

## Notes

# The Lynching of James Scales: How the FBI, the DOJ, and State Authorities “Whitewashed” Racial Violence in Bledsoe County, Tennessee

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## I. INTRODUCTION

Midday on November 23, 1944, a crowd gathered to lynch an African-American teenager named James Scales. Earlier that morning, guards at the Tennessee state reformatory where Scales was imprisoned had accused the sixteen-year-old of brutally killing the wife and daughter of the institution's superintendent. The mob began to hang its victim under a large tree, but the lynching came to an abrupt end when one member of the mob shot Scales in the head multiple times.

The murder of two white women and the lynching of a black teenager instantly became national news. Tennessee Governor Prentice Cooper pledged a full investigation and offered a \$500 reward for information leading to capture and conviction of Scales's killers. Local clergy and the International Labor Defense raised the total reward to more than \$1,800. The U.S. Department of Justice (DOJ) ordered the Federal Bureau of Investigation (FBI) to explore the circumstances surrounding the lynching.

Despite the initial outpouring of attention, the incident was all but forgotten a few weeks later. No one was ever indicted or prosecuted for Scales's lynching. The double murder of the superintendent's wife and daughter also has remained unexplored because the mainstream press and official investigations presumed Scales was guilty. Although Scales's name has appeared in a few published lists of known lynchings,<sup>1</sup>

<sup>1</sup> RALPH GINZBURG, 100 YEARS OF LYNCHING 269 (1968); *A Memorial to the Victims of Lynching*, AMERICA'S BLACK HOLOCAUST MUSEUM, <http://abhmuseum.org/category/lynching-victims->

this Note offers the first detailed account of the case.

The obscurity of Scales's story is not surprising because state and federal authorities colluded in its cover-up. The record reveals that the DOJ and FBI expressly acceded as Tennessee authorities "whitewashed and let go"<sup>2</sup> of the case. Both the FBI and the U.S. Attorney in Chattanooga deferred to local law enforcement and state political leaders rather than gathering sufficient evidence to prosecute the perpetrators. Ultimately, after the state failed to prosecute Scales's killers, the DOJ also abandoned the case. Assistant Attorney General Tom C. Clark,<sup>3</sup> a future Supreme Court Justice, cited lack of jurisdiction as the reason that the DOJ did not pursue federal prosecution. Clark was probably incorrect in this assessment. State actors—guards and construction contractors employed by the state reformatory—clearly participated in Scales's murder. Therefore, Title 18, Section 52 of the U.S. Code, a Civil Rights statute used to prosecute lynching by people "acting under the color of state law," should have applied.

James Scales's story highlights three modes of racial violence that predominated during the pre-Civil Rights Era South:

1. Institutional violence: how an inhumane and degrading state reformatory for black youth persisted for many decades in Bledsoe County, Tennessee, despite repeated condemnation by members of the local community and observers from across the country;
2. Lynching: the dynamics of "vigilante justice" perpetrated against a black teenager accused of brutally murdering two white women;
3. Support for racial violence through cover-up by state and federal authorities: how state and federal law enforcement abandoned a case that prompted significant outcry, generated national news coverage, and for which legal remedies were available.

While Scales's lynching was a sensational event that garnered national attention, his story also reveals subtler and more enduring forms of racial violence. These include the degrading conditions of the state reformatory, where countless black youth were jailed, and the collusion

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memorial/tennessee/page/4/, <<http://perma.cc/P4AU-GBMH>>.

<sup>2</sup> Memorandum from L. R. Pennington, to Mr. Rosen, Unknown Subjects, Lynching of James T. Scales, Colored, Civil Rights and Domestic Violence, at 2 (Dec. 14, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139 [hereinafter Dec. 14 Memo from Pennington to Rosen] (photo. reprint 2013) (on file with author). These are the exact words of the Knoxville-based FBI agent who led the lynching investigation. *Id.*

<sup>3</sup> Tom C. Clark later became U.S. Attorney General in the Truman administration from 1945–1949. *About Tom Clark*, TARLTON LAW LIBR., <http://tarlton.law.utexas.edu/clark/clark.html>, <<http://perma.cc/G7WV-2P8Z>>. President Truman appointed him to the Supreme Court in 1949, where he served until his retirement in 1967. *Id.* In an ironic twist of history, Thurgood Marshall succeeded Tom C. Clark as an Associate Justice. *Thurgood Marshall*, PBS, [http://www.pbs.org/wnet/supremecourt/rights/robes\\_marshall.html](http://www.pbs.org/wnet/supremecourt/rights/robes_marshall.html), <<http://perma.cc/5DVP-FS46>>. Also in 1967, President Lyndon Johnson appointed Tom C. Clark's son, General Ramsey Clark, as U.S. Attorney General. *About Tom Clark, supra.*

between state and federal authorities that undermined accountability for his murder. This Note chronicles the interplay of direct, structural, and cultural violence in the pre-Civil Rights Era South through the life and death of James Scales.

## II. A “VICIOUS TRIANGLE”: DEFINING DIRECT, STRUCTURAL AND CULTURAL VIOLENCE

Sociologist Johan Galtung defined three “super-types” of violence, which form the legs of a “vicious” “violence triangle”: (1) “direct violence” (or “personal violence”), (2) “structural violence,” and (3) “cultural violence.”<sup>4</sup>

### A. Direct Violence

Direct violence is interpersonal: perpetrated by an individual or a group of people against a particular person or another group.<sup>5</sup> Direct violence is a discrete event or series of events that can be pinpointed in time.<sup>6</sup> In the words of Black Power pioneer Stokeley Carmichael, direct—or personal—violence, “can be recorded on TV cameras and can frequently be observed in the process of commission.”<sup>7</sup> Scales’s lynching is an archetypal example of such direct violence.

### B. Structural Violence

Structural violence is “violence that occurs in the context of establishing, maintaining, extending, or reducing the hierarchical ordering of categories of people in a society.”<sup>8</sup> It is a process<sup>9</sup> that creates conditions of social injustice expressed as “unequal power and consequently as unequal life chances.”<sup>10</sup> Exploitation is at the core of structural violence, where “some, the topdogs, [sic] get much more . . .

<sup>4</sup> Johan Galtung, *Cultural Violence*, 27 J. PEACE RES. 291, 294 (1990).

<sup>5</sup> Johan Galtung, *Violence, Peace and Peace Research*, 6 J. PEACE RES. 167, 170 (1969).

<sup>6</sup> Galtung, *supra* note 4, at 294.

<sup>7</sup> Galtung, *supra* note 5, at 187 n.13 (quoting STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE DIALECTICS OF LIBERATION* 151 (1968)). Carmichael writes about individual violence versus institutional violence, a frame that Galtung endorses as functionally equivalent to his paradigm of direct (or personal) violence versus structural violence. *Id.* at 188 n.13. Galtung favors his chosen terms because structural violence can occur outside of institutions, and direct violence may be perpetrated by groups as well as by individuals. *Id.*

<sup>8</sup> PETER IADICOLA & ANSON SHUPE, *VIOLENCE, INEQUALITY, AND HUMAN FREEDOM* 35 (2012).

<sup>9</sup> Galtung, *supra* note 4, at 294.

<sup>10</sup> Galtung, *supra* note 5, at 171.

out of the interaction in the structure than others, the underdogs.”<sup>11</sup> The racial caste system that existed in Bledsoe County at the time of Scales’s lynching—as well as across the Jim Crow South—formed the structural element of the vicious triangle because “the general formula behind structural violence is inequality, above all in the distribution of power.”<sup>12</sup> African Americans, generally, had little power in the 1940s South; Scales—a black, incarcerated youth—was at the bottom of the power structure.

### C. Cultural Violence

Cultural violence refers to “those aspects of culture, the symbolic sphere of our existence—exemplified by religion and ideology, language and art, empirical science and formal science (logic and mathematics)—that can be used to justify or legitimize direct or structural violence.”<sup>13</sup> Because culture tends to transform slowly, Galtung frames cultural violence as an “invariant, a permanence” that remains static for long periods of time.<sup>14</sup> In practice, these cultural factors make direct and structural violence “look, even feel, right—or at least not wrong.”<sup>15</sup> The ideology of white supremacy in the Jim Crow South created a platform on which structural violence and direct violence could flourish and gain legitimacy.<sup>16</sup>

### D. Direct, Structural, and Cultural Violence and the Loss of Identity

Despite its interpersonal nature, direct violence is often depersonalized when perpetrated in the context of structural and cultural violence.<sup>17</sup> This depersonalization was not merely a feature of caste

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<sup>11</sup> Galtung, *supra* note 4, at 293.

<sup>12</sup> Galtung, *supra* note 5, at 175.

<sup>13</sup> Galtung, *supra* note 4, at 291.

<sup>14</sup> *Id.* at 294 (internal quotation marks omitted) (emphasis added).

<sup>15</sup> *Id.* at 291.

<sup>16</sup> The ideology of white supremacy went beyond the beliefs of specific white supremacist groups such as the Ku Klux Klan. It was a deeply held and widespread societal belief about the existence of a racial hierarchy with white people at the pinnacle. See, e.g., David Garland, *Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America*, 39 *LAW & SOC’Y REV.* 793, 800 (2005) (describing the post-Reconstruction reassertion of white supremacy as “a reactionary reassertion of traditional hierarchies”). These beliefs were supported by contemporary interpretations of science, history, and even theology. See Galtung, *supra* note 4, at 296–302 (describing how these factors can contribute to cultural violence, using other examples).

<sup>17</sup> See Kathleen M. Blee, *Racial Violence in the United States*, 28 *ETHNIC & RACIAL VIOLENCE* 599, 606–07 (2005) (arguing that “[w]hen a white man shows off for his buddies by beating up a black man . . . [it] is racial violence because it involves racially constituted groups of black victims and white peers . . . [but] [t]he African American man [as a particular individual] is fungible”).

system, but also a means of the caste system's perpetuation.<sup>18</sup> As will be shown in Part IV, the mob did not know and did not care about Scales's personal history. Scales became the target of extrajudicial killing as a marginalized person who the perpetrators perceived as being closest to the scene of the underlying crime. Reflexively, the entire white community assumed Scales's guilt. The mob did not seek any proof in carrying out its swift, extralegal actions because the caste system's cultural and structural violence legitimated the lynching. Part III attempts to counteract the deletion of identify by exploring James Scales's personal history and how he came to be a victim of direct, structural, and cultural violence.

### III. WHO WAS JAMES SCALES?

#### A. James Scales's Childhood

There are few accounts of Scales's life beyond the newspaper articles that came out after his death. Yet, by any measure, Scales appears to have had a troubled childhood that included significant run-ins with the law. He was born in Nashville, Tennessee, in January 1928, to Daisy and Ellis Scales.<sup>19</sup> In 1940, the U.S. Census recorded that Scales, age 11, was living with his mother and grandmother in a Nashville apartment.<sup>20</sup> It appears that his parents separated at some point prior to this time.<sup>21</sup> Between the ages of nine and sixteen, Scales encountered difficulties with the law at least eight times before he was sent to the state reformatory.<sup>22</sup> An article in the *Nashville Banner* reported that Scales was arrested for disorderly conduct on December 31, 1937, at age nine.<sup>23</sup> On July 25, 1940, at age twelve, "he was arrested and charged with housebreaking and larceny in two cases; highway robbery in three cases; and assault with a knife in two cases."<sup>24</sup> On May 31, 1942, he was arrested for destroying property, and on September 1, 1942, he was arrested for purse snatching.<sup>25</sup> On October 16, 1944, he was arrested for

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<sup>18</sup> See *id.* (describing the interrelationship between the violence and the perceptions of supremacy that the violence creates).

<sup>19</sup> DIV. VITAL STATISTICS, TENN. DEP'T OF PUB. HEALTH, JAMES ELLIS SCALES, CERTIFICATE OF DEATH (Nov. 23, 1944) [hereinafter SCALES DEATH CERTIFICATE] (on file with author).

<sup>20</sup> BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION SCHEDULE FOR DAVIDSON CNTY., TENN. SIXTEENTH CENSUS OF THE U.S.: 1940 (1940) (on file with author) (showing that in 1944, James lived with Daisy Scales and James's grandmother, Sarah Taylor).

<sup>21</sup> *Id.* (listing Daisy as divorced).

<sup>22</sup> *Killer Attacks Wife, Slays Daughter of School Head*, NASHVILLE BANNER, Nov. 23, 1944, at 2.

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

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

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

housebreaking and larceny.<sup>26</sup> His conviction and sentence to the reformatory stemmed from his arrest on October 24, 1944, for highway robbery and carrying a pistol.<sup>27</sup> The newspaper reported that Scales held up two women outside of the Polk Apartments and stole their purses.<sup>28</sup> Scales had “steadfastly proclaimed his innocence” of this robbery, yet en route to the reformatory in Pikeville, he purportedly confessed to M. M. Pitts, the juvenile court officer who worked on Scales’s case, and drew a picture of where he had hidden the stolen purses.<sup>29</sup>

Despite these transgressions, people who knew Scales did not consider him to be dangerous, though he was known to be crafty and shrewd. After Scales’s murder, Pitts told the *Nashville Tennessean* newspaper that he was “surprised” that the young man would commit such a deadly act because “we didn’t regard him as a dangerous person . . . but he was considered extremely cunning. He was very moody and it was impossible to tell what he was thinking by his speech or manner.”<sup>30</sup>

## B. James Scales’s Navy Career

When Scales was arrested for the crimes that led to his sentence at the reformatory, he was wearing a Navy uniform and carrying papers that attested to fifteen months of military service.<sup>31</sup> Although he was technically too young to serve, Scales enlisted in the Navy on March 29, 1943, at age fifteen.<sup>32</sup> His father, Ellis Scales, falsely corroborated that his son was born on January 12, 1926,<sup>33</sup> two years earlier than James’s actual date of birth.<sup>34</sup> James Scales served in the Navy for more than a year, including ten months overseas.<sup>35</sup> On May 2, 1944, he was

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Scales Negro Well Known to Police Here*, NASHVILLE TENNESSEAN, Nov. 24, 1944, at 18.

<sup>30</sup> *Id.* at 1 (internal quotation marks omitted).

<sup>31</sup> *Id.* at 18.

<sup>32</sup> Enlistment Agreement (Mar. 29, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author) (incorrectly showing his year of birth as 1926); see also SCALES DEATH CERTIFICATE, *supra* note 19 (showing birthdate as January 1928, making Scales fifteen-years-old); Letter from James Scales, at 1 (Oct. 11, 1944), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author) (writing that he “got a discharge for being underage”).

<sup>33</sup> NRB FORM 15: JAMES ELLIS SCALES’S AGE CERTIFICATE (Mar. 10, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author) (evidencing Ellis H. Scales’s signature); NRB FORM 18: JAMES ELLIS SCALES’S CONSENT, DECLARATION OF PARENT OR GUARDIAN IN THE ENLISTMENT OF A MINOR UNDER TWENTY-ONE YEARS OF AGE (Mar. 5, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author) (evidencing Ellis H. Scales’s signature).

<sup>34</sup> See SCALES DEATH CERTIFICATE, *supra* note 19 (indicating that Scales was born in January 1928).

<sup>35</sup> See Discharge Slip (Apr. 17, 1944), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author) (showing date of discharge as May 2, 1944, over a year from his March 29, 1943, enlistment); Summary of Service, in NAT’L PERSONNEL

discharged “by reason of inaptitude” due to several incidents of violent and undisciplined conduct.<sup>36</sup>

Scales had disciplinary problems throughout his time in the service. The most serious incident took place on July 5, 1943, when Scales had a verbal altercation with Frank Sykes, another black stewardmate, which escalated into violence.<sup>37</sup> According to Scales, the argument began when Sykes took Scales’s writing pad and verbally abused him,<sup>38</sup> prompting Scales to retort with a demeaning comment about Sykes’s wife.<sup>39</sup> In Sykes’s account, which was corroborated by multiple witnesses, Scales instigated the altercation with the disparaging remark.<sup>40</sup> Sykes threw a dirt clod at Scales, who ran out of the barracks.<sup>41</sup> Scales returned moments later with his belt knife in one hand and a carbine rifle in the other, threatening to “cut his damned throat.”<sup>42</sup> Another stewardmate told Scales to “pipe down” and inserted himself between the two men.<sup>43</sup> Thinking that Scales was not serious in his threat, Sykes got up from his bed to go “clean silver” in the Captain’s mess.<sup>44</sup> Seconds later, Scales broke away from the other stewardmate’s grasp, stabbed Sykes in the chest with his knife, and then fled from the scene.<sup>45</sup> Sykes was admitted to the hospital with a stab wound that was two inches long and an inch-and-a-half deep, just to the right of his sternum.<sup>46</sup> It appears that Sykes recovered fully because there is no mention of any problems with his health in subsequent reviews of the “findings and sentence” for the stabbing.<sup>47</sup>

On July 7, 1943, the Commanding Officer for Acorn Unit Number Nine, H.J. McNulty, deposed Scales, Sykes, and other witnesses.<sup>48</sup> He recommended a sample charge for the upcoming Court Martial, which

RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author) (showing dates with ACORN Unit #9 as June 1943 through March 1944).

<sup>36</sup> Statement Regarding Scales’ Inaptitude Discharge, in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author). It was an “indifferent” discharge, which is a form of honorable discharge. Discharge Slip, *supra* note 35; *Veteran’s Eligibility*, PENN. STATE CIV. SERVICE COMMISSION, <http://www.portal.state.pa.us/portal/server.pt/community/veterans/14275/eligibility/590768>, <<http://perma.cc/SRU4-G3ZQ>>.

<sup>37</sup> Letter from Commanding Officer to Commanding Officer, Eighth Defense Battalion, Reinforced (July 7, 1943), at Encl. B, in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE [hereinafter July 7 Letter] (photo. reprint 2012) (on file with author).

<sup>38</sup> *Id.* at Encl. A.

