

The Incongruous Intersection of the Black Panther Party and the Ku Klux Klan

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INTRODUCTION

When, in 2015, a Louisiana prison warden publically likened the Black Panther Party to the Ku Klux Klan, I was stunned.¹ The differ-

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ences between the two groups seemed so extreme and so obvious I could not imagine ineptness of this magnitude. Not long after this, a Georgia legislator unashamedly express that the Ku Klux Klan was not a racist, terrorist group, but merely a vigilante group trying to keep law and order.² After initial dismay, each of these instances evoked thoughts of the far-reaching implications of officials making operational and policy decisions around such a flawed appreciation of history. These lapses prompted me to consider what this type of oblivion might mean when unleashed elsewhere in society, such as in the employment realm, schools, law enforcement encounters with citizens, the judicial system,³ or within the regulation of professions. At best, continued lapses of this nature have the potential to cause an abysmal pattern of individual injustices. At worst, they could contribute to outright racial unrest in society. Tragically, this is all preventable. All that is needed is unsanitized and factually accurate historical information upon which to rely, an awareness of how important it is to think outside one's own cultural identity, and a willingness to do so.

This Article critically examines two of the most infamous, racially-associated groups in the history of this country: the Ku Klux Klan (KKK)⁴ and the Black Panther Party (BPP).⁵ “The Ku Klux Klan, a se-

1. See Emily Lane, *State Makes Its Case to Try Albert Woodfox a 3rd Time*, TIMES-PICAYUNE, Sept. 6, 2015, at A-2 (quoting Burl Cain, then-warden of Louisiana State Penitentiary (known as “Angola”) as saying “I wouldn’t let a Ku Klux Klan member come here to organize . . . I also wouldn’t let anyone organiz[ing] a Black Panther Party out of [his] cell.” (alterations in original)); Annie Ourso & Julie Hebert, *Angola Inmate Argues That Three Decades in Solitary is Unconstitutional Punishment*, THE ADVOCATE (May 10, 2015, 6:38 PM), <http://theadvocate.com/news/12056320-123/angola-inmate-argues-that-three> (citing then-warden Burl Cain suggesting the Black Panther Party is a hate group); *Angola Warden Burl Cain on “Black Pantherism,”* LA. JUSTICE INST. BLOG (Jan. 8, 2012), <http://louisianajusticeinstitute.blogspot.com/2012/01/angola-warden-burl-cain-on-black.html> (last visited Mar. 29, 2016) (noting when then-warden Burl Cain was asked the meaning of Black Pantherism, he replied “I have no idea. I know they hold their fists up. I know that they advocated for violence.”). See generally Angela A. Allen-Bell, *Perception Profiling & Prolonged Solitary Confinement Viewed Through the Lens of the Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged, and Justice Becomes Legally Blind*, 39 HASTINGS CONST. L.Q. 763 (2012).

2. See Laura Bult, *Georgia Lawmaker Tommy Benton Says Ku Klux Klan Wasn’t Racist but Were Vigilantes Who Kept ‘Law and Order,’* N.Y. DAILY NEWS (Jan. 30, 2016, 12:44 PM), <http://www.nydailynews.com/news/national/georgia-lawmaker-kkk-law-order-article-1.2514712> (discussing a 2016 statement made by Georgia lawmaker Tommy Benton).

3. In *Murray v. Jamison*, 333 F. Supp. 1379, 1381 (W.D.N.C. 1971), for example, the court opined that the Ku Klux Klan is analogous to the Black Panther Party.

4. The Ku Klux Klan is hereinafter referred to as the “KKK.” “The words *Ku Klux* they adapted from *kuklos*, a variant of the Greek *kyklos* meaning cycle or circle—in their case their own little circle. For alliteration a young former captain . . . suggested adding *Klan*, possibly from romantic visions of the old Scottish clans portrayed by . . . one of the South’s most popular authors. For picaresque fun they adopted mystical language and initiation rites, along with costumes of hoods and flowing robes. Any night could be Halloween as they rode through the little town to stir up some

cret association formed by white vigilantes during Reconstruction, carried out violent attacks primarily against African Americans.”⁶ The KKK was a “violent and explosive”⁷ “organized terror group[.]”⁸ In contrast, “[t]he BPP was a multifaceted association of American citizens who . . . did not believe in pleading, begging, praying, or patiently waiting for equal rights to be conferred.”⁹ “They felt equality was a birth-right, demanding it was a duty, having it delayed was an insult, and compromise was tantamount to social and political suicide.”¹⁰ The BPP “provided a model for people moving from protest to radical ideas to revolutionary action.”¹¹

The BPP and the KKK are immiscible, heterogeneous, and incongruous groups—they simply cannot be analogized or compared. This Article aims to equip administrators, official actors, policy makers, and the public with accurate information about the various divergences among these two groups so future policies, laws, and regulations can be

excitement.” RICHARD K. TUCKER, *THE DRAGON AND THE CROSS: THE RISE AND FALL OF THE KU KLUX KLAN IN MIDDLE AMERICA* 19 (1991).

5. The Black Panther Party is hereinafter referred to as the “BPP.” Robert C. Mants, Jr. was a civil rights activist who lived in Lowndes County, Alabama. He helped organize the famous Bloody Sunday march in Alabama. Thereafter, Mr. Mants formed a “black power” movement in Alabama called the Lowndes County Freedom Organization (LCFO), also known as the “Black Panther Party.” *Honoring the Life of Mr. Robert C. Mants, Jr.—Civil Rights Activist and Community Organizer*, 158 CONG. REC. E226-03 (daily ed. Feb. 17, 2012) (statement of Hon. Bennie G. Thompson of Mississippi), available at 2012 WL 525854. As Thompson explained,

The Party’s goal was to promote and place its own candidates in political offices throughout the Alabama Black Belt. . . . The movement spread all over the Nation. Two black Californians, Huey P. Newton and Bobby Seale, asked for permission to use the Black Panther emblem that the LCFO had adopted for their newly formed Black Panther Party. The Oakland-based Black Panther Party became a much more prominent organization than the LCFO.

Id. The BPP was originally named The Black Panther Party for Self-Defense. See JIM HASKINS, *POWER TO THE PEOPLE: THE RISE AND FALL OF THE BLACK PANTHER PARTY* 20 (1997). It is believed that the name was changed to represent an ideological shift to making social programs a top priority. See *id.* at 65. As used herein, “BPP” is intended to refer to the Black Panther Party, not the New Black Panther Party.

6. MANNING MARABLE & LEITH MULLINGS, *FREEDOM: A PHOTOGRAPHIC HISTORY OF THE AFRICAN AMERICAN STRUGGLE* 110 (2002).

7. *Bergman v. United States*, 565 F. Supp. 1353, 1386 (W.D. Mich. 1983).

8. DERRICK A. BELL, JR., *RACE, RACISM AND AMERICAN LAW* 857 (1973).

9. Angela A. Allen-Bell, *Activism Unshackled & Justice Unchained: A Call to Make a Human Right Out of One of the Most Calamitous Human Wrongs to Have Taken Place on American Soil*, 7 J.L. & SOC. DEVIANCE 125, 129 (2014).

10. *Id.* at 129–30.

11. Lee Sustar & Alan Maass, *The Black Panthers*, SOCIALISTWORKER.ORG (Feb. 15, 2013), <http://socialistworker.org/2013/02/15/the-black-panthers>.

fashioned upon legitimate considerations and not speculation, conditioning or benightedness.¹²

This Article proceeds in two parts. In Part I, the KKK will be juxtaposed against the BPP. Specifically, Part I will (1) explain why each group was formed and highlight the geographical presence of each group; (2) probe the mission and objectives of each organization; (3) reveal the respective identities of each group; (4) closely analyze how, by the work and practices of each group, they fulfilled their respective organizational goals; (5) consider ways law and the legal system impacted each group; and (6) evaluate the public's reaction to each group. Part II will evaluate the larger meaning of the various group nuances discussed in Part I.

I. JUXTAPOSITION BETWEEN THE KKK & THE BPP

A. Formation & Geographical Presence

In 1866, Nathan Bedford Forrest, a former Confederate general, formed the first KKK along with five other former rebel officers.¹³ “The original Klan emerged in the war-torn South at the end of the Civil War”¹⁴ “during the Reconstruction period when the federal government sent troops into the South to enforce the acts of Congress giving blacks equal political and civil rights”¹⁵ The original KKK was a fraternal organization.¹⁶ It had written precepts and officers.¹⁷ During this period of its existence, “the KKK was a potent factor in intimidating blacks and overthrowing black rule.”¹⁸

Faced with growing evidence of KKK violence, President Ulysses S. Grant was instrumental in bringing an end to the original Klan.¹⁹ About this same time, segregation was being institutionalized in most of

12. This is not an empirical or scientific work, nor is it an attempt to chronicle every act on the part of the BPP, the KKK, courts, or the government as it relates to the story of these two groups. Arguably, that could never be achieved. The cases and examples cited are to be accepted as illustrative and not exclusive.

13. See DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* 55 (2008).

14. Thomas B. Metzloff, *The Constitution and the Klan: Understanding the Burning Cross in Virginia v. Barry Black*, in *CIVIL RIGHTS STORIES* 347, 348 (Myriam E. Gilles & Risa L. Goluboff eds., 2008); see also BELL, *supra* note 8, at 866 (“The Ku Klux Klan was organized by southern whites in 1866”).

15. JOHN GEORGE & LAIRD WILCOX, *AMERICAN EXTREMISTS: MILITIAS, SUPREMACISTS, KLANSMEN, COMMUNISTS, & OTHERS* 20 (1996).

16. See *id.* at 21.

17. *Id.*

18. *Id.*

19. See *id.* (discussing President Ulysses S. Grant's efforts relative to the passage of the Ku Klux Klan Act of 1871).

the South.²⁰ One might reasonably conclude that this contributed to the KKK no longer seeing the need to pursue its endeavors. “By the end of Reconstruction in 1877, the first Klan no longer existed.”²¹ After this initial formation, the KKK experienced periods of extinction and revitalization.

“Although the Ku Klux Klan started as a social club, it soon changed into something far different.”²² In 1905 the Ku Klux Klan was popularized anew by a book and a subsequent movie.²³ By 1920, the “invisible” Klan had reemerged, claiming membership in the millions.²⁴ “It was still mostly in the South and Southwest . . .”²⁵ During this phase of its existence, the KKK developed into a secret society.²⁶ It “targeted Roman Catholics, Jews, and aliens” and engaged in a “terror campaign conducted against blacks, probably unparalleled in American History.”²⁷ “At its peak, the new Ku Klux Klan of the 1920s—a reincarnation of the original white supremacist group in the Reconstruction South—had an estimated 5 million members nationwide.”²⁸ At this juncture, the KKK also “controlled hundreds of elected officials and several state legislatures.”²⁹ “In 1944 the Ku Klux Klan was in effect temporarily shut down. Its charter was revoked, the Internal Revenue Service placed a \$685,000 tax lien on its assets, and the organization disbanded.”³⁰

The KKK was resurrected yet again following World War II when various local KKK groups began to form.³¹ “As early as 1953, a new, small Klan group called, redundantly, the U.S. Klans, Knights of the Ku Klux Klan . . . formed in Atlanta by an auto plant worker named Eldon Edwards.”³² “These ‘new’ KKK organizations were, for all intents and purposes, identical to the previous one.”³³ “Various other small Klans formed in the 1950s but no mass movement developed.”³⁴ What spawned the renewed interest in the 1950s was likely the 1955 Montgomery bus

20. Metzloff, *supra* note 14, at 349.

21. *Virginia v. Black*, 538 U.S. 343, 353 (2003).

22. *Id.* at 352.

23. GEORGE & WILCOX, *supra* note 15, at 29. This book and movie is further discussed in Part I.F.

24. Metzloff, *supra* note 14, at 349; *see* GEORGE & WILCOX, *supra* note 15, at 21 (mentioning that the KKK reappeared “in somewhat modernized form in 1915”).

25. TUCKER, *supra* note 4, at 25.

26. GEORGE & WILCOX, *supra* note 15, at 29.

27. *Id.*

28. TUCKER, *supra* note 4, at 5–6.

29. MARABLE & MULLINGS, *supra* note 6, at 110.

30. GEORGE & WILCOX, *supra* note 15, at 362.

31. *Id.*

32. TUCKER, *supra* note 4, at 185.

33. GEORGE & WILCOX, *supra* note 15, at 362.

34. *Id.*

boycott and the integration of Little Rock High School in 1957.³⁵ By 1956, Edwards attracted 3,000 to a Klan rally on Stone Mountain near Atlanta.³⁶ By 1958, an estimated fifteen thousand had joined.³⁷ Membership fluctuated during the 1970s and 1980s and dropped to about 5,000 by 1988.³⁸ “The 1960s Klan had a share of businessmen, homeowners, minor professionals, politicians, policemen, and individuals with roots in the community.”³⁹ Chapters of the KKK are still active in the United States.⁴⁰ “Today, researchers estimate that there are as many as 150 Klan chapters active in the U.S. with between 5,000 and 8,000 members nationwide.”⁴¹

Throughout its evolution, the KKK grew to oppose affirmative action, immigration, and abortion, often referring to the Bible when doing so.⁴² It also opposed school desegregation and court-ordered school busing.⁴³ The KKK felt that the Bible supported its views and much of what it did was done in the name of Christianity.⁴⁴ The KKK often showcased its religious affiliation. For example, a 1964 Louisiana KKK rally is described as follows:

[A]n estimated 400 hooded persons attended a gathering of the KKK . . . to hear talks against integration The main speaker, who was introduced as a minister, spoke against Protestant ministers who, he said, are influenced by philosophy, psychology and sociology, not by the Bible. He said, ‘the only kind of brotherhood

35. *See id.*

36. TUCKER, *supra* note 4, at 185.

37. *Id.*

38. *Id.* at 192.

