Moore v Dempsey: How a Pogrom Became a Turning Point in the Fight for Civil Rights

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Abstract

From the period of April to November 1919, the occurrence of over 25 large-scale racially charged riots in the United States, in which whites perpetuated violence against blacks in multiple cities, left thousands injured and hundreds of people dead. One of the worst of these events in Elaine, Arkansas, turned into a pogrom, where approximately 200 people were killed. In the aftermath, hundreds of black men were arrested, and many were indicted for murder. The case of *Moore v Dempsey*, resulting from the Elaine, Arkansas pogrom, served as a turning point for the protection of human and legal rights and led to a defining shift to the era with more concentration on civil rights. When the Supreme Court agreed in a 6-2 decision in 1923 that the interference of the mob violated the defendant's rights to due process, it negated the prior precedence of no review of the fairness of state criminal trials on petitions for writs of habeas corpus. At this juncture, the law became a crucial resource in the Civil Rights Movement and the fight for civil rights, and it was a vital turning point the NAACP would continue to build upon in the fight for civil rights and liberties. The racial riots of 1919 created awareness of the racial inequality that existed and the denial of democracy for many, and the case of Moore v Dempsey opened the door to more cases that would bolster the Civil Rights Movement of the 20th century.

Keywords: Elaine Massacre, Pogrom, NAACP, Elaine Twelve, *Moore v Dempsey*, Mob Violence, Moorefield Storey, Scipio Jones, Racial Riots 1919, due process

Moore contra Dempsey: cómo un pogromo se convirtió en un punto de inflexión en la lucha por los derechos civiles

Resumen

Entre abril y noviembre de 1919, se produjeron más de 25 disturbios a gran escala con carga racial en los Estados Unidos, en los que blancos perpetuaron la violencia contra negros en varias ciudades, y dejaron miles de heridos y cientos de muertos. Uno de los peores acontecimientos en Elaine, Arkansas, se convirtió en un pogromo, donde murieron aproximadamente 200 personas. Posteriormente, cientos de hombres negros fueron arrestados y muchos fueron acusados de asesinato. El caso Moore contra Dempsey, resultante del pogromo de Elaine, Arkansas, sirvió como un punto de inflexión para la protección de los derechos humanos y legales y condujo a un cambio decisivo hacia una era con mayor concentración en los derechos civiles. Cuando la Corte Suprema acordó en una decisión de 6 a 2 en 1923 que la interferencia de la mafia violaba los derechos del acusado al debido proceso, negó el precedente de no revisión de la imparcialidad de los juicios penales estatales en peticiones de recursos de hábeas corpus. En esta coyuntura, la ley se convirtió en un recurso crucial en el movimiento de derechos civiles y la lucha por los derechos civiles, y fue un punto de inflexión vital que la NAACP continuaría aprovechando en la lucha por los derechos y libertades civiles. Los disturbios raciales de 1919 crearon conciencia de la desigualdad racial que existía y la negación de la democracia para muchos, y el caso Moore v Dempsey abrió la puerta a más casos que reforzarían el Movimiento de Derechos Civiles del siglo XX.

Palabras clave: masacre de Elaine, pogromo, NAACP, Elaine Twelve, Moore v Dempsey, violencia mafiosa, Moorefield Storey, Scipio Jones, disturbios raciales de 1919, debido proceso

摩尔诉邓普西案：大屠杀如何成为民权斗争的转折点

摘要

1919年4月至11月期间，美国发生了超过25起大规模种族骚乱，白人在多个城市对黑人实施暴力，造成数千人受伤、数百人死亡。其中最严重的事件之一发生在阿肯色州伊莱恩，

最后演变成一场大屠杀，造成约200人死亡。随后，数百名黑人被捕，许多人被指控参与谋杀。阿肯色州伊莱恩大屠杀引发的摩尔诉邓普西案是“保护人权和合法权利”的转折点，并导致了向“更加注重公民权利的时代”的决定性转变。当最高法院于1923年以6比2的裁决认为，暴民的干涉侵犯了被告的正当程序权利时，它否定了“不对人身保护令申请进行国家刑事审判公正性审查”的先例。在这一关键时刻，法律成为了民权运动和争取公民权利的重要资源，也是美国全国有色人种协进会继续争取公民权利和自由的重要转折点。1919年的种族骚乱让人们意识到种族不平等以及对多数民主的否定，而摩尔诉邓普西案为更多案件打开了大门，这些案件将支持20世纪的民权运动。

关键词：伊莱恩大屠杀，大屠杀，美国全国有色人种协进会，伊莱恩十二名被告(Elaine Twelve)，摩尔诉邓普西案，暴徒暴力，Moorefield Storey，Scipio Jones，1919年种族骚乱，正当程序

From April through November 1919, racial unrest resulted in one of the worst instances of violent riots throughout the Midwest, South, Northeastern, and Great Plains parts of the United States. At the end of the summer of 1919, a planned union meeting in Arkansas turned into one of the deadliest massacres in United States history, described by some as a pogrom. More than 460 black men and women were arrested in two separate locations, and 122 were indicted for insurrection-related charges, and 73 for murder.[1] Twelve men were sentenced to death for their alleged involvement in the massacre, and the NAACP worked to fund and defend them. The resulting Supreme Court case of *Moore v Dempsey* that stemmed from defense of the twelve men provided a federal focus on the fairness of state criminal trials on petitions for writs of *habeas corpus*. The bloody riots, targeting black people and the massacre in Elaine, Arkansas, awakened the nation to the racial inequality that existed, as black men and women stood up to protect themselves and demand equal rights and the resulting Supreme Court case of *Moore v Dempsey* became a crucial turning point in the fight for Civil Rights in the 20th century.

