# Reframing Black Southerners' experiences in the courts, 1865-1950

Article (Accepted Version)

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**Abstract:**

In civil cases that took place in southern courts from the end of the Civil War to the mid-twentieth century, black men and women frequently chose to bring litigation and then negotiated the white-dominated legal system to shape their cases and assert rights. In some ways, these civil cases were diametrically opposite from the criminal cases of black defendants who did not choose to enter a courtroom and often received unequal justice. However, this article draws on almost 2,000 cases with black litigants in eight state supreme courts across the South between 1865 to 1950 to argue that in both civil and criminal cases African Americans were at times shaping their cases and fighting for their rights, as well as obtaining decisions that aligned with the interests of white elites. Southern state courts during the era of Jim Crow were thus spaces for negotiating for rights and sites of white domination, in both criminal and civil cases.

Reframing Black Southerners' Experiences in the Courts, 1865-1950

In 1906, two county courts in Georgia met to hear a case involving an African American litigant. In the first case, a white farmer's wife named Georgia Hembree accused a black man named Will Johnson of raping her between 6:00 a.m. and 7:00 a.m. on the morning of August 15, 1906. Johnson did not match the physical description Hembree had given to a reporter immediately after the crime – she had told the reporter the rapist was "heavyset" while Johnson was described as "slender." But now, three months later, Hembree had identified Johnson as the rapist and Johnson was unable to produce a strong alibi. He said only that he was sick that day and had stayed home from work. His lawyers, assigned the case only a few days earlier, did little to refute the charge. After a brief trial, the jury convicted Johnson of the crime and sentenced him to hang. Then, the case took on a new twist. The white foreman at Johnson's employer, a concrete company, discovered a time-book that showed Johnson had worked from 7:00 a.m. to 5:00 p.m. on August 15. He and a white sub-foreman submitted affidavits testifying that Johnson had been at work the morning of the alleged rape. The sub-foreman noted, too, that the Atlanta-based concrete company was at least a forty-minute walk from the site of the crime. Yet within the one-hour window that Hembree had placed the crime, she had said the rape occurred "nearer seven" o'clock. On the basis of the new evidence, Johnson's lawyers applied for a new trial. When the local court denied their request, they appealed to the Supreme Court of Georgia. The state's highest court, though, affirmed the lower court's conviction of Johnson. Because Hembree may have been referring to "sun time" and the foreman to "railroad time" they explained that Johnson's alibi was still not "perfect." In the end, Johnson was executed for a crime it would have been almost impossible for him to have committed.[1]

That same year, another case involving a black litigant came before a Georgia county court. Unlike Johnson's criminal case, this was a civil suit. Lou Bonds, an elderly black

woman, alleged that she had approached a white woman named Mrs. C.G. Brown for a loan of $406. Brown agreed to a one-year loan on the condition that Lou Bonds give her a "warranty deed" to her land – essentially using the elderly woman's land as security for the loan. Just before the loan came due, in the fall of 1904, Brown approached Lou Bonds and allegedly told her she could have an extra year to pay off her debt if she signed a document extending the loan. Bonds agreed and signed the document. Soon, though, she discovered that the new document had actually transferred all of her land – worth an estimated fifteen hundred dollars – to Brown. The two women then turned to the courts to contest the transaction. First the case was brought to a magistrate's court, which ruled against Lou Bonds. With the aid of two white lawyers, Bonds then brought a suit in 1906 before the local superior court. In an affidavit presented at the trial, Bonds framed the dispute to enhance her own legal claims and appeal to the white judge's understanding of race. To show her lack of understanding of the transaction, she described herself as "an ignorant negro woman, without education" who "had the utmost confidence in Mrs. Brown and signed the paper without any knowledge as to its contents." In fact, the court record noted, Bonds had some writing ability and may not have been as uneducated as she claimed. Bonds' case also leveraged the testimony of whites to strengthen her claims. During the trial, several local white men gave affidavits in support of Bonds, stating that her land was worth far more than $406. In the end, both the trial court and on appeal, the Georgia Supreme Court, ruled in favor of Lou Bonds and declared the transaction to have been usurious and void.[2] In this case, the black litigant obtained exactly what she sought from the southern justice system.

For many years, scholars have been all too aware of the obstacles that African Americans like Will Johnson faced in criminal cases in the post-Civil War South, documenting a host of factors – former slaveholders' desire to maintain power, state and local

officials' quest for profits, and white southerners' fear and racism – that yielded a criminal justice system that handed down vastly different justice for people of color and incarcerated millions of black southerners.[3] At the same time, the civil cases that African Americans like Lou Bonds litigated in the same courts have largely escaped scholars' attention.[4] Yet in civil cases that took place in southern courts from the end of the Civil War to the mid-twentieth century, a number of individual black men and women chose to bring litigation before a southern court, hired white lawyers, and then negotiated the white-dominated legal system to shape their own cases and assert rights. More often than not, in the cases examined, black litigants won their appellate civil suits against whites.[5] In some ways these civil cases were diametrically opposite from the criminal cases of black defendants who did not choose to enter a courtroom, often had very limited legal representation, and received starkly unequal sentences. In other ways, African Americans' civil and criminal cases in southern courts were more similar than they initially seemed.

This article argues that examining civil and criminal cases together allows a fuller and more nuanced understanding of African Americans' experiences in the justice system in the postbellum South. If one only looks at criminal cases in southern courts, it can appear that the justice system was something African Americans could rarely negotiate and assert rights in. Only looking at civil cases, however, can minimize the brutality of the justice system and its role in upholding white supremacy. But looking at both criminal and civil cases together brings forward a more complicated picture. This was a justice system in which black litigants initiated civil cases as well as had criminal cases brought against them. It was a system where African Americans could negotiate the system in some cases for their own benefit and could assert their rights. At the same time, it was a system that worked to maintain white supremacy and ruined millions of lives.

Examining these civil and criminal cases in tandem also provides insights into particular kinds of cases. On one side, black southerners' civil suits help us better understand their criminal cases. In civil cases, the way that black litigants negotiated a white-dominated system to gain a favorable outcome is often clearly manifest. In criminal cases, black litigants' attempts to influence the cases' outcome are often subtler. But when one looks for it, black defendants were also at times working to shape their cases and assert their rights, even as they often had considerably greater barriers in doing so. Criminal cases shed light on civil cases during the same period, too. Looking at the depth of racism black litigants faced in criminal cases helps us to understand the proceedings and outcomes in African Americans' seemingly successful civil suits. In fact, the outcome of black southerners' civil suits – even when they won – often relied just as much on ideas of white supremacy as criminal cases.

Through an examination of the range of black southerners' litigation, then, this article contends that southern state and local courts during the era of Jim Crow were often both spaces for shaping cases and fighting for rights and sites of white domination, in criminal and civil cases alike. Black litigants could sometimes influence their suits and assert their rights in criminal cases in which they were on trial for their lives as well as in civil cases over property and test cases over equal rights. Concurrently, black litigants experienced the power of white supremacy as they gained decisions in their favor in civil suits as well as upon receiving vastly unjust sentences in criminal cases. A decision in an individual black person's favor could reinforce whites' property rights, strengthen racial hierarchies, and protect whites from hazards in their communities just as a decision against a black litigant could reinforce white economic, social, and political power. This duality within the courtroom took place in everyday cases involving individual black men and women, as well as in high profile suits initiated or supported by racial justice organizations.

Increasingly, other scholars have also shown the courts to be both sites of oppression and crucial spaces in the struggle over rights. However, not all courts have been viewed equally as spaces where this duality could occur. Certain courts, at particular times in history, are more frequently portrayed as providing spaces for contesting inequality. In particular, scholars have given particular consideration to the struggle for African American rights in local and federal courts in the antebellum era, the period of Reconstruction, and the long Civil Rights era.[6] This article demonstrates that both of these processes occurred even in courts seen as particularly oppressive such as southern state courts under Jim Crow. I argue, too, that instead of stopping and starting, black southerners' contestations of rights and negotiations of a white-dominated legal system, as well as the impact of white supremacy within the courtroom, occurred throughout the period from 1865 to 1950, continuing through the height of Jim Crow.

**SOURCES USED**

To analyze African Americans' experiences in different kinds of cases in southern courts, this article draws on my examination of almost two thousand cases in eight state supreme courts across the South from 1865 to 1950. To find these cases, I began by conducting keyword searches in southern state supreme court records on the legal database LexisNexis to identify civil and criminal cases involving African American litigants between 1865 and 1950. As my keyword terms related to race or captivity, the thousands of case reports generated identified African Americans by racial categorization or as former slaves. I then went to archives in the eight southern states to examine archival case files containing the trial and appellate records for the suits. In all, I located 1,377 civil cases involving African American litigants between 1865 and 1950 in the state supreme courts of eight states: Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia. About two-thirds of these civil cases took place between black and white litigants;

about a third took place between black litigants.[7] I also searched for criminal appeals cases involving African American appellants in the highest courts of Georgia and Alabama across the period of 1865 to 1950 and found 561 criminal cases. In Georgia and Alabama, these civil and criminal cases with black litigants made up 1.1 percent of the overall case load of the two state supreme courts.[8]

My research used both quantitative and qualitative study of these civil and criminal cases to better understand African Americans' range of experiences in the southern legal system. I paid particular attention to the archival case files, the vast majority of which have survived and are available in state archives. Frequently, the case files of suits that reached southern appellate courts are one to two hundred pages long and include the full lower court proceedings, including the trial testimony, lower court petitions, and the lower court decision, as well as the appeals to the higher court and the higher court opinion. Despite the value of these case files as historical sources, the archival records of many civil suits – and some criminal suits – have gone largely unnoticed by scholars for generations.[9] As I read through the case files, I entered quantitative factors in a spreadsheet while also analyzing details of the trials, including taking note of the trial testimony, the language of the appeals, litigants' and lawyers' strategies, barriers the cases encountered, and reasons given for the outcome in the decisions. My research was shaped as well by my original research focus on black litigants' civil cases. After I then took an in-depth look at the criminal case files, I began to notice links and similarities between these two kinds of cases that initially seemed so different.

This research has significant limits. These cases eventually reached states' highest courts and are not representative of all of the cases that came before southern trial courts. Untold numbers of other civil disputes and criminal proceedings never reached trial or were never appealed. However, analyzing suits in this way allows a systematic examination of

cases involving black litigants and provides a broader and longer view of their litigation than would otherwise be possible. In addition, the extensive and well-preserved trial records within these case files allow in-depth analysis in a way that county records often do not. Moreover, these suits are often more representative of black southerners' litigation than they might seem. Although cases that made it to appellate courts often had particularly strong claims and at times litigants had greater resources than their peers, the litigants in these civil and criminal cases were drawn from a wide swath of the black population in the South. Particularly in the decades after the Civil War, many litigants had little education and a sizable number were former slaves.[10] Throughout much of this time, as well, state supreme courts accepted many of the cases appealed to them, although this varied by state and changed over time. (Kagan et al. 1977, 128-32; Milewski 2018, 6-7, note 18 on p.237). Finally, because these suits seem to be a significant portion of the appellate cases litigated by black southerners in the states in question, they give important insights into how black litigants interacted with the highest courts of law in southern states and how such courts made decisions in suits involving African Americans.

