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## THE CASE OF ANGELA DAVIS: THE PROCESSES OF AMERICAN JUSTICE

By Professor John Kaplan  
Stanford University

**SUMMARY:** Written for USIA by a recognized authority on criminal law, this two-part article analyzes the complex legal issues in the Davis case. Part I reviews the kidnapping charges while Part II takes up the charges of murder and conspiracy.

**LENGTH:** 2,500 words in Parts I and II

**PHOTOS:** None

**NOTE:** No date has been set for the trial which is being delayed by numerous and prolonged pre-trial arguments.

For your information, this article was transmitted via Wireless File to selected posts in Europe and Africa on May 5 and 6.

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PART I

By Professor John Kaplan  
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(Mr. Kaplan holds A.B. and LL.B. degrees from Harvard University, and is Professor of Criminal Law and Procedure and Evidence at Stanford University. Professor Kaplan studied criminology at the University of Vienna at the invitation of the Austrian Government and has had much experience before the criminal bar as a trial attorney. In addition to numerous scholarly articles, Professor Kaplan has authored four books including "The Trial of Jack Ruby" and "Principles of Evidence and Proof.")

On August 7, 1970, a trial was under way in the Courthouse at San Rafael, California, the county seat of Marin County, just across the Golden Gate Bridge from San Francisco. The defendant, James B. McLain, a prisoner at San Quentin, was accused of assault upon a guard. Ruchell Magee, another prisoner was on the witness stand and William J. Christmas, a third prisoner, waited in a holding cell for his turn to testify. The trial entered history when, before court officials, guards, or spectators had a chance to react, a 17-year-old youth named Jonathan Jackson, brandishing what appeared to be sticks of dynamite, stood up and quickly handed guns to the two prisoners in the courtroom. The three armed men seized five hostages, the Judge, Harold Haley, the prosecutor and three women jurors, and quickly marched them outside the courtroom where they disarmed the guards and released and armed Christmas. Then

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the armed men and their captives moved past the helpless spectators to a rented Ford van parked near the Courthouse. As the truck containing both kidnapers and hostages proceeded out of the parking area, someone opened fire and when the gun battle ceased, three of the kidnapers and Judge Haley lay dead.

Racial aspects were implicit in the case since all the kidnapers had been black and all the hostages white. Shortly, however, the case developed political overtones as well when it was announced by the authorities that the tracing of the serial numbers of the guns found in the van revealed that four of them had been originally purchased (one only two days earlier) by a black woman radical named Angela Davis.

Angela Davis had had previous experience as the center of a cause célèbre. The year before she was dismissed from her position as Assistant Professor of Philosophy at the University of California at Los Angeles by the California Board of Regents (the governing body of the university system), because of her membership in the Communist party. At that time, she had brought suit, and, in a widely publicized opinion, the court determined that the Regents' action was unconstitutional and ordered the rehiring of Miss Davis for the remainder of her contract. Subsequently, Miss Davis' contract term ran out, and, when she was not rehired, she brought suit once again to compel her employment. This suit was still pending at the time of the attempted kidnapping.

The substantive legal issues in the prosecution of Angela Davis (as distinguished from the many issues of criminal procedure, and, of course, from the ultimate issue of her guilt or innocence) are not too

difficult. Although Miss Davis has been charged by the California authorities with three separate crimes -- kidnapping, murder and conspiracy -- it is not grossly oversimplifying the case to say that there are only two major factual issues in the case. That is, whether Miss Davis turned over any guns to Jonathan Jackson, and if so, whether she knew at the time that they were to be used in the kidnapping of hostages such as Judge Haley. An affirmative finding on both questions would probably be required to establish guilt.

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The issues of law which determine Miss Davis' guilt are somewhat more complex than this -- since they vary somewhat depending upon the crime charged.

With respect to the kidnapping charge, the prosecution has charged in the Grand Jury indictment that Jackson and the convicts were guilty not of simple kidnapping, but of an aggravated form of the crime -- kidnapping for the purpose of extortion. Unlike most other American states, California holds this crime to be a capital one -- punishable at the discretion of the jury by life imprisonment or by death -- though, in fact, no one has been executed for this or any other crime in California for more than four years.

