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David Ray Papke*

INTRODUCTION

Although their pivot came tardily compared to those by scholars in other disciplines, many legal scholars have in recent years turned to narrative.[1] Dozens of scholarly articles and several major recent collections of writings have demonstrated convincingly that law, like all human constructs, possesses a significant narrative dimension.[2] Lawyers, judges, law professors, and legal theorists are to a significant extent storytellers and interpreters of stories, and the contributors to this special issue of *Vermont Law Review* further demonstrate and analyze this important phenomenon.

In addition, those who effectively rebel against the law tell and interpret stories, a tendency I hope to demonstrate in this article on the Black Panther Party of the late 1960s and early 1970s.[3] During that period Panther leaders Huey P. Newton, Bobby Seale, and Eldridge Cleaver delivered countless speeches, published editorials and broadsides, and also authored substantial

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1. The first author whom I noted calling on legal scholars to turn to narrative was James R. Elkins. *See* James R. Elkins, *On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Path*, 9 LEGAL STUD. F. 123 (1985).

2. Legal narrative has been the subject of two symposia: Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989), and Symposium, *Pedagogy of Narrative*, 40 J. LEGAL EDUC. 1 (1990). Selected essays from these symposia and from other sources are collected with introductory discussions and questions in DAVID R. PAPKE, NARRATIVE AND THE LEGAL DISCOURSE: A READER IN STORYTELLING AND THE LAW (1991). *See* Jane B. Baron, *The Many Promises of Storytelling in Law*, 23 RUTGERS L.J. 79 (1991) (an essay admirably synthesizing and critiquing the wide range of recent publications concerning law and narrative).

3. This article addresses neither recent Black Panther activity nor autobiographies. Current groups active in Indianapolis, Milwaukee, and elsewhere call themselves Black Panthers and work aggressively for racial justice, but their leaders and tactics are different from those of the Black Panther Party of the 1960s. *See generally* ELAINE BROWN, A TASTE OF POWER: A BLACK WOMAN'S STORY (1992) (recent autobiographical work looking back on Black Panther Party activism of the 1960s); DAVID HILLIARD, THE AUTOBIOGRAPHY OF DAVID HILLIARD AND THE STORY OF THE BLACK PANTHER PARTY (1993).

autobiographical works.[4] These materials are rich in individual and collective narrative. The materials show how radicals and social critics can craft stories useful for purposes of resistance and turn experience into narrative ideologies.

In more specific terms, this article's first four parts consider various features of the Panthers' writings and activities. The first concerns the manner in which Newton, Seale, and Cleaver were able to retell their personal stories. Beginning with only deprivation and oppression, they reimagined their pasts in ways which set the stage for liberationist work. The second part explores the way political and theoretical materials further enriched the Panther leadership's personal narratives and resulted in an ideology which was itself in large part narratival. The third part turns to the law-related aspects of Panther thought. Contrary to media imagery, the Panther leadership was not lawless but rather surprisingly legalistic. However, the legalism which the Panthers made part of their narrative and delighted in turning back on their perceived white oppressors was itself fundamentally cynical. The fourth part addresses the Panthers' thoughts related to a particular legal institution: the urban police department. Concern with police conduct was at the heart of the Panthers' narrative, social criticism, and activism.

The conclusion of the article offers what is perhaps the best evidence of the coherence and potential of the Panthers' narratives of resistance, to wit, the police response to it. The police, both in the Panthers' Oakland home and on a national level, suppressed the Panthers and muffled their narratives. When the agents of the system react in this fashion, their conduct underscores the radical nature of the opposition's narrative. More commonly, voices of protest and even resistance are co-opted and tamed, but all political hegemonies also, in varying degrees, engage in direct suppression. Those interested in taking counter-

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4. Especially strong collections of essays, editorials, speeches, and broadsides by Newton, Seale, and Cleaver are housed in The Social Protest Collection and The Elizabeth and James Abajian Collection of Afro-Americana in the Bancroft Library of the University of California at Berkeley. The ephemera without pagination or years of publication cited in this article are housed in these collections. Major autobiographical works include HUEY P. NEWTON, REVOLUTIONARY SUICIDE (1973) [hereinafter NEWTON, REVOLUTIONARY SUICIDE]; BOBBY SEALE, A LONELY RAGE: THE AUTOBIOGRAPHY OF BOBBY SEALE (1978); BOBBY SEALE, SEIZE THE TIME: THE STORY OF THE BLACK PANTHER PARTY AND HUEY P. NEWTON (1970) [hereinafter SEALE, SEIZE THE TIME]; ELDRIDGE CLEAVER, SOUL ON ICE (1968) [hereinafter CLEAVER, SOUL ON ICE]; ELDRIDGE CLEAVER, SOUL ON FIRE (1978) [hereinafter CLEAVER, SOUL ON FIRE].

hegemonic positions can benefit from a study of the Panthers' narratives, but the Panthers' ultimate fate also demonstrates the dangers of successfully articulating narratives that challenge the police and the system they serve.

I. LEARNING TO NARRATE

Huey P. Newton, Bobby Seale, and Eldridge Cleaver were the three most important leaders of the Black Panther Party during the late 1960s.[5] Newton, working with Seale as his chief and sometimes only lieutenant, founded the Party in Oakland in October 1966.[6] Cleaver joined the Party in 1967, shortly after his parole from Soledad Prison.[7] Within the year, Newton and Seale were incarcerated, and Cleaver became the Party's leading spokesman.[8] Tensions eventually developed among the three and led to Cleaver's dismissal from the Party in 1971,[9] but for almost five years Newton, Seale, and Cleaver directed Party activities and rankled the power structure. In addition to recording events in their authors' lives, their autobiographical writings underscore the moments when the authors were able to seize control of the directions and meanings of their lives. In this sense, their narratives include thematic attention to a subject's very ability to narrate.

The Newton, Seale, and Cleaver families took part in the massive exodus of African-Americans from the South that began in 1940 and continued for two decades.[10] The three families were attracted to what must have seemed at the time the great promise of California, the Golden State. But this promise went unkept, depositing the three families onto the mean streets of California ghettos. As youths, Newton, Seale, and Cleaver knew

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5. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 110-37.

6. *Id.* at 110-20.

7. *Id.* at 128-30.

8. Technically speaking, David Hilliard became the Party's formal leader when Newton and Seale were imprisoned, but Cleaver through his speaking and writing emerged as the Party's most visible spokesman. *See* HUEY P. NEWTON, TO DIE FOR THE PEOPLE: THE WRITINGS OF HUEY P. NEWTON 52 (1972) [hereinafter NEWTON, TO DIE FOR THE PEOPLE].

9. In dismissing Cleaver from the Party, Newton said that Cleaver had overemphasized the importance of guns and armed resistance to the white power structure. *Id.* at 49-53. Cleaver had also supported the New York 21, whom Newton had expelled from the Party. KATHLEEN ROUT, ELDRIDGE CLEAVER 150 (1991).

10. 2 MARY BETH NORTON ET AL., A PEOPLE AND A NATION 802 (1986).

deprivation and began to rebel.

In Newton's case the road ran from Louisiana to Oakland. His parents had met originally in Arkansas and then moved to Louisiana where Newton's father worked in a sobering archipelago of gravel pits, mills, and factories.[11] Newton himself was one of seven children and was born on February 17, 1942, in Monroe, Louisiana.[12] Evidencing the Kingfish's appeal to southerners of both races, Newton's parents named him after Huey Long, Louisiana's blustering and demagogic governor of the Depression Era.[13] After moving to California, the Newtons lived in a two-bedroom apartment in Oakland's flatlands, and Newton slept on a small cot next to the refrigerator. He later recalled his daily fare of cush (day-old bread mixed with leftovers and gravy) and the amusement of trapping and igniting neighborhood rats.[14] He also recalled in more detail his boyhood fighting, drinking, and burglarizing of homes in more affluent Berkeley.[15] Although he graduated from Oakland Technical High School, he took no pride in this accomplishment: "My high school diploma was a farce. When my friends and I graduated, we were ill-equipped to function in society, except at the bottom, even though the system said we were educated. Maybe they knew what they were doing, preparing us for the trash heap of society."[16]

Seale was born in Dallas, Texas on October 22, 1936, the son of an often unemployed carpenter. His parents' marriage was unstable, and Seale lived in various familial arrangements in Port Arthur, San Antonio, and other Texas cities. Seale was sometimes terrorized by his father.[17] When Seale was seven, his family relocated to California. They lived for a while in Cordonices Village, a federal housing project which was built in Berkeley for workers in the war industries.[18] By the early 1950s, Cordonices was home to 10,000 people.[19] "My mother never really had any money," Seale recalled in his most important

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11. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 11-12.
12. *Id.* at 13.
13. *Id.*
14. *Id.* at 16-17.
15. *Id.* at 24-81.
16. *Id.* at 50.
17. SEALE, SEIZE THE TIME, *supra* note 4, at 5.
18. W.J. RORABAUGH, BERKELEY AT WAR: THE 1960S, at 5, 54 (1989).
19. *Id.* at 5-6.

autobiographical work. "I ran around with a couple gangs in my younger days, when I was fourteen, fifteen, and sixteen."[20] After dropping out of school, Seale enlisted in the Air Force, initially deriving some satisfaction from his work as a mechanic but ultimately receiving a bad conduct discharge.[21] His bad conduct discharge made it difficult for Seale to find and keep satisfactory employment after his return to Oakland.[22]

While Newton and Seale flirted with lengthy prison terms during their early adulthoods, Cleaver actually spent a significant amount of time in reform schools and prisons. He had been born in Wabaseka, Arkansas on August 31, 1935, and then moved at the age of eleven to Los Angeles.[23] His mother worked as a cleaning lady, and his father disappeared.[24] Cleaver was first arrested at the age of twelve for bicycle theft, and he spent a good portion of his youth and early adulthood in penal institutions. He served time at three reform schools and then a long, almost unbroken stretch between 1954 and 1966 in Folsom, San Quentin, and Soledad, adult prisons of the most degrading and violent variety.[25] His offenses included selling drugs, attempted rape, and assault with intent to kill.[26] While as outraged and humiliated by prison as Newton was by the Oakland Public Schools and Seale by the United States Air Force, Cleaver at least used his lengthy incarceration to learn to write and to think critically.[27]

We know from their subsequent narratives that Newton, Seale, and Cleaver were unable to put their earliest rebellion into any kind of political framework; all reported stumbling about during their youths in an underclass rage and stupor. Newton was a master of petty crime and street-level machismo,[28] and his early falling out with his family over the surface issue of whether

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20. SEALE, SEIZE THE TIME, *supra* note 4, at 6.

