

**JUSTICE FOR DANIEL FAULKNER'S RESPONSE TO  
AMNESTY INTERNATIONAL'S PROPAGANDA PIECE  
FOR MUMIA ABU-JAMAL**

**BY MICHAEL SMERCONISH, ESQ.  
AND PAUL PALKOVIC**

The self-styled guardian of international justice, Amnesty International USA (AIUSA), has come down heavily on the side of convicted murderer Mumia Abu-Jamal. Their web site features a "report" on Jamal and his trial, done in a tone that is meant to convince the reader that AIUSA is an objective, unbiased observer rather than a biased advocate with an agenda. That's just the first lie in this one-sided piece of propaganda. For the truth, read on.

In **The Introduction**, despite the fact that no attempt was made to contact the Philadelphia District Attorney's Officer or the Philadelphia Police Department, AIUSA states that it has performed an "impartial" and "thorough study" of Jamal's case. Based on this one sided "study" they allege that the proceedings "were in violation of minimum international standards that govern fair trial procedures."

Lets recall that this case was reviewed on direct appeal by the Pennsylvania Supreme Court in 1989, by the United States Supreme Court on a petition for *certiorari* in 1990, was the subject of extensive "post conviction review" hearings in 1995, 1996, and 1997, was reviewed *again* by the Pennsylvania Supreme Court in 1998, and was finally rejected for *certiorari* by the United States Supreme Court in 1999. Perhaps AIUSA would have us believe that all those courts don't understand the "minimum international standards" for a fair trial. But it's hard to believe that these courts do not know the "minimum USA standards" for a fair trial. It's even harder to believe that the rest of the world in general -- which includes places like Iraq -- has better "standards" than we do here in the United States. In France, for example, where Jamal enjoys considerable support, one is guilty until proven innocent, and there is no right against self-incrimination as there is in the US system. By comparison, the "minimum" standards in any American court make the maximum standards of some of our most allegedly advanced and enlightened international neighbors look downright shabby.

Well, all right, maybe the folks at AIUSA know more than the combined sixteen Justices of the Supreme Court of the United States and the Pennsylvania Supreme Court. So lets give AIUSA a chance to make their case. Here goes.

**The Backdrop.** AIUSA gets off to a rather poor start. They begin their report with an *ad hominem* argument. That's a fancy term for an argument that, instead of dealing with relevant facts and issues, attempts to distract attention from those issues by attacking someone or something. It's an appeal to emotion rather than reason, and it's cheap. It's something people do when they're trying to convince you of something they know you just won't buy if they give you time to think about the relevant issues.

That's what we find in "The Backdrop." There's nothing in it about this case. This case is about the murder of Officer Daniel Faulkner. But AIUSA's "backdrop" piece says, in essence, that the Philadelphia police in the 1970's were a bunch of homicidal maniacs. For example, AIUSA points to Mayor Frank Rizzo telling police in 1978, "Even when you're wrong, I'm going to back you." According to AIUSA's interpretation, this means that Rizzo "appeared to tolerate police misconduct." Or did it mean something else. Could Mayor Rizzo have been telling his police force, a force that was working in an extremely difficult environment, that he would not abandon them over mere errors of judgment, while at the same time not "tolerating misconduct"? After all, Mayor Rizzo didn't say "I'll back you even when you commit misconduct." That interpretation -- which seems much more reasonable than the one AI comes up with -- doesn't seem to have occurred to AIUSA. Why is that?

More important, what does any of the information contained in "The Backdrop" have to do with *this case*? Is AIUSA claiming that the police officers that handled *this case* were all "lawless" and corrupt? Well, no. Does AIUSA address *anything* that *specific* officers did to make *Jamal's* trial unfair? Well, no. What AIUSA is saying, is that all of us should dislike and mistrust the police department of that era because of their reputation, and thus, we should conclude that Jamal's trial was unfair. That there's simply no connection between the premise and the conclusion they want you to draw, seems to cause AIUSA no distress.

Here's another one -- AIUSA says the police clashed with the radical group MOVE in 1978; Jamal was "closely involved with" MOVE and had MOVE-style hair; therefore, the police would not have liked Jamal; therefore, the trial was unfair.

How does any of that prove that the trial was unfair? Well, actually, it doesn't. But it sure helps you to get a good hate going against the police, doesn't it?

**The Crime.** Next, AIUSA offers another familiar debating trick. Propagandists for Jamal don't like to discuss the details of the crime, such as the testimony of the four eyewitnesses who saw Jamal shoot

Officer Faulkner to death. Sure enough, AIUSA's discussion of "the crime" is remarkably brief. Whereas at trial, over a period of several days, four eyewitnesses to the shooting described Jamal -- three of them specifically identified him as the gunman, two did so at the scene, while the fourth described him in such a way as to leave no doubt it was Jamal -- running across the street, shooting the officer in the back, and then shooting him in the face as he lay face-up on the ground. But AIUSA chooses to skip over all of the testimony regarding the shooting and instead says there was a "struggle" between Officer Faulkner and Jamal's brother, William Cook, and then says that "police officers arrived on the scene to find" the officer dead and Jamal "sitting nearby wounded in the chest by a bullet from the police officer's gun." Gee, what happened? AIUSA acts as if there wasn't a mountain of credible testimony to allow us to know.

JAMAL WAS FOUND ROUGHLY 10 FEET FROM FAULKNER'S DEAD BODY JUST 40 SECONDS AFTER THE FATAL SHOT WAS FIRED. JAMAL WAS WEARING AN EMPTY SHOULDER HOLSTER AND HAD AN EMPTIED GUN LYING AT HIS SIDE. FOUR PEOPLE, EACH OF WHOM WAS LESS THAN 60 FEET FROM THE SHOOTING, SAW JAMAL SHOOT OFFICER FAULKNER AND THREE OF THEM PHYSICALLY IDENTIFIED JAMAL AS THE KILLER AT THE CRIME SCENE. LESS THAN ONE HOUR AFTER THE SHOOTING, EACH EYEWITNESS GAVE A SIGNED WRITTEN STATEMENT DESCRIBING WHAT THEY HAD SEEN, TO FOUR DIFFERENT OFFICERS, AT FOUR DIFFERENT LOCATIONS. (NONE OF THESE EYEWITNESSES KNEW EACH OTHER BEFORE THE SHOOTING AND THEY HAD NO CHANCE TO COORDINATE THEIR STORIES BEFORE GIVING THEIR STATEMENTS TO POLICE.) WHEN THE POLICE FIRST ARRIVED AT THE SCENE, INSTEAD OF PROFESSING HIS INNOCENCE, MUMIA ABU-JAMAL TRIED TO PICK UP HIS GUN AND SHOOT THEM TOO.

Sorry, we didn't mean to shout. But it's annoying when some self-important organization with an anti Death Penalty agenda ignores the glaring facts while *pretending* to be "thorough" and "objective".

Let's not forget that there was ballistics evidence too. The results of extensive formal ballistics tests that were entered into evidence at the 1982 trial verified that the fatal bullet was the same caliber as Jamal's gun. It had the same rifling marks etched into its outer edge as are found in the barrel of Jamal's gun. It was the same unique type of ammunition -- Federal brand hollow based +P -- as the shells found in Jamal's gun. Jamal's five shot revolver, which was registered to him, contained five

shells, all of which had been fired.

Jamal and his attorneys have never even *attempted* to refute *any* of these ballistics findings with alternative ballistics findings of their own. Yet, AIUSA conveniently chooses to omit this incriminating chain of facts in the section of their report which purports to display the pertinent information regarding "the crime" for the unknowing reader.

