

**ACTIVISM UNSHACKLED & JUSTICE
UNCHAINED: A CALL TO MAKE A
HUMAN RIGHT OUT OF ONE OF THE
MOST CALAMITOUS HUMAN
WRONGS TO HAVE TAKEN PLACE
ON AMERICAN SOIL¹**

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I. INTRODUCTION

The attack upon the World Trade Center in New York City on September 11, 2001 was a defining moment in American history.³ Logistically, life changed in the United States. Americans collectively guarded their trust and conjointly heightened their suspicions. With all the emphasis on post-9/11 strategizing, and the countless caveats concerning anticipated international enemy attacks, many Americans involuntarily conceptualize a terrorist as being a person visible through binoculars—one far removed from us by geography, politics, language, custom, and, perhaps, religion. Partaking in this type of

³ This attack is hereinafter referred to as the “9/11 attack.” For further details about the attack, *see* *In re September 11 Litigation*, 2013 WL 1137320 (S.D.N.Y. Mar 20, 2013); *see also* Sumit Galhotra, *Domestic Terror: Are We Doing Enough to Combat the Threat from Within?*, CNN.COM, available at <http://www.cnn.com/2012/09/16/us/domestic-terrorism/index.html> (last visited Jan. 15, 2014) (In the words of Daryl Johnson, a former counterterrorism expert at the Department of Homeland Security, “9/11 has set the threshold for what terrorism is in the minds of many Americans . . .”). *See also* Proclamation 7588, *National Days of Prayer and Remembrance, 2002*, (Aug. 32, 202), available at 2002 WL 32817650 (In the words of then-President George W. Bush, “The events of September 11 altered our lives, the life of this Nation, and the world.”)

enemy-etching has become good social etiquette now in our nation's history. Few people would even entertain the thought of a terrorist being anything other than an "outsider." Even fewer people would openly consider the almost sacrilegious notion of American governmental agents committing acts that are consistent with or akin to what is statutorily recognized as domestic terrorism upon the very citizens it exists to serve.⁴

This Article examines whether, during a darker period in United States history, government officials committed acts that are consistent with or akin to what is statutorily recognized as domestic terrorism against American citizens—specifically,

⁴ See *Socialist Workers Party v. Attorney General of U.S.*, 642 F.Supp. 1357, 1383 (S.D.N.Y., Aug 25, 1986) ("Not so obvious is the fact that...counterintelligence and disruption activities have at times been directed against domestic organizations."). See also *Alliance to End Repression v. City of Chicago*, 91 F.R.D. 182, 189 (N.D.Ill. Aug 11, 1981) (wherein the FBI, Justice Department, CIA and individual defendants settled a class action involving a pattern of the following domestic intelligence practices: (a) investigations of persons and groups based on their lawful exercise of First Amendment rights, (b) disruption and harassment of persons and groups engaged in the lawful exercise of First Amendment rights, and (c) the use against such persons and groups of investigative means which are overly intrusive, in violation of First and Fourth Amendment rights, or which are otherwise illegal).

members of the Black Panther Party (the “BPP”).⁵ Section II analyzes the purpose, goals and legacy of the BPP. Section III elucidates as to whether members of the BPP fell prey to behaviors consistent with or akin to what is statutorily recognized as domestic terrorism. The conclusion is presented in section IV. This Article details the grave and calamitous nature of the harm done to BPP members and to the BPP at large, in hopes that the profound damage be acknowledged and those responsible be officially held accountable. Acknowledging shortcomings, being accountable for wrongdoings, and reconciling transgressions gives birth to social growth. Moreover, “public

⁵ The BPP was originally named “The Black Panther Party for Self-Defense.” See Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 20* (Simon & Schuster Books For Young Readers 1997). It is believed that the name was changed to represent an ideological shift to making social programs a top priority. See *Id.* at 65. BPP members were known for wearing black leather jackets, dark sunglasses and black berets. See Richard Gonzales, *Did Man Who Armed Black Panthers Lead Two Lives* (National Public Radio Broadcast Oct. 3, 2012), available at <http://www.npr.org/2012/10/03/161408561/did-man-who-armed-black-panthers-lead-two-lives> (last visited Jan. 26, 2014). The BPP is further discussed in Section III.

discussion is a political duty,”⁶ and lawyers have a “duty, when necessary, to challenge the rectitude of official action.”⁷ Consecrating a union between unaccountability for wrongdoing and unrepentance will forever divide what could have been and what should have been.

II. THE BPP

Enemies have not always been “outsiders” or “non-Americans.” At an earlier point in history, the BPP was branded the enemy. In 1966, Huey Newton and Bobby Seale co-founded the BPP in Oakland, California.⁸ The BPP was a multifaceted association of American citizens who had a vision for making America better. The BPP did not believe in pleading, begging, praying, or patiently waiting for equal rights to be conferred. They felt equality was a birthright, demanding it was a duty, having it

⁶ See *Whitney v. California*, 274 U.S. 357, 375 (U.S. Cal., 1927) (Brandeis, J., concurring), *overruled in part by* *Brandenburg v. Ohio*, 395 U.S. 444 (U.S. Ohio 1969).

⁷ See MODEL RULES OF PROFESSIONAL CONDUCT PREAMBLE 5.

⁸ See Bobby Seale, *SEIZE THE TIME THE STORY OF THE BLACK PANTHER PARTY AND HUEY P. NEWTON* 59 (Random House 1991).

delayed was an insult, and compromise was tantamount to social and political suicide. “The Black Panther Party claimed center stage on the world scene like a burst of radiation, searing American race relations with its bold, “in-your-face” stance.”⁹ “Beginning with a core of five members in 1966, the BPP had grown to include as many as 5,000 members within two years, and had spread from its original Oakland base to include chapters in more than a dozen cities.”¹⁰ At various times, the BPP allegedly had affiliates in over forty cities throughout the United States.¹¹ The BPP’s reach even extended behind prison walls,¹² and into the international sphere.¹³

⁹ Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 20* (Simon & Schuster Books For Young Readers 1997).

¹⁰ See Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS 125* (South End Press 1990).

¹¹ See *Black Panther Party v. Smith*, 661 F.2d 1243, 1289 (D.C.Cir., Jul 08, 1981).

¹² See Colette Gaiter, *What Revolution Looks Like: The Work of Black Panther Artist Emory Douglas*, in *BLACK PANTHER: THE REVOLUTIONARY ART OF EMORY DOUGLAS 109* (Rizzoli International Publications, Inc. 2007) (noting that the Angola 3 organized the Angola prison chapter of the Black Panther Party in 1971). See also *Celebrating The Life of Herman Wallace*, 159 Cong. Rec. E1439-03 (Oct. 4, 2013) (speech by John Conyers), available at 2013 WL 5502164 (“Mr. Wallace began his struggle for justice back in the

1970s, when he, along with Robert King and Albert Woodfox, organized a prison chapter of the Black Panther Party at the Angola prison.”); *see also* Emily Wilson, *Former Black Panther: "There Are Political Prisoners in America as Well,"* ALTERNET.ORG, May 26, 2009,

http://www.alternet.org/story/140242/former_black_panther%3A_%22there_are_political_prisoners_in_america_as_well%22?paging=off¤t_page=1#bookmark (last visited June 17, 2013) (Robert King credited Herman Wallace and Albert Woodfox with organizing the Angola chapter of the BPP. He indicated that “[t]hey started political education classes and started passively protesting the work conditions, which were 17 hours a day. They tried to hold political discussion and political education classes that would instill hope in the prisoners. It was a passive protest. You know, work stoppage and food stoppage. Not eating any food or not serving food in the kitchen so that they could get the attention of the administration.”); *see also* Alec “Icky” Dunn & Brice White, *Out of Angola*, CLAMOR MAGAZINE, Sept./Oct. 2001), *available at* http://www.itsabouttimebpp.com/Chapter_History/pdf/New_Orleans/Out_of_Angola.pdf (last visited Jan. 22, 2014) (Interview with Angola 3 member Robert King)(mentioning that Herman Wallace and Albert Woodfox formed the first official chapter of the BPP). *See generally* Angela A. Allen-Bell, *Perception Profiling and Prolonged Solitary Confinement Viewed Through the Lens of the Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged, and Justice Becomes Legally Blind*, 39 HASTINGS CONST. L.Q. 763 (2012). *See generally* Robert Hillary King, FROM THE BOTTOM OF THE HEAP (PM Press 2009). *See also* Orissa Arend, SHOWDOWN IN THE DESIRE 157-163 (The University of Arkansas Press 2009).

¹³ *See* “Gun- Barrel Politics: The Black Panther Party, 1966-71”, p. 34, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 34 (1971), *available at* <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013)(referencing an attempt by BPP members to engage the United Nations in their quest for international support for what they deemed to be human rights violations); *see also* “Gun-Barrel Politics: The Black Panther Party, 1966-71”, p. 105, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 34 (1971), *available at* <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013)(“[T]he North Korean communist regime

A cornerstone of the BPP was service to the community and community empowerment. They established a “free breakfast program for school children, free neighborhood clinics that administered tests for sickle-cell anemia, a major killer of African Americans, and an award-winning community school.”¹⁴ They served as watchdogs over the police to ensure that police were not violating rights in their community.¹⁵ “Members of

joined communist China in public expressions of sympathy for black Americans and the Black Panther Party in particular.”).

¹⁴ Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 20* (Simon & Schuster Books For Young Readers 1997); see also William Brand and Cecily Burt, *Behind Fury, Panthers Laid Course for Social Programs*, *THE ARGUS* (FREMONT-NEWARK, CA), Oct. 7, 2006, available at 2006 WLNR 17418301. (“At [Bobby] Seale's urging, Tolbert Small, an Oakland doctor, started the first widespread testing for sickle cell disease. Eventually all 11 Panther clinics and 49 Panther chapters throughout the country offered free screening, raising the medical community's awareness of the little-known disease. The Panthers' political lobbying led to passage of the Sickle Cell Act and President Richard Nixon's mention of sickle cell disease for the first time in a State of the Union address.”). See generally *The Black Panther Party Research Project, Black Panther Community Programs*, available at <http://www.stanford.edu/group/blackpanthers/programs.shtml> (last visited Jan. 14, 2014).

¹⁵ See Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 20* (Simon & Schuster Books For Young Readers 1997). After a detailed study of the BPP, the government explained the patrols as follows:
Open carrying of loaded weapons was not expressly forbidden by California law. Newton's research into the law and instructions to Panthers on how to handle weapons and ammunition within legal

the BPP would listen to police calls on a short wave radio, rush to the scene of the arrest with law books in hand and inform the person being arrested of their constitutional rights.”¹⁶ In one instance, following the deaths of several children, they organized a campaign to have a traffic light installed,¹⁷ and they directed traffic at the dangerous

limits enabled the patrols to function for many months before authorities adopted measures putting an end to the practice...The equipment...included cameras and tape recorders. If a police officer stopped a ghetto resident for questioning or search...the militants might photograph or record the encounter, advise the black citizen of his rights, intercede in his behalf, and, in the case of an arrest, follow along to the police station to see that due process was observed without so-called ‘brutality.’ The...patrol[s]...tapped grievances found to be commonplace in black communities where residents were often in violent upheaval in the mid-sixties. Hostility toward police, a Presidential commission of inquiry reported, was widespread in such areas, where not only actual misconduct but even acceptable law enforcement procedures were subject to interpretation as part of a police campaign to ‘brutalize’ the residents.

"Gun- Barrel Politics: The Black Panther Party, 1966-71", p. 18, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 43 (1971), *available at*

<http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013) (footnotes omitted).

¹⁶ A Heuy P. Netwon Story, PBS.ORG,

http://www.pbs.org/hueypnewton/actions/actions_capitolmarch.html (last visited Jan. 13, 2014).

¹⁷ See Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 64 (Lawrence Hill Books 2010).

intersection until a traffic light could be installed.¹⁸ When there were safety fears for Betty Shabazz following the assassination of her husband, Malcom X, the BPP agreed to escort her.¹⁹ The BPP regularly escorted the elderly as they traveled to banks to cash their checks.²⁰ They educated children,²¹ taught political education classes to adults,²² provided shoes to those in need,²³

¹⁸ See Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 20* (Simon & Schuster Books For Young Readers 1997).

¹⁹ See *Id.* at 33.

²⁰ See *Id.* at 68.

²¹ See *Id.* at 67 (making reference to “Liberation School,” which operated in summers when schools were closed). See also *id.* at 102 (referencing the purchase of a building and the subsequent opening of a school named the Oakland Community Learning Center). The school was touted a success:

The first class to graduate was so far advanced beyond the necessary ninth-grade education that it was skipped over the junior-high level and placed into public high schools. Students were served breakfast, lunch and dinner at the school. They were taken for medical and dental checkups. The facility was open on weekends for them to play and eat. Those who needed new clothes and whose parents could not afford them received them courtesy of the school; so, too with school supplies and books.

Id. at 103.

“In the fall of 1977, the California State Legislature issued a commendation to the Oakland Community Learning Center for having set the standard for the highest level of education in the state.” See *Id.* at 104.

²² See *Id.* at 68.

²³ See *Id.* at 86.

registered voters,²⁴ and offered free transportation to families who wanted to visit loved-ones in prison.²⁵ In the words of co-founder Bobby Seale, “[t]his is what my revolution was all about, putting (control) back into the hands of the people.”²⁶

The BPP had a largely reasonable and entirely legal platform, which sought to ensure that African Americans enjoyed equal rights in this country.²⁷ Contrary to popular legend, the BPP did not hate whites, law enforcement, or others who

²⁴ See *Id.* at 101.

²⁵ See *Id.* at 68.

²⁶ William Brand and Cecily Burt, *Behind Fury, Panthers Laid Course for Social Programs*, THE ARGUS (FREMONT-NEWARK, CA), Oct. 7, 2006, available at 2006 WLNR 17418301.

