

# *Moore v. Demsey (1923)*



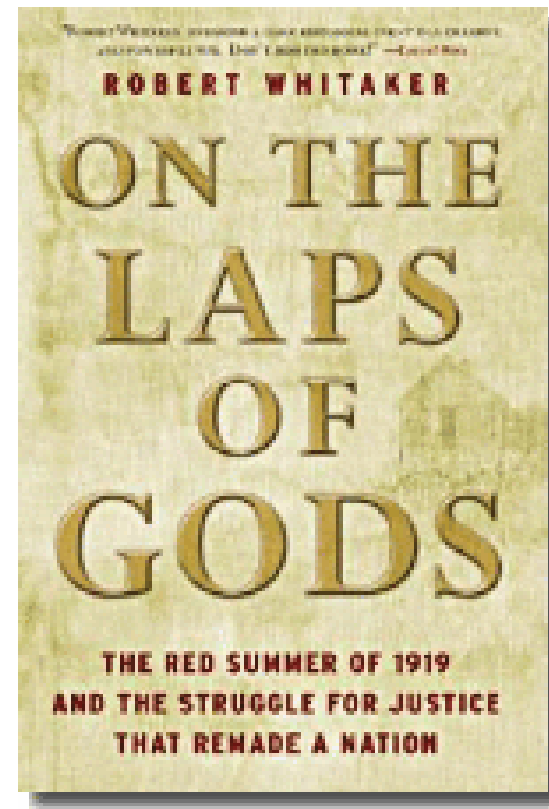
The twelve men condemned to die. *Courtesy of the Arkansas History Commission.*

ON THE LAPS  
OF GODS

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- The Elaine Riot 1919



# Hoop Spur, Arkansas

- September 30, 1919
- Baptist Church
- Meeting, Hoop Spur Lodge of the Progressive Farmers and Household Union
- Cotton country: Mississippi Delta
- 11:00 p.m. Church lights on, 40 yards away a car sits, the lights are off

## September 30, 1919

- World War I: Over 368,000 black men were inducted into the army and served in the 92<sup>nd</sup> and 93<sup>rd</sup> Divisions. The 369<sup>th</sup> Infantry and other units were honored for bravery by the French.
- *Shreveport Times*: The war had changed nothing. “If the black man will stay where he belongs, act like a Negro should act, talk like a Negro should talk, and study like a Negro should study, there will be few riots, fights or clashes.”
- The Ku Klux Klan boasted that one million Americans now proudly wore white robes. “If you wish to make your wives and daughters safe and happy, join the Klan today.”
- Labor problems and a hint of Communist agitation-Bolsheviks

## September 30, 1919

- The Red summer of 1919
- 450 periodicals were being published for Negroes, including 220 newspapers and at least 7 magazines.
- Lynching were daily events and there was an uptick in the number of blacks being burned alive at the stake as a public torture spectacle.
- “The South is more hellish than Germany ever was.” The white man is “the most damnable hypocrite, scoundrel and savage that the world has ever seen.”
- Reports of blacks buying guns and preparing to make a stand.

September 30, 1919

- Racial clashes and riots: Charleston, SC, May 10; Chicago, July 4; Longview, TX, July 10; Washington, D.C., July 19, two thousand-plus federal troops, six blacks dead, hundreds wounded; Chicago; Knoxville, TN; Ocmulgee and Oglethorpe, GA; Bogalusa, LA; Montgomery, AL; and hundreds of other incidents.
- W.E.B. Du Bois, a moderate, urged blacks to stockpile bricks, clubs and guns. “If is to be a Land of Mobs and Lynchers we might as well die today as tomorrow.”
- Phillips County sharecroppers placed a guard at the front door of a humble church and men sat out front in a buggy, with shotguns resting on their laps.



# Photos

- Hoop Spur Baptist Church
- Sharecroppers cabin. Notice the air conditioning system.

*The Arkansas Democrat*  
identified this building as  
the church where the Hoop  
Spur sharecroppers met.  
*Courtesy of the Arkansas  
History Commission.*



A sharecropper's cabin in the Mississippi Delta.  
*Library of Congress.*



# Progressive Farmers & Household Union

- Organized by Robert Lee Hill, WWI literate veteran and three others, 1918.
- Spring, 1919: Chapters organized at Ratio and across southern Phillips County.
- Sharecroppers contacted the Bratton law firm about potential of suits in Circuit Court of Phillips County if they did not get properly itemized accounts from landowners in 1919.
- Identified 21 landowners that could be sued.
- On Oct. 1 or 2 Hill and a Bratton lawyer would be in Elaine to sign contracts with the sharecroppers.
- Frank Moore, sharecropper, one of leaders of Hoop Spur Lodge had been told to leave or be chased off property.

# Hoop Spur Lodge: Progressive Farmers and Household Union

- For several months Union had been signing up farmers throughout southern Phillips Co.
- Meeting was packed Sept. 30 by 9:00 p.m.
- Guards in front, Route 44 a lonely road.
- Feared the whites “are going to kill us.”
- Most sharecroppers young, in 30’s, 40’s and 50’s.
- Union thinking of holding back cotton.
- Wanted accounting for sales and expenses or would take legal action.
- Union advised, “From now on keep your racks full and guns loaded.”

