

**WHITE SUPREMACY CRIMINAL JUSTICE:
THE ROGERS FAMILY MURDERS¹**

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ABSTRACT

On New Year's Eve 1939 three members of the Rogers family were murdered, and two small children escaped. Authorities thought the murders were committed by prison camp convicts allowed to roam freely with minimal supervision. A local farmer came forward and identified two prison camp convicts as the murderers. Oklahoma Governor Leon Phillips sent special investigators to Choctaw County. The governor on 12 January announced the confession implicating convicts was a hoax. Instead, two African Americans were charged. One, W. D. Lyons confessed but alleged beatings and torture were used to extract the confession. Locals, white and African American, remained convinced the convicts were at fault. The case attracted Roscoe Dunjee, the NAACP, and ultimately Thurgood Marshall who became Lyons' co-counsel at trial and lead attorney in appeal. Dunjee, the NAACP, and Marshall were attracted as the case was ideal to raise the profile of the NAACP. This raised a conflict between Marshall's obligation to his client, Lyons, and his obligations to the NAACP. Marshall failed to challenge the absence of African Americans on the jury. After Marshall's Supreme Court appeal failed local white and African Americans pressed for Lyons' release. After incarceration from 1940 through 1961, Lyons was paroled by Democrat Governor J. Howard Edmondson and pardoned in 1965 by Republican Governor Henry Bellmon. Lyons lived another 30 years in Okfuskee

where he married and fathered two children.

The New Year's Eve murders and subsequent arson at the Choctaw County Rogers family shack led to the worst instance of Oklahoma political corruption and misuse of Oklahoma's criminal justice system, to my mind, unsurpassed, perhaps unsurpassable. The clash of interested parties ensured the murderers were never brought to justice while a young innocent African American was sent to the State Prison for twenty years. Those with a stake in the affair included the local sheriff and county attorney, the governor, the NAACP, local residents, including the victim's family, and, most of all, W. D. Lyons, the young African American convicted.

THE ROGERS FAMILY MURDERS

Sunday, 31 December 1939, New Year's Eve, two persons approached the Rogers' rural Fort Towson area home. One fired a shotgun through the window killing Elmer Rogers. His wife Marie ran out the back door shouting to their son James Glenn to run, which he did, scooping up his younger brother Billie Don. A fleeing Marie received a shotgun blast. Marie and Elmer were chopped with an ax and the house set afire. A third son, Elvie Dean, hiding under a bed, died of smoke inhalation. Making it to the highway, James Glenn and Billy Don were picked up and taken to the Choctaw County sheriff's office.

*"Eight-year-old Glenn Rogers, a weeping, tow-headed farmer boy, told in a shrill, shaking voice today how a quiet New Year' eve at this tiny home in the wooded Kiamichi Mountain country had been turned into a night of horror by two men who killed his father and mother and burned their home. ... He told officers that two men whom he never had seen before shot his father through the window, killed his mother when she attempted to flee, spread coal oil around the house, then touched matches to the furnishings."*²

County Sheriff Roy Harper – County Attorney Norman Horton's Investigation

Local suspicion fell on convicts at a prison work camp between Fort Towson and Sawyer. The Sawyer work camp was under the jurisdiction of Jess Dunn, warden of the state prison at McAlester. Prison sergeant, Joe Adair, supervised the work camp. Adair maintained loose control over the convicts. They were permitted to roam freely about the area, some had guns and vehicles, lived with girlfriends nearby, were habitués of local drinking and bawdy establishments.³

The local investigation was led by Choctaw County officials, Sheriff Roy Harper and County Attorney Norman Horton. Both were Democrats elected for two-year terms. Both were relatively new to their jobs. Neither was directly implicated in the recent federal prosecutions and convictions of corrupt Hugo police officers. Choctaw County affairs was not immune to the corruption and political undertow of the day. Whatever hierarchy there was, Horton and Harper were relatively low on it. What we know of these investigations is roughly as follows.

Tuesday 2 January 1940 Information started coming to authorities implicating prison work camp convicts, Frank Wellmon and Floyd Carpenter. They were arrested.⁴ Ten days later, sheriff Roy Harmon announced the crime was solved. Mrs. Pruda May Worts, age 72, told authorities her nephew, Huston Lambert, a 28-year-old Choctaw County farmer, could identify the killers.

“Solution of the gruesome triple arson tragedy ... was claimed Friday by Roy Harmon, Choctaw county sheriff. Behind prison walls at McAlester Friday were two convicts from the Sawyer prison camp near here, both accused of the triple murder by Houston Lambert, 28 years old, Fort Towson farmer. Lambert told county officers early Friday morning that the two prison camp trustees, at the point of a gun, forced him to drive them to the Rogers home the

night of the tragedy ... At McAlester early Friday, Lambert confronted the suspects in their cells and identified them as the two he drove to the Rogers home. Both convicts denied his statement. ”⁵

The next day, Saturday 13 January 1940, Choctaw County prosecutors announced they were ready to file murder charges against Lambert and the two convicts. They found a bloody axe at one suspect’s home, possibly the one used to smash Mrs. Rogers’ head. The murder motive seemed to be \$80 Rogers had won in a dice game with the convicts.⁶ Charges were never filed, however.

Monday 15 January 1940:

“Sheriff Roy Harmon said ... the case still presented perplexing angles and that the charges cannot be filed until they are cleared up. ”⁷

Friday 19 January 1940:

“County Attorney Norman Horton said Houston Lambert, 28-year-old farmer told him a shotgun used in the killings had been thrown into the [Gates] creek. Although Lambert had given several other versions of the tragedy in which officers placed little credence, Horton said he was inclined to believe his latest story. The county attorney said Lambert has absolved several convicts he at first named as the slayers and now says that he and Jim Thompson, a convict, were involved. The farmer admitted he was not ‘forced’ to accompany the slayers, as he first contended, but says he was ‘influenced’ by Thompson to go to the Rogers home under an agreement to split whatever money they could take from Rogers, Horton said. After being questioned for several hours, Horton said Lambert told him Thompson shot Rogers and his wife through the window and that Lambert poured kerosene on the bodies and fired the house. The county attorney predicted finding of the weapon would provide a clue which would solve the crime. ”⁸

For three weeks, between 2 and 22 January, local authorities had obtained information and a confession implicating work camp convicts in the Rogers' murders. Then, Monday 22 January, the *Oklahoma City Times* reported accusations against the prison camp trustees 'gave impetus' to the governor sending down his investigators who reported back there was nothing linking trustees to the murders.⁹

Governor Phillips' Vernie Cheatwood and Bert Steffee Investigation

Leon Phillips was a "star lineman on Oklahoma's 1915 [National Championship] football team."¹⁰ As an Okfuskee County attorney he successfully defended local election officials in one episode of a long federal court battle. Okfuskee County election officials were notorious for denying the vote to African Americans. Phillips defended them in court.¹¹ Phillips was elected to the State House of Representatives, made Speaker, then elected Governor. He was hard working and detail oriented. Scales and Goble capture Phillips as "a man capable to consuming political hatreds."¹² One gets the impression Phillips saw a political landscape populated by pawns. Some pawns were threats. Governor Phillips had special Investigators looking out for his political interests, "reporting only to Phillips such useful data as the campaign plans of his opponents, as well as the business and marital problems of would-be independent legislators."¹³

By the second or third day of January it began to appear the local investigation would implicate the management of Oklahoma's school lands, on which the prison camp was located and the State Prison at McAlester. There was a direct line of responsibility from the work camp to the governor. The governor was and is the permanent chair of the Land Office Commission.¹⁴ Managing state lands as a recreation area for unsupervised convicts, including murderers, had the potential of derailing the remainder of his term leaving Phillips sitting in the middle of a toxic mess. Monday, 15 January 1940 the governor announced the Land Office Commis-

sioners would end use of prison labor.¹⁵ By early March 1940, the New Deal Works Project Administration (WPA) took charge of the soil conservation work.¹⁶ Bringing in the New Deal WPA solved an immediate problem for the anti-New Deal governor. The governor is also responsible for the state prison and its warden.¹⁷

The governor quickly realized the Choctaw County murders posed a political threat evidenced by the work camp shakeups. He sent down his special investigators, Vernie Cheatwood and Bert Steffee, to Choctaw County.¹⁸ Cheatwood and Steffee engaged Reasor Cain, a Frisco Railroad Special Officer, and Oscar Bearden, a local constable.¹⁹ Oscar Bearden and Reasor Cain were peculiar persons to join a murder investigation. Neither appears to have been part of the Sheriff and County Attorney's investigation focused on the work camp convicts. A year earlier, March 1939, Bearden, along with six others, including Hugo police chief Jim Lindley, were convicted in federal court of conspiring to protect untaxed liquor shipments passing through Hugo.

Bearden and his fellow conspirators were awaiting appeal at the time of the Lyons arrest.²⁰ Soon after, on 8 February 1940, the 10th Circuit Court of Appeals affirmed the convictions. Testimony documented Oscar Bearden was a thoroughly corrupt law officer. While Reasor Cain was not a defendant, he was a habitue of the corrupt police station and testified as a defense witness on behalf of Bearden and the others.²¹

The Cheatwood – Steffee investigation leading to Lyons' arrest was behind the scenes. Details were not brought out at trial. They can only be inferred. We can assume they did not look into the convicts and the work camp.²² Instead, they looked for killers, who, when found, could not embarrass or harm the governor. Fall guys.

The governor's investigators learned W. D. Lyons, a young African American, a convicted chicken thief, lived near the Rogers

home. Lyons had been seen with a shotgun wrapped in a newspaper wandering field and wood ostensibly hunting rabbits. Fishing and hunting commonly supplemented local diets. The Cheatwood-Steffee investigation determined Lyons had borrowed a broken but usable gun and purchased a couple of shotgun shells. As Lyons lived right there, the investigators had no trouble finding people who remembered seeing Lyons with an African American friend, Van Bizzell, in that vicinity about the time of the murders. When Cheatwood and Steffee had their fall guys their next task was to bring around Sheriff Roy Harper and County Attorney Norman Horton. That took over a week. Governor Phillips then could announce the white farmer's confession and white convict arrests were a 'hoax.'²³

The motive for the 'hoax' was never explained. Nor was how a 'hoax' coming to involve so many unconnected persons, even a murder confession. Houston Lambert, who had confessed and implicated convicts, was released. When asked by a reporter about what is going on, Lambert replied "I just don't know."²⁴

County Attorney Norman Horton at this point, Wednesday 24 January 1940, offered a revised scenario of the investigation. The initial murder suspect was W. D. Lyons all along.

*"It was [Lambert's] statement, Horton said Wednesday, that diverted their investigation of the Negro against whom suspicion was thrown nearly two weeks ago. At that time police sought to question Lyons, but he fled from them and escaped. When the inquiry was resumed a few days ago officers found that Lyons had been seen in the neighborhood of the Rogers home carrying a shotgun the afternoon before the three were killed."*²⁵

Finally, Friday 26 January 1940, County Attorney Norman Horton announced W. D. Lyons and Van Bizzell would be brought from McAlester prison to be arraigned for the Rogers murders.²⁶

Lyons had not fled police. He was in the Choctaw County jail for two weeks. W. D. Lyons had been held incommunicado with no access to an attorney or appearance before a magistrate. By 22 January 1940, the local authorities had come aboard with the governor's hoax scenario. We can only imagine what went on between the local authorities and the governor's people. In the end, Sheriff Roy Harper and County Attorney Norman Horton went along with what many in Choctaw County, white and African American, thought was a frame-up. Authorities gambled few would care if an innocent African American illiterate convict was unjustly sentenced to death for murder. The local law enforcement corruption was already documented in the federal trials which convicted Hugo's police chief and one of the Cheatwood – Steffee investigators, Oscar Bearden.

Roscoe Dunjee, Stanley Belden, Thurgood Marshall and the NAACP

In 1915 Roscoe Dunjee began *The Black Dispatch* African American newspaper in Oklahoma City. The same year Dunjee helped form the Oklahoma City chapter of the NAACP. In 1932 Dunjee organized the Oklahoma State Conference of Branches of the NAACP. He served as State President 1932 – 1948 and on the NAACP National Board of Directors. Dunjee linked Oklahoma litigants with NAACP attorneys in a number of landmark Oklahoma cases.²⁷

Through his newspaper and the Oklahoma NAACP organization Dunjee had a network alerting him to matters of interest to African Americans. Likely, NAACP Idabel branch leader, H. W. Williamson, gave Dunjee an early alert when the Rogers murder investigation turned from white convicts to African American W. D. Lyons. The point of interest were local stories of beatings and torture leading to Lyons' confession. Idabel is less than 50 miles down US 70 from Hugo. H. W. Williamson became the point person for the Hugo NAACP effort.

As NAACP State President Roscoe Dunjee was concerned with broad patterns of government-inflicted injustice upon African Americans. The NAACP could not stand behind every Oklahoma African American accused of a felony. The immediate NAACP issue in the Lyons murder case was not Lyons' guilt or innocence. It was the alleged vicious beating of an African American to gain a confession and the subsequent alleged casual violation of the accused's basic civil and constitutional rights. The NAACP was desperate for scarce funding, new membership, and publicity. The Oklahoma NAACP needed a drum to pound. Dunjee framed the Lyons case from this organizational perspective.

National and local organizations dedicated to opposing legal injustice mounted a gargantuan effort to protect the unjustly accused. But their goals conflicted. Given a choice between saving the victim of the injustice or continuing to fan flames of public outrage, they often chose to keep the case alive to strengthen organizational membership and fundraising. In this instance organizational goals perpetuated, rather than ameliorating, a horrible injustice.²⁸

By February 4th, 1940, Dunjee hired white Cushing attorney Stanley Belden to represent accused murderer W. D. Lyons. Belden, a Kansas native, attended Northwestern Oklahoma Teachers College, now Northwestern Oklahoma State University, in Alva. He studied law at Cumberland School of Law in Lebanon, Tennessee.²⁹

Dunjee later told Thurgood Marshall:

*"I employed Belden at a time when only a white man could have gone into Hugo, and at the request of Negroes in that section who advised me that relations between the races were very strained. It is well that I did employ Belden for he has been able to secure the testimony of a large number of whites who otherwise perhaps might have failed to testify."*³⁰

Belden, as an American Civil Liberties Union (ACLU) attorney, defended Communists, union members, and Jehovah's Witnesses. He defended unpopular causes in the courtroom and in appeals.

For Roscoe Dunjee the way forward for the Oklahoma NAACP was to involve the national office, especially its Special Counsel Thurgood Marshall. In March 1940 Dunjee wrote the NAACP Executive Secretary Walter White, enclosing a newspaper clipping with details of W. D. Lyons' beating and torture.

