IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION)
OF ELMER "GERONIMO" PRATT)
Petitioner:)

No. CRIM. 21826

APPLICATION OF NATIONAL BLACK HUMAN RIGHTS COALITION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER PRATT

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Because Black people have, over the years, had innumerable Black leaders killed and/or imprisoned in the U.S. it it incumbent upon Black organizations to demand any Black leader that is encarcerated in the United States to get a scrupulously fair trial. By reading the facts of Mr. Pratt's case it became clear that Mr. Pratt never received a fair trial for the convictions he is presently serving time in the California State Prison System.

Therefore we are of the opinion that it is important for us as Africans in the United States to manifest our concern regarding our leaders welfare directly to the Courts and not solely through the ballot box.

There are other reasons why we would like our Amici brief filed with this court, however they are fully explained in the Amicus Curiae itself.

RESPECTFULLY SUBMITTED,

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COPY

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BRIEF OF AMICI CURIAE NATIONAL BLACK HUMAN RIGHTS COALITION

Signers of Amicus Brief:

1) Attorney Le Grand Clegg
2) Black American Law Students Association (B.A.L.S.A.)
3) Bob Duren, Chairperson
   Black Panther Party of Southern California
4) Dr. Anyim Palmer, Ph.D.
5) Dr. R. Maulana Karenga, Ph.D.
6) Kawaida Groundwork Committee
7) Marcus Garvey Elementary School
8) Minister Louis Farrakhan
9) National Conference of Black Lawyers
   Community College of Law
10) Nation of Islam
11) Omowale Ujamaa School
12) Pan Afrikan Secretariat
13) Republic of New Afrika
14) Rev. James Lawson
15) SOULBOOK Magazine
16) Southern Christian Leadership Conference (West) (S.C.L.C.)
17) United League of Mississippi

INTEREST OF AMICI CURIAE

The idea of combating human rights violations of Black people in the U.S. began almost with the origin of African resistance to our kidnapping from Africa and our subsequent captivity in the United States. From David Walker, who in 1829 wrote, "An Appeal to the Colored Citizens of the World"; to Marcus Garvey and his 1925 Declaration of the Rights of Black People' to Blacks in the 1950's who wrote "We Charge Genocide", which outlines in a petition to the United Nations the genocidal conditions and forced dehumanization of Black people in the U.S.; to El Hajj Malik Shabazz (Malcolm X) in the 1960's who in his travels around the world gained support for Black people in the U.S. - all began to put forward a strategy of shifting the struggle from the domestic arena of civil rights to the international forum of human rights.

During this time as well, many Black political activists and organizations contributed to raising the issue

of human rights. Advocates of the rights of Black people in the U.S., such as Richard Wright, W.E.B. DuBois, Paul Robeson, etc., have played historical roles in the development of Black human rights struggles. Contemporarily, Queen Mother Moore, Ossie Davis and many others have presented petitions on genocide of Black people to the United Nations. The Republic of New Afrika organized in 1973 a International Afrikan Prisoners of War Solidarity Day. More recently in December 1978 the National Conference of Black Lawyers (NCBL) presented a petition to the Subcommission on Prevention of Discrimination and Protection of Minorities, on human rights violations in the U.S.

On September 9, 1978, ten major Black organizations came together to form the NATIONAL BLACK HUMAN RIGHTS COALITION (henceforth referred to as NBHRC). All of these organizations were involved actively in working against human rights violations on the part of the United States government and its sub-division. With this abundance of

experiences in this field, the NBHRC arrived at the following objectives:

1. To inform and educate Black people to their full and total human rights;
2. To gain international support and recognition for Black people's struggle for human rights and self-determination inside the United States;
3. To develop research and resources necessary to achieve our human rights.

Since most of the NBHRC members have been born with what the dominant white socieity determines as "natural U.S. citizenship", we are trying to understand the fact that the following still legally exist:

> "A Black child in America today has nearly one chance in two of being born into poverty, and is twice as likely as a white baby to die during the first year of life". /1

1
Los Angeles Times, January 14, 1981, pg. 4, "Future Still Bleak for Black Children, Lobbying Statistics Show"

In spite of all the constitutional and statutory safeguards that have been enacted it is still legal in the U.S. to deny Black children the most fundamental right of all: Human Life. Hence we all realize that we must be committed to obtaining the human right to life for all of our people, and thus we have to be concerned with legal racism.

In the recent U.S. constitutional history we know that the highest court of this land has found it to be constitutional to deprive, under certain circumstances, the right of equal protection to citizens and aliens who happened to be of Japanese descent.[2] Again we wondered whether our people's determined struggle for freedom would invoke the State's "compelling interest" and thus order us "evacuated - like the Japanese" so that we would have no claim to the basic civil right: The writ of Habeas Corpus? Again we

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2
Korematsu v. U.S. 232 U.S. 214

as civilized people must be concerned with the reality of legal racism.

Thus we are all committed to the rectifying of the total spectrum of legal racism; the eradication of the very history of legal racism has maimed and deprived our people of our most basic right: full and equal membership in the human race.

Earlier we stated that many Black people, since at least the early 19th Century, had looked toward the world community for justice rather than exclusively to the guardians of the u.S. Constitution. It is clear that this was Black people's healthy response to the U.S. government's founders' failure to reconcile their egalitarian ideas and rhetoric, which is enshrined in the Constitution and Declaration of Independence, with their disparate possession of their own slaves and their gross discrimination against African freed-persons.

The legal racism which the United States of America

is founded upon is accurately explained in the following passage:

> "The court stated that a slave was to 'labor upon a principle of natural duty', to disregard his own personal happiness and that the purpose of legal system was to convince such slave that he had no will of his own (and that he must surrender) his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else that can operate to produce the effect. The submission of the slave perfect. /3

This is the heritage of legal racism that was bequethed to the contemporary U.S. by those who are considered by Black people in America as the original American slave masters and the protectors of the American

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3

State v. Mann (1929) 13 North Carolina 266; Queen v. Hepborn, 11 U.S. (7 (ranch) 290 (1913); Wood v. Davis, 11 U.S. (7 (ranch) 271 (1812); Scott v. Negro Ben, 10 U.S. (6(ranch) 3 (1910); Scott v. Negro London, 7 U.S. (3 (ranch) 324 (1906).
These cases were all decided between 1806 and 1813. The Courts unanimously agreed with the exception of one dissenting opinion, that the right of the slavemaster was more important than the right of personal freedom of the slaves in question. See also, In the Matter of Color, "Race and the American Legal Process: The Colonial Period", Judge A. Leon Higginbotham, N.Y. Oxford University Press, 1978.

slave masters' interest. In a word, the founders of the American Constitution of the United States were also the progenitors of the hypocritical practice of institutionalized legal racism.