# Cotton and Sharecropping

- Sharecroppers: Most had makeshift household furniture, a few ragged clothes, a gun and one or more dogs, sometimes a few chickens and a hog.
- Cabins: one room, 18 by 20 ft., shed on back. Fireplace for heat and a couple of windows, wooden shutters but no glass for light.
- Fish, wild game, few vegetables, local groceries.
- March: Break ground, farm 15-30 acres, plant seed, hoe weeds that grew fast and thick; malaria a problem; sweltering heat in summer.
- Picking cotton by late August through November. An adult could barely fill two 100-pound sacks a day. Mule- drawn wagons, off to gin, seeds removed, cotton baled.

## Cotton Sharecropping (Cont.)

- Hoop Spur heart of Delta. 1,500 pounds per acre or one 500-pound bale per acre.
- 10 acres yields 10 bales; cotton seeds could be sold, hulls fed to cattle. Settle accounts in November.
- Local shopping on credit at local plantation commissaries or stores where landlords had accounts for tenants. Prices 25 to 100 percent more than for whites, said to be a “carrying charge.”
- One-half crop went to landowner. Landowner would sell all the cotton, make a deduction for expenses, scribble a balance due number down, no accounting. “No matter how good account you kept, you had to go by their accounts....” There was no itemized statement.

# Cotton Sharecropping (Cont.)

- Sharecropper always ended up owing and kept in debt. Would typically return to cabin with \$50 to \$100 in pockets for the year. In addition, they usually got the money from the sale of cottonseed.
- Hopefully sharecropper survived until spring. Same story for years across entire South for cotton, tobacco and other crops.
- Cotton prices in 1914 at 7 cents a pound; 1917 and the U.S is into WWI, 24 cents a pound. Half a share on 10 acres should approach \$900 and might net \$700 after expenses. Model T sold for \$350. Few settlements came even remotely close. 1918 cotton prices were 30 cents a pound.

# SHARECROPPING

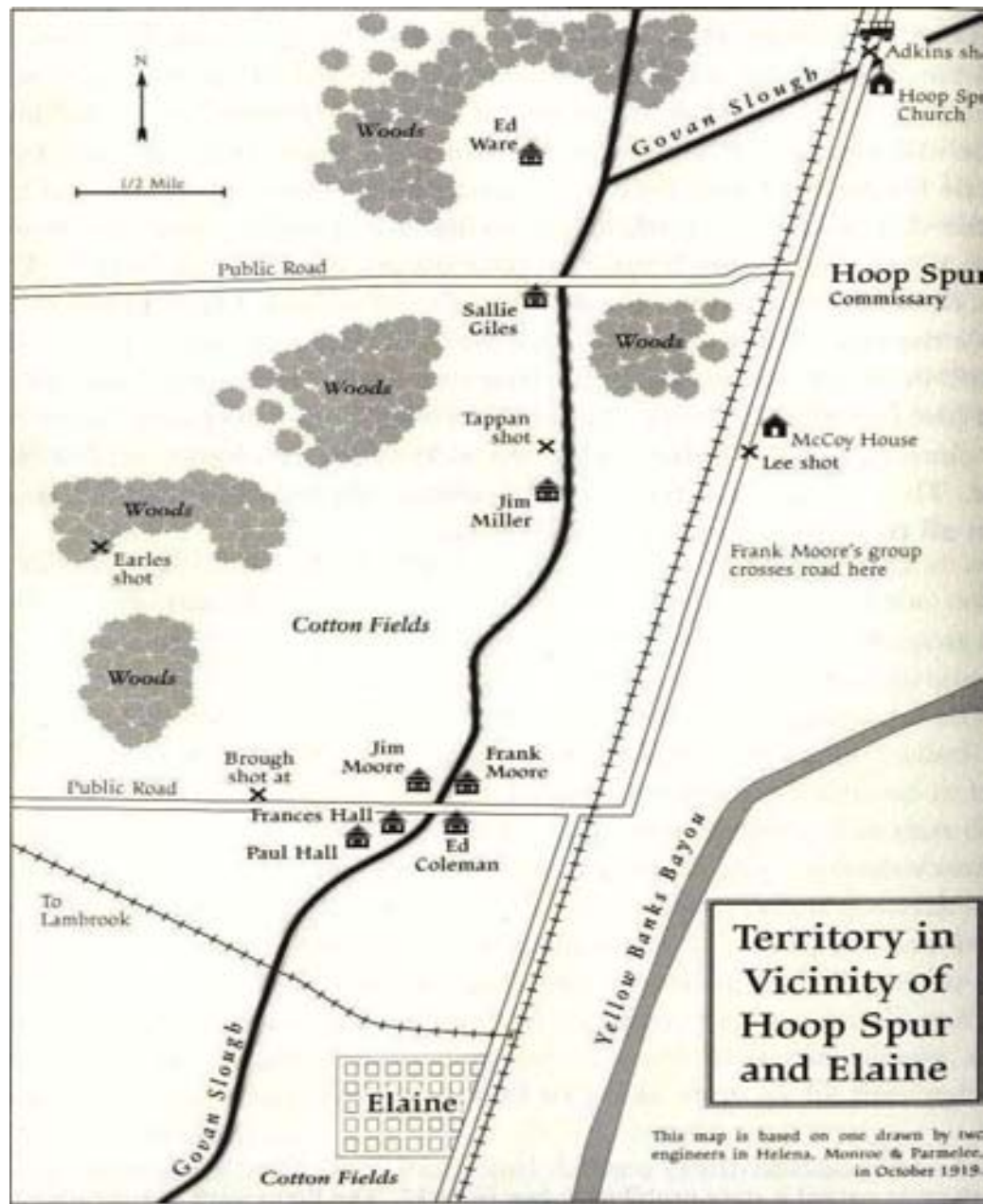
- Ballad for the times:  
“Nought’s a nought  
An’ figger’s a figger  
All for de white man  
Non fer de nigger.”
- 1919: Acute unrest in the Delta. Cotton prices forecast at 40 to 50 cents per pound.
- Frank Moore and his dad had 51 acres planted, so their half-share net should exceed \$5000.
- Phillips County population 32,929 blacks and 11,601 whites.

