

Huey Newton

FBI File #HQ 62-117442

Section 6

# Memorandum

**TO :** Mr. William Webster  
Director  
Federal Bureau of Investigation

**DATE:** November 28, 1978  
BAB:JA:JFF:RJSher:vrn  
145-12-3025

**FROM :** Jeffrey Axelrad  
Director, Torts Branch  
Civil Division

**SUBJECT:** The Black Panther Party v. Edward Levi Civil No. 76-2205 (D. DC)

C

At a hearing held on November 22, 1978, the court granted our Motion for an extension of time to respond, inter alia, to plaintiffs' First Interrogatories and Fourth Request for Documents. Judge Smith ruled from the bench that we would have ten days from the date of his ruling on our pending dispositive motions to respond. A hearing on those motions will be held on December 14, 1978, and we expect a ruling from the Court shortly thereafter.

In order that we may meet schedule imposed by Judge Smith for response to this discovery, if it is not mooted by his ruling on our motions, we request that you prepare draft responses and forward them to us for coordination as soon as possible, but in any event before the hearing on December 14. For your ready reference we have enclosed a copy of the plaintiffs fourth document request and first interrogatories.

If you have any questions with respect to this matter, please contact Mr. R. J. Sher of this office who may be reached at 724-6730.

REC-20

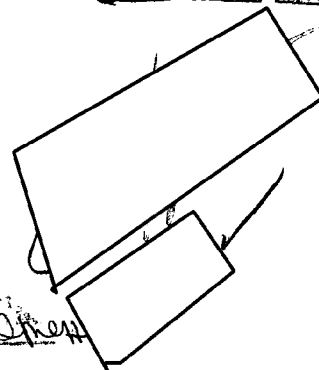
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EX-109

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ENCLOSURE

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62-117442-215  
DEC 7 1978

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-7-93 BY 9803 RDD/MSH

... or recommendations of government officials.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

... information ...

... this objection ... information obtained

**THE BLACK PANTHER PARTY, et al.,** }  
**Plaintiffs,** }  
 v. }  
**EDWARD LEVI, et al.,** }  
**Defendants.** }

**Civil Action No. 76-2205**

34. With regard to the definition of the objection for "third party information ... subject of an investigation,"

... the scope of this objection includes: (a) information

**PLAINTIFFS' FIRST INTERROGATORIES TO THE FEDERALLY  
REPRESENTED DEFENDANTS**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiffs propound the following interrogatories to the federally represented defendants, to be answered by them personally, or by any authorized officer designated by them; provided, however, that the person making the answer, shall, as provided in Rule 33(a), furnish all information available to the respective defendants. Each of these interrogatories shall be answered separately and fully in writing under oath, within thirty (30) days from the service hereof.

**DEFINITIONS**

1. The "agencies or departments subject to plaintiffs' Third Request for Production of Documents" include: the Department of Justice, the Federal Bureau of Investigation, the Central Intelligence Agency, the Treasury Department including the Bureau of Alcohol, Tobacco, and Firearms and the Internal Revenue Service, the Department of the Army, and the United States Postal Service and its predecessor, the United States Post Office.

2. "Identify," when referring to a person, shall mean the individual's (a) name, (b) job title or position, (c) division or section, (d) agency or department, (e) correct mailing address, (f) length of service with that agency or department, and (g) whether the individual remains in the employ of that agency or department.

3. "Identify," when referring to a document, shall mean (a) its subject matter, (b) its date, (c) with whom the document originated, (d) to whom the document was addressed, (e) whether the document is in the possession of one of the defendants, and (f) the individual, agency, or department in possession of the document.

4. "Document" shall mean, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand: agreements, communications, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, reports, notebooks, file cards, logs, summaries or records of meetings or conferences, drafts, letters, any marginal comments appearing on any document, and all other writings.

5. Plaintiffs' Request shall mean plaintiffs' Third Request for Production of Documents.

#### INTERROGATORIES

1. Identify with respect to each of the agencies or departments subject to our Third Request for Production of Documents all individual(s) directly responsible for, or who carried out, any or all of the following duties as to the responses submitted by those agencies or departments:

(a) searching that agency's or department's files for documents responsive to plaintiffs' Third Request for Production of Documents, (b) making deletions from the documents produced to plaintiffs, (c) withholding documents for whatever reasons, including reasons stated in defendants' Objections to Plaintiffs' Third Request for Production of Documents, (d) applying deletion codes to pages containing deleted matter, (e) preparing an index of deletions, (f) making objections to plaintiffs' Request, or (g) any other duties involved in the preparation of responses to plaintiffs' Request.



2. Describe in detail the duties relating to plaintiffs' Request of each individual identified in response to Interrogatory 1. If a document or portion of a document is withheld both generally

3. Identify any document setting forth or relating to the duties relating to plaintiffs' Request of any individual identified in response to Interrogatory 1. If contained material

4. As to each individual identified in response to Interrogatory 1, describe in detail the procedures followed with regard to the duties outlined in Interrogatory 1(a)-(g).

5. Identify any document setting forth or relating to the procedures described in response to Interrogatory 3.

6. As to each individual identified in response to that Interrogatory 1, state whether he or she received any supervision with regard to the performance of his or her duties as outlined in Interrogatory 1(a)-(g).

7. If the answer to Interrogatory 6 is affirmative, identify each individual who acted in a supervisory capacity with regard to the individual(s) directly responsible for responding to plaintiffs' Request.

8. If the answer to Interrogatory 6 is affirmative, and describe in detail the duties of the supervisor and the nature and extent of the supervision received by each individual directly responsible for responding to plaintiffs' Request.

9. If the answer to Interrogatory 6 is affirmative, identify any document setting forth or relating to the duties and the nature and extent of the supervision relating to plaintiffs' Request of any individual identified in response to Interrogatory 7.

10. As to each individual identified in response to Interrogatory 1, state whether he or she received any instructions with regard to the performance of his or her duties as outlined in Interrogatory 1.

11. If the answer to Interrogatory 10 is affirmative, identify each individual who issued instructions or gave any other guidance to those individual(s) directly responsible for responding to plaintiffs' Request.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

12. If the answer to Interrogatory 10 is affirmative, describe in detail the nature of any instructions or other guidance, whether written or oral.

13. If the answer to Interrogatory 10 is affirmative, identify any document setting forth or relating to any instructions relating to plaintiffs' Request given to any individual with regard to the performance of his or her duties as outlined in Interrogatory 1, including any notes or memoranda generated by an individual identified in response to Interrogatory 1, by an individual identified in response to Interrogatory 7, or by an individual identified in response to Interrogatory 11.

14. State whether there were any supervision, instructions, or other guidance given to the individuals identified in response to Interrogatories 1, 7, 11, including but not limited to, past or present counsel for the federally represented defendants, with regard to plaintiffs' Request.

15. If the answer to Interrogatory 14 is affirmative, identify the individual providing the supervision, instructions, or other guidance, and the date, 3, 5, 9, 13, 17, 19, 23.

16. If the answer to Interrogatory 14 is affirmative, describe in detail the nature of the supervision, instructions or guidance given to the Federally represented

17. If the answer to Interrogatory 14 is affirmative, identify any document setting forth, describing or relating to such supervision, instructions or guidance including any notes or memoranda generated by any individual identified in response to Interrogatories, 1, 7, 11, or 15. J. TERRIS  
KARL H. EDWARDS  
Washington, D.C. 20006

18. State whether any of the agencies or departments subject to plaintiffs' Third Request for Production of Documents have any document relating to responses to discovery by Federal agencies, including the production of documents, relating to litigation or any particular kind of litigation.

19. If the answer to Interrogatory 18 is affirmative, identify any such documents.

20. Identify the individual(s) responsible for preparing the two lists of objections which appear in Defendants' Objections to Plaintiffs' Third Request for Production at pages 2-3.

21. State whether these lists were the only instructions or guidance ever given to the individual(s) directly responsible for responding to plaintiffs' Request.

22. If the answer to Interrogatory 21 is negative, describe in detail the nature of any other oral explanations or definitions of these objections which were given or otherwise conveyed to the individual(s) directly responsible for responding or to those who supervised the preparation of responses.

23. If the answer to Interrogatory 21 is negative, identify any document setting forth or relating to any explanation or definitions of these objections which were given to the individual(s) directly responsible for responding or to those who supervised the preparation of responses.

24. State whether each individual identified in response to Interrogatory 1 as directly responsible for responding to plaintiffs' Request was given a copy of plaintiffs' Amended Complaint.

25. State, as to each of the agencies or departments subject to plaintiffs' Third Request for Production of Documents, whether counsel for the federally-represented defendants saw, reviewed, or otherwise approved (a) each of the documents which were produced to plaintiffs; (b) the materials for those documents which were deleted; and (c) the objections made as to each deletion.

26. Insofar as the answer to Interrogatory 25 is affirmative, describe in detail the procedures followed and the actions taken by counsel for the federally-represented defendants.

27. Identify the heads of all agencies or departments subject to plaintiffs' Third Request for Production of Documents.

28. Describe in detail all actions taken by the individuals identified in response to Interrogatory 27 with regard to defendants' response to plaintiffs' Request.

Identify all documents relating to the actions taken by the individuals identified in response to Interrogatory 27.

30. Explain in detail the definition and scope of each of the following objections as claimed by the federally represented defendants:

- (a) informant information
- (b) information received from other agencies
- (c) third party information - confidential source
- (d) third party information - individual subject of an investigation
- (e) third party information - organization subject of a current investigation
- (f) information privileged from disclosure in the national interest
- (g) information that is not otherwise relevant
- (h) classification stamps
- (i) file numbers
- (j) governmental and attorney-client privilege
- (k) administrative markings
- (l) third party tax information
- (m) information protected from disclosure by the governmental privilege for intra-agency memoranda.

31. With regard to the definition of the objection for "informant information," state whether the scope of this objection includes: (a) information conveyed by an informant whether or not such information might tend to reveal the identity of the informant, (b) the identity of an informant whose status as an informant is already known to the public either through his own admission or through other litigation, (c) any instructions relayed to an informant whether or not such information might tend to reveal the identity of the informant, or (e) the identity of an agent provocateur who engaged in or provoked illegal or violent actions.

32. With regard to the definition of the objection for "information received from other agencies," state whether the scope of this objection includes: information other than opinions,

evaluations, or recommendations of government officials.

33. With regard to the definition of the objection for "third party information - confidential source," state whether the scope of this objection includes: (a) information obtained from a third party not an informant, (b) the identity of a third party not an informant who has conveyed information to a government official, (c) information concerning a third party

34. With regard to the definition of the objection for "third party information - individual subject of an investigation," state whether the scope of this objection includes: (a) information obtained from a third party not an informant, (b) information concerning a third party who was the subject of a closed investigation, (c) information concerning a third party who is the subject of an ongoing investigation, (d) the identity of a third party who was the subject of a closed investigation, or (e) the identity of a third party who is the subject of an ongoing investigation.

35. With regard to the definition of the objection for "third party information - organization subject of an ongoing investigation," state whether the scope of this objection includes: (a) information obtained from a third party not an informant, (b) information concerning an organization not a named party which was the subject of a closed investigation, (c) information concerning an organization not a named party which is the subject of an ongoing investigation, (d) the name of an organization which was the subject of a closed investigation, (e) the name of an organization which is the subject of an ongoing investigation.

36. With regard to the definition of the objection for "information privileged from disclosure in the national interest," state whether the scope of this objection includes matters other than military or diplomatic secrets and, if so, what these matters are.

37. With regard to the objection for "information that is not otherwise relevant," state whether the scope of this objection includes the "Note" which typically appears at the

end of a memorandum originating with the FBI Director's Office. State the functional purpose of the "notes" including whether they generally contain information relating to the same subject matter as the body of the memorandum.

38. Explain any connection between the two concepts referred to as "governmental and attorney-client privilege."

39. With regard to the objection for "third party tax information," state whether the scope of that objection includes: (a) information concerning the investigation of a named plaintiff by the Internal Revenue Service, (b) information contained in the investigative files of the IRS other than opinions, evaluations, or recommendations of government officials, (c) the fact that a return or other return information has been filed by a third party, or (d) the fact that IRS has in the past or is currently conducting an investigation of a third party.

40. With regard to the definition of the objection for "information protected from disclosure by the governmental privilege for intra-agency memoranda," state whether the scope of this objection includes information other than opinions, evaluations, or recommendations of government officials.

41. If the answer to any of Interrogatories 28-37 and 39-40 is affirmative in whole or in part, explain the reasons why such matters were included.

42. Identify all documents, including memoranda, instructions, and notes, relating to the definitions and scope of the objections set forth in Interrogatory 27, including all documents setting forth, analyzing, or discussing the reasons for the definitions and scope. Identify all documents relating in any way to the responses to Interrogatories 28-41.

43. To the best recollection of each individual identified in response to Interrogatory 1, state whether any deletions of material were made, or any documents or portions of documents withheld, without either (a) a coded objection or (b) inclusion in the IRS index.

44. If the answer to Interrogatory 43 is affirmative, explain in detail the circumstances under which such a deletion was made or document or portion of a document withheld both generally and as to each particular document.

45. State what principles and procedures were followed, when a document or a paragraph of a document contained material to which an objection was made and material to which an objection was not made, to determine whether the non-objectionable material was produced.

46. Identify all documents, including memoranda, instructions, and notes relating to the response to Interrogatory 45.

47. Do counsel for the federal defendants represent that the documents produced to the plaintiffs and those for which an objection has been stated, comprise all of the documents in the possession or control of the federal defendants which are relevant to the subject matter of this case and which are responsive to plaintiffs' Requests.

48. Explain the discrepancy between the millions of documents which counsel for the federal defendants claimed existed which were relevant to this case and the several thousand pages received by plaintiffs.

Respectfully submitted,

BRUCE J. TERRIS  
KAREN H. EDGECOMBE  
1526 18th Street, N.W.  
Washington, D.C. 20036  
(202) 332-1882

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )

Plaintiffs, )

v. )

EDWARD LEVI, et al., )

Defendants. )

Civil Action No. 76-2205

PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF  
DOCUMENTS FROM THE FEDERALLY REPRESENTED DEFENDANTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, plaintiffs request the federal defendants to produce the following documents for inspection and copying at the office of plaintiffs' attorney, Bruce J. Terris, 1526 18th Street, N.W., Washington, D.C. 20036 within 30 days of the date of service of these requests.

1. All documents identified by the federal defendants in response to Plaintiffs' First Interrogatories to the Federally Represented Defendants, Interrogatories 3, 5, 9, 13, 17, 19, 23, 29, 42, 46.

2. All documents which were used to answer any of Plaintiffs' First Interrogatories to the Federally Represented Defendants or which discuss in any way the subject matter of those responses.

Respectfully submitted,

BRUCE J. TERRIS  
KAREN H. EDGECOMBE  
1526 18th Street, N.W.  
Washington, D.C. 20036  
(202) 332-1882

Attorneys for Plaintiffs



# Memorandum

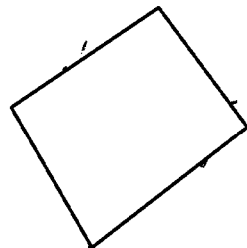
- Assoc. Dir. \_\_\_\_\_
- Dep. AD Adm. \_\_\_\_\_
- Dep. AD Inv. \_\_\_\_\_
- Asst. Dir.:
- Adm. Servs. \_\_\_\_\_
- Crim. Inv. \_\_\_\_\_
- Ident. \_\_\_\_\_
- Intell. \_\_\_\_\_
- Laboratory \_\_\_\_\_
- Legal Coun. \_\_\_\_\_
- Plan. & Insp. \_\_\_\_\_
- Rec. Mgnt. \_\_\_\_\_
- Tech. Servs. \_\_\_\_\_
- Training \_\_\_\_\_
- Public Affs. Off. \_\_\_\_\_
- Telephone Rm. \_\_\_\_\_
- Director's Sec'y \_\_\_\_\_

TO : Assistant Director *H. Mintz*  
Records Management Division

DATE: 12/6/78

FROM : Legal Counsel *JMB*

SUBJECT: THE BLACK PANTHER PARTY, et al., v.  
EDWARD LEVI, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 76-2205



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**PURPOSE:** To request that the Special Projects Review Unit (SPRU) provide Legal Counsel Division (LCD) with the factual information responsive to the attached Interrogatories of plaintiffs regarding the processing of documents disclosed in discovery in this suit so that LCD may draft appropriate responses for the Department of Justice (DOJ).

**SYNOPSIS AND DETAILS:** Captioned lawsuit was filed in the United States District Court, District of Columbia, on 12/1/76, alleging conspiracy on the part of certain high-level Governmental officials to ruin the Black Panther Party politically and financially. The Complaint demands in excess of one million dollars in general and punitive damages, plus statutory damages for electronic interceptions provided in Title 18, United States Code, Section 2520.

By memorandum dated 11/28/78 and received by LCD **REC-16** 12/1/78 (copy attached) the DOJ requested that LCD prepare draft responses to Plaintiffs' First Interrogatories **62-117442-216** the Federally Represented Defendants (copy attached). These Interrogatories request information concerning the processing of documents provided by the FBI pursuant to **16 DEC 27 1978** plaintiffs' previous document requests. Also attached hereto is Plaintiffs' Fourth Request for Production of Documents from the Federally Represented Defendants which requests the production of those documents relied upon in responding to Plaintiffs' First Interrogatories. It is anticipated that much of the requested information will be objected to on the basis of Attorney-Client privilege.

Enclosures (3)

**15 ENCLOSURE**

1 - Mr. Mintz

MFK:bbh  
(3)



**62 JAN 5 1979**

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

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DATE 9-2-93 BY 1033PCK/BA

Memorandum from Legal Counsel to Assistant Director, RMD  
Re: THE BLACK PANTHER PARTY, et al., v.  
EDWARD LEVI, et al.

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RECOMMENDATIONS: (1) That Records Management Division,  
SPRU, furnish LCD with the information  
requested in this memorandum and attachments.

B

*Material furnished to  
SA [redacted] on 12-11-78 by SA  
[redacted]*

APPROVED:

Director \_\_\_\_\_  
Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_

Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgmt. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_

(2) That LCD prepare draft responses to  
the attached Interrogatories and document  
requests for DOJ.

B

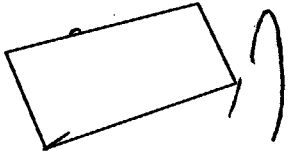
APPROVED:

Director \_\_\_\_\_  
Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
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Laboratory \_\_\_\_\_

Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgmt. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA



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THE BLACK PANTHER PARTY, et al, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 EDWARD LEVI, et al, )  
 )  
 Defendants )

CIVIL ACTION NO. 76-2205

OCT 3 1978


JAMES F. DAVEY, Clerk


STIPULATION

It is hereby agreed between plaintiff Elaine Brown and the defendants in the above-captioned case that pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) all claims filed by plaintiff Brown against all defendants are hereby dismissed with prejudice.

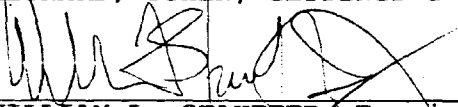
Dated September 24, 1978

Respectfully submitted,

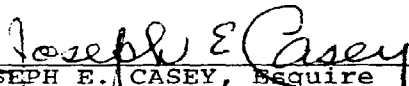
  
R. JOSEPH SHER, Esquire  
Main Building, Room 3330  
U.S. Department of Justice  
Washington, D.C. 20530  
Counsel for federal  
defendants

  
BRUCE J. TERRIS, Esquire  
PETER J. EGLICK, Esquire  
1526 18th Street, N.W.  
Washington, D.C. 20036  
(202) 332-1882  
Counsel for Plaintiff Elaine Brown

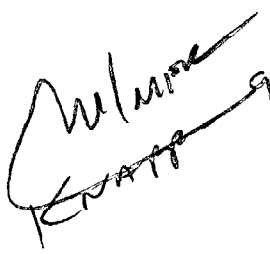
LEONARD, COHEN, GETTINGS & SHER

  
WILLIAM L. STAUFFER, Esquire  
1400 N. Uhle Street  
Courthouse Square  
P.O. Box 742  
Arlington, Virginia 22216  
Counsel for defendant,  
George C. Moore

  
UNITED STATES DISTRICT JUDGE

  
JOSEPH E. CASEY, Esquire  
1200 18th Street, N.W.  
Washington, D.C. 20036  
Counsel for defendant,  
William Sullivan

ca/  
62-11742



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DEFENDANT FBI'S ANSWERS TO PLAINTIFF'S FIRST  
INTERROGATORIES TO THE FEDERALLY REPRESENTED DEFENDANTS

ANSWER TO INTERROGATORY 1

(1) [REDACTED] Records Management Division (RMD), Federal Bureau of Investigation (FBI), 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 27 years, not presently employed.

(2) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 12 years, presently employed.

(3) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 2 years, not presently employed.

(4) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 2 years, not presently employed.

(5) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 2 years, presently employed.

(6) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 2 years, presently employed.

(7) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 4 years, presently employed.

(8) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 2 years, presently employed.

(9) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 3 years, presently employed.

(10) [REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington, D.C., 6 years, presently employed.

62-117442

4 [REDACTED]

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9102R00m4 (1)

(11) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
4 years, presently employed.

(12) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
3 years, presently employed.

(13) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
1 year, presently employed.

(14) [REDACTED] RMD, FBI, 9th and  
Pennsylvania Avenue, Northwest, Washington, D.C., 4 years,  
presently employed.

(15) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
2 years, presently employed.

(16) [REDACTED] RMD, FBI, 9th and  
Pennsylvania Avenue, Northwest, Washington, D.C., 1 year,  
presently employed.

(17) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
1 year, presently employed.

(18) [REDACTED] RMD, FBI, 9th and  
Pennsylvania Avenue, Northwest, Washington, D.C., 2 years,  
presently employed.

(19) [REDACTED] RMD, FBI, 9th  
and Pennsylvania Avenue, Northwest, Washington, D.C., 5 years,  
presently employed.

(20) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
26 years, not presently employed.

(21) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 19 years, presently employed.

(22) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 22 years, presently employed.

(23) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 14 years, presently employed.

(24) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 20 years, presently employed.

(25) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 9 years, presently employed.

(26) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 14 years, presently employed.

(27) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
26 years, presently employed.

(28) [REDACTED]  
RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington,  
D.C., 6 years, presently employed.

(29) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
11 years, presently employed.

(30) [REDACTED] RMD, FBI,  
9th and Pennsylvania Avenue, Northwest, Washington, D.C.,  
34 years, presently employed.

(31) [REDACTED]  
RMD, FBI, 9th and Pennsylvania Avenue, Northwest, Washington,  
D.C., 8 years, presently employed.

(32) [REDACTED]  
[REDACTED] RMD, FBI, 9th and Pennsylvania Avenue, Northwest,  
Washington, D.C., 27 years, presently employed.

ANSWER TO INTERROGATORY 2

See Answer to Interrogatory 3.

ANSWER TO INTERROGATORY 3

See Exhibit A.

ANSWER TO INTERROGATORY 4

See Answer to Interrogatory 3.

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ANSWER TO INTERROGATORY 5

See Answer to Interrogatory 3.

ANSWER TO INTERROGATORY 6

Each individual identified in response to Interrogatory 1 has received supervision in connection with his or her performance as outlined in Interrogatory 1(a - (g)).

ANSWER TO INTERROGATORY 7

See Answer to Interrogatory 1.

ANSWER TO INTERROGATORY 8

See Answer to Interrogatory 3.

ANSWER TO INTERROGATORY 9

See Answer to Interrogatory 3.

ANSWER TO INTERROGATORY 10

Each individual identified in response to Interrogatory 1 has received instruction in connection with the performance of his or her duties as outlined in Interrogatory 1.

ANSWER TO INTERROGATORY 11

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ANSWER TO INTERROGATORY 12

See Answer to Interrogatory 3 and Exhibit A.

ANSWER TO INTERROGATORY 13

See Answer to Interrogatory 12.

ANSWER TO INTERROGATORY 14

ANSWER TO INTERROGATORY 15

ANSWER TO INTERROGATORY 16

ANSWER TO INTERROGATORY 17

ANSWER TO INTERROGATORY 18

ANSWER TO INTERROGATORY 19

ANSWER TO INTERROGATORY 20

ANSWER TO INTERROGATORY 21

ANSWER TO INTERROGATORY 22

ANSWER TO INTERROGATORY 23



ANSWER TO INTERROGATORY 24

[redacted] [redacted] Unit Chief, RMD, and [redacted]  
[redacted] Supervisory Special Agent, RMD, were furnished  
copies of plaintiffs' Amended Complaint.

b6  
b7c

ANSWER TO INTERROGATORY 25

ANSWER TO INTERROGATORY 26

ANSWER TO INTERROGATORY 27

ANSWER TO INTERROGATORY 28

ANSWER TO INTERROGATORY 29

ANSWER TO INTERROGATORY 30

ANSWER TO INTERROGATORY 31

(a) The scope of the objection for "informant information" includes information conveyed by an informant, only if the disclosure would tend to reveal his identity.

(b) The scope of the objection for "informant information" does not protect the identity of an informant whose identity is already known through his own admission or otherwise.

(c) The scope of the objection for "informant information" does not include the protection of instructions relayed to an informant, the disclosure of which would not reveal his identity.

(e) The scope of the objection for "informant information" is designed primarily to protect the identity of the informant. Information is not withheld solely on the grounds that it reflects illegal or violent actions of an informant.

ANSWER TO INTERROGATORY 32

The scope of this objection encompasses all information originated by another agency and furnished to the FBI, which would include information other than opinions, evaluations or recommendations of Governmental officials.

ANSWER TO INTERROGATORY 33

The FBI has not employed "third party information - confidential source" as a single basis for deleting information from documents furnished to plaintiffs during discovery in this litigation. Also, see Exhibit B, Paragraph 8.

ANSWER TO INTERROGATORY 34

See Exhibit B, Paragraphs 7 and 8(c).

ANSWER TO INTERROGATORY 35

See Exhibit B, Paragraphs 6 and 9.

ANSWER TO INTERROGATORY 36

ANSWER TO INTERROGARORY 37

The scope of this objection frequently includes material contained in a "note." A "note" is an administrative aid for the reviewing officials at FBI Headquarters who must approve a given communication by providing these officials

with a current overview of the matter at hand, thereby eliminating the necessity of routing several background documents with the outgoing communication. Usually, "note" contains some information relating to the subject matter of the body of the communication and appears only on Headquarters' copy of the communication.

ANSWER TO INTERROGATORY 38.

ANSWER TO INTERROGATORY 39

ANSWER TO INTERROGATORY 40

ANSWER TO INTERROGATORY 41

It is generally recognized that selected deletion or excision of information may be made to documents disclosed in discovery in civil litigation in order to safeguard important public interests. Guidelines for excising information were furnished to the FBI by Government attorneys handling the defense of this suit. Also, see Exhibit B.

ANSWER TO INTERROGATORY 42

See Exhibit B.

ANSWER TO INTERROGATORY 43

ANSWER TO INTERROGATORY 44

ANSWER TO INTERROGATORY 45

In instances where a document or a portion thereof contains privileged and nonprivileged material, the nonprivileged material is released if reasonably segregable from the privileged material.

ANSWER TO INTERROGATORY 46

ANSWER TO INTERROGATORY 47

ANSWER TO INTERROGATORY 48

Supervisory Special Agent GS-15

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9803R00/MDA

9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only).  
Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

Estimate  
% of time  
for each  
duty.

Introduction:

All incumbents have served in grades GS 10 through GS 14 and introductory material in descriptions for those positions applies at this level also. Assignment to this position is based on demonstrated merit and ability of the employee and is part of a long-range competitive program in the FBI designed to develop executives. In order to qualify for this position, incumbents must be completely available for assignment anywhere. Incumbents work up through the ranks of the FBI, which is a necessary and practical policy in view of the involved operations of the Bureau which frequently require an official to make an immediate or split-second decision, such as those affecting the security of the Nation, the lives of individuals during the course of raids and arrests, the well-being of victims of kidnapers and extortionists, and the like. Such decisions can be made only on the basis of extensive firsthand knowledge of the operations and responsibilities of the Bureau based on actual experience in the organization. Incumbents serve as officials in key executive posts such as the following: Special Agent in Charge of a small field office; Assistant Special Agent in Charge of a field office; Legal Attache assigned to the U. S. Embassy in a foreign country; supervisor in a Section or Unit at Headquarters or top assistant in one of the executive offices; Inspector; etc.; and as such have responsibility for supervising and administering a specific

## Supervisory Special Agent GS 15

phase of the Bureau's operations such as a very important investigative and/or administrative activity or substantial segment of such activity having a definite and close relationship to the discharge of the Bureau's investigative responsibilities in the fields of criminal, security, and civil investigations covering numerous classifications of cases over which the FBI has investigative jurisdiction as well as many special inquiries. These investigative responsibilities are wide in scope and diversity and involve complex and important matters so that Special Agents performing investigative and supervisory assignments are required to exercise a continuing high degree of resourcefulness, versatility, ingenuity, and originality in planning and organizing investigations of widest diversity covering major crimes assigned to the Bureau for investigation. Each incumbent must have complete general knowledge of the entire scope of the Bureau's investigative jurisdiction as well as a comprehensive, authoritative knowledge of the investigative or administrative activity supervised.

At this level, incumbents are fully qualified Special Agents and have had extensive investigative, supervisory, administrative, or executive experience either in the field or at Headquarters, or both. Incumbents have demonstrated by sustained performance that they are outstanding in the exercise of the widest latitude of independent judgment and that they excel from the standpoint of initiative; imagination; ingenuity; personal responsibility; leadership; ability to supervise, train, and develop personnel and promote morale; and must have demonstrated their continued ability and potential for assuming additional responsibility. Each incumbent is carefully selected for assignment at this level in keeping with the provisions and requirements of the FBI Career Development Program.

### 1. DUTIES AND RESPONSIBILITIES:

Incumbents may function in any of the following executive-type assignments and may be rotated to other assignments at this level based on the needs of the service and in order to provide diversified experience on the part of such officials.

(1) May serve as Special Agents in Charge of field offices which are small in size and as such are the top executive officials in those offices. Insure efficient utilization of personnel and direct available resources toward priority programs. Are fully responsible for administering, directing, supervising, and co-ordinating all investigative and other Bureau activities within the territory, keeping Headquarters and other interested field offices informed on matters of interest, establishing and

**Supervisory Special Agent GS 15**

maintaining all necessary working liaison with local law enforcement agencies, other Federal Government agencies, branches of local government, and any other individuals or groups necessary in conducting Bureau business; serving and keeping the public informed on subjects of interest; and discharging related duties and special assignments as required. Are responsible for efficient operation of the offices, including adequacy, on-the-job training, assignments, and performance of personnel; oversee training programs, including periodic firearms and defensive tactics, for Special Agents, as well as certain scientific and technical training; are responsible for personnel management under centralized planning and guidance; have responsibility for all phases of matters pertaining to equal employment opportunity; participate in co-operative functions as the Director's personal representative, including local law enforcement conferences and training programs, news media including television, radio, and other public appearances for the education of the public, and working conferences with other federal law enforcement and intelligence agencies; must keep constantly informed on all investigative and administrative matters in the respective territories, taking the initiative to advise the Director by the appropriate means of pertinent information; assume the lead in major investigations including the planning and execution of raids seeking the apprehension of dangerous and armed fugitives from justice; may in some instances be instructed to proceed to another territory to play a significant role in direction of a major investigation which possibly may involve simultaneous activity in many territories; and are expected to provide the necessary executive, supervisory, and administrative leadership within their offices.

(2) May serve as Assistant Special Agents in Charge of FBI field offices, having responsibility for supervision of investigative matters as well as for certain aspects of office administration and exercise full associate authority concurrently with the Special Agent in Charge in all matters pertaining to field office responsibility. Direct and supervise a staff of Special Agents engaged in investigation of a substantial number of complex and varied matters within the investigative jurisdiction of the FBI. A large number of these investigations are nation-wide in character and coverage and frequently involve a very high degree of controversy; have a significant direct impact upon the national welfare, economy, and/or security; involve highly sensitive issues and investigative problems requiring the utilization of a very high degree of ingenuity. Are responsible for insuring that all investigations are conducted within predetermined deadlines and in accordance with all Bureau rules and regulations. Are regularly and frequently called upon to take over control of the entire office in absence of the Special

Supervisory Special Agent GS 15

Agent in Charge, often for extended periods of time, and to take full charge on the scene of major investigations involving matters such as kidnaping, bank robbery, interstate crime, organized crime, and the like. Serve as Equal Employment Opportunity counselors.

(3) May serve as Legal Attaches and as such serve as the Director's personal representative on the U. S. Embassy staff in a foreign country and are accredited diplomatic officials of the United States. In execution of the Bureau's domestic responsibilities various matters arise which have international ramifications. Are responsible for establishing and maintaining liaison with all necessary foreign agencies in order to insure the exchange of law enforcement and intelligence information where proper. This work is by its very nature both confidential and delicate to a high degree; proper discharge of responsibilities calls for the utmost in tact, diplomacy, and initiative; and the nature of the work is of such magnitude as to have a significant relationship to the welfare of the United States and the international aspects of law enforcement. Regularly perform related duties, many of which cannot be described without impairing the essential security of the Bureau's operations and responsibilities.

(4) May serve as Section Chiefs, Assistant Section Chiefs, Unit Chiefs, or other top assistants in a Section or Division at Headquarters or in one of the executive offices, being delegated extremely wide latitude for the exercise of independent judgment and originality in planning, developing, directing, and co-ordinating investigative or administrative programs or major and very important segments of the Bureau's responsibilities which, regardless of their exact nature, have the purpose of attaining maximum results in the execution of the Bureau's broad and complex investigative responsibilities. Formulate, initiate, and guide the overall policies of the FBI as they relate to extremely important matters coming within the jurisdiction of the specific Unit, Section, Division, or office of assignment. Receive and review incoming communications from field offices or divisions at Headquarters in order to follow the progress of investigative or administrative matters and in order that decisions can be made with regard to matters of policy or procedure, being responsible for recognizing specific problems as they develop and thereafter taking effective steps to analyze and control them. Receive telephonic inquiries relating to problems and matters of policy and in response provide suggestions, direction, instruction, and guidance in such matters. Review and approve outgoing correspondence emanating from the particular organizational segment supervised including intra-Bureau communications as well as those



## Supervisory Special Agent GS 15

directed to other Government officials and the general public, insuring that such correspondence is factual, complete, in accord with prescribed rules, statutes, orders, and policies, and that proper and complete action has been taken both in the field and at Headquarters. Are responsible for establishing policies and procedures which will insure that information being disseminated is factual, thorough, and unbiased, and that all matters are complete and adequately covered. Analyze proposed, pending, and new legislation, court decisions, Presidential directives, Departmental orders, and other pertinent regulations or decisions insofar as they may have application to matters supervised in order to recommend required changes in investigative or administrative procedures and policies and if same are approved to follow through to insure compliance. Direct the preparation of instructional and policy material which may be used for guidance and training of the staff. Attend divisional or other conferences, discussing and recommending action to be taken in connection with investigative, administrative, operational, personnel, or budget matters, etc. May appear in an official capacity before Bureau training classes to provide instruction and guidance and answer questions or before personnel of other agencies or other groups for the purpose of outlining Bureau policies and procedures. Are responsible for developing and maintaining contacts of great significance in other Government agencies, law enforcement agencies, private enterprise, etc., in furtherance of the particular phase of operations and for the purpose of conferring on matters of highest policy. May serve as the Bureau's official representative in such contacts before conferences, committees, meetings, etc., with authority within certain limits to commit the Bureau to a course of action or to recommend that the Bureau adopt a change or abandon a particular policy or procedure. May be called upon to serve as the Bureau's representative in high level interagency committees where Government policies, particularly those affecting the national security or welfare, are formulated. Are regularly called upon to substitute for officials in the higher echelon, at such times assuming responsibility for co-ordination and direction of matters coming within the scope of the particular desk.

Fulfillment of these responsibilities often requires the services of a substantial staff to assist in the discharge of assigned responsibilities including investigative personnel in grades GS 10 through GS 14 and a substantial staff of service and support employees and subject matter specialists, some of whom may be in grade GS 13 or GS 14. Where this latter situation applies, the type supervisory control exercised includes top-level work planning and organization; work assignment and review; the full range of supervisory personnel functions and, with some exceptions of a top policy nature, full technical responsibility for work operations. Are responsible for placing employees in positions

## Supervisory Special Agent GS 15

for which they are best suited; establishing working conditions which promote efficient performance; gaining the co-operation of the working force; controlling employee absences within reasonable limits; and assuring all employees consistent and equitable opportunities for advancement in line with the Bureau's Upward, Mobility and Equal Employment Opportunity Programs. Must maintain a force of employees to adequately and economically meet production requirements. Are responsible for developing adequate employee training programs in order to enhance the value of such personnel to the particular organizational segment and to increase the value of such employees to the Bureau generally. Follow on such matters as employee development and performance; recommend promotions, reassignments, administrative action; assess and participate in deployment of resources by program needs; make budgetary estimates regarding personnel, facilities, programs; etc. Conduct necessary conferences to discuss administrative or operational problems, assist in working out solutions and advising of changes in policy, procedure, etc.

(5) May serve as Inspectors and as such are the Director's personal representatives in the particular offices or divisions being inspected. Direct in-depth examinations of FBI investigative and administrative operations including such matters as utilization of personnel, direction of available resources toward priority programs, and financial operations. Submit comprehensive reports of inspection findings for information of the Director in assessing and evaluating office or divisional operations. May be designated as investigator to conduct inquiries into allegations or complaints of discrimination under the Equal Employment Opportunity Act.

Incumbents who serve at Headquarters, regardless of their specific assignments, must continue to participate to the fullest extent in the training programs and related activities required of all Special Agents. Illustrative of the continuing status of each incumbent as a Special Agent is his regular participation in firearms training, expert firearms training, and defensive tactics. Incumbents have complete responsibility for maintaining familiarity with the contents of the various Bureau manuals as well as manual inserts, SAC Memoranda, and other communications containing information of a policy nature. They are required to attend periodic In-Service training and to participate in the various specialized schools. They are called upon to perform investigative duties in cases of the highest sensitivity and importance and frequently in such cases act in a supervisory capacity. Such assignments may involve any task falling in the investigative jurisdiction of the FBI. Perform related duties or, in accordance with the needs of the service, may be given special assignments as a result of special skills, training, knowledges, abilities, or aptitudes, which assignments may involve physical hardship or hazard.

## Supervisory Special Agent GS 15

It is emphasized that none of these assignments are static; all are subject to change in accordance with exigencies of the service; all are part of a long-range, competitive program of career development.

### 2. SUPERVISION RECEIVED:

Special Agents in Charge and Legal Attaches are under administrative control of the Director and Associate Director of the Federal Bureau of Investigation. In such assignments incumbents must operate with a maximum degree of good judgment and initiative and serve as the Director's on-the-spot representative in the specific territory. Assistant Special Agents in Charge receive general administrative supervision and guidance from the Special Agent in Charge of the particular office; incumbents are regularly and frequently designated to personally represent the Special Agent in Charge and to assume responsibility for administration of the office. Incumbents who are assigned to Headquarters receive general administrative and policy supervision from an Assistant Director, Section Chief, or other top official of the Bureau, depending on specific assignment. The progress and administrative potential of incumbents of this position are carefully followed and evaluated on a continuing basis.

Document Classification  
Assistant GS-7

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-9-93 BY 9103RCP/era

9 Description of Position - Following headings must be used for all General Schedule (GS) positions: 1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only). Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.	Estimate % of time for each duty.
<p><b>I. DUTIES AND RESPONSIBILITIES:</b></p> <p>Analyze and evaluate for document classification purposes, material consisting of Bureau files and other documents containing official investigative information on which disclosure litigation is pending. Keep up to date on FBI investigative techniques and methods as well as guidelines set out in Executive Orders and correspondence from Department Review Committee (DRC) in order to classify information accurately keeping in mind impact on future investigations and safety of confidential informants. Recognize classified material and identify that which originates in other agencies and intelligence organizations and as necessary, submit appropriate correspondence to these organizations while safeguarding documents and maintaining confidentiality of the material. Review files, contact employees assigned to other Divisions and/or utilize any other resources available to identify informant and status of the informant as well as the investigative cases involved; identity of informants is often disguised. Consider nature of information being obtained by informants and its effect on intelligence gathering methods and techniques or interest in foreign Government matters. As necessary on cases where deadlines are short, search indices to determine identity of subject.</p>	90%

Insure each paragraph of correspondence is classified properly by following strict guidelines set out in Executive Orders, guidelines of Department of Justice and the like. Determine whether classification is warranted, assign appropriate levels of classification, insure that each classification is made in accordance with appropriate procedures and suggest further excisions to documents proposed for release in civil action cases against the FBI based on the personal review given at the time. Correct any incorrect classifications previously made and advise appropriate personnel. Make inquiries of the Department of Justice Security Office or of other components of the intelligence community to develop substantive information to be considered in determining whether classified information must remain classified, can be declassified, should be upgraded, or further classified. Prepare addenda covering portions of documents which have been classified/declassified setting out basis for the action and recommending referral to other agencies of documents which originated in these agencies and have been furnished to the Bureau. As necessary, provide training and guidance to less experienced personnel.

Review communications from DRC setting forth decisions on classification matters. Abstract, list and cross-index specific information contained in the communications by date, topic, intelligence techniques, organizations, country, and the like. Transfer pertinent information to index cards which are maintained in the office and used for immediate reference. 10%

## 2. SUPERVISION RECEIVED:

Immediate supervisor is Supervisory Special Agent GS 15 who serves as Unit Chief. Duties are performed independently however supervisor and other Special Agent personnel are available to answer questions and provide guidance as necessary. A variety of guidelines and policy material is available for reference purposes. Completed work is reviewed by an Agent prior to being released from the Unit.

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Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage  
System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

Estimate  
% of time  
for each  
duty.

**2. SUPERVISION RECEIVED:**

Delete first sentence. Add: Receives supervision from Supervisory Special Agents GS-14.

# Management Assistant GS-7

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-92 BY 9603 R00/ret

- 9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only).  
Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

## 1. DUTIES AND RESPONSIBILITIES:

Receive complex assignments to analyze a broad scope of records keeping responsibilities, with continuing accountability for research and study. Assignments deal with many phases of mail processing functions, at both Headquarters and in the field, and include filing procedures, equipment usage, and work measurement. Study is based on extensive knowledge of mail processing procedures and their relation to Bureau policy and needs of users of the files. Use voluminous guideline material and evaluate same. Conduct surveys and consult with operating and supervisory personnel to obtain all possible information and consider all ramifications in arriving at conclusions and making suggestions or recommendations.

Conduct studies of existing manuals and guidelines for various subunits and assure only current material is retained. Conduct workflow studies and compile descriptive reports, along with suggestions for necessary changes or implementation of new procedures. Consider impact of proposed new procedures on current work operations and study areas requiring new or modified work procedures. Study, in connection with specific assignments, the various aspects of position changes to be sure they operate in the most effective fashion. Develop new forms for work measurement, workflow, and production analysis and recommend specific techniques and procedures to be used to insure method is responsive to needs and to insure no important factors are overlooked.

Estimate  
% of time  
for each  
duty.

100%

4

Assignments may include study of installation of computer terminal equipment and all problems on a continuing basis associated with such equipment which will be placed in the Division. Studies involve Headquarters and field operations, as specifically related to the equipment. This includes daily problems with the equipment which will be installed in the Division, and related procedures and techniques. Must be familiar with computer jargon necessary in frequent contact with technicians in Computer Systems Division. Assure transition to automation proceeds in an effective and efficient manner and will not impede workflow. Analyze impact of various automated functions on current work operations and study areas which require new or substantially modified work procedures. Construct work alignment for positions to assure all work processes are covered and are efficient and in line with new procedures and make work space studies in this regard. Assist in establishing a training program in the use of new equipment and new procedural operations.

Maintain contact and liaison with the proper personnel in the various Headquarters divisions, field offices, other Government agencies, and those in industry, as necessary to accomplish specific assignments. Attend selected trade shows, schools, seminars, and visit other facilities including field offices, relative to assignments and remain current regarding selected areas of assignments.

Effectiveness in connection with assignments will depend on seasoned judgment, initiative, and imaginative approach to work out necessary and essential specific details. Must be completely familiar with and have an excellent understanding and working knowledge of the many diverse duties in the record keeping and record processing functions. Must have an understanding of automation and electronic data processing functions as they relate to the Bureau's centralized filing system.

## 2. SUPERVISION RECEIVED:

Receive very general supervision from <sup>Training Administrator CS D</sup> Supervisory Management Assistant CS-3 who outlines assignments as necessary, gives assistance regarding unusual policy matters, and follows on progress made. Resolve all but most unusual problems independently using good judgment, resourcefulness, ingenuity, and originality.



# Management Assistant GS-7

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9803 RCP/elt

9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
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Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage  
System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

Estimate  
% of time  
for each  
duty.

## 2. SUPERVISION RECEIVED:

Change receives general supervision from Training  
Administrator GS 12 instead of Program Analyst GS 12.

5

# Supervisory Research Assistant GS11

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9603 RCO/MAH

9 Description of Position - Following headings must be used for all General Schedule (GS) positions: 1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only). Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.	Estimate % of time for each duty.
<p><b>1. DUTIES AND RESPONSIBILITIES</b></p> <p>Incumbents of this position share in supervising a staff of _____ employees who _____ are handling and processing incoming Freedom of Information-Privacy Acts (FOIPA) requests, conducting the necessary research and preparing correspondence connected with these requests received by the Federal Bureau of Investigation. Serve as final review authority on correspondence over the Director's or Branch Chief's signature with the exception of extremely controversial requests. Daily correspondence averages from 50 to over 100 letters per day per each incumbent. Replies are addressed to persons from all walks of life: the general public, authors, attorneys, historians, legislators, students, the news media, and other numerous and varied sources. Each incumbent supervises eight to ten employees responsible for preparing replies to FOIPA requests. Each shares supervision of about 20 other employees involved in initial processing of FOIPA requests, duplication of records to be released under provisions of the FOIPA, and the day-to-day operations of the FOIPA Reading Room. Above duties necessitate incumbents being involved in active and direct participation on numerous occasions as it is imperative that an even flow of mail and work from the above subunits is maintained.</p>	100%

Utilize in-depth knowledge of numerous violations over which the FBI has jurisdiction, and exercise a high degree of competence and judgment based on experience and a thorough knowledge of the FBI records system, review in final form correspondence prepared by team members which is directed to requesters and material prepared for Disclosure Units for processing; evaluate requests and insure the initial reply is responsive to the request. Insure all replies are tactfully forthright and accurately define the FBI's position; replies are designed to establish or assure continued understanding of the Bureau's policies and responsibilities under the Acts, as well as to build and retain the loyalty, confidence, cooperation and support essential to the continued long-range effectiveness of the FBI. Since correspondence may be read by persons antagonistic to the FBI and/or law enforcement in general and unfavorably disposed to accepted policies, replies must not only set forth and define Bureau's position in the matter at hand but often must attempt to change the opinion of the reader as well. At times it is necessary to correct misconceptions of fact or purpose regarding accessibility of information in the FBI files.

Upon completion of review of correspondence which is both proper and responsive to the inquiry, sign out mail on behalf of Branch Chief or forward for signature of Director, if appropriate, again serving as final review authority.

Must personally process extremely complex or urgent requests, particularly Congressional inquiries which may necessitate consultation with officials of other divisions at FBIHQ having substantive responsibility concerning the information being sought by the requester in order to formulate a single responsive reply. As necessary, has regular and frequent telephonic contact with requesters from all walks of life; contacts may be to ascertain whether information requested is still desired, to supply information relating to requirements of the Acts, or the estimated date of completion of the action, or other information, as appropriate.

Review all incoming correspondence concerning a past request to insure the request has not been modified to increase or reduce the scope of the request. If correspondence has modified the initial request, then it must be insured that appropriate action is taken to comply with the current request and that the necessary records are also changed to show appropriate action has been taken on the confirmation sent to the requester.

Are responsible for assigning work to employees on initial correspondence teams or assigning employees on teams to urgent or specialized projects based on a selective consideration of such factors as difficulty and requirements of assignments, availability, capability and special qualifications of employees and other related factors to be considered. Insure equitable distribution and variety of assignments. Plan to meet changes in a workload which is highly variable and unpredictable. Regular workload, unexpected specials, or unforeseen developments necessitate processing work under an almost continuous pressure situation. Must insure that timely response to inquiries is accomplished as statutory guidelines prescribe a maximum ten day initial response period. In addition, as unit work processes directly affect further FOIPA Branch work operations, they must be completed accurately and efficiently. Follow on progress of work and assign specials, adjusting workloads in order to meet deadlines and comply with existing rules, policies, and legislated regulations. Remain cognizant of unit work production, workload, accomplishments, deficiencies, and trends; devise measures to counteract undesirable trends or practices; streamline operations on an ongoing basis to provide for the most effective and efficient processing of requests for information at this initial processing level. Make changes in the organization of work plans and schedules for the accomplishment of work to meet program goals, objectives, and policies established by superiors.

Are responsible for quality and quantity of work produced. Check completed work insuring finished product is acceptable; note any recurring errors, discuss with employee, make suggestions for improvement, and institute necessary training or other measures. Personally resolve any of the more difficult and involved questions on grammar, punctuation, format and similar matters. Issue written instructions regarding policies or procedures to be followed and specific types of work. Must insure Research Assistants handle initial processing of FOIPA correspondence adequately and efficiently not only to comply with FOIPA statutes, etc., but also to insure this large volume of mail is processed and handled consistent with Bureau policies and procedures. Specifically, must monitor, coordinate and review information and correspondence which has been searched and prepared for excising and review by Research Analysts assigned to Disclosure Units. This necessitates close and careful scrutinization of material

insuring that it has been searched correctly, comprehensively, and properly synthesized, adequately packaged, appropriately duplicated, indexed and numbered for dissemination to Disclosure Units for final processing. It should be noted that incumbents serve as final review authority for above-completed material released to Disclosure Units and there is no need for further search or review of indices or files.

Formulate training plans for assigned employees as well as conducting on-the-job and cross training for all phases of work on the teams to broaden employee skills; develop additional training phases as the need arises. Specifically, training must include preparation of search slips, whether type of information being sought is or is not retrievable, knowledge of different types of classifications, knowledge of Service Unit abstracts and Numbering abstracts, applicable Bureau regulations and policies, and preparation and review of correspondence and material furnished to Disclosure Unit teams. Receive instructions regarding new policies or procedures directly from superior or through attendance at supervisory conferences. As necessary, consult with other supervisors in Branch, elsewhere in Records Management Division, or in other Divisions to work out mutual problems. Conduct team conferences to discuss and interpret change of regulations or procedures.

Prepare performance ratings, provide orientation, counseling and guidance of employees, resolve most personnel problems and refer most involved cases to superior with recommendations for administrative action as warranted. Advise subordinates of requirements for promotion; make formal recommendations to superior regarding promotions and recognition in form of commendations and awards, reassignment of employees, and need for additional personnel or equipment. Schedule employees for special duty, overtime or relief assignments. Inform employees about the policies, procedures and goals of management as they relate to the work of the unit; and inform superiors of employees' participation, suggestions, and reactions. Prepare reports and maintain records reflecting unit work accomplishments, status of work, and other matters.

Perform related duties.

Have available for reference the FOIPA Reference Manual, various general guides, precedents, and instructions, and other necessary reference material as appropriate.

In order to perform adequately in this position, incumbents must have a comprehensive knowledge of FBI's on-going operations and policies as they pertain to processing FOIPA requests; in-depth knowledge of FOIPA Acts per se gained through on-the-job application of the Acts and guidelines set up for interpretation of the Acts. Must have extensive knowledge of FBI correspondence and/or searching procedures and demonstrated capability in the preparation and review of correspondence and records. Records and research knowledges are mandatory, gained either through work in lower grade positions in FOIPA area or in Records Branch proper.

**2. SUPERVISION RECEIVED:**

Receive general supervision from Supervisory Special Agent GS-15, who serves as Unit Chief. Independently carry out assignments to their completion by exercising a very high degree of initiative, judgment, tact, and discretion. With few exceptions serve as the final review authority on all correspondence and FOIPA requests processed and prepared in the unit.

**3. SUPERVISION GIVEN:**

-----  
an identifiable team of -----

Supervise, in manner described above, /approximately 20 employees each; Research Clerks GS-7\* (~~Proposed~~), Research Clerks GS-5, GS 0301-05-75-04-209, Supervisory Clerk GS-5 GS 0301-05-76-04-005, Lead Office Machine Operator GS-4 GS 0350-04-77-04-227, Clerks GS-4 GS 0301-04-76-04-006, Clerks GS-4 GS 0301-04-75-04-128, Data Transcriber GS-4 GS 0356-04-77-04-267, Clerk GS-4\* (Reading Room) (~~Proposed~~), Clerk-Typists GS-3 GS 0322-03-76-04-158, and Clerks GS-3 GS 0301-03-77-04-269. For the major portion of time, GS-3s and GS-5s will predominate within the staff being supervised.

\*GS 0301-07-78-04-057

\*\*GS 0301-04-78-04-075

File Supervisor GS7

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9903 RAC/mst

9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only). Position Classification Manual should be consulted for detailed instructions. All Wage Board (WB) jobs must be prepared in accordance with headings set forth in Position Classification Manual.

**1. DUTIES AND RESPONSIBILITIES:**

Estimate  
% of time  
for each  
duty.

Serves as supervisor in charge of the overall operations of the Section on the day and night shifts in the Justice Building. Organizes, coordinates, and directs operations of the Section in the Justice Building with the operations of the Section in the Identification Building and the Division, and with operations of other divisions of the Bureau.

55%

Directly supervises the Unit engaged in locating files and serials, including difficult, extensive, and urgent requests. Examines work on hand and requests, as received during course of the day, and makes regular and special assignments based on personnel available and their experience, including the dispatching of employees as needed to other buildings wherein Bureau offices are located to perform locate and serial removing operations. Remains constantly aware of status and progress of work and follows closely on urgent and special requests, particularly those from the Office of the Director, Associate Director, and other Bureau officials. As deems necessary shifts personnel and/or obtains additional employees from outside the Unit to prevent a backlog. Ensures employees are properly trained and, as deems necessary, provides for additional on-the-job training or recommends additional classroom training be afforded employees. Ensures employees perform a satisfactory amount and quality of work. Answers questions of employees and guides them in resolving complex work problems. Explains to employees current and newly instituted procedures. As necessary, clarifies erroneous application of work methods and explains proper interpretation of rules and regulations. Conducts,

or directs, a spot check of work sheets and locate records turned in at the end of each day. Directs the maintenance of production and error records and the preparation of production and accuracy reports of subordinate employees. Evaluates work performed and, as necessary, discusses work performance with employees and furnishes constructive criticism and assistance on specific problems. Prepares performance ratings and submits them to supervisor. Makes recommendations to supervisor regarding personnel actions, including promotions, commendations, transfers, and reassignments. Resolves personal problems and less involved matters of a personnel and administrative nature, referring more serious problems to supervisor. Approves annual leave requests and grants sick leave as required.

Supervises through a File Supervisor ~~GS-5~~ <sup>(GS 6 proposed)</sup> 3 the Unit engaged in operating the Incoming Table, delivering items received, looking files up-to-date and forwarding them destined for Bureau personnel in Justice Building and other buildings wherein Bureau offices are located, collecting and boxing files being returned to Identification Building, maintaining and safeguarding master reels of all microfilmed investigative file material, maintaining microfilm viewing equipment in Justice Building, servicing requests to view this microfilmed material, and file rehabilitating operations performed in Justice Building and through a File Supervisor ~~GS-5~~ <sup>(GS 6 proposed)</sup> supervises the night shift of the Section in the Justice Building. As required by work loads, emergency situations, or heavy delinquencies, shifts personnel within the Units in the Justice Building and makes temporary or permanent reassignments with approval of supervisor. Guides subordinate supervisory personnel in solution of work problems relating to any or all phases of Section operations. Directs and participates in the performance of periodic inspections which cover physical conditions and special features of the work. Studies regular and special reports submitted by subordinate supervisors prior to sending same to supervisor. Reviews performance ratings and personnel recommendations made by subordinate supervisors before forwarding same to supervisor; confers with them on administrative and technical matters; clarifies changes in policies and procedures; and the like. Conveys to the night shift supervisor current developments on expeditious locates, delinquencies, special requests, or other related projects which require attention.

Maintains close liaison with Units of the Section in the Identification Building. Coordinates and directs special and urgent projects for other divisions. Frequently has contact with Bureau officials, supervisors, and clerical personnel to answer questions, resolve work problems, and provide special services. 15

Attends conferences conducted by supervisor to discuss changes in, or institution of, new policies and procedures relating



to the work of the Section; to present suggestions for changes in work flow, work methods, priorities or procedures; and to discuss matters relating to work or personnel problems. Keeps subordinate supervisors and employees under direct supervision apprised of results of the conferences and initiates procedural changes as necessary. On occasion, when matters of organization or work planning, including problems of work priorities and procedures, affect other entities in the Branch, or other divisions in the Bureau, participates with supervisor in discussions to work out changes and achieve necessary coordination.

Maintains pertinent records relative to operations of the Unit and other necessary records to permit an effective control of all work operations and personnel efforts of the Units of the Section in the Justice Building. Conducts special surveys and compiles data requested. Submits reports on accomplishments and on pending and delinquent work and, as necessary, special reports requested by Bureau officials.

✓ Is responsible for working conditions and strict conformance with security regulations and safeguarding of highly sensitive files and material. Makes periodic checks of Unit and Section space and takes corrective action, or ensures same is taken, regarding any delinquencies noted. Remains constantly alert for new methods and techniques to streamline work operations. Estimates future expansion needs relative to space, equipment, and personnel and submits same to supervisor for budgetary projections. Performs related duties as necessary.

Must have a very thorough knowledge of all phases of work operations in the Section; must have a knowledge of functions and work flow in each division; must remain current as to case assignments of Special Agent personnel throughout the Seat of Government; and must have a good knowledge of the organizational set-up of the Bureau.

## 2. SUPERVISION RECEIVED:

Receives very general supervision from the File Supervisor GS 10. Performs duties independently, exercising a high degree of initiative, resourcefulness, good judgment, tact, and discretion.

## 3. SUPERVISION GIVEN:

Is responsible for supervision of approximately 35 to 41 employees in grades GS 2 through GS 6 (~~proposed~~). Serves as immediate supervisor of a group of approximately 20 employees in grades GS 4, GS 5 (~~proposed~~), and ~~GS 5 (GS 6 proposed)~~.

# Mail and File Supervisor GS6

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 9-8-93 BY 9808RUC/ew

Description of Position - Following headings must be used for all General Schedule (GS) positions:

1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only). Position Classification Manual should be consulted for detailed instructions. All Wage Board (WB) jobs must be prepared in accordance with headings set forth in Position Classification Manual.

## 1. DUTIES AND RESPONSIBILITIES:

Estimate  
% of time  
for each  
duty.

Serves as supervisor of mail and file operations in connection with confidential and sensitive files kept in separate space from regular investigative and administrative files for the purpose of affording maximum security and control. Is responsible for exercising complete control over access to these files containing restricted intelligence information.

Supervises all unit operations including utilization of space, supplies, adequacy of personnel, assignment of work, work procedures, correlation of unit functions with other units and with work of other divisions, and application and interpretation of policy. On own initiative makes changes in unit and assigns functions to positions when such changes do not effect costs of operation or established policy. Puts into effect changes in working procedures when such is deemed necessary. Schedules assignments to provide equal distribution of work load and follows on progress of same to insure timely completion of all necessary operations. Independently resolves questions raised by subordinates during the processing of their daily assignments.

60%

Oversees preparation and revision of policy folders and instructions relating to processing material and the security of material in the special files. Affords training and instructions to employees in procedures, regulations, and operations of the unit. Utilizing an extensive background in work of the Records Branch

and thorough knowledge of Bureau's rules and regulations, resolves questions referred by officials, supervisors and subordinates regarding work problems. Holds conferences with clerical personnel as necessary and participates in Section conferences, relaying changes in policy and procedures to subordinates. Notifies appropriate official in Domestic Intelligence Division regarding any changes in personnel in the unit. Approves leave and holiday schedules; prepares performance ratings; and evaluates potential of employees for advancement, following on progress and submitting formal recommendations. Counsels subordinates and resolves personnel problems referring the more serious matters to superior along with recommendations for action.

Reads and analyzes the more difficult highly sensitive material, exercising independent judgment in determining the Bureau's interest in espionage and foreign intelligence operations for purpose of designating information for appropriate officials or supervisory personnel. Participates in processing mail for files and oversees such duties as typing index cards and preparing material for file. Utilizing independent judgment and without further review, destroys incoming intelligence items deemed to be of no interest to the Bureau. Possesses thorough knowledge of work and operations of other divisions as well as current and detailed information relating to individuals and organizations of interest to Bureau, including international, economical, and political situations especially in potential war zones as reported by highly confidential sources. Must be alert for supporting or conflicting information as may appear in material reviewed. Must be completely familiar with procedures and regulations relating to the processing and disclosure of highly classified material and alert to any violations of these regulations. Is responsible to assure certain newly assigned Special Agent supervisory personnel in Domestic Intelligence Division are made aware of instructions for security of handling certain highly classified material. Is responsible to assure mail dealing with specially classified intelligence matters has been given proper security classification. 40%

Supervises review of records to eliminate obsolete and unnecessary references from the General Index and the disposal of material no longer of value to Bureau's investigation of espionage and foreign intelligence operations. Receives requests for confidential information in files and determines whether individual making request is authorized to receive it. Reviews file material, some highly technical in nature, including world-wide intelligence and counterintelligence data of the highest security classification. Pursuant to specific request, reviews and analyzes file references to establish identity, eliminate non-pertinent data, or locate specific information or activity

and presents information in paraphrase form as necessary to protect source while at the same time being accurate and complete so that information can be used in Bureau operations and correspondence.

Performs related duties.

2. SUPERVISION RECEIVED:

Receives very general supervision from File Supervisor GS <sup>11</sup>10, who is in charge of the Section and available to resolve questions regarding policy. Is expected to operate with wide latitude for independent judgment and initiative in regard to processing and filing highly classified material and assuring compliance with special security regulations.

3. SUPERVISION GIVEN:

Supervises and coordinates the work of 3 employees in grade GS 5 (proposed).

7  
File Supervisor GS 11

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9303 RCO/mt

<b>9</b> Description of Position - Following headings must be used for all General Schedule (GS) positions: 1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only). Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.	Estimate % of time for each duty.
<b>1. DUTIES AND RESPONSIBILITIES:</b>  Has overall responsibility for, and directs through subordinate supervisors, employees engaged in reviewing investigative and administrative records and evaluating material information to identify and isolate pertinent data relating to subjects of inquiries. Oversees operation of Subunit on day and night shifts in widely scattered work areas and is responsible for objectives consistent with maximum efficiency and security and optimum economy. Organizes, plans, coordinates and directs subunit operations including utilization of space, equipment, supplies, budgeting, flow of work, work procedures, adequacy of personnel, training program, personnel management, leave matters, correlation of subunit functions with all other functions of the division, other sections and divisions of the Bureau, application of policy and regulations for changes in policy. Resolves technical work problems not covered by precedents or established policy. Anticipates on a long-range basis changes in volume of work, personnel and equipment needs, and work methods and evaluates and advises in solution of operational problems. Is constantly alert for streamlining methods to provide maximum production, accuracy and efficiency. Directs the compilation and preparation of special statistical, survey, production and accuracy reports; assures the work performed reflects the goals and objectives established by higher management levels.	100%

If more space is required, use additional pages 8 x 10 1/2

FBI/DO-  
9

Through subordinate supervisory personnel, directs continuous training program including issuance and revision of manuals and instructional material and orientation of newly assigned employees. Administers and spot checks current work methods and accomplishments. Observes work flow and takes action to eliminate bottlenecks. Assigns and explains work requirements to subordinate levels of supervision for new or changed methods, functions, goals, and processes.

Is responsible for strict conformance with security regulations and for the safeguarding of highly sensitive files and material and makes regular inspection thereof. Utilizing an extensive background in the work of the Division and thorough knowledge of Bureau rules and regulations, resolves questions referred by subordinate supervisors regarding work problems, personnel matters, and interpretation of policy. Interviews employees concerning work and personnel problems, offers suggestions and guidance, commends or criticizes where warranted, and composes memoranda regarding their work status including performance ratings and recommendations for promotions, commendations, incentive awards, quality within-grade promotions and disciplinary actions. Devises special training programs or counseling methods to deal with difficult attitudinal or motivational problems.

Has frequent contacts with other divisions of Bureau relative to urgent requests, arrangements for emergency projects, and personnel matters, and with representatives of other Government agencies concerning research, procedures and record systems. Attends staff conferences in office of Assistant Director and regular meetings held by supervisor. Conducts periodic conferences and others as required with subordinate supervisors, gives instructions implementing changes in policy or procedures, and discusses various programs and work problems. Follows to conclusion any changes or regulations resulting from these conferences.

## 2. SUPERVISION RECEIVED:

Receives administrative supervision from Supervisory Special Agent who serves as chief of unit. For the most part, works independently resolving most personnel and all technical problems. Consults superior principally on matters of new and questionable policy.

## 3. SUPERVISION GIVEN:

Is responsible personally or through subordinate supervisors for approximately 140 employees on day and night shift in grades GS 2 through GS 10, the majority being in grades GS 4 and GS 5.

# Legal Technician GS7

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9803 R09/MLH

9 Description of Position - Following headings must be used for all General Schedule (GS) positions: 1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only). Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.	Estimate % of time for each duty.
<p><b>I. DUTIES AND RESPONSIBILITIES:</b></p> <p>Review, research, analyze, and evaluate incoming requests in regard to civil court pleadings, discovery matters or interrogatories from Bureau Field Offices, Headquarters Divisions and outside sources. Determine the degree of action necessary to insure requests requiring special attention receive immediate action.</p> <p>Upon receipt of a request, review main files and references listed on search slip and obtain necessary files for penetrating review. Exercising judgement based on experience in the work, perform research and evaluate the pertinence or relevance to the request of information located in FBI records, and assign appropriate documents for Xeroxing. Perform a line-by-line review of each document to determine what data meets the evaluation of the scope of matter under discovery. Excise all information to which an exemption may be cited to matters subject to discovery, information which is not relevant, privileged data such as informant identification and classified data; material must be thoroughly reviewed in order to make determinations to excise such data prior to release. Edit records to be disseminated, deleting any information necessary to protect informants, sources, individual's privacy and investigative techniques. This includes data relating to FBI policy and in some instances, references to formulation of such policy and the establishment of official Bureau attitudes relating to matters</p>	100%

If more space is required, use additional pages 8 x 10 1/2

within its jurisdiction. Insure records or portions thereof to be released are stamped accordingly in order that a permanent record of disseminated information can be maintained.

Where necessary, forward data to appropriate Division at FBI-~~Headquarters~~ so determination can be made as to whether classified data must remain classified, be subject to declassification or if particular unclassified data should be marked classified. Special consideration is given to relevant data contained in documents which originated in another Government agency. Similar consideration is given to data originating with another Government agency. Similar consideration is given to data originating with another Government agency but set forth in an FBI document. In such instances, make copies of these documents for referral to the originating agency together with an explanation of the request for discovery and that the referred data was deemed relevant. Designate a copy of the transmittal letter for the particular attorney of the Civil Division of the Department of Justice.

As required, review files and summarize information for use of another Division in responding to inquiries when no dissemination of documents is involved.

Compose and dictate communications transmitting excised records and appropriate memoranda clearly and concisely presenting facts and conclusions pertaining to any information which has been denied in accordance with the stipulations described above. Communications and memoranda must be composed with utmost care and judgement and must be responsive to each specific request. Must adhere to policies pertaining to dissemination of information under existing regulations, Federal rules of civil procedure concerning production of documents sought under discovery and/or subpoena duces tecum and various decisions handed down by the Attorney General or U. S. courts since every request or portion of request denied is subject to appeal.

In cases in which the denial of information is appealed, must explain orally in detail to a Department of Justice Attorney the reasons for action taken. The decision to refuse information must be made on a solid basis since the denial action can be subject to close scrutiny in U. S. courts and must be defensible. In instances where Department Attorney decides to release additional information and incumbents do not agree with such action, a detailed memorandum setting forth Bureau's grounds for a denial must be prepared for the use of Bureau officials.

Perform related duties.

Must have had experience in research assignments and preparation of correspondence at the GS-5 level prior to assignment in this position. Experience may be obtained in this Unit or elsewhere in Bureau having work of comparable difficulty and



complexity. Must be able to work under pressure especially that caused by short or unscheduled deadlines, must be mentally and emotionally stable, must have an excellent Bureau service record in previous assignment(s), and must be physically fit.

2. SUPERVISION RECEIVED:

As assigned to specific teams within the Unit, receive very general supervision from Special Agent designated as team captain. Work is assigned and reviewed upon completion by the team captain who is available to answer any questions and to provide guidance during on-going assignments. Exercise independent initiative and judgement when performing majority of assignments; may receive some training and guidance from team captains as required, especially as concerns new or increasingly difficult projects.

<p>9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only).  Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.</p> <p><b>1. DUTIES AND RESPONSIBILITIES:</b>  Paragraph 3, Lines 1-2, delete: Division at FBI Headquarters; add: Unit in the Section  Paragraph 3, Line 4, delete: classified.; add: classified, or if unclassified refer to appropriate Division with responsibility for substantive matter. Special...  Paragraph 3, Lines 6-7, delete: Similar consideration is given to data originating with another Government agency.</p>	<p>Estimate % of time for each duty.</p> <p>7</p>
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# File Supervisor GS 11

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9803 RCP/ML

9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only).  
Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

Estimate  
% of time  
for each  
duty.

## 1. DUTIES AND RESPONSIBILITIES:

As supervisor of the Unit is responsible for coordinating the operations of eight subunits engaged in servicing and maintaining the Bureau's administrative and investigative files in assuring the immediate availability and access of the files to the Director, Bureau officials, and other authorized personnel. Unit operations are carried out on the day, night, <sup>midnight</sup> holiday, and weekend shifts. Insures the objectives of the Unit are accomplished consistent with maximum efficiency and optimum economy. 100%

Organizes, plans, coordinates, and directs Unit operations including flow of work, work procedures, adequacy of personnel, personnel management, leave matters, and policy changes. Is responsible for the efficient utilization of space, equipment, and supplies. Prepares budget estimates. Coordinates Unit functions with other functions of the Division and assures operations are a satisfactory adjunct to each of the other Divisions of the Bureau. Anticipates on a long range basis fluctuations in volume of work, personnel and equipment needs, and work methods. Advises and recommends solutions to operational problems. Is constantly alert for streamlining methods to provide maximum production and accuracy. Conducts research into records systems and procedures, and consults on records systems problems to determine effectiveness and need for revision. Directs the compilation and preparation of special statistical and survey reports. Organizes and directs surveys to determine if Bureau records and obsolete material should be preserved,

3  
destroyed, or converted to film. Has primary responsibility for present microfilming system involving microfilming of thousands of investigative files on an accelerated and continuing basis due to space limitations. Must be extremely knowledgeable regarding microfilming criteria, as well as all technical aspects of preparation, filming, checking, processing and ultimate destruction of investigative files.

4  
Directs a continuous training program including issuance and revision of manuals of instructional material and orientation of newly assigned employees. Selects employees to fill vacancies. Administers and spot checks quality of work, current work methods and accomplishments. Observes work flow and takes action to eliminate bottlenecks. Shifts personnel, as necessary, in order to provide expeditious processing of special requests. Is responsible for physical working conditions, strict conformance with security regulations, safeguarding of highly sensitive files and material and making regular inspections thereof. Utilizing knowledge of work of Division and of Bureau rules and regulations, resolves questions referred by subordinate supervisors regarding work problems, personnel matters and interpretation of policies. Formulates and issues instructions implementing changes in policy and/or procedures. Recommends, reviews, and approves personnel actions relating to training, promotions, transfers, commendations, and performance ratings. Conducts personnel interviews and prepares memoranda. Makes recommendations regarding disciplinary action. Approves or disapproves subordinates' leave including vacation schedules.

Maintains contacts with commercial equipment representatives in order to stay abreast of new types of equipment and material in effort to upgrade operations and with representatives of other Government agencies concerning records systems and procedures. Receives or makes inquiries of other Divisions of Bureau relative to urgent requests, arrangements for emergency case projects, purchasing, and personnel matters. Attends weekly staff conferences in office of Assistant Director and regular meetings held by supervisor. Conducts monthly conferences and others as required with subordinate supervisors to discuss various programs, work problems, and changes in policy and procedures. Follows to conclusion any changes or recommendations that might result from these conferences.

Approves divisional memoranda relative to disposal of bulky exhibits being retained in connection with investigative matters. Prior to such approval, must insure retention

criteria is satisfied and that memorandum along with bulky exhibit, is properly routed to and approved by substantive supervisor. Thereafter, gives final approval for filing based on designated action of reviewing substantive supervisor.

Performs related duties as required.

2. SUPERVISION RECEIVED:

Receives very general supervision from Supervisory Special Agent who is in charge of the Unit. Has broad latitude for independent judgment in resolving all technical problems.

3. SUPERVISION GIVEN:

Is responsible for a work force of approximately 252 employees in grades GS 2 through GS 10. Serves as the immediate supervisor of approximately 18 employees in grades GS 3 through GS 7 and grade GS 10.

FILES AND COMMUNICATIONS  
RECORDS BRANCH  
FILING

FILE SUPERVISOR GS ~~305-11-74-D-23~~  
11, 305-11-74-D-23

UTD  
UTD  
UTD  
WTD  
WTD

12-10-70 *Tim*  
12-8-71 *Tim*  
2-19-74 *3-42*  
3-27-75 *PR*  
9-29-75 *PR*

FILE SUPERVISOR GS-0305-11-75-04-221 in lieu of GS-305-11-75-D-221  
Change Records Section to Records Branch 4/27/77

1. DELETE: EIGHT  
ADD: TEN

4/6/78

2. Delete: Holiday & weekend shifts .

3. Delete: Underlined portion

4. Delete; Underlined sentence.

5. Delete: 252  
Add: 166

6/26/78

Legal Clerk GS5

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-10-93 BY 9803 RCO/MSH

9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only).  
Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage  
System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

Estimate  
% of time  
for each  
duty.

**1. DUTIES AND RESPONSIBILITIES:**

Receive, review and analyze incoming requests such as civil court pleadings, discovery matters, or interrogatories from Bureau Field Offices, Headquarters Divisions and outside sources; determine the degree of action necessary to insure that requests requiring special attention receive immediate action. Receive the less complex assignments requiring limited research and review of files and records.

100%

Upon receipt of the request, review and analyze as to the issues presented in the pleading documents and evaluate the scope of the matters under discovery. After this determination, have indices searched, and secure all files and records deemed necessary for a penetrating review. Perform a line-by-line review of each document to determine what data meets the evaluation of the scope of matter under discovery.

Applying a working knowledge of various objections that may be cited to matters subject to discovery, information which is not relevant, privileged data such as informant identification and classified data, review material thoroughly in order to make determinations to excise such data prior to release. Insure records or portion thereof which have been released are stamped accordingly in order to maintain a permanent account of disseminated information.

12

Where necessary, forward data to appropriate Division at FBI Headquarters with substantive responsibility so determination can be made as to whether classified data must remain classified, be subject to declassification or if particular unclassified data should be marked classified. Special consideration must be given to relevant data contained in documents which originated in another Government agency. Similar consideration must be applied to data originating with another Government agency but set forth in an FBI document. In such instances, copies are to be made of these documents for referral to the originating agency together with an explanation of the request for discovery and that the referred data was deemed relevant. A copy of the transmittal letter must also be designated for the particular attorney of the Civil Division of the Department of Justice.

Compose and dictate communications transmitting documents and also memoranda to clearly and concisely present facts and conclusions pertaining to any information which has been denied. Upon completion of review, compose and dictate answers to interrogatories. In instances where Departmental Attorney elects to release additional information and incumbents do not agree with such action a detailed memorandum setting forth Bureau's grounds for denial must be prepared for the use of Bureau officials. Perform other related duties.

Must be able to work under pressure, especially that caused by short or unscheduled deadlines, must be mentally and emotionally stable, must have an excellent Bureau service record in previous assignments, and must be physically fit with demonstrated excellent sick leave record.

## 2. SUPERVISION RECEIVED:

As assigned to specific teams within the Unit, receive very general supervision from Special Agent designated as team captain. Work is assigned and reviewed upon completion by the team captain who is available to answer any questions and to provide guidance during on-going assignments. Incumbents exercise independent initiative and judgment when performing majority of assignments.



# Supervisory Special Agent GS14

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-10-93 BY 9803RCO/mem

9 Description of Position - Following headings must be used for all General Schedule (GS) positions:  
1. Duties and Responsibilities; 2. Supervision Received; 3. Supervision Given (for supervisory positions only).  
Position Classification Manual should be consulted for detailed instructions. All descriptions for Federal Wage  
System jobs must be prepared in accordance with headings set forth in Position Classification Manual.

Estimate  
% of time  
for each  
duty.

## Introduction:

Incumbents have had service in grades GS 10 through GS 13 and the introductory material in the descriptions for those positions applies herein. Are subject to provisions and requirements of the FBI Career Development Program, and assignments at this level are in accordance with same. May be assigned to divisions at Headquarters or to field offices with specific authority for supervising and administering a major investigative and/or administrative activity or substantial segment of such activity having a definite close relationship to the discharge of the Bureau's investigative responsibilities. Such investigative responsibilities embrace the fields of criminal, security, and civil investigations covering the numerous classifications of cases over which the FBI has investigative jurisdiction. These investigative responsibilities are wide in scope and diversity and involve complex and important matters. Are required to exercise resourcefulness, versatility, ingenuity, and originality in planning and organizing investigations which may involve major crimes assigned to the Bureau for investigation. Must have complete general knowledge of the entire scope of the Bureau's investigative jurisdiction as well as a comprehensive, authoritative knowledge of the investigative or administrative activity personally supervised. May be assigned to serve as Assistant Legal Attache assigned to the U. S. Embassy in a foreign country.

13

## Supervisory Special Agent GS 14

Incumbents have had extensive FBI investigative experience and have demonstrated by sustained performance that they are outstanding in the exercise of the widest latitude of independent judgment and that they excel from the standpoint of initiative, ingenuity and personal responsibility. May have had extensive supervisory experience either at Headquarters, in the field, or both. The status of each incumbent is periodically reviewed and assignments are adjusted as appropriate.

### 1. DUTIES AND RESPONSIBILITIES:

May be assigned to supervise an investigative or administrative program or a major segment of such program which, regardless of its exact nature, has as its purpose the attainment of maximum results in the execution of the Bureau's broad and complex investigative responsibilities. For example, at Headquarters, through review of investigative reports, memoranda, letters, teletypes, airtels, etc., will follow the progress of investigations conducted by Special Agents in certain categories of cases throughout the entire field service or a major segment of the field service; determine the extent of coordination, guidance or direction necessary to achieve maximum investigative results and afford same by issuing appropriate instructions, suggestions, or guidance to pertinent field offices; evaluate the effectiveness of the overall investigative program of individual offices as it pertains to the subject matter being supervised and provide guidance and direction based on a knowledge of techniques used with success in comparable situations; participate in evaluation of deployment of resources among field offices on a program basis; keep fully informed of new legislation, court decisions, Presidential Directives, Departmental Orders, and other pertinent regulations or decisions insofar as they may have application to matters within the field of assigned responsibility and submit recommendations to superiors as to changes necessary in investigative or administrative procedures and policies and if same are approved follow to insure compliance. Fulfillment of these responsibilities may require the services of a substantial staff of clerical employees and subject matter specialists. Where this latter situation applies, the type of supervisory control exercised includes top-level work planning and organization; work assignment and review; the full range of supervisory personnel functions; and with some exceptions of a top-policy nature, full technical responsibility for work operations.

Incumbents may be assigned to a field office as a Field Supervisor or Supervisory Senior Resident Agent and in this

## Supervisory Special Agent GS 14

capacity will administer a major section of the field office. Direct and supervise a staff of Special Agents, in grades GS 10 through GS 13, engaged in investigations of a substantial number of the complex and varied matters within the investigative jurisdiction of the FBI. A large number of these investigations are nation-wide in character and coverage and frequently involve a very high degree of controversy; have a significant direct impact upon the national welfare, economy, and/or security; involve highly sensitive issues and investigative problems requiring the utilization of a very high degree of ingenuity. Insure that all investigations are conducted within predetermined deadlines and are in accordance with Bureau rules, policies, and regulations. Provide close analysis to the work of the squad or resident agency with responsibility for identification of specific investigative objectives for concentrated attention by the squad or resident agency; assure investigative effort is expended on the basis of established program priorities in order to concentrate investigative effort on major criminal or security problems; and direct the use of new and innovative methods as warranted. May, as assigned at headquarters city, be called upon to take over control of the office in absence of the Special Agent in Charge and Assistant Special Agent in Charge, and, in either capacity, to take full charge on the scene of major investigations involving such matters as hijackings, kidnapings, bank robberies, organized crime and the like.

Incumbents may be assigned at Headquarters to supervise an administrative program or Unit which has as its primary purpose the support and furtherance of the Bureau's investigative responsibilities. Such assignment may take the form of directing a major segment of the Bureau's complex personnel program, or its records operations, or its fingerprint operations, or related programs. In supervising activities of this nature at Headquarters, incumbents must apply a thorough comprehension of the investigative activities of the Bureau based upon extensive experience as field investigator in order that the function or program supervised may achieve maximum results in servicing the investigative staff of the FBI. In this latter type of supervisory assignment incumbents are expected to develop new and improved techniques within the scope of the program being directed which will have the general overall effect of facilitating the execution of the investigative responsibilities of the FBI. In either case, incumbents are responsible for extensive planning, the results of which have a significant relationship to the work of a large force engaged in a wide variety of dissimilar and complex investigations, many of which have the broadest national or international implication.

May be assigned to the Laboratory Division or other division having forensic science or other technical responsibilities.

Supervisory Special Agent GS 14

Provide direction by reviewing reports or memoranda dealing with the particular investigative situation and issuing instructions to the appropriate office as to the scientific or technical procedures required to bring the investigation to a successful conclusion. Frequently it may be necessary for incumbents to proceed to the field to provide on-the-scene direction of the scientific and technical aspects of highly important and involved cases, e.g., may proceed to the scene of a major kidnaping case to take full charge of the many complicated technical aspects of such investigations. Are expected to originate or develop new scientific techniques of criminal detection, particularly as related to the investigative jurisdiction of the FBI. Represent the Bureau in important contacts with law enforcement agencies throughout the country relative to scientific aspects of crime detection. Serve as technical consultants to local and state law enforcement organizations and to various federal agencies. Conduct a wide variety of highly technical scientific examinations of irreplaceable physical evidence and testify as expert witnesses in state and federal court proceedings.

Are regularly and frequently designated to personally represent the Assistant Director of the division to which assigned or the Special Agent in Charge of the field office to which assigned and to act for that official after the close of regular business hours, including weekends, holidays, and at night. In this capacity receive communications from the field, the Bureau, law enforcement or government agencies, or from private individuals, particularly those of an urgent nature, as well as personal and telephone calls dealing with investigative and/or administrative matters under the jurisdiction of such Assistant Director or Special Agent in Charge. Make appropriate disposition of the vast majority of such matters by issuing instructions in the name of the Assistant Director or Special Agent in Charge, referring the matter to other Special Agents in the division for further handling, by taking whatever emergency measures are necessary, or, in instances of the most delicate urgency, contact the Assistant Director or Special Agent in Charge, recommending appropriate action and receiving instructions as to action to be taken and following through to insure such instructions are carried out.

Are responsible for developing and maintaining contacts of significance in other Government agencies, law enforcement agencies, or in private enterprise in furtherance of the investigative or administrative program to which assigned. Serve as the Bureau's official representative in such contacts and frequently as the Director's personal representative before conferences,

## **Supervisory Special Agent GS 14**

committees, meetings, etc., with authority within certain limits to commit the Bureau to a course of action or to recommend that the Bureau adopt a change or abandon a particular policy or procedure. May be called upon to serve as the Bureau's representative in high level interagency committees where Government policies, particularly those affecting the national security or welfare, are formulated.

May lecture to training classes of new Agents, In-Service Agents, National Academy classes, special schools, or may be designated to appear before groups of Special Agents in field office conferences or to participate as experts in some phase of law enforcement or related endeavor before special groups as assigned. Regardless of the specific assignment in this connection must have acquired an outstanding comprehension of the subject matter.

May serve on the inspection staff by participating in the periodic review and analysis of investigative and administrative procedures to detect weaknesses, recommend corrective action, and foresee potential problems or needs that may arise in the future.

Incumbents at Headquarters, regardless of their specific assignments, must continue to participate to the fullest extent in the training programs and related activities required of all Special Agents. Illustrative of the continuing status of the incumbents as Special Agents is their participation in regular firearms training, expert firearms training, and defensive tactics. Incumbents have complete responsibility for maintaining familiarity with the contents of the various Bureau manuals as well as manual inserts, SAC Memoranda, and other communications containing information of a policy nature. They are required to attend periodic In-Service training and to participate in various specialized schools as appropriate. Incumbents are called upon to perform investigative duties in cases of the highest sensitivity and importance and frequently in such cases act in a supervisory capacity. Such assignments may involve any task falling in the investigative jurisdiction of the FBI. Perform related duties or, in accordance with the needs of the service, may be given special assignments as a result of special skills, training, knowledges, abilities, or aptitudes, which assignments may involve physical hardship or hazard.

It is emphasized that none of these assignments are static; all are subject to change in accordance with exigencies of the service; all are a part of a long-range, competitive program of career development.

Supervisory Special Agent GS 14

2. SUPERVISION RECEIVED:

Receive general direction from the Special Agent in Charge, Assistant Special Agent in Charge, Assistant Director, Section Chief, or other official as appropriate as assigned to a field office or division at FBI Headquarters. Are responsible for planning and organizing work and for developing methods and carrying out work in accordance with established policies. Receive supervision, guidance, and advice regarding matters of policy.



Memorandum from Legal Counsel to Assistant Director, RMD  
Re: THE BLACK PANTHER PARTY, et al., v.  
EDWARD LEVI, et al.

b6  
b7c

it will be necessary for Records Management Division to conduct a review of the excisions in the attached documents to verify that all were made in accordance with the excision guidelines used in this litigation. This matter has been discussed with [redacted]  
[redacted]

RECOMMENDATION: That SPRU conduct the requested review of excisions in the attached documents and furnish Legal Counsel Division with the results.

B

*Handled by affidavit  
dated 1-19-79 JEF*  
*[Signature]*

APPROVED: \_\_\_\_\_

Director \_\_\_\_\_  
Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_

Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgmt. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_

*[Signature]*  
*HNB/R*



APPENDIX A

Appendix A contains documents which plaintiffs obtained from the FBI reading room and which plaintiffs contend are relevant and are within the scope of our Request but which were not produced by defendants.

1. Memorandum dated 4/27/71 from [\*] to W.C. Sullivan, (1 page) which contains the statement, "To afford additional security to our sensitive techniques and operations, it is recommended the COINTELPROS operated by the Domestic Intelligence Division be discontinued."

2. Memorandum dated 4/28/71 from Director, FBI to SAC, Albany (1 page) discontinuing Cointelpros except in certain circumstances.

3. Memorandum dated 12/23/70 from Director, FBI to SAC, Albany (3 pages) concerning investigation of Key Black Extremists and ordering the commencement of an "intensified investigation" of each individual "with the objective of developing complete and detailed information on their day-to-day activities and future plans." This investigation was to include informant coverage, monitoring of bank accounts and safe deposit boxes, and obtaining of handwriting specimens for each individual. The memorandum also ordered an annual check of each individual's federal income tax returns.

4. Memorandum dated 11/10/70 from Director, FBI to 39 SACs (2 pages) forwarding a column proposing that union members refuse to handle shipments of BPP newspapers and recommending

340920  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9103R00/kuh

that each office anonymously mail copies to unions and others , who could encourage such a boycott.

5. Memorandum dated 11/2/70 from G.C. Moore to [\*] (2 pages) seeking authority to "expand the use of concealed recording devices in covering" public appearances of black extremists.

6. Memorandum dated 10/11/69 from New York to Director, FBI (2 pages) stating that, "the BPP is charged general rate for printed material at this time, however, following a discussion with [\*\*] it was determined that beginning with this shipment, [\*\*] will charge full legal rate allowable for newspaper shipment." This it was noted would constitute a 40 percent increase in shipment costs. It was recommended that this be done throughout the United States.

7. Memorandum dated 10/10/68 from G.C. Moore to W.C. Sullivan (2 pages) recommending that a certain item be given to the news media. The statement to be circulated was: "According to zoologists, the main difference between a panther and other large cats is that the panther has the smallest head." The memo states, "This is biologically true. Publicity to this effect might help neutralize Black Panther recruiting efforts."

8. Memorandum dated 4/5/71 from SAC, New York, to Director, FBI (2 pages) suggesting that because the [\*] faction of the BPP is outside the United States they will be more susceptible to counterintelligence than the Newton faction.

9. Memorandum dated 12/2/68 from Director, FBI to SAC, Baltimore (1 page):

[\*\*] signifies a deletion which appeared in the document as reviewed by plaintiffs' in the FBI reading room

[F]or the information of recipient offices a serious struggle is taking place between the Black Panther Party (BPP) and the US organization. The struggle has reached such proportions that it is taking on the aura of gang warfare with attendant threats of murder and reprisals.

In order to fully capitalize upon BPP and US differences as well as to exploit all avenues of creating further dissension in the ranks of the BPP, recipient offices are instructed to submit imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP.

10. Memorandum dated 9/30/69 from Director, FBI to SAC, Milwaukee concerning the anonymous mailing of information to a University about an employee who was a supporter of the Black Panther Party.

11. Memorandum dated 11/6/69 from Director, FBI to SAC, Springfield concerning coverage of speeches by a member of the Black Panther Party.

12. Memorandum dated 4/7/70 from SAC, Miami to Director, FBI concerning FBI contacts with the media.

13. Memorandum dated 6/17/70 from Director, FBI to SAC, Philadelphia authorizing the mailing of an anonymous letter to Huey Newton designated to create dissension within the Party.

14. Memorandum dated 5/19/71 from SAC, New Haven to Director FBI concerning publicity generated about the Party by the FBI.

15. Memorandum dated 12/30/68 from G. C. Moore to W. C. Sullivan concerning the furnishing of information by the Crime Records Division to a cooperative news source.

16. Memorandum dated 10/31/68 from Director, FBI to SAC, Los Angeles regarding capitalizing on BPP and US differences.

17. Memorandum dated 9/3/68 from Director, FBI to San Francisco concerning acceleration of the counterintelligence program against the BPP.

18. Memorandum dated 3/4/68 from Director, FBI to SAC, Albany concerning expansion of the counterintelligence program.

# ROUTE IN ENVELOPE

- 2 - Mr. Sullivan
- 2 - Mr. Brennan
- 1 - Mr. Branigan

b6  
b7c

Mr. V. C. Sullivan

4/27/71

Mr. C. D. Brennan

Mr. Gray

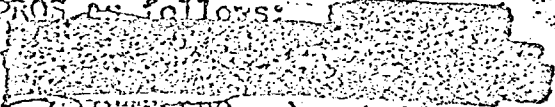
- 1 - Mr. G.C. Moore
- 1 - Mr. Shackelford

~~CONFIDENTIAL~~

COUNTERINTELLIGENCE PROGRAMS (COINTELPROS) - INTERNAL SECURITY - RACIAL MATTERS

To afford additional security to our sensitive techniques and operations, it is recommended the COINTELPROS operated by the Domestic Intelligence Division be discontinued.

At the present time this Division operates seven COINTELPROS as follows:



- COINTELPRO - New Left
- COINTELPRO - Disruption of White Hate Groups
- COINTELPRO - Communist Party, USA
- Counterintelligence and Special Operations
- COINTELPRO - Black Extremists
- Socialist Workers Party - Disruption Program

These programs involve a variety of sensitive intelligence techniques and disruptive activities which are afforded close supervision at the Seat of Government. They have been carefully supervised with all actions being afforded prior Bureau approval and an effort has been made to avoid engaging in harassment. Although successful over the years, it is felt they should now be discontinued for security reasons because of their sensitivity.

In exceptional instances where counterintelligence action is warranted, it will be considered on a highly selective individual basis with tight procedures to insure absolute security.

**ACTION:**

If approved, attached airtel will be sent to all field offices discontinuing our COINTELPROS.

- Enclosure
- 1 - 65-69260
  - 1 - 100-449698
  - 1 - 157-9
  - 1 - 100-3-104
  - 1 - 105-174254
  - 1 - 100-348006
  - 1 - 100-436201

65-69260-  
NOT RECORDED  
APR 30 1971

~~CONFIDENTIAL~~

Date of Discontinuation: 4/27/71  
 General: [unclear]  
 Special: [unclear]

5000

ROUTE TO ENVIRONMENT

4/28/71

b6

b7C

Airtel

~~CONFIDENTIAL~~

- 1 - Mr. Sullivan
- 1 - Mr. Brennan
- 1 - Mr. Branigan
- 1 - Mr. Gray
- 1 - Mr. G.C. Hood
- 1 - Mr. Sackelfor
- 1 - [Redacted]
- 1 - [Redacted]

To: SAC, Albany

PERSONAL ATTENTION

From: Director, FBI

COUNTERINTELLIGENCE PROGRAMS (COINTELPROS)  
INTERNAL SECURITY - RACIAL MATTERS

Effective immediately, all COINTELPROS operated by this Bureau are discontinued. These include:

- COINTELPRO - New Left
- COINTELPRO - Disruption of White Hate Groups
- COINTELPRO - Communist Party, USA
- Counterintelligence and Special Operations
- COINTELPRO - Black Extremists
- Socialist Workers Party - Disruption Program

In exceptional instances where it is considered counterintelligence action is warranted, recommendations should be submitted to the Bureau under the individual case caption to which it pertains. These recommendations will be considered on an individual basis.

You are reminded prior Bureau authority is required before initiating any activity of a counterintelligence nature.

2 - All Field Offices (PERSONAL ATTENTION)

- 1 - 65-69260
- 1 - 100-449698
- 1 - 157-9
- 1 - 100-3-104
- 1 - 105-174254
- 1 - 100-448005
- 1 - 100-436291

65-69260-

NOT RECORDED

MAY 10 1971

DUPLICATE YELLOW

DR:efw  
(136)

NOTE: See memorandum, same caption, dated 4/27/71, prepared by DR:efw.

440000

Classified by 5436  
Exempt from automatic  
Date of Declassification Indefinite

59 MAY 19 1971

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 12-23-93 BY 9803 RDD/mey

- 1 - Mr. W. C. Sullivan
- 1 - Mr. J. P. Mohr
- 1 - Mr. C. D. Brennan
- 1 - Mr. Casper
- 1 - Mr. Conrad
- 1 - [redacted]
- 1 - [redacted]
- 1 - [redacted]

APPROPRIATE AGENCIES  
AND FIELD OFFICES  
ADVISED BY ROUTING  
SLIP(S) OF [redacted]  
DATE 4-2-77

To: SAC, Albany  
From: Director, FBI

KEY BLACK EXTREMIST PROGRAM  
RACIAL MATTERS

During your investigations of black extremist organizations and individuals, you have furnished information indicating that certain individuals are extremely active and most vocal in their anti-Government statements and their calls for terrorism and violence. Although the violence potential in all black extremists necessitates continued priority attention by all offices, there are certain individual leaders and activists who can be considered as Key Black Extremists (KBE).

At this time, the Bureau is designating those on the attached list as KBEs. The term KBE does not require that an individual actually hold an official position in an organization but is to include others of equal importance because of their influence as black extremists.

An intensified investigation of each person on the attached list must be immediately instituted with the objective of developing complete and detailed information on their day-to-day activities and future plans. Each office must continually remain alert for additions to the KBE list. Submit all recommendations to make specific subjects KBEs to the Bureau for approval. These cases must be given intensive investigative attention and close supervision by all offices. Maintain a high level of

Enclosure  
2 - All Offices (Enclosure)

NOT RECORDED  
48 JAN 5 1971

SEE NOTE PAGE THREE

MAILED 21  
DEC 30 1970

- Tolson
- Sullivan
- Mohr
- Bishop
- Brennan, C.D.
- Callahan
- Casper
- Conrad
- Felt
- Gale
- Rosen
- Soyars
- Tavel
- Walters
- Tele. Room
- Holmes
- Gandy

58 JAN 8 1971  
MAIL ROOM TELETYPE UNIT

[Handwritten signatures and initials]

Airtel to SAC, Albany  
KEY BLACK EXTREMIST PROGRAM

Informant coverage on the subjects. All avenues of investigative attention must be explored and necessary recommendations to the Bureau must be made promptly.

The desirable coverage must include, but not be limited to, the following investigation. These investigations must be conducted with initiative and imagination in order that the desired results are achieved. Each of these cases will receive close scrutiny at the Bureau.

(1) All KBEs must be included in Priority I of the Security Index. If not already so included, promptly submit FD-122.

(2) All KBEs must be included in the Black Nationalist Photograph Album (BNPA). Promptly submit photograph and required background on each KBE not presently in the BNPA and when a subject is designated a KBE.

(3) All aspects of the finances of a KBE must be determined. Bank accounts must be monitored. Safe deposit boxes, investments, and hidden assets must be located and available information regarding them must be reported.

(4) Continued consideration must be given by each office to develop means to neutralize the effectiveness of each KBE. Any counterintelligence proposal must be approved by the Bureau prior to implementation.

(5) Obtain suitable handwriting specimens of each KBE to be placed in the National Security File in the Laboratory. When possible, obtain specimens from public records, law enforcement agencies, and similar sources. Send specimens to the Bureau under separate cover letter by registered mail for the attention of the FBI Laboratory. When they are of value as evidence, so state in the transmittal letter and request their return after copies have been made. Specimens should be sufficient to permit future comparisons by the Laboratory.



Airtel to SAC, Albany  
KEY BLACK EXTREMIST PROGRAM

(6) Particular efforts should be made to obtain records of and/or reliable witnesses to, inflammatory statements made which may subsequently become subject to criminal proceedings. Promptly record all such information in interview report form.

(7) Where there appears to be a possible violation of a statute within the investigative jurisdiction of the Bureau, the substantive violation character should be included in subsequent communications and the possible violation vigorously investigated in accordance with existing instructions.

(8) Particular attention must be paid to travel by a KBE and every effort made to determine financial arrangements for such travel. If a credit card is used, determine its validity and the amount being charged to that card on a continuing basis. Travel information must be submitted to the Bureau and interested offices by appropriate communication to permit coverage of the KBE. It will be the responsibility of the office of origin to insure that the activities of the KBE are covered by auxiliary offices.

(9) The Federal income tax returns of all KBEs must be checked annually in accordance with existing instructions.

If no investigative summary report has been submitted in each case, such a report must be submitted to the Bureau by 2/15/71. Thereafter, an investigative report should be submitted at least every 90 days. Furthermore, appropriate communications suitable for dissemination should be promptly submitted in the interim to keep the Bureau fully advised of the activities of each KBE. The words (Key Black Extremist:) should be included in the character of each communication submitted except those communications (including reports) which are prepared for dissemination.

NOTE: See memorandum G. C. Moore to C. D. Brennan, dated 12/22/70, captioned as above, prepared by CEG:ekv.

