

IN DEFENSE OF ANGELA: PROFILE OF THE DAVIS DEFENSE TEAM

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With Introduction by LEO BRANTON

"Those who say the most urgent question is the 'environment' should recognize that it is Blackness that is unsightly in America. Those who say it is war should face the fact that racism—an arrogance of superiority that seeks economic and military exploitation—is as much the nation's role in Birmingham as it is in Vietnam. And those who say that the most pressing issue is 'law and order' should recognize the term for what it is: a euphemism for the total repression and possible extermination of those in the society who cry for justice where little justice can be found."

SAMUEL F. YETTE

The Choice: The Issue of Black Survival in America

ON MARCH 27, 1972, in a small heavily guarded courtroom in San Jose, California, Assistant Attorney General Albert W. Harris arose to make the prosecution's opening statement in the case of People of California vs. Angela Y. Davis. Thus began a trial which has had no parallel in American judicial history.

The prosecution's opening statement unfolded the following story concerning what the State intends to prove: Angela Y. Davis joined in a conspiracy with seventeen year old Jonathan Jackson and others to effectuate, by armed might, the release from custody of three San Quentin inmates, James McClain, Ruchell McGee and Willie Christmas. The plan called for Jonathan Jackson to smuggle guns into a San Rafael (Marin County) courtroom on August 7, 1970 where McClain was on trial, and to take the judge and certain jurors as hostages while Jonathan and the inmates escaped from the courthouse. According to the prosecution, the plan then called for the hostages to be held as prisoners, and to bargain for their exchange in return for the release of the "Soledad Brothers," the name used popularly to refer to three Black inmates, George Jackson, John Cluchette and Fleeto Drumgo who were then awaiting trial for the alleged murder of a white prison guard at Soledad Prison. This plan, described by the prosecutor as "simple but ingenious," was thwarted when gunfire erupted between San Quentin guards and the rented van which contained all the armed inmates, Jonathan Jackson, Judge Harold Haley, deputy district attorney Gary Thomas, and three women jurors. When the gunfire ended, Judge Haley was dead. Jonathan Jackson,

James McClain and Willie Christmas were all dead. Gary Thomas was paralyzed for life from a bullet which severed his spinal cord, and Ruchell McGee and a woman juror were seriously wounded. It is contended by the State that Angela Davis was the mastermind of this conspiracy and that she purchased all four guns used in the crime and furnished them to young Jonathan Jackson for his use in the escape attempt. Her motive, says Albert Harris, was raw deep passion which she felt for George Jackson, the older brother of Jonathan and the most well known of the "Soledad Brothers." It is further charged by Harris that Angela, upon learning of the failure of the plan, hurriedly took a plane from the San Francisco airport about 2:00 p.m. on that date and dropped out of sight for more than two months and was not heard from again until she was arrested in October in a mid-town New York City motel lobby. During this time she was on the FBI's Ten Most Wanted List, and when captured was wearing a wig over her usual Afro style hairdo.

EVEN THOUGH ANGELA has four lawyers representing her, it was decided that she herself, having been granted the right of self representation as co-counsel, should make the opening statement for the defense, and that she should do it immediately following the opening statement by the prosecution. While she made a point by point refutation of the prosecutor's case, her defense was relatively simple. She acknowledged that the guns were indeed hers which she had purchased over a two year period, both for her self protection (having had hundreds of threats against her life when she publicly acknowledged her membership in the Communist Party at the time she was fired from her teaching position at UCLA), as well as because of her developed interest in guns and target shooting as a sport. She denied, however, that she had furnished those weapons to Jonathan Jackson to be used in any criminal purpose. She challenged the prosecution to prove by any means other than guess, speculation, and conjecture that she had either knowledge or intent concerning August 7, 1970's events.