Now lets step into Jamal's shoes for a moment. Suppose you're just out minding your own business, sitting in a parking lot at 4 AM, and right in front of you somebody shoots a police officer in the face and runs away. (This is the alternative scenario that Jamal's attorneys promote.) You exit your car and run to the scene. Then lets suppose the officer -- who is actually already dead due to his head wound - somehow manages to shoot you in the chest (why and how he would do that we don't know, but anyway.). Ok. The police arrive just 40 seconds later. They're looking at you kind of funny and they're pointing their guns and shouting at you as you lay wounded on the ground. Oh, and by the way, your brother is there too. He's standing just a few feet away and he's witnessed the entire episode. And yet when police approach him, he doesn't even *mention* that you didn't shoot anybody *or* that the "real killer" is getting away. Instead, he just says to the police as they arrive on the scene, "I ain't got nothing to do with this." What would *you* do in that situation? When the police came, would *you* try to pick up your own gun (what you're doing at the scene of a murder with the gun containing five spent shells, you, nor your attorneys have ever explained, but so what....) and *shoot them*? Then, would you decide to say nothing about the incident until you get to the hospital, and *then* say "I SHOT THE M----- F----- AND I HOPE HE DIES," like Jamal did? And *then*, even though you're innocent, at your *trial*, your brother doesn't testify on your behalf about what really happened, and *neither do you*. In fact, you go NINETEEN YEARS without EVER telling ANYBODY what "really" happened, including your attorney and dozens of reporters from around the world who have interviewed you on repeated occasions.

Isn't that exactly what *you* would do?

Could this have anything to do with the reason why the AIUSA "report," supposedly based on the trial record, neglects to *mention* the facts from the trial record?

**The Trial Judge.** It's *ad hominem* time again at AIUSA. This time the game is not "smear the police," it's "smear the judge." That rotten "biased" Judge Albert Sabo. Did you know that he was a member of the Fraternal Order of Police? (Well, yes-- when he was Undersheriff, *before* he became a judge, he was *briefly* an FOP member, but he

resigned from the FOP on becoming a judge, *eight years before* the 1982 Jamal trial).

Did you know that there was a "survey" in which "one third of the responding attorneys" said he was unqualified? (And did you know that this "survey" was carefully directed to certain criminal *defense* lawyers who would naturally dislike a "law and order" judge who was tough on crime, like Judge Sabo?)

Did you know that the *Philadelphia Inquirer* "reviewed" 35 trials and decided that Judge Sabo favored prosecutors? (Did you know that the *Inquirer* was simply parroting the *same* criminal *defense* lawyers who were behind the "survey" and they never "reviewed" the actual trial records for themselves?)

Did you know that of the 31 "condemned" defendants tried before Judge Sabo, " 29 came from ethnic minorities"? (Did you know that these were all JURY trials, where the jury, not the judge, convicted the accused and determined their sentences? Did you know that the judge is not permitted to decide the ethnicity of people tried in his courtroom? Did you know that in his tenure, which spanned nearly two decades, Judge Sabo has heard nearly exclusively first degree murder cases, in a major metropolitan area that is made up of over 40% "non-whites", with one of the highest murder rates in the country? Did you know that, based on Bureau of Justice statistics, Judge Sabo's ratio of white and black defendants who received death sentences from juries in his courtroom is identical to the national average for all judges? Did you think that maybe these 33 guys were "condemned" because they committed vicious murders, and not because of who the judge was, or the color of their skin?).

Come on, AIUSA. Stop insulting our intelligence.

So then, what does this "let's hate the evil racist Judge Sabo" business have to do with the fairness of Jamal's trial? What did the judge do wrong that made *this* trial unfair? Well, according to AIUSA, at one point in the three-week trial, the judge said "I don't want to be held up on lousy technicalities ... Let's do something. I have a jury waiting out there."

Wow! After Jamal had caused endless disruptions and delays in his courtroom day after day, the judge didn't want additional unnecessary delay in the trial! He didn't want jurors -- who have lives of their own to live outside the courtroom -- to be kept waiting for no reason! Surely the trial couldn't have been fair, could it?

AIUSA claims to be concerned with only the 1982 trial, yet says in their report that Judge Sabo "flaunted his bias, oozing partiality" at 1995 PCRA hearings. And where in the record is that? When the Pennsylvania Supreme Court reviewed the record to determine if Sabo had displayed any bias they found none. That's because it's not there. AIUSA is quoting empty rhetoric from a writer in a local Philadelphia magazine article, who likely wasn't even in the courtroom. What does it have to do with the fairness of the 1982 trial, about which AIUSA professes such concern? Well, nothing at all really. But again, it sure helps the unknowing reader to work a good hate for the "bias" Judge Sabo and diverts attention for the real criminal, Mumia Abu-Jamal. The argument is, "that Judge is a bad guy, so the trial must have been unfair, even if we can't specifically exactly explain how." Come on, AIUSA.

**The Defense.** Next AI purports to discuss "Jamal's legal representation at trial." It's a legitimate topic. If Jamal didn't have a good defense lawyer, maybe the trial wasn't fair. Ok, lets let AIUSA make their case against Anthony Jackson, Jamal's 1982 lawyer.

Hmm. There's very little here about Jamal's lawyer. AIUSA says that at the time of the trial, Pennsylvania "had no minimum standards" for lawyers in capital cases. That seems to imply that *Jamal's* lawyer fell below whatever "minimum standards" should have been in place, doesn't it?

But AIUSA never actually comes out and says this; the reason is that, in fact, Anthony Jackson was one of the better criminal lawyers in the city at the time. All AIUSA tells you about Jackson, is that he was a "court-appointed" lawyer, which is apparently meant to conjure up an image of an incompetent hack who couldn't earn a living from paying clients. But lets look at what the *record* -- which AIUSA supposedly studied -- has to say about Anthony Jackson. ***Anthony Jackson himself testified that prior to representing Jamal, he had tried approximately twenty first degree murder cases, resulting in six convictions and no death sentences*** (N.T. 7/27/95, 92-93). He was not some kind of tyro, but a seasoned and respected criminal defense attorney, with experience comparable to that of the best defense lawyers in the city. Before becoming an attorney, Jackson had worked for years as an evidence technician for the Philadelphia Police Department. He had also worked as an investigator for the Defender's Association of Philadelphia, as well as for Marilyn Gelb, Esq., who later represented Jamal on his direct appeal. Jackson served as an Assistant District Attorney and worked with a Federal Master to reform the Philadelphia prison system. Later Jackson became the director of the Public Interest Law Center Police Project, where he specialized in, and trained other lawyers in how to handle claims of police misconduct. He had also admittedly tried cases

in Judge Sabo's courtroom in the past and knew exactly what would be expected of him. Jackson testified that he got involved in Jamal's case at the request of Jamal's friends at the Association of Black Journalists and that he personally met with Jamal on several occasions in December 1981. Jackson acknowledged that he was not *assigned* to Jamal's case, but instead approached the court and *arranged to be court-appointed* on December 15, 1981 (N.T. 7/27/95, 31-34, 95-101, 117-121), so that Jamal wouldn't have to pay him. Jackson was not some random choice made by the Court as AIUSA infers. He was *Jamal's handpicked lawyer*. Mr. Jackson conducted thorough and intensive pretrial preparation for a period of five months, *until* two weeks before the trial began. Then, Jamal suddenly decided he wanted to represent himself (N.T. 3/18/82, 9; 7/28/95, 55-59, 67-68). (Perhaps Jamal never heard the old adage -- he who represents himself has a fool for a lawyer and a jackass for a client).

