

2020

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Recommended Citation

Russell-Brown, Katheryn (2020) "The Dog Walker, the Birdwatcher and Racial Voice: The Manifest Need to Punish Racial Hoaxes," *University of Florida Journal of Law & Public Policy*. Vol. 31: Iss. 1, Article 11.
Available at: <https://scholarship.law.ufl.edu/jlpp/vol31/iss1/11>

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THE DOG WALKER, THE BIRDWATCHER AND RACIAL VOICE: THE MANIFEST NEED TO PUNISH RACIAL HOAXES

Katheryn Russell-Brown

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INTRODUCTION

On May 25, 2020, the same day that George Floyd was killed, there was a different but related racial encounter. That day, Amy Cooper, a White woman, and Christian Cooper, a Black man, crossed paths in New York City’s Central Park.¹ Their encounter led to the most recent national incident involving a racial hoax²—cases where someone who files a false police report relies on racial stereotyping to legitimize their false claim of victimization.³ By triggering images of the *criminalblackman*,⁴ racial hoaxes act as a kind of racial dog whistle. Amy Cooper was walking her dog in a section of Central Park that required owners to leash their dogs.⁵ There was signage to this effect.⁶ While there, Amy encountered Christian, a bird watcher, who asked that she leash her dog.⁷ Amy declined and Christian responded, “[l]ook, if you’re going to do what you want, I’m going to do what I want, but you’re not going to like it[.]”⁸ and

1. Amir Vera & Laura Ly, *White woman who called police on a black man bird-watching in Central Park has been fired*, CNN (May 26, 2020, 4:21 PM), <https://www.cnn.com/2020/05/26/us/central-park-video-dog-video-african-american-trnd/index.html> [<https://perma.cc/K4W4-JBAU>].

2. See Sarah Maslin Mir, *White Woman Fired After Calling Police on Black Man in Central Park*, N.Y. TIMES (May 27, 2020), <https://www.nytimes.com/2020/05/26/nyregion/amy-cooper-dog-central-park.html> [<https://perma.cc/YT6D-EKTV>].

3. KATHERYN RUSSELL-BROWN, *THE COLOR OF CRIME* (2021), forthcoming. Text catalogues 132 racial hoax cases.

4. *Id.* at 14.

5. ABC7, *Central Park: White woman ID’ed as Amy Cooper in NYC calls police on black man over dog leash*, YOUTUBE (May 26, 2020), <https://youtu.be/lalQ3ABWIZA> [<https://perma.cc/3SW7-PKBE>] [hereinafter *Central Park Video*].

6. *Id.*

7. See Mir, *supra* note 2.

8. Vera & Ly, *supra* note 1.

proceeded to offer dog treats to her pet.⁹ He also began filming the exchange.¹⁰ Amy, who appears visibly upset, walks quickly toward Christian and asks him to turn off his camera.¹¹ He refuses and she responds by saying she's going to call the police and tell them she is being threatened by "an African American."¹² Amy makes two calls to the New York Police Department and in one she tells the 911 operator, "There is a man, African American, he has a bicycle helmet and he's recording me and threatening me and my dog."¹³ She further embellishes her claims and states, "I am being threatened by a man in the Ramble, please send the cops immediately!"¹⁴ The police responded to the call and after speaking with Amy Cooper and Christian Cooper they concluded there had been a verbal dispute and no arrest was made.¹⁵ Later that evening, Christian Cooper's sister posted the video online.¹⁶ In this case, Christian Cooper was fortunate that the incident amounted to nothing more than an inconvenience.

This Essay shines a spotlight on racial hoaxes, as both historical and contemporary phenomena. The discussion proceeds with three objectives in mind. First, to provide a context for racial hoaxes. This history shows that hoaxes are not benign offenses. Second, to identify the legal and social harms of racial hoaxes. Third, to discuss why sanctions for hoaxes should be reimagined to impose harms that deter future hoaxes. The fact that racial hoaxes continue to be deployed demonstrates that they carry legal and cultural weight. Racial hoaxes are used to activate and privilege some voices over others. The resulting inequity courses through the justice system and makes it possible for some people to give less credence to and have less concern for Black bodies.

I. THE LEGACY OF RACIAL HOAXES

U.S. history has a lengthy catalogue of cases involving violence and harassment against Blacks that began with racial hoaxes. The 1921 Tulsa, Oklahoma massacre was initiated by a false claim that a Black man had

9. *Id.*

10. *See* Mir, *supra* note 2.