21. *Id.* at 11.

22. *Id.*

23. ROUT, *supra* note 9, at xiii.

24. CLEAVER, SOUL ON FIRE, *supra* note 4, at 64.

25. ROUT, *supra* note 9, at 6.

26. *Id.* at xiii.

27. Cleaver later wrote glowingly of Chris Lovdjieff, a teacher at San Quentin who taught him "Everything." CLEAVER, SOUL ON ICE, *supra* note 4, at 31.

28. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 60-80; *see* GILBERT MOORE, A SPECIAL RAGE 39 (1971) (providing a nonautobiographical account of Newton's street toughs).

he should wear a beard betrayed a deeper need for independence.[29] During his Air Force court-martial, Seale's interrogators asked him to comment on the civil rights movement, and Seale, struggling to articulate anything at all, cast civil rights activists as Communists.[30] During his teenage years in Los Angeles, Cleaver never stopped to take personal stock and lived in "an atmosphere of novocain."[31] When the United States Supreme Court handed down its decision in *Brown v. Board of Education*,[32] just one month before Cleaver entered prison, he did not have "even the vaguest idea of its importance or historical significance."[33] Predictions made circa 1960 that these three men would shape a movement with political acumen and forcefulness would have seemed foolhardy indeed.

Fortuitously, the Panther leadership's narratives not only recorded personal travails but also described how the narrating subjects were themselves able to begin making sense of the lives they were leading. In keeping with Jean-Paul Sartre's prescription for good autobiography,[34] the Panther narrators were able to objectify themselves and comment thereon. In particular, the Panther narrators made central in their stories moments and periods during which they became aware of and increasingly competent at the practice of narrative.

For Newton and Seale, enrollment at Merritt College was crucial. Merritt College was a community college which, in the 1960s, was located in North Oakland.[35] Newton, known for his theorizing and impassioned rhetoric, became a striking, albeit unconventional, "big man on campus."[36] He and Seale moved through various student and cultural nationalist groups and came eventually to view each other as friends and comrades.[37]

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29. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 59.

30. SEALE, SEIZE THE TIME, *supra* note 4, at 12.

31. CLEAVER, SOUL ON ICE, *supra* note 4, at 3.

32. Brown v. Board of Educ., 347 U.S. 483 (1954).

33. CLEAVER, SOUL ON ICE, *supra* note 4, at 3.

34. PETER BROOKS, READING FOR THE PLOT: DESIGN AND INTENTION IN NARRATIVE 114 (1992) (citing Jean-Paul Sartre). Writing of fiction more so than autobiography, Brooks says, "Perhaps of greater interest than the concept of plot . . . is that of plotting, the moments where we seize the active work of structuring revealed or dramatized in the text." *Id.* at 34-35.

35. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 60.

36. *See generally id.* at 60-77.

37. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 105-09.

Looking back on these relatively innocent times, Newton remembered fondly his friendship with Seale:

> Our conversations with each other became the most important thing. Brothers who had a free hour between classes and others who just hung around the campus drifted in and out of Bobby's house. We drank beer and wine and chewed over the political situation . . . . In a sense, these sessions were our political education classes, and the Party sort of grew out of them.[38]

While Newton and Seale politically educated themselves in and around Merritt College, Cleaver learned his initial political lessons in the harsher academy of Soledad Prison. He fell in with a group of young African-Americans who were rebelling against everything they perceived as white and American.[39] In one of his first attempts to define himself vis-à-vis the law, Cleaver declared himself an "outlaw," that is, someone who "had stepped outside of the white man's law."[40] Indeed, his diatribes against whites became so prolonged, prison authorities declared he had suffered a "nervous break-down" and locked him in a padded cell.[41] Only when he ceased decrying everything white did the prison authorities allow him to leave the hospital and return to the general prison population.[42]

External events also fueled the future Panthers' developing ability to see their history and present condition differently. At the same time the civil rights movement won apparent success with the passage of federal civil rights legislation,[43] unabated frustration led to rioting in African-American ghettos beginning in the summer of 1964, and continuing for several years. Particularly important for Californian African-Americans were the riots in Watts during the summer of 1965.[44] After noting the ironic fact that "Watts" was once used in the African-American

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38. *Id.* at 111.

39. CLEAVER, SOUL ON ICE, *supra* note 4, at 4.

40. *Id.* at 13.

41. *Id.* at 11.

42. *Id.* at 11-12.

43. *See, e.g.*, Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

44. CLEAVER, SOUL ON ICE, *supra* note 4, at 27.

community as a term of derision (much as "country" was used in the white community), Cleaver reported that it had now become a source of pride. "I'm from Watts," Cleaver brayed, "and I'm *proud* of it."[45]

More generally, pasts spent in the ghettos, housing projects, and prisons ceased being merely something to forget or overcome. They could be reimagined and represented narratively as a source of special self-awareness and an inspiration to rebel. Newton and Seale characterized their early Panther comrades as "brothers off the block," hailing from "the nitty gritty and the grass roots."[46] "You could look at their faces and see the turmoil they've lived through."[47] They were not "house niggers" who had been pampered and somewhat privileged but rather "field niggers" who were fully denied, oppressed, and, ultimately, more determined to demand their rights.[48] If the master's house caught on fire, house niggers worked harder than even the master to put the fire out. Field niggers—and by extension the members of the Black Panther Party—prayed that the house would burn down.[49] Humble origins and deprivation notwithstanding, the Panther leadership was able in the 1960s to construct personal and collective narratives which lead to liberationist activity. They had reimagined themselves and retold their stories well.

II. IDEOLOGICAL NARRATIVE/NARRATIVE IDEOLOGY

During the period of their greatest success and prominence, the Panthers were not immune to reductive outbursts of anti-intellectualism of the sort which has plagued many populist movements in American history.[50] Seale, for example, castigated a Panther arts program as "damn shit artwork,"[51] and there is the even more distressing record of Cleaver's vicious attacks on the essayist and novelist James Baldwin.[52] But generally the

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45. *Id.*

46. SEALE, SEIZE THE TIME, *supra* note 4, at 155.

47. *Id.*

48. HUEY P. NEWTON, THE GENIUS OF HUEY P. NEWTON: MINISTER OF DEFENSE BLACK PANTHER PARTY 15-16 (1970) [hereinafter NEWTON, THE GENIUS OF HUEY P. NEWTON].

49. *Id.* at 16.

50. *See generally* RICHARD HOFSTADTER, ANTI-INTELLECTUALISM IN AMERICAN LIFE (1962).

51. SEALE, SEIZE THE TIME, *supra* note 4, at 130.

52. CLEAVER, SOUL ON ICE, *supra* note 4, at 99-100.

Panther leadership respected ideas and theoretical writings and eagerly used them to shape the Black Panther Party's ideology. Newton in particular wanted to use the theoretical and political literature of revolutionaries and oppressed people to articulate "principles and methods acceptable to brothers on the block."[53] Cleaver was quite determined to raise ideological labor to the level of consciousness in hopes of gaining proficiency at it. In the first pamphlet of what was supposed to become a series exploring Party ideology, Cleaver defined ideology:

> Ideology is a comprehensive definition of a status quo that takes into account both the history and the future of that status quo and serves as the social glue that holds a people together and through which a people relate to the world and other groups of people in the world. The correct ideology is an invincible weapon against the oppressor in our struggle for freedom and liberation.[54]

The Panthers' ideological "weapon," as Cleaver dubbed it,[55] would derive sharpness and strength through its narrativity.

The previously mentioned distinction between "house niggers" and "field niggers" is itself an illustration of how the Panthers borrowed from other sources in developing their ideology.[56] The distinction was not original but rather came from Malcolm X, who perhaps more so than any other figure supplied the Panthers with perspective and attitude. Malcolm, of course, was widely recognized in African-American communities of the 1960s, and Seale was able to collect Malcolm's speeches and editorials from both *The Militant* and *Muhammad Speaks*.[57] Malcolm also attracted significant attention in the mainstream media in the 1960s, just as the Panthers were launching their ideological project. Articles about Malcolm appeared in *Reader's Digest*,[58]

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53. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 111.

54. ELDRIDGE CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY 3 (1969) [hereinafter CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY].

55. *Id.*

56. *See supra* notes 48-49 and accompanying text.

57. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 113. *The Militant* and *Muhammad Speaks* were movement newspapers. *Id.*

58. Alex Haley, *Mr. Muhammad Speaks*, READER'S DIG., Mar. 1960, at 100, 100-04.

The Saturday Evening Post,[59] and *Playboy*.[60] C. Eric Lincoln published a book-length study,[61] and Mike Wallace put together a network special.[62] Malcolm and his thoughts were available to the Panthers, and they were not blind to the resource.

