

The Death of Wesley Johnson:

The Legacy of Lynching an Innocent Man



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TABLE OF CONTENTS

Introduction

- I. The Death of Wesley Johnson**
- II. A Possibility of Justice?**
- III. Aftermath**
- IV. The Response to Racial Violence Today**

Conclusion

For Wesley Johnson, Belle and Lee Johnson, Trayvon Martin, Michael Brown, Dontre Hamilton, Eric Garner, John Crawford, Ezell Ford, Dante Parker, Tanisha Anderson, Akai Gurley, Tamir Rice, Romain Brisbon, Jerame Reid, Tony Robinson, Phillip White, Eric Harris, Walter Scott, Freddie Gray, Sandra Bland and those whose names we don't know.

“It is not the creature of an hour, the sudden outburst of uncontrolled fury, or the unspeakable brutality of an insane mob. It represents the cool, calculating deliberation of intelligent people who openly avow that there is an ‘unwritten law’ that justifies them in putting human beings to death without complaint under oath, without trial by jury, without opportunity to make defense, and without right of appeal.” – Ida B. Wells.

"Racism, specifically, is the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death." – Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*

Introduction

Henry County, Alabama, is “nothing but unincorporated peanut farms.”¹ The county sits landlocked between Barbour and Houston Counties on the Eastern edge of Southern Alabama. A Google Maps search shows downtown Tumbleton, Henry County as the intersection of two rudimentarily paved county roads, a few battered and apparently abandoned buildings slouching in the setting sun.² Tall grass grows in the ditches along the side of the road.³

There are no streetlights, and there were no streetlights 78 years ago when, on February 2, 1937, a mob of white men shot and hung 18-year old Wesley Johnson from an oak tree. He died in the dark, in the wet bottom of a ditch, warm blood seeping into the grass as he was shot over and over again. After the teenager took his last breath, he was hauled out of the ditch and hung from an oak tree. The mob left him hanging from the tree for (time), his chin slumped down onto his neck, his bare feet sticking out of his work overalls.

Today 17,000 people are spread out among the peanut farms that populate the county.⁴ Oak trees dot the land. Of those 17,000 residents, 70% are white and 27% are Black or African American.⁵ Racial tensions are still high, particularly in the wake of the recent battles to take down the Confederate flag.⁶ As one Henry County commenter wrote on a social media site: “let

1 Interview with T. Larry Smith, (July 26, 2015).

2 Map of Tumbleton, Alabama. <https://www.google.com/maps/place/Tumbleton,+Alabama+36345/@31.4065609,-85.2565997,2579m/data=!3m1!1e3!4m2!3m1!1s0x8892a261804f4327:0xd1f3321a327b5341>

3 *Id.*

4 State and County QuickFacts, [Henry County, Alabama](http://quickfacts.census.gov/qfd/states/01/01067.html), United States Census Bureau, (July 10, 2015), <http://quickfacts.census.gov/qfd/states/01/01067.html>.

5 *Id.*

6 On June 17, 2015, 21-year old Dylan Roof killed nine people during a prayer service at Emanuel African Methodist Episcopal Church in Charleston, South Carolina. For more information, see Robert Costa,

it be very clear IF ONE BLACK HAND TOUCHES OUR CONFEDERATE MONUMENTS we will drag dozens of you through the street and make an example out of you. THAT IS A PROMISE!"⁷

The Confederate monuments whose horses stand frozen throughout Alabama still remain, but the tree that held Wesley Johnson's body, rope wrapped around his neck, is gone.⁸ The lynching is remembered as "the last mob lynching in Alabama"⁹ -- the period at the end of a sentence rather than a story that hasn't yet ended. In 1937, 18-year-old Wesley Johnson paid the price for being a black man in a relationship with a white woman. His death was the first lynching of 1937 after a year without any reported lynchings in Alabama.¹⁰ Wesley Johnson's name peppered the arguments of the NAACP as they fought for the passage of the Wagner Van

Lindsey Bever, J. Freedom Du Lac, and Sari Horowitz, Church Shooting Suspect Dylan Roof Captured Amid Hate Crime Investigation, *The Washington Post*,

<http://www.washingtonpost.com/news/morning-mix/wp/2015/06/17/white-gunman-sought-in-shooting-at-historic-charleston-african-ame-church/>. In response to this shooting, Southern states questioned the practice of displaying the Confederate flag on state property, and after Black activist Bree Newsome scaled the flagpole outside the South Carolina Statehouse herself to remove the flag, South Carolina governor Nikki Haley called for the flag to be removed. "*This Flag Comes Down Today*": Bree Newsome Scales SC Capitol Flagpole, Takes Down Confederate Flag, DEMOCRACY NOW, Jul. 3, 2015,

http://www.democracynow.org/2015/7/3/this_flag_comes_down_today_bree; Nikki Haley Calls for Removal of Confederate Flag From Capitol Grounds, CNN, Jun. 24, 2015,

