

Injustice Unveiled: The Lynching of Jesse Thornton



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I. Introduction

On June 21, 1940, Jesse Thornton fell victim to racial violence when he was lynched by a mob in Luverne, Alabama, Crenshaw County.¹ Like many men before and after him, Thornton was a casualty of the persistent and calamitous violence that scorched the backs of many black men throughout the South in the mid twentieth century.² In fact, in the year 1940, there were fifteen lynchings that occurred throughout the United States.³ Specifically, there were two lynchings that took place in the state of Alabama in 1940 alone, including Jesse Thornton.⁴ This essay chronicles Thornton's lynching, and the struggle to achieve justice for his case.

II. The Lynching

Luverne, the seat of Crenshaw County in the center of Alabama's farming district, is located only one county away from infamous Montgomery, Alabama.⁵ At the time of Jesse Thornton's lynching, Luverne was a typical small southern town.⁶ On Saturdays, farmers gathered in the city in large numbers to barter, trade, and "shoot the breeze."⁷ In many ways, Jesse Thornton was a typical southerner who embraced the small town life. He was the manager of a chicken farm and he had been living in Luverne with his wife

¹ Charles A. J. McPherson, NAACP Report of Jesse Thornton Lynching in Luverne Alabama (1940).

² "International Labor Defense Survey Reveals Fifteen Lynchings in 1940," *New York Amsterdam Star-News (1941-1943)*, (Feb. 22, 1941).

³ *Id.*

⁴ *Id.*

⁵ Tuskegee Newspaper Microfilm 231, *New York Times* (on file with Tuskegee University Archives).

⁶ McPherson, *supra* note 1.

⁷ *Id.*

Nellie Thomas for five years.⁸ Thornton attended the local black church with his wife, and on Saturdays, he would go downtown to the black barbershop.⁹ He was known around town as a reliable worker and as a person who would fight anyone if he was imposed upon.¹⁰

On June 21, 1940, Jesse Thornton's trip to the barbershop was his last. In typical fashion, Thornton and a few of his acquaintances were standing in front of the barbershop talking.¹¹ As an officer came along, Thornton said to his friends pointing at the officer, "There comes Doris Rhodes, boys."¹² Officer Rhodes overheard the remark, turned to Thornton and said, "What did you say?"¹³ When Thornton realized that he had been overheard by the officer, he hesitated to reply. He tried to recant his statement by saying that he said, "Mr. Doris Rhodes."¹⁴ The officer said, "No you didn't Nigger."¹⁵ In response, Thornton admitted, "I did say Doris Rhodes."¹⁶ Upon hearing his response, Officer Rhodes immediately struck Thornton with his black jack and knocked him down to the ground.¹⁷

Following the violent attack, Rhodes arrested Thornton and walked him to the local jail.¹⁸ At the jail house door, Rhodes briefly relinquished his grasp of Thornton to unlock the door.¹⁹ Thornton attempted to run away.²⁰ As Thornton tried to escape, bystanders crowded around the jail and began to throw bricks, bats, and stones at him to

⁸ Tuskegee University Archives, *supra* note 5.

⁹ McPherson, *supra* note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ McPherson, *supra* note 1.

¹⁹ *Id.*

²⁰ *Id.*

prevent him from running away.²¹ Despite the risk, Thornton ran from the rapidly forming mob.²² As Thornton ran away a second time, he gained ground, and five shots were fired at him.²³ Still, he ran for approximately three quarters of a mile before he fell from exhaustion, due to the loss of blood.²⁴ After resting, Thornton saw that the mob was still chasing him and he made an attempt to continue running. Finally, in sheer exhaustion, he gave up running and the mob captured him.²⁵

The mob put Thornton in a small truck, carried him to a “dead-end street,” and then dragged him from the truck to a swamp.²⁶ More shots were reportedly fired and Jesse Thornton was left in a swampy, wooded area.²⁷

To learn his home address, the mob went to City Hall and returned to the local black barbershop where Jesse Thornton was initially arrested.²⁸ Next they went directly to Thornton’s house and asked his wife where Thornton was, as if they had played no role in his disappearance.²⁹ Unaware that her husband had been lynched, Thornton’s wife, Nellie Thomas, repeatedly told the mob that her husband had gone downtown earlier in the day.³⁰ The mob finally left the house, but told her that they would be back and that she “had better tell” where her husband was.³¹

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ McPherson, *supra* note 1.

