

Tulsa Greenwood Riot Accountability Act of 2007
Subcommittee on Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
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Testimony of
Alfred L. Brophy
Professor of Law
University of Alabama

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Representative Conyers, Chairman Nadler, Ranking Minority Member Franks, and Members of the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties,

It is my pleasure and honor to speak on behalf of this legislation to repair in part the tragedy of the Tulsa riot of 1921. I am Al Brophy, professor of law at the University of Alabama and author of *Reconstructing the Dreamland: The Tulsa Riot of 1921* (Oxford University Press, 2002) and *Reparations Pro and Con* (Oxford University Press 2006). My remarks today are delivered in my individual capacity, not as a representative of the University of Alabama.

The tragedy of the Tulsa riot began when World War I veterans—men who contributed to saving democracy in Europe—took action to prevent a lynching on the evening of May 31, 1921. The threat of lynching was set off by a front-page article in the *Tulsa Tribune* on the afternoon of May 31, that (as we now know) falsely accused a young African American man of attempting to attack a young white woman. The *Oklahoma City Black Dispatch* called that story the “false story which set Tulsa in fire.”¹ When black people in Tulsa read the story, realized that there was a threat of lynching, and began to mobilize to prevent it; at the same time, many in the white community read the same story and began to gather at the courthouse, in anticipation of a lynching.

Some met in the back room of the Dreamland Theater, to discuss what to do. They were afraid there would be a repeat of the September 1920 lynchings of a white man in Tulsa and a black man in Oklahoma City. In both cases, the lynching victims were taken from jail. Late in the evening of May 31, a group of black veterans appeared at the courthouse, to help protect the young man in jail there. The resulting confrontation set off a riot in which the Tulsa officials, their special deputies, and members of a mob destroyed the African American section of Tulsa, known as Greenwood. The Tulsa tragedy left dozens, perhaps hundreds, dead and thousands homeless and it left Greenwood in smoldering ruins. Bishop Ed D. Mouzon told the sobering story of the ways that the horrors of war in Europe appeared on American soil: “Civilization broke down in Tulsa. I do not attempt to place the blame[;] the mob spirit broke and hell was let loose. Then things happened that were on a footing with what the Germans did in Belgium, what the Turks did in Armenia, what the Bolsevists did in Russia.”² The riot is replete with stories of looting, burning, cold-blooded killing, even use of the new technology of airplanes to attack Greenwood.

The stories of the riot’s destruction are also replete with pathos—of an elderly couple shot in their home; of the homeless sifting through the charred embers of their homes, searching for whatever might remain; of families separated; of the burning of a church. It is impossible to convey the human cost in a short compass and I hesitate to even try. Perhaps one story from the *Tulsa World* will begin to introduce to the way the riot crushed the human spirit:

¹ *The False Story Which Set Tulsa on Fire*, BLACK DISPATCH 1 (July 1, 1921).

² *Black Agitators Blamed for Riot*, TULSA WORLD 1 (June 6, 1921).

Half lying, half sitting a negro girl with heavy-lidded eyes stared before her with such blank misery in them that more than one person hesitated before her. Someone asked her if she were ill. She raised tear-filled eyes. “No, I ain’t sick.” She scarcely noticed her questioner. Was there anything could be done for her? “No, I ain’t got nothin’.” That was all she would say.³

The Oklahoma legislature’s Tulsa Riot Commission provides us with a detailed picture of the destruction and tragedy wrought by the riot. I hope that you will spend some time with it, for it draws upon thousands of hours of research by a number of scholars and presents one of the most comprehensive pictures available of the unfolding of a riot and it lays out the detailed evidence implicating governmental actors in the destruction.⁴

