

sive manhunt for the two suspects.”

Five days after the shooting a meeting was convened in the Oval Office to discuss the crisis unfolding in New York. Among those in attendance were President Nixon, Hoover, Attorney General John Mitchell, and John Ehrlichman, the White House domestic-affairs adviser. According to a memo written by Hoover that afternoon, Nixon requested that the F.B.I. involve itself in the Jones/Piagentini investigation, report directly to Ehrlichman, and “solve it.” The case was thereafter referred to by its F.B.I. code name, NEWKILL (for “New York Killing”).

A nationwide dragnet for the killers of Jones and Piagentini turned up little until August, when two B.L.A. soldiers, Jalil Bottom and Nuh Washington, were arrested for attempting to murder a policeman in San Francisco. In their car police discovered a pearl-handled Colt .45 semiautomatic pistol and a .38-calibre Smith & Wesson. The serial numbers on the Smith & Wesson identified the gun as Waverly Jones’s service revolver. The police believed they had their first big break in the case, but Bottom and Washington denied any involvement in the Colonial Park murders. In a lineup in San Francisco, a young witness (flown, with three others, from New York for the occasion) said she thought Bottom “might be” one of the Colonial Park shooters; no one identified Washington. When I spoke with Bottom and Washington recently, they admitted to participating in a “firefight” in San Francisco but again denied shooting Jones and Piagentini. When I asked how they came to possess Officer Jones’s .38, they said that Panthers often shuttled weapons to one another around the country, and that they had obtained the gun sometime after May 21st. “If I’d known that was a police gun it would not have been in my possession for long,” Bottom said. “That’s just common sense.”

Without a conclusive identification of Bottom, no identification of the second shooter, and little physical evidence, the Jones/Piagentini investigation stalled for nearly two years. But then, in May of 1973, it was suddenly reinvigorated when a Panther named Herman Bell, who had been under suspicion in the police shooting, appeared on the F.B.I.’s Ten Most Wanted List for a series of

bank robberies in California, Louisiana, and Mississippi. In September, Bell was finally arrested, in New Orleans, by a posse of agents from the F.B.I., the N.Y.P.D., the San Francisco Police Department, the New Orleans Police Department, and the Manhattan D.A.'s office. In the course of their investigation [before or after Bell's arrest?], the police had discovered that in the spring of 1971 Bell, Bottom, and Washington had been living together in New York, sharing a Bronx safe house with two other Panthers, Gabriel and Francisco Torres, and three women associates. [How many months later?], the five Panthers—Bell, Bottom, Washington, and the Torres brothers—were charged with the murders of Officers Jones and Piagentini. At the trial, investigators said they had matched Bell's fingerprint records to prints lifted from the hood of the Ford Mustang at Colonial Park; Bell's lawyers, however, claimed that the police were desperate to solve this case, and had falsified the fingerprint evidence in order to convict Bell. "I robbed a lot of banks—we didn't think of it as stealing, it was 'expropriation,' for the movement—but I did not shoot those cops," Bell told me recently. "If they had actually lifted my prints from that car, how come it took them six months to match them? There are many, many unanswered questions in this case."

THE case of Bell, Bottom, Washington, and the Torres brothers required two trials. Both were held in the New York Criminal Courts Building, on Centre Street on the Lower East Side. The first trial opened on January 7, 1974, before Judge TK. TK months earlier, Robert Tanenbaum had taken over as the prosecutor on the case from John J. Keenan, who was transferred to Queens. Tanenbaum was born in Brooklyn, in 1948, the second son of a beauty-goods salesman and a school-teacher; after graduating from Berkeley's Boalt Hall law school, in 1968, he returned to Manhattan to work as an Assistant District Attorney under Frank Hogan. Even then, Tanenbaum's reputation was that of a hardworking and highly competitive prosecutor, whose effectiveness was occasionally limited by his ego. A trial featuring murdered policemen and black revolutionaries was bound to prove spectacular, and parti-

sans of both sides crowded the courtroom and paraded along Centre Street daily. The Panthers' confidants, many of whom were objects of police scrutiny, were unwilling to take the stand as character witnesses; the police, meanwhile, had to contend with the disclosure of widespread corruption in the N.Y.P.D. by Frank Serpico and the Knapp Commission.

