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# Police Misconduct and Civil Rights

## LAW REPORT

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## THE ASSASSINATION OF FRED HAMPTON: 40 YEARS LATER

By G. Flint Taylor and Ben H. Elson\*

December 4, 2009 marks the 40<sup>th</sup> anniversary of the assassination of Chicago Black Panther Party Chairman Fred Hampton while he slept in his bed. Peoria BPP leader Mark Clark was also killed in the pre-dawn police raid, and several other sleeping Panthers were wounded. This raid, which was directed by the State's Attorney of Cook County, and orchestrated by the FBI, was the culmination of J. Edgar Hoover's secret COINTELPRO program, and remains one of the most significant events in Chicago political history. This raid led to federal and state investigations, criminal indictments and trial, a massive civil rights lawsuit that spanned thirteen years, and, ultimately, directly led to the election of Harold Washington, Chicago's first black Mayor. After an 18-month trial, the Seventh Circuit Court of Appeals handed down a landmark civil rights decision thirty years ago, and the first issue of this publication – then known as the *Police Misconduct Litigation Reporter* – reported on the decision, which has been cited nearly 700 times in reported cases since it was rendered. To commemorate these anniversaries, we reprint *Fred Hampton: A History*, published in 1989, the 1979 *Police Misconduct Litigation Reporter Case Study: Hampton v. Hanrahan*, and discuss the continuing relevance of this event, with a focus on a book, *The Assassination of Fred Hampton*, which will be released in November 2009.

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### FRED HAMPTON: A HISTORY

By Flint Taylor and Dennis Cunningham

[Messrs Taylor and Cunningham, together with Jeffrey Haas, were attorneys for the Black Panthers in the Hampton case]

Fred Hampton was born on August 30, 1948 in Blue Island, Illinois. He grew up in Maywood, Illinois and emerged as a student leader there in the mid-sixties. He attended Proviso East High School and was considered a leader by blacks and whites, students and administrators alike. At the age of 14, he organized a student chapter of the NAACP in Maywood, and the chapter soon grew to 700 members. He led a march on the Maywood Town Hall and organized to build a swimming pool there. After he graduated from Proviso, the administration asked him to come back to mediate a confrontation between black and white students, then had him arrested when he did so. He spoke out strongly against police brutality.

Even during his Maywood days, Fred displayed unique leadership qualities. Influenced by Malcolm X, the Student Non-Violent Coordinating Committee (SNCC), and the realities which he observed and experienced in the movement, Fred was radicalized and his politics became increasingly more militant.

The growing strength of the civil rights and Black liberation movements had not escaped the attention of federal and local law enforcement agencies, especially J. Edgar Hoover and the FBI. In August 1967, the FBI issued a directive to its field offices across the country, calling on them to "expose,

disrupt, misdirect, discredit, or otherwise neutralize" Black leaders and organizations. The organizations named were the Southern Christian Leadership Conference (SCLC), SNCC, the Nation of Islam, and the Revolutionary Action Movement (RAM). This nationwide effort was coordinated under the Bureau's super-secret and highly illegal "counter-intelligence" program, COINTELPRO.

The FBI began to actively monitor Fred Hampton's activities in Maywood in late 1967. Early the next year, Hoover issued another COINTELPRO directive to FBI field offices. This directive more completely defined the "disruption" and "neutralization" plan, while again targeting Black organizations and leaders. FBI headquarters directed its local offices to "prevent the rise of a messiah who could unify and electrify the militant Black nationalist movement." As examples, Hoover named Malcolm X, who had been assassinated three years before, Dr. King, Stokely Carmichael, H. Rap Brown, and Elijah Muhammed.

FBI headquarters further instructed that special efforts should be made to prevent coalitions, unity and growth of black organizations. They were to be discredited in the public eye, and local police, prosecutors and judges were to be utilized in the plan's implementation. A month later, Dr. King was assassinated, and blacks on the West Side of Chicago and across the country rebelled and rioted.

The civil rights movement had moved North and became urbanized and further radicalized in the second half of the 1960's. Bobby Seale and Huey Newton founded the Black Panther Party for Self-Defense in Oakland in 1966, and electrified the country by entering the California State Legislature carrying guns, and by organizing citizen patrols to follow the police in the community in an attempt to prevent brutality and harassment.

In the fall of 1967, Fred enrolled in Crane Junior College, later renamed Malcolm X College, which was a center of radical Black activity in Chicago. He continued his dynamic organizing there, and injected a new militancy which challenged the older student leaders. During 1968, Fred, Bobby Rush, Bob Brown and several others organized the Chicago Chapter of the Black Panther Party, and they opened their offices at 2350 West Madison Street on the West Side of Chicago.

By this time, Fred had been expressly targeted by the Chicago FBI office under the command of the Special Agent in Charge (SAC) Marlin Johnson. The Chicago office was already quite experienced in "disruption" tactics and techniques, having taken several sophisticated actions in the mid-60's which were designed to exploit and exacerbate the political division between Malcolm X and Elijah Muhammed. Within days of the opening of the Panther office, Johnson's Racial Matters Squad directed one of its operatives, William O'Neal, to join the Party.

O'Neal soon maneuvered himself into a leadership position as Chief of Security, and served as Fred's bodyguard during the early days of the Illinois Chapter.

Under the leadership of Fred and Minister of Defense Bobby Rush, the BPP grew into a strong organization in Chicago. They began to negotiate with Chicago street gangs, such as the Blackstone Rangers, Disciples, and Vice Lords, attempting to convince them to give up their violent "gangbanging," and to focus instead on the true "enemy" – the government and the police. They built the original Rainbow Coalition which united Panthers, the Puerto Rican Young Lords Organization, the Young Patriots, the Students for a Democratic Society (SDS), and, for a time, certain black street gangs.

They opened a Breakfast for Children Program, first at the Better Boys Foundation, then later at several other locations in the city, and fed hundreds of hungry young children before they went to school. Fred was spreading the message throughout the city, constantly speaking at colleges and high schools and meeting with a wide range

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of leaders and organizations. He led by example, starting his day at six in the morning at the Breakfast Program, and would never ask someone to do something he would not do, from selling the Panther newspaper to defending the Panther office from police attack.

At the same time, the FBI, both nationally and locally, was increasing its efforts to, in its words, "neutralize the Panther Party and destroy what it stands for." Not only had they targeted the leadership, including Fred, but they specifically set out to destroy the BPP newspaper and the Breakfast Program, and to "eradicate" other BPP "serve the people" programs. They sought to exploit ideological differences and resultant tensions between the Panthers, street gangs, and black nationalist organizations.

