

By Alan Berger

The assassination of Malcolm X thirteen years ago left in its wake a trail of unanswered questions. Some of these were legal questions and some were farger, political questions. The standing legal verdict on the assassination holds that three men, forming a conspiracy, were guilty of the act. And since two of the three were white, known Black Muslim "enforcers," the public has accepted the obvious implication that the murder was ordered, planned, and carried out solely by the Black Muslims as the culmination of that group's vendetta against the on-state, Malcolm X.

Yet, in the last few days of his life, Malcolm had people close to him that recent events had led him to believe that the plotters of his death were much bigger than the Muslims. Malcolm had what he considered sound reasons for this belief. The previous summer he had been poisoned in a rooming room of the Cairo Hilton Hotel in Egypt. Malcolm was certain this was not the work of the Black Muslims; he had grounds for attributing this attempt on his life to the CIA. Less than two weeks before his death, he was denied entry into France, never in an "undesirable person," possibly because French officials feared he would be assassinated on French soil.

Malcolm assumed that these signs of danger were the inevitable consequence of his political effort to "internationalize" the situation of black people in America by taking their case to the United Nations.

The assassination itself and the trial that followed almost a year later produced a myriad of disturbing indications that two innocent men were convicted and that undercover agents of the New York Police Force and the FBI may have played an instrumental role in the case.

Attorney William Kunstler has recently submitted affidavits to a New York court

intended to show that new evidence unearthed since the final appeal in the case constitutes grounds for obtaining a new trial.

One of the three men originally convicted, Thomas Hagan, has now volunteered to name four other men who acted with him in the murder. Hagan says that Thomas Johnson and Norman Butler, the two men convicted with him, are innocent. Attorney Kunstler has submitted Hagan's affidavit along with another that includes the transcript of testimony given by police undercover agent Gene Roberts, who demonstrated during a 1971 conspiracy trial of twenty-one Black Panthers in New York City that he had been a bodyguard to Malcolm X and possessed crucial knowledge about Malcolm's murder which had been withheld from the original trial.

Thus far the media have given little attention to the initial motions for retrial, but if Kunstler is successful in negotiating the successive legal stages leading to a new trial, then the American public and what is likely to become an international audience may be exposed to a new chapter — and not the least damning — in the continually unfolding story of politically inspired criminal actions carried out by organizations that were established to gather intelligence and to enforce the law.

A little after three o'clock on Sunday afternoon, February 21, 1965, Malcolm X walked out onto the stage of the Audubon Ballroom on Broadway and 160th Street in Manhattan, across the street from the Columbia Presbyterian Medical Center. He came up behind the rostrum and gave the crowd of about 400 people the Islamic greeting *Assalamu alaikum*. To those who knew him, Malcolm appeared tense and tired. He was showing the strain of the past few weeks, a time during which his house had been fire-bombed with his wife and four children in it and he had received several warnings of an imminent attempt to

assassinate him. For some time he and his friends had assumed and said publicly that Black Muslims, under orders from Elijah Muhammad, were out to kill him. Malcolm had heard rumors, he had seen signs, he had received letters. But just before he went on stage he had told his assistants waiting with him in the anteroom of the stage that he was going to tell the audience that he had been hasty to accuse the Black Muslims of bombing his home. "Things have happened since that are bigger than what they can do," Malcolm said. "I know what they can do. Things have gone beyond that."

As Malcolm stood behind the rostrum, preparing to begin his talk, a scuffle broke out toward the back of the hall. There was an angry shout: "Nigger, get your hands out of my pocket!" All heads turned to see what was happening — and to see who had spoken this unforgivable word. Malcolm's bodyguards moved down from the stage toward the disturbance. Malcolm himself stepped out from behind the podium and toward the front of the stage. "Hold it! Hold it! Don't get excited," Malcolm said. "Let's cool it, brothers."

Then there was a muffled explosion at the rear of the hall and smoke from an incendiary device rose into the air. A woman screamed. A man in one of the front rows held up a sawed-off shotgun and fired into Malcolm's chest.

As Malcolm keeled over, two or three men were seen standing in the front row, "like a firing squad," pumping bullets into him. After he had fallen the gunman emptied their revolvers into the inert body.

Now there was chaos in the ballroom. Women and young children shrieked. Mothers and fathers pulled their children to the floor and lay over them. Betty Shabazz, Malcolm's wife, looked to the safety of her four children and then rushed forward by the stage, shouting, "They're killing my husband!"

Some men threw themselves on the floor, some tried to use the literature tables for

protection, and some chased the fleeing killers.

Two men were saved from the mob by policemen who had not been in the ballroom during the shooting. The first was "a thin-lipped, olive-skinned, Latin-looking man" whom eyewitnesses said was overcome by pursuers in the hall after he had emptied a gun into Malcolm's body. He was rescued from his pursuers by Patrolman Thomas Hoy.

