DUCK
A Legal History of Robert Mallard’s Murder

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Civil Rights and Restorative Justice
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I. INTRODUCTION

The death of Robert Mallard, murdered on November 20, 1948 by a mob of white farmers while his wife and son looked on, initially garnered little attention. Local police made no effort to investigate. Newspapers ignored the story. Mallard’s family fled their home in Lyons, Georgia and life in the town continued as if nothing had happened. At the time, one may have questioned whether the case would ever escape the confines of local gossip.

But Mrs. Mallard did not allow the case to disappear, and her outspokenness led to the participation of numerous interconnected parties. The National Association for the Advancement of Colored People (NAACP) entered the case, which became a major plank in its campaign for federal civil rights legislation, including an anti-lynch law. The federal government, though pressured by the NAACP, took no action, waiting for Georgia officials to investigate and prosecute. Rather than focusing on the real murderers, local officials arrested Mrs. Mallard for her husband’s murder. Ironically, that arrest compelled Governor Herman Talmadge, an infamous white supremacist, to demand an investigation. Yet no Georgia law enforcement body effectively probed the killing; oddly, a businessman from Cleveland, Ohio, acting on his own, conducted the most fruitful investigation.

The Mallard murder case was ultimately prosecuted by state authorities in what the NAACP, Mrs. Mallard and others believed to be a sham trial. After the jury acquitted the accused, Mrs. Mallard toured the country on behalf of the NAACP campaigns, exposing the terror of mob violence in Georgia. The Mallard case reveals much about the
practices of these law enforcement institutions and civil rights organizations, and brings to light an important cross-section of pre-civil rights era America.

II. BACKGROUND

Toombs County sits halfway between Macon and Savannah in southeast Georgia. Lyons and Vidalia, two small cities, are located in the northern section of the county. The southern part of the county is mostly farmland. In this sparsely populated area, in 1948, Robert C. Mallard, 37, and Amy James Mallard, 42, a black couple, lived in a comfortable home on a farm on the banks of the Altamaha River. The couple had a two year-old son, John. Mrs. Mallard, who had a college degree, taught at an elementary school in town and was well respected in the community. Mallard was a successful traveling salesman from a ministerial family. He dressed well, drove a shiny new Frazer automobile and played the saxophone. Mallard’s family and friends adoringly called him “Duck.”

Governor’s Race, 1948

1 It was rare for a black family to own property in this part of Toombs County. (Fred Brogden, interview by John Warren, Lyons, Georgia October 28, 2001). The land was handed down to the Mallards from Mrs. Mallard’s stepfather, a white landowner, whom Mrs. Mallard’s mother married after her husband had died. (Doris Mallard, interview by John Warren, November 3, 2011).
5 Doris Mallard, interview by John Warren, October 12, 2011.  
6 Patrick Novotny, This Georgia Rising: Education, Civil Rights and the Politics of Change in Georgia in the Late 1940’s (Macon, Georgia: Mercer University Press, 2007), 310.  
7 Doris Mallard, interview by John Warren, October 12, 2011.
In 1948, Georgia was consumed by the governor’s race. The two candidates pitted against each other, Herman E. Talmadge and Melvin E. Thompson, knew each other well. Thompson had been lieutenant governor under Governor Eugene Talmadge, Herman’s father.\(^8\) When Eugene Talmadge died on December 20, 1946, twenty-one days before his inauguration, the state legislature, relying on a clause in the state constitution, selected Herman Talmadge as governor.\(^9\) In support of the younger Talmadge, one legislator, Jewel Crowe, declared, “we are not going to turn Georgia over to niggers, Rosenwalds and Wallaces.”\(^10\)

Thompson challenged the legislature’s selection and the ensuing political and legal conflict between Thompson and Talmadge was termed, “The Battle of the Governors.”\(^11\) Eventually, on March 19, 1947, the Supreme Court of Georgia held that the legislature had no jurisdiction to elect Herman Talmadge as Governor.\(^12\) The court stated that the death of the elder Talmadge vested Thompson with full executive powers.\(^13\) As he left the state capital, Herman Talmadge told reporters, “we’ll be running again.”\(^14\) During his two months as governor, Talmadge introduced legislation to privatize the state Democratic Party and purge black voters from registration.\(^15\)

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\(^8\) Novotny, *This Georgia Rising*, 136.
\(^9\) Ibid., 228.
\(^11\) Novotny, *This Georgia Rising*, 226.
\(^12\) *Thompson v. Talmadge*, 201 Ga. 867, 889 (1947).
\(^14\) Novotny, *This Georgia Rising*, 259, n. 184.
1948 gubernatorial campaign, he pledged, “if we can’t have a white primary, we want a primary just as white as we can get it.”

The 1948 Governor’s race officially began on July 10, 1948. Talmadge made clear his stance on the civil rights bill; his campaign literature read, “[a] Vote for Talmadge Is a Vote to Defend Georgia against the Civil Rights Program, to Uphold the Southern Way of Life!” He told his supporters: “when I am your governor, I assure you Georgia’s segregation laws will be preserved.”

More than being segregationist, Herman Talmadge had concrete ties to the Ku Klux Klan. On November 18, 1946, Talmadge was a featured guest at the birthday party for the Klan’s Imperial Wizard, Samuel Green. At the event, Talmadge stated, “[the Ku Klux Klan] through its power and influence was of tremendous assistance in electing my father. My father and I were among the first to point out the dangers of Negro voting, particularly since they are easily controlled by a shrewder race . . . I believe in the Ku Klux Klan, and will fight for it and white supremacy with the last drop of my blood.”

In turn, the Klan pledged its support to make Talmadge governor as “the only hope for white supremacy in Georgia.” Imperial Wizard Green promised that the number one priority of the Klan was to elect Talmadge in the 1948 election and that it

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16 Ibid., 110.
17 Novotny, *This Georgia Rising*, 294.
18 Ibid., 226.
19 Ibid.
21 Patterson, *We Charge Genocide*, 208-209.
22 Ibid. See also Ward, *Defending White Democracy*, 110.
23 Patterson, *We Charge Genocide*, 212.
would be a “hot year” with “something doing almost every night.” Green wanted at least one Ku Klux Klan “Klavern” in each of the 159 Georgia counties. Throughout the campaign, Klansmen marched and burned crosses in dozens of Georgia towns, and placed miniature coffins on the doorsteps of black leaders. In the Klan, Talmadge had a fellow opponent of anti-lynching legislation. “No law that will ever be drafted will make us accept the Negroes as our equals,” Green reportedly stated.

**The Election**

On September 8, 1948 Herman Talmadge was elected Governor of Georgia. Eighty-two percent of the white population of over twenty-one years old was registered to vote, but only eighteen percent of the black population over twenty-one years old was registered. Imperial Wizard Green was one of the first to congratulate Talmadge at campaign headquarters. He declared: “at last the Klan has a friend in the governor’s chair. We’re sitting on top of the world and nothing can stop us. Herman has assured me of his cooperation at all times, and has promised to go all the way down the road to protect the Klan. If you ever need anything from him, be sure to make it known that you are a friend of Sam Green’s.”

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24 Ibid., 210.
25 Ibid.
27 Patterson, *We Charge Genocide*, 210.
29 Patterson, *We Charge Genocide*, 145. According to *We Charge Genocide*, the low number of black registrants was attributable to three chief causes: “direct action by officials of the state of Georgia, official action by the Democratic Party of the State, and action of private organizations and corporate powers “acting with the actual or implied sanction of the State of Georgia.”
30 Ibid., 213.
31 Ibid.
After reclaiming the governor’s office, Talmadge rewarded the Klan by naming Samuel Green a lieutenant colonel and appointing Klansman Sam Roper, Green’s eventual successor as Imperial Wizard, as head of the Georgia Bureau of Investigation (GBI). Through education qualification legislation, Talmadge sought to disenfranchise eighty percent of black Georgians. Statewide NAACP membership plummeted from 11,000 to 3,000. Meanwhile, with the endorsement of the governor, Green boosted state Klan membership to an estimated 100,000 Klansmen. The Ku Klux Klan had a stranglehold on the state of Georgia.

