

Why Bailey lost a winnable case

by Clark Norton

SAN FRANCISCO, (PNS) — A few days before the guilty verdict that left him stunned, F. Lee Bailey confided to a reporter that he might be better off losing the Hearst case. "If I win, every crackpot criminal in the country will think I can get him off," Bailey said. "If I lose, at least other lawyers will know I did a good job."

But Bailey wasn't playing to a panel of lawyers; his job was to convince a jury of laymen. Lawyers may debate the legal merits of the case, but to this courtroom observer — a layman like the jury members — Bailey lost a case he should have won.

Patricia Hearst's overriding claim for acquittal was that she was a kidnap victim. She was charged solely with voluntarily participating in an armed bank robbery just two months after her brutal, terrorizing abduction; she had been out of her closet prison only two weeks.

The government's evidence concerning the bank robbery alone was inconclusive. Bailey should never have let the jury lose sight of those basic premises.

Yet Hearst was convicted, not for the bank robbery itself, as the comments of the jurors themselves attest, but for her subsequent seventeen months as a fugitive. Proof of her intent prior to and during the robbery was not conclusive. Rather the government won its case on Hearst's activities after the robbery — which the defense tried to answer with a convoluted theory of fear and "brainwashing."

Bailey did fight hard to keep such **ex post facto** evidence out of the trial. But in a go-for-broke hearing out of the jury's presence he may have made a fatal error. Bailey put Hearst on the stand to try to convince Judge Oliver Carter that her post-bank robbery actions were involuntarily coerced — and thus legally inadmissible as evidence. But Carter didn't buy her story.

Once Carter allowed the Los Angeles evidence, Bailey felt compelled to put Hearst on the stand before the jury to counter the damaging testimony that she had shot up Mel's Sporting Goods Store. Having told Judge Carter in the hearing that she had acted solely from fear during her seventeen months as a fugitive, she had to stick with that story.

By calling his client to testify, Bailey opened up even more damaging territory to prosecution questions. One searing result was that Bailey had to advise his client to take the Fifth Amendment 42 times, against the judge's orders, to avoid incriminating herself for alleged crimes in Sacramento.

And the same story that had failed to convince Judge Carter ultimately proved to be, in Prosecutor James L. Browning's words, "just too big a pill to swallow."

Hearst's Extraordinary Tale

Hearst asked the jury to believe she had robbed, fired weapons and kidnaped all out of fear of the SLA — especially

William and Emily Harris, to whom she ascribed almost mystical powers of control.

Hearst's testimony left no middle ground. Everything she had written or spoken during her fugitive life, she claimed, had been influenced by fear of the Harrises.

She kept loaded weapons in her apartment because Bill Harris "might drop in and check up on me." She spoke of revolutionary feminism to best friend Trish Tobin after her arrest because she "thought Emily Harris was in the visiting room" (she wasn't). An autobiography she had written on the lam was dictated to her by the Harrises, who forced her to reveal embarrassing inside gossip about her family.

Had Bailey been able to limit trial evidence to the bank robbery itself, Hearst's tale of duress might have held up. Bank photos were unclear on whether SLA guns were trained on her.

But the legal concept of duress applies only to fear of immediate bodily injury or death, without chance of escape. Her later actions as a fugitive could not convincingly be explained that way. She had many apparent opportunities to escape; she was alone in a car when she sprayed the sporting goods store with bullets.

POW Syndrome

Bailey found himself boxed in. Committed to Hearst's tale of duress, which left too many questions unanswered, he brought in three eminent psychiatrists to depict Hearst's fugitive life in terms of "coercive persuasion" and "thought reform" (popularly known as "brainwashing"), casting the Harrises as villains. Hearst had now known why she acted as she did, the experts said. They compared her to American POW's in the Korean War.

But no matter how textbook-perfect the psychiatrists' arguments, they were not enough to overcome the doubts raised by Hearst's own story.

