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BOOK REVIEW

BLUE VS. BLACK: LET'S END THE CONFLICT BETWEEN COPS AND MINORITIES

JOHN L. BURRIS WITH CATHERINE WHITNEY

ST. MARTIN'S PRESS, 1999

*Reviewed by William D. McColl II**

Blue vs. Black is John Burris's personal, although not quite autobiographical, account of law practiced between the police and the Black community. It is not, however, the story of litigation so much as it is a from-the-trenches report about relations between Black people and police in California and around the nation. Burris, a civil rights lawyer in Oakland, California, culls eighteen cases from his files to advance his thesis that there is a "conflict" between current police culture and (primarily) African Americans, particularly in urban areas. This thesis is not particularly new, but Burris is able to provide an interesting gloss by using his conclusions from the cases to prepare a blueprint for successful policing strategies.

Burris's "Blueprint for Police Reform" will undoubtedly generate controversy, although readers will have no doubt as to how Burris came to his conclusions. Despite his attempts to be evenhanded, and indeed he is careful not to condemn all police, or even a majority of police, he is not a neutral player but an advocate for change. *Blue vs. Black* serves as a klaxon to awaken the general public to the dangers of the damage wrought by a few cases in which police overreactions to even relatively minor incidents poison the relations between the police and an entire community.

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¹ See DAVID COLE, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* (1999)

Blue vs. Black would make a nice companion piece with David Cole's recent *No Equal Justice*¹ which is a startling indictment of the criminal justice system's inequities for Blacks and Whites. Both works provide a visceral understanding of how it is possible for an entire community to come to distrust the police. Burris's work is the more personal of the two but his book is much less analytical. One particular pleasure for those interested in the law is that Burris provides occasional glimpses into his own successful practice. Offhand comments reveal how he investigates and prepares his cases.

Burris relates his clients' stories in his own voice. This device allows him to provide commentary on the cases, his own reactions to his clients, and to offer glimpses into his own life and feelings. His tone is conversational and folksy, much more journalistic than legalistic. Burris, the trial lawyer, argues to the jury of his readers.

In a post-O.J. Simpson/Rodney King nation, *Blue vs. Black* has two audiences. Burris, a member of Rodney King's civil trial team and a television and radio commentator on the Simpson trial, is well aware of the dual nature of his audience. He attempts to bridge this gap by personalizing his clients and their stories. It is a clever strategy. White readers hear sympathetic and uninterrupted accounts of the stories while black readers hear a message of solidarity. In an overt acknowledgement of this duality, he cites *Invisible Man* and sets out to render Black people visible to Whites. This may seem clumsy or too revealing of the author's sleight-of-hand, but it works. Burris puts a White reader on notice that he or she will be required to make the mental effort to understand the lives of Black people as individuals. He does not come off as condescending so much as conversational, and indeed the personal stories he relates are the most successful portions of the book.

Burris's typical strategy is to begin by placing his client in the community so that the reader understands exactly who the client is and how events affect not only the client, but also the community. For instance, here is how he describes one of his clients:

After five years as the director of the Acorn Community Center, Darrell Hampton had achieved folk-hero status The parents . . . could turn almost tearful when they spoke of Darrell . . . they had hope again, that their beautiful babies would not grow hardened by the streets, feel the pull of the gangs, the allure of drugs . . . Darrell also taught the kids to believe that the police were their friends.²

The focus on placement and setting is essential to making the case that abusive police practices injure communities at large. The main assumptions of the book, that there is a conflict between the community and the police, that the conflict is widespread, and that the conflict comes from a clash of cultures, hinge on a reader's intuitive grasping of the injury to the community. Despite occasional reference to empirical evidence (such as that provided by commissions looking into

² JOHN L. BURRIS WITH CATHERINE WHITNEY, *BLUE VS. BLACK: LET'S END THE CONFLICT BETWEEN COPS AND MINORITIES* 44-45 (1999).

police abuse and independent reports from agencies such as Human Rights Watch), Burris mainly supports his arguments with basic intuition. At one point, Burris asserts: "Across the country, WWB (walking while Black) and DWB (driving while Black) cases are commonplace. Occasionally they flash across our TV screens creating a brief wave of public uproar and indignation."³ He then lists six such cases. One might reasonably conclude from such evidence that these cases are not commonplace, but instead, well publicized.