²⁷ See Bobby Seale, SEIZE THE TIME THE STORY OF THE BLACK PANTHER PARTY AND HUEY P. NEWTON 66-69 (Random House 1991) (explaining the platform and program as a demand for the following ten things: freedom, employment, no exploitation of the African American community, housing, educational opportunities, exemption of African Americans from military service, end to policy brutality, release of African Americans from penal institutions, trials conducted by a jury of peers, and a United Nations-supervised plebiscite for African Americans only). According to an official government report, “[t]he thrust of the Panther program at its inception was to persuade black citizens that they must seek control over the communities in which they already resided.” See “Gun- Barrel Politics: The Black Panther Party, 1966-71”, p. 8, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 43 (1971), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013).

were not African American.²⁸ The gun toting images of a blood-thirsty posse that has become the

²⁸ One of the BPP's white attorneys, Jeffrey Haas, explained that the BPP "adopted [the position] that while black culture and black history were beautiful and significant, not all whites were bad, and that whites could be allies as long as blacks controlled the main policies and the agenda for action." See Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON 29* (Lawrence Hill Books 2010). BPP-member Richard Aoki, who was Japanese American, recalled the following exchange between himself and BPP co-founder Huey Newton, after he was asked by Newton to join the BPP: "And I said, 'Say what? I know you two are crazy, but are you colorblind? You know I'm not black,'...He said, 'I know you're not black, Richard, but I'm asking you to join because the struggle for freedom, justice and equality transcends racial and ethnic barriers.'" See Richard Gonzales, *Did Man Who Armed Black Panthers Lead Two Lives*, (National Public Radio Broadcast Oct. 3, 2012), available at <http://www.npr.org/2012/10/03/161408561/did-man-who-armed-black-panthers-lead-two-lives> (last visited Jan. 26, 2014). See also William Brand and Cecily Burt, *Behind Fury, Panthers Laid Course for Social Programs*, *THE ARGUS (FREMONT-NEWARK, CA)*, Oct. 7, 2006, available at 2006 WLNR 17418301. (According to Bobby Seale, "[i]t was distortions planted by the FBI that said things like we hated all white people and that we were trying to invade the white community and shoot and kill white people...That was not true.' 'I truly believe in democracy, real power to the people, and I believe in human equality to all people, white, black, brown,' 'When I said things like 'the bullet or the ballot,' I preferred the ballot."). It is not debatable that the BPP and law enforcement were not bedfellows. Due to the nature of the inquiry at hand, this article won't attempt to fully explore the dynamic between the BPP and the police. To the extent needed to appreciate the undertaken discussion, a window into the dynamics of this rather precarious relationship is offered. BPP member Harold Taylor, who was arrested on charges related to the 1971 killing of a police officer, offers a glimpse into an aspect this relationship, which was layered with enmity:

And immediately, when we got in the jail, they started beating us. They never asked us any questions in the beginning. They just started beating us...they put me a room with Ruben Scott...he was laying on the floor in a fetus position, where — and he had urine on him, feces,

and his face was scratched up, and he was swollen, and he was trembling... They made me take off my clothes, chained me to a chair by my ankles to the bottom of the chair and my wrists to the sides of it, and I just had on my shorts. And at that point, they started beating me.

So they were beating me and asking me questions. And when they started asking me questions, they started telling me about what I was supposed to have done, that if I didn't cooperate and tell them what happened, they were going to continue to do it. So they put plastic bags over my head and held me back while five or six police officers stood around me, hitting me and kicking at me. They were like kicking each other trying to get their licks in. They were hitting each other trying to hit me. And all I could do was sit there and just try to brace myself and anticipate blows coming. And then they'd take the bag and put it back over my head, and they'd wait 'til I'd just about pass out, and they'd snatch it off.

[O]ne... would stand behind me, and he would take the palms of his hands, and he'd slap my ears, and my ears would just be ringing. He did that a number of times, and fluid began to run down the side of my face, and I couldn't hear anything. It was just ringing.

And at that point, they dragged me to another room, and then they take me out of the chair, and they had the chains on my ankles, and they would drag me through like a gauntlet of police on both sides, and they were like kicking me and calling me names. And they continued that and put me in another room, and then I could hear John Bowman and I could hear Ruben Scott, and they were hollering. They were doing basically the same thing to them that they were doing to me. This went on for — you lose conception of time, but it seems like it was forever. And they continued this and continued this.

Then [the]... San Francisco Police Department... came.... And they took me in a room, and he says, "Mr. Taylor," he says, "we want to talk to you about San Francisco." I told him I had no idea what they were talking about. So they says, "You know what? This is not California. This is a whole different show here."

So the door flies open, four or five run in there, they start beating me and kicking me. And they just take me out of the room and just drag me down the hallway and take me and slam me back in a chair, chain me back up to the chair and start all over again with the plastic bag, the ear slapping, the slapjacks across the back of my shoulders, all down my legs and on my shins, between my knees. It was so painful

symbol of the BPP is also mythic. Some historians have recorded the BPP as a violent group.²⁹ This

that all you could do was try to scream, you know. And they says, “You’re going to talk, or we’re going to continue. This will go on as long as it takes for you to talk.” And I kept telling them the same thing. So later — they did that all day. It went in shifts...

I could hardly talk from screaming so much that my voice was hoarse. And they started probing me with the cattle prod on the back of my ear, down the side of my arm, underneath my arm, all real sensitive areas. And they says, “You know, we can do this all night long. We have nothing to do, you know. And this will continue until you talk to the people from San Francisco.”

See *Former Black Panther Details Brutal Police Torture to Extract Confession in 1971 Murder Case*, (Democracy Now Nov. 30, 2007), available at

http://www.democracynow.org/2007/11/30/former_black_panther_details_brutal_police (last visited Jan. 23, 2014) (Interview with BPP member Harold Taylor as he describes being taken into custody by police in New Orleans in 1973. The charges at issue were dismissed in 1975, but they resurfaced in 2007.). This topic is discussed further in Section IV.

²⁹ See *Toston v. Thurmer*, 689 F.3d 828, 830 (7th Cir. Aug 02, 2012) (indicating that “the Black Panthers were implicated in many acts of violence, including murder.”). See also *Sinclair v. Kleindienst*, 645 F.2d 1080, 1082 (D.C. Cir. Mar 09, 1981) (stating that “[t]he Black Panthers had advocated violence against police, military officers, and the President, and had carried out attacks upon public buildings and police stations.”). See also “Gun- Barrel Politics: The Black Panther Party, 1966-71”, p. 133, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 34 (1971), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013) (“Born in the flames of urban rioting in 1966, the organization of black youth first saw its mission as the creation of an autonomous black America through the threat of violence, if not actual violence.”).

Violence, as relates to the BPP, should not be considered in isolation, out of context or without giving deference to the role perception plays in altercations, or without understanding that official excesses were at issue during the BPP era. For the BPP, to simply view the

reputation might have come as a result of many BPP members choosing to bear arms for self-defense. It might have even come from a single incident in “May 1967 [when] thirty Oakland Panthers . . . went to the California legislature in Sacramento carrying rifles to dramatize their right of self defense, as well as to protest pending legislation that would overturn the law allowing them to legally carry unconcealed weapons.”³⁰

Some have claimed that the association with violence came from the BPP themselves due to their frequent use of the phrase: “off with the pigs.”³¹ Some people theorized that this saying was a

altercation from the moment that the first lick passed or the point in time that the first shot fired is a misleading oversimplification of history. A more balanced point of reference would be to, using perception and abuses as the barometer, consider if the violence (by or against the BPP) was excessive and/or necessary to avoid death or injury and to consider who was the aggressor when violence was at issue.

³⁰ Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 31 (Lawrence Hill Books 2010). See also William Brand and Cecily Burt, *Behind Fury, Panthers Laid Course for Social Programs*, *THE ARGUS* (Fremont-Newark, CA), Oct. 7, 2006, available at 2006 WLNR 17418301.

³¹ “Gun- Barrel Politics: The Black Panther Party, 1966-71,” p. 42, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 34 (1971), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013).

mischievous way of suggesting that violence should be used on police.³² After a thorough investigation into the BPP's affairs, Congress reached a contrary conclusion concerning the violent implications of "Off with the Pigs." The congressional report explained:

[A] 'pig' [as used by the BPP] . . . is a 'low natured beast that has no regard for law, justice or the rights of the people; a creature that bites the hand that feeds it; a foul depraved traducer, usually found masquerading as the victim of an unprovoked attack.' The epithet 'pig'...refer[s] not only to police officers, but also to national guardsman, military men, the

³² One court recalled:

The most famous Black Panther slogan, known to everyone at the time, was 'Off the pigs.' It was generally understood that these words meant, 'Kill police officers.' The Party aimed at making a revolution. The Party emphasized armed struggle and guerilla warfare. The Party planned violence, incited terrorism and spread inflammatory rhetoric designed to encourage homicidal assaults upon the police. The articles and cartoons of the party publication reflected a 'continuous endorsement of the physical extermination of police officers.' Cartoons in this publication graphically demonstrated panthers attacking pigs in police uniforms and actually killing them. A virus of violence had been released in the community
Spain v. Rushen, 883 F.2d 712, 730 (9th Cir. Aug 22, 1989) (citing "Gun-Barrel Politics: The Black Panther Party, 1966-71," Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 43 (1971)).

President, and executive department heads, candidates of major political parties, the U.S. Government...to unsympathetic newspaper[s]. 'Pigs' usually had white skins, but occasionally were colored black. The label was applied to Panther 'enemies.'³³

Perhaps William O'Neal, the BPPs former chief of security, is deserving of some of the credit for the BPPs image as a violent organization. He "advocated the most militaristic line; he often carried a gun; he was constantly suggesting other Panthers engage in criminal activities."³⁴ William O'Neal was consumed with weaponry.³⁵ He promoted them amongst the BPP and personally initiated a weapons training program.³⁶ Some of

³³ "Gun- Barrel Politics: The Black Panther Party, 1966-71," p. 42, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 43 (1971), *available at*

<http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013).

³⁴ Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 174 (Lawrence Hill Books 2010).

³⁵ See Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 68 (South End Press 2002).

³⁶ See *Id.*

William O'Neal's proposed security plans included use of nerve gas, electrocution, bullwhips, bombs, and electric chairs.³⁷ If only the BPP had known that he was actually a FBI informant³⁸ who was acting out a script ghostwritten by the FBI.³⁹ Some people might legitimately assign fault for the violent image to BPP-member Richard Aoki, a recently discovered FBI informant, who is said to have actually supplied the BPP with its first weapons.⁴⁰ Others see the BPP as violent because

³⁷ See *Id.* at 67 (noting that BPP leaders rejected William O'Neal's proposals).

³⁸ See *Hampton v. Hanrahan*, 600 F.2d 600, 606 (7th Cir. Apr 23, 1979), *rev'd in part*, 446 U.S. 754 (U.S. Ill. Jun 02, 1980) (establishing William O'Neal as a paid informant for the FBI). See also Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 174-186 (Lawrence Hill Books 2010); see also Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION: THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 65 (South End Press 2002).

³⁹ See Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION: THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 68 (South End Press 2002). See also *id.* at 123 (mentioning how the FBI used the reference "violence-prone" as a pretext for most of its COINTELPRO actions against the BPP). See also Paul DeMain, *An Anatomy of a Government Informer*, *NEWS FROM INDIAN COUNTRY*, Feb. 15, 1995, available at 1995 WL 15435809 ("In addition to infiltrators, the FBI was also known to have offered, under the Hoover/Nixon, COINTELPRO era, guns and ammunition to many groups it was investigating.").

⁴⁰ See Richard Gonzales, *Did Man Who Armed Black Panthers Lead Two Lives*, NATIONAL PUBLIC RADIO BROADCAST (Oct. 3, 2012),

the media regularly reported violent exchanges between the BPP and the police.

The BPP had a very different self-image, however. Co-founder Huey Newton explained: “A panther will not attack anyone, but when cornered he will strike out and not stop until the aggressor is wiped out....”⁴¹ It seems they felt they were more victims of violence than they were initiators of violence.⁴² When asked if it was a violent organization, the BPP indicated that members were

available at <http://www.npr.org/2012/10/03/161408561/did-man-who-armed-black-panthers-lead-two-lives> (last visited Jan. 26, 2014).

⁴¹ “Gun-Barrel Politics: The Black Panther Party, 1966-71,” p. 24, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 43 (1971), *available at*

<http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013).

⁴² See *Seale v. Gramercy Pictures*, 949 F.Supp. 331, 334 (E.D.Pa. Dec 18, 1996) (stating that “the Black Panther Party engaged in overt political activity, such as demonstrations and protests...the Black Panther Party rejected Dr. Martin Luther King Jr.’s calls for non-violent resistance to physical attack. [Bobby Seale] stated in his deposition that the Black Panther Party advocated that black people should own guns for ‘self-defense against the racist power structure or any racist who attacked us.’”). An analogy to consider is taken from the following words of an elected official in defense of the United States’ reaction to terrorism:

Terrorism, the killing of innocent victims, is totally reprehensible, repugnant, and morally unjustifiable. Self-defense in response to such terrorism is morally justifiable and is authorized under international and natural law.

147 Cong. Rec. S11185-02 (Oct. 30, 2001) (statement of Arlen Specter), *available at* 2001 WL 1334870.

not required to carry or train with firearms.⁴³ They continued “the atmosphere of harassment by law enforcement officers was such that members were encouraged to carry firearms.”⁴⁴ Many BPP members were present in the apartment of slain-member Fred Hampton on the night that Mr. Hampton was killed during a raid.⁴⁵ The surviving members reported that there was no security plan and, as a result, most members did nothing, despite having weapons in close proximity.⁴⁶ Beyond this, the BPP rules prohibited members from using, pointing, or firing weapons unnecessarily or accidentally.⁴⁷

⁴³ See *Black Panther Party v. Smith*, 661 F.2d 1243, 1263 (D.C.Cir. Jul 08, 1981), *vacated by* 458 U.S. 1118 (U.S. Dist. Col. Jul 02, 1982).

⁴⁴ See *id.* (referencing a BPP’s discovery response in a civil suit that they filed against the United States government).

⁴⁵ Section III discusses BPP-member Fred Hampton in further detail.

⁴⁶ See *Hampton v. Hanrahan*, 600 F.2d 600, 615 (7th Cir. Apr 23, 1979), *rev’d in part*, 446 U.S. 754 (U.S. Ill. Jun 02, 1980) (wherein Robert Zimmers, a ballistics examiner for the FBI crime laboratory, concluded that there was no evidence of shotgun blast coming from any area of Fred Hampton’s apartment where BPP members were stationed during the raid).

⁴⁷ See “Gun-Barrel Politics: The Black Panther Party, 1966-71,” p. 74, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 43 (1971), *available at*

III. ARE THE PANTHERS VICTIMS OF ANYTHING CONSISTENT WITH OR AKIN TO DOMESTIC TERRORISM?⁴⁸

<http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013) (referencing the BPP’s rules).

⁴⁸ In trying to decipher if an intentional harm that adversely affects multitudes of people is in fact domestic terrorism, one must be careful not to confuse a mass murderer with a domestic terrorist. For more information on this discrepancy, see Mark McAllister Johnston, *We Shouldn’t Misuse The Meaning of ‘Terrorist’*, DES MOINES REGISTER, Feb. 16, 2012, available at 2012 WLNR 3361672 (explaining that “[t]errorists commit their atrocities so as to attempt to influence the behavior of the general population and of its government. Their intended victims are not those they kill, but rather are the governments and the millions of people they hope to terrorize into some desired change of behavior, as they see it”). See also Mychal Denzel Smith, *Assata Shakur Is Not a Terrorist*, THE NATION’S BLOGS, May 7, 2013, available at 2013 WLNR 11201831 (expressing “what of [Assata Shakur’s] actions qualifies Shakur as a terrorist? Even if you believe she is responsible for [the death of one police officer], that would make her responsible for one death . . . 40 years ago. If that is terrorism...then in the process of labeling Assata Shakur a terrorist, the FBI has rendered the word all but meaningless . . .”).

The domestic terrorist is more strategic and more agenda-driven; terrorists act to bring about social, religious or political change and do so in a way to seize the attention of the masses. See NATIONAL RESEARCH COUNCIL, DISCOURAGING TERRORISM SOME IMPLICATIONS OF 9/11, p.13 (2002), available at http://www.nap.edu/openbook.php?record_id=10489&page=R2 (last visited Dec. 25, 2013) (“All terrorists . . . have one trait in common: they live in the future: that distant—yet imperceptibly close—point in time when they will assuredly triumph over their enemies and attain the ultimate realization of their political destiny. For the religious groups, this future is divinely decreed and the terrorists themselves specifically anointed to achieve it. The inevitability of their victory is taken for granted.’ They value their own cultural values and, if . . . religiously based, their religious commitments.”).

