

# CLAUDE OTIS JOHNSON:

*A search for legal justice in 1953 Mississippi*



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## I. INTRODUCTION<sup>1</sup>

Claude Otis Johnson was only 34 years old, when, on April 25, 1953, he was shot and killed in Benoit, Bolivar County, Mississippi by the local Justice of the Peace.<sup>2</sup> This single incident became the embodiment of sociological and legal dynamics playing out in the South during this time period.

On the evening of April 25, 1953, Johnson went to meet his wife at the local grocery store.<sup>3</sup> While there, he and the store owner had some sort of confrontation over an unpaid grocery bill of around \$37.50.<sup>4</sup> This confrontation culminated in a minor physical altercation, at which point Johnson left the store.<sup>5</sup> John Thomas, the store owner who was also one of two Justices of the Peace for the Bolivar County 2nd District, then went and got his gun. Over his wife's alleged protestations, he pursued Johnson and found him at a café down the street.<sup>6</sup> Thomas then fired three shots and killed Johnson.<sup>7 8</sup>

Three days later Thomas was brought before E. V. Reams, the other local justice of the peace for Bolivar County 2nd District, for a preliminary hearing.<sup>9</sup> Reams promptly "exonerated"

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<sup>1</sup> The majority of information gathered on this case by the author was through newspaper articles. The author was unable to obtain access to official records of court proceedings and thus some of the legal language will be imprecise—non-legal descriptions of legal proceedings given by newspapers are approximated in order to coherently describe the events that may have transpired.

<sup>2</sup> "Allege JP Shot Negro; He Says 'No Comment'." *The Delta Democrat-Times*, April 27, 1953; "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953.

<sup>3</sup> "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953; "Trial Of Justice In Slaying Case Begins." *The Delta Democrat-Times*, October 29, 1953; "Witness Says Thomas Was Hit." *The Delta Democrat-Times*, October 30, 1953.

<sup>4</sup> "Trial Of Justice In Slaying Case Begins." *The Delta Democrat-Times*, October 29, 1953; "Witness Says Thomas Was Hit." *The Delta Democrat-Times*, October 30, 1953.

<sup>5</sup> *Id.*

<sup>6</sup> "Witness Says Thomas Was Hit." *The Delta Democrat-Times*, October 30, 1953.

<sup>7</sup> "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953; "Trial Of Justice In Slaying Case Begins." *The Delta Democrat-Times*, October 29, 1953; "Witness Says Thomas Was Hit." *The Delta Democrat-Times*, October 30, 1953.

<sup>8</sup> "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953; "Witness Says Thomas Was Hit." *The Delta Democrat-Times*, October 30, 1953.

<sup>9</sup> "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953.

Thomas, calling the incident “justifiable homicide,” claiming he could not find any witnesses to the actual slaying.<sup>10</sup> At this point the case was picked up by a regional paper, *The Delta Democrat-Times*, which seized on this case, calling for true justice to be done.<sup>11</sup> Due in part to the newspaper’s public admonitions about the initial treatment of this slaying, the case gained notoriety and attracted the attention of the US Attorney’s Office for the Northern District of Mississippi. A federal grand jury for the Northern District of Mississippi was convened to determine whether there was a “civil rights violation.”<sup>12</sup> A leak from the proceedings disclosed that the jury was tasked with determining whether John Thomas was acting in his official capacity as a justice of the peace when he killed Johnson.<sup>13</sup> Ultimately, the jury failed to return an indictment, effectively ending the federal case.<sup>14</sup>

After the case was essentially abandoned at the federal level, murder charges against John Thomas were finally brought at the state level about six months after the shooting.<sup>15</sup> The defense attorney argued zealously that Thomas had acted in self-defense and Thomas was acquitted.<sup>16</sup> During the coverage of these proceedings, it was discovered that Thomas had a history of violence when he lived in McComb, Mississippi and was similarly found not guilty of shooting a man, under a theory of self-defense.<sup>17</sup>

## II. THREE ATTEMPTS AT LEGAL JUSTICE AND THEIR ULTIMATE FAILURE

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; “Bloodstained Whitewash (An Editorial).” *The Delta Democrat-Times*, April 29, 1953.

<sup>12</sup> “Federal Court Action Seen In Benoit Killing.” *The Delta Democrat-Times*, September 6, 1953; “Grand Jury To Probe Shooting At Benoit.” *The Delta Democrat-Times*, September 16, 1953; “Grand Jury Returns No Indictment.” *The Delta Democrat-Times*, September 22, 1953.

<sup>13</sup> “Grand Jury To Probe Shooting At Benoit.” *The Delta Democrat-Times*, September 16, 1953; “Grand Jury Returns No Indictment.” *The Delta Democrat-Times*, September 22, 1953.

<sup>14</sup> *Id.*

<sup>15</sup> “Trial Of Justice In Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953

<sup>16</sup> “Bolivar Jury Finds Justice Not Guilty.” *The Delta Democrat-Times*, November 1, 1953.

<sup>17</sup> “Fellow JP Exonerates Thomas Of Murder Charges:--‘Justifiable’.” *The Delta Democrat-Times*, April 28, 1953; “Defendant in Heated Pike Trials Two Decades Ago--John Thomas Principal In Delta Court Hearing.

There are two interesting legal aspects to this case: first, the mystery that is the federal prosecution, and second, the fact that despite the three distinct legal proceedings in Johnson's case (a rarity in racially motivated murders), Thomas was never held accountable for his crimes.

