SID B. REDDING, Clerk,
By_____D.C.

IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DIVISION OF
THE EASTERN DISTRICT OF ARKANSAS.

FRANK MOORE, ED HICKS, J.E.KNOX,
ED COLEMAN AND PAUL HALL.....PETITIONERS.
VS.
E.H.DEMPSEY, KEEPER OF THE
ARKANSAS PENINTENTIARY.....DEFENDANT.

PETITION FOR A WRIT OF HABEAS CORPUS.

Your petitioners, Frank Moore, Ed. Hicks, J.E. Knox, Ed Coleman and Paul Hall, state that they are citizens and residents of the State of Arkansas, and are now residing in Little Rock, confined in the Arkansas State Penintentiary, in the Western Division of the Eastern District of Arkansas, within the jurisdiction of this court; that the defendant is the keeper of the said Arkansas State Penintentiary, and as such is unlawfully restraining your petitioners of their liberty, and will, unless prevented from so doing by the issuance of the write herein prayed for, deprive them of their li[illegible] on the 23rd. day of Sept, 1921, in violation of the Constitution and laws of the United States, and the Constitution and laws of the State of Arkansas.

Petitioners further say that they are negroes, of African descent, black in color, and that prior to the times hereinafter mentioned were citizens and residents of Phillips County, Arkansas, at Elaine; that on the ____day of October, 1919, they were arrested, placed in the Phillips County jail and thereafter until their trial were kept in close confinement upon an alleged

charge of murder in the first degree for the killing of one Clinton Lee,a white man,said to have occurred on the 1st.day of October,1919; that said Clinton lee was killed,as they are informed,while a member of a posse of white men who were said to be attempting to quell a race riot,growing out of the killing of W.A.Adkins on the night of September 30th.1919,at Hoop Spur, in said County and State; that said Adkins was killed,as they are advised,under these circumstances and conditions: Petitioners and a large number of the mebers of their race were peaceably and lawfully assembled in their church house at or near Hoop Spur,with no unlawful purpose in view,and with no desire or purpose to injure or do any wrong to any one; that while they were thus assembled,white persons began firing guns or pistols from the outside into and through said church house, through the windows and shooting the lights out therein,causing a great disturbance and stampede of those assembled therein; that the white persons so firing on said church come there in automobiles,of which there were several,and came for the purpose of breaking up said meeting; that said Adkins was killed either by members of his own party or by some other person unknown to your petitioners; that the white men sent out the word to Helena,the County seat,that said Adkins had been killed by the Negroes,shot down in cold blood while on a peaceable mission,by an armed force of negroes,assembled at said church, which caused great excitement all over the City of Helena and Phillips County; that the report of said killing spread like wild fire into other counties,all over the State of Arkansas, and into other States,notably the State of Mississipi; that early the next day a large number of white men of said county armed themselves and rushed to the scene of the trouble and to adjacent regions,the vicinity of Elaine being one of them,and began the indiscriminate hunting down,shooting and killing of

negroes; that in a short time white men from adjoining Counties and from the State of Mississipi likewise armed themselves,rush-to the scene of the trouble and began the indiscriminate shooting down of Negroes,both men and women,particularly the posse from the State of Mississipi,who shot down in cold blood innocent Negro men and women,many of whom were at the time in the fields picking cotton; that highly imflamatory articles were published in the press of Arkansas and especially of Helena and throughout the United States,in which the trouble was variously called a "race riot","an uprising of the Negroes" and a "Deliberately planned insurrection among the Negroes against the whites" of that part of Phillips County; that the officers of Phillips County,especially the Sheriff,called upon the Governor of the State,and the Governor in turn called upon the Commanding Officer at Camp Pike for a large number of United States soldiers to assist the citizens in quelling the so called "race riot","uprising" or "insurrection"; that a company of soldiers was dispatched to the scene of the trouble who took charge of the situation and finally succeeded in stopping the slaughter.

Your petitioners further say that they,together with a large number of their race,both men and women,were taken to the Phillips County jail,at Helena,incarcerated thereinand charged with murder; that a committee of seven composed of leading Helena business men and officials,to wit: Sebastian Straub,Chairman,H.D.Moore,County Judge,F.F.Kitchens,Sheriff, J.G.Knight,Mayor,E.M.Allen,J.E.Horner and T.W.Keese,was selected for the purpose of probing into the situation and picking out those to be condemned to death and those to be condemned and sentenced to the penintentiary; that said Committee assumed charge of the matter and proceeded to have brought before them a large number of those incarcerated in jail and examined them regarding their own connection and the connection of oth-

ers charged with participation in said trouble; that if evidence unsatisfactory to said Committee was not given they would be sent out and certain of their keepers would take them to a room in the jail which was immediately adjoining, and a part of the Courthouse building where said Committee was sitting, and torture them by beating and whipping them with leather straps with metal in them, cutting the blood at every lick until the victims would agree to testify to anything their torturers demanded of them; that there was also provided in said jail, to further frighten and torture them, an electric chair, in which they would be put naked and the current turned on to shock and frighten them into giving damaging statements against themselves ad others, also strangling drugs were put up their noses for the same purpose and by these methods and means false evidence was extorted from Negroes to be used and was used against your petitioners.

Petitioners further say that on every day from October 1st. until after their trial on November 3rd.1919, the press of Helena and the State of Arkansas carried inflamatory articles giving accounts of the trouble, which were calculated to arouse and did arouse bitter feeling against your petitioners and the other members of their race; that on October 7th.1919, the Helena World, a newspaper published and printed in the City of Helena, and having a wide and almost universal circulation throughout said County, published an article written and given out by Mr.E.M.Allen, a member of said Committee of Seven, for and on behalf of said Committee, purporting to give the facts concerning what he called "not a race riot", but a "deliberately planned insurrection of the Negroes against the Whites", in which it was stated that the Union, of which petitioners were members, was "established for the purpose of banding Negroes together for the killing of white people"; that a copy of said

article is attached hereto, made a part hereof and marked Exhibit "A"; that shortly after being placed in jail, a mob was formed in the city of Helena, composed of hundreds of men, who marched to the County jail for the purpose and with the intent of lynching your petitioners and others, and would have done so but for the interference of United States soldiers and the promise of some of said Committee and other leading officials that if the mob would stay its hand they would execute those found guilty in the form of law.

Petitioners further state that prior to October 1, 1919, they were farmers, and share croppers; that nearly all the land in Phillips County is owned by white men; that same is rented out to share croppers to be tilled on shares, one half to the tenant and the other half to the owner; that for some years past there has grown up a system among the land owners of furnishing the Negro tenants supplies on which to make crops and which is calculated to deprive and does deprive the Negro tenants of all their interest in the crops produced by them; that in pursuance of this system, they refused to give the share croppers any itemized statement of account of their indebtedness for supplies so furnished, refused to let them move or sell any part of their crops, but themselves sell and dispose of the same at such prices as they please, and then give to the Negroes no account thereof, pay them only such amount as they wished and in this way kept them down, poverty stricken and effectually under their control; that for the purpose of protecting themselves, if possible, against the oppressive and ruinous effects of this system, the Negro farmers organized societies, with the view of uniting their financial resources in moral and legal measures to overcome the same, which fact became quickly known to the plantation owners; that such owners were bitterly opposed to such societies, sought to pre-

vent their organization,ordered the members to discontinue their meetings and sought by every means they could employ to disrupt them; that on the 30th.day of September,1919,petitioners and other members of the Ratio Lodge,near Elaine,learned that some of the Negro farmers of a nearby plantation had employed U.S.Bratton,an attorney of Little Rock,Arkansas,to represent them in effecting a settlement for them with their landlords,or if he could not,to institute legal proceedings to protect their interests,and that either he,or his representative, would b e there on the following day to meet with all the parties concerned,perfect the arrangements,and learn all the facts as far as possible,and decided to hold a meeting with the view of seeing him while there,and engaging him as an attorney to protect their interest; that accordingly they met that night at the Hoop Spur Church house,which resulted,as hereinbefore set out,in the killing of said Adkins and the breaking up of said meeting; that on the morning of October 1st.Mr.O.S. Bratton,son and agent of attorney U.S.Bratton,arrived in Elaine for consultation with those who might desire to employ his father,was arrested,barely escaped being mobbed,notwithstanding it was well known that he was there only for the purpose of advising with those Negroes as to their rights,and getting from them such facts as would enable his father intelligently to prepare for their legal rights; that he was carried thence to the County jail,thrown into it and kept closely confined on a charge of murder until the 31st.day of the same month, when he was indicted on a charge of barratry,without any evidence to sustain the charge; that on that day,he was told by officials that he would be discharged,but not to go on the public streets anywhere,to keep the matter a secret,to leave secretly in a closed automobile and to go to West Helena,four miles away,and there take the train,so as to avoid being mob-

bed; that he was told he would be mobbed,or would be in great danger of being mobbed if his release became known publicly before he was out of reach; that the Judge of the Circuit Court,the Judge of the same court before whom petitioners were tried,facilitated the secret departure and himself went to West Helena and there remained until he had seen said Bratton safely on the train and the train departed.

Petiti oners further say that the Circuit Court of Phillips County convened on October 27th.1919; that a grand jury was organized compposed wholly of white men,one of whom,W.W. Keesee,was a member of the said Committee of Seven,and may of whom were in the posses organized to fight the Negroes; that during its session,petitioners and many others of the prisoners were frequently carried before it in an effort to extract from them false incriminating admissions and to testify against each other,and that both before and after,they were frequently whipped,beaten and tortured; that those in charge of them had some way o f learning when the evidence was unsatisfactory to the grand jury,and this was always followed by beating and whipping; that by these methods,some of the Negro prisoners were forced to testify against others,two against your petitioners,though no one could truthfully testify against them; that on October 29th.1919,a joint indictment was returned against petitioners accusing them of the murder of said Clinton Lee,a man petitioners did not know,and had never,to their knowledge,even seen; that thereafter on the 3rd.day of November,1919,petitioners were taken into the court room before the judge,told of the charge,and were informed that a certain lawyer was appointed to defend them; that they were given no opportunity to employ an attorney of their own choice; that the appointed attorney did not consult with them,took no steps to prepare for their defense,asked nothing about their witnesses, though there were many who knew that petitioners had nothing to

do with the killing of said Lee; that they were immediately placed on joint trial before an exclusively white jury and the trial closed so far as the evidence was concerned with the State's witnesses alone; that after the court's instructions, the jury retired just long enough to write a verdict of guilty of murder in the first degree,as charged,and returned with it into court---not being out exceeding two or three minutes,and t they were promptly sentenced to death by electrocution for December 27th.1919.

