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The Law's Failures: Common Threads of Racial Injustice from Tulsa to Greensboro to the Present

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THE LAW’S FAILURES: COMMON THREADS OF RACIAL INJUSTICE FROM TULSA TO GREENSBORO TO THE PRESENT

Mary Louise Frampton *

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I. INTRODUCTION

The promise of racial justice in the future rests on an understanding of the injustices of the past. Yet the peculiar historical amnesia that seems to afflict so many Americans—particularly on issues of race—places obstacles in the path to that mandate. Honest remembrances and commemorations of historical tragedies can help to remove some of those barriers and assist us in confronting both our past and present shortcomings. For lawyers and legal academics committed to racial justice, a critical examination of history can help us assess the effectiveness of the narratives and tools we have used in the past

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and analyze why different or additional approaches are needed today. In my view, it is a moral imperative for the legal profession to examine those instances in which the American legal system—often purported to be a model for the world—failed to prove equal to the task.

As we contemplate how the law failed the victims of the Tulsa Race Massacre and its aftermath a century ago, it can be easy to dismiss the lessons it teaches us as ancient history, as irrelevant to today. The story the United States tells itself is that the Civil Rights Movement and its accompanying legislative and policy prescriptions fundamentally changed the racial landscape in this country. The disappointing shortcomings of the law for both the survivors of the Greensboro Massacre of 1979 and for the Greensboro community a half century after the Tulsa Race Massacre and more than a decade after the Civil Rights Movement belie that myth. The common themes in these two tragedies—and the repeat performances of the law’s failures—illustrate the tenacity of white supremacy within our legal system. Indeed, our current racial calamities demonstrate that a line can be drawn from Tulsa to Greensboro to today.

In both Tulsa and Greensboro, the law failed in a myriad of ways. Rather than preventing or even mitigating the harms caused by the massacres themselves, the law contributed to them. Indeed, law enforcement officers and informants paved the way for the violence and were directly responsible for some of it. After the massacres, the legal system failed to hold the guilty to account or to accord justice to the victims. What is equally damning, the law allowed a false narrative of the massacres to be constructed in their afterward. Lawyers often forget that the law’s failures have impacts far beyond the legal system and the parties themselves. The story of civil rights mythology is that racial hierarchy and discrimination are problems to be both defined and solved by the law. In this fable white people need not be overly concerned about the vestiges of white supremacy because that is the job of the law. But if the law is incapable of doing this job it creates the opportunity for society as a whole to ignore the reality of apartheid.

Fortunately, in the wake of the traditional legal system’s failures in Tulsa and Greensboro, truth commissions were established decades after the massacres to document the facts, expose the harms, seek accountability, and foster healing. These commissions sought to change the dominant narrative of these events and to uncover a more accurate account. Their success in this latter regard is illustrated by the fact that the Tulsa Race Riot is now correctly named the Tulsa Race Massacre and the Greensboro Shoot-Out is now referred to as the Greensboro Massacre. Yet even these commissions have fallen far short of the finish line. Indeed, the patterns of white supremacy that reveal themselves in Tulsa and Greensboro can be seen today.

II. THE TULSA RACE MASSACRE

From May 31 to June 1, 1921, a white mob killed hundreds of Black people and burned and looted over a thousand structures in the Greenwood District of Tulsa, Oklahoma.¹ This prosperous neighborhood called Black Wall Street was home to 10,000

1. Kweku Larry Crowe & Thabiti Lewis, *The 1921 Tulsa Race Massacre: What Happened to Black Wall Street*, NEH (2021), <https://www.neh.gov/article/1921-tulsa-massacre>.

African American people.² The genesis of the Massacre reads like a tragic story we have heard and lamented too many times to count. A young Black teenager was wrongfully arrested for the rape of a white woman by a white police force.³ Concerned that the young man would be hung without a trial, a group of Black men, many of them World War I veterans recently returned from battle, gathered at the courthouse to protest the arrest.⁴ One can imagine that some of them had seen action in Europe and had experienced less discriminatory treatment there than awaited them back home.⁵ Many of them may have also anticipated that—having risked their lives for their country—the least their nation could do for them was guarantee them equal protection under the law. We can never be certain but we can speculate that a stew of white entitlement and resentment mixed with racism—explicit and implicit—caused the white police to see a dangerous mob rather than the demonstration of righteous anger, legitimate fear, and a plea for fairness. Faced with this protest, local law enforcement deputized hundreds of white men to purportedly keep order.⁶ Instead over a period of two days hundreds of Black people—and a few white people—were killed and over a thousand Greenwood homes and businesses were burned to the ground and looted by violent white vigilantes.⁷ Most of the Black residents of Greenwood were left homeless and were forcibly herded into tent camps after being arrested by the belatedly involved National Guard.⁸

