

ELIMINATIONIST DISCOURSE IN A CONFLICTED SOCIETY: LESSONS FOR AMERICA FROM AFRICA?

PHYLLIS E. BERNARD*

I. INTRODUCTION

For generations, Western society has taken pride in welcoming all types of discourse in the press, radio, or television; the livelier, the better. Outrage often awaits individuals or institutions suggesting that some passionate rhetoric in the public square invites danger that outweighs the theoretical value of free expression. This Article does not address the constitutionality of restraints on political expression as presented in the context of isolated, one-time events such as marches, demonstrations, or speeches by identified partisans.

This Article proceeds from the assumption that—from a less lofty, more grassroots perspective—modern, organized, formal, one-time venues for extremist political speech do not present the most potent threat to physical safety and a stable democracy. The greater danger emanates from pervasive right-wing extremist themes on radio, television, and some online news sources (often as a modern-day replacement for hard-copy newspapers and newsletters). These media support an increasingly passionate and virulent message in public discourse. This message encourages persons who feel uneasy or displaced in society to expiate their grievances not through the political process, but through murder.

* Professor of Law and Director, Center on Alternative Dispute Resolution, Oklahoma City University School of Law. Director, Early Settlement Central Mediation Program, Oklahoma Supreme Court (1995–2005). Project Director and Principal Grant Author, Bayelsa Mediation Exchange, a U.S. State Department grant to advance rule of law in strife-torn regions of Nigeria. The project trained trainers on inter-ethnic/inter-tribal, communal, and inter-religious dialogue for conflict prevention and resolution, in collaboration with the American Bar Association (ABA) Dispute Resolution Section, ABA Africa, and the International Federation of Women Lawyers (FIDA) in Rivers State and Bayelsa State, Nigeria (2002). ABA Section on Dispute Resolution Council Member. Liaison to ABA Africa. ABA Africa Council Member. ABA Section on Administrative Law and Regulatory Practice Council Member. Fellow of the National Association of Administrative Law Judges. Recipient of the Southern California Mediation Association's Cloke-Millen Peacemaker Award for work in developing models for culturally appropriate ADR programs used in Nigeria, Rwanda, Liberia, and Native American communities in the United States. Bryn Mawr College, A.B. (History), cum laude (1976); Columbia University Graduate School of Arts & Sciences, M.A. (American History) (1978); University of Pennsylvania Law School, J.D. (1981).

In some quarters, this particular type of extremist rhetoric is helpfully denominated as “eliminationist”¹ to distinguish it from standard political content or even hate speech. This form of extremism condones the use of killing to eliminate all contrary political viewpoints.

When Americans encounter this type of discourse in other countries, we readily see the danger. We recognize that such hate-filled, action-oriented rhetoric undermines the very concept of civil government in favor of rule through terroristic acts. However, when such discourse abounds in the United States, we become deaf with denial. We assume that American notions of civilization reach too deeply and broadly to permit the tragic outcomes seen in other nations, such as Germany, which provided the template for more recent tragedies in Rwanda.

As this Article will demonstrate, America’s history of lynching belies this conceit. Although the rise of white supremacist groups and other anti-government separatist factions seemed to abate in the immediate aftermath of the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the U.S. Department of Homeland Security has confirmed what other organizations, such as the Southern Poverty Law Center, have cautioned. Namely, the “current economic and political climate has some similarities to the 1990s,” when an “economic recession, criticism about the outsourcing of jobs, and the perceived threat to U.S. power and sovereignty” helped right-wing extremists mobilize existing supporters and recruit new members.² These groups have seized upon the election of the first African-American President as part of an expanded, re-energized propaganda campaign.³

This Article examines one reasonably foreseeable outcome if American

1. The phrase “eliminationist” has been used by David Neiwert, a journalist who has long covered right-wing discourse and action in the United States. Joshua Holland, *The Terrorist Threat: Right-Wing Radicals and the Eliminationist Mindset*, AlterNet (June 12, 2009), <http://www.alternet.org/story/140578/>. Neiwert credits the phrase to DANIEL GOLDHAGEN, *HITLER’S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST* (1996). Holland, *supra*. The book explains the rhetorical mechanisms and socio-economic dynamics that led Germany’s non-radical majority to acquiesce, then accept the race politics of the Nazi regime. *See generally* GOLDHAGEN, *supra*. “Eliminationism” claims a moral purpose, holding that political opponents are “a cancer on the body politic that must be excised—either by separation from the public at large, through censorship, or by outright extermination—in order to protect the purity of the nation.” Joshua Holland, *Dave Neiwert on the Roots of Right-Wing Terror*, Daily Kos (June 12, 2009), <http://www.dailykos.com/story/2009/6/12/741680/-Dave-Neiwert-on-the-Roots-of-Right-Wing-Terror>. *See generally* DAVID NEIWERT, *THE ELIMINATIONISTS: HOW HATE TALK RADICALIZED THE AMERICAN RIGHT* 11 (2009).

2. U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INTELLIGENCE AND ANALYSIS, *ASSESSMENT: (U//FOUO) RIGHTWING EXTREMISM: CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT*, 2009, IA-0257-09, at 2, *available at* <http://fas.org/irp/eprint/rightwing.pdf> [hereinafter *DHS ASSESSMENT ON RIGHTWING EXTREMISM*].

3. *See id.*

right-wing⁴ media outlets continue, unchecked, to propound violent action—such as assassinations, lynchings, arson, and assault—as legitimate, even admirable, conduct to eliminate perceived opposition. We shall explore cases on the role of America’s media in inciting violent action to understand the archetypal “lynch mob mentality.”⁵ By comparing this intertwining of history and media in America with similar relationships in other countries, we shall see that America’s past raises due concern for the future.

Today, various personalities receiving regular exposure in the mass media blend entertainment, political opinion, and news to create a potent blend of ethnic affinity with economic concerns, melded by the heat of religious fervor. Recent public tragedies—the assassination of a Wichita, Kansas physician providing legal, late abortions to women in desperate straits,⁶ the

4. The U.S. Department of Homeland Security (DHS) divides American right-wing extremism into “those groups, movements, and adherents that are primarily hate-oriented (based on hatred of particular religious, racial or ethnic groups), and those that are mainly antigovernment, rejecting federal authority in favor of state or local authority, or rejecting government authority entirely.” *Id.* at 2 n.*. DHS notes that extremists may “include groups and individuals that are dedicated to a single issue, such as opposition to abortion or immigration.” *Id.*

5. *See People v. Dear*, 121 N.E. 615, 618 (Ill. 1918) (providing a succinct description of the lynch mob mentality and its impact). Describing an egregious example of “mob rule and lynch law,” the court noted that local newspapers had:

[C]ome out with the statement that the defendant should be hanged, and it had been publically expressed by no less a person than a judge presiding in the criminal court that he would continue all cases so the attorney in this case might devote his entire time to . . . dispos[ing] of [the *Dear*] case as quickly as possible [so that *Dear* could be] hanged at as early a date as possible.

Id. *See also Garcia v. State*, 16 So. 223, 224–25 (Fla. 1894) (describing the classic impact of inflammatory media coverage):

[F]rom the time said arrests were made great excitement prevailed in the city of Key West over the affair, and the whole community was aroused by inflammatory articles in the local press against the defendants, calling upon all good citizens to help see to it that they were at last brought to justice for a long list of offenses of which said articles pronounced said defendants, and especially the defendant Emilio Garcia, to be guilty, and that the community was by that means rid of a gang of cutthroats and murderers, among which said defendants were alleged to be numbered; that by means of such articles, and by the active endeavors of certain persons in the community, the public mind was so prejudiced and excited against said defendants that threats of lynching them were openly made, crowds gathered around the jail, and public meetings were held, at which large rewards were offered for the production of evidence which would convict said defendants, and resolutions were adopted calling upon the state to offer additional rewards for the same purpose, and every means employed to violently prejudice and excite the whole community against said defendants.

Id.

6. Suspect in Abortion Doctor George Tiller Slaying Says Such Killings Justifiable, Fox News

assault by a neo-Nazi gunman upon the National Holocaust Museum in Washington, D.C.,⁷ the assassination of the head of the Democratic Party in Arkansas,⁸ a gunman's rampage against a Tennessee church that welcomed gay youth⁹—evidence that concern is merited.

Our free society must seriously question when passionate public discourse oversteps the bounds of duly protected free speech. Yet, this Article does not presume that the American legal system will timely move to quell dangerous media propaganda—whether through a governmental apparatus or through private action. For, while some persons see a clear line between incitement to murder and legally protected freedom of speech, others would appropriately hesitate.¹⁰ The most powerful and important demarcations may reside not in the law books, but in human interactions.

Hence, rather than relying upon doctrines of constitutional law deriving from discrete political events, this Article addresses pervasive, long-term,

(July 3, 2009), <http://www.foxnews.com/story/0,2933,529988,00.html> [hereinafter George Tiller Slaying]. On May 31, 2009, Scott Roeder assassinated Dr. George Tiller, claiming that such killings are justifiable. *Id.*

7. Holocaust Museum Shooting Suspect Has History of Anger, Racism, Fox News (June 11, 2009), <http://www.foxnews.com/story/0,2933,525718,00.html>. On June 19, 2009, James W. Von Brunn, author of *Kill the Best Gentiles*, killed a black security guard when Von Brunn entered the National Holocaust Museum. *Id.* Von Brunn was shot before he could complete his killing rampage. *Id.* He claimed the Holocaust was a hoax and for years he had been consumed by a hatred of Jews and blacks. *Id.*

8. Probes Find No Motive for Ark. Democrat's Slaying, Fox News (Nov. 20, 2008), <http://www.foxnews.com/wires/2008Nov20/0,4670,DemocraticPartyShooting,00.html>. On August 13, 2008, Timothy Dale Johnson, apparently distraught due to losing his job, went to the headquarters of the Arkansas Democratic Party and shot to death Bill Gwatney, the party chairman. *Id.*

9. Tennessee Church Gunman Hoped Attack Would Provoke More Like It, Fox News (Mar. 12, 2009), <http://www.foxnews.com/story/0,2933,509053,00.html> [hereinafter Tennessee Church Gunman]. On July 27, 2008, Jim David Adkisson entered the Tennessee Valley Unitarian Universalist Church in Knoxville, killed two people and wounded six others during a children's musical performance. *Id.* In his confession to police, Adkisson explained that he was unemployed and wanted to "take his anger out on what he called 'an ultra-liberal' church that 'never met a pervert they just didn't embrace.'" *Id.*

10. See Beverley Rouse, Right-Wing Shock Jock Michael Savage Banned from the UK for Extremist Views, AlterNet (Aug. 27, 2009), <http://www.alternet.org/media/139826>. An action by the United Kingdom to ban three American non-Muslim extremists from entering Britain offered eliminationists a taste of what they have often recommended regarding U.K. citizens inside the United States. *Id.* In October 2008, British Home Secretary Jacqui Smith banned from entry sixteen persons with records of extremist views collectively deemed an unnecessary threat to already conflicted communities in the U.K. *Id.* This list included right-wing radio "shock jock" Michael Savage and Baptist minister Fred Waldron Phelps and his daughter. *Id.* The Phelps were known for leading disruptive protests at the funerals of American service people as a means of attacking the military for allegedly tolerating homosexuality. *Id.* American courts have been much slower to act similarly with regard to American citizens. Even when a program styled as public education led to actual bodily harm or death, courts have not required the media to bear legal responsibility. See *infra* Part V.B.

mixed messages that blend ostensible news with entertainment, politics, religion, and appeals to ethnic identity and general fear-mongering. Although such discourse receives the greatest coverage in the mass media, the better forum to mitigate and neutralize the incitement to action may be on a person-to-person level.

This Article will explore interventions in Rwanda and Nigeria that adapted American dispute prevention and resolution methods to African media and dispute resolution traditions. The African collaborations offer a different view of justice, based on relationships, which may provide a better fit and forum for America to address extremist media messages and their impact on society.¹¹

We begin by breaking through hagiography that portrays America as a civilization always sturdy enough to withstand the dangers of passionate, incendiary, wrong—but nevertheless free—speech.

II. THE AMERICAN LYNCH MOB ARCHETYPE IN MEDIA AND IN REALITY

A. *The Media-Propelled Archetype*

If the nineteenth century's westward expansion forms the quintessence of the American archetype, then the dark side of that image reaches full expression in the classic Walter Van Tilburg Clark novel and subsequent movie, *The Ox-Bow Incident*.¹² Recognized by the Library of Congress in 1998 as an American treasure,¹³ *The Ox-Bow Incident* takes an event of vigilante justice in the 1880s and turns it into a powerful examination of universal right and wrong, the role of the individual within a community, and the meaning of justice—particularly when the institutional trappings of justice may be physically distant or inconvenient.¹⁴ The movie tests the meaning of

11. See, e.g., Frank E.A. Sander & Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 NEGOTIATION J. 49 (1994).

12. WALTER VAN TILBURG CLARK, *THE OX-BOW INCIDENT* (Random House 1972) (1940); *THE OX-BOW INCIDENT* (Twentieth Century Fox 1943).

