

California's Attempts to Disarm the Black Panthers

CYNTHIA DEITLE LEONARDATOS*

TABLE OF CONTENTS

I.	INTRODUCTION	948
II.	THE BLACK PANTHERS: THE GREATEST THREAT TO THE INTERNAL SECURITY OF THE COUNTRY	949
	A. <i>Racial Violence in the 1960s</i>	949
	B. <i>The Origin of the Black Panthers</i>	957
	C. <i>Panthers, Guns, and Violence</i>	964
	D. <i>Law Enforcement Response to the Black Panthers</i>	966
III.	CALIFORNIA DISARMS THE BLACK PANTHERS.....	968
	A. <i>The Panthers in California</i>	968
	B. <i>The Panthers Invade the Capitol</i>	969
	C. <i>California Passes the Gun Bill</i>	976
	D. <i>The Panthers Are Sent to Jail</i>	980
IV.	REASONS LEADING TO THE PASSAGE OF SECTION 12031: CRIME CONTROL OR PANTHER CONTROL?	981
	A. <i>The Statute Was Aimed at Preventing a Riot?</i>	981
	B. <i>Section 12031 Targeted the Black Panthers, Not the Ku Klux Klan, the Nazis, or the Minutemen</i>	986
	1. <i>The Black Panthers</i>	986

* Special Agent, Federal Bureau of Investigation (FBI); LL.M. 1999, New York University School of Law; LL.M. 1994, George Washington University National Law Center; J.D. 1992, New England School of Law; B.A. 1989, The Ohio State University. The author is grateful to Harry Leonardatos for his inspiration, enthusiasm, and research ideas, and to David B. Kopel for his patience, comments, and suggestions. The author would also wish to express gratitude to Richard Hernandez, the staff at the California State Archives, and the Hoover Institution Archives at Stanford University for their invaluable assistance. Although the author was granted permission by the FBI to publish this Article, the views expressed herein, as well as any mistakes, are the author's alone.

2. <i>The Ku Klux Klan</i>	990
3. <i>The Nazis</i>	992
4. <i>The Minutemen</i>	994
V. CONCLUSION	995

I. INTRODUCTION

Imagine this scene: You are a young black male living in Oakland, California in 1966. The police are terrorizing you during random car stops and identification checks. Many of your friends live in substandard housing, and if they make it through high school, are rewarded with a trip to Vietnam. White men are maintaining control over the government and most of the businesses. Your prospects for a successful future seem bleak.

Enter a group calling themselves the Black Panthers. They speak to you about “Black Power” and equality among the races and classes. For African-Americans, they demand full employment, an education, decent housing, and an exemption from military service. They also teach you the benefits of carrying a gun for self-defense. Interested?

On the other hand, what if you are a white state assemblyman in California, and the thought of an armed black community frightens you? You know that if you could somehow disarm this militant black group, you could convince your colleagues and constituents that California would never experience the destructive urban riots that had just devastated Detroit and Newark. Significantly, perhaps, as a member of the mostly white power structure, you would maintain your position of authority over the less fortunate, unarmed classes, and you could prevent an armed force from attacking and crippling the state.

When the Black Panthers screamed of an armed black populace on the verge of a revolution in 1966, the California Legislature responded with a gun control statute. While many journal articles have been written on the topic of race and guns, none have examined the history and motivations behind the California Legislature’s decision to enact a gun control statute in 1967 for the purpose of disarming the members of the Black Panther Party. This Article examines and analyzes this particular California law to enhance the Second Amendment literature on the topic of discriminatory gun control statutes.

Accordingly, Part II of this Article describes the violence experienced by African-Americans in the South in the 1960s, examines the origins of the Black Panther Party, and explains the Panthers’ views on guns. Part III describes the events leading to the proposal and the eventual passage

of the California gun control statute. Part IV then analyzes the reasons for the enactment of the law, concluding that the law was passed to disarm the Panthers. In short, the Article begs the following question: If California can pass a gun control statute in order to disarm a specifically identified, politically distasteful, minority group, is any class of citizens safe from being left defenseless in the future?

II. THE BLACK PANTHERS: THE GREATEST THREAT TO THE INTERNAL SECURITY OF THE COUNTRY¹

A. Racial Violence in the 1960s

Before describing the origin of the Black Panthers and their reasons for possessing, displaying and using firearms, an examination and understanding of the racial violence that was destroying African-American families and communities is necessary. The Black Panthers claimed that they carried firearms in order to defend themselves and others against brutal and often deadly attacks perpetrated by law enforcement, the Ku Klux Klan, and other groups intent on thwarting the advancement of civil rights.² If violent attacks against African Americans were as prevalent as the Panthers claimed, and if local, state, and federal governments offered no assistance or protection, then the Panthers' position of armed self-defense has merit.

Robert J. Cottrol and Raymond T. Diamond have written two of the most comprehensive law review articles on African-Americans and guns.³ Unfortunately, Cottrol and Diamond devoted only two

1. The then-acting Director of the Federal Bureau of Investigation (FBI) described the Black Panthers as "the greatest threat to the internal security of the country." WARD CHURCHILL & JIM VANDER WALL, *AGENTS OF REPRESSION: THE FBI'S SECRET WAR AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* 77 (1990) (quoting J. Edgar Hoover).

2. See *infra* Part II.B-C.

3. See Robert J. Cottrol & Raymond T. Diamond, "Never Intended to be Applied to the White Population": *Firearms Regulation and Racial Disparity—The Redeemed South's Legacy to a National Jurisprudence?*, 70 CHI-KENT L. REV. 1307 (1995) [hereinafter Cottrol & Diamond, *Firearms Regulation and Racial Disparity*]; Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO L.J. 309 (1991) [hereinafter Cottrol & Diamond, *The Second Amendment*]. Two other authors have written excellent pieces on race and guns. See Carl T. Bogus, *Race, Riots, and Guns*, 66 S. CAL. L. REV. 1365 (1993); Clayton E. Cramer, *The Racist Roots of Gun Control*, 4 KAN J.L. PUB. POL'Y 17 (1995).

paragraphs in one of these articles to a description of the violence and death suffered by blacks at the hands of whites in the South in the 1960s.⁴ Within these paragraphs, the authors point to the most commonly remembered incidents of personal destruction: the attacks on Freedom Riders and protestors at sit-ins, the murder of Medgar Evers, and the Birmingham church bombing in which four black children were killed.⁵ The authors, however, do not discuss the institutional violence perpetrated by police officers, and they do not examine how the criminal justice system failed to prosecute private individuals who murdered African-Americans for no other reason than racial hatred.⁶

Most students of American history have learned about the political and racial volatility in the South during the 1960s. For example, in late 1963, communities in Birmingham, Alabama were in a state of racial crisis.⁷ Martin Luther King and other black leaders were pleading with President Kennedy to dispatch federal troops to the area or take other action to stop the violence and mayhem.⁸ Student Non-Violent Coordinating Committee (SNCC) President John Lewis sent a telegram to Attorney General Robert Kennedy on September 16, 1963, asking, "Just what do you expect Negroes to do to defend themselves against vicious onslaughts from whites with clubs and sticks or dynamite and guns?"⁹ Unfortunately, when the Birmingham campaign began in 1963, neither the White House nor the Justice Department gave the mass demonstrations their full attention.¹⁰ President Kennedy complained that the media coverage of the Birmingham violence cast the United States in a negative light throughout the world, and Attorney General Kennedy quipped that ninety percent of civil rights demonstrators had no idea what they were demonstrating about.¹¹ Although Robert Kennedy stated that the Birmingham violence made him "sick," he doubted that he had the constitutional authority to act.¹² Robert Kennedy believed that the

4. See Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 355-56. Professors Cottrol and Diamond only give the Black Panthers slight mention in one footnote, which concludes with the statement, "[T]he Black Panthers deteriorated into an ineffective group of revolutionaries, at times using arguably criminal means of effectuating their agenda." *Id.* at 358 n.273. The authors' lack of interest in the Panthers is unfortunate considering that the Panthers' activities in California, including their open display of weapons, ultimately led to a change in the state penal law. See *infra* Part III.

5. See Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 355-56.

6. See *infra* notes 16-30 and accompanying text.

7. See MICHAEL R. BELKNAP, *FEDERAL LAW AND SOUTHERN ORDER: RACIAL VIOLENCE AND CONSTITUTIONAL CONFLICT IN THE POST-BROWN SOUTH* 102 (1987).

8. See *id.*

9. *Id.* at 127.

10. See KENNETH O'REILLY, *NIXON'S PIANO: PRESIDENTS AND RACIAL POLITICS FROM WASHINGTON TO CLINTON* 220 (1995).

11. See *id.*

12. DAVID J. GARROW, *BEARING THE CROSS* 250 (1988).

state of Mississippi, not the federal government, had the responsibility to protect its citizens.¹³ The main reason Robert Kennedy even considered dispatching troops to Birmingham was to protect the actions of the state troopers, not the black citizenry.¹⁴ Thus, for African Americans, Attorney General Kennedy's inadequate response did not address the genuine concern of brutality at the hands of white mobs and the police.¹⁵

During this era, African Americans feared not only white supremacist groups and mobs, but they also had legitimate apprehensions that the police and government would not come to their rescue. For instance, some of the attacks directed at the Freedom Riders in the South were encouraged or facilitated by law enforcement. The conduct of Police Commissioner T. Eugene "Bull" Connor during a May 14, 1961 attack on Freedom Riders in Birmingham, Alabama provides a prime example.¹⁶ While Klansmen with lead pipes beat black victims, Connor purposefully delayed police response to the scene for at least fifteen minutes.¹⁷ Prior to the attack, Connor and the Klan members had reached an agreement that Connor would arrive at the bus terminal only after the attack had escalated.¹⁸ Don B. Kates, Jr., a legal scholar and former civil rights advocate in the South, recalled one situation in which "Klansmen broke up a series of marches in a Louisiana town with hideous violence and head-bashing while the police looked on in benevolent neutrality."¹⁹ As Kates explained:

13. See O'REILLY, *supra* note 10, at 225.

14. See GARROW, *supra* note 12, at 262.

15. Don B. Kates, Jr., a former civil rights worker and a noted criminal and constitutional law scholar, has described his experiences working in the South in the 1960s and the government's response to armed civil rights workers. See John Salter & Don B. Kates, Jr., *The Necessity of Access to Firearms by Dissenters and Minorities Whom Government Is Unwilling or Unable to Protect*, in *RESTRICTING HANDGUNS: THE POLITICS OF LIBERATION IN AMERICA* 185, 190 (Don B. Kates, Jr. ed., 1979); see also KWAME TURE & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 52-53 (1992) ("If a nation fails to protect its citizens, then that nation cannot condemn those who take up the task themselves. . . . [W]hat man would not defend his family and home from attack?").

16. See Bogus, *supra* note 3, at 1374.

17. See *id.*

18. See *id.*

19. Salter & Kates, *supra* note 15, at 188. Kates elaborated: Moreover, civil rights workers' access to firearms for self-defense often caused Southern police to preserve the peace as they would not have done if only the Ku Kluxers had been armed. . . . The unarmed marchers' appeals to the governor for state police protection were in vain. After many weeks of heavy injuries to the marchers, a black man shot one of several Klansmen who attacked him with clubs. The state police arrived the next day, and there was

Those who view the situation from the perspective of today's federally enforced civil rights gains can have no idea what the South was like in the 1950s and early 1960s when over a hundred civil rights workers were murdered while our federal government would do nothing to offend the South's all-white electorate. Under strict gun control the slaughter would have been immeasurably worse, since we could not have defended ourselves.²⁰

Like law enforcement officers, the courts were also failing to protect African-Americans during the 1960s. Although a few civil rights laws existed in the early 1960s, the criminal justice systems were not protecting blacks against assaults and injustice.²¹ When three black teenagers were killed in the Algiers Motel in the midst of the Detroit riots in 1967, three Detroit policemen and one black private security guard were tried for the murder.²² Although defense counsel conceded that the four defendants shot two of the victims, the jury voted to acquit.²³ In Boston, in the spring of 1970, a policeman fired five shots, killing an unarmed black man who was a patient in the Boston City Hospital, after the man snapped a towel at the policeman.²⁴ After a bench trial, the judge acquitted the perpetrator.²⁵ At the same time that

no further violence.

Id. Furthermore, Kates declared that “[a]s a civil rights worker in a Southern state during the early 1960s, I found that the possession of firearms for self-defense was almost universally endorsed by the black community, for it could not depend on police protection from the KKK.” *Id.* at 186. See generally DAVID B. KOPEL, *THE SAMURAI, THE MOUNTIE, AND THE COWBOY: SHOULD AMERICA ADOPT THE GUN CONTROLS OF OTHER DEMOCRACIES?* 338 (1992) (“Over a hundred civil rights workers were murdered during the [1950s and 1960s], and the Department of Justice refused to prosecute the Klan or to protect civil rights workers adequately. Help from the local police was out of the question in areas where Klan dues were sometimes collected at the local station.”); John R. Salter, Jr., *Social Justice Community Organizing and the Necessity for Protective Firearms*, in *THE GUN CULTURE AND ITS ENEMIES* 19 (William R. Tonso ed., 1989). Explaining his experiences as a grassroots civil rights organizer in North Carolina, Salter stated,

The multicounty setting was Klan-ridden and night-time terrorism was common: cross-burnings, armed motorcades, arson, shootings. Local law enforcement was almost completely dominated by the United Klans of America in some of the counties and at least strongly Klan-influenced in others. Halifax County, in which our project started and where our central base existed in the town of Enfield, was the toughest. [Klan dues were paid and collected in the Enfield police station!]

Id.

20. Salter & Kates, *supra* note 15, at 189-90.

21. See HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES* 454 (rev. & updated ed. 1995); see also BELKNAP, *supra* note 7, at 109-10 (arguing that one line of defense which seemed to succeed more often than not with white defendants was the self-defense argument—whites who attacked civil rights workers would then claim in court that they were acting in self-defense in an unprovoked attack).

22. See ZINN, *supra* note 21, at 454.

23. See *id.*

24. See *id.*

25. See *id.*

killing occurred, a federal jury in Boston found that a policeman had used excessive force against two black soldiers.²⁶ Despite the fact that one of the victims required twelve stitches in his scalp, the judge awarded the serviceman only three dollars in damages.²⁷

The same problems existed in the South. On the campus of Jackson State College, a black college in Mississippi, several policemen fired shotguns, rifles, and a submachine gun for approximately thirty seconds in the direction of a girls' dormitory.²⁸ Over four hundred rounds hit the dormitory and two black students were killed.²⁹ After a state grand jury failed to return an indictment against the officers, finding that the attack was "justified," United States District Court Judge Harold Cox stated that students who engage in civil disobedience "must expect to be injured or killed."³⁰

During this period in history, while many blacks, white civil rights workers, and other innocent people in this racial struggle were threatened, assaulted, and murdered by whites with firearms, the victims were discovering the benefits of self-armament.³¹ Without protection from the state it does not appear that they had much of a choice. Guns served the useful and often necessary purpose of protection.³² As Don B. Kates, Jr., explained,

As a civil rights worker, I saw how possession of a firearm could shrink the threat of ultimate violence into just another more or less innocuous incident:

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *Id.* As explained by Zinn, these incidents were precipitated by the death of Martin Luther King, Jr. and the urban unrest of the time:

The killing of King brought new urban outbreaks all over the country, in which thirty-nine people were killed, thirty-five of them black. . . .

These were "normal" cases endlessly repeated in the history of the country, coming randomly but persistently out of a racism deep in the institutions, the mind of the country.

Id. at 454-55.

