

# Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin

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*ABSTRACT: This Article takes what many view as an extraordinary case about racial hatred from 1955, the Emmett Till murder and trial, and analyzes it against the Trayvon Martin killing and trial outcome in 2012 and 2013. Specifically, this Article exposes one important, but not yet explored similarity between the two cases: their shared role in policing the boundaries of whiteness as a means of preserving the material and the psychological benefits of whiteness. This policing occurred in a variety of forms, including: (1) maintaining white racial separation; (2) facilitating cross-class, white racial solidarity; (3) articulating blackness, and specifically black maleness, as a threat; and (4) regulating the presence and movement of Blacks in what sociologist Elijah Anderson has defined as “the white space.” This Article also delineates how the strategies, practices, and tactics for protecting whiteness and its attendant advantages and benefits have*

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*shifted from explicit actions in thwarting, punishing, and even violently resisting challenges to black racial subordination and white authority to ostensibly “race-neutral” actions that promote a type of thinking that legal scholar Ian Haney López calls “commonsense racism,” and that sustain a form of rationalizing racial inequities and injustices that sociologist Eduardo Bonilla-Silva refers to as “colorblind racism.” Ultimately, this Article demonstrates how the same race-based forces and the same racist tropes that undergirded the Till case in 1955 are still operating today, even as meaningful changes have occurred in the practice of racism in the country.*

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## I. INTRODUCTION

February 26, 2017 marks the fifth anniversary of the death of Trayvon Martin, the African American teenager whose life was tragically cut short when George Zimmerman, the neighborhood watch captain for a gated community in Sanford, Florida called “The Retreat at Twin Lakes,” shot and killed the 17-year-old as he was walking back from a candy and drink run to a convenience store.<sup>1</sup> After the shooting, Sanford police officers released

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1. Madison Gray, *Trayvon Martin, One Year Later: Where We Are Now*, TIME (Feb. 26, 2013), <http://nation.time.com/2013/02/26/trayvon-martin-one-year-later-where-we-are-now>.

Zimmerman, a 28-year-old man of white American and Peruvian descent, claiming they found no evidence to contradict Zimmerman's assertion that he acted in self-defense after Martin attacked him.<sup>2</sup> Evidence later revealed that Zimmerman, who saw Martin walking in the neighborhood as he was driving to Target, called 911 to report Martin as a "suspicious person," but then disregarded the 911 operator's directives to remain in his car and leave Martin alone.<sup>3</sup> Instead, Zimmerman chased, confronted, and ultimately shot and killed Martin after a physical struggle.<sup>4</sup> Evidence also showed that Martin, who had no criminal record, was simply returning to the home of Brandy Green, where he was a guest; Green, a resident of the Retreat at Twin Lakes, was the girlfriend of Martin's father, Tracey Martin.<sup>5</sup> At the time of his death, Martin had nothing on his person but his cellphone, an Arizona watermelon soda, a bag of Skittles, \$40.15 in cash, a cigarette lighter, and some headphones.<sup>6</sup>

The death of Trayvon Martin inspired nationwide conversations about racism, racial profiling, implicit bias, police brutality, and numerous inequities in the criminal justice system.<sup>7</sup> Martin's death also sparked

2. CJR Staff, *Reporting Trayvon*, COLUM. JOURNALISM REV. (Apr. 2, 2012), [http://www.cjr.org/behind\\_the\\_news/reporting\\_trayvon.php](http://www.cjr.org/behind_the_news/reporting_trayvon.php); *History of Racial Tension for Sanford and Blacks*, GRI0 (Mar. 23, 2012, 8:31 AM), <http://thegrio.com/2012/03/23/history-of-racial-tension-for-fla-city-and-blacks>.

3. *Trayvon Martin Shooting Fast Facts*, CNN (Feb. 7, 2016, 4:25 PM), <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts>.

4. *Id.*

5. See LISA BLOOM, SUSPICION NATION: THE INSIDE STORY OF THE TRAYVON MARTIN INJUSTICE AND WHY WE CONTINUE TO REPEAT IT 39 (2014).

6. Teresa M. Bruce, *Terrorism Du Jour: How the Trayvon Martin Case Exposes an Endemic Regime of Fear That Keeps Black Males and Females of All Colors in a State of Subjugation*, 21 UCLA WOMEN'S L.J. 1, 6 (2014).

7. See, e.g., Valena Elizabeth Beety, *What the Brain Saw: The Case of Trayvon Martin and the Need for Eyewitness Identification Reform*, 90 DENV. U. L. REV. 331, 331 (examining "the role of memory and perception in the death of Trayvon Martin and in eyewitness identification in criminal cases" and suggesting reforms to avoid witness misidentifications); Mark S. Brodin, *The Murder of Black Males in a World of Non-Accountability: The Surreal Trial of George Zimmerman for the Killing of Trayvon Martin*, 59 HOW. L.J. 765, 767 (2016) (examining the trial of George Zimmerman and highlighting how the "prosecutors committed the most inexplicable strategic and evidentiary blunders of a type that experienced prosecutors would very likely not commit in a more earnest effort to convict the accused"); Bruce, *supra* note 6, at 2 (exploring "the depth of suffering caused by unprovoked, racially or sexually motivated, aggression" and analogizing that "sort of aggression to terrorism"); Cynthia Lee, *(E)Racing Trayvon Martin*, 12 OHIO ST. J. CRIM. L. 91, 95 (2014) (arguing that the best way to overcome the employment of stereotypes and bias in the criminal justice system is to "call[] attention to race to encourage jurors to consciously combat stereotypical thinking"); Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1555, 1564 (2013) [hereinafter *Making Race Salient*] (proposing "that prosecutors and criminal defense attorneys who are concerned about the operation of implicit racial bias should attempt to make race salient in the criminal courtroom" because "calling attention to the relevance of race in a given situation encourages individuals to suppress what would otherwise be automatic, stereotypic congruent responses in favor of acting in a more egalitarian manner"); Camille Gear Rich, *Angela Harris and the Racial Politics of Masculinity: Trayvon Martin, George Zimmerman, and the Dilemmas of Desiring Whiteness*, 102 CALIF. L.

remembrances of the long history of racial subordination and oppression against African Americans through senseless killings such as lynchings.<sup>8</sup> Notably, media mogul Oprah Winfrey remarked that Martin's death reminded her of the horrific murder,<sup>9</sup> or rather lynching, of 14-year-old Emmett Till in 1955.<sup>10</sup> She proclaimed, "Trayvon Martin, parallel to Emmett Till. Let me just tell you, in my mind, same thing."<sup>11</sup>

Winfrey immediately came under fire for declaring that the murder of Emmett Till in 1955 and the killing of Trayvon Martin in 2012 were, "in [her] mind, the same thing."<sup>12</sup> For instance, Stacy Dash, *Clueless* actress and a

REV. 1027, 1032 (2014) (analyzing in part "the way the female jurors in the case (and the male attorneys) were influenced by certain masculinity constructs in understanding Zimmerman and Martin's behavior during the conflict, and whether either man was entitled to sympathy and understanding"). See generally Jeannine Bell, *Can't We Be Your Neighbor? Trayvon Martin, George Zimmerman, and The Resistance to Blacks as Neighbors*, 95 B.U. L. REV. 851 (2015) (employing the Trayvon Martin case to illustrate resistance to integration); Richard Delgado, *The Trayvon Martin Trial—Two Comments and An Observation*, 47 J. MARSHALL L. REV. 1371 (2014) (considering two different alternatives that might have resulted in legal punishment for Zimmerman); Rasheena Latham, *Who Really Murdered Trayvon? A Critical Analysis of the Relationship Between Institutional Racism in the Criminal Justice System and Trayvon Martin's Death*, 8 SO. J. POL'Y & JUST. L.J. 80 (2014) (analyzing institutionalized racism in racial profiling, stop and frisk encounters, the pretrial phase, trial, and sentencing); Tamara F. Lawson, *A Fresh Cut in An Old Wound—A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, The Prosecutors' Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL'Y 271 (2012) (examining the Trayvon Martin case and suggesting improvements that can be made in the law to thwart further tragedies).

8. See generally CRYSTAL N. FEIMSTER, *SOUTHERN HORRORS: WOMEN AND THE POLITICS OF RAPE AND LYNCHING* (2009) (exploring how the protection of white womanhood was utilized as a justification for lynching and how lynching informed and shaped the politics and voices of black and white women); ASHRAF H.A. RUSHDY, *AMERICAN LYNCHING* (2012) (examining the horror of lynching and its changes in form and meaning over time).

9. Although John William Milam and Roy Bryant, the two white men who were tried for Till's murder, were acquitted, this Article refers to Till's killing as a murder based on Milam's confession in William Bradford Huie's article in *Look Magazine* in 1956 and based on the findings in the U.S. Federal Bureau of Investigation Report from 2006. See FED. BUREAU OF INVESTIGATION, PROSECUTIVE REPORT OF INVESTIGATION CONCERNING EMMETT LOUIS TILL ET AL. 89–92 (2006), <http://vault.fbi.gov/Emmett%20Till%20>; William Bradford Huie, *The Shocking Story of Approved Killing in Mississippi*, PBS: AM. EXPERIENCE, [http://www.pbs.org/wgbh/amex/till/sfeature/sf\\_look\\_confession.html](http://www.pbs.org/wgbh/amex/till/sfeature/sf_look_confession.html) (last visited Jan. 19, 2017).

10. *Oprah Compares Trayvon Martin to Emmett Till*, EBONY (Aug. 5, 2013), <http://www.ebony.com/news-views/oprah-compares-trayvon-martin-to-emmett-till-981#axzz4PMAoXFas>. History professor Bernadette Pruitt also linked Trayvon's killing to the lynching of Emmett Till. See Wil Haygood et al., *Trayvon Martin's Killing Galvanizes Florida Community, Civil Rights Groups*, WASH. POST (Mar. 21, 2012), [https://www.washingtonpost.com/politics/trayvon-martins-killing-galvanizes-florida-community-civil-rights-groups/2012/03/21/gIQAbQsISS\\_story.html](https://www.washingtonpost.com/politics/trayvon-martins-killing-galvanizes-florida-community-civil-rights-groups/2012/03/21/gIQAbQsISS_story.html).

11. *Oprah Compares Trayvon Martin to Emmett Till*, *supra* note 10; see also Jack Mirkinson, *Oprah: Trayvon Martin The 'Same Thing' as Emmett Till*, HUFFINGTON POST (Oct. 5, 2013, 8:12 AM), [http://www.huffingtonpost.com/2013/08/05/oprah-trayvon-martin-emmett-till\\_n\\_3707096.html](http://www.huffingtonpost.com/2013/08/05/oprah-trayvon-martin-emmett-till_n_3707096.html). Oprah continued, "But you can get stuck in that and not allow yourself to move forward and to see how far we've come." *Oprah Compares Trayvon Martin to Emmett Till*, *supra* note 10.

12. Jessica Chasmar, *Oprah Winfrey: Trayvon Martin 'Same Thing' as Emmett Till Lynching*, WASH. TIMES (Aug. 5, 2013), <http://www.washingtontimes.com/news/2013/aug/5/oprah-winfrey-trayvon-martin-same-thing-emmett-til>. During the fall of 2016, Oscar-nominated film

conservative political commentator for *Fox News*, attacked Winfrey in a tweet that read: “If you aren’t careful, the newspapers will have you hating the people who are being oppressed and loving the people who are doing the oppressing—Malcolm X. Shame on you @Oprah.”<sup>13</sup> Similarly, former *Fox News* talk show host Glenn Beck lambasted Winfrey, calling her comparison of the killings “evil.”<sup>14</sup> Beck further asserted, “These are two cases that have nothing in common. I can’t think what they have in common, honestly. . . . [Zimmerman’s actions are] not the same as torturing and executing a 14-year-old and bragging about it, it’s a disgrace. It diminishes what African-Americans suffered through.”<sup>15</sup> Overall, Winfrey’s critics claimed that she was a race-baiter and argued that she and all others who were making comparisons between the deaths of Till and Martin were “distorting the facts” and “ignoring how far we’ve come.”<sup>16</sup>

In certain ways, Beck and other critics of Winfrey are correct. As sociologist Elijah Anderson has highlighted, there is a critical difference between the social and legal context in which Till was murdered and the social and legal context in which Martin was killed.<sup>17</sup> Indeed, Anderson maintains that the killing of Martin differs from the murder of Till in two important respects. First, unlike Till’s murder, Martin’s death did not occur under a strict Jim Crow regime.<sup>18</sup> Till was murdered in Mississippi within a system of severe racial segregation and subordination in 1955; at the time that Till was

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director Ava DuVernay also spoke of similarities between the two cases, particularly their roles in galvanizing major civil rights movements in the nation. *How Emmett Till’s Brutal Death Was a “Flashpoint” for Civil Rights Movement*, CBS NEWS (Sept. 12, 2016, 9:44 AM), <http://www.cbsnews.com/videos/ava-duvernay-how-emmett-tills-death-was-a-flashpoint-for-civil-rights-movement>.

13. Zayda Rivera, *Stacey Dash Slams Oprah Over Trayvon Martin, Emmett Till Comparison*, N.Y. DAILY NEWS (Aug. 19, 2013, 5:12 PM), <http://www.nydailynews.com/entertainment/gossip/stacey-dash-takes-oprah-trayvon-martin-emmett-comparison-article-1.1431164>; Lilly Workneh, *Stacey Dash Lashes Out at Oprah for Comparing Emmett Till to Trayvon Martin*, GRIO (Aug. 19, 2013, 10:54 AM), <http://thegrio.com/2013/08/19/stacey-dash-lashes-out-at-oprah-for-comparing-emmett-till-to-trayvon-martin>.

14. Erica Ritz, *Glenn Beck Takes Apart Oprah’s ‘Offensive’ Trayvon Martin, Emmett Till Comparison During Heartbreaking Segment*, BLAZE (Aug. 6, 2013, 8:00 PM), <http://www.theblaze.com/stories/2013/08/06/glenn-beck-calls-oprahs-trayvon-martin-comparison-a-slap-in-the-face-to-memory-of-emmett-till-in-heartbreaking-segment-comparing-the-cases>.

15. *Id.*

16. See, e.g., Noel Sheppard, *Oprah Winfrey: ‘Trayvon Martin Parallel to Emmett Till . . . In My Mind, Same Thing’*, NEWSBUSTERS (Aug. 5, 2013, 12:04 PM), <http://www.newsbusters.org/blogs/nb/noel-sheppard/2013/08/05/oprah-winfrey-trayvon-martin-parallel-emmett-till-in-my-mind-same>. One could interpret Winfrey’s comments as acknowledging this reality of “how far we’ve come” when she asserted the following after making her comparison: “But you can get stuck in that and not allow yourself to move forward and to see how far we’ve come.” Mirkinson, *supra* note 11.

17. See Elijah Anderson, *Emmett and Trayvon: How Racial Prejudice Has Changed in America in the Last Sixty Years*, WASH. MONTHLY, [http://www.washingtonmonthly.com/magazine/january\\_february\\_2013/features/emmett\\_and\\_trayvon042036.php](http://www.washingtonmonthly.com/magazine/january_february_2013/features/emmett_and_trayvon042036.php) (last visited Jan. 18, 2017).

18. *Id.*

killed, white civilians could murder Blacks in open daylight with impunity.<sup>19</sup> On the other hand, Martin was shot and killed during our post-Civil Rights era of formal legal equality<sup>20</sup> on February 26, 2012. Second, according to the claims of Zimmerman, his family members, and some of his neighbors, Zimmerman, unlike Milam and Bryant, was not a conscious racist.<sup>21</sup>

Yet, the fact that the deaths of Till and Martin occurred under distinct factual circumstances and took place in two different eras—the pre-Civil Rights era and the post-Civil rights era—does not mean that the two killings and trials have no meaningful commonalities. In this Article, I examine and analyze these two cases studies, the Emmett Till murder and trial in Mississippi in 1955, and the more recent killing of Trayvon Martin in 2012, as a means

19. See FED. BUREAU OF INVESTIGATION, *supra* note 9, at 15–18; cf. STEPHEN J. WHITFIELD, A DEATH IN THE DELTA 23, 77 (1991) (noting that “between 1955 and 1957 . . . in fourteen cases involving white defendants charged with violating the rights of blacks, Southern jurors sprang their peers loose in all but one trial”).

20. See Katie Eyer, Brown, *Not Loving: Obergefell and the Unfinished Business of Formal Equality*, 125 YALE L.J.F. 1, 1–2 (2015) (describing a formal equality regime as “a legal regime in which discrimination against a group is presumptively unlawful”); Trina Jones, *Title VII at 50: Contemporary Challenges for U.S. Employment Discrimination Law*, 6 ALA. C.R. & C.L. L. REV. 45, 68 (2014) (defining the theory of formal equality as “where the goal is to treat everyone (men and women, people of color and whites, religious majorities and minorities) the same” and where “[a]ny deviation from this formalism appears to be immediately suspect”).

21. In fact, Zimmerman’s supporters defended him in part by claiming that racism could not have motivated his actions because he and his wife had “mentored for[sic] two black children for free” and because Zimmerman grew up in a multiracial home. See Alexander Abad-Santos, *George Zimmerman’s Defenders Come Out*, ATLANTIC (Mar. 26, 2012), <http://www.theatlantic.com/national/archive/2012/03/george-zimmermans-defenders-come-out/330137/>; David Muir & Olivia Katrandjian, *Trayvon Martin Killing: George Zimmerman’s Attorney and Friend Speak Out*, ABC NEWS (Mar. 25, 2012), <http://abcnews.go.com/US/george-zimmermans-attorney-friend-speak-trayvon-martin-incident/story?id=15999256>; see also Richard Fausset, *How Trayvon Martin Gunman Aided Neighbor After a Break-In*, L.A. TIMES (Mar. 28, 2012), <http://articles.latimes.com/2012/mar/28/nation/la-na-nn-george-zimmerman-friend-20120328> (“Friends and family have argued that Zimmerman, who is half-Peruvian, has many black friends and even family members, and was not motivated by prejudice.”). At trial, Zimmerman’s former neighbor Eloise Dilligard, a black woman, testified that Zimmerman was a “neighbor” with whom she spoke on “a friendly basis.” See Axiom Amnesia, *Eloise Dilligard—7/9/2013—Trayvon Martin George Zimmerman Trial*, YOUTUBE (July 9, 2013), <http://www.youtube.com/watch?v=oplddkUri0I>. It is important to note that Dilligard resisted any attempts by Zimmerman’s attorneys to define her as one of Zimmerman’s friends. Each time O’Mara referred to Dilligard as Zimmerman’s friend, she corrected O’Mara to make clear that she was simply Zimmerman’s neighbor—that Zimmerman was a “friendly neighbor.” *Id.* Additionally, one of Zimmerman’s purported black friends, Joe Oliver, repeatedly defended Zimmerman on television programs. See Muir & Katrandjian, *supra*. Later, Oliver was exposed as someone who was not really a close friend of Zimmerman’s. Interviews revealed that Oliver actually knew very little about Zimmerman, which began to make people question why he was so persistent in giving television interviews to defend Zimmerman. *Id.* For instance, responding to claims that Zimmerman had called Martin a “f%king coon” on a taped call to the 911 operator, Oliver argued that Zimmerman used the word “goon,” not “coon.” Danielle Canada, *George Zimmerman’s Friend: He Called Trayvon Martin A Goon, Not A Coon*, ROLLINGOUT (Mar. 26, 2012, 3:01 PM), <http://rollingout.com/culture/george-zimmerman-called-trayvon-a-goon-not-a-coon>. Oliver claimed, “Goon is apparently a term of endearment in the high schools these days. I don’t know of anyone younger than 40 who uses coon as a racial epithet.” *Id.*

of illustrating how the same race-based forces and the same racist tropes that worked in the past—a past that we do not and cannot deny was steeped in the ugliest forms of race hatred—are still operating in today’s society. More specifically, I take what many view as an extraordinary case about racial hatred from the 1950s, the Emmett Till murder and trial, and compare it to the Trayvon Martin killing and trial outcome in the 2010s, to reveal how the same racist principles that undergirded the Till case remain quite ordinary today. In so doing, I expose one important, but not yet explored similarity between the two cases: their shared basis in the policing of boundaries of whiteness as a means of preserving the material benefits and the psychological wages of whiteness.

Thereafter, while acknowledging that meaningful changes in both race relations and forms of racism have occurred in U.S. society since 1955, this Article examines the Martin killing as a form of what Reva Siegel calls “preservation through transformation.”<sup>22</sup> As Ian Haney López explains in his book *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism & Wrecked the Middle Class*, it is not that the racist practices employed during and around 1955 remain unchanged today, but rather that “*racial patterns [have] adapt[ed]* in ways that [continue to] maintain white dominance.”<sup>23</sup>

In the end, this Article reveals how the two killings and trials centered on the policing of the boundaries of whiteness. This policing occurred in a variety of forms, including: (1) maintaining white racial separation; (2) facilitating cross-class white racial solidarity; (3) articulating blackness, and specifically black maleness, as a threat; and (4) regulating the presence and movement of Blacks in what sociologist Elijah Anderson has defined as “the white space.”<sup>24</sup> This Article also delineates how the strategies, practices, and tactics for protecting whiteness and its attendant advantages and benefits have shifted from explicit actions in thwarting, punishing, and even violently resisting challenges to black racial subordination and white authority to ostensibly “race-neutral” actions that promote a type of thinking that legal scholar Ian Haney López calls “commonsense racism,”<sup>25</sup> and that sustain a form of rationalizing racial inequities and injustices that sociologist Eduardo

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22. See Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997).

23. IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* xii (2014) (quoting DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 12 (1992)).

24. Elijah Anderson, “*The White Space*,” 1 SOC. RACE & ETHNICITY 10, 10 (2015) (describing “the white space” in part as “overwhelmingly white neighborhoods, restaurants, schools, universities, workplaces, churches and other associations, courthouses, and cemeteries . . . that reinforce[] a normative sensibility in settings in which black people are . . . not expected, or marginalized when present”).

25. Haney López defines commonsense racism as beliefs that racial stereotypes, myths, and inequalities are natural—“are just what they are, widely known, widely recognized, and not needing any further explanation.” HANEY LÓPEZ, *supra* note 23, at 181.

Bonilla-Silva refers to as “colorblind racism.”<sup>26</sup> Ultimately, this Article reveals the way in which racism (and thus the protection of whiteness as a privilege and benefit) has changed in practice from 1955 to today, while also showing that such changes in the practice of racism have occurred primarily in the consciousness and overtness of the racism, and not in the sense of its power and impact.

Part II of this Article focuses on the murder of Emmett Till and the trial against J.W. Milam and Roy Bryant, the two white men who were charged with and tried for Till’s murder. Specifically, Part II.A offers a theoretical foundation for understanding the material and psychic value of whiteness by describing seminal works from scholars like W.E.B. Du Bois and Cheryl Harris. Part II.A also briefly details key elaborations of the “whiteness as property” and white privilege frameworks by exploring the works of Kimberlé Crenshaw, Ian Haney López, and David Roediger, all of whom have analyzed how these frameworks have evolved in today’s society. Parts II.B and II.C. then proceed to reveal how the protection of whiteness as property, particularly the psychic value of whiteness, animated and influenced the killing of Till and the acquittal of Milam and Bryant at trial. Specifically, Part II.B offers a description of the events leading up to the murder of Till as well as key facts from the trial concerning Till’s murder. Part II.C then delineates how preserving the property value of whiteness motivated the murder of Till and acquittal of Milam and Bryant. It begins by analyzing an underappreciated dimension of the murder of Till: that it occurred against the backdrop of *Brown v. Board of Education*, the U.S. Supreme Court decision that held that state-mandated racial segregation in public schools was unconstitutional<sup>27</sup> and which many white Southerners considered a major threat to their segregated way of life in the Jim Crow South and, more so, to the benefits they received under that system. In so doing, Part II.C relies on evidence from the FBI’s 2006 Investigative Report of a re-opened Till case and the transcript of the 1955 Till trial, making this Article the first scholarly work to analyze both the Till trial transcript, which had been lost until the FBI found it during the early 2000s, and the results of the FBI’s case investigation. Part II.C also shows that, in an era when Blacks<sup>28</sup> had no formal equality rights, spatial segregation,

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26. EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 2 (4th ed. 2014) (“Whereas Jim Crow racism explained blacks’ social standing as the result of their biological and moral inferiority, color-blind racism avoids such facile arguments. Instead, whites rationalize minorities’ contemporary status as the product of market dynamics, naturally occurring phenomena, and blacks’ imputed cultural limitations.”).

27. *Brown v. Bd. of Educ.* (*Brown I*), 347 U.S. 483 (1954).

28. Throughout this Article, I generally use the words “Black” and “African American” interchangeably. I capitalize the words “Black” and “White” when I use them as nouns to describe a racialized group; however, I do not capitalize these terms when I use them as adjectives. Professor Kimberlé Crenshaw, one of the founders of Critical Race Theory, has explained that “Black” deserves capitalization because “Blacks, like Asians [and] Latinos, . . . constitute a specific

though important, was not paramount for many Whites; rather, Whites focused on thwarting, punishing, and even violently resisting symbolic and actual challenges to white authority and black racial subordination and on maintaining a racial hierarchy that placed all Whites on top, regardless of character, socioeconomic class, and education. Ultimately, Part II.C explains that part of the resistance against *Brown* took the form of racial violence in which the State was deeply implicated. For, if *Brown* engendered antiracist solidarity among Blacks, it also produced racist cross-class solidarity among Whites.

Part III centers on an analysis of the killing of Trayvon Martin by George Zimmerman, who shot and took the life of the African American teenager in February of 2012. Part III.A. first provides a description of how the patterns and practices of racism have morphed in the post-Civil Rights era. In so doing, it details the role that space and Whites' desire to remain physically separate from Blacks plays in current practices of racism and the maintenance of white racial domination. Parts III.B and III.C explicate how both the protection of whiteness as property and the protection of "the white space" influenced the killing of Martin and laid the foundation for the acquittal of George Zimmerman. Part III.B begins by detailing the disputed and undisputed facts that occurred on the night that Zimmerman shot and killed Martin. Part III.C then examines the Martin killing within the context of emerging gated neighborhoods and their racialized meanings to residents and against the backdrop of residential racial segregation in the United States, where white residents frequently "try to make sense" of any "anonymous black person [who] enters the white space."<sup>29</sup> In so doing, Part III.C explains how white residents of the Retreat at Twin Lakes, the neighborhood where Zimmerman shot and killed Martin, began to view their gated community as one besieged by young black males following the downturn in the economy, which caused significant devaluations of their homes and resulted in an influx of renters into the neighborhood. More so, Part III.C explicates how such perceptions devolved into a form of what Haney López calls "commonsense racism," a form of racism that worked to identify all black males who were unknown to Zimmerman and other neighborhood watch volunteers as potential criminal suspects—as trespassers of their "white space." Finally, Part III.C of this Article reveals why Zimmerman had reasons to downplay his identity as both a renter and Latino as well as an incentive to underscore his role as a "white" protector

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cultural group and, as such, require denotation as a proper noun." Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). Also, I generally prefer to use the term "Blacks" to the term "African Americans" because "Blacks" is more inclusive. For example, while the term "Blacks" encompasses black permanent residents or other black noncitizens in the United States, the term "African Americans" includes only those who are formally Americans, whether by birth or naturalization. For this reason, I use the term "Blacks" as opposed to "African Americans" when the context requires greater inclusivity.

