

The Rubin Stacy Lynching

Reconstructing Justice



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I. THE LYNCHING OF RUBIN STACY

Every version of the story of Rubin Stacy's lynching begins with Marion Jones opening her door to Rubin Stacy¹ on July 16th 1935 the city of Fort Lauderdale. They all agree that Stacy asked for water, but then the discrepancies begin. The official version, as told the next day in an article published by the *Fort Lauderdale Daily News*, tells that a search had begun for the Negro (unidentified Stacy) who had attacked a white mother of three.² The *Miami Herald* would cover it as well, establishing that officers arrived at Jones' home after she was attacked, and found her left bleeding from knife wounds.³ Marion Jones told the sheriff and the paper that a man she did not recognize (who was later identified as Stacy) came to her home to ask for water, and when she turned her back to get it for him, he brandished a small knife, and attacked her.⁴ She said he had the desire to kill in his eyes; she claims to have feared for her life.⁵ He told her not to yell, but she did.⁶ She fought back. The altercation led out of her house, where Stacy threw her to the ground, and her screams attracted attention of her neighboring father and her children.⁷ When these people appeared, Stacy ran.⁸ The story alleges that he got caught on her clothes line as he ran, a small detail that would come back to haunt him. The sheriff's department arrived, and they put out a warrant out for the arrest of the man who attacked Mrs. Jones.⁹

¹ Rubin Stacy, Bureau of Vital Statistics, State of Florida, Certificate of Death 11100, July 19, 1935; Rubin Stacy's name is spelled on his death certificate this way, it is spelled in News Articles as Reuben Stacey, and Ruben Stacey/Stacy. The most reliable document is his death certificate, his sister signed it as a witness, so this spelling is used throughout this paper.

² "Believe Attack Fugitive Hides in Swamp Here," *The Fort Lauderdale Daily News*, July 17, 1935: 1.

³ "Bloodhounds Aid in Hunt for Assailant of Mother of Three" *The Miami Herald*, July 17, 1935: 1.

⁴ "Believe Attack Fugitive Hides in Swamp Here," *The Fort Lauderdale Daily News*, July 17, 1935: 1.

⁵ "Inquiry opens into Lynching of Prisoner," *The Miami Herald*, July 21, 1935: 1.

⁶ "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1, 12.

⁷ "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1, 12.

⁸ *Id.*

⁹ "Bloodhounds Aid in Hunt for Assailant of Mother of Three" *The Miami Herald*, July 17, 1935: 1.

This warrant was fruitful. The search was on. A reward was set. Fifty suspects were brought to Mrs. Jones's house that night and the next morning.¹⁰ Jones did not confirm any of them as her attacker, until Constable Douglas found a suspicious-looking Stacy hiding in the bushes, arrested him and brought him to the sheriff's office on July 19th.¹¹ Stacy was brought to Jones's house, where her son, who had remained calm when he saw the fifty other suspects, ran to his mother, shouting "Here is that man, mother!" The boy then ran in fright.¹² Jones confirmed that Stacy was the man who attacked her two days before.¹³ By this time there had been many articles, spreading the word that bloodhounds were out searching for Jones' attacker, and the Fort Lauderdale community was restless.

A mob was forming and, when Stacy was brought back to be booked at the sheriff's office on charges of attempted murder, the crowd grew so large that the sheriff feared for the detainee's safety.¹⁴ Sheriff Walter Clark arranged with Judge Tedder, a local judge, to have Stacy moved to a jail in Miami.¹⁵ The Miami jail on the top floor of a courthouse would be safer if mobs formed, and was far enough away that the outraged members of the local community might not follow the prisoner to jail.¹⁶ The mob was forming so fast that the sheriff determined they must move him very quickly.¹⁷ On the afternoon of July 19th when they set out, Stacy was cuffed in the back seat of the sheriff's patrol car.¹⁸ Sheriff Clark attempted to take the federal highway, but came to a mob blockading the highway.¹⁹ According to Clark the angered community

10 "Believe Attack Fugitive Hides in Swamp Here," *The Fort Lauderdale Daily News*, July 17, 1935: 1.

11 "Negro Identified by Attack Victim now Held in Jail," *The Fort Lauderdale Daily News*, July 19, 1935: 1.

12 *Id.*

13 *Id.*

14 "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1, 12.

15 *Id.*

16 Conversation with Fort Lauderdale Historian Roberto Fernandez, III, October 7, 2016.

17 "No Whitewash, Says Marie of Plan for Quiz," *The Fort Lauderdale Daily News*, July 21, 1935: 1.

18 "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1, 12.

19 "'No Bill' Follows Grand Jury Probe," *Fort Lauderdale Daily News*, July 24, 1935.

members suspected that the sheriff's department would try to move the prisoner for his safety - as they had done in the past - and did not want to let that happen.²⁰ The sheriff's deputies attempted to travel to Miami via the West-Dixie highway.²¹ There was a blockade at the entrance to this route too, but the sheriff's men overcame the blockade, only to be followed by many members of the mob.²² Masked men drove cars with their license plates hidden or removed and ran the sheriff's car off the road into a ditch.²³ The men wrestled Stacy out of the patrol car, into their own vehicle, and sped back in the direction of the town.²⁴

With the sheriff and his deputies stuck in a ditch, the mob got a head start back to town, and arrived at a clearing in view of Mrs. Jones's house before any members of the sheriff's office could stop them.²⁵ Someone cut a stretch of clothesline from Mrs. Jones's yard, and strung Stacy off the ground in a noose.²⁶ Observers shot at the hanging body as the crowd grew. Photos were taken, and pieces of the clothesline and swatches of Stacy's clothing were collected as souvenirs.²⁷

Newspaper accounts estimate that a thousand people came from all around Fort Lauderdale and neighboring towns in Broward County to see the hanging man.²⁸ His body was not released until 7:15 that night by Coroner George Benton, the only black coroner in Fort Lauderdale.²⁹ Benton could not determine whether [Stacy's](#) death was caused by the hanging, or

20 *Id.*

21 "'No Bill' Follows Grand Jury Probe," *Fort Lauderdale Daily News*, July 24, 1935.

