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ARTICLE

LIFE AS A CIVIL RIGHTS LAWYER IN THE SAN FRANCISCO BAY AREA

JOHN L. BURRIS*

INTRODUCTION

As a civil rights lawyer for almost 40 years, I have represented over 1,000 victims of police misconduct, thousands in class action employment and toxic tort cases, defendants in many serious criminal cases, and an array of high-profile public figures and professional athletes.¹ During the course of this article, I will write about a selection of cases that are most meaningful and impactful to me. This article also addresses the development of my high-profile status related to my involvement with cases of public interest.²

In 1999 I co-authored a book entitled *Blue vs. Black: Let's End the Conflict Between Cops and Minorities*³ where I discussed the issues of police-community relations and accompanying challenges. After writing about the conflict between police and minorities, I proposed a ten-point plan to improve police departments in hiring, recruiting, internal affairs,

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¹ For example: professional basketball players such as Gary Payton, Jason Kidd, Kevin Durant, and Latrell Sprewell; actor Delroy Lindo; rapper Tupac Shakur; soul singer D'Wayne Wiggins of Tony! Toni! Toné!; legendary soul singer Lester Chambers; baseball legend Barry Bonds; high profile sports agent Aaron Goodwin; as well as numerous public officials and their families whose names I will not list for the protection of their privacy.

² I have served as a Legal Analyst in a variety of television forums including MSNBC, CNBC, CNN, Fox, Court TV, national NBC, ABC and CBS (especially during O.J. Simpson's trials in the 1990s), local television, newspapers and radio. I have appeared prominently in news articles in the New York Times, Oakland Tribune, San Francisco Chronicle, and the San Jose Mercury News, among others.

³ JOHN L. BURRIS WITH CATHERINE WHITNEY, *BLUE VS. BLACK: LET'S END THE CONFLICT BETWEEN COPS AND MINORITIES* (St. Martin's Press, 1st ed. 1999).

and discipline. The *Riders* case, discussed in greater detail later, afforded me the opportunity to incorporate many of my ideas for improving the Oakland Police Department.

Over the course of my career, I have litigated or worked on many cases that addressed, dealt with, or touched on challenges we face as a society. I have represented many highly unpopular clients, such as a suspected child abductor⁴ and a very young boy charged with a brutal murder,⁵ and in doing so protected the rights that we are all entitled to. I have also worked on several major employment cases,⁶ chipping away at racism in the workplace and contributing to better legal protections for women and employees of color. The work may make some uncomfortable, but it is immensely rewarding.

I. BACKGROUND

Growing up as a black man in the San Francisco Bay Area during the civil rights era exposed me to the social disparity and discrimination that existed within our communities.⁷

Hearing the voices of the leaders of the civil rights movement⁸ and experiencing the different worlds where black and white people existed ignited within me a desire to address these gross inequities.

After earning a bachelor's degree in accounting at Golden Gate University, I worked for two years as an accountant with Haskins Sells, a national CPA firm. Although financially rewarding, the work was not inspiring enough. I went back to school and received an MBA from UC

⁴ See Charlie Goodyear, 'Stalemate' in Cases of 4 Missing Girls / Psychologist's Book Revives Suspicions About Oakland Man, S.F. CHRON. (Aug. 30, 1997, 4:00 AM), <http://www.sfgate.com/news/article/Stalemate-in-Cases-of-4-Missing-Girls-2829281.php>.

⁵ See *Transcripts: 1513 Little Criminals*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/little/etc/script.html> (last visited Mar. 12, 2017).

⁶ See, e.g., *Carter v. UPS*, No. 3:97-cv-01590-MJJ (N.D. Cal. 1997); *Satchell et al. v. FedEx*, No. 3:03-cv-02659-SI (N.D. Cal. 2003); *Davis vs. City of Oakland*, No. 3:02-cv-02257-SI (N.D. Cal. 2002) (an employment discrimination case, where a police Lieutenant was denied promotion to Captain because she was pregnant and was thought not able to be available full time as a Captain. The 2 million dollar jury verdict was reduced to 450 thousand dollars); *Freitag v. Cal. Dep't of Corrections*, No. 3:00-cv-02062 (N.D. Cal. 2000) (a female correctional officer was subjected to discrimination and retaliation when she complained about the Department's failure to respond to exhibitionist masturbation conduct by inmates; the jury awarded \$600,000 plus attorney fees and a monitor was in place for 3 years to implement reforms).