29. Anderson, *supra* note 24, at 13.

and watchdog for the neighborhood. In all, this Article exposes the relatively small gap between the forces that produced Till's death and trial outcome in 1955 and Martin's death nearly 60 years later in 2012.

## II. EMMETT TILL AND THE PROTECTION OF WHITENESS

Although the deaths of Till and Martin occurred nearly 60 years apart and took place during completely different legal regimes, one in which Blacks had no legal rights and one in which Blacks had been granted formal legal rights, both deaths were heavily influenced by the desire of Whites to maintain white capital, privilege, and comfort. This Part of the Article delineates the role that both the material and psychic value of whiteness played in the death of Till and the trial against two of his murderers, Milam and Bryant.

Part II.A explains the many ways in which whiteness holds property value for Whites in the United States. Part II.B provides a narration of the facts of the Till murder and trial. Part II.C analyzes how the protection of whiteness and all of its attendant privileges spurred both the killing of Till and white Mississippians' support of Milam and Bryant during their trial for Till's murder.

### A. UNDERSTANDING THE MATERIAL AND PSYCHOLOGICAL WAGES OF WHITENESS

For nearly a century, scholars have offered critical insights on both the material and psychic value that whiteness has provided and continues to provide for Whites in the United States. In his classic book *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880*, W.E.B. Du Bois explicated the value of whiteness, particularly the psychic value of the meaning of whiteness for white male laborers, during the period of Reconstruction.<sup>30</sup>

In the chapter “Counter-Revolution of Property,” Du Bois began by noting the enormous potential that lay ahead for the United States at the beginning of the Reconstruction period. Acknowledging that “[r]elatively few of [those within the abolition-democracy of the North] believed in the mass of Negroes any more than they believed in the mass of whites,”<sup>31</sup> Du Bois professed that, had this group, along with those from northern industry, truly set up a system in which black southern labor (or former slaves) actually received adequate education, land, and economic opportunity, they “could have rebuilt the economic foundations of Southern society . . . and built a real

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30. W.E. BURGHARDT DU BOIS, *BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860–1880*, at 580–636 (Meridian 5th ed. 1968).

31. *Id.* at 580.

democracy of industry for the masses of men.”<sup>32</sup> Specifically, Du Bois argued that, had such Northerners created a “benevolent dictatorship” that protected the right to vote for laborers, black and white; ensured education for the masses; and confiscated the land of the former planter ruling class and redistributed it to former black slaves (whose people had toiled on that land for more than a century and a half), a true democracy could have been formed in the United States.<sup>33</sup>

As Du Bois explained, however, four separate factors prevented the creation of a true democracy during this period. The factor most pertinent to this Article is the psychological value of whiteness for white male laborers. According to Du Bois, white laborers clung tightly to their whiteness due in part to manipulation by northern capitalists and the old southern planter aristocracy.<sup>34</sup> As Du Bois explained, because the planters from the old South feared successes from Blacks post-slavery and resented the ways in which Blacks had repeatedly disproved their claims of laziness and irresponsibility,<sup>35</sup> the planters from the old South developed and sold propaganda that turned both northern decision-makers and poor white laborers, who should have been naturally aligned with their black counterparts, against formerly enslaved Blacks.<sup>36</sup> Specifically, this planter class sold both Northerners and the southern white working-class on the idea that Blacks were inferior and thus could not be productive workers if they were truly free, that Blacks could not be educated, and that Blacks would essentially ruin civilization if they were allowed to have any political power.<sup>37</sup>

Ultimately, Du Bois proclaimed, the southern planter aristocracy was able to achieve its goals of maintaining a white-dominated racial hierarchy because of how racism and “economic power underlie[] politics.”<sup>38</sup> The end result was that the South, and particularly Blacks, remained vulnerable to exploitation by northern capitalists whose interests in gaining greater wealth and power ultimately did not align with Blacks’ interests in creating a true and sustainable democracy.<sup>39</sup> Plus, with the planter aristocracy working together with white working-class laborers, who preferred “anarchy and destruction . . . to the economic rise of the Negro,” Blacks were forced to remain in

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32. *Id.* at 580.

33. *Id.* at 585; *see also id.* at 602.

34. *Id.* at 587, 601–03, 624.

35. *See id.* at 594–95, 624–25.

36. *See id.* at 624–25.

37. *Id.*

38. *Id.* at 591–92.

39. *Id.* Professor Derrick Bell’s interest convergence theory explains why such alignment of interests was essential to any advancement for African Americans. Bell’s interest convergence theory provides that “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.” Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

conditions that were essentially the same as slavery.<sup>40</sup> From this “coalition” of poor Whites and the former southern ruling class sprang violent groups such as the Ku Klux Klan, which were designed to keep Blacks in what poor Whites (and the planter aristocracy) viewed as their place.<sup>41</sup>

According to Du Bois, what emerged was a new white leadership that “shamelessly deserted, not only the Negro, but the cause of democracy; not only in the South, but in the North.”<sup>42</sup> More so, this new white leadership sustained itself on the backs of white male laborers whose fears about their status in the economic and racial geography of the post-war world rendered them easily coopted. Instead of forming a powerful coalition with Blacks, whom they viewed as beneath them, these white laborers clung to the psychic benefits of whiteness, meaning the understanding that they would not be at the bottom of the hierarchy because Blacks were. In other words, these white laborers contented themselves with the least of the material benefits of whiteness: basically poor jobs and low wages, yet wages and jobs that were superior to those afforded to Blacks.<sup>43</sup>

In the end, Du Bois explained why the “theory of laboring class unity” did not work in the United States during Reconstruction. He wrote:

Most persons do not realize how far this [the theory of laboring class unity] failed to work in the South, and it failed to work because the theory of race was supplemented by a carefully planned and slowly evolved method, which drove such a wedge between white and black workers that there probably are not today in the world two groups of workers with practically identical interests who hate and fear each other so deeply and persistently and who are kept so far apart that neither sees anything of common interests.

*It must be remembered that the white group of laborers, while they received a low wage, were compensated in part by a sort of public and psychological wage.*<sup>44</sup>

During the 1990s, scholars such as David Roediger and Cheryl Harris built upon Du Bois’ analysis in their research. In his book *The Wages of Whiteness: Race and the Making of the American Working Class*, Roediger explains that “whiteness was a way in which white workers responded to a fear of dependency on wage labor and to the necessities of capitalist work

40. DU BOIS, *supra* note 30, at 608–10, 616; see also DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 12–13 (3d ed. 2007).

41. See DU BOIS, *supra* note 30, at 622–23, 626.

42. *Id.* at 584.

43. See *id.* at 586; see also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1741 (1993) (defining the short-term benefits of whiteness to white workers during Reconstruction as “wages [that] far exceeded those of Blacks and were high even in comparisons with world standards”).

44. DU BOIS, *supra* note 30, at 700 (emphasis added).

discipline.”<sup>45</sup> Offering what he calls a more “tragic” and “less angry” view of the white worker than Du Bois, Roediger details how blackness became the touchstone by which Whites in the United States measured their independence, freedom, and status because in a slave republic, “the comparison with the truly enslaved . . . loomed.”<sup>46</sup> According to Roediger, what made the position of the white worker or hireling meaningfully attractive to white laborers was that “[t]he white hireling had the possibility of social mobility [while] the Black slave did not” and “[t]he white hireling was usually a political freeman [while] the slave, and with very few exceptions the free Black, were not.”<sup>47</sup> As Roediger highlights, that standard of measurement for Whites transformed from not being slave to not being black after the Civil War ended (though, as Roediger explains, “the fact of emancipation [also] sharply called into question the tendency to equate Blackness and servility”).<sup>48</sup>

Moving beyond the pre- and post-Civil War periods that Du Bois and Roediger examined, Professor Cheryl Harris explores, in both historical and contemporary terms, “the valorization of whiteness as treasured property in a society structured on racial caste” in her seminal article, *Whiteness as Property*.<sup>49</sup> Although her article was written more than 50 years after Du Bois’ *Black Reconstruction* and was published during the post-Civil Rights era, Harris persuasively demonstrates that any intervening changes in whiteness as a type of property were simply in form and not in substance. As Harris explains, “[a]fter legalized segregation was overturned, whiteness as property evolved into a more modern form through the law’s ratification of the settled expectations of relative white privilege as a legitimate and natural baseline.”<sup>50</sup>

Starting with how Blacks were legally a form of property contingent on race during the antebellum period, Harris eventually sets forth an analysis of modern theories of property. In so doing, she considers how whiteness satisfies the functional criteria of property: (1) the right to use and enjoyment, which Harris explains Whites use and enjoy each time they take advantage of white skin privilege; (2) reputation and status property, which is evidenced by lawsuits that held that even calling a white person black constituted defamation;<sup>51</sup> and (3) the right to exclude, as exhibited in numerous cases involving the racial trials of individuals.<sup>52</sup>

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45. ROEDIGER, *supra* note 40, at 13.

46. *Id.* at 11, 20, 27–36, 46.

47. *Id.* at 46–47.

48. *Id.* at 170, 174.

49. Harris, *supra* note 43, at 1713.

50. *Id.* at 1714.

51. *Id.* at 1731–37.

52. *Id.*; see also *Plessy v. Ferguson*, 163 U.S. 537, 549 (1896) (declaring that if *Plessy* were white, he would have had an action for damages against the railway company for depriving him of the reputational value of his property as a white man). Harris also notes that, although *Brown v. Board of Education* overruled *Plessy*, in refusing to acknowledge a right to equality of resources, the Court failed to guarantee that white privilege would be dismantled, thus perpetuating a

Further, like Du Bois, Harris provides an analysis of the “public and psychological wage” of whiteness, particularly for white workers.<sup>53</sup> Noting that “[w]hite workers perceived they had more in common with the white bourgeoisie than with fellow workers who were Black,” Harris explains the psychic benefits that white workers tend to derive from not being black.<sup>54</sup> Harris explicates, “Owning white identity as property affirmed the self-identity and liberty of whites and, conversely, denied the self-identity and liberty of Blacks,” and such whiteness was “all the more valued because [it was] denied to others.”<sup>55</sup> Indeed, bolstered by the sense of superiority that whiteness confers due to its financial, legal, social, and political advantages and benefits,<sup>56</sup> white laborers have clung to their vested interests in whiteness, even while receiving relatively little tangible material benefits.<sup>57</sup> Harris explains, regardless of civil rights case law and statutes, “whiteness retains its value as a ‘consolation prize’: it does not mean that all whites will win, but simply that they will not lose, if losing is defined as being on the bottom of the social and economic hierarchy—the position to which Blacks have been consigned.”<sup>58</sup> This sense of superiority, Harris contends, enables even the most economically and culturally deprived Whites to feel superior to any black individual.<sup>59</sup> In fact, this feeling of superiority relative to Blacks has even unified white immigrants, who themselves were exploited in mines and factories and employed in unsafe conditions for sub-standard wages.<sup>60</sup>

Professor Kimberlé Crenshaw argues that, today, black subordination based on assumed white superiority has been replaced with black subordination based on the assumed cultural inferiority of Blacks.<sup>61</sup> Despite

property interest in whiteness. See Harris, *supra* note 43, at 1750–53.

53. Harris, *supra* note 43, at 1741 (quoting Du Bois’ BLACK RECONSTRUCTION); see also Barbara J. Flagg, “*And Grace Will Lead Me Home*”: *The Case for Judicial Race Activism*, 4 ALA. C.R. & C.L. L. REV. 103, 108 (2013) (“But there is one benefit of whiteness that every white person does possess on an individual and daily basis: this is the dignitary value of being white.”).

54. Harris, *supra* note 43, at 1741–45; see also ROEDIGER, *supra* note 40, at 13 (“[S]tatus and privileges conferred by race could be used to make up for alienating and exploitative class relationships, North and South. White workers could, and did, define and accept their class positions by fashioning identities as ‘not slaves’ and as ‘not Blacks.’”).

55. Harris, *supra* note 43, at 1743–44.

56. *Id.* at 1760.

57. See generally ROEDIGER, *supra* note 40 (chronicling why “whiteness” has become so important to white workers); see also DU BOIS, *supra* note 30, at 700–01 (same).

58. Harris, *supra* note 43, at 1758–59 (footnote omitted).

59. *Id.* at 1759; see also ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 217 (1992) (“No matter how degraded their lives, white people are still allowed to believe that they possess the blood, the genes, the patrimony of superiority. No matter what happens, they can never become ‘black.’”); Derrick Bell, *Racism as the Ultimate Deception*, 86 N.C. L. REV. 621, 623 (2008) (“[T]his belief enables the most economically and culturally deprived white man to feel so superior to any black that the former feels entitled to justify ignoring such a basic Christian admonition as ‘love thy neighbor as thyself.’”).

60. Derrick Bell, *Getting Beyond a Property in Race*, 1 WASH. U. J.L. & POL’Y 27, 32 (1999).

61. Crenshaw, *supra* note 28, at 1379; see also Ian F. Haney-López, *Post-Racial Racism: Racial*

these shifting rationales, the end result has been the same. Today, an ideology of whiteness subjugates Whites as well as Blacks, pushing poor and working-class Whites to identify with other Whites at the top of the economic ladder, even though their economic and political interests tend to be more aligned with Blacks. In other words, the desire to hold onto the property value of whiteness ends up driving poor and working-class Whites away from forming cross-racial alliances that would work to eliminate the forces that oppress people based on race and socioeconomic class in the United States.<sup>62</sup>

More important, Haney López adds, this ideology of whiteness is not one that is usually consciously held. Instead, it is often unconsciously adopted and sustained by colorblind scripts that implicitly invoke the racial stereotypes, images, and biases that individuals in the United States have internalized about people of color and that resonate with many Whites' commonsense understandings of race in society.<sup>63</sup> Indeed, as Haney López explains, when the racial nature of such coded messages and beliefs are uncovered and exposed, the messages and scripts lose their power because Whites tend to reject explicitly racialized messages.<sup>64</sup> For this reason, this Article works to uncover the hidden racial messages and stereotypes that underlie the killing of Martin and the acquittal of Zimmerman and to explain how such events mirrored the murder and trial involving Till in 1955, which most agree was the result of explicit racism. Before doing so, however, this Article details and analyzes the facts of the Till slaying and trial.

#### B. THE TERROR OF "RACE HATRED": THE MURDER OF EMMETT TILL

On August 28, 1955, J.W. Milam and Roy Bryant, two white laborers, came to the home of Till's uncle and aunt, Preacher Moses Wright and

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*Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023, 1069 (2010) ("[M]ost Americans seem to believe a halcyon post-racial era has arrived. The current consensus among whites seems to be that contemporary racial inequalities flow from nonracist factors, whether private choices aggregated by the market, cultural predilections, or real racial differences that form inescapable facts of life.").

62. Derrick Bell, *Racism: A Major Source of Property and Wealth Inequality in America*, 34 IND. L. REV. 1261, 1269–71 (2001). In many ways, this ideology of whiteness, coupled with the psychic value of whiteness, can help to explain the outcome in the 2016 presidential election in the United States, in which many poor and working-class Whites voted against their economic interest to cast their lot with Donald Trump—a billionaire who once proclaimed that he did not believe the minimum wage should be raised because wages were already too high—rather than form a voting coalition with people of color whose economic concerns and issues more closely mirrored their own obstacles. See Bob Bryan, *Krugman: White Working-Class Voters Keep Voting for Republicans Who Say, Outright, That They're Lazy*, BUS. INSIDER: NORDIC (Nov. 22, 2016, 8:14 PM), <http://nordic.businessinsider.com/krugman-white-working-class-2016-11>; see also Maggie Haberman, *Donald Trump Insists That Wages Are 'Too High'*, N.Y. TIMES (Nov. 11, 2015, 3:51 PM), <http://www.nytimes.com/politics/first-draft/2015/11/11/donald-trump-insists-that-wages-are-too-high>.

63. HANEY LÓPEZ, *supra* note 23, at 176–77.

64. *Id.* at 177–78.

Elizabeth Wright, to teach the “Chicago boy,” Till, a lesson.<sup>65</sup> Ignoring the Wrights’ pleas to let the young boy go because “[h]e was raised up yonder” and “didn’t know what he was doing” and to let them pay money for any damages, Milam and Bryant forcibly took the Illinois-born teenager from the safety of his relatives’ house and into the dark of the night.<sup>66</sup> Milam and Bryant then gathered other men to punish Till for his alleged actions.<sup>67</sup> The men all ruthlessly beat Till before Milam shot the young boy; the men then tied a 74-pound gin fan to Till’s neck with barbed wire and rolled him into the Tallahatchie River.<sup>68</sup>

On August 31, 1955, three days after Milam and Bryant had kidnapped the 14-year-old Till from his uncle’s home, “Robert” Hodges, a 17-year-old white boy, discovered a horribly mutilated body floating in the Tallahatchie River, just north of Phillip, Mississippi.<sup>69</sup> In her autobiography *Death of Innocence: The Story of the Hate Crime That Changed America*, co-authored with Christopher Benson, Till’s mother, Mamie Till-Mobley, described what she saw when she had to identify her only son’s body. She wrote:

When I got to his chin, I saw his tongue resting there. It was huge. I never imagined that a human tongue could be that big. Maybe it was the effect of the water, since he had been in the river for several days, or maybe the heat. But as I gazed at the tongue, I couldn’t help but think that it had been choked out of his mouth. I forced myself to move on, to keep going one small section at a time, as if taking this gruesome task in small doses could somehow make it less excruciating. . . . Step by step, as methodically as his killers had mutilated my baby, I was putting him back together again, but only to identify the body.

From the chin I moved up to his right cheek. There was an eyeball hanging down, resting on that cheek. It looked like it was still attached by the optic nerve, but it was just suspended there. I don’t know how I could keep it together enough to do this, but I do recall looking closely enough to see the color of the eye. It was that light hazel brown everyone always thought was so pretty. Right away, I looked to the other eye. But it wasn’t there. It seemed like someone had taken a nut picker and plucked that one out. . . . Emmett always had the most beautiful teeth. Even as a little baby, his teeth were *very* unusual. . . . So I looked at his teeth, because I knew I could recognize them. Dear God, there were only two now, but they were definitely his. I looked at the bridge of his nose . . . [i]t had been

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65. WHITFIELD, *supra* note 19, at 20.

66. *Id.*; see also Huic, *supra* note 9.

67. See FED. BUREAU OF INVESTIGATION, *supra* note 9, at 60–115.

68. *Id.*

69. *Id.* at 38.

chopped, maybe with a meat cleaver. It looked as if someone had tenderized his nose.<sup>70</sup>

Residents in the Mississippi Delta knew that the body Hodges discovered was Till's and suspected that Milam and Bryant had murdered the young boy.<sup>71</sup> After all, Till had been missing since the two men had grabbed him from his sleep in the safety of his uncle and aunt's house. Despite this common knowledge, Milam and Bryant repeatedly denied actually killing Till before their acquittal. Although Milam and Bryant openly admitted to forcibly taking Till away from Preacher Wright's home, the two men insisted that they had eventually released Till to walk home on his own later that day.<sup>72</sup>

There are numerous, conflicting accounts of the events that supposedly formed the basis for Milam and Bryant's actions in kidnapping and later murdering Till. Carolyn Bryant, the wife of Roy Bryant, offered one account. She claimed that her husband and Milam kidnapped Till because he made a pass at her in their family-owned grocery store while she was working on August 24, 1955.<sup>73</sup> Specifically, she maintained that Till had grabbed her hand as she held it out for him to give her his money when he was buying candy at their store and that Till had asked her for a date and then inquired whether she could "take it."<sup>74</sup> Carolyn Bryant further testified that the young boy whistled at her as she, a terrified woman, ran out of the store's front door to retrieve her pistol.<sup>75</sup>

70. MAMIE TILL-MOBLEY & CHRISTOPHER BENSON, *DEATH OF INNOCENCE: THE STORY OF THE HATE CRIME THAT CHANGED AMERICA* 135–36 (2003). As journalist George Curry explained, Till-Mobley's "thought was that this was a sight so ghastly, so inhumane that people would have to see it for themselves to believe it." George E. Curry, *Killed for Whistling at a White Woman*, *EMERGE*, July/August 1995, at 26, <http://www.emmettillmurder.com/new-page-66>. She reportedly told the undertaker, "No, you can't fix that. Let the world see what I saw." *Id.*

71. WHITFIELD, *supra* note 19, at 24 (describing the "considerable effort" that other white Mississippians made "to establish distance from the depravity of which Bryant and Milam were accused").

72. During the trial, Leflore County Sheriff George Smith testified that Bryant admitted to him that they had taken Till away from his uncle's house, brought him to the store for his wife Carolyn Bryant to identify him, and then let him go once Carolyn indicated that Till was not the boy who accosted her. Sheriff Smith asserted: "He [Bryant] said he went down there [Leflore County] and went to his house [Preacher Wright's house] and got him out and then brought him up to the store. And he said he [Emmett Till] wasn't the right one so then he turned him [Till] loose." FED. BUREAU OF INVESTIGATION, *PROSECUTIVE REPORT OF INVESTIGATION: APPENDIX A-TRANSCRIPT* 91 (Feb. 9, 2006), <http://static1.squarespace.com/static/553d7f9ae4b0bd2bbd401341/t/553d9a41e4bo8cebo8ac2888/1430100611225/FBI+transcript.pdf> (redirect examination of Sheriff George Smith) [hereinafter *APPENDIX A-TRANSCRIPT*]; *see also* TILL-MOBLEY & BENSON, *supra* note 70, at 175; *A Mississippi Jury Indicts 2 in Till Death*, *BALT. SUN*, Sept. 7, 1955, at 1 ("Sheriff George Smith of Leflore [C]ounty said the men admitted taking Till from his uncle's house, but said they released him unharmed.").

73. *APPENDIX A-TRANSCRIPT*, *supra* note 72, at 267–76 (direct examination of Carolyn Bryant).

74. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 40–41; *see also* *APPENDIX A-TRANSCRIPT*, *supra* note 72, at 268–71 (direct examination of Carolyn Bryant).

75. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 40–41; *see also* *APPENDIX A-TRANSCRIPT*,

Till's cousins and friends, who accompanied Till to Bryant's Grocery and Meat Market on the night of the incident, offered a different account. According to them, nothing out of the ordinary occurred inside the grocery store where Carolyn Bryant was working.<sup>76</sup> In fact, they claimed that nothing noteworthy occurred until after Till had already exited the store.<sup>77</sup> These witnesses claimed that Till was in the store for too short a period for Carolyn Bryant's story to be true. At least one witness stated that he saw Till pay for his bubble gum without incident, and other witnesses informed the FBI that nothing could have happened inside the store because Till and his cousin "walked out [of the store] calmly" and "didn't appear rushed."<sup>78</sup> Though two witnesses informed the FBI that Till had shown them a photograph of a white woman from his wallet and that several boys dared Till to speak to Carolyn Bryant while inside the store, all of these boys insisted that Till never came onto, accosted, or assaulted Carolyn Bryant.<sup>79</sup> Indeed, one FBI interviewee indirectly questioned whether Carolyn Bryant would have held her hand out to receive Till's money at all because she, like most white (and black) people in Mississippi, worked hard to avoid cross-racial skin contact.<sup>80</sup> Specifically, this interviewee recalled Carolyn Bryant's efforts to avoid any skin contact with black customers, stating: "[W]hen you'd buy somethin', you know, she'd drop the money in your hand and she never would touch your hand or nothin', you know . . . She never would allow you to touch her hand."<sup>81</sup>

In the end, although none of the boys witnessed Till come onto, accost, or assault Carolyn Bryant, many of the boys reported that Till whistled once he left the store.<sup>82</sup> In her autobiography, Mamie Till-Mobley explained that one of Till's cousins, Maurice Wright, told reporters that Till, who had a speech impediment, "made a whistling sound when he got stuck on a word."<sup>83</sup> Being the very person who advised Till to whistle when he had difficulty saying a word, Till-Mobley contended that the word "'[b]ubble gum' [which is what Till purchased that night] would have given [Till] as much trouble in Money as the words 'Moon Pie' once had given him in Argo."<sup>84</sup> Another FBI witness

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*supra* note 72, at 274-75.

76. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 42-44.

77. *Id.*; see also SIMEON WRIGHT & HERB BOYD, SIMEON'S STORY: AN EYEWITNESS ACCOUNT OF THE KIDNAPPING OF EMMETT TILL 50-51 (2010) (explaining that Carolyn Bryant's story could not be true because Till was in the store alone "[f]or less than a minute").

78. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 43. The FBI's report redacts the names of the witnesses in their investigation.

79. *Id.* at 42-45.

80. *Id.* at 14.

81. *Id.*

82. See WRIGHT & BOYD, *supra* note 77, at 51.

83. TILL-MOBLEY & BENSON, *supra* note 70, at 122.

84. *Id.* In her autobiography, Till-Mobley describes a story about how Till stuttered the words "M-M-M-Moon Pie" when he was buying the treat in "Miss Haynes's store around the corner" in Argo, Illinois. *Id.* at 81-82.

believed that “Till was whistling at a bad move by [a] checker player.”<sup>85</sup> In his narrative *Simeon’s Story: An Eyewitness Account of the Kidnapping of Emmett Till*, Till’s cousin Simeon Wright indicated that Till, who “was always joking around,” whistled at Carolyn Bryant when she came out of the store to “get a laugh out of us or something.”<sup>86</sup> Simeon further explained that, even then, Till, the Northerner, did not immediately recognize the social rules he had broken, stating:

It was a loud wolf whistle, a big city “whee wheeeee!” and it caught us all by surprise. We all looked at each other, realizing that Bobo had violated a longstanding unwritten law, a social taboo about conduct between blacks and whites in the South. Suddenly we felt we were in danger, and we stared at each other, all with the same expression of fear and panic. Like a group of boys who had thrown a rock through somebody’s window, we ran to the car. Bobo, with a slight limp from the polio he’d contracted as a child, ran along with us, but not as panic-stricken as we were. After seeing our fright, it did slowly dawn on him that he had done something wrong.<sup>87</sup>

Regardless of Till’s intentions when he whistled, “[e]veryone knew Till’s whistling was trouble so they ran for their car and left Money, Mississippi and went home to [Preacher] Moses Wright’s house.”<sup>88</sup> Once the boys were in the car, Till asked his cousins and friends to keep his whistling a secret from his uncle.<sup>89</sup> The boys all agreed and kept their word.<sup>90</sup> Sadly, the boys’ decision not to inform Preacher Wright of the “whistling” event at the grocery store proved to be fatal for Till. As Simeon explained in his autobiography, “[i]f I had told Dad, he would have done one of two things: either he would have taken Bobo back to the store and made him apologize to Mrs. Bryant or he would have sent Bobo home as soon as possible. Either way, perhaps Bobo would be alive today.”<sup>91</sup>

After Till’s body was discovered, state officials in Mississippi tried to convince his mother to conduct his burial services in Mississippi.<sup>92</sup> She refused and insisted that the state send her son’s body to Chicago.<sup>93</sup> Eventually, the Mississippi state officials complied with Till-Mobley’s request, but they

85. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 44.

