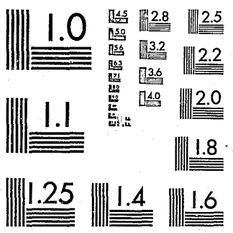

UNequal Justice Under the Law

UNequal Justice Under the Law

A Collection of Essays on the Problem of Discrimination in the U.S. Criminal Justice System

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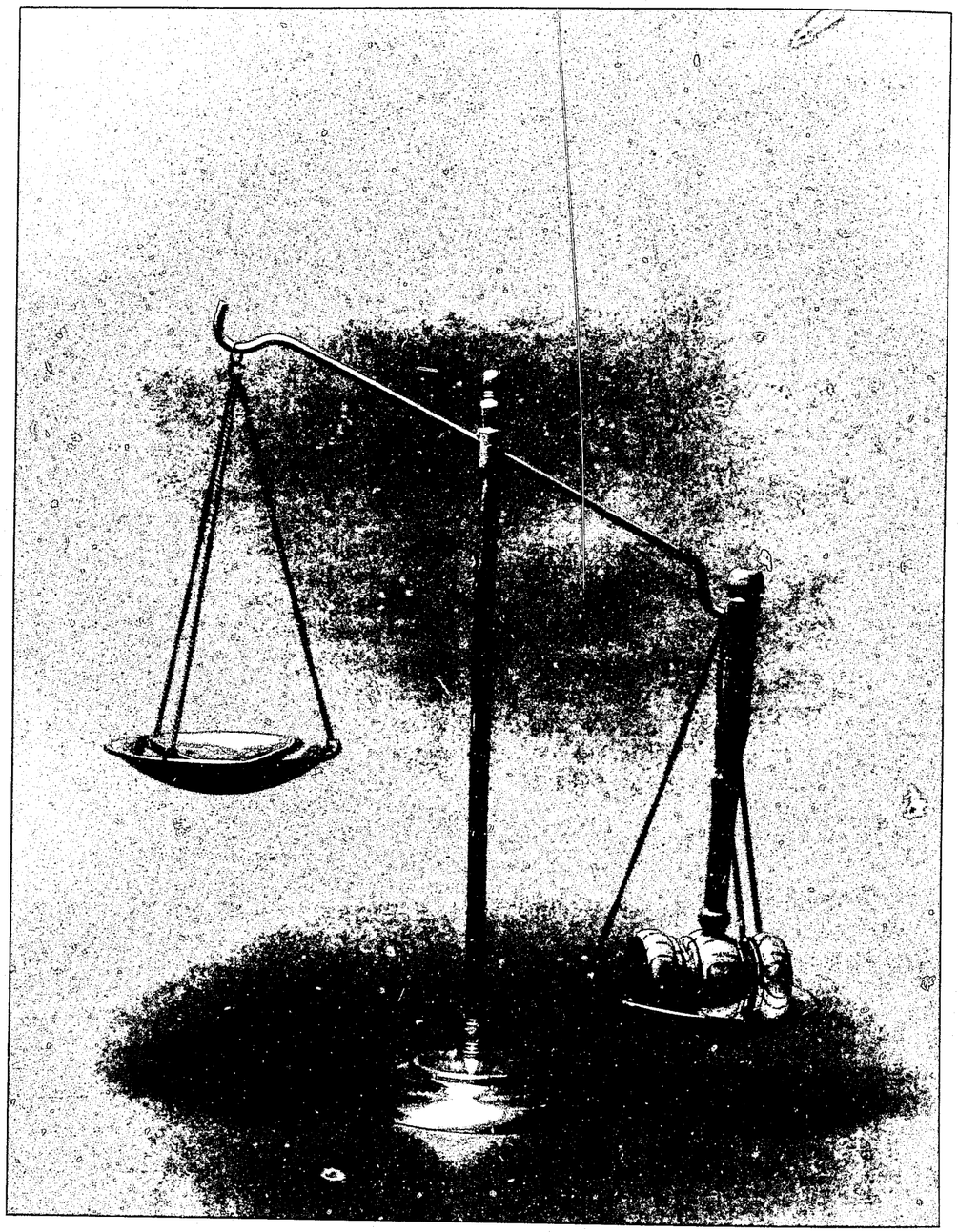
Introduction

Under the Constitution of the United States, every American is entitled to equal justice under the law; but too often, that justice is not dispensed evenhandedly.

Blacks are treated differently than whites; government officials are treated differently than private citizens; and those who disagree with the policies of the government are often subjected to a different kind of treatment—one that includes surveillance, bugging and wiretapping.

In the following essays, presented by the *National Commission on Law Enforcement and Social Justice*, six prominent community leaders discuss the problems of discrimination within the Justice Department today.

It is hoped that their comments will not only shed light on the situation, but open the door to some new solutions.



UNequal Justice Under the Law

by Alex R. Jones

Alex R. Jones has been with the National Commission on Law Enforcement and Social Justice (NCLE) *since 1974, when he first began working as the Commission's Campus Co-ordinator while attending MIT in Cambridge, Massachusetts. In 1975, as an MIT graduate, he became the Deputy Director of* NCLE's *New England Chapter. He then began to co-ordinate extensive information campaigns and petitions throughout all of New England's six states, pressing for criminal justice reform and an end to abuses such as the FBI's "dirty tricks" campaign.*

In 1977, he returned to Washington, D.C., his hometown, to take over as Associate Director of NCLE's *office in the nation's capital. There he began to actively work with community leaders, legal professionals and ministers in organizing D.C.'s minority community to demand and achieve needed reform in the U.S. Attorney's Office.*

The Seventies have brought us revelation after revelation of Justice Department "dirty tricks" against racial, political and religious minorities in the U.S. We have learned of the malicious disruption of black organizations by the FBI. We have seen another powerful arm of the Department of Justice, the U.S. Attorney's Office, publicly slander Congressional Black Caucus member Rep. William Clay (D-Missouri) only to have those charges later retracted by an embarrassed Department of Justice while under Congressional pressure. We have learned that the FBI had the National Conference of Black Mayors under electronic surveillance as late as 1978.

In short, we have seen the Department of Justice focusing huge amounts of its vast resources to harass, discredit and disrupt the activities of those groups and individuals dedicated to social change and who have been guilty o[illegible]thing more than exercising their Constitu[illegible]nal rights of freedom of

speech and assembly. Yet when the Department of Justice has been faced with crimes by government agents in violation of the rights of American citizens, it has often dragged its feet or ignored the abuses altogether.

