

The Murder of Ellis Hutson

A Legal Legacy



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Summer 2014 (working document)

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I. Introduction

On Saturday morning, March 13, 1948, Ellis Hutson, Sr., a 50-year-old African-American father walked into the Nacogdoches County Courthouse. He was dressed in a hat¹ and a U.S. Navy jacket, a gift from his son Lincoln, a veteran from the recent war.²

Hutson, Sr. had gone to court so he could post bond for his eldest son, Ellis Jr., who had been arrested the evening before for allegedly assaulting Constable Travis Helpinstill. Speaking through the bars of his county jail cell, Hutson, Jr. had told his father that Helpinstill had been the aggressor. Ellis Hutson, Sr. never succeeded in posting his son's bond that morning because Constable Helpinstill shot him three times, purportedly in self-defense. A knife was found next to Hutson, Sr.'s body, although his family and those who had seen him that morning insisted that he had not been carrying a knife.

Hutson, Sr., a widower, left behind eight children.³ His 14-year-old daughter Marylon, would later recall washing the blood off of his coat after he was killed.⁴ She and her two minor siblings went to live with their maternal grandmother.⁵

Hutson, Sr. was not the first African-American man to be victimized by Constable Helpinstill. Although he had never met the constable before this day,⁶ he knew of many others who had endured severe injuries at the hands of Travis Helpinstill. What made Helpinstill's attack on Hutson, Sr. unique was that it sparked legal action at a time when legal remedies were

¹ Ellis Hutson Police Brutality Case, 15. Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series B: Legal Department and Central Office Records, 1940-1955. In ProQuest History Vault [database on-line]; available from <http://www.proquest.com/> (publication number 001532-019-0954; accessed August 15, 2013) [hereinafter *Ellis Hutson Case NAACP*].

² James Hutson and Marylon Wilson, interviews by Georgi J. Vogel Rosen and I.B. Koleosho, East Texas Research Center, July 26, 2013.

³ James Hutson, Marylon Wilson, Obadiah Johnson, interviews by Georgi J. Vogel Rosen and I.B. Koleosho, East Texas Research Center, July 26, 2013 [hereinafter *James Hutson or Marylon Wilson or Obadiah Johnson interview*].

⁴ *Marylon Wilson interview, supra* note 3.

⁵ *James Hutson and Marylon Wilson interviews, supra* note 3.

⁶ *Id.*

not readily available for bringing justice to victims of racially-motivated violence in the Jim Crow South. Ellis Hutson's death led to the first prosecution of a white law enforcement officer for the first-degree murder of an African-American man in Texas history. In addition, Ellis Hutson's family received a modest settlement in a civil suit, and Constable Helpinstill was successfully prosecuted in federal court for the unlawful arrest and beating of Hutson's son, Ellis Hutson, Jr.

II. Constable Travis S. Helpinstill and His Previous Victims

On September 3, 1946, Travis Helpinstill ousted veteran incumbent J. Todd Brown in a landslide election, winning the office of Constable for Precinct 1 of Nacogdoches County, Texas.⁷ At the age of 21, Helpinstill was the youngest man ever to have been elected a constable in Texas history.⁸ He had used his youth to his advantage, running on the campaign slogan, "Old enough to know what to do, experienced enough to know how to do it, and young enough to do it."⁹ Helpinstill said he gained his experience while serving in the U.S. Marine Corps as a corporal in Saipan and Iwo Jima during World War II.^{10,11,12} A book about the history of Nacogdoches would later boast that "[i]n one incident, [Helpinstill's] heroism saved the lives of many of his fellow soldiers and caused the death of 27 Japanese combatants."¹³ Helpinstill had

⁷"Constable Neither Too Young Nor Too Old to Do His Job," *Evening Journal*, September 3, 1946, 7, accessed June 4, 2013, <http://newspaperarchive.com/evening-journal/1946-09-03/page-7> [hereinafter "Constable...Job," *Evening Journal*].

⁸Jan D. Barton and Peggy A. Jasso, *Images of America: Nacogdoches in World War II* (Charleston, SC: Arcadia Publishing, 2011), 91 [hereinafter Barton and Jasso, *Images*].
<http://books.google.com/books?id=UB7Rkwt5IosC&pg=PA91&lpg=PA91&dq=Travis+helpenstell+nacogdoches&source=bl&ots=xi5uEf1fiV&sig=J0lwFJPon1chDieU53dLbxbx88w&hl=en&sa=X&ei=7wcsUMelM8u50AH9vYHYBA&ved=0CE0Q6AEwCA#v=onepage&q=Travis%20helpenstell%20nacogdoches&f=false>

⁹"Constable...Job," *Evening Journal*, *supra* note 7 at 7.

¹⁰*Id.*

¹¹Barton and Jasso, *Images*, *supra* note 8 at 91.

¹²"Travis Helpinstill, 1925-2005," *Light and Champion*, November 2005, n.p.

¹³Barton and Jasso, *Images*, *supra* note 8 at 91.

returned to East Texas after the war in the fall of 1946. He reassumed his old job at an automobile sales company and began to campaign for office.¹⁴ He told the *Evening Journal*, "I figured that if I could take care of myself against the Japs, I could surely fulfill the duties of Constable."¹⁵

Helpinstill was sworn into office on January 1, 1947.¹⁶ Thirty-two days later, on Sunday, February 2, he came across Willie Lee Mergerson, an African-American Baptist preacher on his way home from his church in the Sanctified Quarters neighborhood of Nacogdoches.^{17,18}

Mergerson was 41 years old, married, and the father of seven children.¹⁹ According to Mergerson's account, the preacher had "peacefully and quietly" been walking home from church along the train tracks.²⁰ Constable Helpinstill "accosted" him "in such a manner to frighten him.²¹ Mergerson became scared and ran. Helpinstill shot at him with his pistol.²² Mergerson then "ran into a wire fence and through brush and briers and under brush for his life trying to escape from the gun shots..."²³ He ran to a "colored" taxi stand and attempted to call the sheriff for help.²⁴ Helpinstill then reportedly arrived at the taxi stand.²⁵ Mergerson tried to explain why he had run but Helpinstill "at once seized upon him" with assistance from other young boys at the

¹⁴ "Constable...Job," *Evening Journal*, *supra* note 7 at 7.

¹⁵ *Id.*

¹⁶ Willie Mergerson Police Brutality Case, 2. Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series B: Legal Department and Central Office Records, 1940-1955. In ProQuest History Vault [database on-line]; available from <http://www.proquest.com/> (publication number 001532-019-0954; accessed August 15, 2013) [hereinafter *Mergerson Case, NAACP*].

