

**RIGHTING ONE OF AMERICA'S GREATEST
WRONGS: MAKING THE CASE FOR
TRYING NOW-ELDERLY PARTICIPANTS
INVOLVED IN DEADLY HATE CRIMES**

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Hate crimes are a cruel, repulsive, and unfortunate fixture in American history. In recent decades, anti-hate crime legislation has been enacted on the state and federal levels to combat these crimes more effectively. Though these legislative advancements are significant and celebrated, public attention has often turned back to looking at those who were involved in hate crimes decades ago and were never held accountable, living their lives freely while their victims' loved ones have grieved and tried to pursue justice for decades.

This Note argues that hate crime statutes should be used to indict now-elderly perpetrators of hate crimes from decades past. Specifically, the Note discusses and compares the pre-hate crime legislation cases of the lynching of Willie Earle and the failure to indict Carolyn Bryant Donham for her involvement in Emmett Till's murder to the recent Ahmaud Arbery murder case, where hate crime charges were successfully brought. Finally, it offers that in pursuing charges for the former decades-old hate crimes, potentially both on the state and federal levels, and in holding prosecutors accountable when they fail to bring charges, the justice system can best strengthen its goal of preventing future hate crimes by addressing how it failed hate crime victims of the past and their loved ones.

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I. Introduction

As a forewarning, this Note will discuss sensitive topics such as race, lynchings, and racially motivated deaths, which may be triggering or highly upsetting to some readers.

In the summer of 2022, while clearing out a courthouse basement, a warrant against Carolyn Donham was unearthed.¹ Donham had led a generally quiet life, out of the spotlight, for decades, but remains infamous to many for her participation in the lynching of fourteen-year-old Emmett Till almost seventy years ago.² Specifically, Donham accused Till of making lewd comments and touching her while she worked alone at a family store.³ These accusations—which Donham later admitted were lies—led Donham’s husband, his brother, and others to kidnap the fourteen-year-old Till.⁴ They then tortured and murdered him in cold blood.⁵ Despite her known role in the lynching, a grand jury declined to indict Donham, even following the discovery of the unserved warrant.⁶ On April 27, 2023, Donham died at the age of eighty-eight, having never answered for her pivotal part in cutting Emmett Till’s life cruelly short.⁷

1. *Arrest Warrant for Woman Who Accused Emmett Till Found Nearly 70 Years Later in Court Basement*, CBS NEWS (June 30, 2022, 7:45 AM), <https://www.cbsnews.com/news/emmett-till-accuser-carolyn-bryant-donham-arrest-warrant-found-1955-kidnapping/> [hereinafter *Arrest Warrant*, CBS NEWS].

2. See Black Information Network, *Emmett Till’s Accuser Carolyn Bryant Donham Seen for First Time in 20 Years*, CHI. DEF. (Aug. 2, 2022), <https://chicago.defender.com/emmett-tills-accuser-carolyn-bryant-donham-seen-for-first-time-in-20-years/>.

3. *Emmett Till: Woman Whose Accusation Led to Lynching Will Not Be Charged*, GUARDIAN (Aug. 9, 2022, 3:00 PM), <https://www.theguardian.com/us-news/2022/aug/09/emmett-till-carolyn-bryant-donham-no-charges>.

4. See Rich Shapiro, *Emmett Till Accuser Admits She Fabricated Her Testimony at His Killers’ Murder Trial*, IMDIVERSITY (Jan. 28, 2017), <https://imdiversity.com/diversity-news/emmett-till-accuser-admits-she-fabricated-her-testimony-at-his-killers-murder-trial/>.

5. Richard Pérez-Peña, *Woman Linked to 1955 Emmett Till Murder Tells Historian Her Claims Were False*, N.Y. TIMES (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/us/emmett-till-lynching-carolyn-bryant-donham.html>.

6. Chuck Johnston, *Grand Jury Declines to Indict Carolyn Bryant Donham, the Woman Whose Accusations Led to the Murder of Emmett Till*, CNN (Aug. 10, 2022, 9:39 AM), <https://www.cnn.com/2022/08/09/us/emmett-till-carolyn-bryant-no-indictment-rea/j/>.

7. Associated Press, *Carolyn Bryant Donham, Who Accused Emmett Till Before He Was Lynched, Dies at Age 88*, NPR (Apr. 27, 2023, 4:42 PM), <https://www.npr.org/2023/04/27/1172489493/carolyn-bryant-donham-who-accused-emmett-till-before-he-was-lynched-dies-at-age->.

The last refusal to indict Donham before her death was met with public outrage.⁸ This was not the first time, however, that there was discussion of indicting her over the decades following Till's murder.⁹ In 2007, a different grand jury also declined to indict Donham for her involvement in the case.¹⁰ In the seventy years since Till's murder, Donham lived her life as a free woman. Meanwhile, Till's family members have been forced to only imagine what his life beyond the age of fourteen could have been.¹¹ The most recent grand jury's failure to indict Donham renewed public fury over the fact that Donham never faced accountability for her actions.¹² A petition calling for Donham's arrest circulated on popular petition website change.org and received over 30,000 signatures.¹³ In February 2023, Patricia Sterling, one of Till's surviving cousins, filed a federal lawsuit against a local sheriff to compel him to serve the unearthed warrant against Donham.¹⁴ When Donham died two months after this filing, the chance that Till's family would ever see justice appeared to die with her.¹⁵

When Donham died, outrage only increased.¹⁶ Patrick Weems, the executive director of the Emmett Till Interpretive Center, issued a statement following the news: "While the world saw the horrors of racism,

8. *Id.*

9. Johnston, *supra* note 6.

10. *Id.*

11. Associated Press, *Emmett Till's Relatives Want His Accuser to be Prosecuted in His 1955 Kidnapping*, NPR (Apr. 22, 2022, 7:42 PM), <https://www.npr.org/2022/04/22/1094446642/emmett-till-relatives-accuser-prosecution-1955-kidnapping-carolyn-bryant>.

12. Robert Raben, *Emmett Till Had a Last Chance at Justice. And We Wasted It*, NBC: THINK (Aug. 10, 2022, 5:26 PM), <https://www.nbcnews.com/think/opinion/emmett-accuser-carolyn-bryant-donham-last-chance-justice-rcna42415>; *Arrest Carolyn Bryant Donham and Include Emmett Till in History Books*, CHANGE.ORG, <https://www.change.org/p/united-states-justice-department-arrest-carolyn-bryant-donham-and-include-emmett-till-in-history-books> (last accessed Sept. 12, 2023) [hereinafter Donham Petition].

13. Donham Petition, *supra* note 12.

14. Maya Yang, *Emmett Till Relative's Lawsuit Seeks to Serve White Woman's Arrest Warrant*, GUARDIAN (Feb. 11, 2023, 1:17 PM), <https://www.theguardian.com/us-news/2023/feb/11/emmett-till-lawsuit-serve-arrest-warrant-carolyn-bryant-donham>.

15. Ashton Pittman, *'Mercy on Her Soul': Emmett Till Family, Allies Respond to Carolyn Bryant Donham's Death*, MISS. FREE PRESS (Apr. 28, 2023), <https://www.mississippifreepress.org/32860/mercy-on-her-soul-emmett-till-family-allies-respond-to-carolyn-bryant-donhams-death>.

16. WLBT.com Staff, *Emmett Till Interpretive Center Releases Statement on Death of Carolyn Bryant Donham*, WLBT 3 (Apr. 27, 2023, 1:45 PM), <https://www.wlbt.com/2023/04/27/emmett-till-interpretive-center-releases-statement-death-carolyn-bryant-donham/>.

and the real consequences of hatred, what the world will never see is remorse or responsibility for Emmett's death."¹⁷ Donham's multiple escapes from accountability have made her the face of a much larger problem: many of those involved in hate crimes of the 1960s have gotten to live out the rest of their lives free from punishment.¹⁸ Despite the advanced age of the perpetrators, can they be tried under the hate crime legislation the federal government has passed in recent decades?¹⁹

This Note will discuss the background of hate crime legislation, the ways in which the federal government has evolved its approach to hate crimes over the past several decades, and instances where hate crime perpetrators have been tried for their crimes. This Note will then analyze the lynching of Willie Earle in 1947 and the subsequent trial that ensued, and contrast that case with the murder of Ahmaud Arbery in 2020, along with the conviction of his murderers. Finally, this Note recommends that the United States Department of Justice ("DOJ") should increase the number of indictments it brings against those who were involved in hate crimes decades ago, and that—regardless of their age—seeking justice for their victims won't just right past wrongs, but send a clear message that could help the country's future.

II. Background

A. Federal Hate Crime Legislation

Hate crime-focused legislation is a relatively new and evolving area of federal legislation, beginning in 1968.²⁰ In 1990, the Hate Crime Statistics Act ("HCSA") was passed, requiring the federal government to collect statistics on hate crimes across the nation.²¹ Though the HCSA focuses on collecting statistics and reporting, the Act is useful because it provides a uniform definition of a hate crime.²² Specifically, the HCSA defines hate crimes as "crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of

17. *Id.*

18. See Associated Press, *supra* note 11.

19. See *infra* Part III.

20. *Hate Crimes: Laws and Policies*, U.S. DEP'T OF. JUST., <https://www.justice.gov/hatecrimes/laws-and-policies> (last accessed Sept. 12, 2023) [hereinafter *Hate Crimes: Laws and Policies*]; see *infra* note 31.

21. Hate Crime Statistics Act, 34 U.S.C. § 41305.

22. *Id.*

murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.”²³

Seventeen years later, the Emmett Till Unsolved Civil Rights Crime Act of 2007 (“The Unsolved Civil Rights Crime Act”) passed.²⁴ Though the Unsolved Civil Rights Crime Act did not specifically add to the definition of hate crimes, it cleared the way for many unsolved cases to be reopened and reinvestigated.²⁵ Introduced by the late civil rights activist and then-Georgia representative, John Lewis, the act allowed for cold cases involving suspected violence against African Americans from prior to 1970 to be reopened.²⁶ The Unsolved Civil Rights Crime Act specifically calls for “all authorities with jurisdiction . . . to expeditiously investigate unsolved civil rights murders and provide all resources necessary to ensure timely and thorough investigations of cases.”²⁷

Two years later, in 2009, Congress went further and introduced the Matthew Shephard and James Byrd Jr., Hate Crimes Prevention Act of 2009 (“2009 HCA”).²⁸ This act was named for individuals who were victims of two different hate crimes: Shephard for his sexuality and Byrd for his race.²⁹ The codified 2009 HCA expanded the HCSA definition and aimed to help different jurisdictions across the country more effectively combat hate crimes.³⁰ Under the 2009 HCA, a hate crime has two requirements: (1) the crime was committed “because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person”; and (2) the crime

23. *Id.*

24. Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934 (2008).

