

# **John Lewis Smith:**

*A Lynching in the Jefferson County Courthouse?*



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### **I. Introduction**

On January 23, 1938, John Lewis Smith wrote a letter to his mother from jail at the Jefferson County courthouse in Birmingham, Alabama. It read: “Dear Mother, this is from your son. Please try to get me a lawyer and come up here to see me right away. I didn’t do what they say I did.”<sup>1</sup> Smith, who was 16 years old and Black, was accused of raping a white child and was desperate for help. There were no witnesses called for his defense at trial, and, following his conviction by an all-white jury and a sentence of 99 years, the father of the white child took the law into his own hands and killed Smith in the hallway of the courthouse in full view of the public.

Smith’s death sparked outrage among the Black community and led to an uptick in NAACP membership and also to a collaboration between the organization and members of the Communist Party and the International Labor Defense to address this crime, at a time when the two groups were divided over the best strategy for racial justice. However, the momentum and collaboration that followed Smith’s murder did not last long, and the NAACP and local Communists were soon again divided after funding to fight the case dried up and NAACP involvement declined.

If the NAACP had had the resources to continue investigating Smith’s murder, perhaps the unanswered questions still lingering today would have been answered. The details of Smith’s murder were reported in newspapers across the country, in NAACP branch files, and by Communist organizers. In an attempt to uncover the truth of what happened on May 11, 1938 in that courthouse hallway, many questions remain: Was this the action of one man? Was there official involvement? Was this the result of a conspiracy to set an example and create fear in the Black community? Can this murder be viewed within the definition of “lynching” and why must this be explored?

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<sup>1</sup> *Convicted Boy, 16, Killed in Ala. Court House*, ATLANTA DAILY WORLD, May 14, 1938, at 6.

## II. The Shooting of John Lewis Smith

*“If I had listened to you, mother, I wouldn’t have been in this trouble” John Lewis Smith, 1938<sup>2</sup>*

In December, 1937 a white man named Huey E. Colburn asked Smith’s mother, Amanda Hill, if Smith could watch his two children, Sarah and William, for the evening at the boarding house where the Colburns lived. This was apparently a regular arrangement between Smith, who worked in the boarding house as a dishwasher and firemaker<sup>3</sup> and the Colburns.<sup>4</sup> Newspapers reported that Smith watched the children on Christmas Eve while their parents went out shopping for presents,<sup>5</sup> but Communist labor organizer Hosea Hudson later tells a different story. He reported that Colburn, a steelworker, had to work late that night, and his wife, Gladys, went to an unknown location.<sup>6</sup> According to Hudson, Colburn left work at around 11:00 p.m., and when he returned home at around midnight he found Smith still with the children and his wife nowhere to be found.<sup>7</sup> Hudson recalled: “I don’t know where this wife was at, don’t know what lie she had to tell, but what this dirty rat done, he took it out on the Negro boy.”<sup>8</sup> The next morning, Colburn put out a statement alleging Smith had raped his then seven-year-old daughter Sarah.

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<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.*; *Slayer of Convicted Youth Given Freedom by Ala. Grand Jury*, ATLANTA DAILY WORLD, June 11, 1938, at 1.

<sup>4</sup> Hosea Hudson & Nell Irvin Painter, *The Narrative of Hosea Hudson: The Life and Times of a Black Radical* 272 (Painter ed., 1993).

<sup>5</sup> *Father of Seven-Year Old Victim Shoots Her Negro Assailant to Death*, DECATUR DAILY, May 12, 1938, at 3; *Kills Daughter’s Assailant in Court Building*, DANVILLE BEE, May 12, 1938, at 14; *Negro Facing Life Sentence is Slain*, KINGSPORT TIMES, May 12, 1938, at 1; *Negro Slain By Child’s Father*, MONROE NEWS STAR, May 12, 1938, at 3; *Negro Youth, Convicted and Sentenced, is Shot in Courthouse Corridor*, THE BIRMINGHAM NEWS, May 12, 1938, at 1; *Victim’s Father Kills Rapist in Birmingham Case*, CLARION LEDGER, May 12, 1938, at 1.