<http://www.cnn.com/2015/06/22/politics/nikki-haley-confederate-flag-south-carolina-press-conference/>

7

<http://henrycountyreport.com/blog/2015/07/04/eufaulas-brad-griffin-tied-to-charleston-killer-dylan-roof/> (This website is no longer available)

8 Interview with T. Larry Smith, (July 26, 2015); See also, *Debate Over Confederate Monuments, In Birmingham And Beyond*, WBHM, Aug. 13, 2015,

<https://news.wbhm.org/feature/2015/debate-over-confederate-monuments-in-birmingham-and-beyond/>.

9 T. Larry Smith, A Pictorial History of Henry County Alabama, (self published); interview with T. Larry Smith (July 26, 2015).

10 See, *To Challenge Senators on the Constitutionality of Anti-Lynching Bill*, NAACP, Papers of the NAACP pt. 7, Folder 001527-021-0704; *Lynching Record for 1937*, Supplement No. 19 to "Thirty Years of Lynching, 1889-1918," NAACP, *Records of Lynchings in the U.S. and Newspaper Clippings*, Papers of the NAACP, pt. 7, Folder: 001527-021-0704; *Famous Woman Columnist Rebukes Senator Graves*, Papers of the NAACP, Folder 001529-022-0495.

Nuys Anti-Lynching Bill,¹¹ but the full story of Wesley Johnson's short life, and the failed attempts to bring his murderers to justice has never been told.¹²

This paper situates the 1937 Alabama lynching of 18-year old Wesley Johnson at the center of both contemporary discussions about police violence against people of color and the recurring, prevalent racism that still infects Alabama and the United States¹³ – even though Johnson's lynching is remembered by some as "the last lynching in Alabama."¹⁴ As both individual states and the federal government attempt to stem and redress police violence against people of color,¹⁵ and racism moves closer to the forefront of political consciousness, this paper seeks to tie our current era of racial policing to the political currents that surrounded the killing of Wesley Johnson. This paper is divided into four main sections: I. The Death of Wesley Johnson; II. A Possibility of Justice?; III. Aftermath; IV. The Response to Racial Violence Today.

11 See, for example, *To Challenge Senators on the Constitutionality of Anti-Lynching Bill*, NAACP, Papers of the NAACP pt. 7, Folder 001527-021-0704; *Lynching Record for 1937*, Supplement No. 19 to "Thirty Years of Lynching, 1889-1918," NAACP, Records of Lynchings in the U.S. and Newspaper Clippings, Papers of the NAACP, pt. 7, Folder: 001527-021-0704; *Famous Woman Columnist Rebukes Senator Graves*, Papers of the NAACP, Folder 001529-022-0495.

12 The research for this paper about Wesley Johnson's life and the legal issues raised by his lynching was conducted through the Civil Rights and Restorative Justice Clinic at Northeastern University. While the author has never been to Henry County, Alabama, she reviewed numerous historical reports, old newspapers, social media and current blogs and news from Henry County, as well as consulted with community members.

13 *How the Southern Strategy Made Donald Trump Possible*, Jeet Heer, NEW REPUBLIC, Feb. 18, 2016, , <https://newrepublic.com/article/130039/southern-strategy-made-donald-trump-possible>.

14 T. Larry Smith, *A Pictorial History of Henry County Alabama*, (self published); interview with T. Larry Smith (July 26, 2015).

15 263 African Americans were killed by police in 2015, including six in Alabama. *990 People Were Killed By Police in 2015*, THE WASHINGTON POST, <https://www.washingtonpost.com/graphics/national/police-shootings/>

Section I tells the story of Johnson, who was killed by a lynch mob after being accused of raping a white woman. Section II describes the state and federal response to Johnson's death and the government's attempts to bring the lynch mob to justice. Section III describes the failures to hold anyone responsible for Johnson's murder, and Section IV considers the relevance of Johnson's story to contemporary events, detailing current state possibilities for justice in such cases and exploring the relation between the public imaginary of race and racialized violence today and the responses to Johnson's murder.

I. The Death of Wesley Johnson

Everyone in Tumbleton called Wesley Johnson, "Wes."¹⁶ Wes Johnson was born Wesley Pearce in 1919, but for reasons unknown, his mother sent him to live with his aunt and uncle, who raised him along with their two biological children on the property of Mr. John Harper Oates, a white farmer whose land was worked by a large black community of sharecroppers.¹⁷ Census records indicate that a family with the last name of "Pearce" lived near the Johnson family, but it was not possible to confirm whether the family was related to Wes.¹⁸

Wes Johnson was 18-years-old, tall (6'2") and strong. Oates had a baseball diamond on his property and Wes liked to play baseball.¹⁹ When he wasn't playing baseball, Wes worked odd jobs around town and had a store job in Headland, about five miles north of Tumbleton.²⁰ Each day Johnson walked two miles towards Headland to a filling station, where he would wait for his

¹⁶ *Id.*, Several news articles also refer to Johnson as "Wes." See, for example, *Negro Lynched*, LIMA NEWS, Feb. 2, 1937; *Negro Attacker is Lynched in Alabama*, JEFFERSON CITY POST, Feb. 2, 1937.