Timothy McVeigh, a convicted and now-executed domestic terrorist, was an American citizen and an ex-Army soldier who had developed

The Patriot Act defines domestic terrorism

as

an activity, occurring primarily
within the territorial jurisdiction of

extremist ideologies following a government raid upon a religious sect in Waco, Texas; Timothy McVeigh bombed a federal building. *See Terror Hits Home: The Oklahoma City Bombing*, FBI.Gov, available at <http://www.fbi.gov/about-us/history/famous-cases/oklahoma-city-bombing> (last visited Jan. 15, 2014) (“Within moments, the surrounding area looked like a war zone. A third of the building had been reduced to rubble, with many floors flattened like pancakes. Dozens of cars were incinerated and more than 300 nearby buildings were damaged or destroyed. The human toll was still more devastating: 168 souls lost, including 19 children, with several hundred more injured.”). Theodore Kaczynski, an American citizen, was convicted of domestic terrorism. “[For] [o]ver . . . 17 years, he mailed or hand delivered a series of . . . bombs that killed three Americans and injured 24 more.” “Along the way, he sowed fear and panic, even threatening to blow up airliners in flight.” *See FBI100*, FBI.Gov, available at http://www.fbi.gov/news/stories/2008/april/unabomber_042408 (last visited Jan. 15, 2014). Clayton Lee Waagner, also an American citizen, is another example of a domestic terrorist. Mr. Waagner had ties to the Army of God, a group believing in violence against abortion providers as a way of ending abortions. *See U.S. v. Waagner*, 319 F.3d 962, (7th Cir. Feb. 19, 2003). *See also* Press Release, National Abortion Federation, National Abortion Federation Commends Law Enforcement on Apprehension of Domestic Terrorist Clayton Lee Waagner (Dec. 5, 2001), available at <http://www.prochoice.org/news/releases/archive/2001/20011205.html> (last visited Jan. 18, 2014). Mr. Waagner “claimed responsibility for over 550 anthrax threat letters sent to abortion providers.” *See* Press Release, National Abortion Federation, National Abortion Federation Commends Law Enforcement on Apprehension of Domestic Terrorist Clayton Lee Waagner, (Dec. 5, 2001), available at <http://www.prochoice.org/news/releases/archive/2001/20011205.html> (last visited Jan. 18, 2014). These illustrations showcase individual acts of domestic terrorism, as well as serve as benchmarks by which to gauge the query at hand.

the United States, that involves acts dangerous to human life that are in violation of the criminal laws of the United States or of any state which appears to be intended to intimidate or coerce civilians, influence government policy by intimidation or coercion or affect the conduct of a government by mass destruction, assassination, or kidnapping.⁴⁹

⁴⁹ The formal name is “Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism.” See Public L. No. 107-56, 115 Stat. 272, signed into law on October 26, 2001, *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/html/PLAW-107publ56.htm> (last visited June 12, 2013). On May 26, 2011, President Barack Obama signed the PATRIOT Sunsets Extension Act of 2011, a four-year extension of three key provisions in the USA PATRIOT Act: roving wiretaps, searches of business records (the “library records provision”), and conducting surveillance of “lone wolves”—individuals suspected of terrorist-related activities not linked to terrorist groups. *See also* <https://www.govtrack.us/congress/bills/112/s990> (last visited Sept. 16, 2013). *See* 18 U.S.C.A. § 2331(5). *See also* Krissah Thompson, *Assata Shakur Was Convicted of Murder: Is She a Terrorist?*, THE WASHINGTON POST, May 9, 2013, *available at* 2013 WLNR 11323185. (According to the FBI, domestic terrorism is: “The unlawful use or threatened use of force or violence by a group or individual based and operating entirely within the United States or its territories without foreign direction committed against persons or property to intimidate or coerce a government, the civilian populations or any segment thereof in furtherance of political or social objectives.”). Use of the current definition is appropriate because: (1) the harm to the BPP continues (due to the lack of a remedy, the lack of accountability and many open cases against BPP members); and, (2) the former and current meanings are consistent.

In deciding if the BPP is a victim of behaviors consistent with or akin to what is statutorily recognized as domestic terrorism, one might reduce the definition of domestic terrorism to the following parts, all of which must be met:

- (1) activity occurring primarily within the territorial jurisdiction of the United States
- (2) involves acts dangerous to human life
- (3) in violation of the criminal laws of the United States or of any state
- (4) appears to be intended to intimidate or coerce civilians, influence government policy by intimidation or coercion or affect the conduct of a government by mass destruction, assassination, or kidnapping.

The first part of the definition requires the existence of an activity occurring primarily within the United States. In an August 25, 1967 memo, J. Edgar Hoover instructed the FBI “to expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of black-nationalist, hate-type organizations.”⁵⁰ After the deaths of Martin Luther King and Malcom X, a tide change occurred.

⁵⁰ Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 91-2 (South End Press 1990).

Nonviolence was losing footing to a more radical approach to social change.⁵¹ This change prompted a second memo, dated February 29, 1968, calling for expanded counterintelligence efforts.⁵² This memo expressed as a goal:

To prevent the coalition of militant black nationalist groups, prevent the rise of a leader who might unify and electrify these violence-prone elements, prevent these militants from gaining respectability, and prevent the growth of these groups among America's youth.⁵³

The FBI took this directive seriously. Perceiving the BPP to be such an organization, the FBI engaged in aggressive clandestine operations towards the end of making them extinct, literally or figuratively, whichever could be best accomplished.⁵⁴

⁵¹ *See id.* at 105.

⁵² *See id.* at 107.

⁵³ *Id.*

⁵⁴ *See generally*, Pratt v. Webster, 673 F.2d 408 (D.C. Cir. Jan 22, 1982). *See generally* Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities, Final Report, S.Rep.No.755, 94th Cong., 2d Sess., Book III at 185-223 (1976) (chapter titled "The FBI's Covert Action Program To Destroy The Black Panther Party");

This secret intelligence operation, called COINTELPRO, “lasted from 1956 to April 1971,”⁵⁵ and was headed by William C. Sullivan.⁵⁶ However, COINTELPRO was not brought to the attention of the American public until 1975 when a Senate subcommittee called for an investigation. This committee, chaired by Senator Franck Church of Idaho, came to be known as “The Church Committee.”⁵⁷ The Church Committee found that the various intelligence agencies “had exceeded their authority through abusive surveillance and disruption of political activity at home” and it further found that “the most serious breaches of

Human Rights In The United States: The Unfinished Story Current Political Prisoners-Victims of COINTELPRO, Congressional Black Caucus Legislative Weekend (Sept. 14, 2000) (Hosted by Representative Cynthia McKinney, D-Ga.), available at <http://www.ratical.org/globalize/CynthiaMcKinney/news/if000914HR.htm> (last visited July 6, 2013).

⁵⁵ See Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, *UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR 25* (The New Press 2008).

⁵⁶ See Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS 96* (South End Press 1990).

⁵⁷ The full name of this Committee was “The United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities.” See Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities, Final Report, S.Rep.No.755, 94th Cong., 2d Sess., Book III at 185-223 (1976).

duty were those of presidents and other senior executive branch officials.”⁵⁸ In addition to COINTELPRO occurring on American soil, following a hearing and investigation conducted by United States legislators, a decision was made to use various arms of the United States government to dismantle the BPP, including the United States Postal Service, the United States Internal Revenue Service, and the United States federal employment application and screening process.⁵⁹

Some people might be weary of how a president or an agency might succeed at a conspiracy against so many different individuals in so many different states. The answer might be that the United States Justice Department created a special unit to assist with federal-local

⁵⁸ Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR 5 (The New Press 2008).

⁵⁹ "Gun-Barrel Politics: The Black Panther Party, 1966-71", p. 139-140, Report by the Committee on International Security, House of Representatives, H.R.Rep. 92470, 92nd Cong., 1st Sess., 34 (1971), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013).

cooperation.⁶⁰ The Central Intelligence Agency (the “CIA”) also followed suit and formed local alliances.⁶¹ Kathleen Cleaver, National Communications Secretary of the BPP, stated: “Richard Nixon’s election as president seemed like

⁶⁰ See Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 142 (South End Press 1990). See also *Wahad v. F.B.I.*, 813 F.Supp. 224 (S.D.N.Y. Jan 29, 1993) (NO. 75 CIV. 6203 (MJL)) (where a BPP member alleged a federal-local police conspiracy). See also *Pratt v. Webster*, 508 F.Supp. 751, 759 (D.D.C. Feb 12, 1981), *reversed by* 673 F.2d 408, 411 (D.C. Cir. Jan 22, 1982) (In a proceeding to obtain COINTELPRO documents by way a Freedom of Information Act request, the court ruled that the FBI properly deleted the “names of state and municipal police officers from law enforcement reports submitted by their agencies in the course of the FBI investigation” in question.). See also *Alliance to End Repression v. City of Chicago*, 237 F.3d 799, 801 (7th Cir. Jan 11, 2001) (“[T]he intelligence division of the Chicago Police Department contained a unit nicknamed the ‘Red Squad’ which spied on, infiltrated, and harassed a wide variety of political groups.... Most of the groups, including most of the politically extreme groups, were not only lawful, and engaged in expressive activities protected by the First Amendment, but also harmless.”). See also *Hampton v. Hanrahan*, 600 F.2d 600, 610 (7th Cir. Apr 23, 1979), *rev’d in part*, 446 U.S. 754 (U.S. Ill. Jun 02, 1980) (“The FBI in Washington urged its offices implementing COINTELPRO to develop liaisons and working relationships with local law enforcement officials to comply with the FBI’s mandate to provide information to these agencies as well as to help effectuate the FBI’s counterintelligence goals.”); see also *Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283, 1302 (9th Cir.(Cal.), Sep 24, 1999) (finding that the Oakland Police department had a division that monitored the activities of the environmental activist group, Earth First!, and further finding that the FBI cooperated with the Oakland police in a conspiracy against the group’s leader).

⁶¹ See *Alliance to End Repression v. City of Chicago*, 91 F.R.D. 182, 189 (N.D. Ill. Aug 11, 1981) (making reference to CIA documents detailing a relationship between the CIA and the Chicago Police Department during the civil rights era).

the shot from the starting pistol for a systematic assault against the [BPP] that rolled ferociously across the country.”⁶² “Along with its growth came a local, national, and federal response that was ruthless in its efforts to discredit and destroy” the Panthers.⁶³ “United States law enforcement agencies, from local to state to federal branches, proclaimed the BPP its number one enemy.”⁶⁴ Raids upon their headquarters were commonplace.⁶⁵ Harassing arrests and criminal prosecutions were a routine and ritualistic in their frequency.⁶⁶

⁶² Kathleen Cleaver, *A Picture Is Worth A Thousand Words*, in *BLACK PANTHER: THE REVOLUTIONARY ART OF EMORY DOUGLAS* 59 (Rizzoli International Publications, Inc. 2007).

⁶³ See Orissa Arend, *SHOWDOWN IN THE DESIRE*, Introduction, xvii (The University of Arkansas Press 2009).

⁶⁴ Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 2* (Simon & Schuster Books For Young Readers 1997)

⁶⁵ See Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY* 59 (Simon & Schuster Books For Young Readers 1997) (“Between July 1968 and December 1969, there were at least twenty-nine raids and confrontations between the police and the BPP.”).

⁶⁶ On this point, a court observed: Plaintiffs' affidavits, which must be accepted as true at this stage, reveal a series of incidents between police and members of the Black Panther Party or vendors of the Black Panther newspaper. In December 1969 and January 1970, persons selling the Black Panther newspaper were taken to the police station and told either to stop selling the paper or to obtain a license, and then were released without charges. One such vendor, Bruce Johnson, was charged with

As for establishing an “activity,” the FBI declared “war” on the Panthers.⁶⁷ In an effort to

violating Chapter 31, pleaded guilty and on January 7, 1970, received a conditional discharge for one year. Although city officials now claim that, at some point in the period between Johnson's conviction and filing of this action, the corporation counsel ruled that Chapter 31 did not apply to selling newspapers, that information was never conveyed to Bruce Johnson or the Black Panther Party, nor was it publicly announced.

In the ensuing months, threats to invoke Chapter 31 ceased, but there is some indication that the police established surveillance of persons selling the paper. Joseph Campbell, a police officer, revealed that he ‘purchased nearly every issue of the said paper,’ and was able to give the names of persons who sold the paper on several different occasions. On April 29, 1970, Black Panther Party members were arrested for putting up a poster setting forth their political ideas, and charged with violating chapter 4(1) of the Ordinances of Mount Vernon which requires a permit for posting ‘commercial or business advertising matter’ and thus was plainly inapplicable. One of those arrested, Leo Woodberry, claims that he was threatened by police officers and that approximately fifty copies of the Black Panther newspaper were confiscated. On May 25, 1970, after the present action was filed, the charges were dismissed. Finally, Leo Woodberry claims that on June 5, 1970, while he was selling the paper, two police officers told him to keep moving and then watched him walk up and down the block.

The alleged incidents, taken together, could be construed to establish a campaign of harassment directed against sales of the Black Panther newspaper.

Hull v. Petrillo, 439 F.2d 1184, 1187 (2nd Cir.(N.Y.) Mar 17, 1971). *See also 1971: Black Panthers Acquitted after Tangle with New Orleans Police*, THE TIMES-PICAYUNE, Dec. 14, 2011, available at http://www.nola.com/175years/index.ssf/2011/12/1971_black_panthers_acquitted.html (last assessed June 17, 2011) (noting “On Aug. 6, 1971, a New Orleans jury cleared 12 Black Panthers of charges of attempted murder. Several members of the group later pleaded guilty to criminal trespassing.”).

⁶⁷ *See generally* WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER

establish that the activity occurred “primarily within the United States,” it is noteworthy that all COINTELPRO activity was first approved by high ranking, executive level officials who were acting under the badge of official authority and as arms of the United States government.⁶⁸ The FBI acted domestically in its efforts to neutralize the BPP in the aforementioned ways. During the COINTELPRO era, J. Edgar Hoover, a United States official, sent personal directives to the FBI relative to the BPP.⁶⁹ Without a doubt, the United

PARTY AND THE AMERICAN INDIAN MOVEMENT 68 (South End Press 2002). *See generally* Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 125 (South End Press 1990). *See generally* Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities, Final Report, S.Rep.No.755, 94th Cong., 2d Sess., Book III at 185-223 (1976); *See generally* *Human Rights In The United States: The Unfinished Story Current Political Prisoners-Victims of COINTELPRO*, Congressional Black Caucus Legislative Weekend (Sept. 14, 2000) (Hosted by Representative Cynthia McKinney, D-Ga.), available at <http://www.ratical.org/globalize/CynthiaMcKinney/news/if000914HR.htm> (last visited July 6, 2013).

⁶⁸ *See* Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 111 (South End Press 1990). (referencing a March 4, 1968 FBI internal memo stating that “[c]ounterintelligence operations must be approved by the Bureau...so that there is no possibility of embarrassment to the bureau”).