*"I wish you would advance me \$100.00 immediately ... I am attempting to dig into ... the terrible flogging given to this Negro in order to extort a confession."*³¹

Roy Wilkins, Assistant Secretary to Walter White in New York, wrote back 18 April 1940 "am mailing ... [a] check for \$75 today. Best we can do. Sorry."³²

As intended, Dunjee's letter created interest in the NAACP New York headquarters. However, the national headquarters was itself pressed for funds. Many cases competed for attention. The NAACP leadership had to triage. They needed winnable cases they could bring to the United States Supreme Court. If successful, such cases could change the law and law enforcement throughout the nation. Such cases, incessantly publicized, would bring needed support and prestige to the NAACP. The NAACP was in competition with the ACLU, the Communist Party and other groups fighting on behalf of the disadvantaged.

Thurgood Marshall, age 32, was NAACP Special Counsel and Director of the NAACP Legal Defense and Educational Fund. He had already litigated before the U.S. Supreme Court and had pending cases in Texas and Connecticut. He was very pressed for both time and funds. But, as Director of the NAACP Legal Defense and Educational Fund, he was also charged with raising money. To do that he needed publicity, publicity showing the NAACP at the forefront of the battle against injustice.

Wednesday 11 December 1940 Marshall wrote Dunjee, opening with the April \$75 loan:

*"I wonder if you would let us know whether or not the item will be repaid in the near future so we can use it on our other cases. ... The other question is that we would like to have a full report on this [Lyons] case because we consider it a most important one and the type of case which captures the attention of all of us. ...I am wondering if you would give us the 'lowdown' on the entire situation."*³³

Dunjee wrote back on Thursday 26 December 1940:

*"Since we offered defense for Lyons the court has through some subterfuge, or another refused to docket the case. Before the primary, it was commonly known that the officials in Hugo County [sic. Choctaw County] did not want the case called because it might react disastrously to the candidacy of the County Attorney and Sheriff."*³⁴

Here, Dunjee was prescient. By 1943 both County Attorney Norman Horton and Sheriff Roy Harmon had been defeated, replaced by Ralph K. Janner and Cap Duncan, respectively. Dunjee goes on:

*"There is also another element which enters. The governor's office sent a man down to the county and this man is known to have whipped and clubbed Lyons almost into insensibility. This is a wide-open case ... the whites down in Hugo are very much inclined to be with Lyons and against the elected County officials. ...this is one where I believe we could attract the attention of the entire nation."*³⁵

At this point, December 1940, Lyons has been jailed 'for safe-keeping' at the state prison since January.³⁶ His co-defendant, Van Bizzell, was released on bail in July. Lyons' attorneys discussed with Dunjee seeking a writ of habeas corpus, but they chose not to. A writ of Habeas corpus would force authorities holding Lyons to justify holding him without trial. It is clear they did not dis-

cuss this strategy with their client, Lyons, nor get him bail. The legal team's consideration, instead, was keeping the case alive for national publicity and fundraising for the Oklahoma and national NAACP. Bailing Lyons would end his usefulness to the NAACP. Lyons' priority, in contrast, was gaining release from jail.

Thursday 11 January 1941, Thurgood Marshall wrote back to Dunjee. Marshall wanted to know if this would be a NAACP case.

³⁷Dunjee replied:

*"I am of the opinion that this is one of the most important cases we have attacked. It is a perfect natural so far as winning is concerned. ... What I want to suggest is that you arrange to come down for the trial. Immediately following the trial, I can have you speak in half dozen points of the state which will make it possible to soften the cost of transportation and [etc.]. ... I believe you would be doing a fine thing to step in right at this point so that the National Office can take the spot-light and therefore revive association activity all over the U.S. ... As the matter stands no there is no ill feeling against Lyons. The community will be with him. Public sentiment has completely changed in and around Hugo. The only trouble will come from the officers who worked with the Governor's investigator. They [Sheriff Roy Harmon and County Attorney Norman Horton] are no longer officers, for the white and Negro citizens defeated the sheriff who served at the time Lyons was beaten."*³⁸

Local Residents, White and African American, and the Victim's Family

Local whites were on Lyons' side. Their horror at the Rogers murders was only amplified by authorities exonerating felons that locals were confident did the crime. They were angered by authorities railroading two African Americans white locals thought innocent. The father of victim Marie Rogers, E. O. Colclasure, helped form a local NAACP chapter.³⁹ He led the effort to free Lyons well after the NAACP had given up.

The Chicken Thief

William Douglas [W.D.] Lyons, a 19-year-old Ft. Towson youth, was caught Thursday 13 January 1938 at 1:30 a.m. with some chickens, a pistol and flashlight. By 3 p.m. that day he had been sentenced by District Judge George R. Childers to a three-year sentence at McAlester penitentiary.⁴⁰

At the time, an illiterate young southern rural African American male stealing chickens was a trope on stage and literature.⁴¹ It was also a reality. We can notice in the course of thirteen and a half hours young Lyons was arrested, arraigned, tried, and sentenced to three years in the penitentiary by Judge Childers. For some reason he did not serve all three years. As it turned out, it would have been better for him if he had at least served two years. For many young male African Americans, then and today, an arrest, even over a trivial matter, can disastrously change the course of an entire life.

Denver and John Nix, using interviews, court documents and newspaper coverage pieced together African American W. D. Lyons' version of his detention and interrogation.⁴²

Within a week of Cheatwood and Steffee's arrival in Choctaw County, Thursday 11 January 1940. W. D. Lyons came home to find two men with drawn pistols waiting. Oklahoma court of Criminal Appeals judge Thomas H. Doyle noted "Lyons was 'arrested' by civilians without a warrant."⁴³ Oscar Bearden and Reasor Cain were not acting as a constable, a law officer, a Frisco agent, or even within the law. At best, they were 'good citizens helping out.'

In court, Lyons told his version as to what happened next. About three blocks from the courthouse and jail Resor Cain broke off a piece of one-inch board lying on the street and Oscar Bearden struck Lyons on the head with this board. He then kicked Lyons and threatened his life by telling him they were going to burn him and kill him by degrees unless he 'confessed.' About a block from the jail, they banged Lyons' head against a tree. When they reached

the jail, the jailer, Leonard Holmes, greeted Lyons by striking him in the mouth with the jail keys which weighed about five pounds. Bearden then told Cain and Holmes to ‘get some more officers, and we will drag him through colored town and let the rest of the Negroes learn a lesson.’ Leonard Holmes returned and reported there were no more officers around at that time. The jailor and Deputy Sheriff Floyd Brown then carried Lyons to the top floor of the women’s side of the jail where Floyd Brown kicked him and knocked him down with his fist.⁴⁴

Monday evening 22 January 1940 – Tuesday 23 January 1940, Lyons told the court at his trial he was taken from his cell to the office of Choctaw County Attorney Norman Horton. On the way, Lyons said a highway patrolman beat him with a blackjack. In Horton’s presence, Lyons said, Cheatwood handcuffed Lyons to a chair and began hitting him with a blackjack. Cheatwood, a highway patrolman and Reason Cain took turns beating Lyons, making threats, and demanding a confession. About 4:30 the next morning county prosecutor Norman Horton asked Lyons if he killed Elmer Rogers. When Lyons said “No” Cheatwood hit Lyons again with the blackjack and continued until Lyons agreed to say he killed Rogers, according to Lyons. Denver and John Nix summarized Lyons’ version of his interrogation and confessions.

“Sheriff Roy Harmon pulled W. D. Lyons’s mangled, bloodied body up from the chair in the county attorney’s office – he couldn’t stand on his own – and carried him back to the jail section of the courthouse. Lyons stayed in a cell there for just five minutes before men returned and brought him to the sheriff’s office. ... He had now been without sleep for approaching twenty-four hours. ... That evening, the assistant county attorney, the court clerk, and Vernon Cheatwood came to Lyons’s cell with a written statement, ordering him ... to sign it. ... After nearly two days without sleep, amid repeated rounds of beatings and constant threats, Lyons signed their statement. With their

confession in hand the lawmen walked Lyons out into the jail yard and posed for pictures with him ... After that Lyons was transported to the Oklahoma State Penitentiary at McAlester ... where his captors sat him in a chair in the office of the prison warden Jess Dunn ... Lyons signed a [second] statement prepared for him by his captors ... ”⁴⁵

Wednesday 24 January 1940, Vernon Cheatwood announced 21-year-old African American W. D. Lyons had been arrested Thursday 11 January 1940, two weeks earlier, for the murders.⁴⁶

“[Lyons] was held in an undisclosed jail [Antlers in Pushmataha County, about 20 miles Northwest of Hugo] ... ‘We got Lyons put away for safekeeping,’ said Vern Cheatwood, special investigator for Governor Phillips, who announced Lyons’ confession. ... Cheatwood said Lyons admitted after eight hours of questioning, naming another Negro ex-convict, Van [Bizzell], as the man who shot the Rogers, hacked them with an ax and then set fire to their frame home ... Cheatwood said Lyons told him he received two dollars for his part in the slayings ... He denied using either the gun or ax, Cheatwood said, but admitted pouring coal oil through the dwelling before it was fired.”⁴⁷

Pre-Trial Violations of Defendant W. D. Lyons Rights

Whether or not Lyons’ testimony about his treatment between his apprehension and confession is truthful, his rights were severely violated. *Compiled Statutes of Oklahoma, 1921* provide:

§ 2351 “No person ... charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.”

§ 2446 “When a complaint, verified by oath or affirmation, is laid before a magistrate, of the commission of as public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a

warrant of arrest.”

§ 2456 “The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

§ 2466 “The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.”

§ 2477 “A private person may arrest another ... When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

§ 2478 “He must, before making the arrest, inform the person to be arrested of the cause thereof ...”

§ 2480 “A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

§ 2484 “When the defendant is brought before a magistrate upon arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charges against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination, before any further proceedings are had.”

§ 2485 “He must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose ...”⁴⁸

Using the Lyons’ trial manuscript as a source, Oklahoma Criminal Court of Appeals judge Thomas H. Doyle provided an ‘undisputed’ chronology of events from W. D. Lyons’ apprehension to his criminal trial. The parentheses have the trial manuscript [C.M.] source pages.

“Lyons was arrested [Thursday] January 11, 1940 (C.M. 236)

“ ‘Confession’ obtained at Hugo morning of [Tuesday] January 23, 1940 (C. M. 313-314)

“ ‘Confession’ signed 2:00 P. M. same afternoon (C. M. 129)

“ ‘2d. Confession’ obtained at McAlester same night (C.M. 130)

“ ‘3d. Confession’ obtained at McAlester two days later (C.

M. 228)

“Lyons before magistrate without counsel [Saturday] January 27, 1940 (C.M. 140)

“First advice of counsel on [Sunday] February 4, 1940 (C.M. 369)

“Information⁴⁹ filed [Thursday] August 29, 1940 (C.M. 2)

“Arraignment [Monday] December 30, 1940 (C.M. 5)

“Trial started [Monday} January 27, 1941 (C.M. 7.)⁵⁰

It is not disputed Lyons was arrested without a warrant 11 January 1940 and did not appear before a magistrate until 27 January. During this period Lyons was held in the Choctaw County jail, not Antlers. The jail was at least nominally under the control of the sheriff and county attorney. A defense attorney could reasonably ask the two men making the arrest what information they had, i.e., probable cause, other than the fact he lived there, leading to led them to arrest W. D. Lyons. Why had they not obtained a warrant? That would require a demonstration of probable cause before a magistrate. The sheriff, county attorney, and prison warden could reasonably be asked why they had the defendant brought before them rather than a magistrate. A defense attorney could reasonably ask why the defendant had been held for eleven days, been interrogated, and had confessed three times before being brought to a magistrate. Judge Doyle of the Criminal Court of Appeals seems the only one to ask these questions.

The clear implication is there was no plausible evidence to present to a magistrate for a warrant and no plausible case to bring to a magistrate without a confession. Making Lyons’ eleven-day treatment more irregular is he was being held while two or three others were being held in the state prison in McAlester for the same crime, one of them having provided a detailed confession. These considerations alone merited a defense demand Lyons’ three confessions, elicited as they were in clear violation of his rights, be suppressed. Whether or not Lyons’ account of his beatings and abuse were true, his rights were severely violated with no expla-

nation as to why – if we discount the obvious lie he had escaped. These violations of Lyons’ rights, however, did not become part of his attorneys’ defense strategy. The defense was focused on the beatings and abuse Lyons said forced his confessions. The alleged beatings, too, were certainly in violation of his rights.

Van Bizzell: Accusation, Arrest and Bail

Eight-year-old James Glenn Rogers, the only surviving witness to his family’s murders, was firm. There were two men involved. Authorities, once they obtained a confession from W. D. Lyons, needed to learn his accomplice. Lyons gave them Van Bizzell, an older African American, age 36.⁵¹ Vern Cheatwood, in announcing Lyons’ confession, said Lyons identified Bizzell as “the man who shot the Rogers family, hacked them with an ax and then set fire to their frame home ...”⁵² According to one newspaper account Bizzell was arrested with Lyons on 11 January, questioned, released, and finally re-arrested by Wednesday 24 January when Vern Cheatwood announced the Lyons arrest.⁵³ Whereas Lyons was brought to the state prison at McAlester for “safekeeping,” presumably from mob violence, ironic given his alleged treatment by authorities, Bizzell initially remained in jail in Hugo, steadfastly denying any involvement in the murders.⁵⁴ The next day, Thursday 25 January, the *El Reno Daily Tribune* reported Choctaw County Attorney Norman Horton saying “... he would request a quick trial ... ‘The less delay the better ... We have plenty of evidence.’”⁵⁵ By that time both prisoners were at the state penitentiary.

Finally, on Saturday, 27 January, W. D. Lyons and Van Bizzell were brought before County Judge Tom Hunter acting as magistrate.