Undercover observers for the Anti-Nazi League reported that the Klan had two or three discussions concerning the “need” for Klan activity in the Toombs County area. Cliff Vittur of the Ku Klux Klan reported that a demonstration was held in Vidalia, Toombs County on October 28, 1948. Vittur reported that 300 Klansmen arrived from all parts of Georgia and were met at the city limits by Toombs County Sheriff R.E. Gray, the police chief and the assistant chief, who escorted the parade into town. Vittur further stated that all three of the aforementioned officials, including Sheriff Gray, in addition to all officials from Vidalia except the mayor, were members of the Ku Klux

32 Ward, *Defending White Democracy*, 111.
33 Ibid., 110.
34 Ibid.
35 Ibid.
37 Patterson, *We Charge Genocide*, 213-14. See also “News from the Non-Sectarian Anti-Nazi League Memorandum,” *Papers of the NAACP*, Part 7, Series A, reel 25. Fred Bronston, Lyons resident and former history professor at Georgia Southern University remembers Klansmen, dressed in white robes, marching down the streets of Lyons. He was seven years old. (Bronston interview, October 28, 2011).
Klan. Other sources also reported that Sheriff Gray and Thomas ("T.") Ross Sharpe, the defense attorney for the alleged perpetrators in the Mallard case, were Klan members and that this "was generally known in Toombs County."\textsuperscript{40}

\section*{III. THE INCIDENT}

"a dark county road in Toombs County, Georgia . . ."\textsuperscript{41}

On the night of November 20, 1948, Robert Mallard, his wife Amy Mallard, their son John, and two of Mrs. Mallard’s cousins, Angelina Carter, thirteen, and William “Tim” Carter, eighteen, attended a gathering at the Oak Grove Elementary School in Lyons, where Mrs. Mallard was a teacher.\textsuperscript{42} Meanwhile, according to a local rumor, a group of white farmers convened at Dixon’s general store, just down the road from the Mallards’ property, and planned to ambush the Mallard family.\textsuperscript{43} One member of the group reportedly visited the Oak Grove School and asked whether anybody had change for a twenty-dollar bill. The request was outrageous; few farmers carried that much money around.\textsuperscript{44} But his intent was not to seek change. He was checking to make sure that Robert Mallard was in attendance.\textsuperscript{45}

The Mallards, along with their son and Mrs. Mallard’s cousins left the gathering—Mallard behind the wheel of his new Frazer automobile. Less than one mile


\textsuperscript{42} Novotny, \textit{This Georgia Rising}, 310.

\textsuperscript{43} Eugene Jones, interview by John Warren, Lyons, Georgia, October 28, 2011.

\textsuperscript{44} Ibid.

\textsuperscript{45} Ibid.
from the Mallards’ home, outside of the Providence Baptist Church, the family encountered several automobiles blocking the small path to their home.⁴⁶ There were men standing outside of the vehicles wearing what Mrs. Mallard would later describe as “white stuff.”⁴⁷ While the men were robed, they were unmasked.⁴⁸ Mrs. Mallard could not tell how many men there were.⁴⁹ The men yelled “hands up,” and then there was a “volley” of gunshots.⁵⁰ Mrs. Mallard slumped to the floor of the car for protection, effectively evading the piercing bullets.⁵¹ Robert Mallard was not so lucky. He had been shot. His death certificate would read, “homicide” because of a “pistol shot through chest.”⁵²

Mrs. Mallard ran for help to the nearby home of Frank Brinson, a white farmer.⁵³ Brinson, the first person to arrive at the scene, later reported that there was a blue-steel revolver located in the Mallards’ car and that, in total, there were only two shots fired.⁵⁴ Brinson notified Toombs County Sheriff R.E. Gray of the slaying.⁵⁵ When Sheriff Gray arrived at the scene, rather than attempt to locate the suspects, he searched Mrs. Mallard and emptied her pocketbook of all of its contents.⁵⁶

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⁵⁰ Ibid.
⁵¹ Ibid.
⁵² Robert Mallard’s death certificate, in author’s possession. After the murder, the rumor around Lyons was that a man with the last name “Krulic,” who was never held, arrested or charged in connection with the case, fired the fatal shot. (Brogden interview, October 28, 2011). A bullet was also apparently found in Mallard’s leg. (Portia Mallard Walker to “Uncle and Aunt Em,” November 24, 1948, Savannah, Georgia, Papers of the NAACP, Part 7, Series A, reel 25).
⁵³ “Jail Wife of Mob Victim In Frame-Up,” The Chicago Defender, December 4, 1948, 1.
⁵⁵ “Jail Wife of Mob Victim In Frame-Up,” 1.
⁵⁶ Novotny, This Georgia Rising, 311-12.
In an interview months later, Mrs. Mallard filled in the details of the killing: we were driving home, a car “cranked up and followed us, blinking its lights off and on. We turned off the dirt road in front of a church bordering our property and as we turned off there were all these folks in white robes.” There were “a great many” of men that “all had guns. . . there was a crash of fire. I thought I was shot.” She stated that the men had hoods but “the hoods were thrown back so I could see their faces. I recognized two of them before I had to duck down in my seat. The two I recognized were neighbors of ours.”

Mrs. Mallard continued, “[w]e waited till they cleared out. We knew the car in the rear left because there were no lights . . . I go[t] out of the car and found my husband lying on the ground with blood gushing out of his mouth. I sent the oldest boy in the car to get a doctor, and sent the little girl running to the house with the baby. A crowd had collected and someone looked at my husband[,] said he was gone. They went to get the state patrol, six miles away. After a while the deputy sheriff came with another man and two state patrolmen. They didn’t even try to find the killers. All they did was search through my pocketbook and read all my personal letters, stalling around while the mob got away.”

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58 Ibid.
59 Ibid.
60 Ibid. A memorandum from George S. Mitchell, executive director of Southern Regional Counsel, to the NAACP corroborates Amy’s story. According to Mitchell’s memorandum, one car was following Mallard’s car blinking its lights. The Mallards pulled up to a semi-circle of cars blocking the trail to their house. Shots were fired but none hit the car. Then three men approached, came very close to the front of the car and the man in the middle threw back his hood over his head and shot Mallard through the windshield. Mrs. Mallard got a good look at him but did not recognize him. A white man, a farmer who lived just across the path, right near the Mallard’s house helped carry Robert to the Mallard’s house. Mrs. Mallard’s 18 year-old cousin,
Motivation for the Killing

Several theories emerged to explain the murder. The most prominent theory was that Mallard was killed because white neighbors resented his prosperity. Indeed, Mrs. Mallard stated that the Mallard’s were resented because they owned property and a new car and were well off financially.61 According to a New York Amsterdam staff correspondent, “[t]he whites along the banks of the Altamaha River have never learned to accept that sort of living standard for Negroes: hence the enmity.”62 One Lyons resident who remembers the killing cites Mallard’s success, and his car, as the primary reasons he was slain.63

A second theory was that Mallard’s death was related to his voting efforts, although sources differ on the extent of his political participation. One source reports that Mallard had worked to register blacks to vote in Toombs County in the governor’s race.64 An NAACP memorandum stated that Mallard was reportedly warned against voting and was told his life “would not be worth fifty cents” if he did vote.65 Mrs. Mallard later testified during grand jury proceedings that her family had been warned not to vote in the November election.66

Finally, Mrs. Mallard pointed to two incidents that had occurred recently in the area. During the first incident, Mrs. Mallard was driving the Frazer when cars in front of

William Carter, recognized three of the cars that were blocking the road. (Mitchell to Walter White, December 2, 1948, Papers of the NAACP, Part 7, Series A, reel 25).
63 Jones interview, October 28, 2011. Eugene Jones, who lived near the Mallards in 1946 stated that the white farmers in the community despised seeing Mallard in a new car, while the farmers worked the farms driving tractors. (Ibid.).
64 Novotny, This Georgia Rising, 311-12.
65 Redding to White, November 22, 1948.
66 Novotny, This Georgia Rising, 313.
the Providence Baptist Church blocked the path to the Mallards’ home. Mrs. Mallard began honking her horn. A woman exited the church and moved the car. According to Mrs. Mallard, her husband was blamed for the incident even though he was at home. “They started talking awful about my husband and said he ought to be lynched for ‘letting me blow the horn,’” she reported. In a second incident, Mrs. Mallard recalled asking a white farmer, William L. Howell, to get off of her lawn. Howell was later charged and tried for Robert Mallard’s murder.

