

Judi Bari

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When Judi Bari died of breast cancer last week she was only 47. She was a champion for the preservation of the Northern California forests. She was fearless and she was brilliant. She died within six months of learning she had breast cancer, leaving her two young teenage children before adulthood, and her life's work unfinished. These are tragic circumstances. Unfortunately, they pale in comparison to how she was treated by the criminal justice system.

I represented Judi when she was under suspicion for carrying the bomb in her car that exploded and left her maimed for life. It was clear from the moment of the explosion that neither the FBI or the Oakland police were going to investigate who was behind this vicious attack and what was the motive behind this effort to kill Judi, and her companion Darryl Cherney.

Literally, within hours of the explosion, the FBI announced to local law enforcement and the press, who were both willing to buy the explanation and run with it, that Judi and Darryl were members of Earth First!, an organization that they labeled "terrorist." Therefore, the reasoning went, there was no need to look further; Darryl and Judi were carrying the bomb.

The problem and the tragedy were that Earth First! is not a terrorist organization and the evidence at the scene did not support a theory that this was a self-inflicted bombing. Judi, Darryl and the public have been denied the investigative services of the FBI to expose and punish the attackers. Judi was adamantly anti-violence, and the FBI knew it. She lived the rest of her life maimed and in chronic pain, without the satisfaction for herself or for her children of a complete investigation into the attack. The vast and abundant resources of the FBI, which were displayed so graphically in the Kazynski Unabomber investigation, were never brought into play in the Bari bombing. It would be an exaggeration to say they never lifted a finger, but the finger was only pointed towards Judi and Darryl.

Within moments of the bombing, in what proved to be an act of utter naivete on my part, I phoned the FBI

and offered to meet with them and tell them what we knew: that Judi had been the subject of several death threats in recent months. She was a trained and very able organizer, and for months before the bombing had been engaged in a dialogue both with timber workers, and timber management. She was confrontational, funny, abrasive when she chose to be, as well as charming, well-informed and very good at directing public awareness to the plunder of the forests for commercial profit. She was also at that time in the process of organizing Redwood Summer, which was conceived to bring masses of college students and activists to the North Coast for a summer of demonstrations and civil disobedience to focus national attention on the local problems. It was modeled after Mississippi Summer of the 1960's which brought activists in great numbers of an earlier generation to the South to register voters and bring attention to the conditions of African Americans living in the South.

Redwood Summer was a very good idea, and it proved very threatening to the logging interests that had survived scrutiny from the outside world for decades while they increased logging yields, denuded the forests and made a lot of money. Early in the organizing effort, Judi denounced "tree-spiking" which was the only potentially violent arrow in the Earth First! quiver. In years previous, Earth First! activists had on isolated occasions endorsed the practice of tree-spiking, which called for placing large nails in trees to be logged, which would injure mill workers in the milling process. Judi saw that any form of violence was counter-productive in garnering public support for the issue. Anyone watching in the spring of 1990 was aware that Earth First! and Redwood Summer were shaping up to be a powerful force. Judi was so effective at what she was doing, that she was going to have to be reckoned with. There was no way to ignore her. It is the same message of Karen Silkwood and Fred Hampton. To me there is no explanation for the attempted murder other than she was too much of a threat, and had to be silenced. Whoever conceived of the plot was surely aware that their chances of getting away with it were greater if she could be made to look like a self-destructing terrorist. Was the FBI complicit? Were they aware that there were plans afoot to injure her? Did they allow these to go forward, without direct involvement? I wish we knew. Litigation in the civil action for damages against the FBI, and Oakland Police is pending in Federal

District Court in Oakland. Discovery has already documented sufficient irregularities and false statements made by FBI personnel at the time of the bombing to make one extremely suspicious of what role the FBI may have played in the bombing.