The Riot and the Failure of the Rule of Law

I want to talk today about the riot—a uniquely horrific episode of violence during the Jim Crow era—as the complete breakdown of that most American value, the rule of law. The rule of law failed in the months leading up to the riot, as Oklahoma experienced lynchings and near-lynchings and as the law separated the races and left African Americans in unequal and vulnerable positions. Looking back on his childhood in Oklahoma in the 1910s and 1920s, Ralph Ellison recalled that law enforcement officers were called “laws,” for they had the power to dictate what the “law” would be. They did not follow what we have come to know as the rule of law, however.⁵ Moreover, when cases reached the courts, judges failed to apply the law equally to blacks and whites. Judges failed to convict whites who attacked blacks, issued harsher sentences to blacks than whites, and sometimes interpreted statutes to allow continued unequal treatment in schools and in voting. Ellison told of a quip made by an Oklahoma judge from the bench, that “a Model T Ford full of Negroes ranging at large on the streets of the city was a more devastating piece of bad luck than having one’s path crossed by thirteen howling jet-

³ *Negroes Gladly Accept Guards*, TULSA WORLD 7 (June 2, 1921).

⁴ *Tulsa Race Riot: A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* (Scott Ellsworth & John Hope Franklin, eds.), available at: <http://www.okhistory.org/trrc/freport.htm>

For additional detail on the government’s culpability and the promises to assist in rebuilding, as well as the recognition throughout Tulsa at the time that something ought to be done, see Alfred L. Brophy, *Reconstructing the Dreamland: The Tulsa Riot of 1921*, esp. 103-19 (2002).

⁵ Ralph Ellison, “The Perspective of Literature,” in *The Collected Essays of Ralph Ellison* 768 (John F. Callahan ed., 1995). Similarly, as an Oklahoma City police officer roughly handled a woman suspected of stealing from her employer, she told him to “mind what you are doing. There is a law against such treatment.” “By God, I am the law,” was the reply. “Story Like Unto Dark Ages,” *Black Dispatch* 1 (June 21, 1918).

black cats.”⁶ An editorial in the *Muskogee Cimeter*, Muskogee’s weekly black newspaper, protested that Oklahoma statutes treated blacks as objects. Laws might be passed to control and punish a black man, but “[m]easures that would improve his mentality, encourage his industry and mold his morals are never thought of.”⁷ The pattern of using law to reinforce white superiority was common. “[L]aw and order methods,” an NAACP official concluded, “absolutely insure ‘white superiority’ in every way in which that superiority is real.”⁸

The Oklahoma legislature enacted, for instance, a statute that allowed railroads to haul segregated luxury cars for whites only. The Oklahoma Supreme Court upheld the statute when J.B. Stradford was charged with violating the segregation statute. The United States Supreme Court invalidated the segregation statute in 1914; the next year, it invalidated the Oklahoma grandfather clause. Yet that did not end Oklahoma’s attempt to keep blacks from voting. A replacement statute for the grandfather clause, which served much the same purpose, was not struck down until the 1930s, again by the United States Supreme Court. In 1919, in the neighboring state of Arkansas, amid fears of a “negro uprising,” dozens of African Americans were killed and others railroaded into death sentences. Justice Oliver Wendell Holmes eventually reversed their convictions, observing that “counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion.”⁹ Public passion went out of control in Tulsa on the evening of May 31, 1921.

The rule of law failed completely during the riot, as the police department hastily deputized hundreds of men, then instructed them and others to “get a gun . . . and get a N—r.”¹⁰ Those who did not have access to guns were issued them by the police department. Some of those guns were taken from sporting goods shops in downtown Tulsa; one merchant whose guns were taken is the only person I know to receive compensation from the city for the riot.¹¹ One

⁶ Ralph Ellison, *The Perspective of Literature*, in *THE COLLECTED ESSAYS OF RALPH ELLISON* 768 (John F. Callahan ed., 1995).

⁷ “Not a Child Race,” *Muskogee Cimeter* (June 17, 1916).

⁸ “Terrible Lessons,” *Black Dispatch* 4 (August 22, 1919).

⁹ *Moore v. Dempsey*, 261 U.S. 86, 91 (1923).

¹⁰ See Testimony of Laurel Buck 30, Attorney General’s Civil Case Files, RG 1-2, A-G Case No. 1062, Box 25 (Oklahoma State Archives) (discussing instructions given to Laurel Buck, a white man, to “get a gun, and get busy and try to get a n—er.”). According to pleadings in a suit filed by a black riot victim, one deputy officer gave instructions to “Go out and kill you a d__m nigger.” Petition in *Robinson v. Evans, et al*, Tulsa County District Court, No. 23,399, May 31, 1923. There is extensive discussion of this in Brophy, *Dreamland*, *supra* note 4, at 39-40.