“While 30 National guardsmen armed with semi-automatic rifles guarded the Choctaw County Courthouse and jail ... two Negroes were returned from McAlester, given preliminary trial and bound over without bond to await action of district court ... Immediately after the hearing the Negroes, W. D. Lyons and Van [Bizzell], were whisked down

the secret stairway into cars waiting in the alley between the courthouse and jail and back to the state penitentiary. ... The courtroom, every seat was crowded with spectators, remaining silent during the four-hour hearing. ... eight-year-old Glen Rogers ... gave his version of the crime ... The child could not identify either one of the Negroes defendants when they were pointed out in the courtroom nor could he ever recall seeing a cap, produced by officers. The cap, a grey one with ear flaps, owned by one of the Negroes, is believed by officers to have caused the child to say ... one of the men had horns.' ... [Bizzell] ... entered a plea of not guilty through his attorney appointed by the court to defend him. Lyons made no plea and was not represented in the hearing. Two local attorneys asked by Judge Hunter to represent him declined after disqualifying in the case."⁵⁶

Bizzell's attorney was Robert H. Warren, a Choctaw County legal insider.⁵⁷ Warren had previously served as Choctaw Assistant County Attorney.⁵⁸ It is not clear why no attorney stepped forward to represent Lyons. Oklahoma Statute provided "The magistrate must also allow to the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose ..."⁵⁹

Lyons finally met with his attorney 4 February 1940, well after he had been arraigned and sent to prison to await trial. Given the undisputed violations of Lyons' rights, an attorney would automatically file a writ of habeas corpus. This was not done. Lyons was allowed to languish in prison without trial for almost another year. In December 1940 Thurgood Marshall asked Dunjee why?

"From our review of the case and the Oklahoma statutes it seems that prosecution of Lyons should have begun long ago or the case dismissed. Although we hate to suggest procedure in these cases where a legal lawyer has been retained, I am wondering regarding the possibility of taking some form of legal action to compel the State to either try

Lyons of release him. I am wondering if you would give us the 'lowdown' on the entire situation."⁶⁰

Dunjee quickly responded:

"[I wrote] several months ago that we swear out a writ of habeas corpus for Lyons but Attorney [Amos Hall]⁶¹] and others on our legal staff advised against it. ... we have the best case to be found in the South on the question of forced confession. We had to go slow because of shortage of funds ... Even the father of the slain girl believes in the innocence of Lyons.

... this is one where I believe we could attract the attention of the entire nation. For instance, I believe we could start something if we sought to secure the freedom of Lyons by a writ. What do you think of this? One of the Negroes who was arrested [Van Bizzell] and who was alleged to have confessed to something has been freed and driven from the town."⁶²

At this point, December 1940, Lyons has been jailed 'for safe-keeping' at the state prison since January.⁶³ His co-defendant, Van Bizzell, was released on bail in July. Imagine 1940s Oklahoma authorities letting loose an African American facing the death penalty for sneaking up and murdering a white husband, wife and their small child -- in their own home, if they had any case against him. Lyons' attorneys discussed with Dunjee seeking a writ of habeas corpus, but they chose not to. A writ of Habeas corpus would force authorities holding Lyons to justify holding him without trial. It is clear they did not discuss this strategy, and getting him bail, with Lyons. The legal team's consideration, instead, was keeping the case alive for national publicity and fundraising for the Oklahoma and national NAACP. Keep in mind Thurgood Marshall's dual NAACP role: NAACP special counsel and Director of the NAACP Legal Defense and Educational Fund. The former entailed providing clients legal defense, the later required creating

publicity and raising money. Bailing Lyons at this point would end his usefulness to Dunjee and the NAACP, especially if the authorities simply dropped the case, as they seemed to have done with Bizzell. Lyons' priority, in contrast, was getting out from under the death penalty threat and gaining release from jail.

In defense of Dunjee and Marshall we can concede they were overworked with other important matters and short of funds. But Stanley Belden, if allowed, could easily have filed the writ. It seems Dunjee told him not to.

THE TRIAL

POST-CONFESSION VIOLATIONS OF LYONS'S RIGHTS

The trial came down to the state presenting Lyons' confession and circumstantial evidence consistent with the confession. The defense task became documenting the state's violation of Lyons' rights in beating a confession out of him, not bringing him immediately before a magistrate, and not providing an attorney. Their next task was to discredit prosecution circumstantial evidence and offer the defendant's alibi.

The All-White Jury

Dallas and John Nix describe the jury selection process. The jury pool was exhausted after prosecution and defense objections and for opposition to capital punishment, firmly held opinions on the case, and other reasons. Judge Childers suggested the County Attorney go out and find more potential jurors. Plaintiff attorneys withdrew their objections and took the remaining jurors to prevent the prosecution from rounding up his friends.⁶⁴ Marshall wrote Walter White:

*"Jury is lousy. State investigator and County Prosecutor busy around town stirring up prejudice, etc. No chance of winning here. Will keep record straight for appeal."*⁶⁵

The immediate consideration was an all-white jury in an African

American's death penalty case. In *Hollins v. State of Oklahoma*⁶⁶ the United States Supreme Court ruled Okmulgee County had a history of excluding African Americans from juries. Jess Hollins' conviction and death penalty from an all-white jury was reversed, sending the case back for re-trial. In 1940 Okmulgee County was 19.5% African American.⁶⁷ In 1940 Choctaw County was 20.7% African American.⁶⁸ There is no evidence Lyons' attorneys discussed challenging the absence of African Americans on the jury with their client, Lyons. They only discussed it among themselves. When the matter came up when considering appeal, Marshall sent a Wednesday 31 January 1941 memo to fellow civil rights attorneys, Bill Bastie, Leon Ransom and W. Robert Ming:

*"A lawyer in Dallas Texas ... [suggests we appeal the all-white jury] The question was not raised at the trial. The point he wants to make is that the defendant requested his lawyer to raise this question and the lawyer refused to do so. ... [the] question about the failure of the lawyer to raise the jury question at the request of the defendant is worthy of some consideration. What say you about raising this point on Habeas Corpus in local federal court? We do not have Much time."*⁶⁹

The strategy suggested appealing on the basis of incompetent counsel. Marshall and Belden could not allow that. We can only speculate as to why the all-white jury was not raised at trial. One reason could be that if it had been brought up either the judge would have to rule for a new trial, or an appeal would easily grant one – or the entire case would be dismissed. We can imagine Marshall did not want the case dropped or delayed given how useful the case was in generating publicity. Fundraising would be sidelined. Further, it is impossible to imagine a credible dispute between the defendant, Lyons, and the Belden – Marshall team on legal strategy. There is no evidence Marshall and Belden ever discussed any legal strategy with Lyons.

Excessive Delay in Arraignment and Trial

On Thursday 25 January 1940, before the arraignment of Lyons and Bizzell, County Attorney Norman Horton told reporters he would request a quick trial ... “The less delay the better ... We have plenty of evidence.”⁷⁰ Eleven days after that, Stanley Belden first met with his client. He, too, demanded a quick trial. “Judge Childers said it does not appear possible the Negroes can be tried this term as four murder cases are already set for trial this week.”

⁷¹ In the end, it took over a year for Judge Childers to hold W. D. Lyons’s trial.

This delay violated Lyons rights. Oklahoma’s Constitution, Article II §20, guarantees “the accused shall have the right to a speedy and public trial.” Remedies to a full docket, if needed, include Oklahoma’s Constitution, Article VII §9

“Whenever the public business shall require it, the Chief Justice may appoint any District Judge of the State to hold court in any district.”

I could find no evidence Lyons’ attorney made any effort to get their client a speedy trial.⁷² The time to bring up trial delay was 6 February 1940 when Judge Childers complained of his packed docket. I have no doubt any appeal based on explicit sections of the Oklahoma Constitution regarding speedy trials would have resulted in a remedy to Judge Childers’ problem.

The trial delay seems to have served the interests of the prosecution and the defense attorneys but not that of W. D. Lyons. For the prosecution, the delay gave time for troublesome witnesses to absent themselves. For example, Van Bizzell, Oscar Bearden and Houston Lambert were not called at trial and defense witness Christine James appears to have changed her testimony.⁷³ For the defense, the delay allowed Thurgood Marshall time to dispose of other cases and Dunjee and the NAACP to raise needed funds and generate publicity.

Absence of an Attorney until after Confession and Arraignment

Lyons was not provided an attorney during arraignment. Under the provisions of the Code of Criminal Procedure, sections 2484, 2485, C.S. 1921, 22 O.S. 1941 §§ 251, 252, “the magistrate must immediately inform him of ... his right to the aid of counsel in every stage of the proceedings” and “he must also allow to the defendant a reasonable time to send for counsel and adjourn the examination for that purpose.” If the defendant did not have counsel “the court must assign counsel to defend him.”⁷⁴ The magistrate, Judge Hunter, asked two attorneys to represent Lyons. When they disqualified themselves, the judge left Lyons unrepresented.⁷⁵ He should have adjourned until an attorney could be found. To see the benefit of having an attorney consider Lyons’ co-defendant, Van Bizzell.

Robert H. Warren, Bizzell’s attorney, was a Choctaw County legal insider who worked behind the scenes.⁷⁶ He made two key legal maneuvers. He arranged to sever his client’s case from W. D. Lyons, the NAACP and ACLU. He managed by Wednesday 10 July 1940 to have Van Bizzell released on \$5,000 appearance bond. Bizzell was (informally) told to leave Choctaw County and stay out.⁷⁷ He was never tried. W. D. Lyons remained in the penitentiary.

Van Bizzell’s bond, co-signed by one Clyde Collins, required Bizzell.

“... ”⁷⁸ shall personally be and appear before the District Court of Choctaw County ... on the 1 day of Fall Term 1940 at 10 o’clock of said day, to answer the indictment ... and make like appearance from day to day and term to term of each successive term of said Court, until the said charges shall be disposed of by said Court ... and shall not depart from said Court without leave ... ”⁷⁹

Given these bail requirements, the absence of Van Bizzell during Lyon’s trial is puzzling. We can surmise Clyde Collins, Bizzell’s

guarantor, was also unavailable to tell the jury the circumstance of one accused murderer being tried and his indicted accomplice set free.

Bizzell's appearance was guaranteed by Clyde Collins with \$5,000 -- \$100,000 in 2020 dollars. Clyde Collins earlier had been convicted of attempted rape, sex with an underage girl, and sentenced to five years in the penitentiary. His attorney, Robert H. Warren, subsequently Bizzell's attorney, successfully appealed.⁸⁰ In 1929 Governor Henry Johnson was impeached, tried, convicted, and removed by the state senate. An element of his conviction was his use of clemency.

*"Undercover clemency to give political aid to his friends also was aired before the senate court ... Johnson gave Clyde Collins, Fort Towson, a leave of absence to aid his 'good friend' Dave Stovall⁸¹ ... The clemency act was filed in the secretary of state's office ... but no record was made in the pardon and parole office ... Collins ... was said to be a member of an influential Choctaw county family ..."*⁸²

We can suspect Governor Phillips was behind getting Robert Warren to represent Bizzell, Collins to guarantee Bizzell's bail and the district court to grant bail. All that was behind the scenes.

While Thurgood Marshall was very interested in Bizzell's bail – neither he nor Stanley Belden pursued it at trial or appeal.⁸³

The client, W. D. Lyons, made clear to his attorneys, Stanley Belden and Thurgood Marshall, at every opportunity, he was innocent and wanted to get out of the jail or prison holding him as soon as possible.⁸⁴ Illiterate Lyons knew nothing of habeas corpus, Oklahoma's statutes or the state's constitution. We can assume neither did his wife, sister, mother or any of his associates. His attorneys did. They discussed habeas corpus among themselves but rejected it. There is no evidence they informed their client of that

discussion or that option. What we know suggests the opposite.

Lyons' Confessions

W. D. Lyons had signed two confessions, the first in the office of the county attorney in Hugo, the second, a few hours later, in the office of the warden of the state prison in McAlester. The third was verbal in the presence of Cap Duncan, then a sergeant at the Penitentiary, several days after the second confession. At trial the prosecution introduced the second (but not the first) confession. The defense objected and the jury was dismissed while the matter was discussed. The defense argued the confession was coerced, the prosecution agreed that perhaps there might be a problem with the first confession (or there might not) but they would not rely on it, just the second confession.

The prosecution conceded authorities placed a pan of the victims' bones on Lyons' lap during interrogation. This was intended to terrify "one of his tribes."⁸⁵ Lyons appeared to quiver in fear as a result and signed a confession. The second confession, signed later at McAlester prison was not accompanied by any evidence of intimidation or quivering. The prosecution denied authorities maltreated Lyons in any way save for the pan of bones. The defense stressed Lyons' account of his brutal arrest, long incarceration without access to a magistrate or attorney, and his brutal torture at the hands of his interrogators. For the defense, the effects of this treatment easily carried over to his second and third confessions.

The prosecution presented testimony from those involved in Lyons' arrest and interrogation. All said they did not participate in, nor witness, any maltreatment. Defense cross-examination failed to shake their testimony.

When we read Marshall's cross-examination of former sheriff Roy Harmon might think the prosecution witnesses were well-rehearsed not to remember or say anything. Marshall showed Harmon a photograph of him, the defendant and Vernon Cheatwood

taken immediately after the first confession. The photograph had been in all the Oklahoma newspapers and many national newspapers and magazines. It was famous. The following dialogue between Marshall and Harmon ensued:

***Q** Do you know these three people shown on the reprint?*

A I can't tell very much about it.

***Q** Do you know who this is [pointing]?*

A Looks a little like me but there are several fellows here that favor me.

***Q** Who does that look like in the middle?*

A These negroes look nearly alike to me, can't hardly tell them apart.

***Q** Does that look alike over there [pointing to the defendant]?*

A No way to tell.

***Q** You can't identify the person on the left?*

A No. I said it looked like me.

***Q** Are you not positive?*

A I am not positive. ""⁸⁶

Reason Cain, one of the men who 'arrested' Lyons, testified Lyons was not beaten, abused, threatened, or struck in any way. Reasor Cain saw no abuse of Lyons during questioning or any other time.⁸⁷

Judge Childers curtailed Marshall's cross examination of Reasor Cain.

***By Mr. Marshall: Q** What is your occupation at this time?*

A Clerk for the draft board.

***Q** Did you leave the Frisco voluntarily?*

***By Mr. Horton:** Objected to as incompetent, irrelevant and immaterial.*

***By Mr. Marshall:** We would like to find out whether he was released from the Frisco as a result of this case, which would give him a motive for testifying.*

By Mr. Horton: *I don't think for every witness, we have to establish a motive for his testimony. They are under oath to tell the truth.*

By the Court: *I think that is right. Whether he was fired, or his time was out, he told who his employer is now.*”⁸⁸

Marshall's cross examination tells us three things. First, there was something dodgy in Reasor Cain's recent background the prosecution did not want on the record. Second, Cain was being taken care of with a salaried local draft board political appointment. The appointment was by the President of the United States on the recommendation of the Governor, Leon Phillips.⁸⁹ Third, the judge clearly favored the prosecution in denying Marshall a look into Reasor Cain's background. Marshall could have inquired of Reason Cain who he was with when Lyons was arrested. That would be Oscar Bearden, presumably then serving time in a federal penitentiary. Marshall could have also inquired as to what probable cause he and Oscar Bearden had for arresting Lyons. But he did not, nor did he put into the record an objection enabling the judge's decision to be part of an appeal.