ROUTED TO [unclear] ADE

- 1 - Mr. J. P. Mohr
- 1 - Mr. C. D. Brennan
- 1 - Mr. J. J. Casper
- 1 - Mr. G. C. Moore

11-10-70

Airtel

340970  
 ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9-13-93 BY 9103 BROOKH

1 - [redacted]  
 1 - [redacted]  
 1 - [redacted]  
 1 - [redacted]

- To: SACs, Alexandria (Encs - 50)  
 Atlanta (Encs - 50)  
 Baltimore (Encs - 50)  
 Boston (Encs - 50)  
 Buffalo (Encs - 50)  
 Charlotte (Encs - 50)  
 Chicago (Encs - 50)  
 Cincinnati (Encs - 50)  
 Cleveland (Encs - 50)  
 Columbia (Encs - 50)  
 Dallas (Encs - 50)  
 Denver (Encs - 50)  
 Detroit (Encs - 50)  
 Houston (Encs - 50)  
 Indianapolis (Encs - 50)  
 Jacksonville (Encs - 50)  
 Kansas City (Encs - 50)  
 Los Angeles (Encs - 50)  
 Miami (Encs - 50)  
 Milwaukee (Encs - 50)

- Newark (Encs - 50)  
 New Haven (Encs - 50)  
 New Orleans (Encs - 50)  
 New York (Encs - 50)  
 Norfolk (Encs - 50)  
 Omaha (Encs - 50)  
 Philadelphia (Encs - 50)  
 Pittsburgh (Encs - 50)  
 Portland (Encs - 50)  
 Richmond (Encs - 50)  
 Sacramento (Encs - 50)  
 St. Louis (Encs - 50)  
 San Diego (Encs - 50)  
 San Francisco (Encs - 50)  
 Savannah (Encs - 50)  
 Seattle (Encs - 50)  
 Springfield (Encs - 50)  
 Tampa (Encs - 50)  
 WFO (Encs - 50)

MAILED 44  
 NOV 13 1970  
 DOMESTIC

From: Director, FBI (100-448006) JT-115

COUNTERINTELLIGENCE MEASURES  
 BLACK PANTHER PARTY  
 RACIAL MATTERS

REC 63 100 111 2153

NOV 13 1970

Enclosed for each office are 50 reproductions of a column written by Victor Riesel regarding Black Panther Party (BPP):

ENCLOSURE

BEH:bad (88)

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 EXCEPT WHERE SHOWN  
 OTHERWISE.

SEE NOTE PAGE TWO

- Tolson
- Sullivan
- Walters
- Bishop
- Brennan, C.D.
- Callahan
- Casper
- Conrad
- Felt
- Gale
- Rosen
- Tavel
- Walters
- Soyars
- Gandy

NOV 17 1970

MAIL ROOM  TELETYPE UNIT

Robert 5302

*[Handwritten signatures and initials: J.P. Mohr, C.D. Brennan, J.J. Casper, G.C. Moore, W.C. Jacka, etc.]*

Airtel to SAC, Alexandria  
RE: COUNTERINTELLIGENCE MEASURES  
BLACK PANTHER PARTY

100-748006

Portion of column deals with proposal that union members refuse to handle shipments of BPP newspapers. Obviously if such a boycott gains national support it will result in effectively cutting off BPP propaganda and finances; therefore, it is most desirable this proposal be brought to attention of members and officials of unions such as Teamsters and others involved in handling of shipments of BPP newspapers. These shipments are generally by air freight. The column also deals with repeated calls for murder of police that appear in BPP paper; therefore, it would also be desirable to bring boycott proposal to attention of members and officials of police associations who might be in position to encourage boycott.

Each office anonymously mail copies of enclosed to officials of appropriate unions, police organizations or other individuals within its territory who could encourage such a boycott. Use commercially purchased envelopes and take appropriate measures to insure mailing cannot be traced to Bureau. Make no dissemination of this column other than anonymously.

Handle promptly and advise Bureau of any positive results noted. Any publicity observed concerning proposed boycott should be brought to attention of Bureau.

Be alert for any other opportunities to further exploit this proposal. Submit any suggestions to Bureau for approval prior to taking action.

NOTE:

By memorandum G. C. Moore to C. D. Brennan, 10-28-70, captioned "Racial Conference, October 22-23, 1970, Recommendation for Counterintelligence Action Against Black Panther Party" the reproduction and anonymous mailing of attached column was approved.

UNITED STATES GOVERNMENT

# Memorandum

- Tolson \_\_\_\_\_
- Sullivan \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Bishop \_\_\_\_\_
- Walters \_\_\_\_\_
- Belmont \_\_\_\_\_
- Mohr \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Soyars \_\_\_\_\_
- Tavel \_\_\_\_\_
- Trotter \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

- 1 - Mr. W. C. Sullivan
- 1 - Mr. J. P. Mohr
- 1 - Mr. C. D. Brennan
- 1 - Mr. A. Rosen
- 1 - Mr. J. J. Casper
- 1 - Mr. G. C. Moore
- 1 - [redacted]

DATE: November 2, 1970

TO: Mr. C. D. BRENNAN

FROM: Mr. G. C. MOORE

SUBJECT: RACIAL CONFERENCE, OCTOBER 22-23, 1970,  
RECOMMENDATION TO MODIFY INSTRUCTIONS  
CONCERNING RECORDINGS OF BLACK AND NEW  
LEFT PUBLIC APPEARANCES

To obtain authority to send attached airtel to all field offices concerning the recording of public appearances of black and New Left extremists.

Memorandum G. C. Moore to Mr. W. C. Sullivan 5/21/69 obtained authority to instruct the field to expand the use of concealed recording devices in covering such appearances. Since that time, the field has reported a large number of such appearances and Special Agents in Charge (SACs) have always demonstrated sound judgment in affording such coverage under secure conditions. On a number of occasions, because of extremely short notice concerning appearances, there has been insufficient time to obtain Bureau authority. Because of this, valuable evidentiary material has been lost. Recordings are the best possible evidence of extremist statements actually made in the event of prosecutive action. This matter was discussed in depth at captioned conference with field supervisors. It was the unanimous recommendation of those supervisors that present instructions concerning such recordings should be modified in one respect to allow SACs to arrange on their own initiative for recordings.

The recommendation has merit. SACs have uniformly demonstrated excellent judgment in making such recordings to date and should be given authority to record public appearances by black and New Left extremists whenever full security can be assured except when such appearances are at educational institutions. When at educational institutions, the field must still obtain prior Bureau authority. This will give the field necessary flexibility to record public appearances even when advance notice is extremely short. The modification will in no way supersede or conflict with authority to record statements given in individual cases under investigation such as the Antiriot Law investigations which arose out of violence at the 8/68 Democratic National Convention on subjects known as the "Chicago 7" and their defense attorneys William M. Kunstler and Leonard I. Weinglass.

Enclosure *encl*

(9)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11-5-70 BY 115-10  
CONTINUED - OVER

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-83 BY 115-10-ROD/DA

*11/11/5077*  
*3. 11/11/5077*

Memorandum to Mr. C. D. Brennan  
RE: RACIAL CONFERENCE, OCTOBER 22-23, 1970,  
RECOMMENDATION TO MODIFY INSTRUCTIONS CONCERNING  
RECORDINGS OF BLACK AND NEW LEFT PUBLIC APPEARANCES

ACTION:

If approved, attached airtel will be sent to  
all field offices in accordance with the above. No Manual  
changes are necessary.

*l.s.*

*OK*  
*h*  
*WBS*  
*[Signature]*

WBS

10-11-69

TO DIRECTOR

FROM NEW YORK

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 9-13-83 BY 9803 BROC/MH

COUNTERINTELLIGENCE PROGRAM BLACK NATIONALIST  
HATE GROUPS RACIAL INTELLIGENCE BLACK PANTHER PARTY (BPP)

CONTACT WITH OFFICIALS, TEN NINE SIXTY NINE, [REDACTED]

[REDACTED] NEW YORK,

INTERNATIONAL AIRPORT, JAMAICA, NEW YORK, REFLECTS THAT THE  
BPP PICKS UP PANTHER NEWSPAPERS ON A WEEKLY BASIS, TARIFF  
FOR WHICH IS USUALLY PAID IN COIN RATHER BILLS.

PAPERS ARE PACKED IN GALLO WINE BOXES SEALED WITH BROWN  
PAPER. [REDACTED] ADVISED THE BPP IS CHARGED

GENERAL RATE FOR PRINTED MATERIAL AT THIS TIME, HOWEVER,

FOLLOWING A DISCUSSION WITH [REDACTED] IT WAS DETERMINED

THAT BEGINNING WITH THIS SHIPMENT, [REDACTED] WILL CHARGE FULL LEGAL

RATE ALLOWABLE FOR NEWSPAPER SHIPMENT. OFFICIALS ADVISE

THIS INCREASE IS SEVEN DOLLARS AND FIFTY CENTS PER HUNDRED

WEIGHT AND SINCE BPP SHIPS BETWEEN THREE TO FOUR THOUSAND

END PAGE ONE.

This document contains neither  
recommendations nor conclusions of  
the FBI. It is the property of  
the FBI and is loaned to your agency;  
it and its contents are not to be  
distributed outside your agency.

100-0

1371

PAGE TWO

POUNDS, THIS INCREASE WILL COME TO TWO HUNDRED TWENTY FIVE TO THREE HUNDRED DOLLARS PER WEEKLY SHIPMENT TO NEW YORK WHICH MEANS APPROXIMATELY FORTY PERCENT INCREASE. [REDACTED] AGREE TO DETERMINE CONSIGNOR IN SAN FRANCISCO AND FROM THIS DETERMINE ALL CONSIGNEES THROUGHOUT THE UNITED STATES SO THAT THEY CAN IMPOSE FULL LEGAL TARIFF.

THEY BELIEVE THE [REDACTED] ARE DUE THE DIFFERENCE IN FREIGHT TARIFFS AS NOTED ABOVE FOR PAST SIX TO EIGHT MONTHS, AND ARE CONSIDERING DISCUSSIONS WITH THEIR LEGAL STAFF CONCERNING SUIT FOR RECOVERY OF DEFICIT FROM CONSIGNEES THEY ESTIMATE THAT IN NEW YORK ALONE WILL EXCEED TEN THOUSAND DOLLARS.





PANTHER PINHEADS

The Student Nonviolent Coordinating Committee (SNCC) and the Black Panthers, two black nationalist extremist groups, are still feuding. Stokely Carmichael has gone over to the Panthers and the Panthers seem to be upstaging the older SNCC group.

Now SNCC is retaliating by circulating, sub rosa, this little item:

"According to zoologists, the main difference between a panther and other large cats is that the panther has the smallest head."

In short, the Panthers are pinheads!

Handwritten initials and scribbles, including "H.C." and "M".

- Mr. Tolson \_\_\_\_\_
- Mr. DeLoach \_\_\_\_\_
- Mr. Mohr \_\_\_\_\_
- Mr. Bishop \_\_\_\_\_
- Mr. Casper \_\_\_\_\_
- Mr. Callahan \_\_\_\_\_
- Mr. Conrad \_\_\_\_\_
- Mr. Felt \_\_\_\_\_
- Mr. Gale \_\_\_\_\_
- Mr. Rosen \_\_\_\_\_
- Mr. Sullivan \_\_\_\_\_
- Mr. Tavel \_\_\_\_\_
- Mr. Trotter \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Miss Holmes \_\_\_\_\_
- Miss Gandy \_\_\_\_\_

MAIL ROOM

COINTELPRO

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

# Memorandum

TO : DIRECTOR, FBI (100-448006)

FROM : SAC, NEW YORK (100-161140) (P)

SUBJECT: COINTELPRO - BLACK EXTREMISTS  
RM

DATE: 4/5/71

Handwritten initials and scribbles, possibly "JLL" and "100-161140".

Handwritten initials and scribbles, possibly "100-161140".

ReNYlet to the Bureau, 3/2/71.

Referenced letter pointed out that the Black Panther Party (BPP) had undergone a complete bouleversement in its organization and operations in the New York City area which left its local operations in a state of chaos.

Since the date of referenced letter, the BPP has split into two factions in the New York City area, namely the CLEAVER and NEWTON supporters. This dichotomy apparently has been instrumental in the shooting and killing of ROBERT WEBB, a functionary of the Cleaver faction in New York City.

These tumultuous events have made it difficult for the NYO to formulate specific and practical counterintelligence proposals which would be timely and productive.

New York feels that while at this time there are no specific proposals to be submitted, it is obvious that it would be detrimental to the continuing efforts of the BPP as a whole to keep the two opposed factions from reaching a detente or at least seeking a rapprochement in their future dealings.

Inasmuch as the leadership of the Cleaver faction is without the continental boundaries of the United States, it will make it more difficult for that group to communicate with and control the operations of the rank and file membership of that group.

Therefore, this will make that faction more susceptible to counterintelligence techniques than the Newton faction.

New York will in the immediate future submit counterintelligence proposals against the Cleaver faction of the BPP designed to widen the existing rift within the BPP.

Vertical stamp: ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 9-19-93 BY 9603R001/mt

100-10140

(2) Bureau (RM)  
1-New York

JLL:ss  
(3)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

6 APR 6 1971

Handwritten signature and stamp: DEPARTMENT SECRET

NY 100-161140

"From what I could quickly peruse in the papers shown me that pertain to your organization it would appear that you have a fink operating in some East Coast city who is reporting directly to the Government.

"The only things I could gather that could describe this 'informer' is that he apparently is a white Jew boy who works in some professional or executive capacity and handles some financial aspects of your operations.

"I am a white liberal who holds no truck with your aims or objectives, but I cannot stand by and watch this KKK country become a fascist police state.

"Pro Bona Publica"

The above-proposed letter is an attempt to discredit an advisor of the national BPP, in his future dealings with the BPP.

It is felt that the above-described format could be used for many other situations with a counterintelligence aspect and is not intended to be limited to this one proposal.

New York believes that the proposed letter could be prepared in a manner that could not be traced to the Bureau. No action on this matter will be taken without prior Bureau approval.

SAC, Baltimore

Director, FBI (100-448006)

- 1 - Mr. C. D. DeLoach
- 1 - Mr. W. C. Sullivan
- 1 - Mr. G. C. Moore
- 1 - [REDACTED]

- 1 - [REDACTED]
- 1 - [REDACTED]

COUNTERINTELLIGENCE PROGRAM  
 BLACK NATIONALIST - HATE GROUPS  
 RACIAL INTELLIGENCE (BLACK PANTHER PARTY)  
 (BUDED 12/2/68)

For the information of recipient offices a serious struggle is taking place between the Black Panther Party (BPP) and the US organization. The struggle has reached such proportions that it is taking on the aura of gang warfare with attendant threats of murder and reprisals.

In order to fully capitalize upon BPP and US differences as well as to exploit all avenues of creating further dissension in the ranks of the BPP, recipient offices are instructed to submit imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP.

Commencing December 2, 1968, and every two-week period thereafter, each office is instructed to submit a letter under this caption containing counterintelligence measures aimed against the BPP. The bi-weekly letter should also contain accomplishments obtained during the previous two-week period under captioned program.

All counterintelligence actions must be approved at the Bureau prior to taking steps to implement them.

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 10-13-83 BY 6032RC/MLA

- 2 - Boston
- 2 - Chicago
- 2 - Cleveland
- 2 - Denver
- 2 - Indianapolis
- 2 - Los Angeles
- 2 - Newark
- 2 - New York
- 2 - Omaha
- 2 - Sacramento
- 2 - San Diego
- 2 - San Francisco
- 2 - Seattle

MAILED 2  
 NOV 25 1968  
 COMM-FBI

REC-35  
 19 DEC 12 1968  
 482

- \_\_\_\_\_ Tolson
- \_\_\_\_\_ DeLoach
- \_\_\_\_\_ Mohr
- \_\_\_\_\_ Bishop
- \_\_\_\_\_ Casper
- \_\_\_\_\_ Callahan
- \_\_\_\_\_ Conrad
- \_\_\_\_\_ Felt
- \_\_\_\_\_ Gale
- \_\_\_\_\_ Rosen
- \_\_\_\_\_ Sullivan
- \_\_\_\_\_ Tavel
- \_\_\_\_\_ Trotter
- \_\_\_\_\_ Tele. Room
- \_\_\_\_\_ Holmes
- \_\_\_\_\_ Gandy

SEE NOTE PAGE TWO

100-448006-1075

COUNTERTEL PRO

1 - [REDACTED]

SAC, Milwaukee (157-459)

9/30/69

EX-106 REC-89

Director, FBI (100-448006) — 130

*Handwritten initials*

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

b6  
b7c

[REDACTED]

ReMilairtel 9/22/69.

Permission is granted to anonymously mail the article mentioned in referenced airtel to the Chief Administrators of the University of Wisconsin. Strict security must be maintained and the Bureau not identified as the source of this mailing. The note which should accompany the article should refer to [REDACTED] as an employee of the University. Advise the Bureau of the results of this mailing.

*Handwritten mark*  
: NOTE.

Milwaukee has furnished information indicating that

[REDACTED]

[REDACTED] is listed as a sponsor of the "International Committee to Defend Eldridge Cleaver." Cleaver is a BPP leader who has fled from the U. S. to avoid trial. Milwaukee is recommending that this information be anonymously furnished to officials at the University of Wisconsin. We are authorizing this anonymous mailing. It is extremely important that followers of this notorious black nationalist group are exposed especially if they are in the education field.

- Tolson \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Trotter \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holloman \_\_\_\_\_
- Gandy \_\_\_\_\_

MAILED 21  
SEP 30 1969  
COMM-FBI

OCT 9 - 1969

MAIL ROOM  TELETYPE UNIT

*Handwritten notes:* ways, Dist, 9/1/69

*Handwritten signature:* OCY/SL

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803 RDM/MLH

3/4/68

RA

ALPHEL

- 1 - Mr. C. D. DeLoach
- 1 - Mr. W. C. Sullivan
- 1 - Mr. G. C. Moore
- 1 - [REDACTED]
- 1 - [REDACTED]

To: SAC, Albany

PERSONAL ATTENTION

REC 18

From: Director, FBI (100-443005) - 17

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-ILATE GROUPS  
RACIAL INTELLIGENCE

240000

MAR 9 1968 9:13 AM

MAILED 12  
MAR 5 1968  
COMM-FBI

Title is changed to substitute Racial Intelligence for Internal Security for Bureau routing purposes.

PERSONAL ATTENTION FOR ALL THE FOLLOWING SACS

- |                  |                   |
|------------------|-------------------|
| 2 - Atlanta      | 2 - Minneapolis   |
| 2 - Baltimore    | 2 - Mobile        |
| 2 - Birmingham   | 2 - Newark        |
| 2 - Boston       | 2 - New Haven     |
| 2 - Buffalo      | 2 - New Orleans   |
| 2 - Charlotte    | 2 - New York      |
| 2 - Chicago      | 2 - Omaha         |
| 2 - Cincinnati   | 2 - Philadelphia  |
| 2 - Cleveland    | 2 - Phoenix       |
| 2 - Denver       | 2 - Pittsburgh    |
| 2 - Detroit      | 2 - Portland      |
| 2 - Houston      | 2 - Richmond      |
| 2 - Indianapolis | 2 - Sacramento    |
| 2 - Jackson      | 2 - San Diego     |
| 2 - Jacksonville | 2 - San Francisco |
| 2 - Kansas City  | 2 - Seattle       |
| 2 - Los Angeles  | 2 - Springfield   |
| 2 - Memphis      | 2 - St. Louis     |
| 2 - Miami        | 2 - Tampa         |
| 2 - Milwaukee    | 2 - WFO           |

Chk

- Tolson \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Trotter \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

JD:YEM (88)  
1 3 1 1  
MAR 8 1968

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

SEE NOTE PAGE SIX

D.A.

W.C.S.

Airtel to SAC, Albany  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS

BACKGROUND

By letter dated 8/25/67 the following offices were advised of the beginning of a Counterintelligence Program against militant Black Nationalist-Hate Groups:

Albany	Memphis
Atlanta	Newark
Baltimore	New Orleans
Boston	New York
Buffalo	Philadelphia
Charlotte	Phoenix
Chicago	Pittsburgh
Cincinnati	Richmond
Cleveland	St. Louis
Detroit	San Francisco
Jackson	Washington Field
Los Angeles	

Each of the above offices was to designate a Special Agent to coordinate this program. Replies to this letter indicated an interest in counterintelligence against militant black nationalist groups that resort violence and several offices outlined procedures which had been effective in the past. For example, Washington Field Office had furnished information about a new Nation of Islam (NOI) grade school to appropriate authorities in the District of Columbia who investigated to determine if the school conformed to District regulations for private schools. In the process WFO obtained background information on the parents of each pupil.

The Revolutionary Action Movement (RAM), a pro-Chinese communist group, was active in Philadelphia, Pa., in the summer of 1967. The Philadelphia Office alerted local police, who then put RAM leaders under close scrutiny. They were arrested on every possible charge until they could no longer make bail. As a result, RAM leaders spent most of the summer in jail and no violence traceable to RAM took place.

The Counterintelligence Program is now being expanded to include 41 offices. Each of the offices added to this program should designate an Agent familiar with Black

Airtel to SAC, Albany  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS

nationalist activity, and interested in counterintelligence, to coordinate this program. This Agent will be responsible for the periodic progress letters being requested, but each Agent working this type of case should participate in the formulation of counterintelligence operations.

#### GOALS

For maximum effectiveness of the Counterintelligence Program, and to prevent wasted effort, long-range goals are being set.

1. Prevent the coalition of militant black nationalist groups. In unity there is strength; a truism that is no less valid for all its triteness. An effective coalition of black nationalist groups might be the first step toward a real "Mau Mau" in America, the beginning of a true black revolution.

2. Prevent the rise of a "messiah" who could unify, and electrify, the militant black nationalist movement. Malcolm X might have been such a "messiah;" he is the martyr of the movement today. Martin Luther King, Stokely Carmichael, and Elijah Muhammed all aspire to this position. Elijah Muhammed is less of a threat because of his age. King could be a very real contender for this position should he abandon his supposed "obedience" to "white, liberal doctrines" (nonviolence) and embrace black nationalism. Carmichael has the necessary charisma to be a real threat in this way.

3. Prevent violence on the part of black nationalist groups. This is of primary importance, and is, of course, a goal of our investigative activity; it should also be a goal of the Counterintelligence Program. Through counterintelligence it should be possible to pinpoint potential troublemakers and neutralize them before they exercise their potential for violence.

4. Prevent militant black nationalist groups and leaders from gaining respectability, by discrediting them to three separate segments of the community. The goal of discrediting black nationalists must be handled tactically in three ways. You must discredit these groups and individuals to, first, the responsible Negro community. Second, they must be discredited to the white community.



Airtel to SAC, Albany  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS

b6  
b7c

both the responsible community and to "liberals" who have vestiges of sympathy for militant black nationalist simply because they are Negroes. Third, these groups must be discredited in the eyes of Negro radicals, the followers of the movement. This last area requires entirely different tactics from the first two. Publicity about violent tendencies and radical statements merely enhances black nationalists to the last group; it adds "respectability" in a different way.

5. A final goal should be to prevent the long-range growth of militant black nationalist organizations, especially among youth. Specific tactics to prevent these groups from converting young people must be developed.

Besides these five goals counterintelligence is a valuable part of our regular investigative program as it often produces positive information.

#### TARGETS

Primary targets of the Counterintelligence Program, Black Nationalist-Hate Groups, should be the most violent and radical groups and their leaders. We should emphasize those leaders and organizations that are nationwide in scope and are most capable of disrupting this country. These targets should include the radical and violence-prone leaders, members, and followers of the:

Student Nonviolent Coordinating Committee (SNCC),  
Southern Christian Leadership Conference (SCLC),  
Revolutionary Action Movement (RAM),  
Nation of Islam (NOI)

Offices handling these cases and those of Stokely Carmichael of SNCC, H. Rap Brown of SNCC, Martin Luther King of SCLC, [redacted] of RAM, and Elijah Muhammed of NOI, should be alert for counterintelligence suggestions.

#### INSTRUCTIONS

Within 30 days of the date of this letter each office should:

1. Advise the Bureau of the identity of the Special Agent assigned to coordinate this program.

Airtel to SAC, Albany  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS

2. Submit a very succinct summary of the black nationalist movement in the field office territory. Include name, number of members and degree of activity of each black nationalist group. Also state your estimate of each group's propensity for violence. This is for target evaluation only, not for record purposes. Second, list Rabble-Rouser Index subjects who are militant black nationalists and any other militant black nationalist leaders who might be future targets of counterintelligence action because of their propensity for violence. Include a minimum of background information on each person listed; a few descriptive sentences should suffice.

3. List those organizations and individuals you consider of such potential danger as to be considered for current counterintelligence action. Briefly justify each target.

4. Submit any suggestion you have for overall counterintelligence action or the administration of this program. Suggestions for action against any specific target should be submitted by separate letter.

5. Submit, by separate letter, suggestions for counterintelligence action against the targets previously listed as field-wide. These should not be general, such as "publicize Stokely Carmichael's travel to communist countries," but should be specific as to target, what is to be done, what contacts are to be used, and all other information needed for the Bureau to approve a counterintelligence operation.

Thereafter, on a ninety-day basis, each office is to submit a progress letter summarizing counterintelligence operations proposed during the period, operations effected, and tangible results. Any changes in the overall black nationalist movement should be summarized in this letter. This should include new organizations, new leaders, and any changes in data listed under number two above. Suggestions for counterintelligence operations should not be set out in this progress letter. Use the following captions:

1. Operations Under Consideration, 2. Operations Being Effected, 3. Tangible Results, and 4. Development of Counterintelligence Interest. These 90-day progress letters are due at the Bureau the first day of March, June, September, and December, excepting March, 1968.

Airtel to SAC, Albany  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS

The effectiveness of counterintelligence depends on the quality and quantity of positive information available regarding the target and on the imagination and initiative of Agents working the program. The response of the field to the Counterintelligence Program against the Communist Party, USA, indicates that a superb job can be done by the field on counterintelligence.

Counterintelligence operations must be approved by the Bureau. Because of the nature of this program each operation must be designed to protect the Bureau's interest so that there is no possibility of embarrassment to the Bureau. Beyond this the Bureau will give every possible consideration to your proposals.

NOTE:

See memorandum G. C. Moore to Mr. U. C. Sullivan captioned as above dated 2/29/68, prepared by TJD:rma.

RCV [redacted] ENVELOPE

SAC, Springfield (157-802)

November 6, 1969

*C57*

Director, FBI (100-448005)

1 - [redacted]  
1 - [redacted]  
1 - [redacted]  
1 - [redacted]  
1 - [redacted]

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-23-93 BY 9102ARD/ren

ReSIairtel 10/31/69 captioned "Speech of Fred Hampton, Chairman, Illinois Black Panther Party (BPP), Normal, Illinois, 10/29/69, RM; IS - SDS."

Reairtel noted that at a speech by Fred Hampton, Chairman of the Illinois Black Panther Party (BPP), attendees were required to submit to comprehensive searches of their person without prior notice. The searches were conducted by white persons dressed in hippie clothing.

Chicago and Springfield should submit recommendations for counterintelligence action to exploit this situation, and possibly to prevent future searches of this type, which interfere with our coverage of public speeches by black extremists. Consideration might be given to preparing letters to campus or local newspapers protesting "fascist and police state tactics." The use of white hippies as security for the appearance of a Black Panther leader might also be appropriately brought to the attention of BPP headquarters. Chicago and Springfield should give this matter imaginative thought and submit recommendations as soon as possible. No counterintelligence action should be taken without Bureau authority.

MAILED 6  
NOV 6 1969  
COMM-FBI

2 - Chicago (157-2209)

REC 5/113  
SI-113  
11/11/69  
130

18 NOV 6 1969

Tolson \_\_\_\_\_  
DeLoach \_\_\_\_\_  
Walters \_\_\_\_\_  
Mohr \_\_\_\_\_  
Bishop \_\_\_\_\_  
Casper \_\_\_\_\_  
Callahan \_\_\_\_\_  
Conrad \_\_\_\_\_  
Felt \_\_\_\_\_  
Gale \_\_\_\_\_  
Rosen \_\_\_\_\_  
Sullivan \_\_\_\_\_  
Tavel \_\_\_\_\_  
Trotter \_\_\_\_\_  
Tele. Room \_\_\_\_\_  
Holmes \_\_\_\_\_  
Gandy \_\_\_\_\_

TJD:cbv  
(10)

**NOTE:** These searches necessitated Special Agents attending the public appearance to remove concealed recording devices and prevented our recording of this speech.

NOV 17 1969 TELETYPE UNIT

*Handwritten signatures and initials*

FBI

Date: 4/7/70

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via AIRTEL \_\_\_\_\_  
(Priority)

TO: DIRECTOR, FBI  
FROM: SAC, MIAMI (157-2414) (P)  
COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL MATTERS

*Handwritten initials and number 3*

*157-2414-1749*  
ReBuairtel to Miami dated 4/1/70.

On 4/7/70, the public source material set forth in Miami airtel of 3/25/70 was furnished to [redacted] indicated he was interested in the activities of the Black Afro Militant Movement and in all probability, [redacted] will favorably consider doing a half-hour TV program on this organization. He reported that further consideration will be given to the matter before any final decision is reached.

*Handwritten letter 'b'*

Miami will follow this matter and keep the Bureau advised. The confidential nature of this matter is fully understood by [redacted]

2 - Bureau  
1 - Miami  
LCP:sll  
(3)

REC 9

APR 10 1970

RACIAL INT. SECT.

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803 RCP/MLH

APR 21 1970  
Special Agent In Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

# ROUTE IN ENVELOPE

June 17, 1970

*V*  
Airtel

1

To: SAC, Philadelphia (157-2371)

From: Director, FBI (100-448006) - 1850

REC-40

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)

Reurairtel 6/12/70.

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 1103R00m4

You are authorized to send the original of the enclosed letter to Huey P. Newton. Assure that the letter cannot be traced to the Bureau. Advise the Bureau of any tangible results.

Enclosure

CEG:ekw *ekw*  
(4)

APPROPRIATE AGENCIES  
AND FIELD OFFICES  
ADVISED BY ROUTING  
SLIP(S) OF *Philadelphia*  
DATE *4-2-77*

NOTE: *[redacted]* former BPP official in Philadelphia, was expelled 5/19/70. Philadelphia, signing *[redacted]* name, sent a letter to Black Panther Party (BPP) national headquarters accusing Philadelphia BPP members of stealing food, clothing, and drugs collected for poor children. All the accusations were true. Since this letter was sent, Philadelphia BPP has been severely criticized by national headquarters which is reported by thinking of closing the chapter in Philadelphia. Philadelphia wants to send follow-up letter to Huey Newton, national BPP leader, to "keep the pot boiling" and add to the BPP problems in Philadelphia.

MAILED 23  
JUN 17 1970  
COMM-FBI

- Tolson \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Walters \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Casper \_\_\_\_\_
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- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Soyars \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

JUN 22 1970

MAIL ROOM  TELETYPE UNIT

UNITED STATES GOVERNMENT

# Memorandum

TO : DIRECTOR, FBI (100-448006)

DATE: May 19, 1971

FROM : SAC, NEW HAVEN (157-785) C

SUBJECT: COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTER

*Whitson*

Re: New Haven letter to Bureau, 3/25/71, and Bureau airtel to Albany, 4/28/71.

Pursuant to Bureau's instructions, all Cointelpro operations, New Haven, have been discontinued. Prior to the discontinuance of the program, however, New Haven had initiated a Cointelpro measure directed at the New Haven Chapter of the Black Panther Party. This proposal is outlined in referenced New Haven letter.

Shortly after the initiation of this approved proposal, [redacted] that several merchants in the vicinity of the BPP headquarters, 259 Dixwell Avenue, New Haven, [redacted] receipt of a leaflet that had been mailed to each of these persons. [redacted] the leaflet had caused a great deal of concern in the Dixwell area and advised that many of the merchants stated that if any incident or requests were made by the BPP [redacted] that the police would be immediately notified. [redacted] that the general tone of the merchants was of non-support of the BPP in the Dixwell area and many stated they would flatly deny the Black Panthers free food or merchandise.

[redacted] is a resident in the immediate area in which the BPP headquarters is now housed and that numerous community residents have approached him concerning the BPP, stating they had seen this leaflet and asking if what the leaflet said was true. [redacted] informed these persons that this leaflet was very accurate in its description of the BPP. He also advised community members to heed the warning of this leaflet and to stay away from all BPP members.

340980  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-12-93 BY 9803 RDM/DM

- (2) - Bureau
  - 1 - New Haven
  - IMG:lmg
  - (3)
- REGISTERED MAIL

REC-6

12 MAY 24 1971

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

RACIAL MATTER

NH. 157-785

It is evident by the lack of support and attitude of the merchants and/or residents in the immediate area of the BPP that this measure has been highly successful.



UNITED STATES GOVERNMENT

# Memorandum

- 1 - DeLoach
- 1 - Mr. Bishop
- 1 - Mr. Sullivan

Tolson	
DeLoach	
Mohr	
Bishop	
Casper	
Callahan	
Conrad	
Felt	
Gale	
Rosen	
Sullivan	
Tavel	
Trotter	
Tele. Room	
Holmes	
Gandy	

TO : Mr. W. C. Sullivan *WCS*

DATE: 12-30-68

FROM : Mr. G. C. Moore *GC*

- 1 - Mr. Moore
- 1 - [Redacted]
- 1 - [Redacted]
- 1 - [Redacted]
- 1 - [Redacted]
- 1 - Mass Media, *GC*

SUBJECT: COUNTERINTELLIGENCE PROGRAM  
STOKELY CARMICHAEL; ELDRIDGE CLEAVER  
RACIAL MATTERS - BLACK PANTHER PARTY

This is to recommend item about danger to this country of black extremists preaching violence and anarchy to the youth be furnished a cooperative news source on a confidential basis by the Crime Records Division.

Many individuals in this country have belittled the strength of black extremists. While the number of black extremists may not be large at this time, they can have an incalculable effect on this country by spreading a doctrine of revolution and anarchy primarily to audiences of youth.

Since the Fall of 1966, black extremist, Stokely Carmichael, has spoken to live audiences of well over 1/4 million people in the United States including appearances at over fifty college campuses advocating a black revolution of violence and guerrilla warfare. He has also made frequent appearances on television, held many press interviews and written a book, as well as numerous articles. In addition, during a five-month trip abroad in 1967, Carmichael gave many speeches before large audiences advocating unity of the blacks throughout the world by violent revolution.

Black extremist, Eldridge Cleaver, who is currently a fugitive from justice, has in the past year spoken to over 35,000 people primarily at college campuses. If anything, Cleaver has been more vitriolic than Carmichael.

ACTION: ENCLOSED

That attached item be furnished a cooperative news media source on a confidential basis by Crime Records Division.

Enclosure

PTB:sd (9)

JAN 1 1969

17 JAN 6 1969

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/21/83 BY 10380/904

*L. R. [unclear]*  
*Dr. Cleaver*  
*N. [unclear]*

*12/31/68*  
*1/2/69*  
*1/3/69*  
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*1/30/69*

Some individuals in this country have belittled the strength of black extremists. While the number of black extremists may be small at this time, they can have an incalculable effect on this country by spreading a doctrine of revolution and anarchy in speeches before audiences of college students and other young people.

Since the Fall of 1966, black extremist, Stokely Carmichael, has traveled extensively throughout the United States advocating a black revolution of violence and guerrilla warfare. He has spoken to live audiences of well over 1/4 million people. Carmichael was one of the principal speakers before 125,000 at the Spring Mobilization Committee to End the War in Vietnam held in New York City on April 15, 1967. The remainder of his talks were primarily at over fifty university and college campuses.

This is only part of the story as Carmichael has also made frequent appearances on television, held many press interviews and written a book, as well as numerous articles. His exposure to the public has been formidable. Nor has Carmichael restricted his speech making to the United States. In 1967 he took a five-month trip abroad including Cuba, North Vietnam, China and several countries in Africa and Europe making frequent speeches before large audiences where he advocated unity of the blacks throughout the world by violent revolution.

Another black extremist, Eldridge Cleaver, who is presently a fugitive from justice, during the past year has also been active in giving speeches to over 35,000 people. These were primarily college audiences. If anything, these speeches were more vitriolic than Carmichael's in advocating a black revolution through violence.

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803 RDP/DAH

ENCLOSURE

SAC, Los Angeles (157-1751)

October 31, 1968

Director, FBI (100-448006) - 25

- 1 - [redacted]
- 1 - [redacted]
- 1 - Field Guidance
- 1 - [redacted]

COUNTERINTELLIGENCE PROGRAM  
 BLACK NATIONALIST - HATE GROUPS  
 RACIAL INTELLIGENCE  
 (BLACK PANTHER PARTY)

Reurlet 10/14/68.

340770  
 ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9-13-93 BY 9103RCQ/WH

The four specific counterintelligence measures to disrupt the Black Panther Party (BPP) suggested in relet show imagination and insight on your part. For your information, numerous counterintelligence proposals are being considered at the Bureau concerning the BPP, many of which involve the "anonymous letter" technique. Although each recommendation involving anonymous letters made by you has merit, approval for each is not being authorized since the overuse of this technique may reduce its effectiveness.

Your suggestion to capitalize on BPP differences with [redacted] are appealing and could result in an "US" and BPP vendetta.

Submit for Bureau approval your proposed anonymous letter in this regard.

Also submit to the Bureau for approval the anonymous letter you propose to send to a selected individual in the Peace and Freedom Party (PFP). Advise of the identity of the individual in the PFP to whom you intend to send the communication.

WDH:ekv (7)

SEE NOTE PAGE THREE

MAILED 5  
 OCT 31 1968  
 COMM-FBI

- Mr. Tolson
- Mr. DeLoach
- Mr. Mohr
- Mr. Bishop
- Mr. Casper
- Mr. Callahan
- Mr. Conrad
- Mr. Felt
- Mr. Gale
- Mr. Rosen
- Mr. Sullivan
- Mr. Tavel
- Mr. Trotter
- Tele. Room
- Mr. Holmes
- Miss Gandy

113  
 34 NOV - 1968  
 MAIL ROOM

*Handwritten signature*

Letter to SAC, Los Angeles

RE: COUNTERINTELLIGENCE PROGRAM; BLACK PANTHER PARTY  
100-448006

In view of counterintelligence suggestions being considered at the present time which involve the mailing of anonymous letters to Eldridge Cleaver, the Bureau does not desire that you prepare an anonymous letter to Cleaver concerning [REDACTED]. For the same reason, the Bureau does not desire that additional anonymous letters be sent to the BPP headquarters in Oakland, California.

In order to fully capitalize upon the falling out of Cleaver [REDACTED] as well as your excellent suggestion that funds being collected in Los Angeles for the defense of Huey Newton are being dissipated by BPP members in Los Angeles, the following variation on your idea is being submitted for your consideration and development.

Prepare an envelope which appears to have been prepared and distributed by the Los Angeles BPP soliciting donations for the defense of Huey Newton. The envelope can appear to be one of many preprinted envelopes directing the donor to place his contribution in the envelope with instructions to mail the envelope to the mailing address of [REDACTED] name and address or that of the local Los Angeles office of the BPP can be preprinted on the envelope. This envelope with a small financial donation can be forwarded to the Oakland BPP headquarters along with a subscription request to the BPP newspaper. Obtain name and address of Negro donor from obituary column of Los Angeles newspaper. The envelope could inadvertently be sent to the BPP headquarters in Oakland rather than Los Angeles. The desired effect would be to give the BPP headquarters in Oakland the impression that a considerable amount of money was being collected in Los Angeles for Newton but the money was not being forwarded to the defense fund but rather being pocketed by Los Angeles Panthers and [REDACTED] himself.

Make specific recommendations concerning all of the above discussed counterintelligence actions. Take no positive action without prior Bureau authority.

Letter to SAC, Los Angeles

RE: COUNTERINTELLIGENCE PROGRAM; BLACK PANTHER PARTY  
100-448005

NOTE:

In relet Los Angeles submits four proposed counter-intelligence techniques aimed against the BPP. Each suggestion involves the mailing of anonymous letters. In those instances where anonymous letters, under captioned program, are not already being considered, Los Angeles is being instructed to go ahead and submit their anonymous letters for Bureau approval. An alternate suggestion intended to obtain the same results is being forwarded to Los Angeles for its consideration to cover the two instances where anonymous letters are not appropriate for the reasons stated above. Upon receipt of specific recommendations for action from Los Angeles, a detailed memorandum will be prepared in order to obtain authority to implement the above counterintelligence measures.

- 1 - Mr. C. D. DeLoach
- 1 - Mr. W. C. Sullivan

9/30/68

San Francisco

REC-15

Director, FBI (100-448006) 306

EX-101

COUNTERINTELLIGENCE PROGRAM  
 BLACK NATIONALIST - HATE GROUPS  
 RACIAL INTELLIGENCE  
 (BLACK PANTHER PARTY)  
 (BUDED 10/14/68)

- 1 - Mr. G. C. Moore
- 1 - [REDACTED]
- 1 - [REDACTED]
- 1 - [REDACTED]

340920  
 INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9-13-93 BY 9803 RCP/et

In view of the continued increase of violent activities on the part of the Black Panther Party (BPP), it is mandatory that the counterintelligence program against this party be accelerated. Each division receiving this letter either has an active BPP chapter in its division or according to information received the BPP is either forming or attempting to form a chapter in that division.

By 10/14/68 each division must submit concrete suggestions as to proposed counterintelligence activity to be taken against the BPP in its particular division as well as suggestions as to what action can be taken against the BPP on a national level. In keeping with Bureau policy no action should be taken on these proposals without prior Bureau authority.

In line with the above, consideration should be given as to how factionalism can be created between local leaders as well as national leaders and how BPP organizational efforts can be neutralized. Give consideration to actions which will create suspicion among the leaders with respect to their

MAILED 4  
 OCT 1 - 1968  
 COMM-FBI

- Tolson \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Trotter \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

- 2 - Albany
- 2 - Atlanta
- 2 - Baltimore
- 2 - Boston
- 2 - Chicago
- 2 - Denver
- 2 - Detroit
- 2 - El Paso
- 2 - Houston
- 2 - Los Angeles
- 2 - Newark
- 2 - New York
- 2 - Omaha
- 2 - Pittsburgh
- 2 - Portland
- 2 - Sacramento
- 2 - St. Louis
- 2 - San Diego
- 2 - Seattle
- 2 - WFO

JUL 1968  
 MAIL ROOM

SEE NOTE PAGE TWO

Letter to SAC, San Francisco  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)

financial sources, suspicion concerning their respective spouses, suspicion as to who may be cooperating with law enforcement and suspicion as to who may be attempting to gain complete control of the organization for his own private betterment. In addition, consideration should be given to the best method of exploiting foreign visits BPP members have made as well as the best method of creating opposition to this party on the part of the majority of the residents of the ghetto areas.

This matter must be given continued attention and your imagination and resourcefulness must be employed in order for the Bureau to be successful in this most serious matter.

NOTE:

See memorandum G. C. Moore to Mr. W. C. Sullivan captioned as above, dated 9/27/68 prepared by JGD:mas.

APPENDIX C

The following constitutes a partial list of deletions which have been made without codes where it was evident that an attempt had been made to conceal the deletion.

1. Memorandum dated 12/4/70 from SAC, Albany to Director, FBI. (4 pages -- COINTELPRO; and same memorandum produced to plaintiffs--(6 pages). In the copy plaintiffs received on discovery only the last few lines of the first page are present but have been moved up so that it looks as if the memo started there. cf. COINTELPRO version. The two codes which appear on this page do not represent the deletion thus described. The "I" refers to the deletion of a file number, and the "C" refers to portions of a paragraph deleted on the grounds that it is third party information from a confidential source. No deletion code appears for the deletion of three full paragraphs.

2. Memorandum dated 11/3/70 from Director, FBI to SACs Chicago, New York, and San Francisco, and attached Memorandum dated 10/29/70 from SAC, New York to Director, FBI (5 pages -- COINTELPRO; and same memoranda produced to plaintiffs-- 5 pages). On page two of the October memorandum the first full paragraph has been deleted in the copy plaintiffs received, and the remaining paragraphs have been moved up to the top of the page to conceal this fact. No deletion code appears on this page at all.

3. One unidentified page of a document produced by the United States Postal Service. It appears that part of

340770 ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RCO/MLH



one page was matched up with part of another page as evidenced by the paper punches and new page heading on the lower half of the page. No deletion codes were supplied.

UNITED STATES GOVERNMENT

# Memorandum

TO : DIRECTOR, FBI (100-448006)

DATE: 12/4/70

FROM : SAC, ALBANY (157-231) (P\*)

340770

SUBJECT: COINTELPRO - BLACK EXTREMISTS  
RM

ALL INFORMATION CONTAINED  
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DATE 9/18/93 BY 9803 RCO/mjt

Re Albany letter to Bureau dated, 8/31/70.

The following quarterly counterintelligence letter is submitted in accordance with current Bureau instructions:

1. Operations Under Consideration

Efforts are being made to organize a National Committee to Combat Fascism (NCCF) Chapter at Ithaca, New York. If such a chapter is, in fact, organized vigorous investigation will be conducted to identify the leaders. When identified, Bureau authority will be requested to conduct a survey to determine the feasibility of installing Misur and/or Tesur coverage.

2. Operations Being Effected

It should be noted that the persons involved in this matter are reliable, established sources, who have been in intermittent contact with the Syracuse Resident Agency, [REDACTED]

[REDACTED] but also matters relating to the New Left and racial fields.

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EXCEPT WHERE SHOWN  
OTHERWISE.

[REDACTED]

admiration for the Bureau's work in the internal security field. Recently, they visited the Syracuse Resident Agency

(2) Bureau (Encs. 2) (P)  
2- Albany  
JWM:lew

REC-110-110000-2104

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(4)  
DEC 16 1970

INT. SEC.

COINTELPRO  
12-5061

AL 157-231

and requested recent material prepared by the Bureau concerning SDS, the New Left, the Black Panther Party, etc. They were furnished the Director's Testimony before the House Subcommittee on Appropriations on April 17, 1969, regarding Communist, racial, and extremist groups, together with other statements made by the Director concerning the New Left and the BPP. [redacted] stated that he was especially anxious to be well versed on such matters, since he had recently

[redacted]

The committee desires to increase involvement on the part of [redacted] not only in the Syracuse area, but throughout the United States. It is desired that certain firm answers be received from the administration and Student Government, as to how student activity fees are allocated, including the identities of all organizations and individuals who receive funds from Student Government. [redacted] specifically interested in learning of the identities and organizational affiliations of all speakers appearing [redacted] and a precise compilation of funds paid these speakers. It was [redacted] view that the Student Government, guided by certain faculty members with questionable motives, have provided an imbalance, insofar as the political philosophies of the speakers are concerned.

[redacted] also related that the sum of the administration officials did not desire active participation [redacted] in exploring University operations. In fact, he had been discouraged somewhat by [redacted]

[redacted] since the problems of the University were really handled by the administration.

AL 157-231

In addition to the above public information, [redacted] was furnished a copy of a flyer dated, 5/26/70 captioned "Dear Colleague" which had been circulated at [redacted]. The flyer contained details concerning the formation of an Ad Hoc Committee to raise funds among the [redacted] faculty for Black Panther defense.

It is noted that a LHM has been furnished the Bureau concerning the 48 faculty members who have pledged money to the Black Panther Legal Defense Fund.

[redacted] stated that it would be perfectly normal for him to gain access to such a flyer since [redacted]. Since it is public information, they said that this information could be very useful to them in their discussions with the Chancellor and other administration officials. They were both cautioned, of course, that under no circumstances should they reveal that the flyer had been received from the FBI.

### 3. Tangible Results

It was learned on [redacted] concerning the efforts of [redacted] faculty members in soliciting financial support for the Black Panthers. [redacted]

[redacted] Additionally, it is expected that [redacted] can and will continue to apply pressure to [redacted] officials concerning this matter, particularly through the [redacted]. It has been determined that [redacted] has been informed of the situation and has received a copy of the flyer.

It is not recommended that any additional action be initiated at this time. It is felt that a significant step has been taken by [redacted] in confronting SU officials with some of the nefarious

AL 157-231

activities of certain radical students and faculty. [redacted] stated that he intended to recommend that [redacted] student newspaper, but that they also attend open meetings which feature controversial speakers. He noted that with this exposure, he felt that parents could then deal in specifics when they discuss their gripes with [redacted]

4. Development of Counterintelligence Interest

Not applicable at this time.



I  
C  
and requested recent material prepared by the Bureau concerning [redacted] the Black Panther Party, etc. They were furnished the Director's Testimony before the House Subcommittee on Appropriations on April 17, 1969, regarding Communist, racial, and extremist groups, together with other statements made by the Director concerning the [redacted] and the BPP. [redacted] stated that he was especially anxious to be well versed on such matters, since he had recently

b6  
b7C  
b7D

[redacted]  
The committee desires to increase involvement on the part of parents of SU students, not only in the Syracuse area, but throughout the United States. It is desired that certain firm answers be received from the administration and Student Government, as to how student activity fees are allocated, including the identities of all organizations and individuals who receive funds from Student Government. [redacted] stated that he is specifically interested in learning of the identities and organizational affiliations of all speakers appearing at SU, and a precise compilation of funds paid these speakers. It was [redacted] view that the Student Government, guided by certain faculty members with questionable motives, have provided an imbalance, insofar as the political philosophies of the speakers are concerned.

C [redacted] also related that the sum of the administration officials did not desire active participation by parents in exploring University operations. In fact, he had been discouraged somewhat by [\*] [\*] who had told him a few weeks ago that he was not expected to spend any time on the above described committee, since the problems of the University were really handled by the administration.

[REDACTED] I  
C [REDACTED] In addition to the above public information, [REDACTED] was furnished a copy of a flyer dated, 5/26/70, captioned "Dear Colleague" which had been circulated at SU. The flyer contained details concerning the formation of an Ad Hoc Committee to raise funds among the SU faculty for Black Panther defense.

It is noted that a LHM has been furnished the Bureau concerning the 48 faculty members who have pledged money to the Black Panther Legal Defense Fund.

C [REDACTED] stated that it would be perfectly normal for him to gain access to such a flyer [REDACTED] [REDACTED] Since it is public information, they said that this information could be very useful to them in their discussions with the Chancellor and other administration officials. They were both cautioned, of course, that under no circumstances should they reveal that the flyer had been received from the FBI.

### 3: Tangible Results

C [REDACTED] It was learned on October 28, 1970, that [REDACTED] had contacted Chancellor [\*] concerning the efforts of SU faculty members in soliciting financial support for the Black Panthers. Attached to this letter is a copy of a letter written by [REDACTED] to C Chancellor [\*] together with a copy of Chancellor [\*] response. Additionally, it is expected that C [REDACTED] can and will continue to apply pressure to SU officials concerning this matter, particularly through the SU trustees. It has been determined that [\*] President of the SU Trustees, has been informed of the situation and has received a copy of the flyer.

11- It is not recommended that any additional action be initiated at this time. It is felt that a significant step has been taken by [REDACTED] in confronting SU officials with some of the nefarious C



H [REDACTED]  
C [REDACTED] activities of certain radical students and faculty.

[REDACTED] stated that he intended to recommend that parents not only read the "Daily Orange," the SJ student newspaper, but that they also attend open meetings which feature controversial speakers. He noted that with this exposure, he felt that parents could then deal in specifics when they discuss their gripes with Chancellor [\*] and his staff.

4. Development of Counterintelligence Interest

Not applicable at this time.

October 23, 1970

C [REDACTED]

I have your letter of October 21 and the attached list of faculty members who were supporting the Black Panther Fund and urging others to do so. You should note that these forty-eight faculty members are only a small portion of our approximately 1,200 teaching faculty at Syracuse University. We have faculty members with a diverse range of ideas and opinions about almost every matter on our campus. We operate under the policy that teaching within the classroom should be as objective as possible but that each faculty member has a right to teach his subject as he sees fit, as a part of his academic freedom. We also support the idea that any faculty member may exercise his citizenship rights as any other citizen can. We do not condone any illegal activities on the part of our faculty, however. I hope this response will be of some value to you.

Sincerely,

C [REDACTED]

[\*]

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ENCLOSURE

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DATE 9-13-93 BY 9903 RCM/MLH

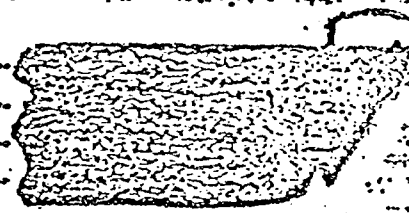


ROUTE IN ENVELOPE

11/3/70

Airtel

1  
1  
1  
1



To: SACs, Chicago  
EX-111 New York (100-161140)  
San Francisco

REC-20

From: Director, FBI (100-448006) - 2137

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY 9803ROB/MLW

ReNYairtel 10/29/70.

Bureau authority is granted for Chicago and New York to prepare and mail the anonymous letters proposed in reairtel. Take the usual precautions to insure that action taken cannot be traced to the Bureau.

Recipients should be alert for any results from this operation.

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b7C  
b7D

WLS:drl  
(11)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE

NOTE: MAILED 24  
NOVS - 1970

cc [redacted] was arrested by [redacted]  
Bureau Agents in New York City on 10/13/70. [redacted]  
[redacted] was arrested with [redacted]  
and charged with harboring. New York racial informant has  
advised that [redacted]

[redacted] New York suggests that  
anonymous letters be mailed to Ebony magazine (postmarked  
Chicago, Illinois) and Village Voice (postmarked New York City).  
Both are publications published by and primarily for Negroes.  
The letters would cast Huey P. Newton, BPP Minister of Defense  
and Supreme Commander, as the "finger man." Suggestion approved  
as at [redacted] could have a disruptive effect in the black nationalist  
field and particularly between the Communist Party, USA - New  
York coalition and the BPP.

Follow  
Call  
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NOV 11 1970

FBI

Date: 10/29/70

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via AIRTEL \_\_\_\_\_  
(Priority)

TO: DIRECTOR, FBI (100-448006)  
FROM: SAC, NEW YORK (100-161140)  
SUBJECT: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE

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340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RGM/MLH

Enclosed for the Bureau are two copies each of two suggested letters designed to cause disruption with BPP.

As the Bureau is aware [redacted] Top Ten Fugitive was arrested by Bureau Agents, New York City 10/13/70. Arrested along with [redacted] and charged with violation of Harboring Statute was [redacted] from Chicago, Illinois [redacted]

b6  
b7c  
b7D

[redacted] source stated that he had heard rumors that Ebony Magazine, a weekly negro magazine was presently attempting to determine if this rumor had any semblance of credence. Source stated that these rumors were not confined to Brooklyn, NY but was under impression Ebony Magazine was receiving similar "rumblings" from Chicago and Los Angeles.

REC-20, 11-11-70 205

- 2-Bureau (Encls. 4) (RM)
- 1-Chicago (Encls. 2) (RM)
- 1-San Francisco (Encls. 2) (RM)
- 1-New York

EX-111

ENCLOSURE

LJM:emb  
(6)  
Approved: [Signature]  
Special Agent in Charge

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE. M Per [Signature]

NYO feels that any counterintelligence program directed against [redacted] would be superfluous since [redacted] activities in the Black Nationalist field are nominal, at the best.

In view of the fact that there is suspicion in the negro community that [redacted] was "set up", NYO suggests that HUEY NEWTON, Supreme Commander of the BPP be cast in the light as "fingerman". If such a ploy could be successfully carried out it might result in disruption in the Black Nationalist field as well as divorcing BPP from CPUSA and Militant New Left groups.

For the further information of the Bureau, the BPP has taken little or no activity in the defense of [redacted] subsequent to her arrest.

It is the proposal of the NYO that handwritten letters anonymously be forwarded to Ebony Magazine, 1820 S. Michigan Avenue, Chicago, Ill. 60616 and to the Village Voice, 80 University Place, NYC.

If this proposal meets with the satisfaction of the Bureau the letter designated for Ebony Magazine, which begins with the words, Dear Brothers and Sisters would be mailed from a negro area in Chicago, Ill. The second letter for the Village Voice would be mailed from NYC.

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b7C

Dear Brothers and Sisters:

As of this writing, our lovely Sister [redacted] languishes in jail and her chances of freedom seem remote. She's got to pay the man, right? But the question I put to you is: Who did the man pay?

You know and I know the pigs can't come up with a Black in a Black community just by driving around the streets and hasseling the Brothers. I tell you that Sister [redacted] would still be free if her capture was left to the federal pigs alone. Of course, it was not that way at all. There was bread - lots of pure cash rye - put into an eager black hand which in turn twisted the knife of treachery in our Sister's back.

Now, the big question is who? Who was the cat who dishonored his skin and took the 30 pieces of silver? Some of the cats in New York and Chicago point their fingers at [redacted] [redacted] says no. Naturally, he says no. You wouldn't expect him to say "yes" would you? Well, maybe he's right. [redacted] just don't fit the picture.....no brains, and he's a shooter.

Some of the west coast cats are looking hard at Brother Newton. Shit, you say, Huey would never sell out to pig country. He's a dedicated Nationalist, leader of the Brothers and Sisters and a cat with real soul. Maybe it's bullshit, but let's look at Huey a little closer. He gets sprung from a stiff rap in August. The man suddenly turns kind and sets our Brother free. In that same month Sister [redacted] is among the missing as the result of a frame the pigs laid on her. What did Huey give for the sunlight and flowers? Or better still, what did the man give sweet Huey? How come Huey's size 12 mouth has been zippered since our Sister's bust? Nothing, he says. Absolutely nothing. Not one appeal for justice. No TV, no papers, no radio, no nothing. He got five grand, so the cats say. It's enough to make a man wonder. Wouldn't be surprised if Huey didn't split the scene soon. I, for one, will be most interested.

A friend of Sister [redacted]

34070  
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HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY 9803ROO/mt

203

b6  
b7c

Sister [redacted] is in jail. [redacted] is free.  
Huey Newton is free. [redacted] is a dumb-head and a hop-  
head. Forget him. But Huey is smart. Gets along well  
with the MAN. The question is: Did this cat bank five  
big bills lately.....a gift from the federal pigs?

Concerned Brother

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY 9803R00/MLH

ENCLOSURE

100 1/2 26 223



ROUTED IN ENVELOPE

11/3/70

Airtel

[\*]

To: SACs, Chicago  
EX-111 New York [redacted] I  
San Francisco  
REC-20  
From: Director, FBI (100-448006) - 2037

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE

ReNYairtel 10/29/70.

Bureau authority is granted for Chicago and New York to prepare and mail the anonymous letters proposed in reairtel. Take the usual precautions to insure that action taken cannot be traced to the Bureau.

Recipients should be alert for any results from this operation.

WLS:drl

G

340976  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9808 RCL/ML

FBI

Date: 10/29/70

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

AIRTEL

(Priority)

TO: DIRECTOR, FBI (100-448006)

FROM: SAC, NEW YORK [REDACTED] J

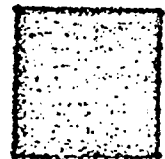
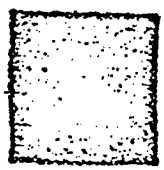
SUBJECT: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE

Enclosed for the Bureau are two copies each of two suggested letters designed to cause disruption with BPP.

As the Bureau is aware [\*] Top  
Ten Fugitive was arrested by Bureau Agents, New York City

G

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY 9808RCD/KSH



In view of the fact that there is suspicion in the negro community that [\*] was "set up", NYO suggests that HUEY NEWTON, Supreme Commander of the BPP be cast in the light as "fingerman". If such a ploy could be successfully carried out it might result in disruption in the Black Nationalist field as well as divorcing BPP from CPUSA and Militant New Left groups.

For further information of the Bureau, the BPP has taken little or no activity in the defense of [\*] subsequent to her arrest.

It is the proposal of the NYO that handwritten letters anonymously be forwarded to Ebony Magazine, 1820 S. Michigan Avenue, Chicago, Ill. 60616 and to the Village Voice, 80 University Place, NYC.

If this proposal meets with the satisfaction of the Bureau the letter designated for Ebony Magazine, which begins with the words, Dear Brothers and Sisters would be mailed from a negro area in Chicago, Ill. The second letter for the Village Voice would be mailed from NYC.

Dear Brothers and Sisters:

As of this writing, our lovely Sister [\*] languishes in jail and her chances of freedom seem remote. She's got to pay the man, right? But the question I put to you is: Who did the man pay?

You know and I know the pigs can't come up with a Black in a Black community just by driving around the streets and hasseling the Brothers. I tell you that Sister [\*] would still be free if her capture was left to the federal pigs alone. Of course, it was not that way at all. There was bread - lots of pure cash rye - put into an eager black hand which in turn twisted the knife of treachery in our Sister's back.

Now, the big question is who? Who was the cat who dishonored his skin and took the 30 pieces of silver? Some of the cats in New York and Chicago point their fingers at [\*] says no. Naturally, he says no. You wouldn't expect him to say "yes" would you? Well, maybe he's right. Little [\*] just don't fit the picture....no brains, and he's a shooter.

Some of the west coast cats are looking hard at Brother Newton. Shit, you say, Huey would never sell out to pig country. He's a dedicated Nationalist, leader of the Brothers and Sisters and a cat with real soul. Maybe it's bullshit, but let's look at Huey a little closer. He gets sprung from a stiff rap in August. The man suddenly turns kind and sets our Brother free. In that same month Sister is among the missing as the result of a frame the pigs laid on her. What did Huey give for the sunlight and flowers? Or better still, what did the man give sweet Huey? How come Huey's size 12 mouth has been zippered since our Sister's bust? Nothing, he says. Absolutely nothing. Not one appeal for justice. No TV, no papers, no radio, no nothing. He got five grand, so the cats say. It's enough to make a man wonder. Wouldn't be surprised if Huey didn't split the scene soon. I, for one, will be most interested.

A friend of Sister [\*]

ENCLOSURE

34070  
448006-2037

Sister [\*] is in jail. [\*] is free.  
Huey Newton is free. [\*] is a dumb-head and a hop-  
head. Forget him. But Huey is smart. Gets along well  
with the MAN. The question is: Did this cat bank five  
big bills lately.....a gift from the federal pigs?

Concerned Brother

340770

ENCLOSURE

100-448006-2037

THE BLACK PANTHER

OAKLAND, CA

The Black Panther newspaper is the official newspaper of the Black Panther Party (BPP). The Party was started during December 1966, in Oakland to organize black people so they can take control of the life, politics, and the destiny of the black community. It was organized

3.

THE BLACK PANTHER (Contd.)

by \_\_\_\_\_, BPP Chairman, and Huey P. Newton, BPP Minister of Defense. Newton is presently serving a sentence of two to 15 years on a conviction of manslaughter in connection with the killing of an Oakland police Officer.

An article entitled "Organizing Self Defense Groups" (Exhibit J) was printed in serial form in issues Nos. 17, 18, 20, and 22 of Volume IV, dated March 28, April 6 and 18, and May 2, 1970, respectively. This article includes instructions for handling weapons and recipes for a self igniting molotov cocktail and a "people's handgrenade." While we are unable to provide a copy of each issue mentioned, a copy of issue No. 20 is enclosed as Exhibit E with a copy of page 17 of issue No. 22.

APPENDIX E

The following constitutes a partial list of documents with deletions plaintiffs contend were improperly withheld on grounds of relevancy:

1. Memorandum dated 11/3/70 from Director, FBI to SACs, Chicago, New York, and San Francisco and attached Memorandum dated 10/29/70 from SAC, New York to Director, FBI authorizing an anonymous mailing to the effect that Huey Newton was the finger man in the arrest of  Several key sections of this memorandum were deleted. (COINTEL-PRO and same memoranda produced to plaintiffs -- 5 pages each).

2. Memorandum dated 2/10/71 from Director, FBI to SAC, San Francisco authorizing the anonymous mailing of a letter to the brother of a named plaintiff containing an implied threat on his life designed to have come from followers of [\*] and intended to reach Huey Newton and promote dissension and distrust. The Note at the bottom of the first page which explains the significance of this action was deleted. (COIN-TELPRO -- 1 page; same memorandum plus an additional one -- 3 pages).

3. Memorandum dated 2/2/70 from Director, FBI to SAC, San Diego authorizing a letter to be sent to an employer from a fictitious person advising them that the employee was a supporter of the Black Panther Party. Again, the Note at the bottom of the Director's Memorandum gives the details and significance of this action. (COINTELPRO -- 1 page; same memorandum plus another with attachment -- 3 pages).

4. Memorandum dated 4/24/69 from Director, FBI to SAC, San Francisco discusses the disruption of the mailing of BPP publications. The Note instructing the San Francisco office to review their files with this goal in mind is deleted.

5. Memorandum dated 1/28/71 from Director, FBI to SACs, Boston, Los Angeles, New York and San Francisco.

6. Memorandum dated 11/6/70 from Director, FBI to SAC, San Francisco.

7. Memorandum dated 5/21/69 from Director, FBI to SAC, Chicago.

8. Memorandum dated 12/28/70 from Director, FBI to SACs, Atlanta, Cincinnati, New York, San Francisco.

9. Memorandum dated 11/3/69 from Director, FBI to SAC, Baltimore.

10. Memorandum dated 4/10/69 from Director, FBI to SAC, New York.

11. Memorandum dated 3/16/71 from Director, FBI to SAC, San Francisco.

12. Memorandum dated 3/10/71 from Director, FBI to SAC, San Francisco.

13. Memorandum dated 6/5/69 from Director, FBI to SAC, Boston.

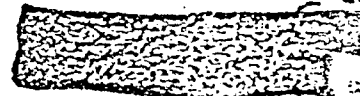


ROUTE IN ENVELOPE

2/10/71

CODE

1 -  
1 -



TELETYPE

NITEL

TO SAC, SAN FRANCISCO (157-601)

FROM DIRECTOR, FBI (100-448006) - 229

COINTELPRO - BLACK EXTREMISTS, RACIAL MATTER.

RESFTEL FEBRUARY NINE LAST.

BUREAU AUTHORITY GRANTED FOR MAILING OF COMMUNICATION TO BROTHER OF HUEY NEWTON IMPLYING THREAT TO NEWTON'S LIFE. INSURE MAILING CANNOT BE TRACED TO THE BUREAU. ADVISE OF ANY POSITIVE RESULTS.

ABF:cal  
(4)

COINTELPRO

NOTE:

To further promote existing dissension and distrust within the Black Panther Party (BPP) San Francisco requested authority to direct special delivery communication to a brother of Huey Newton, BPP leader, containing implied threat to his life by followers of Eldridge Cleaver, another BPP leader and fugitive in Algeria. Letter being directed to Newton's brother since it is logical to assume he will pass letter on to Newton. Director advised by informative note San Francisco's request and approved same.

- Mr. Tolson \_\_\_\_\_
- Mr. Sullivan \_\_\_\_\_
- Mr. Mohr \_\_\_\_\_
- Mr. Bishop \_\_\_\_\_
- Mr. Brennan CD \_\_\_\_\_
- Mr. Callahan \_\_\_\_\_
- Mr. Casper \_\_\_\_\_
- Mr. Conrad \_\_\_\_\_
- Mr. Dalbey \_\_\_\_\_
- Mr. Felt \_\_\_\_\_
- Mr. Gale \_\_\_\_\_
- Mr. Rosen \_\_\_\_\_
- Mr. Tavel \_\_\_\_\_
- Mr. Walters \_\_\_\_\_
- Mr. Soyars \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Miss Holmes \_\_\_\_\_
- Miss Gandy \_\_\_\_\_

~~ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.~~

FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

FEB 10 1971

8:15 PM KPT  
TELETYPE

FEB 18 1971

MAIL ROOM TELETYPE UNIT

*Handwritten notes:*  
340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803ROD/MSH

LEB 10 4 55 11 13 11

ROUTE IN ENVELOPE

2/10/71

CODE

1 - [\*]  
1 -

TELETYPE

NITEL

TO SAC, SAN FRANCISCO (157-601)

FROM DIRECTOR, FBI (100-448006) — 2709

COINTELPRO - BLACK EXTREMISTS, RACIAL MATTER.

RESFTEL FEBRUARY NINE LAST.

BUREAU AUTHORITY GRANTED FOR MAILING OF COMMUNICATION

TO BROTHER OF [\*] IMPLYING THREAT TO NEWTON'S LIFE.

INSURE MAILING CANNOT BE TRACED TO THE BUREAU. ADVISE OF

ANY POSITIVE RESULTS.

ABF:cal  
(4) *J*

*G*

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9103RAD/meh

ST-100  
REC-91

FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

FEB 9 1971

*New*  
TELETYPE

✓

[\*]

NR 009 SF CODE

2:45PM URGENT 2/9/71 MCC

b6  
b7c

TO DIRECTOR (100-448006)

FROM SAN FRANCISCO (157-601) 2P

COINTELPRO - BLACK EXTREMISTS, RACIAL MATTERS.

*11/11/71*

*11/11/71*

TO PROMOTE DISSENSION AND DISTRUST BETWEEN HUEY NEWTON AND  
[\*], BUREAU PERMISSION IS REQUESTED TO FORWARD  
FOLLOWING COMMUNICATION SPECIAL DELIVERY FROM SANTACRUZ, CALIFORNIA,  
TO [\*] OF HUEY NEWTON, IN OAKLAND, CALIFORNIA.

THE "AC" MIGHT BE CONSTRUED BY NEWTON TO BE [\*], WHOSE  
WHEREABOUTS HAVE NOT BEEN KNOWN TO THE BPP FOR SEVERAL WEEKS.

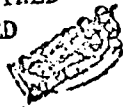
"DEAR BROTHER--

"PLEASE WARN HUEY. HE DOESN'T KNOW THE DANGER HE IS IN.  
HUEY HAS HANDED OUT SUSPENSIONS AND DISCIPLINE WHOLESAL WITH  
NO IDEA OF WHO IS LOYAL AND WHO IS NOT.

"WHERE DOES HE THINK ALL OF OUR TROUBLE STARTED. WHY  
DOESN'T HE LOOK TO ALGIERS AND FIGURE IT OUT? FIRST HE LOST

END PAGE ONE

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.



*21-112*

13 FEB 17 1971

*100-448006-2709*

*157-601*  
*REC'D*  
*5-A*

MR. SULLIVAN FOR THE DIRECTOR

*ENCLOSURE*

*Tel to SF 2/9/71 407/101*

PAGE TWO

THE SUPPORT OF A GOOD PART OF THE WHITE RADICALS AND NOW THE  
NEW YORK CHAPTER.

"WE STILL HAVE PEOPLE AT NATIONAL WHO ARE CLOSE TO NEW  
YORK AND ALGIERS. HUEY SHOULD BE CAREFUL BECAUSE WHEN ..... [\*]  
ARRIVES HE MAY END UP LIKE [\*]

"AC".

END

H

AJP FBI WASH DC

CC-MR. BRENNAN

COINTELPRO

1 - [redacted]

2-2-70

# ROUTE IN ENVELOPE

airtel

b6  
b7c

To: SAC, San Diego (100-14192)

From: Director, FBI (100-448006)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BPP)

Reurairtel 1-22-70.

San Diego is authorized to send the letter set out in referenced airtel. Take the usual precautions to assure that this mailing cannot be traced to the Bureau.

You should be alert for any results from the mailing of the letter, and furnish any pertinent information developed to the Bureau.

WLS:mbm [signature]  
(5)

NOTE:

San Diego has determined that [redacted], a white male, a [redacted], has engaged in fund raising activities on behalf of the extremist Black Panther Party (BPP). San Diego has suggested that a letter bearing a fictitious name be sent to Union Carbide Company officials, in both San Diego and in New York. This action should neutralize [redacted] activities on behalf of the Black Panther Party. Since the name appearing on the letter is fictitious, there is no possibility of embarrassment to the Bureau.

MAILED 4

FEB 2 1970

COMM-FBI

34070:  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803R00P/MSH

[Handwritten signatures and initials: wings, Gert, mss]

[Handwritten signature]

TELETYPE UNIT

2-2-70

# ROUTE IN ENVELOPE

airtel

b6  
b7c

To: SAC, San Diego (100-14192)  
From: Director, FBI (100-448006) — 1611

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BPP)

Reurairtel 1-22-70.

San Diego is authorized to send the letter set out in referenced airtel. Take the usual precautions to assure that this mailing cannot be traced to the Bureau.

You should be alert for any results from the mailing of the letter, and furnish any pertinent information developed to the Bureau.

WLS:mbm *mbm*  
(5)

G

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RDD/meh

FBI

Date: 1/22/70

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

AIRTEL

AIR MAIL - REGISTERED

(Priority)

TO: DIRECTOR, FBI (100-448006)

b6  
b7C

FROM: SAC, SAN DIEGO (100-14192) (P)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BPP)

For the information of the Bureau, a [\*]

[\*], who is reportedly a

Union Carbide Corporation, [redacted] San Diego, California, has been identified as a financial contributor of the BPP. [\*] who is an individual of the Caucasian race, has, in addition to financially contributing to the party, held fund raising meetings at his home and additionally attempted to influence other Union Carbide personnel to support the BPP.

Bureau permission is therefore requested to send the following letter to [\*], Vice President, Union Carbide Corporation, 8888 Balboa Avenue, San Diego, California, and to [\*], President, Union Carbide Corporation, 270 Park Avenue, New York, New York:

- ② - Bureau (AM) (REGISTERED)
- 1 - San Francisco (Info) (157-601) (AM) (REGISTERED)
- 2 - San Diego

RLB:baf  
(5)

REC-51

100-448006-1611

JAN 24 1970

[redacted]  
RACIAL INT. SECT.

340770  
COMMUNICATIONS SECTION  
943-93  
RECORDED

Approved: \_\_\_\_\_ Sent \_\_\_\_\_ M Per \_\_\_\_\_

Special Agent in Charge

70  
WLS/mg  
2-2-70

WLS

SD 100-14192

"Dear [\*]

"I am writing you in regards to an employee in your San Diego operation, [\*]

"Recently I was considering the purchase of a rather substantial block of Union Carbide stock. In discussing this potential transaction with some of my associates, it was indicated to me that [\*] whom I understand is in a rather influential position with your corporation, is an avid supporter of the revolutionary Black Panther Party.

"In questioning the authenticity of this 'information', it was pointed out to me that [\*] has (1) supported the Black Panther Party financially, (2) has held meetings at his private residence to raise funds for the Black Panther Party, and (3) has been attempting to influence the personnel of Union Carbide in San Diego to support the Black Panther Party.

"I am not generally considered a flag waving exhibitionist, but I do regard myself as being a loyal American citizen. I therefore considered it absolutely ludicrous to invest in any corporation whose ranking employees support, assist, and encourage any organization which openly advocates the violent overthrow of our free enterprise system.

"It is because of my firm belief in this self-same free enterprise, capitalistic system that I feel morally obligated to bring this situation to your attention.

"Sincerely yours,

T. E. Ellis  
Post Office Box 12186  
San Diego, California"

For the additional information of the Bureau, the name T. E. ELLIS is completely fictitious and Post Office Box 12186 can in no way be traced to the FBI.



COINTELPR

# ROUTE IN ENVELOPE

SAC, San Francisco (157-601)

4/24/69

Director, FBI (100-448005)

1 - Mr. G. C. Moore

1 - ~~\_\_\_\_\_~~

RA  
57

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

Notice is taken of the fact that the BPP publications are mailed from headquarters throughout the country. Effective counterintelligence measures could be taken against the publications if certain information is available from San Francisco Office files and through informants.

San Francisco should review its files concerning publication and distribution of BPP literature to determine whether we are in possession of the tools necessary to misdirect and otherwise cause confusion in the mailings of these publications. Your review should be conducted with the thought in mind of disruption and specific proposals should be made together with the results of your review.

JAM:ra (5)

NOTE:

San Francisco is office of origin in the BPP. As such the BPP publications are mailed from National Headquarters. We are instructing San Francisco to review files to determine whether there are areas wherein we can cause dissension and disruption in the mailings of these publications.

MAILED 23  
APR 23 1969  
COMM-FBI

REC-19 100-448005-854

10 APR 23 1969

EX 106

Handwritten initials and signatures

[\*]

99 MAY 2 1969

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803ROD/ew

ROUTE IN ENVELOPE

SAC, San Francisco (157-601)

4/24/69

Director, FBI (100-448006)

1 - Mr. G. C. Moore

1 - [\*]

RA  
57

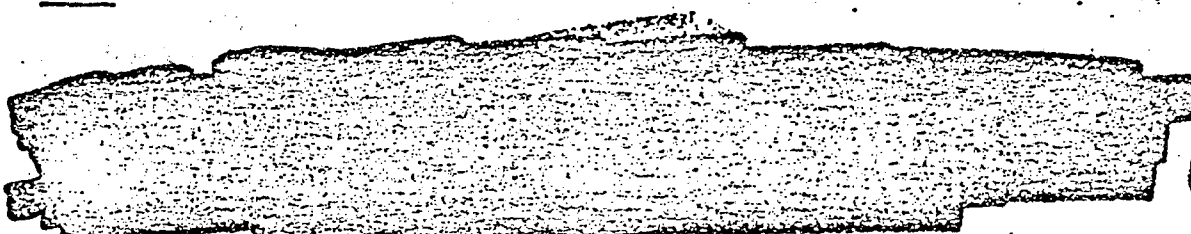
COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

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San Francisco should review its files concerning publication and distribution of BPP literature to determine whether we are in possession of the tools necessary to misdirect and otherwise cause confusion in the mailings of these publications. Your review should be conducted with the thought in mind of disruption and specific proposals should be made together with the results of your review.

JAM:ra (5)

NOTE:



G

MAILED 23  
APR 23 1969  
COMM-FBI

REC-19

10 APR 23 1969

EX 106

854

Handwritten initials and scribbles.

[\*]

99 MAY 2 1969

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 9-13-93 BY 9803RDM/MLH

MAIL ROOM  TELETYPE UNIT

8 8  
ENCLOSURE

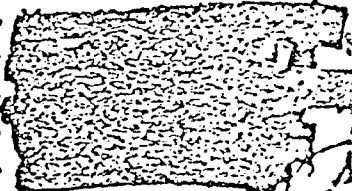
1/28/71

Artel

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 9/13/93 BY 9803RCD/mwt

1 -  
1 -  
1 -  
1 -  
1 -



To: SACs, Boston  
Los Angeles  
New York  
San Francisco

Country Intelligence - Black Nationalist

From: Director, FBI

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

Black Nationalist  
Plate 6-1111

ReSftel to Bureau and recipient offices 1/25/71  
captioned "BPP - Disciplinary Action, RM."

In addition to disciplinary action outlined in  
retel, latest issue of BPP newspaper (1/23/71) indicates  
BPP leader Huey P. Newton also expelled Panther  
his companions and denounced  
Also recently suspended by Newton were Panthers  
(since reinstated) and

It appears that Newton responds violently to any  
question of his actions or policies or reluctance to do his  
bidding. He obviously responds hastily without getting all  
the facts or consulting with others.

The Bureau feels that this near hysterical reaction  
by the egotistical Newton is triggered by any criticism of  
his activity, policies or leadership qualities and some of  
this criticism undoubtedly is result of our counterintelligence  
projects now in operation.

- Tolson \_\_\_\_\_
- Callahan \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Branson, C.D. \_\_\_\_\_
- Malone \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Walters \_\_\_\_\_
- Conrad \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

RNB:drl  
(14)

SEARCHED 22  
SERIALIZED 13/1  
COMM-FBI

EX-115/01 - 4/4/71  
REQ 11  
13 JAN 29 1971

SEE NOTE PAGE TWO

97 FEB 4 1971

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

MAIL ROOM  TELETYPE UNIT

Airtel to Boston et al  
Re: COINTELPRO - Black Extremists

The present chaotic situation within the BPP must be exploited and recipients must maintain the present high level of counterintelligence activity. You should each give this matter priority attention and immediately furnish Bureau recommendations for further counterintelligence activity designed to further aggravate the dissension within BPP leadership and to fan the apparent distrust by Newton of anyone who questions his wishes.

COINTELPRO

NOTE:

Huey P. Newton has recently exhibited paranoid-like reactions to anyone who questioned his orders, policies, actions or otherwise displeases him. His Hitler-like hysterical reaction, which has very likely been aggravated by our present counterintelligence activity, has resulted in a number of suspensions of loyal BPP workers. It appears Newton may be on the brink of mental collapse and we must intensify our counterintelligence.

NOTE: ENVELOPE

1/28/71

3

Airtel

[\*]

To: SACs, Boston  
Los Angeles  
New York  
San Francisco

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803ROB/ST

Counterintelligence Program - Black Extremist

From: Director, FBI

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

Counterintelligence Program - Black Nationalist  
Hate Group

ReSftel to Bureau and recipient offices 1/25/71  
captioned "BPP - Disciplinary Action, RM."

In addition to disciplinary action outlined in  
retel, latest issue of BPP newspaper (1/23/71) indicates  
BPP leader Huey P. Newton also expelled Panther [\*]  
[\*], his companions and denounced [\*] as CIA agent.  
Also recently suspended by Newton were Panthers [\*]  
[\*] (since reinstated) and [\*]

It appears that Newton responds violently to any  
question of his actions or policies or reluctance to do his  
bidding. He obviously responds hastily without getting all  
the facts or consulting with others.

The Bureau feels that this near hysterical reaction  
by the egotistical Newton is triggered by any criticism of  
his activity, policies or leadership qualities and some of  
this criticism undoubtedly is result of our counterintelligence  
projects now in operation.

[\*]

RNB:drl  
(14)

MAILED 22  
JAN 28 1971  
COMM-FBI

EX-115/00 - 448006 - 21  
REQ. 11  
15 JAN 29 1971

SEE NOTE PAGE TWO

FEB 4 1971

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

MAIL ROOM  TELETYPE UNIT

Airtel to Boston et al  
Re: COINTELPRO - Black Extremists

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NOTE:

G

# ROUTE IN ENVELOPE

11/6/70

Airtel

1 - [REDACTED]  
1 - [REDACTED]

To: SAC, San Francisco (157-601)

From: Director, FBI (100-448006) - 2047

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

ReSFairtel 10/28/70.

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RCC/mh

Your proposal to send the anonymous note to Huey P. Newton regarding drugs is approved. Insure that mailing cannot be traced to Bureau.

Advise Bureau of tangible results of this counterintelligence proposal.

CAF:sef  
(5)

NOTE:

~~ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.~~

COINTELPRO is recent designated code word for counterintelligence program.

San Francisco proposed anonymous note be sent to Newton, BPP Supreme Commander, criticizing Eldridge Cleaver, Minister of Information, in Algiers, for "playing footsie" with Tim C. Leary, the escaped convict from California who is ardent advocate of LSD and seeking asylum with Cleaver in Algiers. The BPP has published newspaper articles blasting use of drugs. The anonymous note could cause dissension between Newton and Cleaver over this issue.

MAILED 8  
NOV 6 1970  
COMM-FBI

- Tolson \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Herman, C.D. \_\_\_\_\_
- Fallahan \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Soyars \_\_\_\_\_
- Tele. Rm. \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

97 NOV 18 1970

TELETYPE UNIT

*Handwritten signatures and initials:*  
mel  
chris  
[initials]

FBI

Date: 10/28/70

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

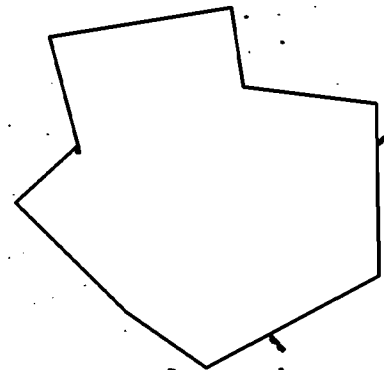
Via AIRTEL AIR MAIL (REGISTERED)  
(Priority)

TO: DIRECTOR, FBI (100-448006)

FROM: *LSE/jr* SAC, SAN FRANCISCO (157-601)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST -- HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY

b6  
b7C



As the Bureau is aware, TIM LEARY, the escaped convict from California who is an ardent advocate of LSD, has sought asylum with ELDRIDGE CLEAVER in Algeria and is known to have travelled in the Far East with [redacted] inasmuch as the "Black Panther Party" has published articles blasting the use of drugs it is suggested that San Francisco be allowed to forward the following anonymous letter to HUEY NEWTON:

"San Francisco, California  
Date 340990

"Mr. Newton:

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9103RCC/104

"Dope plus capitalism equals genocide.

"If that is true I can't believe that Eldridge Cleaver and [redacted] are playing footsie with Tim Leary. Leary is the greatest acid head and dope addict there is. I think Cleaver like any other Black Panther Party member should take orders from you before he starts associating with a druggie.

"Power to the People"

2 - Bureau (PM)  
2 - San Francisco  
LSE/jr  
(4)

*11/6/70 CAC:11/19/70*

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

EX-112

119  
12 NOV 8 1970  
RACIAL INT. SEC.



ROUTE IN ENVELOPE

11/6/70

Airtel

1 -  
1 -

[\*]

To: SAC, San Francisco [redacted] I

From: Director, FBI (100-448006) - 2047

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

EX-112

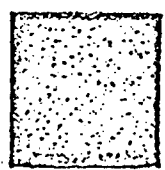
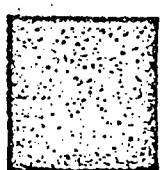
ReSFairtel 10/28/70.

Your proposal to send the anonymous note to Huey P. Newton regarding drugs is approved. Insure that mailing cannot be traced to Bureau.

Advise Bureau of tangible results of this counterintelligence proposal.

G

340790  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-98 BY 9103PCC/mt



FBI

Date: 10/28/70

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via AIRTEL AIR MAIL (REGISTERED)  
(Priority)

TO: DIRECTOR, FBI (100-448006) <sup>b6</sup> <sup>b7C</sup>

FROM: SAC, SAN FRANCISCO (157-601)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY

As the Bureau is aware, [\*] the escaped convict from California who is an ardent advocate of LSD, has sought asylum with [\*] in Algeria and is known to have travelled in the Far East with [\*]. Inasmuch as the "Black Panther Party" has published articles blasting the use of drugs it is suggested that San Francisco be allowed to forward the following anonymous letter to HUEY NEWTON:

"San Francisco, California

Date

"Mr. Newton:

"Dope plus capitalism equals genocide.

"If that is true I can't believe that [\*] and [\*] are playing footsie with [\*] is the greatest acid head and dope addict there is. I think [\*] like any other Black Panther Party member should take orders from you before he starts associating with a druggie.

"Power to the People"

- 2 - Bureau (RM)
- 2 - San Francisco
- LSB/jr
- (4)

EX-112

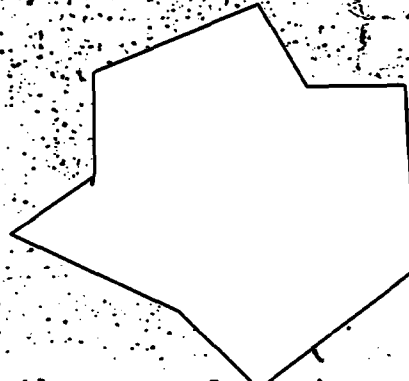
119  
12 NOV 2 1970

RACIAL INT. SEC. 9

Approved: \_\_\_\_\_  
Special Agent in Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

11/6/70 CAF:aj  
AC-811970



ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803R00/MLH

340970

9803R00/MLH

# ROUTE IN ENVELOPE

SAC, Chicago

5/21/69

Director, FBI

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)  
(CGFILE 157-2209)  
(BUFILE 100-448006)

COINTELPRO - NEW LEFT  
(CGFILE 100-45316)  
(BUFILE 100-449618)

ReCGlet 5/1/69.

Authority is granted to instruct selected BPP informants for use in creating a rift between the BPP and the Students for a Democratic Society. These sources should be given different arguments so that this does not look like a plan. Your selection of the sources should be of those who are in a position to influence BPP thinking. Be careful that the sources do not find themselves isolated from the BPP leadership.

MAILED 9  
MAY 21 1969  
COMM-FBI

The articles appearing in the 4/24/69 edition of "New Left Notes" and "The Guardian" are being reviewed for reproduction as suggested in relet. You will be advised concerning this.

JAM:ra (6)

REC-93

100-447000-93

MAY 21 1969

NOTE:

The Students for a Democratic Society (SDS) and the BPP are cooperating in several ways to exploit their common revolutionary aims. Together these organizations pose a formidable threat. Chicago has proposed that BPP informants

SEE NOTE CONTINUED PAGE TWO

- Mr. Tolson
- Mr. DeLoach
- Mr. Mohr
- Mr. Bishop
- Mr. Casper
- Mr. Callahan
- Mr. Conrad
- Mr. Felt
- Mr. Gale
- Mr. Rosen
- Mr. Sullivan
- Mr. Tavel
- Mr. Trotter
- Tele. Room
- Miss Holmes
- Miss Gandy

*W. J. ...*

*1/8e*

TELETYPE UNIT

Letter to SAC, Chicago  
RE: - COUNTERINTELLIGENCE PROGRAM  
100-448006

NOTE CONTINUED:

be instructed to plant the idea that the SDS is exploiting the BPP. There are various good arguments available to accomplish this such as the SDS is using the BPP for their dirty work or the SDS will relegate the BPP to the status of servants. The planting of this idea in the minds of BPP leaders should pose no problem. It would be a definite advantage if these two groups were alienated. We are authorizing Chicago to instruct selected informants to plant ideas and cautioning them to make sure that the various ideas are different in nature and, of course, will not leave BPP leaders with the idea that this is a plan. Chicago has also made available some newspaper articles with the thought in mind of anonymous mailings. These articles question the SDS - BPP alliance. We are reproducing these articles and will consider to use as counterintelligence.

# ROUTE IN ENVELOPE

SAC, Chicago

5/21/69

RA  
5/21

Director, FBI

1 -  
1 - [\*]

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)  
(CGFILE 157-2209)  
(BUFILE 100-448006)

COINTELPRO - NEW LEFT

[REDACTED] I

240970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803ACD/men

ReCGlet 5/1/69.

Authority is granted to instruct selected BPP informants for use in creating a rift between the BPP and the Students for a Democratic Society. These sources should be given different arguments so that this does not look like a plan. Your selection of the sources should be of those who are in a position to influence BPP thinking. Be careful that the sources do not find themselves isolated from the BPP leadership.

MAILED 9  
MAY 21 1969  
COMM-FBI

The articles appearing in the 4/24/69 edition of "New Left Notes" and "The Guardian" are being reviewed for reproduction as suggested in relet. You will be advised concerning this.

REC-93

100-448006-937

JAM:ra (6)

MAY 21 1969

[\*]

NOTE:

[REDACTED]

SEE NOTE CONTINUED PAGE TWO

MAY 23 1969

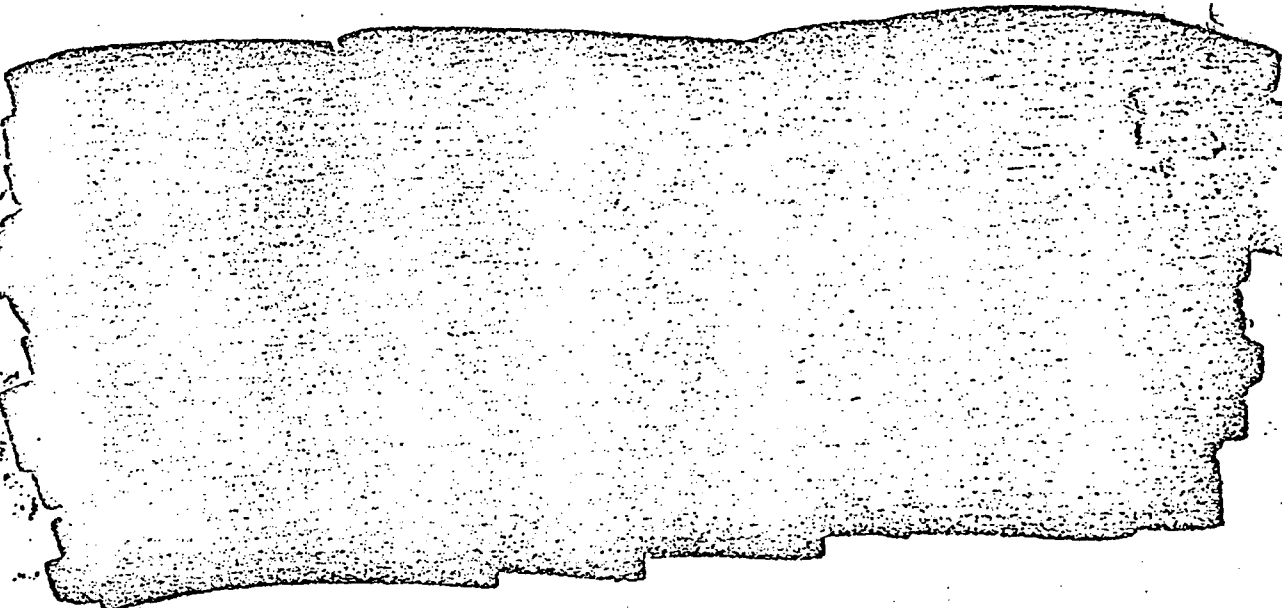
TELETYPE UNIT

*Wise*  
*Worke* *don* *th*

UNRECORDED COPY FILED IN

Letter to SAC, Chicago  
RE: - COUNTERINTELLIGENCE PROGRAM  
100-448006

NOTE CONTINUED:



G

ROUTE ENVELOPE

12/28/70

Airtel

- 1 - Mr. Atkinson
- 1 - [redacted]
- 1 - [redacted]
- 1 - [redacted]

To: SACs, Atlanta (Enclosure)  
 Cincinnati (Enclosure)  
 New York (Enclosure)  
 San Francisco (Enclosure)

From: Director <sup>FBI</sup> (100-448006)  
 EX-113 70-12

COINTELPRO - BLACK EXTREMISTS  
 RACIAL MATTERS

340970  
 ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9-13-93 BY 9103 BCL/MLH

ReNYlet with enclosures 12/10/70.

Enclosed for recipients is a copy of the memorandum addressed to "All SNCC Workers" submitted by New York as an enclosure to relet but which bears slight alterations on pages one and two made at the Bureau.

Bureau authority is granted for Atlanta to prepare and mail copies of the enclosed Student National Coordinating Committee (SNCC) memorandum and its enclosure to individuals and Black Panther Party (BPP) locations as recommended by New York. The memorandum should bear a date in proximity to the items' mailing. Atlanta should note, however, correct mailing address to be utilized in directing these items to the BPP in Philadelphia should be Black Panther Party, 3625 Wallace Street, Philadelphia, Pennsylvania, while those to be directed to Eldridge Cleaver should be mailed to him at the address Boite Postal 118, Grande Poste, Algiers, Algeria.

*WJ*  
*lij*

b6  
b7C

- Tolson \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- DeLoach, C.D. (13) \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Tavel \_\_\_\_\_
- Walters \_\_\_\_\_
- Soyars \_\_\_\_\_
- Tele. Rm. \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

~~ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 EXCEPT WHERE SHOWN  
 OTHERWISE.~~

MAILED 21  
 DEC 28 1970  
 COMM-FBI

97 DEC 31 1970

SEE NOTE PAGE TWO

MAIL ROOM  TELETYPE UNIT

Airtel to SACs, Atlanta et al  
CODINTELPRO - BLACK EXTREMISTS  
100-448006

Atlanta is instructed to insure reproductions and mailing of these items are handled in a manner to preclude tracing of this counterintelligence proposal to the Bureau.

Recipients should advise of positive counterintelligence benefits derived from this technique.

*CODINTELPRO*

NOTE: New York has suggested mailing of a supposed memorandum prepared by the current leader of SNCC, [redacted] and addressed to "All SNCC Workers," to various BPP offices, leaders, and certain BPP apologists. The memorandum is to enclose an article which appeared in the 6/20/70 issue of "The Black Panther," as written by BPP leader Eldridge Cleaver, BPP fugitive residing in Algeria, criticizing SNCC leader [redacted] as a do-nothing revolutionary. The supposed SNCC memorandum not only defends [redacted] status as a revolutionary, but severely criticizes Cleaver as a coward living in exile while the revolutionary struggle is carried on at home by SNCC and [redacted]. The proposed memorandum submitted by New York has been altered at the Seat of Government to indicate the BPP article was only recently brought to SNCC's attention and to include a brief final statement indicating the SNCC memorandum was also being brought to the attention of Cleaver and the BPP organization. This counterintelligence activity is designed to further disrupt an already strained relationship between the BPP and SNCC.



ROUTED ENVELOPE

12/28/70

Airtel

[\*]

To: SACs, Atlanta (Enclosure)  
Cincinnati (Enclosure)  
New York (Enclosure)  
San Francisco (Enclosure)

From: Director, FBI (100-448006) - 21-1  
EX-113 12

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

340170  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803R001MEH

ReNYlet with enclosures 12/10/70.

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PEN:ekw/fb  
(13)

[\*]

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

MAILED 21  
DEC 28 1970  
COMM-FBI

DEC 31 1970

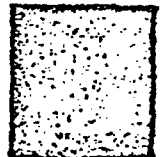
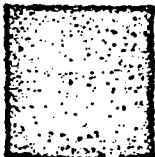
MAIL ROOM  TELETYPE UNIT

Airtel to SACs, Atlanta et al  
COINTELPRO - BLACK EXTREMISTS  
100-448006

Atlanta is instructed to insure reproductions and mailing of these items are handled in a manner to preclude tracing of this counterintelligence proposal to the Bureau.

Recipients should advise of positive counterintelligence benefits derived from this technique.

G



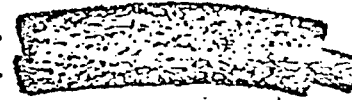
# ROUTE IN ENVELOPE

SAC, Baltimore

11-3-69

Director, FBI

1 -  
1 -



CST  
COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

3907 PD  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-12-93 BY 9103 RCO/KH

Recent communications received at the Bureau indicate that various BPP branches are forwarding taped reports to national BPP headquarters at San Francisco. In an effort to determine if this procedure will lend itself to successful counterintelligence operations, it is requested that the recipient offices determine the following.

1. If BPP branches in your territory are sending reports on tape to national headquarters or to other branches.
2. If tapes are generally dictated by the same person, if so, who?
3. The extent of use, that is, are tapes sent on a regular basis or sporadically. If regularly, are they sent out on a particular day of the week?
4. Full description of tape utilized including brand, size, etc.

MAILED 5  
NOV 3 - 1969  
COMM-FBI

REC-5 100-448006-139

- 1 - Boston
- 1 - Chicago L-116
- 1 - Cleveland
- 1 - Denver
- 1 - Detroit
- 1 - Indianapolis
- 1 - Kansas City
- 1 - Los Angeles
- 1 - Milwaukee
- 1 - Minneapolis
- 1 - Newark

- 1 - New Haven
- 1 - New York
- 1 - Oklahoma City NOV 7 1969
- 1 - Omaha
- 1 - Philadelphia
- 1 - Portland
- 1 - Sacramento
- 1 - San Diego
- 1 - San Francisco
- 1 - Seattle
- 1 - Springfield

Handwritten initials

Handwritten initials

HEH:bad (27)

NOV 17 1969

SEE NOTE PAGE TWO

MAIL ROOM  TELETYPE UNIT

Letter to SAC, Baltimore  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

5. Method of packaging, addressing and mailing.

In this connection it would be helpful to know if protective packaging is utilized or whether regularly available commercial mailing carton is used.

6. Any other available information regarding the handling of these tapes.

The use of tapes for transmitting reports to national headquarters suggests the counterintelligence possibility of preparing and mailing tapes containing disruptive, erroneous information. Also under certain circumstances it may be feasible to erase or distort these tapes making them valueless to the recipient.