### A. The Preliminary Hearing

Three days after the shooting, on April 28, 1953, Thomas was brought before E.V. Reams, the other local Justice of the Peace for the Bolivar County 2nd District,<sup>18</sup> for a "preliminary hearing."<sup>19</sup> Notably, before the hearing actually began the Bolivar County Deputy Sheriff, the County Attorney, and Thomas engaged in a private 30-minute conference, the substance of which was not made public.<sup>20</sup> Then "a preliminary hearing" began before the other local justice of the peace E.V. Reams, in which Thomas presented his own defense and the County Attorney read Reams several portions of the Mississippi Code concerning "justifiable homicide, manslaughter and murder."<sup>21</sup> No eyewitnesses were called. The only persons who testified were: an employee of Thomas's from his grocery store; the Bolivar Deputy Sheriff; and a Benoit Town Marshall.<sup>22</sup> At this hearing, Thomas claimed that he "got his gun to 'go out and arrest him [Johnson] so I could turn him over to Marshall Lester."<sup>23</sup> Reams subsequently found that there was insufficient evidence to "bind him [Thomas] over to the grand jury," and that the homicide was justifiable.<sup>24</sup> *The Delta Democrat-Times* reported this hearing as an "exoneration."<sup>25</sup>

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<sup>18</sup> Official Statistical Register, Bolivar County—Rosedale—Cleveland, 1949-1952.

<sup>19</sup> "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953.

<sup>20</sup> Note, the assumption is that the meeting's content was not publicly available because the Delta Democrat was not able to determine or publish what exactly was discussed. "Fellow JP Exonerates Thomas Of Murder Charges:--'Justifiable'." *The Delta Democrat-Times*, April 28, 1953.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

It is unclear from the newspaper articles surrounding this event exactly what the legal force and nature of this proceeding was. Possibly it was some sort of probable cause hearing. Typically, such preliminary hearings are conducted as a coroner's inquest or they are held before a grand jury. The supposition that this was not a typical probable cause hearing and was highly irregular is supported by the stance of Betty Carter, co-publisher of *The Delta Democrat-Times* and the wife of Hodding Carter, the publisher. Ms. Carter stated that what initially drew the attention of *The Delta Democrat-Times* was that no coroner's inquest was to be had.<sup>26</sup>

The preliminary hearing held by Reams was most likely a particularized hearing under Mississippi's system of local justice. The role of the Justice of the Peace is limited to adjudicating local disputes, namely, keeping the local peace,<sup>27</sup> and therefore it is possible that Reams was executing this function in the preliminary hearing. However, Even in 1953, whether or not to pursue murder charges would have been outside the jurisdiction of a local Justice of the Peace. According to the Mississippi Constitution, they were only permitted to adjudicate civil disputes and crimes that would result in a fine or imprisonment in county jail (i.e. low level regulatory offenses):

Sec. 171. A competent number of justices of the peace and constables shall be chosen in each county in the manner provided by law, for each district, who shall hold their office for the term of four years . . . . The jurisdiction of justices of the peace shall extend to causes in which the principal amount in controversy shall not exceed the sum of two hundred dollars; and they shall have jurisdiction concurrent with the circuit court over all crimes whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail . . .

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<sup>26</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977. It is further unclear whether any coroner's inquest ever occurred, even after the District Attorney became involved in the case.

<sup>27</sup> JUSTICE OF THE PEACE, Black's Law Dictionary (10th ed. 2014); State of Mississippi Judiciary - Justice Court. Accessed August 16, 2017. <https://courts.ms.gov/trialcourts/justicecourt/justicecourt.html>.

<sup>28</sup> CONSTITUTION OF MISSISSIPPI, §171 (1890).

Murder was outside the scope of authority for a Justice of the Peace. Additionally, although *The Delta Democrat-Times* argued that part of what made this hearing devoid of due process was the bias the E.V. Reams showed for his close colleague,<sup>29</sup> such a conflict of interest was, in fact, permissible under Mississippi law. Pursuant to the Mississippi Constitution,

“In all causes tried by a justice of the peace, the right of appeal shall be secured under such rules and regulations as shall be prescribed by law, and no justice of the peace shall preside at the trial of any cause where he may be interested, or the parties or either of them shall be connected with him by affinity or consanguinity, except by the consent of the justice of the peace and of the parties.”<sup>30</sup>

This provision was interpreted in case law to mean that a justice of the peace must have an actual pecuniary or familial interest in the case; other conflicts do not require Justices of the Peace to recuse themselves.<sup>31</sup>

The “preliminary hearing” described by *The Delta Democrat-Times* and other local newspapers was utterly devoid of due process, smacked of a violation of proper judicial neutrality (evidenced by the off the record pre-trial conference and the fact that Thomas was judged by his close colleague who theoretically determined that the case was unfit for a jury).<sup>32</sup> However, these improprieties likely had no real legal implications for two basic reasons. First, no grand jury was impaneled, and therefore jeopardy did not attach.<sup>33</sup> Secondly, one day after the “preliminary hearing,” the district attorney, (presumably an authority on local laws), stated that this hearing would in no way preclude a grand jury inquiry into the case or a potential prosecution.<sup>34</sup> Consequently, while this hearing may exemplify the corruptness of local law enforcement (the local justice of the peace, sheriff, and county attorney all participated in this

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<sup>29</sup> “Fellow JP Exonerates Thomas Of Murder Charges:--‘Justifiable’.” *The Delta Democrat-Times*, April 28, 1953.

<sup>30</sup> CONSTITUTION OF MISSISSIPPI, §171 (1890).

