

# Judge bars testimony of Kelly

NEW BRUNSWICK — Superior Court Judge Theodore Appleby yesterday barred testimony from FBI Director Clarence Kelley and Sen. Frank Church (D-Idaho) as "irrelevant" to the murder trial of JoAnne Chesimard.

He rejected motions by defense attorney William Kunstler who sought certificates compelling their appearances as out-of-state witnesses along with top New York police personnel and other FBI and CIA witnesses who were unnamed.

Judge Appleby said that the testimony

sought by Kunstler as part of the defense case aimed at proving a police conspiracy against black militants was "irrelevant to this case" and would create "a trail within a trial."

"I am not convinced by any evidence so far that this was not just a routine stop," Judge Appleby said. He termed the claims by Kunstler "speculation and conjecture which is not borne out by the available evidence."

Kunstler had said he sought the testimo-

ny relating to the "cointelpro" operations of the FBI which were explored by Sen. Church's select senate committee as being indicative of directives to other police agencies.

Kunstler said a major defense tactic was a claim that the stop of the white Pontiac in which Mrs. Chesimard, Clark Squire, and James Costan were riding on the night of the murders "was a set-up or a 'cointelpro' program so all-pervasive through the nation . . . that it psyched up the officers on the N.J. Turnpike as well as militants, making a shootout inevitable."

Kunstler said the fact that all three cruisers in the area converged on the car when Trooper James Harper made the stop for a defective taillight tied in with the defense theory.

"Do you seriously contend that this was part of a scheme? That the stop would have been made by Harper along, with Foerster wandering in later and Palentchar 10 miles away?", Judge Appleby

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## and Church at trial

asked.

Mrs. Chesimard is accused of slaying Trooper Werner Foerster and wounding Harper in the exchange of gunfire. Trooper Robert Palentchar was initially assigned to back up Harper on the stop but Foerster, who was closer, did arrive to give assistance.

"I'm not saying it proves it because I say it," Kunstler told the judge. "I'm just saying something funny went on that night."

Kunstler, who said the "cointelpro" defense was the key to victory in the recent trial of Wounded Knee, contended that the program "sent out the word that militant blacks were dangerous . . . would shoot first . . . and should be stopped at any pretext."

"A major premise was that law enforcement has a duty to combat preconceived threats . . . and it was concentrated on every single black group," he said.

Kunstler charged that Harper "was indoctrinated with this absolute paranoia . . .

the madness and sickness that permeated this country and in this case may have caused two deaths on the turnpike."

The defense lawyer said it was not a case "where we can offer absolute proof, but this defendant was a member of a targeted group." He said both Mrs. Chesimard and Squire were fugitives on the night of the killings. In September, 1972, she was the FBI's most wanted fugitive.

"Let the jury decide if Harper would shoot first and ask questions afterward," Kunstler said.

Assistant Prosecutor William Welaj, opposing the motion, said the state police were not on trial. "When Jimmy Harper stopped that car, he in no way knew they were militants," he said.

Welaj echoed Judge Appleby when he said that Harper stopped the car alone without waiting for Foerster and with Palentchar 10 miles away. "It wouldn't have been two on three, it would have been six on three if they suspected anything unusual," the prosecutor said.

"If they want to show Harper is predisposed to violence, fine, but they don't need Church or Kelley," Welaj added. "This is nothing but speculation."

"They would like to produce their part of the case and have the jury forget the evidence. They want a trial within a trial to subvert the jury from focusing on the guilt or innocence of Mrs. Chesimard," he said.

Welaj argued that the defense theory was "ridiculous . . . that Harper and Foerster precipitated the incident when Foerster is on the ground with four bullets in him."

"Maybe this wasn't a set-up, maybe it was a panic," Kunstler shot back. "Their story is that three people warred on the state police. Maybe it was the other way, not out of malice but because of the insidious nature of 'cointelpro.'"

When Judge Appleby rejected his claims, Kunstler said, "Your bias is so demonstrable. God, you must hate us to the bottom of your core."