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# The Case of Elmer "Geronimo" Pratt: A Long and Winding Road to Retrial

## INTRODUCTION

Two men using rubber suction cups and mountaineering equipment climbed a third way up the Statue of Liberty yesterday in a political protest, and park officials said the men had caused extensive damage to the statue's tin copper skin.

One of the climbers. . .reached the small of the statue's back, while the other clung to a rope at the rear of its right knee. Soon after, they unfurled a 25-foot-long red and white banner with the words: 'Liberty was framed. Free Geronimo Pratt.'<sup>1</sup>

On the evening of December 18, 1968, Caroline Olsen and husband, Kenneth, were about to begin a game of tennis when they were approached by two black men in their twenties. The two men were armed and ordered the Olsens to lie face down on the tennis court. The men then rummaged through the couple's belongings in search of valuables, yielding approximately thirty dollars in cash.<sup>2</sup> Having completed their search, the men fired a salvo of bullets into the prone couple. Kenneth Olsen survived five shots from a pistol, later identified as a 45-caliber automatic. Caroline Olsen died eleven days after the incident.<sup>3</sup>

In 1970, robbery, murder, and attempted murder charges were brought against 22 year old Elmer Gerard ("Geronimo") Pratt, Deputy Defense Minister for the Black Panther Party.<sup>4</sup> Pratt insisted that, at the time of the incident, he was in Oakland, California—400 miles to the north—attending a national committee meeting of the Black Panther Party. Three party members corroborated his claim.<sup>5</sup>

The case that the prosecution presented to the jury included an eyewitness to the crime, testimony of a verbal confession, the murder weapon that was found during a raid of a Black Panther's home where Pratt had been arrested, and a description of the getaway car generally matching that of one registered to Pratt.<sup>6</sup>

On July 28, 1972, after deliberating for over nine days, the jury found Pratt guilty of first-degree murder, assault with intent to commit murder, and two counts of robbery.<sup>7</sup>

Subsequent to his conviction, defense attorneys allegedly discovered that numerous pieces of exculpatory evidence existed. Members of the state prosecution team and agents of the Federal Bureau of Investigation (FBI), who were cooperating with the team, were aware of this evidence at the time of

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1. *Statue of Liberty Damaged in Climb by Two Protestors*, N.Y. Times, May 11, 1980, § 1, at 1, col. 3.

2. *Pratt v. McCarthy*, No. CV 81-3407 (C.D. Cal. filed July 9, 1981); *Free Geronimo Pratt: Let Freedom Ring*, Nommo, Jan. 1985, at 4 (UCLA publication).

3. *Jury Convicts Black Panther of Murdering Teacher in 1967*, L.A. Times, July 28, 1972, § 1, at 3, col. 3.

4. *Id.*

5. McWilliams, *Second Thoughts*, THE NATION, Dec. 29, 1979, at 678.

6. *Pratt v. McCarthy*, No. CV 81-3407, 2-4 (C.D. Cal. filed July 9, 1981).

7. *Jury Convicts Black Panther of Murdering Teacher in 1967*, *supra* note 3.

trial.<sup>8</sup>

Since then, several defense attorneys have embarked on a long and winding road toward retrial for the former Black Panther Party leader. Although the road to retrial has contained a number of unexpected turns, Pratt has gained many supporters along the way.

Several attorneys and political figures have been convinced of Pratt's innocence—among them, former district attorney and Republican congressman Paul McCloskey, who described Pratt as the possible victim of a "monstrous" miscarriage of justice.<sup>9</sup>

The efforts for the retrial of Pratt can be viewed as a test to measure boundaries of professional responsibility in criminal prosecution—to wit, at what point does one draw the line between an "unfair trial" and one that is merely "not an absolutely perfect trial?"<sup>10</sup> This question will be hereafter addressed, within the context of the case of Elmer "Geronimo" Pratt.