11. *Central Park Video*, *supra* note 5.

12. Mir, *supra* note 2.

13. *Id.*

14. *Id.*

15. Kimberly Dole, *Woman in Viral Central Park Video Fired by Employer: 'We Do Not Tolerate Racism of Any Kind,'* 1010 WINS (May 26, 2020, 11:18 AM), <https://1010wins.radio.com/articles/no-arrests-made-in-viral-of-white-woman-in-central-park> [<https://perma.cc/V5AW-42VW>].

16. Allie Yang, *Christian Cooper accepts apology from woman at center of Central Park confrontation*, ABC NEWS (May 28, 2020, 2:59 PM), <https://abcnews.go.com/US/christian-cooper-accepts-apology-woman-center-central-park/story?id=70926679> [<https://perma.cc/NS8D-XZC2>].

attempted to sexually assault a White woman.¹⁷ The story energized scores of Whites to begin burning Black-owned properties, and, additionally, to begin shooting and rounding up Blacks in the Greenwood district of the city.¹⁸ This area, which was known as “Black Wall Street,” was home to a prosperous Black community of teachers, doctors, lawyers, and business owners.¹⁹ The fabricated crime was used to justify wide scale carnage, including officials who deputized White citizens to act as police and round up and detain Blacks in Tulsa’s convention center.²⁰ It is estimated that over 800 people were injured and that somewhere between 30 and 300 people were killed.²¹ In this case, there was massive damage to both people and property.²² The 35-square blocks of Greenwood were burned to the ground.²³ In this instance, the hoax was used to regulate and reduce Black advancement and Black humanity.

A false claim that a Black man had assaulted a White woman ignited the Rosewood, Florida massacre.²⁴ In 1923, Whites in Sumner, Florida used the allegations to justify burning down property and also to justify killing Blacks in the neighboring Black town of Rosewood.²⁵ It is estimated that as many as 150 Blacks were killed.²⁶ The 1931 Scottsboro Boys case is another instance of a false claim of sexual assault being used

17. *Scottsboro: An American Tragedy*, PBS (Apr. 2, 2001), <https://www.pbs.org/wgbh/americanexperience/films/scottsboro/> [https://perma.cc/L3MZ-KAAG] [hereinafter PBS].

18. *Id.*

19. Shelia Poole, *Tulsa Race Riots: White mobs reduced black community to rubble in 1921*, ATLANTA J.-CONST. (June 12, 2020), <https://www.ajc.com/lifestyles/tulsa-race-riots-white-mobs-reduced-black-community-rubble-1921/dqF7KzOZgBJLwnerouWbWP/> [https://perma.cc/CH4D-ZVMP].

20. *Id.*

21. Laurie Ochoa, ‘*Watchmen*’ revived it. But the history of the 1921 Tulsa race massacre was nearly lost, L.A. TIMES (Oct. 27, 2019, 11:29 AM), <https://www.latimes.com/entertainment-arts/story/2019-10-27/history-behind-the-tulsa-race-massacre-shown-in-watchmen>.

22. *See id.*

23. Gretchen Frazee, *What happened 99 years ago in the Tulsa Race Massacre*, PBS (June 19, 2020, 10:51 AM), <https://www.pbs.org/newshour/nation/what-happened-99-years-ago-in-the-tulsa-race-massacre> [https://perma.cc/76VX-9TQ4]; ALFRED L. BROPHY, RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921: RACE, REPARATIONS, AND RECONCILIATION 44 (2002).

24. R. Thomas Dye, *The Rosewood Massacre: History and the Making of Public Policy*, 19 PUBLIC HISTORIAN 25, 29 (1997).

25. *Id.* at 29–32.

26. *See id.* at 25. In 1994, Black descendants of Rosewood victims were awarded \$2 million in reparations, *Jan. 1, 1923: Rosewood Massacre*, ZINN EDUCATION PROJECT: TEACHING PEOPLE’S HISTORY, <https://www.zinnedproject.org/news/tdih/rosewood-massacre/> [https://perma.cc/6LJD-WBLH] (last visited Sept. 14, 2020); Margo Harakas, “Owed to Rosewood Voices from a Florida Town That Died in a Racial Firestorm 70 Years Ago Rise from the Ashes, Asking for Justice,” SUN SENTINEL (Feb. 23, 1993), <https://www.sun-sentinel.com/news/fl-xpm-1993-02-21-9301110134-story.html> [https://perma.cc/PXH8-GVZV].