⁷ I was born in Vallejo, California, to Dewitt and Imogene Burris who married after migrating from Oklahoma. I am the oldest of six children and received my primary and secondary education in the Vallejo school system.

⁸ As a teenager I heard Dr. Martin Luther King, including his "I have a dream" speech, Malcolm X, John Lewis, Stokely Carmichael, and Rosa Parks, among others prominent during the 1960s and 1970s. I was also influenced by Bay Area attorney Clinton White and future mayor of San Francisco, Willie Brown.

Berkeley Graduate School of Business, but my desire to have more of an impact on the world around me remained. I attended law school at UC Berkeley. There, law professor (and later judge) Henry Ramsey inspired me to focus on civil rights issues. While at Berkeley Law School as President of the Black Law Students Association,⁹ I led a weeklong student strike in support of affirmative action. After graduation, I moved to Chicago where I joined the nationally recognized law firm of Jenner & Block as an associate.

In Chicago I had my first experience with inner-city police violence. During the summer of 1972, I worked as a law clerk for the Metcalfe Commission,¹⁰ which examined police brutality in Chicago. The Metcalfe Commission was a blue-ribbon panel that produced a report and recommendation titled “The Misuse of Police Authority in Chicago.”¹¹

At the Metcalfe Commission I learned about the abuse of official police power, which was consistent with the teaching and observations of the Black Panther Party¹²

Experiences like working on this panel and observing the Fred Hampton assassination trial in Chicago showed me the challenge of fighting police brutality; despite being philosophically emboldened I needed to know how I could use my skills to bring about real progress.

I left Jenner & Block after two years to join the State Attorney’s office in Cook County, Illinois. Two years later, I returned to California and joined the Alameda County District Attorney’s Office, where I served for two years.

⁹ Berkeley Law School was known as Boalt Hall when I attended from 1970 to 1973, graduating with a Juris Doctorate. *See generally* Justin Berton, *John Burriss Powers Oakland Police Reforms*, S.F. CHRON. (Sept. 17, 2012), <http://www.sfgate.com/crime/article/john-burriss-powers-Oakland-police-reforms-3869000.php>; Henry K. Lee, *Henry Ramsey Jr., ‘Warrior for Justice,’ Dies at 80*, S.F. CHRON. (Mar. 15, 2014), <http://www.sfgate.com/bayarea/article/Henry-Ramsey-Jr-warrior-for-justice-dies-at-5319665.php>.

¹⁰ Ralph Metcalfe, a 1936 Olympian, second to Jesse Owens in the 100-yard dash in Berlin, and later a Chicago Congressman, instituted an investigation into police abuse by Chicago police officers. Metcalfe’s personal physician was assaulted by an officer and Metcalfe was insulted by Mayor Richard Daley’s lack of concern. As a clerk, I interviewed hundreds of primarily African Americans who claimed that they were wrongly assaulted and or arrested by Chicago police officers. *See The Crisis of Confidence in the Chicago Police Department*, CHICAGO REPORTER (Aug. 1, 1972), <http://chicagoreporter.com/the—crisis-of-confidence-in-the-Chicago-police-department/>.

¹¹ RALPH H. METCALFE, BLUE RIBBON PANEL, THE MISUSE OF POLICE AUTHORITY IN CHICAGO (1972), <https://chicagopatf.org/wp-content/uploads/2016/01/metcalfe-report-1972.pdf>.

¹² The Black Panther Party was started in Oakland in the 1960s by Huey Newton and Bobby Seale and it had a ten-point platform, one of which was elimination of police brutality. *See* HUEY P. NEWTON & BOBBY SEALE, TEN-POINT PROGRAM (Oct. 15, 1966), http://collectiveliberation.org/wp-content/uploads/2015/01/BPP_Ten_Point_Program.pdf.