The Next Few Days

After the killing, Mrs. Mallard, her children and the two cousins fled to Savannah. They were all “so scared,” Mrs. Mallard reported. Over the next few days, they traveled between Savannah, Lyons and Jacksonville, Florida. Mrs. Mallard and her family stopped at her house in Lyons to pick up some papers, but left quickly because they “thought they would be next.” Later, Mrs. Mallard stated that she did not identify the killers earlier because she was afraid they would come after her. Robert Mallard’s family scrambled to get information about the murder. In a letter dated November 22, 1948, Mallard’s brother, Benjamin F. Mallard, who then lived in

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68 Ibid.
71 Scott, “Lynch Wrong Woman To Hush Amy Mallard,” 1.
72 Novotny, *This Georgia Rising*, 310.
74 Ibid.
75 Ibid.
76 “Terrified Woman Names Lyons Men,” 12.
California, wrote to the NAACP that the Ku Klux Klan had killed his brother, and asked what legal steps he should follow.  

Indeed, the NAACP quickly learned about the killing. In a letter dated November 22, 1948, Theodore L. Redding, president of the Jacksonville, Florida branch of the NAACP alerted Walter White, executive secretary of the national branch of the NAACP, about Mallard’s death. Redding asked White to publicize the case and help in bringing a federal investigation.

The newspapers, however, were late to break the story. Thomas Johnson, a Macon attorney, provided the initial tip to Lincoln Burkett of the *Macon News*. Burkett then got a statement from Toombs County Sheriff R.E. Gray, which the reporter disseminated to the Associated Press. Various newspapers published articles regarding the killing four days after the incident. An article ran in the *Atlanta Constitution* offering a $500 reward to be paid upon the arrest and conviction of Mallard’s killers. The reward money was reportedly offered by a “wool hat man from South Carolina” and given to Ralph McGill, editor of the *Atlanta Constitution*.

### IV. OFFICIALS’ RESPONSE

“*I think the Ku Klux Klan has been wrongfully accused in this case.*”

GBI Lieutenant W. E. McDuffie.

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78 Redding to White, November 22, 1948.
79 Ibid.
81 Ibid.
83 Ibid.
Despite the fact that Frank Brinson immediately contacted local authorities about the killing, it was not reported by the Toombs County sheriff’s office until journalists questioned Toombs County Sheriff R.E. Gray. The Chicago Defender reported that officials made no effort to apprehend Mallard’s killers during the days following the murder.85

Quoting Sheriff Gray, the Savannah Morning News reported that witnesses told the lawman that Mallard was killed by a group of white men wearing some “white stuff.”86 According to Gray, witnesses told him that the men had fired a shot from one of the blockaded cars, severing an artery in Mallard’s heart, killing him.87 Gray stated there were tire tracks at the scene of the crime, but little other evidence.88 According to the Savannah Morning News, Gray declared he did not put much credence in the witnesses’ story.89 He described Mallard as a “biggity negro” with whom “he had trouble before.”90 Sheriff R.E. Gray’s statements were based on interviews from “Negro witnesses,” including Mrs. Mallard.91

The next time the sheriff publicly commented on the case, he was completely dismissive of Mrs. Mallard’s story. On November 25, 1948, the Savannah Morning News reported that Gray said that earlier reports of the shooting were in error.92 “We don’t know who shot him,” he said. “There were tire marks on the spot but we have

85 “Sheriff Discounts Story of Slaying,” 1.
86 “Negro Slaying Spurs Inquiry In Georgia,” 42. See also “‘Break’ Promised in Slaying Case,” Savannah Morning News, November 29, 1948, 1.
87 “Sheriff Discounts Story of Slaying,” 1.
88 “Negro Slaying Spurs Inquiry In Georgia,” 42.
89 Ibid.
90 “Reward Offered in Lyons Death.” See also “Five Decoys Surrender in Mallard Lynching Case,” 1.
91 “Negro Slaying Spurs Inquiry In Georgia,” 42. See also “‘Break’ Promised in Slaying Case,” 1.
92 “Sheriff Discounts Story of Slaying,” 1.
almost no other evidence.”93 Gray stated that, “the witnesses have not at all been cooperative.”94 The *News* reported: “Sheriff Gray said little excitement was manifested in the case until newspaper stories appeared. There was no racial tension in the county, he said, and expressed surprise that the slaying was attracting such widespread attention.”95 Other media reports quoted Gray as saying, “[t]his Negro was a bad negro, as I have had dealings with him. I further know that this Negro was hated by all who knew him.”96

On November 24, 1948, once the story became national news, Governor Talmadge ordered an investigation from the GBI and the State Highway Patrol.97 Imperial Wizard Samuel Green proclaimed that the Ku Klux Klan would investigate the case as well.98

The NAACP doubted that Georgia would investigate the case thoroughly. In a November 26, 1948 memorandum, an NAACP official wrote that Macon attorney Thomas Johnson and reporter Lincoln Burkett had both concluded that, “there was a great deal of covering up going on in this case and that the Georgia Bureau of Investigation would not uncover the facts.”99 In a letter on this case dated December 27, 1948, special counsel to the NAACP Thurgood Marshall wrote, “[a]s to Governor Talmadge, the latest evidence of his ‘sincerity’ concerning Negroes is his proposal to disenfranchise them by

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93 Ibid.
94 Ibid.
95 Ibid., 5.
97 “Negro Slaying Spurs Inquiry In Georgia,” 42. See also “Sheriff Discounts Story of Slaying,” 1.
98 “Negro Slaying Spurs Inquiry In Georgia,” 42.
means of a new registration test admitted by him to be for the purpose of preventing Negroes from voting.”

Mrs. Mallard Arrested and Charged with the Murder

A funeral for Robert Mallard was held on Saturday, November 27, 1948 at Steele’s funeral home in Savannah. Members of the Mallard family explained that there was “too much excitement” to hold the funeral in Toombs County.” Mrs. Mallard’s brother, James C. James, an attorney from Buffalo, New York, arrived at the funeral in the Mallards’ Frazer automobile. Notably, a single bullet hole was visible in the left side of the Frazer automobile windshield.

At the conclusion of the funeral, agents from the GBI arrived, including Lieutenant W. E. McDuffie and two Savannah. Shockingly, the agents arrested Mrs. Mallard at the funeral and charged her with her husband’s murder. The officers directed James to drive Mrs. Mallard to the Savannah police headquarters. At headquarters, when asked by a reporter if she wanted to make a statement, Mrs. Mallard cried, “I want to tell the world he was killed by the hooded Ku Klux Klan. I want to tell the world because he worked so hard for me.”

101 Banks, “Slain Negro’s Widow Seized,” 22. Robert was to be buried in Griffin, Georgia, the birthplace of his mother. (Ibid.)
102 Ibid.
103 Ibid.
104 Ibid.
105 Ibid.
106 Ibid.
107 Ibid.
108 Ibid., 9.
Lieutenant McDuffie abandoned his plans to interrogate Mrs. Mallard in Savannah and decided to take her back to Lyons for questioning. Mrs. Mallard pleaded with McDuffie not to take her to Lyons for fear that the Klan would “get [her] too.” GBI agents drove Mrs. Mallard from Savannah to Lyons, where she was held by Toombs County Sheriff Gray. Frank Brinson, the white farmer who arrived at the scene of the killing, and Mrs. Mallard’s two young cousins, William Carter, and Angelina Carter, were also arrested. GBI investigators reported that, upon searching the Frazer at the time of her arrest, they found a .32 caliber nickel-plated revolver under the front seat of the Mallards’ car with all chambers loaded. Mrs. Mallard claimed that she put the gun in the car after the murder.