⁶⁹ *See* WARD CHURCHILL & JIM VANDER WALL, *AGENTS OF REPRESSION THE FBI’S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 68 (South End Press 2002).

States engaged in “an activity [—war—] primarily within the United States.”

The second part of the definition of domestic terrorism involves acts dangerous to human life. The United States undertook many acts during its war upon the BPP that were dangerous to human life, both to the lives of the Panthers, as well as to the lives of many others. After announcing that the BPP was “the greatest threat to the internal security of the country,”⁷⁰ FBI Director J. Edgar Hoover suggested that a “deliberate false arrest” campaign be used as a method of neutralization for African American activists.⁷¹ Additionally, “in Southern California the FBI mounted a covert operation to escalate a ‘gang war’ between the BPP and an organization called the ‘United Slaves.’”⁷² “This gang war resulted in the killing of four Panthers by members of United Slaves and

⁷⁰ See Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 123 (South End Press 1990).

⁷¹ Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 112 (South End Press 1990).

⁷² *Hampton v. Hanrahan*, 600 F.2d 600, 609, n.7 (7th Cir. (Ill.), Apr 23, 1979, *Rev'd in part*, 446 U.S. 754 (U.S.Ill. Jun. 02, 1980).

numerous beatings and shootings.”⁷³ These two acts show some ways the government undertook acts that were dangerous to human life, with many more acts, including the countless raids upon the BPP. Not only did these raids endanger lives, many of these raids were pretextual and undertaken for nothing more than harassment and intimidation, and many more raids were done with far greater force and manpower than was needed. The raid upon the New Orleans Chapter of the BPP serves as a good illustration.

New Orleans was host to one of the strongest southern chapters of the BPP.⁷⁴ The state’s governor did not approve of the BPP’s presence in Louisiana and he made no secret of it. Then-governor John J. McKeithen said: “We should hit them right between the eyes.”⁷⁵ He continued:

⁷³ Hampton v. Hanrahan, 600 F.2d 600, 609, n.7 (7th Cir. (Ill.), Apr 23, 1979, *Rev’d in part*, 446 U.S. 754 (U.S.III. Jun. 02, 1980).

⁷⁴ See Drew Jubera, *No Hotbed: Black Panther Party Lacked Members, Power in South*, ATLANTA JOURNAL AND CONSTITUTION, Oct. 11, 1991, *available at* 1991 WLNR 2218897.

⁷⁵ Ed Anderson & Bruce Nolan, *12 Black Panthers Found ‘Not Guilty’*, TIMES PICAYUNE, Aug. 7, 1971, *available at* http://www.itsabouttimebpp.com/Chapter_History/pdf/New_Orleans/New_Orleans_Chapter_No1.pdf (last visited Jan. 21, 2014).

“These people will not have a foothold in the community.”⁷⁶ In September 1970, New Orleans police attempted to evict the group from its Piety Street-base near the Desire public housing development.⁷⁷ “[W]hen police descended on the Panthers' headquarters, a 30-minute gun battle broke out.”⁷⁸ Police arrested Malik Rahim and many chapter members, and then charged them with attempted murder.⁷⁹ Malik Rahim was the chapter's defense minister.⁸⁰ Afterwards, the headquarters

⁷⁶ *Id.*

⁷⁷ See 1971: *Black Panthers acquitted after tangle with New Orleans police*, THE TIMES-PICAYUNE, Dec. 14, 2011, http://www.nola.com/175years/index.ssf/2011/12/1971_black_panthers_acquitted.html (last visited Jan. 13, 2014).

⁷⁸ Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100.

⁷⁹ See Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100. While in custody, Malik Rahim and other BPP members met the men who would go on to start the first prison chapter of the BPP. Those men, the Angola 3, are discussed at the end of Section III. The Angola 3 got their indoctrination into the BPP while in custody in New Orleans for various criminal acts at the same time members of the BPP were in custody for their activism. See Orissa Arend, *SHOWDOWN IN THE DESIRE* 157 (The University of Arkansas Press 2009).

⁸⁰ See Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100; Malik Rahim's birth name is Donald Guyton. See Orissa Arend, *SHOWDOWN IN THE DESIRE* 215 (The University of Arkansas Press 2009).

moved to a new location (in the Desire Housing Project). “As Rahim and other Panthers sat in jail on \$1.5 million bond, their comrades squared off with police in what became known as the Showdown in Desire.”⁸¹

The Showdown in the Desire started when police showed up at their headquarters to serve an eviction notice on November 19, 1970.⁸² About “250 heavily armed officers were sent.”⁸³ The officers “were backed by a tanklike ‘war wagon’ mounted with a M60 caliber machine gun (like

⁸¹ Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100. See also Leslie Williams, *Ex Panther Thankful He Survived Shoot Out Leaves Legacy*, NEW ORLEANS TIMES PICAYUNE, Sept. 15, 1995, available at 1995 WLNR 1024565. (Tyronne Edwards, a member of the New Orleans Chapter of the BPP who survived the Showdown in the Desire recalls: "What can you do when somebody's firing 100 bullets to your one shot[?] I don't know who (among the Panthers) put the white flag out, but I am so glad they did[.] I'll never forget that day because I was so happy to be going to jail. I was alive! And being alive meant I could continue doing the things we were talking about.").

⁸² See Orissa Arend, *SHOWDOWN IN THE DESIRE* 101-117 (The University of Arkansas Press 2009). See also *Holmes v. Giarrusso*, 319 F.Supp. 832 (E.D.La., Nov 24, 1970).

⁸³ 1971: *Black Panthers Acquitted After Tangle With New Orleans Police*, THE TIMES-PICAYUNE, Dec. 14, 2011, available at http://www.nola.com/175years/index.ssf/2011/12/1971_black_panthers_acquitted.html (last visited Jan. 13, 2014).

those used in Vietnam).”⁸⁴ “A bloody denouement loomed—until hundreds of public housing residents filed out of their homes and stood between the police and the Panthers, forming a human shield.”⁸⁵ Surprisingly, no one was killed in the battle.⁸⁶ Predictably, the Panthers were charged with attempted murder.⁸⁷ Every aspect of the government’s covert operations against the BPP was dangerous to human life (both the lives of the Panthers and to the many innocent people who

⁸⁴ *1971: Black Panthers Acquitted After Tangle With New Orleans Police*, THE TIMES-PICAYUNE, Dec. 14, 2011, available at http://www.nola.com/175years/index.ssf/2011/12/1971_black_panthers_acquitted.html (last visited Jan. 13, 2014). See also *People’s Judges Free New Orleans Panthers*, THE BLACK PANTHER, Aug. 21, 1971, available at http://www.itsabouttimebpp.com/Chapter_History/Judge_Free_New_Orleans_Panthers.html (last visited Jan. 23, 2014).

⁸⁵ Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100.

⁸⁶ See *1971: Black Panthers acquitted after tangle with New Orleans police*, THE TIMES-PICAYUNE, Dec. 14, 2011, http://www.nola.com/175years/index.ssf/2011/12/1971_black_panthers_acquitted.html (last visited Jan. 13, 2014).

⁸⁷ See Ed Anderson & Bruce Nolan, *12 Black Panthers Found ‘Not Guilty’*, TIMES PICAYUNE, Aug. 7, 1971, available at http://www.itsabouttimebpp.com/Chapter_History/pdf/New_Orleans/New_Orleans_Chapter_No1.pdf (last visited Jan. 21, 2014) (describing the unanimous verdict of “not guilty”); see also *1971: Black Panthers Acquitted After Tangle With New Orleans Police*, THE TIMES-PICAYUNE, Dec. 14, 2011, available at http://www.nola.com/175years/index.ssf/2011/12/1971_black_panthers_acquitted.html (last visited Jan. 13, 2014).

suffered collateral damage). The baseless raids where officers were over-armed, the pretextual stops used to justify illegal arrests or to incite violence, the periods of unjust incarceration were all extremely dangerous to human life.

The third part of the definition of domestic terrorism involves a violation of the criminal laws of the United States. During the COINTELPRO era, the government engaged in the following acts against the BPP, which violated criminal laws: manufacturing criminal cases;⁸⁸ interfering with the

⁸⁸ Panther attorney Charles Garry recalled:

In a period of two years—December, 1967 to December, 1969—the Black Panther Party has expended in bail-bond premiums alone—just the premiums, that is, money that will never be returned—a sum in excess of \$200,000! How many breakfasts or lunches for hungry children, how much medical attention sorely needed in the ghetto communities would that \$200,000 have furnished? Between May 2, 1967 and December 25, 1969, charges were dropped against at least 87 Panthers arrested for a wide variety of so-called violations of the law. Yet these men and women were kept in prison for days, weeks, and months, even though there was absolutely no evidence against them. The courts have dismissed a least a dozen cases involving Panthers. In these cases, the criminal justice system's purpose has clearly been to intimidate, to frighten, to remove from operation and activities the Panthers, and to hope the [resultant public] hysteria against the Black Panther Party would produce convictions and imprisonments.

Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 112 (South End Press 1990). *See also* Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 44-

judicial process;⁸⁹ and orchestrating plots sure to lead to death of leaders.⁹⁰ In addition to these, there are a number of official actions against specific members of the BPP that speak directly to the

52 (South End Press 2002). *See also* Orissa Arend, *SHOWDOWN IN THE DESIRE* 137-138 (The University of Arkansas Press 2009) (quoting William M. Kunstler, an attorney for a high ranking BP, as he referred to this as “legal lynching”) *See also id.* at 140 (detailing that former BPP member Angela Davis was the victim of false criminal charges); *See also* Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 112 (South End Press 1990) (mentioning J. Edgar Hoover’s suggestion that a “deliberate false arrest” campaign be used as a method of neutralization); Interestingly, the Non-Detention Act provides: “No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress.” *See* 18 U.S.C. § 4001(a).

⁸⁹ *See Senate Select Committee To Study Governmental Operations With Respect To Intelligence Activities*, 94th Cong., *SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS*, BOOK III, S. REP. NO. 94-755, at 58-9 (1976); *see also* Bell v. Coughlin, 820 F.Supp. 780 (S.D.N.Y. May 10, 1993) (where perjured testimony was used and exculpatory evidence was withheld during the trial of BPP members). *See Hampton v. Hanrahan*, 600 F.2d 600, 640 (7th Cir. (Ill.), Apr 23, 1979, *Rev’d in part*, 446 U.S. 754 (U.S.Ill. Jun 02, 1980)) (“It is clear that federal defendants...and their counsel, rather than promptly furnishing relevant documents as requested, deliberately impeded discovery and actively obstructed the judicial process, thus denying plaintiffs the fair trial to which they were entitled. Regrettably, the trial judge permitted these tactics. Moreover, he repeatedly exonerated the federal defendants for their derelictions. Instead of applying sanctions on these defendants and their counsel, the court assessed costs against plaintiffs in excess of \$26,000 for the Government’s time in reproducing the documents which were finally furnished to plaintiffs only under the orders of the court.”).

⁹⁰ *See* Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 112 (South End Press 1990)

element of criminal violations; the first of which is the case of the late Bobby Hutton.⁹¹

Bobby Hutton “was 15 years old when he met Seale and Newton, who were working for the mayor's anti-poverty jobs program in North Oakland and asked to join the Panthers as their first member.”⁹² Bobby Hutton became the first national treasurer of the BPP.⁹³ “On April 6, 1968, Oakland police ambushed a carload of BPP members on a side street.”⁹⁴ “An hour and a half shootout ensued, resulting in the death of BPP member Bobby Hutton and the arrest of all others present on the scene.”⁹⁵

⁹¹ See, e.g., *The Jericho Movement*, THEJERICHOMOVEMENT.COM, available at <http://thejerichomovement.com/> (last visited Dec. 28, 2013).

⁹² Cecily Burt, *Little Bobby Hutton held as Role Model for African Americans*, TRI-VALLEY HERALD, April 15, 2005, available at 2005 WLNR 24234920.

⁹³ See Cecily Burt, *Little Bobby Hutton held as Role Model for African Americans*, TRI-VALLEY HERALD, April 15, 2005, available at 2005 WLNR 24234920.

⁹⁴ Bobby Hutton (from A Huey P. Newton Story), PBS.ORG, available at http://www.pbs.org/hueypnewton/people/people_other.html (Last Visited Jan. 13, 2014). See also THE ENCYCLOPEDIA OF ARKANSAS HISTORY & CULTURE, Bobby James Hutton, available at <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=6040> (last visited Jan. 14, 2014).

⁹⁵ Bobby Hutton (from A Huey P. Newton Story), PBS.ORG, available at http://www.pbs.org/hueypnewton/people/people_other.html (Last Visited Jan. 13, 2014). See also THE ENCYCLOPEDIA OF ARKANSAS HISTORY & CULTURE, Bobby James Hutton, available at

“Bobby Hutton was shot more than twelve times after he had already surrendered and stripped down to his underwear to prove he was not armed.⁹⁶

Seventeen-year-old Bobby Hutton was shot in the back as he walked with his arms above his head.⁹⁷

“Hutton, the first to die, was killed two days after the assassination of Martin Luther King Jr”⁹⁸

“In 1968, Fred Hampton founded and led the Chicago chapter of the Black Panther Party; he was

<http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=6040> (last visited Jan. 14, 2014).

⁹⁶ Bobby Hutton (from A Huey P. Newton Story), PBS.ORG, *available at* http://www.pbs.org/hueypnewton/people/people_other.html (Last Visited Jan. 13, 2014); *see also* THE ENCYCLOPEDIA OF ARKANSAS HISTORY & CULTURE, Bobby James Hutton, *available at* <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=6040> (last visited Jan. 14, 2014)

⁹⁷ *See* Ward Churchill & Jim Vander Wall, THE COINTELPRO PAPERS 112 (South End Press 1990). *See also* "Gun-Barrel Politics: The Black Panther Party, 1966-71," p. 119, REPORT BY THE COMMITTEE ON INTERNATIONAL SECURITY, H.R.Rep. 92470, 92nd Cong., 1st Sess., 34 (1971), *available at* <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (last visited Dec. 27, 2013) (“Two cases in which Panthers were killed without a direct threat to a policeman’s life were identified...as Bobby Hutton... while allegedly running from the scene of an Oakland shootout”).

⁹⁸ Rick DelVecchio, *Oakland Tribute To Panther Leader City Holiday Honors Slain Bobby Hutton*, SAN FRANCISCO CHRONICLE, April 25, 1998, *available at* 1998 WLNR 3973955.

20 years old.”⁹⁹ During a 4:30 a.m. raid on his apartment, Fred Hampton was shot several times in the body and head as he slept.¹⁰⁰ The warrant was “conducted by fourteen Chicago policemen armed with shotguns, handguns, a rifle and a .45-caliber submachine gun.”¹⁰¹ FBI Informant William O’Neal provided the FBI with the detailed map that they used to plan the Chicago arms raid on Fred Hampton’s apartment.¹⁰² Mr. O’Neal also told the FBI exactly where Fred Hampton might be sleeping on any given night.¹⁰³ Before Fred Hampton went to bed for the night, Mr. O’Neal “seems to have slipped Hampton a substantial dose of secobarital in

⁹⁹ Fred Hampton (from A Huey P. Newton Story), PBS.ORG, *available at* http://www.pbs.org/hueypnewton/people/people_other.html (Last Visited Jan. 13, 2014).

