

No Statute of Limitations for Murder

The Role of the Media

in the search for Brooke Hart

and the Lynching of His Kidnappers



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Preface

The kidnapping of Brooke Hart in November of 1933 is an infamously brutal chapter in the history of San José. It has been written about by countless passionate local historians and interested students alike. None, of course, compares to the impeccable journalism displayed in Harry Farrell's *Swift Justice*. More than half a century after the kidnapping of young Hart and the lynching of his presumed kidnappers, Farrell captured the fear, destruction, and sheer chaos that engulfed an entire region.

What this study will add to the historiography of these events is an analysis of the role of the media in the resultant lynching of Harold Thurmond and Jack Holmes. Newspapers, the radio, and even the theaters proved to be essential in whipping up the fury that would explode on November 26th. Were it not for the sensationalist thirst of the media, those seventeen days in 1933 would have been dramatically different. Without the daily headlines the public's lust for vengeance perhaps would not have been present. Indeed, as will be discussed, the presumed kidnappers themselves may never have been caught were it not for the extensive publicity of the events that followed the kidnapping.

The integral part played by the media in this tragedy demands its own analysis. From Brooke Hart's kidnapping to the lynching, the media was fundamental in shaping events, including the public cover-up that followed the murder of Thurmond and Holmes. From the moment the crowds began to disperse from St. James Park that night, a code of silence ensued that in large measure persists to this day.

By 11:25 p.m. on the night of November 26, 1933, the Santa Clara County Jail in San Jose, California had been battered open, its sheriff assaulted and suffering from a concussion and a back injury, a deputy was unconscious with a concussion, countless people were being treated for severe burns, and two beaten and tortured men were hanging dead from the limbs of two trees in a downtown public park across the street from the jail. The jail had withstood a siege that had lasted several hours before the angry mob outside had resorted to using a make-shift battering ram to demolish the doors to the jail in their quest to enforce lynch law on the untried, unconvicted, yet confessed kidnappers named Harold Thurmond and Jack Holmes. Seventeen days prior, on the night of Thursday, November 9, at approximately 6 p.m., Thurmond and Holmes had kidnapped twenty two year old Brooke Hart, a local executive and the oldest son of a well known and influential San Jose family. What caused the citizenry of San Jose to turn into a raging, violent mob is a question that would take volumes to answer.

The 1930s were a time of fear and struggle for much of the world. The Great Depression left millions jobless and homeless. Fear of fascism and communism was on the rise. Violent crimes, coupled with economic insecurity left many people living with a great deal of anxiety and fear. Most importantly, for this study, kidnap for ransom, “the cowardly felony” as Harry Farrell describes it in his book, *Swift Justice*, had become a growing and lucrative business.¹ Much of the country was still shocked at the kidnap and murder of Charles Lindberg’s son.² Political corruption, a history of vigilante justice, the pure animalism of human nature, and much more have all been fingered as causes for the violence surrounding the lynching of Holmes and Thurmond. This study will focus in on one particular contribution to the vigilantism that ended the lives of Thurmond and Holmes, the role played by the media.

¹ Harry Farrell, *Swift Justice: Murder and Vengeance in a California Town* (New York: St. Martin’s Press, 1992), 19

² Clyde Arbuckle, *Clyde Arbuckle’s History of San Jose* (San Jose: Memorabilia of San Jose, 1986), 343

As the Hart kidnapping case progressed, newspapers across the nation picked up the story and amplified it. Everyone put their own local twist on the story. Papers in Chicago “found” connections between its own local organized crime and the events unfolding in San Jose. Newspapers across the state of California carried reported sightings of Brooke Hart and of notorious gangsters. Word spread around the world about the kidnapping of Alex Hart’s oldest son. For reasons of time limitations, I have chosen to focus on the local reporting of the events, particularly that of the San Francisco *Examiner* and the San Jose *Mercury Herald*. These two papers were chosen for their prominence in their areas and for the representation of two ends of the journalistic spectrum. The *Examiner*, a Hearst paper, was generally more flamboyant and sensational in its reporting while the *Mercury Herald*, as described by Farrell, was the strongest voice of moderation.³ Farrell’s research, however, is exhaustive to say the least and stands as the primary source of information for this analysis.

