SR UP FRONT

AUGUST 5, 1972

"Ask Me. I Know. I Was the Test Case."

BY EARL CALDWELL

NEW YORK, N.Y.—At this point I am already so far past my deadline that my editor has given up listening to my excuses. She has parked outside my office and has informed me that she will not leave until the piece is finished. All this to pull loose my reaction to the Supreme Court's June 29 decision that the government has, if it chooses, a perfect right to subpoena me, or any other newsman, to testify before a grand jury—in my case, one investigating the Black Panther party.

The article should be easy to write. I've got so much to say that I feel about to burst. But I can't put anything on paper. I can't let anyone know. I have to keep it to myself. That's the rule of the game. Just this once, though, I'd like to say: The hell with it—the hell with what the Justice Department might do—the hell with what the *New York Times* thinks. I owe this one to myself. I know what I've been through these past two years. Let me get this off my chest.

The day the decision came down I stayed at home. A friend called to say that I had lost. Later that morning I phoned the *Times,* and Gene Roberts, the national editor, told me that the decision had been 5 to 4. Justice Rehnquist had made the difference. The deciding vote had been cast by a man who had been deeply involved in the subpoena issue when he was in the Justice Department.

I thought back to the day, February 2, 1970, when the first subpoena was served. It required me to appear in San Francisco before a federal grand jury that was probing the activities of Black Panthers. I had been counseled—not by my attorney, but by other legal experts and by people prominent in the newspaper industry—against being so anxious to go to court to fight the issue. They argued that I risked having a bad law made in an area where none had existed. In other words, I shouldn't go to court because I might lose. It would be better, they said, if we could work something out.

There was nothing to work out. I'm a journalist and, as quiet as it's kept, serious about my work. I grin a lot and try to give the impression that I'm always happy. That's the facade black folks must put up. So when I said that I wasn't going to appear before any grand jury investigating the Black Panther party, nobody believed that I was serious. Perhaps they didn't know where I'd been for the past five or six years.

I was on the balcony with Martin Luther King in 1968, and I saw him die. I saw the blood come out of his neck and stack up around his head. I watched Ralph Abernathy cradle King's head in his arms. I was there, and I looked into King's eyes and watched him die.

Before that I had done my time in the streets. I wasn't just in Newark or Detroit. I was on Blue Hill Avenue in Boston. I was on the west side in Dayton. I was in Cincinnati and Watts and Sacramento and Chicago and a lot of other places where black folks showed their anger and rebelled during the summer of 1967.

I remember being in Newark and visiting a young kid in his home just after his mother had been fatally shot. There were twelve in that family, and their father was dead. Their mother had locked them inside the apartment when the rioting broke out, and she was lying on a couch. She got up—maybe to get a drink of water or maybe to see about the food on the stove. It makes no difference. The thing that's worth remembering is that when she got up a bullet came through a window and tore her neck apart. When I arrived, with my press card, there was only a pool of blood left and holes in the walls that were bigger than your fist. The next morning the stories in my paper were not about police and National Guardsmen firing weapons so powerful that they dug walls apart. The *Times* headlined stories about snipers—snipers who the governor of New Jersey said were operating in the black community and who were highly professional (in spite of the fact that they never killed anyone).

Out of that summer came Rap Brown. I went across the country with him, and I watched thousands of black folks who were fed up, who were so filled with rage that they, too, were about to explode. Out of all that came the Black Panther party.

When I linked up with the Panthers late in 1968 on the West Coast, they called me a cop. I had to be a cop, they reasoned: The *New York Times* was not about to send a black reporter 3,000 miles just to cover them.

I had friends who knew Kathleen Cleaver; she was my first contact with the party. But to make it, you had to be able to deal with the Panthers in the streets, the Panthers whose names you never asked, whose names you never read in the paper. They were the ones who showed me what I needed to know. Late one night in San Francisco they yanked an old couch away from a wall in a cramped apartment, exposing stacks of guns of every sort. I could tell my readers then to take these people seriously, and I did.