II. PRACTICING LAW IN THE SAN FRANCISCO BAY AREA

On February 28, 1979, I left the Alameda County D.A.'s office to open a private practice with my fraternity brothers David Alexander¹³ and Elihu Harris.¹⁴ I specialized in criminal defense where I had many high-profile cases and my partners had a general practice. As friends we had a delightful time practicing together.

A. MELVIN BLACK

On March 17, 1979, less than a month after we started our practice, Melvin Black, a 14 year old African American, was fatally shot by two Oakland Police Department ("OPD") officers, after they confronted him in front of his apartment while responding to reports of a sniper. The initial statement from police was that Melvin had pointed a gun at the officers, but the eight bullet wounds in his back inferred he was running away and did not support the police narrative.

Community outrage justifiably ensued, provoking then-Mayor Lionel Wilson and the Oakland City Council to appoint me to conduct an independent investigation into Melvin Black's death.

The painstaking, five-month investigation that followed, conducted with the help of renowned San Francisco private investigator Hal Lipset, is something that I look back on as the crucible of my life. In September 1979, I filed a 700-page report essentially finding that the shooting of Melvin Black was unjustified. The report was not well received. The reaction of the public officials including the Mayor was surprising. My finding contradicted the findings of the local U.S Attorney, the District Attorney, City Attorney and the police department's internal affairs section.

Eventually, Melvin Black's mother filed a civil suit. Portions of my report were used to support her case. The jury returned a substantial verdict for the family.¹⁵ The response to my report made me more determined than ever to stop official lies from going unchallenged. Melvin Black was a light that burned steadily in the back of my consciousness as I pursued my work in criminal law in the coming years. However, the

¹³ After our partnership dissolved in 1985, David Alexander eventually became the General Counsel at the Port of Oakland.

¹⁴ Elihu Harris later became the California State Assemblyman for the 16th District (East Bay) and was the Mayor of Oakland from 1991 to 1999.

¹⁵ The Sacramento jury returned a verdict of over a million dollars for Black's mother. I was called as a witness to support my findings. See Stacy Johnson, *Melvin Black*, STREET STORIES, <http://www.streetstoriesoakland.com/items/show/52> (last visited Mar. 14, 2017).

City created a police and community review board as a consequence of my investigation.

B. CRIMINAL DEFENSE CASES

For eight to ten years I had many federal and state criminal cases ranging from homicides including the death penalty, as well as petty crimes. When I left my firm in 1985, I de-emphasized my criminal practice and started working on civil rights cases.

1. *Cocaine Mom*

In 1988, I represented Deborah Stewart, an Oakland woman dubbed the “Cocaine Mom” who was charged with two counts of murder after the death of her prematurely born twins.¹⁶ From my point of view, it was unconscionable to charge a woman who had experienced such a tragic and personal loss with any crime at all, particularly a person who was addicted to illicit drugs. In defending Ms. Stewart, after producing evidence of the lack of viability of the fetuses I was able to get the murder charges dropped.¹⁷ She ultimately pled no contest to involuntary manslaughter.

2. *Tim Bindner*

In the 1990s, I took on a case for one of my most unpopular clients, Tim Bindner, a middle-aged white man employed as a technician with a local water district. Many people in the Bay Area considered Mr. Bindner’s behavior odd due to his penchant for attempting to assist police with searching for several young girls who were missing. After the disappearance of four-year-old Nikki Campbell, the Fairfield Police Department (“FPD”) decided Bindner was responsible for her disappearance¹⁸ as well as others, without any evidence to support their theory.

¹⁶ *The State: 2 Babies Die: Mother Held*, L.A. TIMES (Feb. 14, 1988), http://articles.latimes.com/1988-02-14/news/mn-42575_1_baby-boy.

¹⁷ I proved that one of the fetuses was not viable. For the other, I established that the defendant’s mental state at the time of the births did not support the mens rea for murder.