31. *See Cottrol & Diamond, The Second Amendment, supra* note 3, at 355. *See generally* KOPEL, *supra* note 19, at 337. Kopel asserted:

Yet if blacks would not protect themselves, no one would protect them. The government (in the form of the police or the military) and the white upper- and middle-class majority (in the form of the militia or vigilance committees) were generally indifferent to protecting blacks from anyone. Often enough, the government forces themselves actively attacked the blacks.

Id.

32. *See id.*

When Klansmen catch you in some deserted area and open fire, you take cover and shoot back—if you have a gun. Then both sides depart with great speed, because no one wants to get shot. If you don't have a gun, however, the Klansmen keep on shooting and moving closer, and your only hope is that their aim is poor and that you can outdistance their pursuit.³³

As blacks began to arm themselves for self-defense, tensions between blacks and whites escalated.³⁴ For example, C.C. Bryant, a National Association for the Advancement of Colored People (NAACP) leader in the South, began guarding his house with a shotgun after his barbershop was dynamited, a cross was burned on his lawn, and threats were received against his family.³⁵ In 1964, an armed group of blacks physically attacked both law enforcement personnel and white civilians after they were confronted with police officers that were attempting to disband civil rights demonstrators.³⁶ Bombs exploded and damaged buildings, and white men were wounded by gunfire and cut with razor blades.³⁷ Another example occurred in St. Augustine, Florida, when one night in 1964 armed mobs of whites and blacks fired their weapons at homes and cars as they roamed through the city.³⁸

Carrying and using firearms was not a new idea to African-Americans in the South in the 1960s. More than a century earlier, slaves had armed themselves to revolt against their white masters,³⁹ and they fought

33. Salter & Kates, *supra* note 15, at 186. Relevant to this issue, Kates wrote: Everyone remembered an incident several years before, in which the state's Klansmen attempted to break up a civil rights meeting and were routed by return gunfire. When one of our clients (a schoolteacher who had been fired for her leadership in the Movement) was threatened by the Klan, I joined the group that stood armed vigil outside her house nightly. No attack ever came—though the KKK certainly knew that the police would have done nothing to hinder or punish them.

Id.

34. *See, e.g.*, BELKNAP, *supra* note 7, at 102.

35. *See id.* at 138.

36. *See id.* at 130.

37. *See id.*

38. *See id.* at 133.

39. *See, e.g.*, Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 338 (discussing Nat Turner's slave revolt); *id.* at 340 ("In Boston in August of 1843, after a handful of white sailors verbally and physically assaulted four blacks who defended themselves, a mob of several hundred whites attacked and severely beat every black they could find, dispersed only by the combined efforts of police and fire personnel."); *see also* ZINN, *supra* note 21, at 170. Describing Nat Turner's revolt, Zinn stated:

Nat Turner's rebellion in Southampton County, Virginia, in the summer of 1831, threw the slaveholding South into a panic, and then into a determined effort to bolster the security of the slave system. Turner, claiming religious visions, gathered about seventy slaves, who went on a rampage from plantation to plantation, murdering at least fifty-five men, women, and children. They gathered supporters, but were captured as their ammunition ran out. Turner and perhaps eighteen others were hanged.

Id. Zinn also described what he termed the largest slave revolt in United States history,

against whites who lynched blacks.⁴⁰ Professor and historian Howard Zinn described one incident where blacks faced retaliation after a violent confrontation with whites:

A Negro blacksmith named Charles Caldwell, born a slave, later elected to the Mississippi Senate, and known as "a notorious and turbulent Negro" by whites, was shot at by the son of a white Mississippi judge in 1868. Caldwell fired back and killed the man. Tried by an all-white jury, he argued self-defense and was acquitted, the first Negro to kill a white in Mississippi and go free after a trial. But on Christmas Day 1875, Caldwell was shot to death by a white gang. It was a sign. The old white rulers were taking back political power in Mississippi, and everywhere else in the South.⁴¹

Professor Zinn described a similar incident from the 1950s regarding the Reverend Joseph DeLaine in Clarendon County, South Carolina.⁴² Reverend DeLaine had rallied his community to bring a lawsuit concerning school desegregation.⁴³ As a result, he was dismissed from his teaching position and his home was burned as the fire department watched.⁴⁴ After gunmen fired rounds at his house, DeLaine shot back.⁴⁵ He was subsequently charged with felonious assault and fled the state.⁴⁶

Not all attempts by African-Americans to defend themselves,

which occurred in New Orleans in 1811:

Four to five hundred slaves gathered after a rising at the plantation of a Major Andry. Armed with cane knives, axes, and clubs, they wounded Andry, killed his son, and began marching from plantation to plantation, their numbers growing. They were attacked by U.S. army and militia forces; sixty-six were killed on the spot, and sixteen were tried and shot by a firing squad.

Id. at 169. Cottrol and Diamond argued:

Violence on the part of the Ku Klux Klan and other nightriding terrorists were instruments of the oppression of the former slaves and of the maintenance of the Southern way of life. The right to bear arms had been intended by the champions of the freedmen as a hedge against oppression by their former masters, and the right had in fact functioned to this end. White Southerners recognized this, and both the authorities and nightriders sought to confiscate arms from those blacks who had them and often to kill or otherwise cow those who would not give them up.

Cottrol & Diamond, *Firearms Regulation and Racial Disparity*, *supra* note 3, at 1333.

40. See, e.g., Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 353-54. The authors argued that "[w]hen blacks used firearms to protect their rights, they were often partially successful but were ultimately doomed." *Id.* at 353.

41. ZINN, *supra* note 21, at 199.

42. See HOWARD ZINN, *DECLARATIONS OF INDEPENDENCE: CROSS-EXAMINING AMERICAN IDEOLOGY* 242 (1990).

43. See *id.*

44. See *id.*

45. See *id.*

46. See *id.*

however, ended unsuccessfully. In Monroe, North Carolina in 1957, Robert Williams, President of the local NAACP, taught others that blacks should defend themselves with guns.⁴⁷ When some local Klan members attacked the house of another leader of the local NAACP, Williams and a group of blacks armed themselves with rifles and returned fire, causing the Klan to flee.⁴⁸

While Martin Luther King was well respected in the South amongst blacks and civil rights activists for his position of non-violence, new heroes wielding guns began to emerge.⁴⁹ The late Stokely Carmichael (later known as Kwame Ture), former President of the SNCC and member of the Black Panthers, who authored the phrase and the book *Black Power*, described the decision of some African-Americans to arm themselves in the 1960s:

A key phrase in our buffer-zone days was non-violence. For years it has been thought that black people would not literally fight for their lives. Why this has been so is not entirely clear; neither the larger society nor black people are noted for passivity. The notion apparently stems from the years of marches and demonstrations and sit-ins where black people did not strike back and the violence always came from white mobs. There are many who still sincerely believe in that approach. From our viewpoint, rampaging white mobs and white night-riders must be made to understand that their days of free head-whipping are over. Black people should and must fight back. Nothing more quickly repels someone bent on destroying you than the unequivocal message: "O.K., fool, make your move, and run the same risk I run—of dying."

Those of us who advocate Black Power are quite clear in our own minds that a "non-violent" approach to civil rights is an approach black people cannot afford and a luxury white people do not deserve. It is crystal clear to us—and it must become so with the white society—that *there can be no social order without social justice*. White people must be made to understand that they must stop messing with black people, or the blacks *will* fight back!⁵⁰

47. See ZINN, *supra* note 21, at 443.

48. See *id.* See generally KOPEL, *supra* note 19, at 339 ("Robert Williams . . . chartered an official National Rifle Association gun club, where blacks were encouraged to learn armed self-defense.").

49. See ZINN, *supra* note 21, at 452. However, not all commentators viewed Martin Luther King as endorsing only non-violent protest. See, e.g., KOPEL, *supra* note 19, at 339, 371 n.245 (arguing that Martin Luther King, Malcolm X, and the NAACP explicitly endorsed individual self-defense and the right of collective defensive violence).

50. TURE & HAMILTON, *supra* note 15, at 52-53; see TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* 248 (1993) ("Hadn't SNCC organizers and Mississippi, Alabama, and Louisiana blacks long since carried guns for self-defense, abandoning nonviolence on anything but tactical occasions, though without advertising the fact?"); KOPEL, *supra* note 19, at 338 ("Civil rights workers and the black community generally viewed nonviolence as a useful tactic for certain situations, not as a moral injustice to let oneself be murdered on a deserted road in the middle of the night.").

B. The Origin of the Black Panthers

In 1966, Huey Newton⁵¹ and Bobby Seale⁵² founded the Black Panther⁵³ Party for Self-Defense in California.⁵⁴ However, the “Panther” name and symbol were adopted from a Lowndes County political group in Alabama.⁵⁵ The Lowndes County Freedom Organization, which evolved into the Black Panther Party for Self-Defense,⁵⁶ had not only developed a political organization, but also held a nominating convention that slated seven members of the group to run for county office.⁵⁷ Although Lowndes County was eighty-one percent black in 1965, the white minority ruled the county and perpetuated a well-

51. Huey Newton’s life has received much following. *See generally* Todd Burroughs & Olive Vassell, *The Black Panthers* (visited Sept. 19, 1999) <<http://www.afroam.org/history/Panthers/panther-lead.html>>; Jerry Belcher, *Oakland’s Black Panthers Wear Guns, Talk Revolution*, S.F. EXAMINER, Apr. 30, 1967, at 1. Newton was born in Monroe, Louisiana and grew up in Oakland, California, where he met Bobby Seale. *See Burroughs & Vassell, supra*. Newton was arrested in Oakland for petty theft (for which he received probation), burglary (the charge was dismissed), and assault with a deadly weapon (he received six months in county jail). *See Belcher, supra*, at 1. After his conviction for manslaughter was overturned in 1971, he fled to Cuba. *See Burroughs & Vassell, supra*. He later returned to the United States and earned a Ph.D. from the University of California in 1980. *See id.* He was fatally shot by a low-level drug dealer in 1989. *See id.*

52. Bobby Seale was born in 1937 in Dallas, Texas, and his family moved to Oakland, California in 1944. *See Burroughs & Vassell, supra* note 51. Seale met Huey Newton while they were both enrolled in Merritt Junior College. *See id.* Seale worked as a family counselor for the North Oakland Community Center of the Oakland Economic Development Council, the local War on Poverty agency, for which he was paid \$422 a month. *See Belcher, supra* note 51, at 1. Seale was given a bad conduct discharge from the Air Force in 1958. *See id.* Seale’s criminal record includes minor traffic offenses, and he spent six months in a military prison for disrespecting an Air Force officer. *See id.* Seale was arrested in Chicago along with several “white radicals” (the “Chicago Eight”) for attempting to disrupt the Democratic National Convention being held in that city. *Burroughs & Vassell, supra* note 51. During his subsequent trial, the judge ordered him bound and gagged, which led to “international outrage.” *Id.* He left the Black Panther Party in 1974, “a year after the Party ran him for mayor of Oakland,” and is currently a community organizer in Pennsylvania. *Id.* Seale has his own web site at <<http://www.bobbyseale.com>>. Repeated attempts by the author to contact Mr. Seale by e-mail were unsuccessful.

53. Huey Newton explained the symbolism behind the name Black Panthers: “The panther doesn’t attack anyone, but when he’s forced into a corner he will strike out and he will not stop until the aggressor is wiped out.” *Belcher, supra* note 51, at 1.

54. *See GITLIN, supra* note 50, at 348.

55. *See Eyes on the Prize II: America at the Racial Crossroads: Power!* (PBS Video 1989) [hereinafter *Eyes on the Prize II*].

56. *See id.*

57. *See TURE & HAMILTON, supra* note 15, at 98-99.

deserved reputation as one of the worst areas for individual and institutional racism and brutality against blacks.⁵⁸ The county began to change in the spring of 1965 when several workers from the SNCC arrived in the county.⁵⁹ The workers had come in response to the shooting death of Viola Liuzzo, a white housewife from Michigan, who was killed by Klansmen as she drove civil rights marchers home.⁶⁰ The SNCC members joined forces with John Hulett, a resident of Lowndes County, to establish the Lowndes County Christian Movement for Human Rights.⁶¹ Soon after that, the groups began speaking in terms of political power.⁶²

The group that evolved out of Lowndes County was different from the more mainstream, non-violent “civil rights movement.” Instead of focusing on the aspirations of the growing black middle class, the Black Panthers appealed to the needs of the lower classes and their lack of power.⁶³ The Panthers encouraged ideas of revolution, cultural autonomy, and economic advancements.⁶⁴ They were young, tough, sincere, and preached the works of revolutionaries such as Mao Tse-Tung and Malcolm X.⁶⁵ Huey Newton spoke to followers on such topics as socialism, anti-colonialism, anti-imperialism, and world revolution.⁶⁶ The Panthers created and supported numerous “survival programs” such as food giveaways, free health clinics, and free breakfast programs for children, all of which became popular fixtures in black neighborhoods.⁶⁷ The Black Panthers also wrote and distributed a Ten Point Plan, which

58. *See id.* at 100.

59. *See id.* at 99.

60. *See id.* at 99-100.

61. *See id.* at 103.

62. *See id.*

63. *See* HARVARD SITKOFF, *THE STRUGGLE FOR BLACK EQUALITY* 216 (rev. ed. 1981).

64. *See id.* at 215.

65. *See* Burroughs & Vassell, *supra* note 51. *But see* JOHN GEORGE & LAIRD WILCOX, *AMERICAN EXTREMISTS: MILITIAS, SUPREMACISTS, KLANSMEN, COMMUNISTS & OTHERS* 114-15 (1996). The authors argued:

Ideologically, the Panthers always were a confusing mess. Many spouted Marxists-Leninist rhetoric and tried to indoctrinate with theories they evidently didn't understand. Theoreticians they were not. Several Panthers carried Mao's *Red Book* and quoted it frequently, but they denounced most domestic Maoist organizations. And although they yelled “fascist” at many who opposed them, it's doubtful that more than a handful could have even discussed the essential characteristics of fascism.

Id. at 118-19.

66. *See* GITLIN, *supra* note 50, at 349. Gitlin described Huey Newton, Bobby Seale, and Eldridge Cleaver as “the very image of indigenous revolutionary leadership risen from the underclass and certified in prison.” *Id.* *See generally* *Eyes on the Prize II*, *supra* note 55 (commenting that the Panthers even referred to themselves as a revolutionary organization).

67. *See* Burroughs & Vassell, *supra* note 51.

called for, among other things, black freedom, full employment for blacks, decent housing and education, and the immediate end to police brutality.⁶⁸

Another significant development occurred in 1966, when Stokely Carmichael called for “Black Power.”⁶⁹ Following the assassination of James Meredith, Carmichael gave a speech in a June 1966 rally that introduced the phrase:

68. *See id.* The Ten Points in full are as follows:

- 1) We want freedom. We want power to determine the destiny of our Black Community.
- 2) We want full employment for our people.
- 3) We want an end to the robbery by the capitalists of our Black Community.
- 4) We want decent housing, fit for shelter of human beings.
- 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 present day society.
- 6) We want all Black men to be exempt from military service.
- 7) We want an immediate end to POLICE BRUTALITY and MURDER of black people.
- 8) We want freedom for all black men held in federal, state, county and city prisons and jails.
- 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.
- 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.

Id. *See generally* Interview by Henry Louis Gates, Jr. with Eldridge Cleaver, former Minister of Information for the Black Panther Party (Spring 1997), available in <<http://www.pbs.org/wgbh/pages/frontline/shows/race/interviews/ecleaver.html>>.