22 "'No Bill' Follows Grand Jury Probe," *Fort Lauderdale Daily News*, July 24, 1935.

23 "Inquiry opens into Lynching of Prisoner," *The Miami Herald*, July 21, 1935: 1.

24 "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1, 12.

25 "Inquiry opens into Lynching of Prisoner," *The Miami Herald*, July 21, 1935: 1.

26 *Id.*

27 "No Whitewash, Says Marie of Plan for Quiz," *The Fort Lauderdale Daily News*, July 21, 1935: 1.

28 "No Whitewash, Says Marie of Plan for Quiz," *Fort Lauderdale Daily News*, July 21, 1935: 1.

29 "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1, 12.

the bullet wounds³⁰ – of which there were seventeen marring his body.³¹ Local papers also followed the investigation quite closely.

The story of how Fort Lauderdale’s only recorded lynching occurred manifests itself through many narratives. Unofficial narratives from witnesses and later investigations reveal intricacies lost in the official newspaper reports. The official investigation comes from the sheriff’s office, witnesses brought before the grand jury, community leaders, the NAACP, and the state investigator. The story is not without its complications, drama, and admitted failures. The community tells of its distrust of the legal process, the sheriff’s office testifies to have done its best to protect a vulnerable detainee, and the prosecutor suspects a leak in the sheriff’s office and expresses disappointment in his inability to solve this crime.

II. THE OFFICIAL INVESTIGATION

Governor David Sholtz was pressed to investigate the lynching thoroughly, and State Attorney Louis Marie was committed to an honest investigation.³² Sheriff Walter Clark pledged his cooperation into the investigation, assisting in any way he could.³³ Twenty-nine witnesses, including the sheriff and his deputy were called before the grand jury.³⁴ Two days into the investigation the sheriff’s office was cleared of any fault in the hanging.³⁵ No one could identify a single member of the one hundred man mob, and the grand jury found *no true bill*.³⁶ Marie promised to recall jurors and continue the investigation if any more evidence became available.³⁷

30 Rubin Stacy, Bureau of Vital Statistics, State of Florida, Certificate of Death 11100, July 19, 1935.

31 “Inquiry opens into Lynching of Prisoner,” *The Miami Herald*, July 21, 1935: 1.

32 “Prisoner is Lynched by Florida Mob,” *The Miami Herald*, July 20, 1935: 12.

33 Florida Archives, Department of State, Series 5273, Carton 73, File Folder 8; Telegraph from Sheriff Walter Clark to Gov. Sholtz, July 20, 1935.

34 “‘No Bill’ Follows Grand Jury Probe,” *Fort Lauderdale Daily News*, July 24, 1935.

35 “Inquiry opens into Lynching of Prisoner,” *The Miami Herald*, July 21, 1935: 1.

36 “‘No Bill’ Follows Grand Jury Probe,” *Fort Lauderdale Daily News*, July 24, 1935.

37 “Marie Will Recall Jurors if Necessary,” *Fort Lauderdale Daily News*, July 25, 1935.

Marie believed that there had been a leak from the sheriff's office.³⁸ He was suspicious about how the mob knew where and when the detainee would be transferred, but never uncovered any evidence to support this theory of the case.³⁹

That ended the state investigation into Rubin Stacy's lynching. No other investigation ever took place. This was the official story that was told of Rubin Stacy's hanging. A photo was used by the NAACP in the campaign to pass the Costigan-Wagner Anti-lynching Bill.⁴⁰ , NAACP testimony begged Congress to consider the impact of this violence on white children, seven of whom were in the photograph, along with eight white adult men and women. The Anti-lynching bill failed, leaving Stacy's death all but forgotten.

III. A NEW WITNESS AND ALTERNATIVE STORIES

No new witnesses came forward, until 1988. The Fort Lauderdale *Sun Sentinel* ran a fifty year "anniversary" article after pursuing an investigation into the Stacy lynching. The journalists found a woman, who claimed to be one of the white people in the image used by the NAACP, showing the white observers smiling up at Stacy's hanging body.⁴¹ She told a different story, one that has been recounted among community members, a story that no one would put their name to. This story, though occasionally told with slightly varying facts, places blame on the sheriff's office, and explains why and how the bullet holes got to Stacy's body after he was already dead.⁴²

38 Florida Archives, Department of State, Series 5273, Carton 73, File Folder 8; Letter from Louis Marie to Gov Sholtz, July 26, 1935.

39 *Id.*

40 Papers of the National Association for the Advancement of Colored People, Part 07: The Anti-Lynching Campaign, 1912-1955, Series B: Anti-Lynching Legislative and Publicity Files, 1916-1955 July 1, 1935 - Aug 31, 1935.

41 "The Day They Lynched Reuben Stacey" *Sun Sentinel*, Brian Brooks, July 17, 1988: 1.