39. GEORGE & WILCOX, *supra* note 15, at 369.

40. *See Active Hate Groups in the United States in 2014*, S. POVERTY L. CENTER (Mar. 10, 2015), <https://www.splcenter.org/fighting-hate/intelligence-report/2015/active-hate-groups-united-states-2014#general>; *see also* *Virginia v. Black*, 538 U.S. 343, 348 (2003) (discussing a 1998 KKK rally in Virginia); *Church of Am. Knights of the Ku Klux Klan v. Kerik*, 356 F.3d 197, 199 (2d Cir. 2004) (mentioning that the American Knights, a New York chapter, was formed in 1994); 1994–1995 LA. OP. ATT’Y GEN. 242 (1995), *available at* 1995 WL 367173 (discussing the existence of a KKK chapter in Franklin, Louisiana in 1995).

41. *See Ku Klux Klan (KKK)*, NAT’L PARK SERVICE, <https://www.nps.gov/articles/kukluxklan.htm> (last visited May 19, 2016) [hereinafter NAT’L PARK SERVICE].

42. *See Church of Am. Knights*, 356 F.3d at 200.

43. *See* NAT’L PARK SERVICE, *supra* note 41.

44. *See* FEDERAL BUREAU OF INVESTIGATION FILE NO. 105-71801, ORIGINAL KNIGHTS OF THE KU KLUX KLAN—LOUISIANA 332 (1964–65), *available at* https://ia801709.us.archive.org/24/items/foia_Original_Knights_of_KKK-HQ-2/Original_Knights_of_KKK-HQ-2_text.pdf [hereinafter FBI FILE NO. 105-71801] (wherein the actual incorporation documents of a local Louisiana chapter that was filed with the Secretary of State’s Office declares, in its articles, that the chapter exists, in part, to “foster and promote the tenets of Christianity”).

there is the kind of brotherhood of the klan, which is composed of good, white Christians.⁴⁵

The KKK was not entirely prone to violence. The KKK “had its violent fringes . . . [b]ut the masses flocking to its flaming crosses . . . were not out to lynch blacks or to flog adulterers. They were, for the most part, ordinary work-a-day Americans caught up in a rush of flag-waving, nativist nationalism”⁴⁶ “Wherever the K.K.K. flourished, it cut across class barriers. Far from appealing as is popularly believed to ‘white trash’ alone, it attracted the moderately prosperous almost as readily as the illiterate poor.”⁴⁷ Many members were ordinary citizens who lived what appeared to be ordinary lives.⁴⁸ “Mayors, sheriffs, and police officers were frequently dues-paying members.”⁴⁹ Some were veterans,⁵⁰ active members of the military,⁵¹ contractors,⁵² chiropractors,⁵³ and lawyers.⁵⁴

Prior to his service on the Court, United States Supreme Court Justice Hugo Black was a KKK member.⁵⁵ He has been credited with first enshrining the term “separation of church and state” into constitutional law, and it has been suggested that this was done in fulfillment of the KKK’s agenda to keep Catholics out of government.⁵⁶

45. *Id.* at 59–60 (referencing a May 4, 1964, newspaper article describing the KKK rally in Denham Springs, Louisiana).

46. TUCKER, *supra* note 4, at 2–3.

47. R. J. Stove, *J. Edgar Hoover and the Klu Klux Klan*, NAT’L OBSERVER, Summer 2001, at 47, available at http://www.nationalobserver.net/2001_summer_109.htm.

48. *See* Murray v. Jamison, 333 F. Supp. 1379, 1380 (W.D.N.C. 1971) (mentioning that the 1971 KKK Grand Dragon of a North Carolina KKK chapter was a dispatcher who operated a switchboard for the city’s Building Inspection Department); TUCKER, *supra* note 4, at 23 (“Its earliest members were solid middle-class citizens, including a future congressman . . . and a . . . [c]ounty commissioner . . .”).

49. TUCKER, *supra* note 4, at 6.

50. *See id.* at 32.

51. *See* GEORGE & WILCOX, *supra* note 15, at 377 (“In 1986 it became known that armed forces personnel were participating in Ku Klux Klan activity.”).

52. *See* FBI FILE NO. 105-71801, *supra* note 44, at 524 (referencing *Report on Activities of the “Ku Klux Klan” and Certain Other Organizations in Louisiana Before the J. Legis. Comm. on Un-American Activities* (La. 1965) (statement of KKK member Murray Martin)).

53. *See id.* at 533 (statement of KKK member J. M. Edwards).

54. *See* TUCKER, *supra* note 4, at 189 (mentioning that one of the KKK members accused of murdering civil rights worker Viola Liuzzo was represented by Klan “Imperial Klonsel” Matt Murphy, Jr.); *The FBI Versus the Klan Part 2: Trouble in the 1920s*, FBI (April 29, 2010), https://www.fbi.gov/news/stories/2010/april/klan2_042910/the-fbi-versus-the-klan-part-2-trouble-in-the-1920s (mentioning that the then-United States Attorney in Shreveport, Louisiana was a KKK member).

55. *See* H.R. REP. No. 109-657, at 13 (2006).

56. *See id.*

During the various stages of its existence, the KKK dispersed about the United States.⁵⁷ “In some parts of the country, Klan influence was considerable and in others it was virtually nonexistent.”⁵⁸ Since its initial formation, the KKK has not been a single entity.⁵⁹ Instead, there are local chapters,⁶⁰ some of which are formally incorporated.⁶¹ At times, there has been a national group and an internal organizational structure.⁶² Women⁶³ and children⁶⁴ have played a role in the KKK.

In contrast, the BPP enters the discussion much later in history. “The Panthers emerged as a national organization just as Democratic President Lyndon Johnson’s administration showed itself incapable of controlling the Black Power revolt or stopping the racist campaigns of Alabama Gov. George Wallace.”⁶⁵ The origins of the BPP also differ greatly from that of the KKK. Huey Newton, Bobby Seale, and David Hilliard, students of Merritt College in Oakland, California, founded the BPP in 1966.⁶⁶ “They had been influenced by the writings of Frantz Fanon, Malcolm X, Robert F. Williams, and Mao Tse Tung, and drafted a ten-point program, the last of which contained approximately the first 250 words of the Declaration of Independence.”⁶⁷ The 1966 ten-point platform and program provided:

57. See S.C.R. 23, 119th Gen. Assemb., 1st Reg. Sess. (Ind. 2015) (discussing KKK activity in Indiana in the 1920s); see also *Virginia v. Black*, 538 U.S. 343, 348 (2003) (discussing a 1998 KKK rally in Virginia); *Church of Am. Knights of the Ku Klux Klan v. Kerik*, 356 F.3d 197, 199 (2d Cir. 2004) (mentioning that the American Knights, a New York chapter, was formed in 1994); 1994–1995 LA. OP. ATT’Y GEN. 242 (1995), available at 1995 WL 367173 (discussing the existence of a KKK chapter in Franklin, Louisiana in 1995). See generally IRA HARKEY, *THE SMELL OF BURNING CROSSES: A WHITE INTEGRATIONIST EDITOR IN MISSISSIPPI* (2006) (1967) (discussing the KKK in Pascagoula, Mississippi); BILL STANTON, *KLANWATCH: BRINGING THE KU KLUX KLAN TO JUSTICE* (1991) (discussing the KKK in Decatur, Alabama).

58. GEORGE & WILCOX, *supra* note 15, at 30.

59. See *id.* at 364; see also *Church of Am. Knights*, 356 F.3d at 199 (discussing the organizational structure of the American Knights, a local chapter in New York); 1994–1995 LA. OP. ATT’Y GEN. 242 (1995), available at 1995 WL 367173 (discussing the Knights of the White Kamellia KKK chapter in Franklin, Louisiana).

60. See *Bergman v. United States*, 565 F. Supp. 1353, 1385 (W.D. Mich. 1983) (mentioning that the Alabama KKK had a Board of Directors).

61. See FBI FILE NO. 105-71801, *supra* note 44, at 331–37 (examining the actual incorporation documents of a local, Louisiana chapter that was filed with the Secretary of State’s Office).

62. See *Virginia v. Black*, 538 U.S. 343, 356 (2003) (referencing the Klan constitution, called the Kloran); TUCKER, *supra* note 4, at 35 (mentioning a national secretary and an official publicist).

63. See TUCKER, *supra* note 4, at 44 (observing that, during a rally, “the ladies of Klan auxiliary units had set up block-long cafeteria tables loaded with soda pop, near-beer, roast beef, and buns”).

64. See *id.* at 69 (mentioning that the KKK newspaper had a “‘Klan Kiddie Korner’ with activities for younger children”); see also MICHAEL NEWTON & JUDY ANN NEWTON, *THE KU KLUX KLAN: AN ENCYCLOPEDIA* photo 11 (1991) (depicting a young Frank Jones in a KKK uniform).

65. Sustar & Maass, *supra* note 11.

66. GEORGE & WILCOX, *supra* note 15, at 114.

67. *Id.*

1. WE WANT freedom. We want power to determine the destiny of our Black Community.

WE BELIEVE that black people will not be free until we are able to determine our destiny.

2. WE WANT full employment for our people.

WE BELIEVE that the federal government is responsible and obligated to give every man employment or a guaranteed income. We believe that if the white American businessmen will not give full employment, then the means of production should be taken from the businessmen and placed in the community so that the people of the community can organize and employ all of its people and give a high standard of living.

3. WE WANT an end to the robbery by the CAPITALIST of our Black Community.

WE BELIEVE that this racist government has robbed us and now we are demanding the overdue debt of forty acres and two mules. Forty acres and two mules were promised 100 years ago as restitution for slave labor and mass murder of black people. We will accept the payment in currency, which will be distributed, to our many communities. The Germans are now aiding the Jews in Israel for the genocide of the Jewish people. The Germans murdered six million Jews. The American racist has taken part in the slaughter of over fifty million black people; therefore, we feel that this is a modest demand that we make.

4. WE WANT decent housing, fit for the shelter of human beings.

WE BELIEVE that if the white landlords will not give decent housing to our black community, then the housing and the land should be made into cooperatives so that our community, with government aid, can build and make decent housing for its people.

5. WE WANT education for our people that exposes the true nature of this decadent American society. We want education that teaches us our true history and our role in the present-day society.

WE BELIEVE in an educational system that will give to our people knowledge of self. If a man does not have knowledge of himself and his position in society and the world, then he has little chance to relate to anything else.

6. WE WANT all black men to be exempt from military service.

WE BELIEVE that Black people should not be forced to fight in the military service to defend a racist government that does not protect us. We will not fight and kill other people of color in the world

who, like black people, are being victimized by the white racist government of America. We will protect ourselves from the force and violence of the racist police and the racist military, by whatever means necessary.

7. WE WANT an immediate end to POLICE BRUTALITY and MURDER of black people.

WE BELIEVE we can end police brutality in our black community by organizing black self-defense groups that are dedicated to defending our black community from racist police oppression and brutality. The Second Amendment to the Constitution of the United States gives a right to bear arms. We therefore believe that all black people should arm themselves for self-defense.

8. WE WANT freedom for all black men held in federal, state, county and city prisons and jails.

WE BELIEVE that all black people should be released from the many jails and prisons because they have not received a fair and impartial trial.

9. WE WANT all black people when brought to trial to be tried in court by a jury of their peer group or people from their black communities, as defined by the Constitution of the United States.

WE BELIEVE that the courts should follow the United States Constitution so that black people will receive fair trials. The 14th Amendment of the U.S. Constitution gives a man a right to be tried by his peer group. A peer is a person from a similar economic, social, religious, geographical, environmental, historical and racial background. To do this the court will be forced to select a jury from the black community from which the black defendant came. We have been, and are being tried by all-white juries that have no understanding of the "average reasoning man" of the black community.

10. WE WANT land, bread, housing, education, clothing, justice and peace. And as our major political objective, a United Nations supervised plebiscite to be held throughout the black colony in which only black colonial subjects will be allowed to participate, for the purpose of determining the will of black people as to their national destiny.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind

requires that they should declare the causes which impel them to the separation.

WE HOLD these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.⁶⁸

“Beginning with a core of five members in 1966, the BPP had grown to include as many as 5,000 members within two years, and had spread from its original Oakland base to include chapters in more than a dozen cities.”⁶⁹ Chapters were called affiliates and each affiliate had a local staff.⁷⁰ At various times, the BPP allegedly had affiliates in over forty cities throughout the United States.⁷¹

Being intellectually astute is a trait that many BPP members had upon their affiliation. If they did not have it then, getting it was an expectation. Founding member Huey Newton had a doctorate degree.⁷² “Many [members] were voracious readers who reinvented themselves through books, often while in prison.”⁷³ One BPP member, Larry Pinkney, successfully self-authored a case to the United Nations.⁷⁴ The BPP did not

68. *The Black Panther Party Ten Point Platform & Program: October 1966*, IT’S ABOUT TIME: BLACK PANTHER PARTY LEGACY & ALUMNI, http://www.itsabouttimebpp.com/home/bpp_program_platform.html (last visited Mar. 2, 2016).

69. WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS* 125 (1990).

70. *See* *Black Panther Party v. Smith*, 661 F.2d 1243, 1290 (D.C. Cir. 1981).