On the west coast, the FBI claimed a large role in provoking the murder of four Panthers by the U.S. (United Slaves) Organization, while in Chicago they attempted to provoke the Blackstone Rangers to attack Fred and the Panthers by sending a forged letter to Ranger leader Jeff Fort which purported to warn him of a "hit" the Panthers had ordered against him. Continuing his work as a COINTELPRO operative, O'Neal blossomed as a provocateur. He constructed an "electric chair" supposedly to be used to elicit confessions from suspected informants, proposed rocket attacks on City Hall, and encouraged and sometimes dared other Panther members to commit criminal acts.

The local police and prosecutors also sought to destroy the BPP with a vengeance. Panthers were constantly harassed and arrested, often for the "offense" of selling the Panther paper. Fred had been arrested in Maywood for allegedly liberating an ice cream vendor's inventory of ice cream and distributing it to neighborhood children. The politically aggressive State's Attorney, Edward V. Hanrahan, who had recently been elected on a racist "war on gangs" platform, put Fred on trial for robbery, and he was convicted. After promising Fred probation, the trial judge, under extreme public pressure from Hanrahan, reneged, and instead gave Fred a 2 to 5 year sentence in the penitentiary. He denied Fred appeal bond because Fred stated in open court that he was a revolutionary. Thus, in May 1969, he was sent to the state prison in far downstate Menard.

On July 16<sup>th</sup>, the police shot Panther member Larry Roberson, and he died later in Cook County Hospital. On July 31<sup>st</sup>, the police attacked the Panther office on West Madison Street, and a shootout ensued. In the aftermath, the police arrested several Panthers and ransacked the office, destroying BPP newspapers and food for the Breakfast Program.

The Illinois Supreme Court granted Fred appeal bond in August, and he returned to Chicago to a joyous welcome

at People's Church on South Ashland Avenue. In an inspiring and memorable speech, he told of how he heard the "beat of the people," and was "high off the people" while he was locked up in Menard. Upon his release, Fred immediately resumed his speaking and organizing at a breakneck pace during the fall.

The conspiracy trial of eight alleged leaders of protests at the 1968 Democratic National Convention also started in the fall before Judge Julius J. Hoffman, and Fred led demonstrations at the Federal Building to protest the binding and gagging of BPP National Chairman Bobby Seale, one of the eight on trial. On October 3<sup>rd</sup>, the police again attacked the Panther offices, made six arrests, and ransacked the office. Fred and the Panthers continued to actively organize against police brutality and for community control of the police during this period, and called upon the community to arm and defend itself against police violence. The urgency of this message was underscored when the police killed the Soto brothers in the Henry Horner Homes on the West Side. First they killed Michael, then they killed John only days later while he was home on leave from Vietnam to attend his brother's funeral. Fred was particularly outspoken concerning police brutality, and he publicly condemned Hanrahan for his overtly racist and politically motivated prosecutorial policies. During the fall, Fred was also working closely with Ronald "Doc" Satchel and other BPP members in organizing a free people's health clinic.

Under the watchful eye of the FBI, Fred traveled to the West Coast and consulted with BPP Chief David Hilliard about the possibility of assuming a national leadership position. On November 13, 1969, a former BPP member, Spurgeon "Jake" Winters, and two Chicago police officers were killed in a shootout on the South Side. Fred and the Panthers eulogized Winters as a fallen comrade, further enraging the police. Realizing that this was a perfect time to implement a deadly COINTELPRO action, FBI "Racial Matters" agent Roy Mitchell met with William O'Neal and instructed him to get a detailed floorplan of the apartment located at 2337 West Monroe Street where Fred and other Panther leaders stayed.

On November 19, 1969, O'Neal reported back with the requested floorplan, which showed the complete layout of the apartment, including the exact location of Fred's bed. At that time, O'Neal also reported that the guns in the apartment were legally purchased. With the approval of his superiors, Mitchell then turned to the local police to do its COINTELPRO dirty work. He contacted the police Gang Intelligence Unit and Hanrahan's assistant Richard Jalovec, chief of a Special Prosecutions Unit which included a semi-secret group of police officers and prosecutors assigned to Hanrahan's "War on Gangs," and told them about the floorplan and the guns.

The Gang Intelligence Unit planned a raid for late November, but cancelled it at the last minute at the request of FBI SAC Johnson, who called the Commander of the Intelligence Unit, apparently to tell him that Fred was in Canada on a speaking engagement. Hanrahan, Jalovec and his men then planned a raid, with the FBI's active assistance, to be executed after Fred returned. Mitchell had supplied Hanrahan's men with O'Neal's floorplan, a list of the persons who would be at the apartment, and the times when they would be there. The raiders then changed the time of the raid from 8:00 p.m. on December 3<sup>rd</sup>, when Fred and the Panthers would have been away from the apartment at political education class, to 4:30 a.m., to assure that Fred and the Panthers would be present and asleep in their beds.

The fourteen-man raiding party was armed with a submachine gun, semi-automatic rifles, shotguns, and handguns. They chose not to bring teargas, floodlights or loudspeakers. The occupants of the apartment included Fred, his fiancé Deborah Johnson, Minister of Health Doc Satchel, Rockford Defense Captain Harold Bell, Peoria Defense Captain Mark Clark, Brenda Harris, Verlina Brewer, Blair Anderson, and Louis Trueluck. Bobby Rush had left only hours earlier, as had William O'Neal, who had served a late dinner of Kool-Aid and hot dogs to the occupants, including Fred.

The raiders were led by Sgt. Daniel Groth, a shadowy figure with suspected connections to the CIA, and included James "Gloves" Davis, a Black officer who was so nicknamed because he supposedly put on gloves before he beat people up, and Edward Carmody, who had been a childhood friend of one of the officers killed in the Jake Winters shootout. They burst in the front and back doors of the tiny apartment on Monroe Street, and Davis killed Mark Clark, who was just inside the front door, with a shot through the heart. They then charged into the front room, shooting Brenda Harris, who was laying on a bed next to the wall, and "stitched" that wall with machine gun and semi-automatic fire. These bullets tore through the wall and into the middle bedroom, where three Panthers were huddling on the floor, and many of them continued through another wall into the bedroom where Fred and his fiancé, Deborah Johnson, who was 8-1/2 months pregnant, were asleep. The trajectories of many of these bullets were towards the head of Fred's bed, as marked on O'Neal's floorplan.