42 *Id.*

One element of this alternative story that remains consistent across all the versions is that Sheriff Walter Clark's brother, Deputy Sheriff Bob Clark was part of the plan to hang Stacy.⁴³ The witness that came forward to the *Sun Sentinel* claimed that she saw the Deputy Sheriff in a car with Stacy, en route to the site of the hanging.⁴⁴ She saw many other cars following this one. A different officer saw the witness's husband outside and shouted "They've got him!"⁴⁵ Given the news coverage of Stacy's arrest warrant and the search for him, if this parade went past many houses the community would have quickly known what was about to happen. Local residents, including the witness and her husband, got in their cars to follow the parade.⁴⁶ They arrived at a place not far from Marion Jones's house. Deputy Sheriff Clark got a piece of clothesline from her yard.⁴⁷ He led Stacy to the pine tree where the crowd gathered around and shouted "You black son of a bitch!" Clark strung the clothesline around Stacy's neck and a branch of the tree, lifting him off the ground to break his neck.⁴⁸

Deputy Sheriff Clark then stated that if the community was going to watch a lynching they better participate in it, at which point members of the crowd pulled out their guns and shot at the body.⁴⁹ Deputy Sheriff Clark passed around his gun too, so people without their own weapon could participate.⁵⁰ The drama of the event also brought a promise of secrecy - no one would want to testify that they participated in the lynch mob, and so they would not be able to testify against the Deputy Sheriff.⁵¹

43 "The Day They Lynched Reuben Stacey" *Sun Sentinel*, Brian Brooks, July 17, 1988: 1; Cahill and Jarvis, "Out of the Muck; A History of the Broward Sheriff's Office, 1915-2000," Carolina Academic Press, Durham, North Carolina, 2010, 88

44 *Id.*

45 *Id.*

46 "The Day They Lynched Reuben Stacey" *Sun Sentinel*, Brian Brooks, July 17, 1988: 1.

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*, at 2.

51 *Id.*

This version of the story assumes that Deputy Clark never planned on bringing Stacy to the Miami jail at all. However, other accounts are not quite so sinister.⁵² An alternative account acknowledges that the sheriff's story of the mob overtaking the patrol car and kidnapping Stacy was true, but alleges that the law enforcement officers then quickly joined in with the mob and participated in the hanging.⁵³

IV. PUBLIC RESPONSE AND THE NAACP ANTI-LYNCHING CAMPAIGN

The case attracted national attention. Newspapers across the country including the New York Times covered the story, and the National Association for the Advancement of Colored People also became involved. Bob Saunders, at the time a field agent of the NAACP, joined the state attorney and the sheriff in their attempts to uncover what really happened to Rubin Stacy and who was at fault. A note from July 19, 1935, taken by the Governor's secretary J.P. Newall, relays a message from Saunders to Governor Sholtz, saying "He had been out with Sheriff Clark in the afternoon after it happened and thinks Sheriff really did his best to prevent the lynching."⁵⁴

However, the NAACP continued focusing on the Stacy lynching case. The public nature of the violence and the presence of numerous viewers made it an appropriate case to highlight in the anti-lynching campaign.⁵⁵ Surely most people would agree that the impact of this atrocious violence was bad for small communities like Fort Lauderdale – bad for white folks, and bad for white children in particular.⁵⁶ The NAACP framed the campaign for federal anti-lynching

52 *Id.*

53 "Mob lynched Black Man in Fort Lauderdale 75 years ago" *Sun Sentinel*, Robert Nolin, July 17, 2010: 1.

54 Florida Archives, Department of State, Series 5273, Carton 73, File Folder 8: Note from JPN, July 19, 1935.

55 Papers of the NAACP, Part 07: The Anti-Lynching Campaign, 1912-1955, Series B: Anti-Lynching Legislative and Publicity Files, 1916-1955 July 1, 1935 - Aug 31, 1935.

56 *Id.*

legislation in a way designed to appeal to the U.S. Senate.⁵⁷ The caption for the photo deliberately asked the reader to “not look at the Negro” because “his earthly troubles are over.” This anti-lynching message notably ignores the cycle of trauma and fear for black men and women in these communities. According to local witnesses, the sheriff perpetuated fear in local black communities when he visited black neighborhoods on that July afternoon and told them to go to the clearing where Stacy hung, and to heed this warning for black men who did not know their place.⁵⁸

The NAACP also constructed a resume of facts and assessment of community reaction to the lynching. In order to understand this lynching, and the discontent within the black community, it is important to focus on the history and practices of the Sheriff’s office. Most important are the long delays in the appeal from convictions in a murder, which occurred in Pompano, Florida in 1933, about twelve miles from Fort Lauderdale. Commonly referred to as the “Little Scottsboro case,” the case involved four young black men who had been kept safe by police officers while on trial for murder of an elderly white man named Robert Darsey.⁵⁹ The appeal was still pending when Stacy was hung.⁶⁰

In the days following the Stacy lynching, community members – possibly observers or participants - claimed they did not think this lynching would have happened if it were not for the perceived miscarriage of justice in the case of the murder of Mr. Darsey, which occurred in Pompano, Florida 3 years earlier.⁶¹ Darsey was robbed and murdered, and many black suspects

57 *Id.*

58 “Mob lynched Black Man in Fort Lauderdale 75 years ago” *Sun Sentinel*, Robert Nolin, July 17, 2010: 2.

59 *Id.*; “Prisoner is Lynched by Florida Mob,” *The Miami Herald*, July 20, 1935: 12.

60 *Id.* The appeal in the “Little Scottsboro case” made its way through the Florida courts and eventually reached the U.S. Supreme Court, which issued a land-mark civil rights decision condemning confessions coerced by abusive law enforcement practices. See *Chambers v. Florida*, 309 U.S. 227, 1940.