Not a single criminal conviction held the murderers to account.⁹ Although at least eighteen civil cases were filed in 1922 by Black residents against the City of Tulsa, the Police Department, and the National Guard for conspiracy to destroy their homes and businesses it is unclear what exactly transpired.¹⁰ Filed by a prominent Greenwood Black attorney, they were ultimately dismissed in 1937 with his consent.¹¹

Decades of silence and fear about the Tulsa Race “Riot” ensued. As those with the power determine what constitutes knowledge, it is not surprising the slaughter became defined as a “riot” with everyone—white and Black alike—to be blamed. As the Black men were portrayed as instigating the events with their protest, any action that white law enforcement took was viewed as a justifiable response. And in this fable, the city and the Police Department were not responsible for the violence: it was the Klan that was largely responsible.¹²

2. Yuliya Parshina-Kottas et al., *What the Tulsa Race Massacre Destroyed*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html>.

3. Dreisen Heath, *The Case for Reparations in Tulsa, Oklahoma*, HUM. RTS. WATCH (May 29, 2020), https://www.hrw.org/news/2020/05/29/case-reparations-tulsa-oklahoma#_ftnref5.

4. *Id.*

5. *Id.*

6. *Id.*

7. Greta Katherine Smith, *The Battling Ground: Memory, Violence, and Resistance in Greenwood, North Tulsa, Oklahoma, 1907-1980* (2018) (Ph.D. dissertation, Portland State University), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=5631&context=open_access_etds.

8. *Id.*

9. TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921, at 145 (2001) [hereinafter A REPORT].

10. *Id.*

11. *Tulsa Race Riot Court Cases*, TULSA HIST. SOC'Y & MUSEUM, <https://www.tulsaohistory.org/exhibit/1921-tulsa-race-massacre/documents/> (last visited Oct. 5, 2021).

12. *Timeline: The 1921 Tulsa Race Massacre*, TULSA WORLD (May 29, 2021),

III. THE GREENSBORO MASSACRE

Over fifty years later, on November 3, 1979 members of the Klan and the American Nazi Party shot and killed five labor activists and injured ten others during a “Death to the Klan” demonstration in a predominantly Black neighborhood near the Morningstar Manor housing project in Greensboro, North Carolina.¹³ The protest was led by a widely diverse group of people who had been organizing workers in the Greensboro textile mills.¹⁴ Some of the protesters had recently joined the Communist Workers’ Party (“CWP”), which called for workers’ democratic control of factories and other workplaces, jobs at union scale, national health and retirement insurance, free childcare, and free education through college.¹⁵ A few months before the demonstration some of the murder victims protested at an event in nearby China Grove where Klansmen gathered to show “Birth of a Nation,” a movie that casts the Klan as saviors of the Reconstruction.¹⁶ Tensions between the two groups escalated after that event, and it was widely predicted that the next encounter would be violent.

The Greensboro protest was proceeding in a peaceful fashion with about forty or fifty participants making signs, strumming guitars, and singing songs when a nine car caravan of cars driven by about forty Klan and American Nazi Party members drove into the crowd.¹⁷ Some of the CWP participants shouted insults at the Klan and Nazi members and hit their cars with sticks.¹⁸ Then several Klan and Nazi Party members exited their cars, shouting “Out of the way, niggers,” retrieved shotguns and rifles from their trunks, shot directly at the protesters, and then quickly got back in their cars and left the scene.¹⁹ Within eighty-eight seconds, thirty-nine shots were fired.²⁰ Cesar Cause, 28, a Cuban refugee and a graduate of Duke Medical School; Michael Nathan, 33, Chief of Pediatrics at Lincoln Community Health Center and a 1973 graduate of Duke Medical School; James Waller, 37, president of a local union and formerly a professor at Duke Medical School; and Sandra Smith, 29, a nurse and former student body president at Bennett College all died instantly.²¹ William Sampson, 31, a graduate of the Harvard Divinity School and the University of Virginia Medical School, died shortly thereafter in the hospital.²² Paul Bermanzohn, also a Duke Medical School graduate, was critically injured and became permanently paralyzed from his wounds; nine other demonstrators were also

https://tulsaworld.com/news/local/racemassacre/timeline-the-1921-tulsa-race-massacre/collection_1c02a7b4-86ce-11e8-b63d-c3bbb45d4a6c.html.

13. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT 2 (May 25, 2006).

14. Ronald J. Bacigal & Margaret Ivey Bacigal, *When Racists and Radicals Meet*, 38 EMORY L. J. 1145, 1148 (1989).

15. *Id.* at 1149.

16. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 14.

17. Rebecca Boger et al., *The Greensboro Massacre*, UNCG, <http://libcdm1.uncg.edu/cdm/essay1979/collection/CivilRights> (last visited Aug. 17, 2021).