Through Farrell’s narrative and news reports contemporary to the kidnapping, a picture of the media develops. As the public’s main source of information on the developments surrounding the disappearance of Brooke Hart, the daily papers throughout the valley strongly shaped the final outcome of those intense days in November. While contributing actual facts to the public information, the news media also created a sense of drama, inflamed the fury of the local citizens, served as a tool of the investigative authorities, and reinforced the air of acceptance and justification for the violence which eventually ensued. Without absolving the participants of their responsibility, this study will look at the contribution of the media in creating that final night of violence.

From the beginning, newspapers reported in a fashion that promoted the drama of the situation. On the night of Brooke’s kidnapping, November 9, two calls were received at the Hart

³ Farrell, 186

residence, both told of Brooke's kidnapping and demanded the police not be involved. In addition, the second call set the ransom at \$40,000. It was, however, too late to prevent police involvement. The Harts had already contacted the San Jose Chief of Police, John Black, who had also notified Santa Clara County Sheriff William Emig and Special Agent Reed Vetterli of Department of Justice (later to become the FBI). Alex Hart, however, still wished to keep things as quiet as possible, in an effort to not anger his son's kidnappers. According to Farrell, Alex Hart asked the reporters of local papers to not mention any calls from the kidnappers nor the ransom demand.⁴ Most papers complied. The San Jose *Mercury Herald*, on the other hand, did not. On its front page the *Herald* ran a large headline which read "Brooke Hart, Son Of Wealthy Merchant, Kidnapped, \$40,000 Ransom Demand Is Received." This headline was run right above a picture entitled "Kidnap Victim and Father."⁵ Drama was definitely at the core of this article. A simple relating of the facts would have been very thin material to work with. The known information was sketchy at best. Brooke was missing, two calls had been received, and his roadster had been found abandoned outside of town. Yet even the "moderate" *Herald* could not resist the urge to spice up the story with touching pictures and glowing testimonials of Brooke Hart's character. For the *Examiner*, however, this was small and modest sensationalism. The *Herald* had simply relayed facts which Alex Hart had wished to remain silent. What the *Examiner* would print on Saturday, November 11, would outrage Alex Hart even further.

Friday, November 10, passed with no communications from the kidnappers and only one major development which broke too late for the Saturday morning printing. With no real sensational news in the case, the *Examiner* relied on the "vivid imagination" of one of its writers

⁴ Ibid, 35

⁵ "Kidnap Victim and Father," *San Jose Mercury Herald*, 10 November 1933

to concoct a story which, according to Farrell, completely lacked in truth.⁶ On the front page was printed “Hart Kidnappers Send Three Warnings; Girls Deliver \$40,000 Mystery Notes; ‘We Mean Business,’ Gang Declares.”⁷ Along with the wholesale invention of a story, the *Examiner* was playing on a theme growing in popularity throughout the papers in the United States. By referring to a “gang” of kidnappers, the article was building on the theory that a group of professional kidnappers was responsible for Brooke Hart’s disappearance. This theory was pure conjecture with no facts with which to back it. Alex Hart would later make a statement calling the *Examiner*’s headline and accompanying article “a damned lie.”⁸ This statement was a part of a brief news conference at the Hart residence concocted by Alex Hart and Agent Vetterli.

This conference would be the first time the media was to be unwittingly used as a tool of the investigation. Fearful of angering the kidnappers, Alex Hart and Agent Vetterli created a ruse to relax those responsible for Brooke Hart’s disappearance. Prior to Alex Hart’s statement, the patrol cars belonging to police and sheriff department officers were very visible in departing from the Hart residence. This was the first step. The second step was to falsely inform the media that the federal government was “withdrawing all agents” from the Hart mansion.⁹ The gathered reporters had no idea that federal agents had no intention of abandoning the Hart residence. Their first action in coming on the case had been to install two private lines in a servant’s quarters in the back of the Hart mansion. There they had stationed an agent who would monitor all calls to the Hart’s during their long ordeal. The *Herald*, however, had no inkling of this and would report that “Police Clear Way for Hart Kidnappers to Contact Family.”¹⁰

⁶ Farrell, 41-42

⁷ “Hart Kidnappers send Three Warnings; Girls Deliver \$40,000 Mystery Notes; ‘We Mean Business,’ Gang Declares,” *San Francisco Examiner*, 11 November 1933

⁸ Farrell, 43

⁹ Ibid

¹⁰ “Police Clear Way for Hart Kidnappers to Contact Family,” *San Jose Mercury Herald*, 15 November 1933

Regardless of whether or not the article had any affect upon the kidnappers, Vetterli and Alex Hart had successfully used the media for their own means. This would not be the only time the Hart's would utilize the papers.