She admitted that upon learning that the police were looking for her she did indeed make herself unavailable for that two month period, but asserted that her departure from California was not because of any consciousness of guilt but was because she genuinely feared for her safety at the hands of the police and that she also feared unfair treatment by the courts for a crime she did not commit. She further pointed out that all her activities on behalf of the "Soledad Brothers" had been along the lines of building a mass movement among the people so that they could come to understand the racist nature of the case which was being built against three Black inmates whom the prison authorities feared because of their militancy. She disputed the prosecution's denial that she was a "political" defendant. She pointed out that the very first overt act alleged in the indictment was the fact of her participation in a "Soledad Brothers" rally on the steps of the Los Angeles City Hall. She pointed out that, all the time, while she was engaging in Constitutionally protected activities, the State authorities including the prison authorities were spying on her actions with an elaborately prepared dossier which was being assembled on her life and activities.

Angela admitted that as a result of her intense statewide efforts on behalf of the Soledad Brothers, she did indeed develop a warm and deep affection for George Jackson. But to equate passion for George as her

motive for participation in the events of August 7th is indication, she said, of the type of male chauvinism which motivates a prosecutor to believe that women act only out of their emotions. She concluded her opening statement by reminding the jury that the prosecution's entire case was built out of a fabric of speculation and surmise in which they were being asked to make criminal those acts which were legal and proper, but to do so only because the prosecution wanted to silence her voice on behalf of all oppressed people, and particularly the Black inmate prison population.

Thus, with the two opening statements, the issue was joined, and the "trial of the century" was to be played out before a small courtroom audience of only forty from the general public, thirty reporters who are able to be seated in the courtroom, another 150 reporters who are able to view the proceedings on closed circuit television in a basement room set up for their use, and the millions of readers and viewers reached by the media throughout the world.

PRIOR TO THE COMMENCEMENT of the trial, the defense had made a challenge to the system of trial jury selection in Santa Clara County. All jurors in Santa Clara County are selected from the voter registration list. The code does not specify that jurors must be selected by such a process, but merely indicates that a trial juror should be able to understand the English language. The policy of using the voter registration list is one of convenience for the Jury Commissioner not only in Santa Clara County but in most of the counties throughout the State of California, since it affords a ready place where the largest number of citizens with established residences is located. The challenge of the defense was based upon the contention that such a jury selection system unconstitutionally discriminated against Blacks, Chicanos, and the poor, for the reason that this category of persons were not represented on the voter registration list in the same proportions as they are represented in the general population at large. In support of this motion, an array of distinguished professors from various universities in the area were called to testify as experts, and explained in great detail with statistical information to back up their conclusions, revealing the fact of low registration among Blacks, Chicanos and the poor, and the reason for such low registration. Even though the Chicano population of Santa Clara County is roughly 18%, the number of Chicanos represented on the voter registration list represented a percentage of close to 9%. The Black population of Santa Clara County is only 1.8%. After several days of testimony, and the building of a record on the matter, the trial judge denied the motion, and the jury selection process began.

The jury selection in the Davis case was unique from several standpoints. In the first place, it offered great opportunities to make a deep exploration into the subjective and objective feelings of the prospective jurors as they dealt with the issues of white racism, Black Militancy, and Communism. The defense knew from the beginning that its task of selecting a jury in Santa Clara County would be immensely complicated by the white racism which prevailed in the area, and especially by reason of the intense anti-Communist feelings which had been brought to surface by way of the public opinion polls at the time of the motion for change of venue from Santa Clara County.

In spite of predictions of several months in which a jury could be selected, the jury was actually selected in this case within a period of three weeks. This came about by reason of the fact that once the possibility of having any Black jurors was removed for all purposes, the defense was then concerned with having the fairest possible all-white jury that it could select. The one Black person on the entire panel was excused by the prosecution. The investigation of the names on the prospective jury list revealed after three weeks of voir dire that those twelve people in the box represented about as fair a jury as one could possibly get from the names that had been selected as prospective jurors.

Another unique thing about this jury selection was the fact that for the first time in the history of California eighteen year olds became eligible for jury duty. Regrettably, almost all people in the 18-21 year old group who were called as prospective jurors had to be dismissed because of the fact that the estimated six month period of the trial would make it impossible for them to serve as jurors without losing at least one quarter from school and in some instances two quarters or two semesters. In the final analysis, no student remained as a part of the twelve regular jurors, but one twenty year old young lady who had dropped out of school for this particular year did remain as one of the twelve. Also a nineteen year old student is a part of the alternate panel of four. He was able to sit by reason of the fact that he rearranged his classes so that he could attend school at night and make it possible for him to sit on this case during the day.