to rally Whites to punish innocent Blacks.²⁷ Two White women claimed that they had been assaulted and raped by nine Black men.²⁸ As a result of these false allegations, eight of the men were sentenced to death and the remaining man's case resulted in a hung jury.²⁹ One of the women, Ruby Bates, later recanted her story.³⁰ The Emmett Till case is another well-known instance of a racial hoax that ended with severe consequences.³¹ In 1955, Till, a fourteen-year-old Black youth from Chicago, visited his Mississippi relatives.³² While patronizing a store, the clerk, a White woman named Carolyn Bryant, told her husband that he had made sexual advances towards her.³³ Bryant's husband, Roy Bryant, and his brother, J.W. Milam, kidnapped Till from his uncle's home.³⁴ Till was killed and his body was dumped into the Tallahatchie River.³⁵ Bryant and Milam, who were charged with Till's murder, were acquitted by an all-White jury.³⁶ A year later, they confessed to murdering Till and provided details of the killing.³⁷

Racial hoaxes in contemporary times do not typically trigger the same violence, however, they can cause clear and consequential harm.³⁸ In 1989, Charles Stuart told Boston police that as he and his wife, Carol (who was seven months pregnant), were returning home from a birthing class, they were robbed and shot by a Black man wearing a jogging suit.³⁹ After Stuart's initial claims, police scoured the Mission Hill neighborhood in Boston.⁴⁰ Following a police line-up, Stuart picked William Bennett, who he said looked like the man who attacked them.⁴¹

27. PBS, *supra* note 17.

28. *Id.*

29. *Id.*

30. *Id.*

31. See generally Ed Pilkington, *Will justice finally be done for Emmett Till? Family hope a 65-year wait may soon be over*, GUARDIAN (Apr. 25, 2020, 2:00 PM), <https://www.theguardian.com/us-news/2020/apr/25/emmett-till-long-wait-for-justice> [<https://perma.cc/WA3N-GGFL>].

32. *Id.*

33. Carolyn Bryant Donham has provided different accounts about her encounter with Emmett Till. See generally *id.*

34. *Id.*

35. *Id.*; see generally RUSSELL-BROWN, *THE COLOR OF CRIME*, *supra* note 3, at 23–24.

36. Pilkington, *supra* note 31.

37. *Id.*

38. See Jan Ransom, *Case Against Amy Cooper Lacks Key Element: Victim's Cooperation*, N.Y. TIMES (July 7, 2020), <https://www.nytimes.com/2020/07/07/nyregion/amy-cooper-central-park-report-charge.html> [<https://perma.cc/2U9V-Y7F9>].

39. RUSSELL-BROWN, *supra* note 3, at 169.

40. *Id.*

41. *Id.* at 100.

Carol Stuart and the unborn child died days later.⁴² After police began to suspect Stuart, he committed suicide.⁴³

In the 1994 Susan Smith case, a White South Carolina mother told police that she had been carjacked by a young Black man.⁴⁴ Her claims led to a national manhunt involving state and federal law enforcement.⁴⁵ Young Black men in Union, South Carolina were stopped, questioned, and detained.⁴⁶ Nine days later Smith admitted that she had made up the carjacking story.⁴⁷ She had drowned her two boys in her car.⁴⁸

This backdrop of racial hoax cases provides context for public reaction to the Amy Cooper case. Whites who fabricate stories about Blacks committing crime are more likely to be perceived as credible and these racial tales have the potential to cause grave harm. Racial hoaxes work in large part based on how we categorize victims and our stereotypes about race.

II. TESTIMONIAL CAPACITY AND RACE

From the slave codes to the modern era, the U.S. justice system has privileged White voices and silenced Black voices. The history of laws on testimonial capacity illustrates this point.⁴⁹ Under the slave codes, Blacks were not allowed to serve as witnesses in cases involving Whites.⁵⁰ Free states also precluded Black testimonial capacity.⁵¹ An 1850 California law provided that “No Black or Mulatto person, or Indian, shall be allowed to give evidence in favor of, or against a [W]hite man.”⁵² After slavery ended, the 1866 Civil Rights Act was passed.⁵³ While the legislation granted testimonial rights to all, racial reform was scattershot.⁵⁴ All told, “[W]hite voices were the only voices of legal

42. *Id.*

43. *Id.*

44. *Id.* at 99.

