

The Historical Society of the U.S. District Court for the Northern District of California presents

THE PATRICIA HEARST TRIAL: THE LOCAL LAWYERS REMEMBER

Wednesday, October 3, 2018, 4:30 p.m.

*Ceremonial Courtroom
Philip Burton Federal Building
450 Golden Gate Avenue, San Francisco*

Moderator: Hon. William H. Orrick, III, U.S. District Judge *and son of Hon. William H. Orrick, Jr., U.S. District Judge.*

Panelists:

- Hon. D. Lowell Jensen, U.S. District Judge (retired), *and former District Attorney, Alameda County.*
- Robert A. James, Esq., partner, Pillsbury Winthrop Shaw Pittman LLP, Historical Society board member, *and partner of Assistant U.S. Attorney Edward P. Davis, Jr., Northern District of California.*
- David P. Bancroft, Esq., of counsel, Sideman & Bancroft LLP, *and former Assistant U.S. Attorney, Northern District of California.*
- Ralph J. Swanson, Esq., partner, Berliner Cohen LLP, *and 1975-76 clerk to Hon. Oliver Carter, U.S. District Judge.*

Timeline, trial transcript excerpts and docket citations compiled by Robert A. James.

But for—this is the test—but for the kidnapping there would be no bank robbery. ... What is the right to live? How far can you go to survive? The big question is, and we don't have it in this case, thank God, can you kill to survive? Does one have an obligation at some point to die? ... We all have a covenant with death. We're all going to die and we know it. And we're all going to postpone that date as long as we can.

—*F. Lee Bailey*

I hope you decide this case on the facts, because that is, frankly, where it's at. ... A person who is in fear of being killed by her captors does not, when confronted with an opportunity to escape from the captors, fire weapons in the direction of other persons in order to free the captors, and does not fail to escape, given an opportunity to escape, or at least an opportunity to get word to somebody other than the captors. ... It's too big a pill to swallow, ladies and gentlemen, it just does not wash. I ask whether you would accept this incredible story from anyone but Patricia Hearst, and if you wouldn't, don't accept it from her either.

—*Jim Browning*

I got letters, not from local people so much, but from people all over the world... [The public reaction was] just what you would think. Both: "The only reason that she got seven years and wasn't treated like other criminals was because she had a wealthy family." Or: "What right have you to sentence a daughter of the great benefactors of California, the Hearst family." The whole gamut.

--*William H. Orrick, Jr.,*

<https://archive.org/details/calipolkennedy00orrich>

SYMBIONESE LIBERATION ARMY TIMELINE

1970-1972: Vacaville prisoner Donald deFreeze meets Berkeley students Willie Wolfe, Russ Little and others.

Mar. 1973: deFreeze escapes from Soledad prison, connects with students.

Nov. 1973: Oakland Schools Supt. Marcus Foster murdered in ambush by deFreeze, Patricia Soltysik, Nancy Ling Perry, Joseph Remiro and Little. First communique of the Symbionese Liberation Army (SLA).

Jan. 1974: Remiro and Little arrested with murder weapon. Prosecution by Alameda DA Lowell Jensen, after venue changed to Sacramento.

Feb. 1974: deFreeze, Wolfe, Soltysik, Perry, Angela Atwood, Camilla Hall, Bill Harris and Emily Harris kidnap Patricia Hearst in Berkeley. First tapes demanding multi-million dollar food giveaway.

Mar. 1974: Chaotic \$2 million food giveaway. Tape: "I have chosen to stay and fight ... I have been given the name Tania." Iconic photograph with gun in front of cobra flag.

Apr. 1974: SLA robs SF Hibernia Bank branch of \$10,660.02, wounding two; surveillance photos of Hearst with gun. She goes from being a crime victim to being on FBI's Most Wanted List.

