"BETWIXT AND BETWEEN": RACE, LAW, AND COMMUNITY IN THE JIM CROW SOUTH

by

LESLIE KATHRYN TUCKER

(Under the Direction of James C. Cobb)

ABSTRACT

This dissertation examines legal and social actions and beliefs regarding mixed race and interracial marriage and relationships in the Deep South from Reconstruction through the end of Jim Crow. Using court cases dealing with miscegenation and racial identity, it examines the contrast between the ways that laws defined and regulated race and the ways that local communities dealt with the same issues. While miscegenation and racial definition laws became stricter and encompassed more people throughout the nineteenth and twentieth centuries, ultimately moving toward a one-drop standard, in part because of the influence of the eugenics movement, courts struggled to apply these new definitions to actual situations because of persistent racial ambiguity. Furthermore, evidence from court cases indicates that communities, in contravention of the law, often continued to define race based on appearance and reputation rather than "scientific" assessments of blood, as well as to tolerate infractions against legal Jim Crow, including miscegenation. Thus, while increasingly strict legal restrictions were intended to maintain tight control over race and racial behavior in the South, they often failed to achieve this level of control on a local or individual level, largely because of this ongoing community toleration as well as the persistent inability to apply racial definitions in real life situations.

Rather than a monolithic legal and social system buttressed by a common understanding of what race meant, then, the Jim Crow period encompassed a wide variety of opinions, motivations, and actions regarding race.

INDEX WORDS: Jim Crow, Miscegenation, Interracial Relationships, One-Drop Rule, Eugenics, Race Relations, Definition of Race, Georgia, Alabama, Mississippi

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DEDICATION

For My Family

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INTRODUCTION

In 1927, Alabama legislators passed a law banning any person with "any ascertainable trace" of "negro blood" from marrying, living in adultery, or even fornicating with a white person.[1] Even as legislators met to pass this stricter version of Alabama's long-standing anti-miscegenation law, Benjamin Watts, a white resident of Monroeville, Alabama, was living openly with a black woman, Nazarine Parker, as if they were a married couple. This arrangement began long before the legislature tightened the anti-miscegenation law and continued for years afterward, until Watts' death in 1940. Despite the law's clear proscription against just this type of relationship, however, Watts and Parker never faced legal repercussions. In fact, when Nazarine Parker went to court to protect the inheritance Watts left her at his death, the judge noted that "...so far as the business men with whom [Watts] came in contact all the years are concerned, he was not ostracized, but continued to enjoy their confidence and continued to carry on business with them as usual. However boldly he may have defied the laws of our State and its public policy...society took no steps to interfere." The local sheriff, J.L. Bowden, who had known Watts for over forty years, confirmed that although "I often had conversations with him, probably every day," and "I have heard of him living in a state of adultery with one Nazarine Parker. As sheriff of this county I never investigated that. I never tried to break it up."[2] Clearly, neither the officials charged with upholding the law, nor the larger community in which Watts and Parker lived, ever took steps to prosecute their relationship, or bring it under the control of the law.

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[1] Alabama Code (1928).
[2] *Dees et. al. v. Metts et. al.*, 245 Ala. 370 (1944).

How, in a region known for its racial inequality and strict segregation laws, and during a time period of increased racial tension and tightening legal restrictions, did Watts and Parker live together for so long, and face so few legal or social repercussions? The court case detailing their relationship, like hundreds of other cases involving race from the Deep South states of Alabama, Mississippi, and Georgia in the years between the Civil War and the Civil Rights Movement, highlights the contradictions and inconsistencies of the Jim Crow system. Even as legislators sought to strengthen control of racial behavior and beliefs through legal means, southerners of both races continued to challenge these barriers, sometimes successfully. My examination of appellate court cases involving miscegenation, racial definition, school attendance, and related issues suggests that ongoing racial ambiguity, as well as southern communities' occasional willingness to tolerate racial transgressions, played an important role in permitting the existence of a range of racial beliefs, attitudes, and actions even during the oppression and inequality of Jim Crow, thus challenging our view of Jim Crow as a monolithic and almost universally imposed system.

Throughout the South's history, interracial couples such as Watts and Parker have persisted in challenging social and legal color lines, as well as the desires of some white southerners for racial purity and dominance, thus prompting the enactment of strict laws and harsh penalties. Although the earliest anti-miscegenation laws date from the colonial period, the capstone of this ongoing legal attempt to impose legal control over interracial relationships came in the 1920s with the passage of what became known as "one-drop" laws, which equated as little as one drop of "African blood" with social and legal blackness.[3] The increasingly strict definitions of blackness leading up to and including the one-drop law represent the white

[3] Most southern and many western states adopted this standard during the 1920s. Previously, most states had defined a "negro" as a person with either one-eighth or one-sixteenth "negro blood." See Appendix A.

majority's attempts to control not only African Americans but also those whites who might engage in relationships across the color line. This much-feared offense against Jim Crow norms thus, as they believed, required harsh laws and penalties forbidding any form of interracial relationship in order to achieve the goal of social control.

There is a sizable body of literature focused on laws mandating and regulating racial segregation, and debating whether segregation was firmly fixed by custom before it was actually written into law. Despite long-standing assertions that southern segregation derived from ancient and well-accepted "folkways," or a broad and common consensus in a society, C. Vann Woodward in 1955 challenged this notion, arguing instead that law had created segregation where previously it had not existed, and that law, therefore, could dismantle it.[4] While the appeal of this argument, coming on the cusp of the Civil Rights Movement dedicated to un-doing segregation, was obvious, other historians soon began to challenge Woodward's thesis. Joel Williamson, for example, argued that custom and habit created and enforced southern segregation well before the flurry of segregation laws in the 1890s hailed the traditional starting point of Jim Crow.[5] Later historians, including John Cell and Michael Klarman, supported Williamson's findings that "formal segregation" simply supplanted "informal segregation," mirroring rather than creating segregation and racist beliefs.[6] The trajectory of miscegenation and racial identity laws and practices further addresses this tension between law and community, or stateways and folkways, in creating and enforcing the Jim Crow system.

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[4] C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955).
[5] Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: University of North Carolina Press, 1965).
[6] John W. Cell, *The Highest Stage of White Supremacy: The Origins of Segregation in South Africa and the American South* (Cambridge: Cambridge University Press, 1982); Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Civil Rights* (New York: Oxford University Press, 2004); also see James C. Cobb, *The Brown Decision, Jim Crow, and Southern Identity* (Athens: University of Georgia Press), 8-30.

Within the broader rubric of law as an agent of racial control and enforcement, then, numerous scholars have also addressed the legal issues, implications, and evolution of miscegenation laws and one-drop rules. Robert J. Sickels wrote an early examination of miscegenation laws in 1972, just after the 1967 US Supreme Court ruling in *Loving v. Virginia* overturned these statutes. Other scholars, such as Peter Wallenstein, have since elaborated on the development of miscegenation laws and the forces that shaped and created these barriers, tracing the legal history of concepts including race, marriage, and even inheritance throughout a wide swath of the nation's history and geography.[7] While legal historians have focused primarily on the evolution and passage of anti-miscegenation laws along with legal challenges and precedents, all recognize the fact that laws cannot entirely excise a behavioral pattern or stifle the desires of individuals to engage in certain relationships. Social historians thus have begun to explore the ramifications of the persistence of black men and white women, and white men and black women, in continuing to form voluntary and willing interracial relationships and therefore in challenging both legal and social conventions. In his examination of pre-Civil War Virginia, Joshua Rothman revealed the social networks and implications of interracial relationships as well as the ongoing clash between community and law that likewise emerge in my study of the post-war Deep South. Martha Hodes, who also examined interracial relationships primarily before the Civil War, provides a model for scholars seeking to use legal sources to approach social questions. She argued that interracial sexual relationships occurred

[7] Robert J. Sickels, *Race, Marriage, and the Law* (Albuquerque: University of New Mexico Press, 1972); Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law- An American History* (New York: Palgrave Macmillan, 2002). For other studies of the legal aspects of miscegenation laws see Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South* (Chapel Hill: University of North Carolina Press, 1995); Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," *Yale Law Journal* 108 (1998) 109-188; A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (New York: Oxford University Press, 1996); Phyl Newbeck, *Virginia Hasn't Always Been for Lovers: Interracial Marriage Bans and the Case of Richard and Mildred Loving* (Carbondale: Southern Illinois University Press, 2004); and Annette Gordon-Reed, ed., *Race on Trial: Law and Justice in American History* (New York: Oxford University Press, 2002).

not infrequently, and sometimes were tolerated socially before, although rarely after, the Civil War. Joel Williamson earlier proposed this same division, arguing that interracial relationships were rare and heavily condemned after the Civil War. My examination of appellate court cases and testimony suggests, however, that these relationships continued with surprising frequency and met with at least occasional tacit social acceptance by whites throughout the late nineteenth and much of the twentieth centuries, even during the darkest days of Jim Crow.[8]

In addition to these antebellum miscegenation studies, other scholars have utilized miscegenation cases from the Civil War through the Civil Rights Movement to explore social and legal trends. In examining miscegenation trials from this period in the southern states, Charles Robinson, for example, argued that rhetoric and actions regarding interracial sex differed greatly and that southerners deliberately enforced—or failed to enforce—miscegenation laws according to a certain set of underlying concerns. Some of these concerns, such as the political utility of anti-miscegenation laws in undermining African Americans, clearly played a significant role in race relations. On the other hand, Robinson also argued that true intimacy faced harsher prosecution than casual sex, an argument that the letter of the law supports, but that my research complicates with a large number of cases indicating ongoing acceptance of intimate, long-standing interracial relationships. Robinson's examination of miscegenation cases thus provides valuable insight into racial interactions, but these cases also have more to offer scholars seeking to understand race relations under Jim Crow in the South.[9]

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[8] Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families across the Color Line in Virginia, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003); Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997); Joel Willimason, *New People: Miscegenation and Mulattoes in the United States* (New York: Free Press, 1980). For additional discussions of interracial relationships, see F. James Davis, *Who is Black? One Nation's Definition* (University Park: Pennsylvania State Press, 1991); and Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Pantheon Books, 1998).

[9] Charles Frank Robinson, II, *Dangerous Liaisons: Sex and Love in the Segregated South* (Fayetteville: University of Arkansas Press, 2003).

Ariela Gross has also traced the intersections of race, law, and identity, examining racial identity trials from throughout the nation to support her argument that community understanding rather than law ultimately created race, a finding my research corroborates and expands upon. Gross's treatment of not only blacks but also Indians, Latinos, Asians, and other races provides a foundation upon which I build by looking more closely at the unique conditions influencing efforts to write racial definitions into laws and the community responses they elicited in the racially fraught Jim Crow Deep South.[10] Along with Gross, Peggy Pascoe took a similarly geographically and racially inclusive approach in her examination of the forces behind the creation and the ultimate defeat of American miscegenation laws, as well as the ways in which these laws influenced and reflected ideas about race and gender while reinforcing the interests of white male dominance, again providing a valuable legal and social framework upon which I build in this dissertation.[11]

While scholars such as Gross and Pascoe adopted a broader view of miscegenation and racial identity trials, the South has not been ignored. For those seeking to understand the social implications of anti-miscegenation laws and the couples who broke them, particularly after the Civil War, Alabama in particular provides especially valuable insight through almost seventy appellate cases dealing with interracial relationships between 1865 and 1970. Other southern states saw significantly fewer cases during this time period. Accordingly, some historians have used Alabama's plentiful cases as the basis of their examinations of interracial relationships. Julie Novkov, for example, broke down Alabama's appellate cases into distinct periods based on legal defenses and challenges in order to explore the reliance on law in state-building and the

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[10] Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2005).

[11] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009).

creation of white supremacy, as well as examine issues including the link between eugenics and miscegenation laws.[12] By exploring additional cases involving interracial intimacy but not actual miscegenation charges, along with cases from neighboring Deep South states, I work to provide a more complete picture of the social ramifications of and influences upon this legal process, as well as trace the ways in which law and society interacted.

While previous scholars have begun the task of mining southern miscegenation cases for insight into race relations, many aspects of these cases, in particular their commentary on community perceptions of race and reactions to interracial relationships, remain largely unexplored. Therefore, I have examined these cases, along with related trials involving mixed race couples or families, to further explore the social implications of interracial relationships and the laws banning them, ultimately concluding that interracial relationships occurred more frequently and with greater community acceptance than the laws and traditional historical interpretations of race relations would indicate. Indeed, the laws themselves, regardless of how strictly legislators defined race, sometimes failed to impose the desired social order because of both the ambiguity of race and the persistent unwillingness of communities to enforce the laws. As my research suggests, rather than obediently and enthusiastically embracing the laws and legal standards of race, southerners of both races drew on a deep understanding of the nuances and motivations behind race relations to negotiate the terms of a multi-racial society according to their own varied beliefs and intentions. Revealing this new side of race relations allows us to see the Jim Crow South as more complicated, more self-aware, and less monolithic than previous studies have indicated.

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[12] Julie Novkov, *Racial Union: Law, Intimacy, and the White State in Alabama, 1865-1954* (Ann Arbor: University of Michigan Press, 2008); Julie Novkov, "Racial Constructions: The Legal Regulation of Miscegenation in Alabama, 1890-1934" *Law and History Review* 20 (2002): 225-227. For a discussion of the eugenics movement in the South, see Edward J. Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore: Johns Hopkins University Press, 1995).

In order to trace white southerners' beliefs and actions regarding race and racial regulation, I examine in my first chapter the history of anti-miscegenation laws and the factors that influenced their evolution up through the mid-twentieth century. While forerunners of anti-miscegenation laws appeared early in the colonial history of the United States, the development of race-based slavery created the impetus for the full development of antebellum miscegenation laws. The Civil War, emancipation, and Reconstruction required a reworking of both the social and legal systems of the South, leading to rapid changes and shifts before the return of conservative white elites to political power re-entrenched anti-miscegenation and related laws during and after Reconstruction. The ensuing development of statutory Jim Crow echoed, in many ways, the goals of long-standing miscegenation laws, with these already extant statutes becoming part of a larger effort to regulate actions and beliefs regarding race and to divide society along racial lines.

One of the most significant shifts in anti-miscegenation laws, however, emerged during the early decades of the twentieth century, as southern legislators tightened their definitions of race and in many cases adopted one-drop standards. While ongoing tensions from Jim Crow, emerging tensions regarding immigration, and events such as the resurrection of the Ku Klux Klan illustrate the overall concern of Americans for race during this period, the biggest factor driving the adoption of one-drop definitions in southern states at this time was the burgeoning eugenics movement. In attempting to create a more "fit" race of people, southern eugenicists stressed racial purity along with mental and physical fitness, leading to increased concern over racial purity and hidden racial taints, as well as the development of presumably scientific justifications to separate the races. These concerns culminated in the passage of Virginia's 1924

Racial Integrity Act, which Georgia and Alabama both copied in 1927.[13] The pattern of evolving anti-miscegenation laws in the South thus shows an ongoing concern of legislators regarding control of both beliefs and actions regarding race, and the ongoing push to establish a particular vision of a segregated and hierarchical society.

In reality, however, no matter how strictly legislators attempted to define and divide races, courts struggled to uphold these standards, as I argue in my second chapter. While one-drop laws, for example, presumed to base racial definitions on more objective scientific standards and thus render race more easily determined, the ambiguity of some individuals' and families' racial identities in a region that had experienced extensive racial mixture for centuries continued to confound efforts to enforce these new racial definitions. One-drop laws, based on pseudo-scientific thought, thus attempted to establish a standard that was well beyond the parameters of science at that time, leaving the courts little option other than to rely on more traditional measures. As a result, juries and judges, unable to decide cases based on legal definitions of race, no matter how precisely drawn, instead turned to often conflicting legal technicalities along with alternate methods of defining race, such as allowing discussions of appearance and reputation. While in some cases these methods supported the goals of racial and social control of anti-miscegenation laws, they also sometimes opened loopholes for defendants to raise reasonable doubt concerning their racial identity and for judges to occasionally decide cases in favor of apparent interracial marriages and relationships, clearly in contravention of the

[13] For discussions of the eugenics movement, see Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (Cambridge: Harvard University Press, 1985); Larson, *Sex, Race, and Science*; Gregory Dorr, "Defective or Disabled?: Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama," *Journal of the Gilded Age and Progressive Era*, 5 (2006): 359-392; Richard B. Sherman, "'The Last Stand': The Fight for Racial Integrity in Virginia in the 1920s," *Journal of Southern History* 54 (1988): 69-92; and Paul A. Lombardo, ed. *A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era* (Bloomington: Indiana University Press, 2011).

laws. Increasingly strict legal codes regarding race, then, failed to consistently achieve their goals of increased racial control, in part because of racial ambiguity.

In my third chapter, I examine the ways in which communities and individuals contributed to this ongoing conversation on how to define and control race. With judges struggling to ascertain race according to the methods mandated by law, many instead admitted extensive testimony from community members regarding characteristics such as appearance and reputation that were much more flexible, open to interpretation, and even malleable than the supposedly science-based eugenics influenced laws. As witness testimony indicates, despite evolving laws and eugenic influences, most southerners continued to evaluate the race of their neighbors based on physical traits like skin color and hair texture, as well as by a person's actions and interactions in his or her larger community. With this ongoing use of reputation and actions to determine race, individuals and families thus occasionally found themselves able to mold and influence their own racial identities or the way those of others were perceived, leading to further difficulties in enforcing racial boundaries and Jim Crow standards. The persistent reliance on community methods of determining race therefore contributed to the ongoing inability of laws to effectively address racial ambiguity and to enforce racial boundaries and divisions.

Furthermore, as I argue in my fourth chapter, just as southern communities sometimes recognized the ambiguity and malleability of race, they also proved surprisingly willing to tolerate infractions against legal racial boundaries. Dozens of miscegenation and related race-based court cases such as inheritance disputes thus reveal interracial relationships that lasted for years before facing legal repercussions, as well as numerous long-term relationships that never faced prosecution at all, including Benjamin Watts and Nazarine Parker. Not only did interracial

couples sometimes avoid legal prosecution for years or altogether, but witness testimony also indicates a surprisingly pervasive lack of concern about these infractions on the part of their neighbors and families. Many witnesses testified that couples who crossed racial boundaries continued to enjoy status in their communities and rarely faced the expected degree of ostracism. Instead, neighbors and families persistently expressed an unwillingness to serve as racial gatekeepers, preferring to mind their own business and allow social, familial, and business ties to temper any pre-existing prejudices when community members crossed racial boundaries. Without the participation of communities, Jim Crow laws consequently failed to provide a consistent and efficient level of social control. This dynamic shifted the main site of racial control from the law and the courts to the neighborhoods and communities, whose residents and members often acted and believed very differently regarding racial barriers than did the legal system.

Despite this tolerance for racial infractions that persisted throughout the decades before and during Jim Crow, however, hundreds of couples nevertheless found themselves on trial for miscegenation, raising the question of how tolerance in one case could become prosecution in another case, or at another point in time. My fifth chapter thus explores the mechanisms by which interracial couples found themselves in legal trouble, focusing on the role of personal retaliation and motivations in initiating and furthering prosecution. The vast majority of cases that indicate their origins displayed this pattern, with most cases being initiated by neighbors who held grudges that had nothing to do with race against one or both of the defendants. Instead, disputes over bootleg whiskey, arson, water rights, and a wide range of other assorted issues drove some southerners to utilize race-based legal charges to gain a measure of revenge against others. Furthermore, similar motives proved central to influencing the specific testimony

witnesses provided, with individuals engaged in unrelated personal disagreements with defendants generally giving the most damaging, but also least reliable, testimony, consequently often damaging prosecutors' cases in doing so. These individuals clearly understood the utility of race and racial charges in the racially skewed Jim Crow system and used these charges to further their own non race-related goals, indicating the range and nuances of beliefs and actions regarding race, even during a period presumably characterized by uniform attitudes and beliefs.

Ultimately, based on these cases and the testimony included in them, I argue that race relations before and during Jim Crow in the Deep South reflected a range of beliefs, actions, and choices. While legislators continued pushing for greater control over both beliefs and actions regarding race, community members continued to define race on their own terms and to tolerate racial transgressions by their friends and family members, undermining the efforts of the law to achieve social control. This range of beliefs highlights the myths and fictions of white solidarity and "group think" during Jim Crow; when legislators tightened laws, or community members initiated legal proceedings—or even used violence—against neighbors who crossed racial boundaries, they consciously chose those actions from a range of options that included tolerance and acceptance. By exploring these patterns and contrasts, my dissertation thus promises to expand our understandings of race relations in the Deep South, as well as the role of local communities in enabling, challenging, or even, in effect, nullifying the legal force of Jim Crow.

CHAPTER ONE

THE ROAD TO ONE-DROP: DEVELOPMENT OF RACIAL LAWS AND IDEOLOGIES

Anti-miscegenation sentiment and legislation have a long and complex history in North America, predating the United States itself by more than a century. This background proves crucial to understanding the interactions of law, community, and race in the Deep South in the century between the Civil War and the Civil Rights Movement. Disapproval of interracial intimacy in the future United States manifested itself as early as the mid seventeenth century, when Virginia passed the first law forbidding "Christians," i.e. whites, from committing fornication with "Negroes," with Maryland following closely after.[14] As these laws suggest, interracial marriage emerged as a serious concern in the American South from essentially the first moment of interracial contact, revealing the weight of history and tradition that nineteenth and twentieth century interracial couples and mixed race families would eventually face.

The history of miscegenation restrictions and the development of what became the unique system of American slavery are deeply intertwined, with the roots of both reaching back to the earliest English colonies in North America. The foundations for race-based slavery arrived in the southern colonies along with these first English colonists, who brought with them their existing prejudices and experiences which, along with the unique challenges and realities of the "New World," shaped the society and labor systems they developed. Within only a few decades, as reliance on indentured labor grew increasingly costly and problematic, full-blown racial

[14] See Robert J. Sickels, *Race, Marriage, and the Law* (Albuquerque: University of New Mexico Press, 1972), 64-66; and A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (New York: Oxford University Press, 1996).

slavery emerged, although the process of codifying slavery and fully linking it to skin color was an evolving process during this period.[15]

Throughout this small window of time, before blackness and slavery became as closely intertwined as they later would, early colonial white society also demonstrated somewhat less concern for black and white intermarriages than it later would, as Martha Hodes argues in her examination of relationships between black men and white women in the pre-Civil War South. As Hodes explains, this type of sexual relationship became problematic primarily as racial slavery developed and grew in influence.[16] Ariela Gross similarly points out that "for most of the seventeenth century there were no laws against interracial sex or marriage, and 'fornication' was treated the same way by law no matter who the protagonists were."[17] Joel Williamson agrees that early colonial society exhibited more lenient attitudes toward interracial relationships and their results, writing that "most of these first mulattoes were probably the offspring not of white planters and their black slave women... but rather of white 'servants' and blacks," indicating a broader acceptance of and participation in interracial relationships than later years would show. Williamson notes, however, that while these relationships were both more plentiful and generally less legally proscribed in the early colonial period, these couples nonetheless still

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[15] Winthrop Jordan and Edmund S. Morgan present two different views of the process by which race and slavery came to be equated. Jordan argues that racism against Africans pre-dated slavery, while Morgan argues that slavery only came to be equated with blackness as white indentured servitude became less economically advantageous than enslaving Africans for life, and that early servants and slaves occupied a similar space in society and recognized commonalities of class and interests. Thus, prejudice developed largely as a method of "separat[ing] dangerous free whites from dangerous slave blacks by a screen of racial contempt." Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968); Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton and Company, 1975), 328.

[16] Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South* (New Haven: Yale University Press, 1997), 19-20.

[17] Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2005), 18.

acted "in defiance of a color code of goodness and badness in the English tradition," and that "the authorities... would early set a stern face against miscegenation."[18]

Several factors contributed to the rapid development of this "stern" attitude toward racial mixing. Throughout the seventeenth century, labor and demographic trends pushed the colonies away from a varied labor system that included indentured whites alongside with free, indentured, and enslaved blacks, toward a dichotomy of free whites and enslaved blacks.[19] These shifts in labor systems consequently fed and solidified growing perceptions of bondage as the natural lot of the black man. Furthermore, as the white population began to achieve more gender balance, liaisons with blacks less appeared both less necessary and less tolerable.[20] And as Winthrop Jordan argues, English colonists were already primed to accept both racial slavery and racial prejudice by the time they began developing the North American colonies, further explaining the relatively rapid development of these practices and attitudes.

In his influential work on the development of American racial attitudes, Jordan explains that while racial slavery in the southern colonies did shift and evolve over time in the direction of perpetual and hereditary servitude for all blacks, negative attitudes towards blackness, and consequently black people, actually predated the colonial development of race-based slavery. Accordingly, he documents the negative associations that early Englishmen assigned to the color black and suggests that other traits of Africans that the English viewed negatively upon initial contact, such as religion and dress, quickly melded these negative associations to skin color as well. Furthermore, preexisting models of Spanish, Portuguese, and Caribbean slavery had

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[18] Joel Williamson, *New People: Miscegenation and Mulattoes in the United States* (New York: Free Press, 1980), 7.

[19] Edmund Morgan emphasizes the ability to boost production as a major factor in the shift from servitude to slavery. Also see Ariela Gross, *What Blood Won't Tell*, 16-18.

[20] Paul Finkelman, "Crimes of Love, Misdemeanors of Passion: The Regulation of Race and Sex in the Colonial South," in Catherine Clinton and Michele Gillespie, eds., *The Devil's Lane: Sex and Race in the Early South* (Oxford: Oxford University Press, 1997); Jordan, *White Over Black*, 175-176.

already prepared English colonists to associate blacks with lifelong hereditary slavery before the North American colonies even fully took root. Ultimately, Jordan argues that instead of the development of slavery creating prejudice toward blackness, slavery and prejudice "seem rather to have generated each other," with perpetual slavery, racial discrimination and debasement, and rejection of interracial intimacy all emerging together in the same time and place.[21]

Jordan admits, however, that while early colonists were primed to develop both racial prejudice and race-based slavery, records allow for the possibility that the earliest colonial interracial liaisons received neither worse punishment nor greater outrage than other cases of fornication or adultery, and that interracial pairings remained somewhat "common" throughout the colonial period. As early as the mid to late seventeenth century, however, as the concepts of race and servitude merged and solidified, "the emergence of distaste for interracial mixture was unmistakable," with "aversion" proving as powerful a cultural influence as sexual desire was a personal motivator. This distaste for interracial liaisons continued to deepen, and as Jordan explains, "by the turn of the century it was clear in many continental colonies that the English settlers felt genuine revulsion for interracial sexual union, at least in principle."[22] This well-documented and extensive history of white Americans' negative views of the black race as well as racial intermixture highlights the challenges that both black and mixed race families and individuals would face to attain social or legal equality even centuries later.

Given the developing relationship that historians such as Jordan point out between race, servitude, and sexuality, it is not mere coincidence that some of the first symptoms of negative attitudes regarding racial mixing appeared in early legal statutes regarding miscegenation enacted during the same period that slavery itself became increasingly codified. Virginia, for

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[21] Jordan, *White Over Black*, 80.
[22] Jordan, *White Over Black*, 79, 138.

example, passed the first law discouraging miscegenation in 1662, with Maryland following two years later, just as slavery itself gained legal and statutory recognition. These earliest colonial regulations and regulations enacted by Virginia and Maryland, though revised and amended in later years, ultimately set the standard for future legislation regarding race and servitude enacted throughout the entire United States. Massachusetts, for example, in 1705 followed Virginia and Maryland's earlier examples in prohibiting interracial marriage, quickly joined by both southern colonies, such as North Carolina in 1715 and South Carolina in 1717, as well northern colonies including Pennsylvania in 1726, showing the early development and wide reach of these laws and prejudices.[23]

While anti-miscegenation laws spread throughout the English colonies, whites in the southern colonies proved to have a particularly strong interest in these statutes because of the unique concerns and societal structure of this region that increasingly depended upon racially based slavery for economic growth. As this system of slavery developed throughout the seventeenth and eighteenth centuries and southerners increasingly associated blackness with servitude and whiteness with freedom, they consequently acted to codify and define slavery itself. For example, in the same year that Virginia acted to ban miscegenation, it also broke from English tradition by mandating that mixed-race children of slaves would follow the status of their enslaved mother, rather than their free father, into slavery.[24] Bolstered by these laws, the developing system of hereditary race-based slavery thus ensured that the largest number of

[23] Jordan, *White Over Black*, 139; Williamson, *New People*, 7-11; Rachel F. Moran, *Interracial Intimacy: The Regulation of Race and Romance* (Chicago: University of Chicago Press, 2001); and Gross, *What Blood Won't Tell*, 18. For further discussion of the development of miscegenation laws, also see Frank W. Sweet, *Legal History of the Color Line: The Rise and Triumph of the One-Drop Rule* (Palm Coast, Florida: Backintyme, 2005). Georgia passed a similar miscegenation ban in 1750, as soon as blacks and slavery were admitted to the colony.
[24] Williamson, *New People*, 8.

southerners of mixed white and black ancestry, the children of enslaved black mothers and free white fathers, would remain within the institution of slavery.

Despite the regulation that laws such as these provided, however, a major factor driving early anti-miscegenation laws was the persistent fear that children of black men and white women would, also following the status of their mother, be free, thus undermining the larger system of slavery. This possibility of free individuals with black ancestry proved problematic in a society organized socially, politically, and economically around the dichotomy of race and freedom, therefore prompting the white slave-owning elite to enact legal regulations to reduce this possibility.[25] Virginia, again setting the course for later colonies and states, passed stiff laws in the late seventeenth century mandating that mixed-race children of English mothers be placed in servitude until the age of thirty, thus partially eliminating the problem of free black proliferation while also attempting to control the sexual behavior of white women.[26]

As many historians have further argued, the additional fear of interracial alliances formed in opposition to the control and power of the white ruling elite also drove early laws attempting to separate the races and prevent intimate contact. In particular, Bacon's Rebellion, a 1676 uprising of former indentured white servants alongside black slaves and servants against colonial power and policies in Virginia, underscored the threat that interracial coalitions represented to white elite control. Events such as this increased the urgency that colonial assemblies felt to pass laws that defined the concepts of and interactions allowed between freedom, slavery, and race.[27]

Along with increasingly precise legislation regarding intimate racial mixing, proliferating regulations limiting the rights of mulattos and blacks, and growing identification of blackness

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[25] Daniel J. Sharfstein, "Crossing the Color Line: Racial Migration and the One-Drop Rule, 1600-1860," *Minnesota Law Review* 91 (2007): 12.
[26] Williamson, *New People*, 8.
[27] Gross, *What Blood Won't Tell*, 17-20.

with slavery, southern society in the eighteenth century developed progressively solidified definitions of race itself. Over time, social perceptions of what it meant to be black or white, and who fell into these categories, shifted, with anti-miscegenation laws evolving in response, and in turn further influencing southerners' views regarding racial identity. While the earliest colonial laws thus merely banned "negroes" from marriage to whites, colonies quickly amended or passed new laws clarifying this term. By the first years of the eighteenth century, for example, Virginia specified that blackness as a legal category included the children, grandchildren, and great-grandchildren of blacks, regardless of the number of white ancestors, thus including individuals with as little as one-eighth African ancestry. North Carolina, similarly, adopted a one-sixteenth standard at this time.[28] Again following these examples, many states, particularly in the Upper South, soon set similar definitions, although the commonly adopted standard specifying that a "negro" had a black parent or grandparent, or in other words possessed one-fourth of black blood, proved problematic for white elites' goals in that it allowed many visibly black individuals the legal status and privileges of white citizens.[29]

Interestingly, Deep South states, despite or perhaps because of larger populations of blacks, were somewhat less hasty about drawing a legal barrier between intimate racial interactions and legislating racial definitions than were their generally older and more northern neighbors. Alabama, for example, only banned miscegenation in 1852, and South Carolina, as a state, did not explicitly outlaw interracial relations until 1865, after the Civil War (although as a colony it had passed a law to this effect in 1717). Similarly, in 1822 Mississippi merely mandated that ministers could only perform marriages between free whites, and Louisiana was well known for its French and Spanish influenced laxity regarding racial mixture and its greater

[28] Jordan, *White Over Black*, 168; Christine B. Hickman, "The Devil and the One-Drop Rule: Racial Categories, African Americans, and the US Census," *Michigan Law Review* 95 (1997): 1178; Sweet, *Legal History*, 127.
[29] Williamson, *New People*, 13. Also see Moran, *Interracial Intimacy*, 20-21.

acceptance of a range of racial identities. The slightly more lenient position of Deep South legal systems could be seen in the court room as well as legislative assembly halls; South Carolina Judge William Harper went so far as to declare in 1831 that a person's reputation and acceptance by whites overruled known but slight black ancestry in rendering an individual socially and legally white.[30] In a few large, relatively cosmopolitan cities such as Charleston, South Carolina and New Orleans, Louisiana, an "in between" class of free mulattoes even developed their own elite socioeconomic and racial classes that in many ways paralleled, identified with, and gained the support of the white elite. While careful to preserve their superior position, the white elite recognized this class as a buffer between themselves and the lowest slave classes and used ties of kinship and economics to gain the loyalty and support of these free mulattoes.[31]

As these patterns reflect, in lower South states, which absorbed more influences from the Caribbean and Europe and boasted larger enslaved black populations as well, white elites sometimes viewed mulattos as a useful defense between the white and black populations and a possible ally against black slave insurrection, rather than simply a threatening presence, making them both more reluctant to clearly define race and more willing to be upfront about their interracial affairs, particularly the common practice of white elite men sleeping with black women. In explaining this situation, Jordan suggests that "the preponderance of slaves in the low country tended to give white men a queasy sense that perhaps they were marooned...

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[30] Moran, *Interracial Intimacy*, 24-25; Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009) 20; F. James Davis, *Who Is Black: One Nation's Definition* (University Park: Pennsylvania State Press, 1991), 35.

[31] For discussions of free blacks, mulattoes, and race relations in antebellum Charleston, see Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (Oxford: Oxford University Press, 1974); Leonard P. Curry, *The Free Black in Urban America 1800-1850: The Shadow of the Dream* (Chicago: University of Chicago Press, 1981); Robert L. Harris, Jr., "Charleston's Free Afro-American Elite: The Brown Fellowship Society and the Humane Brotherhood," *South Carolina Historical Magazine* 82 (1981); Michael P. Johnson and James L. Roark, "'A Middle Ground': Free Mulattoes and the Friendly Moralist Society of Antebellum Charleston," *Southern Studies* 21 (1982); and Jason Poole, "On Borrowed Ground: Free African-American Life in Charleston, South Carolina 1810-1861," *Essays in History* 36 (1994).

[making] men feel like both fleeing and embracing Negro slavery all at once," an ambivalence demonstrated in these rather late and sometimes conflicting laws and rulings.[32] Despite the ambivalence seen in legal precedents, however, white residents of the Deep South largely shared the prejudices and aversions of their slightly more northern neighbors, and while these southerners, like those in the Upper South, might have turned a blind eye toward elite white men's intimacy with black women, interracial relationships in general met with noted social, if not always legal, censure.

As developing interpretations of race and corresponding regulations ultimately evolved into the strict legal and social oppression attached to race-based slavery throughout the South during the antebellum period, so, on the other hand, did efforts of all races and classes to get around these laws. White elite society thus continued to persecute and attempt to prevent relationships likely to produce free blacks, while sometimes turning a blind, if not truly accepting, eye toward sexual relationships between white planters and their female slaves. The power of the planters and the enslaved condition of children of these relationships granted such liaisons an uneasy and sometimes unchallenged but still noticeable place in society. On occasion, despite both societal disapproval and the proliferation of laws limiting their ability to do so, planters even recognized their children from such unions as legitimate heirs, further skewing racial distinctions and defying anti-miscegenation laws.

If elite white males enjoyed some immunity from the laws against interracial liaisons during the antebellum period in the South, free blacks, slaves, and poor whites still fell squarely under the jurisdiction and enforcement of the law. Such individuals had few options when accused of miscegenation; blacks and slaves could not even testify in court, and women of all classes faced the dominating control of their male relatives. Nevertheless, scholars such as

[32] Jordan, *White Over Black*, 147.

Martha Hodes and Victoria Bynum record instances of miscegenation prior to the end of slavery often involving lower or less powerful classes, revealing that such relationships did occur, despite legal punishments and white elites' fears of free blacks.[33] Even under the specter of slavery, then, neither legal nor social restrictions could prevent interracial relationships entirely, a trend that continued until such laws were finally overturned a century after the abolition of slavery.[34]

The Civil War and abolition destroyed this carefully balanced society and necessitated a reworking of miscegenation laws along with social norms that previously had been based on the premise of preventing the emergence of a large free black population in addition to maintaining white elites' political, social, and economic control. Despite the abolition of slavery following the Civil War, white southerners continued to oppose racial mixing as a way to maintain social and legal control, and thus worked to reinstate antebellum ideals and social hierarchy as closely as possible. As Reconstruction ended and whites solidified their control, southern states consequently reenacted anti-miscegenation statutes as part of this larger effort to impede racial equality and reestablish white control.

The reenactment of anti-miscegenation statutes throughout the southern states after the Civil War followed a common general pattern. Many states passed and invalidated laws according to political shifts during the years of Reconstruction, with most legislatures definitively re-implementing anti-miscegenation laws as Radical Reconstruction ended and white elites regained political control.[35] Initially, most of these laws simply prohibited marriage

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[33] Hodes, *White Women, Black Men*; Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: University of North Carolina Press, 1992).

[34] Technically, the last anti-miscegenation statute was not repealed until 2000, when Alabama narrowly voted to remove from its constitution section 102, which banned the legislature from passing laws allowing interracial marriage. The Supreme Court case *Loving v. Virginia*, however, rendered such laws moot in 1967.

[35] Peter Wallenstein, "Reconstruction, Segregation, and Miscegenation: Interracial Marriage and the Law in the Lower South, 1865–1900," *American Nineteenth-Century History* 6 (2005): 57–76.

between white persons and persons of African descent, with only a few states attempting to quantify the definition of a "person of African descent" before the 1880s, when amended laws began specifying certain degrees of blood, generally either one-fourth, one-eighth, or one-sixteenth Negro blood as constituting blackness.[36]

While each state differed in the exact timeline of postwar passage and implementation of miscegenation legislation, the Deep South states of Georgia, Alabama, and Mississippi all illustrate aspects of this larger trend. Georgia, which in 1865 retained in its code a section prohibiting the marriage of "white persons and persons of African descent," was one of the few southern states to leave this law intact during Reconstruction, in large part due to the weaker position of Radical Republicans in that state, as legal scholar Peter Wallenstein points out.[37] Responding to larger political patterns of consolidating white control in the last years of Reconstruction, however, Georgia adjusted its original statute in 1873 to include the terminology "amalgamation," revealing its interest in perpetuating miscegenation laws, then for the first time defined race itself in 1882, setting the definition of blackness at one-eighth Negro blood.[38] In contrast to Georgia, Mississippi's initial 1865 effort to ban interracial marriage, carrying a severe penalty of life imprisonment for convicted couples, was explicitly overturned by the Republican dominated legislature in 1870, although it was reinstituted more permanently in 1880, when the state also set the definition for a "negro" at "one-fourth or more of negro blood." Similar to Georgia, Mississippi quickly tightened this standard to one-eighth in 1890.[39] Like Mississippi, Alabama implemented one of the earliest and most specific anti-miscegenation laws in 1866,

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[36] For a listing of post-bellum southern state laws concerning miscegenation, see Appendix A.
[37] Wallenstein, "Reconstruction, Segregation, and Miscegenation," 57–76.
[38] Georgia Laws (1882).
[39] Mississippi Laws (1890). Charles F. Robinson II, *Dangerous Liaisons: Sex and Love in the Segregated South* (Fayetteville: University of Arkansas Press, 2003), 24. Although Mississippi did retain an effective anti-miscegenation law until 1880, prosecutors often used non-race based adultery laws to prosecute interracial couples before the passage of this law.

banning whites and blacks not only from marrying, but also from living "in adultery or fornication," and immediately setting the definition of "negro" at "the third generation inclusive," or one-eighth standard.[40] The inclusion of adultery and fornication in Alabama's anti-miscegenation statue helps explain why, in later years, Alabama experienced a notably higher number of miscegenation cases and appeals than did its Deep South neighbors.[41] During Reconstruction, legal precedent briefly hindered the enforceability of Alabama's strict miscegenation law, but the return of white conservative elites to power entrenched this law as a standard of the Alabama code and constitution for decades.

After the last round of miscegenation laws and racial definitions passed in the 1880s, banning interracial marriage in all Deep South states and generally setting racial definitions at one-eighth blood, most southern anti-miscegenation statutes remained fairly stable until the 1920s, when, driven by the influence of the eugenics movement, some states tightened their definitions of "negro" even further by adopting one-drop rules. Alabama and Georgia, for example, both passed a one-drop definition in 1927, following Virginia's precedent from 1924.[42] These infamous laws prohibited persons with "any ascertainable trace" of Negro blood from intermarrying, or, in Alabama, even "fornicating" with whites.[43] These race-based marriage laws and the increasingly narrow definitions that promised to expand the number of individuals who fell under their jurisdictions indicate an ongoing concern on the part of southern legislators for

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[40] Alabama Code (1886). For further discussion of Reconstruction miscegenation laws, see Wallenstein, "Reconstruction, Segregation, and Miscegenation."

[41] The wording of the laws helps explain this discrepancy in number of cases, but while Alabama's law was more inclusive than Georgia or Mississippi, Louisiana also banned "cohabitation," and yet saw only five miscegenation cases reach the appellate level. Michelle Brattain, "Miscegenation and Competing Definitions of Race in Twentieth Century Louisiana," *Journal of Southern History* 71 (2005): 621-658.

[42] Georgia Laws (1927), Alabama Code (1928), Virginia Code (1924). Mississippi, along with several other southern states, never passed a one-drop racial definition. Mississippi's 1917 ruling in *Moreau et al., School Trustees, v. Grandich et ux.*, 114 Miss. 560 (1917), however, effectively applied this standard to school attendance cases, despite the one-eighth definition still included in the marriage statute.

[43] Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law—An American History* (New York: Palgrave MacMillan, 2002) discusses the evolution of miscegenation laws throughout the United States.

regulating race and racial behaviors in the South throughout the Reconstruction period and into the Jim Crow era. Through these anti-miscegenation statutes and related Jim Crow laws, southern legislators worked to impose a particular racialized vision of society upon the larger population, and to strictly regulate both behavior and beliefs about race.

The periodic progression and tightening of racial laws and standards in the Deep South, as seen in the pattern of the evolution of anti-miscegenation laws, reflected changing racial and political climates in the South and the nation as a whole. As these particular laws help to illustrate, the implementation of the larger legal system of Jim Crow evolved over the course of years and decades, getting progressively stricter and more codified, largely in response to shifts in racial attitudes and political trends as the nation transitioned from the Civil War and into the Jim Crow period. A closer look at the evolution of miscegenation and race laws in conjunction with larger trends helps illustrate the close links between the two.