61 “Prisoner is Lynched by Florida Mob,” *The Miami Herald*, July 20, 1935: 12.

were called in for questioning. The exact number is unknown, but the Supreme Court refers to as few as twelve and as many as forty suspects who were subject to questioning.⁶² After a night of questioning, four men, referred to as the Pompano Boys, confessed to the murder.⁶³ Three of these men eventually plead guilty, one stood trial, and was convicted after only thirty minutes of jury deliberation.⁶⁴ All were sentenced to death by state circuit court Judge Tedder.⁶⁵ The case bounced from appeal to the State Supreme Court back to Florida's 11th Judicial Circuit. It was heard before a jury, appealed and reversed again.⁶⁶ The primary issue was whether the confessions and guilty pleas were coerced. A related issue involved improper jury instructions when the jury found that the confessions were not coerced.⁶⁷

When Stacy was hung the sheriff's office was "exhausted from their efforts to protect these four Negroes."⁶⁸ Further, community members expressed distrust of the justice system. They did not believe that the trials would be speedy, nor did they have any confidence that a just outcome would be delivered by the criminal justice system. The feeling of needing to take justice into one's own hands shaped the community justification for lynching, especially when for the sake of protecting a white woman's life and honor.⁶⁹ Coupled with community distrust of the justice system, the call for lynching Stacy was all the more fervent.

62 *Chambers v. State*, 111 Fla. 707, 712, 713 (1933).

63 *Id.*.

64 *Chambers v. State*; Cahill and Jarvis "Out of the Muck; A History of the Broward Sheriff's Office, 1915-2000," Carolina Academic Press, Durham, North Carolina, 2010, 87.

65 *Chambers v. State*, Papers of the NAACP, Part 07: The Anti-Lynching Campaign, 1912-1955, Series B: Anti-Lynching Legislative and Publicity Files, 1916-1955 July 1, 1935 - Aug 31, 1935.

66 Miscarriages of Justice in Potentially Capital Cases, Hugo Adam Bedau and Michael L. Radelet, *Stanford Law Review*, Vol. 40, No. 1 (Nov., 1987), 21, 104

67 *Id.*

68 Florida Archives, Department of State, Series 5273, Carton 73, File Folder 8; Letter from Louis Marie to Gov Sholtz, July 26, 1935.

69 Hobbs, Tameka Bradley, "Democracy Abroad, Lynching at Home : Racial Violence in Florida," Gainesville, US: University Press of Florida, 2015. ProQuest ebrary. Web. 21 November 2016.

Nonetheless, many community members, especially religious leaders and organizations, condemned the lynching, and wanted to find the people responsible for it.⁷⁰ Groups such as the YWCA implored the NAACP and Governor Sholtz to bring an end to lynching as a socially accepted form of public punishment.⁷¹ An editorial that ran the day after the hanging of Stacy condemned the lynching, encouraging community members to respect the law, and expressing hope for an honest investigation into the event.⁷² The editorial condemned the action by Stacy, but asserted that two wrongs do not make a right while acknowledging that the first wrong was the failure to bring justice to the four defendants who were accused of murder in the Darsey case.⁷³ A similar editorial ran the day the jury returned a *no bill* in the Stacy lynching case, saying nothing was learned.⁷⁴ The editorial seems lighthearted, but revealed the town's willingness to drop any further attempts to find the men who killed Rubin Stacy, even though responsibility for the lynching remained completely unresolved.

The investigation revealed very little about who was at fault in the Stacy case, and many questions still remain. The unofficial version of these events, which provided some answers, was believed by many white people at the time of the lynching.⁷⁵ The sheriff's protection of the four Pompano Boys both helped and hurt the official story that the sheriff's office had done everything they could to achieve justice for the four suspects in the Darsey case. Since they had spent so much time protecting them, the sheriff's office could argue that they were obviously

70 Papers of the NAACP, Part 07: The Anti-Lynching Campaign, 1912-1955, Series B: Anti-Lynching Legislative and Publicity Files, 1916-1955 July 1, 1935 - Aug 31, 1935: Community Reactions in Resume of Facts.

71 Florida Archives, Department of State, Series 5273, Carton 73, File Folder 8: Telegraph from Y.W.C.A. to Governor Sholtz, July 20, 1935; Papers of the NAACP, Part 07: The Anti-Lynching Campaign, 1912-1955, Series B: Anti-Lynching Legislative and Publicity Files, 1916-1955 July 1, 1935 - Aug 31, 1935.

72 "The Law Must Say," *Fort Lauderdale Daily News*, July 20, 1935: 1.

73 *Id.*

74 "The Law Speaks," *Fort Lauderdale Daily News*, July 25, 1935: 1.

75 "The Day They Lynched Reuben Stacey" *Sun Sentinel*, Brian Brooks, July 17, 1988: 1.

invested in pursuit of justice through the law. However, the diligence displayed in the Darsey case can also be interpreted as cutting against the actual commitment of the sheriff's office to protecting Stacy. Perhaps they had taken a lesson about the slow-moving justice system in the earlier case and wanted to avoid wasting resources by shipping Stacy to the Miami jail and back for trials, and all the efforts that would accompany protecting him.

The sheriff's office was known to have power in the community, and it would not have been unusual for the office to manipulate the investigation and the state attorney in their favor.⁷⁶ They were known to be violent racists, and to use their power to ensure that black men and women "stay in their place."⁷⁷ One such tactic was in evidence when the sheriff's deputies visited black neighborhoods on July 19, 1935, while Stacy's body hung from the tree, and invited local residents to view the scene and take it as a warning.⁷⁸

There was much more to the abuse of power by the sheriff's office than their possible involvement in the lynching of Reuben Stacy. Sheriff Walter Clark boasted an excellent reputation among his white constituents: he was known for offering them loans and helping them to find jobs.⁷⁹ For his black constituents, however, Clark fit the stereotypical description of a southern sheriff, demanding that blacks stand up when he enter a room, and forcing them to work on local farms to pay off high fines for "vagrancy" charges.⁸⁰ One man who failed to stand when the sheriff entered the room was arrested and jailed on vagrancy charges, only to die that night in prison.⁸¹ The sheriff claimed that this was because he fell out of his bunk, but no investigation

⁷⁶ "Clark Brothers Ruled the County by Promoting Racism, Fear," *The Miami Herald*, February 27, 1987.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Chaill and Jarvis *Out of the Muck; A History of the Broward Sheriff's Office, 1915-2000*, Carolina Academic Press, Durham, North Carolina, 2010, 86.