25. *Id.*; see also Lottie Joiner, *Inside the Effort to Solve Civil Rights Crimes Before It's Too Late*, TIME (Oct. 15, 2015, 10:45 AM), <https://time.com/4068183/emmett-till-act-history/>.

26. Joiner, *supra* note 25.

27. Section 2 of the Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934 (2008).

28. Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, 123 Stat. 2835 (2009) (codified as The Hate Crimes Act of 2009, 18 U.S.C. § 249).

29. *Our Story*, MATTHEW SHEPHARD FOUND., <https://www.matthewshepard.org/about-us/our-story/> (last accessed Sept. 12, 2023); *In Tribute & In Memory: James Byrd Jr.*, ADL, <https://www.adl.org/imagine-james-byrd-jr> (last accessed Sept. 12, 2023).

30. 18 U.S.C. § 249; 34 USC § 41305.

affected “interstate or foreign commerce” or occurred within the “special maritime and territorial jurisdiction of the United States.”³¹

The 2009 HCA, though not initially part of the Shepherd & Byrd Act, provided an open statute of limitations only for crimes resulting in death, stating that “[a]n indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.”³² Most recently, in March of 2022, Congress expanded the federal hate crime legislation area once again with the Emmett Till Antilynching Act (the second act named for Emmett Till), which specified lynching as a federal hate crime.³³

B. Prior Responses to Hate Crimes

Prior to the aforementioned legislation, despite the infamy of hate crimes within U.S. history and culture, there was no federal legislation recognizing hate crimes, or considering their motivation beyond the typical definition.³⁴ Lynchings, despite the disturbing normalcy with which they were treated in some areas of our country, had many decryers throughout our nation’s history.³⁵ For example, Ida B. Wells attacked the disgusting nature of lynchings in editorials and subsequent pamphlets decrying the 1892 lynching of three black men who were kidnapped from a Memphis jail and later shot by a white mob.³⁶ Though Wells’s work was not met with the kind of outcry against racial violence that we would expect in the modern day, she set the groundwork for calling out lynchings as unacceptable, unjustified acts of racist murder and later founded the National Association for the Advancement of Colored People (“NAACP”).³⁷

Calls for antilynching legislation eventually also came from within the White House, decades after Wells’s work first began.³⁸ First

31. 18 U.S.C. § 249.

32. *Id.*

33. Emmett Till Antilynching Act, Pub. L. No. 117-107, § 2, 126 Stat. 1125 (2022) (codified at 18 U.S.C. § 249).

34. *Hate Crimes Timeline*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/hate-crimes-timeline> (last accessed Sept. 12, 2023) [hereinafter *Hate Crimes Timeline*].

35. See, e.g., *Ida B. Wells and the Campaign Against Lynching*, BILL OF RTS. INST., <https://billofrightsinstitute.org/essays/ida-b-wells-and-the-campaign-against-lynching> (last accessed Sept. 12, 2023).

36. *Id.*

37. *Id.*

38. Paul M. Sparrow, *Eleanor Roosevelt’s Battle to End Lynching*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM (Feb. 12, 2016), <https://fdr.blogs.archives.gov/2016/02/12/eleanor-roosevelts-battle-to-end-lynching/>.

Lady Eleanor Roosevelt publicly supported the passage of an anti-lynching bill, known as the Costigan-Wagner Bill, in 1934.³⁹ She was so committed to the bill and to outlawing lynchings that she joined forces with then-NAACP leader Walter White.⁴⁰ However, President Roosevelt's unwillingness to back the bill in order to maintain the support of Southern Democrats for the New Deal led to the Costigan-Wagner bill's demise in 1935 and the failure of a similar bill in 1937.⁴¹

But despite all of the previous proposals, and decades upon decades of hate crimes being committed, hate crimes (specifically those against African Americans) only truly came to the forefront of the popular American conscience during the 1960s, thanks in large part to the Civil Rights movement.⁴² The Civil Rights movement saw previously-ignored demands for change actually considered and acted upon by the federal government.⁴³

One infamous hate crime of the Civil Rights era was Baptist Street Church Bombing of 1963 in Birmingham, Alabama, where four local Ku Klux Klan members threw a dynamite bomb into the historically African American Sixteenth Street Baptist Church as prayer was beginning on September 15, 1963.⁴⁴ The disgusting attack resulted in the tragic deaths of four young African American girls: Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley.⁴⁵ Addie Mae and Denise were the oldest at fourteen-years-old; Cynthia was the youngest at eleven.⁴⁶ The bombing is considered one of the most egregious examples of racial hatred and tension in the country during the 1960s, and it has been portrayed in modern media as one of the most startling moments of the Civil Rights movement.⁴⁷

39. *Id.*

40. *Id.*

41. *Id.*

42. See John Shattuck & Mathias Risse, *Reimagining Rights & Responsibilities in the United States: Hate Crimes*, CARR CTR. FOR HUM. RTS. POL'Y, HARV. KENNEDY SCH., Spring 2021, at 3.

43. See *id.*; *The Civil Rights Act of 1964: A Long Struggle for Freedom*, LIBR. OF CONG., <https://www.loc.gov/exhibits/civil-rights-act/civil-rights-act-of-1964.html> (last accessed Sept. 12, 2023).

44. *Baptist Street Church Bombing*, FBI, <https://www.fbi.gov/history/famous-cases/baptist-street-church-bombing> (last visited Sept. 12, 2023).

45. *16th Street Baptist Church Bombing (1963)*, NAT'L PARK SERV. (Sept. 19, 2022), <https://www.nps.gov/articles/16thstreetbaptist.htm> [hereinafter NAT'L PARK SERV.].

46. *Id.*

47. See Sharelle M. Burt, *The History of the 1963 16th Street Baptist Church Bombing*, DAILY NEWS (Sept. 15, 2015, 4:02 PM), <https://www.nydailynews.com/news/national/10-key-facts-16th-street-baptist-church-bombings/>.

A year later, in 1964, compelled by the bombing and episodes like it, the Civil Rights Act was signed into law by President Lyndon B. Johnson.⁴⁸ The Civil Rights Act predated Johnson, having been proposed by his predecessor, John F. Kennedy, during a televised address made four months before his assassination.⁴⁹ The Civil Rights Act enforces the constitutional rights of people of all races to vote and banned discrimination on the basis of race, religion, sex, and national origin.⁵⁰ To this day, the Civil Rights Act of 1964 remains one of the landmark laws of our nation and continues to be highly celebrated and discussed.⁵¹

C. The Most Hateful Crime & Event: Lynchings

The Civil Rights Act responded in large part to large inequalities in the United States, namely voting rights and racially motivated violence and hate crimes. Lynchings are the most well-known and discussed type of hate crime in American culture.⁵² Lynchings are defined by the NAACP as “the public killing of an individual who has not received any due process.”⁵³ Lynchings have been carried out against a number of different minority groups, including Chinese immigrant workers in 1871 and Native Americans.⁵⁴ Many of the most infamous

48. *Civil Rights Act (1964)*, NAT’ L ARCHIVES, <https://www.archives.gov/milestone-documents/civil-rights-act> (last visited Sept. 12, 2023).

49. *Id.*

50. *Id.* (citing full text of Civil Rights Act of 1964, Pub. L. No. 88, 352, 78 Stat. 241, 241–68 (1964)).

51. *Landmark Legislation: The Civil Rights Act of 1964*, U.S. SENATE, <https://www.senate.gov/artandhistory/history/common/generic/CivilRightsAct1964.htm> (last visited Sept. 12, 2023).

52. *See History of Lynching in America*, NAACP, <https://naacp.org/find-resources/history-explained/history-lynching-america> (last visited Sept. 12, 2023) [hereinafter NAACP].

53. *Id.*

54. Peter Paccone, Ellie Kanda, & Mansi Gokani, *The 1871 Chinese Massacre—One of the Worst Lynchings in U.S. History*, MEDIUM (June 26, 2019), <https://ppaccone.medium.com/the-1871-chinese-massacre-e40d601a6376>; Cecily Hilleary, *Remembering Native American Lynching Victims*, VOA (Apr. 25, 2018, 8:45 AM), <https://www.voanews.com/a/remembering-native-american-lynching-victims/4362911.html>; *see generally Racial Terror Lynchings*, LYNCHING IN AM., lynchinginamerica.eji.org/explore (last visited Sept. 12, 2023) (analyzing reported lynchings by county in a color-coded map) [hereinafter LYNCHING IN AM.].

lynchings in American history, however, were carried out against African Americans.⁵⁵ Though lynchings were often extrajudicial, there were even instances where law enforcement officials were aware of what was going on and decided not to stop mobs from imposing their concept of justice through violence.⁵⁶ Lynchings were often considered public events, and participants and onlookers would buy souvenir postcards to celebrate their participation in these heinous acts.⁵⁷ As a result, few involved in lynchings were held legally accountable for their actions.⁵⁸

This attitude towards lynchings unfortunately carried over into the judicial system, and the few participants who were arrested and tried were found either not guilty or were acquitted.⁵⁹ Notably, Roy Bryant (Carolyn Bryant Donham's then-husband) and J.W. Milam were tried for the lynching of Emmett Till.⁶⁰ Though the voice of the Civil Rights movement only grew in volume, the pursuit of justice for these lynchings faced a lack of either federal or state law that specifically established hate-related violence as a triable offense.⁶¹

There were instances, however, where those involved in infamous hate crimes were tried and convicted prior to the creation of federal hate crime law.⁶² Most notably, in the Mississippi Burning case, several men were found guilty for the murder of three civil rights workers, two white and one black.⁶³ The three workers, Andrew Goodman, James Earl Chaney, and Michael Schwerner, were reported missing after failing to report in by phone as required by their training.⁶⁴ A massive in-

55. *Lynching in America*, PBS: AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/emmett-lynching-america/> (last visited Sept. 12, 2023) [hereinafter PBS: AM. EXPERIENCE].