As early as 1915, black people mobilized and migrated North and West, seeking better economic opportunities and improved social and housing conditions. One result is that they filled many positions left vacant by men fighting in World War I. This gave them more economic opportunities and improved wages. When the war ended abruptly in 1918, soldiers wanted to come home to a normal life like be-

fore the war. Both white and black men flooded major cities and began competing for jobs in a contracting labor market. Tensions increased as white veterans seeking work found many of their previously held positions had been taken by black laborers.[2] Rising prices for consumer goods, rents, and labor strikes also contributed to the escalating unrest.

Much of the white population was uneasy about change in the social, political, and economic order. Racially incited mob violence against blacks led to lynchings and riots as many blacks stood up to injustices and fought to gain rights long denied to them. Black veterans had fought to preserve the ideals of democracy abroad, and they were not willing to return home as second-class citizens to a homeland that denied them rights and freedoms. The black population that had migrated to find better housing and job opportunities was reluctant to surrender and return to the status quo before the war.

Across the nation, in response to the violence, blacks resisted and armed to defend themselves against white-initiated violence.[3] In the areas where the migrant population of blacks was largest, violent clashes turned into deadly and destructive riots. The worst of these occurred in Elaine, Arkansas, Chicago, Illinois, Omaha, Nebraska, and Washington, D.C. Over forty racially charged riots occurred across the nation throughout 1919, in which thousands were injured and hundreds died. The riots exposed a profound system of inequality and segregation, and black people resisted the status quo to gain economic and social prosperity and obtain their civil rights.[4]

At the end of summer in September 1919, black farmers near the town of Elaine in Phillips County, Arkansas, attended a Progressive Farmers and Household Union of America union meeting. While many blacks had migrated away from the South, Phillips County, Arkansas, continued to have a large black population in 1919. There was a robust middle class, with many blacks occupying positions like doctors, teachers, lawyers, clergy members, and business owners. Many of the black farmers worked large pieces of land as sharecroppers. During the war, cotton prices had risen due to the demand for supplies. They wanted to obtain the money owed, made from their share of the crops. They also wanted an itemized accounting for the goods charged from the local store. In the economic system of sharecropping, landowners, business owners, or merchants set the prices for cotton and other crops, didn't always provide an accounting of supplies given or loaned, and often charged enormous sums for settling accounts at season's end. Sometimes, sharecroppers would be in debt rather than break even or make money due to the cost of the supplies and goods. It was a system known as debt peonage.[5]

Robert Hill, a black veteran of WWI, was one of the original organizers of the black member union, the Progressive Farmers and Household Union of America, in early 1918.[6] Another union member was Ed Ware, a farmer who owned his land and had found some semblance of success. He

joined the Hoop Spur lodge when it was newly formed in early August of 1919 and became the secretary.[7] Robert Hill worked with a white attorney named Ulysses S. Bratton, a renowned Republican lawyer in Little Rock, Arkansas, who also served as District Attorney and Postmaster of Little Rock.[8] He had been working with sharecroppers from the Arkansas Delta for about a year and aimed to break the system of debt peonage.[9]

On September 30, 1919, the Progressive Farmers and Household Union of America meeting was to occur in the evening at a country church in Hoop Spur. In attendance at the meeting was Ulysses Bratton's son, Ocier. In the early evening, Ed Ware drove to the church with approximately 100-200 men, women, and children.[10] When he entered the church, he quietly said the union password, "We've just begun."[11] Due to the number of threats the union had received, armed men were guarding the church, and the farmers brought shotguns and rifles to the meeting.[12] Robert Hill had not shown up to the meeting.

At about 11 p.m. that night, a car had driven up, stopped about 40 yards away, and shut off its lights and engine.[13] Two white men, Charles Pratt, a county deputy, and Will Adkins, a railroad detective, and a black prisoner who assisted local law enforcement called Kidd Collins, were in the car.[14] While Collins was a prisoner serving time for murder, the deputy gave him a revolver to carry for the trip.[15] What happened next was disputed, as there are two different accounts. According to Pratt, they were out looking for a white bootlegger, and it was only by chance the men stopped near the church.[16] When they stopped to urinate on the side of the road, black men approached them and opened fire.