¹⁰⁰ *See Hampton v. Hanrahan*, 600 F.2d 600, 614 (7th Cir. (Ill.), Apr 23, 1979, *Rev'd in part*, 446 U.S. 754 (U.S.Ill. Jun 02, 1980)).

¹⁰¹ Jeffrey Haas, *What the FBI's Murder of a Black Panther Can Teach Us 40 Years Later*, Dec. 2, 2009, *available at* http://www.alternet.org/story/144283/what_the_fbi%27s_murder_of_a_black_panther_can_teach_us_40_years_later (last visited Jan. 6, 2014).

¹⁰² *See* Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 44-52 (South End Press 2002).

¹⁰³ *See* Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 139 (South End Press 1990).

a glass of kool-aid.”¹⁰⁴ The initial autopsy identified “two bullet wounds in Fred’s head.”¹⁰⁵ The second autopsy went into further details. It “found that both head wounds came from bullets fired from the top right side of the head in a downward direction.”¹⁰⁶ The second autopsy also concluded that the head wounds were consistent “with two shots to the head at point blank range.”¹⁰⁷ It was also determined by an FBI firearms expert that “more than eighty shots were fired by the police at the Panthers, with only one coming from a Panther. That one shot was fired in a vertical direction by a falling Mark Clark after he had been fatally wounded.”¹⁰⁸ The litigation

¹⁰⁴ *Id.* See Hampton v. Hanrahan, 600 F.2d 600, 614, n. 15 (7th Cir. (Ill.), Apr 23, 1979, *Rev'd in part*, 446 U.S. 754 (U.S. Ill. Jun 02, 1980)) (“Eleanor Berman, chief toxicologist of Cook County Hospital, indicat[ed] that Hampton was drugged at the time of the raid. On the basis of blood samples extracted from his body, she concluded that secobarbital was present in Hampton's system at the time of his death in an amount which would make it difficult for him to awaken.”).

¹⁰⁵ Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 91 (Lawrence Hill Books 2010).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jeffrey Haas, *What the FBI's Murder of a Black Panther Can Teach Us 40 Years Later*, Dec. 2, 2009, available at http://www.alternet.org/story/144283/what_the_fbi%27s_murder_of_a_black_panther_can_teach_us_40_years_later (last visited Jan. 6, 2014).

ended with an arbitration ruling “that there had in fact been an active governmental conspiracy to deny . . . civil rights.”¹⁰⁹ In the end, none of the government actors were convicted and no fault was admitted. After thirteen years of litigation, a \$1.85-million-dollar settlement was reached.¹¹⁰

Within a week of the Chicago raid that took the life of Fred Hampton, plans were underway for a Los Angeles raid. Akin to the Chicago raid, an informant, Melvin “Cotton” Smith, was integral to the plans.¹¹¹ Like Mr. O’Neal, Mr. Cotton had become Chief of Security, and he also provided the FBI with a detailed floor plan.¹¹² Elmer Gerard Pratt (commonly known as Geronimo Pratt) served as the Minister of Defense for the BPP.¹¹³ He was this raid’s target, but, on the night in question, he slept on the floor (instead of in the bed), allowing him to

¹⁰⁹ See Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION THE FBI’S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 77 (South End Press 2002).

¹¹⁰ See Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 347 (Lawrence Hill Books 2010).

¹¹¹ See Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 141 (South End Press 1990).

¹¹² See *id.* at 141-142.

¹¹³ See *Pratt v. Webster*, 673 F.2d 408, 410 (D.C.Cir. Jan 22, 1982).

miss the hail of bullets that would have caused his demise.¹¹⁴ In 1968, Geronimo Pratt was accused of a robbery and murder in Santa Monica, California.¹¹⁵ At the time of this murder, Pratt was in Oakland, California at a BPP national leadership conference;¹¹⁶ he offered this explanation as an alibi. Who would have known best where he was given the extensive surveillance he lived under?¹¹⁷ At his trial, the FBI claimed that their surveillance tapes had been lost or destroyed.¹¹⁸ They also withheld the fact that one of the witnesses was an

¹¹⁴ See Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS* 142 (South End Press 1990).

¹¹⁵ See *Pratt v. Webster*, 673 F.2d 408, 411 (D.C.Cir. Jan 22, 1982).

¹¹⁶ See Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 88 (South End Press 2002).

¹¹⁷ See *Pratt v. Webster*, 508 F.Supp. 751, 755 (D.D.C. Feb 12, 1981), *reversed by* 673 F.2d 408, 411 (D.C.Cir. Jan 22, 1982) (stating that “[t]he voluminous documentation of Pratt's activity that has been identified by the Bureau is a result of extensive investigations into his activities and activities of other organizations, such as the Black Panther Party, that he has had some relationship to. Six main files were maintained on Pratt, as well as “see” or cross references to him in files of other objects of FBI investigations. Electronic surveillance records of Pratt, resulting from wiretaps of various BPP offices were also compiled. These documents were indexed in twenty-one volumes.”).

¹¹⁸ See Ward Churchill & Jim Vander Wall, *AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 90 (South End Press 2002).

FBI informant.¹¹⁹ As a result, Geronimo Pratt was convicted.¹²⁰ On his first day in prison, he was placed in solitary confinement where he remained for eight years.¹²¹ Geronimo Pratt was freed after 27 years of wrongful incarceration.¹²² He subsequently prevailed in a civil suit against the government. Interestingly, Sandra Lane “Red” Pratt, Geronimo Pratt’s wife during his Panther years, was also mysteriously murdered.¹²³

The actions against the Angola 3 are arguably, if not clearly, criminal.¹²⁴ In the early 1970s, the Angola 3 decided to do the unthinkable. They organized a coalition of mostly African American male inmates at a time when African Americans were appraised as acquiescent to the

¹¹⁹ *See id.*

¹²⁰ *See generally* In re Pratt, 112 Cal.App.3d 795 (Cal.App. 2 Dist. Dec 03, 1980).

¹²¹ *See* Christopher W. Michaels, *Geronimo Pratt and Inmate Records: Avoiding Injustice by Changing Inmate Record-Keeping in New York State Prisons*, 3 ALB. GOV’T L. REV. 843, 851 (2010).

¹²² *See generally* Jack Olsen, *LAST MAN STANDING: THE TRAGEDY AND TRIUMPH OF GERONIMO PRATT* (Anchor Books, 2001). *See generally* Johnnie Cochran & Tim Rutten, *JOURNEY TO JUSTICE* (Ballantine Books 1996).

¹²³ *See* Ward Churchill & Jim Vander Wall, *THE COINTELPRO PAPERS 142* (South End Press 1990).

¹²⁴ Robert King Wilkerson, Herman Wallace & Albert Woodfox are hereinafter referred to as “the Angola 3.” *See infra*, note 136.

established racist caste system. In this social climate, the Angola 3 succeeded in starting the first prison chapter of the BPP behind the walls of the then-segregated Louisiana State Penitentiary, also known as “Angola.”¹²⁵ “When Herman Wallace and Albert Woodfox arrived at the Louisiana State Penitentiary [(the “LSP”)] in 1969 and 1971, respectively, they initially were classified as medium custody inmates and housed with the general prison population.”¹²⁶ “They were placed in extended lockdown on April 18, 1972, immediately following a prison riot which resulted in the death

¹²⁵ See *Woodfox v. Cain*, 609 F.3d 774, 783 (5th Cir. (La.), Jun 21, 2010) (“In 1972, the Louisiana State Penitentiary was a segregated institution prone to violence and harsh living conditions. The record suggests that stabbings occurred among the inmate population on a regular basis. Homosexual rape was prevalent, as was the presence of so-called ‘gal-boys,’ inmates who acted like women in homosexual relationships and who were traded as slaves by stronger, predator inmates. The social and political unrest of the early 1970s that was common in the entire country added to the tension of an already hostile prison environment.”). Anne Butler and C. Murray Henderson, *ANGOLA LOUISIANA STATE PENITENTIARY A HALF-CENTURY OF RAGE AND REFORM* 127 (1990) (“In the early 1970s [Angola did not have] . . . a single black employee. The prison itself was completely and totally segregated; there were black camps and white camps, black work lines and white work lines.”). See *supra* note 183.

¹²⁶ *Wilkerson v. Stalder*, 639 F.Supp.2d 654, 659 (M.D.La., Sep 11, 2007).

of a guard.”¹²⁷ “Both men were later charged with and convicted of murdering LSP correctional officer Brent Miller during the riot.”¹²⁸ Despite there being a bloody crime scene (including a bloody fingerprint next to the body), no physical evidence linked any member of the Angola 3 to the murder.¹²⁹

Angola 3 member Robert King Wilkerson “began his stay in LSP’s extended lockdown on May 15, 1972.”¹³⁰ “In June of 1973, he was accused and later convicted of killing a fellow inmate, and he remained in extended lockdown until his conviction was overturned in early 2001.”¹³¹ He served all of his time in solitary confinement (in

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *See* Woodfox v. Cain, 609 F.3d 774, 810 (5th Cir. (La.), Jun 21, 2010) (“In 1973, the State presented at the first trial testimony from Steven Leddell, who was employed by the Louisiana State Police and who participated in the investigation after the murder. Leddell testified that he examined the crime scene and located a bloody fingerprint on the door to the Pine 1 dorm, which he photographed. Leddell explained that although the print was identifiable, it did not match the fingerprints on file for either Woodfox or any of the other defendants charged in the case.”).

¹³⁰ *Id.*

¹³¹ *Id.*

excess of twenty-eight years).¹³² After having his conviction overturned, Angola 3 member Herman Wallace was released on October 1, 2013.¹³³ He also served all of his time in solitary confinement (in excess of forty-one years).¹³⁴ Angola 3 member Albert Woodfox remains in solitary confinement today, though he was convicted under highly questionable circumstances and has been the victim

¹³² See generally Robert Hillary King, FROM THE BOTTOM OF THE HEAP (PM Press 2009). See also *Wilkerson v. Stalder*, No. 00-0304 (La. Filed Apr. 27, 2000) (alleging that the Angola 3's stay in prolonged isolation violates the United States Constitution); See also *USA: 100 Years In Solitary The 'Angola 3' and Their Fight for Justice* (Amnesty International), June 2011, at 8, available at <http://www.amnesty.org/en/library/asset/AMR51/041/2011/en/1373c247-9955-41c4-a87a-db89ae161d5f/amr510412011en.pdf> (last visited Dec. 27, 2013).

¹³³ See *Wallace v. Prince*, 2013 WL 5517980 (M.D.La., Oct 01, 2013). Herman Wallace died two days after his release. See John Schwartz, *Herman Wallace, Freed After 41 Years in Solitary, Dies at 71*, THE NEW YORK TIMES, available at http://www.nytimes.com/2013/10/05/us/herman-wallace-held-41-years-in-solitary-dies-at-71.html?_r=0 (last visited Dec. 25, 2013).

¹³⁴ See generally Jamila Aisha, *Herman Wallace and Nelson Mandela: A Tale of Two Heroes*, EBONY, July 18, 2013, available at <http://www.ebony.com/black-history/wallace-and-mandela-222#axzz2rqmXNozb> (last visited Dec. 26, 2013). See also *Wilkerson v. Stalder*, No. 00-0304 (La. Filed Apr. 27, 2000) (alleging that the Angola 3's stay in prolonged isolation violates the United States Constitution); See also *USA: 100 Years In Solitary The 'Angola 3' and Their Fight for Justice* (Amnesty International), June 2011, at 8, available at <http://www.amnesty.org/en/library/asset/AMR51/041/2011/en/1373c247-9955-41c4-a87a-db89ae161d5f/amr510412011en.pdf> (last visited Dec. 27, 2013).

of questionable prosecution tactics.¹³⁵ Disturbingly, he has lived under these conditions for forty-two years, since April 17, 1972.¹³⁶

¹³⁵ The use of questionable testimony has been alleged. “Inmate Paul Fobb . . . testified in 1973 that he saw Woodfox enter the Pine 1 dormitory and then throw a rag into the Pine 4 dorm” immediately before Officer Miller was murdered. *See Woodfox v. Cain*, 609 F.3d 774, 812 (5th Cir.(La.), Jun 21, 2010); “During Fobb’s direct examination . . . Fobb himself conceded that he had no vision in his right eye and had severe glaucoma in his left eye.” *See Woodfox v. Cain*, 609 F.3d 774, 812 (5th Cir.(La.), Jun 21, 2010); At trial, the State used five inmate witness suggesting they saw Herman Wallace or Albert Woodfox running away from the murder scene. Besides Inmate Paul Fobb, one was later shown to have been offered incentives for his testimony (Hezekiah Brown), one was heavily medicated and the others have recanted. *See Laura Sullivan, Favors, Inconsistencies Taint Angola Murder Case*, NAT’L PUB. RADIO BROADCAST (Oct. 28, 2008), available at <http://www.npr.org/templates/transcript/transcript.php?storyId=96199165> (last visited Jan. 9, 2014). Suppression of evidence and violations of *Brady v. Maryland*, 373 U.S. 83 (1963) has been alleged:

At Woodfox’s 1973 trial, Hezekiah Brown testified in response to questioning from the State that he had not been promised any incentives in return for his testimony, other than protection from other inmates. During his 1973 cross-examination, Brown denied making certain statements to defense counsel and indicated that defense counsel was the only person to have made any promises to help Brown. Brown’s direct and cross-examination were read to the jury in 1998. As part of his defense, Woodfox called Warden Henderson, who testified about interviewing Brown a few days after the murder. When Brown incriminated Woodfox at this interview, he had been moved to the ‘dog pen,’ a minimum-security area used to house the prison’s hunting dogs and to also house trustees and inmates under protection. Henderson testified that he promised to ‘protect’ Brown and that he ‘later’ promised to support Brown’s pardon application, although Henderson could not recall when he made that promise. When asked about Brown’s testimony in 1973 that nothing had been promised to him, Henderson said, “Well nothing was promised to him to begin with, but we told him, you

know, we would protect him and try to help him any way we could after he, you know, cracked the case for us." When asked whether promises were made "before [Brown] testified," Henderson said, "That's right." Defense counsel also had Henderson identify letters that were later written on Brown's behalf in support of a pardon application.

Woodfox v. Cain, 609 F.3d 774, 798 (5th Cir. (La.), Jun 21, 2010). In addition to jurisprudence requiring disclosure of said information, the Rules of Professional Conduct also impose such a duty. *See* MODEL RULES OF PROF'L CONDUCT R. 3.8. Impropriety in the grand jury has been alleged. After his initial conviction was overturned, Anne Butler was a member of the grand jury that reindicted Albert Woodfox.