45. RUSSELL-BROWN, *supra* note 3, at 99.

46. *See Smith's brother apologizes to blacks for carjack hoax*, TAMPA BAY TIMES (Oct. 7, 2005), <https://www.tampabay.com/archive/1994/11/09/smith-s-brother-apologizes-to-blacks-for-carjack-hoax/> [<https://perma.cc/9FNR-9V4C>].

47. RUSSELL-BROWN, *supra* note 3, at 99.

48. *Id.*

49. FREDERICK C. BRIGHTLY, *A DIGEST OF THE DECISIONS OF THE FEDERAL COURTS, FROM THE ORGANIZATION OF THE GOVERNMENT TO THE PRESENT TIME* 403 (1870).

50. *See, e.g.*, J. Clay Smith, *Justice and Jurisprudence and the Black Lawyer*, 69 NOTRE DAME L. REV. 1077, 1106 (1994).

51. *See* Paul Finkelman, *Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North*, 17 RUTGERS L.J. 415, 424–25 (1986).

52. *See* *People v. Hall*, 4 Cal. 399, 400 (1854) (citing 1850 Cal. Stat. 230).

53. Civil Rights Act of 1866, 14 Stat. 27–30 (1866).

54. *See* Amanda Carlin, *The Courtroom as White Space: Racial Performance as Noncredibility*, 63 UCLA L. REV. 450, 457 & 457 n.26 (2016).

truth.”⁵⁵ For centuries the legal system has treated the words of Black people (and other people of color), as untrustworthy compared with the words of White people.⁵⁶ Laws which explicitly denied Blacks the right to bear legal witness against Whites,⁵⁷ were part of larger system of racial hierarchy that undermined Black civil rights and liberties.⁵⁸

This complex socio-legal system includes interconnected policies, practices, and laws that have prevented Blacks from being on equal footing with Whites. Examples include laws that banned Blacks from becoming police officers (or limited their authority to Black neighborhoods),⁵⁹ segregated public schooling,⁶⁰ courtroom practices of referring to Black witnesses by their first names,⁶¹ redlining, restrictive covenants, denial of voting rights, Jim Crow laws that assigned separate and inferior spaces for Blacks to eat, drink, sit, and play separately from Whites, police violence,⁶² and White vigilantes who punished Blacks they believed had undermined the status quo. Together these laws and practices expressed an unimpeachable conclusion that “White is right.” Over two centuries, the legal and social diminishment of Black life has enabled killings like that of George Floyd—who was killed in broad daylight by Minneapolis police officer, Derek Chauvin, who held his knee on Floyd’s neck for nearly nine minutes, while other officers and citizens watched and recorded the incident.⁶³

This history and background is necessary to understand the potential impact of the actions and language used by Amy Cooper. She used her words to place herself on a privileged testimonial perch. Not only did she warn Christian Cooper that she would tell the police that she’s being threatened by an African American man, but when she calls the police, she emphasizes that her alleged attacker is an “African American” man.⁶⁴

55. *Id.* at 455.

56. *Id.* at 452–53.

57. *Id.* at 455.

58. *See id.* at 476.

59. Taylor Hosking, “The Long History of Black Officers Reforming Policing From Within,” *THE ATLANTIC* (Dec. 5, 2017), <https://www.theatlantic.com/politics/archive/2017/12/the-long-history-of-black-officers-reforming-policing-from-within/547457/> [<https://perma.cc/JH9C-4V78>]; *see also* W. MARVIN DULANEY, *BLACK POLICE IN AMERICA* 8 (1996).

60. PAULI MURRAY, *STATES’ LAWS ON RACE AND COLOR* 14 (Pauli Murray ed., 1997).

61. *See Mary Hamilton*, LDF: THURGOOD MARSHALL INSTITUTE, <https://tminstituteldf.org/tmi-explains/thurgood-marshall-institute-briefs/tmi-briefs-active-voice/mary-hamilton/> [<https://perma.cc/2AB2-U8B9>] (last visited Sept. 15, 2020); *Ex parte* Hamilton, 156 So. 2d 926, 926 (Ala. 1963), *rev’d sub nom*, *Hamilton v. Alabama*, 376 U.S. 650 (1964).

62. *See, e.g.*, *Jamison v. McClendon*, 2020 WL 4497723, at *2 (S.D. Miss. 2020).