18. *The Greensboro Massacre: Critical Lessons for the 1980's*, MARXISTS, <https://www.marxists.org/history/erol/ncm-5/greensboro/part1.htm> (last visited Aug. 17, 2021).

19. Art Harris, *'Agonizing' Verdict in Greensboro*, WASH. POST (Nov. 21, 1980), <https://www.washingtonpost.com/archive/politics/1980/11/21/agonizing-verdict-in-greensboro/88dd3c6b-71af-460d-8ef2-4c6a85c6ac3d/>.

20. Boger et al., *supra* note 17.

21. *Id.*

22. *Id.*

injured.²³ Nelson Johnson, one of the leaders of the protest, and other CWP members, were arrested for creating a riot.²⁴

In the face of information that armed members of the Klan and Nazi Party were on their way to storm the rally, the Greensboro Police Department ordered its officers to stay away from the demonstration.²⁵ In contrast, the city called in hundreds of National Guard troops to police the funerals of the victims and imposed a curfew.²⁶ News stations were advised by city officials not to broadcast the footage of the murders showing the lack of police presence.²⁷

IV. FAILURE OF THE LAW TO PROTECT

The Massacre was allowed to occur because of the decision of the Greensboro Police Department to stay absent from the protest.²⁸ This cooperation and collaboration between the police and those directly responsible for the murders was reminiscent of the complicity of law enforcement authorities in Tulsa more than fifty years previously. Although the Police Department was well aware of the plans of the Klan and the Nazi Party to bring guns to the protest, they did not send any police officers to protect the demonstrators or prevent the violence.²⁹ Indeed, the Police Department's informant, Eddie Dawson, took an active role in the "storming" of the demonstration.³⁰ He designed a flyer equating Communists with killers, spoke at a Klan rally denouncing Blacks and Communists, and according to some Klansmen encouraged them to bring guns to the CWP protest rally.³¹ On the day before the protest he obtained a map of the march route from the Greensboro Police Department and shared it with his Klan colleagues.³² That morning he notified his contact at the Police Department that Klansmen and Nazi Party members were on their way to the protest with a large number of guns.³³ He helped assemble his group that morning and joined Grand Dragon Virgil Griffin in the lead car.³⁴ As the *Washington Post* reported on February 7, 1980, there was "a feeling of kinship between city authorities and the Klan."³⁵

On the federal level, Bernard Butkovich was sent by the Department of Alcohol, Tobacco, and Firearms to infiltrate the American Nazi Party in North Carolina in 1979,

23. *Id.*

24. *Id.*

25. SPOMA JOVANOVIC, DEMOCRACY, DIALOGUE, AND COMMUNITY ACTION: TRUTH AND RECONCILIATION IN GREENSBORO 162 (2012); GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 8.

26. Boger et al., *supra* note 17.

27. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 234.

28. Boger et al., *supra* note 17.

29. *Id.*

30. Bacigal & Bacigal, *supra* note 14, at 1154.

31. *Id.*

32. *Id.*

33. Shaun Assael & Peter Keating, *The Massacre that Spawned the Alt-Right*, POLITICO (Nov. 3, 2019), <https://www.politico.com/magazine/story/2019/11/03/greensboro-massacre-white-nationalism-klan-229873/>.

34. Bacigal & Bacigal, *supra* note 14, at 1155.

35. Milton Coleman, *The Klan, the Terror*, WASH. POST (Feb. 7, 1980), <https://www.washingtonpost.com/archive/local/1980/02/07/the-klan-the-terror/6ec76579-8473-4415-bb19-2cc40c147e12/>.

and he was involved in the Nazi Party's plan to disrupt the CWP rally.³⁶ Although he was advised by his handlers to not attend the protest because it would be too "public," he encouraged his colleagues to take guns to the event.³⁷ He justified this action later by saying he was attempting to facilitate the seizure of illegal weapons.³⁸

V. FAILURE OF THE LAW TO DELIVER JUSTICE

In 1921 there were no video cameras to record the murders and burning of homes and businesses of Tulsa's citizens of African descent so holding the killers to account may have been more difficult.³⁹ In Greensboro, however, television cameras captured the actual murders in video recordings.⁴⁰ Hence, the Greensboro District Attorney had little choice but to file homicide charges against four Klansmen and two Nazi Party members in the aftermath of the killings.⁴¹ However, neither Eddie Dawson, the police informant, nor Bernard Butkovich, the ATF informant, were indicted or called to testify.⁴² (Mr. Dawson later revealed that the prosecutors prevented him from testifying when he threatened to reveal the role of the city and the police in the Massacre.)⁴³ Although 132 witnesses testified, the District Attorney did not subpoena any of the CWP victims.⁴⁴ For their part the surviving victims, friends, and families of the deceased victims declined to be involved in what they viewed as a travesty of justice.⁴⁵ The trial lasted for twenty three weeks.⁴⁶