Comments of recipient offices concerning these or other possibilities which they may suggest themselves are invited.

Handle promptly and furnish results to Bureau and San Francisco.

NOTE:

The recent information concerning the use of tapes to send reports to BPP headquarters suggests the possibility of certain counterintelligence techniques as outlined above in addition to others which may be suggested by the field. In order to determine if further consideration along these lines is warranted, the primary survey as requested in this letter is in order.

# ROUTE IN ENVELOPE

SAC, Baltimore

11-3-69

Director, FBI

1 - [\*]  
1 -

*CST*

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

240970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY 9903ROD/MLH

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2. If tapes are generally dictated by the same person, if so, who?
3. The extent of use, that is, are tapes sent on a regular basis or sporadically. If regularly, are they sent out on a particular day of the week?

4. Full description of tape utilized including brand, size, etc.

REC-5 100-448006-139

MAILED 5  
NOV 3 - 1969  
COMM-FBI

- |                         |                   |
|-------------------------|-------------------|
| 1 - Boston              | 1 - New Haven     |
| 1 - Chicago <i>with</i> | 1 - New York      |
| 1 - Cleveland           | 1 - Oklahoma City |
| 1 - Denver              | 1 - Omaha         |
| 1 - Detroit             | 1 - Philadelphia  |
| 1 - Indianapolis        | 1 - Portland      |
| 1 - Kansas City         | 1 - Sacramento    |
| 1 - Los Angeles         | 1 - San Diego     |
| 1 - Milwaukee           | 1 - San Francisco |
| 1 - Minneapolis         | 1 - Seattle       |
| 1 - Newark              | 1 - Springfield   |

NOV 7 1969

*Handwritten initials*

*Handwritten initials*

HEH:bad (27)

NOV 17 1969

SEE NOTE PAGE TWO

MAIL ROOM  TELETYPE UNIT

Letter to SAC, Baltimore  
RE: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

5. Method of packaging, addressing and mailing.

In this connection it would be helpful to know if protective packaging is utilized or whether regularly available commercial mailing carton is used.

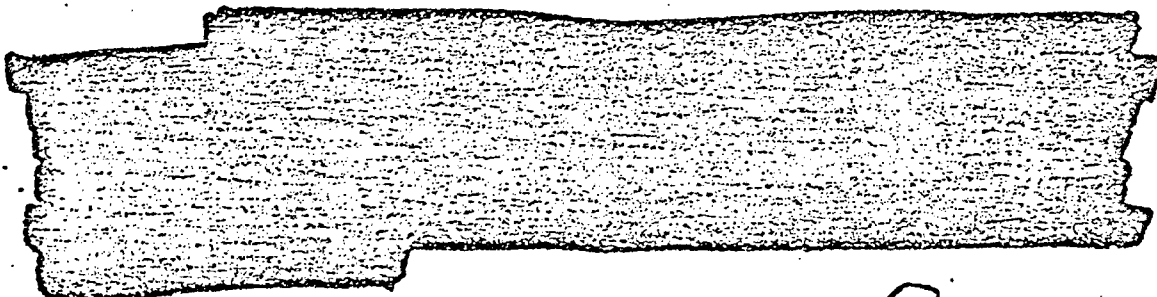
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Comments of recipient offices concerning these or other possibilities which they may suggest themselves are invited.

Handle promptly and furnish results to Bureau and San Francisco.

NOTE:



G

April 10 1969

Airtel

- 1 - Mr. R. M. Horner
- 1 - [REDACTED]
- 1 - [REDACTED]
- 1 - [REDACTED]
- 1 - [REDACTED]

To: SAC, New York (100-161140)

From: Director, FBI (100-448006)

*6.4.69*

COUNTERINTELLIGENCE PROGRAM  
 BLACK NATIONALIST - HATE GROUPS  
 RACIAL INTELLIGENCE  
 (BLACK PANTHER PARTY)  
 BUDED: APRIL 18, 1969

PERSONAL ATTENTION

*AB  
RU*

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9-13-93 BY 9803 RDM/MEV

*A.B. Fyfe*

An extra copy of this airtel is being furnished for New York file 100-129802, "Communist Party, United States of America (CPUSA), Counterintelligence Program, IS - C."

Miami airtel dated 3/6/69 captioned "Communist Infiltration in Racial Matters," copies furnished New York and San Francisco, New York file 100-153735, contained information that the CPUSA Commission on Black Liberation adopted a motion that the CPUSA accept the program of the Black Panther Party (BPP), work closely with the BPP, and join it. It can be anticipated that this proposal will be presented to the CPUSA national convention which is scheduled to begin in New York City on 4/30/69.

MAILED 5  
 APR 10 1969  
 COMM-FBI

In order to effectively thwart any support for the BPP by the CPUSA and in addition to disrupt factions within the CPUSA, it is believed that counterintelligence action

Enclosure

- Tolson
- DeLoach
- Mohr
- Bishop
- Casper
- Callahan
- Conrad
- Felt
- Gale
- Rosen
- Sullivan
- Tavel
- Trotter
- Tele. Room
- Holmes

1 - San Francisco  
 100-3-104-34 (CPUSA, Counterintelligence Program)

ABF sek (11)

BEC 5A

SEE NOTE PAGE 100-448006

100-448006

APR 11 1969

*[Handwritten initials and signatures]*

APR 17 1969

Airtel to SAC, New York  
COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST-HATE GROUPS,  
RACIAL INTELLIGENCE, (BLACK PANTHER PARTY)  
100-448005

should be taken against the proposal of the Commission on Black Liberation. The Bureau feels that the most effective means of doing this is through an anonymous "Irving" letter to [redacted]. The Bureau has noted with pleasure the favorable reaction stemming from such letters in the past on the CPUSA-Jewish question. It is believed that the time is right for another such letter which would strike a double blow against the BPP and the CPUSA by emphasizing to [redacted] the anti-Semitic and pro-Chinese communist line of the BPP.

Accordingly, New York should prepare an "Irving" letter in the dialect previously used which will contain the data outlined below aimed at denying CPUSA support to the BPP and to further disrupt the CPUSA on the eve of its convention. In connection with the use of an "Irving" letter, New York should coordinate this matter with the Agent handling the CPUSA counterintelligence program.

The "Irving" letter should point out to [redacted] that there is a faction in the CPUSA, led by its former presidential candidate Charlene Mitchell, that wants to align the CPUSA with the BPP and adopt the latter's 10 point program. "Irving" should express alarm at this because of the extreme anti-Semitism of the BPP. In support of this position, "Irving" should furnish [redacted] with the following editions of the official BPP newspaper "The Black Panther" and point out the below listed articles:

11/16/68, page 9 - "Mao Condemns US-Israeli Link"  
"Palestinian Commandos Attack Israeli Airport"

12/7/68, page 10 - Letter from Paul S. D. Berg, a Jew, attacking anti-Semitism in the paper.



Airtel to SAC, New York  
COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST-HATE GROUPS,  
RACIAL INTELLIGENCE, (BLACK PANTHER PARTY)  
100-448006

12/21/68, pages  
9 & 14

- Letters in answer to Berg  
attacking him and Israel

1/4/69, page 10

- "Arab Protests UN Partitioning  
of Palestine"

1/4/69, page 13

- "Palestine Guerrillas VS  
Israeli Pigs"

Copies of these editions should be obtained for forwarding by "Irving" to [redacted] with appropriate remarks and underlining on each article. In the event New York does not have copies of these editions, the Bureau will furnish them to New York on request.

"Irving" should then point out to [redacted] that the BPP ideology is Chinese communist oriented which completely contradicts the CPUSA policy of support for the Soviets who are now engaged in a serious confrontation with China. In support of this contention "Irving" could point out to [redacted] the following articles in the above-mentioned editions of "The Black Panther":

12/21/68, page 19

- "China Views US Student Revolt"  
date the "Peking"

1/4/69, page 8

- "Chairman Mao's Work Published  
in Mexico"

1/4/69, page 11

- "Chairman Mao's Work in Columbi

In addition, the BPP "Eight Points of Attention" and "Three Main Rules of Discipline" which appear in each edition of "The Black Panther" are taken directly from page 256 of the Red Book (Quotations from Chairman Mao Tse-tung).

Airtel to SAC, New York  
COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST-HATE GROUPS,  
RACIAL INTELLIGENCE, (BLACK PANTHER PARTY)  
100-448006

"Irving" should also point out that even the imperialistic capitalistic press recognizes the pro-Chinese beliefs of the BPP and a copy of the 12/15/68 edition of "Combat" should be furnished [redacted]. This issue of "Combat" specifically points out where in the Red Book the BPP has taken Mao's statements and adopted them as BPP policy. A Xerox copy of the pertinent parts of this issue of "Combat" is attached for your assistance and you should obtain a copy of this issue to be sent to [redacted] after it has been marked and handled to give it a "used" look.

In order to effectively utilize this counterintelligence technique prior to the CPUSA convention, New York should submit its proposal in accordance with the above for Bureau approval by 4/18/69. New York should also submit its observations of this proposal along with any other proposal it feels will serve to negate CPUSA support for the BPP.

NOTE: New York has in the past effectively utilized the counterintelligence technique of having "Irving," a disgruntled Jewish member of the CPUSA, write to [redacted] in a complaining manner. [redacted] in turn uses the information furnished by "Irving" to write articles in [redacted] which have proven to be embarrassing and injurious to the CPUSA. If effective in this instance, such an article would not only further disrupt the CPUSA on the eve of its convention, but it may prove effective in forcing the CPUSA not to adopt the proposal for alignment with the BPP which is being pushed by a militant faction of the CPUSA. This would deny to the BPP any aid or support which might be forthcoming from the CPUSA.

April 10, 1969

Airtel

[\*]

To: SAC, New York (100-161140)

From: Director, FBI (100-448006)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)  
BUDED: APRIL 18, 1969

PERSONAL ATTENTION

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 903R00M/MT

An extra copy of this airtel is being furnished for  
New York [redacted] "Communist Party, United States of  
America (CPUSA), Counterintelligence Program, IS - C."

Miami airtel dated 3/6/69 captioned "Communist  
Infiltration in Racial Matters," copies furnished New York and  
San Francisco, New York file 100-153735, contained information  
that the CPUSA Commission on Black Liberation adopted a motion  
that the CPUSA accept the program of the Black Panther Party  
(BPP), work closely with the BPP, and join it. It can be  
anticipated that this proposal will be presented to the CPUSA  
national convention which is scheduled to begin in New York City  
on 4/30/69.

In order to effectively thwart any support for the  
BPP by the CPUSA and in addition to disrupt factions within  
the CPUSA, it is believed that counterintelligence action

Enclosure

[\*]

1 - San Francisco  
1 - [redacted] (CPUSA, Counterintelligence Program)

ABF:ekw (11)

REC 54

SEE NOTE PAGE FOUR

PR 17 1969

TELETYPE UNIT

APR 11 1969

Airtel to SAC, New York  
COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST-HATE GROUPS,  
RACIAL INTELLIGENCE, (BLACK PANTHER PARTY)  
100-448006

should be taken against the proposal of the Commission on Black Liberation. The Bureau feels that the most effective means of doing this is through an anonymous "Irving" letter [redacted] "The New York Times." The Bureau has noted with pleasure the favorable reaction stemming from such letters in the past on the CPUSA-Jewish question. It is believed that the time is right for another such letter which would strike a double blow against the BPP and the CPUSA by emphasizing to [\*] the anti-Semitic and pro-Chinese communist line of the BPP.

Accordingly, New York should prepare an "Irving" letter in the dialect previously used which will contain the data outlined below aimed at denying CPUSA support to the BPP and to further disrupt the CPUSA on the eve of its convention. In connection with the use of an "Irving" letter, New York should coordinate this matter with the Agent handling the CPUSA counterintelligence program.

The "Irving" letter should point out to [redacted] that there is a faction in the CPUSA, led by its former presidential candidate [\*], that wants to align the CPUSA with the BPP and adopt the latter's 10 point program. "Irving" should express alarm at this because of the extreme anti-Semitism of the BPP. In support of this position, "Irving" should furnish [redacted] with the following editions of the official BPP newspaper "The Black Panther" and point out the below listed articles:

11/16/68, page 9 - "Mao Condemns US-Israeli Link"  
"Palestinian Commandos Attack  
Israeli Airport"

12/7/68, page 10 - Letter from [\*], a  
Jew, attacking anti-Semitism in  
the paper.

Airtel to SAC, New York  
COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST-HATE GROUPS,  
RACIAL INTELLIGENCE, (BLACK PANTHER PARTY)  
100-448006

12/21/68, pages  
9 & 14

- Letters in answer to  
attacking him and Israel

1/4/69, page 10

- "Arab Protests UN Partitioning  
of Palestine"

1/4/69, page 18

- "Palestine Guerrillas VS  
Israeli Pigs"

Copies of these editions should be obtained for forwarding by "Irving" to [redacted] with appropriate remarks and underlining on each article. In the event New York does not have copies of these editions, the Bureau will furnish them to New York on request.

"Irving" should then point out to [redacted] that the BPP ideology is Chinese communist oriented which completely contradicts the CPUSA policy of support for the Soviets who are now engaged in a serious confrontation with China. In support of this contention "Irving" could point out to [redacted] the following articles in the above-mentioned editions of "The Black Panther":

12/21/68, page 19

- "China Views US Student Revolt"  
dateline "Peking"

1/4/69, page 8

- "Chairman Mao's Work Published  
in Mexico"

1/4/69, page 11

- "Chairman Mao's Work in Columbia"

In addition, the BPP "Eight Points of Attention" and "Three Main Rules of Discipline" which appear in each edition of "The Black Panther" are taken directly from page 256 of the Red Book (Quotations from Chairman Mao Tse-tung).

Airtel to SAC, New York  
COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST-HATE GROUPS,  
RACIAL INTELLIGENCE, (BLACK PANTHER PARTY)  
100-448006

"Irving" should also point out that even the imperialistic capitalistic press recognizes the pro-Chinese beliefs of the BPP and a copy of the 12/15/68 edition of "Combat" should be furnished. This issue of "Combat" specifically points out where in the Red Book the BPP has taken Mao's statements and adopted them as BPP policy. A Xerox copy of the pertinent parts of this issue of "Combat" is attached for your assistance and you should obtain a copy of this issue to be sent to [redacted] after it has been marked and handled to give it a "used" look. C

In order to effectively utilize this counterintelligence technique prior to the CPUSA convention, New York should submit its proposal in accordance with the above for Bureau approval by 4/18/69. New York should also submit its observations of this proposal along with any other proposal it feels will serve to negate CPUSA support for the BPP.

NOTE:



G

# ROUTE TO ENVELOPE

COINTELPRO

1  
1

3/18/71

Artel

To: SAC, San Francisco (157-601)

From: Director, FBI (100-448006)

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

340730  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RCC/ML

Reurtel 3/11/71 captioned "BPP - Files and Publications, RM - BPP."

You are authorized to immediately send by air mail three copies of the 3/13/71 issue of "The Black Panther" newspaper to Eldridge Cleaver in Algeria. An unsigned, typewritten note should accompany the papers stating "This is what we think of punks and cowards." Insure the Bureau cannot be identified with this mailing.

RNB:pjc,  
(5)

NOTE:

3/13/71 issue of "The Black Panther" contains full page caricature of Eldridge Cleaver indicating extreme cowardice. The mailing to Cleaver will insure he receives the paper and will exacerbate the intense divergences between Cleaver and Huey P. Newton and BPP National Headquarters.

ST-105

REC-65

100-448006-2547

Handwritten initials and numbers

- Tolson \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Trotter \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

MAILED 22  
FBI

62 MAR 22 1971

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

MAR 16 1971

MAIL ROOM  TELETYPE UNIT

ROUTE IN ENVELOPE

1 : [\*]  
1 :

airtel

To: SAC, San Francisco [redacted] I

From: Director, FBI (100-448006)

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

340000

9-13-93 9103RCH

Reurtel 3/11/71 captioned "BPP - Films and Publications, BH - BPP."

You are authorized to immediately send by air mail three copies of the 3/13/71 issue of "The Black Panther" newspaper to [\*] in Algeria. An unsigned, typewritten note should accompany the papers stating "This is what we think of punks and cowards." Insure the Bureau cannot be identified with this mailing.

RNB:pjc  
(5)

NOTE:

G



# ROUTE IN ENVELOPE

3/10/71

RA  
7

Artol

To: SAC, San Francisco (157-601)

From: Director, FBI (100-448006)

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803A00/mk

Unless information in your possession indicates it is inappropriate, you are authorized to immediately send by air mail three copies of the 3/6/71 issue of "The Black Panther" newspaper to Eldridge Cleaver in Algeria. An unsigned typewritten note should accompany the papers stating "This is what we think of punks and cowards." Insure the Bureau cannot be identified with this mailing.

Also you should submit to the Bureau for approval a proposed letter to the European BPP Solidarity Committees to be sent to each committee with a known address enclosing a copy of 3/6/71 issue of "The Black Panther."

The proposed letter should follow the theme that if they align with Cleaver, they can expect to be disavowed by BPP National Headquarters. This letter should be quite short, unsigned, and more in the form of a notice than a letter.

RNB:cal (5)  
NOTE:

23  
lin  
m  
os

The 3/6/71 issue of "The Black Panther" is very critical of Eldridge Cleaver and accuses Cleaver of holding his wife prisoner and murdering her lover. The mailing to Cleaver will insure he receives the paper and will exacerbate the intense divergences between Cleaver and Newton. The proposed mailing to BPP European Solidarity Committees is to divide the allegiance of these groups who have looked to Cleaver for guidance in the past.

ST. 103 REC-7 100-448-2336

- Tolson \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- DeLoach, C.D. \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Dalbey \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Tavel \_\_\_\_\_
- Walters \_\_\_\_\_
- Soyars \_\_\_\_\_
- Tele. Room \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_

MAILED 9  
FBI

MAR 12 1971

WJ  
Demp  
hl  
B

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE

MAIL ROOM  TELETYPE UNIT

ROUTE IN ENVELOPE

9/13/73

1-  
1-

[\*]

airtel

To: SAC, San Francisco [redacted]

I

From: Director, FBI (100-443006)

340770

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

9-13-73 9103 RAB/pw

Unless information in your possession indicates it is inappropriate, you are authorized to immediately send by air mail three copies of the 3/6/71 issue of "The Black Panther" newspaper to [\*] in Algeria. An unsigned typewritten note should accompany the papers stating "This is what we think of punks and cowards." Insure the Bureau cannot be identified with this mailing.

Also you should submit to the Bureau for approval a proposed letter to the European BPP Solidarity Committees to be sent to each committee with a known address enclosing a copy of 3/6/71 issue of "The Black Panther."

The proposed letter should follow the theme that if they align with [\*] they can expect to be disavowed by BPP National Headquarters. This letter should be quite short, unsigned, and more in the form of a notice than a letter.

RNB:cal (5)

NOTE: [initials]

G

ROUTE IN ENVELOPE

BAC, Boston (157-854)

6/5/69

Director, FBI (100-448006)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE - BLACK PANTHER PARTY (BPP)

ReBSairtel and LHM 5/21/69 captioned Black Panther Party - Boston Racial Matters, Submission of Intelligence Data.

A review of referenced letter discloses that various members of the BPP have submitted their resignations in view of the fact that the BPP is accepting the aid and alliance of the Students for a Democratic Society (SDS). It would be to the benefit of the Bureau that this split in the BPP, Boston, Massachusetts, is widened. Boston should review pertinent files, with a view in mind of disrupting the alliance between BPP and SDS. Forward a specific counterintelligence program concerning this matter.

JAM:rel  
(5)

NOTE:

Several BPP members, Boston, Massachusetts, resigned from the Party because the BPP and SDS have been cooperating. We are instructing Boston to review pertinent files and submit a specific counterintelligence program as it pertains to this alliance.

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RDD/mjt

REC 4

100-448006-1115

MAILED 5  
JUN 5 1969  
COMM-FBI

14 JUN 8 1969

*Walt*  
*meys*

- Tolson \_\_\_\_\_
- DeLoach \_\_\_\_\_
- Mohr \_\_\_\_\_
- Bishop \_\_\_\_\_
- Casper \_\_\_\_\_
- Callahan \_\_\_\_\_
- Conrad \_\_\_\_\_
- Felt \_\_\_\_\_
- Gale \_\_\_\_\_
- Rosen \_\_\_\_\_
- Sullivan \_\_\_\_\_
- Tavel \_\_\_\_\_
- Trotter \_\_\_\_\_
- Tele. Rm. \_\_\_\_\_
- Holmes \_\_\_\_\_
- Gandy \_\_\_\_\_


57 JUN 12 1969

TELETYPE UNIT

ROUTE IN ENVELOPE

1 -  
1 -

[\*]

SAC, Boston  I

Director, FBI (100-448006)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE - BLACK PANTHER PARTY (BPP)

ReBSairtel and LHM 5/21/69 captioned Black Panther Party - Boston Racial Matters, Submission of Intelligence Data,

A review of referenced letter discloses that various members of the BPP have submitted their resignations in view of the fact that the BPP is accepting the aid and alliance of the Students for a Democratic Society (SDS). It would be to the benefit of the Bureau that this split in the BPP, Boston, Massachusetts, is widened. Boston should review pertinent files, with a view in mind of disrupting the alliance between BPP and SDS. Forward a specific counterintelligence program concerning this matter.

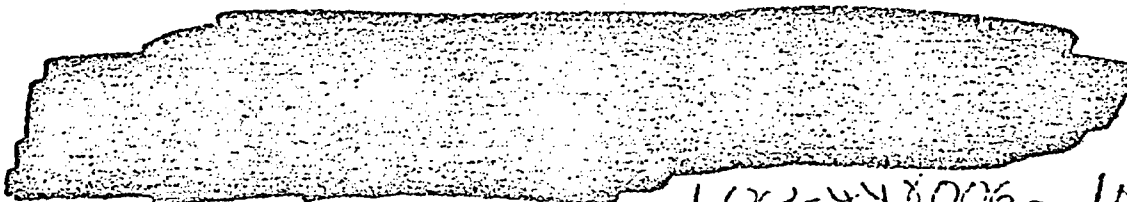
JAM:rel  
(5)

NOTE:

340970

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803R007/CH

k



G

REC 4

100-448006-1015

MAILED 5  
JUN 5 1969  
COMM-FBI

14 JUN 9 1969

*Handwritten signature*

*Handwritten initials*

*Handwritten initials*

[\*]

JUN 12 1969

TELETYPE UNIT

APPENDIX F

The following constitutes a partial list of documents which were produced by the FBI to Huey P. Newton, Plaintiff, pursuant to an FOIA request, but which were not produced in the same manner to plaintiffs on discovery. Deletions were made on grounds of relevancy.

1. Memorandum dated 4/4/69 from Director, FBI to SAC, San Diego concerning the anonymous mailing of cartoons designed to "further differences between the BPP and US." This statement of purpose was deleted from the version supplied to plaintiffs on discovery.

2. Memorandum dated 11/3/70 from Director, FBI to SACs Chicago, New York, and San Francisco. This same memorandum was also produced in full to the public and appears in the FBI reading room. It was produced to Huey Newton on an FOIA request in the same undeleted condition. Two relevant paragraphs were deleted from the version supplied to plaintiffs on discovery. Our deleted version and the COINTELPRO version appears in Appendix A. The FOIA version is not duplicated here as it is identical to the FBI COINTELPRO version.

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RDD/KAH

ROUTE IN ENVELOPE

58A

SAC, San Diego (100-14192)

4-2-69

57A  
REC 26

Director, FBI (100-448006) -

1 -  
1 -  
1 - [\*]  
1 -  
1 -

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)

Reurairtel 3-27-69.

Authority is granted to reproduce the three cartoons which were enclosed with reairtel for anonymous distribution to Black Panther Party (BPP) members in Los Angeles, New York, Sacramento, San Diego, and San Francisco.

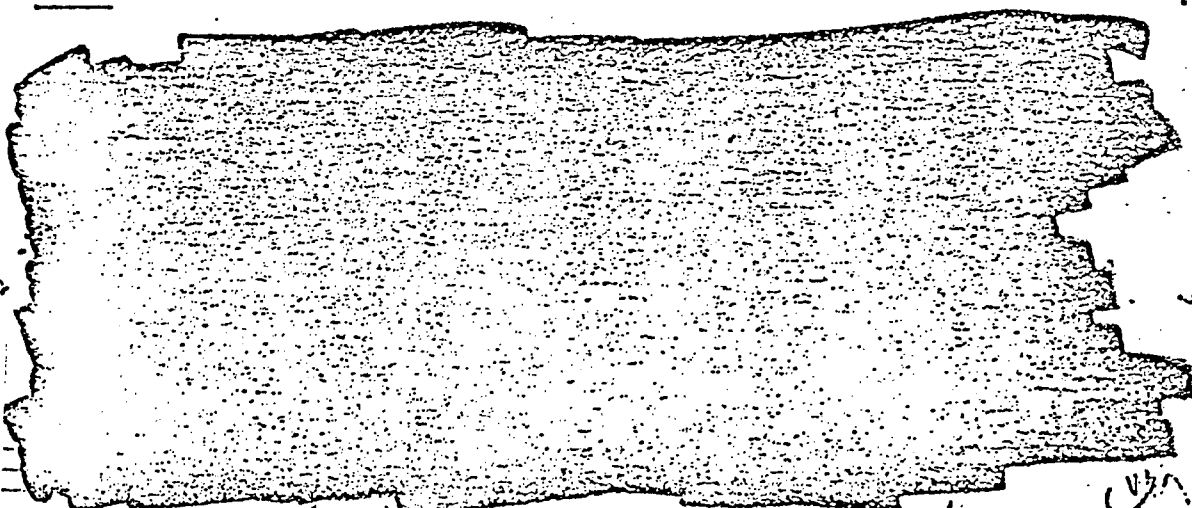
The reproduction and distribution of these cartoons should be made in accordance with Bureau instructions contained in Bureau airtel to your office dated 2-27-69, captioned as above.

Keep the Bureau advised of all developments and results obtained through this counterintelligence maneuver.

WDN:sg  
(9)

NOTE:

APR 4 - 1969  
COMM-FBI



Red

PR 10 1969  TELETYPE UNIT

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RDM/MT

FBI

Date: 3/27/69

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

AIRTEL

AIR MAIL - REGISTERED

(Priority)

*WCS*

TO: DIRECTOR, FBI (100-448006)

FROM: SAC, SAN DIEGO (100-14192) (P)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)

*WCS*

Enclosed for the Bureau are three cartoons which are self-explanatory.

For the information of the Bureau, caricature Number 1 resulted from a recent article in the Black Panther Party (BPP) newspaper in which the US organization was referred to as a bunch of snakes.

Number 2 is a take-off on the MAO TSE TUNG terminology of "the paper tiger."

Number 3 was also inspired by the BPP newspaper in which US has been referred to as a "bunch of pork chop cultural niggers."

Bureau approval is requested to reproduce the enclosed caricatures and thereafter distribute them in accordance with previous Bureau approved procedures.

3 - Bureau (Encs. - 3) (AIR) (REGISTERED)  
2 - San Diego

*WCS*

URLB:bef  
6(5)

REC 26 100-448006-913

MAR 27 1969

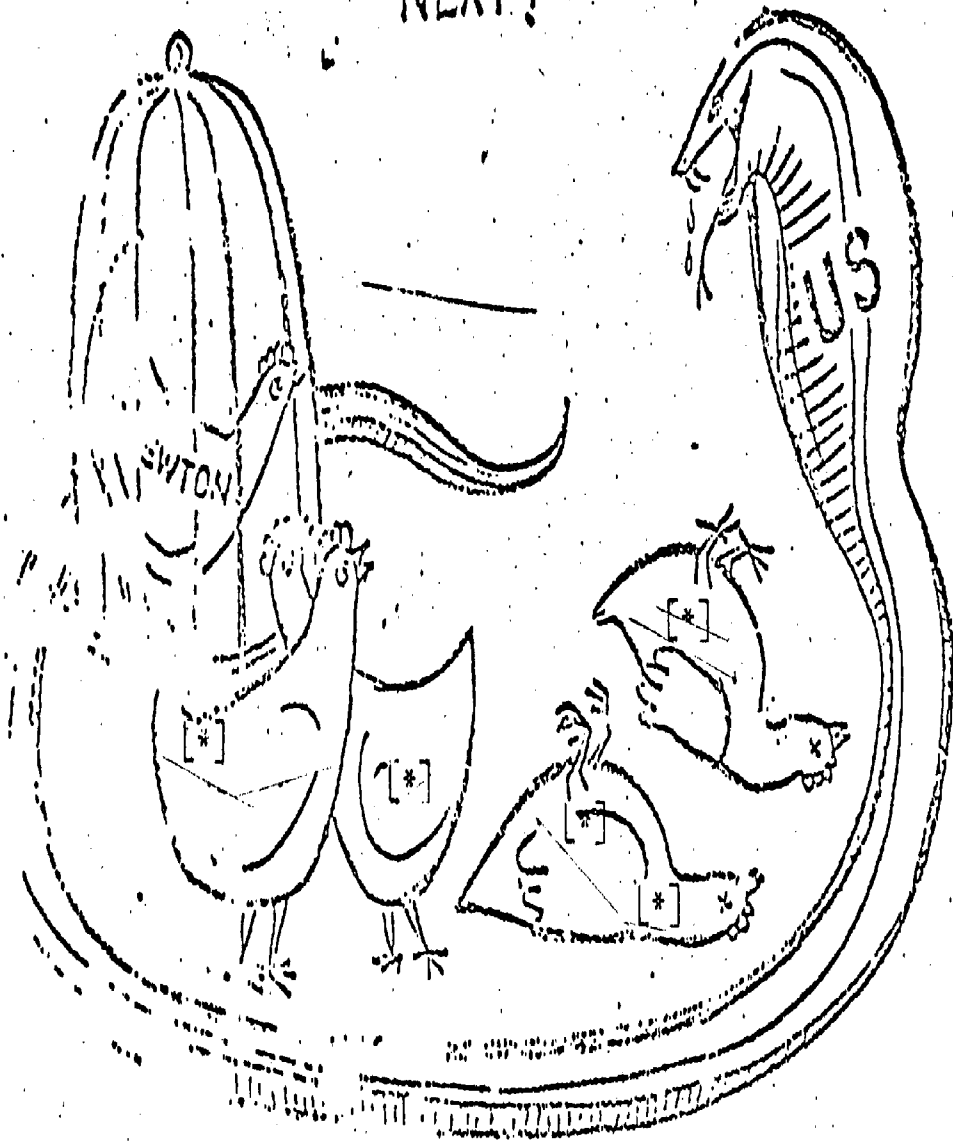
340990

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RCP/H4

*WCS*

Approved: E/W Sent \_\_\_\_\_ M Per \_\_\_\_\_  
Special Agent in Charge

21  
شماره  
NEXT?





PORK CHOP



JUST A (CHOMP) MINUTE  
BOY. DON'T YOU HAVE  
ANY CULTURE?

FASTER, BOY,  
FASTER!



THE RIDE OF THE PAPER PANTHER



BE 151

BE 151

Attached are three cartoons forwarded to FBIHQ by San Diego letter 4/10/69.

*g/v*

24077 0  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803R001meit

APPENDIX G

The following constitute a partial list of deletions on grounds of relevancy which plaintiffs submit are suspect:

1. Memorandum dated 3/21/70 from Director, FBI to SAC, [\*] authorizing an anonymous mailing. The next page and a half is deleted which, if this memorandum follows the pattern of the others listed above, probably contains more specific instructions and the actual version to be sent. Attached to these pages is the originating memorandum requesting permission and from this it can be inferred that the deletions are of relevant material. The mailing is to be directed against the Black Panther Party as if written by another black group in Winston-Salem, North Carolina.

2. Memorandum dated 2/2/71 from Director, FBI to 29 SACs recommending that each field office devise at least two counterintelligence proposals. The last page of this memorandum has been deleted.

3. Memorandum dated 3/29/71 from Director, FBI to Sacs discontinuing a requirement for 90-day progress letters summarizing counterintelligence operations related to black nationalists. A paragraph following this statement was deleted on grounds of relevancy:

Extent of your office's participation in contributing to the program's objectives will be followed at the Bureau, and your participation will be analyzed during field office inspections.

4. Memorandum dated 3/5/69 from SAC, San Diego to Director, FBI recommending a certain individual for commendation

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RCP/mt  
340970

with regard to certain counterintelligence activities including the planting of information to the effect that a local BPP member was a police informant and resulting in the discreditation of the member by the Party.

ROUTE IN ENVELOPE

62A

8-21-70

Airtel

1 - [ \* ]  
1 - [ \* ]

To: SAC, [ \* ] (157-6109)

From: Director, FBI (100-448006) 1933  
EX-100 REG-15

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUP  
RACIAL INTELLIGENCE  
RACIAL MATTERS - BLACK PANTHER PARTY

ReCEairtel 8-17-70.

You are authorized to prepare and mail anonymous newsheet set forth in referenced airtel. Insure letter cannot be traced to the Bureau. Advise Bureau and interested offices of positive results achieved.

1 - San Francisco

JOI:bad (6)

NOTE:

G

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/17/93 BY 90300/MS

MAILED 6  
AUG 21 1970  
COMM-FBI



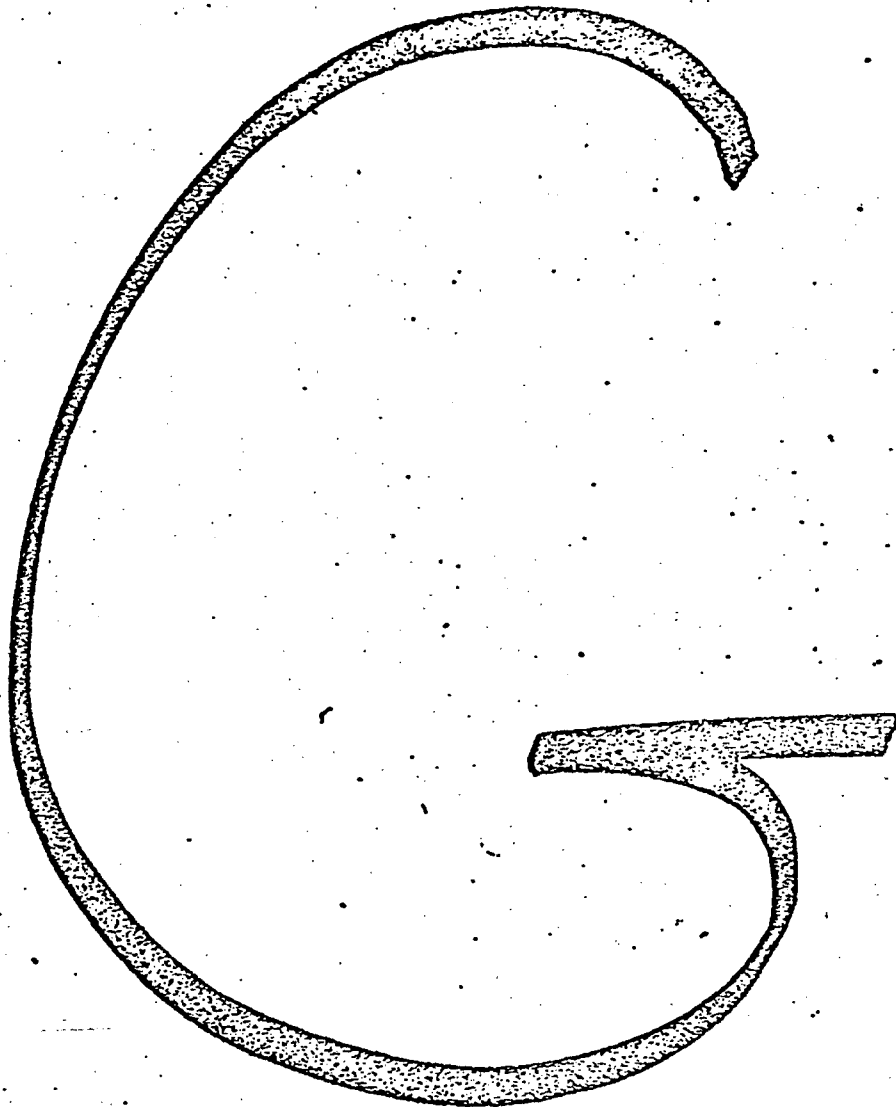
~~ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.~~

NOTE CONTINUED PAGE TWO

07 SEP 1 1970

MAIL ROOM  TELETYPE UNIT

WBS  
Chris  
George



— page (5)



FBI

Date: 8/17/70

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

AIRTEL

(Priority)

TO: DIRECTOR, FBI (100-448006)

FROM: SAC, [\*] (157-6109) (P)

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUP  
RACIAL INTELLIGENCE  
(BLACK PANTHER PARTY)

340790

9/13/93 9305800 MEH

Re [\*] airtel to Bureau, 8/14/70.

It is noted that under the name S.V.R.P., which allegedly stands for the Southern Vanguard Revolutionary Party, [\*] has been submitting a newsletter with the caption "News of Interest to the Black Citizens of Winston-Salem. This letter is written in the vein that it is a newsheet from a black group at Winston-Salem of a slightly higher caliber than the BPP group.

These letters have been primarily derogatory concerning the leadership. At the present time, the group is in financial difficulty and is pushing for donations in the black community, primarily from businesses, either black owned or with predominantly black trade. In this connection, [\*] desires to institute the following plan, noting that it is to be aimed primarily at business and religious groups and is to be written in terms of a citizen or neighborhood organization with religious orientation.

The caption of this newsheet which is to be prepared and mailed in Winston-Salem will be "The Committee of Twenty-Five" and will read as follows:

- ② - Bureau (RM)
- 1 - San Francisco (RM)
- 2 - [\*]

EX-100 REC-15  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE.

100-448006-193

THG:dh  
(5)

25  
AUG 15 1970

Approved: \_\_\_\_\_  
Special Agent in Charge

Sent \_\_\_\_\_  
U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 368-090 (11)

FBI

Date:

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

Via \_\_\_\_\_

CE 157-6109

(Priority)

The Committee of Twenty-Five was organized by responsible black people of East-Winston and was formed in secret to avoid repression by the hoodlum element. Its reason for existence is to expose and destroy any group which is enslaving our people.

The chains of past slavery are almost gone; yet, a new master, Chinese-style Communism in the name of the Winston-Salem Committee to Combat Fascism, is now using the blood of our children to lead us back into slavery. The Black Panther Party which operates in Winston-Salem as the Winston-Salem National Committee to Combat Fascism has the purpose of overthrowing the present system of Government by force, using our children as cannon fodder, dying for a godless, impossible, and unjust cause.

We want everyone to know that each time you pay 25 cents for a Black Panther newspaper, one half of this money goes to support Black Panther leadership in California and the rest to support those who prey upon us local people. A small amount of the money donated by well-intentioned but ill-informed people actually feeds children in the Panther breakfast program while a much larger part supports the local Black Panther leadership who then have no need to do honest work and can prey upon the local people. The rent, electricity, and food for a dozen people, even if they are going under the pretext of helping the community is quite an amount.

2

Approved: \_\_\_\_\_

Sent \_\_\_\_\_

M

Per \_\_\_\_\_

Special Agent in Charge

FBI

Date:

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

Via \_\_\_\_\_

CE 157-6109

(Priority)

If interested in improving the lot of the black people in East Winston, they could do much more good by working for better education, employment opportunities and such. They now, in fact, preach the gospel of dropping out of school and "getting your education in the streets" which is not the way that we have made progress.

The Panthers publicly oppose our fathers, sons and daughters who fought in Korea and now Vietnam since they support the teachings of MAO TSE TUNG of Red China and KIM IL SUNG of North Korea who were the leaders of the enemy during the Korean War and support the North Vietnamese at the present time.

The Committee of Twenty-Five will from time to time point out these things to the people in our area. Due to our limited funds, we can do little but we hope that if other citizens are interested they will form similar groups in their immediate areas and will make contact with the Committee of Twenty-five in order that we may go forward together.

[\*] proposes to prepare the above on unwatermarked, commercially-purchased blue or red paper, using inexpensive envelopes, not like those used by the SVRP projects in order they will not be connected.

On receipt of Bureau approval, approximately 200 copies will be mailed out to churches and businesses in the eastern half of Winston-Salem, N. C. It is hoped that this project will create enough opposition to the Panthers to cut down their funds and generate some type of community group in opposition.

3

Approved: \_\_\_\_\_

Sent \_\_\_\_\_

M Per \_\_\_\_\_

Special Agent in Charge

FBI

Date:

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

via \_\_\_\_\_

(Priority)

CE 157-6109

Upon receipt of Bureau approval, the operation will be carried out in such a manner as the Bureau will not be identified.

4

Approved: \_\_\_\_\_ Sent \_\_\_\_\_ M Per \_\_\_\_\_  
Special Agent in Charge

2/2/71

*J. B. V.*

Airtel

- 1 - Mr. W. C. Sullivan
- 1 - [ ]
- 1 - [\*]
- 1 - Mr. G. C. Moore
- 1 - [ ]
- 1 - [ ]

To: SACs, Albany New Haven  
 Atlanta New Orleans  
 Baltimore New York  
 Boston Philadelphia  
 Charlotte Pittsburgh  
 Chicago Portland  
 Cincinnati Richmond  
 Cleveland Sacramento  
 Columbia San Francisco  
 Dallas Savannah  
 Detroit Seattle  
 Indianapolis Springfield  
 Las Vegas Tampa  
 Los Angeles WFO  
 Newark

From: Director, FBI (100-448006)

COINTELPRO - BLACK PANTHER PARTY (BPP) - DISSENSION

FEB 10 1971  
 COMM-FBI

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9/14/93 BY 9803RCP/mw

Increasing evidence points to rising dissension within BPP causing serious morale problem and strained relationship among Panther hierarchy. Primary cause of these internal problems appears to be dictatorial, irrational and capricious conduct of Huey P. Newton. His extreme sensitivity to any criticism, jealousy of other leaders and belief he is some form of deity are causing severe problems within the group. Newton's relationship with [\*] and other top leaders is strained. He has recently expelled or disciplined several dedicated Panthers including

ABF:drl (69)

REC 8-100-448006-2100  
 SEE NOTE PAGE THREE

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 EXCEPT WHERE SHOWN  
 OTHERWISE

FEB 4 1971  
 MAIL ROOM  TELETYPE

FEB 3 1971

*CPA*

[\*]

*RA 57*

*[Handwritten signature]*

*[Handwritten mark]*

*web*

*[Handwritten initials]*

*[Handwritten initials]*

Airtel to Albany et al.  
Re: COINTELPRO - Black Panther Party (BPP) - Dissension  
100-448006

[\*] Deputy Minister of Information; [\*]  
[\*] International Representative and Newton's  
secretary; [\*] and companions who were involved  
in BPP underground operation (see 1/23/71 edition of  
"The Black Panther"); and the "New York 21" who were a  
leading cause celebre of Pantherism.

This dissension coupled with financial difficulties  
offers an exceptional opportunity to further disrupt,  
aggravate and possibly neutralize this organization through  
counterintelligence. In light of above developments this  
program has been intensified by selected offices and should  
be further expanded to increase measurably the pressure on  
the BPP and its leaders.

San Francisco and New York are already involved  
in counterintelligence actions and should continue to be  
alert for further opportunities. All other recipients  
should immediately devise at least two counterintelligence  
proposals and submit same to Bureau by 2/10/71. First  
proposal should be aimed strictly at creating dissension  
within the local branch. Second proposal should be aimed  
at creating dissension or problems between local branch  
and/or its leaders and BPP national headquarters. Submit  
each proposal in a separate airtel referencing this  
communication and in first paragraph specifically indicate  
whether proposal aimed at local dissension or national  
dissension.

In order for these proposals to be effective it  
is imperative that a close analysis be made of weaknesses  
and problems within the local BPP branch and that all  
proposals submitted be imaginative and timely. No proposal  
should be implemented without specific Bureau approval.

G

— | p a l e ( s )

52

1 - Mr. W.C. Sullivan

3/29/71

# ROUTE IN ENVELOPE

Airtel

- 1 - [\*]
- 1 -
- 1 -
- 1 -
- 1 - Mr. G.C. Moore

## PERSONAL ATTENTION

[\*]

To: SACs, Albany

- Alexandria
- Atlanta
- Baltimore
- Birmingham
- Boston
- Buffalo
- Charlotte
- Chicago
- Cincinnati
- Cleveland
- Columbia
- Denver
- Detroit
- Houston
- Indianapolis
- Jackson
- Jacksonville
- Kansas City
- Los Angeles
- Memphis
- Miami

- Milwaukee
- Minneapolis 1
- Mobile
- Newark
- New Haven
- New Orleans
- New York
- Omaha
- Philadelphia
- Phoenix
- Pittsburgh
- Portland
- Richmond
- Sacramento
- San Diego
- San Francisco
- Seattle
- Springfield
- St. Louis
- Tampa
- WFO

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN  
OTHERWISE

MAILED 3  
MAR 30 1971  
FBI

EX-112

REC-22

100-448006-2365

From: Director, FBI (100-448006)

xerox copy  
Orig. in SCR 8798

MAR 31 1971

COINTELPRO - BLACK EXTREMISTS  
RACIAL MATTERS

ReBuairtel 3/4/68 which in part instructed recipients to submit progress letters every 90 days summarizing counter-intelligence operations and changes in overall Black Nationalist Movement in your area during that period.

WHA:sef (95)

APR 5 - 1971  
MAIL ROOM TELETYPE UNIT

*[Handwritten signatures and initials]*

*[Handwritten notes and scribbles]*



Airtel to Albany  
Re: COMINTELPRO - BLACK EXTREMISTS  
100-448006

Effective immediately these 90-day progress letters are being discontinued.

You must insure that Racial Matters Supervisor, Special Agent Coordinator for this program and Agents assigned to Racial Matters investigations are aware of continued objectives of this program and that meaningful proposals are submitted to the Bureau on a timely basis. Insure that such Supervisor and Coordinator are aggressively and enthusiastically ramrodding this program and that Agents are exercising ingenuity and initiative to accomplish this program's objectives.

You are reminded that counterintelligence operations must be approved by the Bureau. Proposals submitted must be designed to insure there is no possibility of embarrassment to the Bureau.

Proposed operations should be submitted to the Bureau by airtel or in unusual situations by teletype where timeliness is essential.

You must generate understanding of the objectives of this program and insure your office is participating in it on a timely basis. Extent of your office's participation in contributing to the program's objectives will be followed at the Bureau, and your participation will be analyzed during field office inspections.

G

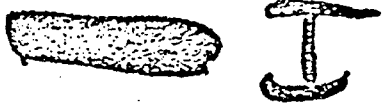
*duplicate*  
56

# Memorandum

TO : DIRECTOR, FBI  
ATTENTION: ADMINISTRATIVE DIVISION

DATE: 3/5/69

FROM : SAC, SAN DIEGO



SUBJECT: COINTELPRO - BLACK NATIONALIST

This is to recommend SA [\*] for an individual letter of commendation in the above-captioned case for outstanding performance as set forth hereafter.

*Handwritten note:*  
JEM: [unclear] 3-11-69

On 2/4/69, SA [\*] placed an anonymous telephone call to local Black Panther leaders in the San Diego area, complaining of the apparent ignorance of [\*] a Black Panther Party leader in San Diego. Specifically, [\*] had appeared at a local San Diego television station and was interviewed by one of the news commentators. [\*] made rash and outlandish statements regarding planned programs of the Black Panther Party and the interview actually resulted in [\*] making a "fool" out of himself. As a result of this call, informants in the Black Panther Party stated that a great deal of consternation and distrust of [\*] was brought about on the part of Black Panther Party members.

On 2/25/69, SA [\*] placed an anonymous telephone call to Black Panther Party member, [\*] at which time [\*] was told that [\*] was responsible for the arrest of five Black Panther Party members in Los Angeles on 1/24/69. SA [\*] indicated to [\*], that he had information that [\*] was cooperating with the local San Diego police authorities. Informants have reported that [\*] has been directly confronted by members of the Black Panther Party in San Diego regarding his cooperation with the San Diego Police Department and [\*] has been told that it is known that he is an informant. Because of this telephone call, [\*] effectiveness as a leader and even as a member of the San Diego Black Panther Party has been greatly diminished.

- 2 - Bureau
- 1 - San Diego

REC-123

RSB:mt  
(3)

SEE ADDENDUM PAGE TWO

7-7

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-13-93 BY 9803RDD/meh

THREE

SA [\*] is 6'2" tall and weighs 174 pounds.  
He was weighed on 1/30/69 by [\*] and is  
within the desirable weight limits.

Because of SA [\*] talent and competent  
handling of the above matters in connection with the  
Counterintelligence Program, I recommend that he be commended  
at this time.

ADDENDUM:

[REDACTED]

6

*[Handwritten signature]*

APPENDIX K

The following constitutes a partial list of documents containing deletions of several pages on the basis of the claim of informant information.

1. Memorandum dated 11/22/68 from G.C. Moore to W.C. Sullivan concerning the exploitation of existing antagonisms between the BPP and other organizations including US. Two pages were deleted and the letter code "A" representing informant information was used. These two pages, according to the cover memorandum, were a letter to be sent to the field offices recommending bi-weekly reporting by the field offices. There is no immediately apparent reason why two entire pages should be deleted as revealing the identity of an informant.

2. Memorandum dated 7/11/69 from SAC, Milwaukee to Director, FBI which clearly withholds both the identity of the informant and the information conveyed by the informant. It also seem likely that further instructions to the informant were withheld in paragraph 3.

3. Memorandum dated 9/24/69 from SAC, Los Angeles to Director, FBI is essentially a progress report on COINTELPRO field office activities. At page two the following appears:

In an attempt to determine the activities of the individuals involved in the formation of a new organization made up of ex-BPP members [deletion] has been instructed to [deletion] the leadership of the BPP. At the same time, he has been told to maintain close contact with all BPP leaders both old and new.

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY A003R00/eh

*duped*

UNITED STATES GOVERNMENT

# Memorandum

*56*

[\*]

TO : Mr. W. C. Sullivan

DATE: 11/22/68

FROM : G. C. Moore *GC*

SUBJECT: COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST - HATE GROUPS  
RACIAL INTELLIGENCE (BLACK PANTHER PARTY)

*is in C*

Authority requested to send attached letter to those offices having active BPP branches. It instructs that a letter be submitted every two weeks containing recommendations aimed against the BPP under captioned program.

A serious power struggle is now taking place between the BPP and US, in which threats have been made against various leaders of these two black extremist organizations.

With the end in mind of curbing extremist acts and the growth of the BPP, we should not miss the opportunity to exploit existing antagonisms existing between the BPP and other extremist organizations.

RECOMMENDATION:

That attached letter to designated offices should be sent for the reasons cited above.

Enclosure *sent 11-26-68*  
100-448006

*OK*  
*WCL*

[\*]

- 1 - Mr. W. C. Sullivan
- 1 - Mr. G. C. Moore

[\*]

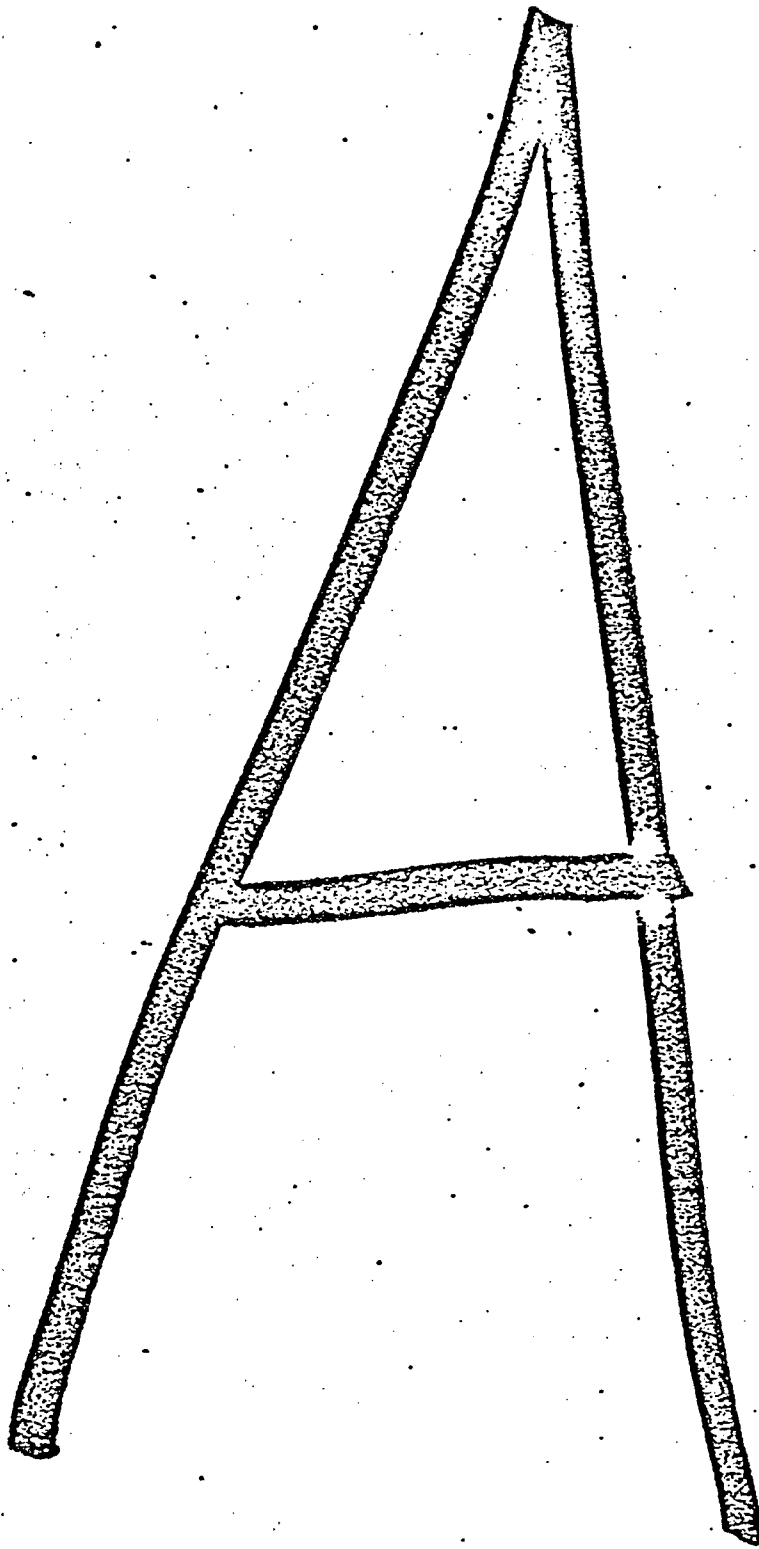
380000  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/1/93 BY 103800004

*5-10-NA*  
*W. C. Sullivan*  
*11/23/68*  
*W. C. Sullivan*  
*D. G. [unclear]*

WDN:ra/rmm  
(7)

REC-10

17 JAN 3 1969



*2 Pages*

56

FBI

Date: July 11, 1969

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

Via AIRTEL

AIRMAIL

(Priority)

TO: DIRECTOR, FBI (100-448006)

FROM: SAC, MILWAUKEE (157-459) (P)

SUBJECT: COUNTERINTELLIGENCE PROGRAM  
 BLACK NATIONALIST - HATE GROUPS  
 RACIAL INTELLIGENCE  
 BLACK PANTHER PARTY (BPP)

Re MI airtels to BU 6/23 and 6/30/69.

**A** [redacted] advised as follows on 7/8/69:

[redacted] at the request of [redacted] had of the [redacted] Instead [redacted] and ordered him out of the [redacted] purged from the National rolls.

At that time [redacted] was told to [redacted]

[redacted]

Source advised further that Chicago wants to have [redacted] handled by the Chicago REP [redacted]

[redacted] advised again on 7/10/69 [redacted]

[redacted] on the previous evening at which time [redacted] returned and attempted [redacted] But he was informed [redacted]

- 2 - Bureau (RM)
- 2 - Milwaukee (1-157-459) (1 - 157-600)

RAB/mw (4)

Approved: \_\_\_\_\_  
Special Agent in Charge

**H**

SEARCHED INDEXED  
 SERIALIZED FILED  
 JUL 14 1969  
 FBI - MILWAUKEE

100-448006-1139

Airtel to SAC, MI  
 JUM/KLS  
 6/18/69  
 A  
 A  
 A  
 ADVISED BY ROUTING SLIP(S) OF DATE

REC-100

25 JUL 14 1969

MI 157-459

A [REDACTED] and that [REDACTED]. Attempts are being made [REDACTED] a copy of which will be furnished MI office.

In view of the developing conflict between Chicago BPP and MI BPP [REDACTED] it is recommended that the Bureau grant authority for MI [REDACTED]

A It is felt that by doing this, strained relations will develop between the Chicago BPP, which considers itself mid-western regional headquarters, and MI BPP. There is currently a great deal of communication and travel between Milwaukee and Chicago BPP Chapters. It is felt that the above tactic would serve to disrupt these relations.



# Memorandum

56

DIRECTOR, FBI (100-448006)

DATE: 9/24/69

*Wls  
m*

SAC, LOS ANGELES (157-4054) (P)

DM

SUBJECT:

COUNTERINTELLIGENCE PROGRAM  
BLACK NATIONALIST-HATE GROUPS  
RACIAL INTELLIGENCE  
BLACK PANTHER PARTY (BPP)

(BUDED: 9/24/69)

*X  
13*

Re Los Angeles letter to Bureau, 9/18/69, Bureau letter to San Francisco, 9/12/69, Bureau letter to Los Angeles, 7/25/69, and San Francisco letter to Bureau, 7/28/69.

On 7/25/69, an anonymous letter was mailed to [\*], a leader in the Los Angeles Black Panther Party (LA-BPP) containing what reportedly was a memo written by [\*]. The contents of this memo were written in a manner to divide the BPP and the white groups who support them.

On 7/28/69, [redacted] revealed that a cartoon prepared by the Los Angeles Office depicting [\*] as an informant, was distributed at the National Conference for a United Front Against Fascism held in Oakland on 7/18/69 through 7/20/69.

Information received from [redacted] indicates that [\*], Officer of the Day, LA-BPP, is 17 years of age and presently on probation. This source revealed that [\*] has reported [\*], Vault Records, as her employer when she is, in fact, employed full time by the BPP. The source further revealed that [\*] may be pregnant by [\*] who is presently charged with murder by the Los Angeles Police Department. This information has been given to the Intelligence Division, Los Angeles Police Department. This information was then relayed to [\*] probation officer.

REC-96

1512

- 2 - Bureau (REGISTERED) ST-109
  - 1 - Los Angeles
- new/gcw  
(3)

5 SEP 26 1969

RACIAL INT. SECT.

*P. 8*

340770  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/13/93 BY 9803 RCO/WH

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



LA 157-4054

Intensive investigation is being conducted regarding harboring charges and possession of illegal firearms with the principal subjects being [\*] and [\*] is an active organizer and supporter of the Friends of the Panthers. [\*] is a supporter of the Friends of the Panthers and additionally, supplies a great deal of financial support in the BPP. It is felt that any prosecution or exposure of either [\*] will severely hurt the BPP. Any exposure will not only deny the Panthers money but in addition, would cause other white supporters of the BPP to withdraw their support. It is felt that the Los Angeles chapter of the BPP could not operate without the financial support of white sympathizers.

[REDACTED]

Interviews of local BPP members are being conducted and all local violations reported to the appropriate law enforcement agency. As a result of reports of local violations, the leadership and membership are constantly being arrested. These arrests constitute not only a morale factor but a financial drain on the resources of the BPP. Due to these arrests, the LA-BPP has a serious split in the membership and the leaders of the LA-BPP are unsure as to whose orders to follow.

Referenced Los Angeles letter to Bureau requested Bureau authority to mail a copy of an item entitled "Report on Background and Activities of" [\*] head of the US organization. It is felt that when [\*] knows that the BPP has this item in their possession, the gap between the US organization and the BPP will widen.

A In an attempt to determine the activities of the individuals involved in the formation of a new organization made up of ex-BPP members, [REDACTED] has been instructed to [REDACTED] the leadership of the BPP. At the same time, it has been told to maintain close contact with all BPP leaders both old and new.

LA 157-4054

In an attempt to disrupt this organization, Bureau authority is requested to mail an anonymous letter to [\*] This letter would be sent as though from an ex-Panther who is still sympathetic with the BPP. The letter would name [\*] who are two individuals active in the Los Angeles area setting up this organization.

b6  
b7C

Assistant Attorney General  
Civil Division  
Attn: Mr. Joseph R. Sher

FEDERAL GOVERNMENT

January 19, 1979

Assistant Director - Legal Counsel  
Federal Bureau of Investigation

1 - [redacted] - Enc.  
Attn: [redacted]  
1 - Civil Lit. Unit  
1 - [redacted] - Enc.

THE BLACK PANTHER PARTY, et al., v.  
EDWARD LEVI, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 76-2205

Enclosed is the original of a Declaration of  
Special Agent [redacted] that you requested for use  
in replying to Plaintiffs' Motion to Compel Discovery by  
Federal Defendants, dated December 28, 1978.

Enclosure

MFK:bbh  
(6) *bbh*

APPROVED:	Adm. Serv. _____	Legal Coun. _____
Director _____	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. _____	Fin. & Pers. _____	Rec. Mgnt. _____
Dep. AD Adm. _____	Ident. _____	Spec. Inv. _____
Dep. AD Inv. _____	Intell. _____	Tech. Servs. _____
	Laboratory _____	Training _____
		Public Affs. Off. _____

*MFK*

*(circled)*

ENCLOSURE

EX-125  
REC-9

*62-117442-218*

2 JAN 25 1979

*HNB/AR*

- Assoc. Dir. \_\_\_\_\_
- Dep. AD Adm. \_\_\_\_\_
- Dep. AD Inv. \_\_\_\_\_
- Asst. Dir.:
- Adm. Servs. \_\_\_\_\_
- Crim. Inv. \_\_\_\_\_
- Ident. \_\_\_\_\_
- Intell. \_\_\_\_\_
- Laboratory \_\_\_\_\_
- Plan. & Insp. \_\_\_\_\_
- Rec. Mgnt. \_\_\_\_\_
- Spec. Inv. \_\_\_\_\_
- Tech. Servs. \_\_\_\_\_
- Training \_\_\_\_\_
- Public Affs. Off. \_\_\_\_\_

MAILED 6  
JAN 22 1979  
FBI

340990  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-7-93 BY [redacted]

*TSI/AM*

*MFK*

*7/15/79*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al. )  
 )  
 ) Plaintiffs, )  
 )  
 ) v. )  
 )  
 ) EDWARD LEVI, et al. )  
 )  
 ) Defendants. )

b6  
b7c

Civil Action No. 76-2205

DECLARATION OF [REDACTED]  
SPECIAL AGENT, [REDACTED]  
RECORDS MANAGEMENT DIVISION

I, [REDACTED] am presently assigned to the [REDACTED]  
[REDACTED] Records Management Division, Federal  
Bureau of Investigation (FBI) Headquarters. I have examined  
Appendixes A, C, E, F, G and K to Plaintiffs' Motion to Compel  
Discovery by Federal Defendants dated December 28, 1978, and  
with respect to the allegations set forth in each of these  
appendixes, I make the following responses, numbered to  
correspond to the paragraph designations in the particular  
appendix:

1. Appendix A contains documents which plaintiffs state  
they obtained from the FBI Reading Room and which plaintiffs  
contend are relevant and within the scope of their document  
request, but which were not produced by defendants in this  
litigation.

(1) Memorandum dated April 27, 1971, from  
C. D. Brennan to W. C. Sullivan, captioned,  
"Counterintelligence Programs," was not  
furnished to the plaintiffs in that it made no  
mention of the Black Panther Party (BPP) or any  
of the individual plaintiffs. The FBI has no  
objection at this time to producing this docu-  
ment, appropriately excised.

348970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/27/93 BY 9803ROO/eta

62-117442-218  
ENCLOSURE

- (2) Airtel dated April 28, 1971, from Director, FBI, to SAC, Albany, captioned, "Counterintelligence Programs," was not furnished to the plaintiffs in that it made no mention of the BPP or any of the individual plaintiffs. The FBI has no objection at this time to producing this document, appropriately excised.
- (3) Airtel dated December 23, 1970, from Director, FBI, to SAC, Albany, captioned, "Key Black Extremist Program," was not furnished to the plaintiffs in that it made no mention of the BPP or any of the individual plaintiffs. The FBI has no objection at this time to producing this document, appropriately excised.
- (4) Airtel dated November 10, 1970, from Director, FBI, to the SACs of 39 field offices, captioned, "Counterintelligence Measures, Black Panther Party," a 2-page document, was furnished to the plaintiffs with administrative markings on page 1 and the note on page 2 excised. The FBI has no objection at this time to producing this note, appropriately excised.
- (5) Memorandum dated November 2, 1970, from G. C. Moore to C. D. Brennan, captioned, "Racial Conference, October 22-23, 1970," was not furnished to the plaintiffs in that it made no mention of the BPP or any of the individual plaintiffs. The FBI has no objection at this time to producing this document, appropriately excised.
- (6) New York teletype dated October 11, 1969, to Director, FBI, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," was furnished to the plaintiffs, with a file number handwritten on the edge of the first page of the document indicating the location of a copy of this document excised.
- (7) Memorandum dated October 10, 1968, from G. C. Moore to W. C. Sullivan, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party)," a 1-page document, was furnished in its entirety to the plaintiffs along with copies of the enclosure.
- (8) Memorandum dated April 5, 1971, from SAC, New York, to Director, FBI, captioned, "COINTELPRO - Black Extremists," a 1-page document, was furnished in its entirety to the plaintiffs.
- (9) Memorandum dated November 25, 1968, from Director, FBI, to SAC, Baltimore, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party)," a 2-page document, was furnished to the plaintiffs in its entirety except for the notation, "See Note Page 2," and the note itself appearing on page 2. This notation was excised in that it made no mention of the BPP or any of the individual plaintiffs. The FBI has no objection at this time to producing this note, appropriately excised.

- (10) Memorandum dated September 30, 1969, from Director, FBI, to SAC, Milwaukee, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 1-page document, was furnished to the plaintiffs in its entirety except for the note and certain administrative markings appearing thereon. The FBI has no objection at this time to producing this note, appropriately excised.
- (11) Letter dated November 6, 1969, from Director, FBI, to SAC, Springfield, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party)," a 1-page document, was furnished to the plaintiffs in its entirety except for a file number and the note appearing at the bottom of the document. The note appearing on this document made no mention of the BPP or any of the named plaintiffs and accordingly was excised. The FBI has no objection at this time to producing this note, appropriately excised.
- (12) Airtel dated April 7, 1970, from SAC, Miami, to Director, FBI, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Matters," was not furnished to the plaintiffs in this litigation in that it made no mention of the BPP or any of the individual plaintiffs. The FBI has no objection at this time to producing this document, appropriately excised.
- (13) Airtel dated June 17, 1970, from Director, FBI, to SAC, Philadelphia, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party)," a 1-page document, was furnished to the plaintiffs with certain administrative markings excised, along with the note appearing at the bottom of the document. The FBI has no objection at this time to producing the note in its entirety. This note is a summary of information appearing in the text of documents previously disclosed to the plaintiffs.
- (14) Memorandum dated May 19, 1971, from SAC, New Haven to Director, FBI, captioned, "COINTELPRO - Black Extremists, Racial Matter," a 2-page document, was furnished to the plaintiffs in its entirety except for the identity of individuals furnishing confidential information to the FBI.
- (15) Memorandum dated December 30, 1968, from G. C. Moore to W. C. Sullivan, captioned, "Counterintelligence Program, Stokely Carmichael; Eldridge Cleaver, Racial Matters - Black Panther Party," a 2-page document, was inadvertently withheld from plaintiffs due to a clerical error. The FBI has no objection at this time to producing this document, appropriately excised.

- (16) Letter dated October 31, 1968, from Director, FBI, to SAC, Los Angeles, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party)," a 3-page document, was furnished to the plaintiffs in its entirety except for the note appearing on page 3. This note is a summary of information appearing in the text of this document. The FBI has no objection at this time to producing this note, appropriately excised.
- (17) Memorandum dated September 30, 1968, from Director, FBI, to San Francisco captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party), BUDED 10/14/68," a 2-page document, was furnished in its entirety except for the note appearing on page 2. The FBI has no objection at this time to producing this note, appropriately excised.
- (18) Airtel dated March 4, 1968, from Director, FBI, to SAC, Albany, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence," a 6-page document, was withheld in its entirety in that it made no mention of the BPP or any of the individual plaintiffs. The FBI has no objection at this time to producing this document.

2. Appendix C contains documents which plaintiffs state were deleted without explanation in an attempt to conceal such deletions.

- (1) Memorandum dated December 4, 1970, from SAC, Albany, to Director, FBI, captioned, "COINTELPRO - Black Extremists, RM," a 4-page document with 2 pages of enclosures, was furnished to the plaintiffs with certain excisions. In processing page 1 of this document for disclosure, a portion of the page was folded upon itself blocking out a portion of the text which was not intended to be deleted. The FBI has no objection at this time to producing this document, appropriately excised.
- (2) Airtel dated November 3, 1970, from Director, FBI, to SACs, Chicago, New York and San Francisco, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence," a 1-page document enclosing a 2-page airtel with a 2-page attachment, was released with certain excisions. The first paragraph of page 2 was deleted because it contained the name of a person who was the subject of a previous FBI investigation and was excised to safeguard that individual's privacy interests. This excision was accomplished by folding the page in such a manner as to conceal this paragraph, however, the appropriate excision code, which in this case should have been "D," was inadvertently omitted.



- (3) A 1-page document plaintiffs assert was provided them by the United States Postal Service. This document contains insufficient information to determine whether a copy, or the original of this document in its unexcised form, appears in the files of the FBI.

3. Appendix E contains documents which plaintiffs state were improperly excised on the grounds of relevancy.

- (1) Airtel dated November 3, 1970, from Director, FBI, to SACs, Chicago, New York and San Francisco, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence," a 1-page document without attachments, was furnished to the plaintiffs in its entirety except for a file number unrelated to this investigation and the note appearing at the bottom of the page. The FBI has no objection at this time to producing the text of the note, appropriately excised. See also, Paragraph 4, Subsection (2), of this Declaration.
- (2) Teletype dated February 10, 1971, from Director, FBI, to SAC, San Francisco, captioned, "COINTELPRO - Black Extremists, Racial Matters," a 1-page document without attachments, was furnished in its entirety to the plaintiffs with the exception of the note appearing on the bottom of the page. This note contains a summary of facts previously disclosed to plaintiffs in documents produced in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (3) Airtel dated February 2, 1970, from Director, FBI, to SAC, San Diego, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (BPP)," a 1-page document without attachments, was furnished in its entirety to the plaintiffs with the exception of the note which was excised on the grounds of relevancy. This note contains a summary of information appearing in the text of documents previously disclosed to the plaintiffs in this litigation. The FBI has no objection at this time to producing this document in its entirety.
- (4) Letter dated April 24, 1969, from Director, FBI, to SAC, San Francisco, captioned "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 1-page document, was furnished in its entirety to the plaintiffs except for the deletion of the note on the grounds of relevancy. This note contains a summary of information appearing in the text of documents previously disclosed to the plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.

- (5) Airtel dated January 28, 1971, from Director, FBI, to SACs, Boston, Los Angeles, New York and San Francisco, captioned, "COINTELPRO - Black Extremists, Racial Matters," a 2-page document, was furnished to the plaintiffs in its entirety with the exception of the note which was excised on the grounds of relevancy. This note contains a summary of facts disclosed in other documents previously provided plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (6) Airtel dated November 6, 1970, from Director, FBI, to SAC, San Francisco, captioned, "COINTELPRO - Black Extremists, Racial Matters," a 1-page document, was furnished to the plaintiffs in its entirety with the exception of the note which was excised on the grounds of relevancy. This note contains a summary of facts disclosed in other documents previously provided plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (7) Letter dated May 21, 1969, from Director, FBI, to SAC, Chicago, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 2-page document, was furnished in its entirety to plaintiffs with the exception of 3 file numbers unrelated to this investigation and a note appearing on the bottom of page 1 and the top of page 2. This note contains a summary of facts disclosed in other documents previously provided plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (8) Airtel dated December 28, 1970, from Director, FBI, to SACs, Atlanta, Cincinnati, New York and San Francisco, captioned, "COINTELPRO - Black Extremists, Racial Matters," is a 2-page document. Although the airtel indicates an enclosure which is described in the first paragraph of this communication, no such enclosure was found attached to this document at the time it was provided to the plaintiffs, however, this enclosure has been furnished to the plaintiffs in this litigation. This document was produced in its entirety except for the words, "See Note Page 2," appearing on the bottom of page 1 and the note itself appearing on the bottom of page 2. This note contains a summary of facts disclosed in other documents previously provided the plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (9) Letter dated November 3, 1969, from Director, FBI, to SAC, Baltimore, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 2-page document, was furnished in its entirety to the plaintiffs except for the words, "See Note Page 2," appearing on the bottom of

page 1 and the note appearing on the bottom of page 2. This note contains a summary of facts contained in the text of this communication. The FBI has no objection at this time to producing this note in its entirety.

- (10) Airtel dated April 10, 1969, from Director, FBI, to SAC, New York, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 4-page document, was furnished to the plaintiffs in its entirety, except for the deletion of file numbers unrelated to this investigation, the identity of a confidential source and the note appearing at the bottom of page 4. This note contains a summary of facts disclosed in other documents previously provided the plaintiffs in this litigation. The FBI has no objection at this time to producing this note, appropriately excised.
- (11) Airtel dated March 16, 1971, from Director, FBI, to SAC, San Francisco, captioned, "COINTELPRO - Black Extremists, Racial Matters," a 1-page document, was furnished in its entirety to the plaintiffs except for a file number unrelated to this investigation and the note appearing at the bottom of page 1 which was excised on the grounds of relevancy. This note is a summary of the facts disclosed in other documents previously furnished the plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (12) Airtel dated March 10, 1971, from Director, FBI, to SAC, San Francisco, captioned, "COINTELPRO - Black Extremists, Racial Matters," a 1-page document, was furnished in its entirety to the plaintiffs except for a file number which was unrelated to this investigation and the note appearing at the bottom of the page. This note is a summary of the facts disclosed in other documents previously furnished the plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (13) Letter dated June 5, 1969, from Director, FBI, to SAC, Boston, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 1-page document, was furnished in its entirety to the plaintiffs except for the deletion of a file number unrelated to this investigation and the excision of a note appearing on the bottom of the page which was deleted on the grounds of relevancy. This note is a summary of facts disclosed in other documents previously furnished the plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.

4. Appendix F contains documents which plaintiffs state were produced by the FBI to Huey P. Newton pursuant to a Freedom of Information request, but were not produced in the same manner in discovery in this litigation as certain information was deleted on grounds of relevancy.

- (1) Letter dated April 4, 1969, from Director, FBI, to SAC, San Diego, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (BPP)," a 1-page document was furnished in its entirety to the plaintiffs except for the note appearing at the bottom of the page. This note is a summary of information already provided plaintiffs in documents previously disclosed in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (2) Airtel dated November 3, 1970, from Director, FBI, to SACs, Chicago, New York and San Francisco, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence," a 1-page document, was furnished in its entirety to the plaintiffs except for the deletions of a file number unrelated to this investigation and the deletion of the note appearing on the bottom of the page. The FBI has no objection at this time to producing the note, appropriately excised.

(5) Appendix G contains documents which plaintiffs state were improperly excised on the grounds of relevancy.

- (1) Airtel dated August 21, 1970, from Director, FBI, to SAC, Charlotte, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Racial Matters - Black Panther Party," a 2-page document, was furnished in its entirety except for the note appearing on the bottom of page 1 and the top of page 2 which was deleted on the grounds of relevancy. This note contains a summary of facts disclosed in other documents previously provided plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (2) Airtel dated February 2, 1971, from Director, FBI, to SAC, Albany, and 28 other FBI field offices, captioned, "COINTELPRO - Black Panther Party (BPP) - Dissension," a 3-page document, was produced in its entirety with the exception of the note on the top of page 3 which was deleted on the grounds of relevancy. This note contains a summary of facts disclosed in other documents previously provided plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.

- (3) Airtel dated March 29, 1971, from Director, FBI, to SAC, Albany, and 42 other field offices, captioned, "COINTELPRO - Black Extremists, Racial Matters," a 2-page document, was furnished in its entirety except for the words "See Note Page 2," appearing on the bottom of page 1 and the note itself on the bottom of page 2 which was deleted on the grounds of relevancy. This note contains a summary of facts disclosed in other documents previously provided plaintiffs in this litigation. The FBI has no objection at this time to producing this note in its entirety.
- (4) Memorandum dated March 5, 1969, from SAC, San Diego, to Director, FBI, captioned, "COINTELPRO - Black Nationalist," a 2-page document, was furnished in its entirety with the exception of a file number unrelated to this investigation and the words, "See Note Page 2," appearing on the bottom of page 1 and the note itself appearing on the bottom of page 2. This note is a summary of facts disclosed in the text of this communication. The FBI has no objection at this time to producing this note in its entirety.

6. Appendix K contains documents which plaintiffs state contain deletions on the basis of informant privilege.

- (1) Memorandum dated November 22, 1968, from G. C. Moore to W. C. Sullivan captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence (Black Panther Party), a 1-page document, was furnished in its entirety to plaintiffs in this litigation. The attached letter referred to in this memorandum was not found to be attached to this memorandum at the time it was disclosed to the plaintiffs and the 2-page document plaintiffs refers to in paragraph 1 of Appendix K, which was deleted on the basis of informant privilege, represents another communication entirely. The letter referred to in the recommendation in G. C. Moore's memorandum to W. C. Sullivan dated November 22, 1968, was furnished to plaintiffs in this litigation with the exception of the words, "See Note Page 2," on the bottom of page 1 and a 2 line note appearing at the top of page 2. This note relates to another document which has been furnished plaintiffs in this litigation. The FBI has no objection at this time to furnishing this note in its entirety.
- (2) Airtel dated July 11, 1969, from SAC, Milwaukee, to Director, FBI, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 2-page document, was furnished to the plaintiffs with deletions of various administrative markings as well as deletions of information that would identify, or tend to identify, an informant of the FBI. A review of this document in its unexcised form disclosed that paragraph 3 of page 1 does not contain instructions from the FBI to the informant as the plaintiffs believe, however, it does contain information which, if disclosed, would tend to identify the informant.

(3) Memorandum dated September 24, 1969, from SAC, Los Angeles, to Director, FBI, captioned, "Counterintelligence Program, Black Nationalist - Hate Groups, Racial Intelligence, Black Panther Party (BPP)," a 3-page document, was furnished to the plaintiffs with information deleted that would identify, or tend to identify, an informant of the FBI.

I declare, under penalty of perjury, that the foregoing is true and correct.

---

JACK A. FRENCH  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

Executed on \_\_\_\_\_, 1979.

UNITED STATES GOVERNMENT

# Memorandum

TO : *NY* DIRECTOR, FBI  
(ATTENTION LEGAL COUNSEL DIVISION)

DATE: 1/23/79

FROM : *DO* SAC, WFO (197-57) (P\*)

SUBJECT: *K* BLACK PANTHER PARTY, VS.  
EDWARD LEVI,  
ET AL  
(U. S. D. C., D. C.)  
CIVIL ACTION NUMBER 76-2205

ReWFOlet to Bu dated, 11/13/78.

On 1/16/79, Docket Number 76-2205 of the United States District Court for the District of Columbia was received and attached is a copy of the docket since 11/9/78.

WFO will follow and report.

*(Handwritten mark)*

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b7c

EX-140

REC-6

*62-117442-219*

16 JAN 24 1979

②-Bureau (Enc. 1)  
1-WFO

MCP:g1  
(3)

LEGAL COUNSEL 7316  
*213*

*62-117442*



66 FEB 3 1979

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/7/93 BY 9803ROD/REH

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR-3-7-78

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. <u>76-2205</u> PAGE <u>16</u> OF <u>    </u> PAGES
--	----------------------------------	--

DATE	NR.	PROCEEDINGS
1978		
Oct	23	REPLY Memorandum by defts. in support of the motion of defts. for an extension of time; attachment.
Oct	24	REPLY by pltfs. to response of deft. Moore to response of pltfs. to motion of federally defts. for an order to show cause.
Oct	25	RESPONSE of pltfs. to motion of deft., Moore to adopt motion of defts., Bell, et al. for sanctions for failure to provide discovery.
Oct	27	RESPONSE of pltfs. to supplemental memorandum of P&A's in support of motion by federally-represented defts. for sanctions for failure to provide discovery and memorandum of defts. Bell, et al. in opposition to motion for reconsideration of order granting motion of defts., Bell, et al. for extension of page limitations.
Oct	30	MEMORANDUM of P&A's by pltfs. in opposition to motion by federally-represented defts. for partial summary judgment or in the alternative for sanctions; affidavit of Bruce J. Terris; exhibit.
Nov	03	NOTICE by Lawrence J. Jensen of withdrawal of appearance for the United States.
Nov	03	REPLY Memorandum in support of the motion of defts., Bell except for for Moore & Sullivan for partial summary judgment or for sanctions; table of cases; exhibits 1 thru 4.
Nov	06	STATUS CALL: Motion of defts., Bell, et al. filed 2-3-78 for enlargement granted; Motion of defts., Bell, et al. filed 3-2-78 for extension of time to compel granted; Motion of pltf. for extension of time to file response to interrogatories filed 7-10-78 granted; Motion of pltf. to file response to interrogatories filed 8-16-78 granted; Motions hearing on motion of defts., Bell, et al. to extend time to respond to motion of pltf. to compel set for 11-22-78 at 9:30 A.M. (Rep: Dawn Copeland) SMITH, J.
Nov	22	NOTICE by pltfs. of filing affidavit of Mark H. Lynch in response to the reply memorandum in support of motion of defts. Bell, et al. for an extension of time and etc; Affidavit of Mark H. Lynch.
Nov	22	MOTIONS: Motions of Federal defts. for extension of time to respond to pltfs. motion to compel heard and Granted with hearing on defts. motion for sanctions and for Summary Judgment 12-14-78 at 10:00 A.M. (Rep: R. Kavulick) SMITH, J.
Nov	27	TRANSCRIPT of proceedings of Nov. 22, 1978; pp. 1-20; Rep: Ronald Kavulick (COURT COPY).

SEE OVER



197-57

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 76-2205
THE BLACK PANTHER PARTY, et al.		EDWARD LEVI, et al.	PAGE 17 OF _____ PAGES
DATE	NR.	PROCEEDINGS	
1978			
Dec	12	SUPPLEMENTAL Memorandum of P&A's by pltfs. responding to new issues raised by defts. Bell, et al. in oral argument before this Court on 11-22-78, and to supplemental memorandum of P&A's by defts. in support of motion by federally-represented defts. for sanctions for failure to provide discovery; attachment.	
Dec	14	MOTION of defts. Bell, et al. for sanctions, heard and denied; motion of defts. for partial summary judgment taken under advisement; defts. given 20-days to file motion to compel with pltf. given 20-days thereafter to respond; hearing to be set later. (Rep: Dawn Copeland) SMITH, J.	
Dec	19	SUPPLEMENTAL Memorandum of pltfs. in opposition to motion of federally-represented defts. for partial summary judgment.	
Dec	21	ORDER filed Dec. 20, 1978 denying Federal Defts. motion for sanctions and further that defts have 20 days to file any appropriate motions to compel and pltffs. 20 days thereafter to respond. (N) SMITH, J.	
Dec.	28	MOTION of defts for extension of page limitation prescribed by local Rule 1-9(e) and for Leave to deviate from Local Rule 1-9A; Exhibit.	
Dec.	28	SUPPLEMENTAL REPLY MEMORANDUM of pltfs. in support of the motion of defts. Bell, et al. for partial summary judgment.	
Dec.	28	MOTION of defts. to compel discovery of pltf. Huey Newton; P & A; Attachments.	
1979			
Jan	03	TRANSCRIPT of proceedings of Nov 6, 1978; pp. 1-31; Rep: Dawn Copeland (COURT COPY)	
Jan	03	TRANSCRIPT of proceedings of Dec 14, 1978; pp. 1-43; Rep: Dawn Copeland (COURT COPY)	
Jan	11	MOTION by pltfs. for an extension of time to respond to motion of defts. to compel discovery by the Black Panther Party and by Huey P. Newton.	
Jan	12	ORDER filed 1-11-79 granting motion of defts., Bell, et al. for extension of page limitations provided by Local Rule 1-9(a) and Clerk is directed to file memorandum of P&A's in support of the motion of defts., Bell, et al. to compel. (N) SMITH, J.	
Jan	12	MEMORANDUM of P&A's by defts., Bell, et al. in support of motion to compel pltf., Black Panther Party to respond to discovery.	

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

# Memorandum

TO: *NY 25*  
*9/11*  
DIRECTOR, FBI  
ATTN: LEGAL COUNSEL DIVISION

DATE: 3/20/79

FROM: SAC, WFO (197-57) (P\*)

SUBJECT: Black Panther Party, vs.  
Edward ~~Levi~~ Et Al  
(U.S.D.C., D.C.)  
Civil Action #76-2205

Re WFO let to Bureau, 1/23/79.

On 3/16/79 Docket #76-2205 of the United States District Court for the District of Columbia was reviewed and attached is a Xerox copy of the docket since last reviewed on 1/16/79.

WFO will follow and report.

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b7c

30070  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9/17/93 BY 2603 ROR/mst

EX-115

REC-124

62-117442-220

16 MAR 23 1979

ENCLOSURE ATTACHED

2-Bureau (Encl 1)  
1-WFO

MCP:sac  
(3)

[Redacted Box]

LEGAL COUNSEL 7321  
B 213



1 cc 7370  
APR 12 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

ENCLOSURE TO BUREAU  
FROM WFO

Re: Black Panther Party, vs. Edward Leir,  
Et Al

1 Xerox copy of Docket #76-2205

WFO 197-57

Letter dated 3/20/79.

240970



APR 7 1979 9:03 AM RECEIVED

62-117442-220

ENCLOSURE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 EDWARD LEVI, et al., )  
 )  
 Defendants. )

Civil Action No. 76-2205

PLAINTIFF BLACK PANTHER PARTY'S  
SUPPLEMENTAL RESPONSES TO INTERROGATORIES  
OF THE FEDERALLY REPRESENTED DEFENDANTS

INTRODUCTION

I, Joan Kelley, on behalf of plaintiff Black Panther Party (BPP), supplement to the best of my ability the answers given on July 24, 1978, to the first set of interrogatories propounded by the federally represented defendants. All my answers are subject to the following statements:

a. "HCIS Report" means the House Committee on Internal Security, Staff Study, The Black Panther Party -- Its Origin and Development as Reflected in Its Official Weekly Newspaper, The Black Panther Black Community News Service, 91st Cong., 2d Sess., 1970.

b. "Senate Report" means the Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, S. Rep. No. 755, 94th Cong., 2d Sess., Book III (1976).

c. Plaintiff originally conducted an extensive search to answer the 244 interrogatories. <sup>1/</sup> Nonetheless, plaintiff ~~did not~~

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HEREIN IS UNCLASSIFIED  
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1/ Plaintiff's search of its files, discussions with ~~Certain~~ Committee members, and conversations with present and former members and supporters were detailed in plaintiff's Memorandum of Points and Authorities in Response to Motion to Compel Discovery, pp. 8-11, and in the Affidavit of Joan Kelley, para. 2(a)-(e), both filed

6 ENCLOSURE "ENCLOSURE ATTACHED"  
62-117443  
70 FEB 26 1979

(continued)  
[Redacted Box] b6 b7c

reconsidered its responses to the questions raised in defendants' Motion to Compel in order to be certain that all possible information was provided. Despite defendants' contention that "all the answers" were tainted by an inadequate search (Def. Mot. Compel BPP, p. 5), additional information could be found for only seven of the interrogatories.

d. In its original responses, plaintiff made it clear that the Party frequently did not have any record of the information requested (Black Panther Party's Responses to Interrogatories of Federally Represented Defendants, p. 2) and that all relevant documents that could be found were being produced (ibid). In many instances, plaintiff stated that its information about defendants' activities came from the Senate Report or could be found in articles in the Party's newspaper. See, e.g., Responses 40, 114, 213, 223, 228, 241. Nevertheless, defendants objected that plaintiff did not specify sufficiently what information it had. Def. Motion to Compel BPP, p. 9. In order to avoid any possible misunderstanding, the Party has reiterated as to each interrogatory objected to on this ground when the information in the Senate Report or the Party's newspaper comprises all the information presently available to plaintiff. These statements constitute the majority of the Supplemental Responses.

e. A few of the Supplemental Responses consist of explanations of alleged inconsistencies in plaintiff's original responses raised in defendants' Motion to Compel.

f. Plaintiff has further indicated in these Supplemental Responses when it anticipates that more information about a particular issue will be obtained through discovery from defendants.

---

1/ (continued)

January 31, 1979. I estimate that I spent 400 hours before the responses were submitted on July 24, 1978, researching files, locating former members and supporters, and talking with knowledgeable individuals. In addition, I had the assistance of three part-time workers who spent an estimated 100-150 hours helping compile information.

When additional witnesses are discovered, they will be identified in accordance with the Party's obligation under Rule 26(e)(1).

#### SUPPLEMENTAL RESPONSES

##### Interrogatory 16:

Identify all documents which constitute charters, constitutions, programs, by-laws, rules, regulations, executive mandates, or any other similar documents, however styled, of the Black Panther Party.

##### Supplemental Response:

The Black Panther Party did not include the "8 Points of Attention" and "3 Main Rules of Discipline" in its original response to interrogatory 16 for two reasons. First, they did not originate with the Black Panther Party, but instead were taken from Mao Tse Tung's Red Book. Second, and more important, they were not considered to be part of the Party's rules or bylaws. Although they were quoted from time to time in the Party newspaper, they were used as examples of another revolutionary group's rules and bylaws.

##### Interrogatory 21:

Identify all persons who held the offices identified in answer to interrogatories 18 and 19 and provide the dates for each such person's term of office, post or position of responsibility.

##### Supplemental Response:

Gwen Newton should be added as a Central Committee member, a position she has held from 1974 to the present. With the addition of Gwen Newton, the Party's list of 21 present and past Central Committee members is more complete than either the list compiled by Elaine Brown in 1976 or the list compiled by Huey Newton in 1977 because more members of the Central Committee have become publicly known over time. Joan Kelley was not listed as

a Central Committee member until the July 24, 1978, responses because, although she previously may have been publicly known as a member of the Party (see HCIS Report, p. 7), she was not publicly known as a member of the Central Committee. Fred Hampton was never a member of the Central Committee; he was listed by Elaine Brown as a Deputy Chairman, which is a Chapter, not a Headquarters, designation.

Interrogatory 22:

For any offices, posts or positions of responsibility identified in answer to interrogatories 18 and 19 as to which there are no documents which describe their duties, set forth their duties and the basis for the description, including but not limited to the following offices:

- A) field marshal
- B) minister of foreign affairs
- C) minister of defense
- D) chief of staff
- E) chairman or chairperson
- F) minister of information
- G) minister of propaganda
- H) national headquarters captain
- I) central committee member
- J) minister of education
- K) minister of culture
- L) minister of finance
- M) prime minister
- N) prime minister of Afro-America
- O) minister of justice
- P) communications secretary
- Q) assistant chief of staff
- R) minister of religion
- S) deputy minister of information

- T) defense captain
- U) deputy minister of defense
- V) organizer
- W) lieutenant of defense
- X) lieutenant of security
- Y) lieutenant of information
- Z) field secretary
- AA) inspector
- BB) minister of labor
- CC) section leader
- DD) other offices identified in answer to interrogatory 18 but not listed in A) through CC).

Supplemental Response:

Of the 25 titles used by the Party , the following 12 were not identified in plaintiff's original response:

I) Central Committee member -- this general designation was used interchangeably with any of the 13 titles originally identified.

Q) Assistant Chief of Staff -- this was a Bay Area central staff position.

R) Minister of Religion and BB) Minister of Labor -- these were honorary titles given to persons possessing expertise in these areas who advised the Party. Father Earl Neil was Minister of Religion and Kenny Norton was Minister of Labor.

The remaining 8 titles were used by the local central staffs which, as explained in the original response to Interrogatory 18, functioned in the same collective coordinating manner as the national Central Committee. These 8 local titles were S) Deputy Minister of Information, T) Defense Captain, U) Deputy Minister of Defense, W) Lieutenant of Defense, X) Lieutenant of Security, Y) Lieutenant of Information, Z) Field Secretary, and CC) Section Leader.



The Party's description of the collective coordinating nature of the Central Committee is not contradicted by Mr. Newton's description of the delegation of responsibility within the Party as "analogous to management within a large corporation" (Newton Responses, p. 2). The comparison is accurate at any particular time, since responsibility for specific programs and activities rotates among Central Committee members and among local central staffs, but the analogy is not exact.

Interrogatory 25:

Identify all officers and other persons who were or now are authorized to speak on behalf of the Black Panther Party.

Supplemental Response:

The 7 leading members listed in the original response had general authority to speak for the Party for the dates listed. The 14 other members of the Central Committee identified in the original and supplemental responses to Interrogatory 21 had limited authority to speak for the Party at a particular meeting or on a particular subject during the time that they were Central Committee members.

Interrogatory 35:

Identify all chapters which had or have been delegated as regional chapters or have or had been delegated regional responsibility over other chapters and identify the chapters within the jurisdiction of each and the period for which they were or have been designated as a regional.

Supplemental Response:

The following list identifies which of the Party's chapters and branches listed in response to interrogatory 26 have exercised a regional function since 1968. The local chapters and branches that worked with each regional are listed under that regional. In a number of cases, chapters and branches that were isolated geographically across the country worked with the National

Headquarters rather than through the regional office nearest them. These are therefore listed under the National Headquarters in Oakland.

REGIONAL AND LOCAL CHAPTERS  
OF THE BLACK PANTHER PARTY

<u>Chapter/Branch</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
<u>National Headquarters:</u>			
<u>1968-70</u> Berkeley Office 3106 Shattuck Ave. Berkeley, CA 415/845-0103/0104/0773	1968		Moved in 1970 to: 1048 Peralta Street Oakland, CA
<u>1970-Present</u> Ministry of Information 1048 Peralta Street Oakland, CA 415/465-5047/48/58	1970		Moved in 1972 to: 8501 East 14th St. Oakland, CA 415/638-0195/96/97
			The San Francisco office of the National Headquarters (1336 Fillmore St., founded 1968) moved to 8501 E. 14th St., Oakland, CA in 1972.
<u>California Chapters/Branches that Worked with National Headquarters:</u>			
<u>San Francisco</u> Community Centers 2777 Pine Street San Francisco, CA 415/882-8471	1968	*	**
Community Center 135 Kiska Rd., Apt. 304 San Francisco, CA 415/822-8471	1968	*	**
<u>Oakland</u> Community Center 1321 - 99th Ave. E. Oakland, CA 415/636-0944	May 1, 1970	*	
Community Center 1690 Tenth Street W. Oakland, CA 415/465-7089	1969		**late 1974 11th Street Oakland, CA

\* / No documentation available as to specific dates.

\*\* / Relocated in Oakland, California, as of closing date.

<u>Chapters/Branches</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
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California Chapters/Branches  
that Worked with National  
Headquarters (continued)

<u>Richmond</u> 520 Bissell Street Richmond, CA 415/237-6305	*	*	
<u>Sacramento</u> 35th Street Sacramento, CA	May 1968	October 1969	**
<u>Vallejo</u> no address available	1968	1969	**

Other Chapters/Branches  
that Worked with National  
Headquarters:

<u>Denver</u> 1224 E. 22nd Ave. Denver, CO 303/244-8353	January 1969	1970	
<u>Denver Locals</u> <u>Community Center</u> 3123 Franklin St. Denver, CO 303/534-4010	July 1969	1970	
2311 Clarson Street Denver, CO	1969	1970	
<u>Indianapolis</u> 133 W. 30th Street Indianapolis, IN 317/925-5172	*	*	
<u>Indianapolis Local</u> <u>Community Center</u> 414 E. 23rd St. Indianapolis, IN 317/925-0157	*	*	
<u>Seattle</u> 173 - 20th Ave. Seattle, WA 206/324-8818	April 1968	1976	**
<u>Portland (worked with Seattle)</u> 3619 N.E. Union Portland, OR 503/282-5115	October 1969	*	
<u>Portland Local</u> <u>Health Clinic</u> Portland, OR 503/288-7279	*	*	
Dental Clinic Portland, OR 503/287-6513	*	*	

\*/ No documentation available as to specific dates.

\*\*/ Relocated in Oakland, California, as of closing date.

<u>Chapter/Branch</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
<u>Other Chapters/Branches that Worked with National Headquarters (continued):</u>			
<u>Cleveland</u> 2783 E. 79th Street Rear South Upper Cleveland, OH 216/881-5055	*	*	
2314 E. 79th Street Cleveland, OH	1968	*	
<u>Omaha</u> 3508 N. 24th Street Omaha, NE 402/455-7065	*	*	
<u>Winston-Salem</u> 1225 E. 18th St., #5 Winston-Salem, NC 919/722-4097	1969	1977	**
<u>Chattanooga</u> 428 N. Highland Park & 1738 Vine Street Chattanooga, TN	October 1971	June 1976	**
<u>Houston</u> Dowling Street Houston, TX	March 1969	July 1974	**
<u>Kansas City</u> 2905 Prospect Kansas City, MO	1968	1969/ 1970	
<u>Atlanta</u> 2041 Dunwoody Street Atlanta, GA	1970	*	
<u>Memphis</u> 815 E. McIemore Memphis, TN	1970	1972	
<u>Las Vegas</u> no address available	1973?	*	(reopened 1976 ? and closed 1977) ?
<u>Des Moines</u> no address available	1968	1969	
<u>Dallas</u> 2857 Pueblo Dallas, TX	1970	1974	

\* / No documentation available as to specific dates.

\*\* / Relocated in Oakland, California, as of closing date.

<u>Chapters/Branches</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
<u>Los Angeles Regional Chapter:</u>			
2043 Stockwell Street Los Angeles, CA 213/635-2586/9882	1970	1976	Re-opened on January 17, 1977
<u>Los Angeles Locals</u> 73rd & Broadway Los Angeles, CA	November 1967		Moved 1968 to 4115 So. Central Avenue
W. Adams Boulevard Los Angeles, CA	Nov./Dec. 1967		Moved in 1968 to 4115 So. Central Avenue
Watts Office 1859 E. 103rd Street Los Angeles, CA	1968		Moved in 1970 to 2043 Stockwell
Community Center 334 W. 55th St. Los Angeles, CA 213/779-4518	September 1969	*	
Community Center 2136 - 113th Street Los Angeles, CA 213/564-2728	January 1970	*	
Medical Clinic Los Angeles, CA 213/233-7044	1970	*	
<u>Other Chapters/Branches that Worked with Los Angeles:</u>			
<u>San Diego</u> 2952 Imperial San Diego, CA	1968	1969	Moved in 1969 to Los Angeles
<u>Santa Ana</u> no address available	1969	1970	
<u>Riverside</u> Riverside People's Community Center 4046 Dwight Ave. Riverside, CA 714/784-2215	1970	*	
<u>Compton</u> Toure Community Center 1511 - 153rd Street Compton, CA 213/774-5733	November 1969	*	

\*/ No documentation available as to specific dates.

