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**CIVIL LITIGATION AGAINST HATE GROUPS
HITTING THE WALLETS
OF THE NATION'S HATE-MONGERS**

Damon Henderson Taylor*

I. INTRODUCTION

On April 19th, 1980, three white males, members of the Justice Knights of the Ku Klux Klan, planned and executed a cross burning in a predominantly black neighborhood of Chattanooga, Tennessee.¹ On the way through the neighborhood to watch the reactions of the residents, the men passed four elderly black women, Viola Ellison, Lela Evans, Opal Jackson, and Katherine Johnson, and one of them fired three shots from a shotgun, striking each of the women in their lower extremities. Soon after, they shot

* I would like to thank the following people: Professor Paul Finkelman, Professor Sandra Kerber, and Professor Steven Lazarus for their wise tutelage and inspirational words of encouragement; Professor Phyllis Crocker for her dedication to instruct me on how to create a quality manuscript and her patients and hard work in assisting me in this endeavor; Jeff Lucier for his superior editing skills and his willingness to teach me the finer points of writing excellence; Dr. Bill Coleman and Dr. Steven Kramer, among many others at Mount Union College, for opening my mind to the challenges of the world; the circulation staff, the reference librarians, and the automation department at the Cleveland-Marshall College of Law library for their support and wonderful service; to my mother—Kristine Pamela Taylor—and to my very good friend—Susan Elizabeth Peine—along with the rest of my amazing family and loved ones, who have always sought to provide me with the tools and support to make a difference. Finally, I would like to dedicate this article to my grandparents—William Donald and Virginia Taylor and Walter “Red” and Helen Hussing—who diligently worked hard and sacrificed much so that I may be in a position to compose this article.

¹ See RANDOLPH M. SCOTT-MCLAUGHLIN, *RACIALLY MOTIVATED VIOLENCE: LITIGATION STRATEGIES* 8 (1984).

at another elderly woman, Mrs. Crumsey, causing injuries to her neck.²

Following these shootings, the three Klansmen were arrested and charged with assault with intent to commit murder.³ Two of the men were acquitted of all charges by an all-white jury while one man was sentenced to nine months in jail of which he served only six.⁴ Although the elderly women were deprived of criminal justice, the Center for Constitutional Rights' Legal Project civilly litigated on their behalf and obtained a monetary judgment against the Chattanooga Ku Klux Klan for \$535,000.⁵

On May 26th, 1979, in Decatur, Alabama, a group of protesters organized a march and proclaimed May 26th as "Free Tommy Lee Hines Day."⁶ Unbeknownst to the protesters, a thirty-car caravan of Ku Klux Klan members gathered at a nearby park. They intended to stop the protest despite the fact that the local and regional press were out in force to cover it.⁷ Not since the *Scottsboro* case in the 1930's had a story been so controversial in Northern Alabama as the arrest and trial of Tommy Lee Hines.⁸

² *Id.* Mrs. Crumsey had been watering her plants. *Id.* Although the gun fire missed her, the shotgun pellets shattered glass in a nearby car, causing her injury. *Id.*

³ See Charles H. Jones, Jr., *An Argument for Federal Protection Against Racially Motivated Crimes: 18 U.S.C. § 241 and the Thirteenth Amendment*, 21 HARV. C.R.-C.L. L. REV. 689, 692 (1986).

⁴ See *Id.* at 690.

⁵ See *Id.* at 689-690; See also MCLAUGHLIN, *supra* note 1, at 8.

⁶ BILL STANTON, *KLANWATCH: BRINGING THE KU KLUX KLAN TO JUSTICE* 4 (1991). The march was organized by the Southern Christian Leadership Conference (SCLC). *Id.* The group came from Atlanta to protest the trial and rape conviction of the young mentally retarded man, Tommy Lee Hines. *Id.* The SCLC and the protesters felt the conviction was reminiscent of pre-civil rights days where mob justice, rather than legal justice, ruled the South. *Id.*

⁷ *Id.* at 6. The Ku Klux Klan group was organized and led by Ray Steel, the newly appointed Titan or regional leader of the Northern Alabama Ku Klux Klan. *Id.* at 5. Steel and the Klan were "sick and tired" of listening to the protesters argue Tommy Hines' innocence and wanted to put a stop to the protests. *Id.*

⁸ See DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* 5 (1969). The 'Scottsboro boys' were nine black teenagers who were taken off a train in Paint Rock, Alabama. *Id.* at 4-5. See also RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN v. BD. OF EDUCATION AND BLACK AMERICA'S*

The march was abruptly cut short because violence between the caravan of Klansmen and the protesters erupted mid-way through the planned route.⁹ Upon order being restored, two Klansmen and two marchers were found to be seriously injured. Furthermore, a black man named Curtis Robinson was charged with assault with

STRUGGLE 144-54 (1977). On March 25, 1931, the boys were charged with the gang-raping of two white women. *Id.* at 145. The International Labor Defense, ILD, a civil rights wing of the communist party, intervened to provide legal counsel for the boys. *Id.* With circumstances such as “the speed of the trial, number and age of the boys, the severity of the punishment—death in the electric chair—and reports that the two girls sold their bodies to men of both races,” *Scottsboro* instantly became an infamous case around the world. *Id.* The sensational nature of the injustice committed against the nine boys was the reason that three trials were necessary for the conviction of the boys. *Id.* at 148. In the first trial, following a conviction in State court, the U.S. Supreme Court threw the case out and ruled in capital offense cases, an individual must be afforded legal representation. *Id.* At the second trial, even though one of the two girls originally alleging rape recanted her story and testified she was coached to testify certain facts, the all-white jury convicted again. *Id.* After the jury sentenced the boys to death, the trial judge quickly reversed the ruling and threw the case out for lack of sufficient evidence and subsequently ordered a third trial. *Id.* Again, in the third trial, the boys were found guilty and sentenced to death. *Id.* The defense appealed the ruling to the United States Supreme Court on the basis that the exclusion of blacks from both the trial and grand juries was unconstitutional. *Id.* In the spring of 1935, at the conclusion of the arguments, the United States Supreme Court ruled that all-white juries were illegal if there was a “persistent pattern of discrimination thereby making jury selection intolerable.” *Id.* at 154. The *Scottsboro* boys were tried for the fourth time. *Id.* at 154. Once again they were found guilty and four of the nine were individually sentenced to varying terms of prison. See EDWARD W. KNAPPMAN, GREAT AMERICAN TRIALS: FROM SALEM WITCHCRAFT TO RODNEY KING 351-356 (1994). This time, the Supreme Court refused to review the convictions. *Id.* at 355. The Alabama governor, Bibb Graves, reviewed a clemency appeal and agreed to pardon the four boys. *Id.* However, due to strong public opinion, Governor Graves changed his mind. *Id.* In 1948, one of the boys, Haywood Patterson, escaped from an Alabama prison and was arrested in Detroit, Michigan. *Id.* at 356. The governor of Alabama wanted Michigan to extradite him back to Alabama. *Id.* at 356. Nevertheless, the North had been so flabbergasted at the injustice that was done to the boys, the governor of Michigan refused the request to sign the extradition papers by the governor of Alabama and freed the boy. *Id.*

⁹ See Stanton, *supra* note 6, at 8.

intent to murder in the shooting of one of the two injured Klansmen, a local Klan leader, David Kelso.¹⁰

Mr. Robinson was represented by Morris Dees,¹¹ a famous mail order entrepreneur turned civil rights attorney, who took the case because of what he believed to be an injustice being committed against Robinson, a small town City Hall building supervisor.¹² Unfortunately for Robinson, despite overwhelming evidence supporting his acquittal,¹³ the jury found him guilty and recommended a sentence of probation.¹⁴

¹⁰ See *id.* at 10.

¹¹ See generally Bill Shaw, *Morris Dees; A Wily Alabamian Uses the Courts to Wipe Out Hate-groups and Racial Violence*, PEOPLE MAGAZINE, July 22, 1991, at 50. Morris "Bubba" Dees is the co-founder of the Southern Poverty Law Center. *Id.* His first big victory with the SPLC was in 1975, when he defended a black female inmate in a murder case in which the jury ruled the inmate was acting in self-defense when stabbing a white jailer to death. *Id.* at 53.

¹² See generally STANTON, *supra* note 6, at 21-29. Dees contended that Robinson possessed and used a gun but was merely defending himself and his family against the angry Klan mob when he shot David Kelso. *Id.* at 22. Curtis Robinson was a politically uninvolved family man who made a concerted effort to reach out to all people, white and black. *Id.* at 30. He was on speaking terms with Mayor Dukes, the mayor of Decatur. *Id.* Furthermore, Curtis Robinson's best friend was white and the two often visited each other's homes. *Id.* He and his family were on their way to a long Memorial Day weekend when he remembered he had to check the boilers at City Hall. *Id.* at 21. Mr. Robinson, with his family, drove straight into the mayhem. *Id.* at 21-22.

¹³ See STANTON, *supra* note 6, at 32. Curtis Robinson stated, "[I] had gotten out of [my] car as the march came to a halt to see what the commotion was. Minutes later, the Klan had broken through the police lines, and when a wave of Kluxers (Klansmen) rushed towards [me] with clubs raised, [I] pulled [my] pistol from [my] pocket and fired—in defense of [myself], [my] family, and the other blacks standing around [me]." *Id.* A former deputy police officer of Decatur corroborated much of Robinson's testimony, stating, "Robinson was virtually under siege when he fired his pistol and that Kelso was a distance of only six to ten feet away, rushing at him with a raised club . . . the shooting had been a clear-cut case of self-defense." *Id.* at 69-70. Furthermore, Dees provided ample evidence that Curtis Robinson was not an "agitator." *Id.* at 70. See also *Id.* at 29. Dees argued Robinson was neither prepared to assault a Klansman or commit assault with intent to murder David Kelso. *Id.* at 30. At best, Dees maintained Robinson should be charged only with a misdemeanor. *Id.*

¹⁴ See STANTON, *supra* note 6, at 72. The judge changed Robinson's sentence to five years in prison but subsequently suspended the sentence and gave him two years probation. *Id.* at 73.

Cases such as the Chattanooga shootings and *Robinson* exemplify the long and often embarrassing history of criminal injustice against African Americans. Nevertheless, both blacks and whites have successfully committed themselves to fighting racial injustice in our courtrooms. In the past, great men such as Charles Hamilton Houston and Justice John Marshall Harlan fought against racial injustice and bigotry at times when the majority of the population, or bench, disapproved of providing legal justice to black men and women.¹⁵ Presently, the Southern Poverty Law Center (SPLC) and Morris Dees, its co-founder and Chief Trial Counsel, continue this struggle by concentrating on hate-group violence, among other violations of law.¹⁶

The SPLC and Morris Dees maintain there are two options when fighting racial injustice and hate-group violence.¹⁷ The first is to encourage prosecutors and legislators to treat hate crimes as a serious threat to American ideals and increase prosecution and write stricter and harsher legislation.¹⁸ The second is to seek civil remedies for victims of hate-group crimes.¹⁹ The verdict in the

¹⁵ See generally KLUGER, *supra* note 8, at 156. Charles Hamilton Houston was a former Dean of Howard Law School and the mastermind behind the litigation strategy used to win the 1956 decision *Brown v. Bd. of Education*, which overturned the infamous 1896 decision in *Plessy v. Ferguson*. See *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Justice John Marshall Harlan is the author of the famous Supreme Court lone dissenting opinion in *Plessy v. Ferguson*, which held “our constitution is color-blind and neither knows nor tolerates classes among citizens.” See KNAPPMAN, *supra* note 8, at 219. See *Plessy v. Ferguson*, 163 U.S. 537 (1896).

¹⁶ See Memorandum from the Southern Poverty Law Center on history and mission: Recruitment Letter (Undated) (on file with author). The SPLC is a non-profit organization based in Montgomery, Alabama, whose purpose is to fight intolerance, discrimination, and unfairness through education and litigation. *Id.* See also SOUTHERN POVERTY LAW CENTER, *Seeking Justice: A Brief History of the Southern Poverty Law Center* (visited Nov. 10, 1998) <<http://www.splcenter.org/legal/la=4.html>>. The SPLC also works on challenging prison conditions, sex discrimination, and improving health care and social services for the poor, protecting worker safety, fighting for tax equity, opposing the death penalty, taking down the confederate flag, and ensuring fair housing. *Id.*

¹⁷ See Morris Dees & Ellen Bowden, *Hate: Taking Hate Groups to Court*, TRIAL MAGAZINE, Feb. 1995, at 22.

¹⁸ See *id.*

¹⁹ See *id.*

Robinson case and incidents similar to what occurred in Chattanooga inspired Dees to devise an alternative to existing federal and state statutes.²⁰ Rather than sue the hate-mongers individually under existing civil statutes, which prohibit “any citizen from conspiring with another citizen to deprive a third of his or her civil rights,”²¹ Dees sues the hate groups themselves and holds them responsible for the violent actions of their members.²²

While the first option, increased prosecution and additional legislation, could arguably be more potent as systemic responses to hate violence, the second option, civil remedies, is heralded by the SPLC and Morris Dees as a creative and often more effective legal strategy for providing justice to victims of hate-group violence.²³ Dees’ civil litigation strategy is based on traditional legal theories—aiding and abetting and civil conspiracy—thereby

²⁰ See STANTON, *supra* note 6, at 76. The Chattanooga incident and the Robinson incident also inspired Dees to create the Klanwatch Program. *Id.* at 76. Dees outlined three reasons to begin such a project: “to become an information bank on the KKK for journalists and scholars; to file ‘selected lawsuits’ against KKK groups for violating minority citizens’ rights; and to provide public education.” *Id.*

²¹ See *id.* at 75.

²² See *id.* On November 3rd, 1980, on behalf of the marchers injured and attacked at the “Free Tommy Lee Hines Day” demonstration, Dees filed Peoples Association of Decatur, et al. v. The Invisible Empire, Knights of the Ku Klux Klan, et al., in federal court in Birmingham, seeking one million dollars in damages. ¹⁸ *Id.* at 77. Peoples Association of Decatur was settled ten years later, resulting in monetary damages to be paid by the Klan marchers. Furthermore, the judgment demanded that the Klan marchers must attend human relations classes. *Id.* at 251. At the conclusion of the sessions, one Klan member responded snidely, “thank goodness for newspapers,” yet, former Klan Special Forces leader, Terry Tucker, left the classes talking about racial “common ground.” *Id.* Although Dees’ litigation strategy was considered novel, it was not the first time ever that civil litigation of Klan groups had been used. *Id.* During Reconstruction, Congress sought to protect the newly freedmen vis-à-vis civil and criminal laws. *Id.* These reconstruction laws were intended to protect and hopefully empower freedmen to use private litigation to prevent groups like the KKK from murdering and raping their people by obtaining monetary damages and injunctive relief. *Id.* at 76. Any hope of successful civil litigation was rendered virtually impossible for a variety of reasons such as all-white juries, no money for counsel, no supportive competent counsel, and judges who afford little justice to blacks. *Id.*

²³ See *id.* at 24.

circumventing the barriers encountered with increased prosecution and additional legislation.²⁴ The success of Dees' civil litigation strategy does not hinge on variables such as rarely-used legislation and inexperienced prosecutors or judges. Rather, his strategy depends only on plaintiff counsel's ability to establish the requisite elements needed to prove a defendant's liability.