¹⁷ Interview with T. Larry Smith (July 26, 2015).

¹⁸ 1930 Federal Population Census, <https://www.archives.gov/research/census/1930/>.

¹⁹ Interview with T. Larry Smith, (July 26, 2015).

²⁰ *Id.*

ride into Headland.²¹ On the day of the lynching, he missed his ride.²² Realizing he wouldn't make it to work, he turned around and started walking North back towards Tumbleton.²³ Fatefully, he walked to the property of a young white farming couple.²⁴

Johnson had a relationship with the young married white woman who lived there, Dorothe Bond.^{25, 26} Apparently, many of the black folks in town knew about the relationship and had warned Wes that it was not safe for him to be in a relationship with a white woman.²⁷ Johnson, however, did not appear to heed their warnings. On that day, he stopped to visit Dorothe.²⁸ Dorothe's husband worked in Newville, but he was suspicious that she was having an

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*; see also, *Famous Woman Columnist Rebukes Senator Graves*, Papers of the NAACP, Folder 001529-022-0495.

25 Interview with T. Larry Smith, (July 26, 2015).

26 Initially, the name of the woman whom Wes Johnson allegedly raped and that of her husband who shot him were nowhere to be found. Reports of the lynching were published in newspapers across the country, but several papers misprinted or did not print at all the name of Rupert Bond, the husband of the woman Wesley allegedly assaulted. None of them printed the name of the woman. When this author interviewed community members, no one would disclose the name of the family, because descendants of the family still live in the area. Armed Men Take Negro From Jail; Lynched in Southern End of County, *The Abbeville Herald*, Feb. 4, 1937; Plan Impeachment, *The Anniston Star*, Date Unknown. In order to discover the name of Johnson's witness, and one of the alleged shooters, the author cross referenced newspaper reports with primary source census records from the 1930's. In order to limit the chance of error, only newspaper articles that reported on sworn testimony given at the trial of Sheriff J.L. Corbitt were used. This approach narrowed the possible identity of the husband to either a Mr. Robert Bond or a Rupert Bond. County records showed men by both names living in Henry County during the 1930's. However upon further investigation, it was discovered that Robert Bond was not married. By using census records, the author deduced that Mr. Rupert Bond and Mrs. Dorothe Bond were the unnamed white family in the story told by Mr. Smith. Mr. Bond and Dorothe Bond stayed in Tumbleton and are buried together in Henry County.

27 Interview with T. Larry Smith, (July 26, 2015).

28 *Id.*; See also, Sheriff is Freed of Letting Mob Lynch Captive, CHICAGO DAILY TRIBUNE, Jun. 6, 1937.

affair so on that day he doubled back and found Johnson and his wife in the carriage house, together in bed.²⁹

Mr. Bond entered the carriage house with a gun.³⁰ Dorothe, terrified, alleged that Johnson was raping her.³¹ Johnson fled, running through the woods towards Tumbleton.³²

Mr. Bond began gathering men in town into a mob by telling them that he caught Johnson raping his wife.³³ Dorothe, meanwhile, was taken to the home of a neighbor to calm down.³⁴ Once calm, Dorothe told the neighbor that she had not been raped at all.³⁵

A mob of white men gathered together with bloodhounds and attempted to track Johnson.³⁶ Eventually, they came to John Harper Oates' home where Johnson was hiding.³⁷ Oates was concealing Johnson in his house with his family.³⁸ The mob demanded that Oates produce Johnson but he repeatedly refused.³⁹ Eventually the leaders of the mob told Oates that they would hurt him and his family if he did not turn Johnson over.⁴⁰ Oates relented, stating that he would turn Johnson over, but only to the County Sheriff.⁴¹ Sheriff Corbitt was called and Johnson was released to him.⁴² Corbitt took Johnson to the county jail at Abbeville.⁴³

29 Interview with T. Larry Smith, (July 26, 2015).

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 *Lynched Wrong Negro, State Attorney General Says*, THE ANNISTON STAR, Jun. 4, 1937.; *see also, Armed Men Take Negro From Jail; Lynched in Southern End of County*, THE ABBEVILLE HERALD, Feb. 4, 1937.