¹⁸ The police suspected Bindner because he was seen looking along grassy knolls, ostensibly looking for Nikki Campbell. Bindner had sent some correspondence to her and a police search dog had a “hit on Bindner.” Bindner argued that the dog “had a bad nose.” See Charlie Goodyear, *Psychologist’s Book Revives Suspicions About Oakland Man*, S.F. CHRON. (Aug. 30, 1997, 4:00 AM), <http://www.sfgate.com/news/article/Stalemate-in-Cases-of-4-Missing-Girls-2829281.php>; Barry Eberling, *Quest for Lead in Campbell Case Continues After 20 Years*, DAILY REPUBLIC (Dec. 25, 2011), <http://www.dailyrepublic.com/featured-stories/quest-for-lead-in-campbell-case-continues-after-20-years/>; *Bindner v. City of Fairfield*, No. 93-CV-03683-CAL (N.D. Cal. 1995).

Fairfield Police officers, along with FBI agents, searched his home and at the same time held a press conference in which they declared Tim Bindner to be the prime suspect. Mr. Bindner was not arrested because they had no evidence to incriminate him. This did not change the speculation that Bindner was a predator masquerading as a concerned citizen. This case was particularly challenging because most people were convinced that he had abducted this girl and possibly many others based on this press conference. The actions of Fairfield Police officers were deemed defamatory. After this case the FBI adopted a policy that under future circumstances they will use the term “person of interest” instead of calling people “suspects.”

C. CIVIL RIGHTS CASES

1. *Dog Bite*

In November of 1993, OPD officers, along with a police canine, responded to a silent alarm at an auto body shop. The canine, Nero, found Nathaniel Watkins¹⁹ hiding in a car and bit him. When the officer handling Nero reached them, he ordered Watkins to show his hands. Recoiling from the pain of the dog’s bite, Watkins was unable to comply. The dog continued biting for about 30 seconds. Watkins suffered injuries to his feet and legs that required two skin graft surgeries and caused a lifetime of pain and mobility issues. The case revealed that a number of people likewise had been subject to similar treatment; assaulted by a canine that had been trained to “find and bite.” After winning the civil appellate case against the OPD in the Ninth Circuit in 1998, we reached a substantial monetary settlement that also resulted in OPD changing its canine training policies to “find and bark.” I have not had a dog bite case with OPD since.

2. *Riders*

In 2000, Jim Chanin and I would bring forth a case that I consider to be the most important of my career. Known as the “*Riders Case*,” the suit was against four OPD officers known as the “*Riders*,” who were victimizing an entire community with a campaign of false arrests, evidence planting, false reporting, assault and battery, and excessive use of force. The story of Delphine Allen,²⁰ who was named lead plaintiff in the

¹⁹ Watkins v. City of Oakland, 145 F.3d 1087, 1090 (9th Cir. 1998); Watkins v. City of Oakland, No. 94-CV-03932-CRB (N.D. Cal. 1998).

²⁰ Allen v. City of Oakland, No. 00-cv-04599-TEH (N.D. Cal. 2012).

lawsuit, was a prime example of how the *Riders* operated. Allen was detained for no reason and then placed under arrest for possession of drugs that one of the *Riders* planted on him. Allen was enraged and began kicking at the windows of the cruiser. He was then taken out of the cruiser and pepper sprayed, punched, and kicked by the officers. Subsequently, they kidnapped Allen and took him to a freeway overpass, where he was severely beaten in the face and all over his body. Hundreds of people in West Oakland experienced treatment similar to Allen's at the hands of the *Riders*.

In June of 2000, an OPD trainee came forward to blow the whistle on this campaign of terror and recounted the *Riders*' exploits in detail. Dozens of victims came forward to join a class-action lawsuit we brought that December. We ended up representing 119 plaintiffs who, from at least 1996, had been systematically abused by the *Riders*.

The case was settled in February 2003 with a settlement agreement of \$10.9 million in addition to the condition that OPD make 55 significant reforms. Judge Thelton E. Henderson²¹ and the City of Oakland signed a Negotiated Settlement Agreement ("NSA") that required implementation of the reforms and a federal monitoring team to track progress. Never before had private lawyers put forth a case that sought to reform a police department. The overall objective of the NSA was to "provide for the expeditious implementation of the best available practices and procedures for police management in the areas of supervision, training and accountability mechanisms, and to enhance the ability of the OPD . . . to protect the lives, rights, dignity and property of the community it serves."

An Independent Monitoring Team (IMT) was assigned and tasked with monitoring the efforts and progress of the OPD towards compliance²².