<sup>39</sup> *Id.* Scales reported that Sykes said, “Hey Scales, I heard you was a big fuck-off. Of course I know you’re not a dick-suck because if you were you’d suck mine.” Scales responded with, “[y]our wife’s a big suck-off.” *Id.* (internal quotation marks omitted).

<sup>40</sup> *Id.* at Encl. B.

<sup>41</sup> Note from H. J. McNulty (Aug. 31, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

<sup>42</sup> July 7 Letter, *supra* note 37, at Encl. C.

<sup>43</sup> *Id.* at Encl. D.

<sup>44</sup> *Id.* (internal quotation marks omitted). Witnesses reported that “[a]t no time did Sykes attempt to injure or get at Scales subsequent to the time he threw the dirt clod.” *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at Encl. D.

<sup>47</sup> *Id.*

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

read, in relevant part, that Scales “did . . . willfully, maliciously and without justifiable cause, assault and strike with a dangerous weapon, to wit, a sheath knife, one Frank (none) Sykes.”<sup>49</sup> Scales was tried by summary court martial on July 26 and the charge was “proved in part . . . except for the words ‘and without justifiable cause.’”<sup>50</sup> In other words, Scales was found guilty but his actions were deemed to have some level of justification. His sentence included a \$25 reduction in monthly salary for six months, seventy-five hours of extra police duties, and a demotion in military rank.<sup>51</sup> He was released from arrest and restored to duty on August 16, 1943.<sup>52</sup>

The Court Martial and punishment did not put an end to Scales’s misbehavior. One month later, on September 16, 1943, Scales was cited for “violating the sanitary bill” and punished with twenty-five hours of extra duty.<sup>53</sup> On September 25, he was sentenced to five days of solitary confinement with only bread and water for “violating Acorn Unit Number Nine Order #10.”<sup>54</sup> Then, on October 25, Scales slept in past reveille and was punished with twenty-five hours extra duty.<sup>55</sup> On April 10, 1944, he was punished for being out of uniform and using profane language to a petty officer.<sup>56</sup> He served five days in solitary confinement with only bread and water.<sup>57</sup>

This pattern of undisciplined conduct resulted in Scales’s discharge from the Navy “by reason of inaptitude” on May 2, 1944.<sup>58</sup> Describing the reasons for this severe sanction, Commander McNulty wrote:

[He] consistently gets into trouble with other enlisted personnel and evidenced a lack of ability to associate harmoniously with other people or to cooperate in the maintenance of discipline. There is marked evidence of immaturity which prevents Scales from taking military life seriously. Every attempt through personal attention and frequent interviews has been made to salvage Scales, but he

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<sup>49</sup> *Id.*

<sup>50</sup> Note from H. J. McNulty, *supra* note 41.

<sup>51</sup> *Id.* Although the proceedings were approved on August 11, 1943, and again on August 31, 1943, the “findings and sentence” were “disapproved” on each of those dates. *Id.*

<sup>52</sup> Captain’s Mast—Offense: Striking Another Person in the Navy, in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

<sup>53</sup> Captain’s Mast (Sept. 18, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

<sup>54</sup> Captain’s Mast (Sept. 25, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author). Scales’s Naval Unit was called “Acorn number nine.” *Id.* The Navy records provide no indication about the content of rule #10.

<sup>55</sup> Captain’s Mast (Oct. 25, 1943), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

<sup>56</sup> Captain’s Mast (Apr. 10, 1944), in NAT’L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

<sup>57</sup> *Id.*

<sup>58</sup> See *supra* note 36 and accompanying text.

has proven an unapt character.<sup>59</sup>

On March 15, 1944, Scales submitted a statement regarding his inaptitude discharge. It read:

I have read the statement regarding my inaptitude discharge. When I enlisted in the United States Navy, I was under the impression that I would be assigned to duty aboard ship and in a capacity other than in officers' mess. Thinking that I could do my part in the war effort, I misrepresented my age upon enlistment. I was sixteen (16) years old on January 12, 1944.<sup>60</sup>

It appears from Scales's statement that he anticipated engaging in military duties other than cooking and serving food for Naval officers. During the two decades prior to World War II, African Americans in the Navy were largely restricted to serving as mess attendants.<sup>61</sup> Although this policy shifted during the War due to resource pressures and the great valor shown by African-American service members,<sup>62</sup> it comes as no surprise that a young, inexperienced sailor such as Scales would be assigned as a mess attendant.

Several months later, on October 11, 1944, Scales wrote to the Navy asking to reenlist. "I got a discharge for being underage," he wrote, "I would like to get back in the Navy when I am of age."<sup>63</sup> This letter appears to misrepresent the reason for his discharge. Either Scales did not understand, or he chose to ignore, that his inaptitude discharge was prompted by his bad behavior, as described in Commander McNulty's statement.<sup>64</sup> On October 23—the day before he was arrested for the crime that resulted in his incarceration at the reformatory—the Navy penned a reply. The letter stated that personnel records showed his birth year to be 1926, and it asked him to provide an "authenticated birth certificate," if his birth records were incorrect.<sup>65</sup>

It is likely that many of Scales's behavioral mishaps stemmed from immaturity. He was a full two years younger than he should have been as an enlisted sailor. However, the armed assault on a fellow sailor represented a serious episode in a striking pattern of delinquency that began when he was a young child.

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<sup>59</sup> Statement Regarding Scales' Inaptitude Discharge, *supra* note 36.

<sup>60</sup> Scales' Statement Regarding Inaptitude Discharge (Mar. 15, 1944), in NAT'L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

<sup>61</sup> *African-Americans and the U.S. Navy—World War II*, NAVAL HIS. & HERITAGE, <http://www.history.navy.mil/photos/prs-tpic/af-amer/afa-wwii.htm>, <<http://perma.cc/3TEV-X3G5>>.

<sup>62</sup> *Id.*

<sup>63</sup> Letter from James Scales, *supra* note 32, at 1.

<sup>64</sup> Interestingly, Scales's skill in writing such a letter (with good penmanship) demonstrates that he likely had a decent education. See *id.* (demonstrating penmanship). He left school no later than age fifteen when he joined the Navy, although it is possible that he dropped out before enlisting.

<sup>65</sup> Letter from George P. Daly, U.S. Navy Lieutenant, to James Scales (Oct. 25, 1944), in NAT'L PERSONNEL RECORDS CTR., JAMES SCALES VETERAN FILE (photo. reprint 2012) (on file with author).

#### IV. INSTITUTIONAL VIOLENCE: A REFORMATORY FOR BLACK BOYS IN A DANGEROUS WHITE COUNTY

After his conviction for armed robbery, James Scales was incarcerated at the Tennessee State Training and Agricultural School for Colored Boys in Pikeville. The reformatory was located in a remote, rural location in the mountains of Bledsoe County on the Cumberland Plateau.<sup>66</sup> It was an overwhelmingly white and poor area at the time, and it remains so to this day.<sup>67</sup>

##### A. “Bloody Bledsoe”

Bledsoe County, Tennessee, sports a sinister sobriquet: “Bloody Bledsoe.”<sup>68</sup> This nickname attached because of violent feuds between local white families that began during the Civil War when the county was evenly divided between supporters of the Union and the Confederacy.<sup>69</sup> Local Bledsoe County historian Thomas V. Swafford wrote a series of books chronicling the “violence, moonshine and colorful characters” that caused turmoil in the county.<sup>70</sup> According to Swafford:

As the war dragged on, atrocities beget atrocities and acts of revenge beget acts of revenge throughout the local civilian population. Guerrillas and bushwhackers took over. The animosity between families and the killings that occurred during the war carried over for many years after the war

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<sup>66</sup> See OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION 5 (2011), <http://www.occ.gov/static/cra/craeval/oct12/10470.pdf>, <<http://perma.cc/LFN6-RQW5>> (describing Pikeville).

<sup>67</sup> MARGARET MCCULLOCH, AM. MISSIONARY ASS'N, TENNESSEE STATE AGRICULTURAL AND TRAINING SCHOOL FOR COLORED BOYS 2 (Dec. 12, 1944) (on file with author) (describing 1940s Pikeville as “an overwhelmingly white area, of a poverty-stricken and widely [sic] scattered population”); *State & County Quick Facts: Bledsoe County, Tennessee*, U.S. CENSUS BUREAU (Feb. 27, 2014, 6:20 PM), <http://quickfacts.census.gov/qfd/states/47/47007.html>, <<http://perma.cc/GLK7-WTJL>> (reporting that the percentage of white residents in Bledsoe County in 2012 was 94.1%, the percentage of persons below poverty level from 2008–2012 was 23.1% in Bledsoe County, and the median household income was \$13,000 less than Tennessee as a whole).

<sup>68</sup> *Bloody Bledsoe: Vengeance [sic] by Blood*, YOUTUBE (May 11, 2012), <https://www.youtube.com/watch?v=qgvV829UOXk>, <<http://perma.cc/R8S2-FVSQ>> (showing a recording of a series titled “Bloody Bledsoe” based on the Bloody Bledsoe books written by Thomas V. Swafford).

<sup>69</sup> THOMAS V. SWAFFORD, *MOONSHINE MAN: THE LIFE OF CHURCH LESTER* 20 (2007) [hereinafter *MOONSHINE MAN*]; Elizabeth Robnett, *Bledsoe County*, TENN. ENCYCLOPEDIA HIST. & CULTURE, <http://tennesseencyclopedia.net/entry.php?rec=99>, <<http://perma.cc/E5K-R7ZB>>; see also THOMAS V. SWAFFORD, *THE SWAFFORD-TOLLETT FEUD* 80–83, 85, 87 (2003) (describing the bloody feud between the Swafford and Tollett families, which began in the 1860s and continued through the 1900s).

<sup>70</sup> Ben Benton, *Second ‘Bloody Bledsoe’ Book Now Available*, CHATTANOOGA TIMES FREE PRESS, Dec. 29, 2007, <http://www.timesfreepress.com/news/2007/dec/29/2nd-Bloody-Bledsoe--book-now-available/>, <<http://perma.cc/LTL4-4YQT>>.

ended.<sup>71</sup>

The arrival of Prohibition exacerbated these conflicts and sparked competition between local brewers and moonshiners.<sup>72</sup> “Moonshine was the county’s lifeblood and the root of its identity,” which included significant corruption as some sheriffs and deputies participated in the illegal trade.<sup>73</sup> A bomb planted in a residential home by a particularly notorious character killed three young girls in 1938.<sup>74</sup> Although this crime was successfully prosecuted in a blockbuster trial,<sup>75</sup> vigilante justice ruled the day during most of this period in Bledsoe’s history.<sup>76</sup>

Swafford notes that, in 1938, Bledsoe had the highest per capita murder rate in Tennessee and the lowest rate of convictions.<sup>77</sup> Of the 211 confirmed killings by Bledsoe men between 1861 and 1950, only 21% of the perpetrators served any jail time in Bledsoe County, and none were sentenced to death.<sup>78</sup> An attorney who practiced in the county during the mid-1900s explained with chilling clarity that Bledsoe juries let so many killers walk free because “[w]e take into consideration whether or not the person who was killed needed to be killed.”<sup>79</sup> Although Swafford suggested that the rate of violence declined to an average level after about 1950,<sup>80</sup> the current District Attorney General for Bledsoe County, Michael Taylor, asserts that local blood feuds persisted into the late 1970s.<sup>81</sup> Throughout the “Bloody Bledsoe” time period, the crimes were traditionally white-on-white violence, as very few African Americans lived in the county.

Given the predilection for vigilantism among Bledsoe’s residents and the cavalier attitude toward prosecuting murder by white perpetrators, it is not surprising that a young black man accused of murder would be lynched. Prior to Scales’s murder, there were two other known lynchings of black men in Bledsoe’s history. Fifty years earlier, in 1893, John Cooper, a black man, was accused of assaulting and killing Rosa Boring, a young white woman.<sup>82</sup> The police apprehended Cooper

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<sup>71</sup> MOONSHINE MAN, *supra* note 69, at 20.

<sup>72</sup> *Bloody Bledsoe: Vengance* [sic] *by Blood*, *supra* note 68.

<sup>73</sup> MOONSHINE MAN, *supra* note 69, at 20–21.

<sup>74</sup> *Id.*; *Gouge Girls’ Murder*, ELIZABETHTON STAR, Nov. 26, 2004, <http://archives.starhq.com/html/localnews/1104/112604MrRobinson.html>, <<http://perma.cc/VXK5-93KF>>.

<sup>75</sup> *Gouge Girls’ Murder*, *supra* note 74.

<sup>76</sup> Benton, *supra* note 70.

<sup>77</sup> MOONSHINE MAN, *supra* note 69, at 18.

<sup>78</sup> *Id.* at 18–19. Swafford notes that these statistics most likely underrepresent the actual number of murders committed by Bledsoe men during this time period because of incomplete or nonexistent records for the earlier years. *Id.* at 19.

<sup>79</sup> *Id.* at 18 (internal quotation marks omitted).

<sup>80</sup> *Id.* at 22.

<sup>81</sup> Telephone Interview with Michael Taylor, Dist. Att’y Gen., 12th Judicial Dist. of Tenn. (July 26, 2012).

<sup>82</sup> *Her Throat Cut: A Young Girl Found Murdered Near Pikeville*, CHATTANOOGA SUNDAY TIMES, Oct. 22, 1893; *Additional Details of the Confession and Lynching of a Negro Fiend*, CHATTANOOGA DAILY TIMES, Oct. 24, 1893. Cooper changed his name to John Gamble—a name that is listed in other sources documenting the man’s death. *Additional Details of the Confession and Lynching of a*

and brought him to the Pikeville jail.<sup>83</sup> Soon thereafter, a mob of 300 white men assembled at the jail to demand that the sheriff turn over Cooper.<sup>84</sup> The sheriff left to consult a judge about what he should do, and during his absence, the mob overpowered the jailer, apprehended Cooper, and lynched him.<sup>85</sup> Nearly half a century earlier, in 1848, a black slave was accused of killing Nancy Thurman, a thirty-three-year-old white woman, whose family owned him.<sup>86</sup> Apparently, Thurman had whipped the man and, later in the day, he sought revenge as she was gathering walnuts near Pikeville's cemetery.<sup>87</sup> A group of white men lynched him near the site of the crime.<sup>88</sup>

It was in this violent, extraordinarily remote, and nearly all-white county that the State of Tennessee chose to locate a reformatory for African-American boys.

### B. Tennessee State Training and Agricultural School for Colored Boys

Tennessee's first public reformatory for boys opened its doors in 1911.<sup>89</sup> Prior to that time, "youthful criminals" were routinely incarcerated in prisons alongside adults.<sup>90</sup> In 1908, a ten-year-old boy and an eleven-year-old boy were each committed to a state prison for two to three years for larceny and related offenses.<sup>91</sup> Deeming the adult facilities "schools of crime for the young," state legislators passed a law financing an institution for boys.<sup>92</sup> The state founded the Training and Agricultural School for Colored Boys in Pikeville, Tennessee, in 1918.<sup>93</sup> Beginning in 1932, the reformatories for black boys and for white boys were operated under the same management until responsibility for the institutions was separated in 1934.<sup>94</sup>

The public reformatory system was problematic from its inception. Numerous private and public inspectors pronounced the reformatory

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*Negro Fiend*, *supra*; see, e.g., GINZBURG, *supra* note 1, at 268.

<sup>83</sup> *Additional Details of the Confession and Lynching of a Negro Fiend*, *supra* note 82.

<sup>84</sup> *Id.*

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

<sup>86</sup> Email from Carolyn Knight, Pikeville Librarian, to author (May 16, 2014) (on file with author).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> TENN. DEP'T OF CORR., 1700–2013 HISTORICAL TIMELINE 3 (2013), <http://www.tn.gov/correction/pdf/HistoricalTimeline.pdf>, <<http://perma.cc/8T3L-VRQ2>> [hereinafter DEP'T OF CORR. TIMELINE].

<sup>90</sup> TENN. STATE BD. OF CHARITIES, BIENNIAL REPORT 1 (1911) [hereinafter 1911 CHARITIES BD. REPORT] (on file with author).

<sup>91</sup> DEP'T OF CORR. TIMELINE, *supra* note 89, at 3.

<sup>92</sup> 1911 CHARITIES BD. REPORT, *supra* note 90, at 1.

<sup>93</sup> DEP'T OF CORR. TIMELINE, *supra* note 89, at 3.

<sup>94</sup> TENN. DEP'T OF INSTS. & PUB. WELFARE, BIENNIAL REPORT 1 (1934) (on file with author).

system to be an utter failure since its creation.<sup>95</sup> A 1923 biennial report to the State Board of Charities stated, “A most unsatisfactory condition exists here because of the poorly planned main building and the fearfully over-crowded conditions of the dormitories.”<sup>96</sup> Regarding the institution’s “Colored Department,” the report stated that the reformatory was:

Located in the most inaccessible spot conceivable for a reformatory institution. Not only does this out-of-the-way location entaile [sic] an unnecessary expence [sic] in transporting supplies to the institution and the finished products to the railroad, but it makes it practically impossible to secure efficient help, or trained teachers.<sup>97</sup>

A report on the Pikeville institution from December 1944 provided a detailed description of the Training and Agricultural School’s remote setting:

It is located nearly 100 miles from any large city, 15 miles from the town of Pikeville, 7 miles from any highway, in an area where no Negroes live. It is almost inaccessible to inspection by officials or civic groups . . . . It is an institution for Negroes located in an overwhelmingly white area, of a poverty-stricken and widely [sic] scattered population. It is an institution filled largely with city boys with nothing in the isolated rural environment through which they can be re-educated for city life.<sup>98</sup>

The Pikeville reformatory was a work farm where young boys were tasked with hard labor, including farming, mining, and maintaining the property.<sup>99</sup> There were no bars or fences to keep the boys in, so runaways were common.<sup>100</sup> The boys rarely got far, however, since they were easy to spot in the all-white, rural community. There was a standing \$10

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<sup>95</sup> See TENN. DEP’T OF INST. AND PUB. WELFARE, LAW ENFORCEMENT COMM. OF MADISON CNTY., REPORT ON TRIP TO HERBERT DOMAIN REFORM SCHOOL FOR COLORED BOYS (Jan. 31, 1933) [hereinafter REPORT ON TRIP TO REFORM SCHOOL] (on file with author) (“It is no reformatory at all. It is an isolated place of confinement for boys. There is no way of reforming a boy there. There are no trades to be learned, no equipment or machinery for trades.”); WILLIAM B. JONES, STATE TRAINING AND AGRICULTURAL SCHOOL FOR NEGRO BOYS AT PIKEVILLE 3 (1938) (on file with author) (recommending that the facility “be abandoned . . . [and] relocated at some point between Nashville and Memphis”); MCCULLOCH, *supra* note 67, at 1–3 (“Over a period of many years investigations and reports have shown the need for drastic reforms in the institution . . . without avail”).