In fact, this reality had been so institutionalized within the legal system and body politic of America that the U.S. Supreme Court recognized in 1857 that,

> "Blacks in America, both slave and free, cannot be citizens of America in the sense that U.S. Constitution defines the word citizen. /4

In studying the case of Elmer "Geronimo" Pratt one is struck by the wholesale disregard of the rights of this young man by the Courts which have heard and passed judgment on the charges that have been brought up against him. The presence of informants infiltrating his legal defense, and therefore not only violating his absolute right of attorney-

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4

Dred Scott v. Stanford, 60 U.S. (19 HOward) 393 (1857) See also Race, Racism and the American Law by Derrick Bell Jr. (Professor of Law, Harvard University) Little Brown and Company, Boston, 1973; Civil Rights Record, "Black America and the Law, 1849-1970", by Bardoth, Crowell Publications, 1970

client confidentiality but suggest a disturbing number of incidents of prosecutorial misconduct; the cavalier actions of the Los Angeles Police Department and F.B.I. hiding and/or destroying of documents requested for discovery by Mr. Pratt's defense counsel are gross denials of his Human and Constitutional rights. This latter could only mean the apparent denial to Mr. Pratt of the right to call relevant and available evidence as well as the denial of the Sixth Amendment right to effective legal counsel. We therefore must conclude that these gross denials of Mr. Pratt's fundamental rights within the U.S. criminal law process are definitive legal/racist descendents of the absolute denial of the human rights of African slaves during America's colonial period. It should be understood by all who are sensitive to the existence of legal racism that the denials of constitutional rights to Mr. Pratt are directly akin to the Dred Scott decision which the U.S. Supreme Court unequivocally stated that the "U.S. owes Blacks no rights

and priviledges as human beings". [5]

In a word, all the forces that are truly against the inhumanity of the denial of rights to the African slave on George Washington's plantation system must recognize and struggle against the identical denial of humanity to Geronimo Pratt; both are exemplification of the legal racism that all people of conscience must resolutely struggle against. Therefore, it is clearly within the latter committment that the NBHRC defines its interest as a Amicus in the Writ of Habeas Corpus to California State Supreme Court in behalf of Mr. Elmer "Geronimo" Pratt.

5
Ibid.

INTRODUCTION

NATIONAL BLACK HUMAN RIGHTS COALITION states there must be a legal campaign to exhaust all legal redress as well as challenge those courts and law enforcement agencies that participated overtly and covertly in acts of violence and illegality against activities under the excuse of "Law and Order". We are convinced the agencies and courts that participated in the arrest, prosecution and sentencing of Pratt were part of this conspiracy; hence it is part of our organizational objectives and goals to have reversed Mr. Pratt's conviction.

Since the constitution is the law of the land we demand that it be upheld and enforced so all Black prisoners in the U.S. be given equal protection of the law. The struggle to free Geronimo Pratt and to give him a fair trial is part of the struggle of Black prisoners, with the support of other progressive peoples, to see that Pratt obtains equal protection under the law.

Consequently, a purpose of this brief is to see that the Courts to hear this matter of Elmer Pratt will do so with vigilance and honest scrutiny so that his constitutional and human rights will be enforced and rectified regardless if the perpetrator of his false imprisonment is the head of the F.B.I. and/or Chief of Police of Los Angeles, or even the President of the United States.

Therefore a major question that must be focused upon is can Black people, such as Geronimo Pratt, descendents of ex-slaves' human rights, be protected by the laws, lawmakers and a judicial system that claims equal protection of the law, guaranteed rights for all citizens, but refuses to prosecute the real criminals, while freedom fighters such as Geronimo Pratt are encarcerated without a fair trial and/or killed off one by one.

Suffice it to say the significance of Mr. Pratt's case is more an indication of how legal racism has so persisted that a young Black man who is dedicated to the

the liberation of his people can be forced to spend 7 1/2 years in solitary confinement for no justifiable reason; it is proof that the American legal process is so infested with racism that a Black activist can spend ten years in jail without a fair trial if he has been accused by the state of murdering a white woman. Any system that does in fact eventually exonerate a person with Mr. Pratt's years of encarceration and then claims their system works for the oppressed would be guilty of a preposterous self-serving statement which would only serve to expose its own savage disregard for the African race.

Additionally, we believe that a reversal by California Supreme Court of Mr. Pratt's conviction and his release from prison would still serve to indict the American legal process by the standards of sentencing acceptable in the civilized world. Based on 7 1/2 years in solitary confinement and ten years of imprisonment which Mr. Pratt has already served,

his situation would be part of a prima facie[6] case of sentencing being so unconscionably punitive as to violate internationally accepted human rights of all prisoners to an opportunity for rehabilitation and reintegration into their communities.

Since there is evidence that, overall in the United States, Blacks receive sentences 20% longer than whites; the case of Mr. Pratt would be part of a prima facie case that shows imprisonment is imposed so disproportionately that minority groups in the community become the majority groups in prisons.[7]

6
Prima Facie - in American jurisprudence and common law: such as will suffice until contradictions are overcome by other evidence.

7
Report of International Jurists Visit with Human Rights Petitioners in U.S., August 3-20, 1979, "Sentencing", pg. 29 (Finding III).