The defense began with Lyons' account of his treatment by the authorities. This was presented by Lyons himself and by Belden who summarized it.⁹⁰ The defense had several witnesses in support of Lyons' testimony.

Christine James was a prisoner in the jail at the time Lyons was locked in the women's section. Defense attorney Stanley Belden questioned her:

Q *Did you see him [Lyons] at any time during that time?*

A *I seen him when they brought him up.*

Q *Tell the Court and jury if you saw anything unusual.*

A *I didn't see anything.*

Q *Did you notice his head, feet or eye?*

A *No sir, I didn't pay any attention to him.*”⁹¹

We must assume Christine James was induced to change her testimony. We do not know of her status at the time of Lyons' trial. As a prisoner under charges the authorities would have leverage over her the defense would not.

The defense called Mrs. Vernon Colclasure, the sister-in-law of the murder victim, Mrs. Elmer Rogers. Her testimony was expected to be compelling to the jury given she was white, respectable, a long-time resident of the area and, the sister-in-law of one of the murder victims. Defense attorney Stanley Belden asks her:

***Q** All right. Do you know Vernon Cheatwood, the Governor's special investigator?*

A Yes, I do.

***Q** Do you recall his coming to your home one morning, and there talking to you and to the father of Mrs. Rogers [one of the murder victims] about a confession he had obtained?*

A Yes, he did. ...

***Q** What did Mr. Cheatwood do or say, if anything?*

***By Mr. Lattimore:** Objected to as incompetent, irrelevant and immaterial, and calling for hearsay testimony.*

***By Mr. Marshall:** If the Court please, on yesterday we specifically asked Mr. Cheatwood whether or not he made a statement concerning a blackjack, and he answered that he never had made the statement concerning that, and I think we are in a position at this time to show that he did make the statement.*

***By Mr. Belden:** And further, he stated at that time he never had a blackjack.*

***By Mr. Lattimore:** I don't know what the law is in New York, but in Oklahoma in order to impeach you must ask an impeaching question, fixing the time and place. They asked general questions and cannot come in on this procedure now.*

***By the Court:** You may fix the time and place. ...*

***By Mr. Belden:** Court please, will withdraw that ques-*

tion...

By the Court: *I will sustain the objection. Let the record show that the defendant is permitted to call Mr. Cheatwood for further cross-examination.*”⁹²

Vernon Cheatwood was called to the stand and questioned by Thurgood Marshall. We must note Cheatwood was excused from The Rule and was carefully listening to all the testimony. The Rule, common in American courts, requires witnesses to be outside the courtroom, not allowed to talk with one another and under the supervision of a bailiff until called to testify. Cheatwood had an advantage in Thurgood Marshall’s examination. Assistant Attorney General Sam Lattimore dictated exactly what questions Belden and Marshall must ask Cheatwood and what answers Cheatwood must give for defense witnesses to impeach Cheatwood’s testimony. Vernon Cheatwood sat and watched all this. After this was noticed by the defense, Cheatwood was excused from The Rule over defense objection.⁹³ With the help of the trial judge Sam Lattimore out-lawyered Belden and Marshall.

Recalled to the stand, Cheatwood could not remember exactly who he spoke with and when during the Lyons’ investigation. Did he visit the Colclasure home after Lyons’ arrest? “I don’t remember whether I did or not. After he was arrested, I don’t remember, I might have, I would not say whether I was or not.”⁹⁴ Marshal asked if Cheatwood could recall being at the Webb Hotel just after Lyon’s confession had been obtained in the county attorney’s office. Alerted by Assistant Attorney General Latimore not to testify to time and place, Cheatwood was not able to give that information. The defense did not challenge this in a way to enable an appeal.

A key to the case was judge Childers’ ruling out the first confession as it was made through fear, but the second confession was made later when there was no fear. The judge seemed confused.

“By the Court: *The Court permitted the defendant to submit evidence of the confession made in the county attor-*

ney's office, which the court suppressed ... in order that it might be established, if [there] could be the evidence [of], a continuation of fear, [from] the time he made the confession in the county attorney's office by having had the pan of bones set on his lap, in which the officer said it made the defendant quiver. If they would show a continuation of that fear at the time of the confession made at McAlester; then certainly the jury would have a right to consider these facts to see if there that night the confession at McAlester was made through fear or not. This Court suppressed the first confession that was made here [in the county attorney's office in Hugo]. There was no evidence at that time of fear having been used, or force having been used in the office of the warden of the State penitentiary, and the Court was of the opinion that the confession should be submitted to the jury for its consideration. ... the Court found that there were things done there [in the county attorney's office] that were calculated to scare a man, make him afraid, one of his tribe, by placing the bones of dead white people in his lap, that had been murdered in the community, was calculated to arouse suspicions, things that would make him testify against himself when otherwise he would not. I think in all fairness to this defendant, he has a right to have all the defenses that he might have to the confession that was made at McAlester submitted to the jury, to have twelve men pass on it. ... They [the defense] contended that the defendant was still scared when he went to Oklahoma City [sic. the State Prison at McAlester]. The Court was of the opinion that several days had elapsed. [At] the time, it was not made clear to the Court that both confessions were made on the same day, as I get it now.⁹⁵

Judge Childers did not exclude the first confession because authorities tortured Lyons. The judge never accepted, or rejected, Lyons' version of his treatment. The superstitious fear should have dissipated after the pan of bones was no longer present. Two

weeks of sleep deprivation, fear of torture and threats would not dissipate while a person was in the hands of the same authorities who inflicted the torture, as Lyons was, until well after his second confession. Judge Childres obfuscated the nature source of Lyons' fear. This was not pointed out by Lyons' attorneys.

Neither Marshall nor Belden tried to establish the prison camp convicts as a valid alternative to Lyons in the Rogers murders. Marshall did not cross examine Sheriff Roy Harmon as to the details of the prison camp convict arrests and the confession leading to their arrests, nor to the evidence leading to their charges being dropped. Marshall's sole interest in questioning Harmon was Lyons' treatment in custody. Marshall did not probe Cheatwood as to how, when or by whom the convicts were exonerated. Rather, he was seeking to establish if Vernon Cheatwood caused Lyons to be arrested and if Cheatwood had any knowledge or, or involvement in, Lyons' abuse, beatings or threats. Marshall let stand, unchallenged, Cheatwood's statement the convicts "were all exonerated from the crime." That was what the jury was left with.

This ended the defense case for Lyons' confession being the product of abuse and threats. It was up to the jury to weigh testimony of defense witnesses, Annie May Fleeks, Lyons' sister, Mrs. Vernon Colclasure and E. C. Colclasure, sister-in-law and grandfather of the murder victims, and Hugo's Webb Hotel employees Leslie Skeen and Albany Gipson. They testified Vernon Cheatwood had a blackjack as Lyons described it. They testified Cheatwood talked about beating a confession out of Lyons with it. Prosecution witnesses were authorities present when Lyons claimed to have been abused. They all denied seeing any abuse. Complicating the jury's task was the judge's suppression of the confession obtained in the county attorney's office but admission of the confession in the warden's office. What reason did the jury have to think Lyons was not, in the warden's office, the same broken man who gave the confession in the county attorney's office? Prosecution witnesses Warden Jess Dunn and the new sheriff, Cap Duncan, testified they

saw or administered no abuse on Lyons. There was no evidence, from Lyons or anyone else, Dunn or Duncan abused Lyons. Thurgood Marshall did find a way to challenge Warden Dunn's testimony the confession was freely given and in Lyons' own words by noticing the confession included the word 'renumeration,' a word Lyons would never use or know. Dunn noted that was read to Lyons who Dunn said agreed.

Circumstantial Evidence Against Lyons

Vernon Cheatwood and Bert Steffee appeared to have arrived in Choctaw County Tuesday 2 January 1940. We can assume they hired Oscar Bearden and Reasor Cain to aid their investigation. By Thursday 11 January Cain and Bearden had apprehended W. D. Lyons. If this is at all accurate it suggests Cheatwood and his associates had very little case against Lyons. What might that case have been?

Lyons, as a youth, been arrested and sentenced to prison for stealing chickens. He was an ex-convict. He had borrowed a broken shotgun from a friend. He had bought at least two shells from a local store. He had been seen in Ft. Towson carrying the shotgun wrapped in a newspaper. He had been seen, alone, but not with Van Bizzell, in the field and wooded area in the vicinity of the Rogers home the day of the murder with the newspaper-wrapped shotgun. He had been seen with Van Bizzell earlier that day. Lyons said he borrowed the shotgun and purchased shells to hunt rabbits. Two shots missed a rabbit. He threw the spent cartridges away near a fence post. He wrapped the shotgun in a newspaper as he did not have a hunting license and did not want to be arrested and fined. He was in the vicinity of the Rogers home because it was where he and his family lived – about a half mile from the Quarters, the African American part of Fort Towson. There was no testimony or evidence linking Lyons to the actual murders. No one testified Lyons 'suddenly' came into money or discussed the robbery. No money from the robbery was found.

Guilty

The jury returned a guilty verdict with a life in prison sentence. The jury rejected the death penalty.

POLITICAL REPERCUSSIONS

Lyons' prosecution and conviction seem to have caused Choctaw County political repercussions. The governor lost a legislative supporter in 1940. At the 9 July 1940 Democrat legislative primary:

*"Well aware that the election holds the key to his success or failure in the last two years of his administration, the anxious chief executive [Phillips] kept a vigil at the telephone and radio until 2 a.m. at the capitol. He was reported Wednesday to be 'pleased' with the results. ... [However] Vance Posey, former president of Southeastern State College at Durant, won in the [State Senate] district composed of Choctaw and Bryan counties. He is listed as anti-administration"*⁹⁶

Governor Phillips pushed three constitutional amendments for a vote in a 11 March 1941 special election.⁹⁷ Choctaw was the only one of the 77 counties to vote against all three of the governor's amendments.⁹⁸

In the 14 July 1942 Democrat gubernatorial primary Phillips backed anti-New Deal Gomer Smith in the seven-candidate field. Smith's main opponent was Robert S. Kerr, a New Deal supporter. Kerr actively campaigned for Negro votes. Governor Phillips seconded key staff to the Smith campaign including his special investigator, Vernie Cheatwood. The Lyons case played a part in the campaign.⁹⁹ Kerr won. Telling, is while Gomer Smith took all its surrounding counties, Kerr took Choctaw.¹⁰⁰

State-wide, Leon Phillips successfully kept his administration from repercussions from the mess over the Rogers murders. Overall, one contemporary historian did note "... there was some loss of confidence among common people because of mediocre lead-

ership in the Seventeenth Legislature and the chief executive office.”¹⁰¹

APPEALS

We might try to put ourselves into W. D. Lyons’ mind. He is bewildered by what has happened. He did not murder anyone. He was at best only dimly aware of the wider situation of politics, the law and the motivation of those controlling his situation. He surely knew much of the mess he found himself in was due to his race. He was African American, a Negro, a Black. He was poor with little education. He could not read or write. All the significant actors were white. They showed nothing but contempt for him. He experienced the ugly side of White Supremacy. The ritual of everyday polite interaction between white and African American, each in their proper place, for him, in this situation, was gone. It had to be gone. The white authorities knew he was innocent. But they also knew he must suffer for the crime, be treated as a brute, a savage killer, to serve their larger purpose. That larger purpose was to protect politicians from having their corrupt and incompetent prison and land administration exposed. From 11 January to 4 February 1940 Lyons was helpless in the unrestrained hands of a small number of vicious whites acting under authority of law.

After twenty-five days of isolation Lyons is visited by a genuinely sympathetic white attorney, Stanley Belden. Belden has been sent by Oklahoma City African American Roscoe Dunjee, on behalf of an organization of Oklahoma African Americans, the NAACP. Over a year later, in March 1941, Lyons meets New York African American attorney Thurgood Marshall. Marshall had made the enormous journey from New York just for him. Marshall, Dunjee and Belden, to Lyons’ mind, must have come to somehow equal or balance the power of his white persecutors. He was no longer brutalized and abused. At his trial he was treated by white authorities with the same formality and respect as a white in a similar fix. He knew nothing of the law’s intricacies. The only outcome he hoped for was to get out of prison, a free man. Only Dunjee, Belden and

Marshall could accomplish that. How, he could not, did not, know.

Marshall wrote to NAACP Executive Director Walter White Sunday 2 February 1941, immediately after Lyons' trial and conviction. After first meeting Lyons Marshall said he and Belden "were convinced he was innocent."¹⁰² Much later Marshall told journalist and friend Carl Rowan "I still think Lyons was innocent."¹⁰³

After jurors were struck or excused the jury panel was exhausted. Marshall wrote to Walter White "The State's attorney was getting ready to call additional talesmen¹⁰⁴ (sic. talesmen) from the streets when we decided it was best to take what we had than let him go out and get his friends, relatives, etc."¹⁰⁵ The attorneys expected a guilty finding. The trial was conducted with an eye toward a trial record for appeal. In the same letter Marshall wrote:

*"I think we are in a perfect position to appeal. We will prepare a motion for a new trial ... This case has enough angles to raise a real defense fund over the country if handled properly. I thought we should aim at \$10,000. We have already raised around \$275 in that small community down there. We can raise more than a thousand in this state. We could use another good defense fund and this case has more appeal than any up to this time. The beating plus the use of the bones of dead people will raise money. I think we should issue a story this week on the start of a defense fund and when I get back on the tenth, we can lay plans for a real drive for funds ... We have been needing a good criminal case and we have it. Let's raise some real money."*¹⁰⁶

Governor Phillips Offers a Deal

The campaign of the NAACP and its allies, within Oklahoma and nationally, as well as the political challenge the anticipated appeal posed, as well as (hopefully) awareness W. D. Lyons was framed, caused the backchannel offer of a deal through Roscoe Dunjee. Stanley Belden wrote Thurgood Marshall Monday 31 March 1941.

"I talked to Mr. Dunjee last Friday. Altogether there has been seven people called him over the phone from the State Capital Building about the Lyons case. When the first one called, I told Mr. Dunjee that I thought if we played [our]] hand right we would find that the Governor was back of the calls, and the last one was an investigator [for] the [Governor's] office.

They proposed that we have the case dismissed on the grounds that the Judge was out of the county while the jury was deliberating (that is ground for dismissal in this state) but I am not sure that the Judge was out of the county while was deliberating, but whether he was or not they gave Mr. Dunjee to understand that they would have Lyons released on this ground, but they told Mr. Dunjee that he would have to get rid of Belden.