May 1974: In south central LA, Harrises and Hearst engage in shoplifting and gunfire at Mel's Sporting Goods and getaway carjackings. Rest of SLA dies next day in live-televised fiery shootout with LAPD SWAT (who do not know whether Hearst is in the safehouse). Eulogy tape: Hearst mourns Wolfe and his "old McMonkey."

1974-1975: Harrises, Hearst and others on run and in hiding in NY, Pennsylvania, Las Vegas and Sacramento.

Feb. & Apr. 1975: Bank robberies, including Carmichael Crocker Bank branch where customer Myrna Opsahl is killed and Hearst is in getaway car.

Sept. 1975: After police car bombings in LA and Bay Area, Hearst and others arrested in SF (Hearst gives occupation as "urban guerilla"). Arraigned in federal court for bank robbery and use of weapon in commission of a felony, initially represented by Vincent and Terrence Hallinan.

Oct. 1975: Defense counsel F. Lee Bailey and Albert Johnson. Prosecution US Attorney Jim Browning, David Bancroft, Steele Langford, and Ed Davis. Trial judge Hon. Oliver Carter, clerks Robin Donoghue and Ralph Swanson.

Feb. 1976: The Patricia Hearst trial opens in the Northern District ceremonial courtroom.

Mar. 1976: Guilty verdict. Judge Carter dies in June. Judge Orrick Jr. denies post-trial motions, imposes 7 years' sentence in September.

May 1977: LA Superior Court Judge E. Talbot Callister sentences Hearst to 5 years' probation for Mel's shootout.

May 1978: After Ninth Circuit affirms Judge Orrick (Nov. 1977) and Supreme Court denies certiorari (Apr. 1978), Hearst enters Pleasanton federal prison.

Nov. 1978: Jonestown mass suicide in Guyana, affecting views of many on psychological coercion.

Jan. 1979: President Jimmy Carter commutes Hearst sentence to time served (22 months).

Jan. 2001: President Bill Clinton pardons Hearst.

Remiro, Little, Harrises and others also arrested and convicted over the years. All but Remiro are now free or deceased.

Closing argument of U.S. Attorney James Browning, Jr., United States v. Patricia Campbell Hearst (N.D. Cal.), March 18, 1976.

... Ladies and gentlemen, we expect that Judge Carter will instruct you as to what the elements of the crime of bank robbery are. Essentially, there are four elements. It is incumbent upon the United States to prove that somebody took some money from a bank. That this taking—and this is the second element—was accomplished by means of force, violence or intimidation. Thirdly, as alleged in this case, that the taking of the money by force, violence, or intimidation was accomplished by an assault or by the use of a dangerous weapon. Fourthly, that the acts have been done willfully.

I will submit to you, and I think there is no question from the defense about this, that there is really no real dispute in this case as to the first two elements. ... As to the third element, there has been some question raised as to the operability of the weapon the defendant had at the time. I suggest to you that, for purposes of this third element, independent of her intent, ... the operability in this case is immaterial. This is true inasmuch as even if the weapon that the defendant had on April 15, 1974, were found to be inoperable, and we do not concede that it was inoperable, the evidence shows that the defendant aided and abetted others who most certainly did have operable weapons. ...

So the sole question that it boils down to, as I think Judge Carter himself has told you, probably will tell you again, basically is whether the defendant was in that bank on April 15, 1974, voluntarily and whether she acted willfully with a general willful criminal intent. ...

The burden is on the government, there is no question about that, to prove the case beyond a reasonable doubt. But I want you ladies and gentlemen to be very clear that the doubt we're talking about here is a reasonable doubt. It is not a possible doubt, because everything open to human affairs is open to some possible or imaginary doubt. It's a doubt based upon reason. And I would like you, ladies and gentlemen, to start thinking in terms of what is reasonable in this case. What is reasonable to a reasonable man or a reasonable woman, which I hope and trust each and every one of you is and are.

First, let's consider, ladies and gentlemen, the evidence in this case of the defendant's apparent voluntary participation. [*Look at her in the motion pictures,*] swinging the weapon at the customers when they came in the door almost immediately, and under such circumstances that it is unlikely that anyone was forcing her to do anything at that particular time. ...