56. *Lynching in America: Confronting the Legacy of Racial Terror (Third Edition)*, LYNCHING IN AM., <https://lynchinginamerica.eji.org/report/> (last visited Sept. 12, 2023) [hereinafter *Confronting Racial Terror*].

57. NAACP, *supra* note 52.

58. *Confronting Racial Terror*, *supra* note 56.

59. PBS: AM. EXPERIENCE, *supra* note 55.

60. *Getting Away with Murder*, PBS: AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/emmett-biography-roy-carolyn-bryant-and-jw-milam/> (last visited Sept. 12, 2023).

61. See *Hate Crimes Timeline*, *supra* note 34.

62. *Mississippi Burning*, FBI: HIST., <https://www.fbi.gov/history/famous-cases/mississippi-burning> (last visited Sept. 12, 2023).

63. Kent Germany & David Carter, *Mississippi Burning*, UVA: MILLER CTR., <https://millercenter.org/the-presidency/educational-resources/mississippi-burning> (last visited Sept. 12, 2023).

64. *Id.*

vestigation by the FBI led to the indictment and arrest of a dozen suspects, including a sheriff and one of his deputies, for their involvement in the murders.⁶⁵

Though the initial Mississippi Burning trial resulted in some convictions, some of the perpetrators walked free for decades.⁶⁶ The first round of trials regarding the case also led to the 1966 U.S. Supreme Court case, *United States v. Price*, which found that—although there was no hate crime law yet in place—the kidnapping and murder of the three civil rights workers did, in fact, violate federal law.⁶⁷ In 2005, just under forty years later, Edgar Ray Killen, one of the men who had been involved in the murders, was tried a second time and finally found guilty of manslaughter in Mississippi state court at the age of eighty years old.⁶⁸

III. Analysis

As the Hate Crime Act of 2009 provides no statute of limitations for those actions considered hate crimes that led to the deaths of victims,⁶⁹ this Note argues that seniors who were involved in these acts yet were never prosecuted should face justice under the Hate Crime Act. To illustrate the need for more convictions, even decades later, and the importance of bringing those involved to justice in the modern day, this Note will contrast the crimes and trials of the murderers of Willie Earle in 1947 with the murderers of Ahmad Aubrey in 2020, who were tried in part under federal hate crime law.

A. The Lynching of Willie Earle

One of the most egregious, yet underdiscussed, examples of the failure of the pre-hate crime system is the 1947 lynching of Willie Earle—in which his murderers were tried and all acquitted by an all-white jury.⁷⁰ Earle was a twenty-four-year-old African American man

65. *Id.*

64. *Id.*

67. *United States v. Price*, 383 U.S. 787, 787 (1966).

68. Gary Younge, 'Mississippi Burning' Killer Gets 60 Years, *GUARDIAN* (June 23, 2005, 9:50 PM), <https://www.theguardian.com/world/2005/jun/24/usa.gary-younge>.

69. 18 U.S.C. § 249.

70. John Jeter, *75 Years Later, Willie Earle's Lynching Still Looms Large in Greenville's Painful Past*, *GREENVILLE J.* (Feb. 1, 2022), <https://greenvillejournal.com/black-history-month/75-years-later-willie-earles-lynching-still-looms-large-in-greenvilles-painful-past>.

who was visiting his mother in a small farming town.⁷¹ On the night of February 15, 1947, he hired a cab to go socialize with friends.⁷² That same night, a local white cabbie named Thomas Weston Brown was later found badly beaten and bleeding, but still alive.⁷³

After he had been fired from a previous job as a truck driver because of his epilepsy, Earle became depressed and had supposedly taken to drinking.⁷⁴ According to early accounts, Earle had been drinking with friends the night of February 15th, when he hired Brown's cab that night in order to go visit his mother, a widow who lived in a small nearby town.⁷⁵ This occurred before Brown was found beaten.⁷⁶ However, when he was questioned and later arrested by officers, Earle denied any involvement in Brown's beating and subsequent death.⁷⁷

Earle's supposed hiring of Brown's cab that night led to his arrest in connection with Brown's assault.⁷⁸ Earle denied each accusation, but he was still jailed.⁷⁹ And in the early morning hours of February 17, 1947—a mere two days later—a mob of white men kidnapped Earle from jail.⁸⁰ The men were able to easily abduct Earle from the jail because the jailer made no efforts to stop them from taking him.⁸¹ After kidnapping Earle, the men cruelly interrogated, assaulted, and mutilated Earle before murdering him.⁸² Thirty-one men were charged with Earle's murder later that same week.⁸³

Each of the thirty-one men involved in Earle's kidnapping and murder faced trial, and each were acquitted.⁸⁴ But even in 1947, the jury's decision sparked outrage, with the trial judge leaving the verdict

71. William Gravely, *The Civil Right Not to be Lynched: State Law, Government, and Citizen Response to the Killing of Willie Earle (1947)*, TOWARD THE MEETING OF THE WATERS: CURRENTS IN THE CIVIL RIGHTS MOVEMENT OF SOUTH CAROLINA DURING THE TWENTIETH CENTURY 93, 93 (Winifred B. Moore & Orville Vernon Burton eds., 2008) [hereinafter Gravely].

72. *Id.*

73. *Id.*

74. Rebecca West, *Opera in Greenville*, NEW YORKER (June 6, 1947), <https://www.newyorker.com/magazine/1947/06/14/opera-in-greenville>.

75. *Id.*

76. See West, *supra* note 74.

77. Gravely, *supra* note 71, at 94.

78. See *id.* at 93–94.

79. *Id.*

80. *Id.* at 94.

81. *Id.*

82. Jeter, *supra* note 70.

83. Gravely, *supra* note 71, at 94.

84. *Id.*

reading without thanking the jury for their service.⁸⁵ The case appeared to be extremely open-and-shut as those involved made their involvement explicitly known through signed statements and conversations with police.⁸⁶ Twenty-six of the thirty-one men had given full statements admitting their participation, and some had even identified the man who fired the shot that ended Earle's life.⁸⁷ Yet, all of the men were considered innocent of any wrongdoing by a jury of their peers,⁸⁸ a jury made up of all white men.⁸⁹

Earle's lynching is a haunting tragedy that echoes many of the legal issues common to racially-motivated murder cases.⁹⁰ First, there is speculation that the Brown murder investigation was mishandled,⁹¹ and that there was serious doubt as to whether Earle was truly a viable suspect in the Brown murder case.⁹² Only two days separated Earle's initial arrest and his abduction and murder, and it is not clear whether the police had any evidence linking Earle to the later deadly assault on Brown beyond him hiring a cab the night of the attack.⁹³ There were even concerns that there had been a second passenger in Brown's taxi that night that the police never investigated further.⁹⁴ Earle's mother also claimed that her son never took a taxi that night, but had instead arrived in Liberty via a bus.⁹⁵ Second, there is the fact that law enforcement officers allowed the mob to kidnap Earle from jail, and that the jailer did nothing to keep Earle away from the mob.⁹⁶ The jailer was the brother-in-law of one of the later defendants—which may have been why he allowed them to take Earle—but this too was never investigated.⁹⁷ Like many lynchings, though, the question remains: would any of this—the murder or the verdict—still have occurred if the suspect in custody was white?

85. West, *supra* note 74.

86. Gravely, *supra* note 71 at 94.

87. *Id.*

88. Will Moredock, *The Good Fight: The Last Lynching*, CHARLESTON CITY PAPER (Feb. 14, 2007), <https://charlestoncitypaper.com/the-good-fight-the-last-lynching/>.

89. *On This Day—Feb. 17, 1947: White Mob Lynches Wille Earle Near Greenville, South Carolina*, EJI: A HISTORY OF RACIAL INJUSTICE, <https://calendar.eji.org/racial-injustice/feb/17> (last accessed Sept. 12, 2023) [hereinafter EQUAL JUSTICE INITIATIVE].

90. See NAACP, *supra* note 52.

91. West, *supra* note 74.

92. Gravely, *supra* note 71, at 100.

93. *Id.* at 93–94, 99–100.

94. *Id.* at 99.

95. *Id.* at 100.

96. *Id.* at 94, 97.

97. *Id.* at 97.

B. The Murder of Ahmaud Arbery

Ahmaud Arbery's 2020 murder provides a haunting reminder that—for as much progress as this country has made—there remain those unchanged or unmoved by calls for equality.

In February 2020, twenty-five-year-old Arbery, a soon to be college student, was chased and murdered by three men: Travis McMichael, Gregory McMichael, and William Bryan. Arbery was an avid jogger, following a successful high school athletic career.⁹⁸ While on a jog on February 23, 2020, Arbery stopped at a local construction site to drink some water from a faucet on the property. Arbery was only one of several different people observed coming and going from the site.⁹⁹

The entire chase and murder was recorded by Bryan on his cell phone and the graphic video showed the scene: Arbery running on foot from the men in the Satilla Shores neighborhood, shots ringing out, and his body striking the ground.¹⁰⁰ This horrific footage was later leaked by a lawyer who had consulted with the McMichaels' and Bryan following the murder, but who never represented any of them.¹⁰¹ Later, he claimed that he leaked the video to a local radio station to dispel rumors that he claimed fueled tension in the community.¹⁰² The leaked video resulted in the arrest of both Travis and Gregory McMichael for aggravated assault and murder.¹⁰³ William Bryan was also eventually arrested for his participation.¹⁰⁴ When the video was released, public outrage was palpable and widespread.¹⁰⁵ All three men were tried both in

98. Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (Aug. 8, 2022), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

99. Jonathan Allen, *Jury Sees Video of Arbery's Prior Visits to Neighborhood he Was Shot in*, REUTERS (Nov. 12, 2021, 12:30 AM), <https://www.reuters.com/world/us/jury-sees-video-ahmaud-arberys-prior-visit-neighborhood-he-was-shot-2021-11-11/>.