Anyway, what does AIUSA have to say about all of this? They don't mention it. Ok, you say, AIUSA must be looking at Jackson's *performance* in *this* case, and not at his record, or his qualifications, right? Well, then, what *does* AIUSA say about Jackson's performance in *this* case? Nothing. Instead of talking about Jackson's performance, AIUSA grouches that, during jury selection, the judge "withdrew permission for Mumia Abu-Jamal to act as his own attorney" (AI report, "the defense," p.2). What does what the judge did while Jamal was representing himself have to do with Jackson's performance as a lawyer? Who knows?

To make matters worse, AIUSA gets even these beside-the-point facts wrong. Jamal *wasn't removed from representing himself during jury selection*. We know this from the record, and also from Jamal's own current attorney, Leonard Weinglass, Esq. As Mr. Weinglass himself explains:

MR. WEINGLASS: ... What the Court did on June 7th [jury selection] is, as the record reveals, was **not** to remove Mr. Jamal as his own Counsel. The Court exercised its prerogative under the local rule to take over the voir dire, which it can do with any attorney. Mr. Jamal remained as Counsel while the Court took over the voir dire. Mr. Jamal was not removed as counsel until June 18th.

N.T. 7/28/95, 67.

Had AIUSA bothered to check the trial record (which it claims to have studied), or had it even just checked with Mr. Weinglass, it would have known that Jamal continued to represent himself until *after* the jury selection was completed. In fact, they would have seen that Jamal

continued to represent himself into the second day of trial, when, after Jamal relentlessly refused to allow the trial to proceed, Sabo removed him and reinstated Jackson as lead counsel.

So, what's going on here? AIUSA talks about "many years of monitoring" this case, and they don't know a simple thing like this? It almost makes you lose confidence in AIUSA's objectivity.

Next, AIUSA protests that the judge would not allow Jamal to be "represented" by John Africa -- a non-lawyer -- and would not allow Africa to sit at counsel table as if he were a lawyer. What the devil does this have to do with Anthony Jackson's performance? In fact, what does it have to do with anything? Is AIUSA claiming that the trial was unfair because Jamal didn't get to have a non-lawyer as his lawyer, or because he couldn't have his buddy sit at the table with him? Come on, AIUSA.

AI complains about the fact that Jamal was removed as his own counsel when the trial started -- another incident that has absolutely nothing to do with Jackson's performance. But they don't really explain *why* Jamal was not allowed to continue to represent himself. The reason is that the *entire first day of the trial* was spent arguing with Jamal, who refused to let the prosecutor make his opening statement, unless he was given John Africa as his lawyer and a microphone, even though nobody else in the courtroom had one:

THE DEFENDANT: I need a microphone.

THE COURT: I do not have a microphone.

THE DEFENDANT: You can get one, Judge.

THE COURT: Let's go.

THE DEFENDANT: I need a microphone, Judge.

THE COURT: I'm sorry.

THE DEFENDANT: You're sorry?

THE COURT: Mr. McGill [the prosecutor], please.

MR. MCGILL: Yes, Your Honor.

THE DEFENDANT: I'm not finished.

THE COURT: Mr. McGill, please.

THE DEFENDANT: I need a microphone.

THE COURT: You don't need a microphone.

THE DEFENDANT: I do need one.

N.T. 6/17/82, 1.45-1.46.

Jamal proceeded to bring the trial to a screeching halt while he expounded upon his demand to be "represented by John Africa." The judge explained that he had already repeatedly ruled against this request. Jamal replied, "What does that rule mean to me?" (Id., 1.52-1.59). When the court again directed the prosecutor to begin his opening statement, Jamal in front of the jury, again demanded that John Africa, the leader of a violent anti-government organization known as MOVE, "represent" him. When the judge again said he had already ruled, Jamal said, "You have not ruled on it to my satisfaction" (Id., 1.69-1.70). The judge repeatedly warned Jamal -- who was clearly representing himself at this point in the trial -- that he would forfeit his pro se status and might have to be removed from the courtroom if he refused to conduct himself properly, and also warned that it might hold him in contempt. Jamal responded, "That's absolutely meaningless to me" (N.T. 6/17/82, 1.45, 1.86, 1.110-1.111). After the entire day had been consumed in arguing with Jamal about John Africa and *pleading* with him to proceed while acting as his own attorney, the judge removed him from pro se status (Id., 1.123). This is exactly what the law permits. Faretta v. California, 422 U.S. 806, 834 n.46 (1975) ("the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct"); United States v. Brock, 159 F.3d 1077, 1079 (7th Cir. 1998) ("when a defendant's obstreperous behavior is so disruptive that the trial cannot move forward, it is within the trial judge's discretion to require the defendant to be represented by counsel").

But don't try explaining law to the folks at AIUSA.

**The Right to Resources.** Here, AIUSA protests that the homicide calendar judge, the Honorable Paul Ribner, gave Jamal insufficient funds to hire experts and an investigator. After noting that Ribner allotted the paltry sum of \$150 for each expert, AIUSA states, "This sum allocated by the court ... was clearly insufficient." To AIUSA's unknowing reader it appears that Jackson proceeded with \$150 allocated for each expert for the duration of the trial, when this is entirely false. As was the standard practice, the initial amount allotted for each expert was \$150; Judge Ribner, who presided over the pre-trial hearings, ruled

that additional funds would be provided when Jackson submitted itemized bills to justify each charge (N.T. 3/18/82, 7-8). And that's just what Judge Sabo did. AIUSA conveniently forgets to mention that the record clearly shows that, prior to the beginning of trial, Judge Sabo provided Jackson with over \$1,300 (in 1981 dollars) for investigative and expert assistance, and promised to provide more funding when itemized bills were submitted. (N.T. 7/28/95, 100)

AIUSA may pretend otherwise, but this was the standard practice, and although Mr. Jackson made clear that he would have preferred a blank check, he never claimed, at any time during the trial, that he was unable to hire experts under this system. At the same time Judge Sabo was approving additional funding for experts, the defense was receiving an undisclosed amount of money from various sources prior to and during trial, including an "independent defense fund"; the Mumia Abu-Jamal Defense Committee, a fund-raising entity; the Association of Black Journalists; and other organizations and individuals (N.T. 4/1/82, 11; 7/26/95, 65; 7/27/95, 175-177, 240-243). And in fact, Jamal's lawyer went right out and hired two experts -- Robert Greer, an investigator, and George Fassnacht, a ballistics expert. Greer stated that he provided in excess of 60 hours of investigative work for Jamal and conducted several interviews of witnesses. Fassnacht, in particular, was referred to throughout the trial as Jamal's ballistics expert. Jackson stated that, prior to trial, he met with Fassnacht on four separate occasions for roughly three hours each time, and that he conferred with Fassnacht right up to the final day of trial. (N.T. 7/28/95, 42) At no time did Jackson claim that Fassnacht or Greer were dogging it because they wanted more money. That assertion did not materialize for another fourteen years, when a new set of attorneys began representing Jamal. Of course you'd never know that from the AIUSA report.

