

THE DATE IS June 8, 1970. The place is the hospital ward of a jail at Santa Rita, Calif., operated by the county of Alameda. On bed 10 lies a one-legged black man, slowly recovering from an attack of alcoholic delirium. Also on the bed is a kitten and a large bed caster.

About 10:30 that night the ward lights suddenly flash on. Four armed men burst into the room and approach bed 10. One rushes to the foot of the bed and levels a revolver at the patient's head. Another, carrying a shotgun, shouts a brusque command. As the patient half rises, supporting himself on his left elbow and shielding his body with his right arm, the man with the shotgun fires. The blast shatters the patient's right arm and perforates his one intact leg. The interposed arm has saved the man's life.

Three months later, on Sept. 8, the victim has recovered sufficiently to leave the hospital temporarily and face his assailants in a courtroom. But the victim is not asked to testify, only the assailants. Their testimony is available in a public document titled "Preliminary Examination of Willie Fulbright in the Justice Court for the Pleasanton Judicial District, County of Alameda." The record does not tell of the assailants being charged with anything. Rather, it describes how, on that June night, Willie Fulbright, serving a 30-day sentence for drunkenness, did, while lying in his hospital bed, deliberately and with malice, violate section 69 of the California penal code—resisting four sheriff's deputies with "fear, force or violence" by pointing at them an object they had reason to believe was a lethal weapon: a bed caster. Indeed, the judge charged Fulbright with two counts of this felony, set bail at \$5,000 and remanded him to a county hospital, in the custody of the same sheriff's department which had almost killed him. There Fulbright remained, under day and night guard, for two months.

The case of Willie Fulbright and

Willie Fulbright and the Fearsome Bed Caster

By Richard R. Korn

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the fearsome bed caster might have remained in total obscurity if not for a deputy probation officer named Sharon Damron. Miss Damron had long been concerned about the plight of her clients confined at Santa Rita, and when she learned of Fulbright's experience she began a campaign to interest others in the case. She gained the support of a handful of people—and in the process was fired from her job by Alameda County's chief probation officer, James Callahan.

Deal Offer Reported

ON NOV. 11, the Damron group provided surety for the bond, bailed out Fulbright and created a modest defense fund that raised only about \$100, far short of the costs it anticipated. The first thing the group did was to have Billy (he prefers Billy to Willie) examined by a private physician, who kept Fulbright in his home until he could be placed in a veterans' hospital. The doctor determined that swift hospital care was the only alternative to amputating the arm.

Then Billy placed his case in the hands of two experienced criminal lawyers. On March 23, 1971, Billy Fulbright filed suit against the police and prosecutor of Alameda County and its Board of Supervisors, charging a con-

spiracy to violate his civil rights and seeking damages of \$750,000. Another damage suit was filed in state court by a separate group of lawyers.

By this time there had been considerable press coverage and, according to Philip Ryan, one of Fulbright's lawyers, the county had tried to make a deal. Ryan reported that Assistant District Attorney John Taylor, speaking on behalf of the county prosecutor, Lowell Jensen, offered on Nov. 12, 1970, to dismiss all criminal charges if Fulbright would "sign a written promise absolving the county of any civil liability." Fulbright's attorney said he rejected the offer as "improper and extortive." Later he reported a renewal of the Taylor offer on Jan. 21, 1971. Again, he said he rejected it. On March 23, the day Fulbright's civil suit was filed in federal court, California Rep. Ronald V. Dellums addressed an open letter to Gov. Ronald Reagan and state Attorney General Evelle Younger. The congressman charged that "Mr. Fulbright is being prosecuted, in part, because he refuses to surrender his constitutional right to redress of grievances." But nothing came of Dellums' protest.

The county's next tactic was delay, presumably in the hope that the Ful-

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By Eva Korn

Fulbright after the shooting.

bright suit still might be dropped. The prosecutor's office did not press for a trial date. Intent on developing its own civil action, the defense did not press the county either. But time was passing, and time was not on the side of Billy Fulbright.

An Embarrassing Failing

THE SUMMER OF 1971 saw the tragedy of Attica and the killing of George Jackson. The Soledad Brothers were fighting their pre-trial battles in the case they eventually won. Angela Davis was in custody in Marin County. A coalition of black and white liberals and militants intent on defending young blacks fighting for their lives with guns was losing interest in a middle-aged, black alcoholic facing trial after he himself had been shot up for allegedly pointing a bed caster.