# The Killing Fields

- Hoop Spur Church: 11:00 p.m. plus, Sept. 30, 1919. White men got out of car. Black guards approached. Whites fired automatic pistol 21 to 22 yards from church. Guards returned fire and killed Adkins, a white man. Inside the church was pandemonium. Many shots fired at church. During lulls blacks ran from the rear exit and escaped into the darkness.
- Oct. 1, Helena posse formed and ready to go by 8:30 a.m. Posse made a sweep down from Hoop Spur Church with several killings, driving croppers ahead of them. "When we started down that thicket it was with the understanding with all of us that we would shoot the negroes as we came to them."

## The Killing Fields (Cont)

- James Tappen, white hero and son of rich planter, and Lee were shot and killed.
- Sharecroppers scooped up families and fled. Incidents and shootings occurred until evening. Mississippi men joined posse. Posse indiscriminately shot blacks armed or unarmed and family members.
- Three white men, perhaps 50 to 100 negroes killed, numerous other persons including both whites and negroes were wounded on Oct. 1.



# “They shot them down like rabbits”

- Phillips County call to Arkansas Governor for U.S troops mid-day Oct. 1. By midnight, 583 white officers and troops from Camp Pike departed Little Rock. The troops arrived in Helena by the next morning Oct. 2 and were joined by a dozen or more Mississippi men.
- During the day it was chasing Negroes in woods and swamps, “a march of death” leaving behind “a path strewn with widows and orphans.” Several hundred prisoners were captured, with 225 housed in the Elaine schoolhouse and 60 in the Helena jail. Over 800 blacks were detained. All told, 300 black men and a handful of black women were sent to Helena for criminal prosecution. Some killings and rounding up of blacks continued for several days, but the riot was over.

# Aftermath

- Total deaths were four or five white men and well over 100 blacks, with estimates as high as more than 200 to 300. The U.S. troops with machine guns cleared many wooded areas and likely were responsible for the most deaths.
- The Red Summer came to an end with only a few more burnings and lynchings along the way. The U.S. reached a nadir of a horrible time that had been 50 years in the making.
- The Union was crushed, and its members—those that had survived—would soon experience the brutal sting of American justice.

# The Path to Hoop Spur

- January 1, 1863: Abraham Lincoln pronounced that the four million slaves in the Southern States were free.
- 39<sup>th</sup> Congress, winter, 1865: In the spring, 1864, Andrew Johnson had issued a Proclamation of Amnesty that basically pardoned most former Confederates. As a result, white Democrats in the South enacted “black codes” to regain control. The codes allowed blacks to be arrested as “vagrants” and forced to work, without pay, for whites who paid off their fines. A Congressional Committee on Reconstruction was formed.

# 14<sup>th</sup> Amendment: July 28, 1868

- “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside. No State shall make or enforce any law which shall abridge the **privileges or immunities** of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without **due process** of law; nor deny to any person within its jurisdiction the **equal protection of the laws.**”
- “The black man is free, the black man is enfranchised,....” Frederick Douglass

# Civil Rights De-construction

- 1868 to 1877: Major progress for blacks, elected 16 members of Congress and hundreds more to state legislatures and to local government. Many blacks were educated and professionals trained. Some blacks became successful businessmen and an elite emerged.
- But freedoms hung by a thread. The KKK and white supremacy groups were formed and terrorized blacks. The U.S. Supreme Court was solidly Republican, but by the 1870s the *Slaughterhouse* cases were heard.
- The Court agreed the Louisiana legislature could pass a law allowing the city of New Orleans to centralize all slaughterhouse operations. The 14th Amendment rights of the butchers to “sustain their lives through labor” was not upheld. The Court held to a narrow interpretation of the amendment and ruled it did not affect the police powers of the state.

