ARGUMENT

I. JUDGE DEMBE'S DISMISSAL OF THE PETITION IS BEREFT OF "INTERNAL AND EXTERNAL LOGIC."

In dismissing the underlying Petition, Judge Dembe ruled that there were no material facts in dispute and, therefore, no need for an evidentiary hearing. However, if there were no material facts in dispute, and the judge assumed that the facts pled in the Petition were true, as she claimed she did in her Supplemental Opinion of February 20, 2002 (Appendix 3 to Petitioner's Opening Brief), then she should have granted the Petition instead of dismissing it.

Judge Dembe was correct in finding that there were no material facts in dispute because the Commonwealth did not contest the merits of Petitioner's claims for relief in its Answer to the Petition, limiting its pleading to disputing only the jurisdictional isse and failing to file any counter-affidavits.[1] However, Judge Dembe was less than candid in claiming that she had assumed the allegations in the Petition to be true before summarily dismissing it (Supplemental Opinion of February 20, 2002, Appendix 3 to Opening Brief), when the truth was that she

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[1]With regard to Judge Dembe's summary execution of Petitioner Jamal's extra-judicial racial bias claim ("Tenth Claim for Relief") against Judge Sabo for his frank intention, as judge at Petitioner's trial, to "help 'em [the Philadelphia County District Attorney's Office] fry the nigger," it should be noted, as is analyzed in more detail in Point I of this Reply Brief, that Judge Dembe should also have granted relief on that claim because there was no material fact at issue there, either, given that the Commonwealth never filed a counter-affidavit from Sabo denying he had made the remark attributed to him; but instead this illustrious jurist summarily dismissed the claim on purported grounds of lack of jurisdiction – although her actual finding was that there was an issue with regard to timeliness because, she claimed, it was "not clear" to her that Petitioner could not have learned of the fact that Judge Sabo had called him a "nigger" and promised to help the District Attorney "fry" him at an earlier time than he did learn of it – when, assuming *arguendo* that there were a timeliness issue, she should have set an evidentiary hearing to resolve the facts relevant to determining it.

assumed precisely the contrary with regard to the allegations of prior counsel's conflicts of interest and resulting sabotage of Petitioner's case based solely upon her assumption, unsupported by any evidence, that they were "hitherto honorable, capable and professional attorneys" of whom it was appropriate to query why they would "desert their training, ethics [*sic!*], and their professionalism [*sic!]*] and place their very right to practice law in jeopardy." (Memorandum and Order, November 21, 2001, Appendix 1)

The implicit message unsaid but transmitted by Judge Dembe's failure to provide an answer to this question is that her inability to answer her own rhetorical question must mean that these "hitherto honorable" Benedict Arnolds, these noble "Guildenstern and Rosencrantz, Rosencrantz and Guildenstern,"[2] these despicable Iagos,[3] would not and, indeed, did not, desert their "ethics" or "professionalism" (such as it was), despite the allegations in the Petition to the contrary which the judge assures us she assumed to be true, but then found to lack "external and internal logic" (whatever that may be).

Judge Dembe dismisses the facts pled in the Petition concerning Petitioner Jamal's betrayal by his prior counsel, in whom he placed not only his confidence, but his very life, as "mere conjecture" without even taking the opportunity to hear testimony at an evidentiary hearing from these "hitherto honorable" gentlemen concerning the implicit and explicit death threats to which they were subjected in order to dissuade them from presenting any evidence or raising any claims that might point to the real killers, and without hearing the testimony of

[2] *Hamlet*.

[3] *Othello*.

attorney Wolkenstein and private investigator Mike Newman about Weinglass' disclosure of the threat he had received from Kenneth Freeman's brother (Docket #D-13, D-21.)

Similarly, without deigning to hear the testimony of Arnold Beverly, the self-confessed killer of Officer Faulkner, and based solely on her own idle speculation and racial stereotypes, Judge Dembe disparaged Beverly's confession as symptomatic of those people who engage in "[a]ggrandizing themselves by confessing to participation in a high profile crime."

Ironically, Judge Dembe's blithe assertion that the facts pled in the Petition lack "external and internal logic" more appropriately describes her own Opinion dismissing the Petition, as it defies the most basic laws of Aristotelian logic – current in the West since the Crusades "recaptured"Aristotle's work on logic, lost after the fall of Rome, from the Arabs – by finding incredible that which she insists she has assumed to be true. Judge Dembe's dismissal of the Petition without an evidentiary (or any) hearing is even more eggregious than that in *Commonwealth v Williams*, 732 A2d 1167, 1180-1184 (Pa 1998) where the PCRA court uncritically adopted *in toto* the prosecution's boiler-plate arguments (as Judge Dembe also did) instead of evaluating a (recantation) witness' testimony in light of the evidence.