On Monday morning, November 13, a ransom letter arrived at the Hart store and was brought to the Hart home. The letter was the first communication from Brooke Hart's abductors since the two phone calls on Thursday evening. In the letter was another demand for \$40,000 in ransom money as well as strange directions telling how to make the drop.¹¹ What Alex Hart and the investigators lacked, however, was proof that they were dealing with the actual kidnappers and not some unscrupulous opportunist. To send a "good faith" message to his son's abductors, Alex Hart gave a second brief press conference that night at 8 p.m.¹² This time the result was a printed transcript in local papers of precisely what Alex Hart had said.

To the Kidnappers of Brooke L. Hart

We are anxious for the return of our son Brooke. We desire to negotiate for his return personally or through any intermediary who might be selected. When contact is made we will of course want evidence to prove that Brooke is held by you. All negotiations will be considered confidential by us and we will allow no interference from any outside source.

Signed:

Alex J. Hart

(Mrs. Alex J.) Nettie B. Hart¹³

Alex Hart had no intention of keeping negotiations "confidential" nor of preventing outside interference from the authorities, yet the papers had again unknowingly fell in line with his plan. Although Agent Vetterli's misinformation campaign most likely had no effect on Thurmond and Holmes, the use of the media played a significant role in the strategies employed in the search for Brooke Hart and his captors.

¹¹ Farrell, 55

¹² Farrell, 59

¹³ "To The Kidnappers of Brooke L. Hart," *San Jose Mercury Herald*, 14 November 1933

Both conferences gave journalists some meat for their stories. They had been searching high and low for anything to print, regardless of how unreliable the source. For a story, many would not stop at inventing “facts” or leaping to conclusions. Still clinging to the unfounded theory that organized crime was involved in Brooke Hart’s disappearance, the San Francisco *Chronicle* connected several outlandish stories together. William Pabst, president of the San Jose National Bank, took a trip to Los Angeles with Victor Chargin, a lawyer friend of Alex Hart. By linking false sightings of Brooke Hart in Los Angeles and a reported sighting of members of the “Klutas Gang” in Southern California with Chargin and Pabst’s trip south, the *Chronicle* went on a “conjectural spree” and insisted that the two men were setting out to arrange a ransom exchange.¹⁴ The trip, in fact, was for business and entirely independent of the Hart case. The *Chronicle*, however, was not alone in the Klutas theory. The *Herald* kept the theory alive by reporting: “Klutas Gang Suspected in Disappearance of Hart Youth... ‘Handsome Jack,’ Leader of Educated Racketeers, Reported in California.”¹⁵ Such boldfaced false reporting and unfounded conjectures contributed to the confusion, the sensationalism, and the fear experienced by the San Jose community. Countless letters and phone calls were received by the Harts from people with information on Brooke’s disappearance. Some were people genuinely doing their best to offer help. Others were cruel opportunists playing off of information disseminated by the media and effectively muddying the investigation. The public, like the media, was looking for conspiracies in the shadows. Reports of other kidnapping “threats” were printed in the *Examiner* and the *Chronicle*, threats which were attributed to “unknown” sources.¹⁶ Dramatized and invented reports were helping to create an anxious and fearful atmosphere in San Jose. This was

¹⁴ Farrell, 56

¹⁵ “Klutas Gang Suspected in Disappearance of Hart Youth,” *San Jose Mercury Herald*, 13 November 1933

¹⁶ Farrell, 49

made worse by the inflammatory nature of many of the articles and, particularly, the editorials printed.

