

The 1946 Moore's Ford Lynching Case: The Path to the Supreme Court

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On the evening of July 25, 1946, a mob of 20 - 30 white men ambushed four African-Americans near the Moore's Ford Bridge linking Walton and Oconee Counties, about 50 miles east of Atlanta. The victims were slaughtered in a barrage of gunfire, their bodies riddled with over 60 bullets then dumped near the banks of the Apalachee River. Their names were George W. Dorsey (a decorated World War II veteran), his wife Mae Murray, Roger Malcolm and his wife Dorothy.

Despite federal grand jury testimony in December, 1946 and despite numerous FBI and GBI investigations spanning the next seven decades, no one was ever prosecuted for these murders. In late 2013, Author/Historian Anthony S. Pitch retained Attorney Joseph J. Bell (Bell & Shivas, P. C., Rockaway, NJ) to petition the courts for release of the 1946 grand jury transcripts in order to shine the light of truth on a dark corner of American history.

A Modern-Day Battle in the Georgia Courts

So began a 7-year journey through the Georgia courts in an attempt to win release of these grand jury records. There was an initial victory at the district court level in August, 2017, but the government filed an appeal and the matter was handed up to the Eleventh Circuit Court of Appeals for resolution.

On October 3, 2018, a 3-judge panel of the Eleventh Circuit Court heard arguments from Bell and the government's attorney, Brad Hinshelwood. On February 11, 2019, in a 2-1 decision, the Court ruled to release the transcripts, stating the district court had "the inherent supervisory authority" to disclose the records due to the case's significant historical importance (the Moore's Ford Lynching is widely regarded as the precursor to the modern-day civil rights movement).

Other high-profile cases involving disclosure of grand jury records in matters of great historical significance had already been favorably decided, e.g., President Nixon and the Watergate materials, Ethel and Julius Rosenberg, Jimmy Hoffa, and Alger Hiss. There was no reason to believe that the Moore's Ford Lynching was any less noteworthy especially given the degree of nationwide outrage, the FBI investigations and intense media coverage over decades, and President Truman's establishment of the President's Committee on Civil Rights (PCCR) in late 1946.

But the euphoria over a favorable decision was short-lived. In June, 2019, the Eleventh Circuit issued an order to re-hear the case before a full (en banc) panel of judges later that year.

On October 22, 2019, Bell and Hinshelwood again advanced their theories of how Rule 6(e), the Federal Rule of Criminal Procedure that governs secrecy of grand jury proceedings, should be interpreted by the Court.

Hinshelwood took the position that the rule needed to be interpreted with strict adherence to its enumerated exceptions. Bell advanced the argument for a more case-centric approach, allowing the district court to invoke its inherent supervisory authority to make exceptions when it deemed a case's unique circumstances warranted it, especially those with significant historical importance.

On March 27, 2020, the Eleventh Circuit Court issued its decision and reversed its 2019 ruling, effectively preventing access to the grand jury records by Moore's Ford author and historian Laura Wexler, who had been named intervenor in the case after the sudden death of Anthony Pitch on June 29, 2019.

In a recent interview with CNN, Bell vowed to take the fight to the Supreme Court, the only other venue available to obtain justice for the victims of the 1946 murders and their descendants.

The First Step on the Road to SCOTUS: The Writ of Certiorari

But just because a case is viewed as relevant for Supreme Court consideration doesn't mean the highest court will hear it. In fact, each year over 8,000 cases are submitted to the Supreme Court for consideration but only a fraction of them (around 1%) are selected.

To have a case considered by the Supreme Court, a party must file a petition for a *writ of certiorari* – a written request asking the Supreme Court to hear a case. The “writ of cert” is not a request to have the Supreme Court re-hear the facts of the case – which are typically settled in a lower court – but to settle questions about federal law related to those facts.

If a writ of cert is granted, it directs the lower court to send the record of the case to the Supreme Court. The Supreme Court typically does not issue its rationale for accepting or rejecting cases for review.

The Rule of Four

Since the overarching goal of the Supreme Court is to ensure that federal law is applied uniformly across the country, petitions for certiorari are typically considered if they pass a test called “The Rule of Four” – meaning that the petitions are granted if four of the nine justices want to hear the case.

If a case is not granted certiorari, that fact alone does not imply a decision, i.e., it doesn't mean that the Supreme Court agrees or disagrees with the lower court ... only that it has decided not to hear the case because it considers the matter to be one in which the law at issue does not affect the whole country.

The Rule of Four is not required by the Constitution or any law or even the Supreme Court's own published rules. Rather, it is a custom that has been observed since the Court was given discretion over which appeals to hear by the Judiciary Act of 1891, the Judiciary Act of 1925 and the Supreme Court Case Selections Act of 1988.

If a Petition for a Writ of Cert is Granted ...

If a petition for a writ of cert is granted, the case probably falls into one or more of these three categories:

1. a case of national importance (e.g., when the Supreme Court decided *Bush v. Gore* in the midst of a presidential election) or,
2. when a lower court issues a decision that invalidates federal law (e.g., *Gonzalez v. Raich*, Ninth Circuit, re: use of marijuana for medical use) or,
3. cases involving split decisions in the circuit courts (e.g., *Obergefell v. Hodges*, re: same-sex marriage with a split in the circuits ... here, the Supreme Court was likely to hear the case because it meant that existing federal law applied differently from state to state).

It's important to understand that these three categories suggest only a framework for the Supreme Court considering petitions for certiorari – they are not rules that must be obeyed by the Court.

What's Next for the Moore's Ford Lynching Case?

The law firm of Bell & Shivas, P. C. is currently drafting a petition for a writ of certiorari to submit to the Supreme Court. Based on the criteria the Court uses to weigh decisions to hear or reject cases submitted for review, it appears that the Moore's Ford case meets the high standards described by at least two of the three categories mentioned above (national importance and a clear split in the circuit courts on the issue of disclosure of grand jury materials).

The final disposition of justice in the 74-year-old Moore's Ford case may come down to a meeting of the minds of four of the Supreme Court justices on the merits of hearing the case and, if the petition for the writ of cert is granted, whether or not a majority of the justices share the view that case-by-case determination of disclosure of grand jury records accomplishes three important goals: 1) settling the issue of whether district courts have the inherent supervisory authority to allow disclosure of grand jury records in cases of significant historical importance, 2) eliminating the need to write new law; and 3) permitting existing federal law to be applied uniformly across the full judicial landscape.

Right now, no one knows if or when the Supreme Court will hear the Moore's Ford case. But one thing is certain: the determination of Joe Bell and Laura Wexler to right an historic wrong is as strong and unwavering as ever.

For More Information

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