71. *See id.* at 1289.

72. *See* GEORGE & WILCOX, *supra* note 15, at 116.

73. John Blake, *The Black Panthers Are Back—and Never Really Went Away*, CNN (Feb. 17, 2016), <http://edition.cnn.com/2016/02/16/us/black-panthers/index.html>.

74. *See* RALPH CRAWSHAW & LEIF HOLMSTRÖM, *ESSENTIAL CASES ON HUMAN RIGHTS FOR THE POLICE* 290–91 (2006) (discussing *Larry James Pinkney v. Canada*, which was authored while

affiliate exclusively with intellectuals, however. It focused much of its attention on the permanently unemployed—what the BPP called “brothers off the block” and Karl Marx called “lumpenproletariat.”⁷⁵

The BPP had a broad presence on college campuses,⁷⁶ in correctional facilities,⁷⁷ and in the international sphere.⁷⁸ It is therefore unsurprising that the BPP attracted a diverse group of members, including youth, military veterans and patriotic Americans,⁷⁹ educators,⁸⁰ postal

BPP member Larry Pickney was incarcerated); *see also* *Canada Guilty of Violating Rights*, THE STAR-PHOENIX, Dec. 15, 1981, at A2.

75. Sustar & Maass, *supra* note 11. Interestingly, although BPP members called themselves “Marxist-Leninists,” they did not tend to focus on the Black working class.

76. Nick Wing, *Here’s How the Nation Responded When a Black Militia Group Occupied a Government Building*, HUFFINGTON POST (Jan. 6, 2016), http://www.huffingtonpost.com/entry/black-panthers-california-1967_us_568accfce4b014efe0db2f40.

77. *See* HERMAN WALLACE, THE RISE AND FALL OF THE ANGOLA PRISON CHAPTER OF THE BLACK PANTHER PARTY, *available at* http://www.itsabouttimebpp.com/Political_Prisoners/pdf/The_Rise_and_Fall_of_the_Angola_Prison_Chapter_of_the_Black_Panther_Party.pdf (mentioning that he and two other Louisiana inmates, Albert Woodfox and Ron Ailsworth, were granted permission to start a chapter of the BPP behind bars at Angola, and explaining that the focus of the chapter was education, physical fitness, self-defense, financial and emotional support, mentorship, and protection); *see also* Emily Wilson, *Former Black Panther: “There Are Political Prisoners in America as Well,”* ALTERNET (May 26, 2009), http://www.alternet.org/story/140242/former_black_panther%3A_%22there_are_political_prisoners_in_america_as_well%22#bookmark. *See generally* Allen-Bell, *supra* note 1; ROBERT HILLARY KING, FROM THE BOTTOM OF THE HEAP: THE AUTOBIOGRAPHY OF BLACK PANTHER ROBERT HILLARY KING (2009). Robert Hillary King credited Herman Wallace and Albert Woodfox with organizing the Angola chapter of the BPP:

They started political education classes and started passively protesting the work conditions, which were 17 hours a day. They tried to hold political discussion and political education classes that would instill hope in the prisoners. It was a passive protest. You know, work stoppage and food stoppage. Not eating any food or not serving food in the kitchen so that they could get the attention of the administration.

Wilson, *supra* (quoting Robert Hillary King).

78. *See* *The Black Panther Party Ten Point Platform & Program*, *supra* note 68 (discussing Polynesian Panthers); HOUSE COMM. ON INTERNAL SEC., GUN-BARREL POLITICS: THE BLACK PANTHER PARTY, 1966–1971, H.R. REP. 92-470, at 34 (1st Sess. 1971), *available at* <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1> (referencing an attempt by BPP members to engage the United Nations in their quest for international support for what they deemed to be human rights violations); *see also id.* at 105 (“[T]he North Korean communist regime joined communist China in public expressions of sympathy for black Americans and the Black Panther Party in particular.”).

79. JASMINE GUY, AFENI SHAKUR: EVOLUTION OF A REVOLUTIONARY 199 (2004) (describing the sight of an American flag outside the home of BPP member Afeni Shakur when she arrived for a visit after the 9/11 tragedy); Ollie A. Johnson, *Explaining the Demise of the Black Panther Party: The Role of Internal Factors*, in THE BLACK PANTHER PARTY (RECONSIDERED) 391, 396–97 (Charles E. Jones ed., 1998) (mentioning that BPP member Elmer “Geronimo” Pratt “served in Vietnam as a paratrooper and ‘participated in a series of highly classified missions, garnering some eighteen combat decorations—including Silver Star, Bronze Star (for valor), Vietnamese Cross of Gallantry, and the Purple Heart’”); Allen-Bell, *Activism Unshackled*, *supra* note 9, at 193–95 (discussing how many high ranking BPP members were decorated veterans); *Interviews: Black Panthers Today*, PBS, <http://www.pbs.org/pov/apantherinafrica/interview-black-panthers-today/4/> (last visited Mar. 4, 2016) (interview with BPP member Elbert Howard where he mentions his military service).

workers,⁸¹ and many others, including those who credit the BPP with reforming and educating them.⁸² The organization, however, was short-lived, and “[f]or all practical purposes, the Black Panthers ceased to exist in the early 1980s.”⁸³

B. Mission & Objectives

Although there has not been one consistent KKK group, the central objectives of the various groups and chapters have been uniform. The KKK consistently believes in white pride and racial separation.⁸⁴ The KKK even openly protested the recognition of a federal holiday in honor of Dr. Martin Luther King.⁸⁵ Those who still need convincing about the KKK’s ideology might consider an acknowledgement made by the KKK itself. In 2000, the Knights of the Ku Klux Klan, Realm of Missouri, approached a campus-based Missouri radio station and offered a donation.⁸⁶ As the radio station had a legal obligation to acknowledge donors on the air, the KKK chapter submitted the following statement: “The Knights of the Ku Klux Klan, a White Christian organization, standing up for rights and values of White Christian America since 1865. . . . [P]lease contact the Knights of the Ku Klux Klan”⁸⁷ The KKK does not want African Americans to have equal participation in American so-

80. See Charles E. Jones & Judson L. Jeffries, “Don’t Believe the Hype”: *Debunking the Panther Mythology*, in THE BLACK PANTHER PARTY (RECONSIDERED), *supra* note 79, at 25, 45.

81. See Tim Wheeler, *From COINTELPRO to the Patriot Act: The Long Battle for Justice and Civil Liberties*, PEOPLE’S WORLD (Oct. 29, 2004), <http://www.peoplesworld.org/from-cointelpro-to-the-patriot-act-the-long-battle-for-justice-and-civil-liberties/> (reporting that BPP leader Marshall “Eddie” Conway was a postal worker when he joined).

82. BPP member Afeni Shakur explains her personal transformation:

All . . . I was doing . . . against humanity. Robbing people. Beating people. . . . Before I joined the party I would slap a [person] in a minute. I cussed my mama out, disrespected her, left her cryin’ on the kitchen floor. . . . I left home and lived with any brother off the street that would pay my way. . . . I’d cut somebody just for the hell of it and never look back.

So, the Panther Party . . . clarified my situation They took my rage and channeled it With that direction came hope They took me and looked at me and said: ‘Afeni, you are strong, so use your strength to help the weak. You are smart, so use your mind to teach the ignorant.’

GUY, *supra* note 79, at 61–62; see also Regina Jennings, *Why I Joined the Party: An Africana Womanist Reflection*, in THE BLACK PANTHER PARTY (RECONSIDERED), *supra* note 79, at 257, 259 (discussing how the Panthers helped this former BPP member overcome a drug addiction).

83. GEORGE & WILCOX, *supra* note 15, at 122.

84. See *Church of Am. Knights of the Ku Klux Klan v. Kerik*, 356 F.3d 197, 206 (2d Cir. 2004).

85. See NEWTON & NEWTON, *supra* note 64, at photo 22.

86. See *Knights of Ku Klux Klan v. Curators of Univ. of Mo.*, 203 F.3d 1085, 1089 (8th Cir. 2000).

87. *Id.* at 1089–90. Station officials made the decision to reject the donation because, in their view, it would result in adverse financial repercussions. *Id.*

ciety, not even minimally.⁸⁸ It favors state sovereignty⁸⁹ and professes a belief in Christianity.⁹⁰ Despite this, it opposes Catholics and, historically, did not want them serving in government.⁹¹

While every KKK member and every KKK chapter has not always engaged in violence, the KKK has long had violent factions and has always been a “segregationist ‘white supremacy’ organization.”⁹² The oath of an Indiana KKK chapter is illuminating:

I do further promise and declare that I will . . . wage relentless war, secretly and openly, against all heretics, Protestants and Masons . . . and that I will hang, burn, waste, boil, flay, strangle and bury alive those infamous heretics . . . rip up the stomachs and wombs of their women, and crash their infants’ heads against the walls in order to annihilate their inexecrable [sic] race.⁹³

For an example of the KKK’s violent supremacist agenda, consider KKK member Gary Rowe’s participation in an attack on the Freedom Riders and separately in the murder of civil rights worker Viola Liuzzo.⁹⁴ KKK member (and FBI informant) Gary Rowe has since gone on record to acknowledge that “he did participate in acts of violence” while a KKK member (and FBI informant).⁹⁵

For the KKK, depriving the Negro of political equality became “a holy crusade in which a noble end justified any means.”⁹⁶ One example can be found in *Texas v. Knights of Ku Klux Klan*, 1994 litigation involving the KKK in Vidor, Texas.⁹⁷ The City of Vidor was under a federal desegregation order, which mandated the desegregation of a federal

88. See, e.g., FBI FILE NO. 105-71801, *supra* note 44, at 32 (discussing a KKK rally that was organized to oppose the use of African Americans as cast members in television shows and for television advertising).

89. See *id.* at 324 (identifying the chapter objectives as white supremacy, state sovereignty, and segregated schools).

90. See *id.* at 526 (referencing *Report on Activities of the “Ku Klux Klan” and Certain Other Organizations in Louisiana Before the J. Legis. Comm. on Un-American Activities* (La. 1965) (statement of KKK member Murry Martin)).

91. See H.R. REP. No. 109-657, at 13 (2006).

92. *Murray v. Jamison*, 333 F. Supp. 1379, 1381 (W.D.N.C. 1971).

93. TUCKER, *supra* note 4, at 56 (alterations in original) (quoted in Norman F. Weaver, *The Knights of the Ku Klux Klan in Wisconsin, Indiana, Ohio and Michigan* (1954) (Ph.D. dissertation, Univ. of Wisconsin)).

94. See *Bergman v. United States*, 565 F. Supp. 1353, 1381–82 (W.D. Mich. 1983) (discussing Gary Thomas Rowe’s many acts of violence while an FBI informant); *Liuzzo v. United States*, 485 F. Supp. 1274, 1278–79 (E.D. Mich. 1980); GEORGE & WILCOX, *supra* note 15, at 369 (discussing Gary Thomas Rowe).

95. *Liuzzo*, 485 F. Supp. at 1279.

96. BELL, *supra* note 8, at 122 (quoting JOHN HOPE FRANKLIN, *FROM SLAVERY TO FREEDOM* 326–28 (Vintage Books 1969) (1947)).

97. See *Texas v. Knights of Ku Klux Klan*, 853 F. Supp. 958 (E.D. Tex. 1994).

housing complex.⁹⁸ While those desegregation efforts were ongoing, the KKK “filed an application with the Texas Adopt-A-Highway Program.”⁹⁹ This program gave groups an opportunity to support Texas’ anti-litter program and, in exchange for its support, a group’s name was posted along a portion of the highway.¹⁰⁰ To prevent the KKK from having its name posted, state officials sought declaratory relief due to the seeming collision of First Amendment concerns and desegregation objectives. The court ultimately held that the KKK did not have a First Amendment right to participate in the program because, according to the court, “The Ku Klux Klan discriminates against minorities.”¹⁰¹ The court also found that the KKK “applied to adopt a highway as subterfuge to intimidate those minority residents already living in the Vidor housing complex and to discourage any further desegregation.”¹⁰²

In contrast, the BPP sought to achieve very different outcomes. “Where the established civil rights movement was concerned primarily with ending legal segregation in the South, the Panthers . . . took up the demands of Northern Blacks, who faced unemployment, poverty, police violence and ‘de facto’ segregation.”¹⁰³ The BPP “gave women prominent roles in the movement,”¹⁰⁴ and it had a number of white supporters.¹⁰⁵ However, to achieve organizational autonomy, it only extended membership to African Americans.¹⁰⁶ “The Panthers forged alliances with white, Asian and Latino political groups in America and abroad.”¹⁰⁷ “The Panthers were committed to using force only if it was used against them”¹⁰⁸

Ultimately, the BPP wanted change, and it felt that change could only be brought about by a revolution. As BPP cofounder Bobby Seale explained,

Revolution is not about any need for violence. It is a need to organize and then re-evolve greater community empowerment into the

98. *Id.* at 959.

99. *Id.*

100. *Id.*

101. *Id.* at 960.

102. *Id.*

103. Sustar & Maass, *supra* note 11.

104. Blake, *supra* note 73. “From the beginning there were women within the organization, and as Huey Newton said, we do not have any sex roles in the organization.” *Interviews: Black Panthers Today*, *supra* note 79 (interview with BPP member Kathleen Cleaver).

105. See Wing, *supra* note 76.

106. Miriam Ma’at-Ka-Re Monges, “I Got a Right to the Tree of Life”: *Afrocentric Reflections of a Former Community Worker*, in *THE BLACK PANTHER PARTY (RECONSIDERED)*, *supra* note 79, at 135, 139.