The case studies bear a heavy burden, and they face additional pressure because even Burris admits that they are extreme. The vast majority of citizen interactions with police do not result in arrest, and the vast majorities of arrests do not result in injury. Therefore, each case must represent Everyman and readers must decide, not so much if they are typical but whether they represent enough evidence to demand systemic reform. Burris has a ready answer. It is the extreme cases that affect the community, and if a community is unable to trust the police then ultimately, police will be ineffective in the community. Burris posits a cycle of mutual suspicions that feed into an antagonistic relationship. Perhaps his statement that "many black people I know are afraid to call the police when they are in danger" best sums up his concerns.⁴

Burris is on firmer ground in his descriptions of what happens to his clients and the effects on the community. Here is what happened to Darrell Hampton. A police car cut through the community center yard at a high rate of speed with children present. Hampton yelled to the officer to slow down. Mike Yoell, another officer walking through the yard responded aggressively, claiming that Hampton was carrying a weapon (a pool cue from inside the center). Yoell and three additional officers began beating Hampton, who eventually became unconscious. Yet even this did not stop the beating. Hampton then spent three days in jail. All of this occurred in broad daylight in front of more than forty kids and many adults. The case was settled for \$225,000 including \$5,000 directly from Yoell. The shame is that Hampton no longer feels comfortable telling kids to turn to the police for assistance, and many of the kids have been unable to get over what they saw.

In turn, Burris is able to draw some conclusions about the culture of policing. At the time of the beating, Yoell had twenty-six complaints filed against him with the Oakland Police Department Internal Affairs Division. None of the complaints had been sustained. This is a pattern in the case studies. Poorly trained young officers and policemen with extensive records of complaints for brutality (usually not sustained by the internal affairs departments) commit most of the abuses. There are very few police with such extensive records, and Burris reasonably asks why it is so difficult to weed out such officers. His answer is simple. The police frequently are responsible for investigating themselves. Such a conflict of interest almost naturally results in acquittals of police misconduct. In addition, the appointment of non-independent members and a lack of actual accountability often compromise (and sometimes sabotage) the independence of outside investigative bodies.

³ *Id.* at 98.

⁴ *Id.* at 21.

Burris then draws on the files of five of the worst police abusers to come up with a pattern for an abusive cop. He lists three common traits: inexperience with an urban environment, lack of formal education, joining the force at a youthful age, and in three of his five cases, immediate prior military experience. Burris concludes that such a background might produce fear and aggression, a deadly combination in a police officer. His solution is to try to weed out officers who may become abusive during the recruitment process. Thus, the police department must devise methods to ensure that it hires only people with proper qualifications who are unlikely to become abusers. It does not help that state attorneys and judges depend on police cooperation to make the criminal justice system work. Burris argues that, in this sense, attorneys and judges become *de facto* supporters of the police culture.

Individual police officers are not the only ones at the root of the problem. Burris posits that there is a police culture that enables these officers to act abusively. A blue wall of silence, which instills attitudes and practices that may lead to conflict, protects these officers. Burris uses a case with the late rapper, Tupac Shakur, "Mr. Attitude himself," to demonstrate an aspect of this cultural conflict. In the course of being cited for jaywalking, Shakur responded to the police with verbal one-upmanship. The display of disrespect degenerated into a fight and arrest. By not adapting a submissive demeanor, Shakur failed an "attitude test," and the officers escalated the jaywalking incident into a demonstration of power.

The issue of escalation of minor incidents into abusive arrests and detainment particularly interests Burris as many of his legal cases focus on whether or not police followed procedure in the use of force. Most police departments follow a continuum-of-force policy, which dictates that police officers may use force one step above the degree of force that the person with whom they deal uses. Force is thus meant to be a defensive response for police. Burris is able to use the discovery process to show that police step far above the level of force required and that police frequently use force offensively. Burris ultimately calls for changes in police training to emphasize communication skills, with a particular focus on de-escalating conflict.

Further cultural barriers between police and community result from racism. As evidence, Burris cites the barely coded racial radio messages of police officers in Los Angeles, which were revealed during the Rodney King trial as an outward manifestation of such racism. The messages are startling (perhaps the most infamous being a reference to an African American couple as "Gorillas in the Mist"). He contrasts police departments routinely allowing such comments in a "boys must be boys" spirit to private American businesses, many of which have worked to weed out such chat at water cooler gatherings. The point is well made.

Burris makes a powerful case that there has been a breakdown in relations between the community and the police in the cases he discusses. The reader concludes from the discussion that the breakdown is widespread enough to merit attention. So what is the solution? Burris proposes the ten point "Blueprint for Police Reform." This is actually a rather interesting choice and one not without some peril. The book's subtitle, "Let's End the Conflict Between Cops and

Minorities," hints at this problem. By focusing solely on the police, Burris risks the appearance of excusing the community from taking action or finding ways to institute reform. Burris swims against the popular current because many other theorists locate the problem very much within the community.⁵ In this worldview, conflict with the police is evidence of communities and crime out of control. Burris himself acknowledges that following the Los Angeles riots over the Rodney King case, there was a powerful pro-law enforcement movement in Congress (which is itself a reflection of a law and order movement that has been underway for nearly two decades).⁶ Interestingly, these very popular theories may make Burris's case for him. Use of zero-tolerance and other such tough on crime policies may have resulted in escalations of the police behavior which Burris focuses on changing.⁷