The Klan and American Nazi defendants painted a picture of themselves as patriots fighting Communists in the streets.⁴⁷ Their defense was bolstered by a prosecutor who made anti-Communist comments and a jury foreman who had escaped Communist Cuba twenty years before.⁴⁸ The prosecutors termed the encounter "a riot waiting to happen . . . like putting a mongoose and a snake together."⁴⁹ The all white jury decided the defendants had acted in self-defense and acquitted all of them.⁵⁰

Efforts to persuade the federal government to file civil rights charges against the Klan and Nazi Party perpetrators were unsuccessful until a January 1983 public television documentary, *88 Seconds in Greensboro*, revealed the involvement of the police informant, Eddie Dawson, and reviewed the murders.⁵¹ Three months later a federal grand

36. Bacigal & Bacigal, *supra* note 14, at 1155.

37. *Id.*

38. *Id.*

39. Assael & Keating, *supra* note 33.

40. *Id.* (It is ironic that the media was present even though the police were not).

41. Harris, *supra* note 19.

42. Bacigal & Bacigal, *supra* note 14, at n.44.

43. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 270.

44. Harris, *supra* note 19.

45. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 279–80.

46. ELIZABETH WHEATON, CODENAME GREENKIL: THE 1979 GREENSBORO KILLINGS 212–26 (2009).

47. Art Harris, *The Hardscrabble Heroes of Hatred*, WASH. POST (Nov. 19, 1980), <https://www.washingtonpost.com/archive/politics/1980/11/19/the-hardscrabble-heroes-of-hatred/166c2260-54c4-4431-b07d-3ac22b386278/>.

48. Boger et al., *supra* note 17, at 3.

49. Harris, *supra* note 19.

50. *Id.*

51. Bacigal & Bacigal, *supra* note 14, at 1184.

jury indicted nine Klansmen and Nazis for conspiring to violate the civil rights of the victims.⁵² Yet again, however, prosecutors made decisions which seemed to set the stage for failure. They filed charges under 18 U.S.C. Section 245, a narrow statute requiring proof of explicit racial animus rather than 18 U.S.C. Section 241 which covers anti-political motivation as well.⁵³ Indeed, a chief prosecutor in the Civil Rights Division resigned over this decision.⁵⁴ Nor were any governmental defendants charged.⁵⁵

Yet again, the defendants and their highly experienced counsel argued they were patriots protecting the community against violent Communists.⁵⁶ After a four month trial an all white jury found the defendants not guilty.⁵⁷ This time the acquittal was based on the grounds that the government had failed to prove racial animus beyond a reasonable doubt.⁵⁸ Instead, the jury concluded the defendants had killed the victims because some of them were Communists.⁵⁹

On the one year anniversary of the Massacre sixteen plaintiffs, including the relatives of the victims, filed a civil wrongful death case against both Klan and Nazi Party members and governmental agents for conspiring to violate their civil rights.⁶⁰ The suit was held in abeyance for four years to allow the criminal prosecutions to be concluded.⁶¹ Initially, the suit was led by the Greensboro Justice Fund composed of family and friends of the victims and closely aligned with the Communist Workers' Party.⁶² Later the leadership shifted to the Greensboro Civil Rights Fund, a broad based coalition which gained support from the National ACLU and religious organizations.⁶³

The Klan and Nazi Party defendants filed counterclaims for \$40 million in damages for deprivation of their rights to free speech and assembly and anti-white race discrimination under the Civil Rights Act of 1871.⁶⁴ Although that law had been enacted to protect newly freed slaves from Klan violence, the court ruled that it could be interpreted to encompass discrimination against white people.⁶⁵ Despite expert evidence demonstrating statistically significant bias against the plaintiffs: two-thirds of the jurors in the potential jury pool stated they would refuse to award compensation to plaintiffs even if they found the Nazis and Klan members at fault, the court denied the plaintiff's motions for change of venue.⁶⁶

52. *Id.*

53. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 286.

54. G. Flint Taylor, *Waller v. Butkovich: Lessons in Strategy and Tenacity for Civil Rights Litigators*, 1 POLICE MISCONDUCT & CIV. RTS. L. REP. 145, 147 (1986).

55. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 285.

56. *Id.* at 287.

57. Boger et al., *supra* note 17, at 3.

58. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 289.

59. Assael & Keating, *supra* note 33, at 2.

60. Bacigal & Bacigal, *supra* note 14, at 1154.

61. *Id.* at 1157.

62. *Id.* at 1160.

63. *Id.* at 1160–61.

64. *Id.* at 1167.