³⁰ *Id.*

³¹ *Id.*

The mob went back downtown to Mayor T. McKing's office to discuss the incident.³² Following the mayor's orders to go back to Thornton's house, the mob kidnapped Nellie Thomas from her home during the night.³³ They kept her in a truck practically all night and told her that she would face the same fate as her husband if she told anyone about the kidnapping.³⁴ Following the kidnapping, Nellie Thomas was so intimidated that she refused to speak to anyone in town, including black residents.³⁵ Reluctantly, she told inquiring white people that she had been threatened by the mob.³⁶ Like other black people in Luverne, Jesse Thornton's wife Nellie lived shrouded in fear, day after day.³⁷

While it was undisputed that Jesse Thornton was killed by a violent mob, his body was not discovered until June 28th, 1940, seven days after the violent attack occurred.³⁸ The body was discovered by Stephen Thompson, who was fishing on the bank of the Pataylagga River.³⁹ Thompson discovered vultures and buzzards hovering over a vulture-eaten decaying body.⁴⁰ He went to city officials to report his discovery.⁴¹ Deputy Sheriff Ray Horn went to the swamp to bring the body to land.⁴² Upon his search of the body, he found a gold watch and a pocket knife in Thornton's pockets.⁴³

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ McPherson, *supra* note 1.

⁴¹ *Id.*

⁴² Jesse Thornton Found Dead in Patasaliga, Luverne Journal Page 1, Col 5 (July 3, 1940).

⁴³ *Id.*

Subsequently, a black person who had sold the watch to Thornton identified him as the owner, thereby completing the identification of Jesse Thornton's body.⁴⁴

III. The Investigation

Following Thornton's death, the Birmingham branch of the National Association for the Advancement of Colored People (NAACP) began an investigation concerning Jesse Thornton's death. Dr. Charles A. J. McPherson, Secretary of the Birmingham Branch of the NAACP, wrote a detailed statement that chronicled Jesse Thornton's lynching.⁴⁵ Also, on August 13, 1940, Thurgood Marshall, who was then serving as Special Counsel to the NAACP, wrote a letter to John Rogge, the Assistant Attorney General of the United States Department of Justice ("the Department").⁴⁶ He enclosed a copy of McPherson's report with his letter to Rogge and requested that the Department undertake an investigation of Jesse Thornton's death.⁴⁷ Attorney Marshall's letter noted that there was strong evidence of local officers' involvement with Thornton's death, which, if proven, would constitute a violation of Section 52 of Title 18 of the United States Code.⁴⁸

On August 26, 1940, Attorney Rogge wrote Marshall back to acknowledge receipt of his letter and inform him that the request for an investigation was being given

⁴⁴ *Id.*

⁴⁵ McPherson, *supra* note 1.

⁴⁶ Letter from Thurgood Marshall, Special Counsel, NAACP to John Rogge, Assistant Attorney General, United States Department of Justice (August 13, 1940) (on file with the Archives at Lamont Library, Harvard University).

⁴⁷ *Id.*

⁴⁸ *Id.*

“earnest consideration.”⁴⁹ On the same day, Rogge sent a memorandum to J. Edgar Hoover, Director of the Federal Bureau of Investigation (“FBI”), enclosing the statement of facts regarding Thornton’s death and requesting that the FBI conduct a formal investigation of the incident.⁵⁰ Rogge’s memorandum said that the participation of local police officers in any manner, which aided or provoked the mob, should be “thoroughly investigated.”⁵¹ The memorandum also acknowledged that any officer’s participation, which aided the mob, could be a violation of Section 52, Title 18 of the United States Code.⁵² Rogge recommended that the first phase of the investigation involving local police officers should be “discretely investigated.”⁵³ He suggested that the special agents assigned to the case should first interview every person who might have relevant information without contacting the police officers or other defendants who might be involved.⁵⁴ Further, Attorney Rogge requested that reports from the first phase of the investigation should be submitted to the Criminal Division of the Department of Justice before any interviews were conducted because any information that was revealed might “obviate” the need to proceed with the investigation.⁵⁵

⁴⁹ Letter from John Rogge, Department of Justice, to Thurgood Marshall, Special Counsel, NAACP (August 26, 1940) (on file with the Archives at Lamont Library, Harvard University).

⁵⁰ Memorandum from John Rogge, Assistant Attorney General, Department of Justice, to J. Edgar Hoover, Director of the Federal Bureau of Investigation (August 26, 1940) (on file with the Archives at Lamont Library, Harvard University).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

IV. Obstacles to Achieving Justice

To date, it is unclear what action, if any, the Department of Justice and the FBI took to investigate Thornton's death. In 1939, a year before Thornton's lynching, the Department of Justice created a new Civil Liberties Unit ("the Unit") in the Criminal Division.⁵⁶ Attorney General Frank Murphy created the Civil Liberties Unit to supervise enforcement of several criminal statutes from the Reconstruction era that punished the infringement of federal constitutional rights.⁵⁷ At the time the Civil Liberties Unit was created, the Department had failed to apply the Reconstruction statutes in any of the notorious lynching cases that the NAACP had brought to the Department's attention.⁵⁸ The creation of the new Unit was seen as a turning point in asserting the Department's duty to investigate and prosecute civil rights violations.⁵⁹ It was also seen as an opportunity to make Reconstruction laws effective by giving the Unit the organizational status and resources to pursue racially based violations of federal laws.⁶⁰

In its first year, the Unit circulated a memorandum to all U.S. Attorneys that defined its interpretation of the Reconstruction statutes.⁶¹ The memo was the first Department of Justice policy statement affirming that there was a federal right "not to be lynched."⁶² The memo stated that the failure of state officers to protect persons against mob lynching and the refusal of a state's attorney to prosecute persons who have committed acts of violence upon "negroes or labor organizers" would be regarded as state

⁵⁶ John T. Eliff, *Aspects of Federal Civil Rights Enforcement: The Justice Department and the FBI, 1939-1964* p. 605

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 607.