In the morning edition of the next day's *New York Times* an account was given of Patrolman Hoy's actions. "Patrolman Thomas Hoy, 22, said he had been stationed outside the 160th Street entrance when 'I heard the shooting and the place exploded.' He rushed in, saw Malcolm lying on the stage and 'grabbed a suspect' who he said some people were chasing. 'As I brought him to the front of the ballroom, the crowd began beating me and the suspect, Patrolman Hoy said. He said he put this man — not otherwise identified later for newsmen — into a police car to be taken to the Wadsworth Avenue station."

The suspect arrested by Patrolman Hoy never was identified, never appeared in court, and was never seen nor heard about again. Moreover, he already began to disappear from the afternoon (or late city) editions of the *New York* newspapers within the same day. The subhead for the *Times* story was changed from the morning's "Police Hold Two for Questioning" to the afternoon's "One Is Held in Killing."

A story by Jimmy Breslin in the *New York Herald Tribune* suffered a similar editorial change. The subhead for the morning edition of Breslin's account said, "Police Rescue Two Suspects." Breslin had originally told his readers that "the other suspect was taken to the Wadsworth Avenue precinct, where the city's top policemen immediately converged and began one of the heaviest homicide investigations this city has ever seen." In the next edition of the *Tribune* (the late city edition) the subhead was

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changed to read, "Police Rescue One Suspect." And the piece had been edited to eliminate any reference at all to the man Patrolman Hoy brought to the Wadsworth Avenue station house.

The second man captured by the police may have also been rescued from a beating, but his capture was in no other way a rescue. Thomas Hagan was taken to Bellevue Prison with a bullet in his leg, was identified, stood trial and was convicted. He was first taken into custody by Sergeant Alvin Aronoff and Patrolman Louis Angelos, who happened to be cruising past the Audubon in their patrol car. The officers, on arriving in front of the ballroom entrance, saw people rushing out into the street. According to Sergeant Aronoff, "The crowds were pushing out and screaming. Malcolm's been shot" and "Get 'im, get 'im, don't let him go!" The policemen grabbed Thomas Hagan by the arms. Hagan was being kicked and beaten by a crowd. The policemen fired a warning shot into the air to drive Hagan's attackers back and then hustled him into their police car and drove him away.

In the aftermath of the assassination the press gave much coverage to the feud between Malcolm X and his former spiritual leader, the honorable Elijah Muhammad. Despite heavy police protection, an arsonist was able to climb onto the roof of the Black Muslim's Harlem Mosque less than two days after the murder and use gasoline to set fire to the Muslim building. With only some rare exceptions, the newspaper slant given to the story was of a religious war between two irrational fringe groups composed of dangerous ex-convicts. Because the feud between Malcolm's Organization of Afro-American Unity and the Nation of Islam was accepted public knowledge, and because the titillating concept of a conflict that was part holy war and part gang war could sell papers, it was seductively easy for the press and the public both to accept the assumption

that the Black Muslims, alone, killed Malcolm X. The Times and the Tribune both editorialized airily about hatred that turns on itself and the violence that spawns violence.

The editorials appeared despite the well-known change in Malcolm's ideas after he returned from his pilgrimage to Mecca. In a letter to his followers, much publicized in the press, he wrote: "Each hour here in the Holy Land enables me to have greater insight into what is happening in America between black and white. The American Negro never can be blamed for his racial animosities — he is only reacting to four

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hundred years of the conscious racism of the American whites. But as racism leads America up the suicide path, I do believe, from the experiences that I have had with them, that the whites of the younger generation, in the colleges and universities, will see the handwriting on the wall and many of them will turn to the spiritual path of truth — the only way left to America to ward off the disaster that racism inevitably must lead to." In an airport news conference after his return from that first trip abroad he told American reporters: "In the past, yes, I have made sweeping indictments of all white people. I never will be guilty of that again — as I know now that some white people are truly

sincere, that some truly are capable of being brotherly toward a black man. The true Islam has shown me that a blanket indictment of all white people is as wrong as when whites make blanket indictments against blacks."

So the editorials about hatred may have been either careless or vicious, but what about the widespread assumption that Malcolm was killed for a renegade by his former brothers in the Nation of Islam? Certainly Malcolm, right up until the last few days of his life, believed and said that the Muslims were out to kill him.

"In any city, wherever I go, making

have been chosen to kill me. I will announce them at the meeting..."

Halley also describes Malcolm being followed and threatened during the last three weeks of his life by Muslims he recognized, not only in New York, but also in Los Angeles and Chicago.

Thus there was ample reason for Malcolm to think that he was marked for death, and to believe that the killers would be acting as agents of the Nation of Islam. But to understand the main thrust of the motions for a retrial that William Kunstler will be arguing in the courts, it is first necessary to understand why Malcolm intended to tell his audience in the Audubon Ballroom that he "had been busy to accuse the Black Muslims," and why he said, "things have happened since that are bigger than what they can do. I know what they can do. Things have gone beyond that..."

The assassination carried out so bravely by the "tiring squad" that gunned Malcolm down in the Audubon Ballroom was not the first attempt on his life. At least two other attempts had already been made.

