

Rethinking the role of the courts in the lives of black Southerners

Article (Published Version)

Milewski, Melissa (2017) Rethinking the role of the courts in the lives of black Southerners. *The American Historian* (14). pp. 28-36. ISSN 2334-1394

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NOVEMBER 2017 | TAH.OAH.ORG

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One May morning in 1906 while Lurena Roebuck's husband was at work, a white saloon owner named John Leonard came to her house and offered to buy twenty acres of her land. While the title to the land in question was in dispute, Roebuck initially refused. "I told him...that I did not want to sell it," the Alabama woman said, "and he said that makes no difference he wanted to buy it." Eventually, though, Leonard pressured Roebuck into taking \$35 for what she believed was twenty acres. He

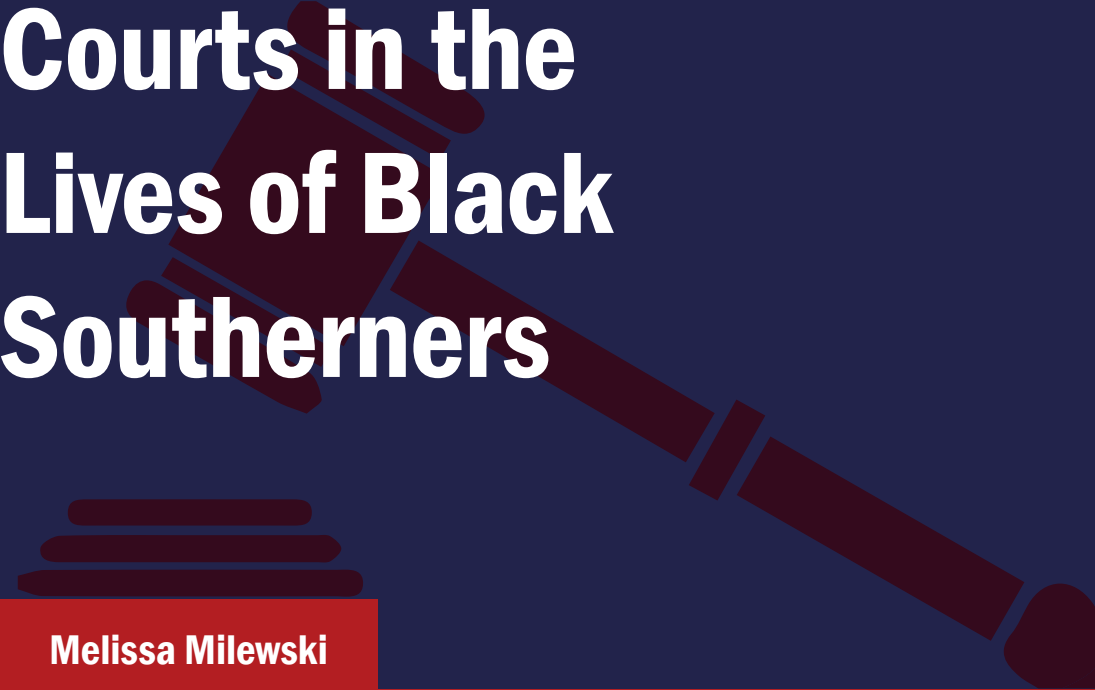
presented her with a legal document to sign, and unable to read well, she signed it.

Shortly afterwards, Roebuck discovered that the documents she had signed granted Leonard all eighty acres of her land, property she later testified was worth \$2,400. Upon learning this, Roebuck confronted Leonard at his saloon and offered him \$35 to return her land. If he refused, she told him, "I would try the law about it." In reply, Leonard told her "to tell [your] lawyer to pop his whip." "I told him all right," Roebuck



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Rethinking the Role of the Courts in the Lives of Black Southerners



Melissa Milewski

said, and “then I left.” Although she was a black woman in the Jim Crow South, Roebuck understood the law as a legitimate remedy to her problem. She had pursued civil action against whites before and could do so again.¹

For years, black southerners’ ability to vote has been a key framework around which southern history is viewed. Focusing largely on the vote, however, leads to a particular story in which black southerners gradually lose the vote after Reconstruction, only to take up the fight for the

vote again in the decades immediately before the civil rights movement. The focus shifts from institutional engagement during Reconstruction and its aftermath to resistance largely outside of white political institutions during the period of Jim Crow. For a large portion of this story, black men are the key actors.²

