

RACIAL RECKONING

RENEE C. ROMANO

**PROSECUTING
AMERICA'S
CIVIL RIGHTS
MURDERS**

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Prosecuting America's Civil Rights Murders

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Harvard University Press

Cambridge, Massachusetts

London, England

2014

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Printed in the United States of America

First Printing

Library of Congress Cataloging-in-Publication Data

Romano, Renee Christine, author.

Racial reckoning : prosecuting America's civil rights murders / Renee C.

Romano.

pages cm

Includes bibliographical references and index.

ISBN 978-0-674-05042-6 (alk. paper)

1. Trials (Murder)—United States—History. 2. Civil rights movements—United States—History. 3. African Americans—Civil rights—History—20th century. 4. United States—Race relations. I. Title.

KF221.M8R66 2014

345.73'02523—dc23 2014003227

For my parents

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Introduction

Exhuming the Past

Americans, unhappily, have the most remarkable ability to alchemize all bitter truths into an innocuous but piquant confection and to transform their moral contradictions, or public discussion of such contradictions, into a proud decoration, such as are given for heroism on the field of battle.

—James Baldwin, 1951

JUNE 1, 2005, dawned warm and sunny in Alsip, Illinois, a suburb twenty miles south of Chicago, but the mood at Burr Oak Cemetery, a historic black burial ground, was somber. A few relatives, a preacher, and a group of FBI agents had gathered to exhume the body of Emmett Till, a fourteen-year-old black Chicagoan who had been killed in Mississippi almost exactly fifty years earlier. Till had gone to the tiny town of Money in August 1955 to spend some time with his extended family. Just a week after his arrival, he was brutally murdered, a punishment for supposedly sassing a young white female clerk in a small local store. Stories differ on whether Till actually whistled at twenty-one-year-old Carolyn Bryant, but whatever had transpired, Bryant's husband, Roy, decided that the teenager from Chicago needed to be taught a lesson.¹ Several days after the fateful encounter in the store, Bryant and his half brother, J. W. Milam, kidnapped Till from his great-uncle's house and took him to a barn where they and several others beat him, gouged out one of his eyes, and shot him in the head before dumping his body in the Tallahatchie River.

In 1955, there was no justice for Emmett Till. Bryant and Milam were charged with the murder, but an all-white jury acquitted them after a five-day trial and a sixty-seven-minute deliberation. Emboldened by their acquittal, the two men confessed to the murder on the pages of *Look* magazine in exchange for \$4,000. They would both die of old age never having served a day in jail for the crime. Till's brutal murder and the complete failure of the criminal justice system to hold anyone accountable for it galvanized many young African Americans to join the struggle against the southern racial caste system.²

Fifty years later, in response to years of lobbying to reinvestigate the murder by relatives and activists, state and federal authorities reopened the case. Their efforts to determine whether anyone else could be charged with Till's murder prompted the exhumation of his body so that an autopsy could be conducted. The backhoe that dug up the earth around Till's casket was, quite literally, excavating the past. And that excavation did not begin or end with the case of Emmett Till. Since the late 1980s, state and federal authorities have reinvestigated over one hundred killings that took place during the struggle to uphold the racial order in the 1950s and 1960s. Legal proceedings related to nine incidents of violence have resulted in, to date, thirteen contemporary trials and the sentencing of more than twenty men to jail time for racially motivated murders they committed in the years between 1955 and 1970.

Racial Reckoning seeks to understand the phenomenon of the contemporary prosecution of civil rights-era crimes. It explores the forces that drove the legal system to revisit these decades-old murders, what happened in the courtroom when they came before a jury, and how reopenings and trials have been represented in the media and popular culture. Most centrally, it uses these modern civil rights trials to explore the dramatic evolution in the operation of race in American society, as a legally enforced caste system based on claims of white biological superiority has been rapidly replaced by ideologies that instead maintain inequalities by insisting that the United States has effectively ended discrimination and thus public policy should be "colorblind." Trials became a key site of contestation between those who wanted to harness them to the project of declaring and celebrating the end of racism in a "postracial" nation and those who saw in them the potential to challenge the

denial of the significance of race that was at the foundation of the new racial order.