I watched the Panthers' breakfast program before other reporters knew it existed. I wrote about it in the *Times.* If I've ever written a page-one story, that was it. The story was all there, but it was buried somewhere in the thickness of the Sunday edition. I told how painstakingly

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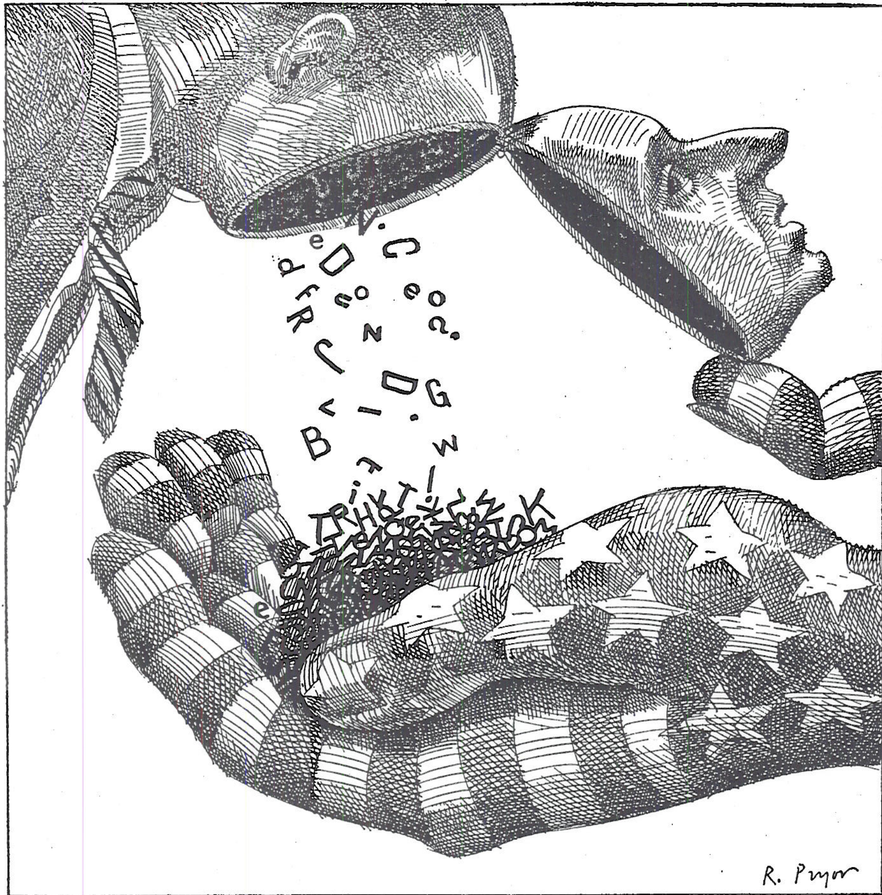


"The FBI wanted to pick my brain. They wanted me to slip about behind my news sources, to act like the double agents I saw on TV."

they went about their work, cooking big breakfasts—eggs, bacon, ham, grits, biscuits—they had it all. But they also added politics, in the songs they sang, in the literature they gave to the kids. Nobody tried to hide the political part from me—the reporter from the *New York Times*. Every now and then I'd get the third degree. "C'mon now, Caldwell; we know you're a cop," they'd say. But I kept coming back, and I kept telling them: "I'm a reporter. That's my job. That's the only reason—the only reason I'm here." Somewhere along the line they began to believe me.

On the morning before he went into hiding and eventually slipped out of the country, I visited Eldridge Cleaver in his San Francisco home. I remember him sitting there at his typewriter with his shoes off and telling me that the time was coming when the Panthers would have to move against black journalists. Once, he explained, it hadn't made any difference what we wrote because nobody—nobody black, that is—read us. But with blacks beginning to read more, what was being written about them was becoming more important. "What good do you do, anyhow?" he asked me. I wrestled with the question then; it is even more difficult to answer now.

As I became more deeply involved with the Panthers, I began to keep all kinds of files on them. On Panther personalities. On off-the-record conversations. I kept tapes, too, and I would write my personal reactions to everything involving the Panthers that I covered. At this point they were under attack by police groups across the country. At a time when the party was shutting out reporters, I was closer to it than ever. I would sit nights at the national headquarters on Shattuck Avenue in Berkeley, talking with anyone who would talk. Often I would not leave until 3 or 4 in the morning. The party trusted me so much that, I did not have to ask for permission to bring along a tape recorder. Some writers hinted on occasion that I was a member of the party: I wrote that off as professional jealousy.