While not entirely at odds, Hearst's tale of duress and the experts' tale of brainwashing weren't completely complementary either: There are inherent contradictions between the two defenses. Duress signifies the subject freely chooses to act because of fear; brain washing implies there is no free will.

Instead of bolstering a clear, consistent defense version of events — centered on Hearst's own testimony and role as victim — Bailey's experts actually muddied the issues. By bogging the trial down in a lengthy debate over Hearst's months as a fugitive, they shifted the jury's attention from the all-important Hibernia bank robbery.

Despite his problems, Bailey nonetheless may have been overconfident of victory. The press was raving about his courtroom skill; his opponent Browning was blundering by comparison. On paper this looked like Hearst's easiest trial.

Bailey indicated to the media he was already looking ahead to other trials, and may have overexposed his psychiatrists in order to lay the groundwork for Los Angeles, where the brainwashing defense would be crucial.

But Bailey had seriously miscalculated. His psychiatrists couldn't save Hearst from her own testimony. Prosecutor Browning was actually able to turn the concept of "reasonable doubt" into a government asset by asking the jury, "Would you, as reasonable men and women, accept this story from anyone but Patricia Hearst? And if not, I ask you not to accept it from her."

All Or Nothing

Not only was Hearst's story hard to swallow, but she left the jury little room to sympathize with her if they disbelieved it. She incriminated many of her former associates. She repudiated her previous avowals of love for slain SLA member Willie Wolfe by branding him a "Rapist" whom she "couldn't stand." Yet at her arrest she still carried a Mexican figurine he had given her over a year before.

Bailey's requests for sympathy toward his client had a hollow ring of their own. His relentless cross-examination of witnesses — though technically brilliant — may have alienated more than dazzled the jury.

Bailey left a 68-year-old bank guard literally shaking on the stand; opened his questioning of one middle-aged man by eliciting the news that he still lived with his mother; and poked fun at homosexuals. "Have you been down to Polk Street lately?" (a local gay hangout) Bailey asked one witness when the man said he could tell males from females.

But Bailey reserved his most scathing attacks for the prosecution psychiatrists. Rather than questioning the substance of their testimony, he unleashed vitriolic character assaults on Drs. Harry Kozol and Joel Fort, whom he called a "psychopath" and "habitual liar." Bailey was much harsher on Fort and Kozol than Browning ever was on Patricia Hearst — an irony the jury may well have noted.

In the end, Bailey himself became an issue, allowing Hearst's role as victim to become obscured in his own flamboyant aura.

In his growing fury, Bailey seemed ignorant of how to deal with a San Francisco Bay Area jury. By branding all radicals as "crazies" and Terrorists, by ridiculing homosexuals, by criticizing Dr. Fort's individualistic brand of psychiatry, Bailey betrayed himself as a rude out-of-towner in this most tolerant of American cities.

Misplaced Emphasis

Bailey's closing argument was also off the mark. Browning's had been cool and factual. Bailey ignored Browning's mound of evidence and made an emotional appeal. Not, as many had guessed, to play on the human sympathies of the

jury. Instead, standing eye-to-eye with the jury, he delivered a bombastic and condescending lecture on their obligation to find his client not guilty.

Rather than emphasize Hearst's brutal kidnaping — as he had done so effectively in his opening statement — Bailey chose to depict her as one who would do anything to survive. "People eat other people to survive," Bailey told the jury. The remark made Hearst seem more cannibal than victim and buttressed the view that she would — among other things — lie to survive.

No one can say for certain whether the jury would have been swayed by another defense. But one thing is clear: Bailey should never have put Patricia Hearst on

the stand if she couldn't tell a credible story. A consistent defense emphasizing her terror at the time of the kidnaping, and for weeks afterward, could have provided a good case for diminished responsibility for her later actions. Hearst would have had to blame herself more and others less, but she would more likely have evoked sympathy from the jury.

And she would at least have retained her dignity. Instead — whatever crimes she may have committed between her kidnaping and arrest — Patricia Hearst remained as much a victim in court as she did at her abduction.