While many domestic forces have contributed to the interest in revisiting civil rights-era violence, exhumations like those of Emmett Till reflect much broader international trends. In the years since 1945, and especially since 1990 with the end of the Cold War, a growing number of communities and nations have revisited and tried to address historical injustices. Stemming in large part from the new human rights norms that developed after the Holocaust and reflecting the growth of political power of minority groups, nations around the globe have begun to acknowledge guilt for their wrongdoings, from their complicity with the Holocaust to their persecution of native peoples. The appearance of restitution cases all over the world, where nations voluntarily offer acknowledgment of or reparations for a historical injustice, marks one manifestation of the new moral standards in international politics. So do efforts to hold state officials accountable for genocide and gross human rights violations through war crimes tribunals or international or domestic prosecutions, which since the 1990s have exploded in what one scholar has called a “justice cascade.” The prevalence of truth commissions—since the 1980s, there have been nearly thirty international or national commissions established around the world to explore past atrocities—reflects this unprecedented historical moment as well. Indeed, as legal scholar and human rights advocate Martha Minow argues, what is truly distinctive about the twentieth century is not its infamous record of human rights abuses and genocides, but the ways in which nations have been moved to formally respond to these atrocities.³

The exhumation of Emmett Till’s body offers some clues as to the particular nature of the American manifestation of this broader international trend. For one, it highlights the fact that the nation’s history of racial violence, especially that which was directed at African Americans in the Jim Crow era of the 1890s through the 1970s, remains an unsettled past that has demanded some kind of formal response. Jim Crow-era racial violence is not the only history that the United States has been moved to address in the past thirty years—other examples include federal reparations for victims of the World War II Japanese internment and some apologies and legal restitution directed at Native Americans. But the racial violence symbolized by a figure like Emmett Till has been

at the forefront of the histories that garnered national media and political attention. Some pasts, South African Archbishop Desmond Tutu has said, “refuse to lie down quietly.”⁴ The racial violence of the Jim Crow era is such a past. Murders like Till’s were committed in the pursuit of the political end of maintaining a system of white supremacy. Their history did not “lie down quietly” because the murders, while committed by a relative few, were enabled and condoned by the larger community and its institutions, a story encapsulated in the failure of the legal system to hold anyone responsible for the crimes at the time. When Jim Crow gave way to a new racial system characterized by the principle of formal legal equality, the racial violence of that era became even more restive, symbolizing as it did the near-total failure of the law to protect blacks and their white allies.

The exhumation of Emmett Till also makes clear that bringing these unsettling pasts into the present required effort. Till’s case would not have been reopened if not for the persistence and dedication of his mother, Mamie Till Mobley. Till Mobley had died by 2005, but she was still near Emmett, buried in the same cemetery as her son. From the time of his death fifty years earlier, she had dedicated her life to making sure that he not be forgotten, going on speaking tours, collaborating with playwrights and filmmakers to tell Emmett’s story, and starting youth groups dedicated to his memory. Emmett’s murder became a national touchstone because his mother insisted that his body be displayed in a glass-topped casket for his funeral; the photos of his mutilated corpse, circulated in the black press and internationally, vividly uncovered the evil at the heart of the Jim Crow system.⁵ Mamie Till Mobley did everything in her power to ensure that the day would come when Emmett’s murder might be revisited. Fittingly, the unique casket she chose preserved her son’s remains exceptionally well, making it possible for FBI forensic scientists to uncover new evidence about his death.⁶ Through her activism, she both preserved the past so that it could be revisited and lobbied and fought to ensure that it would be.

The fact that the FBI exhumed Emmett Till’s body as part of a criminal investigation highlights another important aspect of America’s racial reckoning: much of it has taken place through the legal process, and especially in the arena of criminal courts. While many countries around the world have created truth commissions or ordered official investigations