⁸⁰ *Id.*, at 87

⁸¹ *Id.*

was ever pursued.⁸² Another account of brutality by the sheriff's officers involved a woman who allegedly spat at the sheriff while working in a field.⁸³ For this she was shot and the officer urinated on her body.⁸⁴

Fear of the sheriff and his deputies pervaded everything black men and women did in their community, and the trauma continues to this day. When journalists and historians attempt to gather stories of this era, no black person with close ties to the events will testify on the record about the actions of the sheriff's office.⁸⁵

This is not a case with a black and white version of the events – there is not one story that black people believe and one story that white people believe. The narrative that survived is the one people were willing to put their name to, the one the sheriff endorsed, the one that would not incite more actions of the same violence. White people also widely accepted the unofficial version of the events.⁸⁶ There was no one to whom people could report the sheriff's alleged abuse of power, and so the sheriff's office continued to rule Broward County at the expense of the black community.⁸⁷

Another narrative attempts to place blame on Marion Jones and claims its legitimacy through “a subsequent investigation by the New York Times.”⁸⁸ The papers and chapters of books claim that the *Times* article would establish that Marion Jones was merely frightened by the face

82 *Id.*, at 86.

83 “The Day They Lynched Reuben Stacey” *Sun Sentinel*, Brian Brooks, July 17, 1988: 3.

84 *Id.*

85 Conversation with Roberto Fernandez, III.

86 “The Day They Lynched Reuben Stacey” *Sun Sentinel*, Brian Brooks, July 17, 1988: 2.

87 *Id.* at 3.

88 Apel, Dora, “Imagery of Lynching,” Rutgers University Press, New Brunswick, New Jersey, 41, 2004; Batchelor, Dahn, “Whistling in the Face of Robbers: The Life and Times of Dahn A. Batchelor,” iUniverse, Inc., Bloomington, IN, 74, 2012; Simon, Roger, “A Pedagogy of Witnessing: Curatorial Practice and the Pursuit of Social Justice,” SUNY Press, Albany, New York, , 66, 2014; Cahill and Jarvis; “Out of the Muck; A History of the Broward Sheriff's Office, 1915-2000,” Carolina Academic Press, Durham, North Carolina, 2010, notes.

of Rubin Stacy appearing at her door and her scream attracted the attention of the authorities.⁸⁹ This would mean that no attack ever took place. While this narrative might tend to support Stacy's innocence, there is little evidence of its truthfulness. Most accounts directly quote the last sentence of the NAACP record, alleging that *Times* made the investigation. The text of the NAACP record is as follows:

“Stacy Accused of frightening a white woman with a knife was snatched from six deputies near Fort Lauderdale and hanged to a tree within sight of the home of the woman, his body being riddled with bullets. Subsequent investigation revealed that Stacy, a homeless tenant farmer, had gone to the house to ask for food; the woman became frightened and screamed when she saw Stacy's face.”⁹⁰

The NAACP cites a New York Times article published on July 20, 1935. This article does exist, but it does not indicate any investigation. Rather, it restates – almost verbatim – the accounts from the Fort Lauderdale papers.⁹¹ There is no *Times* article in their archive that indicates any subsequent investigation took place, or was done by their reporters.⁹² In addition, many of the articles which mention the investigation and findings, either have no cite, or provide a circular citation to another modern book that makes a reference to a New York Times investigation without specificity as to article or date of the issue.

Regardless of whether Marion Jones was actually attacked or whether Stacy simply frightened her, his relative “innocence” should not impact how we view lynching and community violence. Whether or not Stacy was a perfect victim does not change the fact that his hanging was a criminal act, of the most graphic and gruesome sort. Whoever perpetrated the lynching – regardless of the reasons they may have believed their actions were justified – should have been

⁸⁹ *Id.*

⁹⁰ NAACP ANNUAL REPORT FOR 1935, 28 (1936).

⁹¹ “Governor Sholtz orders Inquiry into Lynching” *New York Times*, July 21, 1935; “Negro is Lynched by Mob in Florida” *New York Times*, July 21, 1935.

⁹² NAACP ANNUAL REPORT FOR 1935, 28 (1936).

brought to justice under the law. The grand jury's failure to indict, the witnesses refusal to testify, the sheriff's office's complicity in the crime or perpetration of it, all represent a deep failure in the criminal justice system. Stacy's right to a trial, his right to be considered innocent until proven guilty – as much of a false dichotomy that is in our legal system – should never have been preempted by the lynching, regardless of his perspective guilt or innocence. Lynch law became pervasive in the South because vigilantes, like those in Broward County on July 19, 1935, felt they would be justified in punishing wrongdoers without the backing of a legal ruling. This utter disrespect for law and order provided a basis for extra-legal violence that pervaded local communities and created a system where the truth, the actual guilt or innocence of a defendant, can never be established.

IV. JUSTICE RECONSTRUCTED: POTENTIAL LEGAL REMEDIES

These alternate stories may seem to be dramatically different, but each version suggests ways in which the parties who killed Rubin Stacy might have been brought to justice, had circumstances in 1935 been different. Based on evidence arising from the investigation led by Governor Sholtz and Attorney Louis Marie, murder charged against several different parties might have been brought through the state criminal justice system. Federal civil rights charges would have depended upon what the investigation revealed, which version of the events were true, and finding credible evidence to support the theory of the case.

One version of the story that could have supported a federal civil rights prosecution is based on State Attorney Louis Marie's official investigation. The report suggested that the sheriff himself exercised reasonable diligence to protect Stacy but that there had been a leak from the sheriff's office about plans to move Stacy. The second version of the story would require proving

that the sheriff's office – apart from any potential involvement in leaking information – joined in the lynching. The third theory for federal civil rights charges would require clearly establishing that either Sheriff Walter Clark or his Deputy Sheriff Bob Clark never intended to bring Stacy to another jail at all, but instead brought him directly to the clearing outside Jones' house and orchestrated the hanging. If the federal government had investigated the Stacy case as a civil rights violation, these three variations of the events could have brought about very different federal claims.