\*\*/ Relocated in Oakland, California, as of closing date.

<u>Chapters/Branches</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
<u>Chicago Regional Chapter:</u>			
2350 W. Madison Chicago, IL 312/738-0778/0779	1968	1976	**
<u>Chicago Locals</u>			
4233 So. Indiana St. Chicago, IL	1968	1973	**
3850 W. 16th Street Chicago, IL	1969	1973	
<u>Other Chapters/Branches that Worked with Chicago:</u>			
<u>Rockford</u>			
112 So. Main Street Rockford, IL	1968	1970	
<u>East St. Louis</u>			
1610 - 16th Street East St. Louis, MO	1969	1971	Relocated in Chicago
<u>Detroit</u>			
2219 Indiandale Detroit, MI 313/868-9836	1969	March 1975	**
157 Collingwood and 611 Continental Detroit, MI	1969	1973	
<u>Milwaukee (Worked with Detroit)</u>			
2121 North 1st St. Milwaukee, WI 414/374-5481	1968	1972	Moved 1975 to: 2750 N. 16th Street
<hr/>			
<u>Boston Regional Chapter:</u>			
23 Winthrop Street Roxbury, MA 617/427-9693, 617/422-0100	February 1968	April 1973	**
<u>Cambridge (Worked with Boston)</u>			
2662 Western Avenue Cambridge, MA 617/491-2430	1970	*	

\*/ No documentation available as to specific dates.

\*\*/ Relocated in Oakland, California, as of closing date.

<u>Chapters/Branches</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
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Washington, D. C. Regional Chapter:

2327 - 18th Street, N.W. Washington, D. C. 202/265-4418/4419	1969	March 1974	**
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Other Chapters/Branches  
that Worked with Washington:

<u>Norfolk</u> no address available	1970	*	
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<u>Richmond</u> 911 St. James Street Richmond, VA	1970	*	
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New Haven Regional Chapter:

35 Sylvan Avenue New Haven, CT 203/562-7463/8557	March 1969	1973	
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Other Chapters/Branches  
that Worked with New Haven:

<u>Bridgeport</u> 470 Broad Street Bridgeport, CT 203/367-0893	*	*	
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<u>Hartford</u> 135 Barbour Street Hartford, CT 203/347-7518	*	*	
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New York Regional Chapter:

Ministry of Information 1370 Boston Road Bronx, NY 212/328-9911/9009	1969	1974	
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New York Locals

<u>Harlem Branch</u> 2026 Seventh Avenue New York, NY 212/864-8951, 212/666-3603	1969	*	
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<u>Brooklyn Branch</u> 180 Sutter Avenue Brooklyn, NY 212/842-2791, 212/458-7538, 212/342-6886	1970	*	
--	------	---	--

\*/ No documentation available as to specific dates.

\*\*/ Relocated in Oakland, California, as of closing date.

<u>Chapters/Branches</u>	<u>Inception</u>	<u>Closed</u>	<u>Comments</u>
<u>New York Regional Chapter</u>			
<u>New York Locals (Continued):</u>			
<u>Queens</u> 108-60 New York Boulevard New York, NY	1969	1973	
<u>Mt. Vernon</u> Community Center 45-B East 3rd Street Mt. Vernon, NY 914/667-9419	1969	*	
<u>Corona</u> 101-16 Northern Boulevard 212/779-1550/0551/0552	1969	1971	
<u>Jamaica</u> E. Coast Distribution 108-60 New York Blvd. 212/523-9866	1969	*	
<u>Other Chapters/Branches</u> <u>that Worked with New York:</u>			
<u>Philadelphia</u> 1928 W. Columbia Avenue Philadelphia, PA 215/235-5738	1968	January 1974	**
<u>Baltimore</u> 1202 N. Gay Street Baltimore, MD 301/342-8536	November 1968	March 1972	
<u>Baltimore Local</u> Community Information Center 567 Mosher Street Baltimore, MD	1969	1970	
<u>Jersey City</u> 93 Summit Avenue Jersey City, NJ 201/333-7200/7201	1969	*	
<u>Newark</u> no address available	1968	*	
<u>Atlantic City</u> Community Center 915 Virginia Place Atlantic City, NJ	*	*	

\*/ No documentation available as to specific dates.

\*\*/ Relocated in Oakland, California, as of closing date.



Interrogatory 36:

Describe in detail the nature of a regional Chapter's responsibility over chapters in its jurisdiction.

Supplemental Response:

As explained in the Party's original response, the primary responsibility of the regional chapters was to serve as distribution centers for the Party newspaper, books, and other materials. In addition, the regional chapters worked with local branches on Party service programs and activities, fund-raising, and, in some instances, holding joint meetings and rallies.

Interrogatory 40:

Describe in detail the circumstances which led to the dissolution of each affiliate.

Supplemental Response:

The Party has no records that describe in detail the circumstances which led to the dissolution of each affiliate and the Party's only information at this time consists of the references in the Senate Report cited in the original response. As the plaintiff acquires more information about this question through discovery, it will supplement this response as required by Rule 26(e)(1).

Interrogatory 41:

Identify each affiliate which plaintiffs contend became defunct or otherwise was dissolved as a result of the actions of the defendants.

Supplemental Response:

See supplemental response to interrogatory 40.

Interrogatory 49:

Identify all documents which reflect reprimands, imposition of sanctions (including expulsion of members and revocation of charters) or cautions by the national organization to any Black Panther Party affiliate.

Supplemental Response:

The Black Panther Party newspaper at times carried notices of expulsion of affiliates, although this was never termed a "charter revocation."

Interrogatory 50:

Identify all copies of "The Black Panther" which contain lists of Party members and chapters who were expelled or charters revoked.

Supplemental Response:

See supplemental response to interrogatory 49.

Interrogatory 58:

Describe in detail the purposes, aims, goals, and actions of The Emergency Conference to Defend the Right of the Black Panther Party to Exist held on or about March 7-8, 1970, in Chicago, Illinois.

Supplemental Response:

Plaintiff's original response was correct. After contacting former Party members, supporters, and others in the Chicago area, Ms. Kelley was able to confirm that the Emergency Conference was not sponsored by the Party. During that period, many individuals and groups with no affiliation with the Party sponsored meetings in which the Party itself was not involved. Mr. Garry was among the persons contacted by Ms. Kelley and he had no recollection of attending the conference or of any actions he may have taken to lend support to it. That Mr. Garry may have lent his name as a sponsor for a fund-raising appeal six months after the conference <sup>1/</sup> does not, of course, mean that the Party itself supported the conference. Even for a period during which Mr. Garry is counsel to the Party, his independent activities are no more attributable to the Party than are the activities of other private attorneys attributable to their clients.

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<sup>1/</sup> See letter from Continuations Committee of the Emergency Conference, dated September 1970. The conference was held in March 1970. HCIS Hearings, Black Panther Party Part I, Investigation of Kansas City Chapter; National Organization Data, 91st Cong., 2d Sess., p. 5110 (1970).

Interrogatory 59:

Identify all other Conferences, ad hoc organizations, programs, and conventions (by title, date, and location) with purposes, aims, goals, and actions similar to the Chicago conference referenced in the preceding interrogatory.

Supplemental Response:

See supplemental response to interrogatory 58.

Interrogatory 75:

Were Party members or officers required by any formal or informal rule or encouraged to obtain, carry, and/or train with firearms?

Supplemental Response:

The Party never required members, by any formal or informal rule, to obtain, carry, or train with firearms. However, when the atmosphere of harassment by law enforcement officers was intense during the late 1960s and early 1970s, members were encouraged to carry firearms. As guidance for members who did possess firearms, 3 of the 26 Rules of the Black Panther Party were directed to proper handling of weapons. Rule 5 forbade the pointing, use, or firing of a weapon of any kind at anyone unnecessarily or accidentally, Rule 7 provided that no one could have a weapon in their possession while intoxicated, and Rule 16 stated that members must learn to operate and service weapons correctly.

Interrogatory 76:

Did the Party or persons it represents ever caution, warn or threaten witnesses not to testify before the House Committee on Internal Security with regard to the Committee's hearings in 1970 on the Black Panther Party?

Supplemental Response:

The Party did not caution, threaten, or warn witnesses not to testify before the House Committee on Internal Security in 1970.

Interrogatory 86:

Describe in detail the make-up, purpose, and structure of the Black Liberation Army.

Supplemental Response:

The Party explained that the "Black Liberation Army" was not a real entity but a rhetorical term used to describe anyone working to improve the quality of life of Blacks in the United States. This answer is not inconsistent with Mr. Newton's responses since he understood defendants' questions to refer to a concrete entity and therefore denied knowledge of the Black Liberation Army. Plaintiff Huey P. Newton's Responses to First Interrogatories of the Federally Represented Defendants, 54, 57, 59, 60, 61.

Interrogatory 105:

Identify by number, location, and subscriber all telephones which plaintiff alleges by paragraph 57(A) that the defendants monitored.

Supplemental Response:

The list of 233 Party office, member and supporter telephone numbers given in the original response represents all numbers that, at the present time, the Party suspects have been illegally monitored over a 12-year period. An accurate and complete list of numbers that were actually monitored will be developed through discovery from defendants.

Interrogatory 109:

Identify by name and address all individuals and organizational affiliates as to which it is alleged in paragraph 57(A) there has been unlawful mail opening by the defendants.

Supplemental Response:

The addresses plaintiff identified in the original response are the only ones plaintiff suspects, at the present time, to have been subject to mail openings. Plaintiff did not maintain records of occasions on which packages arrived open or torn

or when packages which had been expected failed to arrive. As discovery proceeds, plaintiff expects to be able to obtain further evidence of defendants' involvement in illegal mail opening by contacting former members for their recollection of events documented in the materials produced by defendants.

Interrogatories 110

If the alleged subject of mail opening identified in answer to the preceding interrogatory is not a plaintiff, describe the affiliation of the alleged subject to the plaintiffs.

Supplemental Response:

See supplemental response to interrogatory 109.

Interrogatory 111:

If the answer to the preceding interrogatory is that the alleged subject of the mail opening was an officer, member or legal counsel of the Black Panther Party or any affiliate, identify the office held, dates of membership, and/or dates or retention as counsel and the particular affiliate with which the individual was associated.

Supplemental Response:

See supplemental response to interrogatory 109.

Interrogatory 112:

If the answer to interrogatory 94 is that the alleged subject of mail opening was an organizational affiliate of plaintiff identify any documents which set forth or otherwise establish the affiliation with the plaintiff.

Supplemental Response:

See supplemental response to interrogatory 109.

Interrogatory 113:

Identify all counsel as to whom it is alleged in paragraph 57(A) their privileged communications with Party members and supporters have been intercepted by defendants.

Supplemental Response:

The list of the Party's counsel supplied in the original response represents the attorneys whom the Party presently suspects have been subject to illegal monitoring. Because plaintiff and its counsel did not maintain records of occasions on which they suspected a conversation was being intercepted, this is the only information plaintiff has until discovery can be completed.

Interrogatory 114:

Identify all property which plaintiff alleges in paragraph 57(B) was the subject of "burglaries" or "black bag jobs" committed by the defendants as a result of which plaintiff seeks relief.

Supplemental Response:

The Party did not maintain records of break-ins, burglaries, and other evidence of illegal entries into Party offices and files other than the raid reported in the Party newspaper. Thus, plaintiff will not be able to provide further information to this question until discovery is complete.

Interrogatory 115:

Identify all persons or organizations which held property interests, and the dates such interests were held as to all property identified in answer to the preceding interrogatory as having been the subject of burglaries of "black bag jobs" allegedly committed by the defendants.

Supplemental Response:

See supplemental response to interrogatory 114.

Interrogatory 116:

If the persons or organizations identified in answer to the preceding interrogatory are not plaintiffs, describe the relationship or affiliation to the plaintiffs of the holders of an interest in property, which allegedly was the subject of burglaries or "black bag jobs" committed by the defendants.

Supplemental Response:

See supplemental response to interrogatory 114.

Interrogatory 117:

If the answer to the preceding interrogatory is that a holder of an interest in property which allegedly was the subject of a burglary or "black bag job" committed by the defendants, was an officer, member, or legal counsel of the Black Panther Party or any affiliate, identify the office held, dates of retention as counsel and the particular affiliate with which the holder was associated.

Supplemental Response:

See supplemental response to interrogatory 114.

Interrogatory 118:

If the answer to interrogatory 100 is that the holder of an interest in property, which allegedly was the subject of a burglary or "black bag job" committed by the defendants, was an organizational affiliate of plaintiff, identify any documents which set forth or otherwise establish the affiliation with the plaintiff.

Supplemental Response:

See supplemental response to interrogatory 114.

Interrogatory 131:

Describe in detail (including identification of substantiating documents) the factual circumstances surrounding the dispute between the Black Panther Party and the US organization as referenced in paragraphs 58(B-C).

Supplemental Response:

Until discovery is completed, plaintiff cannot provide accurate information about the dispute which defendants promoted between the US organization and the Black Panther Party.

Interrogatory 140:

Identify all documents and describe in detail all information upon which plaintiffs rely for the allegation con-

tained in paragraph 59(A), other than information submitted to the United States District Court for the Northern District of Illinois in Iberia Hampton, et al., v. Edward V. Hanrahan, et al., 70C1384 (N.D. Ill.).

b6  
b7C  
b7D

Supplemental Response:

The Party at this time does not have other documents or information to support the allegations in paragraph 59(a) of its complaint regarding the activities of [REDACTED]

[REDACTED] As noted in the original responses, such information will be sought through discovery.

Interrogatory 143:

Identify the name and nature of Party affiliation of the person alleged in paragraph 59(B) to have been placed as an undercover agent in the New Haven Chapter of the Party.

Supplemental Response:

The lists of expelled members carried in the "Black Panther" were not necessarily complete and thus George Sams' could be expelled without publication of a notice in the newspaper.

Interrogatory 144:

Identify (by name, address and nature of Party affiliation) the persons who are alleged in paragraph 59(B) to have participated in the "torture-murder" of Alex Rackley after being persuaded and directed by the alleged undercover agent of defendants.

Supplemental Response:

Plaintiff's best recollection and belief had been that Lonnie McLucas' conviction was overturned on appeal and this was the information supplied in plaintiff's response to the motion to compel. (Black Panther Party's Memorandum in Response to Defendants' Motion to Compel Discovery, p. 81-82). At the time of filing these responses, plaintiff had no records to substantiate its belief. However, plaintiff has since checked



with a representative of the law firm of Koskoff, Koskoff and Viedor, who served as counsel for Lonnie McLucas in his trial. From counsel, plaintiff has learned that Mr. McLucas' conviction was not, in fact, reversed. While he was serving a 12-15 year sentence, McLucas' attorneys sought through various appeal procedures, including a writ of habeas corpus, to reverse the conviction. During this period of time, negotiations between counsel for Mr. McLucas and counsel for the State of Connecticut resulted in an agreement to reduce the sentence. At the time agreement was reached, Mr. McLucas had served 4 years and the Sentence Review Board reduced the sentence to time served.

Interrogatory 146:

If Alex Rackley was not a member of the New Haven Chapter, what was the basis for the New Haven Chapter taking any actions against him (e.g., directed to do so by the national office or by the New York regional Chapter)?

Supplemental Response:

On plaintiff's best information, there was no directive from either the National Headquarters office or the New York chapter to take any action against Alex Rackley. Plaintiff has no weekly reports from the New York or New Haven chapters and thus is unable to provide any further answer to this question.

Interrogatory 159:

Identify all documents which identify, mention or otherwise refer to members as being possible or potential informants or agent provocateurs.

Supplemental Response:

[redacted] was identified as an informant in the Supplemental Response of Plaintiff Black Panther Party to Federally Represented Defendants' First Request for Production of Documents (filed November 21, 1978). At this time, the Party is able to further supplement its response with the following four names:

b6  
b7C  
b7D

Name                      Dates                      Location                      Manner of Publication

<u>Name</u>	<u>Dates</u>	<u>Location</u>	<u>Manner of Publication</u>

Interrogatory 184:

Identify all persons to whom the draft comic book was distributed prior to the alleged decision against publication or circulation.

Supplemental Response:

Although the Party has been unsuccessful in contacting these individuals, it is believed that Bobby Seale and David Hilliard saw and rejected the draft comic book. If the Party is able through its inquiries to identify other individuals who may have seen the comic book, it will supplement its responses pursuant to Rule 26(e)(1).

Interrogatory 210:

Identify each teacher, (by name, former and last known address, and date of contact) whom defendants are alleged in paragraph 60(E) to have called upon to question and deter the teacher from having any further contact with or support for the Educational Opportunities Corporation, Inc. school.

Supplemental Response:

Plaintiffs do not have the present or former addresses or date of defendants' contact with Vivette Miller. Plaintiff presently does not have the names of other teachers contacted

but will supplement its response pursuant to Rule 26(e)(1) as discovery progresses.

Interrogatory 211:

Identify each contributor (by name, former and last known address, and date of contact) whom defendants are alleged in paragraph 60(E) to have called upon to question and deter the supporter from having any further contact with or support for the Education Opportunities Corporation, Inc., school.

Supplemental Response:

Plaintiff presently has no information on Party contributors deterred by defendants but will supplement its response pursuant to Rule 26(e)(1) as discovery progresses.

Interrogatory 213:

Identify each institution which paragraph 61(A) alleges was urged by defendants to cancel previously arranged speaking engagements by Party representatives.

Supplemental Response:

Other than the information in the Senate Report identified in the original response, plaintiff has no information on institutions urged by defendants to cancel Party speaking engagements. As discovery progresses, plaintiff will supplement its response pursuant to Rule 26(e)(1).

Interrogatory 214:

For each institution identified in answer to the preceding interrogatory, identify the date of the planned speaking engagement, the nature of the agreement (e.g. letter of confirmation, written contract, etc.), the name and address of the Party representative, and the nature of that person's Party affiliation.

Supplemental Response:

See supplemental response to interrogatory 213.

Interrogatory 215:

Identify (by institution, date, and planned speaking engagement identified in answer to the preceding interrogatory) each instance where the Party was advised that institution officials had received anonymous telephone calls warning of violence if the planned speaking engagement was not canceled.

Supplemental Response:

Other than the information in the Senate Report identified in the original response, plaintiff has no information on institutions which cancelled Party speaking engagements because of anonymous telephone calls warning of violence. As discovery progresses, plaintiff will supplement its response pursuant to Rule 26(e)(1).

Interrogatory 216:

For each instance identified in answer to the preceding interrogatory, state whether the speaking engagement was, in fact, canceled and identify any documents which reflect such cancellation.

Supplemental Response:

See supplemental response to interrogatory 215.

Interrogatory 217:

For each instance identified in answer to interrogatory 215 where a speaking engagement was not canceled, state whether there was violence and describe the nature of the violent acts, including the persons and organizations involved.

Supplemental Response:

See supplemental response to interrogatory 215.

Interrogatory 218:

If the speaking engagement identified in answer to interrogatory 215 was pursuant to a legal, binding agreement, describe in detail all acts which the Party took to enforce the agreement or receive compensation for its breach.

Supplemental Response:

See supplemental response to interrogatory 215.

Interrogatory 219:

For each instance identified in answer to interrogatory 215, identify all documents which reflect actual loss from the failure to meet such speaking engagements (e.g., auditorium rental deposit or fees charged to plaintiff).

Supplemental Response:

See supplemental response to interrogatory 215.

Interrogatory 223:

Identify (by name, former and last known address, and nature of Party affiliation) all street vendors who are alleged in paragraph 61(B) to have been arrested by defendants for selling "The Black Panther."

Supplemental Response:

The street vendor arrests discussed in issues of the Party newspaper and weekly reports produced to defendants represent all information presently available to the Party. The Party contends that every arrest of a vendor was a false arrest. If other names are identified through discovery, plaintiff will supplement its response pursuant to Rule 26(e)(1).

Interrogatory 224:

For each person identified in answer to the preceding interrogatory, state the nature and disposition of any charges brought against that person as a result of the arrest by the defendants.

Supplemental Response:

See supplemental response to interrogatory 223.

Interrogatory 225:

Identify all documents (including but not limited to documents filed with a court) which reflect the defendants' arrest of street vendors selling the publications "The Black Panther" as alleged in paragraph 61(B).

Supplemental Response:

See supplemental response to interrogatory 223.

Interrogatory 228:

Identify (by radio or television station, newspaper, source, information disseminated, and date) each instance where defendants are alleged in paragraph 61(C) to have disseminated "half-truths" and "out-right fabrications" about the Party and its leaders to the media.

Supplemental Response:

The only information the Party presently has concerning dissemination of half-truths and lies about the Party to the media is the information originally cited from the Senate Report. As more information is obtained, plaintiff will supplement its response to the extent required by Rule 26(e)(1).

Interrogatory 229:

For each instance identified in answer to the preceding interrogatory, identify that part of the information alleged in paragraph 61(C) which was not true.

Supplemental Response:

See supplemental response to interrogatory 228.

Interrogatory 233:

If the arrest of Fred Hampton alleged in paragraph 61(E) to have been "instigated" by defendants was pursuant to an arrest warrant, describe in detail which rights of the Party were violated.

Supplemental Response:

Plaintiff's original response was not that the traffic warrant was on its face improper, although if a copy of the warrant were available, it might show that it was illegal. Plaintiff's contention as to the illegality of the warrant is based on the fact that it was illegally intended (by defendants' own admissions in hearing testimony cited in the Senate Report, p. 217) to disrupt and prevent Mr. Hampton's appearance on a television program.

Interrogatory 241:

Identify (by name, address, and nature of Party affiliation) all persons who are alleged in paragraphs 62(G) to have been the subjects of physical surveillance, mail opening, and other acts by defendants.

Supplemental Response:

Plaintiff identified the Party members and supporters listed in the responses to interrogatories 105-113 as the subjects of physical surveillance, mail opening, and other acts by the defendants. In addition, plaintiff cited information from sections of the Senate Report. Except as to the identities of persons protected by the First Amendment, this represents the extent of the Party's present information.

Interrogatory 242:

For each person identified in answer to the preceding interrogatory, identify (by date, place, and act) the acts alleged in paragraph 62(G) to have been taken by defendants against that person.

Supplemental Response:

See supplemental response to interrogatory 241.

Interrogatory 243:

Identify (by name, address, and nature of Party affiliation) all persons who are alleged in paragraph 62(H) to have been the subjects of electronic surveillance authorized by defendants.

Supplemental Response:

See supplemental response to interrogatory 241.

Interrogatory 244:

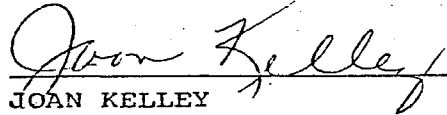
For each person identified in answer to the preceding interrogatory, list all phone numbers which are alleged in paragraph 62(H) to have been the subject of electronic surveillance conducted by defendants.

Supplemental Response:

See supplemental response to interrogatory 241.

I declare under penalty of perjury that the foregoing  
is true and accurate.

Executed on February 9, 1979.

  
\_\_\_\_\_  
JOAN KELLEY



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 EDWARD LEVI, et al., )  
 )  
 Defendants. )

Civil Action 76-2205

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing  
"Plaintiff Black Panther Party's Supplemental Responses to  
Interrogatories of the Federally Represented Defendants" has  
been sent via first-class mail, postage prepaid, on this the  
12th day of February, 1979, to the following:

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Arlington, Virginia 22216  
(703) 525-2260

Karen H. Edgecombe

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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THE BLACK PANTHER PARTY, et al.,  
Plaintiffs,  
vs.  
EDWARD LEVI, et al.,  
Defendants.

CIVIL ACTION NO.  
76-2205

REPLY MEMORANDUM TO OPPOSITION  
TO MOTION OF DEFENDANTS BELL, ET AL.  
TO COMPEL DISCOVERY OF PLAINTIFF NEWTON

TABLE OF CASES AND AUTHORITIES

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ENC. BEHIND FILE  
ENCLOSURE

Miscellaneous:

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\* Cases and authorities chiefly relied upon are marked by an asterisk.

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DATE 9/7/93 BY 4803R00/MSH

62-117442-

ENCLOSURE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Civil Action No. 76-2205  
 )  
 EDWARD LEVI, et.al., )  
 )  
 Defendants. )

SECOND SUPPLEMENTAL RESPONSE OF PLAINTIFF  
BLACK PANTHER PARTY TO FEDERALLY REPRESENTED  
DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS 1/

In its original production of documents on July 24, 1978, plaintiff asserted a First Amendment claim not to disclose the names of members and supporters who were not already publicly known. These names were deleted from the documents produced. See Response of Plaintiff Black Panther Party to Federally Represented Defendants' First Request for Production of Documents, pp. 1-2. Defendants have objected that certain of the deletions in the weekly reports were overbroad. Def. Mot. to Compel BPP, pp. 66-68. Plaintiff has reviewed the deletions and is producing corrected documents where appropriate in response to Request 2.

Request 2:

All weekly reports which Chapters were required to submit to National Headquarters pursuant to Rule 20, Rules of the Black Panther Party.

Supplemental Response:

The names of all Party members and supporters considered not publicly known were deleted from the weekly reports originally submitted in response to this request. After reviewing the

1/ An affidavit from [redacted] describing his activities as an informant was produced in the Supplemental Response of Plaintiff Black Panther Party to Federally Represented Defendants' First Request for Documents (filed November 21, 1978). Defendants had requested in interrogatory 159 that plaintiff identify all documents that refer to informants.

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DATE 9-7-93 BY 103 R0104

deletions, plaintiff is producing the following weekly reports with corrections:

1. Milwaukee Chapter weekly reports of March 15, 1976, and May 25, 1976. The first page of each of these reports is now produced showing the name of the person at National Headquarters who received the reports. This individual was Larry Henson, who was identified in the Party's response to Interrogatory 21 as a leading member of the Party. Plaintiff has verified, however, that the sender of these reports is not publicly known. Thus, the Party continues to claim a First Amendment privilege to delete the name of the sender from page 2 of the March 15, 1976, and May 25, 1976, reports.

A new copy of page 2 of the March 15, 1976, report is also produced, showing the text of the last three paragraphs exclusive of the names of individuals subject to the Party's claim of privilege. Plaintiff checked the names appearing on this page against the list of publicly known local members given in the House Committee on Internal Security, Staff Study, The Black Panther Party -- Its Origin and Development as Reflected In Its Official Weekly Newspaper, The Black Panther Black Community News Service, 91st Cong., 2d Sess., pp. 7-9 (1970), and concluded that none of the individuals are publicly known.

2. Southern California Chapter weekly report of November 29, 1971. The first page of this report is produced showing the signatory which, as plaintiff indicated in its response to the motion to compel, was not an individual. Plaintiff Black Panther Party's Memorandum in Response to Defendants' Motion to Compel, p. 92. The Party continues to claim a First Amendment privilege against disclosing the names of the individual report writers, since they are not publicly known. Page 8

of this report is also being produced to show the full text of the writer's summary of public trial testimony.

Respectfully submitted,

BRUCE J. TERRIS  
KAREN H. EDGECOMBE  
1526 18th Street, N.W.  
Washington, D.C. 20036  
(202) 332-1882

Attorneys for Plaintiffs

#### CERTIFICATE OF SERVICE

I hereby certify this 12th day of February, 1979, that a copy of the foregoing "Second Supplemental Response of Plaintiff Black Panther Party to Federally Represented Defendants' First Request for Production of Documents" and true copies of the documents specified within the Response have been served by mailing via first-class mail, postage prepaid, to the following:

Joseph E. Casey  
1435 G Street, N.W.  
Washington, D.C. 20005

Larry Gregg  
R. Joseph Sher  
Civil Division  
Torts Section  
U.S. Department of Justice  
Washington, D.C. 20530

William L. Stauffer, Jr.  
Leonard, Cohen & Gettings  
1400 North Uhle Street  
P.O. Box 742  
Courthouse Square  
Arlington, VA 22216

---

KAREN H. EDGECOMBE

BLACK PANTHER PARTY, Milwaukee Chapter  
2750 N. 16th Street - Milwaukee, Wisconsin 53206  
(414) 263-5563

March 15, 1976

To: Larry Henson  
Black Panther Party, Central Headquarters  
8501 E. 14th Street  
Oakland, California 94621

From: Milwaukee Chapter, Black Panther Party  
2750 N. 16th Street  
Milwaukee, Wisconsin 53206

Dear Comrades,

We have four Party members, and  
/ We also have a brother that works fairly regular in  
the print shop and is beginning to relate to the Party. Back in  
November the situation of the print shop was critical. Bills were  
in the rear and a lot of energy had to be expended towards that  
end to bring it to a stable point.

FREE BUSING TO PRISON PROGRAM

Momentum is being picked up toward having the program funded.  
We have one CETA slot for the program right now and have requests  
for three more positions which were given a Priority I rating by  
the Finance Committee, Milwaukee County Board of Supervisors last  
month. The requests go back before the Finance Committee at their  
next meeting on the 25th of this month to be voted upon by that body.  
Because of its longevity the program has tremendous support throughout  
the community.

We have also reorganized the Committee for the Survival of Prison-  
ers, Inc. On the 20th of March we are having a Benefit Dinner and  
Bake Sale out of our office on sixteenth street. We recently re-  
structured our busing program operation to become a component part  
of our newly named Milwaukee Legal Aid & Educational Program for  
purposes of funding, job slots, etc., and in conjunction with our  
thrust toward implementing prisoners commissary programs and providing  
assistance and survival services to inmates and their families in  
general.

BLACK PANTHER INTERCOMMUNAL NEWS SERVICE

We had been selling only 300 papers through the winter until  
2 weeks past when we started taking 500. We understand the importance  
of our paper. We have always been short handed in terms of people  
and we are trying to recruit new members to help us and I believe  
that we will have many new members shortly.

\*\*\*\*\*

"SUPPORT YOUR SURVIVAL PROGRAMS"

[Second Supplemental Response of Black Panther Party to  
Federally Represented Defendants' First Request for Documents]

I've been spending most of my time trying to set up a survival machine relating to my talks with - and in fact have already begun, but I can only report about it in person.

The trip to Chicago wasn't cool at all. I was relegated to a minor role before I even got there. informed me that since had already given prior notice that he wasn't going to be there he was written out of the planning sessions so all I was suppose to do was go to work shops, and we didn't have any kind of accomodations.

I'm in the process of organizing what I think will be a permanent and fruitful income for us to do things the way they need to be done.

The Milwaukee Chapter has had to be reorganized since, and as a result of the situation that existed when I came out to Central last summer, which still has its effects. has reported to me that he has been told by Circulation Coordinator, that he wasn't doing shit and the brother had just come back from in the field in 10 below zero selling the Party paper.

All Power to the People,

Coordinator

[Second Supplemental Response of Black Panther Party to Federally Represented Defendants' First Request for Documents]



BLACK PANTHER PARTY, Milwaukee Chapter  
2750 N. 16th Street - Milwaukee, Wisconsin 53206  
(414) 372-0178

May 25, 1976

Larry Henson  
Black Panther Party, Central Headquarters  
8501 E. 14th Street  
Oakland, California 94621

Re: Monthly report

Dear Comrade,

PRINTING BUSINESS

Business is picking up some, the problems now are money and help. We have some people from the Community coming in at times to help, but we haven't gotten any qualified help to this point. We just signed a contract for a on-the-job training program for four trainee's. The contract pays half of the employee's salary for six months, and is worth about \$4,000. We should receive our first installment payment in about a week. Financially the printing business is in debt. Hopefully by August we should be able to began to show a profit.

FREE BUSING TO PRISON PROGRAM

In the months of April and May we bussed 284 people to the penal institutions in Wisconsin. The Free Busing to Prison Program support group, the Committee for the Survival of Prisoners, meets every Tuesday at our office. The Committee sponsors benefits, dances, sales and other activities to support the program. The Committee is incorporated. The busing program trips are paid for by the Social Development Commission in Milwaukee, and we also have one CETA slot.

INTERCOMMUNAL NEWS SERVICE

Since the beginning of the year we have increased distribution by 500 papers. Store distribution has increased by 10 stores in the last two weeks. We are trying to buy display stands for the papers in the stores because we know this would increase the sales. This week we are going to hit all of the supermarket chains about taking the paper. The problem that I have had is the number of comrades that I am able to send to the field because of our other areas of responsibility. I'm also going to Madison, Wisconsin this week to distribute papers in that area and other receptive areas in the state.

"SUPPORT YOUR SURVIVAL PROGRAMS"

[Second Supplemental Response of Black Panther Party to  
Federally Represented Defendants' First Request for Documents]

TO: CENTRAL HEADQUARTERS BLACK PANTHER PARTY  
FROM: SOUTHERN CALIFORNIA CHAPTER  
RE: WEEKLY REPORTS FOR WEEK ENDING NOVEMBER 27, 1971  
DATE: NOVEMBER 29, 1971

ENCLOSED ARE THE FOLLOWING WEEKLY REPORTS FOR THE SOUTHERN CALIFORNIA CHAPTER.

BREAKFAST REPORT.....  
DISTRIBUTION REPORT.....  
CLINIC REPORT.....  
LEGAL DEFENSE REPORT.....  
STOCKWELL REPORT.....  
78TH STREET REPORT.....  
PASADENA REPORT.....

ALL POWER TO THE PEOPLE  
S. Calif. Chapter  
Black Panther Party

[ Second Supplemental Response of Black Panther Party to  
Federally Represented Defendants' First Request for Documents ]

Cross -

He didn't dig up any information about L.A.

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Under Farwell's cross-examination, he said that he didn't know that [ ] was an informant. He knew that [ ] would be a statewitness after he had taken the stand. He didn't know Tackwood prior to '70. [ ] never worked for him.

Witness - Reverend Kilgore

He attended Morehouse College and Morris College. He has three honorary degrees and has taught in New York and other places. He belongs to several organizations, SCLC, NAACP, etc. He is very interested in helping the community. Became familiar with the Party when the breakfast program started. Some Panthers asked him if a breakfast could be held in his church, but he was already holding a similar program. He said that the 10 Pt. Program had very many positive things in it. He went down each point and told what was positive about it. Cross - No Panther ever took him into his confidence. He has never been invited inside of CHQ. Has never been invited to the gun room. At his church breakfast program he doesn't teach hate or violence.

Thursday - Ronald Freeman

He joined the Party in '68. He was a member up to this year. He attended PE classes. "Off the pig" means to eradicate the oppressive conditions in our community. The purpose of the Party is to redistribute the power in the country to oppressed people. He read literature of other people's struggle. He knew [ ] [ ] was in charge of supplies. He knew Toure and they never talked about killing. He believes in armed revolution if necessary. He hates when the police are manipulated by the ruling circle to serve the ruling circle's interest. He has had discussions about the April 6th shoot-out. During August to November of '69 he wasn't involved in Panther affairs.

Cross - The goal of the Party is to educate the people. He recited the Motto and the Cardinal Rule. He is an active revolutionary. An active revolutionary needs a gun. Every one at CHQ had access to all the rooms. There was only one shotgun behind the partition. He learned how to make pipebombs one time in court...a pig had testified to how pipebombs were made. He never talked about pipebombs to any of the defendants.

He was directly under G in rank. He left the Party early this year. He is subordinate to the needs of Black people. The Party had an organized structure, people had functions, and people gave orders which may or may not be followed. G was first man, he was second. Long John was his equal. Deputy Minister of Information and Communication Secretary were next in rank, and they were Elaine and Masai. There were section leaders and sub-section leaders. [ ] was subordinate to Roland on the political level. There was also a military level. He didn't know what it was about. [ ] and Julio Butler were in the military level. There was an underground. Its (one) functions was to teach people how to defend themselves. He doesn't know of military classes. He would always be travelling back and forth from San Diego to L.A. All branches are subordinate to the Central Staff of this chapter. Elaine, Long John, Joan Kelley, Ronald, and Masai were all on the Central Staff.

He's heard the saying that "political power grows out of the barrel of a gun." That means that the people in power have control of guns. BPP has a military section but not an army. He knew [ ] was in the military because Bunchy told him so. He didn't have information on who was in the underground. He, Roland, and Craig are the oldest members in the Party.

There was a distinction between the office and the breakfast program location. The office is to conduct political work and register complaints. There were unmarked Panther houses. Time came when people began staying at offices because of fear of their lives. It was better to stay together in a group. Stated that we started staying together in offices just before he got busted.

[ Page 8 of Southern California Chapter  
Weekly Report of November 29, 1971 ]

[Second Supplemental Response of Black Panther Party to  
Federally Represented Defendants' First Request for Documents]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 ) Civil Action No. 76-2205  
 EDWARD LEVI, et al., )  
 )  
 Defendants. )

PLAINTIFF HUEY P. NEWTON'S  
SUPPLEMENTAL RESPONSES TO FIRST INTERROGATORIES  
OF THE FEDERALLY REPRESENTED DEFENDANTS

I, Huey P. Newton, supplement to the best of my ability and recollection my July 24, 1978, responses to the first interrogatories propounded by the federally represented defendants.

Interrogatory 4:

How were you elected President of the Black Panther Party (e.g., vote of the Central Committee, vote of Party members, etc.)?

Supplemental Response:

Although I was out of the country from August 1974 until July 1977, I remained a member of the Central Committee and a Party leader. It was understood when I left, however, that it would be impractical for me to carry on the day-to-day leadership of the Party. Elaine Brown served in a temporary capacity as head of the Party until my return from Cuba. It was mutually understood among all Central Committee members that, upon my return, I would resume my leadership position with the Party. Consequently, on my return, there was no need for a formal election.

Interrogatory 5:

If your answer to the preceding interrogatory is that you were not elected President, how did you assume authority as the chief officer of the Black Panther Party from Elaine Brown?

Supplemental Response:

See supplemental response to interrogatory 4.

Interrogatory 8:

Identify (by docket number, court, and parties) all civil and criminal actions (Federal and State) in which you have been a party, other than actions involving marital, child support, or personal debt issues.

Supplemental Response:

The following information supplements my earlier description of criminal charges filed against me since 1972.

1. On April 21, 1972, a complainant lodged charges of assault and brandishing a weapon against me. These charges were brought to trial in the case of People of the State of California v. Robert Bay and Huey Newton, Alameda County Superior Court, Case No. 25272 and resulted in a misdemeanor conviction on the assault charge on April 15, 1974.

2. When I returned from Cuba in 1977, I was charged with a group of felony and misdemeanor offenses in an Information dated July 19, 1977 (Alameda County Municipal Court, Case No. 6-46-24A). These charges were eventually separated, as follows:

a. People of the State of California v. Huey Newton, Alameda County Superior Court, Case No. 654-74. I was acquitted of one count of assault with a deadly weapon and convicted of two counts of possession of a weapon by an ex-felon on September 29, 1978. An appeal of this conviction was filed November 3, 1978 (Court of Appeals for the First Appellate District, Division 3, Crim. No. 18996). These charges are referred to in defendants' interrogatories 42, 44 as the Preston Callins case.

b. People of the State of California v. Huey Newton, Alameda County Superior Court. My trial on this murder charge is scheduled to begin shortly. This charge is referred to in defendants' interrogatories 42-43 as the Kathleen Smith case.

c. People of the State of California v. Huey Newton, Oakland Municipal Court, Case No. 65919. My prosecution on two misdemeanor counts of battery has been stayed pending the outcome of the felony charges above. This charge is referred to in defendants' interrogatories 11-15 as the Fox Lounge incident.

3. In People of the State of California v. Huey Newton, the information was filed on May 11, 1978, in Santa Cruz County Municipal Court, Case No. 66517, and included two charges of felony assault and one charge of possession of a weapon by an ex-felon. These charges were dismissed by Judge William Kelsey on July 13, 1978.

Interrogatory 9:

For each action identified in answer to the preceding interrogatory, identify all pleadings (in civil actions), indictments or informations (in criminal actions) and all other papers which reflect the disposition of claims and charges (including but not limited to notices and stipulations of dismissal).

Supplemental Response:

See supplemental response to interrogatory 8.

Interrogatory 10:

Identify the date of each occasion, if any, on which you have been convicted of a felony.

Supplemental Response:

See supplemental response to interrogatory 8.

Interrogatory 13:

What was the disposition of charges as to each person arrested on or about July 30, 1974 at the Fox Lounge incident referenced in paragraph 57(D)?

Supplemental Response:

I have no documentary evidence in my possession or control which would indicate the disposition of charges against persons arrested at the Fox Lounge on or about July 30, 1974. To the extent my personal knowledge of the dispositions of these charges would require disclosure of the identities of persons present at the Fox Lounge on that date, it is information as to which I have invoked the privilege against self-incrimination because of the state criminal charge pending against me concerning events at the Fox Lounge. See response to interrogatories 11 and 12.

Interrogatory 48:

Identify the Party status (e.g., Party or affiliate member, central Committee member) of Flores Forbes on July 30, 1974, at the time this action was filed, and at the present time.

Supplemental Response:

Flores Forbes was a member of the Party on July 30, 1974, and at the time this action was filed. He is not a member of the Party at the present time.

Interrogatory 49:

Do you know the present whereabouts of Flores Forbes? Have you been in contact with him since October 23, 1977?

Supplemental Response:

I have been advised by my attorneys that information leading to the discovery of potential witnesses is within the scope of my claim of privilege against self-incrimination and therefore I continue to invoke this privilege to responding to this interrogatory.

Interrogatory 54:

Identify all types of communications (e.g., monthly reports, reports of Black Liberation Army personnel) you received or would have received in the normal course of your duties as Black Panther Party Minister of Defense.

Supplemental Response:

I have no copies of written reports that I may have received as the Party Minister of Defense. I have no recollection in any more detail as to the nature of the oral communications I received.

Interrogatory 57:

Describe in detail the nature of your duties, responsibilities, authority and/or influence as the Party's Minister of Defense over the Black Liberation Army.

Supplemental Response:

I understood this and the succeeding questions (interrogatories 58, 59, 60, and 61) to refer to a specific organization called the "Black Liberation Army" which had an organizational structure, personnel, activities, etc. Since I had no responsibilities or authority in such an organization or knowledge of its existence, I answered accordingly. As the Party correctly pointed out in its original responses to interrogatory 86 the "Black Liberation Army" did have a rhetorical meaning in the black community and as such was used to describe people who were working to improve the quality of life of blacks in the United States.

Interrogatory 58:

If your answer to the preceding interrogatory is that you had/have no such duties, etc., describe in detail the basis for your authority (e.g., authorized by a majority vote of the Central Committee) to offer troops to the National Liberation Front and Provisional Revolutionary Government of South Vietnam ". . . to assist you in your fight against American imperialism" as reported in the August 29, 1970 issue of "The Black Panther."



Supplemental Response:

See supplemental response to interrogatory 57.

Interrogatory 59:

Describe in detail the organizational structure of the Black Liberation Army.

Supplemental Response:

See supplemental response to interrogatory 57.

Interrogatory 60:

Describe in detail (including but not limited to dates, personnel involved, nature of authorization to act, and result of action) all para-military or "self-defense" actions taken by the Black Liberation Army.

Supplemental Response:

See supplemental response to interrogatory 57.

Interrogatory 61:

Does the Black Liberation Army, either by that name or another, presently exist?

Supplemental Response:

See supplemental response to interrogatory 57.

Interrogatory 72:

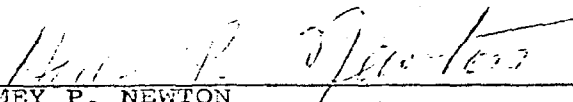
Identify all books and articles you have authored or co-authored, other than those articles only published in "The Black Panther."

Supplemental Response:

I do not have a listing or copies of any articles I may have written other than the collection specified in the original interrogatory. I would be happy to respond to questions as to whether I was the author of any additional particular writings which the defendants believe I may have authored that are not in my possession.

I declare under penalty of perjury that the foregoing  
is true and accurate.

Executed on February 9, 1979.

  
HUEY P. NEWTON

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 ) Civil Action No. 76-2205  
 EDWARD LEVI, et al., )  
 )  
 Defendants. )

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing  
"Plaintiff Huey P. Newton's Supplemental Responses to First  
Interrogatories of the Federally Represented Defendants" has  
been sent via first-class mail, postage prepaid, on this the  
12th day of February, 1979, to the following:

Joseph E. Casey  
1435 G. Street, N.W.  
Washington, D.C. 20005  
(202) 223-5750

Larry Gregg  
R. Joseph Sher  
Civil Division  
Torts Section  
U.S. Department of Justice  
Washington, D.C. 20530

William L. Stauffer, Jr.  
Leonard, Cohen & Gettings  
1400 North Uhle Street  
P. O. Box 742  
Courthouse Square  
Arlington, Virginia 22216  
(703) 525-2260

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Karen H. Edgecombe

*Gregg (F)*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-2205
	)	
EDWARD LEVI, et al.,	)	
	)	
Defendants.	)	

ERRATA TO  
PLAINTIFF HUEY P. NEWTON'S  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO COMPEL DISCOVERY

1. The attached corrected page 4 should be substituted for page 4 of Plaintiff Newton's brief filed January 31, 1979. The corrected page carries three sentences at the end of paragraph 2 that were inadvertently omitted in the typing of the final page. The new section begins "Interrogatory 10 also requested...." and ends "...will be noted in the Supplemental Responses."

2. The attached corrected page 27 should be substituted for page 27 of Plaintiff Newton's brief. The corrected page adds the word "him" to complete the third sentence in footnote 1. The sentence now reads: "If he intended to harm witnesses to these incidents which are the subject of these investigations, he of course could have done so as to witnesses known to him." The corrected page also adds the word "They" to begin the second sentence of the last paragraph. This sentence (which continues on page 28) now reads: "They suggest that Mr. Newton was in fact not involved in the incident involved and is only protecting his associates."

Respectfully submitted

BRUCE J. TERRIS  
KAREN H. EDGEcombe  
Attorneys for Plaintiffs

February 6, 1979

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-2-93 BY 903 POC/24

to this interrogatory. In his response, Mr. Newton first described all civil actions in which he has been a party. See Newton's Response to Interrogatory 8, attached.<sup>1/</sup> In addition, he included his rap sheet current through 1972 and mentioned that his autobiography, Revolutionary Suicide (1972) contains a fuller and, in Mr. Newton's view, a more accurate reflection of the criminal cases noted on his rap sheet. Finally, Mr. Newton listed all criminal actions, as reflected by the files of his attorneys, subsequent to 1972. Since these responses did not contain all the information requested by defendants (for example, jurisdiction, docket number, and disposition), Mr. Newton will include further information in his Supplemental Responses.

Defendants also contend (Def. HPN Mem. p. 10) that the responses to interrogatories 9 and 10 were inadequate. Interrogatory 9 requested identification of papers which reflect the disposition of claims and charges. Mr. Newton responded that this information was publicly available in court records. However, to assist defendants, plaintiff will include this information in his Supplemental Responses. Interrogatory 10 also requested the date of each felony conviction. Through 1972, this information was furnished in response to Interrogatory 8. More recent convictions will be noted in the Supplemental Responses.

Defendants also object (Def. HPN Mem. p. 3) to the adequacy of the search for information responsive to interrogatory 13 which might be in the possession of plaintiff's attorneys. This interrogatory requests the disposition of charges for those arrested at the Fox Lounge. Mr. Newton responded that state charges are still pending against him. Thus, there has not yet been a disposition of these charges as requested in interrogatory 13. This answer was therefore complete. See also Argument II, below.

---

<sup>1/</sup> Plaintiff Huey Newton notes that defendants did not attach the full text of the interrogatories and the plaintiff's Responses. Plaintiff believes that the Court should have available to it a copy of those responses along with a copy of his objections and therefore we have attached these documents for the Court's convenience.

If the Court, however, decides to determine whether plaintiff Newton must answer the interrogatories at this time, we again emphasize that defendants have shown (Def. HPN Mem. p. 28), at the very most, no more than the information is relevant. They have not even suggested that they do not already have this information or that they cannot obtain it from other sources.

4. Interrogatory 45: Describe the extent of your knowledge and/or participation in the "Richmond incident" of October 23, 1977, where three men (two of them identified as Black Panthers) broke into a house in front of a house where a prosecution witness stayed, shooting M-16 rounds.

Interrogatory 46: Did you order or were you aware of any order for North Carolina Party member [redacted] to resettle in the Oakland area?

Interrogatory 47: Describe the extent of your knowledge and/or participation in the shooting of [redacted] at Lake Mead.

Defendants' only statement of their compelling need for responses to these interrogatories is based on their misinterpretation of the plaintiff's request for injunctive relief from the defendants. Defendants contend (Def. HPN Mem. p. 28) that "plaintiffs seek broad equitable relief that would effectively preclude further government investigation of the Black Panther Party." Plaintiffs seek, and this Court could only properly enter, an order enjoining defendants from further illegal activities such as those which have been associated with their "investigation" of the Black Panther Party in the past. Therefore, responses to these interrogatories not only serve no compelling need of the defendants, they are not even relevant to this litigation.<sup>1/</sup>

Defendants raise (Def. HPN Mem. p. 29) whether "Mr. Newton has any real fear of self-incrimination." They

<sup>1/</sup> Defendants also suggest (Def. HPN Mem. p. 29) that the information is relevant because of "witness safety issues." However, it is difficult to understand how Mr. Newton's responses to these questions can bear on witness safety. If he intended to harm witnesses to these incidents which are the subject of these investigations, he of course could have done so as to witnesses known to him.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, )  
et al. )  
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Plaintiffs, )  
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v. )  
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EDWARD LEVI )  
 )  
Defendant. )

Civil Action No. 76-2205

REPLY MEMORANDUM IN SUPPORT OF THE MOTION OF DEFENDANTS  
BELL, ET AL. TO COMPEL DISCOVERY OF PLAINTIFF NEWTON

Introduction

Like the Party, plaintiff Newton has supplemented his responses to movants' interrogatories since the motion to compel was filed. Newton also has submitted his affidavit to explain the type of search he made in providing responses. These partially satisfy defendants' concerns. However, further responses still must be compelled on the specific grounds discussed below and plaintiff's many claims of privilege must be rejected on the merits and in view of movants' need for discovery.

Before discussing these issues, it is again important to emphasize that very little information seems to be available to the defendants to prepare their defenses, in view of (1) the Party's destruction of the vast majority of the relevant documents (even though related litigation initiated by it was pending) and in view of (2) the fact that many knowledgeable persons have since left the Party (such as its former Chairperson, Elaine Brown) and were not even willing to talk with the Party's own representative. [Kelley Jan. 15, 1979 Aff. ¶ 2(b).] The Party was not even able to reach its other co-founder, Bobby Seale. [BPP Supp. Res. 184 to Fed. Defs. First Int.]

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Thus, movants are left to rely upon the stale recollections of the few long-standing Party members who have remained. As its co-founder and leader from the very beginning, Newton's testimony is vital. He, more than anyone else, knows of the Party's activities during its early period. <sup>1/</sup> Given Newton's role with the Party throughout its history, his recollections would appear to be critical to the plaintiffs' case as well as to the defense. Accordingly, there is a very great need for movants to have all "available" information from this plaintiff.

Argument

I. PLAINTIFF SHOULD BE REQUIRED TO REFRESH HIS LITIGATION RECOLLECTION WITH THE MATERIALS CONTAINED IN HIS COUNSELS' FILES

In an affidavit filed in support of his memorandum in opposition, plaintiff has explained the search he conducted to provide the information sought by movants' interrogatories. In part, this was in response to Part I of movants' opening memorandum pointing out that plaintiff had a duty to provide information that was available to his counsel, as well as to himself directly. See e.g., Miller v. Doctor's General Hospital, 76 F.R.D. 136, 140 (W.D. Okla. 1977). Although Newton avers he conferred with his attorneys, he did so only "...for the purpose of determining whether there were any particularly objectionable interrogatories." [Newton Jan. 29, 1979 Aff. ¶ 3.] This is not an adequate response. Newton has been a party to a large number of criminal matters, as well as civil matters (such as

<sup>1/</sup> Indeed, of those fully consulted by Kelley in responding initially, only Emory Douglas appears to have been a Party leader almost as long as Newton.

the San Francisco Black Panther suit). [See e.g., Newton Ans. & Supp. Res. 8 to Fed. Defs. First Int.] Newton's attorneys' files likely will contain much factual information which could be used by him to refresh his recollection to answer the interrogatories. This is especially important if Newton intends to claim that his prosecution in these criminal matters resulted, somehow, from defendants' alleged harassment. Accordingly, a further search should be compelled along these lines.<sup>2/</sup>

Additionally, it is noted that plaintiff has been reported as testifying in his current trial that he returned after fleeing to Cuba "... armed with innocence and with 300,000 pages of FBI documents, proving the government was out to get me." [Attach. 1.] If this is his testimony, then plaintiff's limited recollections are hard to explain. At the least, plaintiff should be required to confirm or deny the accuracy of the report of his testimony and, if true, provide more responsive answers. It is noted that he does not state in his recently-filed affidavit that these materials were reviewed (if they exist) in refreshing his recollections about the charges he has brought. Accordingly, a further explanation and response should be compelled along these lines as well.

<sup>2/</sup> Since many of these criminal matters are over, it is noted Newton would not appear to have any Fifth Amendment privilege at this time.

II. RESPONSES ALSO SHOULD BE COMPELLED TO INTERROGATORIES 5 AND 42 FOR THE SPECIFIC REASONS SET FORTH BELOW

In the event the Court compels further answers by the plaintiff, it is likely that additional information will be forthcoming in response to all interrogatories. In their opening memorandum, however, movants discussed how plaintiff's answers to certain interrogatories also were defective as evasive and incomplete for specific reasons. Newton's Supplemental Response clarifies these specific deficiencies, except for interrogatories 5 and 42. <sup>3/</sup> For the following reasons, further responses to these interrogatories should be compelled on the specific grounds discussed below.

1. Interrogatory 5:

If your answer to the preceding interrogatory is that you were not elected President, how did you assume authority as the chief officer of the Black Panther Party from Elaine Brown:

Supplemental Response: See Supplemental Response to Interrogatory 4. [Supplemental Response 4: Although I was out of the country from August 1974 until July 1977, I remained a member of the Central Committee and a Party leader. It was understood when I left, however, that it would be impractical for me to carry on the day-to-day leadership of the Party. Elaine Brown served in a temporary capacity as head of the Party until my return from Cuba. It was mutually understood among all Central Committee members that, upon my return, I would resume my leadership position with the party. Consequently, on my return, there was no need for a formal election.]

This might be adequate were it not for the possibility that former plaintiff and Party Chairperson Elaine Brown was forced out of her position by Newton after he physically beat her. This possibility arises from published reports of such a beating and Brown's affidavit concerning medical

<sup>3/</sup> For the Court's convenience, the paragraph numbering system used in the opening memorandum will be used here.

problems at the time. These were discussed in movants' opening memorandum but are not addressed by Newton in his Supplemental Response. Considering the gravity of the matter, they should be addressed either by a simple denial, if that is the case, or by an explanation of what happened. If there was such a beating, then it would reflect on the current posture of the Party under Newton's leadership (possibly as a change from the Party's goals under Elaine Brown), as well as the possibility that witness testimony will not be available to movants for fear of reprisals if the testimony is not favorable to plaintiff. <sup>4/</sup>

3. Interrogatory 42:

Do you contend your present prosecution for the murder of Kathleen Smith and for the beating of Preston Collins is part of the conspiracy alleged in this civil action?

Supplemental Response: None.

Plaintiff's argument that "[p]laintiff Newton's answer is not evasive but rather reflects the only information he presently has available to him" with respect to his contention of the involvement of the movants in his criminal prosecutions [Pl. Opp. 8] is wholly inapposite.

This is nothing more than a contention interrogatory. A simple yes or no should be provided, not the evasive answer given to date. The answer should come from plaintiff, under oath.

<sup>4/</sup> It is noted that Newton is reported to have testified that members who discuss matters in his apartment are precluded by Party rules from discussing matters elsewhere, absent Newton's approval. [See Attachment 4, p. 2, to Reply in Opposition to Motion of Defendants Bell, et al. to Compel Discovery filed this date as to the Party's responses.] Thus, he does appear to exercise control over testimony of others.

III. PLAINTIFF NEWTON'S CLAIM OF THE PRIVILEGE AGAINST SELF INCRIMINATION SHOULD BE OVERRULED AND ANSWERS COMPELLED

A. Plaintiff Newton Has Waived The Privilege Asserted

The privilege against self incrimination, like other privileges:

...is not a self-executing mechanism; it can be affirmatively waived, or lost by not asserting it in a timely fashion.

Manes v. Meyers 419 U.S. 449, 466 (1975). Plaintiff Newton contends that his failure to respond to discovery, or to object to those interrogatories deemed objectionable in the time allowed by the Rules or even to seek leave of Court to extend the time to respond worked no waiver of the privilege. [Pl. Opp. 12.] In this argument, Newton adopts the argument set forth in Part II (A) of the Party's Opposition to the movants' separate Motion to Compel directed at the Party. The movants' Reply Memorandum, Part II refuted those arguments, and it is adopted here to avoid duplication.

There are, however, matters which are peculiar to plaintiff Newton's failure to object in a timely fashion and the consequent waiver of his privilege claim. which require separate treatment.

1. Newton Has Concealed An Objection And Thereby Waived It

In his Supplemental Response, plaintiff Newton, for the first time, asserts a previously undisclosed objection. [See Newton Ans. and Supp. Res. to Fed. Defs'. Int. 13.]<sup>5/</sup> The danger of undisclosed objections was adverted to in the movants' opening memorandum. [See Defs. Mem. 3; Dollar v. Long Manufacturing Inc. 561 F.2d 613 (5th Cir. 1977).] Newton acknowledged this was an improper practice [Newton Opp. 5], and argued that while:

<sup>5/</sup> In his separately filed Objections, plaintiff Newton does not mention interrogatory 13 at all.

...a party may not provide a partial response and reserve an objection by silence ... plaintiff Newton has provided all information reasonably available to him.

Ibid.

Newton has, in fact reserved an undisclosed objection.

In answer to interrogatory 13, Newton averred:

State charges against me are still pending. Disposition of charges against others may be obtained from them or the appropriate law enforcement records, but are not in my possession.

When pressed on the obvious inadequacy of this answer by the Motion to Compel, he supplemented the answer as follows:

I have no documentary evidence in my possession or control which would indicate the disposition of charges against persons arrested at the Fox Lounge on or about July 30, 1974. To the extent my personal knowledge of the dispositions of these charges would require disclosure of the identities of persons present at the Fox Lounge on that date, it is information as to which I have invoked the privilege against self-incrimination because of the state criminal charge pending against me concerning events at the Fox Lounge. See response to interrogatories 11 and 12.

While one may doubt that Newton's attorneys' file do not contain documentary evidence reflecting the disposition of charges against co-defendants, the critical point is that after purporting fully to answer Interrogatory 13, plaintiff Newton only now discloses this objection. Therefore, even if his failure timely to answer and object in general, or his bringing of this damages action, did not waive the claim of privilege, the failure to object to this interrogatory when the timely responses and objections were finally filed plainly waived any claim of privilege as to interrogatory 13. Therefore, a full answer to this interrogatory should be compelled.

2. By Voluntarily Testifying, Newton Waived His Claim of Privilege.

It is well settled that one way in which the self-incrimination privilege may be waived is to take the stand and testify. See e.g., United States v. Brannon, 546 F. 2d 1249, 1256 (5th Cir. 1977); Johnson v. United States, 318 U.S. 189, 195 (1943); Harrison v. United States, 392 U.S. 219, 222 (1968). It has been widely reported in the press that Newton took the stand in his current criminal trial, and testified about many, if not all, of the matters over which he claimed privilege in this action.<sup>6/</sup> If such be the case, further answers should be compelled as to all interrogatories over which privilege was claimed.

B. Plaintiff Newton Has Shown No Real Danger of Self-Incrimination.

Plaintiff Newton contends, in effect, that his decision to claim the self-incrimination privilege is essentially unreviewable. [Pl. Opp. 13-14.] This is simply not the case. He must show as to each question objected to a real danger of self-incrimination. [See cases cited at pages 15-16 of the movants' opening memorandum.] Plaintiff Newton has not done this [see Pl. Opp. 19-20], thus his claim is facially defective.<sup>7/</sup>

It is not necessary to burden this memorandum with a detailed discussion of the failure to properly and adequately claim the privilege asserted. While relying generally on the points made in their opening memorandum (which movants contend are unrefuted in Newton's opposition) certain points need to be made. As the movants noted in their opening memorandum [pages 16 n. 8, 26, 29 and 31], certain of Newton's objections were

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<sup>6/</sup> For example, Newton appears to have already testified as to what happened at the so-called Fox Lounge incident which was the subject of paragraph 57(D) of his pleading [Attach. 2], even though Newton has asserted a privilege here to responding to interrogatories directed about the incident. [Newton Obj. 11-15 to Fed. Defs. First Int.]

<sup>7/</sup> It is not conceded that the unsworn argument of counsel could supply the factual basis for a claim of privilege. However, even if arguendo it could, the discussion referred to is insufficient.

not directed to avoiding self-incrimination, but rather to avoiding incriminating others. Indeed, it now appears that Newton has ignored a Court Order to give testimony in his criminal trial precisely because of his reluctance to incriminate others. [Attach. 3.]

For this reason, too, that he has not shown a danger of self-incrimination, and is thus not entitled to any privilege, further answers should be compelled.

C. Plaintiff Has Now Asserted A Priority In Discovery, Not A Privilege

Plaintiff Newton asserts that interrogatories 43 and 44 need not be answered because of a newly discovered relevance objection. <sup>8/</sup> He states:

It is therefore impossible to state at present whether these two interrogatories are relevant. This determination will depend upon whether plaintiffs decide on the basis of information provided by defendants that these events were part of the conspiracy against the plaintiffs. Consequently, determination of Mr. Newton's Fifth Amendment claim as to these interrogatories should be deferred until discovery against the defendants is complete.

[Pl. Opp. 26.]

Having pled a broad based conspiracy, including all the incidents which are the subject of the interrogatories, Newton, and presumably the remaining plaintiffs, now seek to complete all the discovery they may desire against the defendants, then pick and choose among events so that they can limit defendants' discovery to only those areas plaintiffs choose. This is a procedure wholly contrary to the letter and spirit of the Rules, and should not be allowed. [See Rule 26 (d), F.R. Civ. P.] Certainly it provides no basis to refuse to answer an interrogatory by claiming, on a facially overbroad basis, the privilege against self-incrimination.

<sup>8/</sup> Such an objection, concealed in his original answers, is, of course, waived. [See Part II (A)(1) above.]



Plaintiff Newton, by the plain effect of this position is seeking to distort the reality that was the Black Panther Party, and to prevent the defendants from testing and correcting that distorted picture. The movants have, in the past, adverted to the danger of revisionist history -- of past happenings becoming non-events. The position now set forth makes that danger much more real. By asserting that the totality of defendants' actions with regard to him and the Party are a basis for their claim for pecuniary and injunctive relief, Newton and the Party have put in issue their own actions which gave rise and reason to the actions of which plaintiffs complain .

Instead of confronting this difficulty, however, the plaintiffs now blandly claim a full and unconditional priority in discovery, which they had previously disclaimed in their Memorandum in Opposition to the movants' motion for an extension of time to respond to plaintiffs' Motion to Compel, filed October 17, 1978. At page 8 of that memorandum plaintiffs note that "there is no legal basis for any party arguing that its discovery taken precedence over any other." The position revealed by plaintiff Newton's assertion is without legal basis.

Plaintiff Newton should be required to answer fully all interrogatories, and be prevented from using discovery to select only those aspects of his claims which, based on what the defendants already know, he feels are "safe" to put in issue.

Conclusion

For the foregoing reasons, and those set forth in the movants' opening memoranda, further answers should be compelled.

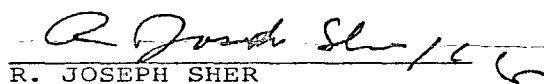
Respectfully submitted,

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al.,

Plaintiffs,

v.

Civil Action No. 76-2205

EDWARD LEVI, et al.,

Defendants.

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REPLY MEMORANDUM TO OPPOSITION TO MOTION OF  
DEFENDANTS BELL, ET AL. TO COMPEL DISCOVERY  
OF PLAINTIFF NEWTON

ATTACHMENTS

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# Tapes Made by Police Will Clear Him, Newton Claims

## Secret Recordings Prove He Was at His Apartment at Time of Murder, Suspect Testifies at Trial

OAKLAND (AP)—Black Panther leader Huey Newton testified Thursday that tape recordings secretly made by state and federal police would prove him innocent of the murder of a 17-year-old prostitute.

Newton claims he was home writing the night Kathleen Smith was shot on an Oakland street corner in August, 1974.

"You know I was in the apartment," he told prosecutor Tom Orloff, "from the bugging you had in the apartment. Isn't that true? Are you afraid to answer that?"

Orloff replied, "We'll get to that." Both Newton and author Donald Freed have testified in Newton's murder trial that they were writing a religious essay when Miss Smith was shot.

Two other witnesses, a former prostitute and a self-proclaimed "street man," have testified that they saw Newton shoot the young prostitute.

Newton, claiming he is being framed, said that police and prostitutes "find themselves strange bed-fellows."

"I think the whole thing is that the police hate me and the prostitutes—to improve their situation—will give testimony against me."

Orloff has said he wants to admit into evidence a tape recording of Newton and Freed discussing the religious essay. The date of that recording, however, has not been determined and Orloff has not indicated how it might help the prosecution.

In earlier testimony, Newton claimed he was pistol-whipped by police when he was arrested about 10 days after the shooting.

"When you put a gun in a man's hand, he's dangerous," Newton said. "When you give him a gun and a badge, he's lethal."

Newton, who fled the United States for Cuba in 1974 shortly after the shooting, said he left because of a conspiracy directed at him by federal and Oakland authorities.

He ended his voluntary exile once he was "armed with 300,000 pages of documents" which he said revealed that "the authorities would do anything to tear my character down and jail me."

Key prosecution witnesses Charles Buie and Michelle Jenkins testified last week that they saw Newton shoot Miss Smith.

Black Panther bodyguard Larry Henson told the court that he witnessed Buie shoot Miss Smith.

Newton currently is free on \$130,000 bail, pending his appeal of a conviction last fall of being an ex-felon in possession of firearms. He was sentenced to two years in prison.

The charge stemmed from his acquittal of pistol-whipping his tailor, Preston Collins, who recanted an earlier accusation and refused to testify.

Newton served 22 months in prison for his 1968 conviction of voluntary manslaughter in the shooting of an Oakland policeman. The conviction was reversed on appeal in 1970, and charges were dismissed after two trials ended in hung juries.

The once-militant Black Panthers, which Newton claims has 30,000 members in 38 chapters throughout the United States, now advocate community education, child care and nutrition programs.

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BLACK PANTHER PARTY v. LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep Mem in Support of the Mot of Defs. Bell, et al to Compel  
Discovery of Pl. Newton, filed Mar. 26, 1979

ATTACHMENT 1

# Newton Trial: Slow Battle Over One Man's Image

By Cynthia Gorney

Special to The Washington Post

OAKLAND, Calif.—“The party puts you on a pedestal,” the prosecutor said.

“I put the party on a pedestal,” Huey Newton said.

“The party puts you on a pedestal,” the prosecutor said again.

“The party loves me and I return the love. You don't know what that's about,” Newton replied.

Last Tuesday, at 2:28 p.m., Black Panther Huey Percy Newton took the stand before a mostly white jury and began, politely and easily, to portray himself as a self-taught black revolutionary theoretician who would not, could not have murdered a prostitute in cold blood.

Before the week ended, Tom Orloff, the Alameda County prosecutor, began trying to portray Newton as a thug.

Newton, on Tuesday: “I taught myself to read through recordings of Vincent Price reading Shakespeare—Hamlet, MacBeth, King Lear. I used to follow the text . . . The second book I finally mastered, after reading about 15 times, was The Republic of Plato . . . I was very impressed with the Socratic mission, the cave allegory of Socrates. . . .”

Orloff, on Friday: “Was Mr. Callins beaten to a bloody pulp?” Defense objection—Newton was acquitted on that charge last year because Preston Callins, the tailor who had said Newton beat him up, recanted and refused to testify. Overruled. “Didn't he have four skull fractures?” Objection. Overruled. “Wasn't it you that did it?” Objection. Overruled.

The way he is perceived—as a thoughtful and persecuted political leader, or a violent and egomaniacal bully—means everything to Newton this month.

He is accused of shooting Kathleen Smith, also black, 17 years old, on the Oakland street corner where she waited for a customer on an August night in 1974.

He is alleged to have climbed out of a steel-gray Lincoln Continental and begun arguing with this prostitute, arguing because she apparently declined to show him the proper respect. “Don't you know who I am?” he is alleged to have said.

The prosecution's case rests entirely on the testimony of two people who say they saw Newton do it. One is a 20-year-old former prostitute. The other is a pimp named Carles Buie, or Carl Buie, or Lee Buie, or Carl Walters, or Lee Bo. His character was shredded by two defense witnesses.

A third eyewitness was dropped when it was learned she apparently had been in jail on prostitution charges the night she was supposed to have seen Newton. A fourth, accused of falsely testifying to a murder to protect her lover, also was dropped.

It is a weak case for the prosecution—and Newton has an alibi, which was presented for the first time last week.

His wife and a Los Angeles-based author have testified that he worked through the night with them while someone was shooting Kathleen Smith—that Newton was taping his rough ideas for an essay on community control of police and a second essay on new political interpretations of Jesus' life as described in the New Testament.

So if Newton is convicted, it will have to be because the jury simply does not believe him, his alibi, or his unswerving insistence that he has once again been singled out because he is a radical black activist.

They will have to believe, as the prosecutor has argued, that Newton is a dangerous man whose outbursts have nothing to do with race. And that is why the trial has turned into a slow battle over one man's image.

Newton, short-haired and dressed in camel or black velvet jackets, speaks of leftist politics; Orloff, gaunt and bland-voiced, asks about alleged brawls.

Orloff demands details on the dates and circumstances of Newton's admission to the University of California,

probing for inconsistencies in his testimony or failings in his academic work; Newton explains reactionary and revolutionary intercommunalism and thanks the people who tutored him on campus. “The professors were very kind to me.”

“I had a very stormy school career,” Newton said during his direct examination, facing the jury and explaining how he graduated from high school a functional illiterate.

“Black children generally were very alienated in the school system at that time. There were mostly white teachers . . . we were led to believe that missionaries had rescued us (in Africa) from savagery and had brought us to this country to civilize us . . . I was expelled or suspended from just about every school in Oakland.”

There was no anger in his voice as he described the founding of the

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BLACK PANTHER PARTY v. LEVI, CANO. 76-2205 (D.D.C.) (Smith, J.)  
Rep. Mem. to Opp. to Mot. of Defs. Bell, et al. to Compel  
Discovery of Pl. Newton, filed Mar. 26, 1979

ATTACHMENT 2 , 1 of 2 pp.

Black Panther Party 13 years ago and the 10-point program party leaders established to demand such things as full employment, adequate housing and health care, and an end to the Vietnam war.

"We wanted police to stop humiliating blacks, stop shooting little black kids in the back. I carried a shotgun and a law book," he said. (Carrying an un concealed weapon was legal at that time in California.) "Whenever we saw the police stopping people in our community we would stand at a distance and observe..."

Newton spoke of the shooting incident 12 years ago in which he was wounded in the stomach and an Oakland police officer died—the shooting for which Newton was convicted of manslaughter in an emotional and much publicized trial in this same courthouse.

The conviction was overturned in 1970, after Newton had served part of his sentence. Two subsequent trials ended in hung juries, and the case was dropped.

Wasn't it true, Orloff said, that the conviction was overturned only because the judge had failed to properly instruct the jury?

It was not, Newton said—his trial had been found illegal in a lengthy appellate opinion, and he had been vindicated.

Wasn't it true, Orloff said, that in July 1974 Newton had become enraged at a police officer when the officer refused Newton's offer of a drink in a bar—and that Newton had ordered his bodyguard to kill the officer?

It was not, Newton said. The officer had provoked him into saying something insulting, and had then poked a

.357 magnum at his head, Newton said. "I was beaten so badly I had to be taken to a hospital," Newton said.

Had Newton jumped bail in 1974, resurfacing for the next three years in Cuba to flee the charges facing him?

"The party decided it was best for me to leave." There was a contract out on his life, Newton said—pimps and prostitutes had been offered \$10,000 to kill him.

Did he know many pimps and prostitutes?

"I know the streets very well," Newton said evenly. "The majority of blacks in Oakland are poor people, and live in a poor community where many illegal actions take place because of this poverty."

Back and forth it went, during the days of sometimes heated, sometimes plodding testimony and cross-examination.

Orloff suggested it was curious that Newton could not produce the tape of his conversations the night Smith died: Newton shot back. "The best record would be the bugs the police put into my wall."

The cross-examination will continue this morning, and the case is expected to go to the jury by midweek.

Newton, his confidence apparently unshaken, makes a brief appearance each day in front of the television cameras that wait for him to emerge from the elevator.

He was asked toward the end of the week whether he had anything to say about the nature of his cross-examination.

"Yes," Newton said. "I think this trial is becoming even more ridiculous." He waited for the cameras to get their shot, and then put his arm around his wife and went off to lunch.

BLACK PANTHER PARTY v. LEVI, CANO. 76-2205 (D.D.C.) (Smith, J.)

Rep. Mem. to Opp. to Mot. of Defs. Bell, et al. to Compel  
Discovery of Pl. Newton, filed Mar. 26, 1979

ATTACHMENT 2 , 2 of 2 pp.

## Newton's Defiant Day on the Stand

By George Williamson

Murder defendant Huey Newton and prosecutor Tom Orloff traded heated words yesterday over what the testimony might have been from a prostitute whom the prosecution mysteriously dropped as a scheduled witness two days into the Oakland trial.

"Were you worried about that prostitute?" Orloff shouted, referring to Raphaelle Gary (street name Crystal Gray), whom police claim other Black Panthers tried to kill in October, 1977.

"No, I'm not worried. I'd like that prostitute to take the stand. As a matter of fact, we're thinking about subpoenaing her," Newton replied.

The defendant then said, "I don't know," to these questions: "Were any of your party members concerned about her ... Was Flores Forbes concerned about her?"

Forbes was a Newton body-guard who police say was wounded in a botched attack on Crystal Gray's Richmond house by three Panthers. Forbes has disappeared since that incident, which also resulted in the death of another Panther.

From his seat at the witness stand yesterday, Newton claimed: "You (Orloff) didn't have her testify because you knew we could prove her to be a certified bonafide liar."

Earlier yesterday, Newton steadfastly refused to divulge who advised him to jump bail in 1974 and who helped him flee to Cuba. He said he would not do so because the people would be harassed by

the law if he identified them.

When Superior Court Judge Carl Anderson admonished him that the refusals were "not his privilege," Newton stared back and said evenly: "I'm taking that privilege."

Over defense attorney Michael Kennedy's objections, Orloff questioned Newton about the 1974 beating of Oakland tailor Preston Callins, a charge of which Newton was acquitted in October by a jury in Oakland.

Orloff prosecuted the Callins case, but couldn't question Newton about it at the October trial because the defense rested then without presenting its own case.

Callins had testified previously that Newton assaulted him, but he retracted the claim before Newton was tried for assault, and refused to testify at the trial.

Newton carefully pulled back yesterday from earlier claims that the murder trial stems from an Oakland Police Department "conspiracy" against him.

He insisted that, on further reflection, he would now call it a "lack of police diligence" — based on their "dislike" for him — that stopped officers from adequately checking out witnesses the prosecution planned to use, who turned out to be liars and were dropped.

BLACK PANTHER PARTY v. LEVI, CANO. 76-2205 (D.D.C.) (Smith, J.)

Rep. Mem. to Opp. to Mot. of Defs. Bell, et al. to Compel Discovery of Pl. Newton, filed Mar. 26, 1979

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## Newton Trial Witness Changes Her Testimony

OAKLAND (AP) — A key prosecution witness who testified two weeks ago that she saw Black Panther leader Huey Newton shoot a prostitute on an Oakland street corner recanted her testimony on Monday.

Michelle Jenkins, a 20-year-old former prostitute who says she was standing on the corner shortly before Kathleen Smith was shot Aug. 6, 1974, testified at Newton's murder trial that she didn't know who had shot her friend, then admitted she was sure it wasn't Newton.

"I can't say it was Mr. Newton or anyone else," she said in a weak monotone. "I assumed it was Mr. Newton. I don't know who it was. All I can say is that I saw a person that night."

Miss Jenkins' reappearance at the trial came as a surprise and appeared to catch Deputy District Attorney Tom Orloff off guard. She testified for the prosecution on March 7, stating then that Newton was the killer.

When defense attorney Michael Kennedy pointed to Newton on Monday and asked, "Is this the man you saw on the street in the early morning hours of Aug. 6?" Miss Jenkins' voice barely audible, replied, "No."

"Are you sure?" Kennedy asked.

"I'm sure," she replied.

Kennedy questioned Miss Jenkins briefly

before allowing Orloff to cross-examine her. During the next hour, Orloff attempted to shake her story and find out why she had changed her story.

"Everyone was trying to make me think I saw something. There was nothing else I could do but go along with it," she said of her earlier testimony.

Miss Jenkins had identified Newton originally from a series of six pictures given to her by police. When Kennedy showed her the same series of pictures in court, she refused to say any of them was the man who shot Miss Smith.

She said she had identified Newton because of his eyebrows and said that was what set him apart from the picture of another, similar-looking man.

"But you can't judge a man by his eyebrows," she said Monday as the courtroom spectators chuckled.

She said that she never saw anyone actually pull the trigger on her friend.

"I saw a man with a gun — I did not see anybody shoot Kathleen Smith," she said. "When I saw that gun, I look off running like I'm supposed to."

Earlier Monday, Newton was held in contempt of court for refusing "on principle" to explain how he fled to Cuba after the 1974 slaying.

BLACK PANTHER PARTY v. LEVI, CANO. 76-2205 (D.D.C.) (Smith, J.)

Rep. Mem. to Opp. to Mot. of Defs. Bell, et al. to Compel  
Discovery of Pl. Newton, filed Mar. 26, 1979

ATTACHMENT 3, p. 2 of 2 pp.

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DATE 9-1-93 BY 903000/04



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY,  
et al.

Plaintiffs,

v.

EDWARD LEVI

Defendant.

Civil Action No. 76-2205

ORDER

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DATE 9-8-93 BY 1002ARDEK/CH

Upon consideration of the Motion of Defendants Bell,  
et al. to Compel Discovery of Plaintiff Newton, and the matters  
submitted in support of and in opposition to the motion, and  
the entire record before the Court, it is hereby

ORDERED that defendants' motion is GRANTED; and it is  
further

~~ORDERED~~ that plaintiff shall file a further response to  
movants' First Interrogatories for the reasons referenced in  
movants' reply memorandum; and it is further

ORDERED that, the Court having found plaintiff's objections  
and claims of privileges untimely, inadequate, and otherwise  
outweighed by movants' need for discovery from this plaintiff,  
the plaintiff's objections and claims are rejected; and it is  
further

ORDERED that, the Court having found plaintiff's answers  
to interrogatories 5 and 42 to be inadequate, plaintiff shall  
file full and complete responses to these interrogatories for  
the reasons referenced in movants' memoranda; and it is further

ORDERED that plaintiff shall have twenty (20) days in  
which to file responses pursuant to this Order. In the event  
plaintiff seeks an extension of time, plaintiff shall in any  
event advise whether he will persist in his claims of privilege.

Date: \_\_\_\_\_

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

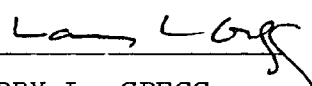
I hereby certify that copies of the foregoing Reply Memorandum to Opposition to Motion of Defendants Bell, et al. to Compel Discovery of Plaintiff Newton, with attachments and proposed Order were served, postage prepaid, this 26 day of March, 1979, by mailing copies to the following counsel of record:

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LARRY L. GREGG

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )

Plaintiffs, )

vs. )

EDWARD LEVI, et al., )

Defendants. )

CIVIL ACTION NO.

76-2205

MOTION OF DEFENDANTS BELL, ET AL.  
FOR EXTENSION OF  
PAGE LIMITATION PRESCRIBED BY LOCAL RULE 1-9(e)

Defendants Bell, et al., move the Court for a twenty-one (21) page extension of the thirty-five (35) page limitation prescribed by Local Rule 1-9(e) of the Rules of this Court. The extension is needed in order that the defendants' memorandum of points and authorities submitted in reply to plaintiff's opposition memorandum to the motion to compel can address and quote in full (pursuant to Local Rule 1-9(A)) the plaintiff's Supplemental Response to various interrogatories which are the subject of this motion. The Supplemental Response was filed with plaintiff's opposition memoranda and therefore has not been discussed previously.

Accordingly, for the foregoing reasons, defendants

respectfully request the Court to grant this motion to and  
direct the attached reply memorandum be filed.

Respectfully submitted,

BARBARA ALLEN BABCOCK  
Assistant Attorney General

EARL J. SILBERT  
United States Attorney

  
\_\_\_\_\_  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )

Plaintiffs, )

vs. )

EDWARD LEVI, et al., )

Defendants. )

CIVIL ACTION NO.

76-2205

ORDER

Upon consideration of the Motion of Defendants Bell, et al., for Extension of the Page Limitation Provided By Local Rule 1-9(e), defendants' Motion is GRANTED and the Clerk is directed to file the Reply to Opposition to Motion of Defendants Bell, et al., to Compel Discovery.

UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_

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<u>The Black Panther</u>	<u>passim</u>

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al.,	)	
Plaintiffs,	)	
vs.	)	CIVIL ACTION NO.
EDWARD LEVI, et al.,	)	76-2205
Defendants.	)	

REPLY TO OPPOSITION TO MOTION OF  
DEFENDANTS BELL, ET AL. TO COMPEL DISCOVERY

Introduction

"One purpose of Rule 33 is to allow one party to obtain admissions from another, and thereby save time in preparation and at trial." Evans v. Local Union 2127, Int'l. Brotherhood of Electrical Workers, AFC-CIO, 313 F. Supp. 1354, 1362 (N.D. Ga. 1969).

The "8 Main Rules of Attention and 3 Main Rules of Discipline" speak of taking "captives" and disposition of "captured" property. In explaining why these were not included among the Party's rules in its answer to movants' interrogatory 18, the Black Panther Party, through Joan Kelley, avers under oath that these ". . . were not considered to be a part of the Party's rules of bylaws." [BPP Feb. 12, 1979 Sup. Res. to Fed. Defs. Int. 18.] A "Central Committee,

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B.P.P. Press Conference" published in The Black Panther, however, cautions all members to follow the rules of the Party ". . . which have been in existence since Huey P. Newton organized the Black Panther Party (including the 3 main rules of discipline and the 8 points of attention) . . . ." [Attach. 1 .]

This perhaps better than anything else summarizes the situation confronting the defendants in this action. Plaintiff took ample time in which to prepare its answers initially -- much more time than was permitted by the Federal Rules of Civil Procedure even though the Court's permission to do so was not even sought. Plaintiff then had even more time while the Court considered defendants' motion for sanctions and even more since the instant motion was filed in which to check its answers. After all that, supplemental answers were filed. And still, plaintiff has not answered truthfully. This is not the only example, as discussed in Part III, infra. Moreover, it has now become clear that most of the relevant documents in plaintiff's possession were destroyed by the plaintiff before this litigation was commenced, even though similar litigation commenced by the plaintiff was pending.

A purpose of discovery is, of course, to narrow the issues before trial -- not, as plaintiff suggests, to defer all matters until proof at trial. Evans v. Local 2127, 313

F. Supp. at 1362.<sup>1/</sup> The pattern of evasive and contradictory answers engaged in by the plaintiff, regardless of its motive,, cannot be tolerated in a suit as far-ranging as this. Plaintiff has given three different answers to the same basic question about the make-up of its Central Committee, the Party's ruling body, and the plaintiff's new explanation for these apparent contradictions is, itself, at least partially refuted by the Party's own publication. The plaintiff's argument through counsel, that movants ". . . can hardly be heard to complain because the [more recent] answers they received contained many more [committee names] than either Elaine Brown [in another action] or Huey Newton [in response to defendant Moore's discovery here] had supplied previously" [Pl. Opp. 60] does not excuse the prior untruths. More importantly, given its poor track record to date, plaintiff's argument gives no assurance that these new answers, like the earlier ones, also are not quite correct.

Some of the plaintiff's new answers and explanations demonstrably are not correct. Others are questionable because of the inadequacy of plaintiff's search and contradictory information contained in its own publication. To these, perhaps the plaintiff is in the position of Aesop's sheppard boy who cried 'wolf' too often, so that no one believed him when he finally cried the truth. Nonetheless,

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<sup>1/</sup> Plaintiffs suggest that they first should have discovery before even deciding what claims to press and contend that defendants' interrogatories would not be relevant until that decision is made. [Newton Opp. 26.] However, plaintiffs already have pressed these claims by filing their amended complaint. They are not entitled to a priority of discovery which would prevent movants from seeking discovery relevant to the allegations plaintiffs have pleaded. They are, of course, free to drop claims at any time. Rule 26(a), F.R. Civ.P.

special measures must be taken to compel, and to assure, that full and candid answers finally are forthcoming, if plaintiff is to continue this lawsuit. <sup>1a/</sup>

#### Argument

Further responses should be compelled on three grounds, which will be discussed below in turn. First, the inadequacy of plaintiff's search in preparing answers coupled with its admitted destruction of most of the relevant documents requires that special measures be employed to ensure that defendants indeed do receive "such information as is available" to plaintiff. Rule 33(a), F.R.Civ.P. Second, plaintiff's demonstrably overbroad claims of privilege cannot outweigh movants' own need for discovery, especially since so little documentary material remains. Third, further answers to certain interrogatories must be compelled where the various answers and supplemental answers given to date have been evasive, incomplete, inaccurate and even contradictory.

#### I. THE PARTY'S RESPONSE WAS INADEQUATE

Movants urged the Court to compel further answers to all interrogatories because it appeared that the Party's answers were based on an inadequate search and that the affiant, Joan Kelley, was not qualified to respond on the

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<sup>1a/</sup> A modified proposed Order is attached for the Court's consideration.

basis of her recollections since she was not a member of the plaintiff's leadership until 1971, after the most overtly violent period of the Party's history. In rebuttal, plaintiff has supplemented its responses to some interrogatories and submitted Kelley's affidavit with regard to her qualifications and the search she conducted.

Rule 33 requires the litigant served with interrogatories to "furnish such information as is available to the party." The duty of the Party to provide all available information is especially important here. First, plaintiff has sued individuals for damages, individuals who will be personally liable (not the government) if a judgment were rendered against them. Second, plaintiff waited very long before initiating this action, to the prejudice of these defendants. Finally, and again to the prejudice of the individuals who have been sued, plaintiff destroyed or lost nearly all the relevant documents before this action was filed.

The fact that plaintiff has chosen to seek personal damages liability as well as to seek equitable relief has an obvious impact on discovery. These individuals cannot be forced simply to rely upon the cold trail left by government records in establishing the reasonableness of their actions, their lack of involvement in particular actions, and their good faith. They also are entitled to seek discovery from the plaintiff. Simply receiving full and candid answers to their interrogatories might well obviate movants having to establish their defenses by extrapolation from thousands of pages of government records, records which plaintiff un-

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doubtedly will dispute in any event. Judicial economy as well as fairness to defendants commends such a course.

Defendants' efforts to assert a defense is hindered by plaintiff's failure to prosecute an action in a timely manner. There can be no doubt that plaintiff has sat on its rights. Its own newspaper reflects the Party was aware of the government's investigative interest in the Party's activities from almost the very beginning. Indeed, this was the basis for much of the rhetoric espoused in that publication over the years. Any doubt that the Party was on notice is dispelled by the simple fact that plaintiff instituted a nearly identical suit some years ago in the Northern District of California and, in fact, had been a plaintiff since 1969 in a suit instituted in this Court challenging electronic surveillance. It may well be that the Party waited for a more favorable climate before bringing its action as a matter of litigation strategy. Be that as it may, its decision has prejudiced the individual defendants severely, because memories have lapsed and witnesses are no longer available (for example, former FBI Director Hoover and former FBI Assistant Director Sullivan are deceased). Indeed, only one of the individual defendants now remaining in this action is still employed by the federal government, and many do not reside close to Washington, D. C., where many of the government records are kept.

Defendants also have been prejudiced by the unavailability of documents, which is directly attributable to the plaintiff.

The Party failed to preserve relevant documents, even though it had a duty to do so in view of the Dellinger and San Francisco Black Panther suits.<sup>2/</sup> What type of documents were destroyed? Most significant are the various chapters' "weekly reports," which the Party's Rule 20 required to be sent in to the national office. The Party's Rule 22 also required monthly finance reports be sent. These reports, of course, would have been contemporaneous with many of the incidents challenged in this lawsuit and, thus, would have been highly relevant in establishing the reasonableness of defendants' beliefs that the Party was a violence-oriented revolutionary force, that specific incidents were caused by persons other than defendants (or their agents) or, indeed, were of the plaintiff's own doing. An example will illustrate. Paragraph 61(B) of the Amended Complaint alleges defendants were responsible for false arrests of the Party's street vendors. Plaintiff's counsel further claims in the opposition memoranda that all such arrests were unlawful. [Pl. Opp. 89.] However, one such incident apparently taken from the Philadelphia Chapter's weekly report was reported in the July 19, 1969 issue of the Black Panther (page 17). [Attach. 2.] That report reflects the Party members were arrested for failing to comply with Atlantic City, New Jersey,

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<sup>2/</sup> The San Francisco suit was dismissed for failure to prosecute. Black Panther Party, et al. v. Donald Alexander, et al., Civil Action No. C-74-1247 (N.D. Cal., Feb. 27, 1976). The Party's claims in the suit initiated in this Court were dismissed recently for failure to provide discovery. David Dellinger, et al. v. John N. Mitchell, et al., Civil Action No. 1768-69 (D.D.C., Jan. 2, 1979, merged in final judgment of dismissal entered Mar. 16, 1979).

licensing requirements and not because of defendants' acts, refuting the plaintiff's allegation and the claim of counsel. Unfortunately, very few reports survived especially from the early years of the Party in view of plaintiff's failure to preserve them. Indeed, reports of only six of the Party's over forty chapters remain.

By its own acts, therefore, the Party has posed serious obstacles to the avenues of defense normally open to a defendant. As a practical matter, plaintiff has foreclosed Rule 34 discovery by defendants by destroying its own records.<sup>3/</sup> Defendants are then left to interrogatory and deposition discovery and, thus, to the memories and recollections which remain, without the benefit of the Party's own records which could be used to impeach such testimony. The problem is compounded since many persons have left the Party [Pl. Jun. 22, 1978 Opp. to Mot. for Sanctions 2; see also Brown Jul. 21, 1978 Aff.] and now are "difficult to locate." [Kelley Jan. 15, 1979 Aff. ¶ 2(b).] Indeed, former members ". . . expressed an unwillingness to talk about their former connection with the Party" -- even with the Party's own representative, Joan Kelley. Ibid.

If this litigation is to continue, especially against the individual defendants in damages, then special steps must be compelled to insure that all information available to the plaintiff is provided in discovery.

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<sup>3/</sup> It is noted that Joan Kelley has averred that none of the Party's records were destroyed "because of this litigation" [Kelley Jan. 15, 1979 Aff. ¶ 2(d), emphasis added], although a possibility exists documents were destroyed in anticipation of discovery in other civil or criminal litigation. Of course, relevant documents were destroyed while similar litigation was pending, the Dellinger and San Francisco Black Panther actions.

Rule 33(a) requires the answering party to provide all "available" information to it. Where that party is an organizational entity, designated person(s) must respond on its behalf with such information. Rule 37(d), in turn, confirms the inherent power of the Court, where necessary, to fashion such forms of relief "as are just" to assure the mandate of Rule 33 is met. See also Rule 37(b), F.R.Civ.P. (evasive or incomplete answer is treated as a "failure to answer" for purposes of the Rule). Such special safeguards now are needed here. After repeated opportunities to respond fully, the Party's designated representative continues to be unable to answer in a satisfactory manner. Even accepting this has happened because of her own lack of personal knowledge, it underscores the need for compelling something further. <sup>3a/</sup> Simply compelling further responses from Joan Kelley would be useless, however. Accordingly, the Court first should compel supplemental answers under oath by each Central Committee member. <sup>4/</sup> Then defendants would be assured of receiving all available information the Party has or is willing to provide. Since even the Party's Supplemental Response is contradictory and otherwise inadequate, this procedure for answering should be compelled.

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<sup>3a/</sup> This is especially so since Kelley's affidavit states that she fully discussed its answers with only three other Central Committee members [Kelley Jan. 15, 1979 Aff. ¶ 2(b)], although the Party claims to have fifteen members. [BPP Ans. 18 to Fed. Defs. First Int.] It is likely that all would have at least some relevant information to the Party's claims.

It is noted that apparently at least one Central Committee member was not contacted, Robert Heard, since he is reported to have disappeared. [Attach. 3.]

<sup>4/</sup> Compare the procedure provided in Rule 30(b)(6), F.R.Civ.P.



Second, the plaintiff cannot be permitted to always refer merely to unidentified incidents reported in unidentified issues of The Black Panther as being the basis for their claim.<sup>5/</sup> Plaintiff initiated this suit. At the least it should be required to review its paper (the only relatively contemporaneous account of the alleged harassment) and specify its charges, rather than force defendants to guess what really is at issue in this action.

As movants already have shown it is clear that all arrests of street vendors reported in its paper facially cannot be attributed to defendants, contrary to plaintiff's allegation and that of their counsel. Indeed, plaintiff repeatedly has attempted to explain away many of the most violent threats in its paper as mere "rhetoric." While rhetorical statements clearly are within the Party's editorial discretion, equally clearly in litigation they are no substitute for statements under oath. If plaintiff intends to attribute any incidents reported in its paper to defendants, it should specify those incidents by supplemental answers. Judicial economy will be ill-served and defendants will be unfairly treated if they must wait until the eve of trial to find out what plaintiff decides to pursue.

Plaintiff's destruction of documents and dilatoriness in pursuing its action when coupled with the way it has responded to date has 'poisoned the well.' Stringent measures must be taken if the litigation is to proceed with any degree of fairness. For these reasons, the Court should compel

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<sup>5/</sup> See e.g., BPP Ans. 49-50, 99-100, 103, 119, 123, 138-39, 151, 159, 163, 169, 179, 180, 193-95, 198, 206, 223-26, 237 to Fed. Defs. First Int. Of course, the failure to carefully review these undermines plaintiff's answers to all interrogatories.

compel further responses to all interrogatories in the manner suggested above.

II. PLAINTIFF BLACK PANTHER PARTY'S FIRST AMENDMENT CLAIMS ARE WITHOUT MERIT.

A. The Party Waived It's Objection By It's Unexplained And Unexcused Delay.

The Party contends that it's failure to respond to the movants' interrogatories or document requests, or to seek permission of the Court to extend the time for responding, or even to accept a proffered agreement for such an extension does not have the effect of waiving the objection. [Pl. Opp. 27-32.] The Party contends that this result is required because of the importance of the right sought to be protected [id. at 27, 31-32], and because they contend the failure to respond did not prejudice the movants [id. at 28-29]; that no Court Order was violated [id. at 29], and that the failure was not, in their view, willful [id. at 29-31].

In their opening memorandum, the movants have shown that the failure to object in a timely fashion, or to respond, has been held to waive the objection. [See Defs. Mem. 11.] The authorities plaintiffs cite do not contradict this proposition, and are inappropriate to this case because the Party's contentions are without basis in fact.

First, while the Party contends movants have shown no prejudice, the contrary is true. The Party contends that,

having responded in July, there can be no prejudice. However, this ignores the fact that the Party's answers were not only delayed, willfully as will be shown, but were and are inadequate. [See Part III, infra.] Moreover, it is not sufficient to argue, as the Party does, that because the defendants' received extensions of time, approved by the Court and counsel, they have suffered no prejudice as a result of the Party's unexplained and unexcused willful delay. The Party's responses were not filed until almost two months after the movants were forced by that delay to file a Motion for Sanctions.

As has been recently held, "[a]lthough no showing of actual prejudice was made, prejudice is presumed from unreasonable delay." Moore v. Telfon Communications Corp., 589 F.2d 959, 967-68 (9th Cir. 1978), and cases there cited. The Court emphasized that the presumption was especially strong in cases where "recollections about conversations and conduct are very important." This is precisely the situation in the case at bar, and supports the weight of authority that unexcused delay waives any objection not timely interposed.

More than delay is involved here, however. Much more fundamental than the Party's delay is its destruction of its own contemporaneous record of its history. See, supra, pp. 6-8. This record would have provided information the defendants lack as to the activities of the Party, and would have also provided a basis upon which memories could be refreshed and the credibility of witnesses could be

tested. This is critically important in this case because the Party has indicated that it does not accept the accuracy of the government records it has sought. At the same time, all that remains is the recollection of witnesses of events long past. The danger that memories will be stale, and need refreshing is apparent -- and vital source of material to refresh recollection has been destroyed. The Party's delay, then, plainly prejudices the defendants by unjustifiably increasing the risk of complete loss of evidence by an irretrievable lapse of memory. Cf. Moore, supra.<sup>5a/</sup>

Second, the Party contends that there should be no waiver for the reason that the Party has violated no Order of this Court. This is simply not the law, as the movants' opening memorandum established. As the Court observed, at the status call of November 6, 1978, "discovery should be handled by counsel without even the intervention of the Court." [Transcript of the Status Hearing of Nov. 6, 1978, p. 7.] Another Court has said:

Time limits, whether embodied in the Rules of Civil Procedure or in the Order of a Court, are designed to expedite the orderly movement and disposition of litigation. If those time limitations can be flouted persistently and at will, they are meaningless.

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<sup>5a/</sup> Indeed, it appears that the Party, far from seeking the "just, speedy and inexpensive determination of [this] action," Rule 1, F.R.Civ.P., seeks to delay this litigation and extend it by such dilatory tactics in order to punish those who, in it's view, are unpunished wrongdoers. [See Plaintiffs' Opposition to the Movants' Motion for Partial Summary Judgment, p. 11 n. 1 (served October 30, 1978).]

Riverside Memorial Mausoleum, Inc. v. Sonnenblick-Goldman Corp., 80 F.R.D. 433,435 (E.D. Pa. 1978). To say that, by waiting until an opponent's patience is exhausted and a Motion for Sanctions is filed a litigant may nonetheless escape any consequences is to say that the Rules have no meaning, and that a litigant may ignore them as he will, always provided he avoids any Order of a Court. The Rules do not contemplate such a result, and, as the Court observed, they require a contrary conclusion.

But, even more to the point, it is plain that the Party's default was willful. The Party now claims that, due to the legal difficulties of Huey Newton, the resignation of former Chairperson Elaine Brown, and the change in practice location of Mr. Heistand, the Party's delay should be held not to be willful. Of course, this does not respond to the plain fact that the Party wholly failed to take any step at all to assure the movants and the Court that the Party recognized and accepted it's responsibilities.<sup>6/</sup> Nor does it in any way explain why the Party's lead counsel in this case, who had not moved his office nor resigned his position, was unable to assert the objections here raised in a timely fashion. Most assuredly, it does not explain why counsel was unable, or unwilling, to agree to the proffered extension, or to move this Court for such further time as was needed.

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<sup>6/</sup> This is especially serious in view of the Party's willful failures to make discovery in Dellinger, et al. v. Mitchell, supra, p. 7 and n. 2, which resulted, after nearly 10 years of litigation, in the dismissal of the Party. Given this history, and the Party's present record in this case, the conclusion is inescapable that the Party has willfully ignored its obligation, and absent sanctions will continue to do so.