<sup>6</sup> Hudson & Painter, *supra* note 5, at 272-73.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 273.

Smith was arrested and taken to jail in the Jefferson County courthouse, where he wrote several letters in January and February of 1938 as he awaited trial. Along with the letters he wrote his mother, he wrote to former employers asserting his innocence and requesting they come to the courthouse and speak on his behalf.<sup>9</sup> He wrote to a “Miss Massey” and a “Mr. S. Goldner.”<sup>10</sup> Miss Massey likely owned the boarding house where the Colburns lived and Smith worked, as he writes to her, “I wanted to write you to tell you all that I didn’t do what the lady upstairs say I did. Miss Massey, you know I’ve always tried to stay in a colored boy’s place. I have never had the least idea of doing a thing like that.”<sup>11</sup>

Despite his desperate pleas for help, nobody came to his defense. In fact, no witnesses were called on Smith’s behalf at his trial, and even his mother was barred from entering the courtroom.<sup>12</sup> It is unclear when Smith’s trial started or how long it lasted, but it is certain that it ended on May 11, 1938. According to newspaper reports, the all-white jury deliberated for four hours before returning a guilty verdict and a sentence of 99 years imprisonment.<sup>13</sup> This sentence was apparently not harsh enough for Colburn, who decided to take the law into his own hands. Despite being searched by police in the courthouse hallway multiple times,<sup>14</sup> Colburn managed to hide a gun, and, while Smith was being escorted from the courtroom by Bailiff Homer Brown and Detective J.W. McFarland, Colburn stepped out of a phone booth and shot Smith, killing him

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9 *Private Letters Written By Youth*, ATLANTA DAILY WORLD, May 14, 1938, at 6.

10 *Id.*

11 *Id.*

12 *Liberate Man Who Slew Lad In Courtroom*, THE CHICAGO DEFENDER, June 25, 1938, at 5.

13 ATLANTA DAILY WORLD, *supra* note 1, at 1; THE BIRMINGHAM NEWS, *supra* note 6; *99 Years In Jail Is Not Enough, Youth Shot Down In Cold Blood As Four Guards ‘Protect’ Him*, PITTSBURGH COURIER, May 21, 1938, at 13; *Convicted Negro Slain By Father Of Abused Child*, THE BIRMINGHAM POST, May 12, 1938, at 1.

14 PITTSBURGH COURIER, *supra* note 14; THE BIRMINGHAM POST, *supra* note 14; *Kills Prisoner After Cops Seek Hidden Pistol*, BALTIMORE AFRO-AMERICAN, May 21, 1938, at 6; Jean Moyer, *Glad He Did It, Killer of Negro Says*, THE BIRMINGHAM POST, May 12, 1938, at 1; *White Revenge Slayer Is Held Without Bail*, PITTSBURGH COURIER, June 4, 1938, at 7.

instantly.<sup>15</sup> According to attendees of the trial who relayed information to Hudson, when the pistol fired, Smith's mother exclaimed, "Oh, Lord, is they killing my child?"<sup>16</sup> Other police officers witnessed the shooting. Detective R. J. Granger said that Colburn "kept pumping bullets at him,"<sup>17</sup> and when he and Detective W. M. Espy Jr. apprehended Colburn, he calmly said, "You can have the gun."<sup>18</sup>

### III. The Legal Response

Coroner Gip M. Evans returned a verdict of unlawful homicide against Colburn and ordered him arrested.<sup>19</sup> At his preliminary hearing, Colburn's attorney, Roderick Beddow, attempted to secure a bond of \$2,500,<sup>20</sup> but County Solicitor Cecil Deason said he would strenuously oppose bond.<sup>21</sup> Colburn remained in the Ensley Jail, held without bond, until a grand jury convened in June to determine his fate.

