In the recent past we have experienced the reopening and trial of several of the egregious cases of the civil rights era. Each of those trials has generated substantial public attention for a few weeks, but what has been accomplished? Have these trials provided any measure of restorative justice? Perhaps the more significant question: what is restorative justice?

Although I have not been of the view that the trial and conviction of one or more old men could in itself set the national conscience right, I do think that trials matter: if the state does not acknowledge responsibility, how can governmental misconduct be avoided in the future? If the state does not acknowledge responsibility, how can the past be integrated into a societal comprehension of how we came to be who we are? And without that understanding, how can we move forward, building on those experiences to construct for the first time a commonality of purpose to confront the legacy of slavery, a confrontation and acknowledgement that this country has yet to experience.

So, for forty-one years after the murder of Mickey Schwerner, along with James Chaney and Andy Goodman, I went on with my life, thinking about these questions,
ultimately coming to believe that there would never be a murder trial, and that if by some small chance a trial occurred, the ultimate questions of responsibility would not be reached.

Then came the trial. I shared the dismay and perhaps anger which other families have expressed: that the crimes had been permitted to go unacknowledged for so long that most of the killers were dead, and that of the eight direct participants still alive, only one was indicted and brought to trial. That the case would be tried on the narrowest of issues—was Edgar Ray Killen responsible for the deaths of three men?

And yet, I still knew that the trial was important. That it was worth the effort that would go into seeing it through.

What I didn't yet understand was the complexity of individual and community responses that the trial would unleash. I needed to experience the events of those two weeks in Neshoba County and in the courtroom, and what has happened since, to see both the significance of these trials, and their limitations.

In retrospect, now that the Killen trial is almost two years past, and the Mississippi Supreme Court has just affirmed the conviction, we may be able to examine it in a broader context. The experience may provide some insight into restorative justice, and the opportunity to explore whether such justice can be achieved.

A criminal trial is a public event through which civil society attempts to confront a wrong, by determining guilt, by seeking to acknowledge responsibility, and by imposing a penalty commensurate with the wrongdoing. Can that even occur when many of the perpetrators are long since dead?

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3 Killen v. State, 958 So.2d 172 (Miss. 2007).
There are functional limitations in a criminal trial. The defendant has the constitutional right to remain silent. The defendant need not acknowledge his participation in the crime, explain his motives, or seek forgiveness. Can a trial process, which by its nature includes the due process concept that the evidence must be specifically related to the actions of the defendant, possibly explore the questions of broader culpability? And if not, what purpose is served?

In a criminal trial, the potentially restorative process of complete truth telling, personal confrontation between accused and accuser, and acceptance of responsibility often do not occur on any level. Yet a trial may provide some level of community justice.

The social philosopher Emil Durkheim maintained that an act offends the common consciousness not because it is criminal, but it is criminal because it offends that consciousness. Punishment publicly demonstrates that the sentiments of the community are still unchanged, despite the deviant ways of the offender. Thus, the injury that the crime inflicted on society is made good. In his view, the primary intent of punishment is to affect honest people. A criminal trial is, in at least one sense, an affirmation of the values that make civil society possible.

So what then happens when there has been no public reckoning? No trial? No punishment?

For decades, the crimes of the civil rights era went unacknowledged. People lived out their lives in the towns and cities where the crimes occurred, often engaging in the small exchanges of life with the perpetrators. For some, that continual interaction with persons whom they knew had committed heinous acts must have been a constant source
of intimidation, even if nothing was said directly. For others, knowledge of the crime and
the failure of communal action to impose consequences on the actors was the denial of
the seriousness of the event, a diminishment of civil society. I expect there were people
who experienced a sense of guilt for their own failure to confront the reality of the
crimes. And for some, the lack of consequences may have been perceived simply as an
embarrassment which they worry has stultified progress and interfered with the
community's economic opportunities. They too were given permission to deny the
magnitude of the wrongdoing, since they were not forced to confront it.

These are complex and damaging results that flow from the denial of justice.

What did happen in Philadelphia, Mississippi, when the case against Edgar Ray Killen
proceeded to trial?

For one thing, the Attorney General of the State put his political capital at risk in
trying the case. This was the first time in the history of the State, and I believe in the
history of any of the other civil rights cases throughout the South, that a state's chief law
enforcement officer personally took on a prosecution of any of the perpetrators. The
significance of Jim Hood's role as prosecutor was not lost on the citizenry of the state, or
perhaps even more broadly. It was an overt statement that a crime had been committed,
not just against the three men who were murdered, but against the very fabric of society,
that the crime had never before been acknowledged by the state, and as a result there had
been no effort to confront the reality of the communal dysfunction.