## DIVERGENCES IN BLACK SOUTHERNERS' CRIMINAL AND CIVIL CASES

To some African Americans in the post-war South, the judicial system was not undifferentiated. Instead, these observers recognized differences across individual cases and courtrooms, including variations between black southerners' experiences in civil and criminal cases. In particular, while commentators frequently observed that they were at a disadvantage in both types of cases, some noted that the disadvantage seemed greater in criminal cases, particularly when such cases involved crimes against whites. Wilford H. Smith, an extraordinary black lawyer who argued multiple cases over racial discrimination before the US Supreme Court, wrote at the turn of the century: "With the population of the South distinctly divided into two classes, not the rich and poor, not the educated and ignorant, not

the moral and immoral, but simply whites and blacks, all negroes being generally regarded as inferior and not entitled to the same rights as any white person, it is bound to be a difficult matter to obtain fair and just results, when there is any sort of conflict between the races. The negro realizes this, and knows that he is at an immense disadvantage when he is forced to litigate with a white man in civil matters, and much more so when he is charged with a crime by a white person" (Smith 1903, 144). Black-operated newspapers also occasionally noted distinctions between civil and criminal litigation. An article in *The Savannah Tribune*, for instance, implied that whites' decisions to initiate criminal rather than civil cases against African Americans in contract disputes played a part in migration out of a state.[11]

Black southerners' actions provide additional evidence of a perceived difference between civil and criminal cases. In several instances in the cases examined, black men and women turned to civil litigation in a dispute, while the whites in the dispute turned to criminal cases to gain their ends. For example, when an African American tenant farmer in North Carolina named Jesse Jackson disagreed with the white landowner about the crops he was owed, the black tenant initiated a civil suit. In response, the white landowner initiated criminal action against Jackson for "larceny of cotton seed," leading Jackson to be imprisoned in an insane asylum two times over the space of two and a half years. Despite these experiences with criminal justice, Jackson maintained some faith in civil action, initiating a civil case in 1939 against his former landlord to recover damages for "false imprisonment."[12] In other instances, suits that involved potentially criminal actions against African Americans were brought by black litigants against whites in civil courts.[13]

Indeed, as these black southerners observed, there were significant differences in black litigants' experiences in civil and criminal cases in southern courts from the end of the Civil War to the mid-twentieth century. Many of these differences made it significantly easier for civil litigants to shape and win their cases than black defendants. First, in civil

cases that took place in southern courts during this period, individual black men and women frequently chose to initiate the litigation. In civil cases between black and white southerners that reached eight southern states' highest courts between 1865 and 1950, African Americans had served as plaintiffs in the lower court trial in 790 out of 980 such cases (eighty-one percent of suits). While these statistics are not representative of all local trials and depend in part on whether plaintiffs and defendants appealed cases, they show that black litigants initiated a significant number of civil suits. The fact that black litigants were initiating civil cases gave them a measure of control over the process and allowed more deliberate planning.

In contrast, in criminal cases in the U.S. South during this period, black defendants almost never chose to enter the justice system. In disputes, too, black southerners turned to the criminal courts much less often.[14] Very occasionally, though, they appealed to criminal law just as they turned to civil law. In 1899, Rachael Nobles, a sixty-five-year-old black landowner, discovered five white men illegally cutting timber on her North Carolina land. Boldly, she approached them and "forbid them from cutting on her woodland & carrying off her timber & ordered them to desist & go away." In response, she was met with jeers and a shout that "she had no land." She replied that she would have warrants for the men's arrest "before sun went down." Indeed, later that day an officer arrested the men and they were soon after convicted of "forcible trespass."[15] Such cases remained the exception; far more often, African Americans had criminal cases forced upon them.

There were significant differences as well regarding who took part in civil and criminal cases that reached appeals courts, and how often these cases occurred. Civil litigants at times had more resources than black defendants and seem to have been more likely to be land owners. In addition, black women appeared in far more southern appellate civil suits than appellate criminal cases. Black women served as one of the litigants in forty-one percent of civil suits between black and white southerners in the eight appellate courts examined. At a

time when white men dominated the legal system, many of these black women consciously chose to bring their civil disputes into the southern court system and demonstrated considerable legal acumen during trials. In contrast, African American women made up only five percent of black litigants in criminal appeals cases in Georgia and Alabama.[16] Additionally, throughout almost a century after the Civil War, black litigants in Georgia and Alabama were twice as likely to enter the appellate judicial system as parties in criminal suits than as litigants in civil suits against another southerner. By comparison, throughout the US, civil cases made up the vast majority of state supreme court case volumes.[17]

Black litigants' quality of representation could also vary considerably, depending in part on their resources and whether it was a civil or criminal case. In both kinds of cases, African Americans had to work within a justice system dominated by white attorneys. Only a very small number of lawyers in postbellum southern states were African American. In 1900, in the eight states examined, fewer than two percent of the lawyers were African American (Smith 1993, 624-25). But in civil cases, it was often easier to gain white lawyers' support. For one, civil cases generally appeared less threatening to whites than criminal cases. At times, African Americans' civil cases seemed to support whites' own interests or white supremacy itself. Cases over bequests left to African Americans by former masters, for instance, were just as much over white men's right to leave their property to who they wished, as they were about the former slaves' right to receive it. In addition, some of black litigants' civil cases could prove very lucrative to white lawyers that took them on. Increasingly, from the mid-nineteenth century on, American lawyers operated on contingency fees, ranging from five to fifty percent of the overall reward if their client won the case (Karsten 1998), 231-260; Leubsdorf 1984, 9-36). A number of the civil cases litigated by African Americans in state supreme courts could yield a large reward from a corporation or estate, and thus a significant fee for the lawyers. Lou Bonds' case was over a piece of land

valued at fifteen hundred dollars and her lawyer's fees were likely at least ten percent of that.[18] Motivated in large part by such financial rewards, in the years following the Civil War white lawyers throughout the South often represented black litigants in civil cases. These lawyers often included leading whites in the community, who had held or would go on to hold positions of power in southern legislatures and courts. Frequently, they represented black litigants well in cases that reached appeals courts, putting significant effort and time into their cases.[19]

In criminal cases, in contrast, white lawyers stood to lose far more and gain far less. Representing an African American litigant in a controversial murder or rape case could have detrimental effects on a white lawyer's career or even lead to violence. Probably because white lawyers did not always want these cases, when African American lawyers represented black clients in the South it often was in criminal trials in lower courts (McMillen 1989, 215-17; Lofgren 1987, 30-31; Smith 1993, 271-368). In general, though, black litigants had to deal with white lawyers in criminal cases as well. At times, they hired such lawyers themselves. In the majority of cases that went on to appeals courts, though, they seem to have been represented by court-appointed counsel in their trial, with varying abilities and willingness to represent their clients well. Often, they did not have the funds for any other lawyers; occasionally, they were not given the chance to hire a lawyer of their own. In part because of white lawyers' lack of time or stomach for such cases, in many instances, criminal charges were plea-bargained before reaching trial.[20] Black defendants' limited legal representation, therefore, had serious – and sometimes fatal – implications for their cases.

Similarly, the timing of these two types of cases made it easier for black civil litigants to successfully appeal to white judges' and jury members' sympathies and support their legal claims. In civil cases, black litigants often had months to work with their lawyers to develop legal strategies to prepare for the trial. The lawyers' preparations in Lou Bonds' suit were

already in motion in December 1905, four months before the case was heard by the county court in March 1906.[21] In contrast, in criminal cases, black defendants had far less time to work with their lawyers to develop their case. Even when they received conscientious court-appointed lawyers, black defendants often had only a few minutes with their attorneys shortly before the trial.[22] At other times, African Americans were not even aware of the charge against them until they entered the courtroom.[23] Will Johnson's white lawyers had more time than many black litigants' lawyers to meet the defendant and develop the case. They submitted an affidavit on the appeal that they had been "appointed by the court on a Monday to defend the defendant, and after consulting with defendant on that day" worked on the case until Thursday and then brought the case to trial on a Friday. Even if they did work as much as they claimed, though, these several days on the case were not enough to yield the alibi for Johnson that came out in the appeal.[24]

Moreover, in both kinds of suits African Americans had to work within whites' preconceptions. Yet in civil suits African Americans at times could make whites' stereotyping – including tropes like the "loyal slave" – work in their favor. In contrast, criminalized images of African Americans that influenced criminal cases almost never helped black defendants' suits. Ideas of African Americans as dangerous and naturally inclined to crime were a longstanding notion that stretched back to the pre-emancipation South (Oshinsky 1996, 32; Haley 2016, 36-38; Ayers 1992, 153-158; Kendi 2016, 1-358). The criminalization of African Americans was given even greater impetus at the end of the nineteenth century when white southern Democrats declared there to be an epidemic of black men raping white women to push disfranchisement through (Dailey 2009, xxii-xxiv; Hodes 1997, 176-208). As a result of these ideas, actions that may have seemed unthreatening if done by whites took on a menacing tone to white southerners when they involved African Americans. In one case, a white fifteen-year-old girl reported that when she saw a black

teenager coming toward her while she was outside alone, "I got up and started running."[25] Moreover, skin color alone could be the primary identifying factor when looking for perpetrators of crimes (A South Carolinian 1877, 474; Oshinsky 1996, 33-34; Ayers 1984, 176-77). Georgia Hembree seems to have identified Will Johnson as the rapist largely based on the color of his skin as the other identifying characteristics she mentioned to a reporter on the day of the alleged rape – short height, a "thickset" figure, and a mustache – did not apply to him.[26] With such preconceptions coloring the minds of many whites involved in criminal cases, there was often only so much black defendants could do to shape their suits.

## BLACK LITIGANTS' ABILITY TO SHAPE CIVIL AND CRIMINAL CASES

Yet despite the structural differences between these two types of suits, black civil litigants and black defendants in criminal cases both at times shaped their cases and negotiated the southern legal system to obtain specific outcomes. Undoubtedly, black civil litigants often had more opportunities to influence their cases than African American defendants. As discussed above, black civil litigants had often chosen their own lawyers and remained in conversation with their lawyers throughout the litigation. Knowledge could move both ways in such discussions, as lawyers' legal claims were influenced by litigants and litigants learned about aspects of the law from their attorneys. In civil cases, black litigants also often had the opportunity to testify. As they testified, many black civil litigants shaped their words based on their understandings of southern race relations to appeal to white jury members' and judges' sympathies and interests. At times, black litigants' testimony also drew on their knowledge of the legal claims of the case and sought to back up the legal claims made by their lawyers (Milewski 2018, 66-68). In contrast, a prohibition existed in Georgia against defendant testimony throughout this period and even in Alabama, defendants generally were not questioned in the trials examined from the end of the Civil War to the mid-twentieth century. However, in many cases in these states the defendant was given the opportunity to

give an unsworn statement to the jury during the trial.[27] During criminal appeals, black litigants also at times submitted affidavits and worked with lawyers to shape their defense.