But I was never permitted to follow the story through to the end. The FBI saw to that. I had my first encounter with FBI agents when I wrote about the Panthers' guns, but that time they left me alone when I assured them that all the information was available in the newspaper. Then, late in 1969, they began to interfere with my work. They wanted to pick my brain. They wanted me to slip about behind my news sources, to act like the double agents I saw on old movie reruns on TV.

This is not my fantasy. The *Times* knew what was happening. They knew the FBI was calling me every day. Finally, Wallace Turner, chief of the *Times* bureau in San Francisco, arranged for an assistant in the bureau, Alma Brackett, to take all my calls. The FBI even had women call. It went on like that for months, until one day an agent told Mrs. Brackett that, if I didn't come in and talk to them, I'd be telling what I knew in court. That's when they subpoenaed me. They asked for all of my tape recordings, notebooks, and other documents covering a period of more than fourteen months—and let me know that, if I did not come in with everything, I would go to jail. As it turned out, when I did refuse to appear before the grand jury, I was found in civil contempt and sentenced to jail until I complied with the court order. Fortunately, the court agreed to stay the execution of that order until I had a chance to appeal.

The rest is history. I met Tony Amsterdam, a good man and a brilliant lawyer, who understood why I could not appear before the grand jury. Tony was beautiful. He never asked about money. He never said that we shouldn't do this or we shouldn't do that because we might get a bad law written. He said that we were right and that we would go all the way to the Supreme Court if we had to. We did. And now the Court has ruled, and it makes me sick that the vote that beat us was cast by one of the very men who earlier sat in the Justice Department, where he could not have avoided being involved in this whole issue. So the records show that we lost—lost in a court that black folks had come to think of as their last resort for justice in the United States of America.

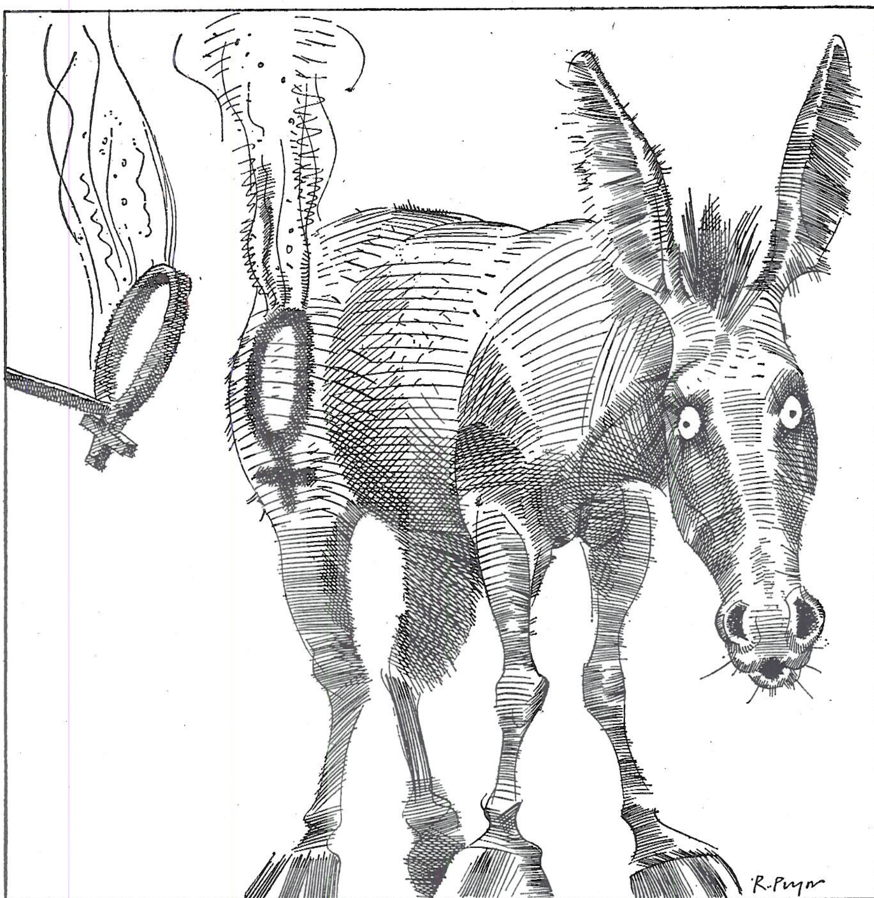
It's no longer important now what the government can get from me about the Panthers. I have nothing to say about them. They are not the same organization now that they were when I covered them. As for the notes and the tapes I spoke of earlier—well, they're all gone. I ripped up the notebooks. I erased the tapes and shredded almost every document that I had that dealt with the Panthers. Many of those items should have been saved, for history's sake, as much as for anything. But in America today a reporter cannot save his notes or his tapes or other documents.

