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Thursday, May 1, 2008

# Chief's killer seeks new trial

## Lawyer allegedly had conflict of interest

By Gary V. Murray TELEGRAM & GAZETTE STAFF  
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**WORCESTER—** The man convicted of murdering Paxton Police Chief Robert J. Mortell 14 years ago asked a judge yesterday to grant him a new trial on grounds that the lawyer appointed to represent him failed to inform him of a potential conflict of interest.

Michael D. Souza, who is serving a life sentence in the Feb. 1, 1994, shooting death of Chief Mortell in Holden, told Judge Peter W. Agnes Jr. during a Worcester Superior Court hearing that lawyer Michael S. Hussey, who represented him at trial, did not tell him he had been released by state police on March 16, 1994, after being taken into custody on suspicion of drunken driving.

Mr. Souza, who is representing himself and whose fifth motion for a new trial is now pending before the court, said documents he obtained from an internal state police investigation into the incident indicate Mr. Hussey was told before his release without any charges being lodged against him that he should "go easy" on state police in court.

Mr. Souza, who was convicted of first-degree murder on March 29, 1995, argued that he was deprived of his right to a conflict-free lawyer as a result of Mr. Hussey's failure to inform him of his "arrest" and release and the prosecution's failure to bring it to the attention of the court. He asked the judge to order that he be granted access to all related state police internal affairs documents.

State police conducted the investigation that led to the arrests of Mr. Souza and two co-defendants in the slaying of the 38-year-old police chief during a chase in woods off Route 31 in Holden. Mr. Souza was alleged to have fired 11 shots at Chief Mortell, striking him twice, before discarding his gun in the snow and fleeing.

The Supreme Judicial Court affirmed Mr. Souza's conviction in 1998.

Assistant District Attorney Ellyn H. Lazar-Moore said the argument offered by Mr. Souza "doesn't even suggest, much less show, that his attorney had a conflict of interest."

Ms. Lazar-Moore said Mr. Hussey's reported response when it was suggested that he "take it easy" on state police

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in court was, "When it's in the ring, it's not personal." She said there was no indication Mr. Hussey felt beholden to state police or that he "did anything but a good job in representing the defendant."

Ms. Lazar-Moore also said Mr. Souza should have been aware of the incident involving Mr. Hussey at the time of his trial because it had been well-publicized in the local media.

Judge Agnes took the matter under advisement and said he would decide whether to hold an evidentiary hearing on the motion for a new trial or act upon it without a further hearing.

"I don't believe there was a conflict of interest," Mr. Hussey said later when reached for comment.

"My co-counsel, Chris Skinner, and I worked as hard as we possibly could to win his case and ensure that he got a fair trial.

"The suggestion that I would somehow put less of an effort into any case because of something that happened in my personal life is absurd," Mr. Hussey said.



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