THE TASK OF THE DEFENSE was made somewhat lighter, and the enthusiasm of the entire defense team was increased by the fact that Angela was released on bail a few days before the start of the case. She had previously been held without bail under that section of the California law which provides that in a death penalty case, bail could be denied where the "proof of guilt is evident or the presumption thereof great." During the pre-trial bail motions the trial judge had ruled that Angela Davis was a good risk for bail and that he would set bail at a reasonable amount were he able to do so under the law. However, as he interpreted the law, Angela was ineligible for bail. Just before the case commenced, the California Supreme Court ruled the death penalty to be unconstitutional in California. Thereupon, in the light of the trial judge's earlier ruling that Angela Davis would be a good risk for bail, he set bail in the sum of \$100,205.00. Needless to say, Angela's release on bail brought a new feeling of enthusiasm to the entire defense team.

The trial commenced after some of the most intense security precautions ever seen in any court of law in this country. All spectators entering the courtroom were required to have their persons searched including the necessity of passing through a metal detector which had been set up in a special search room for that purpose. Additionally, spectators were assigned to specific seats in the courtroom and each person entering the courtroom was photographed with his seat assignment in plain view on his chest. No spectator was allowed to enter the courtroom after any particular session of the court had started, and anyone leaving the courtroom before a session was concluded was not allowed to re-enter the courtroom. During the jury selection process, all jurors were required to be searched and passed through the metal detectors. The same requirement was made mandatory for all counsel in the case — prosecution as well as defense. The entire court area surrounding

the particular site of the trial had been cordoned off with a twelve foot high chain link fence. Numerous deputy sheriffs were always in evidence at strategic places around the chain link fence and all of them wearing two-way walkie-talkie radios for immediate communication between each other. In addition, the courtroom at all times contained a minimum of at least five armed deputy sheriffs.

THUS WITH JURY SELECTION, and in the atmosphere which has been described above, the taking of testimony began in the case of *People v. Angela Y. Davis*. No matter what the outcome, the trial of this case will certainly have afforded every lawyer in the case, perhaps the most challenging experience of his legal career.



LEO BRANTON, 49, was born in Pine Bluff, Arkansas. He received his Bachelor of Arts degree from Tennessee State and his law degree from Northwestern University. In 1949 he was admitted to the California bar and began his career there as a sole practitioner. During the early 50's he handled two significant cases. One was *People v. Lawrence Bucky Walter*, a case involving a charge of double murder against a young Black soldier in Riverside, California. He successfully challenged the exclusion of Blacks from the jury. Until then, 1950, a Black had never sat on a jury in Riverside county. The second case emerged from the Foley Square trials under the Smith Act in New York. In these trials communists were accused of conspiracy to advocate the overthrow

of the government. The attorneys for the defense had been sentenced to jail for contempt of court. Hence, other attorneys were frightened from representing admitted communists. Subsequently, Mr. Branton represented three communists in California charged under the Smith Act. The defendants were not allowed bail and Mr. Branton helped appeal their case on the issue of bail to the U.S. Supreme Court. In a landmark ruling, the court held in *Stack v. Boyle* that the sole purpose of bail is to guarantee the presence of the defendant in court. The case remains the most quoted on the right to bail until this day.

In 1952 he became a partner in the firm of Margolis, McTernan and Branton, at the time, the first and only interracial law firm west of Chicago. In 1958 he left the firm and became the first Black attorney to practice law in the entertainment industry. During the 1960's he worked in the civil rights struggle in the south and did pro bono work for people arrested in the Watts riots. In 1968 he retired from practice and moved to Mexico. He soon returned from retirement to establish the defense for 18 people arrested during the 5 a.m. police raid on the Black Panther headquarters in Los Angeles.

On January 10, 1972 he became involved in Ms. Davis' case. The defense staff needed an attorney experienced in California trial law. Mr. Branton's reputation induced the defense team to request his services. The prosecution states Angela's trial is criminal, not political. Mr. Branton believes a more accurate description is that the trial is criminal with political overtones. He contends that the prosecution has made it a political trial by emphasizing Ms. Davis' political activities. An example of the misplaced emphasis is the prosecution's use of her many writings and speeches to buttress its case. He sees such tactics as part of a national campaign to "rip off" militant Black leaders. He doubts that a communist can get a fair trial in any California court today. He believes the defense team must start from scratch with jurors whose racism developed long before they heard anything about Angela Davis. Mr. Branton's difficult task will be to successfully manage the major arguments in court.