But if we widen our lens beyond voting rights and consider participation in government institutions—including participation in the courts—a different narrative emerges. Even



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when black southerners no longer could exercise the right to vote or act within other government institutions, some remained able to operate within their states' civil courts. In contrast to criminal cases, in which black litigants typically had little choice in whether to enter the courtroom, many black civil litigants initiated their cases, making the decision to bring their dispute before a white-dominated forum.³ Lurena Roebuck, for instance, brought a suit against the white saloon owner John Leonard, not the other way around. While these civil cases involving black litigants occurred during Reconstruction, they also continued to take place in the decades after Reconstruction, regularly coming before southern courts from 1865 to 1950. My research unearthed 1,377 civil cases with black litigants across eight southern state supreme courts between 1865 and 1950. While all of these cases eventually reached a southern state's highest court, the archival case files I found—which include detailed records of both the lower court trial and the appeal—tell stories of African Americans whose lives were much like other black southerners in the South at the time.⁴ In about a third of these cases, black southerners litigated cases against other African Americans; in the other two-thirds, the cases took place against whites.⁵ The litigants were black community members, former slaves and former masters, black tenants and white landowners, black and white neighbors, and shopkeepers and their customers.

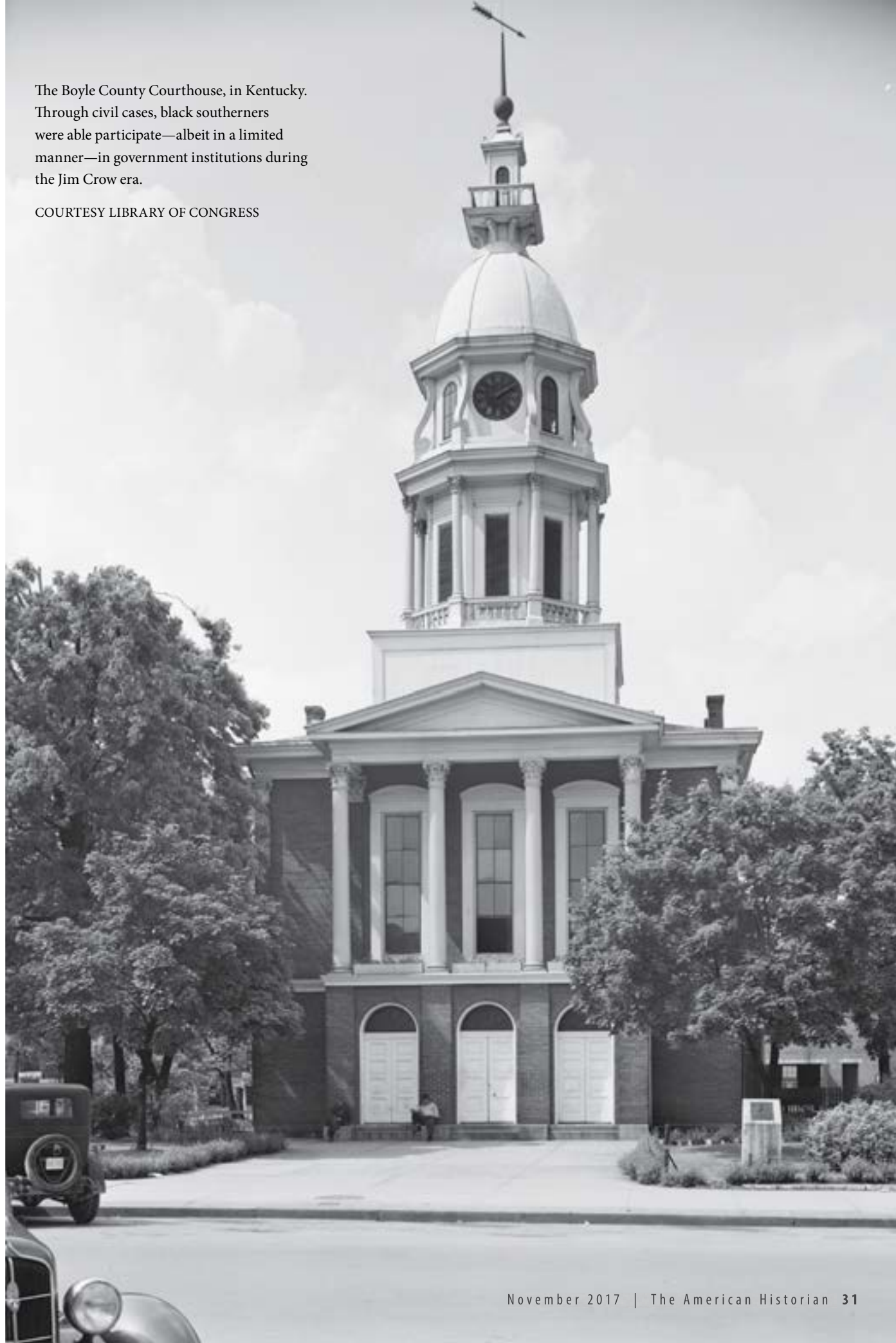
This framing of southern history looks

substantially different from histories focused on black voting rights. Unlike the narrative around voting rights in which political participation stops and starts, at no time did black southerners stop participating in the courts. Instead, their cases shifted as politics and society changed. And it was not just black men litigating these cases; black women such as Lurena Roebuck served as litigants in 41 percent of the civil cases between black and white litigants examined.⁶ Moreover, not only did black southerners successfully access a white institution, at times they gained exactly what they wanted from it. Even as black southerners' ability to vote sharply declined at the turn of the twentieth century and people of color experienced vast injustice in criminal cases, black southerners won the majority of these civil cases against whites across all eight state supreme courts throughout the period 1865 to 1950.⁷ These cases are clearly not representative of all the civil cases heard by lower courts throughout the South. They show, though, that some black southerners could litigate civil cases and even win. Moreover, in many of the lower court trials of these cases, black litigants also found success in their claims against whites.⁸ At the height of Jim Crow, Lurena Roebuck successfully pursued a case against John Leonard before the local county court and received a decision invalidating his claim to her land. When the white man appealed the lower court's decision, she defended her claim in the Supreme Court of Alabama and once again received a decision in her favor.⁹