They told Mr. Dunjee they were doing this because of their friendship for him but ended up by saying it would cost about twenty-five hundred dollars for a guarantee of the release of Lyons. Finally [they] asked Mr. Dunjee what he would pay to get Lyons free.

Now I feel certain that the Governor doesn't want this case appealed to the Criminal Court of Appeals and all the facts be placed before the public. It is one thing to have it published in the papers but a far different thing to have it before the people of the state in a court decision. The Governor has further political ambitions and this case is causing him great embarrassment and if it could be disposed of on the technicality of the Judge being out of the county during the deliberation of the jury, he would be saved politically. ...

Now, I am fully aware of our duty to our client but I am also aware of our duty to expose and not cover up the

things that make possible such travesty [of] justice as took place in the Lyons case, and I feel it is our duty to the colored race, to the state and all concerned that we file the appeal and expose the corruption in this state even though in doing so doing to some degree we risk the liberty of our client and make sure that for some months to come he must stay in prison; but after all this thing is bigger than just the questions of the immediate liberty of W. D. Lyons or any other individual.”¹⁰⁷

Oklahoma statutes provided the judge must be present during jury deliberation.¹⁰⁸ A mistrial would occur should the State stipulate the judge was out of the county during jury deliberation. This could be seen as a technicality. Implicit here, the State would not ask for a re-trial. Lyons would be freed while the matter of the corruption and abuse leading to his conviction would be forgotten. This is more or less what was granted Lyons’ co-defendant Van Bizzell. Bizzell was released on bail and never tried.

After consulting with his mentor, Howard University Law Dean William H. Hastie,¹⁰⁹ and others Marshall wrote Belden “File the appeal. No compromise.”¹¹⁰ Most poignant in the letter is Belden’s articulation of the Duty to Client vs. Duty to The Colored Race and to The State at the “risk of the liberty of our client.” Whereas Belden is troubled by this, Marshall appears not. Marshall is confident of the appeal and willing to let Lyons’ prison stay be prolonged. How would Lyons have reacted should the attorneys consulted with, and be guided by, their client? There is no doubt Lyons would have taken the deal.

In May Belden wrote Marshall.

“The special investigator for the Attorney General’s Office told an Oklahoma City Attorney, who is a friend of mine, that if I would file a motion to dismiss the [Lyons] case by reason of Judge Childers having been out of the county during the deliberation of the jury that the case

*would be dismissed and that within two weeks they would arrest the two white men that committed the murder. They say they know who they are, that they are bootleggers and that the murder of [the Rogers'] was the result of their quarrels over bootlegging and the division of profit; this certainly is a very queer situation if the authorities know they committed the murder, and they stated positively that they do, it certainly is the duty of the authorities to arrest, immediately, and prosecute the murder and not let [murderers] run loose. Why should the arrest be contingent on the dismissal of the Lyons' case if it is not a political move to prevent an appeal to be filed in the Lyons' case and the public learn the truth, which certainly would affect the [Governor's] political ambitions. This is the first time they ever suggested that I go ahead with the dismissal, before they had always told Mr. Dunjee that they must get rid of Belden before anything could be done."*¹¹¹

Marshall was heavily involved in other cases and did not respond concerning the 'offer.'¹¹² Marshall received another note authorities were anxious to get rid of the case. W. D. Lyons wrote Marshall thanking him for his help and for Booker T. Washington's *Up from Slavery*:

"I am getting along fine, holding my chin up, and trusting in you.

I talked with the sheriff [Cap Duncan] of Hugo a few days ago. He said that if my case was reversed, the court at Hugo would not try me again; that I would be released.

Mr. Marshall, I realize that I am in debt to you already, for many kind things you have done for me, but there is one more thing which I wish to ask of you. It is for financial aid for me if and, when I am released. Of course, you realize that it would not be wise for me to return to Hugo. I should like to obtain transportation to Detroit Michigan, where

I believe I could easily obtain work, unless you could arrange for employment for me some other place.

I plan to get located some place first, and then send for my wife later, after I begin work. If you can arrange for such help as above mentioned, for me, I will repay the money as soon as possible after I get work.”¹¹³

Sheriff Cap Duncan assured Lyons he would not be re-tried if his appeal was successful. We can understand that as encouraging the appeal – quite at variance with the threat if a successful appeal resulted in a re-trial the death penalty would be the likely outcome.¹¹⁴

Roscoe Dunjee’s back-channel efforts seemingly smoothed the way for the appeal to the Criminal Court of Appeals. He wrote Marshall:

“You are not going to have any trouble getting before this court. The presiding judge B. B. Barefoot, is a personal friend of mine. He told me just few minutes ago to tell you that you would be given as much time as you wanted for oral argument.

I have known Judge Barefoot for the past fifteen years, and he is a liberal of the first water.”¹¹⁵ I sometimes go out to his office and talk an hour. The last time at his request. You can see you will have easy sledding so far as presentation is concerned.”¹¹⁶

Appeal to Oklahoma Criminal Court of Appeals

The Criminal Court of Appeals, since 1960, the Court of Criminal Appeals, has exclusive Appellate jurisdiction in criminal cases. Prior to 1968 the Criminal Court of Appeals had three judges elected on a partisan ballot for six-year terms. At the occasion of the Lyons appeal the judges were Bert B. Barefoot, presiding, Dick Jones and Thomas H. Doyle, all Democrats. Jones had been

appointed to fill a vacancy by Governor Phillips.

Stanley Belden had left his legal practice and Oklahoma for California. Roscoe Dunjee arranged for his friend Amos Hall, a Tulsa African American attorney, to be Marshall's Oklahoma co-counsel. Hall would continue in that role through subsequent Oklahoma NAACP cases.

The Criminal Court of Appeals released its decision Friday 4 June 1943. The Court of Criminal Appeals unanimously rejected the appeal. Curiously, Judge Doyle, however, wrote he favored the opportunity of a re-hearing.¹¹⁷

THE US SUPREME COURT

Court Politics and Divisions

Between 1936 and 1942 the Supreme Court heard seven coerced confession cases involving poor uneducated African Americans. These resulted in life in prison or death sentences. The Supreme Court unanimously reversed the convictions.¹¹⁸

Justice Black, speaking for a unanimous Court in *Chambers v. Florida* (1940):

*"The grave question presented ... is whether proceedings in which confessions were utilized, and which culminated in sentences of death upon four young negro men in the State of Florida, failed to afford the safeguard of that due process of law guaranteed by the Fourteenth Amendment."*¹¹⁹

Marshall joined the Lyons case in January 1941. He could easily think Lyons' outcome would be no different from the earlier cases. He crafted Lyons' defense with an eye toward providing the Supreme Court with the elements he thought proved successful in 1936 through 1942 appeals. Marshall had no access to what the court did with similar cases from 1944 or the still-emerging legal scholarship.¹²⁰

Several key elements of earlier decisions were missing from the Lyons appeal. Lyons was not sentenced to death, rather to life in prison without parole. There were three confessions. The first was ruled out by the trial judge. In doing so, the judge did not reference abuse or torture to the defendant. Instead, he noted the undisputed evidence the defendant was not afforded counsel and was not properly arraigned in a timely manner before a magistrate. This was important for appeals as there were no findings of abuse at trial. Rather, the defendant claimed abuse with scant supporting evidence. Those accused of the abuse denied it, as did others present. A second confession was proffered at arraignment.

For appellate judges to overturn the conviction they would have to send it back for re-trial under certain corrective stipulations. What stipulations? The issue of no African Americans on the jury was not brought up at trial. It could not be brought up on appeal. What remedy would a new trial offer?

Lyons' Supreme Court appeal had an additional difficulty. John F. Blevins outlines the Court's evolving collective thinking on forced confessions.¹²¹ In essence some justices had become uncomfortable being part of state criminal justice systems. The egregious behavior of some Southern trial courts toward African American defendants required correction. They began to resist routine intervention. The Court granted certiorari to Lyons but denied relief or rehearing.¹²²

The coerced confession cases asked the Court to intervene in state judicial procedures, essentially making federal courts superior to, and part of, the state judicial process. This was new ground for the Court and required constitutional justification. In *Brown v. Mississippi* 297 U.S. 278 (1936) Chief Justice Hughes, speaking for a unanimous Court noted the defendants were "all ignorant negroes"¹²³:

"The State is free to regulate the procedure of its courts in accordance with its own conceptions of policy unless, in so

doing, it 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' ... It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process."¹²⁴

Fourteen years later Justice Frankfurter said almost the same thing in *Watts v. Indiana*.

*"...the State courts have the responsibility for securing the rudimentary requirements of a civilized order; in discharging that responsibility there hangs over them the reviewing power of this Court. Power of such delicacy and import must, of course, be exercised with the greatest forbearance. When, however, appeal is made to it, there is no escape. And so, this Court once again must meet the uncongenial duty of testing the validity of a conviction by a state court ..."*¹²⁵

While concurring with Frankfurter in *Watts v. Indiana*, Justice Roberts asked:

*"...if ultimate quest in a criminal trial is the truth and if the circumstances indicate no violence or threats of it, should society be deprived of the suspect's help in solving a crime merely because he was confined and questioned when uncounseled?"*¹²⁶

For Justice Frankfurter oversight of a state court was 'uncongenial.' Justice Jackson, in concurring, made clear his sympathy with authorities seeking to solve murders. Who else except the murderer could possibly provide details? How other than questioning the murderer could the police get those details? A defense attorney would tell the suspect to say nothing. In contrast, Justice Douglas, also concurring, found the questioning evil.

The Decision

Justice Stanley Reed gave the majority opinion, joined by Harlan F. Stone, Owen Roberts, Felix Frankfurter, Robert H. Jackson:

“In our view, the earlier events at Hugo do not lead unescapably to the conclusion that the later McAlester confession was brought about by the earlier mistreatments. The McAlester confession was separated from the early morning statement by a full twelve hours. It followed the prisoner’s transfer from the control of the sheriff’s force to that of the warden. ... The petitioner testified to nothing in the past that would indicate any reason for him to fear mistreatment there. The fact that Lyons, a few days later, frankly, admitted the killings to a sergeant of the prison guard [Cap Duncan], a former acquaintance from his own locality, under circumstances free of coercion suggests strongly that the petitioner had concluded that it was wise to make a clean breast of his guilt, and that his confession to Dunn was voluntary. The answers to the warden’s questions, as transcribed by a prison stenographer, contain statements correcting and supplementing the questioner’s information, and do not appear to be mere supine attempts to give the desired response to leading questions.

The Fourteenth Amendment is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of “that fundamental fairness essential to the very concept of justice,” and in a way that “necessarily prevent[s] a fair trial.” ... A coerced confession is offensive to basic standards of justice not because the victim has a legal grievance against the police, but because declarations procured by torture are not premises from which a civilized forum will infer guilt. The Fourteenth Amendment does not provide review of mere error in jury verdicts, even though the error concerns the voluntary character of a confession. We cannot say that an inference of guilt based in part upon Lyons’ McAlester

confession is so illogical and unreasonable as to deny the petitioner a fair trial.

Justices Frank Murphy, Hugo Black and Wiley Rutledge dissented. Justice Murphy, Justice Black concurring:

“This flagrant abuse by a state of the rights on an American citizen accused of murder ought not to be approved. The Fifth Amendment prohibits the federal government from convicting a defendant on evidence that he was compelled to give against himself. Decisions of this Court in effect have held that the Fourteenth Amendment makes this prohibition applicable to the states.”¹²⁷

Justice Rutledge:

“The confession was introduced over defendant’s objection. If such admission of this confession denied a constitutional right to defendant, the error requires reversal. ... In petitioner’s brief, a claim is made that Oklahoma denied to him the equal protection of the laws guaranteed by the Fourteenth Amendment. Apparently, petitioner relies upon his undue detention without preliminary examination, which was in violation of the state criminal procedure as a denial by Oklahoma of equal protection of the law. But the effect of the mere denial of a prompt examining trial is a matter of state, not of federal, law. To refuse this is not a denial of equal protection under the Fourteenth Amendment, although it is a fact for consideration on an allegation that a confession used at the trial was coerced.”

That left Justice Douglas. He neither joined the court majority nor issued his own explanatory opinion. The decision simply records “Mr. Justice Douglas concurs in the result.”¹²⁸ Contrast this with Justice Douglas’ concurrence in *Watts v. Indiana*.

“We should unequivocally condemn the procedure and stand ready to outlaw ... any confession obtained during the period of unlawful detention. The procedure breeds co-

erced confessions. It is the root of the evil."¹²⁹

Was not Lyons unlawfully detained at the time of his first two confessions and only brought before a magistrate afterwards?

Was Lyons decided differently from the other twelve African American forced confession cases due to changes in the Court, new justices, new factions, intra-court personal differences? Or was it decided differently because the case itself was different?

The eight cases decided prior to Lyons unanimously or with 6-3 majority reversed convictions. The four cases decided after Lyons were decided similarly, either unanimously or with a 6-3 majority for conviction reversal.

Scholarship falls into two types. The first seeks to discover 'blocks' among the justices. The second seeks to discern emerging policy by examining cases. C. Herman Pritchett, then a young assistant Political Science professor, published a statistical analysis of 1943 Supreme Court decisions. Looking only at the 75 non-unanimous decisions, he calculated the percent of cases each justice agreed with every other justice. Black, Douglas, Murphy and Rutledge, the left-wing group, agreed an average of 82% on non-unanimous decisions. Stone, Jackson, Reed, Frankfurter, and Roberts,¹³⁰ the right-wing, agreed 66% of the time with each other. Left-wing justices agreed with right-wing justices on an average of 45% of cases. On 10 civil liberties cases, the left-wing sided with the government on an average of 5% of cases and the individual on 85% of cases. The right-wing sided with the government on an average of 67.5% of cases and with the individual on an average of 27.5% of cases. Justice Stone did not fit well in either group, siding with the government on 3 cases and the individual on 7. Pritchett summarizes:

"The statistics show, in fact, that from a quantitative point of view at least, the reorganized Supreme Court has become by far the most badly divided body in the history of

that institution."¹³¹

Looking at only non-unanimous decisions has two problems. It masks the actual agreement among justices. And it ignores emerging constitutional law. Left-wing and right-wing do not describe the results of the decisions. Prichett can certainly be excused for failing to document the subsequent law as it emerged over the next half-century.