The first of these took place far from Harlem and far from the reach of Mr. Elijah Muhammad. In July 1964 Malcolm was in Cairo to address a summit conference of African prime ministers. He had come to the conference to persuade the powerful friends he'd made on a previous visit to Africa — men such as President Nkrumah of Ghana, President Touré of Guinea, Prime Minister Kenyatta of Kenya, President Nyerere of Tanzania, Prime Minister Obote of Uganda, President Nasser of Egypt and President Akiwe of Nigeria — that their countries should arrange the United States before the General Assembly of the United Nations for American violations of the human rights provision of the UN charter. Earlier that year he had told a press con-

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ference in Ghana. "All of Africa unites in opposition to South Africa's apartheid, and to the oppression in the Portuguese territories. But you waste your time if you don't realize that Verwoerd and Salazar, and Britain and France, never could last a day if it were not for United States support. So until you expose the man in Washington, D.C., you haven't accomplished anything."

At a press conference at New York's Kennedy Airport, upon returning from his first trip to Africa, Malcolm had told American reporters that "the American black man needed to recognize that he had a strong airtight case to take the United States before the United Nations on a formal accusation of 'denial of human rights' — and that if Angola and South Africa were precedent cases, then there would be no easy way that the U.S. could escape being censured, right on its own home ground."

On July 23, 1964, the day before he was to address the summit conference, Malcolm was poisoned while eating dinner in the Cairo Hilton's main dining room. His roommate at the Hilton, Detroit lawyer and civil rights activist Milton Henry, said, "He would have died if he hadn't been able to get to the hospital in a hurry. His stomach was pumped out, cleaned out thoroughly, and that saved him. But as Malcolm's said afterwards, he would have died if he had not got immediate treatment."

The food pumped from his stomach was analyzed and found to contain a "toxic sub-

stance." The possibility of gratuitous food poisoning was ruled out by doctors. Malcolm told Milton Henry: "Somebody deliberately poisoned me." An effort was made to locate the waiter who had served Malcolm, but the waiter had vanished.

In discussing the poisoning with Henry, Malcolm emphasized "the fact that CIA men were all around him in Cairo." Malcolm's half-sister, Mrs. Ella Collins, who paid for his first trip to Mecca and Africa, said Malcolm told her about the poisoning in Cairo. "He told me that he felt that the CIA was definitely responsible for it. After that he was very careful. In fact, on another occasion, there was an affair given in his honor in Addis Ababa, and in observing the waiter he got a leery feeling and refused the food. He never had any proof, of course, but he always felt sure somehow that he had by-passed another poisoning."

Malcolm's certainty that the CIA was responsible for the poisoning was not founded on mere intuition. For some time before the conference the American Embassy in Cairo tried by quiet diplomatic means to prevent Malcolm from addressing the delegates. The Embassy's diplomatic requests were rebuffed, however, both by the Egyptian government and by the conference organizers. In a *New York Times* article of August 13, 1964, while Malcolm was still in Cairo discussing his UN project with the African ministers, reporter M. S. Handler wrote: "The State Department and the Justice Department have begun to take an interest in Malcolm's campaign to convince African states to raise the question of

persecution of American Negroes at the United Nations....

"Malcolm's eight-page memorandum to the heads of state at the Cairo conference requesting their support became available here only recently. After studying it, officials said that if Malcolm succeeded in convincing just one African government to bring up the charges at the United Nations, the United States government would be faced with a touchy problem.

"The United States, officials here believe, would find itself in the same category as South Africa, Hungary and other countries whose domestic policies have become debating issues at the United Nations. The issue, officials say, would be of service to critics of the United States, Communist and non-Communist, and contribute to the undermining of the position the United States has asserted for itself as the leader of the West in the advocacy of human rights.

"In a letter from Cairo to a friend, Malcolm wrote: 'I have gotten several promises of support in bringing our plight before the UN this year....

"Officials here conceded the possibility that Malcolm might have succeeded....

"Although the State Department's interest in Malcolm's activities is obvious, in the discretion of the Justice Department is shrouded as an implacable leader with deep roots in the Negro submergerd classes.... [Malcolm] has confided in friends that he has been under the constant surveillance in New York by the Federal Bureau of Investigation and by the intelligence section of the New York Police

Department...."

The incident that persuaded Malcolm in the final days before his death that someone other than the Black Muslims was out to kill him was not the Cairo poisoning, but rather another ominous event that took place beyond the borders of the United States.

Twelve days before he died, Malcolm flew to Paris, where he was scheduled to address the Congress of African Students. In his epilogue to Malcolm's autobiography Alex Haley recounts the unexpected reception Malcolm got from the French officials.

"... He was formally advised that he would not be permitted to speak and, moreover, that he could consider himself officially barred forever from France as an 'undesirable person.' He was asked to leave — and he did, fuming with indignation."

