI several years ago organized Progressive Land Developers, Inc., and more recently United Dynamics Corporation, both incorporated in the State of Illinois. Both have well known NOI officials as officers - ELIJAH MUHAMMAD is not shown as involved in either. The professed purpose of these groups is economic in nature and gives no appearance of being religious in nature.

Activity by these groups was most limited until the past year to year and one half ago. Since that time the NOI has invested heavily in business properties in the Chicago area and in land in Michigan and Georgia. It was noted publicity regarding formation of these two corporations by the NOI was limited throughout the United States - only two articles have appeared and both dealt briefly with Progressive Land Developers, Inc. buying land in Michigan. Both articles were published in cities other than Chicago.

[REDACTED] contacted this office and volunteered data to the effect he had been surveying NOI business ventures and wanted to write an article about same but needed assistance. Bearing the above facts in mind re the two corporations, the Bureau was requested to give permission to furnish [REDACTED] with pertinent public record material relating to ownership of these non-religious ventures with emphasis on the fact it appeared membership monies were possibly being misused. The Bureau granted permission and [REDACTED] was given all possible assistance. At this time he is working on his article and assures this office he will advise us of the article and its publication. Re Chicago letters set forth full details. It is hoped that publicity emphasizing NOI non-religious ventures will cause factionalism among the leaders and discredit them among the black community and the organization's membership.

ELIJAH MUHAMMAD is sole leader of the NOI claiming to have been so appointed by ALLAH. He further claims to be the only divinely appointed leader of all black people in America. His "gimmick" in creating an aura of mysticism

has been proclaiming the black man to be God and the future ruler of Earth; branding the white man as the Devil whose future lies in his destruction by ALLAH through the forces of nature; and a call for a separate state or territory of their own or equal justice and equal opportunities in the United States if they cannot have separate territory. These "gimmicks" would be most attractive to many black people in the lower economic strata who would want to hear the white man condemned and castigated because of their own plight. Of course, the development of a seemingly large following would also attract the opportunist - a black man who would profess to believe MUHAMMAD's teachings but is really out solely for personal gain. As is apparent, MUHAMMAD has created through the above an almost fanatical devotion to him on the part of his following; however, this devotion and subservience is purely voluntary as members are specifically instructed to leave if they cannot follow all of the "Laws of Islam" The turnover is constant and while many have left because of the NOI's demands they still believe in his teachings.

ELIJAH MUHAMMAD, as far as is known, has not designated, or even shown a preference for, an heir apparent. With two exceptions the national leadership is composed of members of his family. All are dependent on MUHAMMAD and the group for their livelihood. Over the years various members of the "Royal Family" have been in the favor of MUHAMMAD only to fall by the wayside because they dared question MUHAMMAD's edicts. A prime example of this would be WALLACE MUHAMMAD who was until about 1964 considered most likely to be the heir apparent and MUHAMMAD himself indicated ALLAH might be communicating with WALLACE. Of course, WALLACE subsequently was suspended by his father because he refused to believe W. D. FARD was ALLAH. It is still believed WALLACE MUHAMMAD is the only member of the "Royal Family" who could give proper spiritual guidance to the organization. No one has emerged as a successor to WALLACE insofar as this sphere of activity is concerned.

Recent indications are that HERBERT MUHAMMAD is closest to MUHAMMAD. He is self-stated to be MUHAMMAD's personal aide. He has illusions of running the NOI from "behind the scenes" when MUHAMMAD passes on.

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There is no indication HERBERT himself will be able to guide the flock spiritually nor is there any indication as to how he plans to accomplish same. He is interested only in such financial gain as the membership will make available to him.

In our opinion there is no one presently in the NOI who will be able to replace MUHAMMAD and the mystical spell he is able to cast on some members of the black race. This must be done to insure survival of the group.

Further, there is no means at present to determine who will succeed MUHAMMAD. Past experience has shown he does not particularly trust any of his sons or daughters and they could be in favor one day but completely in disfavor the next. HERBERT MUHAMMAD is as susceptible to this as any.

It appears the NOI is headed on a collision course for a factional split after the death of MUHAMMAD. The power struggle could well develop among members of the "Royal Family" and could well involve some of the more prominent NOI ministers who could well align themselves with a certain member of the "Royal Family" or could entertain illusions of "ruling" a segment of the NOI. It is not beyond the realm of possibility that anyone of MUHAMMAD's more prominent ministers could make a power play on MUHAMMAD's death. At present, however, MUHAMMAD seemingly has all of them totally subservient to him.

As mentioned earlier, the spiritual aspects of the NOI must be maintained to keep the group going. It is recalled that when MALCOLM X LITTLE defected and later was murdered, many dissenting NOI members sought out WALLACE MUHAMMAD for spiritual leadership. When WALLACE MUHAMMAD returned to his father on another occasion and presented to NOI members gathered at an Annual Muslim Convention in Chicago he was wildly acclaimed. It is felt WALLACE MUHAMMAD is still warmly thought of by his father as he is the only son or daughter who is not monetarily motivated. It is known MUHAMMAD still asks about WALLACE.

It is further known WALLACE is adamant in his belief W. D. FARD is not ALLAH. WALLACE is acknowledged clandestinely by members of the "Royal Family" and is friendly with many of them. He is thought to be held in esteem by NOI members despite his suspension. It is not beyond expectations that he could be sought out for support in a power play by a member or members of the "Royal Family" or by various NOI ministers to be a figurehead or the leader. His beliefs are the brotherhood of mankind and self improvement with no hate for other men.