The greater ability that black civil litigants had to shape their suits can be seen in the ways they framed their cases to appeal to whites in varying ways. In many civil cases, black litigants' testimony drew on both legal knowledge and their understanding of race relations in their communities to reinforce their cases. Their exact strategies varied during different periods of southern history. During the three-and-a-half decades after the Civil War, a sizeable number of these cases revolved around wills in which former masters and other whites had left black litigants bequests; other suits involved disputes over contracts, transactions and property dealings.[28] In such suits, black litigants sometimes took advantage of continuing ties with former masters and other local whites as they negotiated the legal system. At times, this involved procuring respected local whites to testify in their favor. In one 1871 case, a formerly enslaved man named John Anderson brought a suit against his former master's executor to gain funds left to him in a will to pay for his education in the North. During the trial, four local white men testified in his favor and supported his claim to the funds. One white witness, who seemed to have been acquainted with the black litigant before the war, reinforced the former master's intention to leave funds for Anderson, stating: "Saw decedent often just before his death + heard him say often he had made provisions for John in his will."[29] Occasionally former slaves emphasized their loyalty and obedience to their former masters and mistresses in their testimony, reinforcing similar arguments in their lawyers' petitions. In an 1881 Kentucky case over a former slaveholder's bequest, the elderly black litigant, Minta Simmons, testified that she remained with her former master "from the time she was freed to his death and performed her duties faithfully."[30] In a number of instances, black litigants also sought to support their lawyers' legal arguments in their testimony. In one 1877 Alabama suit, a formerly enslaved litigant named Mary Gracie and

her lawyer sought to prove that a piece of property had been bought with her own money rather than by her former master. During the trial, Gracie listed off a series of payments she had made: "I paid Steve Bowles one Hundred + ninety dollars for putting the fence around the lot. I paid said Stevens + Bowles Twenty five dollars for a cross fence … I gave Mr Semple one hundred ninety or Two hundred Dollars to pay Mr Noland for building the house."[31] These details reinforced her lawyer's claims that she had personally paid the money for the property and the home. Through statements and connections such as this, black litigants in the three and a half decades after the Civil War worked to put the force of the law behind their own claims, and – together with their legal counsel – crafted their images in ways whites might find most palatable.

When disfranchisement and segregation were enacted in an organized manner around the South at the end of the nineteenth century, black civil litigants adapted and narrowed their suits to fit the new context. In the first two decades of the twentieth century, the majority of appellate civil cases between black and white southerners involved instances of fraud or personal injury.[32] In such cases, black litigants continued to draw on both their knowledge of the law and of southern race relations. In her 1906 fraud suit, Lou Bonds showed an understanding of a key to her lawyers' legal arguments – that nothing had been given to her in exchange for the land that the white woman claimed. Bonds noted in her affidavit that "there was no additional consideration paid her in any manner nor was anything whatever mentioned about such a thing." At other times, black litigants' testimony supported both their legal claims and appealed to whites' racial ideologies. In fraud cases, a legal claim of fraud was strengthened if one party had significantly greater understanding of the transaction than the other and if the deceived party had trusted the defrauder. As a result, black litigants' cases that reached southern appeals courts often presented the black men and women litigating the cases as ignorant and vulnerable and as having trusted the whites involved.

Their generally white lawyers played an important part in this presentation, but black litigants portrayed themselves in this way in their testimony as well. Lou Bonds, if one remembers, had described herself in an affidavit as "an ignorant negro woman without education" who implicitly trusted the white Mrs. Brown.[33] Other black litigants in fraud cases in the South during this time generally presented themselves in similar ways. In addition to strengthening their legal claims, by presenting themselves as unequal and dependent and asking for white aid, black civil litigants appealed to white judges' and juries' idealized memories of the Old South and beliefs of racial superiority (McElya 2007; Blight 2001; McLaughlin 2004, 285-309).

Then, between 1921 and 1950, as developments such as World War I and II and the Great Migration influenced southern society, the types of cases and the ways that African Americans presented themselves in civil cases litigated in southern courts broadened. While slightly over half of the civil cases examined between black and white southerners still involved fraud and personal injury, black litigants increasingly also litigated cases against whites over property, transactions, insurance, racial justice, and bequests.[34] Moreover, when black litigants in civil cases during this period backed up their lawyers' legal arguments, it was increasingly by asserting their rights under the law. Recall the 1939 case in which an African American tenant farmer in North Carolina named Jesse Jackson disagreed with his white landowner about the crop he was owed and the white landowner instigated Jackson's imprisonment in an insane asylum. When Jackson initiated a civil case against his former landlord after the ordeal, he asserted his right to not be falsely imprisoned through his very act of litigation. In addition, his testimony asserted how his rights had been violated. He described in detail to the court how he had been confined in the state mental hospital on two occasions, and "remained in confinement this last time six months and twenty-one days." His case noted as well that he was discharged from the hospital each time as sane and as a result

of the confinement had lost his position as a pastor. Other civil cases during this time, including cases over seemingly prosaic issues of injury and property, also increasingly asserted black litigants' rights.[35]

In contrast, the strategies used by black criminal litigants to defend themselves in court between 1865 and 1950 were generally less developed than the tactics in many African Americans' civil cases. Due in part to criminal defendants' more limited legal representation and the shorter time to prepare for trial, there is less change over time in how black litigants negotiated the legal system in criminal cases and less conscious shaping of their images for the courtroom. Indeed, with only limited time to prepare, Johnson's efforts to defend himself in the trial are less sophisticated than the strategies in many civil cases. Johnson's statement to the jury is brief and straightforward, stating only that he did not know "anything at all" about the crime and had been at home with an injured back on the day of the alleged rape.[36]

Even in criminal cases, though, black litigants and their lawyers sometimes utilized some of the same courtroom strategies as black civil litigants. This occurred during their trials, as well as in appeals. To begin, like civil cases, some black criminal litigants' suits sought to negotiate the racial ideologies of white jury members and white judges. One key strategy to appeal to white decisionmakers was to procure whites to testify in the black litigant's favor. In many cases, the litigants' lawyers appear to have obtained these witnesses on their own, but in some instances the litigants or their black allies seem to have played a part (Dorr 2004, 177-78; 191-96). In his appeal, Johnson, for instance, relied on the power of multiple white witnesses to back up his claims. In affidavits, both the white foreman and white sub-foreman at the concrete company corroborated that he had been at work on August 15 and eight other white men provided affidavits about the good character of the foreman. While a crucial asset to a black criminal litigant's case, this testimony could reinforce the white witnesses' own power or support their own interests.[37]

As in civil cases, black criminal litigants also occasionally asserted their ties with local whites and even their loyalty to them. Upon being accused of killing his employer's white wife, Arthur Burgess stated to the court that his employer "seemed to be a good friend of mine and so was his wife. Anything he wanted me to do I would do it." Although it had no relevance to his alleged crime, another black litigant, Pris Marshall, similarly noted in his statement that he was "raised up with my masters children + went to war with them."[38] Such statements reinforcing criminal litigants' links with local whites were carefully calibrated to appeal to the sympathies and racial attitudes of white jury members and judges.

In other criminal cases, black litigants sought to shape their image before the court in ways that might be beneficial to their case's outcome. Occasionally, African Americans accused of crimes defended themselves by emphasizing their ignorance or lack of knowledge about the legal process. Black defendant Wash Palmore stated, "At the time I was in the sheriff's office in Dothan when you (Mr. Baxley) was present along with others, I didn't know what 'voluntary' meant. I didn't know what 'freely' meant. I did not know what 'own accord' meant."[39] Additionally, black criminal litigants at times tried to present themselves as "good" African Americans. One defendant stated multiple times in his defense statement that he "had always behaved myself."[40]

Other criminal litigants showed a sense of the necessary legal arguments they and their lawyers needed to make to be found innocent of a crime or to overturn a sentence. Like civil litigants, they may have been coached by their lawyers or may have had some knowledge of the law from previous experiences. In a lengthy statement to the jury in an 1889 trial, defendant John Croom challenged his indictment for assault "with malice aforethought" by attempting to show that he had shot in the moment out of fear of his life. First, Croom emphasized his knowledge of the deceased's previous violence against local African Americans. According to Croom's statement, when Mr. Hawkins came to arrest him

"I was afraid he would kill me because I had heard of his killing these people at Hills Dale trying to arrest them." In describing the violence itself, Croom again emphasized the suddenness of the moment and his fear as the incident unfolded. When Hawkins "threw his gun up quick," Croom testified, "…I shot because I was afraid that I was going to be Killed." Through this framing of the event, Croom sought to strengthen his lawyer's case that he had shot in self-defense and the crime had not been premeditated. Similarly, Johnson worked to strengthen his lawyers' legal claims about why he had not offered a correct alibi in the trial. In his affidavit for the appeal, Johnson stated: "being innocent of the crime with which he is charged, he had no personal knowledge of the date upon which, or the time at which, the crime with which he is charged was actually committed…on account of the lapse of time, he had become confused and uncertain as to dates that long past."[41] As in civil cases involving fraud, this defense of ignorance worked to support the legal claims of Johnson's criminal appeal.

Most often, though, black criminal litigants focused on stating their innocence and their lack of knowledge about the crime. But in cases that would reach appellate courts, even such defenses frequently contained a level of detail that suggests the litigants were making a real effort to assert their innocence. In a typical statement, twenty-year-old Wilkin Curtis, who had been charged with robbery, noted that on the day of the alleged crime he had eaten his lunch at work "having brought my lunch with me from home that morning" and that after leaving his job "a few minutes after six o'clock" he "went into the house and helped my mother about the house for a few minutes and then had supper." With such exhaustive accounts, black litigants were often trying to do all they could to establish their alibis, and thus their innocence.[42]

In sum, the ability of black litigants to shape their criminal cases was significantly more limited than their ability to do so in civil cases. However, black litigants at times tried

to shape the legal process in criminal as well as civil cases by appealing to white racial attitudes, working to reinforce their suit's legal claims, or by providing a detailed explanation. Even in the most oppressive and limited of conditions, some black criminal and civil litigants negotiated the southern legal system to try to gain the best possible outcome.

**ASSERTING RIGHTS IN CIVIL AND CRIMINAL CASES**

Looking at criminal and civil cases side by side also reveals the way that both civil and criminal suits could be vehicles for black litigants to claim rights. In changing ways over the period from 1865 to 1950, civil cases claimed economic rights, legal rights, and property rights, and asserted the right to not experience violence. Throughout this period African Americans' criminal cases also sometimes claimed rights, including the right to due process and to not experience violence and discrimination from police and in the judicial system. Black litigants' civil and criminal cases also occasionally directly challenged racial discrimination itself. Civil and criminal cases explicitly orchestrated to test segregation and disfranchisement have received the lion's share of attention in this regard. In such cases, groups and organizations often carefully planned actions that would lead to civil or criminal cases that would test discrimination.[43] However, civil and criminal cases that involved only individuals and grew out of local disputes and ordinary crimes could also challenge racial discrimination.