Finally, it must be said that a release of Mr. Pratt and a reversal of his conviction by the California Supreme Court would be a victory for the oppressed; but it will not be a vindication of the very legal system which imposed this arbitrary conviction and punitive sentence upon Mr. Pratt. It would be a victory for Mr. Pratt personally because he has maintained his humanity and his fortitude in the face of years of contempt and abuse heaped upon him by both the California Prison System and the State Courts of jurisprudence. It would be a victory for all those who have continued to manifest solidarity in struggle with Mr. Pratt (which in turn is so invigorating to Geronimo Pratt's spirit of resistance to oppression and degradation). In addition, it would be a personal victory for the majority judges on the State Supreme Court that would have lifted their personal judicial integrity above the plethora of precedents of legal racism which they could have hidden behind, and which their less righteous peers have opted for in the face of the challenge of Geronimo Pratt's tragedy.

A granting of the Writ of Habeas Corpus would mean that the principle dissenting Appellate Court opinion[8] of Judge William Dunn may have shortened the time when it becomes inevitable for Mr. Pratt to receive a fair trial. Judge Dunn's articulate and well considered opinion is certainly worthy of emulation by all the judges of the California Supreme Court.

We have been guided by the definitions of fundamental human rights and freedoms as exemplified in the International Convention on the Prevention and Punishment of the Crime of Genocide which was approved by 83 nations on January 12, 1951.

The Article II in said Convention reads in part:

> "In the present Convention, Genocide means any of the following acts committed with intent to destroy, the whole or in part, a national, ethnical, racial or religious group, such as:

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[8] In re Elmer G. Pratt, on Habeas Corpus, December 3, 1980 Court of Appeal of the State of California

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."[9]

The number of African (Black) people in America who are arrested, convicted each year is grossly out of proportion to our relative number to other groups in America. In 1976, for example, over 2.1 million Blacks, almost 10% of the official pupulation, were arrested. The comparable figure for whites was only 3%. On the 2.1 million Blacks, about 1/3 were charged with serious crimes meaning long prison sentences for those convicted. Only about 1/5 of the whites arrested were charged with serious crimes. The inevitable disruption and trauma incurred by Blacks through arrest, conviction and inhumane racist conditions while at the mercy of the anti-Black prison system is clearly "causing serious bodily or mental

[9] Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, Article III.

harm to members of the group."[10]

On the point of inhumane racist conditions it is highly disturbing to note that the most recent court order of demanding the end of racial segregation in prisons occurred on July 13, 1979, Stewart et al. v. Rhodes et. al., U.S. District Court, Southern District, Ohio, East Div. Columbus.[11]

This indicates that racist persecution and segregation persists within the U.S. prison system. Moreover the utilization of solitary confinement, medical maltreatment, behavior modification, systematic brutality, forced labor are all evidence of a pattern to racistly persecute Black prisoners in the U.S. The authentication of this pattern of persecution was professionally

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[10] Convention on Genocide, December, 1948, Article III, (b).

[11] Stewart et. al. v. Rhodes et. al., Southern District U.S. District, Eastern Division Columbus, Ohio, July 13, 1979.

carried out in August, 1979 by a distinguished group of International Jurists.[12]

The only conclusion available is that this evidence shows that here is a pattern of arrest, conviction and racist persecution which is causing serious bodily or mental harm to Black prisoners inside the U.S. prisons. Hence, this evidence constitues a _prima facie_ case of a policy of genocide inflicted upon the Black community by the United States of America.

Recent study of the population within U.S. prisons[13] indicates the rate of encarceration of Blacks in the prison system is 367.5 per 100,000. But the rates for whites within the same system is 43.5 per 100.000. Every state in the Union imprisons at least three Blacks for every

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[12] _Report of International Jurists_ Visits with with Human Rights Petitioners in the U.S., August 3-20, 1979, P. 31.

[13] Prison Law Monitor, Vol. 1, Number 9, March, 1979.

one white.

With respect to the BLacks having received a death penalty sentence, the statistics are again an indictment by Blacks against the U.S. penal system. Even through Africans in the U.S. allegedly only constitute 11% of the overall population, 41% of those on "Death Row" are of African descent.[14]

This available data on the death penalty and the grossly disproportionate percentage of Blacks in prison populations in the U.S. makes a "prima facie case for racial discrimination in the application of the judicial codes and in the interaction generally between the powerful white society and the powerless Black society."[15]

Our conclusion is that the above evidence not only is sufficient to warrant an extensive U. N. inquiry into

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[14]Ibid.

[15]Sundiata Acoli aka Clark Squire, prison number 3974-066 v. Attorney General; Harold Miller, Warden, Marion, Illinois, and the U.S. Secretary of Treasury, P. 10.

the above described abuses, but show that these conditions are calculated 'to cause serious bodily or mental harm to members of the group," i.e. Geronimo Pratt and his peers, the Black prisoners in the U.S. legal system who have been similarly situated as Mr. Pratt. The latter conclusion is a prima facie case of genocide perpetrated on Black people by the U.S. government.

In summary, we have established that Mr. Pratt, and his peers, have been the victim of the following violations which are punishable under international law; 1) Prosecutorial misconduct, 2) arbitrary exlusion of evidence, 3) excessive solitary confinement, 4) Racial discrimination.

Consequently it is clear that amongst civilized nations and governments Mr. Pratt has not received a fair trial, and as such he can ask the international community to excercise their status as nation - states to help persuade relief for himself and those similarly situated. Mr. Pratt has this option regardless of the abuse of

discretion utilized by the U.S. court system to rationlize his conviction and continued encarceration. Furthermore it should be noted that the American committment to the Universal Declaration of Human Rights is, according to former President Carter a reality. Hence the option of internationalizing the solution to his problem is not inconsistent with U.S. constitutional law.[16]

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[16]Ibid. P. 9.