More specifically, she was the forewoman. More astonishingly, she was the forewoman who was married to the prison warden who led the Brent Miller murder investigation, who wrote a book suggesting guilt on the part of Albert Woodfox, and who shared the book with fellow members of the grand jury. *See* Anne Butler & C. Murray Henderson, *DYING TO TELL: ANGOLA, CRIME, CONSEQUENCE, CONCLUSION AT LOUISIANA STATE PENITENTIARY* (1992); *See also* Laura Sullivan, *Favors, Inconsistencies Taint Angola Murder Case*, NAT'L PUB. RADIO BROADCAST (Oct. 28, 2008), available at <http://www.npr.org/templates/transcript/transcript.php?storyId=9619165> (last visited Jan. 9, 2014). Questionable prosecution tactics (during Albert Woodfox's 1973 trial) have been alleged: Prosecutor John Sinquefield... testified at the second trial immediately after the State read Brown's 1973 testimony into the record. The State called him purportedly to explain certain gestures Brown had made during his testimony at the first trial. Defense counsel objected to the State's attempt to bolster Brown's testimony with Sinquefield. The court overruled the objection but gave a limiting instruction that the jury was to be the sole evaluator of witness credibility. During the course of questioning, Sinquefield volunteered the following about Brown: Hezekiah Brown testified in a good, strong voice, he was very open, he was very spontaneous, he answered questions quickly, and he was very fact specific. He didn't have to hesitate and think about his answers, but if you got something wrong, he would stop you, even to the extent in one part of his testimony, I think he-he stopped and corrected me that he said, now, you know, wait, this wasn't Woodfox just by himself, there were others involved. He would even stop you if you tried to put more on Mr. Woodfox than he thought Mr. Woodfox did. He was very open, very quick. He testified, he didn't hesitate, he testified very clearly

and I was proud of the way he testified. I thought it took a lot of courage.

Woodfox v. Cain, 609 F.3d 774, 804-5 (5th Cir. (La.), Jun 21, 2010). On direct appeal of his conviction, Woodfox argued that Sinquefield's testimony was improper. The state appellate court noted the impropriety of this and so did the federal court, which remarked: "Like the state appellate court, we too are troubled by that aspect of Sinquefield's testimony wherein he exclaimed how 'proud' he was of Hezekiah Brown and that Brown's testimony "took courage"...Nevertheless, we do not find that the state court's denial of relief on this claim was unreasonable or contrary to clearly established federal law." See Woodfox v. Cain, 609 F.3d 774, 804-5 (5th Cir. (La.), Jun 21, 2010).

Similar antics have continued over the years. The attorney general is overseeing the prosecution of Mr. Woodfox (as well as representing the state in the Angola 3 civil litigation). In 2013, despite Rules of Professional Responsibility forbidding such conduct, the following email was sent by the state's attorney general to a number of persons who signed a petition in support of the Angola 3:

Thank you for your interest in the ambush, savage attack and brutal murder of Officer Brent Miller at Louisiana State Penitentiary (LSP) on April 17, 1972. Albert Woodfox and Herman Wallace committed this murder, stabbing and slicing Miller over 35 times. Between the years 1967 and 1969 before coming to LSP the last time for armed robbery and aggravated escape, Albert Woodfox was in the streets of New Orleans and charged with numerous crimes, some of which, he was convicted. Among those numerous charges are at least 6 separate, unresolved aggravated rapes and armed robberies. Some of these victims were female patrons or waitresses who were raped during the late night or early morning robberies of bars in the New Orleans area. NO court has ever ruled that these inmates are innocent of the murder of Officer Miller. I have been prosecuting murders for the past 35 years as a District Attorney in Louisiana. If these inmates would have been innocent, we would have never had any of these proceedings and I would have personally turned Woodfox loose. The evidence against him is overpowering. There are no flaws in our evidence and this case is very strong. We feel confident that we will again prevail at the Fifth Circuit Court of Appeals. However, if we do not, we are fully prepared and willing to retry this murderer again. Woodfox was indicted by two separate grand juries and unanimously convicted by two separate juries of his peers. Wallace was indicted and unanimously convicted by a jury of his peers.

Despite having his conviction for the murder of Officer Miller overturned on three separate occasions, the State has been relentless in its efforts to incarcerate Albert Woodfox.¹³⁷ The State still—

[T]hese convicted murderers filed a civil lawsuit alleging they have been denied due process and have been mistreated. It is important to know that if they win this civil case they could possibly receive money and a change in their housing assignments. This lawsuit WILL NOT result in their release from prison.

Let me be clear, Woodfox and Wallace are GUILTY and have NEVER been held in solitary confinement. They are serving out the life sentences handed down by the unanimous jury verdicts for brutally and savagely murdering Officer Brent Miller.

Sincerely,

James D. "Buddy" Caldwell

Louisiana Attorney General

E-mail from The Louisiana Department of Justice (March 21, 2013, 11:02 a.m. CST) (on file with author). See MODEL RULES OF PROF'L CONDUCT R. 3.6 and 3.8.

¹³⁶ See *Wilkerson v. Stalder*, No. 00-0304 (La. Filed Apr. 27, 2000) (alleging that the Angola 3's stay in prolonged isolation violates the United States Constitution); See also *USA: 100 Years In Solitary The 'Angola 3' and Their Fight for Justice* (Amnesty International), June (last visited Dec. 27, 2013). 2011, at 8, available at <http://www.amnesty.org/en/library/asset/AMR51/041/2011/en/1373c247-9955-41c4-a87a-db89ae161d5f/amr510412011en.pdf>

¹³⁷ Mr. Woodfox's conviction was overturned in state post-conviction proceedings, but the State re-indicted him and he was convicted again after a second trial in 1998. After this conviction was affirmed on direct appeal and Woodfox exhausted state post-conviction remedies, Woodfox filed a petition for habeas corpus in federal court, which was granted. See *Albert Woodfox v. Burl Cain, et al.*, No. 06-789 (M.D.La. Sept. 25, 2008). A Fifth Circuit panel, with one judge dissenting, subsequently vacated the district court's judgment and remanded Woodfox's case for further proceedings. See *Woodfox v. Cain*, 609 F.3d 774 (5th Cir. 2010). Following an evidentiary hearing, the district court again granted Woodfox's petition on the ground that his 1993 indictment by a West Feliciana Parish grand jury was

despite a pending civil suit,¹³⁸ the deceased officer's wife's support of the Angola 3,¹³⁹ a national tribute to Herman Wallace,¹⁴⁰ repeated allegations of constitutional and human rights violations,¹⁴¹ and an

tainted by grand jury foreperson discrimination. *See Woodfox v. Cain*, 926 F.Supp. 2d 841 (M.D.La., Feb 26, 2013). The State's appeal of this ruling is pending before the Fifth Circuit Court of Appeals. *See* Lauren McGaughy, *Murder Case of Last Imprisoned Member of Angola 3 Against Headed to 5th Circuit*, THE TIMES PICAYUNE (Jan. 6, 2014), available at http://www.nola.com/politics/index.ssf/2014/01/angola_3_louisiana_5th_circuit.html (last visited Jan. 9, 2014).

¹³⁸ *See* Wilkerson v. Stalder, 639 F.Supp. 2d 654 (M.D.La., Sep 11, 2007).

¹³⁹ *See* Michelle Millhollow, *Amnesty International Joins Woodfox Family in Rally on Capitol Steps*, THE ADVOCATE (Dec. 30, 2013), available at <http://theadvocate.com/news/7376156-123/amnesty-international-seeks-release-of> (last visited Jan. 27, 2014).

¹⁴⁰ *See Celebrating The Life of Herman Wallace*, 159 Cong. Rec. E1439-03, (Oct. 4, 2013) (speech by John Conyers), available at 2013 WL 5502164 (“[W]e rise to commemorate and celebrate the life and contributions of Herman Wallace, one of the bravest champions for justice and human rights whom we have ever met...On behalf of all who believe in fundamental fairness and justice, we commend Mr. Wallace's courage and determination to keep fighting through 41 long years of solitary confinement. He is an inspiration to all of us...Because of Mr. Wallace's work, those of us in Congress who have called for his freedom will dedicate our future efforts to ensuring that no one anywhere in the United States is subjected to the unjust and inhumane treatment that he has endured...[I] ask my colleagues to join me in honoring Mr. Wallace for his many-decades-long fight for the humane treatment of prisoners. We, and all of us, owe Mr. Wallace a debt of gratitude.”).

¹⁴¹ *See* Angela A. Allen-Bell, *Perception Profiling and Prolonged Solitary Confinement Viewed Through the Lens of the Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged, and Justice Becomes Legally Blind*, 39 HASTINGS CONST. L.Q. 763 (2012) (discussing constitutional violations). *See* Amnesty Int'l, USA: *100 Years in Solitary: The "Angola 3" and Their*

admonishment from the United Nations Special Rapporteur on torture¹⁴²—continues to defend the decision to house an elderly man in the extreme conditions of indefinite solitary confinement and persisted in its efforts to keep the Angola 3 behind bars.¹⁴³

Fight for Justice (June 2011), available at <http://www.amnesty.org/en/library/asset/AMR51/041/2011/en/1373c247-9955-41c4-a87a-db89ae161d5f/amr510412011en.pdf>; *See also* Letter from Congressman Cedric L. Richmond, John Conyers, Jr., Jerrold Nadler and Robert C. Scott to Thomas Perez, Assistant Attorney General for Civil Rights (July 12, 2013), available at <http://richmond.house.gov/sites/richmond.house.gov/files/documents/7%2012%2013%20Letter%20to%20DOJ%20re%20Angola%203.pdf> (last visited Jan. 9, 2014) (alleging constitutional violation and requesting a federal investigation). *See also USA: 100 Years In Solitary the 'Angola 3' and Their Fight for Justice* (Amnesty International), June 2011, at 8, available at <http://www.amnesty.org/en/library/asset/AMR51/041/2011/en/1373c247-9955-41c4-a87a-db89ae161d5f/amr510412011en.pdf> (last visited Dec. 27, 2013).

¹⁴² *See* Juan E. Mendez, *Special Rapporteur on Torture, Four Decades in Solitary Confinement Can Only be Described as Torture, United Nations* (Oct. 7, 2013), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E> (last visited Oct. 8, 2013) (“Keeping Albert Woodfox in solitary confinement for more than four decades clearly amounts to torture and it should be lifted immediately... The circumstances of the incarceration of the so-called Angola Three clearly show that the use of solitary confinement in the US penitentiary system goes far beyond what is acceptable under international human rights law.”).

¹⁴³ *See* *Wilkerson v. Stalder*, 2013 WL 6665452, p.9 (M.D.La., Dec 17, 2013) (“[T]his Court has previously found the Plaintiffs’ placement in CCR was and remains indefinite The Review Board’s rote repetition of the reason for the inmates continued confinement as being the same reason they were initially placed in

lockdown effectively eliminates any possibility of release, regardless of their current situation and behavior while in lockdown. The original reason for placement in lockdown can never change; thus plaintiffs' current situation of "indefinite placement" in lockdown is static, with no hope of release other than by death or release from the prison entirely, as was the case for plaintiff Wilkerson."); *See also* Bill Lodge, *Wallace Indicted Again in Killing of Angola Guard in 1972*, THE ADVOCATE, Oct. 4, 2013, available at <http://theadvocate.com/home/7227350-125/grand-jury-indicts-herman-wallace> (last visited Dec. 25, 2013) ("New Orleans resident Herman J. Wallace, released from a life sentence Tuesday by a federal court order, was reindicted Thursday by a West Feliciana Parish grand jury in the 1972 murder of a prison security officer."). This is a window into the prison world imposed upon the Angola 3: Extended lockdown, also known as closed cell restrictions or administrative segregation, is a form of incarceration...that is similar to solitary confinement. The prisoners thereto assigned remain alone in cells approximately 23 hours each day. During the other hour, a prisoner may shower and walk along the tier in which his cell is located. Three times a week, the prisoner may use this hour to exercise alone in a fenced yard, if the weather permits. The prisoners in extended lockdown also face additional restrictions on privileges generally available to inmates such as personal property, reading materials, access to legal resources, work, and visitation rights. In contrast, inmates in the general prison population live in a dormitory setting where they can interact with one another, attend religious ceremonies and take advantage of educational opportunities, training, and other privileges denied to those in extended lockdown. *Wilkerson v. Stalder*, 2013 WL 6665452, n.5 (M.D.La., Dec 17, 2013). These conditions are actually upgrades on what initially awaited the Angola 3 in 1972. According to Herman Wallace, when he was first put in solitary confinement on April 17, 1972, there was "no hot water, no televisions, no fans, no review board, no outside exercise periods, no contact visits, a limit of six books per inmate and food was served under the door by sliding a tray on the floor as one would feed an animal." According to Herman Wallace, hunger strikes, litigation (much of which was initiated by the Angola 3), organizing and diplomacy led to the "improved" conditions we know of today. *See* Letter from the late Herman Wallace, Angola 3 member to Angela A. Allen-Bell (Jan. 10, 2013) (on file with the author).

Reasonable minds have questioned the motivation for such vengeance.¹⁴⁴ Since the Angola 3 were members of the BPP and since they organized during the COINTELPRO era, one is left to wonder if the efforts to incapacitate the Angola 3 has to do with murder, COINTELPRO, or counterterrorism and national security. There are several reasons against tossing these propositions aside too quickly. The first reason involves different FBI informants who infiltrated BPP, or who formed close alliances with major figures in the campaign to free members of the Angola 3, including Jill and Harry E. Schafer¹⁴⁵ and Brandon Darby.¹⁴⁶ Jill

¹⁴⁴ See *Wilkerson v. Stalder*, 2013 WL 6665452, p.9 (M.D.La., Dec 17, 2013) (“[T]he unparalleled amount of time that the inmate Plaintiffs have been living in isolation is more than enough to give rise to an atypical and significant hardship. In fact, Plaintiffs’ approximately forty-year length of incarceration in extended lockdown is so atypical that the Court is unable to find another instance of an inmate spending even close to that much time in isolation.”).

¹⁴⁵ See John M. Crewdson, *F.B.I. Reportedly Harassed Radicals After Spy Program Ended*, THE NEW YORK TIMES, March 23, 1975, available at <http://www.mltranslations.org/Us/fbi032375.htm> (last visited Jan. 5, 2014) (mentioning that the Schafers worked for the FBI and did work in the New Orleans area around the time of the Angola 3 convictions). See also John M. Crewdson, *Judge Says F.B.I. Withheld Data on Indians*, THE NEW YORK TIMES, April 5, 1975, available at 1975 WLNR 66799 (identifying Harry E. Schafer as a FBI informant). See also Paul DeMain, *An Anatomy of a*

Schafer became the treasurer of the defense committee.¹⁴⁷ Brandon Darby became closely acquainted with BPP members Robert King (freed-Angola 3 member) and Malik Rahim, the person who organized the first coalition to work toward the

Government Informer, NEWS FROM INDIAN COUNTRY, Feb. 15, 1995, available at 1995 WL 15435809 (identifying Harry and Jill Schafer as FBI informants); Robert Freidman, *Surveillance Under Surveillance*, DOMESTIC POWER, p. 3, March 3, 1975 (identifying Jill Schafer as an FBI informant and mentioning that the “Schafers had been active in local radical politics in New Orleans since 1969”). See generally Ben Bedell, *Agents Tried to Sow Splits ‘Maoists: The FBI’s Target*, ENCYCLOPEDIA OF ANTI-REVISIONISM ON-LINE, available at <http://www.marxists.org/history/erol/ncm-2/cousml-5.htm> (last visited Jan. 16, 2014) (The Schafers “would hop from group to group, operating under an ultra-“left” cover. They would systematically spread lies about other activists and had a reputation for gossiping and name-dropping. They had been identified as disrupters and splitters....”). See also Brian Glick, WAR AT HOME 28 (SOUTH END PRESS 1999), available at https://archive.org/details/War_At_Home (last visited Jan. 23, 2014) (mentioning that Harry and Jill Schafer were FBI operatives who worked in the New Orleans area in the early 1970s). See also John Makeig, *Ax Falls Hard at Pasadena City Hall*, HOUSTON CHRONICLE, July 13, 1985, available at 1985 WLNR 1293916 (mentioning that Jill Schafer was once an FBI informant).¹⁴⁶ See David Winkler-Schmit, *Brandon Darby—FBI Informant & Common Ground Co-Founder*, GAMBIT WEEKLY, Jan. 26, 2009, available at <http://www.bestofneworleans.com/gambit/brandon-darby-fbi-informant-and-common-ground-co-founder/Content?oid=1255606> (last visited Jan. 7, 2014).