Apparently, Colburn was not concerned about any repercussions that could stem from his crime. From jail he told Birmingham Post reporter Jean Moyer that he was glad he killed Smith. Moyer described Colburn as "relieved and cheerful" and "smiling as would a man who has rid

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<sup>15</sup> ATLANTA DAILY WORLD, *supra* note 1, at 1; DECATUR DAILY, *supra* note 6; DANVILLE BEE, *supra* note 6; *Father Kills Man Jailed for Offense Against Daughter*, RACINE JOURNAL TIMES BULLETIN, May 12, 1938, at 28; *Father Kills Negro After Conviction*, LA CROSSE TRIBUNE AND LEADER PRESS, May 12, 1938, at 1; *Kills Negro Who Had Just Been Sentenced for Annoying Child*, 7, LINCOLN STAR, May 12, 1938, at 20; *Negro Attacker Shot By Father*, SAN ANTONIO LIGHT, May 12, 1938, at 1; *Negro Slain by Child's Father*, MONROE NEWS STAR, May 12, 1938, at 3; *Shoots Down Prisoner For Sex Assault*, NEW YORK AMSTERDAM NEWS, May 21, 1938, at 2; *White Father Kills Prisoner Convicted of Raping Daughter*, ASSOCIATED NEGRO PRESS, May 1938, at 17; *White Father Slays Accused Man In Court*, INDIANAPOLIS RECORDER, May 21, 1938, at 8.

<sup>16</sup> Hudson & Painter, *supra* note 5, at 273.

<sup>17</sup> *Convicted Negro Slain By Father of Abused Child*, THE BIRMINGHAM POST, May 12, 1938, at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Man Who Killed Boy In Ala. Court House Is Denied Bond At Preliminary Hearing*, ATLANTA DAILY WORLD, May 21, 1938, at 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Preliminary Trial for Slayer is Set*, DECATUR DAILY, May 13, 1938, at 2.

himself of a heavy burden, rather than one who has brought on himself a formal charge of murder.”<sup>22</sup> He even joked about having his picture taken and about being the only occupant of his cell-block, laughing about how police did not want him to have any company.<sup>23</sup>

While Colburn smiled for reporters and sat in jail seemingly satisfied with what he had done, Hosea Hudson began working with the NAACP to mount a prosecution. Hudson described this as a frustrating experience, as they (the NAACP) would not do anything about Smith’s murder until his mother and “all the ordinary Negroes” started coming to meetings.<sup>24</sup> Hudson took it upon himself to find Smith’s mother, asking around Birmingham until a woman showed him where she lived- in a house on a small open lot behind the white-operated boarding house.<sup>25</sup> She was glad to see Hudson and wanted justice for her son.<sup>26</sup> When she finally came to a NAACP meeting, excitement shot through the room.<sup>27</sup> While the NAACP officials were “raving,” as Hudson described the scene, a man dressed in overalls got up and said “Now you all talking, but I’m going to show you. I’m going to put my money where my mouth at. I’m ready to do something about this thing.”<sup>28</sup> This man – a poor laborer – laid \$10 on a table, starting the fund that would ultimately retain Black Birmingham attorney Arthur Shores on the case.<sup>29</sup> Hudson described this moment as a “breakthrough.”<sup>30</sup>

The hope that Hudson and other NAACP members felt that day dissipated quickly. According to Hudson, Shores attempted to work with other prosecutors in gathering evidence,

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22 Moyer, *supra* note 15.

23 *Id.*

24 Hudson & Painter, *supra* note 5, at 274.

25 *Id.*

26 *Id.*

27 *Id.* at 275.