Two of the departments within the Justice Department most guilty of operating on a double standard of justice are the U.S. Attorney's Office and the FBI. The FBI's "Dirty Tricks" program is only one of numerous examples of government agents breaking the law and violating the Constitutional freedoms of American citizens which have gone unprosecuted by the U.S. Attorney's Office.

During the FBI's COINTELPRO domestic spy program, FBI agents broke into people's homes and offices, violated their Constitutional rights and stole private property. They circulated false reports which disrupted social reform groups, discredited effective community leaders and caused fatal violence to erupt between rival minority groups.

This campaign was so blind in its attack upon black organizations that after Dr. Martin Luther King, Jr. gave his famous "I have a dream" speech on the equality and rights to freedom of all men, the FBI called him "the most dangerous (sic) and effective Negro leader in the country."

The real tragedy here is that little or nothing has been done to prosecute the agents and officials involved in these disruptive activities.

The FBI's attacks on Dr. King are not the only examples of Justice's double standard of law enforcement. The ordeal of black Army private James Thornwell is another example. Thornwell was stationed in France in 1961 when two files of classified documents turned up missing. Thornwell became the prime suspect. As a result, Army intelligence subjected him to a series of bizarre psychological tortures lasting several weeks in a futile effort to get him to admit taking the documents and to tell where they were.

Thornwell still maintains his innocence. However, the brutal psychological stress did achieve one glaring result: James Thornwell is now a social and emotional cripple, a shadow of the man he once was. During the final night of his interrogation, Thornwell was given LSD without his knowledge or consent. Even today, when recounting that event, his face becomes contorted with fear and pain and he breaks down in tears.

The Department of Justice did not act to prosecute the Army interrogators and officers responsible for this modern-day atrocity. Instead, they gave the Army permission to bring Thornwell before a military court martial, which was later dismissed when the Army refused to reveal the details of Thornwell's interrogation. Once again, the Department of Justice acted to protect the wrongdoer, while attempting to silence the man who could expose the truth.

Another example concerns the *National Commission on Law Enforcement and Social Justice*, sponsored by the Church of Scientology. In 1976, the Church of Scientology in South Africa uncovered a shocking situation in that country whereby thousands of blacks were being housed in slave labor camps run under the guise of mental institutions by large, white-owned private corporations. These 8,000 blacks were being used as a source of cheap labor, being given little or no pay, and then forced to live in inhuman conditions with inadequate medical care.

The Church of Scientology exposed this on an international scale. The Congressional Black Caucus, the United Nations and the American Psychiatric Association got involved in the investigations. The APA investigative team verified that these horrendous conditions did, in fact, exist.

On the basis of this exposé, the FBI issued a memo stating that the Church of Scientology was "possibly training the blacks to fight the whites in South Africa" and should be investigated for possible violations of the Neutrality Act. Thus, the FBI not only attempted to hamper the Church's efforts to expose an injustice and help thousands of black South Africans, but also attempted to have the Church investigated!

The situation is clearly one which needs attention. But it must be pointed out, that no matter how unfair and unjust such government actions may seem now, it can get worse and in fact *will* get worse unless steps are taken to implement the needed changes. The only way that change can take place is if minority leaders and concerned citizens in this country make a concerted demand for improvement—a steady and persistent demand. If this is done, we will at least have a chance and some hope that the needed reforms will be implemented.

There are a number of reforms which could be implemented immediately. Currently before the Congress is a Charter designed to lay down guidelines for the conduct of the FBI. The Charter should include provisions which *clearly* prohibit the type of lawless activity the FBI engaged in during its COINTELPRO campaign.

The U.S. Attorney's Office should also have a set of clear, legal guidelines which it would be required to use in deciding who to investigate and who to prosecute and who not to investigate and prosecute. There are currently no such guidelines and that vital decision is left entirely up to the discretion of the individual U.S. Attorneys.

Such legal guidelines would help ensure that the U.S. Attorney's Office operates in a just fashion and prosecutes government agents and officials under the same law that it has used to prosecute vocal minority groups and individuals.

Finally: blacks, hispanics, women and other minorities must gain fair and proper representation within the Department of Justice and especially in the FBI and the U.S. Attorney's Office. Since the employees in these two agencies exercise great power, it is important that men and women with other points of view hold responsible positions, thereby making the Department of Justice more representative of and sensitive to the various minority groups in the U.S. and thus more able to uphold the standard of "equal justice under the law."

Discrimination in the Criminal Justice System — Harassment of Minority Leadership

by Mary R. Warner

Mary R. Warner is Chairperson of the National Association of Human Rights Workers' Committee on the Status of Black Leadership. *In that capacity, she has done extensive research and writing over the past four years on the issue of harassment of Black elected officials and other minority leaders. Presently doing freelance work, Ms. Warner has previously served in the capacities of Administrative Assistant to Dr. Mervyn M. Dymally, former California Lieutenant Governor; Assistant to the City Manager in Berkeley, California; Research Associate in the Kansas City, Missouri, Human Relations Department; and Research Associate with the Joint Commission on Correctional Manpower and Training, Washington, D.C.*

The initial tendency, it seems fair to say, when considering discrimination in the criminal justice system, is to think in terms of the poor, the powerless, the unrepresented—those who are victim to police brutality, to excessive bonds and compromising plea bargains, to prejudiced juries and brutal prison guards. Yet, brief pause will cause us to reflect as well on the recent history of the *Sixties* during which civil rights and social change groups were subjected to what we now know to be blatantly discriminatory treatment at the hands of law enforcement agencies and agents. Even less prominent in our awareness is the realization that discriminatory practices continue to plague minority leaders. While the "leaders" of today—largely because of the movements of the *Sixties*—have occupied different arenas and assumed different titles, the tactics and patterns of harassment, on close scrutiny, are just as real and wear just as ugly a face as in yesteryear.

The contemporary sources of harassment include—familiarly—the IRS, the U.S. Department of Justice, the FBI, State Attorneys General, local police departments and the communications media—the

latter working in concert, sometimes deliberately, sometimes inadvertently, with law enforcement entities.

The harassment takes the form of character assassination through rumor and innuendo; prolonged investigatory witch hunts; grand jury inquiries; occasional indictments; rare convictions.

The tactics serve to disenfranchise minority leaders economically by necessitating vast expenditures of money in legal defense; by restricting income-generating opportunities; by alienating prospective creditors and business associates. The tactics take their toll as well in inducing psychological constraints—in generating sufficient frustration, depression, despair and futility that all energy and motivation for fighting back is eventually extinguished. The net effect—as appears to be the intent—is to remove leaders, who because of their social change efforts are viewed as threats to the status quo, from positions where they can mobilize and organize the people or exert influence on policy matters.