¹¹ Brophy, *supra* note 4, at 40, 96.

indication of how poor the supervision of the “deputies” was is the police chief’s plea in the *Tulsa World* after the riot for the return of the guns:

Not all persons who borrowed guns from the police station the Tuesday night of the negro uprising have returned them to the station. Chief of Police John A. Gustafson Saturday asked that there be no more delay in returning those firearms. . . . “These guns were only loaned,” the chief explained, “and were loaned with the understanding they would be returned as soon as the situation had improved to a point sufficient to justify their return.”¹²

That plea illustrates how careless the police department was in issuing weapons and deputy police badges.

The police, working with their special deputies, and local units of the National Guard, arrested every black person they could find in the morning of June 1, 1921, and took them to what newspapers referred to as “concentration camps” around the city.¹³ A mob, consisting in part of those special deputies (and assisted in some cases by police officers) then looted and burned Greenwood, the black section of Tulsa. We also learned how destructive those deputies were from General Charles Barrett of the Oklahoma National Guard. He was in charge of the Guardsmen who traveled throughout the night from Oklahoma City to put down the riot. He wrote critically of those deputies. Tulsa’s police chief John Gustafson “did not realize that in a race war a large part, if not a majority, of those special deputies were imbued with the same spirit of destruction that animated the mob.” General Barrett grimly concluded that deputies became “the most dangerous part of the mob.”¹⁴

One picture of Greenwood on fire was made into a postcard after the riot and labeled “Running the Negro out of Tulsa.” That captures the essence of the riot. It was the result of race hatred and became a move to drive out Tulsa’s African American population. It was also about keeping Greenwood’s residents in their places. One white newspaper wrote of treatment of homeless Greenwood residents in the aftermath of the riot. Where there had been hatred during the riot, now there was kindness: “The white citizens of Tulsa have forgotten the bitter hatred and their desperation that caused them to meet the negroes in battle to the death Tuesday night and are now thinking of them only as helpless refugees.”¹⁵ Once Greenwood residents were

¹² “Guns Taken During Riot, Still Sought by Tulsa Policemen,” *Tulsa World* 2A (June 19, 1921); “Weapons Must be Returned,” *Tulsa World* 3 (June 4, 1921) (asking for return of weapons and threatening prosecution if weapons are not returned).

¹³ Brophy, *supra* note 4, at 91.

¹⁴ 1 Charles Barrett, *Oklahoma After Fifty Years* 209 (1941).

¹⁵ “To Rebuild Homes for Negro Owners and Probe Blame,” *Muskogee Phoenix* (June 3, 1921).

reduced to the status of “helpless refugees” they posed little challenge to white authority—and then could be seen as objects of charity and subject to white control.

In fact, they were subject to control. In the aftermath of the riot, thousands were left homeless. They were held at the concentration points around the city, such as the fairgrounds and the convention center, until a white employer or friend vouched for them. Then, they were issued green tags and released. Some were released quickly; others were held for several weeks. And when they left, they returned to scenes of destruction as far as the eye could see—nearly forty blocks leveled by fire. Many left, for cities including Kansas City, Chicago, Memphis, and Los Angeles, never to return.

Even in the aftermath of the riot, when cool heads should have prevailed, riot victims had no shot at justice. An all-white grand jury blamed the Greenwood community for inciting the riot and several leaders of the community fled, fearing indictment for inciting riot. The headlines of the *Tulsa World* told the whole story of the grand jury report: “Grand Jury Blames Negroes for Inciting Race Rioting; Whites Clearly Exonerated.”¹⁶ The *Oklahoma City Black Dispatch* more accurately characterized the nature of the grand jury report: “The truth is, and as usual, we have a white wash brush and a big one in operation in Tulsa.”¹⁷ For not only did the grand jury report blame Greenwood residents, the mayor tried to relocate Greenwood further away from white Tulsa and to prohibit rebuilding in the burned area by requiring use of fireproof materials.

