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The Kindred Client - Interview with Susan Rutberg

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The Kindred Client

Empathizing with a defendant was never so easy for Susan Rutberg as when she represented Stephen Bingham, accused of furnishing the gun used in the San Quentin Massacre.

August 21, 1971, went down as the bloodiest day in the history of California's prison system. That day, the state's most famous inmate, "Soledad Brother" George Jackson, got hold of a gun and took over San Quentin State Prison's maximum security section in a daring escape attempt. The incident, which came to be known as the "San Quentin Massacre," ended with the deaths of Jackson, three guards and two other prisoners.

For years, suspicion rested on the shoulders of 29-year-old Stephen Bingham, a left-wing lawyer with a wealthy pedigree and a history in the civil rights, farm worker and tenants rights movements.

Bingham had been interviewing Jackson for a suit challenging prison conditions and was the last outsider to see the inmate before the uprising.

Prison officials charged that Bingham had smuggled the gun to Jackson inside a tape recorder. Bingham's subsequent disappear- ing act — he lived underground in France for 13 years — only seemed to confirm official suspicions.

But in 1984 Bingham turned himself in, saying he was innocent, tired of life on the lam and ready to face the charges against him. At trial his defense would fall in large part to Susan Rutberg.

Rutberg was 35, handling felony trials in the San Francisco public defender's office, when Bingham surrendered to arrest.

She had kept close tabs on the case since the 1976 trial of Bingham's co-defendants, the San Quentin Six. Then a student at Golden Gate University School of the Law, Rutberg received briefings on the case during daily jogs with a friend who was clerking for one of the defense attorneys.

Ten years later, M. Gerald Schwartzbach invited her to serve as co-counsel for Bingham's trial. They devised strategy together and split up other duties in court. Rutberg, on leave from the PD's office, handled the opening statement, preparation of Bingham's character witnesses and cross-examination of witnesses about the sequence of events at San Quentin on the day of Jackson's escape attempt.

The Bingham defense was a class reunion for a generation of left-wing lawyers in San Francisco, many of whom had scattered into prestigious private practices.

When a Marin County Superior Court judge ordered Bingham held on a $400,000 bond, several of Bingham's friends pledged their houses as security so he could post bail. Supporters held fund-raisers to defray Bingham's defense costs.

At trial Rutberg and Schwartzbach played Bingham's history of non-violent activism to the hill, defending Bingham's decision to flee as based on a well-founded fear that he might be the victim of a frame-up from prison officials.

In this interview for The Recorder with freelance writer Jorge Aquino, Rutberg says Bingham's trial did more than present competing theories about what happened on an especially dark day in California history.

Instead, she explains, the case became a referendum on Bingham's character: Was he, as Rutberg says, "an innocent client who was caught in a web of circumstantial evidence and who had led an exemplary life?" Or was Bingham, as a prison official put it, a "dilettante revolutionary" bent on undermining prison security?

Rutberg, now an associate professor of criminal litigation and trial advocacy at Golden Gate, recalls how Bingham's case afforded her the opportunity to revisit the civil rights movement through contemporary accounts. She looks at how the spirit of the movement played a part in jury selection and how her client's testimony played with that jury. And she recounts how her own anxiety at trying her first high-profile case appeared at one point to work a strategic advantage.

Bingham was found innocent on June 27, 1986. But if his acquittal allayed suspicions about the lawyer's complicity, it did anything but put to rest questions about how the San Quentin Massacre really unfolded and how Jackson, incarcerated inside California's most airtight prison facility, could have obtained a gun.

The Recorder: This was a high-profile case, but it was also an emotional one for you. Why was it so emotional?

Susan Rutberg: One of the things a good lawyer tries to do is put herself in the shoes of her client, right? And I think with Steve, as a lawyer committed to civil rights, it was a lot easier for me to put myself in his shoes.

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than it would have been with some of my other clients. So I had no problem crossing that empathy line. I was right there.

It was as if, in some way, it had happened to all of us. All of us lawyers for social change could have been at any point accused by the system of some crime. And all of us could have been in that position.

So the victory for Steve was a victory for people who care about social change. This was one for the good guys.

Recorder: How did you get involved in Bingham's defense?

Rutberg: The San Quentin Six trial occurred while I was in law school. It lasted 18 months. It was the O.J. of its day, the longest trial in California history up to that point. Eventually, only minor charges were sustained against the prisoners — except for Johnny Spain, who was convicted of conspiracy and murder.

