

Elwood Higginbotham:

Uncovering the Story of “The Hero of the Sharecroppers”



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I. Introduction

In 1935, Elwood Higginbotham was kidnapped from the Lafayette County jail in Oxford Mississippi and lynched on the edge of town. He was about twenty-eight years old, a married father of three. He had been tried for murdering a white man in self-defense and was awaiting the jury's verdict. The story of Elwood Higginbotham's life and untimely death is an untold chapter in the history of Black resistance and the systematic oppression of the courts, press, and government.

On September 19, 1935 the New York Times reported the lynching of Elwood Higginbotham.¹ The short story on page twenty one bore the headline "*Mob Lynches Negro: Mississippi Prisoner Seized as Jury Debates Murder Case.*" The same page featured a story about the Hitler Youth program in Germany and the recent creation of the National Labor Relations Board.² Franklin Delano Roosevelt was in his first term and had recently instituted New Deal programs, including the Civilian Conservation Corps and the Agricultural Adjustment Act.³ The country was in the middle of the Great Depression. National newspapers large and small carried similar accounts, all based on reporting by the Associated Press.⁴ In the Chicago

¹ *Mob Lynches Negro: Mississippi Prisoner Seized as Jury Debates Murder Case*, Sept. 19, 1935, at 21.

² See *Mob Lynches Negro: Mississippi Prisoner Seized as Jury Debates Murder Case*, N.Y Times, Sept. 19, 1935, at 21. The National Labor Relations Board was established with the enactment of the Wagner Act on July 6, 1935. National Labor Relations Act of 1935, 29 U.S.C § 153; See also Nation Labor Relations Board, *The Passage of the Wagner Act*, NLRB.gov. (accessed on Nov 11, 2016, 12:00 PM), <https://www.nlrb.gov/who-we-are/our-history/1935-passage-wagner-act>.

³ Encyclopaedia Britannica, *New Deal: United States History*, (accessed on Nov. 18, 2016, 7:00 PM), <https://www.britannica.com/event/New-Deal>.

⁴ See also *Defendant in Murder Trial Hanged by Mob*, The Lima News, Sept. 18, 1935, at 1 (Ohio); *Mob Lynches Negro on Trial: Overpower Jailer While Jury Debates Verdict in Slaying*, The San Antonio Light, Sept. 18, 1935 at 1 (Tex.); *Mob Lynches Negro on Trial for Murder*, Ogden Examiner, Sept. 18, 1935 at 1 (Utah); *Mob Hangs Negro: As Jury Deliberates on Case, Mob Breaks Into Jail*, Chillicothe Const.-Tr., Sept. 18, 1935, at 1 (Mo.).

Tribune, a headline stated, “*Colored Defendant, 28, Dragged from Cell.*”⁵ The front page of the Abilene Morning News, a Texas daily, read “*Jury Slow, Lynch Mob Gets Negro.*”⁶

Elwood Higginbotham was a sharecropper and union leader in Oxford, Mississippi.⁷ Located in the northern hills of state, Oxford is the seat of Lafayette County and home to the University of Mississippi. Elwood married May Lissie Hill on May 10, 1930, at about the age of twenty-three.⁸ He and May Lissie had three children⁹ and lived together in a three room house.¹⁰ Elwood worked as a tenant farmer on land owned by a local schoolteacher named Glen Baird.¹¹ Down the street from Baird’s property lived Glenn Roberts, a white planter.¹² On May 23, 1935 Elwood was arrested for the shooting death of Glenn Roberts.¹³ On September 17, 1935 he stood trial for murder.¹⁴ Later that same night, Elwood Higginbotham was kidnapped from jail and lynched.¹⁵

⁵ *Death Suspect is Lynched as Jury Debates: Colored Defendant, 28, Dragged from Cell*, Chi. Trib., Sept. 19, 1935, at 13.

⁶ *Jury Slow, Lynch Mob Gets Negro*, Abilene Morning News, Sept 19, 1935, at 1 (Tex.).

⁷ See Robert Wood, *Elwood Higginbotham- Hero of Sharecroppers*, Daily Worker, Sept 24, 1935 (N.Y.).

⁸ Marriage Certificate, Lafayette County, Mississippi, May 10, 1930.

⁹ Robert Wood, *Elwood Higginbotham- Hero of Sharecroppers*, Daily Worker, Sept 24, 1935 (N.Y.).

¹⁰ *Lynching at Oxford, Lafayette County, Miss., Sept. 17, 1935*, Jessie Daniel Ames Papers, Folder 5, scans 45-46.

¹¹ See *Capture of Slayer Near: Officers Closing in on Elwood Higginbottom Who Killed Glenn Roberts Tuesday Night*, Oxford Eagle, May 23, 1935 (Miss.); United States Census Record 1930, Glenn D Baird (showing Baird’s occupation as “Teaching” and industry as “School”).

¹² United States Census, “Gleen D Roberts,” Beat 1, Lafayette, Mississippi (showing Roberts and Glenn Baird in the same vicinity).

¹³ *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, Oxford Eagle, May 30, 1935, at 1 (Miss.)

¹⁴ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935 (Miss.).

¹⁵ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935 (Miss.).

II. What happened to the “Hero of the Sharecroppers”?

Elwood Higginbotham’s story was relayed by a variety of voices, each with a different and sometimes conflicting account of events. One version of the story was constructed and perpetuated by the local newspapers such as the *Oxford Eagle*, the Jackson-based *Clarion-Ledger*, and the *North Mississippi Herald*.¹⁶ African-American newspapers including the *Atlanta Daily World*, *Chicago Defender*, and the *New York Amsterdam News* reported similar facts, but with the skepticism and outrage missing from most local accounts.¹⁷ Anti-lynching organizations published their own version of Higginbotham’s story based on a field investigation, which contradicts the local account on several factual issues.¹⁸ Still another version of the story was reported by the *Daily Worker*, a Communist Party newspaper based in New York that cited a letter from an Oxford man and compatriot to Higginbotham.¹⁹ The *Daily Worker* account includes unique details and declares Higginbotham the “Hero of the Sharecroppers.”²⁰

A. The Arrest

All available accounts agree that the story begins with a conflict between Elwood Higginbotham and Glenn Roberts. The local papers did not describe the nature of the conflict,

¹⁶ The North Mississippi Herald is located in nearby Water Valley. All three of these newspapers are still in publication in the year 2016.

¹⁷ See *Mississippi’s Idea of Celebrating Constitution Day*, Chi. Def., Sept. 28, 1935, at 16; *Mississippi Man Lynched While Jury Weighs: Man Lynched While Jurors Debate Fate*, N.Y. Amsterdam News, Sept. 21, 1935, at 1; *Mob Lynches Man at End of Trial: Certain Sentence is No Deterrent for Unmasked Gang*, Atlanta Daily World, Sept. 30, 1935, at 1.

¹⁸ The investigation was conducted by the Council on Interracial Cooperation and reported by the Association of Southern Women for the Prevention of Lynching. See *Lynching at Oxford, Lafayette County, Miss., Sept. 17, 1935*, Jessie Daniel Ames Papers, Folder 5, scans 45-46, available at http://finding-aids.lib.unc.edu/03686/#folder_5#1.

¹⁹ Robert Wood, *Elwood Higginbotham- Hero of Sharecroppers*, Daily Worker, Sept 24, 1935 (N.Y.).