Immediately following the Civil War, Americans of all races and geographic origins struggled with the question of how to reorganize a region stripped of the institution upon which it had based not only its economy, but also its political and social hierarchy. As Radical Republicans took control of Congress and the process of Reconstruction during the late 1860s, they, along with their black allies, pushed for a vision of society based on equality and full participatory citizenship, regardless of race. The Reconstruction Amendments to the Constitution, the Freedman's Bureau, and the Civil Rights Acts all worked toward accomplishing this goal. While modern historians recognize the limitations of Reconstruction in securing more permanent or lasting change, this period nevertheless opened the door for important achievements in equality, particularly in black voting and office holding. Freed from slavery and

able to participate in the political process for the first time, southern blacks embraced Reconstruction's promise of greatly improved standards of living.

This promise, however, was severely tempered by intense opposition from white southerners, who increasingly closed ranks in attempts to re-establish the antebellum social and economic system as closely as possible. When their early attempts to legally limit the rights of blacks, known collectively as Black Codes, were overturned, white southerners instead turned to violence, intimidation, and fraud to limit black political participation and economic advancement. The Ku Klux Klan became emblematic of the terror and violence of this period, representing the often violent but also organized and methodical ways in which white southerners went about regaining political, social, and economic control of the region. As Radical Republicans and northerners in general gradually backed away from their interest in both the region and racial justice in the 1870s, they pulled out the military forces who helped enforce equality and limit, though certainly not prevent, violence, while allowing white southerners to reestablish their own governments and political and social control through a process they celebrated as "Redemption." The opportunities of Reconstruction quickly seemed to fade, often leaving blacks in the South in little better conditions than they had suffered under slavery.[44]

The pattern of anti-miscegenation laws and legal precedents in this period in many ways reflected the tension of Reconstruction and its battles for control of racial issues. Even as white southerners worked to reestablish racial control, in most states successfully passing anti-miscegenation laws before Reconstruction ended and continuing to refine their definitions and standards, blacks and their Radical Republican allies, including southern Republicans, continued

[44] For comprehensive examinations of Reconstruction, including its impact on race relations, see Eric Foner, *Reconstruction: America's Unfinished Revolution* (New York: Harper & Row, 1988); and Kenneth Stampp, *The Era of Reconstruction: 1865-1877* (New York: Vintage Books, 1965).

working for greater equality, in some cases briefly undermining the effectiveness of anti-miscegenation laws through appeals and precedents.

In Alabama, for example, while the laws regarding miscegenation remained stable throughout Reconstruction, legal precedent shifted between disparate views as white southerners, then Republicans, and then white southerners again controlled the political process. In the first post- Civil War miscegenation case to reach the appellate courts, in 1868, Thomas Ellis, a black man, and Susan Bishop, a white woman, both Alabama residents, faced joint indictment for "living together in adultery or fornication" and fines of one hundred dollars each. Shortly before the Reconstruction Constitution of 1868 resulted in their removal from the court, the Democratic-leaning judges of the Supreme Court of Alabama reversed this conviction after deeming that this particular punishment was not prescribed by the statute. Yet, these judges devoted a large portion of their written opinion to justifying the constitutionality of the anti-miscegenation statute, arguing that because the statute punished both races equally it did not violate the constitution, thus setting a precedent for later cases and providing the key argument in constitutionality debates.[45]

Just four years later, however, in 1872, the Alabama Supreme Court, now composed of three judges elected under Reconstruction policies in 1868, and accordingly primarily local Unionists with Whig and Republican leanings, essentially reversed this decision. In the appeal of *Burns v. State*, they ruled that Alabama's anti-miscegenation statute did indeed violate the Constitution, specifically the Fourteenth Amendment's equal protection of the laws, thus for a brief period setting a precedent that undermined the effectiveness and intent of anti-miscegenation laws. This case and decision, however, represented a last attempt at spreading and instituting Reconstruction goals and policies before the court began filling with Southern

[45] *Ellis v. State*, 42 Ala. 525 (1868).

Democrats again in 1873 and 1874.[46] By the time of its 1881 decision in the influential case *Pace & Cox v. State*, then, Alabama's Supreme Court had solidly reverted to conservative white leadership, reflecting the end of Reconstruction and the abandonment of its goals. This second precedent-setting case, originating in 1881 in the black belt of Alabama when Tony Pace, a black man, and Mary Jane Cox, a white woman, were indicted for miscegenation, reached all the way to the US Supreme Court. The Supreme Court of Alabama, citing its previous decision in *Ellis*, had affirmed the conviction and the constitutionality of Alabama's statutes, and, arguing that "the punishment of each offending person, whether white or black, is the same," the US Supreme Court agreed with the Alabama court, thus affirming the constitutionality of anti-miscegenation laws and closing debate on the subject for almost a century.[47]

In Mississippi, not only legal precedents but also laws themselves shifted throughout Reconstruction according to political influences. Facing an anti-miscegenation law first passed in 1865, repealed in 1870, and reinstated in 1880, Mississippians thus struggled to make sense of the laws. Mississippi Delta residents William and Mary Covington, for example, married as soon as "some commandment passed saying white people and colored people could marry," but later found themselves hiding their actions, since "when they were married the ceremony was legal, but it was not long after the ceremony that it was abolished and they kept it a secret and did not want it to get out."[48] These fluctuations in legal precedents and statutes and their impact on southerners reflect the turmoil and uncertainty of the Reconstruction period, and the consequences of rapid and numerous political shifts on laws, enforcement, and attitudes.

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[46] For listings and discussions of Alabama's Supreme Court justices, see J. Ed Livingston, George Earl Smith and Bilee Cauley, "A History of the Alabama Judicial System," www.judicial.state.al.us/documents/judicial_history.pdf; and "Alabama's Supreme Court Chief Justices," Alabama Department of Archives and History, www.archives.alabama.gov/judicial/justices.html.

[47] *Pace & Cox v. State*, 69 Ala. 231 (1881); *Pace v. Alabama*, 106 US 583 (1883).

[48] *Covington v. Frank*, 28 So. 20 (1899).

Ultimately, decisions such as *Ellis* and Mississippi's ban of miscegenation prohibitions highlight the potential and opportunities of Reconstruction, while the precedent set by *Pace* and Mississippi's later laws clearly illustrates the final backing away from Reconstruction goals and subsequent retrenchment of white southern elites in government and politics.

In the years between the end of Reconstruction and the full development of statutory Jim Crow in the 1890s, southern legislators made few major changes to miscegenation laws, seemingly content that their statutes, racial definitions, and corresponding legal precedents provided an appropriate level of control. Some historians have recognized a similar relatively calm moment in race relations and legal standards generally at this time, as well. C. Vann Woodward, for example, argued that these in-between years represented a period of greater fluidity, racial interaction, and space for black achievement than did the Reconstruction or Jim Crow periods. Only when states began implementing new segregation laws did this window of opportunity close, indicating the development of a new system of racial segregation.[49] While some scholars have found evidence supporting this thesis, other have challenged or adjusted some of Woodward's conclusions, in particular Joel Williamson, who argued that while legal segregation did develop most clearly in the 1890s, informal or social patterns mandated extensive segregation long before laws did.[50] Many historians today agree that, regardless of the specific legal or social origins of the Jim Crow system, the years before the 1890s also saw ongoing limitations of opportunities for blacks. Thus, aspects of segregation emerged even before the flurry of state and local statutes that formalized disfranchisement and segregation beginning in the 1890s, starting with transportation and eventually enveloping most spaces both

[49] C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955).
[50] Joel Williamson, *After Slavery: The Negro in South Carolina During Reconstruction, 1861-1877* (Chapel Hill: University of North Carolina Press, 1965); Joel Williamson, *The Crucible of Race: Black-White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1984).

physical and social, marking the actual beginning of Jim Crow. Throughout the late nineteenth century, then, blacks faced both reduced political opportunities and increasingly strict segregation laws and practices. This overall political shift away from the goals of Reconstruction and towards the methods of Jim Crow clearly influenced the numerous southern anti-miscegenation and racial definition laws of the 1870s and 1880s, with these anti-miscegenation laws in many ways in turn serving as a forerunner to subsequent segregation laws that shared similar goals, intents, and methods.

Regardless of long-standing patterns of separation and prejudice, however, the 1890s and early 1900s did see a new and increased level of codification and entrenchment of legal segregation, secured by *Plessy v. Ferguson'*s infamous 1896 "separate but equal" ruling. In part responding to new racial frictions arising from the growth of urbanization in the South, as seen in the tension over railroad and streetcar segregation, this new batch of laws also represented continuing efforts to deal with persistent racial tensions. By segregating the races, supporters believed, this friction and tension would abate, thus leading to arguments that legal segregation and disfranchisement eliminated political corruption and was modern, sophisticated, and beneficial for both races. Judge John Burton Holden illustrated this belief in the importance of Jim Crow laws for racial control in writing the opinion in *Story v. State*, a 1923 case of possible interracial rape and prostitution from Mississippi. Holden argued that "the social relation and practices of the races have, in the interest of our civilization as well as in expression of the natural pride of the dominant Anglo-Saxon race and of its preservation from the degeneration [that] social equality between the races would inevitably bring, imperatively necessitated and created immutable rules of social conduct and social restraint... it was and is the natural result that laws should be enacted promotive of the social purpose of the dominant race. Among these

are: The inhibition against the authorization or legalization of marriage between any white person and a negro."[51] Such arguments clearly position miscegenation laws as part of larger statutory attempts to provide racial control during Jim Crow.

Despite the claims of Jim Crow segregation supporters that dividing the races would ease friction, however, race relations in fact remained strained in the southern states into the early twentieth century. States and cities continued adopting ever more creative and strict segregation laws, and violence, lynching, and systematic economic discrimination continued to plague race relations. Continuing to respond to these tensions, southern politicians not only proved ever more creative and resourceful in passing new Jim Crow laws, but also in expanding the reach and scope of ones long on the books. Reacting to these trends, then, southern legislators also began pushing for national, not just state, miscegenation laws, and slightly later, for stricter racial definitions in these laws as well. In 1912, for example, Representative Seaborn Anderson Roddenbery of Georgia, upon introducing an anti-miscegenation amendment to the United States Constitution in Congress, argued that "the consequences [of miscegenation] will bring annihilation to that race which we have protected in this land for all these years." While Roddenbery's amendment failed, the mere fact that it engendered serious debate "illuminated much of what was going on around it," as legal historian Peter Wallenstein explained.[52]

The same year that Roddenbery proposed his amendment, Republican United States Senator Boies Penrose pledged his influential support to a Pennsylvania equal rights bill. This bill directly opposed both the spirit and goals of Roddenbery's proposal, but both bills exemplified the ongoing and hotly debated issues of race that engaged the entire nation in the early twentieth century. Numerous outraged southern politicians and editorialists agreed with

[51] *Story v. State*, 133 Miss. 476 (1923).
[52] As quoted in Wallenstein, *Tell the Court I Love My Wife*, 133-136.

Representative John R. Tyson of Alabama, who argued that the Pennsylvania "proposition defeats the order of Divine Providence and is an attempt by the legislation to compel the intermixture of races widely separated, which will result in the destruction of the high standard of moral, religious, and educational conditions as they now exist. Social equality cannot be enforced and maintained by legislative enactments." These debates that centered on proposed legislature such as Roddenbery and Pennsylvania's bills prove that while anti-miscegenation sentiment may have reached its zenith in the South, issues of race relations and racial mixing clearly resonated across the nation during the early twentieth century.[53]

Similar to the Reconstruction period, these early twentieth century movements toward stricter or more comprehensive laws reflected larger racial attitudes and tensions of the time, even beyond the ongoing solidification of statutory Jim Crow. Specific cases concerning racial intermarriage that rose to national prominence in the early twentieth century in particular pushed interracial relationships into the public eye throughout the nation, helping prompt this momentum in the 1910s for greater legislation and control. Peter Wallenstein argues, for example, that the 1912 marriage of black boxer Jack Johnson to a white woman provided the impetus for Roddenbery's passionate but failed attempt to outlaw interracial marriage throughout the country. Legal scholar Denise C. Morgan agrees, citing the fact that "in the year after Johnson and [Lucille] Cameron were married, anti-miscegenation bills were introduced in ten of the twenty states that allowed interracial marriages, and at least twenty-one such bills were introduced to Congress."[54] While Illinois, where Johnson wed his white wife, had repealed its laws against miscegenation and Johnson thus never faced prosecution for miscegenation

[53] "Says Penrose Denies the Rights of Whites: Alabama Representative Holds Senator's Proposed Negro Equality Law Violates Constitution," *New York Times*, 3 April 1921.
[54] Denise C. Morgan, "Jack Johnson Versus the American Racial Hierarchy," in Annette Gordon-Reed, *Race on Trial: Law and Justice in American History* (New York: Oxford University Press, 2002), 90.

(although he was convicted under the Mann Act for allegedly transporting women across state lines for immoral purposes, a trumped up charge stemming directly from indignation over his involvement with white women), the outrage that his actions and marriage sparked spread across the nation. Such a high profile case reveals the nation's ongoing interest in defining, and often in "preserving," race.[55] At the same time, the outrage proved to have more immediate bark than lasting bite. Morgan points out that, despite initial reactions, "none of the bills that were proposed that year to ban interracial marriage were enacted into law," largely "due to the lack of enthusiasm of white Americans and the opposition of black Americans."[56] Such inconsistencies hint at the dichotomy that would simultaneously allow white southern legislators to pass the one-drop rule while local southern communities on the other hand displayed a surprising lack of interest in interracial relationships.

Jack Johnson's marriage was not the only northern case that brought interracial marriage into the national spotlight in the early twentieth century. What became possibly the most famous case of interracial marriage originated in New York in 1925, when Kip Rhinelander, a young member of New York's rich elite society, married Alice Jones, a working class girl of questionable racial background. Although New York, like Illinois, had no law against interracial marriage, Rhinelander's wealthy and influential father, upon learning of the marriage, pushed for an annulment suit on the grounds that Jones had deceived Rhinelander about her racial identity. As what avid trial-observers viewed as increasingly scandalous details emerged about not just the marriage but also about the sexual relationship between Rhinelander and Jones, both black and white newspapers around the nation began to devote front page coverage to the story. The *Birmingham Age-Herald*, for example, ran almost daily stories covering the case, revealing the

[55] Wallenstein, *Tell the Court I Love My Wife.*
[56] Morgan, "Jack Johnson," 91.

Deep South's careful attention to all matters concerning racial mixture.[57] While the courts eventually ruled in favor of Jones in denying Rhinelander's annulment, the couple nevertheless separated after the trial and later divorced. As this case and Johnson's marriage demonstrate, racial mixing as a taboo and a scandalous topic clearly held the imagination of both the southern states and the entire country during the early twentieth century, illustrating the centrality of racial questions to the nation at this time, along with the persistent commonality of racially ambiguous persons and racial boundary crossing.[58] Ultimately, this increased racial fervor of the early twentieth century, while insufficient to gain the passage of national legislation despite the publicity accorded high profile cases, would result in the adoption of strict one-drop definitions of race in several southern states, as the final and most complete evolution of these longstanding laws.

In addition to greater publicity around issues of interracial marriage, new developments in race relations in the first decades of the twentieth century further illustrate ongoing racial concerns and also help contextualize the rising interest in miscegenation laws and stricter racial definitions as part of a larger preoccupation with race and racial control during this period. In 1915, a group of men outside of Atlanta, Georgia revived the Ku Klux Klan, in response to both ongoing racial friction as well as the rapid changes such as urbanization and industrialization sweeping the nation in the early twentieth century. National media coverage of the film *Birth of a Nation*, which celebrated the original Ku Klux Klan as noble heroes and protectors of their race, helped to fuel these tensions and contribute to the growth of the organization, as did the murder of a young white factory girl, Mary Phagan, and the subsequent lynching of her

[57] The *Age-Herald* ran seventeen articles covering this case during early winter of 1925. *Birmingham Age-Herald*, 14 Nov 1924- 6 Dec 1925. On microfilm at Birmingham Public Library.
[58] Earl Lewis and Heidi Ardizzone, *Love on Trial: An American Scandal in Black and White* (New York: W.W. Norton, 2001).

supervisor Leo Frank, a Northern Jew, outside of Atlanta. In part riding the wave of outrage caused by these events, the revived Klan spread rapidly throughout the South and Midwest after World War I and set itself up as the guardian of American morality. While the Klan also targeted Catholics, Jews, and "fallen" whites, blacks remained a favorite target, particularly those considered "too prosperous" or "too uppity" for white sensibilities. The Klan's emphasis on racial purity and protection of the white race thus fit neatly with newly developing legal definitions of blackness and stricter anti-miscegenation laws in the 1920s.[59]

While the Klan gained widespread popularity outside the South as well, whites in Deep South states proved enthusiastically receptive to its message and influence. Georgia, the birthplace of the Second Klan, felt the organization's influence particularly strongly; Nancy MacLean argues that, politically, "the Klan steamrollered opposition" on its way to amassing considerable influence in Georgia politics.[60] In the early 1920s, Alabama fell under the control of the Klan both politically and socially to an even greater extent than did Georgia. This pattern of dominance of state politics, both in the South and Midwest, reflected the Klan's emphasis on electoral politics and explains the success it enjoyed in electing members to office. These Klan-backed office holders then often became the legislators voting on tighter the anti-miscegenation laws proposed during the 1920s, the same decade during which the Klan enjoyed its greatest influence and popularity. The peaking of the Klan's popularity and influence in the 1920s, along with its emphasis on and often violent pursuit of white racial purity, contributed to the overall atmosphere of greater concern for racial segregation in which Deep South states tightened their

[59] Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994); Glenn Feldman, *Politics, Society, and the Klan in Alabama, 1915-1949* (Tuscaloosa: University of Alabama Press, 1999).
[60] MacLean, *Behind the Mask of Chivalry*, 17.

definitions of race and regulations of marriage.[61] This heated atmosphere of resurrected organized racial terror thus helped incite legislators throughout the nation to adopt stricter Jim Crow and anti-miscegenation laws during the first decades of the twentieth century, as politicians, scientists, and laypeople alike increasingly manifested both fear of the racial "other" and a desire for racial purity and control.

The rise of racist organizations such as the Klan helped foster an attitude of racial intolerance, but most significantly for the evolution of stricter legal definitions of race in the 1920s, new theories about human society and race emerged during the late nineteenth century and gained widespread popularity. According to the ascendant theory of Social Darwinism, which rose to such prominence during the nineteenth century that "every serious thinker felt obligated to reckon with" it, the most intelligent and talented individuals would rise to the top of society, and those at the bottom, which, amongst others, generally included blacks, would deservedly fail to thrive or even die out. Supporters of this theory, who included numerous powerful and influential scholars and politicians, commonly used these ideas to justify social and economic inequalities and argue against either private or especially governmental efforts to address inequities. Facing growing criticism by the turn of the century from those horrified by the growing inequities of industrialization, however, Social Darwinism soon began evolving in a different direction; instead of focusing on the competition between individuals, serious thinkers of the day now contrasted and ranked groups of people, most notably races and ethnicities.[62] This new direction helped fuel the development of Scientific Racism, which purported to scientifically prove the superiority of certain races over others, with each race believed to possess biological, fixed, and unchangeable characteristics, and with blacks inevitably "proven"

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[61] Feldman, *Politics, Society, and the Klan in Alabama*; MacLean, *Behind the Mask of Chivalry*.
[62] Richard Hofstadter, *Social Darwinism in American Thought* (Boston: Beacon Press, 1992).

most inferior by these standards.[63] These theories in some ways built upon abolition-era beliefs that blacks would disappear in a few generations without whites caring for them, but also provided new and seemingly scientific support for evolving applications of old prejudices, in particular, the eugenics movement. [64]

Eugenics, touted as the science of improving the human race through genetic manipulation, began developing into a cohesive movement in the late nineteenth century and spread quickly, particularly among the educated white middle and upper classes, partly in response to the social changes threatened by industrialization, urbanization, immigration, and the anxieties these created. The movement attracted followers from both ends of the political spectrum, and by the 1920s had spawned the American Eugenics Society, with branches in twenty-eight states, indicating its influence throughout the nation.[65] Eugenics encompassed a wide range of beliefs and methods for improving the human race; so-called positive eugenics proposed to improve humanity through encouraging matches between "the socially meritorious," but negative eugenics sought to improve humanity through preventing "undesirables" from passing on their negative traits, either by discouraging "breeding," or even by legally forcing sterilization.[66]

To enforce these beliefs, many eugenicists supported a range of marriage restrictions, not only between "feebleminded" or otherwise allegedly unfit individuals, but also between individuals of different races. As historian Daniel J. Kevles explains, "eugenicists embraced the

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[63] Richard B. Sherman, "'The Last Stand': The Fight for Racial Integrity in Virginia in the 1920s," *Journal of Southern History* 54 (1988): 69-92.
[64] Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (Cambridge: Harvard University Press, 1985); Edward J. Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore: Johns Hopkins University Press, 1995). See Feldman, *Politics, Society, and the Klan in Alabama*, and Gary B. Nash, *Forbidden Love: The Secret History of Mixed-Race America* (New York: Henry Holt and Company, 1999), for discussions of scientific theories of race.
[65] Kevles, *In the Name of Eugenics*, 59.
[66] Kevles, *In the Name of Eugenics*, 85.

standard views of the day concerning the hereditary inferiority of blacks,"[67] leading them to view interracial sexual relationships as a prime threat for introducing and spreading "impurities" throughout both races. The language that appellate judges later used when analyzing the laws amended under eugenic influences illustrated this concern with racial purity. Judge Lucien Gardner, for example, wrote in 1944 in *Dees v. Metts* that the Constitution of Alabama was "intended to prevent race amalgamation and to safeguard the racial integrity of white peoples as well as the racial integrity of Negro peoples..."[68] Such language indicates the influence of eugenic ideas about science and purity on southerners' racial beliefs, even while obscuring the fact that, certainly, impurity of the white race was of greater concern to the white southerners in power.

Concern over ensuring racial purity consequently permeated much of southern eugenic thought. As Gregory Dorr explained, white southerners, "worried about the moral, physical, and mental qualities of their region's' inhabitants, ...sought refuge in eugenic racial purity—the improvement of the white race through controlled procreation."[69] In part, eugenicists and their southern supporters based their racial beliefs on longstanding prejudices and other pseudo-sciences, such as Social Darwinism, but they also purported to have new and concrete scientific evidence of black inferiority such as, for example, a series of post-World War One IQ tests of Army draftees that they interpreted as proving that "the average intelligence of black Americans... was just as low as most white Americans had long liked to think it."[70] As early as the 1930s, scientists and scholars would begin questioning not only the validity of these tests, but also the larger basis for the eugenics movement, but the 1920s, when southern states tightened

[67] Kevles, *In the Name of Eugenics*, 75.
[68] *Dees et al v. Metts et al*, 245 Ala. 370 (1944).
[69] Gregory Dorr, "Defective or Disabled?: Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama," *Journal of the Gilded Age and Progressive Era* 5 (2006): 363.
[70] Kevles, *In the Name of Eugenics*, 83.

their anti-miscegenation laws, represented the heyday of both the eugenics movement and efforts to promote eugenics through legal means.[71]

In the 1920s, following the lead of influential scholars and scientists based at the University of Virginia, Virginia became the battleground in which key eugenics legislation was pioneered and tested. At this time, for example, many eugenicists believed that laws forcing the sterilization of feebleminded, epileptic, morally degenerate, or otherwise undesirable individuals would protect society from the spread of these traits, and thus were vital to efforts to improve the human race. Virginia accordingly passed a sterilization law in 1924, which was upheld by both the Supreme Court of Virginia and the US Supreme Court, with Justice Oliver Wendell Holmes famously ruling in 1927 in *Buck v. Bell* that "three generations of imbeciles are enough" and that sterilization laws were constitutional. Following this ruling, many other southern states introduced and passed sterilization laws, illustrating the clear link between the eugenics movement and legal developments of the 1920s.[72]

Virginia also most clearly illustrates the direct link between the eugenics movement and the passage of one-drop racial laws in the South in the 1920s. As historian Edward Larson explains, southerners often approached the eugenics movement from the broader base of the Progressive Movement, viewing eugenics as another method of using science to reform the supposed ills of society and bring it in line with their idealized middle class vision of the way society should appear. Like Progressives, then, southern eugenicists, including those in both Virginia and the Deep South, often relied on "experts," such as professors, social workers, and physicians, in order to fuel and support their legal agendas.[73] These experts, who in general

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[71] Julie Novkov, "Racial Constructions: The Legal Regulation of Miscegenation in Alabama, 1890-1934," *Law and History Review* 20 (2002): 225-277

[72] Kevles, *In the Name of Eugenics*; Larson, *Sex, Race, and Science*; Dorr, *Segregation's Science*.

[73] Larson, *Sex, Race, and Science*.

appealed to the growing American belief in expertise and science itself, attempted to quantify the impact of miscegenation through the scientific terminology of degrees of blood, genes, and heredity, concluding that any black blood represented a biological threat to the white race and thus their mixture must be prevented by any means, either legal or social. As Gregory Dorr writes, southern supporters of eugenics-based marriage laws now "shored up old prejudices with eugenical science."[74]

In 1912, one of these experts, physician Walter A. Plecker, was charged, as Director of the newly created Virginia Bureau of Vital Statistics, with overseeing local registrars throughout the state.[75] In many ways, Plecker represents the blend of science-shrouded eugenics with southern race obsession that led to the passage of one-drop laws. Throughout the early twentieth century, Plecker, driven by his belief in eugenics, pushed his registrars for greater accuracy in their reporting of race in marriages and births, with the goal of preventing blacks from tainting the white race. Even before Virginia passed its one-drop rule, Plecker ordered his employees to refuse "white" classification to anyone with "even a trace of negro blood," since, according to Plecker's personal blend of science and myth, the children of these "near white people" were likely to "revert to the distinctly negro type," thus making them a biological threat to the white race. [76]

Inspired by his struggles in forcing his registrars to comply with this standard and his own belief in eugenics, Plecker helped spearhead the movement to modify Virginia's legal definition of race to the one-drop rule. Along with world-renowned pianist and ardent devotee of eugenics, John Powell; and Earnest Sevier Cox, an amateur ethnographer and author of *White*

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[74] Dorr, *Segregation's Science*, 146
[75] Sherman, "The Last Stand."
[76] J. Douglas Smith, "The Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922-1930: 'Nominally White, Biologically Mixed, and Legally Negro,'" *Journal of Southern History* 68 (2002): 75; Dorr, "Defective or Disabled?"; quote from Sherman, "The Last Stand," 72.

America, a eugenics-influenced tract explaining how racial mixture would destroy the white race; Plecker helped to lead the Anglo-Saxon Clubs of America, founded in 1922 with the goal of preserving Anglo-Saxon ideals and lobbying for legislation to further that aim. Claiming to speak from a position of scientific truth and unbiased neutrality, Plecker, the Anglo-Saxon Club, and the powerful allies they recruited among Virginia's social and political elite, including the Richmond *Times-Dispatch*, began working to spread their message regarding the "logically induced, scientific fact," that "one drop of negro blood makes the negro," arguing that the legal definition should reflect this biologic reality in order to protect the health and purity of the white race.[77] As Douglas Smith explains, these men and their supporters soon "dominated racial discourse in the Old Dominion; successfully challenged the legislature to redefine blacks, whites, and Indians; used the power of a state agency to enforce the law with impunity and without mercy; [and] fundamentally altered the lives of hundreds of mixed-race Virginians."[78] While never gathering a particularly large or active popular following, these men were effective lobbyists, partly because southern politicians of the time recoiled from the thought of being portrayed as anything other than full supporters of white political and social dominance.

In large part because of their publicity and lobbying campaigns which included eugenics-laced speeches delivered before the General Assembly, in March of 1924, Plecker, Powell, Cox, and their allies celebrated the victorious culmination of their efforts with the passage of Virginia's Racial Integrity Act, which required racial registration, adopted a "no trace whatsoever" definition of whiteness, and for the first time in Virginia banned marriage, not just between whites and blacks, but also between whites and any persons with "non-Caucasic blood." With his law now in place, Plecker embraced his new power and responsibilities as racial

[77] Smith, "The Campaign for Racial Purity," 73; Dorr, *Segregation's Science*.
[78] Smith, "The Campaign for Racial Purity," 65.

guardian of the state, targeting allegedly tainted families and individuals with an almost obsessive vigor in his efforts to scientifically and statistically identify and quantify the race of every Virginian and the threat to racial purity they might pose. In particular, Plecker ardently challenged any claims of residents to have only white and Indian blood, arguing that because of ongoing mixture between the black and Indian races, no current citizens of Virginia had any Indian ancestry without measurable African ancestry as well, and that claims to the contrary thus provided sure indication of black blood. This belief effectively recategorized hundreds of Virginians from white—or at least white enough—to black, illustrating the far-reaching consequences of one-drop laws and their consequent expansion of the ranks of individuals falling into the legal category of blackness and subsequently facing the challenges of life under Jim Crow.[79]

Scholars such as Richard B. Sherman and Gregory Dorr recognize that Virginia's one-drop law developed and endured, not because of a "ground swell" of popular support, but rather because of the work of "extremists who played effectively on the fears and prejudices of many whites."[80] Most southerners, with limited access to education much less the lofty circles of academia, knew little or nothing about eugenics and its implications. For the elite whites who ran southern politics, however, access to colleges, lectures, and scientific discoveries introduced them to this movement and persuaded them to its goals, allowing eugenics to make a significant impact on legal standards of race and marriage. This discrepancy between the knowledge and influences on the elite who created laws versus the larger population subject to these statutes helps to explain the apparent contradiction between the Deep South's quick move to follow

[79] Dorr, *Segregation's Science*.
[80] Sherman, "The Last Stand," 69.

Virginia's legislative one-drop example, on one hand, and, on the other, the persistence of racial boundary crossing and tolerance thereof.

Even without a popular groundswell of support, then, Alabama and Georgia both were able to pass their own one-drop laws modelled on Virginia's Racial Integrity Act, illustrating the influence of the eugenics movement on the evolution of miscegenation laws. In Alabama, the professional medical community had long embraced the larger eugenics movement, with the Medical Association of the State of Alabama debating eugenic sterilization as early as 1901, led by Birmingham physicians who advocated endorsement of a sterilization law. Likewise, the Georgia Medical Association began discussing eugenics and sterilization by 1913.[81] Given this established influence of and exposure to the eugenics movement and its philosophies and goals, as well as ongoing regional racial tensions and debates about how to manage race, these states were ripe to follow Virginia's example in adopting the one-drop rule. Thus, when Virginia's governor sent to every other governor in the nation a copy of his state's new Racial Integrity Act, urging them to consider similar legislation, Georgia state Representative James C. Davis was primed to respond favorably. He wrote to Walter Plecker, one of the authors of Virginia's one-drop bill, asking for more information—which he received—and also took Plecker's advice to invite prominent eugenicist and Anglo-Saxon club founder John Powell to speak to the Georgia legislature, writing to Powell that "being a member of the General Assembly of Georgia, it is my purpose to have a law similar to [Virginia's Racial Integrity Act] enacted at our next session."[82] Following Powell's speech and with his support, Davis subsequently introduced a "Racial Integrity Bill" based off of Virginia's model to the Georgia legislature in 1925, a version of

[81] Larson, *Sex, Race, and Science*, 45-52; Dorr, "Defective or Disabled?". While Mississippi never passed a one-drop definition of race, their state medical association also debated and endorsed eugenics during the 1910s.
[82] Correspondence Concerning Eugenics, James C. Davis to John Powell, 25 May 1925. Papers of John Powell, 1888-1978, n.d., Accession #7284, 7284-a, Special Collections, University of Virginia Library, Charlottesville, Va.

which he successfully guided into law in 1927, presumably with the support of other legislators who had been equally swayed by Virginia's example and Powell's speech stressing the importance of eugenic purity.[83] The direct link between Georgia's one-drop law and Virginia's, and between Virginia's law and the eugenics movement, indicates the importance of this movement in the mid 1920's legislative push to achieve greater racial control—and thus greater racial purity—in the Deep South.

Alabama's path to the one-drop law is less well-documented, but, like Georgia, still suggests a link to the eugenics movement.[84] The timing of Alabama's new miscegenation law, which passed the same year as Georgia's Racial Integrity Act, suggests that Alabama politicians, like James C. Davis and his fellow Georgia legislators, might also have responded positively to Virginia's example and explicit call for other states to join it in passing stricter standards. Furthermore, the man who introduced the one-drop amendment to Alabama's miscegenation law in 1927, Senator Oscar S. Justice, was an active member and officer of the Medical Association of the State of Alabama, whose support of eugenic interventions has been well documented.[85] Clearly, the influence of the eugenics movement in the early twentieth century helped encourage legislatures in several southern states to tighten their control over racial boundaries, in large part to better protect the so-called integrity of the white race.

Whatever the motivations and goals that drove legislators to tighten laws and barriers to racial interaction and equality, however, science-based one-drop laws in reality were largely

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[83] Paul A. Lombardo, "From Better Babies to the Bunglers: Eugenics on Tobacco Road," in Paul A. Lombardo, ed., *A Century of Eugenics in America*: *From the Indiana Experiment to the Human Genome Era* (Bloomington: Indiana University Press, 2011), 49-50.

[84] Despite the *Montgomery Advertiser's* comprehensive coverage of state politics, the only mention regarding the one-drop rule is a sentence buried deep in an article stating that Senator Justice proposed an amendment to section 5001. *Montgomery Advertiser*, 16 June 1927, p. 3, on microfilm at Alabama Department of Archives and History.

[85] Transactions of the Medical Association of the State of Alabama, (Montgomery: Brown Printing Company, 1893), 198; "Dr. LeGrande Highly Honored," *Birmingham Age-Herald*, 22 Apr 1899, p. 3; *Montgomery Advertiser*, 16 June 1927, p. 3. For more evidence of MASA's eugenic ties, see Dorr, "Defective or Disabled?"

unable to provide any greater control than previous versions of the law. Most significantly, the much-lauded "one-drop" standard, in real world situations, proved elusive if not impossible to verify. Thus, despite the ardent claims of eugenicists and one-drop supporters to use science to define and regulate race, the very lack of any scientific test or method for doing so in many ways doomed the one-drop standard to making little actual difference in southern racial regulation, as well as to rendering racial identity even more difficult, rather than simpler, to determine. As Scott Malcomsom explains, in "seeking to pin down the essence of race, the one-drop rule actually made that essence unknowable, indeed invisible."[86] While neither eugenicists nor legislators seemed to recognize—or at least to publically acknowledge—this inconsistency, the contrast between what scientific-minded racists promised and what science itself could actually deliver played a major role in contributing to persistent racial ambiguity, and thus in hindering the attempts of white elites to establish consistent and comprehensive racial control.

Furthermore, many other southerners ultimately proved unwilling to uphold these standards in their own lives, as they continued crossing racial lines and tolerating those actions from others. Along with this persistent racial boundary crossing, ongoing racial ambiguity also undermined the ability of this new legal definition of race in Georgia and Alabama to accomplish its eugenic purpose of purifying the races. In the 1930 South Alabama school attendance case of Dorothy Taylor and Hattie Jewel Taylor, for example, a lawyer noted that "John Everett, Sr., prior to 1896, if he be of mixed blood, could lawfully intermarry with the white race and his offspring under that law would have the status of white people prior to and up to the statute of 1927... but now if they be of 'mixed blood'...they are of the colored race by force of this

[86] Scott Malcomson, *One Drop of Blood: The American Misadventure of Race* (New York: Farrar Straus Giroux, 2000), 356.

statute."[87] Maggie Petty, of Georgia, similarly found herself legally reclassified after 1927, with lawyers in her inheritance case pointing out that "she was white up to 1927 and a Negro after that time."[88] People and families whose racial identities had shifted legally after passage of the one-drop law found themselves trapped in "in-between" racial categories where they were unable to legally and fully participate in society as either blacks or whites. Their experiences further demonstrate the limitations of the laws in addressing the true realities of race, regardless of the goals and intent of the law and its eugenic influences.

The eugenics movement and related pseudo-scientific theories played a major role in the evolution of race-based legal statutes, as these cases illustrate, but they also played into larger patterns of national discrimination laws during the early twentieth century. For example, the same year that Virginia developed and pioneered the modern one-drop rule, the United States passed its most comprehensive and restrictive immigration law to date, the 1924 National Origins Act. Reflecting nationwide anxiety regarding industrialization and the accompanying massive influx of racially and ethnically "undesirable" elements, as well as the peaking influence of the eugenics movement, this law intended to keep these types of people out of the country, specifically targeting immigrants from southern and eastern Europe and Asia.[89] In the early twentieth century, then, an overall atmosphere of racial tension, anxieties over immigration and ethnic "others," and the rise of pseudo-scientific theories set the stage for the adoption of even stricter laws in order to prevent anxiety-inducing infractions against the established social and racial order.

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[87] "Dorothy Taylor and Hattie Jewel Taylor vs. Washington County Board of Education, et als." p.66, Jacqueline Anderson Matte / MOWA Choctaw Indian Papers, The Doy Leale McCall Rare Book and Manuscript Library, University of South Alabama, Mobile, AL.
[88] "Negro Man, White Woman Seek $10,000 City Estate," *Atlanta Daily World*, 4 Mar 1943.
[89] Kevles, *In the Name of Eugenics*; Larson, *Sex, Race, and Science*.

Just as legal precedents set by Alabama's appellate cases had earlier reflected the turmoil of Reconstruction, the methods appellants and their lawyers used to defend against miscegenation charges during the race-obsessed period in which southern states debated and adopted the one-drop law also reflected the larger preoccupations of the time. The majority of these cases from 1910s and 1920s, the period in which southern states adopted the one-drop rule, thus focused on the increasingly touchy issues and fears of hidden race that eugenics and one-drop laws sought to eliminate, rather than continuing earlier defense patterns of debating constitutionality or technicalities. Accordingly, between 1918 and 1935, almost two-thirds of appellants in Alabama used racial definitions and heredity to challenge their convictions, arguing that they did not meet the requisite degree of Negro blood to fall under the provisions of pre-one-drop statutes, or else had no Negro blood at all, thus highlighting the limitations of laws in dealing with the specter of hidden black blood.[90] Alabama's first case in this period to feature a racially based defense, *Metcalf v. State* in 1917, thus argued that one of the defendants was, in fact, never proven to be white, revealing the breadth and variety of these arguments concerning racial definitions. As the prosecution in this case failed to prove a crucial element of the crime—that the alleged intercourse involved individuals from different races—the Alabama Court of Appeals reversed the conviction, opening the door for future cases using race as defense.[91]

Even with their smaller numbers of appeals during this era, Georgia and Mississippi supported this pattern, with Mississippi in particular ruling on the influential *Moreau v. Grandich* racial definition case that effectively applied the one-drop rule to schoolchildren in 1917, and later vigorously debating the racial status of Chinese school children, showing the

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[90] See *Metcalf v. State*, 166 Ala.App. 389 (1918); *Reed v. State*, 18 Ala.App. 353 (1922); *Wilson v. State*, 20 Ala.App. 137 (1923); *Weaver et al. v. State*, 22 Ala.App 469 (1928); *Williams v. State*, 23 Ala.App. 365 (1930); *Williams v. State*, 24 Ala.App. 262 (1931); *Williams v. State*, 25 Ala.App. 342 (1933); *Williams v. State*, 26 Ala.App. 53 (1934); and *Mitchem v. State*, 25 Ala.App. 338 (1933).

[91] *Metcalf v. State* (1918).

centrality of racial definition to legal trends of the early twentieth century.[92] Even after the adoption of the one-drop rule in Georgia and Alabama in 1927 seemed to close this legal loophole of arguing for "not enough" blackness to meet legal standards, appellants nevertheless continued to rely on this race-based defense to instead argue for total lack of any blackness, thus persisting in an ongoing refusal to aid the law's efforts to categorize people by impossibly minute infusions of black blood. This race-based legal defense strategy thus ultimately proved surprisingly successful in highlighting the ineffectiveness of both the old standards and the new eugenics-inspired one-drop laws in addressing racial ambiguity, as well as in displaying the racial beliefs and attitudes of local communities.

The history of anti-miscegenation laws and the one-drop rule in particular provides valuable insights into to the ways in which local courts and communities dealt with interracial relationships in the late nineteenth and early twentieth centuries. Even as legislators persevered in their attempts to eliminate interracial relationships and impose social control, progressively tightening their racial standards to include ever growing percentages of the population throughout Reconstruction and well into the Jim Crow period, the persistence of racial ambiguity and interracial relationships shows the inadequacies of legislators' legal mandates. As the nation's obsession with racial purity reached a pinnacle in the early twentieth century, driven by the influence of the eugenics movement, legislators adopted their harshest measure to control interracial liaisons, the one-drop rule. Even this standard, however, failed to achieve the goal of white social control, due in large part to the persistent inability of the law to address racial ambiguity and to the willingness of local communities to tolerate interracial couples.

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[92] *Moreau v. Grandich* (1917); *Rice v. Gong Lum,* 139 Miss. 760 (1925); *Bond v. Tij Fung,* 148 Miss. 462 (1927).

CHAPTER TWO

ONE-DROP MEETS REALITY: JUDICIAL STRUGGLES TO APPLY THE ONE-DROP LAW

Many southern legislators supported the passage of one-drop definitions of race, based on the belief that this standard would eliminate both the possibility of people crossing the racial boundary as well as any ambiguity about the status of certain groups or individuals, and thus provide greater social and legal control. But southern courts, in actuality, witnessed little or no easing of the burden of judging the race of defendants and appellants. The previous definition of blackness as consisting of at least one-eighth black ancestry, in legislators' and eugenicists' opinions, left a loophole for black individuals to blend into legal whiteness, as demonstrated in legal cases in which conviction hinged on the understandably difficult distinction of whether a great-grandparent was a full blooded Negro or a mulatto. The one-drop law, then, presumed to eliminate this loophole—*any* Negro blood, no matter how far back or diluted, defined an individual as black. But while the one-drop definition claimed to use new scientific concepts of race that were based on the purity, or impurity, of one's ancestors' blood to definitively solve the problem of racial ambiguity, the lack of scientific tests that could identify this threatening yet invisible drop meant that the one-drop law offered little actual advantage over its predecessor.