Fifty or more men went around Tumbleton, gathering supporters to go to Abbeville.⁴⁴ Members of the mob came from areas surrounding Tumbleton.⁴⁵ The mob drove 15 miles to Abbeville and paraded around the courthouse square, drinking and shooting guns.⁴⁶ Eventually, the mob went to the county jail where Johnson was being held.⁴⁷ It is unclear how the mob actually got to Johnson, however many newspapers report that the front door of the jail was unlocked, and that Sheriff Corbitt, and Sheriff Corbitt's father, Bud Corbitt, remained in their rooms while the mob stormed the jail.⁴⁸ Sheriff Corbitt contests that the mob locked him and his father in their sleeping quarters, broke the lock, forcibly put Johnson into a car and took him back to Tumbleton,⁴⁹ where they carried him to the carriage house where he had been found with the white woman.⁵⁰ On either side of the carriage house were two ditches.⁵¹

Mr. Bond allegedly fired the first shot.⁵² Afterwards, other members of the mob continued to shoot Johnson.⁵³ The mob then pulled him out of the ditch where he had fallen and hanged him from the oak tree to "make a point."⁵⁴

44 Interview with T. Larry Smith, (July 26, 2015).

45 *Id.*

46 *Id.*

47 *Id.*; *Armed Men Take Negro From Jail; Lynched in Southern End of County*, THE ABBEVILLE HERALD, Feb. 4, 1937.; *Armed Men Take Negro From Jail; Lynched in Southern End of County*, THE ABBEVILLE HERALD, Feb. 4, 1937.

48 *See, for example, Impeachment Trial Nears Close Today*, ANNISTON STAR, June 5, 1937.

49 *Armed Men Take Negro From Jail; Lynched in Southern End of County*, THE ABBEVILLE HERALD, Feb. 4, 1937.

50 *See, for example, Suspect Lynched by Alabama Mob*, NEW YORK POST, Feb. 2, 1937; *Mob Storms County Jail; Kills Negro*, THE BELVIDERE DAILY REPUBLICAN, Feb. 2, 1937.

51 Interview with T. Larry Smith, (July 26, 2015).

52 *Id.*

53 *Armed Men Take Negro From Jail; Lynched in Southern End of County*, THE ABBEVILLE HERALD, Feb. 4, 1937.; *Suspect Lynched by Alabama Mob*, NEW YORK POST, Feb. 2, 1937; *Mob Storms County Jail; Kills Negro*, THE BELVIDERE DAILY REPUBLICAN, Feb. 2, 1937.

54 Interview with T. Larry Smith, (July 26, 2015).

The next morning, word spread through the small town. Johnson's aunt and guardian, Belle Johnson was at the home of a local white family, the Blanches,⁵⁵ for whom she sometimes did odd jobs, when she found out the fate of her adopted son. When Mr. Blanche heard the news of Johnson's death at his store, he closed the store and ran home to tell Mrs. Blanche, who then told Belle that Johnson had been lynched. Belle Johnson ran so fast to get to her nephew's body that Mrs. Blanche reported seeing her climbing over fences in her way.⁵⁶

Meanwhile, John Harper Oates sent some men on a flatbed truck to cut down the body of Wes Johnson. They laid him on the trailer, barefoot and in overalls. After being viewed by the community downtown, while lain on the back of the truck, he was buried at the Little Rocky Mount Free Will Baptist Colored Church Cemetery in Tumbleton.

The Black community immediately began to gather after Johnson's death. Scared to walk alone, they walked downtown in a large group with the kids at the center, silently. When they got into town they divided up into smaller groups to go into the stores and then walked back together, silent and afraid.⁵⁷

II. The Possibility of Justice?

Tumbleton soon became the focus of state and national attention as word of Johnson's gruesome death spread.⁵⁸ In Abbeville, a local Judge, Halstead, summoned a grand jury after Johnson's burial in an attempt to indict several members of the lynch mob. Both the witnesses

55 I was unable to confirm the first names of Mr. and Mrs. Blanche.

56 Interview with T. Larry Smith, (July 26, 2015).

57 *Id.*

58 See, for example, *Report of the Secretary (for the February Meeting of the Board)*, Papers of the NAACP, pt. 1, Folder: 001412-006-0126.; *Negro Attacker is Lynched in Alabama*, JEFFERSON CITY POST-TRIBUNE, Feb. 2, 1937;

and the jury were comprised only of white men, including a former confederate soldier.⁵⁹ They did not indict.⁶⁰

Infuriated, the Judge convened another grand jury in Montgomery in a second attempt to indict members of the lynch mob.⁶¹ This time, it is reported that every witness called testified that they “could not remember” what happened the night of Johnson’s death.⁶² Again, no indictments were made and no member of the lynch mob was tried.⁶³