The addition of Dees' civil litigation strategy to the arsenal of legal weaponry used against hate-motivated criminals has provided an enticing option in the battle to secure real justice—monetary and otherwise—for victims of hate-group violence. Part II of this article discusses the nature of existing federal and state legislation and why Dees' civil litigation strategy is an effective alternative. Dees' strategy will be better used if legal advocates understand the culture and history of hate groups—where they come from and why they exist. Thus, Part III provides a brief historical analysis of the Ku Klux Klan, perhaps the most notorious hate group ever to exist within American society, plus additional background information on other hate groups active today. Part IV analyzes Dees' civil litigation strategy, explores barriers that impede its effectiveness, and then considers a practical application of the strategy in the groundbreaking case, *Beulah Mae Donald v. United Klans of America*.²⁵ Finally, Part IV explores the future of Dees' strategy and how the effectiveness of this strategy, coupled with better enforcement of state and federal legislation, are grounds to rebut current arguments for heightened penalties for crimes motivated by hate.

II. CURRENT LEGISLATIVE DETERRENTS TO HATE-GROUP VIOLENCE

This section explains why Dees' litigation strategy is a potent deterrent to hate-group violence. Both federal and state

²⁴ See *infra* pp. 7-10. The barriers are a lack of positive precedent and an infrequency with which the court system has to deal with hate violence. *Id.*

²⁵ *Beulah Mae Donald v. United Klans of America, Inc.*, No. 84 Civ. 0725 (S.D. Ala. June 14, 1984).

legislation provide civil remedies to victims of hate crimes.²⁶ Unfortunately, according to several legal experts, the enforcement

²⁶ See JACK LEVIN & JACK MCDEVITT, *HATE CRIMES: THE RISING TIDE OF BIGOTRY AND BLOODSHED* 195 (1993). Levin and McDevitt, referencing the National Institute Against Prejudice and Violence's report, maintain federal legislation can be broken into four criminal categories and three civil categories which detail remedies for crimes motivated by bigotry. *Id.* at 180. See WASHINGTON DC LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW et. al, *STRIKING BACK AT BIGOTRY: REMEDIES UNDER FEDERAL LAW FOR VIOLENCE MOTIVATED BY RACIAL, RELIGIOUS AND ETHNIC PREJUDICE* 7 (1986). The four federal criminal statutes for crimes motivated by bigotry are: (1) Conspiracy to interfere with civil rights, 18 U.S.C. § 241, a federal statute regulating bias-motivated behavior specifically forbidding conspiracies intended to interfere with an individual's enjoyment of his or her civil rights; *Id.* at 12. (2) Deprivation of civil rights under color of law, 18 U.S.C. § 242, a federal statute which forbids, "willful deprivation of constitutional and federal statutory rights by individuals who operate under the color of law; *Id.* at 15. (3) Forcible interference with civil rights, 18 U.S.C. § 245, passed in 1968 to protect southern civil rights workers, it protects an individual from, "intentional interference, by force or threat of force, with certain specified rights, and has no state action requirement;" *Id.* at 17. and (4) Willful interference with civil rights under the Fair Housing Act, 42 U.S.C. § 3631, a federal civil rights statute which regulates willful interference with civil rights under the Fair Housing Act. *Id.* at 22. In addition, there are four civil causes of action that apply to hate crimes. *Id.* at 23. They are: (1) Civil actions under 42 U.S.C. §§ 1981 and 1982; *Id.* at 24. (2) Conspiracy to deprive any person or class of persons of equal protection of the laws, 42 U.S.C. § 1985(3); *Id.* at 31. and (3) Interference, coercion, or intimidation in violation of the Fair Housing Act, 42 U.S.C. § 3617. *Id.* at 35. Whereas federal statute can be very narrow; state remedies for victims of hate-crimes vis-à-vis state law are often times more expansive and effective. See LEVIN & MCDEVITT, *supra* note 26, at 186. State hate-crime laws tend to change rapidly, mirroring both the increase in hate crimes and the diversity of methods in which the hate crime is committed. *Id.* Jack Levin, referencing the report issued by the NIAPV, suggests although state hate-crime laws do change rapidly, there are four general types of state hate crime legislation that do exist: (1) legislation that addresses institutional vandalism, such as defacement of cemeteries and houses of worship; See *Id.* See WASHINGTON DC LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW et. al, *supra* note 26, at 66. (2) legislation, commonly known as hate-crime statutes, which address bias-motivated violence and intimidation, thereby making illegal and at times providing heightened penalties for intimidation, harassment, trespass on property of, or assault of an individual based on race, religion, national origin and now in some states, sexual orientation; See *id.* at 63. See LEVIN & MCDEVITT, *supra* note 26, at 189. (3) legislation that prohibits interference with religious worship,

process used to ensure the effectiveness of these hate violence statutes is deficient.²⁷

Jack Levin and Jack McDevitt, two of the leading hate crime experts in this country,²⁸ reference a study on the court's processing of hate crimes in Boston as a microcosmic example of how the criminal justice system does not work.²⁹ Between 1983 and 1987, the Boston authorities processed four hundred and fifty two reports of hate crimes; yet, only five individuals were actually charged, convicted, and punished by incarceration for their behavior.³⁰ Even more, this lack of punishment occurs within a criminal justice system that has been recognized for its outstanding achievements with respect to hate crime law enforcement.³¹ If one of the "finest" hate-crime-focused law enforcement agencies is failing to punish individuals under existing federal and state statutes, one can only imagine how inadequate the rest of the criminal justice system is when dealing with hate-group violence.³²

Levin, McDevitt, and Dees agree that there are two reasons why our criminal process system is inadequate when dealing with hate-group violence.³³ The first can be attributed to the tendencies

which make it punishable to interrupt service or steal specific religious symbols or tools used in religious services; *See id.* at 191. *See* WASHINGTON DC LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW et. al., *supra* note 26, at 69. and (4) anti-Klan legislation, such as statutes which prohibit the burning of a cross or other religious symbol. *See id.* at 72. *See* LEVIN & MCDEVITT, *supra* note 26, at 192.

²⁷ *See id.* at 194.

²⁸ *See id.* at 180. Levin and McDevitt are professors at Northeastern University and authors of *HATE CRIMES: THE RISING TIDE OF BIGOTRY AND BLOODSHED*. *Id.* at XV.

²⁹ *See id.* at 194. Between 1983 and 1987, the Boston authorities processed a reported four hundred and fifty-two hate crimes. *Id.* Out of the four hundred and fifty-two crimes reported, only sixty cases ultimately resulted in arrest. *Id.* Furthermore, out of these sixty cases, only thirty-eight resulted in actual charges being issued. *Id.* Of the thirty-eight actual charges brought against perpetrators, only thirty charges resulted in some sort of conviction. *Id.* at 195. Even more, of the thirty resulting convictions, five resulted in individuals being punished to a prison term. *Id.*

³⁰ *See id.* at 194.

³¹ *See* LEVIN & MCDEVITT, *supra* note 26, at 194.

³² *See id.*

³³ *See id.* at 195. *See* Dees & Bowden, *supra* note 17, at 24.

of prosecutors. Levin suggests that prosecutors, although politically and morally against hate crimes, tend to look for the perfect case when considering whether to prosecute under hate-crime statutes.³⁴ Furthermore, Levin suggests, prosecutors fear that if they lose their case brought under a new hate-crime statute, they will, for all intents and purposes, "render the law ineffective for future prosecutions."³⁵ The second reason why the criminal process is inadequate in securing successful prosecutions of hate-motivated violence is the infrequency with which the system is forced to deal with hate-group violence.³⁶ Although the number of hate crimes reported is increasing at an alarming rate,³⁷ the number of individuals arrested for hate crimes is small compared to the total number of arrests made for violent crimes.³⁸ The reality is that judges and prosecutors rarely see a hate-crime case; therefore, there are no precedents to review or familiar procedures to follow when dealing with hate-group violence.³⁹

In sum, the perpetrators of hate-group violence are often given a virtual slap on the hand because of the lack of substantive precedent available and the criminal processing system's inability to negotiate virgin legal territory.⁴⁰ Fortunately, the civil litigation strategy devised by the SPLC and Morris Dees can be an effective alternative for providing substantive remedies to victims of hate-group violence. Before we can appreciate why Dees' civil

³⁴ See LEVIN & MCDEVITT, *supra* note 26, at 195.

³⁵ *Id.* at 196.

³⁶ See *id.* at 197. "In New York City during 1990 . . . there were 530 hate crimes . . . while during the same period there were 2,245 homicides, 3,126 rapes, 68,891 aggravated assaults, and 100,280 robberies." *Id.* "(where)in Florida, during 1990, there were 250 reported hate crimes compared to 160,990 crimes of violence reported to the police." *Id.*

³⁷ See Hobbs, Tawnell D., *Seeking Solutions to Hate; Jasper Slaying, New Law Discussed At Conference*, FT. WORTH-TELEGRAM, August 21, 1998, at A1. Even though the number of reported hate crimes has grown, the U.S. attorney for the Eastern District of Texas, admittedly, stated, "the increase in numbers could also stem from better, sophisticated ways of reporting hate crimes." *Id.*

³⁸ See LEVIN & MCDEVITT, *supra* note 26, at 196.

³⁹ See *id.* at 197.

⁴⁰ See *id.* Probation seems to be the punishment rendered by the majority of our judges and magistrates. *Id.*

litigation strategy works so well, we must first understand the nature of the groups against which the litigation strategy is used.

III. HATE GROUPS IN AMERICA

To enable legal advocates to successfully use Dees' alternative litigation strategy, this section explores the nature of hate groups in America. Following a historical analysis of the Ku Klux Klan, in which I document the Klan's evolution into the most formidable hate organization in American history, I provide a brief overview of other currently existing hate groups.

In 1996, there were 9,000 hate crimes reported in the United States.⁴¹ A hate crime is "motivated . . . by hostility" towards another person of a "real or perceived" different race and has been defined in various ways.⁴² The Hate Crimes Statistic Act of 1990 states that a hate crime is a crime motivated by hatred of race, religion, and national origin, among others.⁴³ Included are

⁴¹ See Hobbs, Tawnell D., *supra* note 37, at A1. The figure 9000 was provided by Mike Bradford, the U.S. attorney for the eastern district of Texas. *Id.*

⁴² See LEVIN & MCDEVITT, *supra* note 26, at 11-20. See also Elizabeth A. Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistic Act*, 17 HARV. WOMEN'S L. J. 157, 159 (1994) (quoting California's *Att'y Gen.'s Comm'n on Racial, Ethnic, Religious, and Minority Violence*, Final Report 4 (1986)). A hate crime is "any act of intimidation, harassment, physical force, or threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, national origin, religious belief, sex, age, disability, or sexual orientation, with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution or laws of the United States or the State of California whether or not performed under the color of law." *Id.*

⁴³ See Hate Crimes Statistics Act §101-275(b)(1), 28 U.S.C. § 534 (1990). The Hate Crimes Statistic Act of 1990 was passed by Congress to enable the Attorney General's Office to acquire complete data on hate crimes. *Id.* This Act defines hate crimes as "crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage, or vandalism of property." *Id.*

not only violent crimes such as murder, but also non-violent crimes such as vandalism of property.⁴⁴

Since 1990, hate-group violence has resulted in the murders of over 100 individuals.⁴⁵ Organized hate groups commit fifteen percent of all hate crimes in America.⁴⁶ Litigation expert Randolph McLaughlin maintains that hate groups exist to restrain minorities from furthering their efforts to improve their lives and by literally fighting to place minorities back into the bondage of servitude.⁴⁷ While there is not yet a direct connection, one may speculate that the recent murders of Matthew Shepard and James Byrd Jr. were, at the very least, inspired by the manipulative, hate-filled language espoused by our nation's hate groups. In October 1998, Matthew Shepard, a twenty-one-year-old gay college student, was beaten, tied to a fence post, and left for dead in Wyoming.⁴⁸ In 1997, James Byrd Jr., a black man, was dragged to his death behind a truck in Jasper, Texas.⁴⁹

Hate-group violence is on the increase in our society.⁵⁰ If legal advocates are to quell this surge in violence by using Dees's

⁴⁴ See *id.*

⁴⁵ See David E. Rovella, *Attack on Hate Crimes Is Enhanced*, NAT'L L.J., Aug. 29, 1994, at A19.

⁴⁶ See Dees & Bowden, *supra* note 17, at 22.

⁴⁷ See MCLAUGHLIN, *supra* note 1, at 1. Randolph McLaughlin, an expert on litigation strategies against racially motivated violence, argues that hate groups "seek to turn the clock back to the era of slavery." *Id.*

⁴⁸ See Kornblut, Anne E., *Hate Laws Called Free Speech Threat; Wyoming Slaying Triggers Debate*, B. GLOBE, October 14th, 1998, at B1.

⁴⁹ See Trejo, Frank, *Hate Crimes Discussion Kicks off NAACP Meeting; Texas Branch Gathering in Dallas for Annual Conference this Weekend*, DALLAS MORNING NEWS, Oct. 2, 1998, at 33A.

⁵⁰ See David G. Braithwaite, *Combatting Hate Crimes: The Use of Civil Alternatives to Criminal Prosecutions*, B.U. PUB. INT. L.J., 244 n. 6 (1996). See, e.g., Maureen O'Donnell, *Race Leading Factor in Hate Crimes Increases*, CHI. SUN-TIMES, Mar. 12, 1995, at 11. (reporting an increase in hate crimes in Chicago from 1986 to 1994, and noting that approximately equal numbers of blacks and whites were victims); Editorial: *The Face of Hate in Pennsylvania, Preate Reports, It's a Young Face*, PA. POST-GAZETTE, Mar. 10, 1995, at B2. (noting a 130% rise in hate crimes in Pennsylvania from 1988 to 1993); *Bias-Crime Called Serious in Maine*, B. GLOBE, Dec. 23, 1994, at 27. (reporting that the Commission to Promote the Understanding of Diversity in Maine determined that the commission of hate crimes is more serious than Maine's citizens realize,

alternative civil litigation strategy, it is essential that both our legal system and our society grapple with and comprehend how hate groups have grown from small, loose bands of men to large, carefully organized, and calculating groups capable of committing violent hate crimes.

A. A Brief History of the Ku Klux Klan

“Radical” Reconstruction of the Southern states followed the Confederacy’s loss of its bid for secession in the Civil War.⁵¹ Federal troops, overseen by federal military officers, occupied divided Southern territories to ensure a smooth transition from a once hostile region into an integral part of the Union.⁵² Reconstruction governments were established throughout the South to ensure, in part, that freedmen were afforded their Thirteenth, Fourteenth, and Fifteenth Amendment rights.⁵³ During Radical Reconstruction, former Confederate soldiers found themselves disenfranchised, and black men were empowered to assume leadership roles, eventually controlling the state legislatures of South Carolina, among others.⁵⁴ Reconstruction was an era of political equality for blacks unmatched by any other, past or present.⁵⁵ Unfortunately for the newly “freedmen,”⁵⁶ although the Southern loyalists lost the war with the Northern Union, by no means were they prepared to be ruled by those who, for a century and a half, they had treated no better than chattel.

