

U.S. Hijacking Case Ends in a Mistrial

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By ROBERT LINDSEY

Federal District Judge George Rosling in Brooklyn declared a mistrial yesterday in the trial of Garrett B. Trapnell, who had admitted hijacking a Trans World Airlines jet last Jan. 29, but contended he was insane at the time.

The jury was split 11 to 1 for conviction as the five-week trial ended—as it had since deliberations began last Thursday morning. The lone holdout, Gertrude Hass, a middle-aged, unemployed psychiatric therapist, was bitterly criticized by fellow jurors. Through a lawyer for the New York Civil Liberties Union, she issued a statement defending her posi-

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ing said that he felt it necessary to declare a mistrial because of news reports stemming from comments he had made to the court Saturday while the jury was not present.

At that time, when it appeared the deadlock would continue, he said: "If I have to discharge this jury, I think it will be my duty to advise the recalcitrant juror that she may expect some visits from government agencies to find out if this was the performance of her jury function or some other function."

"That's correct, Your Honor," Mr. Schlam replied. Judge Rosling added that he would not make such a statement to the juror until after a mistrial was declared. Some news reports indicated erroneously that he had ordered such an investigation.

Yesterday, as he discharged the jury, he did not issue such a warning and said: "The court did not say it favored, supported or would become a party to a criminal investigation, surely not while the jury had the case under deliberation."

New Trial Date Set

In all, the jurors had deliberated more than 27 hours, counting the time spent together during meals. They were allowed to return home each night and did not deliberate Sunday.

After the mistrial was declared, Judge Rosling spent about 20 minutes in the jury room with the jurors "to see what created their problem."

He told attorneys for each side that the other 11 jurors denied allegations by Miss Hass—which she had made in a letter to the judge on Saturday—that she had been subjected by them to threats and "physical, verbal and emotional pressures."

He said that he had learned that Miss Hass had been "for the past 30 years a psychiatric therapist," apparently for a private agency. He said he felt no person with such a background should have been selected for a jury that was being asked to decide a defendant's sanity.

In a way, he said, this was like having a "cat watch the milk."

He said Miss Hass had read a considerable number of books on psychiatry and, he suggested, used this knowledge in making her decision, rather than basing it on testimony presented by a number of psychiatrists and on the legal definition of insanity, as read to the jury by the Court.

Judge Rosling indicated he felt that there had been no illegal influences on her decisions.

as "based exclusively on my understanding of the evidence and upon nothing else."

But Robert Morse, the United States Attorney for the Southern District of New York, acknowledged that her resistance to a conviction—which was assailed strongly by other jurors—was under Federal investigation. He said:

"I am directing that there will be a further inquiry and investigation based on information which has come to my attention concerning her participation in this case."

He declined to elaborate.

New Trial Date Set

Acting on a request from Peter R. Schlam, the 28-year-old assistant United States attorney who prosecuted the case, Judge Rosling set March 5 for a new trial.

The judge denied a request by Richard Rosenkranz, Trapnell's court-appointed attorney, to transfer the case to another Federal court district because of publicity over the trial here. He also denied requests by Trapnell to disqualify himself from the re-trial and to dismiss Mr. Rosenkranz as his counsel.

Trapnell, who was arrested after being shot by a Federal agent at Kennedy International Airport, is 34 years old and has a long record of criminal arrests. But in most instances when he has been arrested, he has been sent to mental institutions rather than to jail, and has often escaped from the mental hospitals.

He admitted commandeering the Los Angeles-to-New York T.W.A. jet and demanding a \$306,800 ransom and the freedom of Angela Davis, the black militant who was then in jail. But he claimed he had amnesia at the time and therefore was not responsible for his actions. The Government has contended that he was sane and that the crime was premeditated.

Mr. Schlam presented three witnesses—two former confederates of Trapnell and a freelance writer who had once interviewed him—in which the defendant had boasted of knowing how to fool psychiatrists into thinking he was insane.

Trapnell faced a maximum of a life sentence if he had been convicted. He was accused of violating three Federal laws: air piracy, interfering with the crew of a civil aircraft and carrying a dangerous weapon aboard a commercial aircraft. He brought a gun aboard the plane by concealing it in a plaster cast on his left arm.

In addition to the deadlock among the jurors, Judge Ros-

"Mr. Schlam," he said, "I think you would be well advised" to tell investigators looking into Miss Mass's performance as a juror "that they are sniffing up the wrong tree."

Judge Chides Lawyers

A review of testimony by Miss Hass when she was selected for the jury early last month indicated few questions about her background and views, a point over which Judge Rosling had chided lawyers for both sides after the impasse developed. In an exchange that turned out to be ironic, Judge Rosling asked Miss Hass during jury selection: "Do we have any problems with you?" and she replied: "None at all."

The rest of the questions during the interview were perfunctory. She testified that she had not heard of the defendant or of scheduled witnesses; that she had no previous jury experience; that she did not own a home or automobile; had no friends who had been victims of a crime; that she had been unemployed for about five months but normally worked as a "trained social worker for voluntary agencies."

Judge Rosling has experienced only one other 11 to 1 hung jury in his 12 years on the bench, and that holdout was also a social worker. This prompted him on Saturday to criticize social workers generally as jurors because of what he regarded as their preconceptions. He advised Mr. Schlam jokingly never again to have a social worker on a jury. Mr. Schlam said he would not, "at least until I'm a defense lawyer." The 72-year-old judge said in the absence of the jury:

"No one is so superior in his or her outward manifestations of authority as a welfare case worker dealing with his or her beneficiary."

Commenting on remarks by Judge Rosling on Saturday, about a possible investigation of Miss Hass, Ira Glasser, executive director of the New York Civil Liberties Union, which intervened in the case as her representative, said:

"If the Government intends to do anything like an investigation of her, we regard it as the most ominous threat yet to the jury system. If the Government calls a citizen as a juror and then launches an investigation of him, I can imagine no larger threat."

Judge Rosling emphasized several times during yesterday's proceedings that he did not believe he was biased against the defendant and that he had wanted the jury to con-

tinue deliberating despite Miss Hass's strong opposition, in the hope that the jury might reach agreement. In retrospect, he said, he wished he had declared a mistrial Saturday as soon as she had sent her note urging him to end deliberations.

He said that while news reports of the trial had been fair, he took exception to emphasis on his comments about a possible investigation of Miss Hass, and to the inclusion in an article in the New York Times about the trial noting that he had been criticized by an appellate court last week for alleged bias in another case.

Judge Rosling accepted a copy of a letter sent to Mr. Morse from Trapnell, accusing Mr. Schlam and the judge of "criminal collusion" because of what the defendant saw as a pattern of bias toward him.

The judge denied the accusation, but used his reply to repeat earlier assertions that he did not think Trapnell was insane. He read one line from the two-page letter, in which Trapnell said: "As a citizen of the charge and accuse . . ."

"Do you know what that is Mr. Rosenkranz? He got it from Emile Zola, from J'Accuse. That's how smart he is. He's smarter than you are," the judge asserted.

At that point, Trapnell asked to address the court, but Judge Rosling refused and told him to speak through his attorney. The defendant then sought to have Mr. Rosenkranz removed from the case, but the judge declined to do so at this time.