<sup>31</sup> *Winborn v. State*, 213 Miss. 322, 56 So. 2d 885 (1952); *Evans v. State*, 92 Miss. 34, 45 So. 706, 707 (1908).

<sup>32</sup> “Fellow JP Exonerates Thomas Of Murder Charges:--‘Justifiable’.” *The Delta Democrat-Times*, April 28, 1953.

<sup>33</sup> Also, presumably if there were a double jeopardy argument it would have been raised at the state murder prosecution and the newspapers were notably silent on this despite the fact that they reported the defense’s strategy in great detail.

<sup>34</sup> “DA Crisler Says Grand Jury Will Investigate Killing At Benoit.” *The Delta Democrat-Times*, April 29, 1953.

“farce”<sup>35</sup>), and many other cases similar to Johnson’s may also have been swept under the rug by white men who appeared to have the support of the law, formal legal attempts to gain justice for Johnson do not appear to have been affected by this “hearing.” In fact, it is possible that this preliminary “hearing” sparked greater attention and further legal process than the case would have received had it initially been tried as a murder case by the county attorney or district attorney.

### **B. The Federal Grand Jury**

At some point after the preliminary hearing the U.S. Attorney’s office for the Northern District of Mississippi became interested in the case. According to *The Delta Democrat-Times*, a federal grand jury was convened in early September 1953 to consider whether to indict Thomas for “civil rights related offenses.”<sup>36</sup> The paper reported that the jury was asked whether Thomas was acting in his official capacity as a justice of the peace or as a private citizen when he shot and killed Johnson.<sup>37</sup> The newspaper also speculated that there could have been a civil rights violation in light of the fact that no eye-witnesses were called to the “preliminary hearing,” when there were a number of people who witnessed the slaying.<sup>38</sup> Given these facts, it is likely that the U.S. Attorney for the Northern District of Mississippi, Noel Malone, was pursuing the case under 18 USC §242.

In 1953, 18 U.S.C. §242 provided, in relevant part, that:

Whoever, under color of any law, willfully subjects, or causes to be subjected, any inhabitant of any State to the deprivation of any rights secured or protected by the Constitution and laws of the United States, or to different punishments, pains,

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<sup>35</sup> “Bloodstained Whitewash (An Editorial).” *The Delta Democrat-Times*, April 29, 1953.

<sup>36</sup> “Grand Jury To Probe At Benoit.” *The Delta Democrat-Times*, September 16, 1953.

<sup>37</sup> “Grand Jury Returns No Indictments.” *The Delta Democrat-Times*, September 22, 1953.

<sup>38</sup> “Good News From Oxford.” *The Delta Democrat-Times*, September 7, 1953; “Federal Action Seen In Benoit Killing.” *The Delta Democrat-Times*, September 6, 1953; “Grand Jury To Probe At Benoit.” *The Delta Democrat-Times*, September 16, 1953.



or penalties . . . by reason of his color, or race, than are prescribed, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.<sup>39</sup>

One of only a handful of civil rights statutes, the use of §242 was relatively rare in 1953 because of the high hurdles imposed upon its requisite *mens rea* by the then-recent Supreme Court case *Screws v. United States*, decided in 1944.<sup>40</sup> Screws dictated that “the specific intent required by the Act is an intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them.”<sup>41</sup> Additionally, *Screws* concretely defined “under color of law” under 18 U.S.C. § 242 as acting in an official capacity.<sup>42</sup> This definition does not turn on whether or not the state actor’s actions were technically legal or authorized.<sup>43</sup>

Hence the prosecutor, Noel Malone would have had to prove that Thomas had the intent to deprive Johnson of a constitutional right, for example, to inflict upon him an extra-legal punishment. While difficult, because Thomas was a law enforcement official, presumably understanding the law and the minor penalty to which Johnson would be subjected for an unpaid grocery bill, it is possible that the prosecution might have overcome this hurdle by showing that Thomas had *animus* for Johnson (perhaps stemming from the altercation in the store). On the other hand, Thomas, in asserting self-defense may have been able to argue that he was not intending a constitutional deprivation but was acting in fear. This is undercut by the fact that Thomas pursued Johnson with a gun, a gun that he had to go and retrieve. Under traditional concepts of criminal law, a person carrying a weapon is typically found to have the conditional

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<sup>39</sup> *Screws v. United States*, 325 U.S. 91 (1945).

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

<sup>41</sup> *Id.* at 104.

<sup>42</sup> *Id.* At 107

<sup>43</sup> *Id.*

intent to use it.<sup>44</sup> Therefore, even if shooting Johnson was not Thomas's preferred outcome, but only an alternative, it was still intended. Unfortunately, there is little information available about the actual theory of the prosecution to show the existence or success of such theories one way or another.

Given the facts as reported by the newspaper,<sup>45</sup> the more likely reason that this case was "set aside" was a failure of the state action or color of law question. In this case, the jury would have had to determine whether Thomas was pursuing Johnson in his role as a Justice of the Peace in order to arrest him, or whether Thomas chased down and shot Johnson as a private citizen and store owner. Justices of the Peace are elected officials,<sup>46</sup> and as such are always cloaked in the color of law. This view of Thomas as a Justice of the Peace would support the prosecution's theory that Thomas was acting in an official capacity. However, for state action purposes, it is not clear that such elected officials are actually always "on duty." No binding case had been brought at the federal level in 1953 to directly reach this issue. However, during this time period, Justices of the Peace in other parts of the county had been found to have acted under "color of law." It is likely that they were not considered to always be on duty, and that, whether or not they always acted with the authority of the state, a charge of acting under color of law could be brought against such officials.<sup>47</sup> Case law suggests that typically such charges are brought when Justices of the Peace are clearly exceeding their authority, but are still acting as though they have legal authority.<sup>48</sup>

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<sup>44</sup> The Supreme Court did not actually officially make conditional intent binding until 1999 in *Holloway v. United States*, 526 U.S. 1 (1999).