13. The U.S. National Film Registry selected the movie for preservation in the Library of Congress, finding it “culturally, historically, or aesthetically” significant.” Hooray for Hollywood: Librarian Names 25 More Films to National Registry, Library of Congress Information Bulletin (Dec. 1998), <http://www.loc.gov/loc/lcib/9812/film.html>.

14. See *THE OX-BOW INCIDENT*, *supra* note 12. Henry Fonda's performance in the movie as a remorseful member of the posse takes on special poignancy. As a teenager in Omaha, Nebraska, Fonda watched from the second floor of his father's print shop one of the best-documented lynchings on record: the 1919 assault on Mr. Will Brown, a black man accused of accosting a white woman. Racial Tensions in Omaha: A Horrible Lynching, http://nebraskastudies.org/0700/stories/0701_0134.html (last visited Nov. 1, 2009). The crowd outside the courthouse numbered between 5,000 and 15,000 people. *Id.* The crowd stormed the building and set fire to it. *Id.* The mayor attempted to quell the unrest, but the crowd beat and attempted to hang the mayor, too. *Id.* The mayor was rescued and survived. *Id.* Mr. Brown was

justice when people are left to act on their own, without the physical presence of law enforcement or courts near at hand.¹⁵

In a textured, nuanced treatment of human nature, both the novel and movie challenge the very concept of civilization, as erstwhile good (or good enough) citizens of a town hang three innocent men, based upon an unfounded rumor.¹⁶ *The Ox-Bow Incident* supplies the groundwork for a mature understanding of the lynch mob mentality in America. It forms the social background that should frame any candid analysis of America's historical and cultural record regarding speech that threatens public safety.¹⁷

This record can be found not only in history books, but in judicial opinions dating from the time period of the Clark novel through modern days. As a check against my own potential bias as a person of color living in Norman, Oklahoma, a town that used to forbid blacks after sundown,¹⁸ in a state that witnessed one of the nation's most widespread and brutal pogroms against black Americans,¹⁹ I had assumed that most cases concerning the

dragged from the jail, beaten until unconscious, and then hoisted onto a lamppost, his body spinning. *Id.* Bullets riddled his body. *Id.* The crowd then tied Mr. Brown's lifeless body to the back of a car and dragged it to an intersection where the corpse was covered with fuel and set ablaze. *Id.* The crowd later dragged Mr. Brown's charred remains through the streets. *Id.* Pieces of the rope used to lynch Mr. Brown were sold as souvenirs. *Id.*

15. See THE OX-BOW INCIDENT, *supra* note 12.

16. See CLARK, *supra* note 12; THE OX-BOW INCIDENT, *supra* note 12.

17. Professor Michael Asimow of the UCLA Law School developed a valuable body of work documenting and analyzing the cultural interplay between media images and the legal profession. See generally PAUL BERGMAN & MICHAEL ASIMOW, REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES (1996). In an online commentary, Professor Asimow spoke directly to the power of the visual image of lynching and its message, including the connection between the lynch mob prototype as played out in Nazi Germany and in California. Michael Asimow, Lynch Mobs in Trial Movies (Dec. 1997), <http://www.usfca.edu/pj/articles/LynchMobs.htm>.

18. Norman, Oklahoma, Wikipedia, http://en.wikipedia.org/wiki/Norman,_Oklahoma (last visited Nov. 1, 2009). The first Grand Dragon of the Ku Klux Klan in Oklahoma was a chemistry professor at the University of Oklahoma, and was known to be extremely popular on campus. CHARLES C. ALEXANDER, THE KU KLUX KLAN IN THE SOUTHWEST 108-09 (1965). The term "sundown town" described early twentieth-century white suburban communities that were supportive of the KKK and used covenants to exclude blacks from owning property. During the day, blacks could work in the white homes in sundown towns, but after dark they remained at their peril. See NEIWERT, *supra* note 1, at 181-82.

19. See generally *Alexander v. Oklahoma*, 382 F.3d 1206 (10th Cir. 2004). As summarized by the court, "On May 31, 1921, and following into the next day, violent attacks destroyed the African-American community of Greenwood [Tulsa], Oklahoma. An angry white mob [inflamed by rumors that a young black male had indecently approached a white female] converged on Greenwood in a devastating assault, burning homes and businesses, killing up to three hundred people, and leaving thousands homeless." *Id.* at 1211. The Greenwood section of Tulsa had gained national repute as "Black Wall Street" due to its prosperity, which proved a source of umbrage to the surrounding white community. HANNIBAL B. JOHNSON, BLACK WALL STREET: FROM RIOT TO RENAISSANCE IN TULSA'S HISTORIC GREENWOOD DISTRICT 8, 10, 19-20 (1998). See also ALFRED L. BROPHY, RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921: RACE, REPARATIONS, AND RECONCILIATION 1-2 (2002).

media and mob action would involve whites threatening a black defendant in a criminal trial. A LexisNexis search casting a wide net captured a larger variety of cases than anticipated. The search command “lynch or lynching or lynched w/100 newspaper” yielded more than five dozen cases directly on point.

Color alone did not emerge as the sole factor in cases decided in the latter nineteenth and early twentieth centuries. Simple status as an outsider accused of a heinous crime committed in a tightly knit community could be sufficient.²⁰ Being a Jew in a predominantly Christian town could be fatal.²¹ However, courts recognized that if the defendant was a black man the likelihood of race-based hostility grew significantly.²² Further, some courts recognized—implicitly or explicitly—that the justice system could not always rely upon local authorities to defend the life of a black defendant threatened by an angry mob.²³

20. See, e.g., *State v. Weisengoff*, 101 S.E. 450, 452 (W. Va. 1919) (noting how the defendant was characterized in the press as an “outlaw saloonkeeper,” a “crime-soaked foreigner,” and a “cowardly brute,” and accused of killing a popular sheriff while being apprehended by the sheriff). See also *State v. Edgerton*, 69 N.W. 280 (Iowa 1896). In *Edgerton*, a boy allegedly stealing watermelons from a field was shot by the farmer. *Id.* at 283. The boy died from his wounds. *Id.* Local newspaper reporting on the case “worked on public sentiment” to “cause prejudice” against the shooter. *Id.* at 282. This would have been a relatively easy accomplishment, as the “family of the deceased was old, influential, respectable, and was scattered over the county” from which a jury would be selected. *Id.* However, although the newspaper reported rumors of “mobs and lynching and necktie parties,” this was cited as mere rumor, constituting neither a call to action nor a threat. *Id.* Just as importantly, the local sheriff physically removed the defendant from the county to secure his safety. *Id.*

21. *People v. Goldenson*, 19 P. 161 (Cal. 1888), involved a Jewish teenager in a mildly romantic relationship with a girl. She called him a racial epithet, and he shot and killed her. *Id.* The small town where they lived immediately exploded. *Id.* Hundreds of residents crowded outside the Goldensons’ home, yelling for Goldenson to be lynched. *Id.* But, by the time the trial was held, weeks had passed and threats of overt violence were no longer deemed sufficiently coercive to undermine the court’s confidence in the murder conviction. *Id.*

22. Not until the second half of the twentieth century did courts begin unequivocally to acknowledge this reality. See, e.g., *Johnson v. State*, 476 So. 2d 1195, 1214–15 (Miss. 1985). In *Johnson*, the court analyzed the degree to which community sentiment may have affected a trial: “It is also a sobering reminder of our social heritage to note that the testimony in the case *sub judice* would indicate that crimes committed by a black person upon a white victim may generate more community outrage than the same crime involving two members of the same race.” *Id.* at 1215. A classic trigger for such outrage stemmed from repeated newspaper coverage such as the following, taken from *State v. Rogers*, 132 So. 2d 819, 822 (La. 1961): “The colorful pages of Louisiana’s history have often been darkened by crimes of violence, but few can compare in brutality and terror with the shocking slaying of Mrs. Lumney Guillory, 35 year old white woman, who was murdered and ravished Friday morning by a gigantic negro man.” *Id.* (quoting a local news story).

23. If only to protect against a reversal of the trial court on appeal, even in the most racially violent periods of the twentieth century some law enforcement recognized the need to protect black defendants, plus white jurors and witnesses, from threats of mob violence. See, e.g., *Mickle v. State*, 213 S.W. 665, 666 (Tex. Crim. App. 1919). In *Mickle*, the sheriff removed the black male defendant to another county prior to trial, the defendant was escorted to trial by armed guard, and the courtroom

B. Lynching as a Means of Political and Social Control Over Minorities

Estimates of documented race lynchings in this period average 2,500.²⁴ As explained by scholars on the subject, “[t]he scale of this carnage means that, on the average, a black man, woman, or child was murdered nearly once a week, every week, between 1882 and 1930 by a hate-driven white mob.”²⁵ If one extends the period under examination through the mid-twentieth century, some estimates add another thousand such deaths.²⁶

The more or less random targeting, hunting, capture, killing, and mutilation of black men often replaced the orderly process of a public arrest and trial,²⁷ which generally involved an appeal for change of venue and a written judicial opinion.²⁸ When, on occasion, white mob violence against a black person resulted in a trial it was more likely that the black target would be prosecuted for murder or attempted murder, although the black person had

itself was shuttered during the trial and protected by soldiers. *Id.* at 666. In *Fountain v. State*, 107 A. 554, 554 (Md. 1919), the black male defendant had been previously attacked by a lynch mob, from which he escaped. *Id.* After his capture, state militia guarded the jail and courthouse with bayonets drawn. *Id.* at 555. By contrast, in cases exemplified by *Seay v. State*, 93 So. 403, 404 (Ala. 1922), the mob was allowed to be present in the courtroom during the trial of the black defendant and was not removed from grounds outside the courthouse. *Id.* at 404. Most egregious was the conduct of Tulsa, Oklahoma officials during the 1921 riot/pogrom. See *Alexander*, 382 F.3d at 1211–12; see also *supra* note 19. The “white mob . . . included 250–500 newly deputized men,” acting under color of law. See *Alexander*, 382 F.3d at 1212. A 1997 state legislative commission confirmed that “public officials had indeed provided firearms and ammunition to the white mob.” *Id.* Armaments included machine guns used to spray bullets among the black residents. *Id.* Oklahoma National Guardsmen “participated in mass arrests of all, or nearly all, of Greenwood’s residents.” *Id.* At the time, the grand jury exonerated white rioters and indicted African-American victims. *Id.* at 1219.

24. Jana Evans Braziel, *History of Lynching in the United States*, <http://www.umass.edu/complit/aclanet/ACLAText/USLynch.html> (quoting STEWART E. TOLNAY & E. M. BECK, *A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882–1930*, at 17 (1995)).

25. Braziel, *supra* note 24 (quoting TOLNAY & BECK, *supra* note 24, at ix).

26. See, e.g., *Lynchings: By State and Race, 1882–1968, Lynching in America: Statistics, Information, and Images*, <http://www.law.umkc.edu/faculty/projects/ftrials/shipp/lynchingsstate.html> (last visited Nov. 1, 2009).

27. This does not mean the lynching occurred in private. See, e.g., *Without Sanctuary: Photographs and Postcards of Lynching in America*, <http://withoutsanctuary.org/main.html> (last visited Nov. 1, 2009).