Indeed, the assassination of Malcolm in 1965 led the Panthers to invoke him as not only a hero but also as a martyr. In an especially poignant section of *Seize the Time*, Seale recalled learning of Malcolm's assassination and then running down the street in a rage, throwing bricks at passing police cars, and putting his fist through a window.[63] When his son was born, he named him after Malcolm.[64] Cleaver, meanwhile, was among the many African-American inmates who had a special admiration for Malcolm because Malcolm had himself survived prison with dignity and direction.[65] In the early 1960s Cleaver had been a leader of the Nation of Islam (Black Muslim) community in the California penitentiaries, but when Malcolm split with Elijah Muhammad, Cleaver followed his lead.[66] When he learned of Malcolm's assassination while watching a movie in a prison mess hall, Cleaver thought, "For a moment the earth seemed to reel in orbit."[67]

What made Malcolm X so tremendously appealing and important? It was not religion. Neither the Nation of Islam faith, which Malcolm espoused for many years, nor the orthodox Muslim faith, which Malcolm accepted at the end of his life, appealed to the Panthers. They have in fact been singled out by at least one scholar for their particularly secular orientation.[68] Nor was it the social doctrine of Black separatism which Malcolm empha-

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59. Malcolm X, *I'm Talking to You, White Man*, SATURDAY EVENING POST, Sept. 12, 1964, at 30.

60. Alex Haley, *Playboy Interview: Malcolm X*, PLAYBOY MAG., May 1963, at 53, 53-63.

61. CHARLES E. LINCOLN, THE BLACK MUSLIMS IN AMERICA (1973).

62. *CBS Reports: The New Left* (CBS television broadcast, Sept. 12, 1967); *see also* Alex Haley, *Epilogue* to MALCOLM X, THE AUTOBIOGRAPHY OF MALCOLM X 419, 420-21 (First Ballantine Books Hardcover Ed. 1992) (1964).

63. SEALE, SEIZE THE TIME, *supra* note 4, at 3.

64. The son's full name was Malik Nkrumah Stagolee Seale; "Malik" came from Malcolm's Black Muslim name of El Hajj Malik Shabazz. *Id.* at 4.

65. CLEAVER, SOUL ON ICE, *supra* note 4, at 58.

66. *Id.* at 57.

67. *Id.* at 50.

68. GAYRAUD S. WILMORE, BLACK RELIGION AND BLACK RADICALISM: AN INTERPRETATION OF THE RELIGIOUS HISTORY OF AFRO-AMERICAN PEOPLE 174 (Orbis Books 2d ed. rev. 1983) (1973).

sized during and after his service in Elijah Muhammad's temple.[69] It was instead Malcolm's call for an aggressive Black political party and his general invocation of Black personhood.

When Newton, Seale, and Cleaver moved from narrating their own lives to proffering an ideological line for the Party, they all cast the latter as the embodiment of what Malcolm had envisioned.[70] As for the more fundamental notion of personhood, the Panthers' lionizing of Malcolm prefigured the contemporary trend of wearing caps and shirts with giant X's. The Panthers related positively, indeed almost desperately, to Malcolm's promise of fuller personhood. Cleaver cited approvingly Ossie Davis's sense that, "Malcolm was our manhood, our living black, manhood!"[71] "I do not claim that the Party has done what Malcolm would have done," Newton said. "Many others say that their programs are Malcolm's programs. We do not say this, but Malcolm's spirit is in us."[72]

Malcolm was not the only external resource on whom the Panthers drew as they constructed their ideology. The greatest goldmine of insight and conceptualization for the Panthers, as for most other radicals in the West, was Marxism. From the surface of this mine the Panthers took some of their rhetoric and slogans. Che Guevera, for example, inspired Cleaver with his complete and total commitment to liberationist struggle:

> Wherever death may surprise us, it will be welcome, provided that this, our battlecry, reach some receptive ear, that another hand reach out to pick up weapons, and that other fighting men come forward to intone our

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69. *See* MALCOLM X, *supra* note 62, at 338-39.

70. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 113; SEALE, SEIZE THE TIME, *supra* note 4, at 240. Cleaver in fact saw Newton as having received the torch from Malcolm:

> Huey's genius is that he took up where brother Malcolm left off when he was assassinated. Huey was successful in creating an organization unique in the history of Afro-Americans. A revolutionary political party with self perpetuating machinery. This is a historic achievement. And it is the thought of Huey P. Newton that holds the Black Panther Party together and constitutes its foundation.

Eldridge Cleaver, *Introduction* to NEWTON, THE GENIUS OF HUEY P. NEWTON, *supra* note 48.

71. CLEAVER, SOUL ON ICE, *supra* note 4, at 60. The statement from Ossie Davis is reprinted as an appendix in MALCOLM X, *supra* note 62, app. at 497-500.

72. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 113.

> funeral dirge with the staccato of machine guns and new cries of battle and victory.[73]

The same notion of a life-sacrifice in the name of revolution inspired Newton, so much so that he took *Revolutionary Suicide* as the title of his most important autobiographical work.[74] Mao TseTung's "Little Red Book,"[75] meanwhile, originally captured Newton's imagination only as something which could be sold for a profit to the liberals and radicals at the University of California at Berkeley. He, Seale, and other Panthers hawked copies outside Sather Gate at the northern end of Telegraph Avenue and used the money to buy shotguns.[76] Later, Newton virtually memorized the book and adopted one of Mao's sayings as the Panthers' motto: "'We are advocates of the abolition of war; we do not want war; but war can only be abolished through war; and in order to get rid of the gun it is necessary to pick up the gun.'"[77]

The Panthers' penchant for quoting Guevera, Mao, and other Marxist liberationists may seem superficial, and indeed, one scholar has dismissed the Panthers as shallow Marxists.[78] However, the Panthers' variety of Marxism went deeper than sloganeering. During his lengthy imprisonment, Cleaver sought and read works by Marx, even though they left him with a chronic headache.[79]

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73. ELDRIDGE CLEAVER, *The Courage to Kill: Meeting the Panthers*, *in* ELDRIDGE CLEAVER: POST-PRISON WRITINGS AND SPEECHES 39 (Robert Scheer ed., 1967) [hereinafter CLEAVER, *The Courage to Kill: Meeting the Panthers*].

74. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4. The volume begins with the following poem of the same title:

> By having no family,
> I inherited the family of humanity.
> By having no possessions,
> I have possessed all.
> By rejecting the love of one,
> I received the love of all.
> By surrendering my life to the revolution,
> I found eternal life.
> Revolutionary Suicide.

Id.

75. MAO TSETUNG, QUOTATIONS FROM CHAIRMAN MAO TSETUNG (1976).

76. SEALE, SEIZE THE TIME, *supra* note 4, at 79-85.

77. CLEAVER, *The Courage to Kill: Meeting the Panthers*, *supra* note 73, at 37 (quoting MAO, *supra* note 75, at 63).

78. RORABAUGH, *supra* note 18, at 76.

79. CLEAVER, SOUL ON ICE, *supra* note 4, at 12.

> I took him for my authority. I was not prepared to understand him, but I was able to see in him a thoroughgoing critique and condemnation of capitalism. It was like taking medicine for me to find that, indeed, American capitalism deserved all the hatred and contempt that I felt for it in my heart.[80]

Newton, always the most philosophical of the Panthers, was enamored with the Marxian understanding of dialectical materialism, and it was this method of analysis more so than anything else that led him to declare proudly that the Panthers were a Marxist-Leninist party.[81] Also important to Newton, Seale, and Cleaver were certain fundamental Marxian conceptualizations and premises. They referred, for example, to the familiar "base" and "superstructure,"[82] suggesting, in keeping with conventional Marxian thought, that the ideas and attitudes of the latter be understood with reference to the material and economic realities of the former. History was pulled forward, meanwhile, by a class struggle. In the present epoch, that struggle pitted the capitalist ruling class against the proletarian working class.[83] The working class needed a "vanguard" which included the Panthers,[84] and the vanguard must remember that its "theory," in order to be valuable, must always be translated into a "practice."[85] Ultimately, the working class and its vanguard would bring about a revolution,[86] the denouement of the grand Marxist narrative —a narrative with more worldwide popular appeal than any claims to a Marxist "science."

In addition to Malcolm and Marx, other political thinkers helped inform and shape the Panther ideology. As noted previ-

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80. *Id.*

81. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 25.

82. ELDRIDGE CLEAVER, REVOLUTION AND EDUCATION (n.p.) [hereinafter CLEAVER, REVOLUTION AND EDUCATION].

83. SEALE, SEIZE THE TIME, *supra* note 4, at 71-72.

84. *Id.* at x; Eldridge Cleaver, *Introduction* to NEWTON, THE GENIUS OF HUEY P. NEWTON, *supra* note 48.

85. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 30; SEALE, SEIZE THE TIME, *supra* note 4, at 197.

86. Among the Panther leaders Cleaver seemed the most enamored, at least rhetorically, with the need for revolution. Cleaver wrote: "It's important for us to be consciously revolutionary, to understand that we are revolutionaries, and to understand that it's right for us to be revolutionaries, and that in fact the enemies are the ones who are wrong." CLEAVER, REVOLUTION AND EDUCATION, *supra* note 82.

ously, the Panther leadership always looked for ideas that could be adapted to the situation of twentieth-century African-Americans, and they were prepared to critique even the ideas they essentially accepted, Marxism included.[87] In part because lengthy prison terms afforded them ample opportunity to do so, the Panther leaders read extensively. We have in the Panthers' writings frequent citations to books they found noteworthy as well as lists of books in their personal prison libraries.[88] Cleaver invoked Robert Williams and his *Negroes with Guns*.[89] An NAACP worker in North Carolina, Williams had organized African-American self-defense units, used foxholes and sandbags to repulse the Ku Klux Klan, and argued that it was necessary to meet violence with violence.[90] Cleaver also took the writings of Mikhail Alekandrovich Bakunin to be his prison bible,[91] and he later authored an introduction to the Party's republication of a work by Bakunin.[92] In citing these authors and mentioning these books, the Panthers were consciously and subconsciously sharing important ideological building blocks.