28 *Id.*

29 *Id.*

30 *Id.*

but the community's sympathy for Colburn may have been stronger than any evidence.<sup>31</sup> At Colburn's preliminary hearing, the prosecuting attorney told the judge he had known Colburn for 25 years, and that Colburn was "a real gentleman," which shocked and angered Hudson.<sup>32</sup>

In the end, Colburn's confidence that he would not be convicted was well-founded. On June 9, 1938, a grand jury returned a "no bill" in the case and set Colburn free.<sup>33</sup> The committee that had formed within the NAACP – the "John Lewis Smith Defense Committee"<sup>34</sup> – attempted to have Colburn arrested a second time and convene a second grand jury,<sup>35</sup> but no reports exist of a second grand jury except for the fact that local NAACP chairman W. S. Shortridge attempted to get Circuit Judge E. M. Creel's attention on the case.<sup>36</sup>

#### IV. The Community Response

*"[I]t is extremely unfortunate for the law that this case was not allowed to take its course."*

*–The Birmingham News, June 10, 1938*

##### A. General Community Reaction

It appears that most white residents of Birmingham were glad that Colburn was not indicted.<sup>37</sup> They viewed Colburn's violent act as a father doing what was necessary to protect his

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Daughter's Avenger Freed By Grand Jury*, THE MONTGOMERY ADVERTISER, June 10, 1938, at 1; *Farmer Who Killed Negro For Harming Child Is Released*, THOMASVILLE TIMES ENTERPRISE, June 10, 1938, at 8; *Grand Jury Won't Indict White Man Who Slew Daughter's Assailant*, ASSOCIATED NEGRO PRESS, June 13, 1938; *H. E. Colburn Not To Be Tried For Killing Negro*, THE JACKSON SUN, June 10, 1938, at 3; *Man Who Killed Negro In Court Freed*, BILOXI DAILY HERALD, June 10, 1938, at 12; *Slayer of Convicted Colored Youth Given Freedom By Ala. Grand Jury*, ATLANTA DAILY WORLD, June 11, 1938, at 1; *White Father Goes Free In Ala. Shooting Case*, NEW YORK AMSTERDAM NEWS, June 18, 1938, at 2. <sup>34</sup> *Steps Taken To Reopen Colburn "Murder" Case*, ATLANTA DAILY WORLD, June 14, 1938, at 2.

<sup>35</sup> *Id.*; *New Grand Jury Sift of Negro's Slaying Asked*, THE MONTGOMERY ADVERTISER, July 9, 1938, at 6; NAACP Branch News, The Crisis, October 1938 Issue.

<sup>36</sup> *Id.*

<sup>37</sup> *The No Bill In The Colburn Case*, THE BIRMINGHAM NEWS, June 10, 1938, at 8.



daughter and avenge her rape. The Birmingham News described the community reaction in an editorial, stating, “It is probably a safe assertion...that majority public sentiment approves the Grand Jury’s decision not to bring an indictment against Mr. Colburn. It is very easy to understand that feeling.”<sup>38</sup>

But while the Birmingham News understood the community’s feeling, they criticized it nonetheless, stating they “cannot share it or condone it.”<sup>39</sup> The paper had no sympathy for Smith, but was instead concerned that the case did not move through the legal system properly. They stated that those who condoned the killing were “treading on dangerous ground,”<sup>40</sup> and that the system of laws “is for the general good, and any lapse from legal processes is a blow at that system.”<sup>41</sup> In addition, the Baltimore Afro-American, a Black-owned newspaper, referred to a Birmingham Post editorial that “scorned the officers for failing to protect the prisoner in the courthouse.”<sup>42</sup> While it seems that most white residents believed the murder was a justifiable homicide, the press indicates that there were some who believed that the murder and subsequent no bill exemplified a failure of the legal system and of police officers’ ability to protect and uphold that system.