Cleaver, another noted Panther, commented on the Ten Points: “We had a strong economic place in our program. We had a direct challenge—the whole exploitation of the capitalist economy in our ten points. We had a point dealing with the economy. But we were also Marxists in our orientation, which is like totally economics.” *Id.*; *see Eyes on the Prize II*, *supra* note 55 (stating Bobby Seale argued that the Panthers did not hate white people, only oppression and unemployment in their communities); DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY* 207 (1982). McAdam quoted a 1970 release by the Black Panthers, which read in part:

The Black Panther Party stands for revolutionary solidarity with all people fighting against the forces of imperialism, capitalism, racism and fascism. Our solidarity is extended to those people who are fighting these evils at home and abroad . . . our struggle for our liberation is part of a worldwide struggle being waged by the poor and oppressed against imperialism and the world’s chief imperialist, the United States of America.

Id. (alteration in original) (citation omitted).

69. BELKNAP, *supra* note 7, at 212.

"This is the twenty-seventh time I have been arrested—and I ain't goin' to jail no more!" . . . "The only way we gonna stop them white men from whippin' us is to take over. We been saying freedom for six years and we ain't got nothin'. What we gonna start saying now is Black Power!" . . . "We . . . want . . . Black . . . Power!"⁷⁰

Carmichael's definition of "Black Power" corresponded with the ideals of Huey Newton and Bobby Seale. "Black Power" was a call to unify the black people so that they could live and fight from a position of strength.⁷¹ As Carmichael explained, "The goal of black self-determination and black self-identity—Black Power—is full participation in the decision-making processes affecting the lives of black people."⁷²

In addition to preaching about such popular sentiments as equality and support for black identity, the Panthers did something else that drew attention to their cause—they supported the idea of arming blacks for self-protection.⁷³ Bobby Seale explained:

70. SITKOFF, *supra* note 63, at 214.

71. See TURE & HAMILTON, *supra* note 15, at 44.

72. *Id.* at 47. But see SITKOFF, *supra* note 63, at 215. Sitkoff understood the slogan differently:

But Black Power remained more an angry slogan than a clear program. Carmichael kept altering its meaning, defining and redefining it to suit the needs of different audiences. Although a few civil-rights leaders completely repudiated the expression (Wilkins castigated Black Power as "the father of hatred and the mother of violence"), most black spokesmen sought to hitch the popularity of the phrase with blacks to their own wagon. Each gave it a congenial connotation. Each elaborated on it in line with its own ideology. Revolutionaries used it to preach guerrilla warfare, liberals to demand reform, and conservatives to emphasize self-help. Both separatists and integrationists employed it, as did proponents of love and of hostility, of violence and of nonviolence. Politicians saw it as an instrument to win black votes, businessmen as a means to preserve and expand black markets, and artists as a basis for developing a black aesthetic. Black capitalists claimed it, and so did black socialists and publicists for black cooperatives. To some, it meant coalition politics; to others, withdrawal from the system.

Id.; see BELKNAP, *supra* note 7, at 212-13 ("As the movement fell into disagreement and squabbling, white support for its objectives melted away. The fiery rhetoric of militant black nationalists, such as Carmichael, was partly responsible for this. Whatever the real meaning of Black Power was . . . most whites were sure it meant Negro violence against them.").

73. See *Eyes on the Prize II*, *supra* note 55. There is a healthy debate among legal scholars as to the extent to which the Second Amendment to the United States Constitution was meant to protect the right of individuals to keep and bear arms as opposed to the right of states to maintain militias. The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. Individual rights theorists maintain that the Second Amendment was intended to ensure that an armed citizenry would have the means to defend themselves from a tyrannical government. See Cottrol & Diamond, *Firearms Regulation and Racial Disparity*, *supra* note 3, at 1308 n.4; Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 314. According to Kates, the individual rights view is endorsed not by the majority of legal

Huey and I picked up guns, *legally*, for self-defense. Why? Because those avericious[sic]-racist bastards, who we use [sic] to call "... the pig-power structure!" were then brutalizing and murdering peaceful demonstrators, Black and White, Native Americans, Asian, Chicano and other Hispanic peoples. Many were killed.⁷⁴

Eldridge Cleaver, another member of the Panther leadership, wrote in a *Ramparts* article how he fell for the group after he saw Newton hold a shotgun on a San Francisco police officer and face him down.⁷⁵ One of the most popular pictures circulating at the time the Panthers were gaining in popularity was a poster of Newton in a black beret, seated in a fan-shaped wicker chair, with a spear in his left hand and a rifle in his right.⁷⁶ By late 1968, the leadership was recruiting followers nationwide.⁷⁷

However, the Black Panthers were not content with simply arming themselves in case police officers or an unruly white mob should attack

scholars, but by the general populace who believe that law-abiding citizens may possess firearms for self-defense. See Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204, 206-07 (1983). Kates' statement was true in 1983, but certainly not in 1999. Published scholarship as of this writing is overwhelmingly pro-individual rights. See Joyce Lee Malcolm, *The Right of the People to Keep and Bear Arms: The Common Law Tradition*, 10 HASTINGS CONST. L.Q. 285, 314 (1983) ("The Second Amendment should properly be read to extend to every citizen the right to have arms for personal defense. This right was a legacy of the English, whose right to have arms was, at base, as much a personal right as a collective duty."); Don B. Kates, Jr., *The Second Amendment and the Ideology of Self-Protection*, 9 CONST. COMM. 87 (1992), available in <<http://www.2ndLawLib.org/journals/2nd-ideo.html>> [hereinafter Kates, *Second Amendment*]. Kates stated that "[t]o natural law philosophers, self-defense was the 'primary law of nature,' the primary reason for man entering society. Indeed, it was viewed as not just a right but a positive duty." *Id.* at 89 (citation omitted). Kates also used the philosophies of John Locke and Montesquieu for the notion that individuals have a right of self-defense. See *id.* at 90; see also THOMAS HOBBS, LEVIATHAN 109 (Liberal Arts Press, Inc. 1958) (1651) ("The right of nature, which writers commonly call *jus naturale*, is the liberty each man has to use his own power, as he will himself, for the preservation of his own nature . . ."; William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 7 J. ON FIREARMS & PUB. POL'Y 1 (1999), available in <<http://www.saf.org/journal.html>> (attributing to William Blackstone the proposition that individuals have the right to have and use arms for self-preservation and defense).

74. Bobby Seale, *From the Sixties . . . to the Future* (visited Nov. 18, 1999) <<http://www.bobbyseale.com/index.html>>.

75. See GITLIN, *supra* note 50, at 348.

76. See *id.* at 349.

77. See *id.* at 350; see also *Eyes on the Prize II*, *supra* note 55 (stating that Huey Newton said that the Black Panthers spread to other cities rapidly because young people were attracted to the guns and the berets but that they knew nothing of the platform or the community service work).

them. They sought situations in which they could brandish their guns if necessary. Arming themselves with law books and unconcealed firearms, the Panthers would actively monitor the activities of the police (especially in Oakland, California) and police interaction with black communities.⁷⁸ Cars filled with Panthers would follow Oakland police cars and read *Miranda* rights to the people the police detained.⁷⁹ Newton, who was attending law school at night, would quote the California Penal Code and cite cases in order to make it clear to the officers that he was not going to permit the police to abuse their power and authority in the presence of a Panther.⁸⁰ Minister of Information for the Black Panther Party, Eldridge Cleaver,⁸¹ believed that the police must be controlled by any means necessary, including the use of arms. "These racist Gestapo pigs have to stop brutalizing our communities or we will take up guns and drive them out."⁸² Considering that Oakland had a mostly white police force that was increasing in personnel along with the number of brutality complaints, the relationship between state officials in California and the Panthers was quickly becoming tense.⁸³

78. See *Eyes on the Prize II*, *supra* note 55. According to Marion Stamps, a community activist in the South in the 1960s, "The U.S. Constitution gives us the right to bear arms to protect ourselves. And we understand that we need protection in the black community. And it's our responsibility to protect black women and black children—not the police, because the police are not here to serve and protect us, [they are] only here to continue to enslave us." *Id.*; see GITLIN, *supra* note 50, at 348.

79. See *Eyes on the Prize II*, *supra* note 55. See generally GENE MARINE, *THE BLACK PANTHERS* 46-47 (1969) (asserting that, as a result of the Black Panther's activities with the police, incidents of police brutality, harassment, and illegal searches of homes decreased).

80. See *Eyes on the Prize II*, *supra* note 55.

81. Burroughs and Vassell provide the following biographical information on Cleaver:

[Eldridge Cleaver was b]orn in Wabaseka, [Arkansas] in 1935. After serving prison time for assault, he became senior editor of *Ramparts* magazine in 1966. He joined the [Black Panther] Party in 1967, becoming its Minister of Information and putting together *The Black Panther* newspaper.

He was the 1968 Presidential candidate for the Peace and Freedom Party. . . .

. . . Cleaver split from the Party in 1971, forming his own version of the organization with several Party chapters switching from Seale to him. . . . [He is] a born-again Christian and an entrepreneur. A 1991 . . . magazine story listed his current residence as Berkeley, [California].

Burroughs & Vassell, *supra* note 51.

82. *Eyes on the Prize II*, *supra* note 55.

83. See *id.* See generally FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES—1966, at 88 tbl.5, 154 tbl.53 (1966) [hereinafter 1966 UNIFORM CRIME REPORTS]; FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES—1969, at 85 tbl.5, 152 tbl.56 (1969) [hereinafter 1969 UNIFORM CRIME REPORTS]. It is interesting to note the numeric relationship between the Oakland Police Department and the Black Panthers. The City of Oakland employed 660 police officers in 1966, when the Panthers could claim about 40 members. See 1966 UNIFORM CRIME

The Black Panthers were not the only group of African-Americans who decided to arm themselves for protection. The Deacons for Defense and Justice were organized in Louisiana in 1964.⁸⁴ The Deacons established their group after its founder witnessed the Ku Klux Klan marching down the street and realized that “the fight against racial injustice included not one but two foes: White reactionaries and police.”⁸⁵ The Jonesboro chapter of the Deacons obtained a charter for their organization and also obtained guns, pledging to shoot back if fired upon.⁸⁶ Like the Black Panthers, the Deacons took it upon themselves to protect black people from violence by extending violence in return.⁸⁷ As Cottrol and Diamond explained:

Blacks in the South found the Deacons helpful because they were unable to rely upon police or other legal entities for racial justice. This provided a practical reason for a right to bear arms: In a world in which the legal system was not to be trusted, perhaps the ability of the system’s victims to resist might convince the system to restrain itself.⁸⁸

In addition to the Panthers and the Deacons, the Congress of Racial Equality (CORE) dramatically revised its position on nonviolence and asserted the rights of African-Americans to arm themselves with weapons for self-defense.⁸⁹ The purpose of this change was to legitimize

REPORTS, *supra*, at 154 tbl.53. By 1969, Oakland employed 694 officers. *See* 1969 UNIFORM CRIME REPORTS, *supra*, at 152 tbl.56. As a base of measurement, the population of the Oakland/San Francisco area of California in 1966 was 3,014,000. *See* 1966 UNIFORM CRIME REPORTS, *supra*, at 88 tbl.5. By 1969, the population had grown to 3,043,000. *See* 1969 UNIFORM CRIME REPORTS, *supra*, at 85 tbl.5; *see also* Belcher, *supra* note 51, at 1.

84. *See* Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 357.

85. *Id.* (quoting Hamilton Bimbs, *Deacon for Defense*, EBONY, Sept. 1965, at 25, 25-26).

86. *See id.*

87. *See id.* at 358. *See generally* KOPEL, *supra* note 19, at 338-39.

88. Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 358; *see supra* note 4.

89. *See* MCADAM, *supra* note 68, at 207. *See generally* SITKOFF, *supra* note 63. Sitkoff stated that the Congress of Racial Equality was formed in 1942 to experiment with nonviolent actions against Jim Crow laws in the South. *See id.* at 13, 98. On March 13, 1961, their new director, James Farmer asked volunteers to conduct “Freedom Rides” through the South to challenge racial discrimination in interstate travel terminals. *See id.* at 97. Farmer’s intention was to provoke the southern authorities into arresting the Riders, thus causing the Justice Department to enforce federal civil rights laws. *See id.* at 98. By 1963, CORE was organizing rent strikes and school boycotts, and was demonstrating against job bias and for compensatory employment across the country. *See id.* at 146. As the civil rights movement became more militant, CORE leaders schooled their members in provocative demonstrations. *See id.* at 148. With the election

other self-defense organizations in the South and to support the proposition that demonstrators had a right to defend themselves with weapons if attacked.⁹⁰ In 1967, CORE's Executive Director, Floyd McKissick, stated that the old-style civil rights tactics of peaceful civil disobedience were outdated and needed to be replaced by insurrections in the Negro revolution.⁹¹

Civil Rights leader Kates has suggested that the availability of firearms for protection against both private and institutional violence was a key factor in the Civil Rights Movement's survival in the South.⁹² African-Americans who were targets of race riots and other forms of cruelty learned the value of collective armed action,⁹³ especially if the perpetrators of the violence were the police. On the other hand, what police departments and the government learned was that regaining control over militant blacks, such as the Black Panthers, required taking away their only defense—their guns.⁹⁴

C. Panthers, Guns, and Violence

The Panthers candidly advocated gun and weapon use by blacks. In addition to distributing photographs and posters of Huey Newton and his fellow Panthers armed with rifles and handguns, the Panthers underscored the need for blacks to use weapons when necessary. Stokely Carmichael repeatedly spoke to the media about blacks becoming “the executioners of our executioners,” “offing the pigs,” and “killing the honkies.”⁹⁵ “Identifying himself with the Black Panthers, Carmichael snarled, ‘If we don't get justice we're going to tear this country apart.’”⁹⁶ In one of his last appearances as SNCC Chairman, Carmichael toured black colleges in the South in the spring of 1967, sparking riots at four schools when he urged the students to “fight for liberation by any means necessary” and to declare “[t]o hell with the laws of the United States.”⁹⁷

H. Rap Brown, Carmichael's successor at SNCC, continued

of Floyd McKissick as CORE's director in 1966, the group had rejected its traditional goals and tactics and adopted a more aggressive and self-defensive posture. *See id.* at 210, 212.

90. *See* MCADAM, *supra* note 68, at 207.

91. *See id.*

92. *See* Kates, *Second Amendment*, *supra* note 73, at 98.

93. *See* Cottrol & Diamond, *The Second Amendment*, *supra* note 3, at 340-41.

94. *See infra* Part IV.A.

95. SITKOFF, *supra* note 63, at 216.

96. *Id.* at 217.

97. *Id.* “Under Carmichael, SNCC abandoned all pretense of working within the movement, expelled its white staff members, and denounced its white supporters and financial backers.” *Id.* at 216.

Carmichael's inflammatory rhetorical style by telling reporters, "The white man won't get off our backs, so we're going to knock him off. . . . America won't come around, so we're going to burn America down."⁹⁸ Brown even went so far as to exclaim, "If you give me a gun I might just shoot Lady Bird."⁹⁹ Like his predecessor, Brown traveled to various cities to spread his message. Addressing a rally in Cambridge, Massachusetts during the week of the Detroit riots, Brown stated:

You'd better get you some guns. The man's moving to kill you. The only thing the honky respects is force. . . . I mean, don't be trying to love that honky to death. Shoot him to death. Shoot him to death, brother, cause that's what he's out to do to you. Like I said in the beginning, if this town don't come around, this town should be burned down. It should be burned down, brother.¹⁰⁰

Several hours after his speech, flames engulfed the black ghetto. Within days, Brown was arrested for incitement to riot.¹⁰¹

During the 1960s it was clear that when a Black Panther spoke, blacks and whites not only listened, they responded. Inflammatory speeches by Panther leaders led to riots, destruction, and confrontations with the white establishment.¹⁰² It is not a surprise that inspirational and motivational tirades, coupled with the desperate attempt by white officers to suppress the voices and actions of blacks, would lead to a deadly situation.