86. WRIGHT & BOYD, *supra* note 77, at 51.

87. *Id.*

88. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 43.

89. *See* WRIGHT & BOYD, *supra* note 77, at 52.

90. *See id.*

91. *Id.* At trial, Preacher Wright indicated that he had spoken to Till briefly about a rumor he heard, but it is clear that Wright had not heard the full rumor. APPENDIX A-TRANSCRIPT, *supra* note 72, at 36 (cross examination of Moses Wright).

92. Jacqueline Goldsby, *The High and Low Tech of It: The Meaning of Lynching and the Death of Emmett Till*, 9 YALE J. CRITICISM 245, 250 (1996).

93. *Id.*

demanded that Till-Mobley not open the casket they had sealed Till's body in.<sup>94</sup> Hundreds of miles away in Chicago, Till-Mobley defied their orders and opened up the casket.<sup>95</sup> Horrified by the sight of her brutally beaten son, Till-Mobley decided that she wanted the world to see what "race hatred" truly looked like.<sup>96</sup> She proclaimed that "the entire state of Mississippi is going to pay for this" and that "the world [had to] see what they did to [her] boy."<sup>97</sup> Wanting the world to view what racism in Mississippi had enabled and encouraged, Till-Mobley decided to hold a four-day, open-casket memorial service in Chicago. More than 100,000 people chose to attend the service, with another 2,500 people attending the actual funeral; Till-Mobley also allowed the black press to photograph her son's mutilated face and body and publish the pictures on the pages of their magazines and newspapers.<sup>98</sup>

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94. *Id.*

95. See WHITFIELD, *supra* note 19, at 22–23 (asserting that Till-Mobley "wanted to be certain . . . that the body was indeed her son's").

96. Goldsby, *supra* note 92, at 250; see also WHITFIELD, *supra* note 19, at 22 ("The beating, one policeman said, was the worst that he had observed in eight years of law enforcement.").

97. WHITFIELD, *supra* note 19, at 23. Even though Till-Mobley insisted that the mortician leave Till's face as it had been delivered to her, he still made some adjustments. Till-Mobley wrote:

Mr. Rayner did some work to prepare Emmett for the public viewing, despite our talk. . . . That tongue [that was protruding out and keeping his mouth from closing] had been removed, I guess, and put somewhere. The mouth was closed now. And you could see on the side of Emmett's head that some coarse thread had been used to sew the pieces back together. I guess it was like that on the right side, too, but I couldn't see that. The eye that had been dangling, that was removed, too, and the eyelid closed, like on the other side, where no eye was left. . . . You would have to have seen Emmett when I first saw him to really appreciate what Mr. Rayner had done before my son's body was viewed by the public and photographed for public view. What I had seen was so much worse than what other people would ever see.

TILL-MOBLEY & BENSON, *supra* note 70, at 140. Describing why she decided to hold an open casket funeral of her only son's funeral, Till-Mobley declared: "People had to face my son and realize just how twisted, how distorted, how terrifying *race hatred* could be." TILL-MOBLEY & BENSON, *supra* note 70, at 142 (emphasis added). "People had to consider all of that as they viewed Emmett's body." *Id.* "The whole nation had to bear witness to this." *Id.* at 139.

98. *Id.* at 140; Goldsby, *supra* note 92, at 250; see also 2,500 at *Rites Here for Boy, 14, Slain in South*, CHI. DAILY TRIB., Sept. 4, 1955, at 2.

Images of the disfigured teenager ran in *Jet* magazine, the *Chicago Defender*, the *Pittsburgh Courier*, the *New York Amsterdam News*, and the *Crisis*.<sup>99</sup>



With such press, Till's murder garnered a significant amount of attention and outrage from both Blacks and Whites in the North. This outrage began to grow just about the same time as the unthinkable occurred: the September 5, 1955, indictment of Milam and Bryant, two white men, for the murder of Till, a black boy, by an all-white male jury in Mississippi, and one mostly consisting of planters.<sup>100</sup> Historian Stephen Whitfield described the indictment as "so exceptional that the black newspaper in Jackson felt obliged to praise 'white men [who] took this step against other white men for a crime against a Negro,' and a black Baptist convention that was meeting in Memphis went out of its way to commend the grand jury for its 'speedy handling of the case.'"<sup>101</sup>

From September 19 to September 23, 1955, prosecutors tried both Milam and Bryant on one count of murder each for Till's death in Tallahatchie County, the county where the boy's body was found.<sup>102</sup> Although Milam and Bryant were also initially charged with kidnapping, the kidnapping charge was dropped because the admitted kidnapping occurred in Leflore County, where Till's uncle lived instead of Tallahatchie County.<sup>103</sup> The defense's primary argument was that the jury should acquit Milam and Bryant because the state could not prove that the body belonged to Till. As soon as the men were indicted, Sheriff Harold Clarence Strider publicly began to raise

99. Goldsby, *supra* note 92, at 250.

100. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 82; WHITFIELD, *supra* note 19, at 24 ("Prosecuting attorney Hamilton Caldwell later acknowledged that he had opposed the indictment of Bryant and Milam, because he doubted a jury would convict any white man found to have murdered a black who was accused of such insults to a white woman.").

101. WHITFIELD, *supra* note 19, at 24 (alteration in original).

102. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 82.

103. *Id.* at 82, 85–86.

questions about whether the body was Till's.<sup>104</sup> For instance, when the indictment was announced, Sheriff Strider claimed that the body looked like it belonged to an adult, not a child, and argued that the body had deteriorated too much and could not have been submerged in water for only three days.<sup>105</sup> Sheriff Strider later claimed that Till was alive and safe in another city, asserting that “the whole thing looks like a deal made up by the National Association for the Advancement of Colored People.”<sup>106</sup>

Defense counsel also employed old-fashion racism to deliver a “not guilty” verdict for Milam and Bryant. Prior to deliberations, defense attorney John Whitten “argued to the all-white, all-male jury that their ‘ancestors [would] turn over in their graves [if Milam and Bryant] [were] found guilty.’”<sup>107</sup> Whitten then proclaimed that he was “sure every last Anglo-Saxon [juror] has the courage to free these men in the face of [outside] pressure.”<sup>108</sup>

On September 23, 1955, the jury acquitted Milam and Bryant of the charge of murder on the ground that the state had failed to prove that the recovered body belonged to Emmett Till.<sup>109</sup> It took the jury only 67 minutes to reach its verdict.<sup>110</sup> Afterwards, one juror declared, “If we hadn’t stopped

104. *A Mississippi Jury Indicts 2 in Till Death*, *supra* note 72, at 6. During the trial, Strider developed the practice of passing by the card table where the black press sat (white press members could sit in the front or anywhere they desired) and greeting the journalists by saying “Good Morning Niggers.” See *Till’s Mother Awes Throng at Mosque*, *AFRO-AM.*, Nov. 12, 1955, at 7. Only Blacks were searched as they entered the courtroom. No Whites, unless they were strangers, were searched. Once in the courtroom, Whites, including Milam and Bryant, “had complete run of the court.” *5000 Jam Till Death Protest Rally*, *L.A. SENTINEL*, Oct. 13, 1955, at 2. In fact, Milam and Bryant “used the judge’s private toilet during the trial [and] [t]heir kids were allowed to romp and play up and down the aisles.” *Id.*

105. *A Mississippi Jury Indicts 2 in Till Death*, *supra* note 72, at 6. Preacher Wright testified at trial that Till “looked like a man.” APPENDIX A-TRANSCRIPT, *supra* note 72, at 46. Notably, defense counsel emphasized Till’s size in their case. Significantly, recent social science research reveals that black children, especially black boys, are viewed as “less childlike” and that “for every age group after the age of 9 . . . Black children and adults were rated as significantly less innocent than White children and adults.” Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *J. PERSONALITY & SOC. PSYCHOL.* 526, 526, 529 (2014); see also generally ROBIN BERNSTEIN, *RACIAL INNOCENCE: PERFORMING AMERICAN CHILDHOOD FROM SLAVERY TO CIVIL RIGHTS* (2011) (examining books, toys, props, and other items to show how childhood innocence has played a role in racial formation, marking white children as innocent and black children as villain).

106. *2,500 at Rites Here for Boy, 14, Slain in South*, *supra* note 98; see also *Boy, 14, Is Lynched: Fourth Race Victim in Mississippi*, *NORFOLK J. & GUIDE*, Sept. 10, 1955, at 1 (noting that Sheriff Strider “believes the NAACP is ‘trying to frame’ Mississippi in the boy’s death”).

107. Ronald Turner, *Remembering Emmett Till*, 38 *HOW. L.J.* 411, 419 (1995).

108. *Id.*

109. See *FED. BUREAU OF INVESTIGATION*, *supra* note 9, at 82.

110. See *WHITFIELD*, *supra* note 19, at 42; *Goldsby*, *supra* note 92, at 252. The “not guilty” verdict came down despite the fact that every single juror admitted to believing that Milam and Bryant killed Till. See *Curry*, *supra* note 70, at 32.

to drink pop . . . it wouldn't have taken that long."<sup>111</sup> Defense attorneys later disclosed that the sheriff-elect had previously sent word to the jurors that they should "wait a while" before announcing their verdict to make it "look good."<sup>112</sup>

Months thereafter, charges against Milam and Bryant were brought before a grand jury for kidnapping, an act to which the two men had previously admitted.<sup>113</sup> This time, however, an all-white male grand jury in Leflore County did not even indict the two men.<sup>114</sup>

C. *PRESERVING WHITENESS IN THE JIM CROW SOUTH: THE MATERIAL AND PSYCHOLOGICAL VALUE OF WHITENESS TO MILAM, BRYANT, AND THEIR CHAMPIONS*

The murder of Emmett Till occurred under exactly the types of circumstances that sociologist Oliver Cox explained formed the background for lynching activity in his seminal article, *Lynching and the Status Quo*.<sup>115</sup> The killing of Till occurred under a "growing belief among whites in the community that Negroes are getting out of hand—in wealth, in racial independence, in attitudes of self-assertion especially as workers; or in reliance upon the law."<sup>116</sup> Specifically, the slaying of Till and the trial against his accused killers, Milam and Bryant, occurred slightly more than a year after the U.S. Supreme Court issued its first decision in *Brown v. Board of Education*, which held that state-mandated racial segregation in public schools violated the Equal Protection Clause of the Constitution,<sup>117</sup> and a few months after the Court issued its much weaker decision in *Brown II*, which held that local school boards should implement desegregation in public schools with "all deliberate speed."<sup>118</sup>

*Brown I*, in particular, left many white Mississippians feeling anxious about losing their "segregated way of life" and the advantages that "way of life" gave them as Whites.<sup>119</sup> For instance, after *Brown* was issued, Frederick Sullens, then editor of the *Jackson Daily News*, wrote the following in his paper: "Human blood many stain southern soil in many places because of this decision, but the dark red stains of that blood will be on the marble steps of the United

111. WHITFIELD, *supra* note 19, at 42.

112. *Id.*

113. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 85–86.

114. *Id.* at 85–86. "On November 8, 1955, a Grand Jury considered a charge of kidnaping against J.W. Milam and Roy Bryant . . . [but] returned a No Bill on the charges." *Id.*

115. Oliver C. Cox, *Lynching and the Status Quo*, 14 J. NEGRO EDUC. 576, 577 (1945).

116. *Id.*

117. *Brown I*, 347 U.S. 483, 495 (1954).

118. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955).

119. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 18; *see also* 3 BRUCE ACKERMAN, WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION 50 (2014) ("*Brown* hit like a bombshell, forcing all sides to confront an issue that threatened to rip up the framework of normal politics.").

States Supreme Court building. . . . Mississippi cannot and will not try to abide by the decision.”<sup>120</sup> Mississippi Governor Hugh White made a similar declaration, stating simply “[w]e’re not going to pay any attention to the Supreme Court’s decision.”<sup>121</sup>

By December of 1954, white Mississippians were ready to put their last-resort strategy in place—a proposed constitutional amendment that would allow the state legislature to abolish public schools if schools were ever to become integrated; allow “[p]ublic school buildings, buses, and facilities [to] be sold, rented, or leased to private individuals and corporations; and “provide tuition money for [white] students attending private schools.”<sup>122</sup> That same month, the proposed amendment passed.<sup>123</sup>

Additionally, in reaction to *Brown*, segregationist organizations, known around Mississippi as Citizens’ Councils, sprang up in towns and cities across the state.<sup>124</sup> Indeed, the first Citizens’ Council organization arose in Sunflower County, where Till was initially taken after Milam and Bryant kidnapped him in Leflore County.<sup>125</sup> Specifically, this first Council was formed in the county seat of Indianola.<sup>126</sup> The Indianola Citizens’ Council, just like many Citizens’ Councils that would eventually emerge across Mississippi, consisted of white residents in the professional and business class who asserted that their aim was to maintain segregation only through legal and economic means, such as boycotts.<sup>127</sup> Local Citizens’ Council members included people like the five

120. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 16. The *Jackson Daily News* also included a comment that “the court’s decision was the ‘worst thing that has happened to the South since carpetbaggers and scalawags took charge of our civil government in Reconstruction days . . . Mississippi will never consent to placing white and Negro children in the same public schools.” Max K. Gilstrap, *Equality Aim Denied: Mississippi Chary on Desegregation*, CHRISTIAN SCI. MONITOR, Aug. 13, 1954, at 15 (quoting from the *Jackson Daily News*).

121. Robert M. Ratcliffe & A.M. Rivera, Jr., *‘Fear’ Campaign Being Waged Against Mississippi Negroes*, PITT. COURIER, Dec. 11, 1954, at 9.

122. Bicknell Eubanks, *Mississippi Starts Action to Continue School Segregation*, CHRISTIAN SCI. MONITOR, Sept. 9, 1954, at 7 (discussing various forms of resistance to integration in Mississippi and the manner in which politicians were positioning themselves as the candidate who could oppose integration the most); *Mississippi Votes: Public Schools Fate?*, CHRISTIAN SCI. MONITOR, Dec. 21, 1954, at 5 (stating that “Negroes won’t have much weight in deciding the proposed amendment’s fate, [because] with 45 percent of Mississippi’s population, Negroes only have 5 percent of the vote”).

123. *Mississippi Votes: Public Schools Fate?*, *supra* note 122; see also Bern Price, *Race Conflict Flares in Mississippi: Hostilities Mount on the Delta*, WASH. POST & TIMES HERALD, Aug. 21, 1955, at E5.

124. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 16–17.

125. *Id.* at 11–12, 16.

126. *Id.*; WHITFIELD, *supra* note 19, at 10.

127. See Price, *supra* note 123, at E5 (“Membership has been drawn from the so-called best people—bankers, lawyers, politicians, planters, merchants, and some newspapermen.”); see also FED. BUREAU OF INVESTIGATION, *supra* note 9, at 17 (“The Councils openly promoted the cause of segregation through legal means and did not officially advocate violence.”). Later, research revealed “that every juror [in the Till matter] had been visited by members of the Council to make sure they (the jurors) voted ‘the right way.’” *Id.*

men who eventually served as the attorneys for Milam and Bryant during the Till murder trial: J.J. Breland, C. Sidney Carlton, J.W. Kellum, John W. Whitten, and Harvey Henderson.<sup>128</sup> By 1955, only a year after the Supreme Court issued its landmark decision in *Brown I*, the membership of the state's various Councils had grown to more than 60,000 individuals.<sup>129</sup>

Unlike the Ku Klux Klan, Citizen' Councils did not outwardly condone violence.<sup>130</sup> However, among Blacks, Citizens' Councils were known as the "Uptown Ku Klux Klan," organizations with "the express purpose of intimidat[ing] 'troublemakers' and apply[ing] economic pressure to Negroes who no longer fear the white man's 'stay-in-your-place' policy," and not necessarily without violence or the threat thereof.<sup>131</sup>

Race-related tensions in Mississippi grew stronger after May 31, 1955, when the Supreme Court called for public schools to be integrated with "all deliberate speed" in *Brown II*.<sup>132</sup> Just days before *Brown II*, Mississippi Senator James Eastland proclaimed in a speech on the Senate floor that Mississippians would never abide by the May 17, 1954 *Brown I* ruling. At the close of his speech, he posed the following question to his audience: "Who is obligated morally or legally to obey a decision whose authorities rest not upon the law but upon the writings and teachings of pro-Communist agitators who are part and parcel of the Communist conspiracy to destroy our country?"<sup>133</sup>

On August 21, 1955, just one week before Milam and Bryant kidnapped Till, the *Washington Post and Times Herald* published an article with the headline *Race Conflicts Flare in Mississippi*.<sup>134</sup> That article provided a chilling prediction from Hodding Carter, the Pulitzer Prize-winning editor of the *Greenville Delta Democrat-Times*. There, Carter asked: "Are the Councils an incipient Ku Klux Klan? . . . The ingredients are there. The incentive and the incendiary spark are lacking—so far. If and when these should appear, I say, soberly and in warning, that the men in white robes will seize control."<sup>135</sup> Indeed, in the months before Till's death, two other lynchings of black men occurred in the state. Specifically, "[t]wo ministers were killed because they urged people to vote."<sup>136</sup> First, on May 7, 1955, a black minister named Willie George Washington was shot to death while he was driving his car in

128. See DAVIS W. HOUCK & MATTHEW A. GRINDY, EMMETT TILL AND THE MISSISSIPPI PRESS 58 (2008); FED. BUREAU OF INVESTIGATION, *supra* note 9, at 7.

129. See Price, *supra* note 123, at E1.

130. *Id.* at E1, E5.

131. Ratcliffe & Rivera, *supra* note 121, at 9.

132. *Brown II*, 394 U.S. 294, 301 (1955).

133. *Solan Makes Gesture to Influence Supreme Court*, ATLANTA DAILY WORLD, May 28, 1955, at 1 ("Threats and intimidation—the weapons with which Mississippi seeks to maintain racial segregation—were raised on the Senate floor Thursday in a gesture of influence the Supreme Court on the eve of its issuing final decrees in the school segregation cases.").

134. See Price, *supra* note 123, at E1.

135. *Id.*

136. *Boy 14, Is Lynched: Fourth Race Victim in Mississippi*, *supra* note 106, at 1.

neighboring Humphreys County because he became the first Black to register to vote in that county.<sup>137</sup> Additionally, on August 13, 1955, a 63-year-old “farmer [and a World War II veteran named Lamar Smith] was killed on the courthouse square of another Mississippi town because he had enough nerve to ask people to go to the polls.”<sup>138</sup>

Such was the world that 14-year-old Till entered when he came to visit his uncle, aunt, and cousins in Leflore County, Mississippi on August 20, 1955. Born and raised in Illinois, Till was not prepared for the strict and violently protected racial lines that he would encounter in Mississippi. Recognizing that she was sending her only son into what could seem like a foreign world—her family’s home state of Mississippi—an anxious Till-Mobley made a point of explaining to Till the danger and racialized customs that he would encounter down South before he departed on his trip. Her autobiography describes this conversation, stating:

We went through the drill. . . . Don’t start up any conversations with white people. Only talk if you’re spoken to. And how do you respond? “Yes, sir.” “Yes, ma’am.” “No, sir,” “No ma’am.” Put a handle on those answers. Don’t just say “yes” and “no” or “naw.” Don’t ever do that. If you’re walking down the street and a white woman is walking toward you, step off the sidewalk, lower your head. Don’t look her in the eye. Wait until she passes by, then get back on the sidewalk, keep going, don’t look back.

“If you have to humble yourself,” I said, “then just do it. Get on your knees, if you have to.”

It all seemed incredible to him. “Oh, Mama,” he said, “it can’t be that bad.”

“Bo, it’s worse than that,” I said.<sup>139</sup>

Sadly, it did not take long for Till to learn how bad the racial division and hatred in Mississippi were. Soon after Till’s arrival, he became another black casualty in white Mississippians’ desperate struggle to maintain the racial status quo and preserve the psychic value of their whiteness. For, within eight days, Till would not just breach the social rules in Mississippi, he would breach them in ways that meant everything for two angry, white, working-class men who were fearful of losing even their meager place in the racial and class hierarchy of Mississippi.

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137. See FED. BUREAU OF INVESTIGATION, *supra* note 9, at 17; see also L. Alex Wilson, *Lynching in Mississippi: Minister Shotgunned to Death Gang Style, Governor Refuses Appeal for Probe*, CHI. DEFENDER, May 21, 1955, at 2.

138. *Boy 14, Is Lynched: Fourth Race Victim in Mississippi*, *supra* note 106, at 1. Simeon Wright, the son of Preacher Wright, vividly noted, “As he [Smith] lay dying, he was still clutching some election leaflets in his hands. Smith refused to knuckle under or to be intimidated by the white mobs who threatened him.” WRIGHT & BOYD, *supra* note 77, at 10–11.

139. TILL-MOBLEY & BENSON, *supra* note 70, at 100–01.

Like other states, Mississippi had its own unique class-and-race-based structure. Generally speaking, residents in Mississippi were poor. For instance, whereas the median income in the United States in 1955 was approximately \$4,400,<sup>140</sup> it was only \$918 in Leflore County, the county where Till was visiting his family (with the average annual income for Blacks being \$595).<sup>141</sup> In Tallahatchie County, where the trial against Milam and Bryant was held, “the median annual per capita individual income was \$607, with the average annual income of black families in the county being \$462.”<sup>142</sup> Education levels in Mississippi also were relatively low. For example, in Leflore County, the average level of education completed was 6.4 years, with Blacks, on average, completing 4.3 years of education.<sup>143</sup> Statistics on education in Tallahatchie County proved to be grimmer, with the average adult completing 5.7 years of schooling, and with Blacks, on average, completing only 3.9 years of schooling.<sup>144</sup>

Yet, as with all places, certain citizens had more than others, intraracially and interracially. At the top of Mississippi’s class-and-race-based hierarchy were white professionals (such as lawyers, doctors, and businessmen) who catered to a white clientele.<sup>145</sup> At the bottom were Blacks, regardless of their individual profession or level of education,<sup>146</sup> and directly above Blacks were the white sharecroppers.<sup>147</sup> Next came Whites who catered to a black clientele, many of whom were poor themselves.<sup>148</sup> Milam and Bryant were part of this white working poor, who found themselves just a step above white sharecroppers and greatly distanced from the white elite, though technically only a step below them.<sup>149</sup> Indeed, Milam and Bryant were so poor that Bryant had to wait a day and a half after hearing of Till’s alleged transgression before he could seek revenge on the young boy.<sup>150</sup> Bryant learned of the story about the “Chicago boy” and his alleged infraction on Friday,<sup>151</sup> but given that the

140. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, MEDIAN FAMILY INCOME, <http://nces.ed.gov/pubsg8/yi/yi116.pdf>; Howard Fuller, *The Struggle Continues*, 4 EDUC. NEXT 26, 26–27 (2004), [http://educationnext.org/files/ednext20044\\_26.pdf](http://educationnext.org/files/ednext20044_26.pdf) (“The average black household income in 1955 (\$2,890) was 55 percent of that of white households (\$5,228).”).

141. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 10–11.

142. *Id.* at 12.

143. *Id.* at 11.

144. *Id.* at 12.

145. *Id.* at 12–13. Very few Blacks obtained a high level of education in the state at the time, and those who did had limited opportunities outside of the agricultural field. *Id.* at 13. One notable exception was Dr. T.R.M. Howard, who was a civil rights activist in Mississippi. He assisted Till-Mobley in her efforts to find Till after he disappeared and then in her efforts to seek justice for him. See TILL-MOBLEY & BENSON, *supra* note 70, at 125.

146. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 12–13.

147. *Id.* at 12.

148. *Id.*

149. *Id.* at 13.

150. WHITFIELD, *supra* note 19, at 19–20.

151. One rumor is that Bryant learned about the alleged incident from Till’s cousin, Maurice

weekend, particularly Saturday, was the busiest time at his store, he could not afford to miss that work day.<sup>152</sup> Additionally, Bryant was too poor to own a car, so he had to wait until his half-brother Milam could take him to the Wrights' house in Milam's 1955 Chevrolet pick-up truck.<sup>153</sup> Milam, too, was of limited economic means. He ran an agricultural service business and a store that catered to Blacks in the town of Glendora, which had a population of 178 persons.<sup>154</sup> Milam also owned an interest in two other stores, one of which was co-owned with Bryant—the store where Till bought his candy and interacted with Carolyn Bryant on August 24, 1955.<sup>155</sup>

As white men who were subsisting just above the level of white sharecroppers in town, Milam and Bryant greatly prized the meaning of their whiteness in Mississippi's segregated society.<sup>156</sup> While many Whites in Mississippi feared the change in the racial hierarchy that the Supreme Court's decision in *Brown* represented, none feared it more than Whites in the non-professional class, whom as Du Bois and, later, Harris explained, seemed to value the "psychological wage" of whiteness more than any real opportunity for achieving greater political rights and compensation.<sup>157</sup> As the FBI indicated in its investigative report decades later, around the time that Till was killed, "[t]he fear that they would lose control of their way of life permeated the lower socioeconomic segments of the white community. This segment of the community, in particular, believed they had the most to lose if the black community truly became equal."<sup>158</sup>

So when Bryant heard that Till, a boy whom Bryant viewed as an inferior being, had allegedly upset his wife and thus committed an affront upon him, he felt compelled by the social meaning of his whiteness to act. As historian Stephen Whitfield explained, "the failure to respond to insult marked [white men] as less than real men, branded them, in the most telling epithets of the time, as 'cowards' and 'liars.'"<sup>159</sup> When it came to picking a partner in crime for his revenge, Bryant selected his half-brother Milam, not only because Milam owned a car and could drive him to Leflore County, but also because Milam had a reputation for keeping Blacks in their place. A six-foot-two and 235-pound World War II veteran, Milam, in his own words, knew "how to

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Wright, who was jealous of his northern cousin who had an art for telling tall tales and was receiving significant amounts of attention from the other children in town (or who wanted a half a dollar's credit at the Bryants' store). See WHITFIELD, *supra* note 19, at 19.