<sup>45</sup> "Grand Jury Returns No Indictments." *The Delta Democrat-Times*, September 22, 1953.

<sup>46</sup> State of Mississippi Judiciary - Justice Court. Accessed August 16, 2017.

<https://courts.ms.gov/trialcourts/justicecourt/justicecourt.html>.

<sup>47</sup> *McShane v Moldovan*, 172 F.2d 1016 (6th Cir. 1949); *Cuiksa v. City of Mansfield*, F.2d 700 (6th Cir. 1957).

<sup>48</sup> *Id.*

While Thomas initially asserted at the preliminary hearing that he was pursuing Johnson to “arrest him,” it is unclear whether this prior statement was admitted or whether Thomas subsequently changed his story. Assuming that Thomas was “arresting Johnson,” it is more likely that not that such an arrest would be considered to be asserting a law enforcement role and thereby Thomas would have been acting under color of law. Although Justices of the Peace typically do not directly arrest private citizens, it is unclear whether such an arrest would exceed the scope of their duties and thereby would more strongly indicate that Thomas was acting “under color of law” to effect a constitutional deprivation of Johnson’s rights. Justices of the Peace execute arrest warrants, and a warrant for an unpaid bill is likely the type of regulatory offense envisioned by the Mississippi Constitution to be within the jurisdiction of a Justice of the Peace. Since Thomas was once employed as a marshal, he would likely have known this. If he was intending to act lawfully, it is unclear why he did not follow standard procedure by simply executing such a warrant for the local marshal to carry out.

Assuming that Thomas’s statement that he was intending to arrest Johnson was admitted, the weight of this statement is further complicated by the fact that Thomas reportedly stated that he was attempting to arrest Johnson to bring him to the town marshal.<sup>49</sup> During this time period, it would not have been unheard of for a citizen to conduct an arrest for a breach of the peace,<sup>50</sup> an argument that Thomas might have used if any prior inconsistent statements were admitted for consideration by the jury. In fact, no record exists describing what evidence may have been admitted or to what Thomas may have testified.

Given the newspapers coverage of the federal grand jury proceedings, the federal grand jury may have found that Thomas was in fact pursuing Johnson as a private citizen, because in

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<sup>49</sup> “Fellow JP Exonerates Thomas Of Murder Charges:--‘Justifiable’.” *The Delta Democrat-Times*, April 28, 1953.

<sup>50</sup> In fact, this was an argument Thomas’ lawyer used in the state murder trial. “Trial of Justice in Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953.

the end, it “failed to return any indictment” against him.<sup>51</sup> But it is also possible that the jury made this decision based on the state’s plans to pursue murder charges against Thomas some months later.<sup>52</sup> A state murder trial would have likely been considered the more proper remedy to seek justice in a criminal case in such a circumstance. This is mere speculation however, as it is impossible to know the jury’s rationale for declining indictment against Thomas.

### C. The State Murder Prosecution

John Thomas was indicted for murder by a grand jury for Bolivar County on October 20, 1953<sup>53</sup> and, on October 29, 1953, he was officially charged with Johnson’s slaying in front of a jury of twelve at the Bolivar County Circuit Court.<sup>54</sup> *The Delta Democrat-Times* reported that during jury selection, the district attorney prosecuting the case had tried to determine whether any of the prospective jurors ““had prejudice against a conviction in a case of this kind,”” namely, a case “involving charges against a white man for the shooting of a Negro man.”<sup>55</sup> A number of prospective jurors were reportedly dismissed for this reason.<sup>56</sup>

The defense relied on a theory of self-defense. They emphasized the altercation that had previously occurred in Thomas’s store.<sup>57</sup> Taking the stand, Thomas asserted that he had in fact assured Johnson that there was no problem with the grocery bill, when Johnson became suddenly

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<sup>51</sup> “Grand Jury Returns No Indictments.” *The Delta Democrat-Times*, September 22, 1953.

<sup>52</sup> “DA Crisler Says Grand Jury Will Investigate Killing At Benoit.” *The Delta Democrat-Times*, April 29, 1953; “Attorney General Coleman Shows Interest In Bolivar Killing; Supports DA Decision.” *The Delta Democrat-Times*, May 3, 1953; “Trial of Justice in Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953.

<sup>53</sup> “John Thomas Of Benoit Pleads Not Guilty At Hearing.” *The Delta Democrat-Times*, October 28, 1953; “Trial of Justice in Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953.

<sup>54</sup> “Trial of Justice in Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> “Trial of Justice in Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953; “Witness Says Thomas Was Hit.” *The Delta Democrat-Times*, October 30, 1953; “Bolivar Jury Finds Justice Not Guilty.” *The Delta Democrat-Times*, November 1, 1953.

violent, physically assaulting him.<sup>58</sup> He then asserted that after Thomas pursued Johnson, Johnson lunged at him outside the café, pulling him down and “forcing” Thomas to shoot him.<sup>59</sup>

This theory was severely undercut by eyewitness testimony, which state that Thomas shot Johnson first at a distance, and then twice more at close range.<sup>60</sup> Johnson’s sister-in-law testified that before getting his gun Thomas stated that “No — is going to eat my groceries without paying for them.”<sup>61</sup> Finally, in her oral history given many years later, Betty Carter recalled that Johnson had been shot three times in the back.<sup>62</sup> Regardless of the altercation in the store, these facts should have been enough to disprove the defense’s theory and discredit Thomas’s testimony entirely.

