

# FBI chief, senator not allowed

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## to be Chesimard witnesses

By Pam Roberts  
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NEW BRUNSWICK, N.J. — Presiding judge in the Joanne Chesimard trial, Theodore Appleby, last week denied a defense motion to permit the testimonies of FBI director Clarence Kelly, and Senate Select Committee to Report Government Operations chairman Frank Church D-Idaho.

Kelly and Church were to reveal their knowledge of FBI correspondence sent to law enforcement agencies across the country during the late 1960s and early 1970s which sought to end the Black Panther Party, Black Liberation Army and other black nationalist groups.

Chief Counsel for Ms. Chesimard, William Kunstler, in arguing the motion before the judge, told the court in the jury's absence that his client's name appeared on some of the correspondence as a member of the Panthers and BLA.

In other developments in the trial, two state's witnesses testified under direct questioning by first assistant prosecutor Edward Barone that a test administered to Ms. Chesimard on the day of her ar-

rest, which determines the presence of gunpowder on the hands of a person suspected of recently firing a weapon, was "inconclusive."

Ms. Chesimard's charges stem from an early morning shoot-out on the New Jersey Turnpike on May 2, 1973. Killed in the incident were Werner Foerster, a New Jersey State Trooper and James Costan, a passenger in the car with the defendant. Another trooper, James Harper and Joanne were wounded.

The gun battle erupted after a car in which Joanne, Costan and Clark Squire were riding was stopped by Harper for a faulty tail light violation.

Squire was convicted in 1974 of murder and attempted murder and is now serving a sentence of life plus 24 to 30 years at Trenton State Prison. Ms. Chesimard is a former co-defendant with Squire.

Kunstler argued that the jury should be made aware of the COINTELPRO (Counter Intelligence Program) conducted by the FBI, which named Ms. Chesimard, Squire, Costan, Eldrige Cleaver, (one of the former leaders of the Black Panthers), the late

Dr. Martin Luther King and others, as "dangerous to national security."

He said broken tail lights were mentioned in the COINTELPRO reports as a "prime means" for "picking up" people suspected of being members of militant groups.

Senator Church's committee investigated COINTELPRO procedures. Both Senator Church and Kelly have agreed to testify, Kunstler told the judge.

Kunstler also wanted the jury to know of any session in which FBI agents briefed state police about black militant groups. The defense attorney further wanted to re-call Harper to the stand to question him about his knowledge of COINTELPRO and other FBI information on black activists prior to May 2, 1973.

In what at times was a heated discussion between Kunstler and the judge, the defense attorney suggested that Harper may have been "psyched out" by the FBI material and in a state of paranoia started shooting at the "three people who looked like militants."

"If the testimony shows the shoot-out could have

been promoted by the trooper, the jury has a right to know," Kunstler contended.

In defense of his position Kunstler said, "It sounds mad and is mad, insane and deadly and in this case may have caused two deaths."

Kunstler told the judge the evidence in the affidavit to subpoena the two out-of-state witnesses was substantial enough to grant the motion but added he knew it would be denied. "You are not going to grant this motion ... we knew when we put it in it would be denied," he told Judge Appleby.

Assistant Prosecutor William Welai argued that the motion was "speculative, conjecture and not relevant."

In his denial, Judge Appleby said the testimony would be "irrelevant and immaterial to the case" and also refused to have Harper recalled.

Kunstler opposed the judge's decision saving "Judge you must hate us to the bottom of your core." The defense is planning its next move on the denial.

Defense attorney Lawrence Stern, in a later in-

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interview, said the temperament of Harper on the night of the shootout is relevant to the case. This information may have been brought out in testimony by Kelly and church, he suggested.

A New Jersey state trooper testified under direct questioning that a gunpowder test he gave to Joanne shortly after her arrest was "negative." Charles Midkiff Jr. a chemist with the Bureau of Alcohol, Tobacco and Firearms said, while being questioned by Assistant prosecutor Nicholas Stroumtsos, that Ms. Chesimard's test — as well as Costan's, Harper's, Squire's and Foerster's — was "inconclusive." Midkiff conducted the test at a laboratory in Washington, D.C.

Harper, in earlier testimony, said the defendant shot at him twice, once wounding him and missing with the second shot.

Midkiff gave a number of reasons that the tests were inconclusive; under Stroumtsos questioning. He said blood, dirt, washing of hands and time could affect the result of the test.

In his cross-examination

of this witness, Stern tried to bring out that a small quantity of gunpowder on the hands could give a positive result.

Detective James Chalendar was closely questioned under cross-examination by Kunstler about a report he wrote, as a result of two interviews with Harper. Chalendar interviewed Harper shortly after he arrived at a New Brunswick hospital to be treated for gunshot wounds received during the shoot-out.

Kunstler tried to bring out inaccurate statements about the shoot-out and what led to it, that Harper allegedly made to Chalendar during the interviews.

In earlier testimony Harper told the court, while being questioned by Kunstler, he put false information on his report.

Under direct questioning by Barone, Chalendar described the condition of Foerster's body when he was brought into the New Brunswick hospital. "Blood was on his face, shoulder, hands, and matted in his hair ... there was a hole in his neck, lacerations were on his body and he had a head protrusion." Chalendar said in describing the dead trooper.

He told Kunstler under cross-examination that Ms. Chesimard had blood on her and "just stared." He did not go into detail about her condition. Barone questioned Detective Sergeant Edward Wilke for almost a day and a half on the stand. Wilke, supervisor of the State Police Identification Bureau, identified evidence found at the scene of the shootout and the site where Joanne was captured, and Costan's body was found.

The articles put into evidence included a number of spent bullet shells, automatic weapons, a Smith and Weston revolver (this gun, Wilke told Barone, was issued to Foerster) and photographs depicting the two sites.

New Jersey State Trooper Robert Polentchar earlier testified, under direct questioning by Barone, that Foerster's weapon was found under Costan's body.

During the second day Wilke was on the stand, his testimony was held up because of confrontations between spectators, who were said sympathetic to Chesimard, and security officers.

A series of incidents erupted because one spectator refused to remove his kufi (an Islamic hat). In the jury's absence Kunstler asked Judge Appleby to allow the man to wear the hat in the courtroom because it is an Islamic religious garment.

Before the defense attorney finished addressing the judge a scuffle developed and Appleby ordered the man removed from the courtroom. Other spectators were ousted and verbal confrontations ensued between the judge, Ms. Chesimard and defense attorney Stewart Ball, before normality was regained.

At one point Judge Appleby asked "shall we arrest some of these people?" Ms. Chesimard responded to this saying, "You'd love that, why should they be subjected to every kind of harassment in the world?"

Ms. Chesimard left the courtroom after the jury was brought back complaining of illness. The attorneys for Ms. Chesimard, who until this point had appeared optimistic and had not spoken out in this manner, said their client left in tears.