But continued participation in the legal sphere had limits that political participation at the ballot box did not. Because of the barriers to bringing a legal claim, the number of black litigants able to participate in civil actions in southern courts was far less than the number of African Americans able to vote before disfranchisement set in. Moreover, while voting was relatively straight-forward (depending on the state and the time), a legal case required

The Boyle County Courthouse, in Kentucky. Through civil cases, black southerners were able participate—albeit in a limited manner—in government institutions during the Jim Crow era.

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white intermediaries, including white lawyers, white judges, white jury members and in many cases white witnesses. For these reasons, African Americans' civil cases were seen by whites as far less threatening than the black vote. While whites' general view of many civil cases as nonthreatening allowed them to continue, the role of whites in such cases and their limited numbers constrained these suits as well.

The story of African Americans' involvement in the civil courts between 1865 and 1950, then, is an account of how they negotiated a white-dominated institution under enormous constraints. For

one, the kind of case they brought mattered. Black litigants had particular success gaining access to the courts with the kinds of cases that whites viewed as nonthreatening or as supportive of white supremacy.

In civil cases between black and white


litigants, cases litigated by black individuals over matters relating solely to their own families were far more common than cases explicitly challenging racial inequality. The kinds of cases that African Americans were most able to litigate in appellate courts also changed over time, as society and their political power shifted. In the three and a half decades after the Civil War, many appellate civil cases between black and white litigants involved white men's bequests to their former slaves or employees. In a number of other cases, black litigants took on whites over economic disputes over contracts, transactions, and property. As African Americans became disfranchised and segregation

became increasingly standardized around the South at the end of the nineteenth century, however, the kinds of civil cases that black southerners were able to litigate against whites in their state's highest court narrowed. During the first two decades of the twentieth century, the vast majority of such cases were over fraud or personal injury and emphasized the ignorance, lack of business experience, or vulnerability of the black litigants. Then, beginning the 1920s as the political landscape of the United States began to change with the Great Migration, the kinds of civil cases black litigants were able to

litigate against whites in state supreme courts shifted once more, broadening and including more and more claims that sought justice for more than just individuals.¹⁰