Out of the ashes of the pillaged South and in response to Radical Reconstruction, an organization of robed and hooded men,

and stating that the state should allocate additional money to prosecute violators and protect victims). *Id.*

⁵¹ See KLUGER, *supra* note 8, at 44.

⁵² See WYN CRAIG WADE, *THE FIERY CROSS: THE KU KLUX KLAN IN AMERICA* 27 (1987).

⁵³ *Id.*

⁵⁴ KLUGER, *supra* note 8, at 59.

⁵⁵ *Id.*

⁵⁶ See *id.* at 44. The term “freedmen” was often used to label newly freed black slaves. *Id.* The term originates from the bureaucratic body, The Bureau of Refugees, Freedmen, and Abandoned Lands—The Freedmen’s Bureau, created by the War department following the Civil War. *Id.*

called the Ku Klux Klan, came to terrorize blacks and whites, scalawags and carpetbaggers alike.⁵⁷ In 1866, in Pulaski, Tennessee, six young ex-Confederate soldiers, bored with small town life, founded “the circle.”⁵⁸ These ex-rebels then translated “the circle” into Greek: Kuklos.⁵⁹ One of the men suggested they call it “Ku Klux,” because no one would know what it meant.⁶⁰ The men were all of Scotch-Irish descent; thus, another member suggested adding “Klan” at the end.⁶¹ Hence, the much maligned and feared name Ku Klux Klan was born. Disguised in their white robes, these men played pranks on newly freed blacks by imitating ghosts of the Confederate dead.⁶²

By 1867, under the leadership of General Nathaniel Bedford Forrest, the Klan became much more visible.⁶³ In 1868, Forrest estimated that the Klan, in all the Southern states, was “five hundred fifty-thousand members strong.”⁶⁴ The Klan under Forrest was a “protective, political, military organization,”⁶⁵ made up of

⁵⁷ See *id.* at 62. Generally, scalawag is a term used for a white, Southern unionist who opposed secession, or opposed slavery, or supported the North. *Id.* at 21. Whereas, the often misused word carpetbagger was actually a label for a white, Southern-based Northerner who didn’t share the Confederacy’s views on race. *Id.* at 12.

⁵⁸ See *id.* at 33.

⁵⁹ KLUGER, *supra* note 8, at 33.

⁶⁰ See *id.*

⁶¹ See *id.*

⁶² See *id.* at 34.

⁶³ See *id.* at 40. Nathaniel Bedford Forrest was a legendary slave trader before the Civil War, who in 1861 organized a regiment of cavalry for the war, which eventually became the army that he commanded. *Id.* at 41. He was known for his “aggressive tactics and legendary leadership capabilities,” but after the war he was poor, shot up and dependent on others for his survival. *Id.* Therefore, some say he welcomed the opportunity to lead the Klan and was an excellent choice to control this burgeoning new group. *Id.*

⁶⁴ See *id.* at 50. Arguably, increased growth in membership was a direct result of the Republican party winning many of the 1867 elections in Tennessee and throughout the South. *Id.* at 44. The Republicans were able to accomplish this political coup by looking to its newly freed black voter as an integral part of their political platform. *Id.* As a result, the Southern white voter, who were staunch Democrats, organized against the black voter and joined the Klan in droves in order to fight this new tide of empowered freedmen. *Id.*

⁶⁵ KLUGER, *supra* note 8, at 50.

doctors, lawyers, university professors, legislators, and judges.⁶⁶ The Klan provided Southern gentlemen the opportunity to belong to an honorable organization that celebrated their Southern ideals. Yet, by 1869, Grand Wizard Forrest realized that this once honorable organization had been overrun by men who took the law into their own hands and used the Klan as a tool of oppression, murder, lawlessness, and mayhem.⁶⁷ Realizing that he could not control the country night riders, Forrest attempted to disband the loosely-held group by sending out a directive to all of the Klan groups, calling for the dissolution of the Klan.⁶⁸ Regrettably for the freedmen of the South, this directive was scoffed at by the local chapters.⁶⁹

Immediately following the failure of Nathan Bedford Forrest's effort to control the Klan, a wave of Klan-led violence spread across the Southern states.⁷⁰ In 1870, William Holden, the Governor of North Carolina, stated the difficulty of determining the number of victims of violent acts committed by the Klan.⁷¹ In 1871, the Klan lynched two hundred ninety-seven black people in

⁶⁶ See *id.* at 57.

⁶⁷ See *id.* at 58.

⁶⁸ See *id.* at 59. The directive called for the masks and costumes of the Order to be entirely abolished and destroyed. *Id.* The directive also proclaimed that every man who refuses to follow the directive is an enemy of the Order. *Id.*

⁶⁹ See *id.* By this time, the Ku Klux Klan was no longer controlled by the Imperial headquarters in Memphis Tennessee. *Id.* Rather, each chapter, called a "Klavern," was independent of the others and governed by "hellions" of the South. *Id.* at 58.

⁷⁰ KLUGER, *supra* note 8, at 62. President Grant stated the Klan's mission was, "by force and terror, to prevent all political action not in accord with the views of the members, to deprive colored citizens of the right to bear arms and of the right of a free ballot, to suppress the schools in which colored children were taught, and to reduce the colored people to a condition closely allied to that of slavery." *Id.*

⁷¹ See *id.* at 84. The victims of violence included school teachers, state legislators, and sheriffs. *Id.* Governor William Holden of North Carolina stated, "some of these victims were shot . . . some were whipped, some of them were hanged, some of them were drowned, some of them were tortured, some had their mouths lacerated with gags; one of them had their ears cropped; and others, of both sexes, were subjected to indignities which were disgraceful not merely to civilization but to humanity itself." *Id.*

one month in New Orleans, Louisiana.⁷² It is estimated that from 1866 to 1875, Klansmen were responsible for the lynching of thirty-five hundred black people in the South.⁷³

The Federal Government attempted to offset this growing tide of Klan-led hate-mongering and murder by passing a number of legislative acts providing black people freedom from interference at the voting booth and the ability to sue private persons in federal court for violations of their Constitutional rights.⁷⁴ These acts, once passed and ratified, were enforced by the federal troops stationed throughout the Deep South. However, in 1876, President Rutherford B. Hayes, among other measures,⁷⁵ withdrew all federal troops from the South in exchange for Southern support for his election to the presidency.⁷⁶ The period of

⁷² MCLAUGHLIN, *supra* note 1, at 5.

⁷³ *See id.*

⁷⁴ *See id.* at 6. In 1870, 42 U.S.C. §1971 provided the black man the right to vote, free from interference by the Klan or its supporters. *Id.* In 1871, the Ku Klux Klan Acts, 42 U.S.C. §(s)1983, 1985-1986 and 1989 were ratified by President Grant. *Id.* at 7. 42 U.S.C. §1983 provided black people a legal avenue to defend their Constitutional rights from the power of state officials or individuals under the color of law. *Id.* 42 U.S.C. §1958 and §1986 provided black people the ability to protect their constitutional rights from private persons who conspired to deprive them of their rights. *Id.* 42 U.S.C. §1989 provided federal magistrates the power to arrest people charged with crimes vis-à-vis the Ku Klux Klan Acts and allowed the president to activate the militia or U.S. Army to assist in bringing the Klansmen to justice. *Id.* Furthermore, the acts barred two or more individuals access from the nations highways when they were under disguise to carry out their acts of violence. *Id.*

⁷⁵ KLUGER, *supra* note 8, at 61. President Rutherford B. Hayes allowed the South to govern itself as to "federal patronage." *Id.* "Among the direct benefits to the region would be a federal government guarantee of the interest payment on a massive bond issue by the Texas and Pacific Railroad to build 2,500 miles of main and trunk lines linking the South and the West—a long-held dream of the region; the interest guaranteed would come to nearly \$250 million." *Id.* *See e.g.* KEITH IAN POLAKOFF, *THE POLITICS OF INERTIA: THE ELECTION OF 1876 AND THE END OF RECONSTRUCTION* 1 (1973).

⁷⁶ ARTHUR KINOY, *THE CONSTITUTIONAL RIGHT OF NEGRO FREEDOM*, 21 Rut. L.R. 387, 396 (1967). The Compromise of 1877 guaranteed Southern Democratic support in the House to break the deadlock over the election of Rutherford B. Hayes, Republican candidate for the Presidency, over Samuel J. Tilden, the Democratic candidate. *Id.* Following the election of Hayes, then-President Grant withdrew the Northern troops from the South. *Id.*; *See* BUCK,

Radical Reconstruction faded into oblivion. The radical Republicans, having grown old and been sold out by their president, were no longer a force to be reckoned with. A noted historian argues, "the North may have won the war, but the South (no doubt, due to the strength and power of the Ku Klux Klan) had now won the peace."⁷⁷

With Reconstruction dead and the Klan alive and strong, Southern blacks were left to toil on their own against the vestiges of slavery, intolerance, and bigotry. In 1896, the Supreme Court ruled in *Plessy v. Ferguson* that separation of the races was both legal and constitutional.⁷⁸ This infamous ruling effectively legitimized the Klan's treatment of blacks. From 1900 to 1914, the Klan lynched an estimated eleven hundred people in the South.⁷⁹ The lynching of blacks symbolized the dominance of the Klan and the white race in general. Nevertheless, by the late 1920's, rank and file membership of the Klan had slowly dwindled, until the loosely held together Klan factions had become almost non-existent.⁸⁰ Wyn-Craig Wade, a noted historian and author on the Ku Klux Klan, argues that the Klan, like any other hate group, ebbs and flows, thereby mirroring society and its fascination and obsession with issues such as race and religion, which seem to grow and diminish with time.⁸¹

THE ROAD TO REUNION 1865-1900, 101(1938). As a result of the Compromise "the Negro became again what he had been in 1860, the ward of the dominant race. . . The Compromise of 1877 implied a surrender to those who had insisted upon a thorough establishment of strong nationalism and complete equality as the result of the civil war." *Id.* at 102.

⁷⁷ WADE, *supra* note 52, at 111.

⁷⁸ *Plessy v. Ferguson*, 163 U.S. 537 (1896). See KLUGER, *supra* note 8, at 73. Thirty-odd-years following the beginning of Radical Reconstruction, *Plessy v. Ferguson* eliminated any hope of equality the Southern and the Northern blacks would have for almost 70 years. *Id.* at 81. This monumental case in American history pitted Homer Adolph Plessy against Judge John H. Ferguson, the judge who ruled against Plessy's argument that the segregation law was a violation of the Fourteenth Amendment and therefore void. *Id.* at 73. The Supreme Court ruled racially separate facilities, so long as they were equal, could legally be ordained by the state; segregation was not discrimination. *Id.* at 81.

⁷⁹ MCLAUGHLIN, *supra* note 1, at 6.

⁸⁰ WADE, *supra* note 52, at 112.

⁸¹ See *id.* at 402.

In the early part of the twentieth century, the Ku Klux Klan reinvented its ranks and found a new fervor for hate. It seemed the people of the United States needed a mission, something to believe in, something they could rally around.⁸² Once again, the Klan “flowed” into the psyche of America and provided the means to realize this mission.⁸³ In 1923, the Klan had an estimated three hundred fifty thousand members in Indiana alone.⁸⁴ In the same year, total membership for all Klan factions allegedly totaled four million.⁸⁵ This growth was due to the success of the first major

⁸² WADE, *Supra* note 52, at 139. See also *Social Groups and Societies*, CHI. EXAMINER, Oct. 29, 1915.

⁸³ WADE, *supra* note 52, at 143-145. On April 14, 1915, Mary Phagan, a fourteen-year-old girl, was found raped and dead in the building she worked. *Id.* at 145. She was employed by “Leo M. Frank, a Jewish man, originally from New York, who was arrested, tried,” convicted of murder, and sentenced to death. *Id.* However, Frank would be exonerated of all wrongdoing during the real killer’s deathbed statement in 1982. *Id.* At any rate, in part, because of questionable evidence, Georgia’s governor commuted his sentence to life in prison. *Id.* Unfortunately for Frank, former U.S. Representative of Georgia, Thomas E. Watson stated, “our little girl—ours by the eternal god—has been pursued to a hideous death by this filthy perverted Jew of New York . . . Rise! People of Georgia!” *Id.* at 144. One hundred men heeded his call for justice and gathered next to Mary Phagan’s grave and hand-picked a team of men who would make sure real justice was served. *Id.* On August 16th, 1915, Frank was taken from a “prison farm and hanged by the first lynching party in America to use automobiles.” *Id.* The members of this party called themselves the Knights of Mary Phagan and two months later would join in the first ever cross-burning on Stone Mountain. *Id.* Two months after that, Doc Simmons, the self-proclaimed leader of the Ku Klux Klan, wanted to swear in the newly anointed members of his revived Klan with a second cross burning on Stone Mountain, Georgia. *Id.* This would be the first ever Klan-led cross burning ceremony. *Id.* at 146. The idea “had come from the exotic imagination of Thomas Dixon, [in the movie, *The Birth of a Nation*] whose fictional Klansmen had felt so much tangible pride in their Scottish ancestry, they revived the use of burning crosses as signal fires from one clan to another.” *Id.* Soon after the cross burning, people began to join the Klan in droves. *Id.* People viewed the organization as one that upheld American values and morals and provided them with a fraternal or lodge-like atmosphere to gather and associate with each other. *Id.* at 147.

⁸⁴ See *id.* at 218.

⁸⁵ See *id.* at 183.

motion picture, *The Birth of a Nation*,⁸⁶ the growing numbers of Catholic immigrants coming to America,⁸⁷ and the end of the First World War.⁸⁸ Unfortunately for the Klan, they had built their huge following by preying on the fears of white middle-class America. As soon as Klan followers discovered that they had been duped—that white America was not really being threatened by the Catholic Church or the black male—membership dropped, and once again, by the mid-to-late 1930's, the Klan “ebbed” into the shadows of “American democracy.”⁸⁹

⁸⁶ See *id.* at 119. The movie, *THE BIRTH OF A NATION*, was a film produced by D.W. Griffith, who had taken the story from Thomas Dixon's novel, *THE CLANSMAN*. *Id.* The film was the first-of-its-kind. *Id.* It glamorized the Ku Klux Klan and depicted black men as savages who raped and pillaged the South and its pristine white women. *Id.* at 123. The movie would eventually gross 60 million dollars. *Id.* Furthermore, the movie is given credit for triggering race riots and serving as the catalyst for the rebirth of the Ku Klux Klan in the twentieth century. *Id.* at 120.