I. THE CONCEALMENT AND SUPPRESSION OF EVIDENCE DURING AND BEFORE PRATT"S TRIAL CONCERNING F.B.I."S COUNTER-INTELLIGENCE PROGRAM AIMED AT PRATT REQUIRES THE GRANTING OF THE PETITION UNDER CONSTITUTIONAL PRINCIPLES OF DUE PROCESS

A. Background of F.B.I.'s Counter-intelligence Program

Before a thorough, search, and graphic exposition of the facts and legal issues abounding in Petitioner Pratt's pending Habeas Corpus action, some discussion of substance concerning the history and background of the Federal Bureau of Investigation's counter-intelligence activities and programs must be provided. Specifically, the F.B.I.'s counter-intelligence program (Cointelpro) against Petitioner Pratt and the Black Panther Party. Although the Cointelpro issue was raised on two prior occasions in the California Courts, there has been an obvious lack of comprehension by these reviewing tribunals of the historical derivation and the historical sinisterness

of this program as it concerned Blacks in America.[17] In arriving at a comprehensive understanding of the F.B.I.'s Cointelpro scheme or plot, it is extremely important to understand three factors. First, the United States Government has always had a counter-intelligence program. Second, even prior to the formation of the F.B.I. in the 20's the government conducted counter-intelligence activities against the Black community because of White America's paranoia or guilt persecution about the oppression and dehumanization of Blacks in this country.[18] Thirdly, the racism systemic to the American body politic has always allowed governmental agencies like the F.B.I. to use any means necessary to disrupt, destroy, nuetralize or eliminate Black dissent or protest.

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[17] Petitioner Pratt raised the Cointelpro issue before Judge Parker in his Habeas Corpus Petition in November, 1979. Judge Parker summarily rejected the argument advanced by counsel for Petitioner Pratt regarding this matter. Petitioner Pratt raised the Cointelpro issue in his petition in the Court of Appeals of the State of California, Second Appellate District Division. Once, again, two of the three Judges misperceived the constitutional importance of the issue.

[18] For an interesting historical perspective on this problem, read the Report of The National Advisory Commission on Civil Disorders March 1, 1968. U.S. Government Printing Office.

The targeting of Petitioner Elmer "Geronimo" Pratt by the F.B.I. and C.I.A. for victimization, through their extensive counter-intelligence activities is consistent with the historical continuum of such conduct toward Black people in general and outspoken Blacks in particular like Pratt.[19]

The F.B.I.'s counter-intelligence program supposedly was inaugurated in 1956 "in part because of frustration with Supreme Court rulings limiting the Government's power to proceed overtly against dissident groups."[20] In reality the F.B.I.'s surveliance, harrassment and counter-intelligence activities against Blacks in the 20th century parallels the establishment of the Bureau of Justice which was the predessor of the Federal Bureau of Investigation. The Honorable Marcus Garvey, was perhaps one of the earliest Black victims of the government's attempt to frame, discredit, destroy and

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[19] Pratt's outspokenness as a leader in the Southern California Chapter of the Black Panther Party caused the F.B.I. to target him.

[20] Final Report, Book III: Select Committee to Study Government Operations with Respect to Intelligence Activities, United States Senate P. 3.

neutralize Black spokesmen and leaders. Like Petitioner Pratt, the Honorable Marcus Garvey was arrested by the government after an intense effort to destroy his effectiveness as a Black leader.[21] Garvey was subsequently convicted and deported from the United States.

Other prominent Blacks durng the 20's, 30's and 40's were targets of the F.B.I.'s wrath. Black writer Richard Wright,[22] an internationally known author, was target of the F.B.I.'s counter-intelligence efforts. The F.B.I. and U.S. Government prosecuted W.E.B. Dubois, a leader, Black academecian and scholar in 1953 at the age of 83 for allegedly violating U.S. sedition laws.[23] During the period of Dr. Dubois' indictment and trial in Washington, D.C., the F.B.I. attempted to discredit Dubois

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[21] See Martin Tony, Race First, Greenwood Press, Westport,Conn. (1976) See, Also, Cronon David, Black Moses, University of Wisconsin,, Press, Madison, Wis. (1968).

Garvey headed the Universal Negro, Improvement Association during the early 20's. His movement had a following of nearly a million Black people in America. The United States Government through its Bureau of Justice (F.B.I. predecessor) embarked on an extensive campaign to disrupt, destroy and neutralize Garvey and his association because of Garvey's effectiveness as a mass Black leader.

[22] See Gayle,Addison Ordeal Of A Native Son, Doubleday, New York (1980) Recaptures F.B.I.'s efforts to neutralize Wright.

[23] Dubois, W.E.B., autobiography of W.E. Dubois.

within the Black community in the United States. In fact, the F.B.I. actively sought to discourage Dubois' friends and admirers from providing any financial or moral support to him during the pendency of his trial.[24]

From documents that are now available through the Freedom of Information and Privacy Act, it is obvious that thousands of Blacks were targeted by the F.B.I. for counter-intelligence concentration long before 1956. In this regard, Elmer "G." Pratt has had, quite a bit of distinquished company within the exclusive fraternal bounds of the F.B.I.'s counter-intelligence Black victims.

The best exposition of the F.B.I.'s Cointelpro program in America during the last twenty years has been produced by the <u>Select Committee To Study Governmental Operations with Respect To Intelligence Activities, United States Senate</u> (Church Committee) This report states:

"Cointelpro (F.B.I.'s counter-intelligence

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[24] This tactic was to be used by the F.B.I. nearly 25 years later to alienate Pratt from his friends and supporters.

> program) began in 1956,...it ended in 1971 with the threat of public exposure. In the intervening 15 years, the Bureau (F.B.I.) conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous ideas could protect the national security and deter-violence."
>
> "Many of the techniques used would be intolerable in a democratic soceity even if all of the targets had been involved in violent activity, but Cointelpro went far beyond that. The unexpressed major premise of the programs was that a law enforcement agency has the duty to do whatever is necessary to combat perceived threats to the existing social and political order." [25]

Although the F.B.I.'s Cointelpro program purportedly ceased in 1971, there is ample evidence to indicate that Cointelpro-type activities have continued.[26] Specifically, documents released to Petitioner Pratt indicate that the F.B.I.'s targeting of him did not cease in 1971. In fact, the F.B.I.'s Cointelpro tactics were employed against Pratt throughout his trial and conviction.[27]

While the F.B.I. targeted various groups and organizations for victimization through its' counter-intelligence efforts was directed and aimed at Black leaders, Black organizations,

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[25] Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee Report). p. 3.

[26] Thousands of documents are now being released through the Freedom of Information and Privacy Act. See 5 U.S. Sec. 552.