¹⁴⁷ Personal communication with Angola 3 legal counsel; see also Personal communication with Malik Rahim, Founder of the Angola 3 Defense Committee. For the sake of measuring coincidences, it is noteworthy that “FBI agents had infiltrated Geronimo Pratt’s defense committee.” See BRIAN GLICK, WAR AT HOME 24 (SOUTH END PRESS 1999), available at, https://archive.org/details/War_At_Home (last visited Jan. 23, 2014).

defense of the Angola 3.¹⁴⁸ Initially, Mr. Darby “worked . . . to publicize the plight of the Angola Three.”¹⁴⁹ Later, in 2005, Brandon Darby, who was living in Texas at the time, went to New Orleans in the aftermath of Hurricane Katrina in order to rescue Angola 3 member Robert King.¹⁵⁰ As Mr. Darby forged alliances with Angola 3 members and supporters, he was on the FBI payroll as an informant.¹⁵¹

¹⁴⁸ Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100. (Malik Rahim draws a parallel between his BPP training and his post-Katrina organizing through Common Ground: “I was trained for this. . . I’m not doing nothing but what we were doing in the party. The mold abatement I had done with the pest control program. Our feeding program. It was part of our breakfast program.”); see also Orissa Arend, *SHOWDOWN IN THE DESIRE 192-193* (The University of Arkansas Press 2009).

¹⁴⁹ Orissa Arend, *SHOWDOWN IN THE DESIRE 193* (The University of Arkansas Press 2009).

¹⁵⁰ See *Witness to Betrayal: Acott Crow on the Exploits and Misadventures of FBI Informant Brandon Darby*, available at <http://seattlefreepress.org/2013/12/19/witness-to-betrayal-scott-crow-on-the-exploits-and-misadventures-of-fbi-informant-brandon-darby/> (last visited Jan. 3, 2014); see also ORISSA AREND, *SHOWDOWN IN THE DESIRE 192-193* (The University of Arkansas Press 2009).

¹⁵¹ See *Witness to Betrayal: Acott Crow on the Exploits and Misadventures of FBI Informant Brandon Darby*, available at <http://seattlefreepress.org/2013/12/19/witness-to-betrayal-scott-crow-on-the-exploits-and-misadventures-of-fbi-informant-brandon-darby/> (last visited Jan. 3, 2014). See also Orissa Arend, *SHOWDOWN IN THE DESIRE 194* (The University of Arkansas Press 2009) (referring to the Common Ground Clinic as an example of the “Panther Ten Point Program in action”).

State officials and government actors furnished additional reasoning for the questions surrounding the Angola 3 case. Matthew Berland, a New Orleans teacher, was “present on October 18, 2000, when [Angola] Warden Burl Cain gave a speech to the students.”¹⁵² He recalled the following exchange between himself and the warden:

I started out the conversation by saying...: ‘I was wondering if you could tell me anything about the ‘Angola 3?’’ ...Cain...continued, ‘it’s not obvious’ that they should be let out of extended lockdown, they were ‘not good men,’ they ‘haven’t reformed their political beliefs,’ and would be disruptive to the prison environment....

At one point, I asked, ‘So they’re political prisoners?’ Cain responded, ‘Well, yes. Well no, I don’t like the word political.’¹⁵³

¹⁵² Wilkerson v. Stalder, 639 F.Supp.2d 654, 668 (M.D.La., Sep 11, 2007).

¹⁵³ Wilkerson v. Stalder, 639 F.Supp.2d 654, 668 (M.D.La., Sep 11, 2007).

Warden Burl Cain, on another occasion, explained his reasoning for housing Angola 3 member Albert Woodfox in solitary confinement indefinitely even assuming Albert Woodfox did not commit the murder of Officer Brent Miller:

I would still keep him in CCR. I still know he has a propensity for violence. I still know that he is still trying to practice Black Pantherism, and I still would not want him walking around my prison because he would organize the young new inmates. I would have me all kinds of problems, more than I could stand, and I would have the blacks chasing after them. I would have chaos and conflict, and I believe that. He has to stay in a cell while he's at Angola.¹⁵⁴

All of these collective actions—assassinating individuals who are in no way posing a physical threat,¹⁵⁵ engaging in torture, and

¹⁵⁴ Woodfox v. Cain, 2008 WL 5095995, n.37 (M.D.La., Nov 25, 2008).

¹⁵⁵ For further coverage of this, see generally *Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities*, 94th Cong., SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. NO. 94-755, at 8 (1976). See generally WARD CHURCHILL & JIM VANDER WALL, *AGENTS OF REPRESSION THE FBI'S*

manufacturing criminal cases—are in violation of criminal laws.

The final part of the definition of domestic terrorism requires that the act appear to be intended to intimidate or coerce civilians; influence government policy by intimidation or coercion; or affect the conduct of a government by mass destruction, assassination, or kidnapping. Mr. Hoover demanded that the FBI “destroy what the [BPP] [stood] for and “eradicate its serve the people programs.”¹⁵⁶ The COINTELPRO’s goals were met through the use of informants; repeated interviews to intimidate and disrupt growing networks; surveillance;¹⁵⁷ thefts of confidential documents;

SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT 53 (South End Press 2002). *See also* WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS 103-104 (South End Press 1990) (discussing the FBI’s role in the death of Malcom X and discussing ways to bring about the death of activist Dick Gregory).

¹⁵⁶ *See* WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION THE FBI’S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT 68 (South End Press 2002).

¹⁵⁷ *See* Socialist Workers Party v. Attorney General of U.S., 642 F.Supp. 1357 (S.D.N.Y., Aug 25, 1986) (Though not about the BPP specifically, the case illustrates FBI tactics against activist groups. In this case, the target was the Socialist Workers Party. The case revealed that the group had been subject to thirty-five years of

fomentation of racial strife; and plots that were intended to disrupt lawful functions.¹⁵⁸ Some of the FBI's favored tactics included orchestrating conflict

surveillance and, in that time, no evidence of criminal or terrorist activity was produced). *See also* Sinclair v. Kleindienst, 645 F.2d 1080, 1081-2 (D.C.Cir. Mar 09, 1981) (mentioning that the government engaged in warrantless wiretaps of the BPP in Berkly and San Francisco, California in 1969); *see also* U.S. v. Seale, 461 F.2d 345, 364-5 (7th Cir. (Ill.), May 11, 1972) (mentioning the use of warrantless surveillance, by the FBI, upon the BPP); *See also* Forsyth v. Kleindienst, 599 F.2d 1203, 1205-1207 (3rd Cir. (Pa.), May 22, 1979) (revealing that there was electronic surveillance authorized by the Attorney General and executed y the FBI against the BPP).

¹⁵⁸ *See* WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT 40 (South End Press 2002) (making reference to FBI efforts to cause a divide between BPP leaders Huey Newton and Eldridge Cleaver). *See also* In re Attorney General of U. S., 596 F.2d 58, 60 (2nd Cir. (N.Y.) Mar 19, 1979) (A suit, filed in 1973, complained of decades of illegal investigations at the hands of the FBI, including the use of informants, surveillance, surreptitious entities and a disruption plan); *see also* Socialist Workers Party v. Attorney General, 642 F.Supp. 1357 (08/25/1986) (wherein the plaintiff's, a peaceful and lawful group, were awarded damages against the FBI for thirty-five years of disruptive activities, surreptitious entries and use of informants. During this period, there was never an indication that any informant ever observed any federal law or provided information that lead to an arrest); *See also* Burkhart v. Saxbe, 448 F.Supp. 588 (E.D.Pa., Mar 21, 1978) (involving the use of warrantless wiretaps of the telephone registered to the Philadelphia chapter of the BPP); *See also* Sinclair v. Kleindienst, 645 F.2d 1080 (D.C.Cir. Mar 09, 1981) (involving telephone surveillance of the BPP in Berkeley and San Francisco, California); *see also* Wahad v. F.B.I., 813 F.Supp. 224, 229 (S.D.N.Y. Jan 29, 1993) ("Beginning in 1967 and ending during the Spring of 1973, Defendant...participated through COINTELPRO in the preparation of communications directed at the disruption of the Black Panther Party. Through the program, information was disseminated in an attempt to discredit the Black Panther Party and its members, and to impede its operations and activities. The communications were directed by FBI Headquarters.").

within the organizational structure;¹⁵⁹ creating discord between black nationalist groups;¹⁶⁰ discrediting leaders and organizations through the use of media;¹⁶¹ sending flyers or other anonymous communications;¹⁶² placing harassing calls to members at work and at home;¹⁶³ sending letters about infidelity to spouses of leaders;¹⁶⁴ arranging fire inspections with the hope of having buildings

¹⁵⁹ See FBI memorandum to “Personal Attention to All Offices,” captioned “Counterintelligence Program Black Nationalist-Hate Groups Internal Security,” August 25, 1967 at <http://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/cointelpro-black-extremists-part-01-of/view> (last visited July 11, 2013).

¹⁶⁰ See FBI memorandum “Beurlet 3/28/68” captioned, April 11, 1968.

¹⁶¹ There have been allegations of this practice continuing post-COINTELPRO. See 132 Cong. Rec. H1076902 (daily ed. Oct. 17, 1986) (statement of Rep. Edwards), available at 1986 WL 788759 (discussing a secret United States sponsored “disinformation program” against Libya and Mu’ammarr Quadhafi where the government provided exaggerated stories to the press about the threat of Libyan terrorism).

¹⁶² See generally FBI memorandum to “Personal Attention to All Offices,” captioned “Counterintelligence Program Black Nationalist-Hate Groups Internal Security,” August 25, 1967, available at <http://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/cointelpro-black-extremists-part-01-of/view> (last visited July 11, 2013).

¹⁶³ See memorandum from “SAC, New York (100-161140),” to “Director, FBI,” captioned “Bureau letter, 8/25/67,” February 28, 1968, available at <http://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/cointelpro-black-extremists-part-01-of/view> (last visited July 11, 2011).

¹⁶⁴ See WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS 113-15 (South End Press 1990).

condemned;¹⁶⁵ anonymously having telephones of members disconnected;¹⁶⁶ having police make pretextual and/or frivolous stops of members as they operated their vehicles¹⁶⁷; anonymously having water and electricity services disconnected at residences of members¹⁶⁸; placing disruptive calls during planned organizational meetings¹⁶⁹; distributing false documents giving the impression that certain leaders were CIA informants;¹⁷⁰ inciting confrontations that would result in the arrest and imprisonment of leaders;¹⁷¹ planting spies within

¹⁶⁵ See memorandum from “SAC, Denver (100-8098),” to “Director, FBI (25-330971),” captioned “Nation of Islam,” April 5, 1968.

¹⁶⁶ See memorandum from “SAC, Denver (100-8098),” to “Director, FBI (25-330971),” captioned “Nation of Islam,” April 5, 1968.

¹⁶⁷ See memorandum from “SAC, Denver (100-8098),” to “Director, FBI (25-330971),” captioned “Nation of Islam,” April 5, 1968; *see also* Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON* 32 (Lawrence Hill Books 2010) (indicating that BPP leader and founder Fred Hampton “was targeted by the...police and arrested on several occasions for technical traffic violations. The harassment became so great that Fred stopped driving”).

¹⁶⁸ See memorandum from “SAC, Denver (100-8098),” to “Director, FBI (25-330971),” captioned “Nation of Islam,” April 5, 1968.

¹⁶⁹ See memorandum from “SAC, Denver (100-8098),” to “Director, FBI (25-330971),” captioned “Nation of Islam,” April 5, 1968.

¹⁷⁰ See memorandum from “SAC, New York (100-161140),” to “Director, FBI (100-448005),” captioned “Rebulet, 7/1/68,” July 10, 1968.

¹⁷¹ Charles Garry, an attorney for the BBP offered the following commentary on the criminalization of the BP members:

the various BPP chapters;¹⁷² manipulating print and television media stories and interfering with positive reporting about the BPP;¹⁷³ having the Internal Revenue Service institute audits and proceedings;¹⁷⁴ harassing or intimidating donors;¹⁷⁵

Between May 2, 1967 and December 25, 1969, charges were dropped against at least 87 Panthers arrested for a wide variety of so-called violations of the law. Yet these men and women were kept in prison for days, weeks and months even though there was absolutely no evidence against them, and they were finally released. At least a dozen cases involving Panthers have been dismissed in court. In these cases, the purpose has clearly been to intimidate, to frighten, to remove from operation and activities the Panthers, and to hope the [resultant public] hysteria against the Black Panther Party would produce convictions and imprisonments.

WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS* 143 (2d ed. 1990). See also WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS* 118-164 (2d ed. 1990); see also WARD CHURCHILL & JIM VANDER WALL, *AGENTS OF REPRESSION THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 44-47 & 51-53 (2d ed. 2002).

¹⁷² See Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY* 71 (Simon & Schuster Books For Young Readers 1997).

¹⁷³ See WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS* 117-120 (South End Press 1990) (telling how one field office was a part of the editing of a forthcoming news story and, as such, selected for airing the interviewing of African American leaders based on "their inability to articulate or their simpering and stupid appearance"). See also Earl Caldwell, *Branzburg v. Hayes: The Law of Reporter's Ask Me. I was The Test Case*, *COMMUNICATIONS LAWYER*, Summer 1997, available at 15-SUM Comm. Law 1 (wherein a reporter who had gained the trust of the BPP and who had written several news stories was harassed by the FBI and ultimately sentenced to jail time for refusing to reveal what he felt was confidential information obtained during interviews with the BPP).

¹⁷⁴ See SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, 94TH CONG.,

investigating and raiding donors¹⁷⁶; opening unwarranted domestic intelligence files¹⁷⁷; creating lists of citizens to be detained in a national

SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS BOOK III, S. REP. NO. 94-755, at 8 (1976); *See also* Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR 33-4 (The New Press 2008). (mentioning that “The Internal Revenue Service also embarked upon many thousands of tax investigations based on pressure from presidents—starting with John F. Kennedy—and from intelligence agencies to investigate individuals or entities that opposed government politics”). *See also* Black Panther Party v. Alexander, 1975 WL 552, 35 A.F.T.R.2d 75-1241, (N.D.Cal. Mar 21, 1975) (In a civil suit, certain BPP members alleged “in July, 1969, pursuant to orders from the White House, IRS created an Activist Organization Project (AOP) with the specific goal of destroying ‘radical organizations,’ among them the [BPP]”). *See also* Socialist Workers Party v. Attorney General of U.S., 642 F.Supp. 1357, 1427 (S.D.N.Y., Aug 25, 1986) (recognizing that “from 1969 to 1973 the IRS, working in cooperation with the FBI and the Department of Justice, had a program for performing special tax investigations of ‘dissidents’”).