### I. GERONIMO PRATT AND THE BLACK PANTHER PARTY

Between October 1 and October 15, 1966, in Oakland, California, Huey P. Newton and Bobby Seals prepared the ten-point platform of the Black Panther Party.<sup>11</sup> Their founding statement concluded with the following declaration:

When in the course of human events, it becomes necessary for one person to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. *That, to serve these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.*<sup>12</sup>

By 1969, the Black Panther Party had established some forty chapters nationwide, serving free breakfasts to approximately 10,000 needy black children every month and establishing free health clinics for blacks in several cit-

8. *Pratt v. McCarthy*, No. CV 81-3407, 4 (C.D. Cal. filed July 9, 1981).

9. *Pratt vs. the FBI*, L.A. WEEKLY, Jan. 25-31, 1985, at 4.

10. *See In re Pratt*, 112 Cal. App. 3d 795, 808 (1980).

11. THE BLACK PANTHERS SPEAK 1 (P. FONER ed. 1970).

12. H. NEWTON, TO DIE FOR THE PEOPLE 7-8 (1972).

ies.<sup>13</sup> In 1969, *Time* magazine reported that the circulation of the Black Panther newspaper had reached 100,000 per week.<sup>14</sup>

The impact of the Black Panther Party extended beyond the boundaries of the black community. Other racial minorities began to form similar organizations. In Los Angeles, for instance, members of the Chicano community formed the militant Brown Berets organization. In San Francisco and New York City, Asian Americans formed the Red Guard Party and I Work Kuen, the latter named after the boxers of the Boxer Rebellion.

Unlike the major civil rights organizations of the early 1960s, the Black Panther Party believed that social change could not come about through non-violent protest alone. As Information Minister Eldridge Cleaver once wrote in *The Black Panther*: "We call for the violent overthrow of the fascist imperialist United States Government."<sup>15</sup> The Panther Party believed in social change through whatever means necessary.

The impact that the Panthers had on American culture became a major concern for the head of the FBI, J. Edgar Hoover. In the eyes of Hoover, the Black Panther Party had established itself as "the greatest threat to the internal security of the country."<sup>16</sup> Thus, in the late 1960s, the FBI responded by developing its counterintelligence program (COINTELPRO), and making the Black Panther Party its principle target.<sup>17</sup>

Although the existence of COINTELPRO was not public at the time, various sectors of the press speculated whether in fact a government plan existed to "neutralize" the Black Panther Party. *Newsweek* wrote in its December 22, 1969 issue:

Is there some sort of government conspiracy afoot to exterminate the Black Panthers? The black revolutionaries themselves are convinced of it—and have long used such charges as part of their propaganda against capitalist white society and its 'pig' police. Last week, in the wake of yet another bloody shoot-out between the cops and the Panthers, the talk of conspiracy—or, at the least, systematic harassment—began to find a larger and more sympathetic audience than ever before.<sup>18</sup>

In its December 19, 1969 issue, *Time* magazine quoted Dr. Ralph Abernathy of the Southern Christian Leadership Conference as saying, "There is a calculated design of genocide in this country." *Time* responded by asking:

Is there? Specifically, are the raids against Panther officers part of a national design to destroy Panther leadership? Federal law-enforcement officials deny it. . . . The FBI admits only to keeping an eye on Panther activities and exchanging information with state and local law officers. Actually, what may appear to be a concerted campaign against the Panthers is not difficult to account for.<sup>19</sup>

On the pre-dawn morning of December 9, 1969, Los Angeles police converged on Panther headquarters to search for hidden guns and to arrest Paul

13. *Police and Panthers: Growing Paranoia*, TIME, Dec. 19, 1969, at 14-15. (This article constructs a United States Department of Justice Estimate on Panther activity).

14. *Id.*

15. *Id.* at 14.

16. *In re Pratt*, 112 Cal. App. 3d at 808.

17. *Id.*

18. *Too Late for the Panthers*, NEWSWEEK, Dec. 22, 1969, at 26.

19. *Police and Panthers: Growing Paranoia*, *supra* note 13.