My first call to the FBI, seeking their help in identifying Judi's attacker, should have disabused me of any notion that they were interested in finding out who planted the bomb. In the first minutes of the first conversation, they informed me that she and Darryl were the only suspects in the bombing. They impressed upon me their certainty that there was little, if anything, that I could ever do to change their minds, while mouthing the usual litany that they would investigate all leads. In a later meeting, in which I turned over to them the originals of the death threats Judi had received in the weeks and months before the bombing—including one taped to the door of the Mendocino Environmental Center showing her framed in the cross hairs of a rifle sight—they said they wanted to talk to her. She was still hospitalized, her bail was \$100,000, and she and Darryl still remained the only suspects in the offense. They had the audacity then to suggest that it was our demand for immunity as a prerequisite for the conversation that was impeding their investigation. In the civil suit, Judi learned that the death threat original documents, containing a clear potential to produce fingerprint or other forensic evidence, were never submitted to the FBI laboratory in Washington by the agents to whom I personally handed them.

The bomb, a time and motion device, was placed under the seat of her car by someone whose clear intention was to kill her. She had received numerous death threats—which continued after the attack—and while horrifying, the bomb attack was not entirely surprising. She was threatening a very rich industry whose profits and methods had largely gone unscrutinized.

Her pelvis was shattered by the bomb blast and healed in a way that left her in chronic and ceaseless pain, unable to sit down, but also unable to stand for long periods of time. She was lucky to have lived at all. The person or persons who wished Judi's death and conspired to accomplish it, have never been apprehended, entirely because the criminal justice system declined its services to

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her. The system chose to accuse her rather than protect her. Immediately after the bombing the FBI, followed by the Oakland Police, disseminated outright lies about the evidence to support search warrants, feed the press, and keep Judi in police custody while in critical condition. At one point, after bail was raised *ex parte*, the police removed her from the critical care hospital ward which provided intensive nursing services, to the jail ward, which had almost none, on the pretext that she was an increased security risk, despite her virtual paralysis at that point. The FBI has refused and continues to refuse to investigate, smug in its belief that Judi and her Earth First! compatriots were responsible for the bombing. Evidence of her and Darryl's complicity was nonexistent, despite all FBI noise to the contrary, and no charges were never filed against either of them.

During the intervening years between the bombing and Judi's death, the movement she was so instrumental in inspiring has grown from a tiny seed to a full grown forest. Despite pain and physical disability, she continued to work, to organize and to play her violin. Last summer saw Senator Diane Feinstein trying to broker a land swap that would appease the hunger of 20th Century robber baron, Pacific Lumber Company owner Charles Hurwitz, to devour a large percentage of the remaining Redwoods on earth. He hasn't managed yet; the Headwaters Forest still stands. Hopefully it will remain as a living and self-renewing monument to Judi Bari.

I saw a sign in a window in Ukiah a few days after Judi's death. It said: "Don't mourn. Organize." That is pure Judi. It is an honor to have been able to have played a role in her life.

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system. In Germany, battered women who kill their abusers are rarely recognized to have acted in self-defense. However, the fact that they were battered is weighed heavily in mitigation at sentencing. It is not uncommon for a woman who kills her abusive partner to be convicted of manslaughter based on a judicial finding of "diminished responsibility" due to the abuse she suffered. In such a case, she may be sentenced to probation. However, if a woman is found to have acted "with Malice" the law disallows mitigation. Expert testimony on battered women experiences could be used to avoid a judicial finding of malice.

Germany's non-adversarial legal system, where there is no jury and the judges and prosecutors work so closely together is both fascinating and strange. For example, the judge conducts the examination of the witnesses and, as there is no jury, can ask just about anything s/he wants. During a short break during a murder trial, I was shocked to see the prosecutor and the panel of three judges having lunch together in the courthouse cafeteria. I later mentioned this to the prosecutor, who saw no problem and commented that it is a requirement in Bavaria to be a prosecutor for at least five years before becoming a judge.

As I continue my research in German law, I find that my experience as an American defense attorney gives me a unique perspective. I currently am working with a number of family and criminal lawyers in Germany to develop strategies for introducing a battered women's defense into their system. As a Visiting Scholar at Stanford Law School, I am presently writing an article on the use of expert testimony of battered women's experiences. If you have any thoughts on this topic, I can be reached at efarmerl@leland.stanford.edu.