"A courtroom is like a theater," Tanenbaum once wrote, "and every prosecutor must think like a dramatist." He presented the jury with a sweeping tableau. On May 21, 1971, he said, Bottom (who is tall) shot Officer Jones with a .45-calibre pistol; Herman Bell (who is of medium height, but whose face is not pockmarked) shot Officer Piagentini with a .38, and when Piagentini refused to die Bottom pumped a few .45-calibre rounds into him; Washington and the Torres brothers had meticulously planned the attack and were acting as lookouts. To make his case, Tanenbaum summoned two of the women who had shared the Bronx safe house with the Panthers. The women told the court that at about eight o'clock on the evening in question the five men had left the apartment; at around eleven, they had returned in high spirits, toting pistols and liquor, and had proceeded to pantomime their attack on the policemen in grisly detail. Afterward, they listened to a television-news bulletin about the killings and celebrated late into the night. It was very damaging testimony.

The Panthers tell a different version of the events of May 21st. During the trial, they declined to testify on their own behalf (to avoid being cross-examined about their illicit activities), but they now admit that they partied that night; they even acknowledge toasting the deaths of Jones and Piagentini—"because," they say, "we have always had an antagonistic relationship with cops." But they insist that there was "absolutely no way" they could have shot the two policemen, even though they are somewhat vague about what they were doing earlier that night [OK?]. They were busy with diplomatic negotiations among warring Panther factions they claim, and were attending to "other Panther business."

Bell: "For the police to say I was at Colonial Park is ridiculous. I was running from Manhattan to Brooklyn to Queens, trying to sort out the Party

split.”

Washington: “I think the shooting probably *was* a B.L.A. operation, but I wasn’t involved. Actually, I was busy planning to break some brothers out of jail in New Haven.”

Bottom: “That wasn’t a ‘special’ night—we were just hangin’ out, waiting for the [Panther] meetings. We weren’t anywhere near Colonial Park. We don’t have an alibi—if we did, we would’ve used it in court.”

The defense attorneys pointed out that during the investigation, which at the time was the longest in New York history, the original prosecutor, John Keenan, had jailed two of the women for thirteen months as material witnesses, and that later Robert Tanenbaum had released the women, reunited them with their children, and installed them in a police apartment. The prosecutor had struck a deal, the defense suggested: in exchange for clemency, the women had implicated their comrades. Tanenbaum denied the charge. But so many other questions—such as how the police matched Herman Bell’s fingerprints, for example—had been raised about the case that the jury was hopelessly confused, and a mistrial was declared.

A year later, a second trial opened, before Justice Edward J. Greenfield. Tanenbaum had no other suspects, and the stakes were now much higher. The prosecution and defense lawyers interviewed seven hundred and fifty-six citizens before impanelling a jury. Meanwhile, the five Panthers flouted the court in every way they could think of: they refused to stand for Judge Greenfield; they turned their backs to him and addressed the spectators; they referred to Tanenbaum as Captain America. Before the trial and again while it was in progress, they attempted to escape. “I didn’t want a clean, neat knockout,” Tanenbaum later wrote. “I wanted to hold them on the ropes and batter them, I wanted to hit them with everything I had.”

This time, Tanenbaum built his case around the weapons, and his star witness was Rubin Scott, a self-described “armor” for the Panthers, who had been arrested in New Orleans for bank robbery [when?], and was later indicted for the murder of a California police officer. (Charges were subsequently dropped.) Scott testified that after the arrest the New Orleans police had beaten him,

branded him with a cattle prod, and stuck needles into his testicles, because they were convinced that he knew the whereabouts of Herman Bell. In return for the promise of a light sentence, Scott led police to a farm owned by a relative of Bell's, in Pocahontas, Mississippi, and there the police unearthed Officer Piagentini's service revolver. The gun, Tanenbaum said, conclusively linked Bell to the death of Piagentini. Scott further testified that, as part of one of his regular "consignments," he had shipped a .45-calibre pistol from San Francisco to New York, and Tanenbaum declared that this was the same gun that Bottom had used to shoot Officer Jones. Rubin Scott was the only person who could link Piagentini's .38 directly to Herman Bell and the Colt .45 directly to Bottom.

Another key witness was Detective George Simmons, the dean of the N.Y.P.D. ballistics division, who had personally handled this case. Simmons testified that he had matched bullets extracted from the bodies of Jones and Piagentini to Bottom's Colt .45. In summation, Tanenbaum said, "In a very real sense, ladies and gentlemen, this case starts and ends with [Jones and Piagentini's .38s]. Why do the killers keep these guns? . . . Don't they know they are incriminating? Of course they are incriminating. But remember who you are dealing with here. If you kill two human beings and you bother to take their guns, you are delaying your escape. . . . You are taking these guns because they are trophies. . . . To these men, Waverly Jones's gun and Joseph Piagentini's gun are the badge of the assassin."