After being held by the Toombs County Sheriff for nine hours, Mrs. Mallard was released to Ellis Pope, the only lawyer in Lyons willing to represent her at that time. Although she was held on a murder charge, she was not required to make bond. Friends drove her to Reidsville where she was to take a bus back to Savannah. Before boarding the bus, she became scared and hid overnight in the woods. Mrs. Mallard explained: “a white lawyer who was supposed to be helping me kept insisting that I take

109 Ibid.
110 Ibid.
111 Novotny, This Georgia Rising, 310.
112 “Jail Wife of Mob Victim In Frame-Up,” 1. See also “Widow Held in Killing,” 23. According to Amy, “the same policeman who hauled me around is the same man who shot a Negro down for killing a hog since my husband was lynched.” (Dixon, “Hard Luck Dogs Trailing Amy Mallard’s Family,” 1). It is unclear which policeman she was referring to in this statement.
114 Ibid.
115 “Threats Keep Widow Away From Funeral,” 1.
116 “‘Break’ Promised in Slaying Case,” 1.
118 Ibid.
the one o’clock bus to Savannah. But I thought it was a trap and they were planning to take me to the Klan.”119

In the three days following Mrs. Mallard’s arrest, state and local officials released a revealing string of reports. On November 28, upon Mrs. Mallard’s release, GBI Lieutenant W.E. McDuffie stated, “I think the Ku Klux Klan has been wrongfully accused in this case.”120 Meanwhile, Toombs County Sheriff Gray provided Imperial Wizard Samuel Green of the Ku Klux Klan with a statement exculpating the Klan from the Mallard killing.121 In the signed statement, Gray, GBI Sergeant J.W. Robertson, and the Lyons Police Chief, all expressed the “belief” that “the KKK had no part in killing this mean Negro.”122 Included in the report was Gray’s statement that “I understood the Negro was a mean, bad man.”123 That Sheriff Gray issued a statement directly through the Klan suggests that there was a strong link between Mallard’s killing, the Klan and Gray.

Governor Talmadge stated that he wanted “the guilty parties apprehended, no matter who they are.”124 On November 29, Talmadge ordered the Director of Public Safety and GBI Captain Delmar Jones to investigate the case, demanding that the killers be arrested.125 Also on November 29, Klan member and Atlanta Policeman, “Itchy

119 Scott, “Lynch Wrong Woman To Hush Amy Mallard,” 1. Mrs. Mallard later stated to the Chicago Defender that a woman who fit her description had been taken from the bus on November 27, the night Mrs. Mallard was supposed to take the bus, and was beaten and killed. Mrs. Mallard said that the perpetrators had intended to kill her. (Ibid.). This researcher has been unable to corroborate Mrs. Mallard’s account through any newspaper articles. (Ibid.).
120 “Widow Held in Killing,” 23.
122 Patterson, We Charge Genocide, 214.
123 “Non-Sectarian Anti-Nazi League,” memorandum, Papers of the NAACP.
“Trigger Finger” Nash, stated that Governor Talmadge had given the GBI orders “not to believe everything the niggers tell them” about Mallard’s killing.\textsuperscript{126}

Strangely, no state or local official offered an explanation for Mrs. Mallard’s arrest and release. Talmadge stated that he did not find Mrs. Mallard’s abrupt release unusual\textsuperscript{127} and that any information regarding Mrs. Mallard’s arrest would have to come directly from Sheriff Gray.\textsuperscript{128} Sheriff Gray was unavailable for comment.\textsuperscript{129} Even after reporters complained that cooperation by law enforcement had been almost nonexistent, Talmadge declined to speak specifics, stating that the investigation of such matters was comparable to a “military secret.”\textsuperscript{130} The Governor had “clamped a virtual news blackout on the case.”\textsuperscript{131}

In his report, Talmadge also remarked, significantly, “I don’t want any statements being issued through the Ku Klux Klan or any other organization like that.”\textsuperscript{132} This remark is important in two respects. First, it explicitly condemned Sheriff Gray for issuing a statement through the Ku Klux Klan, suggesting a rift between state and local authorities. Second, in light of Talmadge’s public association with the Klan, his criticism of the Klan statement about the Mallard murder suggests that he sought to persuade the public that his administration was conducting a genuine investigation. One possible reason why Talmadge responded to the Klan statement was that he was “under pressure from his political associates, who s[aw] i[n] the Mallard lynching another blow to their

\textsuperscript{126} Patterson, \textit{We Charge Genocide}, 214.
\textsuperscript{127} Talmadge Demands Killers Be Arrested,” 22.
\textsuperscript{128} “‘Break’ Promised in Slaying Case,” 1.
\textsuperscript{129} “Slain Negro’s Widow Released in Georgia,” 9.
\textsuperscript{130} Talmadge Demands Killers Be Arrested,” 22.
\textsuperscript{131} “‘Break’ Promised in Slaying Case,” 1.
\textsuperscript{132} Talmadge Demands Killers Be Arrested,” 22.
battle to defeat federal anti-lynch and other civil rights legislation.”

If the Mallard case was a blow to Talmadge’s anti-civil rights battle, it was also an opportunity for those seeking to advance civil rights legislation.

V. NAACP INVOLVEMENT

“Mr. Goldwasser, who landed in the case with both feet in the interests in ‘good-will and justice’ . . . said that he was acting as an individual and representing no one.”

Three distinct strategies defined the NAACP’s involvement in the case— that of the national office, A.T. Walden and Joseph Goldwasser.

The national office, with special counsel Thurgood Marshall at the forefront, assumed immediate control of the case, contacting Mallard’s family and insisting that the federal government intervene. All legal matters in the case were delegated from the national office to Georgia attorney Austin Thomas (“A.T.”) Walden, one of the few African-American lawyers in the state. Walden, who had once been the president of the Atlanta branch of the NAACP, was Marshall’s “man” in Atlanta. Surprisingly, neither Walden nor the national office thoroughly investigated the Mallard killing.

However, a businessman from Cleveland, Ohio decided to launch his own investigation.

Joseph Goldwasser

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133 “Five Decoys Surrender in Mallard Lynching Case,” 1.
134 “Georgia to Guard Slain Man’s Wife,” 30.
Joseph Goldwasser, president of Peerless Department Stores in Cleveland, was a member of the executive committee of the Cleveland branch of the NAACP. After reading about the Mallard’s slaying, he took a plane to Georgia, arriving on November 30, 1948. Goldwasser stated that he got involved in the case in the interests of “good will” and “justice” and that he was acting as an individual and representing no one.

The NAACP was skeptical, and nervous, about Goldwasser’s participation. In a letter to Thurgood Marshall, Nathan K. Christopher, president of NAACP, Cleveland Branch said, “Mr. Goldwasser was acting independently and individually on his own, the Cleveland Branch did not attempt to grant him any authority whatsoever, i.e., a power it does not possess.” Marshall wrote back to Christopher: “I made it absolutely clear [to Goldwasser] that we would not give approval to any action on a legal matter in Georgia except on the recommendation of Colonel Walden . . . I do say in all confidence that that type of action by Mr. Goldwasser can do more harm than good unless it is directed by [the national] office.” Walden agreed and told Goldwasser, on his arrival to Georgia, that he “didn’t think it would be helpful to the situation for an outsider to openly intervene.”

Goldwasser became a critical figure in the case. In an article published in The Baltimore Afro-American, Goldwasser revealed the details of his journey to Lyons. Goldwasser stated that in order to investigate the murder, he disguised himself as a

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137 “Clevelander Reveals Lynch Probe Details,” The Baltimore Afro-American, March 1, 1941, 6.
138 Ibid.
139 “Georgia to Guard Slain Man’s Wife,” 30.
140 Christopher to Walden, December 4, 1948, Papers of the NAACP, Part 7, Series A, reel 25.
142 Walden to Christopher, December 7, 1948, Papers of the NAACP, Part 7, Series A, reel 25.
farmer. He then traveled to Toombs County on foot, “‘thumbing’ rides with farmers who passed in wagons.”

Throughout his journey, whenever Goldwasser mentioned Mallard’s name, he was told, “‘whatever happened to him was what he deserved.’”

Goldwasser, still in costume, visited the home of William Howell, the man Mrs. Mallard accused of shooting her husband, and told Howell that he was a farmer in the Vidalia area. When Howell asked, “Who’re you with?” Goldwasser replied, “Vidalia 313.” Howell then stated that the killing of Mallard “could’ve been a bigger party.”

Howell told Goldwasser there were about 40 men in the lynching party. Goldwasser claimed that Roderick Clifton later made a similar admission.

Goldwasser presented his findings to Governor Talmadge. According to Goldwasser, “[Talmadge] stated that there was nothing he could do about it; that he had been elected on a white supremacy platform and some day planned to run for the senate.” “If I touch this case I am through,” Goldwasser reported Talmadge to have said.

Goldwasser stated that it was only after he threatened to turn his information

143 “Clevelander Reveals Lynch Probe Details,” 6.
144 Ibid.
145 Ibid.
146 Ibid.
147 Ibid.
148 Ibid.
149 Ibid.
150 Ibid.
151 Ibid.
152 Ibid.
153 Ibid.
154 Ibid.
over to the Federal Bureau of Investigation (FBI) that state authorities arrested suspects for the killing.  