Petitioners further say that during the course of said trial,which lasted less than an hour,that only two witnesses testified to anything to connect them in any way with the killing of said Clinton Lee; that said witnesses were Walter Ward, George Green and John Jefferson,both of whom are Negroes and were under indictment at the same time for the killing of said Lee; that they were compelled to testify against them by the same methods and means hereinbefore described; that their testimony was wholly false and that they gave such testimony through fear of torture and were further told that if they refused to testify that they would be killed,but that if they did so testify,and would plead guilty to murder in the second degree their punishment would be light; that they thereafter plead guilty to murder in the second degree and were sentenced to terms of imprisonment; that they attach hereto the affidavits of each of said witnesses showing the falsity of their testimony and the means of its acquisition,make them a part hereof and mark them Exhibit "B" and "C" respectively; that they also attach hereto a certified transcript of the record of the proceedings in the Phillips Circuit Court as Exhibit "D".

Petitioners further say that large crowds of white people bent on petitioners condemnation and death thronged the courthouse and grounds and streets of Helena all during the trial of

petitioners and the other negro defendants; that on account of the great publicity given theirs and the other cases,on account of their being charged with connection with an insurrection against the white people,and that four or five white men were killed,on account of the fact that they are Negroes,and those who run the court,the Judge upon the bench,the Sheriff,the Clerk and all the jurors being white men,on account of the fact that it was stated and widely published that the purpose of the Negroes was to kill the whites and take their property,and on account of all the race prejudice which normally exists and which was enhanced a thousand ~~xxxx~~ fold at the time,by bitterness beyond expression,it was impossible for them to get a fair and impartial trial in said court before a jury of white men;; that the attorney appointed to defend them knew that the prejudice against them was such that they could not get a fair and impartial trial before a white jury of said county,yet he filed no petition for a change of venue,did not ask the court for time to prepare for a defense,and did nothing to protect their interests; that the court did not ask them whether they had counsel,or desired to employ counsel,or were able to do so,but simply said a lawyer,whom he named,would defend them; that they have,therefore,not had a trial,have had no opportunity to make a defense,but that their case was closed against them as virtually and effectually as if on a plea of guilty; that if they had been given the opportunity they would have employed counsel of their own choice and have made a defense, their ability to do so having been demonstrated since their conviction; that the feeling against petitioners was such that it over-awed the Judge on the bench,the jury,the attorney a p-pointed to defend them and every one connected with said court; that all,Judge,jury and counsel were dominated by the mob spirit that was universally present in court and out,so that if any

juror had had the courage to investigate said charge with any spirit of fairness,and vote for an acquittal,he,himself,would have been the vic tim of the mob; that such was the intensity of feeling against petitioners and the other defendants that had counsel for them objected to the testimony of the two witnesses against them,said Ward,~~Green~~ and Jefferson,on the ground that it was extorted by beating and torture,as they are advised he should have done, he himself would have been the victim of the mob; that it is possible counsel did not know how the evidence against them was obtained,and they do not desire to appear to criticise him,yet he knew that if the evidence against them was acquired as before stated,it was incompetent and should have been excluded,a fact which petitioners did not know; that petitioners were ignorant of their rights,had never been in court before,and had counsel asked them about this testimony they would have told him how it was obtained; that through fear of the mob spirit no witness was called in their behalf and they themselves were advised not to take the stand on their own behalf; that as a result of the mob domination of court, counsel and jury,the court,although a court of original jurisdiction in felony cases,lost its jurisdiction by virtue of such mob domination and the result was but an empty ceremony,carried through in the apparent fprm of law,and that the verdict of the jury was really a mob verdict,dictated by the spirit of the mob and pronounced and returned because no other verdict wpuld have been tolerated,and that the judgment against them is, therefore,a nullity.

Petitioners further say that the entire trial,verdict and judgment against them was but an empty ceremony; that their real trial and condemnation had already taken place before said Committee of Seven; that said Committee,in advance of the sitting of the court,had sat in judgment upon them and all the

other cases and had assumed and exercised the jurisdiction of the court by determing the guilt or innocence of those in jail, had acquired the evidence in the manner herein set out, and decided which of the defendants should be electrocuted and which sent to prison and the terms to be given them, and which to discharge; that when court convened, the program laid out by said Committee was carried through and the verdict against petitioners were pronounced and returned, not as the independent verdict of an unbiased jury, but as a part of the prearranged scheme and judgment of said Committee; that in doing this the court did not exercise the jurisdiction given it by law and wholl y lost its jurisdiction by substituting for its judgment the judgment of condemnation of said Committee; that there is attached hereto as Exhibit "E" a letter from said Committee to the then Governor of the State showing the truth of said charges.

Petitioner further say that, ever since the law of Arkansas for the selection of jury commissioners, the grand and petit jurors, as it now stands, was enacted, all of the judges of the courts have been and are now white men, and that ever since then said judges have appointed, without exception, white commissioners to select the jurors, both grand and petit, and that such commissioners have uniformally selected only white men on such juries; that all of this has been done in discrimination against the negro race, on account of their color; that such has been the unbroken practice in Phillips county for more than thirty years, notwithstanding the Negro population in said county exceeds the white population by more than five to one, and that a large proportion of them are electors and possess the legal, moral and intellectual qualifications required or necessary for such jurors; that the exclusion of said Negroes from the juries was, at all times, intentional and because of their color, of their being Negroes; that such was the case of the grand jury by which petitioners were indicted, and of the petit jury that pronounced them guilty, [illegible]

ced them guilty; that under the law of Arkansa s,as construed by the Supreme Court of the State,an objection to an indictment on the ground that it was found by a grand jury composed only of white men to the exclusion of negroes on account of their color,must be made at the impanelling of the grand jury and objection to the petit jury must be made before a plea is entered to the indictment; that at the time said indictment was found petitioners were confined in jail and did not know the grand jury had been organized,did not know it was in session, did not know they were to be indicted for the killing of said Lee or any other person and did not know they were charged therewith; that it was impossble for them to make any objection to the organization of said grand jury for the very simple reason that they were closely confined,had no attorney,and no opportunity to employ an attorney; that at their trial counsel appointed to defend them made no objection to the petit jury or to any previous proceeding; that their failure to do so was through fear of the mob for petitioners and ~~xxx~~ himself,as they believe.

Petitioners further say that after their conviction and sentence to death,their friends employed other counsel to represent them; that through such counsel they filed a motion for a new trial,copied in the record attached hereto as Exhibit D, which was promptly overruled and an appeal was taken to the Supreme Court of Arkansas,the highest court in said State,where, on the 29th.day of March,1920, the judgment of the Phillips Circuit Court was affirmed,a copy of the opinion of said court being attached hereto as Exhibit "F",(Ed.Hicks vs.State,143 Ark.,158): that thereafter they applied to the Supreme Court of the United States for a Writ of Certiorari to the Supreme court of Arkansas,praying that said court be required to send up the record and proceeding in said cause for review by the Supreme

Court of the United States,but that on the 11th day of October,1920,the application for said writ was denied; that the Governor of the State of Arkansas did on the ____.day of Aug,1921 issue a proclamation carrying into effect the judgment and sentence of the Phillips Circuit Court against petitioners and in which he fixed Sept.23,.1921,as the date of their execution,a copy of which proclamation is hereto attached as Exhibit "G".

Petitioners further say that on the 19th.day of October, 1920,the Richard L.Kitchens Post of the American Legion of Helena,Arkansas,an organization composed of approximately three hundred white ex-service men living in every part of Phillips County,passed a resolution calling on the Governor of the State of Arkansas,for the execution by death of petitioners and the seven other Negroes condemned to death by said Circuit Court at the same time and under the same circumstances as petitioners,and protesting against the commutation of the death sentence of any of said Negroes,which said Resolution was presented to the then Governor of Arkansas,and a copy of same is attached hereto as Exhibit ""H"; that at a meeting of the Rotary Club of Helena,Arkansas,attended by seventy-five members,representing as many ,eading industrial and commercial enterprises of said city,and of the Lions Club of said city,attended by sixty-five members,representing as many of the same kind of enterprises of said citycity,each adopted a resolution approving the action of the Richard L.Kitchens Post of the American Legion in the premises,which said resolutions were presented to the then Governor of the State of Arkansas and copies of each are hereto attached as Exhibits "I"and "J" respectively; that said resolutions further and conclusively show the existance of the mob spirit prevalent among all the white people of Phillips County at the time petitioners and the other defendants were put through the form of trials and show that the only rea-

son the mob stayed its hand, the only reason they were not lynched was that the leading citizens of the community made a solemn promise to the mob that they should be executed in the form of law.

Petitioners further say that to further show the overwhelming existence of the mob spirit and mob domination of their and other trials of Negro defendants at the October term, 1919, of the Phillips Circuit Court, there were six defendants convicted of murder in the first degree, to-wit: John Martin, Alf Banks, Will Wordlow, Albert Giles, Joe Fox, and Ed Ware, whose cases were also appealed to the Supreme Court of Arkansas which were reversed on account of bad verdicts, due to the extreme haste in securing convictions and executions,(Banks vs State, 143 Ark.154) and remanded for a new trial; that upon a re-trial of said cases, defendants were again convicted and appealed to the Supreme Court, and their cases were again reversed, (Ware vs State, Vol 4 Sup. Court Rep. No. 11, page 674) and remanded for a new trial on December 6th, 1920; that said cases were coming on for trail at the May term of the Phillips Circuit Court, which convened May 2nd, 1921, and it was represented to the Governor of the State of Arkansas by the white citizens and officials of Phillips County that, unless a date of execution was set for petitioners there was grave danger of mob violence to the other six defendants whose cases would be called for trial at the May term of said Court and that in all probability they wouldbe lynched; that in order to appease the mob spirit still prevalent in Phillips County and in a measure to secure the safety of the six Negroes whose cases were to be called for trial and were called on May 9th, 1921, the Governor issued a proclamation fixing a date of execution of Petitioners for June 10th, 1921, which was stayed by Court proceedings; that these facts conclusively show that the mob spirit, mob domination, is still universally present in Phillips County.