Michael J. Klarman reviewed interwar Supreme Court criminal procedure cases, focusing on southern court convictions resulting in death sentences for poor, ignorant African Americans. The Court reversed a number of the convictions obtained through egregious and undisputed violations of defendant rights. There were no headwinds, either from the north or south, from the decisions. Rather, opinion concerning defendant treatment supported the Court's remedies. The cases involved mob dictated verdicts, lack of effective counsel, torture extracted confessions, knowingly perjured prosecution testimony and racial discrimination in jury selection.¹³²

*"The Court's willingness to blaze such trails may have depended on the confluence of two factors: appealing cases in which the injustice to black defendants and the dishonesty of the state appellate courts were manifest ..."*¹³³

These decisions raised hopes of southern African Americans for real reform while sparking more challenges from the NAACP. The NAACP, in turn, used its role in the cases to heighten its profile, raise money and expand the organization. Southern courts also responded by curtailing lower courts' egregious practices. Which did not necessarily mean the reality of Southern criminal justice for African Americans improved.

"...none of these rulings had a very significant direct impact on Jim Crow justice. ... black defendants continued to

be tortured into confessing ...”¹³⁴

U. S. Supreme Court Justices were reluctant to substitute their conclusions for those of juries or decide officials were lying without clear evidence.

Building on Klarman, John F. Blevins, argues that coerced African American confession cases fall into two stages. The first witnessed Court unanimity in reversing egregiously forced confessions in individual cases so outrageous as to engender widespread support for the reversals. At the second stage saw Court divisions over the proper role of the federal judiciary in essentially a state domain.

*“By the time Lyons was decided, the Court (in the context of coerced confessions) had become less concerned about issues of race and more concerned with federalism and the proper scope of federal judicial oversight of state courts. From this perspective, the struggle over the scope and definition of a “coerced” confession proved to be one aspect of a larger ideological, jurisprudential, and even personal battle among the Justices on the Court at this time.”*¹³⁵

The Prichett analysis focused on left-wing, and right-wing blocks to account for Supreme Court decisions. The Klarman and Blevins analysis seems to hypothesize the coerced confession cases involve two conflicting themes, judicial fairness and federal-state relationships.

In its broad outline, *Lyons v. Oklahoma* met or exceeded the characteristics of cases unanimously reversed by the Supreme Court. A young, poor, uneducated, African American man was arrested without a warrant by unofficial investigators, beaten, held incommunicado, not given access to counsel, not brought before a magistrate, and signed a dictated confession using words and language foreign to his way of speaking. He was held without trial for over a

year. Other facts included Lyons' innocence was supported by the white victims' closest relations and the white community as well as the African American; two white prisoners from a nearby work camp had been identified as the murderers by fellow inmates and a third white local had confessed implicating the two prisoners. Indicted with Lyons was his alleged accomplice, Van Bizzell, another local African American. Someone provided Bizzell a well-connected local white attorney. A white scion of a wealthy politically connected family provided Bizzell bail. Bizzell, indicted on the same charge, with the same evidence, as Lyons, was never tried.

There were differences between Lyons and other forced confession cases as received by the Supreme Court. For one, in Lyons, much of the plaintiff's side was contested by the state. Justices would have to decide if Oklahoma officials lied. For another, the trial judge ruled out Lyons' first confession while permitting Lyons' to give his version of the confession and, in accordance with Oklahoma law, gave the jury to decide if the second confession given at the State Prison was coerced. This left the justices to second guess the jury. For the Supreme Court loss, Blevins faults Marshall, the NAACP and the ACLU.

“The briefs in Lyons—including the ACLU amicus brief—emphasized the disputed facts, rather than explaining why the undisputed facts required a reversal. The failure to fully engage the undisputed facts requirement, which had been clearly articulated in earlier cases, was an egregious doctrinal oversight. Specifically, Marshall failed to cabin those conceded, undisputed facts into a clear, coherent argument within the formal doctrine. ... Marshall’s brief read too much like a literary narrative, describing in lurid detail the actions of the Oklahoma officials and investigators. Although both briefs [the NAACP’s and the ACLU’s] pointed out some undisputed facts, these few specific examples were interspersed among the much larger description of Lyons’s abuse, which was disputed. No real

attempt was made to cabin off the undisputed facts, or to argue that they alone could form the basis of a reversal. Rather, both Marshall and the ACLU aimed to shock the Court with the brutality of the Oklahoma police instead of incorporating the undisputed facts into a formal doctrinal framework. The State's brief pointed out this flaw, contending that Marshall's statement of facts should actually be called 'Lyons's testimony.' ¹³⁶

The more conservative justices were left with no facts to justify a reversal. Justices Black, Murphy, and Rutledge knew injustice when they smelled it. They voted to reverse. Circulating at the time was the pun “tempering justice with Murphy.”¹³⁷ Dissenting in *Falbo v. United States* Murphy wrote:

*“The law knows no finer hour than when it cuts through formal concepts and transitory emotions to Protect unpopular citizens against discrimination and persecution.”*¹³⁸

While W. D. Lyons lost at the Supreme Court, Marshall and the NAACP gained some positive publicity. The Court's opinion was interpreted in the press from Marshall's brief rather than the Court majority opinion. In a story titled “Court Decision in Sooner Case Thought Third Degree Excuse.” The *Oklahoma City Times* reported:

“Police and district attorneys may see in a supreme court decision this week a loophole for getting away with the third degree by giving it a new twist. Take it step by step. ...

*The Supreme Court considered the second confession voluntary: “That by the time he made it, any effect of the force used on him to get the first confession had worn off. But Justice Murphy dissented ... ‘To conclude that the brutality inflicted at the time of the first confession suddenly lost all of its effect in the short space of 12 hours is to close one's eyes to the realities of human nature.’”*¹³⁹

Marshall's petition for rehearing challenged the assertion the two confessions were separated by 12 hours without further torture or coercion. He did not address the majority opinion finding the torture was disputed. He did not acknowledge the trial court threw out the first confession as it was made without counsel or arraignment before a magistrate, not because of torture. Marshall challenged the jury instructions. He argued it should have specified the confession was a product of torture. He does not note the jury heard the defendant's version of the torture and witness testimony denying the torture or that the trial judge left it to the jury to decide who to believe. Essentially, Marshall reiterated justices Black, Murphy and Rutledge's dissents. The Court denied Marshall's rehearing request.¹⁴⁰

Further Efforts on Lyons' Behalf

W. D. Lyons wrote Thurgood Marshall 30 August 1944.

*"Several weeks ago, I read in a newspaper that the NAACP and the American Civil Liberties Union would search for new evidence and reopen the case immediately, though I have heard nothing more. If that is a fact, I should like you to write me telling me what the attorneys contemplate doing next."*¹⁴¹

Marshall's 7 September 1944 response was cryptic.

*"...efforts are being made on your behalf which we cannot explain through mail at this time. As soon as we are able to let you know, we will write you again."*¹⁴²

Marshall did not know what was going on. He wrote Roscoe Dunjee asking for an update. Dunjee replied 11 September 1944.

"I just read your letter in which you referred to the status of W. D. Lyons case, and the progress we have made in getting a grand jury hearing in Choctaw County.

The truth of the matter is that [Amos] Hall and I have been so busy, that we have not had the opportunity to get down

there and find out the real attitude of the county attorney, and what [E. O.] Colclasure [victim Marie Rogers's father] has uncovered in the way of new evidence."¹⁴³

Lyons again wrote Marshall 13 October 1944.

"Having been advised by editor Dunjee to report to head officials of the NAACP anything that is said to me by law enforcement officers from the outside, I am writing this letter to let you now that I was visited by two special investigators from the governor's office [Robert S. Kerr - 11 January 1943 – 13 January 1947] , who seemed very interested in my case.

The governor's chief investigator (I don't know his name) and another investigator by the name of C.C. Crabb questioned me about thirty minutes. They asked me some of the same questions that I was asked at my trial, and they remarked that I might have to best 'the electric chair again.' ... My visitors talked nicely. They used no harsh words or made no threats. Before they left, they said I would never be given clemency. I cannot tell you through mail all that was said to me."¹⁴⁴

The NAACP Papers did not include a response from Marshall. Marshall did send Lyons \$5 for Christmas, however. Lyons wrote Marshall again 8 January 1945.

"As I wish to know more about the progress that is being made in my behalf, I should like you to inform me as to what you plan to do to reopen my case.

Mr. Ralph Jennings who was elected county attorney of Hugo [Choctaw County], the town in which I was convicted, visited me not long ago. He said that for the past six months he has been in search of a clue or clues that will guide him to the actual murderers responsible for the crime of which I am serving a life sentence for and that his

efforts to procure new evidence has resulted to the collection of nothing but rumors.

You're telling me something of the advancement that the NAACP is making in my behalf will be appreciated."¹⁴⁵

I could find no reference to Marshall, Dunjee Amos Hall or the NAACP involvement in the efforts to find new evidence or otherwise aiding Lyons until late 1952. The 1945 annual NAACP State Convention held in McAlester was chaired by Dunjee with Marshall as the lead speaker. Although Lyons was imprisoned at the nearby State Penitentiary, I could find no reference made to Lyons at the convention or of contact with him by the NAACP.¹⁴⁶

Rosie Fleeks

In 1946 Rosie Fleeks, Lyons mother, wrote Thurgood Marshall. "I wants (sic.) to know if there can be a way for him to get out of prison. ... He is tired of staying in prison he wants to get out before the governor Kerr gets out of office."¹⁴⁷

Her letter likely reflected W. D. Lyons' limited understanding of his situation. Everyone, white and African American, seemed to know he was innocent. There was a national and a local Choctaw County outcry over his case. Governor Kerr expressed some interest. Marshall's assistant, Robert L. Carter replied 31 May 1946.

"As you know, the NAACP has worked very hard and diligently on your son's case. ... There is nothing further we can do. The only other method where your son can be helped is before the Board of Pardons and Parole. ... you can write to the following address for further help regarding his release:

*Society for the Friendless
611 Oil Exchange Building
Oklahoma City, Okla.*"¹⁴⁸

In 1952 William J. Orr wrote Thurgood Marshall asking for Lyons'

Supreme Court case number. Orr a fellow prisoner, was, “making an attempt at this time to assist W.D. Lyons with his case.”¹⁴⁹ Orr, a forger, was serving a ten-year sentence at the State Penitentiary.¹⁵⁰ Orr’s letter appears to have reminded Marshall of Lyons’ situation.¹⁵¹ Marshall wrote Lyons saying he had provided Orr with the requested information. The same day Marshall sent a letter marked PERSONAL to Assistant Attorney General Sam Latimore.

*“I wonder if you remember the W. D. Lyons case in 1943. ... The time has come, I think, that consideration should be given as to whether or not Lyons should be recommended for parole or clemency of any kind, and I am asking you for your personal opinion as to whether this would be a good move at this time.”*¹⁵²

Lattimore’s reply was perfunctory. He was under the impression a longer stay in prison was expected before parole could be considered. Latimore was past considering any deals with Marshall.¹⁵³ If Latimore’s response seems dismissive, compare it to Marshall’s response to Lyons’ mother, Rosie Fleeks. This appears to have ended the NAACP involvement in the Lyons case. There is nothing further in the NAACP Lyons file.

Lyons became eligible for parole in 1956, under Governor Raymond Gary, but was passed over.¹⁵⁴ By 1961 the State Pardon and Parole Board recommended Lyons be paroled. He was paroled by Governor J. Howard Edmondson.¹⁵⁵

Denver and John Nix report Lyons settled in Okmulgee where he remarried and worked as a television repairman and, with his wife Mildred, raised a son and daughter. In 1965 the Pardon and Parole Board recommended Lyons be given clemency and a pardon. This was granted by Oklahoma’s first Republican governor, Henry Bellmon.¹⁵⁶ In the 1980s, with his children grown, his wife moved to a house a few blocks away. She described Lyons as a loner who had drinking bouts. In the early 1990s he suffered a stroke leaving his right side paralyzed. Denver and John Nix tell us “April 15,

1994, Lyons was killed by a gunshot wound and his house burned down with him inside.”¹⁵⁷

ENDNOTES

- ¹ R. Darcy is a retired Oklahoma State University Professor of Political Science and Statistics. This article is taken from a chapter in the author's larger study, in progress, into Oklahoma civil and equal rights 1890 – 1953 and a paper presented at the Annual Meeting of the Oklahoma Political Science Association 2024 Conference, Rose State College, Midwest City, OK 7-8 November. *Papers of the NAACP* citations are drawn from Black Studies Research Sources: Microfilms from Major Archival and Manuscript Collections. General Editors: August Meier and John H. Bracey, Jr. *Papers of the NAACP* Part 8. Discrimination in the Criminal Justice System, 1910 – 1955. Series B: Legal Department and Central Office Records, 1940 – 1955. Project Coordinator Randolph Boehm.
- ² “Night of Horror related by Boy.” 1940. *El Reno Daily Tribune* Monday 1 January Page 1.
- ³ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Pages 19 - 20.
- ⁴ “Convict Held in Slaying of Couple, Child.” 1940. *Oklahoma City Times*. Tuesday 2 January Page 1; “Science and Law Probe Wild Story of Murder, Arson.” 1940. *Sapulpa Herald* Tuesday 2 January Page 1, 6; Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Pages 19, 21.

- ⁵ “Two Convicts Held in State Triple Slaying.” 1940. *Oklahoma City Times*. Friday 12 January Pages 1, 2; “Witness Quizzed in Triple Slaying.” 1940. *Oklahoma City Times*. Saturday 13 January Page 11. In response to the convict’s arrests the School Land Commission met to stop using prison labor on land conservation. “Prison Labor May be Banned in Soil Camps.” 1940. *Oklahoman* (Oklahoma City). Tuesday 16 January Page 5.
- ⁶ “Charges Drawn in Fort Towson Murder Case.” 1940. *Oklahoma City Times*. Saturday 13 January Page 11.
- ⁷ “Third Suspect Faces Probe in Fire Deaths; Charges are Delayed.” 1940. *Oklahoma City Times*. Monday 15 January Page 9.
- ⁸ “Triple Murder Confession Starts Hunt for Weapon.” 1940. *Oklahoma City Times*. Friday 19 January Page 20.
- ⁹ “Arson Murders at Fort Towson Still Baffle Probers Despite Four Arrests.” 1940. *Oklahoma City Times*. Monday 22 January Page 3.
- ¹⁰ “Phillips Makes Big Magazine.” 1940. *Harlow’s Weekly* (Oklahoma City) Saturday 27 January Page 11.
- ¹¹ Sara L. Brown. 1983. “Leon Chase Phillips Governor of Oklahoma, 1939-1943.” In Leroy H. Fisher, Editor. *Oklahoma’s Governors 1929 – 1955*. Oklahoma City, OK: Oklahoma Historical Society Page 104.
- ¹² James R. Scales and Danney Goble. 1982. *Oklahoma Politics: A History*. Norman, OK: University of Oklahoma Press. Page 214.
- ¹³ James R. Scales and Danney Goble. 1982. *Oklahoma Politics: A History*. Norman, OK: University of Oklahoma Press, Pages 209 – 211.