In the back bedroom, the mattress was vibrating from the gun fire as Louis Trueluck and Harold Bell were unsuccessfully trying to wake Fred. The raiders, led by Carmody, burst through the back door, firing at the bedrooms. They then took Bell, Trueluck and Deborah Johnson out of the back bedroom into the kitchen, leaving Fred alive but unconscious on the bed. In the front, the officer with the machine gun had moved to the doorway

of the middle bedroom and fired several machine gun blasts at the defenseless occupants. Doc Satchel was hit five times, while Verlina Brewer and Blair Anderson were also shot.

In the kitchen, Deborah and Harold Bell heard two shots ring out from Fred's bedroom, and a raider said, "He's good and dead now." The physical evidence and Carmody's later statements establish a strong case that Carmody twice shot Fred with a .45 caliber pistol at close range in the head while he lay unconscious in his bed. The physical evidence also strongly suggests that O'Neal had put secobarbital in Fred's Kool-Aid so that he could not wake up.

Fred's body was dragged from the bloodstained bed to the hallway floor, to be displayed as the raiders trophy, while the seven survivors were physically abused, subjected to threats and racial epithets, and then jailed on charges of attempted murder. The raiders then rushed from the apartment to the State's Attorney's office where they appeared with Hanrahan at a press conference at which Hanrahan described a fierce gun battle, initiated by the "vicious" and "criminal" Black Panthers, and during which his raiders acted "reasonably" and with "restraint."

The survivors, and the evidence left by the raiders, told a much different story. Harold Bell, a Vietnam combat veteran, described the military precision and swiftness of the raiders' attack, while the apartment's walls revealed a pattern of over 90 bullet holes – all headed into the rooms where the Panthers were sleeping. That morning, Bobby Rush stood at the door of the apartment and prophetically declared that FBI Director J. Edgar Hoover and the federal government were behind the raid. Later that day, Rush received word that the raiders had boasted that he "was next." Before dawn the next morning the police raided his apartment, but Rush had gone into hiding in order to avoid the same fate as Fred.

People from the community began to go through the apartment on tours led by Panther members. After touring the apartment, the president of the Afro-American Patrolman's League, Howard Saffold, declared that the killing was a "political assassination." An elderly Black woman summed up the sentiment of the thousands of people who toured the apartment during the next ten days by saying "it was nothing but a northern lynching."

Outrage at the murders intensified both locally and nationally as more and more people viewed the apartment and saw how transparent Hanrahan's and his raiders' lies were. Thousands of people attended Fred's funeral, with many of the overflow crowd standing outside for hours in frigid temperatures, listening to the eulogies over loudspeakers. In a desperate attempt to win back public opinion, Hanrahan presented a "re-enactment"



on WBBM-TV and gave a front page "exclusive" to the Chicago Tribune, with accompanying pictures described as showing bullet holes made by Panther shots. This effort backfired, however, when the alleged bullet holes were exposed in the Chicago Sun-Times as nail heads.

The outcry was so intense that Attorney General John Mitchell and the Justice Department were compelled to begin an "investigation." The man Mitchell placed in charge of this investigation, Jerris Leonard, was also the head of a super-secret inter-agency spy network, and had been publicly quoted as saying that the government must "get" the Panthers because they were "hoodlums." Leonard's real task was to keep secret the FBI's central role in the raid, while at the same time conducting an inquiry which would serve to quiet public outrage.

Internally, the FBI congratulated itself for its central role in making the raid a "success." On December 3<sup>rd</sup>, the Chicago office had notified Bureau Headquarters that the Chicago police were planning the raid, which the FBI boldly claimed as a COINTELPRO accomplishment. Within hours of the raid, O'Neal's control agent, Roy Mitchell, met with Hanrahan and the raiders, was briefed on the raid, and discussed post-raid strategy with them. Days later, the local office wrote Hoover and extolled O'Neal and his floorplan as "invaluable" to the "successful" execution of the raid. In this same letter, the FBI requested a \$300 bonus for O'Neal for this work. This request was approved by Headquarters, who in turn applauded the results of Chicago's counterintelligence efforts. While he awaited his reward, O'Neal served as a pallbearer at Fred's funeral.

Meanwhile, a Chicago Police firearms examiner issued a report asserting that two shotgun shells recovered in the apartment came from a Panther shotgun, and this "evidence" became the basis of Hanrahan's charges of attempted murder against the seven raid survivors. An FBI firearms examiner later established without doubt that those shells in fact came from a raider's, rather than a Panther's, shotgun. The police department's Internal Affairs Division (IAD) also initiated an "investigation" of the raiders' conduct, and two days later officially exonerated them. The investigation was such a sham that the head of the IAD later admitted that it was a complete "whitewash."

The Justice Department investigation had developed ballistics evidence that definitively established that the raiders fired over 90 bullets at the Panthers, while the Panthers fired one shot at most. They had also developed evidence that Hanrahan, the raiders, and the police department had lied, manufactured evidence, and done a cover up investigation. However, since an indictment of Hanrahan and his men would have threatened to expose the secret FBI role in the raid, a deal was struck. The Justice Department issued no indictments, but rather issued a

report which was critical of both the Panthers and the police. In exchange, Hanrahan dropped the indictments against the Panther survivors and remained silent about the FBI involvement in the raid.

The public outcry in response to this brazen act of cover up was again swift and strong, and it ultimately forced the Chief Judge of the Criminal Court of Cook County to appoint a special prosecutor to present evidence to a Cook County Grand Jury. This grand jury had as members several "plants" who answered directly to the Democratic machine, and a spy from Mayor Daley's Office of Investigation wiretapped the supposedly secret Grand Jury proceedings and reported back to Hanrahan. This investigation ignored the federal involvement in the raid and refused to return murder indictments, but did bring obstruction of justice indictments against Hanrahan, his raiders, and several other police and assistant state's attorneys.

The Chief Judge refused to file these indictments, and the Special Prosecutor was compelled to appeal to the Illinois Supreme Court to get the indictments filed. The Chief Judge then assigned the case to a machine judge, Philip Romiti, whereupon Hanrahan waived his right to a jury trial. Just before the 1972 elections, Judge Romiti, without so much as requiring Hanrahan and his men to present a defense, directed a verdict in their favor. A week later, the black community returned a much different verdict – splitting their ballots en masse to vote Hanrahan out of office as State's Attorney of Cook County.