Louis Marie's official investigation reveals that: the sheriff himself did exercise reasonable diligence to protect the prisoner; he needed to be moved, but there had been a leak from the sheriff's office about plans for moving Stacy. This version of events would have provided a strong basis for criminal charges under 18 U.S.C. § 241 and § 242. There is a high burden of proof for these claims, because the prosecution must establish that the defendants willfully deprived the victim of their constitutional rights and privileges.⁹³ Courts have favored an extremely narrow interpretation of the term, and willful killing was not considered sufficient to prove that the defendants had the intention to deprive the victim of these rights.⁹⁴ The prosecution would be required to allege and prove through the evidence that the defendants acted with specific intent to violate the victim's constitutional right.⁹⁵

Members of the mob might have been held accountable under 18 U.S.C. § 241, which provides jurisdiction when “two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the

⁹³ 18 U.S.C.A. § 242 (West 1996).

⁹⁴ *Screws v. United States*, 325 U.S. 91 (1945).

⁹⁵ *Id.*

United States.”⁹⁶ With evidence of the identity of the individuals who captured Stacy from the police, their use of masks, guns, and the high speed chase, the members of the mob that lynched Stacy might have been federally prosecuted for their actions as a conspiracy to violate Stacy’s constitutional rights to a fair trial. The general consensus of the mob was that they did not trust the legal system to effectively punish him, and thus intentionally obstructed this process and lynched him to prevent trials from delaying his punishment. However, to this day no witnesses have come forward identifying any members of the mob, so there is no one to prosecute. And even if members of the mob could be identified, they would likely be long dead by now. There is no institution to bring this claim against so it would have expired when the members of the mob died.

Pursuant to 18 U.S.C. §242, the officer who leaked the information could have been prosecuted as an individual. A criminal charge may be brought against anyone who, “under the color of law, willfully subjects any person in any State to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States on account of such person’s color, or race shall be fined under this title or imprisoned not more than one year, or both.” The modern statute further allows for an enhanced sentence, up to life imprisonment or death, if death results from the acts committed in violation of the section.⁹⁷

The requirement for proving specific intent would apply to this case, but would likely be fairly easy to show, given the community’s admitted sentiment after the Darsey case. It was well known that community members’ distrust of the formal legal process was the reason for this lynching. Men and women both said that the lynching would not have happened if the case had

⁹⁶ 18 U.S.C.A. § 241 (West 1996)

⁹⁷ 18 U.S.C.A. § 242 (West 1996)

been resolved so that they could trust the legal system to put him to death.⁹⁸ Since their trust was shaken by the long delays and appeals in the Darcy case, white members of the community felt they needed to intercept the prisoner and bring justice on their own terms.⁹⁹

The second option for bringing criminal charges under civil rights laws is similar, but focuses on proving that the sheriff's office joined the mob and actually participated in the lynching. The same claims would still be applicable to members of the mob who conspired to organize and conduct the lynching, but an additional criminal charge under § 242 could be brought in against the sheriff's department as a whole.

If there was evidence that a deputy sheriff and/or his fellow law enforcement officers were responsible for the hanging and shooting of Stacy, it would have been because they did not want to allow Stacy to go to trial. The sheriff's office was familiar with the Pompano Boys' ability to stave off a death sentence through appeals, and thus their involvement in Stacy's lynching would have been for the purposes of blocking him from the appeals process. Such a charge would be brought against the deputy sheriff and/or his fellow officers in their official capacity acting under color of law – through the cloak of their badge,¹⁰⁰ so their involvement in the hanging would have given rise to the criminal charges. However, this would have involved criminal charges against the officers in their official capacity and thus would have expired when they died.

The final option is based on the claim that the sheriff never intended to bring Stacy to another jail at all, but instead brought him directly to the clearing outside Jones' house and orchestrated the hanging himself. The witness who would have testified to this story also

98 "Prisoner is Lynched by Florida Mob," *The Miami Herald*, July 20, 1935:1; Papers of the NAACP, Part 07: The Anti-Lynching Campaign, 1912-1955, Series B: Anti-Lynching Legislative and Publicity Files, 1916-1955 July 1, 1935 - Aug 31, 1935: Community Reactions in Resume of Facts.

99 *Id.*

100 *Monroe v. Pape*, 365 U.S. 167, (1961).

described two other racially motivated killings by the sheriff and claimed that she witnessed one such killing. If the witness brought this evidence forward during a federal investigation there could have been a strong civil claim against the entire sheriff's department under 42 USC §1983.

Title 42 U.S.C. §1983 was enacted as part of the Civil Rights Act of 1871. The law established a civil remedy to provide that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" Application of this civil rights statute gained some momentum early on in southern states to ensure access to the vote,¹⁰¹ but it was not a reliable remedy for civil rights violations until after the Supreme Court established that (1) it is not necessary for the plaintiff to exhaust any available state remedies before bringing this federal claim; (2) even if an officer is acting contrary to the law he serves he is still acting under the color of law: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law;"¹⁰² and (3) a municipality can be sued as a "person" pursuant to the statute.¹⁰³ The Court's bolstering of this statutory remedy did not occur until after 1960, well after any suit could have been brought on behalf of Stacy's family.¹⁰⁴ However the Supreme Court ruling in *Ex Parte Young*, would have already been in effect in 1935. *Young* established that civil suits can be brought in federal courts against officials

101 *O'Sullivan v. Felix*, 233 U.S. 318, 319 (1914).