65. Bacigal & Bacigal, *supra* note 14, at 1167–69.

66. Mike Fuchs, *Doubts Raised About Old Trials\ The Question of Justice Still Looms as Large Now as it Did in 1979, a Lawyer Says*, WINSTON-SALEM J. (Oct. 9, 2003), https://journalnow.com/news/local/doubts-raised-about-old-trials-the-question-of-justice-still/article_ba0f3d05-2b4e-5ea7-82a4-e4eab1a83191.html.

The core of the defense was that the Communist Workers' Party orchestrated the violence to build the party and to demonstrate that it was necessary to achieve social change.⁶⁷ On directed verdict the court dismissed most of the defendants.⁶⁸ The jury—composed of five white people and one Black person—awarded slightly over \$350,000 in damages to the Caucasian wife of one murder victim who was not a member of the CWP and \$38,000 to Paul Bermanzohn.⁶⁹ Five Klansmen and Nazi members and two police officers were found liable.⁷⁰ Although the city was dismissed as a defendant by the court, its insurance carrier ultimately paid the paltry judgment.⁷¹ The widow contributed the majority of the proceeds to the uncompensated plaintiffs and the Beloved Community Center led by Nelson Johnson and Joyce Johnson in Greensboro.⁷²

VI. THE LAW ALLOWED THE FALSE NARRATIVE

Greensboro, North Carolina prides itself as the city at the epicenter of the Sit-In Movement of the Civil Rights Era. A city of 290,000 people, it supports five colleges and universities including North Carolina A&T State University, the largest Historically Black College and University (HBCU) in the system, and a major Quaker college.⁷³ In 1980, the *Washington Post* described the city in this way:

[Greensboro bears] the trappings of newly-found black success. More neighborhoods are integrated, many blacks have become affluent at an earlier age, the school system is no longer segregated and a new black middle class here has developed its own tinsel-like, Piedmont chic style to show off its new found wealth.⁷⁴

Labelled the third most desirable place to live in North Carolina in the 1980s, Greensboro had a reputation for both civility and progressive politics.⁷⁵ Yet the Klan and the Nazi Party both had strongholds in the rural areas not far from Greensboro.⁷⁶

The city's reaction to the Massacre was similar to former President Trump's comment on the homicide in Charlottesville: blame both sides.⁷⁷ By describing the murders as a riot, a shoot-out, or a tragedy by extremist groups who had no connection to Greensboro, the city could absolve itself of any responsibility.⁷⁸ The city covered up the involvement of the Greensboro Police Department in the Massacre and many in the city

67. Bacigal & Bacigal, *supra* note 14, at 1174.

68. *Id.* at 1173.

69. 8 in *Klan Trial Told to Pay Laintidds \$390,000*, N.Y. TIMES (June 9, 1985), <https://www.nytimes.com/1985/06/09/us/8-in-klan-trial-told-to-pay-laintidds-390000.html>.

70. *Id.*

71. Bacigal & Bacigal, *supra* note 14, at 1177.

72. Marjory Garrison, *The Truth in Greensboro Starts in Brooklyn*, BROOKLYN RAIL (2003), <https://brooklynrail.org/2003/08/local/the-truth-in-greensboro-starts-in-brooklyn>.

73. GREENSBORO AREA CONVENTION & VISITORS BUREAU, GREENSBORO NORTH CAROLINA 2020 VISITORS GUIDE 10–47 (2019).

74. Bacigal & Bacigal, *supra* note 14, at 1148 n.20.

75. *Id.* at 1148.

76. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 101–02.

77. Interview by Duke Law Magazine with Carolyn McAllister, Professor of L., Duke Univ. Sch. of L., Durham, N.C. (Aug. 23, 2017), <https://law.duke.edu/news/mcallister-reflects-greensboro-massacre-1979-aftermath-charlottesville-attack/>.

78. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 362.

even sought to place the blame on the victims themselves, particularly Nelson Johnson, and ridiculed the CWP for “asking for it.”⁷⁹ Reputations were tainted; jobs were lost; many were forced to leave town.

VII. ALTERNATIVE REMEDIES—THE TRUTH COMMISSIONS

Seventy five years after the Tulsa Race Massacre, two members of the Oklahoma State Legislative Black Caucus, Representative Don Ross and Senator Maxine Horner, co-sponsored the Tulsa Race Riot Reconciliation Act acknowledging responsibility for the 1921 Tulsa Race Massacre and authorizing an Oklahoma Commission to study the issue.⁸⁰ After three and a half years of research the Commission confirmed the desecration of the Greenwood neighborhood, the burning of 1,000 structures, the looting of 400 businesses, and the killing of at least 100 people.⁸¹ It recommended the direct payment of reparations to the surviving victims and their families, the establishment of a scholarship fund, the creation of an economic development enterprise zone in Greenwood, and a memorial for reburial of the victims’ remains.⁸² By exposing the truth of the Massacre, the Commission was able to discredit the myth that it was the Klan who had engaged in all the violence without the knowledge or complicity of the police or the city.⁸³ Although many contended that both the legislation and the commission failed to go far enough, the importance of the governmental acknowledgment was significant.