On May 12, 1975, a jury of four blacks and eight whites found Bell, Bottom, and Washington guilty of first-degree murder. Judge Greenfield dismissed charges against the Torres brothers, for lack of evidence, and sentenced each of the three convicted killers to two concurrent terms of twenty-five years to life. When I recently asked the three Panthers to tell me who had shot Jones and Piagentini, each smiled opaquely and said he didn't know, or wouldn't say. When I asked why they wouldn't say, they said they were reluctant to expose their cadre to grand-jury indictments. [QA: Has none of their supporters commented on the unsatisfactoriness of this expln.?)]

IN 1979, Robert Tanenbaum collaborated, with Philip Rosenberg on a "true-crime" thriller about the trial, entitled "Badge of the Assassin." In it he portrays himself as a knight in shining armor who rescues an investigation gone badly adrift. The Panthers are characterized as a "sorry collection of skulking assassins." But the factual accuracy of the book has been disputed by [whom? when? How?], and Tanenbaum now describes it as a work of "mostly non-fiction." In 1985, Tanenbaum co-produced a two-million-seven-hundred-thousand-dollar movie based on his book for CBS television. The film, also entitled "Badge of the Assassin," starred James Woods as a tough yet tender Tanenbaum, and Yaphet Kotto and Alex Rocco as a clean-cut detective team (based on the detectives who worked on the case, Cliff Fenton and Bill Butler). The cinematic Panthers are stereotypes: hoodlums with gigantic Afros and black leather jackets, who speak a "jive" street patois in the manner of "Shaft." Brian Glick, who had become the defendants' attorney in 1982, filed suit to block the telecast of the movie, arguing that it reinforced a distorted version of characters and events. The suit failed, though, and the movie proved quite popular. (It still runs on cable TV, and is available on videotape.)

Throughout both the book and the film, Joseph Piagentini's widow, Diane, appears as an avenging angel who goads Tanenbaum on to courtroom victory. Diane Piagentini still lives in the ranch-style house in Long Island that she shared with her husband; she, too, has a story to tell about the prosecutor. One day in [year?], she says, Tanenbaum dropped by and asked her to sign a release. She recalls with great clarity that he leaned close and promised her: "I'll take care of you financially." At the time, Ms. Piagentini says, she thought that Tanenbaum could "walk on water," because he had convicted the men she holds responsible for her husband's death; she gladly signed the release. But after the book's publication, in 1979, Tanenbaum stopped answering her calls and refused to turn over any of the proceeds to her. Distraught, and surviving solely on her husband's pension, she hired a lawyer to sue Tanenbaum, but Tanenbaum had never signed a written agreement, so she was without recourse.

DEPARTMENT TK

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BY ALEX PRUD'HOMME

ON a Friday morning last June, three former members of the Black Panther Party, bound in handcuffs and leg chains, shuffled into the United States Court House, in lower Manhattan, to appeal, for the tenth time, their conviction of first-degree murder. In a celebrated trial in 1975, the three—Herman Bell, Anthony Bottom, and Albert Washington—were found guilty of the premeditated killing of two policemen in Harlem in 1971. From the start, the three men have vigorously maintained their innocence, claiming that they were framed by the police and the prosecutor, an assistant Manhattan District Attorney named Robert Tanenbaum. Because of the notoriety of the case, they have been kept in separate prisons, mostly in upstate New York, since their conviction. The hearing last June was the first time that Bell, Bottom, and Washington had appeared in public, or seen one another, in seventeen years; and it represented their best hope to date of winning a new trial.

Instead of arguing their innocence, as they had done at each prior appeal, the Panthers charged that they had been denied a fair trial in 1975. They backed their claim with previously withheld government documents, uncovered through the federal Freedom of Information Act, which, they said, showed that the New York City Police Department, the Manhattan District Attorney's office, and perhaps the Federal Bureau of Investigation had conspired against them. Lawyers representing the current Manhattan D.A., Robert Morgenthau, argued that the new evidence would not have affected the jury's original verdict. Sometime in the near future, Federal Judge Morris B. Lasker will decide whether the three deserve a new trial.

The case of Bell, Bottom, and Washington is full of ambiguities and conflicting truths. President Nixon and the F.B.I. director, J. Edgar Hoover, took a personal interest in its solution; it

has been the subject of a controversial book and of a movie based on the book; and it remains for many a politicized and emotionally fraught subject. The Patrolmen's Benevolent Association, for instance, maintains that it is strictly a murder case—a double police homicide—and regards the Panthers as venal cop killers, whose endless appeals have plagued an overburdened court system. Robert Tanenbaum agrees, dismissing the three as “just lunatics and murderers, *not* ‘revolutionaries,’ ” and calls their latest motion “an example that there is no finality in the criminal-justice system.” On the other hand, a number of ex-Panthers and young black political activists consider Bell, Bottom, and Washington—collectively referred to as the New York Three—martyrs in the struggle for racial equality. These and other supporters are deeply skeptical of the criminal-justice system, which they consider racist, and doubt whether self-described “black militants” could ever receive a fair trial. “There was tremendous pressure to convict someone in this case,” says Lawrence Vogelmann, who is one of five attorneys now representing the Panthers, and is also a professor at the Benjamin N. Cardozo School of Law, at Yeshiva University. “The reality is cops perjure themselves all the time, and this was the biggest case of the prosecutor's career. They were convinced they had the right bad guys. The ends justified the means.”