Petitioners further say that on the 8th day of June, 1921, they filed a petition in the Pulaski Chancery Court for a Writ of Habeas Corpus setting out the matters and things as herein stated, and that on said date the Pulaski Chancery Court issued its Writ of Habeas Corpus, directed to the defendant, E. H. Dempsey, keeper of the Arkansas State Penitentiary, commanding him to have the bodies of the Petitioners in

filed with the Supreme Court of Arkansas a Petition for Writ of Prohibition against J. E. Martineau, Chancellor of the Pulaski Chancery Court, and your petitioners, and that on the 20th day of June, 1921, the Supreme Court of the State of Arkansas issued its Writ of Prohibition against the Judge of the Pulaski Chancery Court, prohibiting him from hearing the Petitions for Habeas Corpus pending in his court and quashed the Writ of Habeas Corpus theretofore issued; that a copy of the Opinion of the Supreme Court in issuing said Writ of Prohibition is attached hereto, made a part hereof and marked "Exhibit K" that thereafter, to-wit: on the 4th day of August, 1921, your petitioners made application to the Hon. Oliver Wendell Holmes, Associate Justice of the Supreme Court of the United States, for a Writ of Error to the Supreme Court of the State of Arkansas in the matter of said Writ of Prohibition, but same was denied.

Petitioners, therefore, say that by the proceedings aforesaid, they were deprived of their rights and are about to be deprived of their lives in violation of Section 1, of the 14th Amendment of the Constitution of the United States and the laws of the United States enacted in pursuance thereto, in that they have been denied the equal protection of the law, and have been convicted, condemned, and are about to be deprived of their lives without due process of law; that they are now in the custody of the defendant, E. H. Dempsey, Keeper of the Arkansas State Penitentiary, to be electrocuted on the 23rd day of September, 1921; that they are now detained and held in custody by said Keeper and will be electrocuted on said date unless prevented from so doing by the issuance of a Writ of Habeas Corpus.

Petitioners therefore pray that a Writ of Habeas Corpus be issued to the end that they may be discharged from said unlawful imprisonment and unlawful judgment and sentence to death.

Witness to marks:
J. R. Booker

Frank Moore
Ed X Fields
mark
J. E. Johnson
Ed. his Coleman
mark
Paul his X Hall
Petitioners. mark

S. A. Jones

Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall on their oaths say that the matters and things set out and contained in the foregoing Petition for Writ of Habeas Corpus are true to the best of their knowledge and belief.

Subscribed and sworn to before me, this 21st day of September 1921.

J R Booker
Notary Public.

My commission expires
Jan. 31-1923

Exhibit P.

HICKS VS. STATE.

Opinion delivered March 29, 1920.

Appeal from Phillips Circuit Court: J. M. Jackson, Judge affirmed.

Scipio A. Jones and Murphy, McHaney for appellants.

1. Appellants were discriminated against on account of their color and no colored man sat upon the jury or was summoned to serve.

2. The verdict is plainly against the evidence. 107 Ark. 554.

3. The verdict is defective.

John D. Arbuckle, Attorney General, and J. B. Webster Assistant, for Appellee, Robert C. Knox, of Counsel.

Defendants are not guaranteed under our Constitution, nor that of the United States, a trial by members of his own race, but only a fair and impartial by a jury who are unbiased and unprejudicial without regard to color or race. 100 U. S. 322. The panel should have been challenged, and as he did not, he can not complain that there were no negroes on the jury. 21 Ark. 212. 5 Id. 444; 29 Id. 17; 101 Id. 462; 94 Id. 465.

SMITH, J. Appellant Frank Hicks was indicted for murder in the first degree, alleged to have been committed by shooting one Clinton Lee, and at his trial was convicted of that crime. Appellants, Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall, were indicted for the same crime, and were tried together, and were all convicted of murder in the first degree. Appeals have been perfected from both judgments, and as the questions raised are substantial the same in each case we dispose of both with one opinion.

It is insisted as ground for reversal in each case that appellants who are all men of color, were discriminated against on that account, and that no colored man sat, or was summoned to serve, upon either the grand jury which returned the indictments or upon the petit juries which tried the cases, and that no colored man had served on any jury in Phillips County--where the trials occured--for many years. This assignement of error is answered by saying that the question was first raised in the motion for a new trial, and it, therefore, comes too late to be now considered. Tillman v. State, 121 Ark. 332; Eastling v. State 69 Ark. 89.

It is also insisted on behalf of all the appellants that the verdicts are contrary to the law and the evidence, and are not supported by sufficient evidence, and that appellants have been convicted without due process of law. The facts upon which these contentions are chiefly made were not developed at the trial, but are brought into the record by affidavits filed in support of the motions for new trials.

Discussing these questions together, it may be said that appellants, together with many other men of their own race, were members of an organization known as the Farmers' Progressive Household Union of America. According to the affidavits filed in support of the motions for new trials, this was a fraternal and social organization, organized for the lawful purpose of promoting the financial interest of its members; it met in secret, excluding all persons except those who had been properly initiated, but, according to testimony on behalf of the State, members were told upon their initiation to expect and prepare for trouble with the white people. Members went armed to the meetings

from approaching the building. While one of these meetings was in progress, an automobile containing two white men and one negro passed along the public road near this building, and stopped some forty or fifty yards from it, whereupon the pickets fired into the car and killed one of the white men in it.

At the trials from which these appeals come the following facts were defeloped. Early in the morning after the killing of the man in the car a number of the lodge members, probably as many as fifty, including appellants, assembled at or about the houses of appellants Moore, Hall and Coleman, about a mile from Elaine and Hoop Spur, where the shooting of the night before occured. All, or practically all, of the members were armed, and appellants, Moore made the statement that theywould kill the white people who came there. All of this is admitted, but it is explained that the members had gathered only to resist an attack being made on themselves, and that they intended to kill the white men whom they expected to come only to prevent the white men from killing them.

Sometime between 11 A. M. and 1 P. M. firing near Elaine or Hoop Spur was heard, whereupon appellants, with a number of others, fell in line, and proceeded to march toward Elaine, Moore having said as they fell into line, that some of their members were being attacked, and that they would go and help them fight. As they marched along by twos and fours, they crossed a railroad, and, as they did so, they observed, at the home of one McCoy, a white man about a quarter of a mile away, a number of white men standing in the road at McCoy's house or seated in the car which had stopped there on the roadside. When they observed the white men, appellant Frank Hicks said he would shoot at them. He knelt, took aim and fired two shots, one of which struck Clinton Lee, who died just after he was carried into McCoy's house. These shots were fired from a high-powered rifle, and at such distance away that some of the white men standing near Lee stated that they did not hear the report of the gun which killed him. This party of white men consisted of officers who had come to Elaine to effect the arrest of the men who had killed the man in the automobile the night before. There was testimony to the effect that when Hicks said he would shoot a member of his party told him not to do so, but no one made any attempt to restrain him. After this shooting the party disbersed, and during the excitement of the next few days two other white men were killed and a number of Negroes.

It is now insisted that because of the incidents developed at the trial and those recited in the motion for new trials, and the excitement and feeling growing out of them, no fair trial was had, or could have been had, and that the trial did not, therefore constitute due process of law.

It is admitted, however that eminent counsel was appointed to defend appellants, and no attempt is made to show that a fair and impartial trial was not had, except as an inference from the facts stated above, the insistence being that a fair trial was impossible under the circumstances stated.

We are unable, however, to say that this must necessarily have been the case. The trials were had according to law, the jury was correctly charged as to the law of the case, and the testimony is legally sufficient to support the verdicts returned. We cannot, therefore, in the face of this affirmative showing, assume that the trial was an empty ceremony, conducted for the purpose only of appearing to comply with the requirements of the law, when they were not in fact being complied with.

As to the appellants, Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall, it is insisted that the testimony does not sufficiently connect them with the act of Frank Hicks in firing the fatal shot to make them criminally responsible for that act.

as Hicks himself. According to these witnesses, those appellants were all armed, and before leaving the place from which they started the purpose of going to Elaine to fight the white men found there was announced, and we think this testimony warranted th jury in finding that hicks' act in firing the fatal shot was done pursuant to a conspiracy previously formed, which contemplated violence, and the possible killing of white men.

In the case of appellant Frank Hicks, it is insisted that the judgment must be reversed because of the defective verdict. The verdict as found in the bill of exceptions was originally written in typewriting as follows: "We, the jury, find the defendant, Frank Hicks, guilty as charged in the indictment." Over this verdict has been interlined, between the words "guilty" and "as" the following words: "of murder in the first degree", so that the verdict as interlined reads: We, the jury find the defendant, Frank Hicks, guilty of murder in the first degree as charged in the indictment." on the margin of the page of the transcript on which this verdict appears is the following certificate made and signed by the trial judge: "The interlineation made in this verdict was made before I signed the bill of exceptions, and correctly shows the verdictas it was returned by the jury, J. M. Jackson, Circuit Judge." The judgment of the court also sets out in full the verdict returned, and the verdict as it is there recorded conforms to the certificate of the trial judge set out above.

It is true that in the cases of Johnson v. State, 84 Ark. 95 and Hobbs v. State 86 Ark. 360 and Bridger v. State, 122 Ark. 391, we ignored as unauthorized certain interlineations made with a lead pencil for the reason there stated, that the interlineations were explained unauthenticated and apparently made without authority. But it has not been decided that this court will necessarily ignore interlineations appearing in a bill of exceptions or a transcript. Upon the contrary, interlineations may be a proper part of the record and will be so treated by us unless it appears such interlineations were not properly authorized. Here we have the certificate of the trial judge saying that the interlineation was made before he had approved or signed the bill of exceptions, and, in addition, we have in the judgment proper a record of the verdict which shows it to be in proper form.

We have given these cases the careful consideration which their importance required, but our consideration is necessarily limited to those matters which are properly brought before us for review, and as no error has been made to appear in eather case the judgments must be affirmed. It is so ordered.

Exhibit E.

