

# 3 Cleared, 3 Guilty In San Quentin Case

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— Three of the defendants in the 16-month murder-conspiracy trial of the so-called San Quentin Six were acquitted today, while a fourth was convicted of murder. The two remaining defendants were found guilty of lesser charges.

A jury of seven women and five men found Fleeta Drumgo, Willie Tate and Luis Talamantez not guilty. Johnny Spain was found guilty of conspiracy and two murders and Hugo Pinell and David Johnson were convicted of assault charges.

The mixed verdict came on the 24th day of deliberations after the trial of the five black and Hispanic prisoners and a black former prisoner who had been accused of participating

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in an escape attempt at the prison nearly five years ago on Aug. 21, 1971.

On that day, George Jackson, the black revolutionary author, three guards and two inmate trustees were killed at the prison.

It took Judge Henry Broderick nearly half an hour to read the verdict because each juror was polled after each verdict was read. The Judge had warned the audience against any outbursts, said at times there was quiet jubilation, at times sighs of relief, and at other times tears of joy or sadness from the spectators who were mostly supporters of the defendants.

The prosecution had maintained throughout the trial that all the defendants had participated in a conspiracy to escape the prison by force, while the defense had maintained that there had been a "counterconspiracy" by the authorities to assassinate Mr. Jackson.

Five of the six defendants were acquitted on the charge of conspiracy and all five murder counts. The murder charges involved the two inmates and the three guards who were killed.

However, the jurors found Mr. Spain guilty of conspiring with Mr. Jackson and with Stephen M. Bingham, a radical

lawyer who has been a fugitive since the day of the incident, to escape the prison by force.

Prison officials said that the violence started after Mr. Bingham smuggled a gun to Mr. Jackson on a visit at the prison. Mr. Spain was also found guilty of murdering guards Frank DeLeon and Jere Graham, both of whom died of gunshot wounds.

For Mr. Drumgo, and Mr. Talamantez, the acquittal today meant that they could be paroled soon.

When the "not guilty" verdict for Mr. Drumgo was read, he pounded the table with enthusiasm, shook hands with his attorney, Michael Dufficy, and smiled at his supporters in the courtroom, who included his mother, Inez Williams, and Joel Kirshenbaum, an attorney who has served as Mr. Drumgo's investigator for six years. Looking at her son, Mrs. Williams wept and said softly, "My baby's coming home."

Mr. Tate, the only defendant who is not currently in prison, was mobbed by well-wishers after he left the courtroom. Mr. Tate sobbed as he told reporters, "I feel terrible David Johnson was convicted of assault [on guard, Charles Breckenridge, which could carry a life sentence] and I don't see how Johnny Spain could be convicted of murder."

He said he also felt bad for Mr. Pinell, who was convicted of assaulting guards Urbano Rubiaco and Mr. Breckenridge.

## Sentencing Date Set

Judge Broderick set Sept. 30 for sentencing of the defendants who were convicted.

Attorney for all of the defendants who were convicted said they would appeal. The trial has already been the most expensive for California's in its history, costing the state close to \$2 million.

From the start of the case, the prosecution said it could not prove which of the defendants committed which of the murders, and thus it would proceed on theories of "conspiracy" and "aiding and abetting."

It was not surprising then, said one of the defense attorneys, that all the defendants who were acquitted on the conspiracy count would also be acquitted on the murder counts as well— and these amounted to 30 of the total 46 counts.

However, there was eyewitness testimony that the jurors believed in regard to assault charges against Mr. Johnson and Mr. Pinell.

Additionally, there was eyewitness testimony that Mr. Spain was in possession of a

pistol during the incident and spoke with Mr. Jackson after the latter "took over" a small portion of the prison.

None of the defendants faced the possibility of going to the gas chamber because the crimes occurred before California restored the death penalty for certain specified homicides.

The 1971 killings occurred just two days before Mr. Jackson, Mr. Drumgo and another

prisoner, John Cluchette, were to go on trial for the 1970 murder of a prison guard. They came to be called "the Soledad brothers" from the name of the prison where the incident occurred and where Mr. Jackson wrote a best-selling book on prison life, "Soledad Brothers." Mr. Drumgo and Mr. Cluchette were acquitted on the murder charges in April 1972.

## Prison Militancy

The August 1971 incident occurred at the height of prison militancy that had made Mr. Jackson an international figure. His book had been translated into more than 15 languages. Less than a month later, inmates rebelled at Attica Prison in upstate New York and state troopers were used to retake the prison. In the rebellion and the retaking of the prison, 43 inmates and guards were killed.

This trial was conducted under rigid security measures. Spectators were separated from the participants by a special translucent bullet-proof screen built at a cost of \$40,000 in 1970. The safety screen was built after an attempt on Aug. 7, 1970 by Mr. Jackson's younger brother, Jonathan, to free defendants known as the Soledad brothers in exchange for a judge, a district attorney and another hostage that Jonathan Jackson and three convicts kidnapped from a courtroom here that day. The younger Mr. Jackson, the judge and two convicts died in a gun battle that ensued.

Angela Davis, the black Marxist professor, was indicted on charges of murder and conspiracy stemming from the incident but was acquitted by a

jury in June 1972. Ruchell Magee, one of the convicts involved, received a life sentence for kidnapping.

Every person who entered the courtroom during this trial had to pass through two metal detectors. They were also searched and photographed. A Federal court challenge to these measures was not successful.

Proceedings began on March 25, 1975, and jury selection took 17 weeks. More than 1,800 prospective jurors were considered. Two jurors were replaced in the course of the trial, one because of illness and the other because she had a baby.

Tempers ran high during the trial. Judge Broderick was appointed to the Marin County bench by Gov. Ronald Reagan in 1970 to replace Judge Harold Haley, who was killed during the raid on the courthouse. Judge Broderick was looked upon as an adversary by the defense and at one point it asked the California Judicial Council to monitor his handling of the case.

The prosecution called 34 witnesses, ranging from guards to ballistics experts. The defense called 49 witnesses, including four of the six defendants, psychologists and former inmates. Mr. Pinell acted as his own lawyer.

#### State Versus Bingham

The official name of the case was People of the State of California v. Stephen M. Bingham, et. al., but Mr. Bingham, a radical lawyer, was not present for the proceedings. He disappeared the evening of the incident. He allegedly smuggled a gun to Mr. Jackson on a visit at the prison the afternoon of

Aug. 21, 1971, precipitating the escape attempt.

He was interviewed by a reporter for The New York Times in Canada nearly three years later at which time he neither affirmed nor denied the charges against him. He contended, however, that the official state version of the events was "a smokescreen to cover up the assassination of George Jackson."

The defense presented several witnesses, including Louis Packwood, a former special agent in the Los Angeles Police Department's criminal conspiracy section, who testified that his last completed assignment was "the assassination of George Jackson." Jerry Herman, the prosecutor, called this charge "absurd," but he did not call any of the 17 persons Mr. Packwood named as participants in a state plot.

Mr. Tate, 31 years old, served 10 years for assault with a deadly weapon and was released in January 1975. Mr. Spain, 26, has served nine years on a life sentence for first degree murder. Mr. Pinell, 32, has served 11 years on a sentence of three years to life on a forcible rape conviction, and has been given two more life sentences for assaults committed in prison. Mr. Drumgo, 30, has served 10 years on a six months to 15 year sentence for second degree burglary. Mr. Talamantez, 33, has served 11 years of two consecutive sentences of five years to life after convictions of armed robberies of taxi cabs. Mr. Johnson, 28, has served nearly eight years on a six months to 15 year sentence on a second degree burglary conviction.