¹⁷ *Id.*

¹⁸ Bobbie Mergerson Jones and Clifford Mergerson, interview by Georgi J. Vogel Rosen and I.B. Koleosho, East Texas Research Center, July 26, 2013 [hereinafter *Bobbie Mergerson Jones or Clifford Mergerson interviews*].

¹⁹ *Mergerson Case, NAACP, supra* note 16 at 2.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

stand.²⁶ They forced Mergerson into a car and drove him to the Center Highway, where they beat him repeatedly.²⁷ They then carried him to another location, where they removed his clothes and beat him over the head.²⁸ They discontinued the assault when some white passersby intervened.²⁹ Helpinstill planned to take Mergerson to the county jail, but eventually released him at the white people's urging.³⁰ Mergerson was then taken to the hospital where doctors placed a steel plate in his head.^{31,32} His skull had been fractured, and he had suffered a brain injury.³³ Mergerson would experience headaches and sinus problems for the rest of his life.³⁴ He died in a car accident nine years later, at the age of 50.³⁵ Doctors told his family that had he would have survived the accident but for the steel plate in his head.³⁶

On February 5, three days after the assault on Willie Lee Mergerson, an unknown person or persons identifying themselves "the NAACP members of Nacogdoches, Texas" penned a letter to the National Association for the Advancement of Colored People (NAACP) national office in New York.³⁷ The letter detailed the attack on Mergerson and requested NAACP support in seeking involvement from the Federal Bureau of Investigation (FBI).³⁸ Around that time, a local white attorney, Arthur Lowery, assisted Mergerson in filing for a civil suit.³⁹

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Id.*

³¹ *Id.*

³² *Bobbie Mergerson Jones or Clifford Mergerson interviews, supra note 18.*

³³ *Mergerson Case, NAACP, supra note 16 at 4.*

³⁴ *Bobbie Mergerson Jones or Clifford Mergerson interviews, supra note 18.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Mergerson Case, NAACP, supra note 16, at 14.*

³⁸ *Id.*

³⁹ *Id.* at 11.

The next day, on February 6, Helpinstill reportedly visited Mergerson at the hospital and “threatened to kill him if he attempted to take any step against him in any manner.”⁴⁰ When Mergerson did not respond, Helpinstill then pulled out a gun and showed it to the injured preacher lying in his hospital bed.⁴¹ That same day, Helpinstill’s father, J.B. Helpinstill went to Mergerson’s home to pressure his family not to pursue the matter.^{42, 43} Fearful of retaliation, Mergerson’s wife and children moved out of their home temporarily to hide from the Helpinstill family.⁴⁴

The NAACP showed initial interest in the case after receiving the anonymous letter from Texas. Franklin Williams, Assistant Special Counsel for the national NAACP office, sought information about the case from Nacogdoches branch of the NAACP.⁴⁵ However, after reviewing the details, the Dallas office concluded that there was not much the NAACP could do, given that Helpinstill had not arrested or incarcerated Mergerson.⁴⁶ Indeed, under the existing federal civil rights laws, Helpinstill could not be convicted of violating Mergerson’s civil rights unless the government could prove he had acted under the color of law.⁴⁷ To prosecute Helpinstill, he would have had to act in some type of official capacity, because “color of law” requires the “[misuse] of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”⁴⁸ Without an arrest or incarceration, Helpinstill was technically acting as a private citizen rather than as a law enforcement officer. The assault therefore would not fall within federal jurisdiction.

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Bobbie Mergerson Jones, interview by Georgi J. Vogel Rosen and I.B. Koleosho, East Texas Research Center, July 26, 2013.

⁴⁴ *Mergerson Case, NAACP, supra* note 16, at 6.

⁴⁵ *Id.* at 12.

⁴⁶ *Id.* at 15.

⁴⁷ 18 U.S.C. § 52 (1946) (current version at 18 U.S.C. § 242 (2013)).

⁴⁸ *United States v. Classic*, 313 U.S. 299, 326 (1941).

While federal action was not an option, a state criminal prosecution was under way. Lowery requested that a representative from the NAACP national office travel to Texas to assist with the prosecution.⁴⁹ The president of the Nacogdoches branch of the NAACP noted in a letter to the national office that a grand jury would meet on May 26, 1947 to consider an indictment.⁵⁰ Williams appears to have misunderstood that the State of Texas was moving forward with criminal prosecution. He declined to send a representative, stating that it was the NAACP's policy not to get involved in civil litigation.⁵¹

According to Nacogdoches County Courthouse records, a grand jury did indict Helpinstill on May 28, 1947.⁵² However, he was never tried,⁵³ and there are no documents to suggest he was ever even arrested or arraigned on the charges. The state charge against him eventually was dismissed on the motion of the State's Attorney on January 17, 1949.⁵⁴

Mergerson proceeded with a civil suit against Helpinstill. He sought \$20,000 for his lost wages, physical injuries, pain and suffering, and for his family's pain and suffering.⁵⁵

Helpinstill was said to have committed other acts of violence against Nacogdoches citizens in the year after his assault on Mergerson.⁵⁷ He did not limit these assaults to the African-American community. He allegedly "fired recklessly into the back of a car driven by a white man and [struck] a white woman in the back near the collarbone."⁵⁸ Some residents of the

⁴⁹ *Mergerson Case, NAACP, supra* note 16, at 24.

⁵⁰ *Id.*

⁵¹ *Id.* at 25, 27-28.

⁵² Criminal Docket, Number 9379, Volume 3, Page 8, Nacogdoches County Courthouse.

⁵³ State of Texas v. Helpinstill, Police Brutality Case, 16. Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series B: Legal Department and Central Office Records, 1940-1955. In ProQuest History Vault [database on-line]; available from <http://www.proquest.com/> (publication number 001532-019-0954; accessed August 15, 2013) [hereinafter *Helpinstill Police Brutality Case NAACP*].

⁵⁴ Criminal Docket, Number 9379, Volume 3, Page 8, Nacogdoches County Courthouse.

⁵⁵ *Mergerson Case, NAACP, at* 6.

⁵⁶ The outcome of the legal action is not known.

⁵⁷ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 11, 14.