## **B. Tensions Within the Black Community**

While many white residents were in agreement with the result of the case against Colburn, Black residents were left divided in their feelings toward the NAACP’s legal response and ability to continue fighting for justice for Smith’s murder. At first, the murder helped the NAACP gain membership. Branch records from March, 1939 state, “The John Lewis Smith case

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> BALTIMORE AFRO-AMERICAN, *supra* note 15.

was undoubtedly the greatest impetus in giving our membership campaign new birth just when it would appear to be a failure.”<sup>43</sup> But Hosea Hudson and Communist Party organizers criticized the NAACP’s focus on membership. When NAACP leadership said they would not take action until Smith’s mother came to the meeting, Hudson became frustrated, stating, “They were still compromising. They didn’t want to face the facts, take the responsibility.”<sup>44</sup>

After Colburn was not indicted, NAACP involvement in the case diminished. Hudson described the meeting that took place after the no bill was returned as focused once again on increasing membership.<sup>45</sup> He said officials returned their focus to membership because they did not have sufficient funds to continue fighting this case and others like it.<sup>46</sup> This frustrated Hudson who claimed the NAACP “was always putting it on the Negro people, particularly what you call the lower class who’s always been in front of the gun.”<sup>47</sup>

While criticism from Hudson and members of the Communist Party and the International Labor Defense may have been valid, the NAACP was legitimately constrained by their membership model and truly could not afford to take on every case that came to them. The NAACP had limited funds to take on cases and limited their cases to those where “there is injustice because of race or color and where there is a possibility of establishing a precedent for the benefit of Negroes in general.”<sup>48</sup> This led to the rejection of many cases that came before the NAACP and to sharp criticism from local Communists, but without members funding the organization’s work, the NAACP had to implement these constraints.

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43 NAACP Branch Files, March 31, 1939.

44 Hudson & Painter, *supra* note 5, at 274.

45 *Id.* at 275-76.

46 *Id.* at 276.

47 *Id.*

48 Michael J. Klarman, *Historical Perspectives: Scottsboro*, 93 Marq. L. Rev. 379, 414 (2009).

## V. The Context for Smith's Murder

*"[I]t has been openly hinted here that the murder was a carefully arranged lynching."*

*The Chicago Defender, June 25, 1938*

Many questions arise from Smith's murder: Was it the act of one crazed father? Was the failure to indict him the result of a racist system that condoned such acts? Was there official involvement? Could Smith's murder be labeled a "lynching" and why is it important to examine this question? On the surface, the story is one of an individual white man, angered that "justice" had not been done, deciding to take the law into his own hands. However, details of events surrounding the murder emerged from various sources cast a shadow of suspicion over this surface-level story. Hosea Hudson asserted that "the judge and the official had allowed this girl's daddy to shoot this boy and kill him when they brought him out the door."<sup>49</sup> A deeper look into this murder illuminates a larger focus on systemic racial violence and the fear it was intended to generate through the examination and questioning of who was involved and the language used to describe this horrific event.

The rumors of a conspiracy to kill Smith started before his murder in the Jefferson County courthouse. First, many local newspapers agreed not to cover Smith's trial. After the grand jury returned the no bill against Colburn the Philadelphia Tribune stated, "Newspapers here had not printed a word about the story prior to the murder of the boy. The magazine 'Alabama,' in its May 23 issue, declared that 'newspapers, by agreement, refrained from printing the story.'"<sup>50</sup> Perhaps this decision was made in the aftermath of the 1937 Scottsboro trials where nine Black boys were accused of raping two white women. These trials had recently concluded with the convictions of four defendants, Haywood Patterson, Clarence Norris, Andrew Wright,

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<sup>49</sup> Hudson & Painter, *supra* note 5, at 274.

<sup>50</sup> *Refuse to Indict Man*, PHILADELPHIA TRIBUNE, June 23, 1938, at 3.

and Charlie Weems.<sup>51</sup> The other five boys' rape charges were either dropped<sup>52</sup> or a lesser plea was accepted.<sup>53</sup> In light of the media circus that emerged from the Scottsboro trials, it is possible that newspapers agreed to keep quiet about the John Lewis Smith trial. The Chicago Defender, a Black-owned newspaper, reported that Smith's trial "in several respects recalled the first trials of the Scottsboro boys,"<sup>54</sup> and after Colburn was set free, the New York Amsterdam News declared "Alabama's Scottsboro brand 'triumphed' here...when the Grand Jury refused to indict H. E. Colburn."<sup>55</sup> It seems as if newspapers were committed to preventing another public spotlight on the justice system.