⁸⁷ See *id.* When the KKK reinvigorated itself in the early 1930's, the Klan attempted to capitalize on the fear of large numbers of Catholic immigrants coming to America. *Id.* at 179. At one time, the Klan accused the Pope of attempting to take over America thereby making it a Catholic state. *Id.* at 180. Also, the Klan was fearful of 14.5 million immigrants coming to America following the end of WW I. *Id.* at 148. Furthermore, following the book, *The Passing of the Great Race*, there was widespread fear that America was going to be overrun by “inferior but sensual aliens.” *Id.*

⁸⁸ KLUGER, *supra* note 8, at 151. At the conclusion of the First World War, large numbers of blacks came home from the war in Europe where they had been treated with dignity and respect. *Id.* This infusion of black soldiers into American society caused major clashes between races. *Id.* Not only were black men more confident in themselves, but for the second time in fifty years, the men and their families began to migrate to the North. (the first, coming after the Emancipation of slaves.) *Id.* This migration brought fear of many things, among them job loss. *Id.* The fear transformed the North into fertile soil for the seeds of hate to be planted by none other than the Klan. *Id.*

⁸⁹ WADE, *supra* note 52, at 452 and 254. John M. Mecklin, a sociologist of the period, believed, “the Klan flourished by ‘creating false issues, by magnifying hates and prejudices . . . (the Klan) can not point to a single great constructive movement which it has set on foot. Men do not gather grapes of thorns nor figs of thistles.’ In the end, thorns and thistles couldn't hold members' interest very long.” *Id.* at 254.

In the 1960s, as the Civil Rights Movement gained momentum, the Klan flexed its muscle yet another time.⁹⁰ Under the leadership of men such as Robert Shelton in the 60's,⁹¹ David Duke in the 70's, and Bill Wilkinson in the 80's,⁹² the Klan bolstered its ranks and found itself back in its traditional role as the "protector of Southern values."⁹³

Though the Klan regained some of its Reconstruction-era strength in the early to mid-1980's, this fourth Klan era of protecting Southern values will apparently not be long-lived. This time Klan membership has dropped not as a result of false issues and promises, but because of intense prosecution led by the U.S. Department of Justice and successful civil litigation by Morris Dees, the SPLC, and the Center for Constitutional Rights.⁹⁴ As mentioned earlier, Morris Dees uses civil litigation strategies to bankrupt Klan factions.⁹⁵ This strategy's success economically dissuades members from remaining in the organization and persuaded potential new members not to join the ranks of the Klan.

⁹⁰ *See id.* By 1930, the Klan's power was concentrated in the South. *Id.* Over the next fifty years, the Klan would slowly lose its Northern membership, regressing into more and more like the Klan of the 1870's until, by the 1960's, it would appear as if the "Fiery Cross" was reborn as an exact replica of its long lost ancestor. *Id.*

⁹¹ STANTON, *supra* note 6, at 200. Robert Shelton was the no-nonsense Imperial Wizard of one of the largest and most militant Klan factions of the South, the United Klans of America. *Id.* UKA members were responsible for the murders of Violet Luizzo, the bombing of the Sixteenth Street Baptist Church, which killed four black girls in Birmingham, and the shooting of Lemuel Penn, the black National Guardsman murdered while crossing Georgia. *Id.* at 201.

⁹² WADE, *supra* note 52, at 212. David Duke was the Imperial Wizard, and reviver of the Klan in the 70's. *Id.* Now he is the head of the National Association for the Advancement of White People; *See* SOUTHERN POVERTY LAW CENTER, THE KLANWATCH PROJECT, HATE VIOLENCE AND WHITE SUPREMACY: A DECADE REVIEW 1980-1990 4 (December 1989). Bill Wilkinson was the Imperial Wizard and leader of the 1980's Klan. *See* WADE, *supra* note 52, at 213.

⁹³ *See id.*

⁹⁴ STANTON, *supra* note 6, at 252. The Center for Constitutional Rights is a non-profit center designed to uphold citizen's civil rights. *See also* SOUTHERN POVERTY LAW CENTER, *Law Center Cases Cripple White Supremacist Groups* (visited Nov. 24, 1998) <<http://www.splcenter.org/centerinfo/lci=1.html>>.

⁹⁵ *See supra* p. 6.

Following the *Beulah Mae Donald* case in 1987,⁹⁶ the strongest Klan group remaining in existence disbanded.⁹⁷ But, as Wyn Craig Wade states,

The Klan has remained an American Institution because it is an inversion, or shadow, of American democracy . . . it has always stood as a reminder of the degree to which American ideals can be forgotten or reduced to mere jingoism . . . as long as the concepts so powerfully expressed by Jefferson in the Declaration of Independence are less than fully realized in America, the Klan will be around to turn things backward whenever Americans let it.⁹⁸

With the fall of the Ku Klux Klan as a viable entity of hate in America culture, a new breed of hate groups, more dangerous and violent than the Klan, has emerged from both large-and small-town America to the forefront of racial hatred and bigotry.

B. Other Contemporary Hate Groups

While Klan membership was dropping in the mid-to late-80's, more militant revolutionary groups were expanding their scope and efforts.⁹⁹ The South is no longer the sole locus of hate. The East, the Northwest, the Midwest, and the Southwest have all become bastions of white pride, intolerance, and fear of race mixing and big government.¹⁰⁰ No longer do these groups attack only religion, communism, and race; they have expanded their hatred to homosexuality, taxes, foreign aid, AIDS, and immigration.¹⁰¹ For example, the Aryan Nation espouses hate

⁹⁶ *See id.*

⁹⁷ STANTON, *supra* note 6, at 247. Under the leadership of the Grand Wizard Robert Shelton, the infamous Klan faction—the United Klans of America—disbanded following the *Beulah Mae Donald* case. *Id.*

⁹⁸ WADE, *supra* note 52, at 403.

⁹⁹ *See* SOUTHERN POVERTY LAW CENTER, *supra* note 92, at 2.

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

towards both Jews and blacks.¹⁰² Its members are known to be violent, yet the Aryan Nation advocates a migration of white people to the Northwest.¹⁰³

The Posse Comitatus is ultra anti-federalist.¹⁰⁴ While maintaining the federal government is an illegal body, it argues all governmental power should be concentrated at the local level.¹⁰⁵ "Posse" members believe that, "IRS agents and federal judges are the mortal enemies of the white race . . . [and] Jews create recessions and depressions and control the Federal Reserve."¹⁰⁶

"Identity preachers" represent the religious arm of the hate movement.¹⁰⁷ Members claim Jews are satanic impostors and that whites are chosen by God to claim the world as their own.¹⁰⁸ "Identity preachers argue blacks are (neanderthaloids), a species lower than whites. Identity preachers believe . . . blacks and other non-white groups are at the same spiritual level as animals and therefore have no souls."¹⁰⁹

In the late 1980's and early 1990's, John and Tom Metzger united the skinhead factions under the auspices of an organization called the White Aryan Resistance (WAR).¹¹⁰ WAR used the

¹⁰² See *id.* at 3.

¹⁰³ See *id.* The Aryan Nation, also known as The Third Position or the White Aryan Resistance (WAR), maintains they are the protectors of the white working class. *Id.* at 6. The group argues the federal government "is the primary enemy of white people" and is run by Jews and white race traitors. *Id.* at 7. Neo-Nazi Skinheads have adopted the guise of this organization. *Id.* They espouse hatred and use violence as their only weapon. *Id.*

¹⁰⁴ See SOUTHERN POVERTY LAW CENTER, *supra* note 92, at 8.

¹⁰⁵ See *id.* The Posse Comitatus believe the only legitimate government authority is the county sheriff. *Id.* Its members are survivalists and practice paramilitary training. *Id.*

¹⁰⁶ LEVIN & MCDEVITT, *supra* note 26, at 112.

¹⁰⁷ See *id.* at 111.

¹⁰⁸ See *id.* See also SOUTHERN POVERTY LAW CENTER, *supra* note 92, at 6. Identity Christians detail Anglo-Saxons as the true Israelites and empower hate-groups to commit their crimes in the belief that they act for God. *Id.*

¹⁰⁹ LEVIN & MCDEVITT, *supra* note 26, at 111.

¹¹⁰ See SOUTHERN POVERTY LAW CENTER, *supra* note 92, at 9. WAR was organized by Tom Metzger who pioneered the use of cable TV for racist programming. *Id.* At one time, his hate-filled cable show was broadcast to thirty-five cities. *Id.*

advent of technology, specifically the development of the Internet and cable television, to assist in spreading hate-filled messages.¹¹¹ Tom Metzger was viewed as one of the most dangerous and malevolent men in the country,¹¹² until Morris Dees sued him for the beating death of an Ethiopian refugee in Oregon.¹¹³ The jury ordered Metzger to pay the family of the murdered Ethiopian \$12.5 million.¹¹⁴

Hate groups are alive and well within the fabric of American culture. Though all hate crimes are not committed by these groups directly, they provide impetus for the commission of many hate crimes and should be held accountable.¹¹⁵ Hate groups such as WAR and the Ku Klux Klan continue to disseminate hate-filled messages all over the world, thereby motivating and cajoling individuals to commit hate crimes against individuals such as William Sheppard and James Byrd Jr.. As long as hate groups use malicious language to espouse and incite violent acts, Dees' civil litigation strategy can be the means to seek justice for victims of hate-group violence.

III. CONTEMPORARY CIVIL LITIGATION STRATEGY USED BY THE SOUTHERN POVERTY LAW CENTER AGAINST HATE GROUPS

In response to hate-motivated violence committed against people such as Curtis Robinson and the survivors of the Chattanooga Ku Klux Klan assault,¹¹⁶ Dees and the SPLC developed their alternative strategy based on three goals:¹¹⁷ to bankrupt both the organizations and the individuals responsible for

¹¹¹ See *id.*

¹¹² See *id.*

¹¹³ *Berhanu v. Metzger*, No. A 8911-07007 (Or. Multnomah County Cir. Ct. Oct. 25, 1990), *aff'd*, 850 P.2d 373 (Or. Ct. App.), *review denied*, 865 P.2d 1296 (Or. 1993), *cert. denied*, 114 S.Ct. 2100 (1994). See *supra* pp. 46-47 and notes 246-249.

¹¹⁴ See Robb London, *Sending a 12.5 Million Message to a Hate-group*, N.Y. TIMES, Oct. 26, 1990, at 20.

¹¹⁵ See Dees & Bowden, *supra* note 17, at 22.

¹¹⁶ See *infra* p. 3 and note 5. See *infra* p. 1 and note 1.

¹¹⁷ See Dees & Bowden, *supra* note 17, at 22.

causing hate violence,¹¹⁸ to separate the leader from the followers,¹¹⁹ and to decrease hate-group violence.¹²⁰

This section explores the nature of Morris Dees' litigation strategy and why it is a viable alternative to existing civil and criminal statutes. After examining Dees' two primary tools—civil conspiracy and aiding and abetting—and showing their application in two hypothetical fact patterns, it elaborates on two barriers—judgment-proof defendants and the First Amendment protection “freedom of speech”—that must be addressed for the strategy to continue to work. It then provides a factual analysis of the *Beulah Mae Donald* case, which served as the initial testing ground for Dees' litigation strategy, and speculates on what the future holds for Dees' alternative strategy.

A. Theoretical Analysis of Civil Litigation Strategies

Dees argues that civil conspiracy and aiding and abetting are the two primary avenues for successfully litigating against hate-group violence.¹²¹ Furthermore, he maintains that an individual who is victimized by hate-group crime—such as murder, assault, battery, or conspiracy to murder—can bring a civil action based on these two legal theories to obtain a monetary judgment.¹²² Civil conspiracy and aiding and abetting can be used to attribute fault

¹¹⁸ See *id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 24. Dees acknowledges that although federal and state laws exist to provide solutions for violations of constitutional and statutorily protected rights, they oftentimes do not provide adequate justice for individuals who are violated by hate-group violence. *Id.*

¹²² See ANTI-DEFAMATION LEAGUE, HATE CRIMES LAWS: A COMPREHENSIVE GUIDE 7 (1994). “Thirty-five states have enacted their own hate crime statutes. Twenty-two of these statutes provide special remedies for victims.” See Dees & Bowden, *supra* note 17, at 24. Specifically, some of the statutes allow for attorney fees and treble damages. Other legal theories that are available and often used in hate crime cases are assault, battery and wrongful death actions. See Dees & Bowden, *supra* note 17, at 24. See also *Berhanu v. Metzger*, No. A 8911-07007 (Or., Multnomah County Cir. Ct., Oct. 25, 1990) (Dees used both Oregon's wrongful death statute and his novel strategy of vicarious liability to obtain justice.)

vicariously to those who do not directly cause the specific harm.¹²³ According to Dees and the SPLC, because “these principles underlie many common law tort claims,”¹²⁴ a successful civil suit against hate-group violence is realistic.¹²⁵

1. Civil Conspiracy

Under common law, to prove a defendant’s liability for hate-group violence vis-à-vis civil conspiracy, plaintiff’s counsel must establish four elements:¹²⁶ the individual, not present at the scene of the crime, agreed with others on a specific course of action;¹²⁷ the primary purpose of that agreement was to promote violent behavior;¹²⁸ the manifestation of the violent behavior must be the perpetuation of the course of action;¹²⁹ and the manifestation must be an illegal and/or a tortious act.¹³⁰

To better understand how civil conspiracy would work, I will apply it to the facts underlying an already litigated case—*Crumsey v. Justice Knights of the Ku Klux Klan*. In this case, attorneys representing the injured elderly women successfully used existing federal statutes to obtain a large monetary judgment from both the men involved in the shooting and the hate group to which they belonged.¹³¹ Hypothetically, Mrs. Crumsey could have also used civil conspiracy as a means to place liability on any defendant responsible for the damage she suffered from the attack, even those not present.¹³² When a relationship between two or more

¹²³ See ANTI-DEFAMATION LEAGUE, HATE CRIMES LAWS: A COMPREHENSIVE GUIDE 7 (1994).

¹²⁴ Dees & Bowden, *Taking Hate-groups to Court* (visited Apr. 10, 1998) <<http://www.splcenter.org/legal/la=3.html>>.

¹²⁵ See *id.*

¹²⁶ See Dees & Bowden, *supra* note 17, at 27.

¹²⁷ See *id.*

¹²⁸ See *id.*

¹²⁹ See *id.*

¹³⁰ See *id.* See also Halberstam v. Welch, 705 F.2d 472, 478 (D.C. Cir. 1983).

¹³¹ See MCLAUGHLIN, *supra* note 1, at 8.

¹³² See Dees & Bowden, *supra* note 17, at 24. See also RESTATEMENT (SECOND) OF TORTS §876(a), cmt. A, illus. 2 (1979). Civil conspiracy can make both

defendants is close enough, the fact finder can infer that a civil conspiracy existed.¹³³ In Mrs. Crumsey's case, if an individual, such as the Grand Wizard of the Justice Knights, was not directly involved with the actual crime of assault with intent to murder, but is found to be aware of the foreseeability of the cross burning and the subsequent shooting spree, he could be found liable because a meeting of the minds occurred between the defendants.¹³⁴ Essentially, the acts of the three actual defendants would be transformed into the acts of the Grand Wizard who was not present. Specifically, Mrs. Crumsey's attorney would need to demonstrate that the Grand Wizard, although not present at the scene of the crime, contemplated violence and conspired with the three men who actually carried it out, and that the damage to Mrs. Crumsey was a foreseeable result of their plan.¹³⁵

In sum, if civil conspiracy had been applied in Mrs. Crumsey's case,¹³⁶ her counsel would have had to prove the Grand Wizard, though not present with the three defendants at the scene of the shootings, agreed with the three men on a specific course of performance—burning a cross and committing assault with intent to murder.¹³⁷ Her counsel would also have had to prove that the primary purpose of that agreement was to promote incidents such as the cross burning and the shootings.¹³⁸ Even more, her counsel would have had to demonstrate that the shootings committed by the three men furthered their agreement with the Grand Wizard of the Justice Knights to place fear in the hearts of black residents in Chattanooga and/or to promote the power of the Klan.¹³⁹ Finally,

drivers involved in a high-speed auto chase liable to someone injured in a collision with just one of the cars. *See Dees & Bowden, supra* note 17, at 24.