152. *Id.* at 19.

153. *Id.* at 19–20.

154. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 13.

155. *Id.*; see also *id.* at 40.

156. *Id.* at 12. The 2006 FBI investigative report describes the two as being only one step above white sharecroppers in Mississippi, who were just one step above Blacks. *Id.*

157. DU BOIS, *supra* note 30, at 700–01; Harris, *supra* note 43, at 1741–42.

158. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 18.

159. WHITFIELD, *supra* note 19, at 5.

work” Blacks.<sup>160</sup> As Whitfield explained, “‘Big’ Milam was the sort of man who prided himself on getting along with blacks, on knowing how to ‘handle’ them.”<sup>161</sup>

When Milam and Bryant came to kidnap Till from the Wrights’ home during the wee hours of August 28, 1955, Milam served as the muscle. With a .45 Colt pistol and a flashlight in hand, Milam yelled at Preacher Wright as he opened the door: “I want that boy that done the talking down at Money!”<sup>162</sup> Before Milam and Bryant absconded from the Wrights’ home with Till, Milam made sure to threaten the life of Preacher Wright. Preacher Wright described the exchange at trial as follows:

Well, when he [Till] got up, and they [Milam and Bryant] started out, then he asked me if I know anybody there and I told him, “No, Sir. I don’t know you.”

And then he said to me, “How old are you?” And then I said, “Sixty-four.” And then he said, “Well, if you know any of us here tonight, then you will never live to get to be [s]ixty five.”<sup>163</sup>

The best evidence of how the protection of whiteness and its attendant status and privileges served as part of the motivation for Till’s murder came directly from Milam’s mouth. After he and Bryant were acquitted, Milam confessed to and, in fact, bragged about murdering Till to journalist William Bradford Huie, who handsomely paid Milam for a confession and who later published Milam’s words in an article in *Look* magazine.<sup>164</sup> Milam began his

160. Huie, *supra* note 9; see also WHITFIELD, *supra* note 19, at 20.

161. WHITFIELD, *supra* note 19, at 20; Huie, *supra* note 9 (“He is slavery’s plantation overseer. Today, he rents Negro-driven mechanical cotton pickers to plantation owners. Those who know him say that he can handle Negroes better than anybody in the country.”).

162. APPENDIX A-TRANSCRIPT, *supra* note 72, at 12 (direct examination of Preacher Moses Wright).

163. *Id.* at 16 (direct examination of Preacher Moses Wright). Milam also threatened Till’s aunt, Elizabeth Wright. After she got out of bed and begged Milam to let him go, promising to pay him and Bryant money, Milam commanded: “You get back in that bed, and I mean, I want to hear the springs.” *Id.* at 17.

164. See WHITFIELD, *supra* note 19, at 52–53, 58. It is important to note that Emmett Till’s mother, Mamie Till-Mobley, contested the way that Huie, the journalist who paid Milam for his confession, portrayed her son—as defiant and boastful—in this *Look* magazine article. Till-Mobley also objected to the manner in which Huie disregarded the accounts of black witnesses of the alleged whistling incident and the kidnapping of Till, accounts that contradicted those told by key white witnesses and the account told by Milam and Bryant in *Look*. In her autobiography *DEATH OF INNOCENCE*, she wrote:

The tale that unfolded in *Look* was horrible. In fact, it was unbearable. And that was not just because of the description the killers gave of that night of terror, but also because of the distorted picture of Emmett that was presented.

...

... They claimed Emmett kept talking back to them the whole time. They claimed he had a picture of a white girl in his wallet and that he bragged about having white

confession to Huie by expressing his desire to keep Blacks in their place so they would not exercise their right to vote. He proclaimed:

I like niggers—in their place—I know how to work ‘em. But I just decided it was time a few people got put on notice. As long as I live and can do anything about it, niggers gonna stay in their place. Niggers ain’t gonna vote where I live. If they did, they’d control the government.<sup>165</sup>

It is significant, but not surprising, that Milam referenced his troubles with the idea of political participation by Blacks in his confession. After all, concerns about Blacks’ voting in the area had been growing ever since the *Brown* decisions. Although Blacks made up 68% of the population in Leflore County<sup>166</sup> and more than 63% of the residents in Tallahatchie County, Whites had been able to maintain control over both counties by preventing Blacks from registering to vote.<sup>167</sup> Indeed, no Blacks were even eligible to serve on the jury in the murder trial against Milam and Bryant because service on a jury depended upon eligibility to vote, and no Blacks were registered to vote in Tallahatchie County at all.<sup>168</sup> In fact, “none of the residents [of Tallahatchie

girlfriends. So, they kept beating him with the pistols they had taken as mementos of their service to the country. . . . They said Emmett was still defiant as he stood on the riverbank and was told to strip and as the gun was pointed at his head.

. . . .

. . . Oh, God, if Huie had only looked at the photograph of Emmett’s body, he would have known that Emmett was in no condition to stand at the riverbank and talk back. . . . After that savage beating Emmett took, I doubt that he could have stood at all.

TILL-MOBLEY & BENSON, *supra* note 70, at 212–13. Till-Mobley explained further:

William Bradford Huie negotiated for this story. His interview with Bryant and Milam had been cleared by their lawyers, and they were very careful not to bring anyone else into the picture. Bryant and Milam had already been acquitted of murder. They could never be tried again for murdering my son. Other people didn’t have that kind of protection.

*Id.* at 213. Ultimately, Till-Mobley filed a libel lawsuit against Huie and *Look* magazine, but her lawsuit was dismissed for lack of standing. *Id.* at 215–16. As Till-Mobley explained, because libel is a personal claim, only her son Emmett Till had standing to bring the lawsuit. *Id.* at 216. Roy Wilkins, then Executive Secretary for the National Association for the Advancement of Colored People (“NAACP”), wrote a letter to the editor of *Look* magazine, proclaiming “*Look’s* story of the Till murder in Mississippi carries the material covering the alleged remarks and acts of the dead boy as ‘facts’. . . Who stands behind these ‘facts?’” Roy Wilkins, Letter to the Editor, *The Confession in Look*, PBS: AM. EXPERIENCE, [http://www.pbs.org/wgbh/amex/till/sfeature/sf\\_look\\_letters.html](http://www.pbs.org/wgbh/amex/till/sfeature/sf_look_letters.html) (last visited Jan. 19, 2017).

165. Huie, *supra* note 9 (emphasis added).

166. U.S. FED. BUREAU INVESTIGATION, *supra* note 9, at 10.

167. WHITFIELD, *supra* note 19, at 35; see also Owen M. Fiss, *The Unruly Character of Politics*, 29 MCGEORGE L. REV. 1, 5 (1997) (“In many instances, blacks were disenfranchised and thus systematically excluded from the electoral process.”).

168. WHITFIELD, *supra* note 19, at 35; cf. Akhil Reed Amar & Jonathan L. Marcus, *Double Jeopardy Law After Rodney King*, 95 COLUM. L. REV. 1, 56 (1995) (“Unconstitutional racial stacking

County] could remember any blacks registered to vote there since the turn of the century.”<sup>169</sup> And, by the time Till was killed, white Mississippians had already voted to pass a constitutional amendment with a literacy requirement and poll provision that were designed to keep Blacks from voting.<sup>170</sup> Additionally, as previously noted, just weeks before Till’s lynching, two black men—Willie George Washington and Lamar Smith—had been murdered precisely because they were attempting to encourage other Blacks in the area to register to vote and exercise their right to vote.<sup>171</sup> In his confession, Milam revealed not only his concern with Blacks voting in elections, but also his knowledge that Blacks, given that they were numerically the majority in Mississippi and specifically in his county, could control politics if they had an actual opportunity to vote.<sup>172</sup>

After taking issue with the notion of Blacks voting in Mississippi, Milam expressed alarm about the possibility of racial integration in Mississippi’s public schools. In the same breath, he linked such integration with the concern most frequently raised by Whites as an argument against school integration: the potential for interracial love and intimacy between schoolchildren, particularly between black boys and white girls.<sup>173</sup> Specifically,

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destroys the very essence of a jury and, in effect, deprives the jury of its very representative status, its jurisdiction, its right to decide. If this argument works, a stacked jury is, constitutionally speaking, no jury; its acquittal, no acquittal; and so defendant, as a result of his own race-stacking, was never constitutionally in jeopardy.”). Of course, even if any Blacks had been eligible for the jury, none would have been placed on the jury. Even today, Blacks are disproportionately excluded from juries. *See generally* Robert J. Smith & Bidish J. Sarma, *How and Why Race Continues to Influence the Administration of Criminal Justice in Louisiana*, 72 LA. L. REV. 361 (2012) (examining the jury system and detailing “how African Americans are systematically disenfranchised from participating in the administration of justice and why these processes [specifically, non-unanimous jury verdicts, discriminatory peremptory challenges, and death-qualification] drive substantively unequal outcomes”).

169. WHITFIELD, *supra* note 19, at 35 (emphasis omitted).

170. *See* Price, *supra* note 123, at E5; *see also* Wilson, *supra* note 137, at 2 (discussing how “the tax book was deliberately made incorrect to disqualify [Blacks] who paid the tax” and a “number of [black] poll tax payers have been persuaded to have their names removed from the records”). The amendment required “prospective registrants to be able to read, write, and interpret the Federal and state constitutions to the satisfaction of the local registrar” and to pay a poll tax. Price, *supra* note 123, at E5; *see also* Heather K. Gerken, *A Third Way for the Voting Rights Act: Section 5 and the Opt-In Approach*, 106 COLUM. L. REV. 708, 711 (2006) (noting that “[l]iteracy tests, poll taxes, citizenship tests, at-large districting schemes—all were used seriatim to prevent blacks from voting”); Wilson, *supra* note 137, at 2.

171. *See supra* notes 136–38 and accompanying text.

172. Huie, *supra* note 9 (“Niggers ain’t gonna vote where I live. If they did, they’d control the government.”).

173. *See* ANGELA ONWUACHI-WILLIG, ACCORDING TO OUR HEARTS: *RHINELANDER V. RHINELANDER* AND THE LAW OF THE MULTIRACIAL FAMILY 190 (2013) (“The threat posed by interracial marriages was considered so dangerous that segregationists sought to prevent their formation through legal prohibition and through the racial segregation of spaces.” (quoting Reginald Oh, *Regulating White Desire*, 2007 WIS. L. REV. 463, 472–73)); Jack M. Balkin, Plessy, Brown, and Grutter: *A Play in Three Acts*, 26 CARDOZO L. REV. 1689, 1694–95 (2005) (noting that concerns about “‘social equality’ had another, more racially charged meaning” because “[i]t was

Milam offered the following rant in his *Look* magazine confession: “*They ain’t gonna go to school with my kids. And when a nigger gets close to mentioning sex with a white woman, he’s tired o’ livin’. I’m likely to kill him.*”<sup>174</sup> Here, too, Milam’s fears about racial integration in Mississippi’s public schools were no surprise. As Professor Lani Guinier has explained, “many poor and working-class whites [after *Brown*] saw themselves as victims . . . [and] saw desegregation as downward economic mobility. . . . In the words of Du Bois, the psychological wage of whiteness put ‘an indelible face to failure.’”<sup>175</sup> In fact, by his own words, Milam not only saw himself as a victim of what he viewed as a changing racial caste system in Mississippi, he also believed it was his duty to kill in order to prevent any further perceived downward spiral for Whites in Mississippi.

The strongest evidence of Milam and Bryant’s desire to protect the wages of whiteness came near the end of Milam’s confession, where Milam repeatedly referred to Till’s being a Northerner and where Milam complained over and over that Till simply refused to capitulate to the understood racial hierarchy of Mississippi society. Milam ended his confession, declaring that he had no choice but to murder Till in order to make an example of him for northern Blacks and any others who might even question the way of life in Mississippi. Milam said:

[W]hat else could we do? . . . Me and my folks fought for this country, and we got some rights. I stood there in that shed and listened to that nigger [Till] throw that poison at me [Till’s alleged talking back], and I just made up my mind. ‘*Chicago boy, I said, I’m tired of ‘em sending your kind down here to stir up trouble. Goddam you, I’m going to make an example of you—just so everybody can know how me and my folks stand.*’<sup>176</sup>

Indeed, prior to that point in his story, Milam claimed that his and Bryant’s original plan was simply to scare Till by taking him “to Rosedale, the Big River bends around under a bluff” that had a 100-foot drop.<sup>177</sup> In his article, journalist William Bradford Huie noted, “Big Milam’s idea was to stand him up there on that bluff, ‘whip’ him [Till] with the .45, and then shine the light on down there toward that water and make him think [they were] gonna

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also a code word for miscegenation and racial intermarriage”); Jed Rubenfeld, *The Right of Privacy*, 102 HARV. L. REV. 737, 759–60 (1989) (“[Interracial marriage and miscegenation] threatened to remake communities, to undermine the institutions that assured many their security and superiority (and others their inferiority), to throw into question a whole set of social arrangements and practices that relied on the presupposition of a natural and absolute division between races.”).

174. Huie, *supra* note 9 (emphasis added).

175. Lani Guinier, *From Racial Liberalism to Racial Literacy: Brown v. Board of Education and the Interest-Divergence Dilemma*, 91 J. AMER. HIST. 92, 102, 108 (2004).

176. Huie, *supra* note 9 (emphasis added).

177. *Id.*

knock him in.”<sup>178</sup> According to Huie, Milam announced, “Brother, if that won’t scare the *Chicago* ——, hell won’t.”<sup>179</sup> In other words, they purportedly planned only to scare Till until they realized that Till would not accept the idea of their being superior to him simply because they were white.<sup>180</sup>

Even before that, Milam had subtly noted one way in which Till had already broken the unwritten rules of the South, a transgression that ended up depriving Milam and Bryant of one of the few signs of respect that they, as part of the white working poor, received in their daily lives: being addressed as “Sir” or “Mr.” by Blacks. Raised in the North as opposed to the South, Till was not accustomed to racialized means of communication between Whites and Blacks in Mississippi, such as referring to all Whites, including white children, “as ‘Mr.,’ ‘Mrs.,’ ‘Miss,’ ‘Sir,’ or ‘Ma’am.’”<sup>181</sup> As a result, when Milam and Bryant woke Till and his relatives up from their sleep at 2:30 a.m. on August 28, 1955, and shouted orders at them, a groggy Till, unlike his uncle, did not respond with the customary “Yes, sir” or “No, sir.”<sup>182</sup> Huie’s retelling made it clear that Milam felt insulted by Till’s failure to abide by these rules. Huie wrote:

Big Milam shined the light in Bobo’s [Till’s] face, said: “You the nigger who did the talking?”

“Yeah,” Bobo replied.

Milam: “*Don’t say, ‘Yeah’ to me: I’ll blow your head off. Get your clothes on.*”<sup>183</sup>

178. *Id.*

179. *Id.* (emphasis added). The 2006 FBI investigation revealed that Bryant told the following to an undercover informant:

Well, we done whopped that son of a bitch, and I had backed out on killin’ the mother fucker . . . and we gonna take him to the hospital. But we done whopped that son of a bitch. I mean, it was, the, carryin’ him to the hospital wouldn’t have done him no good (laughs). Put his ass in the Tallahatchie River.

FED. BUREAU OF INVESTIGATION, *supra* note 9, at 92.

180. It is important to note that Milam may have been playing to the audience here to come across as more sympathetic.

181. *Id.* at 14.

182. WHITFIELD, *supra* note 19, at 16–21. Till was apparently calmer than expected when Milam and Bryant came to get him from the Wrights’ home. Indeed, he had so little idea of what awaited him that he insisted upon putting on his socks with his shoes before he left the house. As Till-Mobley explained, when Milam and Bryant came for him, “Emmett wanted to put on his socks. They told him he didn’t need socks. But he stopped. He said he didn’t wear shoes without socks.” TILL-MOBLEY & BENSON, *supra* note 70, at 124.

183. Huie, *supra* note 9 (emphasis added). At trial, even Till’s mother, who grew up knowing and practicing these racialized rules for addressing white people, nearly forgot to respond with a “sir” at the end of one of her answers. In her autobiography, she wrote: “I responded to every question [when I was being cross-examined on the witness stand], and always remembered to say ‘sir.’ Well, almost always. I slipped once and just said ‘no,’ and I hurried up and added ‘sir.’ I

Making plain his measure of the psychological wage that whiteness offered him as well as his disdain for anyone who might even think to suggest that any Black was as good as a white man, Milam proclaimed, “We were never able to scare him [Till]. They had just filled him so full of that poison that he was hopeless.”<sup>184</sup> Indeed, if Milam’s comment about his inability to rid Till of his “poisonous” thoughts were not enough, Milam’s confession indicates that it was Till’s alleged belief that he was equal to Milam that ultimately made him pull the trigger. Huie’s tale explained:

Big Milam ordered Bobo to pick up the fan.

He staggered under its weight . . . carried it to the river bank. They stood silently . . . just hating one another.

Milam: “Take off your clothes.”

Slowly, Bobo pulled off his shoes, his socks. He stood up, unbuttoned his shirt, dropped his pants, his shorts.

He stood there naked.

It was Sunday morning, a little before 7.

*Milam: “You still as good as I am?”*

*Bobo: “Yeah.”*

. . .

*That big .45 jumped in Big Milam’s hand. The youth turned to catch that big, expanding bullet at his right ear. He dropped.*<sup>185</sup>

Intelligence collected during the FBI’s investigation of the Till murder decades later corroborates this notion that Milam was most disturbed by his sense that Till believed that he was equal to him. Years later, Milam would tell an undercover FBI interviewer that “[d]uring the beating Till was never respectful to the men and did not say ‘yes sir’ or ‘no sir’” and that “[t]hings got out of hand and Till stated something to the effect of ‘he was as good as they are’” before Milam shot him.<sup>186</sup> In sum, Milam’s own words serve as the best proof of how his desire to protect the status and privileges—the property—of his whiteness motivated him to kill Till. Like many other white Mississippians, Milam simply was not ready and willing to give up even the arguably meager compensation that whiteness provided him.

Yet, much more was at stake than the protection of whiteness and its attendant privileges for these two men—Milam and Bryant. For white Mississippians as a whole, whiteness and the social significance that it would

mean, there was gap between those words, but I tried to hook them up before anybody could notice.” TILL-MOBLEY & BENSON, *supra* note 70, at 180.

184. Huie, *supra* note 9.

185. *Id.* (emphasis added).

186. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 90.

have for their own place in a post-*Brown* world was at stake. Against the backdrop of change that the *Brown* decisions threatened to create, Till, or rather the criticism and attacks that came from Northerners upon his death, ultimately came to represent a threat to white Mississippians' segregated way of life. To protect segregation and the benefits it yielded them, many white Mississippians, despite their initial reaction to distance themselves from Milam and Bryant, came around to protecting the two known murderers with the resources of a vigorous defense by all five attorneys in town and, ultimately, with their complicity in a not guilty verdict.<sup>187</sup>

This greater desire to preserve the social and legal meaning of whiteness in Mississippi after Till's death is most evident in the shift that white Mississippians made in their reactions to Milam and Bryant from the day that Till's body was discovered to the moment when major criticisms of racism in Mississippi began to emerge from the North. The initial reaction by many white Mississippians, though certainly not all Mississippians, to the horrific actions of Milam and Bryant was negative. Politicians, journalists, and lay citizens were quick to condemn the actions of the two men. For instance, Governor Hugh White immediately denounced Milam and Bryant's crimes, promising a "vigorous prosecution" of the men involved and asserting that "Mississippi deplores such conduct on the part of its citizens and certainly cannot condone it."<sup>188</sup> Governor White later called Till's death "a straight-out murder" (as opposed to a lynching).<sup>189</sup> Local newspapers referred to the murder as "a brutal, senseless crime and[,] just incidentally, one which merits not one iota of sympathy for the killers" and as a "'nauseating' killing 'way, way beyond the bounds of human decency.'"<sup>190</sup> Indeed, a number of white Mississippians made an express attempt to distance themselves from the two killers. For example, Deputy Sheriff John Ed Cothran of Leflore County emphasized that Milam and Bryant were not "decent" white people and that "the white people around here feel pretty mad about the way that poor little boy was treated . . . and they won't stand for this."<sup>191</sup> Citizens' Councils in Mississippi also made a point of noting that neither of the accused men was a member of or affiliated with their organization.<sup>192</sup> And, the very height of this outrage by white Mississippians came in the form of an indictment that none could have previously imagined—the indictment of Milam and Bryant, two

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187. See Goldsby, *supra* note 92, at 251 ("Feeling besieged by this 'outside' agitation, Mississippians' allegiances began to shift").

188. WHITFIELD, *supra* note 19, at 24 (citation omitted).

189. *Id.* (citation omitted). Some highlighted the politics involved in Governor White's insistence that the killing was a murder, not a lynching. For, "[a] 'lynching' . . . might stimulate inquiries into race relations when national attitudes were growing less tolerant of 'the Southern way of life,' and when such barbarism would affect the decisions of Northern corporations to locate or remain in so turbulent a climate." *Id.* at 25 (citation omitted).

190. *Id.* at 26 (citation omitted).

191. *Id.* at 25–26 (citation omitted).

192. *Id.* at 26 (citation omitted).

white men, for the murder of a black boy by 18 white men, most of them planters.<sup>193</sup> Most important, when Till's body was discovered, no white lawyer in Mississippi wanted to be connected to Milam and Bryant at all.<sup>194</sup> For some period after Till's body was discovered, the two men had no luck in obtaining counsel.<sup>195</sup>

Attitudes began to change, however, as the news of Till's brutal murder and pictures of his mutilated face and body began to circulate widely and after Mississippi became the target of great criticism from persons across the nation.<sup>196</sup> For example, Roy Wilkins, who then served as the Executive Secretary for the NAACP, proclaimed that "it would appear that the State of Mississippi has decided to maintain white supremacy by murdering children."<sup>197</sup> Mississippi officials' actions in indicting Milam and Bryant were even criticized. For instance, *Newsweek* "suspected that the official promise of 'swift justice' [by the state] was so firm precisely so that the cause of segregated public schools would not be weakened."<sup>198</sup> Such critiques of Mississippi's racial caste system drove white Mississippians together, making them feel compelled to defend their way of life.<sup>199</sup> With time, Milam and Bryant, who earlier could not find one lawyer between the two of them, eventually had all five lawyers in Tallahatchie County representing them pro bono.<sup>200</sup> White Mississippians from across the state also contributed and raised approximately \$10,000 in defense funds for the two murderers.<sup>201</sup>

At the end of it all, an all-white, all-male<sup>202</sup> (and largely poor) jury acquitted both Milam and Bryant of the charges against them.<sup>203</sup> Later, one of the two defendants' attorneys, J.J. Breland, made statements that revealed how the defense attorneys and other white Mississippians viewed the criticisms of the social and legal conditions that led to Till's death as a threat to their segregated way of life as well as how Milam and Bryant's counsel viewed their defense of the two men as a means of protecting the state's racial caste system.

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193. *See id.* at 24.

194. *See id.* at 27.

195. *See id.*

196. *See id.* at 27-29.

197. THE LYNCHING OF EMMETT TILL: A DOCUMENTARY NARRATIVE 18 (Christopher Metress ed., 2002).

198. WHITFIELD, *supra* note 19, at 28.

199. *See id.* at 25.

200. *See* Goldsby, *supra* note 92, at 250.

201. WHITFIELD, *supra* note 19, at 34. Finding jurors who had not contributed to the two men's legal defense funds proved to be somewhat difficult. *Id.*

202. Women were not allowed to serve on juries in Mississippi at the time. *See* Judith Resnik, *On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges*, 61 S. CAL. L. REV. 1877, 1911 (1988) (noting that "[w]omen's exclusion from and inclusion on juries were explained by assumed differences between women's and men's judgments").

203. WHITFIELD, *supra* note 19, at 44. Attorney J.J. Breland was reported to have said, "After the jury had been chosen . . . any first-year law student could have won the case." *Id.*

Although Breland considered lower class Whites such as Milam and Bryant to be “peckerwoods,” he viewed them as necessary to the fight, stating: “Hell, we’ve got to have our Milams and Bryants to fight our wars and keep the niggahs in line.”<sup>204</sup> Breland also asserted that he “hoped that Till’s death would be publicized and be a warning to African Americans to stay in their place.”<sup>205</sup> In so doing, Breland specifically identified aspects of propertied whiteness that he hoped to preserve in the state. He declared, “There ain’t gonna be no integration. . . . There ain’t gonna be no nigger votin’. And the sooner everybody in this country realizes it, the better. . . . If any more pressure is put on us, . . . the Tallahatchie River won’t hold all the niggers that’ll be thrown into it.”<sup>206</sup>

The defense of Milam and Bryant and, more so, the protection of the material and psychic value of whiteness, did not end there. White Mississippians would even work to protect Milam and Bryant from punishment for the crime that they readily admitted to engaging in: kidnapping. Knowing that Milam and Bryant were being brought before a grand jury in Leflore County for a possible kidnapping charge, Sheriff Strider leaked news that he had discovered about Till’s father, Louis Till, who served as a private in the U.S. Army:<sup>207</sup> the fact that Louis Till “was executed on July 2, 1945 by the U.S. Army for the rape of two women and the murder of another in Italy.”<sup>208</sup> The idea behind this release of information was that Milam and Bryant had done the world a favor by stopping Till before he committed any rapes and murders against white women and thus should be spared an indictment for kidnapping. The grand jury in Leflore County predictably obliged, understanding the meaning of the information and the significance of the whiteness that they had essentially sworn to defend.<sup>209</sup>

Further proof that white Mississippians were motivated more by their desire to preserve the property value of whiteness than any desire to protect

204. *Id.* at 54.

205. Turner, *supra* note 107, at 422.

206. WHITFIELD, *supra* note 19, at 54.

207. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 21.

208. *Id.* at 21 (footnote omitted). On November 3, 1955, *Jet* magazine ran an article covering the story of Louis Till through the words of his soldier friends from World War II. In this article, Louis Till’s fellow black soldiers claimed that he had been falsely charged and put to death in a “hush-hush way.” See CLENORA HUDSON-WEEMS, EMMETT TILL: THE SACRIFICIAL LAMB OF THE CIVIL RIGHTS MOVEMENT 71 (2006) (quoting *GI Buddies Say Till’s Dad Was “Railroaded” in Italy*, *JET*, Nov. 3, 1955, at 4–5). The article provided in relevant part:

Till and three other Negro GIs were whisked from the unit and carried to a stockade in another area. Later, all of Till’s records were taken from the company and none of the outfit’s Negro leaders was allowed to see any material on the case. . . . [One] Negro non-com said: “Till never confessed the crime and we felt he was innocent. It is inconceivable that the big, playful fellow could be a criminal. If the facts stood up, the Army should have not been so hush-hush about killing him.”