# One Vote

- The Court held that the 14<sup>th</sup> Amendment's Privileges or Immunities clause affected only rights of United States citizenship and not state citizenship, a distinction that remains to this day. The only rights that fell under federal protection were those that could be seen as national in character, such as the right to use navigable waters. The vote was 5-4, one vote difference. *Slaughterhouse* opened the flood gates to Jim Crow policies.
- In a Colfax, Louisiana massacre/riot case, the Supreme Court did not incorporate the Bill of Rights to the states and found under *Cruikshank* (1875) that the First Amendment right to assembly “was not intended to limit the powers of the State governments in respect to their own citizens.” The **due process** and **equal protection** clauses of the 14<sup>th</sup> Amendment protect citizens only from **state action**, and not to the actions of other citizens. As a result of *Cruikshank* whites knew that violence could be used to keep blacks in their place.

## De-construction (Cont.)

- With *Cruikshank*, various voter registration and election laws followed. Jim Crow laws flourished. Former Confederate states passed disenfranchising constitutions or amendments, with provisions for **poll taxes, residency requirements, literacy tests** and **grandfather clauses** that effectively prevented most black voters and many poor whites from voting.
- This also meant that in most cases blacks **could not serve on juries** or **hold political office**, which were restricted to voters.

## De-construction (Cont.)

- In *Hodges vs. United States*, 1905, the Court ruled that the 13<sup>th</sup> Amendment did not authorize Congress to criminalize those who physically intimidated employers of blacks into breaching labor contracts. The cases in question involved mob intimidation of white employers of black sawmill workers and sharecroppers.
- Precedent law was quite settled; therefore it was “vain to contend that the Federal Constitution secures a right to work in a given occupation or a a particular calling free from injury, oppression or interference by individual citizens.”
- Not many options existed for the black sharecroppers in jail in Hoop Spur in October 1919.

# Whitewash

- Whites tending to a flat tire were “ambushed” by an “organized band of negroes.” The negroes “murdered” a posse member. A “force of armed negroes” who were “dug into a trench” all had “high-powered rifles” and began “promiscuous firing” on white persons. “Brave men” from Arkansas and neighboring Mississippi rushed to the aid of the beleaguered white posses. 1500 negroes massed for an attack on Elaine.
- Headlines: “Vicious Blacks Were Promising a Great Uprising.” NY Times: “Troubles Traced to Socialist Agitators.”

## Oct. 2, 1919

- Telephone and telegraph lines from Hoop Spur were cut. The Hoop Spur Church was burned down.
- Fact: A lynch mob of whites formed outside the Phillips County Courthouse in Helena. Town leaders and local planters wanted to defuse the mob. Leaders wanted to maintain Helena's image as a "progressive southern town with industrial opportunities." Also, killing would cause blacks to flee and cotton fields would not get picked in 1919 and for years to come. Wiser heads prevailed and the mob was quelled, but it was touch and go.

# Creaky Machinations of Order

- Arkansas Governor, Oct. 3, appointed a Committee of Seven composed of the town's leading businessmen to investigate the negro revolt. "All parties, both white and black,...will be treated absolutely fairly and will be dealt with by law." But there was a dilemma: committee members had promised the mob that the union leaders would be electrocuted. What about the other 300 plus? Blacks not in jail were told to go back to the cotton fields "and remain at work as if nothing had happened." Whites around the country lauded the brave work of Arkansas officials.
- Oct. 3: President Wilson died of a severe stroke, police in Pittsburgh, PA, and Gary, IN, fought striking workers; a mob in Georgia lynched a Negro and made plans to lynch five more.

## Creaky Machinations (Cont.)

- The U.S. Department of Justice's Bureau of Investigation received confidential reports from four of its agents that the alleged murder plot by sharecroppers was either a figment of the planter's imagination or—and this was even worse—a calculated lie. Stories in the press did not hold up.
- The contracts and documents signed by the Progressive Union with a local lawyer were legal and a normal relationship between an attorney and client. Local officials had already over-zealously interrogated more than 100 negroes. Interviews with various parties including blacks turned up no evidence of a conspiracy to murder whites.
- Politically the Department of Justice was polishing a report on the radical black press and how it was stirring blacks to seditious acts. The local Arkansas reports by nine agents were filed away in a back drawer.

# March of Time

- Plans to try 300 blacks for murder moved on. The Hoop Spur farmers were now about as isolated as any group could be.
- The fields in southern Phillips County remained unpicked. Sharecroppers scattered to distant spots throughout the Delta.
- Some women from Hoop Spur who had been arrested were released and headed back to ransacked cabins. Their homes were stripped bare and all household goods were missing, including clothes, hogs and chickens. Women were told to leave or they would be killed. They were “penniless, ragged and starving.”



Walter White. *Visual materials from the NAACP records; Library of Congress.*

When Walter White arrived at the Helena train station, he feared that he was being watched and might be lynched. *Courtesy of the Department of Arkansas Heritage, Delta Cultural Center Archives*

# Walter White

- Oct. 7: Small, 26 yrs. old, blond hair, blue eyes and the slightest hint of color to the skin bound from NY to Memphis. Ties to NAACP. African-American parents, very white skinned. Netherworld status could move between races and be frowned upon by both.
- Doing story for *Chicago Daily News*.
- Interviewed Arkansas Governor who blamed northern agitators.
- Visited carefully around Helena. “If niggers had gotten what they earned,” one planter laughed, “they would own half the Delta by now.”
- Interviewed lawyer Ulysses Bratton who set up union for “Progressive Farmers.”