⁵⁸ *Id.* at 14.

town allege that Helpinstill also killed a pregnant white woman by intentionally running over her with his car.⁵⁹

On March 8, 1948, Helpinstill allegedly was involved in an incident of police brutality against an African-American World War II veteran, Turner White. Constable Helpinstill, the Chief of Police M.C. Roebuck and other local law enforcement officers reportedly took White from his home late that night on the pretext of asking him about his whereabouts two nights before.⁶⁰ According to White, Helpinstill and the officers repeatedly beat him and then arrested him for public intoxication.⁶¹ White reported that he been repeatedly harassed by Nacogdoches law enforcement ever since he had returned from the war.⁶² White pled guilty to public intoxication the next morning, and Helpinstill told him to leave town.⁶³ White immediately left Nacogdoches and checked himself into a veterans' hospital in Louisiana, where he was treated for injuries to his head, eye and legs.⁶⁴ His wife and children left Nacogdoches shortly thereafter.⁶⁵

III. The Killing of Ellis Hutson, Sr.

In the late afternoon of March 12, 1948, just four days after the assault on Turner White, 24-year-old Ellis Hutson, Jr. and his cousin, Elree Littles, also 24, were walking down a main road in their African-American neighborhood.⁶⁶ They were transporting a hog in a wagon to a

⁵⁹ Archie L. Rison, Jr., interview by Georgi J. Vogel Rosen and I.B. Koleosho, East Texas Research Center, July 26, 2013.

⁶⁰ *Ellis Hutson Case NAACP*, *supra* note 1, at 19-20.

⁶¹ *Id.* at 19-22.

⁶² *Id.* at 22.

⁶³ *Id.* at 10.

⁶⁴ *Id.* at 18, 22.

⁶⁵ *Id.* at 19.

⁶⁶ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 21, 23.

neighbor's farm to breed.⁶⁷ On the way, they passed an abandoned car that had been stuck in a ditch for weeks.⁶⁸ Another car pulled up beside them. Constable Helpinstill was driving, while Deputy Constable G.W. "Happy" Copeland and Hal B. Stripling, Jr. rode as passengers.⁶⁹ Helpinstill asked Littles about the abandoned car and the hog in the wagon. Littles answered his questions, and then Helpinstill drove away.⁷⁰

Minutes later, the car returned. Helpinstill spoke to Littles again and told him to bring Hutson, Jr. over, which he did.⁷¹ Helpinstill inquired if Hutson, Jr. knew who he was.⁷² Hutson, Jr. answered that "no," he did not.⁷³ In doing so, he did not address the 23-year-old Helpinstill as "Sir."⁷⁴ According to Hutson, Jr.'s account, Helpinstill responded by getting out of his car and hitting Hutson, Jr. with his pistol.⁷⁵ It is undisputed that Hutson, Jr. then hit him back.⁷⁶ Helpinstill then reportedly identified himself, noting that he was "the law."⁷⁷ Hutson, Jr. ran while Littles remained at the scene.⁷⁸

Helpinstill reportedly threatened to kill Littles if Hutson, Jr. would not return.^{79,80} Hutson, Jr. came back out of concern for his cousin.⁸¹ The three white men then forced Hutson, Jr. into their car.⁸² While Copeland drove, Helpinstill beat Hutson, Jr. with his pistol in the backseat of

⁶⁷ *Helpinstill Police Brutality Case NAACP supra* note 53, at 21, 23.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 22, 23.

⁷² *Id.* at 23.

⁷³ *Id.*

⁷⁴ *Id.* at 24.

⁷⁵ *Id.* at 23.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 22, 23.

⁷⁹ *Id.*

⁸⁰ James Hutson, interview by Georgi J. Vogel Rosen and I.B. Koleosho, East Texas Research Center, July 26, 2013.

⁸¹ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 22, 24.

⁸² *Id.* at 24.

the car.⁸³ They drove to Egnog Branch, a nearby stream.⁸⁴ There, according to Hutson, Jr., Helpinstill ordered Hutson, Jr. to wash the blood off his face and clothes. Helpinstill then pushed Hutson, Jr. into the cold water.⁸⁵ Helpinstill reportedly commanded Hutson, Jr. to “take this pistol so I can kill you.”⁸⁶ Hutson, Jr. refused and begged not to be killed.⁸⁷ Two of Hutson, Jr.’s neighbors, who came down to the stream at that point, witnessed the violence.^{88, 89, 90}

The three white men then carried Hutson, Jr. back to the car and transported him to the county jail.⁹¹ Throughout the ride, Helpinstill reportedly continued to beat him and jab him with his pistol.⁹² According to Hutson, Jr., Helpinstill asked him, “If I don’t kill you, will you go to the FBI or go get you a colored lawyer, or will you plead guilty before the judge in the morning?”⁹³ Hutson, Jr. promised to plead guilty and to leave Nacogdoches after he was released from jail.⁹⁴ As they neared the jail, Copeland allegedly tried unsuccessfully to get Hutson, Jr. to put his hands on his pistol so it would bear Hutson, Jr.’s handprint.⁹⁵

When they arrived at the jail, Constable Helpinstill and High Sheriff Hagan Parmley put Hutson, Jr. into a cell.⁹⁶ Hutson, Jr. was confined “without complaint, warrant of arrest, commitment or legal process of any kind.”⁹⁷ That night, Helpinstill reportedly returned with Chief of Police Roebuck and police officer Pad Spradley.⁹⁸ According to Hutson, Jr.’s account,

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 25.

⁸⁷ *Id.*

⁸⁸ *Id.* at 13.

⁸⁹ *Id.* at 26.

⁹⁰ *James Hutson interview, supra* note 3.

⁹¹ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 25.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 25-26.

⁹⁵ *Id.* at 25.

⁹⁶ *Id.* at 26.

⁹⁷ Complaint at 2, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

⁹⁸ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 26.

Roebuck hit him while Helpinstill held him down.⁹⁹ Roebuck allegedly threatened to kill Hutson, Jr., but did not.¹⁰⁰ The three men then left.¹⁰¹

The following morning, Copeland took Hutson, Jr. to the Courthouse for arraignment.¹⁰² On the way, Copeland reminded Hutson, Jr. that he had promised to plead guilty to assault.¹⁰³ However, at the Courthouse, the County Attorney Harlon Martin informed Hutson, Jr. that he was not required to plead guilty and doing so might be more expensive.^{104, 105} Hutson, Jr. opted to contest the charges against him.¹⁰⁶ On the way back, Copeland reportedly reprimanded Hutson, Jr. for this decision and added that Helpinstill would be angry.¹⁰⁷

Hutson, Jr.'s father, Ellis Hutson, Sr. arrived at the jail shortly thereafter.¹⁰⁸ He had consulted with Attorney Arthur Lowery that morning about his son's case.¹⁰⁹ At the county jail, Hutson, Jr. spoke to his father through the jail bars and informed him that he wanted to post bond rather than plead guilty and pay the fine.¹¹⁰ Hutson, Sr. retrieved the bond and returned to the jail for his son to sign it. He told his son, "I'm trying to have you out of here in a few minutes."¹¹¹ That was the last time Hutson, Jr. ever saw his father alive.¹¹²

Hutson, Sr. had arrived at the Courthouse at ten o'clock in the morning to deliver the bond to the Justice of the Peace. His girlfriend, Charlean Hudson, accompanied him.^{113, 114}

⁹⁹ *Id.* at 26-7.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 27.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 16, 27.