*Id.*

209. FED. BUREAU OF INVESTIGATION, *supra* note 9, at 85–86.

Milam and Bryant as individuals was the manner in which white Mississippians deserted Milam and Bryant when they were no longer at risk of any further charges. Once white Mississippians were no longer worried that a conviction of Milam and Bryant could function as an indictment against their racially segregated way of life, they left the two men to suffer on their own. As Huie would report just one year later in another *Look* magazine article entitled “What’s Happened to the Emmett Till Killers?,” both Milam and Bryant suffered severe personal consequences after their trial, though neither would ever suffer the ultimate consequence of the death penalty or incarceration.<sup>210</sup> According to Huie, a year after the publication of Milam’s confession in *Look* Magazine in 1956, both Milam and Bryant had “suffered disillusionment, ingratitude, resentment, [and] misfortune.”<sup>211</sup> First, boycotts by Blacks resulted in the actual closing of all three stores that the Milam and Bryant families had operated for years—stores that had very much been “dependent on Negro trade.”<sup>212</sup> Upon his store’s closing, Bryant “had trouble getting a job” and ultimately went to welding school, an act which Milam claimed would be of no help to Bryant and his family because “by the time you’ve learned it, you’ve ruined your eyes.”<sup>213</sup> More than 50 years later, in its 2006 investigative report for the reopening of the Till case, the FBI noted that Bryant had gone “partially blind from his earlier welding work” and operated a store in Ruleville, Mississippi before he was twice convicted in federal court for food stamp fraud violations.<sup>214</sup>

Additionally, Milam, who, prior to the murder, had employed Blacks to operate his mechanical cotton picking machines, could not find any Blacks who were willing to work for him after the Till murder and confession, so he was compelled to hire white men, whom he had to pay higher wages.<sup>215</sup> Having to pay higher wages made his business unsustainable. Not too long thereafter, Sheriff E.D. Williams of Sunflower County prohibited Milam from carrying any gun—in this case, the same .45 that Milam had used to kill Till.<sup>216</sup> In the end, Huie summed up the thoughts of Milam, who still, a year later, held no remorse for murdering the young Till, as follows:

So Milam is confused. He understands why the Negroes have turned on him, but he feels that the whites still approve what he did. Why, then, should they be less co-operative than when they were patting

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210. William Bradford Huie, *What’s Happened to the Emmett Till Killers?*, LOOK, Jan. 24, 1957, at 65–67.

211. *Id.* at 65.

212. *Id.*

213. *Id.*

214. See FED. BUREAU OF INVESTIGATION, *supra* note 9, at 25.

215. Huie, *supra* note 211, at 65.

216. *Id.*

him on the back, contributing money to him and calling him a ‘fine, red-blooded American.’<sup>217</sup>

Milam himself proclaimed, “I had a lot of friends a year ago. . . . Everything’s gone against me—even the dry weather, which has hurt my cotton. I’m living in a share-crop with no water in it. My wife and kids are having it hard.”<sup>218</sup> In essence, once defending Milam and Bryant was no longer tantamount to defending the state’s system of segregation, no white Mississippians cared about the fate the two men would suffer.

### III. TRAYVON MARTIN, THE PROTECTION OF WHITENESS AS PROPERTY, AND SECURING “THE WHITE SPACE”

As noted earlier, although the deaths of Emmett Till and Trayvon Martin were separated by more than half a century, the same racial forces that motivated the murder of Till and the “not guilty” verdict for Milam and Bryant in 1955 played a role in the killing of Martin and the acquittal of Zimmerman. For instance, just like in the Till case, pervasive stereotypes of black males as inherently dangerous, criminally suspect, and disruptive to the social order heavily influenced the actions of the killer and the jury in the Martin case. This Part of the Article explicates the role that both the material and psychic value of whiteness played in the death of Martin. It also examines the role that commonsense racism played in leading Zimmerman to follow and ultimately shoot Martin as Martin was returning to the home where he was a guest in the Retreat at Twin Lakes neighborhood in Sanford, Florida.

Part III.A begins by explaining the different ways in which practices of racism have shifted over time. Specifically, it explicates how Whites have increasingly turned to protecting “the white space” as a means of maintaining white authority and advantage during the post-Civil Rights era. Part III.B then turns to the tragic killing of Martin itself, offering a description of both the undisputed and disputed facts from that night. Part III.B also examines the relationship between Martin’s death, the protection of whiteness as property, and commonsense racism. In so doing, it focuses on the protection of “white” spaces or “white” real property, the protection of the social meaning or psychic value of whiteness, and the application of the residents’ “commonsense” belief in the stereotype that black males did not belong in the Retreat at Twin Lakes neighborhood and were criminally suspect and dangerous.

#### A. POST-CIVIL RIGHTS RACISM AND THE PROTECTION OF “THE WHITE SPACE”

In today’s society, although there is formal equality, meaning laws on the books that prohibit discrimination against traditionally subordinated groups

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217. *Id.* at 67.

218. *Id.*

like Blacks,<sup>219</sup> the preservation of whiteness and its attendant benefits and privileges, including the psychological wages of whiteness, still has great purchase among white Americans, particularly among those Whites who have not experienced immense material gains in their personal lives.<sup>220</sup> As the 2016 election of Donald Trump as President of the United States has shown, the white working-class and poor continue to resist associations made between them and the black working-class and poor, who, like Du Bois explained decades ago, have more in common with white laborers in terms of economic and political interests than the white elite.<sup>221</sup> Indeed, despite the more populist programs and policies proposed in the Democratic nominee Hillary Clinton's campaign platform, including a continued commitment to Medicaid and Medicare, the white working-class and poor overwhelmingly supported Trump, the Republican candidate who frequently placed blame for these voters' economic troubles on groups like immigrants, Muslims, Mexicans, and other people of color and who ironically plans to gut the Affordable Care Act and programs like Medicaid and Medicare that provide assistance to this class of voters.<sup>222</sup> Additionally, middle-class and upper middle-class, suburban, educated Whites—meaning the very people who made the most significant material gains over the past ten years—lent tremendous political support to Trump with their votes.<sup>223</sup> On the other hand, the black working-class, poor, and middle-class offered strong support to the Democratic candidate Hillary Clinton.<sup>224</sup>

The persistent value placed on whiteness as property, however, does not mean that its preservation works in exactly the same way as it did in 1955. As Ian Haney López has explained, the operation of racism, including its structural dimensions, morphs over time.<sup>225</sup> Such changes have occurred not only through the law, but also in the language and actions that are used,

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219. See Eyer, *supra* note 20, at 1–2; Jones, *supra* note 20, at 58–59.

220. See Flagg, *supra* note 53, at 105 (“It is no longer acceptable in most white circles overtly to express sentiments of white supremacy. But whites remain attached to a subtle and culture-borne sense of superiority vis-à-vis people of color. The law, and the judges who interpret and apply it, have played an important role in the construction of race and its social meanings.”); see also HACKER, *supra* note 59, at 217.

221. See Alec Tyson & Shiva Maniam, *Behind Trump's Victory: Divisions by Race, Gender, Education*, PEW RES. CTR. (Nov. 9, 2016), <http://www.pewresearch.org/fact-tank/2016/11/09/behind-trumps-victory-divisions-by-race-gender-education> (reporting that “[t]wo-thirds (67%) of non-college whites backed Trump, compared with just 28% who supported Clinton, resulting in a 39-point advantage for Trump among this group”).

222. See Paul Krugman, Opinion, *Seduced and Betrayed by Trump*, N.Y. TIMES (Dec. 2, 2016), <http://www.nytimes.com/2016/12/02/opinion/seduced-and-betrayed-by-donald-trump.html>.

223. Eric Sasson, *Blame Trump's Victory on College-Educated Whites, Not the Working Class*, NEW REPUBLIC (Nov. 15, 2016), <https://newrepublic.com/article/138754/blame-trumps-victory-college-educated-whites-not-working-class> (noting that “[t]he kind of change Trump was espousing wasn't supposed to connect with this group”).

224. See Tyson & Maniam, *supra* note 221.

225. HANEY LÓPEZ, *supra* note 23, at xii.

whether consciously or non-consciously, to maintain this nation's longstanding racial hierarchy, which places whiteness at the top.

As Devon Carbado and Mitu Gulati have explicated, in the post-Civil Rights era where the State no longer explicitly and openly endorses and encourages racial subordination, discrimination, and violence against people of color (like it did during the pre-Civil Rights era), most white individuals express a belief in racial equality; they know that they cannot and should not expressly exclude or otherwise discriminate against people of color because of their race.<sup>226</sup> In fact, most Whites describe themselves as “colorblind.”<sup>227</sup> Critically, these individuals accept that a few racially palatable<sup>228</sup> people of color must be included in their workplaces, their schools, and their neighborhoods, but they desire and demand a limit to such inclusion.<sup>229</sup> As Cheryl Harris explains in her seminal article *Whiteness as Property*, the right to exclude is critical to maintaining the value of whiteness.

In contemporary society, because the Civil Rights Movement resulted in the enactment of laws that no longer allow explicit exclusion of people of color in arenas such as education, work, and housing, spatial segregation has taken on a more prominent role than it did during the pre-Civil Rights era when Till was murdered. In 1955, although racial segregation was important and very well-established through both law and social practices,<sup>230</sup> the absence of laws and legal enforcement offering protection to African Americans created, in some ways, a greater focus on maintaining Whites' control over challenges, both symbolic and actual, to white authority and power through social and legal punishment and violence. During the pre-Civil Rights era, it was not uncommon for Blacks to live physically near Whites, particularly if Blacks worked on a white person's land or were supervised by that person. Indeed, the Till case illustrates this reality, as Till's aunt and uncle, the Wrights, were living in a house right next to a white family when Till was kidnapped and killed, a white family whose help the Wrights sought immediately after Till had been kidnapped by Milam and Bryant.<sup>231</sup> As Till's

226. DEVON CARBADO & MITU GULATI, ACTING WHITE? RETHINKING RACE IN “POST-RACIAL” AMERICA 2 (2013).

227. BONILLA-SILVA, *supra* note 26, at 1 (“Most whites assert they ‘don’t see any color, just people.’”).

228. Carbado and Gulati assert that racially palatable people of color are those who are “racially comfortable in part because they negate rather than activate racial stereotypes.” CARBADO & GULATI, *supra* note 226, at 2.

229. *Id.*

230. See generally DOUGLAS A. MASSEY & NANCY S. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

231. See WHITFIELD, *supra* note 19, at 20 (“Soon after the abduction, Elizabeth Wright [Till's aunt] had asked a white neighbor to intercede, but he refused.”); see also FED. BUREAU OF INVESTIGATION, *supra* note 9, at 14–15 (detailing how “whites were to interact with blacks when problems arose”). In its 2006 Investigative Report, the FBI explained this protocol for resolving disagreements and wrongs for Whites and Blacks in the Mississippi Delta. The report indicated:

cousin and the Wrights' son, Simeon, explained, "once the men [Milam and Bryant] were gone, Mama [Elizabeth Wright] frantically ran next door to ask our white neighbors for help," but they refused.<sup>232</sup> Simeon further explicated: "When the man of the house, who was the straw boss of our farm, refused to offer any assistance, it only compounded my mother's hysteria. She was completely mortified at his refusal to help."<sup>233</sup>

However, since the late 1960s and 1970s when courts began to enforce desegregation orders in schools,<sup>234</sup> Whites have become increasingly concerned with ensuring spatial segregation from people of color, particularly Blacks.<sup>235</sup> As sociologists Douglas Massey and Nancy Denton have explained:

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[A] de facto institution of separate justice was in place for whites and blacks. The white population could rely on the normal vestments of government and call on the local sheriff's department for assistance in criminal matters. This was not the case for blacks. The black population was dealt with in a manner which some historians have called "Negro Law," a system where the gravity of the crime was determined in large part by its impact on whites.

. . . If a white person had a problem with a black person, the issue would be taken up with the black person's "land owner," the person who owned the farm where the black person, or that person's family, sharecropped. The "land owner" would then take care of the problem by a number of means. . . . Much the same was done in the case of black on black crime/problems. The victim's "land owner" would take up the issue with the subject's "land owner" and the issue would be resolved. The black community had almost no recourse when dealing in problems with whites, especially crimes committed against blacks by whites.

FED. BUREAU OF INVESTIGATION, *supra* note 9, at 14–15; *see also* Cox, *supra* note 115, at 588 ("During a lynching it would be foolhardy for Negroes of the community to seek the protection of the police station, the sheriff's office or the courthouse. . . . The custom of Negroes is rather to go to the homes of 'white friends,' who would be able to certify to the lynchers that they are 'good, well-behaved niggers.' The act of relying upon white friends for primary security has a double significance. It demonstrates to the lynchers that the Negro is willing to accept the personal authority and guardianship of white people as the final guarantee of any possible rights which he may have. . . . In the second place, the practice is significant in that it provides a valuable lesson intractable to Negroes. Negroes who have been saved by white friends are indebted to the latter, and subsequently such Negroes tend to act as a check upon any of their fellows who might harbor ideas of revolt.").

232. WRIGHT & BOYD, *supra* note 77, at 59.

233. *Id.*

234. *See generally* GARY ORFIELD, JOINT CTR. FOR POLITICAL STUDIES., PUBLIC SCHOOL DESEGREGATION IN THE UNITED STATES, 1968–1980 (1983), [https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/public-school-desegregation-in-the-united-states-1968-1980/orfield\\_american-desegregation-1983.pdf](https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/public-school-desegregation-in-the-united-states-1968-1980/orfield_american-desegregation-1983.pdf).

235. MASSEY & DENTON, *supra* note 230, at 11 ("Whereas segregation declines steadily for most minority groups as socioeconomic status rises, levels of black-white segregation do not vary significantly by social class."). They also received significant support in ensuring residential segregation from U.S. Supreme Court decisions like *Milliken v. Bradley*, which held that public school integration could not be achieved through city-suburban desegregation efforts. *Milliken v. Bradley*, 433 U.S. 267 (1977). Also, as Bonilla-Silva has pointed out, "covert behaviors such as not showing all available units [renters or buyers of color], steering minorities and whites into certain neighborhoods, quoting higher rents or process to minority applicants, or not advertising

[a]lthough whites now accept open housing in principle, they remain prejudiced against black neighbors in practice. Despite whites' endorsement of the ideal that people should be able to live wherever they can afford to regardless of race, a majority still feel uncomfortable in any neighborhood that contains more than a few black residents.<sup>236</sup>

Indeed, in his book *Searching for Whitopia: An Improbable Journey to the Heart of White America*, writer Rich Benjamin describes his two-year exploration of what he calls Whites' search for "Whitopia," or Whites' migration and exodus to "exurbs' that are extremely white," in response to growing immigration and an increasingly racially and ethnically diverse society.<sup>237</sup> Benjamin explains:

Most whites are not drawn to a place explicitly because it teems with other white people. Rather, the place's very whiteness implies other perceived qualities. Americans associate homogenous white neighborhood with higher property values, friendliness, orderliness, hospitality, cleanliness, safety, and comfort. These seemingly race-neutral qualities are subconsciously inseparable from race and class in many whites' minds. Race is often used as proxy for those neighborhood traits. And, if a neighborhood is known to have those traits, many whites presume—without giving it a thought—that the neighborhood will be majority white.<sup>238</sup>

Sociologist Elijah Anderson has offered further insights on Whites' obsession with remaining physically separated from people of color, especially Blacks, in his article, "The White Space" in the inaugural issue of *Sociology of Race and Ethnicity*.<sup>239</sup> Noting that "the white space" is a "perceptual category,"<sup>240</sup> Anderson explicates that it, the white space, must be understood alongside "the iconic ghetto," another perceptual category in which all Blacks are presumed to live and belong, regardless of class status.<sup>241</sup> In the white space, Anderson notes, Blacks "attract special scrutiny; on occasion, they get stopped and questioned by the police. . . . [and] they can be subject to social,

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units at all are the weapons of choice" that have facilitated a desire by Whites for spatial segregation. BONILLA-SILVA, *supra* note 26, at 3.

236. MASSEY & DENTON, *supra* note 230, at 11.

237. See RICH BENJAMIN, *SEARCHING FOR WHITOPIA: AN IMPROBABLE JOURNEY TO THE HEART OF WHITE AMERICA* 24 (2009).

238. *Id.* at 9; see also Bell, *supra* note 7, at 868–70 (describing what she calls "the integration nightmare").

239. See generally Anderson, *supra* note 24.

240. *Id.* at 10.

241. *Id.* at 11 (noting that "members of the general public often treat blackness in a person as a 'master status' that supersedes their identities as ordinary law-abiding citizens"); see also Elijah Anderson, *The Iconic Ghetto*, 642 ANNALS AM. ACAD. POL. & SOC. SCI. 8, 10 (2012).

if not physical, jeopardy.”<sup>242</sup> Importantly, Anderson lays out both what can occur when Whites encounter a black person unknown to them in “the white space” and how Whites may feel when they see a black person in their “white space” or their neighborhood. Speaking of how Whites approach unknown Blacks in their area, he writes:

When the anonymous black person enters the white space, others there immediately try to make sense of him or her—to figure out “who that is,” or to gain a sense of the nature of the person’s business and whether they need to be concerned. In the absence of routine social contact between blacks and whites, stereotypes can rule perceptions, creating a situation that estranges blacks. In these circumstances, almost any unknown black person can experience social distance, especially a young black male—not because of his merit as a person but because of the color of his skin and what black skin has come to mean as others in the white space associate it with the iconic ghetto.

In other words, whites and others often stigmatize anonymous black persons by associating them with the putative danger, crime, and poverty of the iconic ghetto, typically leaving blacks with much to prove before being able to establish trusting relations with them.<sup>243</sup>

Additionally, much like Milam, Bryant, and other white Mississippians reacted to the threat that *Brown* represented to them in 1954 and 1955, Anderson explains how many Whites respond to the presence of Blacks in what they perceive as white spaces as a threat to their status and security. Anderson asserts:

For many of them, blacks in the white space may be viewed as a spectacle of black advancement at the expense of whites. Black presence thus becomes a profound and threatening racial symbol that for many whites can personify their own travail, their own insecurity, and their own sense of inequality. While certainly not all are guilty of such acts, many can be mobilized in complicity to “protect” the white space . . . where whites belong and black people can so easily be reminded that they do not.<sup>244</sup>

Pulling together insights from scholars’ explications of whiteness as property, including the psychological wages of whiteness; commonsense racism; “the white space”; and what I call “spacism,” an emerging phenomenon by which Whites work to maintain white advantage through policing physical racial segregation,<sup>245</sup> the next Part of this Article explicates

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242. Anderson, *supra* note 24, at 11.

243. *Id.* at 13 (citation omitted).

244. *Id.* at 15.

245. I am completing an article tentatively titled “Racism ‘Comes Spacism” that spells out

how the policing of whiteness, including “the white space” and the psychic value of whiteness, motivated the killing of Trayvon Martin and laid the groundwork for an acquittal of Zimmerman. Part II.B details key disputed and undisputed facts of the Martin case, and Part II.C explains how the desire to police and maintain the boundaries of whiteness resulted in the killing of Martin.

B. BEING “OUT OF PLACE” IN A DIFFERENT WORLD: TRAYVON MARTIN AND A POST-RECESSION WHITELASH

Like Till, Trayvon Martin, who had just turned 17 years old before he was killed, found himself visiting family in a strange new town in February of 2012.<sup>246</sup> Following a ten-day suspension order from his high school, Martin accompanied his father, Tracy Martin, on a trip to Sanford, Florida, which was four hours away from the home of his mother Sybrina Fulton in Miami, Florida.<sup>247</sup> Martin, whom English teacher Michelle Kypriss described as “an A and B student who majored in cheerfulness,”<sup>248</sup> had been suspended for having a baggie with marijuana residue in his school bag,<sup>249</sup> and his father Tracy decided to bring Martin along to Sanford as a means of preventing Martin from unproductively using his suspension time away from school by simply hanging out with friends in Miami.<sup>250</sup> On the night of the fatal shooting, Martin was a guest at the home of his father’s girlfriend, Brandy Green, a black woman who was renting a townhome in the Retreat at Twin

the factors of this phenomenon. In a different article, I also examine the Martin trial and outcome in more detail, specifically looking at the shared trope of protecting white womanhood in the Till and Martin cases.

246. See *Trayvon Martin Shooting Fast Facts*, *supra* note 3.

247. See Greg Botelho, *What Happened the Night Trayvon Martin Died*, CNN (May 23, 2012), <http://www.cnn.com/2012/05/18/justice/florida-teen-shooting-details>.

248. Bianca Prieto & Robert Nolin, *Tensions Still Simmer in Trayvon Martin Shooting Case*, ORLANDO SENTINEL (Mar. 17, 2012, 10:51 PM), [http://articles.orlandosentinel.com/2012-03-17/news/os-trayvon-martin-shooting-tension-20120317\\_1\\_shooting-death-english-teacher-uncle](http://articles.orlandosentinel.com/2012-03-17/news/os-trayvon-martin-shooting-tension-20120317_1_shooting-death-english-teacher-uncle).

249. *Trayvon Martin Was Suspended Three Times from School*, NBC NEWS (Mar. 26, 2012, 12:19 PM), [http://usnews.nbcnews.com/\\_news/2012/03/26/10872124-trayvon-martin-was-suspended-three-times-from-school](http://usnews.nbcnews.com/_news/2012/03/26/10872124-trayvon-martin-was-suspended-three-times-from-school) (noting that “[t]here was no substance found,” “[t]here was a baggie that school officials believe may have formerly contained marijuana,” and “[t]here was no arrest or citation from the police”). Martin was previously suspended two other times. He was first suspended for either being late to school or missing school. *Id.* The second time, Martin and his friends were suspended in October of 2011 for writing “W.T.F.” on a hallway locker. *Id.* According to a report, “[a] security guard looking through [Martin’s] backpack for the graffiti marker . . . found women’s rings and earrings and a screwdriver, described by the staffer as a ‘burglary tool.’” *Id.* Benjamin Crump, the attorney for Martin’s parents, indicated that Martin’s parents had never heard about the bag of jewelry. *Id.* Crump also asserted: “[I]t’s completely irrelevant to what happened Feb. 26 . . . They never heard this and don’t believe it’s true. If it were true, why wouldn’t they call the parents? Why wasn’t he arrested?” *Id.* In response to this news, Martin’s mother, Sybrina Fulton, declared: “They killed my son and now they’re trying to kill his reputation.” *Id.*

250. See Botelho, *supra* note 247.

Lakes neighborhood in Sanford, Florida.<sup>251</sup> That night, while Tracy Martin and Brandy Green went on a dinner date, Martin and Green's 14-year-old son, Chad Joseph, remained in the townhome.<sup>252</sup>

Just as Mississippi and its culture were foreign to the Illinois-born-and-bred Till, Sanford must have felt completely different to Martin, a Miami resident. Sanford was not just a few hundred miles away from the popular city; it was vastly different in culture. With more than 2.5 million people and a bustling city life in areas like South Beach, Miami is often referred to as the city in Florida that is not at all southern in character.<sup>253</sup> Its population is more than two-thirds Latino, with black Latinos consisting of only three percent of that group and white Latinos making up the rest.<sup>254</sup> A growing majority of residents in Miami are Spanish-speaking, and only 27.2 % of the city's residents speak English only.<sup>255</sup> In fact, the prevalence of Spanish as a language in Miami has resulted in out-migration by non-Latino Whites who feel alienated because they do not speak Spanish.<sup>256</sup> As Juan Clark, a sociology professor at Miami Dade College, explicates, "The Anglo population is leaving . . . . One of the reactions is to emigrate toward the [N]orth. They resent the fact that (an American) has to learn Spanish in order to have advantages to work. If one doesn't speak Spanish, it's a disadvantage [here in Miami]." <sup>257</sup> Additionally, many white natives of Miami have experienced the city as a home lost. For instance, Lauren McCleary, who left Miami in 1987 to move to Vermont, indicates that Miami no longer feels like her hometown, explaining: "I don't like being there anymore. It is very, very different . . . . I cannot live there anymore, I can't speak their language."<sup>258</sup> Similarly, librarian Martha Phillips, 61, worries that Miami "will be like a branch of Latin America" and "resent[s] the fact that people seem to expect that the people who live here adjust to their ways, rather than learning English and making adjustments."<sup>259</sup> Furthermore, although only 20% of Miami's population is black, Martin lived with his mother in Miami Gardens, an area of Miami that is predominantly black and is governed by a black mayor, an all-black City Council, and a black police chief.<sup>260</sup>

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251. See BLOOM, *supra* note 5, at 39.

252. *Id.*

253. See *QuickFacts: Miami-Dade County, Florida*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/12086> (last visited Jan. 19, 2017).

254. JOHN R. LOGAN, HOW RACE COUNTS FOR HISPANIC AMERICANS 6 (2003), <http://mumford.albany.edu/census/BlackLatinoReport/BlackLatino01.htm>.

255. See Gisela Salomon, *In Miami, Spanish Is Becoming the Primary Language*, USA TODAY (May 29, 2008, 4:38 AM), [http://usatoday30.usatoday.com/news/nation/2008-05-29-580323573\\_x.htm](http://usatoday30.usatoday.com/news/nation/2008-05-29-580323573_x.htm).

256. See *id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Mayor & City Council*, CITY OF MIAMI GARDENS, <http://www.miamigardens-fl.gov/mayorcouncil/index.html> (last visited Jan. 19, 2017) (linking to individual pages for the mayor and

In contrast to Miami, Sanford has a smaller population, with approximately 58,000 residents.<sup>261</sup> Although Sanford, too, is racially and ethnically diverse, it is not as ethnically diverse as Miami. The population of Sanford is approximately two-thirds white, with white Latinos making up approximately 15% of that population.<sup>262</sup> The population in Sanford is also 30% black.<sup>263</sup>

Although both Sanford and Miami have horrible histories regarding racial profiling and shootings of black men by the local police,<sup>264</sup> Sanford possesses its own special place in racial history. Indeed, Sanford's racialized history begins with its "official" founding during the 1870s when Henry Shelton Sanford formed the town with the intention of shipping former black slaves to the Belgian Congo.<sup>265</sup> Sanford believed that a "Congo peopled with African Americans could be 'the ground to draw the gathering electricity from that black cloud spreading over the Southern states.'"<sup>266</sup> Decades later, in 1911, the town of Sanford forced a hostile merger with an independent black town called Goldsboro, stripping Goldsboro of its charter, taking over the black-centered town, and then renaming Goldsboro's streets, which had been named after its black pioneers.<sup>267</sup> According to historian Francis Oliver, Sanford "never paid restitution to the people who lost their [city] jobs" as a result of this hostile takeover.<sup>268</sup> Years later, in 1946, the town of Sanford became famous, or rather infamous, for chasing away one of baseball's greatest heroes.<sup>269</sup> Sanford, after all, was the town where white residents ran Jackie

city council members).