Only dead fish go with the flow and Burris is determined to swim upstream. There are several implicit subtextual reasons that may have influenced Burris's decision to focus on the police. The first is simply that Burris views his subject through the lens of the cases he has presented. He focuses on the abuse of *individuals* (whom he works to make visible). It is the extent of the abuse of the individuals that affects the community. Eliminate the abuse and eliminate the effect on the community. Thus, he looks for ways to weed out individual officers who may be prone to committing abuse in the first place. This effort is reflected in the Blueprint for Police Reform. Point One, "Institute a three tier recruitment standard," and Point Five, "Deny promotions to officers with numerous citizen complaints" fit clearly into this box.

Burris proposes that it will be easier to change the attitudes and behavior of the police rather than those of the community. In fact, the community will respond to changes in the police. One reason is that the police have a command and control structure, subject to discipline. There is no similar enforcement mechanism in the community at large. Additionally, traditional Constitutional freedoms directly conflict with making certain types of restrictive demands on the community. This focus results in points which seek to change the command and control structure. Point Six, "Establish a committee to review policy and standards," Point Seven, "Create an incentive for officers to report misconduct," Point Eight, "Impose discipline on officers who lie," and Point Nine, "Replace Internal Affairs with an independent review board" implement a new force structure designed both to create more reasonable policy and to strike directly at the wall of silence.

⁵ See WILLIAM J. BENNETT ET AL., *BODY COUNT: MORAL POVERTY – AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS* 56-57, 197-208 (1996) (stating that moral poverty of individuals within a community creates crime and that the solution includes moral training, better adoption services, renewal of religious faith, etc.). See also James Q. Wilson & George Kelling, *Broken Windows: The Police and Neighborhood Safety*, *THE ATLANTIC MONTHLY*, March 1982, at 29 reprinted in STEVEN G. BRANDL, *CLASSICS IN POLICING* 358-59 (1996) (stating that community fear is rooted in community disorder).

⁶ See FRANCIS ALLEN, *DECLINE OF THE REHABILITATIVE IDEAL* 7-11 (1981).

⁷ See AMNESTY INTERNATIONAL, *UNITED STATES OF AMERICA, POLICE BRUTALITY AND EXCESSIVE FORCE IN THE NEW YORK CITY POLICE DEPARTMENT*, § 2.9 (1996).

In a related maneuver, Burris moves beyond command and control to challenge the police culture. Point Two, "Establish a dual-training focus of force and communication," and Point Three, "Grade field training on de-escalation skills," suggest ways in which the police should react to belligerent behavior. De-escalation in particular is an attack on the police culture's intolerance of disrespect. By becoming fixated on disrespect, Burris in effect says that the police miss the larger picture, which is to assist the community to regulate itself.

Finally, Burris comes to focus on the community through the inverse lens of the police. He reasons that police are a part of the community and the entire idea of policing should grow out of the community. Ultimately, Burris believes that the only way to make deep and abiding changes is for police to adopt a "community policing" style. On this, he has company. Many police theorists believe that community policing (a policing model which involves individual officers with the day to day lives of the community) results in a greater ability both to prevent crime and apprehend criminals.⁸ Point Four, "Rotate new officers through community policing divisions," and Point Ten, "Make community policing skills essential for promotion," show a clear preference for this model.

Not one of these points is without strong opposition. Point One for example would create a tiered system, which would set basic standards of competence, including two years of college education, physical fitness and basic psychological capabilities. It would also require that to work in urban police departments, candidates must have life experience in urban areas, work and living experience with ethnic and minority populations, and demonstrated sensitivity to issues specific to urban populations. Finally, candidates would be given extensive psychological testing to find history of abusive behavior, prejudice, family instability, and other possible disqualifications. One can already envision the dollar signs flashing in the background before one even reaches the philosophical objections sure to be raised. The other provisions raise similar concerns.

But it is clear that practicality is not the standard of this book. If anything, the "Blueprint for Police Reform" is a work of idealism, a goal marker of success. In fact, the power of the book is not so much in the blueprint but in the stories Burris tells. Many of his subjects, though shot or severely beaten and psychologically maimed, transcend their fears. Burris challenges readers to identify with his subjects and to become advocates. He wants readers to become advocates. This book is meant to incite public discussion and on this level, it succeeds.

⁸ See ROBERT TROJANOWICZ & BONNIE BUCQUEROUX, *COMMUNITY POLICING: A CONTEMPORARY PERSPECTIVE* xiii-xv, 5-6 (1990), *reprinted in* STEVEN BRANDL, *CLASSICS IN POLICING* 353-56 (1996).