While some of black litigants' civil cases did not specifically refer to rights, the act of bringing a civil case asserted their right to own property, inherit, and serve as litigants. Throughout the 85-year period examined, black litigants' civil suits referred to particular rights as they made their claims. In the wake of the Civil War, some litigants and their lawyers appealed to new citizenship rights. The petition of one group of former slaves in 1872 Mississippi claimed that recent acts of the state and federal governments and amendments to the US Constitution had freed them, made them citizens, and given them the

ability to inherit property.[44] In some cases, black southerners' suits appealed to economic rights, including their right to make contracts, conduct transactions, hold property, and transfer property on an equal basis with whites. When a landowner refused to allow him to sell his own share of a crop, tenant farmer W.H. Weems consulted a lawyer regarding his rights. In a later civil case against the landowner, Weems told the court that the lawyer had told him "you are out of debt and you have a perfect right to sell it" and therefore he had done so. Weems' testimony also appealed to the contract to enforce to his rights, stating: "I was to have half of the crop, that was the contract." At other times, black litigants mentioned their right to bring disputes to court. In a 1907 fraud case, Andrew Carpenter noted that when the white defendant refused to retract a deed, "I came on then to see if I could get any rights in court."[45]

In the 1920s, 1930s and 1940s, black litigants' civil cases also increasingly asserted their right to not experience violence. While white lawyers played a key part in such assertions, black litigants' decision to litigate and their testimony about violence served a central role in such claims. Some suits asserted black litigants' right to not experience violence in the workplace and to maintain their property without violence. In one case, a black sharecropper in Kentucky named Ed Lee Allen brought a civil suit for damages against a white landowner. Allen claimed that during a dispute over the sharecropper's tobacco crop, the white man had "grabbed the corn knife and struck at me."[46] Other civil cases in southern courts protested violence and intimidation against African Americans during economic dealings. Rosa Wilson and her husband brought a suit against the Singer sewing machine company and one of its agents, for instance, when the agent swore and physically assaulted her while attempting to collect a payment on a sewing machine.[47] Still other black litigants highlighted violence they had experienced as passengers on public transportation. Patrick Hairston, for one, brought a suit contending that he had been asleep in the colored waiting

room at a bus station when two white station employees poured gasoline on his feet and set them on fire.[48]

In civil cases, individual black litigants also challenged inequality in their own communities, often without backing from any larger organizations. Like other cases claiming rights, such cases became more common beginning in the 1920s, but occurred throughout the period from 1865 to 1950. Often the outcomes of these suits would have a personal or economic impact on the litigants involved, as well as other people of color in their communities. A number of these cases protested the discrepancies in funding for schools for black children in the Jim Crow South. In 1909, a black father and taxpayer named Robert Goins sued the tax collector of Jasper County, Mississippi. In his suit, Goins challenged the constitutionality of a tax that had been assessed on all citizens of the county but would only benefit the white high school. Such a tax, the suit claimed, violated the Fourteenth Amendment of the U.S. Constitution and "[abridged] the privileges…of the negro citizens of Jasper county."[49] Other racial justice civil suits challenged segregation ordinances and discriminatory practices that impacted their livelihoods. After losing all his seniority rights, one black railroad employee filed a suit in 1943 on behalf of "Negro locomotive firemen" alleging that the railroad and a white-only union had conspired to limit the employment of black firemen and firemen's "seniority rights." Several years later, in 1950, four black law school graduates brought suit, claiming that the Alabama Board of Bar Commissioners put additional barriers to their admission to the state bar.[50] These cases mattered personally and financially to the men and women litigating them but also held the power to bring greater equality for black Americans.

Occasionally, civil suits took on constitutional equality with the intention of reaching the U.S. Supreme Court and forcing change. In one such suit in 1942, William Boswell brought a case against the local Board of Registrars when they refused to register him to vote.

The petition boldly stated his rights, noting that the Board of Registers had "refused to register your petitioner" and asserting that "it has become the general, habitual and systematic practice of said Board of Registrars…to refuse to register Negro Residents of said Jefferson County…and to deprive them of their rights of sufferage soly on account of race, color and previous condition of servitude." This refusal, the petition continued, "is contrary to the provisions of the Constitution of the State of Alabama and violates the rights of your petitioner under the Constitution of the State of Alabama and under the Constitution of the United States and the 14th and 15th amendments thereto." Other civil suits involving constitutional equality protested segregation in parks and racial discrimination on public transportation.[51]

Some of the same assertions of rights found in civil cases – including claiming legal rights and the right to not experience violence – occasionally appeared in criminal cases during the same period. Frequently these claims came through criminal appeals, in which appellants and their lawyers often had more time and resources to make their cases, and revolved around receiving fair treatment in the southern justice system. In particular, a number of convicted African American men and women appealed discriminatory actions of the police and criminal courts that they believed had played an unjust role in their convictions. Like some civil cases, these cases at times appealed to specific rights set out in the U.S. Constitution.

The right to not experience violence in the justice system was a recurring theme in criminal appeals. A few criminal litigants highlighted the violence they experienced during their arrests in their statement during the trial or in affidavits included with the appeal. Robert Walker explained that when a sheriff searched him and found he had a gun, "the sheriff asked me to release the gun, and just as I got the gun out, he shot me, and his son hit me across the head."[52] A number of litigants claimed that their confessions had been given under duress,

including after threats of violence, deprivation of food and water, and extended violence. At times, such confessions were extorted by private citizens who then turned over the confessor to the police; at other times, such involuntary confessions were extracted by the police or jailors themselves. Black teenager Jeff Gaskin's appeal to Georgia's highest court asserted that after his arrest he was repeatedly and "brutally beaten kicked and bruised" by the police over a period of several days in an effort to obtain his confession. He was told that he "would be continually subjected to such brutal mistreatment and intimidation until he did…confess to said crime." Finally, after a month and a half in jail, the appeal stated, the petitioner "was so fearful for his life, health and safety" that he gave a formal confession to the crime of rape. No context to his confession was given during the trial and the jury voted to convict him. Similarly, Emma Canady, a black Georgia woman accused of killing her husband, stated in an affidavit in her appeal that she was driven by a group of police officers to the "old tin-top house" where "they doubled a wire and put it around my neck and chocked me." While the wire was around her neck, the sheriff questioned her about her husband's death and, she stated, "I don't know what I told them folks. I just told them anything to get rid of them." In describing her confession in this way, Canady went farther than her lawyer, who did not directly challenge the confession in the appeal.[53] Such statements about police brutality boldly challenged the violence endemic in the southern justice system. Further, by tying the violence to the litigants' confessions, these statements contested the validity of the southern legal system itself.

Other black appellants and their lawyers protested the lack of proper criminal procedure and due process in their trials. One appeal contested the outcome of a trial because the litigant had not been read his rights during the initial questioning.[54] Some black litigants and their lawyers also based their appeals on their inability to confer with a lawyer or their lack of adequate representation. In one such case in 1885, a black Georgia preacher named

Wesley Hicks was convicted of vagrancy and sentenced to twelve months of "hard labor." In response, he appealed, requesting a new trial. In the appeal, his lawyer stated that Hicks's counsel had only been appointed to represent him "at the moment" of the trial and so did not have time to contact his employers who could have testified that he had worked throughout the year. Likewise, another black litigant, Sam Jackson, brought an appeal claiming that he did not know he had been charged with rape until he entered the courtroom. According to his deposition for the appeal, Jackson was then asked if he had an attorney and when he replied no, the judge appointed two young lawyers to defend him. Then, he explained, "his counsel and he went into the grand jury room, that adjoins the court room, to confer about his case." However, he stated, "their conference lasted only two or three minutes, when bailiff called at the door and stated that the Judge said come on into the court room." Having such a short amount of time with his lawyers, Jackson said, did not allow "sufficient time to explain to his counsel his case, nor to tell his counsel what witnesses he would need in his trial…neither he nor this counsel had had time to prepare for trial."[55] By making these claims, black litigants challenged the way in which basic standards of criminal procedure were ignored during their arrests and trials. Despite their position enmeshed in the criminal justice system, the statements of these litigants claimed that legal rights should apply to them.

Criminal cases of individual litigants in southern courts at times also asserted the right to not experience racial discrimination in the criminal justice system (Dorr 2004, 181-82). Between 1865 and 1950, several cases that reached the state supreme courts of Georgia and Alabama protested racist comments made by prosecutors during the trial. One 1909 Alabama case objected to the prosecutor's remark to the jury disparaging the black witnesses: "You know the negro race—how they stick up to each other when accused of crime, and that they will always get up an alibi, prove it by perjured testimony of their own color, and get their accused companion clear if they can."[56] Additionally, several criminal appeals brought by

black litigants before these state supreme courts based their requests for new trials on their experiences of racial basis during their trial. In some cases, black appellants and their lawyers claimed that African Americans had been excluded from the juries that had indicted and convicted them. In one 1882 Georgia case, the appellant Harrison Wilson contested his conviction for killing a white man on the grounds of the racial composition of the jury. According to his legal challenge, "persons of color or African race" were systematically excluded from jury service in the county that the trial had taken place "because of their race & color," violating the 14th and 15th amendments of the U.S. Constitution.[57] While these cases generally focused their claims on contesting the circumstances of their clients' specific trial, by publicly highlighting the lack of black jury members in their counties or racist comments by prosecutors, black appellants' cases had potentially larger implications. In some cases, it forced local whites to defend their practices to courts. Thus, even when they were not orchestrated by organizations to test discriminatory laws, civil and criminal cases could assert rights for individual litigants as well as other African Americans.

**OUTCOMES OF BLACK LITIGANTS' CIVIL AND CRIMINAL CASES**

Even as black civil and criminal litigants worked to negotiate the southern legal system, decisions in both kinds of cases generally reinforced white economic, racial, and ideological interests, including the cause of white supremacy. On the surface, the outcomes in such suits seem significantly different. In the eight state supreme courts examined, black litigants won fifty-nine percent of their civil cases on appeal between 1865 and 1950. In contrast, in the criminal cases involving black appellants heard by the state supreme courts of Georgia and Alabama during that period, black litigants received favorable decisions from the appellate court in only thirty-eight percent of suits.[58] For certain kinds of crimes, the chance of obtaining a decision in their favor was even lower. The Alabama and Georgia Supreme Courts overturned only twenty-four percent of appeals cases in which the black

litigant had been convicted of raping a white woman, the type of suit which Will Johnson appealed.

In part, these statistics reflect the fact that higher courts were more likely to uphold lower courts' decisions than to overturn them, and black litigants had won far more of the initial trials of civil cases being appealed in the lower courts than the initial trials of criminal cases appealed.[59] Indeed, the overall rate of reversal by appellate courts in civil cases that took place between black and white litigants in the states examined (thirty-five percent) and in criminal cases with black defendants in the states examined (thirty-seven percent) is similar to the rate of reversal in appellate courts in the U.S. during this general period (38.5 percent).[60] The many differences in black litigants' civil and criminal cases discussed in this article played a part in the varying lower court and appellate court outcomes as well. Both kinds of trials also brought out different aspects of whites' ideas about race. Black defendants in criminal cases appeared dangerous to many white southerners while black civil litigants, like Lou Bonds, often seemed relatively harmless.