It was hard to believe in 1964 that the France of Charles De Gaulle would comply so abjectly with a political whim of the State Department — especially when to do so meant compromising both France's post-Algerian image of tolerance and her Gaullist claims of big-power autonomy. Nevertheless, this is what Malcolm believed. "I was shocked when they told me I couldn't land," he told students at the Congress in Paris over the telephone from London. "They didn't give me any excuse for it. I believe the State Department is responsible."

The day before he was murdered, in the last conversation the two men were to have together, he told Alex Haley, "... You know, I'm going to tell you something, brother — the more I keep thinking about

this thing, the things that have been happening lately. I'm not all that sure it's the Muslims. I know what they can do, and what they can't, and they can't do some of the stuff recently going on. Now, I'm going to tell you, the more I keep thinking about what happened to me in France, I think I'm going to quit saying it's the Muslims."

Two months after Malcolm's death "a highly placed North African diplomat" told American journalist Eric Norden something about the incident at Orly which, if true, would confirm Malcolm's last-minute suspicions. According to Norden: "This official, who insists on anonymity, said that his country's intelligence apparatus had been quietly informed by the French Department of Alien Documentation and Counter-Espionage (the famous *Deuxieme Bureau*) that the CIA planned Malcolm's murder, and France feared he might be liquidated on its soil."

"The diplomat's country, which enjoyed close relations with France, was so informed because Malcolm had visited it on prior occasions, and possibly might have flown there after his expulsion from France."

"Your CIA is beginning to murder its own citizens now," he commented in elegantly modulated French."

By February 1965, Malcolm had developed what amounted to diplomatic relations with several African delegations to the United Nations. He frequented the UN delegates' lounge in the manner of a working diplomat, the self-appointed ambassador of Afro-America to the United Nations. Not only had he made progress in promoting his plan for having America condemned for violations of human rights, but in November 1964, at the time the United States intervened in the Congo's civil war, Malcolm lobbied with his African contacts to convince them to condemn the American intervention. He was regarded as being partly responsible for the vituperative attacks mounted against the United States during the General Assembly debates that took place toward the end of 1964. On January 2, 1965, M. S. Handler, writing in the *New York Times*, reported that Malcolm had pressed African delegates to condemn

America's role in the Congo and also to use "the racial situation in the United States as an instrument of attack in discussing international problems," since "such a strategy would give the African states more leverage in dealing with the United States and would in turn give American Negroes more leverage in American society."

"The spokesmen of some African states acted precisely within the framework of these recommendations last month in the Congo debate at the United Nations," the article said. "They accused the United States of being indifferent to the fate of blacks and cited as evidence the attitude of the United States government toward the civil rights struggle in Mississippi."

"The African move profoundly disturbed the American authorities, who gave the

Those who had contact with Malcolm during his last few days say that he felt a conspiracy closing in around him, that he felt his death was inevitable, and that he no longer believed the Muslims were the force behind what was happening to him.

The *New York Times* could not, of course, measure nor say just how "profoundly disturbed" the American authorities were. But Malcolm knew that as a result of his role at the United Nations, as a result of his conscious political decision to internationalize the problems of American black people, he was under constant surveillance. His phone was tapped and at times he found himself shadowed by as many as three different agents. His friends and family were concerned about the effect of his interference in the functioning of American foreign policy. His half-sister, Ella Collins, "told him that to take a step of this kind he needed protection, real protection that he felt secure with. But he couldn't even trust his own bodyguards. I've been

informed by reliable sources that there were CIA agents right in the Organization (the Organization of Afro-American Unity), and I've been given their names. Malcolm knew the danger, but he said he had to go ahead."

Malcolm returned from his disquieting trip to Orly and London eight days before he was assassinated. He landed at Kennedy International on Sunday afternoon, February 13. At 2:45 the following morning, while he, his wife and four children were sleeping in their home in East Elmhurst, Queens, four fire bombs were thrown through the windows of the house. The house was destroyed, but Malcolm and his wife managed to carry and lead the four children out into the back yard. Afterward police officers suggested to reporters, off the record, that Malcolm had set fire to the house himself to procure publicity for himself. The police even produced a tin of gasoline, which they said they had found on a dresser in the room belonging to Malcolm's youngest child.

Commenting on this episode, Ella Collins said: "When they planted the gasoline I knew it was no longer the Muslims. Only the police could have planted it, because as the fire died down, neighbors went into the house to get some clothes for the children from their rooms, what hadn't been burned. And none of them saw this jug of gasoline when they took things from the baby's dresser. And then the police bomb squad arrived and took over the house, and then they produced the gasoline."

At a press conference on Wednesday of that week, Malcolm declared that an official of the Fire Department admitted to him that the gasoline container had been planted on his child's dresser. "Fire Marshal Malcolm names the man I met me at the airport later and said that yes, it had been planted there."

Malcolm went on to say, "We are demanding an immediate investigation by the FBI of the bombing. We feel a conspiracy has been entered into at the local level, with some local police, firemen and news. Neither I, nor my wife and children have insurance, and we stand in no way to gain from the bombing. ... My attorney has defended me and my wife up against to a

detector test and will ask that the same test be given to police and firemen at the scene."