[27] This information was revealed through documents received in two pending Federal Court cases on behalf of Petitioner Pratt, Pratt v. Rhees, United States Federal District Court, Northern District of California, Pratt v. Webster, U.S. District Court for the District of Columbia.

members of Black organizations and any Black persons showing or demonstrating any concern about the problems of race and economic deprivations facing Blacks in America as a visible minority. A noted national syndicated columnist who was privy to highly sensitive F.B.I. documents regarding the F.B.I.'s efforts against Blacks stated the following in a congressional hearing:

> "...It's clear from the files that the F.B.I. considers it un-American to dissent if the dissenters happen to be against the war or say in favor of Black power."
>
> "Those who support these causes may find themselves the subject of searching investigations. Now, it doesn't seem to have occurred to the F.B.I.'s officials that they are the ones who are guilty of Un-American activities for treating political dissent as a crime. When it comes to Blacks, the situation is even more grievious. To the F.B.I. apparently anyone with a dark skin who dares to open his mouth is viewed as subversive. I've seen dozens of dossiers on Black leaders whose only crime is voicing the woes and tribulations of their people, who have done nothing more than organize their ranks, who are guilty only of peacefully petitioning their government in redress of grievances as the Constitution says they have an inalienable right to do."
>
> "Permit me if you will, to offer a couple of general conclusions from my review of these dossiers. The most noticeable characteristic in the files is that the slightest opposition to the status quo is enough to trigger an investigation of a Black American. Back in the late sixties, for example, anyone who cried Black

Power came under F.B.I. surveliance.[28]

Blacks have historically been the victims of governmental lawlessness. It did not come as a surprise to find that Blacks in general were targeted for a vicious coordinated and concerted campaign to keep the historical badge of slavery lingering above their heads.

The Cointelpro program was specifically geared towards certain groups. The Church Committee Report stated:

> "Black Nationalist-Hate Groups. In marked contrast to prior Cointelpro's, which grew out of years of intensive intelligence investigations, the Black Nationalist Cointelpro and the racial intelligence investigative section were set up at about the same time in 1967."
>
> "...However, the long hot summer of 1967 led to intense pressure on the Bureau to do something to contain the problem, and once again, the Bureau heeded the call."
>
> "The originating letter was sent to twenty-three field offices on August 25, 1967, describing the program's purpose as ...to expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of Black Nationalist, hate-type organizations and groupings, their leadership, spokesman, membership, and supporters and to counter their propensity for violence and civil disorder. ...Efforts of the various groups to consolidate their forces or

[28] Testimony of Columnist, Jack Anderson, before Congressional Black Caucus Hearings on Governmental Lawlessness, June 27, 1972.

to recruit new or youthful adherents must be frustrated."

"Initial group targets for intensified attention were the Souther Christian Leadership Conference, the Student Nonviolent Co-ordinating Committee, Revolutionary Action Movement, Deacons for Defense and Justice, Congress of Racial Equality, and the Nation of Islam.

...The targets were chosen by conferring with headquarters personnel supervising the racial cases, the list was not intended to exclude other groups known to the field. [29]

The above program to disrupt, discredit, misdirect, or otherwise neutralize Black organizations simply defined in objective terms what the F.B.I. had been covertly doing to Black people for many years. More importantly, the F.B.I. clearly did not make any distinction between Black organizations or groups. As noted, the peaceful and non-violent Southern Christian Leadership Conference under the leadership of Dr. Martin Luther King Jr. was a principle target of the F.B.I.'s Cointelpro effort. Other documents

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[29] Supra, Church Committee Report, cited herein at p. 20.

reveal[30] that many law abiding prominent Blacks were immediate targets of the Black Nationalist Hate Group Cointelpro Program. It was obvious that all Blacks[31] fell into the Black Nationalist Hate Group;" the F.B.I.'s perfidiousness in attacking Black leaders is clearly manifested. One can ssume that if the F.B.I. attempted to destroy an apostle of peace like the Rev. Dr. King, then, an Elmer "G." Pratt, as a Black Panther, could not and would not escape the tentacles of the Bureau's perfidy.

Perhaps, a March, 1968 letter to forty-one F.B.I. field offices from F.B.I. headquarters best explains the long term and short term objectives of the F.B.I.'s Cointelpro plan.

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[30] Evidence revealed during the Church Committee hearings that Dr. King was the target of some of the most vicious and inhumane tactics that were employed by the F.B.I.'s Cointelpro program. On at least one occasion the F.B.I. forwarded a letter to Dr. King suggesting that he commit suicide.

[31] Jack Anderson, syndicated Columnist testified before the Congressional Black Caucus hearings on Governmental lawlessness in June, 1972 that he personally had seen files on, Roy Wilkins, Executive Director of NAACP, Bayard Rustin, Director of the A. Phillip Randolph Institute, Roy Innis, Congress of Racial Equality, Jesse Jackson, Director of Operation Push, Actor, Harry Belafonte, Actress, Ertha Kitt, Writer, James Baldwin, Actor Ossie Davis, Muhammad Ali, Joe Louis and Congressman, Walter Fauntroy.

The letter stated that the purpose of the program was:

> "[1] to prevent the coalition of coalition of militant black nationalist groups, which might be the first step toward a real Mau Mau in America."
>
> "[2] to prevent the rise of a messiah who could unify and electrify, the movement, naming specifically Martin Luther King, Stokely Carmichael and Elijah Muhammad;
>
> [3] to prevent violence on the part of black nationalist groups, by pin-pointing potential troublemakers' and neutralizing them before they exercise their potential for violence;
>
> [4] to prevent groups and leadership from gaining respectability by discrediting them to the responsible Negro Community, to the White Community (both the responsible communities and the 'liberalist...the distinction is the Bureau's), and to Negro radicals; and
>
> [5] to prevent the long range growth of these organizations, especially among youth, by developing specific tactics;
>
> [6] to prevent these groups from recruiting young people.[32]

By 1968, another Black organization had emerged as a national based party concerned with defending the rights of the poor and oppressed. Although this organization was not on the F.B.I.'s initial list of target groups, it was quickly added. Of course, we are referring to the Black Panther Party.