²⁰ *Id.*

stating only that “Mr. Roberts had had some difficulty with the negro,”²¹ and that Higginbotham “harbored hard feelings toward Roberts.”²² However, a later investigation explained that Higginbotham had “objected to Roberts’ driving cattle across his rented field.”²³ When Roberts, and perhaps other “landlords,” made plans to “cut a short road” across the land he farmed, “Higginbotham fenced off the field to save it from destruction.”²⁴ The account in the *Daily Worker* goes further to assert that Elwood was “one of the leaders of the Share Croppers Union in Oxford” and that he had “long been singled out by the landlords.”²⁵

On May 21, 1935, weeks after their initial confrontation, Roberts paid a visit to Higginbotham.²⁶ There are two distinct and contradictory versions of what transpired. According to local accounts, the farmer came to Elwood “to talk with him.”²⁷ “Roberts went to the negro’s house about something,” the *Clarion-Ledger* reported, “we don’t know what.”²⁸ Roberts then

²¹ *Capture of Slayer Near: Officers Closing in on Elwood Higginbotham, Who Killed Glenn Roberts Tuesday Night*, Oxford Eagle, May 23, 1935, at 1 (Miss.)

²² *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.).

²³ *Lynching at Oxford, Lafayette County, Miss., Sept. 17, 1935*, Jessie Daniel Ames Papers, Folder 5, scans 45-46.

²⁴ See Robert Wood, *Elwood Higginbotham- Hero of Sharecroppers*, Daily Worker, Sept 24, 1935 (N.Y.). Wood goes on to assert that “This move immediately put him into the class of ‘uppity niggers,’ in the language of the arrogant landlord class.”

²⁵ Wood, *supra*; See also *America Holds Lynching Record: 16 in 9 Months*, Chi. Def., Oct. 26, 1935, at 11 (“Higginbotham was a leader of the Share Croppers Union and had aroused the anger of the landlords.”).

²⁶ Local accounts reported that Roberts went to Higginbotham “two weeks” or “a few weeks” after they had a disagreement. Other sources are silent on the time period between the initial conflict and the later confrontation. *Capture of Slayer Near: Officers Closing in on Elwood Higginbotham, Who Killed Glenn Roberts Tuesday Night*, Oxford Eagle, May 23, 1935, at 1 (Miss.); *Slaying of Farmer Admitted by Negro: Officers Avert Mob Action- Removed to Jackson*, N. Miss. Herald, May 5, 1935; *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.).

²⁷ *Mob Hangs Negro While Jury Deliberates Fate*, N. Miss. Herald, Sept. 20, 1935.

²⁸ *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.). The *Oxford Eagle* notably omitted the fact that the confrontation took place at Higginbotham’s home. See *Capture of Slayer Near: Officers Closing in on Elwood*

asked Elwood to come outside and speak with him.²⁹ Higginbotham recognized Robert's voice, loaded a shotgun, and invited Roberts inside.³⁰ When Roberts obliged, Higginbotham shot him "in the face at close range . . . killing him almost instantly."³¹

The facts reported by the anti-lynching organizations and the *Daily Worker* directly contradicted this narrative. Instead, they describe a scene in which Roberts rallied a group of "at least 25 white farmers armed with pistols"³² and went to find Higginbotham "to whip him."³³ They arrived at Higginbotham's home at about 9:30 pm, after he and his children had gone to sleep.³⁴ The family awoke to a member of the group demanding that Elwood "open the door and come out."³⁵ Glenn Roberts then demand entrance.³⁶ When Higginbotham refused, Roberts "took an axe and broke down a back door."³⁷ Elwood warned Roberts not to come further as the farmer forced his way from the "shed-room" into the hallway. Then just outside Higginbotham's room,

Higginbotham, Who Killed Glenn Roberts Tuesday Night, Oxford Eagle, May 23, 1935, at 1 (Miss.).

²⁹ *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.) (quoting District Attorney Fred Belk); *Death Suspect is Lynched as Jury Debates*, Chi. Trib. Sept. 19, 1935, at 13 (quoting Higginbotham as stating "come inside if you want to see me").

³⁰ *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.); see also *Slaying of Farmer Admitted by Negro: Officers Avert Mob Action-Removed to Jackson*, N. Miss. Herald, May 5, 1935.

³¹ *Capture of Slayer Near: Officers Closing in on Elwood Higginbotham, Who Killed Glenn Roberts Tuesday Night*, Oxford Eagle, May 23, 1935, at 1 (Miss.); e.g., *Slaying of Farmer Admitted by Negro: Officers Avert Mob Action-Removed to Jackson*, N. Miss. Herald, May 5, 1935.

³² Wood, *supra*.

³³ Jessie Daniel Ames, *Lynching at Oxford, Lafayette County, Miss., Sept. 17, 1935*, Jessie Daniel Ames Papers, Folder 5, scans 45-46. The *Daily Worker* refers to the group as a "lynch mob." Wood, *supra*.

³⁴ Ames, *supra*.

³⁵ The *Daily Worker* reports that the name of this name was Tom Likkings. Wood, *supra*.

³⁶ Ames, *supra*.

³⁷ Ames, *supra*.

Elwood pleaded, “Now, Mr. Roberts, don’t come in here or I will hurt you.”³⁸ Stalwart, Roberts broke through the door and “from close range received in his face a charge of a shotgun shell fired by Higginbotham.”³⁹

After shooting Glenn Roberts, Elwood fled. The farmers in Roberts’ posse then sent for the sheriff.⁴⁰ “Now started one of the typical man-hunts,” the *Daily Worker* relayed, “with bloodhounds and the mob armed to the teeth rushing through the woods, hills and swamps.”⁴¹ Higginbotham evaded apprehension for two days and nights.⁴² The search became a town affair. After Robert’s funeral “citizens of Oxford and the county joined with officers,”⁴³ amassing around 300 persons.⁴⁴ Even the “boys in the C.C.C. camps nearby” may have joined.⁴⁵ The search party targeted Higginbotham’s relatives.⁴⁶ They brutally beat his sister and jailed his brother-in-law without charges.⁴⁷ His brothers were “hunted” with the intention “burning them

³⁸ Ames, *supra*.

³⁹ Ames, *supra*. The *Daily Worker* account offers a slightly altered version of this last scene, where instead of shooting Roberts in his room after waiting behind the door, “Higgenbotham, who didn’t have time to dress ran and when Roberts started after him Higgenbotham shot him down with a Winchester.” Wood, *supra*. Glenn Roberts’ death certificate confirms his manner of death as well as the time and location the incident occurred. Death Certificate, Lafayette, State File No. 7590, Glen D. Roberts.

⁴⁰ The *Daily Worker* reports “When the mob of white lynchers on the outside heard the shot, they became so frightened they left the lynch leader to his own fate and sent to town to get the law to come.” Wood, *supra*.

⁴¹ Wood, *supra*.

⁴² *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, Oxford Eagle, May 30, 1935, at 1 (Miss.).

⁴³ *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, Oxford Eagle, May 30, 1935, at 1 (Miss.).

⁴⁴ *Slaying of Farmer Admitted by Negro: Officers Avert Mob Action- Removed to Jackson*, N. Miss. Herald, May 5, 1935.

⁴⁵ Wood, *supra*.

⁴⁶ Wood, *supra*.