II. IT WAS ERROR AND AN ABUSE OF DISCRETION TO DISMISS THE PETITION WITHOUT GRANTING RELIEF OR HOLDING AN EVIDENTIARY HEARING ON PETITIONER'S "ACTUAL INNOCENCE" CLAIM.

In *Williams*, this Court held it to be an abuse of discretion to discount the testimony of a witness without giving any particularized reasons for so doing. Similarly here. Judge Dembe savaged Arnold Beverly's sworn confession based upon nothing more than "mere conjecture" without giving Beverly the opportunity to testify in open court or herself the opportunity to

observe his testimony, note his demeanour, evaluate his response to cross-examination, or question him herself.

If the judge had really wanted to know if Beverly is telling the truth or merely seeking to "aggrandize himself" she should have listened to Beverly's testimony in open court and under oath, and considered as well the testimony of Dr. Honts with regard to how the polygraph examination he administered to Beverly corroborated his testimony, and how Leonard Weinglass was incensed that this had occurred (Docket #D-1A, Ex. C, J). She should have had Donald Hershing explain the context of the events and the corruption of the police force in 1981 and the mob involvement in that corruption (Docket #D-1A, Ex. E). She should have listened to key witness Chobert admit that he had lied when he testified at trial and/or asked private investigator Mike Newman for his testimony about Chobert's 1995 recantation to him which Leonard Weinglass never questioned Chobert about when he called Chobert as a witness in the post-conviction hearings before Jude Sabo (Docket #D-21). She should have listened to Yvette Williams swear that Cynthia White told her how she was induced, cajoled, bribed with drugs and money, and coerced by the police to lie and falsely identify Petitioner Jamal as the person who shot Officer Faulkner when she was high on drugs at the time and did not even see the shooting. She should have listened to the Petitioner's brother, William Cook, explain that he was there when it happened and Mumia Abu-Jamal did not shoot Officer Faulkner but was himself shot down, but afterwards Kenneth Freeman, the passenger in Cook's car, who disappeared when shots rang out, confessed to Cook that he, Freeman, had been armed in that night, was involved in a plot to kill Faulkner, and had participated in the shooting; and that Cook wanted to testify at

the post-conviction hearings in 1995, but Weinglass discouraged him from doing so and then falsely told the court that Cook had "disappeared" because he was afraid of being arrested on outstanding warrants (Docket #D-1A, Ex. D). And, of course, she should have listened to the Petitioner himself recount what happened to him on December 9, 1981, explain that he did not shoot Officer Faulkner but was himself shot down and then viciously beaten by a small crowd of police officers, and deny that he had ever made the cruel statement falsely attributed to him by lying police officers months afterwards despite two contemporaneous reports by those guarding him where he lay gravely wounded which state that he "made no statement" (Docket #D-1A, Ex. A).

III. IT WAS ERROR AND AN ABUSE OF DISCRETION TO DISMISS THE PETITION WITHOUT HOLDING AN EVIDENTIARY HEARING ON THE "CONFLICTS OF INTEREST" AND "CONSTRUCTIVE DENIAL OF COUNSEL" ISSUES.

Had Judge Dembe wanted to know if the "hitherto honorable" Weinglass and Williams had violated their duty of loyalty to their client, Petitioner Jamal, and served his head up to the executioner on a silver platter, she would have asked attorney Rachel Wolkenstein to testify about the history of their representation of Petitioner and the manner in which they sabotaged his defense(Docket #D-13). She would have issued a subpoena to Petitioner's ex-Chief Counsel and ex-Chief Legal Strategist and implored them to tell the truth about why they suppressed the evidence that would have freed their client.

IV. IT WAS ERROR AND AN ABUSE OF DISCRETION NOT TO GRANT RELIEF OR HOLD AN EVIDENTIARY HEARING ON PETITIONER'S EXTRA-JUDICIAL RACIAL BIAS CLAIM.

Had Judge Dembe been concerned about whether Petitioner Jamal had a fair trial she

should have listened to Court Stenographer Terri-Maurer Carter recount how she overheard Judge Sabo say, in reference to Petitioner at the time of his trial, that he "was going to help 'em fry the nigger." Instead, Judge Dembe dismissed Petitioner's claim of extra-judicial racial bias with a haughty "Further discussion is unnecessary," just as Justice Taney dismissed those of Dred Scott with a worse than haughty pronouncement that Black people have "no rights which the white man was bound to respect." *Dred Scott v Sanford*, 60 US 393, 407 (1857).

CONCLUSION

Had Judge Dembe granted an evidentiary hearing she would have involved herself in the truth-seeking process, rather than indulging in idle speculation bereft of "external and internal logic" and then, having heard the evidence, would have had to free Mumia Abu-Jamal because the exonerating evidence would have been overwhelming.

For the foregoing reasons it is requested that Petitioner Mumia Abu-Jamal's appeal be granted.

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Respectfully submitted,

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