**A.T Walden**

Although Thurgood Marshall ceded the NAACP’s legal interests in the case to A.T. Walden, Walden merely watched the case from afar. Walden played an inconsequential role in securing legal representation for Mrs. Mallard. Mrs. Mallard employed Savannah attorney Aaron Kravitz the day after the murder. Walden suggested, through John R. Mallard, Mallard’s father from Jacksonville, that Kravitz obtain legal help from “another lawyer well known to [the NAACP] as being thoroughly dependable as well as competent,” recommending Macon attorney Thomas Johnson. Kravitz did not follow through and, instead, sought help from a Lyons attorney.

Walden offered two reasons for his limited involvement in securing Mrs. Mallard counsel. First, as he explained in a letter to Marshall before the trial, the fact that Mrs. Mallard had already employed Kravitz limited his ability to provide legal support. Second, Walden wrote, “[w]e did not think it advisable at that time to openly enter the case even if it were possible. We did not want it said that the authorities would have acted but for us. We planned to abide our time and if the law officers did not act, would

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155 Ibid.  
156 Although the national office apparently retained W. W. Larson of Dublin, Georgia about assisting in the prosecution, the extent of his involvement in the case is unclear. (“The Mallard Case,” memorandum,” Papers of the NAACP).  
157 The Georgia Defense Committee had agreed to pay Kravitz $400 to take the case and $400 more if there was a grand jury indictment. (Walden to Marshall, December 8, 1948, Papers of the NAACP, Part 7, Series A, reel 25).  
159 Ibid.  
160 Ibid.
use our efforts to have the widow act, in the meantime letting that situation enure [sic] to the benefit of the Civil Rights movement.”

Hence, it was likely Walden’s overall strategy to abstain from the case. By late 1948, the NAACP campaign for federal anti-lynching legislation was in full throttle and the NAACP argued that the Mallard killing and the subsequent inadequate investigation persuasively demonstrated the need for a national bill. Indeed, Walden stated publicly that Mallard’s killing “is further evidence of the continuing need for a federal anti-lynching law.”

As with Mrs. Mallard’s legal representation, Walden took a hands-off approach to Goldwasser’s involvement. The national office directed Goldwasser to meet with Walden in Georgia. Walden helped Goldwasser contact Mrs. Mallard by introducing him to NAACP leaders in Georgia. However, when they met, Walden told Goldwasser that his involvement would not be helpful and did not provide Goldwasser with any assistance in conducting the investigation.

Again, Walden’s lack of involvement appeared strategic. In a letter from Walden to an official in the national office about a month before the trial, Walden wrote that Goldwasser’s intervention turned out to be “instrumental” to the case, but that, “[w]e were of the opinion, however, that since we could not bring Robert Mallard back to life that it would be a good strategy to use the situation of focusing the attention and interest of the nation upon the existing diabolical situation with the view of giving greater imputus [sic] to the enactment of the Civil Rights Bill. In other words we wanted to

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161 Ibid.
162 “Threats Keep Widow Away From Funeral,” 1.
163 Walden to Christopher, December 7, 1948.
164 Ibid.
make Georgia stew in its own mess. Obviously, we could not publically acknowledge that as our objective.” Walden appeared to be suggesting that if state officials botched the Mallard investigation, it would bolster the NAACP’s campaign for federal anti-lynching legislation.

Walden’s statements suggest that his failure to investigate the killing, assist Goldwasser and offer Mrs. Mallard substantial legal support was not an oversight, but rather a calculated decision. Indeed, this strategy reflected his views on the civil rights movement generally. Walden, who was born in rural Georgia, was intimately familiar with “[t]he ways of white folks in the South—what they would and would not permit blacks to do.” As such, he carried a “pragmatic civil rights” vision that was “distinct from the more confrontational approach of the lawyers in the NAACP’s National Office, such as Thurgood Marshall.” Given his “pragmatic” vision, his stance on the Mallard case is unsurprising.

The National Office

With legal control of the case in the hands of Walden, the national office focused its efforts more broadly, using the case to support its campaign for an anti-lynching bill and pressuring the federal government to intervene. A press release issued by the NAACP reported that Thurgood Marshall appealed for a federal investigation and

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165 Ibid., emphasis added.
166 Tomiko Brown-Nagin, Courage to Dissent, 27.
168 Two things are important to point out. First, it remains an open question whether Walden, had he been more proactive, could have more effectively aided the investigation and prosecution. Second, it is important to note that Walden’s views may not have reflected those of the national office. Nevertheless, as the NAACP’s legal advisor in Georgia, Walden’s influence on the case cannot be understated.
prosecution in a letter to Attorney General Tom Clark, citing the killing of Mallard as well as the murder of Georgian Isaiah Nixon, and the attack upon D.V. Carter. Marshall wrote “[t]hese three incidents of brutality and murder against Negro citizens of Georgia, all occurring within a few weeks of one another and in the same general area, seem to establish a pattern of violence which deserves immediate and vigorous investigation. May we urge your Department to take whatever steps it feels warranted to bring those individuals guilty of these charges to justice.”

In addition to the NAACP, two other civil rights organizations, the Anti-Nazi League and Southern Regional Counsel, also urged the federal government to investigate the Mallard case. James H. Sheldon and Stetson Kennedy of the Anti-Nazi League sent a telegram to Attorney General Tom C. Clark requesting that the United States Department of Justice intervene in the case. The League charged, “[i]t is clear that the sheriff and other local law enforcement officers in this area of Georgia are functioning as deputies of the Grand Dragon and Exalted Cyclops of the KKK, and not as the responsible custodians of law and orders and protectors of the lives and safety of American citizens.” George S. Mitchell, executive director of Southern Regional Counsel, sent the NAACP’s Henry Lee Moon a memorandum on the Mallard killing, stating, “I have written to the Attorney General suggesting that the case be made one for federal prosecution.”

170 Ibid. In a letter, Walter White assured Robert Mallard’s Uncle, Reverend S.D. Mallard, that the NAACP had demanded that the FBI make a full investigation. White to Mallard, December 9, 1948, Papers of the NAACP, Part 7, Series A, reel 25.
171 “Non-Sectarian Anti-Nazi League,” memorandum, Papers of the NAACP.
172 Ibid.
It is difficult to determine exactly the position of the Justice Department and FBI on the Mallard case.\textsuperscript{174} On January 8, 1949, the \textit{Pittsburgh Courier} reported, “U.S. Hints Action in Ga. Lynch Case.”\textsuperscript{175} According to a Department of Justice spokesman, the Department had “not yet decided” whether it had jurisdiction in the case.\textsuperscript{176} The spokesman said the case was still under investigation by the FBI.\textsuperscript{177} The newspaper hypothesized: “In the event of an acquittal, Attorney General Clark may take jurisdiction under Section 51, Title 18 of the U.S. Code. This automatically would transfer the case to the Federal grand jury at Dublin, Ga.”\textsuperscript{178}

There was little reason for optimism that there would be federal intervention. The Mallard case did not immediately lend itself to prosecution under either 18 U.S.C. § 241, because there was no obvious depravation of a federal right, or under 18 U.S.C. § 242, as there was no clear state action. Moreover, by 1948, the FBI was authorized to conduct preliminary investigations into civil rights offenses, but could only launch full-scale investigations upon the Department of Justice clearance.\textsuperscript{179} In addition, the Department of Justice was wary of such cases. Two years before Mallard’s killing, the federal government intervened but failed to obtain an indictment in a highly publicized case where four blacks were murdered by a mob of twenty white men in Monroe, Georgia.\textsuperscript{180}

A Department of Justice official, speaking after the Monroe case stated, “[i]n the future reported violations of Sections 241 and 242 . . . should be very carefully screened before

\textsuperscript{174} The FBI file on the Mallard case is apparently no longer available, as this researcher has submitted numerous requests to the FBI for records under the Freedom of Information Act.


\textsuperscript{176} Ibid.

\textsuperscript{177} Ibid.

\textsuperscript{178} Ibid. Section 51, Title 18 was the precursor of 18 USC 241.