The NSA is in its fourteenth year and Jim Chanin and I are still involved. We meet regularly with OPD command staff to monitor the Department's progress. Many of the tasks are completed except issues related to racial profiling and computerized early warning systems. It remains my most challenging and worthwhile case to date.

²¹ Dan Brekke, *Judge Thelton Henderson, Major Figure in Civil Rights Cases, to Retire*, KQED NEWS (Jan. 10, 2017), <https://ww2.kqed.org/news/2017/01/10/judge-thelton-henderson-to-retire-in-august>.

²² Dan Brekke, *Court Orders Oakland Police to Expand Review of 'Deadly Force' Incidents*, KQED NEWS (Dec. 11, 2015), <https://ww2.kqed.org/news/2015/12/11/court-orders-oakland-police-to-expand-review-of-deadly-force-incidents>.

3. *Public Strip Searching*

In 2005, it came to my attention that officers of the OPD were subjecting African American men who were suspected of possessing illegal drugs to illegal public strip searches. My office, along with attorneys Michael Haddad and Julia Sherwin, exposed 44 cases of strip searches conducted in public between 2005 and 2006. These instances of public humiliation were indicative of the OPD's pattern of stopping and searching young African American men without probable cause, detaining suspects longer than necessary, and fabricating charges to support Constitutional violations.²³ The judge deemed the searches unconstitutional. The ruling forced an OPD policy change regarding strip searches, including retraining officers to engage in strip searches based on a standard closer to probable cause as opposed to the previous standard of reasonable suspicion, and adding a policy that the searches cannot be done in public unless there are exigent circumstances.

4. *Sexual Exploitation*

In 2004 and 2005, OPD Officer Richard Valerga was singling out women of Asian descent for traffic stops and subjecting them to sexual harassment. Some were fondled, kissed, and photographed against their will.²⁴ Valerga also forced some of the women to give him their phone numbers and would subsequently call and harass them. Jim Chanin and I brought a lawsuit representing sixteen women who were victimized by Officer Valerga. He resigned from the force, was convicted of false imprisonment and civil rights violations, and sentenced to six months in jail.

5. *Oscar Grant*

A few hours into New Year's Day in 2009, Oscar Grant was killed by Bay Area Rapid Transit ("BART") Officer Johannes Mehserle. Grant was handcuffed and lying on his stomach when Mehserle shot him in the back. The incident was captured on several onlookers' cell phones and broadcast worldwide. The officer maintained that he inadvertently pulled his firearm when he intended to pull his taser.

²³ See e.g., *Smith v. City of Oakland*, Nos. C 07-6298, C 07-4179 (N.D. Cal. 2011).

²⁴ *Roe v. City of Oakland*, No. 4:08-CV-04228 (N.D. Cal. 2009); *Smith v. City of Oakland*, No. C-06-07171 (N.D. Cal. 2008). The two cases settled for \$2.2 million.

I filed a wrongful death lawsuit on behalf of Oscar's family and we ultimately reached a settlement, awarding Oscar's family \$2.8 million.²⁵ Additionally, based upon our lawsuit BART hired the National Organization of Black Police Executives ("NOBLE") to review its policies, ultimately recommending over 100 changes in areas including training, citizen complaints, internal affairs, management structure and retraining on use of tasers. This would not have happened without our lawsuit.

6. *Mental Health Cases*

Throughout my career I have noticed another pattern of police abuse involving individuals with mental health issues. In 2008, I was retained by Teresa Sheehan, a San Francisco resident who lived at Conard House, a group home with on-site counselors for adults living with serious mental illness. A social worker, who supervised the counselors at the co-op, called police after Sheehan threatened him. Two officers from the San Francisco Police Department ("SFPD") arrived and pushed their way into her room. Sheehan threatened the officers with a butter knife and the officers retreated and made a call for assistance. Without waiting for help to arrive, the officers forced their way back into her unit and claimed she charged at them, the officers shot her five times in the torso and once in the head. She survived and sued.