The *Black Dispatch*’s editor, Roscoe Dunjee, wrote about the debt to riot victims:

The white citizens of Tulsa are in debt to the Negroes whose property they burned and the lives they wantonly destroyed, and we believe that there are those who will make some effort to repair the loss which they have caused. They cannot forget it, they admit that it was wrong and they feel deep down in their hearts that they should repay. It will always be a debt until it is paid.¹⁸

Still, Dunjee placed extraordinary faith in the rule of law. He urged Tulsa riot victims to file lawsuits seeking damages against their insurance companies and the city. And they did so. Yet, the lawsuits were dismissed or the claims denied. When Mabel Allen’s case against the city went to trial, it was dismissed before it went to the jury.

¹⁶ “Grand Jury Blames Negroes for Inciting Race Rioting; Whites Clearly Exonerated,” *Tulsa World* 1, 8 (June 26, 1921).

¹⁷ “In Name Only,” *Black Dispatch* 4 (July 8, 1921) (“We observe that the only really definite statement made in the whole [grand jury] report is that the NEGRO IS TO BLAME, a conclusion they seemed to have arrived at through evidence unsupported by any facts which they present.”).

¹⁸ “Tulsa’s Distress,” *Black Dispatch* 4 (March 15, 1923).

But as they attempted to assert their rights, riot victims left us important evidence about the riot. William Redfearn's suit against his insurance company went to trial in Tulsa. Like Allen's case, it was dismissed before going to a jury. However Redfearn appealed to the Oklahoma Supreme Court. The court acknowledged in *Redfearn v. American Central Insurance Company* the culpability of the city. The court wrote that "groups of white men, many of them wearing police badges and badges indicating that they were deputy sheriffs, after removing the negroes from buildings, went inside the buildings, and, after they left, fires broke out inside the buildings."¹⁹ Still, the Court offered no relief on Mr. Redfearn's insurance claim.

The courts' refusal to grant relief is unsurprising. Several decades before the riot, the Oklahoma territorial court blocked a suit against the city of Norman for a riot that occurred there, in which the mayor was allegedly involved. But things were going from bad to worse for riot victims. In 1923, the governor of Oklahoma declared martial law throughout the state. He cited, among other reasons, the pervasive control of the Tulsa courts by the Klan. The records of the military tribunals established by the governor to investigate the Klan are some of the most detailed available anywhere on how the Klan functioned in the years immediately after the movie *Birth of a Nation* rekindled it. They detail systematic, vicious beatings of people, black and white, who violated the Klan's norms of behavior. Those norms included the rule that some towns were "sundown towns"—places where blacks might come during the day to work, but where they had to leave by sundown.²⁰ Those who sought to assert their rights—before, during, or after the riot—faced the very real prospect of being destroyed for the assertion of those rights. The riot itself is testimony to it. And, as the district court recognized in *Alexander v. Oklahoma*, the Greenwood residents had no effective means of asserting their rights in the aftermath of the riot.²¹ For those riot victims—people who lived through the horror and brutality of the riot—Jim Crow has not yet ended, for they were taught at an early age that the assertion of legal rights leads to destruction.

Even in the 1970s, when someone as established as General Ed Wheeler of the Oklahoma National Guard studied the riot, he was threatened with violence. Brent Staples' story about the riot in the *New York Times Magazine* recounts the story of the threats against Wheeler:

¹⁹ 242 P. 929, 930 (Okla. 1926). For further discussion of the case, see Alfred L. Brophy, "The Tulsa Race Riot of 1921 in the Oklahoma Supreme Court," 54 *Okla. L. Rev.* 67 (2001).

²⁰ See Alfred L. Brophy, "Norms, Law, and Reparations: The Case of the Ku Klux Klan in 1920s Oklahoma," 20 *Harv. Blackletter L.J.* 17-48 (2004).