I attended as a supporter of the prisoners. A lot of my [National] Lawyers Guild friends went there not just to watch the trial, or for political reasons, but to learn. I learned about the trial because a friend, Dennis Riordan, was Charles Garry's law clerk at the time and Dennis and I used to go running every morning. Charles Garry represented Johnny Spain and he was one of the most exciting lawyers you could ever be in a courtroom. So I knew about the case through Dennis and that's what primed me to become one of Steve's lawyers years later.

Recorder: Who was Stephen Bingham? And how did he become involved with George Jackson?

Rutberg: Steve Bingham was never a criminal defense lawyer. Like many of the lawyers of his generation, he graduated from the Freedom Rides in the South, organizing voters in Mississippi. Steve Bingham was a college student at the time. He was idealistic and he came from a tradition of idealistic yet wealthy people. His father was a populist guy who had published a newspaper called Common Sense. Steve grew up believing that one should help those less fortunate than themselves. After the civil rights movement he worked with the farm workers. He worked as a law student and a lawyer in Berkeley trying to organize tenants.

Recorder: Steve was on the periphery of the prison rights movement. How was he drawn into the Soledad Brothers case?

Rutberg: Steve had been visiting George over the summer, but not as part of the Soledad Brothers defense. He was visiting to gather information for a lawsuit against the Department of Corrections protesting the inhumane conditions of the adjustment center. So he was going there as a fact finder to talk to George about what his life was like. The [Soledad Brothers] trial was about to start on the Monday — Aug. 23rd, 1971 — following Steve's visit to George. The Saturday before is when this all happened.

Recorder: Jackson took over the adjustment center minutes after his visit with Bingham, with a gun he had somehow obtained. The prosecution's theory was that Bingham had come to San Quentin to visit Jackson with a Black Panther Party member named Vanita Anderson, who was working as an investigator on Jackson's defense; that Anderson had handed Bingham a tape recorder when he went into the visitors center; that the tape recorder had a gun concealed in it; and that Bingham then slipped the gun to Jackson.

What kind of evidence did prosecutors have connecting Steve Bingham to smuggling the gun?

Rutberg: A very flimsy collection of circumstantial evidence. It was ludicrous. I think what the prosecution did — which in my experience is what they so often do — is work backwards from a conclusion: "Bingham must be guilty. He's a radical lawyer, affiliated with the Lawyers Guild and we can't find him and he won't talk to us. We could explore the possibility that Jackson already had the gun in the adjustment center, or a guard brought the gun to the adjustment center. But that wouldn't look good. So let's explore the possibility that supports our ideology."

Their theory was that the gun could only have come during the visit with Steve. But that assumption is not based on anything that was the truth of the prison.

What was established at trial was that guards were never searched going in and out of San Quentin. And people who worked in the prison were not searched. But visitors were searched, prisoners were searched; prisoners' families were searched; lawyers were searched. But every day dozens, hundreds of guards could walk back and forth carrying whatever they wanted to carry.

And inside George Jackson's cell, after this shootout, they found bullets, ammunition clips — a lot of stuff that you would think they wouldn't want him to have. So one theory that was widely believed at the time was that George Jackson was being set up by the prison authorities — that they wanted to let people bring him stuff so that they could shoot him and kill him. So the theory was that Jackson already had the gun in his cell.

Recorder: What were some of the flaws in the prosecution's case?

Rutberg: Their version depended, first of all, on the validity and integrity of the Inspectroscope, the metal detector you have to go through [at San Quentin]. During the trial we had a personal experience with how secure that system was. We had asked for a "jury view," to actually bring the jury to San Quentin, so they could see for themselves what the adjustment center and what the prison looked like. And they could go through the process of going through the metal detector that Steve went through on Aug. 21, 1971. In 1986 they were still using the same metal detector.

I was wearing a pantsuit or something and the buttons on my blouse apparently — unknown to me — were covered in cloth but had metal underneath. One of the jurors was wearing an underwire bra. She and I both set off the metal detector. And we were both hustled to the back and we were searched. It was by a woman guard, but it was a humiliating event. They didn't strip-search us, but they patted us down until they found the metal.

The strip of metal in an underwire bra was really very tiny. And if that set off the metal detector, that experience I think for the juror and for me was visceral proof that the prosecution's theory was crazy. Because if Steve had been in possession of a gun, it would have set off the metal detector. This gun weighed two pounds and was made of metal. So that was one place where their theory didn't make any sense.

Recorder: The prosecution also theorized that after Jackson allegedly got the gun from Bingham, he had planted it under a wig or a hair net, and balanced it on his head for the walk back from the Visitor Center to the adjustment center.