WALLACE MUHAMMAD is well aware of this and maintains his contacts.

The above is pure speculation but factual data can only be obtained as time passes and events occur. At this time proper courses of action can be planned and implemented.

ReBulet refers to legal action against the NOI on the death of its leader and asks such questions as

- 1) Does MUHAMMAD have a will?
- 2) Is the NOI incorporated?
- 3) In whose name and where are NOI bank accounts?
- 4) In whose name are NOI assets such as mosque buildings, MUHAMMAD's home, etc.?

There is no information available as to whether or not ELIJAH MUHAMMAD has a will. This would be information available only to MUHAMMAD and, possibly, an attorney.

MUHAMMAD's Temple No. 2 of the Holy Temples of Islam is shown as being an Illinois corporation at the Cook County Recorder's Office, Chicago; however, there is no evidence of same on file with the Secretary of State, Corporate Section, Springfield, Illinois.

Bank accounts maintained by MUHAMMAD's Temple No. 2 in Chicago are in a state of complete flux at present. Accounts both savings and checking have been maintained for several years in the name of MUHAMMAD's Temple No. 2 at the South East National Bank (all having balances of under \$1,000.00); at Continental Illinois National Bank and Trust Company of Chicago (all now closed); at the American National Bank and Trust Company of Chicago (unavailable due to bank policy). ELIJAH MUHAMMAD was not shown as being authorized to draw on any of the above accounts. Rather those

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authorized to draw included officers of the Temple - any 2 of 4. Only one bank account was located for ELIJAH MUHAMMAD. It was a savings account containing less than \$5,000.00 and was in the name of ELIJAH and CLARA (his wife) MUHAMMAD.

NOI properties have been closely followed by this office insofar as title holder, evaluation, etc., are concerned. MUHAMMAD's Temple No. 2, including the University of Islam No. 2; is in the name of MUHAMMAD's Temple No. 2; various business ventures purchased by the NOI are in the name of Progressive Land Developers, Inc., or United Dynamics Corporation (both described above) as are land purchases in Michigan and Georgia. So far as can be determined NOI properties are in one of the above names. The exception to this are MUHAMMAD's residence at 4847 South Woodlawn; his residence at 2118 East Violet Drive, Phoenix, Arizona; and a residence at 1122 Staples Street, N.E., Washington, D.C., which are in the name of ELIJAH and/or CLARA MUHAMMAD at present.

Chicago's experience insofar as MUHAMMAD's legal advice is concerned dates back to 1959 at which time ELIJAH MUHAMMAD on legal advice tempered his teachings against the white man and the government, both synonymous in NOI teachings, to avoid prosecution. At that time he demphasized religious aspects in the NOI and commenced emphasizing economic benefits to be derived by the black man who joined the organization. It appears, based on NOI land and business ventures in the past two years, MUHAMMAD is implementing monies accrued over the from the membership and from appreciation from properties sold. His success or failure in these business and farming ventures remains to be determined as they have only been in effect for a year or so.

Over the years MUHAMMAD's legal involvements have been closely followed. He has been represented by numerous attorneys and evidently seeks out advice on new endeavors. IRS has reviewed the NOI and some of its officials but results were negative. Income Tax Returns filed by such individuals as HERBERT MUHAMMAD, who made substantial money as manager of CASSIUS CLAY, were reviewed and no discrepancies were noted. It was noted attorneys executed these returns. Perhaps the most significant factor is recognition of the NOI as a religion by USDC and subsequent court, both Federal and State, approval for NOI services in Federal and State prisons.

Chicago has no source in Probate Court, Cook County, Chicago, and has not considered the development of same due

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to the many scandalous allegations relating to political appointees and their associates in this area. It is not deemed advisable to approach such a person as the Bureau would be in an extremely embarrassing position if there were the slightest leak that the Bureau was involved in probate of any estate.

Chicago, as the Bureau is aware, has always been on the alert for methods by which the NOI could be directed or disrupted. As is evidenced by the present cooperation with [REDACTED] this policy continues.

Chicago continues its contacts with its sources whose identities are known to the Bureau and feels these sources will be of possible extreme value at the time of the demise of MUHAMMAD. At this time appropriate recommendations will be made.

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DISTRICT ATTORNEY  
NEW YORK COUNTY

# DISTRICT ATTORNEY

OF THE  
COUNTY OF NEW YORK

155 LEONARD STREET

NEW YORK, N. Y. 10013

RE 2-7300



ROBERT M. MORGENTHAU  
District Attorney

*Neighborhood Complaint Office:*

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

## MEMORANDUM

TO: Mr. Silvio Mollo  
FROM: Mr. Allen Alpert  
DATE: April 24, 1978  
RE: FBI Documents - Murder of Malcolm X

This memorandum is in reference to our conversation of April 21, 1978 in which I requested your assistance in obtaining from the FBI unredacted copies of certain FBI memoranda, telegrams and other reports relating to the murder of Malcolm X. Attached please find the FBI documents in question.

I am especially interested in obtaining the names of those persons mentioned in these FBI papers who were identified to the FBI as being involved in the murder or who were suspected by the FBI of involvement in it.

These FBI papers also contain apparent references to several other people, such as Ronald Timberlake and Reuben Francis, who either supplied the FBI with information or who were involved in certain aspects of the murder or its aftermath. Since the identities of these persons have subsequently become matters of public