- ¹⁴ Oklahoma's Constitution, Article 6, § 32 in force in 1940 provides "The Governor, Secretary of State, State Auditor, Superintendent of Public Instruction, and the President of the Board of Agriculture shall constitute the Commissioners of the Land Office, who shall have charge of the sale, rental, disposal and managing of the school lands and other public lands of the State, and of the funds and proceeds derived therefrom, under rules and regulations prescribed by the Legislature."
- ¹⁵ "Prison Labor May be Banned in Soil Camps." 1940. *Oklahoman* (Oklahoma City). Tuesday 16 January Page 5.
- ¹⁶ "Vast State Soil Projects to Start." 1940. *Oklahoma City Times* Wednesday 21 February Page 4; "Choctaw County Starts Soil Conservation Work." 1940. *Oklahoma City Times* Monday 11 March Page 1.
- ¹⁷ Oklahoma statutes Chapter 1, Article I, § 2 provides "The governor shall have the power to remove any officers appointed by him, in case of incompetency, neglect of duty, or malfeasance in office; and may then fill the vacancy as provided in case of vacancy." Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated*. Volume I. Ardmore, OK: Bunn Publishing Company; Chapter 1 Article I § 2351 - § 2, page 307.
- ¹⁸ "Inquiry of Fire Deaths at Towson is at Standstill." 1940. *Oklahoma City Times*. Saturday 6 January Page 11. State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 409. NAACP Legal File 1940 – 55 Crime Lyons, W. D. v Oklahoma Petitions and Briefs 1940-41. Papers of the NAACP Part 8: Discrimination in the Criminal Justice System 1910 – 1955. Series B: Legal and Central Office Records, 1940 – 1955. University Publications of America, Inc.

- ¹⁹ Contemporary statutes provided for Justice of the Peace appointed constables and gave the constables the authority of sheriffs, marshals and police. See Henry George Snyder. *The Compiled Laws of Oklahoma, 1909: a Compilation of All the Laws of a General Nature Now In Force, Including the Session Laws of 1909*. Kansas City, MO: Pipes-Reed book company, 1909 passim and Chapter 88, Article XIII pages 1353 – 1354.
- ²⁰ “Seven Hugo People Face U. S. Charges.” 1938. *Chickasha Daily Express* Thursday 15 December Page 2; “Police Officials Face U. S. Charges.” 1939. *Chickasha Daily Express* Tuesday 10 January Page 2; “Officials at Hugo Await Sentencing.” 1939. *Chickasha Daily Express*. Friday 3 March Page 6.
- ²¹ Hall v. United States 109 F.2d 976.
- ²² “Arson Murders at Fort Towson Still Baffle Probers Despite Four Arrests.” 1940. *Oklahoma City Times*. Monday 22 January Page 3.
- ²³ “Two Convicts Held in State Triple Slaying.” 1940. *Oklahoma City Times*. Friday 12 January Pages 1, 2.
- ²⁴ “Two Negroes Face Charges.” 1940. *Paris News* (Paris Texas). Thursday 25 January Page 1.
- ²⁵ “Murder Charges Drawn.” 1940. *Oklahoma City Times*. Wednesday 24 January Page 4.
- ²⁶ “Arraignment Set in Fort Towson Slayings.” 1940. *Oklahoma* [Oklahoma City]. Friday 26 January Page 13.
- ²⁷ Bob Burke and Angela Monson. 1998. *Roscoe Dunjee Champion of Civil Rights*. Edmond, OK: UCO Press page 71.

- ²⁸ Such a theme was explored by Janet Boles in connection with the Equal rights campaign. Janet K. Boles. *The Politics of the Equal Rights Amendment: Conflict and the Decision Process*. 1979. New York, NY: Longman.
- ²⁹ “Cushing Has Likely List of Bachelors Well Worth Investigating by Any Leap-Year Conscious Lass.” 1940. *Cushing Daily Citizen* Sunday 18 February Page 4.
- ³⁰ Letter from Roscoe Dunjee to Thurgood Marshall 13 January 1941. *Papers of the NAACP*.
- ³¹ Letter, Roscoe Dunjee to Walter White, 26 March 1940. *Papers of the NAACP*.
- ³² Letter, Roy Wilkins to Roscoe Dunjee, 18 April 1940. *Papers of the NAACP*.
- ³³ Letter, Thurgood Marshall to Roscoe Dunjee, 11 December 1940. *Papers of the NAACP*.
- ³⁴ Letter, Roscoe Dunjee to Thurgood Marshall, 26 December 1940. *Papers of the NAACP*.
- ³⁵ Letter, Roscoe Dunjee to Thurgood Marshall, 26 December 1940. *Papers of the NAACP*.
- ³⁶ “Son of Victims Witness at Murder Trial of Negro.” 1941. *Oklahoman* (Oklahoma City). Tuesday 28 January Page 7.
- ³⁷ Letter, Thurgood Marshall to Roscoe Dunjee, 11 January 1941. *Papers of the NAACP*.
- ³⁸ Letter, Roscoe Dunjee to Thurgood Marshall, 13 January 1941. *Papers of the NAACP*.
- ³⁹ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall’s Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Page 129.

- ⁴⁰ “Young Chicken Thief arrested With Goods Gets Three Year Term.” 1938. *Oklahoma City Times*. Thursday 13 January Page 1
- ⁴¹ J. Stanley Lemons. 1977. “Black Stereotypes as Reflected in Popular Culture, 1880 – 1920.” *American Quarterly* Volume 29 Number 1 (Spring) pages 102 – 116. See “Jim Noble” in Chapter “With Statehood Came White Supremacy: African American Leaders Become Janitors”
- ⁴² Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall’s Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Pages 65 – 74.
- ⁴³ Lyons v. State 77 Okl. Cr 197 (1943) at page 250.
- ⁴⁴ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 105 – 107, 349 Items #117 – 119, 372. NAACP Legal File 1940 – 55 Crime Lyons, W. D. v Oklahoma Petitions and Briefs 1940-41. *Papers of the NAACP*.
- ⁴⁵ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall’s Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Pages 80 -83.
- ⁴⁶ “Murder Changes Drawn.” 1940. *Oklahoma City Times*. 24 January Page 4.
- ⁴⁷ “Negro Guarded From Mob Violence After Confessing Part in ripple Robbery-Slaying at Fort Towson.” 1940. *Miami News-Record*. Wednesday 24 January Page 1; “Negro Ex-Convict Admits Murders at Fort Towson.” 1940. *Paris News* (Paris Texas). Wednesday 24 January Page 1.
- ⁴⁸ Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated*. Volume I. Ardmore, OK: Bunn Publishing Company; Chapter 7 Article I § 2351 - § 2485, pages 1137 – 1157.

⁴⁹ ‘Information’ is used in some states as a rough equivalent to an indictment. It is a statement of the charges by the prosecutor.

⁵⁰ *Lyons v. State* 77 Okl. Cr 197 (1943) at page 251.

⁵¹ No relation to William Bennett Bizzell, then president of the University of Oklahoma. One version has Bizzell age 36, another age 39, yet another at age 30. “Murder Changes Drawn.” 1940. *Oklahoma City Times*. 24 January Page 4; “Two Negroes Face Charges.” 1940. *Paris News* (Paris Texas). 25 January Page 1; “Quick Trial For Negroes Sought.” 1940. *El Reno Daily Tribune*. Thursday 25 January Page 1; “2 Bound Over in Triple Slayings.” 1940. *Miami Daily News-Record*. Sunday 28 January Page 5.

⁵² “Negro Guarded From Mob Violence After Confessing Part in ripple Robbery-Slaying at Fort Towson.” 1940. *Miami News-Record*. Wednesday 24 January Page 1.

⁵³ “Negro Ex-Convict Admits Murders at Fort Towson.” 1940. *Paris News* (Paris Texas). Wednesday 24 January Page 1.

⁵⁴ “Murder Charges Drawn.” 1940. *Oklahoma City Times*. 24 January Page 4

⁵⁵ “Quick Trial For Negroes Sought.” 1940. *El Reno Daily Tribune*. Thursday 25 January Page 1.

⁵⁶ “Guardsmen Called Out in Hugo.” 1940. *Paris News* (Paris, Texas). Sunday 28 January Page 1, 10.

- ⁵⁷ He was the son of Robert King Warren (1867 – 1926) who served in the legislature and as Choctaw County Attorney. Robert H. Warren’s son, also Robert Warren (1921 – 2015) was a third generation attorney who went on to serve as Director of the Oklahoma County Bar Association, Lifetime Fellow of the Oklahoma Bar Foundation and on numerous Bar committees. <https://www.legacy.com/us/obituaries/oklahoman/name/robert-warren-obituary?id=7805245> accessed 21 February 2023.
- ⁵⁸ 1936 OK CR 84 | 60 P.2d 401.
- ⁵⁹ Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated*. Volume I. Ardmore, OK: Bunn Publishing Company; Chapter 7 Article I § 2351 - § 2485, pages 1137 – 1157.
- ⁶⁰ Letter, Thurgood Marshall to Roscoe Dunjee, 11 December 1940. *Papers of the NAACP*.
- ⁶¹ Tulsa’s Amos Hall (1896 – 1971) formally enters the case when Stanley Belden withdrew. Hall becomes the NAACP Oklahoma lead attorney with Thurgood Marshall a few years later in *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U.S. 631 (1948). He joined the Oklahoma Bar Association in 1925. In 1969 he was appointed special judge by the District Court in Tulsa County and in 1970 was elected Tulsa County associate district judge.
- ⁶² Letter, Roscoe Dunjee to Thurgood Marshall, 26 December 1940. *Papers of the NAACP*.
- ⁶³ “Son of Victims Witness at Murder Trial of Negro.” 1941. *Oklahoman* (Oklahoma City). Tuesday 28 January Page 7.
- ⁶⁴ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall’s Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Page 47.

- ⁶⁵ Handwritten Note, Thurgood Marshall to Walter White, 29 January 1941. *Papers of the NAACP*
- ⁶⁶ 295 U. S. 394 (1935).
- ⁶⁷ United States Department of Commerce, *Seventeenth Census of the United States: 1940 Population Volume II Part 5 New York – Oregon. 1943*. Washington, DC: Government Printing Office, Table 21. Page 827.
- ⁶⁸ United States Department of Commerce, *Seventeenth Census of the United States: 1940 Population Volume II Part 5 New York – Oregon. 1943*. Washington, DC: Government Printing Office, Table 21. Page 824.
- ⁶⁹ Memo, Wednesday 31 January 1941. Thurgood Marshall to Bill Bastie, Leon Ransom and W. Robert Ming. *Papers of the NAACP*.
- ⁷⁰ “Quick Trial For Negroes Sought.” 1940. *El Reno Daily Tribune*. Thursday 25 January Page 1.
- ⁷¹ “Want Trial Right Away.” 1940. *Paris News* (Paris, Texas). Tuesday 6 February Page 3.
- ⁷² Thurgood Marshall himself pointed out the failure to grant a speedy trial in a December 1940 letter to Roscoe Dunjee. Letter, Thurgood Marshall to Roscoe Dunjee, 11 December 1940. *Papers of the NAACP*.
- ⁷³ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 400 - 401. NAACP Legal File 1940 – 55 Crime Lyons, W. D. v Oklahoma Petitions and Briefs 1940-41. *Papers of the NAACP*
- ⁷⁴ Chapter 7, Article VIII §2590. Clinton Orrin Bunn. 1922. *Compiled Statutes of Oklahoma, 1921 Annotated*. Volume I. Ardmore, OK: Bunn Publishing Company Page 1193.

- ⁷⁵ “Guardsmen Called Out in Hugo.” 1940. *Paris News* (Paris, Texas). Sunday 28 January Page 1, 10.
- ⁷⁶ Robert H. Warren was middle of three generations of distinguished attorneys. His father, Robert King Warren (1867 – 1926) served one term as a Democrat in the Oklahoma House of Representatives (1917 – 1919) and was elected Choctaw County Attorney in 1924. Robert H. Warren practiced with his father (1928 OK CR 169 | 267 P. 872) and served as Assistant County Attorney for Choctaw County circa 1936 (1936 OK CR 84 | 60 P.2d 401). The third Robert Warren, “Bob” was born 1921 in Hugo. He lived most of his adult life in Oklahoma City. He started his undergraduate studies at the University of Oklahoma. While at Oklahoma University World War II began. He entered the Army Air Corps serving a captain at the U.S. Air Base at Kunming, China. He graduated from the University of Oklahoma School of Law in 1948. (<http://genealogytrails.com/oka/choctaw/bios1.html> accessed 11 May ’22; *Oklahoman*. 2015 Thursday 20 August. (<https://www.legacy.com/us/obituaries/oklahoman/name/robert-warren-obituary?id=7805245> accessed 22 October 2023).
- ⁷⁷ Denver Nicks and John Nicks. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall’s Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Pager 29; “Son of Victims Witness at Murder Trial of Negro.” 1941. *Oklahoman* (Oklahoma City). Tuesday 28 January Page 7.
- ⁷⁸ Van Bizzell Bail Document 10 July 1940. *Papers of the NAACP*
- ⁷⁹ Van Bizzell Bail Document 10 July 1940. *Papers of the NAACP*
- ⁸⁰ Collins v. State 1928 OK CR 169 | 267 P. 872.

- ⁸¹ Served Oklahoma House of Representatives 1919 – 1929, Speaker 1927; lost re-election in 1930, lost 1938 United States At-Large House of Representative Democrat primary coming in fourth. “Stovall ... led the movement against impeachment of Governor Johnson.” Stovall was defeated for re-election by R. H. Stanley “one of the coalitionists and a member of the board of managers in charge of the impeachment trial.” See “Dave Stovall Defeated.” 1930. *Harlow's Weekly* (Oklahoma City, Okla.), Vol. 36, No. 31, Ed. 1 Saturday, 2 August. Page 12. Stovall was among the ‘anti-Murray’ legislators defeated in 1930 Democrat primaries. See “Murray Men Will Organize Next Legislature.” 1932. *Healdton Herald*. Thursday, 4 August, Page: 3.