<sup>96</sup> TENN. STATE BD. OF CHARITIES, BIENNIAL REPORT (1923) (on file with author).

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

<sup>98</sup> MCCULLOCH, *supra* note 67, at 2.

<sup>99</sup> JONES, *supra* note 95, at 4.

<sup>100</sup> Interview with Jeffrey Angel, Resident at Reform School and Descendant of a Superintendent and an Unofficial Historian of the Reform School, in Pikeville, Tenn. (July 23, 2012) [hereinafter Jeffrey Angel Interview]. Mr. Angel grew up at the Pikeville reformatory because his father worked there during the 1960s and 1970s, including as superintendent. *Id.* His mother, Zanda Angel, became an unofficial historian for the Training and Agricultural School and worked there through the 1990s. *Id.*

reward for local farmers who brought back a runaway<sup>101</sup> (equivalent to about \$135 in 2014 currency).<sup>102</sup> Corporal punishment was routine.<sup>103</sup>

The Training and Agricultural School for Colored Boys was notorious for deplorable conditions.<sup>104</sup> A nationwide survey of “American institutions for delinquent juveniles” named the Pikeville institution as “the most desolate and forbidding.”<sup>105</sup> The report reads:

Inadequate appropriations, bad housing, poor location, meager and run down equipment, the absence of any plan or program, a strictly punitive approach, and a technically untrained staff and administration combine to make the State Training and Agricultural School for Colored Boys one of the most negative and ineffectual institutions visited so far in this nation-wide survey. Among the schools visited Pikeville stands as the most desolate and forbidding. Its lonely, isolated, and inaccessible mountain top is poorly suited to human habitation, to say nothing of its use as a place for a children’s school. This geographic factor is one of the many reasons why funds should be made available for Pikeville’s immediate discontinuance. Further money appropriated for the upkeep of an institution with such debasing standards will simply represent an additional waste of public funds.<sup>106</sup>

In 1938, the Advisory Commission on Juvenile Correctional Institutions—directed by William B. Jones—released a scathing report on the Training and Agricultural School for Colored Boys. The Jones Report described “almost primitive” buildings and equipment that were only worth their salvage value.<sup>107</sup> It criticized the location as “not at all suited to the objectives or needs of a training school for Negro boys.”<sup>108</sup> Jones noted a complete absence of rehabilitation, treatment, or training

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<sup>101</sup> Report by Z. Alexander Looby, NAACP Legal Defense Fund Attorney, to Thurgood Marshall, NAACP Legal Defense Fund Chief Counsel, at 2 (Dec. 7, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE No. 44-1139 [hereinafter Looby Report] (photo. reprint 2013) (on file with author).

<sup>102</sup> *CPI Inflation Calculator*, BUREAU LAB., [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm), <<http://perma.cc/Z6XJ-9GMQ>>.

<sup>103</sup> Jeffrey Angel Interview, *supra* note 100.

<sup>104</sup> A sister institution, the Training and Agricultural School for white boys (called *Jordania*), was located in Bordeaux, Tennessee, a neighborhood in Nashville. George Zepp, *Jordania Kindled Fear in Tennessee’s Youth For 60 Years*, TENNESSEAN, May 4, 2007, <http://www.tennessean.com/article/20060308/COLUMNIST0102/105030040/1093>, <<http://perma.cc/8PD4-N28R>>. While there were terrible conditions at both reform schools, the reformatory for black boys spent less than one-half per inmate between 1941 and 1945 as did its counterpart for white boys. ANNUAL REPORT OF THE DEPARTMENT OF INSTITUTIONS STATE OF TENNESSEE FOR THE FISCAL YEAR ENDING JUNE 30, 1946, 93, 98 (1946); MCCULLOCH, *supra* note 67, at 2. Although the boys incarcerated at *Jordania* suffered significant abuses, the reformatory underwent significant changes in the late 1940s due to action by Governor Browning, which was, in part, spurred by advocacy from a group of well-heeled supporters known as the Optimist Club. Nat Caldwell, *Satterfield Brings Change of View to Boys in Custody*, NASHVILLE TENNESSEAN, May 29, 1949.

<sup>105</sup> MCCULLOCH, *supra* note 67, at 1–2.

<sup>106</sup> *Id.*

<sup>107</sup> JONES, *supra* note 95, at 1, 3.

<sup>108</sup> *Id.* at 2.

programs at the reformatory, and blamed the institution's leadership for these failings:

There is no program of vocational training. Farming, mining, and maintenance work constitute the so-called vocational training program, and attention has been previously called to the fact that this is not the type of training which youths from the city need to enable them to return to the city and then become self-supporting. . . .

These findings concerning the treatment program, or absence of treatment program, reinforce the recommendation that the immediate dire need of this institution is proper location and buildings and equipment to permit a program and service which will enable the institution to carry its purpose and fulfill its objectives.

As this school now operates it is purely a custodial institution. In no sense might it be called a rehabilitative institution. Let it be clearly understood that what may seem to be unduly harsh criticism is not directed toward the present officials of the institution, nor the administration. The deplorable conditions which have been described are simply the inevitable result of no carefully planned long-time policy and program, frequent shifts in administrative authority, and administrative officials who either were ignorant of the objectives and purpose of a training school or did not care.<sup>109</sup>

It is no wonder the commission contended that the only way to fix the Pikeville institution was to close its doors and relocate the institution to "some point between Nashville and Memphis."<sup>110</sup> Despite calls to shutter the reformatory, the state had proposed capital improvements to the site, including a large dormitory project.<sup>111</sup> The Jones Report condemned this idea in the strongest terms:

[T]he state of Tennessee should not, in this day and time, erect dormitories for its juvenile offenders. This would be a decidedly backwards step. . . . It is believed that the proposal is most ill-advised and does not evidence a working knowledge of the principles and objectives of a training school. . . . [T]he proposal is wholly unsound, and should be abandoned at once.<sup>112</sup>

Nonetheless, a \$250,000 dormitory construction project was

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<sup>109</sup> *Id.* at 4–5.

<sup>110</sup> *Id.* at 3.

<sup>111</sup> See JONES, *supra* note 95, at 3 (citing and criticizing the proposal).

<sup>112</sup> *Id.* at 3–4.

underway when Scales arrived at the reformatory in 1944.<sup>113</sup>

### C. Attention on the Reformatory After Scales's Lynching

In the aftermath of Scales's lynching, the Training and Agricultural School for Colored Boys attracted a flurry of attention from the local community, activists both locally and nationally, and officials at all levels of government. Despite the increased scrutiny, the reformatory continued in operation for many years to come, largely unchanged but for some modest improvements. Ultimately, desegregation may have been the primary driver of real reform at the institution.

#### 1. Public Response

In the wake of the lynching, some members of Bledsoe's white community focused greater attention on the reformatory, expressing outrage about the presence of such a degrading institution in their midst. One opinion column, appearing in the *Bledsonian and Pikeville Banner*, blamed inaction by state authorities for the problems at the reformatory.<sup>114</sup> The article opined:

This school, as it is so miscalled, is really a disgrace and a dangerous menace to this county and section and far-reaching changes and corrections should be made or the people of Bledsoe county should demand in no uncertain terms that it be removed or abolished. . . . We would like to emphasize to the people of Tennessee that this is a STATE institution and that the STATE OF TENNESSEE and not the people of this community are responsible for conditions out there.<sup>115</sup>

Another opinion column, preserved by the FBI in its file, expressed outrage about the mob violence and lack of due process:

By defying the courts and due process [the mob] compounded the crime. Yes, they created an example, but not as they thought, if mobsters can think. Scorning law and order, they encouraged lawless and irresponsible elements elsewhere. They provided water for the wheel of the impractical groups

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<sup>113</sup> See MCCULLOCH, *supra* note 67, at 2 (noting that \$250,000 was invested in 1943 to begin a construction project); *Pikeville School Program Pushed*, NASHVILLE TENNESSEAN, Dec. 5, 1944 (reporting that the building project was nearly complete as of December 1944).

<sup>114</sup> *Negro Reform School a Disgrace to the County*, BLEDSONIAN & PIKEVILLE BANNER, June 7, 1945.

<sup>115</sup> *Id.* (emphasis in original).

trying to force the odious and misnamed anti-lynching bill on the South. They did themselves and their community a disservice. . . . The negro's crime was heinous. The courts are sometimes slow. But resorting to mob vengeance is a rebuke to God and the justice which man has fashioned from His precepts.<sup>116</sup>

Meanwhile, the lynching reinvigorated broader public attention to the appalling conditions at the Training and Agricultural School in Pikeville. Similar articles attesting to the institution's deplorability ran in newspapers across Tennessee, likely reflecting and stoking the community's rage.<sup>117</sup> On December 1, 1944, just a week after the murders, the *Nashville Tennessean* printed an interview with Reverend D. A. Jackson, a black leader in the Knoxville area. Jackson told the paper, "I made an intensive investigation at the institution last August [1944] . . . and told Superintendent Scott that conditions there were just like a powder keg and would blow up one day."<sup>118</sup> The paper reported:

Jackson said the institution is poorly operated, is filthy, has no recreational program at all and that teen-aged inmates are forced to work eight hours daily in coal mines. "The institution should be relocated near some large city or in a more populated place where preachers and social workers could make regular visits," he added. . . . "I didn't even see a ball or bat while I was there—the only recreation the boys have is to shoot dice, pitch pennies and fight among themselves. . . . One of the first things I saw when I drove there last summer was a guard clubbing a 12-year-old boy over the head with a stick. He kept beating him until the boy fell to the ground."<sup>119</sup>

Jackson echoed the same refrain as observers in 1933<sup>120</sup> and 1938.<sup>121</sup> The remote location was unfit for a reformatory, the conditions were deplorable, staff was untrained, and instruction was all but non-existent. In other words, not much had changed in the intervening

<sup>116</sup> *Setback for Law and Order*, COM. APPEAL, Nov. 25, 1944 (on file with author).

<sup>117</sup> See, e.g., *Pikeville School Location, Personnel Changes Urged*, NASHVILLE TENNESSEAN, Dec. 1, 1944, at 8 (describing the Reverend Jackson's reports about the facility's conditions as "a powder keg [that] would blow up one day"); *Pikeville Probe Spurs Investigation of State Institutions in General of State Institutions in General*, NASHVILLE TENNESSEAN, Jun. 3, 1945 (photo. reprint 2013) (on file with author) (reporting on the investigations into the facility's "deplorable living conditions"); *Horror Prison at Pikeville Without Legal Sanction, Say Ministers and West Tennessee Association, Evade Mention of Rumors That Scales Boy Was Not Guilty of Double Murder*, NASHVILLE GLOBE, Jan. 26, 1945, at 4 [hereinafter *Horror Prison*] (describing the facility as "harsh, un-Christian, and uncivilized").

<sup>118</sup> *Pikeville School Location, Personnel Changes Urged*, *supra* note 117 (internal quotation marks omitted).

<sup>119</sup> *Id.*

<sup>120</sup> REPORT ON TRIP TO REFORM SCHOOL, *supra* note 95, at 1–2.

<sup>121</sup> JONES, *supra* note 95, at 1.

years.

Bishop E. P. Dandridge of Nashville also gave voice to the institution's dismal state. Bishop Dandridge wrote a report asserting that "extremely bad conditions" existed at the reformatory "in direct violation of scores of public health law and regulations in effect in this state."<sup>122</sup> The Bishop described the reformatory's dining room as:

[C]old with broken windows and doors, gloomy, dirty and bad-smelling. . . . The arrangements for preparing the food were unsanitary. The metal plates and pans in which it is served were washed in a sink without sterilization or segregation of those used by boys who might be infected with venereal or other communicable diseases. There were no tables. The boys sat on long benches and their plates and bowls were placed on horizontal boards fastened on the back of the bench in front. The milk looked dirty.<sup>123</sup>

The Bishop's report showed the dormitories to be equally terrible:

The dormitories—where the boys live—were found cold, dirty, and disorderly. . . . An inadequate number of single iron beds were provided for 200 boys. In one room there were 43 beds for 93 boys. Many had broken springs or no springs and in many cases the mattresses rested on the floor. Each bed had a blanket and a mattress—unspeakably filthy. The boys said they slept naked, two or three to a bed, and this was confirmed by guards.<sup>124</sup>

A report by Judge Camille Kelley of the Memphis juvenile court found that "the buildings in which the Negro boys were housed were 'not habitable for human beings.'"<sup>125</sup> Perhaps most damning of all, this report found that "although the institution is called the state agricultural and training school for Negro boys . . . there was no school of any sort."<sup>126</sup> Given the remote location and awful conditions, many activists argued that reforming the reformatory facility in Bledsoe would be insufficient; rather, they advocated abandoning the facility altogether.

A proposed dormitory project elicited sharp criticism from many observers—most notably from Margaret McCulloch, a teacher, writer, and civil rights activist who worked in the Race Relations Department at Fisk University in Nashville.<sup>127</sup> A memorandum by McCulloch, issued

<sup>122</sup> *Pikeville Probe Spurs Investigation of State Institutions in General of State Institutions in General*, *supra* note 117 (internal quotation marks omitted).

<sup>123</sup> *Id.* (internal quotation marks omitted).

<sup>124</sup> *Id.* (internal quotation marks omitted).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> DAVIS W. HOUCK & DAVID EDWARD DIXON, WOMEN AND THE CIVIL RIGHTS MOVEMENT, 1954–1965, 201–202 (2009); *United Church of Christ Subject Guide*, *American Missionary Association Missionaries and Teachers*, AMISTAD RES. CENTER,

after Scales's murder, noted that the construction project "served to retard progress as the building is on the old dormitory style plan and is in this totally wrong location."<sup>128</sup> McCulloch lauded the recent appointment of the Training and Agricultural School's warden, H. E. Scott, "a trained and experienced teacher," but she observed that "while a step in the right direction, [Scott's appointment] was rendered wholly ineffective by the handicaps to which location, untrained staff, inadequate budget, and antiquated attitudes of staff subjected him."<sup>129</sup> The number one recommendation offered by McCulloch's report was "removal of the institution from its totally unfit present location."<sup>130</sup> Nonetheless, she acknowledged the political obstacles facing such a move:

All [investigators] agree that no funds should be invested in buildings on the present site. Despite this, the Commissioner still favors the site, \$250,000 was invested last year in the construction of a building there, and a glowing account of its rural charms and their softening influence on the boys appears in the 1943 report of the Commissioner of Institutions.<sup>131</sup>

Advocates continually pressured state leaders to address the conditions at the reformatory. Echoing McCulloch's calls for reform, the Ministers' Alliance for Nashville petitioned the state legislature to move the institution to a more accessible part of the state, among other proposals.<sup>132</sup> Sustained advocacy may have contributed to the institution's improvements in the long-term, but the reformatory was never relocated.<sup>133</sup>

## 2. *Government Response*

One week after Scales's lynching, on December, 3, 1944, Tennessee Governor Prentice Cooper visited the institution to personally inspect the premises.<sup>134</sup> Cooper spent most of his time viewing the dormitory construction project.<sup>135</sup> He offered an upbeat analysis of the

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<http://www.amistadresearchcenter.org/index.php/the-amistad-event/234-american-missionary-association-missionaries-and-teachers>, <<http://perma.cc/8AR6-MVZB>>.

<sup>128</sup> MCCULLOCH, *supra* note 67, at 3.

<sup>129</sup> *Id.* at 3.

<sup>130</sup> *Id.* at 2.

<sup>131</sup> *Id.*

<sup>132</sup> *Horror Prison*, *supra* note 117.

<sup>133</sup> The reformatory in Pikeville eventually was re-named the Taft Youth Center in 1971. Zepp, *supra* note 104. In a strange twist of fate, the state finally closed the institution in July 2012 as a budget-saving measure, just a week before this author visited the premises. Ben Benton, *Taft Youth Center's Last Three Students Moved to Other Facilities*, CHATTANOOGA TIMES FREE PRESS, July 12, 2012, <http://www.timesfreepress.com/news/2012/jul/12/tafts-last-three-students-moved-to-other/>, <<http://perma.cc/UZ7V-79SU>>.

<sup>134</sup> *Pikeville School Program Pushed*, *supra* note 113.