Importantly as well, convicting African Americans in criminal cases was seen by many whites as in their interest, while deciding against them in civil cases was at times in whites' interest, but at other times not in their interest. The southern system of criminal justice served multiple purposes that benefited whites. White southerners had long thought of African Americans as inclined toward crime, and they viewed criminal law as a key tool they had to control such tendencies. The criminal justice system also played an outsize role in regulating the southern labor market. Laws that criminalized leaving before completing a labor contract, for instance, allowed whites to control black southerners' labor. Furthermore, black convicts made enormous sums of money for southern states and local law enforcement, who hired their labor for profit. In addition, cases over black men allegedly raping white women helped to solidify white elites' political control by increasing whites' fear and

working to divide working class white and black southerners (Blackmon 2008, 51-154; Oshinsky 1996, 32, 40-84; Haley 2016, 58-118, 156-194; LeFlouria 2015; Hodes 1997, 176-208).

In contrast, many of the civil cases that black litigants were successful in appealing to state supreme courts involved areas of the law like property rights and inheritance that whites also brought cases over or dealt with dangers that affected whites as well. A decision upholding a black person's property rights would strengthen white southerners' property rights. A case initiated by an injured black litigant highlighting dangerous practices by a railroad could protect white citizens. Additionally, the vast majority of the civil cases between black and white southerners between 1865 and 1950 were initiated by individuals and involved economic claims that would primarily impact only their own families. Such civil suits brought by individual African Americans seemed relatively unthreatening and unlikely to have a real impact beyond the individuals involved. Lou Bonds' case to regain her property involved only her own land, for instance, and seemed to have no impact beyond her suit. Thus, in civil cases that did not seem to have the potential to shake up society, judges often decided cases involving African Americans just as they decided other suits that came before them – relying on precedent and the merits of the case as well as their own opinions and considerations about the impact on the white community. For example, the higher court justices in Bonds' case explained in their opinion that they had decided in favor of the elderly black woman because the purported conveyance of the land from Bonds to Mrs. Brown did not involve any payment to Brown or cancellation of debts but instead "purports to be nothing more than a gratuitous relinquishment" and does not show "any consideration moving from Mrs. Brown."[61]

However, in civil cases that directly confronted the interests of large numbers of whites, black southerners struggled to have their cases heard throughout much of this period

and generally ended up on the losing end. In particular, unlike most seemingly harmless civil cases, civil litigation that asserted rights for African Americans as a group unsettled many white Americans. Cases over racial equality, in particular, challenged white southerners in a way cases over property or contracts never could. As a result, black litigants won only thirty-six percent of civil cases that focused on racial justice in southern appellate courts during this period – an almost identical rate to how often they won criminal appeals in such courts.[62] When black litigants did win civil cases over racial justice, one of the deciding factors may have been the assumption that their outcomes were unlikely to bring real change.

Black southerners also often fared poorly in other civil cases that threatened the interests of large groups of whites. Mary Ray encountered this opposition when she brought a civil suit in 1889 against the local county commissioners, the most powerful white men in the North Carolina county where she lived. Her suit claimed the land upon which the local courthouse and jail were located. The dispute had begun decades earlier, before the Civil War. At the time, Mary Ray's father Lewis Pratt had been a slave owned by a prominent white man in Durham, North Carolina. Pratt's skills as a blacksmith had brought him favor with his master, and in the wake of the Civil War, his former owner gave him a deed to the two acres of land on which the blacksmith shop stood. At the time, the land was worth little and the deed was not challenged. Lewis Pratt took possession of the land, paying taxes on it each year.[63]

Then, in 1873, the former slave died. Hearing of Pratt's death, the executor carrying out his former owner's will claimed that the deed to the two acres had been only for the duration of Pratt's life and offered the land for sale. The land was bought by a local white man, and then three years later purchased by the town of Durham. Lewis Pratt's family did not let the land go without a fight. In 1876, his widow and son brought a suit against the executor, alleging that William Pratt had given the land to Lewis Pratt outright. Rather than

giving their case a full hearing, the court appointed an arbitrator, who decided in favor of the white executor.[64]

To most observers at this point, it no doubt seemed Lewis Pratt's family had lost the land completely. During the next decade, a new county courthouse and jail were built on the property and the Main Street of Durham cut through the land. Then, in 1889, Lewis Pratt's daughter Mary Ray hired a lawyer and filed suit against the Durham County Commissioners for the property. Because Ray's brother and mother could not bring the land dispute to court again, Ray appeared as the sole litigant in the legal contest.[65]

Realizing the intense bias in her own county against her suit, Mary Ray's legal team requested the case to be removed to a neighboring county. According to Ray's testimony in support of the action, a change of venue was needed as she "cannot obtain justice in this Cause in said county" because of the interested nature of local leaders and judges. She astutely summed up what she was up against: "That besides being gentlemen of marked personal influence and magnetism in said county, around which many interests are drawn and adhered, they as such Commissioners have under the law the control & supervision of the Jury system as well as all other official matters appertaining to the affairs of the County." She concluded by expanding the charges of bias to include all the "jurors and tax payers" in the county, explaining that they had an interest in deciding against her to prevent additional taxes.[66]

Mary Ray's case likely came to court at all because it revolved around a white man's deed and involved questions of property. But unlike many of the other civil cases litigated by black southerners over wills and property, her case threatened some of the most important institutions of the county as well as taxpayers' bottom line. As a result, even after Ray and her lawyer succeeded in gaining a change of venue to a neighboring county, they met obstacles at every turn. In the new trial location, she had difficulty getting her witnesses to

appear. The court hearing was delayed for several court terms. Finally, in August 1891, the Orange County Superior Court heard her case and a jury ruled that she did not have an interest in the property. In response, Ray appealed the verdict to North Carolina's highest court. The higher court affirmed the county court's ruling, arguing that there was a "total absence of words of inheritance" in the deed, which indicated that "the deed conveyed but an estate for life." Mary Ray never recovered the property.[67] Her interests were not only not aligned with those of local whites, they very much threatened their interests. Like most criminal cases, civil cases like Mary Ray's supported white supremacy best when the black litigant lost.

To conclude, at first glance, the differences between African Americans' experiences in civil and criminal cases seem glaring. Upon closer examination, though, black litigants' civil and criminal cases have a number of similarities. For one, there were real limits in both kinds of suits. In both, black litigants were often dependent on white lawyers, white juries, and white judges and subject to whites' stereotypes and judgment. Examining both kinds of cases together helps us see other similarities too. In civil cases, black litigants often worked to shape their testimony and suits to negotiate white judges' and jury members' ideas about race. Frequently, they asserted – either explicitly or implicitly – their economic and legal rights in their litigation. The recognition that this was occurring in civil cases allows an examination of the way individual black litigants were at times shaping their criminal suits and even using them to assert rights. On the other hand, criminal cases highlight the deep injustice and power imbalance at the core of southern society. They clearly show the way the courts were used to uphold white interests. Even in the face of overwhelming evidence that Will Johnson had been at work at the time that the rape occurred, for instance, it was in the interests of turn-of-the-century whites to believe he was guilty. Examining these criminal

cases brings to the study of civil suits a greater understanding of the depth of white supremacy and violence in southern society. This helps to better understand decisions, such as the outcome of the Lou Bonds suit, that seem on the surface to be in black litigants' favor. Such civil suits were also being decided in part based on the interests of white society. The key difference was that at times it was in the interest of whites deciding civil suits to side with the black litigant.

This matters for several reasons. For one, looking at African Americans' civil cases alongside their experiences in criminal cases changes how one views the southern justice system. Southern courts during the era of Jim Crow were not solely sites of white domination and oppression. Neither, however, were they spaces where African Americans could assert rights without experiencing the power of white supremacy. Instead, the southern legal system was a site where power was both exercised and claimed, by ordinary people as well as by elites.

Looking at these suits together also reveals both the brutality and occasional subtlety of the system of white supremacy that undergird daily life in the South as well as the astonishing boldness and creativity in which at times this white supremacy was challenged. A court could be working to further the ends of white power when ruling in favor of an elderly black woman by portraying her as unequal and in need of white assistance as well as when they condemned a man to death who many of the justices must have known was likely innocent. Moreover, even when black litigants had largely lost the right to vote and experienced widespread racial segregation, they still sought to negotiate within the last government institution still accessible to them, the courts. They did so by working with white lawyers to draw on the racial ideas of whites in their communities and by asserting their rights, even as they faced death sentences, the loss of land, and white violence.

In conclusion, these cases highlight the many limits within the southern judicial system, which could make them difficult spaces to claim rights and gain justice. At the same time, these suits demonstrate the ways that black southerners – even as they experienced segregation, disfranchisement, and violence – continued to seek to navigate the legal system in both civil and criminal cases to gain the best outcome for themselves and their families, and at times their larger communities. Despite the many structural differences in how civil and criminal cases proceeded, then, they were linked by black litigants' assertions of their rights and negotiation of a biased system even in the face of deep and systematic racism.

**REFERENCES**


Ayers, Edward L. *The Promise of the New South: Life After Reconstruction*. New York: Oxford University Press, 1992.

Ayers, Edward L. *Vengeance & Justice: Crime and Punishment in the 19th-Century American South.* New York: Oxford University Press, 1984.

Blackmon, Douglas A. *Slavery By Another Name.* New York: Doubleday, 2008.

Blight, David W. *Race and Reunion: The Civil War in American Memory.* Cambridge, MA: Harvard University Press, 2001.

Boyle, Kevin. *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age.* New York: Henry Holt and Company, 2004.

Carle, Susan D. *Defining the Struggle: National Organizing for Racial Justice, 1880-1915.* Oxford: Oxford University Press, 2013.

"Courting Reversal: The Supervisory Role of State Supreme Courts," *The Yale Law Journal*, 87 (1978): 1191-1218.

Dailey, Jane. *The Age of Jim Crow: A Norton Casebook in History*. New York: W.W. Norton, 2009.

Dorr, Lisa Lindquist. *White Women, Rape, & the Power of Race in Virginia, 1900-1960.* Chapel Hill: University of North Carolina Press, 2004.

Edwards, Laura F. *A Legal History of the Civil War and Reconstruction: A Nation of Rights.* New York: Cambridge University Press, 2015.

Edwards, Laura F. *Gendered Strife and Confusion: The Political Culture of Reconstruction.* Urbana: University of Illinois Press, 1997.

Elliott, Mark. *Color-Blind Justice: Albion Tourgée and the Quest for Legal Equality from the Civil War to Plessy v. Ferguson.* New York: Oxford University Press, 2006.

Goluboff, Risa L. *The Lost Promise of Civil Rights.* Cambridge, MA: Harvard University Press, 2007.

Gonda, Jeffrey D. *Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement.* Chapel Hill: University of North Carolina Press, 2015.

Haley, Sarah. *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity.* Chapel Hill: University of North Carolina Press, 2016.

Hodes, Martha. *White Women, Black Men: Illicit Sex in the Nineteenth-Century South.* New Haven, CT: Yale University Press, 1997.

Jett, Brandon. "I Want Him Put In; I Don't Want Him to Kill Me": Black Women, Domestic Violence, and the Law in the Jim Crow South," Paper presented at the American Society for Legal History Annual Meeting, November 2018.

Jones, Martha. *Birthright Citizens: A History of Race and Rights in Antebellum America.* Cambridge: Cambridge University Press, 2018.

Kagan, Robert A. Bliss Cartwright, Lawrence M. Friedman and Stanton Wheeler. "The Business of State Supreme Courts, 1870-1970." *Stanford Law Review* 30 (Nov. 1977): 121-156.