⁴⁷ Wood, *supra* (“Higgenbotham’s sister was beaten so mercilessly by a mob while officers looked on until her clothes in tatters was mangled in with her flesh and blood.”)

on the father's front yard should they fail to find and lynch Higginbotham."⁴⁸ A man named Doc Gray was arrested for helping Higginbotham escape.⁴⁹ The sheriff used a bloodhound owned by a man from nearby New Albany to follow Higginbotham's trail.⁵⁰ He led band of 150 men into Pontotoc County, where Higginbotham had other relatives.⁵¹ After two days and nights, Higginbotham was sighted by a young farmhand who he had asked for food.⁵² Higginbotham was finally discovered in a swamp about twenty-five miles away from his home.⁵³

Elwood was immediately marshalled to the Lee County jail at Tupelo to avoid a potential lynching by the mob,⁵⁴ though the *Oxford Eagle* avowed that "such action had not been anticipated from the level-headed Lafayette countians."⁵⁵ The article explained that after "quitting their work and joining in the manhunt to see the ends of justice met" they "wanted to bring the negro back to justice alive if it was at all possible." Even so, the mob "had been warned not to take any chances."⁵⁶ Later that night the sheriff "secretly" moved Higginbotham from

⁴⁸ Wood, *supra*

⁴⁹ *Capture of Slayer Near: Officers Closing in on Elwood Higginbotham, Who Killed Glenn Roberts Tuesday Night*, *Oxford Eagle*, May 23, 1935, at 1 (Miss.)

⁵⁰ *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, *Oxford Eagle*, May 30, 1935, at 4 (Miss.).

⁵¹ The name of the sheriff was S.T. Lyles. *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, *Oxford Eagle*, May 30, 1935, at 4 (Miss.); *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, *Clarion-Ledger*, May 25, 1935 (Miss.).

⁵² *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, *Oxford Eagle*, May 30, 1935 (Miss.).

⁵³ *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, *Clarion-Ledger*, May 25, 1935 (Miss.). The local newspapers reported that Elwood was intentionally laying in the water with just his nose showing- but had allowed too much of his face to be seen. *Id.* Alternatively, the *Daily Worker* relayed that he had been stuck in the water. Wood, *supra*.

⁵⁴ *Mob Hangs Negro While Jury Deliberates Fate*, *N. Miss. Herald*, Sept. 20, 1935.

⁵⁵ *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, *Oxford Eagle*, May 30, 1935, at 4 (Miss.).

⁵⁶ *Id.*

Tupelo to Jackson to be held at the “lynch-proof” Hinds County jail.⁵⁷ “The fact that he was caught in another county,” asserted the *Daily Worker*, “is the only explanation for Higginbotham being here yet.”⁵⁸

The day after he arrived in Jackson, Higginbotham was visited by District Attorney Fred M. Belk and County Attorney Bramlett Roberts.⁵⁹ Attorney Roberts was the nephew of the man Higginbotham had killed, Glenn Roberts.⁶⁰ The attorneys extracted a written confession that reads as an unqualified admission of guilt. It describes a version of the facts in which Higginbotham invited Roberts into his house and “fully intended on killing him.” “I killed him because I was mad at him” it states.⁶¹ “The negro is the vindictive type” District Attorney Belk is quoted as saying, “we have a clear cut case of cold blooded murder.”⁶² Local reports on the confession included a histrionic account of Higginbotham’s escape in which he reportedly “vow[ed] never to be taken alive” and hid within feet of the search posse, close enough to touch the passersby.⁶³ The narrative seems designed to characterize Higginbotham as lazy- mentioning

⁵⁷ *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.); *Mob Lynches Man at End of Trial: Certain Sentence is No Deterrent For Unmasked Gang*, Atlanta Daily World, Sept. 30, 1935, at 1.

⁵⁸ Wood, *supra*. Indeed, this incident was recorded on the NAACP’s list of “Lynchings Prevented” in 1935. NAACP Papers, 001527-004-0854, Anti-Lynching Campaign report on causes of lynching and lynching statistics (reporting Higginbotham’s first name as “Ceasar”).

⁵⁹ *E.g.*, *Slaying of Farmer Admitted by Negro: Officers Avert Mob Action- Removed to Jackson*, N. Miss. Herald, May 5, 1935.

⁶⁰ Bramlett Roberts was the son of William Isaac “Ike” Roberts, Glenn’s brother. See United States Social Security Applications and Claims Index, 1936-2007, Ike Roberts; United States Census, 1910, Bramlett Roberts; United States Census, 1880, Issac Roberts.

⁶¹ The *Clarion Ledger* states that Higginbotham repeated this confession “over and over again.” *Id.*

⁶² *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.).

⁶³ *Id.*; *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, Oxford Eagle, May 30, 1935, at 4 (Miss.);

that he abandoned his shotgun because he was “too tired to carry it,”⁶⁴ and that he took “cat-naps” while evading capture.⁶⁵ The attorneys resolved to demand the death penalty for Higginbotham and “declared their belief” that the confession would “lead to his death here at the hands of the law.”⁶⁶

B. The Trial

Higginbotham was held at the Hinds County jail from his arrest on May 23, 1935 until his trial in September of that year.⁶⁷ He was brought back to Oxford for one day at the beginning of the circuit court’s term and then again when the court was ready to hear his case on Sept 17, 1935.⁶⁸ Though trial date was originally scheduled for the previous day, the circuit court was delayed because of another murder trial- that of a white farmer named Jessie Tatum.⁶⁹ The *Oxford Eagle* called the Tatum matter “[t]he most noted or notorious case” of the session.⁷⁰ Tatum was accused of murdering his wife “for the purpose of collecting insurance on her,” and burning down his neighbors’ house for aiding the ensuing investigation.⁷¹ The court spent three

⁶⁴ *Confessed Murderer of Lafayette Farmer Held Here for Safekeeping*, Clarion-Ledger, May 25, 1935 (Miss.)

⁶⁵ *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, Oxford Eagle, May 30, 1935, at 4 (Miss.)

⁶⁶ *Captured Slayer Makes Confession: Higginbotham Now in Hinds County Jail Awaiting Circuit Action; Acknowledges Crime*, Oxford Eagle, May 30, 1935, at 1 (Miss.)

⁶⁷ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935 (Miss.).

⁶⁸ The *Oxford Eagle* noted that Higginbotham’s presence in Oxford before the trial was underway did not catalyze a “demonstration of any kind.” *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.).

⁶⁹ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.); *Jesse Tatum’s Murder Trial Friday; Higginbotham’s is Set for Monday*, Oxford Eagle, Sept. 12, 1935, at 1 (Miss.).

⁷⁰ *Jurors Drawn for September Term: Selections Being Notified of Jury Duty for September Term of Circuit Court Starting 9th*, Oxford Eagle, Aug. 29, 1935, at 1 (Miss.).