According to the black men outside the church, Lit Simmons and John Ratliff, the car idled for approximately five minutes on the side of the road before three men got out of the vehicle.[17] One of the white men from the car flashed light from a flashlight and rapidly fired three shots from a pistol at the church. From there, someone unleashed from the back of the vehicle a torrent of bullets. Gunfire also erupted from the men guarding the church. Charles Pratt was hit in the knee and wounded, and Will Adkins, shot in the abdomen, died almost immediately.[18] Inside the church, people blew out the lights and dove to safety as pamphlets flew and glass from the windows littered the ground. The members inside the church also stated the men in the car fired first.[19]

After the shooting ended, over a hundred men, women, and children fled for safety. Most ran South of the church, while others hid in the bushes off the side of the road to see if more cars were coming. No blacks were seriously injured or killed that night. Within a half-hour, witnesses arrived to find Will Adkins's corpse and found the car full of bullet holes. Other witnesses that came that night said the church had no bullet holes, but other black and white witnesses later said the church was shot up, the inside in disarray, and windows destroyed.[20]


FIRE ON BLACKS
KILLING ONE

Military Patrol Fire on Negroes
Near Elaine, Ark.

Headline of a newspaper article from October 3, 1919. ["FIRE ON BLACKS KILLING ONE." Perth Amboy Evening News, October 3, 1919.]

Rumors of a black insurrection were spreading fast throughout the town of Elaine, and surrounding areas received news of unrest through articles they read. Newspapers ran stories of a negro plot to kill white people, and by the next day, had spread considerably. One story titled "Negroes Planned Revolt" supported this idea with the opening statement: "The trouble began with the discovery last night of an alleged negro plot to rise against the white residents of the southern part of Phillips county when Deputy Pratt with Adkins and a negro trusty were ambushed opposite a negro church at Hoop Spur, two miles north of Elaine, while on their way to arrest members of the Clem family…."[21]

The next day, the Sheriff of Phillips County and the Mayor of Helena ordered residents to stay inside and close local businesses and venues. Reports of phone lines being cut, with all communication with Elaine severed, were published in newspapers.[22] Descriptions of the white population outnumbered by the black population also were reported.[23] Calls for assistance from surrounding areas to help hunt down the men who shot Pratt and Adkins were sent out. This call brought men from Mississippi and Tennessee, and those in Arkansas and the Helena American Legion requested members to provide armed assistance.[24]

Early Wednesday morning after the initial shooting, Frank Kitchens, a plantation owner well known for his intense dislike of black people and Sherriff of Phillips County, showed up, ill, to the courthouse to direct affairs. He appointed Sebastian Staub as the new acting sheriff, appointed Herbert Thompson, a war veteran, as second in command, and deputized men.[25] Many of the few hundred deputized men who made up the posse were WWI veterans.

Convinced a black insurrection was in progress, Frank Kitchens divided the men into groups, with orders to subdue, disarm, and detain black people.[26]

Most of the black people who had fled the union meeting the night before weren't aware a man had died outside the church. Those who knew knocked on the doors of fellow union members and urged them to meet centrally at Frank Moore's home. Approximately 50 men showed up, armed with pistols and shotguns.[27] In the morning hours, the men gathered in the house heard shots fired from Hoop Spur. A small black boy ran down the road to the house and alerted them of the white mobs roaming the county. As a woman from the house, Nina Jenkins testified, the boy said, "He told us some white people were coming and said they were going to kill everything that was big enough to die."[28]

As blacks rushed about for safety and tried to understand what was happening, so did Ed Ware. He met up with other sharecroppers at a local cabin of Sallie Gile to discuss the intentions of the white mob.[29] Ed Ware looked out the cabin windows and saw white men walking, approximately four and five in a row, carrying guns and led by Kid Collins. They shouted to the inhabitants to come out of the cabin. Ed Ware's wife, Lulu, stepped outside to confront the approaching white men, and Ed left

Black men taken prisoner by soldiers in the Elaine Massacre; 1919. [Butler Center for Arkansas Studies, Bobby L. Roberts Library of Arkansas History and Art, Central Arkansas Library System]

to get his gun. Another man, Charlie Robinson, who'd been watching from his cabin, also tried to flee but couldn't do more than limp, and the white men shot him dead. All the other inhabitants of Sallie Gile's cabin escaped, except for Lulu, who was arrested and imprisoned in the local jail.[30]

Many of those fleeing the cabin ran to the brush near a marsh and another place half a mile away to the Hoop Spur union president, Jim Miller's home. As a mob of white men showed, the men met up and hid in the bushes. Many black men were armed but chose to hide in a wet marsh instead of fighting, hoping the white mob would pass. Instead, as the white men fired at the bushes above them, the black men realized the white men were shooting the women.[31] The white mob included the posse led by Herbert Thompson and another from Elaine, and both groups flanked the marsh, trying to flush the men out of hiding. Black men were immediately shot to death when they came into sight and not arrested. Many of those killed were unarmed. As the white posse fired upon the black men, some of the black men hiding in the marsh returned fire. Jack Tappan, a white veteran, was killed in the gunfire.[32] Upon hearing the gunfire exchange, additional black union men arrived to assist and saw multiple cars and the white mob of men. More gunfire erupted as both the black and white men shot at each other.