107. Blake, *supra* note 73.

108. Wing, *supra* note 76.

hands of the people: a greater, more profound political, economic, ecological and social justice empowerment.¹⁰⁹

Seale continued: “This is what my revolution was all about, putting (control) back into the hands of the people.”¹¹⁰ He further stated, “We don’t hate nobody because of their color. We hate oppression.”¹¹¹

C. Group Identity

These groups further differed when it came to their identities. A key aspect of KKK operations is and always has been secrecy.¹¹² The KKK achieved secrecy through several means, one of which was attire. “The underground society hid behind the anonymity of white sheets to mask their identities.”¹¹³ “Their hooded faces were invisible in parades. Their membership lists were secret. One was often uncertain whether a next-door neighbor was a Klansman or not.”¹¹⁴ The official organizational name and structure also contributed to the KKK’s ability to operate in secret. In some instances, the KKK used nondescript names of organizations that appeared to exist for legitimate purposes. Some examples include the Christian Constitutional Crusaders¹¹⁵ or the Louisiana Rifle Association,¹¹⁶ which the FBI identified as subterfuge by the KKK.¹¹⁷

At times, the KKK used direct marketing, and at others, it used discreet marketing.¹¹⁸ One such method of direct marketing involved its use of the cross. The burning cross served a dual purpose. First, it served to intimidate African-American communities¹¹⁹ and warn of impending violence.¹²⁰ But it was also used as a marketing tool: “[T]o grow, the[KKK]

109. Bobby Seale, *Community Control of Police Was on the Berkeley Ballot in 1969*, S.F. BAY VIEW (Aug. 13, 2015), <http://sfbayview.com/2015/08/bobby-seale-community-control-of-police-was-on-the-berkeley-ballot-in-1969/> (noting that “[t]he referendum lost by only one percentage point”).

110. William Brand & Cecily Burt, *Behind Fury, Panthers Laid Course for Social Programs*, E. BAY TIMES (Oct. 7, 2006, 10:37 PM) (alteration in original), http://www.eastbaytimes.com/ci_4460221.

111. Blake, *supra* note 73.

112. See BLACKMON, *supra* note 13; see also Murray v. Jamison, 333 F. Supp. 1379, 1381 (W.D.N.C. 1971) (noting that the KKK’s “oath of allegiance requires secrecy”).

113. MARABLE & MULLINGS, *supra* note 6, at 110.

114. TUCKER, *supra* note 4, at 67.

115. See, e.g., FBI FILE NO. 105-71801, *supra* note 44, at 135.

116. See, e.g., *id.* at 29.

117. See *id.*

118. See TUCKER, *supra* note 4, at 34 (quoting a KKK leader who, during an interview, said, “I did not sell the Klan in Indiana on hatred[.]. That is not my way. I sold the Klan on Americanism and reform.”).

119. MARABLE & MULLINGS, *supra* note 6, at 110.

120. See Virginia v. Black, 538 U.S. 343, 354 (2003).

also had to be visible—often spectacularly so.”¹²¹ The KKK established a white robe, a mask, and a pointed hood as its accouterment.¹²² Like most organized groups, the KKK exercised specific rituals, such as rallies. At these rallies, torch-carrying Klansmen often form a circle around the cross and march clockwise, symbolizing the Klan being taken into the future.¹²³ Recurrently, religious songs play as the cross burns.¹²⁴ Thereafter, participants face the cross and recite words, some of which are commonly used in religious ceremonies, before they countermarch back around the cross to symbolize the Klan being taken back into the past.¹²⁵ At the end of a rally, a cross is lit and members salute.¹²⁶

Like the KKK, the BPP had a unique organizational identity. Unlike the KKK, however, the BPP proudly and openly did its work. There was no effort to conceal members’ identities or distance the organization from members’ work. BPP members were known for wearing black berets, black pants, powder blue shirts, black shoes, black leather jackets, and dark sunglasses.¹²⁷ “The Panthers didn’t just introduce a new look to pop culture with their leather jackets and berets. They brought a new attitude.”¹²⁸ “The Panthers were the pioneers of this kind of performance art, some say. They injected swagger into the American mainstream at a time when civil rights groups were singing ‘We Shall Overcome’ and demonstrators still dressed in their Sunday best.”¹²⁹ In the words of one scholar, the “Panthers stole all of the oxygen in the room.”¹³⁰

BPP members often raised a balled fist and chanted, “All Power to the People.”¹³¹ By this, they meant “the source of social and political power comes from the masses of people.”¹³² When the BPP formed, “California gun laws permitted anyone to carry a weapon as long as it

121. TUCKER, *supra* note 4, at 67.

122. *See* Church of Am. Knights of the Ku Klux Klan v. Kerik, 356 F.3d 197, 205–06 (2d Cir. 2004).

123. *See* Metzloff, *supra* note 14, at 352.

124. *See* Black, 538 U.S. at 349 (“As the cross burned, the Klan played Amazing Grace over the loudspeakers.”).

125. *See* Metzloff, *supra* note 14, at 352.

126. *See id.* at 351.

127. *See* Charles E. Jones, *Reconsidering Panther History: The Untold Story*, in THE BLACK PANTHER PARTY (RECONSIDERED), *supra* note 79, at 1; *see also* Richard Gonzales, *Did Man Who Armed Black Panthers Lead Two Lives?*, NPR (Oct. 3, 2012, 4:38 PM), <http://www.npr.org/2012/10/03/161408561/did-man-who-armed-black-panthers-lead-two-lives>.

128. Blake, *supra* note 73.

129. *Id.*

130. *Id.* (quoting Professor Komozi Woodard of Sarah Lawrence College).

131. *See* Interviews: *Black Panthers Today*, *supra* note 79 (interview with BPP member Kathleen Cleaver).

132. *Id.*

was openly displayed.”¹³³ BPP members often carried weapons, but they were not required to.¹³⁴ Notably, the BPP rules prohibited members from carrying firearms while intoxicated and from using weapons unnecessarily.¹³⁵

“People focused on the guns they carried, but the Panthers did a lot of damage with their words.”¹³⁶ While they are guilty of using profanity and other potentially offensive language at times,¹³⁷ they also have the distinction of “transform[ing] political discourse into a form of verbal combat.”¹³⁸ This is best illustrated by their use of the word “pig” as a reference to law enforcement.¹³⁹ Some saw this as a vile and reckless expression. But BPP cofounder Huey Newton characterized the word choice as part marketing and part sociology.¹⁴⁰ He indicated that it was their way of conveying to the public that the people who engaged in the well-documented and unrefuted acts of rampant police brutality were not people, but something less than human—pigs.¹⁴¹

D. Fulfillment of Organizational Goals

The KKK had a very distinct approach to fulfilling its organizational goals. The KKK used “intimidation, force, ostracism in business and society, bribery at the polls, arson, and even murder to accomplish [its] deeds.”¹⁴² Its tactics included the following: burning crosses;¹⁴³ burning homes or businesses;¹⁴⁴ torching churches;¹⁴⁵ bombing¹⁴⁶ or firebombing

133. Sustar & Maass, *supra* note 11.

134. *See* Black Panther Party v. Smith, 661 F.2d 1243, 1263 (D.C. Cir. 1981).

135. *See id.*

136. Blake, *supra* note 73.

137. *See Interviews: Black Panthers Today, supra* note 79 (interview with BPP member Billy X Jennings).

138. Blake, *supra* note 73.

139. *See id.*

140. *See id.*

141. *See id.*

142. BELL, *supra* note 8, at 122 (quoting JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM 326–28 (Vintage Books 1969) (1947)).

143. *See* Memorandum from FBI Special Agent in Charge, New Orleans, Louisiana (105-1057) to FBI Director (Apr. 18, 1964) (reporting the observation of “three large crosses” being burned at a Bastrop, Louisiana KKK rally); Memorandum from FBI Director to FBI Special Agent in Charge, New Orleans, Louisiana (105-1057) (Aug. 16, 1964) (“[A] large number of crosses were burned throughout the state of Louisiana during the night of 8/15/64.”).

144. *See* Jim Brown, *The Ku Klux Klan in Louisiana!*, JIMBROWNUSA.COM (Oct. 17, 2013), <http://www.jimbrownla.com/blog/?p=10725> (discussing the KKK’s burning of a Louisiana shoe shop with the black owner inside of it and also the KKK’s burning of a black music night club in Louisiana).

145. *See* H.R. 2200, 84th Gen. Assemb., Reg. Sess. (Tex. 2015) (finding that “with prejudice against German Americans running high in the aftermath of World War I, the Ku Klux Klan set fire to” St. John Lutheran Church in Bishop, Texas, a place of worship founded by German Americans).

structures,¹⁴⁷ blowing up school buses to prevent desegregation of schools;¹⁴⁸ flogging¹⁴⁹ or beating individuals;¹⁵⁰ kidnapping,¹⁵¹ lynching,¹⁵² mutilating,¹⁵³ or other forms of murder;¹⁵⁴ sending hate mail,¹⁵⁵ and acid-branding (inscribing KKK on the forehead).¹⁵⁶ It often held rallies and displayed signs expressing its sentiments on various issues. At one rally, a sign saying “Huey Newton Rot In Hell” was displayed.¹⁵⁷ When the KKK opposed something, it used these techniques to force the public to entertain its opposition. For example, in the 1970s, in Baton Rouge, Louisiana, the KKK

plastered the utility poles and other upright surfaces with signs showing a rearing white-hooded horse carrying a hooded white rider, his left hand holding aloft a fiery cross. Beneath the horse’s feet was the Klan’s motto: FOR GOD AND COUNTRY. The poster was dominated by the horse and rider and by big, bold print in the upper

146. See TUCKER, *supra* note 4, at 187 (discussing the KKK’s 1963 bombing of four black children in their church).

147. See S. Con. Res. 502, 131st Leg., Reg. Sess. (Miss. 2016) (mentioning that, after Vernon Dahmer, Sr., “a farmer and NAACP leader who spent much of his time fighting for voting rights” in Mississippi, announced he would pay poll taxes for those who could not, his house was firebombed by the KKK); TUCKER, *supra* note 4, at 187 (“In . . . 1961, in . . . Alabama, Klansmen led a white gang that firebombed the first Freedom Riders bus, where blacks and whites had joined to test the new bus terminal desegregation ruling . . .”).

148. See NAT’L PARK SERVICE, *supra* note 41.

149. See TUCKER, *supra* note 4, at 25.

150. See S. Res. 289, 112th Cong. (2011) (“Whereas Reverend Shuttlesworth was beaten with chains and brass knuckles by a mob of Ku Klux Klansmen in 1957 when he tried to enroll his children in a segregated school in Birmingham”); see also *Bergman v. United States*, 565 F. Supp. 1353, 1381 (W.D. Mich. 1983) (discussing the KKK’s use of pipes and baseball bats in its 1961 attack upon the Freedom Riders); GEORGE & WILCOX, *supra* note 15, at 363 (discussing the convictions of six KKK members for the 1957 abduction and castration of Judge Aron, an African-American man).

151. See TUCKER, *supra* note 4, at 25.

152. See NAT’L PARK SERVICE, *supra* note 41. See generally EQUAL JUSTICE INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR (2d ed. 2015), available at http://www.eji.org/files/Lynching_in_America_2d_Ed_Summary.pdf.

153. See TUCKER, *supra* note 4, at 25.

154. See S. Con. Res. 23, 119th Leg., 1st Reg. Sess. (Ind. 2015) (mentioning that the grand wizard of the KKK murdered a female student at Butler University in Indiana in the 1920s); H.R. Res. 1214, 111th Cong., (2010) (discussing the KKK’s murder of Viola Liuzzo, “a White woman from desegregated Michigan [who] courageously volunteered to assist the ongoing civil rights movement in Alabama in 1965”); GEORGE & WILCOX, *supra* note 15, at 378 (discussing a 1987 judgment won against a KKK group for the 1981 slaying of a black teenager whose body was left hanging in a tree).

155. See H.R. Res. 298, 113th Cong. (2013) (describing how KKK members sent hate mail in response to the increasing number of African Americans playing college basketball in Chicago in the 1960s).

156. See TUCKER, *supra* note 4, at 25.

157. See NEWTON & NEWTON, *supra* note 64, at photo 36 (taken at a 1989 rally in Gainsville, Georgia).

left corner that read SAVE OUR LAND, and beneath the picture it read JOIN THE KLAN.¹⁵⁸

Another example occurred in an Indiana town where, the KKK posted “signs warning ‘Nigger, don’t let the sun set on you here.’”¹⁵⁹ On another occasion in Bogalusa, Louisiana the KKK distributed a venomous circular “all over the [c]ity.”¹⁶⁰ The flyer attacked the local newspaper for its reporting of KKK activities in the area and accused newspaper staff members of having meetings “with Bobby Kennedy and trying to figure out more ways to take away a bit more of the White Citizen’s rights and slide [whites] . . . deeper along the path of socialism.”¹⁶¹ The flyer used the following terms to describe the newspaper staffer: a person of “low bred character,”¹⁶² a “traitor to the cause of freedom,”¹⁶³ and a “name calling coward.”¹⁶⁴ The flyer warned: “Did you know [about the] pending . . . immigration Bill? This Bill would allow One Million Negroes from Africa to enter the United States each year for the next four years. . . . This is equally as bad as the Civil ‘Wrongs’ Bill.”¹⁶⁵ Immediately preceding that text is a reference to KKK prayers for God’s help.¹⁶⁶

Opposition to African-American voter participation was a major tenet of the KKK. The KKK “patrolled the streets displaying weapons they would use to prevent African Americans from voting.”¹⁶⁷ “On one primary election day in Indianapolis, Klansmen paraded through black neighborhoods waving pistols.”¹⁶⁸ While they were not the only voice opposing black voters, their impact should not be underestimated. “In national politics between 1870 and 1903, [only] two African Americans served in the United States Senate and twenty in the House of Representatives.”¹⁶⁹

While the KKK also engaged in fundraising, this was usually done with the motive of establishing organizations and opportunities for select

158. WILBERT RIDEAU, *IN THE PLACE OF JUSTICE* 61 (2010).

159. TUCKER, *supra* note 4, at 56.

160. Letter from James H. Morrison, Member of the U.S. Congress, to Cartha D. DeLoach, Assistant Director of the Federal Bureau of Investigation (Aug. 25, 1964) (on file with author). The flyer in question was attached to Mr. Morrison’s letter.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. A. LEON HIGGINBOTHAM, JR., *SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS* 173 (1996); *see also* TUCKER, *supra* note 4, at 56 (referencing Klansmen “waving pistols”).