[Commentary on evidence: Listen to her voice in her tapes and what she said. Look at what she wrote in her memoir drafts. Look at the positions where the other robbers were standing who were supposedly guarding her, and how they would have killed each other if they had shot at Hearst.]

The circumstantial evidence, the surrounding circumstances, is very important in this case. Incidentally, ladies and gentlemen, the law makes no distinction between direct evidence and circumstantial evidence as a means of proof. You know, I think there is a popular misconception among non-lawyers that circumstantial evidence is no good. That is not what the law says at all.

Circumstantial evidence is probative evidence, the law makes no distinction between direct evidence and circumstantial evidence. It is what convinces you, ladies and gentlemen ...

The most crucial segment of circumstantial evidence in this entire case, ladies and gentlemen, I suggest to you, is the events at Mel's Sporting Goods Store and the following day and night in Los Angeles on May 16 and 17 of 1974. Why? Well, first of all, I suggest that it is reasonable to believe that a person who is in fear of being killed by her captors does not, when confronted with an opportunity to escape from the captors, fire weapons in the direction of other persons in order to free the captors, and does not fail to escape, given an opportunity to escape, or at least an opportunity to get word to somebody other than the captors. ...

[Commentary on evidence: Look at her picking up a gun, firing the gun until it ran out of ammunition, picking up a second gun, and firing that gun.]

I suggest to you, ladies and gentlemen, the evidence shows, the physical evidence, that she aimed directly at Mr. Stewart and the others that she saw, and it's only by the grace of God that others were not killed. And then she attempts to explain this by telling us that it was simply sort of a reflex action. Well, if that is true, ladies and gentlemen, there were three reflex actions on that occasion. ... Finally, ladies and gentlemen, don't forget that the defendant told Tom Matthews that evening or that afternoon, that very same afternoon, that it gave her a good feeling to see her comrades—and Mr. Matthews said that was the exact word that she used, her comrades,—came running across the street.

[Commentary on evidence: Look at her writing Patria o Muerte on the Golden Gate Avenue apartment wall. Look at her standing solitary guard 20 to 26 times. Look at her counting the money. Look at her fleeing the scene of the crimes.]

She was finally arrested September 18th, 1975. You might say she didn't call us, we called her. ...

Now, ladies and gentlemen, let me say a few words at this time about the psychiatric testimony in this case. First of all, the defendant is not attempting to convince you, as I understand the defense, that she was suffering from any mental [defect] which would preclude her having the ability in law to be mentally responsible for her facts. ... It is simply, in short, not an insanity defense in this case. ...

You are free to accept or reject the opinion of an expert witness, a psychiatrist. The psychiatrists weren't there at the bank robbery, they weren't there at Mel's, they don't have any ability to unscrew the top of a person's head and look in and take a picture of what the intent was any more than you or I do. ... We've heard basically from three psychiatrists. We've heard from the defense and we've heard from the prosecution. They are opposed, the three from the defense and the two from the prosecution, in their conclusions. Their conclusions certainly are diametrically opposed, you might say. You might consider it sort of a wash transaction, one side washes out the other.

I hope you decide this case on the facts, because that is, frankly, where it's at. A duress defense is what is being proposed to you in this case. That she was under physical duress. That somebody was threatening to kill her unless she robbed that bank, and that she was imminent fear of death or great bodily injury as a result of those threats. That is the defense. You don't need to be a psychiatrist to tell you whether that is true in this case or not. You can decide that as well as anybody, else can, and I certainly encourage that you do it without too great a reliance on psychiatric testimony.