AIUSA seems to assume that if the state can hire experts, the defendant has a "right" to hire some too, at state expense. That's not the law. In order to be entitled to hire one's own experts at state expense, one must show why one needs one's own expert. *Jamal never did that, but he was permitted to hire experts at state expense anyway.* His claim now is *not* that he had no experts, but that he should have had more or better ones. But what would more or better experts have done to make the trial more fair? That was the question to be decided at the 1995 PCRA appeals hearings and by the Pennsylvania Supreme Court. In their 1998 findings, the Supreme Court concluded that, at those hearings, Jamal and his current attorneys completely failed to show how having more money to throw at experts would have made his trial more fair, or would have made him any less guilty. In fact, at those hearings, when the prosecution offered to let the highly financed Fassnacht -- the same ballistics expert Jamal had at the 1982 trial -- test the ballistics evidence

(the fatal bullet), he *refused to look at it* (N.T. 8/2/95, 150-152). By now, you've probably got a pretty good idea why -- examining the actual evidence is the *last* thing Jamal wanted his expert to do.

AIUSA concludes this section by stating, "The police and prosecution interviewed more than 100 witnesses during their investigation of the crime. The evaluation of these statements alone would have taken more time than Jackson could afford to devote to them." This is another gross misrepresentation by AIUSA. The record clearly shows that Anthony Jackson stated that he reviewed each of those witness statements "at least 10 times" prior to trial. (N.T. 7/28/95, 57)

**The Jury.** AIUSA says that the jury was composed of "two blacks and fourteen whites." How they came up with those figures is anybody's guess, since the trial record reports the race of only a few of the jurors. AIUSA argues that the prosecution "used 11 out of its 15 peremptory strikes to remove African Americans from the jury," and adds that "the US Supreme Court ruled in the case of Batson v. Kentucky that the removal of potential jurors must be "race neutral" -- implying that the use here was not.

The real story is as follows.

The United States Supreme Court decision in Batson v. Kentucky, 476 U.S. 79 (1986), does not prohibit using peremptory strikes to remove jurors of a particular race; it prohibits the use of peremptory strikes *with discriminatory intent*. In Jamal's case the prosecution had five *unused* peremptory challenges -- it used a total of fifteen out of twenty available -- when the jury was seated. Yet the very first juror selected by both the prosecution and the defense was *black*, and at least two additional black persons were later selected. United States v. Wills, 88 F.3d 704, 715 (9th Cir.) (Prosecutor's willingness to accept minority jurors weighs against claim of discriminatory intent), cert. denied, 519 U.S. 1000 (1996); United States v. Montgomery, 819 F.2d 847, 851 (8th Cir. 1987) ("The fact that the government accepted a jury which included two blacks, when it could have used its remaining peremptory challenges to strike those potential jurors, shows that the government did not attempt to exclude all blacks, or as many blacks as it could, from the jury"). Jamal's own federal habeas corpus petition currently states that *four black jurors were accepted by the prosecution* (Jamal habeas petition, p.120), at least one of whom *Jamal* himself struck with one of his own peremptory challenges.

Contrary to what is stated by AIUSA (which claims to have studied the record for years), the trial record *does not show* the total number of black jurors accepted by the state, but removed by Jamal with his

peremptory challenges. And the court record clearly reflects that the number of black people struck by the prosecution was no more than 10, not 11, as AIUSA contends. To show discriminatory intent, the law requires Jamal to show how many members of a cognizable racial group were available, what proportion of the persons questioned were part of that group, how many of what race were struck by the prosecution and the defense, and how many of what race served on the jury. E.g., Walker v. Vaughn, 53 F.3d 609, 612-613 (3rd Cir. 1995) (Batson claim failed where record did not show how many blacks were in venire, how many were struck by prosecution and defense, and how many blacks served on jury); Deputy v. Taylor, 19 F.3d 1485 (3rd Cir.) (Affirming denial of discovery and rejection of Batson claim where record failed to substantially show, *inter alia*, how many minority members were in the venire). Jamal and his band of attorneys have never even *tried* to demonstrate any of these things, much less succeeded at it, and neither does AIUSA.

In short, there is absolutely no proof that the prosecutor in Jamal's trial acted with *discriminatory intent* to exclude blacks from the jury. As was determined by the Supreme Court of Pennsylvania when they reviewed this allegation on Direct Appeal in 1989, and again in 1998.

AIUSA continues, however, by saying that "the" Assistant District Attorney made a training videotape that recommended using peremptory strikes against black jurors. In 1987, a tape was made by "a" -- not "the" -- Assistant District Attorney (one of two hundred Assistant DA's) named Jack McMahan. McMahan's repugnant ideas about jury selection, which he put on a tape that *was never used* by "the" District Attorney for any purpose, were McMahan's personal views alone. McMahan is no longer a prosecutor. The prosecutor at *Jamal's* trial, moreover, was Joseph McGill, not Jack McMahan. McGill didn't know about the tape made by McMahan when he tried Jamal -- he couldn't have, because McMahan made his tape in 1987, and Jamal was tried in 1982. So, what does McMahan's tape have to do with Jamal's trial? Nothing at all -- which is probably why AIUSA misleadingly pretends that McMahan, an unimportant former prosecutor, was "the" prosecutor "for Philadelphia." McMahan was nothing of the kind, and he had nothing to do with Jamal's trial.

Even more slanted is AI's account of Juror Jennie Dawley, who supposedly "requested" to be allowed to go home to take care of her pet cat. The record shows that Ms. Dawley didn't request anything -- she just left, violating the court's sequestration order, saying, "I don't care what Judge Sabo or anybody says, I do what I have to do. Nobody is going to stop me" (N.T. 6/18/82, 2.35-2.39). She was therefore removed from the jury, *with the full agreement* of Jamal's lawyer (N.T. 6/18/82,

2.40-2.46).

How on earth would this make the trial unfair? Well, AIUSA explains, Dawley was replaced by one of the alternates, who was white (now who's being racist?) Contrary to AI's account, that juror testified that he would decide the case based solely on the evidence (N.T. 6/16/82, 406-413). (If he hadn't, he couldn't have been on the jury in the first place, even as an alternate). Facts just don't seem to matter to AIUSA when it comes to this case.

AIUSA next refers to a 1998 "study of Philadelphia" that supposedly "found" that a black murderer is "four times" more likely than a white murderer to be sentenced to death. First, let's mention a few facts AIUSA leaves out. The "study" is the product of a well-known anti-death-penalty law professor, David Baldus, and it's a crock. It's based on handpicked data assembled by the Philadelphia Public Defender. Even so, the raw numbers in the "study" reveal *no racial disparity at all*. So Dr. Baldus created one by "weighting" certain "factors" that he arbitrarily picked out, and after the numbers were thus massaged, they magically show the "result" Baldus intended all along. Baldus did two strikingly similar "studies" that supposedly "found" the same thing in two other states. When subjected to peer review, both of the Baldus "studies" were found to be riddled with methodological flaws and totally unreliable. Why anyone would trust Dr. Baldus and his manipulated statistics a third time is hard to imagine, unless they were totally unconcerned with a minor detail like the truth. Additionally, in February 2000, the Pennsylvania state legislature reviewed Dr. Baldus's study as part of their decision not to impose a moratorium on the Death Penalty in Pennsylvania. They rejected his findings as flawed and useless.

One additional thing, what does Dr. Baldus's "study" have to do with *this* case? Is AIUSA saying that the twelve jurors who sentenced Jamal to death for murdering Daniel Faulkner would *not* have done so if he were white? Well, no. They won't come right out and say that, because to say that would be absurd. So AIUSA simply infers that this is the case.