The Neshoba County Prosecutor, Mark Duncan, is a man who grew up in the
county, born after the crimes were committed. He still lives there, where he raises his
family and sends his children to school. He depends upon the local electorate for his
position as prosecutor. For many years, the demands of the murdered men's families for state indictments had been ignored. In fact, the prior Neshoba prosecutor had refused to answer my letters or phone calls, whether from fear, or rather because he chose not to offend some of his neighbors by focusing the public spotlight once again on this sordid history. But here was Prosecutor Duncan, who stood before his community and said not only that the crime was horrendous, but also that the failure to prosecute was a wrong that demanded redress. His role in the prosecution was itself a step towards restorative justice.

The trial was publicized, seen in "real time" on Court TV, receiving media attention around the country and the world. But some of the most significant events were rather private—they never made headlines. The trial created a catalyst that prodded people who had carried their fear, anger, and pain without surfacing it, to now do so.

I met an African American woman who waited in line each day to get into the courtroom. She had grown up in neighboring Kemper County, a very dangerous place itself. She told me that as a child her parents had warned her never to go to Philadelphia, it was too risky. She had become a lawyer; since the trial court for the circuit is in Philadelphia, she often came to town. But she always found herself thinking of her parents' warnings. One morning during the trial, as she had arrived early, she went across the street to the coffee shop. She was about to enter when two elderly African American women came down the street. One of them took her by the arm and gently said, "You don't want to go in there dear. The restaurants are just for white folks." Of course, she went in and ordered her coffee, but she told me that the experience reminded her that many people in the county have yet to get over their sense that they constantly live in
danger. For this woman, sitting through the trial and hearing the verdict was her opportunity to bear witness in the face of her community's fear.

I renewed a friendship with a man who had been a seventeen-year-old student and civil rights volunteer in Meridian in 1964. He too attended every day of the trial. He had planned to go to Neshoba County with James, Mickey, and Andy on June 21st, the day they were murdered, but his mother insisted that he go to church with her. When the verdicts were announced, he hugged me tightly and said, "Rita, today we got a little justice." I think he had borne the horror of the murders every day for the past forty-one years. I can't begin to explain all of his emotions. He certainly understood that had he not obeyed his mother, he too likely would have been a victim. I think he also had a misplaced sense of responsibility—had he gone, somehow, these murders would have been prevented. What a painful burden to carry for forty-one years. The verdict seemed to release him.

There were many white observers at the trial. Florence Mars was a life long resident of Neshoba County, who had the courage in 1977 to write a book, *Witness in Philadelphia*, in which she spoke of the harassment which she had experienced for her efforts to cooperate with the investigation of the disappearances, and of the failure of local people to acknowledge responsibility for the crimes which occurred in their midst. Ms. Mars was elderly, sick, and frail at the time of the trial. In fact, she has since died. But she sat through the trial every day. She understood the importance of her last public act, attesting to her sense of truth and justice, for herself and as a message to her neighbors.
Stanley Dearman, the retired editor and publisher of the "Neshoba Democrat," had editorialized about the importance of a trial before there was any local willingness to confront the case. When the verdict was announced, he cried. His editorial stance for justice and accountability took personal courage.

Still, people who were unwilling to speak out over the years seemed to be struggling yet to understand what had happened in their community, not just on the night of the murders, but in all the years thereafter. I was struck by the depth of the wounds that had been imposed on this society, many of them certainly self-inflicted. The trial apparently permitted some to face truths about individual and collective culpability for the silence and the acquiescence that had allowed such crimes to occur in their state repeatedly over so many years.

A Mississippi Highway patrolman, one of many providing security in and around the courtroom, asked to speak with me privately during a recess. He was a tall, handsome white man in his late fifties. He said that he wanted to explain to me that he had been in law enforcement since he was in his twenties, and that in those early years he had served with some bad men. They had all eventually left or retired, and the young officers now just can't imagine how bad it was. He tries to tell them what it had been like to serve in law enforcement then, but they can't believe it. He openly wept as he spoke. I thought he was seeking absolution from me, either for acts he had participated in or witnessed, or maybe just for the shame of knowing all that he knew. Of course, absolution was not mine to give. But, I do think that he was attempting to acknowledge his part in collective responsibility. His recognition was his small, personal step towards the restoration of civil society.
For others, there continued to be a need to deny. An elderly woman who worked in the Court approached me every morning as I entered, to ask if I had had a pleasant evening, and if everyone was treating me with kindness. She then said to me, each morning, "You see, we are good people here, and we would never have allowed this terrible thing to happen had we known it was going on." Despite the tableau of each day's testimony, she was not capable of facing the underlying issue of community responsibility for all that had occurred. Her denial and avoidance of responsibility was palpable.