(copy)

November 14th 1920

Hon. Charles H. Brough
Governor of Arkansas

Dear Governor:

We, the undersigned members of the Committee of Seven, appointed by you in the Elaine-Hoop Spur Insurrection in this County, earnestly urge you to let the law take its course untrammelled by Executive Clemency.

With all the provocation our people refrained from mob violence. The reason they did this was that this Committee gave our citizens their solemn promise that the law would be carried out. This Community can be made a model one so far as resorting to mob violence is concerned, but should the Governor commute any sentence of the Elaine rioters, this would be difficult, if not impossible.

We respectfully urge you to support law and order as we supported it. There were 150 Negroes legally guilty of murder in the first degree---actively present and assisting in the wilful and deliberate murder of white citizens---and this Committee assisted in seeing that only leaders were brought to trial. Leniency has been already shown. We think the law itself is on trial.

All of our citizens are of the opinion that the law should take its course.

Signed S. Strauss, Chairman
E. M. Allen
T. W. Keesee
H. D. Moore
E. C. Horner

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SID B. REDDICK, Clerk,
By_____D.C.

RESOLUTION

It has been brought to the attention of the Richard L. Kitchens Post #41, American Legion, Helena, Arkansas, that the Governor is contemplatingcommuting the sentences of four of the Negroes, who are now under death sentences for their participation in the Elaine Riot, to lesser sentences, and we, the members of this post feel that any action toward this end by the Governor, would do more harm in the community and breed lawlessness, as well as disregard for constituted authority, as at the time of this race riot the members of this Post were called upon to go to Hoop Spur and Elaine to protect life and property, and in compliance with this request, there were two American Legion members killed and one seriously injured, besides the other non-members who also perished, and when the guilty Negroes were apprehended, a solemn promise was given by the leading citizens of the community, that if these guilty parties were not lynched, and let the law take its course, that justice would be done and the majesty of the law upheld.

The twelve Negroes now under sentence of death, but whose sentences are suspended account of court procedure, and six of these Negro cases have taken to the Supreme Court of the United States, which court declined to review. The other six cases, whose original trials were reversed and new trials given them, were convicted,and their cases were appealed to the Sypreme Court of the State and attorneys of their own selection were permitted to handle their cases.

NOW THEREFORE BE IT RESOLVED by this Post assemtled on this the 19th day of October, 1920, that we most earnestly protest against the commutation of anu of the sentences of these twelve Negroes convicted of murder in the Elaine riot of October 1919, their having received a fair trial and proven guilty, and the leniency of the court was shown in the balance of the cases tried, these being the ring leaders and guilty murderers, and that law and order will be vindicated and a solemn promise kept.

BE IT FURTHER RESOLVED that a committee of four be appointed by the Post Commander. This Committee is hereby empowered to represent this Post at a conference, or several conferences, with the Governor of Arkansas and to take such steps as they may deem nedcessary to carry out the wishes of this resolution and leaving nothing undone to have these sentences carried out. This committee to report in full to the next meeting of this post

Passed unanimously 8:50 P. M. October 19, 1920, basement of the Episcopal Church, Helena, Arkansas.

Edwin Burks
Adjutant

R. H. Mott
Post Commander

COMMITTEE APPOINTED

Mr. Herbert Thompson, Chairman
Mr. T. H. Faulkner, Jr.
Mr. J. B. Lambert
Mr. L. J. Wilkes, Jr.

COPY

November 10, 1920

At a regular meeting of the Helena Rotary Dlub, held this date and attended by seventy five members, representing seventy five of the leading industrial and commercial enterprises of this City, there was read the resolution which was adopted by the Richard L. Kitchens Post, No. 41, American Legion, Helena, Arkansas, on the 19th day of October, 1920, protesting to the Governor against the commutation of sentences of any of the Negroes who have been heretofore convicted of participation in the Elaine Insurrection; and by unanimous vote of the Helena Rotary Club, it was,

Resolved:-That the Helena Rotary Club does hereby give its unqualified approval and support of the action and resolution of the Richard L. Kitchens Post, No. 41, of the American Legion, and pledges its full co-operation and assistance to the accomplishment of the purposes of said resolution, and it is also

Resolved-That a copy of this resolution, officially signed by the President and Secretary of the Helena Rotary Club, be presented to the Commander of the Richard L. Kitchens Post, No. 41, American Legion of Helena, Arkansas.

Signed, Helena Rotary Club of Helena, Arkansas, By S. Straub, President

Ozero C. Drewer, Secretary.

FILED

SEP 21 1921

SID [illegible] Clerk,

By____

November 9, 1920.

Exhibit J.

At a regular meeting of the Lions Club of Helena, held this date and attended by sixty members, representing sixty of the leading industrial and commercial enterprises of this city, there was read the resolution which was adopted by the Richard L. Kitchens Post, No. 41, American Legion, Helena, Arkansas on the 19th day of October, 1920, protesting to the Governor against the commutation or sentences of any of the Negroes who have been heretofore convicted of participation in the Elaine insurrection; and by unanimous vote of the Lions Club of Helena, it was

Resolved: - That the Lions Club of Helena does hereby give its unqualified approval and support of the action and resolution of the Richard L. Kitchens Post No. 41, of the American Legion, and pledges its full co-operation and assistance to the accomplishment of the purpose of said resolution. And it also

Resolved: -that a copy of this resolution, officially signed by the President and Secretary of the Lions Club of Helena, be presented to the Commander of the Richard L. Kitchens Post., No. 41, American Legion of Helena, Arkansas.

Signed,

Lions Club of Helena, Arkansas.

by Jos. C. Mayers, President,

Skipwith Adams, Secretary.

STATE OF ARKANSAS

Executive Department

P R O C L A M A T I O N

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, THAT WHEREAS, J. E. Knox, Ed Coleman, Paul Hall, Frank Hicks, Ed Hicks and Frank Moore, were convicted at the November, 1919, Term of the Phillips County Circuit Court of the crime of murder in the first degree, and sentenced by said court to death by electrocution, and their cases being appealed to the Supreme Court of Arkansas, the pendency of which appeal suspended execution beyond the date fixed by the said trial court, and said judgments of conviction being by said court affirmed, it now becomes my duty as Governor of the State of Arkansas, under Section 3262 of Crawford and Moses' Digest of the statutes of Arkansas, to fix the date of their execution, and each of them;

NOW THEREFORE, I, Thomas C. McRae, Governor of the State of Arkansas, acting in my official capacity, do hereby and herein fix the date for the execution of the said J. E. Knox, Ed Coleman, Paul Hall, Frank Hicks, Ed Hicks and Frank Moore, and each of them, to be on Friday, the 10th day of June, 1921.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of State, in the Executive Chamber, at Little Rock, Arkansas, on this the twenty-ninth day of April, 1921.

(S E A L)

Thomas C. McRae,
GOVERNOR

BY THE GOVERNOR:

Ira C. Hopper
SECRETARY OF STATE.

STATE OF ARKANSAS

Executive Department

P R O C L A M A T I O N

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Sep 21 1921

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, THAT WHEREAS, J. E. Knox, Ed Coleman, Paul Hall, Frank Hicks, Ed Hicks and Frank Moore were convicted at the 1919 term of the Phillips County Circuit Court for the crime of murder in the first degree, and sentenced by said court to death by electrocution, and their cases being appealed to the Supreme Court of Arkansas the pendency of which appeal suspended execution beyond the date fixed by said trial court, and said judgments of conviction being by said court affirmed it became my duty as Governor of the State of Arkansas, under Section 3262 of Crawford & Moses' Digest of the statutes of Arkansas to fix the date of their execution, which I did on the 29th day of April, 1921. Before the date set for execution the Chancery Court of Pulaski County assumed purisdiction in these cases and issued a restraining order prohibiting said execution. The State Supreme Court was appealed to by the state for a writ of prohibition against the Chancery Court to prevent said court from assuming jurisdiction. The Supreme Court of Arkansas issued said writ of prohibition against the Chancery Court, from which judgment there has been no further appeal, and it therefore now becomes my duty as Governor of the State of Arkansas, under Section 3262 of Crawford & Moses' Digest of the statutes of Arkansas, to fix the date of their execution, and each of them.

NOW THEREFORE, I, Thomas C. McRae, Governor of the State of Arkansas, acting in my official capacity, do hereby and herein fix the date for the execution of the said J. E. Knox, Ed Coleman, Paul Hall, Frank Hicks, Ed Hicks and Frank Moore, and each of them to be on Friday, the twenty-third day of September, 1921.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of State, in the Executive Chamber, at Little Rock, Arkansas, on this the twelfth day of August, 1921.

(S E A L)

Thomas C. McRae,
GOVERNOR

BY THE GOVERNOR:

Ira C. Hopper
SECRETARY OF STATE.

SID B. REDDING, Clerk
By _____

Exhibit K.

No. 52.

In the Supreme Court of Arkansas, June 20, 1921.

State ex rel, v. Martineau, Chancellor.

OPINION.

McCulloch, C. J.

Frank Hicks, Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall, who had previously been indicted and convicted of the crime of murder and who were being confined in the State Penitentiary awaiting exdcution of the death sentences, filed a petition for habeas corpus in the chancery court of Pulaski County, praying that they be discharged from custody and from said judgments of conviction. This petition was filed and presented to the Chancellor on June 8, 1921, who immediately ordered the issuance of a writ of habeas corpus directed to the keeper of the penitentiary, and the Chancellor also ordered the issuance of a writ of injunction restraining the said keeper from executing the death sentences upon said petitioners in accordance with said judgments of conviction and the proclamation of the Governor fixing the date of executions. The writs were issued and made returnable for hearing before the chancery court at 2 o'clock P. M. on June 10, 1921, and E. H. Dempsey, keeper of the penitentiary, was made respondent in the proceeding and copies of the proceedings and process were served on him and on the Attorney General, who appeared before the Chancellor on behalf of the State and the keeper of the penitentiary and made objections challenging the jurisdiction of the chancery court.

A petition has been filed here praying for a writ of prohibition to restrain the chancery court from proceeding in the matter, alleging that it is not within the jurisdiction of that court. The chancery court postponed further hearing on the matter until a decision of this court could be rendered as to the jurisdiction of

that court. The petitioners in the proceeding below, as well as the Chancellor, have responded to the present petition and the former seek to uphold the jurisdiction of the chancery court. Relators presented the present petition to the Justices of the Supreme Court on June 9, 1921, for a temporary writ of prohibition pending the presentation of the matter to the court in session, but on objection being made by respondents to the hearing at that time it was postponed to the first session of the court on Monday, June 13, 1921, and the cause was set down for hearing on that day.