As I understand the defendant's defense, she does not claim to be brainwashed, mentally coerced or her mind controlled, et cetera, at the time of the robbery. She does claim that she was coerced. Now, apparently, the talk about mind control, psychological coercion, et cetera, et cetera, et cetera, certainly, you heard enough of it. Apparently it was injected in this case by the defense in the hope that if duress does not stick to the ceiling, maybe something else will. I urge you not to be misled by that, because ... brainwashing and duress are totally inconsistent concepts. If a person is brainwashed, there is no need to coerce her physically, because that person does what that person is told to do. ...

[The doctors called by the defense referred to the defendant as "the patient," and are] used to treating individuals who come to them for assistance, and obviously you believe what the patient tells you in trying to help him, [not] persons charged with criminal offenses who often not only have motivation to lie in what they tell the doctor, but who often do, in fact, lie in what they tell the doctor. ... The doctors are basically professorial and literary people. ... A doctor who is a specialist tends to find his own specialty in a patient to one degree or another. [The doctors gave the SLA too much credit for its] pompous rhetoric, designed to dazzle the media. ...

[Extensive commentary on testimony of psychiatrists and comparison with defendant's own testimony.]

[Commentary on other evidence: Look at the defendant's statements in her affidavits, which she has recanted. Look at her taking the stand and then refusing to answer questions on the ground that it might incriminate herself. Look at her drawing of the layout of another bank they contemplated robbing. Look at her not seeking to escape or get word to her family. Look at her conversations in jail with her friend Trish Tobin.]

[Look at the discrepancy because a defense witness identified Hearst rather than DeFreeze as having a banana ammunition clip in her gun.] Wouldn't you be able to tell whether it was a man or a woman? I don't think any great sophistication is required to know whether a person is a male or a female, even on Polk Street. ...

Finally, ladies and gentlemen, I want to talk just a bit about the defendant's testimony concerning the alleged forced sexual intercourse or rape by Willie Wolfe. ... She says, "I couldn't stand [Wolfe]," ... that he had in fact raped her, ladies and gentlemen. On the occasion of her arrest, she had this little stone face in her purse that Willie Wolfe gave her over a year and a half after he raped her, according to her. She couldn't stand him, and yet there is the little stone face that can't say anything, but I submit to you, can tell us a lot. You may recall her voice on tape saying, "The pigs probably have the little old monkey that Cujo (Willie Wolfe) used to

wear around his neck. He gave me the little stone face." Well, the police did recover the little old monkey and that's in evidence, ladies and gentlemen, as No. 178. ...

In short, ladies and gentlemen, we ask you to reject the defendant's entire testimony as not credible. She asks us to believe that that she didn't mean what she said on the tapes. She didn't mean what she wrote in the [memoir draft] documents. She didn't mean it when she gave this power salute, this clenched-fist salute after her arrest. That was out of fear for the Harrises, she tells us. She didn't mean it when she told the San Mateo County Deputy Sheriff that she was an urban guerrilla, that that was her occupation. She says her statement was simply a sort of a shrug-of-the-shoulders type of thing. She says the Tobin conversation wasn't the real Patricia Hearst. The Mel's shooting incident was simply a reflex, ladies and gentlemen, the untruths in the [Hallinan] affidavits simply some attorney's idea. She was in such fear she couldn't escape in nineteen months while crisscrossing the country, or even get word to her parents or someone else. The confession to [Tom] Matthews was recited out of fear. She couldn't stand Willie Wolfe, yet she carried that stone face with her until the day she was arrested.

It's too big a pill to swallow, ladies and gentlemen, it just does not wash. I ask whether you would accept this incredible story from anyone but Patricia Hearst, and if you wouldn't, don't accept it from her either.

Ladies and gentlemen, the jury has a very big role to play in our criminal justice system, and in protecting the integrity of our criminal justice system. The lawyers try to do their jobs, the FBI tries to do its job, Mr. Bailey tries to do his job. I think he's done it very well. But the system won't work unless you conscientiously do your job, too, and if you believe the defendant, Patricia Hearst, in this case voluntarily joined the SLA and committed that bank robbery, and that the evidence points to that—I don't see what alternative you have other than to find that—then we ask that you convict her of the bank robbery. We ask that you not consider punishment, because that's not within your purview, that's up to the Court, the Court will so instruct you. And we leave you with this thought, ladies and gentlemen, which is from several cases quoted by the United States Supreme Court. "The doctrine of our criminal justice system is that guilt shall not escape or innocence suffer." Thank you very much for your patience.