At their trial, in 1975, Bell, Bottom, and Washington were young, self-professed revolutionaries, full of plans for overthrowing the United States government. Last June, they looked like thoughtful, frustrated, and cautiously optimistic middle-aged men. Herman Bell, now forty-five years old, is lithe and intense; he has a professorial mustache and wears silver-rimmed glasses. Anthony Bottom, who has adopted the Muslim name Jalil Muntaqin (it means “majestic servant of Allah”), is forty-one, stands six feet three, wears a goatee, and has large, roaming eyes. Albert Washington, who goes by the Muslim name Nuh (meaning “relief”), is fifty-two and stout, with dramatic silvery-white hair and a flowing silvery-white beard. The three men readily admit having robbed banks and trafficked in illegal weapons and having run from the law, but they insist that they did not shoot the two New York policemen. “Look, we weren't

choirboys, we were in the process of building a *revolution*," Bottom told me. "We are still revolutionaries. Once a Black Panther, always a Black Panther. But we did not shoot those cops. I consider myself a political prisoner: I was put in jail for my beliefs, and that's why I'm still here."

The Panthers hold Robert Tanenbaum responsible for orchestrating a conspiracy against them. They claim that, among other things, he suppressed an F.B.I. ballistics report they consider exculpatory, and encouraged a New York police detective to perjure himself. Tanenbaum denies their charges. At the moment, he operates a one-man law practice and writes crime books in Beverly Hills, California, where he also happens to be the mayor. Residents of Beverly Hills describe him as "the kind of guy you either love or hate." A one-time Berkeley basketball player, Tanenbaum is six feet four and weighs more than two hundred and twenty pounds; he has a ruddy face and neatly styled gray hair. He can muster great charm, but he is also famously truculent and prickly. He often turns a seemingly innocuous occasion—a basketball game at the local Y.M.C.A., say, or a City Council meeting—into an acid confrontation. When I asked him recently about his knack for controversy, he said, "You know, Bobby Kennedy was always criticized for being ruthless. *He* said he was 'resolute and firm.' Do I bring a passion to my work? Well, yes, I do."

In his summation in 1975, Tanenbaum ridiculed the notion of a frameup, telling the jury that such an idea was "beyond 'Mission Impossible,'" and was a "smoke screen" that "offends your common sense." He added, "The irony of this case [is that] the defendants' own brazenness, their own greed, their own lust for power was their ultimate undoing." Then he made a prediction: "If this case were tried twenty years from now, [the] facts would be the same." As the case stands nineteen years later, however, the evidence suggests the existence of facts that Robert Tanenbaum never disclosed.

THE officers Waverly Jones and Joseph Piagentini were shot to death in Harlem on May 21, 1971. Within days, a little-known militant faction of the Black Panther Party, the Black Lib-

eration Army (B.L.A.), took credit for the shooting, in notes it delivered to the radio station WLIB and to the *Times*. "Every policeman, lackey or running dog of the ruling class must make his or her choice now," the notes read. "Trying to stop what is going down is like trying to stop history." [Sentence on public reaction?]

In the American political arena, few groups have flashed as brilliantly and fallen as precipitously as the Black Panthers. The Party was formed in Oakland, California, in 1966, by Huey Newton and Bobby Seale and by its height, in 1969, had gained TK number members. The Panthers declared themselves an "army" dedicated to protecting black civil rights, but disagreed internally over the best means to achieve their goals. Some Panthers ran a free breakfast programs or sold the party newspaper; others, under the guise of revolutionary [what?—copy illegible], committed terrorist murders and bombings and sold drugs. Many policemen were convinced of a nationwide Panther conspiracy by blacks to kill white policemen. J. Edgar Hoover considered the B.P.P. a "black nationalist hate group," and mounted a zealous covert disinformation campaign to sever connections between rival Panther factions. By the spring of 1971, the B.P.P. had become fractured by internal battles over money and power, and was self-destructing almost as fast as it had risen. (By TK, some nineteen Panthers had been killed in shoot-outs; many others landed in jail or went into self-imposed exile abroad.)