Along with the media's deliberate attempts to keep the public in the dark about Smith's trial, it is possible that others may have been involved in facilitating Smith's murder. The Atlanta Daily World reported that, after the jury had returned a sentence of 99 years imprisonment, Judge Russell McElroy, who had been expecting a death sentence, sent the jury to deliberate again. When the sentence of 99 years remained, he was quoted as shouting at the jurors, "YOU WILL NEVER APPEAR ON A JURY IN MY COURT."<sup>56</sup> Attendees at the trial told Hosea Hudson that at this time McElroy wrote a note and passed it to an official in the courtroom.<sup>57</sup> The official looked at the note, frowned, and handed it back to McElroy and proceeded to look out the window with his hands behind his back.<sup>58</sup> Moments later, Smith was escorted from the courtroom and murdered.

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51 *Scottsboro: An American Tragedy: Who Were the Scottsboro Boys?*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/scottsboro-boys-who-were-the-boys/> (last visited Nov. 15, 2018).

52 *Id.*

53 *Id.*

54 *Liberate Man Who Slew Lad In Courtroom*, THE CHICAGO DEFENDER, June 25, 1938, at 5.

55 *White Father Goes Free In Ala. Shooting Case*, NEW YORK AMSTERDAM NEWS, June 18, 1938, at 2.

56 ATLANTA DAILY WORLD, *supra* note 1, at 1.

57 Hudson & Painter, *supra* note 5, at 273.

58 *Id.*

Other details cast suspicion over whether police actually searched Colburn for a gun multiple times that day. The Birmingham Post reported that there had been “rumors that the Negro’s life was in danger,” and Colburn did not want to go into the courtroom.<sup>59</sup> The paper reported that “officers searched him anyway, just to be sure he didn’t have a pistol. Then they kept an eye on him as the trial progressed.”<sup>60</sup> Despite these reports, Colburn refused to answer any questions about where he got the gun, stating only, “They searched me all over more than once, all right, but they didn’t find that gun!”<sup>61</sup> Detective R. J. Granger said he saw Colburn draw a pistol from his coat,<sup>62</sup> but how could he have kept a pistol in his coat if police searched him multiple times? The Birmingham News reported that after the verdict and sentence were given, Colburn “disappeared” for about ten minutes prior to the shooting.<sup>63</sup> Did he allude police by hiding the gun in the phone booth or somewhere else, or did he receive help from them in obtaining the gun? Robin Kelley, in his book “Hammer and Hoe,” described the officers as “passively” looking on while Colburn shot Smith, suggesting that the officers were not as diligent as other reports made them out to be.<sup>64</sup>

Finally, events after the murder also indicate a larger conspiracy at work. The Birmingham News reported that the sixth-floor corridor, where the murder took place, was roped off, and Colburn and his wife were brought to the office of Judge McElroy before Colburn was taken to the Ensley Jail.<sup>65</sup> Hosea Hudson said officials had waited until the body was moved and

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59 *Convicted Negro Slain By Father of Abused Child*, THE BIRMINGHAM POST, May 12, 1938, at 1.

60 *Id.*

61 Moyer, *supra* note 15.

62 THE BIRMINGHAM POST, *supra* note 60, at 3.

63 *Negro Youth, Convicted And Sentenced, Is Shot In Courthouse Corridor*, THE BIRMINGHAM NEWS, May 12, 1938, at 1.

64 Robin Kelley, *Hammer and Hoe: Alabama Communists During the Great Depression* 181 (Univ. of North Carolina Press, 1990).