In addition to the thinkers already mentioned, Frantz Fanon, a Martinique-born psychiatrist associated with the Algerian struggle for independence, deserves mention. In Cleaver's opinion, Fanon was the first major Marxist-Leninist theorist who was primarily concerned with Blacks.[93] Before meeting Cleaver, Seale read Fanon's *The Wretched of the Earth* no fewer than six times and then steered Newton toward the work.[94] Beginning

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87. Cleaver in fact stated that "there is much evidence that Marx and Engels were themselves racists—just like their White brothers and sisters of their era." CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY, *supra* note 54, at 4.

88. SEALE, SEIZE THE TIME, *supra* note 4, at 48. In MOORE, *supra* note 28, at 37, the author reports seeing the following volumes in Newton's 1969 prison cell: *The Economic and Philosophical Manuscripts of Karl Marx*, John Steinbeck's *The Grapes of Wrath*, Fred Smith's *The Warfare State*, John Eaton's *Socialism in the Nuclear Age*, and Ronald Segal's *The Race War*. ROUT, *supra* note 9, at 50, reports that Cleaver took the following to be the most popular books among Californian African-American prison inmates: *The Autobiography of Malcolm X*, *Malcolm X Speaks*, Frantz Fanon's *The Wretched of the Earth*, LeRoi Jones's *Home*, Nat Hentoff's *Call the Keeper*, Robert F. Williams's *Negroes With Guns*, and Che Guevera's *On Guerilla Warfare*.

89. ROUT, *supra* note 9, at 49-51; *see* ROBERT F. WILLIAMS, NEGROES WITH GUNS (Marc Schleifer ed., 1962).

90. Like Cleaver, Williams eventually fled to Cuba. ROUT, *supra* note 9, at 51.

91. CLEAVER, SOUL ON ICE, *supra* note 4, at 12.

92. MIKHAIL A. BAKUNIN, THE CATECHISM OF THE REVOLUTIONIST (n.d.).

93. CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY, *supra* note 54, at 5.

94. SEALE, SEIZE THE TIME, *supra* note 4, at 25.

in his earlier *Black Skin, White Masks*,[95] Fanon had insisted that the Black psyche must be understood in a social context and particularly with reference to white racist colonization of Blacks.[96] In this context, Fanon argued, Blacks develop a pathological inferiority complex and even a third-person consciousness of their own bodily schema.[97] In *The Wretched of the Earth* Fanon not only observed that colonized Blacks frequently directed their pent up rage against their own people[98] but also provided gripping clinical studies from his medical practice in Algeria.[99] As a psychiatrist, Fanon counseled individuals, but he then sprang from his clinical work to articulate a brilliant and surprisingly lyrical critique of colonialism.

The Panthers were enamored with this critique and applied Fanon's insights regarding colonialized Africans to ghettoized African-Americans. Newton used the title of Fanon's most famous work to designate his people. "Penned up in the ghettos of America, surrounded by his factories and all the physical components of his economic system," Newton wrote in 1967, "we have been made into 'the wretched of the earth,' relegated to the position of spectator while the White racists run their international con game on the suffering peoples."[100] In his formal commentary on the ideology of the Black Panther Party, Cleaver asserted that a "Black Colony" existed in the United States.[101] Indeed, Newton added, certain of the pathologies which were familiar in colonial societies were also distressingly evident among African-American ghetto men:

> He [the African-American ghetto male] may attempt to make himself visible by processing his hair, acquiring a "boss mop," or driving a long car even though he cannot afford it. He may even father several "illegitimate" children by several different women in order to display his masculinity. But in the end, he realizes that his

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95. FRANTZ FANON, BLACK SKIN, WHITE MASKS (Charles L. Markmann trans., Grove Press 1967) (1952).

96. *Id.* at 83-108.

97. *Id.* at 110.

98. FRANTZ FANON, THE WRETCHED OF THE EARTH 52 (Constance Farrington trans., Présence Africaine 1963) (1961) [hereinafter FANON, THE WRETCHED OF THE EARTH].

99. *Id.* at 249-310.

100. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 83.

101. CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY, *supra* note 54, at 6.

> efforts have no real effect.
>
> . . . He is confused and in a constant state of rage, of shame, of doubt. This psychological state permeates all his interpersonal relationships.[102]

Worst of all, the residents of the American ghetto perpetrated violence against one another as did the victims of the colonial societies which Fanon analyzed. Angry and miserable, oppressed people struck out not against the true oppressor but rather against more defenseless brothers and sisters.[103]

Perhaps the most intriguing Panther derivation from Fanon's writings involved the notion of a "lumpen proletariat." Marx had used the term in passing to refer somewhat negatively to a small subclass of vagabonds and petty criminals,[104] but Fanon had put a different twist on the term in his writings. For Fanon, the lumpen proletariat was the mass of Third World people who came from the villages to the city, lived in shantytowns, and circled tirelessly hoping for incorporation into the developed world.[105] The lumpen proletariat, in his opinion, was one of the most radically revolutionary forces of colonized people.[106] Inspired by the latter usage, the Panthers recast any African-American ghetto dwellers who lacked a secure relationship with the means of production and other institutions of capitalist society as lumpen proletariat. The Panthers concentrated, in Seale's words, on organizing "the brother who's pimping, the brother who's hustling, the unemployed, the downtrodden, the brother who's robbing banks, who's not politically conscious—that's what lumpen proletariat means."[107] Furthermore, the Panthers saw not only

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102. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 80.

103. CLEAVER, *The Courage to Kill: Meeting the Panthers*, *supra* note 73, at 36-37. Perhaps, the situation of African-Americans is not identical to that of colonialized peoples. There are no mother countries and colonies or formal distinctions between colonizers and the colonized. However, the apparent exploitation of African-Americans by outsiders led others in the late 1960s to speak of domestic colonialism. *See* R. BLAUNER, INTERNAL COLONIALISM AND GHETTO REVOLT IN RACIAL OPPRESSION IN AMERICA 51-111 (1972).

104. Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, *in* MARX AND ENGELS: BASIC WRITINGS ON POLITICS AND PHILOSOPHY 318, 345-48 (Lewis S. Feuer ed., 1959). In *Manifesto of the Communist Party*, Marx describes the lumpen proletariat as "the social scum, that passively rotting mass thrown off by the lowest layers of old society." Karl Marx, *Manifesto of the Communist Party*, *in id.*, at 1, 18.

105. FANON, THE WRETCHED OF THE EARTH, *supra* note 98, at 129.

106. *Id.*

107. SEALE, SEIZE THE TIME, *supra* note 4, at 30.

their Party but also a politicized lumpen proletariat as a vanguard which might lead the way to liberation. Giving credit to Newton, Cleaver said, "Huey transformed the Black lumpen proletariat from the forgotten people at the bottom of society into the vanguard of the proletariat."[108] The traditional working class, Cleaver continued, had become "a new industrial elite" without any revolutionary fire,[109] but the Panthers and the African-American lumpen proletariat could continue the fight against capitalism. "O.K. We are Lumpen. Right on."[110]

Marx himself might have blanched at this variation on his theory, and during the late 1960s more hidebound Marxist-Leninists did indeed criticize the Panthers' theoretical deviations. The era's Progressive Labor Party, for example, challenged Newton whenever possible.[111] But hardly afraid of a fight, be it physical or intellectual, Newton did not back down.[112] Nor did Seale or Cleaver. "Marx and Lenin would probably turn over in their graves," Seale said, "if they could see lumpen proletarian Afro-Americans putting together the ideology of the Black Panther Party."[113] "Some blind so-called Marxist-Leninists accuse the Lumpen of being parasites upon the Working Class," Cleaver said in a huff. "This is a stupid charge derived from reading too many of Marx's footnotes and taking some of his offhand scurrilous remarks for holy writ."[114] The Panther leadership believed in the importance of ideology, but they built their ideology rather than taking it on already prepackaged.

Newton, Seale, and Cleaver over the course of five years shaped various theoretical and political materials into the Party's ideology. Rarely sterile or abstract, this ideology often relied on narrative for its power. The ideology told a story of the oppression of African-Americans and, more importantly, projected liberation through the concentrated efforts of a boldly politicized lumpen proletariat of color. Newton, Seale, and Cleaver's personal stories enlivened the ideological narrative, and the ideological narrative provided a context for their personal stories.

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108. CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY, *supra* note 54, at 2.

109. *Id.* at 9.

110. *Id.* at 7.

111. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 26.

112. *Id.* at 26-30.

113. SEALE, SEIZE THE TIME, *supra* note 4, at ix.

114. CLEAVER, ON THE IDEOLOGY OF THE BLACK PANTHER PARTY, *supra* note 54, at 8.

Ideology and narrative blended powerfully into one.