Redd and "Geronimo" Pratt.<sup>20</sup> To accomplish this mission, the police department assembled a 300-man task force armed with arrest warrants, search warrants, shotguns, AR-15 rifles, tear-gas grenades, satchel charges, one helicopter, six-foot steel battering rams, a National Guard armored personnel carrier, and a fire department "jet-ax" used to cut through the roof of burning buildings.<sup>21</sup> After a four-hour gun battle, police arrested several Panther members, including the leader of the Los Angeles chapter, Elmer "Geronimo" Pratt.<sup>22</sup>

The original arrest warrant issued against Pratt charged him with "assault with a deadly weapon on a police officer." The warrant was sought after police saw a man believed to be Pratt on a rooftop with a gun in connection with an incident that had occurred the month before.<sup>23</sup>

Subsequent to the raid on the Panther headquarters, the District Attorney's Office filed a seventy-two count indictment against the defendants. After two years in court, convictions for conspiracy to possess illegal weapons were the only verdicts returned against the Panther defendants. "Geronimo" Pratt received the maximum one-to-five-year sentence on January 13, 1972.<sup>24</sup>

Five weeks before the trial ended, Sandra Pratt, the wife of Elmer, was shot to death. Authorities have theorized that her death resulted from a factional feud within the Panther Party between followers of Huey Newton and Eldridge Cleaver.<sup>25</sup>

## II. THE MURDER TRIAL

More than a year prior to his conviction for illegal weapons possession, new charges were brought against Pratt in connection with the murder and robbery of Caroline Olsen.<sup>26</sup> The prosecution's case against Pratt in this charge primarily consisted of the testimonies of three witnesses and three pieces of physical evidence.

Kenneth Olsen, the sole eyewitness to the crime, identified Pratt as the shorter of two assailants. Olsen had first identified him in a photographic display which was conducted approximately two years after the murder. Out of sixteen pictures displayed, Pratt appeared in two of them. Pratt was the only person photographed wearing a safari-type jacket such as was worn by the shorter of the two assailants.<sup>27</sup>

Julio "Julius" Butler, a former Black Panther Party member who had been a Los Angeles deputy sheriff until the early 1960s, testified that Pratt had confessed committing the crime to him the day after the murder.<sup>28</sup>

Barbara Reed, the owner of a hobby shop in the area of the Santa Monica

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20. *Police Seize Panther Fortress in Four-Hour Gunfight, Arrest 13*, L.A. Times, Dec. 9, 1969, § 1, at 1, col 2.

21. *Police and Panthers: Growing Paranoia*, *supra* note 13.

22. *Dispute Flares on Who Fired First Shot in Raid on Panthers*, L.A. Times, Dec. 10, 1969, § 1, at 1, col. 1.

23. *Id.*

24. *Three Panthers Involved in Gunfight with Police Get Prison Terms*, L.A. Times, Jan. 14, 1972, § 2, at 1, col. 5.

25. *Id.*

26. *New Pratt Documents Surface*, L.A. Times, Jan. 20, 1980, §2, at 1, col. 4.

27. *Pratt v. McCarthy*, No. CV 81-3407, 2-3 (C.D. Cal. filed July 9, 1981).

28. *Id.* at 3.

tennis courts, identified Pratt as the shorter of two young men who had come into her store on the evening of December 18, 1968. Reed had locked the door to the shop after the two men left, only to have them attempt to re-enter with guns drawn. When their demands for admittance were ignored by Reed, the two men left. Barbara Reed selected Pratt from the same photographic display presented to Kenneth Olsen. Like Olsen, Reed made her identification in late 1970.<sup>29</sup>

The murder weapon, was found during a raid of the home of a Black Panther Party member in early 1969. Although Pratt did not live there, he was arrested outside the home at the time of the raid.<sup>30</sup>

The description of the getaway car, driven by the two men at the tennis courts, generally matched that of one registered to Elmer Pratt. Pratt, however, maintained that the car had been treated by members of the Panther organization as a communal vehicle, and thus had been continually used by several of the group's members.<sup>31</sup>

An "insurance" letter, meant to protect Butler from Panther members who had threatened him, was allegedly given to Sergeant DuWayne Rice of the Los Angeles Police Department in August 1969 for safekeeping. This letter referred on part to a confession allegedly made by Pratt.<sup>32</sup>