In October 1967, Huey Newton was shot in the stomach in a confrontation with the Oakland Police Department.¹⁰³ Police Officer Herbert C. Hanes was also wounded, and Officer John F. Frey, Jr. was killed by a bullet fired by a police revolver.¹⁰⁴ Newton was charged with

98. *Id.* at 217; see Burroughs & Vassell, *supra* note 51 (reporting that H. Rap Brown is now a Muslim convert named Jamil Abdullah Al-Amin, and is a religious leader and grocery store owner in Atlanta, Georgia).

99. SITKOFF, *supra* note 63, at 217. "Lady Bird" refers to Lady Bird Johnson, wife of President Lyndon Baines Johnson.

100. *Id.*

101. See *id.*; see also Bogus, *supra* note 3, at 1375 (noting that gun control opponents argued that blacks in the South in the 1960s should not have been armed if their intention was to create a crisis, or if they participated in a riot).

102. See *infra* notes 103-08 and accompanying text.

103. See *Eyes on the Prize II*, *supra* note 55.

104. See *id.*; see also 1966 UNIFORM CRIME REPORTS, *supra* note 83, at 153 tbl.52; 1969 UNIFORM CRIME REPORTS, *supra* note 83, at 151 tbl.55. Even with the emergence of the Black Panthers, it does not appear that there was a significant increase in the deaths of California police officers. In California in 1966, two state officers out of a force of 4050 were killed in the line of duty. See 1966 UNIFORM CRIME REPORTS, *supra* note 83, at 153 tbl.52. By 1969, four officers out of a state force of 5398 were killed on the job. See 1969 UNIFORM CRIME REPORTS, *supra* note 83, at 151 tbl.55.

first-degree murder.¹⁰⁵ The Panthers came from across the country to join in support of Newton. Dressed in their black berets and leather jackets, they chanted on the steps of the Oakland courthouse, “The Revolution has come, it’s time to pick up the gun,”¹⁰⁶ and “Free Huey or the sky’s the limit!”¹⁰⁷

A few days after Martin Luther King was killed on April 4, 1968, the Panthers had another shootout with the Oakland Police Department. As Eldridge Cleaver explained:

This shootout that we had took place on the sixth and seventh of April. So we saw it coming while the police were acting so we decided to get down first. So we started the fight. There were 14 of us. We went down into the area of Oakland where the violence was the worst a few blocks away from where Huey Newton had killed that cop so we dealt with them when they came upon us. We were well armed, and we had a shootout that lasted an hour and a half. I will tell anybody that that was the first experience of freedom that I had. I was free for an hour and a half because during that time the repressive forces couldn’t put their hand on me because we were shooting it out with them for an hour and a half. Three police officers got wounded. None of them got killed; I got wounded. Another Panther got wounded.¹⁰⁸

D. Law Enforcement Response to the Black Panthers

Stopping the Panthers appeared to be a clear and logical goal among law enforcement personnel on state and federal levels. No self-respecting police department could allow a group of militant black youths to engage them in shootouts that resulted in death or grave injury to several of their own.

Many authors and historians have argued that the Federal Bureau of Investigation’s (FBI) plan¹⁰⁹ to destroy the Black Panthers was part of its counterintelligence program (COINTELPRO).¹¹⁰ The Bureau apparently figured that if it could collapse the Panthers from within, the group would ultimately fail. By effectively utilizing counterintelligence

105. See *Eyes on the Prize II*, *supra* note 55; see also GITLIN, *supra* note 50, at 348 (reporting that Newton eventually was convicted of voluntary manslaughter; however, due to a judge’s error his conviction was reversed; after enduring two more trials, he was released after three years behind bars).

106. GITLIN, *supra* note 50, at 348.

107. *Id.* at 350.

108. Interview by Harry Louis Gates, Jr. with Eldridge Cleaver, *supra* note 68. *But see* GITLIN, *supra* note 50, at 350 n.** (“In 1980, Eldridge Cleaver . . . told a reporter that the April 1968 shootout which killed Bobby Hutton and sent Cleaver to jail (and eventually underground and into exile) began with a Panther ambush of the police.”).

109. All information related to the FBI was adopted from outside sources noted in the following footnotes. The author did not use any sources or materials from the Bureau, nor did the author use any information learned as result of her position as a Special Agent.

110. See ZINN, *supra* note 21, at 455.

methods, the FBI managed to prevent Chicago Panther leader Fred Hampton from merging the Blackstone Rangers, a small South-side street gang, into the Panther fold.¹¹¹

According to some accounts, the FBI was also successful in infiltrating the Panthers with an informant, William O'Neal.¹¹² Acting as an agent provocateur, O'Neal apparently used falsified records to acquire firearms in 1969, and initiated a weapons training program for Party members at a farm in Michigan.¹¹³ He advocated the position that the Panthers should always be armed.¹¹⁴ O'Neal was also concerned with improving the Panthers' cache of firepower. It was his habit to set an example by wearing a .45 semi-automatic in a shoulder holster; he also possessed a personal inventory of two twelve-gauge shotguns and an M1 carbine "for security" at the Panther headquarters in Chicago.¹¹⁵

At the FBI's request, O'Neal provided a sketch of Hampton's apartment, which the Bureau gave to the Chicago Police Department.¹¹⁶ Armed with this drawing, as well as with submachine guns and shotguns, the police raided Hampton's apartment, firing as many as two hundred rounds. The raid killed Hampton and another Panther, Mark Clark, as the two lay in their beds.¹¹⁷ Meanwhile, as the FBI was

111. See CHURCHILL & VANDER WALL, *supra* note 1, at 65. Fred Hampton had come to the Black Panther Party's Chicago chapter at the beginning of 1968. He came from the suburbs where he had been a high school leader and NAACP activist. See *id.* at 64; see also *Eyes on the Prize II*, *supra* note 55. Fred Hampton stated: "Yes, we do defend our offices, we do defend our homes. This is a constitutional right. Everybody has it. Nothin' funny about that. The only reason they get mad at the Black Panther Party when they do it is for the simple reason that we're political." *Id.*

112. See CHURCHILL & VANDER WALL, *supra* note 1, at 68.

113. See *id.*

114. See *id.*

115. See *id.*

116. See *Eyes on the Prize II*, *supra* note 55.

117. See *id.* Edward V. Hanrahan, Cook County State's Attorney gave an official account of the events that transpired in Hampton's apartment. See *id.* Hanrahan stated that the officers who raided the apartment were met with shotgun fire that came from several rooms in the apartment, that the officers took cover, and demanded that the occupants cease firing and come out with their hands raised. See *id.* Hanrahan stated that the officers heard the Panthers shout "shoot it out" and only then did the officers return fire. See *id.* The Chicago Police failed to seal off the apartment after the shooting and it was open to the public for almost two weeks, allowing the Panthers and their supporters time to gather evidence that the shooting was a "northern lynching." *Id.* The Panthers who survived the shooting were charged with attempted murder and other related charges, all of which were dropped after an FBI ballistics expert concluded that the police had fired all but one of the shots! See *id.* No police personnel were indicted. See *id.* The families of Hampton, Clark, and the survivors, however, sued the local police and federal government for a violation of civil rights. See *id.* The case was

preoccupied with dismantling the Panthers in Chicago in 1967 and 1968, the California legislature was waging its own war with the group in their attempts to pass a law that would disarm the Panthers.

III. CALIFORNIA DISARMS THE BLACK PANTHERS

A. *The Panthers in California*

The Black Panther Party for Self-Defense was formed in the San Francisco/Oakland area of California in late 1966.¹¹⁸ Within six months, they were making their armed presence felt and their message heard within the state. Twenty armed Panthers escorted the widow of Malcolm X,¹¹⁹ Betty Shabazz, from the San Francisco Airport to the Malcolm X Grassroots Memorial, where she was scheduled to be a featured guest on February 21, 1967.¹²⁰ In April, 1967, approximately twelve armed Panthers traveled to Martinez, California to protest Contra Costa County Sheriff Walter Young's "murder" of a young black burglary suspect.¹²¹ A Contra Costa sheriff's deputy who had been investigating an attempted burglary killed twenty-two year old Denzil Dowell.¹²² A coroner's jury ruled the death justifiable homicide.¹²³ The protesting Panthers in Contra Costa County stood atop cars and spoke to about 150 blacks who had gathered to listen, instructing the crowd on how to respond to police brutality.¹²⁴ The Contra Costa sheriff's deputies later stated that they could take no action against the speakers because

eventually closed when the parties agreed to a settlement offer of \$1.8 million. *See id.*; *see also* ZINN, *supra* note 21, at 455.

118. *See Black Panther Group Linked to Other Units*, L.A. TIMES, May 3, 1967, § 1, at 28.

119. Although Malcolm X was assassinated a year before the Black Panther Party for Self Defense was organized in California, the Panthers seemed to have adopted some of Malcolm X's messages. When Malcolm X spoke to black students in Harlem in 1964, he stated:

You'll get freedom by letting your enemy know that you'll do anything to get your freedom; then you'll get it. It's the only way you'll get it. When you get that kind of attitude, they'll label you as a "crazy Negro," or they'll call you a "crazy nigger"—they don't say Negro. Or they'll call you an extremist or a subversive, or seditious, or a red or a radical. But when you stay radical long enough and get enough people to be like you, you'll get your freedom.

ZINN, *supra* note 21, at 452-53.

120. *See* Belcher, *supra* note 51, at 1; *see also* The Black Panther Movement (n.d.), Box No. 1, Black Activism & Black Panthers Folder, Mulford Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

121. *See* Belcher, *supra* note 51, at 1.

122. *See* Ed Salzman, *Armed Foray in Assembly Stirs Wrath*, OAKLAND TRIBUNE, May 3, 1967, at A1.

123. *See id.*

124. *See* Belcher, *supra* note 51, at 1.

they did not violate the laws and they openly displayed their weapons.¹²⁵

The Panthers continued to protest Denzil Dowell's death. Several Panthers entered a meeting of the Council of Community Services in Richmond, California in order to bring together the district attorney and members of the Dowell family to discuss the fatal shooting.¹²⁶ A number of armed Panthers also attempted to enter the office of the sheriff to discuss the incident.¹²⁷ After the Panthers were told that they could not bring their weapons into the building, they reluctantly left them in their vehicles.¹²⁸

B. *The Panthers Invade the Capitol*

At the time, carrying loaded firearms in public was a common occurrence in California.¹²⁹ Nevertheless, the police had begun confiscating guns from the Black Panthers, charging them not with weapons violations, but with disturbing the peace. Six Panthers, including Bobby Seale, were convicted of this crime.¹³⁰ However, the Panthers religiously adhered to the tenets of the California Penal Code regarding weapons possession. They carried their loaded weapons in an unconcealed manner on their person, which was legal, and when they had to transport their firearms in vehicles, they would carry the firearms and ammunition separately, which was also legal.¹³¹ California Attorney

125. *See id.*

126. *See* The Black Panther Movement, *supra* note 120.

127. *See id.*

128. *See id.* On another occasion, an unarmed group of Panthers protested at San Pabig's Walter Helms Junior High School, where school officials were accused of beating a black student. *See* Belcher, *supra* note 51, at 1.

129. *See Eyes on the Prize II*, *supra* note 55.

130. *See id.*

131. According to California gun laws at the time, rifles and shotguns could be carried openly by anyone as long as the owner did not brandish them in a threatening manner. Even a pistol could be carried openly in a belt holster on the outside of the clothing. The primary restrictive provision in the California Fish and Game Code made it illegal to keep a loaded rifle or shotgun in a motor vehicle or attached trailer on a public road. This provision defined a loaded gun as one with unexpended cartridges or shells in the firing chamber of the weapon. Another provision of the law made it unlawful to discharge a firearm within 150 yards of an occupied building without permission of the owner. California law also prohibited possession of sawed off shotguns, which were defined as having overall lengths of less than twenty-six inches. In order to carry a concealed handgun, a license must have been obtained and the applicant must have demonstrated his good character and a reason for obtaining the license. In addition, a minor must have obtained his parents' permission to carry a concealed handgun. If a person was an ex-felon, non-citizen, or a narcotics addict, he

General Thomas C. Lynch was quoted as saying that while he was not specifically concerned about the Black Panthers, he was not going to tolerate “‘Wild West’ exhibitions of firearms.”¹³² As a result of the altercations between the Panthers and the Oakland Police Department, the campus speeches that led to riots, and the repeated call of the Panthers to arm the black community, State Assemblyman Donald Mulford introduced legislation to outlaw carrying firearms within city limits.¹³³ Attorney General Lynch announced that “[t]he time has come . . . when we have to legislate against carrying or exhibiting guns in public places.”¹³⁴

The Panthers obviously opposed this legislation, and they made their feelings known. On the day the Assembly was scheduled to hear the bill, a group of Black Panthers members actively protested by walking into the Assembly Chamber in Sacramento carrying pistols, rifles, and shotguns.¹³⁵ As Jerry Rankin wrote in *The Los Angeles Times*:

It was one of the most amazing incidents in legislative history—a tumultuous, traveling group of grim-faced, silent young men armed with guns roaming the Capitol surrounded by reporters, television cameramen, stunned state police and watched by incredulous groups of visiting school children.¹³⁶

As the Panthers entered the Assembly Chamber, Jim Rooney, one of the three sergeants-at-arms who were manning the swinging gates that block off the Assembly door, was knocked into a chair.¹³⁷ Assembly Speaker Pro Tem Carlos Bee could see only the television cameras at first and he ordered them to be removed.¹³⁸ Standing in the doorway to

could not purchase a handgun. California also had a law that required that a person buying a gun wait five days before he was permitted to take it from the store to give law enforcement authorities time to check out the buyer. See *California Gun Law Provisions Are Reviewed*, THE SACRAMENTO BEE, May 3, 1967, at A4.

132. Belcher, *supra* note 51, at 1.

133. See *id.*; see also JOHN R. LOTT, JR., MORE GUNS, LESS CRIME 68 (1998) (“Indeed, even in the 1960s much of the increased regulation of firearms stemmed from the fear generated by Black Panthers who openly carried guns.”).

134. *Stronger Gun Laws Needed*, L.A. TIMES, May 4, 1967, § 2, at 2; see Belcher, *supra* note 51, at 1.

135. See Clayton E. Cramer, *The Racist Roots of Gun Control*, 4 KAN. J.L. & PUB. POL’Y 17, 21 (1995); see also GITLIN, *supra* note 50, at 348; *Black Panthers Disrupt Assembly*, S.F. CHRON., May 3, 1967, at 1; Jerry Rankin, *Heavily Armed Negro Group Walks into Assembly Chamber*, L.A. TIMES, May 3, 1967, § 1, at 3; Salzman, *supra* note 122, at A1; *Eyes on the Prize II*, *supra* note 55.

136. Rankin, *supra* note 135, § 1, at 3.

137. See *id.*; *Panther Invasion Riles Legislature*, L.A. HERALD EXAMINER, May 3, 1967, at A1; see also Martin Smith, *Incident May Prompt New Control Law*, SACRAMENTO BEE, May 3, 1967, at A1 (“At an outer swinging gate, an elderly deputy sergeant-at-arms, James Rooney, brother of Sacramento Police Chief Joseph Rooney, was knocked back when the Black Panthers moved through. He fell into a chair. He got up unhurt but angry.”).