In practice, then, courts struggled to define race, and to decide *how* to define race, both before and after the passage of one-drop laws. Given the difficulty of tracing ancestry at all, much less the precise race of distant ancestors, defendants and appellants thus continued to challenge their legal racial identities and the composition of their "blood," regardless of the

wording of laws and legal definitions. The one-drop law did little to ease this burden placed on courts, forcing them to continue reaching beyond the law to utilize additional, or even conflicting, methods to try to determine race. These issues, including the definition of race, how to determine race, and even *who* could determine race, all arose repeatedly in southern courtrooms during Reconstruction and into the Jim Crow era, consistently challenging judges and juries for almost a century. Faced with these uncertainties which the law could not adequately address, some judges avoided dealing the issue of race altogether in favor of ruling on other less ambiguous issues, contested the need to define race by ancestry, or looked to laws and precedents from other states to deal with these complex issues. Ultimately, as the challenge that courts faced in applying miscegenation laws to real situations reveals, the ambiguity and flexibility of race persisted in spite of increasingly strict laws intended to classify and control a racially mixed population.

Throughout the Jim Crow period and in the years preceding it, laws, reflecting broader social and legal trends such as the turmoil and aftermath of Reconstruction, the advent of Jim Crow, and the growth of the eugenics movement, provided what appeared to be clear definitions of who was black, whether that definition specified one-eighth or one-drop of black blood. The biggest challenge courts faced in deciding miscegenation and racial definition cases, however, was simply meeting this presumably basic standard on either a genealogical or scientific level. Frequently, even at the one-eighth level, which reached back to a person's great-grandparents, few people in a family or community had personal knowledge and memory of the ancestors in question, much less the ability to prove their claims and recollections accurately to the legal standards of a court. An elderly witness's testimony that he or she remembered from childhood that a relative was fully black, rather than partially black, for example, carried little clear

authority.[93] The one-drop definition, despite the intent of legislators, did little to clear up this ambiguity, as memories of an even more distant ancestor—a great-great-grandparent or beyond—having slight black ancestry or not generally amounted to little more than rumor at best.

Defendants in miscegenation and racial definition cases demonstrated an astute ability to utilize these loopholes and ambiguities to their advantage. Even as legislators in the mid to late nineteenth century first moved toward widespread utilization of one-eighth racial definitions, then, appellants had already achieved success in confusing and contesting the issue of their ancestors' race, as claims of specific degrees of blood and ancestry so far back in the family tree persistently proved difficult to verify. The well-documented legal struggles that Rose Reed's descendants faced in the rural southern Alabama counties of Washington and Mobile best exemplify the difficulty of proving the race of distant ancestors, even under the one-eighth definition. At least three of Rose's descendants, when faced with miscegenation charges, argued that their grandmother had Indian, not Negro, blood, and thus that their marriages to white partners were valid and legal.[94] When these descendants' trials took place in the 1920s, long after Rose's death in 1878, a few members of the community still remembered Rose or stories about her, but their testimony about her race and appearance varied wildly and suffered from the distance of decades and the deterioration of memory.

Given the inconsistency of witnesses' memories and accounts, juries and judges in these cases split over their opinions of Rose's, and thus her grandchildren's, race. In 1922, for example, Rose's grandson, Percy Reed's, initial jury failed to buy his argument that Rose had no

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[93] For an example of this scenario, see *Knight v. State*, 207 Miss. 564 (1949).

[94] In addition to Percy Reed and Daniel Reed, their cousin Jennie Reed was indicted for miscegenation in 1881. Records of this case have since been lost, but testimony about Rose's race and appearance from Jennie's 1881 trial was allowed to be included in Percy Reed's 1922 trial. See *Percy Reed v. State*, 18 Ala.App. 353 (1922), and *Daniel Reed v. State*, 20 Ala.App. 496 (1925).

black blood and that he was therefore white, but the appellate court in the same case overturned Reed's conviction, in large part because it, on the other hand, did believe that the evidence failed to prove black ancestry. Also influential in the reversal of Percy's conviction was the finding that "before passing sentence, the court proceeded to ascertain that the defendant is of Indian and Spanish origin," which further convinced the appellate court that the initial jury decided against the weight of the evidence.[95] Three years later, Percy's cousin Daniel Reed also failed to convince a local jury that grandmother Rose was Indian rather than black, but again had his conviction reversed by a less convinced appellate court.[96] These cases reveal the clear difficulty of proving even one-eighth black blood, and as courts discovered after the passage of the one-drop law, family histories, memories, and community knowledge became no more convincing the farther back they looked. If determining the race of a grandparent was impossible, as it proved to be with Rose Reed, how could the race of a second or third great-grandparent be proven? Clearly, this shifting nature of collective family and community memory remained a problem, regardless of how strictly laws defined race.

Haphazard record-keeping compounded the problem of fading and conflicting memories in attempting to define race based on ancestry. In a region plagued with illiteracy, not every family kept records, much less accurate ones, and public and official records furthermore often fell victim to fires or loss. Even when documents that indicated race did exist, they often proved less than convincing. Census records for numerous miscegenation case appellants reveal the arbitrary nature of racial classification through a pattern of individuals being classified variously as white, Negro, mulatto, and Indian, which recurs in documents such as birth and military records. Records for Percy Reed, for example, document him as being black in 1900, mulatto in

[95] *Percy Reed v. State* (1922).
[96] *Daniel Reed v. State* (1925).

1910, white as a World War I draftee, Indian in 1920, and Negro in 1930 and 1940. Even his wife, Helen, who in their 1922 miscegenation trial was classified unequivocally as white, found herself listed as Negro in the 1930 census, then white again in 1940.[97]

In addition to the inconsistencies obvious in governmental records such as these, a number of court cases directly addressed the fallibility of written sources in proving race, revealing the importance of accurate—or inaccurate—record keeping in policing racial behavior and interactions. In *White v. Clements*, a Reconstruction-era case from Savannah, Georgia, Richard White, the winner of a local election, faced a challenge from his opponent to prove that he did not have one-eighth or more black ancestry, which his opponent alleged would have rendered him ineligible for office. Evidence in this trial hinged in part on testimony from the local registrar of voters, who had previously listed Richard White as colored on public voting rolls. Justice Henry McCay wrote the Supreme Court of Georgia's opinion that this voting register and its alleged evidence of race, however, provided nothing more than "mere hearsay, and may have been the simple opinion of the Register."[98] While McCay, a moderate Republican, was presumably more willing to uphold the racially ambiguous White's right to office than later Jim Crow-era judges would be, his judicial opinion reflects the fact that many records, even seemingly official ones, merely indicated personal opinion or reputation rather than reality.

In addition to voting rolls, debates regarding incorrect racial identification in records including city directories, newspaper accounts, and police reports also reached appellate courts in

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[97] Manuscript Census Returns, Twelfth Census of the United States, 1900, Washington County, Alabama, Schedule 1; Manuscript Census Returns, Thirteenth Census of the United States, 1910, Washington County, Alabama, Schedule 1, Precinct 8, Sheet 4A; Manuscript Census Returns, Fourteenth Census of the United States, 1920, Washington County, Alabama, Schedule 1, Precinct 8, Sheet 7; Manuscript Census Returns, Fifteenth Census of the United States, 1930, Washington County, Alabama, Precinct 8, Sheet 6A; Manuscript Census Returns, Sixteenth Census of the United States, 1940, Washington County, Alabama, Precinct 8, Sheet 5A; *U.S., World War I Draft Registration Cards, 1917-1918*; all on ancestry.com

[98] *White v. Clements*, 39 Ga. 232 (1869).

the Jim Crow South.[99] Selma resident Mary A. Jones, for example, sued R.L. Polk and Company for libel for indicating that she was "colored" by placing an asterisk before her name in their 1914 city directory. While the Polk Company claimed that the asterisk was an inadvertent mistake—which presumably occurred at least occasionally if not frequently in directories that listed hundreds and thousands of names—Jones claimed that the asterisk was placed "falsely, maliciously, and with intent to defame her," as she was "of pure Caucasian decent [sic]."[100] Neither the local jury nor the appellant court upheld Jones' claims of libel, presumably because of the ease with which this small but potentially impactful mistake could be made. Jones' experience and the ruling in her libel suit thus both indicate the ease with which even seemingly trustworthy records could be mistaken about race, as well as the importance white southerners placed on correct racial categorization and the social stigma they faced as a result of mistakes.

A later Mississippi case illustrates this same paradox of concern for keeping accurate records regarding race versus frequent mistakes in doing so. In December 1951, Mary Dunigan "smashed" her automobile into a passing bread truck before "careening" away from the accident scene, as the local paper, the *Natchez Times*, subsequently reported. Despite the fact that Dunigan was white, the *Times* reported the accident under the headline "Negroes Arrested After Hit and Run Accident," listing Dunigan by name as a Negro woman and describing her two male passengers as Negroes as well. A number of factors apparently influenced the reporter's misidentification, including incorrect statements by the bread truck driver and the location of the accident in the Negro section of town, but most importantly omissions in the official police report. While clearly marking the truck driver as white, the accident report failed to mention the race of Dunigan or her passengers (who were also white), and when describing Dunigan the

[99] *Jones v. R.L. Polk & Co.*, 190 Ala. 243 (1915); *Shiver v. Valdosta Press*, 82 Ga.App. 406 (1950); and *Natchez Times Publishing Co. v. Dunigan*, 221 Miss. 320 (1954).
[100] *Jones v. R.L. Polk & Co.* (1915).

report furthermore omitted the customary title "Mrs." typically used for white women, thus suggesting to the reporter that she and her passengers must be Negro. In suing the newspaper for libel, Dunigan claimed to have "lost her mind" and have been forced to seek treatment based on the damage to her reputation from being publically described as colored, as well as the implication that she had been alone with two colored men. Both the local jury and Supreme Court of Mississippi agreed with Dunigan that to print that a white woman was a Negro constituted libel, and upheld her suit.[101]

The ruling in this case of mistaken racial identity further affirms the importance that white society placed on proper racial identification, while also underscoring the potential damage that incorrect categorization could and did cause. This case, however, also demonstrates the ease with which even official records could err in this arena. Not only did the newspaper mistake Dunigan's race, but the police record also muddied the issue considerably. Police records presumably constitute a trustworthy and official source of information, but failure to follow standard procedure, such as listing Dunigan's race and according her the courtesy of a title, indicated to a reporter than Dunigan was black, and, presumably, others looking for evidence of Dunigan's race could reach the same conclusion based on these misleading, but official, records. As these cases clearly indicate, even seemingly official or unbiased records likely to be used in efforts to prove race in miscegenation and racial identity trials often hinged on opinion, reputation, or even errors, making them almost as unreliable as memory and further compounding the difficulty of establishing race to the standards of the law.

In part because of this fallibility of both memory and written records, even as legislators worked to impose stricter racial control by tightening racial definitions and adopting first the one-eighth and then the one-drop standard, courts and judges on the other hand explicitly

[101] *Natchez Times Publishing Co. v. Dunigan* (1954).

recognized the difficulty of upholding these standards. Alabama Court of Appeals Justice Charles R. Bricken made this clear in his ruling on the 1924 case *Wilson v. State*, writing that "we are not impressed with the implied insistence of counsel that it is necessary and incumbent upon the state to fully trace the antecedents of a defendant in order to establish the race of an accused. A rule of that kind… no doubt would often defeat the ends of justice, because of the impossibility clearly apparent in making such proof."[102] The impossibility of proving race by tracing ancestry, even at the one-eighth standard, was obvious to Justice Bricken, who had already ruled on a number of miscegenation cases by the time *Wilson* came before his court, but in their attempts to protect the white race and impose societal control, Alabama legislators ignored his experience and perspective when they passed the one-drop standard just three years later.

Contrary to their intent, then, both the one-eighth and one-drop legal definitions of race left so many loopholes and uncertainties that courts were forced to go beyond the scope of the law, or even against its literal intent, in order to decide cases of racial ambiguity. Courts throughout the Jim Crow Deep South consequently used a variety of methods to deal with this failure of the law to provide a workable standard for determining race. Perhaps the most common tactic involved utilizing more common sense definitions or determinants of race, such as appearance, reputation, or previous admissions of race, even when they went far beyond the scope of the law. These definitions of race did not necessarily meet the one-eighth or one-drop standard required by the law, although courts often applied them in conjunction with attempts to determine racial ancestry.

But some judges went farther than tacking on additional, if questionable, standards, and entirely avoided or even contradicted the legal definitions of race. This legal maneuvering took

[102] *Wilson v. State*, 20 Ala.App. 137 (1924).

several forms, including expressly avoiding the racial component of cases in favor of focusing instead on definitions of marriage or adultery, forcing lawyers to prove not only blackness but also whiteness, and simply rejecting the need to prove ancestry at all, as seen in *Wilson v. State*. Furthermore, cases dealing with racial ambiguity in areas other than marriage, such as school admittance, gave courts additional leeway in bending or breaking legal racial definitions, as they could look to precedents from other states or scan the larger legal codes for loopholes or harsher definitions of race to apply. Despite all this maneuvering, however, some individuals' racial composition simply remained beyond the capacity of the courts to determine. The range and persistence of these methods for determining race that fell squarely outside of the increasingly strictly defined legal definitions speak to the ongoing difficulties of defining race in a fluid South, as well as the ongoing struggle to impose social control through legal means.

Both before and after the passage of one-drop laws, many courts that faced this struggle of ruling on race returned in practice to more traditional and tangible definitions of race. Probably the simplest and most time-tested method of determining race, looking at a person's appearance, continued to see heavy use throughout the Jim Crow period. And despite the increasing legal emphasis on "scientific" degrees of blood over features and skin color, judges endorsed the use of appearance to define race both before and after the adoption of one-drop laws. Judges continually upheld this method, perhaps, like Justice Bricken in the *Wilson* decision, because they understood the practical impossibility of relying on genealogy much less science itself, and thus the need for additional information.

Accordingly, when Martha Linton's miscegenation appeal reached the Supreme Court of Alabama in 1890, she and her partner John Blue hoped that the Supreme Court would rule that the lower court's decision to allow his lawyer to physically present him to the jury to determine

his race had been in error, and thus reverse their convictions. The Supreme Court, however, ruled firmly that "there was no error in allowing the state to make profert of John Blue to the jury, in order that they might determine by inspection whether he was a negro," thus setting a precedent for future cases of allowing physical appearance in race-based trials.[103] The Alabama Court of Appeals later followed this example in a 1918 miscegenation trial, and in fact took this standard a step farther, in ruling that Ophelia Metcalf's mere presence in court during her testimony at her trial "was sufficient to authorize the finding that she was of the negro race."[104] Even the United States Court of Appeals later affirmed the admissibility of having juries observe defendants to determine race in the 1951 Georgia school admission and libel case, *White v. Holderby*. In his opinion of this case, Justice McCord wrote that "the court permitted the jury to observe the color and physical characteristics of the plaintiffs," and quoted a well-known American jurist in affirming that "the admissibility of this evidence has never been doubted by Courts."[105]

Other cases expanded this leniency to allow not only physical display or mere presence of defendants for the jury to observe, but also testimony of witnesses' observations of their appearance. In 1908, the Supreme Court of Alabama thus ruled that there was no error in overturning a motion to exclude testimony that defendant "Ophelia Smith looked like a white woman," before citing the earlier *Linton* case and again affirming the acceptability of physically presenting Smith to the jury.[106] Similarly, in the 1932 murder trial, *Pruitt v. State*, the Mississippi Supreme Court ruled that testimony from numerous witnesses as to the race and appearance of an apparently mixed-race baby murdered by its white mother was admissible,

[103] *Linton v. State*, 88 Ala. 216 (1890).
[104] *Metcalf v. State*, 166 Ala.App. 389 (1918).
[105] *White v. Holderby*, 192 F.2d 722 (1951).
[106] *Jones v. State*, 156 Ala. 175 (1908).

going so far as to say that "it is quite well settled that persons familiar with the negro race… may testify concerning the same."[107] Comparable testimony regarding neighbors' and family members' opinions of an individual's race became standard throughout miscegenation and related cases, even when judges did not explicitly comment on its inclusion, revealing the persistent reliance of courts on methods outside the scope of the laws in order to achieve the purpose of the laws.

Some lawyers went beyond physical appearance and descriptions of defendants to display and describe their family members as well, and courts also responded favorably to this strategy. The Alabama miscegenation case *Weaver v. State* reveals that in the late 1920s, even as Alabama legislators debated and passed the 1927 one-drop law further privileging genealogy and blood, juries and judges instead continued to decide cases based on both defendants' and family members' appearances. This 1928 case demonstrates how the Court of Appeals continued to expand the applications of using appearance to determine race, ruling that presentation of family members in order to determine the race of defendants was acceptable, stating that it was "competent for the state to make profert of defendant's father and uncle that the jury may judge for themselves regarding the degree in which defendant stood to a negro of the full blood." Justice Samford, in writing the opinion in this case, in fact endorsed numerous methods of determining race by appearance, not only allowing presentation of the defendant and his family but also remarking that "even a photograph has been held to be admissible," to prove the race of defendants. [108]

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[107] *Pruitt v. State*, 162 Miss. 47 (1932). Also see *Percy Reed v. State* (1922), *Daniel Reed v. State* (1925), and *Weaver et. al. v. State*, 22 Ala.App. 469 (1924) for additional examples of allowed testimony concerning the racial appearance of individuals not physically present, in these cases, ancestors of the defendants.

[108] *Weaver v. State* (1928). While heard before the Court of Appeals in 1928, this case originated prior to the passage of the one-drop law in 1927, and thus was decided based on the Code of 1923.

In some ways, by including the family of the defendant in physical racial displays, the *Weaver* ruling attempted to utilize the legal standard of racial definitions based on genealogy and the racial makeup of ancestors. In other ways, however, this method moved away from the underlying eugenic and scientific motives of the new one-drop law, adding additional variables and allowing even more space for personal opinion and judgment calls regarding the race of not just one, but now several individuals. But the expanded use of appearance, along with attention to family racial history and appearance, in this case, allowed the Court to affirm the convictions of Jim Dud Weaver and Maggie Milstead, thus furthering the ultimate goal of stricter social regulation even while going outside of the definitions set out by the law.[109]

Physical appearance and description of defendants as methods of determining race continued to gain approval from judges, even after the passage of the one-drop law presumably rendered such tactics unnecessary. In a 1929 bastardy case, the Court of Appeals of Alabama allowed prosecutors to exhibit not only the grandmother, but also the great-aunt of the child in question in order to help determine its race and parentage. The only caveat the Court placed on this exhibition was that the great-aunt should not have been asked whether "negro" babies "brightened" as they grew older, as this question was held to be irrelevant and incompetent. Even decades after the one-drop law went into effect, displaying defendants in this way remained a courtroom standard, as seen in Georgia's *White v. Holderby*, decided in 1951 on the cusp of the Civil Rights Movement.[110] Clearly, southern jurists relied heavily on old standbys of appearance throughout the Jim Crow period, responding to the failure of tightening miscegenation and racial laws to eliminate ambiguity from a complex racial reality.

[109] *Graham v. State*, 23 Ala.App. 331 (1929).
[110] *White v. Holderby* (1951).

While appearance proved a handy and widely affirmed method of determining race in the absence of clear evidence of degrees of blood, defendants and courts also relied on other tactics to either subvert or uphold the racial line. Several cases, for example, hinged on previous admissions or official determinations of race made prior to the currently contested legal difficulties. In 1878 Rachel Dillon used this method to her advantage, winning alimony from her husband David based on a pre-war act of the Georgia General Assembly that declared her a citizen with all the rights and privileges thereof. As Justice Bleckley argued in the opinion, "that she was a free white person, though not affirmed expressly, is implied in the declaration of citizenship… [and] is conclusive evidence… that she is white." Once the court defined Rachel as white, David Dillon lost his race-based argument against paying support to his wife and children.[111]

While the Dillon case was decided in favor of a potentially racially dubious relationship, other cases show that previous determinations of race often functioned to condemn any possible crossing or blurring of the racial line. Joseph Parker, for example, found his 1898 miscegenation conviction affirmed on the basis of his application for a marriage license, on which he had stated that his wife-to-be was creole, a term which in Mobile, Alabama often applied to racially mixed families. Apparently the woman in question was actually white, but the court nevertheless held this statement to be an admission of Parker's own Negro or mulatto blood, and thus affirmed his conviction for marrying a white woman.[112]

Similarly, Nancy Locklayer found that previous statements regarding race damaged her 1904 Alabama inheritance case. After the death of her husband, Jackson Locklayer, Nancy, who was white, sued to inherit his estate after his Locklayer relatives claimed that since Jackson was

[111] *Dillon v. Dillon*, 60 Ga. 204 (1878).
[112] *Parker v. State*, 118 Ala. 655 (1898).

black, the marriage was null and thus she could not inherit as his wife. The court sided with Jackson's relatives in declaring him black and the marriage "illegal and adulterous," based in part on previous admissions of race. Most significantly, witnesses recounted that during Reconstruction Jackson Locklayer had been the first black man ever called for jury duty in the county, and that he had asked to be excused from serving "because his color had prevented him from serving on juries theretofore." Alabama Supreme Court Justice Tyson affirmed the admission of this evidence, writing that "[Jackson Locklayer] being dead, any declaration made by him as to his race was competent." In large part on the basis of this decades-old admission of race, the Court affirmed the judgment in favor of Jackson's relatives and against his white wife.[113] As Dillon, Parker, Locklayer, and others learned, even decades old admissions of race could and often did find their way into courtrooms, as individuals, lawyers, and judges struggled to deal with the ambiguities of the realities of race.

Appearance and previous admissions of race provided a logical starting place for courts struggling to apply blood-based laws to the muddied realities of race in the South, but even these more common sense methods could not always provide clarity. As a result, some cases hinged on evidence and methods even farther from the laws' intentions, focusing on factors such as reputation and associations over ancestry and blood. Often, relying on reputation proved most useful when accurate information about a person's ancestry was hardest to find. The Georgia Reconstruction-era election case, *White v. Clements*, for example, focused on the race of a man, Richard White, who had lived in the Chatham County area for two or three years at most, meaning that no one involved had any knowledge of his ancestry or the degree of blood it might convey. Accordingly, the local court charged the jury "that where blood, race, etc., is the subject, you can take general hearsay, or the reputation of a person in his community… in order

[113] *Locklayer v. Locklayer*, 139 Ala. 354 (1904).

to determine as to his being a white man or a person of color." White and his counsel objected to the admission of evidence regarding his reputation, but the Supreme Court of Georgia affirmed the use of this method, opining that "there was no error in permitting the race of the defendant… to be proven by reputation."[114] The use of reputation in cases such as this during the years leading up the Jim Crow established a precedent of using reputation as evidence which continued to be used even after the passage of stricter definitions of race based on blood and ancestry.

In keeping with this precedent, reputation again provided convincing evidence in a 1921 case from Savannah, Georgia, in which proof of ancestry was equally difficult to find as in the case of *White v. Clements*. In *Bourquin v. Bourquin*, Elliott Bourquin tried to disinherit his older brother, Guilleman Bourquin, by alleging that Guilleman "was born of a colored mother, and, having Negro blood in his veins, was not entitled to inherit under the laws of Georgia." While decided a few years before passage of the one-drop law, this case was argued at a time at which the legal profession increasingly looked to blood and ancestry to define race. This particular inheritance case, however, presented a challenge to proponents of defining race using these means. By most accounts, the two brothers shared exactly the same ancestry and blood, and thus race. But what happened when one brother claimed that he recently had been informed that the other, in fact, did not share this ancestry? And given that this alleged fact had been kept in secret for decades, how could anyone prove the now questionable ancestry, especially to the standards of a courtroom? Presented with this inability to prove whether Guilleman's bloodline was pure or tainted as alleged, the court turned to his reputation and actions to evaluate the possibility of his descent from a black woman. Accordingly, evidence that their father treated him the same as his other sons, that he was brought up as one of the family, and that he attended the local school for white children alongside his brothers proved compelling, and convinced the court to rule that

[114] *White v. Clements* (1869).

Guilleman was both white and legitimate.[115] In cases such as this, in which ancestry proved impossible to define, reputation became one method of filling in the holes and ambiguities left by legal definitions.

Courts continued to rely on and permit evidence of reputation to determine racial identity well into the Jim Crow period. In Davis Knight's 1948 miscegenation trial, for example, Judge F.B. Collins of the Jones County, Mississippi Circuit Court retired the jury in order to tell the lawyers that "gentleman, I don't know, I might have the wrong conception of this thing, but my understanding of the law is that you can prove a man's race by what he is generally reputed to be, or what the average man's, acquainted with different races, opinion would be about it." Despite opposition and argument from Knight's defense lawyers, Collins concluded that "the Court holds that the State may show whether or not this defendant was generally considered in the community in which he lived as a Negro or White man," before recalling the jury.[116] Although Mississippi never officially passed a one-drop law, the one-eighth definition in use at the time of Knight's trial, as well as the pervasiveness of science and eugenics-based thought by that period, render Collins' definitive acceptance of reputation decidedly counter to the intent of the law to define race by biology and ancestry rather than possibly arbitrary opinions.

Even after Alabama and Georgia passed the one-drop standard, presuming to make more arbitrary standards such as reputation less viable in racial definition cases, judges and courts continued to rely on this method just as confidently as Collins did in Knight's trial. A 1933 school attendance appeal illustrates this continuity of the challenges faced and methods used to verify race both before and after passage of one-drop laws. The Farmer children of Mobile,

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[115] *Bourquin v. Bourquin*, 151 Ga. 575 (1921).
[116] *Knight v. State* (1949), 28-29. Also see Victoria E. Bynum, *The Free State of Jones: Mississippi's Longest Civil War* (Chapel Hill: University of North Carolina Press, 2003); and Victoria E. Bynum, "'White Negroes' in Segregated Mississippi: Miscegenation, Racial Identity, and the Law," *Journal of Southern History* 64 (1998): 247-276.

when refused admittance to the white school because of alleged black ancestry, faced the challenge of proving the race of their numerous ancestors from the racially ambiguous local "Creole" population. With so many variables and question marks in the family history, an accurate account of blood, even to the one-drop standard, continually proved nearly impossible for lawyers and courts dealing with members of this long-isolated group, which included the Reed family, and descendants of whom decades later organized as the MOWA Choctaw tribe. Given this background, when faced with the challenge of determining the race of Samuel Farmer's children, the courts had to look beyond their convoluted ancestry to determine their race, despite the new one-drop law. As the Supreme Court of Alabama noted, "considerable evidence is devoted to the social connections and associations, [on which] there is and has been, it seems, a division; some recognizing them as white people, others not." Despite the amount of evidence devoted to the racial reputation and treatment of this family in the community, however, the court found no clear answer to the question of their race. Instead, it ruled that "the burden was on relator to affirmatively show his children are entitled to attend the school for white children," and that Farmer failed to meet this burden, thus carefully avoiding ruling on the actual race of the children and having to apply the one-drop rule itself.[117]

Other families related to the community from which the Farmer children descended also found their associations and reputations scrutinized in court as a means of determining their race and thus their marriage or school prospects, even as the one-drop rule became the legal standard of racial identity. In Jim Weaver's 1928 miscegenation appeal, for example, the Alabama Court of Appeals found that "it is also competent to prove a man's race by his admissions, either verbal or by his acts… If he associates with negroes, in his social intercourse, attending negro churches, sending his children to negro schools… such are acts which may be taken as admission." The

[117] *State ex rel. Farmer v. Board of Com'rs of Mobile County et al.,* 226 Ala. 62 (1933).

court here regarded social interactions and reputation as admission of race, and on this basis affirmed Weaver's conviction for miscegenation, despite the recent passage of the one-drop law requiring race to be identified by scientific standards of blood. Even up through the end of the Jim Crow period, individuals related to this racially ambiguous community faced similar challenges and the same utilization of evidence of reputation, as seen in the 1953 *Chestang* school attendance appeal. Citing *Farmer*, the Alabama Supreme Court again allowed testimony regarding local understandings of definitions of race in affirming the denial of Henry Chestang's appeal to attend the white school.[118] In cases such as these, in which courts faced an inability to prove race by biology even to the one-drop standard, courts clearly found that reputation provided a practical method of settling disputes. Consistency, then, characterized the methods courts used to determine race throughout the period from Reconstruction and up to the Civil Rights Movement, despite the many changes that legal definitions of race experienced in the same period. This consistency indicates both the perseverance of individuals in challenging the color barrier as well as the persistent challenges that the laws, no matter how strictly defined, faced in dealing with all the realities of race in the Jim Crow South.

This continued use of reputation to determine race, even after the passage of the one-drop law sought to replace the ambiguity of reputation with the certainty of science, in many ways owed its use to legal precedent as well as practicality, illustrating the ways in which law and legal precedent could sometimes contradict each other. In Georgia, courts, regardless of evolving statues, explicitly relied on the precedent set in the 1869 case *White v. Clements* that allowed reputation to provide evidence of race right up until the Civil Rights Movement made racial definitions moot. For example, in the late 1940s, alleged Ku Klux Klan members accused George White's children of having Negro ancestry through their mother and sought to have them

[118] *Weaver v. State* (1928); *Chestang v. Burns*, 258 Ala. 587 (1953).

removed from the white schools in Clyattville, Georgia. The fallout of this challenge generated a number of related legal actions, including arrests for miscegenation and suits for libel, one of which reached the federal level in 1951. Despite the efforts of the court to trace the ancestry and possible degree of Negro blood of the children, the best they could determine was that "the father was a white man; the mother was more than half white; her mother had been a white woman; her father had been at least half white. The point of dispute was whether the grandfather of the school children was part Indian or part Negro." [119] At such a remove, a small degree, or even one drop, of non-white ancestry proved impossible to determine, despite the supposed clarity of the law, again forcing the court to use other methods, including reputation. The US Court of Appeals affirmed this move, citing the earlier decision from *White v. Clements* in 1869 and quoting its finding that race can be proven by reputation in reaffirming the use of this method. During the near-century between these cases, Georgia law evolved from banning interracial marriage with no definition of race provided, to passing a one-eighth definition of race, to adopting a supposedly science-based one-drop standard, but despite all these changes, judges at both the state and national level continued relying on the same precedent. Clearly, judges at all levels continued to utilize pre- one-drop standards of defining race throughout the Jim Crow period, even when this countered the newer eugenic-based concept of blood and ancestry. The consistent utilization of this method in a wide range of cases and in all levels of courts emphasized the failure of Jim Crow miscegenation laws to convert strict and scientific definitions of race into social control.

The admission of testimony regarding appearance and reputation, in addition to running counter to the increasingly eugenics-based interpretations of miscegenation laws and sometimes even their intent of preventing racial mixture, also raised the challenge of deciding who could

[119] *White v. Holderby* (1951); *White v. Clements* (1869).

and could not testify regarding racial issues. If race was not as simple as finding a black ancestor or the lack thereof, and if courts had to look to more subjective and opinion-based definitions of race, then they also had to decide whose opinion about these factors would be admitted. As discussed in Chapter One, throughout the Jim Crow period, miscegenation laws and legal racial definitions moved in the direction of privileging science and supposed expertise, but the difficulties of determining race in real situations led courts, to the contrary, to rule consistently that expertise, in fact, was not necessary to know who was black or white. Several cases directly addressed this divide between relying on science or expert witnesses versus relying on common perceptions and beliefs.

Two early cases from Georgia set out the separate schools of thought on witness testimony about race, illustrating the contrasting precedents and rulings that judges had to navigate, even before eugenics and the one-drop ideal further complicated racial identity trials. In the Reconstruction-era election case *White v. Clements*, the Supreme Court of Georgia ruled that "whether or not a person is colored… is a matter of opinion, and a witness may give his opinion if he states the facts on which it is based."[120] A decade later, the Court stated the opposite opinion in the matrimonial suit *Dillon v. Dillon*, writing that "true classification in respect to race, cannot be accomplished, readily, by mere inspection. Examination, and the employment of scientific skill, would seem… to be requisite."[121] This early mention of scientific skill foreshadowed the emphasis on biology and eugenics which later would come to dominate discussions of racial definition, but most legal cases throughout the Jim Crow South in fact seemed to follow the precedent of *White v. Clements* in allowing the opinions of non-experts, even as emphasis on science in larger society grew over time.

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[120] *White v. Clements* (1869).
[121] *Dillon v. Dillon* (1878).

Accordingly, the Supreme Court of Mississippi affirmed in the 1932 murder case *Pruitt v. State* that "it is quite well settled that persons familiar with the negro race, as to the mixture of negro with white blood, may testify concerning the same…. In this state, where the white and the negro race are about equally divided in population, we have no hesitancy in saying that the opinion of a non-expert as to race is competent evidence for the jury to consider."[122] Alabama judges could look to a similar precedent in the 1924 opinion from the miscegenation case *Wilson v. State*, in which the Court of Appeals ruled that witnesses could testify as to their knowledge of race, as "courts are not supposed to be ignorant of what everybody else is presumed to know, and in this jurisdiction certainly every person possessed of any degree of intelligence knows a negro."[123] Clearly, even as scientific perceptions of race took hold in southern legislatures during the 1920s, many judges continued to believe not only that experts were unnecessary to establish race, but also that most southerners nevertheless qualified at least as unofficial experts on race and its characteristics simply by the virtue of living in close proximity to people from different races.

Judges repeatedly allowed non-experts to testify about race, both explicitly and implicitly, but lawyers involved in racial definition cases nonetheless sometimes hedged their bets, calling doctors and midwifes as experts to testify about the race of defendants. This strategy revealed not only ongoing difficulties in finding a foolproof way to determine race, but also the continual friction between legal understandings of race and everyday realities. Examples of lawyers utilizing medical or scientific knowledge of race to their clients' advantage occasionally appeared even before eugenics influenced southerners' views on race, but judges did not always agree that these supposed experts provided unique insight into race. In 1869, the

[122] *Pruitt v. State* (1932).
[123] *Wilson v. State* (1924).

Supreme Court of Georgia, when presented with a physician's statement that election winner Richard White was a mulatto, held that the statement was not evidence, implying that the doctor's opinion held no more value than other witnesses. The physician himself admitted that, although he had "studied the science of Ethnology… I think any intelligent person could tell as well as I could, (if much among the negroes,) the difference between a white man and a person of color."[124] Appellate judges in later periods rarely commented specifically on the value of medical or expert testimony, instead continuing to affirm the admissibility of non-expert testimony, but lawyers during and after the implementation of eugenic one-drop laws seemed more likely to use doctors as expert witnesses than prior to the wave of interest in supposedly scientific assessments of race.

The numerous trials of Jesse Williams of Covington County, Alabama provide ample illustration of reliance on medical practitioners to determine an individual's race during the peak of eugenic influence. At each of Williams' trials during the early to mid-1930s, the increasingly elderly Dr. J. E. Broughton and midwife Sarah Bryant testified about the various markers of Negro race that they had witnessed when examining Williams' body at his birth, over two decades earlier. Bryant justified her expertise on the basis of the between six and seven hundred births she had attended, before relating a long list of identifying characteristics of white and black babies. Dr. Broughton likewise testified "based on [his] judgment as a physician" that the infant Williams displayed characteristics that "never fail" to indicate black ancestry. Each time Williams faced a new trial after the previous appeals were reversed and remanded back to local courts, ultimately reaching a total of four trials concerning two different relationships, prosecutors made sure to call these witnesses and question them thoroughly, indicating the value they placed on this "expert" testimony. In each case, the Court of Appeals ruled on technicalities

[124] *White v. Clements* (1869).

rather than racial definition, but the repeated testimony of medical practitioners in Williams' cases speaks not only to the difficulty of defining race, but also to the struggle over who could best answer that question.[125]

Cases involving racially ambiguous infants proved particularly likely to draw testimony and opinions from supposed medical experts. In the murder case *Pruitt v. State*, Dr. G. T. Pruitt (unrelated to defendant Ervin Pruitt) testified that the baby in question, who had been killed possibly because of its race, "looked like a mulatto."[126] Similarly, in a 1951 Alabama miscegenation case that hinged on the race of an infant to prove the existence of an illicit sexual affair, two medical witnesses testified that their examinations revealed that the child was of part Negro blood. During this trial, witness Dr. J. H. Ashcraft testified that the baby "in the main… was different from a white baby…. I think it had negro blood in it," and Dr. B.W. McNease recalled that "it had the features and characteristics of the negro race."[127] Such expert testimony seemed to bolster otherwise remarkably similar testimony from lay witnesses, as lawyers worked to cover all their bases in proving either blackness or whiteness.

The question posed to another medical doctor, J.W. Stringer, in Davis Knight's 1949 Mississippi miscegenation trial perhaps best explains the value lawyers placed on supposedly expert medical testimony. In a question that stated facts more than it pursued them, Knight's lawyer told a witness that "you are a man with wide practice and experience, and a man who has had opportunity to observe numerous people over a number of years, both white and negroes, and have treated them, and you know the dominant characteristics… of the negro race,"[128] thus

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[125] *Williams v. State*, 23 Ala.App. 365 (1930); *Willams v. State*, 24 Ala.App. 262 (1931); *Williams v. State*, 25 Ala.App. 342 (1933); *Williams v. State*, 26 Ala.App. 53 (1934).
[126] *Pruitt v. State* (1932).
[127] *Agnew v. State*, 36 Ala.App. 205 (1951). Also see the co-defendant's case: *Pendley v. State*, 26 Ala.App. 169 (1951).
[128] *Knight v. State* (1949).

indicating the relative value of extensive observation and experience, even over scientific schooling, in witness testimony. Statements such as this reveal continual privileging of common sense in racial debates, while still bowing to pressures to utilize expertise to prove scientific facts. Even though courts and laws never required or valued medical expertise over lay knowledge, and instead often affirmed the opposite, a eugenic emphasis on science nevertheless provided lawyers, both prosecution and defense, with one more method of proving or disproving race, which often worked hand in hand with common sense and traditional tactics.

Many court cases from the Deep South indicate both the difficulties of defining race and the emphasis white society placed on doing so, as the range of methods on which courts and lawyers relied that went beyond ancestry and blood illustrates, but other cases indicate less commitment to precisely determining race at all. Instead, lawyers and judges in these cases maneuvered around the law, finding loopholes to exploit the impossibility of proving race with any certainty, or else entirely avoiding the issue altogether. In doing so, they often directly thwarted the intention of increasingly harsh miscegenation laws and racial definitions intended to prevent any crossing of the racial line and achieve social control.

Along these lines, some cases reveal much more concern over other aspects of the alleged criminal relationship than over the racial dimension. In *Mulling v. State*, for example, the Supreme Court of Georgia in 1884 ruled that in adultery cases, setting forth the race of the defendants was not necessary, as they were subject to the same penalties regardless of race. This decision neatly sidestepped the issue of defining race altogether, despite the then recent post-Reconstruction 1880 reimplementation of an interracial marriage ban, thus allowing judges a loophole to escape having to rule on some impossible to prove cases of racial definition.[129]

[129] *Mulling v. State*, 74 Ga. 10 (1884).

The *Mulling* decision focused on adultery over race as a loophole to having to define race, but other cases focused on proving marriage instead of proving ancestry. In the 1925 case *Dean v. State*, the Supreme Court of Mississippi reversed an unlawful cohabitation conviction on the basis that the charged couple were married by common-law, and thus were not cohabiting unlawfully. The prosecution had originally argued that the woman's black ancestry prevented the couple from legally marrying, whether by common-law or not, and that therefore without a marriage, the couple was cohabitating unlawfully. Even though under the laws of the state as little as one-eighth Negro blood would have automatically voided any marriage and supported this charge of unlawful cohabitation, evidence in favor of the marriage, such as a decade-long relationship during which the couple lived together and had children together, proved more convincing and significant to the Court than the possibility that Ralphine Dean might have had Negro ancestry. Thus, instead of requiring prosecutors to search out this ancestry, the Court reversed the conviction, in this case siding in favor of a possibly racially mixed marriage.[130] Such decisions reveal that even as legislators searched for methods to more effectively police racial boundaries, courts sometimes showed a distinct lack of concern with careful and scientific policing of that same boundary, reflecting not only legal realities of court cases, but also the complexities of defining and policing race in region characterized by two or more races living and working side by side for centuries.

If some judges dealt with the complexity of race by favoring issues that did not involve racial definition, as seen in *Mulling* and *Dean*, other judges focused so intently on the racial requirements of the law that they in effect rendered race completely impossible to define. According to these judges, in order to successfully prove miscegenation, prosecutors not only had to prove that one defendant had black ancestry, but also that the other defendant had only

[130] *Dean v. State*, 139 Miss. 515 (1925).

white ancestry. *Rollins v. State* demonstrates this particularly stringent application of the law, with the Appellate Court of Alabama ultimately arguing that not only did the prosecution fail to prove that Jim Rollins was a Negro or descendant of a Negro, but also that they failed to prove that Edith Labue, an immigrant from Italy, was white. Justice Bricken, in writing the opinion in this case, thus stated that "there was no competent evidence to show that the woman in question, Edith Labue, was a white woman, or that she did not have negro blood in her veins… This fact was essential to a conviction in this case, and, like any other material ingredient of the offence must be proven by the evidence beyond a reasonable doubt." Requiring this level of proof of race rendered a difficult to define concept even more impossible, resulting in a reversed conviction for Rollins and Labue and again illustrating the complexities of defining and regulating race.[131]

Similarly, in the 1918 case *Metcalf v. State*, despite sufficient evidence that Ophelia Metcalf was black, the Alabama Court of Appeals nevertheless reversed her conviction because "there was no evidence that [codefendant] Simmons was a white man."[132] Under this standard, prosecutors faced a double burden of proving the ancestry of both defendants, including the difficult task of proving a negative, that no black blood or ancestry existed in the supposedly white defendant. While courts in most cases did not hold prosecutors to this higher standard, the rulings in these cases reveal the range of difficulties inherent in miscegenation and racial definition laws, as well as representing a viable loophole for defendants, lawyers, or even judges looking to get around the strict racial control that laws sought to impose.

Forcing prosecutors to prove whiteness allowed occasional defendants a chance to escape through the legal loophole of undeterminable ancestry, but other cases utilized the opposite

[131] *Rollins v. State*, 18 Ala.App. 354 (1922).
[132] *Metcalf v. State*, 16 Ala.App. 389 (1918).

approach to dealing with racial difficulties. In these cases, judges dealt with the difficulty of proving race according to the standard set out in the laws by disregarding that requirement to trace ancestry altogether. As seen in the 1924 Alabama miscegenation case *Wilson v. State*, removing this burden of proving actual ancestry often resulted in greater ease of achieving convictions in miscegenation cases. Unlike in the earlier *Rollins* case, which resulted in a decision requiring proof of whiteness as well as blackness, in this case defendant Charles Medicus' whiteness never came under question. Instead, testimony focused on the race of Sarah Wilson, who grew up in another state, which rendered knowledge of her racial ancestry particularly difficult to verify. Faced with this challenge, and given that his earlier standard of proving whiteness had been met for one of the defendants, Justice Bricken ruled that appearance, actions, and associates were sufficient to prove race. He wrote that "we are not impressed with the implied insistence of counsel that it is necessary and incumbent upon the state to fully trace the antecedents of a defendant in order to establish the race of an accused." Instead, he opined that "the rule born of necessity should and does permit a witness… to testify that a person is a negro, or is a white person… [since] in this jurisdiction certainly every person possessed of any degree of intelligence knows a negro."[133] At the time of this ruling, just three years before the passage of the one-drop law in Alabama and the same year as its passage in Virginia, legislators and scientists increasingly privileged biology and by extension precisely determined ancestry over more subjective measures of defining race, which they feared left more space for individuals with black blood to pass into white society, or at the least cross the racial boundary line. Bricken's opinion, however, moved in the opposite direction, bowing to practicality and reality in explicitly rejecting the need to trace ancestry and instead setting a precedent of allowing subjective opinions of appearance and reputation to establish racial identity.