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[32] Church Committee Report Book III, p. 1987.

The Panthers during the period, 1967-1970, were having an electrifying effect on young Blacks. The Black Panther Party's program attracted a large cross section of the Black Community in the United States. The national news media covered the Panthers religiously which added to their national popularity. Within two years of its orgin, the Black Panther Party had become one of the most controversial groups in America. The Panther Party leaders were revered by many as the spokes-persons for disenchanted, dispossed and angry Black youths who yearned for a measure of dignity in a predominantly White racist society and White racist culture. As the Panthers became more vocal and visible through the national news media, J. Edgar Hoover, who needs no introduction in this brief, and the F.B.I. became traumatized at the thought of young Black Americans joining the Panthers in the fight against racism at home and abroad. If the F.B.I. feared Dr. King, then, the advent of the young Panthers Party must have been peculiarly revolting.

As the Black Panther's Party became more popular, thousands of young Blacks filled its ranks. Petitioner Pratt was one

of these young persons. As a decorated Viet Nam war veteran, returning from the rice fields of Southeast Asia, Petitioner Pratt chose to dedicate his life to improving the conditions of life in this country. By September, 1968, he had become a Panther Party member. Unknown to him at that time, within days of his arrival in the Southern California Chapter of the Black Panther Party, the F.B.I. had decided to eliminate and destroy the Black Panther Party. In fact, the F.B.I. within a month of Pratt's joining the Panther Party, decided to launch against one of the most vicious assaults ever waged against a Black Group. The campaign to destroy the Panthers involved legal frame ups, murder, psychological warfare, and wholesale violations of the constitutional rights of Panthers and any persons thought to be associated with Panthers.[33] The Church Commitee Report states:

> "The Black Panther Party was not included in the first two list of primary targets... because it had not attained national importance. By November, 1968, apparently

[33] Church Committee Report Book III, p. 185-224. "F.B.I.'s Covert Action Program to Destroy The Black Panther Party.

> the Black Panther Party had become sufficiently active to be considered a primary target. A letter to certain field offices with Black Panther Party activity dated November 25, 1968, ordered recipient offices to submit imaginative and hard hitting counter-intellience measures aimed at crippling the Black Panther Party." Proposals were to be received every two weeks. Particular attention was to be given to capitalizing upon the differences between the Black Panther Party and U.S. Inc. .. which had reached such proportions that it is taking on the aura of gang warfare with attendant threats of murder and reprisals.[34]

Within days of this memorandum, F.B.I. agents commenced a constant series of lawless actions against Panther Party members including Petitioner Pratt. The F.B.I. in the Los Angeles and San Diego area didn't waste anytime in attacking the Panthers. The Church Committee Report reveals:

> "Similarly, in Southern California, the F.B.I. launched a covert effort to create further dissension in the ranks of the Black Panther Party.
>
> ...F.B.I. officials were clearly aware of the violent nature of the dispute, engaged in actions which they hoped would prolong and intensify the dispute, and proudly claimed credit for violent clashes between the rival factions which, in the words of one F.B.I. official, resulted in shootings, beatings, and a high degree of unrest.[35]

As the fall days of 1968 dawned, the F.B.I. began to pursue the Panther Party and their members with a vengence that

[34] Ibid. page 22.

[35] Ibid. page 188.

causes rational persons to question the civilized nature of those in charge of directing and managing the Bureau, (F.B.I.), In September, 1968, Mr. G. C. Moore, F.B.I. Official, forwarded a memorandum to the F.B.I. second in command, W. C. Sullivan which stated:

> "It therefore, is essential that we not only accelerate our investigation of this organization and increase our informants in this organization, but that we take action under the counter-intelligence program to disrupt this group."[36]

Another such memorandum was issued on September 30, 1968 which states:

> "It is mandatory that the Counter-intelligence program against this Party be accelerated... Consideration should be given as to how factionalism can be created between local leaders as well as national leaders, and how Black Panther Party organizational efforts can be neutralized." [37]

It was sometime during the early fall that Petitioner Pratt walked into this environment of government warfare and assume the title of Black Panther Party member. Although Petitioner Pratt was unaware of it at the time, the exercise of his First Amendment right to speech and association by joining

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[36] Ibid. page 185-224

[37] Ibid. page 185-224

the Party was to seal his fate for quite sometime. Pratt immediately became a target of the F.B.I.'s counter-intelligence program. His arrest for murder was intricately tied to the counter-intelligence program tactics employed against him.

Thus far, two Courts in the California Judicial System have summarily dismissed Petitioner Pratt's claim that the F.B.I., C.I.A. and the Los Angeles Police Department (LAPDCCS) Criminal Conspiracy Section worked jointly on the counter-intelligence operation to effect his arrest, prosecution and conviction.[38] These Courts have taken a myopic view of the facts in this case. They utterly and inexplicably refuse to acknowledge that the ultimate effect of the F.B.I.'s actions violated Petitioner Pratt's due process rights and resulted in a conviction that was tainted by governmental misconduct and over zealousness in prosecution.

Before leaving the historical background of the Federal Bureau of Investigation's Counter-intelligence program, one final point should be made. In prior hearings, Petitioner

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[38] See, also, opinion of two majority of appellate judges in the Court of Appeals of the State of California.