¹⁰⁵ Ed Gaston, Jr., "Jurors Picked Today for Murder Trial of Officer," *Daily Sentinel*, June 8, 1941, 1.

¹⁰⁶ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 27.

¹⁰⁷ *Id.* at 28.

¹⁰⁸ *Id.* at 27.

¹⁰⁹ *Id.* at 34-36.

¹¹⁰ *Id.* at 27.

¹¹¹ *Id.* at 28.

¹¹² *Id.*

¹¹³ *Id.* at 19.

¹¹⁴ *James Hutson interview*, *supra* note 3.

Constable Helpinstill arrived shortly thereafter.¹¹⁵ The Justice of the Peace, Hugh B. Davis, would later describe Helpinstill's demeanor as "agitated."^{116, 117} Helpinstill called Attorney Lowery from Davis' office and inquired why Lowery had told Hutson, Jr. to contest the charges.¹¹⁸ Lowery reportedly told Helpinstill that he had not been involved in this decision, and that it must have been the County Attorney who had advised Hutson, Jr.¹¹⁹ The County Attorney confirmed Lowery's assumption.¹²⁰ According to both Attorney Lowery and Charlean Hudson, Helpinstill then threatened to kill Lowery over the telephone.¹²¹ Lowery would later tell the NAACP that he was afraid of Helpinstill and worried that "he might get shot in the back."¹²²

The telephone conversation ended, and Constable Helpinstill commanded Hutson, Sr. to follow him to a secluded corridor.¹²³ Hutson, Sr. complied, holding his hat in his hand.¹²⁴ It is undisputed that moments later, Helpinstill cursed and cried out, "You tried to pull a knife on me!"¹²⁵ At the same time, Helpinstill fired his gun three times, hitting Hutson, Sr. each time.¹²⁶

One bullet entered below Hutson, Sr.'s left clavicle, another penetrated the body on the left side at the seventh rib, and the third hit the left side of his chest.¹²⁷ According to the undertaker:

The direction of the bullets indicated that the body at the time the bullets struck it was standing at right angles to the path of the bullets and the range of the bullets seemed to indicate that one or two of them ranged downward in the body and one toward the body.¹²⁸

¹¹⁵ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 19.

¹¹⁶ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 7.

¹¹⁷ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 8.

¹¹⁸ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 16, 19.

¹¹⁹ *Id.* at 16.

¹²⁰ *Id.*

¹²¹ *Id.* at 16, 19.

¹²² *Id.* at 16.

¹²³ *Id.* at 19.

¹²⁴ *Id.*

¹²⁵ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 8.

¹²⁶ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 20.

¹²⁷ "Constable Charged After Negro Man Shot to Death," *Daily Sentinel*, March 14, 1948, 1.

¹²⁸ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 14.

Charlean Hudson confirmed this, reporting that she saw Hutson, Sr. already falling to the ground at the time of the second shot.¹²⁹

A six-inch pocket knife with a white handle was found by Hutson, Sr.'s body after the shooting.^{130, 131, 132} However, Ms. Hudson insisted that Hutson, Jr. did not own a knife.¹³³ Attorney Lowery, who saw Hutson, Sr. that morning while preparing the bond, said that he had specifically told Hutson, Sr. that he could not bring any weapons into the courthouse.¹³⁴ Lowery was convinced that the knife found did not belong to Hutson, Sr.¹³⁵ In fact, according to Attorney Lowery's secretary, Hutson, Sr. had "pulled out his pockets" to show that he had no weapon when Lowery questioned him.¹³⁶

Ellis Hutson, Sr. was taken to the hospital and pronounced dead soon after arrival.¹³⁷ Constable Helpinstill reportedly surrendered his gun to Sherriff Parmley immediately after the shooting.¹³⁸

An hour and a half later, Hutson, Jr. was released from jail.¹³⁹ According to Hutson, Jr., the man who released him told him to "get out of town."¹⁴⁰ Hutson, Jr. waited until after the funeral on March 17 and then left for Dallas.^{141,142}

¹²⁹ *Id.* at 20.

¹³⁰ *Id.* at 17.

¹³¹ "Constable Charged After Negro Man Shot to Death," *Daily Sentinel*, March 14, 1948, 1.

¹³² Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 7.

¹³³ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 20.

¹³⁴ *Id.* at 16.

¹³⁵ *Id.*

¹³⁶ *Id.* at 23.

¹³⁷ "Constable Charged After Negro Man Shot to Death," *Daily Sentinel*, March 14, 1948, 1.

¹³⁸ "Constable Charged After Negro Man Shot to Death," *Daily Sentinel*, March 14, 1948, 1.

¹³⁹ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 29.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² State of Texas. Death certificate no. 13843 (1948), Hutson, Ellis; Department of State Health Services – Vital Statistics Unit, Texas.

IV. The Struggle to Bring Justice

Ellis Hutson, Jr. may have gone to Dallas, but he did not forget his father. When he recovered from his injuries, he disguised himself as a woman and returned to Nacogdoches approximately twenty times with the intention of killing Helpinstill, Stripling, Jr. and Copeland.¹⁴³ When he could not be in Nacogdoches himself, he enlisted his 11-year-old brother to lie in wait for Helpinstill with a shotgun to kill him.¹⁴⁴ What the two sons did not know was that Helpinstill had left Nacogdoches. He had checked himself into a U.S. Navy Hospital in Houston to undergo treatment for injuries he had sustained in a car accident a year before.¹⁴⁵

Unable to take the law into his own hands, Hutson, Jr. sought the help of the FBI and the NAACP. On March 18, the day after Hutson, Sr. was laid to rest, the national office of the NAACP received a newspaper article clipped from a white Nacogdoches newspaper about the incident.¹⁴⁶ It was sent to them from Arthur Weaver, a local NAACP activist, who had requested that his name be kept out of the investigation.¹⁴⁷

The NAACP sent its regional legal director Don Jones and Otto Mullinax, a white NAACP activist and labor lawyer from Dallas, to Nacogdoches to investigate the shooting.¹⁴⁸ There, they learned about Constable Helpinstill's previous victims of violence.¹⁴⁹ The undertaker told Mullinax and Jones that Nacogdoches residents had become "disgusted" with the Constable's office but were likely not "willing to take action any themselves."¹⁵⁰ Mullinax and Jones spoke with several members of the Hutson family, some of whom told the two men that

¹⁴³ *James Hutson interview, supra* note 3.