Extortion, as defined in the California statutes includes the obtaining of an official act from a public officer induced by a wrongful use of force or fear. Although the charge against Miss Davis does not make clear the nature of the extortion, a reading of as much of the Grand Jury testimony as has been released to the public indicates that the prosecution will seek to prove that two types of official acts were sought

to be compelled by the kidnapping: First, that threats to the hostages were made to induce the guards to permit the kidnapers to pass from the Courthouse unhindered, and second, that the extortion involved an attempt to free the Soledad Brothers. The Soledad Brothers, the center of yet another cause célèbre, are three prisoners -- all black, but not blood relations -- also at San Quentin, who at the time of the kidnapping were awaiting trial arising out of the death of a prison guard at another California prison, Soledad State Prison. According to the prosecution, the connection between the kidnapping and Soledad Brothers Case is revealed by several items of evidence. For example, George Jackson, one of the Soledad Brothers, and author of a widely selling book on his prison experiences, was the brother of Jonathan Jackson. Secondly, at least one witness has testified before the Grand Jury that as the kidnapers marched their hostages out of the Courthouse, one of them said to him, "Free the Soledad Brothers by 12:30 or they'll all be dead."

All of the above relates directly only to the kidnapers themselves. An additional step is necessary to relate their guilt to that of Miss Davis. The prosecution contends that by supplying Jonathan Jackson with guns, knowing of his projected use of them, Miss Davis was aiding and abetting the kidnapping. Since there is no dispute that Jackson did participate in the kidnapping, the only issues with respect to Miss Davis are first, did she provide Jackson with any aid -- and it is fairly clear that giving him some of the guns he used would be sufficient aid under the laws of all American jurisdictions -- and second, did she know that the guns were to be used in the kidnapping?

There is, to be sure, some dispute among legal scholars as to whether mere knowledge by Miss Davis of the purpose to which the guns would be put would be sufficient to make her an aider and abetter. It is possible that in addition to showing this knowledge, the prosecution would also have to show that Miss Davis actually desired the guns to be used as in fact they were. If it is Miss Davis' desire that is crucial rather than her knowledge, the prosecution would have a somewhat more difficult time of it. But, as a practical matter since a jury would have to infer either knowledge or desire from the circumstantial evidence presented to it, it is hard to see that a different verdict would arise depending on whether knowledge or purpose was required under the facts of this case.

If Miss Davis did have the requisite knowledge or desire and did render aid by giving the guns to Jackson, she would be guilty under the law of every American jurisdiction of exactly the same crime as would those who actively participated in the kidnapping. This is a settled principle of American law -- one which has resulted in the punishment of any number of planners of robberies, drivers of getaway cars, and other helpers in crimes.

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PART II

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The second charge against Miss Davis, murder, taken by itself, appears paradoxically the least serious of the three charges lodged against her. Almost every Anglo-American jurisdiction has a felony murder rule which specifies that if a death should result from the commission of a felony, anyone guilty of the felony will also be criminally responsible for the ensuing death. Moreover, his criminal responsibility will not be that of manslaughter, the usual consequence of a death either resulting from an unlawful act or from negligence; the felon will be guilty of murder. Not all murder, however, is punishable by death. California, like most American states, divides murder into first and second degree murder, with only the former punishable by death. In California, only certain specific felonies can give rise to a first degree felony murder. These include rape, robbery and burglary, but do not include any form of

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kidnapping. However, the prosecution's joining a non-capital murder to a capital kidnapping leads one to search further for a possible theory of first degree felony murder here. 1?

Here are two possibilities. It is possible to argue that the killing of Judge Haley arose out of either a burglary or a robbery. Technically, Jackson committed a burglary when he entered a building (the Courthouse) with intent to commit a felony (kidnapping), and all the kidnapers committed robbery by taking the guards' guns under a threat of force. The success of such a theory, should it be employed, cannot be accurately gauged at this time. However, in such a theory the guilt of Miss Davis would again be derivative. As in the case of the kidnapping, her guilt of any burglary or robbery and hence of first degree felony murder would depend on whether she had aided Jackson by furnishing him with guns and whether she knew of the planned felonies when she did this.

At first glance it might appear that this reasoning might be escaped on the ground that we do not know how or by whom Judge Haley was shot. Decisions in the California Supreme Court, however, make it very clear that even if the death of Judge Haley was unintended, or indeed even if it was caused by guards attempting to stop the felony, the death has resulted from a felony and, as a result, the felons, whether present at the scene or not, would be guilty of murder.