[133] *Wilson v. State* (1924).

The very different tactics that the courts utilized in *Metcalf* and *Rollins* versus the approach taken in *Wilson*, as well as the contrast between the *Wilson* decision and the legal definition of race, highlights the ongoing failure of miscegenation and racial definition laws to conclusively define and regulate race. Faced with an ambiguous reality that the law could not handle, courts resorted to employing a wide range of tactics for deciding these cases, at times leading them to contradict themselves and the law and to set conflicting precedents. This level of confusion that reached all the way into the highest level of the legal system sometimes worked against defendants, as Sarah Wilson found, but also allowed a degree of flexibility and possibility of legal loopholes. In reality, as these conflicting decisions reveal, race in the South continued to be complex, ambiguous, and subject to interpretation at all levels, as the law, no matter how strictly defined, failed to achieve the level of clarity and control it intended.

Many lawyers and judges stretched the boundaries of miscegenation laws to deal with the reality and complexity of race, but the law nevertheless set out presumably clear standards for defining race and thus determining guilt in miscegenation scenarios. These definitions also often provided a starting point for related racial definition cases, such as inheritance and school attendance cases, as many examples demonstrate. But in these racial definition cases that did not specifically involve charges of miscegenation, judges sometimes found more leeway for employing a wider range of legal tactics by looking to definitions and precedents outside of miscegenation law. In these non-miscegenation racial definition cases, courts thus sometimes utilized harsher definitions of race from elsewhere in the code or looked to decisions from other states to provide an alternative definition or precedent. By going beyond miscegenation laws in their decisions regarding racial identity in other race-based trials, these judges continued to

complicate the overall legal definition of race in the South, contributing to the ongoing difficulty of legally defining and controlling race and social interactions.

For example, although Mississippi never officially passed a one-drop law, the Mississippi Supreme Court in the 1917 case *Moreau v. Grandich* nevertheless used this standard to decide a school admission case, setting a powerful precedent for future cases. In his opinion, Justice Etheridge explained that the circuit judge had apparently "adopted the theory that the marriage statute… was controlling in fixing the status of 'white' and 'colored' within the meaning of [the separate school section]." The Court, however, did not agree with this application of the miscegenation law in this case, instead stating that "we do not think the marriage statute has any influence or controlling effect upon this question…. In the section fixing the separate schools for the white and colored races, the Constitution makers must be assumed to have used those terms according to their fixed and settled meaning in this country… The word 'colored' means, not only negroes, but persons who are of the mixed blood," even beyond the one-eighth standard set forth in the miscegenation statute. As Mississippi's Code did not define "negro" either in the section on separate schools or elsewhere in the code beyond the explicit marriage regulation, as did some other southern states, it opened the door for this stricter one-drop interpretation of race, even lacking an actual one-drop law in the codes.

The Supreme Court of Mississippi supported its stricter interpretation of the definition of "negro," as well as the decision to use a definition that conflicted with the miscegenation statute, with precedents established in other states. The *Moreau v. Grandich* opinion thus quoted from the decision a 1912 Kentucky case, *Mullins v. Belcher*, in arguing that "the question [of race] in its final analysis depends upon whether or not the person has, or has not, an appreciable admixture of negro blood," and that "it appears that the almost unanimous holding of the courts,

and especially of the southern states, is to the effect that descendants of Africans are classed as members of the colored race, regardless of the admixture, as long as there is an appreciable amount of negro blood."[134] As this chapter has argued, not all judges in the South, and even in Mississippi, agreed that this was the best standard by which to judge racial definition cases, but this particular case nonetheless shows a willingness to adopt the one-drop standard at a time in which it was very popular, if not yet actually law. Furthermore, this case illustrates the creativity and flexibility of non-miscegenation racial definition cases and the additional leeway these cases gave courts in attempting to uphold and define an evolving racial boundary line.

Another Mississippi case demonstrates the flexibility of defining race in non-miscegenation cases in a different manner, and with a different result. *Moreau v. Grandich* used a stricter standard to ban racially ambiguous children from the white school system, but *Miller v. Lucks* relied on laws and precedents from other states to permit inheritance from a spouse of a different race. Chief Justice Sydney Smith explained that when Pearl Mitchell and Alex Miller faced indictment for miscegenation in 1923, the District Attorney agreed to nolle pros the indictment if the couple promised to leave the state of Mississippi. The Millers accordingly moved to Chicago, where they married legally and lived their lives together. After Pearl's death in 1945, however, her relatives in Mississippi challenged the legality of her husband inheriting property that Pearl still owned in Jackson. While the lower court decided in favor of her local relatives, the Supreme Court reversed this decision, arguing that the Millers never returned to Mississippi as a married couple, and thus neither their marriage nor his inheritance of her property violated the intention of Mississippi's miscegenation statutes. In this decision, the Court relied upon "the holding of courts of other states faced with this Negro problem,"

[134] *Moreau et al., School Trustees, v. Grandich et ux.*, 114 Miss. 560 (1917).

including Florida and Louisiana.[135] Precedents from other states thus provided judges with support for both strictly policing the racial line and also for allowing this line to bend in certain situations. These non-miscegenation cases reveal the depth of the difficulties of dealing with race in legal settings, as judges found—and circumstances forced them to find—ways to apply definitions and standards outside of those specified by miscegenation laws. The continuing lack of consensus on the best way to define race and deal with its ambiguity, regardless of how judges defined race and what methods they used, speaks to the ongoing complexity of race in the South, as well as the inability of legal methods to conclusively deal with these issues.

As southern states increasingly tightened their racial definition and miscegenation laws, moving to one-eighth and then one-drop standards, legislators hoped to prevent crossing of the racial line, protect the integrity of the white race, and maintain social control. In reality, however, the challenges of determining race proved no easier the stricter the laws and definitions became, and the more people they sought to encompass. Even as laws increasingly privileged science through eugenic influences, courts consistently continued to rely on more traditional methods of determining race, upholding precedents set under more lenient racial definition laws that allowed testimony on the appearance of both defendants and their family members or relied on previous admissions of race and commentary on racial reputation. Other courts strayed even farther from the intent of one-drop laws to prevent biological taint to the white race by ignoring race altogether and instead deciding cases based on issues such the definition of marriage or adultery. If those judges avoided the quagmire of race, others addressed it in ways that, although not necessarily upholding the eugenics-based intent of the law, proved effective and creative, by forcing prosecutors to prove both whiteness and blackness, or by refuting the need to trace ancestry at all. Furthermore, legal maneuvering in related non-miscegenation racial definition

[135] *Miller v. Lucks et al.*, 203 Miss 824 (1948).

cases reveals the range of beliefs about race and the law, and the ongoing flexibility and ambiguity of these issues.

Overall, courts used this range of tactics and responses to ambiguous racial identity to sometimes bolster attempts to achieve racial and social control, but, just as frequently, used this flexibility to allow racially ambiguous marriages, or school attendance, or cross-racial inheritance. Even the shift in the ways that some southerners conceived of and legally defined race toward a more supposedly scientific viewpoint during the early twentieth century did not impact or reduce the number of cases involving miscegenation and ambiguous racial identity that reached the courts, nor the percentage of cases decided in favor of strict legal race segregation versus allowing leeway and loopholes, revealing an ongoing need to reach beyond the law, however written, to define race in real situations. The consistency of this courtroom struggle to find ways to define race speaks to the ongoing complexity of racial life in the South. Doctors, scientists, and legislators may have believed strongly in a strict, impermeable racial boundary encircling any individual with the slightest bit of black ancestry, but reality seldom reflected this belief or desire. When faced with reality, courts instead continued to run up against a population that had mixed racially for centuries, as well as the inadequacy of the law to address this situation. In the struggle to define and police race and social interactions regarding race, then, even the courts seemed to recognize that the law failed to accomplish its intended goals of racial control.

CHAPTER THREE

ACTIONS OVER ANCESTRY: COMMUNITY INFLUENCE IN DEFINING RACE

The eugenic and supposedly scientific emphasis of Jim Crow miscegenation and racial definition laws, as demonstrated by the passage of the one-drop law, suggests a privileging of experts and science over everyday knowledge and opinions. But, confronted with the realities of life in a racially mixed region, judges in numerous appellate cases from Georgia, Alabama, and Mississippi instead affirmed that, in fact, any southerner of average intelligence could tell a "negro" from a white person, without any particular scientific knowledge or expertise. Accordingly, these judges repeatedly permitted these non-experts to weigh in on the race of defendants, allowing juries to consider their testimony with weight equal to that of doctors and other supposed experts. In particular, courts relied on testimony regarding appearance and reputation—decidedly counter to eugenic emphasis on blood percentages and purity, but clearly the most widely accepted and utilized method of proving race throughout the nineteenth and twentieth centuries. Despite their reliance on and explicit endorsement of these methods, however, in their opinions, judges rarely delved into the details of what appearance and reputation entailed. Almost universally, courts came to rely on these traits, but what were they really allowing when they permitted this testimony? What aspects of a defendant's appearance marked him or her as black or white, and what contributed to a person's reputation that swayed community opinion in one direction or another? While judges rarely addressed these details, abundant witness testimony from appellate court cases involving racial identity addresses these

questions, providing valuable insight into how ordinary citizens in the Jim Crow South defined and thought about race.

Regardless of the eugenics-inspired push toward a more scientific and biological understanding of race, most white and black southerners during Jim Crow agreed on what factors—rarely based on science—instead actually determined race, from physical traits such as skin color and hair texture to social indicators like church and school membership. When judges thus went beyond the "scientific" basis of the one-drop legal definition of race and instead allowed lawyers to "make profert" of defendants and family members to the jury, as they often did, most jurists and witnesses followed a fairly standard course of evaluation. Not surprisingly, skin color provided a clue to race in most cases, as did hair: its texture, length, color, style, and even whether it could be combed. Facial features met with scrutiny next, often eliciting adjectives such as "broad" or "flat." Most witnesses and lawyers seemed to feel that these traits alone accurately indicated race, but some went further, offering descriptions of smell, or recitals of specific traits of black and white babies at birth. When discussing the possibility of Indian ancestry, appearance sometimes included mentions of height, or the placement of cheekbones.

Reputation, another common method of defining race that strayed even further from the supposedly biological standards of the one-drop law, followed a similar pattern to appearance. Friends, neighbors, and community members agreed that a person's associations, or the people with whom he spent time both intimately and casually, provided valuable information about his racial identity. Similarly, most people felt comfortable looking to school attendance and church membership for further clues on race, while other witnesses turned to former status of servitude, indicating the ongoing relevance of slavery to racial identity even well into the twentieth century. Family relationships also provided widely accepted evidence of race in many cases, with

witnesses discussing former marriages or relationships, and the ways parents treated and regarded their children, in order to prove continuity or discontinuity in racial identities.

Yet despite what seemed a to be widespread consensus on the basic markers of race, different individuals often looked at the same person or family, searching for the same characteristics, and came to vastly different conclusions. The same defendant might have nearly black or fairly light skin, or associate only with whites or largely with blacks, depending on the witness and his or her bias and opinion. These disparate ways that witnesses and community members viewed even widely accepted racial markers indicates the relatively fluid nature of racial definition as actually practiced in the Jim Crow South. Rather than a predetermined biological fact, race could be a shifting identity forged not only by an individual and his or her family, but also by the community in which he or she lived. This participatory form of defining race allowed some individuals and families to renegotiate their place in the racial hierarchy, and the courts' consensus in relying on these community-built reputations further allowed some people to legalize their adjusted racial identities.

The most commonly utilized racial marker in racial identity trials was appearance, but the inability of witnesses to agree upon the appearance of an individual, much less what that appearance meant, demonstrates the relative flexibility of defining race during Jim Crow regardless of the strict standards proscribed by law. Despite the commonality of these disagreements, however, many southerners confidently stated that they, and southerners in general, could determine race at a glance, ignoring the clear contradiction between this statement and the prevalence of clashing views and opinions. As one witness stated, echoing numerous other witnesses, "I have been knowing negroes all my life, and seeing them, and know a negro

when I see one,"[136] emphasizing the role of physically viewing and assessing an individual's appearance in determining race.

In fact, virtually all witnesses, both before and after one-drop laws sought to eliminate the need for such testimony, first referenced appearance, and most commonly skin color, in describing the race of defendants. Their assessments might contradict each other, but descriptions like "dark," "yellow," "black," or even "ginger cake color" and "mighty dark," abounded in testimony. Occasionally, people were slightly more descriptive, such as the witness who described a defendant's grandfather as "brown, …sunburned"[137] or the man who clarified that his father was "red dark, not black dark."[138] In addition to describing the skin of individuals, witnesses often compared them to other family or community members, revealing that, while the law saw only black and white, communities saw a wide range of colors and shades that could be interpreted as darker or lighter, and thus as more "white" or more "black," relative to other community members. Daniel Reed, for example, explained that "my grandfather Reuben Reed was not coal black, he was a kind of dark complected fellow, but not black... My best recollection is that my father might be a little darker than my grandfather, but very little, if any; he is what everybody calls dark complected, that is what people call it. My father is not as dark as myself; he hasn't any mulatto looks…" Furthermore, Reed explained that "my grandmother Emmie... was pretty bright, she was very little darker than my mother, if any."[139] Complicated recitations such as these helped communities and juries place individuals in their "proper" place along the racial scale, revealing the persistence of a multi-hued racial system that went far beyond just black and white.

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[136] *Daniel Reed v. State*, 20 Ala.App. 496 (1925).
[137] *Percy Reed v. State*, 18 Ala.App. 353 (1922).
[138] *Daniel Reed v. State* (1925).
[139] *Daniel Reed v. State* (1925).

In comparing and describing skin colors, witnesses often indicated the social judgment, and thus social and legal repercussions, that commonly accompanied various skin tones. One woman described her mother in law as a "light colored woman, tolerably bright; she has some dark, not dark to hurt anything; she wasn't black or mulatto," clearly indicating the value placed on lighter skin and the social and legal "harm" that dark skin could cause.[140] Another woman testified that a defendant had "a little more tan color than some and not as bad as other," again indicating the negative connotations and repercussions of dark skin.[141] Given such beliefs, many witnesses who testified in support of defendants tried to minimize the impact of any dark pigment. In one case, a witness thus explained that the defendant "was a little dark," before immediately trying to explain away the negative connotations of this observation, adding that "some white people are dark."[142] Similarly, a Georgia resident explained that his neighbor's "complexion was dark [but] I have seen Spaniards and Italians quite as dark."[143] The persistence of caveats such as these, that even white people, although generally foreign whites, could be as dark as or darker than the racially ambiguous individuals on trial, indicates the difficulties of using skin color to define race. As these witnesses continually pointed out, a "black" person could be lighter in color than a "white" person, which ultimately forced southerners both in and out of the courtroom to look beyond skin color to define race, and thus position in society.

Some judges and lawyers, along with these witnesses, also recognized the challenges of relying on skin color to determine race. In a 1925 case concerning the eligibility of a Chinese girl to attend white schools in Mississippi, the court's opinion stated that "the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons

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[140] *Percy Reed v. State* (1922).
[141] *Agnew v. State,* 36 Ala.App. 205 (1951).
[142] *State ex rel. Farmer v. Board of Com'rs of Mobile County et al.,* 226 Ala. 62 (1933).
[143] *Dillon v. Dillon*, 60 Ga. 204 (1878).

of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation."[144] Likewise, a Mississippi lawyer wrote in his brief for a case involving the murder of a black baby born to a white woman that "every person of somewhat dark or bronzed complexion is not a mulatto by any means. There are thousands and thousands of over-pigmented or bronzed white people, in this country, many of whom might easily be mistaken for colored, sometimes. Many of them almost need to carry a certificate of identification."[145] Clearly, these authors recognized the ambiguities of skin color, the many factors that could influence complexion, and the difficulties in determining race using this method, even as legal trends in the South embraced the idea that scientific assessments of one-drop could eliminate such ambiguity. Nevertheless, when faced with the challenge of defining a person's race, and lacking a more precise method or true scientific test, many southerners, often to their great frustration, continued looking to skin color.

Many people clearly understood that skin color was an unreliable marker of race, and complicating matters even more, witnesses often disagreed on the particular shade of a certain individual, much less the meaning of that particular shade. In assessing the possibility that the baby of a white woman living in Alabama had been fathered by a black man, for example, one eyewitness described the child in question as having "reasonable dark complexion all over," while another testified that "it's light aplenty" before the midwife confidently stated that "it had

[144] *Rice v. Gong Lum*, 139 Miss. 760 (1925).
[145] *Pruitt v. State*, 163 Miss. 47 (1932).

white skin."[146] Clearly, even when looking at the same child at roughly the same time, these witnesses did not reach the same conclusion about its color, nor about its racial identity and place in society.

An influential 1917 case from Mississippi regarding the eligibility of children to attend the local white schools further illustrates the disparate ways people could view and interpret the same individual and skin tone. During this trial, one lawyer had the children's grandmother, Louisa Covasovich, lift her skirts in front of the whole courtroom to better allow the jury to assess her skin tone where it should have been undarkened by the sun. Even then, however, Covasovich attempted to explain away her apparently still dark skin, claiming that her legs were "skinned up and brown" from "sporting, shooting, and hunting." She continued her explanation by pointing out to the jury, "now, gentlemen, look, a person can be exposed, a white person can be exposed to the weather and get tanned as much as I do," prompting the lawyers to direct her to "don't argue the case."[147] Certainly, the lawyer and Covasovich differed in their opinions on the message that her skin tone sent, as well as the propriety of her informing the jury of what, apparently, they should have been allowed to "see" for themselves. Contradictions, explanations, and differences of opinion such as these emerge in virtually any case of questioned racial identity, proving not only the difficulty of determining race, but even more significantly, the large discrepancies in how southerners viewed race and racial characteristics. If two—or a dozen—people could look at an individual and come to varying conclusions about his or her skin tone and its meaning, then the meaning of race as a concept continued to defy simple definition and application, which, as the participants of these trials discovered, complicated any attempt at enforcing racial divisions from both the law and society.

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[146] *Agnew v. State* (1951).
[147] *Moreau et al., School Trustees, v. Grandich et ux.*, 114 Miss. 560 (1917), 19.

While numerous witnesses addressed skin color in general during their discussions of racial identity, the debates over the particular racial markers of newborn babies provide additional nuanced insight into the racial beliefs of Jim Crow southerners. If the skin of an adult, which could darken or lighten over time, or be covered by clothes, could not always provide reliable clues to a person's race, the skin of an infant never lied, according to some southerners. Two doctors called to testify in the 1951 Alabama case *Agnew v. State*, a miscegenation trial prompted by the birth of an allegedly black baby to a white mother, summarized the main beliefs about racial markers on newborn babies, particularly males, explaining that "it had black spots—speckled on the hips…and the genitals were pretty dark," and that "[the spots had] a purplish hue, and its scrotum was dark."[148]

Similarly, witnesses in several other racial definition trials also seemed to place great stock in this belief that examination of a child's sexual organs provided a fool-proof identifier of race. The most detailed and fully formed discussion of racial markers of infants in a racial definition trial came from midwife Sarah Bryant and Dr. Louis E. Broughton in Jesse Williams's miscegenation trials. Williams, the son of a white mother and an unknown and possibly black father, faced miscegenation charges for relationships with two different white women during the early 1930s, and in part because of juries' uncertainty regarding his racial identity, endured four trials total. During these trials, midwife Sarah Bryant repeatedly explained that, based on her experience delivering over six hundred babies, she knew that "when a white baby is born it is as fair and tender as a little chicken and a colored baby when it is born is between a white and yellow color and its skin is rough... hard... and thick." Furthermore, "all [babies] have straight hair when they are born and all the black ones I have ever seen, I have never seen but two without straight hair when they were born and when they get about a week old their hair turns up

[148] *Agnew v. State* (1951).

like a grape [vine]."[149] In the next trial, Bryant further elaborated on her descriptions of black infants, explaining that "they have a mark on them that a white child never has... The girls have a black streak down their back. A boy has a black mark at another place, down below... The lips of a black child when born are purple and the lips of a white child are white. If there is any colored blood in them all their lips are purple."[150] Bryant's belief in this extensive range of racial markers in infants presumably helped her make sense of the complex racial system in which she lived and worked, as well as helping her, an African American midwife, successfully and safely maneuver in that world.

Dr. Broughton, whose testimony accompanied Bryant's in all four of Williams' trials, agreed with Bryant and the doctors in the Agnew case about the basic marks of race in infancy, while also attempting to add the weight of science and expertise to his testimony that "the main thing we go by is the black scrotum or sack in which the testicles are held. That is a scientific medical fact."[151] Like Bryant, Broughton gained confidence as the trials progressed, finally declaring definitively that Jesse Williams had "[displayed] every characteristic necessary for [him] to be a negro... He was a negro then, a negro now, and always will be a negro."[152] But despite their confidence, their verbose and descriptive testimonies, their "scientific medical facts" and their credentials as an experienced midwife and physician, Bryant and Broughton still disagreed on key aspects of these supposedly infallible racial markers. Bryant, for example, repeatedly asserted that even newborn blacks had straight hair, while Broughton never varied from his testimony that black babies, instead, had "kinky" hair at birth. In fact, over the course of Williams' four trials, Bryant even contradicted her own testimony, initially stating that a black

[149] *Williams v. State*, 23 Ala.App. 365 (1930).
[150] *Williams v. State*, 24 Ala.App. 262 (1931).
[151] *Williams v. State* (1931).
[152] *Williams v. State*, 25 Ala.App. 342 (1933).

baby's skin is not rough and scaly but just rough and thick, before testifying the next year that "a colored baby is rough like a scaly lizard."[153] The persistence of these individuals' insistence that they could indeed determine race through appearance reflects their desire for easy and foolproof ways to categorize their fellow human beings, but their repeated contradictions expose this desire as wishful thinking. Instead, individuals such as Jesse Williams continued to inhabit an ambiguous and in-between racial territory, a reality which no number of confident witnesses or even strictly defined eugenics-based one-drop laws could change.

Clearly, skin color often proved an unreliable marker of race, which led many witnesses and lawyers to look to another common distinguishing characteristic in their quest for the most reliable physical indicator of race: hair. As with skin color, most witnesses pulled from a common vocabulary in describing the hair of defendants and their family; the word "kinky" almost always accompanied any discussion of hair, as did counter-arguments describing hair that grew "straight" or simply "curly." In keeping with common language of the time period, one witness used the word "wooly" to describe a suspected "negro's" hair,[154] but other witnesses proved more creative, one even describing his relative's hair as resembling "waves on water."[155]

Some witnesses went beyond texture and described hair styles and lengths as well, like the witness who testified that Rose Reed, the grandmother of a miscegenation defendant, "sometimes wore [her hair] plaited, and sometimes in a little knot on her head."[156] The ability to plait and knot hair presumably indicated a certain degree of length and straightness, and, accordingly, whiteness. Many witnesses thus referred to length in their descriptions; another witness said Rose Reed's hair measured "one and a half to two feet long and straight," while a

[153] *Williams v. State* (1930); *Williams v. State* (1931).
[154] *Knight v. State,* 207 Miss. 564 (1949).
[155] *Daniel Reed v. State* (1925).
[156] *Percy Reed v. State* (1922).

different woman was said to have "black and waverly [hair], over a foot long."[157] If the ability to grow and braid hair suggested whiteness, so did the ability to comb it. In an unusual 1929 Alabama inheritance case in which Jane Terry sought to prove that she was the legitimate heir and daughter of her black mother and black father, rather than a white man with whom her mother had had a relationship, Terry's sister looked to the similarity of their hair to provide evidence of Terry's race. The sister explained that her own hair, which the jury presumably could observe, "is about as straight as [Terry's] I think and mine ain't no harder to comb than hers, and my father's hair was just like mine," presumably indicating that Terry was no "whiter" than her family members, and thus was a legitimate heir.[158] This interest in hairstyling appeared in other cases as well, with a witness in a miscegenation case that hinged on racial identity likewise assuring the jury that his father "could comb his hair."[159] Even beards came under scrutiny in the attempt to define race by hair texture, with one witness in a school attendance trial recalling an old man's beard as "straight and silky white," as evidence that his grandchildren were white.[160]

Alongside witness testimony from neighbors and family members, supposedly expert testimony and judicial rulings also illustrate this importance that southerners placed on hair texture in defining race. One doctor, for example, presumed by his profession to be an expert in racial matters, testified that when a defendant being sued for marital and child support asked the doctor if he could tell the difference between the races, he "told him I could if he would give me a piece of the hair and fifty dollars."[161] While this may have suggested a scam aimed at making a little extra money, that the doctor would prepare such a scheme indicates his reasonable

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[157] *Percy Reed v. State* (1922); *Daniel Reed v. State* (1925).
[158] *Moore v. Terry*, 220 Ala. 47 (1929).
[159] *Daniel Reed v. State* (1925).
[160] *Chestang et al. v. Burns et al.* 258 Ala. 587 (1953).
[161] *Dillon v. Dillon* (1878).

expectation that his mark would believe him, and by extension, believe that hair alone could provide definitive proof of race. Viewing and examining hair was so important, in fact, that in miscegenation cases hinging on the race of Rose Reed's grandchildren, judges, despite numerous objections, repeatedly allowed testimony regarding her hair, not only from eyewitnesses who knew her, but also from participants in an earlier trial in which Rose and her hair were presented and even measured before the court.[162] Clearly, many southerners placed great weight on the value of assessing hair in defining race, but testimony again indicates a pervasive inability to reach consensus regarding particular individuals. Often, for example, one witness saw "kinky" hair when another saw "curly" or "wavy," revealing the variety of opinions and beliefs regarding not only the race of certain individuals, but also on what race meant and how to define it in general. Despite the supposed clarity of the laws as well as a general consensus on the traits that could indicate race, then, southerners continued to struggle to define race, apply it to individuals, and deal with what, in reality, proved to be a society of racial gradations, rather than racial dichotomy.

With skin color and hair texture often failing to definitely prove race, despite the widespread acceptance of the utility of these markers in doing so, witnesses regularly proceeded to assess facial features in their attempts to provide evidence of a particular racial identity. Accordingly, extensive testimony centered on how flat a person's nose might be, or how broad his or her lips. A witness in Davis Knight's 1948 Mississippi miscegenation trial neatly summed up this typical testimony and common beliefs regarding racial characteristics of facial features: a Negro had "a flat nose" and "lips [that were] thick," while "I would say the typical white man has straight hair, possibly blue eyes, and the typical straight nose."[163] If "a flat nose, or kinky

[162] *Percy Reed v. State* (1922); *Daniel Reed v. State* (1925).
[163] *Knight v. State* (1949).

hair, or round face or thick lips"[164] indicated black ancestry, many witnesses thus attempted to prove themselves and family members as pure white by describing the supposed opposite of those features. One witness, for example, described the grandfather of a child petitioning to attend the white schools outside of Mobile in the 1950s as having "a high bridge to his nose, prominent cheek bones, and was to my knowledge a very aristocratic looking old fellow... he looked more French that anything to me... his mouth was a pretty straight line, rather a small mouth."[165] Linking European ancestry and particularly aristocracy to stereotypically "white" facial features suggests the value southerners placed on such features in assessing not only race, but also legal and social status.

Given the wide range of facial features that humans display, however, witnesses struggled not only to describe certain individuals, as with skin and hair, but also to come to consensus on which features, beyond the general "broad vs. narrow" continuum, could help identify race. For example, one witness testified to his understanding that not only did blacks have flat noses, but also that "I have always heard that negroes have no bones in their noses."[166] Not only does this belief reveal the range of unscientific observations people offered in an effort to force individuals' features to conform to a certain racial idea, it also suggests that perhaps, contrary to the statements of so many white witnesses, simply being around blacks did not in fact make one an expert on race, or even humanity in general. Additionally, the persistence of unscientific beliefs such as these, as well as their inclusion in legal cases debating race, further undermined the eugenic and scientific basis and impulse of Jim Crow miscegenation laws defining and regulating race, leaving the concept and application of race murky and rendering the laws ineffective and difficult to apply.

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[164] *Chestang v. Burns* (1953).
[165] *Chestang v. Burns* (1953).
[166] *Locklayer v. Locklayer*, 139 Ala. 354 (1904).

If witnesses fell short of forging a consensus on black and white features, repeated claims of Indian ancestry further muddled their attempts. Descriptions of supposedly Indian characteristics often veered beyond the expected "tall and slender,"[167] with high cheekbones, to more unfamiliar indicators. One lawyer thus pressed a witness to indicate whether a defendant had "her eyes sorter in the top of her head" before concluding "she had the characteristics of an Indian girl... look at her cheekbones."[168] Witnesses in another trial recalled that a defendant's ancestor "used to wear a ring in her nose... to represent that she was an Indian" and "had a kind of blue pencil mark" on her face and wrist "like the Indians,"[169] indicating that even physical markers of race could sometimes be created by humans, rather than by nature. Certainly, a person who identified as Indian, whether their "blood" was mixed with "white" or "black," could modify their appearance with tattoos and piercings, creating further complexity regarding the race that an individual acted, claimed, and presented to society, versus the race that biology supposedly assigned them by blood.

In fact, claiming Indian ancestry, similarly to various sometimes obscure European heritages, provided some people whose racial identify fell into question with a legitimate option for denying the existence of "black blood." As already mentioned, defendants often tried to explain away the implications of darker skin tones; references to Spanish, French, or Italian ancestry, and occasionally to Greek or even "Black Dutch" heritage appear in numerous racial definition trials. But in a region characterized by a relative lack of recent European immigration, as well as a rich Native American history, the so-called "Indian foremother" defense often proved more convincing than the more ambiguous ethnicities that some defendants offered, such

[167] *Williams v. State* (1931).
[168] *Pendley v. State*, 36 Ala.App. 169 (1951).
[169] *Moreau v. Grandich* (1917).

as "Black Dutch," which one skeptical witness told a lawyer "I think... originated in your brain."[170]

In their claims of Indian ancestry, some defendants offered extensive histories supported by tangible evidence, but even those without a strong and persuasive argument still frequently offered this explanation for their physical characteristics or rumors of mixed blood. For example, in the 1884 Alabama miscegenation case *Bryant v. State*, in which Washington Bryant's racial identity came under question, a witness volunteered that Bryant's mother looked to him more Indian than black. While Bryant offered no elaboration on this suggestion, possibly even this small mention of an alternative to "black blood" helped pushed the jury toward its hung verdict on his race.[171] Similarly, a doctor testified in racially ambiguous Rachel Dillon's 1878 Georgia spousal support suit against her white husband, David Dillon, that she looked Indian rather than black, casting doubt on her racial origins and raising the possibility that, as an Indian and white woman, Rachel was indeed legally married to and thus owed alimony from her estranged husband.[172]

As these cases indicate, the Indian defense did not always originate with defendants themselves, but sometimes with friendly witnesses. A local doctor who testified in Davis Knight's 1948 Mississippi miscegenation trial provided further evidence for this tendency. With Knight's racial identity under question, the witness, when asked to testify to the Knight family's race, explained that "to tell you the truth, [Knight's great grandmother] looked more like an Indian to me," before offering that "I was scared of Indians, my mother used to tell me the Indians would get me if I didn't do so and so, and I thought perhaps she might be an Indian,"

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[170] *Williams v. State* (1930).
[171] *Bryant v. State*, 76 Ala. 33 (1884).
[172] *Dillon v. Dillon* (1878).

thereby painting a perhaps less than flattering, but nonetheless decidedly not black, picture of Knight's origins.

More frequently, however, defendants and family members offered their own accounts of Indian ancestry, including Knight's uncle, who confirmed that his grandmother was "creole and Indian… no part negro at all."[173] Sarah Wilson, when faced with miscegenation charges for forming a relationship with a white man in the early 1920s in Mobile, likewise stated that her grandfather was Choctaw. Similarly, Dollie Seay White, in trials regarding her own marriage to a white man and her children's school enrollment in Georgia in the late 1940s, testified that her father was half Indian, rather than half black. Despite being able to name specific relatives alleged to have passed down their Indian blood, however, Wilson and White lost their cases, proving that juries did not always buy the "Indian defense.[174]

The families of Jesse Williams and Vena Mae Pendley, who both faced miscegenation charges in Alabama for relationships with unquestionably white partners, offered more detailed descriptions of their unique ethnic heritages than did Wilson and White, hoping to win their juries over with the weight of details. Jesse Williams' grandfather, Joe Lundy, thus described his own parents and their ethnicities, testifying that "I remember my mother and she was very dark. She was not part Indian, she claimed to be Scotch. My father claimed to have Indian blood in him... He was tall and slender and was very dark," in an attempt to prove his grandson's whiteness by explaining questionable physical characteristics as a "throwback" to legally acceptable mixtures of blood.[175] Pendley's family similarly recounted ethnicities and percentages for the court in attempting to prove the possible "whiteness" of her dark-appearing baby, and thus undermine the case for Pendley having slept with a black man. Her uncle

[173] *Knight v. State* (1949).
[174] *Wilson v. State,* 20 Ala.App. 137 (1923); *White et al. v. Holderby et al.* 192 F.2d 722 (1951).
[175] *Williams v. State* (1931).

accordingly described her grandfather as half Choctaw and half Spaniard, a claim her father, John Wyers, partly supported and partly contradicted in his own testimony that his father was, in fact, three-fourths Indian. Despite the confusion over percentages, however, Wyers claimed to know with certainty that his own father had been offered a land grant in Indian Territory by the Federal Government because he was an Indian, thus demonstrating his efforts at providing tangible evidence to support his claim of Indian ancestry.[176]

Wyers offered a land grant as evidence to back his claim of Indian ancestry, but other defendants offered more verbal-based evidence to support their claims to Indian ancestry; Louisa Covasovich, while on the witness stand at her grandchildren's school attendance trial, assured the lawyer that she could "talk Indian," as he put it, before offering proof, noted in the trial transcript as "(witness utters something which she states is Indian)." While severely questioned by the opposing lawyer, Covasovich's demonstration of her ability to "talk Indian" represented an attempt to offer concrete proof to the judge and jury that Covasovich's heritage was Indian rather than African. Combined with the testimony from several witnesses that an "old Indian man" who dressed unconventionally often visited the family matriarch, Christiana, who had a nose ring and blue marks tattooed on her wrists and face "like the Indians," the family was able to offer several examples of evidence supporting their claim of Indian heritage.[177]

While many defendants claimed Indian ancestry, and some even backed up their claims with various forms of evidence, the Reeds and Weavers of Washington County, Alabama had perhaps the strongest case for Indian heritage. The possibility of Indian heritage was central to the respective miscegenation trials of cousins Percy and Daniel Reed and Jim Weaver, who were individually accused of being black and of marrying white women in the 1920s. Discussion of

[176] *Agnew v. State* (1951); *Pendley v. State* (1951).
[177] *Moreau v. Grandich* (1917), 21.

Indian heritage during these particular trials, however, rarely went beyond fairly straightforward statements that one ancestor was half Indian and half white, or that another was a "Choctaw squaw," and of course that grandmother Rose Reed's hair was long and straight. Despite the number of witnesses making this same claim, local juries remained unconvinced and convicted all three men for miscegenation. At the appellate level, these cousins' claims achieved a mixed record; both Reed cousins had their convictions reversed and remanded, while their more distant cousin Weaver's conviction was affirmed. Regardless of the lack of details at the trials, or of the mixed judicial record regarding racial identity, the Reed and Weaver families were later recognized as two of the core founding families of the state-recognized MOWA Choctaw tribe, suggesting, if in hindsight, that their claims of Indian ancestry had some validity.[178] But even though not every defendant who used the Indian defense had as strong a case as the Reeds and Weavers, or even as Pendley, who offered a land grant in Indian Territory as evidence of Indian ancestry, the Indian defense nevertheless provided many southerners with a legitimate explanation for certain physical characteristics, particularly since many southerners struggled to explain what, exactly, an Indian was supposed to look like. By claiming Indian ancestry, then, southerners whose racial identity fell under suspicion chose a valid and sometimes successful method of influencing and creating their own answer to the question of race, as well as serving as a reminder that the Jim Crow South was not, as the laws tried to create, a simple black and white dichotomy.

While most witnesses and lawyers seemed satisfied to conclude their discussions of the physical indicators of race after addressing the common markers of skin color, hair texture, and

[178] *Percy Reed v. State* (1922); *Daniel Reed v. State* (1925); *Weaver et al. v. State*, 22 Ala.App 469 (1928); Jacqueline Anderson Matte, *They Say the Wind is Red: The Alabama Choctaw—Lost in their own Land* (Montgomery: New South Books, 2002); Wilford Taylor, et.al., *CDIB: Corruption, Deceit, Identity, and Bureaucracy in Indian Country* (http://www.cdibthebook.com/cdib.pdf).

facial features, a few cases brought up an additional physical characteristic allegedly capable of indicating race, with witnesses claiming the ability to tell a black person by his smell or odor.[179] Determining race by scent seems to subvert the legal definition of scientific assessment of blood even more than reliance on other physical indicators, but belief in the legitimacy of scent apparently permeated all levels of society. An Alabama sheriff clearly believed in the capacity of scent to define race, testifying that "I would call him [a Negro] by looking at him and smelling the scent."[180] Similarly, a doctor in Georgia, despite a supposedly science-based higher education, swore that one test for race is smell.[181] Another witness elaborated on this alleged scent difference, explaining that "I am familiar with the odor of a negro when he gets hot and when he gets hot he smells peculiar… A white man smells strong when he gets hot but it is a different odor. If you are at work with them you can tell the difference... A negro smells more like a goat." He admitted however, that "I have never smelled a hot Indian and do not know what kind of an odor they give off," again revealing the possibilities of the Indian defense in thwarting attempts to categorize race.[182] Other witnesses went as far as to suggest that not only men engaged in physical labor, but also newborn babies, exhibited this particular scent. In a miscegenation case sparked by the birth of an allegedly black baby to a white mother, a witness thus explained that the baby in question "had the odor of— something of a smell to under your arm, negro odor… It was something like the odor under your arm," an odor she asserted was so strong that "I believe I could tell it in the dark."[183]

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[179] For a more in-depth discussion of southern claims to distinguish racial identity by smell, see Mark M. Smith, *How Race is Made: Slavery, Segregation, and the Senses* (Chapel Hill: University of North Carolina Press, 2006).
[180] *Weaver v. State* (1928).
[181] *Dillon v. Dillon* (1878).
[182] *Williams v. State* (1930).
[183] *Gilbert v. State*, 32 Ala.App. 200 (1945).

The beliefs these witnesses offered in their testimony not only opened the door to further confusion when attempting to define race—since smell, in fact, does not indicate race, individuals attempting to determine race on this basis were destined to meet with frustration—but again attached value judgments to otherwise neutral traits by comparing the "negro" smell to animals or suggesting lack of cleanliness. That numerous white southerners, including well-educated ones such as doctors and politicians, believed such blatant myths about race, both reveals the extent to which the idea of race was manufactured, and also indicates that there was significant room for maneuvering for individuals and families seeking to defend or advance themselves by redefining the construct of race. Even efforts to go beyond the law's emphasis on blood to determine race by examining physical characteristics, then, failed to provide the level of control intended, as the numerous judges and lawyers who relied on appearance of defendants to settle the question of their race continued to find themselves baffled by the realities of racial mixing in the South.

With physical characteristics failing to provide definitive proof of race, particularly when complicated by the Indian defense, courts turned even further from increasingly scientific and eugenics-based laws to examine instead the reputation of defendants, precisely the type of ambiguous and amorphous marker that one-eighth and then one-drop laws sought to avoid. Despite the supposedly increasingly clear laws, as seen in the previous chapter, judges at all levels continued to explicitly allow testimony regarding reputation in their efforts to define the undefinable concept of race and apply it to individuals. But if physical characteristics allowed ample room for disagreement and conflicting interpretations, then reputation, which people could actively shape and influence with their own actions, simply provided more fodder for debate and ambiguity. Nevertheless, faced with the task of defining and applying race despite the inherent

difficulties in doing so, trial participants consistently utilized this approach, leading to extensive discussions and debate regarding actions and other supposed racial markers including prior servitude, school and church membership, company at meals, and most significantly, interactions within the larger community.

As the Jim Crow era progressed, antebellum slavery grew increasingly distant, but the progression of time and even the accompanying dimming of memory did not stop southerners from referring to previous status of servitude in attempting to ascertain a person's racial reputation. In the period between the Civil War and the full development of the Jim Crow system, with race-based slavery less than a generation distant, this method made sense to most southerners. Since antebellum slavery rested on the concept of race, meaning that all persons enslaved before the Civil War were ostensibly African American to some extent, this method of defining race by using reputation and past servitude provided a reasonably valid indicator of race, at least as long as living memory lasted. In 1869, for example, in a case to decide the eligibility of a man to hold local office, a witness's testimony that the defendant told him that he "made his escape from a master or guardian," while little more than rumor and hearsay, nevertheless provided relevant information for the judge and jury.[184] Likewise, Rachel Dillon's 1877 suit to force her white husband to pay child and spousal support centered in part on an 1857 act of the Georgia legislature that, at the urging of her then-devoted husband, declared her a citizen despite her previous servitude. Twenty years later, the legal system still struggled with the import of this unusual act, and questioned whether to declare a person a citizen at that time, rather than a slave or even a free black, was also in essence to declare them a white person.[185]

[184] *White v. Clements*, 39 Ga. 232 (1869).
[185] *Dillon v. Dillon* (1878).

Even as Jim Crow tightened its noose around the South in the 1890s, slavery naturally remained a fairly recent memory for many southerners, lending legitimacy to the Georgia appellate court's mention of Rose Tutty being a former slave in its 1890 decision that, despite this previous status of servitude, reversed her miscegenation conviction.[186] Likewise, in the 1902 Locklayer inheritance suit, in which Jackson Locklayer's black relatives sought to disinherit his white wife by invalidating their marriage on the basis of race, living witnesses could testify positively that Jackson Locklayer and his family had been free blacks before the war. They also remembered that "[Jackson] was the first negro ever drawn on the jury in this county… for the March term 1868" and that "Jack asked the court to excuse him from serving as a juror because his color had barred him from serving on juries heretofore," thus providing seemingly solid evidence of Locklayer's race.[187]

Rather allowing it to gradually disappear from racial trials as memory faded, however, southerners clung to previous enslavement of an individual or his or her ancestors as a method of determining race even long after the memories and oral histories of families and communities began fading, opening the door for contradictions based either on inaccuracy or even on attempts to rewrite history given little clear and trustworthy opposition. In 1916, as living memory of slavery began to blur and die out, an elderly woman of seventy-two testified in a school attendance case that the children's ancestor, Christiana Jourdan, "had servants and slaves. I remember that," as lawyers pressed her for information on Jourdan and her family's race. The lawyer seemed less than convinced by this statement, however, replying "you remember that from the age of five?" calling into question both the witness' memory and her testimony.[188] By this point in time, intervening years had clearly muddled the question of former servitude for the

[186] *State v. Tutty et al.,* 7 L.R.A. 50 (1890).
[187] *Locklayer v. Locklayer* (1904).
[188] *Moreau v. Grandich* (1917).