On May ??, 1971, twenty-one Panthers who had been indicted on charges of, among other things, conspiring to burn down department stores and blow up the New York Botanical Garden were tried in New York, and, on May 13th they were acquitted. During the trial of the "Panther 21," the defense was able to prove that the main witnesses against them were actually undercover police officers. It was a humiliating defeat for the N.Y.P.D., the F.B.I., and the Manhattan D.A., Frank Hogan. At ?? o'clock on the night of May 19th (Malcolm X's birthday), two N.Y.P.D. officers, Thomas Curry and Nicolas Binetti, were machine-gunned on Riverside Drive at 106th Street while chasing two B.L.A. "soldiers" who were fleeing in a black sedan. The officers survived,

but were permanently injured. As it happened, the shooting took place in front of my parents' apartment building; I was nine years old, and was startled by the sharp reports of gunfire, the squeal of tires, and the sound of crumpling metal. Curry and Binetti's police cruiser had crashed into my parents' parked car. It was the first time I was made personally aware of how violent the city's racial antipathies had grown. [what happened to assassins? Were *they* the pair in sedan, or a diff. gang? Any caught? Tried and convicted? Any in prison now?]

What happened two nights later, on May 21st, is still largely in dispute. Officer Jones, who was thirty-three years old and black, and Officer Piagentini, who was twenty-eight and white, were patrolling the Thirty-second Precinct, in East Harlem in a squad car. At about ten-fifteen, Jones and Piagentini responded to a routine call at the Colonial Park Houses, a project at 155th Street and the Harlem River Drive. They found nothing amiss. Around ten-thirty, as they were walking back to their car, they were ambushed from behind. A forensic pathologist later removed four .45-calibre bullets from the head and back of Waverly Jones, who had fallen dead without a sound. Joseph Piagentini was shot twelve times—in the back, in the head, and in the front—by .38 and .45-calibre guns; the fusillade left twenty-two bullet holes in his body. Witnesses recalled that Piagentini writhed and cried out as he was shot; he died in a squad car as he was rushed to Harlem Hospital. The same witnesses described the killers as two black youths: one was tall and paced nervously, they said, the other was of medium height and had a pockmarked face, and had been seen lounging on the hood of a Ford Mustang before the shooting. They took the fallen officers' .38-calibre Smith & Wesson service revolvers and then fled the scene.

Joseph Piagentini was the seventh police officer killed in the line of duty in the first five months of 1971; by comparison, seven policemen had been killed in all of 1970. "We're in a war," declared Edward Kiernan, the president of the P.B.A. For the next two days, the *Times* ran front-page stories about the attack, reporting that hundreds of policemen had affixed black mourning strips across their shields and were pressing "a mas-

Eventually, she received twenty-five hundred dollars; her lawyer's fees came to fifteen hundred dollars. "After all these problems, I expected *something*—some college money for my kids, at least," she says. "But I'm not bitter. God will take care of Tanenbaum."

When I asked Robert Tanenbaum about the story, he shrugged, and said, "No promises were made—it was a misunderstanding. Besides, the money was nothing of great moment. She just wanted a piece of the action."

BETWEEN 1975 and 1985, Bell, Bottom, and Washington launched a series of efforts to gain a retrial. Each time, however, their case came before Judge Greenfield, who continues to sit on the State Supreme Court, and he denied the motion. The defense accused Greenfield of "bias." He accused the defense lawyers of "defending terrorists." The next higher court, the Appellate Division, refused even to consider an appeal. By 1982, the Panthers had started filing Freedom of Information requests for documents concerning their case; the result was thousands of pages of F.B.I. and N.Y.P.D. reports on the NEWKILL investigation, which now crowd their cells.

In the meantime, the prosecutor's case had begun to fray at the edges. In affidavits taken in 1977 and 1985, the star witness, Rubin Scott, recanted his testimony. "Much of my testimony was untruthful," he wrote [said?] of the trial. "I was completely isolated and scared for my life . . . Herman Bell did not bury [Piagentini's .38 on the Mississippi farm] . . . I in fact buried the gun . . . I also testified falsely to other facts such as: that I shipped guns from San Francisco to New York. In fact, I didn't ship any guns to New York." When I asked Judge Greenfield about Scott, he shook his head and declared that he had never encountered such a witness before or since. He added that he was not inclined to believe Scott's recantation.

