

The Gamble in Angela's Staying Off the Stand

By Stephen Cook
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SAN JOSE — When Angela Davis elected to present an abbreviated defense to charges of murder, kidnap and conspiracy, she did so with hopes of offering just a reasonable alternative to the implications of a fragile prosecution case of circumstantial evidence.

To find her legally responsible for the bloodshed and horror at the Marin Civic Center Aug. 7, 1970, the seven-woman, five-man jury must be convinced of guilt beyond a reasonable doubt.

Such a doubt should have been present when the prosecution rested its case last week, her defense team said. They asked for a four-day weekend recess, hinting it was to consider putting on no defense at all.

The decision went the other way and 12 witnesses were called in three days this week before the defense rested. (The trial resumes Tuesday).

Last-Minute Decision

Another question, apparently not decided until the very end, was whether the beautiful, brilliant and articulate defendant should take the stand, deny the charges under oath and cross swords with Prosecutor Albert W. Harris Jr.

Lawyers always consider such a confrontation risky, since the prosecutor is given great freedom in the subjects he can raise on cross examination.

For Miss Davis, there was

an added factor. Her lawyers fought strenuously and successfully during the trial to keep from the jury the revolutionary, sometimes violent, rhetoric contained in 18 pages of love letters from Miss Davis to Soledad Brother George Jackson.

Letters Edited

Superior Judge Richard E. Arnason edited the letters to allow the jury to hear the love passages. The rhetoric, composed a year after the crimes for which she was charged, was not relevant evidence, he ruled.

But under the rules of cross examination, Harris might have been able to question Miss Davis in such a way as to get before the jury all the previously forbidden passages.

Furthermore, as her own co-counsel, Miss Davis is in the unique position of being able to declare her innocence while not under oath and not under cross examination.

She did so in her opening statement and she could do it again, should she choose to make the closing arguments for the defense.

Protected Right

And the law protects Miss Davis's right not to testify. Harris would be forbidden from commenting on her failure to take the stand in his closing arguments and the judge would have to instruct the jury that they were to draw no inference from the fact that she did not testify.

But jurors are only hu-

man. Not all of them could be expected to ignore the implications of a failure by the defendant to testify. The lawyers had to decide which path was riskier.

They decided to try to win the case without her testimony.

The defense they did offer was in response to prosecution charges that, together with 17 year old Jonathan Jackson, she schemed to free the three so called Soledad Brothers, including George Jackson, by kidnaping a Marin Superior Court Judge and holding him as ransom for their release from San Quentin Prison.

4 Slain

A shootout at the Marin Civic Center Aug. 7, 1970, ended the kidnaping, taking the lives of Jonathan Jackson George's brother; Judge Harold J. Haley; James D. McClain, a convict on trial in Haley's courtroom; and William Christmas, a convict witness at McClain's trial.

The most solid evidence against Miss Davis was four guns young Jackson used in the kidnap attempt. All belonged to her and one, the sawed off shotgun fired

point blank at the judge's head, had been purchased by her in the company of someone looking like Jonathan Jackson two days earlier.

But Harris had to prove Miss Davis knew of the plot and furnished the guns with the intent to aid in the commission of the kidnap. He



ANGELA DAVIS
As drawn in the courtroom
Sketch by Don Juhlin

tried to show she was spending so much time with young Jackson in the days before the courthouse events that she could not have helped but know of the scheme.

Seen at Prison

Two San Quentin guards and a woman visiting her stepson swore it was Miss Davis they saw with Jonathan Jackson at San Quentin Prison, when he tried to visit his brother the afternoon of Aug. 4.

The same two guards said she was there with him on Aug. 5, when Jonathan actually did visit his brother. A third said it was at least a

woman of similar description.

A service station owner, his son and a Marin County fireman said they were certain the woman with young Jackson at the Marin Civic Center the morning of Aug. 6 was Miss Davis. A mechanic at the station, where they sought help with a dead battery, said it was at least a woman that looked like

her.

A San Quentin convict, who offered several contradictory statements, said Miss Davis was with Jackson at San Quentin at 12:30 p.m. that day, when the youth made his final visit with his brother.

Contradictions

Witness after witness for Miss Davis offered contradictory testimony.

On Aug. 5, when she was supposed to be at San Quentin Prison, Miss Davis was actually having lunch with Susan Castro, 29 year old director of a San Francisco day care center and an organizer of the Soledad Brothers Defense Committee, Miss Castro testified.

Carl Bloice, editor of the People's World, a Communist publication, said Miss Davis was in his office the mornings of Aug. 4, 6 and 7.

Marvin Stender, a San Francisco lawyer who was unofficial counsel for the Soledad Brothers Defense Committee, said Miss Davis called him at 9:30 a.m. Aug. 6 from the office of the People's World and that he met her near that office at 11:30 and drove her to Berkeley, dropping her off at noon.

Dress Rehearsal

Prosecution witnesses placed Jackson in Judge Haley's courtroom for a dress rehearsal at 10:30 a.m. that day, at the service station across the street with a dead battery at 10:44 a.m. and at San Quentin at 11:25 a.m. The implication of defense testimony is that the woman with Jackson could not have been Miss Davis.