Plaintiffs, in their Response to the Movants' Motion for Sanctions "concede the seriousness of this delay." [Response, 1.] Serious it was, and serious it is -- far too serious to escape sanction.

B. The Party Has No Privilege Under The First Amendment To Justify It's Refusal To Respond To Interrogatories 21, 33, 54, 61 and 198.<sup>7/</sup>

The Party has objected to interrogatories no. 21, 33, 54, 61 and 198 on the basis that they required disclosure of the names of persons whose connection with the Party was not previously publicly disclosed. See Black Panther Party's Objections, passim. The Party, in its opposition, pp. 34-40 facilely assumes that, because most of the defendants are represented by attorneys employed by the Department of Justice, "the government" is seeking disclosure of the undisclosed officers of the Party. [See e.g., Pl. Opp. 34, 35, 36 n.1.] In fact, as we have shown supra, only one of the defendants from whom damages are sought, General Aaron, still serves his country. The remaining defendants have returned to private life. Nor will "the government" bear the burden of a judgment, as the Party (and plaintiff Newton) neither sought damages from "the government" nor did they comply with the jurisdictional requirements so to do.

Thus, while the Party argues that "[t]he government must show that there is an important governmental interest"

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<sup>7/</sup> Interrogatory 105, which seeks the identity of persons alleged to have been the subject of unlawful electronic surveillance is no longer relevant to any issue properly litigable in this case, and is thus withdrawn. See pp. 29-30, supra.

before there can be disclosure where a claim of First Amendment privilege is interposed, that argument is simply inapposite here. As plaintiffs have conceded, they seek damages from former officials, and injunctive relief from those defendants presently in office. Transcript of the hearing of December 14, 1978, p. 41. As the movants have shown, the discovery here sought is relevant to the issues of personal liability, causation, existence, extent and amount of pecuniary damages, as well as available defenses, which are at the very heart of the Party's case against the individual defendants.<sup>8/</sup>

The interest of defendants, private individuals, who seek the discovery objected to, however, is as weighty as the interest the Party claims to be asserting.<sup>9/</sup> That interest is no less than their right, as a matter of due process of law, to have the issues plaintiffs have tendered to the Court fully and fairly determined -- and determined expeditiously and inexpensively. It is this interest, not a "governmental" interest in the classic sense of a public regulatory scheme to further some public policy, which requires that, before the Party may recover damages from these defendants it must permit the fullest and most searching examination of all the facts which bear upon it's claim.<sup>10/</sup>

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8/ Should the damages issues fall from the case, the injunctive issues are anticipated to be ripe for decision on summary judgment motions after a brief period of further discovery. Cf. Loya v. Immigration & Naturalization Service, 583 F.2d 1110, 1114 (9th Cir. 1978).

9/ As will be shown, supra p. 2, the Party's claim of privilege is more apparent than real.

10/ There is no assertion that the information sought is not relevant.

Nor does the Party's analysis of the cases in which identification of membership was sought support the conclusions they reach. [See Pl. Opp. 37-39.]<sup>11/</sup> While they argue that the cases disclose no need for proof of harassment before the claim will be upheld, in each case cited, harassment was found. Thus, the Party's discussion of NAACP v. Alabama, 357 U.S. 449 (1958) centers not on any finding that there was no potential for harassment consequent on disclosure, but rather that the Court did not find that the State of Alabama was the source of the harassment. Plainly there was a danger of harassment found [see NAACP, 357 U.S. at 462], albeit from other sources. In its discussion of NAACP, the Party ignores this finding. [See Pl. Opp. 37-38.] In discussing Doe v. Martin, 404 F. Supp. 753 (D.D.C. 1975), the Party does not, and cannot contend that there was no finding of potential harassment consequent upon the disclosure of the identity of contributors to the Socialist Workers Party. See 404 F. Supp. at 756. Rather, the Party argues that, because it is dissatisfied with the quantum and nature of the proof in that case [Pl. Opp. 38, 39]; and because issues

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<sup>11/</sup> The Party argues at length that there should be no "penalty" imposed for asserting it's alleged right. Opp. pp. 41-48. The Party contends that if these claims are upheld, this action can proceed, notwithstanding the potentially devastating effect denying discovery may have on the defendants. This position may have been properly asserted in a substantive response to the movants' Motion for Sanctions, and to the Supplemental Memorandum in support thereof, and was there shown to be without merit, see Supp. Mem. pp. 6-12, however, it is inapposite to the issues raised by the present motion, which goes to the existence and availability of the claimed privilege, not to the question of whether this action can proceed if answers to the movants questions are not forthcoming. Thus, movants will not respond to this issue, but reserve it for further briefing in the event that the Court, notwithstanding the movants' showing, should shield the Party from discovery.



regarding harassment of the Socialist Workers Party are in litigation in other contexts (and other Courts), somehow Doe is drained of meaning. The Party's reference to Socialist Workers 1974 National Campaign Committee v. Federal Election Commission, Civil No. 74-1338 (D.D.C.) is also defective in this regard. In that case, too, this Court found on the record that there was harassment shown, and consequently found the privilege applied.<sup>12/</sup>

In the present case, neither the Party nor any of the other plaintiffs have offered any evidence from which any present harassment can be shown. In such circumstances, when the danger which the privilege is designed to forestall does not exist, the privilege is inapplicable, and disclosure should be required.

C. Even If A Privilege Is Available, It Was Waived By Bringing This Action.

The Party contends that "the government" cannot impose penalties for asserting Constitutional rights, and that as a result, the Party can, at the same time seek substantial damages from individuals and deny them needed discovery. This result is a palpable denial of due process to those sued in damages, for it forecloses, or at least severely burdens, their ability to fully ventilate all the facts that bear upon the claims for which they may be mulcted in damages.

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<sup>12/</sup> The cited SWP case is limited in its holding since the broader issue of the propriety of suitable relief for alleged potential harassment is presented in Socialist Workers Party v. The Attorney General, 73 Civ. 3160 (S.D.N.Y.)

Professor Moore, in discussing the question of waiver of privileges by bringing suit, concluded that:

. . . a privilege is 'waived' -- though the party intended no waiver -- by bringing or defending the suit [where the privileged matter was central to the issue the party tendered to the Court]

4 Moore's Federal Practice ¶ 26.60[6].

In Grinnell Corp. v. Hackett, 20 F.R. Serv. 2d 668 (D. R.I. 1974), the Court was faced with a motion to compel answers to discovery seeking, inter alia, a list of members of a plaintiff-intervenor. Id. at 669. Chief Judge Pettine observed that:

. . . assuming there is a privilege to protect identity they have interjected the issue and cannot now complain.

Id. at 670.

Similarly, in Dow Chemical Co. v. Taylor, 20 FR Serv.2d 673, 676 n. 1 (E.D. Mich. 1974), app. dismissed 519 F.2d 352 (6th Cir. 1975), Judge Feikens, noting that nothing in the record reflected anything more than speculation as to harm from disclosure went on to observe:

It is elementary that a party must as a matter of course have the right to inquire into the factual bases of allegations contained in the opponent's pleadings. See, e.g., Hughes v. Groves, 47 FRD 52, 57 (WD Mo 1969); Lance, Inc. v. Ginsburg, 32 FRD 51, 52 (ED Pa 1962). Such inquiries are by definition relevant to issues raised in the case. There can be no viable claim of oppressiveness, for having pleaded certain facts, it may be assumed that the pleader is in a position to furnish the details upon which he relied in making the allegation. RCA Mfg. Co. v. Decca Records, Inc., 1 FRD 433, 435 (SDNY 1940). And even assuming that the facts in question may be covered by an assertable privilege, which in this case they are not, it is only just to con-

clude that by pleading at bar as to matters involving those particular facts, the party so pleading has chosen to forego its privilege in favor or proving those allegations as part of its case. Because it would be fundamentally unfair to permit a party to withhold information relevant to allegations which it has itself made and the issues thereby raised, the party must choose between its allegations and its privilege. See *Awtry v. United States*, 27 FRD 399, 402-03 (SDNY 1961); *Independent Productions Corp. v. Loew's, Inc.*, 22 FRD 266, 276-77 (SDNY 1958).

Ibid. (First Amendment right to protect membership lists).

Familias Unidas v. Briscoe, 544 F.2d 182 (5th Cir. 1976) does not assist the Party. In that case, the Court of Appeals found that the interrogatories seeking the identity of the plaintiff organization's members "were neither crucial nor necessary." 544 F.2d at 191 n. 16. The Court went on to observe that "any interest appellees might have had with regard to the identity of the membership . . . was completely dissipated . . . ." 544 F.2d at 192. Thus, the issues which necessitate the discovery resisted in the present case by the Party were not part of the case in Familias Unidas, and the Court acted to limit unnecessary discovery. That is not the case ad hoc, and Familias Unidas is inapposite.

Nor does the Party gain any support from International Union v. National Right To Work Legal Defense and Education Foundation, Inc., \_\_\_ F.2d \_\_\_, Nos. 77-1739, 77-1766 (D.C. Cir., Nov. 17, 1978) (hereinafter "Marker"). The Marker Court nowhere considered and determined the issue of whether a plaintiff may, consistently with due process, shield from discovery facts central to the issues which he put in suit, nor was the question presented to the Court, for it

was the defendant who was asserting the privilege. [Slip. Op. 10.] Of course a plaintiff is the master of his complaint, and may decide what to put in issue and what to protect by the framing of his complaint. It is this factor which distinguishes Dow Chemical and Grinnell Corp. from Marker and it is this distinction which the Party entirely fails to confront. Thus, it is plain that the Party has waived any privilege which might be available to it, were it a defendant, by bringing this action.

D. Defendants' Need For The Information Overcomes Any Privilege The Party May Have.

In the event that the Court were to hold, notwithstanding the foregoing, that the Party has not waived any privilege it may have, either by its unexcused and inexplicable delay in objecting to the interrogatories or by its deliberately placing in issue matters to which the requested discovery is central, nonetheless the movants are entitled to an Order compelling the Party to disgorge the information.

It is plain that the privilege claimed, if it exists at all in this context, is a qualified, rather than an absolute one. As the Court observed in Marker:

. . . [a]t some point, the additional burden on a litigant in seeking out alternative sources of discovery may justify compelling disclosure of essential information from one asserting a constitutional privilege.

[Slip. Op. at 26.] The Court identified two factors which should be considered before such discovery is ordered: is

the information sought available elsewhere, and have reasonable attempts been made to secure it from such sources; and does the information go to the heart of the lawsuit. Id. at 25.

Turning to the first factor, it is plain that the nature of the privilege claimed precludes the possibility that the information sought is reasonably available elsewhere. As noted earlier, documentary discovery is not practical here since the Party destroyed most of the relevant documents. Thus, movants are left to personal recollections already made stale by the passage of time, as the Party's limited collective recollection evidences. However, identities of key witnesses with these recollections have been hidden by the claim of privilege.

The Party has claimed a privilege only as to the identity of persons whose connection to the Party is not publicly known. While the claim is defective for the reason that it is overbroad, on its face [see Part II(E), infra], if it has any meaning at all such a claim can only mean that the identities sought are not reasonably available to the defendants.<sup>13/</sup> Indeed, even extraordinary measures are likely to be unavailing, as the Party's own affidavits show. Joan Kelly asserts that at least "some" of the persons she contacted were unwilling to discuss their former connection with the Party. [Kelley Jan. 15, 1979 Aff. ¶2(b).] If such persons are reluctant to discuss their former connection

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<sup>13/</sup> As a matter of plain meaning, while the Marker Court phrased the first branch of it's test in two sub-parts, it can be reasonably interpreted only to mean that such information must be reasonably available to the seeking party. If only by extraordinary means is the information sought available to that party, then this branch of the test is satisfied.

with the Party with a representative of the Party which may be presumed to be privy to all the Party knows, including, potentially, very highly incriminating or personally embarrassing matters, the possibility is vanishingly small that they would discuss such matters with outsiders. When it is remembered that such contacts would be on behalf of former government officials, who may well be viewed with suspicion by the persons contacted, the Party's suggestion that there are alternate reasonably available sources stands revealed as wholly chimerical.

Thus, the first branch of the test having been satisfied, we turn to the second -- whether the information sought goes to the heart of the claim. Plainly, here it does. Interrogatory 21 seeks the identities of the Party's officers -- in view of it's answer to interrogatory 18, the members of the 15-member Central Committee. Plainly, as some of those members identities were revealed, the remainder is only a small group, not nearly equivalent to the whole membership of the Party.<sup>13a/</sup> As the gravamen of the case at bar is the allegation that the defendants conspired to destroy the Party, it is plain that a central question, indeed perhaps the central question, is whether it was outside forces or the Party's own centripetal tendencies, or perhaps other factors, which resulted in the alleged decline of the Party.<sup>14/</sup>

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<sup>13a/</sup> This fact alone renders the claims of privilege inapplicable.

<sup>14/</sup> Moreover, if there was no decline, but simply a transfer of the public interest, then the Party was not harmed. As to this, the Party's membership records are relevant since they would be the only source for determining whether there was an increase or decrease of membership. Future discovery will be directed to this area if the case goes forward.

In this area, it is plain that the members of the Central Committee are in the best position to provide evidence. Indeed, in view of the Party's loss or destruction of records, they may be the only source of such evidence. If the Party is allowed to select, by some nebulous standard of "public disclosure," only some present and former members of the Central Committee, and thus to have a very definite potential for concealing relevant, material evidence which would undercut the position they assert in this litigation,<sup>15/</sup> it is plain that the ends of justice will not be served. Therefore, all members of the Central Committee must be identified as requested in interrogatory 21. For the same reason, the affiliate and local officers should be identified, as required by interrogatory 33.

Interrogatory 54, which sought pleadings in prior litigation brought by or against the Party or its officers or members, was objected to insofar as it would require disclosure of non-disclosed members. As the Party may seek to tender to this Court issues already litigated by those undisclosed members in suits of which the moving defendants are unaware, disclosure of these matters is necessary. Damages should not be recovered by the Party in this case on a claim which a member has had decided against him, for the reason that the Party's claim can be no different than the

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<sup>15/</sup> This is a real possibility in view of the testimony of one Panther Central Committee member, Larry Henson, that he would perjure himself to save plaintiff Newton. See San Francisco Chronicle, March 14, 1979 Home Edition, p. 3. Attached hereto as Attachment 4. However, concealment of such evidence could also result from an entirely good faith assertion of the claimed privilege. In either event, the serious harm to the defendants is plain.

member's. Here, as before, if the member's name is not publicly disclosed, then the defendants have no reasonable alternative means of securing the information.<sup>16/</sup>

Therefore, as the Party should not be able to litigate, through undisclosed surrogates, straw men in fact, and avoid, by a specious claim of privilege, the potential res judicata and collateral estoppel effects of such litigation; further answers to interrogatory 54 should be required.

Interrogatory 61 so plainly goes to the heart of a limitations defense which would, if asserted by Motion for Summary Judgment based on such evidence, put an end to this litigation, that it borders on the frivolous to even assert such an objection. There are plainly no other sources for this information, and it would establish a complete defense ending this suit. Answers should be compelled.

Finally, interrogatory 198 seeks the identity of street vendors who, the Party contends, were arrested by local police at the defendants' urging.<sup>17/</sup> The Party, by objecting, would deny to defendants any information from which they

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<sup>16/</sup> For example, there are indications that in 1967 or 1968, the Southern California Chapter, or some of its members and leaders, brought an action against the City of Los Angeles and others. The defendants have been unable to discover any details of that action, since the names of the formal parties are unknown. Since the timing of the action overlaps some of the events set forth in the Amended Complaint, the issues raised and their disposition obviously affect the scope of this action. There may have been other such actions of which defendants are wholly unaware. Moreover, Court records are public records, thus any person suing on behalf of the Party is necessarily publicly disclosed as being connected with the Party.

<sup>17/</sup> This claim is facially overbroad, see Part III, ¶35.



could determine with any certainty just what it is the Party alleges they did. Plainly, due process of law requires a civil plaintiff to inform the party he choose to sue of the factual basis for the claims made against him, at least in discovery. Moreover, there can be no better example than this to show the hollowness of the privilege the Party claims.

Arrest records are public records, and they commonly include a specification of the facts upon which the arrest was made. Thus, what the Party is in reality claiming as a privilege is the right to keep the defendants in ignorance of facts, already otherwise public, which they do not already know. This is a total perversion of discovery. It is plain that there can be no secret as to a connection with the Party of one who, according to public records, was arrested for soliciting on behalf of the Party or selling it's newspaper. Thus, a full answer to interrogatory 198 should be compelled.

E. The Privilege As Claimed By The Party Is Overbroad and Undefined.

If notwithstanding the foregoing, the Court were to accept the Party's position, then it must be noted that the Party's claimed privilege is defective due to its excessive breadth and its essential vagueness.

As was shown supra, p. 25 , with respect to interrogatory 198, the Party has claimed a privilege based on non-public disclosure over information which, in fact, is a matter of public record. See also text and note 16, supra. At best,

this proceeds from the failure of the Party to articulate a precise definition for what constitutes public disclosure. This matter was adverted to in the movants' opening memorandum, p. 12 n. 6. No mention of it was made in the Party's opposition, or in the affidavit supporting it. However, the Party's Supplemental Response to movants' Interrogatories and their Second Supplemental Response to movants' document requests show that certain deletions were made of members who were, in fact, publicly known to be connected with the Party. See Supplemental Response to Interrogatory 21; Second Supplemental Response to Document Request no. 2. Additionally, the Party initially claimed a privilege over identifying Emory Douglas as a Central Committee member, even though its own newspaper identified him as such 10 years ago. [See Part III ¶ 2, infra.]

The Party's Second Supplemental Response to document request no. 2 increases rather than allays the movants' concerns. The Party states that it:

. . . has checked the names appearing on [page 2 of a document produced by the Party] against the list of publicly known local members given in the House Committee on Internal Security, Staff Study, . . . and concluded that none of the individuals are publicly known.

While the claim as made by the Party seems to be directed to protecting only persons whose connection with the Party is not known in this community by persons not connected with the Party, -- the above quoted explanation erases the possibility that what the claim really contemplates is not public but official knowledge -- i.e., if a person's

connection is not known to the defendants then the claim will be asserted. Whether this is, in fact, the real meaning of the claim need not be reached, because it clearly illustrates the basic defect of the claimed privilege: it is so broad as to have many possible meanings -- or none at all.

A claim so broad and undefined -- indeed, undefinable with any certainty -- cannot be accepted. It invites endless litigation, and contributes needlessly to the already great burden this case has imposed on the Court and the parties. Therefore, the claimed privilege should be denied and further answers compelled.

III. FURTHER RESPONSES SHOULD BE COMPELLED TO INTERROGATORIES ANSWERED IN A CONTRADICTORY, EVASIVE, OR INCOMPLETE MANNER.

Rule 37(a)(3) of the Federal Rules of Civil Procedure provide that ". . . an evasive or incomplete answer is to be treated as a failure to answer." Defendants moved to compel further responses because several of the plaintiff's answers to movants' interrogatories fall within this category. Other answers contradict those previously given by the plaintiff in this and other cases, those given by other plaintiffs in this case, and pronouncements of the plaintiff in its official publication, The Black Panther.

Plaintiff since has supplemented its responses. [Pl. Feb 12, 1979 Sup. Res.] Relying in part on these newly-modified answers, plaintiff argues that no further response should be compelled as to any of the interrogatories identified by defendants.

Movants agree that plaintiff's Supplemental Response removes defendants' specific objection to the way plaintiff answered interrogatories 35, 109, 140, 146, 159, 210-19, 228-29, 233 and 241-44.<sup>18/</sup> Additionally, defendants withdraw their motion with respect to interrogatories 105 and 113 which concern plaintiff's electronic surveillance claims. The interrogatories no longer are needed in view of the Court's dismissal of the electronic surveillance claims of the Black Panther Party in David Dellinger, et al. v. John N. Mitchell, et al., Civil Action No. 1768-69 (D.D.C.) on January 2, 1979, for having ". . . willfully disregarded the Order of this Court requiring both the filing of answers to interrogatories and the expeditious termination of discovery in this case, to the prejudice of the defendants . . . ."

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<sup>18/</sup> By the Supplemental Response, plaintiff denies having any information pertinent to these interrogatories other than what is contained in the referenced Senate Report. That denial is a proper answer if the plaintiff's search was otherwise adequate. Of course, compelling further answers pursuant to Part I might well produce further information.

Thus, although defendants no longer request further responses be compelled for the specific reasons discussed with respect to these interrogatories, further responses should be compelled for the reasons discussed in Part I.

[Attach. 5 .] That Order became merged in the final judgment in Dellinger with the Court's dismissal of the remaining parties' claims on March 8, 1979. [Attach. 6 .] The Dellinger dismissal on sanctions grounds of the Party's electronic surveillance claims, therefore, bars its related claims here under the doctrine of res judicata.

As to the remaining interrogatories, however, further responses still must be compelled. Far from clearing the air, supplemented responses to these interrogatories and the unsworn explanations in the memorandum in opposition only further exacerbate the inadequacy of plaintiff's responses, as discussed below:<sup>19/</sup>

1. Interrogatory 16:<sup>20/</sup> Identify all documents which constitute charters, constitutions, programs, by-laws, rules regulations, executive mandates, or other similar documents, however styled, of the Black Panther Party.

Supplemental Response: The Black Panther Party did not include the "8 Points of Attention" and "3 Main Rules of Discipline" in its original response to interrogatory 16 for two reasons. First, they did not originate with the Black Panther Party, but instead were taken from Mao Tse Tung's Red Book. Second, and more important, they were not considered to be a part of the Party's rules or by-laws. Although they were quoted from time to time in the Party newspaper, they were used as examples of another revolutionary group's rules and by-laws.

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<sup>19/</sup> For convenience of the Court, movants will use the same paragraph numbering system which was used in the prior memoranda to refer to specific interrogatories or groups of interrogatories. Those paragraphs pertaining to interrogatories 35, 105, 109, 113, 140, 146, 159, 210-19, 228-29, 233 and 241-44 will be omitted for the reasons stated above.

<sup>20/</sup> For convenience of the Court, each interrogatory and pertinent supplemental Response will be quoted in full.

Plaintiff's Supplemental Response defies explanation. The statement that these ". . . were not considered to be a part of the Party's rules or by-laws" is directly contradicted by its own "Central Committee, B.P.P. Press Conference" reported at page 6 of its January 4, 1969 issue of its newspaper, where the Central Committee discussed the binding effect of "[t]he Black Panther Party rules which have been in existence since Huey P. Newton organized the Black Panther Party (including the 3 main rules of discipline and the 8 points of attention) . . . ." [Attach. 1 , Emphasis added.] Indeed, it should be noted that the Party modified the Red Book rules, contrary to the implication of plaintiff. [HCIS Staff Report 85.]

Since these rules of discipline and points of attention speak of taking "captives" and "captured" property, they are highly relevant in evidencing the plaintiff was a violence-prone revolutionary organization and not the simple 'political' organization it claims to be in this suit. The evasiveness and inaccuracy of the Party's responses and unwillingness to even acknowledge its own rules, of themselves and at this time, justify imposition of sanctions. At least, candid answers finally should be forthcoming as to this and any other rules, etc., which were not disclosed.

2. Interrogatory 18: Identify all present posts, offices and other positions of responsibility of the Black Panther Party.

Interrogatory 21: Identify all persons who held the offices identified in answer to interrogatories 18

and 19 and provide the dates for each such person's term of office, post or position of responsibility.

Supplemental Response: Gwen Newton should be added as a Central Committee member, a position she has held from 1974 to the present. With the addition of Gwen Newton, the Party's list of 21 present and past Central Committee members is more complete than either the list compiled by Elaine Brown in 1976 or the list compiled by Huey Newton in 1977 because more members of the Central Committee have become publicly known over time. Joan Kelley was not listed as a Central Committee member until the July 24, 1978, responses because, although she previously may have been publicly known as a member of the Party (see HCIS Report, p. 7), she was not publicly known as a member of the Central Committee. Fred Hampton was never a member of the Central Committee; he was listed by Elaine Brown as a Deputy Chairman, which is a Chapter, not a Headquarters, designation.

To essentially the same question -- identify the officers of the Black Panther Party during the pertinent period -- the plaintiffs have given three different answers. The Party gave one answer in Dellinger, identifying four Central Committee officers. It gave another answer to defendant Moore, claiming there always has been fifteen Central Committee officers, identifying eight of these as being the 'publicly known' members. In answering movants' interrogatories, the Party stayed with the same number, fifteen, but identified a different group of 'publicly known' Committee members.

The Party's Supplemental Response still confuses the issue -- for example, Emory Douglas was not identified as a publicly known Committee member by Newton, in answer to the Moore interrogatories, but was listed by Kelley in answer to movants' interrogatories as having been a Committee member

since 1972. The explanation appears to be that ". . . more members have become publicly known over the time." This hardly explains why Douglas was not listed by Newton since he was identified at least as early March 21, 1969 in The Black Panther as being Minister of Culture and a Central Committee member (also contrary to Kelley's earlier answer that Douglas did not become a Central Committee member until 1972)<sup>21/</sup> and, therefore, is likely to have relevant information about the activities directed by the Party's inner circle.

Whether it is a result of bad faith or extreme carelessness, the plaintiff's repeated failure to provide a full answer to even this type of fundamental inquiry undermines the confidence movants can have that accurate answers now finally have been given to this and other interrogatories. Plaintiff's response that movants ". . . can hardly be heard to complain because the answers they received contained many more names than either Elaine Brown or Huey Newton had supplied previously" [Pl. Opp. 60] provides no assurance that the truth finally has been provided. Given its prior repeated contradictions, the Party should be required to give a full response, under oath, and a full explanation.

3. Interrogatory 22: For any offices, posts or positions of responsibility identified in answer to interrogatories 18 and 19 as to which there are no documents which describe their duties, set forth their duties and the basis for the description, including but not limited to the following offices:

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21/ The same issue reflects Melvin Newton was Minister of Finance in 1969, contrary to the Party's answer to movants' interrogatory 21. [See also the discussion of the jurisdiction of the Ministry of Finance at ¶ 3, infra.



- A) field marshal
- B) minister of foreign affairs
- C) minister of defense
- D) chief of staff
- E) chairman or chairperson
- F) minister of information
- G) minister of propaganda
- H) national headquarters captain
- I) central committee member
- J) minister of education
- K) minister of culture
- L) minister of finance
- M) prime minister
- N) prime minister of Afro-America
- O) minister of justice
- P) communications secretary
- Q) assistant chief of staff
- R) minister of religion
- S) deputy minister of information
- T) defense captain
- U) deputy minister of defense
- V) organizer
- W) lieutenant of defense
- X) lieutenant of security
- Y) lieutenant of information
- Z) field secretary
- AA) inspector
- BB) minister of labor
- CC) section leader
- DD) other offices identified in answer to interrogatory 18 but not listed in A) through CC).

Supplemental Response: Of the 25 titles used by the Party, the following 12 were not identified in plaintiff's original response:

- I) Central Committee member -- this general designation was used interchangeably with any of the 13 titles originally identified.
- Q) Assistant Chief of Staff -- this was a Bay Area central staff position.
- R) Minister of Religion and BB) Minister of Labor -- these were honorary titles given to persons possessing expertise in these areas who advised the Party. Father Earl Neil was Minister of Religion and Kenny Norton was Minister of Labor.

The remaining 8 titles were used by the local central staffs which, as explained in the original response to Interrogatory 18, functioned in the same

collective coordinating manner as the national Central Committee. These 8 local titles were S) Deputy Minister of Information, T) Defense Captain, U) Deputy Minister of Defense, W) Lieutenant of Defense, X) Lieutenant of Security, Y) Lieutenant of Information, Z) Field Secretary, and CC) Section Leader.

The Party's description of the collective coordinating nature of the Central Committee is not contradicted by Mr. Newton's description of the delegation of responsibility within the Party as "analogous to management within a large corporation" (Newton Responses, p. 2). The comparison is accurate at any particular time, since responsibility for specific programs and activities rotates among Central Committee members and among local central staffs, but the analogy is not exact.

As noted previously, documentary discovery has been practically foreclosed in this case by the Party's destruction of its reports. In deciding then who would be the most likely to have information pertinent to particular Party activities, it is important to know which officers played which roles in the Party's management. Newton has averred that members had roles "analogous to management within a large corporation." The Party's ~~supplemented answer that~~ Newton's comparison was "accurate at any particular time. . . but the analogy is not exact" simply is no answer. If, at some time, particular persons were assigned particular responsibilities, those should be discussed. Indeed, at least with respect to the Minister of Finance, it appears there was something more than a rotating assignment since Rule 13 of the Party required "[a]ll Finance officers will operate under the jurisdiction of the Ministry of Finance." [HCIS Staff Rep. 83.] Moreover, plaintiff still has not explained the areas of responsibility of local affiliate officer-holders. For

example, what is the distinction between the Boston Chapter's "defensé captain" and its "deputy minister of defense" or between a "deputy minister of information" and a "lieutenant of information" as in the Wisconsin Chapter? [HCIS Staff Rep. 8-9.]<sup>22/</sup> On its face, there was a hierarchy within the local affiliate. Some answer to movants' interrogatory, therefore, should be given.

4. Interrogatory 25: Identify all officers and other persons who were or now are authorized to speak on behalf of the Black Panther Party.

Supplemental Response: The 7 leading members listed in the original response had general authority to speak for the Party for the dates listed. The 14 other members of the Central Committee identified in the original and supplemental responses to Interrogatory 21 had limited authority to speak for the Party at a particular meeting or on a particular subject during the time that they were Central Committee members.

Since the inflammatory statements of its authorized Party representatives will evidence the true purpose of the Party, it is important to know which persons were authorized to speak on behalf of the Party. More than a "representative" listing should be given. Plaintiff should identify all persons it is aware of at this time (for example, all officers, if that is the case) and any "exceptions" it is aware of. The possibility that further answers might be recalled in the future does not excuse their failure to provide all the information it now has.

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22/ Plaintiff, itself, accepts the accuracy of the HCIS Staff Report in reflecting the officers of the affiliates. [Pl. Opp. 62.] Accordingly, it is proper for defendants to rely on the Report.

5. Interrogatory 27: For each such affiliate, identify all documents which constitute compliance with statutory requirement for incorporation or other statutory organization.

Supplemental Response: None.

Considering the breadth of plaintiff's action and the various privacy and other litigation interests affected by such a broad suit, a question arises as to whether this plaintiff is the real party in interest to all the claims it purports to assert. [Rule 17(a), F.R.Civ.P.] For example, although plaintiff claimed none of its affiliates was incorporated, defendants have demonstrated that one, at least, was, the Iowa affiliate (the Certificate of Incorporation is at HCIS Hearings 5009-10). Obviously, plaintiff cannot assert this independent corporation's claims in the absence of some assignment.

Counsel state that ". . . it is doubtful that anyone in the Party's central office was ever aware that such an incorporation took place," however. [Pl. Opp. 64, Emphasis added.] If the Party is compelled to respond, perhaps all it can do is to say, under oath, that it has no records or information as to whether or not any of its so-called affiliates were actually independent organizations under the laws of other jurisdictions. If that is the case, however, then it should explain the basis for its being the real party in interest to actions allegedly taken with respect to local organizations which, like the Iowa one, may have been independent entities.

6. Interrogatory 32: For each affiliate identified in answer to interrogatory 26, identify all present and

former offices, posts and other positions of responsibility of the affiliate.

Supplemental Response: None.

The plaintiff's 'objection' in their memorandum is not timely. Several offices of former affiliates are listed at HCIS Staff Report 7-9. If these are accurate and reflect all plaintiff's present knowledge, plaintiff should state so under oath. If not, the information now available to it should be provided, even though additional information might turn up later. As to present affiliates, there is no reason plaintiff cannot provide that information simply by checking with the locals.

7. Interrogatory 36:<sup>23/</sup> Describe in detail the nature of a regional Chapter's responsibility over chapters in its jurisdiction.

Supplemental Response: As explained in the Party's original response, the primary responsibility of the regional chapters was to serve as distribution centers for the Party newspaper, books, and other materials. In addition, the regional chapters worked with local branches on Party service programs and activities, fundraising, and, in some instances, holding joint meetings and rallies.

As noted initially, available information reflects that regional chapters also had a discipline function with respect to affiliates within its jurisdiction. [See HCIS Hearings 4439-40, 4487.] Although plaintiff's memorandum notes this, it is not otherwise discussed or denied. If the HCIS information is not true, it should be denied, under oath, by the Party (at least insofar as plaintiff's limited information allows). If there was some type of discipline function, plaintiff should explain it.

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<sup>23/</sup> Paragraph 7 initially included both interrogatories 35 and 36. Plaintiff's Supplemental Response to interrogatory 35 is satisfactory, however.

8. Interrogatory 40: Describe in detail the circumstances which led to the dissolution of each affiliate.

Supplemental Response: The Party has no records that describe in detail the circumstances which led to the dissolution of each affiliate and the Party's only information at this time consists of the references in the Senate Report cited in the original response. As the plaintiff acquires more information about this question through discovery, it will supplement this response as required by Rule 26(e)(1).

Interrogatory 41: Identify each affiliate which plaintiffs contend became defunct or otherwise was dissolved as a result of the actions of the defendants.

Supplemental Response: See supplemental response to interrogatory 40.

Plaintiff's statement that the "only information" it has at this time concerning the dissolution of its affiliates is that contained in the referenced Senate Report is refuted by the Party's own newspaper accounts of dissolution of affiliates. For example, page 14 of the January 24, 1970 issue of The Black Panther contains an article attributing the disbanding of the Milwaukee Chapter because of "counter-revolutionary leadership." [Attach. 7 .] Even if it has no independent recollection at this time, plaintiff at least should advise which of the dissolutions discussed in its newspaper the Party will claim resulted from defendants alleged actions. On its face, from the description given by the Party, it is difficult to see how the disbanding of the Milwaukee Chapter can be laid at the feet of the defendants.<sup>24/</sup> Of course, reviewing these reports might refresh recollections.

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<sup>24/</sup> It is noted that the article goes on to state that: "The leadership continually spouted rhetoric, while failing to engage in reading, study, and self-criticism. Even Bellamy, in charge of information, failed to engage in serious study. . . ." This reflects officers did have specific duties, contrary to plaintiff's prior answers. [See ¶¶ 3, 6 in this and movants' opening memorandum.]

9. Interrogatory 49: Identify all documents which reflect reprimands, imposition of sanctions (including expulsion of members and revocation of charters) or cautions by the national organization to any Black Panther Party affiliate.

Supplemental Response: The Black Panther Party newspaper at times carried notices of expulsion of affiliates, although this was never termed a "charter revocation."

Interrogatory 50: Identify all copies of "The Black Panther" which contain lists of Party members and chapters who were expelled or charters revoked.

Supplemental Response: See supplemental response to Interrogatory 49.

Plaintiff has changed its prior answer and now admits the sanction of expulsion was imposed on some affiliates. However, the Party still fails to answer interrogatory 50 by identifying which issues of The Black Panther reflect such expulsions. This must be provided. It is not an undue burden since plaintiff should review these in any event in preparing a proper response to interrogatory 40. Of course, ~~a basic purpose of discovery is to determine just what~~ events a plaintiff is going to attribute to defendants so that later discovery and motions can focus on those events. Plaintiff should answer the interrogatory.

10. Interrogatory 58: Describe in detail the purposes, aims, goals, and actions of The Emergency Conference to Defend the Right of the Black Panther Party to Exist held on or about March 7-8, 1970, in Chicago, Illinois.

Supplemental Response: Plaintiff's original response was correct. After contacting former Party members, supporters, and others in the Chicago area, Ms. Kelley was able to confirm that the Emergency Conference was not sponsored by the Party. During that period,

many individuals and groups with no affiliation with the Party sponsored meetings in which the Party itself was not involved. Mr. Garry was among the persons contacted by Ms. Kelley and he had no recollection of attending the conference or of any actions he may have taken to lend support to it. That Mr. Garry may have lent his name as a sponsor for a fund-raising appeal six months after the conference<sup>1/</sup> does not, of course, mean that the Party itself supported the conference. Even for a period during which Mr. Garry is counsel to the Party, his independent activities are no more attributable to the Party than are the activities of other private attorneys attributable to their clients.

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1/ See letter from Continuations Committee of the Emergency Conference, dated September 1970. The conference was held in March 1970. HCIS Hearings, Black Panther Party Part I, Investigation of Kansas City Chapter; National Organization Data, 91st Cong., 2d Sess., p. 5110 (1970).

Interrogatory 59: Identify all other Conferences, ad hoc organizations, programs, and conventions (by title, date and location) with purposes, aims, goals, and actions similar to the Chicago conference referenced in the preceding interrogatory.

Supplemental Response: See supplemental response to interrogatory 58.

Plaintiff's Supplemental Response to interrogatory 59 is no answer, since the existence of similar conferences, etc. (which would be relevant for limitations purposes, reflecting prior knowledge contrary to plaintiff's claim of fraudulent concealment) is not addressed at all. Indeed, page 10 of the June 13, 1970 issue of The Black Panther reflects that there was a "Committee to Defend the Panthers" which had been formed ". . . to raise funds for legal expenses and to inform the people of the Black Panther Party and their treatment by the government, courts and media." [Attach. 8.] An answer should be provided.



11. Interrogatory 72: Did Party members ever give the Party, or its officers, a percentage of moneys and/or goods which had been taken without an exchange of consideration?

Supplemental Response: None.

Interrogatory 73: Identify all documents which reflect the receipt of such a percentage by the Party or its officers, including but not limited to documents which either commend or criticize members in connection with the receipt of such a percentage or the failure to pay a percentage.

Supplemental Response: None.

Two points should be noted with respect to counsel's explanation in rebuttal. First, with reference to the "3 Main Rules of Discipline and 8 Main Rules of Attention," it has already been shown that the Party has not answered truthfully when it denies these were Party rules. [See ¶1, supra.] Second, the House Committee did not "discount" the testimony that a percentage of money was turned over to the Party leaders (which would be consistent with the mandate of Rule of Discipline 3 to "turn in everything captured from the attacking enemy"). [See "Gun-Barrel Politics" 66-67.] If this did not occur, however, at least plaintiff should state, under oath.

12. Interrogatory 75: Were Party members or officers required by any formal or informal rule or encouraged to obtain, carry, and/or train with firearms?

Supplemental Response: The Party never required members, by any formal or informal rule, to obtain, carry, or train with firearms. However, when the atmosphere of harassment by law enforcement officers was intense during the late 1960s and early 1970s, members were encouraged to carry firearms. As guidance for members who did possess firearms, 3 of the 26 Rules of the Black Panther Party were directed to proper handling of weapons. Rule 5 forbade the pointing,

use, or firing or [sic] a weapon of any kind at anyone unnecessarily or accidentally, Rule 7 provided that no one could have a weapon in their possession while intoxicated, and Rule 16 stated that members must learn to operate and service weapons correctly.

This Supplemental Response amounts to playing word games -- plaintiff admits members were required by its Rule 16 to "learn to operate and service weapons correctly" but denies members were required to "train" with firearms. The plain meaning of Rule 16 connotes some training, plaintiffs answer is evasive.

13. Interrogatory 76: Did the Party or persons it represents ever caution, warn or threaten witnesses not to testify before the House Committee on Internal Security with regard to the Committee's hearings in 1970 on the Black Panther Party?

Supplemental Response: The Party did not caution, threaten, or warn witnesses not to testify before the House Committee on Internal Security in 1970.

Given that there has been testimony that former Panther Donald Berry's life was threatened if he testified before the House Committee, plaintiff should address whether any inquiry was made before giving its flat denial. Of course, the validity of this denial is conditioned by the paucity of information now purportedly available to the Party, which is one reason for compelling further answers pursuant to Part I, supra.

14. Interrogatory 86: Describe in detail the make-up, purpose, and structure of the Black Liberation Army.

Supplemental Response: The Party explained that the "Black Liberation Army" was not a real entity but a rhetorical term used to describe anyone working to improve the quality of life of Blacks in the United States. This answer is not inconsistent with Mr. Newton's responses since he understood defendants' questions to refer to a concrete entity and therefore denied knowledge of the Black Liberation Army. Plain-

tiff Huey P. Newton's Responses to First Interrogatories of the Federally Represented Defendants, 54, 57, 59, 60, 61.

In continuing in its claim that the Black Liberation Army was only a "rhetorical term," the Party fails to acknowledge that the Black Liberation Army is the subject of two separate editorials in its own newspaper. [Attach. 9 ; Def. Mot. to Compel to Pl. Newton, 10 and n. 4.] This apparent inconsistency should be explained.

15. Interrogatory 87: If the answer to interrogatory 85 is negative, what was the source of the troops offered?

Interrogatory 88: In addition to the article appearing in the March 21, 1970, issue of "The Black Panther," identify all documents originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that American troops in Vietnam should kill their officers, General Abrams and/or his staff.

Interrogatory 89: Identify all documents, originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that members or others should kill police officers.

Interrogatory 90: In addition to the public statement of Party Minister of Defense Huey Newton, concerning the August 2, 1970, Marin County Courthouse shooting published by "liberation News Service" on August 26, 1970, identify all documents originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that members or others should kill judges.

Interrogatory 91: In addition to the statement by Party Chief of Staff David Hilliard reported in the November 2, 1969, issue of "The Black Panther," identify all documents originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that members or others should kill Richard Nixon, Lyndon Johnson, or other officials of government.

Interrogatory 92: In addition to the statement of Party Minister of Information Elridge Cleaver reported in the March 7, 1970, issue of "The Black Panther," identify all documents originated by the Party, its officers, or any affiliate which mention, encourage, warn, threaten, or discuss a "race war."

Supplemental Response: None.

The argument of plaintiff's counsel that the various threats, etc., contained in the Party's publication were just "rhetoric" is fully answered in movants' opening memorandum. The inadequacy of that response is reflected by the article from the Boston Chapter in the newspaper's September 26, 1970 issue (page 7) as well as those previously referenced. [Attach. 10 .] Under a caricature of a prisoner holding a gun to a judge, the article "Pick Up the Gun" vows: "We will not allow them to railroad us through courts. We as people will set more examples, as the one Jonathan Jackson, William Christmas, Ruchell McGee has set until we are free," referring to the murder of Judge Harold Haley. This is hardly just rhetoric.

16. Interrogatory 98: In National Distribution and/or Stronghold Consolidated Productions, Inc., are not identified in answer to interrogatory 26 as a Party affiliate answer the following:

- A) identify all documents which reflect formal organization of National Distribution and/or Stronghold;
- B) identify the shareholders of National Distribution and/or Stronghold;
- C) identify (by type of funds, and person and/or affiliate) whether National Distribution and/or Stronghold received funds or property from any Party officer, member, or affiliate for each year beginning with 1966;
- D) identify whether National Distribution and/or Stronghold filed tax or information returns with the Internal Revenue Service and identify the type of return filed for each year beginning with 1966; and
- E) for each year beginning with 1966, identify each

year National Distribution and/or Stronghold filed tax or information returns pursuant to the revenue laws of any State and identify the type of return filed and the State involved.

Supplemental Response: None.

By their memorandum in opposition, plaintiff argues that since it denies any connection between Stronghold and itself, discovery is not available. [Pl. Opp. 75.] Whether or not the Party is a separate entity is not determinative, however. If the Party has information about Stronghold, it should provide that information and allow defendants to test the Party's denial of a de facto (if not de jure) connection. Indeed, it is highly likely that the Party does have information available. Apparently, Stronghold assets included property which was the site of the Party's Oakland Chapter (1321-99th Avenue) and property which the Party claimed it had standing for electronic surveillance purposes (250 Dixwell Avenue, New Haven, Conn.; 8841 South Merrill Street, Chicago, Ill.; 1524-29th Avenue, Oakland, Cal.; 258 Santa Rosa, Oakland, Cal.; 8501 East 14th Street, Oakland, Cal.; and 3326 Adeline Street, Berkely, Cal.). [Compare BPP Ans. 26, 105 to Fed. Defs. First Int. with Jun. 25, 1975 IRS Report 27-28, Attach. 2 to Def. Mot. to Compel Pl. Newton.] Such information certainly is relevant to establishing the reasonableness of IRS's investigation of Newton for tax evasion, contrary to the plaintiff's claims of harassment.

18. Interrogatory 110:<sup>25/</sup> If the alleged subject of mail opening identified in answer to the preceding interrogatory is not a plaintiff, describe the affiliation of the alleged subject to the plaintiffs.

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<sup>25/</sup> Paragraph 18 initially included interrogatory 109 as well. Plaintiff's Supplemental Response to that interrogatory is satisfactory, however.

Supplemental Response: See supplemental response to interrogatory 109. [Supplemental Response 109: The addresses plaintiff identified in the original response are the only ones plaintiff suspects, at the present time, to have been subject to mail openings. Plaintiff did not maintain records of occasions on which packages arrived open or torn or when packages which had been expected failed to arrive. As discovery proceeds, plaintiff expects to be able to obtain further evidence of defendants' involvement in illegal mail opening by contacting former members for their recollection of events documented in the materials produced by defendants.]

Interrogatory 111: If the answer to the preceding interrogatory is that the alleged subject of the mail opening was an officer, member of legal counsel of the Black Panther Party or any affiliate, identify the office held, dates of membership, and/or dates or retention as counsel and the particular affiliate with which the individual was associated.

Supplemental Response: See supplemental response to Interrogatory 109.

Interrogatory 112: If the answer to interrogatory 94 is that the alleged subject of mail opening was an organizational affiliate of plaintiff identify any documents which set forth or otherwise establish the affiliation with the plaintiff.

Supplemental Response: See supplemental response to interrogatory 109.

Plaintiff still has not provided information to these interrogatories. The reference to prior answers is not adequate, since those answers do not provide the type of information requested by these interrogatories.

20. Interrogatory 114: Identify all property which plaintiff alleges in paragraph 57(B) was the subject of "burglaries" or "black bag jobs" committed by the defendants as a result of which plaintiff seeks relief.

Supplemental Response: The Party did not maintain records of break-ins, burglaries, and other evidence of illegal entries into Party offices and files other than the raid reported in the Party newspaper. Thus, plaintiff will not be able to provide further information to this question until discovery is complete.

Interrogatory 115: Identify all persons or organizations which held property interests, and the dates such interests were held as to all property identified in answer to the preceding interrogatory as having been the subject of burglaries of "black bag jobs" allegedly committed by the defendants.

Supplemental Response: See supplemental response to interrogatory 114.

Interrogatory 116: If the persons or organizations identified in answer to the preceding interrogatory are not plaintiffs, describe the relationship or affiliation to the plaintiffs of the holders of an interest in property, which allegedly was the subject of burglaries or "black bag jobs" committed by the defendants.

Supplemental Response: See supplemental response to interrogatory 114.

Interrogatory 117: If the answer to the preceding interrogatory is that a holder of an interest in property which allegedly was the subject of a burglary or "black bag job" committed by the defendants, was an officer, member, or legal counsel of the Black Panther Party or any affiliate, identify the office held, dates of retention as counsel and the particular affiliate with which the holder was associated.

Supplemental Response: See supplemental response to interrogatory 114.

Interrogatory 118: If the answer to interrogatory 100 is that the holder of an interest in property, which allegedly was the subject of a burglary or "black bag job" committed by the defendants, was an organizational affiliate of plaintiff, identify any documents which set forth or otherwise establish the affiliation with the plaintiff.

Supplemental Response: See supplemental response to interrogatory 114.

Presumably, these sort of charges have been made in the plaintiff's newspaper. Since it forms a part of plaintiff's claim, the Party should be required to identify which, if any, it seeks to attribute to defendants. If none, plaintiff should state so. Defendants should not have to continually

defend against vague charges with plaintiff making no effort at all to review contemporary accounts in its own newspaper in order to specify its claims against the persons which are sued.

21. Interrogatory 131: Describe in detail (including identification of substantiating documents) the factual circumstances surrounding the dispute between the Black Panther Party and the US organization as referenced in paragraphs 58(B-C).

Supplemental Response: Until discovery is completed, plaintiff cannot provide accurate information about the dispute which defendants promoted between the US organization and the Black Panther Party.

Interrogatory 132: Identify any documents which mention or in any way refer to the Party's dispute with the US organization referenced in paragraph 58(B-C).

Supplemental Response: None.

Again, plaintiff's answer reflects the inadequacy of its search. The statement that it cannot now provide "accurate information" until discovery is completed is tantamount to saying defendants are not entitled to discovery until plaintiff finishes its own discovery. Clearly, the Party has some information. In addition to the article in The Black Panther referenced in movants' opening memorandum, the paper's March 31, 1969 issue (page 10) contains a discussion of events in an article captioned "US [Organization] Pigs Attempt to Murder More Panthers." [Attach. 11.] Moreover, the speculations of counsel [Pl. Opp. 80] are no substitute for plaintiff's own sworn answers.

23. Interrogatory 143: Identify the name and nature of Party affiliation of the person alleged in paragraph 59(b) to have been placed as an undercover agent in the New Haven Chapter of the Party.



Supplemental Response: The lists of expelled members carried in the "Black Panther" were not necessarily complete and thus George Sams' could be expelled without publication of a notice in the newspaper.

Plaintiff's answer, and the accompanying explanation of counsel, miss the point. The statement that plaintiff expelled George Sams before the Rackley torture-murder is unlikely since the Party published an article by Sams after the murder. [Attach. 12.] At the least, plaintiff should address how it is an expelled member's views on Party ideology would be published or how it is even the Central Committee would not know of his expulsion.

24. Interrogatory 144: Identify (by name, address and nature of Party affiliation) the persons who are alleged in paragraph 59(B) to have participated in the "torture-murder" of Alex Rackley after being persuaded and directed by the alleged undercover agent of defendants.

Supplemental Response: Plaintiff's best recollection and belief had been that Lonnie McLucas' conviction was overturned on appeal and this was the information supplied in plaintiff's response to the motion to compel. (Black Panther Party's Memorandum in Response to Defendants' Motion to Compel Discovery, p. 81-82). At the time of filing these responses, plaintiff had no records to substantiate its belief. However, plaintiff has since checked with a representative of the law firm of Koskoff, Koskoff and Viedor, who served as counsel for Lonnie McLucas in his trial. From counsel, plaintiff has learned that Mr. McLucas' conviction was not, in fact, reversed. While he was serving a 12-15 year sentence, McLucas' attorneys sought through various appeal procedures, including a writ of habeas corpus, to reverse the conviction. During this period of time, negotiations between counsel for Mr. McLucas and counsel for the State of Connecticut resulted in an agreement to reduce the sentence. At the time agreement was reached, Mr. McLucas had served 4 years and the Sentence Review Board reduced the sentence to time served.

The Supplemental Response does not address the problem with the earlier answer which was discussed in the opening memorandum -- that plaintiff's answer conflicts with the allegations in the complaint. Counsel's attempt to excuse this by arguing that ". . . even if plaintiff's responses were inconsistent with the complaint, it is still accurate" hardly clears the matter. [Pl. Opp. 81.] If the complaint is accurate, and the responses were inconsistent, then consistent responses should have been provided under oath. Contrary to the suggestion in their opposition memorandum judicial economy is ill-served if defendants have to wait until trial for plaintiffs, themselves, to resolve conflicts between their own allegations and answers.

27. Interrogatory 163: Identify each Party affiliate which conducted a "breakfast program" and the dates each program was initiated and terminated (e.g., the dates breakfasts were served and last served) referenced in paragraph 60(A).

Interrogatory 164: For each program identified in answer to the preceding interrogatory, describe in detail the circumstances for terminating the Party's involvement in the program.

Supplemental Response: None.

Counsel for plaintiff states that the Party provided all information available to it. Two points need be made. First, if this were the case, plaintiff, itself, should have stated it had no other information, under oath. Second, this cannot be the answer, however. Plaintiff's prior answer was taken "from representative issues" of its newspaper. Logically, a review of all issues would have provided

further information. Since this forms a significant part of the claims plaintiff is asserting, at least it should bear the burden of further identifying the factual bases for its claims; and defendants should not have to guess at the risk of being surprised after discovery is over or at trial.

28. Interrogatory 184: Identify all persons to whom the draft comic book was distributed prior to the alleged decision against publication or circulation.

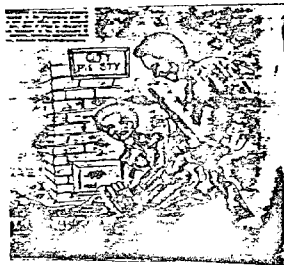
Supplemental Response: Although the Party has been unsuccessful in contacting these individuals, it is believed that Bobby Seale and David Hilliard saw and rejected the draft comic book. If the Party is able through its inquiries to identify other individuals who may have seen the comic book, it will supplement its responses pursuant to Rule 26(e)11).

Plaintiff's answer is confusing. It initially objected to identifying the names of the Central Committee members who it alleges rejected the book where those members have not been publicly disclosed. Now, plaintiff says it does not know which members saw and rejected the book other than possibly Hilliard and Seale. Either there was an overbroad objection initially or there is a hidden objection in the supplemental response. Plaintiff should at least clarify whether these are the only individuals who allegedly rejected the book's distribution or whether other individuals are known, even though plaintiff objects to disclosing their identities.

29. Interrogatory 188: Have caricatures depicting police as "pigs" which are alleged in paragraph 60(B) to have been contrary to Party philosophy ever appeared in "The Black Panther"?

Supplemental Response: None.

Counsel's argument is adequately answered in defendants' opening memorandum. One point should be emphasized, however. With respect to defendants' submission that the comic book was reflective of Party philosophy (and thus distribution could not have damaged its reputation) since caricatures depicting police as "pigs" appeared in the newspaper, it is argued that "[i]n fact, that newspaper is obviously aimed at adults and not children" and that defendants must wait until trial to prove to the contrary. Only plaintiff can attest to this "fact" however, although it is doubtful that they could here. Caricatures such as the one below, showing a Panther helping a child place dynamite to blow up a police station obviously is aimed at children:



[The Black Panther, Sep. 28, 1968; see also, e.g., caricature reproduced at HCIS Staff Report 110.] These speak for themselves. Trial is not needed for plaintiff to acknowledge the obvious (or deny it under oath).

30. Interrogatory 203: Were any funds donated or provided the Party for the use of the Sickle Cell Anemia testing program, which is referenced in paragraph 60(D), used for any other purpose?

Supplemental Response: None.

Again, plaintiff should be required to explain the basis for its ability to make a flat denial when its other responses have been conditioned by the lack of available information. At least this should be addressed by the plaintiff, itself, under oath.

35. Interrogatory 223: Identify (by name, former and last known address, and nature of Party affiliation) all street vendors who are alleged in paragraph 61(B) to have been arrested by defendants for selling "The Black Panther."

Supplemental Response: The street vendor arrests discussed in issues of the Party newspaper and weekly reports produced to defendants represent all information presently available to the Party. The Party contends that every arrest of a vendor was a false arrest. If other names are identified through discovery, plaintiff will supplement its response pursuant to Rule 26(e)(1).

Interrogatory 224: For each person identified in answer to the preceding interrogatory, state the nature and disposition of any charges brought against that person as a result of the arrest by the defendants.

Supplemental Response: See supplemental response to interrogatory 223.

Interrogatory 225: Identify all documents (including but not limited to documents filed with a court) which reflect the defendants' arrest of street vendors selling the publications "The Black Panther" as alleged in paragraph 61(B).

Supplemental Response: See supplemental response to interrogatory 223.

Two types of responses have been given. First, plaintiff says it has no pertinent information other than that contained in its weekly reports (most of which were destroyed by the plaintiff) and its newspaper. Second, plaintiff's counsel states it is plaintiff's belief that all arrests of street

vendors noted in the paper were falsely arrested by defendants within the meaning of the interrogatory and related allegation in the complaint. [Pl. Opp. 89.] If this latter is plaintiff's belief, it should so state under oath. However, again, plaintiff's own newspaper would appear to preclude such a broad charge. For example, the July 19, 1969 issue (page 17) contains an account of the arrest of three Philadelphia Chapter members in New Jersey for failing to comply with local license requirements. [Attach. 2 .] The arrest appears to have been made by Atlantic City, New Jersey, police officers. Likewise, the May 25, 1969 issue (page 5) contains an account of two members stopped by Baltimore Chapter members by Baltimore police officers for selling papers at a Greyhound Bus Terminal. [Attach. 13 .] It is difficult to see how either of these could be attributed to defendants. Since the false arrest allegation forms a basis for plaintiff's suit against the defendants, at the least it should be required to specify in discovery its claims against them, and not just be permitted to rely on blanket statements in briefs of counsel.

\* \* \* \*

Accordingly, regardless the Court's decision with respect to the issues of the adequacy of plaintiff's search and plaintiff's purported claims of privilege, the Court should conclude the above interrogatories have been answered

in an incomplete, evasive and, at times, contradictory manner and should compel further responses.

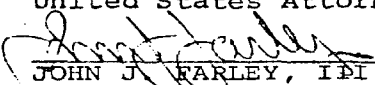
CONCLUSION


Accordingly, for the foregoing reasons and those previously advanced, defendants' motion should be granted. <sup>26/</sup>

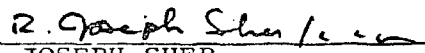
Respectfully submitted,

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26/ Movants have not urged at this time that sanctions should be imposed (for example, for plaintiff's destruction of documents, considering its effect on restricting defendants' ability to assert good faith and other defenses) in view of the Court's prior statement that motions to compel should be resolved. Presentation of the sanctions issue is reserved until such time as the Court decides the instant motion or otherwise directs briefs be filed.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al.,

Plaintiffs,

v.

Civil Action No. 76-2205

EDWARD LEVI, et al.,

Defendants.

REPLY TO OPPOSITION TO MOTION OF DEFENDANTS BELL,  
ET AL. TO COMPEL DISCOVERY

ATTACHMENTS

340000  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-1-93 BY 9703RDD/mw



## CENTRAL COMMITTEE, B.P.P. PRESS CONFERENCE

The Black Panther Party, existing as a true representative of the most down trodden class of poor black and oppressed peoples living in the confines of this racist, exploitative, decadent America, comes forth to DENOUNCE those PROVOCATEUR AGENTS, KOOKS, and AVARICIOUS FOOLS who found their way into the membership; and therefore, after finding their way into the membership of the Black Panther Party have violated rules, principles and revolutionary tactics of the Black Panther Party which is struggling to answer the basic political desires and needs of our people. These conspirators and opportunists who violate the rules and principles of the Black Panther Party have acted foolishly and raised confusion by acts of banditry. These are not members of the Black Panther Party. And the Black Panther Party wholly denounces their acts. For example, William Brent, who allegedly pulled an \$80.00 holdup in our newspaper distribution truck is considered to be either a provocateur agent or an insane man. Others lately have also provoked confusion among the masses of the people. The Black Panther Party rules which have been in existence since Huey P. Newton organized the Black Panther Party (including the 3 main rules of discipline and the 8 points of attention) governed and administered by all leadership levels throughout the nation, functions from our Party's revolutionary principle of democratic centralism. Therefore, those who violate these rules are denounced as counter-revolutionaries.

The Black Panther Party doesn't advocate roving gangs of bandits robbing service stations and taverns. Any member who violates the rules of the Black Panther Party is subject to summary expulsion, and so it is with those recent violators of Party rules.

The rules and regulations of the Black Panther Party appear in every issue of the Black Panther Paper.

BLACK PANTHER PARTY vv LEVI, CANO. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs Bell, et al, to Compel Discovery,  
filed Mar. 26, 1979

ATTACHMENT 1

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-8-93 BY 9803RCP/mt

### 3 PANTHERS BUSTED FOR CONDUCTING PROPAGANDA WORK AMONG THE MASSES

On Friday, the 4th of July, 3 members of the Black Panther Party, while conducting educational, and political work among the people, were busted and charged with soliciting papers without a permit. They were arrested in Atlantic City, New Jersey.

Arrested were, Milton McGriff, age 30, Elijah Graham, age 18, and Eugene Wells, age 23, with an initial fine of 30 dollars.

Later, after the news hit the hierarchy of the fascist pig set-up, the pigs changed their game to \$100 a piece.

Back in Philadelphia, the Party found little of nothing could be done

in terms of legal help, because of the laws of licenses. In addition to this, the 3 brothers, not being residents of New Jersey, found that they would have to pay in cash. So--we were forced to get the only money available--paper money.

The case is supposed to be floored on Monday morning, July 7th, 9:00, at Atlantic City. These bulls--t charges and fines show the inevitable necessity for a UNITED FRONT AGAINST FASCISM----

PEOPLE'S POWER!  
ALL POWER TO THE PEOPLE  
Mumia X

Lt. of Information  
Philadelphia Chapter  
Black Panther Party

BLACK PANTHER PARTY vv LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs Bell, et al, to Compel Discovery,  
filed Mar. 26, 1979

ATTACHMENT 2

340970  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 9-2-93 BY 9903RDP/ew

## Rate of Huey Newton and the Black Panthers Hangs on Murder Trial

By WALLACE TURNER

Special to The New York Times

OAKLAND, March 21 — Huey P. Newton shattered the exchange between the officers and the reporter. His voice rose to a shout as he said, "The minister of defense will answer the questions. Ask your questions of the minister of defense."

Warren, who carried a pistol, Sherwin, who had a pump shotgun, Terry, the karate expert — even Eldridge Cleaver, relegated to taping the interview as he was just out of jail and not yet famous — fell silent, heads down submissively.

That interview, the basis of the first examination of the Black Panther Party in The New York Times, was conducted on May 15, 1967, when Mr. Newton was 25 years old and his organization was in its seventh month.

### Panthers' Fortunes Tied to Trial

Today, at 37, Mr. Newton is on trial for murder, accused of killing a prostitute in a fit of temper. The Panthers' fortunes are closely tied to the outcome of the trial, just as their decline in membership and prominence have been closely tied to a long series of violent incidents involving Mr. Newton.

The case went to the jury late this afternoon.

Mr. Newton says he was not present when Kathleen Smith, 17, was shot in the early morning hours of Aug. 6, 1974. He spent most of two days on the witness stand, an experience he seemed to relish, asserting that the authorities were so eager to bag him that they had abandoned their sense of proportion in judging evidence.

He was identified as the killer by Charles Buie, who in turn was identified by one of Mr. Newton's bodyguards as the real murderer. The only other identifying witness the prosecution presented was a prostitute who, after naming Mr. Newton as the killer, came back as a defense witness and withdrew her testimony.

### Formation of Party

The characters and events in the trial are drawn from the street world of black Oakland, the world that Mr. Newton, Mr. Cleaver, David Hilliard, Bobby Seale and hundreds of other young blacks hoped to make more livable for its residents through creation of the Black Panther Party.

But the dream has faded since the party reached a peak in the mid-1970's. Its school limps along in Oakland, having lost public grants. The medical clinic in Berkeley suffers, too. The Panthers no longer generate much excitement, and crowds now chant "Free Huey."

In the beginning, Bobby Seale and Huey Newton made the Panther concept work with sheer chutzpah, as when they took armed blacks into the California Assembly chamber to protest a pending bill that would limit the right to carry guns, which the Panthers said they needed for defense against oppressors.

The incident gave the Panthers a national currency that helped carry them through a crisis in October 1967, when Mr. Newton was jailed in the killing of an Oakland policeman. A manslaughter conviction was overturned on appeal, and

two hung juries led the prosecutor to abandon the case.

Mr. Newton was jailed until August 1970 in connection with that case. In his absence, Mr. Cleaver became the dominant Panther, and Bobby Seale seemed to have left the scene.

On April 6, 1968, the Panthers were involved in a gun battle with the Oakland police. Bobby Hutton 17, was shot to death, and Mr. Cleaver was wounded. In the next four years, David Hilliard and four other Panthers went to jail.

Only Mr. Cleaver avoided prosecution, but he had to flee the United States to do so. He was gone from late summer, 1968, until November 1975, living in Cuba, Algeria and France. Now he lives with his wife, Kathleen, and their two children in luxury in Woodside, a San Francisco suburb, and tours the country with the story of his becoming a born-again Christian.

The Panthers' greatest era was in from 1970 to 1977, after Mr. Newton returned from jail to emphasize the programs he and Mr. Seale had conceived. Mr. Seale began to take a stronger role in the party, and Elaine Brown, a cocktail waitress, became the editor of the Panther newspaper, giving the group a charismatic woman leader.

Mr. Seale survived a murder trial in New Haven, where the jury could not reach a verdict and the prosecution decided against retrial.

In 1972, Mr. Seale announced that he would run for Mayor in Oakland, and Elaine Brown said she would run for the City Council. In August 1972, Panthers won six of 19 seats on a citizens' board that shared with the City Council control of a model cities program. Panthers also won four of 14 seats on an antipoverty board in Berkeley.

In 1973, Mr. Seale forced the incumbent

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white mayor, John Reading, into a runoff and lost by a 2-to-1 margin. Elaine Brown also lost. But four years later the Panthers helped elect Oakland's first black mayor, Lionel Wilson.

Beginning in the early 1970's, there was a growing murmur in Oakland and Berkeley that the Panthers were running shakedown rackets. One liquor store owner fought a Panther picket line rather than make donations, and bar owners told of being required to pay tribute.

There was violence, too. Mr. Newton and other Panthers were involved in a series of confrontations with the police in mid-1974, and then, on Aug. 6, at 1:30 A.M., Kathleen Smith was shot in the face as she solicited on an Oakland streetcorner. Eleven days later, a tailor named Preston Callins was found by the police in his front yard with head injuries he said Huey Newton had inflicted with a pistol.

The authorities in Oakland charged Mr. Newton with assault in the beating of Mr. Callins, and with attempted murder in the shooting of the prostitute. She died three months later, and the charge was changed to murder. But by that time, Mr. Newton had fled to Cuba.

In his absence, leadership of the Panthers shifted to Elaine Brown. The group continued to be linked to violent incidents, but it also moved into a close relationship with Oakland officials.

Erika Huggins, who had been a co-defendant with Mr. Seale in the New Haven trial, was elected to the Alameda County school board. A school set up by the Panthers was given public grants, and Miss Brown was chosen as a member of the California delegation to the 1973 Democratic National Convention.

Early in 1977, Huey Newton decided to come home from Cuba, over the objections of some Panthers. He arrived in San Francisco on July 3, was taken into custody on charges of murdering the prostitute and assaulting the tailor, and was released on bail.

One night in a bar near Santa Cruz, Mr. Newton and Robert Heard, his bodyguard, were involved in a fracas, and

guns were fired. Mr. Newton appeared for arraignment, and charges against him were dropped. Mr. Heard did not appear and has not been seen since.

Mr. Newton was tried in Oakland for the assault on the tailor, who refused to testify against him. Mr. Newton contended that Mr. Heard had beaten the tailor, and was acquitted of assault but sentenced to two years on a related weapons charge. That left only the murder charge pending against him.

Witnesses have said that Kathleen Smith was working her streetcorner when she was shot by a black man who had driven up in a car, walked over and quarreled with her. Soon after the shooting, the police named Mr. Newton as the killer on the basis of testimony from Raffaele Gary, another prostitute on the corner that night.

On the night of Oct. 23, 1977, not quite four months after Mr. Newton returned from Cuba, a neighbor of Miss Gary's heard someone trying to break in her door. The neighbor fired a pistol through the door, and gunfire came back.

The police found a dead Black Panther a few feet away from the door, and a trail of blood leading to the street. Later, they would say they had learned that two Panthers, Nelson Lee Malloy and Flores Forbes, had gone to an Oakland clinic for treatment of a gunshot wound in Mr. Forbes's hand.

On Nov. 14, tourists at Lake Mead, south of Las Vegas, heard moaning and found Mr. Malloy buried in a shallow grave, shot twice and paralyzed. He told the authorities that two Panthers from Oakland had shot him, and that he believed Mr. Forbes had been killed and buried somewhere in the desert. Miss Gary declined to testify against Mr. Newton.

As they await a verdict in Mr. Newton's trial, the Panthers are limping along with old programs and without government grants. Elaine Brown, under whom the Panthers gained a certain political respectability, has left Oakland for Los Angeles, leaving Huey Newton at the center of the party's leadership.

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# A Dramatic Turn as Newton Takes Stand

By George Williamson

Huey Newton took the witness stand yesterday to defend himself against a murder charge, but his potentially most devastating words were stopped — at least temporarily — in midsentence by an angry prosecutor in the most explosive moment of the Oakland trial.

Outside court, Newton said that prosecutor Tom Orloff became hotly agitated because the Black Panther defendant was just about to tell the jury why a scheduled "eyewitness" against him was dropped on the eve of the trial.

Newton said prostitute and convicted murderer Jeanette Iles didn't testify that she saw Newton shoot another prostitute on an Oakland street corner only because the prosecution ascertained at the last minute that Iles was in jail for prostitution when the shooting happened.

Last night Newton's account was independently confirmed by an Oakland attorney, William Dubois, who is not connected with the Newton case.

Newton's attorney, Michael Kennedy, has consistently tried to impress the jury with the possibility that the two street-life witnesses who testified against Newton had been offered favors in their own troubles with the law.

Iles is serving a life prison term, with eligibility for parole after seven years, for the 1977 murder of University of California geneticist Dr. Spencer Brown.

She had been scheduled to testify against a co-defendant, Robert Dynes, for the Brown murder, as well as against Newton.

The charge against Dynes was dropped at 4 p.m. March 6 — Newton's trial began the next morning — when the prosecution finally realized that Iles had been prepared to commit perjury in the Newton trial by testifying that she was at the murder scene, rather than in Santa Rita prison.

Orloff would not comment on any of this yesterday, including why the district attorney's office was so slow in discovering that Iles was in prison the night of the shooting of prostitute Kathleen Smith.

Dubois, who is Dynes' attorney, said last night that the evidence is strong that Iles got a break after confessing to the Brown murder, by declaring a willingness to testify against Dynes. He theorized that her anticipated testimony in the Newton trial may have been weighed, too.

"Normally," Dubois said, the prosecution's recommendations to the state Adult Authority for a "lousy, terrible murder" like Brown's would have resulted in her not being considered for parole for "about 13 years."

But in Iles' case, no recommendation at all was made to the Adult Authority — which meant that if Iles behaved well in prison, she would have, in the absence of negative reports, been almost automatically up for parole in seven years, Dubois said.

Dubois praised Orloff as "the of the most honest prosecutors in the state," adding that he is certain that Orloff himself felt Iles was a valid witness.

But in court yesterday, when Newton, his eyes fixed steadily on

the jury, mentioned "Jeanette Iles" as an example of alleged police use of prostitutes to "get" him, Orloff leaped to his feet and, his face untypically blood red, shouted:

"There has been a previous ruling that this matter is inadmissible."

Judge Carl Anderson promptly recessed the trial for the day. Newton will continue his direct testimony today, when Anderson will announce whether he can continue talking about Iles.

Before the tall and angular Orloff disappeared into the judge's chambers, he paced before Kennedy, eyeing him as if he were guilty and calling him a name at one point. Kennedy matched evil eye for evil eye.

Newton brought up Iles' name while claiming to the jury that then Oakland Police Chief Charles Gain told him in the early 1972 that "pimps and prostitutes are conspiring to kill you." Gain said "the price on my head was \$10,000," Newton said, claiming out of court that he has tapes of Gain's words.

Newton alleged on the stand

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that the response of many Oakland police was to encourage street people to "participate" in efforts to get rid of him.

Earlier in his 1 1/2 hours of testimony, Newton said his bodyguard, who testified Monday that Newton was not at the scene of the shooting, delayed for years telling anyone else of his claim because the bodyguard's only responsibility was to tell Newton himself — until directed otherwise, by Newton and no one else.

Bodyguard Larry Henson testified that he saw the prosecution's strongest eyewitness, Charles Lee Buie, kill the 17-year-old prostitute Newton stands accused of murdering on Aug. 6, 1974.

Henson also said he told none of this directly to a succession of three Newton attorneys until "several weeks ago."

Newton testified yesterday that it sufficed that he told the attorneys of Henson's account, which he said he heard the day of the murder in his apartment. Newton said Panther rules stipulate that anything discussed "in my house is privileged information and can't be passed on until I tell them to."

Newton's wife, Gwen, preceded him to the stand. As did her husband, she alleged a long trail of police harassment and abuse of the Panther couple.

She also said she was with Newton and literary adviser Donald Freed in their Oakland apartment the moment of the prostitute's murder on an Oakland street three miles away.

Asked by Kennedy if she would lie for her husband, she said: "I would do anything to help him. I love him very much. But I wouldn't lie about the shooting of the woman."

Earlier, Orloff had asked bodyguard Henson if he is "prepared to



By Don Jahn

**BODYGUARD LARRY HENSON**  
He said he might lie

put your life down in front of his (Newton's," and Henson had answered affirmatively.

Asked if he would lie for Newton, Henson said he would, depending on the circumstances. But he said he wasn't lying about his account of the murder.

Most of Newton's testimony dealt with how he went from illiterate high school graduate to Panther co-founder and eventually author and candidate for a graduate degree at the University of California, and with the party's and his trials along the way.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

v.

Civil Action No. 1768-69

JOHN N. MITCHELL, et al.,

Defendants.

**FILED**

JAN 2 1979

ORDER

JAMES E. DAVEY, CLERK

Upon consideration of the defendants' motion for sanctions under Rule 37(b), Federal Rules of Civil Procedure, and the entire record in this case, and finding that plaintiff Black Panther Party has willfully disregarded the Order of this Court requiring both the filing of answers to interrogatories and the expeditious termination of discovery in this case, to the prejudice of the defendants, it is this

*2nd* day of *January*, 1979.

ORDERED that the defendants' motion should be, and it hereby is, granted; and it is further

ORDERED that the claims of the Black Panther Party are dismissed.

*Hubert H. Johnson*  
UNITED STATES DISTRICT JUDGE

BLACK PANTHER PARTY v. LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs. Bell, et al. to Compel Discovery, filed Mar. 26, 1979

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U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
9-1-93

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al., :

Plaintiffs :

v. : CIVIL ACTION NO. 1768-69

JOHN N. MITCHELL, et al., :

Defendants :

**FILED**

MAR 8 1979

ORDER

JAMES E. DAVEY, CLERK

Upon consideration of defendants' motion for sanctions under Rule 37(b), Federal Rules of Civil Procedure, and the entire record in this case, and it appearing to the Court that plaintiffs Dellinger, Davis, Hayden, Rubin, Seale, Froines, and Weiner have willfully disregarded the Orders of this Court requiring the filing of answers to interrogatories, their appearance at depositions, and the expeditious termination of discovery in this case, to the prejudice of the defendants, and it further appearing to the Court that dismissal is the proper sanction to be applied in this action, see, e.g., Dellums v. Powell, 566 F.2d 231 (D.C. Cir. 1977); Margoles v. Johns, 587 F.2d 885 (7th Cir. 1978); Philpot v. Philco-Ford Corp., 63 F.R.D. 672 (E.D. Pa. 1974); it is by the Court this day of March, 1979,

ORDERED, that the defendants' motion should be, and it hereby is, GRANTED; and it is

FURTHER ORDERED, that the claims of plaintiffs Dellinger, Davis, Hayden, Rubin, Seale, Froines, and Weiner are dismissed pursuant to Rule 37(b)(2); and it is

BLACK PANTHER PARTY v. LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs. Bell, et al. to Compel Discovery, filed Mar. 26, 1979

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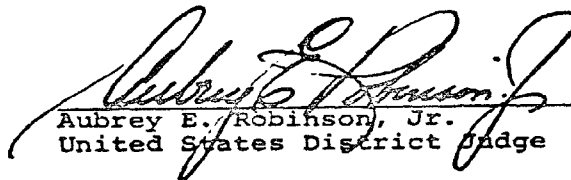
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FURTHER ORDERED, that a final judgment of dismissal of this case shall be entered; and it is

FURTHER ORDERED, that in accordance with the Order entered herein on February 26, 1974, that counsel for the plaintiffs shall deliver to this Court within twenty (20) days of the entry of this Order, all copies of Answers to Interrogatories and documents, produced by the defendants herein under seal, for the purpose of being sealed with the records of this case, provided that counsel of record and plaintiffs in The Black Panther Party, et al., v. Edward Levi, et al., Civil Action No. 76-2205 (D.D.C.) shall be permitted to inspect, copy, and use such material at it pertains to the Black Panther Party, consistent with the terms of this Court's February 26, 1974 Order.

  
Aubrey E. Robinson, Jr.  
United States District Judge

BLACK PANTHER PARTY. v. LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

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THE BLACK PANTHER, SATURDAY, JANUARY 24, 1970 PAGE 14

# MILWAUKEE CHAPTER, B.P.P., DISBAND

## COUNTER-REVOLUTIONARY LEADERSHIP

The Milwaukee leadership consisted mainly of Dakin Gentry, Felix Welch, and Nate Bellamy-- Welch and Bellamy being leaders primarily because they were close personal friends of Gentry. The weaknesses of this leadership group became obvious with time: while Gentry has a certain amount of charisma, and while all three spouted endless streams of rhetoric, they clearly failed to direct Party activities in a disciplined manner or to establish any significant base in the Black community. Some specific observations are as follows:

1. Party leadership seemed to be determined by personal pull with Gentry rather than by merit.
2. Welch was appointed Field Lieutenant despite the fact that he was then being prosecuted (convicted on guilty plea) for several counts of forgery--a non-political felony.
3. Welch finally split for parts unknown to avoid probation revocation (which would never have been revoked or threatened if he had been the least bit careful)--taking with him several hundred dollars of the people's money with the blessings of the Party leadership. He also left the people with \$3,000 in bail obligations.
4. Commandism was the rule of the day, with Gentry, Welch and Bellamy issuing orders without group discussion.
5. The leadership continually spouted rhetoric, while failing to engage in reading, study, and self-criticism. Even Bellamy, in charge of information, failed to engage

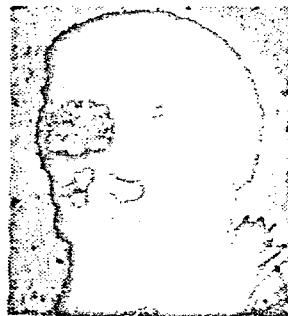
- in serious study, (by his own admission).
6. The leadership concentrated Party efforts on speaking around the state and in the White colleges and universities, while failing to organize within the Black community.
7. The leadership on several occasions knew about members carrying concealed weapons and did nothing to discourage such practices--the net result being that at least five brothers, including Bellamy, were charged with or convicted of carrying concealed weapons (up to one year in Wisconsin).
8. The leadership, by word and example, encouraged the membership to go about Party business while stoned (grass, pills and/or wine). Gentry, Welch and Bellamy were constantly stoned on Party time and made no secret about it. In fact, they often used to joke about the Party rule--while getting stoned!
9. Much of the leadership's time was taken up strutting around their favorite tavern (Torans') trying to impress as many women as possible with "Panther" bravado.
10. The leadership continually practiced male chauvinism.
11. Even though the lawyers had prepared a draft of the police decentralization petition soon after the July conference, the leadership didn't get around to even looking at it for a period of at least two months.
12. Although three brothers have been held in lieu of \$10,000 bail each since September 22 (attempted murder), the Party, because of lack of leadership, has failed to

raise even a penny for the bail fund. (Other groups in Madison & Milwaukee have raised almost \$3,000)

13. Gentry, Welch & Bellamy have exhibited an unusual (for revolutionary leaders) attachment to the bourgeois life style--clothes, cars etc.

White, Earl Leverette and Booker Collins, were busted for allegedly shooting at a pig. Needless to say, these arrests, and the brutal beatings of all six brothers by the pigs, demoralized people considerably--at a time when poor leadership had already created a weak organization. Gentry and Bellamy resigned within a month of these arrests--without warning and without concern for the Party.

To speak in more general terms again, Gentry and his friends seemed to subordinate politics to their own personal goals and set a poor example for the membership. We believe that the major reasons for the local Party's disintegration were incompetent and opportunistic leadership coupled with severe repression (outlined below). While it is true that some of the membership were also poorly motivated and opportunistic, many were true fighters for the people who just could not overcome the bad influence of the Gentry clique.



### COUNTER-REVOLUTIONARY DAKIN GENTRY

14. Gentry maintains a \$10,000 a year job with the state government's five Concentrated Employment Program, where Bellamy also works, and has recently stated that he intends to join the fascist mayor's "Model Cities" Program--a counter-revolutionary pork barrel patronage position.
15. Gentry & Company quit the Party at the time of its greatest crisis--ensuring total collapse. Between September 22 six Panthers including Gentry, were arrested by the pigs on felony charges: three of them, Jesse Lee

These people are still working for the people, trying to correct past mistakes, and have not given up the fight against fascism.

The repression in Milwaukee, as in other cities, has been great. Unfortunately, the Milwaukee leadership did nothing to keep the National or Chicago offices informed about such repression. Virtually every male Panther was arrested at least once, and many were badly beaten.

The most important bust is of the "Milwaukee 3"--Jesse White, Booker Collins and Earl Leverette--on charges of attempted

murder (of a pig) and resisting an officer. The three were beaten badly by pigs and have been given a 1 year sentence (the maximum) on the resisting charge already. The attempted murder trial won't come up for many months yet. The whole thing stinks of a pig frame and we hope to discuss the matter with you more fully at a later date. The "3" have been doing a good job of organizing in jail and have not lost their revolutionary spirit to this day. Unfortunately, the leadership neglected to pass the word about the "3" even to Chicago--much less to Berkeley.

There is no chapter in Milwaukee now, and rightly so. The ex-chapter had little effect because the people in the community saw through the leadership. Yet the potential still exists in Milwaukee, for there are some solid people who continue to fight capitalism, imperialism and the rise of fascism despite the repression. These people should not be forgotten. The Wisconsin Committee to Combat Fascism still exists--with several ex-Panthers on it--and is rallying much support around the "Milwaukee 3" and the murder of Fred Hampton. The struggle continues.

ALL POWER TO THE PEOPLE  
Greenberg, Karp and Dannenberg  
James H. Dannenberg

BLACK PANTHER PARTY vs LEVI, CANO. 76-2205 (D.D.C.) (Smith, J.)

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The Black Panther, Jun. 13, 1970 p. 10

## COMMITTEE TO DEFEND THE PANTHERS

"We must save Bobby Seale because we must save the Black Panther Party because we must save the revolutionary spirit in America."  
Jean Genet

The Committee to Defend the Panthers\* has been formed to raise funds for legal expenses and to inform the people of the Black Panther Party and their treatment by the government, courts and media.

Funds, volunteers, requests send to:

Committee to Defend the Panthers  
P.O. Box 628  
New York, New York 10025

Bail - send to:

Emergency Panther Bail Fund  
P.O. Box 628  
New York, New York 10025

Local Branches:

New York - 111 East 16th St.  
New Haven - 1084 Chapel Street  
Chicago - to be announced  
Los Angeles - to be announced

\*The Committee to Defend the Panthers is the only Defense Committee authorized by the Black Panther Party.

BLACK PANTHER PARTY vs LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

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## Editorial

### "...IN TIME OF WAR"

Expensively produced flyers appeared in San Francisco last week purporting to be "death warrants" against Huey P. Newton, Bobby Seale and Elaine Brown, top leaders of the Black Panther Party, and David G. Du Bois, Editor-in-Chief of the Black Panther Intercommunal News Service.

The flyers were signed by the "Black Women's Information Unit" of the "New World Liberation Front" of the "Black Liberation Army." They were discovered pasted to the walls of the KGO-TV building, KPIX and on a *San Francisco Chronicle* delivery truck.

Alleged "charges" against the four included "crimes against the people in time of war; disbanding and murdering comrades in time of war; using the Black People's news media to miseducate, misinform and to cover up murders they themselves committed..."

The Black Panther Party cherishes human life above all else. Following the example of Huey P. Newton, every Black Panther Party member has dedicated his or her life to the preservation of life with dignity.

Recent and continuing disclosures of the massive infiltration and disruption of our Party, ordered at the highest levels of the U.S. government and executed by professional agents, provocateurs and paid informers, should forever answer honest charges against our Party for acts which violated our proven dedication to our people and to all human kind.

The Black Panther Party withstood the merciless onslaught and learned the revolutionary lesson. We cleaned our ranks, regrouped and began the protracted uphill struggle to sink our roots deep in the community which we serve, inform and educate in preparation for the inevitable confrontation with the real enemy. That community—and history—shall be our only judge.

Unless the Black Liberation Army Brothers and Sisters publicly and firmly disassociate themselves from these latest death threats in their name against the Black Panther Party, we can only conclude that they are allowing themselves to be used in the continuing effort being made by enemies of our common struggle to set us against each other, and thus undermine our people's and all oppressed humankind's libe-

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## PICK UP THE GUN

As we know, under this racist system of Babylon, that their main goal as it has always been is to keep Black people oppressed. The pigs try to put all Black people under maximum security (jail), if we refuse to accept this decadent system. First they trump up some charges in order to put you under maximum security so they can then railroad you through the court system. And under this court system the Black man has no rights.

An example of this piggish behavior happened August 27, 1970 in the South End section of Boston, Mass., which is one of our well known colonies, where the pimps, players, pushers and pro's make their scene. Two brothers Lester Carvin (21) and Willy Carvin (17) were standing in front of the Rainbow Lounge when these racist dogs began their usual harrassment of Black people.

On the way to the pig pen these dogs decided to take a scenic tour in order to brutalize these bloods. Lester Carvin was attacked by these dogs enroute to the pig pen. After they were put under arrest,

these dogs began searching them. These Bloods were charged with possession of narcotics, even though they had no narcotics on them. This is just another act of these fascist dogs attempting to railroad our people through the court system.

It is quite evident that these pigs will not give us our most basic human right, the right to live. So the people must now rise up against the decadent system.

These particular pigs are part of the fascist Bureau of Narcotics. When they reached the gestapo headquarters, they were taken to Tony Linsky, the bald headed fool, where he began his intimidation and interrogation without success.

We will not allow these dogs to interrogate and intimidate us for their piggish desires. We will not allow them to railroad us through courts. We as people will set more examples, as the one Jonathan Jackson, William Christmas, Rubell McGee have set until we are free.

ALL POWER TO THE PEOPLE  
Denise  
Boston Chapter B.P.P.

BLACK PANTHER PARTY vs LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

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## US PIGS ATTEMPT TO MURDER MORE PANTHERS

On Friday, March 14, the Black Community witnessed another instance of the pigs using their agents, or pork-chops, in an attempt to kill another servant of the people, Black Panther and Section Leader of the Watts office, Ronald Freeman. Ronald had been an active and powerful voice in the community all that week, representing the Panther Party regarding the issue of Carver Junior High School specifically, and community control of schools, in general. He let the people in the community and the students know that the Panthers supported and still support them in their fight, 100%.

After actively participating in the meeting that had been held at Victory Baptist Church surrounding the issue of student strikes, he left the church building, and went into the church parking lot. There he noticed US organization goons, whom he identified as having participated in the assassination of Bunchy Carter and John Huggins last January. For purposes of recording their identities, Ron began taking pictures of these US goons, who had, have and are being used to threaten, harass and even assassinate Black revolutionary leaders.

At approximately 10:30 a.m., in that parking lot, four of these bald-headed, psychedelic, abstract negro, pork-chop nationalists approached Ron. He handed his camera to another Panther. The 4 US niggers grabbed the camera, which Ron attempted to retrieve. A fight ensued. These bootlickers, who have a light-weight reputation for having some kind of

ability, in the area of self-defense (Karate), attempted to kick Ronald's ass. The surprise came when these Cheerio-box-top "Black belts" discovered that even with their larger numbers they could not down Brother Ronald. He was definitely getting the best of them. So that suddenly the four backed off and fired a volley of shots. Ronald fell, wounded, having been hit both in the chest and groin areas. It is important to note that all during this entire shooting incident a black and white pig car was stationed across the street, WATCHING; another pig was seen in a phone booth nearby.

He was eventually taken to one of Los Angeles' butcher shops, jokingly referred to as "County Hospital", in critical condition. Later he was reported in satisfactory condition. Various visitors to the hospital phoned to report that US niggers were in Ronald's ward, dressed as orderlies, and freely circulating throughout his floor. Further mistreatment ensued when Ronald, who was still bed-ridden in the hospital, was informed (resulting from previous harassment and another case) that he was to appear in court on Monday, March 17. No consideration was given to his tragic physical condition, nor the possibility that movement could create internal hemorrhaging. Therefore, he was forced to travel under physical strain to the County Courthouse.

At this point the pattern that the comrades-in-arms, pigs and their hind-parts - pork chops, had set in their attempt on Ronald's life becomes even more ridiculous

and insane. The kangaroo court, before even hearing one word from Ronald's lawyer, Dr. Richard Wasserstrom (Professor of Law at U.C.L.A.), ordered Dr. Wasserstrom from the court telling him that he was not fit to try any case before that court without a necktie. Ronald in the mean time was subjected to having to wait in his wheelchair while the lawyer sought a necktie that might please the almighty court.

When finally the arraignment procedures had ended, Ronald, who had been wearing County bedroom slippers, was taken out, NOT to his bed at the hospital, but to the County jail (which is located approximately 10 miles outside L.A.), at which place his bedroom slippers and wheelchair were taken from him, as they were the property of the L.A. County Hospital. So that when he had to call for someone to drive him away from there, he was found standing in bare feet. The brother who picked him up had to drive him back to the hospital and re-admit him.

The whole point in discussing the details of this case is to hopefully bring to light the obvious coalition and plotting of pigs and their agents to destroy not only Black revolutionary leaders, not only the Black Panther Party, but, through these means, the entire Black revolutionary liberation movement. We must awaken to these realities and recognize ALL our enemies, and destroy them if we ever intend to walk the road to Liberation.

ALL POWER TO THE PEOPLE

BLACK PANTHER PARTY vv LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs Bell, et al, to Compel Discovery, filed Mar. 26, 1979

ATTACHMENT 11

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DATE 9-2-93 BY 9903RQP/mtt

# REACTIONARY PAPER TIGER

The racist pig has become reactionary against the people and the Black Panther Party. The pigs shoot mace in your face and kill you to make the people react so our Minister of Defense, Huey P. Newton can't get out of jail. Pigs blew the school because the people and the Party did not react to the reactionary. The people and the people alone did not react to the pigs. So the pigs f---d up, because it is understood that the pig power structure is nothing but paper tigers. They have always been. This is not the first time they were, when they killed 'Lil' Bobby Hutton on April 6. They were paper tigers when they killed the 3 brothers in L. A., they were paper tigers when they got the pork-chop cultural nationalists in L. A. to kill brothers Bunchy and John.

These pigs will kill you, rape you, bribe you, stomp you, and f--k you, these pigs will be delt with. As our Minister of Defense, Huey P. Newton says, "By any means necessary". You must understand that b; will not react on the pigs terms. We will continue to expose the pig power

structures; b-----s like Alioto. W-----s like Ronald Reagan, and Lesbians like Nixon who have given the pigs courage enough to run amuck and kill and slaughter black people and all oppressed people.

You must understand as our Chairman, Bobby Seale says, "this is a class struggle". To all those lackeys, opportunists, rotten ferocious, diseased m-----f-----s, we will not stop until we have destroyed and committed destruction on Capitalism.

You must understand that the revolutionary struggle has yet to continue. So let there be bloodshed because these racist m-----

f-----s have to go check it out in Viet-Nam. Check out Nigeria and check out Hunter's Point when they killed Alvert Joe Linthcome.

So you see, people, as brother Mao Tse-tung puts it, "We are the 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 take up the gun." The immediate results of this destruction will be perpetual peace for all mankind.

ALL POWER TO THE PEOPLE  
George Sams  
Cleveland Brooks



BLACK PANTHER PARTY vs LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs Bell, et al, to Compel Discovery, filed Mar. 26, 1979

ATTACHMENT 12

340970  
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DATE 9-2-93 BY 9803 RCP/ent

## PIG HARASSMENT

report from Baltimore

Two young brothers, Frank Smith 12, and Norman Henderson 11, were selling Panther papers and passing out the leaflets for the upcoming rally. The young brothers ventured downtown to Howard St. and to the rear of the Greyhound Bus Station. They were then apprehended by some white man who told them to come into their office, and pushed them up against the wall and searched them. He then called in the pigs, (2) they got only one pig's number - 1432 and the number of the car - 9835.

The pig grabbed the young brother with the newspapers and asked him, where did you get that shit, and put him in the car, first he gave 5 of his papers to nearby honkies, and said now those black mf's are calling us pigs.

He asked the other young brother his name, the young brother

laughed at the pig and refused to tell him anything. The pig put him in the car and directed his questions to Frank, who has a speech defect. The pig's questions were:

What is your name? Age? Where do you live? What is your father's name, where does your father work?

Then he said I should shoot you, put you in the back and let the dog eat you.

Get out of here and don't come back, the next time we will shoot you. The laughing unanswering brother told him he wouldn't do shit. That same day, Cpt. Hart contacted the pig department and demanded the money for the papers that the pigs stole.

Cpt. Hart, Baltimore, Md.  
POWER TO THE PEOPLE  
POWER TO THE VANGUARD

BLACK PANTHER PARTY vs LEVI, CANo. 76-2205 (D.D.C.) (Smith, J.)

Rep to Opp to Mot of Defs Bell, et al, to Compel Discovery,  
filed Mar. 26, 1979

ATTACHMENT 13



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al., )  
Plaintiffs, )  
vs. )  
EDWARD LEVI, et al., )  
Defendants. )

CIVIL ACTION NO.  
76-2205

ORDER

Upon consideration of the Motion of Defendants Bell, et al. to Compel Discovery from plaintiff Black Panther Party, the matters submitted in support of and in opposition to the motion, and the entire record before the Court, it is hereby

ORDERED that defendants' motion is GRANTED: and it is further

ORDERED that plaintiff shall file a further response to movants' First Interrogatories based upon a full and complete review of the plaintiff's publication, The Black Panther, with respect to every issue presented by plaintiff's allegations and each Central Committee member shall file supplemental answers under oath reflecting such information that member has that is responsive to the First Interrogatories; and it is further

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DATE 9-9-93 BY 9803 RCO/mt

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ORDERED that, the Court having found plaintiff's objections and claims of privilege untimely, overbroad and otherwise outweighed by movants' need for discovery, plaintiff's objections and claims are rejected; and it is further

ORDERED that, the Court having found plaintiff's responses to interrogatories 16, 18, 21-22, 25, 27, 32, 36, 40-41, 49-50, 58, 72-73, 75-76, 86-92, 98, 110-112, 114-118, 131-32, 143-44, 163-64, 184, 188, 203, 223-25 evasive, incomplete, and in some instances contradictory, plaintiff shall provide further answers responding to the specific matters referenced in the applicable paragraphs of movants' memoranda; and it is further

ORDERED that plaintiff shall have twenty (20) days from the date of this Order in which to provide further responses. In the event plaintiff seeks an extension of time, plaintiff shall in any event advise whether it will persist in its claims of privilege notwithstanding this Order.

UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants Motion for Extension of Page Limitation Prescribed by Local Rule 1-9(e) with attached reply memorandum, and Attachments and proposed Order was mailed this 26 day of March, 1979, to:

Bruce J. Terris, Esquire  
1526 18th Street, N.W.  
Washington, D. C. 20036

Mark Lynch, Esquire  
600 Pennsylvania Avenue, S.E.  
Suite 301  
Washington, D. C. 20003

Joseph E. Casey, Esquire  
1435 G Street, N.W.  
Building #420  
Washington, D. C. 20005

William L. Stauffer, Esquire  
Leonard, Cohen & Gettings  
1400 N. Uhle Street  
Courthouse Square  
P. O. Box 742  
Arlington, Virginia 22216

  
LARRY L. GREGG

UNITED STATES GOVERNMENT

# Memorandum

TO : DIRECTOR, FBI  
(ATTENTION: LEGAL COUNSEL DIVISION)

DATE: 8/30/79

FROM : *M/lyt* SAC, WFO (197-57) (P\*)

SUBJECT: *②* BLACK PANTHER PARTY, v.  
EDWARD LEVY, et al  
(USDC)  
Civil Action #76-2205

b6  
b7C

ReWFOlet to the Bureau dated 3/20/79.

On 8/28/79, SC  reviewed docket #76-2205 at the United States District Court for the District of Columbia which shows additional entries made since last reviewed on 3/20/79. One copy of this docket is being forwarded to the Bureau as an enclosure.

WFO will follow and report.

*copy of memo  
of 8/28/79*

2 - Bureau (Enc. 1)  
1 - WFO

ENCLOSURE

RMM:rmm  
(3)

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*62-117442-222*

REC-2

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DATE 9-7-93 BY 9402 REC/mt

*LEGAL COUNSEL 7316*  
*M. R. [unclear]*



OCT 7 1979 *fdd*

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

PLAINTIFF	DEFENDANT	DOCKET NO. <b>76-2205</b>
		PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
1979 Feb	02	ORDER filed 2-1-79 granting pltf. leave to submit a memorandum of P&A's in response to motion of defts. to compel discovery which is no longer than 95-pages in length. (N) SMITH, J.
Feb	06	ERRATA by pltf. Huey P. Newton to memorandum of P&A's in support of motion to compel discovery.
Feb	06	MEMORANDUM of P&A's by Black Panther Party in support of motion to compel discovery; affidavit of Joan Kelley; attachment.
Feb.	12	SECOND supplemental response of pltf. Black Panther Party to federally represented defts' first request for production of documents; attachments (3).
Feb	13	SUPPLEMENTAL responses of pltf., Huey P. Newton to first interrogatories of the federally represented defts.
Feb	13	SUPPLEMENTAL responses of pltf., Black Panther Party to interrogatories of the federally represented defts.
Mar	26	MOTION of defts. Bell, et al for extension of page limitation prescribed by Local Rule 1-9(e); Exhibit (orig. with attachments).
Mar	27	REPLY Memorandum by defts. Bell, et al, to opposition to motion to compel discovery of pltf. Newton; attachments 1, 2 & 3.
May	29	MOTION of deft. to compel heard and taken under advisement; Gov't given until June 1, 1979 to furnish a list of interrogatories that need further answers and pltf. given until June 18, 1979 to respond and indicate to the Court why they intend not to respond. (Rep. Dawn Copeland) Smith, J.
June	12	STATEMENT of defts. Bell, et al. interrogatories sought to be compelled; table of contents; attachment 1. "Let this be filed." (FIAT) Smith, J.
June	18	STATEMENT of pltf. Black Panther Party and Huey P. Newton why defts. motion to compel should be denied; appendix.
Aug	6	OPINION. (N) Smith, J.
Aug	6	ORDER filed 8-6-79 partially granting motion of defts. Bell, et al. to compel discovery and further that pltf. Black Panther Party and Huey P. Newton shall have 60 days from the date of this order in which to provide any further responses. (See for further details) (N) Smith, J.