63. *George Floyd: What happened in the final moments of his life*, BBC (July 16, 2020), <https://www.bbc.com/news/world-us-canada-52861726> [<https://perma.cc/F6XB-CZ62>].

64. Jan Ransom, *Amy Cooper Faces Charges After Calling Police on Black Bird-Watcher*, *N.Y. TIMES* (July 8, 2020), <https://www.nytimes.com/2020/07/06/nyregion/amy-cooper-false-report-charge.html> [<https://perma.cc/S8XW-5CKB>].

By doing this, Amy Cooper was tapping into two presumptive racial truths; that White women are justifiably fearful of Black men and that White narratives are more trustworthy than Black narratives.

III. RACIAL HOAXES AS GROUP HARM

After weeks of calls for the NYPD to file a criminal claim against Amy Cooper,⁶⁵ she was charged with filing a false report in the third degree, a Class A misdemeanor offense that carries a maximum penalty of a year in jail or probation for three years, and a maximum fine of \$1,000.⁶⁶ The case was dismissed following Amy Cooper's completion of five therapy sessions focused on racial identity. Christian Cooper declined to cooperate with the investigation because he believed that Amy Cooper was already punished for the harms caused by her actions.⁶⁷ The taped encounter received widespread national attention and Amy Cooper was heavily criticized on social media and was fired from her job.⁶⁸ This raises the question, who was harmed by Amy Cooper's racial hoax? By his response, Christian Cooper appears to classify the incident as a private encounter between citizens, one that caused him, and only him, offense.⁶⁹ In this view, the encounter was a microaggression—a personal racial slight.⁷⁰

However, an alternative analysis is that racial hoaxes cause not only individual harm but also group harm. Thus, any innocent person who is subject to questioning (Susan Smith case),⁷¹ arrest (Charles Stuart case),⁷² harassment or death (Tulsa massacre,⁷³ Rosewood,⁷⁴ Scottsboro Boys,⁷⁵

65. Janelle Griffith, *NYC officials call for police probe of white woman's 911 call on black man in Central Park*, NBC NEWS (May 28, 2020, 4:03 PM), <https://www.nbcnews.com/news/us-news/nyc-officials-call-police-probe-white-woman-s-911-call-n1216451> [<https://perma.cc/K68R-2CKH>].

66. Kelly McLaughlin, *Amy Cooper, the woman who called 911 on a Black bird-watcher in Central Park, has been charged with falsely reporting an incident*, INSIDER (July 6, 2020, 3:24 PM), <https://www.insider.com/amy-cooper-charged-false-reporting-central-park-incident-christian-cooper-2020-7> [<https://perma.cc/BY3H-TH75>]; N.Y. PENAL LAW § 240.50 (McKinney 2019).

67. See Jan Ransom, *Case Against Amy Cooper Lacks Key Element: Victim's Cooperation*, N.Y. TIMES (Sept. 9, 2020), <https://www.nytimes.com/2020/07/07/nyregion/amy-cooper-central-park-false-report-charge.html> [<https://perma.cc/GBS2-SD8D>].

68. *Id.*

69. *See id.*

70. CHESTER M. PIERCE, *THE BLACK SEVENTIES* 265, 266, 272 & 282 (Floyd B. Barbour ed., 1970) (describing microaggressions as “subtle” and “automatic” exchanges or put downs).

71. RUSSELL-BROWN, *supra* note 3, at 99.

72. *Id.* at 169.

73. PBS, *supra* note 17.

74. Dye, *supra* note 24.

75. PBS, *supra* note 27.

and Emmett Till⁷⁶ cases) as the result of a racial hoax is harmed. Racial hoaxes also pose harm to Blacks as a group. They are reminders of the prevailing racial narratives about Blackness (that equate it with criminality)⁷⁷ and the precarity of safety in public spaces, if challenged by Whites.⁷⁸ Racial hoaxes illuminate the unassailability of White allegations against Blacks. This constricts how Blacks navigate public spaces.⁷⁹ In addition to causing harm to Blacks as a group, these hoaxes amplify existing racial inequities by re-ringing the racial bell. As history makes clear, racial hoaxes have been used as a cloak for racial violence. They create further division between Blacks and police agencies.⁸⁰