The final charge against Miss Davis is that of conspiracy. This charge is by far the longest, taking approximately eight pages of a nine-page indictment. Under Anglo-American law, a conspiracy is simply an agreement to commit a crime -- though most jurisdictions provide, as does 1?



California, that the conspiracy becomes criminal when one act, however innocent in itself, has been taken as a step toward carrying out the purposes of the agreement. In this conspiracy charge, the prosecution claims that Angela Davis and others, including Jonathan Jackson and Ruchell Magee (the only survivor of the four kidnapers, who was also charged together with Miss Davis in both the kidnapping and the murder counts) agreed among themselves to commit four specific crimes. These are kidnapping, the murder of Judge Haley, the escape of the three prisoners in the Courthouse, and, finally, the release of the Soledad Brothers. Under California law, conspiracy to commit a serious crime is punishable as is commission of the crime itself -- and since the first two of the objects of the conspiracy are punishable by death, the conspiracy is similarly punishable.

As a matter of dry legal scholarship, the conspiracy would appear to be the most difficult of the charges to prove against Miss Davis. For her to be guilty of the kidnapping or the felony murder, it would at least be necessary that with knowledge of their intended use in a crime she provided Jackson with guns. For her to be guilty of conspiracy, the prosecution would have to prove instead that she agreed with other perpetrators that these crimes should be committed. In practical fact, however, the task of the prosecution is basically the same as to all the charges. The reason for this is that the jury, in the absence of specific witnesses to any agreement, would have to infer the agreement from other evidence in the case just as it would have to infer knowledge -- and as a practical matter, from just the same evidence. Previously decided cases indicate

that if Miss Davis had the necessary criminal intent and Jackson knew that she had, this would imply an agreement or conspiracy between Miss Davis and Jackson and anyone else who had planned with Jackson toward the ends charged by the prosecution.

It is seldom profitable to speculate on a forthcoming criminal trial. Nonetheless, on the basis of the evidence presently available to the public (mostly public statements of those connected with the defense and those parts of the Grand Jury testimony released to the public) there appears to be a comparatively narrow distance separating the prosecution and the defense on the nature of objective facts. Consequently, the manner in which those facts are interpreted is of capital importance. In reviewing the material available it seems to me that the following questions are critical:

Was Jonathan Jackson provided with guns, and if so, was it because of his status as unofficial bodyguard for Miss Davis and his inability under American law (he was under twenty-one years) to purchase guns himself?

Was Jonathan Jackson so admiring of Angela Davis that he would have attempted no such undertaking (as kidnapping, etc.,) without consulting her?

Would a person of Miss Davis' noted intellect allow the use of guns which could so easily be traced to her?

Did Miss Davis flee and attempt to avoid capture immediately after the attempted kidnapping? (Evidence of flight is admissible in American courts on the theory that, quoting "Proverbs," "The guilty fleeth when no man pursueth, but the innocent is bold as the lion.")

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If Miss Davis did flee, was it because of guilt or because of her lack of confidence in American justice -- something she had already made clear in her campaigns for the Soledad Brothers? (A crucial element as to the probative value of the flight testimony will be whether any flight began before or after the announcement that Jackson had participated in the foiled kidnapping.)

Was Miss Davis the woman cited in the testimony before the Grand Jury as a woman "looking like Miss Davis" and seen in the rented van just an hour before the attempted kidnapping?

The foregoing questions indicate no more than the issues over which the prosecution and defense are likely to struggle. The prosecutor has announced that he has considerably more evidence than has already been made known, but that a court order forbids his being more specific. Those defending Miss Davis have publicly claimed not only that the prosecution has no strong evidence, but that Miss Davis is, in fact, innocent, and the victim of racial and political prejudices. These and all pertinent issues will eventually be fought out by the parties in court, with each side having the right to cross-examine and to introduce its own evidence. In this context the reader should note that the jury in deciding this matter as a matter of law must presume Miss Davis to be innocent unless her guilt is proven beyond a reasonable doubt.

At this stage, no reasonable person can judge. The very best we can do is watch and wait, not only to determine whether Miss Davis in fact is guilty -- but considerably more important -- to reveal to the world whether American justice can give a black militant Communist a fair and impartial trial.

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disqualified

No DJ identification

Case hinges on what jury will believe

Charges not specific, i.e. Murder 1st

But even then can be offense of 2nd.