III. CYNICAL LEGALISM

The Black Panthers prowled through the popular mind of the late 1960s and early 1970s as particularly lawless beasts. To a certain extent, they intentionally promoted this perception with their menacing bearing, berets, and leather jackets.[115] They also ostentatiously displayed their weaponry, and the most famous photograph of Huey Newton showed him with a rifle in one hand and a spear in the other.[116] Police reports, inflammatory media portrayals, and white racism in turn inflated the popular perception of Panther lawlessness.[117] At the peak of their prominence the Panthers were considered by many as thugs, terrorists, and mad killers.[118]

It is therefore surprising when a careful review of the Panthers' personal accounts and ideology reveals the Party to be extremely legalistic. In their earliest years, the Panthers adopted a rights consciousness, endorsed legal education and law-abiding conduct for members, and addressed statutes and ordinances with a picky hypersensitivity. Perhaps all of this was called forth by the legalistic character of the culture in which the Panthers lived. Various scholars have noted the pronounced power of law and legal meanings in American life,[119] and to some extent this power swept the Panthers up along with everyone else. However, the Panthers did fight the legalistic undertow. Uniting their interests in law, its origins, and its uses was an anger and outrage. Their legal hypersentivity in particular was, at its core, cynical and suggested the Party's true radicalism.

The initial source of Black Panther legalism was perhaps Huey Newton himself. He had contemplated legal rules and procedures in his criminal justice classes at Merritt College, remained interested in law while he worked in the Oakland anti-

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115. In addition, Newton's self-chosen and frequently invoked title of Minister of Defense contributed to the Panthers' menacing image. *See generally* NEWTON, THE GENIUS OF HUEY P. NEWTON, *supra* note 48.

116. This photograph appears on the original paper jacket cover of NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4.

117. *See infra* note 152 and accompanying text.

118. *See infra* note 152 and accompanying text.

119. *See* Symposium, *Law in American Culture*, 15 J. AM. CULTURE 1 (1992) (providing a useful collection of articles relating to the role of law in American culture).

poverty program, and even attended classes for one semester at the San Francisco Law School.[120] Newton reported in his autobiographical narrative that he had first studied law in order to further the criminal career with which he flirted in the early 1960s:

> I first studied law to become a better burglar. Figuring I might get busted at any time and wanting to be ready when it happened, I bought some books on criminal law and burglary and felony and looked up as much as possible. I tried to find out what kind of evidence they needed, what things were actually considered violations of the law, what the loopholes were, and what you could do to avoid being charged at all. They had a law for everything.[121]

Later, Newton reveled in defending himself in the courtroom after he had been charged with a crime. He cast these efforts as a way to show his contempt for the system,[122] but his eager commentaries on legal definitions and issues also betray a genuine engagement with legal discourse. "Each law has a body of elements, and each element has to be violated in order for a crime to have been committed," he announced in *Revolutionary Suicide*.[123] "That's what they call the 'corpus delecti.' People think that term means the physical body, but it really means the body of elements."[124] Here and elsewhere, the legally trained hear echoes of their own first-year law school notes. Strange as it might seem, Newton had the categorizing and differentiating aptitude of a fine lawyer.[125]

As a young man, Seale aspired to be an engineer and came to his own fascination with law largely through Newton.[126] Cleaver, on the other hand, was directly engaged by legal issues in the way that many inmates are. Dreaming of their release

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120. MOORE, *supra* note 28, at 41.

121. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 78.

122. *Id.* at 82.

123. *Id.*

124. *Id.*

125. Seale, Newton's closest colleague, reported that Newton in fact wanted to be a lawyer. Bobby Seale, *A Personal Statement*, *in* THE "TRIAL" OF BOBBY SEALE 121, 126 (1970).

126. *Id.*

from prison and holding onto that dream to preserve their sanity, inmates continually draft and mail their post-conviction legal petitions.[127] Cleaver was no exception. He too studied the ratty law books in prison libraries. However, he also realized that these books had limited usefulness for an inmate seeking post-conviction relief:

> Of the law books, we [Californian inmates] can only order books containing court opinion. We can get any decision of the California District Court of Appeals, the California Supreme Court, the U.S. District Courts, the Circuit Courts, and the U.S. Supreme Court. But books of an explanatory nature are prohibited. Many convicts who do not have lawyers are forced to act *in propria persona*. They do all right. But it would be much easier if they could get books that showed them how properly to plead their cause, how to prepare their petitions and briefs. This is a perpetual sore point with the Folsom Prison Bar Association, as we call ourselves.[128]

Beyond longing for more useful legal literature during his lengthy incarceration in Folsom, San Quentin, and Soledad, Cleaver had another early legal experience of quite a different sort: He fell in love with Beverly Axelrod, his lawyer. Bemused and playful, Cleaver asks in *Soul on Ice*, "But can a convict really love a lawyer? It goes against the grain. Convicts hate lawyers."[129]

After the formal establishment of the Black Panther Party in the fall of 1966, the legal sensitivities that the leadership had reported in their writings began to manifest themselves in the Party's documents, organizational norms, and activist practice. As noted in the previous section of this article, a grand Marxist-Leninist narrative was present in the Party's ideology,[130] but the Panther leaders also articulated, in a somewhat contradictory vein, a rights analysis. On one level, these articulations were merely evidence of the vague and generalized rights consciousness

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127. *See* Jim Thomas, *Prisoner Cases as Narrative*, *in* PAPKE, *supra* note 2, at 237, 237-61 (providing an interesting study of inmates' petition-writing and the reactions their efforts receive).

128. CLEAVER, SOUL ON ICE, *supra* note 4, at 47.

129. *Id.* at 19.

130. *See supra* notes 73-86 and accompanying text.

that scholars have found so pervasive in American society.[131] "Every man is born, therefore he has a right to live, a right to share in the wealth," Newton wrote. "If he is denied the right to work then he is denied the right to live."[132]

However, the Panthers' claims to their rights also had a sharper, more piercing tenor. One of the more frequently used motifs in their earlier writings was that of the American colonial patriots throwing off the British because of assorted rights violations.[133] The Panthers invoked the memory of John Adams and Thomas Jefferson. However, they also insisted that the patriots had stopped short. "I emphasize that this was 1776 when white people of America gained Human Rights," Newton wrote. "Unfortunately, Blacks because of racism in the country and the fact of Slavery were not included in these rights."[134] Furthermore, Cleaver added, it was necessary "to transform the American black man's struggle from a narrow plea for 'civil rights' to the universal demand for human rights. . . . This . . . was Malcolm's dying legacy to his people."[135]

As is often the case in American political discourse, talk of human rights melded quickly into talk of constitutional rights, a more recognizable legal tack. The Party platform, which Newton and Seale drafted, was rife with a variety of constitutionalism.[136] Three of the ten basic demands of the Party platform were law-related: the end of police brutality against Black people, the release of Black men from jails and prisons, and Black juries for cases involving Black defendants. Each of these demands[137] was buoyed by a prescriptive paragraph citing amendments to the United States Constitution. Concluding the platform and supporting its final demand for a United Nations supervised plebiscite on independence in America's "black colony" is the Preamble to the Declaration of Independence.

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131. LAWRENCE M. FRIEDMAN, THE REPUBLIC OF CHOICE: LAW, AUTHORITY, AND CULTURE 40, 97-98 (1990).

132. NEWTON, THE GENIUS OF HUEY P. NEWTON, *supra* note 48, at 20.

133. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 82.

134. HUEY P. NEWTON, TOWARD A NEW CONSTITUTION (n.d.).

135. ELDRIDGE CLEAVER, THE BLACK MAN'S STAKE IN VIETNAM (n.d.).

136. This platform is reprinted in many places. One accessible version appears in NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 3-6.

137. Cleaver discussed these demands in an interview with journalist Nat Hentoff. Nat Hentoff, *Playboy Interview: Eldridge Cleaver*, PLAYBOY MAG., Dec. 1968, at 89, 90-91.

Beyond the Party's platform, Newton, Seale, and Cleaver frequently asserted constitutional rights, most commonly in the midst of conflicts with authorities.[138] For now, one can note that in the late 1960s the Panthers insisted on their constitutional right to bear arms and their freedoms of assembly, speech, and the press.[139] Failure to respect the Panthers' rights, they themselves were sure, indicated that fascism was on the rise.[140] Even the infamous fiasco in Judge Julius Hoffman's Chicago courtroom in 1969, after Seale was indicted for conspiracy, related to perceived constitutional rights.[141] Seale's fellow Chicago Eight defendants, especially Abby Hoffman and Jerry Rubin, may have intentionally converted the proceedings into a circus in order to attract media attention. But the outbursts by Seale that led to his being bound and gagged in the courtroom and ultimately sentenced to four years for contempt seem genuinely to have derived from other concerns. Seale wanted Charles Garry, the usual Panther lawyer who was at the time facing a gall bladder operation, to represent him. That being impossible, Seale then wanted either a postponement of the trial or the right to represent himself.[142] When Judge Hoffmann refused both requests, Seale continually disrupted the proceedings calling Hoffman "a racist" and invoking numerous constitutional rights.[143] "Anyone can read the court record," Seale wrote later, "and see that I wasn't trying to sabotage the trial, but that I was only trying to get my constitutional right—either defend myself, or to have my lawyer present—recognized, but Judge Hoffman wouldn't recognize it."[144]

Intellectually speaking, the greatest problem with the Panthers' understanding of constitutional rights involved their static positivism. They seemed to think, almost like white conservative right-to-bear-arms zealots, that the meaning of

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138. More will be said about the Panthers' assertions of their rights during encounters with the police in the next section of this article. *See infra* part IV.

139. SEALE, SEIZE THE TIME, *supra* note 4, at 419.

140. TRIAL OF BOBBY SEALE (Radio interview with Bobby Seale conducted at the beginning of the Chicago Eight Trial) (Pacifica Radio Archives 1986).

141. *Id.*

142. Charles Rembar, *The Colloquies That Led to Bobby Seale's Imprisonment, in* THE "TRIAL" OF BOBBY SEALE, *supra* note 125, at 111, 111-12.

