

ADD
Alpent 806
804

William H. Kunstler

ATTORNEY AT LAW

853 BROADWAY

NEW YORK, NEW YORK 10003



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

1/24
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 30
-----x

THE PEOPLE OF THE STATE OF NEW YORK :

THE PEOPLE -v- THE STATE OF NEW YORK :

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

Defendants. :

SIRS: -----x

Ind. No. 871/66

PLEASE TAKE NOTICE, That defendants wish to *supplement*
their notice of motion dated December 5, 1977, and served *and filed*
on December 6, 1977, praying for certain relief pursuant *to § 440.10.1*
subdivision (g), Criminal Procedure Law, to include therein *the*
failure of the People to notify said defendants prior to *advising*
the trial of this indictment that one of the men who *appear in Def -*
endants' Exhibits V, W, X and Y, formerly marked People's *Exhibits*
36, 37, 38 and 39 for identification, specifically the *men alleged -*
ly giving mouth-to-mouth resuscitation to the victim *herein, was,*
in fact, a police officer of the City of New York, namely *one Gene*
Roberts, apparently then a member of what is now referred *to as the*
Intelligence Division of said Police Department, and to *include the*
statutory grounds contained in subdivisions 1(b), 1(f) *and (h) of*
the said § 440.10, Criminal Procedure Law, as a basis for *the relief*
sought in said notice of motion.

Yours, etc.,

Dated: New York, N.Y.

December 8, 1977

TO:

Criminal Motion Clerk
District Attorney

WILLIAM M. KUNZEL
853 Broadway
New York, N.Y. 10010
(212) 674-3303

THE PEOPLE OF THE STATE OF NEW YORK :

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

Defendants. :
 He also testified that he had "called-x brother Jean" after having

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

WILLIAM M. KONTNER, being duly sworn, deposes and says:
 I am 341 Bixby, the people who have known me the police

2. During the trial, eight photographs, which had been

3. During the cross-examination of Charles H. Blackwell, a witness for the People, it developed that this witness had testified before the Grand Jury that he had picked up a Luger after the shooting, wrapped it in a jacket that he saw on the floor and handed

October, 1977

COPIES OF ALL
EVIDENCE - COPIES

it to a "Brother Jean." TT. 1663. He further testified at the trial that he did not know the identity of "Jean," TT. 1727, and that he had been mistaken in stating that he had handed the Luger to that person. TT. 1743. Instead, he said that he had tried to give "Jean" the weapon but that the latter had told him to give it to someone else and that he had then handed it to Ruben Francis. TT. 1744. He also testified that he had "called Brother Jean" after having picked up the weapon. TT. 1750. Later, he said that he had not been told anything by "Jean," but merely been waved away by the latter. TT. 1756. *"Jan" was the man allegedly giving resuscitation.*

4. At all times, the People must have known and the police certainly did know the identity of "Brother Jean" as well as the fact that he was a police officer and this vital information was never given to the defense but was, instead, deliberately withheld from it. TT 1723

5. This is particularly significant in that one of the defenses asserted during the trial was that the authorities, and particularly the New York City Police Department, might have been involved in the murder. See eg., summation on behalf of defendant Butler on pp. 3725-26, Trial Transcript. To hide from the defendants the identity of an eyewitness who was an undercover police agent violates every principle of fair play as well as all of the decisional law in this area. It was done willfully and deliberately and undercut one of the thrusts of the defense.

WILLIAM M. KUNSTLER

Sworn to before me this
8th day of December, 1977

12/15 - Lang Adj. return date to 1/19/78

Phoned Joan Washington &
told her of new return date. She
said she'd tell K.

Alpert: 3:10 PM.

District Attorney's Office
COUNTY OF NEW YORK

12/14

Kunstler supp. motion -

re "Roberts" - VC cop
gave Malcolm aid after shooting.

DS never told

claims Brady, etc.

K sending new info - transcript from "P.21" case

K says he sent motion app 1 week
ago. I haven't seen it.

K won't consent to any Adj.
Hilperl

12/14

Found supp motion - was sent to

Frazer



William M. Kunstler

ATTORNEY AT LAW

853 BROADWAY

NEW YORK, NEW YORK 10003



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

Attn: ADA Alpert

ENTERED BY
APPEALS CLERK

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
SIRS:"

PLEASE TAKE NOTICE, that defendants, by their counsel, will move this Court, upon the affidavit of WILLIAM M. KUNSTLER, duly verified the 5th day of January, 1978, and all the proceedings heretofore had herein, at a Part 30 thereof, held in and for the County of New York at the Criminal Courts Building, 100 Centre Street, New York, N.Y. 10013, on the 16th day of January, 1978, at 10:00 o'clock in the forenoon thereof or as soon thereafter as counsel can be heard, for an order producing said defendants in the said Part 30 on the 19th day of January, 1978, in connection with their motion for relief pursuant to §440.10, CPL, which is scheduled to be heard on said date, and retaining said defendants in a penal institution within the City of New York until the final determination of their said motion by this Court, and granting such other and further relief as may be just and proper in the premises.