Billy's own attitude didn't help matters. Born and raised in the improbable town of Detroit, Tex., Billy has what some consider an embarrassing failing: He has a high regard for white people. And when he was not catching his mixed audiences off guard by telling them how tenderly he was raised by the family of future Vice President John Nance Garner—who, he insists, stood up as his godfather at his christening—he would be surprising them by describing how kindly he had been treated by the Texas Rangers, when he had had some scrapes with the law in Texas. (Billy's later career is less remarkable. He did his stint in World War II, serving in the Pacific theater and receiving an honorable discharge in 1946. A few years later he lost his left leg in a car accident, and began doctoring himself with the bottle.) Such attitudes, to say the least, did not attract activists to his side.

By the early spring of 1972, then, much of Billy's support had faded. When finally, on March 22, more than a year and a half after his shooting, he was called to face his accusers, there were only three sympathizers among the courtroom spectators.

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The prosecution's first witness was Sheriff's Deputy Jerome Goch, the first officer to have contact with Fulbright on the night of the shooting. About half an hour before Billy was shot, Goch entered the hospital barracks to take the usual body count. Suddenly, he testified, an inmate playing dominoes "told me that a man behind me had a gun and that he was going to shoot." Goch said that he first thought the inmate was kidding, because he heard laughing, so he continued taking the count. Then he turned around and saw an inmate pointing an object at him. The inmate then said, "Yes, I have a gun, and it's no mother— toy." Goch then put his hands up, he said, and backed out of the barracks.

When it came time for the defense to reconstruct this encounter, the context was very different:

When Goch first entered the barracks, he seemed in high spirits. He began swapping wisecracks with the inmates, who responded in kind. Earlier that day, Billy had picked up a bed caster and stuck it in his belt. The barracks trustee got another bed caster for himself and, from time to time, Billy and the trustee would whip out their casters and go "bang, bang" at each other. The sight of Billy whizzing around the barracks in his wheel chair, impersonating the meanest gun in the West, amused the inmates. So when Goch came in and started kidding, they decided to get in some licks of their own. With another inmate giving him the cue, Billy went along with the joke.

But suddenly the whole thing turned sour. Either the kidding got on Goch's nerves and he decided to go back to being a deputy again, or he "freaked out." The defense was not sure. One thing is certain: After he left, Goch did not immediately go toward the front office. Instead, he began to walk toward the next barracks he was scheduled to count. (Goch explained this by saying that his first thought was to inform the front office by telephone, but that he then decided to tell his superiors in person.)

The prosecution's version of what happened next was presented by Sgt. Francis Perry, Goch's superior. On hearing Goch's story, Sgt. Perry said, he ordered Goch and another deputy to accompany him to the hospital barracks. Perry did not order the others to arm themselves, nor did he arm himself.

They entered the barracks and Perry heard a "voice": "I'm a bad-assed mother— and I'm going to shoot some-

body." Perry described Fulbright as "exiting from the bed and leaning against the side of the bed in a crouched-over position holding an object at me," pointing it "in a threatening manner." He then asked Fulbright to "step outside where we can talk about it." The one-legged Fulbright, according to Perry, said he was not going anywhere. All three deputies then backed out the door, and Sgt. Perry remaining behind, told the other two to return to the front office and inform the watch commander, Lt. Jack Baugh.

The Shooting

LT. BAUGH CONTINUED the account. Believing Goch's original report to have been corroborated, Baugh said, he armed himself with a shotgun and ordered the others to arm themselves as well. Deputy Paul Pappas now joined the group, and they all ran back to the hospital barracks. Baugh said he ordered them not to fire their weapons "unless they felt their lives or my life was in danger from Mr. Fulbright."

When they entered the barracks, Perry switched on the lights. Fulbright was in bed, the covers up to his knees. (The law officers said they did not notice Fulbright's leg amputation). One deputy, running to the foot of Fulbright's bed, did not throw himself on the prone figure; rather, he leveled his revolver at Fulbright's head and waited.

Lt. Baugh said he came within 12 to 15 feet of Fulbright's bed, then stopped. A third deputy moved to Baugh's left, stationed himself, and also waited. Lt. Baugh then shouted, "Freeze! Don't move a muscle." According to Baugh, Fulbright rolled to his right, groped about as if reaching for something, but came back empty-handed. Then Fulbright rolled toward his left, Baugh said, reached under his pillow and came up with "an object." Lt. Baugh added that he waited for Fulbright to move the object until it was pointing directly at him, and then Baugh fired. Billy slumped on the bed and Baugh rushed over to him. Expecting to find a gun, he discovered the bed caster. Holding it up, he said, "What the f— is this?"

It is not impossible, of course, that Lt. Baugh did think he saw Billy holding an object and that he did believe it to be a gun. In moments of fear, such things can and do happen, and usually result in overreaction. This phenomenon should not be unfamiliar in a country that has undergone a Mylai, a Chicago 1968, an Attica. It is certainly

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Drawing by William Perkins—The Washington Post

not unfamiliar to the Alameda County sheriff's department.