Jourdan family, but also for numerous other southern families, which led to one of the central debates at Percy Reed's 1920 miscegenation trial. In their attempts to determine Reed's race, numerous witnesses addressed his grandmother, Rose's, status, with one testifying that Rose and her mother "did not associate with white people but lived like other slaves." Several others countered this assertion, insisting that "[Rose's husband] Daniel Reed owned slaves" and that "I have heard that they owned slaves back in olden days."[189] The numerous witnesses in this case never reached any sort of consensus on Rose's pre-war servitude, with some remembering a black slave and some recalling a free Indian and white girl. These contradictions reveal the difficulties of relying on passed-down memories, shaped by generations of family or community members with certain agendas, to define the race of descendants, as well as the opening that faded memories created for families to possibly revise communal opinion of their roots.

Despite the difficulties of accurately remembering ancestors' former servitude that began to plague such cases in the early twentieth century, lawyers and witnesses continued to use this method to argue cases well into the Jim Crow era, suggesting just how difficult it was for southerners to determine the racial identity of some people and families. Two cases from the last years of Jim Crow, almost a century after the end of slavery, reveal this ongoing struggle. In Davis Knight's 1948 miscegenation trial, lawyers repeatedly questioned witnesses about his great-grandparents, Rachel and Newt Knight, and whether Rachel had been a slave belonging to Newt. Even though cross-examination suggested that Newt, in fact, had never owned any slaves at all, lawyers questioned Davis' uncle about the practice of slaves taking their master's last names, implying that Rachel had received Newt's last name as his property, rather than as his wife. The testimony of a neighbor who admitted he was born after Rachel died, but nonetheless continued to insist that he remembered physically seeing her during his childhood, underscored

[189] *Percy Reed v. State* (1922).

the difficulties of finding witnesses who could remember antebellum statuses nearly a century later, as well as the desperation of lawyers frustrated by the challenge of proving a defendant's race.[190]

The Knight case reveals the absurdity of trying to use a family's history of enslavement to determine an individual's race nearly a century later, but it was not the only late Jim Crow era case where this method was employed. The 1953 school admission case involving the Chestang family of Mobile, decided by the Supreme Court of Alabama barely a year before the 1954 US Supreme Court ruling in the case of *Brown v. Board* invalidated segregated schools, provides another example. In an attempt to prove the Chestang children's eligibility to attend white schools, their uncle explained that their ancestors "on both sides [owned slaves, before] everything they had got swept away- their slaves and everything else," presumably during the Civil War and Reconstruction. The family's lawyers even produced several documents proving this slave ownership, including ancestors' wills.[191] Clearly, even a century after emancipation and despite the fact that a few blacks also owned slaves, lawyers realized that many white southerners retained a strong belief in the dichotomy of whites owning slaves and blacks being slaves. Reliance on this unsatisfactory dichotomy reflected, more than anything, the persistent difficulties facing both communities and the legal system in attempting to determine and regulate race, even after the one-drop law intended to clarify these ambiguities and close these loopholes.

While the utility of relying on a personal or family history of servitude to define race in some ways faded with time and memory, despite its persistent usage, other aspects of reputation that relied instead on the more contemporary actions of individuals and communities continued

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[190] *Knight v. State* (1949). Also see Victoria E. Bynum, "'White Negroes' in Segregated Mississippi: Miscegenation, Racial Identity, and the Law," *Journal of Southern History* 64 (1998): 247-276; and Victoria E. Bynum, *The Free State of Jones: Mississippi's Longest Civil War* (Chapel Hill: University of North Carolina Press, 2003).

[191] *Chestang v. Burns* (1953).

to provide relevant information in racial definition trials throughout the Jim Crow era, despite the certainty of eugenicists and legislators that one-drop laws would eliminate the need for such methods. In particular, witnesses frequently mentioned school attendance and church membership in assessing a person's reputation and racial identity. With school attendance regulated by law, and the segregation of Sunday services strictly guarded by tradition and conservative white southerners, proof of attendance at the white versions of these institutions seemed to provide powerful evidence of whiteness, and vice versa, and courtroom reliance on these markers set a powerful precedent that lasted even after new one-drop laws sought to avoid such ambiguous methods by instead using science. In Rachel Dillon's 1878 suit for spousal and child support a former friend's testimony that "[Rachel] used to belong to the first African Baptist church of this city... I saw her baptized and communed with her as a member of the church. No white members were allowed in our church," thus provided evidence that Rachel was black and, as a black woman, not entitled to support from her former partner, a white man to whom she could not have been legally married.[192]

Cases such as Dillon's set a precedent for using church attendance to define race that lasted well into the Jim Crow era. In the early 1950s, for example, Vena Mae Pendley's father explained that she went to church and Sunday school with white people, and in the 1930s Samuel Farmer explained not only that he attended "white churches and I have never put my feet in a negro church," but also that "my wife is dead and she was buried in the Catholic Cemetery in the white part. ...There is a separate place in the Catholic cemetery for the negroes and a separate part for the whites, and my wife was buried in the white part."[193] Farmer later elaborated that "in attending church my people and I and my wife's people and my wife always went right up to

[192] *Dillon v. Dillon* (1878).
[193] *Agnew v. State* (1951).

where we ought to belong, up to the front with the whites," again adding social privilege to white skin and status.[194]

School attendance and affiliation likewise provided evidence either of blackness or whiteness for many defendants regardless of the laws in effect at the time of their trials or the influences that had led to the passage of those laws. In an 1897 negligence suit against the city of Mobile which veered into a referendum on the white plaintiff Edward P. Lord's marriage to an allegedly racially ambiguous woman, Lord attempted to prove his wife's whiteness, and by extension his own character and presumably the legitimacy of his legal suit, with testimony from teachers at all-white boys schools where he had taught. As one principal testified, a man of immoral habits, such as would marry a black woman, would not have been tolerated as a teacher at his school. On the other hand, further evidence revealing that Lord had also taught and furthermore served as principal at several colored schools presumably negated some of the benefit of earlier testimony.[195] Despite the seemingly contradictory messages sent by these accounts of Lord's teaching career, however, the extensive testimony regarding his position at both white and black schools indicated the importance society placed on schools as racial gatekeepers, particularly as the Jim Crow system began to develop fully at the turn of the century.

The growing influence of pseudoscience by the 1920s, however, did not eliminate this emphasis on school affiliation—a decidedly unscientific standard—as providing evidence of race. Just a few years before Georgia passed the one-drop law and thus during the period in which eugenics and related pseudosciences began to assert political influence, Elliot Bourquin, in his attempt to disinherit his older brother on the grounds of being black and therefore also

[194] *Farmer v. Board of Com'rs* (1933).
[195] *Lord v. City of Mobile*, 113 Ala. 360 (1897).

illegitimate, found his case weakened when forced to admit that he and his brother attended the local white school together.[196] Percy Reed, also in the years just before Alabama's adoption of the one-drop law, similarly tried to bolster his own argument for being white, and thus for his marriage to his white wife being legal and valid, by proving that his sister's children attended the local white school.[197] Reed's distant cousin, Jim Weaver, on the other hand, faced testimony by the local sheriff that the Weaver family never attended white schools, thus damaging his racial reputation and his case for whiteness because of the weight granted to school as a marker of race.[198]

Even after the passage of the one-drop law codified the influence of eugenics, presumably rendering evidence of reputation unnecessary, witnesses, lawyers, and judges continued to rely on and embrace this method, perhaps in part because of the lack of a method through which to verify and apply the new science-based concepts of race. Jesse Williams, in his numerous trials in the early 1930s in southern Alabama, thus had to overcome damaging evidence regarding school attendance, with several witnesses testifying that the only time Williams attended school at all was the day he tried to go to the local white school and "was sent back."[199] As late as the 1950s Chestang school attendance case, decades after the one-drop law passed, lawyers still relied on school attendance and reputation to prove race, asking numerous white witnesses if their own mothers had attended school with Chestang family matriarch Catherine Chestang, and therefore suggesting that if the witnesses' mothers attended white schools and were white, then so were Catherine and her family.[200]

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[196] *Bourquin v. Bourquin et al. v. Bourquin*, 151 Ga. 575 (1921).
[197] *Percy Reed v. State* (1922).
[198] *Weaver v. State* (1927).
[199] *Williams v. State* (1930).
[200] *Chestang v. Burns* (1953).

Despite the lack of scientific grounding intended by one-drop laws, given that Jim Crow laws did govern school attendance and divide schoolchildren by race, and that courts throughout the region accepted testimony about school attendance as evidence, this marker seemed to provide a reasonable starting point for officially determining racial identity, as plentiful witness testimony indicated. But regardless of its common usage or of seemingly official endorsement, however, numerous cases reveal how ambiguous this marker could prove in attempting to prove a person's race. Percy Reed's efforts to verify his own whiteness based on the attendance of his nieces and nephews at white schools, for example, proved less than convincing for the jury, who still found him guilty of miscegenation.[201] Presumably, he and his family members all had the same "blood," even though the application of law and the attitude of the community allowed some members of the family to attend white schools, while convicting another member for marrying a white woman, thus indicating the inability of school affiliation to clarify racial identity.

Other racial identity cases featured children who attended white schools sometimes for years before being kicked out on the basis of race, further skewing the evidentiary value of school attendance in racial definition cases. For example, the attendance of Dollie Seay and George White's children at their local white school in Georgia for years ultimately did not prevent either later legal battles over this school attendance or miscegenation charges by the state against the parents.[202] Samuel Farmer, Michael Chestang, and the parents of Dorothy and Hattie Jewel Taylor likewise all went to court to have their children declared white after being turned away from schools they had previously attended, indicating the frequency with which some children of allegedly ambiguous race attended white schools, an action that bolstered any later

[201] *Percy Reed v. State* (1922). The appellate court later reversed this decision.
[202] *White v. Holderby* (1951); *Shiver v. Valdosta Press*, 82 Ga.App. 406 (1950).

arguments for whiteness.[203] The number of these cases further reveals just how difficult the goal of racial segregation—especially at the one-drop level—was to achieve, and how ambiguous supposed evidence of race could be. Even years after the passage of the one-drop rule attempted to remove ambiguity from the process of categorizing people by race, then, communities and families continued to struggle to determine who, in the present or in the past, did or did not possess that one drop, and what evidence they could use to prove this.

To a large extent, church and especially school attendance were subject to regulation by law and larger communities, but many individuals and families clearly nevertheless managed to cross, or at least confuse, racial lines in these institutions. When it came to everyday interactions with a smaller group, then, an individual or family rather than a congregation, for example, racially ambiguous southerners found even more room to maneuver around racial regulations and to influence their own identities and reputations. One common example of this type of interaction that witnesses frequently debated was eating together and sharing a table at mealtime. In fact, many southerners considered the sharing of meals and even their preparation as so indicative of a socially significant relationship that several alleged couples found themselves charged with miscegenation based only on eyewitness testimony of the sharing meals and meal preparation. Martha Linton, Jemima Hardeman, and Bess Adams all found themselves in this situation after neighbors offered observations of the black women cooking for white male neighbors as evidence of a deeper relationship. Likewise, Joe Weaver and Marinda Smith faced charges that ultimately amounted to little more than being seen together at mealtimes, as did Edith Labue and Jim Rollins, a black man who was observed doing nothing more than bringing

[203] *Farmer v. Board of Com'rs* (1933); *Chestang v. Burns* (1953); "Dorothy Taylor and Hattie Jewel Taylor vs. Washington County Board of Education et als.," Jacqueline Anderson Matte / MOWA Choctaw Indian Papers, The Doy Leale McCall Rare Book and Manuscript Library, University of South Alabama, Mobile, AL.

food to his employer's white daughter at mealtimes.[204] Given the significance that many southerners placed on the company one kept during mealtimes, testimony concerning eating companions provided another marker for those attempting to define race by actions and reputation.

If this sharing of food and its preparation occasionally caused neighbors to question the nature of relationships, it could also allow other, generally already racially ambiguous individuals, to claim a "whiter" space in society by eating with whites, the implication being that no white person would lower themselves to sit and eat a meal with blacks. Witness Charlie Rainwater confirmed this belief in Daniel Reed's 1925 miscegenation trial, explaining that although the racially ambiguous defendant "ate at my place once; I asked him in... By God I didn't know any better than to eat with them," presumably because he was not yet aware of Daniel Reed's racial background.[205] Rainwater's next assertion, however, that " there are lots of people who eat at the same table with darkies," suggests that despite the emphasis that many southerners placed on mealtimes as a racial divider, and Rainwater's own denial of crossing this divider knowingly, other southerners of both races showed less concern with upholding this racial boundary, offering a foothold for racially ambiguous individuals looking to claim markers of whiteness. In these situations, social customs and community tolerance sometimes overrode legal and even social proscriptions, undermining attempts by Jim Crow and one-drop laws to fully segregate and thus control the races.

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[204] *Bryant v. State,* 76 Ala. 33 (1884); *Weaver v. State*, 74 Ga. 376 (1884); *Linton v. State*, 88 Ala. 216 (1890); *Lewis v. State*, 18 Ala.App. 263 (1921); *Rollins v. State,* 18 Ala.App. 354 (1922). Linton, Hardeman, Smith, and Labue were white women, while Adams was a black woman, indicating that this preoccupation with women cooking for and possibly eating with men of another race affected women of both races, although it apparently targeted white women seen with black men more frequently.

[205] *Daniel Reed v. State* (1925).

Regardless of how many southerners privately crossed the racial dividing line of dining together, however, testimony about mealtime divisions remained a staple for lawyers attempting to prove a defendant's whiteness. In one case, the former employer of members of a defendant's family reinforced this link between mealtimes and race, stating that "they ate with me at the market and I regarded them as white."[206] Similarly, lawyers in the Chestang school attendance case questioned numerous witnesses, including socially prominent white men, about their habit of dining at the Chestang household. One witness, local attorney Garet Van Antwerp, elaborated on the lawyer's questions, not only affirming that he did attend barbeques at the Chestang's home, but also adding that "every time we go hunting, the whole crowd goes in Clement's house and eats."[207] Another socially prominent white witness, when asked whether the Chestang family patriarch, Joe, "passed as white or colored," volunteered that Joe used to visit the witness's father and "if it was meal time, he come in and eat with us, and all that… [He was] just as welcome as the day is long,"[208] not only simply answering the question but also providing additional potential evidence for Joe's whiteness. Clearly, sharing meals with white people indicated whiteness to much of southern society, and families and individuals knowingly used this belief to help define their own racial identities. By sharing meals with whites, racially ambiguous families such as the "creole" Farmers and Chestangs actively furthered their own claim to whiteness while also distancing themselves from the restrictions and regulations of blackness under Jim Crow. Sharing meals thus provided a way for a few southerners to circumvent or at least push back against the tightening miscegenation and racial definition laws, as well as other Jim Crow restrictions.

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[206] *Farmer v. Board of Com'rs* (1933).
[207] *Chestang v. Burns* (1953).
[208] *Chestang v. Burns* (1953).

Church attendance, school enrollment, and dining habits all composed one aspect of a person's racial reputation, but the majority of testimony regarding defendants' reputations examined more general actions and connections: their associations, or the people with whom they chose to spend their time and leisure, as well as their families. Ideally, family connections could provide the type of genealogical blood percentages that the eugenics-based law specified; with this rarely happening in practice, courts, attempting to decide the complex cases in front of them in any way possible, instead allowed testimony regarding a family's racial reputation and the ways they treated each other as a less-scientific but nonetheless accepted type of evidence. Consequently, witnesses testified about how partners, lovers, and spouses treated each other, as well as parents and children. Nancy Locklayer, for example, found her suit to inherit from her husband Jackson Locklayer denied, in part because testimony that he previously married a black woman and treated her as his wife provided evidence that he, too, was black, and therefore could not legally marry the white Nancy. That the minister who married Jackson and Nancy was also black was held as further evidence that not only was Jackson black, but also that Nancy knew it before she attempted to marry him.[209]

In the Bourquin inheritance suit, in which Eliot Bourquin sought to disinherit his older brother Guilleman on the grounds that he was allegedly black and illegitimate, testimony that their father "kept" a black woman after the Civil War, and that she had a little boy at this time, provided possible evidence of Guilleman's allegedly mixed racial origin. Apparently, the jury and judges ultimately found plenty of reasonable doubt that the little boy in question grew up to become Guilleman Bourquin, but evidence of the father's previous interracial relationship—the associations he developed—nonetheless opened the door for doubt concerning the son's racial

[209] *Locklayer v. Locklayer* (1904).

identity.[210] On the other hand, Sarah Wilson used a previous marriage to try to prove her whiteness; when the lawyer asked if her husband, Wilson, was a white man, she replied "he must have been. He was drafted and went to the white army camps," presumably during World War I.[211] Clearly, an individual's actions in forging romantic relationships, legalized or not, often emerged as evidence of racial definition, even years and decades after the end of the relationship. By engaging in associations and relationships with partners of one race or another, southerners could occasionally influence their own racial reputations in their larger community.

Just as commonly, witnesses recounted the ways parents treated their children in order to establish race and, in some cases, legitimacy. That the Bourquins' father treated all three sons equally, and made no distinction between the younger and the allegedly illegitimate older brother, argued against possible illegitimacy.[212] Similarly, in an Alabama miscegenation trial that centered on the parentage of a racially mixed child, a witness's testimony that he had seen the alleged father Hint Lewis "hold the child, and I saw him put the child to bed and heard him say that it was his child," provided evidence that the white Lewis had indeed engaged in an illegal relationship with the child's black mother, in order to produce the child that he then claimed before the witness.[213]

Another case debated the legitimacy of the oldest child of a black couple; instead of the more common scenario of a white mother having an illegitimate black child, the parties in this case argued that the black mother had had a mulatto child, who thus could not have been her black husband's, and therefore could not inherit his land. Witnesses seemed to agree that Jane Terry, the daughter in question, appeared significantly lighter in color than her mother, ten

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[210] *Bourquin v. Bourquin* (1921).
[211] *Wilson v. State* (1924).
[212] *Bourquin v. Bourquin* (1921).
[213] *Lewis v. State* (1921).

younger siblings, or possible father, which, combined with her birth slightly before the marriage, called her parentage into question. On the other hand, lengthy testimony proved that her mother's husband "recognized this girl just like it was his, just went ahead and treated her like the other children," including providing her clothes and other needs growing up, allowing her to call him "Pappy," presenting her and her husbands with livestock when they married, and letting her live with him for years between her marriages.[214] For the many witnesses who agreed on these points, as well as the court, which decided in favor of Terry inheriting her father's land, the actions of Terry's father and the way he treated her proved more convincing than her light skin tone, thus apparently valuing reputation over biology.

The treatment of Jackson Locklayer by his parents proved equally compelling evidence of his blackness to many of his neighbors, overriding his later-in-life protestations of whiteness, his shift to associating socially with whites, and his marriage to a white woman. While Jackson may have attempted to change his racial status and even succeeded in doing so in some people's eyes, nobody who knew them argued that his parents were anything but black. Testimony from neighbors and cousins revealed that Jackson's parents, a "black negro" man and a "negress" or mulatto woman, raised him in their home and treated him as their son.[215] The testimony of these witnesses strongly suggests their conviction that a black couple could not give birth to and raise a man who then became white.

Clearly, family connections, both through birth and marriage, played an important role in creating and maintaining an individual's racial reputation and identity. For some people, particularly those who "married white" like Rachel Dillon, Sarah Wilson, and Jackson Locklayer, these connections could represent conscious attempts to redefine one's place in

[214] *Moore v. Terry* (1929).
[215] *Locklayer v. Locklayer* (1904).

society. But in other cases—or even sometimes with the same person—different connections, particularly those between parents and children, could provide methods for a community to easily define and categorize a person's race, even when their actions or appearance otherwise muddled the issue.

Relying on family ties and family reputation to verify race, while not the clear-cut solution that the one-drop law sought, nevertheless in some ways reflected its concern with ancestry as determinative of racial identity. But the equally common reliance on social and business associations to determine race in trial settings completely countered the desire of first one-eighth and then one-drop laws to define race by clear and increasingly science-based standards. Regardless of this contradiction, the abundant testimony addressing the choices people made regarding their social and business connections reveals the importance of that more flexible association in defining a racial identity. Accordingly, and based on the sometimes inaccurate assumption that people limited—and were socially limited in—their social and business interactions to members of their own race, numerous witnesses testified regarding whether defendants associated socially more with whites or blacks in order to determine their racial identity. A witness in a miscegenation trial provided typical testimony of this type, stating that "I figured [the defendant] was a colored person. He associates with negroes."[216] Other witnesses provided more specifics in their assessments of a person's associations, like the witnesses at Sarah Wilson's trial who recalled that Wilson once "kissed Ruby goodbye," Ruby being "might near black," and that Wilson also associated as friends with another black woman named Skip Lewis. Testimony that the defendant also "walked with" and lived near blacks further damaged her claim to whiteness.[217]

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[216] *Jackson v. State*, 23 Ala.App. 555 (1930).
[217] *Wilson v. State* (1924).

On the other hand, as revealed in their children's school attendance case, the Chestang brothers relied on specific associations to prove both whiteness as well as a certain status in the white community. Numerous witnesses testified to the prominent white men who used to visit, hunt, and fish at the Chestangs' home, including local attorneys, judges, doctors, businessmen, as well as men with regional status and reputations, such as US District Court Judge Robert T. Ervin and Dr. William Partlow, the superintendent of Bryce Mental Hospital in Tuscaloosa and, ironically, a major proponent of the eugenics movement. When lawyers tried to suggest that these men came only for the good hunting, witnesses disagreed, explaining they instead visited "at different times… as a friend and companion."[218] That prominent white men such as these associated with, spent time with, and furthermore considered the Chestangs to be friends gave the brothers' case for whiteness added weight. Since science-based one-drop definitions as well as less scientific markers such as appearance often failed to define race, community opinion and reputations such as these carried extra weight in determining racial identity. Being welcomed into any white community—much less such a prestigious one—suggested the larger community's endorsement of a defendant as white, while also highlighting the general ability of families to influence their own racial identities by their actions and associations. Such racial fluidity clearly undermined the intent of the law to strictly regulate and define race, while also underscoring the influence of local communities in regulating and acting upon racial matters.

Individuals often consciously used their associations to shape their reputations and achieve specific goals, even beyond basic recognition as white. A former neighbor of Rachel Dillon, for example, explained that Rachel "did not keep company with colored people after she commenced living with the defendant [her alleged husband, and that]… the defendant objected

[218] *Chestang v. Burns* (1953).

to her keeping negro company therefore nobody who knew her visited her."[219] While Rachel's change in social interactions reflected in part the desires of her wealthy white husband, it also provided a way for Rachel to not only adjust her racial status, but in doing so to vastly improve her conditions in life and the futures of her children. By acting in all ways as the white wife of David Dillon, including her relationships, Rachel moved herself from poverty and loss into a world of relative wealth, privilege and luxury.

Like Rachel Dillon, the racially ambiguous Reed and Weaver families, later recognized as founders of the MOWA Choctaw tribe, apparently consciously shaped their own associations to further their claims to whiteness as well. In an already isolated and impoverished community, these and related families generally "all lived to themselves" and held themselves "aloof from other people."[220] While a local sheriff contradicted the majority of testimony in the miscegenation trials of several family members by claiming that they did in fact associate with Negroes, he also admitted that the family patriarch in particular had associated "with white people where he was permitted to come in contact with them." This statement provides clear evidence that Taylor Weaver and his family used connections with whites to shift their own racial reputations, and that if grandfather Taylor associated with both black and whites, while his grandchildren only with whites, as the majority of testimony suggested, they apparently succeeded to a significant degree.[221]

As the Reeds and Weavers discovered, however, for every witness that testified a certain defendant associated only with blacks, or only with whites, or even only with whites in recent years, lawyers could generally find another witness willing to swear the opposite, revealing that even members of the same community could discuss the same person and come to differing

[219] *Dillon v. Dillon* (1878).
[220] *Percy Reed v. State* (1922).
[221] *Weaver v. State* (1927).

conclusions about his or her action, reputation, and race. In the Locklayer inheritance case, for example, different witnesses testified that Jackson Locklayer "associated with and ate with the negroes and slept with them and claimed to be negro," or on the other hand that "he associated mostly with white people and I have seen him eat at their tables," leaving juries and judges still unclear as to his racial identity.[222]

Even seemingly solid and irrefutable evidence of white associations, such as that that the Chestangs presented, proved to be debatable. For example, even as a local judge testified that he considered the brothers friends of his, a local white barber instead testified he refused to serve them based on their race. A different barber, also white, seemed to get at the heart of the conflict central to many of these racial definition cases, admitting that he considered the Chestang family neither colored nor white, but "betwixt and between," and that although "I have cut their hair [because] Clement and myself had been great friends and I like the entire outfit... I always knew that there was a little spot—ticklish spot—there, as to white and colored. Therefore I cut those boys hair rather than get in an argument."[223] Perhaps the Chestang's prominent friends came to a similar conclusion, that the brothers were white enough, and well liked enough, to fly under the racial radar. Yet, such evidence that white southerners, even prominent ones, might sometimes willingly let racially ambiguous people pass as white, and furthermore consider them close friends, runs counter to the goal of racial division that Jim Crow laws sought to achieve. What this evidence suggests, instead, is that communities, or groups within them, often made up their own minds about the racial status of individuals and families, even in direct opposition to the laws, situating the community as the driving force behind racial regulation during Jim Crow.

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[222] *Locklayer v. Locklayer* (1904).
[223] *Chestang v. Burns* (1953).

A streetcar case further highlights this subjective nature of racial reputation and the role of associations in building that reputation. When Nathan Wolfe and his sister, both white, boarded a streetcar in Atlanta in 1904, they were confused by the conductor's repeated instructions for them to move to different seats. When they asked why, the conductor replied "because white people seat from the front, and negroes from the rear of the car." At Wolfe's query as to what that had to do with him, the conductor answered that he had seen Wolfe with colored people. As Justice Russell later wrote in his decision, the conductor's assumption and statement presumed that Wolfe "had enough negro blood to be classified with that race, or else he was a white man degraded… by having associated with negroes," and thus no longer entitled to the privileges of whiteness.[224] By suggesting that associations could make a white man black, this case further indicates that blood and biology played a smaller role in defining race than legislators would have liked to believe, and that community opinion and reputation instead helped to determine whether a person operated under the restrictions of blackness or the privileges of whiteness in the Jim Crow system.

Another case reinforces the suggestion that associations could not only "whiten" racially ambiguous individuals, such as the Chestangs, but also could push a white, or almost white, person into a lower racial category, as Wolfe experienced, again demonstrating the overall fluidity of race in the South. A 1943 Georgia inheritance case concerning the large estate of a racially mixed woman, Maggie Petty, pitted Petty's black husband, Bill Jones, against her white cousin. As a newspaper account of "one of the most unusual cases in the history of Georgia" recounted, the cousin's lawyers argued that Petty had never legally married her alleged husband and therefore that he could not inherit, basing their argument on the premise "that Maggie Petty was 'almost white,' and wouldn't have considered marrying a man as dark as Jones." This

[224] *Wolfe v. Georgia Ry. & Electric Co.*, 2 Ga.App. 499 (1907).

argument suggests that, contrary to the law, southern society often acknowledged many gradations in race and corresponding social status, and that color and actions both played a role in placing individuals along this spectrum. Even more significantly, however, witnesses testified that Maggie Petty, despite her father's black ancestry, had been, in fact, "considered a white woman" until she began her relationship with the darker-skinned Jones. Even the legal team, well versed in the law's strict racial definitions, in part agreed, "declar[ing] that she was white up to 1927 and a Negro after that time," when Georgia passed the one-drop rule. This claim had important implications for the inheritance case, which ultimately was decided in Jones' favor—if Petty in fact had been legally white when she married Jones in 1914, then the marriage and Jones' inheritance did fall under question—but it also suggests an ongoing willingness of southerners to recognize racial gradations ignored by law.[225] Furthermore, the clear suggestion that association with a black person could lower a white, or almost white, person's racial status, or, on the other hand, that wealth could raise a racially mixed individual to "almost whiteness," again indicates the complexity of racial identity in the South as well as the role of community in defining and regulating this concept.

Romantic and familial relationships and social associations all contributed to a person's reputation as black, white, or even "betwixt and between," and all occasionally offered individuals opportunities to enhance, or possibly damage, their own reputations, regardless of laws that increasingly privileged, but provided no way to test, markers of science and biology. But another type of action or association reveals the process of influencing and creating one's own race most directly, and the role that these particular actions played in both social and legal determinations of race. Some defendants thus utilized racial prejudice to further their own

[225] *Jones v. Wilson et al.*, 195 Ga. 310 (1943); "Negro Man, White Woman Seek $10,000 City Estate," *Atlanta Daily World*, 4 Mar 1943, p. A1.

claims to whiteness, both by claiming it in their trials and by performing it in their daily actions. Members of the larger community to which the Reed and Weaver families belonged, organized in the late twentieth century as the MOWA Choctaw tribe, demonstrated this racialized thinking, as later revealed in interviews with researchers aiding the tribe's ultimately unsuccessful fight for federal recognition. Martha Walden, a white woman who taught at the "Indian schools" during the 1920s, recalled that "the community ostracized kids of members who married blacks," as did tribal member Roosevelt Weaver, the first cousin of miscegenation defendant Jim Weaver. Roosevelt recollected that "Indians hated black people; No blacks lived near us. We were taught not to like blacks…We would stop [our children] from marrying blacks, if they did, they were kicked out of everywhere, church, and family generation to generation."[226] While these attitudes in part reflect common racial beliefs of much of southern society during the early twentieth century, they also reveal an ongoing attempt by the racially ambiguous MOWA community to distance itself from blacks and thus further its own claims of whiteness; with some whites in the area even today regarding marriage into the MOWA community as socially and racially unacceptable, the fact that the MOWA ancestors sometimes turned around and exhibited their own prejudices against blacks reveals the complexities of race during Jim Crow, as well as the numerous and very real gradations that fell between the laws' ideal of a stark white and black dichotomy, even after the one-drop law presumed to eliminate these gradations.

Testimony suggesting that the Chestang brothers also exhibited prejudice against blacks provides another example of deliberate actions and attitudes influencing a person's racial reputation. One of their neighbors told the courtroom that "as a matter of fact, I think that… [Mike and Clement] have always had utter contempt for the negro race and they have certainly

[226] "Examination under Oath of Martha Lena Walden," 12 August 1994, Matte/MOWA papers, McCall Library, University of South Alabama; "Interview with Roosevelt Weaver, August 18, 1983," Matte/MOWA papers, McCall Library, University of South Alabama.

shown that to me in all my dealings with them. In fact they have stayed away from them entirely, and didn't want them to even work for them."[227] Testimony like this and the interviews with MOWA members hinge on the assumption that no one would demonstrate such "contempt" or social censure against people of their own race. By seeming to exhibit prejudice in their actions and attitudes in public and in front of their associates, some southerners, whether consciously or not, worked to further their social separation from another race. At the same time, claiming membership in the unofficial white "club" of racial prejudice gave these individuals another point of commonality with the community and culture they strove to join.

Attending a certain church or school, forming friendships and relationships with certain individuals and groups, and even exhibiting racial prejudice all provided racially ambiguous southerners with opportunities to influence their racial reputation and prove that they were white. Social patterns and associations such as these provided the majority of evidence regarding racial identity and reputation, but defendants and their allies proved both creative and resourceful in providing additional proof of race. These defendants demonstrated the ways in which they "acted white" through a diverse variety of examples. Rachel Dillon thus pointed to her husband's hanging family pictures including her and her children on the walls of their home as evidence that he regarded her both as white and as his legal wife. On the other hand, his lawyers used her practice of renting rooms to colored people as evidence that she acted as a "colored," rather than white, woman.[228] Another defendant's father tried to prove that his family "acted white" by testifying that "we registered in 1922 on the Democratic side," implying that certainly no black man under Jim Crow would—or could—register to vote with the Democratic party. Other appellants chose examples of acting white with a degree of legality behind them; the

[227] *Chestang v. Burns* (1953).
[228] *Dillon v. Dillon* (1878).

Chestang brothers emphasized that they always rode in the white section of streetcars, as required by law. A neighbor confirmed that "they always rode in the white coach. I have never seen them come out of the colored car at any time, and in those days the conductors, all of them- old man Tom Burns and Charley Pierce, and such as that, were very strict along those lines. There were lots of them that would try to go in the white coach and would fail."[229] Passing the scrutiny of such reputedly strict and conservative whites, as this witness suggested, lent an air of both social and statutory backing to claims of whiteness.

Similarly, some defendants, in attempting to put an element of official weight behind their claims, discussed their own or their ancestors' military service as white men. Davis Knight's evidence that he served as a white man in World War II certainly provided a sense of governmental sanction to his claim of whiteness, as did Michael Chestang's presentation to the court of a photograph of his grandfather wearing a Confederate uniform.[230] Some appellants even offered their own marriage certificates, uniting them as white people, as legal evidence of not only *acting* white but also of *being* white. On the other hand, actions could also be held against defendants hoping to prove their whiteness. Richard White, for example, faced charges that his political speech favoring the nomination of both black and whites to office during Reconstruction in Georgia proved that he must be black.[231] The diverse examples that defendants, lawyers, and witnesses utilized to try to prove their whiteness or blackness through their actions reveal the myriad methods southerners used to determine, assess, and also create race. Contrary to the insistence of the law that a small fraction, and later a single drop, of black blood defined a person's racial status, court cases reveal that, instead, a person's reputation

[229] *Chestang v. Burns* (1953).
[230] *Knight v. State* (1949); *Chestang v. Burns* (1953).
[231] *White v. Clements* (1869).

might play just as large a role in defining his or her racial identity, and that individuals could and did use their own and their families' associations and actions to influence their reputations.

In numerous court cases involving racial identities, judges and juries in the Jim Crow Deep South discovered that early legal definitions of race as well as later eugenics-based miscegenation and racial definition laws failed to clarify real life racial ambiguities. Subsequently, they also discovered that their next lines of defense, turning away from the laws' roots and using appearance and reputation, sometimes failed to break down the complexities of race as well. In attempting to define the race of defendants or plaintiffs, however, lawyers and witnesses opened a valuable window into the ways that southerners viewed and defined race. Instead of a strict dichotomy, as suggested by the laws, these southerners, both black and white, painted a picture of a society based on multiple gradations and degrees of "blackness" and "whiteness," as well as a reasonable foothold for "betwixt and between." And rather than placing them in these categories and gradations by science and law, individuals, families, and communities often came together to define a person's place through their interpretations of appearance, reputation, associations, and actions.

As multiple court cases indicate, even people once classified as black, or displaying allegedly black physical characteristics, by their actions, interactions, and relationships, could make a case for whiteness that, to a startling degree, many community members would believe, just as actions and associations could also place a seemingly white man in a racially lower caste. Clearly, communities, families, and individuals played a major role in defining what race meant and how it could be determined and applied, and in actually defining the race of certain individuals, often in direct opposition to the intent of the law to regulate and segregate by a supposedly biology-based idea of race. Furthermore, the number of cases where racial identity

remained the central issue, even after the passage of the one-drop law in Alabama and Georgia, reflects the ongoing inabilities of the law to handle racial reality; if race truly were as simple as one-drop, then so many families and individuals would not have been able to sometimes completely and even successfully confuse their racial origins, nor would they have to resort to showing their limbs to the courtroom or explaining how they comb their hair in order to do so.

CHAPTER FOUR

PERSISTENT TOLERATION: COMMUNITY RESPONSE TO INTERRACIAL RELATIONSHIPS

With miscegenation laws, even at the one-drop level, failing to provide clarity and control of racial definitions and corresponding social situations, courts often turned to local communities to assess an individual or family's racial status, granting communities a powerful voice in the ongoing conversation on race. In contrast to the increasingly strict legal definition of race, based on eugenics-influenced belief in the power of "drops" of blood and a correspondingly sharp divide between "black" and "white," communities instead often turned to markers such as appearance or reputation instead of science to determine racial identity. Despite agreement over the markers that defined race, however, each southerner interpreted and applied these traits differently according to their own personal views and goals. In part because of the heavy utilization of such indistinct and ambiguous markers, then, communities, unlike the law, sometimes recognized not only racial gradations and ambiguity, but also the existence of "in-between" racial categories.

Southern communities' input into the conversation on race and its regulation in the Jim Crow Deep South, however, went beyond this occasional recognition and acceptance of racial ambiguity. Throughout court cases involving interracial couples and families, members of diverse southern communities revealed—in sharp contrast to the law—a surprising willingness to tolerate long term interracial intimacy. Examination of miscegenation cases suggests that many interracial couples pursued their relationships for a period of years, generally at least two or three

years but sometimes decades, before facing prosecution. Other couples, even after being indicted, continued to live life as usual for months or even years before being arrested and brought to trial, again indicating a lack of swift social or legal retribution for some racial infractions and indicating the persistent inability of even narrowly defined laws such as the one-drop standard to fully regulate racial reality during Jim Crow.

Other racial identity trials, such as school attendance cases, also echoed this delay in prosecution seen in many miscegenation cases, as parents and school boards squared off over the race of children who often had attended local white schools for years. Notably, while many of these children ultimately faced expulsion from their white schools, very few of their parents ever faced prosecution for miscegenation. And as seen with the parents in these school attendance cases, numerous intimate interracial relationships never faced legal prosecution at all, and yet appeared in a wide variety of other court cases for a range of reasons. Not surprisingly, many of these interracial couples entered the legal record only after one of their deaths, as relatives maneuvered to claim estates initially willed to widows, widowers, and children of a different race. These families, generally but not always related to the white partner, fought for land, bank accounts, and life insurance policies—and sometimes lost—suggesting a willingness of the courts, however begrudging, to acknowledge a degree of legitimacy regarding technically illegal relationships that communities had long tolerated or ignored.

Other couples entered the record under more scandalous circumstances, including murder and infanticide, with individuals involved in the crimes subsequently facing charges only for the violence and not for the intimacy in which they engaged, even though both actions were prosecutable under the law. Lengthy and complex cases such as these murder, school, and inheritance cases often provided detailed records and clear pictures of interracial couples and

their positions in society, but other couples appeared in the record only briefly, leaving few details of their circumstances. Many relationships, for example, entered the record only as casual references during other trials, as lawyers and witnesses worked to establish a larger picture of the racial climate in their communities. Despite their brevity, these mentions indicate the ongoing practice of interracial intimacy and suggest that an unknowable number of these relationships, despite their illegality, never faced legal prosecution or challenge in any form. As these cases suggest, ultimately, regardless of the intent of the law to prevent intimate incursions across the racial line, if no one in a community took the initiative to begin prosecution, interracial couples often remained untouched by the law. Communities thus played an important role not only in defining what it meant to be black or white, but also in policing—or failing to police—both social and legal infractions against Jim Crow conventions.

An analysis of the specific testimony that witnesses provided in the range of cases involving interracial couples further supports a degree of community acceptance or willingness to overlook interracial relationships. As expected for the time period, a few witnesses expressed concern and showed their distaste for these interracial relationships, but a much larger number actually expressed, tacitly and otherwise, a degree of toleration and even acceptance. Numerous witnesses thus explained that they paid little attention to the actions of their neighbors, even when those actions brought together men and women of different races, essentially expressing an unwillingness to serve as racial gatekeepers. Other neighbors recounted ongoing interactions with interracial couples, both professionally and socially, suggesting that many individuals engaged in interracial intimacy without necessarily losing status and respect in their communities. This ongoing pattern of maintaining long-standing interracial relationships without sacrificing community standing suggests that southern communities sometimes

demonstrated a surprising level of tolerance of, or at least indifference toward, interracial couples, which in turn both greatly undermined the intent and challenged the effectiveness of laws aimed at achieving racial division and control.

One of the clearest indications of community attitudes toward and toleration of intimate interracial relationships is the extended duration of many of these relationships. Even couples who later faced prosecution for miscegenation generally pursued their relationships for significant periods of time before facing charges; of the court cases that indicate length of relationship, the majority reveal pairings that lasted two to three years before prosecution. Only a few indicate shorter durations, while several stretched beyond this length, sometimes significantly. Many couples even stayed together decades before facing legal prosecution for their illicit relationships.

Many of these lengthier relationships initially formed before or during the Reconstruction period, reflecting the unsettled and changing nature of miscegenation laws and southern society at this time. In Hinds County, Mississippi, for example, H.W. Kinard and Mary, a "negro woman," lived together from 1868 until facing prosecution for unlawful cohabitation in 1879. Similarly, fellow Mississippians William A. and Mary Covington, who began living together around 1860 and married in 1863, did not face prosecution until 1868.[232] Even in Alabama, where passage of an 1866 anti-miscegenation law immediately closed loopholes that remained open longer in states that implemented or enforced miscegenation laws only after Reconstruction, Aaron Green, a black man, and Julia Atkinson, a white woman, "lived together for several years… represented themselves as married, and were known and recognized as husband and wife in the community" before officially marrying in 1876, facing prosecution only

[232] *H.W. Kinard v. State*, 57 Miss. 132 (1879); *Covington et al v. Frank et al*, 28 So. 20 (1899). In Mississippi, legislators did not re-implement anti-miscegenation laws until 1880, but interracial couples sometimes faced charges of adultery or unlawful cohabitation in lieu of specific race-based miscegenation charges.

after almost a year of marriage and a relationship that stretched over several years altogether.[233] Throughout the turmoil of Reconstruction and the shifting realities of southern society and law, then, some interracial couples found at least tacit acceptance of their relationships.