## Walter White (Cont.)

- Listened carefully to snippets around town. Locals were on the lookout for that “dammed yaller nigger.”
- White made it out of town without being lynched.
- Oct. 18 story in the *Chicago Daily News* told the story of “debt-slavery” and systematic robbery of sharecroppers.
- NAACP had a press conference to announce findings.
- Many stories followed in black press but also major city papers. Arkansas “massacre,” “bloodthirsty mobs.”
- There were two narratives of the “Elaine Riots” for the nation to ponder.
- Whitaker comments “the struggle for America’s soul—and its future—was under way.”

# Time for Torture

- Helena jail at back of courthouse. 18 cells and 200 to 300 prisoners. Created makeshift jail in nearby grocer's warehouse. No visitors, no change of clothes, no preparation of defense.
- All of union leaders, including Frank Moore, remained in Court House.
- Harsh interrogations of one-half hour or so, then off to top floor of jail—stripped, blindfolded, face down on concrete floor, four persons pinning down arms and legs, spread eagled—whipped with seven-pound leather strap. If prisoner would not agree to incriminate others, confess or sign written statements, would get second or third treatments. At the extreme was stuffing a “strangling drug” like formaldehyde up nose for more treatment and then down to an electric chair for an excruciating jolt or two.

# Justice moves on

- Frank Moore never did confess, survived three “treatments” plus having his wife whipped.
- Most of needed testimony set by mid-October 1919.
- Prosecutor John Miller, KSU law degree, knew Southern Phillips County “as near a feudal state as ever existed” and was aware there was not a negro conspiracy to commit mass murder. He knew of torture.
- Decided to take a middle ground. He released 150 of the men in the Phillips County jail and the women. He assured local authorities he would proceed to prosecute most of the remaining 150 prisoners for first-degree murder.
- He felt this was somewhat ethically correct. “I went in there and tried to uphold the law.”

Phillips County Courthouse. The county jail was attached to the rear of the building. *Courtesy of the Butler Center for Arkansas Studies.*



# Criminal Justice: Round One

- Arkansas white Circuit Court judges appointed jury commissioners.
- Commissioners selected men of “good character, approved integrity, and sound judgment” to serve on grand and petit juries.
- Phillips County, prominent planters regularly served.
- No black had served on a jury for more than 30 years.
- Prosecutor Miller brought witnesses before the grand jury panel in late October. The panel indicted 73 sharecroppers for first-degree murder, 49 for lesser charges and 21 sharecroppers were set free for lack of sufficient evidence.
- Helena’s town fathers put together their own roster of attorneys—two prosecutors (they didn’t trust Miller). Judge Jackson appointed several Helena attorneys to serve as the sharecroppers’ defense counsels.

## Round One (Cont.)

- Monday, November 3: Jury included member of posse and one of deputies that did whipping.
- Frank Hicks, still dressed in “ragged overalls and dirty overcoat” pled “not guilty.” A series of witnesses swore various things regarding events of October 1, 2 and 3. Elaine’s mayor Sid Stoaks testified Hicks had confessed to killing Mr. Lee, the confession was freely made—he had not been “whipped or threatened.” The defense called no witnesses. The trial lasted 84 minutes; the jury returned a guilty verdict of first-degree murder in eight minutes.
- The same pattern continued through the week.

## Round One (Cont.)

- The last jury took two minutes to reach a guilty verdict.
- By Friday, November 7, 11 sharecroppers (one more captured and convicted in December) were convicted of first-degree murder, 13 pled guilty to second-degree murder (21 years), 27 pled guilty to second-degree murder or assault to kill (five to seven years), and 18 more pled guilty to night riding (one year). There were a few other guilty or plea bargains.
- Tuesday, November 11: Judge Jackson pronounced Frank Moore and four others would go the electric chair on December 27, the other six on January 2, 1920. They were to be electrocuted until they were “dead, dead, dead.”
- Cotton prices topped 50 cents per pound.

## Round One (Cont.)

- Nov. 21: The convicted were shackled, led through town and taken by train to a state-owned penal plantation and those convicted for murder to Little Rock “The Walls” death row. Reporters remarked on Ed Coleman, 78, who was one of the death row 11. At “The Walls” they were allowed to bathe and were given some different clothes. The condemned were relieved at a bit of humanity.
- An extraordinary man, Scipio Africanus Jones, went to work.



*Above: In 1919, the National  
Cyclopedia of the Colored Race ran this  
picture of "Judge Scipio A. Jones."  
Courtesy of the Butler Center for  
Arkansas Studies.*



This photo of  
Scipio Jones was  
published in a  
1924 book on the  
history of the  
Mosaic Templars.  
*Courtesy of the  
Butler Center for  
Arkansas Studies.*



# Scipio Jones

- Office in downtown Little Rock. 5 feet 5 inches tall, he wore a distinctive Panama hat. Well known and respected by white politicians, businessmen and attorneys.
- For the past 30 years no man in Arkansas had done more to fight for the rights of blacks.
- “He is the best and most worthy Negro lawyer I’ve ever known.”
- Born a slave, he was named for Scipio Africanus, who defeated Hannibal at Zama in 202 BCE.
- He managed to get some education and by good circumstances and hard work passed his oral bar exams in June 1889 at the age of 26. He had gone from being a cotton picker to an attorney.