²¹ *Alexander v. Oklahoma*, No. 03-C-133-E, at 21-22 (N.D. Okla., March 19, 2004) ("Both the Commission Report and the Legislative Findings and Intent resulting from that Report catalog the horror and devastation of the Riot as well as the intimidation, misrepresentation and denial that took place afterward. The political and social climate after the riot simply was not one wherein the Plaintiffs had a true opportunity to pursue their legal rights.").

When it became known that Wheeler was moving forward with the article, he began to be harassed by telephone, both at home and at work. One afternoon in downtown Tulsa, a man in overalls tapped Wheeler on the shoulder, whispered, "You'll be sorry if you publish that story," and walked away.

In the spring of 1971, his article nearly finished, Wheeler discovered a message scrawled in soap across the windshield of his blue Ford sedan: "Best Look Under Your Hood From Now On."²²

At the risk of belaboring the point, Tulsa riot victims had no shot at justice at the time and until recent memory would reasonably feel threatened for even discussing the riot, let alone trying to assert their rights in court.

The Oklahoma Legislature's Tulsa Riot Commission was, through the moral and financial support given it by the legislature, able to piece together a complete picture of the riot. The report draws on data from archives all over the United States—particularly the Oklahoma State Archives in Oklahoma City, the Oklahoma Historical Society in Oklahoma City, the Tulsa County Historical Society, the Tulsa County archives, but also the Library of Congress, the National Archives regional bureau, and the Cook County Records Office in Chicago, in addition to newspaper microfilm records. Many of those records—such as the critical National Guard records—have only become publically available in recent years. And certainly the entire picture has only been available since historians have assembled the recent pieces of the riot. Indeed, many people, upon hearing about the Tulsa riot for the first time, ask, how could this story have been hidden for so long? How, given the photographs showing scenes of utter destruction for as far as the eye can see, could this story have been buried? The answer turns on an unholy combination of factors: the diligent efforts of Tulsa authorities and other prominent Tulsans to scuttle the story and tell the rest of the world that they would make the injured parties whole; the diligent efforts of Tulsa authorities to blame Greenwood residents for the riot and to hide the culpability of the police department and their complicity with local units of the National Guard; the threats of prosecution of certain leaders of the Greenwood community who stayed in Tulsa or returned to it; and a culture of suppression, in which, to borrow a phrase from Ralph Ellison's novel *Juneteenth*, blacks were counted but not heard. It has been only relatively recently—as people who had culpability for such crimes as murder have died and as evidence has come to light and been put together by the Tulsa Riot Commission—that a fairly complete story of the Tulsa tragedy has emerged.

It is particularly disappointing that, after all the excellent work that has been done to recover a complete history of the riot (including the culpability of the city in the riot) that when the United States Court of Appeals for the Tenth Circuit affirmed the dismissal of the riot victim's lawsuit it referred to the angry mob that destroyed Greenwood. The court should have written of a deputized mob, clothed with the power of the state and working in conjunction with

²² Brent Staples, "Unearthing a Riot," *New York Times Magazine* (Dec. 19, 1999).

the local police. After all that work, we still have an inaccurate picture of the riot in the pages of the *Federal Reporter*.²³ Truth is fragile, particularly in the case of Tulsa. And it is hard to say that riot victims should have known what the United States Court of Appeals has so quickly forgotten.

Considering Legislative Relief Now

There are five key principles, which make the case for relief of Tulsa riot victims particularly compelling.

First, the city and state are culpable for the destruction during the riot. The city failed to keep the peace; when a riot broke out, its special deputies working in conjunction with the police and local units of the National Guard contributed to the riot's destruction. The federal government had no involvement in the riot; however, the federal government had failed to pass an anti-lynching act (the Dyer Anti-Lynching Bill had been pending before Congress since 1918).²⁴ An anti-lynching act would have made the riot less likely.

Second, the tragedy is concentrated in place and time; this is not a claim for general societal reparations, which is so suspect in modern jurisprudence. Instead, this is a claim for a very discrete event, of unique level of violence and destruction. In short, the amount of violence and damage in Tulsa is unparalleled.

Third, there are still people alive who suffered harm. That living connection was important in the Civil Rights Act of 1988, which provided \$20,000 to every Japanese-American interned during World War II who survived until 1986. There is, in short, a direct, living connection to the riot. And so there is some possibility of repairing part of the damage to people who immediately suffered.