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Routing Slip  
FD-4 (Rev. 6-28-78)

Date 9/26/79

To:  Director

Att.: RECORDS BRANCH FILE # 62-117442

SAC \_\_\_\_\_ Title BLACK PANTHER PARTY,  
 ASAC \_\_\_\_\_ V. EDWARD LEVI, ET AL  
 Supv. \_\_\_\_\_ (USDCDC)  
 Agent \_\_\_\_\_ CIVIL ACTION #76-2205  
 OSM \_\_\_\_\_  
 Rotor # \_\_\_\_\_ RE: 0-17 dated 9/19/79  
 M \_\_\_\_\_  
Room \_\_\_\_\_

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|---|--|--|
| <input type="checkbox"/> Acknowledge                              | <input type="checkbox"/> For information   | <input type="checkbox"/> Return assignment card                      |
| <input type="checkbox"/> Assign <input type="checkbox"/> Reassign | <input type="checkbox"/> Handle  | <input type="checkbox"/> Return file <input type="checkbox"/> serial |
| <input type="checkbox"/> Bring file                               | <input type="checkbox"/> Initial & return  |  |
| <input type="checkbox"/> Call me                                  | <input type="checkbox"/> Leads need attention  | <input type="checkbox"/> Return with action taken                    |
| <input type="checkbox"/> Correct                                  | <input type="checkbox"/> Open case   | <input type="checkbox"/> Return with explanation                     |
| <input type="checkbox"/> Deadline _____                           | <input type="checkbox"/> Prepare lead cards  | <input type="checkbox"/> Search and return                           |
| <input type="checkbox"/> Delinquent                               | <input type="checkbox"/> Prepare tickler   | <input type="checkbox"/> See me                                      |
| <input type="checkbox"/> Discontinue                              | <input type="checkbox"/> Recharge file <input type="checkbox"/> serial <input type="checkbox"/> Type |  |
| <input type="checkbox"/> Expedite                                 |  |  |
| <input type="checkbox"/> File                                     | <input type="checkbox"/> Send to _____   |  |

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 DATE 9-7-93 BY 9803 RDM/mt

*[Handwritten signature]*

*CRM/67*  
 SAC CHARLES R. MCKINNON

See reverse side Office WFO

*[Handwritten signature]*

OFFICIAL NOTIFICATION OF ERROR

0-17 (Rev. 4-10-78)

Date

9/19/79

TO SAC, WASHINGTON FIELD ( 197-57 ) FROM DIRECTOR, FBI ( 62-117442 )

Subject: BLACK PANTHER PARTY, v. EDWARD LEVY, ET AL (USDC) CIVIL ACTION #76-2205

Reference: [ ] Cover pages of SA [ ] Report of SA [ ] Letterhead memo dated \_\_\_\_\_ at \_\_\_\_\_

[x] Letter [ ] Teletype [ ] Airtel dated 8/30/79 from WASHINGTON to DIRECTOR Your mail dispatch of \_\_\_\_\_, registry number \_\_\_\_\_

[x] Nonsubstantive Error - notify appropriate personnel; mark notation in error folder; and consider in next performance ratings. Consider employees' work records as to any needed action. [ ] Substantive Error - return original of form to Bureau promptly with explanations and recommendations.

Take appropriate action in connection with error in subject matter checked below:

- 1. Administrative Data
2. Delayed
3. O.O. Incorrect
4. Reporting office
5. Date of communication
6. Investigative period
7. Title
8. Character
9. Synopsis
10. Status
11. Not approved by SAC
12. Copies
13. Bufile Number
14. Details
15. Form
16. Enclosures
17. Security Classification
18. Leads
19. Informants
20. Reference
21. Abstract
22. Misspelling
23. Typographical error
24. Incorrect use of
25. Resubmit promptly
26. Incorrect date(s)
27. Miscellaneous
28. Bureau mailing instructions
29. Submit appropriate amended pages.
30. Fugitive Airtel

Remarks:

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9-1-83 9103 ROOMnet

TITLE PREVIOUSLY REPORTED AS: EDWARD LEVI

FURNISH BUREAU, ATTENTION RECORDS BRANCH, PROPER TITLE SO BUREAU'S INDICES MAY BE ADJUSTED

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY,  
et al.,

Plaintiffs

v

EDWARD LEVI, et al.,

Defendants

Civil Action

No. 76-2205

FILED  
AUG 6 1979

O P I N I O N JAMES E. DAVEY, Clerk

In this action, the Black Panther Party, with some of its members and supporters, is suing the United States, former and current high-ranking officials of various governmental agencies, and a former White House Assistant on a claim that the defendants conspired to destroy the Party. The matter is before the Court on defendants' motion to compel answers to interrogatories.

"One purpose of Rule 33 is to allow one party to obtain admissions from another and thereby save time in preparation and at trial." Evans v Local Union 2127, Int'l Brotherhood of Electrical Workers, AFL-CIO, 313 F. Supp. 1354 (N.D. Ga. 1969). Defendants contend that some answers to interrogatories are evasive and incomplete, and assert ill-founded claims of privilege. The posture of this case at this point in discovery is unusual in several respects. First, plaintiffs have either lost or destroyed virtually all of the relevant documents. Secondly, plaintiffs waited several years after the alleged actions complained of began taking place to file this lawsuit. Third, plaintiffs are asking for injunctive relief from officials presently in office, but are requesting damages from past officials.

ENCLOSURE

RECORDED  
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DATE 9/21/93 BY 9803 RDD/AMH

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Defendants have requested information which is pertinent to their defense of a potentially complex lawsuit. Since many of the documents which could assist the defendants in focusing on the actual events in issue are no longer in existence, defendants are forced to rely on memories and whatever documentation still exists.

Defendants have asked the Court to compel further answers to fifty-four interrogatories on the basis that defendants have knowledge of or have received from plaintiffs information which is inconsistent with or contradicts information provided in the answers and supplemental answers to the interrogatories. In addition, defendants allege that many answers in this category are evasive. Many of these are answers where plaintiffs claim they have no knowledge of the facts or no documentation of the facts. Even if plaintiffs are without such knowledge, plaintiffs should so state under oath for purposes of absolute clarity. Roberson v Great Am. Ins. Companies of New York, 48 F.R.D. 404 (N.D. Ga. 1969). Since defendants will be relying mainly on these answers to interrogatories and other discovery to prepare their defenses, the Court will grant their motion compelling plaintiffs to further answer some of the interrogatories or state that plaintiffs are unable to further answer because they are without knowledge of the facts. Further answers explaining inconsistencies referred to by defendants, clarifying previous answers and providing further information are to be given to the following inter-

rogatories propounded to plaintiff Black Panther Party:

16	49	92	123
18	50	98	131
21	58	114	132
22	59	115	144
25	61	116	163
27	72	117	164
32	73	118	184
33	76	119	203
36	89	120	223
40	90	121	224
41	91	122	225

It should also be noted that while the Court is not ordering plaintiff Black Panther Party to further answer interrogatories 54, 55, 110, 111, and 112 as requested by defendants, plaintiff has a continuing obligation to update its answers, and provide any new information it may receive.

Plaintiff has asserted constitutional privilege as a ground for not providing answers to some of the interrogatories listed above. Specifically 21, 33, 54 and 61. Plaintiff cannot assert this privilege and at the same time proceed with this lawsuit, withholding information vital to the defense of the parties sued. Anderson v Nixon, 444 F. Supp. 1195 (D.D.C. 1978).

Defendants have requested that a second group of interrogatories, which have already been answered by Joan Kelley, the Black Panther Party's authorized representative for purposes of responding to these interrogatories, be answered by Party officers who have responsive information. This request is made because Ms. Kelley was not a member of the Central Committee prior to 1971, alleged by defendants to be the Party's most violent period. Plaintiffs contend that Rule 33(a) of the Federal Rules of Civil Procedure states that a corporation or private association may appoint

"any officer or agent who shall furnish such information as is available to the party." In addition, plaintiffs state that Ms. Kelley consulted all members of the Party's Central Committee, and spoke to eighty percent of the Party's present members, a large number of past members, and the Party's attorneys to elicit information they possessed. Defendants argue that they have received different and conflicting answers to the same inquiry and that, because of inexperience, or otherwise, the designee is not able to respond fully.

After reviewing the answers, supplemental answers, affidavits and the entire file it appears that plaintiff Black Panther Party and its attorneys have made a good faith effort to provide full and complete answers to the interrogatories in question. However, given the circumstances here of 1) the scarcity of records, 2) the time lapse between the alleged occurrences and the present and 3) the scattering and possible unavailability of many witnesses, the Court finds that it would be appropriate if the interrogatories listed above and immediately below were reviewed by the plaintiff Black Panther Party's officers, and that they provide under oath whatever information each has, if any, responsive to the inquiries.

23	68	152	194
24	70	153	195
26	79	154	205
30	80	155	206
31	81	157	207
34	85	158	220
42	100	166	221
44	113	167	232
46	127	169	234
47	128	174	235
48	129	175	236
53	130	176	237
59	148	177	238
60	149	178	239
61	150	185	240
67	151	193	

In response to many interrogatories, plaintiff has not provided specific information but has referred to unspecified issues of its newspaper, The Black Panther, or Congressional reports. Defendants have requested that more detailed answers be compelled. Plaintiffs contend that The Black Panther is a public record available to defendants and that they do not possess all the issues of the newspaper themselves. In Halkin v Helms, Judge June Green held:

(3) The answers to the interrogatories must be based on the plaintiffs' own knowledge. Answers provided by counsel on the basis of information available to counsel, such as congressional reports, are not responsive.  
(4) Plaintiffs' objections are insufficient under the Rules of this Court. It is not responsive to state that the defendants have invoked the answers in government files. Plaintiffs, having invoked the action of the Court, have a duty to personally respond to discovery to show whether they have a cause of action .... (Civ. Action No. 75-1773, D.D.C. Green, J.)

Likewise here, plaintiffs have invoked the jurisdiction of this Court of their own free will. They have a duty to respond and answer discovery requests as completely as possible. Plaintiffs should respond to defendants inquiries as to events in which they are alleged to have been involved. Therefore, plaintiff Black Panther Party shall file further responses to interrogatories based upon a full and complete review of the plaintiff's publication, The Black Panther, with respect to every issue presented by plaintiff's allegations.

Defendants have submitted a list of forty-five interrogatories sought to be compelled of plaintiff Huey P. Newton. The majority of these request information regarding incidents in which plaintiffs allege defendants were involved.

Newton has claimed constitutional privilege in the majority of these. In Anderson v Nixon, supra, the plaintiff claimed that his newsman's privilege as protected by the First Amendment and other Constitutional provisions allowed him to refuse to answer discovery questions propounded by defendants. This Court held that plaintiff was not required to waive his privilege, but if he did not do so, he could not continue to pursue his claims. The Court stated:

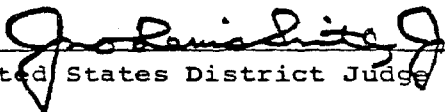
He cannot have it both ways. Plaintiff was not a bystander in the process but a principal. He cannot ask for justice and deny it to those he accuses. ...Having chosen to become a litigant, [he] is not exempt from those obligations imposed by the rule of law on all litigants in the federal courts. As a litigant he has a duty to conform to the rules of procedure. The public interest in fair and impartial administration of justice demands nothing less. Indeed, there is strong precedent in analogous situations suggesting that in initiating and maintaining a lawsuit such as the one in this case the newsman waives his qualified privilege of silence where his sources have information that goes to the heart of the defense.... Where the interests of a newsman in preserving the anonymity of his sources clash with his responsibilities as a plaintiff, and where the information sought to be protected goes to the heart of the defense, the privilege must give way.

So, too, in this case, defendants contend that the withheld information is vital to their defense, many times to the point of telling them what exactly they are accused of doing. Therefore, if plaintiff Newton is to proceed with this lawsuit on many of his claims, he must answer the interrogatories listed below. This Court is not compelling plaintiff Newton to waive any privileges he may have, but is merely leaving the choice to Mr. Newton, as a plaintiff, whether he wishes to continue to press claims relating to these interrogatories:

11	22	32	43
12	23	33	44
13	24	34	45
14	25	35	49
15	26	36	51
17	27	37	64
18	28	38	74
19	29	39	
20	30	40	
21	31	41	

Plaintiff Newton has, of course, a continuing obligation to update his answers to interrogatories 8, 9, and 10 if he receives any futher information.

Accordingly, the plaintiffs Black Panther Party and Huey P. Newton must further answer the interrogatories indicated in this memorandum in accordance with the principles discussed herein.

  
United States District Judge

Dated August 6, 1979

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY, et al.,	)	
	)	
Plaintiffs	)	Civil Action
	)	
v	)	No. 76-2205
	)	
EDWARD LEVI, et al.,	)	
	)	
Defendants	)	

ORDER

Upon consideration of the motion of defendants Bell, et al. to compel discovery from plaintiffs Black Panther Party and Huey P. Newton, the memorandum submitted in support thereof and in opposition thereto, the interrogatories, answers, supplemental answers, affidavits, the entire record herein, and oral argument of counsel, it is by the Court this 6<sup>th</sup> day of August 1979

ORDERED that defendants' motions are partially granted; and it is further

ORDERED that plaintiff Black Panther Party shall file further responses to the following interrogatories:

16	49	92	123
18	50	98	131
21	58	114	132
22	59	115	144
25	61	116	163
27	72	117	164
32	73	118	184
33	76	119	203
36	89	120	223
40	90	121	224
41	91	122	225

and it is further

ORDERED that plaintiff Black Panther Party's officers review the interrogatories listed above and

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ENCLOSURE

immediately below and provide under oath whatever information each has, if any, that is responsive to the interrogatories:

23	68	152	194
24	70	153	195
26	79	154	205
30	80	155	206
31	81	157	207
34	85	158	220
42	100	166	221
44	113	167	232
46	127	169	234
47	128	174	235
48	129	175	236
53	130	176	237
59	148	177	238
60	149	178	239
61	150	185	240
67	151	193	

and it is further

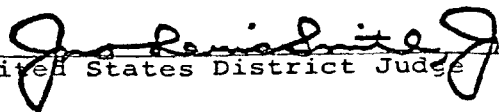
ORDERED that plaintiff Black Panther Party shall file further responses to interrogatories based upon a full and complete review of the plaintiff's publication, The Black Panther, with respect to every issue presented by plaintiff's allegations; and it is further

ORDERED that if plaintiff Huey P. Newton intends to pursue any claims relating to the interrogatories listed below that he provide further answers to said interrogatories:

11	22	32	43
12	23	33	44
13	24	34	45
14	25	35	49
15	26	36	51
17	27	37	64
18	28	38	74
19	29	39	
20	30	40	
21	31	41	

and it is further

ORDERED that plaintiffs Black Panther Party and Huey P. Newton shall have sixty (60) days from the date of this Order in which to provide further responses.

  
United States District Judge



UNITED STATES GOVERNMENT

# Memorandum

TO : DIRECTOR, FBI  
(ATTENTION: LEGAL COUNSEL DIVISION)

DATE: 1/14/80

FROM: SAC, WFO (197-57) (P\*)

b6  
b7C

SUBJECT: BLACK PANTHER PARTY,  
v.  
EDWARD LEVI, et al  
(U.S.D.C., D.C.)  
CIVIL ACTION # 76-2205

ReWFOlet to the Bureau dated 8/30/79.

On 1/10/80, SC [redacted] reviewed docket #76-2205 at the U.S. District Court for the District of Columbia which shows additional entries made since last reviewed on 8/28/79. One copy of this docket is being forwarded to the Bureau as an enclosure.

WFO will follow and report.

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DATE 9-7-93 BY 9803 RDD/MLH

- 2 - Bureau (Enc. 1)
- 1 - WFO

ENCLOSURE

ENCLOSURE ATTACHED

62-117442-223

7 JAN 20 1980

RMM:rm  
(3)

cc + copy to - Room 7336

*(Handwritten signature)*



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DATE 9-7-93 BY [signature]

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ENCLOSURE

62-117442-223

197-57

PLAINTIFF		DEFENDANT	DOCKET NO. 76-2205
			PAGE ___ OF ___ PAGES
DATE	NR.	PROCEEDINGS	
1979 Feb	02	ORDER filed 2-1-79 granting pltf. leave to submit a memorandum of P&A's in response to motion of defts. to compel discovery which is no longer than 95-pages in length. (N) SMITH, J.	
Feb	06	ERRATA by pltf. Huey P. Newton to memorandum of P&A's in support of motion to compel discovery.	
Feb	06	MEMORANDUM of P&A's by Black Panther Party in support of motion to compel discovery; affidavit of Joan Kelley; attachment.	
Feb.	12	SECOND supplemental response of pltf. Black Panther Party to federally represented defts' first request for production of documents; attachments (3).	
Feb	13	SUPPLEMENTAL responses of pltf., Huey P. Newton to first interrogatories of the federally represented defts.	
Feb	13	SUPPLEMENTAL responses of pltf., Black Panther Party to interrogatories of the federally represented defts.	
Mar	26	MOTION of defts. Bell, et al for extension of page limitation prescribed by Local Rule 1-9(e); Exhibit (orig. with attachments).	
Mar	27	REPLY Memorandum by defts. Bell, et al. to opposition to motion to compel discovery of pltf. Newton; attachments 1, 2 & 3.	
May	29	MOTION of deft. to compel heard and taken under advisement; Gov't given until June 1, 1979 to furnish a list of interrogatories that need further answers and pltf. given until June 18, 1979 to respond and indicate to the Court why they intend not to respond. (Rep. Dawn Copeland) Smith, J.	
June	12	STATEMENT of defts. Bell, et al. interrogatories sought to be compelled; table of contents; attachment 1. "Let this be filed." (FIAT) Smith, J.	
June	18	STATEMENT of pltf. Black Panther Party and Huey P. Newton why defts. motion to compel should be denied; appendix.	
Aug	6	OPINION. (N) Smith, J.	
Aug	6	ORDER filed 8-6-79 partially granting motion of defts. Bell, et al. to compel discovery and further that pltf. Black Panther Party and Huey P. Newton shall have 60 days from the date of this order in which to provide any further responses. (See for further details) (N) Smith, J.	
Oct	3	MOTION by pltf. Black Panther Party and Huey P. Newton for an extension of time in which to respond to portions of court's order of Aug. 6, 1979	
Oct	5	MEMORANDUM of P&A's by pltf. in support of responses to 107 interrogatories as ordered by this court on Aug. 6, 1979.	
Oct	5	FURTHER supplemental response by pltf. to 107 interrogatories as ordered by court on Aug. 6, 1979; affidavit	

see next page

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## CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>76-2205</u>
THE BLACK PANTHER PARTY, et al		EDWARD LEVI, et al.	PAGE <u>18</u> OF <u>    </u> PAGES
DATE	NR.	PROCEEDINGS	
1979 Oct	5	SUPPLEMENTAL response of plttf. to Federally represented defts. first request for production of documents; attachment.	
Oct	12	OPPOSITION of defts., except defts. #6 & 7, to plttfs. motion for extension of time in which to respond to the court's Aug. 6, 1979 order.	
Oct	24	REPLY by plttfs. Black Panther Party and Newton, to opposition of defts. Civiletti, et al. to plttfs. motion for an extension of time in which to respond to portions of court's order dated Aug. 6, 1979.	
Oct	31	MEMORANDUM of P&A's by defts. Civiletti, et al (except Sullivan and Moore) in support of renewed motion of said defts. for the sanctions of dismissal of plttfs. Black Panther Party's and Newton's claims and for costs; MOTION of defts. Civiletti, et al (except Sullivan and Moore) for the sanction of dismissal of plttfs. Black Panther Party's and Newton's claims for costs.	
Nov	1	FURTHER supplemental responses by plttf. Black Panther Party based upon a search of "The Black Panther" newspaper from 1967 thru 1970 as ordered by this court on Aug. 6, 1979.	
Nov	1	ATTACHEMENTS by defts. Civiletti, et al (except defts. Moore & Sullivan), to P&A's in support of renewed motion of said defts. for the sanction of dismissal of plttfs. Black Panther Party's and Newton's claims and for costs (filed Oct. 31, 1979); attachments 1 & 2.	
Nov	7	CHANGE of address for Joseph E. Casey, counsel for Marion Sullivan Admin. of estate of William C. Sullivan (def. #6), to 1435 G St., N.W., 20005, Ph. 223-5750. CAL/N.	
Nov	8	FURTHER supplemental responses by plttf. Huey P. Newton to interrogatories as ordered by this court on Aug. 6, 1979. "Let this be filed." (FIAT) Smith, J.	
Nov	8	CHANGE of address for Mark H. Lynch, counsel for plttfs., to 122 Maryland Ave., N.E., 20002, Ph. 544-5380. CAL/N.	
Nov	09	STATEMENT by plttfs. Black Panther Party and Huey P. Newton why motion of defts. Civiletti, et al. for the sanction of dismissal should be denied; table of contents; table of authorities; attachments 1 & 2.	
Nov	13	REPLY by defts. (except Moore and Sullivan) to opposition to renewed motion of defts. Civiletti, et al., for the sanctions of dismissal of plttfs. Black Panther Party's and Newton's claims and for costs; attachment.	
Nov	13	MOTION of plttf. for an extension of time heard and granted. (Rep. Dawn Copeland) Smith, J.	

see next page

PLAINTIFF <b>THE BLACK PANTHER PARTY, et al</b>	DEFENDANT <b>EDWARD LEVI, et al.</b>	DOCKET NO. <b>76-220</b> PAGE <b>19</b> OF <b>    </b> PAGES
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DATE	NR.	PROCEEDINGS
1979 Nov	14	ORDER filed Nov. 13, 1979 granting pltffs. Black Panther Party and Huey P. Newton's motion for an extension of time in which to respond to portions of this court's order dated Aug. 6, 1979, further pltff. Newton shall respond to part four of said order by Nov. 4, 1979. (see for details) (N) Smith, J.
Dec	03	FURTHER SUPPLEMENTAL RESPONSES by pltf., Black Panther Party based upon a search of "The Black Panther" newspaper as ordered by this court on August 6, 1979.
Dec	10	RENEWED MOTION of defts. Civilette, et al for sanctions of dismissal of pltff's Black Panther Party and Newton's claims heard and taken under advisement. (Rep. Dawn Copeland) Smith, J.
Dec	28	MOTION by pltfs. for an extension of time to file further responses to discovery.
1980 Jan	4	ORDER filed Jan. 2, 1980 granting pltff. Black Panther Party's motion for extension of time to file further responses to discovery based on search of the Black Panther Newspaper years 1975 thru and including 1979 to and including Jan. 4, 1980. (N) Smith, J.
Jan	4	FURTHER supplemental responses by pltff. Black Panther Party based upon a search of "The Black Panther" Newspaper from 1975 thru 1979 as order by this court on Aug. 6, 1979.

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

# Memorandum

Assoc. Dir. \_\_\_\_\_  
 Dep. AD Adm. \_\_\_\_\_  
 Dep. AD Inv. \_\_\_\_\_  
 Asst. Dir.:  
 Adm. Servs. \_\_\_\_\_  
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 Telephone Rm. \_\_\_\_\_  
 Director's Sec'y \_\_\_\_\_

*MLB*

TO : Director

DATE: 2/1/80

FROM : Legal Counsel *JML*

b6  
b7C

SUBJECT: THE BLACK PANTHER PARTY, et al., v.  
 EDWARD LEVI, et al.  
 (U.S.D.C., D.C.)  
 CIVIL ACTION NO. 76-2205

*6001*

PURPOSE: To advise of a court order dated 1/25/80  
 (copy attached) granting defendants' motion to  
 dismiss captioned lawsuit and ordering costs be assessed  
 against plaintiffs and to recommend that the Director  
 send the attached letter to Alice Daniel, Assistant  
 Attorney General - Civil Division.

SYNOPSIS: The Black Panther Party and several of its  
 members, most notably its founder Huey P.  
 Newton  filed suit in  
 U.S.D.C. for the District of Columbia on 12/2/76 against  
 20 present and former government officials in their  
 individual and official capacities representing 6  
 government agencies. Also named as defendants were the  
 Estate of J. Edgar Hoover and unnamed government agents.  
 The United States was later added as a defendant.  
 The suit charged the officials with conspiring to destroy  
 the Black Panther Party and harass its members. The  
 suit claimed that defendants had violated various  
 constitutional rights of plaintiffs as well as several  
 statutory proscriptions. The suit demanded declaratory  
 and injunctive relief and compensatory and punitive  
 damages in excess of 100 million dollars. Initial motions  
 to dismiss were denied and discovery was ordered in  
 May, 1977. Several non-FBI defendants were granted summary  
 judgment in July, 1978. Plaintiff  claims  
 against all defendants were dismissed pursuant to a  
 stipulation in October, 1978. Both sides engaged in  
 lengthy discovery. Defendants made several motions to

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Enclosure - Sent 2/13/80

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Memo to Director

*[Handwritten initials]*  
Legal Coun.  
Plan. & Insp.  
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Public Affs. Off.

compel plaintiffs to comply with discovery and for sanctions for non-compliance. On August 6, 1979, the Court ordered plaintiffs to comply. On January 25, 1980, the Court held that plaintiffs had failed to comply with this order and granted defendants' motion dismissing all plaintiffs' claims and awarding defendants costs including attorneys fees.

*[Handwritten initials]*

Adm. Serv.  
Crim. Inv.  
Ident.  
Intell.  
Laboratory

RECOMMENDATION: That the Director send the attached letter to Alice Daniel, Assistant Attorney General - Civil Division.

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APPROVED:  
Director *[Signature]*  
Exec. AD-Inv.  
Exec. AD-Adm.  
Exec. AD-LES

DETAILS: On December 2, 1976, suit was filed in U.S.D.C. for the District of Columbia by the Black Panther Party and 10 of its members and supporters against 20 present and former United States government officials representing 6 federal agencies. The plaintiffs included Huey P. Newton, founder of the Black Panther Party and [redacted] chairperson of the Black Panther Party at the time of the suit. FBI defendants were Director Clarence M. Kelley, former Assistant Director William C. Sullivan and George C. Moore, former Section Chief of the Racial Intelligence Section. Also named as a defendant was the Estate of former FBI Director J. Edgar Hoover. The United States was later named as a defendant in an amended complaint.

*[Handwritten initials]*

The suit charged that the defendants had conspired to destroy the Black Panther Party politically and financially and had harassed and harmed individual Black Panther Party members and supporters for their political beliefs and activities. The suit alleged various actions by defendants including involvement in assassination of party leaders, mail openings, interception of telephone and other conversations, physical surveillances, burglaries, causing armed raids by local law enforcement agencies, improper arrests on federal charges, unwarranted tax audits, causing strife between the Black Panther Party and other groups and disrupting Black Panther Party activities. It was claimed that these activities violated their rights as guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth amendments of the constitution and various statutory proscriptions.

Memo to Director

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The suit demanded declaratory and injunctive relief, compensatory damages in excess of \$50,000,000.00, punitive damages in excess of \$50,000,000.00 and statutory damages for unlawful electronic interception pursuant to Title 18 United States Code Section 2520.

Departmental representation was provided Director Kelley and defendants Sullivan and Moore were authorized to retain private counsel at government expense.

An initial motion to dismiss was filed by the Federal defendants in March, 1977. This motion was denied and in May, 1977 discovery was ordered to commence. For the next two years both sides engaged in lengthy discovery. Requests for production of documents, admissions and interrogatories were served on the Black Panther Party and Huey P. Newton and notice of disposition was served on [redacted]

In July, 1978, nine non-FBI defendants were granted summary judgment. In October, 1978, a stipulation was entered into with [redacted] dismissing her claims against all defendants. When the suit was first filed plaintiffs had requested that it be certified as a class action. This was denied on procedural grounds. There were therefore only two remaining parties seeking damages as of January, 1979, the Black Panther Party and Huey P. Newton.

The defendants had moved the Court to impose sanctions on plaintiffs in September of 1978 for failure to comply with discovery. This was denied by the Court in December of 1978. In May, 1979, following several motions to compel discovery, the court directed the defendants to file a statement of what they sought from plaintiffs by June 11, 1979, and plaintiffs were given until June 18, 1979, to advise the Court of why answers should not be given.

Following the filing of these papers the court on August 6, 1979, ordered plaintiffs to: provide further answers clarifying previous answers, explaining inconsistencies noted by the defendants, or stating under oath that they were without further knowledge if that were the case; to have the Party's officers individually review specified interrogatories and provide whatever



Memo to Director

responsive information each might have; to file further responses based on a complete review of the plaintiffs' publication, the Black Panther, with respect to every issue presented by the plaintiffs' allegations; to choose between continuing to assert a claim of constitutional privilege or proceeding with this suit; and finally, in the case of plaintiff Mr. Huey Newton, either to give further answers to certain interrogatories or to withdraw his claims related to them.

Plaintiffs filed papers purporting to comply with this order and in December, 1979 defendants renewed their motion that the court impose sanctions. On January 25, 1980, United States District Court Judge John Lewis Smith, Jr., issued an opinion holding that plaintiffs had not complied with his order of August 6, 1979, and ordered that defendants' motion to dismiss was granted and that plaintiffs shall pay defendants reasonable expenses in bringing the motion, including attorney's fees.

The Department of Justice now has 10 days to submit a bill for expenses to the Court prior to entry of judgment. Upon entry of judgment the plaintiffs will have 60 days to appeal the order to the District of Columbia Circuit Court of Appeals.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY,  
ET AL.,

Plaintiffs

v

EDWARD LEVI, ET AL.,

Defendants

Civil Action

No. 76-2205

FILED

JAN 25 1980

JAMES E. DAVEY, Clerk

MEMORANDUM

The Black Panther Party along with some of its members and supporters bring this action against the United States, former and current high-ranking officials of several government agencies, and a former White House Assistant, contending that the defendants conspired to destroy the Party. The matter is before the Court on defendants' motion for the sanctions of dismissal and costs because plaintiffs have allegedly failed to comply with this Court's order dated August 6, 1979. On the grounds that their earlier responses were internally inconsistent, contradictory, and evasive, the August 6 order compelled plaintiffs to provide further answers clarifying previous answers, explaining inconsistencies noted by the defendants, or stating under oath that they were without further knowledge if that were the case; to have the Party's officers individually review specified interrogatories and provide whatever responsive information each might have; to file further responses based on a complete review of the plaintiffs' publication, the Black Panther, with respect to every issue presented by the plaintiffs' allegations; to choose between continuing to assert a claim of constitutional privilege or proceeding

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with this suit; and finally, in the case of plaintiff Mr. Huey Newton, either to give further answers to certain interrogatories or to withdraw his claims related to them.

Compliance with the August 6 order

1. The plaintiffs shall file further responses to forty four specified interrogatories, clarifying previous answers, explaining inconsistencies referred to by the defendants, providing further information, or stating under oath that they are without further knowledge of these matters.

The Party has filed supplemental responses to sixteen of these interrogatories and states by affidavit of its designated agent that except for three items privileged from disclosure by provisions of the first amendment these responses taken together with the original and first supplemental answers constitute all the information available to the Party, including its officers. These responses were drafted by the Party's recently selected agent, Ms. JoNina Abron, who replaces the Party's earlier agent, Ms. Joan Kelley.

The answers are fatally defective in several respects. In some instances not only do they fail to clarify previous answers, they create further confusion. In other instances they either completely ignore the inconsistencies the Party was directed to address or they introduce new information inconsistent with that already given in this case and with information given under oath by another member of the Party officially authorized to speak on its behalf, Mr. Huey Newton. The new supplemental answers fail to comply with the requirements of this Court's August 6 order.

2. The plaintiffs shall direct Party officers who have responsive information to answer personally and under oath 107 specified interrogatories.

The plaintiffs refuse to comply with this directive. They continue instead to press the argument raised prior to this Court's August 6 order, that Rule 33 allows a private association to name an agent to furnish such information as is available.

The doctrine of the "law or rule of the case" does not always compel rigid adherence to a prior decision in a given case. Nevertheless, once an issue is litigated and decided, absent some good reason why a prior ruling is inapplicable or should no longer be followed, that ruling should stand. Naples v. U.S., 359 F.2d 276, 277 (D.C. Cir. 1966). There has been no such showing in the present case. The reasons set out in the August 6 order are still valid and justify this Court's discretionary requirement that the individual officers of the Party respond to particular interrogatories: records are admittedly scarce, a considerable time has elapsed since the alleged occurrences, and many witnesses are scattered or no longer available. The quality of subsequent discovery has underlined the propriety of this ruling. As noted above, the supplemental answers filed by the Party's new agent continue to be unclear, contradictory, and internally inconsistent. The plaintiffs are once again not in compliance with the Court's explicit order.

3. The plaintiffs shall choose between continuing to assert a claim of constitutional privilege or proceeding with this lawsuit.

The Party continues to urge its claim of first amendment privilege with respect to the names of Central Committee members not previously disclosed (Interrogatory 21), the identity of local leaders of Party affiliates except those published in the Black Panther (Interrogatory 33), and the names of individual Party members not already publicly known (Interrogatory 61). Because of the special character of this litigation, which involves a suit brought several years after the alleged events by plaintiffs who have lost or destroyed almost all the relevant documents, the identity of these individuals is critical to the parties sued. These may well be the individuals able to provide defendants with the information necessary for their defense - even to the point of telling them exactly what they are accused of doing. The plaintiffs cannot choose to be litigants and at the same time exempt themselves from the rule of law that binds all federal litigants. They cannot, that is, assert the privilege and at the same time proceed with this lawsuit. Anderson v. Nixon, 444 F. Supp. 1195, 1199 (D.D.C. 1978); see, e.g., Independent Production Corp. v. Loew's, Inc., 22 F.R.D. 266, 276-77 (S.D.N.Y. 1958); 4 J. Moore, Federal Practice ¶ 26.60[6] at 252-54 (2d ed. 1979).

4. The plaintiffs shall file further responses based on a complete review of the Party's publication, the Black Panther, with respect to every issue presented by the plaintiffs' allegations.

By order of this Court dated November 13, 1979, the Party was granted additional time to complete its review.

The results of that review have now been submitted and the Court has examined the Party's responses as supplemented by information drawn from the Black Panther.

5. Mr. Huey Newton shall either give further answers to certain interrogatories or withdraw his claims related to them.

On November 8, 1979, Mr. Newton filed further supplemental response to six of the thirty seven interrogatories noted in the August 6 order and declared that it was not possible to answer interrogatory 37. He asserts that the remaining thirty involve claims of fifth amendment privilege. This Court ruled on August 6 that

if plaintiff Newton is to proceed with this lawsuit on many of his claims, he must answer the interrogatories listed below. This Court is not compelling plaintiff Newton to waive any privileges he may have, but is merely leaving the choice to Mr. Newton, as a plaintiff, whether he wishes to continue to press claims relating to these interrogatories. Order of August 6, 1979, p. 6.

Mr. Newton had full notice of the potential consequences when he made his election.

Mr. Newton argues that if sanctions are now appropriate, they should operate only with respect to "claims relating to these interrogatories," contending that the unanswered interrogatories relate to two subsections of claim 57 alone: 57(d) (false arrest) and 57(e) (falsely alleged tax liability). It should first be noted that the interrogatories inquire about more than just the subjects of these two subsections. It should further be noted that Mr. Newton was also directed by the Court to answer personally and under oath, as an officer of the Party, all the interrogatories required of the officers of the Party. He has failed

to comply with this mandate and there remains only the question of which sanctions are most suitable.

The appropriate sanction

Rule 37(b) (2) provides a wide variety of sanctions that may be imposed at the Court's discretion, whether a party's actions were willful or not. The 1970 amendments to Rule 37 conform its language to the Supreme Court's ruling in Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, 203 (1958), which concluded that willfulness was germane only to the selection of sanctions. Advisory Committee Note, printed in C. Wright & J. Miller, Federal Practice and Procedure: Civil § 2281, at 755 n.18 (1970). Later cases made clear that if willfulness or conscious disregard for the court's order is demonstrated, then dismissal may be appropriate. See 4A J. Moore, Federal Practice ¶ 37.03[2.-5], at 37-70 (2d ed. 1979).

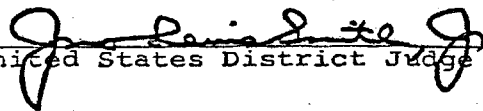
In the case at bar, plaintiffs collectively and Mr. Newton individually were fully apprised by the Court's August 6 ruling that opting to press their claims of privilege would lead to dismissal. Their disregard for the Court's order, then, is clearly conscious. Plaintiffs' other failures to comply with the requirements of discovery, as indicated above, demonstrate further conscious disregard and so justify the sanction of dismissal. See National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 643 (1976).

Award of expenses

In the final and unlettered paragraph, Rule 37(b) directs that the court "shall require the party failing to

obey the order" to pay reasonable expenses, including attorney's fees, unless the court "finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2). In this case, the Court finds that the plaintiffs were not substantially justified in failing to comply with the order, nor do circumstances make an award unjust. Plaintiffs' behavior in frustrating the discovery process made this motion for sanctions necessary. The plaintiffs should therefore bear the reasonable expenses, including attorney's fees, incurred by the defendants in bringing this motion.

An order consistent with this Memorandum follows.

  
United States District Judge

Dated:

Jan. 25, 1980



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE BLACK PANTHER PARTY,  
ET AL.,

Plaintiffs

v

EDWARD LEVI, ET AL.,

Defendants

Civil Action

No. 76-2205

ORDER

Upon consideration of defendants' motion to dismiss and for costs, plaintiffs' opposition, supporting memoranda, and oral argument of counsel, it is this 25<sup>th</sup> day of January 1980

ORDERED that defendants' motion to dismiss is hereby granted and plaintiffs shall pay defendants' reasonable expenses in bringing this motion, including attorney's fees.

*J. Dennis*  
United States District Judge

62-111442-224

FBI

TRANSMIT VIA:

- Teletype
- Facsimile
- AIRTEL

PRECEDENCE:

- Immediate
- Priority
- Routine

CLASSIFICATION:

- TOP SECRET
- SECRET
- CONFIDENTIAL
- UNCLAS E F T O
- UNCLAS

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Date JAN. 25, 1980

TO: DIRECTOR, FBI  
(ATTN: LEGAL COUNSEL, [redacted])

FROM: SAC, SAN FRANCISCO (197-0)

SUBJECT: HUEY NEWTON vs. NEW TIMES PUBLISHING

Enclosed for the Bureau, as requested one copy of above captioned case.

Only the complaint has been filed. No answer has been filed, and no response from either side has occurred.

San Francisco will advise Legal Counsel every thirty days in above matter.

*Blair Phillip Party v  
FBI v. [redacted]*

*Enclosure furnished to  
Dept. Attorney General  
Gregg, [redacted]  
1/30/80. (Enc. furnished  
by SF at Gregg's request)*

*USDC  
Civil Division 76-2200*

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- 2 - Bureau (Enc. 1)
- 1 - San Francisco (197-0)
- JDLW/aa
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*LEGAL*

Approved: *[Signature]*

Transmitted \_\_\_\_\_ (Number) \_\_\_\_\_ (Time)

Per \_\_\_\_\_

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DATE 9-7-93 BY 9803RCP/MSH

February 8, 1980

FEDERAL GOVERNMENT

Honorable Alice Daniel  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
Washington, D.C.

Dear Ms. Daniel:

*101*  
101  
76-2205

I have reviewed the decision by the United States District Court in the District of Columbia which dismissed the civil action The Black Panther Party, et al. v. Edward Levi, et al. I have been advised that this resulted in large part from the excellent work which was done on the case by Civil Division attorneys Larry L. Gregg and R. Joseph Sher. They should be commended for their efforts.

I have long believed that the Federal Rules of Civil Procedure should be used aggressively by the government in defending suits such as this. Tactics such as the positive use of discovery, which was utilized in this case, are equally available to both parties to a litigation and it is entirely appropriate for the government to use them.

The Black Panther case is an excellent example of how the Civil Rules can be utilized to the government's advantage. I suggest that other government attorneys assigned to such cases, both in the Department and in the various United States Attorneys offices around the country, be encouraged to employ similar aggressive defenses.

*60-117442-226*

Sincerely yours,

William H. Webster

William H. Webster  
Director

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*9*

Honorable Alice Daniel

NOTE: See LCD memorandum to the Director dated 1/30/80 captioned "The Black Panther Party, et al. v. Edward Levi, et al.", U.S.D.C., D.C., Civil Action No. 76-2205.

APPROVED:	Adm. Serv. _____	Legal Coun. _____
Director <i>CSH</i>	Crim. Inv. _____	Plan. & Insp. _____
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FBI

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PRECEDENCE:

- Immediate
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- TOP SECRET
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Date 4/3/81

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TO: DIRECTOR, FBI  
ATTENTION: LEGAL COUNSEL DIVISION

FROM: SAC, WFO (197-57)(*pk*)

BLACK PANTHER PARTY V.  
EDWARD LEVI; ET AL;  
(U.S.D.C., D.C.)  
CIVIL ACTION #76-2205

ReWFOairtel to Bureau dated January 14, 1980.

Enclosed for the Bureau is one complete copy of  
Docket Number 76-2205 obtained by Special Clerk [redacted]  
[redacted] on March 19, 1981.

For information of the Bureau, WFO is currently  
reviewing all litigation on record at WFO. This review is  
directed towards updating any information which may have  
been inadvertently omitted in the past.

WFO will continue to follow captioned litigation  
until a final resolution can be determined.

*62-117442-227*

20 APR 7 1981

*ENCLOSURE*

2 Bureau (Enc. 1)  
1- WFO

SFF:rwp  
(3)

*1. CC - copy of enc  
made for Rm 7358*

*[Handwritten signature]*

Approved: 746

Transmitted \_\_\_\_\_ Per \_\_\_\_\_

(Number) (Time)

SEARCHED

CIVIL DOCKET CONTINUATION SHEET

Amended preceding page #1

PLAINTIFF

THE BLACK PANTHER PARTY, et al.

DEFENDANT

EDWARD LEVI, et al.

DOCKET NO. 76-2205

PAGE \_\_\_ OF \_\_\_ PAGES

DATE	NR.	PROCEEDINGS	
		<u>PARTIES</u>	<u>COUNSEL</u>
		THE BLACK PANTHER PARTY	Bruce J. Terris 1526-18th St., N.W. 20036 Tele: 332-1882
		HUEY P. NEWTON	
		ELAINE BROWN	Mark H. Lynch Suite 301-- 600 Pa. Ave., S.E. 20003 Tele: 544-1681
		DONALD FREED	
		BERTON SCHNEIDER	122 Maryland Ave., N.E. 20002 544-5380
		THOMAS GLADWIN	
		FLORA GLADWIN	
		JOHN GEORGE	
		FATHER EARL NEIL, Associate Officer, Community Action & Human Development Executive Counsel of the Episcopal Church	
		JOHN HUGGINS	
		ELIZABETH HUGGINS	
		vs.	
		1) EDWARD LEVI	Larry L. Gregg 724-6732 R. Joseph Sher 724-6730 1) Glenn V. Whitaker U.S. Dept. of Justice 20530 Tele: 739-3383
		BENJAMIN R. CIVILETTI	
		2) GRIFFIN BELL, Attorney General of the United States	2) <del>ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 9-7-93 BY 9803RUC/pwh</del>
		3) JOHN MITCHELL	3) Glenn V. Whitaker
		4) ROBERT MARDIAN	4) - do -
		5) CLARENCE M. KELLEY, Director Federal Bureau of Investigation	5) - do -

62-117112-227

PLAINTIFF- THE BLACK PANTHER PARTY, al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. <u>76-2205</u> PAGE ___ OF ___ PAGES
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DATE	NR.	PARTIES	COUNSEL
		<u>PARTIES</u>	<u>COUNSEL</u>
		6) WILLIAM C. SULLIVAN	6) Glenn V. Whitaker -Dept. Justice Joseph E. Casey 223-5750 <del>1200 18th St., N.W. 20036</del> 1435 G St., N.W., 20005
		7) GEORGE C. MOORE	7)
		8) ADMINAL STANSFIELD TURNER Director Central Intelligence Agency	8) Glenn V. Whitaker
		9) GEORGE BUSH	9) Glenn V. Whitaker
		10) WILLIAM E. COLBY	10) - do -
		11) RICHARD HELMS	11) - do -
		12) W. MICHAEL BLUMENTHAL Secretary of The Treasury	12) - do -
		13) WILLIAM E. SIMON	13) Glenn V. Whitaker
		14) REX DAVIS, Director	14) - do -
		15) HAROLD A. SERR	15) - do -
		16) WILLIAM E. WILLIAM, Acting Commissioner of Internal Revenue Service	16)
		17) DONALD C. ALEXANDER	17) Glenn V. Whitaker

SWAN

CIVIL DOCKET CONTINUATION SHEET Amended preceding page #3

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE ___ OF ___ PAGES
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DATE	NR.	PROCEEDINGS	PROCEEDINGS
		<u>PARTIES</u>	<u>COUNSEL</u>
Aug	18)	JOHNNIE M. WALTERS	18) Glenn V. Whitaker
Aug	19)	RANDOLPH W. THROWER	19) - do -
Aug	20)	CLIFFORD ALEXANDER Secretary of the Army	20)
Aug	21)	HOWARD H. CALLOWAY	21) Glenn V. Whitaker
Aug	22)	HAROLD R. AARON	22) - do -
Aug	23)	BENJAMIN F. BAILAR Postmaster General United States Postal Service	23) - do -
Aug	24)	WINTON M. BLOUNT, Chairman of the Board and President Blount, Inc.	24) - do -
Aug	25)	TOM CHARLES HUSTON	25)
	26)	UNITED STATES OF AMERICA	26) Glenn V. Whitaker
	27)	JOHN DOE 1-5	27)
	28)	RICHARD DOE 1-5	28)
	29)	JANE DOE 1-5 Individually and in their official capacity	29)



PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE ___ OF ___ PAGES
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DATE	NR.	PROCEEDINGS	
		<u>PARTIES</u>	<u>COUNSEL</u>
		16) RANDOLPH W. THROWER	16) Glenn V. Whitaker Dennis G. Linder Dept. of Justice 20530 739-3383
		17) TOM CHARLES HUSTON	17) -do-
		18) HOWARD H. CALLOWAY Secretary of the Army	18) - do -
		19) HAROLD R. AARON Assistant Chief of Staff for Army Intelligence	19) - do -
		20) BENJAMIN F. BAILLAR Postmaster General United States Postal Service	20) - do -
		21) WINTON M. BLOUNT	21) Glenn V. Whitaker Dennis G. Linder Dept. of Justice 20530 739-3383
		22) JOHN DOE 1-5	22)
		23) RICHARD DOE 1-5	23)
		24) JANE DOE 1-5  Individually and in their official and former official capacities	24)

SMITH, J. SMITH, J.

CIVIL DOCKET CONTINUATION SHEET

Preceding Page #1.

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE ___ OF ___ PAGES
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DATE	NR.	PROCEEDINGS		
		<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center;"><u>PARTIES</u></td> <td style="width: 50%; text-align: center;"><u>COUNSEL</u></td> </tr> </table>	<u>PARTIES</u>	<u>COUNSEL</u>
<u>PARTIES</u>	<u>COUNSEL</u>			
		<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">           THE BLACK PANTHER PARTY            HUEY P. NEWTON            ELAINE BROWN            DONALD FREED            BERTON SCHNEIDER            THOMAS GLADWIN            FLORA GLADWIN            JOHN GEORGE            FATHER EARL NEIL, Associate Officer                Community Action &amp; Human Development                Executive Counsel of the                Episcopal Church            JOHN HUGGINS            ELIZABETH HUGGINS         </td> <td style="width: 50%;">           Bruce J. Terris  <del>1908-Sunderland-Pl., N.W. 20036-</del>  <del>Tel: 785-1992</del>            1526-18th St., N.W. 20036            Tele: 332-1882         </td> </tr> </table>	THE BLACK PANTHER PARTY HUEY P. NEWTON ELAINE BROWN DONALD FREED BERTON SCHNEIDER THOMAS GLADWIN FLORA GLADWIN JOHN GEORGE FATHER EARL NEIL, Associate Officer Community Action & Human Development Executive Counsel of the Episcopal Church JOHN HUGGINS ELIZABETH HUGGINS	Bruce J. Terris <del>1908-Sunderland-Pl., N.W. 20036-</del> <del>Tel: 785-1992</del> 1526-18th St., N.W. 20036 Tele: 332-1882
THE BLACK PANTHER PARTY HUEY P. NEWTON ELAINE BROWN DONALD FREED BERTON SCHNEIDER THOMAS GLADWIN FLORA GLADWIN JOHN GEORGE FATHER EARL NEIL, Associate Officer Community Action & Human Development Executive Counsel of the Episcopal Church JOHN HUGGINS ELIZABETH HUGGINS	Bruce J. Terris <del>1908-Sunderland-Pl., N.W. 20036-</del> <del>Tel: 785-1992</del> 1526-18th St., N.W. 20036 Tele: 332-1882			
		vs.		
	✓ 1) 2) 3) 4)	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">           EDWARD LEVI, Attorney General                of the United States            JOHN MITCHELL            ROBERT MARDIAN            CLARENCE M. KELLEY, Director                Federal Bureau of                Investigation         </td> <td style="width: 50%;">           1) Glenn V. Whitaker            2) - do -            3) Glenn V. Whitaker                Dennis G. Linder                Dept. of Justice                20530 739-3383            4) - do -         </td> </tr> </table>	EDWARD LEVI, Attorney General of the United States JOHN MITCHELL ROBERT MARDIAN CLARENCE M. KELLEY, Director Federal Bureau of Investigation	1) Glenn V. Whitaker 2) - do - 3) Glenn V. Whitaker Dennis G. Linder Dept. of Justice 20530 739-3383 4) - do -
EDWARD LEVI, Attorney General of the United States JOHN MITCHELL ROBERT MARDIAN CLARENCE M. KELLEY, Director Federal Bureau of Investigation	1) Glenn V. Whitaker 2) - do - 3) Glenn V. Whitaker Dennis G. Linder Dept. of Justice 20530 739-3383 4) - do -			
		SEE OVER		

CIVIL DOCKET CONTINUATION SHEET

Proceeding Page #2.

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SERIALIZED

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 65-2305 PAGE ___ OF ___ PAGES
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DATE	NR.	PROCEEDINGS	
		<u>PARTIES</u>	<u>COUNSEL</u>
	5)	WILLIAM C. SULLIVAN	Glenn V. Whitaker
	6)	ESTATE OF J. EDGAR HOOVER	
	7)	GEORGE C. MOORE	
	3)	GEORGE BUSH, Director Central Intelligence Agency	Glenn V. Whitaker
	9)	WILLIAM E. COLBY	
	10)	RICHARD HELMS	
	11)	WILLIAM E. SIMON Secretary of the Treasury	Glenn V. Whitaker
	12)	REX DAVIS, Director Bureau of Alcohol, Tobacco & Firearms of the Treasury Department	Glenn V. Whitaker
	13)	HAROLD SERR	Glenn V. Whitaker
	14)	DONALD C. ALEXANDER Commissioner, Internal Revenue Service	Glenn V. Whitaker
	15)	JOHNNIE M. WALTERS	Glenn V. Whitaker, Dept of Justice 202-739-3383 (20530

SEE NEXT PAGE

DIST/OFFICE	DOCKET		FILING DATE			J	N/S	O	R	23	\$	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET	
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PLAINTIFFS

DEFENDANTS

THE BLACK PANTHER PARTY, et al.

~~CIRCA~~  
SANTA, N.C.

EDWARD LEVI, et al.

SEE PRECEDING PAGE FOR COMPLETE CAPTION

CAUSE

Civil rights action against former and present federal government officials for conspiring to destroy the pltf., Black Panther Party politically & financially. The acts of defts. which injured ptfs. were taken against ptfs. because of the political beliefs, expressions & associations in violation of ptfs. constitutional & statutory rights (42 USC 1985, etc.; & Rule 23 allegations) ja

See preceding page

ATTORNEYS

See preceding page

Glenn V. Whitaker error  
Bruce J. Terris  
1908 Sunderland Pl., N.W. 20036  
785-1992

#3, 16, 17,  
21.

Glenn V. Whitaker  
Dennis G. Linder  
Dept. of Justice  
20530 739-3383

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS

FILING FEES PAID

STATISTICAL CARDS

DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
			JS-5	
			JS-6	

DATE	NR.	PROCEEDINGS
976 Dec	01	COMPLAINT, appearance.
Dec	01	SUMMONS (25) and copies (25) of complaint issued to all defts. & the AUSA, including the three (3) Does. #1 & #20 ser 12-2-76; AUSA, #4, #12 & #14 ser 12-3-76; #11 ser 12-6-76; #8 ser 12-8-76; #15 ser 12-10-76 #3 & #5 ser 12-13-76; #16 & #21 ser 12-14-76; #17 ser 12-15-76. #18 NS 12-2-76; <del>#18 ser 1-23-77</del> ; #19 ser 1-6-77; #2 NS 1-22-77
Dec	06	REASSIGNMENT of Case from Judge Sirica to Judge Smith. PRATT, J.
1977 Jan	10	#3, 16, 17 and 21 MOTION of defts. for extension of time to respond to complaint; P & A; c/m 1-5-77. Appearance of Glenn V. Whitaker.
Jan	13	MOTION of déft #15 for extension of time to respond to complaint; P&A; c/m 01/13/77. Appearance of Glenn V. Whitaker.
Jan	14	SUMMONS and copy of complt. issued vs. deft. #18 Service on Martin Hoffman on 1-23-77
Jan	26	CHANGE of address for Bruce J. Terris counsel for pltfs.
Jan	31	ORDER filed 1-28-77 granting motion of defts. #2, #16, #17 & #21 for extension of time to Jan. 31, 1977 within which to respond to complaint without prejudice to their rights to raise any and all defenses available under the FRCP. (N) SMITH, J.
Jan	31	ORDER filed 1-28-77 granting deft. #15 motion for extension of time to Jan. 31, 1977 within which to answer the complaint without prejudice to his rights to raise any and all defenses available under the FRCP. (N) SMITH, J.
Jan	31	Service on deft. #10 made by U. S. Marshal by certified mail on 1-6-77.
Feb	09	STIPULATION extending time within which defts. have to respond to the complaint to & including 2-28-77, approved 2-9-77. (N) SMITH, J.
Feb	28	STIPULATION allowing defts. to & including 3-30-77 within which time to respond to the complaint and this stipulation in no ways prejudices the rights of the defts., approved. (N) SMITH, J.
Mar	14	MOTION by pltfs. for enlargement of time in which to move for class action certification; P&A's; c/m 3-11-77.
Mar	16	SUMMONS (5) and copies (5) of amended complaint issued to defts., John Mitchell, George C. Moore, William E. Colby, Harold Serr & Howard H. Calloway. Ser: George C. Moore & Harold Serr 3-19-77 SEE NEXT PAGE John Mitchell ser 3-20-77 Howard H. Calloway ser 3-28-77

## CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 3 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1977 Mar	24	POINTS & Authorities by Federal defts. in opposition to motion of pltfs. for enlargement of time in which to move for class action certification; table of cases; attachment; c/m 3-24-77.
Mar	30	MOTION by defts. Robert C. Mardian & William C. Sullivan for extension of time to respond to complaint; P&A's; c/m 3-30-77. Appearance of Glenn V. Whitaker.
Mar	31	MOTION by defts. #1, #4, #8, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20 & #21 to dismiss; P&A's; exhibit; c/m 3-30-77. Appearance of Glenn V. Whitaker.
Mar	31	MOTION by pltf. for leave to add and drop defts.; P&A's; exhibit (amended class action complaint); c/m 3-31-77.
Mar	31	MOTION by pltfs. for enlargement of time in which to move for class action certification; P&A's; c/m 3-31-77.
Apr	04	TABLE of Cases and authorities by defts. #1, #4, #8, #11, #12, #13, #14, #15, #17, #18, #19, #20, & #21 to motion to dismiss; c/m 4-1-77.
Apr	07	STIPULATION extending time to & including May 2, 1977 within which pltfs. to respond to motion of defts. to dismiss, approved. (N) SMITH, J.
Apr	08	MOTION of pltf. for appointment of special process server and ORDER by Clerk appointing Sherille Ismail to serve summons and complaint upon John Mitchell.
Apr	11	AMENDMENT of motion of pltfs for enlargement of time in which to move for class action certification; c/m 4-8-77.
Apr	14	OPPOSITION of all defts. except Mitchell, Sullivan and Moore to motion of pltfs. for leave to add and drop defts.; c/m 4-14-77.
Apr	20	MOTION of deft. #7 for extension of time to respond to complaint; P&A's; c/m 4-20-77. Appearance of John F. Barg (Attorney, U.S. Dept. of Justice, Washington, D.C. 20530, phone 739-4189)
Apr	21	SEE OVER

## CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 76-2205
THE BLACK PANTHER PARTY, et al.		EDWARD LEVI, et al.	PAGE 2 OF _____ PAGES
DATE	NR.	PROCEEDINGS	
1977			
Apr	21	MOTION by defts., Levi, Bell, Kelley, Bush, Turner, Colby, Helms, Blumenthal, Simon, Davis, Serr, Williams, Alexander, Walters, Thrower, Alexander, Callaway, Aaron, Bailar, Blount, and Huston to dismiss proposed amended complaint; P&A's; attachment; c/m 4-21-77.	
Apr	28	SUMMONS and copy of complaint and amended complaint issued for deft. #2 NS 5-3-77	
May	02	AFFIDAVIT of Sherille Ismail of service of summons & complaint on deft. #2 on 4-29-77.	
May	04	MEMORANDUM of points & authorities by pltfs. in opposition to motion of defts. to dismiss; affidavit of Elaine Brown; c/m 5-4-77.	
May	05	TABLE of Contents by pltfs. to P&A's filed 5-4-77; c/m 5-4-77.	
May	6	STIPULATION for extension of time for pltfs. to respond to defts' motion to dismiss extended from May 2, 1977 to May 4, 1977. (N) Smith, J.	
May	11	REPLY by pltfs. to opposition of defts. to motion of pltfs. for leave to add and drop defts.; c/m 5-9-77.	
May	18	REPLY by defts. to opposition of pltfs. to motion to dismiss; table of contents; table of cases & authorities; c/m 5-18-77.	
May	20	REQUEST by pltfs. for production and copying of documents; memorandum regarding service; c/m 5-19-77.	
May	23	MOTION by defts. #2,3,5, and 7 for extension of time to respond to complaint; memorandum of P&A's; c/m 5-20-77.	
May	23	AFFIDAVITS by pltfs. in support of opposition to defts. motion to dismiss; affidavit of Arthur Jefferson; affidavit of Elaine Brown; <del>affidavit of Charles R. Garry; exhibit A; exhibit B; exhibit C;</del> c/m 5-23-77.	
May	24	CERTIFICATE of service by pltfs. on motion for enlargement of time in which to move for class action certification, etc. by certified mail on May 20, 1977.	
May	25	MOTION of pltf. to add defts. and motion for enlargement of time within which to file class certification and motion of defts. to dismiss, argued and taken under advisement. (Rep: Dawn Copeland) SMITH, J.	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 3 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1977 May	27	ORDER filed 5-26-77 denying motion of defts. to dismiss and granting motion of pltfs. to add and drop defts.; motion of pltfs. for extension of time within which to move for class certification, denied; Defts., Mitchell, Mardian, Sullivan & Moore extension of time to respond to compel, granted; Service of process on all defts. on or before 6-15-77; all discovery to be completed on or before Sept. 25, 1977. (N) SMITH, J.
May	27	AMENDED Complaint by pltfs. adding and dropping defts.; c/m 3-31-77.
May	27	SUMMONS (14) and copies (16) of amended complaint issued to Edward Levi, Rex Davis, William E. Simon, W. Michael Blumenthal, Richard Helms, George Bush, Admiral Turner, Griffin Bell, William E. William, Donald Alexander, Johnnie Walters, Clifford Alexander, Benjamin F. Bailar, and the United States of America. #14 & #23 NS-5-31-77 #13 ser 6-2-77; U.S. Atty. ser 6-3-77; #2 & #20 ser 6-1-77; #16 ser 6-2-77 #9 ser 6-1-77; #18 ser 6-16-77
June	01	SUMMONS and copy of amended complaint issued to Clarence Kelley. Ser 6-6-77
June	06	ERRATA Sheet by pltf. to second request of pltfs. for production and copying of documents; c/s 6-6-77.
June	06	WITHDRAWAL by pltfs. of first request and substituting of second request for production and copying of documents; second request for production and copying of documents; c/s 6-3-77.
June	06	MOTION by Federal defts. for extension of time in which to answer the amended complaint; P&A's; c/m 6-6-77.
June	06	STIPULATION allowing defts., Bailar and Davis waive their right to personal service of the summons and amended complaint and further that deft., Kelley, FBI appointing John A. Mintz to accept service of summons and complaint on his behalf in both his official and individual capacities, approved. (N) SMITH, J.
June	16	STIPULATION waiving rights of deft., Griffin B. Bell, Attorney General of the U.S. to personal service of the the summons & amended complaint, approved. (fiat) (N) SMITH, J.
June	21	SUMMONS (2) and copies (2) of amended complaint issued to Edward Levi. Ser 7-12-77
June	21	SUMMONS (4) and copies (4) of amended complaint issued to Admiral Stansfield Turner, Richard Helms, W. Michael Blumenthal & Donald C. Alexander. Blumenthal ser 6-27-77;



## CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 76-2205
THE BLACK PANTHER PARTY, et al.	EDWARD LEVI, et al.	PAGE 4 OF _____ PAGES

DATE	NR.	PROCEEDINGS
1977		
June	21	MOTION of defts., John N. Mitchell, Robert C. Mardian, George C. Moore & William C. Sullivan for extension of time to respond to complaint; P&A's; c/m. Appearance of Glenn V. Whitaker.
June	21	MOTION of defts., Clarence Kelley & William Simon for extension of time in which to answer the amended complaint; P&A's; c/m 6-20-77. Appearance of Glenn V. Whitaker.
June	21	ANSWER by deft., Edward H. Levi to amended complaint; affidavit of Edward H. Levi w/attachment; c/m 6-20-77. Appearance of Glenn V. Whitaker.
June	21	ANSWERS (17) by amended defts. #2, #8, #9, #10, #11, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24 and #25 to the amended complaint; c/m 6-20-77. Appearance of Glenn V. Whitaker.
June	21	MOTION by defts. to establish litigation schedule and to extend time for serving answers to amended complaint; P&A's; c/m 6-20-77.
June	22	CHANGE of address for Mark H. Lynch, as counsel for pltfs.
June	23	MEMORANDUM by pltfs. regarding service; c/m 6-23-77.
June	28	ANSWER by amended deft. #13 to the amended complaint; c/m 6-27-77.
June	28	RETURN of Non-Service on #1 on 6-10-77; #8 on 6-17-77; #11 on 6-14-77; #12 on 6-17-77; and #17 on 6-14-77.
June	29	RETURN of service as to deft. #11 on 6-21-77 & deft. #8 on 6-22-77.
June	29	RETURN of Non-service as to deft. #17 on 6-24-77.
July	05	ANSWERS of amended deft. #5 to the amended complaint; c/m 7-5-77.
July	05	ANSWER of amended deft. #12 to the amended complaint; c/m 7-5-77.
July	05	MEMORANDUM of pltfs. in opposition to motion of defts. to establish litigation schedule and to extend time for serving answers to amended complaint; c/m 7-5-77.
July	07	MOTION by defts. for extension of time to respond to discovery; P&A's; c/m 7-6-77.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. <u>76-220</u>
THE BLACK PANTHER PARTY, et al.	EDWARD LEVI, et al.	PAGE <u>5</u> OF <u>    </u> PAGES

DATE	NR.	PROCEEDINGS
1977		
July	12	MOTION of defts. John N. Mitchell, Robert C. Mardian, George C. Moore and William C. Sullivan for extension of time to respond to amended complaint; memorandum of P&A's; c/m 7-12-77.
July	12	REPLY by defts. to pltfs. opposition to motion to establish litigation schedule and to extend time for serving answers to amended complaint; c/m 7-12-77.
July	14	MOTION by defts. Edward H. Levi, Griffin B. Bell, Clarence M. Kelly, John Mitchell, Robert Mardian, Admiral Stansfield Turner, George Bush, William E. Colby, Richard Helms, W. Michael Blumenthal, William E. Simon, Rex D. Davis, Harold A. Serr, William E. Williams, Donald C. Alexander, Johnnie M. Walters, Randolph W. Thrower, Clifford Alexander, Howard H. Calloway, Harold R. Aaron, Benjamin F. Bailor, Winston M. Blount, Tom Charles Huston, and U.S.A. for a protective order; memorandum of P&A's; affidavit of James L. Linebarger; affidavit of Robert A. Barteaux; affidavit of Sidney D. Stenbridge; affidavit of Douglas T. Cummins; affidavit of Julian A. Sherman; affidavit of George J. Lex, Jr.; c/s 7-13-77.
July	14	MOTION by defts. Griffin B. Bell, W. Michael Blumenthal, Clifford L. Alexander, Jr., Stansfield Turner, Benjamin F. Bailor, Edward H. Levi, George Bush, William E. Simon, William E. Williams for summary judgment; memorandum of P&A's; table of cases and authorities; attachment; statement of material facts; affidavit of Griffin B. Bell; affidavit of W. Michael Blumenthal; affidavit of Clifford L. Alexander, Jr.; affidavit of Stansfield Turner; affidavit of Benjamin F. Bailor; exhibit; attachment; affidavit of George Bush; affidavit of William E. Simon; affidavit of William E. Williams; c/s and c/m 7-13-77.
July	14	SUMMONS (2) and copies (2) of amended complaint issued to defts. George Bush and William E. Williams:  Williams ser 7-19-77      George Bush ser 8-10-77
July	18	ORDER filed 7-14-77 granting motion of defts. for extension of time to & including 7-12-77 within which to respond to second request of pltfs. for production & copying of documents. (N) SMITH, J.
July	18	STIPULATION for extending time within which pltfs. shall have to & including twenty (20) days after service of supplemental memorandum by defts. of points & authorities to respond to the motion for summary judgment, approved. (N) SMITH, J.

SEE OVER

## CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 6 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1977 July	25	OPPOSITION of pltfs. to motion of defts. for a protective order; c/m 7-25-77.
July	25	SUPPLEMENTAL response by pltfs. to motion of defts. to establish litigation schedule and to extend time for serving answers to amended complaint; c/m 7-25-77.
July	29	SERVICE as to deft. #17 on 7-18-77.
Aug	04	SUPPLEMENTAL Memorandum of points & authorities by moving defts. on official immunity; table of cases & authorities; attachment; c/m 8-4-77.
Aug	11	ANSWER by deft. #7 to the amended complaint; c/m 8-11-77.
Aug	11	MOTION of defts., John N. Mitchell & Robert C. Mardian for extension of time to respond to amended complaint; P&A's; c/m 8-11-77.
Aug	23	STIPULATION for extension of time for deft. William C. Sullivan to respond to pltffs. amended complaint to Sept. 1, 1977. APPROVED. (FIAT) (N) Smith, J.
Aug	23	STIPULATION allowing pltffs until Sept. 1, 1977 to respond to the motion of certain defts. for summary judgment. APPROVED. (N) Smith, J.
Aug	25	APPEARANCE of Joseph E. Casey as counsel for deft. William C. Sullivan. CAL/N.
Aug	25	ANSWER of deft. William C. Sullivan to amended complaint; c/m 8-24-77
Aug	25	MOTION of deft. John N. Mitchell for extension of time to respond to amended complaint; P&A; c/m 8-25-77.
Aug	25	ANSWER of deft. Robert C. Mardian to the amended complaint; c/m 8-24-77.
Aug	29	INTERROGATORIES/ <sup>(8)</sup> of deft. George C. Moore to pltffs.; c/s 8-26-77.
Aug	31	REQUEST (first) by deft. #7 to pltf. for production of documents; c/m 8-29-77.
Sept	01	MEMORANDUM of points & authorities by pltffs. in opposition to motion of certain defts. for summary judgment; affidavit of Bruce J. Terris; statement of material facts; c/m 9-1-77.

CIVIL DOCKET

THE BLACK PANTHER PARTY, et al.

United States District Court for the District of Columbia  
 EDWARD LEVI, et al

C. A. No. 76-2205

Supplemental Page No. 7

DATE	PROCEEDINGS
1977	
Sept 7	ORDER filed 9-6-77 granting motion of defts., Mitchell & Mardian for extension of time to respond to complaint to 8-25-77. (N) SMITH, J.
Sept 16	RESPONSE by deft., George C. Moore to second request of pltfs. for production and copying of documents; c/m 9-14-77.
Sept 16	ANSWER of deft. John N. Mitchell to amended complaint; c/m 9-15-77. (fiat) SMITH, J.
Sept 19	ORDER filed 9-16-77 granting motion of deft. Mitchell for extension of time to 9-15-77 to respond to amended complaint of pltfs. (N) SMITH, J.
Sept 21	MOTION by deft. #26 to enlarge time for serving answer to amended complaint; P&A's; c/m 9-21-77.
Sept 21	REPLY by defts. to opposition to motion of certain defts. for summary judgment; c/m & c/s 9-21-77.
Sept 22	MOTION of federal defts. for summary judgment, heard and taken under advisement. (Rep: Dawn Copeland) SMITH, J.
Sept 23	ORDER filed 9-22-77 withdrawing by consent motion of defts. for protective order. (N) SMITH, J.
Sept 23	ORDER filed 9-22-77 granting motion by U.S. for enlargement of time for serving answer to the complaint until 10-21-77. (N) SMITH, J.
Sept 29	STIPULATION allowing plfff. to 10-14-77 to make objections to deft. #7 Interrogatories and First Request for Production of Documents and First Request for Production of Documents and until 10-28-77 to respond to those portions of the Interrogatories and Request for Production to which objection is made. (N) (signed 9-28-77) SMITH, J.
	SEE OVER

CIVIL DOCKET

The Black Panther Party, et al.

United States District Court for the District of Columbia

vs. Levi, et al.

C. A. No. 76-2205

Supplemental Page No.

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DATE	PROCEEDINGS
1977	
Oct 14	OBJECTION by pltf. to first request for production of documents by deft., George C. Moore; c/m 10-14-77.
Oct 14	OBJECTIONS by pltfs. to interrogatories by deft., George C. Moore; c/m 10-14-77.
Oct 21	MOTION by deft., United States of America to enlarge time for serving answer to amended complaint; P&A's; c/s 10-21-77.
Oct 28	ORDER filed 10-27-77 granting motion of deft. to 11-7-77 in which to answer amended complaint. (N) SMITH, J.
Nov 3	THIRD Request by pltfs. to defts. for production of documents; c/m 11-2-77.
Nov 7	MOTION by deft. #26 to enlarge time for serving answer to amended complaint; P&A's; c/m 11-7-77. Appearance of Glenn V. Whitaker.
Nov 15	STIPULATION Agreement between the parties on certain discovery in this action which will proceed in waves and the defts. having withdrawn without prejudice their pending motion for protective order and motion to establish a litigation schedule, approved. (N) (See for details) SMITH, J.
Nov 22	ANSWERS of the United States and Griffin Bell, Clarence M. Kelley, Admiral Stansfield Turner, W. Michael Blumenthal, Rex Davis, Jerome Kurtz, William E. Williams, Clifford Alexander, Harold R. Aaron, and Benjamin Bailor in their respective capacities to the amended complaint. (fiat) Smith, J.
Dec 6	RESPONSE by deft. #7 to third request of pltfs. for production and copying of documents; c/m 12-5-77.
Dec 23	NOTICES (6) by deft., George C. Moore to take depositions of Berton Schneider, John and Elizabeth Huggins, Father Earl Neil, John George, Thomas and Flora Gladwin, and Donald Freed; c/m 12-21-77.
	(SEE NEXT PAGE)

## CIVIL DOCKET CONTINUATION SHEET

FPI-MAR

PLAINTIFF

DEFENDANT

THE BLACK PANTHER PARTY, ET AL.

EDWARD LEVI, ET AL.

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DATE	NR.	PROCEEDINGS
1977		
Dec	23	RESPONSE of pltf. Black Panther Party to def't. George C. Moore's first request for production of documents; c/s 12-20-77.
Dec	23	(Huey Newton) ANSWERS of pltf. Black Panther Party to def't. George C. Moore's interrogatories; c/s 12-20-77.
Dec	23	ANSWERS of pltf. Donald Freed to interrogatories of def't. George C. Moore; c/s 12-20-77.
Dec	23	ANSWER of pltf. Father Earl Neil to interrogatories of def't. George C. Moore; c/s 12-20-77.
Dec	23	ANSWERS of pltf's. John and Elizabeth Huggins to interrogatories of def't. George C. Moore; c/s 12-20-77.
Dec	23	ANSWERS of pltf's. Thomas and Flora Gladwin to interrogatories of def't. George C. Moore; c/s 12-20-77.
Dec	23	ANSWERS of pltf. Berton Schneider to interrogatories of def't. George C. Moore; c/s 12-20-77.
Dec	23	ANSWERS of pltf. Huey P. Newton to interrogatories of def't. George C. Moore; c/s 12-20-77.
1978		
Jan	19	STIPULATION allowing pltf's. to Jan 26, 1978 to file a motion for a protective order in response to all depositions that have been noticed to date by def't., George C. Moore, approved. (N) SMITH, J.
Jan	26	MOTION by pltf's., Donald Freed, Berton Schneider, Thomas & Flora Gladwin, John George, Farther Earl Neil & John & Elizabeth Huggins for a protective order; P&A's; exhibit 1; c/m 1-26-78.
Jan	27	attorney for SUGGESTION by/William C. Sullivan of death upon the record of William C. Sullivan; c/m 1-26-78.
Jan	31	<del>REQUEST (first) by federal def'ts. to pltf., Black Panther Party for production of documents; c/m 1-31-78.</del>
Jan	31	INTERROGATORIES (first) by federal def'ts. to pltf., Black Panther Party; c/m 1-31-78.
Feb	02	MOTION by def't. #7 for order compelling answers to interrogatories by pltf's., Elaine Brown & John George; P&A's; table of authorities; statement of facts; exhibits A & B; c/m 2-1-78.

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## CIVIL DOCKET CONTINUATION SHEET

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PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 10 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1978		
Feb	02	MOTION by deft. #7 for order compelling pltfs. to answers to certain interrogatories; P&A's; table of authorities; statement of facts; c/m 2-1-78.
Feb	02	MOTION by deft. #7 for order compelling pltfs. for production of documents; P&A's; table of authorities; statement of facts; c/m 2-1-78.
Feb	03	MOTION by federal defts. to enlarge time for responding to third request of pltfs. for production of documents, time having expired; P&A's; c/m 2-3-78.
Feb	06	MOTION of deft., George C. Moore in opposition to motion of pltfs. for a protective order; table of authorities; P&A's; c/m 2-3-78.
Feb	09	OPPOSITION of defts., except defts., Moore & Sullivan, to motion of pltfs. for a protective order; c/m.
Feb	10	ANSWERS by pltf., John George to interrogatories of deft., George C. Moore; c/m 2-9-78.
Feb	14	ANSWER by pltf., Elaine Brown to interrogatories of deft., George C. Moore; c/m 2-13-78.
Feb	14	RESPONSE of pltfs. to motion of deft., Moore for order compelling answers to interrogatories; c/m 2-14-78.
Feb	14	OPPOSITION of pltfs. to motion of deft., Moore for order compelling answers to certain interrogatories; c/m 2-14-78.
Feb	14	OPPOSITION by pltf., Black Panther Party to motion of deft. Moore for order compelling production of documents; c/m 2-14-78.
Feb	14	AFFIDAVIT of Linda Morton; c/m 2-14-78.
Feb	15	REPLY by pltfs. to opposition of defts. to motion of pltfs. for a protective order; c/m 2-15-78.
Feb	21	REQUEST (first) by deft. Moore to pltfs., Thomas & Flora Gladwin for production of documents; c/m 2-17-78.
Feb	21	REQUEST (first) by deft. Moore to pltfs., John & Elizabeth Huggins for production of documents; c/m 2-17-78.
Feb	21	REQUEST (first) by deft. Moore to pltf., Elaine Brown for production of documents; c/m 2-17-78.

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PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 11 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1978		
Feb	21	REQUEST (first) by deft. Moore to pltf., Earl Neil for production of documents; c/m 2-17-78.
Feb	21	REQUEST (first) by deft. Moore to pltf., Huey P. Newton for production of documents; c/m 2-17-78.
Feb	21	REQUEST (first) by deft. Moore to pltf., Donald Freed for production of documents; c/m 2-17-78.
Feb	21	REQUEST (first) by deft. Moore to pltf., Berton Schneider for production of documents; c/m 2-17-78.
Feb	21	REQUEST by deft. Moore to the Clerk to remove from the docket with prejudice motion of deft. Moore for order compelling answers to interrogatories by pltf., Elaine Brown & John George; c/m 2-17-78.
Feb	22	NOTICE by pltf. of filing affidavit of Michael Fultz; affidavit of Michael Fultz; c/m 2-17-78.
Feb	22	SUPPLEMENTAL Memorandum by pltf. concerning motion by pltf. for a protective order; c/m 2-22-78.
Feb	23	NOTICE by pltf. of filing affidavit of Fred J. Hiestand; affidavit of Fred J. Hiestand; c/m 2-23-78.
Mar	03	RESPONSE of defts. to third request of pltf. for production of documents; c/m 3-3-78.
Mar	03	OBJECTIONS of defts. #2, #5, #8, #14, #16, & #20 to third request of pltf. for production of documents; c/m 3-2-78.
Mar	03	MOTION by defts. except defts. Moore & Sullivan for extension of time to complete the production of documents; P&A's; c/m 3-2-78.
Mar	29	MOTION by deft., George C. Moore for order compelling production of documents and for such other relief as is just; P&A's; c/m 3-28-78.
Mar	30	RESPONSE of pltf. to motion of deft., George C. Moore for order compelling production of documents and for such other relief as is just; c/m 3-30-78.
Apr	4	FURTHER response by the Federal Bureau of Investigation to pltf. third request for production of documents; c/m 4-3-78.
Apr	4	FURTHER objections by William H. Webster, Director of the Federal Bureau of Investigation to pltf. third request for production of documents; c/m 4-3-78.



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PLAINTIFF THE BLACK PANTHER PARTY, al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. <u>76-2205</u> PAGE <u>12</u> OF <u>    </u> PAGES
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DATE	NR.	PROCEEDINGS
1978 Apr	06	STIPULATION extending time for pltf. to & including 4-7-78 to make any objections to request of deft., Moore for production of documents and further given until May 8th to produce documents. (N) SMITH, J.
Apr	07	OBJECTIONS by all pltfs. except for The Black Panther Party to first request for production of documents by deft. #7.
Apr	18	REQUEST (first) by defts. to pltf., Huey P. Newton for production of documents.
Apr	18	INTERROGATORIES (first) by defts. to pltf., Huey P. Newton.
Apr	18	REQUEST (first) by defts. to pltf., Huey P. Newton for admissions.
Apr	18	REQUEST by defts. to attach page 2 to first interrogatories of defts. to pltf., Huey P. Newton; page 2.
Apr	26	RESPONSE of pltfs. to suggestion of death upon the record of William C. Sullivan.
June	08	NOTICE by all defts. except Moore & Sullivan to take deposition of pltf. Elaine Brown.
June	08	REQUEST (first) by all defts. except Moore & Sullivan to pltf. Elaine Brown for production of documents.
June	08	MOTION by all defts. except Moore & Sullivan to shorten time; P&A's
June	12	INTERROGATORIES (first) (8) by defts. to pltfs. Berton Schneider, Earl Neil, Thomas Gladwin, Donald Freed, Elizabeth Huggins, John George, Flora Gladwin, and John Huggins.
June	12	MOTION of defts. except Moore and Sullivan for sanctions for failure of pltfs. Black Panther Party & Huey P. Newton to provide discovery; P&A's; attachment.
June	22	RESPONSE of pltfs. to motion of defts. Bell, et al. for sanctions for failure to provide discovery.
July	06	MEMORANDUM of P&A's by all defts. except for Moore & Sullivan in reply to response of pltfs. to motion of defts. Bell, et al. for sanctions for failure to provide discovery.
July	10	MOTION by pltfs. for extension of time in which to file responses to interrogatories P&A's.
July	10	SUPPLEMENTAL Memorandum by defts. in support of the motion of certain defts. for summary judgment.

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PLAINTIFF		DEFENDANT	DOCKET NO. 76-2205
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DATE	NR.	PROCEEDINGS	
1978 July	25	MOTION by pltfs. for leave to file a further response to motion of Federally-Represented defts. for sanctions for failure to provide discovery; P&A's.	
* July	28	ORDER filed 7-27-78 granting motion of defts., Bell, Blumenthal, Alexander, Turner, Bailar, Levi, Bush, Simon, and Williams for Summary Judgment and the Claims against thes defts. in their individual capacities only hereby dismissed with prejudice. (N) Smith, J.	
* July	27	RESPONSES by pltf., Huey Newton to first request for admissions by Federally represented defts. (Fiat) SMITH, J.	
July	27	OBJECTIONS by pltf. Black Panther Party to the interrogatories of the Federally represented defts. (Fiat) SMITH, J.	
July	27	OBJECTIONS by pltf., Huey Newton to interrogatories (first) of Federally represented defts. (Fiat) SMITH, J.	
July	27	RESPONSE by pltf., Huey P. Newton to request for production of documents (first) by Federally represented defts. (Fiat) SMITH, J.	
July	27	RESPONSE by pltf., Black Panther Party to request for production of documents (first) by Federally represented defts. (Fiat) SMITH, J.	
July	27	ANSWERS by pltf., Huey P. Newton to interrogatories (first) by Federally represented defts; Exhibits. (Fiat) SMITH, J.	
July	27	RESPONSES by pltf., Black Panther Party to interrogatories of Federally represented defts. (Fiat) SMITH, J.	
July	31	MOTION by pltfs. for substitution of Marion L. Sullivan for deft. William C. Sullivan, deceased; P&A's; attachment. SMITH	
Aug Aug	04 11	ORDER granting mo. of defts. to file a further response to defts. mo. for sanctions FURTHER RESPONSE of Pltffs. Black Panther Party and Huey P. Newton to federally represented defts. motion for sanctions; Affidavit.	
Aug	16	MOTION by pltfs. for extension of time to file responses to interrogatories.	
Aug	28	MEMORANDUM by all defts. except George C. Moore and William C. Sullivan in opposition to Pltffs' motion for an extension of time to respond to Interrogatories.	
Sept.	07	NOTICE by all defts. except George C. Moore and William C. Sullivan of resubmission of requests for admission and for production of documents.	
Sept.	07	NOTICE by all defts. except George C. Moore and William C. Sullivan of deposition of Pltff Elaine Brown.	

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DATE	NR.	PROCEEDINGS
1978 Sept.	08	REPLY by Pltffs. to Defts' Memorandum in Opposition to Pltffs' motion for an extension of time to respond to Interrogatories.
Sept.	08	MOTION by Pltffs for waiver of Page Limitations.
Sept.	14	MOTION by defts, except Moore and Sullivan for an order to show cause; P&A's; Exhibits A & B.
Sept.	14	RESPONSE by pltf., Father Earl Neil to interrogatories of the Federally represented defts.
Sept.	14	RESPONSE by Pltffs. John & Elizabeth Huggins to Interrogatories of the Federally represented defts.
Sept.	14	RESPONSE by Pltff Berton Schneider to Interrogatories of the Federally represented defts.
Sept.	14	RESPONSE by Pltff. Donald Freed to Interrogatories of the Federally represented defts.
Sept.	14	RESPONSE by Pltff. John George to Interrogatories of the Federally represented defts.
Sept.	14	RESPONSE by Pltffs. Thomas & Flora Gladwin to Interrogatories of the Federally represented defts.
Sept.	20	MOTION by pltfs. for waiver of page limitations.
Sept.	21	INTERROGATORIES (first) by pltfs. to the Federally represented defts.
Sept.	21	REQUEST (fourth) by pltfs. for production of documents from the Federally represented defts.
Sept	21	MOTION by pltfs. for order under Rule 37 compelling discovery by Federal defts.; P&A's; Affidavit of Peter J. Eglick; Appendices A thru K to the Points and Authorities in support of the motion.
Sept	22	MOTION by defts. Bell, et al. except Moore and Sullivan for extension of page Limitation provided by Local Rule 1-9(e); Exhibit (P&A's)
Sept	25	ORDER filed 9-21-78 permitting pltfs. to file with this Court a Statement of P&A's in Support of pltfs. motion to compel discovery by Federal defts. That is no more than 55 pages in length. (N) Smith, J.
Sept	25	RESPONSE by pltfs. to motion of Federally represented defts. for an order to show cause; Affidavit of Morton H. Halperin; Exhibits A thru V.

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PLAINTIFF	DEFENDANT	DOCKET NO. 76-2205
THE BLACK PANTHER PARTY, et al.	EDWARD LEVI, et al.	PAGE 15 OF _____ PAGES

DATE	NR.	PROCEEDINGS
1978 * Sept.	26	ORDER filed 9-25-78 granting motions of defts. Bell, et al. for extension of Page Limitation provided by Local Rule 1-9(e) and directing the Clerk to file Supplemental Memorandum of points and authorities in support of defts. motion for sanctions for failure to provide discovery. (N) Smith, J.
* Sept.	25	SUPPLEMENTAL memorandum by defts. Bell, et al., except Moore and Sullivan of points and authorities in support of the motion of defts. Bell, et al. for sanctions for failure to provide discovery; Attachments 1 thru 8.
Sept.	28	NOTICE by defts. of Typographical Errors in Supplemental Memorandum filed 9/22/78.
Oct.	03	STIPULATION agreed to by Pltff. Elaine Brown and the defts pursuant to FRCP 41 (a) (1) (ii). All claims filed by pltff. against All defts. are dismissed with prejudice (N) Smith, J.
Oct.	04	REPLY memorandum by defts. Bell, et al., except Moore and Sullivan in support of motion for an order to show cause.
Oct.	04	MOTION of defts. Bell, et al., except Moore and Sullivan for an extension of time in which to respond to motion of pltfs. to compel, first interrogatories and fourth request for documents; P&A's.
Oct	16	MOTION by pltfs. for reconsideration of order granting motion of defts., Bell, et al. for extension of page limitation; P&A's; exhibit.
Oct	17	MEMORANDUM by pltfs. in opposition to motion of defts., Bell, et al. for an extension of time in which to respond to motion of pltfs. to compel, first interrogatories, and fourth request for documents.
Oct	18	RESPONSE of deft., Moore to response of pltfs. to motion of federally represented defts. for an order to show cause; affidavit of William L. Stauffer, Jr.
Oct	18	NOTICE by pltfs. of filing additional exhibit to response to motion of federally represented defts. for an order to show cause; exhibit.
Oct	18	MOTION by defts., Bell, et al. including all defts. except Moore & Sullivan for partial summary judgment or in the alternative for sanctions; statement of material facts; table of cases & authorities; P&A's.
Oct	20	MOTION by deft. Moore to adopt motion of defts. Bell, et al, for sanctions for failure to provide discovery.
Oct	20	MEMORANDUM of defts. Bell, et al. in opposition to motion of pltfs. for reconsideration of order granting motion of defts. Bell, et al. for extension of page limitation.
Oct	23	CHANGE of phone number for Larry L. Gregg & R. Joseph Sher, counsel for defts. except Moore & Sullivan.

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FPI-MAR-3-7-78

PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 16 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1978		
Oct	23	REPLY Memorandum by defts. in support of the motion of defts. for an extension of time; attachment.
Oct	24	REPLY by pltfs. to response of deft. Moore to response of pltfs. to motion of federally defts. for an order to show cause.
Oct	25	RESPONSE of pltfs. to motion of deft., Moore to adopt motion of defts., Bell, et al. for sanctions for failure to provide discovery.
Oct	27	RESPONSE of pltfs. to supplemental memorandum of P&A's in support of motion by federally-represented defts. for sanctions for failure to provide discovery and memorandum of defts. Bell, et al. in opposition to motion for reconsideration of order granting motion of defts., Bell, et al. for extension of page limitations.
Oct	30	MEMORANDUM of P&A's by pltfs. in opposition to motion by federally-represented defts. for partial summary judgment or in the alternative for sanctions; affidavit of Bruce J. Terris; exhibit.
Nov	03	NOTICE by Lawrence J. Jensen of withdrawal of appearance for the United States.
Nov	03	REPLY Memorandum in support of the motion of defts., Bell except for for Moore & Sullivan for partial summary judgment or for sanctions; table of cases; exhibits 1 thru 4.
Nov	06	STATUS CALL: Motion of defts., Bell, et al. filed 2-3-78 for enlargement granted; Motion of defts., Bell, et al. filed 3-2-78 for extension of time to compel granted; Motion of pltf. for extension of time to file response to interrogatories filed 7-10-78 granted; Motion of pltf. to file response to interrogatories filed 8-16-78 granted; Motions hearing on motion of defts., Bell, et al. to extend time to respond to motion of pltf. to compel set for 11-22-78 at 9:30 A.M. (Rep: Dawn Copeland) SMITH, J.
Nov	22	NOTICE by pltfs. of filing affidavit of Mark H. Lynch in response to the reply memorandum in support of motion of defts. Bell, et al. for an extension of time and etc; Affidavit o Mark H. Lynch.
Nov	22	MOTIONS: Motions of Federal defts. for extenstion of time to respond to pltfs. motion to compel heard and Granted with hearing on defts. motion for sanctions and for Summary Judgment 12-14-78 at 10:00 A.M. (Rep: R. Kavulick) SMITH, J.
Nov	27	TRANSCRIPT of proceedings of Nov 22, 1978; pp. 1-20; Rep: Ronald Kavulick (COURT COPY).

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PLAINTIFF THE BLACK PANTHER PARTY, et al.	DEFENDANT EDWARD LEVI, et al.	DOCKET NO. 76-2205 PAGE 17 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1978		
Dec	12	SUPPLEMENTAL Memorandum of P&A's by pltfs. responding to new issues raised by defts. Bell, et al. in oral argument before this Court on 11-22-78, and to supplemental memorandum of P&A's by defts. in support of motion by federally-represented defts. for sanctions for failure to provide discovery; attachment.
Dec	14	MOTION of defts. Bell, et al. for sanctions, heard and denied; motion of defts. for partial summary judgment taken under advisement; defts. given 20-days to file motion to compel with pltf. given 20-days thereafter to respond; hearing to be set later. (Rep: Dawn Copeland) SMITH, J.
Dec	19	SUPPLEMENTAL Memorandum of pltfs. in opposition to motion of federally-represented defts. for partial summary judgment.
Dec	21	ORDER filed Dec. 20, 1978 denying Federal Defts. motion for sanctions and further that defts have 20 days to file any appropriate motions to compel and plttfs. 20 days thereafter to respond. (N) SMITH, J.
Dec.	28	MOTION of defts for extension of page limitation prescribed by local Rule 1-9(e) and for Leave to deviate from Local Rule 1-9A; Exhibit.
Dec.	28	SUPPLEMENTAL REPLY MEMORANDUM of pltfs. in support of the motion of defts. Bell, et al. for partial summary judgment.
Dec.	28	MOTION of defts. to compel discovery of pltf. Huey Newton; P & A; Attachments.
1979		
Jan	03	TRANSCRIPT of proceedings of Nov 6, 1978; pp. 1-31; Rep: Dawn Copeland (COURT COPY)
Jan	03	TRANSCRIPT of proceedings of Dec 14, 1978; pp. 1-43; Rep: Dawn Coepland (COURT COPY)
Jan	11	MOTION by pltfs. for an extension of time to respond to motion of defts. to compel discovery by the Black Panther Party and by Huey P. Newton.
Jan	12	ORDER filed 1-11-79 granting motion of defts., Bell, et al. for extension of page limitations provided by Local Rule 1-9(a) and Clerk is directed to file memorandum of P&A's in support of the motion of defts., Bell, et al. to compel. (N) SMITH, J.
Jan	12	MEMORANDUM of P&A's by defts., Bell, et al. in support of motion to compel pltf., Black Panther Party to respond to discovery.
Jan	31	MEMORANDUM of P&A's by pltf., Huey P. Newton in support of motion to compel; affidavit of Huey P. Newton; copy of answers by Huey P. Newton to interrogatories of federally represented defts.
Jan	31	MOTION of pltf., Black Panther Party for extension of page limitation prescribed by Local Rule 1-9(e); exhibit (P&A's w/attachments).

SEE OVER

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. <u>76-2205</u>
		PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
1979		
Feb	02	ORDER filed 2-1-79 granting pltf. leave to submit a memorandum of P&A's in response to motion of defts. to compel discovery which is no longer than 95-pages in length. (N) SMITH, J.
Feb	06	ERRATA by pltf. Huey P. Newton to memorandum of P&A's in support of motion to compel discovery.
Feb	06	MEMORANDUM of P&A's by Black Panther Party in support of motion to compel discovery; affidavit of Joan Kelley; attachment.
Feb.	12	SECOND supplemental response of pltf. Black Panther Party to federally represented defts' first request for production of documents; attachments (3).
Feb	13	SUPPLEMENTAL responses of pltf., Huey P. Newton to first interrogatories of the federally represented defts.
Feb	13	SUPPLEMENTAL responses of pltf., Black Panther Party to interrogatories of the federally represented defts.
Mar	26	MOTION of defts. Bell, et al for extension of page limitation prescribed by Local Rule 1-9(e); Exhibit (orig. with attachments).
Mar	27	REPLY Memorandum by defts. Bell, et al, to opposition to motion to compel discovery of pltf. Newton; attachments 1, 2 & 3.
May	29	MOTION of deft. to compel heard and taken under advisement; Gov't given until June 1, 1979 to furnish a list of interrogatories that need further answers and pltf. given until June 18, 1979 to respond and indicate to the Court why they intend not to respond. (Rep. Dawn Copeland) Smith, J.
June	12	STATEMENT of defts. Bell, et al. interrogatories sought to be compelled; table of contents; attachment 1. "Let this be filed." (FIAT) Smith, J.
June	18	STATEMENT of pltf. Black Panther Party and Huey P. Newton why defts. motion to compel should be denied; appendix.
Aug	6	OPINION. (N) Smith, J.
Aug	6	ORDER filed 8-6-79 partially granting motion of defts. Bell, et al. to compel discovery and further that pltf. Black Panther Party and Huey P. Newton shall have 60 days from the date of this order in which to provide any further responses. (See for further details) (N) Smith, J.
Oct	3	MOTION by pltf. Black Panther Party and Huey P. Newton for an extension of time in which to respond to portions of court's order of Aug. 6, 1979
Oct	5	MEMORANDUM of P&A's by pltf. in support of responses to 107 interrogatories as ordered by this court on Aug. 6, 1979.
Oct	5	FURTHER supplemental response by pltf. to 107 interrogatories as ordered by court on Aug. 6, 1979; affidavit

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. <u>76-2205</u>
THE BLACK PANTHER PARTY, et al	EDWARD LEVI, et al.	PAGE <u>18</u> OF <u>    </u> PAGES

DATE	NR.	PROCEEDINGS
1979 Oct	5	SUPPLEMENTAL response of plttf. to Federally represented defts. first request for production of documents; attachment.
Oct	12	OPPOSITION of defts., except defts. #6 & 7, to plttfs. motion for extension of time in which to respond to the court's Aug. 6, 1979 order.
Oct	24	REPLY by plttfs. Black Panther Party and Newton, to opposition of defts. Civiletti, et al. to plttfs. motion for an extension of time in which to respond to portions of court's order dated Aug. 6, 1979.
Oct	31	MEMORANDUM of P&A's by defts. Civiletti, et al (except Sullivan and Moore) in support of renewed motion of said defts. for the sanctions of dismissal of plttfs. Black Panther Party's and Newton's claims and for costs; MOTION of defts. Civilette, et al (except Sullivan and Moore) for the sanction of dismissal of plttfs. Black Panter Party's and Newton's claims for costs .
Nov	1	FURTHER supplemental responses by plttf. Black Panther Party based upon a search of "The Black Panther" newspaper from 1967 thru 1970 as ordered by this court on Aug. 6, 1979.
Nov	1	ATTACHEMENTS by defts. Civiletti, et al (except defts. Moore 7 Sullivan), to P&A's in support of renewed motion of said defts. for the sanction of dismissal of plttfs. Black Panther Party's and Newton's claims and for costs (filed Oct. 31, 1979); attachments 1 & 2.
Nov	7	CHANGE of address for Joseph E. Casey, counsel for Marion Sullivan Admin. of estate of William C. Sullivan (deft. #6), to 1435 G St., N.W., 20005, Ph. 223-5750. CAL/N.
Nov	8	FURTHER supplemental responses by plttf. Huey P. Newton to interrogatories as ordered by this court on Aug. 6, 1979. "Let this be filed." (FIAT) Smith, J.
Nov	8	CHANGE of address for Mark H. Lynch, counsel for plttfs., to 122 Maryland Ave., N.E., 20002, Ph. 544-5380. CAL/N.
Nov	09	STATEMENT by plttfs. Black Panther Party and Huey P. Newton why motion of defts. Civiletti, et al. for the sanction of dismissal should be denied; table of contents; table of authorities; attachments 1 & 2.
Nov	13	REPLY by defts. (except Moore and Sullivan) to opposition to renewed motion of defts. Civiletti, et al., for the sanctions of dismissal of plttfs. Black Panther Party's and Newton's claims and for costs; attachment.
Nov	13	MOTION of plttf. for an extension of time heard and granted. (Rep. Dawn Copeland) Smith, J.

see next page



**CASE CLOSED**

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. <u>76-2205</u>
THE BLACK PANTHER PARTY, et al	EDWARD LEVI, et al.	PAGE <u>19</u> OF <u>    </u> PAGES

DATE	NR.	PROCEEDINGS
1979 Nov	14	ORDER filed Nov. 13, 1979 granting plttfs. Black Panther Party and Huey P. Newton's motion for an extension of time in which to respond to portions of this court's order dated Aug. 6, 1979, further plttf. Newton shall respond to part four of said order by Nov. 4, 1979. (see for details) (N) Smith, J.
Dec	03	FURTHER SUPPLEMENTAL RESPONSES by plttf., Black Panther Party based upon a search of "The Black Panther" newspaper as ordered by this court on August 6, 1979.
Dec	10	RENEWED MOTION of defts. Civilette, et al for sanctions of dismissal of plttf's Black Panther Party and Newton's claims heard and taken under advisement. (Rep. Dawn Copeland) Smith, J.
Dec	28	MOTION by plttfs. for an extension of time to file further responses to discovery.
1980 Jan	4	ORDER filed Jan. 2, 1980 granting plttf. Black Panther Party's motion for extension of time to file further responses to discovery based on search of the Black Panther Newspaper years 1975 thru and including 1979 to and including Jan. 4, 1980. (N) Smith, J.
Jan	4	FURTHER supplemental responses by plttf. Black Panther Party based upon a search of "The Black Panther" Newspaper from 1975 thru 1979 as order by this court on Aug. 6, 1979.
Jan	25	MEMORANDUM. (N) Smith, J.
Jan	28	ORDER filed Jan. 25, 1980 granting defts. motion to dismiss; requiring plttfs. to pay defts. reasonable expenses in bringing this motion, including attorneys fees. (N) Smith, J.
Feb	1	MOTION of plttfs. to amend judgment or, alternatively, to direct entry of final judgment pur. to Rule 54(b)
Feb	12	RESPONSE of defts. Civiletti, et al to motion of plttfs. to amend judgment pur. to Rule 59(e) or, alternatively, to direct entry of Final Judgment pur. to Rule 54(b).
Feb	14	AMENDED ORDER and Final Judgment filed Feb. 13, 1980 granting defts. motion to dismiss and for costs and that allnamed plttfs to this action are dismissed and Black Panther Party and Huey P. Newton shall pay defts. reasonable expenses in bringing this motion and including attorneys fees. (N) Smith, J.
Feb	20	STATEMENT of expenses by attorneys for defts.; declarations (2)
Feb	27	MEMORANDUM by plttfs. in opposition to defts. statement of expenses; Exhibit 1.

...see next page...