Karsten, Peter. "Enabling the Poor To Have Their Day In Court: The Sanctioning of Contingency Fee Contracts, A History to 1940." *DePaul Law Review* (Winter 1998): 231-260.

Kendi, Ibram X. *Stamped From the Beginning: The Definitive History of Racist Ideas in America.* New York: Nation Books, 2016.

Kennedy, Randall. *Race, Crime, and the Law.* New York: Vintage, 1997.

Kennington, Kelly. *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America.* Athens: University of Georgia Press, 2016.

Kluger, Richard. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*. 1975; reprinted New York: Knopf, 1965.

LeFlouria, Talitha. *Chained in Silence: Black Women and Convict Labor in the New South.* Chapel Hill: University of North Carolina Press, 2015.

Leubsdorf, John. "Toward a History of the American Rule on Attorney Fee Recovery," *Law and Contemporary Problems* (Winter 1984): 9-36.

Lofgren, Charles A. *The Plessy Case: A Legal-Historical Interpretation*. New York: Oxford University Press, 1987.

McElya, Micki. *Clinging to Mammy: The Faithful Slave in Twentieth-century America.* Cambridge, MA: Harvard University Press, 2007.

McLaughlin, Glory. "A 'Mixture of Race and Reform': The Memory of the Civil War in the Alabama Legal Mind," *Alabama Law Review*, 56 (Fall 2004): 285-309.

McMillen, Neil R. *Dark Journey: Black Mississippians in the Age of Jim Crow*. Urbana: University of Illinois Press, 1989.

Milewski, Melissa. *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights.* New York: Oxford University Press, 2018.

Nieman, Donald G. “Black Political Power and Criminal Justice: Washington County, Texas, 1868-1884.” *The Journal of Southern History* 55, no.3 (1989): 398-406.

Novkov, Julie. *Racial Union: Law, Intimacy, and the White State in Alabama, 1865-1954.* Ann Arbor: University of Michigan Press, 2008.

Oshinsky, David. *“Worse Than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice*. New York: Free Press, 1996.

Popper, Robert. “History and Development of the Accused’s Right to Testify.” *Washington University Law Review* (January 1962): 454-71.

Riser, R. Volney. *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890-1908.* Baton Rouge: Louisiana State University Press, 2010.

Schmidt, Christopher W. *The Sit-ins: Protest and Legal Change in the Civil Rights Era.* Chicago: The University of Chicago Press, 2018.

Scott, Rebecca J. “The Atlantic World and the Road to ‘Plessy v. Ferguson,’” *The Journal of American History* 94:3 (Dec. 2007): 726-733.

Smith, J. Clay. *Emancipation: The Making of the Black Lawyer, 1844-1944.* Philadelphia: University of Pennsylvania Press, 1993.

Sullivan, Patricia. *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement.* New York: The New Press, 2009.

Tushnet, Mark V. *The NAACP’s Legal Strategy against Segregated Education, 1925-1950.* Chapel Hill: University of Chapel Hill Press, 1987.

Twitty, Anne. *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787-1857.* Cambridge: Cambridge University Press, 2016.

Waldrep, Christopher. *Roots of Disorder: Race and Criminal Justice in the American South*. Urbana: University of Illinois Press, 1998.

Waldrep, Christopher. “Substituting Law for the Lash: Emancipation and Legal Formalism in a Mississippi County Court.” *The Journal of American History* 82, no. 4 (1996): 1425-1451.

Welch, Kimberly M. *Black Litigants in the Antebellum American South.* Chapel Hill: University of North Carolina Press, 2018.

**Primary Sources**

A South Carolinian, “South Carolina Morals,” *The Atlantic Monthly*, April 1877, p.474.

Black, Henry Campbell. *A Treatise on the Rescission of Contracts and Cancellation of Written Instruments*. Kansas City, Mo., 1916.

Browne, Causten. *A Treatise on the Construction of the Statute of Frauds*. Boston, 1895.

Reed, John C. *Conduct of Lawsuits Out Of and In Court*. Boston, 1885.

Smith, John W. *A Treatise on The Law of Frauds and The Statute of Frauds*. Indianapolis, 1907.

Smith, Wilford H. “The Negro and the Law.” In *The Negro Problem* (New York, 1903), 125-160.

“William N. Pratt Estate Records,” Orange County, North Carolina. North Carolina State Archives.

**Cases**

*Abercrombie v. Carpenter*, 150 Ala. 294 (1907).

*Anderson v. Green*, 46 Ga. 361 (1872).

*Andrews v. Aderhold*, 201 Ga. 132 (1946).

*Barge v. Weems*, 109 Ga. 685 (1900).

*Boswell v. Bethea*, 242 Ala. 292 (1942).

*Briley v. Underwood*, 41 Ga. 9 (1869).

*Bryant v. Barnes***,** 144 Miss. 732 (1925).

*Board of Trustees v. Board of Trustees,* 181 Ky. 810 (1918).

*Broome v. Jackson,* 193 Miss. 66 (1942).

*Brown v. Bonds*, 125 Ga. 833 (1906).

*Burdine v. Burdine's Ex'or*, 98 Va. 515 (1900).

*Burgess v. State*, 164 Ga. 92 (1927).

*Canady v. State*, 171 Ga. 11 (1930).

*Carey v. City of Atlanta,* 143 Ga. 192 (1915).

*Carter v. State*, 154 Ga. 359 (1922).

*Chaires v. City of Atlanta,* 164 Ga. 755 (1927).

*Cobb v. Battle*, (1866), Case number A-3927.

*Cochreham v. Kirkpatrick*, 48 Tenn. 327 (1870).

*Cowan v. Stamps*, 46 Miss. 435 (1872).

*Croom v. State*, 85 Ga. 718 (1890).

*Curtis v. State*, 226 Ala. 29 (1933).

*Dooley v. Sterling Stores*, 214 Ark. 895 (1949).

*Dorsey v. State*, 108 Ga. 477 (1899).

*Duncan v. Pope*, 47 Ga. 445 (1872).

*Ex parte Banks*, 254 Ala. 117 (1950).

*Ex parte Taylor. Taylor v. State*, 249 Ala. 667 (1947).

*Gabriel (Freedman) v. State*, 40 Ala. 357 (1867).

*Gaskin v. State*, 105 G.A. 631 (1898).

*Glover v. City of Atlanta*, 148 Ga. 285 (1918).

*Goldsmith v. State*, 232 Ala. 436 (1936).

*Hairston v. Atlantic Greyhound Corporation*, 220 N.C. 642 (1942).

*Hall v. Jones*, 129 Ark. 18 (1917).

*Hardrick v. Southeastern Greyhound Lines*, 306 Ky. 579 (1949).

*Hayes v. Lancaster*, 200 N.C. 293 (1931).

*Herndon v. State*, 178 Ga. 832 (1934).

*Hicks v. State*, 76 Ga. 326 (1886).

*Hough v. Leech*, 187 Ark. 719 (1933).

*Howard v. State*, 115 Ga. 244 (1902).

*Howell v. Harris and Queen City Coach*, 220 N.C. 198 (1941).

*Hudson v. Hodge*, 139 N.C. 308 (1905).

*Jackson v. Parks*, 216 N.C. 329 (1939).

*Jackson v. State*, 176 Ga. 148 (1932).

*James v. State*, 170 Ala. 72 (1911).

*Johnson v. State*, 63 Ga. 356 (1879).

*Johnson v. State*, 128 Ga. 102 (1907).

*King v. State*, 40 Ala. 314 (1867).

*Lattimore v. Dickson*, 63 N.C. 356 (1869).

*Lattimore v. Dixon*, 65 N.C. 664 (1871).

*Levison v. State*, 54 Ala. 520 (1875).

*Lowery v. Board of Graded School*, 140 N.C. 33 (1905).

*Madison v. Nunnelee*, 246 Ala. 325 (1945).

*Marshall v. State*, 59 Ga. 154 (1877).

*McFarland v. Goins*, 96 Miss. 67 (1909).

*McKinnon v. Henderson*, 145 Ga. 373 (1916).

*Miller v. State*, 40 Ala. 54 (1866).

*Millhouse v. State*, 232 Ala. 567 (1936).

*Millhouse v. State*, 235 Ala. 85 (1937).

*Mississippi Cooperative v. Walker*, 186 Miss. 870 (1939).

*Mississippi Power & Light v. Garner*, 179 Miss. 588 (1937).

*Melton v. Allen*, 212 Ky. 310 (1925).

*Montgomery v. Wallace*, 216 Ark. 525 (1950).

*Munroe v. Phillips*, 64 Ga. 32 (1879).

*New v. Atlantic Greyhound Corporation*, 186 Va. 726 (1947).

*Norris v. State*, 229 Ala. 226 (1934).

*Palmore v. State*, 244 Ala. 227 (1943).

*Porter v. State*, 55 Ala. 95 (1876).

*Potter v. Gracie*, 58 Ala. 303 (1877).

*Ray v. Commissioners of Durham County*, 110 N.C. 169 (1892).

*Redding v. State*, 167 Ga. 549 (1928).

*Robinson v. Holman*, 181 Ark. 428 (1930).

*Simmons v. Hessey*, 11 Ky. Op. 40 (1881).

*Smith v. Summerlin*, 48 Ga. 425 (1873).

*State v. Elks*, 125 N.C. 603 (1899).

*Steele v. Louisville & N.R. Co*., 245 Ala. 113 (1944).

*Sullivan v. Padrosa*, 122 Ga. 338 (1905).

*Sutton v. Dunn*, 176 N.C. 202 (1918).

*Sweeney v. City of Louisville*, 309 Ky. 465 (1949).

*Tannehill v. State*, 159 Ala. 51 (1909).

*Taylor v. State*, 249 Ala. 667 (1947).

*Tri-State Transit v. Westbrook*, 207 Ark. 270 (1944).

*Vernon v. State*, 240 Ala. 577 (1941).

*Vernon v. State*, 245 Ala. 633 (1944).

*Walker v. State*, 194 Ga. 727 (1942).

*Wall v. State. Lewis v. State*, 153 Ga. 309 (1922).

*Warley v. Board of Park Commissioners*, 233 Ky. 688 (1930).

*Warren v. Knox County*, 258 Ky. 212 (1935).

*Williams v. Wright*, 249 Ala. 9 (1947).

*Wilson v. Singer Sewing Machine Company*, 184 N.C. 40 (1922).

*Wilson v. State*, 69 Ga. 224 (1882).