With the capture and confessions of Thurmond and Holmes during the late night of Wednesday, November 15 and the morning of Thursday, November 16, the fearful and angry mood of the city suddenly had a target. Thurmond's damning confession had been released to the press and published on Friday morning. As if the confession weren't enough to enliven the fury of the people of San Jose, Publisher Logan Payne of *The San Jose News* published an editorial that was at once prophetic and advocating of the violence that would soon come. "If mob violence could ever be justified it would be in a case like this... To read the confession... makes one feel like he wanted to go out and be a part of that mob... there is likely to be a hanging without waiting for the courts of justice."¹⁷ Although it stopped short of a call to action, Payne's editorial was already justifying a lynching. Payne was pricking a nerve of resentment shared by many people across the country when he directed his editorial to his fellow San Jose citizens. That nerve was a distrust of the legal system. With the rise in violent crimes people felt more vulnerable than ever, to make matters worse they felt unprotected by the law. What Payne was intimating was spelled out by a quote in the *Herald*. "It is hoped that justice will be sure and swift and that the *subterfuges and technicalities* of law that *frequently thwart justice* will not be taken in this instance."¹⁸ In general there was a call for swift justice, even from Sheriff Emig, yet "justice" was by many defined as retribution.

The media cannot be held solely responsible for the anger and actions of the San Jose community. The newspapers merely set this anger to words and pictures, confirming the public's fears and justifying in advance the violence that was desired. Although neither

¹⁷ Ibid, 139

¹⁸ "Council Adjourns in Hart's Memory," *San Jose Mercury Herald*, 17 November 1933, italics added

Thurmond nor Holmes had any semblance of a police record prior to kidnapping Brooke Hart, they were likened to “the most hardened professional killers” by the *Herald*.¹⁹ Perhaps without the encouragement of the media, there would not have been a large enough and angry enough crowd to breach the doors of the jail. When Brooke Hart’s body was found floating in the bay by two duck hunters, word spread almost instantly. A crowd began to gather outside the jailhouse and Sheriff Emig’s worst fear seemed about to come true. Word of mouth formed the beginning of the crowd, yet the fury was fed into by radio stations. KQW, a station affiliated with the First Baptist Church in San Jose, broadcast that “The Crowd is Gathering!...Lynching!...Tonight in St. James Park!” With other stations joining KQW, people across the valley began to flock to the jailhouse where Thurmond and Holmes were being held. A radio broadcast out of Los Angeles even turned its 10:00 show into a blow-by-blow following of the lynching.²⁰ As if this were not enough advertisement, movie-goers at the American Theater in downtown San Jose suddenly saw their feature presentation interrupted by a slide placed in the projector announcing that the lynching was about to begin.²¹ In short order, thousands of people from San Jose and across the valley converged upon the jail. For all of its role in creating the frenzy which led to the lynching, the media’s contribution was not complete yet.

In the end, the media helped to create a smokescreen in the official memory of the events on the evening of November 26, 1933. Regardless of the fact that prominent individuals were easily recognized in the pictures printed the following day, people like Royce Brier of the *Chronicle* insisted that “...justice was done... It is a closed scene, a fallen curtain... The immunity of the mob leaders is almost as conclusive as a jury’s verdict....[they] appeared like wraiths in the night to lead the public’s protest against legal delays and kidnapping...[and]

¹⁹ “Swift Justice,” *San Jose Mercury Herald*, 17 November 1933

²⁰ Farrell, 202, 203, 214

²¹ Ibid, 216

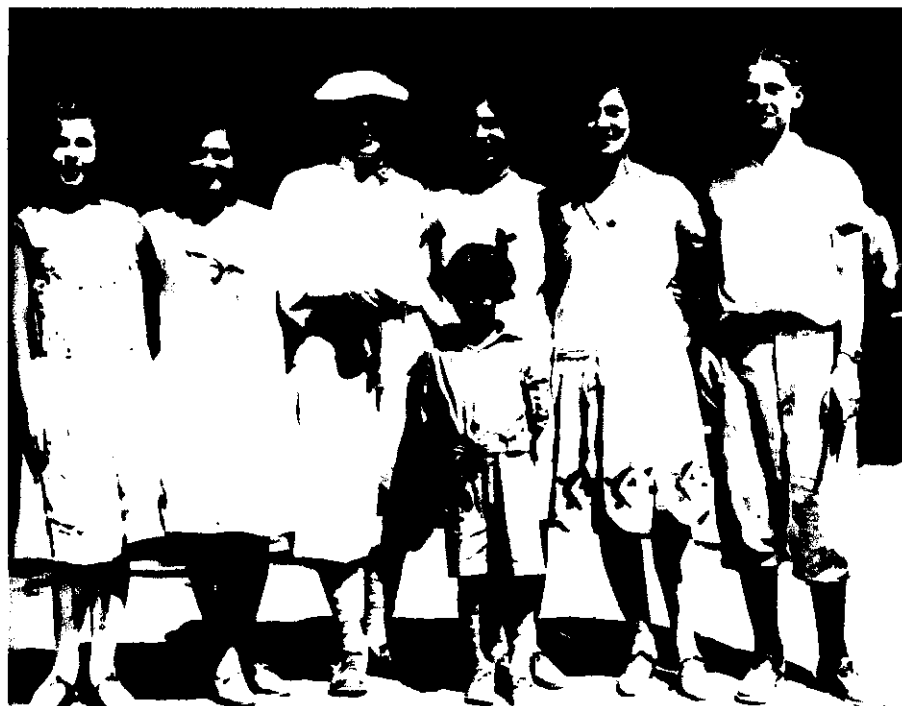
vanished as they came...”²² Brier was expressing what many people felt, that the court system was not reliable, was not sufficient—that it was, as the *Herald* quoted Samuel Tompkins on its front page as saying, “woefully antiquated, decrepit and inefficient, and wholly inadequate to protect society from the modern criminal.”²³