⁷¹ *Jesse Tatum’s Murder Trial Friday; Higginbotham’s is Set for Monday*, Oxford Eagle, Sept. 12, 1935, at 1 (Miss.).

days on the Tatum trial, devoting one full day selecting a jury and another hearing arguments.⁷²

Tatum received a guilty verdict and was sentenced to life imprisonment.⁷³

In stark contrast, Higginbotham's trial "started and ended quickly."⁷⁴ "The prosecution and defense attorneys agreed to make only short statements to the jury,"⁷⁵ and evidence was "limited to testimony from the sheriff, Higginbotham's wife, and the defendant."⁷⁶ Proceedings began in the morning and the jury received its charge at about 6:00 p.m. that night.⁷⁷ Judge Taylor McElroy instructed the jury to consider whether Higginbotham was justified in killing Roberts under a theory of self-defense.⁷⁸ The instruction read:

The court charges that if you believe from the evidence in this case that the deceased went to the home of the defendant on the night of the homicide and entered the home of the defendant in a rude, an angry manner, and then and there held a pistol pointing toward the defendant then and there had reasonable grounds to believe and did believe his life to be in immediate danger at the hands of the

⁷² The Tatum jury heard arguments from 7 a.m. until 11 p.m. on Monday Sept. 16, 1935. Tatum was represented by Falkner and Falkner, perhaps the younger brothers of Oxford-based author William Faulkner. *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.); United States Census 1930, Murray Falkner; United States Census, John Falkner (showing that two of Falkner's younger brothers were attorneys).

⁷³ *Id.*

⁷⁴ *Mob Lynches Man at End of Trial: Certain Sentence is No Deterrent for Unmasked Gang*, Atlanta Daily World, Sept. 30, 1935, at 1.

⁷⁵ Ames, *supra*. Higginbotham was represented by attorney L.C Hutton. *Jesse Tatum's Murder Trial Friday; Higginbotham's is Set for Monday*, Oxford Eagle, Sept. 12, 1935, at 1 (Miss.).

⁷⁶ Higginbotham's landlord was subpoenaed to appear but was not called on to testify. Ames, *supra*. The *North Mississippi Herald* claimed that a witness at the trial testified that Roberts was "shot down in cold blood." There is no indication whether that account refers to the sheriff, an unknown witness, or the recorded confession. *Mob Hangs Negro While Jury Deliberates Fate*, N. Miss. Herald, Sept. 20, 1935. Arthur Raper testified that there were other witnesses, but none of them provided direct evidence. United States Senate, Subcommittee on the Judiciary hearings, Seventy-Sixth Congress, H.R. 801, at 9 (Testimony of Arthur Raper). The Chicago Defender remarked that although no one was present at the time of "yet, the mob could find witnesses who said it was a 'cold blooded murder.'" *Mississippi's Idea of Celebrating Constitution Day*, Chi. Def., Sept. 28, 1935, at 16.

⁷⁷ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 1 (Miss.) ("The jury received the case at 6 o'clock yesterday afternoon").

⁷⁸ Ames, *supra*; Commission on Interracial Cooperation, *The Mob Still Rides: A Review of the Lynching Record, 1931-1935* at 21 (1936).

deceased, then defendant had the right to shoot and kill the deceased in his necessary self-defense, that the jury should find him not guilty.⁷⁹

Rumors that the jury would find for Higginbotham began to circulate.⁸⁰ As the Associated Negro Press related, “the jury had hardly entered the jury room for deliberation and the prisoner returned to his cell to await their verdict, before a mob began milling around the jail and talk of lynching the prisoner was started.”⁸¹ At 8:30 p.m., “no verdict had been returned.”⁸² “It was reported about town that two of the jurors were holding out for acquittal.”⁸³ Indeed, a local prosecutor expressed the opinion that “no jury would convict the Negro on the known evidence, and that if one did the court would set aside the verdict, or an appeal to a higher court would bring a reversal.”⁸⁴

C. The Lynching

While the jury continued to deliberate, a mob of white men alighted on the jail, their faces “smudged with dirt to prevent identification.”⁸⁵ The *Oxford Eagle* described the attack as “a complete surprise” to local officials,” and “evidently well planned.”⁸⁶ Sheriff Lyles was reportedly not present at the jail when the episode began.⁸⁷ First, “[t]he jail telephone wires were

⁷⁹ Ames, *supra*.

⁸⁰ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.).

⁸¹ *Mob Lynches Man at End of Trial: Certain Sentence is No Deterrent for Unmasked Gang*, Atlanta Daily World, Sept. 30, 1935, at 1.

⁸² Ames, *supra*; *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.). The Clarion-Ledger reported the time of the mob’s attack as 9:30pm. *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 1 (Miss.).

⁸³ Ames, *supra*.

⁸⁴ Commission on Interracial Cooperation, *supra*, at 21.

⁸⁵ See *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.).

⁸⁶ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.).

⁸⁷ Ames, *supra*.

cut.”⁸⁸ Then, fifty men “forced their way into the jailor’s office and demanded the cell keys.”⁸⁹ The jailor, D.A. Pritchard, refused.⁹⁰ The mob searched the office and found the keys in Pritchard’s desk, but he would not identify which key belonged to Higginbotham’s cell.⁹¹ The mob then “smashed down the doors” and found the key they were looking for.⁹² Neither the jailor nor the three sheriff’s deputies present were reportedly able to “reason with the determined men.”⁹³ They dragged the young farmer out of the jail as Higginbotham screamed and fought.⁹⁴ Then they thrust him to car waiting in the square, using four men to restrain him.⁹⁵ The sheriff is said to have arrived “just as the mob was leaving with the prisoner.”⁹⁶ He was “overpowered” by

⁸⁸ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.). This detail is not included the other available accounts of the mob’s attack.

⁸⁹ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.). Other accounts describe the mob who attacked the jail as numbering between 100-150. The *Clarion-Ledger* article describing the mob’s attack includes numerous details that are not found in other newspapers articles or the ASWPL/Ames report. The author has therefore chosen to recount the *Clarion’s* version of these specific facts which suggest that the mob began with fifty people who stormed the jail and grew to 100-150 as the lynching progressed.

⁹⁰ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

⁹¹ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

⁹² *Death Suspect is Lynched as Jury Debates*, Chi. Trib. Sept. 19, 1935, at 13. The *Oxford Eagle* recounts that when the mob broke down the door to the jail, two federal prisoners attempted to escape- Claude Lott, and Wilton Smith. The mob prevented their escape and returned them to their cells. *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 4 (Miss.).

⁹³ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.).

⁹⁴ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

⁹⁵ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.); *Death Suspect is Lynched as Jury Debates*, Chi. Trib. Sept. 19, 1935, at 13.

⁹⁶ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 4 (Miss.). The AP account describes Sheriff Lyles and present during the mob’s siege on the jail but still unable to stop them. See, e.g., *Mob Lynches Negro: Mississippi Prisoner Seized as Jury Debates Murder Case*, Sept. 19, 1935, at 21

the men, who “held him until fellow mobsters carried [Elwood] off to his death.”⁹⁷ None of the officers at the jail were injured.⁹⁸ The lynch mob drove Higginbotham two-and-a-half miles north to a wooded area on Old Russell Road near a spot known as the “Three-Way”.⁹⁹ According to the facts somehow obtained by the *Clarion Ledger*, “the victim was quiet during the ride.”¹⁰⁰

The mob carried Elwood out into the night as he “put up a strong fight.”¹⁰¹ The lynchers managed to work a “well-rope” over his head, but he trapped the rope in his mouth.¹⁰² Higginbotham fought “so strongly” that the men resorted to using a “tire tool to get the rope loose from his jaws.”¹⁰³ Finally, Elwood was “jerked to his feet and left dangling in the air as several members of the mob had fired into his body.”¹⁰⁴ His body was abandoned to hang in a tree as the members of the mob “[left] the scene of the lynching in an orderly fashion.”¹⁰⁵ At

⁹⁷ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 4 (Miss.).

⁹⁸ Ames, *supra*.