Pratt has described the Cointelpro program in some detail. In general, this program was supposedly directed against American citizens who exercised their constitutional right to dissent from the policies of their government. More importantly for purposes of this Writ, it must be understood that the F.B.I. and C.I.A.'s counter-intelligence program was aimed at one specific ethnic group in particular. In order to appreciate the viciousness, sinisterness, perniciousness and rank perfidly of the F.B.I.'s counter-intelligence program, one must be poignantly aware that the F.B.I. actually conducted warfare against a specific race of people in contravention of the United Nations Declaration of Human Rights and International Treaties on genocide. Petitioner Pratt is a Black male citizen of the United States. By virtue of his skin color, Petitioner Pratt became a target of the Federal Bureau of Investigation for neutralization and/or elimination.[40] As sordid as the statement sounds in a

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[40] This is, of course, in violation of the 13th Amendment to the Constitution.

democratic society, it is a fact that race is still a factor in determining who will reap the benefits of this society. Finally, Cointelpro is and was a manifestation of this country's legacy that has allowed the law to be used as an instrument to oppress and dehumanize the rights of a people in the name of freedom, justice and equality. See Roberts v. City of Boston 59 Mass. 198 (1850), Dred Scott v. Sanford, 19 How. 393 (1857) (affirming Blacks as chattel or property instead of human beings); Civil Rights cases 109 U.S. 3 (1887) (Supreme Court stops federal protection of Black's civil rights); Ward v. Flood 48 Cal 36 (1874) upholding segregation in public schools; See also, People v. Gallagher 93 N.Y. 438 (1883); Williams v. Mississippi, 170 U.S. 213 (1897); Supreme Court upholds Mississippi law disfranchising Blacks; Louisville, New Orleans and Texas Railway v. Mississippi, 133 U.S. 587 (1890); Supreme Court upholding racial apartheid on trains; Plessey v. Ferguson, 163 U.S. 537 (1896), Supreme Court upholding racial apartheid in all aspects of American life; See, also, Berea College v. Kentucky, 211 U.S. 26 (1908)

racial apartheid in education; Corrigan v. Buckley, 271 U.S. 323 (1926) Supreme Court uphold racially restrictive covenants; Grovey v. Townsend, (1935); Supreme Court upholds White primary; Trudeau v. Barnes, 65 F.2d 563, (5th Cir. 1933); Circuit Court upholds literacy test to prohibit Blacks from exercising their right to vote. The following cases are involving Blacks and (legal) racism. See, also, Scott v. Negro London, 7 U.S. Sec. 24 (1806), Scott v. Negro Ben, 10 U.S. 3 (1810), Wood v. Davis, (1816) U.S. Supreme Court, Antelope Case 23 U.S. 66 (1825), Boyce v. Anderson, 2 Peters 464 (1840), U.S. 14 Peters 464 (1840), Groves v. Slaughter, 40 U.S. 448 (1841), Gordon v. Longest, 16 Peters 97 (1842), Prigg v. Pennsylvania, 16 Peters 608 (1842), Smith v. Turner and Norris v. Boston 7 Howard 283 (1848), Jones v. Van Yandt, 51 U.S. 88 (1850), Strader v. Graham 51 U.S. 88 (1850), Moore v. Illinois, 14 Howard 13 (1812) and Albleman v. Booth, 65 U.S. 506 (1858). The F.B.I.'s counter-intelligence program against Blacks in particular is an outgrowth of America's history of racism, white supremacy and paranoia due to an

insecurity on the part of Whites that Blacks will eventually seek retribution against Whites for the years of racism and oppression suffered by Blacks.[41] Petitioner Pratt became a victim of the Cointelpro program which resulted in his arrest, prosecution and conviction. This program was so inextricably linked to the judicial proceeding against him in the Superior Court of Los Angeles for murder until it seemed farcial to attempt to contradistinguish what happen at Pratt's trial from the events surrounding his prosecution. Cointelpro was very much apart of the events that characterized his trial.

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[41] The fear of Black retribution against White America is evidenced by the F.B.I.'s March 4, 1968 memorandum expanding the F.B.I.'s Cointelpro program from 23 to 41 field officers. The memorandum list five long range goals. Interestingly goal number 1, was "to prevent the coalition of militant Black nationalist groups, which might be the first step toward a real "Mau Mau" in America." Final report of the Select Committee to Study Governmental Operations with Respect to Intelligence Operations p. 211. It is obvious that the F.B.I.'s reference to Mau Mau was indicative of fear that Blacks in America would attempt to attack Whites in a manner similar to the Mau Mau attacks in Kenya during the Kenyan Independence Movement.

It is obvious that the F.B.I.'s counter-intelligence program seriously impaired Petitioner Pratt's constitutional right to a fair and impartial trial. Accordingly, the operation of the Government's counter-intelligence program resulted in the suppression of material evidence that would have made a substantial difference in the outcome of his trial before the Superior Court of Los Angeles. See People v. Ruthford, 14 Cal.3d 399, 406 (1975); Giglio v. United States, 405 U.S. 150. There is ample evidence to warrant an inference that the prosecution and F.B.I. was aware that certain testimony present against Petitioner Pratt was perjured. See, Also, Napue v. Illinois, 360 U.S. 264.

Accordingly, the Petition for Habeas Corpus on behalf of Petitioner Pratt should be granted. The governments counter-intelligence program raises critical inferences of governmental misconduct which justifies this Court granting relief.

WAS PRATT DIRECTLY AFFECTED BY COINTELPRO?

Prior to the filing of Petitioner Pratt's first Petition For A Writ Of Habeas Corpus, the Petitioner had commenced two Federal lawsuits. These cases are listed as Pratt v. Rhees, et al., U.S. D. C., Northern District of California No. C 76-1069 - S.C., and Pratt v. Webster et al., No. 78-1688 U.S. D.C. for the District of Columbia. Through these two lawsuits a plethora of discovery information has been released that directly links the F.B.I. targeting Petitioner Pratt as an object of their Cointelpro effort. For example, an October 28, 1969 memo from the San Francisco field officer regarding Pratt and two other Panthers stated:

> "San Francisco will follow appropriate sources closely for additional information pertaining to above and will keep the Bureau and appropriate offices advised. All offices will be alerted for any information or situations pertaining to these active members of the Black Panthers Party mentioned above which would lend itself to counter-intelligence measures."[42]

Another document promulgated by the Los Angeles Office of

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[42] See Exhibit 15 to Petitioner Pratt's Petition For Habeas before Superior Court of Los Angeles.

F.B.I. on June 26, 1970 regarding Petitioner Pratt stated:

> "It is noted, however, that constant consideration is given to the possibility of utilization of Counter-intelligence measures with efforts being directed towards neutralizing Pratt as an effective Black Panther Party Functioning.