102 *Monroe v. Pape*, 365 U.S. 167, 180 (1961), 184 overruled on different grounds by *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); citing *United States v. Classic*, 313 U.S. 299, 326 (1941).

103 *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 689 (1978).

104 *Ellison v. Lester*, 275 F. App'x 900, 901 (11th Cir. 2008) (4 year statute of limitations for these claims in the state of Florida).

acting on behalf of states, despite the state's sovereign immunity, when the state officials acted unconstitutionally.¹⁰⁵ This case could have been used to argue that claims can be brought against a sheriff's office acting on behalf of the state.

The legislative history of §1983 reveals that it was passed to allow for claims against southern state actors perpetuating discrimination and deprivation of civil rights for black men and women.¹⁰⁶ If there had been enough evidence brought forward that the Sheriff's office had been unwilling to protect the rights of the black citizens of Broward County, a §1983 claim could have been appropriate after the hanging of Rubin Stacy.

There are some rules that were established by the Court much later, that seem to be relatively obvious interpretations of the statute. For instance, in 1989 the Supreme Court decided that in order for a §1983 claim to be successful the plaintiff must have a legally cognizable claim of some constitutional violation.¹⁰⁷ To bring a claim on behalf of Stacy, his estate or representative would be required to allege that the sheriff violated a constitutional right. He could allege that it was his right to due process that had been violated. He was arrested by the sheriff on charges of assault to kill. Any citizen of the United States who is arrested is presumed innocent until proven guilty and is entitled to the process of a trial by jury to determine their guilt. If evidence showed that the sheriff brought the defendant to his death after being arrested, punishing him for this crime without the appropriate process, this evidence could also establish that the sheriff deprived him of his constitutional right.

¹⁰⁵ *Ex parte Young*, 209 U.S. 123 (1908).

¹⁰⁶ Cong. Globe, 42d Cong. 1st Sess., 374 (1871)(remarks of Rep. Lowe) (While murder is stalking abroad in disguise, while whippings and lynchings and banishing have been visited upon unoffending American citizens, the local administrators have been found inadequate or unwilling to apply the proper corrective).

¹⁰⁷ *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989); see also *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The claim would also be dependent on the sheriff's policies regarding black men and women. A claim against the sheriff's office as a municipal body would require a two part burden of proof – that there was a policy in place, and that the policy was the “moving force behind” the violation.¹⁰⁸ “Official policy” often refers to formal rules or understandings—often but not always committed to writing—that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time.¹⁰⁹ The courts in 1935 would likely have a narrow interpretation of policy, and where there was no written policy, they might dispose of the claim. However, recent court decisions have allowed for a policy maker's actions to be interpreted as policy for the department.¹¹⁰ The sheriff's actions, as the policy maker for the sheriff's office, would suffice to constitute an official policy of unequal protection under the law. Evidence the witness alleged in the *Sun Sentinel*, that the sheriff was involved in two other murders of one black man and one black woman would be evidence of the Sheriff's actions of discrimination against black citizens.

The plaintiff would also have to establish that this policy of unequal protection under the law was the moving force behind the violation in Stacy's case. This would require proving that the policy of unequal protection was the reason for the hanging. This would be straight forward, because the violation of Stacy's constitutional right was an example of the Sheriff not providing equal protection to this black citizen. As long as there was evidence of the sheriff's involvement and testimony as to the treatment of other black citizens and the attitudes of the community the policy and its impact on Stacy would be provable in court.

108 *Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 405 (1997).

109 *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 689 (1978) (written rule requiring pregnant employees to take unpaid leaves of absence before such leaves were medically necessary)

110 *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978)

This line of argument makes it likely that a civil suit under §1983 could be successful given the future interpretation of the law. Such claims were few and far between in 1935, and the legal standard was not well established until 1980, so there is not substantial precedent to establish whether a §1983 claim would have been successful in 1935. However, since the courts were much less favorable toward civil rights – especially those of black citizen – it likely would have failed even if it had been brought. This claim would have been against the institution – the municipal office – and so the cause action would survive the death of any individual perpetrator, but the state statute of limitations would be a limiting factor in this case – in Florida it is only four years. This would not have been enough time for the law to develop, thus making it likely that any claim brought on behalf of Stacy’s family against the sheriff would have failed due to the strong political forces keeping cases like this from success.

V. NEVER TOO LATE FOR RESTORATIVE JUSTICE

All of the legal remedies have expired for this case, but options for reconciliation/restorative justice in the present day for Stacy’s living relatives and the community as a whole remain.

One prominent issue in the Stacy case is the limited information publicly available and the details of the lynching are not included in most histories of the town. Balancing the necessity for the community recollection and recognizing the truth in this terrible hanging against placing responsibility on the family to be the informers has tipped the scale against remembering the event at all. The members of the family who were closest to the event and who know the most about what happened have refused to speak with anyone about the hanging. Requiring them to be a part of the remembrance might not be in their interest.¹¹¹ They are forced to remember this

¹¹¹ Conversation with Roberto Fernandez, III.

event, because it happened to one of their own. However, the community is largely able to ignore its past, the scars of which still impact many members of the community, whether others recognize it or not. This is a leading consideration when considering suitable retroactive remedies for this case.

A truth commission may be useful, but, given the age of the case, very few people with even second hand knowledge are still alive to really know the “truth,” and the documented truth fails to tell the complete story. Bringing attention to the official version of the story, and undermining it with the unofficial account, as well as the stories in between and the allegations from the state attorney’s investigation, could be beneficial to the community by giving a more complete account of all the possible truths of the event. Public recognition of the unofficial account could benefit the memory of Stacy, and could force the sheriff’s office to recognize their past wrongs. The sheriff’s office would have to make concessions to the allegations made against them in order to begin rebuilding their reputation with the black community members who remember or are familiar with the fear the Clark years instilled.

