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Chicago 17th ed.

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BOOK NOTES

"BLACK RAGE" CONFRONTS THE LAW

BY PAUL HARRIS

NEW YORK UNIVERSITY PRESS, 1997

In *Black Rage Confronts the Law*, Paul Harris strives to show that, whether surrounded by gunfire in America's ghettos or struggling with racial barriers in financial centers, "black rage" can exist. Harris, Charles Garry Professor of Law at New College's public interest law school in San Francisco, past president of the National Lawyers Guild and an attorney who worked with the San Francisco Community Law Collective for sixteen years, uses case history, American literature and personal stories to outline the evolution of the "black rage" defense in the United States. Harris addresses misconceptions of the defense, perceived advantages and disadvantages of the defense and methods of successfully utilizing "black rage" as a defense.

Harris defines the "black rage" defense as a legal strategy to explain to a judge or jury the relationship between a defendant's environment and a defendant's alleged commission of a crime. The defense, centered upon a defendant's experiences of racial oppression, attempts to show the effects of such oppression on a defendant's mental state. Similar defenses include the "battered woman" defense and other cultural defenses increasingly used to explain a defendant's state of mind during the alleged commission of a crime.

Harris discusses William Freeman's trial of 1846. Freeman, the son of an ex-slave, was mistakenly blamed for stealing a horse and subsequently sent to jail. He escaped from jail, and following his recapture, sentenced to hard labor at the State Prison in Auburn, New York. Continually threatened, physically assaulted and punished, Freeman suffered a broken ear drum and permanent damage to his left temporal bone. In one instance, Freeman endured such severe whipping that "he could put his fingers into the hole that had been cut between his ribs." These terrifying experiences permanently changed William Freeman.

Upon his release from prison, Freeman, knowing the man whose false testimony resulted in Freeman's sentence, went to the police to get a warrant for the man's arrest. The police refused to issue a warrant and told him that no legal remedy existed. Freeman then went to a wealthy family in the area, searching for a job; the family refused to hire him. Freeman's brother-in-law informed him that the wealthy family from whom Freeman tried to get a job initially sent

Freeman to jail. Freeman, only twenty-two, stabbed the wealthy couple, their two year old son and the mother-in-law, to death.

Harris focuses on this case in an effort to illustrate the beginning of the "black rage" defense. Freeman's attorney, William Henry Seward, relied on a psychiatric defense when advocating on his client's behalf. Seward described the conditions of racism in which Freeman lived as so abhorrent that they could cause insanity. Freeman, sentenced to death, was ultimately deemed mentally unfit to be tried on appeal.

Harris then takes his readers forward one hundred years to the civil rights movement of the 1960's and, through vivid imagery, deals with the continuing history of racial unrest in America and the confrontations and uprisings that made race and the anger of hundreds of years of oppression too strong to ignore. Steven Robinson, a music director in a San Francisco school without available funding to pay him, decided to search elsewhere for employment. Laid off from subsequent employment, he could not afford to support his wife and child or provide medical care when they were diagnosed with tuberculosis. The poverty and frustration of the years of oppression blacks like him faced created a boiling rage in Robinson. After trying to pawn a derringer given as payment for a job he had done, Robinson, in a dazed state, entered a bank and attempted to rob it. Paul Harris served as Robinson's attorney and defended his client by intertwining three elements: Robinson's "personal life history; what it means to be black in America; and the law of temporary insanity." Harris did not blame racism for Robinson's actions, but rather, entered it into the equation of Robinson's life that created Robinson's "rage." Harris used the "black rage" defense and the jury granted an acquittal.

Harris also discusses James Johnson, Jr., an automobile worker in the late 1960's and early 1970's at a Chrysler plant in Detroit. The conditions of automobile plants at that time were dangerous and racist practices often kept black workers from receiving promotions or increases in pay. Harris details the danger and racism at Johnson's plant which led to Johnson's "rage" after a white worker's promotion over him. Misinterpreting a subsequent suspension as a firing, Johnson re-entered the plant with a rifle and began shooting, killing his foreman and two other men. Using an insanity defense, Johnson's attorneys succeeded in merging "the political reality outside the courtroom with Johnson's individual life." A jury found Johnson not guilty by reason of insanity.