None of the newspapers in New York City reported on the press conference and the accusations Malcolm had made about police involvement in a conspiracy.

All those who had contact with Malcolm during his last few days testified that he felt a conspiracy closing in around him, that he felt his death was inevitable, and that he no longer believed the Muslims were the force behind what was happening to him. Ella Collins has said: "On the day before his death, which was a Saturday, we spent the day together. He discussed the fact that the way his house was bombed, and his being barred from France, led him to believe that the plotters of his death were much bigger than the Muslims."

In the days immediately following the assassination, while the major newspapers were dwelling on the war they had hypothesized between Malcolm's followers and the Muslims, Malcolm's New England representative, Leon Amner, after going from Boston to New York to meet with other aides, declared that Malcolm had been killed not by the Muslims, but by what he called "the power structure." Amner proposed that a mediator be chosen to meet with Elijah Muhammad and members of Malcolm's organization in order to work out a rapprochement between the two groups.

In Boston on March 13, 1965, in a speech to the Boston Militant Labor Forum, Leon Amner said: "I have facts in my possession as to who really killed Malcolm." Amner said he would call a press conference shortly to reveal evidence in documents and tape recordings which Malcolm had transmitted to him before the murder, evidence to show Malcolm had been the victim of the "power structure." "The killers aren't from Chicago," Amner declared, alluding to Elijah Muhammad's headquarters in that city. "They're from Washington."

Prophetically, Amner told his Boston audience: "I know my life is worth nothing." The morning after his speech, Leon Amner was found dead in his room at the *Amner*

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Biltmore Hotel in Boston. The official cause of death was strangulation.

The Boston police told the press that Amerer had died from an epileptic fit. Amerer's wife said, however, that her husband had undergone a complete medical check-up just one month before his sudden death and that "there was no hint of epilepsy." She said that her husband's body was found with his blackened tongue protruding from between his lips, whereas the victim of an epileptic fit would normally die from asphyxiation, as a result of having swallowed his tongue.

Ellis Collins, who lived in Boston and was friendly with Leon Amerer, told journalist Eric Norden: "I firmly believe that Leon Amerer was assassinated.... In Boston everything was kept very quiet. The police hushed it all up." Malcolm's sister went on to say: "I spoke to his wife on the telephone. She said that she had been married to him for eleven years, and he'd never had an epileptic fit of any kind. But that's what the police kept telling her, did it."

Whatever — or whoever — caused the death of Leon Amerer in Boston, the effect of his death on other aides to Malcolm was flight and silence. Earl Grant, the person who possessed most of Malcolm's tapes and files, fled to Ghana. Presumably, he took the tapes and files with him. Malcolm's second-in-command in the OAAU, James Shahbaz, disappeared. And Malcolm's secretary, Reuben Francis, who was indicted for firing the bullet found in the leg of convicted assassin Thomas Hagan, jumped bail. Francis was taken into custody by the FBI eight months later, but he never appeared to testify in the trial, even though his testimony might very well have been crucial. Recently, during the course of an extended interview, attorney William Kunstler told me that, although the transcript of the original trial contains many irregularities, he was particularly surprised to find that Reuben Francis was never called, or allowed, to testify.

Kunstler was brought into the case this winter and convinced to move for a retrial by Thomas Hagan, the fleeing gunman whom Reuben Francis allegedly shot in the leg. When arrested, Hagan was found to have in his pocket a clip of .45 bullets that

matched one of the murder weapons left behind in the bathroom. Also, his thumbprint was found on a piece of the smoke bomb that had been set off in the rear of the hall to create a diversion. Hagan had been caught at the scene of the murder; he was incriminated by material evidence; at his trial he eventually confessed to the killing. But for several days after the killing the New York police found themselves in an uncomfortable position. Newspaper reports spoke of four accomplices who were still at large. Eyewitness accounts had reported four or five gunmen firing at Malcolm. Since the police had allowed the "thin-tipped, olive-skinned, Latin-looking" suspect apprehended by Patrolman Thomas Hoy to vanish, they were holding only one suspect for a crime committed by four or five men. The position of the police became less uncomfortable ten days later when, after what was termed an "intensive investigation," they arrested two Black Muslim enforcers associated with Muslim Mosque #7 in Harlem, Thomas (15X) Johnson and Norman (3X) Butler. Johnson and Butler had been arrested two months before for shooting one Benjamin Brown, a Muslim defector. They had both been free on bail and had assault charges pending against them for the nonfatal shooting.

Although there was no evidence connecting Hagan to Johnson and Butler, and although no material evidence existed to place Johnson and Butler at the Audubon Ballroom, the district attorney indicted all three men together for having carried out a criminal conspiracy to murder Malcolm X. The district attorney's case against Johnson and Butler was founded on the testimony of four witnesses who identified Johnson and six who identified Butler. All ten appeared to have been carefully coached in their testimony, and yet the testimony they gave was marred by contradictions, evasions and apparent perjury. Several of the witnesses — and among them the most important — were out on bail at the time of their testimony. The charges pending against them, which made them vulnerable to the district attorney's will, often seemed gratuitous enough to indicate a possibility of intimidation.