¹³³ *See supra* note 17, at 24.

¹³⁴ *See id.* at 25.

¹³⁵ *See* RESTATEMENT (SECOND) OF TORTS §876(a), *supra* note 132.

¹³⁶ *See supra* note 5. Three men burned a cross and subsequently went on a shooting spree through the streets of Chattanooga. *See also* MCLAUGHLIN, *supra* note 1, at 8.

¹³⁷ *See Dees & Bowden, supra* note 17, at 25.

¹³⁸ *See id.* at 27.

¹³⁹ *See id.*

her counsel would have had to illustrate that the shootings were illegal and/or independently tortious.¹⁴⁰

2. Aiding and Abetting

Dees argues that aiding and abetting is an equally effective litigation theory for providing justice to victims of hate-group violence.¹⁴¹ Aiding and abetting subjects an individual to liability if he or she substantially assisted or encouraged others to commit criminal actions.¹⁴² To prove a defendant's liability for hate-group crimes vis-à-vis aiding and abetting, plaintiff's counsel must show that the defendant provided substantial assistance or encouragement with the intent that the other defendants would commit violent acts.¹⁴³ The encouragement or assistance must have been a substantial factor in causing violent conduct, and the criminal act must be the foreseeable result of that assistance or encouragement.¹⁴⁴ For example, "When a police officer 'advises other policemen to use illegal methods of coercion upon B,' the officer is liable to B 'for batteries committed in accordance with the advice.'"¹⁴⁵

Again, hypothetically, for this article's purpose, if Dees' civil litigation strategy had existed at the time of the Greensboro murders, counsel for the survivors could have used an aiding and abetting liability strategy to hold individuals not directly associated with the violence civilly liable for damages. In 1979, five union organizers were allegedly murdered by the Christian Knights of the Ku Klux Klan in the Greensboro massacre.¹⁴⁶ In what was called

¹⁴⁰ See *id.*

¹⁴¹ See *id.* at 24.

¹⁴² See Dees & Bowden, *supra* note 17, at 24.

¹⁴³ See *id.*

¹⁴⁴ See *id.* (Restatement (Second) of Torts maintains that aiding and abetting, a sub-category of liability, can be used to prove defendants are liable for their tortious acts.) *Id.*

¹⁴⁵ See *id.* See also RESTATEMENT (SECOND) TORTS §876(b), cmt. B, illus. 5.

¹⁴⁶ See WADE, *supra* note 52, at 378. The Klan members were never held criminally liable. Nevertheless, civil litigation vis-a-vis federal statute was successful in obtaining a monetary judgment against the Klan. *Id.* at 382. The murdered victims, ex-members of the then-defunct Student for a Democratic

the longest criminal trial in North Carolina history, an all-white, all-Christian jury acquitted every defendant on the basis of self-defense.¹⁴⁷ Hypothetically, survivors' counsel could have used the aiding and abetting theory to place liability on Bernard Butkovich, an undercover agent for the Federal Bureau of Alcohol, Tobacco

Society (SDS), were associated with the Communist Workers' Party, a Maoist, anti-Soviet group. *Id.* at 378. The CWP viewed the Klan as the "embodiment" of everything that was wrong with "capitalist America." *Id.* at 379. The CWP openly challenged the North Carolina Klan by goading the group to attend their planned rally in Greensboro, on November 3rd, 1979. The CWP applied for and received protection from the Greensboro police, hoping the Klan would attend the rally and provoke a confrontation. *Id.* The CWP did not know there was a member of the Klan in the Greensboro police department, Edward Dawson, who also was a paid informant for the FBI. Dawson was shown the starting point of the rally and was told the CWP would be unarmed. *Id.* at 380. To this day, there remains a question as to where Dawson's loyalties were the strongest—the Klan or the FBI. For some unknown reason, he vigorously attempted to provoke various Klan members to attend the rally. Another informant, Bernard Butkovich, an undercover agent for the Federal Bureau of Alcohol, Tobacco & Firearms, had infiltrated a Neo-Nazi group in Winston-Salem. *Id.* Butkovich, violating FBI countelpro tactics, encouraged an alliance between Nazi groups and Klan groups. He encouraged the groups to "stockpile weapons," personally assisted in gathering illegal explosives, and urged the Klansmen to attack the CWP. *Id.* On the morning of November 3rd, a caravan of nine cars approached the marchers. Following a heated verbal exchange between the two groups, the Klansmen were observed by local reporters "to calmly walk to the trunks of the rear cars, open them, and take out and distribute rifles and handguns. A shot rings out, and demonstrators run for cover. . . Armed Klansmen walk about, carefully select victims, fire and reload . . . Five protesters lie on the ground dead or dying. Another is shot in the head and will survive, severely paralyzed." *Id.* at 381. Ed Boyd, a reporter out of Durham, stated, "It wasn't any shoot-out. It was a military execution." *Id.* Eighty-eight seconds after the shooting had begun, five people laid dead on the ground. All of the dead were either union leaders or CWP office holders, they included: the chief of pediatrics at a local health center; another doctor who had become the leader of a textile union; a union organizer with a master of divinity degree from Harvard; a magna cum laude graduate from Duke university; and, a local advocate for blacks and children had been the target of the attack. *Id.* Bill Wilkinson, the Imperial Wizard of the Klan, used this massacre as a promotion for their organization. He proclaimed that it was 1980 in America, the communists were something to be feared and the Klan could be a promoter of Southern values and protector of American democracy. *Id.*

¹⁴⁷ See *Id.* at 382.

and Firearms. Although Butkovich did not carry out the actual killings of the five protesters, he did provide substantial assistance or encouragement to the Klansmen who did.¹⁴⁸ Furthermore, aiding and abetting could have permitted the five victims' families to place fault on those, such as the Imperial Wizard of the Klan faction, whose indirect involvement might otherwise allow him to escape unpunished and remain free to continue promoting hateful actions.¹⁴⁹ Therefore, if a man such as Virgil Griffin, the Imperial Wizard of the Christian Knights of the Ku Klux Klan, a North Carolina Klan group, was not present at the massacre itself, but advocated the use of violence at the rally, he could still be held civilly liable for the damage caused by the violence.¹⁵⁰ Dees reminds us that aiding and abetting rests on the close relationship between the speaker and the murderers, all of whom were Klan members.¹⁵¹

In sum, to prove that Bernard Butkovich and Virgil Griffin were guilty of aiding and abetting the defendants, survivors' counsel must prove that Butkovich and Griffin provided the shooters with substantial assistance or encouraged the actors with the intent that they would actually commit hate-motivated violence.¹⁵² Furthermore, the encouragement by Butkovich and Griffin must have been a substantial factor in causing the violent

¹⁴⁸ See RESTATEMENT (SECOND) TORTS §876(b), *supra* note 132, See also WADE, *supra* note 52, at 380.

¹⁴⁹ See RESTATEMENT (SECOND) TORTS §876(b), *supra* note 132, See Dees & Bowden, *supra* note 17, at 24.

¹⁵⁰ See *id.* at 25. Virgil Griffin is likened to an organized crime boss. *Id.* "When an organized crime boss orders one of his henchmen to kill someone . . . the boss becomes vicariously liable for the subordinate's act. The fact that the henchman waited a month to execute the killing . . . has no bearing on other aiding and abetting theories." *Id.*

¹⁵¹ See *id.* See also RESTATEMENT (SECOND) TORTS §876(b), *supra* note 132. According to Dees, when the speaker occupies a higher position than the actor, the argument for liability (under aiding and abetting) becomes even stronger because the speaker knows that the actor will probably act on the speaker's advice. . . . (Aiding and abetting) depicts two or more independent actors, at least one of whom encouraged the other(s) to act. See Dees & Bowden, *supra* note 17, at 25. A tremendous body of law on the aiding and abetting theory in civil suits allows lawyers to invoke the theory with relative ease. *Id.*

¹⁵² See Dees & Bowden, *supra* note 17, at 24.

conduct and the crime must also have been a foreseeable result of the assistance.¹⁵³

Although aiding and abetting and civil conspiracy are the key components of Dees' potent litigation alternative, there is a noteworthy difference between them. Conspiracy law is generally afforded a broad interpretation by judges—conspirators do not have to know the identity or even the existence of the other conspirators.¹⁵⁴ When using civil conspiracy to prove liability, individuals can be held culpable without having knowledge or ever participating in the planning of specific injuries to the victim.¹⁵⁵ Whereas aiding and abetting requires plaintiff's counsel to prove the presence of a relationship between one violent actor and another.¹⁵⁶ The aiding and abetting strategy is used to show that the individual who did not actually commit the crime in fact provided substantial assistance or encouragement to those who did.¹⁵⁷ Depending on the facts in a specific case, aiding and abetting and civil conspiracy can be used independently or simultaneously in assigning fault to those whose indirect involvement might otherwise allow them to escape unpunished and remain free to continue to promote hateful actions.¹⁵⁸

B. Impediments to the Success of Dees' Civil Litigation Strategy as a Means to Provide Monetary Judgments to Victims of Hate Crimes

To ensure that Dees' litigation strategy remains an effective technique for obtaining monetary judgments for victims of hate-group violence, plaintiff's counsel must overcome two formidable barriers—judgment-proof defendants and the First Amendment

¹⁵³ See *id.*

¹⁵⁴ See *id.* at 27.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.* at 24.

¹⁵⁷ See *id.*

¹⁵⁸ See Dees & Bowden, *supra* note 17, at 27.

protection “freedom of speech.”¹⁵⁹ This section briefly explores the judgment-proof nature of hate-violence perpetrators and then provides an analysis of the U.S. Supreme Court’s interpretation of the “freedom of speech” clause as it pertains to the viability of Dees’ alternative litigation strategy.¹⁶⁰

The initial barrier to the success of Dees’ litigation strategy is that many times the defendants are judgment-proof, young and indigent.¹⁶¹ If a civil suit is successful, often hate-crime perpetrators are not directly associated with a specific hate-group or groups and cannot provide any monetary compensation for their victims.¹⁶² However, as Levin and McDevitt recognize,

There may be thousands of alienated youngsters looking for a role model who will encourage them to express their profound resentment. Such impressionable youths may not actually join some hate group. They may not be willing to shave their heads and wear the uniforms of skinheads, but they are nonetheless inspired by the presence of such groups and intrigued by the use of their symbols of power.¹⁶³ Therefore, according to Dees, if legal advocates can focus on the more wealthy, charismatic leaders whose behind-the-scenes actions may render them vicariously liable for the indigent actors’ violent crimes, then monetary justice for victims of hate-group violence is possible.¹⁶⁴

While the judgment-proof nature of most hate-crime perpetrators is an obstacle, the First Amendment is the more formidable barrier.¹⁶⁵ The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press.”¹⁶⁶ With regards to “freedom of speech,” specifically, hate speech;¹⁶⁷ the U.S. Supreme Court has evolved from its liberal, early-twentieth century “clear and present danger

¹⁵⁹ See *id.* at 22 and 27.

¹⁶⁰ See U.S. CONST. amend. I.

¹⁶¹ See Dees & Bowden, *supra* note 17, at 22.

¹⁶² See LEVIN & MCDEVITT, *supra* note 26, at 104.

¹⁶³ *Id.* See also Dees & Bowden, *supra* note 17, at 22.

¹⁶⁴ Dees & Bowden, *supra* note 17, at 24.

¹⁶⁵ See *Id.* at 27.

¹⁶⁶ U.S. CONST. amend. I. See also LOCKHART KAMISAR CHOPER et. al., CONSTITUTIONAL LAW: CASES- COMMENTS- QUESTIONS 614 (8th ed. 1996).

¹⁶⁷ See U.S. CONST. amend. I.

test” to the more modern, yet conservative “Brandenburg test” of *Brandenburg v. Ohio*.¹⁶⁸

In 1961, in *Noto*,¹⁶⁹ the U.S. Supreme Court held that the First Amendment did not afford citizens the right to prepare organized groups for violence.¹⁷⁰ The Court held that a plaintiff may prove that an individual was preparing a group for violence by presenting substantially direct, or circumstantial, evidence to show there was a present call by that individual for violence to be committed by the group.¹⁷¹

Eight years later, the Court in *Brandenburg v. Ohio*, distinguished between mere advocacy of and incitement to imminent lawless action. The Court held that an individual who advocates abstract theory or “moral necessity for force and violence” should be protected under the “freedom of speech” clause in the First Amendment.¹⁷² The Court explained that mere

¹⁶⁸ *Schenck v. United States*, 249 U.S. 47 (1919). “The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.” *Id.* At 52. The “clear and present danger” test evolved into the “not-improbable test” which was coined by Judge Learned Hand in his decision that was later affirmed by the U.S. Supreme Court’s decision in *United States v. Dennis*. *United States v. Dennis*, 341 U.S. 494; 71 S.Ct. 857 (1951); *United States v. Dennis*, 183 F.2d 201(1950). *See e.g.* *Brandenburg v. Ohio*, 395 U.S. 444 (1969). “Constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Id.*

¹⁶⁹ *Noto v. United States*, 367 U.S. 290, 298 (1961) (mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent actions). *See e.g.* *Whitney v. California*, 274 U.S. 357, 371 (1927) (statute was upheld because ‘advocating’ violent means to effect political and economic change involves such danger to the security of the State that the State may outlaw it).

¹⁷⁰ *See id.*

¹⁷¹ *See Noto*, 367 U.S. at 298.