100. Rick Rojas, *Man Who Filmed Ahmaud Arbery's Death is Charged with Murder*, N.Y. TIMES (Oct. 18, 2021), <https://www.nytimes.com/2020/05/21/us/william-bryan-arrest-ahmaud-arbery.html> [hereinafter Rojas, *Man Who Filmed*].

101. Sarah Mervosh, *Ahmaud Arbery Video Was Leaked by a Lawyer Who Consulted with Suspects*, N.Y. TIMES (Oct. 18, 2021), <https://www.nytimes.com/2020/05/08/us/ahmaud-arbery-video-lawyer.html>.

102. *Id.*

103. Aaron Morrison, *In His Final Day's, Ahmaud Arbery's Life Was at a Crossroads*, AP (Nov. 24, 2021, 8:02 PM), <https://apnews.com/article/life-of-ahmaud-arbery-e869ad7dc4ae6b86635507d412e63319>.

104. Morrison, *supra* note 103.

105. Rick Rojas, *Investigators Say Man Who Filmed Arbery's Killing was More Than a Witness*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/2020/05/22/us/ahmaud-arbery-william-roddie-bryan.html> [hereinafter Rojas, *More Than a Witness*].

state and federal court,¹⁰⁶ and in January 2022, all three men were sentenced by a Georgia state judge to life in prison.¹⁰⁷ A month later, in February of 2022, after a two-week trial, all three men were found guilty of a hate crime by a federal jury for their pursuit and murder of Arbery.¹⁰⁸

Prior to their arrest and trials, concerns regarding the perpetrators' ties to local law enforcement arguably played a role in delaying justice for Arbery. Gregory McMichael—Travis McMichael's father—is a former police officer, as well as a retired investigator for the Glynn County District Attorney.¹⁰⁹ Satilla Shores, the subdivision where Arbery's murder took place, is a part of Glynn County and borders Brunswick, the county seat.¹¹⁰ McMichael left the district attorney's office only one year prior to Arbery's murder, and he had previously faced suspension in 2014 for failing to complete required firearms and deadly force trainings.¹¹¹ Two district attorneys consecutively recused themselves from the case because of their prior working relationships with McMichael.¹¹² However, the first district attorney's recusal did not come until after claims that she had directed officers to not arrest Travis McMichael for murdering Ahmaud Arbery.¹¹³

106. Richard Fausset, *Three Men Sentenced to Life in Prison in Arbery Killing*, N.Y. TIMES (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/us/mcmichael-bryan-sentencing-ahmaud-arbery-killing.html> [hereinafter Fausset, *Three Men Sentenced*].

107. *Id.*

108. Press Release, Department of Justice, Federal Jury Finds Three Men Guilty of Hate Crimes in Connection with the Pursuit and Killing of Ahmaud Arbery (Feb. 22, 2022), <https://www.justice.gov/opa/pr/federal-jury-finds-three-men-guilty-hate-crimes-connection-pursuit-and-killing-ahmaud-arbery> [hereinafter DOJ Arbery Press Release].

109. Morrison, *supra* note 103.

110. *Where is Satilla Shores? | Neighborhood at Center of Ahmaud Arbery Death Trial*, 11 ALIVE (Nov. 9, 2021, 5:29 PM), <https://www.11alive.com/article/news/crime/ahmaud-arbery/satilla-shores-brunswick-georgia-glynn-county-map/85-74af3568-f2c9-4dc8-ac13-184ce8d2bd64>; see *Glynn County, GA*, NATL. ASSOC. OF COUNTIES, https://explorer.naco.org/?county_info=13127 (last visited Sept. 12, 2023) (showing that Brunswick is the county seat for Glynn county).

111. Haven Orecchio-Egresitz, *Gregory McMichael had a Career in Local Law Enforcement for 30 Years and Faced Suspension for a Lapse in Gun Training*, INSIDER (May 8, 2020, 9:06 AM), <https://www.insider.com/this-is-what-we-know-about-gregory-and-travis-mcmichael-2020-5>.

112. Rojas, *More Than a Witness*, *supra* note 105.

113. *Former Georgia District Attorney Booked on Charges of Obstructing Ahmaud Arbery Case*, CBS NEWS (Nov. 25, 2021, 6:53 AM), <https://www.cbsnews.com/news/jackie-johnson-ahmaud-arbery-prosecutor-charged-obstruction/> [hereinafter *Former DA*, CBS News].

William Bryan, the neighbor whose footage led to the McMichaels' arrest, was also later charged with murder.¹¹⁴ Bryan initially painted himself as a concerned citizen, even being interviewed on television saying that he was praying for Arbery's family.¹¹⁵ However, investigators noted that Bryan took a much more active role and became part of the pursuit—not just a passive bystander—leading to his arrest and murder charge.¹¹⁶

At trial, the defense claimed that the men pursued Arbery because he matched the description of a man suspected of break-ins in the area and because he happened to be jogging when they saw him.¹¹⁷ Specifically, during the McMichaels' trial, the jury was shown security camera footage showing several people entering and exiting the property, including Arbery, on at least three other occasions.¹¹⁸ During none of these instances did Arbery deface the property, steal, or do anything suspicious.¹¹⁹ Travis McMichael, who lived close to the construction site, had previously called 911 to report an African American man entering this same construction site.¹²⁰ This time, however, instead of waiting for law enforcement, McMichael and his father, Gregory McMichael, along with a neighbor and friend, William Bryan, confronted Arbery—three against one.¹²¹ Although a neighbor had been asked to keep an eye on the property in this case, none of the perpetrators were ever asked to guard the property in any way.¹²² Travis McMichael boldly claimed that despite Arbery not having a weapon and being outnumbered three-to-one, he still considered Arbery a threat.¹²³ McMichael would also claim that Arbery struck him, and that this supposed hit prompted the three men to ruthlessly chase and execute Arbery in the street.¹²⁴

The federal jury, however, found that Arbery's race was a "but-for" cause of the defendants' decision to chase and murder him that

114. Rojas, *Man Who Filmed*, *supra* note 100.

115. *Id.*; Rojas, *More Than a Witness*, *supra* note 105.

116. Rojas, *More Than a Witness* *supra* note 105.

117. Fausset, *Three Men Sentenced*, *supra* note 106.

118. *Id.*

119. *See id.*

120. *Id.*

121. Rojas, *Man Who Filmed*, *supra* note 100.

122. Allen, *supra* note 99.

123. *Travis McMichael Says Ahmaud Arbery Was No Threat During Chase*, BBC NEWS (Nov. 18, 2021), <https://www.bbc.com/news/world-us-canada-59335011>.

124. *Id.*

day, and, therefore, that the men had committed a hate crime by murdering Arbery.¹²⁵ At the time of their sentencing, Gregory McMichael was sixty-six years old.¹²⁶

The Arbery family expressed their pain both inside and outside of the courtroom, with many of their statements echoing the sentiment that Arbery will be forever twenty-five because of the actions of his murderers.¹²⁷ Wanda Jones, Arbery's mother, founded the Ahmaud Arbery Foundation with the mission of giving young African American men resources for their mental health and to empower them to maintain their mental wellbeing.¹²⁸

C. Considering the Arbery & Earle Cases Together

The trial of Ahmaud Arbery's murderers and its outcome contrast sharply with the Earle trial back in 1947. Yet, the two trials and the murders themselves have several notable similarities that pose the question: what would the Earle murder trial look like had Earle's murderers been tried today under the same laws as Arbery's murderers?

One of the biggest similarities of note is the actual knowledge of who murdered both men.¹²⁹ In both trials, evidence plainly established that the defendants murdered the victims.¹³⁰ In the Arbery trial, the leaked video clearly showed that the McMichaels and their neighbor, William Bryan, chased and murdered Arbery.¹³¹ And in the Earle trial, many of the men tried had signed literal confessions, not only readily admitting they were part of the mob, but identifying the man who had led the mob and ultimately ended Earle's life.¹³² Despite both of these cases having clear and convincing evidence that the men involved

125. DOJ Arbery Press Release, *supra* note 108.

126. Fausset, *Three Men Sentenced*, *supra* note 106.

127. Destiny Wiggins, *Ahmaud Arbery's Family Reacts to Federal Hate Crime Sentences for his Killers*, FOX CHATTANOOGA (Aug. 8, 2022, 8:02 PM), <https://foxchattanooga.com/ahmaud-arberys-family-reacts-to-federal-hate-crime-sentences-for-his-killers>; *see also* Cathy Frye, *His Cousin Slain at 14, Boy Forever Changed*, NORTHWEST ARKANSAS DEMOCRAT GAZETTE (Feb. 1 2013, 5:00 AM), <https://www.nwaonline.com/news/2013/feb/01/his-cousin-slain-14-boy-forever-changed-20130201/>.

128. *About Us*, AHMAUD ARBERY FOUNDATION, <https://www.ahmaudarberyfoundation.org/about-us/> (last visited Sept. 12, 2023).

129. *See* Moredock, *supra* note 88; *see also* Mervosh, *supra* note 101.

130. *See* Moredock, *supra* note 88; *see also* Mervosh, *supra* note 101.

131. Mervosh, *supra* note 101.

132. Moredock, *supra* note 88; Mervosh, *supra* note 101.

were, in fact, a part of these murders, only one case resulted in guilty verdicts.¹³³

If the Earle case were tried today, there likely would be enough evidence to find the thirty-one men being tried guilty of the charges of murder and conspiracy.¹³⁴ Even though it seemed the men solely wanted to seek revenge for the murder of a fellow cabbie, they could almost certainly also be charged with hate crimes under the 2009 HCA for specifically taking action because the suspect was African American, if the case were tried today.¹³⁵ Many of their statements indicated that they felt empowered to take Earle and carry out extrajudicial justice against him solely because of his race.¹³⁶

Like the Arbery defendants, the Earle defendants may have argued that they felt the need to avenge their fallen colleague or even protect themselves from someone who had supposedly murdered a cabbie, and that this was their primary motivation.¹³⁷ However, just as nothing corroborated the notion that Arbery was the one breaking into homes in the Georgia neighborhood where he was murdered, there was no confirmation that Earle murdered Brown back in 1947.¹³⁸ It is doubtful that Earle had anything to do with the Brown murder at all, although none have attempted to find the real killer.¹³⁹

Further, although the jury today would likely have some semblance of diversity, the jury in the trial of Earle's murderers was all white and all male.¹⁴⁰ The defense strategy—as well as the actual investigation—focused on relying on the preconceived notions that this jury would have against African Americans and attempting to spin possibilities about Earle's involvement into fact.¹⁴¹ For example, during the trial, one of the defense attorneys even compared Earle to a “mad dog” that deserved to be killed.¹⁴²

133. See West, *supra* note 74; see also Fausset, *Three Men Sentenced*, *supra* note 106.

134. Gravely, *supra* note 71.

135. 18 U.S.C. § 249.