On the outset of the hearing by this court respondents were opposed to proceeding at this time on the ground that the notice was not given for the length of time required by statute. There is a statute regulating the practice on applications for mandamus and prohibition, which provides that ten days' notice of an application shall be given. Crawford & Moses Digest, 6251 and 7023. This statute manifestly applies only to proceedings of this nature in courts of original jurisdiction. It defines a writ of mandamus, treated in the chapter, "as an order of a court of competent and original jurisdiction", and defines a writ of prohibition as "an order from a circuit court to an inferior court of limited jurisdiction prohibiting it from proceeding in a matter out of its jurisdiction." Crawford & Moses Digest, Secs. 7021-22. This does not apply to proceedings in the Supreme Court where jurisdiction is derived from the Constitution, but there is no statute regulating the practice. Prairie C. C. M. Co. v. Kittrell, 107 Ark. 361. This leaves the matter of notice as one to be fixed by rules of this court. This seems to have been the thought in the mind of the court in deciding the case of Tucker ex parte, 25 Ark. 567, which arose shortly after the adoption of the civil code containing the provision referred to in regard to notice. In the opinion it was

said following, the common law practice, that a writ of prohibition should not be "issued unless an opportunity be offered those sought to be prohibited of showing cause against it", but no reference was made to the statute requiring notice. There is no established rule of this court on the subject and it is a question to be determined in each instance whether reasonable notice has been given. In the present case we concluded that the notice was, under the circumstances, reasonable and the request for further postponement was denied. In fact, there was no contention that the notice was unreasonable if we concluded that the statute referred to did not apply.

Again, it is urged that the remedy should not be awarded under the writ of prohibition for the reason that the proper objection had not been made to and overruled by the Chancellor to the exercise of jurisdiction. The rule has often been recognized in decisions of this court that prohibition is not available until objection to the wrongful attempt to exercise jurisdiction has been raised in the inferior tribunal and overruled; but exceptions to that rule have been found. Reese v. Steel, 73 Ark. 66; Monette Road Imp. Dist. v. Dudley, 144 Ark. 169.

The state of the matter as presented here is this: The chancery court has already exercised jurisdiction by issuing an injunction staying execution of the judgments in the criminal cases and has set the cause for final hearing. Relators made objection to the exercise of jurisdiction, but the chancery court declined to decide either the question of jurisdiction or the merits of the case until after this court determined the question of jurisdiction. The Chancery court on June 10, postponed the hearing indefinitely until this court decides the present case. The effect of the court's attitude is therefore to retain jurisdiction and to further exercise it in due time unless prohibited by this court.

The case, therefore, falls within the exceptions stated in Monette Road Imp. Dist. v. Dudley, supra. Relators are now under restraint until the writ of injunction issued by the chancery court in the attempt to exercise jurisdiction which it is alleged that court did not rightfully possess, and the failure of the court on the request of the relators to relinquish jurisdiction is tantamount to overruling the objections.

This brings us to the consideration of the main question in the case, whether or not, upon the allegations of the petition filed below, the chancery court possessed jurisdiction, either by injunction or under the writ of habeas corpus, to review the proceedings in which the accused respondents were convicted of the crime of murder or to interfere with the judgments of conviction. The facts are stated in detail and at great length in the petition filed, and include the record of the proceedings in which the accused respondents were indicted, tried and convicted, the record of the appeal to this court, the judgment of affirmance and the opinion of this court, and also the record of the application to the Supreme Court of the United States for a writ of certiorari to review the proceedings.

The accused respondents were indicted by the grand jury of Phillips county of the crime of murder in the first degree, alleged to have been committed by shooting one Clinton Lee. It is charged in the indictment and was proved at the trial that the killing of Lee occurred on October 29, 1919, and on the 3rd day of November, 1919, the trials occurred. Frank Hicks was tried separately and the other five were tried together, and each trial resulted in a conviction of murder in the first degree. When the accused were brought into court and arraigned they had no attorney to represent them and the court appointed counsel, certain members of the Phillips County bar who represented the accused throughout the trials. There were no exceptions

saved during the progress of the trials, but the records show that counsel for the accused cross-examined all of the State's witnesses at length. Before the final adjournment of the circuit court for the term and within the time allowed by law the accused or their friends employed to represent them the counsel who now appear in their behalf in the present proceedings, and they filed a motion for new trial, supported by affidavits, which was heard by the court and overruled on December 18, 1919. The motion set forth, as grounds therefor, that the verdict was contrary to the law and the evidence and that the court erred in rendering judgment upon the verdict. The motion also set forth at considerable length and in detail the circumstances surrounding the accused at the time of the killing of Clinton Lee and from then up to and throughout the trials of the causes, stating among other things that "at the time of the returning of said indictment and trial said excitement and bitterness of feeling among the whites of said county against the negroes, especially against the defendants, was unabated and still at the height of intensity." It alleged, in substance, that the trials of the accused occurred during a period of great excitement; that the accused were given no opportunity to consult with friends or to employ counsel and while they were confined awaiting trial a mob composed of several hundred armed white men surrounded the jail and courthouse and that the excitement and feeling against the accused among the white people of the county was such that it was impossible to obtain an impartial jury. The substance of the ground thus pleaded was that they had not been given fair trial on account of the alleged domination of a mob over the court and jury. Upon overruling the motion for new trial the circuit court allowed the accused sixty days within which to prepare and file a bill of exceptions which was filed within the time allowed and an appeal was duly prosecuted to this court and after arguments the case was decided by this court affirming the judgment of conviction. All of the assignments of

error in the motion for new trial were reviewed in the opinion of this court and decided against the contention of the accused. Hicks v. State, 143 Ark. 58. Thereafter a petition was presented to the Supreme Court of the United States for a writ of certiorari, which was by that court refused. Since that time the accused respondents have remained in the custody of the keeper of the penitentiary awaiting the action of the Governor in fixing the date of execution, and the proclamation of the Governor fixing the date of the execution on June 10, 1921, has been suspended by the injunction of the chancery court.

The petition filed below contains a repetition of the allegations contained in the motion for new trial with reference to the excitement prevailing at and before the trial in the circuit court and the alleged domination of mob violence. It also contains a charge, which was also stated in the motion for new trial, that the accused, being negroes, were denied the right and privilege guaranteed by the Constitution of the United States by the exclusion of men of their race from the grand jury and from the trial jury in Phillips county. The petition recites facts in regard to publications in newspapers and resolutions passed by civic and fraternal organizations prior to the trial and subsequent thereto alleged to be calculated to arouse the people of Phillips county to a high pitch of excitement. It also gives a history of the events which are said to have led up to the killing of Clinton Lee and declares the innocence of the accused of the crime charged in the indictment. It also alleges that the witnesses introduced by the State in the prosecution of the accused were tortured into giving false testimony, which said witnesses had retracted since the trial. It contains and allegation that prior to the indictment of the accused there had been an investigation by a committee of white citizens in Phillips county for the purpose of ascertaining who were the guilty parties in the homicide which had occurred and it is stated in the

petition that "The entire trial, verdict and judgment against them was but an empty ceremony; that their real trial and condemnation had already taken place before said 'Committee of Seven', that said committee, in advance of the sitting of the court, had set in judgment upon their and all other cases and assumed and exercised the jurisdiction of the court by determining the guilt or innocence of those in jail, had acquired the evidence in the manner herein set out, and decided which of the defendants should be electrocuted and which sent to prison and the terms to be given them, and which to be discharged; that when court convened, the program laid out by said committee was carried through and the verdict against petitioners was pronounced not as the independent verdict of an unbiased jury, but as part of the pre-arranged scheme and judgment of said committee; that in doing this the court did not exercise the jurisdiction given it by law and wholly lost its jurisdiction by substituting for its judgment the judgment of condemnation of said committee."

The doctrine has been announced by this court that courts of equity in this State are not clothed with jurisdiction to review proceedings in criminal cases or to interfere with such proceedings either by injunction or under the writ of habeas corpus. State ex rel Williams, 97 Ark. 243, Ferguson v. Martineau, Chancellor, 115 Ark. 317. In State ex rel v. Williams, there was an instance where the chancellor had, after indictment of the accused in the circuit court, issued a writ of habeas corpus for the purpose of allowing bail and we held that the circuit court acquired exclusive jurisdiction of the cause upon the return of the indictment and that the chancery court had no jurisdiction to interfere even to the extent of allowing bail. In disposing of the matter, we said; "The Chancellor has nothing to do with the administration of the criminal laws nor right to interfere with them neither has he appellate jurisdiction over criminal trials nor appellate or supervisory jurisdiction over the actions of chancellors or circuit judges granting or refusing bail."

The case of Ferguson v. Martineau, Chancellor, supra, was one where the chancellor issued an injunction to restrain the keeper of the State Penitentiary from executing a death sentence, the writ being issued to suspend proceedings and stay the execution until the sanity of the accused could be inquired into in the probate court. In disposing of the case, in which we held that the chancery court was proceeding beyond its jurisdiction, we said: "Courts of equity have to do with civil and property rights, and they have no jurisdiction to interfere by injunction with criminal proceedings. They can not stay processes of courts having the exclusive jurisdiction of criminal matters, where no civil or property rights are involved."

These two decisions seem to be conclusive of the controversy now before us and to settle the question that the chancery court was without jurisdiction. But it is insisted that while such is the effect of our decisions in establishing the jurisdiction of courts that they do not reach to the particular question now presented, which is that under the "due process of law" provision of the Constitution of the United States any court having authority to issue a writ of habeas corpus possesses jurisdiction to inquire into and review the proceedings in criminal cases for the purpose of determining whether or not the judgment was the result of "due process of law within the meaning of the Federal Constitution." In other words, the contention is that the provision of the Constitution with reference to due process of law and the Federal statutes prescribing the remedies whereby the constitutional guaranty may be enforced must be read into the State laws so that the prescribed remedies may be afforded in the State courts.