<sup>135</sup> *Id.*

reformatory's situation, pledging further improvements: "The state is to be congratulated on the progress already made at Pikeville. . . . However, other facilities are needed and I plan to ask the next legislature to provide them."<sup>136</sup> While the Governor acknowledged that reforms were necessary, his plans failed to address any of the concerns raised by investigators and advocates. The Governor identified "three outstanding needs of the school as a laundry, power plant and separate quarters for the guards and other staff members."<sup>137</sup> Yet, perhaps unsurprisingly, none of these proposals aimed to improve conditions or instruction for the young inmates.<sup>138</sup>

On January 16, 1945, less than two months after the lynching, Cooper left office. Jim Nance McCord succeeded Cooper as Governor.<sup>139</sup> McCord appears to have given very little attention to the lynching, but he did appoint a committee to further investigate the conditions at the Pikeville institution.<sup>140</sup> In June 1945, the committee released two reports—one by Bishop Dandridge and the other by Judge Kelley—that reflected all of the prior findings by earlier investigators.<sup>141</sup>

Governor McCord and his successor, Gordon Browning, apparently devoted significant resources to improving the reformatory.<sup>142</sup> The Tennessee Committee on Children released a report sometime during the 1950s, which claimed that the "Tennessee Training and Vocational [sic] School for Colored Boys has a brand new reputation as one of the best in the nation."<sup>143</sup> The sincerity of this report is questionable, however.<sup>144</sup> State committee reports released in earlier years expressed similar positive sentiments about the institution, despite substandard conditions. For example, in the 1946 report of the Tennessee Department of Institutions, the Superintendent of the Reformatory for Colored Boys, Lake F. Russell, wrote:

Many changes have taken place in this institution during the year 1945–46. The physical plant has been greatly improved. . . . The health of the boys has been excellent. No

<sup>136</sup> *Id.* (internal quotation marks omitted).

<sup>137</sup> *Id.*

<sup>138</sup> Cooper and his successor as Governor, Jim Nance McCord, ended up appointing a series of superintendents to lead the Tennessee Training and Agricultural School. At least five individuals either turned down the job or left after serving a very short period of time. *Russel Heads Pikeville School*, NASHVILLE TENNESSEAN, Aug. 31, 1945.

<sup>139</sup> *Tennessee Governor Jim Nance McCord*, NAT'L GOVERNORS ASS'N, [http://www.nga.org/cms/home/governors/past-governors-bios/page\\_tennessee/col2-content/main-content-list/title\\_mccord\\_jim.html](http://www.nga.org/cms/home/governors/past-governors-bios/page_tennessee/col2-content/main-content-list/title_mccord_jim.html), <<http://perma.cc/P7KU-325H>>. Cooper's term had expired and he was ineligible to run again under state law. PHILLIP LANGSDON, TENNESSEE: A POLITICAL HISTORY 336–343 (2000).

<sup>140</sup> *Pikeville Probe Spurs Investigation of State Institutions in General*, *supra* note 117.

<sup>141</sup> *Id.*

<sup>142</sup> See *Pikeville Story*, NASHVILLE TENNESSEAN (date unclear) (photo. reprint 2013) (on file with author) (describing the improvements). The institution was renamed State Vocation Training School for Colored Boys in 1955. DEP'T OF CORR. TIMELINE, *supra* note 89, at 7.

<sup>143</sup> *Pikeville Story*, *supra* note 142.

<sup>144</sup> The author was unable to procure a copy of this report.

serious illness and there have been no epidemics. No deaths have occurred during the year. The splendid health record is attributed to a healthy climate, proper food, regular habits, good domiciliary and medical care. New boys are given complete physical and medical examinations upon arrival. Typhoid inoculations are given to all inmates and blood tests are made and treatments given if necessary.

Significant departures have been made in the training and control of the boys. Under the new program, teaching is emphasized and all aspects of the penal institution are avoided. Guards, as such, are no longer employed. Under the present plan, every employee becomes a teacher. . . . Men are now employed for the purpose of supervising and instructing the boys at work, rather than to keep them from running away.<sup>145</sup>

The report notes that the facility hired a recreational director and that a half day of “academic training [was] provided for all inmates” during eight months of the year.<sup>146</sup> The positive spin of this official report presents a starkly different picture of the institution than the accounts by Bishop Dandridge, Judge Kelley, and Margaret McCulloch, which covered a similar time period.

It appears that greater improvements to the Pikeville institution may have arrived only after the reformatory system was desegregated in 1965 due to larger societal and legal shifts motivated by the Civil Rights Movement.<sup>147</sup> Nonetheless, corporal punishment remained legal in Tennessee’s juvenile institutions until 1978.<sup>148</sup> A stark reminder of the institution’s dark history remains to this day: about two dozen ankle-high, concrete crosses mark the graves of unnamed boys who died while serving time at the reformatory.<sup>149</sup>

It was to this remote, degrading, and segregated institution that James Scales arrived, in late October 1944.

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<sup>145</sup> ANNUAL REPORT OF THE DEPARTMENT OF INSTITUTIONS STATE OF TENNESSEE FOR THE FISCAL YEAR ENDING JUNE 30, 1946, *supra* note 104, at 95–96.

<sup>146</sup> *Id.* at 96. It is clear from the report that the reformatory for white boys in Jordania had significantly greater resources devoted to education, training, health, and recreation than were available for the African-American inmates in Pikeville. *See id.* at 87–98 (describing each of the programs).

<sup>147</sup> DEP’T OF CORR. TIMELINE, *supra* note 89, at 7.

<sup>148</sup> *See id.* at 11 (noting the abolition in 1978). Corporal punishment had been outlawed in 1956, but it was reinstated in 1957. *Id.* at 7. It was made illegal in Tennessee adult institutions in 1966. *Id.*

<sup>149</sup> Visit to Taft Youth Center (July 22, 2012).

## V. LYNCHING: TWO WHITE WOMEN MURDERED, A YOUNG BLACK MAN ACCUSED

On November 23, 1944, a group of white men lynched James Scales after accusing him of brutally murdering the wife and daughter of the reformatory warden, Superintendent Henry Eugene Scott. Many of circumstances surrounding this episode are shrouded in mystery. Contemporaneous accounts from newspapers, the FBI, the National Association for the Advancement of Colored People (NAACP), and other sources concur on the general outlines of what happened, but the details remain contested. Critical questions loom unanswered, including: Was Scales innocent of the double murder? To what extent did reformatory staff participate in the lynching? Who fired the fatal shots that killed Scales?

### A. A Double Murder

Soon after sixteen-year-old James Scales arrived at the reformatory, he was named a “trusty.”<sup>150</sup> As such, he was tasked with cooking and building fires for Superintendent Scott’s family.<sup>151</sup> The superintendent lived in a small house on the grounds of the reformatory<sup>152</sup> with his wife, Notie Bell Lewis Scott, age forty-eight, and their daughter, Gwendolyn Scott McKinney, age nineteen.<sup>153</sup> Gwendolyn had moved back with her parents just three weeks before when her husband of six months, Charles M. McKinney, age twenty-three, left for the South Pacific to fight in

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<sup>150</sup> See *Mob Storms Jail: Lynches Boy*, N.Y. AMSTERDAM NEWS, Dec. 2, 1944, at 1 (noting that “Scales was assigned several weeks ago” to the Scott home); *Killer Attacks Wife, Slays Daughter of School Head*, *supra* note 22, at 2 (showing that the conviction and sentence to the Pikeville facility was a result of Scales’s October 24, 1944, arrest).

Merriam-Webster defines a “trusty” as “a prisoner who is trusted and given special privileges because of good behavior.” MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/trusty>, <<http://perma.cc/8TQQ-GVDB>>.

<sup>151</sup> *Slayer of Two Women: Pikeville School Head’s Daughter, Wife Murdered*, NASHVILLE TENNESSEAN, Nov. 24, 1944, at 16 [hereinafter *Slayer of Two Women*] (reporting that Scales “fired the furnace at the Scott home”); J.B. Collins, *Negro Lynched in Slaying of Pikeville Girl: Reform School Chief’s Daughter Slain, Wife Badly Beaten*, CHATTANOOGA NEWS-FREE PRESS, Nov. 23, 1944 (describing Scales as a cook and waiter for the family).

<sup>152</sup> *Negro Murderer Shot by Mob in Double Slaying at Pikeville*, CHATTANOOGA NEWS-FREE PRESS, Nov. 24, 1944, at 5 [hereinafter *Negro Murderer*].

<sup>153</sup> DIV. VITAL STATISTICS, TENN. DEP’T OF PUB. HEALTH, NOTIE BELL SCOTT, CERTIFICATE OF DEATH (Nov. 23, 1944) [hereinafter NOTIE DEATH CERTIFICATE] (on file with author); DIV. VITAL STATISTICS, TENN. DEP’T OF PUB. HEALTH, GWYNDOLYN LEWIS MCKINNEY, CERTIFICATE OF DEATH (Nov. 23, 1944) [hereinafter GWYNDOLYN DEATH CERTIFICATE] (on file with author).

Mrs. Scott’s first name is also reported as “Nottie,” although other sources spell her name with one “t.” See, e.g., NOTIE DEATH CERTIFICATE, *supra*. Likewise, Mrs. McKinney’s first name is also reported as “Gwendolyn,” but her death certificate lists her name with a “y.” GWYNDOLYN DEATH CERTIFICATE, *supra*.

World War II.<sup>154</sup>

Sometime between 7:30 and 9:00 a.m. on November 23, Assistant Superintendent William S. Neil and George Vergil Davis, a guard and storekeeper at the facility, discovered the women's bodies in their home.<sup>155</sup> It appears that Neil had sent one or two inmates to the Scott household to deliver freshly butchered meat.<sup>156</sup> The young men reported back that no one responded to their knocking, so Neil and Davis went to investigate.<sup>157</sup> Finding the house locked and hearing no response from the inhabitants, the men broke the windowpane on the back door and let themselves in.<sup>158</sup>

Neil and Davis were confronted with a horror scene. The murder was exceptionally brutal. The assailant (or assailants) had assaulted the women with a double-edged axe, a hammer, the barrel of a shotgun removed from its stalk, and one or two butcher knives.<sup>159</sup> Gwendolyn was already dead, but her severely injured mother was still breathing.<sup>160</sup> One account reported that the women's bodies were found draped across each other in the hallway,<sup>161</sup> while another reported that Gwendolyn was in the hallway and Mrs. Scott was partly in the hallway and partly in the kitchen.<sup>162</sup>

R. G. Putnam, the ambulance driver who brought Mrs. Scott to the hospital, told a Chattanooga newspaper that the crime scene was "the most horrible sight I ever saw. . . . A bloody double-bladed axe was leaning against the wall and a butcher knife was lying beside the body of the younger woman."<sup>163</sup> Newspapers and Gwendolyn's death certificate reported that her body was mutilated, having been bludgeoned by an axe and stabbed near the heart with a butcher knife.<sup>164</sup> Mrs. Scott was bleeding from multiple open wounds in her head and throat,<sup>165</sup> and she died later that evening at 8:15 p.m.<sup>166</sup> Her death certificate reported the cause of death to be "multiple fractures of head and face" due to "axe wounds."<sup>167</sup> An NAACP report, based on interviews with witnesses to

<sup>154</sup> *Governor Orders Probe of Lynching and Murder*, NASHVILLE BANNER, Nov. 24, 1944, at 4.

<sup>155</sup> *Negro Murderer*, *supra* note 152, at 5.

<sup>156</sup> *Id.* An account in the *Nashville Tennessean* reported that Asst. Superintendent Neil had sent one boy to deliver meat to the Scott household at 7:30 a.m. on November 23. *Slayer of Two Women*, *supra* note 151, at 1, 16. A third account said that Neil and Davis investigated after Mrs. Scott failed to appear for her job as a matron. *Youth Is Lynched at a Reformatory: Negro Taken from Tennessee Jail and Shot After Warden's Daughter Is Slain*, N.Y. TIMES, Nov. 24, 1944, at 34 [hereinafter *Youth Is Lynched*].

<sup>157</sup> *Id.*

<sup>158</sup> *Negro Murderer*, *supra* note 152, at 5.

<sup>159</sup> *Slayer of Two Women*, *supra* note 151, at 16.

<sup>160</sup> Looby Report, *supra* note 101, at 1.

<sup>161</sup> Collins, *supra* note 151.

<sup>162</sup> *Slayer of Two Women*, *supra* note 151, at 1, 16.

<sup>163</sup> Collins, *supra* note 151.

<sup>164</sup> *Id.*; GWYNDOLYN DEATH CERTIFICATE, *supra* note 153.

<sup>165</sup> Collins, *supra* note 151; *see also* NOTIE DEATH CERTIFICATE, *supra* note 153 (listing wounds).

<sup>166</sup> *Negro Murderer*, *supra* note 152, at 1.

<sup>167</sup> NOTIE DEATH CERTIFICATE, *supra* note 153.

the crime scene, offered the following account:

Mrs. Scott had apparently been bending over a kitchen cabinet when she was struck on the back of the head with a hammer. She was apparently unaware of the assassin's approach and probably never regained consciousness. He then went into an adjoining bedroom and attacked Mrs. Gwendolyn McKinnie [sic], Mrs. Scott's daughter. A tremendous struggle followed in which the room was disturbed. She was stabbed in the chest with a "butcher knife." The knife pierced the heart and was either wrenched and bent by the assassin or as she fell. The mother was then struck in the head twice with an ax. In both instances there was injury to the brain. Her neck was also chopped at. . . . Blood had been spilled all over the room.<sup>168</sup>

Soon after Neil and Davis discovered the crime scene, reformatory bookkeeper Paul Treanor called the sheriff in Pikeville and members of the victims' family.<sup>169</sup> By all accounts, Superintendent Scott was in Nashville on the morning of November 23, meeting with the Commissioner of Institutions, W. O. Baird.<sup>170</sup>

## B. Motive

If James Scales killed Gwendolyn McKinney and Notie Bell Scott, his motive remains elusive. In the days following the murders, the press struggled to determine why Scales would have perpetrated such a vicious and inexplicable crime. Several articles insinuated that Gwendolyn had been raped or sexually assaulted by reporting that Gwendolyn was discovered only partially dressed.<sup>171</sup> Two newspapers wrote that Scales discarded his bloodied clothing in Gwendolyn's bedroom and changed into her husband's clothes, including a bombardier jacket that he reportedly wore during the lynching.<sup>172</sup> In contrast, people who worked at the institution in later years shared stories that Mrs. Scott may have gifted the jacket to Scales before the murders.<sup>173</sup>

However, it was only after news stories reinterpreted the event that

<sup>168</sup> Looby Report, *supra* note 101, at 2.

<sup>169</sup> Interview with Paul Treanor, in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 5 (Dec. 18, 1944) [hereinafter Paul Treanor FBI Interview] (photo. reprint 2013) (on file with author).

<sup>170</sup> *E.g.*, Looby Report, *supra* note 101, at 1; *Slayer of Two Women*, *supra* note 151, at 16.

<sup>171</sup> *Negro Murderer*, *supra* note 152 ("her one piece of clothing was around her shoulders"); Collins, *supra* note 151 ("clothing was torn from the body of Mrs. McKinney"); *Slayer of Two Women*, *supra* note 151, at 1 ("clothed only in the top part of her sleeping garment").

<sup>172</sup> *Negro Murderer*, *supra* note 152; *Slayer of Two Women*, *supra* note 151, at 16.

<sup>173</sup> Jeffrey Angel Interview, *supra* note 100. Mr. Angel related that his mother, an amateur historian who worked at the reformatory for many years, told him that Mrs. Scott may have given the jacket to Scales prior to the incident. *Id.*

sexual assault arose as a potential element of the crime. Many of the earliest and most direct accounts made no mention of this possibility. These reports described a different motive: Scales told school officials that he attacked the women because Mrs. Scott refused to give up the keys to her car.<sup>174</sup> In fact, the FBI initially reported to the DOJ that Scales's "motive for killing Mrs. McKinney was alleged by him as being based upon the refusal of use of the car."<sup>175</sup> This motive is particularly curious because Scales did not take the car when he fled the reformatory.

Interestingly, the FBI interviews with Davis and Neil—the two people who discovered the bloody scene, and the men who initially fingered Scales for the crime—reveal nothing about a possible motive—sexual assault or otherwise. Furthermore, neither Neil nor Davis reported to the FBI that they found Scales' bloodied clothing in the house.<sup>176</sup> The absence of evidence regarding Scales's participation in, or motive for, the double murder augments the mystery surrounding the brutal crime.

### C. Accusing and Capturing Scales

Neil and Davis immediately suspected that Scales was the killer because, as a trusty, the young man was scheduled to build a fire for the Scott family earlier that morning.<sup>177</sup> Significantly, Scales was nowhere to be found at the reformatory when the bodies were discovered, presumably having escaped through the woods. Around 8:30 a.m., a local farmer, Walter Hale, and his uncle came across Scales about half a dozen miles away.<sup>178</sup> Inmates routinely ran away from the institution, and local farmers knew about the standing reward for returning inmates to the facility.<sup>179</sup> Hale didn't perceive anything suspicious; he asked Scales to come with him and his uncle, and together they drove back to the reformatory in Hale's pick-up truck.<sup>180</sup>

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<sup>174</sup> *Killer Attacks Wife, Slays Daughter of School Head*, *supra* note 22, at 2; *Many Peculiar Angles Seen in Lynching of James T. Scales at Pikeville Reform School*, NASHVILLE GLOBE, Dec. 1, 1944 [hereinafter *Many Peculiar Angles*]; *Mob Storms Jail: Lynches Boy*, *supra* note 150, at 1; *Youth Is Lynched*, *supra* note 156, at 34.

<sup>175</sup> Memorandum from J. Edgar Hoover, FBI Dir., to Tom C. Clark, Assistant U.S. Att'y Gen. (Nov. 27, 1944), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>176</sup> *Id.* Because the FBI report assumes that Scales killed the two women and focuses primarily on his capture and lynching, omission of the clothing detail may not be conclusive.

<sup>177</sup> Interview with Assistant Superintendent William S. Neil (Dec. 9, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 2-3 (Dec. 18, 1944) [hereinafter *Neil FBI Interview*] (photo. reprint 2013) (on file with author); Interview with George Vergil Davis (Dec. 9, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 6 (Dec. 18, 1944) [hereinafter *Davis FBI Interview*] (photo. reprint 2013) (on file with author).

<sup>178</sup> FBI Interview with Walter Hale (Dec. 10, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 7 (Dec. 18, 1944) [hereinafter *Walter Hale FBI Interview*] (photo. reprint 2013) (on file with author).

<sup>179</sup> Looby Report, *supra* note 101, at 2; Walter Hale FBI Interview, *supra* note 178, at 7.