\textsuperscript{180} Ibid., 620.
requesting the Federal Bureau of Investigation for an investigation. It is believed that many unnecessary investigations, costing considerable money, have been made in the past." 181 FBI Director J. Edgar Hoover agreed, stating that the federal statutes were “inadequate weapons for efficient enforcement” and that it was a mistake to investigate so many civil rights cases. 182 Once the FBI and Department of Justice were publicized as entering a case, Hoover argued, they were charged in the minds of the public with the responsibility of obtaining a conviction, a responsibility that, he thought, should ultimately rest with the states. 183

VI. “JUSTICE”

“[Amy Mallard] yelled, ‘Oh Lawdy, Oh Murder. They killed him.’ She got down on her knees, screamed, ‘I see ’em. I see ’em. Oh Lord-why did they murder him?’ A lot of people in the audience couldn’t help laughing.” 184

Surrender and Swearing of Warrants

On December 3, 1948, after Goldwasser made his report to Governor Talmadge, the governor pledged that he would protect Mrs. Mallard if she returned to Toombs County to swear out warrants, “by calling out the National Guard if necessary.” 185 Talmadge stated that the GBI could make arrests only in traffic violations, unless asked to do so by a sheriff, solicitor general or judge. 186 He said that he would send the

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181 Ibid., 625. Indeed, on December 11, 1948, the Chicago Defender made this point, expressing skepticism of federal action in the Mallard case: “recall the fact that J. Edgar Hoover’s representatives were also sent to investigate the quadruple lynching at Monroe, Ga., in 1945, but failed to break the case, or reveal the name of a single participant in the mass mob murders.” (“Five Decoys Surrender in Mallard Lynching Case,” 1).
183 Ibid.
184 “Georgia: Justice in Toombs County,” TIME, January 24, 1949.
185 “Georgia to Guard Slain Man’s Wife: Talmadge to Call Troops, If Needed, Should She Return to County to Obtain Warrants,” New York Times, December 4, 1948, 30.
186 Ibid.
evidence to the Toombs County solicitor general and Sheriff R.E. Gray of Toombs County. Talmadge added: “if this had happened in [Goldwasser’s] home town of Cleveland, it would have been forgotten in a day. It is unfortunate that it happened in Georgia and has been seized upon by a hostile press in its campaign to destroy states’ rights not only in Georgia, but in all of the forty-eight states, through the civil rights program.” Although Talmadge was disgruntled, Goldwasser’s threat to take the case to the Federal authorities appeared to have worked.

Indeed, the next day, on December 4, 1948, five white men surrendered and were held under suspicion in the ambushing of Robert Mallard. Those identified were J. Roderick Clifton, 36; William Lamar Howell, 24; James Spivey, 24; Herschel Sikes, 34; and Barney Sikes, 34. Their lawyer, T. Ross Sharpe stated, “we want and invite an investigation by the grand jury.”

After the news broke that the men would surrender, a series of fires wiped out the Lyons, Georgia black business area. Among the property destroyed was a large nightclub owned by a black man, Moses “Baby” Brazil. Sheriff Gray stated, “[a]ll we can say now is that this fire started and got out of control before we had a chance to learn the cause.” One black resident reported, “we’re carrying the protection we’ll need just

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187 Ibid.
188 Ibid.
189 Ibid.
190 Ibid.
191 Ibid.
192 Ibid.
193 Ibid.
194 Ibid.
as we were taught in the war,” presumably referring to weapons. While the perpetrators were unknown, few questioned that the fires were meant to intimidate the black Lyons community in light of the Mallard case.

Amidst this tension, on December 8, 1948, Mrs. Mallard returned to Lyons to swear out a warrant against William Howell. An editorial in the New York Star argued that, “Sheriff R.E. Gray, who has all the evidence needed to swear out a warrant, refuses to do so, or to get a special grand jury called. He wants Mrs. Mallard to swear out the warrant.” At the Toombs County Courthouse, Mrs. Mallard, “with a trembling hand,” swore out an affidavit against Toombs County farmer William Howell as one of the men in the mob that killed her husband. Howell, who had surrendered himself days earlier, was taken into custody.

Grand Jury Hearing

On December 10, 1948, a special grand jury session was held at Toombs County Superior Court, which was crowded to capacity. After hearing an account of the slaying from Mrs. Mallard, the grand jury indicted William Howell and Roderick Clifton. Mrs. Mallard testified that she recognized Clifton’s automobile at the scene of the crime and that her family had been threatened if they voted in the November 4, 1948

195 Ibid.
196 Ibid.
197 “The Mallard Case,” memorandum,” Papers of the NAACP.
199 Novotny, This Georgia Rising, 313. The Chicago Defender printed a photo of Amy Mallard signing the warrant, accompanied by her daughter, Doris Byron, Robert’s brother, Benjamin F. Mallard, and E.T. Ellebe, executive secretary of the West Broad Street YMCA in Savannah. (“Two Face Jail in Mallard Lynching,” The Chicago Defender, December 18, 1948, 1).
200 Novotny, This Georgia Rising, 313.
201 Novotny, This Georgia Rising, 313. See Boyack, “U.S. Hints Action in Ga. Lynch Case,” 1.
Ralph McGill, editor of the Atlanta Constitution, testified at the hearing regarding the “reluctance” of the Georgia authorities to bring the murderers to justice. Judge Robert H. Humphrey announced the two would be tried at a special session of Superior Court on January 11, 1949. No charges were brought against any of the other men who had also been held.

From the indictment, an implication could be drawn that Georgia law enforcement was handling the case properly. However, not everybody was convinced. In a letter to Mallard’s brother, Benjamin F. Mallard, Thurgood Marshall stated: “[t]he grand jury indicted two men last Friday and we are informed that they will be brought to trial. However, I do not have much hopes of conviction in the Georgia courts. In the meantime, we are still pressing the U.S. Department of Justice. You may rest assured that this Association is doing everything possible to bring the guilty parties to justice.”

Doubts whether the case would be aggressively prosecuted and problems connected with the legal representation of Mrs. Mallard provided further concern about the Georgia prosecution. In a memorandum to Roy Wilkins and Thurgood Marshall, Gloster B. Current of the NAACP stated, “[f]rom a legal standpoint, the trial is set for January 11th but [Mrs. Mallard] has not heard from any of the lawyers including Colonel Walden or Kravitz and she is supposed to return to Lyons [from Savannah] for the trial. To her knowledge, no one has been subpoenaed. It would appear that our State Conference

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203 Novotny, *This Georgia Rising*, 313.
204 “2 Whites Indicted in Georgia Killing,” 32.
205 Ibid.
206 Ibid.
Representatives have not kept in close touch with Mrs. Mallard and this situation could reflect unfavorably upon us since we have publicized our interests."\(^{208}\)

**Trial Proceedings**

On January 11, 1949 the trial of Howell and Clifton began.\(^{209}\) Joseph Goldwasser flew down from Cleveland to support Mrs. Mallard. The national press was also present.\(^{210}\) A compelling *LIFE* magazine photograph depicting Mrs. Mallard, her children, John and Doris, and Joseph Goldwasser walking towards the Toombs County Courthouse vividly brought the case to a national audience.

Roderick Clifton had obtained a severance of trial, but the trial of William Howell was set to begin.\(^{211}\) At the commencement of trial, Toombs County Solicitor W.L. Lanier announced that his only evidence would be that of Mrs. Mallard.\(^{212}\) Mrs. Mallard testified that her husband and their family turned off on a side road leading to their home and were stopped by a gang of “about twenty men, wearing white stuff and all carrying pistols.”\(^{213}\) She testified that she recognized William L. Howell, one of the men in the mob, and that she recognized Roderick Clifton’s automobile.\(^{214}\) She further testified that


\(^{209}\) Novotny, *This Georgia Rising*, 313.


\(^{211}\) Popham, “Georgians Freed in Negro’s Killing,” 1.

\(^{212}\) Novotny, *This Georgia Rising*, 313.

\(^{213}\) Popham, “Georgians Freed in Negro’s Killing,” 1.