Reconstruction, with its glimpse of hope for greater racial equality and its shifting statutes and precedents regarding race based laws, would seem more likely to have provided opportunities for the acceptance of interracial relationships than later, stricter, periods. This trend of toleration, however, continued well into and throughout the Jim Crow period, indicating that, despite tightening legal regulations and well-documented social prejudices, local communities persisted in tolerating or overlooking mixed race relationships. Some of the longest relationships, in fact, developed in the 1910s and 1920s, just as Jim Crow reached its nadir and southern legislators began pushing for one-drop laws. W.S. Dean, a white man, and Ralphine Burns, whose lawyers later argued that the state had "total[ly] fail[ed] to prove... [she] was of other than the white race," thus in 1914 formed a relationship near Natchez, Mississippi, where they remained together, raising their "five or six children," for over decade before facing prosecution in 1925. During this same period, John Bufford, white, and Ella Lee Brown, black, pursued a relationship across racial boundaries for significant lengths of time in two Deep South states. Eventual prosecution for miscegenation in Alabama in 1924 revealed that the mixed race couple "came from Georgia together," where one witness suggested that they might have been together for up to five or six years, to the Opelika area of Alabama, where they shared the same house, raised their children, and socialized widely and freely with the larger community for two years before a falling-out with a white friend over whiskey sparked legal prosecution.[234] Until that point, members of neither community in which they lived, either in Georgia or Alabama,

[233] *Green et al. v. State*, 59 Ala. 68 (1877).
[234] *Bufford v. State*, 20 Ala.App. 197 (1924), 24, 30.

showed any inclination to prosecute Bufford and Brown's illegal relationship, despite the mandates of the laws, thus suggesting ongoing popular reluctance or unwillingness to serve as racial gatekeepers for the state.

This inclination to tolerate interracial relationships continued until the growing Civil Rights Movement of the mid-twentieth century forced racial issues such as these into the larger American conversation and consciousness and ultimately overturned anti-miscegenation laws. For example, in rural Pine Apple, Alabama, Luby Griffith, a white woman, "had been going with Nathan [Bell] for four years" before they faced miscegenation charges in 1951. Similarly, Elsie Arrington and Daisy Ratcliff, a white man and black woman from South Mississippi, faced miscegenation charges in 1958 after up to five years of interaction. In Clyattville, Georgia, Dollie Seay and George White married, raised a family, and lived together for decades before facing legal challenges in 1949, with appeals reaching US appellate courts and stretching into the 1950s. These later cases indicate both the persistence of the Jim Crow system, as well as the persistence of communities willing to turn a blind eye to interracial relationships for significant periods of time, even during what was generally a time of increasing violence, prejudice, and legal proscriptions.

Community willingness to tolerate some interracial relationships also held relatively steady regardless of the legal marital status of the couple. Of the roughly twenty cases that indicate both the length of relationship and legal marital status of the couple, married couples generally enjoyed about two years together before facing charges, with the range spreading from a few months to five or more years. Unmarried couples displayed a similar pattern, with most relationships lasting two to three years before prosecution, although the two or three longest relationships in this group lasted around ten years before prosecution, rather than five. Historian

Charles Robinson suggests that the more relationships approximated true intimacy and family ties, the more threatening southerners found them, perhaps explaining the slight discrepancy between married and unmarried couples at the top range of relationship length.[235] While marriage certainly would push couples closer to Robinson's idea of more threatening relationships than would adultery, ultimately, virtually all of these relationships lasted for similar and extended periods, during which most displayed all the traits of family life, including living together and raising families, before facing prosecution.

Southern communities also proved willing to tolerate relationships regardless of the racial and gender pairings they presented, with couples consisting of black men and white women, and white men and black women, all enjoying years together before facing prosecution. Despite the perception of greater prejudice against white women sleeping with black men than vice versa, almost a third of the cases that indicated length of relationship in fact featured white women and black men. Julia Adkinson Green, Betsey Litsey, Helen Corkins, Luby Griffith, Junie Lee Spradley, and Vena Mae Pendley thus all married or formed relationships with black men that lasted for years before miscegenation charges. Ultimately, however, based on the evidence of these miscegenation cases involving lengthy relationships, southern communities apparently witnessed a greater number of white men forming lasting relationships with black women, a longstanding and tacitly accepted practice since the development of the slave system in the South. That communities nonetheless also proved willing to extend this toleration to some couples composed of black men and white women, despite a history of greater prejudice against this pairing, suggests a greater degree of flexibility in racial attitudes during Jim Crow than expected.

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[235] Charles F. Robinson II, *Dangerous Liaisons: Sex and Love in the Segregated South* (Fayetteville: University of Arkansas Press, 2003).

Some race-based court cases from the Deep South also offer hints of interracial intimacy that lasted for years even after, not just before, prosecution, again highlighting the persistence of these relationships in southern society. The 1889 marriage of Charles Tutty, described as a wealthy Englishman, and Rosa Ward, a former slave, in Washington DC caused much commentary when they returned home to coastal Liberty County, Georgia and faced prosecution for fornication. Because of the publicity surrounding the case and appeal, newspapers noted when, fourteen years after the case was decided, Charles Tutty passed away, leaving his estate to his daughter by his "colored wife." The daughter, also named Rosa, was born in 1894, several years after her parents' legal troubles, indicating, along with the will, that Charles Tutty and Rosa Ward Tutty continued their relationship until death.[236]

Similarly, after their unlawful cohabitation indictment was nolle prossed in 1868, Mississippi Delta residents William A. and Mary Covington resumed life as a married couple, raising several children and sharing their lives for thirty years until William's death provoked an inheritance suit.[237] In South Alabama, Percy Reed and Helen Corkins, after their miscegenation convictions were reversed on evidence that Reed was Indian and white, rather than black, also returned to life as a married couple, adopting two children and raising them as their own, and remaining together until Percy passed away in 1950.[238] That couples such as these stayed together, raised families, and lived out their lives, even after prosecution for miscegenation,

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[236] *State v. Tutty*, 7 L.R.A. 50 (1890); "Miscegenation in Georgia: The Validity of the Georgia Statute is Questioned," *Macon Telegraph*, 25 May 1889, p. 1; "Married in Washington: But Not Man and Wife in Georgia—An Important Trial," *Columbus Daily Enquirer*, 26 May 1889, p. 1; "White and Black: The Tutty Case before the Federal Court," *Atlanta Constitution*, 17 January 1890, p. 2; "Marriage Between White and Black," *Cleveland Gazette*, 1 February 1890, p. 2; "Races and Marriage: Judge Emory Speer Reviews the Miscegenation Law," *Atlanta Constitution*, 7 February 1890, p. 5; "Georgia: Charles Tutty," *Oregonian*, 30 March 1890, p. 6; "Sheriff Smith's Adventure: An Incident of the Tutty Case in Liberty County," *Atlanta Constitution*, 10 December 1890, p. 2; "Five Houses Burned: They Were All Owned By the Notorious Rosa Tutty," *Macon Telegraph*, 12 June 1893, p. 2; "Left His Money to Negro Child: Will of Charles Tutty Will Be Contested," *Atlanta Constitution*, 5 November 1904, p. 4.

[237] *Covington v. Frank* (1899).

[238] *Percy Reed v. State*, 18 Ala.App. 353 (1922).

suggests that even when miscegenation laws were, in fact, applied and enforced as intended by lawmakers, they still could fail to provide any real sense of racial control or boundaries. The significant length of time that many couples were together before prosecution, and the persistence of relationships and marriages even afterwards, reveal the difficulties southern lawmakers faced in regulating race, as well as suggest a relatively more fluid racial atmosphere in many southern communities.

Allegations of relationships that might never have existed can also indicate the degree to which these relationships would have been found credible in the Jim Crow South. In 1940, Onice Graham alleged that Tom Jordan, a white man, had been pursuing a relationship with a black woman, Mary Brewer, for sixteen years. Jordan's convincing testimony that he only met Brewer two years prior, when he had hired her to care for his ill wife, and testimony by other witnesses, including policemen, that Graham lacked credibility as a witness, suggest that these allegations had no truth behind them. Whether false or not, however, Graham's allegations of a sixteen year interracial relationship that never faced prosecution did not appear to stretch the belief of anyone involved with the case. On the contrary, judges, lawyers, and witnesses seemed to take seriously the idea that an interracial couple could be together for such an extended period without legal repercussions.[239] Even alleged relationships that later were essentially proved false, then, indicate the degree to which southern communities tolerated interracial relationships, regardless of the mandates of law.

If miscegenation prosecutions such as these suggest both the ongoing tolerance of interracial relationships, as well as the difficulty of enforcing Jim Crow laws, the large number of cases exposing additional interracial relationships that never faced prosecution at all only underscores these points. Unprosecuted interracial relationships appeared in a wide variety of

[239] *Jordan v. State*, 30 Ala.App. 313 (1941).

court cases, from school attendance and murder to city violations, but the most revealing category of court cases involved inheritance disputes. Numerous such cases from the Deep South indicated couples who engaged in generally long-standing relationships without facing legal censure, but whose heirs and families of origin, after the death of one spouse, contested their wills and inheritances on the basis of race.

These inheritance cases often revealed long relationships and complicated legal maneuvering. In the case of *Allen v. Scruggs* out of rural southwestern Alabama, for example, heirs of Littleberry Ryal Noble sought to probate his will, an endeavor complicated by the fact that the will had been lost years before. This missing will opened the door for Noble's "respectable white family" to seek to disinherit his intended heirs, his children by his longtime black mistress, Kit Allen. Testimony indicated that "soon after the war between the states," Noble and Allen began a relationship, that together they raised their five children, that "his fatherhood of them was generally known in that section," and that they stayed together until Noble passed away around 1914. For almost forty years, then, and despite the larger community's widespread knowledge of the relationship, this couple lived their lives together without facing legal prosecution. While the appellate judge, in his opinion, suggested that Noble faced—or at least should have faced— "a degree of ostracism" within the community because of his relationship, none of those individuals who supposedly disapproved of Noble took the additional step of initiating prosecution against him, despite the dictates of the law.[240] Clearly, the law only functioned as long as local communities were willing to help enforce it, and in many cases such as this, that never happened. Furthermore, despite the appellate judge's disapproval of Noble's lifestyle, he nonetheless upheld the ruling in favor of Noble's black children inheriting the estate, indicating a grudging willingness of not only local communities

[240] *Allen v. Scruggs*, 190 Ala. 654 (1914).

but also representatives of the law, despite the clear intent of anti-miscegenation laws, to recognize the existence and on some level even the legitimacy of some interracial relationships.

A similar pattern can be seen in numerous cases throughout the Deep South. In rural North Alabama, Nancy Locklayer's marriage to Jackson Locklayer entered court records only when Jackson's relatives contested Nancy's inheritance of his estate, valued at $265.81 when he died in 1902. Jackson's relatives claimed that since Nancy was white and Jackson black, their 1887 marriage was invalid and thus Nancy could not inherit his estate. For the thirteen years the couple was married, however, none of these relatives, nor the many community members who testified under oath to their knowledge that Jackson was, in fact, black, took the steps of initiating prosecution. Eventually, the courts decided in favor of Jackson's black relatives in declaring that Nancy was not eligible to inherit as his wife, but their long relationship and lack of legal prosecution reveal the willingness of southern communities to sometimes tolerate interracial relationships.[241]

Unprosecuted interracial relationships entered the public record not only because of disputed wills, but also because of disputed benefits. The fifteen year relationship between South Alabama couple Charlie Stroud and Estella Mathews, for example, never entered the courts until he named her the beneficiary to his life insurance policy, which his white daughter challenged after his death in 1939.[242] Similarly, Vincent Vetrano, an Italian living in the Mississippi Delta, and Adeline Young, described as a "negro," despite a two decade-long relationship that they considered a marriage, were told that their children were not eligible for Vincent's social security benefits after his death in 1963 because they were "children of a miscegenetic union which was... both void as a marriage and violative of the Mississippi

[241] *Locklayer v. Locklayer,* 139 Ala. 354 (1904).
[242] *Mathews v. Stroud et. al.,* 239 Ala. 687 (1940).

criminal law."[243] The regularity with which similar cases reached the local and appellate courts of Georgia, Alabama, and Mississippi suggests the existence of a large number of interracial relationships that never faced legal prosecution. The willingness of communities to tolerate these relationships, and their corresponding unwillingness to prosecute interracial couples, meant that regardless of how the law defined race or how strictly it drew lines in order to achieve racial control, individuals continued to carve out spaces of relative integration and equality even under the strict mandates of Jim Crow.

Many inheritance cases such as these provide a relatively complete look into the lives and relationships of interracial couples, granting valuable insight into a community's views and actions regarding interracial couples, but even brief mentions of interracial relationships can provide important information. Occasionally, during the proceedings or testimony of one court case, witnesses or lawyers would allude to other interracial couples not at the center of the current case. In Mary Covington's 1892 suit to inherit her white husband's estate in the Mississippi Delta, for example, she testified that her brother, Jim McGhee, had also crossed racial lines and married a white woman. This suit further revealed that when William and Mary Covington were indicted for charges relating to their relationship in 1868, they were, in fact, only one couple out of several facing the same charges at the same time. One lawyer indicated that "ten or twelve parties" were included in the indictment while another witness suggested the fate of some of these couples, mostly composed of white men and black women. According to this witness, "Some of the women left the country, the men all stayed here, they put Mirandy Hanna in jail and he afterwards married his woman in jail." This 1868 crackdown on interracial couples in Bolivar County, Mississippi apparently had mixed results. While some couples did break up or face punishment for their crime, others, such as the Covingtons and Hannas, who also "lived

[243] *Vetrano v. Gardner*, 290 F.Supp 200 (1968).

together as man and wife" until the death of Mr. Hanna, ultimately continued their relationships long after prosecution and even jail.[244]

Numerous other cases that mentioned additional interracial couples attest to the relative commonality of such arrangements. The 1898 appeal of *McAlpine v. State*, from Talladega, Alabama, revealed that appellants Will McAlpine, black, and Lizzie White, white, faced indictment for miscegenation along with two other couples, including Lizzie's mother, Jennie, indicted for her relationship with Joe Gantt, and John McAlpine, possibly a relative of Will's, who was indicted with Tilda Grinnell. Will McAlpine and Lizzie White's conviction was overturned on appeal, and the absence of any of the six defendants from the state convict rolls suggests that none of these individuals faced jail time for their relationships.[245] In *Cauley v. State*, an 1891 appeal also from Alabama, testimony indicated that appellant Parthenia Grayson, a white woman, had two children from previous relationships, including one who was black, although she never faced prosecution for the earlier interracial relationship that produced the child.[246] And the 1897 southern Mississippi case *Schwall v. State* indicated an additional two relationships; appellant Lula Smith, a black woman, testified that she had "a white child" from a previous relationship, not with her white co-defendant, and a key witness, John Franklin, black, testified that his daughter had formed a tumultuous relationship with a white man.[247]

School attendance cases also provide several similar indications of additional interracial relationships that only entered the legal record as brief mentions, but nonetheless offer important information about racial realities and attitudes. One such case from the Mississippi coastal region revealed that although the children's mother, whose race was hotly debated, married a

[244] *Covington v. Frank* (1899).
[245] *McAlpine et. al. v. State,* 117 Ala. 93 (1898).
[246] *Cauley v. State*, 92 Ala. 71 (1891).
[247] *Schwall et al v. State*, 21 So. 660 (1897).

white man, her sisters both married black men, indicating that someone in the family crossed racial lines, regardless of how one classified the sisters themselves.[248] Another school case from outside of Mobile, Alabama included testimony from a black woman who admitted to a twenty year relationship with a white man, which again never faced prosecution.[249] That so many interracial relationships, most of which never faced prosecution, entered court records only as brief mentions suggests that these relationships were not rare throughout the Deep South. Many communities clearly included not just one but a handful of interracial couples, who lived together, produced children, and raised families, sometimes for long periods of time. While the actual number of these relationships is impossible to determine, evidence suggests that such arrangements were not uncommon, and that communities sometimes failed to prosecute these couples, regardless of the laws. With individuals persisting in forming romantic ties across race lines, and communities continuing to tolerate these couples and families in their midst, miscegenation laws thus at best only partially accomplished their goals of strengthening racial barriers.

Clearly, a number of interracial relationships formed and sometimes even flourished during Jim Crow, despite the known prejudices and hardships of the period, creating a paradox between the deeply racialized attitudes of the Jim Crow period juxtaposed with the persistent tolerance that allowed such relationships to exist. School attendance cases, in which school officials attempted to remove allegedly black or racially ambiguous children from their white school systems, provide perhaps the best example of this seeming contradiction. In several of these cases across the Deep South, school officials deemed children racially mixed enough to justify initiating legal proceedings to remove them from the white schools, even though their

[248] *Moreau et al., School Trustees, v. Grandich et ux.*, 114 Miss. 560 (1917).
[249] *Chestang v. Burns,* 258 Ala. 587 (1953).

parents, whose mixed marriages produced these children, never faced legal proceedings for their interracial and therefore illegal relationships.

This contradiction between banning children from white schools without charging their parents for miscegenation continued even after the passage of the one-drop law presumably made even the small amounts of racial mixture involved in such cases prosecutable. Outside of Mobile, Alabama during the early to mid-twentieth century, the families of Edward Everett, Samuel Farmer, and brothers Russell and Michael Chestang all found themselves in this position of trying to prove a negative, that their children had *no* drops of black blood, while simultaneously enjoying apparent toleration of their own marriages. Each family was composed of one white parent, one allegedly racially ambiguous parent, and several children, the older ones of which, in every case, had attended white schools for years without question, often graduating from the same schools their younger siblings were banned from.[250] Under the one-drop law, any amount of "black blood" that would have prevented these children from attending white schools, however small, would have certainly met the standard necessary for miscegenation prosecution, but none of these longstanding marriages ever faced such charges. These families' eventual legal struggles concerning school attendance, and the prejudices that led to legal action, serve as reminders of the harsh realities and prejudices of Jim Crow. That the parents in these families were never prosecuted for their marriages, on the other hand, complicates the picture by suggesting that a level of tolerance of racial infractions existed even alongside harsher prejudices. The same neighbors who signed petitions and lobbied for the removal of these children from schools clearly knew about the parents' mixed marriages, but never took similar steps to prosecute those relationships. Perhaps, as Laura Edwards argues regarding community

[250] *Chestang v. Burns* (1953); *State ex rel. Farmer v. Board of School Com'rs of Mobile County et al.,* 226 Ala. 62 (1933); *State ex rel. Everett v. Board of School Com'rs of Mobile County et al.*, 244 Ala. 467 (1943).

application of law in antebellum North and South Carolina, school attendance in these cases disturbed the "peace," or status quo and hierarchy, of the community to a greater degree than did the act of miscegenation, thereby leading to such inconsistent actions and rulings.[251] Certainly, this would have been an uncertain and uncomfortable position for these families, but despite the challenges they faced, their very existence continued to undermine the intent and goals of legal Jim Crow, while their neighbors' mixed record regarding legal actions opened a small, if unreliable, window of greater freedom.

The family of Dollie Seay White of Clyattville, near Valdosta, Georgia, provides another example of the uneasy relationship between community toleration of interracial marriages and legal intervention for school attendance. In this case, unique among the school attendance cases that reached the appellate level, the school board member who in 1949 initiated proceedings to remove the White children from their schools, Lillie Holderby, also subsequently initiated miscegenation proceedings against Dollie White and her husband, George. Quite possibly, however, this action was in response to the Whites filing their own suit against Holderby and the other school board members for libel regarding the original school case, and claiming that they were "members of a subversive organization known as the Ku Klux Klan... whose object and purpose is to promote envy, hatred, malice, and discord." Ultimately, the grand jury failed to indict the Whites on the miscegenation charges, and the family's move to Florida rendered the school attendance of their children in Georgia moot.[252] These multiple and extended court cases, along with claims of Klan membership, however, highlight the tense race relations of the late Jim

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[251] Laura Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009).

[252] *White v. Holderby,* 192 F.2d 722 (1951); *Shiver v. Valdosta Press,* 82 Ga.App. 406 (1950); "For Miscegenation: Suit Leads to Arrest for Couple," *The Washington Post*, 15 October 1949, p. 7; "Negro Blood Claim Leads to $300,000 Georgia Suit," *Oregonian*, 15 October 1948, p. 4; "Federal Court Dismisses Parents $300,000 Suit," *Atlanta Daily World*, 5 November 1949, p. 1; "Big Damage Suit Opens at Valdosta," *Augusta Chronicle*, 24 March 1950, p. 7.

Crow period, even as the White's decades of marriage and parenthood before they faced legal challenges indicate an ongoing willingness of some southerners to overlook both social prejudices and legal statutes in tolerating interracial couples and families. As these school cases reveal, even one-drop laws could not entirely prevent individuals from crossing racial lines in their private lives unless community members, whether driven by personal motives or even by lessons taught through Klan membership, took efforts to implement these laws, thus undermining efforts of the law to establish a certain vision of social and racial order.

While school attendance cases highlight the dichotomy of prejudice and prosecution versus long-term toleration, other cases instead speak to the level of discord and even violence that interracial relationships, like all intimate relationships, could occasionally inspire. A number of interracial relationships thus entered the legal record not because of miscegenation charges or school attendance, but through murder charges. In the 1922 case *Crowder v. State*, from a small, rural community in South Alabama, Dr. J. Wade Crowder was tried for killing his wife's lover, who was, like Crowder and his wife Iola, white. Testimony, however, revealed that Iola Crowder had a history of extramarital affairs, including one with a black man before her present marriage, which had resulted in the birth of a biracial child. While Iola's first marriage failed as a result of this interracial affair, she and her partner never faced legal charges for their interracial relationship. And although Iola's second husband, Crowder, was rumored to have attacked her black lover for his relationship with Iola, Crowder nonetheless apparently believed her to be socially acceptable—or redeemable—enough to marry, again indicating the existence and possibility of tolerance and forgiveness for racial infractions, even as they coexisted alongside violent prejudices.[253]

[253] *Crowder v. State*, 18 Ala.App. 632 (1922).

In a dramatic 1891 case from North Georgia, Will Mays, a black man, shot and killed Ed Harris, a white man. While the brief mentions of the murder printed in Georgia newspapers suggested that the cause of the quarrel was a disagreement over wages, the trial transcript clarified that the real dispute was over Harris' intimate relationship with Mays' wife, Ellen. According to the laws of Georgia, all three parties had committed a crime, but Harris and Ellen Mays had never faced prosecution for their illegal relationship. Will Mays, on the other hand, faced both legal prosecution and fears of social repercussions such as lynching, although he testified in his defense that "I knew this country belonged to white people and I had nothing but what they gave me... I have kept myself in a negroes' place." Ultimately, Mays was found guilty of voluntary manslaughter, the original murder charge having been reduced based on the justification that adultery was a provoking circumstance.[254]

Like in the earlier Mays case, Zack Cockrell, a black man, killed Ed Wilson, white, upon catching him sleeping with Zack's wife, Mary Jane Cockrell, in Grenada County, Mississippi. The Supreme Court of Mississippi in 1936 actually reversed Cockrell's murder conviction, stating that because of the element of adultery, "the grade of the offense was no greater than manslaughter," echoing the decision in *Mays*.[255] The failure of their communities to prosecute Ed Wilson and Mary Jane Cockrell and Ed Harris and Ellen Mays for their illicit interracial intimacy, along with the surprisingly fair decisions of the courts to lower murder charges to manslaughter based on adultery as a provoking circumstance, even for black men who killed white men over interracial sex, when juxtaposed with Will Mays' fears of lynching, again highlights the tension between prejudice and tolerance in the Jim Crow South.

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[254] *Mays v. State*, 88 Ga. 399 (1891); "Murdered His Employer: Mr. Ed Harris of Kingston Shot by a Negro Employee," *Macon Telegraph*, 12 August 1889, p. 1; "Murdered by a Negro: Ed Harris Slain by Will Mayes at Cement," *Atlanta Constitution*, 12 August 1889; "A Misunderstanding and Murder," *Washington Post*, 12 August 1889, p. 2.

[255] *Cockrell v. State*, 175 Miss. 613 (1936).

Not only spouses, but also the individuals involved in interracial relationships themselves sometimes acted in violence against their own partners, creating a legal record of an otherwise unprosecuted interracial relationship. In the Mississippi Delta in 1921, for example, Fannie Walden, a black woman, shot and killed the white man with whom she had shared a two year relationship, Will Moore, during a fight about her leaving him. Walden testified that when she told Moore she wanted to leave him to marry a black man in another city, he threatened to kill her. To pacify him, she let him think she was returning to him and their relationship, while her real intention was to collect her property and leave. During the ensuing confrontation, as both Walden and Moore began slapping and hitting each other, Walden claimed that Moore grabbed his pistol and fired it at her, missing, after which they struggled for the gun and she ended up shooting him. This relationship ended in unfortunate violence, but it lasted for two years, during which time the couple lived as husband and wife, a fact which was "open and well known to both races," and, like so many other relationships, never faced legal repercussions.[256]

Occasionally, outsiders got caught in the crossfire of these volatile relationships, with the danger they faced increased by the illegal nature of interracial intimacy. In 1910, a marshal searching a house in Washington County, Georgia was shot and killed by W.L. Brown, a white man, who claimed he acted in self-defense after the marshal beat him and advanced toward him with his weapon drawn. The prosecution, however, successfully argued that Brown's true motive was to prevent the marshal from "making a case against [Brown] for his illicit intercourse" with a "negro woman," whom the marshal had found in the house with Brown during his search.[257] Without fear of prosecution for miscegenation, then, Brown presumably would not have felt threatened to the point of shooting and killing the person who represented a

[256] *Walden v. State*, 129 Miss. 686 (1922).
[257] *Brown v. State*, 8 Ga.App. 382 (1910).

threat to his freedom, illustrating the thin line interracial couples walked between enjoying toleration and facing prosecution.

In another case resulting in the death of an innocent, Mississippi's *Pruitt v. State* reveals an unprosecuted interracial relationship that led to infanticide in the early years of the Great Depression. No one disputed the basic facts of the case. Luella Williamson, a married white woman, and Ervin Pruitt, a black man, had an affair that led to the birth of a baby. Not long after the birth, a self-described "indignation committee" of neighbors visited Luella and her husband Frank, advising them against raising the "mongrel" baby with their other children. The next day, when Luella's parents visited, they were so "shame[d] and distress[ed]" that they made her bring the baby to the barn rather than visit it at the house. Faced with this shame and harassment, Luella then poisoned the baby, who died shortly afterwards. The only point of contention during the case was whether Pruitt had told her to poison the baby and had supplied her with the materials to do so, or if she had acted alone.[258] As in the Brown case, the interracial aspect of this situation worsened already difficult circumstances. The outcome of this particular interracial relationship was tragic, and Luella ultimately faced significant social criticism and legal repercussions for her actions, but this case, along with numerous other murder, inheritance, and assorted other cases, indicated a large number of relationships that never faced legal censure as well as the tension between toleration and widespread prejudices.

Less dramatically than murder and infanticide trials, a range of other cases involving lesser charges also point to the prevalence of interracial relationships. In Mobile, a suit against the city for failing to maintain a sidewalk improbably revealed another unprosecuted long-term interracial relationship. Edward P. Lord, at times the principal of both Talladega College and Emerson Institute, Alabama schools that educated blacks following the Civil War, broke his leg

[258] *Pruitt v. State*, 162 Miss. 47 (1932).

tripping over a hole in a Mobile sidewalk in 1892, damaging his health and prompting a legal suit against the city for negligence. Instead of focusing on the responsibilities of the city, however, the trial quickly switched focus to his marriage to an allegedly black woman, Annie Oliver. Even though Lord and, presumably, the facts of his marriage were well-known in communities throughout the Deep South, and even though his relationship was discussed at length in a legal setting, this marriage never faced legal prosecution.[259] With both short and long term relationships, and even marriages such as Lord's, never facing prosecution, relevant Jim Crow laws sometimes failed to achieve total social and racial control. Instead, communities often proved willing to accept these couples in their midst, despite their knowledge of the relationship and the laws against them.

Combined with the hundreds of miscegenation cases known to have been prosecuted during the nineteenth and twentieth centuries in the Deep South and the length of many of these relationships before and even after prosecution, these inheritance, murder, and city ordinance cases, along with the numerous relationships briefly mentioned in other trials, all suggest a level of commonality to interracial relationships, regardless of the goals and strictures of Jim Crow laws. If laws had been thoroughly effective at preventing and punishing interracial intimacy, and if communities had played their role in enforcing these laws, these numerous couples would not have been able to stay together for years or even decades, during which time they might raise children who would later register for school, or might instead descend into violence, thus entering the legal record in a range of ways that speaks to the complexity of southern society. Instead, some interracial couples managed, despite various challenges, to build lives together during Jim Crow in the Deep South, often with the tacit if not outright toleration of their communities. Not only did southerners prove capable of nuance and contradiction in their

[259] *Lord v. City of Mobile*, 113 Ala. 316 (1897).

actions regarding racial barriers, then, but laws also sometimes proved unable to either create or maintain a rigidly and comprehensively segregated society, or to dictate absolutely the views and behaviors of individuals and communities.

All these cases and relationships suggest that southern communities often failed to play their vital and anticipated role in enforcing anti-miscegenation laws, and a closer look at testimony from court cases involving interracial couples provides evidence to help explain this toleration, even during a period of well-documented social prejudices. In many court cases, witnesses or even judges expressed some level of disapproval of interracial couples, as expected for the Jim Crow period, but they generally tempered that disapproval with admissions that those relationships had, in reality, done little to impact a person's social reputation in his or her community. This mixed message suggests that, perhaps, community, social, and family ties proved more important to community members than their racial prejudices did when weighing their treatment of interracial couples. Furthermore, the majority of witnesses who directly addressed their opinions of interracial relationships almost universally revealed a lack of outrage over racial infractions, combined with a desire to avoid getting involved in the affairs of others. As Laura Edwards documents in the antebellum South, communities often weighed protecting the "peace" of the community against upholding the law, privileging local concerns over larger systems of law, which this Jim Crow community action or inaction regarding miscegenation further reinforces.[260]

Many trial transcripts indicate that lawyers and witnesses directly and frequently addressed the issue of the reputation and community standing of individuals engaged in interracial relationships, with most indicating that, despite a level of disapproval, many of these individuals faced relatively little social censure. In particular, wealthy or influential white men

[260] Edwards, *The People and their Peace.*

who formed relationships with black women often continued to enjoy high status in their communities, as wealth and social status seemed to temper any prejudices of their neighbors. The well-known case of Amanda Dickson of Hancock County, Georgia illustrates this pattern. When Amanda's extremely wealthy white father, David Dickson, left the bulk of his estate to Amanda, whose mother was a slave, newspapers wrote that "it is said that Mr. Dickson's social standing among his neighbors was below par," and that living with his black family "did not elevate Mr. Dickson's social standing or exalt the regard in which his neighbors held him." These statements indicated disapproval and prejudice, as would be expected for late nineteenth century Georgia, but a closer look at testimony from the estate battle provides little evidence to support this supposed loss of reputation. Instead, many of the "best people in the county," including judges, ministers, and lawyers, testified to visiting and socializing with David Dickson, even at his own home, hardly suggesting that Dickson faced social ostracism. And although his enormous wealth may have been a factor, as Kent Anderson Leslie has documented in his study of the Dickson family, David Dickson appeared to have been a widely respected figure in his community who faced few, if any, social repercussions for his lifestyle and relationship choices. As one witness explained, "at that time that was a matter that never seemed to trouble us much; it was generally understood."[261] In cases such as these, then, economic standing or communal ties of family and friendship sometimes overrode and even negated prejudices against interracial relationships.

In the Mississippi Delta, white planter William Covington also seemed to escape ostracism for his relationship with his black wife, Mary. One local white man testified that "we were always the best of friends and saw a great deal of each other," while a local lawyer stated

[261] *Smith v. DuBose*, 78 Ga. 413 (1887); Kent Anderson Leslie, *Woman of Color, Daughter of Privilege: Amanda America Dickson, 1849-1893* (Athens: University of Georgia Press, 1995).

that "I visited [Covington's] place at intervals... as long as Mr. Covington lived." Another witness testified that Covington, along with other white men in the area who had formed relationships with black women, "were tolerated and reasonably respected among the whites in Bolivar County." The white community in nearby Helena, Arkansas, where Covington periodically moved with his family for better schooling for his children, proved equally tolerant, with one white man going so far as to say that while "I thought it strange that a white man should have a black wife" he nonetheless characterized their acquaintance as "intimate," visited the Covingtons, ate and drank with them, considered Covington to have a good reputation, and even stayed with him at his house at times. With several other witnesses testifying to similar close friendships and visits, occasional claims that Covington lost status because of his marriage seem largely baseless. Instead, his neighbors—black as well as white—proved willing to tolerate his relationship in favor of continuing to build and nurture social and business connections, making community ties and tolerance a more powerful factor than laws and prejudices.

Victoria Bynum has documented a similar contrast between claims of lowered status stemming from interracial relationships, countered by more concrete evidence of sustained business, social, and family relationships, in the case of Newton Knight of Mississippi. By the 1870s, Knight, an influential community member and Southern Unionist who during the Civil War led a group of Confederate deserters against their former army, had formed a lifelong relationship with a black woman, Rachel. While some community members later expressed disapproval of this relationship, numerous friends and acquaintances later recalled participating in longstanding and ordinary relationships with Knight, which included visiting his home and

eating at his table.[262] The 1948 miscegenation trial of Newton and Rachel Knight's grandson, Davis, illustrates the long reaching effects of infractions against Jim Crow, as well as the persistence of the Jim Crow system in trying to achieve control, but the numerous white witnesses who stood up to support Newt's character and legacy, and thus his grandson, also testify to the importance of communal ties in hindering the law from achieving its desired control.

This pattern of influential white men facing minimal social repercussions for their relationships with black women played out in numerous court cases across the Deep South from Reconstruction through the Jim Crow period. Littleberry Ryal Noble, for example, experienced a similar situation in his rural Alabama community. As the 1914 legal battle to probate his lost will reveals, despite Noble's lifelong relationship with Kit Allen and his active involvement in their children's lives, his friends and family showed no clear sign of disapproval in their actions and patterns of visitation. And even as the appellate judge on the one hand condemned Noble's choices and suggested the possibility that Noble faced social repercussions, he also admitted that "some or all of his kin may have visited with him and he with them." Combined with the white witnesses who testified to ongoing friendships with Noble, this suggests a distinct level of tolerance.[263] A later judicial opinion in a similar case even referenced Noble, explaining that while "for such meretricious conduct our laws are more severe, the punishment more extreme[,] yet it appears that organized society—the law—took no step to interfere, and the guilty parties left unmolested."

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[262] Victoria E. Bynum, "'White Negroes' in Segregated Mississippi: Miscegenation, Racial Identity, and the Law," *Journal of Southern History* 64 (1998): 247-276; Victoria E. Bynum, *The Free State of Jones: Mississippi's Longest Civil War* (Chapel Hill: University of North Carolina Press, 2003).
[263] *Allen v. Scruggs* (1914).

Later cases indicate that the pattern of influential white men enjoying undamaged reputations despite their long-term relationships with black women persisted even deep into the Jim Crow era, long after both law and social customs presumably developed into stricter forms of their earlier, more lenient, versions. John Benjamin Watts of Monroe County, Alabama thus regularly took meals at his mother's house with his family of origin, and bankers, merchants, and businessmen all testified to regular social interaction and even occasional visits to Watts' home, despite his long-standing relationship with Nazarine Parker. Ultimately, the judge ruling on the dispute over Watts' estate after his death concluded "that so far as the business men with whom he came in contact all the years are concerned, he was not ostracized, but continued to enjoy their confidence and continued to carry on business w/ them as usual."[264]

In these cases, appellate judges, distant from the parties and communities at the center of the cases, sometimes expressed disapproval and prejudice against interracial relationships in keeping with the spirit of anti-miscegenation laws and common Jim Crow practices, while the individuals who actually interacted with these couples on a daily basis took a more nuanced approach. They sometimes shared many of the same prejudices expressed by the appellate judges—Watts' mother, for example, was known to "remonstrate... Watts concerning his disgraceful way of life"—but ties of family, business, and community pushed them toward toleration rather than prosecution or even ostracism. Ultimately, these kinship and communal ties often proved more influential than prejudices or disapproval, hindering the effectiveness of both Jim Crow laws and the very intent of the Jim Crow system.

Community ties could be so powerful in guiding southerners' views and actions regarding interracial couples that they sometimes even influenced communities to regard certain individuals as "whiter" than they might otherwise have believed them to be, as seen in the

[264] *Dees et. al. v. Metts et. al.*, 245 Ala. 370 (1944).

alimony dispute between white Savannah businessman David R. Dillon and his wife Rachel, whose racial identity was questioned. When the couple married in 1857 after an already years-long relationship, Dillon managed to get an act passed by the state legislature declaring Rachel a citizen, thus implying whiteness in the pre-war South as well as enabling their marriage, despite laws against interracial marriage. The dramatic affairs of the Dillon family reached local headlines years before their eventual 1877 alimony suit, when, in 1872, the Dillon's son Alexander entered his father's office, shot his father three times without killing him, and then committed suicide. In two news articles discussing his mother's reaction to the shooting, including a lengthy one fully devoted to an interview with Rachel, neither reporter mentions her race. In fact, both portray her sympathetically and respectfully, framing her as the victim of her husband's temper, threats, and extramarital affair, which also allegedly drove their son to his drastic actions. Up until this period, later court testimony reveals, several white community members regularly visited, socialized, and conducted business with both David and Rachel, apparently without prejudice or difficulty of any sort.

After Rachel's successful alimony and subsequent stalled divorce suits, however, newspapers reporting David's 1883 death referred to her as "a handsome mulatto woman" and "the colored wife." Although David left most of his considerable estate, valued at more than a million dollars, to his "white wife," Virginia Ehrlich, the "other woman" mentioned unfavorably in newspapers at the time of the shooting, Rachel contested the will. During the decades of this tumultuous relationship, the larger community seemed to take its lead from prominent citizen David Dillon. Despite the mandates of both law and, supposedly, convention, their community initially accepted Rachel and David as legitimately married and tolerated their relationship without legal or social persecution. Only after David's public disavowal of Rachel, however, did

the community vocalize what it apparently had always known, that she was not fully white.[265] This willingness to tolerate interracial relationships and even whitewash certain individuals, despite laws or prejudices, indicates yet again the importance of wealth and social ties in navigating the complexity of Jim Crow restrictions.

Interracial relationships between black women and prominent white men such as David Dillon were often "less controversial" than relationships of black men and white women, as historian Ariela Gross points out, but court cases also indicate that this toleration sometimes extended to less influential community members, or even black men and white women as well, suggesting that accommodating interracial relationships was more than simply a method to gain social capital or avoid disputes with powerful individuals.[266] The racially ambiguous Chestang brothers, for example, married white women and continued to enjoy a widespread social network that both included and reached beyond their local community, with prominent white men from around the state of Alabama with regional and national reputations, such as judges and doctors, enjoying their friendship and hospitality. Witnesses later admitted that they knew the brothers were "a little mixed" or "betwixt and between," but they nonetheless sustained close business and social ties with little apparent prejudice. Clearly, then, ties of friendship and commerce could "whiten" individuals such as Rachel Dillon and the Chestang brothers, as well as persuade

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[265] *Dillon v. Dillon*, 60 Ga. 204 (1878); "Father and Son: Fearful Tragedy in Savannah—Attempted Parricide and Successful Suicide—A Son Shoots His Father and Kills Himself—Agony of the Mother," *Augusta Chronicle*, 12 October 1872, p. 3; "The Savannah Tragedy: An Interview with the Mother of the Suicide—A Woman in the Case—The Father a Bad Man—A Sad Story of Domestic Infelicity," *Columbus Daily Enquirer*, 18 October 1872, p. 1; "Bloody Domestic Tragedy," *Baltimore Sun*, 19 October 1872; "The Georgia Press," *Macon Weekly Telegraph*, 22 October 1872, p. 8; "Savannah, Georgia: Death of David R. Dillon," *Atlanta Constitution*, 11 October 1883, p. 2; "A Contested Will," *San Francisco Bulletin*, 14 December 1883, p. 4; "Suing for an Estate: Two Wives, One White, One Colored, Fighting for $1,000,000," *Bridgeton Evening News*, 15 December 1883, p. 4; "Bequeathing an Estate to Two Wives," *New York Herald Tribune*, 15 December 1883, p. 8; "A Peculiar Will," *Cincinnati Commercial Tribune*, 15 December 1883, p. 1; "Dillon's Darling," *Atlanta Weekly Constitution*, 18 December 1883, p. 5; "Georgia Gossip," *Atlanta Constitution*, 3 January 1884, p. 2.

[266] Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2009), 93.

people to overlook interracial relationships, regardless of the specific circumstances of the relationships or individuals involved.

The complex social networks highlighted in court cases such as these indicate the important role that interracial friendships in particular could play an in fostering community toleration of Jim Crow infractions. In addition to the several white men who claimed friendship with the Chestang brothers of Mobile County, Alabama, testifying with statements such as, "I considered [Mike Chestang] a friend, and I guess he considered me a friend, as far as that is concerned," many other interracial friendships emerge in these cases.[267] Ryal Noble had both black and white friends visit frequently, as well as witness the signing of his will, a point later elaborated upon in court in order to evaluate the veracity of the witness statements in establishing the existence of his lost will.[268] When George Smith, a white man, started pursuing African American Henry Leonard's daughter, Leonard prevailed upon their friendship to convince Smith to leave his daughter alone, explaining that "[George Smith] said he was my friend… I told him he had better stay away if you are my friend."[269] In a case from Fayette, Alabama, witnesses even testified "that at several places in Fayette it's habitual for white persons in Fayette to visit back and forth with colored persons," which opened the door for the possible interracial relationship and miscegenation charges being debated.[270] And the Covington family inheritance suit from the Mississippi Delta featured extensive testimony from a black man, Ben H. Taylor, who revealed that he and the white William Covington "were very intimate good friends," and often shared meals and confidences. In fact, Taylor felt secure enough in his friendship with Covington to comment to him on his personal life, advising him to leave his

[267] *Chestang v. Burns* (1953).
[268] *Allen v. Scruggs* (1914).
[269] *Smith v. State,* 16 Ala.App. 79 (1917).
[270] *Agnew v. State,* 36 Ala.App. 205 (1951).

black wife and take a white one.[271] Certainly, interracial friendships were uneven, at best, during Jim Crow, but the commonality of these friendly connections helps to explain the persistent toleration of infractions against Jim Crow laws. Even when individuals disapproved of their friends' actions, as did Ben Taylor, ties of community and friendship fostered toleration rather than prosecution or ostracism and helped to neutralize miscegenation laws.

Ties of family and friendship logically deterred individuals who were closely connected to couples from socially ostracizing or legally prosecuting interracial relationships, but even community members with few connections to interracial couples sometimes proved equally reluctant to take action to enforce Jim Crow laws or social customs. Testimony suggests that, in general, this toleration stemmed from both a lack of outrage and severe prejudice against the couple, as well as a reluctance or lack of incentive to get involved in other people's affairs. In some circumstances, southerners simply found it unremarkable to see men and women of different races together. When Jim Simmons, white, and Ophelia Metcalf, black, of Marion County, Alabama, were accused of miscegenation, for example, most of their neighbors simply assumed that any interactions they had seen between the two were common occurrences that indicated nothing significant. One witness who saw them riding together on horseback or in a buggy testified that "I supposed they were going to their work," and another witness who saw them talking together concluded that "I saw nothing wrong there between them." Yet another witness explained that when he saw them sitting on a front porch together "they were not doing anything, except talking."[272]

Similarly, in the trials of Hosea Agnew, black, and Vena Mae Pendley, white, of rural Fayette, Alabama, a neighbor explained that she "didn't see anything wrong" in Pendley being at

[271] *Covington v. Frank* (1899).
[272] *Metcalf v. State*, 166 Ala.App. 389 (1918).