Her identity had twice been snatched away and remolded: first by the SLA

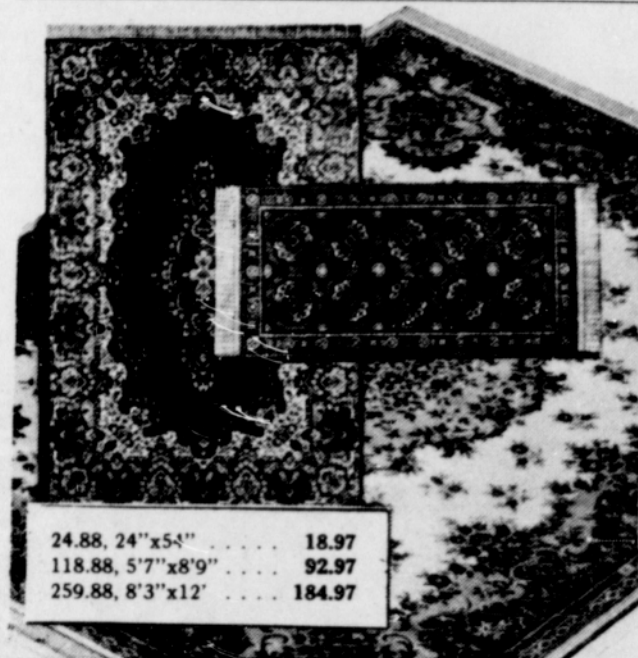
kidnapers, who transformed her from college student to hostage and fugitive; then by F. Lee Bailey, who turned her from the confident feminist of the Tobin tape into a quiet wisp of a woman without identity, friends or freedom.

To the public, she is a criminal; to her former radical associates, a snitch. At age 22, she has nothing left of herself. This most of all makes her a tragic figure.

(EDITOR'S NOTE: Clark Norton, a PNS (Pacific News Service) editor, covered the Patricia Hearst trial for "Rolling Stone" magazine and an upcoming book on the Hearst saga to be published by Bantam.)

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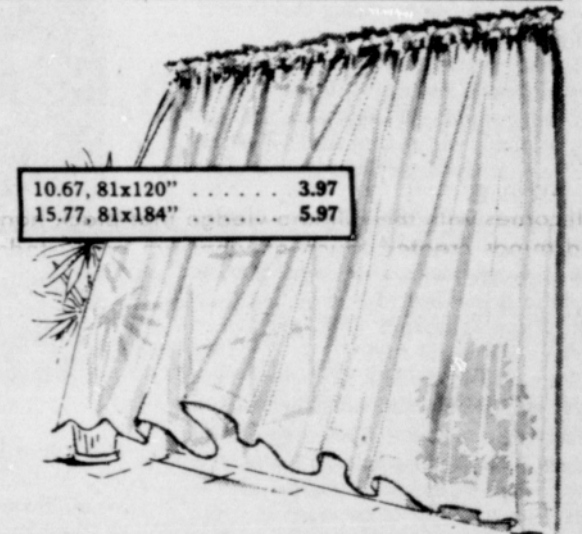
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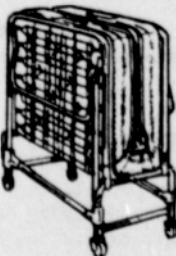
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Mitchell denounces Ford welfare proposal

Congressman Parren J. Mitchell (D-Maryland), Chairman of the Human Resources Task Force of the House Budget Committee, denounced the President's tax and public welfare proposals as anti-work, anti-workers.

"The President's proposals for taxes, AFDC, food stamps, school lunch, and public housing are totally at odds with his rhetoric about the rewards of work. Not only are benefits for modest-income workers slashed almost across the board, but earnings more frequently would yield less income. This turns the work ethic on its head," stated Mitchell.

In a Human Resources working paper, Mitchell released tables comparing taxes and benefits under current law and the President's proposed law. The paper reflects a comparison in Chicago, Detroit, and Seattle, showing that:

- A working man with a wife and two children earning \$6,000 — little more than the updated property level — would have \$5,403 in total net income and benefits

(food stamps and school lunch) under the President's proposals, compared to \$5,886 under current law.