Counsel for respondents rely on the case of Frank v. Mangum, 237 U. S. 309, as sustaining this contention, but an analysis of that decision and a consideration of the language employed by the learned justice who wrote it shows very clearly that such is not the

effect of that decision. The court distinctly recognized the well established rule at common-law and under the British statutes, that on habeas corpus a court was confined in its inquiry to the face of the process of the judgment under which the prisoner was held in custody. The case of Ex parte Watkins, 3 Peters 193, was cited where Chief Justice Marshall, in delivering the opinion of the court, followed the common law rule stated above and decided that a court could not, under habeas corpus, look beyond the face of the judgment of a court of competent jurisdiction to determine whether or not a prisoner was being unlawfully held. This is in accordance with repeated decisions of our own court holding that if a petitioner for habeas corpus "is in custody under process regular on its face nothing will be inquired into save the jurisdiction of the court whence the process came." State ex rel v. Neel, 48 Ark. 283; Barnett ex parte, 51 Ark. 215; Ex parte Perdue, 58 Ark. 285; Ex Parte Foote, 70 Ark. 12; Ex parte Byles, 93 Ark 612; Ex parte Williams, 99 Ark. 475.

But the Supreme Court of the United States in the Frank case, supra, held that Congress had, by the Act of February 5, 1867 (Revised Statutes, Sections 753 et seq.) conferred upon the Federal Courts express authority to inquire beyond the face of the precess or judgment under which a prisoner is being held and "extended the writ of habeas corpus to all cases of persons restrained of their liberty in violation of Constitution or law or treaty of the United States." Further speaking on this subject, the court said: "The effect" (Acts 1867) "is to substitute for the bare legal review that seems to have been the limit of judicial authority under the common law practice, and under the act of 31 Car. ll. c. 2, a more searching investigation, in which the applicant is put upon his oath to set forth the truth of the matter respecting the causes of his detention, and the court, upon determining the actual facts, is to 'dispose of the party as law and justice require'."

The statute referred to does not apply to any courts except to the Supreme Court and circuit and district courts of the United States, and it defines the practice in those courts and the powers of the courts under the remedy afforded by the writ of habeas corpus. The statute does not purport to apply to the courts of the States and Congress had no authority, had it attempted to do so, tp prescribe the powers of the State courts and the practice to be followed in matters within their jurisdictions. The court in the Frank case in effect held that the statute had no application to the State courts, for it said this: "But repeated decisions of this court have put it beyond the range of further debate that the "due process" clause of the Fourteenth Amendment has not the effect of imposing upon the States any particular form or mode of procedure, so long as the essential rights of notice and a hearing, or opportunity to be heard, before a competent tribunal are not interfered with."

And again in speaking of the due process mandate in the Constitution, the court said: "The prohibition is addressed to the State; if it be violated, it makes no difference in a court of the United States by what agency of the State this is done; so, if a violation be threatened by one agency of the State but prevented by another agency of higher authority, there is no violation by the State. It is for the State to determine what courts or other tribunals shall be established for the trial of offenses against its criminal laws, and to define their several jurisdictions and authority as between themselves And the question whether a state is depriving a prisoner of his liberty without due process of law, where the offense for which he is prosecuted is based upon a law that does no violence to the Federal Constitution, cannot ordinarily be determined, with fairness to the State, until the conclusion of the course of justice in its courts."

And again the court said on this subject: "as to the 'due process of law' that is required by the Fourteenth Amendment, it is perfectly

well settled that a criminal prosecution in the courts of a state, based upon a law not in itself pepugnant to the Federal Constitution and conducted according to the settled course of judicial proceedings, as established by the law of the State, so long as it includes notice, and a hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure, is 'due process' in the constitutional sense."

What the result would be of an application to a Federal Court under the statute referred to and upon the facts stated in the petition we need not inquire. A perusal of the opinion of the Supreme Court of the United States in the Frank case, supra, is, however, illuminative of the subject. The court, after reviewing all of the facts as narrated in the petition and referring to the various proceedings in the State courts, said: "The narrative has no proper place in a petition addressed to a court of the United States except as it may tend to throw light upon the question whether the State of Georgia, having regard to the entire course of the proceedings, in the appellate as well as in the trial court, is depriving the appellant of his liberty and intending to deprive him of his life without due process of law. Dealing with the narrative, then, in its essence, and in its relation to the context, it clearly appears to be only a reiteration of allegations that appellant had a right to submit, anddid submit, first to the trial court and afterwards to the Supreme Court of the State, as a ground for avoiding the consequences of the trial."

The court further said that "this familiar phrase "due process of law" does not mean that the operations of the State government shall be conducted without error or fault in any particular case, nor that the Federal Courts may substitute their judgment for that of the State courts, or exercise any general review over their proceedings, but only that the fundamental rights of the prisoner shall not be taken from him arbitrarily or without the right to be heard according to the usual course of law in such case."

Further discussion would seem to be useless. It was not contended in the argument here that there is any other charge in the motion upon which relief could be granted, except the one to the effect that the trial court was dominated by a mob, which suspended the functions of the court and prevented a fair trial. There are no other facts in the petition which would warrant a review of the judgment of the circuit court of Phillips county. The allegations with regard to newly discovered evidence and the retraction by the State's witnesses, which is, in effect, an allegation of the discovery of new evidence, afford no grounds for a review of the judgments of conviction, for there is no provision in the laws of this State for the granting of a new trial after the lapse of the term on the ground of newly discovered evidence, Howard v. State, 58 Ark. 229; Thomas v. State, 136 Ark. 290; Satterwhite v. State, Ms. Op.

It follows that the chancery court is without jurisdiction to proceed and the writ of prohibition will, therefore, be granted and the writ of habeas corpus as well as the injunctive order issued by the court will be quashed.

STATE OF ARKANSAS.

COUNTY OF PULASKI.

CERTIFICATE OF CLERK OF THE SUPREME COURT.

I, W. P. Sadler, Clerk of the Supreme Court of the State of Arkansas, do hereby certify that Exhibits "A", "B", "C", "D", "E", "F", "G", and "H", to the above and foregoing response of petitioners, are correct copies of the transcript in the above and foregoing case, No. 4495, as same appear on file in the office of the Clerk of the Supreme Court of the State of Arkansas.

Witness my hand and the seal of the said Court on this 16 day of May 1923.

W. P. Sadler

Clerk of the Arkansas Supreme Court.

BY _____ D.C.

FILED
SEP 27 1921
SID B. BOOTH, Clerk
By _____

KNOW ALL MEN BY THESE PRESENTS,

That we, Frank Moore, Ed. Hicks, J. E. Knox, Ed Coleman and Paul Hall, as principals, and

are held and firmly bound unto E. H. Dempsey, Keeper of the State Penitentiary of the State of Arkansas,

in the full and just sum of Three Hundred Dollars,

to be paid to the said E. H. Dempsey, Keeper of the State Penitentiary of the State of Arkansas,

heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 27th. day of September, in the year of our Lord one thousand nine hundred and twenty-one

WHEREAS, lately at the April term A. D. 1921, of the District Court of the United States for the Western Division of the Eastern District of Arkansas, in a suit depending in said Court between Frank Moore, Ed. Hicks, J. E. Knox, Ed. Coleman and Paul Hall Petitioners,

and E. H. Dempsey, Keeper of the State Penitentiary of the State of Arkansas, respondent,

defendant

judgment was rendered against the said Frank Moore, Ed. Hicks, J. E. Knox, Ed. Coleman, and Paul Hall,

and the said Frank Moore, Ed. Hicks, J. E. Knox, Ed. Coleman and Paul Hall

has obtained an appeal of the said Court to reverse the judgment in the aforesaid suit, and a Citation directed to the said E. H. Dempsey, Keeper of the State Penitentiary of the State of Arkansas,

citing and admonishing him to be and appear in the United States Supreme Court, at the City of Washington, D. C. thirty days from and after the date of said Citation.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Frank Moore, Ed. Hicks, J. E. Knox, Ed. Coleman and Paul Hall,

shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

SEALED AND DELIVERED IN PRESENCE OF

Frank Moore, Ed Hicks, J. E Knox, Ed Coleman & Paul Hall
By E. L. McHaney Attorney in fact. [SEAL]

E. H. Powell [SEAL]

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT OF THE STATE OF ARKANSAS.

FRANK MOORE, ED HICKS,
J. E. KNOX, ED COLEMAN,
AND PAUL HALL - - - - - - - - - - - - - - - - - -PETITIONERS

vs.

E. H. DEMPSEY, KEEPER OF THE
PENITENTIARY OF THE STATE OF
ARKANSAS --RESPONDENT

DEMURRER

Comes E. H. Dempsey, Keeper of the Penitentiary of the State of Arkansas, and demurs to the petition heretofore filed herein by Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall, and for cause of demurrer states that the said petition does not allege facts sufficient to entitle the petitioner to the relief prayed for in his petition.

WHEREFORE, respondent prays that the petition of said Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall be dismissed, and for all other general and proper relief.

E. H. Dempsey
Keeper of the Penitentiary

By J. S. Utley
Attorney General of the
State of Arkansas.

By_____D.C.

This cause came on to be heard, the petitioners appearing by Murphy, McHaney & Dunaway, and S. A. Jones, Esqs., and the respondent by J. S. Utley, Attorney General of the State of Arkansas, and said respondent files herein his demurrer and motion to dismiss and after argument of counsel, the Court, being wel and sufficiently in the premises, doth sustain said demurrer and motion to dismiss.

It is therefore ordered that said demurrer and motion to dismiss be and the same is hereby sustained and that the writ of habeas corpus be and the same is hereby discharged.

the writ heretofore granted

the writ of Habeas Corpus heretofore issued

Same order in #6247

SID B. REDDING Clerk,
By_____D.C.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

FRANK MOORE, ED HICKS, J. E. KNOX, ED COLEMAN AND PAUL HALL, Petitioners.

vs.

E. H. DEMPSEY, Keeper of the Penitentiary of the State of Arkansas, Respondent.

The above named petitioners, feeling themselves aggrieved by the judgment of this court discharging the writ of habeas corpus, and dismissing their petition for said writ, pray an appeal to the Supreme Court of the United States and file herewith their assignment of errors.