Even if black litigants had the right kind of case for the time period, they generally had to work through the intermediary of a

white lawyer who had very different ideas and beliefs than their own. In appellate civil cases between white and black litigants in the eighty-five years after the Civil War, black litigants almost always had white lawyers representing them. In many cases, white lawyers were willing to take on black clients in civil matters when cases promised a large reward from a corporation or estate. In other suits over less lucrative items, white lawyers might still take on black clients because of personal connections with the black client, out of a sense of paternalism, out of a feeling of professionalism, or, in a few cases, because of their political preferences. Whatever their reasons, the vast majority of white lawyers



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were native southerners who had served in the war for the Confederacy and practiced law in the decades immediately after.¹¹ Using such lawyers enabled cases to move forward, but also limited the kinds of civil cases black southerners could litigate and the types of arguments that their lawyers would make.

The final sets of white gatekeepers were the white or almost-all white juries and largely white judges in trial courts, and the panels of (almost always) white appellate justices in appeals courts.¹² Having the right kind of case, strong legal claims, and a white lawyer helped in convincing these parties to decide in one's favor. In many civil cases between black and white litigants that reached state supreme courts, local whites also testified in black litigants' favor in the case's initial trial. But African American litigants played a part in convincing these juries and judges to decide in their favor as well.¹³ In the local trials of these cases, many black litigants recognized the interests of the people wielding power in this realm and framed their testimony to appeal to such parties. At various times, different strategies were more effective. Despite the vast social and economic differences across the South, African American legal strategies shifted across the South as a whole at different points in time.

In playing a part in getting whites on their side, African Americans often had little formal knowledge of the law or the courts. However, in the many decades following the Civil War, black southerners drew on a keen understanding of race relations. They had lived their lives negotiating the careful balance of race relations in the South and often understood what whites wanted to hear. Thus, in the aftermath of the Civil War, some litigants emphasized their loyalty to their former masters during the war. Likewise, at the turn of the century as whites sought to justify disfranchisement and segregation, a number of black litigants emphasized their own inability to read and their

lack of financial understanding. Lurena Roebuck characterized her reading and writing abilities as "not much" and told the court, "I have never had any experience in business affairs. I know nothing about land numbers. I do not know how many acres of land there are in quarter sections."¹⁴

Despite often having little legal training, in the nineteenth and early twentieth centuries African Americans also lived in communities that were saturated in the law. Courthouses often sat in the center of southern county seats with the rest of the town radiating out from it. There, in such courthouses, many members of communities gathered when court was in session to hear the day's cases, and then carried talk and gossip about the cases to the surrounding area.¹⁵ Living in such communities and often coached by their lawyers during the trial process, African Americans could sometimes draw on an understanding of relevant points of the law to shape their testimony and negotiation of the legal system.

Throughout this period, both black and white southerners also drew on their long histories together as they litigated cases against each other. In two-thirds of these cases during Reconstruction and about a third of cases in the two decades after Reconstruction, men and women who had been considered property or their children sued the very people who had owned them or their former owners' heirs.¹⁶ This shared past could be used by both sides to enhance their claims—by black litigants to gain white witnesses for their cases and to align their claims with powerful local whites, and by white litigants to damage the reputations of black litigants and turn white jurors and judges against them.

In the end, despite the many barriers African Americans faced in the legal system, when their civil cases against whites reached state supreme courts, the appellate courts examined ruled in African Americans' favor 59 percent of the time.

Often, in cases that received favorable decisions, black litigants and their lawyers managed to align their civil cases with whites' interests and the interests of white supremacy. At the very least, they generally made it appear that such a decision would not diminish white power in the South. In some cases, a decision for a black litigant upheld whites' ability to bequest their property to whom they desired; at other times, a decision in a black litigants' favor upheld precedents about property and contracts. In still other cases, such a decision spotlighted black inequality and vulnerability or worked to paper over the vast injustices occurring elsewhere around the South. The decision of the Supreme Court of Alabama in favor of Roebuck, for instance, highlighted her inequality with the man who had allegedly cheated her out of her land: "We have, then, an unlettered, ignorant woman, 22 years old, who owned 80 acres of land, who was sought out by a man experienced in affairs, and a real estate dealer."¹⁷ At a time when African American men had recently been disfranchised in Alabama, such a decision worked to uphold the ideas of white supremacy that enabled disfranchisement and segregation to occur even as it had economic benefits for Roebuck.