IV. SANCTIONS

This discussion has presented an overview of how racial hoaxes reflect and reinforce the existing racial legal hierarchy. Given the myriad harms that hoaxes can cause, the question arises: How should they be punished? There are laws against filing false reports of crime: in most jurisdictions, filing a false police claim is a misdemeanor offense, subject to a fine and less than one year behind bars.⁸¹ In those instances where a racial hoax perpetrator is charged with any offense, it is filing a false report.⁸² However, state and federal laws are largely silent on punishing the unique harms posed by racial hoaxes.⁸³ Notably, the day after the Cooper incident, a New York state legislator introduced a bill that would make filing a false police report eligible for a hate crime charge.⁸⁴

A strong case can be made that people who perpetrate racial hoaxes should face serious punishment. For the law to function as a deterrent, hoax perpetrators (and the public at large), have to know that they will likely face punishment. As noted earlier, most racial hoax perpetrators are not charged with filing a false police report—the one law on the books that covers their actions.⁸⁵ Therefore, step one requires that hoax

76. Pilkington, *supra* note 31.

77. See Chan Tov McNamara, *White Caller Crime: Racialized Police Communication and Existing While Black*, 24 MICH. J. RACE & L. 334, 344 & 348 (2019).

78. See *id.* at 353 (2019).

79. When a racial hoax becomes national news, it becomes a “macroaggression.” See RUSSELL-BROWN, *supra* note 3, at 27.

80. RUSSELL-BROWN, *supra* note 3, at 44.

81. See, e.g., CAL. PENAL CODE § 148.5 (West 2020) (punishable by maximum fine of \$1,000 and/or 6 months in jail).

82. In approximately less than one half of cases identified as racial hoaxes was the perpetrator charged with filing a false police report. RUSSELL-BROWN, *supra* note 3, at 106.

83. In 1995, in response to two high profile hoax cases, a New Jersey state legislator introduced a bill designed to punish hoax offenders. It was never passed. RUSSELL-BROWN, *supra* note 3, at 122.

84. H.D. A3566, 116th Assemb., Legis. Sess. (N.Y. 2019).

85. RUSSELL-BROWN, *supra* note 3.

perpetrators face charges for their racially-charged false reports. Step two is that the sanction should deter not only a particular perpetrator from committing other hoaxes in the future, it should also deter others in the general public from committing racial hoaxes.⁸⁶ This could be done by increasing the maximum fine from \$1,000 to \$5,000.⁸⁷ Step three is to determine whether the racial hoax caused specific identifiable individual harm. If so, that could be considered an aggravating factor. The final step requires a look at whether racial hoax perpetrators should face incarceration. If so, then a determination must be made whether a longer period—over one year—is warranted. Related to this is the consideration of whether the level of offense should be raised from a misdemeanor to a felony. Increasing time beyond bars for commission of a racial hoax is not ideal. It is also worth considering whether other types of sanctions should be imposed, such as community service, an apology, or racial bias training.⁸⁸ The goal here is to have laws and practices in place that acknowledge the seriousness of the racial hoax and punish it accordingly. In doing so, a racial hoax law can help to restore the voice of the disenfranchised, those who have historically been denied testimonial capacity.

CLOSING THOUGHTS

Racial hoaxes have a long and sordid history. This Essay highlights what this history tells us about how they have been used to criminalize Black life. Specifically, these hoaxes reinforce racial hierarchy by privileging statements made by Whites over those made by Blacks. As discussed, this inequity is deeply rooted in legislation that deemed it unlawful for Blacks to testify and in any way bear witness against Whites.⁸⁹ The racial hoax is a direct descendant of these laws. False reports of crime that invoke race are symptomatic of a justice system that allows race to impact outcomes. Racial hoaxes inflict varied harm, including on those who are wrongfully brought in the justice system due to a false claim. False claims create further support for Black fear and loathing of interactions with law enforcement. The community harm is greatest in racial hoax cases that receive national attention. Cases such as Amy Cooper's sound a loud cautionary bell of racial distress. Given the harms and potential harms of racial hoaxes, the sanctions should be greater and alternative penalties should be given serious consideration. Recent incidents have pushed large numbers of American citizens to reflect inward and outward to examine how race and systemic racism are

86. Katheryn K. Russell, *The Racial Hoax as Crime: The Law as Affirmation*, 71 INDIANA L.J. 594, 619 (1996).

87. *See id.*

88. *Id.*

89. *See* Smith, *supra* note 50.

embedded in our institutions, particularly the justice system. Reflection and revised approaches are necessary. Otherwise, we can expect past to be prologue, and another racial hoax will result in unnecessary detainment, delinquency, destruction, or death.