After it became clear that no indictment would come of the lynch mob, the Governor Graves appointed a special investigator, Highway Patrol Captain Potter Smith, to report on the lynching.⁶⁴ After the investigation, the Attorney General brought impeachment charges against Sheriff Corbitt for negligence of office.⁶⁵ This step was unprecedented and Governor Graves was lauded in newspaper editorials from throughout the country for his swift response to the lynching.⁶⁶ The decision to bring charges against the Sheriff is one of the factors that make Johnson’s lynching historically unique -- it appears to be the first case in which Alabama made such a concerted effort to punish lynchers.⁶⁷ This unprecedented state support for impeachment proceedings, however, was not because Alabama was truly intent on abandoning

59 Interview with T. Larry Smith, (July 26, 2015); *Negro Lynched, Said to Have Attacked White Girl*, KINGSTON DAILY FREEMAN, Feb. 2, 1937.; *Lynching in Alabama*, HELENA INDEPENDENT, Feb. 2, 1937.; *Young Negro Lynched by Mob in Alabama*, GREELY DAILY TRIBUNE, Feb. 2, 1937; *Lynch Negro Charged with Attacking Girl*, FITCHBURG SENTINEL, Feb. 2, 1937; *Alabama Mob of 100 Lynched a Negro at Abbeville [sic]*, DUNKIRK EVENING OBSERVER, Feb. 2, 1937.; *They Lynched the Wrong Man*, THE CAROLINA TIMES, June 12 1937.

60 ALA. *Supreme Court Acquits “Lynch Sheriff”*, THE PITTSBURGH COURIER, Jun. 12, 1937.

61 Interview with T. Larry Smith, (July 26, 2015).

62 *Id.*

63 *Id.*

64 *Impeachment Trial Nears Close Today*, THE ANNISTON STAR, date unknown. I was unable to locate the Grave-commissioned report created by Captain Potter Smith despite extensive research.

65 *Impeachment Trial Nears Close Today*, THE ANNISTON STAR, date unknown.

66 *See, for example, They Lynched the Wrong Man*, THE CAROLINA TIMES, June 12, 1937.

67 *Id.*

its legacy of lynching, but because of the state's strong desire to prevent federal anti-lynching legislation from passing on a national level.⁶⁸ In order to stem the growing federal support for anti-lynching legislation, Alabama wanted to show that lynching would meet swift state reaction, and there would therefore be no need for federal intervention.⁶⁹

In order to stymie federal anti-lynching reform, charges were brought against Sheriff Corbitt under Section 138 of the Alabama constitution, which provide that, "[w]hensoever any prisoner is taken from jail, or from the custody of any sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached under section 174 of this Constitution. If the sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this state during the time for which he had been elected or appointed to serve as sheriff."⁷⁰

These constitutional provisions, although seemingly designed to counter the lynching culture in Alabama, are only one part of a constitution that was created with the explicit purposes of disenfranchising and controlling the Black population of Alabama after Reconstruction.⁷¹ During Reconstruction in the South, freed slaves participated regularly in politics and were often elected to office.⁷² Although this political participation had waned by the end of reconstruction, Alabama sought to "reform" its constitution in 1901 to prevent a resurgence of participation by both Black Alabamans and poor white Alabamans.⁷³ The

68 See, *They Lynched the Wrong Man*, THE CAROLINA TIMES, June 12, 1937.

69 *Id.*

70 ALA. CONSTITUTION OF 1901, § 138.

71 Max Bennett Thatcher, *The Alabama Constitutional Convention*, 67 *Outlook* 1901 at 437.

72 William H. Stewart, *The Tortured History of Efforts to Revise the Alabama Constitution of 1901*, 53 ALA. L. REV. 295, 314-15 (2001).

73 *Id.* at 296.

Chairman of the Constitutional Convention, Judge John B. Knox, when interviewed on the purpose of the Constitutional Convention, stated, "[w]hat we want to do is, within the limits imposed by the Federal Constitution, to establish white supremacy in the state of Alabama."⁷⁴

Thus, while the state constitution contains a provision specifically empowering the state to impeach sheriffs that purposely or negligently allow for the lynching of prisoners, the constitution itself was explicitly established for the purpose of disenfranchising African Americans.⁷⁵ The impeachment provision offered little redress, and functioned more as a straw man propping up the perceived legitimacy of the 1901 Constitution. It was this lynching provision under which charges were brought against Sheriff Corbitt for allowed Johnson to be taken from the jail.

In Sheriff Corbitt's impeachment case, the odds were stacked against an impeachment verdict. Not only were the charges themselves brought via a provision of a constitution explicitly enacted to preserve white supremacy, but the trial was a spectacle that included a dramatic fist fight among the counsel,⁷⁶ and ended in a "not guilty" verdict only 30 minutes after deliberations began.⁷⁷ The attorney general of Alabama, A.A. Carmichael served as the prosecutor.⁷⁸ According to newspaper accounts, instead of focusing on Sheriff Corbitt's responsibility to protect Mr. Johnson once Mr. Johnsons was in his custody, the Attorney General argued that he could show the court by unimpeachable evidence that the mob had "lynched the wrong negro."⁷⁹ The court, finding that the innocence of Johnson had no bearing

⁷⁴ Max Bennett Thatcher, *The Alabama Constitutional Convention*, 67 Outlook 1901 at 437.