261. See *QuickFacts: Sanford City, Florida*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/1263650> (last visited Jan. 19, 2017).

262. See *id.*

263. See *id.*

264. See, e.g., Don Van Natta, Jr., *Race Issues Rise for Miami Police*, N.Y. TIMES (Mar. 22, 2011), <http://www.nytimes.com/2011/03/23/us/23miami.html> (noting "the seventh African-American man to be shot and killed by Miami police officers in eight months"). One common, but incorrect assumption is that Latinos, given their "social status" as minorities, do not hold the negative stereotypes and views of Blacks. See Tanya Katerí Hernández, *Multiracial Matrix: The Role of Race Ideology in the Enforcement of Antidiscrimination Laws, a United States-Latin America Comparison*, 87 CORNELL L. REV. 1093, 1134-53 (2002) (detailing, for example, the racism against Afro-Cubanos in Cuba); see also generally Tanya Katerí Hernández, *To Be Brown in Brazil: Education and Segregation Latin American Style*, 29 N.Y.U. REV. L. & SOC. CHANGE 683 (2005) (unpacking this myth with regard to race and education in Brazil).

265. Adam Weinstein, *Trayvon Martin's Death Extends Sanford's Sordid Legacy*, MOTHER JONES (Mar. 28, 2012, 5:00 AM), <http://www.motherjones.com/politics/2012/03/trayvon-martin-sanford-racial-history>.

266. *Id.*

267. See *id.*; Martin E. Comas, *Trayvon Martin's Death Reminds Sanford of History of Racial Tension*, ORLANDO SENTINEL (Mar. 14, 2012 11:05 PM), [http://articles.orlandosentinel.com/2012-03-14/news/os-trayvon-martin-shooting-sanford-20120314\\_1\\_sanford-police-lieutenant-black-pioneers-celery-avenue](http://articles.orlandosentinel.com/2012-03-14/news/os-trayvon-martin-shooting-sanford-20120314_1_sanford-police-lieutenant-black-pioneers-celery-avenue).

268. Weinstein, *supra* note 265.

269. Tom Brown, *Racist Past Haunts Florida Town Where Trayvon Died*, REUTERS (Apr. 8, 2012 7:14 AM), <http://www.reuters.com/article/2012/04/08/us-usa-florida-sanford-idUSBRE8370692>

Robinson out of town after he moved there to play on the Brooklyn Dodgers' farm team.<sup>270</sup> And, they did so not just once but twice.<sup>271</sup>

By the time that Martin was killed by Zimmerman in 2012, Sanford was a town rife with racial tensions. Recent events had already eroded the trust between black residents and the Sanford Police Department.<sup>272</sup> Black residents of Sanford were still angered by two troubling police investigations. The first investigation involved two white security guards, Patrick Swofford and Bryan Ansley, who shot and killed an unarmed, black, 16-year-old male, Tavares McGill.<sup>273</sup> Swofford and Ansley claimed that McGill tried to run them down in his car after he dropped off friends in the parking lot of an apartment complex, so they shot and killed him in self-defense.<sup>274</sup> “[A] review of more than 600 pages of evidence show[ed] that the bullet that killed McGill hit him in the middle of the back and that Swofford kept firing after the car was no longer headed toward him.”<sup>275</sup> Although both Swofford and Ansley were eventually charged with manslaughter, a judge later dismissed both cases for lack of evidence.<sup>276</sup> The second investigation involved an initial cover-up in 2010 of an unprovoked assault and battery on a homeless black man by a white police lieutenant's son, Justin Collison.<sup>277</sup> Although Collison had been caught on videotape knocking out the homeless black man for no reason, Collison was not arrested or charged with battery for a month.<sup>278</sup> Once charged, Collison pled guilty to a misdemeanor, receiving a sentence of

0120408.

270. See *id.*; Weinstein, *supra* note 265.

271. See Brown, *supra* note 269; Weinstein, *supra* note 265.

272. See Audra D.S. Burch, *Federal Mediator Thomas Battles Serves As Peacemaker in Sanford*, MIAMI HERALD (July 4, 2013, 7:01 PM), <http://www.miamiherald.com/news/state/florida/trayvon-martin/article1953005.html> (“Blacks, who had long felt mistreated by the Sanford Police Department, saw in Trayvon another case of mistreatment by law enforcement.”); see also Cara Buckley, *Police Chief in Florida Tries to Ease Old Tensions*, N.Y. TIMES (June 16, 2013), <http://www.nytimes.com/2013/06/17/us/in-city-of-zimmerman-trial-police-chief-navigates-race-relations.html> (“While the enmity toward the police is rooted in Sanford’s segregationist past, black residents and leaders said it had been fueled by what they described as mistreatment and the agency’s failure to thoroughly investigate the shooting deaths of many young black men.”); *History of Racial Tension for Sanford and Blacks*, *supra* note 2 (quoting Turner Clayton, Jr., President of the Seminole County NAACP, as saying: “There is no trust. There is no confidence.”).

273. See Trymaine Lee, *Trayvon Martin Case Salts Old Wounds and Racial Tension*, HUFFINGTON POST (Mar. 14, 2012 7:59 PM), [http://www.huffingtonpost.com/2012/03/14/trayvon-martin-sanford-florida\\_n\\_1345868.html](http://www.huffingtonpost.com/2012/03/14/trayvon-martin-sanford-florida_n_1345868.html).

274. See *id.*; Rene Stutzman, *Fatal Bullet Hit Teenager in Back, Records Reveal*, ORLANDO SENTINEL (Jan. 29, 2006), [http://articles.orlandosentinel.com/2006-01-29/news/GUARDS29\\_1\\_sanford-ansley-security-guards](http://articles.orlandosentinel.com/2006-01-29/news/GUARDS29_1_sanford-ansley-security-guards).

275. Stutzman, *supra* note 274.

276. Lee, *supra* note 273.

277. *History of Racial Tension for Sanford and Blacks*, *supra* note 2; Lee, *supra* note 273. At this time, Brian Tooley, not Lee, was police chief. *History of Racial Tension for Sanford and Blacks*, *supra* note 2.

278. Mike Schneider & Suzette LaBoy, *History of Racial Tension for Fla. City and Blacks*, YAHOO! NEWS (Mar. 23, 2012), <http://news.yahoo.com/history-racial-tension-fla-city-blacks-073406601.html>.

probation only.<sup>279</sup> Black residents in Sanford were also frustrated because the local police seemed to frequently stop black children based on their clothing, wrongfully suspecting the kids of gang activity.<sup>280</sup> As then-local NAACP President Turner Clayton explicated, “[p]eople are outraged [about the killing of Trayvon Martin] because they never recovered from the last shooting, or recovered from the beating a year or so ago with the policeman’s son . . . . All of these things are escalating and simmering, and it’s going to reach a point where it’s going to explode.”<sup>281</sup> After Martin was killed, then-Police Chief Bill Lee stepped down, and Cecil E. Smith, a black man, replaced Lee as Police Chief (with the express goal of rebuilding trust in the community). Great skepticism, however, remained.<sup>282</sup> One black resident remarked that Sanford “has been a slave town forever.”<sup>283</sup> Another declared: “Two months won’t take away six decades . . . . At the end of the day, he’s [meaning Smith] still chief over those officers that have the same mentality.”<sup>284</sup> Similarly, Clayton asserted: “[I]t seemed that things would get better, but with this Martin case, seems we’re dealing with the same old Sanford regime.”<sup>285</sup>

At approximately 7:15 p.m. on February 26, 2012, Martin was returning from the local 7-Eleven after a candy- and soda-run to Green’s home in the Retreat at Twin Lakes, the gated community where both Green and Zimmerman lived.<sup>286</sup> Likely due to the rain that night, Martin pulled the hood of his black hoodie over his head as he spoke to his friend Rachael Jeantel on the phone.<sup>287</sup> At the same time, George Zimmerman, who was the captain of the gated subdivision’s neighborhood watch program, was driving to Target in his SUV. Upon spotting Martin in the rain, Zimmerman made a 911 call to report Martin as a suspicious person. The exchange between Zimmerman and the 911 operator proceeded in relevant part as follows:

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279. *History of Racial Tension for Sanford and Blacks, supra* note 2. The homeless man who was the victim of Collison’s battery was paid an undisclosed sum by Collison’s family and later asked for the charges to be dropped. Prosecutors did not drop the charges, which is when Collison pled guilty to a misdemeanor. *See Lee, supra* note 273.

280. *See Schneider & LaBoy, supra* note 278.

281. *Lee, supra* note 273; *see also* Tracey Meares, *Ferguson’s Schools Are Just As Troubling As Its Police Force*, NEW REPUBLIC (Aug. 22, 2014), <http://www.newrepublic.com/article/119169/ferguson-missouri-schools-are-just-troubling-its-police-force> (explicating how the anger and protests in Ferguson are not simply a reaction to the shooting of an unarmed teenager, but to longstanding mistreatment and devaluation of Blacks when it comes to housing, education, voting, representation, and police services).

282. Buckley, *supra* note 272.

283. *Id.*

284. *Id.*

285. *Lee, supra* note 273.

286. *See Botelho, supra* note 247.

287. *See id.*

Zimmerman: Hey, we've had some break-ins in my neighborhood, and there's a real suspicious guy, uh, [near] Retreat View Circle, um, the best address I can give you is 111 Retreat View Circle. This guy looks like he's up to no good, or he's on drugs or something. It's raining and he's just walking around, looking about.

Dispatcher: OK, and this guy is he white, black, or Hispanic?

Zimmerman: He looks black.

Dispatcher: Did you see what he was wearing?

Zimmerman: Yeah. A dark hoodie, like a grey hoodie, and either jeans or sweatpants and white tennis shoes. He's [unintelligible] he was just staring. . .

Dispatcher: OK, he's just walking around the area. . .

Zimmerman: . . .looking at all the houses.

Dispatcher: OK.

Zimmerman: Now he's just staring at me.

Dispatcher: OK—you said it's 1111 Retreat View? Or 111?

Zimmerman: That's the clubhouse. . .

Dispatcher: That's the clubhouse, do you know what the—he's near the clubhouse right now?

Zimmerman: Yeah, now he's coming towards me.

Dispatcher: OK.

Zimmerman: He's got his hand in his waistband. And he's a black male.

Dispatcher: How old would you say he looks?

Zimmerman: . . . late teens.

Dispatcher: Late teens, ok.

Zimmerman: Somethings wrong with him. Yup, he's coming to check me out, he's got something in his hands, I don't know what his deal is.

Dispatcher: Just let me know if he does anything ok

Zimmerman: How long until you get an officer over here?

Dispatcher: Yeah we've got someone on the way, just let me know if this guy does anything else.

Zimmerman: Okay. These assholes they always get away.<sup>288</sup>

After discovering that Zimmerman, a stranger, was staring at him, Martin, a guest in the gated community, told his friend Rachel Jeantel that a strange man was "following him" and "kept looking at him."<sup>289</sup> When asked by Jeantel what the man looked like, Martin informed Jeantel that a "creepy ass cracker" was following him.<sup>290</sup> Soon thereafter, Martin told his friend Jeantel, "The nigga is still following me," and noted that he was going to try to lose the strange man by walking home.<sup>291</sup> Worried that the unknown man—Zimmerman—might be a rapist, Jeantel told Martin to run, which he did.<sup>292</sup>

At this point during the four-minute phone call, Zimmerman told the 911 operator that Martin began to run. The 911 operator responded, "He's running? Which way is he running?," and then the following colloquy took place:

Zimmerman: Down towards the other entrance to the neighborhood.

Dispatcher: Which entrance is that that he's heading towards?

Zimmerman: The back entrance . . . fucking [coons/goons/punks/unintelligible].<sup>293</sup>

Eventually, the 911 operator began to suspect, due to Zimmerman's breathing, that Zimmerman was chasing after Martin, so the operator asked what Zimmerman was doing.

288. *Transcript of George Zimmerman's Call to the Police*, MOTHER JONES, <http://www.motherjones.com/documents/326700-full-transcript-zimmerman> (last visited Jan. 19, 2017).

289. *Continuing Zimmerman Trial Coverage; Trayvon Martin's Girlfriend Testifies*, CNN (June 26, 2013, 2:30 PM), <http://www.cnn.com/TRANSCRIPTS/1306/26/cnr.10.html>.

290. *See* Amanda Sloane & Graham Winch, *Key Witness Recounts Trayvon Martin's Final Phone Call*, CNN (June 27, 2013, 2:00 PM), <http://www.cnn.com/2013/06/26/justice/zimmerman-trial>.

291. *See id.*

292. *Continuing Zimmerman Trial Coverage; Trayvon Martin's Girlfriend Testifies*, *supra* note 289.

293. *Transcript of George Zimmerman's Call to the Police*, *supra* note 288.

Dispatcher: Are you following him?

Zimmerman: Yeah.

Dispatcher: Ok, we don't need you to do that.<sup>294</sup>

Despite being instructed by the 911 operator to remain in his vehicle, Zimmerman, who was carrying his gun, failed to follow the operator's directives, continued to follow Martin, and ultimately confronted the teenager. By choosing to follow Martin, Zimmerman was also ignoring the instructions of Wendy Dorival, the Volunteer Program Coordinator for the Sanford Police, who previously told neighborhood watch volunteers at the Retreat at Twin Lakes not to "confront someone suspicious" because "[o]ur officers are the ones who are paid and trained to go out and deal with it."<sup>295</sup>

The next thing that Jeantel heard was Martin ask: "Why are you following me . . . ?"<sup>296</sup> Thereafter, she heard a voice say: "What you doing around here?"<sup>297</sup> Following that, Jeantel heard what she believed was another person pushing Martin, Martin's phone crashing to the ground, "wet grass sounds," and then Martin saying: "Get off! Get off!"<sup>298</sup> For a short while longer, Jeantel heard arguing in the background, and then the phone line went dead.<sup>299</sup>

Only Martin and Zimmerman know what transpired after that point, but one undisputed fact is that Zimmerman shot and killed Martin, who was an unarmed guest of a resident in that same gated community.<sup>300</sup> Martin had nothing on his person but his cellphone, an Arizona watermelon soda, a bag of Skittles, \$40.15 in cash, a cigarette lighter, and some headphones.<sup>301</sup> His dead body lay in the grass, several feet from the concrete sidewalk that Zimmerman alleged Martin had banged his head on.<sup>302</sup>

Although Zimmerman shot and killed an unarmed teenager, Sanford Police released Zimmerman because he asserted a claim of self-defense and they claimed they found no evidence that night to contradict his claims.<sup>303</sup> Zimmerman claimed that Martin attacked him by knocking him to the ground, climbing on top of him, and beating his head against the sidewalk numerous times. Zimmerman, who had earned an A in a course that covered

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294. *Id.*

295. Comas, *supra* note 267.

296. Sloane & Winch, *supra* note 290.

297. *Id.*

298. *See id.*

299. *See Trayvon Martin's Final Phone Call: 'He Said this Man was Watching Him'*, NBC NEWS (Mar. 20, 2012, 7:55 AM), [http://usnews.nbcnews.com/\\_news/2012/03/20/10774247-trayvon-martins-final-phone-call-he-said-this-man-was-watching-him](http://usnews.nbcnews.com/_news/2012/03/20/10774247-trayvon-martins-final-phone-call-he-said-this-man-was-watching-him) (last updated Mar. 12, 2012, 8:01 AM).

300. *See* BLOOM, *supra* note 5, at 9, 39.

301. *See id.* at 9; *see also* Bruce *supra* note 6, at 6.

302. *See* BLOOM, *supra* note 5, at 70.

303. *See History of Racial Tension for Sanford and Blacks*, *supra* note 2; *Reporting Trayvon*, *supra* note 2.

Florida's self-defense and Stand Your Ground laws, even asserted that Martin specifically told him that he would die tonight.<sup>304</sup> Ultimately, Zimmerman claimed, he feared for his life and shot Martin to save his own life.<sup>305</sup> As soon as the shot rang out, the screaming that was caught in the background of the 911 tape immediately stopped.<sup>306</sup>

After Martin's death, his body was tested for drugs.<sup>307</sup> Test results revealed that "Martin's blood contained THC, which is the psychoactive ingredient in marijuana . . ." <sup>308</sup> One toxicologist, Dr. Michael Policastro, warned against reading too much into the THC levels found in Martin's blood. Policastro asserted that "one cannot make a direct correlation between those findings and a level of intoxication" and explained that "levels of THC, which can linger in a person's system for days, can spike after death in certain areas of the body because of redistribution."<sup>309</sup> Additionally, Dr. Drew Pinsky, an expert on addiction, explicated that marijuana typically does not make its users more aggressive, but rather more passive.<sup>310</sup>

Despite his involvement in a potential crime, Zimmerman, unlike Martin, was not tested for drugs.<sup>311</sup> At the time, Zimmerman was on two prescribed medications, one for anxiety and the other for insomnia.<sup>312</sup> Zimmerman also had his own reasons for feeling blue on the day of the killing. The night

304. Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (July 13, 2013), <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>.

305. *Id.* Because he had studied self-defense law in Florida, Zimmerman certainly knew that he needed to fear serious harm when he spoke to the police officers. *See Zimmerman Earned an "A" in Self-Defense Class*, NBC N.Y., <http://www.nbcnewyork.com/news/national-international/NATL-Zimmerman-Earned-an-A-in-Self-Defense-Class-214230441.html> (last updated July 4, 2013, 1:42 PM).

306. *See* BLOOM, *supra* note 5, at 155.

307. *Police: Trayvon Martin's Death 'Ultimately Avoidable'*, CNN (May 18, 2012, 11:13 AM), <http://www.cnn.com/2012/05/17/justice/florida-teen-shooting>.

308. *Id.* "Toxicology tests found elements of the drug in the teenager's chest blood—1.5 nanograms per milliliter of one type (THC), as well as 7.3 nanograms of another type (THC-COOH)—according to the medical examiner's report. There also was a presumed positive test of cannabinoids in Martin's urine, according to the medical examiner's report." *Id.*

309. *Id.*

310. *Id.*

311. *See* Serge F. Kovalski, *Trayvon Martin Case Shadowed by Series of Police Missteps*, N.Y. TIMES (May 16, 2012), <http://www.nytimes.com/2012/05/17/us/trayvon-martin-case-shadowed-by-police-missteps.html> ("The police did not test Mr. Zimmerman for alcohol or drug use that night, and one witness said the lead investigator quickly jumped to a conclusion that it was Mr. Zimmerman, and not Mr. Martin, who cried for help during the struggle.").

312. *See Martin Family: Why Wasn't Zimmerman Tested?*, HLN (May 18, 2012, 2:50 PM), <http://www.hlnv.com/article/2012/05/18/martin-family-why-wasnt-zimmerman-tested>. A fire and EMS report indicated that Zimmerman had been prescribed the medications Librax and Temazepam at the time of Martin's killing. *Id.* Librax "is a combination of two drugs, one that reduces stomach cramping, and another drug that reduces anxiety," and Temazepam "is a sleep medication that is used for the short-term treatment for insomnia." *Id.*

before, his wife Shellie had left him following a big fight.<sup>313</sup> On the night that Zimmerman killed Martin, his wife Shellie was staying at her parents' house.<sup>314</sup> During the trial, a witness, Joe Manalo, testified that Zimmerman asked him to call Shellie while the police were questioning him.<sup>315</sup> Manalo testified: "He gave me her number. I had a connection right away and said: 'Your husband has been involved in a shooting. He's detained by Sanford police.'"<sup>316</sup> According to Manalo, Zimmerman then added: "Just tell her I shot someone," and Manalo did.<sup>317</sup>

For many Blacks, the decision by the local police to release George Zimmerman, even though he had just killed an unarmed teenager, demonstrated how black lives were devalued in the area.<sup>318</sup> In fact, Zimmerman would not be arrested for another six weeks following the shooting, which is a lifetime when it comes to police investigations because significant amounts of evidence can be lost in a matter of hours or days. Speaking about the inaction of the Sanford police, 75-year-old Lula King remarked, "There are two sides to every story, but they don't get but one side."<sup>319</sup> Sanford City Manager Norton Bonaparte, a black man, stated that in Sanford, the shooting of a black person, "particularly by someone who's not black," is not taken seriously.<sup>320</sup> Bonaparte continued: "That's why some feel that Mr. Zimmerman was allowed to just go on his way while Mr. Martin went to a morgue."<sup>321</sup> University of Central Florida history professor Vibert White proclaimed: "By the police being slow-footed to arrest someone, it demonstrates that things are not different for the black community. . . . They have ignited a powder keg by being slow, by being indecisive and by being arrogant by not arresting this man."<sup>322</sup>

When Zimmerman was finally charged with second-degree murder on April 11, 2012, many noted that it came only after weeks of a brilliant social media campaign ignited by Benjamin Crump, the attorney for Martin's

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313. See Carol Kuruvilla, *George Zimmerman's Estranged Wife Speaks Out: My Ex Is a 'Ticking Time-Bomb'*, N.Y. DAILY NEWS (Nov. 22, 2013, 11:54 AM), <http://www.nydailynews.com/news/national/george-zimmerman-estranged-wife-speaks-ticking-time-bomb-article-1.1525912>. In an interview with Katie Couric, Shellie Zimmerman proclaimed, "I do wish that the night before when I had left . . . that he had just let me go and didn't call me back into his life and that I didn't play the role I played as a supportive wife. . . . Because my life would be very different now." *Id.*

314. *Id.*

315. See Perry Chiaramonte, *Witness Describes Zimmerman's Injuries, Phone Call to Wife*, FOX NEWS (June 28, 2013), <http://www.foxnews.com/us/2013/06/28/zimmerman-defense-grills-witness-for-second-day>.

316. *Id.*

317. *Id.*

318. Brown, *supra* note 269.

319. *History of Racial Tension for Sanford and Blacks*, *supra* note 2.

320. Brown, *supra* note 269.

321. *Id.*

322. Comas, *supra* note 267.

mother, Sybrina Fulton, and his father, Tracy Martin.<sup>323</sup> The jury for the Zimmerman trial consisted of all women, five of whom were white and one of whom was Latina.<sup>324</sup> At trial, prosecutors would do such a poor job presenting their case against Zimmerman that noted defense attorney Mark Geragos would speculate that they threw the case.<sup>325</sup> Law professor Mark Brodin has also questioned the motives of the prosecution, particularly in light of the fact that “it was the State that introduced into evidence the audio and video recordings of Zimmerman’s uncross-examined, unchallenged, self-serving statements to police, as well as his video reenactment at the crime scene the next day.”<sup>326</sup> Brodin further declared:

What defendant has ever been given such a free ride at a murder trial? Had Zimmerman been required to take the witness stand to spin his wild tale, the jury would have had the benefit of observing his demeanor under oath, and, most important, during cross-examination, exposing the obvious flaws in the story as well as his race-profiling, demonstrated by his reference to Martin as “one of them.” He would have had to confront the facts that he marked Martin as a suspicious person apparently based on nothing other than his race; that he followed him (against instructions from the 911 operator) and never once identified himself as a neighborhood watch volunteer, explaining why Martin may have been suspicious of Zimmerman. He would have had to explain how he came out of the “life-or-death struggle” with the slight teenager absent any injuries other than superficial abrasions.<sup>327</sup>

In the end, the all-female and nearly all-white jury acquitted Zimmerman of both second-degree murder and manslaughter.<sup>328</sup>

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323. Brenna Ehrlich, *Trayvon Martin: How Social Media Became the Biggest Protest*, MTV NEWS (July 15, 2013), <http://www.mtv.com/news/1710582/trayvon-martin-social-media-protest>; Madison Gray, *Social Media: The Muscle Behind the Trayvon Martin Movement*, TIME (Mar. 26, 2012), <http://newsfeed.time.com/2012/03/26/social-media-the-muscle-behind-the-trayvon-martin-movement>. In many ways, Crump followed in Till-Mobley’s footsteps in 1995 when he utilized a worldwide media campaign to bring attention to the Martin case.

324. *Zimmerman Jurors All Women: Does It Matter?*, HLN (June 24, 2013, 4:47 PM), <http://www.hlnv.com/article/2013/06/21/george-zimmerman-trial-female-jurors-trayvon-martin>.

325. Hal Boedeker, *George Zimmerman: Is State Throwing the Case?*, ORLANDO SENTINEL (July 3, 2013 7:51 AM), <http://www.orlandosentinel.com/entertainment/tv/tv-guy/os-george-zimmerman-is-state-throwing-case-20130703-post.html>.

326. Brodin, *supra* note 7, at 774 (emphasis omitted).

327. *Id.* at 779 (footnotes omitted).

328. Alvarez & Buckley, *supra* note 304.

C. *A GATED MENTALITY: HOW COMMONSENSE RACISM, THE SOCIAL MEANING OF WHITENESS, AND THE PROTECTION OF "THE WHITE SPACE" LED TO TRAYVON MARTIN'S DEATH*

Much like Till when he came to visit his relatives in Money, Mississippi in 1955, Martin entered Sanford without any real knowledge of the racially tense environment that he was entering. A soft-spoken teenager, Martin was known for being kind and gentle towards others. For example, Martin's friend Rachel Jeantel, who was the last person who spoke to him before he was killed, stated, "[Trayvon was] one of the few guys that never made fun of me, about the way I dressed, about the way I talked, about my hair, about my complexion. . . about my weight."<sup>329</sup> Martin's tattoos also reflected his soft side; on his right shoulder, Martin had a tattoo of praying hands alongside the names of his grandmother and great-grandmother, and he had a tattoo on his left wrist of his mother's name.<sup>330</sup> Trayvon was also well-known among the young boys in the Sanford neighborhood because he would frequently play football with the young kids in the area.<sup>331</sup> Indeed, when Martin left his father's girlfriend's townhome within the Retreat at Twin Lakes on the evening of February 26, 2012, he departed, in part, to get her 14-year-old son Chad a bag of Skittles.<sup>332</sup>

What Martin did not know is that he was walking in a neighborhood where residents, much like white Mississippians in 1955, were fighting to preserve the whiteness of their neighborhood, or rather the meaning accorded to perceived white spaces that their neighborhood had previously claimed.<sup>333</sup> Additionally, Martin had no idea that he would encounter a person like George Zimmerman, who like Milam and Bryant, may have been working to preserve his precarious status within the neighborhood's racial and class-based hierarchy as someone who was a renter in a neighborhood that was becoming increasingly hostile to renters and as someone who was part Latino in a neighborhood that was becoming wary of the presence of people of color in their "white space," particularly of Blacks.<sup>334</sup>

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329. Rachel Jeantel, "Trayvon Was One of the Few Who Didn't Tease Me," *EBONY* (July 13, 2013), <http://www.ebony.com/news-views/rachel-jeantel-trayvon-was-one-of-the-few-who-didnt-tease-me-981#xzz4Rulpu394>.