65 THE BIRMINGHAM NEWS, *supra* note 64.

the blood was cleaned “before they allowed the rest of the Negroes to come out the courtroom.”<sup>66</sup>

The Birmingham News reported that after the courtroom had been cleared, Judge J. Fritz Thomson, presiding judge of the Circuit Court, Osa Andrews, Circuit Court Clerk, Judge J. Edgar Bowron, and other officials gathered in Judge McElroy’s office for a conference, “results of which were not made public.”<sup>67</sup>

## VI. The Definition of “Lynching”

While various accounts and details of Smith’s murder make it difficult to come to a confident conclusion over whether the murder was a result of collusion within the system, the question of whether Smith’s death constitutes a lynching is important to explore in order to better understand its significance and the nature of criminal justice at that time. The 1918 anti-lynching bill put forth by Congressman Leonidas C. Dyer, in collaboration with the NAACP, defined a lynching as “an assemblage composed of three or more persons acting in concert for the purpose of depriving any person of his life without authority of law as a punishment for or to prevent the commission of some actual or supposed public offense.”<sup>68</sup> If Smith’s murder was one born of individual anger and hatred from Colburn, then it does not fit this definition of a lynching. But if Colburn acted with the assistance of Judge McElroy, court officials, and police, then this could more likely be categorized as a lynching.

In fact, Smith’s murder was described as a lynching by multiple entities. The NAACP, in their March, 1939 branch files, called it a “stream-lined lynching.”<sup>69</sup> The International Labor Defense included Smith’s murder in a list of deaths they defined as lynchings.<sup>70</sup> The Chicago

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<sup>66</sup> Hudson & Painter, *supra* note 5, at 274.

<sup>67</sup> THE BIRMINGHAM NEWS, *supra* note 64.

<sup>68</sup> Josephine Bolling McCall, *The Penalty for Success: My Father Was Lynched in Lowndes County Alabama*, 6 (2015).

<sup>69</sup> NAACP Branch Files, March 31, 1939.

<sup>70</sup> *I.L.D. Says 8 Members Of Race Lynched In 1938*, THE CHICAGO DEFENDER, Jan. 21, 1939, at 10; *ILD Lists 8 Lynchings*, BALTIMORE AFRO-AMERICAN, Jan. 14, 1939, at 5.

Defender described the murder as a “carefully arranged lynching.”<sup>71</sup> An Associated Negro Press story reprinted in the New York Amsterdam News said the case “had most of the elements of a lynching.”<sup>72</sup>

At the very least, Smith’s murder could be categorized as a “legal lynching,” a term used by Communists and the ILD to describe the Scottsboro trials,<sup>73</sup> or as a lynching in the way Josephine Bolling McCall describes her father’s lynching – one man acting in representation of the mob.<sup>74</sup> The difficulty of determining how to define Smith’s murder reflects the debate of the era as to what the definition of a lynching should be.<sup>75</sup> Without further knowledge of who knew what and when, and who acted when and in what context, this difficulty will remain lingering over Smith’s death.

## VII. Seeking Justice Today

*“She would like somebody to do something.”<sup>76</sup>*

*–Hosea Hudson, recalling Amanda Hill’s reaction to her son’s death*

The courthouse where John Lewis Smith was murdered is the Jefferson County Courthouse still standing today. In light of the lies and selective application of guilt that tainted the memory of Smith’s life and death, a restorative justice event at the courthouse appears as an appropriate way to seek justice for Smith today. But before this event can occur, certain steps need to be taken to uncover the full truth of what happened on May 11, 1938. First, Smith’s trial records need to be recovered. Their existence at the Jefferson County courthouse has been

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71 THE CHICAGO DEFENDER, *supra* note 55.

72 *Shoots Down Prisoner For Sex Assault*, NEW YORK AMSTERDAM NEWS, May 21, 1938, at 2

73 Klarman, *supra* note 49, at 385.

74 Bolling McCall, *supra* note 69.

75 See generally Christopher Waldrep, *War of Words: The Controversy over the Definition of Lynching, 1899-1940*, 66 J. Southern History 75 (2000).