In May 1973, the *Commission of Inquiry Into the Black Panthers and Police*, chaired by Roy Wilkins (former NAACP Executive Director) and Ramsey Clark (former Attorney General), issued a 272-page report, which characterized the raid as a "search and destroy" mission and said there was "probable cause to believe that Hampton was murdered" while he lay "prostrate" on the bed. The report also concluded that it was "more probable than not" that Fred was drugged; that the investigations of the raid by "various local law enforcement agencies were singularly inadequate," and "designed not to determine the facts but solely to establish the innocence of the police;" that there was "probable cause" to believe that the raid violated the Criminal Federal Civil Rights Statutes and the Constitution; and that the Federal Grand Jury "failed in its duty to proceed against violations of civil liberties."

Around the same time, it was also first publicly revealed that BPP leader William O'Neal was an FBI operative, and that the FBI had a program called COINTELPRO, which was designed to "neutralize and disrupt" Black leaders and their organizations.

The families of Fred and Mark Clark and the survivors of the raid had previously filed a civil rights suit for damages,

and upon learning this information, their lawyers sought to discover O'Neal's and COINTELPRO's role in the raid.

They obtained the FBI floorplan document when it was produced by an Assistant U.S. Attorney who did not want to be implicated in the cover up, then questioned O'Neal at a secret location. This honest U.S. Attorney was quickly removed, and his successor, together with the Justice Department, the FBI, and U.S. District Court Judge Joseph Sam Perry, collaborated to suppress the evidence which further established that the FBI and COINTELPRO were deeply implicated in staging the raid.

The civil rights trial began in January 1976 and lasted for 18 months. During its early stages, the Senate Select Committee investigating FBI counterintelligence "abuses" released documents which established that Fred and the Chicago Panthers had been targets of COINTELPRO. The release of these documents, together with an admission made by FBI defendant Roy Mitchell on the witness stand, revealed that the FBI, with Judge Perry's active assistance, had hidden 25,000 pages of documents which they were required to produce at trial. Among these documents was the FBI request for O'Neal's \$300 bonus, as well as FBI admissions that they had set up the raid; that the raid was part of COINTELPRO; and that O'Neal's floorplan was "invaluable" to the "success" of the raid. Nonetheless, Judge Perry, a 79-year-old racist from Alabama, refused to stop the trial or punish the FBI and Justice Department for their suppression of evidence.

Just after these revelations, the Senate Committee issued its findings – concluding that, under COINTELPRO, the FBI had a "covert action program to destroy the Black Panther Party", and that the raid was in integral part of this program. Nevertheless, when the trial concluded, and the jury was unable to reach a unanimous verdict, Judge Perry, like Judge Romiti before him, directed a verdict for all the Defendants.

The case was appealed to the Seventh Circuit Court of Appeals, which overruled Judge Perry, ordered a new trial, and found that the FBI and their government lawyers "obstructed justice" by suppressing documents. Most significantly, the Court of Appeals also concluded that there was "serious evidence" to support the conclusion that the FBI, Hanrahan, and his men, in planning and executing the raid, had participated in a "conspiracy designed to subvert and eliminate the Black Panther Party and its members," thereby suppressing a "vital radical Black political organization," as well as in a post-raid conspiracy to "cover up evidence" regarding the raid, "to conceal the true character of their pre-raid and raid activities," to "harass the survivors of the raid," and to "frustrate any legal redress the survivors might seek." The U.S. Supreme Court refused to overturn this decision, and in February of 1983, the federal government, Cook

County and the City of Chicago, in a clear admission of guilt, finally agreed to settle the lawsuit for 1.85 million dollars. Two months later, Harold Washington was elected as Mayor and Bobby Rush as Second Ward Alderman.

Now [in 1989] another Daley is Mayor, and his police continue their uninterrupted practice of violence and brutality. In Oakland, former Panther members are publishing a commemorative issue of the Panther newspaper, and hope to launch a mass organization based on the principles of the Black Panther Party.

## CASE STUDY: HAMPTON v. HANRAHAN

By Flint Taylor

We have chosen to focus the first issue of the *Police Misconduct Litigation Report* (PMLR) on an analysis of the recent Seventh Circuit Court of Appeals decision in *Hampton v. Hanrahan*, 600 F.2d 600 (7<sup>th</sup> Cir. 1979), not only because it is the most important recent decision concerning affirmative litigation against police abuse and government misconduct, but also because the litigation itself is a symbol of the important efforts carried on by [National Lawyers] Guild attorneys in this field all over the country. With no attempt at objectivity and a great deal of joy, we congratulate the many people whose work, over the years, has resulted in this most significant decision. After a discussion of the factual background, we will present a discussion of the most significant legal issues decided by the Court.

This decision comes almost ten years after State's Attorney Edward Hanrahan's raiders burst into the apartment of Black Panther leader Fred Hampton at 4:30 a.m., fired over 90 bullets, killing Hampton and Mark Clark and seriously wounding several other Panther members. In 1970 the Hampton and Clark families and the raid survivors filed a multi-million dollar civil rights lawsuit against Hanrahan, several of his assistants, the police raiders, and other police officials. The case against Hanrahan and some of his co-defendants was first dismissed by trial Judge Joseph Sam Perry in 1972, but his dismissal was reversed by the Seventh Circuit. *Hampton I*, 484 F.2d 602 (7<sup>th</sup> Cir. 1973).

In late 1973, the FBI's involvement in the raid was first revealed, and from that point forward their central role has been exposed layer by painful layer. On December 4, 1974, the suit was amended to join several FBI defendants. The litigation has involved a Watergate-style coverup by state and FBI officials, which abused both federal and state court proceedings and which continues to the present day. After the longest trial in Federal Court history (18 months), the judge directed verdicts for all defendants, some while the jury was still deadlocked in deliberation.

On April 23, 1979, the Seventh Circuit, in a decision written by former Chief Judge Luther Swygert, with Chief Judge Thomas Fairchild concurring and Judge Wilbur Pell concurring in part and dissenting in part, reversed the entry of these directed verdicts for all but three of the 29 defendants. The Court also held that upon remand sanctions hearings are to be held concerning the government's coverup, the Plaintiffs' discovery demands are to be fully considered, and the name of a key informant who allegedly supplied information concerning the raid is to be revealed. Contempt citations against Plaintiffs' attorneys were reversed. Attorneys fees are to be awarded to the Plaintiffs for their appellate work, and the case will be assigned to another judge for retrial.

The Hampton decision is particularly important because it is the first decision which both recognizes and discusses in some detail the FBI COINTELPRO repression campaign.