That's not all. From now on no newspaper can hope to cover effectively an organization such as the Panthers. I don't care how black a reporter is, he won't get close. He won't, and he shouldn't try. He won't because he cannot be trusted as a reporter. When he goes out and cuts an

interview, he may say that it's only for his paper. He may swear to it. But if he means it, the government can now put him in jail and keep him there. Ask me. I know. I was the test case. And because Justice Rehnquist did not disqualify himself, we lost.

Yes, this should be an easy piece to write. I have a lot to say. It's difficult, though, because I have a lot to think about. I am teaching this summer at Columbia University, but in another month I'll be heading back west to my job as a West Coast correspondent for the *Times*. I still have not figured out how I can go back into the black community—or any community, for that matter—and present myself as a journalist. Hell, even the Supreme Court has now said that there is nothing wrong with forcing a reporter to become a spy. But not all of the Court misunderstood.

In his dissenting opinion, Justice Douglas wrote: "A reporter is no better than his source of information. Unless he has a privilege to withhold the identity of his source, he will be the victim of governmental intrigue or aggression. If he can be summoned to testify in secret before a grand jury, his sources will dry up and the attempted exposure, the effort to enlighten the public, will be ended. If what the Court sanctions today becomes settled law, then the reporter's main function in American society will be to pass on to the public the press releases which the various departments of government issue." □



Democratic Women

BY LYNN SHERR

MIAMI BEACH, Fla.—Midway through the exuberant first birthday meeting of the National Women's Political Caucus, on the morning of the opening session of the Democratic Convention, Gloria Steinem told nearly a thousand females, "The world is watching, and this time it's watching women."

Well, yes, the world *was* watching women—but only when it was convenient, and then usually through the unliberated eyes of the TV networks' newsmen. On the other hand, if you were here, and you were a woman or a reporter or a feminist, all of which I am, you were watching women constantly—sometimes happily, sometimes anxiously. This was a convention at which women behind still cameras photographed women behind movie cameras, so unaccustomed were they to seeing their sisters in the media; at which the hottest selling campaign item was a "Free Martha" button going for $4; at which the wife of the vice presidential nominee, one of the few wives of high-ranking politicians not to denounce female activists as lingerie burners, said the first thing she did when she heard that McGovern had named her husband was to clean house frantically. Along with 1,000 women delegates and the first-ever female party officials, there were bouffant hairdos, style shows, meter maids on motorcycles, bracelets with donkeys or with POW names inscribed on them, and a sale of quilts to help bankroll the candidate. Here is some more of what I saw in nine days. It is a biased report, I admit, but so are the reports that leave these happenings out:

THURSDAY: It is four days before the convention opens. I arrive, unpack, take an evening stroll down Collins Avenue with a friend, photographer Jill Krementz. A knobby-kneed male passerby wearing Bermuda shorts stage-whispers to his buddy: "I'll take the one on the left." He means me. I am not flattered. Welcome to Miami Beach.

FRIDAY: McGovern's women are holding a press conference, and the cameras are rolling. No wonder. "I'm Shirley MacLaine," announces the first speaker. She turns out to know something, to be more than a movie star. "We are interested in the higher political consciousness of all women," she says. The senator, she foresees, "could tolerate the inherent danger of women achieving political power . . . although he has a lot to learn."

Jean Westwood, McGovern's highest-ranking staff woman, who is to engineer the California credentials victory on the floor, makes a prophetic statement: "If women expect to make political decisions, they have to get in and assume roles. You can't sit outside and wait to be asked." Then Anne Wexler, the leader of McGovern's bloc on the Rules Committee, talks about the child-care centers set up during the campaign, how they had been "manned on a full-time basis." "You mean *personned* on a full-time basis," quips a male AP reporter in a surprising burst of feminism. The crowd chuckles approvingly.

We whip over to Flamingo Park, camp site of the poor, the hip, the yip, the zip. While the dissident leaders, all male, talk to the fascinated press, I slip into the Women's Tent, where I learn that the women are not feeling real power here,

Lynn Sherr is coauthor of The Liberated Woman's Appointment Calendar.