136. See WILLIAM H. WILLIMON, WHO LYNCHED WILLIE EARLE: PREACHING TO CONFRONT RACISM 2–5 (2017).

137. *But see* West, *supra* note 74.

138. Gravely, *supra* note 71 at 100; Allen, *supra* note 99.

139. Gravely, *supra* note 71 at 100.

140. Jasmine Jordan, *The Lynching of Willie Earle*, UPCOUNTRY HISTORICAL (May 8, 2019), <http://www.upcountryhistorical.org/items/show/>.

141. See Gravely, *supra* note 71 at 97–100.

142. EQUAL JUSTICE INITIATIVE, *supra* note 89.

One of the most concerning shared connections in these two cases, though, are the ties between the perpetrators and local law enforcement.¹⁴³ Gregory McMichael, one of Arbery's murderers, had a thirty-year long career working with local law enforcement in the area where Arbery's murder took place, specifically as an investigator for the district attorney.¹⁴⁴ This may have played a role in Jackie Johnson (the first district attorney assigned to the case) declining to arrest Travis McMichael or bring any charges against either McMichaels before recusing herself, which later resulted in Johnson being charged with obstruction of justice.¹⁴⁵

Though no law enforcement officers were present among the thirty-one men tried for the murder of Willie Earle,¹⁴⁶ there were also concerns about how law enforcement had been involved in the murder.¹⁴⁷ First, there is speculation that on-duty deputies knew of the plans to seek revenge for the assault and death of Brown.¹⁴⁸ This triggered discussions of a federal investigation into possible inaction on the part of local law enforcement, but this never came to fruition.¹⁴⁹ Second, the jailer was the brother-in-law of one of the defendants, an issue which again raised concerns of inaction, but was never investigated fully.¹⁵⁰ These ties to law enforcement would likely be questioned to a fuller extent and investigated more thoroughly if the case were investigated and tried in the modern day, assuming the charges against Johnson are any indication.¹⁵¹

Ultimately, whether or not Earle's murder trial would have been tried differently in modern courts—applying modern hate crime legislation—is a question that will forever remain unanswered.¹⁵² Since the

143. See Orecchio-Egresitz, *supra* note 111; see also Gravely, *supra* note 71 at 97–98.

144. Orecchio-Egresitz, *supra* note 111.

145. See *Former DA*, CBS News, *supra* note 113.

146. Dan Hoover, *The Lynching of Willie Earle, SC's Last, Foreshadowed Changing Times*, GREENVILLE NEWS (April 9, 2018, 12:43 PM), <https://www.greenvilleonline.com/story/news/local/greenville-roots/2018/04/09/lynching-willie-earle-scs-last-foreshadowed-changing-times/499199002/>.

147. Gravely, *supra* note 71, at 97–98.

148. *Id.* at 98.

149. *Id.*

150. *Id.*

151. See *Former DA*, CBS News, *supra* note 113.

152. Jeter, *supra* note 70.

murder and trial occurred in the 1940s, many of those who were involved are long dead.¹⁵³ The entire trial is now recognized as a dark spot on South Carolina's history, and is memorialized with a historical marker placed by the courthouse where the trial took place.¹⁵⁴

Decades after the Earle case, Dr. William Gravely compiled "*The William Gravely Oral History Collection on the Lynching of Willie Earle*."¹⁵⁵ Dr. Gravely recorded interviews with members of the community and members of Earle's family, including his mother, Tessie Earle Robinson.¹⁵⁶ Robinson was interviewed on December 16, 1982, and was still able to recall with stark detail the moment she found out that her son had been murdered.¹⁵⁷ Mary Robinson, Earle's sister, was also interviewed for the Collection in 1989 and recalled that her two older brothers, who were in the Navy at the time, were unable to come home to help comfort and console their mother when Earle was murdered.¹⁵⁸ These interviews serve as a disturbing reminder that there are those who carry the pain and trauma of the murders with them for decades after, alongside those who perpetrated the murders but are allowed to walk freely.¹⁵⁹

D. Other Hate Crime Cases Involving Elderly Defendants

Although many of those involved in the Earle lynching are long deceased, there are still those who were involved in similar hate crimes who have escaped accountability and have gotten to walk freely for decades.¹⁶⁰ The face of this fact is, of course, Carolyn Bryant Donham,

153. *Id.*

154. *Id.*

155. *William Gravely Oral History Collection on the Lynching of Willie Earle*, UNIV. OF S. CAR., https://sc.edu/about/offices_and_divisions/university_libraries/browse/oral_history/collections/william_gravely.php (last accessed Sept. 12, 2023).

156. *Tessie Earle Robinson Oral History Interview, 1982 December 22*, U. S. CAR. (Dec. 22, 1982), <https://digital.tcl.sc.edu/digital/collection/gravely/id/149/rec/1> (capturing an interview recorded on Dec. 16, 1982).

157. *Id.*

158. *William Gravely Oral History Collection on the Lynching of Willie Earle, Earle Family Discussion, 1989 November 30*, U. OF S. CAR. (Nov. 30, 1989), <https://digital.tcl.sc.edu/digital/collection/gravely/id/164/rec/2>.

159. *Tessie Earle Robinson Oral History Interview*, *supra* note 156.

160. Airielle Lowe, *The Lynching of Willie Earle Prompted a Trial, but no Convictions*, WORD IN BLACK (Nov. 29, 2021), <https://wordinblack.com/2021/11/the-lynching-of-willie-earle-prompted-a-trial-but-no-convictions/>; *see generally* James Allen & John Littlefield, WITHOUT SANCTUARY: PHOTOGRAPHS AND POSTCARDS OF LYNCHING IN AMERICA, <https://withoutsanctuary.org/> (last accessed Sept. 12, 2023)

whose accusations led to the lynching of Emmett Till seventy years ago.¹⁶¹ For the remainder of her life, she was never charged and lived free from judicial trial or punishment, despite repeated calls for her to be charged in the decades following Till's murder.¹⁶² Many of Till's relatives are still alive, and they continue to seek justice for his senseless extrajudicial murder, as even those tried were found not guilty back in 1966, despite their clear and well-known involvement.¹⁶³

Justice is still possible. The 2009 HCA explicitly states there is no statute of limitations for crimes that result in the death of victims, like the murders of Earle or Till or Arbery.¹⁶⁴ Furthermore, there have been several occasions where the elderly have been tried for their involvement in murders decades after the crime took place.¹⁶⁵

For example, after his identity was discovered by law enforcement via DNA testing, the Golden State Killer was tried and sentenced in 2020 for murders he committed in the '70s and '80s.¹⁶⁶ The Golden State Killer, later identified as former police officer Joseph James DeAngelo, murdered thirteen victims and raped more than fifty.¹⁶⁷ DeAngelo remained unidentified and at large for more than forty years, until familial DNA tests revealed his identity and he was eventually tried and sentenced to life.¹⁶⁸ At the time of his sentencing, DeAngelo was seventy-four years old.¹⁶⁹

Likewise, in the Mississippi Burning case, Edgar Ray Killen was tried a second time for his involvement and was sentenced to sixty years in prison.¹⁷⁰ At the time of this sentencing, Killen was eighty-years

(cataloguing photographs and souvenir postcards of lynchings, showing that they were treated as social events.) The over 70 photographs include known and unknown victims and perpetrators, suggesting that statistics of lynching victims and unprosecuted perpetrators may significantly surpass known data.

161. Raben, *supra* note 12.

162. *Id.*

163. Associated Press, *supra* note 11; PBS: AM. EXPERIENCE, *supra* note 55.

164. 18 U.S.C. § 249.

165. See Laurel Wamsley, *Golden State Killer Sentenced to Life in Prison Without Possibility of Parole*, NPR (Aug. 21, 2020 2:17 PM), <https://www.npr.org/2020/08/21/904744564/golden-state-killer-sentenced-to-life-in-prison>.

166. *Id.*

167. *Id.*; Ray Sanchez, Madeline Holcombe & Cheri Mossburg, *Golden State Killer Joseph DeAngelo Sentenced to Life in Prison*, CNN (Aug. 21, 2020, 5:40 PM), <https://www.cnn.com/2020/08/21/us/golden-state-killer-sentencing/index.html>.