⁷⁵ *Id.*

⁷⁶ *Attorney-General, Lee in Fist Fight*, THE ANNISTON STAR, Jun. 3, 1937.

⁷⁷ *Henry County Sheriff Freed by State Court*, THE ANNISTON STAR, Jun. 5, 1937.

⁷⁸ *Id.*

⁷⁹ *Impeachment Trial Nears Close Today*, THE ANNISTON STAR, date unknown.

on the impeachment case, barred the evidence.⁸⁰ Consequently, the attorney general's already weak argument was cut off at the knees and he was left with little to argue.

Corbitt, as well as nine alleged members of the lynch mob took the stand, each denying any part in the lynching, and speaking positively of Sheriff Corbitt.⁸¹ According to several newspapers, when Mr. Bond was called to the stand, the prosecutor asked him, "Didn't your wife get down on her knees and beg that mob not lynch Johnson?" but an objection was sustained, and Mr. Bond did not answer.⁸²

The Alabama Supreme Court acquitted Corbitt after 30 minutes of deliberation.⁸³ The lack of impeachment was unsurprising, but further rallied NAACP activists who were fighting for the passage of Federal anti-lynching legislation.⁸⁴

III. The Aftermath

Despite the fears that a lack of indictments against the mob members and the failure of Alabama to impeach Sheriff Corbitt would result in the passage of federal anti-lynching legislation, the Wagner Van Nuys bill did not pass.⁸⁵

⁸⁰ *Impeachment Rehearing Not Given By Court*, THE ANNISTON STAR, date unknown.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See, To Challenge Senators on the Constitutionality of Anti-Lynching Bill*, NAACP, Papers of the NAACP pt. 7, Folder 001527-021-0704; *Lynching Record for 1937, Supplement No. 19 to "Thirty Years of Lynching, 1889-1918,"* NAACP, Records of Lynchings in the U.S. and Newspaper Clippings, Papers of the NAACP, pt. 7, Folder: 001527-021-0704; *Famous Woman Columnist Rebukes Senator Graves*, Papers of the NAACP, Folder 001529-022-0495. *Id.*

⁸⁵ *Filibuster Ended as Senate Shelves Anti-Lynch Bill*, THE NEW YORK TIMES, Feb. 22, 1938.

The bill was introduced in the Seventy Fifth Congress by Joseph Gavagan of New York, Frederick Van Nuys of Indiana, and Robert F. Wagner of Indiana.⁸⁶ Gavagan represented Harlem and had a reputation for being central to the anti-lynching fight.⁸⁷ Both Wagner and Gavagan had previously fought for the passage of anti-lynching bills, in 1935 and 1933.⁸⁸

The bill itself was similar to previous anti-lynching bills, with modifications to attempt to make it more palatable and easier to pass.⁸⁹ It explicitly tried to capitalize on the death of Claude Neal,⁹⁰ offering a remedy for lynching by expanding the Lindbergh Kidnapping Act.⁹¹ Newspapers reported that the bill could possibly pass, a change in tone from previous attempts to pass anti-lynching legislation.⁹² In January 1937, a Gallup Poll found that 70% of those polled supported the passage of anti-lynching legislation.⁹³ Indeed, even 65% percent of Southerners supported anti-lynching legislation.⁹⁴

Despite this, however, the bill faced strong opposition in the House.⁹⁵ The legislation got stuck in the rules committee where Hatton W. Sumners of Texas tried to divert support from the

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.*

90 Claude Neal was an African American man lynched in Florida in 1934. His death was particularly gruesome and sparked new discussion about lynching in the United States. Spectacle: The Lynching of Claude Neal, Ben Montgomery, Tampa Bay Times, Oct. 20, 2011, *available at* <http://www.tampabay.com/features/humaninterest/spectacle-the-lynching-of-claude-neal/1197360>.

91 Dorothy Catherine McGrath, A Study of the Treatment of the Wagner Van Nuys Anti-Lynching Bill (1939).

92 *Id.*

93 Isabelle Whelan, The Politics of Federal Anti-Lynching Legislation in the New Deal Era, Institute for the Study of the Americas, *available at* http://sas-space.sas.ac.uk/1569/1/Whelan_Isabelle%20Dissertation%20complete.pdf.