⁹⁹ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.). Many of the accounts describe the location as “in the shadow of the University of Mississippi.” That rendering seems to be more of a creative flourish for the benefit of out-of-state readers than an actual descriptor of the location’s proximity to the university—which is much closer to the center of town than the “Three Way.” See e.g., *Death Suspect Is Lynched As Jury Debates*, Chi. Trib., Sept. 19, 1935, at 13.

¹⁰⁰ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

¹⁰¹ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

¹⁰² *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.). The *Afro-American* reported that the rope used was a “[c]otton plow line.” *Filibusters Lied on Lunch Curb, F.D. Told: NAACP Says the South Won’t Stop Mobbing Without Federal Law: Year’s 13th Victim Brings New Protest: Man Slain as the Jury Debates His Fate*, Afro-American, Oct. 5, 1935, at 14 (Balt.).

¹⁰³ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

¹⁰⁴ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.). The *Clarion* mentions that “Reports that the body was mutilated were later disqualified.”

¹⁰⁵ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

about midnight, the sheriff and his deputies recovered Higginbotham's body.¹⁰⁶ He was buried in the "Boles" cemetery the next day.¹⁰⁷ The jury had still been deliberating Higginbotham's guilt when the news of the lynching made it back to the courtroom.¹⁰⁸ Judge McElroy summoned the jury and discharged them.¹⁰⁹ As the *Oxford Eagle* remarked "there was no need of any further court action in the case of state versus Elwood Higginbotham, negro."¹¹⁰

D. Official Response

On September 18th, as Elwood was buried, the Associated Press carried the story of the lynching across the country.¹¹¹ Many of the articles concluded with the same statement: "Officers announced an investigation would be made, though it was said no members of the mob were identified."¹¹² Indeed, reportedly neither the jailor nor the sheriff and his deputies could recognize even one member of the crowd that stormed the jail that evening.¹¹³ An editorial in the *Jackson Free Press* stated sardonically "[t]hat jailor ought to cultivate a memory for names and

¹⁰⁶ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.).

¹⁰⁷ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 4 (Miss.); Standard Certificate of Death, State File no. 13820, Elwood Higginbottom; see, n.169, *supra*.

¹⁰⁸ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.).

¹⁰⁹ *Id.*

¹¹⁰ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, Oxford Eagle, Sept. 19, 1935, at 1 (Miss.); *Mob Hangs Negro While Jury Deliberates Fate*, N. Miss. Herald, Sept. 20, 1935;

¹¹¹ See, *supra*, at n.

¹¹² E.g., *Mob Lynches Negro on Trial: Overpower Jailor While Jury Debates Verdict in Slaying*, The San Antonio Light, Sept. 18, 1935 at 1 (Tex.).

¹¹³ Most accounts report that the mob was unmasked, but perhaps having smudged dirt on their faces. However, the *Daily Worker* quotes Judge McElroy as stating "Sheriff Lyles told me the men were masked and could not be identified." See Wood, *supra*. The *Daily Worker* had previously reported that "none wore masks" in the mob." *Lynching of Negro Protested in Wire By Defense Group*, Daily Worker, Sept. 20, 1935 (N.Y.).

faces. It is a very valuable asset for any person who occupies a position of responsibility.”¹¹⁴ “I don’t suppose there is anything that can be done,” Judge Mc Elroy concluded, adding that “the matter ‘might be referred’ to the County Grand Jury ‘when it meets several months hence’.”¹¹⁵ No action was taken.¹¹⁶ While the AP account allowed readers to assume that justice would be done, the Associate Negro Press communicated the truth of the matter: “Another negro has been lynched in Mississippi and again whatever investigation is made will mean naught.”¹¹⁷

In Jackson, Governor Martin Conner issued a statement condemning the “spirit of mob action” and asserted that “he would have ‘done all in [his] power as governor to prevent it’.”¹¹⁸ However, he claimed, “he had received no intimation that violence was expected.”¹¹⁹ Of course, having previously “save[d] him from a mob of 300 men,” Sheriff Lyles should have expected Higginbotham’s safety to be in jeopardy when he returned to town.¹²⁰ The Commission on Interracial Cooperation reports that the court had ordered Lyles to “place extra guards around the defendant when he was brought back to Oxford for trial.”¹²¹ The sheriff could presumably also

¹¹⁴ *White Editor Twits ‘Blind’ Lynch Jailor*, Pittsburg Courier, Sept. 28, 1935, A10.

¹¹⁵ Wood, *supra*.

¹¹⁶ NAACP, *Can the States Stop Lynching?* NAACP papers (6); Arthur Raper reported that there was a “perfunctory investigation” and that a grand jury resolved that Higginbotham “came to his death at the hands of parties unknown.” United States Senate, *supra*, at 9 (Testimony of Arthur Raper).

¹¹⁷ *Mob Lynches Man at End of Trial: Certain Sentence is not Deterrent for Unmasked Gang: Jury is Out*, Atlanta Daily World, Sept. 30, 1935.

¹¹⁸ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 2 (Miss.); see generally Julius E. Thompson, *Lynchings in Mississippi: A History, 1865-1965*, 195 (2007).

¹¹⁹ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, Clarion-Ledger, Sept. 19, 1935, at 2 (Miss.).

¹²⁰ *Slaying of Farmer Admitted by Negro: Officers Avert Mob Action- Removed to Jackson*, N. Miss. Herald, May 5, 1935.

¹²¹ Commission on Interracial Cooperation, *supra*, at 12.

have acted when the mob began to form and grow as the jury deliberated.¹²² Nevertheless, the sheriff and his three deputies offered “no armed resistance” as the men removed Higginbotham from jail and carried him off to be killed.¹²³

Just a year beforehand, the *Clarion-Ledger* reported that “more and more Mississippi officers” were utilizing special safety procedures “when in doubt, or when they have reason to believe that lynching is a real possibility.”¹²⁴ In November, 1935, the sheriff and district attorney of Webster County, MS, anticipated violence against three Black criminal defendants, requested assistance from Governor Conner, and received the support of the National Guard.¹²⁵ Governor Conner insisted “[a]s governor of the state . . . I have never hesitated to use the full force of the state government to protect prisoners.”¹²⁶ He asserted that he had not received notice of Higginbotham’s trial¹²⁷ or an official report of his murder.¹²⁸ Oxford officials were evidently “reluctant to give out any information concerning the lynching.”¹²⁹ The governor refused to act without an invitation from the local government. As *Clarion-Ledger* reported, “[u]ntil the matter is brought to his attention by the proper authorities in Lafayette county it is purely a local problem to be dealt with by the local authorities.”¹³⁰

¹²² *Mob Lynches Man at End of Trial: Certain Sentence is not Deterrent for Unmasked Gang: Jury is Out*, *Atlanta Daily World*, Sept. 30, 1935.

¹²³ *Mississippi Man Lynched While Jury Weighs: Man Lynched While Jurors Debate Fate*, *N.Y. Amsterdam News*, Sept. 21, 1935, at 1.

¹²⁴ *Better Unnecessary Precautions than One Preventable Lynching*, *Clarion-Ledger*, April 6, 1934, at 6 (Miss.).

¹²⁵ *In Doubt, Governor, Send the Troops Anyway*, *Clarion-Ledger*, Nov. 21, 1935, at 6 (Miss.).

¹²⁶ *Mob Action at Oxford Deplored by Governor*, *Clarion-Ledger*, Sept. 21, 1935, at 12 (Miss.).