¹⁴⁴ *Id.* at 2.

¹⁴⁵ "Bonds Set in Three Indictments," *Daily Sentinel*, May 31, 1948, 1.

¹⁴⁶ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 2-3.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.* at 14.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

they were scared for their safety but were still committed to bringing justice for Hutson, Sr.'s death and Hutson, Jr.'s beating.¹⁵¹

Not everyone in Nacogdoches was so willing to speak with Mullinax and Jones, however. Two women known as the “Tanner Girls” refused to discuss the incident and insisted that they knew nothing about it, even though Mullinax suspected that they had witnessed the killing at the Courthouse.¹⁵² Mullinax and Jones heard reports that a white woman had seen the shooting and had been traumatized by it.¹⁵³ Despite their efforts, she declined to come forward.^{154, 155} Mullinax and Jones also learned that a county commissioner had witnessed the shooting, but their sources would not divulge which commissioner it was.¹⁵⁶ (County Commissioner Opal Coats later came forward and testified for the prosecution at the state criminal trial.)¹⁵⁷

Mullinax and Jones also learned that County Attorney Harlon Martin had made no efforts to prosecute the case and that District Attorney Ward Burke had little intention of pursuing it either.^{158, 159} Burke told Mullinax that they would never be able to get a conviction.¹⁶⁰ He said he would accept special prosecution but requested that there be no publicity around the NAACP's involvement.¹⁶¹

Documents were sent to the NAACP's national legal team, with an inquiry as to whether the organization was interested in pursuing a civil suit.¹⁶² Days later, on April 19, 1948, Franklin Williams responded to Maceo Smith, the Secretary of the Texas State Conference of Branches of

¹⁵¹ *Id.* at 15.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *James Hutson interview, supra note 3.*

¹⁵⁶ *Helpinstill Police Brutality Case NAACP, supra note 53, at 17.*

¹⁵⁷ Edwin Gaston, Jr. “Helpinstill Case Near Jury Today,” *Daily Sentinel*, June 9, 1948, 8.

¹⁵⁸ *Helpinstill Police Brutality Case NAACP, supra note 53, at 17.*

¹⁵⁹ Ed Gaston, Jr., “Jurors Picked Today for Murder Trial of Officer,” *Daily Sentinel*, June 8, 1941, 1.

¹⁶⁰ *Helpinstill Police Brutality Case NAACP, supra note 53, at 17.*

¹⁶¹ *Id.* at 18.

¹⁶² *Id.* at 4.

the NAACP.¹⁶³ He seemed somewhat more amenable to the idea of a civil suit than he had in the Mergerson case, and stated that he could “see no valid objection to the institution of a civil suit for damages.”¹⁶⁴ However, Williams informed Smith that before they could proceed, they would first need the approval of the Executive Board of the State Conference.¹⁶⁵ Williams explained that NAACP funds were tight and their personnel resources were limited due to NAACP Special Counsel Thurgood Marshall’s absence.¹⁶⁶ He added that he preferred that the NAACP focus its efforts on “assisting the FBI wherever possible in: giving assaults of this type the most widespread publicity and in following through with the Department of Justice toward the end that the prosecution of the guilty parties will result.”¹⁶⁷ The national office of the NAACP sent the affidavits taken by Mullinax to the Department of Justice (DOJ) to achieve that end.¹⁶⁸

V. The State Criminal Trial: A First in Texas History

After receiving considerable pressure from the NAACP, the District Attorney moved forward with prosecuting Constable Helpinstill for Hutson, Sr.’s murder. He did so without the assistance of a special prosecutor.¹⁶⁹ On May 28, 1948, a grand jury indicted Helpinstill for the first-degree murder of Hutson, Sr.^{170, 171} Helpinstill returned from Houston to give a voluntary statement to the grand jury.^{172, 173} On Monday, May 31, he was arrested and released on bond.¹⁷⁴ He resigned from his post as Constable and announced he would not run for reelection.¹⁷⁵

¹⁶³ *Id.* at 10.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 32.

¹⁶⁹ *Id.* at 10.

¹⁷⁰ Indictment at 1, *State of Texas v. Helpinstill*, No. 7822 (Tex., May 28, 1948).

¹⁷¹ “Murder Trial Set June 7,” *Daily Sentinel*, June 1, 1948, 1.

¹⁷² *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 6-7.

¹⁷³ Edwin Gaston Jr., “Jury Completed in Helpinstill’s Trial,” *Daily Sentinel*, June 8, 1948, 1.

In spite of the District Attorney's request that the NAACP not publicize its involvement, the NAACP issued a press release shortly after the indictment: "Nacogdoches Constable Indicted for Murder of Negro in Courthouse: Believed first time 1st degree murder indictment returned against peace officer for killing Negro in Texas."¹⁷⁶ The press release was picked up in the *Chicago Defender*, a national African-American newspaper, but the NAACP involvement was not referenced in local East Texas newspapers.¹⁷⁷

A special venire of 160 was called for trial.^{178,179} Jury selection began on Monday, June 7 and ended the next morning.^{180,181} In total, 86 of the 160 veniremen were examined.¹⁸² According to local newspaper reports, the prosecution reportedly questioned the potential jurors about their racial prejudices.¹⁸³ Many were excused because they revealed during questioning that they already had an opinion on the case.¹⁸⁴ The 12 jurors eventually selected included: four farmers, one logger, one employee of a feed and grain company, two carpenters, one merchant, one butcher (who served as the foreman), and one with an unknown position.¹⁸⁵ Two of the jurors were World War II veterans.¹⁸⁶

Opening arguments began on the afternoon of June 8.¹⁸⁷ The first witness for the prosecution was Charlean Hudson, who testified that she had accompanied Hutson, Sr. to the Courthouse and had been sitting on a nearby bench when she heard Constable Helpinstill curse

¹⁷⁴ "Murder Trial Set June 7," *Daily Sentinel*, June 1, 1948, 1.

¹⁷⁵ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 11.

¹⁷⁶ *Id.*

¹⁷⁷ "Indict Constable for Killing Negro," *Chicago Defender*, June 12, 1948, 1.

¹⁷⁸ Special Venire with Certificate of True Copy at 1, *State of Texas v. Helpinstill*, No. 7822 (Tex., May 31, 1948).

¹⁷⁹ "Murder Trial Set June 7," *Daily Sentinel*, June 1, 1948, 1.

¹⁸⁰ Ed Gaston, Jr., "Jurors Picked Today for Murder Trial of Officer," *Daily Sentinel*, June 8, 1941, 1.

¹⁸¹ Edwin Gaston, Jr., "Jury Completed in Helpinstill's Trial," *Daily Sentinel*, June 8, 1948, 1.