94 *Id.*

95 *Id.*

Wagner Van Nuys bill to a much weaker bill.⁹⁶ In response, the NAACP stepped in to recruit sufficient signatures from Congressional representatives to show their support for the Wagner bill over the weaker bill and force it out of Committee.⁹⁷ The Wagner Bill came to the floor for a vote, during which testimony was given about the lynching of two men in Mississippi,⁹⁸ and the Wagner Van Nuys bill passed the House by a vote of 277 to 120.⁹⁹

Despite its passage through the house, the Roosevelt administration offered little tangible support for the bill.¹⁰⁰ Although African Americans overwhelmingly voted for FDR, the Roosevelt Administration's priorities lay outside race.¹⁰¹ As Nancy Joan Weiss describes an interview with a member of the administration, Tommy Corcoran, said that between "the court fight,... the purge fight, and then ... the third term fight, ... and... Hitler and the war," there was "only a little niche" for race.¹⁰² In 1937 Roosevelt was attempting to pack the Supreme Court, and believed he could not afford the Southern alienation that support of an anti-lynching bill would bring.¹⁰³ Ultimately, Roosevelt's fears about the bill would not be tested. The bill faced a multi-day filibuster and was eventually set aside in order to pass several other social spending bills.¹⁰⁴ To this day, no anti-lynching legislation has ever been passed.

V. Justice Today

96 *Id.*

97 *Id.*

98 *Id.*

99 *Id.*

100 *Id.*

101 Nancy Joan Weiss, Farewell to the Party of Lincoln: Black Politics in the Age of FDR (1983).

102 Nancy Joan Weiss, Farewell to the Party of Lincoln: Black Politics in the Age of FDR (1983).

103 *Id.*

104 *Filibuster Ended as Senate Shelves Anti-Lynching Bill*, THE N.Y. TIMES, Feb. 22, 1938.

It is telling that no federal lynching legislation was passed despite the clear need for federal intervention. Although lynching in its traditional form slowly dissipated, it was not without replacement: by 2012, police killing of people of Color surpassed the rate of lynching during reconstruction, with police killing someone on average every 28 hours.¹⁰⁵ These killings, whether by gun, neglect, or other violence, have been almost uniformly met with little legal consequence.¹⁰⁶ This section attempts to tie parallels between the story of Johnson's death and the numerous police killings of people of Color that happen every day in the contemporary United States, and present a framework for white Americans to think about our response to racist violence that considers and centers of our legacy of lynching.

The common duality of white memory in Henry County, Alabama today highlights much of the current feelings around race today: the lynching of Wesley Johnson is both so distant that it can be remembered as "the last mob lynching in Alabama," but so recent that the names of the perpetrators must not be spoken aloud for fear of tarnishing a family's name with what, to whites, might be the dirtiest word—"racist."¹⁰⁷ In our allegedly "post-racial" society, we bend ourselves to extremes looking to continue to protect white supremacy without being called racist. In contrast, Johnson's alleged discretion with a white woman is still well remembered, as today we search for retroactive proof of unworthiness by Black victims of violence. In 1937, newspapers described Johnson as a large, imposing man who had raped a woman, leveling a

¹⁰⁵ Tongo Eisen-Martin, *WE CHARGE GENOCIDE, AGAIN: A CURRICULUM FOR OPERATION GHETTO STORM: REPORT ON THE 2012 EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITYGUARDS AND VIGILANTES*. (Malcolm X Grassroots Movement), <https://mxgm.org/wp-content/uploads/2013/05/we-charge-genocide-FINAL.pdf>.

¹⁰⁶ *Id.*

¹⁰⁷ My contact in Henry County refused to disclose the name of the Bond family during our interviews.

charge against him that was never proven, the same way newspapers today rushed to accuse Black victims of violence of being

In the same way that indictments against the lynch mob that killed Johnson were unsuccessful, indictments against police officers who kill people of color are rare.¹⁰⁸ For example, despite the frequent refrain that a grand jury would "indict a ham sandwich,"¹⁰⁹ police officers are almost never among those indicted.¹¹⁰ Although comprehensive, accurate numbers are almost impossible to come by because of the secrecy surrounding both police violence and grand jury proceedings, numerous newspaper reports suggest that indictments against police are largely exceptional.

This is exemplified by reports by the Houston Chronicle on police indictments in major Texas cities.¹¹¹ The paper found that between 2004 and November 2014, not a single indictment against a police officer was sustained.¹¹² In Dallas, between 2008 and 2012, 81 police shootings were brought before a grand jury and yet only one single indictment was returned.¹¹³ Partially, the failure to indict is the exact same as the failure to indict in Johnson's case – grand juries that are overwhelmingly white and connected to the judiciary and police departments.¹¹⁴ In Johnson's case, the Governor who called for the indictment of Corbitt was himself a member of

108 *Why it's impossible to indict a Cop*, Chase Madar, THE NATION, Nov. 25, 2014.