The Court found that the Plaintiffs had presented "considerable evidence" – the "most damning from the files of the FBI itself" – that the FBI had a national counterintelligence program seemingly aimed at "neutralizing the Black Panther Party as a political entity.... Among the tactics used by the FBI was to discredit the BPP among liberal whites, the promotion of violent conflicts between the BPP and other groups, the encouragement of dissension within the BPP, and the disruption of the Breakfast for Children Program." 600 F.2d at 609.<sup>1</sup>

One of the key figures in the Chicago program to disrupt the Panthers was [FBI informant and defendant] William O'Neal, through whom the other FBI defendants "effectuated many of their programs" and who encouraged the Panthers to initiate and "participate in various criminal activities, obtain more weapons, and to increase their use of violent tactics." 600 F.2d at 609.

"The FBI in Washington urged its offices implementing COINTELPRO to develop ...working relationships with local law enforcement officials ...to help effectuate the FBI's counterintelligence goals." In Chicago the FBI had an ally, which was also quite concerned about the growth of black militant groups. 600 F.2d at 610.

The Court went on to recount the formation of Hanrahan's own elite police force during 1969 and the rise of tension and physical confrontations between the Chicago police and the BPP during that year. It next detailed an intricate matrix of meetings and communications in which the FBI defendants conveyed first to the Gang Intelligence Unit of the Chicago Police and then to Hanrahan and his raiders a detailed floorplan of Hampton's apartment, marking the bed where Hampton slept. A Gang Unit raid was mysteriously cancelled after a call from FBI Special Agent in Charge and defendant Marlin Johnson; on December 4, 1969, at 4:30 a.m., Hanrahan's raiders, armed with both

the floorplan and a Thompson sub-machinegun, executed the infamous raid, firing over 90 shots, leaving Hampton and Clark dead and seriously wounding other Panthers. 600 F.2d at 610-615.

The Court noted that on December 3, the FBI defendants notified the Bureau in a counterintelligence memorandum that "a positive course of action" was planned on Hampton's apartment and later claimed credit for the raid in a post-raid memo which sought a \$300 bonus for O'Neal for his work in setting up the raid. 600 F.2d at 612-617. The Court further recounted a complex Federal and state effort to coverup and falsify the evidence, a conspiracy that continued through the trial. 600 F.2d at 616-620.

### **I. Conspiracy Claims under Bivens, 42 U.S.C.A. §1983 and §1985(3)**

The Seventh Circuit gives a broad definition of conspiracy:

A combination of two or more persons acting in concert to commit an unlawful act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties "to inflict a wrong against or injury upon another" and "an overt act that results in damage."

600 F.2d at 620-621; *Rotermund v. U.S. Steel*, 474 F.2d 1139 (8<sup>th</sup> Cir. 1973). (Additional cites herein are those relied on by the Court in *Hampton*.)

The Plaintiff need not provide direct evidence of the agreement between the conspirators, and circumstantial evidence may provide adequate proof. 600 F.2d at 621; *Hoffman-LaRoche, Inc. v. Greenberg*, 447 F.2d 872 (7<sup>th</sup> Cir. 1971). Because direct evidence of a conspiratorial agreement will usually be lacking, the question whether an agreement exists should not be taken from the jury so long as there is a possibility that the jury can "infer from the circumstances [that the alleged conspirators] had a 'meeting of the minds' and thus reached an understanding" to achieve the conspiracy's objectives. 600 F.2d at 621; *Adickes v. Kress & Co.*, 398 U.S. 144 (1970).

Using this standard, the Court found that the District Court invaded the province of the jury when it ruled that the Plaintiffs had not established a prima facie case of two conspiracies between the federal and state defendants which were designed to violate their rights. The first encompassed the planning of the raid and the raid itself, and was designed "to subvert and eliminate the Black Panther Party and its members, thereby suppressing ...a vital, radical black political organization." 600 F.2d at 622; and the second, which included the post-raid coverup and legal harassment of the Plaintiffs and "was intended to

frustrate any redress the Plaintiffs might seek and, more importantly, to conceal the true character of the pre-raid and raid activities of the defendants involved in the first conspiracy." 600 F.2d at 622.

The Court held that the claim against the federal and state defendants must go to the jury under § 1983 for conspiracy to deprive the Plaintiffs of constitutional rights. Even though § 1983's prohibitions are directed only against state actors, federal actors can be liable "[w]hen the violation is the joint product of the exercise of a state power and a non-state power." 600 F.2d at 623; *Kletschka v. Driver*, 411 F.2d 436, 449 (2d Cir. 1969). The test, under the 14<sup>th</sup> Amendment and § 1983, is whether the state or its officials played a 'significant' role in the result. 600 F.2d at 623; *Kletschka, supra*, at 449.

The Court found that the Plaintiffs also made out a prima facie case of conspiracy under 42 U.S.C.A. § 1985(3), stating that there is no doubt that "the evidence demonstrated a commingling of racial and political motives on the part of the defendants." 600 F.2d at 623.

As to the federal defendants, the Court found that COINTELPRO, as indicated by the FBI's own documents, "directed against the BPP transcended mere 'law enforcement' and [was] designed to 'neutralize' the BPP as a political voice on racial issues." 600 F.2d at 623.

No less can be said for the state defendants. Hanrahan himself testified at trial that "two of the principal goals of his Special Prosecutions Unit assigned to investigate the BPP was to combat anti-police propaganda the BPP had been disseminating in the black community and to mobilize support among blacks for police." The evidence presented by the Plaintiffs was such that "reasonable persons could conclude that these parties shared a 'class-based or otherwise discriminatory' desire to undermine the BPP." 600 F.2d at 624.<sup>2</sup>

## II. "Mere Negligence" under §1983

The Court accepted the defendants' argument that "mere negligence" is not actionable under 42 U.S.C.A. § 1983. 600 F.2d at 625, n. 25; *Bonner v. Coughlin*, 545 F.2d 565, 567 (7<sup>th</sup> Cir. 1976), cert. denied, 435 U.S. 932 (1978), but found that the evidence offered by the Plaintiffs satisfied the recklessness / intentional conduct test set out in *Jamison v. McCurrie*, 565 F.2d 843 (7<sup>th</sup> Cir. 1977).

## III. Supervisory Liability

The Court also held that the failure of Hanrahan and Assistant State's Attorney Jalovec to properly supervise the raiding police officers formed the factual basis for supervisory liability. Specifically, these defendants approved

the selection of the men, weapons and timing of the raid. These facts were sufficient for the jury to determine:

[W]hether the plaintiffs' constitutional rights are violated as a result of police behavior which is the product of the active encouragement and direction of their superiors or as a result of the superiors' mere acquiescence in such behavior.

600 F.2d at 626-627, quoting *Schnell v. City of Chicago*, 407 F.2d 1084 (7<sup>th</sup> Cir. 1969). See also, *Sims v. Adams*, 537 F.2d 829, 831 (5<sup>th</sup> Cir. 1976).