¹²⁷ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, *Clarion-Ledger*, Sept. 19, 1935, at 2 (Miss.) (adding that lynchings are never justified because they represent “a fundamental problem of law enforcement.”).

¹²⁸ *Mob Action at Oxford Deplored by Governor*, *Clarion-Ledger*, Sept. 21, 1935, at 12 (Miss.).

¹²⁹ *Lynching Investigation Makes Little Progress as Mob is Unidentified*, *Clarion-Ledger*, Sept. 19, 1935, at 1 (Miss.).

¹³⁰ *Mob Action at Oxford Deplored by Governor*, *Clarion-Ledger*, Sept. 21, 1935, at 12 (Miss.).

E. The Federal Government

Two days after the murder occurred, Walter White, then Secretary of the NAACP's national office, sent a telegram to President Franklin Roosevelt reacting to the lynching of Elwood Higginbotham.¹³¹ It branded the mob's actions at Oxford "anarchy", stating:

Within sight of the University of Mississippi a mob at Oxford yesterday perpetrated the thirteenth lynching of 1935. One may be certain that there was grave doubt of the guilt of Elwood Higginbotham, the Negro farmer lynched, whom a white jury delayed in finding guilty. Action of mob in seizing victim in open daylight as jury deliberated, with apparently no resistance whatever from law enforcement officials, is anarchy and nothing else. It is certain nothing will be done by Mississippi authorities to punish lynchers. This clearly proves filibusters against Costigan-Wagner bill during last session of Congress lied and knew they were lying when they claimed states could and would prevent lynching and punish lynchers. Does America by its callous indifference and criminal inaction against lynchers mean to say to prospective lynching victims and their friends that they can expect no hope of protection from Federal or State Government and thus must resort to physical force to check the archaic mobs?¹³²

Under the leadership of White, the NAACP had been tirelessly advocating for federal anti-lynching legislation that would empower the federal government to intervene where local law enforcement would not.¹³³ The Costigan-Wagner bill, introduced in 1934, criminalized the actions of law enforcement who, "by indifference or collusion, permitted lynching," and created

¹³¹ *States Will Not Check Lynchings, Roosevelt Told*, Sept. 20, 1935 NAACP Papers (1)

¹³² *States Will Not Check Lynchings, Roosevelt Told*, Sept. 20, 1935 NAACP Papers (1); *Filibusters Lied on Lynch Curb, F.D. Told: NAACP Says South Won't Stop Mobbing Without Federal Law: Year's 13th Victim Brings New Protest: Man Slain as the Jury Debates His Fate*, Afro-American, Oct. 5, 1935, at 14 (Balt.); Department of Justice Classified Special Subject Files on Civil Rights, Reel 7 frame 0622, Section 42 May-Nov 1935.

¹³³ See Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950*, 126 (1980). It is worth noting that other organizations led by Southern liberals, such as the Association of Southern Women for the Prevention of Lynching and the Commission on Interracial Cooperation did not favor federal anti-lynching legislation, though the CIC did offer their endorsement shortly before it died in session. See *id.*; *Legislation, 1934-1938*, Ohio State University, 117 (1995), available at, https://etd.ohiolink.edu/rws_etd/document/get/osu1269368027/inline.

civil liability for “counties in which the mob action occurred.”¹³⁴ Southern senators led a filibuster against the bill in April, 1935, and Congress adjourned without taking action in May.¹³⁵ Proponents noted that “while the bill had been in congress in 1934, no lynchings occurred.”¹³⁶ However, the following year was an entirely different story. In September 1935, Elwood Higginbotham became the nineteenth victim of lynching.¹³⁷ This upsurge in mob violence was a rallying point for advocates seeking to demonstrate that the states were unwilling and/or unable to protect Black people.¹³⁸

Higginbotham’s case in particular came to symbolize the intransigent problem of the local legal structures yielding to the will of white supremacy in the community.¹³⁹ It fueled a proposal, sponsored by Illinois Senator Frederick Van Nuys, that the Senate Judiciary Committee investigate the lynchings that took place between the abandonment of the Costigan-Wagner bill in May, 1935 and the end of that year.¹⁴⁰ Walter White enlisted the support of allies in the South

¹³⁴ Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950*, 171-72 (1980); Balthorpe, *supra*, at 117. The bill did not undertake to punish individual perpetrators because the federal government was only permitted to intervene in threats to constitutional rights caused by “state action.” Balthorpe, *supra*, at 121-22 (citing the precedent set in *U.S. v. Cruikshank*, 92 U.S. 542 (1876), and *Civil Rights Cases*, 109 U.S. 3 (1883)).

¹³⁵ Balthorpe, *supra*, at 162-167.

¹³⁶ Balthorpe, *supra*, at 155.

¹³⁷ *Can the States Stop Lynching?* at 11; *See also America Upholds the Lynching Record: 16 in 9 Months*, Chi. Def. Oct. 26, 1935, at 11 (reporting Higginbotham’s murder as the 16th that year, likely based off of the research of International Labor Defense); *see* Letter from Louis Coleman to Walter White, Jan 10, 1936, NAACP Papers, 001527-004-0890, Anti-Lynching Campaign Correspondence and reports on lynchings in 1935 (providing the lynching record for 1935 according to the International Labor Defense).

¹³⁸ *See*, n. 128, *supra*.

¹³⁹ NAACP papers, *States Will Not Check Lynchings, Roosevelt Told*, Part 07: The Anti-Lynching Campaign, 1912-1955, Series A: Anti-Lynching Investigative Files, 1912-1953 (“The killing of Ellwood Higgenbotham by a mob at Oxford, Miss. Sept. 17, even while a white jury was trying to arrive at a verdict, proves that mobs do not want to give the law a chance.”).

¹⁴⁰ *See* Balthorpe, *supra*, at 176.

to prepare testimony for hearings under the Van Nuys Resolution.¹⁴¹ Arthur Raper of the Commission on Interracial Cooperation¹⁴² recommended that three individuals connected to Higginbotham be subpoenaed to testify: (1) P.J Ramey, (2) Judge Taylor McElroy, and (3) “Mrs. Elwood (Mary Lizzie) Higginbotham.”¹⁴³ However, the resolution languished without necessary congressional action and Senate Committee never held the hearings.¹⁴⁴

Four years later, Arthur Raper would testify about Elwood Higginbotham on his own during Senate hearings on another federal anti-lynching bill.¹⁴⁵ He recounted the facts of how Higginbotham killed Glenn Roberts out of self-defense, and how the local law enforcement surrendered him to be lynched during a trial that may have exonerated him.¹⁴⁶ He insisted that the both the people of Oxford and local officials felt powerless to intervene in the lynching, or make reports in their aftermath, because of fear of the consequences.¹⁴⁷ Indeed, Raper testified that “two well-known people had taken a very active part” in lynching Higginbotham.¹⁴⁸ Though Raper had “sent that information to the judge in the county seat . . . nothing was done about it.”¹⁴⁹ The Gavagan bill was passed by the house, but it was defeated by inaction in the Senate.¹⁵⁰

¹⁴¹ See Zangrando, *supra*, at 132.

¹⁴² Raper was a sociologist who also worked under the auspices of the Southern Commission on the Study of Lynching. See Zangrando, *supra*, at 102.

¹⁴³ Mary Lizzie was the only Black woman included among Raper’s recommendations. Letter from Raper to White Jan. 24, 1936. NAACP (2)

¹⁴⁴ Balthorpe, *supra*, at 176.