A white man sitting in one of the cars, Clinton Lee, was caught in the crossfire.[33] Word of the death of both Lee and Tappan spread rapidly through the county and incensed the white population and posses, and the white mobs were now out for both blood and vengeance. That evening, even though approximately 50 black men and one white man were jailed, the killing continued. Many of the white women and children had been put on trains earlier in the day and evacuated.[34]

Business and local political leaders sent telegrams to the Arkansas Governor, Charles Brough, seeking help. The Governor responded to the calls for assistance and escalated it further instead of trying to calm the situation. He called the United States Secretary of War, Newton Baker, and asked for troops from Camp Pike to assist with the problem in Phillips County.[35] After the telephone call, he sent a telegram to Baker that read, "RACE RIOT AT ELAINE PHILLIPS COUNTY THIS STATE FOUR WHITE SAID TO BE KILLED NEGROES SAID TO BE MASSING FOR ATTACK REQUEST COMMANDING GENERAL CAMP PIKE BE AUTHORIZED TO SEND SUCH UNITED STATES TROOPS AS MAY BE NECESSARY."[36] While Secretary Baker authorized Governor Brough's request, it was not until late that evening, after lengthy preparations, that the troops left Camp Pike to head to Phillips County.[37] Approximately 400 soldiers from the Third Division and 150 soldiers from the Fifth Infantry Division traveled from Little Rock by train.[38] Colonel Isaac Jenks commanded them.[39] Many of the soldiers were experienced combat veterans from World War I in France. All the soldiers were white, and their provisions included supplies of six trucks, two ambulances,

Right, Charles H. Brough talking with a U.S. Army officer in the aftermath of the Elaine Massacre' 1919. [Butler Center for Arkansas Studies, Bobby L. Roberts Library of Arkansas History and Art, Central Arkansas Library System]

twelve machine guns, and ample ammunition.[40] Wanting to witness the situation firsthand, Governor Brough was also on the train.

Arriving in Elaine the following day, Governor Brough and Colonel Jenks surveyed the area. One of the Captains that accompanied Brough and Jenks, Edward Passailiague, was met by a group of white civilians who explained how blacks had the town and farms surrounded and were shooting at any who tried to leave their farms or towns.[41] Colonel Jenks set up a command center from a telephone building in Elaine. Soldiers positioned a machine gun at the top of the building, and Jenks surveyed the scenes around town with binoculars.[42] The local town merchants gave shotguns, rifles, and guns to the soldiers, who gave them to the local posse.[43] The deputized men

would accompany the soldiers to assist with disarming both black and white civilians, but the orders went further. The *Arkansas Democrat* reported, "The troops are all under orders to shoot to kill any negro who refuses surrender immediately."[44]

Colonel Jenks declared martial law, and shortly after 9:15 a.m., the troops marched through town and out into the fields.[45] As the soldiers marched along the road, many frightened black men, women, and children met them on the road, surprising the soldiers when they were unarmed. The soldiers put the blacks that met them on the road in the white schoolhouse and marched many more in gang lines led by the soldiers into town. Vacant buildings and the basement of the new school building were used to intern those captured.[46]

At the same time, Governor Brough, Colonel Jenks, and soldiers drove west of town, where black people were hiding, fearful. When four black men were frightened out of the bush, they shot at the car and soldiers. While the bullets went astray, it was established the black mob had attacked the Governor. Later that afternoon, a skirmish in the thick cane where one soldier was killed and another wounded would change how the soldiers cautiously pursued blacks.[47] The other soldiers opened fire into the thick cane brush and then worked their way through the thick brush with machine guns over the next hour. The reporter from the *Memphis Press* accompanying the soldiers said they saw many blacks being shot and that the soldiers used their machine guns on blacks.[48]

The posse and the troops worked in tandem, firing upon and rounding up blacks. Plantation owner Gerard Lambert witnessed the soldiers "mow down" a black man who ran from behind a building where he had been hiding.[49] Lambert also told how soldiers brought a black man as a prisoner to his store for interrogation and tied him to a column. The black man was then doused in kerosene, set on fire, and when he broke free of his bonds and ran, he was fired upon numerous times and shot dead.[50] Other soldiers spoke to witnesses and said that "this should be a lesson to them."[51] As the troops cleared fields and poked their rifles into the brush to find and flush out black men, those that were hiding fled deeper and further into the wood and brush, and the soldiers followed, firing. A soldier stated, "they were shooting them down like rabbits."[52] Governor Brough said later, "they took machine guns out there and let 'em have it.'[53]

Later in the afternoon, Colonel Jenks and his soldiers headed back to town with the prisoners they had captured. As they drove, they passed a plantation where about 50 white women and children were gathered and scared. Colonel Jenks ordered about a dozen soldiers to protect the white women and children against the blacks that had murderous plans.[54] Not far down the road, another event took place. Four prominent black men, brothers by the name of Johnston, had been on a hunting trip and had heard of the unrest.