Murphy McKaney & Lamsway
and Scipio A. Jones Atty
for Petitioners

Jno. B. REDDING, Clerk,

By_____D.C.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

FRANK MOORE ED HICKS J. E. KNOX,
ED COLEMAN AND PAUL HALL, Petitioners.

vs.

E. H. DEMPSEY, Keeper of the Penitentiary
of the State of Arkansas, Respondent.

ASSIGNMENT OF ERRORS.

1. The above named petitioners assign as errors, that the court erred in holding that the facts stated in the petition for the writ of habeas corpus and the exhibits filed there with, are insufficiant to entitle them to any relief.

2. That the court erred in sustaining the demurrer to the petition for the writ of habeas corpus by petitioners.

Murphy, McKenney & Dunaway and
Eurkis A. Jones
Attorneys for Petitioners.

Frank Moore, Ed Hicks
J. E. Knox, Ed Coleman
and Paul Hall - - - - - - - - - - - - - - - - - - Petitioners

vs.

E. H. Dempsey, Keeper of the
Penitentiary of the State of
Arkansas - Respondent

ORDER

The above named petitioners having petitioned to me for an appeal to the Supreme Court of the United States discharging the writ of habeas corpus heretofore issued, and dismissing the petition and having filed their assignment of errors and the Court being of the opinion that there exists probable cause for an appeal in this cause, the appeal to the Supreme Court of the United States is allowed, returnable within thirty days, the said petitioners to remain in the custody of the respondent in the meantime. Bond for costs on appeal is fixed at $300.00.

John H. Cotteral,
U. S. District Judge

United States of America, ss:

APR 11 1923

SID B. REDDING, Clerk.
By _____ D. C.

The President of the United States of America,

To the Honorable the Judges of the District
Court of the United States for the Eastern
District of Arkansas,

GREETING:

Whereas, *lately in the* District *Court of the United States for the* Eastern *District of* Arkansas *before you,* ~~*or some of you,*~~ *in a cause between* Frank Moore, Ed. Hicks, J. E. Knox, Ed. Coleman, and Paul Hall, petitioners, and E. H. Dempsey, Keeper of the Penitentiary of the State of Arkansas, respondent, wherein the final order of the said District Court, entered in said cause on the 27th day of September, A. D. 1921, is in the following words, viz:

"This cause came on to be heard, the petitioners appearing by Murphy, McHaney & Dunaway, and S. A. Jones, Esqs., and the respondent, by J. S. Utley, Attorney General of the State of Arkansas, and the demurrer and motion to dismiss the writ heretofore granted herein, and after argument of counsel, the Court being well and sufficiently advised in the premises, doth sustain said demurrer and motion to dismiss.

It is therefore ordered that said demurrer and motion to dismiss the writ of habeas corpus heretofore issued be and the same is hereby sustained and that the writ of habeas corpus be and the same is hereby discharged."

SID. B. REDDING, Clerk

By .....

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT OF THE STATE OF ARKANSAS.

FRANK MOORE, ED HICKS,
J. E. KNOX, ED COLEMAN
and PAUL HALL -PETITIONERS

vs. #595

E. H. DEMPSEY, KEEPER OF THE
PENITENTIARY OF THE STATE
OF ARKANSAS -RESPONDENT.

R E S P O N S E

Comes E. H. Dempsey, Keeper of the Penitentiary of the State of Arkansas, and for his response herein alleges:

By filing this response the respondent does not waive nor intend to waive his demurrer heretofore filed herein, but strictly relies on said demurrer and insists that the petition filed herein does not state facts sufficient to entitle petitioners to the relief prayed for and insists that for that reason said petition be dismissed, and that the respondent be granted all other general and proper relief.

For his response the said E. H. Dempsey, states that the only effect of said petition is to point out errors in matters of law alleged in said petition to have been committed by the criminal courts in the exercise of their jurisdiction over this case; that no denial is made in said petition that this case was properly subject to the cognizance of said courts.

Respondent further alleges that, in the filing of the petition for writ of habeas corpus in the United States District Court, petitioners are attempting to employ the writ of habeas corpus as a substitute for writ of error.

Respondent further states that the prosecution of this case in the State courts was based upon State laws not in themselves repugnant

to the Federal Constitution, and that said prosecutions were conducted according to the settled course of judicial proceedings as established by the laws of the State of Arkansas, and that said proceedings included due notice at all stages thereof, and opportunity was offered at every step of the trials for a hearing on every question raised, and that all this was done according to established modes of procedure under the laws of the State of Arkansas, as will appear by the following recital of the steps taken in the hearing of this cause.

First: The Circuit Court of Phillips County, Arkansas, in which this trial was held, originally, was duly open and constituted, and the Grand Jury which returned the indictments was duly summoned, sworn, impaneled and charged, as will appear by copy of the order of said court relative thereto, attached to this response and made exhibit "A" hereto.

Second: The indictment herein was lawfully returned, as will appear by copy of the record thereof hereto attached, marked exhibit "B" and made a part hereof.

Third: The indictment in this cause was sufficient, as will appear by copy of same hereto attached, marked exhibit "C" and made a part hereof.

Fourth: The court, at the time of trial, was duly constituted and open, and the defendants, petitioners herein, were duly arraigned and a jury was duly sworn and examined, and sworn and impaneled to try the cause, as will appear by a copy of the proceedings relative thereto attached hereto, marked exhibit "D" and made a part hereof.

Fifth: The evidence of both State and defendants was heard, the jury was instructed and afterwards the petitioners herein were found guilty of murder in the first degree, as will appear by reference to the above-mentioned exhibit "D", and were duly sentenced, as will appear by reference to copy of the proceedings relative thereto, hereto at-

tached, marked exhibit "E" and made a part hereof.

Sixth: After the trial and sentence the defendants, petitioners herein, filed their motion for new trial, copy of which is hereto attached, marked exhibit "F" and made a part hereof.

Seventh: The above-mentioned motion for new trial was duly heard and by the court overruled, as will appear by copy of the proceedings of said court relative thereto, hereto attached, marked exhibit "G" and made a part hereof.

Eighth: Within the time allowed by law, the defendants, petitioners herein, duly filed bill of exceptions which was by the court approved and ordered filed as a part of the record, as will appear by copy of the proceedings relative thereto, hereto attached, marked exhibit "H" and made a part hereof.

Ninth: An appeal from the action of the Circuit Court of Phillips County, convicting the defendants, petitioners herein, was granted January 9th, 1920, and transcript of the record of the trial court duly filed in the Supreme Court of the State of Arkansas on January 9th, 1920, the cause being numbered 2416.

Tenth: This cause was duly heard by the Supreme Court of the State of Arkansas on said appeal and action of the trial court was affirmed, as will appear by exhibit "I" hereto attached and made a part hereof, same being copy of the opinion of said court delivered March 29th, 1920, and reported in 143 Ark. 158 to 164.

Eleventh: Motion for re-hearing was duly filed by the appellants, petitioners herein, in the Supreme Court of the State of Arkansas, and was denied by that tribunal.

And so respondent alleges the regularity of the trial of this cause before State courts of competent jurisdiction, as hereinbefore set out.

Respondent further states that the petition for writ of habeas

corpus filed herein consists chiefly of assertions of the existence at the trial of disorder, hostile manifestations and uproar alleged to have amounted to mob domination of court and jury and denial of the due process of law guaranteed by the 14th Amendment to the Federal Constitution. And respondent alleges that the aforesaid assertions of disorder, hostile manifestations and uproar are but repetitions of allegations which the petitioners herein, the accused, had a right to submit and did submit, first, to the trial court on motion for new trial, and, afterwards, in the Supreme Court of the State of Arkansas, as ground for avoiding the consequences of the trial; that both the trial court and the State Supreme Court considered such allegations successively at times and places under circumstances wholly apart from the atmosphere of the trial and free from any suggestion of mob domination or the like, and, having examined the facts upon the affidavits and exhibits submitted in behalf of the prisoner, as shown by the copy of motion for new trial hereto attached and marked exhibit "F", found the allegations of disorder, hostile manifestations and uproar to be groundless and insufficient in law to avoid the verdict.

And so respondent pleads that the petitioners herein were concluded by the finding of the State courts, upon subsequent motions to set aside the verdict and to reverse the cause, and by their declining to again consider such allegations; that all questions of fact raised by the petition for writ of habeas corpus herein and all questions of law put in issue have been directly determined by State courts of competent jurisdiction and can not now be disputed by petitioners.

The respondent herein denies that the trial judge, or jury, or witnesses, or State Supreme court, was ever dominated by mob spirit, or intimidated in any way, and denies that there was ever any Mield-

ing to the mob spirit by anyone at any point in the trial, and denies that there was any interference by mob spirit with the course of justice. That the State of Arkansas, in the course of procedure above outlined, allowed the filing of a motion for new trial by the petitioners herein, and permitted said petitioners to adduce evidence outside of that which was heard in the trial, and the trial court went fully on the hearing of said motion for new trial into the question of whether the process of justice had been interfered with in the trial court, as will appear by reference to exhibit "F" hereto; and respondent pleads that such a determination of the facts as was thus made by the trial court and afterwards affirmed by the Supreme Court of the State of Arkansas, respecting the alleged interference with the trial through disorder and manifestations of hostile sentiment, can not, in this collateral inquiry, be treated as a nullity, but must be taken as setting forth the truth of the matter.

For further response your respondent states again that he is the keeper of the Penitentiary of the State of Arkansas, and alleges that he is holding the petitioners herein by virtue of the authority contained in a certain commitment delivered to him as such keeper, a copy of which commitment is hereto attached, marked exhibit "J" and made a part hereof.

Respondent denies that he is unlawfully restraining the petitioners of their liberty, and denies that he is holding them for execution in violation of the Constitution or laws of the United States, or of the State of Arkansas; denies that the Committee of Seven, mentioned in the petition herein, was selected for the purpose of picking out those to be condemned to death and those to be condemned and sentenced to the penitentiary. Denies that said Committee of Seven was guilty of any such misconduct as is alleged in said petition, and specifically denies that said Committee of Seven sent out any person or persons giving unsatisfactory evidence and permitted them

or any of them
to be tortured by beating and whipping with leather straps, or in any other manner, and denies that any testimony was extorted from said petitioners or any other person or persons, and denies that any person was whipped for the purpose of compelling him to agree to testify to any certain state of affairs, and denies that they were whipped or tortured at all; and denies that there was provided in said jail, an electric chair in which any person was put, naked or at all.

