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Press Release

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For Immediate Release

**APPELLATE DIVISION GRANTS NEW TRIAL IN CASE
WHERE POLICE OFFICER SHOT PLAINTIFF
WHO HAD FIRED A SEMI-AUTOMATIC GUN AT HIM**

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New York, July 11, 2002 -- The Appellate Division, First Department, granted a new trial in a lawsuit that alleged an off-duty New York City police officer lacked justification for shooting an individual. The plaintiff, Daryl Barnes, had been running through the streets in the Bronx with an Tec 9 semi-automatic gun and had fired a shot at the officer while fleeing. The officer testified that he shot the plaintiff after the plaintiff turned toward the officer to shoot again. The plaintiff, who suffered spinal injuries and claimed severe psychosis due to the shooting incident, did not take the stand at trial. The \$76 million verdict was reduced by the trial court to \$8.9 million.

The defendants' appeal was argued on April 24, 2001, by Assistant Corporation Counsel Margaret G. King for the City and the police officer, and Milton Mollen for the plaintiff. The City requested dismissal on the grounds that the plaintiff failed to prove lack of justification for the shooting, and asked for a new trial or reduction of the damage award as alternative arguments. The plaintiff urged affirmance of the judgment and, alternatively, that no trial error was committed.

The grant of a new trial was based upon the improper exclusion of proof of the plaintiff's membership in the "Five Percenters," a group that advocates vigorous resistance of arrest, including violence if necessary, and hostile actions toward police officers.

The First Department observed that the "Five Percenters' violent propensities are sufficiently well established that certain State correctional facilities, as a security measure, have prohibited inmates from possessing the group's literature."

The Court also held that "[u]nder the particular circumstances of this case, evidence of this plaintiff's motive would be admissible to show that the plaintiff was likely to act in accordance therewith on this occasion" and that evidence of the plaintiff's membership should also have been admitted to impeach the plaintiff's credibility.

Chief Litigating Assistant Lawrence S. Kahn stated, "We are pleased that the Appellate Division reversed the judgment in this case, in which a jury awarded Mr. Barnes the extraordinary sum of \$76 million, reduced by the trial court to \$8.9 million. With proof of the plaintiff's membership in a group that advocates hostile actions toward police officers, we believe on retrial that the evidence will overwhelmingly show that the police officer shot Mr. Barnes only because, after shooting at him once, Mr. Barnes turned to shoot at the officer yet again."

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