Rather than drive, they had boarded a train to head back to Elaine. Two of the brothers, Leroy and Gibson, had recently returned from fighting in France, Louis was a doctor visiting from Oklahoma and D.A.E. was a dentist.[55] When their train arrived in Elaine, a group of white men was waiting to arrest them for their suspected part in the insurrection. The four brothers were taken from the train, chained together, and put in a car. They would later be found shot to death and dumped on the roadside near Elaine. It was unclear if the car they were riding in was shot up and the men killed or if one of them had tried to grab a gun and was then shot and killed. It was a stretch to attempt to connect them to the unrest occurring in Phillips county.

Once he returned to town, Colonel Jenks reported back to his superiors that the situation was under control, but it was not. The troops continued to spread out through town, firing upon and pursuing the black citizens.[56] As black men and women fled, the white mobs and soldiers ransacked their homes. From the black sharecropper's cabins, approximately 400 guns and 200 pistols were confiscated.[57] Gun ownership was not unusual, as it was customary for both black and white farmers to own weapons. As the posses and soldiers ransacked and searched and moved from cabin to farm, it caused the frightened black citizens to flee further and set up a cycle where the possess and soldiers continued to pursue them. A journalist, Sharpe Dunaway, wrote later the soldiers, working together with the posses, went from cabin to cabin, killing blacks.[58] For two days, the soldiers and posses roamed the countryside, pursuing and shooting blacks and generously used their machine guns.[59] Not many stories of the black citizens lying dead or being killed were reported in the newspapers. The few stories that did make it to publication gave hints as to the killing that occurred. The *Chattanooga News* published a story that reported, "The known negro dead today was fourteen, with other bodies reported in the cane brakes and underbrush about Elaine, where most of the fighting took place."[60]

Historian Charles L. Lumpkins defines pogrom as "an assault, condoned by officials, to destroy a community defined by ethnicity, race, or some other social identity."[61] In his book, journalist Robert Whitaker carefully details 22 separate and two anecdotal killing sites where over 200 blacks were reportedly killed.[62] Across these sites, the events that led to the racially targeted slaughter of these people were done by deputized men who made up posses and soldiers across four days. Newspapers across America proclaimed the event to be an uprising and a planned insurrection. Ida B. Wells detailed the event as a massacre.[63] It was more; it was a pogrom.

That Friday, Governor Brough traveled to Phillips County Courthouse and met community leaders there. He appointed a "Committee of Seven" from these leaders, and they were to research the planned insurrection and decide who should be prosecuted. All of these men were large landowners who

employed many of the Phillips County sharecroppers. Governor Brough traveled back to Little Rock on October 4, 1919, and declared peace to be restored, yet the killing continued sporadically until Monday, October 6, 1919.[64]

The Committee of Seven had promised justice to the mob in the form of electrocuting those responsible. They were going to identify who was guilty, charge them with a crime, prosecute, and electrocute them. Yet organizing to obtain equal rights and fair prices for labor, while frowned upon by the county's white population, was not a crime punishable by electrocution. *The New York Times* ran a story detailing the planned slaughter of white people in Phillip's County, as told by the Committee of Seven on Monday, October 6, 1919.[65] The Committee obtained the details from forced and tortured confessions from blacks in custody. Robert Hill was also identified as the uprising leader and was being sought at the time of the article.[66]

Over 400 black men and women were taken into custody and held in a schoolhouse in Elaine, and approximately 60 were taken into custody in Helena.[67] Approximately 60 black men were held in custody in Helena. Only one white man was arrested, Ocier Bratton, the son of Ulysses Bratton, the attorney who had agreed to represent the union members.[68] He was charged with the murder of Will Adkins at the church in Hoop Spur and had to be smuggled out of town to prevent lynching. His father worked to have the charges dropped about a month later. Walter White, assistant secretary of the NAACP, traveled by train to perform an investigation on the incident and arrived in Phillips County on October 11, 1919.[69] He posed as an investigative reporter to get information and interviewed sharecroppers and Governor Brough.[70] After several more interviews and looking around, he felt threatened enough to flee the area.

Colonel Jenks interrogated the prisoners, as did the Committee of Seven. When the prisoners were interrogated, no attorneys were present.[71] For days, the prisoners were cruelly interrogated. An imprisoned black sharecropper was brought to the top floor, blindfolded, stripped, and made to lay on the concrete floor facedown.[72] Some were held down spread eagle and whipped, and others received electric shocks until confessions were received. T.K. Jones, one of the interrogators, said:

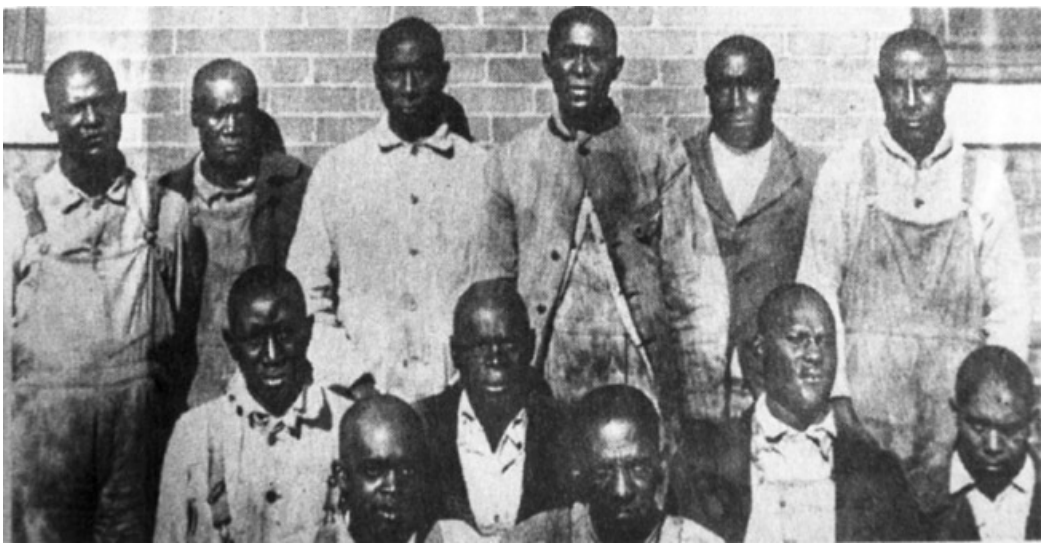
> They were not only whipped but formaldehyde was put to their noses and were stripped naked and put into an electric chair which they had in the room to frighten further and torture them. I not only personally saw a great many negroes whipped with a leather strap that would cut blood at every lick, but I whipped probably two dozen of them myself … one of the witnesses against the petitioners was whipped two or three times and put in the electric chair to make him testify against the petitioners.

A doctor had to attend to some of the prisoners because the torture had been so brutal.

Prisoners remained jailed without changes of clothing and proper food to eat. A total of fifty of the prisoners, including both men and all the women, were released, and the remaining men's prosecution moved quickly. John Miller served as the prosecutor. On October 27, a grand jury, including two members of the Committee of Seven, indicted seventy-three black men for first-degree murder and forty-nine for lesser charges.[73] The trials began the following Monday, November 3, 1919, and were fast. By the end of Tuesday, eleven men had been convicted of murder.[74] Ed Ware was arrested in New Orleans and brought back to stand trial for murder. He was also convicted and, along with the other eleven men, sentenced to die in the electric chair.[75] By Tuesday, November 11, 1919, all remaining men pleaded to lesser charges, such as second-degree murder, assault to kill, and night riding, to avoid the death penalty.[76]

Ulysses Bratton traveled to the NAACP's Manhattan office on October 30, 1919, to get assistance for the men. While the National Association for the Advancement of Colored People, or the NAACP, had never become involved in assisting criminal defendants, Bratton felt different.[77] He wanted the NAACP to help obtain counsel for the men in their appeals case and to put the case under a national review lens.[78] Over the next few weeks, Bratton met with the board members to convince them to support and defend the men.

Although the organization had started small, with limited funds and a few employees, it had quickly grown in the ten years before 1919. The



A picture of the twelve Elaine massacre defendants. [Butler Center for Arkansas Studies, Bobby L. Roberts Library of Arkansas History and Art, Central Arkansas Library System]"

NAACP's primary efforts were to create awareness about the mistreatment of blacks to highlight the inequality and work towards lobbying Congress for change and getting an anti-lynching bill passed.[79] They had never assisted criminal defendants before, either with the appeals process or trials in the state court. This practice changed as they launched a massive membership drive and fundraising campaign to assist the twelve men in Arkansas.[80] The NAACP legal defense fund was kept quiet, as there was the potential for harm if it were found out the NAACP was funding the legal defense of the twelve condemned men and might hurt their case in court.[81] The NAACP publicly campaigned to pressure Congress to launch an investigation into the Arkansas riot. Yet Congress and the Justice Department refused to get involved, would not make a statement, or publicly investigate what occurred in Arkansas.[82]

Bratton recommended a former Confederate colonel named George Murphy to represent the men.[83] Murphy was an established lawyer with a good reputation. At the same time, the NAACP had also been working with another law firm in Little Rock to potentially represent the men. Law partners Thomas Price and Scipio Jones had also reached out to the NAACP to represent the men.[84] They had already started working on the case of the 12 men.

Scipio Jones, Thomas Price, and Colonel George Murphy began working together by the end of November. Scipio Jones interviewed sharecroppers, gathered court records and transcripts, filed paperwork with the courts, and wrote briefs while George Murphy was the face of the defense team with the press and in the courtroom.[85] The NAACP was wary of having a black lawyer on the case and wanted to ensure that a white lawyer also represented the men.