168. TUCKER, *supra* note 4, at 56.

169. HIGGINBOTHAM, JR., *supra* note 167.

members of society—the white race—and not for all members of society.¹⁷⁰ “The Klan’s victims included blacks, southern whites who disagreed with the Klan, and ‘carpetbagger’ northern whites.”¹⁷¹

Like the KKK, the BPP had its own distinct approach to fulfilling its mission. Community protection from the police was at the top of its priority list. According to cofounder Bobby Seale, “[the BPP’s] first organizing tactic was to legally observe the police in our Oakland and Berkeley Black communities.”¹⁷² He continued: “We had law books, tape recorders and very legal loaded arms as we recited the law to the police.”¹⁷³

Like the KKK, public expression was an often-used method of the BPP, but the two groups’ tactics were distinctly different. For example, consider the BPP’s response when, in 1967, the California state legislature was in the process of drafting gun control legislation.¹⁷⁴ Members of the BPP, armed and in their associated attire, confidently walked into the legislature.¹⁷⁵ “The Panthers announced that they were opposed to the gun control bill because it would leave Blacks helpless in the face of police terror.”¹⁷⁶ Making frequent speeches on college campuses and in the community was another of the BPP’s public practices.¹⁷⁷ The BPP also distributed proactive art, cartoons, and satire through its newspaper, posters, banners, and buttons.¹⁷⁸ Some have described BPP images as “dangerous pictures meant to change the world.”¹⁷⁹ Often, the depicted images were of pigs made to look like politicians and police officers, and African Americans toting guns.¹⁸⁰

The BPP also participated in the political process in a number of ways. For example, “the Panthers endorsed Brooklyn Rep. Shirley Chisholm’s campaign for president”;¹⁸¹ founding member Bobby Seale ran for mayor of Oakland, California in 1972;¹⁸² and the BPP put a

170. See TUCKER, *supra* note 4, at 50 (discussing efforts to raise funds to build a hospital in protest to the only hospital being a Catholic institution).

171. *Virginia v. Black*, 538 U.S. 343, 353 (2003).

172. Seale, *supra* note 109.

173. *Id.*

174. See Wing, *supra* note 76.

175. See *id.*

176. Sustar & Maass, *supra* note 11.

177. See Ma’at-Ka-Re Monges, *supra* note 106, at 139.

178. See, e.g., BLACK PANTHER: THE REVOLUTIONARY ART OF EMORY DOUGLAS (Sam Durant ed., 2007).

179. *Id.* at 19.

180. See *id.*

181. Sustar & Maass, *supra* note 11.

182. See GEORGE & WILCOX, *supra* note 15, at 116.

Community Control of Police referendum on the ballot in Berkeley, California.¹⁸³

In addition, BPP members did extensive work in the community for no pay. The BPP operated a number of free community programs, such as a medical clinic.¹⁸⁴ It established “free breakfast programs for school children, free neighborhood clinics that administered tests for sickle-cell anemia—a major killer of African Americans—and an award-winning community school.”¹⁸⁵ They regularly acted as escorts to the elderly as they traveled to banks to cash their checks.¹⁸⁶ They educated children,¹⁸⁷ taught political education classes to adults,¹⁸⁸ provided shoes to those in need,¹⁸⁹ registered voters,¹⁹⁰ gave groceries to the poor,¹⁹¹ offered free transportation to families who wanted to visit loved ones in prison,¹⁹² and

183. See Seale, *supra* note 109 (noting that the “referendum lost by only one percentage point”).

184. See *id.* One of the photo captions reads: “Bobby Seale and a doctor in a Black Panther Party medical clinic.” *Id.* See generally ALONDRA NELSON, *BODY AND SOUL: THE BLACK PANTHER PARTY AND THE FIGHT AGAINST MEDICAL DISCRIMINATION* (2011).

185. HASKINS, *supra* note 5, at 3. As Brand and Burt explain,

At [Bobby] Seale’s urging, Tolbert Small, an Oakland doctor, started the first widespread testing for sickle cell disease. Eventually all 11 Panther clinics and 49 Panther chapters throughout the country offered free screening, raising the medical community’s awareness of the little-known disease. The Panthers’ political lobbying led to passage of the Sickle Cell Act and President Richard Nixon’s mention of sickle cell disease for the first time in a State of the Union address.

Brand & Burt, *supra* note 110. See generally *Black Panther Community Programs*, BLACK PANTHER PARTY RESEARCH PROJECT, <http://www.stanford.edu/group/blackpanthers/programs.shtml> (last visited Jan. 24, 2016).

186. See HASKINS, *supra* note 5, at 68.

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

The first class to graduate was so far advanced beyond the necessary ninth-grade education that it was skipped over the junior-high level and placed into public high schools.

Students were served breakfast, lunch, and dinner at the school. They were taken for medical and dental checkups. The facility was open on weekends for them to play and eat. Those who needed new clothes and whose parents could not afford them received them courtesy of the school; so, too with school supplies and books.

Id. at 103. “In the fall of 1977, the California State Legislature issued a commendation to the Oakland Community Learning Center for having set the standard for the highest level of education in the state.” *Id.* at 104.

188. See *id.* at 68.

189. See *id.* at 86.

190. See *id.* at 101.

191. Susan Gilmore, *Black Militants Put Energy in Kids Now*, SEATTLE TIMES, Feb. 29, 1979, at A14, available at http://depts.washington.edu/civilr/display.cgi?image=bpp/news/ST_FEB%2029-79-A14.jpg.

192. *Id.*

offered free courses in drug and alcohol abuse awareness¹⁹³ and community and consumer health.¹⁹⁴

E. Law, the Legal Process & Law Enforcement

Throughout the various stages of the KKK's existence, the law or the legal process has been used in a number of ways with some rather intriguing results. The KKK's impact was so profoundly damaging, it prompted President Grant to implore Congress to pass federal legislation:

A condition of affairs now exists in some States of the Union rendering life and property insecure and the carrying of the mails and the collection of the revenue dangerous. The proof that such a condition of the affairs exists in some localities is now before the Senate. That the power to correct these evils is beyond the control of State authorities I do not doubt; that the power of the Executive of the United States, acting within the limits of existing laws, is sufficient for present emergencies is not clear. Therefore, I urgently recommend such legislation as in the judgment of Congress shall effectually secure life, liberty, and property and the enforcement of law in all parts of the United States¹⁹⁵

"In response, Congress passed what is now known as the Ku Klux Klan Act."¹⁹⁶ These noble intentions were no match for the realities that were met when laws were actually tested.

"For a few years 'radical' Republicans dominated the governments of the Southern States and Negroes played a substantial political role."¹⁹⁷ "But countermeasures were swift and violent."¹⁹⁸ Evidence of the KKK's retaliation is memorialized in *United States v. Cruikshank*, which involved a KKK attack upon a group of African-American Republicans.¹⁹⁹ This 1873 attack followed a disputed gubernatorial election in Louisiana between John McEnery and William P. Kellogg.²⁰⁰ "In the small town of

193. See Wing, *supra* note 76.

194. See *id.*

195. BELL, *supra* note 8, at 885 (citing a message sent to Congress by President Grant on March 23, 1871).

196. *Virginia v. Black*, 538 U.S. 343, 353 (2003) (making reference to An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes, 17 Stat. 13 (codified as amended at 42 U.S.C. §§ 1983, 1985, and 1986) (2012)).

197. BELL, *supra* note 8, at 866.

198. *Id.*

199. *United States v. Cruikshank*, 92 U.S. 542 (1875).

200. Henry C. Warmoth, who opposed President Ulysses Grant, was governor at the time. President Grant supported William P. Kellogg in this 1872 election. As governor, Mr. Warmoth controlled the State Returning Board, the institution that administered elections. His board named John McEnery the winner, but a rival board claimed Kellogg the winner. Mr. Warmoth was impeached for allegedly stealing the election. See *Louisiana Governors 1861-1877*, L.A. SEC. STATE, <http://www.sos.la.gov/HistoricalResources/AboutLouisiana/LouisianaGovernors1861-1877/Pages/>

Colfax, Louisiana, the seat of Grant Parish, black Republicans took control of the Colfax courthouse.”²⁰¹ “They supported Kellogg’s government and refused to leave the courthouse.”²⁰² “On April 13, 1873, a white mob, supporters of McEnery’s government, attacked the courthouse and attempted to drive the black Republicans out.”²⁰³ “The white mob set the courthouse on fire and, afterwards, it was confirmed that over one hundred African Americans had perished in the massacre”²⁰⁴ The white mob was charged under the Enforcement Act of May 31, 1870, which criminalized attempts “to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States.”²⁰⁵ Deeming this language vague and general, the Supreme Court remanded with instructions to release the defendants.²⁰⁶ “In essence, the Supreme Court allowed white violence against blacks to happen unchecked.”²⁰⁷

In the late 1800s, another KKK case made its way to the United States Supreme Court. R. G. Harris and nineteen other whites formed a lynch mob, went into a Tennessee jail, and captured four African Americans who were in custody.²⁰⁸ They were charged under the Ku Klux Klan Act of 1871, which made it a crime for two or more persons to conspire for the purpose of depriving anyone of the equal protection of the laws.²⁰⁹ The constitutionality of the statute was challenged.²¹⁰ In 1882, the United States Supreme Court declared the criminal provisions of the Ku Klux Klan Act of 1871 unconstitutional, finding that Congress could not reach private conspiracies under its Fourteenth Amendment powers.²¹¹ This inured to the benefit of the KKK.

“Despite [the existence of some] federal laws, killing was still a state crime to be prosecuted in state courts.”²¹² “In case after case, accused Klan or allied racist killers went free in trials before all white

default.aspx (last visited Feb. 27, 2016) (discussing former Louisiana Governors Henry Clay Warmoth and John McEnery); HIGGINBOTHAM, JR., *supra* note 167, at 88.

201. *1872 Louisiana Gubernatorial Election*, MEDIA NOLA (Apr. 10, 2014), <http://media.nola.org/discover/place/1158/1872-Louisiana-Gubernatorial-Election>.

202. *Id.*

203. *Id.*

204. *Id.*

205. *United States v. Cruikshank*, 92 U.S. 542, 548 (1875).

206. *See id.* at 559.

207. *1872 Louisiana Gubernatorial Election*, *supra* note 201.

208. *See United States v. Harris*, 106 U.S. 629 (1882).

209. *See id.* at 641.

210. *See id.* at 633.

211. *See id.* at 643–44.

212. TUCKER, *supra* note 4, at 187.

southern juries.”²¹³ In countless others where there was evidence warranting a trial, trials never took place.²¹⁴ This prompted a legislative remedy once again. “Congressman Leonidas Dyer of Missouri first introduced [an] Anti-Lynching Bill . . . into Congress in 1918.”²¹⁵ “The Dyer Bill was passed by the House of Representatives on the 26th of January 1922, and was given a favorable report by the Senate Committee assigned to report on it in July 1922, but its passage was halted by a filibuster in the Senate.”²¹⁶ “Efforts to pass similar legislation were not taken up again until the 1930s.”²¹⁷ “More than 200 anti-lynching bills were introduced in congress in the first part of the century and the House of Representatives passed anti-lynching bills three times.”²¹⁸ Southern Senators, however, repeatedly blocked this legislation.²¹⁹ “[A]lmost 5,000 people—mostly African-Americans—were lynched between 1882 and 1968.”²²⁰

In addition to a legislative response, the United States Department of Justice also committed itself to stopping the KKK in the 1940s through the 1960s when the KKK experienced a resurgence.²²¹ Prosecutions were in short supply, however.²²² In one instance in the 1920s, the KKK had such an adverse impact on local government that Louisiana’s Governor John M. Parker cried out for help from the federal government, claiming that the KKK “held his state in a grip of terror, controlling even the mails and telephones, rendering an indictment of Klansmen impossible”²²³ and expressing fears that “judges and prosecuting attorneys had been corrupted.”²²⁴

213. *Id.*; see also *Liuzzo v. United States*, 485 F. Supp. 1274, 1276 (E.D. Mich. 1980) (discussing how one of three KKK members charged with the murder of civil rights worker Viola Liuzzo was brought to trial in state court, but not convicted until federal conspiracy charges were pursued).

214. See TUCKER, *supra* note 4, at 188 (discussing the failure to prosecute in the 1963 16th Street Baptist Church bombing and in the 1964 disappearance of civil rights workers in Mississippi).

215. *NAACP History: Anti-Lynching Bill*, NAACP, <http://www.naacp.org/pages/naacp-history-anti-lynching-bill> (last visited Mar. 3, 2016).