138. See Rankin, *supra* note 135, § 1, at 3.

the Assembly, Bobby Seale gave the following statement as the police unloaded the Panthers' weapons:

Statement of the Black Panther Party for Self-Defense calls on the American people in general and the black people in particular to take full note of the racist California legislature aimed at keeping the black people disarmed and powerless at the very same time that racist police agencies throughout the country are intensifying the terror and repression of black people. At the same time that the American Government is waging a racist war of genocide in Vietnam, the Concentration Camps in which Japanese Americans were interned during World War Two are being renovated and expanded. Since America has historically reserved the most barbaric treatment for non-white people, we are forced to conclude that these concentration camps are being prepared for black people who are determined to gain their freedom by any means necessary. The enslavement of black people from the very beginning of this country, the genocide practiced on the American Indians and the confining of the survivors on reservations, the savage lynching of thousands of black men and women, the dropping of atomic bombs on Hiroshima and Nagasaki, and now the cowardly massacre in Vietnam, all testify to the fact that towards people of color the racist power structure of America has but one policy: repression, genocide, terror, and the big stick. Black people have begged, prayed, petitioned, demonstrated and everything else to get the racist power structure of America to right the wrongs which have historically been perpetuated against black people. All of these efforts have been answered by more repression, deceit, and hypocrisy. As the aggression of the racist American Government escalates in Vietnam, the Police Agencies of America escalate the repression of black people throughout the ghettos of America. Vicious police dogs, cattle prods and increased patrols have become familiar sights in black communities. City Hall turns a deaf ear to the pleas of black people for relief from this increasing terror.

The Black Panther Party for Self Defense believes that the time has come for black people to arm themselves against this terror before it is too late. The pending Mulford Act brings the hour of doom one step nearer. A people who have suffered so much for so long at the hands of a racist society, must draw the line somewhere. We believe that black communities of America must rise up as one man to halt the progression of a trend that leads inevitably to their total destruction.¹³⁹

The author of the bill, Assemblyman Don Mulford, a Republican from Piedmont¹⁴⁰ rose to inform the Assembly that “[a] serious incident has just occurred. People with weapons forced their way into this chamber and were ejected.”¹⁴¹ Mulford described the invasion as a “direct attempt” to intimidate him, and he later said that the Panthers’ actions

139. Huey P. Newton, Minister of Defense, Statement of the Black Panther Party for Self Defense on the Mulford Act Now Pending Before the California Legislature (May 2, 1967), Box 1, Black Activism & Black Panthers Folder, Mulford Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California; see Rankin, *supra* note 135, § 1, at 3; *Eyes on the Prize II*, *supra* note 55.

140. Piedmont is a city located northeast of Oakland and southeast of Berkeley.

141. *Black Panthers Disrupt Assembly*, *supra* note 135, at 1.

inspired him to toughen the bill.¹⁴² The police escorted the protesters to an office downstairs while the Panthers shouted that they had a constitutional right to bear arms.¹⁴³

Governor Ronald Reagan appeared outside the Capitol as the group was departing. When asked by reporters about the Panthers' activities, Reagan agreed that there was a right to bear arms, but he added, "There's no reason why on the street today a citizen should be carrying loaded weapons."¹⁴⁴ Reagan called it a "ridiculous way to solve problems that have to be solved among people of good will."¹⁴⁵ He further declared, "Americans don't go around carrying guns with the idea of using them to influence other Americans."¹⁴⁶

After the Panthers left the Capitol, they assembled at a nearby gas station.¹⁴⁷ Police armed with riot guns and pistols stormed the station, disarmed the group, and loaded the protesters into patrol wagons.¹⁴⁸ Approximately twenty-five Black Panther members were arrested and processed for: violating the Fish and Game Code, which prohibits loaded guns in a vehicle; conspiracy to invade the Assembly Chamber, a felony; brandishing a gun in a threatening manner; and possession of two sawed-off shotguns.¹⁴⁹ Fifteen weapons were confiscated.¹⁵⁰

142. *Id.*; see *Panther Invasion Riles Legislature*, *supra* note 137, at A1.

143. *See Black Panthers Disrupt Assembly*, *supra* note 135, at 1.

144. Rankin, *supra* note 135, § 1, at 3.

145. *Id.* At a press conference Governor Ronald Reagan gave on May 9, 1967, a reporter asked him if he thought that the state law, which permitted the Black Panthers to invade the Capitol, should be repealed or revised. Reagan responded,

Well, now—I don't know just what you mean about the law that would permit such behavior. I tell you this, I think such behavior is absurd, and I've expressed myself on this. I think they ought to take a look in the mirror at themselves. The idea in a country like ours that grown men and women think they have got to run around playing cowboys with guns on their belts. They come in and try to impress a legislature. If it wasn't so terribly serious, you'd have to laugh at it, but it is terribly serious. . . .

Press Conference of Governor Ronald Reagan (May 9, 1967), Box No. GP, Press Unit 31, Press Conference Transcripts 1967 Folder, Reagan Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

146. Salzman, *supra* note 122, at A1.

147. *See Black Panthers Disrupt Assembly*, *supra* note 135, at 1.

148. *See id.*; see also Rankin, *supra* note 135, § 1, at 3.

149. *See Black Panthers Disrupt Assembly*, *supra* note 135, at 1; Rankin, *supra* note 135, § 1, at 3. At a press conference Governor Ronald Reagan gave six days after this incident, he stated his belief that the Panthers could have been arrested for assault with a deadly weapon:

I'm not at all sure we didn't have the right to arrest those people on another charge. There is a difference between someone carrying legitimately and legally a weapon, and someone that must be construed by the manner in which they came in, as if they came in constituting a threat, and I think there is certainly a question there that if this was not an assault with a deadly weapon. There was a threat implied.

Press Conference of Governor Ronald Reagan (May 9, 1967), Box No. GP, Press Unit

Assemblyman Bee, speaking from the police station, stated that the Panthers' armed protest would help the bill pass.¹⁵¹

Assemblyman Mulford told reporters after the protest that it is "ridiculous to think [this legislation] is aimed at any ethnic group[.] . . . It is aimed at white people as much as anyone."¹⁵² African-American Assemblyman Willie L. Brown, Democrat from San Francisco, agreed with Mulford that the bill did not have racial implications; however, he suggested that the author's motives might be racially inspired.¹⁵³ Brown further alleged that Mulford had opposed similar proposals "until Negroes showed up in Oakland—his district—with arms and then he seek[ed] restrictive legislation."¹⁵⁴ Another black Assemblyman, Leon Ralph, a Democrat from Los Angeles, disagreed with Brown that the bill had racial overtones, and believed that it was "aimed at Nazis, the KKK, the Minutemen and others, and should be applied equally to all, black or white."¹⁵⁵ Bill Greene, an African-American Democrat from the district encompassing Watts, who was considered to be a militant advocate of Negro rights, commented, "This action was not militant, it was senseless. No person black or white can condone this action."¹⁵⁶

After the Panthers left the Capitol, the Assembly Criminal Procedure Committee voted on several bills in an attempt to strengthen the laws

31, Press Conference Transcripts 1967 Folder, Reagan Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California. Perhaps Governor Reagan did not consult with his legal advisors prior to making this statement. See *Police Arrest 24 Capitol Invaders, Get 11 Weapons*, SACRAMENTO BEE, May 3, 1967, at A4.

Reginald W. Forte, 18 of Oakland, was charged with conspiracy to commit a crime and assault with a dangerous weapon upon a police officer. Detectives Joseph Del Ponte and Donald Shierts reported Forte raised a loaded .38 caliber revolver nearly out of a holster in a move toward them until they grabbed the weapon and disarmed him.

Id.

150. See Rankin, *supra* note 135, § 1, at 3.

151. See *Black Panthers Disrupt Assembly*, *supra* note 135, at 1; see also Smith, *supra* note 137, at A1 ("An unprecedented invasion of the State Capitol by gun-wielding members of the militant Black Panther Party for Self-Defense demonstrating against a bill to prohibit carrying loaded weapons in public may have had the reverse effect and increased support of the measure.").

152. See *Black Panthers Disrupt Assembly*, *supra* note 135, at 1.

153. See *id.*

154. *Id.* One Black Panther had shouted during the protest that the bill was introduced for the "racist Oakland police" force. *Id.*

155. *Id.*; see *Stronger Gun Laws Needed*, *supra* note 134, § 2, at 2.

156. *Panther Invasion Riles Legislature*, *supra* note 137, at A1; see *Stronger Gun Laws Needed*, *supra* note 134, § 2, at 2.

and penalties relating to “larger military-type guns and ammunition.”¹⁵⁷ Members of the Committee, which was chaired by Assemblyman W. Craig Biddle, were “[c]oncerned over the ease with which a person [could] arm his own army.”¹⁵⁸ In addition to the Panthers’ disruption earlier in the day, the discovery of seventy-seven tons of military arms in William Thoresen’s San Francisco home undoubtedly intensified the debate and influenced the affirmative votes.¹⁵⁹ When Assemblyman Mulford requested that his bill be put over so he could toughen its provisions, John T. Knox from Contra Costa County stated that he wanted to continue working on the bill because he wanted to “stop the spread of [the] problem,” noting that the Black Panthers had engaged in several incidents in the Bay Area.¹⁶⁰

Two days after the Panthers encroached upon the legislative session, several militant black leaders held a rally at San Francisco State College to raise bail money for their jailed comrades.¹⁶¹ Le Roi Jones, a poet and a playwright, shouted to the few students in attendance that the “Oakland policemen—are ‘killers,’ President Johnson is a ‘mass murderer’ and white people in general [are] ‘fiends and bandits.’”¹⁶² Additionally, Jones implored black people to arm themselves in anticipation of an armed confrontation with whites. “You’d better get yourself a gun if you want to survive the white man’s wrath. . . . Those white policemen aren’t here to protect you—they’re there to kill you.”¹⁶³ Interestingly enough, the speaker who earned the most applause was Barbara Arthur, an African-American, who told the small crowd that the Panthers had shaken the power structure when they invaded the Capitol.¹⁶⁴ Arthur

157. Wilson K. Lythgoe, *Assembly Unit Okays Gun Control Bills; Another Is Deferred After Intrusion*, SACRAMENTO BEE, May 3, 1967, at A12. The Committee approved the following bills: 1) AB 1326, which proposed to outlaw private possession of particular military weapons, such as anti-tank guns, bombs, booby traps, and explosives; 2) AB 1324, which required Californians who purchased concealable guns out of state to provide local law enforcement with the same information required if they had bought the handguns in California; 3) AB 1325, which defined hand rocket launchers as concealable firearms; and 4) AB 1323, which banned possession of machine-gun parts. *See id.*; *see also Gun Curbs Plan Moves to Assembly*, OAKLAND TRIBUNE, May 3, 1967, at 5.

158. Lythgoe, *supra* note 157, at A12.

159. *See id.* Apparently, legislators at the time were unaware of the purpose for Thoresen’s stockpiling of military hardware. Since 1956, Thoresen had been arrested eleven times on charges including assault, grand larceny, sex perversion, setting explosives, possession of blackjacks and brass knuckles, and resisting arrest. *See Gun Curbs Plan Moves to Assembly*, *supra* note 157, at 5.

160. Lythgoe, *supra* note 157, at A12.

161. *See Maitland Zane, Ugly Words at S.F. State—A Pro-Panther Rally*, S.F. CHRON., May 5, 1967, at 8.

162. *Id.*

163. *Id.*

164. *See id.*

argued that the Panthers were “merely ‘concerned citizens’” who demonstrated their opposition to Mulford’s weapons bill.¹⁶⁵

Assemblyman Mulford’s office received some complaints regarding his proposed legislation. One man, identified as Steven C. Sullivan, telephoned Mulford’s office on May 4, 1967, and stated that he was a “gun nut” who wanted to protest the pending bill.¹⁶⁶ Sullivan expressed concern that the bill would prevent a man from carrying a gun on his hip in order to protect himself from incidents such as payroll robbery.¹⁶⁷ The only alternative, Sullivan explained, would be for the businessman to hire an officer for protection.¹⁶⁸ Marvin C. Buchanan, a retired FBI agent working for Mulford, took Sullivan’s call and replied that “in view of the development in recent months of armed bands, black and white, roaming the streets[,] that legislation was badly needed in order to protect not only law[-]abiding citizens but police as well.”¹⁶⁹

At least one member of the Black Panthers, Bruce Edward Cockerham, went to Assemblyman Mulford’s office following the May 2 incident.¹⁷⁰ The verbal exchange between Cockerham and stenographer Harriett Hildebrand, as observed by secretary Barbara Anderson and reported to Buchanan, is worth repeating:

Mrs. Hildebrand advised that about 1:30 p.m. on this date she looked up from her desk in Room 870 to see a black hand pointing at the sign “Mulford” on the door to the office. Two negro males looked in the doorway, but at this time, did not actually enter the office. Number 1 [Cockerham] stated, “Isn’t this Congressman Mulford’s Office from Piedmont?” Mrs. Hildebrand answered, “No, this is Assemblyman Mulford’s Office.” Number 1 then asked, “Is he in?” She answered, “No, . . . he [is] in Sacramento.”¹⁷¹

The two men left for approximately ten or fifteen minutes and then returned to speak with Mrs. Hildebrand:

“I’d sure like to get ahold of Mr. Mulford, I want to talk to him.”

165. *Id.*

166. Memorandum from Marvin C. Buchanan to Assemblyman Don Mulford (May 5, 1967), Box No. 1, Black Activism & Black Panthers Folder, Mulford Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

167. *See id.*

168. *See id.*

169. *Id.*

170. *See* Memorandum from Marvin C. Buchanan to Assemblyman Don Mulford (May 24, 1967), Box No. 1, Black Activism & Black Panthers Folder, Mulford Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

171. *Id.*

Mrs. Hildebrand asked why he would like to talk to him and he said, "He doesn't like me, I belong to the Black Panthers for Self Defense."

Number 1 then asked what days he is in his office.

Mrs. Hildebrand answered that he was not in his office because the Legislature was in session and he would not be back until after the [L]egislature was adjourned. Number 1 then wanted to know when the Legislature would adjourn. Mrs. Hildebrand answered that this would be about the last of July or the 1st of August.

Number 1 then stated, "And then he will be at home?" Mrs. Hildebrand answered, "As far as I know."¹⁷²

According to the written account of this incident, neither man appeared to be armed and no threats were made to Mulford's staff.¹⁷³ Marvin C. Buchanan drafted a memo to Mulford informing him of this incident so that "appropriate security measures may be observed."¹⁷⁴

Eventually, six members of the Black Panthers who stormed the Capitol Assembly, including Bobby Seale, pled guilty to a misdemeanor charge of disrupting a legislative session.¹⁷⁵ In return, felony charges of conspiracy to disrupt a legislative session were dismissed for the six Panthers.¹⁷⁶ At the request of Deputy District Attorney Hamilton L. Hintz, charges against nine other members were dismissed due to lack of evidence.¹⁷⁷ Bench warrants were issued for those Panthers who failed to appear.¹⁷⁸

C. California Passes the Gun Bill

On July 26, 1967, the California Senate voted twenty-nine to seven in favor of the gun bill after listening to comments related to the Detroit riots.¹⁷⁹ The Assembly, in turn, voted unanimously for passage of the

172. *Id.* at 2.

173. *See id.*

174. *Id.* at 3.

175. *See Black Panthers Plead Guilty*, SAN JOSE MERCURY, July 21, 1967, at 6.