143. *16 Ways to Count Contempt, in* THE "TRIAL" OF BOBBY SEALE, *supra* note 125, at 25, 25-110.

144. SEALE, SEIZE THE TIME, *supra* note 4, at 347.

constitutional amendments was unambiguously known. They wanted rights to play fixed and certain roles in their tales of personal and collective liberation. Their constitutional jurisprudence was oversimplified and reductively ahistorical. In addition, after making a certainty of something as fluid and complex as a constitutional right, it was then an easy step to instill comparable certitude into the meaning of statutes. While on trial in Chicago and indignantly asserting his Sixth Amendment rights, Seale "got hold of material about an old Reconstruction law, Section 1941 of the U.S. Government Code, that says a black man cannot be discriminated against in any manner in any court in America, concerning 'legal defense.'" "When I got hold of that, man," he thought, "Oh, man! It was a real thing with me, because I knew I was right by the laws."[145]

References to the violation of their extant constitutional rights gradually drained from the Panthers' narrative work, and in 1970, speaking in "Washington, D.C., Capital of Babylon, World Racism and Imperialism," Cleaver called for a revolutionary people's convention to draft a new constitution.[146] However, pronounced sensitivity to legal concerns remained central in the Party's internal educational program. The mandatory instruction for admission to the Party included "thirteen points of basic, legal first aid, legal and constitutional rights."[147] Senior Panthers often repeated the thirteen points in political education classes and also in weapons training sessions.

In addition, the Party established twenty-six rules for members and required that members commit them to memory.[148] The Panthers' sensitivity to ghetto parlance and practice contributed to the Panthers' appeal. One rule reflecting that sensitivity read, "No Party member can have a weapon in his possession while drunk or loaded off narcotics or weed."[149] "No Party member will commit any crimes against other Party members or BLACK people at all, and cannot steal or take from the people not even a needle or a piece of thread," read another.[150] To be sure, rules in and of themselves, even if memorized,

145. *Id.* at 329.

146. ELDRIDGE CLEAVER, ON THE CONSTITUTION (1970).

147. SEALE, SEIZE THE TIME, *supra* note 4, at 86.

148. *Id.* at 375.

149. *Id.* at 391.

150. *Id.* at 392.

do not guarantee law-abiding conduct. There were incidents of unlawful conduct by initiates and expulsions on those grounds.[151] Allegations that the Panthers were merely a criminal gang tailed the Party throughout the period of its prominence and even hounded Newton to his grave.[152] Yet Newton, Seale, and to a lesser extent Cleaver wanted their comrades "to keep their activities within legal bounds."[153] The strategy had two goals: (1) to deny the police reasons for acting against the Panthers; and (2) to win the confidence of the African-American population.[154]

This rigorous legalism, of course, did not reflect a deep and genuine respect for the law, lawmaking process, or law enforcement. Manifesting a simplistic Marxist economism,[155] Newton said, "The laws exist to defend those who possess property. They protect the possessors who should share but who do not."[156] In late 1962, in his very first conversation with Seale and long before the founding of the Party, Newton argued that there were plenty of laws on the books to protect Blacks and that contributing to Martin Luther King, Jr. and others who wanted additional civil rights legislation was a waste of money.[157] After the founding of the Party, conservative California State Assemblyman Donald Mulford attracted support for a bill that would limit the Panthers'

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151. SEALE, SEIZE THE TIME, *supra* note 4, at 376.

152. "A number of the Panthers were caught in robberies and some thought the Panthers nothing more than a crime gang." RORABAUGH, *supra* note 18, at 79. In an article reporting Newton's death, San Francisco's leading newspaper quoted Alameda County District Attorney Tom Orloff: "I must say I am not surprised he ended up meeting a violent death because violence was so much a part of his life. He was nothing more than a gangster." Lori Olasewski & Rick DelVecchio, *Huey Newton Shot Dead on West Oakland Street*, S.F. CHRON., Aug. 23, 1989, at A1.

153. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 122.

154. *Id.*

155. After Marx's death in 1883, and even more so after the death of Engels in 1895, the base/superstructure model led many self-styled Marxists to subscribe to economic determinism, that is, a belief that economic forces and power determined ideas, attitudes and other superstructural constructs. Law from this economic perspective seemed primarily superstructural, and Marx said that the economic base was "the real foundation on which rise legal and political superstructure and to which correspond definite forms of social consciousness." KARL MARX, A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY (Int'l Library Publishing Co. 1904) (1859).

156. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 82.

157. Both Newton and Seale recall the same conversation. *Id.* at 105-06; SEALE, SEIZE THE TIME, *supra* note 4, at 13-14.

brandishing of weapons.[158] Newton saw the development as predictable. "We knew how the system operated," he said. "If we used the laws in our interest and against theirs, then the power structure would simply change the laws."[159] As for law enforcement, Cleaver perceived a similar bias:

> If the capitalists are in power, they enforce laws designed to protect their system, their way of life. They have a particular abhorrence for crimes against property, but are prepared to be liberal and show a modicum of compassion for crimes against the person—unless, of course, an instance of the latter is combined with an instance of the former. In such cases, nothing can stop them from throwing the whole book at the offender. For instance, armed robbery with violence, to a capitalist, is the very epitome of evil. Ask any banker what he thinks of it.[160]

In response to this perceived bias, the Panthers both brandished weapons and spouted law. These legal pronouncements came in predictable areas such as probable cause or the carrying of guns.[161] They came as well in areas more peripheral to their liberationist struggle: the rules for renting the Oakland Coliseum,[162] the safety requirements for passengers in police vehicles,[163] even ordinances regarding U-turns on residential streets.[164] The Panthers were frequently hypersensitive to law. At times, their awareness of precise prescriptions and proscriptions seemed almost legalistically manic.

This cynical legal hypersensitivity contrasts strikingly with

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158. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 146.

159. *Id.*

160. CLEAVER, SOUL ON ICE, *supra* note 4, at 129.

161. Prior to his arrest on October 28, 1967, Newton fumbled around for the right legal materials:

> I picked up my law book from between the seats and started to get out. I thought it was my criminal evidence book, which covers laws dealing with reasonable cause for arrest and the search and seizure laws. If necessary, I intended to read the law to this policeman, as I had done so many times in the past. However, I had mistakenly picked up my criminal law book, which looks exactly like the other one.

NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 175.

162. SEALE, SEIZE THE TIME, *supra* note 4, at 211-12.

163. *Id.* at 299.

164. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 5.

the genuine faith in law so evident in the dominant culture and even among reformers and civil rights leaders. From the perspective of James M. Nabrit, Jr., the former President of Howard University, "As has been stated many times, ours is basically a society of laws, and it is through the enactment of laws and their enforcement that much of the progress in future must be made just as has been done in the past."[165] To be sure, American history includes separatist movements and impassioned commitments to the culture of Black Africa. Yet, in the words of two prominent scholars of American culture and racial diversity, "the overwhelming number of American Blacks have concentrated on using the law to obtain equal rights and access to the resources of the larger society."[166]

No less a figure than Martin Luther King, Jr. is illustrative. He shared the Panthers' early sense of human and constitutional rights. He also would have advised those practicing civil disobedience in the civil rights campaign to know well the existing laws. But as often cited sections in a letter he wrote while jailed in Birmingham suggest, King was deeply respectful of the law and its potential to be righteous.[167] Unlike the Panthers, King, speaking from a Christian natural law foundation, proffered a narrative in which the law would be reformed to correspond more fully to the just and moral.[168]

The Panthers' legal thought, by contrast, manifested no deep respect for law or abiding belief in a warming parable of legal change. The Panther leaders sang paeans early in their history to constitutional rights. There was a sense that the poor, unrepresented, and oppressed had the right to rewrite unjust laws.[169] But more fundamentally, the Panthers wanted to know the law and abide by it in order to protect themselves and to thumb their noses at the system. In their writings, the Panthers

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165. James M. Nabrit, Jr., *Introduction* to LEGAL ASPECTS OF THE CIVIL RIGHTS MOVEMENT 1, 6 (Donald B. King & Charles W. Quick eds., 1965).

166. JILL NORGREN & SERENA NANDA, AMERICAN CULTURAL PLURALISM AND LAW 7 (1988).

167. MARTIN L. KING, JR., *Letter from Birmingham City Jail*, *in* A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 293-94 (James M. Washington ed., 1991). In the letter, King discusses the difference between just and unjust laws and the responsibility to disobey the latter. *Id.*

168. *See* Teresa G. Phelps, *Voices from Within: Community and Law in Three Prison Narratives*, 15 J. AM. CULTURE 69 (1992) (providing a fascinating comparison of King's *Letter from Birmingham City Jail* to writings by Philip Berrigan and Jack Henry Abbott).

169. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 82.

withheld respect from law and legal institutions, and in doing so, they broke with law-related discursive norms. In the context of American culture, and in contrast to others who demanded equality for African-Americans, the Panthers were indigenous radicals. Their radicalism manifested itself through the cynical legal instrumentalism in their personal and collective narratives.

IV. OFF THE PIGS

During the late 1960s, the Black Panther Party's often heard chant of "Off the Pigs" seemed to many just a burst of superficial, albeit menacing, rhetoric. In reality, the criticism of law enforcement which the chant represented grew out of the Panther leadership's experiences as young African-Americans on the streets of the nation's cities. The Panthers gave these experiences a central place in their autobiographical writings, ideology, and law-related criticism. An attempt to retell these experiences led directly to the formation and programs of the Party.