28. See, e.g., *State ex rel. Fox v. LaPorte Cir. Ct.*, 138 N.E.2d 875, 882–83 (Ind. 1956). In *State ex rel. Fox*, the circumstances surrounding the black male defendant’s arrest and subsequent trial for the alleged murder of a white male victim appeared to be devoid of the type of violent disorder seen in earlier cases involving minority defendants—although local media did help fan flames of “widespread prejudice against [the defendant].” Compare *State ex rel. Fox*, 138 N.E.2d at 884 (Emmert, J., dissenting) with *supra* notes 20–23. As a result, the defendant requested not one but two venue transfers. *State ex rel. Fox*, 138 N.E.2d at 876. Despite a spirited dissent acknowledging that the “bias, prejudice and excitement of the citizens” in the first transferee county sparked “an odium” against the defendant as he faced trial in the second county, the defendant’s venue transfer request to a third jurisdiction was denied. *Id.* at 883–84.

acted in self-defense.²⁹ Civil authorities that failed to protect black targets and newspapers that incited such violence routinely escaped liability, often because the established social order subsumed mob order.³⁰

America's archetype and reality of race-based lynchings may have

29. See, e.g., The Sweet Trials, Famous American Trials, <http://www.law.umkc.edu/faculty/projects/ftrials/sweet/sweet.html> (last visited Nov. 1, 2009). In 1925, a black internist, Dr. Ossian Sweet, and his family moved into a house in a white neighborhood in Detroit, Michigan. *Id.* Crowds surrounded the house for two days, shouting threats and throwing rocks. *Id.* The police made no effort to control the crowd. *Id.* By the second night, tensions had risen to a breaking point. *Id.* Shots rang out. *Id.* A white male in the crowd died. *Id.* No physical evidence linked the dead man's fatal injury to any gun held by the Sweets. *Id.* Nevertheless, all adults in the house, including Dr. Sweet, his wife, his brother, and his friends, were jailed for murder. *Id.* Clarence Darrow represented the Sweets in what he considered his finest hour. *Id.* The first trial in 1925 resulted in a hung jury. *Id.* The second trial in 1926 resulted in an acquittal. *Id.* Because the Sweet Trials did not result in a conviction that was appealed, court records or opinions are not available. However, the Famous Trials database, established by Professor Douglas O. Linder at the University of Missouri-Kansas City School of Law, <http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm>, has extensive information regarding the trials, including excerpts from the trial transcripts. According to this database, transcripts of the trials are maintained at the Burton Historical Collection at the Detroit Public Library.

30. Key examples of this dynamic are found in cases decided during and after World War I. Blacks, invigorated by the experience of participating in the Great War, often discomfited the white communities in which they sought to exercise their human rights in terms of housing, employment, education, and other areas. Separately, but sometimes framed as an associated issue, populist and socialist politics gained a voice. Consider, for example, the case of *Ellsworth v. Massacar*, 184 N.W. 408 (Mich. 1921), which took place in a white farming community during World War I. Ellsworth had declined the request (demand?) of a neighbor to purchase Liberty war bonds. *Id.* at 408. Ellsworth had already purchased a bond, but resented being asked to purchase more bonds and to swear a loyalty oath. *Id.* Ellsworth's neighbor accused him of being anti-American and pro-German. *Id.* In short order Ellsworth was set upon by a drunken group of men who kidnapped and beat him, while some in the crowd ordered, "get the ropes." *Id.* at 409. Combining a generally volatile political atmosphere with race sets the stage for the struggles played out in *Moore v. Dempsey*, 261 U.S. 86 (1923). In 1919, a white political organization, the Progressive Farmers' and Household Union of America, was accused of motivating the blacks in Phillips County, Arkansas, to engage in murderous insurrection against whites. *Id.* at 88. At one point, blacks gathered in the local church and were surrounded by a crowd of angry whites. *Id.* at 87. During that assault, a white man was shot and killed. *Id.* No objective evidence clearly proved how the victim died. *Id.* Twelve black men were arrested for murder. *Id.* at 100 n.1. A lynch mob gathered at the jail. *Id.* at 88. The mob was stopped by force of law—the presence of federal troops—and force of a promise that the government would assure conviction and execution. *Id.* at 88–89. The American Legion, Rotary Club, and Lions Club joined in demanding that the government fulfill its promise to convict. *Id.* at 90. The grand jury included one member of the committee appointed by the governor to follow through on the promise to convict. *Id.* at 88–89. The grand jury also included several members of the posse who had whipped and tortured black witnesses to obtain testimony used to indict the defendants. *Id.* at 89. Today, some observers argue that racially motivated lynching of blacks has, over time, been replaced by its functional equivalent in the form of a grossly disproportionate number of death penalties against black men, usually with scant appearance of a fair and effective defense. See Stephen B. Bright, *Discrimination, Death, and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, in *FROM LYNCH MOBS TO THE KILLING STATE: RACE AND THE DEATH PENALTY IN AMERICA* 211–15 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2006).

appeared random, spasmodic, or isolated. However, they served specific functions:

[F]irst, to maintain social order over the black population through terrorism [namely, by unleashing lethal mob violence for seemingly minor infractions of “caste codes of behavior”]; *second*, to suppress [or] eliminate black competitors for economic, political, or social rewards; *third*, to stabilize the white class structure and preserve the privileged status of the white aristocracy.³¹

Researchers tabulating reasons for lynchings of black citizens have identified a wide array. Let us delete from their roster categories of major crimes that society often has deemed deserving of a death sentence, namely rape, child abuse, and murder. What remains is a list of vague descriptors: acting suspiciously, quarreling, adultery, race hatred or race troubles, behaving improperly with a white woman, arguing with a white man, resisting a mob, inciting trouble, indolence, inflammatory language, sedition, being disreputable, informing, slander, being obnoxious, boasting about riot, insulting a white man, insulting a white woman, insurrection, swindling, conjuring, courting a white woman, living with a white woman, frightening a white woman, defending an alleged rapist, trying to colonize blacks, demanding respect, making threats, miscegenation, trying to vote, disorderly conduct, mistaken identity, using obscene language, unruly remarks, voting for the wrong party.³² In short, being “uppity” could constitute an offense worthy of lynching.

C. *The Lynch Mob Mentality and the Law*

Virtually all of the sixty-five cases researched on this issue sought a change of venue in a criminal trial because newspaper coverage of the case was of sufficient intensity, bias, and duration to render a fair trial unlikely. For this Article, the most important research findings were the dozens of cases that defined factors identifying a lynch mob mentality.³³ This exists when a

31. Braziel, *supra* note 24.

32. *Id.*

33. *See, e.g., Moore*, 261 U.S. at 89.

The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous consequences to anyone interfering with the desired result. The counsel did not venture to demand delay or a change of venue, to challenge a juryman or to ask for separate trials. He had had no preliminary consultation with the accused, called no witnesses for the defence

community's shared state of mind makes illicit violence against the targeted person or persons likely, makes violence against the defendant (and supporters) acceptable, or passions have been so inflamed that neutral or moderate voices seeking justice are likely intimidated into silence. As the Supreme Court said in one such case, "no juryman could have voted for an acquittal and continued to live in [the county] and if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob," which had been inflamed by daily newspaper articles.³⁴

As jurisprudence on this issue evolved, norms arose against which community sentiment could be measured. Courts could delineate standards to assess when the press had overstepped reasonable boundaries by slanting the news or whether the press had merely served its proper role in reporting the news.³⁵ Beginning in the mid-twentieth century, as news media became more sophisticated, courts recognized that efforts to curtail the impact of reportage in newspapers, radio, and television would be increasingly unsuccessful.³⁶

Former decades' threats of gross mob action set the stage for today's discussion of the more subtle mob mentality. Jurisprudence from earlier days on this issue should raise concern about how extremist media impact not only unstable individuals in our society, but the more moderate elements of a community as well. In regard to criminal trials of a marginalized individual, courts questioned the role of the media if a community had been saturated with messages condoning or encouraging violent action against that individual.³⁷ What does this tell us about repeated messages targeting disfavored groups?

Earlier courts raised concerns that witnesses would be intimidated from

[sic] although they could have been produced, and did not put the defendants on the stand.

Id.

34. *Id.* at 89–90.

35. *See, e.g.*, *United States v. Toledo Newspaper Co.*, 220 F. 458, 503–04 (N.D. Ohio 1915). The analysis in this case reveals abiding concerns for our day: (1) media stories that manipulated facts to encourage "through intensive comment and extravagant headings . . . a plan for popular uprising," *id.* at 460–61; (2) unverified, personal charges against the presiding judge, *id.* at 460; (3) a "prolonged bombardment" of "inflammatory" language that led to a reasonably foreseeable result: street car riots, *id.* at 508, 513; (4) and constituting "palpable acts of journalistic lawlessness" solely directed to "prejudice the mind of the public and extort a particular decision in a case then pending for determination," *id.* (internal quotation marks omitted).

36. *See, e.g.*, *Lingo v. State*, 162 S.E.2d 1, 3–4 (Ga. 1968). The court found that, despite admittedly substantial news coverage of the case in daily newspapers, on radio, and on television, and despite testimony from some witnesses that coverage led them to form the opinion that the defendant was guilty, "there was no pervasive prejudice in the community which denied the defendant a fair and impartial hearing . . ." *Id.*

37. *See, e.g.*, *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 565–67 (1976) (discussing procedural and practical challenges facing the judiciary in attempting to limit media coverage).

speaking in a trial due to reasonable concern about reprisals or ostracism.³⁸ Continuing this line of concern from the perspective of conflict resolution, should we be concerned that violent, extremist media propaganda, particularly eliminationist rhetoric, may similarly silence moderates? If so, America faces the prospect of an eroding civil society, following the paths of Germany and Rwanda.

III. LYNCHING AS SYMBOL OR SIGNAL?

Is it overreaching to link a lynch mob archetype in America with genocidal archetypes in Germany and Rwanda? The difference is an order of magnitude, depending on timing. America is, gratefully, early enough in its trajectory to change directions. By comparison, when the National Socialist German Workers' ("Nazi") Party was on the rise in Germany, moderate members of the majority in positions of governmental authority and community power did not effectively challenge the onslaught of extremism.³⁹ In the 1990s, minority Tutsis and moderate Hutus in Rwanda did not have sufficient armed forces to oppose Hutu extremists.⁴⁰

An outline of the deadly formula follows. When a more or less silent majority discounts eliminationist rhetoric as "merely" symbolic, the message can manifest as action. Cultural symbols gain power by articulating aspects of a group narrative.⁴¹ Symbols are manipulated to create an atmosphere that accepts political violence.⁴² This begins by dehumanizing the targeted social group.⁴³ The repeated use of culturally specific imagery supports brutalizing such targets individually.⁴⁴ As moderate voices remain silent or ineffective in

38. See *Moore*, 261 U.S. at 89. African-American witnesses were "whipped and tortured" until they would implicate the defendant, but no one came forward with these allegations until after the defendants were convicted of murder. *Id.* at 89–90.

39. From the perspective of those committed to the rule of law and higher education, one view that stands out among the many chronicles on the rise of Nazism in pre-war Germany describes the pervasive, generally quiet acquiescence of Germany's judiciary and bar when instructed to base decisions on "ideology rather than legal doctrine," creating a racial state that favored Aryans over all others. Matthew Lippman, *Law, Lawyers, and Legality in the Third Reich: The Perversion of Principle and Professionalism*, 11 TEMP. INT'L & COMP. L.J. 199, 243 (1997).

40. Jose E. Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT'L L. 365, 388–91 (1999).

41. Phyllis E. Bernard, *Finding Common Ground in the Soil of Culture*, in RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 31–32 (Christopher Honeyman et al. eds., 2009).

42. *Id.*

43. See, e.g., SAM KEEN, *FACES OF THE ENEMY: REFLECTIONS OF THE HOSTILE IMAGINATION* 60–61 (1986). Within the context of war, descriptions of a targeted population as barbarian, subhuman, non-human, animal, or germ-like encourage soldiers to perceive killing that group of people as merely exterminating pests. *Id.* at 61.

44. *Id.* at 41. Keen explains that "[o]ne of the age-old functions of picturing the enemy as the enemy of God is to convert the guilt we naturally feel in killing into a source of pride, transform[ing]

the face of such events, extremist messages move from the fringe toward the center of public discourse.⁴⁵ By imbuing the message with religiosity, extremist positions and actions convert into “[h]oly wars and just causes [that] invite warriors to view battle as sacred drama.”⁴⁶ Extremist violence against the dehumanized becomes accepted. Episodic events of assault turn into acts of arson and rampages, then, if unchecked, into pogroms and genocide.

This sounds alarmist as applied to America—or does it? One’s perception of America’s potential for violence depends upon one’s personal history and knowledge of national history. Let us return to the issue of lynching to consider how cultural symbols communicate differently, depending upon the speaker and audience.