The above cases are some of those used by Harris to portray the "oppression" suffered by those defendants for whom the "black rage" defense has been successfully argued. The cases are both moving and disturbing, and Harris' discussion of them shows how he perceives the defense should be used without "demeaning or stereotyping black people." He also outlines factors to consider when determining whether to use the "black rage" defense. However, while trying to delineate the defense, Harris simplifies a complicated defense that encompasses lives and decades of oppression and fear.

Harris explains the system of law and "justice" in America and the myths associated with such a system. He later describes criminal defenses such as justification, self-defense, excuses, insanity and diminished capacity. These discussions

may aid strangers to the legal system to understand how the system works. For those familiar with the system, these discussions are more helpful in determining where the "black rage" defense falls in the criminal defense system and the defense's importance.

Harris points out that many feel that the system is one in which "justice is blind" and race, gender or economics do not play roles. However, as Harris states, a "major fact in legal reasoning is the myth that the law is made up of neutral, fair rules." Furthermore, Harris reminds us of difficulties within the system, such as proving racial discrimination because "intent to discriminate" needs to be proven. His point is that the system is not fair and therefore, greater inherent difficulty arises when using the "black rage" defense, though its use is necessary.

In a judicial system that believes it is immune to public issues, the "black rage" defense brings the realities of racial and economic oppression to the forefront and forces society to take responsibility for shaping the environments of defendants brought before the court. Harris asserts that the defense must be used responsibly and in a manner that "does not demean or stereotype black people."

Harris discusses cases concerning defendants from America's urban centers in the 1980's and 1990's, where the "black rage" defense negated the mental element needed to prove first-degree murder or attempted murder. Also, Harris discusses some cases where the "black rage" defense was argued by other people of color and by women who had been raped, or otherwise oppressed. For example, Felicia Morgan, upon hearing gunshots, blindly shot a gun, an object she had never possessed before, and killed another young girl. Morgan was sentenced to life with the possibility of early parole after thirteen years after the successful use of the "black rage" defense. Patrick Hooty Croy, a Native American, was shot in the back twice and, upon turning around, shot the police officer shooting at him. He killed the officer but was found not guilty upon successful use of the "black rage" defense on appeal after spending eleven years on death row. Here, Harris reveals that the "black rage" defense is versatile and may be considered in various cases where oppression exists.

Some argue that the "black rage" defense can rebound and be used as a "white rage" defense. Harris describes the "black rage" defense as "brought by a person who is a victim of white supremacy" and who suffers economic hardship. However, Harris reacts ineffectively to the "white rage" rebound argument by failing to completely discount the possibility of a white rage defense. Rather, he vaguely states that more white people will also find themselves "casualties of a dysfunctional social system."

In outlining the "black rage" defense and its use, Harris simplifies what is a complicated environmental defense, leaving many questions unanswered. For those familiar with the legal system, Harris provides a brief overview of the "black rage" defense which is thought-provoking and moving, but brings to mind difficulties in utilizing the defense. For example, many may feel uncomfortable when a person who has killed is acquitted or given a lighter sentence because of successful utilization of the defense. Some may argue that such a defense sends a message to the members of society that if they feel that they have

been oppressed, then commission of a crime is allowable without punishment. Also, the "black rage" defense forces one to think about what rights or relief victims have if these defendants are acquitted or given lighter sentences because of the defense. Do the advantages really outweigh the disadvantages?

Though Harris's language is sermonizing at times, the core of his discussion remains strong: the "black rage" defense is viable. Through Harris' discussion of cases, the reader may understand the frustration and "rage" of the defendants in question. One may then understand that the defense arises not from a moment of oppression, but rather, from a long history of such oppression, fear and sense of hopelessness created by the defendants' environments. Also, the cases discussed exhibit a clear interplay of racial and economic oppression in the lives of these defendants and in turn, one may sympathize with the defendants.

Finally, Harris argues that the defense opens the public's eyes and the eyes of justice to the existence of racism and poverty, and reminds us that the law does not exist in a social vacuum. The book provides a brief introduction to the types of defenses that may be used in criminal cases and it is a quick read, recommended for those interested in the interplay of race, economics and the law. But the question still remains: Where do the rights of victims fall within the scope of the "black rage" defense?

Shuba Satyaprasad