

# Crime Non-Existent, Trial 'Sham,' Court Frees Negro After 26 Years

Special to THE NEW YORK TIMES.

CHICAGO, Aug. 10 — James Montgomery of Waukegan, Ill., a Negro who had served nearly twenty-six years of a life sentence for rape, was freed today after Judge Michael L. Igoe in Federal District Court called his trial "a sham" and said Mr. Montgomery was convicted because the state suppressed vital evidence. Mr. Montgomery is now 56 years old.

Upon his release from Stateville Penitentiary a representative of the prison gave him \$10, the amount given to all convicts upon their discharge.

The judge found as a fact, uncontroverted by the state, that threats of reprisal by the Ku Klux Klan were used to prevent Mr. Montgomery or his counsel from presenting any defense witnesses at the trial.

Mr. Montgomery was convicted in the Circuit Court of Lake County on Jan. 9, 1924, of raping Miss Mamie Snow, then 62, a Waukegan itinerant who made a living selling shoe laces from door to door, on

Nov. 15, 1923. Miss Snow later was committed to a mental institution, where she died.

Miss Snow was examined at the time by Dr. John E. Walter of Waukegan. He found she had not been raped. This finding was known to the then State's Attorney, A. V. Smith, now dead, but was suppressed.

Dr. Walter appeared before Judge Igoe at a hearing on a writ of habeas corpus filed in behalf of Mr. Montgomery on June 27. Judge Igoe at that time took the case under advisement.

In freeing Mr. Montgomery, Judge Igoe said that the trial procedure was dominated by the State's Attorney, that the State's Attorney threatened retaliation by the Ku Klux Klan if Mr. Montgomery or his counsel attempted any defense and that the issue at the trial was not the guilt or innocence of the accused, but racial subjugation.

He further found that the testimony of Miss Snow at the trial

Continued on Page 13, Column 2

# Trial 'Sham,' Negro Freed After 26 Years

Continued from Page 1

was false, and that although the State's Attorney knew it to be false he wrongfully used it to convict Mr. Montgomery.

At the time Miss Snow complained of being raped she picked Mr. Montgomery out of a group of negroes as her assailant, but was unable to identify him the following day.

When Mr. Montgomery sought his liberty on bond the Waukegan Chief of Police told him, Mr. Montgomery testified, "You know if you were in Georgia or Mississippi we would turn you over to the Ku Klux Klan. We are liable to do that now, because I am a member."

At the time Mr. Montgomery was arrested he was a property owner, married, a veteran of the World War, with no previous police record.

Mr. Montgomery's attorney said an effort would be made to have the legislature vote an appropriation to compensate Mr. Montgomery for his years in prison, although this could not be done immediately since the state was planning an appeal. The attorney said there was no way Mr. Montgomery could bring suit for damages for his wrongful detention.

Raymond F. Thiesse, assistant attorney general who appeared for the state in the habeas corpus hearing, said the state would appeal from Judge Igoe's ruling. He asked that Mr. Montgomery be held in \$5,000 bond, but Judge Igoe refused his request.

Commenting on the credibility of Miss Snow as a witness, Judge Igoe observed that "the testimony of such a witness in any field of litigation should be of little credence, yet without her testimony the case against Mr. Montgomery would have collapsed had the prosecuting attorney exercised the degree of impartiality and fairness which is sworn duty in the rendition of true justice."

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James Montgomery, right, with his attorney, Louis Kutner, in Chicago after being released yesterday.

Associated Press Wirephoto

those accused of crime. It was and is the prosecuting attorney's duty to assist in giving a fair trial to the defendant."

After noting that someone identified with the prosecution had suppressed material evidence which, if it had been brought to the attention of the jury or the trial judge must have resulted in an acquittal, Judge Igoe said:

"To condone the method of evidence in this case is to invite grave injustice. There is one way to stop a practice that has become altogether too common and that is to bring it to a conscious life where the public can scrutinize it and take such steps as are necessary

to insure a true rendition of justice to all, regardless of race, creed or color."

The court then found that Mr. Montgomery's conviction was a denial to him of the due process of law under the Fourteenth Amendment to the Constitution, and ordered him released.

With Mr. Montgomery in court were his wife, Sentoria, of Waukegan, who for more than a quarter of a century has continued to work for his vindication, and a sister, Mrs. Bessie W. Tilford of Chicago.

certain parts of the Middle West. Mr. Montgomery had apparently had a brush with an ambitious State's Attorney, involving a minor civil law suit, which he won. Not long afterward, he was arrested for rape, convicted and sentenced to life imprisonment.

An Illinois lawyer became interested in the case two years ago, and investigated it. Now, after a quarter-century behind the bars, Mr. Montgomery has been freed by a Federal District judge, who asserted that the State's Attorney (now dead) had deliberately concealed vital evidence, had offered evidence he knew to be false and had threatened the defendant with Klan retaliation if he presented any witnesses on his own behalf. In short, said the judge, the trial had been a "sham." Drawing the natural conclusion from this sordid story, the jurist held that it was not the guilt or innocence of the defendant that had been on trial in 1923, but the question of subjugation of the Negro race. It is worth remembering that all this took place far north of the Mason-Dixon Line.

The State of Illinois reportedly intends to appeal the ruling; but whatever the outcome, this truth will stand: "Society cannot suppress lawlessness by means of lawlessness in prosecution. Society cannot inspire respect for law by withholding the protection of law from those accused of crime." If Mr. Montgomery is ultimately and permanently vindicated, he still will have lost twenty-six years of his life to a perversion of justice induced by ignorance, prejudice, vindictiveness and fear.

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**AN ILLINOIS TRAGEDY**

The tragic case of James Montgomery may yet have a happy ending; but it is none the less a tragedy. Twenty-six years ago Mr. Montgomery was a 30-year-old veteran of the First World War, married, a property owner and law-abiding citizen of Waukegan, Ill. He was also a Negro; and in 1923 the Ku Klux Klan was running rampant in