No one was ever convicted nor even charged with murder for the lynching of Harold Thurmond and Jack Holmes. No one was prosecuted for assaulting Sheriff William Emig and his men. No one was held accountable for the destruction inflicted upon the jailhouse. The media was no more responsible for the cover up than it was for the furor and the fury that led to the lynching. The media often acted as a conduit through which such emotions and energies were broadcast to the public, sometimes intentionally inflaming such feelings through yellow journalism or boldface lying. Yet in the end, the lawlessness was excused from the very top down. California governor Jim Rolph was widely quoted as saying he would pardon any and all persons convicted for their involvement in the lynching—he saw it as “...a fine lesson to the whole nation...” as to how to deal with kidnappers.²⁴ From the governor, to the media, and right down to the very individuals who were involved in or witnessed the lynching of Holmes and Thurmond, there was a code of silence strictly adhered to. Even to this day. After all, in California, there is no statute of limitations for murder.

²² Ibid, 253

²³ Ibid, 255

²⁴ Ibid, 241



The Hart Family, gathered c. 1927. Left to Right, Aleese, Jeannette, Alex, Sr. (in cap), Alex, Jr., Miriam, Nettie, and Brooke. (Hart Family Collection, as found in *Swift Justice*)



Last Portrait of Brooke Leopold Hart. (Hart Family Collection, as found in *Swift Justice*)



Duck hunter Leonard Dalve, with the body of Brooke Hart, on a San Francisco Bay mud flat. (San Francisco Chronicle, as found in *Swift Justice*)



Harold Thurmond, after his arrest, with Sheriff William J. Emig (left) and FBI agent Reed E. Vetterli (San Francisco Chronicle, as found in *Swift Justice*)



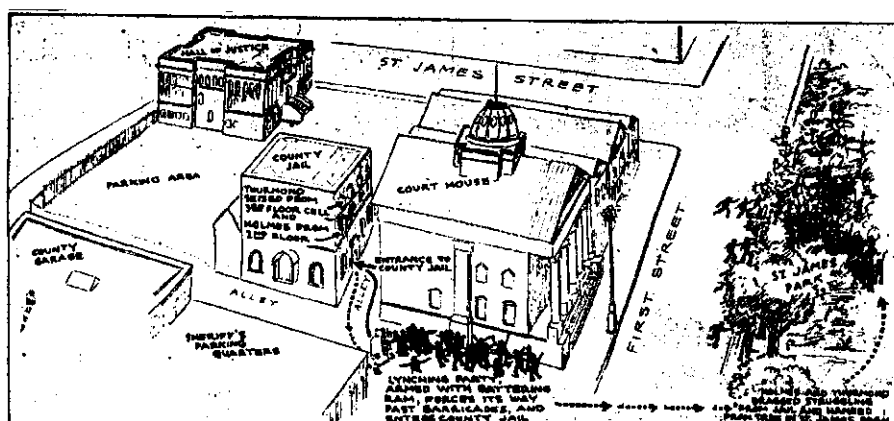
Jack Holmes
(San Francisco Chronicle, as found in *Swift Justice*)



Mob using a battering ram to break through the hastily secured jail-house doors (San Jose Mercury Herald, photo by Loris Gardner, as found in *Swift Justice*)



Baltimore Sun cartoonist Edmund Duffy won a Pulitzer Prize for this antilynching cartoon. (As found in *Swift Justice*)



An illustration that appeared in the *San Francisco Call-Bulletin* shortly after the lynching. (As found in *Swift Justice*)

Afterward

Although in some ways the following commentary should be found in a preface, I choose here to include a few thoughts regarding my research at the end of the paper rather than the beginning. Originally I stumbled upon this topic while doing some researching Thomas Fallon and the controversy around the statue of him commissioned by the City of San José. I discovered a website a great deal of information on the various events in the history of San Jose. Here is where I learned of the lynching in Saint James Park.