A protracted legal battle followed. At the heart of the case was the question of how police officers should approach mentally unstable individuals, and if the Americans with Disabilities Act ("ADA") applies in such situations. After extensive litigation in the Federal District Court and the Ninth Circuit Court of Appeals, the United States Supreme Court decided the case in 2015.²⁶ The Supreme Court ruled that the officers did not violate Sheehan's 4th Amendment rights by entering her apartment initially but left open the question of whether the ADA applied. When the case returned to the Northern District in San Francisco, the judge ruled that the ADA does apply and that officers should make reasonable accommodations if possible.

The Sheehan case was one of many cases I have taken on in recent years with mental health at its core. I am hopeful that the Sheehan case will be informative for other police officers, in the Bay Area and beyond, on how to approach and treat potential suspects who may be laboring under a mental disability.

²⁵ *Johnson v. Bay Area Rapid Transit Dist.*, 790 F. Supp. 2d 1034 (N.D. Cal. 2011), *aff'd in part, vacated in part, rev'd in part*, 724 F.3d 1159 (9th Cir. 2013).

²⁶ *City and Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765 (2015). In 2015, a tentative settlement was reached for \$1 million.

Several tragic instances of police officers killing mentally unstable individuals have been added to my caseload as a result of the indifference of some law enforcement officials seem to have towards this issue. Despite the proven effectiveness of programs such as Crisis Intervention Training (“CIT”),²⁷ the vast majority of officers nationwide still treats these contacts as felony confrontations and do not de-escalate when possible.

7. *Mario Woods*

In December 2015, bystander video footage caught an especially egregious police shooting in San Francisco. Mario Woods, a 25 year-old African American man, was surrounded by SFPD officers who were responding to a call regarding a man with a knife. Seemingly bewildered and holding a small knife in his hand, Woods was hit with beanbags deployed by officers. The force of the beanbag shots caused Mr. Woods to slowly stumble and fall forward. When he attempted to stand up again, five SFPD police officers shot Mr. Woods 24 times in the back and killed him as he was walking away, despite supposed efforts by the SFPD to increase the use of de-escalation tactics, particularly when it comes to encounters with individuals suffering mental health challenges.

With the public again out on the streets protesting the killing, and with the political climate as it was, the San Francisco District Attorney, the SFPD, and the Office of Citizen Complaints all began separate investigations. I was not satisfied with this, as it seemed like another case of the foxes guarding the henhouse. At a press conference on January 18, 2016, we called for an investigation into the Woods shooting and into SFPD practices as a whole. We also filed a lawsuit.²⁸ Soon thereafter, San Francisco officials voluntarily agreed to an Office of Community Oriented Policing Services (“COPS”) review. COPS completed the review and set forth areas where San Francisco’s police force can make positive changes.²⁹

²⁷ Megan Thompson, *How Memphis Has Changed the Way Police Respond to Mental Health Crises*, PBS NEWSHOUR (Nov. 7, 2015, 3:19 PM), <http://www.pbs.org/newshour/bb/memphis-changed-way-police-respond-mental-health-crises/> (explaining that the Memphis Plan requires police officers to form Crisis Intervention teams that are dispatched to scenes where a person is in crisis and the team seeks to defuse the situation without using force).

²⁸ Vivian Ho, *Family Sues as Video Casts New Light on Police Killing of Mario Woods*, S.F. CHRON. (Dec. 12, 2015, 7:48 AM), <http://www.sfgate.com/crime/article/Family-of-man-shot-by-SF-police-to-file-federal-6691945.php>.

²⁹ Press Release, U.S. Dep’t of Justice: Cmty. Oriented Policing Servs., Department of Justice Releases Assessment Report on San Francisco Police Department (Oct. 12, 2016), <https://cops.usdoj.gov/default.asp?Item=2902>.

III. CONCLUSION

As we face the specter of a Trump administration, including Jefferson Beauregard Sessions III as the United States Attorney General, I am continually inspired to keep up the fight for constitutional policing. I know first-hand that the scales in police cases are tipping towards greater transparency and accountability. Though much of the inner workings of police departments remain opaque, the level of transparency under which they currently operate would have been almost unimaginable when my career began more than four decades ago. Although we have far to go, and at times it can seem like nothing has changed, change is happening.

Over the course of my career, I have seen public awareness around these issues expand exponentially, mostly as a result of citizen-recorded video footage, significant police misconduct litigation, public protests, community involvement, and political leadership. But, I remain hopeful.