In some venues, the power of the word “lynching” has diminished due to

murder into devotion.” *Id.*

45. See generally RORY O’CONNOR & AARON CUTLER, *SHOCK JOCKS: HATE SPEECH AND TALK RADIO: AMERICA’S 10 WORST HATE TALKERS AND THE PROGRESSIVE ALTERNATIVES* (2008). An example of how extremist messages silence moderate voices is the recent symbolic ritual performed by a member of the Oklahoma House of Representatives. Greg Horton, *Oklahomans Split on Representative’s Morality Proclamation*, OKLA. GAZETTE, July 8, 2009, at 12–13, available at <http://www.okgazette.com/Default.aspx?p=12729> (click through “Current Articles” archives to July 8, 2009, issue). Rep. Sally Kern hosted a gathering at the Oklahoma state capitol to gain signatories to her “Proclamation for Morality,” which states that the current national economic recession is the result of America’s sins, chief of which is homosexuality. *Id.*; Oklahoma Citizen’s Proclamation for Morality, <http://ftpcontent.worldnow.com/griffin/NEWS9/PDF/0906/OKMoralityProclamation.pdf>. The sole remedy, according to the proclamation, is for the United States to become once again a purely Christian nation, using the Bible as the guide to law and education. See Oklahoma Citizen’s Proclamation for Morality, *supra*. Some 250 people attended, including protestors. Horton, *supra*. Most of the signatories were white males, age fifty and older. *Id.* However, a number of younger “establishment” males also signed. *Id.* Two suggested it was because it accorded with their political ambitions, or to enlarge their congregation’s influence. *Id.* The legal director of the American Civil Liberties Union in Oklahoma saw this as an uncomfortable echo of pre-war Germany. *Id.*

46. KEEN, *supra* note 43, at 41. Fuel for a right-wing Christian holy war is found in the rhetoric of the End Times, namely, that we live in the last days before the Apocalypse, which will herald the return of Jesus Christ. Worthy Christians will be taken up in the Rapture, leaving the unworthy to suffer through the reign of the Antichrist on earth. This demonic figure is presented as a charismatic leader who brings the world, including America, into one global dictatorship. A person unfamiliar with the End Times phenomenon will find some right-wing extremist political commentary baffling when presented in mainstream broadcasts. Examples include commentary declaring President Obama as the Antichrist, fear that America will convert from the U.S. dollar to the Euro, and an overarching resistance to social improvements through governmental or private entities. See generally LEANN SNOW FLESHER, *LEFT BEHIND? THE FACTS BEHIND THE FICTION* (2006) (offering a theological analysis of the best-selling fiction series for adults). See also David D. Kirkpatrick, *In 12th Book of Best-Selling Series, Jesus Returns*, N.Y. TIMES, Mar. 29, 2004, at A1 (pointing out that by 2004, the *Left Behind* series had surpassed John Grisham’s legal thrillers as the “best-selling novel[s] for adults”); Rachel Donadio, *Faith-Based Publishing*, N.Y. TIMES, Nov. 28, 2004, at 35 (noting that over nine years, the first twelve books of the *Left Behind* series had sold 62 million copies). While the *Left Behind* series, by Tim LaHaye and Jerry B. Jenkins, is listed as “fiction,” followers see the series as fact. FLESHER, *supra*, at 1 (citing the former president of the Dallas Theological Seminary). “Many scenes in [the *Left Behind* books] could easily be the lead stories in tomorrow’s news.” *Id.* at 2 (quoting the editor of a widely used study Bible).

overuse as hyperbole, leading to desensitization.⁴⁷ Take the brutal, tangible reality of the Omaha, Nebraska lynching described earlier. Compare that with the abstract concept of a “high-tech lynching”⁴⁸ that consists of a short-term, albeit intense, flurry of media attention surrounding a public figure, such as Clarence Thomas. Thomas knew or should have known that any appointee to the United States Supreme Court must suffer close scrutiny of his personal and professional life. But no blood was spilled, no corpse was burned. Thomas achieved his goal. Even if he had not been elevated to the Supreme Court he would have remained in a lifetime appointment as a federal judge in one of the nation’s most prestigious fora: the U.S. Court of Appeals for the District of Columbia.

Contrast this with the position of a black employee, a member of the rank and file in a blue-collar workplace. Is talk of lynching by white coworkers mere jest, a fundamentally benign form of hazing?⁴⁹ Does it express dislike and distrust, or is it illegal discrimination?⁵⁰ If a noose appears anonymously in the black employee’s workplace, does this signal a heightened threat to physical safety?⁵¹ Courts have opined on these fact patterns within the

47. Consider, for example, the popular rock music group named “Lynch Mob,” making a play on the name of the band’s leader whose last name is Lynch. See Lynch Mob (band), Wikipedia, [http://en.wikipedia.org/wiki/Lynch_Mob_\(band\)](http://en.wikipedia.org/wiki/Lynch_Mob_(band)) (last visited Nov. 2, 2009). Presumably, the name was intended to stand out among the crowd of competitors, but now it is nearly mainstream.

48. JONATHAN MARKOVITZ, LEGACIES OF LYNCHING: RACIAL VIOLENCE AND MEMORY 111–12 (2004) (quoting Justice Thomas’s famous comment, made during his 1991 confirmation hearings on Capitol Hill, that “high-tech lynching[s]” are doled out to “uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas”). This term has also been applied to other wealthy, privileged black males who faced unsavory media attention due to questionable actions on their part, such as Michael Jackson, Kobe Bryant, and O.J. Simpson. See Margaret Kimberley, *Freedom Rider: “No Michael, No Peace!”*, BLACK COMMENTATOR, Nov. 27, 2003, available at http://www.blackcommentator.com/66/66_fr_michael.html.

49. See *McKenzie v. Citation Corp.*, No. 05-0138-CG-C, 2007 U.S. Dist. LEXIS 34890 (S.D. Ala. May 11, 2007). In *McKenzie*, black plaintiffs proved racial slurs and symbols were evident in the workplace. *Id.* at *3–5. The court held that even in the absence of physical threats,

it is not unreasonable to infer that the overall atmosphere . . . was racially demeaning and hostile. Clearly, the display of nooses in the workplace should not be cast aside as a light joke or teasing. A noose is a historical symbol of racial hatred for African-Americans and can represent a severe physical threat.

Id. at *41.

50. See *Rodgers v. Union Pac. R.R.*, No. C03-0092L, 2006 U.S. Dist. LEXIS 15297 (W.D. Wash. Mar. 13, 2006). In *Rodgers*, the “plaintiff found a brown doll with a noose made of toilet tissue hanging on a cork board in an employee room.” *Id.* at *7. This was, however, an isolated instance which the employer acted quickly to squelch and disclaim, thus mitigating a legal claim of racial discrimination. *Id.* at *8.

51. When the workplace itself is inherently dangerous and physical survival depends upon the cooperation and protection of coworkers, racial epithets, rumors spreading negative racial stereotypes, and threats by white supremacists present a heightened concern for black employees. See *Allen v. Michigan Dep’t of Corr.*, 165 F.3d 405, 407 (6th Cir. 1999) (involving a black

context of employment discrimination law.⁵² Lay interpretations, however, depend less on legal precedent and more upon cultural context.

Indeed, the power of the noose as a symbol has spread and lasted via the use of photography, a particularly powerful medium. Photographs of white men in the foreground, smiling into the camera, with the body of one or more black men hanging in the background were widely disseminated throughout the first quarter of the twentieth century. Often, they were fashioned as postcards.⁵³ For many whites, such photos were badges of community honor at the time, intended to demonstrate that the townsfolk protected their women, their property, and their way of life.⁵⁴ Preserving the lynching in photographs and news articles sustained the noose's potency as a symbol for decades. This preservation allowed new generations to claim the event and react anew.⁵⁵

Thus, persons—black or white, young or old, Northern or Southern—who understand the brutality of the act of lynching itself, and the circumstances under which it took place may take away an intuitive, subjective message that courts might not. Some may perceive the noose as a memorial to the alleged passivity of blacks in the face of white supremacist power and use it to achieve a similar response. Rarely does the story also portray the black response in the form of journalism, literature, and art.⁵⁶ These media functioned to strengthen African-Americans' resolve to achieve justice through peaceful means.⁵⁷ Indeed, these media arts echo the African oral

correctional officer in a prison). In *Allen*, two of Allen's supervisors had verbalized their distrust of him based upon racial stereotypes. See *id.* at 407–08. The supervisors told Allen that he “was lazy like the rest of his people and that is why they are all in prison,” and transferred Allen to an area where he could be “watched more closely because ‘[n]iggers can’t be trusted.’” *Id.* at 408. Allen received a threatening note signed “KKK” which read: “Pull bid—if not, you will be looking for a job or die. Nigger out.” *Id.* The note referred to lynching him, communicated through “a drawing of a stick figure with a noose around its neck.” *Id.*

52. See, e.g., *id.* at 409–13.

53. See, e.g., Without Sanctuary, *supra* note 27.

54. See DORA APEL, *IMAGERY OF LYNCHING: BLACK MEN, WHITE WOMEN, AND THE MOB* 30 (2004).

55. Jim Downs, Who Owns the Noose?, History News Network (Jan. 28, 2008), <http://hnn.us/articles/46716.html>.

56. *Id.*

57. In a time when blacks could not rely on the legal system for justice, blacks and liberals turned to the media. From 1955 until 2004, the media were the primary venue used to seek justice for the killing of fourteen-year-old Emmett Till, who was kidnapped and brutally slain by a group of white males for having allegedly whistled at a white woman in the Mississippi Delta in 1955. The efforts began with powerful photojournalism, as Till's mother insisted that his casket be open at the funeral, revealing to newspaper and magazine readers that he had been beaten until no face could be recognized. At the time, two white men were tried in Mississippi and found not guilty after seventy-five minutes of deliberation by the all-white jury. Over the years, major artists have written books, plays, poems, and songs about the incident, including Toni Morrison, Langston Hughes, James Baldwin, Bebe Moore Campbell, and Bob Dylan. Many perceived the lynching of Emmett Till as the spark that ignited the active civil rights movement. In 2004, the U.S. Department of Justice

traditions of storytelling, drama, song, and poetry that characterize the traditional, informal media this Article recommends to address re-emerging political violence in America.

However, when the African-American response is manifested in physical defense or retaliation, perceptions and interpretations about those actions may differ based on race. The 2006 altercations between black and white high school students in Jena, Louisiana remind us that reasons for concern remain.⁵⁸ Jena, like most of the Deep South, had a history of lynchings, leaving behind underlying tensions similar to those ascribed to Georgians.⁵⁹ White students hung three nooses at an on-campus tree considered “white” territory, warning black students to stay away.⁶⁰ The local school board characterized this act as a “prank.”⁶¹

After they attempted to “desegregate” the tree, black students perceived the noose, coupled with verbal taunts, threats with a firearm, and other actions by white students, as threats to their physical safety.⁶² An altercation ensued, followed by other racial confrontations in a short period of time.⁶³ White students—arguably the instigators seeking to enforce illegal limitations—largely evaded official sanctions.⁶⁴ Yet, black students faced charges of attempted murder.⁶⁵

The disparity in response by the school system, sheriff, judge,⁶⁶ prosecutor,⁶⁷ and white community probably came as close to mirroring the actions of prior generations as instantaneous media will allow today.⁶⁸ Television news, web sites, blogs, and word of mouth—amplified through

reopened the investigation, working with Mississippi state officials. A landmark summary of the story and its cultural significance is found in the *American Experience* documentary, *The Murder of Emmett Till: The Brutal Killing that Mobilized the Civil Rights Movement* (PBS television broadcast), <http://www.pbs.org/wgbh/amex/till/>.

58. See *State v. Bailey*, 969 So. 2d 610, 610 (La. 2007).

59. See *infra* note 71.

60. *Bailey*, 969 So. 2d at 610.

61. *Id.* at 611.

62. *Id.*

63. *Id.* at 610.

64. *Id.* at 611, 613.

65. *Id.* at 611.

66. See *State ex rel. J.R.B.*, 08-1428, p. 1–2 (La. App. 3 Cir. 3/4/09); 11 So. 3d 2, 2–3. *State ex rel. J.R.B.* cleared the way for a new judge not directly associated with the original indictments. See *id.*

67. The original judge was required to recuse himself, as was the parish district attorney who publicly “stated his intent to charge Bailey and his co-defendants with the harshest crimes, and to seek the maximum penalty allowed by law, while characterizing efforts to intimidate African-Americans as a ‘prank,’ and bringing only misdemeanor charges against the whites who assaulted Bailey.” *Bailey*, 969 So. 2d at 613.

68. Justice Johnson of the Louisiana Supreme Court took official notice that the “facts of this case [were] well known because of wide spread media coverage.” *Id.* at 610.

personal digital networking—activated a national response, complete with demonstrations⁶⁹ and a well-honed legal defense, courtesy of the Southern Poverty Law Center. With a critical public eye fastened upon Jena, Louisiana, charges against most of the black targets of the threats were dropped or reduced.⁷⁰

Jena manifested in this generation a message shared by descendants of those who have survived a history of eliminationist violence, such as that seen in Rwanda. The promise of a civil compact among neighbors had been shattered, perhaps irreparably.⁷¹ If trust is to be rebuilt, mediation and facilitated dialogue may be the best tools to embed legal principles into a private sense of justice.