Rutberg: If [Jackson] had gotten the gun from Steve, [how could he] have remained undetected, put it on his head, balanced it under a wig all the way back from where the visiting room was to the adjustment center?
He was watched by, I would venture to say, hundreds of eyes, because he was the man in the California prison system at the time. And when George was being escorted back and forth, he was shackled, so he didn't have his hands to help him balance anything.

Rutberg: Did they ever recover anything like a wig or a hair net?

Rutberg: George Jackson did have the gun at some point. What happened with the wig was: They searched the adjustment center on Aug. 21, right after this happened, then again on Aug. 22 and again on Aug. 23, when the wig was finally found — or a wig was found — stuck in the neck of a toilet, the back pipe of a toilet [in Jackson's cell]. This toilet had been searched two or three times before and nothing was found. But suddenly, the third time it was searched, here comes a wig.

The state's criminalist testified at trial that he had examined the wig and couldn't find any hair fibers that matched George Jackson's hair. And he found nothing on the gun or on the wig to show that they had ever been in contact with each other.

Recorder: You came into the case after the preliminary hearing. What sort of information had Bingham's first lawyers — Leonard Weinglass and Paul Harris — sprung?

Rutberg: There was testimony early on by the guard whose job it was to search George Jackson's person after he left the visiting room. And his earliest statement was, "I did search his hair."

Recorder: That was Edward Fleming. To whom did he make that statement?

Rutberg: To the investigators at the prison immediately after the event. If you say something after the event, it's most likely to be true. Fleming was an African-American man, that made a difference. When he said, "I did search his hair," that was more credible than if it had just been a white guard who

CONTRABAND: At Bingham's 1986 trial, Rutberg holds the gun that officials said George Jackson surreptitiously balanced on his head.
packed. There’s not a seat in the courtroom; there was a line to get in.

There were no cameras in the courtroom. But the press was allowed to have audio and there was a microphone on the podium. And I was already extremely nervous.

The point I was trying to get home to the jury was that the prosecution’s theory was ludicrous because this gun was too heavy for any human being to balance on their head as they walked — I don’t remember how many yards it was.

Recorder: Seventy-five yards.

Rutberg: Quite a ways. And as I was trying to describe this, I was holding the gun in my hand and my palms were sweaty and the gun dropped out of my hand and made a huge cracking noise as it hit the wooden podium because the microphone was right there.

After the opening statement, my friends came up to me and said, "Oh, that was brilliant strategy, Susan," because it had resounded in the courtroom. And, of course, I’ll confess now: no strategy, just sweaty palms.

Recorder: You had the [East Bay nonprofit] National Jury Project as consultants in the defense. What did their interviews show? What did the jurors come away with?

Rutberg: They formed a really close-knit group. We had parties. We had a 10-year anniversary. They made a Trivial Pursuit[-type] game based on bits of information they had learned at the trial. We played this game at the first party we went to a year after the acquittal. There were questions like: "What was significant about his eyebrows?" Or, "What was his name underground?" [He shaved the patch between his eyebrows to avoid being recognized and went by the name Robert Boarts.] I can’t remember all the trivia. But they really got into it.

Here you are with Steve Bingham being who he is and you’re seeing his whole life before you. We had character witnesses from every part of his life testifying, people who had been with him in Mississippi, people who had worked with him for landlord-tenant issues in Berkeley, somebody who had worked with him in the early days of the Lawyers Guild. I think that’s what persuaded the jury.

Recorder: Having your client on the stand must have been an unnerving experience. He was nervous, even rambling at times. What do you recall about having him on the stand? Was he your best witness?

Rutberg: Yes. I think that having a defendant get up and look the jurors in the eye and say, "I'm innocent. I didn't do it," is a very important piece of evidence. The way our system works, you don't have to do that. But when you don't do that, there are always questions. And Steve very much wanted to leave this trial with no questions. He is a man of honor and he wanted his honorable name unstained.

He has a high voice and it was cracking and quaking when he was on the stand. I think he cried. I think he's not someone who was raised to show his emotions. And it was very hard for him because he went through a kind of death for 13 years. And I doubt one can ever piece one's life together again after something like that.

So I think he was a very moving and effective witness. The jurors cried when he cried. We all did a lot of crying there.

Recorder: It looks like you’re feeling pretty emotional right now.

Rutberg: I’m just a crier. In fact, the headline on the front page of the paper said, "Susan Rutberg wept after the verdict." It was not the way I’d like to be remembered. But, so be it.