I was not prepared for the depth and significance of the emotions people experienced. There is no doubt that for the families of people who were beaten or murdered, a trial of the perpetrators is of great importance. And when it comes so long after the crime, it is especially significant. As Fannie Lee Chaney, James Chaney's elderly mother, said, the trial was the very first time anyone was to be held responsible for his murder. I do not know if a successful prosecution provided some closure for her, or for some other family members of victims of these senseless crimes. For myself, the experience of the trial is one more of the threads that are woven together to integrate these events into the totality of my life.

I came to believe that this trial, and each of the civil rights trials, might have more importance to the community at large than they can ever have to victims' families. The trial established a forum for truth telling, albeit incomplete, which permitted at least some in the community to begin to confront responsibility, if they were willing to do so.

One of the witnesses was a Meridian police officer in 1964. While serving as a policeman, he had also been a member of the Klan. He testified as to Edgar Ray Killen's
bragging to him shortly after the murders of his part in orchestrating them. He told the jury that Killen had given him a gun the day after the murders, which Killen asked him to make disappear. When confronted by the defense as to why he didn't speak of Killen's alleged confession before, he replied that he had always been afraid to do so—that there was too much danger. Perhaps.

Another witness was a former mayor of Philadelphia, whose term of office had been in the 1990's. He was called as a character witness for Preacher Killen, whom he assured the jury was a fine man and a good Christian. Asked by the prosecution if he would maintain his support for Killen if he knew Killen was a member of the Klan, a fact that the defense had acknowledged, the mayor responded that he would, since he knew that the Klan had done good things, such as deliver food baskets to widows.

Many people in the courtroom registered shock at this testimony. It was important for the community to hear. It was an opportunity to confront the truth of the extent to which the white society had continued to deny reality, and to cloak itself in a fantasy in which the wrongdoers were the outsiders—first the civil rights workers who had disrupted their expectations and traditions of the Jim Crow world, and then the news media, the writers, the investigators, and now the prosecutors of this case who had challenged the community notion of civil society.

That some could not yet fully face the crime, and acknowledge that Killen not only orchestrated such evil, but that they had made no effort to sanction him or the other participants, was revealed in the verdict. Although charged with three counts of murder, with proofs that he had organized the killers the night of the crime, directed them to purchase rubber gloves to be used in the disposal of the bodies, and arranged for the use
of a bull dozer for the burials, the jury ultimately returned convictions of manslaughter. Twelve jurors could not reach agreement that Edgar Ray Killen had participated in premeditated murder. The jury compromised to reach guilty verdicts. That they compromised indicates that not all could face the horrible truth. Yet, that they compromised also indicates that most of the jurors understood the importance of a conviction to help establish a civil society.

So, this trial, as others like it, was an opportunity for a part of the truth to emerge, imperfect and incomplete as it is. The trials focus on the particular acts of individual defendants. But unfortunately, the trial process also permits the larger truth, the overarching societal and governmental issues, to be lost in the attention to the detail of the crime.

In the very week that Edgar Ray Killen was on trial in Philadelphia, the United States Senate was debating whether to issue an apology for its repeated failure to pass anti-lynching legislation. The apology was passed by 92 of the senators. Two of the "no" votes were those of the two Mississippi senators, Trent Lott and Thad Cochran, who said he had nothing to apologize for. Yet, according to the Jackson Clarion Ledger, there were 581 lynchings in Mississippi, and it is likely that count was incomplete.

Also that week, Ben Chaney, James Chaney's brother, criticized Mississippi Governor Haley Barbour for wearing the Confederate battle flag on his lapel. Barbour's response was to say that if anyone didn't like it, "tough." When the trial was concluded, Barbour announced that we should all now have closure. His suggestion was that Mississippi should now be done with civil rights trials.

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4 Congressional Record, S6364 (June 13, 2005).
This month, April 2007, Governor Barbour signed an official State of Mississippi
Proclamation, declaring "Confederate Heritage Month" in recognition of the "four year
struggle" of the Confederate States. Other states of the old Confederacy have joined the
call for "Confederate Heritage Month." Look on the Southern History Web sites
promoting this bizarre theme; their lead quote is from Jefferson Davis: "Nothing fills me
with deeper sadness than to see a Southerner apologizing for the defense we made of our
inheritance."

And Governor Barbour has created a Commission to establish a National Civil
Rights Museum in Jackson, where commissioners including co-chair Charles Pickering,
rejected by the U.S. Senate for appointment to the Fifth Circuit Federal Court of Appeals
because of his racist positions, would participate in constructing the history to be told.