While they were growing up in the ghettos of California, the men who would become the leaders of the Black Panther Party had personally degrading encounters with the police. Cleaver recalled during a 1968 interview conducted by Nat Hentoff that the police, all of whom were white, frequently stopped and wrote up his boyhood friends and himself for no apparent reason:

> We'd just be walking down the street and the pigs would stop us and call in to see if we were wanted—all of which would serve to amass a file on us at headquarters. It's a general practice in this country that a young black gets put through this demeaning routine.[170]

In obvious ways this routine was oppressive, and the Panthers cast it as such in their writings.

In addition, the Panthers grew adept over time at placing police encounters in narrative contexts. Newton, for example, realized that harassment could be turned on its head and made into something invigorating. In *Revolutionary Suicide* he shared his exhilaration about the first time he faced down a white policeman harassing a black citizen.[171] Incarcerated[172] and

170. Hentoff, *supra* note 137, at 108.

171. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 76-77.

bitter, Cleaver wrote "Domestic Law and International Order,"[173] a searing essay casting the police department and the army as the domestic and international arms of the power structure.[174] The policeman and the soldier, he wrote, "will shoot you, beat your head and body with sticks and clubs, with rifle butts, run you through with bayonets, shoot holes in your flesh, kill you. . . . They will use all that is necessary to bring you to your knees."[175]

The writings of Frantz Fanon and Malcolm X were useful to the Panther leadership in effectively narrativizing the police. For Fanon the police were "the official, instituted go-betweens" in a world of colonial oppression;[176] the policeman spoke "the language of pure force" and was "the bringer of violence into the home and into the mind of the native."[177] In *The Autobiography of Malcolm X*, a work recognized as the joint product of Alex Haley's writing skills and Malcolm's recollections,[178] Malcolm recalled an incident that brought the Nation of Islam to the public's attention. Malcolm and others had established Temple Seven in Harlem, but the Black Muslims had attracted little attention.[179] Then, two white policemen, in the aftermath of breaking up a street scuffle, encountered several Black Muslims who would not "move on" and beat one with their nightsticks.[180] When the injured Black Muslim was taken to the nearby precinct station, fifty Black Muslims stood in ranks-formation outside the station, and Malcolm himself formally demanded that the bloodied brother be given medical attention.[181] The nervous precinct commander consented, and the Black Muslims, still in formation, followed the ambulance to Harlem Hospital, using busy Lenox Avenue as a route.[182] The next day, "in Harlem, the world's

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172. Maxwell Geismar, *Introduction* to CLEAVER, SOUL ON ICE, *supra* note 4, at xi.

173. CLEAVER, *Domestic Law and International Order*, *in* CLEAVER, SOUL ON ICE, *supra* note 4, at 128, 128-37.

174. *Id.* at 128.

175. *Id.* at 130.

176. FANON, *supra* note 98, at 38.

177. *Id.*

178. *See generally* MALCOLM X, *supra* note 62. The subtitle of the book recognizes Haley's writing skills with the phrase "as told to Alex Haley."

179. *Id.* at 254.

180. *Id.*

181. *Id.* at 254-55.

182. *Id.* at 255.

most heavily populated black ghetto, the *Amsterdam News* made the whole story headline news, and for the first time the black man, woman, and child in the streets were discussing 'those Muslims.'"[183]

Newly able to see police conduct in a politicized narrative and perhaps sensing what such a focus might yield, Newton and Seale began contemplating the use of a police critique as *the* idea of a new organization.[184] In deference to the people they considered field niggers and street brothers, Newton and Seale began comparing their thoughts to those of Oakland's ghetto residents. They wanted to learn if their emerging police-related narratives had resonance in the larger community. "We asked them if they would be interested in forming the Black Panther Party for Self-Defense, which would be based upon defending the community against the aggression of the power structure, including the military and the armed might of the police."[185] When the response was positive, Newton and Seale formally established the Party.[186]

Almost immediately the focus paid significant organizational dividends. When a Contra Costa County deputy sheriff killed young Denzil Dowell in the horrid ghetto in North Richmond, the Panthers revealed inconsistencies in the police reports, held rallies on the spot of the killing, and attracted both media attention and new members.[187] "The police murder us outright and call it justifiable homicide," Newton argued. "They always cook up a story, but simple investigation will expose their lies. That is why we must disarm and control the police in our communities if we want to survive."[188]

Shortly thereafter, in May 1967, thirty Panthers, twenty of whom were visibly armed, visited the State Capitol Building in Sacramento.[189] They received a chilly, bordering on frozen, welcome from the legislators, but Newton used the occasion to issue *Executive Mandate Number One*, an indictment of the power structure in the form of a miniature narrative of oppression:

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183. *Id.* at 255-56.

184. MOORE, *supra* note 28, at 196.

185. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 114.

186. *Id.*

187. SEALE, SEIZE THE TIME, *supra* note 4, at 134-49.

188. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 140.

189. NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 8 n.*.

> As the aggression of the racist American Government escalates in Vietnam, the police agencies of America escalate the repression of Black people throughout the ghettos of America. Vicious police dogs, cattle prods, and increased patrols have become familiar sights in Black communities. City Hall turns a deaf ear to the pleas of Black people for relief from this increasing terror.[190]

In the midst of a media feeding frenzy, which included television footage in which the Panthers called the police "motherfuckers,"[191] the Panthers again attracted attention for their complaints against police and more new members.

Less dramatically but perhaps more significantly in terms of life in the ghetto, the Panthers also began patrolling the police. At first, in December 1966, the patrols were informal and sporadic:

> Sometimes we'd just be high, going to a party. We might not have guns. Other times, we'd have guns. Still other times we weren't even going to a party. We'd just be going to a meeting. We'd have our shit with us, and while we were going to the meeting, we'd patrol those pigs, trying to catch them wrong. We'd see a pig, we'd get keyed off the meeting. We'd just forget about the meeting, and patrol that pig, just drive around behind him, a long time.[192]

Before long, the patrols grew more systematic, especially on Friday and Saturday nights. Two to five cars, each full of Panthers, spent several hours following a squad car as its occupants cruised the Oakland ghetto.[193] Often, the patrolling Panthers brandished pistols, rifles, and shotguns. According to radical sociologist Robert L. Allen, "This was perfectly legal, and the Panthers scrupulously avoided violating the law."[194] Newton even made a point of carrying a rifle or a shotgun

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190. *Executive Mandate No. 1: May 2, 1967*, *in* NEWTON, TO DIE FOR THE PEOPLE, *supra* note 8, at 7, 7-8.

191. SEALE, SEIZE THE TIME, *supra* note 4, at 161.

192. *Id.* at 77.

193. *Id.* at 85.

194. ROBERT L. ALLEN, BLACK AWAKENING IN CAPITALIST AMERICA 82 (1990).

because, in keeping with his reading of the law, it was illegal for a man on probation to carry a handgun.[195] What's more, the guns were always carried openly in hopes of "educating the masses of black people about the necessity for guns and how self-defense was politically related to their survival and their liberation."[196]

While the weapons were no doubt the most striking aspect of the Panthers' patrols, the Panthers carried other items as well: cameras, tape recorders, and lawbooks. When the Panthers perceived a policeman harassing a citizen, one member of the Party patrol would stand off to the side and read relevant sections of a lawbook in a loud and righteous voice.[197] The goals were to deter harassment and also to educate and politicize others who invariably gathered at the scene. "[W]e were proud Black men," Newton said recalling these police encounters, "armed with guns and a knowledge of law."[198]

Sometimes, of course, the police arrested either the person they had originally confronted or a Panther on patrol. But even in these situations the Panthers had a plan. They followed the squad car to the police station and posted bail as soon as possible. The Panthers were especially determined to police the police, but their thoughts on the incarceration of a brother were almost as strong. To some extent, they saw jails and prisons as simply an extension of the police department. Newton in particular was dedicated to using bail to get brothers out of jail as quickly as possible.[199] He also realized that when the Panthers posted bail, "Many citizens came right out of jail and into the Party."[200]

More so than any other aspect of their personal lives, police encounters offended the Panther leadership, and more so than any other concern, police control became central in their ideology and critique of legal institutions. Events to be discussed in the conclusion of this article cut short their efforts, but as the 1960s gave way to the 1970s, the Panthers were developing plans for community-based policing as an alternative to white policing of

195. RORABAUGH, *supra* note 18, at 78.

196. SEALE, SEIZE THE TIME, *supra* note 4, at 125.

197. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 121.

198. *Id.* at 120.

199. SEALE, SEIZE THE TIME, *supra* note 4, at 175.

200. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 120.

the ghetto.[201] According to Seale, the stage would be set for community-based policing by amendments to city charters that would decentralize police departments and require policemen who patrolled a community to live in that community. Neighborhood councils would then elect community police commissioners, and these commissioners would supervise and discipline individual policemen. "The people throughout the city, will control the police, rather than the power structure, the avaricious businessmen, and the demagogic politicians who presently control them."[202]

During that era, virtually no one in the dominant white community took the Panthers' ideas for police reform seriously, much less Cleaver's demand for "autonomous black departments of safety in black communities."[203] However, as the physical and bureaucratic brutalization of Rodney King makes dramatically clear,[204] the root problem that prompted Panther demands for police reform has hardly disappeared. Nothing in the entire range of the Panthers' writings and activism has greater lasting importance in public discourse than their determination to control and redirect the police.

CONCLUSION

The Panthers' police patrols, legalistic confrontations, prompt posting of bail, and general public critique of police conduct arguably reduced the incidents of police harassment of the ghetto population,[205] but whatever initial success the Panthers found cost them dearly. They had built their personal narratives into a radical ideology, used the narratives to think jurisprudentially, and aggressively addressed police conduct. But now they were being heard. Bristling in their tight uniforms and—on higher levels in the structure of command—in their business suits, the police retaliated against the Panthers and their patrols. This

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201. SEALE, SEIZE THE TIME, *supra* note 4, at 420.