## Scipio Jones (Cont.)

- He adopted “be patient” with “fighting for respect” and striving for civil rights at a time Jim Crow laws came into prominence.
- He was active in community organizations, ran for political office and helped fight off or modify racially motivated laws.
- He was the first black attorney in the state to appeal a lower court’s decision to the Arkansas Supreme Court and by 1919 had done so 17 times with eight wins, eight losses and a tie.
- He argued a 14<sup>th</sup> Amendment case in 1901 based on blacks being excluded from grand juries, and lost.

# Criminal Justice: Round Two

- The initial response by Jones and other black leaders to the “Elaine Riots” was to defend Governor Brough for restoring order. It would not serve to alienate the person with the power to issue pardons.
- A defense committee for the sharecroppers was formed with Jones as the leader. The committee included Col. Murphy, Confederate veteran and a Democrat, but who believed the law should be fair for all.
- Politics with the NAACP emerged. In the end the NAACP agreed to pay part of Murphy’s expenses and supported the Little Rock defense committee.
- December 20, 1919: Jones asked the Arkansas Supreme Court for re-trials for the 12 condemned death row prisoners, which was denied, but he was granted a 60-day reprieve for the prisoners to prepare their appeals to the Court.

## Round two (Cont.)

- March 22, 1920: Jones and Murphy argued the sharecroppers' appeal before the Arkansas Supreme Court. On March 29 they were rejected, but new trials were ordered for Ware and five other prisoners since their verdicts were "fatally defective" (failed to specify if the verdicts were for first-degree or second-degree murder).
- May 2: Jones vigorously led a defense with cross examination and calling of witnesses for the Ware *et al* re-trials in Phillips County, to the embarrassment of local officials. Arkansas and Little Rock newspapers pulled back their coverage. All six were found guilty of first-degree murder with a new execution date of July 23. They were returned to death row in Little Rock. The verdicts were immediately appealed; the Arkansas Supreme Court agreed they would rule on the appeals in the fall.

## Round Two (Cont.)

- Summer, 1920: Another stream of lynchings across the United States, Helena's mayor resigned, a fire destroyed 50 homes in the black section and left 200 homeless.
- Oct. 11: Col. Murphy died and the Arkansas Supreme Court declined to review the murder convictions of Moore and five others whose Phillips County Circuit Court trials were not fatally defective. The Governor promised that Frank Moore, *et al*, would be executed before he left office January 12, 1921.

## Round Two (Cont.)

- Jones counterattacked the Moore *et al* execution date set by the Governor with a reasoned statement to the Little Rock newspapers. The letters were not published, but the *Arkansas Democrat*, in an editorial the next day, raised the issue of why the rush.
- December 6: The Arkansas Supreme Court again reversed the Ware convictions, this time because Judge Johnson had refused to hear evidence regarding the exclusion of blacks from the juries. Jones had laid a trap.
- New execution date for Frank Moore, *et al*, was set for 6 a.m. Friday, June 10, 1921.

## Round Two (Cont.)

- Winter and spring, 1921: News heavy with reports of gruesome lynchings. Frequent national press coverage of racial issues and activities of KKK.
- There were a lot of appeals, maneuverings, delegations and pleas for the Moore group during the spring but Governor McRae did not budge. Jones was prepared to go to federal Judge Trieber with a habeas corpus brief at the last minute but the Judge was out of town. All hope was gone on Thursday, June 9, for a stay of execution for the Moore group.
- The execution was set for 6:00 a.m. on June 10. A Chicago paper carried the story of the executions of the six prisoners and some of their last words in their late Friday, June 10, edition.
- Any questions?

## Round Two (Cont.)

- Jones and colleague took habeas corpus petitions to Pulaski Chancery Court (Little Rock) on basis that the Moore *et al* Arkansas Supreme Court appellate reviews had been so unfair that the state could be said to have “lost its jurisdiction” over the six condemned black men. Chancery courts handle property disputes and other civil matters—they had no authority over criminal matters but the Judge was a friend of Jones. It was a 4:20 p.m. Thursday, June 9, long shot.
- Judge Martineau prohibited “The Walls” warden, E.H. Dempsey, from the executing the six prisoners at 6:00 a.m. Friday morning. He issued a writ of habeas corpus to Dempsey, demanding that he bring the six men to his court on Friday at 2:00 p.m.
- There was a flurry of consternation and protests Thursday evening, and the state attorney general appealed to the Arkansas Supreme Court. The Court decided to hear arguments the following Monday.