¹⁷² *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969) (Ohio Criminal Syndicalism Act punished mere advocacy and forbid assembly with others when merely advocating a described type of action. The Act failed to distinguish mere advocacy from incitement to imminent lawless action; therefore, the Act violates the First and Fourteenth Amendments). *See also Noto*, 367 U.S. 298.

advocacy is constitutionally protected; therefore, the state could not forbid advocacy of violence.¹⁷³ Nevertheless, the Court did permit states to “prohibit advocacy if it is directed to inciting or producing imminent lawless action and is presently likely to incite or produce such actions.”¹⁷⁴ Accordingly, Dees maintains, “trainers need not know what crimes will be committed to be liable for them, but only that their efforts are preparing foot soldiers to commit violence.”¹⁷⁵ There is a difference between the right to hate and the right to lead others to hurt, and the First Amendment does not protect the right to lead others to hurt.¹⁷⁶

When considering the relationship between aiding and abetting and the First Amendment rights afforded to citizens, the central question is, was the assistance provided to the violent perpetrators similar to training people for violence or to teaching abstract political theory?¹⁷⁷ If the answer is training people for violence, aiding and abetting will survive the “freedom of speech”

¹⁷³ See *id.*

¹⁷⁴ *Brandenburg*, 395 U.S. at 449. The Court states “the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.” This will be determined on a case-by-case basis. *Id.* See also *Macedonia Baptist Church v. Christian Knights of the Ku Klux Klan—Invisible Empire Inc*; *Horace King*; *Arthur A. Haley*; *Hubert “Herbert” L. Rowell*; *Timothy A. Welch*; and *Gary C. Cox*, In the Court of Common Pleas for the third Judicial Circuit, Second Amended Complaint, Civil Action No. 96-CP-14-217, Dec. 29, 1997. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982); see also *United States v. Choate*, 576 F.2d 165, 181(9th Cir.) (“Speech thought to promote a criminal scheme . . . is hardly within the ambit of the First Amendment.”), *cert. denied*, 439 U.S. 953 (1978); *Rice v. Paladin Enterprises, Inc.*, 128 F. 3d 233, 244-45 (4th Cir. 1997)(quoting *Brown v. Hartlage*, 456 U.S. 45, 55 (1982)) (“the fact that a conspiratorial ‘agreement necessarily takes the form of words does not confer upon the underlying conduct, the constitutional immunities that the First Amendment extends to speech’ ”), *cert. denied*, 118 S. Ct. 1515 (1998); *Id.* at 244 (citation omitted)(“ ‘a solicitation, even though it may have an impact in the political arena, remains in essence an invitation to engage in an illegal exchange’ ”).

¹⁷⁵ *Brandenburg*, 395 U.S. at 449. See also *Kent Greenawalt, Speech and Crime*, AM. B. FOUND. RES. J. 645, 747 (1980).

¹⁷⁶ See *id.* See also *Noto*, 367 U.S. at 290.

¹⁷⁷ See *Dees & Bowden, supra* note 17, at 28.

barrier.¹⁷⁸ With regards to a civil conspiracy argument, the First Amendment concern is not an issue because the act of one defendant is the act of all defendants.¹⁷⁹ Once the act of one conspirator is deemed tortious and/or illegal, that act is vicariously transmitted to all other co-conspirators, thereby rendering the First Amendment moot.¹⁸⁰ Legal theory and barriers aside, the following real life application of Dees' civil litigation strategy will elucidate its effectiveness as an alternative to existing federal and state statutes.

C. The Catalyst Case:

Beulah Mae Donald v. United Klans of America

While the Curtis Robinson injustice was the motivation for Morris Dees to develop his alternative litigation strategy,¹⁸¹ the *Beulah Mae Donald* case presented a more felicitous fact pattern for Dees to apply civil conspiracy and aiding and abetting as effective tools to establish a hate group's culpability for its members' violent actions.

The case of *Beulah Mae Donald* began on a balmy night in Mobile, Alabama, in 1981, when a young man by the name of Michael Donald told his mother, Beulah Mae, he was going to his sister's house and would return by twelve-midnight.¹⁸² Unfortunately for Beulah Mae, she would never again see her son alive.¹⁸³ That hot and sticky evening, Beulah Mae Donald's son,

¹⁷⁸ See Greenawalt, *supra* note 175, at 747.

¹⁷⁹ See Dees & Bowden, *supra* note 17, at 28.

¹⁸⁰ See *id.*

¹⁸¹ See STANTON, *supra* note 6, at 74.

¹⁸² See James S. Kunen, *Seeking Justice For Her Lynched Son, An Alabama Mother Ruins the Klan that Killed Him*, PEOPLE, June 8, 1997, at 55.

¹⁸³ See *id.* Tiger Knowles, 17, and Henry Hays, 26, forced Michael Donald into their car at gun point. *Id.* They drove him to a remote area across the Mobile Bay, beat him with boards, ran him in circles with a rope around his neck, and stomped him as he pleaded for his life. *Id.* Knowles testified that he stood on Michael's face and pulled the rope tight while Hays cut his throat. *Id.* The Mobile unit of the United Klans of America (UKA)—Klavern 900—had decided to kill a black, any black, in retaliation for a mostly-black jury's failure to convict a black man charged with killing a white Birmingham police officer.

Michael, would be beaten badly, his throat cut, and hung in a tree on a suburban street.¹⁸⁴

At the onset of the investigation, no man or woman, black or white, was brought to justice. Furthermore, initially, the Mobile County District Attorney did not believe racism played a part in this gruesome murder.¹⁸⁵ Rather he believed Michael's death was an intentional homicide, probably resulting from a drug transaction gone bad.¹⁸⁶ It was Beulah Mae's daughter, Cynthia, who picketed and protested for justice, who ultimately convinced the FBI to investigate her brother's death.¹⁸⁷ As a result of this investigation, Henry Hays and Tiger Knowles were convicted of murder.¹⁸⁸ Though the murderers were apprehended and received long prison sentences, both the investigation and trial left a bad taste in Morris Dees' mouth.¹⁸⁹

One year later, Dees and the SPLC filed *Beulah Mae Donald et al. v. United Klans of America et al.*, seeking ten million

Id. Unit 900, angered by the verdict, burned a cross at the courthouse while Hays and Knowles abducted and murdered Donald. *Id.* See Robin Toner, *A Mother's Struggle with the Klan*, N.Y. TIMES, March 8, 1987, at 24. The following morning, Michael Donald's body was found hanging from a camphor tree across the street from Bennie Jack Hays' house—a Titan of the UKA in Southern Alabama. *Id.* Upon seeing Donald's body in the tree, Hays reportedly said, "That's a pretty picture. It's going to look nice on the news. It's going to look good for the Klan." *Id.*

¹⁸⁴ See *id.*

¹⁸⁵ See STANTON, *supra* note 6, at 201.

¹⁸⁶ See *id.* It took years to finally attract the FBI's attention to this hate-motivated murder. *Id.* at 204. Only when the FBI got involved, coupled with the prodding of a state legislator/attorney, would the prosecution even entertain the idea that hate could be involved. *Id.* at 203. Still, the Mobile County Prosecutor's Office would not openly admit the Michael Donald murder was a Klan-led hate crime until after the civil suit was won by Dees. *Id.* at 248.

¹⁸⁷ See *id.*

¹⁸⁸ See *id.* at 199. Hays was convicted of the murder and sentenced by the jury to life in prison without parole. *Id.* The judge overruled the jury's sentence and mandated that Hays be put to death, becoming the only second white in Alabama history to receive the death penalty for killing a black person. *Id.*

¹⁸⁹ See *id.* Dees had seen this type of violence before. *Id.* He was convinced others were responsible for the murder of Michael Donald. *Id.*

dollars in damages.¹⁹⁰ The goal was to bankrupt the United Klans of America (UKA) and to end their reign of terror, which had been raging since the early 1960's.¹⁹¹ The SPLC wanted to use civil conspiracy and aiding and abetting to show that the two murderers were acting on behalf of the UKA when they brutally killed Michael Donald, thereby making the UKA itself liable for the actions of its members.¹⁹² To be successful, Dees knew he had to establish four evidentiary factors: a conspiracy between Hays, Knowles, and Unit 900, the local chapter for the UKA; a broader conspiracy among Unit 900 members and the UKA; a chain of command between the UKA and the Mobile chapter, Unit 900; and the history of other violent acts by UKA members.¹⁹³

The first evidentiary factor—a conspiracy between Knowles, Hays, and Unit 900—was established quite easily in that Knowles and Hays were well known members of Unit 900.¹⁹⁴ The second evidentiary factor—a broader conspiracy among Unit 900 members and the UKA—proved to be much more difficult to substantiate.¹⁹⁵ Bill Stanton, an attorney for the SPLC, began contacting individuals who were present at the Hays household on the night of the murder.¹⁹⁶ Through a series of interviews, Stanton learned facts that established the conspiracy. Teddy Kyzar, the man responsible for burning a cross on the lawn of the county court house on the night of the murder, explained that there had been a meeting at the Unit 900 Klavern headquarters two nights prior to the murder of Michael Donald on March 18th.¹⁹⁷ During this

¹⁹⁰ See STANTON, *supra* note 6, at 204. This suit was filed against the UKA corporate organization as well as Bennie Hays, Henry Hays, Tiger Knowles, Teddy Kyzar, Johnny Matt Jones, Frank Cox, Bill O'Connor, and Robert Shelton. *Id.* at 240, 241.

¹⁹¹ *See id.*

¹⁹² *See id.* at 199.

¹⁹³ *See id.* at 215.

¹⁹⁴ *See id.* at 205.

¹⁹⁵ *See STANTON, supra* note 6, at 205.

¹⁹⁶ *See id.* The night of the murder, Bennie Hays had a number of Klansmen and "aliens" or non-Klansmen, over to his house to play cards. This was an attempt to camouflage the real reason for the gathering—to await the verdict of the Josephus Anderson trial.

¹⁹⁷ *See id.* at 216.

meeting, Kyzar stated there was open discussion about the trial of Josephus Anderson, a black man being tried for the murder of a white man.¹⁹⁸ Bennie Hays, the highest ranking UKA official south of Montgomery and the father of Henry Hays,²⁰⁰ declared, “a black man should not be allowed to get away with killing a white man.”²⁰¹ Furthermore, Stanton learned from Johnny Matt Jones, a Klan member, also present at the March 18th meeting, that Bennie Hays announced that if a black man could get away with killing a white man, a white man should be able to get away with killing a black man.²⁰² Henry Hays immediately followed his father’s statement with a statement of his own, “a nigger ought to be hung by the neck until dead to put them in their place.”²⁰³ Dees believed that the interviews with Kyzar and Jones established a broader conspiracy between Unit 900 and the UKA. He was convinced the jury would see that the March 18th meeting was not an innocent discussion about retaliatory murder; rather, it was a conspiracy to murder.²⁰⁴

Dees had to prove a link between the corporate UKA organization and Unit 900 in order to satisfy the third evidentiary factor.²⁰⁵ He needed to locate evidence that demonstrated Unit 900 was closely affiliated with, if not an active arm of, the corporate UKA organization.²⁰⁶ Following a meeting with Bennie Hays and his wife, Dees was able to convince Bennie Hays to send Dees the

¹⁹⁸ See *id.* Josephus Anderson was accused of killing a white police officer following a bank robbery. *Id.* at 204. The trial had begun in Birmingham, but was moved on a change of venue motion. *Id.* Ultimately, the trial was declared a mistrial because the jury was unable to reach a verdict. *Id.* at 206. Unit 900 members decided if there was no justice, i.e. Josephus Anderson receiving the death penalty, then the Klan would kill a black man thereby creating their own justice and this would “show Klan strength in Alabama.” *Id.* at 204.

²⁰⁰ See *id.* at 205.

²⁰¹ See STANTON, *supra* note 6, at 207.

²⁰² See *id.* at 207. Bennie Hays approved of the murder of a black man with one stipulation; the two men could hang the body across the street from his home only after he sold some nearby property. *Id.* at 205.

²⁰³ See *id.* at 207.

²⁰⁴ See *id.* at 208.

²⁰⁵ See *id.* at 220.

²⁰⁶ STANTON, *supra* note 6, at 220.

original charter of Unit 900.²⁰⁷ This charter was the official document by which the national office of the UKA granted authority to local Klavern 900 to conduct business in the name of the UKA corporation.²⁰⁸ Most important, this charter contained the actual signature of the Imperial Wizard, Robert Shelton, and bore the UKA's corporate seal.²⁰⁹ The charter became the first and foremost link in the evidentiary chain connecting the Mobile Klavern to the UKA corporate organization. Soon after Bennie Hays turned over the UKA charter, he was convicted of fraud and sent to prison.²¹⁰ Taking advantage of the fact that both Hays men were incarcerated, Dees seized the opportunity to subpoena Bennie Hays' wife.²¹¹ The summons specified if she did not want to go to prison on a contempt charge, she was to bring the entire contents of the Mobile 900 files with her to court.²¹² The files that she produced included the Kloran, a valuable source of information.²¹³ Dees' opined that possession of both the Mobile 900 charter and the Kloran meant there was ample evidence to prove to the jury the presence of a demonstrable link between Mobile 900 and the UKA national organization.²¹⁴

²⁰⁷ See *id.* Bennie Hays wanted Morris Dees to make a deal. Hays proposed that Dees decline pursuing his culpability in the Beulah Mae Donald case for exchange of the Mobile 900 files. *Id.* at 221. In an effort to entice Dees and show that he would fulfill his side of the bargain, Hays sent Dees the original charter. *Id.* at 220. This was the first and foremost link of the evidentiary chain connecting the Mobile Klavern to the corporate organization. *Id.*

²⁰⁸ See *id.* at 220.

²⁰⁹ See *id.*

²¹⁰ See *id.* at 222.

²¹¹ See STANTON, *supra* note 6, at 222.

²¹² See *id.* at 212. As a result of the subpoena, Mrs. Hays provided Dees a copy of the Kloran/Constitution. *Id.* Dees had knowledge of the existence of these documents because Bennie Hays openly showed Dees all of his files when Dees went to speak with Hays and his wife. *Id.* at 211. This was yet another attempt by Bennie Hays to persuade Dees to consummate his proposed deal. *Id.* See *supra* text accompanying note 207.

²¹³ See *id.* See WADE, *supra* note 52, at 419. The Kloran is the constitution of the Ku Klux Klan. See STANTON at 212. The Kloran was a multipurpose handbook containing the constitution and bylaws of the UKA. See *supra* note 6, at 212.

²¹⁴ See STANTON. at 214.

The fourth and final evidentiary factor—proof that the UKA had a corporate policy advocating violence—was the most onerous to prove.²¹⁵ Dees had to demonstrate that the Klan corporation, or its top officers, had promoted and/or instigated violence.²¹⁶ Dees had no documented proof; therefore, he resorted to testimony by former Klansmen, Gary Thomas Rowe and Randy Charles Ward. Both had associated with the officers of the UKA organization and were willing to testify against the Klan.²¹⁷ Gary Thomas Rowe, the FBI informant who had helped convict two UKA members of murdering a Freedom Marcher in 1965,²¹⁸ revealed a number of significant facts pertaining to the UKA's corporate policy of violence. He testified that Robert Shelton, the notorious Imperial Wizard, was very involved in day-to-day operations of local Klaverns.²¹⁹ In the past, Imperial Wizard

²¹⁵ See *id.* at 219.

²¹⁶ See *id.*

²¹⁷ See *id.* at 219, 243.