Agnew's house, especially since "she got her water there," attesting to the unremarkable nature of interracial contact in a multiracial region.[273] As their statements indicate, witnesses in these cases saw or chose to see nothing noteworthy about men and women of different races interacting in both work and social environments, suggesting that the reality of daily contact between the races fostered a lack of interest in maintaining and policing racial boundaries. Without community interest in enforcing racial divisions, Jim Crow laws such as miscegenation statutes were rendered less effective at dividing southern society along stark racial lines, allowing for a greater range of complexity in southerners' racial beliefs, actions, and interactions.

Even when witnesses suspected that something noteworthy was, in fact, occurring in their community, they still often proved reluctant to get involved. As a witness in the 1941 Alabama miscegenation trial of Tom Jordan and Mary Brewer explained, "I ain't told nobody [that I saw them together] because I had nothing to do with it." Only after lawyers approached him did this witness share his observations.[274] Similarly, the woman who lived next-door to Edith Labue in Birmingham in the early 1920s stated decisively that "I ain't watching nobody" when she was questioned about the comings and goings of Jim Rollins, a black man, at Labue's house. In fact, the witness's own testimony refuted this claim; the specific details she shared, that "at 12 o'clock in the morning and two o'clock he brings something to eat.... I see him bring some fish that's all," indicated that she actually was watching Labue and Rollins, at least to some degree. Nonetheless, she stressed that while "I see him going in and out of there sometimes... I don't understand much," thus refusing to speculate on the true nature of the relationship, even in a legal venue. Her desire to remain uninvolved presumably kept her from contacting the police to

[273] *Agnew v. State* (1951).
[274] *Jordan v. State* (1941).

initiate legal prosecution or taking other actions against the couple, leaving Labue and Rollins free to continue this pattern for almost three years before being arrested.[275]

Witnesses in numerous other cases echoed these sentiments. A neighbor who lived near John Bufford and Ella Lee Brown for two years outside of Opelika, Alabama thus stated that "I never did look after them like I look after my own business… I never looked after them at all; It was all I could do to look after my little affairs in my shape."[276] A friend of Mike Chestang's explained that this tendency to mind one's own business was shared by many southerners, testifying that Chestang's racial background and mixed family "was a very little discussed subject in those days. People kind of lived out there, you know, and they didn't poke into the other fellow's business. If he tended to his business and lived the right kind of life and let the other fellow alone, he wasn't molested."[277] As these statements indicate, while southerners sometimes took note of the coming and goings of their neighbors, they often proved reluctant to take steps to prosecute or prevent infractions against racial boundaries. Instead, they focused on their own lives and activities, and caught up in their own lives, ended up tolerating numerous infractions that Jim Crow laws expressly forbade.

Although some of witnesses' reluctance to get involved could stem from general wariness concerning the legal system, their statements also reveal little overt anger and outrage regarding the racial behaviors they observed. Of the numerous people who testified that their neighbors' relationships were none of their business, sometimes elaborating on their views at length, none suggested pleasure or satisfaction at the eventual prosecution, indicated that they ever considered taking action or wanted to see actions taken against their neighbors, or even expressed disapproval of the relationships. This pattern could reflect, in part, the questions lawyers did or

[275] *Rollins v. State*, 18 Ala.App. 354 (1922).
[276] *Bufford v. State* (1924).
[277] *Chestang v. Burns* (1953), 119.

did not ask to witnesses, but the overall tone of these statements suggests that many southerners viewed interracial relationships with, at worst, a nosy curiosity, and at best, a distinct lack of interest. Combined with the numerous cases also indicating a willingness of whole communities to tolerate interracial relationships, this apparent lack of racial concern in individual situations suggests that despite the tense racial atmosphere of Jim Crow and the directness of race laws, a number of southerners, in fact, felt little outrage over infractions against racial boundaries. With Jim Crow laws and social conventions both relying on individuals and communities to participate and aid enforcement, then, the reluctance of these people to do so opened a loophole or small safe space for numerous couples to cross racial divisions without social or legal repercussions.

Legislators throughout the Deep South, before and during the Jim Crow period, strove to develop clarity and consistency in definitions of blackness and to eliminate, prevent, and punish individuals who crossed this racial boundary line. In many ways, social conventions and prejudices helped uphold these standards, as seen, for example, in the case of the "indignation committee" that visited Luella Williamson after the birth of her black baby. On the other hand, the large volume of court cases attesting to long-standing interracial relationships, and even interracial relationships that never faced legal or significant social repercussions, suggests a more nuanced reality of race relations in the Jim Crow South. The predominant attitude of witnesses to interracial relationships in these cases appeared to be mild curiosity rather than virulent prejudice and outrage, and family members and friends of individuals pursuing interracial relationships often found preexisting prejudices tempered by ties of social and business networks. The brutality and racism of the Jim Crow period cannot be exaggerated, let alone ignored, but evidence from court cases involving interracial relationships complicates the image

of Jim Crow as an impenetrable legal and social bulwark. Instead, as these cases suggest, because views of race stemming from the realities of everyday life in individual communities sometimes triumphed over legal definitions and restrictions, the Jim Crow period at times offered a surprising degree of leeway for some individuals and couples. Furthermore, southerners' attitudes about race and racial infractions, as seen in these cases, proved more complex and nuanced than the law either anticipated or desired.

CHAPTER FIVE

REVENGE, RETALIATION, AND PERSONAL GAIN: HIDDEN MOTIVES FOR PROSECUTION

Longstanding and committed interracial relationships that only faced prosecution after years of toleration, if at all, combined with witness testimony from race-based court cases, indicate a persistent pattern of communities in the Jim Crow Deep South proving reluctant and unwilling to get involved in interracial affairs, as well as a lack of concern with the racial implications of these infractions against Jim Crow boundaries. Despite these trends, however, hundreds of interracial couples did, at some point, face prosecution, raising the question of what finally drove community members to initiate legal proceedings for situations they had long tolerated, or proven willing to tolerate or ignore in similar circumstances.

Testimony from court cases suggests that, in many cases, personal motivations such as revenge or financial gain provided this necessary motivation to push community members from toleration into prosecution. Trial transcripts reveal a wide range of these personal motivations for initiating prosecution, ranging from disagreements over business deals—often involving bootleg whiskey—to career advancement, romantic spats, retribution for previous legal actions, and of course financial gain. In the few cases for which circumstances indicated racial prejudice rather than personal gain as the major factor in driving a person to initiate prosecution, these individuals often went to such extremes to prove their cases to the police and then the court that they ended up harming their own arguments and casting the entire case into doubt. Whatever the particular motive of southerners who took the step to begin prosecution of their neighbors for

miscegenation and racial offenses, personality and the interplay of community ties clearly played a large role in how these cases—and relationships—played out, and thus contributed to the difficulties that Jim Crow laws, such as the one-drop law, faced in regulating racial behavior and standards.

Similar issues of personal gain or revenge proved equally motivating in driving community members to not only initiate prosecution, but also to participate in legal proceedings centering on race as witnesses. Under questioning from lawyers, these witnesses sometimes inadvertently revealed their motives, admitting that they had ongoing personal disagreements—not related to race—with defendants, not only helping to explain their departure from the prevailing pattern of reluctance to get involved in other people's business, but also casting their damaging testimony into doubt. Neighbors fighting over boundaries, business associates disputing the cost of services, and even spouses angling for divorce thus all proved to be unreliable witnesses in court cases involving race and racial boundaries. In cases where personal motivations clearly drove prosecution or testimony, judges and lawyers often ended up questioning part or all of the initial claims of racial infractions, leading to the possibility of reasonable doubt and acquittal. Personal grudges and motivations thus further exacerbated the difficulties of applying and enforcing certain Jim Crow laws and standards, and contributed to the complex and varied range of racial views and actions of this period.

Community and family members sometimes lodged these miscegenation charges or testified for the prosecution in order to settle unrelated personal scores, but lawyers and police in particular sometimes took this impulse even further, proving adept at manipulating defendants' previous and current racial infractions to advance their own legal cases and improve their own chances of success. In several cases, lawyers brought up previous but unrelated miscegenation

charges against the defendants to convince judges and juries that the defendants had, in the case in question, also engaged in interracial intimacy. In other cases that, on their face, had no racial element at all, lawyers introduced this prejudicial element into trials, again trying to use race to sway trials in their favor. This pattern of utilizing race-based legal charges to settle scores or achieve personal gain, from all segments of southern communities, indicates that some southerners viewed race and racial boundaries not as absolute givens, but instead as flexible categories that could be ignored or invoked according to the circumstances. This not only suggests a more nuanced approach to southern customs and actions than Jim Crow laws would indicate, it also suggests that, despite matter-of-fact legal definitions and proscriptions, some white southerners understood the fictions of race and the arbitrary nature of racial boundaries, but nonetheless proved willing to utilize the stricter legal standards for their own gain.

Many cases provided no indication of how or why a particular couple ended up on trial for engaging in interracial relationships, but the cases that did indicate a clear trigger for prosecution revealed a wide range of personal motivations leading to an individual taking legal action against an interracial couple. Some people initiated prosecution as a result of personal disagreements involving issues such as water rights or bootlegging operations, others to advance their own careers or businesses or to punish adultery with their partners. Some cases even suggested that community members sought to prosecute individuals for their interracial intimacy in an attempt to straighten them out and set them on the right path, or, in one case, as an outcry of frustration against the suffocating racial double standards of the Jim Crow era. The large number and wide variety of these triggers helps to explain why widespread toleration and unwillingness to get involved in other people's lives sometimes broke down, leading to prosecutions for miscegenation.

This desire for revenge over personal disagreements led to several colorful miscegenation cases. John Bufford and Ella Lee Brown, for example, found themselves in court in 1923 after a former friend turned them in for miscegenation in order to settle a score over illegal whiskey. Bufford and Brown, who had lived together in Georgia for up to six years without facing prosecution, and who enjoyed similar tolerance for two years after their move to a location just outside Opelika, Alabama, apparently enjoyed a widespread social network in their local community. J.M. Clements, in particular, spent considerable time socializing at Bufford's house with both Bufford and his son-in-law, Robert Craft, testifying that "I went there at all hours for two years," and that "me and [Craft] run together a whole lot." On the witness stand, however, questioning elicited Clements' admission that "I don't [know] how you would expect my feelings toward Mr. Bufford could be good; my feelings are not very good towards him." Further questioning revealed the root of these negative feelings, with the lawyer asking Clements point blank, "Don't you know that [your feelings toward Bufford] are bad and you [are] mad with him because you had some whiskey hid over there and he required you to move it and that you told him then that you were going to turn him up for that?"[278]

Particularly during Prohibition, the storage and possession of illegal whiskey could lead to personal disagreements with serious legal implications, as in this case. As Bufford himself explained, "J.M. Clements got mad with me about some whiskey that he had buried there in my cow pasture and around my barn and we had a fuss... I went to him and I told him to move his goods away, that I didn't want to get on the public road [chain gang] on his account; he told me that he was going to turn me up about that." In this case, Clements, along with the larger community, had not only tolerated but also socialized with Bufford and Brown for years. Only when Clements felt slighted by Bufford's command to remove his illegal whiskey, a request with

[278] *Bufford v. State*, 20 Ala.App. 197 (1924).

possible legal repercussions for Clements, did he feel compelled to take action against the couple. As testimony indicated, a simple desire to police racial boundaries had little to do with Clements' ultimate actions; instead, he plainly utilized miscegenation charges as a convenient method of achieving personal revenge against a former friend.[279] Cases such as this suggest that Jim Crow laws played a far less central role in policing racial boundaries than intended or desired, and that community and social ties instead served as the ultimate arbiter of toleration or persecution.

Other cases provide further examples of individuals using race-related legal charges and Jim Crow laws to gain revenge for unrelated personal disagreements. In 1931, the Lundy, Petty, and Batson families of Covington County, Alabama, just north of the Florida state line, were embroiled in escalating incidents of arson, threats of violence, legal charges, and perjury. The feud apparently began when a house owned by Joe Lundy and rented and occupied by his tenant Jim Batson burned to the ground in late May. Lundy suspected that a neighbor, Oliver Petty, had intentionally torched the house and so, as he later testified, "immediately after the house was burned I had Oliver Petty arrested."[280] Petty himself explained that "[Lundy] got a warrant but the papers were never served at all. I was never indicted, and they never had a case against me for burning anybody's house."[281] Despite this failure to indict, Petty apparently harbored considerable hostility toward Joe Lundy over the charge and his own subsequent legal troubles. Lundy, who ran a "big plantation" with the help of numerous tenants, presumably had greater resources and connections than Petty, but Petty nevertheless found a vulnerable target in order to inflict revenge on Lundy in Lundy's grandson, Jesse Williams.

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[279] *Bufford v. State* (1924).
[280] *Williams v. State*, 26 Ala.App. 53 (1934), 70.
[281] *Williams v. State* (1934), 27.

Williams, a young man who helped his mother and grandfather hire tenants and "run plows" on their land, and who had a reputation for keeping to himself and socializing mostly with his family and a few tenants with whom he played cards, also happened to be of uncertain racial origins. No one in the community disputed that Williams' mother and grandfather were white, but from his birth, Williams' race, and thus his mother's intimate relationships, had been debated. This uncertain racial status placed Williams and any relationship he might engage in under suspicion, and previous miscegenation charges for a short-lived marriage to a white woman in 1928 made Williams even more vulnerable to subsequent charges of crossing racial boundaries. Williams' racial past thus created an opening through which to target his family, and, conveniently for Petty, who had reason to feel slighted not only by Williams' grandfather, but also by his tenant Jim Batson, Batson's daughter had worked for Joe Lundy in the months preceding the house fire, during which time she lived in Lundy's house. While extensive testimony proved that Williams himself lived in another house with his mother during this entire period, rather than with his grandfather and thus Bessie Batson, the connection nonetheless provided a reasonably plausible opening for Petty to charge Williams and Batson with miscegenation, in effect gaining revenge at both parties involved in his own arson charges. As Joe Lundy explained, it was only after Petty was arrested that "all this came up about Jesse and Bessie."[282]

Additional testimony suggests further motives for Petty to accuse Williams and Batson of miscegenation, revealing several other indications of tension between the three families. Jim Batson's sons apparently destroyed some beer belonging to Petty, and in an attempt to recoup the loss, Petty asked Williams, as an agent for his grandfather, to "take [the cost of the beer] out of the amount that Mr. Lundy was due them [as wages]" and give it to Petty, a request that

[282] *Williams v. State* (1934), 70-71.

Williams refused.[283] Charges against Jesse Williams and Bessie Batson thus again involved both parties involved in another perceived offense against Petty by targeting the families who destroyed his property and refused to compensate him for it. In a later line of questioning ultimately overruled by the judge, Williams' lawyer also hinted at a third possible motive, explaining that Petty was angry at Lundy and Williams not simply for the arson charges, but also because Petty "thought that [Williams] had something to do with turning Petty [in to the law] for 'stilling and turning out a whole lot of his beer."[284] While the judge disallowed this line of questioning, preventing any further discussion of this particular incident, relations between the Lundy and Batson families and Oliver Petty were clearly strained, for a number of reasons. Ultimately, as several witnesses testified, after a "wrangle" over a mule between Williams and Petty in the summer of 1931, Petty finally swore to Williams that "I will get you if I have to shoot you down," prompting Williams to go into hiding until his subsequent arrest for miscegenation.[285]

The obvious hard feelings between these parties and the numerous and escalating incidents between them suggest that Petty had plenty of motivations to indict Bessie Batson and Jesse Williams for miscegenation simply in order to gain his own revenge. Several witnesses, however, made this link between desire for payback and subsequent legal charges explicit, testifying that Petty tried to bribe them to lie under oath about seeing intimacy between Williams and Batson, and even that Petty had apologized for swearing out "lies" and tried to find a way to drop the case without facing perjury charges. As Williams' brother recalled, Petty told him "that there was not a dam [sic] thing to [these charges] and he was going to stop it." Williams' stepfather further recalled that "in the jail Petty walked up and shook hands with Jesse and told

[283] *Williams v. State* (1934), 33.
[284] *Williams v. State*, 25 Ala.App. 342 (1933), 43.
[285] *Williams v. State* (1934), 38.

him that he had swore a lie on him and that he wanted him to forgive him, and said there was nothing to what he said about him and Bessie Batson."[286] Additional testimony from two witnesses who had lived in Lundy's house and worked for him during the period in question, and who swore that Williams had never interacted with Bessie Batson and that Petty had tried to bribe them to testify otherwise, further indicated that revenge probably provided Petty's motivation for initiating prosecution, and that no illicit relationship actually existed.

The tensions between these families and the ensuing evidence of miscegenation charges being utilized for purposes largely unrelated to race suggests that some southerners understood Jim Crow regulations regarding race and racial behavior not as rigid mandates requiring universal enforcement, but as tools that might be utilized as needed for personal satisfaction and material gain. This selective usage of Jim Crow laws for unrelated purposes not only undermined the intent of the laws by further muddying already vague social and racial realities, but also corroborated societal trends toward defining race on the basis of social characteristics rather than legal or scientific ones, and of tolerating infractions of racial boundaries despite the clear mandates of the law. As these cases suggest, white southerners' understandings of and actions regarding race demonstrated surprising variety, flexibility, and a keen understanding of how to make the system work for individuals, rather than having individuals work for the system. In such an environment, Jim Crow laws failed to live up to their own goals of defining and policing racial realities, as community and social ties, both positive and adversarial, proved more relevant and influential.

A case from an isolated tri-racial community in Washington County in southwest Alabama further illustrates the often tangled ties of family and community that, when fractured, could lead to legal prosecution for racial infractions. In the spring of 1920, Thelma Curry, a

[286] *Williams v. State* (1934), 56-59.

white woman, and Daniel Reed, of possible Indian, white, or black ancestry, were indicted for miscegenation. Members of Reed's extended family, which decades later organized as the MOWA Choctaw tribe, had previously faced similar miscegenation charges. In this case, however, testimony indicated that, despite the extensive legal history of the Reed family, these particular charges likely stemmed from the circumstances surrounding Curry, not Reed's, birth. A key witness in the trial, Charley Rainwater, admitted in his testimony that "I have been convicted of living in adultery, for living with [defendant Thelma Curry]'s mother." He denied claims that he was, in addition, Thelma Curry's father, explaining that "I didn't get mad when this fellow married the girl—she is not my girl," before adding "as to whether I came here and prosecuted him for marrying this girl, I am not telling what I did; she is not my girl, and I don't claim her." Despite his denials, these lines of questioning suggested that perhaps Rainwater initiated prosecution, as he appears to have done, because of his ties to Curry and her mother. Whether Rainwater was Curry's biological father or not, the rumors to that effect that obviously pervaded the community meant that her behavior would reflect on him as well, perhaps prompting him to try to destroy what could be seen as a socially disadvantageous marriage, or to punish her for damaging his reputation with her marriage, by initiating legal proceedings. Similarly, initiating prosecution against Curry also could have provided Rainwater a measure of revenge against Curry's mother for the indignity brought on by his relationship with her and his ensuing legal difficulties.[287] In cases such as this, complex ties of family and community drove legal prosecution for racial charges like miscegenation, just as they did for non- race-related charges like adultery. Rather than simply providing white southerners with a definitive system to frame the ways they defined and regulated race, Jim Crow laws, then, could provide southerners with a method to play out their own desires and aims.

[287] *Daniel Reed v. State*, 20 Ala.App. 496 (1925), 8.

These same themes emerged in a Depression Era miscegenation case from Lauderdale County in the far northwest corner of Alabama. In the summer of 1936, Buster and Alice Murphy, a white couple presumably hard hit by the financial collapse, moved their family to a tent encampment on a creek outside of Florence. Within a week, one of their new neighbors, Felix Perry, had accused Alice Murphy of miscegenation with a black man, Coleman Cole, who also lived nearby. The appellate judge later called Perry and his friends' testimony regarding Cole and Murphy's alleged actions "sordid," "nauseating," and illustrative of "moral filth," but despite the graphic details that Perry and his friends provided, testimony from other neighbors not only cast doubt on Perry's account, but also suggested a strong personal motivation for Perry to falsely charge his neighbors with miscegenation.[288]

Like Oliver Petty in the Williams case, Felix Perry had been involved in recent disputes with both the Murphy family and Coleman Cole, making a joint miscegenation charge a convenient method to gain revenge over both parties. During cross examination, Perry denied charges of "operating a bootlegging joint out there" with Cole, and that he had "had this same fellow, Coleman Cole, going out and getting girls and men to come to your place and then when the Murphys moved out there, that interfered with your arrangement and you had to get them out of the way and this is the only way you knew to do it." Despite Perry's denial, these actions not only seemed in keeping with the image of Perry's personality and history that emerged throughout the trial, but also provided an explanation for his, quite likely false, charges against his neighbors.

Bootlegging operations and other illicit business deals certainly provided ample opportunity for disagreements, making Cole a likely target, and the Murphys' move to the tent encampment inconvenienced Perry not only by interfering in his illicit business, but also by

[288] *Murphy et. al. v. State*, 27 Ala.App. 546 (1937).

blocking his access to the creek that he and his family relied on for water. As Perry himself testified, "they did move their tent next door to mine, across the path, closed the path up to where my wife couldn't get water. They sure put their tent across the path and I asked them not to do that." Further questioning revealed the extent to which the Murphy's move apparently angered and inconvenienced Perry, as a lawyer suggested that Perry "had a conversation with [Cole] out there in his front yard and... you told him then that you were going to make these folks, talking about Murphy, move away even if you had to swear a lie on him, to do it." Again, Perry denied the charge, but even the appellate judge ultimately found these denials less than convincing, overturning Alice Murphy and Coleman Cole's miscegenation conviction on the grounds that the trial testimony's "contradictions, inconsistencies, improbabilities, and factitious nature, everywhere apparent, stamps it as unworthy of belief."[289]

As in the Williams case, the accuser in the Murphy case stood to gain concrete personal rewards by swearing false charges against his neighbors. Eliminating Coleman Cole would settle disagreements over illicit business deals, and targeting the Murphy family would not only provide retribution for the disturbances they caused, but also possibly convince them to abandon their problematic camp site. Again, race itself proved to be a relatively tangential element of this trial; instead, legal restrictions based on race provided a bitter community member with leverage against his adversaries, despite the fact that his grievances had no direct connection to race. Ironically, using Jim Crow laws for unintended purposes actually undermined the laws' goals of defining and establishing racial order, as the acquittals of those charged with miscegenation piled up and the nefarious tactics of false accusers sometimes overshadowed the racial dimensions of a case.

[289] *Murphy v. State* (1937).

The Bufford, Williams, and Murphy cases colorfully illustrate some of the wide range of disagreements and fights that could prompt individuals to prosecute interracial relationships that they had previously accepted, or even to make false charges of miscegenation to further their own ends. In each of these cases, the desire for revenge provided the primary motivation for individuals to file race-based charges against neighbors and friends, but other cases revealed accusers who focused less on revenge and more on their own career advancement. A Reconstruction-era case out of Chatham County, Georgia, home of the port city of Savannah, illustrates this point. In the April 1868 election for Clerk of the Superior Court of Chatham County, Richard White "got a plurality of the votes," taking office over his opponent, William Clements. Upset by his loss, Clements filed a petition stating that White was, in fact, ineligible for office as a "person of color," and thus should be removed from the position, which would then go to Clements.[290]

In Reconstruction Georgia, with its rapidly shifting political climates, the judges who heard this case failed to reach consensus on Clements' claim that the laws of Georgia disqualified persons with one-eighth or more black blood from holding office. The local judge decided in favor of Clements, but Justice Henry McCay of the Supreme Court of Georgia, a Republican appointee to the court,[291] overruled this decision, arguing instead that "men of color," as citizens, could not be barred from office. McCay's opinion decided the case, but not without dissent from Justice Warner, who argued that without an explicit law granting "colored citizens" the right to hold office, they enjoyed no such right. As this case indicates, laws and legal precedents during Reconstruction were not as settled or incontestable as they would become

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[290] *White v. Clements*, 39 Ga. 232 (1869).

[291] Stewart D. Bratcher, "Hiram Warner (1802-1881)," http://www.georgiaencyclopedia.org/articles/history-archaeology/hiram-warner-1802-1881. For a general discussion of the impact of Reconstruction on miscegenation laws and enforcement in Georgia, see Charles F. Robinson II, *Dangerous Liaisons: Sex and Love in the Segregated South* (Fayetteville: University of Arkansas Press, 2003), 36-38.

during the later Jim Crow period, but the persistent pattern of individuals using race-based legal charges for personal gain nonetheless emerged clearly, with William Clements revealing less concern over regulating racial boundaries than with his own lagging political career. Of the witnesses Clements found to present possible evidence of White's racial background, none had ever challenged White's ability to hold office, despite their awareness of his ambiguous background. Only when Clements stood to gain personally from raising these charges did White face legal challenges to his office and his race. The frequent centrality of personal motivations such as revenge and career advancement to relatively infrequent race-based legal charges actually affirms more than it undermines the sense that, all things being equal, miscegenation was at least as likely to be tolerated as prosecuted in the Deep South.

In Waynesboro, Georgia, a 1913 disturbing the peace charge provided another example of individuals pursuing personal gain and career or business advancement through race-based charges against neighbors and community members. When Mrs. Strother, a boarding house owner, witnessed two black women entering the room of her white renter, Mr. Nolls, she called the police, leading to a disturbance of the peace conviction for one of the women, Bessie Garvin. Presumably, evidence was too thin for a miscegenation charge, but as the Court of Appeals of Georgia explained, "if the landlady could not be protected from such offensive behavior under the city ordinance against "disorderly conduct," she would be practically helpless and unable to preserve the reputation of her house for quiet and good order, and would soon be unable to attract desirable boarders or respectable custom, and would be thus deprived of her means of livelihood." While Strother found the behavior of her renter disturbing and objectionable, the heart of her concern—and that of the judges deciding her case—was the impact on her business rather than her morals. As in the Clements case, other individuals, such as Strother's other

boarders, presumably knew what was going on but, lacking direct personal impact on them from Nolls' actions, took no steps to intervene. Only Strother, who faced possible concrete loss to her business and her professional reputation, moved beyond the pattern of toleration and reluctance to get involved. Clearly, personal motivations proved central to overcoming some southerners' unwillingness to interfere in other people's lives in order to initiate prosecution for race-based charges.[292]

Not only did friends, neighbors, and other community members occasionally find ways to pursue their own aims and preserve their own reputations through race-based legal prosecution, even family members sometimes did the same. Even as Civil Rights lawyers and activists began fighting to eliminate the Jim Crow system in the late 1950s, one Mississippi husband turned to the anti-miscegenation laws in an attempt to influence and control his wife. Mary and Elmer Rose, a white couple in their thirties, had been separated for "a long period of time," when he went to a Justice of the Peace in February 1958 and executed an affidavit "charging her with …an act of adultery with a negro man named Joe Scott," an employee of Rose's, leading to Mary Rose's arrest. Evidence suggested that the affidavit and arrest were Rose's attempt to control his estranged wife, as she explained that "she was informed by her husband that the best thing for her to do was to plead 'guilty' to the indictment thereby avoiding any notoriety and that there would be 'nothing to it,' but that if she insisted upon defending the case there would be a great deal of notoriety reflecting not only upon her but on her children as well...." By the time of the arrest, Rose had been trying to obtain a divorce for years in order to marry another woman, suggesting that perhaps Rose's end game was to use Mary's arrest as leverage to force her to grant him the requested divorce.[293] Elmer Rose, then, proved willing to manipulate both the

[292] *Garvin v. Mayor and City Council of Waynesboro,* 15 Ga.App. 633 (1915).
[293] *Rose v. State*, 234 Miss. 731 (1958).

legal system and his wife for his own personal gain. Instead of arbitrating racial and social order, Jim Crow laws, in these situations, became mere tools for reaching personal goals.

Elmer Rose was not the only person who used miscegenation charges to try to control a spouse or lover. Dr. A.C. Walker, a white dentist and "once a respected citizen of Montgomery, [Alabama],"[294] for years pursued a relationship with a black woman, Daisy Harris, who eventually left him to marry a black man. Walker, however, proved both determined and violent in his attempts to force Harris to return to him. After pursuing her through cities across the South and threatening her with violence, Walker finally resorted to having her charged with adultery in 1886—for her interracial relationship with him. Several newspapers that later commented on the case agreed that this was "simply his way of having her brought back to Montgomery."[295] Not surprisingly, this legal manipulation failed to help Walker to achieve reconciliation. Neither, needless to say, did shooting Harris a year later in a lawyer's office. Sentenced to three to five years in the penitentiary for this shooting, Walker later attempted suicide and ultimately died at "the Walls" State Penitentiary a year into his sentence.[296] While Walker clearly went to extremes far beyond normal in attempting to reconcile with Harris, his reliance on accusations of miscegenation to pursue his own ends was hardly uncommon. Since he sought reconciliation with a black woman, prejudice against interracial relationships, for Walker, plainly played little, if any role, in his personal drama, but he nonetheless understood that race-based laws could be used for his own aims. In cases like this throughout the South, Jim Crow prohibitions on interracial relationships provided jilted lovers and disgruntled neighbors

[294] *Montgomery County News*, 19 November 1887.
[295] "Shot His Paramour: A Montgomery Dentist Sends a Bullet Into the Side of a Dusky Damsel Because She Had Forsaken Him," *Columbus Daily Enquirer*, 12 November 1887, p. 3.
[296] A.C. Walker, *Alabama, Convict Records, 1886-1952*, ancestry.com.

alike with a legal means to gain revenge or manipulate others.[297] While spouses such as Elmer Rose, lovers such as A.C. Walker, and neighbors such as Oliver Petty, were indeed following and enforcing Jim Crow statutes in initiating proceedings against miscegenation, they did so not because of a desire to enforce racial boundaries or even necessarily because they bought into the aims and techniques of the Jim Crow system, but instead because personal or community ties and motivations pushed them from tolerance to prosecution. This refusal on the part of some southerners to buy into the actual intent of the laws designed to clarify and police racial boundaries actually helped to keep those boundaries blurred in the Deep South.

Many individuals initiated legal prosecution for race-based charges for personal gain or revenge, but a few exhibited more nuanced motivations, again revealing the complexity of life under Jim Crow. When C. Bishop, described as a "before the war negro," swore out a warrant against Will McAlpine and Lizzie White for miscegenation in 1898, he was not only following the advice of a local justice of the peace, but also apparently his own heart. As Bishop testified, "I loved Will McAlpine when I had him arrested. I had never had any fuss with Will before the warrant was issued." He later explained that he had held numerous conversations with McAlpine begging him to end his relationship with a white woman, imploring him that "he would have trouble" if he did not end the affair, and that "I said in that conversation, Will it is time for you to stop." Bishop's concern for McAlpine's situation drove him to tears during these conversations, but as they had no apparent impact on McAlpine's behavior, Bishop went a step further and had his friend arrested.[298] In this case, concern for a friend, who during the violent

[297] *Walker v. State*, 85 Ala. 7 (1888); "A Montgomery Sensation: A Professional Man's Endeavors to Prevent His Colored Mistress Deserting Him," *Atlanta Constitution*, 20 August 1886, p. 5; "Griffin Repudiates Him," *Macon Telegraph*, 24 November 1887, p. 3; "Dr. Walker Out," *Columbus Daily Enquirer*, 30 December 1887, p. 1; "Walker Found Guilty: He Makes a Murderous Assault on His Colored Paramour," *Atlanta Constitution*, 30 March 1888, p. 1; "Walker Attempts Suicide," *Atlanta Constitution*, 1 August 1888, p. 5.
[298] *McAlpine et. al. v. State*, 117 Ala. 93 (1898).

and oppressive years of Jim Crow could face far worse than jail for being with white women, apparently motivated an individual to initiate prosecution.

The irony of sending a person to jail to save him from what could be a much worse fate outside the law highlights the contradictions of the Jim Crow era. White southerners both tolerated infractions against racial boundaries and prosecuted them, and they both accepted interracial couples and, sometimes, reacted violently to them. These inconsistencies suggest more flexibility for white southerners to determine their own actions regarding race, whether for violence or tolerance, than framers of the Jim Crow laws intended or desired. As cases such as these miscegenation and racial definition trials reveal, ties of community and family often proved the deciding factor in swaying a community or person in one direction or the other, toward tolerance or even violence, with laws providing a tool for them to achieve their aims rather than a strict guidebook for how to regard the actions of their fellow community members.

An 1897 case from rural Lincoln County in southwest Mississippi further highlights these complexities of the Jim Crow system. Only one witness testified on behalf of the prosecution that George Schwall, white, and Lula Smith, black, had engaged in a relationship, and this key witness, referred to as "Uncle" John Franklin, made it clear in his testimony that he wanted to break up this perceived affair by any means necessary. Franklin and Smith had a history of contentious relations, culminating in her charging him with stealing a hog from her at some point before the miscegenation case. While this provided Franklin with a possible revenge-based motive for prosecuting her, as seen in other miscegenation cases throughout the South, further testimony revealed that Franklin's motives went well beyond paying Smith back for her legal prosecution of him. Instead, his legal move against Schwall and Smith, which he based on

uncorroborated and unconvincing evidence, provided him with a means of protesting the double standard that he, as a black man, faced under Jim Crow.[299]

Franklin's own daughter had formed a relationship with a white man and bore him a child, despite Franklin's best efforts to break up the couple, but on the other hand, as Franklin testified, "negroes... takes off after white women and their necks are broken." This double standard, that white men often could cross the racial intimacy line with far fewer repercussions than could black men, plainly angered Franklin. According to Smith's testimony, Franklin repeatedly enjoined Smith to stop participating in this duplicitous system, and thus to provide a better model for her sons in terms of crossing racial lines. Franklin stressed to Smith that if her sons followed her lead, they would end up being killed, his repeated warnings probably driven in part by his anger over the way his daughter's white partner had treated her and his avowed desire to gain revenge against him. As a result of these frustrations, Franklin went so far as to "[make] up a mob with seven men, with myself that no colored woman should work in the field with a white man, [because] if we look at a white woman they break our necks."[300]

Looking around his community, Franklin clearly saw the contradictions of the developing Jim Crow system and understood the dangers and limitations that this system posed for him and his family. Having seen the repercussions that blacks, especially black men, faced for bucking the system, Franklin chose to protest this injustice by utilizing the system itself to highlight bias and danger. His miscegenation charges against Schwall and Smith thus provided him a different kind of personal satisfaction, that of striking back against the injustices in his own life and those of other black southerners. The actions and words of both C. Bishop and John Franklin indicate the particularly difficult position of black men in a society that could just as easily prosecute

[299] *Schwall et al v. State*, 21 So. 660 (1897).
[300] *Schwall v. State* (1897).

racial infractions as tolerate them. By working within the legal system, these two men strove to mitigate the worst injustices and violence of the Jim Crow period, while pushing for more equal application of laws. At the same time that these cases highlight the challenges of Jim Crow, however, they also suggest a level of flexibility from communities willing to tolerate the numerous interracial relationships revealed in these two trials, despite laws and even social conventions, as well as the failure of Jim Crow statutes to definitively regulate crossings of racial boundaries. As Bishop and Franklin discovered, to their anger and frustration, communities proved more influential arbiters of racial boundary crossings than did law, permitting occasional leeway and flexibility, but also extending unequal and uncertain applications of Jim Crow regulations.

While many legal trials involving race began because of an individual's desire for personal gain rather than because of a desire to follow strict racial boundaries or laws, a smaller number of cases suggested racial prejudice as a possible motive for prosecution. Most of these, however, represented the extreme end of racial prosecution, rather than the norm. In some cases, for example, the primary prosecuting individual went to such extremes to provide even slim evidence of racial infractions that judges and juries ended up doubting the veracity of their claims. In these particular cases, records gave little information about any possible personal motivations for prosecution, but the doubt of judges and juries pushes us to look beyond the appearance of racial prejudice as a motivating factor.

A 1914 case from Helena, Alabama, situated in a then largely rural county in the foothills of the Appalachian Mountains south of Birmingham, provides a relevant example of the type of extreme prejudice—whether racial or personal—that drove a few individuals to initiate race-based legal proceedings. In this case, Deputy Sherriff J.W. Roy provided the only evidence

suggesting a relationship between the defendants, Ed Woody, white, and Louisa Branch, black. Apparently acting on a rumor his father had shared with him, Roy followed Branch home one night and lay beneath her house in freezing weather in an attempt to catch her with Woody. As the Appellate Court Judge E. Perry Thomas later noted,

> "The conduct mentioned… in inconveniencing himself so greatly for the purpose of obtaining evidence against defendant in order to substantiate the rumor of her guilt was so unusual... that from it the jury might well infer that he was actuated in his efforts, which caused him such physical suffering, either by prejudice against or by malice towards the defendant. If such motive moved him, they would cast discredit upon his testimony…Of course, he might have been prompted in his efforts by merely a commendable desire to search out the guilty and bring them to justice for the good of society, or by other worthy motives, which would not discredit his testimony. As to which actuated him, however, was for the jury; but his conduct was certainly such that they might draw from it one of the unfavorable inferences first mentioned."[301]

While not entirely ruling out the possibility that Roy's primary motivation was to protect the law and order of his community, Judge Thomas recognized that circumstances cast such motives under extreme suspicion. Records gave no indication of what kind of personal "prejudice against or malice towards" Branch that Roy might have harbored, or why, but even the judge tasked with upholding and interpreting Jim Crow laws, and thus with enforcing their boundaries, seriously doubted that anyone without more than mere professional motivation would seek evidence for prosecution of interracial couples in the manner followed by J.W. Roy. Even representatives of

[301] *Branch v. State*, 10 Ala.App. 94 (1914).

the law, then, recognized on some level that Jim Crow laws failed to function as intended in fully regulating racial behavior and eliminating loopholes or space for interracial relationships.

A late 1940s school attendance case from South Georgia again highlights the extreme nature of some of the few cases that suggested racial prejudice rather than personal gain as a primary motivation for prosecution. No records indicated that Clyattville school board members Lillie and Murrel Holderby had any personal motives, such as revenge or financial benefit, for filing a complaint to exclude Dollie Seay White's children from the white schools they attended. Instead, circumstances suggested that, in fact, they probably did so because of a desire to enforce racial boundaries and purity, in keeping with the laws of the time. However, these circumstances, including their alleged membership in the Ku Klux Klan, probably placed them toward the extreme end on the spectrum of racial views.[302] As historian Glenn Feldman notes, by the late 1940s, when the Holderbys and Whites clashed in Georgia courts, the KKK had become increasingly "more extreme and less representative of white society" and had fallen considerably from its 1920s peak. Certainly, as the ensuing Civil Rights Movement would reveal, many southerners still sympathized with some of the goals, views, and even methods of the mid-century Klan, but membership at this particular point generally qualified participants as more extreme than the larger population.[303] Cases like this one, then, continue to suggest that either strong motives such as personal gain, or relatively extreme racial views, were often necessary to convince southerners to take action against perceived racial infractions.

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[302] *White v. Holderby*, 192 F.2d 722 (1951); *Shiver v. Valdosta Press*, 82 Ga.App. 406 (1950); "For Miscegenation: Suit Leads to Arrest for Couple," *The Washington Post*, 15 October 1949, p. 7; "Negro Blood Claim Leads to $300,000 Georgia Suit," *Oregonian*, 15 October 1948, p. 4.; "Federal Court Dismisses Parents $300,000 Suit," *Atlanta Daily World*, 5 November 1949, p. 1; "Big Damage Suit Opens at Valdosta," *Augusta Chronicle*, 24 March 1950, p. 7.

[303] Glenn Feldman, *Politics, Society, and the Klan in Alabama, 1915-1949* (Tuscaloosa: University of Alabama Press, 1999).

In other school attendance cases that indicate the extreme methods or motives that often drove race-based prosecutions, one individual often fanned rumors and circulated petitions stirring up sentiment against allegedly racially ambiguous schoolchildren, almost singlehandedly intensifying the prejudices of a community that had long been willing to tolerate these same children in their midst and thus providing the motivation necessary to shift tolerance into action. These individuals generally appealed to white parents and community members by citing the "personal gain" of their children being able to attend racially pure schools. In an early 1950s school attendance case from just north of Mobile, Alabama, for example, several witnesses admitted that they had had no knowledge of Michael Henry Chestang's allegedly mixed racial background, and thus no concern about his attendance at their children's school, until one man, Red Price, came knocking on their doors to talk to them about the implications. A lawyer characterized Price's actions as "sneaking around in your community trying to dig up some dirt." Price, who possibly worked for the school board but, strangely, never testified, apparently stirred up enough fear in the community to inspire petitions, court cases, and community discussion but, absent his involvement, most of these community members probably would have neither known nor particularly cared about Chestang's background and schooling.[304] As in other cases in which communities tolerated racial infractions or ambiguity, prejudice was not absent in this case, but more than mere prejudice, whether personal gain or the persuasion of one man, was necessary to result in legal action. Racial prejudice, then, did drive a few cases to a larger extent than in the more prevalent clear-cut cases of personal gain and revenge, but these cases still suggest that secondary motivations, or the influence of others, often pushed even those who used the language of prejudice and law to participate in these legal proceedings.

[304] *Chestang v. Burns*, 258 Ala. 587 (1953).

Racial prejudice was undeniably a significant feature of life under Jim Crow, and along with prejudice, the possibility for legal harassment or physical violence, but the majority of race-based court cases that indicate how charges originated suggest either strongly or more subtly that relatively few southerners took action against their neighbors for racial infractions unless they saw direct personal benefit in doing so. The benefits varied widely, from personal payback to financial gain, protecting reputations, or even ensuring a "racially pure" school environment for one's children, but personal motives emerged in virtually every case where the background of the charges was revealed. White southerners' apparent tolerance of or indifference toward interracial relationships had limits, but these limits were not defined simply, as could be expected, by the degree of outrage sparked by violation of racial boundaries, but, rather, by the possibility of personal advantage. When southerners looked first to the personal and communal consequences of prosecuting violations of certain racial statutes, Jim Crow laws failed to provide the anticipated definitive and controlling voice on race and racial issues, indicating greater nuance and variety in whites' racial priorities than the laws alone would suggest.