The targets of these patterns of harassment appear to cut across the continuum of Black and Brown leadership positions, including appointed government officials, civil rights leaders, journalists, educators, ministers, doctors and, paradoxically, law enforcement administrators. The trend is one that has the potential for negating the thrust of the past decade for affirmative action and minority professional development. The implications for the furthering of human rights in this country are thus alarming.

Recently, for example, with the expansion in the number of federal judgeships, much has been made of the opportunity for increasing minority representation in the judicial system; little, however, has been said of the prolonged scrutiny and barrage of allegations to which several Black federal judicial appointees have found themselves subjected. Observers of urban dynamics have noted in the past two or three years the reversal of migration trends, with whites returning in increasing numbers to the central cities and urban land value skyrocketing concurrently. But little audience has been given to the perplexed voices of Black real estate brokers questioning whether or not they are being subjected to undue scrutiny under the guise of FHA fraud investigations, with indictments and convictions resulting in license revocations.

While some of these situations are yet to be submitted to thorough examination, the pattern of harassment insofar as one category of leaders is concerned—that of Black elected officials—has been well-documented. The examples that most readily come to mind are those of Edward Brooke and Mervyn Dymally, former United States Senator from Massachusetts and former California Lieutenant Governor, respectively, both of whom were defeated in their 1978 bids for re-election after prolonged media incantations about allegations that have to date proved baseless. A third official elected on a state-wide basis, George Brown, former Lieutenant Governor of Colorado, declined to even run for re-election after four years of constant assault that included a grand jury investigation which found no grounds for any charge of criminal wrong-doing.

These three cases are particularly significant in that the individuals involved were ultimately removed from office because, it seems reasonable to surmise, of the threat they posed by virtue of being, in one case, a prospective Vice Presidential candidate on the Republican ticket, and in the other two cases, next-in-line to become State Governors. A lesson not to be overlooked is that they were particularly vulnerable for *having* been elected on a state-wide basis, which translated means a majority Anglo constituency.

Minority officials elected on a district basis are no more immune from harassment; they are only less likely to be voted out of office. Their effectiveness is nevertheless constricted, simply for having to combat the allegations against them while at the same time striving to perform the duties of their office.

WIDE WORLD PHOTOS

Mervyn Dymally, former California Lieutenant Governor was defeated in his 1978 bid for re-election after prolonged media incantations about allegations which have to date proved baseless.

Intimately familiar with the harassment syndrome is a growing cadre of Black officials whose stories collectively lend great credibility to the charge of deliberate and systematic intimidation designed to impede the progress of Black politics.

Congressman William Clay (D-Missouri) has been the subject of half a dozen investigations, usually as a result of allegations first made by the St. Louis *Globe-Democrat*, which then led to investigations by the U.S. Department of Justice and—after months of duress and thousands of dollars of expense—resulted typically in letters of exoneration. A. Jay Cooper, Mayor of Prichard, Alabama, took the initiative to challenge FBI policies with regard to Black elected officials, and was promptly indicted by a federal grand jury, tried and subsequently acquitted.

Lucius Amerson, Sheriff of Macon County, Alabama, has, in the twelve years of his administration, encountered repeated FBI inquiries, IRS audits and indictments

that invariably result in acquittal or in charges being dropped. The Black political organization that gained control of Hancock County, Georgia, under the leadership of now-deceased John McCown has been decimated through investigative reporting by the Atlanta *Constitution*, inquiries by grand juries and indictments by the U.S. Department of Justice. Maryland State Senator Clarence Mitchell III found himself caught up in a web of surreptitious character assassination wherein friends and business associates were quietly intimidated via an IRS criminal investigation. While this investigation was yet in process, Senator Mitchell was indicted by the U.S. Department of Justice and the case was tried for over a year in the medium of Baltimore newspapers. The final official verdict rendered was that the United States government owed Senator Mitchell $234.

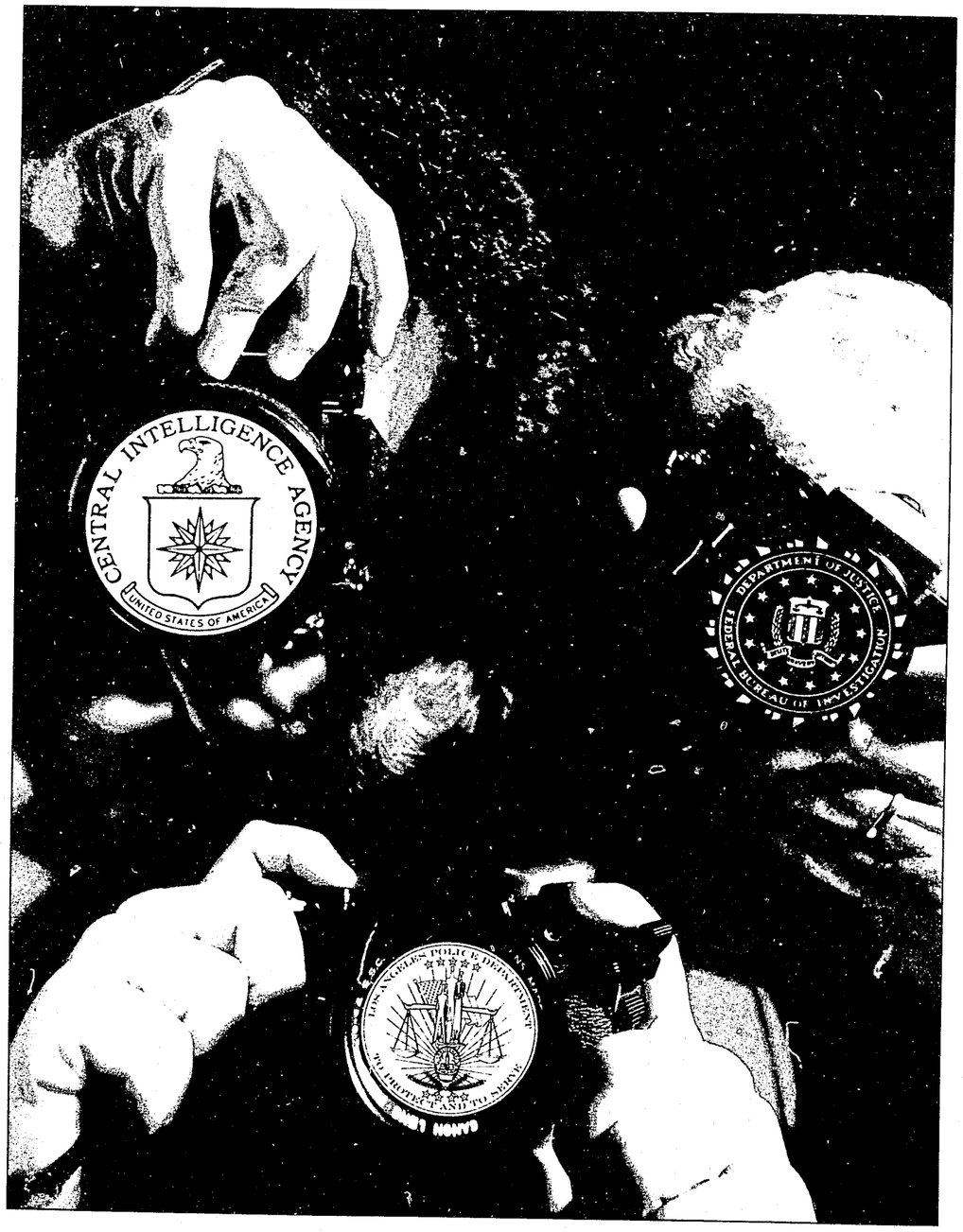
Some observers of these developments —of which the above represent only a small sampling—are prone to dismiss the notion of discriminatory treatment on grounds that, since Watergate, all public officials are subject to scrutiny. A sounder conclusion, given the proportion of elected officials who are Black (less than one percent of the total), the intensity of attacks on Black officials, and the patterns in terms of who is selected for investigation, is that the post-Watergate climate of public conservatism and antipathy toward the government has provided a convenient vehicle and rationale for ill-founded assaults on change-oriented minority leaders. One is given pause, certainly, by the fact that in the course of a "confidential" two-year investigation of alleged corruption in the California state government, the names of three persons somehow found their way into the press to be singled out for public criticism: one a Black Lieutenant Governor, one an Asian State Senator, one a Chicano Administrative Assistant.