Finally, AIUSA complains that Jackson "allowed two jurors onto the jury" that he supposedly shouldn't have. (At last, an attempt to examine Jackson's actual performance). But AIUSA hasn't been paying attention. As noted above, Jamal was still representing *himself* at the jury selection stage. He was personally determining how each of his peremptory challenges was used. Defendant: "Peremptory, Judge." (N.T. 6/9/82, 3.57) Defendant: "Peremptory, Judge." (N. T. 6/9/82, 3.85) Defendant: "Peremptory, Judge." (N. T. 6/9/82, 3.92) AIUSA notes that an article in the Philadelphia Inquirer described Jamal's conduct during jury selection

as, "intent and businesslike." However, Jamal's conduct while questioning prospective jurors was not the issue. The issue raised by the Prosecutor and addressed by Judge Sabo, was the fact that several prospective jurors complained that they felt uneasy about having Jamal - an accused murderer - question them. One prospective juror, Ruth Swank, stated that having Jamal question her, "Scares me to death." (N. T. 6/2/82, 2.138) To counter this problem an agreement was reached, whereby Jackson would merely *assist* Jamal by asking each juror questions that Jamal had compiled. The record clearly shows that it was Jamal who was making all the decisions regarding the acceptance of jurors, not Jackson. If there was a mistake made while selecting jurors, *Jamal* made it while acting as his own lawyer. It's easy to make *any* trial seem unfair if you misrepresent the record.

There was nothing wrong with the jury, and AIUSA knows it.

**The Case for the Prosecution.** In the section misleadingly titled "the case for the prosecution," AIUSA proceeds to set forth anything but. You already saw how AIUSA avoided mentioning the prosecution's evidence when it was pretending to discuss the facts of the crime. Now, in pretending to discuss "the case for the prosecution," it avoids mentioning the case for the prosecution altogether. Instead, we find a collection of the familiar Mumia Myths.

You've heard this before, but anyway, Jamal says he really didn't confess to the murder, because two police officers who heard it initially reported that he "made no statements." But both officers testified -- one at trial, the other in 1995 -- that they were close friends of Officer Faulkner and that they filed incorrect reports the morning of the murder because when they were filling them out they were emotionally devastated. Well, *that's* unbelievable, isn't it? If you saw one of your dearest friends shot dead with a big hole between his eyes, you'd be as cool as James Bond, right? You wouldn't miss a beat.

Anyway, it turned out that there was a *third* witness to Jamal's confession who was not a police officer, and who *did not* initially fail to report it. A hospital security guard, Priscilla Durham, heard Jamal's comments -- he actually confessed twice -- and reported it to her superiors, in writing, the next day. That sort of blows up Jamal's theory that the police made the whole thing up.

But AIUSA isn't ready to give in. Instead, it says that when Durham was shown her report at the trial, she was shown "an unsigned *typewritten* statement" that she "denied having seen before" which was "not the original document." In other words, AIUSA is implying that the report shown to Durham at trial was fabricated, and that she denounced it as a

fake.

This ruse is easily exposed. Have a look at Durham's testimony -- June 24, 1982, starting with page 95, for all of you with access to the trial record (which includes the entire world, since it's posted on the DanielFaulkner.com web site). The prosecutor, having learned of the existence of Durham's report for the first time during Durham's cross-examination, sent a detective to the hospital to get it. She is shown the typed statement. PAGE 97:

BY MR. JACKSON [*Jamal's* lawyer]:

Q. Show it to the witness, please. Read it, Miss Durham. You've had an opportunity to review D-14 [the statement]; is that correct?

[Miss Durham] A. Yes.

Q. Earlier when I questioned you with regard to the statement that you perhaps gave to your supervisor at Jefferson Hospital you indicated that you dictated a statement orally; is that correct?

A. Yes.

Q. Is that the statement?

A. Yes.

Jackson then gets Durham to admit that her report was originally taken down in handwriting, and that she didn't recall reading it or signing it. So, Jackson concluded, you don't really know if this is your report, right? Durham responded, "I'd know if I said it." Jackson tried again -- PAGES 99-100:

Q. So any statement that would be presented to you that purports to be your statement would be a guess on your part. Is that right?

A. No.

Q. It wouldn't be a guess?

A. I'd know if I said it or not.

Q. You would know word for word what you said?

A. No.

Q. So how would you know if it was your statement, ma'am?

A. Because I know what I said.

For good measure, the prosecutor then took Durham through the typewritten version of her report, sentence by sentence, including the following -- PAGE 113:

Q. Now, would you read the next statement, the next line?

A. "Miss Durham stated that Jamal shouted 'Yeah, I shot the mother fucker and I hope he dies.'"

Q. You said that on December 10, 1981?

A. Yes, I did.

So, it turns out that the statement was not a fake at after all. It was merely a typewritten copy of Durham's own report, as she herself unequivocally testified.

AIUSA also suggests that it is "scarcely credible" that Durham would hear Jamal's incriminating statements, report them to her hospital supervisors, then fail to report them immediately to the police. But this too was explained in the record. Durham explained that she had only given her statement to her hospital supervisor because she assumed the officers who were present when Jamal made his outbursts had also heard them and reported them. Durham stated that she felt there was no need for her to report them to the police, because the police were present when they were made. It looks like AIUSA missed all those pages of the record when they were studying it for all those years.

AIUSA next wants us to believe that the eyewitness testimony of the people who saw Jamal shoot Officer Faulkner to death was "conflicting and confusing." Well, AIUSA does its best to make the testimony *seem* confusing by misstating it, and by focusing on what witnesses said about Jamal's height, weight, and the color of his clothes -- things that eyewitnesses typically don't concentrate on when they're watching somebody get shot to death. AIUSA fails to mention that each one of the eyewitnesses said they saw Jamal do it, and that they physically identified Jamal at the scene, where he was still sitting when -- just 40 seconds after the fatal shot was fired -- officers responding to Officer Faulkner's call for backup arrived and Jamal tried to shoot them too. That alone should be the end of it for any truly objective review. One

strongly suspects that if all four eyewitnesses had *videotaped* Jamal committing the murder, AIUSA would now be arguing that the tapes had all been faked.

Just to contrast what you find in the AIUSA piece, lets have a look at what the eyewitnesses actually said.

Michael Scanlan was in his car just 60 feet from the shooting, waiting for the light to change at the corner of 13th and Locust Streets, and saw Officer Faulkner stop Jamal's brother, William Cook. He saw Cook punch the officer in the face for no apparent reason. As the officer tried to subdue Cook, a man came "running out from a parking lot across the street towards the officer" (N.T. 6/25/82, 8.4-8.6). The officer's back was to this man (N.T. 6/25/82, 8.11). Mr. Scanlan testified:

I saw a hand come up, like this, and I heard a gunshot. There was another gunshot when the man got to the policeman, and the gentleman he had been talking to. And then the officer fell down on the sidewalk and the man walked over and was standing at his feet and shot him twice. I saw two flashes.

N.T. 6/25/82, 8.7.

The gunman methodically shot at the officer's face two or three times as he lay helplessly on the ground:

I could see the one that hit the officer in the face ... his body jerked. His whole body jerked.

N.T. 6/25/82, 8.8

Of the eyewitnesses, Scanlan alone did not identify Jamal at the scene as the gunman, because he had briefly left the scene to seek assistance for Officer Faulkner and then returned. However, since he described the gunman doing the exact same things the three other eyewitnesses saw Jamal doing, and since he correctly described that the killer was a black male who was wearing a distinctive red and blue sweater, as Jamal was that morning, there is no doubt about who Scanlan saw.