IV. THE MEDIA AND A MESSAGE OF POLITICAL VIOLENCE

American courts have long recognized a potential linkage between media coverage and incitement to violence. Typically, the issue was not the existence of a nexus, but the degree of connectedness. The classic legal task was to identify the extent to which media coverage influenced the outcome of a trial. Was the locale saturated with so-called news stories that were clearly biased, written in blatant disregard of the facts? Did the press call for lynching as an expression of community outrage, as a way for the majority to enforce its dominance over a despised minority? Media's role also could be more subtle, by contributing to the intimidation of rational, moderating voices so essential for justice.

In trials, judges were concerned if a frenzy of press coverage created “antagonism so intense that the local citizens hesitated or refused to take part

69. Less widely reported in the mainstream media was the effort by the white supremacist, neo-Nazi Nationalist Movement to mount a two-mile demonstration in Jena—with two members holding guns—protesting that the black Jena Six defendants had received preferential treatment. *Nationalist Movement v. Town of Jena*, 321 Fed. App'x 359, 361–63 (5th Cir. 2009).

70. Mary Foster, *Small Fines, No Jail Time for Five in 'Jena Six' Case*, NEWSDAY, June 27, 2009, at A24.

71. See, e.g., LAURA WEXLER, *FIRE IN A CANEBREAK: THE LAST MASS LYNCHING IN AMERICA* (2002). Laura Wexler, a journalism student at the University of Georgia, attempted to unravel the tale of the last mass lynching in U.S. history: the 1946 killing of two black sharecropping couples by whites near Monroe, Georgia. See *id.* at 265–67. Wexler's efforts to record an oral history of the event and the effect on the townsfolk offered a confessional catharsis that some white residents seem to have awaited. Steve Weinberg, *A Lynch Mob, Four Deaths, No Remorse*, S.F. CHRON., Jan. 5, 2003, at M2, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2003/01/05/RV153470.DTL>. Among black people, Wexler encountered far more apprehension and unresolved racial tensions. *Id.* “What the black people . . . knew was that the men who had lynched Roger and Dorothy Malcolm, George and Mae Murray Dorsey, continued to live freely while they continued to work for them; to borrow money from and be cheated by them; to step around them on the sidewalks downtown; to be arrested by them; to be beaten by them; to fear them; and to never know for sure who had been in the mob that Thursday afternoon in July.” *Id.* (internal quotation marks omitted).

in any effort directed toward securing defendants their legal rights.”⁷² Some courts have taken notice of the strains that can arise, pulling justice in one direction and human bonds in another.⁷³ Jurors or witnesses “might reasonably fear” that a verdict independent of mob sentiment could result in “a cooled or lost friendship” or could alienate “an entire community.”⁷⁴ Do these micro concerns matter on a macro level?

Yes. These dynamics apply to the general politics of divisiveness that have sought suppression of moderates not as part of collateral damage, but as intentional, albeit indirect, goals. At least one federal court in the Deep South has taken notice of the fact that white supremacists allied with “Democrats used the Ku Klux Klan and other means of violence, intimidation and social ostracism against those white persons who aligned with the Republican Party,” which promoted the interests of freed blacks during the First Reconstruction.⁷⁵ Liberals were portrayed as “degraded carpet-baggers” because they were “willing to accept office from a negro constituency.”⁷⁶ Thus, the color line was drawn by “forcing all whites on one side and leaving the other side essentially black.”⁷⁷

A similar line was drawn in other countries, including Germany, Rwanda, and Nigeria. We can examine how the eliminationist discourse disseminated by various media in these countries destroyed bonds of civil society in African nations and threaten the same in America. In the final section of this Article we shall see how these same African societies used various media forms to rebuild fractured communities and stave off the specter of identity politics, with suggestions on how these processes also could apply in America.

V. PASSION AND IDENTITY POLITICS IN AFRICA

A. *Dehumanization of the Target Population—Rwanda in 1994*

The most famous, or infamous, contemporary examples of identity politics and the role of the media come from Rwanda. In 1994, ethnic Hutus, in control of the government apparatus—including the national radio and newspapers—engaged in a vigorous propaganda campaign to seize from ethnic Tutsis all rights to employment, to engage in commerce, to hold land, and ultimately, to live.⁷⁸ The ensuing conflagration resulted in the deaths of

72. *People v. McKay*, 236 P.2d 145, 148 (Cal. 1951).

73. *See id.* at 147.

74. *People v. Tidwell*, 473 P.2d 748, 757 (Cal. 1970).

75. *Knight v. State*, 787 F. Supp. 1030, 1068 (N.D. Ala. 1991).

76. *Id.*

77. *Id.*

78. *See Alvarez, supra* note 40, at 379 (analyzing the impact on Rwanda of genocidal links to white supremacist and neo-Nazi models of hate speech used to invoke hate crimes). For a capsule

some 800,000 Tutsis and moderate Hutus.⁷⁹

Key to the brutal efficiency of the massacres were Rwanda's radio and newspapers.⁸⁰ Newspapers were saturated with propagandistic articles and essays modeled nearly verbatim on the style of Nazi Germany's campaign against the Jews.⁸¹ In place of the Nazi "vermin" in reference to Jews, Hutus inserted "cockroach" in reference to Tutsis.⁸² Rwandan newspapers published a "hit list" of targeted victims deemed unfaithful to the mores of the nation.⁸³ Reportage from the national radio reinforced the perception that national security depended upon eliminating—rather, "exterminat[ing]" or cleaning out—not only the minority view but the minority members themselves.⁸⁴

A particularly troubling element of Rwandan eliminationism was the planned campaign to use rape as a tool of genocide.⁸⁵ Men were encouraged by media propaganda to view Tutsi women as scheming wantons who traded sex with Europeans for social and economic gains.⁸⁶ Various Hutu militia

summary of the Rwandan genocide, see *id.* at 389–91.

79. *Id.* at 391.

80. Adrien Katherine Wing & Mark Richard Johnson, *The Promise of a Post-Genocide Constitution: Healing Rwandan Spirit Injuries*, 7 MICH. J. RACE & L. 247, 307–08 (2002).

81. GOLDHAGEN, *supra* note 1, at 133–36.

82. Wing & Johnson, *supra* note 80, at 274.

83. *Id.* at 273.

84. Allison Des Forges, *Call to Genocide: Radio in Rwanda, 1994*, in *THE MEDIA AND THE RWANDA GENOCIDE* 48 (Allan Thompson ed., 2007). Words used in the genocidal propaganda continued to have power long after the mass killings ended. A decade later, many of the words that otherwise could be used to encourage community service had been tainted by use in the radio messages. During the 1994 genocide, they had been used as signals to the *genocidaires* to clean out their villages of cockroaches, snakes, and vermin that threatened health and safety. Phyllis E. Bernard, *Begging for Justice? Or, Adaptive Jurisprudence? Initial Reflections on Mandatory ADR to Enforce Women's Rights in Rwanda*, 7 CARDOZO J. CONFLICT RESOL. 325, 351 (2006).

85. See AFRICAN RIGHTS, RWANDA: BROKEN BODIES, TORN SPIRITS: LIVING WITH GENOCIDE, RAPE AND HIV/AIDS 6–7 (2004), available at <http://www.preventgbvafrica.org/content/broken-bodies-torn-spirits-living-genocide-rape-and-hiv-aids-rwanda> [hereinafter AFRICAN RIGHTS, RWANDA].

86. The ethnic politics and violence in Rwanda followed many of the patterns set by other colonial powers. The Belgians:

implemented a strategy that purposefully exacerbated ethnic division in order to manufacture a ruling class that could be more easily controlled by the colonial power. Prior to colonial rule, the Tutsi minority controlled the Rwandan aristocracy; however, there is seemingly little evidence of ethnic hostility. In order to pursue an efficient means of control, and consistent with emerging theories in the biology of race of that time, the Belgians used the Tutsi's more "European" physical characteristics as the basis for maintaining their racial, and thus moral and intellectual, superiority. This division was further exacerbated by a system of identity cards, similar to the pass system used during apartheid in South Africa, which designated all Rwandan citizens as Hutu, Tutsi, or Twa (a small ethnic minority in Rwanda, comprising only 1 to 2 percent of the

recruited rape squads to brutalize, torture, and kill large numbers of Tutsi females of all ages, whether they were elderly, mature, young, or still in childhood.⁸⁷ These *genocidaires* included men with HIV and AIDS who probably were set loose to infect the Tutsi population with the disease.⁸⁸ AIDS acted as a ticking time bomb; if the woman survived the brutal and repeated rapings, she could die from AIDS, as could any child born from the rape.⁸⁹

B. *Dehumanizing the Target Population in Contemporary America*

When the “enemy” has a human face similar to one’s own, it is typically more difficult to brutalize or kill them.⁹⁰ Hitler’s manifesto, *Mein Kampf*,⁹¹ first laid out the formula followed in the Nazi campaign to exterminate all opposition.⁹² The basic anthropological division of “us” versus “them” transmuted to “us” versus “it.” Transporting victims to death camps was referred to as merely shipping “cargo.”⁹³ As the commandant of the Treblinka death camp explained, the process of killing was done in as dehumanizing a way as possible to enable the guards to carry out their deadly tasks.⁹⁴ Bestial imagery projected upon the human targets protected the consciences of soldiers and lay persons alike.⁹⁵

America’s extremist right-wing media continue to promote against the “Other” a pervasive imagery of humiliation, degradation, and dehumanization.⁹⁶ Thus, rape, assault, or assassination of a liberal,

population). This identity card system continued until the 1994 genocide, when it was often exploited by Hutus to determine the ethnicity of Tutsi attempting to flee the country.

Matthew J. Burnett, *Remembering Justice in Rwanda: Locating Gender in the Judicial Construction of Memory*, 3 SEATTLE J. SOC. JUST. 757, 769–70 (2005) (internal citations omitted).

87. AFRICAN RIGHTS, RWANDA, *supra* note 85, at 6–9.

88. *Id.* at 9.

89. *Id.* at 32, 51, 60.

90. Let us not assume that Americans are immune to these mixed messages. As experienced by some American soldiers in Vietnam, when confronted with women “of another culture, another color, another society,” it became easier to compel sex than to pay for it. KEEN, *supra* note 43, at 59. If the woman resisted, the soldier might become a “double veteran,” having had sex with a woman whom he killed afterwards. *Id.*

91. ADOLF HITLER, *MEIN KAMPF* vii–xi (John Chamberlain et al. eds., Reynal & Hitchcock 1941) (1939).

92. *See id.*

93. KEEN, *supra* note 43, at 61.

94. *Id.*

95. *Id.*

96. *See* Rory O’Connor, Arizona Shock Jock’s Dangerous Call for “Bloodshed” in Polling Places, AlterNet (Aug. 21, 2009), http://www.alternet.org/media/95841/arizona_shock_jock%27s_dangerous_call_for_%27bloodshed%27_in_polling_places/. Racism and misogyny masquerading as comedy form a staple of AM radio talk shows. *See, e.g., id.* Consider

immigrant, African-American, or homosexual can occur without guilt. By framing dehumanizing imagery as humor, media can evade many laws and societal norms that invoke restraint. Political violence framed as comedy or satire aids in deadening the conscience.

Consider the ostensible news reporting and commentary surrounding Dr. George Tiller, gunned down while ushering at church in Wichita, Kansas.⁹⁷ Right-wing personality Ann Coulter responded, “I don’t really like to think of it as a murder. It was terminating Tiller in the 203rd trimester.”⁹⁸ This was followed by a perfunctory sentence that she was “personally opposed to shooting abortionists.”⁹⁹ She then proceeded to undercut this pallid restraint by stating, “I don’t want to impose my moral values on others.”¹⁰⁰

Coulter’s quip came at the end of several years of onslaught by Bill O’Reilly inveighing against “Tiller the Baby Killer” in repeated segments of misstated facts broadcast with fair knowledge of their ability to incite unstable individuals to action. In the context of a trial, such language and persistence likely would have qualified as being calculated to excite a lynch mob.¹⁰¹

the Arizona “shock jock” who fed his audiences protracted, graphic, and sadistic word descriptions encouraging the sexual assault of public figures such as public defender and human rights activist Isabel Garcia. *Id.*

The substance, symbols, tone, and focus of these messages bear a disturbing parallel to the propaganda used by the *genocidaires* in Rwanda to target Tutsi women in high places, who were stereotyped as being, in short, “uppity.” For this offense, Hutu women instructed Hutu men to destroy Tutsi women in body, spirit, and reproductive capacity. Ann Coulter remains a pale imitation of Pauline Nyiramasuhuko, leader of the *Interahamwe* genocide militias and the first female leader of the genocide to stand trial. One window into understanding the pathology of these identity crimes includes the following insight: This woman who excoriated her own militia when they had failed to rape and then slaughter every single Tutsi in a village—from the oldest to the youngest—was, herself, part Tutsi. Tawia Ansah, *Genocide and the Eroticization of Death: Law, Violence, and Moral Purity*, 14 S. CAL. INTERDISC. L.J. 181, 199–201 (2005). The American version of this is found in the phenomenon of “lynching to belong” or lynching to “claim[] whiteness.” CYNTHIA SKOVE NEVELS, *LYNCHING TO BELONG: CLAIMING WHITENESS THROUGH RACIAL VIOLENCE* 7 (2007). As already described, Florida and Louisiana proved difficult places for immigrants of ambiguous whiteness. *Id.*; see also *supra* note 5. In Brazos County, Texas, foreign-born immigrants took advantage of, or took part in, “the South’s most brutal form of racial domination: the lynching of black men. For each of the immigrant groups caught up in the violence—Italians, Irish, and Bohemians—the deaths of black men helped to resolve the immigrants’ ambiguous racial identity and to bestow the privileges of whiteness.” NEVELS, *supra*, at 7.