Two months after the issuance of the Commission’s Report, the Tulsa Reparations Coalition was established by the Center for Racial Justice to ensure the recommendations for reparations would become a reality.⁸⁴ That effort continues.⁸⁵ Professor Charles Ogletree filed a reparations lawsuit on behalf of the victims of the Massacre which was ultimately dismissed on statute of limitations grounds in 2005.⁸⁶ However, it is hoped that the recently filed claim for reparations based on a continuing nuisance theory will withstand this defense and will highlight the present day legacy of the Massacre.⁸⁷

As the Oklahoma Commission began its work at the turn of the century, a similar reckoning was occurring in Greensboro. At the twentieth anniversary of the Greensboro Massacre the idea of a truth commission was suggested.⁸⁸ Some of the surviving victims and their supporters began discussing a study that would fully expose the complicity of

79. *Id.* at 349–60.

80. Eddie Faye Gates, *The Oklahoma Commission to Study the Tulsa Race Riot of 1921*, 20 HARV. BLACKLETTER L.J. 83, 84 (2004).

81. Robert L. Brooks & Alan H. Witten, *The Investigation of Potential Mass Grave Locations for the Tulsa Race Riot*, in TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921, at 123, 123 (2001).

82. A REPORT, *supra* note 9, at ii.

83. Scot Ellsworth, *The Tulsa Race Riot*, in TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921, at 48 (2001); *see also* Alfred L. Brophy, *Assessing State and City Culpability: The Riot and the Law*, in TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921, at 153, 153 (2001).

84. Heath, *supra* note 3.

85. *Id.*

86. *Id.*

87. Petition at 1, *Randle v. City of Tulsa*, No. CV-2020-01179 (2020).

88. David K. Androff, *Reconciliation in a Community-Based Restorative Justice Intervention* 39 J. SOC. & SOC. WELFARE 73, 76 (2012).

the City of Greensboro and the Greensboro Police Department in the Massacre and hopefully lift the persistent stain on the reputations of the victims.⁸⁹ The Center for Transformative Justice in New York City suggested instead an actual truth and reconciliation commission similar to the model created in South Africa post-apartheid.⁹⁰ Alongside the Andrus Family Fund, the Center agreed to fund and shepherd such a commission.⁹¹ Although Reverend Johnson and the other victims were involved in the initial planning stages, they ceded their leadership to an independent and democratically chosen committee of seven impartial judges.⁹²

Unlike Tulsa's Commission, the Greensboro Commission had neither the imprimatur, the power, nor the credibility of a governmentally created entity. Having no subpoena power and lacking official legitimacy, the Greensboro Truth and Reconciliation Commission ("TRC") faced numerous obstacles.⁹³ The city itself voted to oppose the creation of the Commission (its three Black members dissenting) and questioned its validity.⁹⁴ The City Counsel for the Greensboro Police Department advised retired police officers not to testify at the Commission hearings, and the editor at the *Greensboro News and Record* ordered his staff not to provide statements to the Commission.⁹⁵ Others feared retaliation if they cooperated.⁹⁶ And unfortunately, Nelson Johnson's involvement in the genesis of the Commission and his advocacy for the effort coupled with his divisive reputation led detractors to label the Commission as simply a tool for confirming his story of the Greensboro Massacre.⁹⁷

Despite these challenges the Commission issued findings in 2004 that confirmed the complicity of the city and the Greensboro Police Department in the Massacre when it ordered its officers to stay away from what they knew would be a violent confrontation by armed members of the Klan and Nazi Party and afterward deliberately concealed information from the public.⁹⁸ The Commission recommended the city issue an apology to the victims, pay compensation, enact a public exhibition, create a citizens' review board, expand juror lists, educate the public about the Massacre, and encourage public engagement and anti-racism training.⁹⁹

The Oklahoma Legislature and its official Commission acknowledged governmental responsibility for its complicity in the Tulsa Massacre.¹⁰⁰ In contrast, the City of Greensboro refuted the findings of the Commission and the mayor and the majority of the

89. LISA MAGARRELL & JOYA WESLEY, *LEARNING FROM GREENSBORO: TRUTH AND RECONCILIATION IN THE UNITED STATES* 4 (2008).

90. Sally Avery Bermanzohn, *A Massacre Survivor Reflects on the Greensboro Truth and Reconciliation Commission*, 97 *RADICAL HIST. R.* 102, 104 (2007).

91. MAGARRELL & WESLEY, *supra* note 89, at 4.

92. *Id.* at 5.

93. *Id.* at 54.

94. *Id.* at 155.

95. *Id.* at 94.