Robert Chobert, a taxi driver, had just let off a fare and was filling out paperwork at 13th and Locust Streets, just one car length from the spot where Officer Faulkner fell, when he heard a shot and looked up. He described how Jamal executed the officer as he lay wounded and unarmed on the ground:

I looked up, I saw the cop fall to the ground, and then I saw

Jamal standing over him and firing more shots into him.

N.T. 6/19/82, 209-210.

Mr. Chobert demonstrated how Jamal stood over the fallen officer, methodically firing at his face three or four times (N.T. 6/19/82, 215-216, 276-277). He unequivocally testified that Jamal was the shooter (N.T. 6/19/82, 211-213, 233-255).

Cynthia White, a prostitute, was standing on the corner at 13th and Locust Streets roughly 40 feet from the shooting, and saw Officer Faulkner stop the Volkswagen driven by Jamal's brother, William Cook. She too saw Cook punch the officer in the face without provocation. As the officer attempted to handcuff Cook, she saw Jamal run toward the officer from the parking lot on the opposite side of the street. Jamal shot twice from behind. Officer Faulkner staggered, and grabbed for something at his side; she could not see what it was, because Jamal moved into her line of view. The officer fell. Jamal then stood over the fallen officer and fired down at him several times (N.T. 6/21/82, 4.93-4.105; 6/22/82, 5.179). Ms. White testified in detail to having seen Jamal shoot Officer Faulkner to death:

I looked across the street in the parking lot and I noticed he was running out of the parking lot and he was practically on the curb when he shot two times at the Police officer. It was the back. The police officer turned around and staggered and seemed like he was grabbing for something. Then he fell. Then he came on top of the police officer and shot some more times. After that he went over and he slouched down and he sat on the curb.

N.T. 6/21/82, 4.93-4.94.

Q. And then at the time where was the police officer's back in relation to the man who was running across the street?

A. [Cynthia White]: His back was facing him.

Q. Indicating for the record pointing to the defendant, Mr. Jamal. And how close did he get to the defendant -- how close did the defendant get to the officer when you heard those shots or saw those shots?

A. I'm not very good at feet but it wasn't too far away. It was very close.

N.T. 6/21/82, 4.99.

Ms. White demonstrated for the jury how Jamal had shot the fallen officer in the face:

A. He came over and he stood up on top of him and shot some more times.

Q. Now, would you demonstrate, without coming down here, please stand up and demonstrate with your hand and arm exactly what the defendant was doing?

A. Came over and was doing like this here with the gun.

Q. All right. Indicating for the record this time using her right arm she was pointing and going up and down with her right arm three times toward the floor; the elbow was bent at the time that she was moving her arms up and down and her finger was pointed at that time.

N.T. 6/21/82, 4.103.

Q. And what was it you say in his [Jamal's] hand?

A. I seen something -- the gun, the front part.

N.T. 6/21/82, 4.104.

Albert Magilton saw Jamal quickly crossing Locust Street on his way to shoot the victim; he looked away, and then heard shots. He then looked and saw Jamal go to the curb and sit down (N.T. 6/25/82, 8.75-8.78, 8.98-8.138).

Also absent from in the AIUSA "report" is the testimony of *defense witness* Robert Harkins. Though he gave a report to police less than 1 hour after the shooting, Harkins was not called to testify in 1982. But Jamal's new attorneys, who characterized Harkins as "closest to the killing," chose to call him at the 1995 PCRA hearing. When asked by *Jamal's attorney* what he had seen, Harkins stated, "Well he leaned over and two, two or three flashes from the gun. But then he walked, and sat on the curb." (N.T. 8/2/95, 208-9) Harkins then corroborated the stories told by prosecution eyewitnesses Cynthia White and Robert Chobert by telling the court that he saw the killer fall in the spot where Mumia Abu-Jamal was apprehended just 40 seconds later.

Q: "The guy who did the shooting walked and sat on the curb?"

A: "Yes, on the pavement"

(N.T. 8/2/95, 208-209).

The defense's own eyewitness has stated that Jamal is the killer, eliminating the possibility that the prosecution's eyewitnesses were "confused" or "coerced." Yet that doesn't seem to be enough proof for AIUSA.

Each of the eyewitnesses testified that the only people present at the shooting scene were Jamal, the victim and Jamal's brother, William Cook, who moved toward the wall of a building and did nothing; and Jamal. No one else was in the area (N.T. 6/19/82, 212, 227-228, 233-234; N.T. 6/21/82, 4.106; 6/22/82, 5.134-5.135; 6/25/82, 8.21, 8.29-8.30). These witnesses gave their accounts to the police on the scene, within minutes of the murder.

The jury heard and saw all of these witnesses, and they heard Anthony Jackson address all of the arguments AIUSA now attempts to revive, 19 years later, in order to cast doubt on their credibility. Arguments about how tall Jamal is or what hand he held his gun in. After weighing *all* the evidence, *the jury believed the witnesses*. How does that make the trial unfair? Unless by "unfair" you mean, "unfair because Jamal got convicted"?

AIUSA throws up Veronica Jones, who supposedly "witnessed the killing." In reality, Jones has never claimed to have "witnessed the killing." She has repeatedly stated and testified -- before trial in 1981, at trial as a defense witness in 1982, and at a special hearing held specifically for her in 1996 -- that she was over two blocks away from the shooting, around the corner and behind a building. In her 1996 testimony, her "true" version of events, Jones said, "I was not there, I did not see him [the shooter]." (N.T. 10/1/96, 24) Whoops. AIUSA, which has been studying this case for years, doesn't seem to know any of this. They think Veronica Jones is an eyewitness to the killing. It's no wonder they're confused about whether or not the trial was fair.

In 1996 -- fourteen years after she testified at trial -- Jones raised remarkable allegations about the police supposedly threatening and pressuring her and also Cynthia White. After a three-day hearing (during which Jones was caught in several lies and explained that she had memory problems because of her heavy drinking and drug use) these allegations were found to be incredible. AIUSA forgets to mention this

too.

AIUSA claims that "in his first recorded statement to police" Robert Chobert told a police inspector at the scene that the shooter "apparently ran away." Well, not quite. The inspector AIUSA refers to testified that he had not taken Chobert's statement, but that he asked Chobert where the shooter was. Chobert, who could no longer see Jamal because Jamal had been placed in a police wagon, said that he must have run away. Chobert was then taken to the wagon in which Jamal was being held, where, Inspector Giordano states, Chobert identified Jamal as the man he had seen murder Officer Faulkner, telling Giordano, "that's him, that's the guy who shot the cop." This all occurred just five minutes after the shooting. In Chobert's *actual* "initial statement to police," which was given one half hour after the shooting at 4:25 AM, he said, "I saw this black male stand over the cop and shoot him a couple of more times. Then I saw the black male start running towards 12th Street. He didn't get very far, maybe thirty or thirty-five steps and then he fell." (Statement 12/9/81) Chobert further stated, "They got him. The cops got him and stuck him in the back of a wagon. (Statement 12/9/81)

Are you getting the impression that AIUSA will say anything to advance its agenda?