Pratt maintained his innocence throughout the trial. He took the stand during the trial to testify that he was participating in a Black Panther Party conference in Oakland on the date the shooting occurred. Kathleen Cleaver, wife of exiled Panther leader Eldridge Cleaver, testified as a defense witness and at least partially corroborated Pratt's claim about being in Oakland.<sup>33</sup> Although two other Panther members testified on his behalf, Pratt was not successful in getting the general support of the Black Panther Party. As a supporter of Eldridge Cleaver, he had been ostracized by the Party shortly before the trial as an "enemy of the people."<sup>34</sup>

On July 28, 1972—six months after his conviction for illegal weapons and after nine days of jury deliberations—Elmer "Geronimo" Pratt was convicted by an eight man, four woman jury for the murder of Caroline Olsen.<sup>35</sup>

When the verdict of first degree murder was read by court clerk Alice Nishikawa, the 24 year old Pratt cursed under his breath and then spoke out loud:

You're wrong. I didn't kill that woman. You racist dogs. I'm not going to sit here and listen to the rest of this.<sup>36</sup>

Shortly thereafter, the other words of the verdict were read. Pratt was found guilty of assault with intent to commit murder for shooting Kenneth Olsen five times with a .45 caliber automatic pistol. Guilty verdicts were also returned against Pratt on two counts of robbing the Olsens at Santa Monica's Lincoln Park.

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 3-4.

33. *Jury Convicts Black Panther of Murdering Teacher in 1967*, *supra* note 3.

34. Address by Stuart Hanlon, attorney for Elmer "Geronimo" Pratt, at UCLA School of Law (Feb. 26, 1985).

35. *Jury Convicts Black Panther of Murdering Teacher in 1967*, *supra* note —

36. *Id.*

Following the proceeding, jury foreman Dennis M. Romo issued a note to the press:

After hearing the verdict, Mr. Pratt called us a racist jury. He will never know how difficult it was for each of us to render this decision. The evidence and the law left us no alternative. I honestly felt that this jury did its utmost to find him not guilty. Were I to stand in Mr. Pratt's place, I would want this jury for myself.<sup>37</sup>

Prosecutor Richard Kalustian said he was "elated" with the verdict and felt the jury's decision "was definitely in keeping with the evidence in the case."<sup>38</sup> On August 18, 1972, Superior Court Judge Kathleen Parker sentenced Pratt to seven-years-to-life in San Quentin prison.<sup>39</sup>

### III. IN THE AFTERMATH OF THE TRIAL: THE LONG AND WINDING ROAD TO RETRIAL

#### A. *New Evidence*

Subsequent to Pratt's conviction, defense attorneys for Pratt learned that he had been a specifically named target of the FBI's counterintelligence program, COINTELPRO, which was aimed at discrediting the Black Panther Party and other social protest groups.

A United States Senate committee that investigated and subsequently condemned COINTELPRO found that FBI agents wrote false letters, printed false pamphlets, and used other similar tactics to spread lies about target individuals and groups in ways designed to discredit them and disrupt their operations.<sup>40</sup>

One document, dated six months before Pratt was indicted, stated that "constant consideration" was being given to the possibility of utilizing counterintelligence measures "with efforts being directed toward neutralizing Pratt as an effective BPP [Black Panther Party] functionary."<sup>41</sup>

Representative Paul McCloskey, a Republican from San Mateo, California, had obtained documents indicating that the witness Butler had once been an FBI informant—a charge that Butler denied during the trial.<sup>42</sup>

Another piece of new information involved the identification of a second suspect. Defense attorneys found that the murdered woman's husband, Kenneth Olsen, had twice identified someone other than Pratt as the killer immediately after the murder. Pratt, on the other hand, was picked by Olsen out of a police line-up almost two years later. According to Pratt's attorneys, the government withheld evidence that Olsen had made a positive identification of the second suspect.<sup>43</sup>

Perhaps the most provocative disclosure, however, involved the relationship between the FBI, the Los Angeles Police Department (LAPD), and the State Attorney General's Office with regard to the surveillance of political targets. According to the attorneys, the government withheld evidence of FBI

37. *Id.*

38. *Id.*

39. *Second Thoughts, supra* note 5 at 678.