We have too many people in positions of power who not only are unwilling to
integrate the history of the past into an acceptance of societal responsibility, but who
want to redefine that history. They will not acknowledge the offenses to the common
consciousness. We delude ourselves if we think a few trials of a few old men will spark
the necessary societal confrontation.

The trials do not in themselves bring us to restorative justice. However, these
trials may be a tool for some in local communities to reach for political empowerment.

In Neshoba, a multi-racial coalition of local people had come together the year
before and started publicly calling for a trial. It is likely that their calls for the trial were
significant in finally prompting the indictment. They certainly couldn't be dismissed as
outside agitators. They are, however, a group with diverse motivations. Some of them
have very deeply held beliefs that the community needed to obtain a measure of justice in
an effort to expiate a portion of responsibility for the failures to act appropriately in the years past. They are continuing together in other efforts towards restoration of their community, both locally and statewide, with such projects as the creation of a civil rights curriculum to be taught throughout the state by teachers whom we hope will be given the training to do it well.

Unfortunately, not everyone's motives are quite as commendable. There are those in the Neshoba community, as well as in other communities where there have been civil rights trials, who have used the opportunity simply to represent to the world that the trial finally being over, there is no further discussion to be had.

This is the theme the Governor of Mississippi echoes: that there is no need to dig up the stench of this old history. Some take pride in the development of theme tours to sites of murders and bombings, while sanitizing the history that could explain how these crimes came to be. Neither will they discuss slavery's perpetual legacy of racism and economic repression, which motivated these crimes, nor the direct governmental involvement in criminal actions. Their present conduct, if permitted to continue without some counter voice, will suppress the history of the civil rights struggle, and thereby, the work necessary to accomplish real reconciliation.

The trials do provide an opening for part of the process of restorative justice. But this is not likely to be accomplished if the Chamber of Commerce contingent has its way.

The role of government in the crimes of the past, and the day-to-day oppression of people of color, must be told. In Mississippi there exists a treasure of history that was made public only in 1998, after about sixteen years of legal battle, with the opening of the Mississippi Sovereignty Commission Records. These records are now housed at the
Mississippi History and Archives, and are accessible on-line. This is a critical part of the history that has not yet been fully explored, and that the trial did not begin to reach.

The state legislature created the Sovereignty Commission in 1956, as a branch of government, with its stated purpose "to do and perform any acts deemed necessary and proper to protect from encroachment by the Federal Government and to resist the usurpation of the rights and powers of the State."\(^5\) We now know from the surviving records and some 87,000 entries that thousands of people were subject to the dangerous attention of the Commission. The violence was not the isolated acts of a few crazed individuals acting as a mob. Rather, these crimes are heavily tainted with governmental misconduct.

The Sovereignty Commission funded the White Citizens Councils, which used this money for a campaign that spread a virulent racist ideology, serving to encourage violence. The Sovereignty Commission hired staff investigators and private detectives. It employed informants. The investigators spied on people, the reports were transmitted to the governor and disseminated with a deliberate intent to cause damage to persons who were perceived as enemies of the status quo. The Commission disseminated information about people in the community who were providing housing or other assistance to civil rights workers, resulting in beatings, fire bombings, and murders. Civil rights activists were assassinated. Herbert Lee was killed in Amite County in 1961 and Lewis Allen in 1964, after he gave information to federal investigators about the Lee murder. Medgar Evers was shot to death in Jackson in 1963; Vernon Dahmer was killed when his

Hattiesburg home was firebombed in 1966. Even those who had no direct involvement in the Movement were targeted for beatings and murder.

At the request of the defense, the Commission investigated the jury panel in the 1964 trial of Byron de la Beckwith for the murder of Medgar Evers. The Commission secretly reported back its findings as to which members of the jury panel were not expected to be favorable to de la Beckwith. The defense could then eliminate these jurors from the panel by exercising its peremptory challenges. An arm of the state was assisting the defense in a murder case that the state was supposed to be prosecuting. The jury refused to convict.

In February 1964, a month after Mickey and I arrived in Meridian, a state legislator requested the Sovereignty Commission to investigate us. Unknown to us, there followed a series of reports back to Representative Long and to the Governor's office about where we were living, who visited with us, and with whom we met in the community, just as had been done to many other activists, including Medgar Evers for years before his murder. Further, the Sheriff and deputies of Lauderdale County were keeping us under surveillance. The description and license number of the car we drove and the other information they gathered was passed on to law enforcement officers around the state, where the Klan, the police, sheriffs' departments, and state highway patrol officers were often one and the same.