A case in point is Cary Thomas, a bodyguard of Malcolm's and one of the two witnesses most instrumental in convicting Johnson and Butler. Before March 7, 1966, when he was arrested as a

in the case, Thomas said nothing to Malcolm's widow or to the other members of the OAAU about being able to identify the killers. Initially, he was held by the police in solitary jail, a rather casual kind of incarceration. But after he applied for release, in June 1965, the police charged him with arson in the solitary jail and he was transferred to a regular prison. Thereafter, he became a pliant prisoner and a willing, if changeable, witness for the state's case.

In March 1965 Cary Thomas testified to the grand jury, which indicted Johnson and Butler along with Hagan, that the two Muslim enforcers staged the diversion at the back of the ballroom while Hagan, near the front, opened fire on Malcolm with a shotgun. Then Johnson and Butler were supposed to have run forward toward the stage, shooting at Malcolm with revolvers. The .45 bullets discovered in Hagan's pocket were traced to one of the murder weapons after this grand jury testimony was given, however, and so the prosecution version of what happened had to change. Hagan was now located in the rear of the hall with Butler, while Johnson was given the shotgun and located up front, near the stage. As did the testimony of Cary Thomas. In January 1966, after being held in prison for ten months under \$50,000 bail, Thomas claimed under oath that he had seen Johnson firing the shotgun from a point close to the stage, and seen Butler and Hagan running from the rear to fire at Malcolm with their revolvers. One of the two stories Cary Thomas told had to be perjured. The jury chose to believe that his ten-month incarceration had served as an aid to his memory and that only his grand jury testimony was a lie.

Cary Thomas was an example of why Malcolm could not trust his bodyguards (even those who were not undercover agents). Though Thomas had been armed with a .357 magnum pistol at the meeting in the Audubon, though he was strategically placed to intervene if there was trouble, and though he had carried a gun since the age of fifteen, when the shooting started he dived under a table for protection. The jury might have evaluated his testimony differently if Judge Marks had allowed the defense to enter into the record a Bellevue psychiatric report on Thomas, who was hospitalized in 1965 after "falling through the streets" and "did not tell Jesus Christ I did

The other key witness for the prosecution was Charles Blackwell, who also had been a bodyguard of Malcolm's and who also changed the story he had originally told the grand jury. Originally, Blackwell had told the grand jury that Hagan and Butler were seated next to him in the front row and that two men whom he could not identify had created the diversion toward the rear of the hall. He had also told the grand jury that he had never seen anyone shooting anybody.

Q: "Did you see anybody fire a gun?"

A: "No, I didn't."

At the trial, however, he told substantially the same story as Cary Thomas told, and offered a graphic recollection of Hagan and Butler firing their revolvers at Malcolm. When he was asked whether he had lied to the grand jury, he responded: "Yes, I did."

Far more damaging to the prosecution's version of the murder than the doubtful credibility of its witnesses, however, was the unexpected decision of Thomas Hagan, midway through the trial, to confess. Not only did Hagan admit that he had been one of the killers, but he also stated that Johnson and Butler were innocent. "I just want the truth to be known," Hagan told the court, "—that Butler and Johnson didn't have anything to do with this crime. Because I was there, I know what happened and I know the people who were there."

The *New York Times* of March 1, 1966, reported that Hagan "said he had three accomplices, but he declined to name them. He said he had been approached early in the month of the murder and offered money for the job, but he declined to say by whom.... One thing he did know, he said, was that no one involved in the murder was a Black Muslim.... Perhaps because Hagan had refused to give the names of his accomplices and of the man who paid him, the district attorney was able to argue convincingly to the jury that Hagan had come forward only when he saw that his own situation was hopeless, and that therefore his motivation was to get the other two indicted men off, since he had nothing to lose himself in confessing.

But now, a dozen years later, Thomas Hagan has offered to give those names in court and to tell everything he knows about the assassination.

William Kunstler has taken an affidavit from Hagan that is meant to serve as one of the two main examples of new evidence that justifies his argument for a retrial of the case.

Kunstler says that Hagan has been in contact with a Muslim minister in prison for some time, that he is "a very religious man" and that he is trying now, possibly at the risk of his life, to exonerate Johnson and Butler "because he feels bad about it. Two guys — he says innocent men — are serving life terms, and he's had eleven years to think it over. He's still a very cautious man, but he's a strong feed at this moment and we hope to use him."

Kunstler did not want to disclose what Hagan might have said concerning police complicity in the assassination, nor did he believe that Hagan might know who was ultimately responsible for having Malcolm X killed. "Money was spread around," Kunstler said. "He talks about money."

But Kunstler does think that Hagan's affidavit constitutes part of a persuasive argument that new evidence exists to justify a retrial. Meanwhile, Hagan has been placed in protective custody in an unnamed prison. When I asked him if he weren't worried that something might happen to Hagan in prison, the lawyer said, "Sure, that's why he's in protective custody."