¹⁷⁵ *See* Jim Haskins, POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 71 (Simon & Schuster Books For Young Readers 1997) (noting that that FBI “schemed to leak damaging information to the press about Leonard Bernstein, the composer and conductor, after he held a 1970 fundraiser for the Panthers).

¹⁷⁶ *See* SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, 94TH CONG., SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS BOOK III, S. REP. NO. 94-755, at 57-8 (1976).

¹⁷⁷ *See* Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR 32 (The New Press 2008) (noting that the “FBI opened more than 500,000 domestic intelligence files” during the COINTELPRO era).

emergency¹⁷⁸; break-ins and warrantless wiretaps¹⁷⁹; and warrantless searches of mail.¹⁸⁰

¹⁷⁸ On author explained:

[T]he FBI drew up a secret list of 26,000 citizens to be rounded up and detained in a 'national emergency.' The list included Dr. King and author Norman Mailer, with the latter making the list thanks to his 'subversive associations and ideology.' The list also included 'professors, teachers, and educators; labor union organizers and leaders; writers, lecturers, newsmen and others in the mass media field, scientists, doctors and lawyers,' all slated for detention because of their lawful First Amendment Activities.

Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR 33 (The New Press 2008)

¹⁷⁹ See *Sinclair v. Kleindienst*, 645 F.2d 1080, 1082 (D.C.Cir. Mar 09, 1981) (referencing a memoranda from J. Edgar Hoover, Director of the F.B.I., seeking authorization for the Black Panther Party wiretaps between January and June of 1969.). See also *Burkhart v. Saxbe*, 448 F.Supp. 588, 591 (E.D.Pa. Mar 21, 1978) (mentioning that the Attorney General authorized the FBI to initiate and conduct, without a warrant or prior judicial approval, wiretaps of the Philadelphia chapter of the BPP). See also 148 Cong. Rec. E1426-01 (daily ed. July 29, 2002) (statement of Cynthia A. McKinney), available at 2002 WL 1748377 (mentioning "black bag operations that included illegally breaking and entering into private homes to collect information of individuals"). See also Angela Botzer, A GUIDE TO THE MICROFILM EDITION OF FEDERAL BUREAU OF INVESTIGATION CONFIDENTIAL FILES FBI WIRETAPS, BUGS AND BREAK-INS THE NATIONAL SECURITY ELECTRONIC SURVEILLANCE CARD FILE AND THE SURREPTITIOUS ENTRIES FILE, v.-vi, (Athar G. Theoharis, ed. 1988), available at http://www.lexisnexis.com/documents/academic/upa_cis/10755_FBI_FileWiretapsBugs.pdf (last visited Jan. 03, 2014) ("In 1942, Federal Bureau of Investigation Director J. Edgar Hoover informed FBI officials . . . of his newly formulated policy governing requests to conduct break-ins (termed "black bag jobs" at the time, now called surreptitious entries). No break-ins were to be conducted without the explicit authorization of the director's office, and, since this requirement necessitated the creation of written records both requesting and authorizing break-ins, Hoover devised a special records procedure to separate break-in requests and authorization

As if this were not enough, the government also undertook measures to chill speech where the BPP was concerned since this was one of the ways they endeared the public to their cause. A case-in-point comes through the experience of Eldridge Cleaver, BPP information minister, who joined the BPP in February 1967.¹⁸¹ Before joining the BPP, Eldridge Cleaver was incarcerated and released on parole in November 1966.¹⁸² On April 15, 1967, Eldridge Cleaver wooed an audience of 65,000

memoranda from other FBI records. Under this procedure, all memoranda...requesting such authorization were to be captioned ‘Do Not File.’ Thus captioned, these memoranda would not be serialized in the FBI’s central records system to ensure their undiscoverable destruction in the future.”). *See also* Robert Pear, *Prosecutors Rejected Offer of Plea to F.B.I. Break-Ins*, THE NEW YORK TIMES, Jan. 1, 1981, available at <http://www.nytimes.com/1981/01/11/us/prosecutors-rejected-offer-of-plea-to-fbi-break-ins.html> (last visited Jan. 09, 2014) (Although not involving the BPP, the article illustrates the methodology employed by the F.B.I. in the relevant time period. It tells how the F.B.I. authorized break-ins into the homes of friends and relatives of fugitive members of the Weather Underground group in 1972 and 1973. The break-ins were called “raw violations” of personal privacy, noting that diaries, love letters and statements of political philosophy had been photographed in the homes of innocent people.”).

¹⁸⁰ *See* Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR 27-32 (The New Press 2008).

¹⁸¹ *See* Jim Haskins, POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 34 (Simon & Schuster Books For Young Readers 1997)

¹⁸² *See id.* at 32.

people, as he passionately spoke at an anti-Vietnam War Rally.¹⁸³ Subsequently, his parole officer notified him that future speeches would have to be submitted for approval.¹⁸⁴ A subsequent legal challenge as to a violation of Cleaver's First Amendment Rights is what it took to quell this interference.¹⁸⁵ There are but a few explanations for the stated techniques, and they are 1) to intimidate people into conforming to a single belief system; 2) to influence government policy, by intimidation or coercion, so as to eliminate alternative approaches; or 3) to affect the conduct of government by mass destruction, assassination or kidnapping.

IV. CONCLUSION

As a collective group, the Black Panthers were not anti-American quack pots. They wanted a better America and they were largely patriotic

¹⁸³ *See id.* at 36.

¹⁸⁴ *See id.*

¹⁸⁵ *See id.*

people. Huey Newton was named after Huey Pierce Long, a Louisiana governor then a United States Senator.¹⁸⁶ Bobby Seale served in the Air Force.¹⁸⁷ Elmer “Geronimo” Pratt “joined the Army, earning two Purple Hearts and emerging a sergeant after two tours in Vietnam.”¹⁸⁸ Mr. Pratt is also said to have been bestowed a Silver Star and a Bronze Star.¹⁸⁹ Malik Rahim served his country in Vietnam before joining the New Orleans Chapter of the BPP.¹⁹⁰ Bobby Rush, now a United States

¹⁸⁶ See *id.* at 119.

¹⁸⁷ See *id.* at 13.

¹⁸⁸ *Honoring Geronimo Ji Jaga Pratt, Before the House of Representatives*, 112th Cong. (2011) (speech of Barbara Lee of California), available at 2011 WL 2793343.

¹⁸⁹ See Memorial Program for Elmer Gerard “Geronimo Ji Jaga” Pratt, *Journey to Freedom*, (June 18, 2011) (on file with the author); See also Geoffrey Stoute, *Memorial Service Held in Morgan City for Geronimo Pratt ji jaga* (July 6, 2011), available at <http://www.louisianaweekly.com/memorial-service-held-in-morgan-city-for-geronimo-pratt-ji-jaga/> (last visited Jan. 6, 2014); See also Robert J. Lopez, *Elmer 'Geronimo' Pratt Dies at 63; Former Black Panther Whose Murder Conviction Was Overturned*, LOS ANGELES TIMES, June 3, 2011, available at <http://www.latimes.com/news/obituaries/la-me-geronimo-pratt-20110603,0,6307630.story#axzz2rer86WtT> (last visited Jan. 6, 2014).

¹⁹⁰ See Michelle Garcia, *For a Former Panther, Solidarity After the Storm*, WASHINGTON POST, Dec. 4, 2005, available at 2005 WLNR 27767100.

congressman, is both an ordained minister and an honorably discharged Army veteran.¹⁹¹

In the words of BPP member Kathleen Neal Cleaver:

[The Black Panthers] were people who were dedicating their lives to the transformation of this country, who put the benefit of their communities ahead of themselves, who believed that transformation was not only possible but they were willing to die for it. They were willing to die to end brutality, racism, economic discrimination, imperialism, war.¹⁹²

“[W]hile the Black Panther leadership grabbed headlines and drew fire... its rank-and-file members and thousands of volunteers quietly laid

¹⁹¹ See Biography of Congressman Bobby L. Rush, available at <http://rush.house.gov/about-me/biography> (last visited Sept. 17, 2013). See also *Congressman Bobby L. Rush Day, Before the House of Representatives*, 111th Cong. (2009) (speech of Barbara Lee of California), available at 2009 WL 3877478.

¹⁹² *Human Rights In The United States: The Unfinished Story Current Political Prisoners-Victims of COINTELPRO*, Congressional Black Caucus Legislative Weekend (Sept. 14, 2000) (Hosted by Representative Cynthia McKinney, D-Ga.), available at <http://www.ratical.org/globalize/CynthiaMcKinney/news/if000914HR.htm> (last visited July 6, 2013).

the groundwork for social programs that have become national standards today.”¹⁹³ Some examples would be free breakfast programs in schools, early childhood education for toddlers, and community policing.¹⁹⁴ The BPP’s “time in the sun was short; but the shadow it has cast is long.”¹⁹⁵ They did so much more than brandish weapons, engage in spirited oratorical sessions, and occupy the backseats of police cars.

¹⁹³ William Brand & Cecily Burt, *Behind Fury, Panthers Laid Course for Social Programs*, THE ARGUS (FREMONT-NEWARK, CA), Oct. 7, 2006, available at 2006 WLNR 17418301.

¹⁹⁴ See Leslie Williams, *Ex Panther Thankful He Survived Shoot Out Leaves Legacy*, NEW ORLEANS TIMES PICAYUNE, Sept. 15, 1995, available at 1995 WLNR 1024565 (Johnny Jackson Jr., a former Louisiana state representative, “attributes to the Panthers the birth of the Urban Squad, the forerunner of what’s now called community policing.”). See also Office of Headstart website, ACF.HHS.GOV, available at <http://www.acf.hhs.gov/programs/ohs/about> (last visited Jan. 22, 2014) (“Head Start was founded as part of Lyndon B. Johnson’s War on Poverty in 1965. Since then, Head Start has grown from an eight-week demonstration project to include full day/year services and numerous program options.”). See also United States Department of Agriculture website (School Breakfast Program History), FNS.USDA.GOV, available at <http://www.fns.usda.gov/sbp/program-history> (last visited Jan. 23, 2014) (“The School Breakfast Program is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It began as a pilot project in 1966, and was made permanent in 1975.”).

¹⁹⁵ Jim Haskins, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY 120* (Simon & Schuster Books For Young Readers 1997).

Sadly, the program used by the government to destroy the BPP was not terminated as an act of integrity. “FBI Director Hoover terminated it only out of fear of public exposure.”¹⁹⁶ “The program had nothing to do with ‘counterintelligence’.”¹⁹⁷ “Rather, the bureau conducted illegal investigations and meted out secret punishments.”¹⁹⁸ When the Church Committee asked the former Head of the FBI’s Racial Intelligence Section if anyone, in the fifteen-year life of the COINTELPRO program, had discussed the program’s constitutionality or legality, the committee recalled that no thought had ever been given to these ideas.¹⁹⁹

Because this work involves an evaluation of the government’s actions, this article focused to a large degree on official actions by the government towards the BPP. This should not be interpreted as an implicit suggestion that the BPP was free from fault in all instances. Some individual Black

¹⁹⁶ See Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, *UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR* 25 (The New Press 2008).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

Panthers were bad actors; some of them were good people who undertook bad actions; and many of them were guardians of civil and human rights, who were attempting to engineer change in a new, novel, and legal way. A fair assessment of the government's actions cannot be undertaken without arresting this thought. But, a fair assessment of the government's actions must be based in the understanding that, inherent in the concept of government, is the idea that government is charged with the task of managing citizens and situations; citizens do not bear the same great responsibility to the same heightened degree.

This Article benefits from hindsight. The government, at the time of the BPP's activism, was littered with competing forces, interests and pressures, and the advent of new demands being placed upon it. Not only were these things taxing, but the situation intensified because there were no breaks in tensions. These tensions came simultaneously and in close proximity, and therefore disallowed time for rational thought and

no precedent to serve as a blueprint for such thought. Add to this mixture, a government confronted with the BPP for the first time in history. When one considers the situation's complexities and appreciates how these complexities were magnified by the setting within which these developments unfolded, one must bear a degree of understanding for how such a tragedy was set in motion. While one must consider these accounts if the discussion is to remain honest and impartial, one must not determine these explanations as exit points or escape routes for those seeking a way out of this conversation via the path of least resistance.

As America sought to address social and political challenges during the Civil Rights era, did America exceed policy making and domestic security, and enter the dark place traveled by others who injured multitudes to advance a strongly held political or social position? If a domestic terrorist engages in acts that are dangerous to human life and does so on American soil to intimidate or coerce people through mass destruction, assassination, or

kidnapping, then the BPP is a victim of something akin to domestic terrorism—and perhaps more. No official accountability for the full scope exists of what has been outlined in this Article. Some readers might be offended by any conversation suggesting that the government, while engaged in official business—especially the serious work of national security—committed acts that are now being discussed alongside the work of terrorists. The Church Committee offers great insight into the vulnerabilities of such thinking:

The Committee found that all too often, executive branch actions—taken in the name of nebulous concepts like ‘national security,’ or ‘subversion,’ shielded by secrecy, and without the guidance of clear laws—were not ‘governed and controlled in accord with the fundamental principles of our constitutional system of government.’ As a result, the Committee’s report concluded, America’s secret government did far too many ‘illegal, improper or unethical’ deeds that did not reflect ‘the ideals which have given the

people of this country and of the world hope for a better, fuller, fairer life.²⁰⁰

Erased history is ignored history left in an incubator too long. A lesson awaits us.

While some of these victims are still alive to experience vindication, now is the appointed time to make history honest. This Article seeks to do less in the realm of indictment, and more in the sphere of assessment, penance, and introspection.²⁰¹ The magnitude of the unwarranted harm done to the BPP has not yet been explored in an appropriate fashion. As a result, “the FBI's full-scale assault on the social movements of the 1960s and 1970s remains an open wound for the nation itself.”²⁰² This is more than a national tragedy; this is a human

²⁰⁰ Frederick A.O. Schwarz, Jr. & Aziz Z. Huq, *UNCHECKED AND UNBALANCED PRESIDENTIAL POWER IN A TIME OF TERROR* 23 (The New Press 2008).

²⁰¹ See, e.g., *Brown v. Board of Education*, 347 U.S. 483 (1954); *Morgan v. Virginia*, 328 U.S. 373 (1946); *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); J. Slonaker, *THE U.S. ARMY AND THE NEGRO* vi (1971) (“The Army has been an active instrument of civil rights enforcement and an agent of social reform for the Negro.”).

²⁰² Joseph Lowndes, *Why the Hunt for Assata Shakur Matters*, HUFFINGTON POST, May 4, 2013, available at 2013 WLNR 10922302.

wrong. With the intensity and the assertiveness used to respond to international enemies, we must act where our own misdeeds lie unanswered and, in light of this discussion, we must reassess what has been widely and, somewhat impulsively, accepted as good counterterrorism and national security policy. Therefore, such action ends the stalemate between this calamitous human wrong and the human right that lurks in the shadows of the War on Terror.