168. Wamsley, *supra* note 165.

169. *Id.*

170. Younge, *supra* note 68; Carla Baranauckas & Vikas Bajaj, *Judge Orders Edgar Ray Killen to Prison*, N.Y. TIMES (Sept. 9, 2005), <https://www.nytimes.com/2005/09/09/national/judge-orders-edgar-ray-killen-to-prison.html>.

old.¹⁷¹ When the crimes were committed, Killen was a local sawmill owner and an ordained Baptist minister.¹⁷² But outside of his business and the church, Killen was also an organizer and recruiter for a local Ku Klux Klan chapter—it was his first recruit for the Klan that ended up informing the FBI of his involvement in the murders.¹⁷³ Killen's first federal trial back in 1967 ended with him walking free after one juror deadlocked the jury over Killen's guilt.¹⁷⁴ This trial indicates some will-
ingness on the parts of states to retry those involved in hate crimes decades after they concluded, as Killen's trial was a state trial.¹⁷⁵ Killen later died in 2018 at the age of ninety-two, still in prison.¹⁷⁶

Despite the Birmingham Church bombing case's infamy, it took decades for its defendants to even face trial.¹⁷⁷ The bombing was initially investigated by the FBI and four men were named as suspects—Thomas Blanton, Robert Chambliss, Bobby Frank Cherry, and Herman Cash.¹⁷⁸ All four men were believed to be associated with a local group affiliated with the Ku Klux Klan.¹⁷⁹ However, despite public outcry over the heartless attack, the investigation ended in 1968—with none of the men indicted—due to a lack of physical evidence and witness cooperation.¹⁸⁰ It would take ten years and a new Alabama Attorney General for the investigation to be reopened and for Chambliss to be charged with the first-degree murder of one of the girls killed in the explosion.¹⁸¹ But the other three men continued to walk free for decades.¹⁸² Blanton and Cherry would not be convicted and sentenced until 2001 and 2002,

171. Younge, *supra* note 68.

172. Bill Trott, *Edgar Ray Killen, Convicted in 'Mississippi Burning' Killings, Dead at 92*, REUTERS (Jan. 12, 2018, 12:01 PM), <https://www.reuters.com/article/us-people-edgar-ray-killen/edgar-ray-killen-convicted-in-mississippi-burning-killings-dead-at-92-idUSKBN1F12A9>.

173. *Edgar Ray Killen*, UNIV. OF MISSOURI-KANSAS CITY: FAMOUS TRIALS, <http://law2.umkc.edu/faculty/projects/ftrials/price&bowers/killen.htm> (last visited Sept. 12, 2023).

174. Baranauckas & Bajaj, *supra* note 170.

175. *See id.*

176. Richard Goldstein, *Edgar Ray Killen, Convicted in '64 Killings of Rights Workers, Dies at 92*, N.Y. TIMES (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/obituaries/edgar-ray-killen-convicted-in-64-killings-of-rights-worker-dies-at-92.html>.

177. NAT'L. PARK SERV., *supra* note 45.

178. *Id.*

179. *Id.*

180. *Id.*

181. Kenneth M. Rosen, W. Keith Watkins, William X. Baxley & George L. Beck, *Justice Delayed, Justice Delivered: The Birmingham Sixteenth Street Baptist Church Bombing and the Legacy of Judge Frank Minis Johnson Jr.*, 71 ALA. L. REV. 601, 603–04 (2019).

182. NAT'L. PARK SERV., *supra* note 45.

respectively.¹⁸³ Chambliss died in prison at the age of eighty-one in 1985.¹⁸⁴ Blanton was sixty-two years old when he was convicted, and died in 2020 at the age of eighty-two—still in prison.¹⁸⁵ Cherry died in 2004, at the age of seventy-four, two years after he had been sentenced to life.¹⁸⁶ Herman Cash was the only perpetrator who was never tried for his involvement, but he died in 1994, before the cases against Blanton and Cherry were ever brought.¹⁸⁷ These trials, that occurred decades after the bombing, show that justice in these cases is possible—despite prosecutors' initial reluctance to bring charges against the now-elderly perpetrators.¹⁸⁸

All of these previous cases, as well as the sentencing of Gregory McMichael, show that prosecuting the elderly perpetrators in heinous hate crimes is a viable option. Whether they are tried soon after, the way McMichael was, or decades later, like the perpetrators of the Birmingham Church bombing and Mississippi Burning cases, these perpetrators should face consequences for their actions—regardless of age.

IV. Recommendation

A. Increasing Federal Indictments

Though the federal government has been reluctant to retroactively apply the Hate Crime Act to past perpetrators, to do so would send a clear message that these kinds of crimes—no matter how far back in the past they occurred—will not be tolerated.¹⁸⁹ Further, though some may argue that the perpetrators are now too old to be tried and

183. *Id.*

184. Robert Chambliss, 81; *Klansman Killed Girls in '63 Church Bombing*, L.A. TIMES (Nov. 2, 1985, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1985-11-02-fi-1334-story.html>.

185. *Conviction in 1963 Church Bombing*, ABC NEWS (May 1, 2001, 1:13 PM), <https://abcnews.go.com/US/story?id=93402&page=1>; Neil Genzlinger, *Thomas Blanton, Who Bombed a Birmingham Church, Dies at 82*, N.Y. TIMES (June 26, 2020), <https://www.nytimes.com/2020/06/26/us/thomas-blanton-dead.html>.

186. Michelle O'Donnell, *Bobby Frank Cherry, 74, Klansman in Bombing, Dies*, N.Y. TIMES (Nov. 19, 2004), <https://www.nytimes.com/2004/11/19/us/bobby-frank-cherry-74-klansman-in-bombing-dies.html>.

187. NAT'L. PARK SERV., *supra* note 45.

188. *See* Rosen et al., *supra* note 181.

189. *See* Associated Press, *No New Charges as Emmett Till Investigation Closed by Justice Department*, POLITICO (Dec. 7, 2021, 12:02 AM), <https://www.politico.com/news/2021/12/06/emmett-till-investigation-closed-justice-department-523825> [hereinafter POLITICO].

their crimes occurred too far back in time to accurately recall, the trials of Killen and the Golden State Killer show that—regardless of age—people should be held accountable.¹⁹⁰ Both Killen and the Golden State Killer attempted to use their advanced age to portray themselves as weak, sympathetic figures.¹⁹¹ Despite these attempts, both still received hefty sentences—sixty years for Killeen and a life sentence for the Golden State Killer.¹⁹²

These past trials and sentences show that the DOJ should be seeking more indictments against those involved in hate crimes under current hate crime legislation. These people believed that their actions were justifiable based on racist rhetoric of the time, and that even if they were tried, there was always a good chance that they would go free.¹⁹³ Trials like those of Roy Donham and J.W. Milam made that clear, and it is something that the DOJ has failed to address in the past, but can and should address now.¹⁹⁴

When there is clear evidence establishing not only a link to the hate crime, but also active involvement in it, the DOJ must act decisively. For example, Donham acknowledged in 2017 that her statements that led to the murder of Emmett Till were false.¹⁹⁵ Donham made these statements not only to her husband, triggering Till's murder, but also on the stand at her husband's trial in support of his heinous actions.¹⁹⁶ The discovered warrant also establishes that law enforcement officials at some point in time felt that Donham's involvement was enough to require a warrant, even if they declined to serve it.¹⁹⁷ Although the reason it remained unserved on Donham remains unknown, its existence shows that her statements that led to

190. Younge, *supra* note 68.

191. Baranauckas & Bajaj, *supra* note 170; Paige St. John, *Prosecutors Challenge Golden State Killer's Apparent Frailty, Say He Chooses Not to Show Remorse*, L.A. TIMES (Aug. 17, 2020, 2:39 PM), <https://www.latimes.com/california/story/2020-08-17/golden-state-killer-jailhouse-video-frail-remorse>.

192. Wamsley, *supra* note 165; Baranauckas & Bajaj, *supra* note 170.

193. See *Confronting Racial Terror*, *supra* note 56; see generally Baranauckas & Bajaj, *supra* note 170 (discussing Killen's "fraud" by misrepresenting his medical condition in court, and his previous acquittal).

194. See Richard Pérez-Peña, *Woman Linked to 1955 Emmett Till Murder Tells Historian Her Claims Were False*, N.Y. TIMES (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/us/emmett-till-lynching-carolyn-bryant-donham.html>.

195. *Id.*

196. *Id.*

197. *Arrest Warrant*, CBS NEWS, *supra* note 1.

Till's murder were enough to consider her an active participation in the crime.

Elderly age on its own should not be a complete bar in determining whether or not to indict an individual accused of a heinous crime.¹⁹⁸ Many were outraged when now-shamed Hollywood producer Harvey Weinstein, accused of abusing his position in the film industry to sexually exploit and abuse women, appeared at trial using a walker.¹⁹⁹ To many, this appeared to be a ploy.²⁰⁰ And even though Weinstein asserted that the walker was needed and real, he stopped using it after his guilty verdict, furthering the opinion that the walker was nothing more than an attempt to garner sympathy.²⁰¹ Both the Golden State Killer and Edgar Ray Killen also employed such tactics, attempting to use their old age and deteriorating physical health to try and turn the focus away from the heinous nature of their crimes.²⁰²

More recently, age came up in the Arbery case when Gregory McMichael's lawyer argued that, because McMichael was sixty-six years old at the time of his trial, he should serve his life sentence under federal custody and not in Georgia state prison due to his age and physical condition.²⁰³ In all of these cases, age was used to try to extract some sympathy, whether it was from the public or the judge.²⁰⁴ Regardless,

198. Arguments have been made that memory, incapacity, and increased likelihood of illness, as well as the erosion of evidence decades after a crime has been committed are important in considering whether to indict an elderly individual of a crime. There are also valid concerns regarding how prison will treat elderly defendants if they are sentenced to prison time, given these aforementioned physical and mental ailments. See Caroline Davidson, *Aging Out: Elderly Defendants and International Crimes*, VA. J. INT'L L. 1 (2020); *Aging in Prison*, NAT'L. INST. OF CORR., <https://nicic.gov/projects/aging-prison> (last visited Sept. 12, 2023).

199. Julia Jones & Eric Levenson, *Harvey Weinstein Arrives to Bail Hearing Using a Walker*, CNN (Dec. 11, 2019, 12:52 PM), <https://www.cnn.com/2019/12/11/us/harvey-weinstein-court>.

200. Monica Hesse, *Harvey Weinstein Looks Sloppy and Weak. Do you Believe Him?*, WASH. POST. (Jan. 7, 2020, 1:57 PM), https://www.washingtonpost.com/lifestyle/style/harvey-weinstein-looks-sloppy-and-weak-do-you-believe-him/2020/01/07/b09aeee2-309e-11ea-9313-6cba89b1b9fb_story.html.

201. Elizabeth Wagmeister, *Harvey Weinstein Says His Walker Isn't Fake, Sarcasically Tells Reporters 'I'll Have a Race With You'*, VARIETY (Feb. 11, 2020, 10:46 AM), <https://variety.com/2020/film/news/harvey-weinstein-walker-not-fake-1203500880/>; Lucy Needham, *Harvey Weinstein 'Ditches Walking Aid' Immediately After Being Found Guilty of Rape*, MIRROR (Feb. 25, 2020, 1:39 PM), <https://www.mirror.co.uk/3am/celebrity-news/harvey-weinstein-ditches-walker-immediately-21571819>.