97. Bill O’Reilly, *The Killing of George Tiller*, Townhall.com (June 2, 2009), http://townhall.com/columnists/BillOReilly/2009/06/03/the_killing_of_george_tiller. See also *George Tiller Slaying*, *supra* note 6.

98. YouTube.com, O’Reilly, Coulter Discuss Dr. Tiller’s Death, <http://www.youtube.com/watch?v=52UiaMNJuIQ> (last visited Nov. 2, 2009). Because non-verbal content in a message can matter more than the words alone, I refer the reader to a visual record of Coulter’s statement.

99. *Id.*

100. *Id.*

101. YouTube.com, Keith Olbermann: Fox News Incited Dr. Tiller’s Murder,

However, stretched over a period of years, with a more vague and undefined public audience, such discourse has evaded legal culpability in America.

However, moral culpability is another matter. One former propagandist for extremists seeking to eliminate abortion by any means—legal or otherwise—saw the assassination of Dr. Tiller as a turning point.¹⁰² Frank Schaeffer and his father understood the emotional power of cultural symbols. They manipulated the psychological formulas used by Hitler, but inverted them, playing on America's innate revulsion of Nazis and genocide.¹⁰³ The Schaeffers equated abortion with the death camps of Hitler's Germany. Abortion became a vehicle for the heroic sacrifices of World War II. The Schaeffers advocated that "whatever tactics would have been morally justified in removing Hitler would be justified in trying to stop abortion."¹⁰⁴ Dr. Tiller's assassin had immersed himself in this imagery, as evidenced by the literature in his home and postings on his blog.¹⁰⁵ Schaeffer recognized, however, that "even if the murderer had never read Dad's or my words we helped create the climate that made this murder likely to happen."¹⁰⁶

The court in *Johnson v. State*¹⁰⁷ probably would concur. The Mississippi Supreme Court granted that "[p]resumably, the days of lynch mobs are past."¹⁰⁸ Nevertheless, "the emotions which compelled our forebears to such violence endure."¹⁰⁹ The insights offered in this opinion apply more widely. In 1985, the *Johnson* court noted that "the media are all-pervasive in this day and age . . . shap[ing] every community's understanding of itself."¹¹⁰ Judges can attempt to control innuendo and leaks of information that affect the climate around a criminal trial in a specified jurisdiction. But, in the twenty-first century, courts cannot control the larger community of national television, radio talk shows, and the blogosphere.

<http://www.youtube.com/watch?v=2WujkMG9IJY> (last visited Nov. 2, 2009). Again, because the visual, non-verbal communication matters often more than the words alone, I refer the reader to a compilation of O'Reilly's blend of news, editorialism, and entertainment, critiqued on *Countdown with Keith Olbermann*.

102. See Frank Schaeffer, How I (and Other "Pro-Life" Leaders) Contributed to Dr. Tiller's Murder, Huffington Post (June 1, 2009), http://www.huffingtonpost.com/frank-schaeffer/how-i-and-other-pro-life_b_209747.html.

103. See *id.*

104. *Id.*

105. George Tiller Slaying, *supra* note 6.

106. Schaeffer, *supra* note 102.

107. 476 So. 2d 1195 (Miss. 1985).

108. *Id.* at 1214.

109. *Id.*

110. *Id.*

C. A Rwandan Remedy—Morality Codified

Rwanda, in 1994, presented the most direct contemporary example of media being used to shape an atmosphere that signals extremists to act out physically against targeted groups, individuals, and politicians, and to intimidate moderates into silent acquiescence.¹¹¹ Later, Rwanda's legislature would address this manipulation through statutory controls.¹¹² But legislation needs more than an effective date to have the intended impact. To make the legal standards about non-violent, non-eliminationist speech into cultural standards, the Rwandan Ministry of Justice and various non-governmental organizations sought ways to weave the statutory norms into daily community life.¹¹³ Continuing enforcement of non-violent, inclusive norms would come through mediation and arbitration at the neighborhood and village level.¹¹⁴

1. An Eliminationist Media Message

During the compressed months of the genocide, Radio Rwanda broadcast messages to signal militias, gangs, and neighbors to attack identified Tutsis and supporters.¹¹⁵ Following the attacks, as corpses appeared in piles on the streets, newspapers listed the names of the dead as attestation to the effectiveness of the Hutu death squads.¹¹⁶ Mass killings, such as the

111. Des Forges, *supra* note 84, at 42.

112. Lars Waldorf, *Censorship and Propaganda in Post-Genocide Rwanda*, in *THE MEDIA AND THE RWANDA GENOCIDE*, *supra* note 84, at 406–07.

113. *See id.* at 411 (addressing government authorization of private radio and television). The project on which I consulted for ABA Africa/ABA Rwanda, funded through the John D. and Catherine T. MacArthur Foundation, was tasked with taking the newly enacted Mediation Act (which, on its face, was a more commercial arbitration model) to redirect virtually all civil cases, family cases, and property disputes, and some felony cases to village-level community resolution from the shattered court system. The special concern of the MacArthur Foundation, as requested by the Ministry of Justice, was to identify ways to allow implementation of newly enacted legislation to protect the property rights of orphans and widows who had been ostracized due to the genocide rapes, who had contracted HIV, or who were dying from AIDS. All contemporary citations, analyses, and explanations of the mediation-arbitration model developed are found in Bernard, *supra* note 84.

114. Mark A. Drumbl, *Law and Atrocity: Settling Accounts in Rwanda*, 31 OHIO N.U. L. REV. 41, 54–55 (2005). Local participatory tribunals, called *gacacas*, have been implemented by the Rwandan government to help heal the wounds between Hutus and Tutsis. *Id.* Although inevitably interrelated, these are not the same issues, nor the same processes as described in Bernard, *supra* note 84.

115. *See* Des Forges, *supra* note 84, at 47–49.

116. This became a major issue in the genocide trials prosecuted against government officials, demonstrating—as in the Tulsa race pogrom—that these were not spontaneous uprisings of disaffected citizens, but incidents of government-aided ethnic violence. Llezlie L. Green's Note, *Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law*, 33 COLUM. HUM. RTS. L. REV. 733, 746–50 (2002), identifies the most official sources for this generally undisputed fact. Green refers the reader to a variety of International Criminal Tribunal for Rwanda documents relating to the prosecution of *genocidaires*

immolation of thousands at a time in churches around Rwanda, did not warrant more than a general notice in the newspapers¹¹⁷ as a triumphant display of community solidarity, similar to the mentality surrounding the postcard photographs of lynchings in the American South.

Thus, most Hutus incarcerated for genocide crimes tended to perceive themselves not as criminals, but as “honorable citizens” wrongly taken as “prisoners of war.”¹¹⁸ On the whole, they did not evidence a need to ask for apology nor to seek reconciliation with the Tutsis.¹¹⁹ This echoes a sentiment held by leaders of white lynch mobs, as recorded in America.¹²⁰

As the extremist element of the Hutus eliminated the moderates among their own tribe, the genocide faced ever-weakening opposition.¹²¹ The passivity of the international community was taken as tacit approval or weakness.¹²² The United States and United Nations intervened timidly and too late, but the Hutus were eventually ousted from government.¹²³

The new Tutsi-led regime chose to approach language as a matter of law and national security, not personal rhetoric and rights.¹²⁴

2. Inclusive National Norms

The reconstituted Rwandan government focused the rebuilding of its nation around norms that emphasize a positive, cohesive image of national citizenship, overriding tribal identity.¹²⁵ Thus, because words and ethnicity had been used to trigger massive civil unrest and the usurpation of government, words have taken on legal import. Publicizing a person’s tribal identity is banned.¹²⁶ When I served in Rwanda in 2004, the practice was to have all messages on Radio Rwanda cleared by the government in advance,

and to contemporary news accounts describing how “[t]he media . . . relay[ed] directives to the necessity of exterminating Tutsi people, where they were to be found, and the manner in which the listeners or readers were to kill them.” *Id.* (internal citation omitted).

117. See, e.g., Wing & Johnson, *supra* note 80, at 274 (explaining how in Rwanda the radio was the chief means for broadcasting continuous information to *genocidaires* about where to find targets, including names, addresses, and vehicle license-plate numbers). The *New York Times*, however, contemporaneously “relayed stories of thousands of Rwandan corpses being placed on piles” in the streets and in churches, schools, and other presumably “safe” places. *Id.* at 275 (internal citation omitted).

118. See Drumbl, *supra* note 114, at 49–51.

119. *Id.*

120. See *supra* Parts II.C. and III.

121. See Alvarez, *supra* note 40, at 391.

122. See *id.*; Samantha Power, *Bystanders to Genocide: Why the United States Let the Rwandan Tragedy Happen*, in *THE RWANDA GENOCIDE* 79, 83 (Christina Fisanick ed., 2004).

123. See Alvarez, *supra* note 40, at 391.

124. Waldorf, *supra* note 112, at 406–07.

125. See CONSTITUTION, Art. 9 (2003) (Rwanda).

126. *Id.* at Art. 33.

even when the messages were seemingly innocuous, government-friendly announcements of mediation training to be provided pursuant to the Ministry of Justice mandate. As workshop director and developer of the manual to be used in training participants in the nationwide program, I was instructed to eliminate all overt references to ethnicity, which was seen as unduly provocative and threatening given the bloody consequences of ethnic violence in Rwanda's recent history. Instead, all exercises were focused upon commonly accepted principles of humanity and, intermittently, references to Rwandan national unity.

This Article does not advocate for American constitutional or statutory amendments. Neither does it seek enhanced hate speech legislation or civil claims that would render racial speech cause for a private tort action. Formal legal constraints apparently have been Rwanda's primary method, but the ultimate mechanism for enforcement is an unrelenting military presence. Rwanda's secondary method has been to rebuild institutions around these constitutional principles.¹²⁷ The tertiary has been to rebuild community relationships through the now famous *gacacas* for reconciliation among neighbors involved in genocidal crime.¹²⁸ Less widely known is the usage of village peacemaking to resolve most legal disputes involving family law, assault, or property, including the implementation of statutes designed to protect the property rights of widows and orphans previously described.¹²⁹

D. Legal Futility in America

By contrast to Rwanda, it has become standard practice for right-wing extremists in America to use the Constitution as an impenetrable shield for rhetoric that, at best, supports a chronic, low-grade lynch mob mentality that tolerates race-oriented or politically motivated violence. At worst, such rhetoric signals a call for personal acts of violence.

Jim David Adkisson, the gunman who attacked a Unitarian congregation in Tennessee in 2008, was one who responded to the message.¹³⁰ His suicide note described his own actions as “‘a hate crime,’ ‘a political protest,’ and ‘a

127. See, e.g., Waldorf, *supra* note 112, at 406–07. The government applied strong regulatory power to “tighten[] control over the media and civil society.” *Id.* at 406.

128. Drumb, *supra* note 114, at 54. In 1994, the state of Florida engaged in a process of legislative drafting that could be seen as a form of truth and reconciliation, crafting a bill to apologize for the razing of Rosewood, an all-black town destroyed in a pogrom. The bill also provided for \$2 million in compensation to survivors. Professor Brophy argues that the case for reparations in the destruction of Greenwood in Tulsa is even stronger, “because in Tulsa the police took an affirmative hand in the riot. In Rosewood the government failed to protect the residents, but did not take a direct role in the massacre.” BROPHY, *supra* note 19, at 111.