WIDE WORLD PHOTOS

Lucius Amerson, Sheriff of Macon County, Alabama, has in the twelve years of his administration, encountered repeated FBI inquiries, IRS audits and indictments that invariably result in acquittal or in charges being dropped.

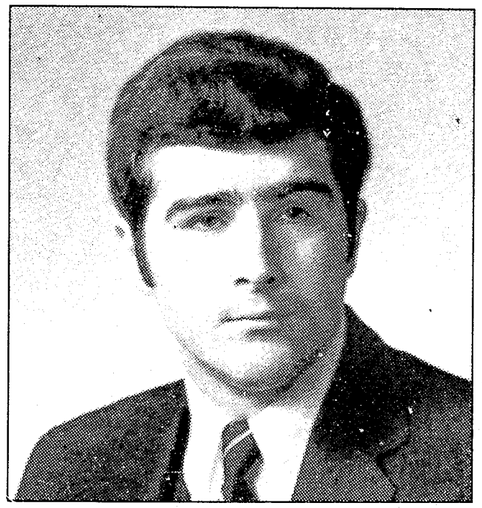
While few would argue that all government officials should not be held strictly accountable, consideration must be given, too, to the hazards of excessive zeal. And the cry of "corruption," it would appear, has become in the *Seventies* what the charge of "communism" was in the McCarthy era of the *Fifties*—a handy and devastating method of discrediting any who are considered "undesirable."

At the very least, it seems reasonable to question whether or not double standards are being applied to the performance of minority elected officials, and whether or not existing statutes and regulations, such as the enabling legislation for the Organized Crime Strike Forces, are being abused to violate the civil liberties of persons whose "crime" has been to exercise their right to function as full citizens of this country. Until persuasive assurance is in hand that this is not the case, one is compelled to assume that the repressive law enforcement programs and tactics of the *Sixties* have been reassigned and renamed and refined—but not eliminated, contrary to what the American public has been induced to believe.



Political Intelligence Gathering: New Threat to Americans

by Daniel Sheehan



Daniel Sheehan is Chief Counsel in the Karen Silkwood v. Kerr McGee Nuclear Corporation. *A graduate of Harvard Law School and Harvard Divinity School, he has served as General Counsel to the Joint Justice Division of the United States Jesuit Headquarters, from 1975 to 1977.*

As Chief Legal Counsel in the recently won $10 million radioactive contamination case of *Karen G. Silkwood v. The Kerr-McGee Nuclear Corporation*, I have had the privilege—and the startling learning experience—of supervising the professional investigation of the yet-to-be-tried charges of unlawful electronic and physical surveillance of Karen Silkwood. During this investigation, the professional private investigators hired by the estate of Karen G. Silkwood have unearthed clear and convincing evidence that there exists in America today a Justice Department-financed and an FBI-concealed domestic political intelligence-gathering apparatus directed against law-abiding critics of the Administration's dangerous nuclear policies and of a scale frighteningly larger and far more pervasive than the Cointelpro operation of the 1960's wielded by the Justice Department against critics of the Executive Department.

In 1961, shortly after the election of President John F. Kennedy, then Attorney General Robert Kennedy called to Washington, D.C. many of the leading participants in the covert law enforcement programs of the Federal Executive Department.

These men represented agents from the FBI, the Treasury Department, the National Security Agency, the Drug Enforcement Administration and others.

Attorney General Kennedy, in the several meetings which took place in 1961 among these men, issued a two-fold directive which caused these men to dramatically increase the use of *domestic* covert intelligence-gathering methods, emphasizing the use of secret electronic devices such as telephone taps and electronic "bugging" devices and to *share* among all Federal law enforcement agencies information gathered by each agency.

This caused each Federal agency to specifically increase its *covert* electronic surveillance activities within the United States (i.e., against Americans) and to gather any and all intelligence data against any group or individual whose activities *might* be of interest to any federal law enforcement agency. In short, these 1961 meetings transformed domestic law enforcement agencies (charged with enforcing the laws of the land) into agencies acting like the CIA (which participated as an equal in these meetings with domestic law enforcement agencies). This meant that these agencies sought to *prevent* violations of the law and did so by secretly gathering intelligence data about these individuals or groups by infiltrating them and seeking to "neutralize" them *before* they violated any laws.