And denies that any current of electricity was turned on any occupant of any such chair for the purpose of frightening said occupant into giving damaging statements against himself or others, and denies that any strangling drugs were put up the nose of any such occupant for any purpose, and denies that by these or any other methods false evidence, or evidence of any kind, was extorted from negroes to be used, and denies that any such testimony was used against petitioners.

Respondent denies that a mob was formed in the City of Helena, and denies that petitioners would have been lynched but for the interference of United States soldiers and the promise of some of said Committee and other leading officials that if the mob would stay its hand they would execute those found guilty in the form of law. Denies that the interference of United States Soldiers, or any such promise as is alleged, was the means of preventing a lynching. And denies that there was any intent on the part of any person to lynch any of said petitioners.

Respondent denies that, during the session of the Grand Jury, any effort was made in the Grand Jury room, or anywhere else, by the Grand Jury, or by anyone else, to extort from petitioners, or any other person, false, incriminating admissions, and denies that petitioners were ever whipped, beaten or tortured as alleged; and denies that any prisoner was forced to testify against any other prisoner.

As to the allegation about denial of the right to employ counsel of petitioners' own choosing, this respondent alleges that eminent counsel was appointed to defend petitioners, and denies that petitioners were given no opportunity to employ an attorney of their choice, but alleges the truth to be that petitioners stated in open court that they had no counsel and that the court, as prescribed by the laws of the State of Arkansas, appointed counsel to defend petitioners; and denies that said counsel did not consult with petitioners and denies that said counsel took no steps to prepare for the defense of petitioners as alleged; and alleges that petitioners were given every opportunity allowed them by law to produce their testimony, and that petitioners were convicted after an orderly trial according to the mode and procedure prescribed by the State of Arkansas and after defense by able counsel.

Respondent denies that any witnesses were compelled to testify against petitioners at all; that as to whether the testimony of Walter Ward and John Jefferson was false, this respondent does not know and has no means of knowing, but relies on the regularity of the procedure in the trial, and the verdict of the jury, and states that he believes that said testimony was true; but avers that the question of the truthfulness or falsity of such testimony was passed on by the jury under proper instructions of the court, and that he has a right to presume that the jury accepted such evidence as they considered to be true and rejected that which they considered to be untrue, if any, and based their verdict upon such truthful testimony.

Respondent denies that Walter Ward and John Jefferson were promised immunity or concessions if they would testify falsely, and denies the statements set out in exhibits "B" and "C" to the petition herein.

Respondent further denies that it was impossible for petitioners to get a fair and impartial trial in the Phillips Circuit Court, and denies that counsel appointed for petitioners was negligent in any respect, in conducting their defense, but alleges that said counsel are eminent lawyers and that they made all the defense which it was possible to make for the petitioners; denies that any feeling against petitioners was such as that it overawed the trial judge or any member of the jury, or counsel for petitioners, or any other person connected with said court; and denies that any person connected with said trial was dominated by the mob spirit, and denies that any mob spirit existed; but avers the truth to be that if any feeling against the petitioners existed whatever, it was because of the manifest guilt of said petitioners, as revealed by the testimony given against them at the trial. And denies that, through fear of the mob spirit, no witness was called in behalf of petitioners, but alleges the truth to be that, on account of the guilt of the petitioners, no witness could be found who could testify to anything in their behalf. That as to why the petitioners were advised not to take the stand in their own behalf, if such is the truth, this respondent alleges that, under the laws of this Stateof Arkansas, a defendant is not required to testify in his own case, and that fact can not be considered against him, and alleges that he believes and is informed that there was no trughful evidence that petitioners could have given in their own behalf that would have been of any value to them.

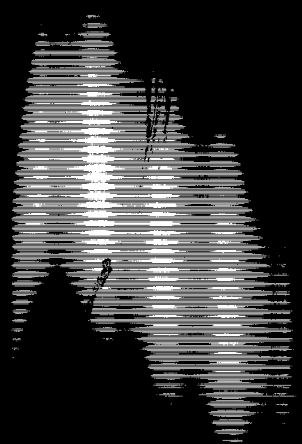
Respondent further denies that the trial court lost its jurisdiction by virtue of mob domination, or that it lost its jurisdiction at all; and denies that the result was but an empty ceremony, and denies that the verdict of the jury was a mob verdict, and denies that said verdict was dictated by a mob spirit, and denies that said verdict was returned because no other verdict would have been tolerated and denies that the judgment against petitioners is a nullity; and denies that the real trial

and condemnation of petitioners had already taken place before said Committee of Seven; and denies that said Committee, in advance of the sitting of the court, had sat in judgment upon the cases of petitioners, or of any petitioner; and denies that said Committee of Seven had assumed or exercised the jurisdiction of the court by determining the guilt or innocence of those in jail, or in any other manner; and denies that said Committee of Seven acquired any evidence in the manner alleged in said petition and denies that said Committee of Seven decided which of the defendants should be electrocuted, ~~electrocuted~~, or which sent to the penitentiary, or the terms to be given them, or which to discharge; and denies that the court carried out any program laid out by any Committee of Seven, and denies that the verdict of the jury was not the independent verdict of an unbiased jury.

Respondent further says that, after the motion for re-hearing was denied by the Supreme Court of the State of Arkansas, petitioners, as alleged by them, applied to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of Arkansas, their petition praying that said court be required to send up the record and proceedings in this cause for review by the Supreme Court of the United States, but that, after a careful review of all the record in this case, the Supreme Court of the United States denied the application for said writ, on October 11th, 1920; that petitioners made no further effort to have the judgments of the State courts reviewed until the 9th day of June, 1921, less than 24 hours before the time set by the proclamation of the Governor for the electrocution of the petitioners, when they filed with the Chancery Court of Pulaski County, Arkansas, their petition asking for a writ of Habeas Corpus; that the chancellor, without jurisdiction, enjoined the electrocution of the petitioners, but was afterwards restrained, ~~restricted~~ by the State Supreme Court on a writ of prohibition, from exercising jurisdiction in said cause;

Third: Beginning with the last paragraph on page 8 and including

Third: Beginning with the last paragraph on page 8 and including



and the recital of such matters ~~questions~~ has no place in this petition.

Second: All the matter found on pages 4, 5, 6 and 7, beginning with the second paragraph on page 4, and ending with the first paragraph on page, 7, for the reasons stated immediately above.

Third: Beginning with the last paragraph on page 8 and including all of the remainder of page 8 and all of page 9, for the reasons stated above.

Fourth: Beginning with the second paragraph on page 11 and including the remainder of page 11 and all of page 12 down to the end of the first paragraph, for the reason that the allegations therein contained have no place in this petition, and the questions there raised have been passed on repeatedly by the Supreme Court of the State of Arkansas against the contention of the petitioners.

Fifth: All that part of page 13 after the end of the first paragraph and all of page 14 down to the beginning of the last paragraph on page 14.

Sixth: Exhibits "A", "B", "C", "E", "G", "H", "I", and "J", because they are irrevelant, incompetent, immaterial, and are not part of proper petition for writ of habeas corpus.

Seventh: The affidavits of T. K. Jones and H. F. Smiddy, filed as part of the petiton herein, because the testimony given in said affidavits discredits said witnesses by their own admissions that they did not testify truthfully when under oath in the trial of these cases but testified falsely.

Respondent further states that he attaches hereto certificate of the Clerk of the Supreme Court of the State of Arkansas, certifying to the correctness of all the exhibits to this petition, except copy of the opinion of the Supreme Court and copy of commitment.

WHEREFORE, respondent prays that the petition herein be dismissed, and for all other proper relief.

E. H. DEMPSEY,
Keeper of the Penitentiary
of the State of Arkansas

By J. S. Utley
Attorney General of the
State of Arkansas

I, the undersigned, state on oath, that the matters and things set forth in the above response are true and correct as I verily believe.

_____

Subscribed and sworn to before me this _____.

"EXHIBIT E"

Court met pursuant to adjournment Tuesday morning at nineoclock A.M. November 11th, 1919. There was present and presiding the Hon. J. M. Jackson, Judge of said Court, A. G. Burke, Clerk and F. F. Kitchens, Sheriff, when after due proclamation by the Sheriff, court was opened when the following proceedings were had to-wit:-

STATE OF ARKANSAS,

vs. No. 4495, Murder in the first degree.

FRANK MOORE, ED HICKS, J. E. KNOX,

ED COLEMAN AND PAUL HALL.

Now on this day the defendants were brought into court and no legal cause being shown why sentence of the court should not be pronounced against them, it is, therefore, considered ordered and adjudged by the Court that the defendants Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall, be delivered to the keeper of the penitentiary of the State of Arkansas, who shall keep said defendants until the 27th day of December, 1919, when between the hours of sunrise and sunset, said defendants are to be electrocuted until dead, dead, dead.

Circuit Court Record "U" page 109, November 11th, 1919.

THE PRESIDENT OF THE UNITED OF AMERICA,

to

E. H. DEMPSEY, KEEPER OF THE PENITENTIARY
OF THE STATE OF ARKANSAS.

You are commanded to have the bodies of Frank Moore, Ed Hicks, J. E. Knox, Ed Coleman and Paul Hall, alleged to be unlawfully detained in your custody, as it is said, together with the day and cause of their being taken, before the District Court of the United States for the Western Division of the Eastern District of Arkansas, in the City of Little Rock on the 26th day of September, A. D. 1921, at the hour of ten o'clock, A. M., and then and there state in writing the terms and cause of their imprisonment and detention, and produce your authority for so doing.

Hereof you are not to fail under the heavy penalties denounced by law against those who disobey this writ, and to submit to and receive those things which shall then and there be adjudged in this behalf.

Witness the Honorable Jacob Trieber, United States District Judge for the Eastern District of Arkansas, this 21st Day of September, A. D. 1921, and the seal of said Court.

Sid. B. Redding, Clerk.

By W. D. Reed Jr. D.C.

This writ is to be served by the Marshal on E. H. Dempsey, Keeper of the Penitentiary of the State of Arkansas, and also on the Attorney General of the State of Arkansas.