202. *Id.*

203. Hentoff, *supra* note 137, at 104.

204. *See* Symposium, *Los Angeles, April 29, 1992 and Beyond: The Law, Issues, and Perspectives*, 66 SO. CAL. L. REV. 1313 (1993) (providing a collection of interesting essays on the Rodney King beating, trial, and aftermath).

205. "The patrols were successful. A noticeable decrease was observed in the number of incidents of police harassment of the ghetto population at large, but the police increasingly turned on the Panthers themselves." ALLEN, *supra* note 194, at 82.

retaliation was not the type of subtle co-optation which radical theorists in the post-Gramscian era have underscored in ostensibly electoral and legalistic hegemonies. It was direct, violent, and in the end effective.

The retaliation occurred both locally and nationally. In the East Bay area, "Berkeley police patrolled constantly in front of the Panther headquarters, and in Oakland a sixteen-year-old girl was charged with felonious extortion for selling Huey Newton buttons on the street."[206] More significantly, the Oakland police carried the license numbers of vehicles belonging to the Panthers and never missed an opportunity to make an inspection or, even better, an arrest.[207] These matters seem indisputable.

How much further did the retaliation extend? How complete was the resolve of the Oakland police to eliminate the Party? Cleaver asserted that the efforts of the Oakland police were systematic.[208] Perhaps he engaged in overstatement, but it is true that the string of events that led to Newton's imprisonment and Cleaver's self-exile both began with what appear to be instances of calculated police harassment.

In Newton's case, he was stopped in the middle of the night on October 28, 1967. According to his own account, he was asked to get out of his car.[209] As he did so, he reached for a lawbook and began to read aloud the section on reasonable cause for arrest. One investigating police officer snarled, "You can take that book and shove it up your ass, nigger."[210] A gun battle ensued that left patrolman John Frey dead, patrolman Herbert Heanes injured, and Newton wounded from a gunshot to the stomach. An indictment and trial followed, with the latter prompting frenetic rallies outside the stark and massive Alameda County Courthouse. While as many as 5000 protestors chanted "Free Huey" and "Set Our Warrior Free," Newton offered a more precise analysis: "The Black Panthers' activities and programs, the patrolling of the police, and the resistance to their brutality had disturbed the power structure; now it was gathering its forces to crush our revolution forever."[211]

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206. RORABAUGH, *supra* note 18, at 81.

207. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 120-27.

208. Hentoff, *supra* note 137, at 104.

209. NEWTON, REVOLUTIONARY SUICIDE, *supra* note 4, at 175.

210. *Id.* at 176.

211. *Id.* at 188.

Cleaver agreed that the Newton trial was a "showdown case" regarding harassment and brutality by white police,[212] but he had only a limited opportunity to agitate on Newton's behalf. In April 1968, according to Cleaver, the Oakland police decided to sabotage a Panther picnic, rally, and fundraiser being held on behalf of Newton. On the night of April 6, a squad car pulled up to a vehicle in which Cleaver and Bobby Hutton were riding. The police and the Panthers exchanged fire, and after leaving a shed in which he had taken refuge, Hutton was killed by police fire.[213] Cleaver was wounded, arrested, and sent temporarily to the State Medical Facility at Vacaville. When it was ruled that he would have to return to prison for parole violation while awaiting trial on new charges, Cleaver fled first to Cuba and then to Algeria.[214]

Despite the incarceration of Newton and self-exile of Cleaver, the Black Panther Party continued to grow in prominence and notoriety in 1968 and 1969. Bobby Seale, although lacking Newton's charisma and Cleaver's command of words, emerged as a strong Party leader. One suspects Judge Julius Hoffman never understood how powerful an image of state oppression he created by binding and gagging Seale in his courtroom. The trial of Seale and codefendant Ericka Huggins for the alleged murder of Party infiltrator Alex Rackley in New Haven, Connecticut also led to large rallies on the venerable New Haven green and widespread national and international attention.[215] After a hung jury, the state dismissed charges, but between the time of the indictment and the dismissal, white campus radicals adopted and lionized the Panthers. The chants of "Free Bobby" in Cambridge, Ann Arbor, Madison, Berkeley, and elsewhere were as loud as "Free Huey"

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212. "Huey Newton's case is the showdown case . . . . We say that we have had enough of black men and women being shot down like dogs in the street." Minister of Information, Black Party for Self-Defense, *Conspiracy and Violence in White America*, *in* FREE HUEY . . . OR THE SKY'S THE LIMIT! (n.p.) (Mona Bazaar ed., 1968).

213. Hentoff, *supra* note 137, at 106. Cleaver claimed that after the police captured Hutton, they ordered Hutton to run and then gunned him down. *Id.*

214. Cleaver's thoughts as he fled the country are recorded in ELDRIDGE CLEAVER, *Farewell Address*, *in* ELDRIDGE CLEAVER: POST-PRISON WRITINGS AND SPEECHES, *supra* note 73, at 147, 147-60.

215. *See generally* GAIL SHEEHY, PANTHERMANIA: THE CLASH OF BLACK AGAINST BLACK IN ONE AMERICAN CITY (1971) (providing a journalistic account of events in New Haven after the 1969 murder of Alex Rackley).

had been earlier on the steps of the Alameda County Courthouse.[216]

Perhaps these struggles carried the Panthers too far from their Oakland home and from a focus on police control, but during the period of the Panthers' greatest prominence a tremendous tension continued to exist between the Party and law enforcement. In February 1970, *The Black Panther*, the Party's sporadic newspaper, listed no fewer than 410 instances of harassment, raids, shootings, and arrests by local, state, and federal police.[217] Some of these might be cast as justified, but justification for the brutal murders of Mark Clark and Fred Hampton, Chairman of the Illinois Black Panther Party, by the Chicago police in December 1969, is difficult to muster.[218] In fact, firm evidence exists that the FBI urged on the police in this particular episode and also had an extensive program to divide and undermine the Party.[219] The Black Panther Party, in the words of one scholar, "became targeted as the 'Number One Threat' to the internal security of the United States by the FBI."[220]

In modern radical theory, drawing as it often does from the work of Antonio Gramsci and others,[221] this direct suppression seems almost old-fashioned. The modern elites of the contemporary West, it is said, rely not on a direct instrumental control and suppression of subordinate populations, but rather on a more general and pervasive predominance. This hegemony co-opts and

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216. Some found white lionizing of the Panthers absurd. *See* TOM WOLFE, RADICAL CHIC AND MAU-MAUING THE FLAK CATCHERS (1970).

217. BLACK PANTHER, Feb. 21, 1970, at 1.

218. *See Police in Chicago Slay 2 Panthers*, N.Y. TIMES, Dec. 5, 1969, at 1; *Inquiry into Slaying of 2 Panthers Urged in Chicago*, N.Y. TIMES, Dec. 6, 1969, at 29; *Panthers Say an Autopsy Shows Party Official Was Murdered*, N.Y. TIMES, Dec. 7, 1969, at 68.

219. After protracted struggle scholars gained access to FBI files and documents, and the revealed record of domestic espionage on African-American reformers and radicals is sobering. WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION: THE FBI'S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT (1990); KENNETH O'REILLY, "RACIAL MATTERS": THE FBI'S SECRET FILE ON BLACK AMERICA, 1960-1972 (1989).

220. James S. Bowen, *Law, Legitimacy and Black Revolution*, 1 YALE J.L. & LIB. 83, 90 (1989); *see also* ROUT, *supra* note 9, at 150 (commenting on FBI pressure on the Chicago police in 1969).

221. *See* ALASTAIR DAVIDSON, ANTONIO GRAMSCI: TOWARDS AN INTELLECTUAL BIOGRAPHY (1970) (providing an introduction to Gramsci's thought); THOMAS NEMETH, GRAMSCI'S PHILOSOPHY: A CRITICAL STUDY (1980) (same); T.J. Jackson Lears, *The Concept of Cultural Hegemony: Problems and Possibilities*, 90 AM. HIST. REV. 567 (1985) (exploring the popularity of Gramsci's thought in contemporary cultural studies).

incorporates the poor and minority groups; the hegemony finds ways to persuade subordinate groups that their subordination is a normal reality. Instead of being marked by confrontations between oppressors and the oppressed, the true measure of a successful hegemony, the historian Eugene Genovese has suggested, may be the extent to which it avoids such confrontations.[222]

In the case of Newton, Seale, Cleaver, and the Black Panther Party, verbal and physical confrontations ultimately became impossible to avoid. Using narrative as a primary tool, the Panther leaders found meaningful ways to present their individual lives, to construct a liberationist ideology, and to critique legal institutions including the police. Their speeches and writings were cogent and appealing to many African-Americans in urban ghettos. The Panthers offered narratives that made sense of present-day oppression and that offered perspectives and strategies for a better future. They found ways to express their resistance and to offer shaped counterhegemonic alternatives.

Not only African-Americans but also agents of the system heard the Panthers' narratives. These narratives had counterhegemonic clout; they constituted undeniable narratives of resistance. The police, who were often the ultimate villains in the Panthers' speeches and writings, appreciated this clout and sensed the narrative power. In particular, the police recognized the danger the Panthers presented to the police themselves and to their continued exercise of social control. Direct coercion and suppression resulted, and the Panther narratives, briefly coherent and effective, grew less and less audible. In the United States and elsewhere, radicals in command of narrative run the risk of being forced to cease their storytelling.

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222. EUGENE D. GENOVESE, IN RED AND BLACK: MARXIAN EXPLORATIONS IN SOUTHERN AND AFRO-AMERICAN HISTORY 369 (University of Tenn. Press 1984) (1971).