330. *Trayvon Martin's Mother Talks About His Tattoos*, WESH 2 (July 5, 2013 9:53 AM), <http://www.wesh.com/article/trayvon-martins-mother-talks-about-his-tattoos/3795608> (including a clip of testimony from Martin's mother, Sybrina Fulton).

331. Lane DeGregory, *Trayvon Martin's Killing Shatters Safety Within Retreat at Twin Lakes in Sanford*, TAMPA BAY TIMES (Mar. 26, 2012 10:00 PM), <http://www.tampabay.com/news/humaninterest/trayvon-martins-killing-shatters-safety-within-retreat-at-twin-lakes-in/1221799>.

332. BLOOM, *supra* note 5, at 39.

333. See generally Elise C. Boddie, *Racial Territoriality*, 58 *UCLA L. REV.* 401 (2010).

334. See *infra* notes 373-408 and accompanying text (highlighting certain residents' concerns about the influx of renters, which Zimmerman was, and other undesirables); see also Camille Gear Rich, *Marginal Whiteness*, 98 *CALIF. L. REV.* 1497, 1515-16 (2010) (exploring the incentives that "near whites" such as multiracials have to choose a white identity). Blacks made up 20% of the population at the Retreat at Twin Lakes at the time of Martin's killing. See *infra*

As numerous studies have revealed over the years, Whites are the most racially segregated group in the United States, and that reality is not by pure mistake or coincidence.<sup>335</sup> On average, Whites live in neighborhoods that are 74% white.<sup>336</sup> This pattern for Whites is distinct from that for racial and ethnic minority groups such as Blacks, Latinos, and Asians, with Blacks being the most segregated of all racial and ethnic minority groups.<sup>337</sup> Unlike Whites, “Blacks, Hispanics, and Asians . . . are willing to live in a neighborhood in which they are a numerical minority.”<sup>338</sup> However, for a variety of reasons, including discrimination and Whites’ preference to live among other Whites, Blacks live, on average, in neighborhoods that are 51% black; Latinos live, on average, in neighborhoods that are 48% Latino; and Asians live, on average, in neighborhoods that are 20% Asian, with the segregation of Asians increasing rather than decreasing over time.<sup>339</sup>

More importantly, researchers have found that Whites are the most segregated racial group in the country because they prefer to have only a few neighbors of color.<sup>340</sup> For example, as the research of sociologists Maria Krysan and Camille Zubrinsky Charles has shown, prejudice is the strongest predictor of resistance to racial integration among Whites while fear of discrimination is the strongest predictor of Blacks’ avoidance of white neighborhoods.<sup>341</sup> In fact, the work of scholars Richard Wright, Mark Ellis, and Steve Holloway reveals that “diversity is a ‘turnoff’ within White-

note 376.

335. See generally Richard Wright et al., *Where Black-White Couples Live*, 32 URB. GEOGRAPHY 1 (2011); cf. Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965, 1966 (2000) (“Recent studies show that urban America is only marginally less segregated today than it was in the 1960s and 1970s, during the height of racial rioting.”).

336. See Haya El Nasser, *Census Data Show ‘Surprising’ Segregation*, USA TODAY (Dec. 22, 2010, 6:30 PM), [http://usatoday30.usatoday.com/news/nation/census/2010-12-14-segregation\\_N.htm](http://usatoday30.usatoday.com/news/nation/census/2010-12-14-segregation_N.htm); see also JEANNINE BELL, HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING 2 (2013) (“Data from the 2010 Census indicate that the ‘average’ white person lives in a neighborhood that is 75 percent white.”); JOHN R. LOGAN, ETHNIC DIVERSITY GROWS, NEIGHBORHOOD INTEGRATION LAGS BEHIND 1 (2001), [http://www.prrac.org/projects/fair\\_housing\\_commission/chicago/logan.pdf](http://www.prrac.org/projects/fair_housing_commission/chicago/logan.pdf) (“The typical white lives in a neighborhood that is 80.2 % white, 6.7% black, 7.9% Hispanic, and 3.9% Asian.”).

337. See LOGAN, *supra* note 336, at 1 (“The average non-Hispanic white person continues to live in a neighborhood that looks very different from neighborhoods where the average black, Hispanic and Asian live.”); see also generally Stacy E. Seicshnaydre, *The Fair Housing Choice Myth*, 33 CARDOZO L. REV. 967 (2012) (looking at the history of discrimination against Blacks as well as different racial groups’ preferences for various levels of integration in neighborhoods to explain why American neighborhoods are so racially segregated).

338. *Id.* at 981.

339. See LOGAN, *supra* note 336, at 3; El Nasser, *supra* note 336.

340. See generally CAMILLE ZUBRINSKY CHARLES, WON’T YOU BE MY NEIGHBOR? RACE, CLASS, AND RESIDENCE IN LOS ANGELES (2006); Jeremy F. Pais et al., *White Flight Revisited: A Multiethnic Perspective on Neighborhood Out-Migration*, 28 POPULATION RES. & POL’Y REV. 321 (2009).

341. Maria Krysan, *Whites Who Say They’d Flee: Who Are They, and Why Would They Leave?*, 39 DEMOGRAPHY 675, 685 (2002). See generally CHARLES, *supra* note 340.

dominated spaces for same-race White households.”<sup>342</sup> Moreover, another study by two professors in Seattle revealed that racial diversity was one of the strongest factors in terms of negatively “predict[ing] the degree to which Whites view[ed] neighbor relations as harmonious.”<sup>343</sup> Indeed, as Andrew Hacker explains in his book *Two Nations: Black, White, Separate, Hostile, Unequal*, many Whites view living in neighborhoods with meaningful racial minority populations as being less than or inferior in terms of social standing. Hacker writes:

Americans have extraordinarily sensitive antennae for the colorations of neighborhoods. In virtually every metropolitan area, white householders can rank each enclave by the racial makeup of the residents. Given this knowledge, where a family lives becomes an index of its social standing. While this is largely an economic matter, proximity to blacks compounds this assessment. For a white family to be seen as living in a mixed—or changing—neighborhood can be construed as a symptom of surrender, indeed as evidence that they are on a downward spiral.<sup>344</sup>

Thus, as more people of color have moved into neighborhoods that were previously viewed and experienced by Whites as white spaces, Whites who have the means to move have departed from those areas.<sup>345</sup> In fact, studies reveal that the likelihood that Whites will leave a neighborhood increases with both the size and presence of populations of color, regardless of socioeconomic class or other predictors of residential mobility.<sup>346</sup> As sociologist Maria Krysan discovered in her research, “‘prejudice as a sense of group position’ was the most frequently [cited]” reason by Whites for leaving a neighborhood in the process of integrating.<sup>347</sup> The subjects in Krysan’s study often identified the increasing number of Blacks with their decision to move.<sup>348</sup> Their concerns included commonsense racism worries that Blacks would take over the neighborhood, that Blacks would discriminate against them in the neighborhood, and that Blacks and Whites would not get along.<sup>349</sup> They provided explanations such as: “Because I would be

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342. Wright et al., *supra* note 335, at 16; *see also id.* at 18.

343. *Id.* at 5.

344. HACKER, *supra* note 59, at 38. *See generally* Drew S. Days, III, *Rethinking the Integrative Ideal: Housing*, 33 MCGEORGE L. REV. 459 (2002) (exploring why residential segregation by race remains).

345. Seicshnaydre, *supra* note 337, at 981–83. *See generally* Mary Szto, *Real Estate Agents as Agents of Social Change: Redlining, Reverse Redlining, and Greenlining*, 12 SEATTLE J. SOC. JUST. 1 (2013) (detailing how realtors contributed to racial segregation in housing through practices such as redlining, reverse redlining, and greenlining).

346. Kyle D. Crowder, *The Racial Context of White Mobility: An Individual-Level Assessment of the White Flight Hypothesis*, 29 SOC. SCI. RES. 223 (2000).

347. Krysan, *supra* note 341, at 685.

348. *Id.* at 683–85.

349. *Id.* at 685.

surrounded by a black majority”; “Because I would be in the minority. Nothing personal against blacks”; “I’d feel I was being moved out of my neighborhood”; “They are taking over my territory”; and “Crime seems to increase when black families move in.”<sup>350</sup> Other Whites who indicated that they would move with increased diversity did not explicitly mention race in their explanations, but they used racially coded language to explain why they would move. One example statement was: “I wouldn’t want to live in a rundown neighborhood with drugs, violence, crime, and that’s how the neighborhood would change.”<sup>351</sup>

Furthermore, as legal scholar Jeannine Bell’s research in her book *Hate Thy Neighbor: Move-In Violence and the Persistence of Racial Segregation in American Housing* demonstrates, before such out-migration for Whites occurs, there is often a “last stand” by Whites to preserve their neighborhood’s whiteness and to prevent white flight so they can remain in their affordable neighborhoods.<sup>352</sup> Such a final stance has been particularly important for Whites from lower socioeconomic classes, many of whom are not as financially able to move as wealthier Whites; for Whites of a lower socioeconomic class, they are frequently working to protect one of the few “white” spaces in which they can afford to live.<sup>353</sup> More so, the resistance by white residents who are working to preserve the whiteness of their neighborhoods does not have to mirror the type of racial hatred and white supremacist thinking that persons like Milam and Bryant possessed in 1955. As Bell explains, the resistance to an increasingly black presence in town, along with whatever meanings are attached to that presence, “may not specifically arise from racial hatred—perpetrators would not seek out minorities outside of their community to harass.”<sup>354</sup>

In February of 2012, the Retreat at Twin Lakes, the neighborhood where Zimmerman killed Martin, had just entered the beginnings of its “last stand” in preserving its whiteness. Just as the entire town of Sanford was racially tense during the early part of 2012, so, too, was the neighborhood where Zimmerman took Martin’s life.<sup>355</sup>

Six years before the fatal shooting, the developer Engle Homes sold eager buyers on the concept of the Retreat at Twin Lakes: a gated community, with images of a neighborhood “oasis” that was “close to good schools, outlet malls

350. *Id.* at 685–86.

351. *Id.* at 687.

352. BELL, *supra* note 336, at 54. *See generally* RICHARD R.W. BROOKS & CAROL M. ROSE, SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS (2013) (analyzing how Whites used racially restrictive covenants as a tool for resisting racial integration of their neighborhoods).

353. BELL, *supra* note 336, at 54 (noting, for example, that in “the 1980s in Chicago and New York, many of the all-white ethnic enclaves resisting minority integration were among the few remaining affordable (white) neighborhoods”).

354. *Id.* at 6.

355. DeGregory, *supra* note 331.

and the magic of Disney World.”<sup>356</sup> “The idea . . . was that people could live peacefully in a paradise where nobody could park a car on the street or paint the house an odd color.”<sup>357</sup> A YouTube video that promoted the Retreat at Twin Lakes offered: “With its modern Florida architecture, this secluded gated community is like living in a resort. . . . It’s the perfect choice for those looking for space and comfort.”<sup>358</sup> Most of all, as with all gated communities, the idea was that the gate around the community, which could be opened only at its front gate with a passcode, would provide both solace and safety from outsiders to the residents in the neighborhood of 263 two-story townhouses.<sup>359</sup> At its formation, the price for one of the 1400-square foot townhomes at the Retreat at Twin Lakes, “with upstairs porches and covered back patios and plenty of green space” plus “granite countertops, hardwood floors, master suites and walk-in closets,” was \$250,000.<sup>360</sup> And, in this instance, the whiteness and gatedness of the community held an even stronger meaning in Sanford, as “Sanford has per capita income barely more than \$20,000 a year.”<sup>361</sup>

During the summer of 2009, George Zimmerman and his then-wife Shellie moved into the neighborhood, renting one of the townhomes.<sup>362</sup> At the time, a 28-year-old Zimmerman, the son of a former magistrate, was a student in the criminal justice associates’ degree program at Seminole State College; yet, Zimmerman’s work history and professional focus had previously been more irregular.<sup>363</sup> Prior to becoming a student, Zimmerman had jumped from job to job, working at variety of places such as a car dealership, an insurance company, an attorneys’ office, and a mortgage company.<sup>364</sup> Zimmerman even collected unemployment benefits from time to time.<sup>365</sup> He also had previous encounters with the law. For example, in July of 2005, police arrested Zimmerman, “charging [him] with resisting arrest, violence, and battery of an officer after [he] show[ed] an undercover alcohol-control agent

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356. *Id.*

357. *Id.*

358. *Id.*

359. *See generally* BENJAMIN, *supra* note 238; *see also generally* Jonathan Simon, Commentary, *Guns, Crime, and Governance*, 39 HOUS. L. REV. 133, 139–44 (2002) (“Gated communities advertise their residents’ lack of confidence in public authorities.”). Yet, as David Morgensten, the spokesman for the Sanford Police indicated in March of 2012: “Gated communities aren’t really any safer than other neighborhoods. . . . Crime is comparable no matter where you go. All that gate does is make people who live in the community feel better.” DeGregory, *supra* note 331.

360. DeGregory, *supra* note 331.

361. *See* Comas, *supra* note 268; *see also generally* BENJAMIN, *supra* note 238.

362. *See* DeGregory, *supra* note 331.

363. *See* Chris Francescani, *George Zimmerman: Prelude to a Shooting*, REUTERS (April 25, 2012, 5:20 PM), <http://www.reuters.com/article/2012/04/25/us-usa-florida-shooting-zimmerman-idUSBRE83O18H20120425>.

364. *See id.*

365. *See id.*

who was arresting an under-age friend of Zimmerman's at a bar."<sup>366</sup> Luckily for Zimmerman, he escaped charges and conviction because he received the opportunity to have the alternative sentence of "agreeing to participate in a pre-trial diversion program that included anger-management classes."<sup>367</sup>

As soon as Zimmerman moved into his rental at the Retreat at Twin Lakes, he began making calls to the police about concerns in the neighborhood.<sup>368</sup> In all, his 911 calls to the local police totaled 28 pages.<sup>369</sup> At first, Zimmerman's calls to the police possessed no racial pattern at all, concerning items such as seeing a "[m]ale driving with no headlights on" August 26, 2009; a "[y]ellow speed bike doing wheelies" on September 22, 2009; or an "[a]ggressive brown and white pit bull" on October 23, 2009.<sup>370</sup> Worried about the pit bull, which had once cornered his wife Shellie, Zimmerman bought a gun to protect his wife from the dog.<sup>371</sup>

Soon, however, the downturn in the economy, specifically the housing market crash, resulted in a change in the ratio of owners to renters at the Retreat at Twin Lakes.<sup>372</sup> Specifically, a greater number of foreclosures occurred, and more renters like the Zimmermans moved in.<sup>373</sup> Along with the foreclosures came a drop in the value of the townhouses in the neighborhood, with the homes that once cost buyers \$250,000 falling to prices below \$100,000.<sup>374</sup> Additionally, a larger number of the townhomes in the gated subdivision went empty. In fact, by February of 2012, when Martin came to Sanford to visit his father, 40 townhomes within the Retreat at Twin Lakes—nearly one quarter of all the townhomes in the neighborhood—were empty, and more than half the residents in the gated subdivision were renters like the Zimmermans and Green.<sup>375</sup> When Zimmerman killed Martin in February of 2012, the population in the subdivision was 20% black, far whiter than the overall population of Sanford which was 40% black,<sup>376</sup> but still a narrative

366. *Id.*

367. *Id.*

368. *Id.*

369. DeGregory, *supra* note 331.

370. *Id.* In early December of 2009, Zimmerman purchased a Kel-Tec PF-9 9 millimeter handgun because of run-ins he or his wife had with the neighbor's brown and white pit bull. *See* Francescani, *supra* note 363.

371. *Id.*

372. *See* Ian Tuttle, *The Neighborhood Zimmerman Watched*, NAT'L REV. (July 22, 2013, 4:00 AM), <http://www.nationalreview.com/article/354042/neighborhood-zimmerman-watched-ian-tuttle> ("Two years into the Great Recession, the gated community of 260 townhomes was in the middle of a demographic transformation.").

373. *See* DeGregory, *supra* note 331; Tuttle, *supra* note 372.

374. *See* DeGregory, *supra* note 331; Francescani, *supra* note 363; *Reporting Trayvon*, *supra* note 2.

375. DeGregory, *supra* note 331.

376. BLOOM, *supra* note 5, at 85 (noting that 20% of the neighborhood residents at the Retreat at Twin Lakes, the neighborhood in which George Zimmerman and father Tracy Martin's girlfriend, Brandy Green, lived at the time of the killing, were black, and that 40% of the residents

soon arose that burglaries were increasingly occurring in the neighborhood because of an influx of Blacks and other “transient” residents.<sup>377</sup>

In 2011, residents of the neighborhood began to report an increasing number of burglaries to the police.<sup>378</sup> At that point, the tenor and pattern of Zimmerman’s 911 calls began to change, and the neighborhood watch residents began their efforts to preserve the whiteness of the Retreat at Twin Lakes, or at least the perception of the neighborhood as a white space.<sup>379</sup> All of a sudden, the suspicious individuals who became the subject of Zimmerman’s calls had one thing in common: they were all black males. For example, on April 22, 2011, Zimmerman called the police to report simply the presence of an elementary school “black male about ‘7-9’ years old, four feet tall, with a ‘skinny build’ and short black hair.”<sup>380</sup> Then, on August 3, 2011, Zimmerman called and made the following report to the police: “Black male with white tank top and black shorts . . . (Zimmerman) believes subject is involved in recent (burglaries) in the neighborhood.”<sup>381</sup> Later that night, the home of Olivia Bertalan, a white woman, was robbed while her husband was away and she and her infant were home alone.<sup>382</sup> As one report indicated, Bertalan “watched from a downstairs window . . . as two black men repeatedly rang her doorbell and then entered through a sliding door at the back of the house. She ran upstairs, locked herself inside the boy’s bedroom, and called a police dispatcher, whispering frantically.”<sup>383</sup> After the robbery, Zimmerman visited Bertalan to console her, gave her his number, and told her that she could contact his wife Shellie for help whenever Bertalan needed to do so

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of Sanford were black).

377. Census Block Data reveals that the black population actually decreased in census tract 206 between 2010 and 2012 and that the white population was growing in that same tract between 2009 and 2012. Tract 206 covers a somewhat larger geographic area than the Retreat at Twin Lakes subdivision, but these facts, coupled with the fact that Sanford as a whole had a 40% black population, lend support to my argument that the neighborhood watch participants’ narrative of increased crime in the area due to an influx of Blacks was misguided. See *American Community Survey: Data Profiles*, U.S. CENSUS BUREAU, <https://www.census.gov/acs/www/data/data-tables-and-tools/dataprofiles/2015> (last visited Jan. 26, 2017) (select “Demographic Characteristics,” then use the “Add/Remove Geographies” tool to select census tract 206 in Seminole County, Florida); see also Tuttle, *supra* note 372.

378. See Francescani, *supra* note 363 (“Previously a family-friendly, first-time homeowner community, it was devastated by the recession that hit the Florida housing market, and transient renters began to occupy some of the 263 town houses in the complex. Vandalism and occasional drug activity were reported, and home values plunged.”).

379. DeGregory, *supra* note 331 (asserting that Zimmerman began “zeroing in on black males”).

380. Matthew DeLuca, *Did Trayvon Martin Shooter Abuse 911?*, DAILY BEAST (Mar. 22, 2012, 6:55 PM), <http://www.thedailybeast.com/articles/2012/03/23/did-trayvon-shooter-abuse-911.html> (emphasis added) (noting that there was “no indication in the police report of the reason for Zimmerman’s suspicion of the boy”).

381. DeGregory, *supra* note 331.

382. Francescani, *supra* note 363.

383. *Id.*

because Shellie was at home studying most days.<sup>384</sup> Later, Zimmerman came back to see Bertalan, giving the young woman a new lock to use on her sliding door, which is where the break-in had occurred.<sup>385</sup>

Days later, on August 6, 2011, Zimmerman reported more black individuals whom he had deemed suspicious. During his call, he reported that “[t]wo black males, one wearing a black tank top . . . are near the back gate of the neighborhood.”<sup>386</sup> Again, on October 1, 2011, Zimmerman reported two more black males simply because he did not personally recognize them.<sup>387</sup> In his call, “he reported two black male suspects ‘20-30’ years old, in a white Chevrolet Impala. He told police *he did ‘not recognize’ the men or their vehicle* and that he was concerned because of the recent burglaries.”<sup>388</sup> Indeed, “[a]ccording to records checks, all of Zimmerman’s suspicious persons calls while residing in the Retreat [at Twin Lakes] neighborhood [beginning in 2011] have identified Black males as the subjects.”<sup>389</sup>

Finally, on September 22, 2011, at the initiation of Zimmerman, residents of the Retreat at Twin Lakes held a meeting to form a neighborhood watch program.<sup>390</sup> Wendy Dorival, the neighborhood watch liaison for the Sanford Police, met with the residents, telling them: “[T]his is not about being a vigilante police force. . . . You’re not even supposed to patrol on neighborhood watch. *And you’re certainly not supposed to carry a gun.*”<sup>391</sup> At the end of it all, Zimmerman volunteered to be the captain of their neighborhood watch team, and the neighbors at the meeting accepted his offer.<sup>392</sup>

On February 2, 2012, Zimmerman called the police to report a black male whom he claimed was peering into the window of a neighbor’s empty

384. *Id.*

385. *Id.*

386. DeGregory, *supra* note 331.

387. Notably, Zimmerman claimed to know everyone in the neighborhood, but he did not know Brandy Green and many other black residents. Rather, he presumed, much like Anderson explains, that nearly all Blacks he saw in the neighborhood were “out of place” members of the “iconic ghetto.” *See* Anderson, *supra* note 24, at 11–14.

388. DeLuca, *supra* note 380 (emphasis added).

389. Richard Fausset, *Trayvon Martin and George Zimmerman: A Portrait of the Retreat*, L.A. TIMES (May 18, 2012), <http://articles.latimes.com/2012/may/18/nation/la-na-nn-zimmerman-hoa-newsletters-20120518>.

390. *See* Francescani, *supra* note 363; Amy Green, *Zimmerman’s Twin Lakes Community Was on Edge Before Trayvon Shooting*, DAILY BEAST (Mar. 28, 2012, 3:45 AM), <http://www.thedailybeast.com/articles/2012/03/28/zimmerman-s-twin-lakes-community-was-on-edge-before-trayvon-shooting.html>; *see also* DeLuca, *supra* note 380 (quoting Dorival as saying that Zimmerman “was the one who contacted me at first to get it started there”).

391. DeGregory, *supra* note 331 (emphasis added).

392. *Id.*; Francescani, *supra* note 363; *see also* *Reporting Trayvon*, *supra* note 2 (“Some outlets have described Zimmerman as a ‘self-appointed’ neighborhood watch captain, but other accounts indicate that Zimmerman volunteered for the job, and that neighbors approved of him in the position.”).

townhome, but by the time the police arrived, the alleged “suspect” had left.<sup>393</sup> Days later, on February 6, 2011, burglars stole gold jewelry and a new laptop from another townhome in the neighborhood.<sup>394</sup> A couple of days later, due to a call made by a local construction worker, police found the stolen laptop in the backpack of a teenager named Emmanuel Burgess, who was riding his bicycle in the neighborhood with three other boys, two black and one white.<sup>395</sup> Zimmerman claimed that Emmanuel Burgess was the same male he saw casing houses on February 2, 2012.<sup>396</sup> The February newsletter for the gated subdivision also addressed the rash of burglaries in the neighborhood. It indicated that the Sanford Police would be increasing its patrols in the neighborhood “during peak crime hours.”<sup>397</sup> It also provided: “If you’ve been a victim of a crime in the community, after calling police, please contact our captain, George Zimmerman.”<sup>398</sup>

By February of 2012 when Martin arrived in Sanford, residents like Bertalan and Zimmerman had become very fearful of what may happen to their property and neighborhood. As Bertalan explained, “People were

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393. Francescani, *supra* note 363.

394. *See id.*

395. *See id.*

396. *See id.* As Valena Beety explains, however, such cross-racial identification was likely not reliable. “Cross-racial misidentifications . . . can occur because people find it difficult to recognize physical traits with which they are unfamiliar.” Beety, *supra* note 7, at 342. Speaking generally about misidentifications, Beety noted that “[i]n a 2000 study, Innocence Project founders Barry Scheck and Peter Neufeld, along with columnist Jim Dwyer, found that 82% of wrongful convictions included mistaken eyewitness identifications. Of those mistaken identifications, 44% were Caucasian individuals erroneously identifying an innocent African-American defendant as the perpetrator.” *Id.* (footnotes omitted). Referring to the Martin case, Beety explained:

[F]or George Zimmerman, subconscious bias based on race likely influenced his misidentification of Trayvon Martin as a criminal. In his phone call, with limited information, Zimmerman saw the young African-American man walking in the neighborhood as “suspicious” and “up to no good.” Zimmerman was known in the neighborhood to warn residents to be “on alert” for African-American individuals. As studies have shown how reading newspaper stories about African-American criminals increases a participant’s shooter bias in a simulation, Zimmerman may have been primed to mistake Martin’s Skittles and iced tea for a weapon—and to ultimately shoot Martin—by his conscious and unconscious bias.

Furthermore, Zimmerman’s perception may have been corrupted by his expectations, beliefs, and sheer desire to catch a criminal, all common influences on witnesses to a crime. . . .

The influence of personal bias on what one sees, coupled with the difficulty of accurate identification in a stressful moment, has resulted in the death and wrongful incarceration of hundreds of innocent individuals.

*Id.* at 342–43 (footnotes omitted).