²¹⁸ See STANTON, *supra* note 6, at 219. Violet Luizzo, a Northern housewife, inspired by Dr. Martin Luther King and the Freedom marchers of Birmingham, traveled south to assist the organizers of a demonstration in Selma. See also WADE, *supra* note 52, at 347-348. Ms. Luizzo was murdered by UKA members, who allegedly were taking orders from Robert Shelton, the same Imperial Wizard who presided over the UKA when the Michael Donald murder was committed. See also STANTON, *supra* note 6, at 219. While in Selma, she was assigned to bring marchers back and forth from the bus terminals to Selma. See WADE, at 350. Four UKA members were cruising the streets to make a statement that the Klan would not tolerate Northerners coming south when they happened upon Mrs. Luizzo and a black man who were on their way to pick up marchers. *Id.* The Klansmen and Viola Luizzo commenced a high-speed chase. *Id.* at 351. After a number of stress-filled minutes, the Klansmen pulled up next to Mrs. Luizzo's car and fired four-to-five shots at Viola and her black-male passenger. *Id.* Mrs. Luizzo was killed instantly. *Id.* Amazingly, the black male was not hit by one bullet. *Id.* Gary Rowe—the FBI informant—was in the car at the time that Mrs. Luizzo was murdered. See STANTON at 219. His testimony led to the conviction of Luizzo's murderers. *Id.* Following Rowe's testimony in the Luizzo case, he was placed in the Witness Protection Program and disappeared until this case. *Id.* See also WADE, *supra* note 52, at 347. In 1983, Ms. Luizzo's children sued the FBI because, arguably under Hoover's control, the FBI commenced a smear campaign—alleging that Ms. Luizzo was a drug addict and possibly having sexual relations with the black man she was sitting next to when killed. *Id.* at 352, 354.

²¹⁹ See STANTON, *supra* note 6, at 221.

Shelton not only condoned violence, but personally led the attack on the Freedom Riders at the Birmingham bus station on Mother's Day, 1961.²²⁰ Furthermore, Imperial Wizard Shelton urged Klan members "to do something" about blacks organizing sit-in movements to protest segregated conditions at Birmingham's lunch counters.²²¹ As a result, Klan members, known as "missionary squads," jumped many of the demonstrators, they deemed "sinners."²²²

Randy Charles Ward had been an "exalted cyclops" of an Alabama UKA unit.²²³ He had been indicted on civil rights violations for a "campaign of violence and intimidation against black activists in Talladega County, east of Birmingham."²²⁴ As a former leader in the UKA he was able to testify "knowledgeably, and credibly," as to the contemporary militant nature of the group and its command hierarchy.²²⁵ Furthermore, Ward was able to verify Rowe's testimony alleging that both Shelton and the UKA sanctioned violent behavior.²²⁶ Ward stated, "[the] titan over [me] once remarked, this unit 'was being ran like a bunch of old men sitting around a campfire . . . intimidation . . . that was the best policy, to put the fear of God in the people.'"²²⁷ Finally, Ward presented his most damaging evidence when he retold a personal

²²⁰ See *id.* The attack combined the efforts by the Klan and the Birmingham police, who left the protesters unprotected for fifteen minutes after their bus arrived in order to give Klansmen time to brutally attack the occupants. *Id.* Rowe testified that Shelton was in attendance at the meeting between the Klan and the police department. *Id.* The police officer in charge stated, "you have got time to beat them, kick them, burn them, kill them, I don't give a shit, we just don't care. . . We don't ever want to see another nigger ride on the bus into Birmingham again." *Id.* at 222. Rowe testified that he informed the FBI of the imminent attack, but was shocked to see FBI agents observing the brutal attack without raising, as little as a finger to assist the ravaged protesters. *Id.* Following the incident, Rowe stated that the FBI reminded him that the FBI was an investigative, not a law enforcement agency. *Id.*

²²¹ See *id.*

²²² See *id.*

²²³ See *id.* at 243.

²²⁴ See STANTON, *supra* note 6, at 243.

²²⁵ See *id.*

²²⁶ See *id.*

²²⁷ See *id.*

conversation he had with Robert Shelton, the Imperial Wizard, in which Shelton virtually sanctioned the Klan-member's violent behavior.²²⁸ In sum, Dees maintained Rowe's and Ward's testimony provided both historical and contemporary evidence affirming the notion that the UKA and its local Klaverns have a corporate policy of violence.²²⁹

To further reinforce the premise that the UKA's corporate policy was to prepare followers to commit violent actions and to further supplement his witnesses' testimony,²³⁰ Dees presented a drawing from a 1979 Ku Klux Klan publication called the *Fiery Cross*.²³¹ This drawing depicted the lynching of a black man.²³² The drawing consisted of a white man addressing the reader, accompanied by a caption: "IT'S TERRIBLE THE WAY BLACKS ARE BEING TREATED! ALL WHITES SHOULD WORK TO GIVE THE BLACKS WHAT THEY DESERVE!" An arrow directed the reader to turn the page, where there was a picture of a black man, his neck broken, his body dangling from a rope tied in a hangman's noose.²³⁴ Dees maintained this depiction validated his witnesses' testimony and provided additional, powerful evidence that the UKA observed a corporate policy of racial animus and incitement for violent action.²³⁵

Dees was ready for trial. He was confident that the jury would see that the four necessary evidentiary factors for conviction had been satisfied. On February 9th, 1987, six years after the

²²⁸ See *id.* at 244. Ward contacted Shelton to ask him what he should do after his Klavern was indicted for civil rights violations. *Id.* Ward stated, "[Shelton] said to talk to the guys and tell them that everything was all right, that they [UKA] would help us—help our unit raise money for the lawyer's fee or whatever, for bail, and to tell them that they weren't kicked out of the Klan, but just not to attend and stay low." *Id.* Dees maintained this statement demonstrated a corporate sanction of violence generally and the ultimate goal of the UKA corporate policy was to intimidate and commit violence. *Id.*

²²⁹ See STANTON, *supra* note 6, at 223.

²³⁰ See *supra* pp. 39 - 41 and notes 217-28.

²³¹ See *id.* at 234. *The Fiery Cross* is the publication printed by the United Klans of America. *Id.* Robert Shelton was the editor-in-chief and controlled what was placed within the publication. *Id.* at 235.

²³² See *id.* at 220.

²³⁴ See *id.*

²³⁵ STANTON, *supra* note 6, at 220.

murder of Michael Donald, the civil trial began.²³⁶ The UKA and Robert Shelton did everything in their power to distance themselves from the murder.²³⁷ Dees countered, utilizing the *Fiery Cross* sketch as a shining example of the UKA's corporate espousal of violence.²³⁸ He maintained that, when publishing this picture, Robert Shelton, the editor-in-chief of the *Fiery Cross*, was implying "[T]hat that's what blacks deserve, to be hung. . . . and that that's what we, (the UKA) should do, go out and hang people, black people."²³⁹ In addition, Mr. Dees contended that during the March 18th meeting, when Bennie Hays advocated retaliatory behavior, he was speaking not only as Bennie Hays, but as a high ranking UKA official who was voicing UKA's corporate policy of violence.²⁴⁰

Dees enhanced his corporate policy of violence theory by highlighting a few key facts: the hanging of Michael Donald, rather than the discarding of his body, was an attempt to make the murder appear to be a lynching, thereby demonstrating the Klan's power over black people;²⁴¹ and the randomness of the murder was an attempt to maximize the potential for fear-mongering and to convey a message that the Klan would not tolerate black people on juries.²⁴² Dees maintained these two premeditated facts further exemplified and personified the violent nature of the UKA's corporate policy.²⁴³ Furthermore, with witness testimony,²⁴⁴ Dees

²³⁶ See *id.* at 232.

²³⁷ See *id.* at 233. John Mays, the longtime counsel for the UKA, stated that "he deplored the killing of Michael Donald as a 'disgusting, horrible' crime that offended the sensibilities of Klan officials" and that the UKA national organization "pleading ignorance as to any aspect of conspiracy that led to it."

Id.

²³⁸ See *id.* at 234.

²³⁹ See *id.* at 238.

²⁴⁰ STANTON, *supra* note 6, at 236.

²⁴¹ See *id.* at 195.

²⁴² See *id.*

²⁴³ See *id.* at 235-36.

²⁴⁴ See *supra* pp. 39 and 41 and notes 217-28.

proved that Shelton's past comments also demonstrated that the UKA had a corporate policy of violence.²⁴⁵

At the conclusion of the trial, Tiger Knowles, one of the murderers of Michael Donald and defendants in this civil suit, chose to stand and address the jury.²⁴⁶ He stated, "I've lost my family, I've got people after me. Everything I said is true. I was acting as a Klansman, when I done this, and I hope that people learn from my mistake. And whatever judgment you decide, I do hope you decide a judgment against me and everyone else involved . . . because we are guilty . . . that's all I've got to say."²⁴⁷ Following four hours of deliberation, the all-white jury returned judgments of liability against the UKA itself and each of the individual Klan members.²⁴⁸ The United Klans of America and Mobile 900 were collectively ordered to pay seven million dollars in damages.²⁴⁹ This decision was a milestone. For the first time ever, a jury had found an entire Klan organization responsible for the violent acts committed by its individual members.²⁵⁰ Morris Dees' civil litigation strategy not only succeeded in providing Ms. Donald with monetary compensation for the loss of her son, but also successfully bankrupted the UKA, effectively ending their thirty-year reign as the most notorious Klan faction in the country.

²⁴⁵ See *id.* at 244. An ex-Klansman, Ward, testified that his Titan declared that their Klavern was too docile. *Id.* Under orders by Shelton, the Klavern was to use intimidation, "to put fear of God in the people." *Id.* at 243. As a result, Ward's Klavern became more militant. *Id.* Ward testified that he had a conversation with Robert Shelton after he was arrested for assault. *Id.* at 244. Shelton told him not to worry about his troubles, that the Klan would provide legal assistance. See *supra* p. 41 and note 228.

²⁴⁶ See *id.* Tiger Knowles had previously been convicted of felony civil-rights violations. *Id.* at 192.

²⁴⁷ See *id.* at 246.

²⁴⁸ See *id.*

²⁴⁹ STANTON, *supra* note 6, at 246. As part of her award, Mrs. Donald was able to obtain the UKA national headquarters building in Tuscaloosa, Alabama. *Id.* at 247. She ended up selling the building for \$75,000 and bought herself a new home. *Id.* at 248. Following the civil trial, Frank Cox, the man who provided the rope, and Bennie Hays, the father of Henry Hays, were indicted for Michael Donald's murder. *Id.*

²⁵⁰ Frank Judge, *Slaying the Dragon*, THE AMERICAN LAWYER, Sept. 1987, at 83.

Dees' strategy had effectively done what federal and state legislation had failed to do—provide Ms. Beulah Mae Donald, a victim of hate-group violence, real justice.

D. Future of Civil Litigation Against Hate Groups

Dees' civil litigation strategy is an effective, present day, counter-attack against the rising tide of hate-group driven racial intolerance and violence.²⁵¹ The future should hold much the same for both the application of the strategy and the success that it brings by obtaining justice—monetary and otherwise. Following the path-breaking victory in the *Donald* case, Dees celebrated another multi-million dollar victory against the ringleaders of a Klan-led mob that attacked civil rights protesters in Forsythe County, Georgia, in January 1987.²⁵² Furthermore, in 1989, the SPLC and the Anti-Defamation League of B'nai B'rith, an organization that seeks to stop the defamation of Jewish people and to secure justice and fair treatment to all citizens alike,²⁵³ joined together to file a suit against three skinheads who clubbed to death an Ethiopian refugee in Portland, Oregon.²⁵⁴ In the fall of 1990, the attorneys

²⁵¹ Mark Curriden, *Hitting the Klan – Civilly: Alabama Lawyer's Suits Cost Violent Extremists Plenty*, 75 *A.B.A.J.* 19, Feb. 1989. In Atlanta, Georgia, a federal jury ruled that Klansmen were liable for an attack on civil rights marchers in Forsythe County and must pay damages. *Id.* Morris Dees has had court officials garnish the wages of individuals named in the lawsuit and take all the assets the KKK organizations may have. *Id.* Dees stated, "financial damage suits against racially inspired violence will keep the Klan thinking they will be paying with their pocketbooks if they aren't careful what they do on a Saturday outing." *Id.* See also *KKK Ordered To Pay \$37.8 Million in South Carolina Church Burning Case*, JET, Aug. 10, 1998, at 6. See also James Willwerth, *Making War on WAR: An Alabama Civil Rights Advocate Invokes Liability Doctrine in a Bid to Drive A California Race-Hatred Monger out of Business*, TIME, Oct. 22, 1990, at 60. See also *The High Cost of Klanning (second large damage awarded against the Ku Klux Klan)*, TIME, Nov. 7, 1988, at 37.

²⁵² Curridan, *supra* note 251, at 19.

²⁵³ See 1 CHRISTINE MAURER & TARA E. SHEETS, ENCYCLOPEDIA OF ASSOCIATIONS, NATIONAL ORGANIZATIONS OF THE UNITED STATES, Pt. 2, § 9, Public Affairs Org., Civil Rights & Liberties 1697 (34th ed. 1999).

²⁵⁴ *Berhanu v. Metzger*, No. A 8911-07007 (Or. Multnomah County Cir. Ct. Oct. 25, 1990), *aff'd*, 850 P.2d 373 (Or. Ct. App.), *review denied*, 865 P.2d 1296

for both the Anti-Defamation League of B'nai B'rith and the SPLC, using both civil conspiracy and aiding and abetting, set out to prove the skinhead killers had acted at the instigation of Tom and John Metzger, the leaders of the California-based racist group, the White Aryan Resistance (WAR).²⁵⁵ The jury in Portland returned a multi-million dollar judgment against both the individual murderers and the WAR leaders.²⁵⁶ Arguably, the judgment against WAR's leader, Tom Metzger, rendered him ineffective as a preacher of hate.²⁵⁷ He has lost his main source of income—donations from WAR members, as well as his meeting

(Or. 1993), *cert. denied*, 114 S.Ct. 2100 (1994). See also MORRIS DEES & STEVE FIFFER, *HATE ON TRIAL: THE CASE AGAINST AMERICA'S MOST DANGEROUS NEO-NAZI* 76, 78 (1993). Three friends from Ethiopia were returning from a party in Portland, Oregon, when their lives would change forever. *Id.* at 4. The car driving the friends had just dropped off Mulugeta Seraw when another car approached. *Id.* Two men with shaved heads jumped out and beat Mulugeta Seraw to death. *Id.*

²⁵⁵ See *supra* note 110, at 22. See *id.* at 21. The following evidentiary requirements were satisfied: counsel showed that the Metzgers, or their lieutenant Mazella, had direct contact with the skinheads who killed Mulugeta Seraw and encouraged them to carry out the business of WAR and the Aryan Resistance Movement (ARM); counsel demonstrated the business of WAR & ARM included committing racially-motivated violence; and, counsel proved the Metzgers or Mazella had in some way encouraged the violence that led to the murder of Mulugeta Seraw. *Id.* See also Willwerth, *supra* note 251, at 60.

²⁵⁶ Robb London, *Sending a \$12.5 Million Message to a Hate-group*, N.Y. TIMES, Oct. 26, 1990, at B 20. Morris Dees stated, "The amount of the award has no real relation to WAR's assets. . . . A judgment of several hundred thousand dollars would have done the job in terms of getting what these defendants have to give. . . .the reason we asked for so much, and the reason the jury gave it to us, is the signal it would send to the organized hate business. We're going to clean their clocks!" *Id.* The jury ordered the elder Metzger to pay \$5 million in punitive damages, his son to pay \$1 million, and two of the skinheads \$500,000 each. *Id.* The jury also awarded \$3 million in punitive damages against the white supremacist group, WAR, and \$2.5 million in compensatory damages under a rule that permits plaintiffs to collect the money from the defendant who can pay it. *Id.*; See also Kynya V. Manning, *Pro Bono*, AM. LAW., Dec., 1990, at 25.