¹⁸² *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 4.

¹⁸³ Ed Gaston, Jr., "Jurors Picked Today for Murder Trial of Officer," *Daily Sentinel*, June 8, 1941, 1.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Edwin Gaston, Jr., "Jury Completed in Helpinstill's Trial," *Daily Sentinel*, June 8, 1948, 1.

and shoot Hutson, Jr.^{188, 189} The prosecutors did not ask Hudson about whether Hutson, Sr. was armed.¹⁹⁰

The next state witness was Justice of the Peace Hugh B. Davis who testified to Helpinstill's "agitated" demeanor in his office shortly before the shooting and recalled the telephone call Helpinstill had made.^{191, 192} Nacogdoches County Auditor M.B. Campbell then testified that he and County Commissioner Opal Coates had seen Copeland at the shooting immediately after the shooting, and that he had heard Helpinstill curse and cry out about the alleged knife just before the shots were fired.^{193, 194} Coates then gave similar testimony and stated that he had seen a knife lying in Hutson, Sr.'s hat after the shooting.¹⁹⁵ He did not indicate whether the knife was open or closed and testified that Hutson, Sr. had "talked rough" to Helpinstill prior to the shooting.¹⁹⁶ The state introduced the knife, which was never identified as having belonged to any particular individual.¹⁹⁷

The state also called Sheriff Hagan Parmley and County Veterans Officer Rex Mulver, who both testified that they had seen the knife lying in Hutson, Sr.'s hat, two inches from his hand.^{198,199} Another state witness, Reva Wade, an African-American woman, testified that she had seen Hutson, Sr. holding the knife in his hand while talking to Helpinstill but was unsure if the blade had been open.^{200,201} She added that Hutson, Sr. had not appeared to be angry.²⁰²

¹⁸⁸ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 4-5.

¹⁸⁹ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 8.

¹⁹⁰ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 9.

¹⁹¹ *Id.* at 5.

¹⁹² Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 8.

¹⁹³ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 5.

¹⁹⁴ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 8.

¹⁹⁵ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 5.

¹⁹⁶ *Id.* at 5-6.

¹⁹⁷ *Id.* at 5.

¹⁹⁸ *Id.*

¹⁹⁹ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 8.

²⁰⁰ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 5.

²⁰¹ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 8.

On the second day of the trial, the state called Attorney Arthur Lowery, who testified that he had spoken to Helpinstill over the telephone shortly before the shooting and that Helpinstill had seemed “angry.”^{203,204} Mullinax, who observed the trial, later informed the NAACP that Lowery “should have been more thoroughly examined so as to bring out the exact telephone conversation.”²⁰⁵ Lowery also was not asked about how Hutson, Sr. had told him that he had not been armed that morning in his office.²⁰⁶

The state also called Dr. A.I. Nelson who examined Hutson, Sr. immediately after the shooting.²⁰⁷ The state then rested.^{208,209} It did not call Attorney Lowery’s secretary, who could have testified to Hutson, Sr. emptying his pockets to show her that he did not have a weapon on his person.²¹⁰ The state also did not call Vergie Jimerson, an African-American woman who reportedly had been present just after the shooting; nor did the prosecution call the neighbors who had witnessed Ellis Hutson, Jr.’s beating or Elree Littles.²¹¹ Ellis Hutson, Jr. did not appear at the trial,²¹² nor did Hutson, Sr.’s other children.²¹³

The first defense witness was Travis Helpinstill, who testified in his own defense.²¹⁴ He appeared “meek and mild in his attitude” and called all attorneys who questioned him “Mr.”²¹⁵ He also referenced his war record.²¹⁶ Helpinstill asserted that he had shot Hutson, Sr. in self-

²⁰² *Id.*

²⁰³ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 6.

²⁰⁴ Edwin Gaston, Jr. “Helpinstill Case Near Jury Today,” *Daily Sentinel*, June 9, 1948, 8.

²⁰⁵ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 6.

²⁰⁶ *Id.* at 7.

²⁰⁷ Edwin Gaston, Jr. “Helpinstill Case Near Jury Today,” *Daily Sentinel*, June 9, 1948, 8.

²⁰⁸ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 6.

²⁰⁹ Edwin Gaston, Jr. “Helpinstill Case Near Jury Today,” *Daily Sentinel*, June 9, 1948, 8.

²¹⁰ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 7.

²¹¹ *Id.* at 8-9.

²¹² *Id.* at 7.

²¹³ *James Hutson and Marylon Wilson interviews, supra*, note 3.

²¹⁴ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 6.

²¹⁵ *Id.* at 7.

²¹⁶ *Id.*

defense after the deceased had advanced on him with a knife.²¹⁷ He said he had been scared of Hutson, Sr. throughout the entire exchange.²¹⁸ Helpinstill testified that he had asked Hutson, Sr. if he was armed, and then proceeded to search him.²¹⁹ As he was searching, he stated that Hutson, Sr. pulled a knife.²²⁰ Helpinstill stated that even though he had shot Helpinstill twice with his pistol, he still feared for his life, and thus shot him a third time.²²¹ At trial, Helpinstill contradicted some statements he had made to the grand jury less than two weeks earlier. At the grand jury, he had said that he had not spoken to Hutson, Sr. before the shooting, but he testified at trial that he had.²²² He also contradicted himself when he stated that he had taken a step toward Hutson, Sr. prior to the shooting, rather than backward as he had told the grand jury.²²³

Following Helpinstill's testimony, the defense called Deputy Constable G.W. Copeland, who testified that he had seen the defendant pat Hutson, Sr. down for weapons prior to the shooting.²²⁴ This conflicted with Helpinstill's testimony that he was in the process of patting Hutson, Sr. down when Hutson, Sr. pulled the knife.²²⁵ The remainder of Helpinstill's thirteen witnesses, all white, testified that Hutson, Sr. "had a reputation for being 'dangerous when aroused'"²²⁶ and for having "a violent and dangerous character."²²⁷ The defense rested.²²⁸

That afternoon, June 9, the state called five rebuttal witnesses.²²⁹ Two members of the grand jury were asked to verify the signed statement that Helpinstill had given during a voluntary

²¹⁷ Edwin Gaston, Jr. "Helpinstill Case Near Jury Today," *Daily Sentinel*, June 9, 1948, 1.

²¹⁸ *Helpinstill Police Brutality Case NAACP*, *supra* note 53, at 8.