While many cases suggest that personal motives played perhaps the largest role in inciting individuals to initiate legal action against those who crossed racial boundaries, the majority of race-based court cases, unfortunately, provide no indication of how or why they ended up in the legal system. Even these cases, however, often underscore the role of personal and community ties in prosecuting racial infractions. Testimony and questioning suggest that many of the individuals who testified for the prosecution against interracial couples often had personal reasons for doing so. As with individuals who initiated legal proceedings outright, these witnesses revealed personal disagreements, family divisions, and financial disputes with defendants, which often called their damaging testimony into question and undermined the legal

cases against interracial couples. This not only limited the legal system's capacity to successfully monitor and punish racial incursions, but also highlighted both the importance of personal motivations in pushing southerners past toleration and the willingness of some southerners to utilize race-based legal proceedings to play out other, entirely unrelated, issues.

Witnesses in trials involving race revealed a wide range of possible motivations for providing damaging testimony. Some merely alluded to unspecified "difficulties" with the people they testified against, as with Richard Mimms, a black Georgian who in 1869 testified to personal knowledge that Richard White had been a slave, and therefore was black and allegedly ineligible to hold political office in Chatham County, Georgia. As the lawyer elicited in questioning, however, Mimms and White "had a difficulty some time ago," casting Mimms' testimony in doubt. Ultimately, a Supreme Court of Georgia divided by Reconstruction politics and confusion ruled that White could remain in his elected position, in part because of changing definitions of citizenship, but also in part because of failure to prove him other than white, a failure to which Mimms' questionable motives and testimony undoubtedly contributed. [305]

Almost a century later, personal motivations for testifying remained a significant feature of race-based cases, when in Lamar County, Mississippi in 1958, witness Eva Rouse's unspecified "personal interest" in her neighbors' miscegenation case damaged her credibility and led to conflicting testimony. Despite testifying at the Grand Jury that she had never seen her neighbors together, Rouse claimed the opposite in the criminal trial. Questioning exposed the possible reason for her change of heart, as the lawyer suggested that "you've got such an interest [in this case that] you told the Justice Court you had not seen them in the act of sexual intercourse and then you come before this court and tell the jury you did see them?" While Rouse avoided answering that specific question directly, at another point, she did admit to a still

[305] *White v. Clements* (1869).

undisclosed personal interest in the case.[306] Whatever Rouse's "personal interest" was, it helped explain in part why she and other witnesses, such as Richard Mimms, might have deviated from the general pattern of southerners tolerating infractions against racial boundaries and shying away from legal involvement.

Other cases corroborate this pattern of witnesses' personal motivations for providing damaging testimony hurting not only their own reliability as a witness, but also the ability of the prosecutor to win a case. When Tom Cauley, a black man, was accused of sleeping with Parthenia Grayson, a white woman, in Butler County, Alabama in 1891, Cauley explained that the prosecution's witness, John Barge, was unreliable, as "Barge and I had a difficulty at a fair, and we have never been friendly since." The most damaging witness in this case, Grayson's sister-in-law, Sally Grayson, also had possible personal motives for offering her negative testimony, in that Parthenia's alleged habit of bringing black men around the shared family home could presumably damage the entire family's reputation. While the Supreme Court of Alabama based its reversal of the original conviction on a different technicality, it also considered the lower court's refusal to charge the jury that inconsistencies regarding Sally Grayson's testimony raised reasonable doubt. The Court ruled that this refused charge did not necessitate reversal of the conviction in this case, but its consideration of this issue nonetheless affirmed the potential of personal motives uncovered during testimony to injure prosecutors' cases against interracial couples.[307] In situations such as this, personal disagreements continually hindered successful implementation of laws and legal systems, again granting communities and families more weight in regulating and defining race.

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[306] *Ratliff v. State*, 234 Miss. 724 (1958).
[307] *Cauley v. State*, 92 Ala. 71 (1891).

Other witnesses and the lawyers who questioned them were more specific than Mimms and Barge about the particular grievances that ultimately called their testimony into question. When Nathan Bell, black, and Luby Griffith, white, of the tiny rural community of Pine Apple, Alabama, faced miscegenation charges in 1950, two key witnesses for the prosecution were both revealed to have personal quarrels with the defendants. Questioning suggested that witness Elmo Griffith, a cousin of defendant Luby's husband, Frank, "had been taking a pretty active part in this case... [and had] been going about seeing witnesses and bringing information to the Sheriff." A "controversy about the will of [Frank's] father" may have explained this behavior, as the lawyer suggested that Elmo and Frank "had some words about" probating the will, leading to hard feelings and a plausible reason for him to testify against his cousin's wife. Another witness, Miley Moore, a black neighbor of the Griffiths, also had reasons for hard feelings against her neighbors. At one point, Luby Griffith, fearing that Moore was "going with" her boyfriend, Nathan Bell, allegedly threatened Moore's life, after which Moore "sort of had it in for [Luby]," which Moore freely admitted. Additional testimony suggested that Moore also "had it in for" Frank Griffith, who was a storeowner, because of a disagreement over some whiskey, and furthermore that Moore and Luby had engaged in an additional dispute over the price of some sewing Luby had done for Moore.[308] These specific arguments not only called key witnesses' testimony, and thus the larger case, into doubt, but also suggested that personal motives could be more influential in inducing southerners to take action, including testifying or even helping build a case, against their neighbors than either laws or the racial conventions of the Jim Crow system.

The alleged dispute between Frank and Elmo Griffith over a will and an inheritance highlights the role that possible financial gain could play in witness testimony, a pattern also reflected in the 1953 Chestang school attendance case. One witness, for example, admitted that

[308] *Griffith v. State*, 35 Ala.App. 582 (1951).

"there's some litigation about a piece of property" in the court between his family and the Chestang family, and another raised the possibility of bad blood between him and the Chestang brothers over the brothers' claim that the witness's father took a steer belonging to them.[309] While testifying against the Chestangs would not return their property to either of these witnesses, it nonetheless provided a possible method to strike back over perceived or actual damages. Motives like this helped to explain why individuals might have gotten involved in legal affairs even after years of previous toleration.

Similarly, in the miscegenation trial of Jesse Williams, while evidence suggested that personal quarrels inspired Oliver Petty to lie about Williams' relationship with Bessie Batson and initiate prosecution, similar disagreements also motivated another key witness in this case to testify in support of Petty's story. As Williams' grandfather, Joe Lundy, explained, witness "Bud Hall lived on my place in 1931, and made a crop for me," and that "he wanted to stay with us this year, but I would not let him." Refusal to provide employment, particularly during the Great Depression, certainly could cause friction between two parties, helping to explain the evidence that Bud Hall not only lied under oath about having seen Williams and Batson together, but also that he later admitted as much to Williams, Lundy, and their family. While Hall eventually denied both recanting his testimony to the Lundy family, as well as desiring a job from Lundy in the first place, the overall weight of the extensive evidence in this case suggested that, in fact, no relationship had existed between Williams and Batson.[310] Instead, personal disagreements motivated community members to act against their neighbors both through legal charges and witness testimony, and race-based charges merely provided a convenient tool for doing so.

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[309] *Chestang v. Burns* (1953).
[310] *Williams v. State* (1933), 23; *Williams v. State* (1934), 70.

When H.W. Kinard, white, went on trial for unlawful cohabitation with his longtime partner, Mary Kinard, black, in Hinds County, Mississippi in 1879, the state only produced two witnesses to support the charges. One of these two witnesses, at best, failed to provide any evidence of a crime, and, at worst, in fact contradicted the charges, leaving witness Erwin Barlow to provide the only evidence of illegal cohabitation. Barlow and Kinard, however, shared a contentious history, with Barlow testifying that he had been "put into jail at the instance of said H.W. Kinard, where he remained twenty five days." Kinard's defense lawyer, J.W. Jenkins, explained the significance of this grudge, asking "how far Barlow's testimony will stand the test of truth. In the first place, Barlow himself says that his feelings are hostile to Kinard... that defendant H.W. Kinard caused him to be put in jail and that he (witness) dislikes said Kinard and does not speak to him. Standing, then, as he does in an attitude of hostility toward Kinard his testimony is to be taken with caution, to say the least." The Supreme Court of Mississippi later agreed that evidence of cohabitation was "negatived in part by the evidence for the defence [sic]," but refused to overturn the conviction on the grounds that "we cannot disturb the verdict of the jury unless error of law occurred to the prejudice of the accused." In this case, Barlow's hostility toward Kinard over his own legal troubles seemed more pressing than any concern he might have exhibited over racial infractions, particularly given the stark lack of corroborating evidence. The presence of three mulatto children in the Kinard's home suggested that H.W. and Mary probably had, in fact, engaged in a decade-long relationship, as charged, but they never faced prosecution until shortly after the dispute between Kinard and the main witness against him.[311] Examining the personal motivations of individuals who initiated prosecution or testified against interracial couples, such as Barlow, thus helps to explain how tolerance and

[311] *H.W. Kinard v. State,* 57 Miss. 132 (1879).

unwillingness to get involved could co-exist with harassment and prosecution during the Jim Crow period.

The Knight family of Mississippi perhaps best illustrated the long-term grudges between community or family members that could result in prosecution or damaging testimony after years and even decades of failure to take action. At the miscegenation trial of Davis Knight for his 1946 marriage to a white woman, Junie Lee Spradley, his great-uncle Tom Knight provided key testimony showing that Davis' branch of the family was part black, and thus that Davis' marriage was illegal. According to Tom and state prosecutors, Tom's father, Newt Knight, had engaged in a long-term relationship with a black woman, known as Rachel Knight, resulting in descendants including Davis Knight. With another key witness to Rachel's race having admitted to being born after Rachel's death, Tom Knight's testimony carried much of the weight of the prosecutor's case. As Davis's attorney wrote in summarizing the case, "Tom Knight... filled with venom and hatred, testified to certain racial characteristics of Rachel, which… indicated that she was a negro of full blood," but that "he seems to have some time early in life become enraged at his father to such an extent that he did not attend his funeral and did not know exactly where he was buried." To believe Tom Knight's testimony that Rachel was a full-blood Negro, as was necessary for her descendant Davis Knight's conviction under Mississippi's one-eighth legal definition of race, thus stretched the imagination not only because of the difficulty of determining precise degree of blood and accurately remembering it decades later, but just as importantly because Tom Knight's open distaste for his father rendered him an unreliable and biased witness. The Supreme Court of Mississippi agreed with Davis Knight's lawyer that the state, and thus Tom Knight, failed to build a case based on reliable evidence that Rachel was a "full-blooded" Negro, and that Davis Knight by extension was a Negro within the legal

definition, and thus overturned Davis Knight's miscegenation conviction.[312] As this situation indicates, decades long grudges and personal disagreements could provide incentive for individuals to testify against family or community members, even after years of non-action, but they could also introduce such doubt of reliability as to hinder prosecution for race-based infractions to the point of undermining the goal of effectively regulating racial boundaries.

Not just estranged relatives, but even spouses and lovers proved willing to testify against each other for personal reasons of spite or gain, again indicating the centrality of personal motives to moving race-based prosecutions forward. In a 1902 case from Montgomery, for example, a husband apparently testified during the trial of his wife's lover in order to get back at her for her poor treatment and embarrassment of him. Island and Mary Calvin, a black married couple, had rented a room to Joe Campbell, a white man, for a couple of weeks when Island began to suspect that Mary and Campbell had begun a relationship. As he later testified, "after the defendant had been in my house about two weeks, I one night went to bed with my wife, …and asked my wife to have sexual intercourse with me which she refused to do stating that she would not give it to me for five hundred dollars and not to touch her, and Joe Campbell laughed out loud when she said that, in a voice that could be heard in the next room." Island Calvin claimed to have later observed the newly formed couple having intercourse, and testified that when he ordered Campbell to leave his house, Mary said she would also leave. His testimony, in part motivated by anger and embarrassment, proved central to the later appeal of Campbell's conviction, with defense lawyers arguing for the inadmissibility of spousal testimony. Ultimately, the Supreme Court of Alabama affirmed the admissibility of a husband's testimony

[312] *Knight v. State*, 207 Miss. 564 (1949). Also see Victoria E. Bynum, "'White Negroes' in Segregated Mississippi: Miscegenation, Racial Identity, and the Law," *Journal of Southern History* 64 (1998): 247-276; and Victoria E. Bynum, *The Free State of Jones: Mississippi's Longest Civil War* (Chapel Hill: University of North Carolina Press, 2003).

at the trial of her lover, since they were indicted separately, but Calvin's testimony reaffirmed the centrality of personal motives to involvement in race-based legal cases, as well as the concrete impact that these personal motives could have on the success or failure of prosecuting these charges.[313]

Similar to Island Calvin, Ivy Medicus also served as a key witness at the trial of her husband, Charles Medicus, in Mobile, Alabama, for miscegenation with an allegedly black woman, Sarah Wilson, better known as "Shreveport Sarah" after her city of origin. The trial largely revolved around the issues of Wilson's racial heritage and her general reputation, but Ivy Medicus was no passive participant. She not only related in detail years' worth of incidents of intimacy between her husband and Wilson during the early 1920s, but she also testified to her own actions of phoning Wilson, following her husband, and on one occasion even chasing him from Wilson's house. Newspaper accounts documented that she even shot her husband once after finding him in the company of another woman, possibly Wilson.[314] These actions all failing to break up the adulterous and interracial relationship between Charles Medicus and Wilson, Ivy possibly could have viewed testifying against Wilson as one more tool for ending the relationship. For spouses such as Island Calvin and Ivy Medicus, then, legal testimony provided a potential method for dealing with the hurtful impact of marital infidelity. As in other race-based cases, personal motivations, rather than a desire to police racial boundaries, proved

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[313] *Campbell v. State*, 133 Ala. 158 (1902).

[314] *Wilson v. State*, 20 Ala.App. 137 (1924); "'Dope' Peddlers' Queen Sentenced: Former Shreveport Woman Given Year in Prison," *New Orleans States*, 3 March 1917, p. 12; "Shoots Husband Leaving Another Woman's House," *New Orleans Item*, 24 March 1922, p. 1; "Women Rap Bondsmen: 'Shreveport Sarah' Released After Two Weeks in Jail," *Times-Picayune*, 2 June 1922, p. 9; "Mobile Women Protest Against Parole of 'Shreveport Sarah,'" *Montgomery Advertiser*, 10 August 1923, p. 2; "League Scores Mayor," *Times-Picayune*, 11 August 1923, p. 16; "Shreveport Sarah Has Parole Revoked," *Montgomery Advertiser*, 11 August 1923, p. 3; "Mobile Commends Governor Brandon: Women Satisfied That He Did Not Know Full History of 'Shreveport Sarah' Case," *Montgomery Advertiser*, 12 August 1923, p. 2; "Shreveport Sarah to Appeal Mobile Case," *Montgomery Advertiser*, 15 August 1923, p. 7; "'Shreveport Sarah' Out on Appeal of Bond of $500," *Montgomery Advertiser*, 2 September 1923, p. 25.

central to building these cases against interracial couples. Similar to evidence of the varied ways in which race-based legal cases entered the system, then, indications of witnesses' motivations for participating in trials suggest that desire to enforce Jim Crow laws played a less important role in moving cases through the judicial system than did personal motives. With ties of community and family proving central to both initiating and succeeding in prosecution of racial infractions, Jim Crow laws themselves seem less than fully effective at defining and regulating the ways southerners dealt with race than anticipated.

Clearly, community members played a key role in choosing to participate in prosecution or else to tolerate infractions against Jim Crow, often hindering the legal system and its goals in the process. Even those charged with upholding the system, however, revealed similar tendencies of utilizing racial charges to further personal agendas and thus often undermining the intent and ability to function of the larger system. Lawyers, in particular, proved adept at manipulating previous race-based legal charges that defendants had faced in order to advance their own legal cases and thus their chances of success in the courtroom. For example, when Tom Cauley, a black man, faced miscegenation charges for an alleged relationship with Parthenia Grayson, a white woman, his defense lawyers argued that Cauley had been falsely identified as Grayson's partner, and "offered in evidence the indictment and judgment of conviction against Green Moore for living in adultery with Parthenia Grayson" to prove Cauley's innocence.[315] Similarly, during Jesse Williams' trial for a possible relationship with Bessie Batson, prosecutors repeatedly questioned him and other witnesses about his previous marriage to a white woman, despite the judge's ruling that "that is immaterial."[316]

[315] *Cauley v. State* (1891).
[316] *Williams v. State* (1933), 26.

A defendant's history of previous miscegenation charges, in cases such Cauley's and Williams', provided lawyers on both sides of miscegenation trials with evidence to influence juries and better their own chances of success, but some lawyers went even farther, using miscegenation charges that members of a defendant's extended family had faced to influence their cases. Percy Reed's trial, for example, focused in large part upon a previous trial, almost forty years earlier, of his cousin, Jennie Goodman, for marriage to a white man. In part, memories of this trial provided evidence of Jennie, Percy, and their extended family's racial identity, but by continually referring to this case, the prosecution also established a pattern of racial ambiguity in the Reed family that had nothing to do with Percy and his marriage, and yet could create doubt in the mind of juries as to his racial "purity."[317]

Lawyers who introduced and elaborated upon previous charges did not do so in order to pursue personal revenge, protect a business, or punish a wayward romantic partner, as did witnesses and community members, but they shared the basic motivation of pursuing personal gain, in these cases the career advancement obtained by successfully winning a trial. Edward Lord's suit against the city of Mobile for failure to maintain its sidewalks perhaps best illustrates this trend. Although Lord's negligence suit contained no racial element whatsoever, the city's lawyers nevertheless introduced this element into the case, repeatedly questioning witnesses about Lord's marriage to an allegedly black woman to undermine his credibility. On appeal, the Supreme Court of Alabama recognized this ploy, reversing the decision and ruling that all evidence about Lord's marriage should have been excluded because it "had nothing to do with the case, and the only effect of such evidence was, to unduly prejudice the jury against the plaintiff." Just like community members who used racial infractions to achieve their personal

[317] *Percy Reed v. State* (1922).

ends, then, these lawyers recognized the utility of appealing to race, and the possible benefits of doing so, particularly in a society as focused on race as was the Jim Crow Deep South.[318]

In the Jim Crow South, community members simultaneously prosecuted and tolerated infractions against the racial line, resulting in possible leniency for interracial couples or racially ambiguous families, but also creating uncertainty and apprehension for those who occupied this uncertain territory. While increasingly strict Jim Crow laws sought to eliminate this wiggle room, communities consistently proved more influential than laws in enforcing these standards, and as race-based court cases indicate, personal motives almost always trumped racial prejudices in pushing individuals to either tolerate or persecute racial violations. As these cases suggest, most communities proved willing to tolerate racial infractions until personal motivations spurred them to get involved, either through initiating prosecution, helping build a case, or simply providing testimony. These personal motivations varied wildly, from disputes over illegal alcohol, to fights between couples, to even frustration over the oppression and double standards of the Jim Crow system, but with personal motives rather than desire to uphold the law driving communities to either toleration or prosecution, laws struggled to create the absolute racial boundaries they desired, much less effectively police them.

[318] *Lord vs. City of Mobile*, 113 Ala. 316 (1897).

CONCLUSION

Almost three decades after Alabama legislators conclusively defined a black person as an individual with as little as or one-drop of "negro blood," Berry Cannon, a white barber outside of Mobile, testified during a school attendance trial that Mike and Russell Chestang, in fact, fit neither this definition of blackness, nor offered conclusive evidence of their whiteness. Instead, he explained that "I wouldn't say they were considered colored people and I wouldn't say they were considered white. They were betwixt and between." Of the numerous witnesses of both races called to testify in this school attendance case, some agreed with Cannon that the brothers occupied a racially ambiguous space, while others countered that they were definitively black, or on the other hand most certainly white.[319] This disagreement and the apparently longstanding inability of the Chestangs' larger community to define their race, along with the willingness of many of their neighbors to live with this ongoing ambiguity, flies in the face of Alabama's by then long-standing Jim Crow laws, almost mocking the belief that one-drop of black blood not only could be ascertained in individuals, but also then could be utilized to regulate race and racial behavior.

As race-based court cases from the Deep South from Reconstruction through the Jim Crow period indicate, contrary to the intent of southern segregation and miscegenation laws, even by the end of the Jim Crow period people like the Chestangs were far from unique in continuing to occupy spaces between the races, although decades had passed since the early twentieth century implementation of strict one-drop laws presumed to clarify any remaining racial ambiguity in southern societies. In Mississippi, for example, the descendants of Newt and

[319] *Chestang v. Burns*, 258 Ala. 587 (1953).

Rachel Knight continued to defy clear legal or social racial categorization, as did Dollie Seay White's family, first in Georgia and then Florida, Vena Mae Pendley's family in Alabama, Vincent and Adeline Vetrano's children in Mississippi, the Farmers and Chestangs of Mobile, and the Reed, Weaver, and related MOWA Choctaw families in South Alabama.[320] The persistence of these racially ambiguous, or merely just allegedly racially ambiguous, families and individuals well into the twentieth century speaks to the difficulty of using laws to define a define a concept as fundamentally imprecise as race, and thus the persistent inability of the law to regulate either the contours of race itself or attitudes and behaviors concerning it.

Despite the laws that continually challenged their identities, marriages, and social standing, and perhaps in part because of the ineffectiveness of these laws at addressing all situations and complexities, most of these late Jim Crow era "betwixt and between" families remained in the Deep South and persisted in attempting to carve out what space they could from the inequality of Jim Crow. Presumably, they counted on continuing to experience the tolerance and acceptance that some court cases indicate did, in fact, exist, rather than the well-documented ostracism, persecution, or even violence that similar families and couples faced during Jim Crow. Percy Reed and Helen Calkins, for example, in the 1930s adopted and raised two children in the same isolated South Alabama community in which they had always lived, and in which they had faced serious legal charges.[321] Michael Henry Chestang, who fought for his right to attend the white schools outside of Mobile just before *Brown v. Board* presumably rendered such struggles moot, likewise lived and died in the same county in which he and his parents had challenged

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[320] *Knight v. State*, 207 Miss. 564 (1949); *White v. Holderby*, 192 F.2d 722 (1951) and *Shiver v. Valdosta Press*, 82 Ga.App. 406 (1950)*; Pendley v. State*, 36 Ala.App. 169 (1951) and *Agnew v. State*, 36 Ala.App. 205 (1951)*; Vetrano v. Gardner*, 290 F.Supp 200 (1968)*; State ex rel. Farmer v. Board of Com'rs of Mobile County et al.,* 226 Ala. 62 (1933)*; Chestang v. Burns* (1953)*; Percy Reed v. State*, 18 Ala.App. 353 (1922)*; Daniel Reed v. State*, 20 Ala.App. 496 (1925)*; Weaver et al v. State*, 22 Ala.App 469 (1928).

[321] *Percy Reed v. State* (1922); Manuscript Census Returns, Fifteenth Census of the United States, 1930, Washington County, Alabama, Precinct 8, Sheet 6A; Manuscript Census Returns, Sixteenth Census of the United States, 1940, Washington County, Alabama, Precinct 8, Sheet 5A.

both the school board and the Jim Crow system, as did Cecil Farmer, who fought a similar battle in a nearby community, two decades before Chestang.[322] And despite spending two years in prison for his mixed-race marriage, when Jim Weaver died in 1939, again in the same southern Alabama area in which he had always lived, Maggie Milstead, who spent three months in prison before being paroled, remained listed as his wife, suggesting a possible ongoing relationship in spite of the law under which she and her husband had been convicted.[323]

Some people faced with racial ambiguity, on the other hand, left their homes or even the region, presumably at least in part to escape ongoing social and legal uncertainty. The Grandich family, whose alleged racial ambiguity resulted in the 1917 precedent applying the one-drop rule to Mississippi school attendance cases despite the lack of a statue specifying that definition, by 1920 had moved to New Orleans, geographically close to their previous Hancock County home, but an area well-known for more racially lenient attitudes.[324] Similarly, Davis Knight, after divorcing Junie Lee Spradley only a few years after his miscegenation trial, moved from Mississippi to a community near Houston, Texas, which, like New Orleans, was an area with the possibility for more racial flexibility.[325] Jesse Williams likewise appears to have ended his life in a larger urban center which offered more flexibility and anonymity, eventually settling in St. Louis, Missouri, far from the Alabama and Florida communities in which he grew up and from which his white sister-in-law, late in her life, still refused to discuss "that man."[326] As these families, individuals, and their reactions to racial ambiguity indicate, racial mixing clearly

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[322] *Chestang v. Burns* (1953)*;* Michael H. Chestang, US Social Security Death Index, 1935-2014, ancestry.com; *Farmer v. Board of Com'rs* (1933); Manuscript Census Returns, Fifteenth Census of the United States, 1930, Mobile County, Alabama, Precinct 10, Sheet 16B; Cecil Joseph Farmer, *Alabama Death and Burial Index, 1881-1974*, ancestry.com

[323] James O. Weaver, *Alabama Death and Burial Index, 1881-1974*, ancestry.com.

[324] Manuscript Census Returns, Fourteenth Census of the United States, 1920, Orleans Parish, Louisiana, Precinct 11, Sheet 7B.

[325] Vikki Bynum, "The Life and Death of Davis Knight after *State vs. Knight* (1948)," http://renegadesouth.wordpress.com/2009/04/08/the-life-and-death-of-davis-knight-after-state-vs-knight/.

[326] Jesse Williams, *US Social Security Death Index, 1935-2014*, ancestry.com.

continued to influence lives and raise strong emotions in the Deep South throughout and even after Jim Crow, but just as clearly, the ambiguity of race and the existence of "betwixt and between" persisted for equally long, despite legal efforts to define ambiguity out of existence and to prevent the creation and perpetuation of a mixed race population.

In many ways, southern communities proved to be the key force in hindering the ability of laws to effectively define and regulate race and thus in allowing people like these families and individuals to continue to claim an apparently tolerated but still racially uncertain space. This contrast between the intent of the law and the response of the community emerged most clearly with the passage of one-drop laws in the early twentieth century. Even as eugenics-influenced legislators of this period embraced a one-drop definition of race that supposedly clarified the issue of race and took precedence over earlier community perceptions of a person's reputation or actions, or, in some cases, even appearance, most southerners, black or white, instead continued to evaluate race on just these terms. Personal opinions about skin color, hair texture, and physical traits thus combined with assessments of behavior, reputation, and actions to provide a sense of a person or family's racial identity, which could shift over time or according to circumstance, as the Chestang brothers discovered. With laws frequently insufficient to meet the day-to-day challenges of navigating these complex real-life racial identities, then, as the difficulties that judges and juries faced in applying the one-drop rule illustrate, these more community-based methods of defining race persisted and remained influential in both the social and legal realms, even deep into the Jim Crow period, allowing a greater degree of flexibility, room for interpretation, and even malleability than laws intended.

Furthermore, as indicated by the large number of whites who accepted the racially ambiguous Chestangs and their mixed marriages as simply a slightly quirky part of the

community—the white community—as well as by the numerous other similar situations that southern racial court cases reveal, southern communities also could demonstrate surprising tolerance of racial boundary crossing, again in direct contravention of the law. As court records and extensive testimony reveal, interracial couples sometimes formed lifelong relationships or marriages that lasted for years before—and occasionally even after— prosecution for miscegenation, and a significant number of couples never faced direct legal challenges to their relationships at all. Communal and family ties instead often tempered possible preexisting racial prejudices, allowing mixed or racially ambiguous families to remain relatively unharrassed, at least until personal grievances unrelated to race sparked action. The personal rather than racial nature of the disagreements that drove most southerners to initiate legal charges against their neighbors or to participate in building cases against them suggests that these southerners had a keen understanding of both the myths and the utility of race. Rather than automatically buying into the intractable racisms and dictates of segregation that Jim Crow laws and customs mandated, these southerners, in reacting to racial infractions, instead chose their own paths from a range of options that could include outrage but that, judging from extensive testimony, also frequently included tolerance and lack of interest.

As anyone the least familiar with Jim Crow can attest, however, this tolerance could be withheld or revoked as easily as extended, and often was, resulting in social ostracism, legal prosecution, and violence. Just as some southerners continued to occupy a racial space that was "betwixt and between," then, these interracial families and couples also occupied a social space that was equally uncertain and "betwixt and between" the two poles of safety and danger. Their communities, neighbors, and even families could, at any point, decide to withdraw their tolerance, a reality that left them perpetually threatened and insecure. This persistent uncertainty

joins the well-documented inequality and violence of Jim Crow in highlighting the wide range of both physical and psychological hardships that minorities faced during that period.

Yet, that the option of tolerance even existed, and was chosen as regularly as court cases indicate that it was, suggests that the Jim Crow system, while harsh, dangerous, and devoid of basic rights and equality, nevertheless incorporated a range of beliefs, attitudes, and choices, rather than a comprising a single monolithic and universally supported social structure. To whatever extent this system might be perceived as a creation of law, it actually functioned according to the desires and preferences of individuals across a variety of contexts and circumstances. In some ways, this finding throws the inequality and violence of Jim Crow into an even harsher light; many white southerners knew that other options existed, and sometimes even practiced them, and yet nonetheless at other times chose to participate in and perpetuate a harsh and unjust system. The possibility of tolerance and acceptance therefore pushes us to reevaluate our understanding of race relations during Jim Crow, forcing us to account for a more nuanced, complex, and diversely motivated system than we once imagined.

APPENDIX A: SOUTHERN MISCEGENATION LAWS

1860s

1865: Georgia retained a pre-war statute invalidating marriage between “white persons and persons of African descent”

Mississippi passed a law sentencing couples convicted of interracial marriage to life imprisonment

Florida banned interracial marriage and fornication, and defined a "person of color" as having one-eighth Negro blood

1866: Alabama passed a law banning interracial marriage, adultery, and fornication, and defined a Negro as having one-eighth Negro blood

Arkansas specified that new laws allowing freedmen to marry did not overturn its antebellum miscegenation ban

1868: Alabama's *Ellis v. State* affirmed the constitutionality of its anti-miscegenation laws

South Carolina repealed its previous miscegenation law

1870s

1870: Mississippi repealed its 1865 miscegenation law

1872: Alabama's *Burns v. State* invalidated state anti-miscegenation laws

Florida omitted anti-miscegenation laws from its new state code

1873: Virginia passed a law banning marriage between whites and Negroes, defined as having one-fourth "colored" blood

North Carolina banned marriage between whites and Negroes, defined as having one-eighth Negro blood

1874: Arkansas removed its previous miscegenation ban from its state code

1876: Arkansas re-implemented a statutory miscegenation ban

1879: South Carolina re-implemented a miscegenation ban between any white person and any "negro, mulatto, mestizo, or half-breed"

1880s

1880: Mississippi re-implemented a miscegenation ban, defining a Negro as having "one-fourth or more of negro blood"

1881: US Supreme Court case *Pace v. Alabama* declared anti-miscegenation laws constitutional

1882: Georgia revised its laws to define "persons of color" for the first time, including anyone with "one-eighth negro or African blood"

1885: Florida re-implemented a miscegenation ban, banning marriage between whites and Negroes having one-sixteenth or more Negro blood

1890s

1890: Mississippi adjusted the definition a Negro from having one-fourth to having "one-eighth or more of negro blood"

1895: South Carolina included an anti-miscegenation clause in its new state constitution, and redefined a Negro as having one-eighth Negro blood

1900s-1910s

1901: Alabama included an anti-miscegenation clause in its new state constitution, prohibiting the passage of laws permitting miscegenation

1910: Virginia changed its definition of a Negro from one-fourth to one-sixteenth Negro blood

North Carolina changed its definition of a Negro from one-fourth to one-eighth Negro blood

1911: Arkansas banned interracial cohabitation as well as marriage, and redefined a Negro as having "any negro blood whatever"

1917: Tennessee passed a one-drop definition of race

1920s

1924: Virginia passed the "Racial Integrity Act," adopting a one-drop standard

1927: Alabama passed a law adopting the one-drop standard

Georgia passed a law adopting the one-drop standard

After Jim Crow

1967: US Supreme Court case *Loving v. Virginia* overturned anti-miscegenation laws throughout the nation

2000: Alabama removed its anti-miscegenation clause from its constitution

APPENDIX B: OUTCOMES OF SELECTED APPEALS

While some of these cases debated the racial identity of the defendants, for the sake of clarity and consistency in describing the circumstances of these cases, I have listed the defendants' races as alleged by the charges they faced, rather than the race they claimed.

Alabama

1868: *Ellis v. State,* Lee County
Thornton Ellis, black; Susan Bishop, white
Convicted of adultery; Conviction reversed

1872: *Burns v. State*, Mobile
Thomas Wood, black; Eckie Bunch, white; married by Thomas J. Burns, justice of peace
Burns convicted of performing an interracial marriage; Conviction reversed

1881: *Pace & Cox v. State,* Clarke County
Tony Pace, black; Mary Ann Cox, white
Convicted of adultery and fornication; Conviction affirmed

1884: *Bryant v. State,* Chilton County
Washington Bryant, black; Jemima Hardeman, white
Convicted of adultery and fornication; Conviction affirmed

1888: *Walker v. State*, Montgomery
Dr. A.C. Walker, white; Daisy Harris, black
Walker convicted of assaulting Harris with intent to murder, Conviction affirmed

1890: *Linton v. State*, Pike County
John Blue, black; Martha Linton, white
Convicted of felonious adultery; Conviction affirmed

1891: *Cauley v. State*, Butler County
Tom Cauley, black; Parthenia Grayson, white
Convicted of adultery; Conviction reversed

1897: *Lord v. City of Mobile*, Mobile
Edward Lord, white; Annie Oliver, black
Lord sued the city for negligence after a sidewalk accident; Decision in favor of the city (in part based on unrelated evidence of Lord's marriage) reversed

1898: *McAlpine v. State*, Talladega
Will McAlpine, black; Lizzie White, white
Convicted of miscegenation; Conviction reversed

1902: *Campbell v. State*, Montgomery
Joe Campbell, white; Mary and Island Calvin, black
Campbell and Mary Calvin convicted of adultery; Conviction affirmed

1904: *Locklayer v. Locklayer*, Lawrence County
Jackson Locklayer, black; Nancy Locklayer, white
Inheritance suit by Jackson's relatives against Nancy; Decision in favor of Jackson's relatives affirmed

1914: *Allen v. Scruggs*, Choctaw County
Littleberry Ryal Noble, white; Kit Allen, black; son Robert Allen
Petition by Robert Allen to probate Noble's lost will; Decision against Allen reversed

1915: *Jones v. RL Polk & Co., et al*, Birmingham
Mary A. Jones, white
Jones sued Polk & Co. for misidentifying her as Negro in the city directory; Decision in favor of Polk & Co. affirmed

1917: *Smith v. State*, Henry County
George Smith, white; Mattie Leonard, black
Convicted of miscegenation; Conviction reversed

1918: *Metcalf v. State*, Marion County
Jim Simmons, white; Ophelia Metcalf, black
Convicted of miscegenation; Conviction reversed

1921: *Lewis v. State*, Henry County
Hint Lewis, white; Bess Adams, black
Convicted of felonious fornication; Conviction affirmed

1921: *Percy Reed v. State*, Washington County
Percy Reed, black/Indian; Helen Calkins, white
Convicted of miscegenation; Conviction reversed

1922: *Rollins v. State*, Jefferson County
Jim Rollins, black; Edith Labue, white/Italian
Convicted of miscegenation; Conviction reversed

1924: *Wilson v. State*, Mobile
Charles and Ivy Medicus, white; Sarah Wilson, black
Wilson convicted of miscegenation with Medicus; Conviction affirmed

1924: *Bufford v. State*, Lee County
John H. Bufford, white; Ella Lee Brown, black
Convicted of miscegenation; Conviction reversed

1925: *Daniel Reed v. State*, Washington County
Daniel Reed, black/Indian; Thelma Curry, white
Convicted of miscegenation; Conviction reversed

1928: *Weaver v. State*, Washington County
Jim Dud Weaver, black/Indian; Maggie Milstead, white
Convicted of miscegenation; Conviction affirmed

1929: *Moore v. Terry*, Coffee County
Charles Moore, black; Millie Moore, black; son Tom Moore, black; daughter Jane Terry, mulatto
Tom Moore sued to disinherit his sister Terry; Decision in favor of Terry affirmed

1930, 1931: *Williams v. State*, Covington County
Jesse Williams, black; Louise Cassady, white
Convicted of miscegenation; Convictions reversed

1933, 1934: *Williams v. State*, Covington County
Jesse Williams, black; Bessie Batson, white
Convicted of miscegenation; Convictions reversed

1933: *Farmer v. Board of School Com'rs of Mobile County et al*, Mobile
Samuel Farmer, "Creole;" children Irene and Cecil Farmer
School attendance case; Decision against Farmer affirmed

1937: *Murphy v. State*, Lauderdale County
Coleman Cole, black; Alice and Buster Murphy, white
Cole and Alice Murphy convicted of miscegenation; Conviction reversed

1940: *Mathews v. Stroud*, Bullock County
Charlie C. Stroud, white; Estella Mathews, black
Inheritance suit by Stroud's relatives against Mathews; Decision in favor of relatives reversed

1941: *Jordan v. State*, Lauderdale County
Tom Jordan, white; Mary Brewer, black
Convicted of miscegenation; Conviction reversed

1944: *Dees v. Metts*, Monroe County
John Benjamin Watts, white; Nazarine Parker, black
Inheritance suit by Watt's relatives against Parker; Decision in favor of relatives reversed

1951: *Griffith v. State*, Wilcox County
Nathan Bell, black; Frank and Luby Griffith, white
Bell and Luby Griffith convicted of miscegenation; Conviction affirmed

1951: *Pendley v. State* and *Agnew v. State*, Fayette County
Hosea Agnew, black; Vena Mae Pendley, white
Convicted of miscegenation; Pendley's conviction affirmed, Agnew's conviction reversed

1953: *Chestang v. Burns*, Mobile County
Michael S. Chestang, "Creole;" son Michael Henry Chestang
School attendance case; Decision against Chestang affirmed

Georgia

1869: *White v. Clements*, Chatham County
Richard W. White, black; William I. Clements, white
Clements claimed White was ineligible to hold office because of race; Decision in favor of Clements reversed

1878: *Dillon v. Dillon*, Chatham County
David R. Dillon, white; Rachel Black Dillon, black; son Alexander
Rachel sued David for alimony; Decision in favor of Rachel affirmed

1887: *Smith v. DuBose*, Hancock County
David Dickson, white; Julia Dickson, black; daughter Amanda Dickson, black
Inheritance suit by Dickson's relatives against Amanda and her sons; Decision in favor of Amanda affirmed

1890: *State v. Tutty*, Liberty County
Charles Tutty, white; Rosa Ward, black
Convicted of fornication; Case remanded to state court by federal court

1891: *Mays v. State*, Bartow County
Will and Ellen Mays, black; Ed Harris, white
Mays convicted of manslaughter of Harris; Conviction affirmed

1907: *Wolfe v. Georgia Railway*, Atlanta
Nathan F. Wolfe, white
Wolfe sued streetcar company for implying he was black; Decision in favor of Georgia Railway reversed

1910: *Brown v. State*, Washington County
W.L. Brown, white
Convicted of voluntary manslaughter for shooting a marshal upon being discovered with a black woman; Conviction affirmed

1915: *Garvin v. Mayor and Council of City of Waynesboro*, Burke County
Noll, white; Bessie Garvin, black
Garvin convicted of disorderly conduct; Conviction affirmed

1921: *Bourquin v. Bourquin*, Chatham County
Elliott Bourquin and Guilleman Bourquin, white
Disinheritance suit by Elliott against brother Guilleman alleging illegitimacy based on race; Decision in favor of Guilleman affirmed

1943: *Jones v. Wilson*, Fulton County
Bill Jones, black; Maggie Petty, had black father and white mother; Missouri Irish, white, Petty's first cousin
Inheritance dispute between Jones and Irish; On retrial, decided in favor in Jones

1951: *White v. Holderby*, Lowndes County
George White, white; Dollie Seay White, black; Lillian and Murrel Holderby, white
Whites sued Holderbys for libel regarding school attendance case; Decision in favor of Holderbys affirmed

Mississippi

1879: *H.W. Kinard v. State*, Hinds County
H.W. Kinard, white; Mary Kinard, black
Convicted of unlawful cohabitation; Conviction affirmed

1897: *Schwall v. State*, Lincoln County
George A. Schwall, white; Lula Smith, black
Convicted of unlawful cohabitation; Conviction reversed

1899: *Covington v. Frank*, Bolivar County
William A. Covington, white; Mary Covington, black
Inheritance suit by William's relatives against Mary; Decision in favor of William's relatives reversed

1917: *Moreau et al., School Trustees v. Grandich*, Hancock County
Antonio Grandich, white; Clara Covasovich Grandich, black; children Coranda, Grace, Antona, Katie
School attendance case; Decision in favor of Grandichs reversed

1922: *Walden v. State*, Holmes County
W.E. Moore, white; Fannie Walden, black
Walden convicted of murdering Moore; Conviction affirmed

1925: *Rice v. Gong Lum*, Bolivar County
Martha Lum, Chinese
School attendance case; Decision in favor of Lum reversed and petition dismissed

1925: *Dean v. State*, Adams County
W.S. Dean, white; Ralphine Burns, black
Convicted of unlawful cohabitation; Conviction reversed

1927: *Bond v. Tij Fung*, Coahoma County
Joe Tij Fung and son Joe Tin Lun, Chinese
School attendance case; Decision in favor of Fung and Lun reversed and petition dismissed

1932: *Pruitt v. State*, Lauderdale County
Ervin Pruitt, black; Frank and Luella Williamson, white
Pruitt convicted of murder for aiding Luella Williamson in killing their baby; Conviction affirmed (Luella Williamson also convicted of murder)

1936: *Cockrell v. State*, Grenada County
Zack and Mary Jane Cockrell, black; Ed Wilson, white
Cockrell convicted of murdering Wilson; Conviction reversed

1948: *Miller v. Lucks*, Hinds County
Alex D. Miller, white; Pearl Mitchell Miller, black
Inheritance suit by Pearl's relatives against Alex; Decision in favor of relatives reversed

1949: *Knight v. State*, Jones County
Davis Knight, black; Junie Lee Spradley, white
Convicted of miscegenation; Conviction reversed

1954: *Natchez Times Publishing Co. v. Dunigan*, Adams County
Mary Dunigan, white
Dunigan sued the newspaper company for libel for falsely identifying her as black; Decision in favor of Dunigan affirmed

1958: *Ratcliff v. State*, Lamar County
Elsie Arrington, white; Daisy Ratcliff, black
Convicted of cohabitation; Conviction reversed

1958: *Rose v. State*, Jones County
Joe Scott, black; Elmer and Mary Rose, white
Convicted of unlawful cohabitation; Conviction reversed

1968: *Vetrano v. Gardner*, various actions throughout Mississippi Delta counties
Vincent Vetrano, white/Italian; Adeline Foules Young Vetrano, black
Adeline sued to collect Vincent's social security benefits; Decision against Vetrano sustained

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