Yrs, etc.,

TO:
District Attorney
Criminal Motion Clerk

WILLIAM M. KUNSTLER
853 Broadway
New York, N.Y. 100083
(212)674-3303

Dated: New York, N.Y.
January 5, 1978

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), :
-----x

Defendants. :
-----x

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

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

1. I am the attorney for the defendants herein whose motion for relief pursuant to §440.10, CPL, is scheduled for a hearing on January 19, 1978, in this Court.

2. Because of the complex nature of this motion, I consider it imperative that defendants be present during the said hearing. I consider this motion to be a major proceeding affecting the most important and significant rights of the defendants and that, without their presence, the said hearing could not be complete.

3. On December 27, 1978, by letter, I asked the Assistant District Attorney in charge of this matter to produce said defendants and he has just informed me that it should be done by application to this Court.

4. Furthermore, in view of the fact that the proceedings herein will probably be lengthy, it is also requested that both defendants be kept in the New York City area in a suitable place of detention until said proceedings have been completed in this Court. Constant consultation will be required, given the nature of this proceeding, and this can only be done if they are physically pre-

sent within reasonable proximity to my office.

5. The defendants are located within 100 miles of this city, Mr. Butler being at the Ossining Correctional Facility and Mr. Johnson at the Walkill Correctional Facility. It is further requested that they be kept within the same penal institution in the City of New York, should this request be granted, and that suitable arrangements be made thereat for their protection.

6. No prior request for the relief sought herein, other than that set forth above, has been made to this or any other court.

WHEREFORE, defendants respectfully request that all of the relief sought herein be granted, as well as such other and further relief as may be deemed just and equitable in the premises.

WILLIAM M. KUNSTLER

Sworn to before me this 5th
day of January, 1978

NOTARY PUBLIC

MARGARET L. RATNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-321147D-15
Qualified in New York County
Commission Expires March 30, 1978

RECEIVED

1978 JAN 6 PM 3:26

DISTRICT ATTORNEY
NEW YORK COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART THIRTY FIVE

THE PEOPLE OF THE STATE OF NEW YORK,)

VS.)

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

Defendants)

IND. NO. 871-65

STATE OF ILLINOIS)
COUNTY OF COOK) ss

BENJAMIN GOODMAN, FIRST DULY SWORN, DEPOSES AND SAYS:

1. I am presently a resident of the city of Chicago, am employed as an assistant engineer at Evanston Hospital, and a member of the World Community of Islam.

2. I was a member of the Fruit of Islam from 1957 until May of 1964.

3. During this time period, I was Assistant Minister to Malcolm X, at Mosque # 7 in Harlem, New York City.

4. Among my functions as Assistant Minister was to give lectures and speeches throughout the Northeast, and to provide security for Malcolm, from time to time, as one of his chief aides.

5. During the late 1950's and early 1960's, I became acquainted and closely associated with Norman 3X Butler and Thomas 15X Johnson, who were also members of Mosque #7 during this time period.

6. Among the duties that Johnson and Butler performed as members of Mosque #7 was bodyguard to Malcolm X.

7. In early 1964, when Malcolm left the Fruit of Islam and formed the Organization of Afro-American Unity, I left with him as his Assistant Minister.

8. Butler and Johnson remained in the Fruit of Islam as members of Mosque #7.

9. On February 21, 1965, in the early afternoon, I was at the Audubon Ballroom on West 166th Street in New York City, where Malcolm X was to give a speech.

10. As Assistant Minister, I gave an introductory speech, approximately twenty minutes in length, to the four to five hundred people in the Ballroom.

11. While giving the speech I was able to and did observe the faces of all the people in the crowd, as one of my functions was to provide security for Malcolm's person.

12. At no time did I see the faces of Butler or Johnson, whom I knew well, and would have been sure to notice since they were still Muslims from Mosque #7, and there was a high degree of animosity between the Fruit of Islam and the Organization for Afro-American Unity.

13. Additionally, no Muslims would have been admitted to the ballroom without Malcolm's notification and permission, and no such notification or permission was sought from Malcolm or from me on February 21st.

14. After I finished my speech, I introduced Malcolm as a man "who would give his life for the people", then went directly to a dressing room to deliver a message at Malcolm's instruction.