Graduating in 1969 from the University of Pennsylvania Law School, MARGARET BURNHAM worked until recently as staff attorney with the NAACP Legal Defense Fund. At the request of her longtime friend, Angela Davis, she became involved in December, 1970 in Ms. Davis' fight against extradition from New York to California. After that battle was lost, she moved to California to work on the Davis trial full-time. The groundwork of this sensitive advocate's activism was prepared in working in the civil rights movement. Prior to law school, she worked as a SNCC organizer in the black community in Jackson, Mississippi. Law school summers were devoted to work in the Philadelphia Black community.

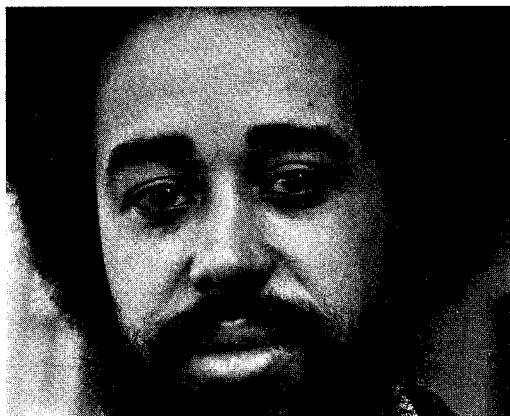
Many would say in hearing of her, that she does not represent the typical Black female lawyer. Like Judge Constance Baker Motley, the first Black female judge in the United States District Court, Marion Edelman, and Eleanor Holmes before her, she decided to work with the NAACP Legal Defense Fund, well known for its years of service in the battle against racial discrimination. Yet, the majority of female lawyers, because of sexism within the profession, end up working for government agencies where the opportunities for dealing with Black community development through the use of laws are limited. Margaret Burnham, both by her concern with Black political prisoners and ghetto conditions from which Black prisoners come, represents a growing number of concerned and committed Black women in the legal profession. Like Margaret, many young Black lawyers and prospective lawyers realize that, while law is not a panacea, its great effect on Black lives requires that larger numbers of politically conscious Black people enter the legal arena.

Ms. Burnham, commenting upon the need for Black lawyers to view their role as occurring both inside and outside the court, said of her work for the "Free Angela" committees: "The street — perhaps more than the court — is the arena for the defense of Angela Davis. My job, of necessity, carries me deep into Black communities as often as it places me in the San Raphael courtroom."

Ms. Burnham feels that Black activist lawyers have their work cut out for them. Unlike the majority of lawyers relating generally to a single client on single issues, the activist lawyer has two major responsibilities. First, she must consider the potential of each case for advancing Black interests. Secondly, she must build Black constituents, whenever possible, who are made more aware of their legal rights and the relevance of particular legal decisions on their lives.

Ms. Burnham does not believe that a lawyer must fight only legal battles. He or she must also be a teacher, an organizer, as well as a legal technician. She says: "Since a successful courtroom defense literally depends on the perspective and commitment of out-of-court forces, the lawyer is obliged to construct his defense outside as well as inside the court. His arguments must be exposed widely to the people. He has an instrumental role to play in amassing the broad support movement necessary to give substance and integrity to the courtroom activity."

Ms. Burnham believes political repression is a major problem facing Blacks. She sees Angela as only the tip of the iceberg; below and around her are thousands of prisoners whom people must begin to think of as integral parts of this case. While people understand that the State is trying to get Angela, they must also understand that there is nothing unique about this situation and that the situation will repeat itself. As a result of this trial the Black community will have a different view of what radicals, revolutionaries and communists are all about. Hopefully, the result will be that the community is educated to, not only the issues having to do with the judicial/penal system, but also the broader questions of why the state is out to get revolutionaries. Why has Angela selected communism as her politics? And why has such a choice made her vulnerable? Then the movement will be strengthened immeasurably.