Mamie Till grieving at her son's 1955 funeral. She chose the unique glass-topped casket to ensure that the world could see Emmett's brutalized body. Till dedicated her life to keeping her son's memory alive and fought for decades to see his murder investigation reopened. (AP Photo/*Chicago Sun-Times*, File)

to explore and redress their histories of violence, there has never been an official truth commission in the United States, and there have only been a very few official commissions appointed at the state level charged with examining episodes of racial violence, such as those appointed by state legislatures in Oklahoma and North Carolina to address, respectively, the 1921 Tulsa Race Riot and the 1898 race riot in Wilmington.⁷ More commonly, the United States has revisited its historic violence in criminal proceedings designed to hold perpetrators accountable for their crimes. The criminal legal process was the earliest site of any official accounting for the history of the Jim Crow era; the first civil rights trial took place in 1977, with many others following the 1994 trial of Byron De La Beckwith for the 1963 murder of Medgar Evers. Arguably these prosecutions, which have focused national attention on dramatic incidents of historic racial violence, helped generate the political support that resulted in one

of the few other official acts revisiting the nation's racial history, the apologies issued by the U.S. Congress in 2005 and 2009 expressing regret and remorse for slavery and for lynching.⁸

The very widespread media coverage of reopened murder investigations and criminal trials, moreover, has made civil rights trials into the most widely publicized site for a national reckoning with the nation's history of racial violence. In criminal trials, reporters, documentarians, and feature filmmakers found ready-made dramas that could be used to tell powerful stories. The bevy of reporters standing just outside the cemetery gate as Till's body was exhumed serves as testament to the importance of media coverage in making the legal arena the most important public site of racial reckoning.

Every form of redress for historic violence has different strengths and limitations; contemporary civil rights trials offer a way to explore the ways in which the legal process has shaped the nature of America's racial reckoning. What, for example, does a trial in a decades-old case mean to family members of victims? Can trials offer healing and closure? In what ways, if any, can the criminal legal process help repair the rifts left by the failure of communities and states to acknowledge the social value of the victims of historic violence? And can criminal prosecutions explore community or state complicity in historic violence? It is especially important to understand the effects of addressing civil rights-era violence through criminal law because efforts to prosecute these murders have gained official approval and support since the 1990s, not only on the federal level, but also among southern states. In recent decades, many southern political leaders who once publicly opposed efforts to revisit the region's history of racial violence have openly endorsed attempts to bring civil rights crimes into the courtroom. Why have governmental bodies in the United States favored trials over truth commissions or other mechanisms as its formal response to historic atrocities?

The attention paid to the Till case signals another key feature of America's racial reckoning: it has focused primarily on southern racial violence rather than the type of violence that structured race relations outside the South. Just as Martin Luther King Jr.'s failed attempt to bring his brand of nonviolent protest to Chicago has little place in the mainstream representations of the civil rights struggle, the racial reckoning that began in the 1990s would do little to explore the nature of

racism and racial violence outside the South.⁹ While the racial system in the North and West did not rely as openly on segregation laws or voting restrictions against blacks, blacks outside the South faced poor housing conditions in racially segregated, run-down neighborhoods, economic discrimination, inadequate segregated schools, and police brutality. When black residents in northern and western cities erupted in frustration and rage in race riots that became common in the last five years of the 1960s, police and National Guardsmen sent to quell the disorder killed rioters and black bystanders in numbers that rivaled the violence unleashed in the South during the struggle to uphold segregation.¹⁰

Civil rights trials could have focused attention on the particular nature and extent of racial violence outside the South since one of the cases that has been reopened and that has resulted in trials involved deaths that took place during the course of riots in York, Pennsylvania, in 1969. Two people were killed during the York riots: Henry Schaad, a white police officer shot as he rode in an armored car in a black neighborhood, and Lillie Belle Allen, an African American woman from South Carolina, who died when a white mob opened fire on her family's car when it ventured into a white neighborhood. No one faced charges for either murder at the time, but in 2001, legal proceedings resulted in the conviction of twelve men, nine whites for the murder of Allen and three blacks for the murder of Schaad.¹¹

While media coverage of civil rights trials almost always notes that there have been twenty-three contemporary convictions, journalists almost never explain that twelve of those convictions took place for a crime that occurred outside the South, and almost none of the many articles written about the various southern civil rights murders have brought in the York case as comparison or context. Instead of raising questions about racial violence outside the South, national coverage of the York trials took pains to pointedly remind readers that York was only barely a northern city. "York lies near Gettysburg, close to the Mason-Dixon line," the *Washington Post* helpfully explained, while a *New York Times* feature described York as "nearer to Baltimore than to Philadelphia."¹² When one York native complained that all of the coverage of the Allen and Schaad trials "makes us look like we're a redneck town in Mississippi," it revealed his sense that the kind of racial violence that had occurred in York was only supposed to happen down South. Rather

than leading to a discussion of racial segregation in the North, the workings of the racial caste system outside the South, or the role of violence, both official and unofficial, in maintaining racial order, the York case was instead marginalized or “southernized” so it could fit within the typical dichotomies of America’s racial understanding: North versus South, *de facto* versus *de jure*, and pre-1970 and after.¹³