¹⁴⁵ United States Senate, *supra*.; Balthorpe, *supra*, at 219.

¹⁴⁶ United States Senate, *supra*, at 8-9.

¹⁴⁷ United States Senate, *supra*, at 6, (“People who see lynchings are afraid to come in and testify. They know what will happen to them if they do. Public officials are afraid to do their duty in a case of that kind.”).

¹⁴⁸ United States Senate, *supra*, at 5.

¹⁴⁹ Raper Testimony at 5.

¹⁵⁰ See Zangrando, 163-64.

F. The Communist Party

Two days after Higginbotham's death, while Governor Conner had still not heard from Oxford officials, he received an "indignant protest" from the National Committee for the Defense of Political Prisoners (NCDPP).¹⁵¹ The NCDPP was a collective of writers that functioned as an "adjunct of the International Labor Defense (ILD), led by the Communist Party."¹⁵² On September 24th, Higginbotham's story appeared on the front page of the *Daily Worker*, declaring him a "Hero of the Sharecroppers," and asserting that his death "has aroused a tremendous anger among many Southern workers." The *Worker* premised their account of Higginbotham's story on a letter from a "native white worker, and Communist Party leader in Oxford."¹⁵³ That worker may have been Gustav Uth, a Danish man who "married into a former slave-holding family" in the Oxford area.¹⁵⁴ Uth rented his plantation out to five sharecroppers, all of whom he recruited to be members of the Share Croppers Union.¹⁵⁵ Uth was also involved in state politics as an official with the Progressive Party.¹⁵⁶ The letter quoted in the *Daily Worker* concludes: "The Negro workers of the South have reason to look with confidence to the coming struggle for power, while the white landlords have just as much reason to think about the same struggle with fear and despair."¹⁵⁷

¹⁵¹ *Lynching of Negro Protested in Wire by Defense Group*, *Daily Worker*, Sept. 20, 1935 (N.Y.).

¹⁵² *Lynching of Negro Protested in Wire by Defense Group*, *Daily Worker*, Sept. 20, 1935 (N.Y.); see Alan M. Wald, *The New York Intellectuals: The Rise and Decline of the Anti-Stalinist Left from the 1930s to the 1980s*, 56 (1987).

¹⁵³ Wood, *supra*.

¹⁵⁴ Harry Haywood, *A Black Communist in the Freedom Struggle: The Life of Harry Haywood*, 204 (2012) (Spelling Uth's name "Ufe"); United States Census, 1930, Gustav J P Uth.

¹⁵⁵ Haywood, *supra*, at 204.

¹⁵⁶ *Wallaceites Near Vote Requirement: Qualifications are Submitted*, *Clarion-Ledger*, Oct. 13, 1948 (Miss.) (reporting that "Gus Uth of Oxford" was elected as a vice president of the party).

¹⁵⁷ Wood, *supra*.

The Communists had resolved to have a presence in the Deep South at the national convention in 1930.¹⁵⁸ The Party focused its initial efforts on Birmingham, Alabama and its rural surroundings full of Black sharecroppers living in abject poverty.¹⁵⁹ In 1931, the Share Croppers' Union (SCU) was born out of the solidification of local efforts by Alabama sharecroppers and the aid of northern Communist organizers.¹⁶⁰ Its central demands included a minimum price for cotton and free school transportation for children.¹⁶¹ The SCU grew and began to reach out across the South to the Delta region.¹⁶² Mississippi sharecroppers who met a traveling SCU organizer described their condition as "near starvation with no end in sight."¹⁶³ Sharecroppers during the Great Depression generally lived in crude two or three room "tenant houses" that did not have plumbing or often even window panes.¹⁶⁴ They were embroiled in tenancy agreements that indebted them to their landlord indefinitely.¹⁶⁵ After a trip through Mississippi, "Party member" Horace B. Davis exclaimed that the sharecroppers were "ripe for organization . . . rotten ripe."¹⁶⁶

¹⁵⁸ Mark Solomon, *The Cry Was Unity: Communism and African Americans, 1917-1936*, 112 (1998). The Communist Party's commitment to the South was based in its adoption of "self-determination" for Black people as a fundamental aspect of the Communist platform. See Timothy V. Johnson, *We Are Illegal Here: The Communist Party, Self-Determination, and the Alabama Share Croppers' Union*, 75 *Sci. & Soc'y* 454, 454-55 (2011).

¹⁵⁹ Solomon, *supra*, at 112-14 ("The Party was the only organization that came to town offering resistance to the hunger that was spreading through the largely homogeneous and native black Birmingham.").

¹⁶⁰ See Solomon, *supra*, at 119-24; see generally Robin D. G. Kelley, *Hammer and Hoe: Alabama Communists During the Great Depression*, 34-56 (1990); Johnson, *supra*, at 463-64.

¹⁶¹ Johnson, *supra*, at 470.

¹⁶² See Solomon, *supra*, at 124-25.

¹⁶³ See Solomon, *supra*, at 125.

¹⁶⁴ Arthur Raper, *Sharecroppers All*, 20-22 (1940).

¹⁶⁵ Raper, *supra*, at 22.

¹⁶⁶ Solomon, *supra*, at 119.

By 1935, the SCU had grown to number to “nearly 12,000 dues-paying members.”¹⁶⁷ They had won some battles in securing rights for sharecroppers on local plantations and had organized a cotton pickers’ strike in 1934.¹⁶⁸ Yet the SCU’s development was marked by constant efforts to repress them. In two particularly violent episodes, in Camp Hill and Reeltown, Alabama, organizers were terrorized and murdered by local landlords.¹⁶⁹ In in the months leading up to Higginbotham’s death, three Share Croppers Union leaders were lynched: Joe Spinner Johnson, Jim Press Merriweather, and Edward Bracey.¹⁷⁰ The Southern Tenant Farmers Union (STFU), which began organizing Arkansas sharecroppers in 1934, faced similar persecution.¹⁷¹ Two months before Glenn Roberts led a mob to Elwood Higginbotham’s house, W.H. Stultz, president of the STFU, was threatened with death unless he fled his home of Marked Tree, Arkansas.¹⁷² The attorney for the STFU “advised Stultz to ‘stand his ground’” insisting that “a man has a right to protect his home.”¹⁷³ Shultz, a white organizer, was not lynched. Yet, the lynching record for 1935 included five Black men who led their fellow sharecroppers in challenging the dominion of tenant farming system.¹⁷⁴

¹⁶⁷ Johnson, *supra*, at 473.

¹⁶⁸ See Kelley, at 54-56 (numbering the membership at the end of 1934 as 8,000).

¹⁶⁹ See Solomon, *supra*, at 121-22; Johnson, *supra*, at 472-73.

¹⁷⁰ NAACP (5); See *Three Lynch Affidavits by Alabama Sharecroppers*, New Masses, Oct. 22, 1935, available at, <http://www.unz.org/Pub/NewMasses-1935oct22-00016> (proving the first-hand accounts of Jim Press Merriweather’s wife and two SCU organizers).

¹⁷¹ See Dyson, *supra*, at 150. In August, 1935, the SCU proposed a merger with the STFU at the latter’s Memphis headquarters, but the STFU rejected the offer to avoid a direct connection with the Communist Party. Dyson, *supra*, at 153.

¹⁷² *Head of the Tenant Farmers’ Union Warned to Get out*, Leader-Call, March 22, 1935 (Miss.).