397. Francescani, *supra* note 363.

398. *Id.*

freaked out. It wasn't just George calling the police . . . we were calling police at least once a week."<sup>399</sup> She further explained:

There was definitely a sense of fear in the neighborhood after all of this started happening, and it just kept on happening. It wasn't just a one-time thing. It was every week . . . . Our next-door neighbor actually said if someone came into his yard he would shoot him. If someone came into his house he would shoot him. Everyone felt afraid and scared.<sup>400</sup>

Just a few days before Zimmerman killed Martin, Bertalan and her family moved from the neighborhood.<sup>401</sup>

When Zimmerman shot and killed Martin on February 26, 2012, the neighbors who supported him offered a narrative about a rash of burglaries committed by black males to justify Zimmerman's actions (as though it would be acceptable for Zimmerman to follow and confront Martin simply because he was black).<sup>402</sup> According to one story, a black female neighbor of Zimmerman's, whom the reporter claimed wanted to remain unnamed, declared, "Let's talk about the elephant in the room. I'm black, OK? . . . There were black boys robbing houses in this neighborhood . . . That's why George was suspicious of Trayvon Martin."<sup>403</sup> A white neighbor named Frank Taaffe, a man who served on the neighborhood watch team for the Retreat at Twin Lakes and who, like Zimmerman, had a criminal history (for burglary, no less), proclaimed that "[p]roblems in the 6-year-old community started during the recession, when foreclosures forced owners to rent out to 'low-lives and gangsters,'"<sup>404</sup> and he asserted that his community was being robbed by "Trayvon-like dudes with their pants down."<sup>405</sup> Revealing the whiteness that he linked with the Retreat at Twin Lakes neighborhood and the blackness and criminality that he assumed of Martin's neighborhood, Taaffe asked: "What if

399. *Id.*

400. Green, *supra* note 390.

401. *George Zimmerman Trial; Expert: Try to Avoid It if You Can; Dennis Root, Olivia Bertalan Testify*, CNN (July 10, 2013, 2:30 PM), <http://transcripts.cnn.com/TRANSCRIPTS/130710/cnr.12.html>.

402. See Anderson, *supra* note 24, at 14 ("Any black male can qualify for close scrutiny, especially under the cover of darkness. Defensive whites in these circumstances may be less consciously hateful than concerned and fearful of 'dangerous and violent' black people. And in the minds of many of their detractors, to scrutinize and stop black people is to prevent crime and protect the neighborhood. Thus, for the black person, particularly young males, virtually every public encounter results in a degree of scrutiny that a 'normal,' white person would certainly not need to endure.").

403. Francescani, *supra* note 363.

404. *Reporting Trayvon*, *supra* note 2.

405. Mariah Blake, *George Zimmerman's Biggest Defender: A Racist with a Criminal Past*, MOTHER JONES (Aug. 8, 2013, 5:00 AM), <http://www.motherjones.com/politics/2013/08/frank-taaffe-george-zimmerman-racist-white-voice>. Taaffe also asserted: "Young black males have been seen in, you know, burglaries here. They've been seen with drug dealings here and the Sanford police is well aware of everything." DeLuca, *supra* note 380.

I—a middle-aged white man—wore a hoodie and went through Trayvon Martin’s neighborhood? . . . I’d only be there for one or two things. . . . And I’m sure the vice squad would want to be interested in that.”<sup>406</sup> In fact, Taaffe, who also played a role in neighborhood watch for the gated subdivision, once declared the following about the integration of Blacks and Whites in neighborhoods: “They don’t want to be with us and we don’t want to be with them.”<sup>407</sup> Like Milam and Bryant, many white citizens rallied around Zimmerman by donating money for his legal defense; just two months after Zimmerman killed Martin, donors had given him more than \$200,000 to support his fees, with those donations increasing to nearly to \$370,000 two weeks before the trial and more than \$500,000 right before the trial.<sup>408</sup>

Furthermore, the only data available regarding reported wrongdoings reveal that only two of the neighborhood’s 44 burglaries, attempted break-ins, and suspected break-ins were confirmed to have involved black males.<sup>409</sup>

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406. Blake, *supra* note 405. Also, one must note the assumptions about race, place, and space in Taaffe’s comments. Without indicating any specific knowledge about Martin’s neighborhood, Taaffe assumes that Martin’s neighborhood must be a black one (which in truth it was, but Taaffe’s comments provide no actual details nor do they hint at any actual knowledge). More importantly, Taaffe describes the Retreat at Twin Lakes as a white neighborhood, despite the fact that Blacks made up 20% of the neighborhood; this description of the Retreat at Twin Lakes as white underscores my point about residents’ perceived view of the gated community as a white space. More so, as Eduardo Bonilla-Silva has explained about the language of colorblind racism, Taaffe presumes the naturalness of racial segregation in neighborhoods. See BONILLA-SILVA, *supra* note 26, at 76 (discussing how “whites can claim ‘segregation’ is natural because people from all backgrounds ‘gravitate toward likeness’”).

407. Blake, *supra* note 405.

408. See Alexander Abad-Santos, *George Zimmerman Spent his Trayvon Kickstarter, So His Lawyers Want You to Pay Them*, ATLANTIC (May 29, 2013), <http://www.theatlantic.com/national/archive/2013/05/george-zimmerman-defense-fund/314785> (noting that approximately \$370,000 had been raised on behalf of Zimmerman and that \$76,000 of those dollars had been paid to his attorneys); *Donations Pour in to Trayvon Martin’s Killer*, CNN (Apr. 26, 2012, 8:19 PM), <http://www.cnn.com/2012/04/26/justice/florida-zimmerman-money> (noting that \$204,000 had been donated to assist Zimmerman with defense funds by the end of April 2012). To this day, Zimmerman’s attorneys assert that they have not been paid anything other than the \$76,000 in fees they received right before Zimmerman’s trial began. Zimmerman owes his attorneys more than two million dollars. Zimmerman chose to forgo use of a public defender, who are the attorneys whom most people who cannot afford to pay private attorneys use and which privileged him in ways that other defendants of similar means are not privileged. See Nina Golgowski, *George Zimmerman’s \$2.5 Million Debt Is Entirely in Legal Fees*, N.Y. DAILY NEWS (Nov. 28, 2013, 9:42 PM), <http://www.nydailynews.com/news/national/george-zimmerman-2-5m-debt-legal-fees-article-1.1532347> (noting that each of Zimmerman’s two attorneys billed 3,000 hours on the case, at a rate of \$400 per hour for the lead and \$350 per hour for the second attorney); Lisa Mahapatra, *George Zimmerman’s Defense Cost \$500,000, Not Including Lawyer’s Fees*, INT’L BUS. TIMES (July 16, 2013, 12:06 PM), <http://www.ibtimes.com/george-zimmermans-defense-cost-500000-not-including-lawyers-fees-infographic-1347753> (noting that \$500,000 was raised for Zimmerman’s defense); see also Robin Abcarian, *George Zimmerman, His Attorneys Raising Money Off Murder Trial*, L.A. TIMES (July 11, 2013), <http://articles.latimes.com/2013/jul/11/local/la-me-ln-social-media-and-the-george-zimmerman-defense-20130711> (describing how even Zimmerman’s attorneys took to social media to raise money).

409. BLOOM, *supra* note 5, at 85. There were eight actual burglaries, one that involved one black male (the Burgess burglary) and another that involved two black males (the Bertalan

The fact that only two of such reported wrongdoings were confirmed to have involved black males supports the notion that the protection of whiteness—here, the protection of white spaces—and the stereotypes of Blacks that formed the basis of their commonsense racism were heavily guiding the actions of neighborhood watch participants like Zimmerman and Taaffe. It was not simply that Zimmerman and other neighborhood watch participants linked blackness with criminality, but that they viewed Blacks who were in the spaces that they viewed as white—here, their neighborhood—as criminals, as outsiders who were up to no good. Indeed, long after it was shown that Martin, who had no criminal record, was simply walking back to the townhome where he was visiting his father’s girlfriend that night, Taaffe insisted during a television interview that Martin was out of place in the neighborhood and should not have come near Taaffe’s home while Taaffe was away from his townhome. Taaffe’s interview proceeded as follows:

Williams: Frank what made him look suspicious—what made him look suspicious in your mind, just because he was walking through your yard?

....

Taaffe: Because he was out of place. George knew he didn’t live there. He was out of place. He was out of place.

Williams: He had a right to be there, Frank.

Taaffe: He’s out of place. He’s on private property. That’s my property.<sup>410</sup>

Although as many as eight burglaries within a year’s time may reasonably concern many residents, in this instance, the concern seemed to be racialized in a way that was not corroborated by actual data, but rather by standard implicit biases. As Professor Song Richardson has explained, studies show that just “thinking about crime can trigger nonconscious thoughts about blacks, which in turn activates negative black stereotypes . . . [and] [d]isturbingly, not only does seeing a black individual bring negative racial stereotypes to mind nonconsciously, but simply thinking about crime triggers implicit thoughts about blacks in police officers and civilians alike.”<sup>411</sup>

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burglary). There were approximately 36 attempted break-ins and suspected break-ins. *Id.*

410. Jane Velez-Mitchell, *George Zimmerman Trial Coverage and Analysis*, CNN (June 26, 2013, 7:00 PM), <http://www.cnn.com/TRANSCRIPTS/1306/26/ijvm.01.html>. In 2014, Taaffe told the media that he changed his mind. He now believes that Zimmerman racially profiled Martin. Taaffe explained: “If that had been a white kid on a cell phone, walking through our neighborhood, he wouldn’t have stayed on him the way he did and that’s a fact and I believe that in my heart.” Alex Greig, *George Zimmerman’s Friend and Vocal Defender Changes His Mind and Decides He IS a Racist Murderer*, DAILY MAIL, <http://www.dailymail.co.uk/news/article-2626478/George-Zimmermans-best-friend-changes-mind-decides-IS-racist-murderer.html> (last updated May 12, 2014, 5:53 PM).

411. L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035,

Essentially, only seven percent of the reported wrongdoings in the neighborhood were confirmed to involve black males; yet, the entire narrative of fear in the neighborhood centered on black males. More so, Zimmerman's calls and attention focused on black males, even those who were a mere seven to nine years old.<sup>412</sup> As a result, just like with Till, Martin was killed in part because he was viewed as stepping out of place. For Till, stepping out of place involved talking to a white woman and then daring to whistle while in her presence. For Martin, stepping out of place involved being a young black teenager in a neighborhood in which Zimmerman, Taaffe, and others viewed him as not belonging; stepping out of place stemmed from what Professors Sheri Lynn Johnson and Bennett Cappers calls "racial incongruity," Martin's being black in what Zimmerman viewed as a white neighborhood.<sup>413</sup>

Additional evidence of the role that the protection of whiteness played in Zimmerman's viewing Martin as suspicious, following him, and then killing the young boy lay in the perceptions and experiences of residents of color at the Retreat at Twin Lakes. For instance, residents like Tito Ortiz were not part of the fearful crowd that started the neighborhood watch program. In fact, Ortiz described the Retreat at Twin Lakes as a "peaceful place," noting "[w]e don't have problems here."<sup>414</sup> Others like Thomas Ransburg, a black man who was then 20 years old, became "targets" of the neighborhood's new fervor in keeping criminals out. One day, Ransburg, a resident of the Retreat at Twin Lakes, was hanging out with a black friend who also lived in the neighborhood.<sup>415</sup> When they returned to the friend's townhome, the friend

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2063–64 (2011) (footnotes omitted).

412. See BLOOM, *supra* note 5, at 85 ("So, three out of forty-four in our local crime sample were known to be African American. That number would be significantly less than the 20 percent of the population blacks comprised of the Retreat at Twin Lakes, and far less than the 40 percent African American composition of the area surrounding Sanford."). Like Milam did to Till, Zimmerman may have confronted and shot Martin because Martin failed to defer to him when he asked Martin what he was doing here. In confronting Martin, Zimmerman presumed that Martin saw him, a stranger, as safe and never considered that he, an unknown, older man following another person for no apparent reason, could be perceived as dangerous to Martin. For many people, simply flipping the script with race exposes how and why Martin was reasonably fearful of Zimmerman. More so, as Professor Frank Cooper explains, race often intersects with masculinity in a police stop, resulting in a masculinity contest, meaning "a confrontation where one person will boost his internal or attributed masculine esteem at the expense of the other." Frank Rudy Cooper, *Masculinities, Post-Racialism and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 NEV. L.J. 1, 5 (2010); see also Frank Rudy Cooper, "Who's the Man?": *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 674–75, 698–702 (2009). As one example of a type of masculinity contest that Cooper describes suggests, Zimmerman may have felt "the need to dominate other men in general and to denigrate contrast figures [such as black men] in particular." *Id.* at 725.

413. Professor Johnson coined the phrase "racial incongruity." Sheri Lynn Johnson, *Race and the Decision to Detain a Suspect*, 93 YALE L.J. 214, 226–27 (1983); see also I. Bennett Cappers, *Policing, Race, and Place*, 44 HARV. C.R.-C.L. L. REV. 43, 65–66 (2009).

414. See DeGregory, *supra* note 331.

415. See *id.*

discovered that he had forgotten his key, so the two men “walked around to the back patio and opened the sliding glass door.”<sup>416</sup> A neighbor called the police, and the two men were arrested.<sup>417</sup> Unlike Zimmerman, who shot and killed Martin, Ransburg and his friend spent four hours in the police station trying to convince officials that Ransburg’s friend actually lived in the townhome before they were allowed to go home.<sup>418</sup> Still, others like then-25-year-old Ibrahim Rashada, a black man, had to alter their daily rituals because they no longer felt free to roam about in the Retreat at Twin Lakes community once Zimmerman and the other neighborhood watch residents began their policing with a focus on black males.<sup>419</sup> Instead of taking walks in his own neighborhood, Rashada took his regular walks downtown.<sup>420</sup> As Rashada explained, “I fit the stereotype he [Zimmerman] emailed around. . . . ‘A black guy did this. A black guy did that.’ So I thought, ‘Let me sit in the house. I don’t want anyone chasing me.’”<sup>421</sup> In essence, much like the effect of move-in violence (what scholars have defined as violent acts “targeting racial and ethnic minorities who integrate white neighborhoods”)<sup>422</sup> on Blacks and other people of color who become targets of such acts in neighborhoods, for some residents of the Retreat at Twin Lakes—specifically, those who resembled the scapegoats in others’ narratives about the neighborhood’s downward spiral—their home could not possess the same meaning as it did for their white counterparts: a sacred place of security, which is the meaning the law has generally given the home.<sup>423</sup>

That Blacks comprised 20% of the Retreat at Twin Lakes residents by February of 2012 does not cut against the argument that residents were

416. *See id.*

417. *See id.*

418. *See id.* Ransburg “swore it didn’t make him angry, and said he understood. ‘I don’t think it was racial,’ he said. ‘I guess we just looked suspicious.’” *Id.* Ransburg is correct. Such an act in and of itself is not racial, but if such calls were not being made for white residents engaged in the same behavior, such an act would become racial. Part of any neighborhood watch program requires getting to know one’s neighbors; yet, some evidence suggests that white neighborhood watch participants were not getting to know many of their black neighbors.

419. *See* Rene Lynch, *Trayvon Martin Shooting: George Zimmerman Dreamed of Being a Cop*, L.A. TIMES (Mar. 12, 2012), <http://articles.latimes.com/2012/mar/20/nation/la-na-nn-george-zimmerman-trayvon-martin-20120320>; *see also* *Reporting Trayvon*, *supra* note 2.

420. *See Reporting Trayvon*, *supra* note 2.

421. *See id.*

422. BELL, *supra* note 336, at 1.

423. *Id.* at 5 (“Since the founding of the United States, American legal doctrine has enshrined this cultural understanding of the home as a place that is specially protected. Most Americans are familiar with the common law right to use deadly force to defend oneself when one is attacked in one’s home. Legal protection for the home goes far deeper than the right to self-defense . . . . This is in keeping with the cultural idea that the home is a place of personal freedom . . . .”); *cf.* Boddie, *supra* note 333, at 420 (“Being excluded from space or marginalized within a particular space is stigmatizing and degrading. Racial territoriality demeans the individual by prohibiting the full expression of the self because those who suffer it experience the world as outsiders, barred from full participation in society.” (footnotes omitted)).

working to preserve the whiteness of the Retreat at Twin Lakes or at least what they perceived as a “white space.”<sup>424</sup> What mattered was the perception that those residents had of their neighborhood. As Elise Boddie explains, “space itself has social, cultural, and—in particular—racial meaning” and this “racial meaning helps to instigate territorial behavior in which one racial group seeks to exclude another racial group from what it perceives to be its own space.”<sup>425</sup> For some of the residents of the Retreat at Twin Lakes like Zimmerman and Taaffe, they viewed the neighborhood as a white space—meaning a space that is economically more privileged and socially desirable because it is occupied primarily by Whites—and they saw any Blacks whom they did not know as intruders. As a consequence, the narrative they developed for the downturn in their neighborhood centered around race and the sense that their “white” neighborhood was being besieged by black males, despite the fact that only 2 out of 44 incidents were confirmed to involve Blacks or, more specifically, black males—for a total of three Blacks. More so, the Retreat’s neighborhood watch residents, particularly Zimmerman, acted on this racialized view of the neighborhood by repeatedly making calls to 911 whenever they encountered persons they did not know who were black, but not doing the same with Whites who were unknown to them.<sup>426</sup>

Indeed, the racial meaning of the Retreat at Twin Lakes was also seemingly adopted by the police officers who arrived on the scene to investigate the killing of Martin. Viewing Martin much like Zimmerman did before and after he followed the boy—as an outsider, not a guest or resident in the neighborhood—the officers did not knock on any doors in the neighborhood to see if Martin might be living in or visiting someone in the gated community. In fact, they left Martin at the morgue as a “John Doe” overnight until his parents called the police in a frantic search for their son.<sup>427</sup> As lawyer and journalist Lisa Bloom proclaimed: “Had they gone a few hundred feet, knocking on less than a dozen doors, they would have come to the home of Brandy Green, where Brandy’s 14-year-old son, Chad Joseph, who was waiting for Trayvon’s return, would have identified the body. (Chad

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424. BLOOM, *supra* note 5, at 85 (noting that 20% of the neighborhood residents at the Retreat at Twin Lakes, the neighborhood in which George Zimmerman and father Tracy Martin’s girlfriend, Brandy Green, lived at the time of the killing, were black).

425. Boddie, *supra* note 333, at 435.

426. *Id.* at 437 (“Racial territoriality is the product of conscious and implicit racial biases against people of color that project onto physical geographic space. These biases are triggered by spatial conditions, including not only whether people of color are present but also their status within the space and how they are treated and/or represented.” (footnotes omitted)).

427. Initially, Tracy Martin was not concerned when he returned from a dinner date with Green in the evening and saw that Martin was not home. Tracy Martin simply thought that his son was out with a cousin. However, when morning came and Martin still had not come home, Tracy Martin and Sybrina Fulton became worried because it “wasn’t like” Martin to stay at out all night and it was even less like him to not contact his parents. See Jeannine Amber, *The Danger Outside: How Can We Protect Our Black Boys?*, ESSENCE (Feb. 26, 2016), <http://www.essence.com/2012/10/12/danger-outside>.

didn't hear the incident because he had headphones on and was playing PlayStation 3 in an upstairs bedroom.)."<sup>428</sup>

Moreover, as scholars such as Kenji Yoshino, Devon Carbado, Mitu Gulati, Mario Barnes, and myself have detailed, both racial exclusion and understandings of race have shifted over time. For instance, as Professor Kenji Yoshino explicates in his book *Covering: The Hidden Assault on Our Civil Rights*, and Professors Devon Carbado and Mitu Gulati clarify in their book *Acting White? Rethinking Race in Post-Racial America*, the notion of racial acceptability has changed in meaningful ways over time.<sup>429</sup> Yoshino explains: "We are at a transitional moment in how Americans discriminate. . . . [I]ndividuals no longer need[] to be white, male, straight, Protestant, and able-bodied; they need[] only to act white, male, straight, Protestant, and able-bodied."<sup>430</sup> As Carbado and Gulati further lay out, today's society is no longer premised upon and constructed in a society in which all Blacks (or racial minorities) are to be excluded, but rather upon a society in which a few Blacks (or other racial minorities) are to be included *so long as they perform their identities in ways that make them palatable*.<sup>431</sup> More so, as Professor Mario Barnes and I explain in our article, *By Any Other Name? On Being "Regarded As" Black, and Why Title VII Should Apply Even If Lakisha and Jamal Are White*, race is not marked solely by physical indicators such as skin color but also by performance or behavior.<sup>432</sup> Race today is frequently understood not solely by physical appearance but also by what that physical appearance has come to signify in society, coupled with one's own individual identity performance.<sup>433</sup> In other words, race is defined just as much by stereotypes and the way one behaves in any particular moment and context as it is by the way one looks, and by racially-associated ways of being such as how one dresses, how one styles her hair, how one speaks, and how one votes.<sup>434</sup> In this instance, with regard to his performance of race on the night of his death, Martin's dress, which included a hoodie, might have signaled to those who would stereotype him, like Zimmerman, that he did not

428. BLOOM, *supra* note 5, at 39.

429. KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 21–22 (2006).

430. *Id.* at 22; *see also* MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 130–31 (3d ed. 2015) ("[R]acial despotism is the norm against which all U.S. politics must be measured. Centuries of racial despotism have had . . . [the] consequence[] . . . [of defining] "American" identity as white: as the negation of racialized 'otherness' . . .").

431. *See generally* CARBADO & GULATI, *supra* note 226.

432. *See* Angela Onwuachi-Willig & Mario L. Barnes, *By Any Other Name? On Being "Regarded As" Black, and Why Title VII Should Apply Even If Lakisha and Jamal Are White*, 2005 WIS. L. REV. 1283, 1295 ("[D]iscrimination against racial minorities, Blacks in particular, is not merely the result of an aversion to dark skin in itself, but to what that dark skin signifies. For many employers, dark skin has signified laziness, unproductivity, and other stereotypes that have wrongfully been associated with all black workers." (footnote omitted)).

433. *See id.*

434. *See id.* at 1295–1315.

fit or belong in the space that Zimmerman and others had assigned a social meaning as a white space.<sup>435</sup>

Finally, the fact that Zimmerman is Latino (and even has some Afro-Latino heritage) does not negate the argument that he was working to preserve the whiteness of the neighborhood. It is clear that Zimmerman perceived the threat to his community as situated in the presence of young black males in the neighborhood. Indeed, he perceived even black children—not yet out of elementary school—as a sufficient threat to invoke the emergency reporting system. Furthermore, the claim that Zimmerman could not have racially profiled Martin because Zimmerman was part-Latino is premised upon the erroneous assumption that people of color cannot discriminate against each other.<sup>436</sup> More so, it ignores the long history of discrimination and bias by white Latinos against Blacks and black Latinos.<sup>437</sup> Additionally, it disregards the various hierarchies of acceptability that exist among racial groups as a whole. As Bell explains in her book *Hate Thy Neighbor*, “Asian American and Hispanic moves to white neighborhoods are much more palatable to whites than is African American integration.”<sup>438</sup> Most of all, the notion that Zimmerman could not have followed and then shot Martin because Zimmerman is Latino ignores the incentives that Zimmerman, as someone who was on the margins of what was perceived as a negative in the

435. Fox News TV journalist Geraldo Rivera, even as he also referred to Zimmerman as “nutty,” asserted that the Trayvon’s hoodie was partially to blame for his death. He proclaimed:

I am urging the parents of black and Latino youngsters particularly not to let their children go out wearing hoodies. I think the hoodie is as much responsible for Trayvon Martin’s death as much as George Zimmerman was.

....

Trayvon Martin, God bless him, an innocent kid, a wonderful kid, a box of Skittles in his hands. He didn’t deserve to die. But I bet you money, if he didn’t have that hoodie on, that nutty neighborhood watch guy wouldn’t have responded in that violent and aggressive way.

Dalina Castellanos, *Geraldo Rivera: Hoodie Responsible for Trayvon Martin’s Death*, L.A. TIMES (Mar. 23, 2012), <http://articles.latimes.com/2012/mar/23/nation/la-na-nn-geraldo-rivera-hoodie-trayvon-martin-20120323>.

436. See Tanya Katerí Hernández, *Latino Inter-Ethnic Employment Discrimination and the “Diversity” Defense*, 42 HARV. C.R.-C.L. L. REV. 259, 265 (2007). “Racism, in particular anti-Black racism, is a pervasive and historically entrenched fact of life in Latin America and the Caribbean.” *Id.* at 268.

437. See *id.* at 270 (arguing that Latino migrants often come to the United States “with their culture of anti-Black racism well intact” and that “this facet of Latino culture is transmitted . . . to younger generations”); Lee, *Making Race Salient*, *supra* note 7, at 1579 (“According to social science studies of Latino racial attitudes, both recent immigrants from Latin America and well-established Latinos in the United States prefer to maintain social distance from African Americans. Young Latinos are often the perpetrators of anti-Black hate crimes in the United States.” (footnotes omitted)); see also James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 37–44 (2012) (noting, for example, how Blacks have pushed for harsher criminal penalties that will have a detrimental impact on other Blacks).

438. BELL, *supra* note 336, at 2; see also ONWUACHI-WILLIG, *supra* note 173, at 123–55 (specifying those hierarchies in terms of outmarriage rates for racial minority groups).

neighborhood by some residents—for example, as a renter, not an owner of one of the Retreat at Twin Lakes townhomes, and as someone who was part Latino—to perform his identity in ways that signaled his belonging despite his otherness.<sup>439</sup> In this sense, Zimmerman may have been just like Milam and Bryant, who in 1955 were desperately fighting to cling onto the meager psychic compensation that their whiteness afforded them.

#### IV. CONCLUSION

In conclusion, for many African Americans, the killing of Trayvon Martin was the first in many recent signals to expose how the United States is far from being a post-racial society. More so, for many people, Trayvon Martin became this generation's Emmett Till. This Article works to provide a scholarly framework for understanding why the deaths of these two black teenagers, Till and Martin, have been linked together in so many individuals' minds. In so doing, this Article offers a socio-historical contextualization of the deaths of Emmett Till and Trayvon Martin and the legal cases regarding their deaths to demonstrate how deeply embedded social and economic structures and practices such as the protection of the material and psychic benefits of whiteness, the protection of "the white space," and commonsense racism, animated the two killings and may have influenced their trials, even though the cases occurred more than half a century apart. Such connections between these two cases reveal that while U.S. society has come a long way in terms of decreasing the presence of conscious and more blatant forms of racism, it is far from becoming a bias-free society where racial stereotypes and racial bias do not result in negative consequences for African Americans and other people of color.

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439. Devon Carbado and Mitu Gulati contend that "the social meaning of, for example, a black person's racial identity is a function of the way in which that person performs (presents) her blackness" such that Blacks can choose to accept or reject societal expectations of behaving conventionally—that is, in accordance with predominant stereotypes. Devon W. Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 YALE L.J. 1757, 1771–72 (2003) (reviewing FRANCISCO VALDES, ET AL., *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* (2002)); see also Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1262–63 (2004) (describing how women and people of color attempt to alter their racial identities in order to prevent discrimination and preempt stereotyping in the workplace); Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 892 (2002) (explaining why individuals in certain groups might downplay disfavored identity traits); see also generally Angela Onwuachi-Willig, *Volunteer Discrimination*, 40 U.C. DAVIS L. REV. 1895 (2007) (highlighting the immense pressures that Blacks generally have to perform their identity in racially palatable ways and in ways that distance them from other Blacks who perform their identities in ways that conform to racial stereotypes).