176. *See id.*

177. *See id.*; *see also Police Arrest 24 Capitol Invaders, Get 11 Weapons*, *supra* note 149, at A4 (reporting that the charges against Reginald Forte were among those dismissed by the District Attorney).

178. *See Black Panthers Plead Guilty*, *supra* note 175, at 6. The Panthers' attorney, Malcolm Burstein, told the Court that one of the three Panthers who failed to appear, Truman Harris, could not be located, and that two others were incarcerated. *See id.* at 6.

179. *See Senate OK's Law Banning Loaded Guns on Streets*, L.A. TIMES, July 27, 1967, § 1, at 3. Three Democrats and four Republicans opposed the bill. *See id.* According to the San Francisco Chronicle, earlier versions of the bill had included provisions prohibiting the instruction in the use of firearms for the purpose of rioting. *See Capitol Flurry in Gun Protest* (copy available in Box No. 1, Black Activism & Black Panthers Folder, Mulford Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California). The day the bill was passed, Governor Reagan stated that he was working with law enforcement to prevent riots in California. *See Jerry Gillam, Reagan Believes Wave of Violence Is Masterminded*, L.A. TIMES, July 26, 1967, § 1, at 1. As Harvard Sitkoff explained about the Detroit riots:

law (AB 1591).¹⁸⁰ The bill, which was approved by Governor Reagan on July 28, 1967, was to take effect immediately.¹⁸¹

On July 23 the mass arrest of blacks at a nightclub selling liquor after the legal closing time detonated six days and nights of epidemic arson and vandalism, six days and nights of black defiance of a system of law and order which seemed so terribly biased against them. Nearly four thousand fires destroyed thirteen hundred buildings. The devastation left five thousand blacks homeless and an equal number jobless. Observing the smoking ruins from a helicopter, the Governor of Michigan remarked that Detroit looked like "a city that had been bombed." Added to the damage caused by burning, looting by tens of thousands of blacks brought the total of lost property to a quarter of a billion dollars. Worse, frightened and untrained National Guardsmen, firing without discipline, accounted for most of the riot's forty-three dead and over a thousand wounded. All told, the 1967 summer riots resulted in at least ninety deaths, more than four thousand casualties, and nearly seventeen thousand arrests.

SITKOFF, *supra* note 63, at 204; see JAMES MILLER, "DEMOCRACY IS IN THE STREETS": FROM PORT HURON TO THE SIEGE OF CHICAGO 277 (1987); MILTON VIORST, FIRE IN THE STREETS: AMERICA IN THE 1960S, at 412 (1979).

180. See Bill Memorandum from Vernon L. Sturgeon, Senate Legislative Secretary, and Jack B. Lindsey, Assembly Legislative Secretary to Governor Reagan (July 28, 1967), Box No. GP, Press Unit 9, Reagan Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

181. See Act of July 28, 1967, ch. 960, 1967 Cal. Stat. 2459-63. The enacted bill stated in pertinent part:

SECTION 1. Section 12031 is added to the Penal Code, to read:

12031. (a) Except as provided in subdivision (b), every person who carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(b) Subdivision (a) shall not apply to any of the following:

(1) Sheriffs, constables,

. . . .

(4) Persons who are using target ranges for the purpose of practice shooting with a firearm, or who are members of shooting clubs while hunting on the premises of such clubs.

. . . .

(c) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

. . . .

(f) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any

person in lawful possession of private property from having a loaded firearm on such property.

(g) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(h) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or another is in immediate danger and that the carrying of such weapon is necessary for the preservation of such person or property.

(i) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(j) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his place of residence, including any temporary residence or campsite.

SEC. 2. Section 171c is added to the Penal Code, to read:

171c. Any person, except a sheriff . . . shall be punished by imprisonment in the county jail for not more than one year, or by fine of not more than one thousand dollars (\$1000), or by both such fine and imprisonment, or by imprisonment in the state prison for not more than five years, if he does any of the following:

1. Brings a loaded firearm into, or possesses a loaded firearm within the State Capitol

2. Brings a loaded firearm upon, or possesses a loaded firearm upon, the grounds of any public school, including the University of California and the state colleges

....

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The State of California has witnessed, in recent years, the increasing incidence of organized groups and individuals publicly arming themselves for purposes inimical to the peace and safety of the people of California.

Existing laws are not adequate to protect the people of this state from either the use of such weapons or from violent incidents arising from the mere presence of such armed individuals in public places. Therefore, in order to prevent the potentially tragic consequences of such activities, it is imperative that this statute take effect immediately.

Id. There is no written record of the Assembly or Senate debates for California. For any particular piece of legislation, there may be author's files, committee files, or governor's chaptered bill files. The California State Archives only has one page containing the Governor's bill file. Everything else regarding this statute is maintained in the private collection of Governor Ronald Reagan at the Hoover Institution at Stanford University. Access to this collection must be obtained by written permission of Edwin Meese, III, Trustee of the Institution. Permission was granted to the author on November 9, 1998 (letter on file with author).

Section 12031 of the California Penal Code was amended in 1968, 1969, 1970, 1972, 1974, 1976, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1986, 1987, 1988, 1990, 1991, 1992, 1993, 1994, 1995, and 1996. The provision regarding carrying a loaded gun in public remains virtually the same as it was when it was passed in 1967. *See* CAL. PENAL CODE § 12031 (West 1998). The current section (a)(1) reads:

A person is guilty of carrying a loaded firearm when he or she carries a

Senator Donald L. Grunsky, a Republican from Watsonville¹⁸² stated after the passage of Assembly Bill 1591 that “[r]ight at the moment, this is perhaps the most timely and most important bill we could have before us.”¹⁸³ Senator Nicholas C. Petris, a Democrat from Oakland, commented that “[w]e’re probably 100 years late” referring to the fact that “[r]iots in New York during the Civil War claimed 1,000 lives in one year.”¹⁸⁴ Furthermore, Petris remarked that “we and a lot of state legislatures across the country should have acted a lot sooner.”¹⁸⁵

Some Senators opposed the bill for interesting, but possibly factually erroneous, reasons. Senator James R. Mills, a Democrat from San Diego, stated that the bill could apply to hunters because the gun did not have to be loaded in order to violate the statute.¹⁸⁶ Senator John G. Schmitz, a Republican from Tustin, supported the bill because of the Detroit riots, but argued that the bill would prevent citizens from defending their homes against rioting individuals. “I would rather have a gun than the assurance that the people attacking my home were using them illegally. . . . All restrictive gun legislation is discriminatory against the law abiding citizen.”¹⁸⁷

Prior to passage of the bill, Governor Reagan had signaled his support in a press conference he gave on May 9, 1967. Reagan stated in part,

Well, I have no objection [to the bill]—as a matter of fact, I think that

loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

CAL. PENAL CODE § 12031(a)(1) (West 1998).

182. Watsonville is a city on the coast approximately fifty miles south of Oakland.

183. *Senate OK’s Law Banning Loaded Guns on Streets*, *supra* note 179, § 1, at 3.

184. *Id.* But see ZINN, *supra* note 21, at 231 (asserting that although no exact figures have ever been given, perhaps as many as four hundred people were killed in New York during the anti-draft riots in 1863; the number of lives lost as a result is estimated as greater than any other incident of domestic violence in American history).

185. *Senate OK’s Law Banning Loaded Guns on Streets*, *supra* note 179, § 1, at 3.

186. See *id.* Senator Schmitz’s statement seems to be in direct contradiction with section 12031(g), which states that a person may carry a loaded firearm “in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited.” Act of July 28, 1967, ch. 960, sec. 1, § 12031(g), 1967 Cal. Stat. 2459, 2460 (codified as amended at CAL. PENAL CODE § 12031(i) (West 1998)).

187. *Senate OK’s Law Banning Loaded Guns on Streets*, *supra* note 179, § 1, at 3; see Cramer, *supra* note 3, at 7. This statement seems to be in direct contradiction to section 12031(j), which allows a person to keep a loaded weapon in his or her residence. See sec. 1, § 12031(j), 1967 Cal. Stat. at 2461 (codified as amended at CAL. PENAL CODE § 12031(l) (West 1998)).

Assemblyman Mulford's proposal about not carrying a loaded weapon, this would have my support, because I don't know of any sportsman who leaves his home with a gun to go out into the field to hunt or for target shooting who carries that gun loaded. The first thing any real sportsman learns is to carry an empty gun until he gets to the place where he's going to do the shooting. So this would work no hardship on the honest citizen. At least it would be some protection, the fellow had to stop and load the gun before he could pull it.¹⁸⁸

The National Rifle Association (NRA) expressed conflicting opinions about Mulford's law. According to one reporter, the NRA advocated the idea that groups of armed civilian posses should be dispatched into the communities during times of unrest to stop citizens bent on violence and destruction.¹⁸⁹ According to another columnist, the NRA supported this legislation from its inception.¹⁹⁰

D. The Panthers Are Sent to Jail

On August 9, 1967, the six Black Panthers who had pled guilty to disrupting a legislative session were sentenced.¹⁹¹ Municipal Court Judge Oscar Kistle praised three of the Panthers for their "efforts to become productive members of society," but stated that he still had to send them to jail for ten days and place them on probation for two years.¹⁹² Another Panther, John Bethea, was sentenced to thirty days in jail and two years of probation.¹⁹³ Bobby Seale and Warren Tucker, however, were sentenced to ninety days in jail and three years of probation.¹⁹⁴

Attorneys for the Panthers told Judge Kistle that the group no longer carried guns in public.¹⁹⁵ The attorneys also argued at sentencing that the Panthers mistakenly believed that they were entering the Public Gallery, not the Assembly, when they protested at the Capitol.¹⁹⁶

According to the available news articles and legislative materials, it

188. Press Conference of Governor Ronald Reagan (May 9, 1967), Box No. GP, Press Unit 31, Press Conference Transcripts 1967 Folder, Reagan Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

189. *See id.* Governor Reagan responded to the NRA's position by saying, "No, you don't settle anything by the citizens taking the law into their own hand." *Id.*

190. *See* Edwin S. Capps, *Black Panthers Put Focus on Gun Laws*, SACRAMENTO UNION, May 11, 1967, at B3.

191. *See NL Panthers* (Aug. 10, 1967), Box No. Research Unit 2, Prevention Civil Disorder File, Reagan Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California.

192. *Id.*

193. *See id.*

194. *See id.*

195. *See id.* Whether the attorneys were speaking for all the members of the Black Panthers when they spoke of "group," or whether they were referring solely to those six present at sentencing, is unclear.

196. *See id.*

does not appear that, at their sentencing hearing, the Panthers challenged the constitutionality and legitimacy of the gun laws under which they were arrested. There could be several explanations for this decision. The Panthers may have entered into a plea agreement with the District Attorney in order to receive a lighter sentence. They may also have wanted to shift the government's focus away from their group by stating in open court that they no longer carried weapons in public and that they were complying with the law. Whatever their reasons, it is interesting to note that the Panthers did not challenge their arrests or challenge the law in court when they had a captive audience and when they were almost guaranteed that their comments would make the news.

IV. REASONS LEADING TO THE PASSAGE OF SECTION 12031: CRIME CONTROL OR PANTHER CONTROL?

A. The Statute Was Aimed at Preventing a Riot?

After examining the violence experienced by citizens in the South in the 1960s, the origin, beliefs, and actions of the Black Panther Party for Self-Defense, and the background of the California gun control statute, it seems that there is one overwhelming theme pervading the enactment of the law: California legislators wanted to prevent a black revolution, to preserve the right and authority of whites, and to protect themselves. Whether it was anticipated that revolution would occur in the form of a riot, or simply that it would spark ideas of equality among the races and classes, self-identity and self-worth, and foster an intolerance of oppression, the California State Legislature and Governor Reagan sought to control the Black Panthers and anyone influenced by their rhetoric.¹⁹⁷

There is some evidence that the California legislators passed section 12031 of the California Penal Code in part because of the Detroit riots, which began three days prior to the vote on the bill in the Senate.¹⁹⁸ But if the Assemblymen and Senators were primarily concerned about the outbreak of a riot, why wasn't the law introduced and passed in 1965 after the Watts riot, which occurred within their own state?

197. See *infra* Part IV.B.

198. See, e.g., *Senate OK's Law Banning Loaded Guns on Streets*, *supra* note 179, § 1, at 3 ("A law banning citizens from carrying loaded firearms on city streets passed the Senate 29-7 Wednesday after comments on rioting in Detroit.")

On August 11, 1965, a black youth was stopped and arrested in Watts, Los Angeles's largest black ghetto, for drunken driving.¹⁹⁹ When the youth's mother appeared on the scene, she scuffled with the patrolmen. After the black observers jeered, officers "brandish[ed]" their rifles and called for reinforcements.²⁰⁰ When additional officers arrived, they were pelted with rocks and bottles by the now angry mob that had begun overturning cars and smashing shop windows.²⁰¹ Stores were looted for several hours.²⁰² The next morning, the police declared that the situation was under control and that the riot had ended.²⁰³

The situation, however, was anything but under control. By that evening, the mob had grown to over five thousand people chanting Black Panther slogans, "Black Power" and "Burn, Baby, Burn."²⁰⁴ Some blacks looted stores and burned white-owned businesses.²⁰⁵ Rioters returned police gunfire, even from rooftops, and some ambushed firemen responding to the crisis.²⁰⁶ Three days after the start of the riot, fourteen thousand National Guard troops arrived in the area, coming to the aid of the fifteen hundred law enforcement officers.²⁰⁷ By the time the riot had concluded, thirty-four people lay dead, nine hundred were injured, four thousand were arrested, and the city sustained over thirty million dollars in property damage.²⁰⁸

If the state's main reason for passing the gun control statute was to prevent riots from erupting in the future, then why didn't the state pass such a law following the Watts riot? After all, didn't black snipers on rooftops kill police officers? Wasn't it partially the state's responsibility to spend state money to repair the property damage? If legislators were mainly interested in preventing riots in a California city, then they should have passed some type of gun control measure in 1965 or early 1966.

One possible reason the gun statute was not passed until two years later was that there was no motivation to pass such a law until after the Watts riot. The state was successful in quashing a spontaneous domestic rebellion through state law enforcement personnel and National Guard troops. Enacting a misdemeanor law that forbid possession of a loaded

199. See SITKOFF, *supra* note 63, at 200. See generally MILLER, *supra* note 179, at 273-75; VIORST, *supra* note 179, at 309-37.

200. SITKOFF, *supra* note 63, at 200.

201. *See id.* at 201.

202. *See id.*

203. *See id.*

204. *Id.* at 200.

205. *See id.*

206. *See id.*

207. *See id.*

208. *See id.*

gun in public could not realistically be seen as an effective form of riot control, since rioters usually commit major felonies, such as destruction of property, aggravated assault, and battery. Therefore, there would be little chance that the gun law would deter individuals contemplating joining a riot, or that it would provide a serious penalty to rioters if the police caught them.

The Black Panthers, on the other hand, were an organized group²⁰⁹ whose members openly displayed their weapons and overtook black urban centers by preaching in support of a black armed revolution. Unlike a domestic riot, the Black Panther Party was not a spontaneous, short-lived movement that would disappear in six days. Instead, the Panthers were a real grass-roots movement, organized on the local level. The Black Panthers expected more armed conflicts with the white power structure that would culminate in a violent revolution.²¹⁰ This difference appears to have spurred California legislators to consider a preemptive solution (i.e., a gun control measure) to disarm a revolutionary movement prior to its commencement.