HAYWOOD BURNS is executive director of the National Conference of Black Lawyers, headquartered in New York, N.Y. He graduated from Harvard in 1962 and earned his law degree from Yale in 1966. Upon leaving Yale he entered the firm of Paul, Weis, Goldberg, Finking, Wharton and Garrison. In 1967 he took leave from the firm to become a law clerk for the Honorable Constance B. Motley, the only Black female District Court Judge in the United States. With the inception of the NCBL in January of 1970, Mr. Burns' present position was created. The NCBL carries on a program of litigation, including affirmative suits on community issues and defense of unpopular clients. Mr. Burns has defended such groups as the Black Panthers in New York and

Philadelphia and the Cornell University Black students engaged in the famous confrontation at Willard Straight Hall.

On October 13, 1970, the day she was arrested, Mr. Burns became involved in Angela's case. The NCBL filed an amicus brief which Mr. Burns argued in federal court; he sought a federal injunction to have Ms. Davis removed from solitary confinement. The injunction was granted. While Ms. Davis was in the Women's House of Detention, she and Mr. Burns had several dialogues about the whole question of the Black bar, the Black liberation struggle and the importance of having Black lawyers involved in her defense to demonstrate to themselves and the world that there are, in every sector of the Black community, people dedicating themselves to the struggle. Subsequently, Mr. Burns was instrumental in obtaining counsel for Ms. Davis. After the defense team was organized, Mr. Burns coordinated and sustained the NCBL members working on the case. The NCBL organized a national panel of Black law professors, virtually a brain trust for the trial team.

Mr. Burns visualizes this case as the classic example of a political case. It brings to his mind an entire catalogue of political cases: the Scottsboro Brothers, Sacco and Vanzetti, the Debs cases, etc. It is a study of how state power can be used in a legal and dubious way to attack unpopular and controversial people. Mr. Burns believes that Ms. Davis' real crime is that she is a Black radical in a society dominated by white racists and male chauvinists. She was too much of a threat; if it had not been Ms. Davis, an indictment would not have been returned on the evidence presented. Placing her on the FBI's most wanted list, one reserved for the most heinous types of crimes and arch criminals, was politically inspired. Listing a political person with no history of violent crime is a thinly disguised attempt at shaping the public mind. When he signed the Omnibus Crime Control Bill the President politically intervened by saying: "Let this be a warning to Angela Davis and other terrorists . . ." There have been many questionable legal practices: the use of conspiracy charges against a political dissident. Such a practice has long been a tradition in American law: it is the "darling of the prosecutor's nursery." The trials of Angela, Bobby Seale, the Panther 21, Erika Huggins, the Berrigans, and many others are cases in point.



ANGELA YVONNE DAVIS was born on January 26, 1944, in Birmingham, Alabama. After spending her junior year at the Sorbonne, Ms. Davis graduated magna cum laude from Brandeis University in 1965 with a B.A. degree, a major in French literature, and membership in Phi Beta Kappa. During her studies and due in part to her admiration for Professor Herbert Marcuse, Ms. Davis' interest in philosophy grew. Resolving to undertake graduate study in the area, she spent the years 1965-67 studying philosophy at the University of Frankfurt. She then enrolled at the San Diego campus of the University of California. In the fall of 1968 she received her M.A. and passed the qualifying examinations for the Ph.D. Six months later she was offered a teaching posi-

tion at the Los Angeles campus of the University of California.

During the summer of 1969 Ms. Davis admitted under protest that she is a member of the Communist Party. The Regents of the University of California then sought to invoke a 1949 rule against the employment of members of the Communist Party. A protracted legal battle ensued. A California State Court invalidated all actions taken pursuant to the 1949 rule, and all administrative proceedings were halted pending the outcome of the instant appeal.

Still without final word from the appellate level the Board of Regents voted not to "renew" Ms. Davis' contract for another year. It is this decision which Ms. Davis was appealing when tragedy struck at San Rafael. The following statement made by Ms. Davis at her arraignment in the Marin County Court House on January 5, 1971 best explains her desire and the necessity of her being co-counsel in this case:

"As a preface to my brief remarks, I now declare publicly before this court, before the people of this country that I am innocent of all charges which have been levelled against me by the State of California. I am innocent and therefore maintain that my presence in this courtroom today is unrelated to any criminal act.