96. SPOMA JOVANOVIC, *DEMOCRACY, DIALOGUE, AND COMMUNITY ACTION: TRUTH AND RECONCILIATION IN GREENSBORO* 162 (2012).

97. MAGARRELL & WESLEY, *supra* note 89, at 14.

98. JOVANOVIC, *supra* note 96, at 97; GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 8.

99. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, *supra* note 13, at 28–37.

100. Brophy, *supra* note 83, at 153–54.

ity council rejected the recommendation of a formal apology.¹⁰¹ Indeed, subsequent Greensboro City Councils continued to resist the idea of a formal apology until 2020.¹⁰² Why the resistance to accountability in Greensboro and the acceptance in Oklahoma? Was it the greater passage of time in Tulsa? The greater legitimacy of the Commission and thus its findings? The governmental leadership? These are all questions for ongoing examination.

The result of Greensboro's resistance to acknowledging its history is that the wounds from this tragedy are still deeply felt in the community. The city's failure to come to terms with the Massacre is demonstrated most starkly in the Greensboro International Civil Rights Museum. Inside the museum walls neither the Massacre nor the Truth and Reconciliation Commission exist, and the historical record of civil rights in Greensboro ends in 1978.¹⁰³

As a teacher of restorative justice and reparations, I became so interested in the Greensboro Massacre and its aftermath that in 2013 I began to conduct a participatory research action project to assess the impact of the Greensboro TRC on racial healing in the Greensboro community. I lived in the city for several months, interviewed over a hundred residents from all of Greensboro's neighborhoods—from its community and government leaders to its gang members, its wealthiest enclaves to its most impoverished areas, its faith centers and refugee settlements, its schools and universities, folks of all ages and races and ethnicities, conservatives and moderates and radicals. I participated in a diverse range of activities and became acquainted with a wide array of people. My original intent had been to work with a local organization that was widely respected as impartial by most city residents. Such was the legacy of distrust, division, and fear in Greensboro that no such organization could be identified by community leaders.

Several months after starting the research, I had the benefit of partnering with David Anderson Hooker, a candidate for the Greensboro TRC directorship and a colleague with whom I had worked on restorative justice practice and scholarship. Although we orally presented the findings from the interviews to the Greensboro community, the concern was that wider publication posed the risk of creating even greater division in the community. Instead, residents eager to work across those divisions asked whether we could assist in building on the aspirations of the Greensboro TRC by crafting a restorative justice model that would seek to find common ground. The result was the Greensboro Counter Stories Project.

VIII. LESSONS FOR THE PRESENT: THE CONTINUING PATTERNS

How do the themes and patterns we see emerging in the Tulsa and Greensboro Massacres manifest themselves today? The historic pattern of cooperation and collaboration between white slave owners and law enforcement that began centuries ago has evolved over time. However, its central lie that Black people are inherently dangerous

101. JOVANOVIĆ, *supra* note 96, at 141–42.

102. See Richard Barron, *Nearly 41 Years Later, Council to Consider Formal Apology for Greensboro Massacre*, GREENSBORO NEWS & REC. (Oct. 2, 2020), https://greensboro.com/nearly-41-years-later-council-to-consider-formal-apology-for-greensboro-massacre/article_61fe6f3c-04d5-11eb-a76d-435ace178e29.html.

103. JOVANOVIĆ, *supra* note 96, at 137.

and so need to be policed by white people retains its tenacious grip on the nation's imagination. In 2020, the country's focus was on the murder of individual unarmed Black men by police officers who erroneously perceived them as threatening. Less attention was paid to another iteration of this phenomenon that harkens back to Greensboro and Tulsa. Public demonstrations by Nazis and white nationalists are still viewed by law enforcement as less threatening than racially diverse protesters advocating for racial justice even when the former are more objectively dangerous. And when there are clashes between these groups the law too often views the white Nazis as the victims even when their threats and actions are more threatening. As in Tulsa and Greensboro, the criminal justice system then fails to hold the actual perpetrators to account. And finally there is the silence: most of the media follow the narrative created by the legal system and fail to accurately highlight the injustice. The contrast between the failure of the committee governing the Capitol Police to enlist the National Guard or adequately prepare for a white mob storming the U.S. Capitol on January 6, 2021, coupled with the permissive attitude toward that violent group by some of the police, and law enforcement's harsh treatment of peaceful racial justice demonstrators across from the White House the previous summer received national attention. Yet similar incidents across the country have received considerably less public scrutiny.