## IV. Nonfeasance of Non-shooters and Liability under §1983

The Court found that the Plaintiffs presented a prima facie case under 42 U.S.C.A. § 1983 against the non-shooters because of their nonfeasance at the BPP apartment. In so doing, the Court followed precedent which establishes that "purposeful nonfeasance ...[can] serve as the basis of tort liability under section 1983." 600 F.2d at 626; *Byrd v. Brishke*, 466 F.2d 6 (7<sup>th</sup> Cir. 1972).

The evidence presented against the non-shooters which resulted in prima facie liability under this theory was their entry into the apartment after the firing ceased and presence during the beatings and abuse of the occupants who survived the raid. As the Court noted, "one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence." 600 F.2d at 626, quoting from *Byrd v. Brishke, supra*, 466 F.2d at 11.

## V. Absolute Immunity of the Prosecutors

A crucial issue throughout the Hampton litigation has been the prosecutor-defendants' contention that they enjoy absolute immunity from liability. They based this claim upon *Imbler v. Pachtman*, 424 U.S. 409 (1976). The Hampton Court refused to shield the prosecutors with absolute immunity. As to the prosecutors' pre-raid activities, and as to some of their post-raid activities, the Seventh Circuit noted:

The entreaties of public officials for immunity for their official wrongdoing ...should be treated with circumspection .... We should be hesitant to expand the scope of official activity which, from the perspective of a victim seeking civil redress, stands beyond the constraints of the Constitution.

600 F.2d at 631. "The Supreme Court in *Imbler* did not hold that all official actions of a state prosecutor are absolutely immune from 1983 liability." The Court there



noted that *Imbler* held only that a prosecutor has absolute immunity "in initiating a prosecution and in presenting the state's case." 600 F.2d at 631, quoting *Imbler, supra*, 424 U.S. at 431. See also, *Briggs v. Goodwin*, 569 F.2d 10 (D.C. Cir. 1977), *cert denied*, 46 USLW 3780 (June 20, 1978).

In so holding, the Court adopted what has become known as the "functional approach" in determining whether a prosecutor is absolutely immune from suit. The focus is on the functional nature of the activities rather than the status of the prosecutor. 600 F.2d at 631; *Imbler, supra*, 424 U.S. at 430, n. 31. When a prosecutor is performing investigative rather than advocacy functions, he is shielded only by the defense of qualified immunity. 600 F.2d at 631-632.

The Court held that Hanrahan and his assistants were not to be afforded absolute immunity for their role in planning the raid, nor for their generation of post-raid publicity which was "designed to cause pretrial prejudice and encourage a coverup of the true facts of the raid." 600 F.2d at 632. The Court did hold that Hanrahan's involvement in the prosecution of the Panther survivors – including his initiation of the prosecution, his presentation of evidence to the Grand Jury, and his deal with the Justice Department which spared him and his raiders federal indictments – was within the prosecutorial function and therefore subject to *Imbler* protection. 600 F.2d 633. In essence, the Court reaffirmed its holdings in *Hampton I* on this issue.

## VI. Absolute Immunity of the Federal Defendants

Relying on *Barr v. Matteo*, 360 U.S. 564 (1959), the federal defendants sought absolute immunity for their illegal actions. However, the Court noted that under *Barr* absolute immunity will not shield a federal official who has exceeded an express statutory or constitutional limitation on his authority. 600 F.2d at 632; *Barr, supra*. This conclusion is further supported by the Supreme Court's recent pronouncements in *Butz v. Economou*, 438 U.S. 478 (1978): "[A] federal official may not with impunity ignore the limitations which the controlling law has placed on his powers." 438 U.S. at 489.

Based on the evidence presented at trial, the Court found that the Plaintiffs made a sufficient showing that the federal defendants violated both constitutional and statutory limitations on their authority, and they could not, therefore, be shielded by absolute immunity.

## VII. Qualified Immunity

The majority reiterated the test for qualified immunity, as most recently enunciated in *Procunier v. Navarett*, 434

U.S. 555 (1978). The Court concluded that no qualified immunity applies if, at the time of the challenged conduct, the constitutional right was clearly established, the defendants knew or should have known the right existed, and the defendants knew or should have known their conduct transgressed the constitutional norm. 600 F.2d at 634-635; *Procunier, supra*, 434 U.S. at 562. See also, *Wood v. Strickland*, 420 U.S. 308, 322 (1975); *Scheuer v. Rhodes*, 416 U.S. 232 (1974).

Given the evidence presented at trial, the Court concluded that "the doctrine of qualified immunity will not thwart recovery of damages." 600 F.2d at 635. The Court noted that the First, Fourth and Fourteenth Amendment rights which Plaintiffs claim were abridged were clearly established; and that the defendants failed to demonstrate that they were unaware of these rights or that their conduct violated these rights. Thus, as a matter of law, the defendants were not entitled to a dismissal on the basis of qualified immunity. 600 F.2d at 635.

## VIII. Validity of the Search Warrant; Disclosure of the Informant

One of the most critical battles in this long case has been the Plaintiffs' attempt to force Chicago police sergeant Daniel Groth, the raid leader, to disclose the identity of his alleged informant. This informant, along with FBI agent provocateur William O'Neal, purportedly provided the basis for the search warrant. Since one-half of the source for the search warrant was the FBI, the identity of Groth's "independent informant" becomes crucial. As the Circuit emphasized:

A determination that Groth's informant did not exist would have significant ramifications for Plaintiffs' case. The warrant used to gain entry to the apartment would be supported only by the misrepresented triple hearsay Groth received from Jalovec, and Groth's own perjured statement .... [S]uch a conclusion would bolster Plaintiffs' conspiracy claims ...[a]nd it would highlight the importance of the federal defendants in the alleged conspiracy. If O'Neal was the only eyewitness informant ...there could be no question that he and his conduit to the state defendants, [FBI agent] Mitchell, were indispensable to the entire operation.

600 F.2d at 638.

Applying the balancing test enunciated in *Roviaro v. United States*, 353 U.S. 53 (1957), the Court concluded that disclosure of Groth's informant's identity was essential to a fair determination of this case. 600 F.2d at 639. Although *Roviaro* was a criminal case, its test for disclosure has been applied in the civil context. See, e.g., *Socialist*

*Workers Party v. Attorney General*, 565 F.2d 19 (2d Cir. 1977), *cert denied*, 46 U.S.L.W. 3766 (June 13, 1978).