"I stand before this court as a target of a political frame-up which far from pointing to my culpability, implicates the State of California as an agent of political repression. Indeed, the state reveals its own role by introduction as evidence against me, my participation in the struggles of my people, Black people, against the many injustices of this society — specifically, my involvement with the Soledad Brothers Defense Committee. The American people have been led to believe that such involvement is constitutionally protected.

"In order to insure that these political questions are not obscured, I feel compelled to play an active role in my own defense: as the defendant; as a Black woman; and as a communist. It is my duty to assist all those directly involved in the proceedings, as well as the people of this state and the American people in general, to thoroughly comprehend the substantive issues at stake in my case. This has to do with my political beliefs, [my] affiliations, and my day-to-day efforts to fight all the conditions which have economically and politically paralyzed Black America.

"No one can better represent my political beliefs and activities than I. A system of justice which virtually condemns to silence the one person who stands to lose the most would seem to be self-defeating. It is particularly crucial to Black people to combat this contradiction inherent in the judicial system, for we have accumulated a wealth of historical experience which confirms our belief that the scales of American justice are out of balance. In order to enhance the possibility of being granted a fair trial, of which I am at present extremely doubtful, it is imperative that I be allowed to represent myself. I might add that my request is not without legal precedent.

"If this court denies our motion to include me as co-counsel in this case, it will be aligning itself with the forces of racism and reaction which threaten to push this country into the throes of fascism. The many people who have become increasingly disillusioned with the court system in this country will have further reason to solidify their contention that it is no longer possible to get a fair trial in America."



DORIS WALKER, 52, was born in Dallas, Texas. She received her Bachelor's degree from UCLA and her Juris Doctorate from University of California, Boalt Hall. She entered general practice and specialized in constitutional law. In the late 40s she gave up her practice and became involved in the struggle of working people. She worked for the CIO organizing cannery workers. Subsequently she worked as a clerical worker for Cutter Laboratories, became president of the local union, and led it during the first strike in Cutter's history. The company fired her, ostensibly, because management "believed" she was a communist. She won an arbitration hearing which the company refused to obey. She sued and won the case, *Black v. Cutter Laboratories*. It was appealed

to the California Supreme Court which reversed. The U.S. Supreme Court granted certiorari. After argument, the court, in a split vote, decided certiorari had been improvidently granted and dismissed the writ. She then returned to practicing law as a sole practitioner for three years. Next she joined the firm of Treuhafft, Walker and Burnstein, where she is presently a partner.

One of her more significant cases was *U.S. v. Powell and Shuman*, the only sedition case filed by the United States government since World War II. Defendants had published a periodical, *China Monthly Review*, in Shanghai. They published stories on America's use of chemical and biological warfare in Korea. The defendants accused the U.S. government of aggression in sending its forces to Korea. The case ended in a mistrial: subsequently the complaint and indictment were dismissed.

Ms. Walker formally joined Angela's defense team in October, 1971. She was selected because of her diligent activism through the years and her extensive California trial and constitutional law experience. Her husband and child are Black; so her experience with Blacks have educated her to the psychology and aspirations of this oppressed group.

Ms. Walker believes her presence on the defense team underlines the case's massive import to all people desiring the liberation of America's underclass. Her presence symbolizes black and white unity. More immediately, she views her role as an experienced lawyer with special expertise in trial tactics. She feels it is no coincidence that the one white lawyer on the case is a woman. She hopes JOURNAL supporters will see the necessity for creating and sustaining a public atmosphere enhancing the jury's chances to vote its conscience rather than its fears and biases. She says: "We need to generate an atmosphere where facts can be viewed for themselves, not through spectacles of fear and prejudice."

BARBARA K. RATLIFF is working full time as a law clerk for the defense team. Ms. Ratliff graduated from Virginia State College in 1967. After a year at the Oberlin Conservatory of Music, she entered Yale School of Law. Upon graduation from Yale in 1971, she came to California to work for the Davis defense team. Her research, including the brief arguing for Ms. Davis as her own co-counsel, has been invaluable to the attorneys of record.