Bringing the alternative versions of the story forward could be a gateway to a public apology by the sheriff’s office. The most fitting apology would be from the sheriff’s office to the family. This could encourage community discussion and more widespread recognition and condemnation of the hanging. It could be a way for the sheriff’s office to recognize that they deserve some blame for Stacy’s hanging – even if that is only for their failure to protect him. Such an acknowledgement could bring some closure and healing for the family. However, apologies are not always beneficial. If official apologies lack authenticity or sincerity they may do more harm than good. If an apology is sincere, and expresses a true hope for future

reconciliation between law enforcement and the community members, it can help bolster the relationship and make community members feel safer in their homes.¹¹²

Since Stacy's living relatives do not wish to discuss the event, an apology could lead to more pain by forcing them to relive the trauma of their relative's brutal hanging and the community's intense disrespect for their family member's life. The sheriff's office should do everything they can through the apology to spark a discussion condemning the hanging and treatment of black men and women, which may lead to their increased feeling of being part of a community that takes ownership for the harm and is trying to move forward.¹¹³

Further, when considering the effect on the community at large it may be a beneficial option if it is done sincerely and completely. There are still hard feelings about the sheriff's office within the memories of older members of the community who remember the trauma or heard from their parents about the Clark reign of terror. Walter Clark had a seventeen year reign as sheriff of Broward County and this period was known for corruption and violence toward black community members and other murders.¹¹⁴ Even people who were very small children knew of the horrors and their families will not discuss the sheriff on the record.¹¹⁵ An apology could lead in an increase in dialogue between victims and perpetrator groups, in this case law enforcement and black community members. However, given the sheriff's office known record of violence toward the black community, if they apologize only for this act, or only for one sheriff, they might be doing a disservice to other community members who suffered violence and trauma by further ignoring other events, and only feigning reconciliation.

112 Wenger, *Apology Lite: Truths, Doubts, and Reconciliations in the Senate's Guarded Apology for Slavery*, 42 Connecticut Law Review 1 (2009).

113 A. Brophy, *The Tulsa Race Riot Commission, Apology, and Reparations: Understanding the Functions and Limitations of a Historical Truth Commission*, in *Taking Wrongs Seriously: Apologies and Reconciliation* (2006).

114 "The Day They Lynched Reuben Stacey" *Sun Sentinel*, Brian Brooks, July 17, 1988: 1.

115 Conversation with Roberto Fernandez, III

An apology would have to be given under very specific circumstances to avoid these problems, but if the sheriff's office wants to work with the community towards healing from this period, the Stacey case could be a worthwhile starting point.¹¹⁶

Another possible remedy in this case could encompass the Equal Justice Initiative Memorial, which would involve collecting dirt from the site of the hanging to publicly acknowledge the story of the lynching. This remedy would not require the same level of personal involvement by the family and could attract national attention. However, this option lacks the appeal to the community, and might not provide any reconciliation on a local level unless there was media/local attention on the specific case.

A final possible remedy is adding a gravestone for Rubin Stacy in the Woodlawn Cemetery, where his death certificate and family indicate he was buried. The gravestone might help to give his death some dignity, and demonstrate that his death was important for the community. A ceremony unveiling the stone could bring some media attention to the story and provide an option for the family to talk about Stacy's death, but this remedy would not require their involvement if they chose to stay out of it. The gesture would be an act of respect without prying or asking them to forgive anyone. The main problem in implementing this remedy, is the availability of funds for a project like this. Money tends to be where people draw the line for willingness to contribute to a cause – legislative bodies agree to almost anything that is privately funded, but, even in high profile cases, will not spend tax dollars on monuments. Since grave stones can cost between \$600 and \$1,000, the funds would have to come from some organization or foundation, and there is no clear option for accessing them in this case.

Finally, this case unwittingly received national attention thanks to Willoughby, a staff photographer from *The Daily Tribune*, a Miami Beach newspaper on July 20, 1935. Willoughby

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captured Stacy's hanging in a photograph "a few moments after a negro was hanged by a mob." The photo was then used by the NAACP, which then distributed possibly 100,000 copies, at "25 cents a hundred to permit maximum circulation" to local NAACP branches, churches, women's groups, and other organizations. The NAACP distribution of the gruesome lynching photo was designed to encourage individuals and groups to appeal to congress to pass the Costigan-Wagner anti-lynching bill. The anti-lynching campaign inextricably linked the photo of Stacy and his hanging to the national eye and the eye of the senate. The photo was of Rubin Stacy's hanging body and the way it was used by the NAACP in their campaign deliberately disrespected Stacy and the life lost by asking the viewers not to look at him. The caption asked the viewer to focus only on the white children's traumatization from witnessing this violence, completely ignoring the trauma to the black community members and family members who were witness to and subject to this violence. Stacy has been remembered only through his hanging, not as the man his family and friends knew or the man his wife married. The mass circulation of his image was undoubtedly traumatizing for these people, and his community.

After its use by the NAACP, the photo was subsequently used by the U.S. Senate when they offered an official apology for not passing the anti-lynching bill.¹¹⁷ This use of the photo was not dignifying to Stacy, his life, or his surviving family members and the Senate participated in this disrespect. The Senate has the ability to lift up the memory of Rubin Stacy, and the atrocities suffered. This could be effected by issuing an official apology, using it as an opportunity to give a more complete picture of Stacy's life, and tell a more complete story of the trauma this lynching imposed on the black community instead of focusing on the white reaction. Focusing the Senate apology on the black community and reasserting an official commitment to

117 "The Lynching of Ruben Stacey," 11th Judicial Circuit Historical Society, Spring 2008, Volume 2 Issue 1: 36.

serving their best interests could be an important way to reiterate a national commitment to the enforcement of civil rights laws, especially in our current political climate.