15. While in the dressing room (behind a closed door) for a very short time, I heard noises which I later learned were the shots which killed Malcolm.

16. I therefore did not witness Malcolm's assassination.

During the years

17. After Malcolm's assassination, I had conversations with many of the people in the Ballroom on February 21st, including many OAAU members.

18. All of these people said that four or five people were involved in the assassination, and those OAAU members who knew Butler and Johnson from (Butler and Johnson) Mosque #7 said that they were not present.

19. During 1965, I was summoned to the New York Police Precinct at or near 51st Street and Amsterdam in New York City.

20. Detectives questioned me about Malcolm's assassination, and showed me pictures, among which appeared to be pictures of Butler and Johnson.

21. I told these detectives that Butler and Johnson were not present at the Audubon Ballroom on February 21st.

22. Later in 1965 I was summoned to the New York Police Precinct

at or near 100th Street in New York City, and again questioned about Malcolm's assassination.

23. One of the detectives was a sergeant dressed in plain clothes, with an Italian name which was Galante, or something similar.

24. I told these detectives that Butler and Johnson were not present in the ballroom on February 21st, and that I had not witnessed the actual shooting.

25. Despite what I told them, these detectives continued to try to persuade me to say that I had witnessed the shooting, and that Butler and Johnson had been present. When I refused to make such a statement, they became angry.

26. Later in 1965, I was summoned to an interview with an assistant District Attorney named Stern, who had another assistant present when we talked. I told them that I knew Butler and Johnson, that they had not been present at the ballroom that day, and that I had not seen the actual shooting.

27. When I said this, Mr. Stern became angry and said that he knew I had previously said that I had seen the shooting through an open dressing room door. This was not true and I had never said this to anyone. In his anger, Mr. Stern threatened me, saying, "Have you ever been to jail? How would you like to go to jail?"

28. Also in 1965, I was interviewed by an agent several times. On each occasion, I told them that Butler and Johnson had not been present at the Audubon Ballroom on February 21, 1965.

29. I was never called to testify at the criminal trial of Butler, Johnson and Hagan.

SUBSCRIBED AND SWORN BEFORE ME
THIS 17th DAY OF MAY, 1978

Ernie Turner
NOTARY PUBLIC

Benjamin Goodman
Benjamin Goodman

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

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

-v-

NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records

AFFIDAVIT

Ind. No. 871765

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

Defendants. :
----- X

STATE OF NEW YORK)

) ss.:
COUNTY OF NEW YORK)

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 Silento, 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.

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71
triple hearsay
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.

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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.

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

BENJAMIN KARIM

21st day of July, 1978

NOTARY PUBLIC

WILLIAM M. KUNSTLER
Notary Public, State of New York
No. 67-10353
County of ... State of New York
Certified that ...
Comm. Expires March 30, 19...

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 35

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. :

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.)

H¹². 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 knew¹ 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

Read v.
K49 +50

See notes for oral
Argument.

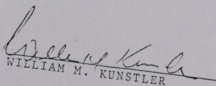
H never refers to Kinky or
Willow as Muslim or from Newark

Temple. In any event, H
was ID'd as this man.

no ev. FBI
informed NYPO

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.

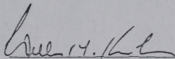
14. In conclusion, the People's opposing papers do not, in the slightest, meet the issues raised in Mr. Hagan's second affidavit or alter the effect of that of Mr. Goodman. If anything, they point up the necessity for an evidentiary hearing so that this Court can judge the credibility of Messrs. Hagan 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.


WILLIAM M. KUNSTLER

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

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

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 Judg-
ments, a copy of which was received by me at approximately 1:45 p.m.
on July 18, 1978.

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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 Ball-
room 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:

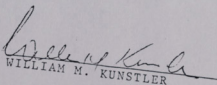
- a. Document 38, which states that an informant "described the person who handled the shotgun as a tall Negro whom he recognized as a member of the Newark Temple. . . . a lieutenant in the Newark Temple." (emphasis added)
- b. Document 39 (p. 2 of Document 38), states that "[T]he man who started the 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.

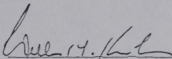
14. In conclusion, the People's opposing papers do not, in the slightest, meet the issues raised in Mr. Hagan's second affidavit or alter the effect of that of Mr. Goodman. If anything, they point up the necessity for an evidentiary hearing so that this Court can judge the credibility of Messrs. Hagan 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.


WILLIAM M. KUNSTLER

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

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

3/30/65

Benjamin Augustus Goodman

1022 Longfellow Ave, Bronx

DA 9-9418

River Church Center, 475 Riv. Side Dr.

also Counsel for Church Training

Age 32

went to live at 1008 University Ave, NYC

joined Mosque # 7 in 1958,
left in Early Summer of 1964.