Scipio Africanus Jones was born a slave towards the end of 1863, attended an all-black school as a child, and graduated from college, and became a schoolteacher in his twenties.[86] He applied to law school at the University of Arkansas but was turned down as expected, as there were no black students at the University.[87] Instead, Jones began to study law in the offices of a few local judges while teaching school. He passed the bar exam on June 15, 1883 and began practicing law in the Arkansas inferior and circuit courts.[88] As Scipio Jones was working towards becoming a prominent black lawyer, Jim Crow laws began to appear, along with the disenfranchisement of blacks. Despite this, Jones prospered, becoming a landowner and attorney for a renowned organization, the Mosaic Templars.[89] He worked hard to help the black community of Little Rock, where he lived and worked. Scipio was active in civic affairs and fought discriminatory laws.[90] In 1901, he became the first black lawyer in Arkansas to argue that his black client's due process had been violated due to the exclusion of blacks from the juries.[91] While he did not win this case, it would not be the last time he pursued this argument.

Scipio Africanus Jones, the attorney that fought for justice for the Elaine defendants. [Butler Center for Arkansas Studies, Bobby L. Roberts Library of Arkansas History and Art, Central Arkansas Library System]

In early December, Scipio Jones wrote a compelling argument for a motion to obtain a new trial for each of the 12 men sentenced to die. While the judge denied the motions, the 12 condemned men were granted 60 days with which they were able to prepare their appeals. When Scipio Jones was working on the appeals, the Bill of Rights did not limit the states regarding due process, and this had been repeatedly affirmed through many previous cases. Despite this, Scipio Jones was determined to fight for justice for his clients, and his hope for appeal rested on one case. In *Frank v Mangum* (1915), a Jewish man had been tried for the murder of a thirteen-year-old girl in Atlanta. Mob violence dominated the trial by those who wished to lynch him if he was not found guilty and sentenced to death.[92] Upon appeals, his guilty verdict was upheld by both the state and U.S. Supreme Courts. It was found that by allowing higher courts to review the lower courts' state criminal proceedings, Frank was provided due process.[93] Justice Holmes dissented and stated, "We are not speaking of mere disorder, or mere irregularities in procedure, but of a case where the processes of justice are actually subverted. In such a case, the Federal court has jurisdiction to issue the writ."[94]

On March 22, Scipio Jones and George Allen argued their appeals case in the Arkansas Supreme Court.[95] In the appeals decision, the Supreme Court

of Arkansas ordered new trials for six men due to a "statutory law" flaw.[96] The other six men had their verdicts reaffirmed. This action split the group of twelve men into two distinct groups. The group that would receive new trials became known as the Ware defendants, and the six that had their convictions upheld and reaffirmed became known as the Moore defendants.[97]

The new trial for the Ware group got underway on May 3, 1920, in Helena, Arkansas.[98] The six defendants were again found guilty and sentenced to death on July 23, although Governor Brough granted an additional stay for an appeal.[99] In December of 1920, the Arkansas Supreme Court reversed Judge Jackson's decision on the Ware group of men on discriminatory grounds for not having any blacks on the petit or grand jury.[100] Governor Brough's term in office had nearly expired, and when the new Governor of Arkansas took office, he set the execution date for the Moore group of men to June 10.[101]

Edgar McHaney and Jones worked fast to file a writ of *habeas corpus* in federal court when this occurred. In response, the Attorney General for Arkansas filed a writ of prohibition intending to carry out the executions of the Moore case men.[102] Oral arguments were instead scheduled when the state supreme court refused to overturn the writ of *habeas corpus*. At the hearing, both sides cited *Frank v Mangum* in their arguments. Scipio Jones and Ed McHaney argued that in the case of *Frank v Mangum*, there was precedent for a judge to find that a trial court had lost jurisdiction.[103] The Arkansas state assistant attorney general argued that according to the precedent set in *Frank v Mangum*, the appellate review had been completed, and no further argument could be made.[104] On June 20, 1921, the Arkansas Supreme Court ruled against the Moore men. A *New York Times* article reported, "Today's writ held that no State court of equity has jurisdiction over criminal cases and that the sentence of death stands."[105]

The next day, Judge J.M. Jackson of the First District Circuit Court granted a change of venue for the Ware men, to Lee County and not in Phillips County.[106] A few weeks later, Arkansas Governor McRae set the execution date for September 23, 1921, for the Moore group of men.[107] Judge Cotteral found probable cause for an appeal to the United States Supreme Court—a glimmer of hope.[108] The trial of the Ware men was set to begin on October 10, yet the prosecution asked for a continuance when two new witnesses for the defense were presented.[109] McHaney and Jones had secured two white men who provided affidavits of the torture that occurred to elicit the original confessions and also that James Tappan, the man the Ware group men were awaiting retrial for killing, was shot and killed by his own posse.[110]