²⁵⁷ See *id.*

hall, video equipment, a personal computer, printer and fax machine, and his home.²⁵⁸

Even more recently, in July of 1998, Dees' civil conspiracy strategy played a large part in successfully winning a \$37.8 million judgment against the Christian Knights of the Ku Klux Klan.²⁵⁹ The jury assessed the following damages: fifteen million against the Christian Knights' national organization; fifteen million against Horace King, the Grand Dragon of the Christian Knight's South Carolina chapter; seven million against the South Carolina chapter itself; one-hundred thousand against three co-conspirators, Haley, Welch and Cox; two-hundred thousand against a fourth conspirator, Rowell, because of his history of setting fires; and, three hundred thousand for compensatory damages for the destruction of the church.²⁶⁰ In *Macedonia Baptist Church v. Christian Knights of the Ku Klux Klan—Invisible Empire Inc.*, the Macedonia Baptist church sued these defendants for compensatory damages for the destruction of their church and punitive damages to punish the defendants for their intentional and malicious acts.²⁶¹

²⁵⁸ See *After the Portland Verdict . . . Metzger Warns of More Violence*, SOUTHERN POVERTY LAW CENTER, KLANWATCH INTELLIGENCE REP., No. 566 (1991). Following the lawsuit, a court order enabled the plaintiff to monitor WAR's mailbox and seize all money in order to help satisfy the judgment. *Id.* Furthermore, after another lost court battle, Metzger was only permitted to retain \$45,000, rather than his requested \$75,000 from the sale of his home. *Id.*

²⁵⁹ See Marcia Bull Stadeker, *Holding Their Feet to the Flame: Making a Case Against the Klan for the Burning of an African-American Church*, SPLC UPDATE (SPLC/ Press Release. Montgomery, Ala.) (undated) at 4. Interestingly, this is the same Klan faction allegedly behind the murders of the five protesters in Greensboro in 1979.

²⁶⁰ See SOUTHERN POVERTY LAW CENTER, KLANWATCH INTELLIGENCE REP., No. 91, 'Day of Reckoning' Record Judgment Cripples Klan Group 6 (1998). SPLC attorneys plan to initiate legal procedure to attach bank accounts, property, and other assets belonging to the Christian Knights and the five men. *Id.* Furthermore, criminal charges are currently being discussed by authorities because of the introduction of new information at the civil trial. *Id.*

²⁶¹ See *Macedonia Baptist Church v. Christian Knights of the Ku Klux Klan—Invisible Empire Inc.*, *Christian Knights of the Ku Klux Klan—Invisible Empire*; Horace King; Arthur A. Haley; Hubert "Herbert" L. Rowell; Timothy A. Welch; and Gary C. Cox, No. 96 C.P.-14-217 (S.C., Clarendon, Dec. 29, 1997) (Pl.[s] Opp'n Def.[s] Mot. New Trial Pl.[s] Req. Ruling Punitive Dam. Award Complies Due Process) (on file with author).

The SPLC was able to prove that Horace King, the head of the South Carolina chapter of the Christian Knights, “conspired, authorized and encouraged the burning” of the Macedonia Baptist Church on behalf of the Christian Knights of the Ku Klux Klan.²⁶² Testimony by Klan members proved that King participated in the conspiracy to burn black churches in Clarendon County, South Carolina.²⁶³ Similar to the jury’s finding in the *Donald* case, where the Klan’s actions were deemed to be furthering a broader goal of conspiracy,²⁶⁴ the burning of the Macedonia Church by the Christian Knights of the Ku Klux Klans was deemed to be an attempt to further their broader goal of conspiracy to burn black churches.²⁶⁵

While media-celebrated settlements have shed some “just” light on the effectiveness of Dees’ civil litigation strategy as an alternative to existing federal and state hate-crime statutes; it is less well known that the strategy may be applicable and effective when dealing with issues such as abortion.²⁶⁶ In the past five to ten years, traditional hate groups such as the Ku Klux Klan and WAR have joined forces with anti-abortion extremists to address abortion issues.²⁶⁷ As a result, it seems that more often anti-abortion extremists are resorting to violence against abortion doctors and clinics.²⁶⁸ A Klan faction, America’s Invisible Empire, maintains that abortion is “America’s greatest crime.”²⁶⁹ Another white power, anti-federalist group, the U.S. Taxpayers Party, calls for the

²⁶² See Staderker, *supra* note 259, at 4.

²⁶³ See Macedonia Baptist Church, No. 96 C.P.-14-217 at 5.

²⁶⁴ See discussion *supra* p. 34.

²⁶⁵ See *id.*

²⁶⁶ Tamar Lewin, *Abortion Foe sued in killing of doctor at a clinic*, NY TIMES., Mar. 10, 1995, at 1.

²⁶⁷ See Frederick Clarkson, *Anti-Abortion Extremism: Anti-Abortion Extremists, ‘Patriots’ and Racists* INTELLIGENCE REPORT, *supra* note 260 at 8.

²⁶⁸ See Frederick Clarkson, *Anti-Abortion Violence: Two Decades of Arson, Bombs and Murder*, INTELLIGENCE REPORT, “over the last twenty years, anti-abortion terrorists have been responsible for six murders and fifteen attempted murders . . . they have also been behind some two hundred bombings and arsons, seventy-two attempted arsons, seven hundred and fifty death and bomb threats and hundreds of acts of vandalism, intimidation, stalking and burglary.” *Id.*

²⁶⁹ See Clarkson, *supra* note 267, at 8.

murder of abortion doctors and their patients.²⁷⁰ An Internet web-page exists, called the “Nuremberg files,” which lists doctors who perform abortions and states whether they are “working,” “injured,” or “killed.”²⁷¹ These vile concoctions of contemporary hate groups mixed with the volatile issue of abortion evidence that the abortion issue has been reduced to “mere jingoism,”²⁷² an issue that hate-groups are attempting to use to galvanize new membership and fervor for hate-mongering. Fortunately, the SPLC’s civil litigation strategy is adaptable to successfully address anti-abortion group violence.²⁷³

On March 9th, 1995, Morris Dees filed a lawsuit in Florida seeking to hold an anti-abortion leader, John Burt,²⁷⁴ and his organization, Rescue America, liable for the death of Dr. David Gunn, a doctor shot and killed outside an abortion clinic in March

²⁷⁰ See *id.*

²⁷¹ On February 2nd, 1999, a federal jury in Portland, Oregon, ordered the creators of the “Nuremberg Files” to pay one hundred and seven million dollars to Planned Parenthood and a number of doctors, who argue the “files” amounted to personal threats on their lives. See Sam Howe Verhovek, *Creators of Antiabortion Web Site Told to Pay Millions*, N.Y. TIMES, Feb. 3, 1999 at A9. See also Rene Sanchez, *Doctors Win Suit Over Antiabortion Web Site; Jury Finds ‘Hit List,’ Awards One Hundred and Seven Million*, WASH. POST, Feb. 3, 1999, at A1. The original civil suit was brought under federal racketeering statutes and the 1994 Freedom of Access to Clinic Entrance Act and sought two hundred million dollars in damages and requested that the site be eliminated. See Verhovek, *supra* note 271. The jury felt the site—listing doctors names in the format of a “wanted” poster and subsequent crossing off of names of doctors who have been killed—equated to a “hit list” that served as a threat of violence. See Sanchez, *supra* note 271, at A01. Furthermore, the jury maintained this type of threat is not protected by the First Amendment. *Id.* David Fidangué, executive director of the American Civil Liberties Union stated, “the standard in this case will apply in many future cases and must be carefully drawn . . . both to safeguard against any chilling effect on free speech and to prevent the First Amendment from being used as a shield by those who want to make [a] true threat of violence.” *Id.*

²⁷² Wade *supra* note 98 at 403.

²⁷³ Tamar Lewin, *Abortion Foes’ Court Losses Are Frustrating the Victors*, N.Y. TIMES, June 11, 1994, Late ed. Sect. 1 at 1.

²⁷⁴ *Family, Abortion Protestor Settle Suit: The Deal Apparently Includes the Sale of Property Used by Protesters Next to a Clinic*, ORL. SENTINEL, July 5, 1996, at C3.

of 1993.²⁷⁵ On July 6th, 1996, Gunn's family settled with Burt for an undisclosed amount.²⁷⁶ Along with other legal advocates, Dees hopes this lawsuit and those like it will result in large judgments against anti-abortion extremist groups. Even more, they hope that the lawsuits will create a stigma against the anti-abortion groups.²⁷⁷ In sum, while hate crimes are manifested in many ways, Dees' strategy is demonstrably adaptable and will provide future victims of hate violence with adequate justice.²⁷⁸

CONCLUSION

Dees' civil litigation strategy is a legal weapon that must be used in order to combat America's deep and troubling tradition of hate-group planned violence. While federal and state legislation exists to combat hate-group violence, Dees' alternative strategy both side steps the barriers blocking federal and state legislation's effectiveness and overcomes the constitutional barriers that protect freedom of speech. The cases discussed in this article "go a long way" in demonstrating that Dees' litigation strategy against hate

²⁷⁵ See Tamar Lewin, *supra* note 266, at 8. The claim asserts that the defendant, Burt, recruited anti-abortion crusaders and gave them substantial assistance "to stop doctors from performing abortions" through unlawful, concerted actions. *Id.* See also *Family, Abortion Protester Settle Suit: The Deal Apparently Includes the Sale of Property Used by Protesters Next to a Clinic*, *supra* note 274, at C3. ("the suit alleged Burt influenced Griffin (the convicted murderer) by providing him with anti-abortion literature and videos, pointing Gunn out to him during a protest, showing him an effigy of Gunn with a rope around his neck and circulating an "unwanted" poster of Gunn.") *Id.*

²⁷⁶ See 7 *State Reports Florida: Pro-Life Protester Settles with Slain DR's Family*, AM. POL. NETWORK, ABORTION REP., No. 235, July 8, 1996, at 2. Morris Dees, attorney for the family, stated that the family had a very strong case, but because (Burt) had no real assets and the fact that the family did not want to relive their father's murder, settlement was the right thing to do. *Id.*

²⁷⁷ See Tamar Lewin, *supra* note 273, at 1. The hope is that new members will decline to join these organizations for fear they would be negatively stigmatized along with the organizations they are joining. *Id.*

²⁷⁸ See *Family, Abortion Protester Settle Suit: The Deal Apparently Includes the Sale of Property Used by Protesters Next to a Clinic*, *supra* note 274, at C3.

groups is successful in enjoining these groups from continuing their incitement of violence.²⁷⁹

Although groups such as the United Klans of America, the White Aryan Resistance, and the Christian Knights of the Ku Klux Klan are being hit hard with multi-million dollar judgments, the legal message—if an individual or organization incites imminent lawless action they may be civilly punished—often remains unheard. Hate groups are not evolving into law-abiding organizations.²⁸⁰ Arguably, the fact that the Christian Knights of the Ku Klux Klan's membership has dropped considerably in the last decade means less than some would like to think.²⁸¹ Following the verdict in *Berhanu v. Metzger*, Tom Metzger stated, "we will put blood on the streets like you've never seen and advocate more violence than both World Wars put together."²⁸² He continued, "I'll be broke and, under the Constitution, I can advocate violence now and nobody can sue me anymore. So all the things I'm accused of that I didn't do I can do now The white racist movement will not be stopped . . ."²⁸³ Though the SPLC considers Metzger washed-up, the reality is, he is still out in the public domain spewing his hate-filled rhetoric and possibly recruiting new members who are ready, willing, and able to commit heinous hate-motivated crimes. Arguably, there will never be enough legal weapons to fight this mode of irrational and repugnant mindset.

The historian Wyn Craig Wade states, "hate-groups adapt to each age, seduce members of each generation, and ally

²⁷⁹ See cases cited *supra* notes 22, 25, 113, 261, 274.

²⁸⁰ See *supra* statistics cited pp. 10-12 and notes 41, 45, 50.

²⁸¹ See Craig Whitlock, *Little Left of the Klan Except the Scary Name: Lawsuits and Changing Times have Eroded the South's Most Infamous Hate-groups*, NEWS & OBSERVER (Raleigh, NC.), Mar. 30, 1997, at 1. Due in large part to Dees' strategy, in North Carolina alone, card carrying members do not exceed one hundred, while thirty years ago every county had a growing KKK chapter. *Id.*

²⁸² See SOUTHERN POVERTY LAW CENTER, *supra* note 258, at 1. Metzger continued his tirade stating, "We have a new set of targets to play with. So if you're white and work for the system, watch your step. *Id.* Whether you be a system cop, a controlled judge or a crooked lawyer, your ass is grass." *Id.*

²⁸³ See Ted Cilwick, *Verdict Against White Supremacist: Legal blunders by hate-group chief lead to \$12.5 million Judgement*, 77 A.B.A.J. 22 (1991).

themselves with anything necessary to sustain or propagate [themselves].²⁸⁴ Hate groups are the corruption of American ideals; they capitalize on some of the best aspects of American tradition.²⁸⁵ Most certainly, if our legal community is not prepared, or not willing, to act; this tradition permits dissension, hateful speech, injustice, and violence between and among our people.²⁸⁶ Fortunately, Morris Dees, and others like him, serve as reminders that this same American tradition also provides society with the legal minds and mechanisms, such as Dees' civil litigation strategy, with which to promote justice and provide equality.

The recent hate-motivated murders of Matthew Shepard,²⁸⁷ and James Byrd,²⁸⁸ have prompted many legal scholars, politicians, and citizens to clamor for additional hate-crime legislation that would enhance a criminal sentence if the perpetrator was shown to have been motivated by certain prejudices.²⁸⁹ While these arguments are well intentioned, they are unnecessary.²⁹⁰ Rather, if we utilize the SPLC and Dees' alternative civil litigation strategy and promote better policing, prosecuting, and sentencing under existing federal and state statutes, solutions are possible, and a just system, which punishes both individual perpetrators and hate groups for committing violent crimes, may become a reality.

²⁸⁴ WADE, *supra* note 52, at 402.

²⁸⁵ *See id.* "The Klan has evoked the rebelliousness of the Boston Tea Party, the vigilantism of American pioneers and cowboys, and the haughty religion of the New England Puritans . . . some of the best-loved aspects of the American tradition." *Id.*

²⁸⁶ *See id.*

²⁸⁷ *See supra* note 48 and accompanying text.

²⁸⁸ *See supra* note 49 and accompanying text.

²⁸⁹ *See supra* p. 11. *See* Brian Levin, *Motive Matters: Hate crime Legislation, A Debate on Punishment Enhancements* 30 (SOUTHERN POVERTY L. CENTER KLANWATCH INTELLIGENCE REP. No. 91, 1998).

²⁹⁰ *See* James B. Jacobs and Kimberly Potter, *Legislation Unnecessary: Hate crime Legislation, A Debate on Punishment Enhancements* 31 (SOUTHERN POVERTY L. CENTER KLANWATCH INTELLIGENCE REP. No. 91, 1998).