<sup>180</sup> Walter Hale FBI Interview, *supra* note 178, at 7.

Upon their arrival, Neil and Davis confronted Scales about the attack.<sup>181</sup> Neil told the FBI that when he asked Scales, “boy, why’d you do it,” Scales responded, “I just don’t know.”<sup>182</sup> Neil also reported that Scales admitted to using a hammer to commit the acts.<sup>183</sup> Both Davis and Neil assumed that Scales’s responses constituted a confession of guilt.<sup>184</sup> Approximately one hour had elapsed since discovery of the crime scene.<sup>185</sup>

Neil asked Davis, Hale, and Hale’s uncle to drive the accused to the local jail in Pikeville, which was fifteen miles away.<sup>186</sup> The three men left Scales in the custody of Ruth Douglas, a white, teenaged jail cook, who was at the jail with her infant child.<sup>187</sup> Douglas later told the FBI that “[t]his was the first time since I’ve been cooking at the jail that I ever put anyone in a cell, the sheriff or deputy sheriff always did that.”<sup>188</sup> Sheriff Henry Goforth was away from the jail that morning because he was working at another job as a steam shovel operator.<sup>189</sup> Deputy Sheriff Frank Goforth was also away from the jail delivering hickory logs in Chattanooga.<sup>190</sup> Before Scales arrived, someone had informed the Sheriff about this new prisoner, so Henry Goforth came to the jail to see Scales.<sup>191</sup>

About an hour after Scales was first locked up, several men came to the jail to kidnap the accused; all accounts suggest that the Sheriff had left prior to the men’s arrival.<sup>192</sup> The men prevailed on Ruth Douglas to give them the keys so that they could take Scales back to the reformatory.<sup>193</sup> Douglas refused to give up the keys, but she unlocked the cell and allowed the men to take Scales away.<sup>194</sup> In her own words:

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<sup>181</sup> See Neil FBI Interview, *supra* note 177, at 3.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* Moreover, this response is curious because a hammer was just one of several implements used in the murders. See *Police Hold Murder Weapons*, CHATTANOOGA NEWS-FREE PRESS, Nov. 24, 1944 (showing the axe and butcher’s knife found at the scene).

<sup>184</sup> Davis FBI Interview, *supra* note 177, at 6.

<sup>185</sup> Neil FBI Interview, *supra* note 177, at 2; Davis FBI Interview, *supra* note 177, at 6.

<sup>186</sup> Neil FBI Interview, *supra* note 177, at 3; Davis FBI Interview, *supra* note 177, at 6.

<sup>187</sup> Davis FBI Interview, *supra* note 177, at 6; Interview with Mary Ruth Douglas (Dec. 9, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 9 (Dec. 18, 1944) [hereinafter Mary Ruth Douglas FBI Interview] (photo. reprint 2013) (on file with author).

<sup>188</sup> Mary Ruth Douglas FBI Interview, *supra* note 187, at 9; see also Interview with Henry Goforth (Dec. 11, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 15–16 (Dec. 18, 1944) [hereinafter Henry Goforth FBI Interview] (photo. reprint 2013) (on file with author).

<sup>189</sup> Mary Ruth Douglas FBI Interview, *supra* note 187, at 9; Henry Goforth FBI Interview, *supra* note 188, at 15–16.

<sup>190</sup> Interview with W. A. Broyles, Manager of Cumberland Case Company in Chattanooga, in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 17 (Dec. 18, 1944) (photo. reprint 2013) (on file with author).

<sup>191</sup> Mary Ruth Douglas FBI Interview, *supra* note 187, at 9; Henry Goforth FBI Interview, *supra* note 188, at 16.

<sup>192</sup> Mary Ruth Douglas FBI Interview, *supra* note 187, at 10; Henry Goforth FBI Interview, *supra* note 188, at 16.

<sup>193</sup> Mary Ruth Douglas FBI Interview, *supra* note 187, at 10.

<sup>194</sup> *Id.*

[T]hree men came into the Sheriff's office at the jail & told me 'we want to get that colored boy & take him back to the industrial school, give us the keys'. I said 'no, I won't give you the keys but I'll unlock the cage for you'. They seemed very mad & I was scared they would take the keys away from me if I didn't unlock the cage & then the Sheriff would be mad at me if I lost the keys. I unlocked the cage & one of the men (the one with the brown jacket) went in the cage & brought Scales out. The three men told him to cross his hands behind him & then the man with the brown jacket tied Scales' hands with a rope. They told Scales to get in front of them & walk on out to the car. Scales went on out, followed by the men & when he got to the car one of the three men kicked Scales. . . . Scales never did say a word while the men were getting him from the jail.<sup>195</sup>

Multiple reports suggest that four carloads of men descended on Pikeville to bring Scales back to the Training and Agricultural School.<sup>196</sup> The sheriff of neighboring Van Buren County told the FBI that he witnessed four cars traveling from Pikeville to the state reformatory in the late morning on November 23:

[F]our miles from the school, about four automobiles, including a red pick-up truck, passed him going toward the school. He stated that he noticed no colored boy in the car, but after he had heard of the lynching, he assumed that these four cars contained the men who had gone to get Scales, and Scales.<sup>197</sup>

Pikeville's chief of police said, "apparently most of the cars that came to the town stayed on the outskirts of Pikeville and only one or two cars actually drove through the town to the jail to get Scales."<sup>198</sup> A middle-aged white woman, Ida Clifton, was at the jail washing clothes during these events.<sup>199</sup> Later, she told the FBI that she knew Scales's abductors intended to lynch him:

I went in & asked Ruth Douglas what she thought they were going to do with the colored boy & she said that the men had told her that they were going to carry the colored boy back to

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<sup>195</sup> Mary Ruth Douglas FBI Interview, *supra* note 187, at 9–10.

<sup>196</sup> Interview with Perry Smith, Sheriff of Van Buren County, in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 18 (Dec. 18, 1944) [hereinafter Perry Smith FBI Interview] (photo. reprint 2013) (on file with author).

<sup>197</sup> *Id.*

<sup>198</sup> FBI Interview with W. M. Tollette, Pikeville Chief of Police, in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 18 (Dec. 18, 1944) [hereinafter W. M. Tollette FBI Interview] (photo. reprint 2013) (on file with author).

<sup>199</sup> Interview with Ida Clifton (Dec. 11, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 11 (Dec. 18, 1944) (photo. reprint 2013) (on file with author).

the State Farm & she thought everything was all right. I thought all the time they were going to kill him but I didn't tell Ruth that.<sup>200</sup>

#### D. A Lynching on Reformatory Grounds

The procession of cars carrying Scales arrived at the state reformatory in the late morning, probably around 11:30 a.m.<sup>201</sup> A group of between twenty and forty people gathered to watch and participate in the lynching.<sup>202</sup> Members of the group included reformatory employees, workers on the dormitory construction project, and some other local white residents.<sup>203</sup>

The FBI report suggests that the construction workers were central to carrying out the murder.<sup>204</sup> A group of workers and sub-contractors left in multiple cars to kidnap Scales from the jail while others positioned a barrel under a tree and hung a noose in the branches.<sup>205</sup> It is unclear whether employees at the Training and Agricultural School were among the group that took Scales from the jail, but it is certain that some reformatory personnel participated in the lynch mob.<sup>206</sup>

Events appear to have unfolded quickly once Scales and his captors arrived back at the reformatory. The mob began to hang Scales from a tree, less than one hundred yards from the scene of the gruesome double murder.<sup>207</sup> When Assistant Superintendent Neil saw what was happening from his house, just fifty yards away, he ran over and ordered the group to stop.<sup>208</sup> Neil informed the FBI that he told the mob, "Hold on there boys, my wife is sick & I don't want this to happen in front of my house, besides I think you boys are making a mistake, I think a Bledsoe County Jury will handle this case right."<sup>209</sup>

Several inmates witnessed the Scales lynching from the dormitory,

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<sup>200</sup> *Id.*

<sup>201</sup> *Governor Orders Probe of Lynching and Murder*, *supra* note 154, at 4.

<sup>202</sup> See Neil FBI Interview, *supra* note 177, at 3 (reporting the participation of "25 or more men"); see also Davis FBI Interview, *supra* note 177, at 7 (reporting the participation of "between 25 & 40 men"); Dec. 14 Memo from Pennington to Rosen, *supra* note 2, at 1 (reporting the participation of "21 subjects").

<sup>203</sup> Interview with Confidential Informants (Dec. 9, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 19-20 (Dec. 18, 1944) [hereinafter Confidential Informants FBI Interview] (photo. reprint 2013) (on file with author).

<sup>204</sup> See Confidential Informants FBI Interview, *supra* note 203, at 19-21 (indicating that the employees who were building the new building at the reformatory were some of those that went to Pikeville to return Scales to the reformatory to be lynched).

<sup>205</sup> *Id.*

<sup>206</sup> See *id.* (noting that an informant thought that "none" of the employees went to retrieve Scales in Pikeville, but also noting the involvement of particular reformatory employees in the lynch mob, including the electrician and at least two reformatory guards).

<sup>207</sup> *Governor Orders Probe of Lynching and Murder*, *supra* note 154, at 1.

<sup>208</sup> Neil FBI Interview, *supra* note 177, at 3.

<sup>209</sup> *Id.*

less than one hundred feet from the unfolding action.<sup>210</sup> One young man told FBI investigators, “Neil ran out of the house and yelled to the mob not to hang the boy there because his wife was sick and he didn’t want that sort of thing happening there.”<sup>211</sup> While the statements from inmates corroborated Neil’s account that he stopped the hanging, none of them suggested that Neil acted decisively to stop the mob from killing Scales or that he prevailed on the group to let the judicial process take its course.<sup>212</sup> Rather, once a member of the mob “jerked down the rope,” Neil turned his back and a member of the mob shot Scales in the head several times.<sup>213</sup>

All of the young inmates who witnessed the lynching told FBI investigators that Felix Morris, sawmill operator at the Training and Agricultural School, fired the fatal shots.<sup>214</sup> Likewise, the NAACP investigation named Fee “Pop” Morris of Spencer, Tennessee, as Scales’s killer.<sup>215</sup> Several inmates said that Morris stepped up to Scales and shot him once in the side of the head.<sup>216</sup> They described Scales falling to the ground and another member of the mob saying “Shoot him some more, he ain’t had enough.”<sup>217</sup> Morris then emptied several more cartridges into Scales’s eyes and face.<sup>218</sup> Later, Deputy Sheriff Frank Goforth, who was also the county coroner,<sup>219</sup> made a finding that Scales “met death as a result of either four or six shots in the head by hands unknown.”<sup>220</sup>

<sup>210</sup> See Confidential Informants FBI Interview, *supra* note 203, at 19–21, 25 (listing the seven witnesses as T–1 through T–7, and noting that each was an inmate at the reformatory).

<sup>211</sup> Interview with Confidential Informant T–1 (Dec. 9, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 19 (Dec. 18, 1944) [hereinafter Confidential Informant T–1 FBI Interview] (photo. reprint 2013) (on file with author).

<sup>212</sup> See Confidential Informants FBI Interview, *supra* note 203, at 19–21 (reporting, with respect to Neil, only that “NEIL ran out of the house and yelled to the mob not to hang the boy there because his wife was sick and he didn’t want that sort of thing happening there.”).

<sup>213</sup> Confidential Informant T–1 FBI Interview, *supra* note 211, at 19–20; see also Neil FBI Interview, *supra* note 177, at 3 (reporting that Mr. Neil turned around, at which point he heard several shots).

<sup>214</sup> Confidential Informants FBI Interview, *supra* note 203, at 19–21.

<sup>215</sup> Letter from Z. Alexander Looby, NAACP Legal Defense Fund Attorney, to Thurgood Marshall, NAACP Legal Defense Fund Chief Counsel (Dec. 18, 1944), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 [hereinafter Dec. 18 Letter from Looby to Marshall] (photo. reprint 2013) (on file with author). *But see* Ronald Fields, *Murder on the Mountain: The Lynching of James Thomas Scales*, at 4 (2007) (unpublished manuscript) (on file with author) (suggesting that “a Davis . . . from Van Buren County . . . went and shot him. Killed the shit out of him” (internal quotation marks omitted)).

<sup>216</sup> See Confidential Informants FBI Interview, *supra* note 203, at 20–21 (testimony of T–1, T–2, and T–3).

<sup>217</sup> Interview with Confidential Informant T–3 (Dec. 9, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 21 (Dec. 18, 1944) (photo. reprint 2013) (on file with author); see also Interview with Confidential Informant T–4 (Dec. 9, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 21 (Dec. 18, 1944) (photo. reprint 2013) (on file with author) (reporting that Palmer said “Give him some more, Dad, he ain’t got enough yet.”).

<sup>218</sup> Confidential Informant T–1 FBI Interview, *supra* note 211, at 20.

<sup>219</sup> Henry Goforth FBI Interview, *supra* note 188, at 16.

<sup>220</sup> Interview with Frank Goforth, in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139, REPORT BY RAYMOND I. JOHNSON, at 17 (Dec. 18, 1944) (photo. reprint 2013) (on file with author). Scales’s death certificate lists his cause of death as “four gunshot wounds in the head.” SCALES DEATH CERTIFICATE, *supra* note 19. Sheriff Goforth told the FBI that he “found that Scales was shot in the

After Scales's murder, newspapers widely reported that the mob forced other reformatory inmates to view his bullet-riddled body "as an example."<sup>221</sup> The NAACP report explained that after Scales was shot, "[t]he body was then placed in a school room and the other inmates forced to view the body as a 'lesson.'"<sup>222</sup> Bookkeeper Paul Treanor<sup>223</sup> and Assistant Superintendent Neil both corroborated these accounts, implying that Scales's executioners used his body to intimidate the other boys incarcerated at the Training and Agricultural School.<sup>224</sup> Neil told the FBI:

While I was in the office calling Nashville to report the incident to my superiors I understand that someone marched some of the inmates outside of the dormitory so they could view James Scales' body but I did not see this happen.<sup>225</sup>

#### IV. SUPPORTING RACIAL VIOLENCE: PUBLIC UPROAR, INVESTIGATIONS, AND COVER-UP BY STATE AND FEDERAL AUTHORITIES

Although James Scales was lynched by a group of reformatory guards, local farmers, and construction workers in a rural corner of East Tennessee, the systemic failure to bring responsible parties to justice implicated people and institutions at all levels of government. Initially, the terrible double murder and lynching attracted a flurry of attention from the FBI, the DOJ, state authorities, and the media. While state and federal action around the Scales lynching began with great energy and promise, attention quickly dissipated as investigations stalled. Interest in the incident petered out after several weeks and the incidents soon disappeared from the local and national consciousness.

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head in four different places, one shot in each eye & one above each eye." Henry Goforth FBI Interview, *supra* note 188, at 16. Looby's report stated that Scales was shot four times: "Two entered the right eye of Scales, one the left eye and one about an inch below the left eye." Looby Report, *supra* note 101, at 2.

<sup>221</sup> *Governor Orders Probe of Lynching and Murder*, *supra* note 154, at 4 ("After Scales was slain instantly by several bullets in his head, members of the group urged other Negro inmates to view his body 'as an example'"); *see also Slayer of Two Women*, *supra* note 151, at 1 ("After they killed him, his body was placed in the school and inmates were made to view it by the mob. 'It will be an example to them,' a member of the mob was quoted as saying"); *Youth Is Lynched*, *supra* note 156, at 34.

<sup>222</sup> Looby Report, *supra* note 101, at 2. An article in an unknown local paper (possibly the *Chattanooga News-Free Press*), stated that Scales's "body was removed to a classroom in a dormitory building, where it was being held under guard of state highway patrolmen." *Governor Offers a Reward of \$500* (newspaper unknown, date unknown) (on file with author).

<sup>223</sup> Paul Treanor FBI Interview, *supra* note 169, at 5.

<sup>224</sup> *Killer Attacks Wife, Slays Daughter of School Head*, *supra* note 22, at 1 ("Treanor said members of the mob placed the body in a room at the school and ordered all other inmates there to look at it"); Neil FBI Interview, *supra* note 177, at 2, 3.

<sup>225</sup> Neil FBI Interview, *supra* note 177, at 3.

### A. Initial Uproar and Swift Action by State Authorities

As soon as news of the double murder and lynching spread, state authorities vowed a rapid and concerted response. Governor Cooper immediately ordered Department of Safety Director, Lynn Bomar,<sup>226</sup> and Department of Safety Attorney, J. J. Dolan, to perform a full investigation.<sup>227</sup> They arrived at the Training and Agricultural School in Pikeville shortly after the Governor's office received reports of the lynching.<sup>228</sup> Newspapers printed photographs of Bomar and Dolan holding the weapons used to murder the two women.<sup>229</sup> Bomar ordered ten members of the state patrol to take charge of the reformatory and they remained there for more than a week to secure the institution.<sup>230</sup> Governor Cooper directed Bomar and Dolan to deliver a full report on the incident and he also offered a \$500 reward for the "arrest and the conviction of 'those guilty in this lynching.'"<sup>231</sup>

Various civic and religious groups, both in Tennessee and nationally, took immediate action. The Governor's pledge of a \$500 reward prompted a Nashville-based organization of black ministers to convene a special fundraising meeting on November 27.<sup>232</sup> The Nashville Interdenominational Ministers' Alliance supplemented Cooper's reward by raising more than \$800.<sup>233</sup> The President of the Ministers' Alliance expressly downplayed the racial overtones of the lynching, however, perhaps to insulate the black community from reprisals: "We are making no racial issue of the matter but are taking this action in the interest of the preservation of law and order."<sup>234</sup> New York Congressman Vito Marcantonio, president of the International Labor Defense (ILD), pledged an additional \$500 on behalf of his organization, bringing the total reward to more than \$1,800<sup>235</sup> (equivalent to more than \$24,000 in

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<sup>226</sup> In 1946, Lynn Bomar became infamous for ransacking a black neighborhood in Columbia, Tennessee, after the so-called "Columbia Race Riot." Carroll Van West, *Columbia Race Riot, 1946*, TENN. ENCYCLOPEDIA HIST. & CULTURE (2009), <http://tennesseeencyclopedia.net/entry.php?rec=296>, <<http://perma.cc/P5LY-UH5K>>. Police officers under Bomar's authority

fired randomly into buildings, stole cash and goods, searched homes without warrants, and took any guns, rifles, and shotguns they could find. When the sweep was over, more than one hundred blacks had been arrested, and about three hundred weapons from the black community had been confiscated. None of the accused were granted bail or allowed legal counsel."

