RESOLVED, That the American Bar Association urges Congress to enact the Emmett Till Antilynching Act or similar legislation to provide that whoever conspires with another person to violate section 245, 247, or 249 of United States Code title 18 or section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) shall be punished in the same manner as a completed violation of such section, except that if the maximum term of imprisonment for such completed violation is less than 10 years, the person may be imprisoned for not more than 10 years.

FURTHER RESOLVED, That the American Bar Association urges state, local, territorial, and tribal governments to enact legislation containing criminal and civil sanctions to prohibit lynching, conspiracies to lynch, attempts to lynch, or solicitations to lynch a person, no matter the form or manner in which the lynching may take place or is proposed to take place, on the basis of race, color, national origin, age, gender, sexual orientation, gender identity, religion, disability, government position, or association with any political or non-governmental organization.
REPORT

BACKGROUND

Lynching: verb (used with object) to put to death, especially by hanging, by mob action and without legal authority.\(^1\) Lynch law: noun the administration of summary punishment, especially death, upon a suspected, accused, or convicted person by a mob acting without legal process or authority.\(^2\) Lynching victims that are hung often die as a result of asphyxiation and are thus killed due to being deprived of oxygen.\(^3\)

Lynching in this country had the highest reported incidents between 1882 and 1968, with at least 4,742 people falling victim to this barbaric practice, most of whom were African Americans.\(^4\) African American death by asphyxiation or other means at the hands of mob action and without legal authority continues today.

Lynching has been used to reinforce the racial inequality that resulted from the “race”-based Atlantic Slave Trade. In the words of the renowned anti-lynching journalist Ms. Ida B. Wells, “In slave times the Negro was kept subservient and submissive by the frequency and severity of the scourging, but, with freedom, a new system of intimidation came into vogue; the Negro was not only whipped and scourged; he was killed.” Lynching was done to make a fatal example out of victims. The Equal Justice Initiative, led by Bryan Stevenson, found that approximately 4,383 racial terror lynchings were reported between 1877 and 1950 in the United States.\(^5\) Instances of lynching differed by geographical location. Due to the legacy of slavery, overwhelming numbers of victims were from the Southern states.\(^6\)

Initially, lynching was synonymous with tarring, feathering, beating, and flogging. However, in 1835, the first recorded incident of lynching by hanging occurred.\(^7\) Lynching and the threat of lynching were often employed to enforce Black exploitation. However, the savage practice was also recorded as being inflicted upon white people and Latinx, although at much lower rates.\(^8\)

Lynching was often justified and generally not prosecuted by government agencies. If white people felt that Black men made advances at white women, committed “minor social transgressions” or demanded their lawful rights and equal treatment, they could face a
violently. The societal justifications for lynching are part and parcel of a scheme of dominance and control over Black bodies as an attempt to reinforce social structures created by slavery.

Slavery officially ended in 1863, however many bondsmen did not realize their freedom until almost two years after the Emancipation Proclamation was signed. This delayed notification time gap is the basis for the Juneteenth celebration where bondsmen in Texas finally realized their freedom on June 19, 1865. Once freedom was fully realized by Black people, lynching was used in attempts to cement the racial dominance and superiority of white people over Black people that slavery established. Such terrorist acts were carried out by white terror groups. In addition to asserting racial dominance, such terror groups worked to set the labor discipline of blacks outside of slavery. Black men were often the target of such discipline, but Black women were also lynched, raped and mutilated.

After Reconstruction ended in 1876, many southern former slave states created constitutions that reinforced segregation and racism. The Black Codes are an example of such laws. The Black Codes were racist laws that created criminal offenses to foster a system where Black people would be easily arrested or incarcerated. Jim Crow, which describes systemic segregation and subjugation of southern Blacks, systemically underpinned lynching because it lent itself to white dominance and Black subjugation.

Many photos depicting lynching show them as public spectacles. These public spectacles often included white mobs attacking black victims, who were often not lawfully accused of criminal acts. There are several examples of lynchings: Edward Johnson, Ballie Crutchfield, Keith Bowen, Mr. and Mrs. Luther Holbert, Ell Persons, Henry Smith, and most recently Brandon McCleland in 2008 in Texas, are just a few examples of this gruesome means of maintaining white supremacy and privilege. With their public spectacle nature, lynchings were often like carnivals where attendees could purchase snacks, beverages, and bloody souvenirs. Exemplary of this, Mrs. Luther Holbert’s fingers were chopped off and passed around as souvenirs in 1904. The worst part about this uncivilized practice was that those who lynched blacks faced no legal repercussions.