Bloice also countered a prosecution contention that Miss Davis and Jonathan Jackson were in San Jose the night of Aug. 5, after the shotgun was purchased, en route to Santa Cruz "to pick up some things."

That night, he testified,

she went with him and Juanita Wheeler, circulation department worker at the People's World, to dinner at a friend's house in San Francisco.

House Guest

Mrs. Wheeler testified that Miss Davis stayed at her apartment that week, sleeping there every night, including the night of Aug. 6, when Harris contends but cannot prove that she was with Jackson at the Holland Motel in San Francisco.

Bloice and Mrs. Wheeler also offered testimony intended to counter the prosecution suggestion that Miss Davis was at San Francisco International Airport the morning of Aug. 7, waiting to coordinate the taking of a plane by the kidnapers, and left in a hurry when she learned of the shootout.

Mrs. Wheeler said she drove Miss Davis to the People's World office the morning of Aug. 7 and that, short-

ly before noon, Bloice borrowed her car to take Miss Davis to the airport.

Earlier Flight

Bloice said he and Miss Davis left for the airport at 1 p.m., with her intending to catch a 3 p.m. flight to Los Angeles. When they got to the PSA ticket counter in the main lobby of the airport's old terminal at 1:45 p.m. the cashier said she could make the 2 p.m. flight, he said.

He testified to watching Miss Davis check her overnight bag and buy her ticket at that counter. Then he left, he said.

This was contrary to testimony by a PSA ticket agent that Miss Davis came running up, baggageless, to the last minute ticket counter near the board ramp and scribbled out a check just minutes before the 2 p.m. flight.

Dramatic Account

Ellen Broms, a Los Angeles social worker, offered the most dramatic testimony.

Miss Davis and Franklin

Alexander, president of the Communist Party's Che-Lumumba Club and now co-chairman of the National United Committee to Free Angela Davis, came to her house for dinner the night of Aug. 7, eight hours after the Civic Center shootout in Marin, Mrs. Broms said.

Miss Davis, whom Mrs. Broms described as an acquaintance, seemed normal, she said, not worried, distraught or apprehensive. After dinner, they were playing Scrabble and listening to records.

At 10:30 p.m., she said, Alexander received a call from his wife, Kendra, then announced that Jonathan Jackson had been killed in a kidnap escape attempt in Marin County.

Miss Davis "became very upset," she said. "She said 'I can't believe it. He was so young.' She began to cry . . . (We) tried to comfort her. Later on, when she didn't seem to be calming down, I gave her a tranquilizer."

Mrs. Broms said she insisted Alexander and Miss Davis stay the night, considering her condition. The next morning, she recalled

Miss Davis reading the paper and saying:

"My God! There's something about a shotgun in here. I just bought a shotgun a couple days ago for the defense of the Soledad House in San Francisco and gave it to Jonathan. I wonder if it could be that one."

Miss Davis also remarked that a carbine in Jonathan's hands in a photograph in the paper looked like one of her guns, kept for the use of Che-Lumumba Club members in the Los Angeles apartment of her ex-roommate, Valerie Mitchell, she said.

According to Mrs. Broms, Miss Davis and Alexander left between 1 and 2 p.m. to go check the gun rack at Miss Mitchell's apartment.

Excited

Miss Mitchell, on the wit-

ness stand, recalled them arriving at her apartment, saying:

"They seemed to be really excited and concerned. They asked if the weapons were still in the gun rack."

The guns were gone, she said, and Miss Davis cried: "Oh no!"

Miss Mitchell said she remembered last seeing the weapons on the rack in late July and testified that, on Aug. 1, she left Jonathan Jackson alone in the apartment when she had to leave and he was using the club's mimeograph machine.

Fleeta Drumgo, one of the two surviving Soledad Brothers, was called to the stand to say he had known nothing of a plot to kidnap a judge for the release of the brothers.

Hate Mail

A clerk from the UCLA philosophy department was called to testify about hate mail and telephone calls re-

ceived during the controversy over Miss Davis's employment at UCLA — indicating why she might have owned guns for self defense.

And, finally, there was an expert witness — Dr. Robert Buckhout, associate professor of psychology at California State College at Hayward.

Buckhout, accepted by Judge Arnason as an expert on "social and perceptual factors in eyewitness identifications," said:

"We (psychologists) consider eyewitness testimony under many circumstances to be unreliable."

Color-Blind

The service station owner who placed Miss Davis at the civic center in Marin was color-blind, he said, and since the brown skin of Negroes contains red pigments, he would have difficulty identifying persons of that race because their skin would appear grey.

Besides, he pointed out, the station owner in describing Miss Davis "indicates he saw the color red in hair. Obviously he would not have been able to see that."

Photographic lineups shown all eye witnesses who testified Miss Davis was with Jackson the days before the shootout were suggestive, making the selection of Miss Davis's picture a foregone conclusion, he said.

And he found other factors which tend to impede accurate eyewitness identifications at play in the testimony of some of Harris's witnesses, he said. These included:

Desire on the part of the witness to be a part of history, desire to conform to the identifications made by one's peers, desire to follow the lead of an authority figure (like father, like son), personal bias on the part of the witness, the insignificance of the event observed and the shortness of the period of observation.