The covert training and equipping of these federal agents for their new "domestic espionage" task force took place covertly in a secret program housed within the Department of the Treasury named "The Technical Investigation Aids School." Literally hundreds of federal law enforcement agents were secretly trained and equipped in this school and went on to staff such programs as Cointelpro, Operation Shamrock, Operation CHAOS, Operation Cable Splitter, Garden Plot and other non-exposed and discredited (but *never* prosecuted) illegal domestic political intelligence gathering operations conceived of, staffed and financed by the *Federal* Executive Department. These illegal Federal operations flourished under Presidents Kennedy and Johnson.

When Richard Nixon took office in 1969, his advocacy of "local control" on state operations of previously federally controlled programs caused him to make offensive use of the Justice Department Law Enforcement Assistance Administration to shift control of the illegal domestic political intelligence gathering operation down to the state level. Under the supervision of a man named Paul Wormet, hundreds of thousands of dollars in federal funds were channelled down to state and local political agencies with instructions that they were to set up their own local domestic political intelligence-gathering operations at the state and local levels.

A centralized training center (named the National Intelligence Academy) was established in the State of Florida, where state and local "intelligence officers" were trained using untraceable Justice Department LEAA funds. These officers were equipped (again at Justice Department expense) by a private corporation named Audio Intelligence Devices, Inc. (AID) which was set up for this purpose by the Central Intelligence Agency in meetings attended by Howard Osborne (the Director of Security for the CIA). Since 1970, hundreds of state and local police "intelligence officers" have been trained at the National Intelligence Academy and equipped with illegal electronic surveillance equipment by the Audio Intelligence Devices, Inc.—all at Justice Department expense.

During the Karen Silkwood investigation, we learned that several officers in the Special Intelligence unit of the Oklahoma City Police Department had been trained and equipped by these allegedly "private" companies. Our investigations established that these officers had undertaken "in their private capacities," i.e., while officially off duty, to use equipment to wiretap telephones and to conduct covert *political* intelligence-gathering activities in the Oklahoma City area against Black civil rights activists, radical student organizations at the University of Oklahoma and Oklahoma State University anti-war activists—and finally, against persons they designated as "potential threats to a nuclear facility," or "potential terrorists." Federally-trained political police used this latter category as an excuse to wiretap and conduct covert political intelligence gathering against Karen Silkwood. This activity was undertaken in direct cooperation and coordination with the Security Division of the private nuclear corporation for whom Karen Silkwood worked.

The Karen Silkwood investigation has, since this discovery, uncovered massive illegal political intelligence-gathering operations underway against citizens' organizations questioning the safety and rationality of the Executive Department's nuclear policies (both military and domestic), ranging from New England to Georgia and from Texas to California. All of their operations utilize equipment and agents monitored at Federal Justice Department expense and channel their illegally obtained political data to an organization called the Law Enforcement Intelligence Unit.

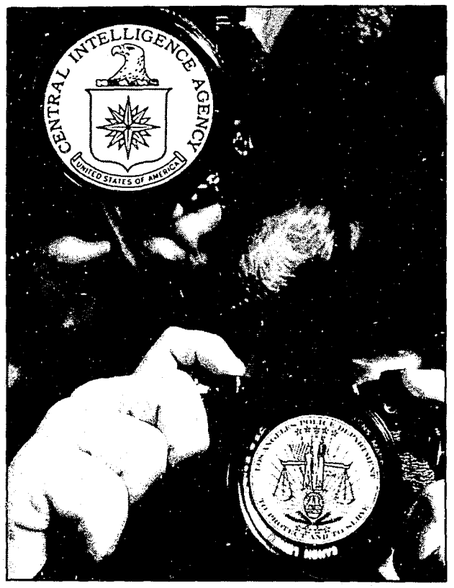
This organization is a private "fraternity" of some 250 individual men who, in their official capacities, are all intelligence officers in large state or municipal police

WIDE WORLD PHOTOS

Federally-trained political police wiretapped and conducted covert political intelligence-gathering against Karen Silkwood, in direct cooperation and coordination with the Security Division of the private nuclear corporation for whom Karen Silkwood worked.

departments. The LEIU is, however, a purely "private" organization, utilizing sophisticated electronic computers to communicate amongst themselves "personal information not available through official police channels." This information is not available because the Constitution totally forbids the gathering or dissemination of such information by state or federal law enforcement agencies. This information includes facts (either correct or incorrect) about citizens' private sex lives, their political affiliations, their private debts and a record of the license numbers of cars which are driven by them and their associates. This is all information which has been constitutionally excluded from official police files and banned from the FBI's NCIC (National Crime Information Center) computers.

However, the LEIU is, in fact, financed with funds from the Justice Department Law Enforcement Assistance Administration. These funds are "laundered" through a "front" organization in California named the California Criminal Technology Institute and sent directly to LEIU to finance their information-gathering and dissemination network.



Dossiers which contain nothing other than purely political information about citizens who have never in their lives committed any violation of the law are kept by virtually all large municipal police intelligence units on "activist" citizens in their city.

Persons who do not believe this to be true have but to go to their nearest state municipal police department and ask them whether there is a man who is a member of their intelligence unit (usually publicly described as a unit gathering information exclusively on "drug dealers" or "organized crime figures"—two of the most unpopular groups in our country) who is *also*, in his *private* life, a member of "the Law Enforcement Intelligence Unit." Then ask to see the list of electronic covert intelligence gathering equipment to which the LEIU member has access which was purchased by the department using Federal Justice Department LEAA (Law Enforcement Assistance Administration) funds. Citizens are lawfully entitled to answers to both of these questions—but not to the lies, equivocations and resistance one will encounter in the department's effort to avoid releasing this information.

My investigators are in physical possession of numerous LEIU dossiers which contain *nothing* other than purely political information about citizens who have *never* in their lives committed any violation of the law or ever been so much as arrested. These dossiers are kept by virtually all large municipal police intelligence units on "activist" citizens in their city.

While these unlawful political intelligence-gathering operations are presently focused on "citizens' groups which are protesting the Executive Department nuclear policies," this is only because these particular policies happen to be the federal policies which are at present the most unpopular among our citizenry. This domestic "political" police force is fully prepared to shift its focus onto any lawful citizens' group in our city which undertakes to lawfully and effectively resist federal programs desired by the federal Executive Department. In short, this domestic political police force is trained and prepared to treat any lawfully dissenting American citizens' group as "potential terrorists" and to lump them into the same category of "threats to the Nation's security" as foreign enemies are categorized by the Central Intelligence Agency. And these domestic political police (trained, equipped and financed by the Federal Justice Department) will use against these law-abiding American citizens' groups the exact same covert tactics of electronic spying, infiltration, disruption and neutralizing as the CIA has been trained to use against foreign enemies.