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. <u>76-2205</u>
THE BLACK PANTHER PARTY, et al.	EDWARD LEVI, et al.	PAGE <u>20</u> OF _____ PAGES

DATE	NR.	PROCEEDINGS
1980 Mar	12	ORDER deferring the adjudication of the amount of debts'. attorney's fees is deferred pending ruling on ptlfs. appeal. (N) (signed 03-11-80) SMITH, J.
Mar	14	NOTICE of Appeal by plttffs. from orders of Jan. 25, 1980 and Feb. 13, 1980; \$5.00 filing fee and \$65.00 USCA docketing fee paid and credited to the U.S.; copy sent to Joseph E. Casey, Larry Gregg and William L. Stauffer, Jr.
Mar	17	COPY of notice of appeal and docket entries sent to USCA: USCA # <u>80-1302</u>
Apr.	10	RECORD on appeal delivered to USCA; Receipt ack.
May	28	TRANSCRIPT of proceedings of May 29, 1979 ; pages 1-41; (Rep: Dawn T. Copeland); court copy
May	28	TRANSCRIPT of proceedings of May 25, 1977; pages 1-37; (Rep: Dawn T. Copeland); court copy
May	30	SUPPLEMENTAL record on appeal delivered to USCA; ack receipt 80-1302.
June	6	STIPULATION to correct the record on appeal in U.S.Court of Appeals for the District of Columbia Circuit Civil No. 80-1302; attachments(5), approved. SMITH, J. (signed 5-14-80)
June	6	SUPPLEMENTAL RECORD on appeal delivered to USCA; Receipt ack.

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Acting Assistant Attorney General  
Civil Division  
Attention: Larry L. Gregg, Esq.

July 27, 1981

Assistant Director - Legal Counsel  
Federal Bureau of Investigation

FEDERAL GOVERNMENT

BLACK PANTHER PARTY v.  
WILLIAM FRENCH SMITH, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 76-2205  
(D.C. CIR.)  
COURT OF APPEALS NO. 80-1302

Reference is made to the telephone conversation between Department of Justice (DOJ) Attorney Larry L. Gregg and Special Agent (SA) [redacted] on July 17, 1981.

Pursuant to the referenced telephone call, your office requested comments regarding whether a Motion for Rehearing En Banc should be made or whether Certiorari should be sought by the Government in this matter.

BACKGROUND

The Black Panther Party (BPP) and several of its members filed suit in the United States District Court for the District of Columbia on December 2, 1976, against 20 present and former Government officials in their individual and official capacities representing six Government agencies. The suit charged the defendants with conspiring to destroy the BPP and harass its members and in the process defendants had violated various Constitutional rights of the plaintiffs as well as several statutory proscriptions.

Lengthy discovery has been conducted by both sides in this action. The plaintiff has served 48 interrogatories on the Government and has made four requests for documents resulting

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SEE NOTE PAGE FOUR

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- Exec AD Adm. \_\_\_\_\_
- Exec AD LES \_\_\_\_\_
- Asst. Dir.:
- Adm. Servs. \_\_\_\_\_
- Crim. Inv. \_\_\_\_\_
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- Laboratory \_\_\_\_\_
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Acting Assistant Attorney General  
Civil Division  
Re: BLACK PANTHER PARTY...

in their receiving 40 volumes of expurgated documents. The Government took a very aggressive posture, serving 244 interrogatories on the BPP and 82 on plaintiff Huey Newton. The failure by plaintiffs to adequately answer the interrogatories served on them resulted in a Court Order dated August 6, 1979, requiring clarification of many of their previous responses and further demanding answers to questions not previously answered due to plaintiffs' claims of Constitutional privilege under the First and Fifth Amendments. Plaintiffs' refusal to comply fully with that Order led the Government to request sanctions against the plaintiffs. On January 25, 1980, United States District Judge John Lewis Smith, Jr., dismissed the case based upon plaintiffs' noncompliance with his August 6, 1979, Order.

The District Court found that the BPP's supplemental responses to the Government's interrogatories were fatally defective, that some interrogatories should have been answered by the BPP's individual officers and not an agent named by the BPP, that the BPP could not refuse to produce the names of party members not publicly known and that plaintiff Huey Newton could not claim the Fifth Amendment privilege and still maintain this action, all in violation of its Order of August 6, 1979. The Court found that in view of the conscious disregard of its August 6, 1979, Order the sanction of dismissal was appropriate and further that plaintiff was not substantially justified in failing to comply with its Order and should pay reasonable expenses including attorney's fees, incurred by the defendants in bringing this motion.

In its Opinion dated July 8, 1981, the United States Court of Appeals for the District of Columbia Circuit in its decision in this case styled *The Black Panther Party, et al., v. William French Smith, Attorney General of the United States, et al.*, (D.C. Cir.) Court of Appeals Number 80-1302, reversed or remanded with instructions, virtually every decision made by the District Court, except that preventing the BPP from converting this suit to a class action suit due to their failure to file that motion in a timely fashion. It should be noted that one of the three judges on the panel dissented strongly in a 20-page Opinion which concurred in part and dissented in part.

To date 40 volumes of material, consisting of several thousand pages, have been turned over to plaintiffs during discovery. This is only a small portion of the approximately 1,448,240 pages of FBI documents within the scope of discovery.

Acting Assistant Attorney General  
Civil Division  
Re: BLACK PANTHER PARTY...

In addition to this, should the case be remanded under the existing opinion there is the possibility of additional voluminous discovery taking place on both sides in the form of numerous interrogatories and depositions. Should the BPP be successful in its discovery attempts and the final decision in this suit the Government defendants would not only have been put through an extraordinary expenditure of manpower and effort in defending this suit but would also be exposed to plaintiff's request for punitive and compensatory damages in excess of \$200,000. We are of the opinion that the actions and decisions of the FBI can be successfully defended, but are fully aware of the possibility of the Court throwing the plaintiff a "bone" in such matters.

As a result of the referenced telephone conversation and the self-evident legal research expended during the four and one-half years of submitting motions and memoranda to the Court, no decision of the legal issues involved is being included herein, but will be provided at the request of DOJ Attorney Gregg, if needed.

#### RECOMMENDATION OF THE FBI

Pursuant to the referenced telephone conversation between DOJ Attorney Gregg and SA [redacted] the FBI is in concurrence with the decision of DOJ Attorney Gregg to seek a Rehearing En Banc or apply for Certiorari. We are of the opinion that a Rehearing En Banc would be the most appropriate step and that the instant case meets the requirement for such a motion under Rule 35(a)(1) and (2), Federal Rules of Appellate Procedure. As pointed out in the dissent there is a lack of uniformity of opinion as to the legal questions at issue and the proceeding does involve a question of exceptional importance. Primarily at issue are the matters of the power of a Federal District Court Judge to control discovery taking place before him when steps toward that end are not prohibited by the Federal Rules of Civil Procedure, and precise guidelines for the District Court to follow in ordering a party to comply with discovery in spite of a claimed privilege when the sanction for not doing so would possibly be dismissal. While a total affirmance of the lower court's decision would be the optimum result of a Rehearing En Banc, a minimal result would be a partial affirmance of the lower court's decision or at least a more definitive set of guidelines for the District Court to follow on remand, either of which could result in a savings of effort in future proceedings.

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Acting Assistant Attorney General  
Civil Division  
Re: BLACK PANTHER PARTY...

NOTE: Civil Division has advised that it was preparing and would seek a Rehearing En Banc and requested that the agencies involved supply it with recommendations to that effect to support its request for authority to file such a motion. A copy of the Court of Appeals' Opinion in this case is being attached to the yellow copy only for inclusion in our files.

APPROVED:	Adm. Servs. _____	Laboratory _____
	Crim. Inv. _____	Legal Coun. _____
Director _____		Rec. Mgnt. _____
Exec. AD-Adm. _____	Ident. _____	Tech. Servs. _____
Exec. AD-Inv. _____	Inspection _____	Training _____
Exec. AD-LRS _____	Intell. _____	Off. of Cong. & Public Affs. _____

*B/PA*

ENCLOSURE TO OUTGOING MEMO TO ACTING ATTORNEY GENERAL,  
CIVIL DIVISION FROM LCD DATED 7-24-81 CAPTIONED  
BLACK PANTHER PARTY v. WILLIAM FRENCH SMITH, et al.,  
(U.S.D.C., D.C.), CIVIL ACTION NO. 76-2205, (D.C. CIR.),  
COURT OF APPEALS NO. 80-1302.

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ENCLOSURE

162-117442-228

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

## United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1302

THE BLACK PANTHER PARTY, *et al.*, APPELLANTS

v.

WILLIAM FRENCH SMITH,  
Attorney General of the United States, *et al.*

Appeal from the United States District Court  
for the District of Columbia

(D.C. Civil Action No. 76-2205)

Argued February 13, 1981

Decided July 8, 1981

*Bruce J. Terris*, with whom *Susan B. Drake* was on  
the brief, for appellants.

*Larry L. Gregg*, Attorney, Department of Justice, with  
whom *Alice Daniel*, Assistant Attorney General at the

Bills of costs must be filed within 14 days after entry of judgment. The  
court looks with disfavor upon motions to file bills of costs out of time.

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time the brief was filed, *Thomas S. Martin*, Acting Assistant Attorney General at the time the brief was filed, and *Barbara H. Herwig* and *R. Joseph Sher*, Attorneys, Department of Justice, were on the brief, for all appellees except *George C. Moore* and *William C. Sullivan*.

*William L. Stauffer, Jr.* for appellee *George C. Moore*.

*Bennett Boskey* entered an appearance for appellee *Edward Levi*.

Before *WRIGHT*, *MACKINNON*, and *GINSBURG*, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge WRIGHT*.

Opinion concurring in part and dissenting in part filed by *Circuit Judge MACKINNON*.

*WRIGHT, Circuit Judge*: In this appeal we confront a number of issues relating to pretrial procedure, including the important question whether civil litigants may refuse to respond to interrogatories on the ground of constitutional privilege. The case began when the Black Panther Party (the Party), Huey P. Newton, and other individuals sued the United States and various government officials, alleging that they had unlawfully conspired to destroy the Party.<sup>1</sup> After presiding over several years of bitterly fought discovery battles, the District Court granted a government motion to dismiss the Party's action.<sup>2</sup> It reasoned that dismissal was appropriate because the Party had: (1) unjustifiably claimed a First Amendment privilege and refused to answer several interrogatories that would have required it to reveal the names of Party members whose names were not known to the public; (2) failed to clarify answers to

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<sup>1</sup> See Amended Complaint, reprinted at Joint Appendix (JA) 24-53.

<sup>2</sup> See Memorandum and Order of January 25, 1980, reprinted at JA 1131.

interrogatories that the District Court believed to be inconsistent or evasive; and (3) disobeyed a discovery order requiring individual Party officers to respond to interrogatories originally served on the Party itself.<sup>3</sup> The District Court also dismissed Huey Newton, ruling that he had improperly asserted the Fifth Amendment privilege against self-incrimination when he refused to answer several interrogatories.<sup>4</sup> Finally, it dismissed all other plaintiffs.<sup>5</sup>

The Party, Newton, and the other plaintiffs now challenge these dismissals. They also appeal the District Court's decision to award to appellees the costs and attorney fees incurred in bringing the motion to dismiss,<sup>6</sup> the decision to grant summary judgment in favor of government officials who held office after 1973,<sup>7</sup> and the decision to deny a motion for an extension of time in which to file for class action certification.<sup>8</sup> For the reasons stated below, we reverse the dismissals, the decision to award attorneys fees and costs, and the decision to grant summary judgment. We affirm the denial of the

<sup>3</sup> See *id.* at JA 1132-1134, 1136.

<sup>4</sup> See *id.* at JA 1135-1136.

<sup>5</sup> See Amended Order and Final Judgment of February 13, 1980, reprinted at JA 1144.

<sup>6</sup> See Memorandum and Order of January 25, 1980, JA 1131, 1136-1137.

<sup>7</sup> See Order of July 27, 1978, reprinted at JA 253.

<sup>8</sup> See Order of May 26, 1977, reprinted at JA 56. The Party, Newton, and the other plaintiffs below also challenge the District Court's decision to postpone consideration of their motion to compel production of documents by appellees until after it had considered appellees' motion to compel further responses to interrogatories. See Transcript of Proceedings, Hearing of November 22, 1978, reprinted at JA 609, 626-627. As we explain below, see Part VI-C *infra*, we need not reach this issue.

motion for an extension of time in which to file for class certification. The case is remanded for further proceedings consistent with our decision.

## I. BACKGROUND

### A. *The Complaint*

Plaintiffs-appellants are the Party, Newton, the Party's founder, and various other Party members and supporters.<sup>9</sup> In December 1976 they filed a complaint seeking declaratory and injunctive relief on behalf of themselves and two classes: all individuals who had been or continued to be members of the Party, and all individuals who had provided political or financial assistance to the Party.<sup>10</sup> The Party and Newton also sought money damages.<sup>11</sup> Defendants-appellees are the United States and various government officials, including past and present Directors of the Central Intelligence Agency and the Federal Bureau of Investigation, Attorneys General, Secretaries of the Treasury, Postmasters General, and Com-

<sup>9</sup> These individuals include Party supporters Donald Freed, Berton Schneider, Thomas and Flora Gladwin, John George, and Father Earl Neil. John and Elizabeth Huggins, who sued on behalf of their son, deceased Party member John Huggins, are also appellants. Elaine Brown, who was Party chairperson at the time the suit was filed, was a plaintiff below but has not joined this appeal. See appellants' brief at 3; Amended Complaint at JA 27-28.

<sup>10</sup> See *id.* at JA 31-33, 51-53. The Party, Huey Newton, Elaine Brown, and John and Elizabeth Huggins, see note 9 *supra*, sought to represent the class of past and present Party members. Donald Freed, Berton Schneider, Thomas and Flora Gladwin, John George, and Father Neil, see note 9 *supra*, sought to represent the class of past and present Party supporters.

<sup>11</sup> See Amended Complaint at JA 53. Elaine Brown also asked for money damages.

have been that the officers prepared such documents in the first place and might have an excellent recollection thereof.

### *Interrogatory 103:*

Identify all documents which discuss, refer to, plan, or in any way mention hijacking airplanes by Party or Party affiliate members.

### *Response:*

Plaintiff has no such documents which plan hijacking airplanes by the Party or affiliates. However, mention of such activity has been made in articles which have appeared in the "Black Panther" newspaper.

(App. 135). The comment made as to Interrogatory 102 is equally applicable here.

### *Interrogatory 104:*

Identify all documents which discuss, refer to, plan, or in any way mention ambushes of or gun battles with police or other law enforcement officers by Party or Party affiliate members.

### *Response:*

Plaintiff has no such documents except for issues of the "Black Panther" which report on police or other government agency activities against the Party or affiliates.

(App. 135). Same comment as to Interrogatory 102, *supra*.

K) the placement of a boobytrapped toolbox in Des Moines, Iowa on or about August 1, 1970; and/or

L) the killing, by way of boobytrapped suitcase, of police officer Larry Minard at 2867 Ohio Street in Omaha, Nebraska on or about August 17, 1970.

*Response:*

Plaintiff is not aware of any such documents.

(App. 133-134).

Since the awareness of the Party representative is somewhat limited, those with firsthand knowledge going back beyond her time with the Party may be required to respond. If such documents exist, many of the officers might have personally prepared them. The specificity of this interrogatory and Kelley's statement that she is not "aware" of any such documents fully justifies requiring each Party officer to respond to this interrogatory.

*Interrogatory 102:*

Identify all documents which discuss, refer to, plan, or in any way mention the use of explosive devices by Party or Party affiliate members.

*Response:*

Plaintiff has no such documents which plan the use of explosive devices by the Party or affiliates. However, mention of such devices has been made from time to time in various articles printed in the "Black Panther" newspaper.

(App. 134-135).

The response that the plaintiff has no such documents is not a complete answer to the question or the request to "identify all documents." Each officer and spokesman may be required to respond to this inquiry because of the importance of the information and because it well might

missioners of the Internal Revenue Service.<sup>12</sup> Present officials were sued in their official and individual capacities. Past government officials were sued only in their individual capacities.<sup>13</sup>

In their complaint appellants alleged that since 1968 the appellees and other unknown government employees had engaged in a continuing conspiracy to destroy the Black Panther Party, in violation of the Constitution and various statutes.<sup>14</sup> They stated that they first learned

<sup>12</sup> The defendants-appellees include the present Attorney General and former Attorneys General Benjamin Civiletti, Griffin Bell, Edward Levi, and John Mitchell; former Assistant Attorney General for Internal Security Robert Mardian; present FBI Director William Webster and past FBI Director Clarence Kelley; past Assistant Director of the FBI William Sullivan; past Chief of the Racial Intelligence Section of the FBI George Moore; the present CIA Director and past Directors Stansfield Turner, George Bush, William Colby, and Richard Helms; the present Secretary of the Treasury and past Secretaries G. William Miller, W. Michael Blumenthal, and William Simon; the present Director of the Bureau of Alcohol, Tobacco & Firearms of the Treasury Department and past Directors Rex Davis and Harold Serr; the present IRS Commissioner and past Commissioners William Williams, Donald Alexander, Randolph Thrower, and Johnnie Walters; past Secretaries of the Army Clifford Alexander and Howard Calloway; Assistant Chief of Staff for Army Intelligence Harold R. Aaron; the present Postmaster General and past Postmasters General Benjamin Bailar and William Blount; and past Assistant to the President Tom Charles Houston. See appellees' brief at viii; Amended Complaint at JA 29-30. Also named as defendants below were unnamed employees of the Department of Justice, the FBI, the CIA, the Treasury Department, the Executive Office of the President, the Department of the Army, the Postal Service, and other federal agencies that took part in the alleged conspiracy. See *id.* at JA 30-31.

<sup>13</sup> See *id.* at JA 31.

<sup>14</sup> In particular, they claim that appellees have violated the Fourth, Fifth, and Ninth Amendments to the Constitution, the Civil Rights Act, 42 U.S.C. § 1985 (1976), the National Secu-

of the existence of this conspiracy in 1976, when the Senate Select Committee to Study Government Operations with Respect to Intelligence Activities published a report entitled *Intelligence Activities and the Rights of Americans*, S. Rep. No. 755, 94th Cong., 2d Sess., Books II and III (Senate Report).<sup>15</sup> According to appellants, this report reveals that the FBI formed a special counter-intelligence program called COINTELPRO primarily to "expose, disrupt, misdirect, discredit or otherwise neutralize the activities of black nationalists."<sup>16</sup> Appellants suggested that through this program the FBI orchestrated efforts to undermine the Party.<sup>17</sup>

Appellants conceded that they lacked specific details about the nature and scope of the conspiracy against the Party; they stated that they hoped to obtain further information through use of discovery.<sup>18</sup> Relying in part on information provided in the Senate Report, however, they were able to allege a number of specific activities.<sup>19</sup>

Act of 1947, 50 U.S.C. § 403 (1976), the Internal Revenue Act, 26 U.S.C. § 7605 (1976), the Postal Service Act, 39 U.S.C. § 403 (1976), and the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520 (1976), 47 U.S.C. § 605 (1976). See Amended Complaint at JA 26.

<sup>15</sup> See *id.* at JA 33-36; appellants' brief at 5.

<sup>16</sup> See Amended Complaint at JA 33.

<sup>17</sup> *Id.* at JA 33-34.

<sup>18</sup> *Id.* at JA 35.

<sup>19</sup> *Id.* More specifically, appellants seem to have based their complaint primarily on information contained in two chapters of this report. The first, entitled "COINTELPRO: The FBI's Covert Action Programs Against American Citizens," S. Rep. No. 755, 94th Cong., 2d Sess., Book III, at 1-77 (Senate Report), describes the FBI's counterintelligence programs in general terms. The second, entitled "The FBI's Covert Action Program to Destroy the Black Panther Party," *id.* at 185-223, focuses on the actions taken against the Party. Appellants also stated that they learned of various actions through independent sources. See Amended Complaint at JA 36.

indications of our disagreement with the repressive and illegal activities of such government officials. See responses for Interrogatories 88-90.

(App. 129).

Same comment as to Interrogatory 89.

*Interrogatory 101:*

Identify all documents which discuss, refer to, plan, or in any way mention the following:

A) the theft of approximately 1000 pounds of dynamite from Quick Supply in Ankeny, Iowa on or about May 5, 1970;

B) the acquisition, storage, handling, or use of any dynamite, including but not limited to dynamite taken from Quick Supply or 2½" by 16" dynamite, by members of the Omaha, Nebraska or Des Moines, Iowa Chapters or National Committees to Combat Facism;

C) the bombing of the Des Moines, Iowa Police Department on or about May 13, 1970;

D) the bombing of the Ames, Iowa Police Department on or about May 22, 1970;

E) the bombing of the Chamber of Commerce building in Des Moines, Iowa on or about June 13, 1970;

F) the burglary of the Holm gun shop in Des Moines, Iowa on or about June 13, 1970;

G) the placement of an explosive boobytrap device beneath a freeway bridge in Des Moines, Iowa on or about June 21, 1970;

H) the bombing of the Drake University science hall in Des Moines, Iowa on or about June 29, 1970;

I) the bombing of the North Assembly police station in Omaha, Nebraska on or about June 11, 1970;

J) the bombing of Components Concept Corporation in Omaha, Nebraska on or about July 2, 1970;

this information is vital to determining the true character of the party and inquires specifically as to any acts by "officers," all officers may be required to personally respond to this interrogatory.

*Interrogatory 89:*

Identify all documents originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that members or others should kill police officers.

*Response:*

No such documents exist. While defendants may believe that such documents exist, this again reflects defendants failure to understand that statements of the Party are frequently to be understood rhetorically and not literally.

(App. 128).

The claim that no such documents exists is implicitly contradicted by the statement that defendants do not understand *rhetorical* statements. Thus the Party officers who were directing the activities of the party may be compelled to respond to the interrogatory.

*Interrogatory 91:*

In addition to the statement by Party Chief of Staff David Hilliard reported in the November 22, 1969 issue of "The Black Panther," identify all documents originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that members or others should kill Richard Nixon, Lyndon Johnson, or other officials of government.

*Response:*

No such documents exist. The November 22, 1969 article and any similar comments are rhetorical

They complained of unlawful mail openings, warrantless wiretaps and break-ins, and burglaries.<sup>20</sup> Appellants contended that the government, with the assistance of local law enforcement agencies, harassed and even assassinated Party officers, members, and supporters.<sup>21</sup> They further suggested that appellees had incited dissension within the Party through use of anonymous letters, paid informants, and *agents provocateurs*.<sup>22</sup> They alleged that appellees also instigated violent confrontations between the Black Panthers and other black organizations.<sup>23</sup> Finally, they claimed that appellees deterred contributions to the Party, crippled the Party newspaper, *The Black Panther*, discouraged press coverage of Party activities, and sabotaged the Party's public service programs.<sup>24</sup>

At the conclusion of their complaint appellants asked the District Court to enter a declaratory judgment finding that appellees had violated their constitutional and statutory rights. They also requested that appellees be enjoined from taking any further action to undermine the Party or harm its members and supporters. The Party and Newton each asked for \$50 million in compensatory damages and \$50 million in punitive damages.<sup>25</sup>

<sup>20</sup> See *id.* at JA 37.

<sup>21</sup> *Id.* at JA 37-41, 47-49.

<sup>22</sup> *Id.* at JA 42-43.

<sup>23</sup> *Id.* at JA 39-41.

<sup>24</sup> *Id.* at JA 43-47.

<sup>25</sup> *Id.* at JA 51-53. Elaine Brown also requested \$50 million in compensatory and \$50 million in punitive damages. As we noted earlier, Elaine Brown is not participating in this appeal. See note 9 *supra*.

B. *Proceedings Below*

Discovery battles and other pretrial disputes consumed almost three years.<sup>26</sup> On May 26, 1977 the District Court denied appellees' motions to dismiss and directed the action to proceed to discovery. It also denied appellants' motion for an extension of time in which to move for class action certification, invoking Local Rule 1-13(b), Rules of the United States District Court for the District of Columbia.<sup>27</sup> Local Rule 1-13(b) provides that motions for class action certification must be made within 90 days of the filing of the complaint.<sup>28</sup> Appellants filed a request for production of documents during the same month. They withdrew this request shortly thereafter in favor of a second request.<sup>29</sup> Later, after appellees complained about the breadth of the second request and moved for a protective order, appellants filed a superseding third request.<sup>30</sup> At the same time the parties agreed

<sup>26</sup> Appellants filed their complaint on December 1, 1976. All appellants were finally dismissed on February 14, 1980. See Docket of Proceedings, reprinted at JA 1.

<sup>27</sup> See Order of May 26, 1977 at JA 56.

<sup>28</sup> Local Rule 1-13(b) states, in pertinent part:

Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, the plaintiff shall move for a certification under Rule 23(c)(1), Federal Rules of Civil Procedure, that the case may be maintained as a class action. \* \* \*

<sup>29</sup> See appellants' brief at 10; appellees' brief at 4-5; see also First Request by Plaintiffs for Production of Documents, May 20, 1977, Record (R) 30.

<sup>30</sup> See Motion by Defendants for a Protective Order, July 14, 1977, R 55; Third Request by Plaintiffs to Defendants for Production of Documents, November 3, 1977, R 85. In their third request appellants asked the FBI, the CIA, the Treasury Department (including the IRS and the Bureau of Alcohol, Tobacco & Firearms), the Department of the Army, and the United States Postal Service to produce a variety of documents pertaining to the Black Panther Party or to Huey Newton.

bazookas, M-79 grenade launchers, dynamite and plastic explosives which have been stored at any time in an office of the Black Panther Party or any affiliate for each year beginning with 1966.

*Response:*

See response to Interrogatory 79.

(App. 126).

This reply is not responsive and the individual officers and spokesmen may be required to respond thereto. The question is directed at information that is material to determining the character of the organization being investigated and the knowledge of the officers of the activities of the organization is material and relevant.

*Interrogatory 88:*

In addition to the article appearing in the March 21, 1970 issue of "The Black Panther", identify all documents originated by the Party, its officers, or any affiliate which reflect statements, suggestions, orders, or policy that American troops in Vietnam should kill their officers, General Abrams and/or his staff.

*Response:*

No such documents exist. If there was any statement on this general subject it would have appeared in the "Black Panther". However, the article of March 21, 1970, and any other similar article, are rhetorical in the idiom of the Black and poor community and reflect the Party's disagreement with the United States Government's participation in the war in Vietnam.

(App. 128).

The party's claim that such statements were "rhetorical" is in effect an admission of their existence. Since

*Response:*

Within the limits of the law and the Constitution, the right to bear arms and defend one's home and property was not discouraged.

(App. 124).

The response of the plaintiff hedges its answer. To the extent that it existed Party officers and spokesmen would have individual knowledge of the information here requested and they should be required to state whether such activity was "required by any formal or informal rule or encouraged." If it was encouraged, they would be the most likely ones to encourage such activity—hence they may have a peculiar ability to respond to this interrogatory.

*Interrogatory 79:*

For each year beginning in 1966, identify which offices of the Black Panther Party or its affiliates have had revolvers, rifles, machine guns, shotguns, other firearms, hand grenades, bazookas, M-79 grenade launchers, dynamite, and/or plastic explosives stored in that office.

*Response:*

Plaintiff has no records or other means of identifying which offices or affiliates, if any, have had such materials stored.

(App. 125-126).

This reply is not responsive to the question. The interrogatory seeks information that was directly related to the activities of Party officers and they should be required to respond to the extent of their individual knowledge.

*Interrogatory 80:*

Identify (by make or type, model and, where appropriate, serial number) all revolvers, rifles, machine guns, shot guns, other firearms, hand grenades,

that discovery would take place in "waves." During the initial wave they planned to limit their discovery to requests for documents and interrogatories; they would have an opportunity to take depositions during subsequent waves.<sup>31</sup>

In July 1977, before initiating any discovery, the government officials who had held office after 1973 moved for summary judgment on the ground that they could not have been involved in any of the acts alleged. They filed affidavits setting forth the dates on which they assumed office and disclaiming any knowledge of or participation in a conspiracy against appellants.<sup>32</sup> Appellants responded with an affidavit of counsel under Rule 56(f) of the Federal Rules of Civil Procedure, stating that they needed further discovery before they could respond to appellees' motion for summary judgment.<sup>33</sup> They also noted that the affidavits of three of the post-1973 officials, former Postmaster General Benjamin Bailar, former Attorney General Edward Levi, and former Internal Revenue Service Commissioner William Williams, raised new issues of material fact, since they seemed to concede involvement in investigations of the Black Panther Party. Finally, appellants noted that

<sup>31</sup> See Stipulation of November 15, 1977, R 89.

<sup>32</sup> See Motion by Defendants Griffin Bell, W. Michael Blumenthal, Clifford Alexander, Stansfield Turner, Benjamin Bailar, Edward Levi, George Bush, William Simon, and William Williams for Summary Judgment, July 14, 1977, R 56.

<sup>33</sup> See Affidavit Pursuant to Rule 56(f) of Bruce J. Terris, Attorney for Plaintiffs, R 71. Rule 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.



their complaint alleged a continuing conspiracy, and that at least one overt act had occurred after 1973.<sup>34</sup> The District Court decided to grant this motion in July 1978, observing that the officials' affidavits supported their claims of noninvolvement, and that appellants had failed to file an evidentiary submission of their own, even though they had been given "ample opportunity" to take discovery since filing their affidavit of counsel.<sup>35</sup>

Appellees served 244 interrogatories on the Party on January 31, 1978. Three months later they served 82 interrogatories on Huey Newton.<sup>36</sup> On June 12, 1978

<sup>34</sup> See Memorandum of Points and Authorities in Opposition to Motion of Certain Defendants for Summary Judgment, R 71 at 9-17.

<sup>35</sup> See Order of July 27, 1978, JA 253-254.

<sup>36</sup> See Federal Defendants' First Interrogatories to Plaintiff Black Panther Party, January 31, 1978, R 105; Federal Defendants' First Interrogatories to Plaintiff Huey P. Newton, April 18, 1978, R 139. Appellees also requested documents from the Party and Newton. See Response of Plaintiff Black Panther Party to Federal Defendants' First Request for Production of Documents, July 24, 1978, reprinted at JA 215; Response of Plaintiff Huey P. Newton to Federal Defendants' First Request for Production of Documents, July 24, 1978, reprinted at JA 215; Response of Plaintiff Huey P. Newton to Federal Defendants' First Request for Production of Documents, July 24, 1977, reprinted at JA 251. In addition, interrogatories were served on the other plaintiffs. See Federal Defendants' Interrogatories to Plaintiffs Schneider, Neil, Gladwin, Freed, Huggins, and George, June 12, 1978, R 146. Neither the document requests nor the interrogatories served on the other plaintiffs are at issue here. Defendant-appellee George Moore, former Chief of the Racial Intelligence Division of the FBI, served separate sets of interrogatories on the Party and Newton. See Defendant George Moore's Interrogatories to Plaintiffs, August 29, 1977, R 69. Moore also made other discovery requests. See generally Docket of Proceedings, JA 1-15. None of Moore's requests is at issue here.

to this inquiry. They well might know the present address of the named individual. A recent newspaper story reported he was in Seattle.

*Interrogatory 72:*

Did Party members ever give the Party, or its officers, a percentage of moneys and/or goods which had ben taken without an exchange of consideration?

*Response:*

No.

(App. 124).

This interrogatory is aimed directly at Party "officers" and to transactions between them and the Party. It requests information that the officers are peculiarly equipped to supply if any exists. Each Party officer may be required to respond to this interrogatory.

*Interrogatory 73:*

Identify all documents which reflect the receipt of such a percentage by the Party or its officers, including but not limited to documents which either commend or criticize members in connection with the receipt of such a percentage or the failure to pay a percentage.

*Response:*

There are no such documents.

(App. 124).

Same position as the comment to Interrogatory 72.

*Interrogatory 75:*

Were Party members or officers required by any formal or informal rule or encouraged to obtain, carry, and/or train with firearms?

to nation-wide harrassment of repression against the Party.

*Response:*

See responses to Interrogatories 58 and 59.

(App. 120).

Since the Party claims not to have any information concerning these matters it is proper to ask the Party officers and former spokesmen to respond to such interrogatories to the extent of their ability.

*Interrogatory 67:*

With regard to those documents identified in answer to interrogatories 62 and 63 which are not retained by the national office, identify which persons or organization (including affiliates) might have the documents.

*Response:*

Plaintiffs are not aware of any other organization or affiliate that might be in possession of these documents with the exception of the defendants.

(App. 122-123). Since the Party claims it is not able to furnish this information it is perfectly proper to ask those who controlled of the party and directed its operation to furnish such information as they may have in connection therewith.

*Interrogatory 70:*

Provide the present address of Bobby Seale.

*Response:*

Plaintiff does not have the present address of Bobby Seale.

(App. 123).

Since the plaintiff claims not to have this information it is perfectly proper to make the Party officers respond

appellees moved to dismiss the Party and Newton under Rule 37(d), Federal Rules of Civil Procedure, because their responses to the interrogatories were late. Appellants responded by stating that answers would be filed by July 24. Answers were actually provided on July 27, 1978.<sup>37</sup> The Party's answers, which were prepared by one of its officers, Joan Kelley, were more than 100 pages in length.<sup>38</sup> It refused to answer several interrogatories that would have required it to reveal the names of Party members whose identities were not known to the public, claiming that the information was privileged under the First Amendment.<sup>39</sup> It also objected to a number of interrogatories on the ground that they were unduly burdensome.<sup>40</sup> When the information requested in an interrogatory could be obtained from the Party's newspaper, *The Black Panther*, the responses simply referred appellees to that publication.<sup>41</sup> Newton's answers were 22 pages in length.<sup>42</sup> He asserted the Fifth Amendment privilege against self-incrimination with respect to 32 of the interrogatories, claiming that they would have

<sup>37</sup> See appellees' brief at 6; Docket of Proceedings, JA 13-14. Rule 37(d) provides that if a party fails to serve answers to interrogatories, the court "may make such orders in regard to the failure as are just," including orders that dismiss the action or any part thereof.

<sup>38</sup> See Plaintiff Black Panther Party's Responses to Interrogatories of the Federal Defendants (Party's Original Responses), reprinted at JA 82-211.

<sup>39</sup> See Plaintiff Black Panther Party's Objections to the Interrogatories of the Federal Defendants, reprinted at JA 212-214.

<sup>40</sup> See, e.g., *id.* at JA 99, 108 (responses to Interrogatories 25 and 33); see also *id.* at JA 83.

<sup>41</sup> See, e.g., *id.* at JA 110 (responses to Interrogatories 37, 38); see also *id.* at JA 82-83.

<sup>42</sup> See Plaintiff Huey P. Newton's Answers to First Interrogatories of Federal Defendants, reprinted at JA 218-240.

required him to disclose information concerning events that were the subject of pending criminal prosecutions or criminal and civil investigations.<sup>43</sup>

On September 21, 1978 appellants filed a motion under Rule 37(a) of the Federal Rules of Civil Procedure to compel production of documents by appellees. Appellants began by noting that the materials they had received were highly disorganized. They stated that the documents were provided in random order in unlabeled boxes, that the CIA did not even keep pages of single documents together, and that only the IRS provided an index. Appellants went on to claim that appellees had failed to produce a number of requested documents without stating any objections to production. They suggested that appellees were deliberately concealing the existence of relevant material. Appellants also argued that even where appellees had stated objections to production of certain documents, their objections were improper.<sup>44</sup>

The next day appellees renewed their earlier motion under Rule 37(d) to impose the sanction of dismissal. They asserted that neither the Party nor Newton could refuse to answer interrogatories on the ground of constitutional privilege. They objected to the Party's claim that several of the interrogatories were overly burdensome. They also suggested that Joan Kelley, who prepared the Party's responses, was not a proper representative since she had only been a Party officer since 1971

<sup>43</sup> See Objections of Plaintiff Huey P. Newton to First Interrogatories of Federal Defendants, *reprinted at* JA 240-251.

<sup>44</sup> See Motion for Order Under Rule 37 Compelling Discovery by Federal Defendants, *reprinted at* JA 255; Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Compel Discovery by Federal Defendants, *reprinted at* JA 256-313. Rule 37(a) provides that if "a party fails to answer an interrogatory submitted under Rule 33," the proponent of the question may "move for an order compelling an answer." Rule 37(a), FED. R. CIV. P.

*Interrogatory 58:*

Describe in detail the purposes, aims, goals, and actions of The Emergency Conference to Defend the Right of the Black Panther Party to Exist held on or about March 7-8, 1970, in Chicago, Illinois.

*Response:*

Plaintiff has no knowledge or documents with regard to this Conference which was not held or sponsored by the Party.

(App. 119-120).

Since the Party has claimed it has "no knowledge or documents with regard to this conference" which was allegedly not held or sponsored by the Party, if any of the officers or spokesmen have any information in connection with it, they may be required to disclose it.

*Interrogatory 59:*

Identify all other Conferences, ad hoc organizations, programs, and conventions (by title, date, and location) with purposes, aims, goals, and actions similar to the Chicago conference referenced in the preceding interrogatory.

*Response:*

Plaintiff has no knowledge or documents with regard to such conferences, organizations, programs or conventions and none were held or sponsored by the Party.

*Interrogatory 60:*

Identify all documents distributed at or generated as a result of the Chicago conference and the conferences, ad hoc organizations, programs, and conventions identified in answer to the preceding interrogatory which discuss, mention, or in any way refer

Even if the plaintiff does not have knowledge of any such documents the question goes directly to the direction and control of the national organization and as to the type of organization that was being conducted. The officers who ran the Party and its spokesmen should have detailed information about this and they may be required to disclose it to the extent that it is within their knowledge.

*Interrogatory 54:*

Identify (by docket number, court, and parties) all civil and criminal actions (Federal and State) in which the Black Panther Party, its officers and members, or any Party affiliate was a party, other than actions involving marital, child support, or personal debt issues.

(App. 117). The party's response was lengthy and is not repeated. It stated that this interrogatory was overly burdensome and that court records are as available to the defendants as to the plaintiffs. Claim was also made that the defendants had extensive records regarding criminal actions, and three actions were specifically referred to. However, as to any *other information* known to the Party officers and spokesmen, they may be required to disclose it. While the defendants might know about some criminal actions involving the Party, they may not know that some criminal prosecutions that have been brought involve members of the Black Panther Party—particularly since the Party has indicated that it has some secret officers and members. Undisclosed crimes then may extend beyond those that the government was able to discover previously. Consequently, to the extent that Party officers and authorized spokesmen have such information, they may be required to disclose it.

and thus did not have firsthand knowledge of many of the events referred to in the complaint. Finally, they contended that many of the Party's responses were incomplete, evasive, or inconsistent.<sup>45</sup> Appellants objected to the filing of this motion as a motion for sanctions, contending that it should have been filed as a motion to compel.<sup>46</sup>

In November 1978 the District Court stated that it would consider appellees' motion to dismiss first, because that motion was "potentially dispositive" of the case. Consideration of appellants' motion to compel discovery was indefinitely postponed.<sup>47</sup> Shortly thereafter the court heard argument on the question whether appellees were entitled to file a motion for sanctions, or whether they were first required to file a motion to compel discovery. It agreed with appellants, and ruled that the motion to dismiss should have been filed as a motion to compel discovery under Rule 37(a).<sup>48</sup> Appellees complied with

<sup>45</sup> See Supplemental Memorandum of Points and Authorities in Support of the Motion of Defendants for Sanctions for Failure to Provide Discovery, reprinted at JA 518-562.

<sup>46</sup> See appellants' brief at 11; see also note 48 *infra*.

<sup>47</sup> See Transcript of Proceedings, Hearing of November 22, 1978, reprinted at JA 626-627.

<sup>48</sup> See Transcript of Proceedings, Hearing of December 14, 1978, reprinted at JA 629, 659. Appellants argued that sanctions may be imposed under Rule 37(d) only when there has been a complete failure to answer. Here, however, answers had been filed. Thus appellees were first required to move for an order compelling discovery under Rule 37(a). If appellants refused to obey this order, then sanctions could be sought under Rule 37(b), which provides that if a party refuses to obey an order made under Rule 37(a), the court may "make such orders in regard to the [refusal] as are just \* \* \*." See *id.* at JA 642-652. The District Court apparently accepted this argument. It continued to give priority to appellees' motion, however. See generally Part III-C *infra* (describing scheme set forth in Rule 37).

this ruling in late December 1978. In their new motion to compel they raised the same objections that they had raised in their earlier motion to dismiss.<sup>49</sup>

The Party responded to appellees' motion to compel with two lengthy memoranda, large portions of which endeavored to explain the apparent inconsistencies in the Party's original responses.<sup>50</sup> The Party also voluntarily supplemented many of the responses to which appellees objected.<sup>51</sup> Joan Kelley provided an affidavit in which she detailed the extent of her search and her qualifications to act as the Party's representative.<sup>52</sup> Huey Newton filed a 35-page memorandum and an affidavit describing his own efforts to respond. Like the Party, he also voluntarily supplemented several of his responses.<sup>53</sup>

<sup>49</sup> See Defendants' Motion to Compel Discovery, R 202; Statement of Defendants Bell et al: Interrogatories Sought to be Compelled, reprinted at JA 775-829.

<sup>50</sup> See Plaintiff Black Panther Party Memorandum of Points and Authorities in Response to Motion to Compel Discovery, reprinted in part at JA 692-727; Statement of Plaintiff Black Panther Party and Huey P. Newton Why Defendants' Motion to Compel Should be Denied, reprinted at JA 830-850.

<sup>51</sup> See Plaintiff Black Panther Party's Supplemental Responses to Interrogatories of the Federal Defendants, reprinted at JA 736-734.

<sup>52</sup> See Affidavit of Joan Kelley, reprinted at JA 728-732. In her affidavit Kelley described the work she had performed for the Party since she became a member in 1969. She stated that the Party considered her to be the person best qualified to respond to the interrogatories. Kelley also testified that in preparing the responses she searched files, talked to approximately 80% of the Party's past and present members, examined back issues of *The Black Panther*, and met with members of the Party's governing body, the Central Committee.

<sup>53</sup> See appellants' brief at 12; Affidavit of Huey P. Newton, reprinted at JA 733-735; Plaintiff Huey P. Newton's Supplemental Responses to First Interrogatories of the Federal Defendants, February 2, 1979, reprinted at JA 768-774.

*Response:*

Plaintiff does not have records or information on these properties.

(App. 115).

The officers and spokesmen should have a recollection of this information. It would disclose material evidence as to the relationship between the Party and its affiliates for whose acts the Party must be held responsible.

*Interrogatory 48:*

For each affiliate's property or office where the answer to the preceding interrogatory was negative, was the property owned or leased by Stronghold Consolidated Productions, Inc.?

*Response:*

See responses to Interrogatories 46 and 47.

(App. 115).

Some of the Party officers and spokesmen should recall whether the property was owned or leased by Stronghold Consolidated Functions, Inc. and they may be required to furnish this information.

*Interrogatory 51:*

Identify all documents which reflect criticism from the national organization to any Black Panther Party affiliate as a result of the affiliate's lack of militancy, aggressiveness, or failure to confront police or other officials.

*Response:*

Plaintiff does not have knowledge of any such documents.

(App. 116).

Black Panther Party newspaper which is publicly available. Reconstruction of such names for a period of ten years and for over forty cities is impossible from the records kept by plaintiff.

(App. 108). The Party officers were undoubtedly in possession of such information and to the extent that they still recall it they should be required to disclose it rather than permit the party to completely hide behind the claim that the question is "unduly burdensome." It may also prove to be unduly incriminating and hence essential to the defense.

*Interrogatory 46:*

Identify all chapters which continued to function after the revocation of their chapter by the national organization and state whether such former chapters currently are functioning.

*Response:*

Plaintiff does not have information on this subject.

(App. 115). The Party officers and spokesmen would undoubtedly have some of this information and to the extent that they still recall it they may be required to disclose it. Such information could produce invaluable leads to Party activities that are highly relevant to the defense.

*Interrogatory 47:*

For each affiliate identified in answer to interrogatory 41, state whether the property and business or other offices either now or formerly occupied by the affiliates was owned or leased by the national organization.

On August 6, 1979 the District Court issued an order and an accompanying memorandum in which it granted appellees' motion to compel further responses by the Party and Newton.<sup>54</sup> It ruled that the Party must answer the interrogatories with respect to which it had claimed a First Amendment privilege, reasoning that "[p]laintiff cannot assert this privilege and at the same time proceed with this lawsuit, withholding information vital to the defense of the parties sued."<sup>55</sup> The court also held that the Party must supplement responses to 44 interrogatories that appellees had alleged to be inconsistent or evasive.<sup>56</sup> The District Court further ruled that each of the Party's officers should provide supplemental responses to 107 interrogatories. It conceded that Joan Kelley, the Party, and its attorneys had made "a good faith effort to provide full and complete answers," but reasoned that such an order was nonetheless appropriate because of "1) the scarcity of records, 2) the time lapse between the alleged occurrences and the present and 3) the scattering and possible unavailability of many witnesses."<sup>57</sup> Finally, the court ruled that where the Party did not provide specific information, but simply referred to *The Black Panther*, it should provide supplemental responses based upon a full and complete review of that publication.<sup>58</sup>

As for Newton, the court held that he must answer the 32 interrogatories with respect to which he had claimed a Fifth Amendment privilege. The court stated:

<sup>54</sup> See Opinion and Order of August 6, 1979, reprinted at JA 851.

<sup>55</sup> *Id.* at JA 853.

<sup>56</sup> *Id.* at JA 852-853.

<sup>57</sup> *Id.* at JA 854.

<sup>58</sup> *Id.* at JA 855.

[D]efendants contend that the withheld information is vital to their defense, many times to the point of telling them what exactly they are accused of doing. Therefore, if plaintiff Newton is to proceed with this lawsuit \* \* \* he must answer \* \* \*. This Court is not compelling plaintiff Newton to waive any privileges he may have, but is merely leaving the choice to Mr. Newton, as a plaintiff, whether he wishes to continue to press claims relating to these interrogatories.

Joint Appendix (JA) 856. The court also ordered Newton to supplement his answers to five other interrogatories.<sup>59</sup>

The Party responded to the court's August 6, 1979 order by filing over 200 pages of supplemental answers.<sup>60</sup> In these new responses it provided additional information based on a complete search of back issues of its newspaper.<sup>61</sup> Some of the new responses helped clarify

<sup>59</sup> In fact, the District Court did not distinguish between the two sets of interrogatories. Instead, it simply ordered Newton to respond to a list of 37 interrogatories, *id.* at JA 856-857. See note 66 *infra*.

<sup>60</sup> See Plaintiff Black Panther Party's Further Supplemental Response to 107 Interrogatories as Ordered by This Court on August 6, 1979, *reprinted at* JA 874-911; Plaintiff Black Panther Party's Further Supplemental Responses Based Upon a Search of "The Black Panther" Newspaper From 1967 Through 1970 as Ordered by This Court on August 6, 1979, *reprinted at* JA 928-990; Plaintiff Black Panther Party's Further Supplemental Responses Based Upon a Search of "The Black Panther" Newspaper From 1971 Through 1974 as Ordered by This Court on August 6, 1979, *reprinted at* JA 995-1071; Plaintiff Black Panther Party's Further Supplemental Responses Based Upon a Search of "The Black Panther" Newspaper From 1975 Through 1979 as Ordered by This Court on August 6, 1979, *reprinted at* JA 1072-1130.

<sup>61</sup> See JA 928-990, 995-1071, 1072-1130.

This is another interrogatory that would have special reference to discovery of facts concerning the extent of a conspiracy. Each of the officers of the Party should be required to respond to this inquiry because the Party had far-flung operations that might be better testified to by the numerous Party officers and spokesmen throughout the country.

*Interrogatory 32:*

For each affiliate identified in answer to interrogatory 26, identify all present and former offices, posts and other positions of responsibility of the affiliate.

*Response:*

Each local affiliate had a local "central staff" which was composed of the members in the area who supervised and coordinated the activities and services of that area. See the response to Interrogatory 18 for more details in the central staff's functions.

(App. 108).

This response is woefully inadequate. It fails to name names. The Party officers should be required to identify "present and former officers" to the extent of their ability.

*Interrogatory 33:*

For each office, post and position of responsibility identified in answer to the preceding interrogatory, identify each person who has held or holds the office, post or position of responsibility and the dates of their respective terms of office.

*Response:*

Plaintiff objects that this request is unduly burdensome. A central file of such information does not exist and this information, to the extent that it is available at all, must be obtained from issues of the

- a) Huey P. Newton .....1966 to the present
- b) Bobby Seale .....1966 to 1974
- c) Elaine Brown .....1971 to 1977
- d) Ericka Huggins .....1972 to the present
- e) David DuBois .....1972 to the present
- f) David Hilliard .....1969 to 1974
- g) Eldridge Cleaver .....1967 to 1971

This information is central to the defendants' defense. The defendants presumably are defending their acts with respect to the Black Panther Party and they are clearly entitled to the names of all officers and other persons who were authorized to act and speak for the Black Panther Party. The party is responsible for their actions and if such are shown to be criminal the acts of the defendants may be fully justified. In this respect the defendants are entitled to information concerning the acts and authority of the various officers and members of the party, particularly so, because in a conspiracy the acts of co-conspirators within the scope of the conspiracy can be imputed to others in the conspiracy.

*Interrogatory 30:*

Describe in detail the nature of the affiliation between the Black Panther Party of Oakland, California, and each affiliate identified in answer to interrogatory 26.

*Response:*

Each "affiliate" which was listed as a Black Panther Party office or center functioned as a local office of a single entity. Each affiliate provided those social services as needed by the Black and poor communities of the area in which it was located. These affiliates subscribed to the principles and theories of government outlined in the 10 Point Program and Platform of the Black Panther Party, the Party's basic operating guide.

(App. 107).

the alleged inconsistencies.<sup>62</sup> The Party continued to claim a First Amendment privilege with respect to portions of three interrogatories, however.<sup>63</sup> In addition, it refused to obey that portion of the order requiring each of the Party's officers to respond to 107 interrogatories. The Party insisted that under Rule 33 of the Federal Rules of Civil Procedure it was entitled to appoint its own representative, and that the court did not have the power to order all Party officers to respond.<sup>64</sup> The Party did supplement its answers to the 107 interrogatories, however. The supplemental responses were prepared by a new representative, JoNina Abron, who, in conjunction with Joan Kelley, reviewed the interrogatories to determine whether additional information might be available. Past and present members were contacted. Abron also called a meeting of the Party's Central Committee, which is its governing body; at this meeting each of the 107 interrogatories was again reviewed.<sup>65</sup>

Huey Newton complied with that portion of the August 6 order which required him to supplement his re-

<sup>62</sup> See *id.*; see also Plaintiff Black Panther Party's Memorandum of Points and Authorities in Support of Responses to 107 Interrogatories as Ordered by This Court on August 6, 1979, reprinted at JA 860.

<sup>63</sup> *Id.* at JA 861-864.

<sup>64</sup> *Id.* at 864-870. Rule 33 states that "any party may serve upon any other party written interrogatories to be answered by the party served or, if the party is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party \* \* \*."

<sup>65</sup> See Affidavit of JoNina Abron, reprinted at JA 871. Abron stated that she was appointed representative because of the "increasing responsibilities which have been assumed by Ms. Joan Kelley, in conjunction with her employment \* \* \*." *Id.* Abron also stated that she had been a Party member since 1972 and a Central Committee member since 1979. Abron had assisted Kelley in preparing the original responses.



sponses to five interrogatories. He maintained his claim of Fifth Amendment privilege with respect to 30 interrogatories, however.<sup>66</sup>

Several weeks after the supplemental responses were filed appellees moved to dismiss the Party and Newton under Rule 37(b). Appellees also sought their costs and attorney fees under Rule 37(b).<sup>67</sup> In an order dated January 25, 1980 the District Court granted these motions.<sup>68</sup> The court found that the Party had failed to

<sup>66</sup> See Plaintiff Huey P. Newton's Further Supplemental Responses to Interrogatories as Ordered by This Court on August 6, 1979, reprinted at JA 991-993. Newton supplemented his responses to the five interrogatories that did not involve a claim of Fifth Amendment privilege. He also answered two interrogatories with respect to which he had claimed the privilege because charges had recently been dismissed. Newton stated that as soon as the remaining investigations and prosecutions were resolved he would respond in full to the remaining 30 interrogatories. See *id.*

<sup>67</sup> See Renewed Motion of Defendants Civiletti, et al., for the Sanction of Dismissal of Plaintiffs Black Panther Party's and Newton's Claims and For Costs (Oct. 30, 1979), reprinted at JA 923; Memorandum of Points and Authorities in Support of Renewed Motion [of] Defendants Civiletti, et al., for the Sanction of Dismissal of Plaintiffs Black Panther Party's and Newton's Claims and For Costs, R 224. See also Statement of Plaintiffs Black Panther Party and Huey P. Newton Why Motion of Defendants Civiletti, et al., For the Sanction of Dismissal Should Be Denied, R 230.

Rule 37(b), FED. R. CIV. P., provides that when a party fails to obey an order to provide discovery, the court may enter an order "dismissing the action," and may require the party failing to obey the order "to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." See also text and notes at notes 77-81 *infra* (describing Rule 37(b) in detail).

<sup>68</sup> See Memorandum and Order of January 25, 1980, JA 1136-1137, 1138.

## APPENDIX

There follows a sampling of the interrogatories and responses that indicate the Party representative failed to answer adequately. The comments that follow the responses point out the inadequacies of the responses and indicate why the officers and authorized spokesmen of the Party should now be required to respond to each of these interrogatories. In my judgment, the comments are not altered by the subsequent responses that the Party made to some interrogatories.

*Interrogatory 25:*

Identify all officers and other persons who were or now are authorized to speak on behalf of the Black Panther Party.

## Response:

The scope of the interrogatory certainly makes it excessively burdensome and, therefore, objectionable. It is impossible for the Party to identify everyone who has been authorized to speak for the Party, an organization that has been in existence for twelve years, and had affiliates in over 40 cities throughout the United States at various times. Party members could have been authorized to speak on one or numerous occasions. At various times, numerous persons have been authorized to speak on a broad range of issues and policies; others only to a specific audience or group, in response to a specific request or need to do so. The Party has not maintained a listing of these persons. However, we can state, that members of the Central Committee are generally authorized to speak on behalf of the Party, although there have been exceptions to this proposition. The following is a representative listing of leading Party members and the approximate periods for which such an authorization existed:

and that right must now be recognized. *See generally Garner v. United States*, 424 U.S. 648, 655 (1976).

I thus respectfully dissent to the extent of the variation between the foregoing views and those expressed in Judge Wright's opinion. The strength of that opinion is minimized by its failure to respond to the First and Fifth Amendment discussion set out above. In any event the eventual outcome of the discovery in this case must follow the principles set forth above if plaintiffs persist in their recalcitrant conduct.

comply with its August 6 order. Although "plaintiffs cannot choose to be litigants and at the same time exempt themselves from the rule of law that binds all federal litigants,"<sup>69</sup> the Party had continued to assert a First Amendment privilege. Moreover, the Party's attempt to clarify the 44 inconsistent and evasive interrogatories was inadequate.

In some instances not only do [the supplemental answers] fail to clarify previous answers, they create further confusion. In other instances they either completely ignore the inconsistencies the Party was directed to address or they introduce new information inconsistent with that already given in this case and with information given under oath by \* \* \* Huey Newton. \* \* \*

JA 1132. Finally, the court stated that the Party had ignored that portion of the order which required its officers to respond to a list of interrogatories.<sup>70</sup>

The court also found that Newton had failed to comply with the August 6 order by continuing to claim a Fifth Amendment privilege.<sup>71</sup> The court then stated that imposition of the sanction of dismissal was appropriate because the Party and Newton had displayed "conscious disregard" for its order.<sup>72</sup> It also stated that the Party and Newton should pay the reasonable expenses incurred by appellees in bringing their motion to dismiss. Under Rule 37(b) the party failing to obey a discovery order must pay expenses unless the court finds that the failure to obey was "substantially justified or that other circumstances make an award of expenses unjust."<sup>73</sup>

<sup>69</sup> *Id.* at JA 1134.

<sup>70</sup> *Id.* at JA 1133.

<sup>71</sup> *Id.* at JA 1135.

<sup>72</sup> *Id.* at JA 1136.

<sup>73</sup> *Id.* at JA 1137.

Although appellees' motion to dismiss referred only to Newton and the Party, the court's January 25 order and the supporting memorandum referred simply to "plaintiffs."<sup>74</sup> Appellants therefore filed a motion for clarification, in which they asked whether the order was intended to dismiss the entire case against all plaintiffs, including those individuals not covered by appellees' motion, or whether the order was restricted to Newton and the Party.<sup>75</sup> On February 13, 1980 the District Court resolved this ambiguity by entering an amended order in which it stated that all named plaintiffs were dismissed.<sup>76</sup>

## II. STANDARDS GOVERNING IMPOSITION OF THE SANCTION OF DISMISSAL

We will begin by describing, in general terms, the legal standards that govern imposition of the sanction of dismissal under Rule 37(b) of the Federal Rules of Civil Procedure. The rule provides that if a party fails to obey an order to provide discovery under Rule 37(a), the court "may make such orders in regard to the failure as are just \* \* \*." A number of possible sanctions are set forth, including orders that certain facts be taken as established or evidence excluded<sup>77</sup>; orders that claims or defenses be unopposed or pleadings struck<sup>78</sup>; orders that reasonable expenses caused by the recalcitrant party be paid<sup>79</sup>; and orders that the party be held in con-

<sup>74</sup> See *id.* at JA 1136-1137, 1138.

<sup>75</sup> See Motion of Plaintiffs to Amend Judgment Pursuant to Rule 59(e) or, Alternatively, to Direct Entry of Final Judgment Pursuant to Rule 54(b), reprinted at JA 1139.

<sup>76</sup> See Amended Order and Final Judgment, reprinted at JA 1144.

<sup>77</sup> FED. R. CIV. P. 37(b)(2)(A) & (B).

<sup>78</sup> FED. R. CIV. P. 37(b)(2)(B) & (C).

<sup>79</sup> FED. R. CIV. P. 37(b)(2) (unlettered paragraph).

criminal to obtain immunity from prosecution as a result of his bringing a civil suit for damages against the officials charged with his prosecution. Such law would breed many civil suits. And granting more limited immunity, considering the breadth of the alleged criminal activities, could lead to endless litigation.

As for allowing the statute of limitations to run, as suggested above, that would be of doubtful practicality inasmuch as they do not run for crimes of murder and aiding and abetting murder, and these crimes may be involved. For example, see S. Rep. No. 94-755, Book III, 190 (1976). House Hearings, Committee on Internal Security, 91st Cong., 2d Sess. 217, 229 (1970). Also, the absence of a putative defendant from the jurisdiction tolls the running of the statute of limitations. The federal statutes of limitations do not run while one is a fugitive from justice. 18 U.S.C. § 3290.<sup>11</sup> See *Jhirad v. Ferrandina*, 486 F.2d 442 (2d Cir. 1973). For state offenses, see 22 C.J.S. *Criminal Law* § 230. It is a matter of general public knowledge that Newton was outside the United States for a number of years. This would extend the expiration of the time fixed by the statute for a very considerable period of time and would cause a further loss of testimony for all the reasons that lapse of time causes an attrition in evidence, i.e., loss of memory, death, inability to locate witnesses, destruction and loss of documents, etc.

In sum, while filing a lawsuit may not automatically waive one's privilege against self-incrimination, the plaintiff in a civil suit does not have an absolute privilege for all time. In this case that time has passed since defendants would be greatly prejudiced by further delay in obtaining relevant testimony. The defendants have a constitutional due process right to all relevant testimony

<sup>11</sup> 18 U.S.C. § 3290 provides: "No statute of limitations shall extend to any person fleeing from justice."

applicable statutes of limitation to lapse without prejudice to the defendant. In Newton's case, as explained elsewhere, further delay will prejudice defendants and expiration of the statutes of limitations might never occur. Even if the statute might run as to some offenses, the defendant's absence from the relevant jurisdiction might have tolled the running of the statute for such a long period of time as to cause an unreasonable delay in obtaining vital evidence.

The second case is *Campbell v. Gerrans*, 592 F.2d 1054 (9th Cir. 1979) where a Fifth Amendment claim of privilege was upheld against "highly questionable" interrogatories which were considered to be harassing and as not going to the heart of the defense. The interrogatories here go to the very heart of the defendants' defenses and do not constitute harassment.

Finally, the Sixth Circuit in *United States v. U.S. Currency*, 626 F.2d 11, 14-15 (6th Cir. 1980), suggested that the district court should consider three alternatives: (1) rely on alternative sources for the information that a litigant seeks to protect with his claim of Fifth Amendment privilege; (2) grant the litigant immunity as to his testimony; (3) stay the proceedings until criminal proceedings and statutes of limitation have run their course. It is not practicable in this case to apply any of these alternatives. Newton and the other officers have exclusive knowledge of some of the facts because they were involved personally. As to the second suggestion, it would be unthinkable to grant plaintiffs immunity from prosecution on the crimes alleged against them in the congressional hearings. See, H. Rep. No. 92-470, 92d Cong., 1st Sess. (1971). The magnitude and number of the alleged offenses compel prosecution, not immunity, particularly with respect to Newton and he is the principal subject that we are considering here. It would be a gross miscarriage of the judicial process to permit an alleged

tempt.<sup>80</sup> The most extreme sanction listed in Rule 37(b) is dismissal.<sup>81</sup>

In *Internat'l Union, UAW v. National Right to Work Legal Defense & Education Foundation, Inc. (National Right to Work)*, 590 F.2d 1139, 1152 (D.C. Cir. 1979), we stated: "The validity of the sanctions imposed under [Rule 37(b)] depends, in the first instance, on the validity of the discovery orders on which they were based." See also *Smith v. Schlesinger*, 513 F.2d 462, 467 (D.C. Cir. 1975).<sup>82</sup> That is, sanctions can be imposed for failure to obey an order compelling discovery under Rule 37(a) only if that order was justified. Thus, in this case, the validity of the District Court's order imposing the sanction of dismissal depends on the validity of the August 6 order compelling further responses.

Even when the underlying discovery order is valid, the District Courts should exercise their discretion to impose the extreme sanction of dismissal in rare circumstances. Ordinarily that sanction is appropriate only when a party has displayed callous disregard for its discovery obligations, or when it has exhibited extreme bad faith. See, e.g., *National Hockey League v. Metro-*

<sup>80</sup> FED. R. CIV. P. 37(b) (2) (D).

<sup>81</sup> FED. R. CIV. P. 37(b) (2) (C).

<sup>82</sup> *National Right to Work* involved a motion under subdivision (2) (A) of Rule 37(b), which authorizes the court to enter orders stating that certain facts will be taken as established. See *Internat'l Union, UAW v. National Right to Work Legal Defense & Education Foundation, Inc. (National Right to Work)*, 590 F.2d 1139, 1152 (D.C. Cir. 1979). However, the logic of that decision clearly applies to motions under subdivision (2) (D), which authorizes the court to dismiss. See *Smith v. Schlesinger*, 513 F.2d 462, 467 (D.C. Cir. 1975); 8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2289 (1970).

*politan Hockey Club*, 427 U.S. 639 (1976).<sup>83</sup> The extent to which the other party's preparation for trial has been prejudiced is a relevant consideration. If less drastic sanctions will be equally effective, they should be employed; dismissal should be used as a last resort. See *Marshall v. Segona*, 621 F.2d 763, 768 (5th Cir. 1980). It is instructive to consider the facts of *Morton v. Harris*, 628 F.2d 438 (5th Cir. 1980), a case cited by defendants, in which a District Court decision imposing the sanction of dismissal was approved. Morton refused to provide his income tax returns even after the court ordered him to do so. He implied first that he had the documents, then asserted that he had lost them, and finally produced copies of a few of the documents that had been in his possession throughout. The District Court displayed a remarkable degree of patience; before the final dismissal, it dismissed Morton once without prejudice, and then reinstated him so that he would have another opportunity to pursue his claims.<sup>84</sup>

<sup>83</sup> See also *Marshall v. Segona*, 621 F.2d 763, 768-769 (5th Cir. 1980); *LaCledde Gas Co. v. G. W. Warnecke Corp.*, 604 F.2d 561 (8th Cir. 1977); *Wilson v. Volkswagen of America, Inc.*, 561 F.2d 494 (4th Cir.), cert. denied, 434 U.S. 1020 (1977); *Kropp v. Ziebarth*, 557 F.2d 142, 146-147 (8th Cir. 1977); *Bon Air Hotel, Inc. v. Time, Inc.*, 376 F.2d 118, 121 (5th Cir. 1967), cert. denied, 393 U.S. 859 (1968); *Gill v. Stolow*, 240 F.2d 660, 670 (2d Cir. 1957); *Szilvassy v. United States*, 82 F.R.D. 752, 755 (S.D. N.Y. 1979).

<sup>84</sup> See also *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639 (1976) (dismissal appropriate where plaintiffs failed to answer interrogatories on time despite numerous extensions, and where answers finally provided were grossly inadequate); *Margoles v. Johns*, 587 F.2d 885 (7th Cir. 1978) (dismissal affirmed where plaintiff failed to comply with District Court order requiring production of relevant documents despite substantial time lapse); *Jones v. Louisiana State Bar Ass'n*, 602 F.2d 94 (5th Cir. 1979) (dismissal affirmed in view of plaintiff's deliberately obstructive conduct in refusing to comply with valid discovery orders).

to answer the questions involved. Plaintiffs thus seek to utilize the privilege not only as a shield, but also as a sword. This they cannot do. A plaintiff in a civil action who exercises his privilege against self-incrimination to refuse to answer questions pertinent to the issues involved will have his complaint dismissed upon timely motion. See *Stockham v. Stockham*, 168 So.2d 320, 4 A.L.R.3d 539 (Fla. 1964); *Lund v. Lund*, 161 So.2d 873 (Fla.App.1964); *Levine v. Borstein*, 13 Misc.2d 161, 174 N.Y.S.2d 574 (S.Ct., Kings Co. 1958); aff'd 7 A.D.2d 995, 183 N.Y.S.2d 868 (2d Dept.), aff'd 6 N.Y.2d 892, 190 N.Y.S.2d 702, 160 N.E.2d 921 (1959); *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483 (1955); Annot., 4 A.L.R.3d 545. Cf. *Zaczek v. Zaczek*, 20 A.D.2d 902, 249 N.Y.S.2d 490 (2d Dept. 1964)

290 F. Supp. at 149.<sup>10</sup>

In an analogous situation the Supreme Court in a denaturalization proceeding ruled that when the subject of the action took the stand and testified in her own behalf she waived the right to invoke on cross examination the privilege against self-incrimination regarding matters made relevant by her testimony on direct examination. *Brown v. United States*, 357 U.S. 148, 154-56 (1958).

Three recent cases discuss other factors. The Fifth Circuit in *Wehling v. CBS*, 608 F.2d 1084 (5th Cir. 1979), ruled that plaintiffs during discovery should have been allowed temporarily to claim the Fifth Amendment privilege without suffering immediate dismissal of their action. It based such decision on the conclusion that the dismissal was unwarranted absent an inquiry as to whether deferring the plaintiffs' action would allow the

<sup>10</sup> *Foss v. Gerstein*, 58 F.R.D. 627 (S.D. Fla. 1973); and *Alioto v. Holtzman*, 320 F. Supp. 256 (E.D. Wis. 1970), which are frequently cited as being *contra*, are substantially distinguishable on their facts.

*Id.* at 276, 277, quoted in *Bramble v. Kleindienst*, 357 F. Supp. 1028 (D. Colo. 1973).

The opinion in *Christenson v. Christenson*, 281 Minn. 507, 162 N.W.2d 194 (1968) by Justice Nelson aptly poses the question and supplies the answer.

The question is rather whether plaintiff should be permitted to withhold information [under a claim of self-incrimination] which must relieve defendant of liability and at the same time be permitted to prosecute her claim. The risk that plaintiff might thereby succeed in an unmeritorious claim would seem to be so substantial that she must either divulge the information or abandon her claim.

162 N.W.2d at 202.

The New York Court of Appeals in *Laverne v. Incorp. Village of Laurel Hollow*, 18 N.Y.2d 635, 272 N.Y.S.2d 780, 219 N.E.2d 294 (1966), also relied upon this rationale.

The privilege against self-incrimination was intended to be used solely as a shield, and thus a plaintiff cannot use it as a sword to harass a defendant and to effectively thwart any attempt by defendant as a pretrial discovery proceeding to obtain information relevant to the cause of action alleged, and possible defenses thereto. (See, also, *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483; *Hazlett v. Bullis*, 12 A.D.2d 784, 209 N.Y.S.2d 601 [2 Dept 1961]).

Judge Doyle in the Western District of Wisconsin reasoned similarly in *Kisting v. Westchester Fire Ins. Co.*, 290 F. Supp. 141-49 (W.D. Wis. 1968). This was a civil action on a fire insurance policy where the insurance company alleged arson by the insured as an affirmative defense.

Plaintiff's next contention is that the privilege against self-incrimination justifies Kisting's refusal

The Supreme Court has indicated that the extreme sanction of dismissal may be used not just to penalize litigants who have acted in bad faith, but also to deter parties to other lawsuits from disregarding their discovery obligations. See *National Hockey League v. Metropolitan Hockey Club*, *supra*, 427 U.S. at 643.<sup>85</sup> In the absence of a valid underlying discovery order, however, or where the litigant on whom the sanction will be imposed has not displayed unusual intransigence, dismissal is not proper. The deterrence goal, by itself, will not support such a harsh result.<sup>86</sup>

### III. DISMISSAL OF THE BLACK PANTHER PARTY

Having outlined the standards governing imposition of the sanction of dismissal, we can proceed to consider the reasons supplied by the District Court for its actions in this case. As we have already explained, the District Court based its decision to dismiss the Party on three grounds: (1) the Party's failure to obey that portion of the August 6 order which required all officers to respond individually to a list of 107 interrogatories served on the Party; (2) the Party's failure to clarify answers the court believed to be inconsistent or evasive; and (3) the Party's failure to obey that portion of the August 6 order which required it to disclose the identities

<sup>85</sup> See also *Dellums v. Powell*, 566 F.2d 231, 235-236 (D.C. Cir. 1977); *Cine Forty-Second Street Theatre Corp. v. Allied Artists Pictures Corp.*, 602 F.2d 1062, 1066-1067 (2d Cir. 1979); see generally Note, *The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions*, 91 HARV. L. REV. 1033 (1978).

<sup>86</sup> See *National Hockey League v. Metropolitan Hockey Club*, *supra* note 84, 427 U.S. at 235; *Cine Forty-Second Street Theatre Corp. v. Allied Artists Pictures Corp.*, *supra* note 85, 602 F.2d at 1066-1069; see also Note, *supra* note 85, 91 HARV. L. REV. at 1043-1055 (noting possible constitutional problems).

of Party members whose names were not known to the public.

As we explain below, we conclude that the three reasons supplied by the District Court do not support the decision to dismiss the Party.<sup>87</sup> (1) That portion of the August 6 order which required each of the Party's officers to respond to 107 interrogatories was not valid. Thus under *National Right to Work, supra*, the Party's failure to obey this requirement does not justify imposition of sanctions. (2) That portion of the August 6 order which required the Party to explain allegedly inconsistent or evasive answers probably was valid. We find, however, that the Party's supplemental responses adequately explained any apparent inconsistencies or evasiveness. The District Court's decision to impose the sanction of dismissal cannot be justified on this ground. (3) We cannot determine on the basis of the record as it now stands whether that portion of the August 6 order which required the Party to divulge the identities of members not known to the public was valid. If it was not, then the Party's failure to comply could not justify imposition of sanctions.

We set forth the legal principles that the District Court should have applied in determining whether the claim of privilege was proper, and remand so that it may reconsider this question. On remand, if the District Court concludes that the claim of privilege should have been upheld, then the Party should be reinstated and given another opportunity to pursue its claims. If the court concludes that the claim of privilege was properly denied, it may enter a new order compelling the Party

<sup>87</sup> Courts ordinarily determine whether the sanction of dismissal should be imposed by examining the entire record. See, e.g., *National Hockey League v. Metropolitan Hockey Club, supra* note 85, 427 U.S. at 642. We follow this procedure here.

arrest suit by plaintiffs who refused to answer any deposition questions relating to any conversations or conduct on the day of the arrest. Finding that the answers to the questions could lead to the discovery of relevant evidence of probable cause to make the arrests, the court ruled that the plaintiffs must testify or suffer their action to be dismissed. It is the prejudice to the defendant that overrides the privilege.

An antitrust action in the Southern District of New York reached the same conclusion. Therein the court ruled that since the witness was the sole stockholder and prime mover of the corporation plaintiffs, his refusal to testify about his Communist Party connections, which testimony was relevant and material to the specific defense of the defendant, amounted to a refusal by the plaintiff corporation and constituted a waiver of its privilege to bring the action. *Independent Productions, Inc. v. Loew's, Inc.*, 22 F.R.D. 266, 277-78 (S.D.N.Y. 1958).

Several courts have also characterized their rulings as prohibiting a plaintiff from using the privilege against self-incrimination as both a sword and a shield:

Plain justice dictates the view that, regardless of plaintiff's intention, plaintiffs must be deemed to have waived their assumed privilege by bringing this action. Moore, *Federal Rules and Official Forms*, 164 (1956).

\* \* \*

This view strikes home. Plaintiffs in this civil action have initiated the action and forced defendants into court. If plaintiffs had not brought the action, they would not have been called on to testify. Even now, plaintiffs need not testify if they discontinue the action. They have freedom and reasonable choice of action. They cannot use this asserted privilege as both a sword and a shield. Defendants ought not be denied a possible defense because plaintiffs seek to invoke an alleged privilege.

incrimination and thereby denies the civil defendant use of the incriminating testimony. The rationale relied upon by the courts in such cases has not been uniform. In *Lyons v. Johnson*, 415 F.2d 540 (9th Cir. 1979) the court after several preliminary comments ruled that in any event the Fifth Amendment could not be used to block all discovery. The court in *Tomko v. Lees*, 24 Fed. R. Serv. 2d 407 (W.D. Pa. 1977) denied a claim of self-incrimination by a plaintiff who sued police under 42 U.S.C. § 1985 for a threat to arrest him unless he turned informer and then sought the Fifth Amendment privilege against testifying to his involvement in the criminal activity for which arrest was threatened. The court refused to permit such claim, noting

It would be uneven justice to permit plaintiffs to invoke the [court's] powers [to seek redress] and, at the same time, permit plaintiffs to fend off questions, the answers to which may constitute a valid defense or materially aid the defense.

(quoting *Independent Productions Corp. v. Loew's, Inc.*, 22 F.R.D. at 276). In an earlier case in the Eastern District of Pennsylvania involving a claim of privilege against self-incrimination the court cited *Lyons v. Johnson*, *supra*, and reasoned that since the plaintiff was a voluntary litigant he could not refuse to answer 50 questions. *Penn Communications Specialists, Inc. v. Hess*, 65 F.R.D. 510, 511 (E.D. Pa. 1975). Judge Neville's decision in *Brown v. Ames*, 346 F. Supp. 1176-1178 (D. Minn. 1972) was also relied upon. That was a false

process of law. . . ." The privilege has been held to extend to civil proceedings. *McCarthy v. Arndstein*, 266 U.S. 34 (1924) (examination of a petitioner in bankruptcy); and to a non-criminal disciplinary hearing of a prison inmate. *Baxter v. Palmigiano*, 425 U.S. 308, 316 (1976). However, the privilege may be found in effect to have been waived where the party answers some preliminary questions but desires to stop at a certain point. *Rogers v. United States*, 340 U.S. 367 (1951); *United States v. Monia*, 317 U.S. 424 (1943).

to respond. If the Party then refuses to comply, the court may consider imposing sanctions.

#### A. Requiring Each Party Officer to Respond to Interrogatories

In its August 6 order the District Court stated that each Party officer should respond under oath to a list of 107 interrogatories originally served on the Party. In our view, the District Court erred when it ruled that each of the officers must respond. It lacked the power to make such an order under the Federal Rules of Civil Procedure.

Under Rule 33(a) of the Federal Rules of Civil Procedure, an organization is entitled to designate the officer or agent who will prepare responses to interrogatories.<sup>88</sup> The organization has broad discretion in making this choice. See 8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2171 at 530, § 2172 at 539 (1970); *Holland v. Minneapolis-Honeywell Regulator Co.*, 28 F.R.D. 595 (D. D.C. 1961) (party serving interrogatories may not select officer or agent of adverse party).<sup>89</sup> When the responses prepared by the designee are inadequate, or when the designee improperly objects to the interrogatories, the District Court may grant a motion to compel further responses under Rule 37(a).<sup>90</sup> If this order is not obeyed, the court may grant a motion for sanctions under Rule 37(b), which, as we have seen, empowers it to "make such orders in regard to the failure as are just \* \* \*."<sup>91</sup> In situations where the organi-

<sup>88</sup> See note 64 *supra* (quoting Rule 33(a)).

<sup>89</sup> See also *Straley v. Idaho Nuclear Corp.*, 500 P.2d 218, 224 (Idaho 1972) (corporation has right to select which of its officers or agents shall answer interrogatories).

<sup>90</sup> See note 44 *supra* (quoting text of FED. R. CIV. P. 37(a)).

<sup>91</sup> See text and notes at notes 77-81 *supra* (describing FED. R. CIV. P. 37(b)).



zation completely fails to respond to interrogatories, a motion to compel discovery under Rule 37(a) is not necessary. Instead, the party that served the interrogatories may immediately move for sanctions under Rule 37(d). This rule also gives the court discretion to "make such orders in regard to the failure as are just \* \* \*."<sup>92</sup>

The District Court's August 6 order requiring each of the Party's officers to respond was not consistent with the scheme set forth in the Rules. The original responses to the 107 interrogatories were prepared by Joan Kelley.<sup>93</sup> In many of her answers she stated that only limited information could be provided because records were not available.<sup>94</sup> In other answers Kelley referred to the Senate Report describing the FBI's counterintelligence activities.<sup>95</sup> And in several others, where the government

<sup>92</sup> See note 37 *supra* (quoting text of FED. R. CIV. P. 37(d)).

<sup>93</sup> For a list of the 107 interrogatories, see JA 854.

<sup>94</sup> For example, in one interrogatory appellees asked for all documents describing the functions of the Party's Central Committee. Kelley responded that there were no such documents. See Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants, JA 98 (response to Interrogatory 23). In another appellees asked for a list of all offices of the Party newspaper that were alleged to have been vandalized. Kelley responded that, because files on such actions were not kept, only a partial list could be provided. See *id.* at JA 198.

In her affidavit Kelley denied that the Party had intentionally destroyed any records. She conceded that some documents had been "inadvertently thrown away over time." Affidavit of Joan Kelley, JA 731.

<sup>95</sup> For example, when asked to describe the basis for allegations that the government had instigated the murder of several Party members, she simply referred to several pages of the Senate Report, *supra* note 19. See Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants, JA 163-164.

On August 6, 1979 the district court ordered Newton to answer 37 interrogatories over his claim that the answers thereto would implicate his Fifth Amendment privilege against self-incrimination. (JA 856-57.)<sup>7</sup> He still claims this privilege with respect to 30 interrogatories. (JA 991.)<sup>8</sup> For the future, it should be noted that Newton as an official of the Black Panther Party cannot assert his personal privilege to resist production of documents of the association in his custody which might incriminate him personally. *United States v. White*, 322 U.S. 696, 699-700 (1944); *Wilson v. United States*, 221 U.S. 361, 384-385 (1911). Cf. *George Campbell Painting Corp. v. Reid*, 392 U.S. 286 (1968). Thus Newton might not be able to claim any personal privilege with respect to those interrogatories that call for the production of association documents. See Interrogatories Nos. 91, 92, 99, 101, 102, 103, 104.

In a great many instances, where the testimony is relevant, courts at the pretrial discovery stage have dismissed civil lawsuits with prejudice when a plaintiff claims the Fifth Amendment<sup>9</sup> privilege against self-

of a crime. [Transcript, page 82.] This testimony concerned Robert Heard, one of the 'publicly-disclosed' members of the Central Committee and a prospective witness, who also is a fugitive. His status as a fugitive and the existence of the Party's policy obviously makes fruitless [the] suggestion that defendants should attempt to interview such members before receiving further answers.

(JA 815 & n.9).

<sup>7</sup> The designated interrogatories were: 11-15, 17-41, 43-45, 49, 51, 64, 74. (JA 857).

<sup>8</sup> Interrogatories 17, 21, 26, 37, 51, 64 and 74 have been answered (JA 991).

<sup>9</sup> The Fifth Amendment provides "no person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

known which were deleted from the weekly reports from Party affiliates which were provided to defendants (interrogatory 61).

(JA at 874). As stated above the plaintiffs have no First Amendment privilege to refuse to disclose the identity of Central Committee members or local leaders. Whether the privilege extends to individual party members will depend on the prominence of the Party member, his authority and upon his Party activities. There is no general right to compel responses from "individual party members," but if a showing were made that individual members were in possession of relevant knowledge they could be compelled to answer interrogatories or to testify by deposition. It must not be forgotten that the suit is brought for the members in the name of their Party.

### III. THE CLAIM OF A FIFTH AMENDMENT SELF-INCRIMINATION PRIVILEGE BY PLAINTIFF HUEY P. NEWTON

Plaintiff Huey P. Newton was co-founder of the Black Panther Party. Throughout the early violent period in the Party's activities he exercised a controlling position in the activities of the Party and its members, and, according to his testimony, controlled the disclosure of information concerning the Party, even if it concerned a crime.<sup>6</sup>

<sup>6</sup> The Government Statement to Compel Responses to Interrogatories (JA 775-816) recites a portion of Newton's testimony as follows:

[I]t has been a Party policy since 1966 that '... when any conversation transpires between a Party member and myself its already understood that nothing will be told unless I give instruction,' even if it concerns a crime.<sup>9</sup> [Transcript, page 146.]

<sup>9</sup> Newton also testified it is against Party policy to reveal the whereabouts of a Party member accused

had asked questions designed to obtain admissions from the Party that it had engaged in unlawful activities, she simply stated that it possessed no information.<sup>86</sup> The District Court was apparently concerned that this lack of information would hinder preparation of the defendants' case; it stated that an order requiring all officers to respond was appropriate because records were unavailable and witnesses were scattered, and because many of the events complained of had occurred several years in the past.<sup>87</sup>

Nothing in the Rules, however, gave the District Court discretion to order all officers to respond simply because it believed that the original responses prepared by the Party's designee did not contain sufficient information. Rule 37(a) states that when a designee's original responses are inadequate, the court may enter an order requiring supplemental responses. It does not give the court power to override an organization's choice of representative under Rule 33(a).<sup>88</sup> It may be true that Kel-

<sup>86</sup> For example, when asked to describe Party participation in the torture or torture-murder of Party members, Kelley stated that the Party had no information concerning any such events. *See id.* at JA 171 (responses to Interrogatories 154 and 155).

<sup>87</sup> *See* Opinion and Order of August 6, 1979, JA 354. Elsewhere in its August 6, 1979 opinion the District Court noted:

The posture of this case at this point in discovery is unusual in several respects. First, plaintiffs have either lost or destroyed virtually all of the relevant documents. Secondly, plaintiffs waited several years after the alleged actions complained of began taking place to file this lawsuit. Third, plaintiffs are asking for injunctive relief from officials presently in office, but are requesting damages from past officials.

JA 851.

<sup>88</sup> Even if Rule 37(a) can be interpreted as giving the court authority, not only to order new responses, but also to override the Party's choice of representative, such action was

ley's original search for information could have been more vigorous; the fact that JoNina Abron was able to uncover additional information when she prepared the supplemental responses to the 107 interrogatories supports this conclusion. Under the circumstances, however, the District Court should have simply entered an order requiring the Party and its representative to conduct a more complete search for information. Then, if it concluded that the representative's response to this order was inadequate, it might have had power under Rule 37(b) to require all Party officers to respond to the 107 interrogatories; that rule, unlike Rule 37(a), does give the courts broad discretion to fashion appropriate orders.<sup>99</sup>

inappropriate here. At the very least, Rule 33(a) establishes a strong presumption in favor of the organization's designated agent. In the absence of evidence suggesting that the agent has acted in bad faith, or some other unusual circumstance, this presumption should prevail. Here the District Court expressly found that the Party had "made a good faith effort to provide full and complete answers to the interrogatories in question." JA 854. It did note that the case was unusual because of "the scarcity of records," "the time lapse between the alleged occurrences and the present," "unavailability of many witnesses," *id.*, and the fact that appellants were seeking damages from past officials. JA 851, *see note 97 supra*. But none of these circumstances can be attributed to misbehavior on the part of appellants. There is no suggestion, for example, that the Party intentionally delayed filing suit; in its complaint the Party states that it learned of many of the events complained of only after the Senate Report was published in 1976. Nor is there any evidence suggesting that the Party intentionally destroyed records. *See note 94 supra*. And although these "unusual" circumstances may demonstrate a need for information, they do not support a decision to override the Party's choice of representative. We note that appellees will have an opportunity to depose other Party officers at a later stage of discovery.

<sup>99</sup> Appellants suggest that, even under Rule 37(b), the District Court could not require Party officers to respond

that the district court had acted prematurely in ordering the Right to Work Foundation to disclose the names of its contributors, but the identity of the companies whose officers or employees were members of the Foundation's Right to Work Advisory Council had already been publicly disclosed: 590 F.2d at 1145. Those council members are the equivalent of the officers and spokesmen of the Black Panther Party. *Right to Work* thus recognized no First Amendment right in concealing the identity of an organization's officers and spokesmen. Moreover, we recognized in *Right to Work* that

At some point, the additional burden on a litigant in seeking out alternative sources of discovery may justify compelling disclosure of essential information from one asserting a constitutional privilege.

*Id.* at 1153. The government's evident prejudice from yet further delay justifies disclosure now. Thus, in my view, *Right to Work*, far from justifying continuing concealment, is additional authority for compelled disclosure.

The Black Panther Party filed a further response on October 2, 1979, to 107 interrogatories as ordered by the Court on August 6, 1979. However, the Party still continued to claim that it had a First Amendment privilege to refuse to disclose the identities of certain Central Committee members, local leaders and certain individual party members who were not already publicly known. The Party stated its position as follows:

The Party, and its officers, continue to object to the disclosure of information for which the Party has claimed a First Amendment privilege. Specifically, the Party continues to refuse to disclose the identities of Central Committee members whose names have not been previously disclosed (interrogatory 21); the identities of local leaders of the Party's affiliates (interrogatory 33); and the names of individual party members not already publicly

Plaintiffs also contend that *Carey v. Hume*, 492 F.2d 631 (D.C. Cir.), *petition for cert. dismissed*, 417 U.S. 938 (1974), supports their claim of a First Amendment privilege to withhold the names of secret officers and spokesmen. However, as we noted in *International Union v. National Right to Work*, 590 F.2d 1139 (D.C. Cir. 1978), our ruling in *Carey v. Hume* recognized that the First Amendment interests implicated by compelled disclosure of the confidential source of a newsman may sometimes be outweighed by a civil litigant's need for information in a lawsuit. The Party's First Amendment claim is similarly outweighed here.

The preconditions for compelling disclosure established in *Carey* were simply that the party seeking disclosure has made reasonable attempts to obtain the information elsewhere, and that the information sought goes to the heart of the lawsuit, 492 F.2d at 636-39 and cases cited. These requirements have been satisfied here. The attempts to obtain the information from the Party itself were unavailing, justifying direct recourse to the Party's officers and authorized spokesmen. It is also clear that the interrogatories seek information that is critical to defendants' apparent contention that their conduct was justified by the nature of the Black Panther Party as an unlawful conspiracy engaged in numerous violations of federal law. At this late stage in the pre-trial proceedings, since the vital information concerning the Party's activities has been withheld or claimed to be unavailable, the time is ripe to require the Party's officers and authorized spokesmen, including those not publicly known, to respond to defendant's interrogatories. In fact, the officers and authorized spokesmen who have not been publicly disclosed might well be the persons best able to reveal the facts of the operation of the alleged conspiracy.

Nor does our *Right to Work* decision, *supra*, support the Party's insistence on secrecy. In that case we held

Appellees suggest that the District Court's order was authorized by Rule 37(d), which, as we stated above, confers power to make such orders as are just when a party completely fails to respond to interrogatories. They argue, in effect, that Kelley's original answers to the 107 interrogatories were so inadequate as to constitute a total failure to respond. But Rule 37(d) has not been interpreted to apply when a party has actually served answers, unless the responses provided are so incomplete as to be grossly inadequate, or unless there is evidence of evasiveness. See 8 C. WRIGHT & A. MILLER, *supra*, § 2291.<sup>100</sup> We do not feel that the original responses could be characterized as grossly inadequate. After all, they totalled more than 100 pages. Indeed, the District Court expressly found that the Party had conducted a "good faith search" for information.<sup>101</sup>

to interrogatories. They argue that under Rule 33(a) interrogatories may not be served on persons who are not named parties. They then point out that the Party officers are not named parties to this action. But Rule 33(a) refers only to the initial service of interrogatories. In our view, the court's authority under Rule 37(b) "to make such orders as are just" would encompass, in some circumstances, the power to require individuals other than an organization's original representative to respond to interrogatories. We believe such circumstances would be rare, however. Cf. note 98 *supra*.

<sup>100</sup> See also *Airtex Corp. v. Shelley Radiant Ceiling Co.*, 536 F.2d 145 (7th Cir. 1976); *Alliance to End Repression v. Rochford*, 75 F.R.D. 438 (N.D. Ill. 1976); *Southard v. Pennsylvania R. Co.*, 24 F.R.D. 456 (E.D. Pa. 1959).

<sup>101</sup> See Opinion and Order of August 6, 1979, JA 854. This argument is also inconsistent with the fact that appellees' motion was a motion to compel under Rule 37(a), not a motion for immediate sanctions under Rule 37(d). And it fails to recognize that at an earlier stage in the proceedings the District Court found that a motion for immediate sanctions under Rule 37(d) was inappropriate, and that appellees must proceed under Rules 37(a) and 37(b). As we explained

Because we do not believe the District Court properly ordered the Party's officers to respond to the 107 interrogatories, the Party's failure to obey this order cannot support imposition of the sanction of dismissal. But even if the underlying discovery order was valid, we would not be able to find that the failure to obey supports dismissal. The Party did not refuse to provide any more information. Its new representative, JoNina Abron, submitted a comprehensive set of supplemental responses totalling more than 50 pages. Moreover, appellants' refusal to comply with the court's order was based on a colorable legal claim. The Party's behavior could not be said to constitute the sort of inexcusable intransigence that would justify imposing the extreme sanction of dismissal. Cf. *Morton v. Harris*, *supra*.<sup>102</sup> It is also relevant to note that appellees are not prejudiced by the Party's failure to comply with the terms of the August 6 order. See *Marshall v. Segona*, *supra*. Again, JoNina Abron's supplemental responses are quite detailed. Moreover, appellees would have had an opportunity to depose Party officers during later stages of discovery. Indeed, because the Party refused to comply, a potentially confusing situation was avoided. The purpose of serving interrogatories on the Party was to obtain admissions. But if each of the officers had responded, it would have been unclear whether they were speaking for themselves or their organization.<sup>103</sup>

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earlier, see text and notes at notes 47-48 *supra*, appellees moved for dismissal shortly after the Party filed its original responses to the interrogatories. The Party objected, arguing that appellees must first file a motion to compel under Rule 37(a). The District Court apparently agreed.

<sup>102</sup> See generally Part II *supra*.

<sup>103</sup> Moreover, to the extent the District Court was concerned about possible inconsistencies in the responses, requiring each

sue their *lawful* private interests." 357 U.S. at 465, 466 (emphasis added).

According to the allegations, this case is much closer to *Zimmerman* than to *NAACP*. Plaintiffs' pleadings contend that the Black Panther Party was at all times practically an eleemosynary organization devoted to good works among the poor and needy and was greatly wronged by the acts of defendants. On the other hand, the defendants, judging from their interrogatories and statutory responsibilities, are contending that the Black Panther Party, during the years in question, was engaged, among other crimes, in a conspiracy to cause civil disorder in violation of 18 U.S.C. § 231(a), 18 U.S.C. § 371, by unlawful intimidation, force, violence, terrorist activities and inducements to kidnapping, murder and interference with law enforcement officers in the lawful performance of their official duties. For example, see Interrogatories 80 (storing guns and military equipment); 81 (encouraging mutiny in armed forces and killing of Army officers); 89 (killing police officers); 91 (killing president and ex-president); 101 (acquiring and stealing dynamite, bombing of public buildings, etc.); 102 (using explosives); 103 (hijacking airplanes); 104 (ambushing police officers). These and other interrogatories indicate it is part of the defendants' defense that, in accordance with their statutory duties to enforce federal laws and to prevent crimes against the United States, they were engaged in a legitimate effort to investigate the Black Panther Party to discover those violating the laws of the United States, to destroy the unlawful conspiracy, and to prevent such illegal activities in the future.<sup>5</sup>

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<sup>5</sup> Defendants have not specified the crimes they were investigating. 18 U.S.C. § 231(a) and § 371 seem obviously involved, however, from the information sought by the interrogatories.

Amendment right of the NAACP to refuse to disclose the names of its *general rank and file members* in Alabama to state authorities who were resisting the civil rights campaign by the NAACP in that state. And the civil rights campaign was legal. What is critical in the *Alabama* decision to this case is that while the NAACP withheld the names, it *furnished* the "total number" of its ordinary members in Alabama. It also furnished "*the names of all its directors and officers.*" 357 U.S. 465. NAACP is thus *not* authority for the Black Panthers withholding names of the Party's officers and authorized spokesmen.

Moreover, the *names* of the NAACP's ordinary members had little or no relevance to the lawsuit brought by Alabama against the NAACP; that suit was brought merely because the NAACP had failed to register as a foreign corporation. The NAACP furnished evidence of its finances in the state and admitted that it had many members in the state. Discovering the *names* of the ordinary members would not have added to the proof that the NAACP was doing business in the state. Justice Harlan's opinion, in distinguishing the case of *Bryant v. Zimmerman*, 278 U.S. 61 (1928), implicitly acknowledged that the names of persons in an organization may sometimes be highly relevant to a lawsuit. In *Zimmerman* the Supreme Court upheld a New York statute that required the Ku Klux Klan in that state to produce its "roster of membership and list of officers for the current year." The New York statute applied to unincorporated associations that required an oath as a condition of membership. In *NAACP*, the Court distinguished *Zimmerman*, indicating that the New York statute was evidently meant to regulate an organization notorious for its "acts of *unlawful* intimidation and violence" (emphasis added), whereas the discovery of names sought by the state under the Alabama statute at issue in *NAACP* would infringe deeply upon the right of NAACP members freely to "pur-

of the officers to respond would probably have magnified the problem.

The dissenting opinion levels a broad attack against the analysis employed in Part III-A, arguing that, although the scheme set forth in the Rules governs the actions of the parties, it does not circumscribe the power of the District Court. According to the dissent, the District Court has inherent authority to supervise the discovery process. This authority would include the power to enter any orders it believes are reasonable under the circumstances. Thus, in this case, because the order requiring each of the Party's officers to respond to a list of interrogatories constituted reasonable intervention, it should be affirmed. Dissenting opinion, Part I. We disagree. In our view, the court does not have the power to depart from the Rules and intervene in the discovery process at will. Such power would be inconsistent with one of the general policies underlying the Rules—that the conduct of discovery is to be left to the parties themselves, except when they ask for the assistance of the court. Moreover, if the court did possess such broad authority, the scheme set forth in the Rules, which carefully delineates the actions available to the parties and the court in specific instances during discovery, would be rendered superfluous.

In fact, the Supreme Court has criticized reliance on "inherent power" as a basis for imposing sanctions during the discovery process. In *Societe Internationale v. Rogers*, 357 U.S. 197, 207 (1958), the Court disapproved a lower court's attempt to predicate dismissal of a complaint on its inherent power.

In our opinion, whether a court has power to dismiss a complaint because of noncompliance with a production order depends exclusively upon Rule 37, which addresses itself with particularity to the consequences of a failure to make discovery by listing a variety of remedies which a court may employ as well as by authorizing any order which is "just." \* \* \* Reliance upon \* \* \* "inherent power[]" can only obscure analysis of the problem before us. \* \* \*

See also *Independent Productions Corp. v. Loew's Incorporated*, 283 F.2d 730 (2d Cir. 1960) (court erred in dismissing action with prejudice on basis of its inherent power; complete adherence to the clearly delineated procedures of

### B. *Inconsistent and Evasive Responses*

Another reason supplied by the District Court to justify dismissal is its finding that the Party failed adequately to clarify 44 responses to interrogatories that the court considered to be inconsistent or evasive. We are unable to conclude that the portion of the August 6 order requiring clarification or additional information was invalid.<sup>104</sup> We find, however, that the District Court erred when it ruled that the supplemental responses did not provide sufficient clarification. In our view, the explanation provided by the Party was adequate. Dismissal could not be justified on the ground that the Party failed to comply with this portion of the August 6 order.

As the Party points out in its brief, the interrogatories to which further responses were directed on the ground that the original answers were inconsistent or evasive can actually be divided into five categories.<sup>105</sup> First, there were interrogatories with respect to which the Party had

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Rule 37 is required). *Societe Internationale and Independent Productions Corp.* strongly support our conclusion that the District Court's actions here were inappropriate.

<sup>104</sup> With respect to some of the interrogatories, however, we believe the order for clarification or supplementation was unwarranted. For example, the District Court included in the list of 44 interrogatories those questions with respect to which the Party claimed a First Amendment privilege. See text and notes at notes 106, 111 *infra*. This portion of the order has not been adequately justified. See Part III-D *infra*. But we do not dispute the District Court's conclusion that, because of apparent factual inconsistencies, clarification of certain other interrogatories was required. See text at note 115 *infra*.

<sup>105</sup> To a certain extent, these categories are overlapping. Compare notes 106-110 *infra*. The District Court did not rely on these categories.

authorized spokesmen are in a different category. As to these undisclosed individuals, the defendants' need for the information in their possession outweighs the Party's claim of constitutional privilege. The district court balanced the appropriate factors, albeit not as explicitly as some might desire, and arrived at the correct result. Its order to compel responses was in this respect valid, even if dismissal was too severe a sanction for flouting it.

As the majority relates, determining whether discovery can be compelled over a claim of constitutional privilege requires an assessment of the substantiality of the claim of privilege, the relevance of the information sought, and the availability of alternative sources. I question, at the outset, whether the district court's order compelling discovery should not be upheld simply on the basis that the Party failed to make a substantial showing of privilege. In fact, the Party made no showing at all. It "claims that [its associational] freedoms [under the First Amendment] might be endangered if the names of its leaders . . . not known to the public are disclosed," Maj. op. at note 153, and "alleges that its members have been harassed before, and suggests this harassment may continue." *Id.* (emphasis added). Of course, if they are breaking the law, some legitimate acts of law enforcement that they characterize as "harassment" may be justified. Yet, despite its opportunities to do so, the Party has made no evidentiary showing to rebut the defendants' explanation that investigation of the Party ceased years ago. This case is thus a far cry from *NAACP v. Alabama*, 357 U.S. 449 (1958), in which an "uncontroverted showing" of past reprisals against persons disclosed to be affiliated with the NAACP permitted the Supreme Court to conclude that compelled disclosure of the NAACP's membership in Alabama would have unwarranted adverse consequences for the individuals involved. *Id.* at 462-63.

*NAACP v. Alabama* is also distinguishable on other grounds. Justice Harlan's opinion upheld the First

ity undoubtedly have firsthand knowledge of such acts, if they did take place. As the district court noted, records were scarce, much time had elapsed since the alleged occurrences, witnesses were scattered, and "defendants [were] forced to rely on memories." App. 852. Moreover, Kelley reported that some people she contacted in preparing her responses would not "talk about their former connection with the Party." App. 731.