AIUSA says that Chobert, a cab driver by trade, made a deal with the prosecution because he wanted to regain his driver's license, which had been suspended. But at the 1995 PCRA hearing, Chobert testified that no such "deal" existed, and that 13 years later, he was still without a driver's license, (N. T. 8/15/95, 18-19) and he was found credible by the court -- which AIUSA also forgets to mention. By the way, are we supposed to believe that the 22-year-old Chobert saw somebody else murder Officer Faulkner, but instantaneously said to himself, "Wow, here's my chance to get my license back! I'll just pin this murder on that innocent guy who just happened to be here and the authorities will do my bidding for me. I sure hope nobody else saw what really happened!" Come on, AIUSA.

AIUSA says that you can disbelieve Michael Scanlan because he "admitted he had been drinking." What Scanlan really said, was that he had a couple of drinks over dinner "a couple of hours before." (N.T. 6/25/82, 8.13) (Here's the citation to the record, see for yourself). He did not say he was drunk, which is what AIUSA seems to be trying to imply.

AIUSA also asserts that Michael Scanlan wasn't able to determine if it was Jamal or Cook who shot Officer Faulkner. This is absolute nonsense and a complete misrepresentation of the record. From the first

moment police arrived, Scanlan told them that the killer was a "man who ran from the parking lot" and that he was wearing "a long sleeved sweater" that was "red and black, or yellow and black." (12/9/81 Scanlan Statement) In a subsequent statement given to police several days after the killing, Scanlon was asked which of the two men, Jamal or Cook, had shot Officer Faulkner. While testifying, Scanlan explained that in his second statement, he told the interviewing officers that he couldn't "identify the killer by name." Scanlan stated that he could only identify the killer as the man who ran from the parking lot, "the runner" who was wearing a red and black sweater. (N. T. 6/25/82, 8.50-3) That person was Mumia Abu-Jamal.

AIUSA next suggests that the "diagram" drawn by Scanlan at the crime scene somehow shows that Officer Faulkner and Jamal were "facing each other" as the first shot was fired. In fact, that diagram showed three stick figures with no anatomically distinguishing features. Further, Scanlan's own statement to police -- given less than one half hour after the shooting -- and his testimony verify that he saw Jamal fire first, shooting Faulkner in the back.

Q: First of all, if you recall, in which direction was the officer's back to the man who was running across the street, and who shot him?

A: "His back was towards him."

Q: "Was towards the man who shot him?"

A: "Yes, sir."

(N.T. 6/25/82, T.R. 8.11)

AIUSA says it has not "analyzed" the statements of the supposed "missing" witnesses who allegedly saw someone else kill Officer Faulkner and then run away before police arrived, because AIUSA is only "concerned with the fairness of Abu-Jamal's original trial." Sure they are. AIUSA knows that these "missing" witnesses all claim to have seen different, mutually-contradicting things, things that are physically impossible (one said he heard the Officer talking and then firing his gun after he was already dead) or to have seen several people (allegedly the "real killer") running in different directions, long after the shooting ended and "police and news crews" had already arrived at the scene.

And then there's William Cook, Jamal's brother. Let's see, at the scene Cook didn't say, "My brother didn't do it," he said, "I ain't got nothing to do with this." He didn't testify at trial. He didn't testify at the 1995

hearing. So we need to say something. Ah, that's it. He was afraid! AIUSA explains that Jamal's "supporters" have "alleged" that Cook won't talk because of his "fear of the police." Where is the evidence for these "allegations" in the record? Well, there isn't any, so AIUSA just tells us about the "allegations" made by Jamal's supporters. We guess we should thank them for not just stating them as fact.

AIUSA next purports to discuss the ballistics evidence. Only they *don't* discuss the ballistics evidence, they discuss only Jamal's arguments *about* the ballistics evidence, which is something else entirely. To get things straight, let's look at the ballistics evidence, which AIUSA never mentions.

Officer James Forbes, one of the two officers who first arrived at the shooting scene, recovered two handguns. The first was the gun, recovered at Mumia Abu-Jamal's side, with which Jamal had tried to shoot his partner, Officer Shoemaker, a five-shot Charter Arms .38 caliber revolver with a two-inch barrel. The second gun, recovered from the street, was a standard police-issue six-shot Smith and Wesson .38 caliber Police Special revolver with a six-inch barrel. The police gun, which was registered as issued to Officer Faulkner, contained six Remington .38 special cartridges, only one of which had been fired. The Charter Arms two-inch gun -- Jamal's gun -- contained five cartridges, all of which had been fired. (According to a receipt produced by the store manager who sold him the gun, Jamal's Charter Arms revolver had been purchased on June 27, 1979, three years before he shot Officer Faulkner and two years before he began working as a cab driver and needed it to protect himself from robbers as is alleged by his attorneys.) All of Jamal's ammunition was of a special "plus P" high-velocity type: four Federal brand .38 caliber "+P" and one Smith and Wesson .38 caliber "+P." (The manager of the sporting goods store where Jamal purchased the gun explained that the "+P" is known to be a "devastating bullet" ... "When it hits the target, it just almost explodes") (N.T. 6/19/82, 152-154, 163-164, 176; 6/21/82, 4.32-4.66; 6/23/82, 6.22-6.23, 6.90-6.99).

The slain officer's bullet struck Jamal in his right chest and was surgically removed from his right back. Ballistic testing confirmed that it had been fired from Officer Faulkner's gun. The fatal bullet, removed from Officer Faulkner's head, was too deformed to be ballistically matched with a specific gun, but ballistic tests verified that it was caliber .38/.357 (.38 and .357 calibers are interchangeable), which is consistent with Jamal's .38 caliber handgun. Moreover, the bullet had a hollow base, which was a unique characteristic of ammunition manufactured by the Federal firearms company; four of the five spent shells in Jamal's gun were of Federal manufacture. A copper bullet jacket, two flattened

and distorted bullet specimens, and a number of fragments were also recovered from the shooting scene; all were unusable for ballistic matching to a specific gun to the exclusion of all other guns. However, one of the flattened bullet specimens, like the bullet taken from the murdered officer's head, had the hollow base, which was unique to Jamal's Federal brand ammunition. Finally, there was enough of the outer edge of the bullet taken from Officer Faulkner's head to formally determine that it had been fired from a gun barrel with eight lands, eight grooves and a right-hand twist. The barrel of Jamal's gun -- unlike the officer's gun -- had eight lands, eight grooves and a right-hand twist (N.T. 6/19/82, 152-155; 6/23/82, 6.2-6.5, 6.101-6.114, 6.163-6.168).

The ballistics evidence verifies that if someone other than Jamal killed Officer Faulkner, that person would have carried a gun with the same general riffling pattern in its barrel as is found in Jamal's gun. Further, that person would have loaded their gun with the same unique .38 caliber hollow based Federal P+ ammunition that Jamal carried in his gun. It seems that AIUSA, which has studied the record, considers all of this a series of amazing, yet unimportant coincidences.

AIUSA complains that the police didn't smell Jamal's gun. Yeah, you heard right. The trial was unfair because the police didn't smell Jamal's gun. Let's see. You're the police. You arrive at the shooting scene and there's a cop on the ground in a pool of blood with a bullet in his brain and this other guy who is shot in the chest who tries to shoot you, and his brother who says, "I ain't got nothing to do with this." You've got to get them both to the hospital before they bleed to death and interview witnesses, and you say to yourself, "hmmmm, things may not be as they appear .... Ah ha! Let me smell this gun to see if it has been recently "fired"! As stated by Jamal's own ballistics expert at the 1995 PCRA hearing, even if the police had smelled the gun, the results of this "test" would have been useless at trial, because there would be no scientific way to prove the sniffing officer's conclusions accurate. (N.T. 8/2/95, 179) Come on, AIUSA. Stop treating us like fools.