²¹⁹ *Id.* at 7.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at 6.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 1.

appearance before the grand jury, which contradicted Helpinstill's testimony at trial.^{230, 231} The state also called three whites as character witnesses to testify to Ellis Hutson, Sr.'s "good reputation."^{232, 233}

The charge was read to the jury an hour later.²³⁴ County Attorney Harlon Martin gave a twenty-minute closing argument, and then the defense attorney gave his closing argument. He stated that the grand jury witnesses had confused the facts, and he criticized Ellis Hutson, Jr. for not having been at the trial.²³⁵ He also attacked Hutson, Sr.'s allegedly bad reputation and criticized County Attorney Martin for not having offered Helpinstill's complete statement to the grand jury.²³⁶

The jury deliberated for one hour and forty-three minutes.²³⁷ They reportedly took three official ballots. Mullinax believed that there were three jurors who initially voted to convict Helpinstill, but then agreed to acquit him.²³⁸ The jury returned with a not guilty verdict.²³⁹

Attorney Mullinax later wrote in a memorandum to the national NAACP office that, "The State as a whole put on a very good case and was as fair about the trial in presenting witnesses were not too favorable to the State but they did present enough evidence to convict."²⁴⁰ He opined that, "it would have been hard indeed in view of all these facts to return a verdict of not guilty as this jury did."²⁴¹ He regretted that the state did not proceed with a special prosecutor, and stated that someone from outside the county without any connection to the individuals

²³⁰ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 7.

²³¹ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 1.

²³² *Helpinstill Police Brutality Case NAACP, supra* note 53, at 7.

²³³ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 1.

²³⁴ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 1.

²³⁵ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 7.

²³⁶ *Id.*

²³⁷ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 1.

²³⁸ "Constable Cleared in Murder Trial," *Redland Herald*, June 10, 1948, 1.

²³⁹ *Helpinstill Police Brutality Case NAACP, supra* note 53, at 9.

²⁴⁰ *Id.* at 8.

²⁴¹ *Id.* at 9.

involved would have been more apt to stress that the jury had a duty to convict regardless of the defendant's or victim's race.²⁴² He concluded that:

It is in this observer's opinion and view of the entire case that unless the jurors are fired by an especially heated argument demanding of them that they perform their duty as they are sworn to do that a jury will not, mainly for public opinion alone, convict a peace officer in Texas for shooting a negro.²⁴³

Upon receiving news of the verdict, NAACP Assistant Special Counsel Edward R. Dudley wrote to Mullinax, stating "The outcome of this case is about as expected by us and as anticipated... We do feel, however, that although Helpinstill was not convicted, the mere fact that he was indicted by the Grand Jury and brought to trial is in itself a step forward."²⁴⁴ Dudley told Mullinax that although the national office was "not optimistic on the outcome of [a civil] suit, we do feel that such is justified under the circumstances in this case."²⁴⁵

VI. Ellis Hutson, Jr.'s Civil Suit Against Helpinstill

A little over months later, on August 25, 1948, Hutson, Jr. filed a civil suit against Helpinstill in the 2nd Judicial District, Court of Nacogdoches County, Texas.²⁴⁶ He filed suit both as a direct injured party and in his role as administrator of his father's estate.²⁴⁷ Otto Mullinax represented Hutson, Jr. as his attorney.²⁴⁸

The first claim in Hutson, Jr.'s civil suit addressed the arrest and abuse he received at the hands of Constable Helpinstill. The first part of the complaint alleged that on March 12, Travis Helpinstill, in his capacity as constable, "falsely, wrongly, and unlawfully" arrested Hutson, Jr.; "deprived him of his liberty, upon the alleged false charge of assault and battery"; "placed and

²⁴² *Id.* at 10.

²⁴³ *Id.*

²⁴⁴ *Id.* at 30.

²⁴⁵ *Id.*

²⁴⁶ Plaintiff's Original Petition at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁴⁷ Plaintiff's Original Petition at 1,3, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁴⁸ Plaintiff's Original Petition at 4, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

confined plaintiff in the county jail of said County of Nacogdoches, without complaint, warrant of arrest, commitment or legal process of any kind”; “illegally and unlawfully kept and confined him for a period of 25 hours without a hearing or opportunity to make bond, against the will and over the protest” of Hutson, Jr.,²⁴⁹ “failed and refused to” take him. before the nearest magistrate in spite of his duty to do so; “maliciously and willfully assaulted and beat [Hutson, Jr.] with a pistol, with his fists and with clubs.”

The complaint stated that Hutson, Jr. “would represent to the court that he was not guilty of” assault and battery, and that “he was afterwards released and discharged.”²⁵⁰ The complaint further alleged that Helpinstill’s actions caused Hutson, Jr. “great humiliation, mortification, mental and physical pain and suffering, damage and injury.”²⁵¹ The complaint also alleged that, due to physical injury from the beating, Hutson, Jr. became “totally disabled from work” for one month, causing him to lose \$100 in wages which he otherwise would have earned.²⁵²

The second claim in the Hutson, Jr’s lawsuit was brought in his capacity as administrator/executor of his father’s estate. The complaint sought monetary compensation “for the use and benefit of himself and the other surviving heirs and children...and as next friend and for the benefit of” his minor siblings.²⁵³ It alleged that Helpinstill, in his capacity as constable, “willfully and maliciously shot and killed” Hutson, Sr., and that the deceased “did nothing on his part and was without fault, and did not in any way provoke such an attack.”²⁵⁴ It also alleged that Hutson, Sr. was in good health, had an annual income of \$2,700, and “could have continued to

²⁴⁹ Plaintiff’s Original Petition at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵⁰ Plaintiff’s Original Petition at 2, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵¹ Plaintiff’s Original Petition at 1-2, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵² Plaintiff’s Original Petition at 2, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵³ Plaintiff’s Original Petition at 3, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵⁴ Plaintiff’s Original Petition at 3-4, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

earn the same during the term of his natural life.”²⁵⁵ It further alleged that Hutson, Sr. did not own property, and was dependent upon his income to support both himself and his family.²⁵⁶

In total, Hutson, Jr. sought \$7,500 in actual damages and \$15,000 in exemplary damages.

The breakdown was as follows:

Actual damages	\$ 500	Hutson, Jr.’s unlawful arrest, resulting injuries, and lost pay
	\$7,000	Actual damages of \$1,000 for each of Hutson, Sr.’s seven children
	\$7,500	Total actual damages
Exemplary damages	\$ 1,000	Hutson, Jr.’s unlawful arrest and resulting injuries
	\$14,000	Actual damages of \$2,000 for each of Hutson, Sr.’s seven children
	\$15,000	Total exemplary damages

Helpinstill submitted his answer on September 22, 1948 through his attorney.²⁵⁷ In it, he denied the allegations in the complaint as “not true in whole or in part.”²⁵⁸

Six months later, on April 13, 1949, Hutson, Jr. filed an amended version of his original complaint, to include both Maryland Casualty Company and the Donegan Insurance Agency of Texas as defendants.²⁵⁹ These two companies were alleged to serve as sureties for Helpinstill in the amount of \$1,000.²⁶⁰ Hutson, Jr. sought to hold the companies “jointly and severally liable” for \$1,000 of the \$22,500 he sought from Helpinstill.²⁶¹ Two weeks later, on April 27, Maryland Casualty Company answered the complaint and denied the allegations.²⁶² There is no record of an answer from Donegan Insurance Agency.