# Habeas Corpus

- Latin for “you shall have the body”—stands at the very heart of English law, its roots dating back to the early 1200s.
- It is a legal action, or writ, through which a person can seek relief from the unlawful detention of him or herself, or of another person.
- Historically it has been an important instrument for the safeguarding of individual freedom against arbitrary state action.
- The U.S. Constitution declared that “the Privilege of the Writ of Habeas Corpus shall not be suspended,....” The Judiciary Act of 1789 authorized federal courts to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment. However, neither the Constitution nor the Judiciary Act addressed the question of whether federal judges were authorized to release prisoners from state courts.

## Habeas Corpus (Cont.)

- The Fourteenth Amendment guaranteed all Americans due process under the law, and the Habeas Corpus Act of 1867 provided state prisoners with the access to federal courts necessary to secure that guarantee.
- However, in *Ex parte Royal* (1886), the court declared that federal judges should not step on the toes of state courts.
- A mob intimidation case (*Frank v. Mangum*) in Georgia in 1915 opened the door slightly, state jurisdiction could be lost, but appellate review was deemed to provide a “corrective process.”

## Round Two (Cont.)

- June 13, 1921: The Arkansas Supreme Court galleries were packed with black and white spectators and a “large number” of attorneys from around the state to hear Jones.
- Jones argued that *Frank* set a precedent to find that a trial court had lost jurisdiction of the Moore *et al* criminal cases. The state assistant attorney general denounced the prisoners’ habeas petitions as “one of the bitterest attacks ever made on a court of any community.” There had been appellate review and that closed the matter. Jones was not upheld.
- Ware *et al* second re-trials (third trials) could go ahead; a new execution date was set for Moore *et al* for Sept. 23.

## Round Two (Cont.)

- Two key witnesses for the prosecution at the original Phillips County trials recanted their testimony and confirmed every detail of the black narrative of the events.
- Jones hustled to finish habeas petitions remaking the case that the State of Arkansas had *lost jurisdiction* over Frank Moore and the other five. The petitions were presented September 21, 1921, to federal Judge Jacob Trieber. The judge asked State to respond by September 26. The State could have contested but did not and responded with a “demurrer” arguing it didn’t matter, the issue was settled and had been ruled on by state courts. This was a huge break for the condemned men.

## Round Two (Cont.)

- Judge Treiber recused himself, since he lived for some time in Helena, so the habeas petition issue was heard before Judge Cotteral from Oklahoma. Since the State of Arkansas had demurred to the habeas petitions, Cotteral had to treat the prisoners' allegations as fact.
- Cotteral acknowledged these were indeed a disturbing set of facts, but he was "forced to rely on the decisions of the state Supreme Court as to the regularity of the proceedings in the trial court." Jones and the Frank Moore group lost again, but Cotteral **did authorize an appeal of his decision to the U.S. Supreme Court**, which is what Jones wanted.

## Round Two on Hold

- The Ware et al second re-trials were put off until spring, 1922, in Marianna (Lee County, Arkansas) and Jones engineered two of the town's leading white attorneys to serve as co-counsel (he had fractured the town's white leadership).
- Oct. 21, 1921, reflection: In two years Jones has skillfully moved the story from one of savage blacks conspiring to kill whites to the state fearing to return to the courtroom to retry the Ware defendants, and the U.S. Supreme Court, as it considered the habeas petition, would be confronted by the narrative that told of a white massacre of blacks and of judicial proceedings of the most grotesque sort. The public opinion had turned around but also had the legal record.

## Round Three: Preparations

- Jones perfected the appeals to the U.S. Supreme Court on October 21, 1921.
- NAACP president Moorfield Story would argue the case.
- Fund-raising to support the effort got underway.
- Phillips County had a lynching.
- There were 33 other lynchings in the first half of 1922.
- Harvard University banned its black students from dormitories and dining rooms.
- Arkansas requested a delay on Ware *et al* retrials.

*Below: The Taft Court. Back row (left to right): Pierce Butler, Louis Brandeis, George Sutherland, Edward Sanford. Front row: Willis Van Devanter, Joseph McKenna, William Howard Taft, Oliver Wendell Holmes, James McReynolds. Sanford was not on the court in January 1923 when *Moore v. Dempsey* was heard. Collection of the Supreme Court of the United States; Courtesy of the Oyez Project.*



# The Taft Court

- Taft had long been one of the country's most avid proponents of laissez-faire judicial philosophy. As president he had done much to alienate blacks. Black leaders expected little from him as Chief Justice. Five other justices were in the Taft mode of generally favoring big business. McKenna, 79, was sliding into senility and McReynolds happened to be the most virulent racist ever to sit on the bench.
- Only Oliver Wendell Holmes and Louis Brandeis could be expected to look favorably on the sharecroppers' case. The ninth seat was vacant. One plus was that Taft's feelings towards Holmes and Brandeis had so softened that he gave them a ride home following every Saturday conference, and this feeling of warmth was now mutual.

# Round Three

- Story made Jones' narrative the centerpiece of his brief. "Nowhere in the history of the case from beginning to end is there any indication that prior to the conviction there was any serious attempt made to ascertain whether the defendants were really guilty."
- "The evidence on which they were convicted was manufactured, the witnesses were beaten and terrorized, and the record of the whole case shows that, if consummated, it is only judicial murder."
- The entire state process had been nothing more than a judicial lynching. The Arkansas Supreme Court had lost its jurisdiction for the same reason that the trial court had, and that was because it had given its consent to this lynching.