The *Hampton* Court then concluded that:

This case, in which Plaintiffs have alleged gross misconduct by federal and state law enforcement officials and have presented evidence to support these claims, is of paramount significance. There is a serious factual controversy focusing on the existence or identity of Groth's informant, and a resolution of this controversy is essential to a just adjudication of Plaintiffs' claims. Thus, we conclude that the public's interest in encouraging the flow of information to law enforcement officials cannot prevail in this case, and that Groth must disclose the identity of his informant.

600 F.2d at 639.

## IX. Abuse of the Discovery Process: Sanctions Against the Government

Throughout the pretrial and trial proceedings, the Plaintiffs were met with a determined coverup by the federal defendants and their lawyers, strongly aided by the trial judge's rulings. During the pretrial stages, the Court viewed, *in camera*, COINTELPRO documents – many of which now form the backbone of Plaintiffs' case – found them irrelevant, and did not require their production. Only after the jury was selected (and later the Senate Committee publicly released some of the documents) did the trial Court order them produced. During the early stages of the trial, it was inadvertently revealed that the FBI defendants had withheld at least 25,000 pages of documents ordered produced at the same time as the COINTELPRO documents.

Among these documents were many extremely inculpatory admissions, including the O'Neal bonus document penned by FBI defendant Piper himself – who, the evidence also showed, supervised the (non)production of the documents. The Plaintiffs moved for sanctions, but the trial Court refused to hold a hearing; and when, a year later, he granted the directed verdicts for the FBI defendants, he also issued an order "exonerating" them and their lawyers for this massive coverup.

The Seventh Circuit reviewed "the delaying and obstructive tactics of the federal defendants and their counsel in matters of discovery and the crippling effect on Plaintiffs' case," 600 F.2d at 639, and found, at 641:

[Federal defendants] Johnson, Piper and Mitchell, and their counsel, rather than promptly furnishing relevant documents as requested, deliberately impeded discovery and actively

obstructed the judicial process, thus denying the Plaintiffs the fair trial to which they were entitled. Regrettably, the trial judge permitted these tactics ...[and] repeatedly exonerated the federal defendants for these derelictions.

Judge Swygert found that sanctions should be imposed pursuant to Rule 37; the rest of the panel, however, concurred only that sanctions should be considered at a hearing on remand. The Court also held that the Plaintiffs' requests for full discovery must be considered upon retrial.

## X. Attorneys' Fees

Based on the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C.A. § 1988, the Plaintiffs sought attorneys' fees for the trial and the appeal. The Court awarded fees for the appeal under the standard of giving fees to a prevailing party "[u]nless special circumstances render such recovery unjust." 600 F.2d at 643; See also, *Davis v. Murphy*, 587 F.2d 362 (7<sup>th</sup> Cir. 1978); *Wharton v. Knefel*, 562 F.2d 550 (8<sup>th</sup> Cir. 1977); Fed. R. App. P. 39.

Concerning the fee request for the trial, the Court found that the Act precludes an award at this time. However, the Court did hold that if the Plaintiffs ultimately prevail, the District Court "shall award reasonable attorneys' fees for the District Court phase of the case preceding" the appeal. 600 F.2d at 643-644.

## XI. Contempt Judgments Reversed

Two of the Plaintiffs' attorneys during the trial were held in contempt of court, in the course of attempting to make an accurate record. Their appeal was consolidated with the main appeal. Recognizing the obstructionist tactics of the defendants, the prejudice of the judge, and that the Plaintiffs' attorneys constantly waged an uphill battle to make a record, the Court concluded that "...there was no interference with the conduct of the trial. There was no obstruction in the administration of justice." 600 F.2d at 647, quoting *Parmelee transp. Co. v. Keeshin*, 294 F.2d 310, 318 (7<sup>th</sup> Cir. 1961).

## XII. Hampton Update

Since the April 23, 1979, decision there have been several further developments in the case. The Plaintiffs, pursuant to the mandates of the decision, have moved for over \$350,000 in attorneys' fees for the hours spent on the appeal, and have asked that the Court increase the award with a multiplier of between 2 and 3 because of the complexity and importance of both the case and the decision. There have also been five petitions for rehearing *en banc* and one for rehearing filed by the federal and state defendants, the Confederation of Police (COP) and the trial judge.

The Department of Justice has moved for rehearing on two issues: the awarding of attorneys' fees to parties who prevailed on appeal and whether the FBI defendants may escape liability through qualified immunity. The Justice Department declined to move for rehearing on the issue of sanctions against the FBI defendants and their government lawyers for their suppression of documentary evidence at trial, and, after a heated battle between Justice and the local U.S. Attorneys' Office, the local office filed a petition for rehearing to the panel alone on the issue of sanctions; Justice declined to join in this petition.

Justice also refused to file a petition for rehearing on the issue of contempt, and the District Court Judge, J. Sam Perry, then took it upon himself to file his own petition, *pro se*. In an unprecedented *ad hominem* attack on the Guild attorneys who tried the case and Circuit Judge Luther Swygert, Perry filed a petition which, in a rambling, contradictory and often incomprehensible manner accused the Plaintiffs' lawyers of continuing the trial to "aid their revolutionary cause" and to allow them to "continue to put forth their 'propaganda' and 'press releases.'" In contrast, he lauded all of the defense lawyers for their "exemplary conduct" throughout the trial. Perry (who along with Judge Julius Hoffman has now been forbidden by the Executive Committee of the District to try cases of over three days in duration) violated his own protective orders in his pleading, which he delivered to the press in person in order to lobby for "appropriate" coverage. While the petition pretends to deal with the contempt issue, it is in fact a desperate attempt to use his judicial influence in aid of the defendants on all the issues raised by them in their petitions.

The state defendants have moved for rehearing on all issues which pertain to them, although their pleadings all but concede on the issues of conspiracy and Hanrahan's purported pre-raid immunity. Since two Circuit Judges with ties to the government recused themselves, they have also moved to have two judges from other Circuits brought in to pass on the rehearing petitions. Hanrahan's private lawyers have received over \$1.5 million in public funds for their work to date. Two attorneys for Hanrahan, who had minor roles in preparing their 26-page rehearing petition, have already received an additional \$25,000 (at \$50/hour) in fees for their work on this petition.

The Plaintiffs answered these petitions in late July, and the Court will soon rule on whether to rehear any, some, or all of the issues raised.