The NAACP worked fast to hire a lawyer to assist with the argument of the case before the U.S. Supreme Court. Moorfield Storey, the former board president of the NAACP, was chosen.[111] He had argued twice before the Supreme Court. Scipio Jones put together

a well-written habeas petition that laid out in detail the plight of the sharecroppers, and the narrative was one of white mob intimidation, torture, inequality, and a denial of due process.[112] In January of 1922, a few days before the Supreme Court case was to be argued, a decision was made to have Moorfield Storey and Ulysses Bratton argue before the court. The NAACP President, Walter White, wired Scipio Jones to tell him he would not be needed, even though he'd done most of the work.[113] On the afternoon of January 9, 1922, the case was argued by Bratton and Storey in front of Chief Justice William Taft's Supreme Court.[114] The courts were not known for ruling in favor of the civil rights of black men. Since the Fourteenth Amendment was enacted, it had pertained to black rights only 28 of 604 times as of 1912.[115] For an amendment intended to provide equal rights to black men, it was utilized more for big business. The civil rights cases that dealt with the rights of black men invoked the principle of state's rights.[116] Yet when it involved property rights for wealthy citizens, state's rights were not considered similarly. Taft's Supreme Court offered little hope that the ruling would differ in this case.

A few days before Storey argued in front of the Supreme Court, a race war broke out and was splashed across newspaper headlines. White mobs hunted and killed blacks, burned homes and businesses as the entire black section of town was torched in Rosewood, Florida.[117] "Thousands of persons were pouring into the village early this morning in heavy laden automobiles, all of them armed."[118] This event provided the opening backdrop for Storey to argue about how whites killed black men in Arkansas. It might not have been the legal point, but it helped paint the violent mob-dominated picture for the debated legal question. Bratton laid this out in his argument about the end of the summer of violence in Elaine, Arkansas, and the continuation of white instigated mob violence in both Tulsa and Rosewood.[119]

On February 19, 1923, the United States Supreme Court ruled in favor of the petitioners. In a 6-2 decision, the Court ruled the men's Constitutional right to due process was violated due to mob-dominated trials. Justice Holmes built upon his dissent in *Frank v Mangum* when he penned his opinion for *Moore v Dempsey*. Justice Holmes wrote,

> If the State, supplying no corrective process, carries into execution a judgment of death or imprisonment based upon a verdict thus produced by mob domination, the State deprives the accused of his life or liberty without due process of law. We assume in accordance with that case that the corrective process supplied by the State may be so adequate that interference by habeas corpus ought not to be allowed. It certainly is true that mere mistakes of law in the course of a trial are not to be corrected in that way. But if the case is that the whole proceeding is a mask—that counsel, jury and judge were swept to the fatal end by an irresistible

> wave of public passion, and that the State Courts failed to correct the wrong, neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this Court from securing to the petitioners their constitutional rights.[120]

It was a surprising ruling and one that struck a blow at Jim Crow. It was a great victory for the Arkansas men and the NAACP, that had fought hard to obtain justice. Mob intimidation and sham trials had been the status quo until this point, and there was no federal review of state proceedings. The Moore decision changed this and stepped away from the precedent in the *Frank v Mangum* case and became a constitutional victory that built a foundation for further constitutional victories in the future, such as victory in the case of *Brown v Board of Education* (1954). It signaled a willingness to review state court decisions in criminal matters.[121] The attorney that argued for Leo Frank in *Frank v Mangum* said of the Moore decision, "Due process of law now means, not merely a right to be heard before a court, but that it must be before a court that is not paralyzed by mob domination."[122]

The Moore defendants were not free, but the men were no longer facing the imminent threat of electrocution. The Ware defendants awaiting retrial had their cases dismissed as two terms of the court had passed without trials, and they had not been afforded a speedy trial as guaranteed by due process of law.[123] The Ware men were finally set free. Scipio Jones worked out a compromise for the remaining Moore men, and on January 13, 1924, Governor McRae granted the men "indefinite furloughs and set them free."[124]

By the beginning of the 20th century, as the nation retreated from Reconstruction, habeas corpus was disregarded as a means of government enforcement. Yet in the first half of the 20th century, three critical cases would help to change this and to "expand the causes and review procedures for federal habeas review of state due process violations."[125] *Frank v Mangum* cracked the door open for *Moore v Dempsey*, which further opened the door for the civil rights victory in *Brown v Board of Education*. *Moore v Dempsey* helped change the way due process violations were reviewed. This was no small feat, and each case built upon the other. The Moore case marked a significant point in history, where the Supreme Court showed a willingness to intervene in state criminal court proceedings that were not just.[126] The precedents set in previous cases that had repeatedly confirmed this were suddenly swept aside, and the foundation was laid for further individual and civil rights fights.

In November of 1919, the summer of racial violence ended, yet what occurred would lay the groundwork for the future. Black America was bolstered to continue to fight for equal rights. In the violence that erupted, many black Americans refused to relinquish the

fight for equality, and many fought back to defend not only their homes, families, and lives but to obtain civil and individual rights. The NAACP learned and grew as an organization from the experiences they gained in defense of the condemned men from Arkansas. The case of *Moore v Dempsey* was a vital turning point and one the NAACP would continue to build upon in the fight for civil rights and liberties. The racial riots of 1919 that awoke a nation to the racial inequality that existed and the denial of democracy for many became a genesis of the Civil Rights Movement of the 20th century.

Endnotes

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