202. Baranauckas & Bajaj, *supra* note 170; Wamsley, *supra* note 165; St. John, *supra* note 191.

203. Wiggins, *supra* note 127.

204. Wiggins, *supra* note 127; St. John, *supra* note 191; Needham, *supra* note 201.

Weinstein, DeAngelo, and Killen were all still sentenced, and McMichael began his life sentence in a Georgia state prison in August 2022.²⁰⁵ In January of 2023, McMichael was moved to a state medical prison, with his lawyer citing a stroke and depression as reasons behind McMichael being moved.²⁰⁶ However, just because people may be less capable in their physical strength or health in the current moment should not preclude that they were able-bodied and capable when they exacted their cruelty and committed a crime against another human being.²⁰⁷

Further, although hate crimes are not nearly as prevalent as they used to be (especially extrajudicial ones like lynchings),²⁰⁸ these convictions would strongly deter those who may carry them out. Indicting culpable individuals, even decades later, serves as a stark reminder that perpetrators cannot simply walk free or escape justice the way they used to before.

This type of action is desperately needed. According to the FBI's Uniform Crime Reporting Program—synthesizing data collected by 15,138 law enforcement agencies—race was the motivating factor in 61.8% of reported cases.²⁰⁹ As much as we wish to believe that racially-driven hate crimes are a relic of the past, these statistics provide a sobering reminder that racial hatred continues to mar American society, even now. In order to combat these current numbers, which increased from previous years, the DOJ should not only focus on charging recent perpetrators, but also known perpetrators from pre-Hate Crime legislation crimes.²¹⁰ Although only a small fraction of federal hate crime referrals resulted in prosecution from 2012–2019,²¹¹ mounting numbers and public outcry have thrust hate crimes into the spotlight.²¹² With

205. Jake Shore, *Arbery's Three Killers Officially Start Life Sentences in State Prison*, GPB (Aug. 24, 2022, 4:11 PM), <https://www.gpb.org/news/2022/08/24/arberys-three-killers-officially-start-life-sentences-in-state-prison>.

206. Nakylah Carter, *Gregory McMichael, Convicted in Ahmaud Arbery Murder, Moved to Medical Prison*, ABC NEWS (Jan. 17, 2023, 3:05 PM), <https://abcnews-go.com/US/gregory-mcmichael-convicted-ahmaud-arbery-murder-moved-medical/story?id=96484834>.

207. *See infra* Part V.

208. *See* PBS: AM. EXPERIENCE, *supra* note 55.

209. *FBI Releases 2020 Hate Crime Statistics*, DEPT. OF JUST. (Mar 30, 2023), <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

210. *See id.*

211. *See Few Federal Hate Crime Referrals Result in Prosecution*, TRAC REP. (Aug. 12, 2019), <https://trac.syr.edu/tracreports/crim/569/> [hereinafter TRAC REP.].

212. *See id.*

hate crime legislation essentially nonexistent and uncodified until recent decades, these kinds of crimes could be carried out without fear of punishment. But if prosecutors take a stronger approach to these charges—and pursue them not only with respect to recent crimes, but also retroactively—we can simultaneously address the outcry of the present and work towards righting the wrongs of the past.

Though prosecutors have chosen to pursue hate crime cases against perpetrators, the case of the Arbery prosecution shows that some are reluctant to hold these perpetrators accountable. The McMichaels had professional ties to their first two prosecutors, the first of which refused to arrest one of the McMichaels for his involvement, before finally recusing herself.²¹³ Even then, the national attention on the case leads to the question: would these charges have been pursued if it weren't for the publicity surrounding them?

Prosecutors often face many pressures on their decisions on whether to prosecute the accused or not. The Mississippi Burning, Golden State Killer, and Birmingham Church Bombing cases show that there have been prosecutors willing to try those known to have been involved in murder cases, despite their age and the time that has passed since their crime.²¹⁴ The question then becomes: what has made people like Carolyn Bryant Donham any different in our country's history? Donham's involvement in the Emmett Till lynching is widely known and, without her accusations, Emmett Till would not have been kidnapped and murdered.²¹⁵ Yet, both state and federal prosecutorial bodies displayed great reluctance to apply these same laws to Donham.²¹⁶

This should not be the case. After all, the law holding those responsible for these kinds of crimes accountable has expanded in huge swaths over the last thirty years.²¹⁷ The 2009 HCA, in conjunction with the Civil Rights Crime Act, presents clear opportunities for the federal government to investigate the suspicious deaths of people of color, spe-

213. *Former DA*, CBS NEWS, *supra* note 113.

214. *See Baranauckas & Bajaj*, *supra* note 170; *Wamsley*, *supra* note 165; NAT'L PARK SERV., *supra* note 45.

215. *Shapiro*, *supra* note 4.

216. *The Associated Press*, *A Grand Jury Declined to Indict a Woman Whose Accusations Set off Emmett Till Killing*, NPR (Aug. 9, 2022, 4:55PM), <https://www.npr.org/2022/08/09/1116562931/grand-jury-emmett-till-woman-carolyn-bryant-donham> [hereinafter NPR]; *Politico*, *supra* note 189.

217. *See Hate Crimes: Laws and Policies*, *supra* note 20.

cifically African Americans, that occurred throughout our nation's history.²¹⁸ Specifically, the Civil Rights Crime Act calls for the reopening of cold cases involving the deaths of African Americans during the Civil Rights era that went uninvestigated due to the generally lax approach to racially motivated crimes at the time.²¹⁹ Furthermore, the 2009 HCA has no statute of limitations for crimes that result in the death of a victim.²²⁰ In the wake of ever-mounting public scrutiny and the continued deaths of African American citizens into the modern day, there needs to be a greater call for federal prosecutors to bring charges forward.

B. Pursuing State Hate Crime Charges

Federal grand juries declining to indict a perpetrator in a hate crime is more than just an inequitable result. These cases should also serve as a reminder that state prosecutors — not just federal — also have the ability to charge actors in cases involving hate crimes.²²¹ Grand juries declining to indict Donham on two separate occasions only provides a dark and upsetting reminder of the times in decades past where those involved in hate crimes were investigated but never indicted because the system remained bent in their favor.²²² These failed attempts to indict known participants display the racial imbalance that permeated the criminal justice system at the time, as well as the weakness of initial investigations, due either to a lack of cooperation, resources, or motivation.²²³ Now that state systems have their own hate crime statutes, this opens up another way to remedy these past failures at seeking justice.²²⁴

According to the NAACP's Washington Bureau, forty-nine states and the District of Columbia now have hate crime laws in effect.²²⁵ However, these laws vary state-by-state in how they cover different

218. *See id.*

219. Section 3 of Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934 (2008).

220. 18 U.S.C. § 249.

221. *See* NPR, *supra* note 216.

222. *See* PBS: AM. EXPERIENCE, *supra* note 55.

223. *See* PBS: AM. EXPERIENCE, *supra* note 55.

224. *See* TRAC REP., *supra* note 211.

225. State-by-State Hate Crime Laws, WA. BUREAU NAT'L. ASSOC. FOR THE ADV. OF COLORED PEOPLE, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/naacp_hate_crime_laws_by_state.pdf (last visited Sept. 12, 2023).

protected characteristics of individuals.²²⁶ For example, Minnesota's law has criminalized interference with religious worship and has penalty enhancements for crimes motivated by race, religion, ethnicity, sexual orientation, gender, gender identity, and age.²²⁷ Pennsylvania's state law enhances penalties only for crimes motivated by race, religion, and ethnicity.²²⁸ Crimes can be tried on the state level with a perpetrator's hateful intent in mind, which means that even if a federal grand jury fails to indict, state charges can still be pursued.

Having both state and federal avenues of prosecution increases the likelihood that trials of hate crimes occur, and when one avenue fails, the other avenue must be considered. Further, these two approaches can also be pursued at the same time for the same crime.²²⁹ Arbery's murderers, for instance, were tried and convicted for his murder at both the state and federal level.²³⁰ At the federal level, the three men were charged and found guilty of hate crimes.²³¹ The police officers involved in the murder of George Floyd were also charged at both the state and federal levels, with their federal charges stemming from their violation of Floyd's civil rights.²³² If prosecutors fail to bring charges against those known to have been involved in these heinous crimes, it will only add to the startlingly long list of cases where prosecutors have historically failed communities of color in this country.²³³

226. *Id.*

227. *Id.*

228. *Id.*

229. See DOJ Arbery Press Release, *supra* note 108.

230. *Id.*

231. *Id.*

232. Press Release, Dep't of Justice, Three Former Minneapolis Police Officers Convicted of Federal Civil Rights Violations for Death of George Floyd (Feb. 24, 2022), <https://www.justice.gov/opa/pr/three-former-minneapolis-police-officers-convicted-federal-civil-rights-violations-death>.

233. EQUAL JUSTICE INITIATIVE, *supra* note 89.

C. Mack Charles Parker & Prosecutor Accountability

Another disturbing entry in our nation's history of hate crimes, the 1959 lynching of Mack Charles Parker, echoes this failure.²³⁴ Like Willie Earle, Parker was also an African American truck driver.²³⁵ Also like Earle, Parker was drinking with his friends on the night of a heinous crime.²³⁶ In this instance, a woman was kidnapped, raped, and later abandoned on a secluded road.²³⁷ Though the woman identified her attacker as a middle-aged African American man, the police still arrested the twenty-three-year-old Parker for the crime.²³⁸ And three days before he was set to face trial, a group of men, again aided by the jailer, dragged Parker from his cell and murdered him.²³⁹ Despite confessions and the FBI's initial investigation producing a 350 page report identifying suspects, no one was ever indicted for Parker's murder.²⁴⁰

In 2009, it was reported that the FBI was re-opening the investigation.²⁴¹ However, as of the writing of this Note in 2023, no substantial breakthroughs have been made regarding the Parker case, and it is likely that those involved have died.²⁴² Hauntingly, Mack Charles Parker was arrested on February 23, 1959—exactly sixty-one years before Ahmaud Arbery was murdered.²⁴³

As shown by the Earle, Parker, and Arbery cases,²⁴⁴ ties to local law enforcement have arguably played a role not just in the murders themselves, but how they can be mishandled by prosecutors. Ahmaud Arbery's family stated multiple times during the perpetrators' trials that they also wanted to see the district attorney who purposefully did

234. See Yulonda Eadie Sano, *Mack Charles Parker (1936–1959)*, BLACKPAST (June 12, 2015), <https://www.blackpast.org/african-american-history/parker-mack-charles-1936-1959>.