These facts will be proved before a federal grand jury in the upcoming case of *Karen Silkwood v. James Reading, et al.* which should go to trial in 1981. But America cannot afford to wait for these facts to be proved beyond any reasonable doubt in a court of law. We must move *now*, through every channel open to us, to dismantle this illegal and unAmerican domestic political police force. Contact your Congressional representatives, your local American Civil Liberties Union representative, your local chapter of the Campaign for Political Rights and your local church groups to obtain their assistance in bringing to your community's attention the operation of this group in your area.

You can contact the editors of this publication for assistance in locating persons in your community who can help accomplish this task.

Underemployment of Blacks in the Federal Justice System Denies Justice to Blacks

by Robert L. Harris

Robert L. Harris is currently an attorney for Pacific Gas and Electric Company in California, where he has represented the company in a number of Constitutional law cases involving First Amendment rights.

He is one of the founders and principal organizers of the California Association of Black Lawyers, is a member of the American Bar Association and sits on the Board of Directors of the ACLU of Northern California. He is the current president of the National Bar Association.

Of the numerous U.S. Attorneys around the country and in the U.S. territories, only six of these Attorneys are Black, and only a handful of the hundreds of Assistant U.S. Attorneys are Black. Most of these Black U.S. Attorneys and the few Black Assistant Attorneys have been appointed during the past two years.

This gross absence of Blacks from the U.S. Attorneys' Offices cannot help but affect the quality of justice accorded Blacks who come into contact with the justice system. A number of factors, many of which are subjective, go into the decision of when to prosecute. Prosecutorial discretion is virtually unlimited.

Too often a Black person is prosecuted criminally or civilly when the same factors would not have led to the prosecution of a white person. Biases possessed about Blacks and other minorities by white prosecutors cannot be ignored when the prosecutor makes that crucial decision about when to prosecute. Unfortunately, U.S. Attorneys are not exempt from their environments and past experiences.

A Black lawyer viewing the same facts viewed by a white lawyer oftentimes is more likely not to harbor the same fear of Blacks that a white lawyer may possess. Consequently, involving more Black lawyers in the U.S. Attorneys' Offices will probably lead to the likelihood of less discrimination against Blacks and other minorities in the prosecutorial aspects of the justice system.

Recently, a Black mayor was prosecuted on alleged bribery charges in Alabama. Although he was eventually exonerated of all charges, it is very probable that the prosecution would never have occurred in the first place had a Black U.S. Attorney had the opportunity to review the charges prior to the filing of the action against him. Under the American system of justice, once a person is indicted he is thought by the general population to be guilty, even though he is legally considered innocent until proven guilty. The public feels, even if the defendant is eventually acquitted, that the system let him off, and for all practical purposes the person is "dead" once indicted.

Because of the negative connotations attached to an indictment, it is absolutely essential that Blacks be involved in the determination of whether or not to prosecute. This power can be abused and has, in fact, been abused. A prosecutor has tremendous discretion, and can refuse to prosecute any case simply because he feels the prosecution will not serve the ends of justice. An insensitive prosecutor usually victimizes powerless people, who are usually Blacks or other minorities, who do not have political clout. Many Blacks who should not be prosecuted are prosecuted primarily because there are no Black lawyers in the prosecutor's office to check out what the prosecutor is doing.

Blacks are needed in U.S. Attorneys' offices to ask the crucial question: "You know you don't have enough evidence, so why are you prosecuting that Brother?" A lot can be done to assure justice for Blacks in the justice system if that system simply employed more sensitive Black lawyers who will demand justice for Blacks. As long as Blacks are only a small part of the prosecutor's office, justice will only be a small part of reality for Blacks who come into contact with the system. If the system is to operate fairly for Blacks, then that system must be reflective of the populace. Anything less is justice denied!

The history of the judiciary in this country is replete with racist decisions by judges and has, for many Blacks, been a nightmare. Between 1789 and 1865, a majority of the U.S. Supreme Court justices owned slaves. When given the choice on the question of enslavement of Blacks or liberty for them, the Supreme Court opted for enslavement. The *Dred Scott* decision and *Plessy v. Ferguson* are but two of numerous cases which clearly demonstrate that justice too often depends upon the color of the persons seeking to vindicate their legal rights.

With 152 federal judges currently being appointed, one would think that this opportunity would be utilized to remedy the obvious past discrimination in selecting the judiciary. In many states, Federal Selection Commissions have been established for the purpose of selecting "qualified" people, including minorities, for the federal bench. As expected by the Black bar, these so-called Merit Selection Commissions have continued with business as usual. Because of the composition of such Commissions, they have continued to report out, for the most part, the same individuals previously selected by Senators under the political "buddy" system.

Consequently, the face of the judiciary will remain essentially the same. No one who understands the history of the American judicial system, can seriously argue that it has not been plagued by racist decisions either by design or by ignorance. For it was not until 1954 that the U.S. Supreme Court finally said it was no longer legal to separate Blacks solely on the basis of race, and then in its next breath, decided that the implementation of that decision must be with all "deliberate speed." No other group of people has ever been told that it has constitutional rights but must wait until its oppressors can decide to accord them those rights. It is no wonder that we are, 25 years later, still litigating cases to de-segregate schools.

"Too often white judges who are infested with the germs of racism spread those germs throughout the trial of Black defendants."

As Black Circuit Court Judge Damon Keith has pointed out: "So long as Black Americans are excluded from the mainstream of American life, it will be the duty of the courts to enforce the Constitution's guarantee of equal protection in ways which prevent the exclusion." But, I must add a footnote, that unless the composition of our courts is changed to reflect the Black population, the judicial system will keep rendering decisions that continue the imprisonment of Blacks.

The importance of having Blacks and other minorities on the bench ought to be clear, and the fact that there are so few there inherently discriminates against Blacks and other minorities. Blacks appearing before white judges are often given stiffer sentences than whites who commit greater crimes. Too often white judges who are infested with the germs of racism spread those germs throughout the trial of Black defendants, and when the defendant is convicted, his sentence is incurably marred with those germs of racism.