Then one day I found myself conducting some business at a local Sheriff's office in Santa Clara County. As I waited in line, I was admiring some of the old artifacts that were on display—an old police log book, several pictures, and a plaque (to name the few I can recall). The secretary behind the desk (who shall remain nameless) then began talking to me about some of the history that she knew regarding crime and law enforcement in Santa Clara County, at which point she mentioned *Swift Justice* by Harry Farrell.

My interest was piqued when she told me how her grandmother (who will also remain nameless) was present at the lynching. In fact, when Farrell's book was first published, this historically minded secretary purchased a copy, read it, and then asked her grandmother to read it and *to make comments relating Farrell's book to her experiences*. Here, of course, I thought I had found a gold mine. An opportunity to use newly discovered information, notes and commentary most likely never before seen by another scholar. Even better yet, the possibility of interviewing a witness! Here, however, came my first major disappointments as an historian.

Although the secretary was more than willing to talk *about* the kidnapping, the lynching, and (vaguely) the presence—and participation—of her grandmother at the lynching, I hit walls of solid stone when it came to *accessing* any of this information (notes or, even more impossible, an

interview). Identifying myself as a history student researching a paper has never, in the past, failed to gain me access to new information. In this instance, however, it sealed the lips of this could-have-been informant. She wanted nothing to do with relaying information on her grandmother's experiences and participation in relation to the lynching, particularly, in my opinion, if this information were to end up in print. As a result, I continued to read Farrell's book (an excellent piece of journalism) and began to research the microfilm at the Dr. Martin Luther King, Jr. branch of the San Jose library—without the gold mine of witness information that had captured my interest.

My entire focus began to shift in researching this paper. I began with the intention of discussing the mob reaction (based upon the experiences of the un-named grandmother), yet this became more and more impossible with the time I had to work with. This was extremely frustrating to me as time passed and I searched for a new focus for my paper. It was not until I had finished Farrell's book that I found the source of my frustration. In Farrell's experience, the citizenry of San Jose have been effectively hiding the direct truth about the lynching of Thurmond and Holmes since the incident occurred. What I experienced was a small piece of that cover-up. After over seventy years these San Joseans "...remain acutely aware of the fact that in California there is no statute of limitations for murder."²⁵

The title of my paper "No Statue of Liimitations for Murder" is a reflection, not of my thesis, but of my frustration in researching this topic. On a limited level I can understand the anger and hatred that San Joseans felt towards Thurmond and Holmes. The violence against law enforcement agents was nothing short of inexcusable though. Far more disgusting was the mutilation of the two dead bodies as they hung from their trees. Cigarettes were put out on the skin of the dead men and fires were lit in attempts to burn them (to name just two incidents).

²⁵ Farrell, 270

The souvenir hunting and hocking that took place is nothing short of embarrassing. Scraps of rope were sold as pieces of the lynch ropes. Shreds of material were hocked as portions of the murdered men's clothing. Postcards were printed glorifying the brutal event. So many pieces of the bark and branches were cut from the actual trees used to hang Thurmond and Holmes that they were soon after cut down because the trees were too damaged to live. I judge these actions as reprehensible from my vantage point here in the 21st Century, yet I believe that San Joseans from the time have similar opinions. I believe that they feel measures of guilt and shame in connection with their actions and the actions of their friends and family at the lynching. In many ways, the lynching and its cover-up mark a shift in the thinking in California and the country at large. Enough of the old vigilante justice attitude of California still existed at the time to perform the deeds, yet the citizenry had become enlightened enough to *feel* differently about the brutal events. After all these years I doubt anyone would be tried, much less convicted, for their part in the lynching of Holmes and Thurmond, yet few wish to leave this life remembered for their beastly acts on the night of November 26, 1933. They know who they are, they know what they did, and that is too much for their liking.

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