216. *Id.*

217. *Id.*

218. *Senate Apologizes for Not Enacting Anti-Lynching Legislation, A Look at Journalist and Anti-Lynching Crusader Ida B. Wells*, DEMOCRACY NOW! (June 14, 2005), http://www.democracynow.org/2005/6/14/senate_apologizes_for_not_enacting_anti.

219. *Id.*

220. *Id.*

221. See NEWTON & NEWTON, *supra* note 64, at 193 (discussing a “probe of resurgent Klans in California, Florida, Georgia, Michigan, Mississippi, New York, and Tennessee”).

222. *See id.*

223. *Id.* at 356.

224. *The FBI Versus the Klan Part 2*, *supra* note 54.

The KKK often shared a symbiotic relationship with local law enforcement entities.²²⁵ KKK members were sometimes even part of law enforcement. In 1925, a KKK police chief was appointed by a Klan-dominated city council in Wetumka, Oklahoma.²²⁶ In the 1990s, KKK leader Barry Black, who had a number of convictions at the time, was elected as a constable in Pennsylvania.²²⁷

Even the Federal Bureau of Investigation (FBI) had involvement with the KKK.²²⁸ COINTELPRO is the FBI acronym for a series of covert action programs directed against domestic groups.²²⁹ Not immediately, but eventually, the FBI directed its COINTELPRO efforts at the KKK.²³⁰ The FBI reports reflect an active campaign to stop the KKK.²³¹ The FBI also touts its efforts to be successful to an extent.²³² However, there have also been allegations that this same FBI passed information to some local law enforcement officials who had known KKK ties. Allegedly, the FBI passed on information in Birmingham, Alabama in the 1960s for the purpose of “facilitating physical attacks on civil rights workers.”²³³ Starting as early as 1960, the FBI began using informants to

225. See *Bergman v. United States*, 565 F. Supp. 1353, 1383 (W.D. Mich. 1983) (noting that members of the 1961 Birmingham, Alabama Police Department “extolled . . . the principles of the Klan”); H.R. 82, 111th Cong., 1st Sess. (2009) (“Whereas on June 21, 1964, James Chaney, Michael Schwerner, and Andrew Goodman were kidnapped and murdered by members of the Ku Klux Klan, with the active assistance of local authorities”); STANTON, *supra* note 57, at 27 (mentioning that “integration of many police agencies had made it more difficult for the KKK to operate inside them as it once had”).

226. See *GEORGE & WILCOX*, *supra* note 15, at 31.

227. See *Barry Black*, S. POVERTY L. CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/individual/barry-black> (last visited Apr. 4, 2016).

228. The FBI operates under Attorney General guidelines and not by statutory grant of authority. These guidelines were created in 1976 as a result of abuses on the part of the FBI. See OFFICE OF THE INSPECTOR GEN., THE FEDERAL BUREAU OF INVESTIGATION’S COMPLIANCE WITH THE ATTORNEY GENERAL’S INVESTIGATIVE GUIDELINES (2005), available at <http://www.justice.gov/oig/special/0509/chapter2.htm>.

229. See FINAL REPORT OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, S. REP. NO. 94-755, Book III, at 3 (1976), available at http://www.intelligence.senate.gov/sites/default/files/94755_III.pdf (“In these programs, the Bureau went beyond the collection of intelligence to secret action designed to ‘disrupt’ and ‘neutralize’ target groups and individuals. The techniques were adopted wholesale from wartime counterintelligence, and ranged from the trivial . . . to the degrading . . . and the dangerous . . .”).

230. See *NEWTON & NEWTON*, *supra* note 64, at 194 (discussing the FBI’s use of COINTELPRO against the KKK).

231. See *id.*

232. See *id.* at 193 (“The FBI proved successful in 1952 and 1953, crippling the Association of Carolina Klans with mass arrests, and later winning indictments of ten Florida Klansmen involved in terrorism in the Miami area.”); *The FBI Versus the Klan Part 3: Standing Tall in Mississippi*, FBI (Oct. 29, 2010), https://www.fbi.gov/news/stories/2010/october/kkk_102910/kkk_102910 (quoting FBI agent James Ingram as saying that the FBI defeated the KKK).

233. *WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION: THE FBI’S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 55 (1988).

infiltrate the KKK.²³⁴ Certain KKK leaders have been deemed to be FBI informants.²³⁵ “[T]he FBI may have been the largest single source of funds for the Ku Klux Klan through its dues-paying informants.”²³⁶ It appears these informants were largely used for intelligence purposes, reporting the plots, plans, and intentions of the local chapters to the FBI.²³⁷ On more than one occasion, it has been determined that the FBI suppressed reports of KKK activity that led to direct harm to others.²³⁸

The BPP also had its share of encounters with the law, the legal system, and law enforcement. But the BPP’s experience was very different from that of the KKK. “[T]he Panthers’ willful assertion of their rights . . . was unacceptable to white authority figures who’d come to expect complete deference from black communities, and who were happy to use fear and force to extract it.”²³⁹ “Stopping the Panthers appeared to be a clear and logical goal among law enforcement personnel on state and federal levels.”²⁴⁰ The United States government had a specific concern with regard to the BPP.²⁴¹ “The government was particularly worried by the Panthers’ attempt to link up with other oppressed groups and ‘progressive’ organizations.”²⁴²

While the BPP was in existence, J. Edgar Hoover was the director of the FBI. Under Mr. Hoover’s leadership, “there were two FBIs—the public FBI Americans revered as their protector from crime, arbiter of values, and defender of citizens’ liberties, and the secret FBI.”²⁴³ This secret FBI “usurped citizens’ liberties, treated black citizens as if they were a danger to society, and used deception, disinformation, and violence as tools to harass, damage, and . . . silence people whose political opinions the director opposed.”²⁴⁴ Mr. Hoover demonstrated an “inability, or refusal, to differentiate people as individuals rather than as stereo-

234. *Bergman v. United States*, 565 F. Supp. 1353, 1381 (W.D. Mich. 1983).

235. See *GEORGE & WILCOX*, *supra* note 15, at 43 (“Bill Wilkinson, Imperial Wizard of the Invisible Empire, Knights of the Ku Klux Klan, had been an FBI informant for years.”).

236. *See id.*

237. *The FBI Versus the Klan Part 3*, *supra* note 232.

238. See *NEWTON & NEWTON*, *supra* note 64, at 194 (claiming the FBI “deliberately suppressed reports of a Klan conspiracy against the integrated Freedom Rides”).

239. Wing, *supra* note 76.

240. Cynthia Deitle Leonardatos, *California’s Attempts to Disarm the Black Panthers*, 36 *SAN DIEGO L. REV.* 947, 966 (1999).

241. As used herein, the term “government” is intended to mean acts committed by or at the behest of the President of the United States in his official capacity as such, or acts committed by or at the behest of any agency, head or instrumentality of the United States government.

242. *Sustar & Maass*, *supra* note 11.

243. BETTY MEDSGER, *THE BURGLARY: THE DISCOVERY OF J. EDGAR HOOVER’S SECRET FBI* 7 (2014).

244. *Id.*

types of either race or an ideology.”²⁴⁵ When it came to African Americans, J. Edgar Hoover was particularly bilious. He thought all African Americans were “dangerous.”²⁴⁶ “[I]t wasn’t necessary for African Americans to engage in violent behavior. . . . [or] to be radical or subversive.”²⁴⁷ “Being black was enough” to prompt the unleashing of his wrath.²⁴⁸

“As required by [FBI] directives . . . , African Americans came under the FBI’s watchful eye everywhere—in churches, in classrooms, on college campuses, in bars, in restaurants, in bookstores, in their places of employment, in stores, in any social setting, in their neighborhoods and at the front doors of their homes.”²⁴⁹ Not even African-American artists and literary writers were spared. “Hoover and . . . FBI ghostreaders pored over scores of . . . poems, plays, stories, novels, essays, and reviews—some even before publication with the aid of bookish informers at magazines and publishing firms.”²⁵⁰ Hoover even shaped the political discourse through a secret public relations division he created inside the FBI.²⁵¹ For over forty-seven long years, J. Edgar Hoover acted as a “political pervert” as he declared war on free expression, intimidated and bullied dissenters, meted out private punishments, invaded privacy rights, and engaged in discriminatory law enforcement practices.²⁵² Unfortunately, Mr. Hoover was obsessed with the BPP.

The FBI successfully infiltrated and neutralized the BPP through its COINTELPRO program.²⁵³ “Just two months after Hoover put the Black Panthers in his sights, Newton was arrested and convicted of killing Oakland police officer John Frey, a hotly contested development and the first in a series of major, nationwide controversies that engulfed the movement.”²⁵⁴ Newton served two years of his sentence before his conviction was overturned.²⁵⁵ Another BPP member, Fred Hampton, was murdered during a raid under suspicious circumstances. “A grand jury indicted the police officers but none were convicted.”²⁵⁶ “The state of Illinois, the city

245. *Id.* at 226.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.* at 227.

250. WILLIAM J. MAXWELL, *F.B. EYES* 60 (2015).

251. See MEDSGER, *supra* note 243, at 259.

252. CURT GENTRY, *J. EDGAR HOOVER: THE MAN AND THE SECRETS* 34 (1991) (quoting Gus Hall, General Secretary of the Communist Party of the United States).

253. See Blake, *supra* note 74. See generally Allen-Bell, *Activism Unshackled*, *supra* note 9, at 169–86.

254. Wing, *supra* note 76.

255. See *id.*

256. Blake, *supra* note 73.

of Chicago, and the federal government eventually paid a \$1.85 million settlement to Hampton's family and survivors of the raid."²⁵⁷

"The government intensified its repression against the organization, with constant raids and harassment long [sic] with a campaign of penetrating the organization with spies and provocateurs."²⁵⁸ "The Panther's [sic] policy of armed self-defense was used by the state to justify the repression."²⁵⁹ "Between December 1967 and December 1969, 28 Panthers were killed by police and hundreds more were arrested on trumped-up charges."²⁶⁰ During the California protest, which was previously discussed,²⁶¹ the BPP showed up at the legislature in opposition to changes in the gun laws. On that date, the law allowed them to have those weapons, which were pointed at the ceiling (and not at any individual).²⁶² Despite this, they were arrested on felony charges of conspiracy to disrupt a legislative session.²⁶³ This was indicative of a much larger pattern. Co-founder Bobby Seale explained:

In a five-year period, 750 Black Panther Party members were arrested on more than 2,500 different charges, mostly felonies. It was an effort to try to identify Party members: the police would get their fingerprints and mug shots and then drop the charges. Less than ten percent of all those charges went to trial, and we won 95 percent of all those that went to trial.²⁶⁴

In the case of the BPP, FBI informants were used for more than intelligence. "[A]n FBI informant had actually provided the Black Panthers with weapons and training as early as 1967."²⁶⁵ Informants were also used to directly harm BPP members in some cases.²⁶⁶

Because of the FBI's neutralization plot, "[c]onversations about the BPP, violence and law enforcement must be approached with caution."²⁶⁷ Incidences of BPP members being involved in confrontations with law

257. *Id.*

258. Sutar & Maass, *supra* note 11.

259. *Id.*

260. *Id.*

261. See text accompanying notes 174–176.

262. See Wing, *supra* note 76.

263. See *id.* (mentioning that the Panthers later pleaded guilty to lesser misdemeanors).

264. *Interviews: Black Panthers Today*, PBS, <http://www.pbs.org/pov/apantherinafrica/interview-black-panthers-today/7/> (last visited Mar. 4, 2016) (interview with Bobby Seale).

265. Wing, *supra* note 76.

266. See Allen-Bell, *Activism Unshackled*, *supra* note 9, at 169–86; see also CHURCHILL & VANDER WALL, *supra* note 69, at 133–43. See generally JEFFREY HAAS, *THE ASSASSINATION OF FRED HAMPTON* (2010).

267. Angela A. Allen-Bell, *A Prescription for Healing a National Wound: Two Doses of Executive Direct Action Equals a Portion of Justice and a Serving of Redress for America & The Black Panther Party*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 1, 56 (2015).

enforcement are often mentioned,²⁶⁸ but the police brutality and excesses they suffered is often overlooked or misunderstood.²⁶⁹ More significant-

268. In an abundance of caution, it is noted that there is no intention to suggest that all police interacted improperly, aggressively, and inappropriately towards the BPP.

269. BPP member Harold Taylor, who was arrested on charges related to the 1971 killing of a police officer, tells of torture he encountered at the hands of police:

And immediately, when we got in the jail, they started beating us. They never asked us any questions in the beginning. They just started beating us.

... [T]hey put me a room with Ruben Scott . . . [H]e was laying on the floor in a fetus position, where—and he had urine on him, feces, and his face was scratched up, and he was swollen, and he was trembling.

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

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

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

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

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

So the door flies open, four or five run in there, they start beating me and kicking me. And they just take me out of the room and just drag me down the hallway and take me and slam me back in a chair, chain me back up to the chair and start all over again with the plastic bag, the ear slapping, the slapjacks across the back of my shoulders, all down my legs and on my shins, between my knees. It was so painful that all you could do was try to scream, you know. And they says, "You're going to talk, or we're going to continue. This will go on as long as it takes for you to talk." And I kept telling them the same thing. So later—they did that all day. It went in shifts.

...
... I could hardly talk from screaming so much that my voice was hoarse. And they started probing me with the cattle prod on the back of my ear, down the side of my arm, underneath my arm, all real sensitive areas. And they says, "You know, we can do this all

ly, the context and climate within which this violence happened is rarely considered. By way of example, attention is called to the findings of a congressional body that, after extensive hearings, found at least two po-

night long. We have nothing to do, you know. And this will continue until you talk to the people from San Francisco.”