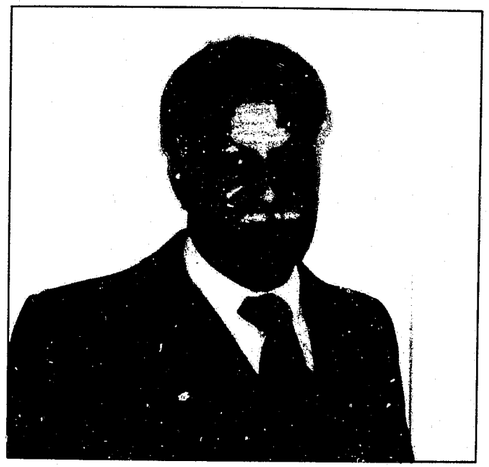
A Black defendant standing before a Black judge who understands the dynamics of the Black community and the forces which shape and govern Black people can more fully appreciate why a Black defendant, with many of the traditional indicators for probation failure, may very well be a good candidate for probation. Many defendants are hauled off to prison because a white judge has routinely accepted the white probation officer's report which concluded the Black defendant has no resources with which to work.

On the other hand, whites committing more serious crimes are placed on probation because the white judge, from his perspective, believes this man, as opposed to a Black man, is capable of being rehabilitated. Judges, like everybody else, are subject to prejudices whether conscious or unconscious, and much of their behavior is governed by these feelings. Too often, the judiciary is isolated from the Black community, does not have Black input and as a consequence, has no level of appreciation for Blacks. With Blacks adequately represented in the judiciary, a great deal of awareness can be injected into the judicial process and influence can be given to others on the bench who need to be enlightened by their Black peers.

Unless and until Blacks become a vital part of the judiciary, it cannot be seriously contended that Blacks are being accorded justice in our court system.

Police Homicide—The Unpunished Crime

by Gwynne Peirson



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He has worked as a professor at the University of Missouri at St. Louis and a lecturer at Howard University in Washington, D.C. Currently, he is an Associate Professor in the Graduate School at Howard University.

Mr. Peirson has served as senior researcher for the U.S. Justice Department's Law Enforcement Assistance Administration's National Minority Advisory Council. He is the author of the book Police Operations, *published in 1976.*

Homicides committed by police officers in the United States are of growing concern, particularly to minorities who represent more than 50% of all citizens killed by the police.[1] In a very real sense, the police are out of control. Municipal governments have little real control over their police departments, a fact that has been repeatedly exploited in the past few years by strikes and walk-outs by rank and file officers.

[1]United States Public Health Service, *Death by Legal Intervention and Homicide or Injury by Intervention of Police.*

It is no simple matter to measure the extent of police killings. While the Federal Bureau of Investigation obtains and publishes statistics annually on the number of law enforcement officers killed, similar statistics—which the F.B.I. also gathers—on killings by police officers are not published. This failure to present both sides of the problem of killings involving law enforcement officers is but one part of a continuing pattern in which the Federal government, police administrators, prosecutors and judges all bear responsibility for protecting police officers who kill citizens both unnecessarily and illegally.

The fact that police officers are far more likely to escape criminal sanctions for illegal killings than be convicted is well documented. Even in instances where the officer is proven to have manufactured evidence in an attempt to justify his killing, the record shows that prosecutors and judges are prone to protect rather than prosecute and convict the offender.

Three examples of officers planting evidence as a means of justifying their killings of citizens occurred in Los Angeles, Houston and Dayton, Ohio. Each case involved the use of a "throw away" or "throw down" gun which the officer left by the dead body as a means of reinforcing his claim that the victim was armed and that the officer fired in self-defense.

The Los Angeles case is a particularly apt example of the court's willingness to condone illegal killings by police officers. The incident started when the officer stopped the driver of an auto because the officer suspected that the car had been stolen. As is often the case in this type of killing, the "suspect" was black. The officer ordered the driver to produce evidence of ownership of the vehicle, and when the man reached for the glove compartment, the officer, "believing the suspect was reaching for a weapon," fired his own weapon, killing the owner of the car.

Although investigators found a pistol next to the dead body, subsequent investigation disclosed that the weapon had been placed there after the officer shot and killed the black man. It was also determined that the car had not been stolen and that the driver had no criminal record. During the department's investigation of the matter, the officer resigned. He was later charged with the misdemeanor offense of possessing an unregistered weapon—the gun he had planted at the scene of the killing. He was found guilty and placed on probation. No charges involving the killing of the innocent citizen were ever placed against him.

The Ohio case involved a police officer dressed in civilian clothes and wearing a Shriner's Fez, pulling his gun and approaching a black man whom the officer believed to be carrying a gun in his belt. Upon seeing a man approaching him with a drawn weapon the citizen turned to flee. He was then shot and killed by the officer who claimed that he first identified himself and ordered the "suspect" to halt. The "weapon" which the officer claimed to have seen in the man's belt was in actuality a smoking pipe. However, the officer turned in as evidence a gun which he claimed to have recovered from the dead man's body.

The police officer was charged with first degree manslaughter and was found not guilty by an all-white jury. One juror later stated that "the fact that he ran and (the officer) thought he had a gun was the important thing."[2] It was interesting to note that the jurors had no trouble accepting the officer's story that he identified himself as a police officer before firing and killing the suspect, despite the fact that the officer was proven to have lied about the gun he claimed to have taken from the dead man.

A more recent killing by a police officer that involved the use of a "throw down" gun occurred in Houston, Texas.

[2]*Dayton Journal Herald*, Jan. 23, 1968

Here again, the officer claimed to have killed in self-defense, even though the victim was killed by a shot from close range to the back of the head. Again, a follow-up investigation disclosed that a gun had been planted at the scene. Unlike the other two cases, however, several officers in the Houston investigation were convicted. There was one further difference in the Houston case—the victim was white. Even here, the punishment meted out by the court was minimal.

Findings of not guilty and convictions on light charges that hardly relate to the seriousness of the offense are occurring because of the willingness of prosecutors to present weak cases because the defendant is a police officer. The same pattern is apparent when prosecutors present cases involving killings by officers to grand juries. Although such hearings are secret, enough evidence has surfaced, as in the Houston, Texas case, to show that rather than presenting evidence to the grand jury with the intent of determining objectively whether or not the officer involved acted justifiably, prosecutors are prone to take the position of protecting the officer.

The foreman of the grand jury which originally ruled the Houston case to be justifiable homicide, stated that the jury did consider the possibility that the police had planted a gun on the dead youth's body, but that they were never given any information about the weapon. The Prosecutor who was responsible for presenting the case to the jury was quoted as being "surprised and saddened" at the news that there was a possibility that the police had used a "throw down" pistol in the killing. The prosecutor further stated, in defending his presentation to the grand jury, "when a policeman comes in and swears on a Bible, you're going to believe him. *You can't abuse the trust in him*" (emphasis added).[3]

[3]*The Houston Post*, March 8, 1978.