Legally, in presenting this defense, Thomas’s attorneys reportedly stressed that “every man has the right to defend himself,” and there would not have to be any actual danger, but rather only apparent danger, for a claim of self-defense to be valid or “justified.”<sup>63</sup> They further emphasized that the burden was on the prosecution to establish Thomas’s guilt, because in the United States “unlike other nations,” “a man is innocent until proven guilty,” and that “it is better for a hundred guilty men to go free for lack of evidence rather than an innocent man being convicted.”<sup>64</sup> Finally, the defense also asserted that Johnson was breaching the peace and that

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<sup>58</sup> “Bolivar Jury Finds Justice Not Guilty.” *The Delta Democrat-Times*, November 1, 1953.

<sup>59</sup> *Id.*

<sup>60</sup> “Witness Says Thomas Was Hit.” *The Delta Democrat-Times*, October 30, 1953.

<sup>61</sup> *Id.*

<sup>62</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM’s Center for Oral History and Cultural Heritage, August 17, 1977. Discussing rising racial tensions in the south in the 1950s, Betty Carter remembered the following about the Johnson case,

Well, up in Bolivar County, a man in a small store, a white man, the store owner, shot a Negro three times in the back because the Negro was threatening him. It was over an account and the Black man said, "I don't owe it," and probably the Black man said some things; I don't know. But, by the time that the gun shots were fired they were all in the man's back. And the sheriff said they didn't need a coroner's jury, that they didn't need anything.

<sup>63</sup> “Trial of Justice in Slaying Case Begins.” *The Delta Democrat-Times*, October 29, 1953.

<sup>64</sup> *Id.*

both private citizens and law enforcement officials have the right to “arrest any person committing a breach of the peace in his presence.”<sup>65</sup>

At one point during the trial, the court room was reportedly filled with 150 spectators.<sup>66</sup> And in total, *The Delta Democrat-Times* reported that some twenty-three witnesses were asked to be present, although only eleven were called to testify.<sup>67</sup>

Despite the fact that this trial spanned days with numerous witnesses who refuted Thomas’s claim of self-defense, after a mere ten minutes of deliberation, the jury found Thomas not guilty.<sup>68</sup> This outcome shows that despite the public nature of this crime, white law enforcement officials in Mississippi were at the time able to act with virtual impunity. This tilting of the judicial system towards white officials is underscored by the fact that Thomas had a prior history of violent action during his long tenure as a law enforcement official. While no transcript of the state proceedings against Thomas was available to this author, given the outcome of the case and the defense statements, one could surmise that Thomas’s past incidents of violence were not admitted at the trial for Johnson’s killing. Reportedly, in arguing Thomas’s innocence, his defense attorney allegedly stated that “If a man is guilty he will continue to get into trouble, and the law will take him in,”<sup>69</sup> a perversion of what occurred in Thomas’s case.

### **III. JOHN THOMAS—A HISTORY OF VIOLENCE AND IMPUNITY**

#### **A. Prior Efforts to Convict Thomas in McComb**

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<sup>65</sup> *Id.*

<sup>66</sup> “Witness Says Thomas Was Hit.” *The Delta Democrat-Times*, October 30, 1953

<sup>67</sup> “Bolivar Jury Finds Justice Not Guilty.” *The Delta Democrat-Times*, November 1, 1953.

<sup>68</sup> “Thomas Is Freed In Murder Trial.” *The Clarion-Ledger*, October 31, 1953; “Bolivar Jury Finds Justice Not Guilty.” *The Delta Democrat-Times*, November 1, 1953.

<sup>69</sup> “Bolivar Jury Finds Justice Not Guilty.” *The Delta Democrat-Times*, November 1, 1953.

Sometime between the shooting of Johnson and the “preliminary hearing” *The Delta Democrat-Times* discovered that Thomas had previously been tried for a similar crime in McComb, Mississippi, where he had lived and worked as a policeman before moving to Benoit.<sup>70</sup> In McComb, Thomas was actually tried two or three times (the record is unclear) on murder charges for killing Howard Bates, a white man.<sup>71</sup> In 1934, in McComb, Thomas was approached by Doll Boyd who told Thomas she was having problems with her ex-husband Howard Lee Bates.<sup>72</sup> Allegedly for reasons related to inspecting Bates’ vehicle for legal violations, Thomas drove Boyd to Bates’ home. There, allegedly after an argument, Bates, who was found unarmed, was shot and killed by Thomas.<sup>73</sup>

During the first attempt to convict Thomas, a mistrial was declared after the jury deliberated for fourteen hours.<sup>74</sup> The second trial in 1935 also ended in a mistrial, this time after the jury deliberated for a reported eighteen hours.<sup>75</sup> During the second trial, Thomas moved to Benoit, where he began serving as town marshal.<sup>76</sup> A third trial allegedly occurred in 1936, and once again resulted in a mistrial.<sup>77</sup> Thomas was never convicted.

Similarly to the attempt at federal prosecution in Johnson’s case, in the Bates case, after Thomas was released by the local criminal justice system, another case was actually brought in McComb to try and hold Thomas and Boyd, Bates’ ex-wife, civilly liable. The administratrix of

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<sup>70</sup> “Fellow JP Exonerates Thomas Of Murder Charges:--‘Justifiable’.” *The Delta Democrat-Times*, April 28, 1953.