²⁵⁵ Plaintiff’s Original Petition at 4, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵⁶ Plaintiff’s Original Petition at 2-3, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Aug. 25, 1948).

²⁵⁷ Defendant’s Original Answer at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Sept. 22, 1948).

²⁵⁸ *Id.*

²⁵⁹ Plaintiff’s First Amended Petition at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Apr. 13, 1949).

²⁶⁰ *Id.*

²⁶¹ Plaintiff’s First Amended Petition at 4, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Apr. 13, 1949).

²⁶² Defendant’s Original Answer at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, Apr. 27, 1949).

A subpoena was issued to Charlean Hudson on June 11, 1949, but it was determined that “her whereabouts [sic] is unknown, and she is out of the county.”²⁶³

Three days later, Ellis Hutson, Jr. reached a settlement agreement with Maryland Casualty Company.²⁶⁴ According to the agreement, Maryland Casualty Company would pay the family \$500 plus costs of court.²⁶⁵ Of those funds, Hutson, Sr.’s three minor children and his 18-year-old daughter, Mary Ellen, would each receive \$25.²⁶⁶ Attorney Lowery served as the children’s guardian ad litem. Attorney Mullinax received \$250, and Ellis Hutson, Jr. received the remaining \$150.²⁶⁷ Hutson, Sr.’s other two adult children named in the suit, Lincoln and Floyd, agreed to “take nothing herein as against the Maryland Casualty Company” because Hutson, Sr. had not supported them since they reached the age of majority.²⁶⁸ The court dismissed the complaint against Helpinstill and the Donegan Insurance Agency with prejudice the day the case settled.²⁶⁹ The next month, the African-American newspaper, the *Chicago Defender* ran a short story about the settlement.²⁷⁰

VII. The Federal Prosecution

On February 20, 1950, a grand jury indicted Travis Helpinstill on charges of violating 18 U.S.C. §§ 51 and 52 with respect to the arrest and assault of Ellis Hutson, Jr.^{271, 272,273} On the first count, for violating § 51, the government alleged that Constable Helpinstill had conspired

with

²⁶³ Subpoena at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, June 11, 1949).

²⁶⁴ Judgment at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, June 14, 1949).

²⁶⁵ Judgment at 2, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, June 14, 1949).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Judgment at 3, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, June 14, 1949).

²⁶⁹ Order of Dismissal at 1, *Hutson v. Helpinstill*, No. 9060 (Tex. 2nd D, June 14, 1949).

²⁷⁰ “Wins \$500 in Slaying Case,” *Chicago Defender*, July 9, 1949, 3.

²⁷¹ Grand Jury Charges at 1, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., February 20, 1950).

²⁷² Proceeding at 1, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., February 20, 1950).

²⁷³ The dates indicate that the civil suit was completed before the government got involved. This suggests the

A subpoena was issued to Charlean Hudson on June 11, 1949, but it was determined that government may have been waiting for the civil result before going forward.

Deputy G.W. Copeland when he unlawfully seized and subjected Hutson, Jr. to punishment without due process of law.²⁷⁴ Copeland himself was not indicted.²⁷⁵ On the second count, for violating § 52, the government charged that he had acted under the color of law to deprive Hutson, Jr. of his rights, privileges and immunities guaranteed by the Fourteenth Amendment.²⁷⁶ Helpinstill was released on \$1,000 bond.²⁷⁷ Helpinstill was arraigned on September 25, 1950 at Tyler Division of the Eastern District of Texas, United States District Court.²⁷⁸ Representing himself, Helpinstill appeared again on October 2, 1950 to plead *nolo contendere* to the second count against him, the charge that he had violated § 52.²⁷⁹ The court dropped the first charge and imposed a 90-day suspended sentence.²⁸⁰

VIII. Conclusion

Ellis Hutson, Sr. and Ellis Hutson, Jr.'s story stand out in a time when little legal recourse existed for African-Americans victimized by white law enforcement officers. Their story represents the unique set of circumstances that had to occur in order for a man like Constable Helpinstill to be brought to justice in the Jim Crow Era. An assault of a black man by a white law enforcement officer, like the one which sent Willie Lee Mergerson to the hospital for months, was not enough to merit NAACP involvement. Rather, the NAACP focused its legal staff on civil rights cases in which a law enforcement officer had clearly acted under the "color of law." The assault on Mergerson lacked this element, but it was present in the assault on Hutson, Jr. Still, even with NAACP involvement, a state criminal prosecution was not enough to bring

²⁷⁴ Grand Jury Charges at 1-2, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., February 20, 1950).

²⁷⁵ *Id.*

²⁷⁶ Grand Jury Charges at 2, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., February 20, 1950).

²⁷⁷ Appearance Bond at 1, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., February 23, 1950).

²⁷⁸ Proceedings at 1, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., February 20, 1950).

²⁷⁹ *Id.*

²⁸⁰ Judgment and Commitment at 1, *U.S. v. Helpinstill*, No. 5633 (E.D. Tex., September 25, 1950).

Helpinstill to justice for killing Ellis Hutson, Sr. The trial became a referendum on the African-American victim's character rather than on the strength of the prosecution's case. As NAACP Attorney Mullinax opined, it was too difficult for local prosecutors to convict a white man of murdering an African-American man, even with sufficient evidence to convict.

Only after the not guilty verdict at the state trial did the NAACP offered to assist with a civil suit against Helpinstill. The outcome of the lawsuit was modest: just \$500. Only after the successful civil suit in state court did the Department of Justice finally take action to prosecute Helpinstill. Even when the federal government stepped in, Helpinstill never served a single day in jail for the violence he inflicted upon the Hutsons.

The Hutson family story is a testament to Ellis Hutson, Jr and his efforts to secure justice for his father's death and on his own account. He – with the help of the NAACP -- kept slogging forward to achieve a small measure of justice. The outcome eventually vindicated the innocence of Hutson, Sr. and uncovered the truth about Constable Helpinstill's abuse of his authority as a law enforcement officer, as well as getting him out of office where he could have continued his abuse of black citizens. In addition, it established some legal "firsts" in the state of Texas.