109 Sol Wachtler

110 *Hard to Charge*, James Pinkerton, THE HOUSTON CHRONICAL, <http://www.houstonchronicle.com/local/investigations/item/Bulletproof-Part-3-Hard-to-charge-24421.php>.

111 *Id.*

112 *Id.*

113 *Id.*

114 *Id.*

the KKK, and the grand jury members were made up solely of white men, at least one of which was a former confederate soldier.¹¹⁵

These days, the makeup of grand juries is often strikingly similar. For example, in Texas, grand juries can be called using either the same random method used for regular jury selection or through a selection process by which commissioners hand select grand jury members.¹¹⁶ In the second selection process, a district judge appoints commissioners who then select "qualified" people from the community to participate in the grand jury.¹¹⁷ The potential jurors are then brought back in front of the judge to be questioned, and the judge personally selects 12 grand jurors and two alternates.¹¹⁸ It has been proved that this process of grand jury selections results in a non-diverse, white, elderly grand jury, which in turn, likely contributes to the failure to secure indictments against police officers.¹¹⁹

Even in the rare cases where indictments are secured, guilty verdicts are rarely reached, and in the end, even in the rare cases where guilty verdicts are reached, the only remedy is often imprisonment in a prison system that itself disenfranchises people of color.¹²⁰

In addition to the structural similarities of the justice system today to the justice system that attempted to respond to Johnson's killing, the rhetorical tone and collective white

¹¹⁵ Interview with T. Larry Smith, (July 26, 2015).

¹¹⁶ *Hard to Charge*, James Pinkerton, THE HOUSTON CHRONICAL, <http://www.houstonchronicle.com/local/investigations/item/Bulletproof-Part-3-Hard-to-charge-24421.php>.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ *Racial Disparity*, The Sentencing Project, <http://www.sentencingproject.org/template/page.cfm?id=122>.

understanding of racist killings are frighteningly similar to the Reconstruction era.¹²¹ Take for example, the anonymous Internet commenter discussed in the introduction who called for the lynching of "black hands" who dared condemn confederate monuments. Although this is an extreme example, it shows that lynching in its historical understanding, even beyond police killings, is still here, and *possible* and even desirable in the minds of some white Americans. The prevalent white response is even more disturbing when it comes to police killings of people of Color. In the wake of the death of Michael Brown in Ferguson, Missouri, the Pew Research Center conducted a series of polls on the attitudes of white and non-white people.¹²² The polls showed unequivocally that Blacks and whites hold vastly different views on police shootings – 80% of Blacks said that the shooting of Michael Brown raised important issues about race, while 47% of whites said that race was getting too much attention in the discussion.¹²³ Tellingly and disturbingly, 52% of whites believe strongly that the investigatory steps and judicial system will effectively investigate the shooting compared to only 18% of Blacks.¹²⁴ 45% of Blacks say they have no confidence in the justice system to resolve the shooting.¹²⁵

And why should they? As racial violence becomes more overt and more common, we remain as impotent as we were in 1937 to effectively combat the "state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death," as Ruth Wilson Gilmore conceptualizes racism. In fact, instead of recognizing racial violence for what it

121 *Police Killings Picked up where Lynching Left Off*, Donovan X. Ramsey, NEWS ONE, <http://newsone.com/3049413/police-killings-picked-up-where-lynching-left-off/>.

122 Stark Racial Divisions in Reactions to Ferguson Police Shooting, PEW RESEARCH, <http://www.people-press.org/2014/08/18/stark-racial-divisions-in-reactions-to-ferguson-police-shooting/>

123 *Id.*

124 *Id.*

125 *Id.*

is, a *race-based* phenomenon (as lynching was understood by anti-lynching activists), white people today bend ourselves into contortions to justify violence against people of color as *anything but* race-based. We back ourselves into a corner, both unwilling to admit that police killings are a racial phenomenon, but eager to stamp down the refrain of "Black lives matter" for fear it threatens white supremacy; we are unwilling to be accused of being racist, while almost never indicting white police officers.¹²⁶

Conclusion

Like the victims of lynching, the victims of police violence will never have their whole stories told. And like lynchings, police violence against people of Color will not cease until we as whites put ourselves in the uncomfortable position of overlaying police killings onto our history of lynching and remember the collective outrage and resistance that eventually drove lynching out of the South. When we hear the story of the next Trayvon Martin, the next Michael Brown, or the next Freddie Grey, we should be remembering our legacy of lynching and our outrage at the death of young men like Wesley Johnson, and demanding justice outside of a system built and maintained on white supremacy.

¹²⁶ See, for example, *Hard to Charge*, James Pinkerton, THE HOUSTON CHRONICAL, <http://www.houstonchronicle.com/local/investigations/item/Bulletproof-Part-3-Hard-to-charge-24421.php>.