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10 Id. at 15.
11 Id. at 23.
12 Id. at 25.
13 Id. at 28-29.
14 Id. at 29.
15 Id. at 29.
16 Id. at 30.
17 Id. at 33.
18 Id. at 35.
19 Id. at 36.
20 Id. at 37.
21 Id. at 33.
22 Id. at 35.
Although lynchings have been reported less than they were directly following post-Emancipation and the Civil Rights Era, it was replaced with the death penalty.\textsuperscript{23}

**IMPACT**

The psychological impact and imminent threat of seeing blacks being lynched, or even witnessing a lynching sent the message that blacks were less than human, although slavery had ended. Due to the high instance of lynchings in the South, many southern Blacks often fled to the North to escape the threat of lynching. The lynchings were also often done in Black commercial districts, which ensured that the victims were examples of what not to do. The visibility of these acts reinforced fear and white domination.\textsuperscript{24} Lynchings also spread false and negative stereotypes of Black people as dangerous, violent sexual aggressors, which effectively controlled and criminalized Black people.\textsuperscript{25}

Lynching racialized criminality and Black people were assigned a presumption of guilt without ever being tried, as the law requires. Although Black lynching victims were often falsely accused of such negative attributes, 99\% of all known and often public perpetrators escaped any form of punishment at the state and local levels.\textsuperscript{26} In some cases, mobs of whites would even seize blacks who were being held but had not been accused of crimes from jail to lynch and terrorize them.\textsuperscript{27} Thus, there was active knowledge of those in lynch mobs, whom they killed and yet they still were not punished for their very public acts.

**FEDERAL RESPONSE**

In response to this crisis, the Federal government did make some attempts to step in. In 1922 the Dyer Bill was introduced\textsuperscript{28}. Between 1920 and 1940 Congress passed anti-lynching measures. However, the Federal government failed to enact anti-lynching legislation despite requests of elected officials and civil rights organizations\textsuperscript{29}. The Senate has apologized to victims of lynching and their descendents, for not enacting anti-lynching legislation\textsuperscript{30}. Although lynching is a heinous depraved heart historically significant crime, Congress has yet to pass anti-lynching legislation. Through this resolution, the ABA would be speaking on this matter to encourage Congress to finally act and make it clear that such measures have no place in a system dedicated to the fair administration of justice and the rule of law.

\textsuperscript{23} Id. at 62.
\textsuperscript{24} Id. at 38.
\textsuperscript{25} Id. at 29.
\textsuperscript{26} H.R. Rep. No. 35, at 5.
\textsuperscript{27} Id. at 47.
\textsuperscript{28} Id. at 53.
\textsuperscript{29} H.R. Rep. No. 35, at 11.
CONCLUSION

As killing is outlawed and punishable as one of the highest offenses in this country and around the world, lynching, which is often conducted on a public platform to intimidate African Americans, clearly belongs in the same, if not a higher category, than killing because it is a killing plus a hate crime. Lynching is an act of psychological and physical terror on its victims, witnesses and black community.\textsuperscript{31} It is the responsibility of attorneys to right this social ill.

Respectfully submitted,

Emilio Varanini, President and Chair of the Delegation,
California Lawyers Association

August 2020

\textsuperscript{31} Id. at 67.
GENERAL INFORMATION FORM

Submitting Entity: California Lawyers Association

Submitted By: Emilio Varanini, President of CLA and Chair of the CLA Delegation

1. **Summary of the Resolution(s).**

   The ABA urges federal, state, local, territorial and tribal governments to enact legislation that imposes civil and criminal sanctions for lynching others on the basis of race, color, national origin, age, gender, sexual orientation, gender identity, religion, or the presence or appearance of mental or physical disability and imposes criminal and civil sanctions.

2. **Approval by Submitting Entity.**

   California Lawyers Association Board of Representatives approved on July 14, 2020.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   Not to our knowledge.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   The Report for Resolution 06M108A, which urged Congress to appropriate funds to study the consequences of slavery, discussed lynching. This Resolution complements 06M108A.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   N/A


7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   The Association will work with relevant stakeholders within and outside the American Bar Association and the Governmental Affairs Office to implement the policy.

8. **Cost to the Association.** (Both direct and indirect costs) none
9. **Disclosure of Interest.** (If applicable) NA

10. **Referrals.** Civil Rights and Social Justice; Criminal Law Section; Commission on Disability Rights; Center for Diversity and Inclusion; Coalition on Racial and Ethnic Justice; Coalition on Sexual Orientation and Gender Identity; and Rule of Law Initiative.

11. **Name and Contact Information** (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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12. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. 

*Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Emilio Varanini, CLA Delegate and Chair of CLA delegation

Hayward, CA

Tel: (310) 991-1959

Email: eevaranini@gmail.com
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

   The ABA urges federal, state, local, territorial and tribal governments to enact legislation to prohibit lynching, conspiracies to lynch, attempts to lynch, or solicitations to lynch a person, no matter the form or manner in which the lynching may take place or is proposed to take place, on the basis of race, color, national origin, age, gender, sexual orientation, gender identity, religion, or the presence or appearance of mental or physical disability and imposes criminal and civil sanctions.

2. **Summary of the issue that the resolution addresses.**

   The Resolution addresses the need to enact legislation that prohibits lynching, attempts to lynch and/or solicitations to lynch.

3. **Please explain how the proposed policy position will address the issue.**

   The proposed policy position will allow the ABA to advocate for passage of H.R. 35 or subsequent legislation.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   None have been identified.