Besides Hagan's affidavit, the second example of crucial new evidence in the case is a transcript from another trial, which Kunstler has submitted to the court. In 1971, twenty-one members of the New York chapter of the Black Panthers were tried in New York for conspiring to blow up Macy's department store and other prominent targets. A key witness against the accused Panthers in that trial was a police undercover agent called Gene Roberts, who had infiltrated the Panthers in New York. The attorneys for the Panthers had been tipped off by somebody that Gene Roberts had been a member of Malcolm's Organization of Afro-American Unity. Defense attorney Gerald Leicourt asked Roberts about his connection to Malcolm and, as Kunstler says, "The judge let him go a little ways with it."

Kunstler relates that under cross-examination Gene Roberts "admitted that he had been the mysterious 'Brother Jean' on the stage of the Audubon Ballroom who was one of Malcolm's security guards, and who attempted to give Malcolm mouth-to-mouth resuscitation after he was shot, and that he had never been called at the murder trial, even though he had a very powerful story to tell. It was he who knocked down

out of the Audubon Ballroom, thus making it possible for the people outside to catch up with him. This was his role; he chased him down the center aisle, he saw everything that happened, he could be, very possibly, an exonerating witness for our defendants. His name was suppressed, he was never brought to the stand by the prosecution, his identity was never told to the defense — even though they requested it on numerous occasions."

According to Kunstler, the Roberts transcript is a crucial ground for retrial because "Roberts' testimony at the Panther trial would have very much buttressed the defense contention that the police set the thing up — first of all by withdrawing all security from the ballroom. You know, there were only two cops and they were next door, in the Rose Room. And they were told not to come out."

The absence of uniformed police on February 21 was remarked on by many people who attended Malcolm's talks. Apparently, at all previous meetings at the Audubon Ballroom there was a large contingent of uniformed police, assigned to protect Malcolm and also to prevent fights between his people and the followers of Elijah Muhammad. After the murder, Deputy Police Commissioner Walter Arm explained the unusual absence of uniformed police by claiming that protection had been offered Malcolm, but that he had refused it. Alex Haley, in his epilogue to Malcolm's autobiography, writes that "Deputy Police Commissioner Walter Arm's statement that Malcolm refused police protection conflicts directly with the statements of many of his associates that during the week preceding his assassination Malcolm X complained repeatedly that the police would not take his requests for protection seriously. Finally, although police sources said that a special detail of twenty men had been assigned to the meeting and that it had even been attended by agents of the Bureau of Special Services, these men were nowhere in evidence during or after the assassination."

Haley's prudence as a writer may have convinced him not to include his own, personal knowledge about Malcolm's desire for protection. But Kunstler mentioned to me that "Alex Haley, spoke to Malcolm that week and Haley tells me that Malcolm said absolutely no security, he never said not to have security. If there was any time in his life, he wanted security, it was after that

bombing of his house."

According to an article by Milton Lewis in the *Herald Tribune* of February 23, 1965, "Several undercover plainclothesmen were in the uptown meeting hall at the time Malcolm was shot dead there. . . . According to a high police official, 'several members of its outstanding unit, the highly secretive Bureau of Special Services (BOSS), were in the Audubon Ballroom. . . ."

"It is no secret that BOSS police — who never wear uniforms — have credentials to cover almost any situation, so that if they were required to have a card or emblem of the Black Nationalist sect it is a safe bet they had them."

Lewis also reported that he was told by a police official, "It is sufficient to say that we had him covered."

I was present in the courtroom myself, in 1966, when Patrolman Gilbert Henry, one of the two uniformed policemen stationed in the nearby Rose Room, testified. It was the same day that Betty Shabazz, Malcolm's widow, testified. Henry told the court that he had been ordered to stay hidden and to communicate by walkie-talkie with another officer stationed in the emergency room of the Columbia Presbyterian Hospital across the street "if anything happened." (It must be noted that one of Malcolm's aides telephoned the hospital immediately after the shooting, and after 15 minutes no ambulance had yet arrived. Followers ran across the street, secured a stretcher and back, put Malcolm on the stretcher and carried him across Broadway to the emergency room.)

Kunstler stressed how ominous the absence of security was by pointing out that even "our friend, Gene Roberts, testified at the Panther trial that he was very much shocked that they had withdrawn all security — particularly since Malcolm's house had been bombed the week before."

There is also evidence that the police in New York knew, despite their claims to the contrary, that Malcolm would be the target of a murder conspiracy. The day after the assassination, Sergeant Edward McClellan of Chicago's police subversion unit stated at a press conference "that Malcolm said December 31 that he feared he was being stalked for death here [in Chicago], and the New York Police were alerted." Another report in the *New York Journal-American* of February 22, the day after the

assassination, said that "according to police spokesmen, the department knew in mid-January that an attempt was to be made on Malcolm's life."