*Id.*

<sup>227</sup> *Patrolmen Guarding Pikeville School*, NASHVILLE TENNESSEAN, Nov. 25, 1944.

<sup>228</sup> *Slayer of Two Women*, *supra* note 151, at 16.

<sup>229</sup> *Police Hold Murder Weapons*, *supra* note 183; *Death Weapons in Pikeville Killing*, NASHVILLE BANNER, Nov. 24, 1944.

<sup>230</sup> *Governor Receives Report on Lynching*, NASHVILLE TENNESSEAN, Dec. 3, 1944.

<sup>231</sup> *Patrolmen Guarding Pikeville School*, *supra* note 227.

<sup>232</sup> *Negroes Raise Reward in Lynching Case*, NASHVILLE BANNER, Nov. 28, 1944.

<sup>233</sup> *Id.*

<sup>234</sup> *Negro Pastors to Supplement Reward Fund*, NASHVILLE BANNER, Nov. 25, 1944.

<sup>235</sup> *Reward in Killing of Negro Slayer Now Totals \$1,806*, NASHVILLE TENNESSEAN, Nov. 29, 1944,

2014 dollars).<sup>236</sup>

State and national media provided in-depth coverage of the lynching and double murder in the days following November 23. Mainstream newspapers in the major Tennessee media markets devoted top-line headlines to the incident and ran several-page spreads, including pictures of the crime scene, victims, and other involved persons.<sup>237</sup> African-American newspapers in Chicago, New York, and Nashville covered the lynching and its aftermath, some with first-hand reporting.<sup>238</sup> The story captured headlines across the United States; the *New York Times* even printed a story about the tragedy.<sup>239</sup> Coverage of the killings was conspicuously absent, however, in Pikeville's local paper, the *Bledsonian and Pikeville Banner*. The only article to appear in the immediate aftermath of the incident was a half-column story announcing the reward for capturing members of the lynch mob.<sup>240</sup>

## B. Initial Federal Response

The FBI and the DOJ also responded promptly to the tragic events. On the evening of November 23, an FBI agent from the Bureau's Knoxville office called Washington headquarters to report on the incident.<sup>241</sup> Agent Ruggles submitted a teletype report to Washington on November 24 that described the circumstances around the lynching and stated, "State police now making investigation at direction of governor. No further inquiry being made, but Bureau will be advised if any violence develops."<sup>242</sup> Both white and black members of the community feared an attack on the boys at the reformatory.<sup>243</sup>

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at 8.

<sup>236</sup> *CPI Inflation Calculator*, *supra* note 102.

<sup>237</sup> *E.g.*, *Killer Attacks Wife, Slays Daughter of School Head*, *supra* note 22, at 1, 2; *Slayer of Two Women*, *supra* note 151, at 1; Collins, *supra* note 151. Strangely, nearly every news outlet and the FBI reported Scales's name as "James T. Scales" or "James Thomas Scales" when his death certificate and the Census state his actual name to have been "James Ellis Scales." *Compare, e.g.*, Collins, *supra* note 151 (listing "Thomas" as Scales's middle name), and *Slayer of Two Women*, *supra* note 151, at 1 (listing "T." as Scales's middle initial), with *SCALES DEATH CERTIFICATE*, *supra* note 19 (listing "Ellis" as Scales's middle name). There is no indication in any of the author's research about where the "T" came from. *See, e.g.*, BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *supra* note 20 (listing only James Scales in the record).

<sup>238</sup> *E.g.*, *Many Peculiar Angles*, *supra* note 174; Robert Lucas, 'Valley Folk' Silent as Hills on Boy's Lynchers, *CHI. DEFENDER*, Dec. 2, 1944, at 1, 4 (noting that the paper sent a reporter to Pikeville); *17-Year-Old Boy Lynched by Tenn. Mob*, *CHI. DEFENDER*, Dec. 2, 1944; *Mob Storms Jail: Lynchers Boy*, *supra* note 150.

<sup>239</sup> *Youth Is Lynched*, *supra* note 156, at 34.

<sup>240</sup> *Reward Hiked by Nashville Negroes*, *BLEDSONIAN & PIKEVILLE BANNER*, Dec. 1, 1944, at 1.

<sup>241</sup> *See* FBI Teletype, Ruggles, FBI Agent, to J. Edgar Hoover, FBI Dir. (Nov. 24, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139 [hereinafter Nov. 24 Memo from Ruggles to Hoover] (photo. reprint 2013) (on file with author) (stating "Re telephone call to Bureau yesterday and Re Teletype concerning James T. Scales").

<sup>242</sup> *Id.*

<sup>243</sup> Lucas, *supra* note 238, at 4.

At the DOJ, Assistant Attorney General Tom C. Clark took decisive action on the case. On November 24, Clark wrote to J. Edgar Hoover requesting “a full and immediate investigation of this lynching.”<sup>244</sup> Clark cited a presidential directive from July 21, 1942, in which President Franklin D. Roosevelt directed the U.S. Attorney General to investigate all lynchings.<sup>245</sup> Clark asked the Bureau to:

[L]ay particular stress upon the whole procedure of arrest, committing and guarding of this victim to determine whether or not any of the responsible parties were negligent in providing adequate protection, whether they had reason to anticipate mob violence and whether they actually connived at any point in such violence.<sup>246</sup>

Also on November 24, Clark wrote to Chattanooga-based U.S. Attorney James B. Frazier, Jr., to advise him of the FBI’s investigation and to ask for his participation: “I would appreciate it if you would send me any information which you yourself may have concerning this incident and the Governor’s investigation of it.”<sup>247</sup> On November 28, FBI Director Hoover ordered two FBI agents to investigate the Scales lynching and he asked for a report within three weeks.<sup>248</sup>

### C. NAACP and the Looby Report

The NAACP initiated an investigation into the Scales lynching shortly following the incident.<sup>249</sup> Z. Alexander Looby, a prominent Nashville-based civil rights lawyer and a member of the NAACP’s National Legal Committee, led the inquiry.<sup>250</sup> Looby produced a report

<sup>244</sup> Memorandum from Tom C. Clark, Assistant U.S. Att’y Gen., to J. Edgar Hoover, FBI Dir., at 1 (Nov. 24, 1944), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 [hereinafter Nov. 24 Memo from Clark to Hoover] (photo. reprint 2013) (on file with author).

<sup>245</sup> Letter from Tom C. Clark, Assistant U.S. Att’y Gen., to James B. Frazier, U.S. Att’y (Nov. 24, 1945), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 [hereinafter Nov. 24 Letter from Clark to Frazier] (photo. reprint 2013) (on file with author); see also KEVIN J. MCMAHON, RECONSIDERING ROOSEVELT ON RACE: HOW THE PRESIDENCY PAVED THE ROAD TO BROWN 164 (2004) (“On July 21, 1942, Attorney General Biddle informed President Roosevelt that in his opinion, investigations would show that many lynchings violated existing federal statutes. On the same day, according to Carr, Roosevelt responded by calling for an ‘automatic’ FBI investigation ‘in all cases of Negro deaths where the suspicion of lynching is present.’”).

<sup>246</sup> Nov. 24 Memo from Clark to Hoover, *supra* note 244.

<sup>247</sup> Nov. 24 Letter from Clark to Frazier, *supra* note 245.

<sup>248</sup> Memorandum from J. Edgar Hoover, FBI Dir., to Richard B. Hood, Knoxville Special Agent in Charge (SAC) (Nov. 28, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE 44-1139 (photo. reprint 2013) (on file with author).

<sup>249</sup> See Looby Report, *supra* note 101, at 1 (indicating that interviews were taken on November 29 and 30, only a week after the incident occurred).

<sup>250</sup> Letter from Thurgood Marshall, NAACP Legal Defense Fund Chief Counsel, to Francis J. Biddle, U.S. Att’y Gen., at 1–2 (Dec. 14, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE 44-1139 [hereinafter Dec. 14 Letter from Marshall to Biddle] (photo. reprint 2013) (on file with author); see also Linda T. Wynn, Z. Alexander Looby, TENN. STATE U. LIBR., <http://ww2.tnstate.edu/library/>

based on a “number of informal interviews” with Pikeville residents that he personally conducted on November 29 and 30, 1944.<sup>251</sup> On December 7, he submitted a report to Thurgood Marshall, who was the NAACP’s Special Counsel at the time.<sup>252</sup> The report raised significant doubts about whether Scales perpetrated the double murder.<sup>253</sup> Looby’s cover letter to Thurgood Marshall acknowledged a lack of concrete evidence to support his theory about the case, but asserted the following based on his interviews:

Someone else other than James Scales committed the crime, probably one of the guards. James was forced to leave the school under threat, was later captured and lynched under the guidance of School authorities to cover up the original crime. . . . It seems to me that this is basically an “institutional” crime which is covered up by the lynching and until the original crime is solved there is little hope of dealing with the lynching.<sup>254</sup>

On December 14, Marshall sent a copy of the NAACP report to U.S. Attorney General Francis J. Biddle, urging investigators to speak with Looby.<sup>255</sup> The letter piqued the Attorney General’s attention and elicited a prompt response. Biddle issued a memorandum to Tom C. Clark on December 16, stating, “Please have the matters outlined in the attached letter from Thurgood Marshall, with respect to the lynching of James Scales, investigated promptly, and advise me of the findings.”<sup>256</sup>

#### D. State Leaders Shift Focus

A little over a week after the lynching, Governor Cooper traveled to the Training and Agricultural School in Pikeville.<sup>257</sup> Besides offering a positive perspective on the reformatory’s conditions—particularly the dormitory project—he also praised Assistant Superintendent Neil’s “good judgment” during the tumultuous episode and named Neil as

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digital/looby.htm, <<http://perma.cc/HT9J-69A6>> (providing Looby’s biography).

<sup>251</sup> See generally Looby Report, *supra* note 101.

<sup>252</sup> *Id.* at 1; Dec. 14 Letter from Marshall to Biddle, *supra* note 250, at 2.

<sup>253</sup> See Dec. 14 Letter from Marshall to Biddle, *supra* note 250, at 1 (“Someone else other than James Scales committed the crime, probably one of the guards.”); Looby Report, *supra* note 101, at 2–3 (questioning “Why was a boy with a record such as Scales’ allowed to be a ‘trustee’ after only about a month’s stay at the School?,” “How did [Scales] get ten miles away in two hours?,” and “Why wasn’t the Scales boy missed and a search started by the school authorities?”).

<sup>254</sup> Dec. 14 Letter from Marshall to Biddle, *supra* note 250, at 1.

<sup>255</sup> *Id.*

<sup>256</sup> Memorandum from Francis J. Biddle, U.S. Att’y Gen., to Tom C. Clark, Assistant U.S. Att’y Gen. (Dec. 16, 1944), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 [hereinafter Dec. 16 Memo from Biddle to Clark] (photo. reprint 2013) (on file with author).

<sup>257</sup> See *Cooper to Ask Improvements at Pikeville*, NASHVILLE BANNER, Dec. 4, 1944, at 1 (noting that Governor Cooper inspected the reformatory on Sunday, December 3, 10 days after the incident).

acting superintendent.<sup>258</sup> Cooper declared morale among the reformatory's inmates to be "fairly good."<sup>259</sup> This account suggests that the lynching gave Cooper a pretextual opportunity to visit the site and provide enthusiastic support for the building construction project, which must have been a politically important undertaking given the amount of vocal opposition to the project.<sup>260</sup>

Safety Director Bomar and Safety Attorney Dolan submitted a full report to Governor Cooper on December 2, 1944.<sup>261</sup> Governor Cooper called the report a "fact finding document" and he declared the investigation would continue.<sup>262</sup> He held a conference with District Attorney Chester C. Chattin, in whose jurisdiction the lynching took place, but declined to answer news reporters' questions about the details of their discussions.<sup>263</sup> Despite repeated promises to do so, Governor Cooper never released Bomar's report and there is no record of it in his papers collected at the Tennessee State Library and Archives.<sup>264</sup> Cooper's successor, Governor Jim Nance McCord, also declined to release the report.<sup>265</sup> Nor are there any records in the FBI file; the case was closed before the file could be procured.<sup>266</sup> It is reasonable to surmise that a written report may have existed at one point, but it was almost certainly a cursory, incomplete account of the events.<sup>267</sup>

As Tennessee leaders shifted their attention away from the Scales matter, others followed suit. Despite the initial hoopla around the lynching, coverage in the mainstream press all but disappeared two

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at 2.

<sup>260</sup> *See id.* (reporting that the Governor would recommend "improved quarters" for staff at the reformatory after his inspection of the reformatory's ongoing construction project); *see also supra* Parts IV.B–C (discussing the construction project).

<sup>261</sup> *See Governor Receives Report on Lynching, supra* note 230 (noting that the report was submitted the day before).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* The *Tennessean* reported the D.A.'s name as "Ted Chatting," likely because the D.A. went by the nickname "Ted." *Id.*; Telephone Interview with Michael Taylor, Dist. Att'y Gen., 12th Judicial Dist. of Tenn. (May 16, 2014) [hereinafter May 2014 Interview with Michael Taylor]. Chester Chattin later became a justice on the Supreme Court of Tennessee. A HISTORY OF THE TENNESSEE SUPREME COURT 330 (James W. Ely ed., 2002).

<sup>264</sup> *Gov. Prentice Cooper Fails to Give out Report on Pikeville: Rumors Persist Scales Boy Not Guilty of Murder*, NASHVILLE GLOBE, Jan. 19, 1945, at 1 [hereinafter *Gov. Prentice Cooper*]; TENN. DEP'T OF STATE, TENN. STATE LIBRARY AND ARCHIVES, GOVERNOR PRENTICE COOPER PAPERS 1939–1945.

<sup>265</sup> Likewise, Governor McCord's papers contain no record of the Bomar report. TENN. DEP'T OF STATE, TENN. STATE LIBRARY AND ARCHIVES, GOVERNOR JIM NANCE MCCORD PAPERS 1945–1949.

<sup>266</sup> Memorandum from Mr. Rosen, to L. R. Pennington, at 2 (Dec. 14, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139 (photo. reprint 2013) (on file with author) (noting that Mr. Ruggles had not yet provided the report, and was waiting to find out if the FBI was going to undergo a complete investigation).

<sup>267</sup> *Id.* ("[T]he Governor [of Tennessee] sent Lynn Bomar, Director of the Tennessee Highway Patrol, to make the investigation and they are sure that Bomar knows the whole story and who did the shooting. They are also sure Bomar turned a report in to the Governor that doesn't show who did it but he probably told the Governor orally. Bomar said he wanted to see the Agents who worked on the case and he will give them a copy of his report, but Mr. Ruggles said that report went [sic] show as much as we know.")

weeks after the lynching. The only source that provided ongoing coverage was the *Nashville Globe*, the state's leading black newspaper. The *Globe* ran stories for more than two months with headlines questioning whether Scales killed the two women and calling for release of Bomar's report to Governor Cooper about the incident.<sup>268</sup> It was the only news source that consistently questioned whether Scales perpetrated the double murder.

## E. Federal Response Comes up Short

The FBI and the DOJ pursued a narrow investigation into the Scales lynching. Each agency deferred to state leaders rather than assuming a lead role in investigating and prosecuting the case. Problematic decisions can be traced to each of the major federal players: J. Edgar Hoover at the FBI, the Chattanooga U.S. Attorney James B. Frazier, Jr., and Assistant Attorney General Tom C. Clark at the DOJ.

### 1. DOJ and the Enforcement of Federal Law

Clark's initial instructions to the FBI ordered an investigation of the circumstances surrounding Scales's capture, imprisonment, and death. The letter noted: "The jurisdiction of the Department of Justice in such a case probably depends upon the participation or gross negligence of the officials responsible for the safe keeping in jail of the victim."<sup>269</sup> The statute underpinning Clark's emphasis on Pikeville officials was 18 U.S.C. § 52.<sup>270</sup> This statute and its companion, 18 U.S.C. § 51,<sup>271</sup> were enacted during the Reconstruction period following the Civil War.<sup>272</sup> Section 52 criminalized "willful" deprivations of individuals' federal constitutional and statutory rights by people acting "under the color of state law."<sup>273</sup> Section 51 allowed for criminal prosecution where two or

<sup>268</sup> E.g., *Gov. Prentice Cooper*, *supra* note 264, at 1; *Horror Prison*, *supra* note 117, at 1.

<sup>269</sup> Nov. 24 Memo from Clark to Hoover, *supra* note 244.

<sup>270</sup> This statute was the predecessor to current statute 18 U.S.C. § 242 (2012). *Notes, 18 U.S. Code § 242*, LEGAL INFO. INST., <http://www.law.cornell.edu/uscode/text/18/242>, <<http://perma.cc/U935-H5T4>>.

<sup>271</sup> This statute was the predecessor to current statute 18 U.S.C. § 241 (2012). *Notes, 18 U.S. Code § 241*, LEGAL INFO. INST., <http://www.law.cornell.edu/uscode/text/18/241>, <<http://perma.cc/A3AD-BM4G>>.

<sup>272</sup> *United States v. Price*, 383 U.S. 787, 801–02 (1966); Robert L. Spurrier, Jr., *McAlester and After: Section 242, Title 18 of the United States Code and the Protection of Civil Rights*, 11 TULSA L. REV. 347, 348 (1976).