\(^{214}\) Novotny, *This Georgia Rising*, 313. Amy would later state in an interview that she believed it was Roderick Clifton’s gun that killed Robert and that Clifton had walked around town after the killing, boasting, “we killed a duck last night,” in reference to Robert Mallard. (“The Mallard Case,” memorandum, *Papers of the NAACP*, Part 7, Series A, reel 27.) In a separate interview, Amy stated: “the man who fired the fatal shot was ‘real short and real fair’ but [Amy] did not recognize him,” and that the men were dressed in white waist-length capes and pieces of cloth around, but not over, their faces. She stated further that one of the two
after words were exchanged, shots were fired and her husband was shot sitting behind the wheel of the family’s automobile.\(^{215}\)

During her testimony, Mrs. Mallard became hysterical and fell from the witness chair to the floor, kneeling with her hands in the air. She exclaimed: “It was so horrible! Why did they kill him? He was so good to us . . . I’m so sick.” Judge Robert H. Humphrey ordered a recess, but Mrs. Mallard continued, “I can’t stand it . . . no one understands what this means to me.”\(^{216}\) As Mrs. Mallard broke down, *TIME* reported, “[a] lot of people in the audience couldn’t help laughing.”\(^{217}\)

Mrs. Mallard took the stand after she returned from the recess and denied having a gun in her possession at the time of the incident and denied that her husband owed a pistol.\(^{218}\) Mrs. Mallard’s two young cousins also testified.\(^{219}\) They described the incident but did not identify any members of the gang.\(^{220}\)

Howell’s attorneys presented his defense through alibi, good-character testimony and implied impeachment of Mrs. Mallard.\(^{221}\) Howell testified that he spent the night with friends and his friends corroborated this story.\(^{222}\) The defense sought to imply that Mrs. Mallard had a pistol that night.\(^{223}\) Defense lawyers further claimed that “outside” men was “always snooping around our land and one day my husband had to ask him out of the field. I think he was after our property.” (“Terrified Woman Names Lyons Men,” 12)

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\(^{215}\) Novotny, *This Georgia Rising*, 313.


\(^{218}\) Ratcliffe, “Mallard Widow Is Crucified at KKK Mob Trial,” 1.

\(^{219}\) Popham, “Georgians Freed in Negro’s Killing,” 1.

\(^{220}\) Ibid.

\(^{221}\) Ibid.

\(^{222}\) Ratcliffe, “Mallard Widow Is Crucified at KKK Mob Trial,” 1.

\(^{223}\) Popham, “Georgians Freed in Negro’s Killing,” 1.
influences were trying to control the verdict, including Ralph McGill, whom they called the “enemy.”

Howell’s defense attorney T. Ross Sharpe employed two crucial legal maneuvers during the trial. First, just as the trial opened, he subpoenaed Joseph Goldwasser as a witness. The move enabled the defense to exclude Goldwasser, who had planned to seek a change of venue for the trial, from the courtroom during the trial. Second, Sharpe called two jurors to serve as character witnesses in the case. The jurors testified that they would not believe, even under oath, the chief prosecution witness, Mrs. Mallard. The jurors further claimed that Mrs. Mallard had a “bad reputation.” The state prosecutor did not object to juror testimony.

The trial was speedy, lasting only seven hours. After only twenty-five minutes of deliberation, the jury acquitted 32 year-old William L. Howell and the courthouse cheered in jubilation. The county attorney moved to nolle prosse the indictment against Roderick Clifton since he asserted that the evidence against Clifton was weaker than that against Howell. Judge Humphrey granted the motion despite an objection.

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224 Ibid.
225 “Two Toombs Men Freed in Mallard Case,” Atlanta Constitution, January 12, 1949, 1.
226 Ibid. It remains unclear why Goldwasser, who was not an attorney, was seeking a change of venue, and why Goldwasser’s removal prevented Mrs. Mallard’s attorneys from bringing such a motion.
227 Popham, “Georgians Freed in Negro’s Killing,” 1. See section VI for a detailed legal analysis of this procedure.
228 “Two Toombs Men Freed in Mallard Case,” 1.
231 “Two Toombs Men Freed in Mallard Case,” 1.
232 Ibid.
from defense counsel Sharpe, who wanted an acquittal verdict in the Clifton case as well.234

Indeed, media reports make clear that Toombs County Courthouse was hostile ground for Mrs. Mallard and Goldwasser. Sheriff Gray wore his hat for the entire trial, prompting a Pittsburgh Courier reporter to state: “[t]he sheriff must be a very important man around here.”235 The Pittsburgh Courier reporter also stated that, “[f]rom the courthouse peanut gallery . . . it appeared that Mrs. Amy Mallard . . . and Joseph Goldwasser . . . were the defendants.”236 Meanwhile, Goldwasser was described by one member of the audience as a, “disgrace, not only to the Jewish race, but to the Negro race as well.”237 Another member of the audience threatened Goldwasser at the trial: “we’ll kill you before you leave town.”238 After the trial, defense attorney T. Ross Sharpe, said of Goldwasser, “[t]hat roaring lion from Judea is a disgrace to the Jewish race. He wouldn’t even make catfish bait in the Altahama River!”239

Post-Trial

Those following the proceedings, including the black press, NAACP officials and Goldwasser concluded that the trial was a farce. Pittsburgh Courier ran an opinion titled, “Freedom to Murder!” claiming that the trial was “nothing more than an invitation to

234 “Two Toombs Men Freed in Mallard Case,” 1.
235 “Negroes Sat in Gallery, But Not Without Fear,” 5.
236 Ratcliffe, “Mallard Widow Is Crucified at KKK Mob Trial,” 1.
237 Ibid.
238 Ibid.
239 “Georgia: Justice in Toombs County,” TIME, January 24, 1949. Attorney Sharpe was a captivating figure in Toombs County. He was instrumental in bringing electricity to Georgia and wrote a column in the local newspaper, the Lyons Progress titled “Tales of the Altamaha,” which has recently been adapted into a play by the same name. (Tales from the Altamaha, available at: http://www.lyonsga.org/tales-from-the-altamaha/.) Legend has it that Sharpe often stuck a wire through his cigarette and smoked in court. The audience eyes remained transfixed Sharpe as they waited for the ash to fall to the ground, but it never did. It is unclear how the alleged perpetrators, who were farmers, could afford to pay such a well-known attorney. Chess Fountain, Toombs County Clerk of Court, interview by John Warren, October 28, 2011.
commit more crimes” in the state of Georgia. Thurgood Marshall proclaimed that the arrest, indictment and trial were “perfunctory motions” for the sole purpose of averting federal action. In a memorandum to Thurgood Marshall, legal staff member Marian Wynn Perry wrote, “Mr. Goldwasser thinks the United States should come into the case at the present time on that grounds that there has been no real trial in Georgia and consequently, the Federal Government should move.” Constance Baker Motley of the NAACP added: “[w]e will not be able to do anything further with regard to the two men who were acquitted . . . The only hope left now is that Mrs. Mallard may be able to identify other members of the mob.”

Evidence suggests that the attorneys responsible for representing Mrs. Mallard’s interests did not adequately do so. After the trial, Goldwasser urged the NAACP to cease providing money to attorneys Aaron Kravitz and W.W. Larson because they are “not doing anything,” are “scared to death,” and because W.W. Larson is a “faker.” Moreover, Kravitz stated publically that he was “satisfied” with the result of the “over-publicized” case. Kravitz stated that the trial confirmed his belief that the murder was not a Klan killing. Kravitz continued: “I appreciate the Georgia courts after yesterday’s trial. The restraint exercised by the court, the jury and the spectators when Mr. Goldwasser made his grand entry into the court room [sic] shows that our efforts to

246 Ibid.
outmode lynching are having a telling effect. There might not have been a conviction but I am satisfied that there will be few Mallard cases in the future.”

VII. JURORS AS WITNESSES

“a rare and unexpected legal stratagem”

During the trial at Toombs County Courthouse on January 11, 1949, defense attorney Sharpe, in an unusual maneuver, called two jurors to serve as character witnesses in the case. The rule permitting jurors to serve as witnesses dates back to at least the late 1800’s. In Atkins v. State, a criminal case, the Court of Appeals of Georgia addressed the defendant’s claim that “the court, by allowing [] two jurors to testify against him, deprived him of the right, guaranteed by the Constitution of this state, that he should be tried by an impartial jury.” Citing Georgian and English common law and the Georgia civil code, the appellate court held that “there is not the slightest suggestion” that being called as a witnesses would render a juror incompetent or deprive the defendant of a fair and impartial trial. The court stated, “[a]bsurd as this rule may be, it seems to be well founded in the precedents.”