In November, 1982, the Panthers again requested a retrial, and shortly thereafter the .38 and .45-calibre bullets extracted from the bodies of Officers Jones and Piagentini—crucial evidence, which had been safely held in police custody since 1971—were destroyed. (The guns confiscated from the Panthers, which are not considered crucial evi-

dence, had been destroyed much earlier.) There is no record of who destroyed the bullets or why. The defense suspects police subterfuge. An assistant D.A. told me, "The police probably ran out of storage space. In fact, it would be unusual if the evidence were *not* destroyed after so many years." Under normal procedure, however, a District Attorney must sign off on the destruction of evidence. In this instance, there was no such signature and no official explanation of the destruction. And, of course, it is now impossible to retest the bullets.

BY 1986, Robert Tanenbaum had moved to Beverly Hills and won a seat on its City Council. The City Council rotates the largely ceremonial position of mayor among its five members, and in 1989 he served his first term as mayor. That same year, he was hired by Riordan & McKinzie, a politically well-connected Los Angeles law firm, to defend cases involving white-collar crime. His real ambition, though, was to become the Los Angeles District Attorney, and after about a year he left the firm. [OK?] (Carl McKinzie, the managing partner, told me, "We're still good friends. We just didn't have the cross-pollination we'd hoped to have with Bob.")

Tanenbaum has the quick intelligence and the gift for language of a natural politician, but his ambition occasionally eclipses his judgment. For example, he often intimates that he played a significant role in prosecuting Los Angeles' famous "Hillside Strangler" in 1987. Someone closely involved in the case, though, says, "Tanenbaum had *zero* to do with it. He was just one of several outside consultants. The investigators had decided to prosecute, and made a presentation; all Tanenbaum did was to say 'Yes, I agree with you.' "

Two years ago, Tanenbaum involved himself in a little-known imbroglio between Sylvester Stallone and the Beverly Hills Police Department, which threatened to erupt into a scandal of Hollywood proportions. Early on the morning of March 28, 1991, Stallone got into a seventy-mile-an-hour fender bender with a paparazzi named E. L. Woody on Sunset Boulevard. When the police began their investigation, they learned that Stallone was represented by Mayor Robert Tanenbaum. The Mayor could

discern no conflict of interest in this arrangement—not even the appearance of a conflict. Others—notably his chief of police—strongly dissented. The fact that Tanenbaum was in the middle of campaigning for the office of District Attorney complicated matters even more. Although the police are unwilling to comment on the Stallone affair, confidential memoranda show that they were vexed, and felt that their inquiry had been turned into a “ridiculous and dangerous” political football. Eventually, they complained to the City Council that Mayor Tanenbaum was “intimidating” their investigation.

Max Salter, an Army-surplus-store magnate, who will succeed Tanenbaum as mayor this April, told me, “I said, ‘Bob, how in God’s name can you represent someone who is being investigated by your *own* Police Department? It’s not right, it’s not ethical!’ Well, he went absolutely berserk on me; he turned into Captain Queeg of the ‘Caine Mutiny.’” After several days of behind-the-scenes negotiations, however, Tanenbaum quietly withdrew from the case. When a local newspaper reporter asked the Mayor whether he represented Stallone, he said no. In the election, Tanenbaum failed to receive the endorsement of his Police Department, but he did get a twenty-five-thousand-dollar contribution from Stallone. He finished in third place. (Stallone’s case is going to trial this spring.)

IN 1989, Bell, Bottom, and Washington, having exhausted their options in the New York State courts, appealed to the Southern District Federal Court with a writ of habeas corpus. It’s rare to have a habeas hearing granted, rarer still to win such a case. Last June, Federal Judge Morris B. Lasker heard the Panthers’ argument for a retrial. Lasker, who is now seventy-five, enjoys a reputation as the most Solomonic judge in the Southern District Federal Court; he is probably best known for his decision in the 1974 *Rhem v. Malcolm* case, in which he forced New York City to improve living conditions for prisoners kept in the Tombs. Last June, he dismissed eight of the Panthers’ nine claims, and kept the habeas hearing narrowly focussed on the issue of ballistics. Robert Tanenbaum was not called to testify, but George Simmons was. Simmons, the

N.Y.P.D. ballistics expert who had provided the clinching evidence at the original trial, had since retired, and he now testified—as he had then—that on September [?], 1971, after Bottom and Washington were arrested, he had flown to San Francisco with all the Colonial Park ballistics evidence to perform a comparison test with Bottom's Colt .45. He fired the Colt into a water tank, retrieved the bullets, and microscopically compared their identifying characteristics—called “lands and grooves”—against bullets removed from Jones and Piagentini's bodies. This, he claimed, was the first, and only, comparison test of the bullets. On September 24th, he said, he matched his test-fired bullets to the Colonial Park evidence, and thus solved the case.