129. See *supra* notes 113–14 and accompanying text.

130. See Tennessee Church Gunman, *supra* note 9.

symbolic killing.”¹³¹ Adkisson did not mask his intentions under a veil of innuendo. He explained that he actually wanted to “kill every major Democrat in Congress.”¹³² But because they were “inaccessible” he would instead kill “the foot soldiers, the (expletive) liberals that vote in these traitorous people.”¹³³ Adkisson did not equivocate in his eliminationist message. He concluded his suicide note with this admonition: “I’d like to encourage other like-minded people to do what I’ve done. If life ain’t worth living anymore don’t just kill yourself. Do something for your country before you go. Go kill liberals.”¹³⁴

Similar to how David Neiwert described the relationship between eliminationists and the U.S. Constitution, “[t]he hate-peddlers use ‘free speech’ as a shield from criticism, as if it means the freedom to not have one’s speech examined or condemned.”¹³⁵ The blend of entertainment and editorialism—what would otherwise be clear hate speech and is banned in countries like Rwanda that have experienced bloody results—has a virtually unfettered forum in America. The American legal system typically does not take action against repeated right-wing messages supporting the bombing, shooting, and hanging of liberals.¹³⁶

Targets of eliminationist rhetoric have little reason to expect shelter in American courts.¹³⁷ Indeed, some judicial opinions have gone so far as to imply that the targets bore responsibility for their endangered status because they opted to speak up for their position in a setting in which the

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. Joshua Holland, Did Right-Wing Shock Jocks Motivate Knoxville Killer?, AlterNet (July 29, 2008), <http://www.alternet.org/blogs/peek/93126/>.

136. Professor Susan Estrich has described this as the “Coulter culture,” propounded by Ann Coulter, a right-wing commentator known for advocating murder as a political tool, then including words or body language to imply that the statement should not be taken seriously. Susan Estrich, Godless Meets Soulless in the Coulter Culture, Fox News (Oct. 11, 2006), <http://www.foxnews.com/story/0,2933,219978,00.html>. Professor Estrich finds particularly disturbing the Coulter culture’s attempt to impose a narrow definition of Christianity as “the law of the land.” *Id.*

137. Note the difference between passionate, blunt discourse and eliminationism. The former makes a statement open to discussion; the latter calls for physical attacks against perceived opponents. See *Horsley v. Rivera*, 292 F.3d 695 (11th Cir. 2002). In *Horsley*, nationally televised talk show host Geraldo Rivera had interviewed the creator of a web site that facilitated the stalking and killing of physicians who performed abortions. *Id.* at 697. Horsley had claimed that providing and maintaining a “hit list” of “abortionists”—complete with their Social Security numbers, addresses, and telephone numbers—was his sacred duty as a Christian. *Id.* at 697–99. The interview had occurred shortly after Dr. Bernard Slepian was killed by a sniper while he stood in his kitchen at home. *Id.* Dr. Slepian was one of the physicians on the Horsley hit list, on which successful eliminations were marked by an “X” through physicians’ names. *Id.*

eliminationist was present.¹³⁸ Even when a shock jock has specified a target (and that person's spouse) by name, repeatedly soliciting a "hit" on the individuals, it has been difficult to find legal culpability.¹³⁹ Courts are reluctant to draw a line any firmer than that drawn by the media corporation that hires the on-air personality whose rhetoric signals death in ways eerily similar to Radio Rwanda in the mid-1990s.

VI. LESSONS FROM NIGERIA FOR AMERICA

The story of media and conflict in Nigeria is more complex than in Rwanda, and in some ways simpler than in America. The key is to view media as more than a single medium, such as formal, print journalism. If we credit the power of the oral arts—a vital part of African tradition—we can understand how informal media function to mitigate or redirect messages disseminated by mass media. This gives us a basis to suggest that even in a society that has already experienced political violence on a national and communal level, and in which outbreaks of political assassination and political thuggery continue, person-to-person communication can make a difference.

A. Nigeria's "Swashbuckling Press"

Nigerian journalists have battled, literally, to reach their position as "possibly the continent's most swashbuckling press."¹⁴⁰ After decades of military rule—first colonial, then domestic—newspapers have found a

138. See *Lucero v. Trosch*, 928 F. Supp. 1124 (S.D. Ala. 1996). In 1994, Paul Hill, a guest on a nationally televised talk show, *Sonya Live*, proclaimed that murder of physicians who provide abortion services was "justifiable homicide." *Id.* at 1126 n.3. Dr. Bruce Lucero, who provided abortion services, appeared on the same show to debate Hill. *Id.* "Sometime after the *Sonya Live* taping, Paul Hill shot and killed Dr. [James] Britton in Pensacola, Florida." *Id.* Lucero later agreed to a televised debate on the *Geraldo* show with Father David Trosch, a noted proponent of the theory that killing abortionists is justifiable homicide and a Christian duty. *Id.* at 1127. Lucero had agreed to appear on the show to stop Trosch. *Id.* at 1126 n.3. The district court refused to apply provisions of federal law designed to protect medical clinics and clinic personnel who provide abortions, on the basis that "Dr. Lucero knew or should have known that the combination of Fr. Trosch's outspoken viewpoints and the sensationalist, melodramatic environment of a daytime talk show rendered it highly likely that Fr. Trosch would direct certain objectionable or uncomplimentary remarks at him." *Id.* at 1130.

139. See *Lackey v. CBS Radio, Inc.*, No. C 06-03987 MHP, 2008 U.S. Dist. LEXIS 7640 (N.D. Cal. Jan. 31, 2008). In *Lackey*, a shock jock's rampage against an on-air rival escalated to the point of the shock jock repeatedly soliciting, on air, a "hit man" to kill his rival, bidding with clearly articulated prices, including a \$2,000 bonus "if there is some suffering involved," and a \$5,000 bonus for a "clean kill." *Id.* at *8. The court found the parent media company to the shock jock's radio station complicit in promoting the radio format, acting only when the shock jock's conduct reached a danger point the company deemed "unconscionable." *Id.* at *23.

140. Norimitsu Onishi, *Nigeria's Press Bounces Back from Military Rule*, N.Y. TIMES, Feb. 21, 2001, at A3.

measure of freedom that some may find surprising. Others still find it insufficient.¹⁴¹

Newspapers abound in Nigeria, from Lagos southward to the oil-producing regions of the former Republic of Biafra. The variety of papers and their diverse, unabashed political¹⁴² and religious positions likely would shock most Americans, who are accustomed to news being presented by a highly limited number of sources in a verisimilitude of neutrality. News stories in Nigeria have bite and clarity, with more than a touch of moral preaching. Humor, particularly in the form of cartoons, serves the same role as it did when used against “Boss Tweed” and Tammany Hall in turn-of-the-century New York City; sharp-witted, sharp-edged cartoons hold the government accountable through the use of ridicule and satire.¹⁴³ Poetry and music also have a prominent place not only on radio and in live entertainment, but even in everyday press.¹⁴⁴

What distinguishes these Nigerian journalists and “graphic warriors” from the right-wing entertainer-newscaster-editorialists of American broadcasting is that the Nigerian press understands it is playing with fire. Further, the

141. See generally CHRIS W. OGBONDAH, *MILITARY REGIMES AND THE PRESS IN NIGERIA, 1966–1993: HUMAN RIGHTS AND NATIONAL DEVELOPMENT* (1993) (analyzing the ebb and flow of repression within the historical context of colonial rule, and the country’s inconsistent march toward democracy).

142. In contrast to Rwanda, Nigeria post-military rule does not shy away from ethnic/tribal issues and their impact on politics. Consider SUNDAY VANGUARD (Lagos, Nigeria), July 21, 2002, at 12–17, which contains full-page stories on *Governors that May Not Return* (giving a state-by-state analysis of party and ethnic politics, their opposition, support and perceived track records); *Trouble-Shooting Time for Mr. President* (addressing the long-standing strains between residents of the oil-producing region of the Niger Delta, who agitate “to control their resources,” and the rest of the nation, given the allegiances of the nation’s president, an ethnic Yoruba, and the leadership of the military, who generally are ethnic Hausa); *Strange Sounds from the Forest* (using lyrics from popular musicians who, like many artists in Africa, use their informal media as a frame to convey political and social messages that discuss wariness about promises made by President Obasanjo to his followers, as those promises affect the “economic landscape” of the country’s oil-producing regions); and *Power Must Not Shift to the North for Another 50 Years* (a bold and uncompromising depiction of the North–South divide, including emerging issues of enlarging “Islamic fundamentalism, northern hegemony and the belief that the Fulanis are born to rule forever”).

143. See, e.g., The Tammany Hall Corruption Cartoons of Thomas Nast, Nevada Observer (Mar. 1, 2005), <http://www.nevadaobserver.com/TNO%20Reference%20Page%20File/Photo%20Page%202.htm>.

144. See, e.g., a full page in the Times Review: Journal of Arts & Cultures, a section of the newspaper DAILY TIMES ON SATURDAY, July 20, 2002, at 16, which reprinted poetry of Austine Amanze Akpuda that was “laced with anger occasioned by the many incidences of arrest and detention that clouded Nigeria during the worst phase of the military reign.” One poem is an elaboration on a brief and biting verse by another Nigerian poet, Ogali A. Ogali: “Government is my shepherd. I am in want. He maketh me to lie down in prison yard.” Ogali A. Ogali, *Government*, reprinted in EMMANUEL N. OBIECHINA, *LANGUAGE AND THEME: ESSAYS ON AFRICAN LITERATURE* 85 (1990). Akpuda continues: “What kind of shepherd surrenders his sheep to the wolves and lions? The shepherd who is a cousin of wolves.” DAILY TIMES ON SATURDAY, *supra*, at 16.

Nigerian press has paid the price for the right to speak, to serve as “the watchdogs of a very messy democracy.”¹⁴⁵

Nigeria’s battles to allow independent, not government-owned, newspapers to bear witness to government malfeasance, corruption, and coercion were physical, not abstract. During decades of military regimes, both foreign and domestic, journalists who failed to follow the government’s prescribed position faced retribution.¹⁴⁶ This took the form of vandalism against the newspaper offices, attacks against the homes of journalists and publishers, and arrests that often included beatings to the point of permanent maiming and death.¹⁴⁷

No one asks that America’s radio and television shock jocks suffer the same treatment as Nigerian journalists. But let us not confuse irresponsible grandiosity with actual courage, or with contributions that merit endorsement, given the harm presented.

B. Using People Media to Overcome Mass Media

How can a society remove its tacit endorsement of eliminationist rhetoric? First, people, especially moderates, cannot remain silent. Second, people should use whatever medium best suits their skills and the particular setting to put forth an alternative message. Oral art matters, and can have a long-term impact when it becomes part of the group narrative. Third, people should identify the various roles that individuals (often unconsciously) play in developing and transmitting a message through their everyday interactions. The fact that others inherently respect these individuals can give their endorsement of an alternative message more value than the mass media. Fourth, people should use different ways to spread the alternative message, ranging from person-to-person communication to listening circles to interactive digital communities, such as Facebook and Twitter.

1. The Bayelsa Mediation Exchange Model for Inter-Ethnic and Inter-Religious Conflict Prevention and Resolution

In 2002, I led a U.S. State Department-funded project to exchange knowledge and skills between the Niger Delta and the United States. The Bayelsa Mediation Exchange, sponsored by the American Bar Association (ABA) Section on Dispute Resolution and ABA Africa, was hosted at the Oklahoma City University School of Law. The principles of tribal peacemaking, initiated in the Oklahoma Supreme Court’s Early Settlement Mediation Program, previously had been adapted in 2000 for use by the

145. Onishi, *supra* note 140.

146. *Id.*

147. *Id.*

International Federation of Women Lawyers (FIDA) in Rivers State and Bayelsa State, Nigeria.¹⁴⁸

In the two-year period between the first mediation training and this program, some 400 village women in the Niger Delta, working with members of FIDA, were trained to serve as mediators of disputes within their communities. Oral reports described an inspiring range of successes, largely because the FIDA peacemaker had used active listening skills to hear a neighbor's problem. FIDA peacemakers took on only those cases based in family disputes, since women traditionally have the greatest influence in the home.

As the women had discerned in 2000, most communal conflicts—rampages of group violence similar to what Americans would describe as lynchings or vigilante justice—initiated as personal conflicts between individuals, families, and neighbors over acts that were perceived by one or the other as disrespectful or disreputable. If one removes the issue of race, the list of perceived slights overlaps with those used as reasons for lynchings in America presented earlier in this Article. As viewed by the workshop participants, despite the mass media's framing of such communal violence as being politically inspired, the political often came secondary to the personal.