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[1] *Johnson v. State*, 128 Ga. 102 (1907). When I have cited a case, I am referring to both the archival case file and the court report except for a few exceptions when the original case file was missing. The archival case files can be located in the following archives and libraries: Alabama Court of Appeals, 1910-1969, Record Group SX-519-5 and Supreme Court of Alabama Record of cases, 1824-1974, Alabama Department of Archives & History, Montgomery, Ala.; Arkansas Supreme Court Briefs and Records, 1836-1926, Series I, II, and III, University of Arkansas at Little Rock, Pulaski Law Library, Little Rock, Ark.; Georgia Supreme Court Case Files, 1846-1917, Record Group 92-1-1 and Georgia Supreme Court Case Files, 1917-1990. Record Group 92-1-3, Georgia Archives, Morrow, Ga.; Court of Appeals, Case Files, 1854-1976, Kentucky Department for Libraries and Archives, Frankfort, Ky.; Supreme Court of North Carolina cases, Record Group 69, The State Archives of North Carolina, Raleigh, N.C.; Mississippi High Court of Errors and Appeals, Case Files, 1832-1870, Series 208 and Supreme Court of Mississippi Case Files, Series 6, Mississippi Department of Archives & History, Jackson, Miss.; State Supreme Court Case Files, Trial Cases, 1796-1955, Record Group 170, Tennessee State Library and Archives, Nashville, Tenn.; Records and briefs of the Virginia Supreme Court, 1865-1950, State government

records collection, The Library of Virginia, Richmond, Va.; Supreme Court of Appeals of Virginia, Records and Briefs for Published Cases, 1849-Present, Virginia State Law Library, Richmond, Va.; Virginia Supreme Court Records & Briefs, 1871-Present, William Taylor Muse Law Library, University of Richmond, Richmond, Va.

[2] *Brown v. Bonds*, 125 Ga. 833 (1906).

[3] See David Oshinsky, *"Worse Than Slavery": Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996); Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South* (Urbana: University of Illinois Press, 1998); Randall Kennedy, *Race, Crime, and the Law* (New York: Vintage, 1997); Edward L. Ayers, *Vengeance & Justice: Crime and Punishment in the 19th-century American South* (New York: Oxford University Press, 1984); Douglas A. Blackmon, *Slavery By Another Name* (New York: Doubleday, 2008); Neil R. McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana: University of Illinois Press, 1989); Talitha LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016).

[4] Generally, scholars have paid the most attention to the kinds of civil cases that directly involve issues of race, including suits over racial discrimination and liaisons across the color line. See Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven, CT: Yale University Press, 1997); Julie Novkov, *Racial Union: Law, Intimacy, and the White State in Alabama, 1865-1954* (Ann Arbor: University of Michigan Press, 2008); Mark V. Tushnet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 1987); and Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (Oxford: Oxford University Press, 2013). Other legal scholars have studied black men and women's

participation in all kinds of civil cases in the postwar period, but their analysis has generally not been systematic across multiple states and has often been limited to judicial opinions or cases in a particular locality. For example, Laura Edwards focuses on Reconstruction-era cases in Granville County, North Carolina in *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997). However, my recent book, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2018), examines civil cases that reached state supreme courts in a systematic manner.

[5] These conclusions about the outcomes of appellate civil cases are based on my analysis of the outcome of black litigants' appeals in 1,377 civil cases involving black litigants that reached the state supreme courts of Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia between 1865 and 1950. Seventy-one percent of these cases, or 980 cases, took place between black and white litigants and twenty-nine percent of these civil cases, or 397 cases, took place between two or more black litigants. Of the 980 civil cases between black and white southerners, black litigants won 582 (fifty-nine percent of suits) on appeal.

[6] For examinations of African American assertions of rights as well as a consideration of white power in the courts in the antebellum period, see Kimberly M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018); Martha Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (Cambridge: Cambridge University Press, 2018); Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787-1857* (Cambridge: Cambridge University Press, 2016); Kelly Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2016). For examinations of African American assertions of rights as well as the

workings of white power in the courts in the Reconstruction period and its immediate aftermath, see Laura F. Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (New York: Cambridge University Press, 2015); Christopher Waldrep, "Substituting Law for the Lash: Emancipation and Legal Formalism in a Mississippi County Court," *The Journal of American History* 82, no. 4 (1996): 1425-1451; Donald G. Nieman, "Black Political Power and Criminal Justice: Washington County, Texas, 1868-1884," *The Journal of Southern History* 55, no.3 (1989): 398-406. For examinations of this duality in the courts in the long Civil Rights era and its aftermath, see Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York: The New Press, 2009); Christopher W. Schmidt, *The Sit-ins: Protest and Legal Change in the Civil Rights Era* (Chicago: The University of Chicago Press, 2018); Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, MA: Harvard University Press, 2007); Jeffrey D. Gonda, *Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement* (Chapel Hill: University of North Carolina Press, 2015); Kevin Boyle, *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age* (New York: Henry Holt and Company, 2004); Tushnet, *The NAACP's Legal Strategy against Segregated Education*. Other exceptions, such as Sarah Haley, examine such challenges during the period of Jim Crow. See Haley, *No Mercy Here*.

[7] See footnote 5.

[8] There were 280 civil cases involving black litigants and 561 criminal cases involving black litigants before the Alabama and Georgia state supreme courts between 1865 and 1950, for a total of 841 cases involving black litigants. During this time period, there were 74,394 suits before these two appeals courts.

[9] For a description of where the case files for these suits can be found, see footnote 1.

[10] Between 1865 and 1877, sixty-seven percent of civil cases between black and white litigants in the eight state supreme courts examined took place between former slaves and their former masters or their heirs or executors. Between 1878 and 1899, thirty-five percent of such cases took place between former slaves and their former masters or their heirs or executors.

[11] "South Carolina," *The Savannah Tribune*, Jan. 26, 1889, 1. See also "Makes Plea For Change of Public Sentiment," *The Savannah Tribune* (Savannah, Georgia), August, 5 1911, 3. Other black-operated newspapers noted the injustices in the criminal justice system and system of convict labor in the US South. See "Lawyer Jones Plea: Color Line in Juries," *The Richmond Planet*, Dec. 21, 1895; "Peonage and the Peon Elaborately Discussed on the Bench by Judge Speer," *Atlanta Independent*, Apr. 1, 1905, 4; "Our Degraded County," *The Savannah Tribune,* February 9, 1895, 2. See also Lisa Lindquist Dorr, *White Women, Rape, & the Power of Race in Virginia, 1900-1960* (Chapel Hill: University of North Carolina Press, 2004), 184-85.

[12] *Jackson v. Parks,* 216 N.C. 329 (1939). See also *Glover v. City of Atlanta,* 148 Ga. 285 (1918); *Carey v. City of Atlanta*, 143 Ga. 192 (1915); *Barge v. Weems*, 109 Ga. 685 (1900).

[13] See *Hall v. Jones,* 129 Ark. 18 (1917); *Sullivan v. Padrosa,* 122 Ga. 338 (1905).

[14] This observation is based on my examination of criminal cases involving black appellants that reached the Alabama and Georgia state supreme courts between 1865 and 1950.

[15] *State v. Elks*, 125 N.C. 603 (1899). See also *Jackson v. State*, 176 Ga. 148 (1932). For an examination of how black women sometimes turned to the criminal justice system to deal with domestic violence perpetrated by black men, see Brandon Jett, "I Want Him Put In; I Don't Want Him to Kill Me": Black Women, Domestic Violence, and the Law in the Jim Crow South," Paper presented at the American Society for Legal History Annual Meeting, November 2018.

[16] Black women were litigants in 404 out of 980 civil cases against whites in the eight appellate courts examined between 1865 and 1950. In contrast, they made up twenty-nine out of 561 litigants in criminal cases with black litigants in the state supreme courts of Georgia and Alabama between 1865 and 1950. Other scholars have found a limited number of black women in southern prisons during the period of Jim Crow. Historian Talitha LeFlouria found that black women formed between two to four percent of all leased southern convicts between 1873 and 1899. LeFlouria, *Chained in Silence,* 1-171 (percentage of black female convicts is on p.11); Haley, *No Mercy Here,* 29-31.

[17] In the state supreme courts of Alabama and Georgia between 1865 and 1950, criminal cases made up 561 out of 841 (sixty-seven percent) of suits involving African Americans while civil suits accounted for only 280 out of 841 (thirty-three percent) of black litigants' suits. A study of the case loads of sixteen state supreme courts found that criminal cases made up only about fourteen percent of the state supreme courts' cases between 1870 and 1970, with civil suits making up the remainder of the cases. Kagan, "The Business of State Supreme Courts," 135.

[18] *Brown v. Bonds,* 125 Ga. 833 (1906).

[19] John C. Reed, *Conduct of Lawsuits Out Of and In Court* (Boston, 1885), 66-67; Milewski, *Litigating Across the Color Line,* 58-62. This analysis is based on examination of archival records and the biographies of select lawyers in the civil cases examined.

[20] McMillen, *Dark Journey,* 215-16; Blackmon, *Slavery by Another Name,* 66-68. For cases in which black litigants claimed to have not been given the option of hiring their own counsel, see *Walker v. State,* 194 Ga. 727 (1942); *Jackson v. State,* 176 Ga. 148 (1932).

[21] *Brown v. Bonds,* 125 Ga. 833 (1906).

[22] McMillen, *Dark Journey,* 215-216. See also *Jackson v. State,* 176 Ga. 148 (1932).

[23] For a defendant who was unaware of the charge before entering the courtroom, see *Jackson v. State,* 176 Ga. 148 (1932).

[24] *Johnson v. State,* 128 Ga. 102 (1907).

[25] *Taylor v. State,* 249 Ala. 667 (1947).

[26] *Johnson v. State,* 128 Ga. 102 (1907).

[27] Robert Popper, "History and Development of the Accused's Right to Testify," *Washington University Law Review* (January 1962): 463-6. While litigants were usually not questioned during these statements in the criminal appellate cases in Alabama that were examined, two exceptions were *Goldsmith v. State*, 232 Ala. 436 (1936); *Palmore v. State*, 244 Ala. 227 (1943).

[28] Between 1865 and 1899, seventy-seven cases took place over inheritance/bequests (thirty-six percent of suits), thirty-five cases took place over personal injury (seventeen percent of suits), twenty-nine cases took place over transactions/contracts (fourteen percent of suits), twenty-three cases took place over property disputes (eleven percent of suits), and eighteen cases took place over apprenticeships (eight percent of suits).

[29] *Anderson v. Green*, 46 Ga. 361 (1872). See also *Lattimore v. Dickson*, 63 N.C. 356 (1869)*; Lattimore v. Dixon*, 65 N.C. 664 (1871); *Munroe v. Phillips*, 64 Ga. 32 (1879); *Cobb v. Battle*, (1866), Case number A-3927.

[30] *Simmons v. Hessey*, 11 Ky. Op. 40 (1881). See also *Burdine v. Burdine's Ex'or*, 98 Va. 515 (1900); *Ray v. Commissioners of Durham County*, 110 N.C. 169 (1892); *Cowan v. Stamps*, 46 Miss. 435 (1872); *Briley v. Underwood*, 41 Ga. 9 (1869).

[31] *Potter v. Gracie,* 58 Ala. 303 (1877). See also *Lattimore v. Dickson*, 63 N.C. 356 (1869)*; Lattimore v. Dixon*, 65 N.C. 664 (1871); *Smith v. Summerlin*, 48 Ga. 425 (1873).

[32] Of the 220 total cases between black and white litigants in eight southern states between 1900 and 1920, sixty-three cases involved fraud (twenty-nine percent of suits) and ninety-seven cases involved personal injury (forty-four percent of suits).