To whatever extent the bill was intended to change riot situations, the law was meant to disarm rioters as opposed to property owners. If a person is not allowed to carry a loaded weapon in public, but he is allowed to possess one in his home or his business for defensive purposes, then these provisions would be applicable in the case of a riot. For example, if the statute had been in effect during the Watts riot, the police could have stopped every armed person and arrested him for violating the law (assuming the gun was loaded). Conversely, the storeowners would have been permitted to arm themselves for purposes of defending themselves and their property. Considering that the overwhelming majority of rioters in the 1960s were black and whites owned the properties they targeted, would the law in effect have protected whites against blacks?

Additionally, recognizing that nervous National Guard troops were responsible for the majority of the deaths during the Detroit riots, would the California law, assuming it were in effect during a riot similar to Detroit's, have disarmed blacks attempting to defend themselves from

209. See Smith, *supra* note 137, at A1. According to Lieutenant Ernest Holloway, a veteran on the Capitol State Police Force, "[t]he Black Panther group was well organized They knew how far they could go They were quoting the Constitution verbatim about their right to bear arms." *Id.*

210. See *supra* Part II.B-C.

the troops? Black citizens in Newark began rioting on July 12, 1967, likely out of hopelessness, despair, and frustration with a city that had the “highest rates of black joblessness, condemned housing, crime, new cases of tuberculosis, and maternal mortality.”²¹¹ On the other hand, African-Americans in Detroit started rioting a week later, not because of economic inequality or lack of political representation, but because of the frequent instances of unwarranted police brutality by white cops against black citizens.²¹² In both cities, the rioters torched buildings and looted stores.²¹³ The governors of Michigan and New Jersey responded by bringing in the National Guard.²¹⁴ The Guard responded by killing the black rioters and arresting thousands more.²¹⁵ This response was unfair and legally unjustifiable—the Guard troops killed people for committing the crimes of arson and theft, hardly an appropriate punishment.

By weighing the balance of power in favor of the white majority at the expense of the black rioters, the state governments, including California, increased the probability that armed government forces would overpower defenseless blacks. Moreover, the states guaranteed that their forms of institutional violence (“the physical or psychological impairment or destruction of what is essential to the human person”²¹⁶), and, of course, physical violence, would continue and possibly lead to further counter-violence — i.e., riots—by minorities.²¹⁷ In order to limit or prevent further counter-violence, whether it be in the form of spontaneous riots or organized movements, the state apparatus in California passed a law that hampered the ability of African-Americans to defend themselves through the use and possession of firearms. This action represented a violation of the fundamental right of self-defense,²¹⁸ a right which, if retained by white business owners and white property owners in California, must be equally retained by blacks seeking to protect their personal freedoms and interests.

As it is often said when analyzing historical events, “timing is everything.” The Detroit riots were continuing when the California law was passed.²¹⁹ Tens of thousands of blacks were responsible for looting

211. SITKOFF, *supra* note 63, at 203.

212. *See id.* at 203-04.

213. *See id.*

214. *See id.*

215. *See id.* at 203.

216. JAMES MCGINNIS, *EDUCATING FOR PEACE AND JUSTICE: NATIONAL DIMENSIONS* 51 (1985).

217. *See id.* (arguing that the only way to prevent counter-violence, which ultimately leads to repression, is to resist institutional violence).

218. *See supra* note 73.

219. *See SITKOFF, supra* note 63, at 204.

stores and burning property, thereby causing a quarter of a billion dollars' worth of damage.²²⁰ No doubt, the California law was attractive in July of 1967, when the nation was experiencing summer riots resulting in at least ninety deaths, more than four thousand wounded, and almost seventeen thousand arrests.²²¹ By adopting this law, the state government sought to convince the white power structure that any future riot would be one in which whites were armed, and blacks were not.²²²

220. *See id.*

221. *See id.* Sitkoff described the time as follows:

The most intense and destructive wave of racial violence the nation had ever witnessed came in 1967. The National Advisory Commission on Civil Disorders, appointed by President Johnson to investigate the turmoil, recorded nearly 150 racial outbreaks that summer and described twoscore of the riots as "major or serious." Violence convulsed Boston, Buffalo, Cincinnati, New Haven, Providence, Wilmington, Cambridge, Maryland, and a hundred other cities. North and South, from coast to coast, authorities reported unprecedented numbers of blacks throwing Molotov cocktails, looting and burning stores, and firing upon police.

No riot was more expected than Newark's; none was more bloody. With the nation's highest rates of black joblessness, condemned housing, crime, new cases of tuberculosis, and maternal mortality, Newark verged on the brink of a race war between its despairing majority black population and a callous, corrupt, almost all-white city administration. The arrest of a black taxidriver and rumors that he had been beaten to death triggered the bloodbath on July 12. Looting began immediately. Then the arsonists took over. On the second night, the police began using live ammunition. They killed five blacks. Although the rioting seemed on the wane the third day, the Governor of New Jersey described the situation as "a city in open rebellion" and ordered in the National Guard. Over the weekend, the Guardsmen and police fired over thirteen thousand rounds of ammunition, killing twenty more blacks and wounding some twelve hundred. Over thirteen hundred blacks had been arrested and property losses were put at \$10 million.

Id. at 202-03. *See generally* MILLER, *supra* note 179, at 277; VIORST, *supra* note 179, at 337, 412, 432; ZINN, *supra* note 21, at 451-52.

222. Sitkoff stated:

The National Advisory Commission on Civil Disorders blamed the riots on the "explosive mixture" of poverty, unemployment, slum housing and segregated education in the nation's cities. To allay black discontent, the commission recommended the creation of two million new jobs in the ghetto, an attack on de facto segregation, the construction of six million new units of public housing, and the institution of a national system of income supplementation. . . .

Such proposals horrified conservatives as rewarding criminal behavior. Poverty and squalor did not cause the riots, they argued: youth groups did; the hoodlum element did . . . a permissive society which encouraged blacks to sate their greed and which indulged the anti-social tendencies of blacks was to blame.

SITKOFF, *supra* note 63, at 205-06. Because California was under the political control of Governor Reagan, a conservative Republican, it seems difficult, if not impossible, to

B. Section 12031 Targeted the Black Panthers, Not the Ku Klux Klan, the Nazis, or the Minutemen

1. The Black Panthers

Four groups were identified by the legislators as being targets of the law: the Black Panthers, the Ku Klux Klan (KKK), the Minutemen, and the American Nazis.²²³ After analyzing the available legislative materials regarding the debates and ultimate passage of Assembly Bill 1591, this section will show that the law was intended to disarm the Panthers and not the other identified groups.

The Black Panthers have long claimed that the California law was proposed and passed not simply to prevent them from displaying their weapons in public, but to prevent them from defending themselves and from spreading their message to others, especially on campuses. As Eldridge Cleaver noted in 1968:

Some very interesting laws are being passed. They don't name me; they don't say, take the guns away from the niggers. They say that people will no longer be allowed to have (guns). They don't pass these rules and these regulations specifically for black people, they have to pass them in a way that will take in everybody.²²⁴

In early 1967, the Panthers had protested the shooting death of a black youth by sheriff's deputies in Contra Costa County.²²⁵ The sheriff was powerless to stop this demonstration. When Assemblyman Mulford asked that his bill be put over for consideration so that he could strengthen its provisions, Assemblyman Knox from Contra Costa stated that the bill would be worked on because he wanted to "stop the spread

believe that Reagan would have entertained any of the commission's proposals in lieu of a gun control statute. Indeed, when Reagan scheduled a meeting on July 18, 1967, with a "group of responsible leaders of the Negro community" to "stimulate grassroots actions aimed at eliminating the basic and real causes of racial tensions," he did not invite any member of the Black Panthers. Memorandum to the Press, Office of the Governor, Sacramento, California (July 18, 1967), Box No. GP, Press Unit 9, Reagan Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California. At a press conference in which he discussed the meeting, Reagan stated,

I would like to repeat a statement I made last January 5 at my inauguration: ". . . Those with a grievance can seek redress in the courts or Legislature, but not in the streets. Lawlessness by the mob, as with the individual, will not be tolerated. We will act firmly and quickly to put down riot or insurrection wherever and whenever the situation requires."

Id.

223. See *Stronger Gun Laws Needed*, *supra* note 134, § 2, at 2.

224. William R. Tonso, *Gun Control: White Man's Law*, REASON, Dec. 1985, at 22.

23.

225. See *supra* notes 121-28 and accompanying text.

of this problem” due to the Black Panther incidents in his jurisdiction.²²⁶ Indeed, Mulford acknowledged that the bill was proposed by law enforcement officials as a result of incidents in Alameda and Contra Costa Counties.²²⁷ If there were other groups of armed individuals who frightened the sheriff in Contra Costa County, then why didn’t Knox or Mulford identify them and their activities for the press? Knox also suggested that the bill include an urgency provision so that the bill could take effect immediately upon Governor Reagan’s signature.²²⁸

Also, as explained in Part II, the Panthers walked throughout Oakland with loaded firearms carried in an unconcealed manner.²²⁹ Oftentimes, the Panthers would defend motorists who had been stopped by the police.²³⁰ The armed Panthers must have appeared to be worthy defenders. They were able to quote the California Penal Code to both the officer and the motorist to ensure that law was followed.²³¹ Their mere presence on the street ensured that they would draw a crowd of people who could later testify as witnesses to the situation. Undoubtedly, the police were far less likely to use excessive force on the occupants of the vehicle with a band of armed Panthers standing nearby. However, with the passage of section 12031 of the California Penal Code, the Panthers were no longer a serious threat to the police in these confrontations. Even if they appeared at the scene of an illegally detained motorist or suspect, the Panthers would not be nearly as effective as defenders of the motorist if the police could dismiss them without fear of an armed response.

Additionally, if a known or suspected Panther was identified and stopped on the street within city limits, the police could arrest him on the street simply for possession of a loaded weapon. While this charge would only constitute a misdemeanor, it could be included with other charges or merely used as a tool of harassment.

Also of interest to the Panthers was the prohibition against carrying a loaded weapon into the Capitol. While this might be worthy legislation in its own right, it is curious that this provision was included in the bill, recalling the Panthers’ field trip to the Capitol to protest the law. Assemblyman Mulford made no secret of the fact that following the

226. Lythgoe, *supra* note 157, at A12.

227. See Salzman, *supra* note 122, at A1.

228. See *id.*; see also note 181 and accompanying text.

229. See *supra* note 78 and accompanying text.

230. See *Eyes on the Prize II*, *supra* note 55.

231. See *id.*

Panthers' "invasion" of the Capitol, he strengthened the bill to include a provision which made it illegal to carry a loaded weapon in state buildings.²³² Indeed, in the week following the Panthers' dramatic entrance into the state Capitol, the Rules Committee had a showing of news film taken during the incident.²³³ "Thirty minutes of unedited film was projected."²³⁴ Assemblyman Mulford was present during this showing and informed his colleagues of an alleged meeting that afternoon at a state university to show support for the Black Panthers.²³⁵ Mulford told those legislators in attendance that the FBI had informed him that "funds were being raised at the meeting to replace the weapons confiscated from the Panthers."²³⁶ Unfortunately, Mulford neglected to confirm this information. If he had contacted the University, he would have been told that the administration canceled the meeting and that the only evidence of fund-raising activities was a white youth asking for bail money.²³⁷

One way the Panthers were able to spread their message was to speak at college campuses. The appearance of Huey Newton or Bobby Seale, with black leather jacket and black beret, gun on hip, preaching of an armed black revolt, was enough to entice many young followers.²³⁸ Would the Panthers be as successful in their recruitment efforts without guns? It is difficult to believe that the lack of weapons would have no effect on their abilities to attract followers considering the content of their message.

Perhaps it was the content of the Panthers' message that partially led to the legislators enacting a law aimed at disrupting the group's effectiveness. The Panthers' Ten Point Plan included such socialist notions as full employment for all blacks and a right to decent housing and education.²³⁹ The Panthers preached the teachings of Mao Tse-Tung and aligned themselves with the Vietnamese against the American troops who were, in the Panthers' opinion, committing genocide and escalating a racist war.²⁴⁰ Indeed, Stokely Carmichael was honored in North Vietnam and Cuba in 1967.²⁴¹ In the early days of the Party, Seale

232. See Mike Jacobs, *Sacramento Report*, THE POST, May 10, 1967 (copy available in Box No. 1, Black Activism & Black Panthers Folder, Mulford Collection, Archives of the Hoover Institution on War, Revolution and Peace, Stanford, California).

233. See *id.*

234. *Id.*

235. See *id.*

236. *Id.*

237. See *id.*

238. See Bobby Seale, *From the Sixties . . . to the Future*, <<http://www.bobbyseale.com>>.

239. See *supra* note 68 and accompanying text.

240. See *supra* note 139 and accompanying text.

241. See GITLIN, *supra* note 50, at 349. Carmichael was eventually disillusioned by

and Newton raised money for their group by selling copies of Mao's *Little Red Book* on Berkeley's campus.²⁴² Posters of Huey Newton hung next to pictures of Che Guevara and Malcolm X at party headquarters.²⁴³ Thus, California's enactment of the gun control law was an attempt to subdue a black power movement that not only preached violence as a means to an end, but also reflected the philosophy of third world anti-imperialistic and pro-communistic ideals.

One undated, unsigned report contained within Assemblyman Mulford's legislative files is entitled *The Black Panther Movement*, and it explains, presumably to Mulford, the history and beliefs of the group.²⁴⁴ The author of the report wrote that law enforcement groups were concerned about the Panthers because of their publications, which advocated the end to police brutality and the murder of black people, and because of their support for an armed black populace.²⁴⁵ The author continued:

The local (Oakland) Black Panther Party is known in full as "The Black Panther Party for Self Defense." In their terminology this means defending one's self with a weapon, be it a pistol, rifle or shotgun. It is clear that members are well informed as to the laws governing the ownership and carrying of weapons. However, they are seen almost daily with weapons on their person—particularly in recent days they have moved about in numbers of from six to twenty-five.

This then represents a threat to the peace of any community in which they choose to appear.²⁴⁶

There is little doubt that the report was written for the purpose of supporting Mulford's bill, which was intended to disarm the Panthers. The last paragraph of the report stated:

For police agencies to be aware of the activities of the Black Panther Party is not enough. With Black Panthers leaders, Bobby Seale and Huey Newton, stating that their prime objective is to arm the Negro community to full capacity for the purpose of backing all plays by the Negro community and to act as a deterrent to all organizations, including police departments, makes it clear that new enforceable legislation is urgent and imperative that would better control the use of weapons by *any group*. This is particularly true when the weapons

Fidel Castro's and Ho Chi Minh's "hostility toward black separatism." *Id.* By 1968, Carmichael was preaching, "Communism is not an ideology suited for black people Socialism is not an ideology fitted for black people" *Id.*

242. *See id.*

243. *See id.*

244. *See generally* The Black Panther Movement, *supra* note 120.

245. *See id.* at 4. The report contained the Ten Point Plan of the Black Panthers. *See supra* note 68 and accompanying text.

246. The Black Panther Movement, *supra* note 120, at 6.

are used as a threat to the peace of the community. Under present existing laws, the police are powerless to act.²⁴⁷

After reading this seven-page report, one is left to wonder what other armed groups could have prompted initiation of the bill. If Mulford had evidence that other groups were “threaten[ing] the peace of the community”²⁴⁸ then he undoubtedly would have included such documentation in his files as further support for his position.

The most persuasive argument that the law was intended to disarm the Panthers comes not from a practical analysis of its provisions, but from the text of the law itself. The conclusion stated that “[t]he State of California has witnessed, in recent years, the increasing incidence of *organized groups and individuals publicly arming themselves*.”²⁴⁹ About whom are the legislators speaking? What other groups had recently armed themselves in public besides the Panthers?