AIUSA complains that Jamal had no ballistics expert to testify at trial and contest all of this. Well, contrary to what AIUSA asserts, he did -- his expert just couldn't help him. At the 1982 trial Judge Sabo told Anthony Jackson that if his ballistics expert could contest the prosecution's evidence he was welcome to come in and do so. Sabo told Jackson, "Wait a while. If he [Fassnacht] wants to come in and testify on these bullets and anything else, bring him in. That's fine." (N.T. 6/23/82, 6.136) The same expert (George Fassnacht), as you will recall, testified for Jamal in 1995 but refused to even look at the physical evidence.

You wouldn't know it from reading the AIUSA piece, but ballistic tests

for nitrates and primer lead *were* done on Jamal's and the victim's clothing. The jury learned that the tests were negative for nitrates but positive for primer lead, proving that both men were shot at a distance of twelve inches or less (N.T. 6/26/82, 15-17). The testimony explained that a negative test for nitrates was to be expected; primer lead is extremely fine and clings to fabric, while other traces, such as nitrates and neurons, tend to fall off or get washed away by perspiration or movement. Thus, Jamal's violent effort to resist arrest, by trying to shoot arriving police and then struggling with them as they tried to handcuff him -- e.g., N.T. 6/24/82, 61 -- rendered any attempt to test his hands futile. His hands were, by definition, immediately "contaminated." The jury also learned that trace metal tests were not done, as they too were usually futile given the state of the art in 1981 (Id., 46-91). In 1995, Jamal's own ballistics expert agreed that, "in light of what you told me, that test may have been very difficult to perform." (N.T. 8/2/95, 120) And Jamal's own pathologist confirmed that the results of such tests are "extremely unreliable."

Further, one can only imagine the howls of outrage had the Philadelphia Police dared to hold Jamal at the scene -- while he slowly bleed to death -- waiting on a technician to arrive and conduct tests they knew would be "extremely difficult to perform" and "extremely unreliable."

As for AIUSA's claim about the supposed "44 caliber bullet," evidence presented at the 1995 hearing -- including the testimony of Dr. James Hoyer, the medical examiner -- proved that no one had ever claimed to determine that the bullet was a 44. Hoyer, a medical doctor, testified that he had never purported to make any ballistics findings of any kind, and that he simply wrote ".44 cal" on a piece of scrap paper as a *guess* when he first saw the body. He also stated that he had no formal ballistics training and that he had used a common ruler to measure the badly distorted bullet. (N.T. 8/9/95, 191-92, 199) The trial evidence conclusively showed that Jamal's gun was likely the murder weapon, as the fatal bullet was of the same caliber as his gun, had the same rifling marks as his gun, and was of the same manufacture as four of the five shells in his gun. Jamal's own firearms expert, who refused to examine the physical evidence, *conceded* at the 1995 hearing that the ballistic report indicated that the fatal bullet was of the same caliber as Jamal's gun -- that the fatal bullet, as determined by examination under a ballistics microscope, was **.38 caliber**, the same as Jamal's gun (N.T. 8/9/95, 186-193, 198-200; N.T. 8/2/95, 155-160) (finding of fact 98). The .44 caliber theory is a crock, as anyone who bothered to look at the record would know.

**The Sentence.** AIUSA isn't going to start to get honest when it comes to the sentencing proceeding. It claims that Jackson erred by not calling

character witnesses. The record, which AIUSA purports to have "studied", belies this assertion, showing instead that Jamal was personally deciding what character witnesses would testify. Since Jamal decided to make those decisions himself -- as was his right -- it is too late for him, or AIUSA, to try to blame his lawyer now.

AIUSA says that the prosecution unfairly used Jamal's "political beliefs" against him, so that he was "condemned by free speech." This is complete nonsense. During the sentencing phase of the trial the prosecutor asked Jamal if he had written "political power grows out of the barrel of a gun," and asked Jamal if "your actions as well as your philosophy" were consistent with that quote. This cross-examination went to Jamal's attitude toward violence, not abstract political beliefs. Through his character witnesses, Jamal had introduced extensive evidence about his supposed peaceful character -- his "barrel of a gun" views coupled with the fact that he carried a gun loaded with high velocity +P ammunition, tended to refute his claim that violence was alien to his nature. When asked if he conformed his actions to his "barrel of a gun" statement, *it was Jamal* who characterized it as solely a political observation. It was for the jury to determine whether this was abstract political cant, as Jamal claimed, or an indication of his violent character and his willingness to act violently. And it was Jamal, not the prosecutor, who proceeded to inform the jury that he had been a Black Panther Party member. He chose to expound upon his "barrel of a gun" statement by referring to what he called "a calculated design of genocide" on the part of the police (N.T. 7/3/82, 25-30), thus adding another piece of evidence as to his motive to murder Officer Faulkner. Jamal was not sentenced to death "by free speech," he was sentenced to death because he is a violent, malicious killer. Contrary to AIUSA's biased view, this did not violate the First Amendment. United States v. Abel, 469 U.S. 45, 52 (1984) (Supreme Court *rejected* a First Amendment claim that Abel's witness could not be cross-examined with his membership in the "Aryan Brotherhood," a conspiratorial group promoting "perjury, theft, and murder").

**The Appeal to the Pennsylvania Supreme Court.** There's not a lot to say here, except that it's strange that AIUSA says on the one hand that its only concern is that the trial was fair, but here it is criticizing the appeal process. AIUSA does not agree with the Supreme Court. Big surprise. No doubt the Supreme Court read the record a little more carefully than the gang at AIUSA. Given all of the mistakes shown above, that's a fairly safe assumption.

Not content with disagreeing, AIUSA goes on the *ad hominem* warpath again. It attacks Supreme Court justice Ronald Castille for not recusing himself. Castille is a former Philadelphia District Attorney, but was not

in office when Jamal was tried (that was Ed Rendell). Contrary to AIUSA's biased comment, Castille had no legal or ethical obligation to recuse himself. By the way, since AIUSA is concerned only with the fairness of the process, it should be noted that the Pennsylvania Supreme Court's decision was *unanimous*. It would have made absolutely no difference had Castille, one of seven Justices, recused himself. As for AIUSA's complaint that Castille -- like most other Justices -- was endorsed by the FOP, it should be noted that Justice Cappy -- a former *Public Defender*, wrote the opinion rejecting Jamal's latest appeal.

**Get the FOP.** AIUSA notes that the FOP does not like Jamal. Maybe they're mad because they don't like people who murder police officers. Who cares? What does it have to do with whether or not the trial was fair?

**Conditions on Pennsylvania's Death Row.** AIUSA is upset with conditions on death row. It "looks and feels like a morgue ...[e]verything is high-tech." They quote the whining of Scott Blystone, who pumped six bullets into the back of the head of a retarded boy in order to steal \$13 from him, a vicious act Blystone immediately afterward said was "thrilling." Blystone is less thrilled now that he is on death row. He doesn't like it. Who cares? What does it have to do with the supposed unfairness of Jamal's trial? AIUSA considers it "torture" that Jamal is on death row. At least he is alive and able to feel discomfort. He took that away from Daniel Faulkner nineteen years ago. Nobody from AIUSA is writing "reports" about how terrible it is that murderers can kill police officers and then become international celebrities with the help of worthless international organizations that lie about the facts. Maybe someday someone will.