That typical framing would be adopted too by the federal government when it formally sanctioned the goal of seeking new trials as part of America’s racial reckoning. In 2008, when the U.S. Congress approved legislation that authorized \$10 million over ten years to fund units in the Department of Justice and the FBI dedicated to investigating racially motivated murders committed before 1970, it named the law the “Emmett Till Unsolved Civil Rights Crimes Act.” The “Till Bill,” as it was commonly described even after it became law, did not exclude murders committed outside the South. But the discussion of the bill in Congress and before the House Judiciary Committee made clear that most supporters understood racial violence as a southern phenomenon. Moreover, of the 125 murders that have been investigated under the act to date, all but two took place in the South.¹⁴ The FBI’s list of cases to reinvestigate failed to include those of victims who were killed by police during urban riots or those of murdered black radicals, such as slain Black Panther Fred Hampton. The framing of the law, historian David Garrow has publicly charged, “limits itself to the kinds of easy cases that fit our expectations and everyone can agree on—while ignoring the cases that cut against our wistful, nostalgic desire to see civil rights history as just a Deep South morality play featuring drooling racists versus Gandhian victims.”¹⁵ Naming the law after Emmett Till, the most iconic symbol of that Deep Southern morality play, framed racial violence as both a problem of the South and a problem of the past.

The exhumation of Emmett Till that June morning offers one final insight into the nature of America’s racial reckoning: it has inspired debate and contestation over what kind of attention to the past the trials should generate and, ultimately, over what might constitute “justice” in response to the nation’s racial history. The Reverend Jesse Jackson, who worked alongside Martin Luther King Jr. during the civil rights movement, responded to the exhumation of Till’s body by asking why it had taken so long for authorities to act. “Justice delayed is justice denied,”

he charged, a claim that suggested whatever legal justice might come from reopening the case would not equal the injustice that the crime and the failure to punish anyone for it at the time represented. FBI agent Arthur Everett, who witnessed the exhumation as the assistant special agent in charge of Chicago's FBI office, offered a different message. For him, the exhumation signified "that even though the system of justice sometimes turns very slowly, it still turns." Justice delayed was not, in his view, a sign of justice denied.¹⁶ Their disagreement illustrates the foundational questions raised by the contemporary reopening of civil rights-era murders: what exactly should constitute "justice" in terms of revisiting the nation's history of racial violence, and could a criminal prosecution deliver it?

Emmett Till was only one of over a hundred victims of racially motivated violence from the 1950s and 1960s whose murders have been reinvestigated in the years since 1990. These "cold cases" were either not fully solved at the time or perpetrators escaped punishment because of racism within the criminal justice system. They include the murders of activists who played a leading role in the civil rights struggle, those of individuals like Till whose deaths highlighted the brutality of the racial system in a way that galvanized the movement, as well as those who were targeted, sometimes randomly, in efforts to intimidate blacks and quell social protest. Most of the reopenings have not resulted in any formal charges. The passage of time, loss of evidence, and death of witnesses and suspects have made it difficult, if not impossible, to pursue further legal action in many cases. Only a handful of cases have proceeded from investigation to indictments. While *Racial Reckoning* analyzes the broader phenomenon of the reopening of civil rights cold cases, it necessarily pays particular attention to the eight southern cases that have proceeded furthest in the legal process to indictments and to resolution through trial or plea bargain.

In 1991, in the case that would spark a wave of reopenings, Mississippi state authorities indicted Byron De La Beckwith for the 1963 murder of Medgar Evers. Evers, a Mississippi native and a World War II veteran, served as the Mississippi state field secretary of the National Association of Colored People (NAACP). Over the course of his civil rights career, he fought to desegregate the University of Mississippi, led

boycotts against Jim Crow stores in Jackson, organized local NAACP chapters, and investigated racial murders like that of Emmett Till. On July 12, 1963, just hours after President Kennedy addressed the nation to call for a national law to desegregate public accommodations, Evers was gunned down in his driveway as he returned home from an evening meeting. Two state juries failed to convict Byron De La Beckwith of murder charges in 1964. Thirty years later, in 1994, a Mississippi jury finally sent Beckwith to jail.