2. *The Ku Klux Klan*

Shortly after the end of the Civil War in 1865, several old Confederates in the South organized a secret army with the intention of continuing the War and preserving their elitist way of life.²⁵⁰ According to the Klan, whites should reign supreme over all other races and creeds,

247. *Id.* at 7 (emphasis added). Were the police powerless to act? The Oakland Police Department arrested the leaders and rank and file members of the Black Panthers on numerous occasions. Bobby Seale and Huey Newton had lengthy arrest records. *See supra* notes 51 & 52 and accompanying text. Since the Panthers’ appearance in California, the group’s members had been arrested and charged with state weapons violations. *See supra* notes 51-52 and accompanying text; *see also* MCADAM, *supra* note 68, at 218-19. For the anonymous author of this document to argue that the police are “powerless” to act in all situations was a gross exaggeration.

248. The Black Panther Movement, *supra* note 120, at 7.

249. Act of July 28, 1967, ch. 960, sec. 6, 1967 Cal. Stat. 2459, 2462-63 (emphasis added).

250. *See* DANIEL J. BOORSTIN & BROOKS MATHER KELLEY, A HISTORY OF THE UNITED STATES 373-74 (1992). The authors explained that the Klan chose the name of their group from the Greek work “kyklos,” which means circle. *See id.* The Klan believes that if the white man started civilization and was responsible for its growth and development, then the Klan would see that the white man completed the circle of the universe with his supremacy over others. *See id.* The Klan white hoods and robes represented the ghosts of Confederate soldiers. *See id.* The Klan would often burn crosses on the properties owned by blacks. *See id.*; *see also* ZINN, *supra* note 21 at 198; *Stormfront.org* (visited Sept. 21, 1999) <<http://neworderknights.com>> (supporting the notion that the Klan strives for total Aryan unity—pure white Christians, non-Jewish, non-Negro, non-Asian). The Southern Poverty Law Center has currently identified thirty-five hate groups within the state of California. *See Intelligence Project* (visited Sept. 21, 1999) <<http://www.splcenter.org/intelligenceproject/ip-index.html>>. These groups include organizations such as: the National Alliance in Allegheny, California; Peckerwoods in Antelope Valley, California; the White Aryan Resistance in Fallbrook, California; the National Association for the Advancement of White People in Loyaltan, California; and the New Order Knights of the Ku Klux Klan. *See id.*

and they must attain that goal by any means necessary, including violence. The Klan began their indiscriminate slaughter of blacks soon after the War ended. In 1866, Klan riots broke out in Memphis, Tennessee and New Orleans, Louisiana resulting in the combined deaths of almost one hundred blacks.²⁵¹ The violence continued throughout the 1860s and 1870s as the armed Klan organized raids, lynchings, and beatings of African-Americans.²⁵²

In response to the violence perpetrated against African-Americans, President Ulysses S. Grant and Congress approved the Ku Klux Klan Acts to outlaw these organizations and protect the nation's citizens.²⁵³ Unfortunately, these laws and their state counterparts had little or no effect because the state governments in the South, which were established by Congress, had started electing Confederate heroes to positions of authority; additionally the Supreme Court had emasculated much of the federal anti-Klan statutes.²⁵⁴

The Klan was revived in the 1920s, possibly due to the influx of immigrants into the United States.²⁵⁵ The group expanded into the Northern and Western states and amassed over four and a half million members.²⁵⁶ During World War II, however, the Klan's charter was revoked, the Internal Revenue Service placed a \$685,000 tax lien on its assets, and the organization temporarily dissolved.²⁵⁷ But after the war, Klan sympathizers once again began organizing local Klan groups in the South.²⁵⁸ Although the group never came close to enjoying the broad political power it had in the 1920s, as of 1947, the Klan was on a list of groups considered by President Harry Truman to be "seeking to alter the form of government of the United States by unconstitutional means."²⁵⁹ By the 1960s, the Klan resurrected itself once again to destroy participants in the Civil Rights Movement, including the 1955 Montgomery bus boycott and the integration of Little Rock High

251. See ZINN, *supra* note 21, at 198.

252. See *id.* at 199.

253. See BOORSTIN & KELLEY, *supra* note 250, at 374. The first prosecutions under this 1870-1871 Act involved a situation in which seven blacks were flogged by a large group of Klansmen. One sheriff and one deputy were prosecuted and convicted. See GEORGE & WILCOX, *supra* note 65, at 362.

254. See ZINN, *supra* note 21, at 199.

255. See BOORSTIN & KELLEY, *supra* note 250, at 374-75.

256. See *id.* at 580.

257. See GEORGE & WILCOX, *supra* note 65, at 362.

258. See *id.*

259. BOORSTIN & KELLEY, *supra* note 250, at 580.

School.²⁶⁰ The Klan was directly responsible for acts of violence against Freedom Riders in 1964, and for the murders of three defenseless civil rights workers—James Chaney, Andrew Goodman, and Michael Schwerner—in Mississippi in 1964.²⁶¹

If the state assembly in California wanted to pass a law to destroy the Klan and its effectiveness in the state, then a legislator would have proposed some type of anti-Klan statute immediately following the Civil War, in the 1920s, or in the early 1960s when the Klan was attacking civil rights workers. According to the Anti-Defamation League, however, Klan membership in 1965 was estimated at ten thousand people, with the majority of its members residing in the South.²⁶² Moreover, the legislators must have understood that there was no single Ku Klux Klan, but rather, many Klan groups, each headed by a different leader.²⁶³ So, which of these local California Klan groups was Mulford addressing? It is doubtful that any proposed statute which was aimed at the Klan would have been one that prohibited carrying weapons in public, considering that the Klan is a secretive group whose members are not always easy to identify absent the white robes and hoods. Additionally, a misdemeanor gun possession law would hardly have deterred the members of the Klan in California, since carrying weapons in public was not a central theme of their agenda. If the Klan posed such a threat to the peace and security of Californians in 1967, then Assemblyman Mulford certainly would have done his homework to produce evidence of that threat for his fellow legislators.

3. *The Nazis*

The Nazi Party, formally known as the National Socialist Workers' Party, was founded as the German Worker's Party in Munich, Germany on January 5, 1919.²⁶⁴ By 1921, Adolf Hitler had become the Party's political and intellectual leader.²⁶⁵ The Nazis believed in the destruction of their enemies, which included the Jews, and in the dominance of the white, German race.²⁶⁶

260. See GEORGE & WILCOX, *supra* note 65, at 362.

261. See SITKOFF, *supra* note 63, at 172-76. The three workers were killed by members of the Mississippi Klan with the assistance of the sheriff and deputy sheriff of Neshoba County. See *id.* at 174.

262. See GEORGE & WILCOX, *supra* note 65, at 364-65.

263. See *id.* at 364.

264. See DANIEL JONAH GOLDHAGEN, *HITLER'S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST* 85 (1996).

265. See *id.*

266. See *id.* See generally ADOLF HITLER, *MEIN KAMPF* 300-09 (Ralph Manheim trans. 1971).

Eventually Nazi Party chapters were organized in the United States, but they never achieved the prominence they had enjoyed in Europe. It is unlikely that, at any time after World War II, a local Nazi Party ever exceeded two thousand members, and a more realistic figure is a fraction of that.²⁶⁷ Nazi sympathizers in the United States seemed to align themselves with either the “neo-Nazi” movement or the American Nazi Party.²⁶⁸ Although it is unclear from the historical materials which faction the legislators were addressing, neither group was a credible threat to the peace and safety of California citizens.

“Neo-Nazi” has been defined as:

[A]n organization or party that generally adopts or advocates traditional Nazi symbolism, including the swastika or appropriate equivalent; the wearing of uniforms or other paraphernalia, the use of the terms, “Nazi,” “National Socialist,” or some variation in its name; and a demonstrated reverence for or appreciation of Adolf Hitler and the Third Reich.²⁶⁹

The National Renaissance Party (NRP), led by James Madole of Beacon, New York, was the first American neo-Nazi organization to form in the United States after World War II.²⁷⁰ Even after thirty years of existence, the NRP was never able to recruit more than seventy-five members.²⁷¹ General hostility to Nazi ideals, an unsympathetic news media, the increase of minorities in the social and political spectrum, and other factors virtually assured that any neo-Nazi organization would remain powerless and unattractive.²⁷²

George Lincoln Rockwell founded the American Nazi Party (ANP) in Virginia in 1959.²⁷³ The ANP never attracted more than one hundred members in the height of its popularity in the late 1960s.²⁷⁴ Rockwell was a hotheaded leader, who had frequent temper tantrums and disputes with members.²⁷⁵ The volatile personality of the group’s leader likely was a reason the ANP did not garner more support. Although splinter Nazi groups such as the Chico Area National Socialists began to emerge in California, they did not gain recognition until the early 1980s.²⁷⁶

267. See GEORGE & WILCOX, *supra* note 65, at 323.

268. See *id.* at 323, 326.

269. *Id.*

270. See *id.* at 324.

271. See *id.* at 325.

272. See *id.* at 323.

273. See *id.* at 326-27.

274. See *id.* at 327.

275. See *id.*

276. See *id.* at 331.

The Nazis and the KKK shared many of the same ideals and principles regarding the advancement of the white race at the expense of other “impure” races. They both shared the belief that their enemies must be destroyed, by violence if necessary, in order for the white race to succeed and prosper. Like the KKK, a misdemeanor gun law would not deter the Nazis in California. The Nazis did not make a habit out of patrolling the streets of major cities in California carrying swastika flags and six-shooters strapped to their hips. Assemblyman Mulford included no evidence in his legislative files that the Nazis were posing a serious threat to the citizens of the state because of their legally armed presence.

4. *The Minutemen*

The California Minutemen are a secret, paramilitary organization,²⁷⁷ but they are not the only active “patriot” or militia group within the state. The Southern Poverty Law Center (SPLC) has identified forty-two active patriot groups in California.²⁷⁸ According to the SPLC, the California Minuteman and the California Militia share a common belief in their dislike of the federal government.²⁷⁹ According to the Charter of the California Militia, the purpose of the group is

to present a unified front of responsible Americans who will take a stand against tyranny, and against any further infringement against the rights of law abiding Americans, and who are prepared to do whatever is necessary to restore America to her former greatness as “[t]he land of the free, and the home of the brave.”²⁸⁰

While there is little doubt that most militia organizations in California would entertain the belief that violence would not be categorically dismissed as a means to achieve their ends, there is no evidence to indicate that any of the militia groups in 1967 were causing violence or wearing their weapons in public. Conversely, according to one member of the California Militia, the Minutemen in the 1950s and 1960s were very secretive, and they did not publicize their membership lists or carry

277. See MORTON H. HALPERIN ET AL., *THE LAWLESS STATE* 126 (1981); see also GEORGE & WILCOX, *supra* note 65, at 248-49.

278. See SOUTHERN POVERTY LAW CENTER, *FALSE PATRIOTS* 59 (1997).

279. See *id.* at 6. For excellent law review articles dealing with the issues of militias and the Second Amendment, see Randy E. Barnett, *Guns, Militias, and Oklahoma City*, 62 TENN. L. REV. 443 (1995); Colonel Charles J. Dunlap, Jr., *USAF, Revolt of the Masses: Armed Civilians and the Insurrectionary Theory of the Second Amendment*, 62 TENN. L. REV. 643 (1995); David C. Williams, *The Militia Movement and Second Amendment Revolution: Conjuring with the People*, 81 CORNELL L. REV. 879 (1996); David C. Williams, *Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment*, 101 YALE L.J. 551 (1991).

280. *Charter of the Constitutional Militia of Southern California* (visited Nov. 21, 1999) <<http://pw1.netcom.com/~stevep/charter.htm>>.

identification cards.²⁸¹ They also did not carry their weapons openly in public. "I knew that I had to carry my shotgun in my truck without the bolt which I kept in the glove box. I kept the ammo in a box on the front seat," explained one militia member.²⁸² If there was evidence to support the notion that the Minutemen were a dangerously violent group in 1967, then, undoubtedly, one of the Assemblymen would have uncovered it.

In whatever manner the Ku Klux Klan, the Nazis, or the Minutemen may have threatened California state authority, the threat was not from carrying loaded guns conspicuously and legally in public, which was what section 12031 of the California Penal Code was designed to prevent. Rather, the purpose of this gun control statute was to leave the Black Panthers, a politically distasteful group of black men and women, utterly powerless and defenseless in public.

V. CONCLUSION

Although section 12031 of the California Penal Code has been amended almost every year since its inception, the state legislature will never be able to erase the law's original purpose: to disarm the Black Panthers, prevent them from carrying weapons in public, and weaken the impact of their socialistic, revolutionary message among prospective followers. What is the relevance today of understanding the origin of an unfairly restrictive California gun control statute from 1967? Clayton E. Cramer explains:

My concern is that past motivations for disarming blacks are really not so different from the motivations behind disarming law-abiding citizens today. In the last century, the rhetoric in support of such laws was that "they" (i.e., blacks) were too violent and too untrustworthy to be allowed weapons.

....

In much the same way, gun control historically has been a tool of racism and associated with racist attitudes about black violence. Similarly, many gun control laws impinge on that most fundamental of rights: self defense.²⁸³

281. See Telephone Interview with Phillip, member of the California Militia (Dec. 9, 1998).

282. *Id.*

283. Cramer, *supra* note 3, at 22-23; see Cottrol & Diamond, *Firearms Regulation and Racial Disparity*, *supra* note 3, at 1335 ("If safety concerns must be conceded, it should be recognized as well that local governments have sought to ban firearms from what is frequently considered one of today's untrustworthy and suspect classes, the urban poor."); Tonso, *supra* note 224, at 25. Tonso described Raymond Kessler's five

The California Legislature apparently decided that the Panthers were “too violent, and too untrustworthy” to be permitted to carry loaded weapons for self-defense. Whether the Panthers were disarmed because of their militant style or because of their violent, anti-white message, the state succeeded in further weakening a powerful black movement.²⁸⁴

The Panthers’ claims that they were carrying guns for the purpose of self-defense has merit in light of the oppressive conditions they faced as blacks in the 1960s who were outspoken in their hatred of the white power structure.²⁸⁵ After they became the targets of California law enforcement organizations,²⁸⁶ their need for self-protection increased as their right to defend themselves with firearms disappeared.

The question yet to be decided by future legislatures faced with the emergence of yet another anti-establishment group is: How far will citizens allow their representatives to go when they act to disarm one group under the guise of protecting the safety of other groups? The citizens of California would have been better served if their government had decided to address the problems and issues raised by the Panthers, such as police brutality, instead of deciding to continue the cycle of inequality and oppression among races and classes.

political functions of firearm regulations:

Raymond G. Kessler, a lawyer-sociologist who has provided some of the most sociologically sophisticated insights into the gun control issue, suggests . . . that attempts to regulate the civilian possession of firearms have five political functions. They “(1) increase citizen reliance on government and tolerance of increased police powers and abuse; (2) help prevent opposition to government; (3) facilitate repressive action by government and its allies; (4) lessen the pressure for major or radical reform; and (5) can be selectively enforced against those perceived to be a threat to government.”

Id. But see Bogus, *supra* note 3, at 1368 (“[In the inner city] both history and contemporary experience demonstrate that arming for self-defense is counterproductive. . . . [S]trict gun control is in everyone’s interest, and especially in the interest of the African-American community.”).

284. See generally MCADAM, *supra* note 68, at 218-20.

285. See *supra* note 74 and accompanying text.

286. See *supra* notes 103-08 and accompanying text.