Feb 21, 1965 -

Goodman asked by
Sarah Mitchell to open the
speaking. Told after he got
to Ballroom, Announced

thanking in moving to
front.

knew Baxter + James
from Mosque - Ben Ben,
looked like head of Crowd.

7C was established around
1963.

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

Bergman became an Asst. Minister
to Malcolm in Hague # 7 in 1961

To files ~~from~~
from # 5000

I am informed that
Rev Martin Luther King
was supposed to speak
in the Ballroom before
March 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.

3/30/65

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Police inform me (Det
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audience, but looks over their
heads. So he doesn't know
who was in the audience.

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. 14* P.M.	15*	19. Pct. 34th	22. U.F. 61 No. 895
Complainant's Address	Apt. No.	11. Day, Date and Time of Occurrence Sun. Feb. 21, 1965 3:10PM	A.M. 16* P.M.	17*	27. Pct. Post	30. C.C.D. No. 88015	
			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	50. TYPE OF PROPERTY		51. Value of Property Stolen	57. Value of Stolen Property Recovered
Was this complaint previously cleared by an arrest?			1. Autos Stolen or Recovered Locally			
If yes, is this an additional arrest?			2. Autos Recovered by Other Auth's.			
Were identified persons wanted previously reported?			3. Autos Recovered F. O. A.			
Was any stolen property previously reported?			THIS REPORT CONCERNS: (Check One)			
Was this stolen property previously reported?			4. Currency			
Was any property recovered previously reported?			5. Jewelry			
Was this recovered property previously reported?			6. Furs			
Was complainant advised of action taken?			7. Clothing			
			8. Firearms			
			9. Miscellaneous			
NUMBER OF ARRESTS			ARRESTS MADE BY:			
Male			Uniformed Force			
Female			Detective Div.			
Adults			Other Peace Off.			
Juveniles			Civilian			
If an alarm is transmitted enter the following information:			Crime or Offense as Classified on U.F. 61 Homicide (MUR)		Det. Sqd. Ser. 1000	
Alarm Number			Date and Time Transmitted		Status of Case 2	
			Copy of this report forwarded to Corr. Bur. for Communication.		Signature of C.O. or Investigating Officer [Signature]	
			YES <input type="checkbox"/> NO <input type="checkbox"/>		Rank 600	
					Name [Name]	
					Command	

Report of Investigating Officer: (LIST ALL LOST OR STOLEN PROPERTY ON REVERSE SIDE) Date of This Report: **2-21-65**

Subject: INTERVIEW OF BENJAMIN GOODMAN AT 54TH SQ.UD

On Feb. 20, 1965, at 6:30PM, one Benjamin Goodman (25M-N-32, of 1030 Longfellow Ave. Bx, N.Y.C. 11. (D.M.G-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 (C7...) and Sister Church 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. He 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. Cusumano

Investigating Officer's Signature

Rank

Ptl. Shield No. 10246

Command

54th

SUPPLEMENTARY COMPLAINT REPORT (DO NOT FOLD THIS REPORT)

Complainant's Surname First Name Telephone No.

PEOPLE

Complainant's Address

Apt. No.

MALCOLM X MURDER

6. Date and Time Reported on U.F. 61

A.M.

P.M.

14°

15°

19. Pct.

22. U.F. 61 No.

February 21, 1965

3:10 P.M.

16°

17°

27. 34 Post

30. 993 No.

Sunday 2/21/65

3:10 P.M.

26815

36. (1) 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?

Answer Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

50. TYPE OF PROPERTY

51. Value of Property Stolen

57. Value of Stolen Property Recovered

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

Det. Sub. Ser.

Crime or Offense Classified to

1022 Case

Copy of this report forwarded to

Signature of C.O. Investigator

Corr. Bur. for Communication

Active

YES ☐NO ☐

Rank

Name

Command

Report of Investigating Officer:

(LIST ALL LOST OR STOLEN PROPERTY ON REVERSE SIDE)

Date of This Report: March 26, 1965

Subject:

REINTERVIEW OF BENJAMIN X DAYNE GOODMAN

1. Goodman At 11:15PM March 25th 1965 the undersigned reinterviewed one Benjamin X DAYNE 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 1950 and defected in favor of Malcolm X in late 1964. States he was arrested for Policy, 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 Sisiter 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.K.B. only

Investigating Officer's Name (Typed)

Investigating Officer's Signature

Patrick J. Sworley

Rank

DET Shield No. 2092

Command

345D