Because urban California is often perceived as the bastion of progressive thinking it may be instructive to take some examples of this phenomenon from that part of the country. In June 2016 the Traditionalist Workers' Party, a neo-Nazi organization, held a demonstration in downtown Sacramento, the capital city of California.¹⁰⁴ Despite the fact that ten leftist counter-protestors were stabbed by the neo-Nazis during the demonstration, the police worked closely with the neo-Nazis to pursue criminal charges against the victims.¹⁰⁵ Indeed, Donovan Ayres, the lead California Highway Patrol investigator, stated in documents that he viewed the neo-Nazis as the "victims."¹⁰⁶ Cedric O'Bannon, a Black journalist filming the demonstration, was arrested because he was "among the protesters."¹⁰⁷ No charges were filed against the neo-Nazis.¹⁰⁸ Mr. O'Bannon observed that the "law enforcement collusion with white nationalists is clear."¹⁰⁹ A year later in Berkeley, California, a similar neo-Nazi protest resulted in criminal charges against three counter-protestors including a sixty-year-old artist for violating the free speech rights of the Nazis.¹¹⁰

These incidents received scant coverage in the local media. There are a range of reasons for this failure, among them the scarcity of reporters resulting from the declining resources of local newspapers and too much reliance on police accounts. Yet once again,

104. Jazmine Ulloa et al., *7 Stabbed at Neo-Nazi Event Outside Capital in Sacramento*, L.A. TIMES (June 26, 2016, 12:26 PM), <https://www.latimes.com/local/lanow/la-me-neo-nazi-stabbed-20160626-snap.htmlstory.html>.

105. Sam Levin, *US Capitol Riot: Police Have Long History of Aiding Neo-Nazis and Extremists*, GUARDIAN (Jan. 16, 2021, 6:00 AM), <https://www.theguardian.com/us-news/2021/jan/16/us-capitol-riot-police-neo-nazis-far-right>.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. Levin, *supra* note 105.

the silence is noticeable. It took the *Guardian*, a British newspaper, to expose the distorted perceptions of danger by law enforcement and district attorneys. These are cautionary tales. We may believe that the horrors of the Tulsa and Greensboro Massacres could not possibly be replicated today but certainly new iterations of white supremacy with clear echoes of the past are at work.

IX. CONCLUSION

Can it be that we expect too much of the law today? After all, for most of our history it has been the law that supported, legitimated, and perpetuated the evils of slavery, Jim Crow, and the New Jim Crow. In the last several decades there has been more focus on the use of the law to combat racial discrimination, but these efforts have fallen far short of the line. Our courts have interpreted the Equal Protection Clause to protect white people and to quash even voluntary efforts to level the playing field for people of color. Even more importantly, the law wants us to believe that racism is the individual act of the “rational actor” intending to harm a person because of skin color. It does not make room for the reality that racism is an evil menace, a toxic pollution which has seeped into our pores, contaminated our institutions, and infected our society. White supremacy’s most pernicious impact has been on people of color, but it has sickened all of us. And while the social and brain sciences have significantly broadened our knowledge of how white hierarchies influence thinking and behavior, the law seems determined to cling to its unscientific and constrained definitions. Such refusal not only hampers the ability of lawyers to obtain justice for their clients, it skews the perspectives of our entire society. If the law defines racism only as a quasi-criminal act (it is rare in civil law to require intent as an element of proof) perpetrated by bad and ignorant white people, then it conveniently sends the message that the rest of us “good” people bear no responsibility. And when we leave the remedy for eradicating this poison from our ranks to an adversarial system that encourages a “scorched earth” battle between us, there is little hope for the law as currently interpreted and practiced to have any significant impact, much less to heal.

Yet as lawyers committed to racial justice we have the responsibility to close that gap between legal doctrine and reality, to expose regressive interpretations of the law, to persuade our courts to recognize science, and to make the nation’s promises of equality a reality. Lawsuits for reparations can be an integral part of that effort.

At the same time we need to explore alternative justice approaches. Truth commissions are a start, but excavating the truth is only the first step. Communicating that truth in a manner that people can hear it and believe it is the necessary second step. Persuading those in power to fully acknowledge responsibility and issue real apologies comes next. Then the true measure of accountability—restitution—can follow. Only then can repair and reconciliation happen.

While those processes unfold there is much that lawyers and private citizens can do. In Greensboro, a diverse group of community residents determined to work against the dominant culture of division, fear, and distrust and to come together outside the silos and boundaries confining them formed the Greensboro Counter Stories Project. Fostering restorative conversations and storytelling to find common understanding, GCSP seeks to create a more equitable, vibrant, and trusting community that works for all its residents. It

recognizes that acknowledging Greensboro's history is a prerequisite to creating such a community but asks different questions than the law does. For example, in bringing together community activists, racial justice advocates, city officials, and the police to tell their stories, the question was not who is legally guilty but what do all of us need to do together to build a Greensboro that is safe and welcoming for everybody.

Let us hope for a story in five years that marks the similarities not between the massacres in Tulsa and Greensboro but between the increasingly creative and innovative efforts by residents and lawyers in those communities for accountability, repair, and healing.