### XIII. Editor's Note:

Before the rehearing petitions were decided, the Plaintiffs discovered that the dissenting Judge was a former FBI agent and a present member of a society of former agents. He nonetheless refused to recuse himself,

and the *en banc* Court denied rehearing in a 3-3 vote. The panel majority awarded \$100,000 in interim attorneys' fees, and all Defendants filed *certiorari* petitions to the United States Supreme Court. Justice William Rehnquist, who was a high ranking official in the Justice Department at the time of the raid, refused to recuse himself, while Justice John Paul Stevens, who had sat on a Seventh Circuit panel that rendered an earlier decision in the case, did remove himself. *Certiorari* was then denied on all substantive issues except attorneys' fees, with a vote of 5-3 on the Federal Defendants' petition. *Hanrahan v. Hampton*, 446 U.S. 754, 760, n. 1 (1980). However, in a *per curiam* decision, the Court reversed the attorneys' fees award, holding that the Plaintiffs had not prevailed under 42 U.S.C.A. §1988. *Hanrahan v. Hampton*, 446 U.S. 754 (1980). On remand, the case was assigned to another judge, and after he indicated that he was inclined to enter severe sanctions against the Defendants in accordance with the Seventh Circuit's opinion, the case was settled for \$1.85 million. While the settlement did not fairly compensate the victims for the egregious wrongs they suffered, it was, at that time, the largest settlement obtained in a §1983 case.

## 40 YEARS LATER: THE BEAT GOES ON

By Flint Taylor

Forty years later, the legacy of Fred Hampton and the horror of his murder still resonate in Chicago history and politics. The grassroots political organization that formed in the black community to defeat States' Attorney Hanrahan in 1972 is not only credited with playing a significant role in Mayor Washington's election, but also in police torturer Jon Burge's firing and later indictment, as well as in electing U.S. Senator Barack Obama. Bobby Rush, who assumed the leadership of the Chicago chapter of the BPP after Fred's death, went on to be elected as a Chicago City Councilman, where he championed the fight against police brutality. Rush then became a U.S. Congressman, handed then state Senator Obama his only political defeat, and has assisted in the fight to expose the Chicago police torture ring. In Maywood, there is a Fred Hampton Way, which runs by the police station to the Fred Hampton swimming pool, where a sculpture of Fred stands on the front lawn. Every year the Hampton family holds a commemoration for the Fred Hampton Scholarship Fund, which awards a yearly scholarship to a student attending law school. Fred's widow, now known as Akua Njeri, and their son, Fred Hampton Jr., who was born three weeks after his father's murder, are local activists who hold a yearly vigil at the site of the murders. Additionally, this year the Illinois Chapter Black Panther Party History Project is also holding a commemoration, and recently a number of former Black Panther Party members and fellow activists, many of whom have gone

on to be doctors, lawyers, educators, a judge, and even a police detective, gathered to honor Bobby Rush's 40 years of commitment and leadership.

While Fred Hampton's murder has been the subject of a critically acclaimed 1971 documentary entitled "The Murder of Fred Hampton," and was featured in 1990 in the PBS series "Eyes on the Prize Part II, A Nation of Laws?," there has been, until now, no book which has documented the murders, the cover-up, and the civil rights trial. That book, entitled *The Assassination of Fred Hampton*, will be released in November 2009. As the author, attorney Jeffrey Haas, describes it:

Beginning with the morning of Dec. 4, 1969, the book relives the legal and political journey to uncover and hold accountable those responsible for the police raid that led to the murders of Hampton and fellow Panther Mark Clark. The saga includes the drama of an eighteen-month trial in which Flint Taylor and I confronted FBI and local police stonewalling and lies put forward by government paid lawyers with unlimited resources mandated to hide the conspiracy that led to Hampton's death. In the course of discovery and the trial, we learned the deadly raid executed by Police assigned to Edward Hanrahan, the ambitious Cook County law and order prosecutor, was initiated by agents carrying out the FBI's COINTELPRO Program. This clandestine program's stated goals were to "neutralize," "disrupt," and "destroy" the Black Panthers and their leaders. In fact we uncovered that it was the FBI informant William O'Neal who provided the information that led directly to Hampton's murder. The trial was not the end of the legal fight, which continued through an appellate decision which has become the major precedent for civil rights cases ever since. The decision was followed by more discoveries of illicit actions by the defendants and their lawyers. It took us thirteen years to uncover and prove what is now the most well documented case of a U.S. Government assassination in our history. The book shows Hampton as a dynamic community leader whose dedication to his people and to truth telling inspired us as young lawyers at the People's Law Office, and solidified our lifelong commitment to fighting injustice.

Reviews of the book include those written by former Attorney General Ramsey Clark, author and political activist Noam Chomsky, noted civil rights attorney Len Weinglass, and the late Studs Terkel. Chomsky captures the gravity of the official crimes committed:

The execution of Fred Hampton was the gravest domestic crime of the Nixon administration. In twelve years of dedicated engagement, a few young lawyers of the People's Law Office were able to overcome disgraceful judicial barriers and government obfuscation and deceit, to establish what actually happened, and to reveal that the assassination was part of a vast program of state repression aimed at undermining dissent generally, and in particular to "prevent the rise of a messiah who could unify and electrify the black masses" – the infamous words of the head of the national political police, J. Edgar Hoover, who cast his dark shadow over half a century of American life. They were finally vindicated in a decision by Appeals Judge Luther Swygert that they rightly say "is among the most famous civil rights decisions ever rendered." This personal memoir by one of the courageous lawyers who achieved this bitter and remarkable victory gives a riveting account of the assassination, the plot behind it, and the attempted coverup.

Forty years later, the words of Fred Hampton still move those fortunate enough to have known him, and capture the essence of the man:

I don't want myself on your mind if you're not going to work for the people. Like we always said, if you're asked to make a commitment at the age of 20 and you say, I don't want to make a commitment only because of the simple reason that I'm too young to die, I want to live a little bit longer. What you did is, you're dead already. You have to understand that people have to pay the price for peace. If you dare to struggle, you dare to win. If you dare not struggle then damn it – you don't deserve to win. Let me say peace to you if you're willing to fight for it .... Why don't you live for the people, why don't you struggle for the people, why don't you die for the people!

1. The Court rejected the FBI's contention that COINTELPRO's purpose was to "prevent violence," citing a March 4, 1968 memo which defined its goals as preventing coalitions between black militant groups, the rise of a messiah who could unify and electrify the black movement, and as discrediting and preventing the growth of black nationalist organizations. 600 F.2d at 609.

2. Having found a § 1985(3) prima facie case of liability, and a § 1985(2) claim, the Court went on to conclude that liability was demonstrated under § 1986 as well. This aspect of "conspiracy" analysis is significant because § 1986 is frequently overlooked as an independent statutory basis upon which to state a claim.