- Under the President's proposals, a woman with three children in Chicago receiving AFDC, food stamps, and school lunches would have a total net income and benefits of only \$5,061 if she earns \$6,000, but **\$300 more — \$5,304 — if she doesn't work at all.**

- Under current law, a Seattle mother of three earning \$4,000 has a total net income and benefits (AFDC, food stamps, and school lunch) under current law of \$6,954 — compared to \$5,703 under the President's proposals.

- After taxes and work expenses only, a working man with a wife and two children in Detroit grossing \$6,000 a year has a net income of \$4,815 under the President's proposals — compared to \$5,033 under current law.

- If a working man in Chicago lives in public housing, gets supplementary food stamps, and his children participate in

the school lunch program, a \$1,000 raise to \$6,000 increases his total net income and benefits by \$74 under the President's proposal — compared to \$363 under current law.

By attempting to reduce the participation rate of particular programs by concentrating benefits more heavily on the poor who earn less than half of the official poverty level, the President abruptly terminates benefits for persons just above the poverty line. Combine this with an effort to concentrate tax relief on families earning more than \$8,000 and the result is that the President squeezes families who earn between \$3,000 and \$8,000.

Mitchell pledged, "I will not allow this injustice to permeate the poor communities of this country. In the budget proposed by the Administration, poor people are considered an expendable item. The Human Resources Task Force has monitored the needs of the poor and I, personally, will be sensitive to those needs in the budget process."

Scott asks aid for Angola

Stanley S. Scott, Assistant Administrator for Africa, Agency for International Development, told a House subcommittee March 10th that AID is considering a request from the International Committee of the Red Cross for \$6.4 million in additional funds to support an expanded relief effort in Angola over the next six months.

Scott testified before the House International Relations Subcommittee on International Resources, Food and Energy. At the request of Chairman Charles C. Diggs, Jr. (D-Michigan), he submitted an AID assessment of economic assistance needs in Angola following the cessation of hostilities in the civil war.

"The main need in the short run," the Assistant Administrator reported, "is expected to be for humanitarian assistance for refugees and other war victims and for skilled personnel to re-establish government services and economic life in the agricultural and industrial sectors."

Further assistance through the ICRC relief effort inside the country or through the United Nations High Commissioner

for Refugees, which is working with the governments in neighboring countries to take care of refugees who fled the hostilities, "would, in fact, be a continuation of our present policy," Scott told the Subcommittee.

Since July 1975, when the ICRC mounted an international disaster relief operation, the United States has provided \$675,000 for disaster relief purposes in Angola. Of that amount, \$600,000 was given to the ICRC, \$50,000 to support other activities within the country by Church World Services, and \$25,000 for emergency relief of war victims following the outbreak of fighting in Luanda last June.

If further assessments indicate that a multilateral relief and rehabilitation effort is required, the Assistant Administrator said, the International Development and Food Assistance Act of 1975 authorizes President Ford to use up to \$30 million of funds made available to AID for development or relief and rehabilitation assistance for the former Portuguese colonies in Africa. "This authority," he explained, "would

permit us to consider responding positively if the United Nations or another appropriate organization initiates a relief and rehabilitation program in Angola."

E. Dennis Conroy, Director of the Office of Regional Affairs in AID's Africa Bureau, who accompanied Scott to the hearing, was questioned by Representative Diggs and Representative Benjamin A. Gilman (R-New York) about an AID contract agreement with the African American Institute under which 45 Angolans are receiving specialized training in development-related skills in the United States and African countries.

Conroy said the regional training contract signed in Fiscal 1975 totals \$400,000, of which approximately half was earmarked for Angola for Fiscal 1976. One million dollars is planned for training activities in Portuguese-speaking Africa, he said, but discussions with the African American Institute have not yet been completed.

Under the current contract, participants in the regional training program total 102, Conroy reported.