In 1998, another well-known civil rights murder came back into the courtroom when Mississippi authorities indicted three men for the 1966 killing of Vernon Dahmer. Dahmer, a successful black farmer and businessman in Forrest County, Mississippi, served as president of the local NAACP and was active in voter registration campaigns. Late on the evening of January 10, 1966, Klansmen angered by Dahmer's political activities and economic success came to Dahmer's farm and set his house on fire. Although Dahmer was able to hold off the attackers with a gun so his family could escape the burning house, he died of smoke inhalation the next day. The state tried thirteen men on charges of arson or murder in the 1960s, and won convictions against four of them. The federal government brought conspiracy charges against eleven men in relation to the murder; all of the federal trials ended in acquittals or hung juries. In 1998, the state brought new charges against three men involved in the killing, and Sam Bowers, the Klan leader who ordered the killing and who had escaped punishment in four different mistrials in the 1960s, was finally convicted of Dahmer's murder.¹⁷

That same year, authorities reopened the case of Rainey Pool, a fifty-four-year-old sharecropper from Humphries County, Mississippi. On April 12, 1970, a group of seven white men gathered at a bar beat Pool after one thought they saw him with his hand in a white man's truck. They then loaded an unconscious Pool into the truck, drove to the Sunflower River, and threw him in. In 1970, the state indicted four men for the killing, but the prosecutor dismissed the charges. In 1999, the state brought charges against all five living suspects in the case. One pled guilty to manslaughter and agreed to testify against the others, resulting in three convictions and one acquittal.

One of the most famous crimes of the civil rights era, the September 15, 1963, bombing of Birmingham's Sixteenth Street Baptist Church,

resulted in trials in 2001 and 2002. Klansmen targeted the church because civil rights protestors were using it as a staging ground for marches demanding an end to segregation in Birmingham. The bomb went off on a Sunday morning, killing four black girls: Denise McNair, eleven years old, and Carole Robertson, Addie Mae Collins, and Cynthia Wesley, all fourteen. No one was charged in connection with the bombing in the 1960s. In 1977, a committed Alabama attorney general successfully prosecuted one of the bombers in the first effort to redress unresolved civil rights-era violence. Twenty-five years later, in 2001 and 2002, Alabama juries convicted Thomas Blanton and Bobby Frank Cherry for their roles in the church bombing.

Legal justice would come next for Ben Chester White, a sixty-seven-year-old Natchez, Mississippi, farmhand, killed by Klansmen in 1966. Described by relatives as a quiet and humble man who never missed work or church, White had steered clear of the civil rights marches, boycotts, and strikes that engulfed Natchez in 1965. But he became a target when local Klansmen decided something must be done to detract attention from activist James Meredith, who was conducting a Freedom March across Mississippi. The Klansmen hoped too that a brutal murder might lure Martin Luther King Jr. to Natchez so that they could assassinate him. So on June 10, 1966, James Jones, Claude Fuller, and Ernest Avants drove White to a bridge over a creek in the Homochitto National Forest. Fuller shot White at least fifteen times with a rifle; Avants then fired a single shotgun blast that blew off the top of White's head.¹⁸ Jones's trial ended in a hung jury, while Fuller was charged but never tried. A state jury acquitted Avants of murder in 1966, but in 2003, he was convicted of federal charges of murder after authorities discovered that White had been killed on federal land.

The 1964 triple murder of three activists, one black and two white, in Neshoba County, Mississippi, became the subject of a 2005 trial. Mickey Schwerner, a native white New Yorker, came to Meridian in early 1964 with his wife, Rita, to direct the activities of the Congress of Racial Equality in one of their five Mississippi districts. James Chaney, a twenty-one-year-old black resident of Meridian, befriended the Schwerners and began working with them to organize voter registration campaigns and Freedom Schools. Andrew Goodman, a twenty-year-old white Queens College student, came south as a volunteer for Freedom Summer, a