But when African Americans' cases directly confronted the interests of large numbers of whites in a substantial way, even when they appealed to rights such as property, in a number of cases they were unsuccessful. For instance, Mary Ray, a black woman in late-nineteenth-century North Carolina, brought a civil suit in 1889 against the local county commissioners, the most powerful white men in the county where she lived. Her suit pointed to a deed to her father to claim the land upon which the local courthouse and jail were located. If successful, her suit would have put the local courthouse and jail at risk and have raised taxes for whites in the community. In the end, even after she managed to remove her suit to another county, she met an uncommon number of barriers in her litigation,

and found her civil action unsuccessful at both the local and state levels.¹⁸ Similarly, civil cases that directly challenged racial discrimination were far less successful in southern state supreme courts than most civil cases, with African Americans winning only 36 percent of such cases examined between 1865 and 1950.¹⁹

So what are the implications of these civil cases? Limited as they were in proportion to the great injustice occurring alongside them in the South, their very existence provides important insights into African American history. Once again, their occurrence reimagines African Americans' ability to negotiate the institutions of Jim Crow. As constrained as these cases were, in these suits many black southerners successfully negotiated a white-dominated government institution at a time when other government institutions were largely shut to them. As mentioned at the outset, these cases also work to shift the time frame of black political participation in the South. In the courts, instead of this battle stopping and starting, it shifted strategically as society changed. African Americans' civil cases refigure as well our understandings of the relationship between legal rights and the ability to vote. African Americans were still able to operate within a white government institution even after black men were disfranchised. However, the loss of the vote reverberated throughout their civil actions, playing a part in shifting the substance and type of civil cases black litigants could play a part in.

These cases also help change our view of who was taking part in legal battles and what they were fighting for. Rather than being only the battleground of elite civil rights lawyers, these legal disputes involving black litigants took place at a grassroots level between ordinary black and white southerners over economic matters that arose out of their daily lives. Black women, as well as black men, contested contracts, wills, transactions, property, and injury claims. Primarily litigated by individuals

without support from any larger organizations, these cases also show the role of individuals in the struggle for economic and legal rights and the opportunities as well as the limitations of individual action. These cases play a part in understanding why African Americans repeatedly turned to the courts throughout the nineteenth and twentieth centuries to fight injustice despite experiencing discrimination in the criminal justice system and many unfavorable decisions in cases challenging racial inequality. They had found that even when other government institutions were shut to them, at times the nature of the court system allowed them to continue to challenge whites in particular ways.

Finally, these suits complicate our understanding of the courts and of white supremacy. As these cases show, southern courts defy simple characterization. They were not a force that solely oppressed African Americans, but the justice they sometimes provided came with severe limitations. Although African Americans were able to win a number of civil suits and make individual economic gains, they were often unable to win suits that would lead to larger change in society or would have an impact on large groups of whites. The cases black litigants won also had to be mediated through a

series of white gatekeepers who influenced the cases and arguments that could be made. These suits add greater nuance to our understanding of the system of white supremacy in the post-war South. In addition to more explicit acts of violence and discrimination, court decisions for black litigants could also uphold white supremacy.

Today, too, U.S. courts continue to defy characterization in many ways, at times upholding the rights of immigrants and members of LGBTQ communities, while at the same time playing a part in the mass incarceration of millions of people of color and overturning parts of the 1965 Voting Rights Act in the 2013 case of *Shelby County v. Holder*. Additionally, while explicit displays of white supremacy are still taking place in the U.S., as the recent events in Charlottesville, Virginia, all too vividly demonstrated, many demonstrations of white supremacy—such as these court cases—are more subtle, but remain powerful, nonetheless. Grassroots political action has also continued—now through the Black Lives Matter movement and other groups—which, just as black litigants did in the decades before, has shifted strategies and tactics to combat the issues of its day. ■■■