⁶² *Id.* at 608.

violations of the due process and equal protection clauses.⁶³ Specifically, state officials would be prosecuted under federal civil rights laws.⁶⁴ In this regard, section 242 could apply to state officials who “willfully” fail to act, and section 241 could be invoked to prosecute state officials who willfully cooperate with a mob.⁶⁵ However, because of concerns that such federal prosecution of criminal violations could present States’ Rights issues, such prosecutions were not pursued except in the case of a flagrant and persistent breakdown of local law enforcement.⁶⁶

Before the creation of the Civil Liberties Unit, the U.S. Attorneys and the FBI were free to act on their own to institute investigations and proceed with prosecutions.⁶⁷ However, after the creation of the Unit, the U.S. Attorneys and the FBI were directed to seek approval from the Unit before starting any investigations of civil rights complaints.⁶⁸ The lawyers who worked in the Civil Liberties Unit relied heavily on the FBI to gather information and evidence for their cases.⁶⁹ Unit attorneys handled numerous detailed problems of pleading and law to develop unified and consistent legal theory.⁷⁰ The FBI agreed with the Unit’s new procedure stating that “many of the complaints resulted in useless loss of manpower by the Bureau and that it...would be in the best public interest to have a screening of all of the complaints by specialized attorneys in the civil rights and election fields before embarking upon a formal investigation.”⁷¹

⁶³ Eliff, *supra* note 56 at 608.

⁶⁴ U.S. Criminal Code, 18 U.S.C. section 241 and 18 U.S.C section 242.

⁶⁵ Eliff, *supra* note 56 at 608.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 608-09.

⁶⁹ *Id.* at 606.

⁷⁰ *Id.* at 609.

⁷¹ *Id.*

Although the FBI appeared to cooperate with the Unit in their investigation of civil rights abuses, the FBI's handling of the *Sutherland* case provides a prime example of the tense relationship between the Bureau and the Civil Liberties Unit. In *United States v. Sutherland*,⁷² a policeman in Atlanta, Georgia was charged with using brutal methods--specifically burning a sixteen-year-old black burglary suspect with a hot branding iron--to obtain a confession.⁷³ United States District Court Judge Marvin Underwood upheld the officer's indictment and ruled that the officer exceeded his authority when he acted "under of color of law" to deprive the prisoner of his Fourteenth Amendment rights.⁷⁴ The U.S. Attorney believed that the incident was a perfect test case to establish accountability for police brutality that violated the civil rights of black suspects. However, the Civil Liberties Unit struggled with the FBI for two years over the proper scope of police brutality investigations.⁷⁵

The U.S. Attorneys' office requested further FBI investigation in the case to establish that it was the custom of Atlanta city police to obtain confessions by beating prisoners, and that Officer Sutherland had a reputation for beating suspects.⁷⁶ In response to the request, F.B.I. Director J. Edgar Hoover told the Civil Liberties Unit, "I desire to call your attention to the fact that the Atlanta Police Department is not under investigation in this matter and the only person indicted is Sutherland... The Atlanta Field Division is in possession of no information indicating that Sutherland or the Atlanta Police Department is in the habit of beating prisoners in order to obtain confessions."⁷⁷

⁷² U.S. v. Sutherland, 37 F.Supp. 344 (N.D. Ga.1940.)

⁷³ Eliff, *supra* note 56 at 609.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 610.

⁷⁷ *Id.*

Appealing to Deputy Attorney General Matthew McGuire, who supervised Department operations, Hoover asserted that the Bureau's first investigation of the Sutherland case created "considerable ill will" between the Atlanta police and the FBI field office.⁷⁸ He also stated that after a "series of conferences with Police Department Officials and Bureau representatives, the Police Department again became friendly with this Bureau" and another investigation would "rupture the friendly relationship which has been established."⁷⁹

V. Conclusion

Conflict and tension between the FBI and the Civil Liberties Unit may provide a partial explanation for the fact that criminal charges were not filed in Jesse Thornton's case. It appears from the correspondence between Assistant Attorney General Rogge, the NAACP, and FBI Director J. Edgar Hoover that Rogge was at least partially committed to conducting a thorough investigation of Thornton's lynching. However, it is still unclear how much effort the Department of Justice and the FBI actually took to fully investigate Jesse Thornton's case. Unfortunately, like so many others before and after him, Thornton's case did not achieve any justice.

⁷⁸ *Id.*

⁷⁹ Eliff, *supra* note 56 at 611.