[33] *Brown v. Bonds*, 125 Ga. 833 (1906). See also *Abercrombie v. Carpenter*, 150 Ala. 294 (1907); *Hudson v. Hodge*, 139 N.C. 308 (1905); *McKinnon v. Henderson*, 145 Ga. 373 (1916); *Sutton v. Dunn*, 176 N.C. 202 (1918). For more on the legal basis for proving fraud and how lawyers negotiated fraud cases at this time, see John W. Smith, *A Treatise on The Law of Frauds and The Statute of Frauds* (Indianapolis, 1907); Henry Campbell Black, *A Treatise on the Rescission of Contracts and Cancellation of Written Instruments* (Kansas City, Mo., 1916); Causten Browne, *A Treatise on the Construction of the Statute of Frauds* (Boston, 1895). See also Milewski, *Litigating Across the Color Line*, 128-143.

[34] Of the 548 civil suits between black and white litigants from 1921 and 1950 in the eight state supreme courts examined, 212 cases took place over personal injury (thirty-nine percent of suits), seventy-five cases took place over fraud (fourteen percent of suits), seventy-seven cases took place over property disputes, contracts, or transactions (fourteen percent of suits), seventy-one cases over insurance disputes (thirteen percent of suits), thirty-three cases over racial justice (six percent of suits), eighteen cases over inheritance or bequests (three percent of suits), and seventeen cases over debt (three percent of suits).

[35] *Jackson v. Parks*, 216 N.C. 329 (1939). See also *New v. Atlantic Greyhound Corporation*, 186 Va. 726 (1947); *Chaires v. City of Atlanta*, 164 Ga. 755 (1927); *Warley v. Board of Park Commissioners*, 233 Ky. 688 (1930); *Mississippi Cooperative v. Walker*, 186 Miss. 870 (1939); *Tri-State Transit v. Westbrook*, 207 Ark. 270 (1944); *Steele v. Louisville & N.R. Co.*, 245 Ala. 113 (1944). See, as well, Milewski, *Litigating Across the Color Line*, 166-190.

[36] *Johnson v. State*, 128 Ga. 102 (1907).

[37] *Johnson v. State*, 128 Ga. 102 (1907). See also *Dorsey v. State*, 108 Ga. 477 (1899); *Jackson v. State*, 176 Ga. 148 (1932); *Goldsmith v State*, 232 Ala. 436 (1936); *Millhouse v. State*, 232 Ala. 567 (1936). See also Dorr, *White Women, Rape, and the Power of Race*, 80-111, 176, 193-96.

[38] *Burgess v. State*, 164 Ga. 92 (1927); *Marshall v. State*, 59 Ga. 154 (1877). See also *Dorsey v. State*, 108 Ga. 477 (1899); *Hicks v. State*, 76 Ga. 326 (1886).

[39] *Palmore v. State*, 244 Ala. 227 (1943). See also Haley, *No Mercy Here*, 17-21.

[40] *Marshall v. State*, 59 Ga. 154 (1877); Dorr, *White Women, Rape, & the Power of Race*, 176.

[41] *Croom v. State*, 85 Ga. 718 (1890); *Johnson v. State*, 128 Ga. 102 (1907). See also *Goldsmith v. State*, 232 Ala. 436 (1936).

[42] *Curtis v. State*, 226 Ala. 29 (1933). See also *Dorsey v. State*, 108 Ga. 477 (1899); *Wall v. State*. *Lewis v. State*, 153 Ga. 309 (1922); *Burgess v. State*, 164 Ga. 92 (1927); *Walker v. State*, 194 Ga. 727 (1942); *Jackson v. State*, 176 Ga. 148 (1932).

[43] See scholarship on the 1896 *Plessy v. Ferguson* case including Charles A. Lofgren, *The Plessy Case: A Legal-Historical Interpretation* (New York: Oxford University Press, 1987), 28-60; Mark Elliott, *Color-Blind Justice: Albion Tourgée and the Quest for Legal Equality from the Civil War to Plessy v. Ferguson* (New York: Oxford University Press, 2006); Rebecca J. Scott, "The Atlantic World and the Road to 'Plessy v. Ferguson,'" *The Journal of American History* 94:3 (Dec. 2007): 726-733; scholarship about disfranchisement cases such as R. Volney Riser, *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890-1908* (Baton Rouge: Louisiana State University Press, 2010), and scholarship about the NAACP's litigation such as Tushnet, *The NAACP's Legal Strategy against Segregated Education*; Richard Kluger, *Simple Justice: The History of Brown v. Board of*

*Education and Black America's Struggle for Equality* (1975; reprinted New York: Knopf, 1965); and Gonda, *Unjust Deeds*.

[44] *Cowan v. Stamps*, 46 Miss. 435 (1872). See also *Cochreham v. Kirkpatrick*, 48 Tenn. 327 (1870); *Duncan v. Pope*, 47 Ga. 445 (1872).

[45] *Barge v. Weems*, 109 Ga. 685 (1900); *Abercrombie v. Carpenter*, 150 Ala. 294 (1907).

[46] *Melton v. Allen*, 212 Ky. 310 (1925). See also *Hough v. Leech*, 187 Ark. 719 (1933); *Hayes v. Lancaster*, 200 N.C. 293 (1931); *Broome v. Jackson*, 193 Miss. 66 (1942); *Montgomery v. Wallace*, 216 Ark. 525 (1950).

[47] *Wilson v. Singer Sewing Machine Company*, 184 N.C. 40 (1922). See also *Dooley v. Sterling Stores*, 214 Ark. 895 (1949).

[48] *Hairston v. Atlantic Greyhound Corporation*, 220 N.C. 642 (1942). See also *Tri-State Transit Company v. Westbrook*, 207 Ark. 270 (1944); *Howell v. Harris and Queen City Coach*, 220 N.C. 198 (1941); *Mississippi Power & Light v. Garner*, 179 Miss. 588 (1937).

[49] *McFarland v. Goins*, 96 Miss. 67 (1909). See also *Lowery v. Board of Graded School*, 140 N.C. 33 (1905); *Board of Trustees v. Board of Trustees*, 181 Ky. 810 (1918); *Warren v. Knox County*, 258 Ky. 212 (1935); *Bryant v. Barnes***,** 144 Miss. 732 (1925).

[50] *Steele v. Louisville*, 245 Ala.113 (1943); *Ex parte Banks*, 254 Ala. 117 (1950). See also *Chaires v. City of Atlanta*, 164 Ga. 755 (1927).

[51] *Boswell v. Bethea*, 242 Ala. 292 (1942). For other voting rights cases, see *Robinson v. Holman*, 181 Ark. 428 (1930); *Madison v. Nunnelee*, 246 Ala. 325 (1945); *Williams v. Wright*, 249 Ala. 9 (1947). For cases protesting racial discrimination in parks, see *Warley v. Board of Park Commissioners*, 233 Ky. 688 (1930); *Sweeney v. City of Louisville*, 309 Ky. 465 (1949). For cases protesting discrimination on public transportation, see *Hardrick v. Southeastern Greyhound Lines*, 306 Ky. 579 (1949);

[52] *Walker v. State*, 194 Ga. 727 (1942). See also *Goldsmith v. State*, 232 Ala. 436 (1936).

[53] *Gaskin v. State*, 105 G.A. 631 (1898); *Canady v. State*, 171 Ga. 11 (1930). See also *Miller v. State*, 40 Ala. 54 (1866); *King v. State*, 40 Ala. 314 (1867); *Gabriel (Freedman) v. State*, 40 Ala. 357 (1867); *Levison v. State*, 54 Ala. 520 (1875); *Porter v. State*, 55 Ala. 95 (1876); *Johnson v. State*, 63 Ga. 356 (1879); *Carter v. State*, 154 Ga. 359 (1922); *Palmore v. State*, 244 Ala. 227 (1943); *Vernon v. State*, 245 Ala. 633 (1944); *Ex parte Taylor. Taylor v. State*, 249 Ala. 667 (1947).

[54] *Palmore v. State*, 244 Ala. 227 (1943).

[55] *Hicks v. State*, 76 Ga. 326 (1886); *Jackson v. State*, 176 Ga. 148 (1932). See also *Howard v. State*, 115 Ga. 244 (1902); *Taylor v. State*, 249 Ala. 667 (1947); *Palmore v. State*, 244 Ala. 227 (1943); *Andrews v. Aderhold*, 201 Ga. 132 (1946).

[56] *Tannehill v. State*, 159 Ala. 51 (1909). See also *Walker v. State*, 194 Ga. 727 (1942); *James v. State*, 170 Ala. 72 (1911).

[57] *Wilson v. State*, 69 Ga. 224 (1882). See also *Redding v. State*, 167 Ga. 549 (1928); *Herndon v. State*, 178 Ga. 832 (1934); *Norris v. State*, 229 Ala. 226 (1934); *Millhouse v. State*, 232 Ala. 567 (1936); *Millhouse v. State*, 235 Ala. 85 (1937); *Vernon v. State*, 240 Ala. 577 (1941); *Walker v. State*, 194 Ga. 727 (1942); *Vernon v. State*, 245 Ala. 633 (1944).

[58] In the eight state supreme courts examined, black litigants won 582 out of 980 of their civil cases against white litigants on appeal between 1865 and 1950. Of the 561 criminal cases involving black litigants found in the state supreme courts of Georgia and Alabama during that period, black litigants received favorable decisions in 211 suits.

[59] Out of 561 criminal cases examined, in only two cases was the criminal case appealed after a black defendant won in the lower court. In contrast, out of 980 appellate civil cases between black and white litigants examined, black litigants had won the initial trial in 552 cases (fifty-six percent of suits).

[60] Out of 561 criminal cases examined, the higher court reversed 210 cases (thirty-seven percent) and upheld 343 of cases (sixty-one percent) that had convicted black defendants. In civil cases, the lower court decisions in 563 civil cases between black and white litigants in the eight appellate courts examined (fifty-seven percent) were upheld by the state supreme court and lower court decisions in 342 out of 980 such civil cases in the eight appellate courts examined (thirty-five percent) were reversed by the lower court. In the remainder of cases, the higher court decision was unclear or mixed. This is relatively representative of overall reversal rates in the nation. The authors of a study that examined a sampling of cases in sixteen state supreme courts throughout the US between 1870 and 1970 found that the courts affirmed 61.5 percent of suits and reversed 38.5 percent of suits. The national study found that 35.6 percent of criminal suits, 37.3 percent of family and estates suits, 39.4 percent of property suits, and 39.4 percent of contract and commercial suits were reversed. See Milewski, *Litigating Across the Color Line*, 225-227; "Courting Reversal: The Supervisory Role of State Supreme Courts," *The Yale Law Journal*, 87 (1978): 1198, 1215.

[61] *Brown v. Bonds*, 125 Ga. 833 (1906).

[62] Cases over racial justice made up seven percent of civil appellate cases between black and white litigants between 1865 and 1950 (sixty-nine out of 980 cases). At the appellate court level, black litigants won twenty-five out of sixty-nine cases over racial justice. Milewski, *Litigating Across the Color Line*, 49-51, 119-121.

[63] *Ray v. Commissioners of Durham County*, 110 N.C. 169 (1892); "William N. Pratt Estate Records," Orange County, North Carolina. North Carolina State Archives.

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