40. *New Pratt Documents Surface, supra* note 26.

41. *Second Thoughts, supra* note 5 at 678.

42. *Id.*

43. *Pratt v. McCarthy*, No. CV 81-3407, 6-7 (C.D. Cal. filed July 9, 1981).

surveillance of Pratt's key alibi witness, Kathleen Cleaver, while she was going to a Panther meeting in Oakland the night of December 18, 1968. Moreover, Pratt's attorneys allege that the FBI, with the knowledge and cooperation of the LAPD had a wire tap and "radio" in the Los Angeles Panther headquarters during December of 1968.<sup>44</sup>

When Pratt's bid for a retrial finally commenced in November of 1979, one witness testified that the LAPD's written reports to the FBI occupied a bookshelf of space nearly seven feet high and twelve feet wide. The Chief of Police stated, however, that the department destroyed a "tremendous amount of files" in 1977 that related to Pratt.<sup>45</sup>

Despite this and new evidence on January 18, 1980, Superior Court Judge Kathleen Parker denied Pratt's request for a new trial. Pratt's attorneys expressed to the judge in vain that they had gone as far as they could with an evidentiary hearing that could give them new powers to subpoena documents. John Mitchell, one of Pratt's attorneys, pleaded:

Please, your honor, do not make me go back to San Quentin and tell Mr. Pratt, 'This court won't let you get the facts.' . . .He'll ask me, 'Doesn't the state want the truth?'"<sup>46</sup>

Judge Parker stated that she was in agreement with Deputy Attorney General Michael Nash, who argued that the FBI's COINTELPRO efforts would not "extend so far as to frame someone for a murder rap. That's almost impossible to believe."<sup>47</sup>

Stuart Hanlon, another of Pratt's attorneys, rose to tell the judge with tears in his eyes and his voice straining, "This case has been from its inception a coverup. . . .What the court has just said has implicated it in this coverup."<sup>48</sup> Judge Parker replied that Hanlon was entitled to his thoughts.<sup>49</sup>

## B. *Additional New Evidence*

On the very day that Pratt's retrial bid was denied, a new batch of FBI documents began to surface which appeared to further contradict some key portions of earlier testimonies. According to Pratt's attorneys, the documents revealed that the government withheld evidence that Butler had met at least thirty-three times with the FBI and had provided them with information regarding both Pratt and the Panther organization.<sup>50</sup>

A series of events closely followed: On April 11, 1980, United States District Court Judge Samuel Conti ordered the FBI to release files that the bureau argued should remain secret.<sup>51</sup> On May 22, 1980, the FBI, acting under the threat of a congressional inquiry, promised to conduct a second

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44. *Id.* at 8-9.

45. *Second Thoughts*, *supra* note 5 at 678.

46. *Pratt Loses Bid for Hearing in 1972 Murder Conviction*, L.A. Times, Jan. 19, 1980, § 2, at 1, col. 1.

47. *Id.*

48. *Id.*

49. *Id.*

50. *New Pratt Documents Surface*, *supra* note 26; *Pratt v. McCarthy*, No. CV 81-3407, 5 (C.D. Cal. filed July 9, 1981).

51. *FBI Told to Release More Files on Ex-Black Panther*, L.A. Times, Apr. 12, 1980, § 2, at 1, col. 5.



internal investigation into whether its agents denied a fair trial to Pratt.<sup>52</sup> By July 30, 1980, FBI officials admitted that at least two informants spied on defense strategy for the FBI during Pratt's murder trial.<sup>53</sup>

On the same day, the California Court of Appeal announced that the three-judge panel which had voted two-to-one to accept the case would not be the panel to hear the oral arguments. The earlier panel consisted of Bernard Jefferson and Sara Radin—two "liberals"—and L. Thaxton Hanson—a known "conserveative." The new panel consisted of two conservatives, Hanson and Mildred L. Lillie, and one liberal, William Dunn, a Long Beach Municipal Court Judge.<sup>54</sup>