In the days prior to the Neshoba murders, the Commission agents had circulated information as to the church in Philadelphia that would host voter registration training. James and Mickey had been meeting with church members for several months. On June
16th, several church members were badly beaten by a mob of Klansmen. The church was burned to the ground. This terrorism was part of a plot to lure Mickey into a trap.

A Sovereignty Commission informant passed on intelligence as to when Mickey and James planned to visit the burned out church to check on the injured members. Andy Goodman, who had arrived in Mississippi only twenty-four hours earlier, went with them. The Neshoba deputy sheriff was alerted to arrest the three men, while Edgar Ray Killen gathered the Klan members. The lynch mob included the sheriff's deputy, and Philadelphia and Meridian police. Two state highway patrol officers abandoned the assassination plot at the last minute, but did nothing to stop the murders even though they knew that the killings were about to occur. The Neshoba County Sheriff may not have been present at the murder site, but he is known to have been a likely member of the conspiracy. The Sovereignty Commission, an official arm of the State, was directly involved in providing the intelligence that led to these murders.

The Sovereignty Commission files expose the fact that the Commission provided all of its investigative reports, apparently from the Commission's inception until 1967, to the Jackson Clarion Ledger and other newspapers in the state. Those reports were used by the newspapers to distort and defame the civil rights movement, further encouraging violence. The Commission instructed newspapers to suppress the reporting of violence against Black persons.

The Clarion Ledger has recently apologized for its activities. And just as the paper's influence was used to perpetuate the violence and other evils of the past, it subsequently has become a voice for restoration of civil society. Since 1989, Jerry Mitchell has reported in the Clarion Ledger about the crimes of the civil rights era. His
investigations have been responsible for uncovering long ignored evidence and pressing communities and prosecutors to bring these cases to trial. It is very likely that there would have been no new trial in the Medgar Evers killing, the Birmingham Church bombings, the Vernon Dahmer murder, the Neshoba murders, and now pending trial, one of the accused killers of Charles Eddie Moore and Henry Hezekiah Dee, without Jerry Mitchell's tireless investigative reporting.

So, the press can be a powerful voice in the struggle for restorative justice. However, none of the trials that have been held have resulted in open discussion by the states as to the involvement and responsibility of state actors for the crimes. Nor have the trials generated recognition of governmental responsibility for the deliberate creation of an atmosphere of fear and a sanctioning of violence, which permitted and in fact encouraged, the brutality and oppression that was a constant fact of life. To the extent that this opportunity for truth telling has been lost, the trials have been inadequate in reaching for restorative justice.

One significant result of the Killen case may be found in the opinion rendered this month by the Mississippi Supreme Court. The opinion recited not only the entire murder plot, including the Klan participation of police, sheriff's deputy, and state patrol, but which also acknowledged something of the intensely racist and violent society which spawned the murders. What was not discussed was the participation of the government itself in actions that created, encouraged, and perpetuated the violence. The law enforcement officers who were part of murder conspiracies were not rogues, but rather the known enforcers of the state's plan to suppress its African American population. The shortcoming of the criminal justice system as a mechanism of societal restoration is that

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6 See supra, Killen v. State, 958 So.2d 172.
the court may only rule upon the evidence before it. So, the high governmental officials who deliberately constructed the machinery of suppression, who intentionally fed the flames of hatred, and those who continue to do so, are not before the Bar of Justice.

Is restorative justice possible? Meaningful restorative justice will require broad-based personal engagement and painful honesty from all of us who must finally face up to the issues of race and poverty in America. To be meaningful, the debate must engage all of civil society. The debate might be stimulated by the nascent efforts at symbolic justice we are just beginning to see, even amidst current regressive national politics. A few state legislatures are actually debating public apologies for the institution of slavery. It is not clear what the significance of such apologies are when the issues in this debate remain at least partially framed by those who seem to be still fighting the Civil War.

And, there are those in public life who not only refuse to acknowledge any responsibility for the past but who continue to exploit the vestiges of Jim Crow as a political organizing tool. So, are the trials of old men, generations after the crimes, relevant to restorative justice? Possibly, but with the important caution that we not lose sight of today's broader context. There is some danger that trials that focus only on a few notorious events of the past can even serve as an excuse for not facing today's hard truths about America's fractured society. Trials may provide some opportunity to expose the racial hatred, violence and degradation that destroyed the lives of so many. But if the focus is too narrow, the context can be lost.

The overarching complicity of government and the common heritage of our nation, derived from slavery and its legacies of racism and poverty, are among the hardest
of truths for Americans to acknowledge and to confront. But without an honest accounting for our history, we cannot move forward.

If these trials can help facilitate this urgent dialogue, even in some small way, they may be worthwhile.