

Angela Davis and the Bail System

Part 2/2/72

Angela Davis is free on bail after sitting in jail for 16 months, having been convicted of no crime at all. This turn of events came about because the California bail statute presumes that a person against whom the state has amassed "any substantial evidence," whatever that means, of the commission of a capital offense, might prefer to flee and forfeit bail rather than face the gas chamber after trial. Now that the California Supreme Court has ruled the death penalty unconstitutional under the California Constitution, the presumption under which Miss Davis was held has evaporated and she is free.

All this must be a great comfort to her family, her lawyers and her friends, who have watched her health fail, her teeth deteriorate and her eyesight dim because of the conditions of her various incarcerations and the limited access that doctors and dentists have had to her. And it must be a real boost to her defense team, which has seen her under conditions which have made the preparation of her defense much more arduous than it would have been had they had easy and normal access to her. Finally, Miss Davis' own state of mind must be substantially eased as she gains some liberty just before she faces the most stressful period of her life.

But the jubilation of Miss Davis and her supporters buries more fundamental issues about the use of bail in the criminal justice system of this country. There is a general impression that the bail reform movement, which we heard so much about a few years ago, really worked. It didn't. The original, essential and sole purpose of bail was to permit accused persons who were unlikely to flee in order to avoid trial to maintain their freedom to live and to work and to prepare to defend themselves against charges of which they are presumed to be innocent. Bail was to be denied only to those who seemed likely to run away.

But over the years, the system has become freighted with other problems and other issues.

The courts and the society have come to believe that there are some people who are so dangerous that it is better to separate them from society even before trial, for the protection of the people. Rather than facing this problem squarely, however, courts and prosecutors have bastardized the bail process in order to enable the criminal justice system to detain preventively, those who appear to the judge and the prosecutor to be too dangerous to be set loose while awaiting trial. There can be reasonable debate about whether preventive detention is ever a good idea and if it is, what procedures should be followed and what standards should be applied in order to determine who should be detained and who should not. But the criminal justice system has avoided that course for the easier path of demeaning the bail process and limiting its value for all.

We have had that kind of debate here in Washington over the District of Columbia Court Reform and Criminal Procedure Act of 1970. That act established detention standards and procedures which provided for the protection of society, speedy trial for those detained and relief of the bail system from unnecessary and burdensome freight. In this respect, the District is far ahead of any other jurisdiction in the United States.

In the rest of the country, however, the courts have become more crowded and the jails have deteriorated. Thus, people who cannot make bail or who are denied it are forced to wait great lengths of time in often inhuman places for trials which are endlessly delayed in a system that is now so creaky that it no longer deserves to have justice in its name. And most of those waiting in squalor and degradation are, unlike Angela Davis, unsung, forgotten and probably substantially more frightened than she must have been.

Although Angela Davis' sympathizers must be buoyed by the fact that her 16 months is over, no American who cares about the quality of our civilization can rest easy until the kinds of issues her bail motions have presented are faced by criminal jurisdictions throughout the country.