<sup>273</sup> In 1944, 18 U.S.C. § 52 contained the following language:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the

more private actors “conspire[d]” to deprive a citizen of certain federal constitutional and legal rights.<sup>274</sup>

Beginning in the early 1940s, a newly created unit in the DOJ, the Civil Rights Section,<sup>275</sup> pursued numerous civil rights complaints under these statutes. A 1940 memo from the Section directed U.S. Attorneys and the FBI not to conduct any civil rights investigations or prosecutions “without prior approval by the new Unit,” because the DOJ sought to develop a “unified and consistent legal theory” in these cases.<sup>276</sup> According to one commentator, this memo “took the first step toward affirming a federal right ‘not to be lynched.’”<sup>277</sup> The memo asserted that § 52 covered “all rights which had been construed to lie within the Fourteenth Amendment and thus provided a powerful weapon against misconduct of [a] state officer.”<sup>278</sup> Section 51 could be invoked “against an entire lynch mob where a state official willfully cooperated with the mob.”<sup>279</sup>

Clark could have relied on § 52 to prosecute Scales’s killers, but he neglected to do so.<sup>280</sup> Clark’s instructions to the FBI about the Scales lynching focused narrowly on the “officials responsible for the safe keeping in jail of the victim.”<sup>281</sup> This order included a glaring omission: the option of bringing charges against reformatory personnel and the

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Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

<sup>274</sup> 18 U.S.C. § 51 contained the following language in 1944:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

<sup>275</sup> The Civil Rights Section was originally called the Civil Liberties Unit when it was created in 1939, but its name was changed in 1941. SAMUEL WALKER, *PRESIDENTS AND CIVIL LIBERTIES FROM WILSON TO OBAMA: A STORY OF POOR CUSTODIANS* 93 (2012). In 1957 it was renamed again as the “Civil Rights Division,” the name that it bears presently. *Id.*

<sup>276</sup> John T. Elliff, *Aspects of Federal Civil Rights Enforcement: The Justice Department and the FBI, 1939–1964*, in *LAW IN AMERICAN HISTORY* 608–09 (Donald Fleming & Bernard Bailyn eds., 1972) (internal quotation marks omitted).

<sup>277</sup> *Id.* at 608.

<sup>278</sup> *Id.* at 607–08 (internal quotation marks omitted).

<sup>279</sup> *Id.* at 608.

<sup>280</sup> Concurrent with the Scales incident, the DOJ was prosecuting several cases of racial violence under these statutes. Most significantly, the Supreme Court had yet to deliver its 1945 opinion in *Screws v. United States*, a case where three white police officers in Georgia had beaten to death a black man accused of stealing a tire. 325 U.S. 91, 92–93 (1945). This opinion affirmed that § 52 could apply to violations involving police brutality, but it also necessitated a showing of “specific intent to deprive a person of a federal right.” *Id.* at 103, 136–37. In practice, the requirement of “specific intent” made it more difficult for juries to convict under this statute. Elliff, *supra* note 276, at 619. Regardless, the DOJ’s decisions in the Scales case occurred prior to this holding.

<sup>281</sup> Nov. 24 Memo from Clark to Hoover, *supra* note 244, at 1.

construction workers—all of whom were either state employees or subcontractors—for their participation in the lynching. This oversight may be explained, at least initially, by the limited information that the FBI submitted to the DOJ. It appears that Clark did not have any indication that reformatory personnel may have been involved. In contrast, he had information that the reformatory Assistant Superintendent acted to prevent the killing, albeit unsuccessfully.<sup>282</sup> Nevertheless, when he received the updated, correct information, Clark failed to expand the scope of the investigation.<sup>283</sup>

## 2. *FBI Investigation Stalls*

The FBI was instrumental in frustrating a complete federal inquiry into the Scales incident. In accordance with Assistant A.G. Clark's orders, the FBI conducted a narrow investigation, operating under the assumption that Scales was guilty of the double murder.<sup>284</sup> Agent Ruggles in Knoxville understood the DOJ's instructions to encompass only the "delinquency of the Sheriff's Office in handing th[e] matter and the committing magistrate."<sup>285</sup> On December 9, Ruggles reported that the preliminary investigation revealed that "the Sheriff was not there and . . . the whole thing transpired while he was away and there was no committing magistrate."<sup>286</sup> In other words, there were no grounds for a federal case based on the instructions given by Assistant A.G. Clark. Ruggles asked his superiors whether he should expand the inquiry, but he was instructed to "restrict the investigation to what the Department asked for unless he was advised to the contrary by the Bureau."<sup>287</sup> On December 11, J. Edgar Hoover advised the local agents to "conduct further investigation in accordance with previous instructions including to ascertain the identity of the actual lynchers of victim Scales."<sup>288</sup>

Ruggles issued an urgent teletype to Hoover on December 12, proposing to broaden the scope of the investigation by acquiring physical evidence:

Memphis requested to contact victims [sic] parents and make

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<sup>282</sup> *Id.* at 2.

<sup>283</sup> See Dec. 16 Memo from Biddle to Clark, *supra* note 256 (directing Clark to investigate the new information received from Thurgood Marshall regarding the incident).

<sup>284</sup> The earliest communication from the Knoxville FBI office pegs Scales as the perpetrator in the deaths of Gwendolyn McKinney and her mother, Notie Bell Scott. Nov. 24 Memo from Ruggles to Hoover, *supra* note 241. All subsequent communications assume the same.

<sup>285</sup> Memorandum from Mr. Rosen, to L. R. Pennington (Dec. 9, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE NO. 44-1139 (photo. reprint 2013) (on file with author).

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> Memorandum from J. Edgar Hoover, FBI Dir., to Richard B. Hood, Knoxville Special Agent in Charge (SAC) (Dec. 11, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE 44-1139 (photo. reprint 2013) (on file with author).

appropriate arrangements to have bullets removed and forwarded to laboratory for appropriate examination and comparison with bullets obtained from the guns of any suspects who might be developed. . . . Memphis will proceed with above requested investigation unless advised to contrary by bureau by nine AM December thirteen [sic].<sup>289</sup>

The Bureau must have advised the local operatives to cease their inquiries because this evidence was never gathered. On the morning of December 14, Agent Ruggles from Knoxville called L. R. Pennington in Washington to say that they had made progress in identifying twenty-one subjects who participated in the Scales lynching and “that they knew who did the actual shooting.”<sup>290</sup> Despite numerous interviews with people directly involved in the events, the FBI agents had not, up to that point, interviewed anyone they considered direct perpetrators, including the suspected shooter, Felix Morris.<sup>291</sup> Ruggles queried:

whether they should dictate a report showing exactly what happened so it could be sent to the [DOJ] to look it over or whether they should go into the case to the extent of actually developing evidence necessary for state prosecution [of the 21 people.]<sup>292</sup>

Although the scope of the FBI investigation was limited, the Knoxville-based agents had asked whether they could communicate with the state’s point-person on the matter, Safety Director Bomar, to learn the identities of Scales’s killers.<sup>293</sup> Shortly thereafter, Agent Ruggles learned that Bomar’s report would not “show as much as we know.”<sup>294</sup> Bomar’s report did not reveal who did the shooting, “but he probably told the Governor orally.”<sup>295</sup>

Throughout the 1940s, Hoover often balked at pursuing comprehensive investigations of racial violence perpetrated by police, purportedly because he was concerned about the FBI’s relationship with state law enforcement.<sup>296</sup> The FBI’s reticence to go beyond the strictures of Clark’s initial order in the Scales investigation is an excellent example of this dynamic. Given local agents’ preliminary findings and their

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<sup>289</sup> FBI Teletype, Ruggles, FBI Agent, to J. Edgar Hoover, FBI Dir., and Memphis SAC (Dec. 12, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139 (photo. reprint 2013) (on file with author).

<sup>290</sup> Dec. 14 Memo from Pennington to Rosen, *supra* note 2, at 1.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> FBI Teletype, Ruggles, FBI Agent, to J. Edgar Hoover, FBI Dir. (Dec. 7, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE NO. 44-1139 (photo. reprint 2013) (on file with author).

<sup>294</sup> Dec. 14 Memo from Pennington to Rosen, *supra* note 2, at 2.

<sup>295</sup> *Id.*

<sup>296</sup> See Elliff, *supra* note 276, at 609, 610–11 (describing the FBI’s initial reaction to civil rights enforcement as being “concern[ed] for its workload”; Hoover’s reaction to the first Section 242 case, during which he denied FBI participation in an investigation because it would “rupture the friendly relationship” with the local police department; and the President’s Committee’s investigation of Hoover’s past attitudes regarding civil rights enforcement in 1947).

conversations with state officials, Ruggles urged his superiors to cease the inquiry due to safety concerns and to avoid “hard feelings on the part of the Governor and Bomar”:

Mr. Ruggles said if we do go into that [county] and interview them and nothing is ever done as to Federal prosecution it is going to be pretty bad for the Bureau in that county. He said the subjects are all Tennessee mountaineers and tough and there is likely to be some trouble as soon as pressure is put on these individuals on interview. . . . He said from the Bureau’s standpoint he thought it would definitely be a great advantage to us if we could stop where we are because it is going to make hard feelings on the part of the Governor and Bomar and everybody in that section. Mr. Ruggles said the case would apparently be whitewashed and let go.<sup>297</sup>

The FBI explicitly recognized that discontinuing the federal investigation would assist state leaders in “whitewash[ing]” this incident. Hoover knew that choosing to suspend the inquiry would effectively sweep the lynching under the rug, particularly since Ruggles informed him that federal prosecution was unlikely under the “Civil Rights and Domestic Violence” statutes, 18 U.S.C. §§ 51 and 52.<sup>298</sup> No one would be prosecuted or held to account. Later in the day on December 14, Hoover sent an urgent communiqué to Knoxville ordering that they “[c]onduct no further investigation and expedite the typing of a report setting forth all information obtained to date.”<sup>299</sup> Knoxville responded the next day that they would cease the investigation although it remained unfinished:

In accordance with the Bureau teletype, any further investigation in this case along the lines of developing the actual evidence which would be necessary for prosecution, such as going ahead with disinterring the victim’s body, obtaining the cartridge cases from Mr. Lynn Bomar, Director of the Tennessee Highway Patrol, obtaining a search warrant to search the premises of subject Morris’ residence and place of occupation, and interviewing the subject, has been discontinued.<sup>300</sup>

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<sup>297</sup> Dec. 14 Memo from Pennington to Rosen, *supra* note 2, at 1, 2.

<sup>298</sup> *Id.* at 1.

<sup>299</sup> Memorandum from J. Edgar Hoover, FBI Dir., to Richard B. Hood, Knoxville Special Agent in Charge (SAC) (Dec. 14, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE 44-1139 [hereinafter Dec. 14 Memo from Hoover to Knoxville SAC] (photo. reprint 2013) (on file with author).

<sup>300</sup> Memorandum from Richard B. Hood, Knoxville Special Agent in Charge (SAC), to J. Edgar Hoover, FBI Dir. (Dec. 15, 1944), in U.S. DEP’T OF JUSTICE, FBI FILE 44-1139 (photo. reprint 2013) (on file with author).

### 3. DOJ Cedes Control to Local Authorities

Assistant A.G. Clark may not have known about the role of reformatory guards in Scales's lynching until he received the letter from Thurgood Marshall on December 14. After Attorney General Biddle ordered Clark to perform a prompt investigation regarding "the matters outlined in th[e] letter," Clark passed the directive to Hoover on December 19.<sup>301</sup> Hoover had already closed the investigation on December 14, however.<sup>302</sup> On December 22, the FBI forwarded the report written by a Knoxville agent, which had been submitted four days earlier.<sup>303</sup> The next day, Clark dispatched Chattanooga U.S. Attorney Frazier to speak with Governor Cooper about the Scales case.<sup>304</sup>

Frazier dragged his feet. On January 1, 1945, he sent a letter to the DOJ acknowledging receipt of Clark's letter from November 24.<sup>305</sup> Frazier wrote, "I have not been able to obtain any information in regard to this case other than that published in the newspapers."<sup>306</sup> He said that Saftey Director's Bomar's report was never released and that he had been unable to procure a copy.<sup>307</sup> Somewhat defiantly, Frazier pointed out that the FBI was already conducting an investigation into the matter.<sup>308</sup> Clark asked Assistant A.G. Victor Rotnem to call Frazier and order him to meet with the Tennessee Governor,<sup>309</sup> and he directed the FBI to send the U.S. Attorney a copy of its report.<sup>310</sup>

On January 7, Clark sent the FBI a second letter from the NAACP's Thurgood Marshall, which included an attached note from Z. Alexander Looby that identified Fee "Pop" Morris as Scales's shooter.<sup>311</sup> Looby also named several other reformatory guards who participated in the lynching, including "Davis, first name unknown."<sup>312</sup>

<sup>301</sup> Memorandum from Tom C. Clark, Assistant U.S. Att'y Gen., to J. Edgar Hoover, FBI Dir. (Dec. 19, 1944), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>302</sup> Dec. 14 Memo from Hoover to Knoxville SAC, *supra* note 299.

<sup>303</sup> Memorandum from J. Edgar Hoover, FBI Dir., to Tom C. Clark, Assistant U.S. Att'y Gen. (Dec. 22, 1944), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>304</sup> Expense Authorization Form Re: U.S. Attorney James B. Frazier's Trip to Nashville to Confer with Governor Prentice Cooper (Dec. 23, 1944), in U.S. DEP'T OF JUSTICE, FILE NO. 144-70-6 (photo. reprint 2013) (on file with author).

<sup>305</sup> Letter from James B. Frazier, U.S. Attorney, to U.S. Dep't of Justice (Jan. 1, 1945), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> Memorandum from Victor W. Rotnem, to Tom C. Clark, Assistant U.S. Att'y Gen. (Jan. 3, 1944), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>310</sup> Memorandum from Tom C. Clark, Assistant U.S. Att'y Gen., to J. Edgar Hoover, FBI Dir. (Jan. 4, 1945), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>311</sup> Memorandum from Tom C. Clark, Assistant U.S. Att'y Gen., to J. Edgar Hoover, FBI Dir. (Jan. 7, 1945), in U.S. DEP'T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author); Letter from Thurgood Marshall, NAACP Legal Defense Fund Chief Counsel, to Francis J. Biddle, U.S. Att'y Gen. (Dec. 22, 1944), in U.S. DEP'T OF JUSTICE, FBI FILE 44-1139 (photo. reprint 2013) (on file with author); Dec. 18 Letter from Looby to Marshall, *supra* note 215.

<sup>312</sup> Dec. 18 Letter from Looby to Marshall, *supra* note 215.

Frazier finally met with Governor Cooper during the second week of January.<sup>313</sup> Information gathered in this meeting led Clark to close the lynching investigation provisionally, with a caveat that it could be reopened if the state did not advance with the prosecution.<sup>314</sup>

On the same day, Clark wrote to A.G. Biddle to inform him that DOJ was closing the case, as “the State has conducted a thorough investigation and all indications point to an immediate murder trial.”<sup>315</sup>

#### 4. *Local Opposition to Prosecution*

Opposition to prosecution of James Scales’ killers was widespread in Bledsoe County and may have presented an insurmountable barrier to legal recourse. FBI Agent Ruggles reported to his superiors that he harbored significant doubts about whether anyone would testify against the perpetrators:

[T]he [inmates] who gave the information are frightened because they realize if the subjects found out what they told their lives would be in danger. Mr. Ruggles said as far as getting the boys to testify in state or federal court they would be extremely reluctant to do so and their life wouldn’t be worth too much if they did testify. Mr. Ruggles stated all of the white people, including the girl at the jail and the sheriff would naturally be expected to say they didn’t know any of the subjects.<sup>316</sup>

Ruggles’ concerns may have been justified. The FBI had interviewed several people serving in official law enforcement capacities who refused to assist with the investigation or denied they knew relevant information. Pikeville’s chief of police, W. M. Tollette, told the FBI that, “very few, if any, people in the town of Pikeville knew that the men had come in town for Scales. . . . it was his opinion that the people in Pikeville had nothing to do with the lynching.”<sup>317</sup> Perry Smith, sheriff of Van Buren County, which bordered Bledsoe County, explained why investigating the incident could be dangerous:

<sup>313</sup> Memorandum from Tom C. Clark, Assistant U.S. Att’y Gen., to J. Edgar Hoover, FBI Dir. (Jan. 15, 1945), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>314</sup> *Id.* (“United States Attorney at Chattanooga, Tennessee, has conferred with the Governor of the state of Tennessee, who indicates that the state investigation has been very thorough in this matter. It seems probable that the Attorney General of the State will personally supervise the state prosecution for murder. . . . Accordingly, it does not seem essential that an autopsy be conducted nor that a search warrant issue. For the present this matter may be considered as being completed subject to being reopened only if the state authorities do not proceed as planned.”).

<sup>315</sup> Memorandum from Tom C. Clark, Assistant U.S. Att’y Gen., to Francis J. Biddle, U.S. Att’y Gen. (Jan. 15, 1945), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>316</sup> Dec. 14 Memo from Pennington to Rosen, *supra* note 2, at 2.

<sup>317</sup> W. M. Tollette FBI Interview, *supra* note 198, at 18.