United States v. Patricia Campbell Hearst

1. 412 F.Supp. 858 (N.D. Cal. Nov. 7, 1975) (**O. Carter, J.**) (Hearst competent to stand trial)
2. 412 F.Supp. 863 (N.D. Cal. Dec. 19, 1975) (rulings on 12 pretrial motions)
3. 412 F.Supp. 871 (N.D. Cal. Jan. 16, 1976) (Dr. Kozol may remain on case)
4. 412 F.Supp. 873 (N.D. Cal. Feb. 2, 1976) (individual *in camera voir dire* of potential jurors)
5. 412 F.Supp. 877 (N.D. Cal. Feb. 9, 1976) (simultaneously charging bank robbery and use of firearm in commission of felony is not double jeopardy; references in opening statements to Tobin jail conversation tape and to psychiatric testimony are not barred)
6. 412 F.Supp. 880 (N.D. Cal. Feb. 17, 1976) (statements made on tapes and in Thomas Matthews conversation were not involuntary, and hence are admissible; Los Angeles evidence admissible because relevant to proficiency with weapon held in earlier San Francisco robbery)
7. 412 F.Supp. 885 (N.D. Cal. Feb. 23, 1976) (having elected to testify about March 1974-September 1975 activities, defendant cannot limit scope of relevant cross-examination)
8. 412 F.Supp. 888 (N.D. Cal. Feb. 23, 1976) (tape of Tobin jail conversation admissible)
9. 412 F.Supp. 889 (N.D. Cal. Feb. 26, 1976) (experts for coercion or duress admissible)
10. 412 F.Supp. 891 (N.D. Cal. March 4, 1976) (Hearst lacks standing to challenge search of Harris' apartment)
11. 412 F.Supp. 893 (N.D. Cal. March 22, 1976) (psycholinguistic testimony of Dr. Singer excluded)
12. 424 F.Supp. 307 (N.D. Cal. Nov. 19, 1976) (**Orrick Jr., J.**) (*Brady* motion re exculpatory evidence (LA witnesses who said Bill Harris, not Hearst, approached with weapon) denied, new trial motion denied)
13. 424 F.Supp. 318 (N.D. Cal. Nov. 19, 1976) (setting bail and release conditions)
14. 435 F.Supp. 29 (N.D. Cal. Feb. 11, 1977) (delayed motion for reconsideration denied)
15. 563 F.2d 1331 (9th Cir. Nov. 2, 1977) (per curiam) (affirming 424 F.Supp. 307 and 435 F.Supp. 29)
16. 573 F.2d 579 (9th Cir. Jan. 4, 1978) (per curiam) (denial of rehearing en banc)
17. 435 U.S. 1000 (April 24, 1978) (denial of certiorari from 563 F.2d 1331 and 573 F.2d 579)
18. 466 F.Supp. 1068 (N.D. Cal. Nov. 7, 1978) (denial of federal habeas relief without hearing for pretrial publicity, admission of Tobin tape, and ineffective assistance of counsel due to book conflict of interest and various strategic decisions)
19. 638 F.2d 1190 (9th Cir. Oct. 17, 1980) (**Choy, J.**) (466 F.Supp. 1068 generally affirmed, but reversed and remanded for hearing on ineffective assistance of counsel issue stemming from book conflict of interest, allegedly influencing decisions not to seek continuance, not to change venue, and to put witness on stand thereby waiving privilege) (no reported opinion on remand from 638 F.2d 1190)
20. 451 U.S. 938 (April 27, 1981) (denial of certiorari from 638 F.2d 1190)