¹⁷³ *Head of the Tenant Farmers’ Union Warned to Get out*, Leader-Call, March 22, 1935 (Miss.).

¹⁷⁴ Ab Young was a sharecropper organizing around fair distribution of Agricultural Adjustment Act funds, he was killed in Slayden, MS on March 12; Joe Spinner Johnson was a leader of the Share Croppers Union who was abducted and killed in Greensboro, AL on July 11; Jim Press Merriweather lead the Share Croppers’ Union cotton pickers’ strike, killed by a sheriff’s posse in Lowndes County, MS on Aug. 22; and Edward Bracy was participating in the cotton pickers’ strike when he was gunned down in Hope Hill, AL on Sept. 3. Higginbotham’s murder followed

III. Who remembers the “Hero of the Sharecroppers?”

The story of Elwood Higginbotham’s lynching did not remain in the public view long. No one was ever prosecuted in connection to his death, and neither the state nor federal government attempted to intervene. The cemetery where Elwood was buried is on unkempt private land.¹⁷⁵ Nevertheless, his personality persisted in veiled form in the writings of Oxford’s own William Faulkner. Literary scholar Arthur F. Kinney explains that Faulkner was about thirty-eight at the time of the lynching and based two of his characters on Higginbotham.¹⁷⁶ “Elwood Higginbotham clearly surfaces as Lucas Beauchamp in *Intruder in the Dust*,” as well as Rider from *Pantaloon in Black*.¹⁷⁷ While investigating the history behind these stories, Kinney discovered that the “white citizens of Oxford in a kind of unplanned epidemic, [had] erased the incident from their minds and from the town’s history.”¹⁷⁸ Records of Higginbotham’s lynching were absent from the *Oxford Eagle* library, the Lafayette County Records Office, and the archives at University of Mississippi.¹⁷⁹ Nevertheless, Kinney was able to access the story in the form of a first-hand, eye-witness account. Jimmy Faulker, the nephew of William Faulkner, saw

shortly thereafter on Sept 17. International Labor Defense, letter to Walter White, 001527-004-0890, Anti-Lynching Campaign Correspondence and reports on lynchings in 1935.

¹⁷⁵ Higginbotham’s death certificate lists his place of burial as “Boles.” The James E. Bowles burial ground, off of highway 30 in Oxford, has not been “kept or fenced.” *James E. Bowles’ Plantation Burial Grounds from 1840s*, msgw.org (accessed on Nov. 18, 2016, 5:30PM), http://msgw.org/lafayette/cemeteries/bowles_plantation/bowles_plantation_burial_grounds.html.

In the alternative, the Boles graveyard may refer to a different, and yet unknown, burial site belonging to the Boles family. See Arthur F. Kinney, *Go Down Moses: The Miscegenation of Time*, 22-23 (1996) (recounting the “local legend” that the Boles, a Black family, were descended in part from a wealthy, white plantation owner).

¹⁷⁶ See Arthur F. Kinney, *Unscrambling Surprises*, 15.1-3 Connotations 17, 17-20 (2005/2006).

¹⁷⁷ Kinney, *Unscrambling Surprises*, at 20.

¹⁷⁸ See Kinney, *Unscrambling Surprises*, at 19.

¹⁷⁹ Kinney eventually found the *Oxford Eagle* articles he sought at the state archives in Jackson. See Kinney, *Unscrambling Surprises*, at 19.

Higginbotham lynched.¹⁸⁰ Age eight at the time, Faulkner had “hopped in a truck and rode out to the lynching.”¹⁸¹ The story he confided to Kinney confirmed the basic narrative of the night and provided additional details: the mob surrounded the courthouse before entering the jail; the men rode to the scene in trucks carrying weapons; the area where the hanging took place was a Black residential neighborhood.¹⁸² Faulkner was sworn to secrecy; the men “told him fiercely to tell no one what he saw.”¹⁸³ And so he and other witnesses allowed the Higginbotham’s lynching to fade into memory without protest or memorialization.

Two days after the mob killed Elwood Higginbotham, the *Oxford Eagle* reported his death with the headline, “*Career of Negro Who Killed Glenn Roberts Terminates at the End of a Rope on Tuesday.*”¹⁸⁴ The *Eagle* provided the verdict the jury could not. Higginbotham was the “confessed negro murder of Glen D. Roberts.”¹⁸⁵ Roberts, on the other hand, is remembered as a “well known and popular Lafayette County farmer.”¹⁸⁶ When asked why the *Eagle* misconstrued the facts of Higginbotham’s story, the editor answered that “he had to live in Oxford and that he wanted to get along with the people there, and that the race situation made it practically impossible to carry the facts about the killing.”¹⁸⁷ The *Eagle* therefore helped to bury Higginbotham’s story under layers of misinformation and bias. Eighty years later, in the winter of 2015, the news editor of the *Oxford Eagle* called the memory of Higginbotham’s lynching

¹⁸⁰ Kinney, *Unscrambling Surprises*, at 19.

¹⁸¹ Kinney, *Unscrambling Surprises*, at 19.

¹⁸² See Kinney, *Unscrambling Surprises*, at 19.

¹⁸³ Kinney, *Unscrambling Surprises*, at 19.

¹⁸⁴ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, *Oxford Eagle*, Sept. 19, 1935 (Miss.).

¹⁸⁵ *Life Imprisonment for Tatum; Mob Lynches Higginbotham Negro*, *Oxford Eagle*, Sept. 19, 1935 (Miss.).

¹⁸⁶ *Jessie Tatum’s Murder Trial Friday; Higginbotham’s is Set for Monday*, *Oxford Eagle*, Sept. 12, 1935 (Miss.).

¹⁸⁷ Ames, *supra*,

back into public consciousness.¹⁸⁸ In an article titled “*A Terrible Truth That Needs to Be Remembered*,” Jonathan Scott recounted the circumstances of the lynching and connected it to the modern struggle for racial justice. “If we continue to avoid confronting our past history of racial injustice” he contended, “it makes our efforts to create a country in which ‘racial justice can be achieved’ much more difficult.”¹⁸⁹ Scott proposed that marking the site of Elwood’s lynching with a “plaque, marker, or monument” could serve as a way for the Oxford community to reengage with its own history of racial violence. Indeed, though the “Three Way” has since been expanded to four-way intersection, Oxford locals are still aware of its status as a local landmark.¹⁹⁰ What they have since forgotten is what took place there- the lynching of a local farmer, young father, and hero of the sharecroppers.

¹⁸⁸ Jonathan Scott, *A Terrible Truth That Needs to Be Remembered*, Oxford Eagle, Feb. 2, 2015, 4A (Miss.).

¹⁸⁹ Jonathan Scott, *A Terrible Truth That Needs to Be Remembered*, Oxford Eagle, Feb. 2, 2015, 4A (Miss.) (reporting on the release of *Lynching in America: Confronting the Legacy of Racial Terror* by the Equal Justice Initiative). Scott’s sentiments were echoed and expanded on by University of Mississippi Professor James M. Thomas in an “open letter to Gov[ernor] Bryant.” See James M. Thomas, *Open Letter to Gov. Bryant*, Clarion-Ledger, May 21, 2015, C3 (Miss.).

¹⁹⁰ Interview with Jonathan Scott, Nov. 6, 2016; Interview with Professor Elizabeth Payne, Nov. 7, 2016.