76 Hudson & Painter, *supra* note 5, at 274.

confirmed, but efforts to obtain them have not been fruitful because the records were sealed by a judge. It is unclear when the records were sealed, but this is an indication that there may be ongoing efforts to this day to stop the truth of Smith's murder from coming to light.

Second, further genealogy research is needed to locate any living relatives of John Lewis Smith, and these efforts could also lead to restorative justice events. Such events can benefit a community which may not have fully recognized its history of racial violence. While research has been able to establish a Smith family tree, no living relatives have been found as of date. What is known for certain is that Smith's parents were Lewis Smith and Amanda Cook (who later remarried and became Amanda Hill).<sup>77</sup> Smith and his family were all born in Talbotton, Georgia, where Smith's body was returned and buried after his murder.<sup>78</sup>

While genealogy research to date has not been able to locate living relatives of John Lewis Smith, it has not been difficult to uncover what happened to the Colburn family and locate living relatives, including the alleged victim. Huey Colburn and his wife divorced shortly after Smith's murder – perhaps in the aftermath – and she was remarried by 1942 to Edwin Forrest Jenkins, as she is listed as his next of kin, Mrs. Gladys Colburn Jenkins, on his World War II draft registration card.<sup>79</sup> Colburn went on to live a long life. He fought in World War II from September 1943 to November 1945.<sup>80</sup> He also got remarried to a woman named Laura, who died in 1969.<sup>81</sup> Colburn died at the age of 83 on April 11, 1990.<sup>82</sup> He is buried in the Centreville Memorial Cemetery in Bibb County, Alabama.

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77 Noah Lapidus, CRRJ Help (Email, Nov. 1, 2018) (describing Smith family tree).

78 John Lewis Smith Death Certificate.

79 Edwin Forrest Jenkins WWII Draft Registration Card (Feb. 14, 1942).

80 Huey Colburn Department of Veterans Affairs BIRLS Death File.

81 Huey E Colburn, Find A Grave, <https://www.findagrave.com/memorial/111647548>.

82 *Id.*



Colburn's daughter Sarah, whom he claimed was raped by Smith, is still alive at the time of this writing. She married at 16 years old and became Sarah Colburn Mowery.<sup>83</sup> She is currently 88 years old.<sup>84</sup> It is unclear how she carries the memory of her father and the events that occurred on May 11, 1938. The Birmingham Post reported that she had given testimony to court officials, but no other details of her involvement in the trial have emerged.<sup>85</sup> If she holds a different view of the murder than her father did, and if living members of Smith's family are located, a restorative justice event could be held during which true healing can begin between the two families.

### **VIII. Conclusion**

Regardless of the lack of definitive evidence surrounding John Lewis Smith's trial and murder, there is value and power in examining whether it was a lynching. While the details of those who may have been involved in Smith's murder are limited, it is possible that Colburn's violent act was not an individual one. Examining Smith's murder as a lynching can be a form of justice today, because it encourages those who learn the story of his murder to look beyond individual hatred and see a societal network of racial violence that facilitated his death. In calling Smith's murder a lynching, a brighter light is shone on the more powerful actors and institutions that allowed this and other violent acts to occur.

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<sup>83</sup> Sarah Nell Colburn, Alabama, County Marriage Records, 1805-1967 (May 15, 1947).

<sup>84</sup> Sarah Colburn Mowery, LexisNexis Public Records.

<sup>85</sup> *Convicted Negro Slain By Father of Abused Child*, THE BIRMINGHAM POST, May 12, 1938, at 1.

## **Appendix A – Photos**



*John Lewis Smith's body lies on the floor of the Jefferson County Courthouse sixth-floor corridor, as various courtroom officials and police look on.*

*– The Birmingham News, May 12, 1938*



*Gladys and Huey Colburn and their daughter Sarah at age 3.*

*-The Birmingham Post, May 12, 1938*



*Huey Colburn (center) in the custody of Detective W. M. Espy (left), and his wife.*

*-The Montgomery Advertiser, May 13, 1938*