In one session of the conspiracy trial of Hagan, Johnson and Butler an extraordinary procedure was invoked: the courtroom was cleared of spectators so that the jury could listen to the testimony of two witnesses in secret. The press learned only that the two witnesses were called Timberlake and Sullivan.

Kunstler, who was not himself involved in the trial, explained their secret testimony to me by saying, "We also have the fine hand of the FBI deeply involved. The weapons were taken to the FBI by someone we think was an FBI informant at the rally by the name of Timberlake." Timberlake gave his testimony in secret, Kunstler said, because "he was afraid of retaliation." Kunstler also disclosed that "it was to his [Timberlake's] apartment that the FBI came to get the guns." The FBI agent who came to Timberlake's house to pick up the guns — or gun — was the witness, Sullivan, who testified to that effect in secret.

Kunstler was explicit about the significance of any FBI involvement. "I checked back in the Church Committee report," he said, "and, you know, that Malcolm — or at least the Nation of Islam and Elijah — were designated primary COINTELPRO [the FBI's Counter-Intelligence Program] targets. And one of the main bulwarks of COINTELPRO was to set one group against the other. And this kind of thing involved, as Senator Church testified, a great risk of bodily harm in many cases — vis-a-vis the Panthers and US [Ron Karenga's group], and Malcolm's followers and those of the Nation of Islam."

There are a great many important questions yet to be answered concerning the assassination of Malcolm X. Only in the framework of a new trial can it be determined who acted with Hagan and whom they were acting for. If there is a new trial, then we can expect to hear a case for the defense that will attempt to show that American law enforcement or intelligence agencies had foreknowledge of, and, at least by omission, abetted the act. We already know that Malcolm was not poisoned in Cairo by Muslims, got turned away from Orly by Elijah Muhammad, and was already king, that Malcolm's plane was

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tapped and he was followed by government agents. We already know that several agents had infiltrated his organization and were even among his bodyguards. We already know that the New York Police planted a tin of gasoline on his child's dresser; withdrew normal security from the Audubon Ballroom the day they may have known he was to be murdered; watched the shooting and the murderers' escape in plain-clothes without acting to intervene; stationed Patrolman Gilbert Henry in the Rose Room with his walkie-talkie; and allowed, or asked, police surgeons to leave a bullet in Thomas Hagan's leg for several weeks. We already know that law enforcement agencies "suppressed" Gene Roberts and Reuben Francis, used Ronald Timberlake, intimidated witnesses, and released the "Latin-looking" suspect caught fortuitously by Patrolman Hoy in the Audubon Ballroom — a man who answers

to Malcolm's description of an agent who followed him through London and even was on the plane he took back to the United States a week before his death, "a light-skinned, olive-skinned type with ferret eyes" according to Malcolm's description — a man who some of Malcolm's friends thought might be a Cuban, one of the many exile agents employed by the CIA.

If there is a new trial for Johnson and Butler, defense attorney Kunster will then be able to have subpoenaes served to potentially important witnesses, compelling them to testify — witnesses such as undercover agent Gene Roberts, Reuben Francis, and Ronald Timberlake. He will also be able to subpoena pertinent material evidence. Both Alex Haley in his epilogue to *The Autobiography of Malcolm X* and reporter Peter Kihss in the *New York Times* of February 25, 1965, have alluded to the existence of motion pictures taken inside the ballroom at the time of the killing. According to the *Times* article, "The police were in possession of motion pictures that had been taken

at the Audubon Ballroom . . . where the killing took place." No such film was ever produced at the original trial. If there was such a film, and if it still exists today, the showing of it to a jury might resolve some of the disturbing questions of guilt and innocence still surrounding the murder of Malcolm X and might revise the official legal verdict on the case that has prevailed for a dozen years now.

One provocative implication of Kunster's statements about apparent FBI involvement in the case is the possibility that undercover agents, having infiltrated Malcolm's OAAU as well as the Nation of Islam, provoked the feud between the two groups. Recent Senate investigations and documents released under the Freedom of Information Act have confirmed that such procedures were a common practice of COINTELPRO. Thus, even if the Black Muslims did seek to assassinate Malcolm, they might have done so at the instigation of police, or federal agents fulfilling their role as agents provocateurs in a program aimed at "neutralizing"

individuals and organizations judged by certain high government authorities to be threats to national security.

In the last days before his murder Malcolm sensed that his role at the United Nations was exposing him to great danger. He felt powerful forces closing in on him, and the feeling made him uncharacteristically fatalistic. Two days before he died he told the famous photographer (Jordan Parks): "It's a time for martyrs now, and if I'm to be one, it will be in the cause of brotherhood. That's the only thing that can save this country. I've learned it the hard way — but I've learned it. . . ."

Despite his mounting fatalism, he was yet convinced he should leave America for a while, for his own protection. Airplane tickets had been bought for him to fly to Africa on Tuesday, February 23, two days after the last meeting at the Audubon Ballroom. The instinct for survival that Malcolm had had to cultivate and refine living on the streets of Boston and New York almost saved him. ■