Former Black Panther Details Brutal Police Torture to Extract Confession in 1971 Murder Case, DEMOCRACY NOW! (Nov. 30, 2007), http://www.democracynow.org/2007/11/30/former_black_panther_details_brutal_police.

The charges at issue were dismissed in 1975 after a court deemed this torture. These charges resurfaced in 2007. *See id.*; HASKINS, *supra* note 5, at 59 (stating that between July 1968 and December 1969, there were at least twenty-nine raids and confrontations between the police and the BPP); *see also* Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979), *rev'd in part*, 446 U.S. 754 (1980) (concerning the raid on the residence of BPP member Fred Hampton); JOHN POTASH, THE FBI WAR ON TUPAC SHAKUR AND BLACK LEADERS 41 (2007) (making reference to BPP member Assata Shakur’s lead trial attorney, Stanley Cohen, dying from a physical attack); THE BLACK PANTHERS SPEAK 83 (Philip S. Foner ed., 2014) (BPP cofounder Bobby Seale recalling a particular raid in Los Angeles, as follows: “Despite police reports to the contrary that they knocked on the door and asked the brothers to come out, the brothers were sleeping when the police riddled the office with bullets and when they broke down the door and came in shooting the brothers had no choice but to defend themselves.”); CHURCHILL & VANDER WALL, *supra* note 69, at 148–50 (discussing the mysterious murder of Sandra Lane “Red” Pratt, then-wife of BPP member Geronimo Pratt). *See generally* HAAS, *supra* note 266 (discussing the murders of Fred Hampton and Mark Clark); GEORGE JACKSON, SOLEDAD BROTHER x (1994) (quoting James Baldwin as questioning the veracity of the official account of BPP George Jackson’s death); IT’S ABOUT TIME – BLACK PANTHER PARTY, <http://www.itsabouttimebpp.com/index.html> (last visited Jan. 26, 2016) (featuring a report captioned “Nineteen Men The Panthers List as ‘Murdered’”). One court observed:

Plaintiffs’ affidavits . . . reveal a series of incidents between police and members of the Black Panther Party or vendors of the Black Panther newspaper. In December 1969 and January 1970, persons selling the Black Panther newspaper were taken to the police station and told either to stop selling the paper or to obtain a license, and then were released without charges. One such vendor, Bruce Johnson, was charged with violating Chapter 31, pleaded guilty and on January 7, 1970, received a conditional discharge for one year. Although city officials now claim that, at some point in the period between Johnson’s conviction and filing of this action, the corporation counsel ruled that Chapter 31 did not apply to selling newspapers, that information was never conveyed to Bruce Johnson or the Black Panther Party, nor was it publicly announced.

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

The alleged incidents, taken together, could be construed to establish a campaign of harassment directed against sales of the Black Panther newspaper. *Hull v. Petrillo*, 439 F.2d 1184, 1187 (2d Cir. 1971).

lice-confrontation cases where BPP members were killed without direct threat to a policeman's life.²⁷⁰ Additionally, there is the case of BPP member Bobby Hutton who was shot more than twelve times after he had already surrendered and stripped down to his underwear to prove he was not armed.²⁷¹

F. Public Appeal

"Many people did, indeed, oppose the Klan, seeing it as a socially disruptive force, but few spoke out."²⁷² While there was much KKK support, it was not uniform. Some states banned the KKK.²⁷³ Others passed cross-burning laws²⁷⁴ or antimasking laws.²⁷⁵ Some "adopted legislation effectively outlawing the KKK."²⁷⁶ Others revoked the local KKK organization's charter²⁷⁷ or obtained injunctions against them.²⁷⁸ At one point, the U.S. Attorney General put the KKK on the subversives list.²⁷⁹

Despite these efforts, at various intervals and in certain regions, the KKK enjoyed broad public appeal, sometimes garnering the support of certain faith-based communities.²⁸⁰ "In many Protestant churches it was not uncommon for a group of hooded Klansmen to appear in the middle of Sunday evening services, march to the altar, and deposit contributions of fifty dollars or more."²⁸¹ "Sometimes the minister then obligingly led

270. See HOUSE COMM. ON INTERNAL SEC., GUN-BARREL POLITICS: THE BLACK PANTHER PARTY, 1966–1971, H.R. REP. 92-470, at 34 (1st Sess. 1971), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.b3891226#view=1up;seq=1>.

271. See *Bobby Hutton*, PBS, http://www.pbs.org/hueypnewton/people/people_hutton.html (last visited Jan. 26, 2016).

272. TUCKER, *supra* note 4, at 76.

273. See GEORGE & WILCOX, *supra* note 15, at 362 (discussing California and New York).

274. *Virginia v. Black*, 538 U.S. 343, 355 (2003) (mentioning the 1950 enactment of cross-burning legislation in Virginia following a pattern of KKK cross burnings in Virginia).

275. See NEWTON & NEWTON, *supra* note 64, at 20–21 (describing anti-masking laws as forbidding adults from donning disguises in public and mentioning that these laws were often passed in response to the KKK).

276. GEORGE & WILCOX, *supra* note 15, at 362.

277. See *id.* (discussing the state of Georgia revoking the Association of Georgia Klans' charter); TUCKER, *supra* note 4, at 89 (discussing plans to commence a 1927 trial in Indiana to revoke the Klan's charter).

278. See FBI FILE NO. 105-71801, *supra* note 44, at 495–96 (discussing and documenting the fact that the United States District Court for the Eastern District of Louisiana, on December 22, 1965, handed down a preliminary injunction against local KKK chapters).

279. See GEORGE & WILCOX, *supra* note 15, at 362 (discussing U.S. Attorney General Tom Clark).

280. See TUCKER, *supra* note 4, at 2 ("Mainline Protestant ministers often praised the Klan from their pulpits."); see also NEWTON & NEWTON, *supra* note 64, at xvii–xviii (setting forth a geographical listing of locations that have played a role in the history of the KKK).

281. TUCKER, *supra* note 4, at 55.

his flock in singing ‘Onward Christian Soldiers’ as the visitors departed.”²⁸²

Beyond the faith-based community, the KKK found support in the public arena and even from public officials. “Public gatherings, pulpits, and even high school graduations, became platforms for Klan orators.”²⁸³ At times, “[o]penly or covertly, ambitious politicians courted the Klan’s favor.”²⁸⁴ “Klan favoritism ran through police departments, sheriff’s offices, and courthouse staffs.”²⁸⁵

One illustration of the extent to which the community supported the KKK is the public’s response to a certain written publication. In 1905, Thomas Dixon, a former legislator and a Baptist minister at the time, wrote a book entitled, *The Clansman: An Historical Romance of the Ku Klux Klan*.²⁸⁶ *The Clansman* starts as a love story between a Confederate soldier and his nurse at the union hospital.²⁸⁷ It continues rather harmoniously as the nurse’s brother falls in love with that soldier’s sister, then the plot changes rather drastically when the nurse’s father decides to exact revenge on the South.²⁸⁸ “His instrument is to be black people,” wrote Dixon.²⁸⁹ In the story, blacks take over, politically and financially, and lust after white women, and the KKK comes to save the day.²⁹⁰ “Although the first Klan never actually practiced cross burning, Dixon’s book depicted the Klan burning crosses to celebrate the execution of former slaves.”²⁹¹ This book “sold in vast quantities in 1905”²⁹² and has been described as the “first true blockbuster in modern U.S. publishing.”²⁹³

Dixon’s book led to a 1905 stage play that toured the United States.²⁹⁴ The play made no attempt at political correctness:

The production featured a cast of exquisitely attractive young white actresses, white actors in blackface playing lecherous emancipated slaves hungry to assault white women and cowering and buffoonish black elected officials, gallant former Confederate officers, and a

282. *Id.*

283. *Id.* at 69.

284. *Id.* at 6.

285. *Id.* at 75.

286. *See id.* at 21. Thomas Dixon’s father was a KKK member. *See* BLACKMON, *supra* note 13, at 268.

287. *See* TUCKER, *supra* note 4, at 21.

288. *See id.*

289. *Id.*

290. *See id.*

291. *Virginia v. Black*, 538 U.S. 343, 353 (2003).

292. BLACKMON, *supra* note 13, at 267.

293. *Id.*

294. *See id.*

fully outfitted contingent of white-robed Klansmen who rode across the stage mounted on horseback.²⁹⁵

It was said that the play had an “epic, record-breaking run of performances followed in theater halls across the South, Midwest, and Northeast.”²⁹⁶ The play led to a movie, *The Birth of a Nation*, which met with equal success²⁹⁷ and was “enthusiastically embraced” by President Wilson.²⁹⁸ It certainly must have shaped policy and more at the time:

Swept up by the movie’s romanticization of the Ku Klux Klan’s savage war on black political involvement in the 1870s, white audiences thrilled to the silent movie, the first full-length American film. It became Hollywood’s first true theatrical blockbuster. Its screening for President Wilson was the first showing of a moving film at the White House. Wilson helped arrange previews for other elected officials, members of his cabinets, and justices of the Supreme Court.²⁹⁹

In addition to the widely received book and play, a 1920s issue of *Time* magazine featured a KKK member on the cover.³⁰⁰

While such successes in the media show public sentiments nationwide, backlash to public criticism of the KKK demonstrates that the KKK enjoyed acceptance in many local jurisdictions. For example, in 1964, when Ralph Blumberg denounced the KKK over a radio station in Bogalusa, Louisiana, he recalls being taunted and threatened with death.³⁰¹ Blumberg’s car was vandalized, shots were fired at his station, his station was boycotted, and he was eventually run out of town.³⁰² In another case out of Pascagoula, Mississippi, Ira Harkey recalls getting a similar response after he wrote newspaper stories that were adverse to the KKK.³⁰³ Often, parade permits for KKK marches were readily granted.³⁰⁴ “[T]here was little or no public controversy over letting the Klan parade.”³⁰⁵

295. *Id.*

296. *Id.* at 268.

297. *See id.* at 359.

298. *Id.*

299. *Id.*

300. *See* Stove, *supra* note 47 (“National Klan boss during the early 1920s was a dentist, Hiram Evans, whose portrait graced the cover of ‘Time’s’ 23 June 1924 issue . . .”).

301. *See* RIDEAU, *supra* note 158, at 50.

302. *See id.*

303. *See generally* HARKEY, *supra* note 57.

304. *See* TUCKER, *supra* note 4, at 68 (mentioning that the police chiefs were often KKK members or supporters).

305. *Id.*

David Curtis Stephenson, the 1925 Grand Dragon of the Indiana KKK chapter, has been described as “the most powerful man in the state” at the time.³⁰⁶ There certainly seems to be some merit to this:

[H]is boast had not been an idle one. With more than a quarter-million Klan followers in Indiana alone, and a Klan-based political machine that controlled public offices from sheriff to governor, he had been, in many ways, the law. Beyond Indiana, as the Klan’s chief organizer in twenty other northern states, he had built a potent force that he thought might lead him to the White House. He had manipulated a state legislature and grown rich with payoffs from special interests. In the Indianapolis state-house even now sat his hand-picked choice for governor. Only last January the Grand Dragon had been an honored guest at the governor’s inaugural banquet in the Indianapolis Athletic Club.³⁰⁷

“In two races—first for the U.S. Senate and then for governor—white supremacist David Duke ran disturbingly successful campaigns based on the resurgence of white supremacy. In both elections, Duke’s racist views were well publicized.”³⁰⁸ In July 1965, the Louisiana legislature investigated the KKK.³⁰⁹ After extensive testimony and a well-documented campaign of terror in the state, the legislature trivialized the actions of the KKK, “calling it a ‘political action group’ with ‘a certain Halloween spirit.’”³¹⁰

The BPP’s public appeal during its organizational life span was very different from the KKK. Many times, it depended on the public in order to raise funds for its community programs, bail and other legal fees, and a segment of the public did assist on a consistent basis.³¹¹ But these instances of support should not be mistaken for broad, mainstream appeal. “A 1970 Harris poll for *Time* magazine found that 25 percent of Black Americans—over 5 million people—said they respected the Panthers ‘a great deal.’”³¹² While this may sound like a big number, in actuality, the greater majority of African Americans either opposed the BPP or were not spoken for in that statistic. Frankly, many African Americans did not support the BPP³¹³ and an even greater number of white Ameri-

306. *Id.* at 1.

307. *Id.* at 1–2.

308. HIGGINBOTHAM, JR., *supra* note 167, at 193.

309. See FBI FILE NO. 105-71801, *supra* note 44, at 516–58 (referencing *Report on Activities of the “Ku Klux Klan” and Certain Other Organizations in Louisiana Before the J. Legis. Comm. on Un-American Activities* (La. 1965)).

310. NEWTON & NEWTON, *supra* note 64, at 356.

311. See DURANT, *supra* note 178, at 58.

312. SUSTAR & MAASS, *supra* note 11.

313. See, e.g., MARTIN LUTHER KING, JR., WHY WE CAN’T WAIT 36–37 (1963). King was critical of the methods employed by the BPP.

cans opposed it. During its organizational life, it never achieved the level of mainstream support that the KKK had.

II. ASSESSMENT

In this effort to understand the appropriateness of comparing the BPP to the KKK, stark differences between the two groups emerge early on. The KKK was started by individuals who fought to defend the ideals of the pre-Reconstruction South, which included white supremacy. The pursuit of those interests has remained the impetus. In contrast, the BPP was formed by college students who, at the time, were unattached to any larger causes. Those two students started their organization on the bed-rock principles of community empowerment and government accountability. The birthrights of these groups, alone, might put to rest any belief that the two groups are comparable, but there is more evidence.