On December 3, 1980, in a two-to-one split, the Court of Appeal panel voted to reject Pratt's plea for an evidentiary hearing. In support of its ruling, the court majority cited the late FBI Director J. Edgar Hoover's opinion of the Panthers as a "militant violence-prone hate group."<sup>55</sup> Speaking for the majority, Judge Hanson wrote that Pratt's attempt to win a new trial "follows the too often typical pattern in today's upside-down system of criminal justice where a defendant himself charged with or convicted of such 'illegal act,' such [sic] as murder, attempted murder, and robbery. . . seeks to focus attention on the alleged 'illegal acts' of law enforcement officers."<sup>56</sup> Despite a vigorous dissent by Judge Dunn, the majority contended that "Pratt was afforded his full day in court. . . .A defendant is only entitled to a fair trial, not an absolutely perfect trial. . . ."<sup>57</sup>

Two days after the opinion was released, Dunn issued the following statement to the press:

This case, perhaps more than many others. . . deals with what is the proper role of government through its agencies in the administration of justice. If there is even a hint of impropriety with respect to whether a person has been denied a fair trial because of activity of government, that needs to be examined by a court. . . and there's more than a hint in this case. . . .<sup>58</sup>

Pratt's attorneys appealed the denial of the habeas corpus petition to the highest court in the state. However, on April 1, 1981, the Supreme Court of California, in an unpublished opinion, affirmed the decision of the lower court.<sup>59</sup>

### C. *The Federal Court*

On July 9, 1981, Elmer "Geronimo" Pratt filed a Petition for Writ of Habeas Corpus to the United States District Court. The legal authorities for the petition were based on two factors: (1)that the government suppression of exculpatory evidence at Pratt's trial violated due process of law; and (2) that the placement of FBI spies who subsequently transmitted defense strategies to

52. *FBI to Make New Internal Probe in Panther Case, Two Officials Say*, L.A. Times, May 23, 1980, § 1, at 3, col. 6.

53. *Second Informant Tied to FBI Role in Pratt Trial*, L.A. Times, July 30, 1980, § 1, at 3, col. 1.

54. *Id.*

55. *Court Reject Pratt Plea for Hearing*, L.A. Times, Dec. 4, 1980, § 1, at 3, col. 7.

56. *Id.*

57. *In re Pratt*, 112 Cal. App. 3d at 890 n.45.

58. *Judge Says Two Other Jurists Slandered Him in Opinion*, L.A. Times, Dec. 6, 1980, § 1, at 1, col. 1.

59. Address by Stuart Hanlon, *supra* note 34.

the state prosecution team violated Pratt's sixth amendment right to counsel.<sup>60</sup>

As to the first factor, Pratt's attorneys alleged five categories of exculpatory evidence suppressed by the government:

(1) Evidence bearing upon the credibility of Butler.

The government may not withhold evidence which bears upon the credibility of a key witness such as Butler.<sup>61</sup> In the case of Butler, defense attorneys asserted that his status as informant bears heavily upon his credibility since he was part of a scheme to "neutralize" Pratt;<sup>62</sup>

(2) Evidence bearing upon the credibility of Olsen. State agents allegedly withheld from the defense the knowledge of a card Kenneth Olsen had signed at a line-up held prior to his photographic identification of Pratt;<sup>63</sup>

(3) Evidence bearing upon the credibility of the "letter."

Both state and federal agents allegedly withheld information that the FBI "appeared on the scene when the letter was delivered from Butler to [Sergeant] Rice, had called to 'Julio' by name, had demanded the letter from Rice under threat of his prosecution for obstruction of justice, and had immediately notified the LAPD concerning the letter and its probable contents;"<sup>64</sup>

(4) Evidence concerning a second suspect.

Both state and federal agents, it is alleged, had information concerning the second suspect, which was withheld at Pratt's trial.<sup>65</sup>

(5) Evidence supporting petitioner's alibi.