He stated that this lynching was a very close-mouthed affair and that nobody seemed to know exactly what had happened. . . . and he had no idea who did the shooting and did not even know anybody who had been in the mob; however, he stated he was willing to aid the Bureau in every way possible in this case, but he would not ask any direct questions of anyone concerning the participants in the lynching for fear of his own life. He stated that he knows the mountaineers in this area, who shoot a person just as quickly as they would shoot a squirrel, and a lot of murders had never been solved, as it was very unhealthy for a law enforcement officer to investigate such things up in the hills.<sup>318</sup>

The culture of denial that coalesced around the Scales lynching was captured beautifully in the headline to a story that ran in *The Chicago Defender*: ‘Valley Folk’ Silent as Hills on Boy’s Lynchers.<sup>319</sup> A brave African-American reporter, Robert Lucas, wrote the article based on his experience traveling to Pikeville for the story.<sup>320</sup> In the first sentence of the article, Lucas presaged that, “[t]he men who lynched 17-year-old James Scales here Thursday will never be brought to justice.”<sup>321</sup> Lucas reported:

[T]he “valley folk” of Pikeville don’t talk, and the one person who could identify the men who spirited Scales “up the mountain” and put four slugs through his head is a typical “valley” girl. She is Ruth Douglas. . . . “Could you identify those men?” I asked her. Deputy Sheriff A. F. Goforth answered quickly, “No, she couldn’t.” , , , “That’s raht,” drawled the teen-aged cook . . . . She did not look at me.<sup>322</sup>

The silence surrounding this case has endured. To this day, local residents in the Pikeville area are extremely reluctant to speak about the Scales lynching. Seventy years on, even a local librarian in Pikeville had difficulty persuading people to divulge details they knew about this story.<sup>323</sup>

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<sup>318</sup> Perry Smith FBI Interview, *supra* note 196, at 19.

<sup>319</sup> Lucas, *supra* note 238, at 1.

<sup>320</sup> *Id.* at 1, 4. When Lucas knocked on the front door of the jail where Scales had been held briefly, Sheriff Goforth admonished him: “You got to realize it’s different down here than where you come from. . . . Down here you come to the back door, even in Tennessee.” *Id.* at 4.

<sup>321</sup> *Id.* at 1. Lucas reported an incorrect age for Scales, which was common across all early news accounts of the incident.

<sup>322</sup> *Id.*

<sup>323</sup> Interview with Carolyne Knight, Pikeville Librarian, in Pikeville, Tenn. (July 23, 2012) (noting, for example, that an anonymous community member she spoke with refused to share the name of the third potential shooter (the first two being Felix Morris and Vergil Davis) because that person was from the Pikeville community).

### 5. “No True Bill”

Between mid-January and mid-February 1945, the DOJ did not receive any additional information about the state’s prosecution of Scales’ killers. U.S. Attorney Frazier failed to update his superiors in Washington about any developments in the case until Clark wrote to ask what happened on February 16.<sup>324</sup> This time, Frazier responded promptly:

[T]he Circuit Court for the Eighteenth Judicial Circuit of Tennessee convened at Pikeville, Bledsoe County, on January 22, 1945, and that the grand jury which convened the same day considered the lynching of James I. Scales [sic]. I am advised that eight or ten witnesses were summoned and appeared before the grand jury, and that after careful consideration, the grand jury returned a no true bill. Mr. Chester Chatham is the Attorney General for the Eighteenth Judicial District, and I believe the matter was thoroughly presented to the grand jury by him.<sup>325</sup>

Interestingly, the FBI received slightly different information. The Bureau recorded that state prosecutors presented the case and a “no true bill”<sup>326</sup> was returned on January 29, 1945.<sup>327</sup> The FBI agents in Knoxville wrote:

[Assistant Attorney General] Templeton stated that all of the facts in this case were presented to the Grand Jury, including the names of all subjects and the part they took in the lynching. He stated it was his personal opinion, as well as the opinion of everyone else in that vicinity that no Grand Jury in the state of Tennessee would indict subjects in this case. He said that citizens of Tennessee do not believe in lynchings but

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<sup>324</sup> Letter from Tom C. Clark, Assistant U.S. Att’y Gen., to James B. Frazier, U.S. Att’y (Feb. 16, 1945), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>325</sup> Letter from James B. Frazier, U.S. Att’y, to Tom C. Clark, Assistant U.S. Att’y Gen. (Feb. 19, 1945), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author). Apparently, Frazier had such scant information about the Scales case that he even misspelled the name of the prosecutor, whose name was actually Chester Chattin. See [17–18 Minute Books 1937–67] January Term Grand Jury Minutes 286 (Bledsoe Cty. Cir. Ct. 1945) (on file with author) (listing Chester C. Chattin as the “Attorney General, Pro. Tem.”); *supra* note 263.

<sup>326</sup> “When the grand jury refuses to indict someone its action is sometimes referred to as a ‘no true bill.’ When the Grand Jury returns a ‘no true bill’ against a defendant, then that person cannot be brought to trial.” *Victim/Witness Handbook*, TENN. DISTRICT ATT’Y GEN. CONF., <http://www.tndage.com/vwh.htm>, <<http://perma.cc/VH3D-XASY>>; see also BLACK’S LAW DICTIONARY 1145 (9th ed. 2009) (defining “no bill” to mean “[a] grand jury’s notation that insufficient evidence exists for an indictment on a criminal charge”).

<sup>327</sup> Memorandum from Richard B. Hood, Knoxville Special Agent in Charge (SAC), to J. Edgar Hoover, FBI Dir. (date unknown), in U.S. DEP’T OF JUSTICE, FBI FILE 44-1139 [hereinafter Undated Memo from Hood to Hoover] (photo. reprint 2013) (on file with author).

in this case they felt such was justified.<sup>328</sup>

It does not appear that the FBI forwarded this missive to the DOJ.

In fact, the Grand Jury for the Eighteenth Judicial Circuit convened in Pikeville on January 22, 1945, as Frazier reported.<sup>329</sup> However, the minutes do not show that the lynching case went before the Grand Jury.<sup>330</sup> According to the current District Attorney for Bledsoe County, Michael Taylor, the Grand Jury Docket book—rather than the Grand Jury Minutes book—would have listed all of the cases that came before the Grand Jury during the January 1945 term.<sup>331</sup> Apparently, the original Grand Jury Docket book covering this time period was inadvertently destroyed,<sup>332</sup> so we will never know whether the Scales case was actually presented to the grand jury. Nevertheless, given the reports by U.S. Attorney Frazier and the FBI, it is likely that the case was, in fact, presented. At least twelve votes would have been required for the grand jury to issue a true bill: either a unanimous finding by the twelve grand jurors, or a positive vote by eleven of the panel's twelve members, plus a yes vote by the grand jury foreman.<sup>333</sup> In any case, it is exceedingly

<sup>328</sup> *Id.*

<sup>329</sup> January Term Grand Jury Minutes, *supra* note 325, at 286–290. The January Grand Jury minutes indicate that this was the only meeting during the month. *Id.* at 286 (“Be it remembered that the circuit court for the State of Tennessee, and Bledsoe County was opened and held on the fourth Monday of January 1945 A.D.”).

<sup>330</sup> Three separate cases involving personnel from the Training and Agricultural School were addressed during the January 1945 term, each alleging “cruelty to animals.” *Id.* at 287, 288 (cases 7096, 7097, and 7081); Neil FBI Interview, *supra* note 177, at 4 (photo. reprint 2013) (on file with author) (identifying H.E. Scott as Superintendent, W.R. Abernathy as Farm Superintendent, and William Henry Roscoe [sic] as guard). The co-defendants for each of the three cases were H. E. Scott, the reformatory superintendent whose wife and daughter were murdered, William Abernathy, the farm manager, and William Rasco, a guard. January Term Grand Jury Minutes, *supra* note 325, at 287, 288; Neil FBI Interview, *supra* note 177, at 4. It appears that trials proceeded for two of the cases, numbers 7096 and 7097. January Term Grand Jury Minutes, *supra* note 325, at 287, 288. The notes for case number 7096 read, in relevant part:

The Grand Jurors . . . upon their oaths present that H. E. Scott, William Abernathy, and William Rasco heretofore, to wit, on the \_\_\_ of June, A.D. 1944, in the county aforesaid, did then and there, unlawfully cause and procure inmates of the State Training and Agricultural School for colored boys, the names of whom are to the Grand Jurors unknown by virtue of their authority as superintendent, Farm manager and guard respectively of said school, to needlessly kill a living creature, to-wit: one hog the property of J. M. Dodson against the peace and dignity of the State of Tennessee.

*Id.* at 287. The notes for case number 7097 describe a similar July 1944 crime in more graphic detail: “needlessly beat mutilate torture and torment [sic] a living creature, to-wit: a hog the property of Ethel Smith, by beating said hog with sticks and clubs.” *Id.* at 288. The third case, number 7081, captioned “Cruelty to Animals,” offered a one-word description, “Nollie.” *Id.* Presumably, this term meant *nolle prosequi*, a Latin phrase indicating that the case would not be prosecuted. BLACK’S LAW DICTIONARY 1147 (9th ed. 2009) (defining the term to mean “[t]o abandon (a suit or prosecution)”).

The Grand Jury Minutes from September 1944 contained a more in-depth listing for case number 7081, including a case description that was nearly identical to those for case numbers 7096 and 7097. [17–18 Minute Books 1937–67] September Term Grand Jury Minutes 278 (Bledsoe Cty. Cir. Ct. 1944) (on file with author).

<sup>331</sup> May 2014 Interview with Michael Taylor, *supra* note 263.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

unlikely that an all-white grand jury in Bledsoe County would have voted to proceed with the prosecution of its own community members for such a crime.<sup>334</sup> On the other hand, grand jurors appeared very willing to issue true bills against personnel at the Training and Agricultural School for crimes involving “cruelty against animals.”<sup>335</sup>

After receiving notice of the state’s failure to prosecute anyone for the lynching, Clark wrote to Attorney General Biddle on February 23, 1945, recommending that “no further action be taken in this case since there is probably no Federal jurisdiction.”<sup>336</sup> He explained that the Department would confer with Thurgood Marshall to discuss the case and, if necessary, would seek Biddle’s advice.<sup>337</sup> This letter is the last entry in the DOJ record. Thus, it is likely that the conversation with Marshall did not yield any further action, prompting the Department to officially close the case. No one was ever indicted for Scales’s murder and the incident was effectively “whitewashed and let go,” just as FBI Agent Ruggles had predicted.<sup>338</sup>

## VII. CONCLUSION

The lynching of James Scales—a form of direct violence—can be understood only in the context of the structural and cultural factors that made it possible. It was an extraordinary event; there had not been a lynching in Bledsoe County since the late 1800s.<sup>339</sup> Yet, as with much direct racial violence, “[h]ate or feelings of animus [were] not necessarily proximate motives” in Scales’ murder or its cover-up.<sup>340</sup> Rather, the violence was embedded within a broader racial caste system where the lynching was understood as an acceptable form of criminal punishment for transgressing the social order—a social order

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<sup>334</sup> *Id.*; Lucas, *supra* note 238, at 4 (“The pattern, a familiar one in the South, is almost complete—a Negro accused of a crime—a lynching—an investigation—then nothing is done until the next time.”); Undated Memo from Hood to Hoover, *supra* note 327 (“He stated it was his personal opinion, as well as the opinion of everyone else in that vicinity that no Grand Jury in the state of Tennessee would indict subjects in this case.”).

<sup>335</sup> January Term Grand Jury Minutes, *supra* note 325, at 287, 288.

<sup>336</sup> Memorandum from Tom C. Clark, Assistant U.S. Att’y Gen., to Francis J. Biddle, U.S. Att’y Gen., at 1–2 (Feb. 23, 1945), in U.S. DEP’T OF JUSTICE, DOJ FILE 144-70-6 (photo. reprint 2013) (on file with author).

<sup>337</sup> *Id.* at 2.

<sup>338</sup> Dec. 14 Memo from Pennington to Rosen, *supra* note 2, at 2.

<sup>339</sup> See Lucas, *supra* note 238, at 4 (“The lynching Thursday [of Scales] was the first in Bledsoe county in 55 years”). In 1893, John Gamble was lynched in Pikeville over allegations of rape. NAACP, THIRTY YEARS OF LYNCHING IN THE UNITED STATES, 1889–1918, 92 (1919); see also GINZBURG, *supra* note 1, at 268–69 (listing John Gamble and James Scales as the only two lynchings in Pikeville or other Bledsoe County towns during the period from 1886 to 1960).

<sup>340</sup> See Blee, *supra* note 17, at 607 (“Hate or feelings of animus are not necessary proximate motives for whites in a racial society to view (and use) racial minority group members as props in a ritualized enactment of white masculine solidarity and identity-building”).

undergirded by a culture of white supremacy.<sup>341</sup> The possibility for direct violence was always bubbling beneath the surface of the racial caste system's structural violence, which functioned like a "blueprint . . . used to threaten people into subordination."<sup>342</sup>

The interdependence of the three modes of violence situates the responsibility for James Scales's death with people at all levels of society, from local farmers who condoned the killing to government leaders who refused to prosecute the shooter. According to one commentator:

Who is the responsible agent of violence: the lynch mob, the legal system and police who fail to prosecute the members of the mob, or the people who encourage lynchings by actively asserting white racial dominance or the heinousness of certain breaches of the moral order? Surely, it is a communal complicity made up of an accumulation of verbal and/or written actions that accomplishes the deed, even though only a small number of actors may be physically implicated.<sup>343</sup>

Although the phenomenon of lynching is strikingly diverse in its means of murder and the characteristics of both victims and perpetrators, it shares the key characteristics of a "mob act[ing] illegally, choosing to circumvent the formal system of criminal justice in order to carry out the lethal punishment personally."<sup>344</sup> Condoned through government inaction and cover-up—structural and cultural factors—this form of direct violence sometimes became, as it did here, a "preferred alternative to 'official' justice"<sup>345</sup>:

The fact that lynchers' claims to be imposing criminal punishments were invariably upheld by the actions or inactions of local legal officials means that these events were, at least at some levels of collective authority, defined as public punishments rather than as acts of private vengeance.<sup>346</sup>

As with many lynchings, the mob kidnapped Scales from jail and killed him "after the wheels of justice had begun to grind."<sup>347</sup> Here, the brutal killing of two white women provoked this mode of "popular justice" because the white perpetrators felt threatened by an act that violated the norms of the racial caste system.<sup>348</sup> Scales may not have

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<sup>341</sup> Garland, *supra* note 16, at 815–16.

<sup>342</sup> Galtung, *supra* note 5, at 172.

<sup>343</sup> Mary Jackman, *Violence in Social Life*, 28 ANN. REV. SOC. 387, 396 (2002).

<sup>344</sup> STEWART E. TOLNAY & E. M. BECK, *A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882–1930*, 56 (1995).

<sup>345</sup> Garland, *supra* note 16, at 798.

<sup>346</sup> *Id.*

<sup>347</sup> TOLNAY & BECK, *supra* note 344, at 62.

<sup>348</sup> *See id.* at 65 ("The popular justice model of lynching describes a white population that felt threatened by black behavior that violated southern norms").

killed the women, but that possibility did not matter to the mob when it chose to circumvent the regular judicial process by meting out punishment on its own terms.

At the Training and Agricultural School for Colored Boys, guards inflicted direct violence routinely—through corporal punishment and various deprivations—but the institution also perpetrated structural violence by reinforcing and recreating the caste system where the lives of African Americans, including children, were worth less than those of whites. State leaders did little to ameliorate the shameful conditions present at the institution, maintaining the racial inequities for decades both before and after the lynching.

Scales's murder was "observed, supported, and perpetuated by community leaders and law enforcement," which, like many other lynchings, conferred upon it "a gloss of state sanction."<sup>349</sup> State authorities took deliberate steps to avoid prosecuting the members of the lynch mob, protecting the perpetrators. Likewise, the federal government's failure to act—particularly when the DOJ had jurisdiction to bring a case against the killers under 18 U.S.C. § 52—further validated the extrajudicial killing. These actions and omissions by local, state, and federal authorities reinforced Scales's lynching as a "legitimate expression of community justice"<sup>350</sup> and allowed the racial caste system to persist unabated. Structural violence existed in the authorities' interpretation of the facts and laws surrounding Scales' lynching, which led to inaction and impunity. Direct violence reinforced and reproduced the caste system's structural violence by conveying a specific message to the other boys at the reformatory, who were forced to view his body as a lesson. The message was about the consequences of violating the community's norms, but it was also a stark reminder of the black youths' powerlessness in a white supremacist society.<sup>351</sup> At the foundation of this system were the white community's collective beliefs—steeped in cultural violence—which sustained the ideas that Scales did not deserve due process, that his life was worth very little, and that, ultimately, his lynching was justified.<sup>352</sup>

Whether or not James Scales murdered the two white women does not diminish the criminal responsibility of those who meted out "popular justice" by lynching him. The mob did not wait for a jury trial and a conviction. Local white people, including employees at the state institution, took matters into their own hands. This crime also deprived the Scott family of a proper and reliable legal determination of who

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<sup>349</sup> Caitlin Naidoff, Note, *Confronting the Fear of "Too Much Justice": The Need for a Texas Racial Justice Act*, 19 TEX. J. C.L. & C.R. 169, 187 (2013).

<sup>350</sup> See Garland, *supra* note 16, at 810 ("[L]ynching made claim to be a legitimate expression of community justice, a normative order that substituted for state law whenever local circumstances required").

<sup>351</sup> TOLNAY & BECK, *supra* note 344, at 93, 113.

<sup>352</sup> Undated Memo from Hood to Hoover, *supra* note 327 ("[T]he citizens of Tennessee do not believe in lynchings but in this case they felt such was justified.").

murdered Gwendolyn and Notie, which remains a mystery.<sup>353</sup> Nor does the possibility of Scales's guilt excuse state and federal authorities from failing to properly investigate and prosecute the lynching. The DOJ abandoned the case even though federal authorities knew that the state had "whitewashed and let go" the prosecution of Scales's killers. State leaders continually failed to address the well-documented horrors of the state-run reformatory, even though this incident offered an opportunity to do so. The nexus between local prejudice and federal indifference in the Scales case exemplifies the utter absence of institutional justice in the pre-civil rights era South. Seventy years later, James Scales's ghost still haunts the silences that people maintain regarding race and violence in Bledsoe County, Tennessee.

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<sup>353</sup> Henry Eugene Scott's obituary in 1967 makes no mention of the incident that robbed him of his wife and daughter. *H. Eugene Scott, Educator, Dies at 76 in McMinnville*, BLEDSONIAN & PIKEVILLE BANNER, Sept. 18, 1967.