⁸² “Powers Of ...” 1929. *Sapulpa Herald* Wednesday 20 February Page 6. Governor Johnson said, “he did not grant any clemency as political favors ... he was informed Collins conviction was a frame up and that he was needed at his home to harvest his crop.” “Johnson Continues Testimony to Defend Grants of Clemency Shifts Responsibility to Aid.” 1929. *El Reno Daily Democrat* 8 March Page 1. State Representative Dave Stovall repeatedly touted as one of the most effective legislators by the state’s political journal *Harlow’s Weekly* was leader of Johnson’s anti-impeachment supporters in the House. Stovall served Oklahoma House of Representatives 1919 – 1929, Speaker 1927; lost re-election in 1930, lost 1938 United States At-Large House of Representative Democrat primary coming in fourth. Stovall was defeated in the 1930 Democrat primary by one of the house impeachment managers, R. H. Stanley. “Dave Stovall Defeated.” 1930. *Harlow’s Weekly* (Oklahoma City, Okla.), Vol. 36, No. 31, Ed. 1 Saturday, 2 August. Page 12. 1930 saw William Murray sweep the governor race. Stovall was among the defeated anti-Murray legislators. “Murray Men Will Organize Next Legislature.” 1932. *Healdton Herald*. Thursday, 4 August, Page: 3. As newly elected governor in a speech to a joint session of the legislature Murray “Singling out Dave Stovall ... Murray branded him ‘a dirty lobbyist who ought to be driven out of the capitol.’ ... ‘a former speaker of this house, representing an agricultural section, pretending he is here in the interests of the state, driving an automobile he couldn’t afford to buy, is lobbying here. I refer to Dave Stovall.’ ... ‘You ought to drive him out of this house as a dirty lobbyist. The idea of him selling himself for filthy lucre! ... ““Gov. Murray Assails Lobbyists and Members of House Not Passing Bills.” 1931. *Chickasha Star* Thursday 5 February Pages 1, 6.

⁸³ Thurgood Marshall letter to Dr. H. W. Williamston, 1 August 1941. *Papers of the NAACP*.

- ⁸⁴ The NAACP files have many notes exchanged between Lyons and Marshall over the years. Lyons’ proclaims his trust in Marshall, his innocence of the crime, and his desire to get out of incarceration as soon as possible.
- ⁸⁵ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 375 - 378. *Papers of the NAACP*.
- ⁸⁶ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 151 – 158. *Papers of the NAACP*.
- ⁸⁷ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 239 - 245. *Papers of the NAACP*.
- ⁸⁸ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 238. *Papers of the NAACP*.
- ⁸⁹ The Selective Training and Service Act of 1940, Pub. L. 76-783, 54 Stat. 885, the Burke-Wadsworth Act 16 September 1940, provided “There shall be created one of more local boards in each county ... [consisting] of three or more members to be appointed by the President, from recommendations made by respective Governors ... the President may appoint necessary clerical and stenographic employees for local boards and fix their compensation ... without regard to the provisions of civil service laws.” Section 10 (a) (2) (3) Pages 893-4.
- ⁹⁰ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 324 - 330. *Papers of the NAACP*.
- ⁹¹ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 400 - 401. *Papers of the NAACP*.
- ⁹² State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 409. *Papers of the NAACP*.
- ⁹³ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript page 15. *Papers of the NAACP*.

- ⁹⁴ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 401 - 404. *Papers of the NAACP*.
- ⁹⁵ State of Oklahoma, Plaintiff vs W. D. Lyons Defendant. Trial Transcript pages 375 - 378. *Papers of the NAACP*.
- ⁹⁶ “Phillips Still Steers Legislative Machine Election Indicates.” 1940. *Oklahoma City Times* Wednesday 10 July pages 1, 2. H. V. Posey was elected in Senate District 20.
- ⁹⁷ “Gov. Explains Amendments to Teacher Group.” 1941. *Sapulpa Herald* Saturday 1 March Page 1; “Increases Proposed For Gasoline Tax, Car, Truck Tags.” 1941. *Oklahoma City Times* Monday 3 March Page 1.
- ⁹⁸ “Increases Proposed For Gasoline Tax, Car, Truck Tags.” 1941. *Oklahoma City Times* Monday 3 March Page 1
- ⁹⁹ “Phillips’ Undercover Support of Gomer Smith Exposed.” 1942. *Oklahoma Eagle* (Tulsa). Saturday 4 July Pages 1, 2.
- ¹⁰⁰ Robert Kerr and Gomer Smith again faced off in the 1948 Democrat Senate Primary. Kerr had 37.4%, Smith 20.2%. In the 27 July 1948 Runoff election Kerr gained 57.5%, Smith 42.4%. Scales and Goble attribute Kerr’s victory to the Negro vote. See James R. Scales and Danney Goble. 1982. *Oklahoma Politics: A History*. Norman University of Oklahoma Press page 257-8.
- ¹⁰¹ Edwin C. McReynolds. 1954. *Oklahoma A History of the Sooner State*. Norman, OK: University of Oklahoma Press page 382.
- ¹⁰² Letter, Sunday 2 February 1941. Thurgood Marshall to Walter White. *Papers of the NAACP*.
- ¹⁰³ Carl T. Rowan, 1993. *Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall*. Boston, MA: Little, Brown page 97.

- ¹⁰⁴ Talesmen were persons selected from the courthouse corridors and street to complete a jury when a jury pool is exhausted.
- ¹⁰⁵ Letter, Sunday 2 February 1941. Thurgood Marshall to Walter White. *Papers of the NAACP*.
- ¹⁰⁶ Letter, Sunday 2 February 1941. Thurgood Marshall to Walter White. *Papers of the NAACP*.
- ¹⁰⁷ Letter, Monday 31 March 1941. Stanley Belden to Thurgood Marshall. *Papers of the NAACP*.
- ¹⁰⁸ *Compiled Statutes of Oklahoma*, 1921. N.P.: Okla., Bunn publishing Company, 1922. Chapter 7, Article X, § 2687, page 1225.
- ¹⁰⁹ Hastie was Dean of Howard University Law School 1939 – 1946 and civilian aid to Secretary of War Henry Stimson, 1940 – 1943.
- ¹¹⁰ Letter, Monday 31 March 1941. Stanley Belden to Thurgood Marshall; Letter, Monday 31 March 1941. Letter, Thursday 17 April 1941. Thurgood Marshall' Secretary to William H. Hastie. *Papers of the NAACP*.
- ¹¹¹ Letter, Tuesday 6 May 1941. Stanley Belden to Thurgood Marshall. *Papers of the NAACP*.
- ¹¹² Letter, Wednesday 4 June 1941. Thurgood Marshall to Stanley Belden. *Papers of the NAACP*.
- ¹¹³ Letter, Wednesday 29 October 1941. W. D. Lyons to Thurgood Marshall. *Papers of the NAACP*.
- ¹¹⁴ “A new trial, as we see it, could have no other outcome than that of finding the defendant guilty, and with a great probability that the result would be that defendant would be given a death penalty sentence, rather than one of life imprisonment.” Lyons v State 1943 OK CR 68 (1943) at 247.

- ¹¹⁵ First water in the diamond trade refers to the highest quality, purity, translucence.
- ¹¹⁶ Letter, Monday 4 August 1941. Roscoe Dunjee to Thurgood Marshall. *Papers of the NAACP*.
- ¹¹⁷ Lyons v State 1943 OK CR 68 (1943) at 259.
- ¹¹⁸ Brown v. Mississippi 297 U.S. 278 (1936), Chambers v. Florida 309 U.S. 227 (1940), Canty v. Alabama 309 U.S. 629 (1940), White v. Texas 310 U.S. 530 (1940), Vernon v. Alabama 313 U.S. 540 (1941), Lomax v. Texas 313 U.S. 544 (1941), Ward v. Texas 316 U.S. 547 (1942). See John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume 90, No. 1 March Pages 387 - 464 at 417 – 420.
- ¹¹⁹ Chambers v. Florida 309 U.S. 227 (1940) at 227.
- ¹²⁰ See C. Herman Pritchett. 1943. "The Coming of the New Dissent: The Supreme Court, 1942-43." *University of Chicago Law Review*, Volume 11, No. 1 (December), Pages 49 – 61.
- ¹²¹ John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume 90, No. 1 (March), Pages 387 – 464..
- ¹²² S. Sidney Ulmer. 1979. "Parabolic Support of Civil Liberty Claims: The Case of William O. Douglas." *Journal of Politics*, Volume 41, No. 2 (May) pages 634 – 639.
- ¹²³ Brown v. Mississippi 297 U.S. 278 (1936) at 281.
- ¹²⁴ Brown v. Mississippi 297 U.S. 278 (1936) at 285 – 286.
- ¹²⁵ Watts v. Indiana 338 U.S. 49 (1949) at 50.
- ¹²⁶ Watts v. Indiana 338 U.S. 49 (1949) at 60.

¹²⁷ *Lyons v. Oklahoma* 322 U.S. 596 at 321.

¹²⁸ *Lyons v. Oklahoma* 322 U.S. 596 at 605.

¹²⁹ *Watts v. Indiana* 338 U.S. 49 (1949) at 57.

¹³⁰ During oral argument justice Roberts asked the size shot Lyons used to hunt rabbits. Marshall answered, “he understood it was No. 4.” Roberts replied “No. 4 is pretty big shot for rabbit hunting ... Other Supreme Court justices hadn’t been aware that there was a hunting authority in their midst. Justice Stanley Reed buzzed a few pertinent queries into Robert’s ear. Chief Justice Harlan Stone, an expert fisherman, joined in whisperers. Roberts, who spends his summer vacations on his farm near Valley Forge, Pa., kept nodding his head up and down. He seemed to know what he was talking about, or at least there were not enough rabbit experts on the bench to dispute him. However, rabbit experts on Capitol Hill say that Justice Roberts probably was thinking of the matter from the perspective of a gentleman farmer, not of those who hunt rabbits to eat. In this segment of society, they say, it isn’t unusual to hunt rabbits with No. 4 shotgun cartridges.” Drew Person. 1944. “Washington Merry-Go-Round.” *Daily Mirror* (New York). Sunday 7 May.

¹³¹ C. Herman Pritchett. 1943. “The Coming of the New Dissent: The Supreme Court, 1942-43.” *University of Chicago Law Review*, Volume 11, No. 1 (December), Pages 49 – 61 at page 49.

¹³² Michael J. Klarman. 2000. “The Racial Origins of Modern Criminal Procedure.” *Michigan Law Review*. Volume 99 #1 Pages 48 – 97 at page 48.

¹³³ Michael J. Klarman. 2000. “The Racial Origins of Modern Criminal Procedure.” *Michigan Law Review*. Volume 99 #1 Pages 48 – 97 at page 77.

- ¹³⁴ Michael J. Klarman. 2000. "The Racial Origins of Modern Criminal Procedure." *Michigan Law Review*. Volume 99 #1 Pages 48 – 97 at page 49.
- ¹³⁵ John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume. 90, No. 1 Pages 387 – 464, at page 393.
- ¹³⁶ John F. Blevins. 2004. "Lyons v. Oklahoma, the NAACP, and Coerced Confessions under the Hughes, Stone, and Vinson Courts, 1936-1949." *Virginia Law Review*, Volume. 90, No. 1 Pages 387 – 464, at pages 399 - 440.
- ¹³⁷ See Howard, J. Woodford. 1968. *Mr. Justice Murphy: A Political Biography*. Princeton, NJ: Princeton University Press, Chapter 12; Treanor, Willim Michael. 2009. "Justice Tempered with Murphy." *Forbes* August 6.
- ¹³⁸ *Falbo v. United States* 320 U.S. 549 (1944) at page 561.
- ¹³⁹ "Court Decision in Sooner Case Thought Third Degree Excuse." 1944. *Oklahoma City Times*. Wednesday 7 June Page 15.
- ¹⁴⁰ *Papers of the NAACP*.
- ¹⁴¹ Letter from W. D. Lyons to Thurgood Marshall 30 August 1944. *Papers of the NAACP*.
- ¹⁴² Letter from Thurgood Marshall to W. D. Lyons 7 September 1944. *Papers of the NAACP*.
- ¹⁴³ Letter from Roscoe Dunjee to Thurgood Marshall 11 September 1944. *Papers of the NAACP*.

- 144 Letter from W. D. Lyons to Thurgood Marshall 12 October 1944. *Papers of the NAACP*. C. C. Crabb, State Investigator, Oklahoma Department of Public Safety, <http://okcca.net/cases/1948/OK-CR-129/>, ballistic expert, State Bureau7 of Criminal Investigation, <https://law.justia.com/cases/oklahoma/court-of-appeals-criminal/1941/52925.html>.
- 145 Letter from W. D. Lyons to Thurgood Marshall 8 January 1945. *Papers of the NAACP*.
- 146 “Equality Sought in Negro Attempt at OU Enrollment.” 1945. *Oklahoma Daily* (Norman) Tuesday 6 November Pages 1, 4; Dunjee to Lead Forum On Langston University at Westminster Sunday.” 1945. The *Oklahoma Daily* (Norman). Tuesday 29 November. Page 1.
- 147 Letter from Rosie Fleeks to Thurgood Marshall 24 May 1946. *Papers of the NAACP*.
- 148 Letter from Robert L. Carter to Rosie Fleeks 31 May 1946. *Papers of the NAACP*.
- 149 Letter from William J. Orr to Thurgood Marshall 7 October 1952. *Papers of the NAACP*.
- 150 “Officers Seek W. J. Orr for Passing Hot Checks.” 1947. *Madill Record* Thursday 13 March Page 1. Orr was recommended for parole in 1954 only to be re-arrested and sentenced in 1956 for driving a stolen car. “6 Convicts Ask State Clemency.” 1954. *Oklahoma City Times* Tuesday 5 October Page 14; “Eight Convicts Up for Parole.” 1954. *Oklahoma City Times* Tuesday 26 October Page 3; “Stolen Car Conviction Draws Five-Year Term.” 1956. *Oklahoma City Times*. Thursday 27 December Page 2.

- ¹⁵¹ Jack Greenberg, Marshall's Assistant Counsel, replied with the information Orr requested. But wrote a note on the copy to refer the matter to "TM for further action." Letter from Jack Greenberg to Willim J. Orr 10 October 1952. *Papers of the NAACP*.
- ¹⁵² Thurgood Marshall to Sam Latimore 16 October 1952. *Papers of the NAACP*.
- ¹⁵³ Sam Latimore to Thurgood Marshall 28 October 1952. *Papers of the NAACP*.
- ¹⁵⁴ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Page 199.
- ¹⁵⁵ "Five Lifers Move Nearer To Freedom." 1961. *Ada Evening News*. Wednesday 1 March Page 12
- ¹⁵⁶ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Page 200.
- ¹⁵⁷ Denver Nix and John Nix. 2019. *Conviction: The Murder Trial That Powered Thurgood Marshall's Fight for Civil Rights*. Chicago, IL: Lawrence Hill Books. Page 201.