Their respective methodologies are also instructive of their differences. The KKK acted as a bully and a terrorist towards those who did not espouse their beliefs. The KKK unleashed its wrath upon all races and ethnicities, including whites. In juxtaposition, the BPP embraced all ethnicities and races. It stands to reason that it wanted all people on its political team. When this did not happen, its reaction is noteworthy. It did not wage war upon people or individuals. The BPP focused on systemic change and empowerment, but never through terroristic or socially traumatizing means. Viewed through this lens, the damage the KKK has done to the public is much more far-reaching, as the legacy of the fear and trauma it inflicted upon communities still lingers.

Times past, many people shaped their views about citizenship and political participation under the influence of the messages, subtle and direct, that the KKK communicated. And many of those elders passed that legacy of fear and docility—willfully or subconsciously—on to their heirs who have repeated the cycle. No good came of this. Generations of people have fasted when it comes to citizenship and participation. These people have abstained for fear of reprisal, opting instead for the safety of neutrality and political anonymity. One has to wonder what the real cost of such a citizenry is to a nation and how much further we might be in our national evolution absent this stagnancy and apprehension.

The national reaction also speaks against comparing these two groups. Nationally, by support or silence, we affirmed the KKK's reign of terror. Perhaps this is due to its infusion of Christianity and the Bible into the movement.³¹⁴ Nationally, we feared the BPP. Perhaps this was

314. I abstain from commenting on whether this is an appropriate or legitimate application of Christian principles. See NEWTON & NEWTON, *supra* note 64, at photo 39 (showing a man at a KKK rally holding a sign that reads: "Praise God for AIDS").

made easy by its failure to affiliate itself with anything mainstream, like the Bible or the Christian faith. Nationally, we must bear the guilt of what we created, and we must acknowledge this as our collective inheritance. In our acquiescence to the message that nonwhites should not share equally and meaningfully in the protections that the United States Constitution affords, we have realized that very reality. We simultaneously imparted the crippling message that African-American males acting in ways other than conciliatory would be feared and put in line for handling, which could mean employing a number of imaginative ways of ensuring they were silenced. What has this done to the African-American woman's respect for African-American men? What has this done to the self-respect of African-American men? What loss has this caused to a country that lacks the full and active participation of all members of society?

The aspects of this Article involving the use of the law and legal process are compelling for a number of reasons. They illustrate yet another material difference between the groups. More importantly, they offer a perspective about a current reality. Interestingly, in the case of the KKK, laws were on the books, yet the legal process just could not find a way to permanently silence it or quell its activities.³¹⁵ In the mid-1960s in Louisiana, state officials resorted to remitting secret payments to the KKK in an effort to minimize violence on the part of the KKK.³¹⁶ Presumably, this was done to compensate for what the law had failed to accomplish at this point in time. Only in recent history have there been overtures or attempts at holding it accountable.³¹⁷ However, where the BPP is concerned, that same system miraculously summoned up the might needed to render it extinct, and notably, this was done while it still existed, not years removed. The FBI explains this by suggesting that the KKK violations, such as cross burnings and lynchings, were local issues.³¹⁸ That same position has not been advanced when it comes to reflections on the FBI's relationship with the BPP. Onlookers might notice a parallel pattern occurring today, where certain groups get the brunt of the law and other groups conveniently escape the law. Besides making

315. *See id.* at 193 (“Hoover’s FBI regime was reluctant to move in defense of black civil rights.”).

316. Patrick Richoux, *FBI: Former Gov. John McKeithen Arranged Payments to Ku Klux Klan to Quell Violence in 1960s*, THE ADVOCATE (Apr. 24, 2016), <http://theadvocate.com/news/15565259-123/fbi-mckeithen-arranged-payments-to-klan-to-quell-violence-in-60s>.

317. *See* Lottie Joiner, *Inside the Effort to Solve Civil Rights Crimes Before It's Too Late*, TIME (Oct. 15, 2015), <http://time.com/4068183/emmett-till-act-history/> (discussing the Emmett Till Unsolved Crimes Act); *see also* NEWTON & NEWTON, *supra* note 64, at 194 (discussing the FBI's role in investigating the murder of NAACP leader Medgar Evers by Klansman Byron de le Beckwith).

318. *The FBI Versus the Klan Part 1: Let the Investigations Begin*, FBI (Feb. 26, 2010), <https://www.fbi.gov/news/stories/2010/february/the-fbi-versus-the-klan-part-1>.

racial unrest a permanent reality in this county, an unequally applied legal system ensures distrust for the law and the legal process. The end result is either self-help or the advent of what I term “the Fourth Branch of government,” where, out of frustration and desperation, citizens take to the streets to state their claims. Neither of these options advance America as a nation.

The inconsistencies involving law enforcement are also illuminating. The disparate treatment among the groups is palpable. The KKK sometimes had the direct support of law enforcement.³¹⁹ That never came close to happening with the BPP. In instances, the FBI watched informants in the KKK and informants in the BPP participate in murders, but the murders were very different. The KKK informants seem to have played a role in harming people outside the organization, whereas the BPP informants seem to have played a role in harming people within the BPP group. The BPP informants did more than just bring about harm; they partook in what many would consider literal or legal assassinations. This speaks to a larger, more systemic problem of law enforcement indiscriminately murdering African Americans with impunity.

One should not make the tragic mistake of reading this Article and assuming it merely breathes life into a dated topic. Instead, this Article speaks to current realities. In the Introduction, I mentioned a warden making a housing assignment based on his false understanding. He saw the BPP as just as much of a hate group as the KKK. Based largely on this erring reasoning, he vigorously opposed Albert Woodfox’s release from forty-three horrific years of solitary confinement, subjecting Albert Woodfox to one of the most extreme cases of torture documented in American prisons upon the false thinking that BPP association alone equated with violence and hate and, therefore, constitutes a threat to the security of the institution.³²⁰ If only we had the assurance that this false reasoning was isolated.

319. In an abundance of caution, it is noted that there is a definite pattern of law enforcement officials who cited KKK members for various violations of the law. Thus, this statement should not be interpreted to mean otherwise.

320. Maya Lau, *Burl Cain Ends Gubernatorial Rumors, but Has Plenty to Say About Other Topics*, THE ADVOCATE (Aug. 12, 2015, 6:05 PM), <http://theadvocate.com/news/13162150-123/burl-cain-ends-gubernatorial-rumors> (citing then-warden, Burl Cain, as saying that Albert Woodfox “is a potential danger because of Woodfox’s willingness to organize young inmates in the tradition of the Black Panther party”); see *Four Decades in Solitary Confinement Can Only Be Described as Torture*, UNITED NATIONS (Oct. 7, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E> (quoting Juan Mendez saying, “Keeping Albert Woodfox in solitary confinement for more than four decades clearly amounts to torture and it should be lifted immediately The circumstances of the incarceration of the so-called Angola Three clearly show that the use of solitary confinement in the US penitentiary system goes far beyond what is acceptable under international human rights law.”).

We must now question how many BPP members have suffered ostracism over the course of their lives because of their party affiliation, and then we must ask whether such treatment was just and whether KKK members suffered similarly. We must probe the adverse actions taken in employment settings because of employees discussing these groups or bringing paraphernalia relating to one of these groups into the workplace and officials lacking the proper understanding of these groups being left to implement a solution. What about the school children who have been reprimanded over assignments involving these groups, or wrongfully disciplined by policies that would punish reference or affiliation with these groups, under the mistaken belief that they both represent terrorist or hate-filled views? There are likely instances of inmates³²¹ or students who have been mistakenly categorized as gang affiliates because of associations with these groups. We should even consider the law enforcement encounters that have been colored by misunderstanding of each of these groups or the flawed training that may have been communicated to law enforcement as a result of this group confusion. Individuals might have even been subject to professional license revocation proceedings because of wrongful understandings about the nature of these groups.

CONCLUSION

During the 2016 Super Bowl halftime performance, “[d]ressed in black berets atop their fluffy ‘fros, Beyoncé’s dancers helped pay homage to the Black Panther Party in honor of its 50th Anniversary.”³²² Many members of the public responded by “clutching their pearls at her audacity.”³²³ Others protested Beyoncé’s support of a “hate group.”³²⁴ She was even accused of attacking police officers with her performance.³²⁵ Weeks later, former KKK leader David Duke publicly urged citizens to support Donald Trump for President of the United States.³²⁶ Mr. Trump, who is known for his insolent remarks and his willingness to indiscriminately engage in verbal sparring matches, failed to immediate-

321. See, e.g., *Sims v. Wyrick*, 743 F.2d 607 (8th Cir. 1984) (discussing a prison policy at the Missouri State Penitentiary which prohibited inmates from receiving literature or other written material concerning the Black Panther Party through the mail).

322. Bené Viera, *The Truth You Don’t Know About the Black Panthers, as Told from a Former Party Member*, TEENVOGUE (Feb. 12, 2016, 11:04 AM), <http://www.teenvogue.com/story/black-panthers-party-beyonce-superbowl>.

323. *Id.*

324. *Id.* (quoting Milwaukee County sheriff David Clarke).

325. See *id.* (quoting former New York City mayor Rudy Giuliani).

326. See Eliza Collins, *David Duke: Voting Against Trump Is “Treason to Your Heritage,”* POLITICO (Feb. 25, 2016, 11:59 AM), <http://www.politico.com/story/2016/02/david-duke-trump-219777>.

ly denounce David Duke's support or the support of the KKK.³²⁷ Why the different reaction? Why the apparent tolerance for the KKK and the obvious intolerance for the mere reference to the BPP? The reason is because there remains a profound misunderstanding about these two groups and a stubborn refusal to think outside of our own cultural identities.

The KKK members were "hooded vigilantes wearing white sheets."³²⁸ "Despite well-documented acts of terror and murder—frequently lynchings and burnings—Klansmen were rarely prosecuted or convicted for their crimes."³²⁹ The KKK was and is a hate group. It has a well-documented history of practicing acts of domestic terrorism. The KKK's "history is totally repugnant to all who favor constitutional government or who believe that all persons are entitled to due process and to equal protection of laws."³³⁰

The legacy of the BPP is very different. "The Black Panther Party was not created just to end police brutality, but to uplift communities of people who were suffering from the inequities and imbalances of a government who valued some lives more than others."³³¹ "Contrary to many reports, the Black Panthers *as a group* were not racists, black nationalists, or separatists . . ."³³² The Panthers were social engineers who "weaponized words."³³³ What drove them was love of mankind. They were selfless and heroic.³³⁴ In reflection, cofounder Bobby Seale expressed: "During those hard core late 1960s racist, fascist times, we took a big chance with our lives patrolling the police. It was a time of rampant, vicious police brutality and murder of Black people by police that was 10 times worse than today."³³⁵ "In spite of their revolutionary rhetoric and behavior and the constant thread of criminal activities that ran through the group almost from its inception, the Black Panther party was still the victim of political repression."³³⁶

The KKK and the BPP were formed for vastly different reasons. One was to stifle a nation, while the other was to advance a nation. One

327. See Eugene Scott, *Trump Denounces David Duke, KKK*, CNN (Mar. 3, 2016, 10:10 AM), <http://www.cnn.com/2016/03/03/politics/donald-trump-disavows-david-duke-kkk/index.html> (explaining that Donald Trump eventually issued an explicit denouncement some days after David Duke made the statement in support).

328. HIGGINBOTHAM, JR., *supra* note 167, at xxx.

329. MARABLE & MULLINGS, *supra* note 6.

330. *Murray v. Jamison*, 333 F. Supp. 1379, 1381 (W.D.N.C. 1971).

331. Viera, *supra* note 322 (quoting BPP member Ericka Huggins).

332. GEORGE & WILCOX, *supra* note 15, at 119.

333. Blake, *supra* note 73.

334. See Allen-Bell, *Activism Unshackled*, *supra* note 9, at 125. See generally Allen-Bell, *A Prescription for Healing a National Wound*, *supra* note 267.

335. Seale, *supra* note 109.

336. GEORGE & WILCOX, *supra* note 15, at 117.

hid their identities and many of their deeds from the public, while the other operated proudly and openly. One terrorized, while the other uplifted. One claimed religious undertones, while the other did not. One continues to exist while the other is extinct. The KKK left a documented trail of victims, including many innocent citizens who were not engaged in any type of planned encounter with it. The same trail of destruction was not left by the BPP. Moreover, the missions, objectives, and methodology of the groups differed. There is also a divergence when it comes to the reactions of the nation, as well as the public, and their experiences differed in the way they were impacted by laws, the legal system, and their relationship with law enforcement. The BPP suffered under the same system that the KKK thrived under.

Society should never treat these groups the same or similarly. They are incongruous. There is no significant intersection between the two. Citizens, as well as officials involved in law making, policy implementation, disciplinary proceedings, judicial determinations, employment matters, institutional management, correctional institutions, education, and law enforcement must act with an understanding of the profound differences in these two groups. I close, plagued with thoughts of just how best to ensure delivery of this momentous message to the masses. Burn a cross in public to call attention? Post angry flyers? Adorned in a black beret, a black leather jacket, black pants, black sunglasses, black shoes, a light blue shirt, and with a balled fist raised high, take center stage and release my words like weapons, but with swagger? I settle safely in my thoughts of entrusting "all power to the people," feeling certain that the changes I advocate will follow.