

Panther Lands on Feet

The Party may be over, but Huey's still got some lives left

BY PETER SOLOMON WITH GLORIA JACOBS

The latest trial of Black Panther Party co-founder Huey P. Newton can only be described as weird: a bizarre morass of shifting testimony, charges and counter charges. For the two jurors who held out for conviction, until the judge declared a mistrial, justifiable confusion may have overshadowed reasonable doubt.

In many ways a hung jury seemed more than the prosecutor could have hoped for. Alameda County deputy district attorney Tom Orloff had planned to call four witnesses to finger Newton as the man who murdered a 17-year-old prostitute in Oakland in 1974. Two of the witnesses never appeared; one appeared twice—the second time as a witness for the defense, repudiating her earlier testimony. The other major prosecution witness was himself ac-

cused of the murder by Newton's bodyguard.

The state claimed that on August 6, 1974, Newton stepped from a car, got into an argument with Kathleen Smith and then shot her in the face. The first eyewitness for the prosecution, 20-year-old Michelle Jenkins, a former prostitute, initially supported that account, but cross-examination by defense attorney Michael Kennedy revealed some important inconsistencies with an earlier statement by Jenkins. He managed to elicit the statement from her that police had threatened to arrest her pimp if she did not make a report in connection with the shooting. Later in the trial, Jenkins returned to the stand to say she had lied, and had been "tricked" into identifying Newton. Though warned that she faced a three-year sentence for perjury, Jenkins held firmly to this story.

Charles Lee Buie, 25, who hung out on the same street corner selling marijuana to the women and occasionally bringing them customers, also named Newton as the killer. His graphic account—"It took 10 seconds for her to fall to the ground"—failed to impress the jurors, who perhaps found it too explicit. Buie, no stranger to the law, is currently facing a forgery charge and is being guarded, fed, and housed through the Federal Witness Protection Program. Twice (in 1975 and in 1978) Buie told police he saw Newton do the shooting, but two officers who testified said they never took his story seriously. By the time Buie admitted in court that he had not decided to testify until after his forgery arrest in January, the prosecution's sturdiest witness looked rather frail.

Orloff closed his case after two days, surprising observers who had expected him to call two more eye-witnesses. But they played an important part in the remainder of the trial. The jurors learned that one, Jeanette Iles, was dropped when the prosecution learned she was in jail the night Smith was shot. (Iles, now serving a life term for murder in a different case, was offered special consideration if she would agree to testify against her co-defendant. In an ironic footnote, charges against him had to be dropped when the District Attorney's office realized Iles was willing to perjure herself in the Newton trial and thus couldn't be a witness in the other case, either.)

The other uncalled witness was Raphaelle Gary, also known as Crystal Gray and described as Kathleen Smith's best friend. Gary identified Newton at a preliminary hearing, while admitting she had been stoned the night of the shooting and suffered from night blindness. The jurors were told Orloff decided not to call Gary because she had once falsely confessed to a shooting to protect a friend.

Michael Kennedy's defense went beyond simply casting doubt on the prosecution's inadequate case. He denied Newton was present at the scene of the crime. Newton's bodyguard, Larry Henson, took the stand saying that he, Buie and another Newton bodyguard were in the car that drove up to the curb that night. Henson said Buie was the person who left the car, argued with Smith and shot her. Los Angeles writer and long-time Panther



STEPHEN SHAMES/PHOTON WEST

The press did its best to smash the Panther image, but Newton's lawyers shot the D.A.'s case full of holes.

NATIONAL NEWS

supporter, Donald Freed testified that he was working with Newton at the time of the incident. Asked why he had not come forward with this information earlier, Freed said Newton's attorneys had told him to sit on it.

Newton finally took the stand in his own defense and spoke of long time police harassment. He also told Orloff under cross examination that Henson's account of the shooting had not even been revealed to his lawyers because a Panther vehicle was involved, and it was therefore considered an "internal" matter.

Orloff tried to salvage his case by playing one last card. It was not a trump. He called Joanne West, a self-described "dope fiend," who had told police that an armed man fitting Newton's description harassed her on the street the night of the shooting, a few blocks from the corner Kathleen Smith and Raphaelle Gary had been standing on. Asked to pick out the man in the courtroom, West talked past the defense table where Newton sat and pointed to a tall, bearded spectator—he was white, and an earlier defense witness.

After nine days, the case went to the jury of nine women—most of them reportedly suburban residents over 45—and three men, one black. Orloff, perhaps concerned about the poor spectacle his witnesses had presented, told the jurors, "When a play is cast in hell, you can't expect to have angels for actors."

Despite the fact that two jurors consistently held out for conviction, attorney Charles Garry, who has represented Newton in other cases and testified for the defense at this trial, thinks the case was phony from the start. "I told them that in

court," Garry told *Seven Days*. "I said the evidence was flimsy in 1974, and it's even phonier now."

Not everyone has felt as sure of Newton's innocence; there were holes in the defense's case. But in comparison, the prosecution's presentation was a series of craters. Despite this, white liberals have, in the last few years, been eager to dump the Panthers with the same passion and abandon they once rushed to embrace them with. One doesn't have to champion either the Panthers' current political line, or Newton's personal virtues to understand that ever since the Party first burst upon the national scene, the government has been out to intimidate and destroy them.

The Panthers first moved strongly as a unit in 1967 to protest the police shooting of Denzil Dowell, 22, in nearby North Richmond. Authorities simply refused to investigate, saying the officers had been within the law, and advised the Panthers to go to Sacramento if they wanted to change the law. They did, carrying their weapons with them. The fear they struck in the hearts of the white establishment triggered a wave of repression still hard to believe. The FBI's bag of dirty tricks ranged from the murder of Panther leader Fred Hampton to the release of forged letters accusing Newton of homosexuality. The Church committee on COINTELPRO operations showed that the FBI moved against the Panthers 233 times out of a total of 295 times for all black organizations. More than 20 Panthers were killed and over 1000 arrested from 1968 and 1971 alone.

This latest trial had some peculiar resonances for those who have followed Newton and the Panthers over the last dozen

years, and it is tempting to look for contrasts with Newton's famous 1967 trial for manslaughter. The two trials were held on the same floor of the same courthouse, but the differences are dramatic. Hundreds of supporters gathered in '67, including, often, a phalanx of black-jacketed Panther Party members. To get a spectator's seat, one had to arrive between 5:00 and 5:30 a.m.; security was extremely tight, with armed deputies everywhere and body searches the general rule. Charles Garry's memorable defense in that trial served to bring real changes in the county jury system.

This time spectators could drop in at will on many days. Security was almost nonexistent, although, oddly, the judge ordered a metal detector installed on the first day of jury deliberations. Those looking for seats included some Newton partisans, but just as many simply curious: law students, courtwatchers and tourists.

For all the changes since 1967, some things are strikingly the same. In the courtroom next to Newton's the judge listens to a series of cases, most involving revocation of parole. The parade of defendants, almost all black or hispanic, come in, some from the jails, to be represented in brief unintelligible proceedings by a string of lawyers, almost all of them white.

The prosecution has not had such an easy time with Newton, but it is not giving up either. "We have a good case," Tom Orloff insisted stubbornly when explaining why the government will retry the case beginning May 7.

Orloff, retorted Newton, "expects to wear me out in the 15th round, but we'll get second wind."

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