But records of a secret F.B.I. ballistics test, which Bottom uncovered just weeks before last summer's hearing, belie this version of events. On September 7th and 8th of 1971, *before* Simmons' test, the F.B.I. lab in Quantico, Virginia, tested two bullets from Colonial Park against bullets fired by Bottom's Colt .45; unlike Simmons' test, however, the F.B.I. comparisons proved “inconclusive,” and which the Panthers assert that such a test is the equivalent of no match. (The F.B.I. did match a Colonial Park shell casing to a test-fired shell casing, but the Panthers' experts hold that a shell casing taken from the street is less accurate in identifying a gun than a bullet taken from a body.) “That F.B.I. report was the thread that began to unravel this whole case,” says Jedediah Alpert, one of the Panthers' defense attorneys.

If the F.B.I. ballistics report had been made public at trial, Professor Vogelmann argues, it would have put all of Tanenbaum's testimony (such as the fingerprint evidence used against Herman Bell) in doubt; the jury, he says, might have reached a different conclusion. But lawyers representing the Manhattan D.A.'s office, Mark Frazier Scholl and James Troy, reject the contention that Simmons intentionally lied on the stand, saying that the F.B.I. ballistics test—having matched a shell casing—was actually inculpatory, and that the F.B.I. report would in no way have affected the jury's verdict.

During the questioning last summer, George Simmons appeared to be stone-

walling. When he was asked why he had testified that his September 24th test was the only comparison of the Colonial Park bullets, he replied, "I must have made a mistake. I can't recall." Acknowledging that he had sent bullets to the F.B.I., he said last June that he had not learned of the results of the F.B.I. test until that very month. "They didn't volunteer it, and I never asked," he said.

The Panthers' attorneys flatly reject Simmons' hazy recollections. "As the ballistics expert in this case it is inconceivable that Simmons did not know that the F.B.I. had tested this material and what its results were," says Michael Spiegel, one of the Panthers' attorneys. Perhaps even more damning was a set of N.Y.P.D. documents showing that Simmons himself had actually tested the Colonial Park ballistics evidence on September 7th and 8th in New York City—before his trip to San Francisco. Inexplicably, he failed to record his findings, and now says that he has no recollection of performing those tests. When Lawrence Vogelmann cross-examined Simmons on his New York tests, Simmons appeared forgetful, or equivocal. Here is part of the transcript:

Q: Now, would it be fair to say that [the Jones/Piagentini case] was one of the more significant cases in your career?

A: Yes.

Q: The arrests of [Bottom and Washington] in August was the first big break that the NYPD had in this investigation, is that right?

A: Yes.

Q: And here it is, the first evidence of that case (test-fired bullets from Bottom's Colt .45), and you have no recollection whatsoever, Sir, of matching that up to the evidence received from the [NYPD]?

A: That's correct.

Q: Now, did you tell anybody, 'Hey, look what I did, I just broke the Piagentini and Jones case, I matched up that .45 to this evidence.' Did you tell anybody that, Sir?

A: I don't recall.

Q: Did you call up Detective Butler and say, 'Hey, I broke your case, I matched up that .45 to the evidence.' Do you recall doing that?

A: No.

Q: You have no recollection whatsoever?

A: No recollection at all.

"There was a web of lies here," Brian Glick [OK?] says. "Our theory is: Simmons couldn't match the bullets in New York, so he flew three thousand miles to San Francisco to 'match' them under less conspicuous circumstances."

The Panthers contend that both Simmons and Robert Tanenbaum had

copies of the secret F.B.I. report during the trial and suppressed it. Simmons and Tanenbaum deny the charge. Indeed, Mark Scholl and James Troy argued that because of a lack of communication between the NYPD and the F.B.I., Simmons never received a copy of the bureau's test results. "I'll tell you—unequivocally—that the F.B.I. never said a word to me about this case, nor I to them," Tanenbaum says. In an affidavit, he had claimed that he had read all the F.B.I. investigative reports on this case, but when I asked him about the F.B.I. ballistics test, which had been included in at least three separate reports, he denied ever seeing it. "I have no idea what you are talking about," he said. "The only ballistics test I saw was George Simmons' test, which was iron-clad. I had no knowledge of anything that was even closely inconsistent with the fact that the .45 was the murder weapon. And I've never had a case when a cop perjured himself—I'll take an oath on that any day!"

Nevertheless, Vogelmann and Spiegel say they have discovered five copies of the F.B.I. test in Tanenbaum's original case file. "It is inconceivable that he could have reports from the F.B.I. on a case of this nature and not read them," Spiegel says. "Inconceivable!"