## Round Three (Cont.)

- Arkansas Attorney General Utley basically argued *Frank* and a dozen other existing standards of habeas corpus law.
- All that the state was required to do was to provide defendants with trials “conducted according to the well established course of judicial proceedings as established by the laws of said State” and Arkansas had met that requirement. The state’s Supreme Court had signed off on the conduct of those trials.

## Round Three (Cont.)

- A sad note: Due to a slip-up by the NAACP and also because of an unexpected early scheduling of the case the second rather than the third week of January, 1922, Jones did not appear before the U.S. Supreme Court with Story and remained in Little Rock.
- The justices peppered the attorneys with questions about “issues of jurisdiction.”
- Afterwards Walter White of the NAACP wrote Jones on January 12, “The cases lie on the laps of the Gods.”

## Round Three: Concluded

- The Court deliberated on January 13, 1922, with Brandeis and Holmes on one side, McReynolds on the other. Taft cast his vote first and as Taft went so went the Court. The decision was 6 to 2 in favor of Moore *et al* versus Dempsey as the warden and executioner for Arkansas.
- Taft assigned Holmes to write the decision that would change America. The opinion was carefully crafted to be clear in spots and murky in others.
- The decision was announced on February 19.

# Postscripts

- The decision in *Moore* at first did not seem that dramatic and the *New York Times* and other leading newspapers made little note of it. It didn't set the Elaine sharecroppers free.
- However, many others—legal scholars, the NAACP and a handful of magazines and smaller newspapers—understood at once that this was a watershed moment for the country.
- “I regard it as a great achievement in constitutional law,” a “cornerstone” for building a new “temple” of justice; it would spur “state courts to conduct trials fairly.” “The Fourteenth Amendment guarantees to every man” the “substance” of a real trial.

## Postscripts (Cont.)

- The *Louisville Courier Journal* summed up its importance best: “The principle that the Federal Government may constitute itself a reviewer of the decisions of the criminal courts of States, overruling the authority of state courts of last resort, will, if established, constitute a change hardly less than revolutionary.”

# Mop-up

- Jones in the fall of 1921 had succeeded in getting the men serving five to six-year terms at the Cummins State Farm released, leaving 15 others with ten to twenty-one-year terms. The Moore six at “The Walls” in Little Rock and the Ware six at Helena were still locked up.
- Jones got the Ware six released on June 25, 1922 after a series of legal steps with the Lee County Circuit Court and an appeal to the Arkansas Supreme Court. For protection, he shortly helped them all move north to Chicago and St. Louis.

# The End

- Finally, a deal was struck on the Moore *et al* group. They would not plead guilty to any charge, but if Arkansas Governor McRae commuted their sentences to 12 years and promised that all of the Elaine prisoners would be released within 12 months, the Moore group would not pursue their freedom through a federal trial.
- Seven more men from Cummins were released in 1923 and the rest in 1924.
- Frank Moore, Ed Colman (83 years old) and the last four other prisoners were released on January 14, 1924 and immediately left for northern locations.
- Scipio Africanus Jones, 62 years before born a slave, had well-served his Elaine clients, the citizens of Arkansas and America.

# Turning Point

- *Moore*, unknown to most Americans is regularly cited as a “turning point” and precedent in American Law.
- *Powell v. Alabama* (1932), U.S. Supreme Court ruled that defendants in a capital case had a right to counsel.
- *Norris v. Alabama* (1935), the Court decreed that black defendants were denied due process if blacks were deliberately excluded from juries.
- *Mooney v. Holohan* (1935), the Court ruled the prosecution could not present testimony that it knew was false.
- *Brown v. Mississippi* (1936), the Court declared that confessions obtained through torture were void.
- *Palko v. Connecticut* (1937), the Court officially adopted a “fairness” standard: “fundamental principles of liberty and justice”.

# 14<sup>th</sup> Amendment Rights

- *Mapp v. Ohio* (1961) 4<sup>th</sup> Amendment protection against unreasonable searches and seizures applies to the states.
- *Robinson v. California* (1962) incorporates 8<sup>th</sup> Amendment prohibition of cruel and unusual punishment.
- *Mallory v. Hogan* (1964) incorporates 5<sup>th</sup> Amendment right against self incrimination.
- Right to confront witnesses, right to an impartial jury, right to a speedy trial all followed.
- By 1969 the incorporation of the Bill of Rights into the 14<sup>th</sup> Amendment was basically completed.

# Habeas Corpus: Erosion

- In 1969 the Warren Court call the writ of habeas corpus “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state actions”.
- Antiterrorism and Effective Death Penalty Act (1996): State actions have to be “unreasonably wrong” versus plain wrong. Undid much of the *Moore* precedent.
- Military Commissions Act (2006) opens up the potential that habeas corpus is losing its place at the heart of our law. The machinations of justice in the Helena courthouse, at the end of the awful Red Summer of 1919, no longer seem quite so foreign.