Workshop participants granted that some politicians routinely paid teenagers to engage in acts of gang violence against designated targets. However, the group concurred that, traditionally, the teenage boys solicited to engage in such thuggery would have been stopped by their mothers. After seeing the success of mediation through the FIDA village peacemaking project, women in 2002 stressed a need for parent-teen mediation to decrease political violence in their villages.¹⁴⁹

The 2000 FIDA model indirectly diminished political violence. The 2002 Bayelsa model more directly addressed inter-ethnic and inter-religious conflict in the workplace, neighborhoods, and wherever rumors spread fears that erupted in violence, similar to the lynchings and pogroms experienced by black Americans in the nineteenth and early twentieth centuries. In addition to teaching standard and advanced active-listening skills and calming

148. Phyllis E. Bernard, *The Administrative Law Judge as a Bridge Between Law and Culture*, 23 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1, 31–50 (2003) (discussing connections between law and culture in the Niger Delta).

149. FIDA has continued to expand its use of the village peacemaker model, particularly through the efforts of the Honorable Elsie Thompson, president of FIDA in Rivers State throughout my involvement and now president of FIDA Nigeria. Her work with TAP, a youth upliftment project in Port Harcourt, and FIDA Rivers State launched the initial village peacemaker effort, funded through a grant by Shell Petroleum Development Corporation. In subsequent years, Judge Thompson, FIDA, and TAP have expanded mediation to include parent-teen and peer mediation, and have expanded the village peacemaker model throughout the Delta—joining lawyers with lay persons and the lettered with the illiterate, in a classless unity unusual for most societies.

techniques, the workshop sessions expanded venues to address emerging conflicts. Professor of journalism and MacArthur Fellow Dr. Chris Ogbondah explained effective methods to engage in discourse with the formal and informal media that disseminate news.¹⁵⁰ Communicating with the same skills one would bring to a mediation serves to enhance credibility and accuracy in communicating with the media. Such rumor control techniques could be combined with principle-based, norm-based mediation, not merely overlapping self-interests of the parties.

Workshop leaders from Oklahoma and Nigeria stressed a need to enter into dialogue with individuals who influenced others by dint of their perceived personal integrity and concern for the overall best interests of the community. These individuals would be key to developing and maintaining self-enforcing agreements, not relying upon an external apparatus to define justice. Thus, when the mediation center established by one of the workshop leaders, the first lady of Cross River State, had to resolve a tense inter-tribal situation, the mediator was a local market woman known for her honesty.

Finally, the mediation exchange offered the Niger Delta residents experience in facilitated community dialogue, modeled on the approach of the Kettering Foundation's Oklahoma Partnership for Public Deliberation.¹⁵¹ In America, the standard public deliberation model provides a venue for private citizens to discuss public policy issues such as education, discrimination, and access to justice. The American model does not necessarily anticipate implementation, only an engagement in constructive, non-confrontational dialogue.

The Bayelsa workshops included numerous public officials and representatives of non-governmental organizations as trainers and participants.¹⁵² Considering this experience anew for this Article deepened

150. PHYLLIS E. BERNARD, RULE OF LAW INITIATIVE, AM. BAR ASS'N, NIGERIA MEDIATION EXCHANGE REPORT (2003), http://www.abanet.org/rol/publications/nigeria_mediation_exchange.doc.

151. See The Kettering Foundation, http://www.kettering.org/ketterings_research/community/coming_together_to_address_wicked_social_problems (last visited Nov. 2, 2009).

152. The delegation consisted of: Barrister Mrs. Elsie Nwanwuri Thompson, Deputy Country Vice President-FIDA Nigeria; Barrister Mrs. Didi Walson-Jack, Director of Legal Services, Bayelsa State House of Assembly, who was appointed during the Oklahoma visit to be Attorney General and Minister of Justice for Bayelsa State; The Hon. Viven Ere Imananagha, Deputy Chief Whip and Chairperson of the Committee on Health and Women's Affairs and Social Development, Bayelsa State House of Assembly; Her Excellency, Mrs. Owanari Bobmanuel-Duke, partner in the law firm of Duke and Bobmanuel, Lagos, and First Lady of Cross River State; The Hon. Barrister (Chief) Nixon Bright Erewari, Chairman, House Committee on Justice, Judiciary and Related Matters, Bayelsa State House of Assembly; The Hon. Barrister Bassey Eko Ewa, Majority Leader, Cross River State House of Assembly and Chairman of the Committee on Judiciary and Public Service Matters; and Chris W. Ogbondah, Ph.D., Professor of Journalism, University of Northern Iowa. Although they do not necessarily follow our American conventions, I have used the titles that the

my appreciation for how the core group of “Connectors”¹⁵³ was comprised. Our work in Oklahoma engaged the best talents and energies of a handful of leaders in the oil-producing region of the Niger Delta. These persons became the trainers of the trainers. Their integrity and personal authority lent added strength to their message.

The work was not always easy. Inter-ethnic/tribal strains existed not only in Nigeria, but even among our working group. For, we reflected the diverse tribal identities of the region, including the residual tensions and personal tragedies of the Biafran War, also known as the Nigerian Civil War.¹⁵⁴ Yet, I believe that working through these dynamics enriched our learning experience and rendered the presentations in Nigeria even more authentic, tested, and tried.¹⁵⁵ This core of trainers took the theoretical concepts and translated them, literally, into the language of everyday life, the *lingua franca* of Nigeria: “pidgin” or Special English. The group developed scenarios of community disputes and inter-religious strains in the workplace—including the role of rumor in the media—for use in workshops in Nigeria.

C. Applications in America

The intensity of political discourse in the United States has increased markedly from the moment Senator Barack Obama appeared poised to win the presidency. Most of the more inflammatory, race-oriented, anti-liberal commentary remains segregated on web sites and AM talk radio. The more

participants themselves provided.

153. See notes 156–161 *infra* and accompanying text.

154. My grandfather’s family is Igbo. The Igbo were among those who suffered most from the blockade at Port Harcourt, which ultimately starved to death approximately 1 million Biafrans. My first husband, David Robison, received the 1968 Overseas Press Club Award for his coverage of *Starving Children of the Biafra War*, LIFE, July 12, 1968, at 3 (noting that photographs appearing on the cover and pages 26–28 were provided by David Robison). He died prematurely from causes linked to his time in Biafra. Every person in the Bayelsa Mediation Exchange delegation was old enough to have lived through the war and to have lost family. The delegation believed much of the political violence that continues today is a resurgence of those unresolved tensions, now manipulated by persons desiring political and economic power. Indeed, during the workshop in Oklahoma, one of the participants, a member of the Bayelsa legislature, learned that some fifty of his constituents had been killed in an outbreak of pre-election beatings, arson, and shootings. Youths had been incited by propaganda and payments to terrorize one politician’s opponents. Inter-religious violence has also been problematic, not only Muslim–Christian but also evangelical Christian versus mainstream “orthodox” Christian. Indeed, in many ways, inter-religious violence could be seen as the most pervasive problem, since faith traditions have such a powerful impact on everyday life, unlike the intermittent effects of elections. I take this opportunity to express deep appreciation to my husband, world religions professor Dann J. May, who designed modules to show the common ground for inter-religious dialogue.

155. Videotape of the Bayelsa Mediation Exchange training scenarios, materials, and report are available at the American Bar Association Section on Dispute Resolution, Washington, D.C., or from this author.

segmented the audience, the more pointed the racist message. Talk show hosts on radio and television have identified audiences that respond to the message of righteous rage. This sense of dislocation must find other venues before it consolidates.

As tested worldwide, the Kettering model for public deliberation offers such a venue, offering the otherwise silent, moderate majority a safe forum to engage in non-confrontational discourse with others. The Bayelsa adaptation directly involving public officials may not be as important as encouraging citizens to consider that eliminationism exists and constitutes a danger to America's civil society. Eliminationism undermines the trust and tolerance necessary for diverse communities to exist without physical conflict.

Person-to-person discourse may be the most powerful medium of all to preserve or restore trust within a society. As Malcolm Gladwell described in *The Tipping Point*, the most effective way for an idea to gain acceptance is communication through "Connectors."¹⁵⁶ Connectors are individuals who naturally reach out to others in acquaintanceship.¹⁵⁷ The relationships need not be deep, but they are broad.¹⁵⁸ Networks of these thin relationships¹⁵⁹ transmit information that comes with the imprimatur of the Connector.¹⁶⁰ Thus, the information has far more credibility and impact than messages received through mass media.¹⁶¹

Today, such connections can "go viral" almost instantaneously, spreading through the personal technology of smartphones, netbooks, laptops, and personal computers. The co-founders of Facebook and Twitter recognized this as a potent marketing dynamic.¹⁶² As the recent protests of the presidential election in Iran reveal, this dynamic also can be political.¹⁶³ People uplinked to mass media, compelling the world to stand witness.

The Iranian uprising has not resulted in immediate political results. But scenes such as the death of Neda Agha-Soltan on the streets of Tehran are

156. MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 38 (2000).

157. *Id.*

158. *See id.* at 46.

159. *Id.*

160. *Id.* at 55.

161. *Id.*

162. Rory O'Connor, Facebook and Twitter Are Reshaping Journalism as We Know It, *AlterNet* (Jan. 20, 2009), http://www.alternet.org/media/121211/facebook_and_twitter_are_reshaping_journalism_as_we_know_it/. "The concept of "the trusted referral" is integral to the success of content sharing on Facebook." *Id.* (quoting Randi Zuckerberg of the Facebook creative marketing team). "Twitter is about the idea of an organic approach to communication." *Id.* (quoting Biz Stone, founder of Twitter).

163. *See* Editorial, *Iran's Twitter Revolution*, WASH. TIMES, June 16, 2009, at A20, available at <http://www.washingtontimes.com/news/2009/jun/16/irans-twitter-revolution/>.

preserved as cultural symbols.¹⁶⁴ Because of the interactive nature of Facebook and Twitter, messages, photos, and video from Iran gained an element of active audience engagement akin to the oral arts of Nigeria.¹⁶⁵ In many ways, the technologies of social networking today have ushered in the next generation of the journalistic and artistic protest that formed in America around the murder of Emmett Till.

VII. CONCLUSION: AMERICAN POLITICAL DISCOURSE, TRUE BELIEVERS, AND THE OTHER

Conflict resolution has much to offer America if we seek to defuse eliminationist discourse and its potential impact. But efforts need to address underlying issues and core values.

Successful efforts at conflict prevention and resolution in these areas will acknowledge that—irrespective of religious affiliation or lack thereof—most persons yearn for some sort of moral order. This may contribute to an answer to the dogging question: Why would otherwise good citizens engage in, or tolerate, mob violence? There is a primal need for security, safety, and a sense of justice. If the legal system seems unresponsive, then humans may act on their own, exercising what they perceive as vigilante justice on a smaller or larger scale, or tolerating such violence when others act ostensibly for the greater good.

Hard-core eliminationists, neo-Nazis, white supremacists, nativists, secessionists, and the mentally unstable may not be susceptible to the lessons suggested in this Article. But they are not the direct audience. That audience is the same one that judges in more than five dozen cases on the lynch mob mentality described, in sum, as otherwise good citizens who dread the cooling or loss of relational bonds with friends, acquaintances, or their standing in the community generally. These people follow the tipping point toward the worst or best in a society.

The most profound pain in any community violence is the loss of community, the loss of trust. In Rwanda and Nigeria—and, historically, in Germany and America—many of those who occupied a position in society in

164. Nazila Fathi, *In a Death Seen Around the World, a Symbol of Iranian Protests*, N.Y. TIMES, June 23, 2009, at A1.

165. In downtown Oklahoma City, younger Iranian immigrants rallied in solidarity with Mousavi supporters in Tehran, beginning June 12, 2009. Grant Slater, *Iranians Living in Oklahoma Look Eastward*, OKLA. GAZETTE, July 8, 2009, at 10–11, available at <http://www.okgazette.com/Default.aspx?p=12729> (click through “Current Articles” archives to July 8, 2009, issue). Iranian-American university students saw the flood of online coverage as a heartening expansion of awareness in Oklahoma. *Id.* “Oklahomans joined Iranian expatriates in turning their Facebook and Twitter profile pictures green” in silent protest against the disputed elections. *Id.*

which they would be expected to care for the health and well-being of others betrayed their positions of trust. Doctors, judges, lawyers, priests, teachers, and neighbors turned against each other, perhaps in an effort to not be left behind in a shift of power. Perhaps they did so to protect their own families. Perhaps they did so because they lacked courage.

In the United States, perhaps we are not yet at a point at which we need to summon the power to confront a mob. But the August 2009 scenes of “teabaggers” and so-called town hall meetings to which some persons came armed raise concern. Community leaders in America need to show the foresight, dedication, and integrity of the leaders in the Bayelsa Mediation Exchange delegation and FIDA, who confront the very real physical threat of eliminationism every day. By comparison, we in America have an easy task before us.