<sup>71</sup> “Defendant In Heated Pike Trials Two Decades Ago--John Thomas-Principal In Delta Court Hearing. *McComb Enterprise-Journal*, April 28, 1953; “Thomas Freed With Hearing At Rosedale.” *McComb Enterprise-Journal*, April 29, 1953.

<sup>72</sup> *Id.*

<sup>73</sup> “Defendant In Heated Pike Trials Two Decades Ago--John Thomas-Principal In Delta Court Hearing. *McComb Enterprise-Journal*, April 28, 1953; “Thomas Freed With Hearing At Rosedale.” *McComb Enterprise-Journal*, April 29, 1953; *Bates v. City of McComb*, 181 Miss. 336, 179 So. 737, 739 (1938).

<sup>74</sup> “Defendant In Heated Pike Trials Two Decades Ago--John Thomas-Principal In Delta Court Hearing. *McComb Enterprise-Journal*, April 28, 1953; “Thomas Freed With Hearing At Rosedale.” *McComb Enterprise-Journal*, April 29, 1953.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

Bates' estate sued the city of McComb under a theory that when city officials decided to employ Thomas they knew or should have known that he was an incompetent or vicious person, and that Thomas was subsequently guilty of the tort of unlawfully and negligently shooting Bates while discharging his governmental duties.<sup>78</sup> On appeal to the Mississippi Supreme Court, the Court found that these actions did not “make the city liable; nor does the failure to require of him a bond; nor can the city be made liable by ratification, where not liable in the first instance.”<sup>79</sup> This lawsuit was also filed against Boyd under the theory that she aided and abetted Thomas the commission of a tort. The case against Boyd, unlike the case against the city, was reversed and remanded after the Supreme Court found that she had failed to properly make a motion to dismiss for lack of a cause of action.<sup>80</sup> While Bates' race may have opened up further litigation options to his next of kin, this lawsuit shows how law enforcement officials were able to escape liability both personally, and as state agents.

### **B. Other Incidents of Violence**

In 1931, John Thomas, at that time a police officer, also reportedly shot and killed a youth when attempting to arrest him.<sup>81</sup> The youth, a 19-year-old from Arkansas, was allegedly seen robbing a store.<sup>82</sup> When Thomas attempted to arrest him, he allegedly “whirled as the officer was about to overtake him and attempted to strike the officer with a crow-bar.” Thomas shot him at close range through the neck—injuring and ultimately killing him.<sup>83</sup> No trial or investigation into Thomas's use of force was reported in that case.

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<sup>78</sup> Bates v. City of McComb, 181 Miss. 336, 179 So. 737, 739 (1938).

<sup>79</sup> Bates v. City of McComb, 181 Miss. 336, 179 So. 737, 739 (1938).

<sup>80</sup> Bates v. City of McComb, 181 Miss. 336, 179 So. 737, 739 (1938).

<sup>81</sup> “Identify Victim As Jewell Smith of Hoxie, Arkansas.” *Semi-Weekly Journal*, September 12, 1931.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*



In 1937 the *Yazoo City Herald* featured a single article entitled “John Thomas Is Freed of Charge Of Beating Youth.”<sup>84</sup> This short article reports that a “John Thomas” was cleared by a jury of charges of assault and battery of a 16-year-old boy.<sup>85</sup> As this is an independently reported article which did not provide any further characterization of the “John Thomas” mentioned, it is unclear whether this is the same or a different John Thomas. *The Delta Democrat-Times* also reported that Thomas was rumored to have previously shot and killed another black man.<sup>86</sup> However, this statement was not supported by specifics, and no records verify any such incident.

If Thomas were convicted in any of these cases, he could have been removed from his position under Mississippi law.<sup>87</sup> While being convicted and/or fired might not have prevented Thomas from relocating and continuing to work in the criminal justice system, it presumably would have been a mark on his record. Instead, he faced no consequences for any of his violent actions. This is yet another failure of the legal system to “take him in.”

#### IV. THE DELTA DEMOCRAT-TIMES

*“Until we in Mississippi can look upon the law and crime without relation to the color or faith or nationality of the principals. We have no right to lift our heads and ask for equal treatment in the concert of states or the community of nations. . . .”*

*--Hodding Carter on Johnson’s Case*<sup>88</sup>

A unique aspects of this case was the involvement of the press. *The Delta Democrat-Times*, a locally respected white newspaper owned and published by Hodding Carter, was instrumental in keeping Johnson’s case alive.<sup>89</sup> At this point in history, journalism in the South

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<sup>84</sup> “John Thomas Is Freed of Charge Of Beating Youth.” *Yazoo City Herald*, July 9, 1937.

<sup>85</sup> *Id.*

<sup>86</sup> “Attorney General Coleman Shows Interest In Bolivar Killing; Supports DA Decision.” *The Delta Democrat-Times*, May 3, 1953.

<sup>87</sup> CONSTITUTION OF MISSISSIPPI, §175 (1890).

<sup>88</sup> “Bloodstained Whitewash (An Editorial).” *The Delta Democrat-Times*, April 29, 1953.