BOTH sides cannot be telling the truth, and it's up to Judge Lasker to decide whom to believe. Judge Greenfield says that he bent over backward to give the Panthers the fairest possible trial. In 1989, he told the *Times*, "They said they were at war with the United States." "I told them that indeed, if this was a war, that they must expect that society will protect itself and take steps to avoid and to punish wanton killing." And in a recent conversation with me, Greenfield amplified his remarks, adding that, "The evidence in this case was overwhelming. Nobody was railroaded." In hindsight, however, it appears that some of the evidence may have been circumstantial. In the last few months, for example, the Panthers' F.O.I. requests have revealed documents indicating that their female associates may in fact have cut a deal with the D.A.'s office and the police—in exchange for clemency [OK?]. Tanenbaum categorically denies that a deal was cut. The nettlesome revelations of the

F.B.I. documents, the fuzzy testimony of George Simmons, and the bluster of Robert Tanenbaum, however, make the notion of a frameup less outlandish than it originally appeared. Indeed, to dismiss the possibility of a frameup out of hand would be to ignore history. Between 1956 and 1971, J. Edgar Hoover authorized agents of the F.B.I.'s top-secret COINTELPRO (Counter Intelligence Program) to carry out hundreds of clandestine, unconstitutional actions against black civil-rights organizations, targeting especially Dr. Martin Luther King and the Black Panther Party. The purpose of COINTELPRO, an internal F.B.I. memo said, was "to expose, disrupt, misdirect, discredit or otherwise neutralize" the Panthers and other radical groups. The F.B.I. worked closely with local police departments to have Panthers arrested on "every possible charge," to have them imprisoned under false pretexts, and to "exhaust and demoralize" the Party. "Since the purpose of counterintelligence action is to disrupt the B.P.P.," one memo read, "it is immaterial whether facts exist to substantiate the charge." In 1971, COINTELPRO was exposed by civil-rights activists and shut down by the F.B.I.; the following year Hoover died, but the F.B.I. continued to pursue operations of the same sort under different guises. Thus far, the F.B.I. has released only a portion of its NEWKILL records, and it is impossible to know the extent of the Bureau's role in the investigation of Bell, Bottom, and Washington. One case that may have some bearing, however, is that of a Panther named Richard Moore (he is also known as Dhoruba Bin Wahad) who in 1973 was convicted of the 1971 shooting of officers Curry and Binetti in front of my parents' building. Moore claimed all along that he was innocent, and after a thirteen-year struggle he used F.B.I. documents to show that the Manhattan D.A.'s office had withheld important evidence during his trial. In 1990, Moore's conviction was overturned; two months ago, he won the right to a new trial—a decision that the state has appealed. "My case was not an aberration," he told me not long ago. "The D.A.'s office wanted to make an example of people like me and the New York Three. Both cases served as a watershed in the war against the black community. But they might have opened a Pandora's Box." John Keenan

was the original prosecutor on the Moore case as well as on the case of Bell, Bottom, and Washington. He is now a highly respected federal judge. When I asked him recently about Moore, he said, "I'm not going to argue with you about that." When I asked him about Bell, Bottom and Washington, he declined to comment on the ground that their case is pending.

Bell, Bottom, and Washington have admitted committing serious crimes, but were they jailed for a murder they did not commit? The truth about whether the three shot Jones and Piagentini has been obscured by dense clouds of contradiction. Did the Panthers receive a fair trial? At the very least, a number of important questions about the way this case was prosecuted have yet to be answered.

If Judge Lasker grants the three Panthers a new trial, the Manhattan D.A., Robert Morgenthau, has thirty days to appeal the decision. In the light of the Panthers' ongoing discoveries, the recantation of Rubin Scott, and the destruction of the ballistics evidence, it's not clear how doggedly Morgenthau might pursue a retrial. (He refuses to comment on the case.) Indeed, Judge Lasker, if he rules in the Panthers' favor, would, in effect, be confirming the allegations that George Simmons and Robert Tanenbaum suppressed important evidence at trial—that they, in effect, betrayed the very system they were trying to protect.

"Before convicting someone, our charge is to find him guilty 'beyond a reasonable doubt,' says William Mogulescu, who was one of the Panthers' attorneys in 1974 and 1975 and is now a New York Criminal Court Judge. "You cannot violate that moral absolute, even if you are convinced you have the bad guys. Once the system is bent, it's *bent*. The result is Sacco and Vanzetti; the Scottsboro Boys; the Rosenbergs; Alger Hiss. Those are real people, and they were actually victimized—they are not figments of somebody's paranoid imagination. The lesson is: Any society that permits its legal process to be circumvented by those in positions of authority will end up paying for it." On the other hand, if Judge Lasker rules against Bell, Bottom, and Washington it is certain that they will appeal their conviction—for the eleventh time. ♦