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247 Ibid. In addition to Kravitz’s statements, another oddity concerning Mrs. Mallard’s legal representation was that Ellis Pope, who represented Mrs. Mallard after her arrest and from whom attorney Aaron Kravitz had sought help, represented William Howell at the trial, along with T. Ross Sharpe. (“Mrs. Mallard Testified,” caption, The Savannah Tribune, January 13, 1949, 1).
250 See Savannah, F. & W. Ry. Co. v. Quo, 103 Ga. 125 (1897) (“it is too well settled to admit to discussion that a juror is not incompetent to testify as a witness solely on account of having been impaneled and sworn in the case, if he is otherwise competent”).
252 Ibid.
Significantly, the procedure was permissible at the time of Howell’s trial in 1949. In addition to Georgia precedent, the *Tumlin* Court cited to the Georgia Code of 1933, which states, “[a] juror shall not act on his private knowledge respecting the facts, witnesses, or parties, *unless sworn and examined as a witness in the case.*”

In 1992, the Georgia Supreme Court finally rejected the rule. In *Lively v. State*, the court held that, “while ancient Georgia law countenances witnesses serving as jurors, such practice ‘conflicts with current Georgia law’ prohibiting contacts between jurors and witnesses, requiring the mandatory sequestration of witnesses on request, requiring the mandatory sequestration of jurors in death penalty cases, and prohibiting jury questioning of witnesses.” The court added, “[i]n the future, jurors known by the parties to be prospective witnesses about matters material to the case should be excused to cause on proper motion.”

**VIII. ON THE ROAD**

“[Amy Mallard’s] doing this part of the world a world of good . . . Let’s continue to strike while the iron is hot and continue the fight until results are obtained.”

Eddy Perry, Radio Broadcaster for WVOM Massachusetts.

In 1949, the NAACP announced that Mrs. Mallard would make a tour under the auspices of the NAACP. NAACP Executive Secretary Walter White noted, “the

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254 See *Tumlin v. State*, 88 Ga. App. 713 (1953) (juror competent to serve as witness in criminal trial and doing so does not deprive defendant right of trial by fair and impartial jury).


257 Ibid. Interestingly, the rule set forth in Georgia Code of 1933, § 110-108, that “[a] juror shall not act on his private knowledge respecting the facts, witnesses, or parties, *unless sworn and examined as a witness in the case,*” remains on the books today, codified, verbatim, in Ga. Code Ann., § 17-9-20. However, the rule has apparently run its course. Effective January 1, 2013, O.C.G.A. § 24-6-606, provides, “[a] member of the jury shall not testify as a witness before that jury in the trial of the case in which the juror is sitting.” The state bar comment to the rule states: “this subsection is opposite” to the previous rule. Though already outlawed in practice, the 2013 law will, formally, close the chapter of jurors as witnesses in Georgia trials.

general idea is that the appearance of Mrs. Mallard will be able to stir up some additional sentiment for the enactment of civil rights legislation in the Congress, particularly an anti-lynching bill; stimulate the membership campaigns of our branches and raise additional funds for the National Office for the general campaign for civil rights."260

Joseph Goldwasser traveled with Mrs. Mallard during the tour in some of the larger cities.261

The tour began successfully. “Hear!! The Brutal Facts of Her Husband’s Lynching, by Mrs. Amy Mallard of Lyons, Georgia,” a flyer read in Baltimore, Maryland.262 The next day newspapers reported that 2,800 Baltimoreans attended the event.263 Mrs. Mallard told the crowd: “there’s no law in Georgia. Just dirty men. That trial wasn’t no trial. All white jury; all white lawyers; all white everything.”264 Mrs. Mallard stated, “I’m going to spend the rest of my life fighting for democracy in America.”265 In Washington D.C. 2,500 men and women “jammed” into a church to hear Mrs. Mallard speak.266 Goldwasser stated that, all told, the tour “enlightened many thousands of people.”267

However, the NAACP’s enthusiasm for the tour began fade. A letter from the NAACP to Goldwasser dated April 5, 1949 read, “I am sure that you realize that there is

264 Ibid.
265 Ibid.
no point in continuing the tour when it is costing us money. The response in the Middlewest has been disappointing and . . . we could not gamble on a trip to the Pacific Coast.”

The tour was slated to stop at twenty-four West Coast cities in May 1949. In a subsequent letter to Goldwasser, the NAACP assistant secretary wrote, “[i]n some cities people in the audience got up and walked out . . . [I]f certain factors had not operated, unquestionably it would have benefitted the cause for which we are all working.” A letter from one NAACP official began, “[k]nowing that everyone is sick of the Mallard tour . . .”

As the tour’s success began to waver, so did the relationship between the NAACP on the one hand, and Mrs. Mallard and Goldwasser on the other hand. Mrs. Mallard wrote to the NAACP requesting money “at once.” She stated it was a big mistake for the papers to state that Mallard was a well-to-do salesman, as she was now out of money. Goldwasser tried to keep the peace: “[i]f there are any differences that may arise between you and Mrs. Mallard please call upon me and I am sure that I can settle things peacefully between the NAACP and Mrs. Mallard.”

But the NAACP had had enough of the tour. In a letter, Thurgood Marshall stated, “Mrs. Mallard turned out to be more of a nuisance that anything else. We are convinced that she is completely insincere

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268 “Assistant Secretary” to Goldwasser, April 5, 1949, Papers of the NAACP, Part 7, Series A, reel 26.
270 “Assistant Secretary” to Goldwasser, May 18, 1949, Papers of the NAACP, Part 7, Series A, reel 26.
273 Ibid.
but we are forced to cooperate in such instances regardless.” The NAACP cited numerous misunderstandings between [Mrs. Mallard] and this office. The NAACP sent a letter to Mrs. Mallard on April 5, 1949 informing her that the tour would be terminated, stating that “most of the engagements during March lost money.”

The Mallard Home Burns Down

On July 4, 1949, units of the Ku Klux Klan allegedly burned down the Mallard home in Toombs County. Mrs. Mallard did not learn of this news until October 1949. An informant to the New York Amsterdam News reported that a group of men dressed in Klan garb set the house ablaze. Sheriff Gray was reported as saying, “it was just an accident. That woman hasn’t been back here to look after her property since she left.” Mrs. Mallard also claimed that her $700 bank account in Vidalia had dwindled to $33. Joseph Goldwasser sent a letter to the NAACP on October 22, 1949 to inquire about the incident.

Thurgood Marshall stated that, based on a report from A.T. Walden, the burning was “reputedly of incendiary origin” but that perpetrators had not been located. Marshall stated that until the NAACP received concrete information that it was done purposefully, with racial motivation, the NAACP could not refer the matter to the Justice

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276 “Assistant Secretary” to Amy Mallard, May 11, 1949, Papers of the NAACP, Part 7, Series A, reel 26.
277 Ibid.
279 Ibid.
280 Ibid.
281 Ibid.
In correspondence to Marshall, Walden stated, “there seems to have developed a less sympathetic attitude for the Mallard[s] on the part of our own people in the county.” Attorney Walden went on to state that the Department of Justice would not be of any help either.

IX. CONCLUSION

William A. Fowlkes, managing editor of the African-American *Atlanta Daily World* in the late 1940’s, wrote of Georgia at the time, “it is not so much the sheet wearing, cross-burning, or casket placing activities of the Klan which is so dangerous, but it is the organization of prejudice and hatred and the use of systematized job and economic sanctions which mean strangulation and death for any Negro who dares compete with the supremacy system,” and in particular, the “infiltration of KKK influence and power into police, court, and prison administration.” The Mallard case reflects Fowlke’s assertion. Mallard’s lynching was horrific, but the injustice did not end there. Ducking their responsibilities, authorities failed to investigate the case for days. Instead, they harassed Mrs. Mallard and charged her, without justification, for the murder.

Due in large part to Mrs. Mallard’s bravery, a trial was held. However, there was never much doubt that the twelve white jurors from the Lyons would acquit William Howell. All doubt was removed when two of the jurors testified as character witnesses. The audience’s jubilant response when the verdict was brought in may have been one of Mrs. Mallard’s last memories of Georgia. After the NAACP tour, Mrs. Mallard moved to

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284 Ibid.
286 Ibid.
Buffalo, New York. Before she died, Mrs. Mallard told her son John, who was two years old at the time of the killing, never to return to Toombs County. He never did. Recently, when one of John Mallard’s daughters decided to live in Atlanta, out of concern for her safety, her father advised her that she should not use her last name. Although the immediate reaction was silence, the Mallard case resounds today.

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289 Ibid.
290 Ibid.