<sup>89</sup> Waldron, Ann. *Hodding Carter: the reconstruction of a racist*. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993

was considered a very personal affair.<sup>90</sup> To a certain extent *The Delta Democrat-Times* directly reflected Hodding Carter's personal views and vice-versa.<sup>91</sup> Betty Carter stated in her recollection of those days that "You see, the other thing that was confusing was that Hodding had three vehicles of expression; he had the editorials here, and even if he didn't write an editorial he was responsible for the editorial. The editorials that he didn't write, they were with his agreement, you know because he was the publisher."<sup>92</sup>

Carter is best known for his political connections and bold writing.<sup>93</sup> He was described as a "Southern Liberal," a unique, and somewhat contradictory identity during the time that the civil rights movement was emerging.<sup>94</sup> For example, Carter would defend equality both personally and in *The Delta Democrat-Times*, although he believed in "formal segregation."<sup>95</sup> As time passed--particularly after the war--Carter changed from the position of the traditional white southerner criticized by northern liberals and became more of a true moderate.<sup>96</sup> Johnson's case, according to *The Reconstruction of a Racist*, a biography on Hodding Carter, was one of several personal experiences that seemed to push his transition.<sup>97</sup>

Initially, *The Delta Democrat-Times* simply reported the killing of Johnson by Thomas. The paper's initial report occurred in what they described as a news blackout—law enforcement would not comment on what had happened or what judicial process would follow, and therefore

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977; Waldron, Ann. Hodding Carter: the reconstruction of a racist. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993

<sup>93</sup> Waldron, Ann. Hodding Carter: the reconstruction of a racist. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993; Davies, David Randall. *The press and race: Mississippi journalists confront the movement*. Jackson: University Press of Mississippi, 2001; Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977.

<sup>94</sup> *Id.*

<sup>95</sup> Waldron, Ann. Hodding Carter: the reconstruction of a racist. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

the newspaper provided very little detail as to what had occurred.<sup>98</sup> But when Thomas was only given a “preliminary hearing,” over which Thomas’s colleague, fellow Justice of the Peace Reams presided, *The Delta Democrat-Times* seized on Johnson’s case. It is unclear whether this hearing was the motivating factor for increased coverage. However, comments from Benoit law enforcement officials hint at a deeper *animus*. After the preliminary hearing “exonerating” Thomas, the city marshal of Benoit “turned to The Delta Democrat-Times photographer sitting beside him and said, ‘Go back and tell THAT to your Mr. Carter.’”<sup>99</sup> In the second article, which reported the marshal’s comments, *The Delta Democrat-Times* took a much harsher tone, calling the preliminary hearing a “Bloodstained Whitewash.”<sup>100</sup> It condemned the informal hearing as insufficient and pointed out the racial hypocrisy that apparently characterized the case, “We know and all our readers know that if the victim had been a white man, or if the killer had been a Negro, this whitewash would not have been tolerated . . . .”<sup>101</sup> It also pointed out that the newspaper had found numerous witnesses to the shooting, while Reams claimed to have found none, and relied solely on the testimony of Thomas’s employee, the Bolivar County Deputy Sheriff, and a Benoit town marshal in his decision to “exonerate” Thomas. The editorial outrage was evident: “[i]n a quarter century of reporting and reading about unequal justice in the South, this is the first time to our knowledge that no one was summoned as an eyewitness on a publicly committed slaying except the man who used the gun.”<sup>102</sup>

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<sup>98</sup> “Allege JP Shot Negro; He Says ‘No Comment’.” *The Delta Democrat-Times*, April 28, 1953.

<sup>99</sup> “Fellow JP Exonerates Thomas Of Murder Charges:--‘Justifiable’.” *The Delta Democrat-Times*, April 28, 1953.

<sup>100</sup> “Bloodstained Whitewash (An Editorial).” *The Delta Democrat-Times*, April 29, 1953.

<sup>101</sup> *Id.*

<sup>102</sup> “Bloodstained Whitewash (An Editorial).” *The Delta Democrat-Times*, April 29, 1953.

After this editorial was published, Betty Carter reported receiving angry and threatening phone calls at the Carter's home.<sup>103</sup> Speaking about the editorial on the Johnson case, Betty Carter recalled:

Well that was the first night, I remember the phone calls had absolutely gone crazy. Whenever you had a hot editorial the phone calls started at dusk and they'd build up until about ten o'clock at night and then they'd cut off. Well, you didn't know what they were going to be. It was just revolting what they'd say to you. And, so, that was a hot, hot, editorial. I mean that had a tremendous precipitation. I don't remember what another one was. And they said "They were coming". Hodding wasn't there, so Tommy and I sat on the stairs with gongs. I don't know what we thought we were going to do, but we sat there. Hodding came home from one trip and he opened the night table and all these [Chinese] gongs fell out and he said, "My God, what is all this?", [laughter] and I said, "Well, I thought if they got to the top of the stairs, if I had the gongs and made a lot of noise it would scare them."<sup>104</sup>

Despite this personal threat, or perhaps because of it, Carter continued to see to it that Johnson's case was meticulously covered.

In an article published the next day, the paper reported that the Bolivar County District Attorney had assured *The Delta Democrat-Times* that a grand jury would be convened to hear the case and that the hearing before the Justice of the Peace did not preclude such action.<sup>105</sup> The next article, published on May 3, makes obvious that *The Delta Democrat-Times* called Mississippi's attorney general and continued to contact the county attorney, who refused to

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<sup>103</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977; Waldron, Ann. Hodding Carter: the reconstruction of a racist. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993.

<sup>104</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977.