Two years ago, for example, helmeted deputies from Santa Rita were on Telegraph Avenue in Berkeley during the People's Park disturbance, looking up toward a rooftop lined with taunting youths. Some rocks had been thrown, and a young man named James Rector lifted his arm as if to throw another one. The deputies fired. A few days later, after Rector died, an aghast medical examiner announced

that Rector had been struck by double-O buckshots. Sheriff Frank Madigan at first hotly denied that any of this lethal ammunition had been fired. But then he amended his recollection: It had been necessary to issue the buckshot "because the deputies had run out of birdshot." In explaining his men's actions, the sheriff repeatedly made the point that they had opened fire because they believed their lives were in danger.

The shooting of Billy Fulbright,

then, could conceivably be explained as an over-reaction in a moment of fear. But it is not as understandable why, if in such fear, Lt. Baugh and his men did not subdue the one-legged Billy in his bed, instead of standing nearby and aiming weapons at him as they had testified. And it is not as understandable why, once they shot him and found the bed caster, the county should press felony charges against him, unless perhaps so it could offer to drop the charges if suits were filed against the county.

Objection Sustained

THE DEFENSE'S attempts to shake the prosecution witnesses floundered against a monolith of consistency. Did any of the deputies remember seeing Fulbright before? No. Did anyone, during the half-hour interval between the first report by Goch and the shooting by Baugh, take the trouble to look up Fulbright's records, easily available in the front office? No. Were any of them aware that Fulbright had been confined at Santa Rita on 18 separate occasions prior to his last sentence? No, they were not aware. Well, how many one-legged black alcoholics are there at Santa Rita? Objection! Sustained. The prosecution rested.

The defense's resources were limited. Many former inmates had scattered. Some were back in Santa Rita; others languished in other jails. Many were fearful of testifying. When it came down to the wire, all the defense could rely on was the defendant and one other witness, a former Santa Rita inmate named William Dellaria. A third inmate, old and ailing, became ill while waiting to testify and was excused.

Billy Fulbright, now 50 years old, testified from his wheel chair. Despite surgery on the arm that was shot, he cannot use it anymore and it may ultimately have to be amputated anyway, which bothers Billy mainly because he no longer can put on his artificial leg by himself.

Billy acknowledged Sgt. Perry's visit, recalled the sergeant's request that he step outside, and remembered that he refused to comply. But he denied that he pointed anything at Perry or that he cursed. His recollection of the later shooting had to be retrieved from a memory blurred by agony. Hearing Lt. Baugh's terse command, Fulbright said, he found himself staring at a shotgun. All he remembered, he said, was twisting away from the line of direct fire and putting his right arm and knee between his body and the direction of the blast.

The next witness, Dellaria, was of little help. The prosecution had not yet

finished with him when the court adjourned for the day. The next morning, Dellaria did not return. The judge became indignant, threatening to haul him back with a bench warrant. The jurors, filing out for a recess of unknown duration, exchanged knowing glances. A flurry of phone calls failed to locate the missing witness. His parents disclaimed knowledge of his whereabouts. But a hastily dispatched messenger finally located him—in his own bedroom. It was already late afternoon. Dellaria said he had overslept. Dellaria's testimony was minor, but his temporary disappearance did not help Billy's case.

Inmates vs. Officers

THE DEFENSE now had to rest its hopes on its final summation. Fulbright's young attorney, Peter Keane, reviewed the evidence, appealing to the jury's sense of human proportion, and a new point was made. Suppose one believed the deputies. Suppose Billy really tried to convince them that he had a gun. Suppose he even succeeded. What could have been on his mind? What would Billy be trying to do, threatening armed men with a bed caster? There is only one plausible explanation, Keane said: He would have been trying to get himself killed. Even if you believed the prosecution's case, he remarked, you must conclude that Fulbright was at least temporarily insane. And if Billy had been insane, he would have to be found not guilty.

In his own summation, the prosecutor made much of the unreliability of inmate character and credibility. Is the word of known offenders to be taken over that of trusted police officers? Could these officers have any reason to assault one of their own prisoners except as a last resort, except if they believed their lives were endangered? The prosecutor concluded with another piece of information: Fulbright had a suit still pending in the courts against the county. Merely for having done their duty, the deputies were facing the possibility of heavy damages.

The jury retired. Several hours passed. The jury then reported that it was deadlocked on one count. The defense was moderately elated: Surely Fulbright had been acquitted on the other count. The jury finally returned. On the first count it was still hung. But on the second count, involving Fulbright's final encounter with the man who shot him, the jury had decided: It found him guilty.

Tomorrow, Billy Fulbright will return to court to be sentenced for his crime. The maximum possible penalty: five years in prison.