235. *Mack Charles Parker*, PBS, <https://www.pbs.org/wgbh/frontline/interactive/unresolved/cases/mack-charles-parker> (last accessed Sept. 12, 2023) [hereinafter *Mack Charles Parker*].

236. *Id.*; Gravely, *supra* note 71, at 93.

237. *Mack Charles Parker*, *supra* note 235.

238. *Id.*

239. *Id.*

240. Zacharie Barber, *Justice, Southern Style: The Kidnap and Murder of Mack Charles Parker*, 7 *IBID. A STUDENT HIST. J.* 37, 42 (2014), <https://twu.edu/media/documents/history-government/Justice-Southern-Style-Ibid.-Volume-7-Spring-2014.pdf>.

241. *FBI Re-Opens Mack Charles Parker Lynching*, PICAYUNE ITEM (May 10, 2009, 3:47 AM), <https://www.picayuneitem.com/2009/05/fbi-re-opens-mack-charles-parker-lynching/>.

242. See Barber, *supra* note 240, at 43.

243. Barber, *supra* note 240, at 37; Morrison, *supra* note 103.

244. See Rojas, *More than a Witness*, *supra* note 105; Gravely, *supra* note 71, at 94.

not charge the McMichaels when the murder first occurred, Jackie Johnson, charged with obstruction of justice.²⁴⁵ Johnson was indicted by a grand jury in November 2021 for violation of the oath of a public officer and for obstructing and hindering a law enforcement officer.²⁴⁶ Though she eventually recused herself from the Arbery case, she was accused of failing to arrest and bring charges against the McMichaels in a timely manner.²⁴⁷ There were even claims that Johnson directed Glynn County police officers to not arrest Travis McMichael, despite the serious allegations levied against him.²⁴⁸ Her indictment came after an investigation (initiated by Georgia's Attorney General, Chris Carr) into possible misconduct by the local prosecutors who failed to bring charges until two months after Arbery's murder, when the video was leaked and outcry echoed around the country.²⁴⁹ Johnson's egregious conduct shows the importance of holding prosecutors accountable for dragging their feet, whether for personal reasons or otherwise, in these types of cases.

D. The Northeastern Civil Rights & Restorative Project

Northeastern University's current Civil Rights and Restorative Justice Project stands as a shining example for how our legal system could be approaching this issue. Founded in 2007, Northeastern University's School of Law launched the Civil Rights and Restorative Justice Project ("the Project").²⁵⁰ It was founded and is still led today by Professor Margaret Burnham.²⁵¹ The Project's main components involve researching issues pertaining to anti-civil rights violence from the 1930s through the 1970s.²⁵² One notable research project involved students being assigned a list of a half-dozen murdered African Americans

245. *Former DA*, CBS NEWS, *supra* note 113.

246. *Id.*

247. *Id.*

248. Alyssa Lukpat, *Former Prosecutor in Ahmaud Arbery's Death Faces Criminal Charges*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/2021/09/02/us/jackie-johnson-indicted-ahmaud-arbery.html>.

249. *Id.*; *Former DA*, CBS NEWS, *supra* note 113.

250. Beth Schwartzapfel, *Getting Away with Murder*, MARSHALL PROJECT (Jan. 3, 2017, 10:00 PM), <https://www.themarshallproject.org/2017/01/03/getting-away-with-murder>.

251. *Id.*

252. *Id.*; *Civil Rights and Restorative Justice Project*, NE. UNIV. SCH. L., <https://law.northeastern.edu/academics/centers/crrj/> (last accessed Sept.12, 2023).

to learn more about their lives, connect with still-living family members, and understand how law enforcement failed to carry out justice for these victims and their families.²⁵³

Though the Project's work has not led to a victory in criminal courts, they have still achieved great victories in seeking justice for victims and their families.²⁵⁴ Notably, the Project's work led to a civil suit against Franklin County, Mississippi, regarding the murder of two African American teenagers in 1964.²⁵⁵ The suit eventually led to a settlement for the victims' families.²⁵⁶ Legal entities like the Civil Rights and Restorative Justice Project emphasize the importance we need to place on crimes of the past moving forward.

To make lasting legal progress, past failures need to be addressed. Legislation like the Hate Crime Act has provided an avenue to address these failures, but to give these Acts more strength, it needs to be shown that they will not just be used moving forward, but also retroactively to right wrongs that the system previously ignored.

Through its passionate and driven efforts to uncover the wrongs committed by our legal system in the past, the Civil Rights and Restorative Justice Project shows the importance of tackling these cold cases to see justice carried out to some degree, especially where suspects have made their involvement in these crimes known. Further, the Project aims not to unearth the injustices of the past in the hopes that justice is served, but also looks to the present and future.²⁵⁷ Prosecutors should look to this example when considering the lynchings and civil rights cases that still mar our country's collective legal and racial past. Investigating these decades-old crimes have led to legal results, and though they have not all been criminal charges, this work highlights the merit and meaning in reopening these cases and providing resources to see justice carried out.

253. Schwartzapfel, *supra* note 250.

254. *See id.*

255. *Id.*

256. *Id.*

257. *See id.*

V. Conclusion

Our country is scattered with memorials and tributes to lives lost to racist hatred and lynchings so barbaric that it remains hard to believe they occurred only a few decades ago. Willie Earle's murder trial is memorialized by a plaque in front of the courthouse where his killers were declared guilty.²⁵⁸ Earle's murder is recognized as the last known lynching to have taken place in South Carolina, and much is made of the efforts that followed the widespread backlash to his killers walking free.²⁵⁹ But the pain of his killers living out their lives as they wished was a pain that Earle's family and loved ones carried with them for the rest of their lives. Ahmaud Arbery's family has been spared that pain, but they carry with them the sorrow of losing their family member to racial hatred, despite all of the progress our country claims to have made.

With the last grand jury's refusal to indict Donham, the unserved warrant, and Donham's later death, Emmett Till's family's decades-long pain has been ignored by prosecutorial hesitation.²⁶⁰ Till's story remains one of the most discussed and most upsetting reminders of how lynchings in the United States were not only happening—even against children—but also that perpetrators could walk free. Till's story was a pivotal moment of the Civil Rights era and the history of racial issues in this country.²⁶¹ His story and his mother's role in the Civil Rights movement led to the designation of the Emmett Till and Mamie Till-Mobley Memorials by President Biden on July 25, 2023 (which would have been Till's 82nd birthday if it weren't for the actions of Donham, her then-husband, and others).²⁶²

With Ahmaud Arbery heartbreakingly joining Emmett Till and Willie Earle, among so many others, the life of another person of color

258. *Greenville County Courthouse/The Willie Earle Lynching Trial*, HIST. MARKER DATABASE (Sept. 6, 2016), <https://www.hmdb.org/m.asp?m=40504>.

259. Peyton Furtado, *76 Years Later: How Last Documented SC Lynching Impacted Greenville, Pickens*, WYFF 4 (Feb. 21, 2023, 6:38 PM), <https://www.wyff4.com/article/last-documented-sc-lynching-impacted-greenville-pickens/42817809>; see Jeter, *supra* note 70.

260. NPR, *supra* note 216.

261. See *A Proclamation on Establishment of the Emmett Till and Mamie Till-Mobley National Monument*, WHITE HOUSE (July 25, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/07/25/a-proclamation-on-establishment-of-the-emmett-till-and-mamie-till-mobley-national-monument/>.

262. *Id.*

has been taken far too soon at the hands of those who seem to feel empowered to do so because their predecessors were able to do so with little to no consequence.

However, the conviction of Arbery's murderers, particularly Gregory McMichael, showed that there can be convictions of the elderly that have been involved in hate crimes.²⁶³ The McMichael conviction, in conjunction with the trials and sentences of participants in both the Mississippi Burning case and Birmingham Church Bombing case, show instances where perpetrators of murderous acts of hatred were held accountable for their heinous actions in spite of their old age.²⁶⁴ Further, more recent trials of elderly defendants, though they did not involve hate crimes specifically, also show this willingness to try elderly participants regardless of the time that has passed since the crimes actually occurred.²⁶⁵

Though Carolyn Bryant Donham was never tried in her lifetime, symbolizing the prosecutorial hesitation to charge those who evade answering for their crimes, work has been done to help secure some justice for victims of hate crimes—even decades later. These efforts, such as those spearheaded by the Northeastern Civil Rights Project, are shining examples of how these cases can be approached and end in positive, more uplifting results.²⁶⁶ The Project continues to dedicate its resources towards unearthing information about victims and the circumstances surrounding their disappearances or deaths in order to see justice done.²⁶⁷ These efforts have not been for nothing, as they have helped surviving family members obtain both settlements and justice.²⁶⁸ Rather than sweeping things under the rug, our legal system needs to hold itself to the standards of our legislation, specifically the Hate Crime Act of 2009 and Civil Rights Act of 2007,²⁶⁹ and give justice to those whose lives were lost to hate. Otherwise, if we continue down the path of allowing them to evade answering for their crimes, we will only continue

263. See Wiggins, *supra* note 127; Goldstein, *supra* note 176; Carter, *supra* note 206.

264. See Wiggins, *supra* note 127; Goldstein, *supra* note 176; Carter, *supra* note 206.

265. See Sanchez et al., *supra* note 167; Needham, *supra* note 201.

266. See Schwartzapfel, *supra* note 250.

267. *Id.*

268. *Id.*

269. See Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, 123 Stat. 2835 (2009) (codified as The Hate Crimes Act of 2009, 18 U.S.C. § 249); *see also* Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934 (2008).

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to empower those who believe they have the right to take the lives of another human solely based on the color of their skin.