Both the state and federal government knew that a wire tap and "radio" had been operating at Los Angeles Panther headquarters during December 1968. Moreover, Pratt's chief alibi witness, Kathleen Cleaver, had been under surveillance while attending the meeting in Oakland. Yet, it is contended, this information was not made known to the defense team.<sup>66</sup>

Pratt's argument in support of the petition before the district court was essentially this: when fully developed through discovery and through an evidentiary hearing, "the totality of withheld government surveillance on himself, his alibi witness, and Panther headquarters for December, 1968, will absolutely exculpate him by substantiating his alibi."<sup>67</sup>

Throughout his state habeas corpus pursuit, Pratt was never provided an opportunity for discovery and was never permitted an evidentiary hearing regarding the aforementioned issues. However, on March 12, 1984—almost three years after the original filing of the petition—Pratt's request for discovery was granted.<sup>68</sup> On January 21, 1985, Pratt's request for an evidentiary hearing finally materialized.<sup>69</sup> On January 24, 1985, Magistrate John R. Kronenberg of the United States District Court in the Central District of California took Pratt's matter under submission.<sup>70</sup> As of this date, no decision has

60. *Pratt v. McCarthy*, No. CV 81-3407, 13-18 (C.D. Cal. filed July 9, 1981).

61. *See Giglio v. United States*, 405 U.S. 150 (1972).

62. Address by Stuart Hanlon, *supra* note 34.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Pratt v. McCarthy* No. CV 81-3407 (C.D. Cal. filed July 9, 1981); (See Petitioner's Request for an Evidentiary Hearing at 1, filed pursuant to 28 U.S.C. § 2254, Rule 8; Magistrate's Local Rule 3.2(04), (filed Aug. 1, 1984)).

69. *Hearing Continues for Former Black Panther Leader*, Open Forum, Feb. 1985, at 2, col. 2 (ACLU publication).

70. *Id.*

been rendered by the district court.

### CONCLUSION

According to Ohio State University criminologist Ronald Huff, at least six thousand persons are wrongfully convicted every year of serious crimes, including murder, rape, robbery, and burglary.<sup>71</sup> Because of wrongful convictions, one hundred innocent persons in the United States have been condemned to death in cases documented since the turn of the century, according to Hugo Bedau and Michael Radelet, criminologists at Tufts University and the University of Florida respectively. They count at least thirteen who have been executed.<sup>72</sup>

On February 26, 1985, Stuart Hanlon, noted defense attorney and one of the attorneys for Elmer "Geronimo" Pratt, talked about the case at the UCLA School of Law before a group of students and faculty members.

Hanlon gained public attention a few years ago for his work in the Chol Soo Lee case. Lee, a Korean immigrant, was serving a life sentence for a Chinatown street gang killing in San Francisco. Courts later determined that Lee did not commit the murder. He was released after having served nine years in prison.<sup>73</sup>

In a similar vein, Pratt has steadfastly maintained his innocence, to the degree that he has obviated the possibility of early parole. Hanlon stated, "Geronimo refused to go in front of the parole board and say he was guilty. They [the board] want you to say, 'I'm guilty and I'm a better person now.' Geronimo won't go and he won't do what he has to do in order to get parole."<sup>74</sup>

Hanlon is not optimistic about Pratt's chances for a retrial:

The worst thing that could happen is if Pratt loses and people don't understand why. We've had some of the best lawyers in the United States working on his case. . . and he is going to lose.

I get so overwhelmed sometimes, because there are so many [exculpatory] elements to this case that would get other people a new trial. But, Pratt won't because of who he is and what he represents.

If we were in front of a jury, this would be a slam-dunk case. We'd win this case so easily, given what we know.<sup>75</sup>

It has been thirteen years since Elmer "Geronimo" Pratt was convicted of the Olsen murder. Whether he will finally get his long sought after retrial remains to be seen.

ROY NAKANO

71. Meyer, *How Justice System Can Go Wrong*, L.A. Times, Mar. 17, 1985, § 1, at 1, col. 1.

72. *Id.*

73. Nakano, *Attorney for Geronimo Pratt Speaks at Law School*, The Docket, Apr. 1985, at 1, col. 1. (UCLA School of Law publication).

74. *Id.*

75. *Id.*