In January, 1970, the Los Angeles Bureau of the F.B.I. issued a memorandum proposing to issue leaflets "designated to challenge the legitimacy of the authority exercised by Pratt, Black Panther Party, Minister of Defense for Southern California."[43] In August, 1970, Los Angeles' F.B.I. sent a memo attempting to send a letter to Huey Newton discrediting and creating friction in the Black Panther Party (BPP) between Newton and Pratt.[44] The F.B.I. was essentially responsible for having Newton expell Pratt from the Black Panther Party.[45] There are numerous other documents that have been now released by the F.B.I. clearly indicating

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See exhibits attached to Petition for Habeas before Superior Court of L.A.

[43] Ibid. p. 47

[44] Ibid p. 48 Petition.

[45] Ibid. 51 Petition and exhibits.

that Pratt was a target.[46] In particular, the F.B.I. has now released documents indicating that two F.B.I. informants were part of Petitioner Pratt's defense team and that a wiretap was in the possession of the F.B.I. corroborating Petitioner Pratt's alibi during his trial for murder.[47] This information was suppressed and not provided to Pratt's attorneys during the trial. See Brady v. Maryland, 373 U.S. 83.

There isn't any doubt that Elmer Pratt was the subject of an extensive F.B.I. campaign to destroy, neutralize and disrupt Petitioner Pratt's life, before, during and after his arrest, prosecution and conviction.

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[46] See F.B.I. memos dated 1/29/71, 2/8/71, 2/9/71, 2/10/71, 2/18/71 and 2/19/71

[47] See Opinion of Court of Appeal of California. Second Appellate District.

THE PLACEMENT OF INFORMANTS IN PETITIONER PRATT'S DEFENSE CAMP OR ENVIRONS DURING THE TRIAL WHO HAD ACCESS TO ALL INFORMATION AND STRATEGY UTILIZED BY THE DEFENDANT VIOLATED PETITIONER"S SIX AND FOURTEENTH AMENDMENT RIGHTS

The California Supreme Court has definitively stated that the placing of an informant in the defense camp during a criminal trial warrants per se reversal. Barber v. Municipal Court (1979) 24 Cal. 3rd 742. The Court stated:

> "The intrusion, through trickery, of the law enforcement agent in the confidential attorney-client conferences of Petitioners cannot be condoned. The right to confer privately with one's attorney is one of the fundamental rights guranteed by the American criminal law a right that no legislature or court can ignore or violate."

This Court, (California, Supreme Court) did not qualify its holding in Barber, Supra, by requiring that actual information from the informant to the prosecution must be transmitted in order to warrant a dismissal. The placing of an informant in the defense environs seriously, if not, irreparably impairs a criminal defendant's right under the Sixth and Fourteenth Amendments to the effective assistance of counsel. It is clear in the case of Petitioner Pratt, that F.B.I. informants were in a position to report to state agencies as to the

information gleaned from discussions occuring in Petitioner Pratt's defense environs. (See dissent by Judge Dunne in, Re Pratt No. 2 Criminal Number 37534, at p. 7.)

If constitutional guarantees are to be perpetuated in the courts of this country, it is fundamental that the basic rights of criminal defendants be respected and preserved. The Supreme Court's decision in Barber leaves very little room for misinterpretation. The rule in Barber applies to misdemeanors as well as felonies.

The placing of informants in Petitioner Pratt's defense environs was one more extension of the government's Cointelpro plan to deny, abridge and abuse Petitioner Pratt's constitutional rights. The government cannot claim that no harm was done to Petitioner Pratt's Sixth Amendment right to the effective assistance of counsel. It is highly unlikely, if not improbable, that the F.B.I. did not communicate the substance of the discussions by the defense to their state counterpart.. As noted, in Judge Dunn's dissent, the Los Angeles' Police Department Criminal Conspiracy Section conspicuously failed to file an affidavit indicating that they did not receive such

information. <u>In Re Pratt</u>, Supra, p. 5. The Criminal Conspiracy Section was in charge of the Pratt investigation and prosecution.

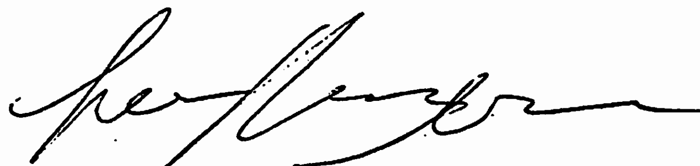
It certainly is a sad day in the annals of criminal jurisprudence when the State and Federal governemnt adopts a policy of placing informants in the defense environs of a case as if a criminal indigent defendant doesn't have enough problems in attempting to overcome the enormous imbalance of power that the State brings to a criminal prosecution in terms of resources and investigation. This Court wisely recognized in <u>Barber v. Municipal Court</u>, supra that a criminal defendant needs some means of combatting the ability of the State to play both sides of the fense. The rationale for dismissal of cases involving informants in the defense camp serves the interest of justice and guarantees that the mandates of the constitution will be preserved and protected according to due process of law.

THE FAILURE TO INFORM PETITIONER PRATT THAT PROSECUTION WITNESS BULTER MAY HAVE BEEN OR WAS AN INFORMANT VIOLATED PETITIONER"S CONSTITUTIONAL RIGHTS.

Julius Bulter was a key prosecution witness during Petitioner Pratt's murder trial in June, 1972. He denied on the witness stand that he was an informant for any governmental agency. Specifically, Bulter denied serving as an F.B.I. informant subsequent to the trial and following extensive Federal litigation, documents now reveal that Bulter was an informant for the F.B.I. These F.B.I. documents revealed that the F.B.I. had at least thirty-three (33) contacts with Butler between August 14, 1969 and April 28, 1972. During this period, Bulter in questionably supplied information to the F.B.I. regarding the Black Panther Party. At the time of Petitioner Pratt's trial, Bulter adamantly refused to divulge this information. Bulter's status as an informant was a material fact affecting his credibility at Petitioner's trial. This information should have been made known to the trier of fact. People v. Ruthford, (1975) 14 Cal. 3rd 399. Brady v. Maryland, supra.

CONCLUSION

For all of the foregoing reasons, the NATIONAL BLACK HUMAN RIGHTS COALITION appearing Amici Curiae urges this Court to grant Petitioner Pratt's Writ of Habeas Corpus.



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