Judges are equally culpable in the efforts within the criminal justice system to protect police officers involved in killings. In a St. Louis case, two officers picked up a black youth on suspicion, handcuffed him and put him in their patrol car. They drove to an alley where they took the prisoner out of the car and one of the officers shot and killed him. The officers then drove off, leaving the body in the alley. They returned a short while later and officially "discovered" the dead youth. After an investigation both officers were charged with criminal homicide. They never stood trial, however, for approximately a year later a judge dismissed the charges against them without benefit of any public hearing.

Illegal killings by the police are continuing unchecked and unpunished. The available evidence indicates that the criminal justice system is making no concerted effort to take forceful actions against police officers who commit unnecessary/illegal killings. In order to reduce this type of police killing, changes must be made in the laws governing police use of deadly force, and checks and balances must be applied which make it possible to hold responsible those public officials who by malfeasance or nonfeasance act to protect certain individuals from criminal sanctions merely because of the position held by the offender.

Failure to take actions which will instill some degree of trust in the many citizens, particularly those minority group members who presently have little reason to trust the police, may well force minorities to respond to police violence in the only manner left open to them. This possibility has already been noted by Professor Paul Takagi of the University of California, who stated: "Open warfare between the police and the citizenry might well be one of the outcomes."[4]

[4]Paul Takagi, "A Garrison State in Democratic Society," *Crime and Social Justice*, (Vol. 31, 1975), p. 163.

Federal Harassment of Black Groups: The Case of the Republic of New Africa

by Elsie Scott

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Most of the attention that black groups have given to the issue of police misconduct, especially police harassment and brutality, has focused on municipal and county police. This is understandable because there are more municipal and county police than there are federal police. The local police have an opportunity to touch the lives of more average and poor people than the federal police.

We can cite a number of cases throughout the country of persons who were injured or killed by local police under questionable circumstances:

- In 1971, Elton Hayes, a 17-year-old black youth was clubbed to death by Memphis (Tenn.) police and Shelby County sheriff's deputies after a police chase on a speeding violation.
- In 1973, Pamela Dixon, a 14-year-old mentally retarded black female was shot in the stomach with dum-dum bullets after five white Atlanta policemen could not take a knife from her.
- In 1973, Clifford Glover, a 10-year-old black male was gunned down by a white New York City policeman who reportedly was looking for two "Negro male suspects in their twenties."
- In 1975, an off-duty white East Orange, N.J. policeman broke a rolled-up car window and fatally shot Derek Humphrey, an 18-year-old black honor student in the head after the officer's father almost backed his car into Humphrey's car.

We could list numerous other cases that would be similar to these in that the victims were "unknown" minority persons, most of whom were poor.

Federal police misconduct has been aimed more at black groups and political figures rather than "nameless" individuals. Many persons were shocked when it was revealed that the FBI had engaged in a calculated effort to discredit the late Dr. Martin Luther King, Jr. The average person was less amazed by the harassment of the Black Panthers, but many were outraged at some of the tactics employed by the FBI.

Some cases of FBI harassment of black groups and black leaders such as the Black Panthers and Dr: Martin Luther King have received a lot of press coverage while others have been suppressed by the media. One of the more blatant cases of federal attempts to destroy a black organization with the cooperation and collusion of local and state government officials is the case of the Republic of New Africa (RNA).

The RNA was formed in March, 1968 in Detroit by two brothers: Richard Henry (Imari Obadele) and Milton Henry (Brother Gaidi), a lawyer. The aim of the organization was to establish an independent black nation formed of the states of Alabama, Georgia, Louisiana, Mississippi and South Carolina. The RNA was asking for reparations of $10,000 for every black person. Four thousand dollars would go to the person and $6,000 would go to the government.

One year after the founding of the RNA, Detroit police officers shot into the New Bethel Church where a meeting of the RNA was just breaking up. A white policeman was killed in the ensuing "shoot-out." The 142 persons inside the church—men, women and children—were all taken to jail. Several members were tried on charges of murder and assault, but they were all acquitted. One of the persons acquitted, however, was later murdered under mysterious circumstances.

The RNA separatist philosophy and the shoot-out created more interest in the organization by the FBI. COINTELPRO documents show that the FBI had begun to try to destroy the organization during 1969. The FBI circulated a letter on RNA stationery to members of the Black Panther Party accusing the Panthers of bleeding the black community of respect and of organizing crime and prostitution in the black community.

Government efforts to destroy the RNA escalated in 1971 when the RNA decided to move beyond theory and begin operationalizing some of its ideas. The RNA entered into an agreement with a black farmer to purchase twenty acres of land in Bolton, Mississippi, a small town near Jackson. In March, the land was dedicated as the Capitol of New Africa, El Malik. Soon after the dedication, reportedly through the intervention of local and federal officials, a dispute developed with the seller of the land. A Hinds County Court issued an order prohibiting RNA officers from entering the land.

The RNA was forced to move its headquarters to nearby Jackson, and of course, the harassment continued. In August 1971, fourteen FBI agents and fifteen Jackson police officers conducted an early morning raid on the headquarters. The FBI claimed that it went to the house looking for four persons, including one wanted on murder charges in Detroit.

FBI agents and police exchanged gunfire with RNA members for about twenty minutes. Two policemen and one FBI agent were injured during the gun battle. (One of the policemen died.) The seven occupants were arrested along with four RNA members who were at another house. One of the persons arrested at the other location was RNA president Imari Obadele. All were charged with murder, waging war against the state of Mississippi, assault and various gun charges.

Imari Obadele formed the Republic of New Africa in March, 1968 for the purpose of establishing an independent black nation.

Harassment of RNA members continued after the shootout. Two RNA members were arrested in Miami during the Democratic Convention in July, 1972 by Secret Service agents. The wire services reported that "two black nationalists" with concealed weapons had been captured near George McGovern. It was implied that there was a plot to assassinate McGovern. The only charge against them was "carrying concealed weapons," yet their bond was set at $100,000 each.

With most of the leaders of the RNA removed, the federal and local officials had accomplished their mission—at least partially. An FBI memo from the Jackson office to the Washington headquarters written shortly after the Jackson raid stated: "If Obadele can be kept off the streets, it may prevent further problems involving the RNA inasmuch as he completely dominates this organization and all members act under his instructions."

Obadele is now serving a seven-year federal sentence on charges of conspiracy to assault federal officers and related charges.

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