An explanation for this reticence may be found in the testimony of Party co-founder and officer Huey Newton (also a plaintiff herein), who revealed that "when any conversation transpires between a Party member and myself it's already understood that nothing will be told unless I give instruction." App. 815. Newton also testified that it is against Party policy to disclose the whereabouts of a Party member accused of a crime. *Id.* In light of all these circumstances it is clear that the district court reasonably determined that the full factual disclosure contemplated by the rules of discovery would come about expeditiously only if all the former Party officers and authorized representatives were required to respond individually to the specified interrogatories. *See generally* Fed. R. Civ. P. 1 ("These rules . . . shall be construed to secure the just, speedy, and inexpensive determination of every action.")

## II. THE CLAIM OF FIRST AMENDMENT PRIVILEGE AS TO INFORMATION CONCERNING UNDISCLOSED PARTY OFFICERS AND AUTHORIZED SPOKESMEN

I also dissent to the extent that the majority holds that the district court violated the Party's First Amendment privileges in ordering disclosure of the names of all undisclosed Party officers and local party leaders. I agree that the names of ordinary members need not be disclosed, absent a showing of a special need with respect to the knowledge of particular individuals, but Party officers and

claimed a First Amendment privilege.<sup>106</sup> Second, there were interrogatories that the Party objected to on grounds of burdensomeness.<sup>107</sup> Third, there were interrogatories to which the Party responded by referring appellees to its newspaper.<sup>108</sup> Fourth, there were interrogatories which sought further information concerning allegations in the Party's complaint, and to which the Party responded that it would be relying on discovery received from appellees.<sup>109</sup> Finally, there were interrogatories the responses to which appellees disputed as a matter of fact because they believed them to be inconsistent with other evidence.<sup>110</sup> Thus the court's description of each of the 44 responses as "inconsistent or evasive" may be somewhat broad.

The Party's responses to the interrogatories that fall within the first four categories clearly do not support dismissal at this stage. As we have already seen, the responses involving a claim of First Amendment privilege were not only included in the list of 44 inconsistent and evasive answers, but were also made the subject of a separate portion of the August 6 order; we show *infra* that it is unclear on the basis of the record as it now stands whether the claim of privilege was properly denied. Dismissal cannot be justified on the ground that

<sup>106</sup> *See* Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants at JA 95-97, 108-109, 121 (responses to Interrogatories 21, 33, 61).

<sup>107</sup> *See id.* at JA 99, 108-109, 121, 201 (responses to Interrogatories 25, 33, 61, 223).

<sup>108</sup> *See id.* at JA 116, 153, 155-159, 175-176 (responses to Interrogatories 49, 114, 115, 120, 121, 123, 163, 164, 223, 224).

<sup>109</sup> *See id.* at JA 111-112, 154-159, 164 (responses to Interrogatories 40, 41, 114, 115, 119, 120, 121, 122, 123, 131, 132).

<sup>110</sup> *See id.* at JA 91, 93-94, 98, 107, 108, 110, 120, 124, 129, 168-169, 183, 193 (responses to Interrogatories 16, 18, 22, 27, 32, 36, 58, 59, 72, 73, 75, 90, 91, 98, 144, 184, 203).



the Party has refused to disclose its membership list until after the District Court has reconsidered the privilege question.<sup>111</sup> As for the interrogatories that the Party objected to on grounds of burdensomeness, we note that supplemental responses were provided after the District Court entered its August 6 order. Review of these new responses convinces us that the Party has fulfilled its obligations.<sup>112</sup> With respect to those interrogatories that the Party answered by referring to its newspaper, we point out that in its August 6 order the court explicitly ruled that the Party must prepare supplemental responses after conducting a full search of the publication. The Party did conduct this search.<sup>113</sup> In the opinion accompanying its order dismissing appellants the court noted that the Party had supplemented its responses on the basis of information drawn from *The Black Panther*.<sup>114</sup> As for the interrogatories which asked for further information regarding the Party's claims, and which the Party responded to by stating that it hoped to rely on further discovery from appellees, we have seen no evidence suggesting that the Party made these

<sup>111</sup> See Part III-D *infra*.

<sup>112</sup> See Plaintiff Black Panther Party's Supplemental Responses to Interrogatories of the Federally Represented Defendants at JA 741, 761 (responses to Interrogatories 25, 223); Plaintiff Black Panther Party's Further Supplemental Responses to 107 Interrogatories as Ordered by This Court on August 6, 1979 at JA 879, 885, 906 (responses to Interrogatories 25, 61, 223); Plaintiff Black Panther Party's Further Supplemental Responses Based Upon a Search of "The Black Panther" Newspaper From 1967 Through 1970 as Ordered by This Court on August 6, 1979 at JA 934-936, 953-956, 987 (responses to Interrogatories 33, 61, 223).

<sup>113</sup> See *id.* at JA 928, 995, 1072.

<sup>114</sup> JA 1134-1135. The court did not expressly state that the Party had complied with its August 6 order. Our own review, however, convinces us that the Party's search was complete.

37 rather than subsection (b) that speaks to orders compelling answers, and it does not restrict the district court's discretion in placing such conditions in its order to compel an answer as will make that order effective. That includes the direction that association officers answer the interrogatories individually. Rule 33(a), as noted, does not restrict the district court's discretion in that regard, either, for Rule 33(a) gives the association the right to select its representative only at the outset, against the attempt of the opposing party to insist on making that selection initially. If the court properly finds that the first set of responses were inadequate, and further properly finds that individual responses are necessary to remedy the deficiency, a Rule 37(a) order to compel individual responses to interrogatories is perfectly valid.

It remains, then, to inquire into the specific circumstances that led the district court to compel individual responses in this case. First, it is obvious from the record and the responses that were made to the defendant's initial interrogatories by Joan Kelley, the Party's designated surrogate for that purpose, that she was unable to furnish much of the information called for by the interrogatories. She did not have first hand knowledge of much of the information concerning the Party that she was requested and selected to furnish. She did not join the Party until 1969, after it had allegedly engaged in 1967 in many of the violent acts of the kind which caused the formation of COINTELPRO, and she did not become a member of the Party's Central Committee until 1971 (JA 730-732). The inadequacy of Kelley as a surrogate for the Party was also made plain by her disingenuous responses to some of the critical interrogatories inquiring about illegal acts: she responded that the Party has no record of any such activity. See Responses to Interrogatories 79, 80, 88, 89, 91, 101, 102, 103, 104 in the Appendix to this opinion. Law breakers rarely go out of their way to document their crimes, but Party officers and others in author-

tive submitted woefully inadequate responses, acted well within its discretion, and in accordance with the Federal Rules.

The majority is correct in stating that Rule 33 entitles an associational litigant at a certain stage to select an agent to prepare responses to interrogatories. To the extent Rule 33 confers this right, however, it is a right only against the *adverse party*, not against the *court*. That is, even if the *opposing party* may not insist upon responses from specific officers or agents, *Holland v. Minneapolis Honeywell Regulator Co.*, 28 F.R.D. 595 (D.D.C. 1961), the *court*, under the appropriate circumstances, may so order.

Rule 37(a) provides that if a party fails to answer an interrogatory submitted under Rule 33, the party seeking discovery may move for an order compelling an answer. The rule does not limit what the order may provide. The common sense of the matter is that if the designated representative of a litigating party proves unable to produce information from the association's officers and records, the court's order may compel officers, or other knowledgeable individuals, to answer individually, if the circumstances warrant.

In my view the majority errs when it maintains, *Maj. op.* at 21-22, that the district court has power to order individual responses, if at all, only under Rule 37(b). Subsection (b) of Rule 37 has nothing to do with the district court's power to compel an answer. Rule 37(b) specifies the *sanctions* available to the court if a Rule 37(a) order compelling an answer is disobeyed. It is with regard to *sanctions* that Rule 37(b) recognizes the district court's power to "make such orders as are just." *Cf. Maj. op.* at 22 n.99. Requiring responses from designated individuals is not a *sanction*; it is simply one means of effectuating an order to compel answers. It is subsection (a) of Rule

claims as part of a conscious effort to conceal relevant information. A decision to dismiss could not be justified on this ground.

The category of interrogatories to which appellees objected on the ground that the original responses were inconsistent with other evidence requires only slightly more attention. Having examined the Party's responses to each of the interrogatories that fall within this category, we cannot conclude that the portion of the District Court's August 6 order requiring clarification constituted an abuse of discretion; although many of the contradictions pointed to by appellees involve relatively insignificant issues, we believe that such an order was warranted. We do conclude, however, that the Party adequately explained the apparent inconsistencies in its supplemental responses and in the memoranda supporting its opposition to appellees' motions.<sup>115</sup> The District Court's finding

<sup>115</sup> The Party's allegedly inconsistent responses, as well as its explanations, are contained in the Joint Appendix: for Interrogatory 16, regarding Party rules, *see* JA 91, 542, 694-695, 738, 835; for Interrogatory 18, regarding the number and responsibilities of Party officers, *see* JA 93, 544, 695-696, 740, 835-836; for Interrogatory 22, also regarding the number and responsibilities of Party officers, *see* JA 97-98, 544, 697-699, 836; for Interrogatory 27, regarding the corporate status of Party affiliates, *see* JA 107, 690-700; for Interrogatory 32, regarding staff positions in Party affiliates, *see* JA 108, 700, 837; for Interrogatory 36, regarding the duties of regional Party chapters, *see* JA 110, 544-545, 701-702, 741-748, 837; for Interrogatories 58-59, regarding sponsorship of the Conference on the Black Panther Party's Right to Exist, *see* JA 119-120, 547, 703-705, 750-751, 838-839; for Interrogatories 72-73, regarding the Party's receipt of stolen goods, *see* JA 124, 547, 705-706, 839; for Interrogatory 75, regarding the Party's rules on carrying firearms, *see* JA 124, 547-548, 706, 751, 840; for Interrogatories 89-92, regarding the Party's advocacy of murder of government officials, *see* JA 128-130, 549, 556-562, 709-710, 840, 888; for Interrogatory 98, regarding the nexus between the Party and Strong-

to the contrary is clearly erroneous. Appellees may continue to dispute the accuracy of the Party's responses. But dissatisfaction with an opposing party's responses to discovery requests is not unusual in complex cases. These disputes may be resolved at trial. Certainly, the Party has not displayed the sort of conscious disregard for its discovery obligations that would justify imposition of the sanction of dismissal.

We will not discuss each of the disputed answers here. Instead, we will simply describe several responses that seemed to present particularly troublesome contradictions. One example concerns allegedly inconsistent statements made regarding the size and composition of the Party's governing body, the Central Committee. In one of its original responses to appellees' interrogatories the Party stated that "the Party is and always has been governed by a fifteen-member body known as the Central Committee."<sup>116</sup> The Party also listed the names of 22 past and present Committee members whose identities

hold Consolidated Products, Inc., see JA 131-136, 549, 710-711, 846; for Interrogatory 144, regarding the Party's participation in the torture-murder of a Party member, see JA 169, 550-551, 717-718, 756-757, 841; for Interrogatory 184, regarding an inflammatory comic book allegedly distributed by the Party, see JA 183, 551-552, 720-721, 758, 842; for Interrogatory 203, regarding diversion of funds donated to the Party, see JA 193, 723, 841. See also Statement of Plaintiffs Black Panther Party and Huey P. Newton Why Motion of Defendants Civiletti, et al., For the Sanction of Dismissal Should Be Denied, R 230 at 10-13. We note that in their Renewed Motion for Sanctions appellees continued to contest only nine of these interrogatories: Interrogatories 16, 18, 58, 59, 72, 73, 75, 98, 144. See appellants' brief at 40. They were apparently satisfied with the Party's explanation of its other responses.

<sup>116</sup> Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants at JA 93 (response to Interrogatory 18).

taining the requested information, or that the information had been lost or destroyed.<sup>3</sup>

In my view the district court has an inherent power to supervise the discovery process and need not justify every exercise of its supervisory power by resort to some specific provision of the Federal Rules of Civil Procedure. The question instead should be whether the court acted reasonably under the circumstances and not contrary to some specific provision of the Rules.<sup>4</sup> The district court here, in ordering Party officers to answer defendants' interrogatories individually after the Party's representa-

<sup>3</sup> See generally Appendix at end of this opinion.

<sup>4</sup> As the majority notes in response, the Federal Rules in some instances provide clearly delineated procedures addressed to particular matters in the discovery process. Maj. op. at note 103. It is true that with respect to these matters the Rule in question preempts any inherent authority and analysis of the court's power to act depends exclusively on interpretation of the Rule. *Societe Internationale v. Rogers*, 357 U.S. 197, 207 (1958) (court's authority to dismiss complaint for failure to comply with production order depends exclusively on interpretation of Rule 37(b)(2), which specifies the steps a district court may take if any party refuses to obey a production order). The rationale of *Societe Internationale*, however, is inapposite here, for, as explained in text, none of the rules cited by the majority speaks with any particularity to the court's power to fashion an order compelling discovery. *Independent Productions Corp. v. Loew's Incorp.*, 283 F.2d 730, 732-33 (2d Cir. 1960), also involving Rule 37, is distinguishable for the same reason. Moreover, in *Loew's* the Second Circuit held the district court ignored specific provisions of Rule 37(a) and (b) by dismissing the suit in advance of a failure to obey a Rule 37(a) order.

Obviously the district court lacks power to act contrary to the rules. What I maintain is simply that *absent specific guidance* the district court has power to act reasonably. This does not render the rules "superfluous"; it merely recognizes that in some areas the Rules do not provide specific guidance and that in these areas the district court has power to advance the Rules' general policies favoring fairness and expedition.

sight. Neither is full disclosure. The district court was understandably concerned about accelerating the speed of full discovery in this case, but I agree with the majority that dismissal, at the present stage of the case, was too harsh a sanction for the Party's initial refusal to comply with the discovery orders. I thus concur in the remand and the court's order, but only to the extent that it directs both sides to answer interrogatories immediately. I dissent from the half-hearted approval of the Party's refusal to supply certain critical information and from any implication that the district court may not now order all past officers of the Black Panther Party to answer all interrogatories to the full extent of their knowledge.<sup>2</sup> Thus, while I concur in the remand, I would not permit further delay in discovery on the grounds claimed by the Party.

#### I. REQUIRING PARTY OFFICERS TO RESPOND INDIVIDUALLY

My principal disagreement with the majority opinion is over its decision that past and present individual *Party officers* can not *now* be ordered to respond to interrogatories, particularly about acts in which they might have personally participated and have personal knowledge. In my judgment the district court did not abuse its discretion when it ordered these individuals to respond under oath to certain interrogatories—particularly those that the designated representative of the Party had refused to fairly or fully answer on the grounds that she lacked the information, that she did not know where the information could be obtained, that she was not aware of any such information, that she did not know of any documents con-

<sup>2</sup> Although the district court ordered only Party officers to respond individually, it would also be reasonable, in my view, to require individual responses from authorized Party spokesmen.

were known to the public.<sup>117</sup> The government challenged the accuracy of these statements. It pointed to responses to interrogatories made by Huey Newton in which Newton confirmed that the Central Committee was a 15-member body but named only eight past and present members whose identities were publicly known.<sup>118</sup> It also noted that in an unrelated criminal trial Newton testified that when he left the United States in 1974 the Central Committee consisted of himself and Elaine Brown, and that when he returned to this country in 1977 Elaine Brown left the Party and the Committee dissolved.<sup>119</sup> Finally, the government notes that in an unrelated civil case Elaine Brown responded to interrogatories by identifying a total of 10 Committee members. Brown did not explain whether she intended to identify all members of the Committee or only the past and present members whose names were publicly known.<sup>120</sup>

The Party's explanation is complex, but fully coherent. In one set of supplemental responses it clarified its first answer by stating that

<sup>117</sup> See *id.* at JA 96-97 (response to Interrogatory 21) (listing 20 names); Plaintiff Black Panther Party's Supplemental Responses to Interrogatories of the Federally Represented Defendants at JA 738 (listing one additional name); Affidavit of JoNina Abron at JA 872 (stating that JoNina Abron is a Central Committee member).

<sup>118</sup> Plaintiff Black Panther Party's Answers to Defendant George C. Moore's Interrogatories (made by Huey P. Newton), reprinted at JA 72.

<sup>119</sup> See Partial Transcript of *People v. Newton*, Superior Court of California, County of Alameda No. 65474, reprinted at JA 819, 826, 828; see also Statement of Defendants Bell, et al., [of] Interrogatories Sought to Be Compelled, reprinted at JA 775, 813-814.

<sup>120</sup> See Response of Plaintiff Black Panther Party to Defendants' First Interrogatories in *Dellinger v. Mitchell*, D.C. Civil Action No. 1768-69, reprinted at JA 677-685 (responses prepared by Elaine Brown).

the Central Committee has always consisted of approximately fifteen members. This number has fluctuated slightly. At times, there have been more than fifteen people on the Central Committee, and at other times there have been fewer than fifteen people. At present, for example, there are twelve members of the Central Committee.<sup>121</sup>

As for the testimony of Newton in the unrelated criminal trial, the Party explained that when he said the Central Committee consisted only of him and Elaine Brown in 1974, and that it subsequently dissolved, he intended to refer to a central core within the Committee. According to the Party, this core consisted of the Committee members with whom Newton, as Party leader, was most likely to confer before making major decisions.<sup>122</sup> This explanation is plausible: the Party suggested that such a central core existed in its original responses.<sup>123</sup> The Party also stated that when Elaine Brown identified 10 Committee members she probably intended to identify only those past and present members whose names were already known to the public. It further explained that the Party identified 22 past and present members, whereas Newton and Brown identified only eight and 10 respectively, because it realized that, over time, more names had become public.<sup>124</sup>

<sup>121</sup> Plaintiff Black Panther Party's Further Supplemental Response to 107 Interrogatories as Ordered by This Court on August 6, 1979 at JA 876.

<sup>122</sup> See Statement of Plaintiffs Black Panther Party and Huey P. Newton Why Motion of Defendants Civiletti, et al., For the Sanction of Dismissal Should Be Denied, R 230 at 12.

<sup>123</sup> See *id.*; Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants at JA 93 (response to Interrogatory 18).

<sup>124</sup> See Plaintiff Black Panther Party Memorandum of Points and Authorities in Support of Motion to Compel Discovery at JA 696.

MACKINNON, *Circuit Judge* (concurring in part and dissenting in part).

The Black Panther Party and its co-plaintiffs seek \$100 million in compensatory and punitive damages from a number of former and present United States officials and employees who, beginning in 1967, allegedly participated in a covert action program (code named COINTELPRO) designed to destroy the Black Panther Party. COINTELPRO was started in the wake of the "long hot summer of 1967," when internal violence in the United States reached epidemic proportions and law enforcement agencies and national guard units throughout the nation were severely taxed to combat mass violence, arson, wholesale looting and constant threats to law and order—particularly in the large cities. At that time the Director of the Federal Bureau of Investigation labelled the Black Panther Party "the greatest threat" to the internal security of the United States. S. Rep. No. 755, 94th Cong., 2d Sess., Book III, 187 (1976).

Following an investigation, by a Select Committee, Senator Church, Chairman, the Committee Report in 1976 revealed the details of several COINTELPRO programs, including one that was directed at the Black Panther Party and that allegedly violated the constitutional rights of the Party and its members. *Id.* at 187-223. The report does not constitute evidence.

Following the release of the Committee Report, this lawsuit was started on December 1, 1976.<sup>1</sup> Since that date, the parties have engaged in a series of extensive discovery efforts that have brought the case to its present procedural status as described in Judge Wright's opinion. In sum, the discovery efforts on both sides have been continuing for over three years and the end is not yet in

<sup>1</sup> An Amended Complaint was filed March 31, 1977. Attorney General Levi filed an Answer on June 21, 1977.

Another dispute involves an effort by appellees to obtain evidence establishing that the Party was committed to violence.<sup>125</sup> In its interrogatory the government asked the Party to provide a list of its rules and by-laws. The Party provided a list,<sup>126</sup> but appellees claimed that the response was evasive because it failed to include two items known as the "8 Points of Attention" and the "3 Main Rules of Discipline," which had been included in Party publications.<sup>127</sup> According to the government, these two items contained rules suggesting that the Party was a violent organization.<sup>128</sup> The Party explained that the

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<sup>125</sup> Appellees hoped to defend their actions on the ground that the Party was engaged in violent activities.

<sup>126</sup> See Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants at JA 91 (response to Interrogatory 16).

<sup>127</sup> See Statement of Defendants Bell, et al.: Interrogatories Sought to be Compelled at JA 778-779; see also Reply Memorandum to Opposition to Motion of Defendants Bell, et al. to Compel Discovery of Plaintiff Newton, R 214.

<sup>128</sup> The "8 Points of Attention" are:

1. Speak politely.
2. Pay fairly for what you buy.
3. Return everything you borrow.
4. Pay for anything you damage.
5. Do not hit or swear at people.
6. Do not damage property or crops of the poor, oppressed masses.
7. Do not take liberties with women.
8. If we ever have to take captives, do not ill treat them.

The "3 Main Rules of Discipline" are:

1. Obey orders in all your actions.
2. Do not take a single needle or piece of thread from the "poor and oppressed" masses.
3. Turn in everything captured from the attacking enemy.

"8 Points of Attention" and the "3 Main Rules of Discipline" were provided merely as examples of the rules of another revolutionary organization. It conceded that a Party press release implied that the rules applied to Party members. It claimed, however, that the press release was based on an article in *The Black Panther*, and that this article supported the Party's position.<sup>129</sup> We think this explanation is adequate.

A third example also involves an effort to obtain an admission that the Party was a violent organization. Appellees asked whether Party members were required or encouraged to carry firearms. The Party responded by stating, "Within the limits of the law and the Constitution, the right to bear arms and defend one's home and property was not discouraged."<sup>130</sup> Appellees argued that this answer was evasive. The Party supplemented its response by stating that, although Party members were not required to carry or train with firearms, "the atmosphere of harassment by law enforcement officers was such that members were encouraged to carry firearms." It also noted that under Party rules members were forbidden to carry weapons while intoxicated, or to use weapons unnecessarily.<sup>131</sup> We find that this answer is sufficiently responsive.

A final example involves two interrogatories in which appellees asked whether Party members were encouraged to give the Party a portion of the proceeds whenever

<sup>129</sup> See Plaintiff Black Panther Party Memorandum of Points and Authorities in Support of Motion to Compel Discovery at JA 694-695; see also appellants' brief at 41.

<sup>130</sup> See Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants at JA 124 (response to Interrogatory 75).

<sup>131</sup> See Plaintiff Black Panther Party Memorandum of Points and Authorities in Support of Motion to Compel Discovery at JA 706.

to file for class action certification. The individual appellants may not press claims on behalf of the classes described in their complaint.

Although we believe this action should go forward, we admonish all parties to do their utmost to ensure that this suit proceeds expeditiously. We hope that, particularly when the parties seek further discovery, there will be more cooperation and less acrimony. No reason appears why this case, given a good faith effort by all parties, cannot proceed to a responsible conclusion.

*Affirmed in part, reversed in part,  
and remanded with instructions.*

further responses to interrogatories and to dismiss without considering appellees' misbehavior. Appellants suggest that, particularly where the court was deciding whether dismissal of their case was appropriate, the conduct of appellees was relevant. Appellees respond by arguing that the District Court has broad discretion to manage the timing of discovery. Because we reverse the dismissal and remand for further proceedings, we need not resolve this dispute. We believe, however, that there is some merit in appellants' position. When a court is deciding whether to impose sanctions on one party, the behavior of the other party deserves some consideration. On remand, if the District Court is confronted with new motions for sanctions by appellees, it should examine their conduct before making its decision.

## VII. CONCLUSION

We reverse the District Court's order dismissing the Black Panther Party and Huey Newton. The case is remanded so that the court may reconsider its decision to deny their claims of constitutional privilege in light of the legal principles outlined in this opinion. If the court decides that the claims of privilege should have been upheld, both the Party and Newton should be reinstated. We also reverse the dismissal of the other named plaintiffs. Regardless of the court's decision regarding the Party and Newton, these individuals should be reinstated and given another opportunity to pursue their claims. We reverse the decision to award expenses to appellees: because we conclude that the dismissals were inappropriate, the basis for that award has evaporated. And we reverse the District Court's decision to award summary judgment in favor of the individual appellees who held office after 1973, since we do not find that appellants have had sufficient opportunity to take discovery. We affirm the District Court's decision to deny appellants' motion for an extension of time in which

goods were "taken without an exchange of consideration."<sup>132</sup> The Party denied this allegation. Appellees argued that this answer was inconsistent with information contained in a House Committee on Internal Security Report, *Gun-Barrel Politics: The Black Panther Party 1966-1971*, 92d Cong., 1st Sess. 55 (1971), as well as with the "8 Points of Attention" and the "3 Main Rules of Discipline."<sup>133</sup> The Party responded by pointing out that the House Committee Report discounted the reliability of the source on which the allegation was based; it also noted that other statements by the Party and the "8 Points" and the "3 Main Rules" themselves supported the Party's denial.<sup>134</sup> Again, we believe the response, as supplemented, is adequate.

### C. Claim of First Amendment Privilege: A Balancing Test

We have already held that the Party justifiably refused to obey the portion of the August 6 order requiring each of its officers to respond to 107 interrogatories, and that it adequately complied with the portion of the order requiring it to clarify 44 of its original responses. Thus the only reason supplied by the District Court to support dismissal that remains for our consideration is its finding that the Party unjustifiably claimed a First Amendment privilege.

<sup>132</sup> See Plaintiff Black Panther Party's Responses to Interrogatories of the Federally Represented Defendants at JA 124 (Interrogatories 72 and 73).

<sup>133</sup> See Memorandum of Points and Authorities in Support of Motion of Defendants Bell, et al., to Compel Plaintiff Black Panther Party to Respond to Discovery, R 207 at 39. See also text and notes at notes 127-128 *supra* (discussing "8 Points" and "3 Main Rules").

<sup>134</sup> See Plaintiff Black Panther Party Memorandum of Points and Authorities in Support of Motion to Compel Discovery at JA 705.



In the three interrogatories with respect to which the Party continues to claim a First Amendment privilege appellees requested the names of all Party officers, the names of the leaders of local Party affiliates, and any documents reflecting the belief that appellees had conspired to destroy the Party.<sup>135</sup> The Party responded in part, providing the names of 59 Party officers<sup>136</sup> and 68 publicly known local leaders.<sup>137</sup> It also provided the requested documents. Although it deleted from these materials all names of members not publicly known, it listed the names of 600 members whose identities were public.<sup>138</sup>

The Party claims that the identities of its leaders and members who are not known to the public are privileged under the First Amendment; it suggests that if the names of these individuals are released, they will be harassed and their rights of expression and association will be infringed. The Party goes on to contend that because of this privilege the August 6 discovery order requiring it to disclose the names could not be justified. Thus its failure to obey provides no support for the decision to dismiss. The Party is clearly correct when it states that District Courts may not order disclosure of privileged information. Rule 26 expressly provides that parties may not obtain discovery of matters that are privileged.<sup>139</sup>

<sup>135</sup> See Federal Defendants' First Interrogatories to Plaintiff Black Panther Party, R 105 (Interrogatories 21, 33, 61).

<sup>136</sup> See JA 95-96, 877, 932-933, 999.

<sup>137</sup> See *id.* at JA 934-936, 1000. The Party also noted that 100 local leaders were identified in a report prepared by the House Committee on Internal Security, *Gun Barrel Politics: The Black Panther Party 1966-1971*, 92d Cong., 1st Sess. (1971).

<sup>138</sup> See appellants' brief at Appendix A.

<sup>139</sup> Rule 26(b)(1), FED. R. CIV. P., states: "Parties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action \* \* \*." (Emphasis added.)

ond, appellants argue that a motion was not yet appropriate because the complaint had not yet been served on appellees, and because the government had received an extension of time in which to respond to the complaint.<sup>200</sup> But this excuse is unavailing. It is instructive to compare *Coffin v. Sec'y of Health, Educ., and Welfare*, 400 F.Supp. 953 (D. D.C. 1975) (three-judge court), where class action certification was denied for failure to comply with Local Rule 1-13(b). In that case the court rejected a claim that plaintiff should not be held to the 90-day limit because defendants had filed motions to dismiss, to dissolve the three-judge court, and to transfer the case, and the class action certification issue could not be resolved until those motions were decided. We also point out that strict enforcement of Local Rule 1-13(b) implements the policy of Rule 23(c)(1) of the Federal Rules of Civil Procedure, which states that the status of class actions should be determined quickly. Moreover, this was not a situation where appellants had failed to "beat the clock" by a few hours.<sup>201</sup>

#### C. Decision to Delay Consideration of Appellants' Motion to Compel Production of Documents by Appellees

Appellants claim that the District Court abused its discretion when it decided to postpone consideration of their motion to compel production of documents by appellees. As a result of this postponement, appellants argue, the District Court decided the motions to compel

<sup>200</sup> *Id.*

<sup>201</sup> See Order of May 26, 1976 in *Gutmann v. Middendorf*, D.C. Civil Action No. 75-1883 (attachment to Federal Defendants' Points and Authorities in Opposition to Plaintiffs' Motion for Enlargement of Time in Which to Move for Class Action Certification, R 12).

B. *Motion for Extension of Time in Which to File for Class Certification*

On March 11, 1977 appellants filed a motion for an extension of time in which to move for class certification.<sup>196</sup> Appellees opposed that motion on the ground that under Local Rule 1-13(b) of the Rules of the District Court for the District of Columbia motions for class action certification must be filed within 90 days of the time the complaint is filed.<sup>197</sup> Here, the complaint was filed on December 1, 1977. Thus the time for moving to certify a class had expired 11 days prior. According to appellees, since the time for moving to certify a class had expired, motions for extensions of time in which to file for certification were also precluded. The District Court agreed, and refused to grant an extension.<sup>198</sup> We affirm.

Appellants failed to offer any compelling reasons why the local rule should not be followed. In their motion appellants argued, first, that "[r]esearch into the facts which will determine the extent of the alleged class is extremely time-consuming and is still underway."<sup>199</sup> But ongoing research need not have precluded a timely motion for class certification. At least as a preliminary matter, the definition of the proposed class that was provided in the complaint would have been sufficient for purposes of a motion for class action certification. Sec-

<sup>196</sup> See Motion for Enlargement of Time in Which to Move for Class Action Certification, R 11.

<sup>197</sup> See Federal Defendants' Points and Authorities in Opposition to Plaintiffs' Motion for Enlargement of Time in Which to Move for Class Action Certification, R 12. See also note 28 *supra* (quoting text of Local Rule 1-13(b)).

<sup>198</sup> See Order of May 26, 1977 at JA 56.

<sup>199</sup> See Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Enlargement of Time in Which to Move for Class Action Certification, R 11.

It is far more difficult to determine whether, under the circumstances presented by this case, the Party has made a valid claim of privilege.

Membership lists of groups engaged in political expression clearly deserve some First Amendment protection. The Supreme Court recognized this need in *NAACP v. Alabama*, 357 U.S. 449 (1958), which held that Alabama could not force the NAACP to reveal its membership list. The Court stated, "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective \* \* \* restraint on freedom of association \* \* \*." *Id.* at 462.<sup>140</sup> Privacy is particularly important where the group's cause is unpopular; once the participants lose their anonymity, intimidation and suppression may follow. And privacy is important where the government itself is being criticized, for in this circumstance it has a special incentive to suppress opposition. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 777 n.11 (1978).

Appellees suggest that even if the Party's membership list would ordinarily be entitled to some First Amendment protection, it automatically waived whatever constitutional rights it possessed when it filed this lawsuit. The logic behind this automatic waiver rule may, at first glance, seem appealing. After all, plaintiffs are "voluntary" litigants; they have created the situation that threatens their constitutional rights. This reasoning has led at least one court to adopt a waiver rule. See *Independent Productions Corp. v. Loew's, Incorporated*,

<sup>140</sup> See also *Bates v. City of Little Rock*, 361 U.S. 516, 527 (1960) (protecting membership list); *National Right to Work*, *supra* note 82, 590 F.2d 1139 (same); *Familias Unidas v. Briscoe*, 544 F.2d 182, 192 (5th Cir. 1976) (same); *Hastings v. North East Independent School District*, 615 F.2d 628 (5th Cir. 1980) (same); *Doe v. Martin*, 404 F.Supp. 753 (D. D.C. 1975) (same).

22 F.R.D. 266 (S.D. N.Y. 1958).<sup>141</sup> But in our view, the appeal of this logic is superficial only. Ordinarily, plaintiffs file suits because they believe the courts provide the best, if not the only, means to protect their rights. To say

<sup>141</sup> In *Independent Productions Corp. v. Loew's, Incorporated*, 22 F.R.D. 266, 176 (S.D. N.Y. 1958), the court stated that "there is no testimonial privilege of silence based on the First Amendment." It went on to say that, even if there were such a privilege, it would not apply where the person wishing to assert the privilege was the plaintiff, since:

It would be uneven justice to permit plaintiffs to invoke the powers of this court for the purpose of seeking redress and, at the same time, to permit plaintiffs to fend off questions, the answers to which may constitute a valid defense or materially aid the defense.

*Id.* See also note 161 *infra* (listing cases that uphold waiver rule with respect to claim of Fifth Amendment privilege). But see generally Part II *supra* (rejecting waiver in Fifth Amendment context).

On the surface, *Anderson v. Nixon*, 444 F.Supp. 1195 (D. D.C. 1978), which was cited by the District Court, see JA 853, 1134, appears to adopt an automatic waiver rule. In that case a plaintiff newspaper columnist refused to reveal confidential sources to the defendant, claiming a First Amendment privilege. The court ordered disclosure after stating that a balancing approach was "unrealistic" when the person claiming the privilege had initiated the lawsuit. *Id.* at 1199. Despite this language, it appears that the court did in fact balance the plaintiff's First Amendment rights against the defendant's need for disclosure. It ordered disclosure only after finding that extensive discovery had already taken place, that alternative sources had been exhausted, and that the information sought went to the heart of the case.

Moore's *Federal Practice*, also cited by the District Court, see JA 1134, might also be interpreted as advocating a waiver rule; in discussing whether parties may claim a constitutional privilege during discovery it uses the terminology of waiver. In fact, however, Moore would find "waiver" only where the information with respect to which a privilege has been asserted is basic to the case. See 4 J. MOORE, FEDERAL PRACTICE ¶ 26.60[6] at 252 (1979).

*States*, 552 F.2d 560 (3d Cir. 1977).<sup>193</sup> Here, appellants have repeatedly stated their intent to rely on materials provided by the government through discovery to prove their claims of conspiracy.

Although we conclude that appellants should be given an opportunity to take further discovery, we are not convinced, on the basis of the record as it now stands, that they will be able to uncover any evidence implicating the post-1973 appellees. Almost all of the activities described in the complaint were alleged to have occurred before 1974. In fact, the FBI's operations under COINTELPRO were disbanded in 1971. The complaint does refer to two recent events: it alleges that the FBI continues to take the license plate numbers of all persons who visit Elaine Brown, and it states that in 1976 the government allocated funds "to pay off informants and provocateurs [*sic*]." <sup>194</sup> But these actions are not necessarily unlawful. It is also true that former Attorney General Edward Levi, former Postmaster General Benjamin Bailar, and former Acting IRS Commissioner William Williams concede that they participated in investigations of the Party.<sup>195</sup> There is no indication that their conduct was illegal, however. Under the circumstances, the District Court might consider establishing an expedited discovery schedule with respect to the claims against the post-1973 government officials. By expediting discovery the court could ensure that these individuals will avoid any unnecessary involvement in further litigation.

<sup>193</sup> See generally 10 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE 2741 (1973) (discussing sufficiency of reasons for not presenting affidavits).

<sup>194</sup> See Amended Complaint at JA 34, 37.

<sup>195</sup> See note 187 *supra* (describing contents of affidavits).

had ample opportunity to take \* \* \* discovery and have taken discovery \* \* \*"<sup>189</sup>

We reverse on the ground that appellants had not yet been given sufficient time to take discovery. When the motion was granted, discovery was still in the first "wave." In fact, appellants had received appellees' first response to their request for documents only three months earlier. The materials they received were highly disorganized.<sup>190</sup> Moreover, only three days before the order granting summary judgment was entered, appellants received an entirely new batch of documents.<sup>191</sup> Because appellants believed appellees' response was inadequate, they later decided to file a motion to compel discovery.<sup>192</sup> Under the circumstances, the District Court should have denied or at least postponed its decision on the motion for summary judgment. A central purpose of Rule 56 (f) is to insure that diligent parties are given a reasonable opportunity to complete discovery and prepare their cases. *Committee for Nuclear Responsibility, Inc. v. Seaborg*, 463 F.2d 783 (D.C. Cir. 1971). See also *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980). Sufficient time for discovery is particularly important where crucial facts are in the control of the opposing party. *Washington v. Cameron*, 411 F.2d 705 (D.C. Cir. 1969). See also *Costlow v. United*

<sup>189</sup> Order of July 27, 1978 at JA 253.

<sup>190</sup> See text and note at note 44 *supra* (describing appellants' motion to compel production of documents by federal appellees).

<sup>191</sup> See appellants' brief at 61; Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Compel Discovery by Federal Defendants at JA 261.

<sup>192</sup> Appellants' motion to compel was filed September 21, 1978, after the District Court granted the motion for summary judgment in favor of the post-1973 appellees. See Docket of Proceedings at JA 14-15.

they must waive those rights when they come into court would make any judicial protection meaningless.<sup>142</sup> Here, for example, the Party is suing the government in part because it believes the government has infringed its First Amendment rights of expression and association. An automatic waiver rule would frustrate this purpose. Indeed, requiring plaintiffs to choose between waiver of their constitutional rights and dismissal raises serious due process questions; if plaintiffs have a right to a day in court, that right is seriously infringed.<sup>143</sup>

In our view, a balancing inquiry should be conducted to determine whether a claim of privilege should be upheld. Before granting a motion to compel discovery and

<sup>142</sup> See *Wehling v. Columbia Broadcasting System*, 608 F.2d 1084, 1089 n.10 (5th Cir. 1979) (rejecting voluntary/involuntary distinction in Fifth Amendment context); see also Note, *Plaintiff as Deponent: Invoking the Fifth Amendment*, 48 U. CHI. L. REV. 158, 162-164 (1981) (criticizing distinction); Note, *Toward a Rational Treatment of Plaintiffs Who Invoke the Privilege Against Self-Incrimination During Discovery*, 66 IOWA L. REV. 575, 584-587 (1981) (same). The defendant, as much as the plaintiff, may be responsible for the decision to file a lawsuit; presumably, the plaintiff seeks to challenge some action taken by the defendant.

<sup>143</sup> Several Supreme Court decisions have discussed the relationship between dismissal for failure to comply with court orders and the due process clause. See *Societe Internationale v. Rogers*, *supra* note 103, 357 U.S. at 212 (under due process clause, party who failed to obey discovery order could not be dismissed where failure was "due to inability, and not to willfulness, bad faith, or any fault of petitioner"); *Hammond Packing Co. v. Arkansas*, 212 U.S. 322 (1909) (due process not denied when defendant's failure to comply with statute requiring production of material evidence leads to striking of answer and default); *Hovey v. Elliott*, 167 U.S. 409 (1897) (due process was denied to party who was dismissed as punishment for failure to comply with court order requiring deposit of money). See also Note, *supra* note 85, 91 HARV. L. REV. at 1041-1044; note 160 *infra*.

forcing a plaintiff to choose between disclosure and sanctions, the plaintiff's First Amendment claim should be measured against the defendant's need for the information sought. If the former outweighs the latter, then the claim of privilege should be upheld. In this way the interests of both parties can be protected. Use of balancing tests to determine whether compelled disclosure is necessary is well established in the First Amendment context. In *NAACP v. Alabama*, *supra*, 357 U.S. at 463, the Supreme Court stated that disclosure of membership lists by the defendant NAACP and the accompanying abridgement of its freedom of association would be appropriate only if the state could demonstrate a compelling interest in disclosure. A balancing test was also used by this court in *National Right to Work*, *supra*, where we held that the defendant, the National Right to Work Legal Defense and Educational Fund, could be forced to disclose its contributors only after a detailed inquiry into the other party's need for the information.<sup>144</sup>

<sup>144</sup> Balancing tests have also been used in other membership list cases. See, e.g., *Bates v. City of Little Rock*, *supra* note 140, 361 U.S. at 527; *Doe v. Martin*, *supra* note 140; *Familias Unidas v. Briscoe*, *supra* note 140, 544 F.2d at 192; *Hastings v. North East Independent School District*, *supra* note 140. *Familias Unidas* and *Hastings*, in which plaintiffs claimed a First Amendment privilege, are discussed in more detail below, see text and notes at notes 147-148 *infra*. Cf. *Buckley v. Valeo*, 424 U.S. 1, 71-75 (1976) (minor political parties likely to be harassed need not comply with statutory disclosure requirements). In *Buckley v. Valeo* the Supreme Court stated:

We have long recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny. We have also insisted that there be a "relevant correlation" or "substantial relation" between the gov-

noted that their complaint alleged a continuing conspiracy, and described several overt acts occurring after January 1974.<sup>188</sup> In July 1978 the District Court granted the motion. It stated that the post-1973 appellees' affidavits evidenced a lack of involvement in the acts alleged, and that the affidavits were substantiated by the recency of the terms of office. Moreover, appellants had failed to respond with evidentiary submissions of their own. The court recognized that appellants had filed an affidavit of counsel pursuant to Rule 56(f), but found that since that affidavit was submitted "plaintiffs have

by a Postal Service employee for the purpose of determining an address to which the letter can be delivered. The affidavit does not state whether the Postal Service had search warrants or whether the mail was opened to ascertain delivery addresses. The affidavit also concedes that Black Panther Party publications were misclassified by the Postal Service, and that, as a result, the Party was charged excessive postage. There is no explanation as to why this occurred. See *id.* (Bailar Affidavit). Former Acting Commissioner of the IRS William Williams concedes in his affidavit that he participated in a meeting at which the status of Newton's tax investigation was discussed. He also stated that he discussed the Black Panther Party and individual members and supporters with former IRS Commissioner Donald Alexander. *Id.* (Williams Affidavit).

<sup>188</sup> See Memorandum of Points and Authorities in Opposition to Motion of Certain Defendants for Summary Judgment, R 71 at 11-12. See also Amended Complaint at JA 34, 37 (government allocated funds in 1976 "to pay off informants and provocateurs [*sic*]") (FBI surveillance of Elaine Brown). Appellants also noted that, although COINTELPRO actions formally terminated in 1971, the Senate Report found that "COINTELPRO existed for years on an 'ad hoc' basis before the formal programs were instituted, and more significantly, COINTELPRO-type activities may continue today under the rubric of 'investigation.'" Senate Report, *supra* note 19, Book III at 12; see *id.* at 13-14.

A. *Summary Judgment in Favor of Individual Defendants Who Held Office After 1973*

In July 1977 each of the individual appellees who took office after January 1974 moved for summary judgment on the ground that they were not in office at the times of the acts alleged. They filed affidavits setting forth the dates on which they assumed office and disclaiming any knowledge of or participation in a conspiracy against the appellants.<sup>185</sup> Appellants responded with an affidavit of counsel under Rule 56(f), stating that they needed further discovery before they could respond to appellees' motion for summary judgment.<sup>186</sup> They also claimed that the affidavits of three of the appellees, Postmaster General Benjamin Bailar, Attorney General Levi, and Internal Revenue Service Commissioner William Williams, raised new issues of material fact, since they seemed to concede involvement in investigations of Party activities.<sup>187</sup> Finally, appellants

<sup>185</sup> See Motion of Certain Defendants [Griffin Bell, W. Michael Blumenthal, Clifford Alexander, Stansfield Turner, Benjamin Bailar, Edward Levi, George Bush, William Simon, and William Williams] for Summary Judgment, July 14, 1977, R 56.

<sup>186</sup> See appellants' Memorandum of Points and Authorities in Opposition to Motion of Certain Defendants for Summary Judgment, September 1, 1977, R 71 (affidavit of Bruce Terris).

<sup>187</sup> See *id.* at 15-17. In his affidavit former Attorney General Levi acknowledges receiving information concerning the ongoing "domestic security investigation" of the Party and COINTELPRO operations. He goes on to state that he decided to terminate the investigation of the Party shortly after he took office. See Motion of Certain Defendants for Summary Judgment, R 56 (Levi Affidavit). Former Postmaster General Benjamin Bailar acknowledges that mail addressed to the Black Panther Party "may have been opened" under authority granted by federal statutes that permit opening of mail either pursuant to a search warrant or

Balancing tests are also used to determine whether reporters must disclose their confidential sources to civil litigants. See, e.g., *Zerilli v. Smith*, — F.2d — (D.C. Cir. No. 79-2466, decided April 13, 1981); *Carey v. Hume*, 492 F.2d 631 (D.C. Cir.), cert. dismissed, 417 U.S. 938 (1974).<sup>145</sup> To be sure, these cases do not involve attempts by plaintiffs to claim a First Amendment privilege. But nothing in the language of the opinions suggests that the proper approach varies depending on whether the plaintiff or the defendant is seeking constitutional protection.<sup>146</sup>

In fact, a balancing approach has been adopted in cases very similar to this one, where the plaintiff has asserted a First Amendment privilege and refused to make discovery. In *Familias Unidas v. Briscoe*, 544 F.2d 182 (5th Cir. 1976), the plaintiff, an association formed to advance the educational and social status of Mexican-Americans, challenged the constitutionality of a state educational code provision that would have required it to

ernmental interests and the information required to be disclosed. \* \* \*

424 U.S. at 64 (footnotes omitted).

<sup>145</sup> See also *Riley v. City of Chester*, 612 F.2d 708, 715-716 (3d Cir. 1976); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 436-438 (10th Cir. 1978); *Baker v. F & F Investment*, 470 F.2d 778, 783 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973); *Cervantes v. Time, Inc.*, 464 F.2d 986 (8th Cir. 1972); *Miller v. Transamerica Press, Inc.*, 621 F.2d 721, 725 (5th Cir. 1980).

<sup>146</sup> It is true that in *Anderson v. Nixon*, *supra* note 141, a reporter's privilege case, the court stated that balancing was unrealistic where the plaintiff claimed First Amendment protection. As we noted earlier, however, the facts of that case reveal that the court refused to uphold the plaintiff's assertion of a privilege only after concluding that the defendant's need for the information sought was substantial. See note 141 *supra*.

disclose its membership. The association refused to answer three interrogatories from the school board that asked for the names of its members. The District Court, which adopted an automatic waiver theory, ordered disclosure and then dismissed when the association refused to comply with the order. The Fifth Circuit reversed, stating:

To require them to forfeit that which they seek to protect in order that they might receive federal assurance that they were indeed entitled to it initially would be an abdication by the federal court of not only its federal stature, but its judicial robes as well.

The language of *N.A.A.C.P. v. Alabama*, *supra*, is much too strong to permit this result. \* \* \* [W]e cannot agree with the trial court's distinction of that case on the basis that the N.A.A.C.P. was the defendant there. \* \* \*

*Id.* at 192. The court then balanced the plaintiff's interest in protecting the names of the association's members against the state's need for the information and ruled against disclosure.<sup>147</sup> Similarly, in *Hastings v. North*

<sup>147</sup> Appellees suggest that *Familias Unidas v. Briscoe*, *supra* note 140, can be distinguished on the ground that the position of the Mexican-American organization was more analogous to that of a defendant than a plaintiff; it filed a suit challenging the constitutionality of the statute in order to forestall a criminal prosecution under the statute. The Fifth Circuit apparently did not believe this factor was important. In *Hastings v. North East Independent School District*, *supra* note 140, it upheld the plaintiff's claim of privilege, even though plaintiff's position was not clearly analogous to that of a defendant. See description of *Hastings* in text and note at note 148 *infra*. We also are unpersuaded by this distinction. To rule that a plaintiff's claim of privilege should be upheld only when the plaintiff can be viewed as a quasi-defendant would be to give credence to the notion that the plaintiff, as a voluntary litigant, deserves less constitutional protection. But we have already rejected this view. See text and notes at notes 141-142 *supra*. In any event, a rule that

court has held that "when an appealable final judgment is entered, appeal brings up the entire record for review, including interlocutory orders." *Taylor v. Washington Terminal Co.*, 409 F.2d 145, 147 (D.C. Cir.), *cert. denied*, 396 U.S. 835 (1969). If appellees would be prejudiced by a decision to consider issues not specifically included in the notice of appeal, our conclusion might be different. See *Gunther v. E. I. DuPont de Nemours & Co.*, 255 F.2d 710, 717 (4th Cir. 1958) ("appeal should not be dismissed for mistakes which do not mislead or prejudice the appellee"). They have not made such a showing, however. We note that the Joint Appendix includes all of the orders which appellants wish to challenge.<sup>184</sup>

<sup>184</sup> See JA 253, 629. Appellees also argue that these issues are not reviewable because appellants' counsel, in a letter to appellees' counsel dated April 25, 1980, provided a list of issues appellants intended to present on appeal, but did not include on this list the decision to grant summary judgment or the decision to defer consideration of the motion to compel. See addendum to appellees' brief (copy of letter). Appellees suggest that this letter should be treated as a designation of issues pursuant to Rule 30(b), FED. R. APP. P., which provides, in pertinent part:

The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than 10 days after the date on which the record is filed, serve on the appellee a designation of the parts of the record which he intends to include in the appendix and a statement of the issues which he intends to present for review. \* \* \*

We do not find, however, that the letter can be treated as a formal designation of issues pursuant to Rule 30(b). Even if the letter was so interpreted, we would review the issues not listed. Appellees have not shown how they are prejudiced; also, as we have stated, the Joint Appendix does contain the order granting summary judgment and the order deferring consideration of the motion to compel.

Under the circumstances, any possible basis for an award of expenses under Rule 37(b) has evaporated.<sup>183</sup>

## VI. OTHER ISSUES

Appellants raise several other issues not directly related to the decision to dismiss and award costs. In particular, they challenge the District Court's decisions to: (1) grant partial summary judgment in favor of all individual defendants who held office after 1973; (2) deny appellants' motion for an extension of time in which to file for class certification; and (3) postpone consideration of appellants' motion to compel discovery until after consideration of appellees' motion to compel. Appellees contend that we may not reach these issues since the notice of appeal filed by appellants pursuant to Rule 3 of the Federal Rules of Appellate Procedure only referred to the orders granting dismissal and awarding expenses. Rule 3 provides that notice of appeal "shall designate the judgment, order or part thereof appealed from \* \* \*." Rule 3(c), Federal Rules of Appellate Procedure. We are not persuaded by this argument.

The Supreme Court has rejected a strict construction of Rule 3. In *Foman v. Davis*, 371 U.S. 178, 181-182 (1962), it held that an appeal should not be dismissed simply because the appellant failed to list all orders appealed from in its Rule 3 notice. In addition, this

<sup>183</sup> Cf. *Stillman v. Edmund Scientific Co.*, 522 F.2d 798 (4th Cir. 1975) (rule limits sanctions to fees and expenses flowing from an abuse of the discovery process); *Vollert v. Summa Corp.*, 389 F.Supp. 1348 (D. Hawaii 1975) (award for costs and attorney fees incurred in obtaining order compelling answers to interrogatories was not justified where defendant had not acted in bad faith and objections had some foundation); *Johnson v. W. H. Stewart Co.*, 75 F.R.D. 541 (D. Okla. 1976) (request for attorney fees and costs in connection with motion to compel is denied where there was some merit to defendant's objection to interrogatories).

*East Independent School District*, 615 F.2d 628 (5th Cir. 1980), the Fifth Circuit reversed a District Court order dismissing a plaintiff teachers organization when it refused to release the names of its members who were not publicly known. The court stated that on remand the District Court should weigh the defendant's need for the names of the members against the plaintiff's constitutional interests before ordering disclosure or imposing additional sanctions.

Balancing one party's First Amendment interests against another party's need for disclosure to determine whether a claim of privilege should be upheld or whether discovery should be ordered requires a detailed and painstaking analysis. The need for First Amendment protection should be carefully scrutinized. See *NAACP v. Alabama*, *supra*, 357 U.S. at 460-462; *National Right to Work*, *supra*, 590 F.2d at 1152. The argument in favor of upholding the claim of privilege will ordinarily grow stronger as the danger to rights of expression and association increases. We emphasize, however, that the litigant seeking protection need not prove to a certainty that its First Amendment rights will be chilled by disclosure. It need only show that there is some probability that disclosure will lead to reprisal or harassment.<sup>148</sup>

would require us to determine whether a plaintiff's position could be analogized to that of a defendant would be extremely difficult to apply.

<sup>148</sup> See *Hastings v. North East Independent School District*, *supra* note 140, 615 F.2d at 632 (First Amendment interests recognized as deserving substantial protection where complaint alleges that members of teachers organization had been harassed); *NAACP v. Alabama*, 357 U.S. 449, 462 (1958) ("Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of physical hostility.").

In *Buckley v. Valeo*, *supra* note 144, 424 U.S. at 72-73, the Supreme Court discussed the circumstances under which



The interest in disclosure should also be carefully examined. Several factors are relevant in conducting this examination. First, courts must consider the relevance of the information sought. The interest in disclosure will be relatively weak unless the information goes to "the heart of the matter," that is, unless it is crucial to the party's case. See *Zerilli v. Smith*, *supra*, — F.2d at —, slip opinion at 17; *National Right to Work*, *supra*, 590 F.2d at 1153; *Carey v. Hume*, *supra*, 492 F.2d at 636.<sup>149</sup> Mere speculation that information might be useful will not suffice; litigants seeking to compel discovery must describe the information they hope to obtain and its importance to their case with a reasonable degree of specificity. See *Cervantes v. Time, Inc.*, 464 F.2d 986, 994 (8th Cir. 1972). Second, courts must determine whether the litigants seeking disclosure have pursued alternative sources. Even when the information sought is crucial to a litigant's case, disclosure should be compelled only after the litigant has shown that he has

a minor party could avoid a statutory requirement that it disclose its membership list. Recognizing that strict requirements of proof of harassment would impose a heavy burden, it stated:

Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. \* \* \*

*Id.* at 74.

<sup>149</sup> See also, e.g., *Hastings v. North East Independent School District*, *supra* note 140, 615 F.2d at 632 (emphasizing fact that defendants' need for membership list had evaporated once plaintiffs withdrew class action); *Familias Unidas v. Briscoe*, *supra* note 140, 554 F.2d at 192 (same); *Baker v. F & F Investment*, *supra* note 145, 470 F.2d at 783 (upholding reporter's privilege in part because information sought was not important).

District Court never ruled on appellants' motion to compel production of documents by appellees.

### B. Award of Attorney Fees and Costs

In addition to dismissing all appellants, the District Court, acting pursuant to Rule 37(b) of the Federal Rules of Civil Procedure, ordered the Party and Newton to pay the reasonable expenses incurred by appellees in bringing their motion to dismiss under Rule 37(b), including costs and attorney fees. We reverse. Appellants need not pay appellees' expenses.

Rule 37(b) states that the court shall require a party failing to obey a discovery order made under Rule 37(a) to pay the reasonable expenses caused by the failure, "unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."<sup>152</sup> In this opinion we have already ruled that the Party complied with that portion of the August 6 discovery order which required it to clarify apparently inconsistent or evasive responses. Thus there was no "failure to obey" that would trigger the expenses provision of Rule 37(b). We have also ruled that the portion of the order requiring all Party officers to respond to a list of 107 interrogatories was not valid. Thus, although the Party did fail to obey this ruling, the failure was clearly "substantially justified." In addition, we have held that the District Court should reconsider those portions of the August 6 discovery order which require the Party and Newton to choose between assertion of a constitutional privilege and dismissal. At this stage we cannot find that their refusal to release the withheld information was not substantially justified.

<sup>152</sup> See also text and notes at notes 77-81 *supra* (describing Rule 37(b) in detail).

stating that their complaint did allege the possibility of continuing harm, and by filing an affidavit of counsel pursuant to Rule 56(f) in which they asked that consideration of the motion be deferred until they had an opportunity to take further discovery.<sup>179</sup> Under Rule 56(f) the District Court may either deny a motion for summary judgment or postpone its decision when it concludes that additional discovery is necessary.<sup>180</sup> We do not agree with appellees that the District Court's amended order can be interpreted as granting their motion for summary judgment. The District Court nowhere refers to Rule 56 or to the motion. We will not affirm the District Court's dismissal on this basis.

Because appellees' efforts to salvage the amended order are unavailing, the other plaintiffs should be reinstated. They should be given an opportunity to pursue their claims even if the court determines on remand that the Party and Newton were properly dismissed. If we have misinterpreted the order, that is, if the court did in fact intend to grant the motion for summary judgment, it may simply enter a new order explicitly stating that the motion is granted. We would point out, however, that summary judgment may be premature. There appears to be considerable merit to appellants' argument that a continuance is appropriate under Rule 56(f); at this stage of the litigation appellants have not had sufficient opportunity to uncover evidence supporting their claim of continuing harm.<sup>181</sup> We note, for example, that the

<sup>179</sup> See Plaintiffs' Memorandum of Points and Authorities in Opposition to Federally Represented Defendants' Motion for Partial Summary Judgment or in the Alternative for Sanctions, October 30, 1978, R 193A.

<sup>180</sup> See note 33 *supra* (quoting text of Rule 56(f), FED. R. CIV. P.).

<sup>181</sup> See also text and notes at notes 188-195 *infra* (discussing need for further discovery on question whether summary judgment should be granted in favor of certain individual defendants).

exhausted every reasonable alternative source of information. *National Right to Work*, *supra*, 590 F.2d at 1153.<sup>180</sup> Because of the preferred position of First Amendment rights, "compelled disclosure \* \* \* [is] normally the end, and not the beginning, of the inquiry." *Zerilli v. Smith*, *supra*, — F.2d at —, slip opinion at 18 (quoting *Carey v. Hume*, *supra*, 492 F.2d at 638). Infringement of First Amendment interests must be kept to a minimum.

On the basis of our review of the record, we cannot conclude that the District Court properly applied these principles in deciding that the claim of privilege should be denied and that disclosure should be ordered. In its August 6 order it stated: "Plaintiff cannot assert this privilege and at the same time proceed with this lawsuit, withholding information vital to the defense of the parties sued."<sup>181</sup> Later, in its order dismissing the Party, it stated: "These may well be the individuals able to provide defendants with the information necessary for their defense—even to the point of telling them what exactly they are accused of doing."<sup>182</sup>

These statements might be interpreted as suggesting that the District Court intended to apply a balancing approach. Clearly, however, they do not reflect the care-

<sup>180</sup> See also *Zerilli v. Smith*, — F.2d —, — (D.C. Cir. No. 79-2466, decided April 13, 1981) (slip op. at 18); *Carey v. Hume*, 492 F.2d 631, 639 (D.C. Cir.), cert. dismissed, 417 U.S. 938 (1974); *Riley v. City of Chester*, *supra* note 145, 612 F.2d at 717-718; *Silkwood v. Kerr-McGee Corp.*, *supra* note 145, 563 F.2d at 430; *Baker v. F & F Investment*, *supra* note 145, 470 F.2d at 784; *Miller v. Transamerica Press, Inc.*, *supra* note 145, 621 F.2d at 726. In *Carey* we suggested that an alternative requiring the taking of as many as 60 depositions might be a reasonable prerequisite to compelled disclosure. *Carey v. Hume*, *supra*, 492 F.2d at 639.

<sup>181</sup> Opinion and Order of August 6, 1979 at JA 853.

<sup>182</sup> Memorandum and Order of January 25, 1980 at JA 1134.

ful analysis that is necessary before an order compelling disclosure should be made. The court never specifically addressed the question whether the Party's fears of harassment and interference with First Amendment rights were substantial.<sup>153</sup> As for the other side of the balance, the court simply accepted appellees' claims that the undisclosed names were crucial, even though appellees had never stated precisely what information they hoped the unnamed individuals would provide.<sup>154</sup> The

<sup>153</sup> The record as it now stands does suggest that the Party deserves some First Amendment protection. The general importance of associational freedoms was stressed by the Supreme Court in *NAACP v. Alabama*, *supra* note 148. The Party claims that these freedoms might be endangered if the names of its leaders and members not known to the public are disclosed. It alleges that its members have been harassed before, and suggests that this harassment may continue. The complaint states, for example, that FBI agents still take down the names and license numbers of persons who visit the home of Elaine Brown. Amended Complaint at JA 37. Appellees respond by stating that, even if they took steps to suppress the Party in the past, these efforts have been discontinued and there is no current threat. We will not resolve this dispute here; the District Court should further explore these issues before reaching its decision on the privilege question. We note, however, that the Party has made serious allegations, and there is some evidence supporting its claims. We also emphasize that protection should not be denied simply because the Party cannot prove to a certainty that intimidation will follow. See text and note at note 148 *supra*.

<sup>154</sup> Appellees have never suggested that the undisclosed identities are themselves linked to a specific issue in the case. Cf. *National Right to Work*, *supra* note 82, 590 F.2d at 1152-1153 (identity of right-to-work organization supporters sought because union hoped to show that they were interested employers).

Appellees do contend that they need the information in order to find out "what exactly they are accused of doing." See Memorandum and Order of January 25, 1980 at JA 1134. But

action are hereby dismissed \* \* \*."<sup>177</sup> We reverse the dismissal of the other plaintiffs.

The District Court failed to set forth any findings of fact or law supporting its determination that the other plaintiffs should be dismissed. However, appellees have offered two theories that they believe support this determination. First, they suggest that the claims of the other plaintiffs were contingent upon the claims of the Party and Newton. Thus, when the Party and Newton were dismissed, dismissal of the remaining plaintiffs was appropriate. But the other plaintiffs' claims are not contingent upon the claims of the Party and Newton. The complaint alleges that the defendants engaged in a continuing conspiracy against the Party, its members, and its supporters.<sup>178</sup> There is no reason why the other plaintiffs, as Party members and supporters, could not continue to litigate this claim, even though the Party and Newton are out of the case.

The second theory offered by appellees is that, although the District Court used the word "dismissal," it actually intended to grant a motion for summary judgment against all the other plaintiffs that appellees had filed roughly one year earlier. In this motion appellees claimed that summary judgment was appropriate because the other plaintiffs, unlike the Party and Newton, had only requested declaratory and injunctive relief. Appellees argued that there was no evidence showing any continuing harm, and that therefore equitable relief was unwarranted. Appellants responded to this motion by

<sup>177</sup> Amended Order and Final Judgment, February 13, 1980, JA 1144. The individual plaintiffs affected by this order were Donald Freed, Berton Schneider, Thomas and Flora Gladwin, John George, and Father Earl Neil, all of whom were Party supporters. Also affected were John and Elizabeth Huggins, who were suing on behalf of their deceased son, John Huggins, a former Party member. See note 9 *supra*.

<sup>178</sup> See, e.g., Amended Complaint at JA 37.

appellees need the information in question immediately, complete dismissal should be a last resort; the court might consider, for example, dismissing only that portion of Newton's suit that relates to the withheld information.<sup>174</sup>

#### V. DISMISSAL OF OTHER INDIVIDUAL PLAINTIFFS AND AWARD OF COSTS AND ATTORNEY FEES

Appellants also challenge two District Court orders closely related to the decisions to dismiss the Party and Newton: (1) the order dismissing all other plaintiffs, and (2) the order requiring the Party and Newton to pay the expenses incurred by appellees in bringing their motion for sanctions.

##### A. *Dismissal of Other Individual Plaintiffs*

In their motion for sanctions appellees did not seek dismissal of any of the plaintiffs other than the Party and Newton. In its order granting the motion the District Court referred only to "plaintiffs."<sup>175</sup> Thus, as we explained above, plaintiffs filed a motion for clarification, asking whether the court intended to dismiss only the Party and Newton, or whether it also intended to dismiss the other individual plaintiffs.<sup>176</sup> The court responded by filing an amended order and final judgment in which it stated that "defendants' motion to dismiss is hereby granted" and that "all named plaintiffs to this

<sup>174</sup> For example, the court could simply dismiss any claims that depend on the allegations contained in subparagraphs 57(d) and 57(e) of the Amended Complaint.

<sup>175</sup> See Memorandum and Order of January 25, 1980 at JA 1138.

<sup>176</sup> See Motion of Plaintiffs to Amend Judgment Pursuant to Rule 59(e) or, Alternatively, to Direct Entry of Final Judgment Pursuant to Rule 54(b) at JA 1139.

court also failed to consider the possibility that alternative sources might be able to provide the information sought.<sup>175</sup> In particular, it failed to recognize that appellees might be able to obtain the information they needed from the individuals that the Party had already named. If appellees really were uncertain about what

it is unclear why this need would justify overriding the Party's First Amendment interests. It may be true that appellants do not describe their claims with perfect specificity. But they have repeatedly stated that they hope to develop their claims after an opportunity to take discovery. Appellants have provided enough information in their complaint and responses to interrogatories to enable appellees to proceed with preparation of their defense. With respect to the allegation that the government conducted unlawful armed raids, for example, appellants have provided a great deal of specific information: they have listed 39 raids, five incidents of arson or bombing of Party offices, violent deaths of 15 Party members, five injuries, and 105 arrests. See JA 156-158, 895, 963, 965-967, 1047-1049, 1112. See also appellants' brief at Appendix A (detailing specific information provided by Party that substantiates allegations made in complaint).

To further support their claim of need appellees also suggest that unidentified Party officers could "provide testimony with respect to the Party's alleged political and social purposes" and "with respect to whether there really was any 'immediacy and reality' to plaintiffs' claim of threatened harm so as to justify imposition of equitable relief \* \* \*." Appellees' brief at 45 n.65. But they fail to explain why this information could not be obtained from the Party officers who have already been named. See also text and note at note 156 *infra*.

<sup>175</sup> Cf. *National Right to Work*, *supra* note 82, 590 F.2d at 1152-1153 (disclosure order reversed, even though right-to-work foundation's membership list was of central relevance, because plaintiff unions failed to show that they had been unable to obtain information from alternative sources); *Zerilli v. Smith*, *supra* note 150, — F.2d at —, slip op. at 20-21 (District Court order refusing to require disclosure upheld even though the identity of reporter's source is crucial, because plaintiff failed to pursue alternatives).

they were accused of doing, for example, it seems likely that they could have obtained helpful information from the Party members whose identities had been disclosed.<sup>166</sup>

We remand so that the District Court may reconsider its decision to order disclosure in light of the principles we have outlined above. If appellees cannot show that their need for the undisclosed identities is substantial, and the court concludes that the claim of privilege should have been upheld, the Party should be reinstated. If, on the other hand, the court decides that the claim of privilege was properly denied, then it may enter a new order requiring the Party to respond. If the Party fails to comply with this order, sanctions may be appropriate. We point out, however, that sanctions should be carefully tailored to preserve to the greatest extent possible the First Amendment values at stake. Again, dismissal should be used only as a last resort.

#### IV. DISMISSAL OF HUEY NEWTON: THE FIFTH AMENDMENT PRIVILEGE

Huey Newton claimed the Fifth Amendment privilege against self-incrimination and refused to answer a number of interrogatories that would have required him to

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<sup>166</sup> As appellants point out, *see* appellants' brief at 31 n.1, 22 members of the Central Committee were identified. *See* JA 95-96, 877, 932-933, 999. All but five of these individuals joined the Party before 1971, JA 863, and thus were members during the period that appellees consider to be most important to their defense. In fact, most of these individuals were Central Committee members during the period 1966-1971. JA 863. We think it likely that appellees could obtain the information they seek by deposing these individuals. Indeed, the individuals whose identities have not been disclosed may be far less valuable sources of information. The Party asserts that the four present Central Committee members whose names were withheld were not Central Committee members before 1973.

edies would seem to be available. The court apparently never considered the possibility of delaying Newton's obligation to respond until the criminal prosecutions and investigations are terminated or until the relevant statutes of limitations have expired. Newton has repeatedly stated that he would be willing to answer the interrogatories once the danger of prosecution has passed.<sup>172</sup> In the meantime, appellees could proceed with discovery on other issues. It is instructive to compare the facts of *Wehling v. Columbia Broadcasting System, supra*, in which the Fifth Circuit stayed the plaintiff's obligation to respond for three years, even though the information sought by the defendants went to the heart of their case.<sup>173</sup>

We remand so that the District Court may reconsider its decision to deny the claim of Fifth Amendment privilege and to force Newton to choose between disclosure and dismissal in light of the balancing test we have just described. In conducting this balancing inquiry the court should consider whether an order delaying Newton's obligation to respond until the danger of criminal prosecution has passed would unduly prejudice appellees. If it finds that such an order would be appropriate, then Newton should be reinstated and given another opportunity to pursue his claims. Even if the court finds that

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<sup>172</sup> *See, e.g.*, Plaintiff Huey P. Newton's Memorandum of Points and Authorities in Support of Motion to Compel Discovery, R 207A at 21, 26; Plaintiff Huey P. Newton's Further Supplemental Responses to Interrogatories as Ordered by This Court on August 6, 1979 at JA 991. In fact, when one of the criminal prosecutions ended in acquittal Newton did provide answers to two more interrogatories. *See id.* at JA 991-992 (responses to Interrogatories 43 and 44).

<sup>173</sup> The information sought here does not seem to go to the heart of the lawsuit. Thus the defendants in this case will be far less hampered in preparing their case than the defendants in *Wehling*.

Finally, appellees claim that Newton has already waived his privilege because he testified about many of these issues in an unrelated criminal trial. However, a waiver of the privilege against self-incrimination is effective only in the proceedings at which the accused testifies. See, e.g., *United States v. Miranti*, 253 F.2d 135 (2d Cir. 1958); *Marcello v. United States*, 196 F.2d 437, 444-445 (5th Cir. 1952); see generally C. McCORMICK, LAW OF EVIDENCE § 132 at 281 (1972).

On the other side of the balance, appellees have not made the detailed showing of need that would justify an order forcing a party to choose between disclosure and dismissal. Appellees have contended that the information is crucial "to the point of telling them what exactly they are accused of doing."<sup>170</sup> But the record does not now provide much support for this contention. In fact, as appellants emphasize, the Fifth Amendment claims seem to relate only to a small portion of the lawsuit; the interrogatories Newton refused to answer pertained primarily to allegations contained in three subparagraphs of the complaint.<sup>171</sup> It may be true that if appellees are never able to obtain the withheld information they will be prejudiced. This does not necessarily mean, however, that at this stage of the litigation an order forcing immediate disclosure is appropriate. Far less drastic rem-

<sup>170</sup> See Opinion and Order of August 6, 1979 at JA 856.

<sup>171</sup> See note 157 *supra*. These subparagraphs are 57(d) ("Fox Lounge incident"), 57(e) (tax investigations initiated to harass Newton), and 59(c) ("Richmond incident" and Newton's claim that he advocated violent action only where necessary for self-defense). See Amended Complaint at JA 38, 43. The District Court expressly found that the interrogatories inquire about more than the subjects of "several subparagraphs of the complaint." Memorandum and Order of January 25, 1980 at JA 1135. It may have intended to refer to Interrogatories 46, 47, and 48, which ask for information regarding the shooting of Nelson Malloy and the Party status of Flores Forbes. See JA 248-249.

disclose information relating to matters that were the subject of pending criminal prosecutions or pending criminal and civil investigations.<sup>157</sup> In its August 6 order the

<sup>157</sup> Newton refused to answer Interrogatories 11-15 and 49, which sought information about the "Fox Lounge incident" in July 1974. Allegations regarding events at the Fox Lounge are made at subparagraph 57(d) of the Amended Complaint, see JA 38. According to Newton, these events are currently the subject of a criminal prosecution against him. Objections of Plaintiff Huey Newton to First Interrogatories of Federally Represented Defendants at JA 240. Newton refused to answer Interrogatories 18-36 and 38-41, which sought information regarding his tax dealings. He objected on the ground that he was under investigation for possible civil and criminal violations of the federal tax laws. See *id.* at JA 241. Subparagraph 57(e) of the Amended Complaint suggests that these investigations were undertaken for the purpose of harassing Newton. Amended Complaint at JA 38. Newton also refused to answer Interrogatory 45, which asked him to describe his involvement in the "Richmond incident" of October 1977 where three men, including two Black Panther Party members, broke into a house where a prosecution witness was staying and fired guns. He stated that this matter was the subject of a pending criminal investigation. Appellees suggest that this interrogatory relates to subparagraph 59(c) of the Amended Complaint, which states that Newton opposed violence except in self-defense. See Statement of Defendants Bell, et al., Interrogatories Sought to be Compelled at JA 808; Amended Complaint at JA 43. Finally, Newton refused to answer Interrogatories 46, 47, and 48, which sought information regarding the shooting of Nelson Malloy and the Party status of Flores Forbes. See JA 248-249.

Newton also objected to Interrogatories 43 and 44, which asked him to describe his participation in the shooting of Kathleen Smith and the beating of Preston Collins. Newton asserted the Fifth Amendment privilege against self-incrimination on the ground that this incident was the subject of a pending criminal prosecution against him. He later answered these interrogatories when the charges against him were dismissed. See Plaintiff Huey P. Newton's Further Supplemental Responses to Interrogatories as Ordered by This Court on August 6, 1979 at JA 991-992.

District Court ruled that Newton must either answer the interrogatories with respect to which he had asserted the Fifth Amendment privilege or face dismissal. When Newton continued to rely on the privilege, he was dismissed. We cannot determine on the basis of the record as it now stands whether the District Court's August 6 decision denying Newton's claim of privilege and compelling disclosure was valid. We remand so that the District Court may reconsider its decision to order disclosure in light of the legal principles we set forth below.

Just as appellees argued that an automatic waiver rule should be applied in the First Amendment context, so also they contend that such a rule should be applied in the Fifth Amendment context. Again, we disagree. In *Griffin v. California*, 380 U.S. 609 (1965), the Supreme Court recognized that penalizing assertion of the Fifth Amendment privilege effectively destroys the privilege. Thus it held that the judiciary may not impose sanctions that make assertion of the privilege "costly." See also *Spevack v. Klein*, 385 U.S. 511 (1967); *Garrity v. New Jersey*, 385 U.S. 493 (1967).<sup>158</sup> Requiring a plaintiff to choose between proceeding with his lawsuit and claiming the privilege clearly imposes a substantial cost. This cost cannot be justified on the sole ground that the plaintiff chose to initiate the suit and thus can be characterized as a voluntary litigant. Again, an individual "voluntarily" becomes a plaintiff only because he believes the courts provide the best means of protecting his rights.<sup>159</sup>

<sup>158</sup> The fact that the privilege was asserted in a civil setting does not justify a waiver rule. It is well established that the privilege may be claimed whenever there is a danger of criminal prosecution. See, e.g., *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924).

<sup>159</sup> See text and notes at notes 141-142 *supra*; see also Note, *Plaintiff as Deponent: Invoking the Fifth Amendment*, *supra* note 142, 48 U. CHI. L. REV. at 162-164 (criticizing voluntary/involuntary distinction); Note, *Toward a Rational Treat-*

did not undertake the careful analysis that is necessary before a claim of privilege can be denied.

First, the court never considered whether there was a serious threat to Newton's Fifth Amendment rights. The record as it now stands strongly suggests that Newton properly invoked the privilege against self-incrimination. Although appellees make several arguments in an attempt to show that Newton's invocation of the Fifth Amendment should not be respected, these arguments lack merit.<sup>160</sup> Appellees contend, first, that Newton's claims involve no more than "imaginary hazards of incrimination."<sup>161</sup> But Newton declined to answer the interrogatories in question precisely because they would have required him to disclose information about incidents that are the subject of pending criminal prosecutions or pending criminal and civil investigations.<sup>162</sup> Newton concedes that the civil investigation has now been completed. However, that investigation did not terminate until after appellees had filed their motion for sanctions and Newton had filed his original and supplemental responses.<sup>163</sup> Second, appellees suggest that Newton refused to answer several interrogatories that would have required him to identify participants in events that are the subject of criminal prosecutions in part because he wished to protect those individuals; they argue that this is not a proper claim of privilege. But as appellants correctly point out, identification of potential witnesses is within the scope of the Fifth Amendment privilege.

<sup>160</sup> It is relevant to note that the District Court never suggested that Newton's claim of Fifth Amendment privilege was not substantial.

<sup>161</sup> Appellees' brief at 37-38.

<sup>162</sup> See note 157 *supra*.

<sup>163</sup> See appellants' reply brief at 31 n.1. The tax investigation was not settled until November 29, 1979. See appendix to appellees' brief (decision of Tax Court).

automatic dismissal. It stated that "a civil plaintiff has no absolute right to both his silence and his lawsuit. Neither, however, does the civil defendant have an absolute right to have the action dismissed anytime a plaintiff invokes his constitutional privilege." 608 F.2d at 1088. It went on to hold that by measuring the relative weights of the competing interests the courts could afford better protection to both parties. The court emphasized that in conducting this balance dismissal should be the last rather than the first step.

When plaintiff's silence is constitutionally guaranteed, dismissal is appropriate only where other, less burdensome, remedies would be an ineffective means of preventing unfairness to defendant.

*Id.* The Fifth Circuit then applied the balancing test to the facts before it. It recognized that the information sought by the defendants went to the heart of their case. But it decided that the balance tipped toward the plaintiff, and that all discovery should be stayed for three years until the statute of limitations on the potential criminal prosecutions had run.

On the basis of our review of the record, we cannot determine whether the District Court properly applied these legal principles when it entered an order requiring Newton to choose between disclosure and dismissal. In reviewing Newton's claim of privilege the court made statements virtually identical to those it made in dismissing the Party. It observed that appellees had contended that the information withheld by Newton "is vital to their defense, many times to the point of telling them what exactly they are accused of doing."<sup>105</sup> This language might be interpreted as showing that the court intended to apply a balancing test. Even if this interpretation is correct, however, it is clear that the court

<sup>105</sup> Opinion and Order of August 6, 1979 at JA 856.

Indeed, as we noted in the First Amendment context, an automatic waiver rule raises serious due process questions; the plaintiff is in effect deprived of his day in court.<sup>160</sup> Our conclusion that a *per se* waiver rule cannot be justified is supported by decisions in other circuits. See *Campbell v. Gerrans*, 592 F.2d 1054 (9th Cir. 1979) (proper exercise of Fifth Amendment rights by plaintiff in discovery stage of civil case can never justify automatic dismissal); *Wehling v. Columbia Broadcasting System*, 608 F.2d 1084 (5th Cir. 1979) (same); *Thomas v. United States*, 531 F.2d 746 (5th Cir. 1976) (there are "constitutional limitations upon the power of courts, even in aid of their own valid proc-

*ment of Plaintiffs Who Invoke the Privilege Against Self-Incrimination During Discovery*, *supra* note 142, 66 IOWA L. REV. at 584-587 (same).

<sup>160</sup> See text and note at note 193 *infra*. See also *Wehling v. Columbia Broadcasting System*, *supra* note 142, 608 F.2d at 1088 (automatic dismissal for assertion of Fifth Amendment privilege would be unconstitutional because due process requires judicial determination of plaintiff's civil action); *Thomas v. United States*, 531 F.2d 746, 749 (5th Cir. 1976).

If an automatic waiver rule were applied, the civil rights of any individuals vulnerable to criminal prosecution would be routinely denied.

For example, no one would be able to bring suit for police brutality if on deposition he were required to elect between incriminating himself with regard to the incident out of which the claims arose, and suffering dismissal.

Note, *Plaintiff as Deponent: Invoking the Fifth Amendment*, *supra* note 142, 48 U. CHI. L. REV. at 163-164 (footnote omitted). A similar problem could arise with respect to gambling tax refund actions. If dismissal were automatic, the government could routinely abuse its power to assess by "filing interrogatories framed to oblige the taxpayer to incriminate himself or forego his lawsuit. \* \* \* [D]ismissal of every suit for wagering tax refund by every taxpayer who invokes his Fifth Amendment right may be akin to forfeiture." *Thomas v. United States*, *supra*, 531 F.2d at 749.



esses, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause").<sup>161</sup>

In our view, a balancing approach is clearly preferable, since it gives far greater protection to plaintiffs' Fifth Amendment rights. Under this approach the claim of privilege should be upheld unless the defendant can show that his need for the information in question is substantial. Even in circumstances where the defendant has demonstrated a strong interest in disclosure, an order requiring the plaintiff to choose between his Fifth Amendment rights and dismissal will not be proper, except where other, less drastic, remedies are not available.<sup>162</sup>

<sup>161</sup> But see *Penn Communications Specialities, Inc. v. Hess*, 65 F.R.D. 510 (E.D. Pa. 1975) (automatic dismissal); *Bramble v. Kleindeinst*, 357 F.Supp. 1028, 1036 (D. Colo. 1973), *aff'd*, 498 F.2d 968 (10th Cir.), *cert. denied*, 419 U.S. 1069 (1974) (same); *Brown v. Ames*, 346 F.Supp. 1176 (D. Minn. 1972) (same); see also *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483 (1955) (party's refusal to answer questions justifies striking pleadings in divorce action).

Several of the above cited opinions relied on *Lyons v. Johnson*, 415 F.2d 540 (9th Cir. 1969), *cert. denied*, 397 U.S. 1027 (1970). In that case the Ninth Circuit approved dismissal of a plaintiff who invoked the Fifth Amendment in response to questions asked at a deposition. It stated that the "scales of justice would hardly remain equal \* \* \* if a party can assert a claim against another and then be able to block all discovery attempts against him by asserting a Fifth Amendment privilege to any interrogation whatsoever upon his claim." *Id.* at 542. When it decided *Campbell v. Gerrans*, however, the Ninth Circuit expressly limited the holding of *Lyons v. Johnson* to situations in which the Fifth Amendment had not been properly invoked. *Campbell v. Gerrans*, 592 F.2d 1054, 1057 (9th Cir. 1979). In *Johnson v. Lyons* the court had suggested that there was no real danger of self-incrimination.

<sup>162</sup> See Note, *Toward a Rational Treatment of Plaintiffs Who Invoke the Privilege Against Self-Incrimination During Discovery*, *supra* note 142, 66 IOWA L. REV. at 594-602 (advocating adoption of balancing test).

Use of a balancing test is not unprecedented in the Fifth Amendment context.<sup>163</sup> In fact, in *Wehling v. Columbia Broadcasting System, supra*, the Fifth Circuit explicitly adopted a balancing analysis to determine whether a plaintiff could invoke the Fifth Amendment and refuse to answer interrogatories.<sup>164</sup> In that case the plaintiff brought a libel action after the defendant had broadcast a radio program in which it was alleged that the plaintiff had abused federal loan programs. The plaintiff invoked the Fifth Amendment at a deposition in response to questions about the loans. The lower court dismissed. The Fifth Circuit reversed, holding that the plaintiff's assertion of the privilege could not justify

<sup>163</sup> In *California v. Byers*, 402 U.S. 424 (1971), it was claimed that a California statute requiring a driver involved in an accident to stop and identify himself violated the Fifth Amendment. Chief Justice Burger, writing for the plurality, suggested that the Fifth Amendment claim could be decided by balancing the constitutional right against the interest in truth finding. *Id.* at 427. The plurality eventually upheld the statute on another ground. But Justice Harlan, who concurred, found that the strong state interest in identifying those involved outweighed what he argued was a minor infringement of the privilege. Implicit balancing may underlie the evolution of the "required records" doctrine. Compare, e.g., *Shapiro v. United States*, 335 U.S. 1 (1948) (rejecting claim that individual could not be required to keep possibly incriminating records under Emergency Price Act of 1942), with *Marchetti v. United States*, 390 U.S. 99 (1968) (invalidating special filing for a tax on gamblers on the ground that it violated the privilege against self-incrimination). These decisions might be explained on the ground that the Court was balancing the government's need for information against the potential harm to the individual if the information was produced.

<sup>164</sup> In its earlier decision discussing the privilege, *Thomas v. United States, supra* note 160, the Fifth Circuit did not explicitly adopt a balancing test. Although the Ninth Circuit rejected the automatic waiver rule in *Campbell v. Gerrans, supra* note 161, it did not explicitly adopt a balancing test.

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Date 8/28/81

TO: DIRECTOR, FBI  
 ATTN: LEGAL COUNSEL DIVISION

FROM: SAC, WFO (197-57)

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BLACK PANTHER PARTY  
 VS. EDWARD LEVI, et al  
 (U.S.D.C., D.C.)  
 CIVIL ACTION #76-2205

Enclosed for the Bureau is one copy of the docket showing the latest entries for captioned litigation, obtained from the United States District Court (USDC) by Special Clerk [redacted] on August 27, 1981.

Washington Field Office will continue to follow and report.

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LEGAL COUNSEL

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. <u>76-2205</u>
THE BLACK PANTHER PARTY, et al.	EDWARD LEVI, et al.	PAGE <u>20</u> OF <u>    </u> PAGES

DATE	NR.	PROCEEDINGS
1980 Mar	12	ORDER deferring the adjudication of the amount of debts'. attorney's fees is deferred pending ruling on pltfs. appeal. (N) (signed 03-11-80) SMITH, J.
Mar	14	NOTICE of Appeal by pltffs. from orders of Jan. 25, 1980 and Feb. 13, 1980; \$5.00 filing fee and \$65.00 USCA docketing fee paid and credited to the U.S.; copy sent to Joseph E. Casey, Larry Gregg and William L. Stauffer, Jr.
Mar	17	COPY of notice of appeal and docket entries sent to USCA: USCA # <u>80-1302</u>
Apr.	10	RECORD on appeal delivered to USCA; Receipt ack.
May	28	TRANSCRIPT of proceedings of May 29, 1979 ; pages 1-41; (Rep: Dawn T. Copeland); court copy
May	28	TRANSCRIPT of proceedings of May 25, 1977; pages 1-37; (Rep: Dawn T. Copeland); court copy
May	30	SUPPLEMENTAL record on appeal delivered to USCA; ack receipt 80-1302.
June	6	STIPULATION to correct the record on appeal in U.S. Court of Appeals for the District of Columbia Circuit Civil No. 80-1302; attachments(5), approved. SMITH, J. (signed 5-14-80)
June	6	SUPPLEMENTAL RECORD on appeal delivered to USCA; Receipt ack.
<u>1981</u>		
Aug	7	APPEARANCE of Brian P. Gettings as counsel for debt #7 and WITHDRAWAL of William L. Stauffer, Jr. as counsel for debt #7.

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62-1174-229  
ENCLOSURE

Assistant Attorney General  
Civil Division  
Attention: Larry L. Gregg, Esq.

October 5, 1981

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Assistant Director - Legal Counsel  
Federal Bureau of Investigation

BLACK PANTHER PARTY, et al., v.  
WILLIAM FRENCH SMITH, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 76-2205  
(D.C. CIR.)  
COURT OF APPEALS NO. 80-1302

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Reference is made to the telephone conversation between Department of Justice (DOJ) Attorney Larry L. Gregg and SA  on September 14, 1981.

Pursuant to the referenced telephone call, your office requested comments regarding whether Certiorari should be sought by the Government in this matter in view of the refusal of the Court to grant the Government's Motion for Rehearing En Banc.

BACKGROUND

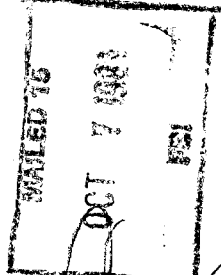
The Black Panther Party (BPP) and several of its members filed suit in the United States District Court for the District of Columbia on December 2, 1976, against 20 present and former Government officials, in their individual and official capacities, representing six Government agencies. The suit charged the defendants with conspiring to destroy the BPP and harass its members and in the process defendants had violated various Constitutional rights of the plaintiffs as well as several statutory proscriptions.

*62-11741-230*

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*(5)*

SEE NOTE - PAGE FOUR

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- Exec AD LES \_\_\_\_\_
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- Telephone Rm. \_\_\_\_\_
- Director's Sec'y \_\_\_\_\_



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Assistant Attorney General  
Civil Division

Lengthy discovery has been conducted by both sides in this action. The plaintiffs have served 48 interrogatories on the Government and made four requests for documents resulting in their receiving 40 volumes of expurgated documents. The Government took a very aggressive posture, serving 244 interrogatories on the BPP and 82 on plaintiff Huey Newton. The failure by plaintiffs to adequately answer the interrogatories served on them resulted in a Court Order dated August 6, 1979, requiring clarification of many of their previous responses and further demanding answers to questions not previously answered due to plaintiffs' claims of Constitutional privilege under the First and Fifth Amendments. Plaintiffs' refusal to comply fully with that Order led the Government to request sanctions against the plaintiffs. On January 25, 1980, United States District Judge John Lewis Smith, Jr., dismissed the case based upon plaintiffs' noncompliance with his August 6, 1979, Order.

The District Court found that the BPP's supplemental responses to the Government's interrogatories were fatally defective, that some interrogatories should have been answered by the BPP's individual officers and not an agent named by the BPP, that the BPP could not refuse to produce the names of party members not publicly known and that plaintiff Huey Newton could not claim the Fifth Amendment privilege and still maintain this action, all in violation of its Order of August 6, 1979. The Court found that in view of the conscious disregard of its August 6, 1979, Order the sanction of dismissal was appropriate and further that plaintiffs were not substantially justified in failing to comply with its Order and should pay reasonable expenses including attorney's fees, incurred by the defendants in bringing this motion.

Assistant Attorney General  
Civil Division

In its Opinion dated July 8, 1981, the United States Court of Appeals for the District of Columbia Circuit in its decision in this case styled The Black Panther Party, et al. v. William French Smith, Attorney General of the United States, et al., (D.C. Cir.), Court of Appeals No. 80-1302, reversed or remanded with instructions, virtually every decision made by the District Court, except that preventing the BPP from converting this suit to a class action suit due to their failure to file that motion in a timely fashion. It should be noted that one of the three judges on the panel dissented strongly in a 20-page Opinion which concurred in part and dissented in part. The Government's Motion for Rehearing En Banc was denied.

To date 40 volumes of material, consisting of several thousand pages, have been turned over to plaintiffs during discovery. This is only a small portion of the approximately 1,448,240 pages of FBI documents within the scope of discovery. In addition to this, should the case be remanded under the existing opinion there is the possibility of additional voluminous discovery taking place on both sides in the form of numerous interrogatories and depositions. Should the BPP be successful in its discovery attempts and the final decision in this suit the Government defendants would not only have been put through an extraordinary expenditure of manpower and effort in defending this suit but would also be exposed to plaintiffs' request for punitive and compensatory damages in excess of \$200,000. We are of the opinion that the actions and decisions of the FBI can be successfully defended, but are fully aware of the possibility of the Court throwing the plaintiffs a "bone" in such matters.

As a result of the referenced telephone conversation and the self-evident legal research expended during the four-and-one-half-years of submitting motions and memoranda to the Court, no discussion of the legal issues involved is being included herein, but will be provided at the request of DOJ Attorney Gregg, if needed.



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(ATTENTION: LEGAL COUNSEL DIVISION)

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FROM: SAC, WFO (197-57) (P)

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BLACK PANTHER PARTY vs.  
EDWARD LEVI, ETAL  
(U.S.C.A.)  
CIVIL ACTION NUMBER 80-1302

Enclosed for the Bureau is one (1) copy of the docket showing the latest entries for captioned litigation obtained from the United States Court of Appeals (U.S.C.A.), District of Columbia, by Special Clerk (SC) [redacted] on 2/2/82.

WFO will continue to follow and report.

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GENERAL DOCKET

80-1302

UNITED STATES COURT OF APPEALS  
FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

FPI-MI-8-2-76-IM-5925

DATE	FILINGS—PROCEEDINGS
	80-1302
	340770 ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 9-7-93 BY 9802 R00/ML
(T)09-15-80	4-Appellee's (Moore) motion to adopt the brief of the federal appellees (m-15)
(C)-9-30-80	Clerk's order granting appellee's (Moore) motion to adopt the brief of federally-represented appellees
(C)10-02-80	15-Appellants' reply brief (m-2)
(T)02-05-81	15-Appellees' (except Moore and Sullivan) supplemental brief (m-6)
(B)02-11-81	Clerk's order, sua sponte, that the following times are allotted for the oral argument of this case: Appellants - 20 minutes; Appellees - 20 minutes.
(B)02-13-81	Argued before Wright, MacKinnon and Ginsburg*, CJ's
(T)03-26-81	4-Letter from counsel for all appellees except Moore and Sullivan advising of additional authorities pursuant to Rule 28(j), FRAP (m-20)
(B)04-06-81	Clerk's order, sua sponte, that pursuant to Rule 43 of the F.R.A.P., the Clerk is directed to delete the names of Edward Levi and Benjamin Civiletti as party appellees' and to substitute therefore the name of William French Smith
(T)04-24-81	4-Letter from counsel for appellees (Except Moore and Sullivan) advising of additional authorities pursuant to Rule 28(j), FRAP (m-22)
(V)06-03-81	4-Letter from counsel for Black Panther Party, et al. advising of additional authorities pursuant to FRAP 28(j) (m-1)
(V)06-22-81	4-Letter from counsel for Black Panther Party, et al. advising of additional authorities pursuant to FRAP 28(j) (m-19)
(R)7-8-81	Opinion for the Court filed by Circuit Judge Wright
(R)7-8-81	Opinion concurring in part and dissenting in part filed by Circuit Judge MacKINNON
(R)7-8-81	Judgment affirming in part; reversing in part and the case is remanded with instructions in accordance with the opinion of this Court filed herein this date
(V)07-15-81	4-Appellees' (except Moore and Sullivan) motion to extend time to file petition for rehearing to August 21, 1981 (m-15)
(V)07-20-81	Letter dated 07/15/81 from counsel for appellee Sullivan advising of change of address
(T)07-21-81	4-Appellee's (Moore) motion to extend time to file petition for rehearing to August 21, 1981 (m-20)
(V)7-22-81	1-Appellants' bill of costs (m-22)
(B)07-30-81	Per Curiam order that appellee's motions to extend time to file petition for rehearing are granted and the time for filing a petition for rehearing is extended to and including August 21, 1981; Wright, MacKinnon and Ginsburg, CJ's
(V)08-07-81	1-Appellee's (Moore) Praecipe
(V)08-21-81	15-Appellees' (except Moore and Sullivan) petition for rehearing and suggestion for rehearing en banc (m-21)
(V)08-21-81	15-Appellee's (Moore) petition for rehearing (m-21)
(C)09-14-81	Per Curiam order denying petitions for rehearing of all appellees except for Moore and Sullivan and the petition for rehearing of George C. Moore; Wright, MacKinnon (who would granted the petitions for rehearing) & Ginsburg, CJs
(C)09-14-81	Per Curiam order, en banc, denying suggestion for rehearing en banc of all appellees except Moore & Sullivan and the suggestion for rehearing en banc of George Moore is denied; CJ Robinson; Wright, Tamm, MacKinnon, Wilkey, Robb (who did not participate), Wald (who did not participate), Mikva, Edwards and Ginsburg, CJs
V)09-18-81	4-Appellees' motion for a 30-day stay of mandate (m-18)
(V)09-21-81	4-Appellee's motion for stay of mandate pending petition for certiorari (m-21) (George C. Moore)

SEE OVER

80-18

GENERAL DOCKET  
 UNITED STATES COURT OF AP  
 FOR THE  
 DISTRICT OF COLUMBIA CIRCUIT

FPI-NI-8-2-76-1N-5925

80-1302

DATE	FILINGS—PROCEEDINGS	Filed
(B)10-08-81	Per Curiam order that appellee's motion to stay mandate is granted and the Clerk is directed not to issue the mandate herein prior to October 22, 1981; Wright, MacKinnon and Ginsburg, CJ's	
(C)10-13-81	Per Curiam order that appellee's motion for stay of mandate is granted and the Clerk is directed not to issue the mandate herein prior to November 4, 1981; Wright, MacKinnon, and Ginsburg; CJs	
(V)10-16-81	4-Appellees' motion for 30-day extension of stay of mandate to 11/20/81 (m-16)	
(V)10-28-81	Notification from Clerk, Supreme Court that petition for writ of certiorari was filed on 10/22/81 in SC No. 81-774	
(B)11-03-81	Per Curiam order that appellees' (federal) motion for stay of mandate is granted and the Clerk is directed not to issue the mandate herein prior to November 23, 1981; Wright, MacKinnon and Ginsburg, CJ's	
(V)12-14-81	Copy of letter from Clerk, Supreme Court dated 12/11/81 extending time to file petition for writ of certiorari to 02/11/82 in SC No. A-492	



U.S. Department of Justice

JPM:REK:LSchaitman:emh  
145-12-3024

TELEPHONE:  
(202) 633-3441

Washington, D.C. 20530

FEB 11 1982

CERTIFIED - RETURN RECEIPT REQUESTED

Mr. John A. Mintz  
Assistant Director  
Legal Counsel Division, Room 7427  
Federal Bureau of Investigation  
J. Edgar Hoover Bldg.  
Washington, D.C. 20235

Re: The Black Panther Party, et al.  
v. William French Smith, et al.  
(D.C. Cir. No. 80-1302)

Dear Mr. Mintz:

We are enclosing for your information a copy of the petition for a writ of certiorari that we have today filed with the Supreme Court.

In our letter of January 7, 1982, we advised you that the Solicitor General had not then decided whether to seek certiorari on that portion of the court of appeals' decision which reversed the dismissal of the Black Panther Party's and Netwon's claims for their failure to satisfy our discovery requests. You should note that the petition which has been filed does challenge the court of appeals' ruling on this issue, as well as on the propriety of awarding summary judgment to those defendants who entered public service after January 1, 1974.

We shall advise you of the results when the Court acts upon our petition.

If you have any question concerning this matter you should contact  of my Appellate Staff.

*62-11741-233*

Sincerely,

J. PAUL McGRATH  
Assistant Attorney General  
Civil Division

APR 20 1982

*HO* By:

Robert E. Kopp  
Director, Appellate Staff

*RJK*

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ALL INFORMATION CONTAINED  
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FBI

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- UNCLAS E F T O
- UNCLAS

Date 4/28/82

TO: DIRECTOR, FBI  
(ATTENTION: LEGAL COUNSEL DIVISION)

FROM: SAC, WFO (197-57) (P)

SUBJECT: BLACK PANTHER PARTY vs.  
EDWARD LEVI, ETAL  
(U.S.C.A.)  
CIVIL ACTION NUMBER 80-1302

b6  
b7C

Enclosed for the Bureau is one copy of the docket showing the latest entries for captioned litigation, obtained from the United States Court of Appeals (U.S.C.A.) District of Columbia by Special Clerk [redacted] on 4/22/82.

WFO will continue to follow and report.

② - Bureau (Enc. 1)  
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*1 copy retained in 7326*

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LEGAL COUNSEL

Approved: \_\_\_\_\_

Transmitted \_\_\_\_\_

Per \_\_\_\_\_

(Number) (Time)

GENERAL DOCKET  
UNITED STATES COURT OF AP  
FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

FPI-NI-8-2-76-1M-5925

1981

FILINGS—PROCEEDINGS

Filed

- 81 Per Curiam order that appellee's motion to stay mandate is granted and the Clerk is directed not to issue the mandate herein prior to October 22, 1981; Wright, MacKinnon and Ginsburg, CJ's
- 81 Per Curiam order that appellee's motion for stay of mandate is granted and the Clerk is directed not to issue the mandate herein prior to November 4, 1981; Wright, MacKinnon, and Ginsburg; CJs
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- 81 Notification from Clerk, Supreme Court that petition for writ of certiorari was filed on 02/11/82 in SC No. 81-1511

FEDERAL BUREAU OF INVESTIGATION  
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