Fourth, the courts and legislature were effectively closed to riot victims at the time. They had no shot at justice; reopening the case now gives the opportunity for a full hearing, which was denied at the time. It was only after the Oklahoma legislature's Riot Commission re-examined the case that all the disparate strands of evidence began to come together. Where the mere discussion of the riot as recently as the early 1970s lead to threats of violence, the Riot

²³ The second two sentence of the Tenth Circuit's opinion affirming the dismissal is: "An angry white mob converged on Greenwood in a devastating assault, burning homes and businesses, killing up to three hundred people, and leaving thousands homeless." 382 F.3d 1206, 1211 (10th Cir. 2004). Even later in the opinion, where this is some acknowledgment of the role of special deputies, the imagery of a "white mob" continues to dominate. *See id.* at 1211-12 ("Armed with machine guns, the white mob ravaged Greenwood, scattering machine gun fire indiscriminately at its African-American residents. . . . The guardsmen, often acting in conjunction with the white mob, disarmed the African-American men who were defending their community and placed them in 'protective custody.' Thus purged of any resistance, the white mob burned virtually every building in Greenwood.").

²⁴ Brophy, *supra* note 4, at 62 (discussing references to Tulsa riot in debate over Dyer Anti-Lynching Bill in aftermath of riot).

Commission made the riot something that victims could discuss. The fear was, at long last, lifted, by the brave actions of the holders of power in Oklahoma.

Finally, Tulsans at the time recognized that something was owed riot victims and they promised to do something. Even the *Tulsa Tribune*—the paper that set in motion the events that led to the tragedy—urged action to repair Greenwood.

Acres of ashes lie smoldering in what but yesterday was “Niggertown.” . . . City and county officials are responsible for this distressing story and this appalling loss of property. The insurance companies flatly place the responsibility there. The city and the county are liable . . . because the city of Tulsa and the county of Tulsa stand before the world as unable to protect life and liberty. . . . Let us meet the need and so far as we can redeem the wanton and unnecessary destruction of property. Let us try to be fair to the innocent.²⁵

The most poignant promise came from Judge Loyal J. Martin, chair of the Emergency Committee:

Tulsa can only redeem herself from the country-wide shame and humiliation into which she is today plunged by complete restitution and rehabilitation of the black belt. The rest of the United States must know that . . . Tulsa weeps at this unspeakable crime and will make good the damage, so far as it can be done, to the last penny.²⁶

Now the United States Congress has the opportunity to make some amends.

In conclusion, I am thinking now about that famous Oklahoman Ralph Ellison. His first novel, *Invisible Man*, begins in Greenwood, which he visited shortly after the riot. Later Ellison wrote about the faith that the *Black Dispatch*'s editor, Roscoe Dunjee, placed in the Constitution as a vehicle for justice. Ellison did not have such faith in his youth—for he saw corrupt Oklahoma politicians and judges who cared little for law and justice. Yet, he came to have more respect over time for our Constitution's ideals. Ellison alluded again to the Tulsa riot in his posthumously published novel, *Juneteenth*. What is particularly poignant today is that *Juneteenth* begins with a visit by a group of elderly African Americans from an unnamed southern state (perhaps Oklahoma) to Washington, D.C., to visit with a Senator. Their leader, Minister Alonzo Hickman, is asked if he is one of the Senator's constituents. Minister Hickman responds that the Senator has no one like him in his state; “We're from down where we're among the counted but not among the heard.”²⁷ I deeply hope that this Committee will be able to hear and respond to the claims of the surviving Tulsa riot victims and to repay Dunjee and Ellison's faith in the justness of our country. For they have waited so long, so patiently, and

²⁵ “The State in Action,” *Tulsa Tribune* 1 (June 2, 1921).

²⁶ “Tulsa,” *The Nation* (June 15, 1921).

²⁷ Ralph Ellison, *Juneteenth* 4 (1999).

have such a compelling claim to some rectification so many years after their community was destroyed through the actions of and neglect by their government.