ENDNOTES

1. Archival case file and court report of *Leonard v. Roebuck*, 152 Ala. 312 (1907). The archival case file of this suit is located in the Alabama Department of Archives and History, Montgomery, Alabama.
2. The author is grateful to Gregory Downs for his insights at the 2017 American Historical Association conference regarding framing her research in this way. A number of exceptions to this framing exist, including Glenda Elizabeth Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896–1920* (1996); Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880–1915* (2013); and Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (2016).
3. In the 980 civil cases between black and white litigants examined in eight state supreme courts between 1865 and 1950, black litigants had served as plaintiffs in the initial trial in 786 cases (80 percent of suits). The eight states in which cases were examined were: Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia.
4. While my search only found cases that eventually reached their state's highest court, I paid particular attention to the trial court record of these cases as well as the cases' appeals. For more see Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (2018), 4–9, 195–205.
5. Of the 1,377 civil cases I found in the state supreme courts of eight southern states, 980 cases took place between white

(ENDNOTES CONTINUED)

and black litigants and 397 cases took place between two or more black litigants.

6. Black women served as one of the litigants in 404 out of 980 civil cases between black and white litigants in the eight state supreme courts examined between 1865 and 1950. See Tables B.12 and B.13 in Milewski, *Litigating Across the Color Line*, 215–16.
7. Of the 980 appellate civil cases between black and white litigants examined, black litigants received a favorable decision from the state supreme court in 582 cases (59 percent of suits). See Tables B.18, B.19, B.20 and B.21 in Milewski, *Litigating Across the Color Line*, 221–24.
8. The lower court results are skewed by who chose to appeal to the appellate courts and how successful they were in appealing. However, of the lower court trials of cases that reached the eight state supreme courts examined, black litigants received a favorable decision in the initial trial in 552 cases (56 percent of suits), an unfavorable decision in 388 cases (40 percent of suits), and a split or unclear decision in the remaining suits. See Table B.16 in Milewski, *Litigating Across the Color Line*, 219.
9. *Leonard v. Roebuck*, 152 Ala. 312 (1907).
10. See Table B.6 in Milewski, *Litigating Across the Color Line*, 212.
11. Milewski, *Litigating Across the Color Line*, 57–60. For an example of a white lawyer discussing white attorneys taking on black clients, see John C. Reed, *Conduct of Lawsuits: Out Of and In Court* (1885), 66–67.
12. My analysis of black jury service is based on a study by Gilbert Thomas Stephenson. In 1900, Stephenson wrote to the court clerk in all the counties in North Carolina that had majority-black populations to inquire about black jury service. Of the sixty-five North Carolina court clerks that replied, twenty reported that a very limited number of black men still served on their juries. All of these twenty also reported, though, that jury service by black men had decreased in their county in the past few years. See Gilbert Thomas Stephenson, *Race Distinctions in American Law* (1910), 258–72. For more on the backgrounds of southern judges, see Kermit L. Hall, “The ‘Route to Hell’ Retraced: The Impact of Popular Election on the Southern Appellate Judiciary, 1832–1920,” in *Ambivalent Legacy: A Legal History of the South*, ed. David J. Bodenhamer and James W. Ely Jr. (1984), 245–47.
13. Such litigants generally only testified in the local trial of the case, but the records of these local trials were used by the state supreme courts in making their decisions.
14. *Leonard v. Roebuck*, 152 Ala. 312 (1907).
15. See Nan Goodman, “Law in Popular Culture, 1790–1920,” in *The Cambridge History of Law in America, Volume II: The Long Nineteenth Century (1789–1920)*, ed. Michael Grossberg and Christopher Tomlins (2008), 387–94; and Edward T. Price, “The Central Courthouse Square in the American County Seat,” *Geographical Review*, 58 (Jan. 1968), 29–60.
16. Seventy-two out of 108 civil cases (67 percent of suits) in the eight appellate courts examined between 1865 and 1877 involved former slaves and their former masters or their former masters’ heirs. Thirty-six out of 104 such cases (35 percent of suits) between 1878 and 1899 involved former slaves and their former masters or their former masters’ heirs.
17. See note 7 and *Leonard v. Roebuck*, 152 Ala. 312 (1907).
18. See the archival case file and court report of *Ray v. Commissioners of Durham County*, 110 N.C. 169 (1892). The case file is located in The State Archives of North Carolina, Raleigh, North Carolina.
19. Additionally, my examination of criminal appellate cases involving black defendants in the Georgia and Alabama state supreme courts found black litigants won only 38 percent of their criminal appeals in these courts between 1865 and 1950. See Table B.25 in Milewski, *Litigating Across the Color Line*, 227.