<sup>105</sup> "DA Crisler Says Grand Jury Will Investigate Killing At Benoit." *The Delta Democrat-Times*, April 29, 1953.

comment on the case.<sup>106</sup> In this way, *The Delta Democrat-Times* became one of the pressure points that caused the federal government to become interested in the case. Months later, in September 1953 the paper reported that federal action that was to be commenced against Thomas, writing that the case was entered to determine whether there was a “civil rights violation” in connection with the killing, and that the question before the grand jury was whether Thomas was acting as a law enforcement official when he shot and killed Johnson.<sup>107</sup>

Finally, in October of 1953, *The Delta Democrat-Times* not only covered the state’s case against Thomas, but actually hired a lawyer, who happened to be a personal friend of Hodding Carter,<sup>108</sup> to act as a special prosecutor assisting the District Attorney and the county attorney.<sup>109</sup> When it was discovered that *The Delta Democrat-Times* had bankrolled the attorney, he withdrew from the case, but the implications of this move remained.<sup>110</sup> Not only was the press acting as a watchdog; the newspaper was actually inserting itself in the judicial system to ensure that justice was done.

All of these actions lend credence to the idea that this case was in some way deeply personal for Hodding Carter, and a crossroad in his transition from being relatively silent on civil rights, to becoming a vociferous critic of the judicial system’s treatment of racially motivated murders. This deep involvement of a white paper, both in its reporting, and in actually assisting in the prosecution of a white law enforcement official for the killing of a black man in rural Mississippi, is perhaps symbolic of the larger efforts during this time period—a year before the

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<sup>106</sup> “Attorney General Coleman Shows Interest In Bolivar Killing; Supports DA Decision.” *The Delta Democrat-Times*, May 3, 1953.

<sup>107</sup> “Grand Jury To Probe Shooting At Benoit.” *The Delta Democrat-Times*, September 16, 1953; “Grand Jury Returns No Indictment.” *The Delta Democrat-Times*, September 22, 1953.

<sup>108</sup> Waldron, Ann. *Hodding Carter: the reconstruction of a racist*. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993.

<sup>109</sup> “Attorney Withdraws From Rosedale Case.” *The Clarion-Ledger*, October 29, 1953.

<sup>110</sup> *Id*; Dyer Tells Of His Role In The Case, *The Delta Democrat-Times*, October 29, 1953.

Supreme Court's decision in *Brown v. Board of Education*—to generate a more public civil rights movement.<sup>111</sup>

If nothing else, the treatment of this case by *The Delta Democrat Times* is a concrete example of the role of the press as the “fourth estate.” Without *The Delta Democrat Times*’ coverage, it is unlikely that the cases would have received sufficient notoriety for state and federal officials to feel any pressure to pursue it after the “preliminary hearing,” in which Reams declared the case insufficient to be brought before a jury. Essentially *The Delta Democrat-Times* was actually successful in bringing attention to injustice and putting pressure on otherwise inactive or ineffective mechanisms, namely legal remedies.

## V. LIFE AFTER THE MURDER TRIAL

At the present time, the author has not identified family members of Claude Otis Johnson or witnesses to these event. This represents a significant hole in this narrative—it lacks support from a personal account and so it remains unclear whether this case was truly one of senseless violence, namely, a death over a grocery bill of around \$37.50, or if there was some other dispute between Johnson and Thomas. Additionally, the impact on the Benoit community is still unknown. The number of witnesses willing to come forward and testify to hold Thomas to account for his violence in killing Johnson hints at a greater community involvement, and bravery amongst all those who spoke out. It is not known whether there were any negative repercussions against those who stepped forward. Finally, it is not known how the Johnson family dealt with Johnson’s death and what, if anything, he left behind. What is known is that this case became a part of Hodding Carter’s legacy. For such a local case, it appears in a biography of

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<sup>111</sup> Waldron, Ann. Hodding Carter: the reconstruction of a racist. Chapel Hill, NC: Algonquin Books of Chapel Hill, 1993.

Carter's life,<sup>112</sup> and as an anecdote in his wife's oral history of their time publishing *The Delta Democrat-Times* some 24 years later.<sup>113</sup> In some way, this case was important to Carter, and to others' perception of him, ultimately coming to represent his twin ideals of justice for all<sup>114</sup> and democracy through public information.<sup>115</sup>

## VI. CONCLUSION

When faced with racially motivated injustices, legal remedies are the most obvious choice for lawyers. However, prosecutions are limited in their reach. Additionally, despite attempts by *The Delta Democrat-Times* and other local papers to educate the populace and bring to light the Thomas's history of violence and the inconsistencies in his story, and despite the prosecutors' attempt to eliminate bias in jury selection, these actions could only change public opinion so much in Mississippi during a time when racial tensions were high. In other words, despite an actual pursuit of accountability from the press, the federal government, and, eventually, the state, there was still no real justice in Johnson's case.

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<sup>112</sup> *Id.*

<sup>113</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977.

<sup>114</sup> *Id.*

<sup>115</sup> Oral history with Mrs. Betty W. Carter, publisher, *The Delta Democrat Times*, University of Southern Mississippi Libraries and USM's Center for Oral History and Cultural Heritage, August 17, 1977.

“[Hodding Carter regarded newspapers as] an extension of the First Amendment and it is a way for democracy to succeed. If the [public] the people, don't know, there is no way for a democratic form of government to exist. And therefore, the press must do more than just reporting the day to day news. It must get in and get as deep into the story as you can get, find the facts, and give those, so that the people can make their own judgment. Then you have your editorial in which you express your opinion on the thing. But keep the communication open. And I think, as far as I'm concerned, that's what Hodding did for this community. The fact that he was willing to talk about things and kept the topic open so it did not become a closed topic that you couldn't discuss. I think that's what he did.”